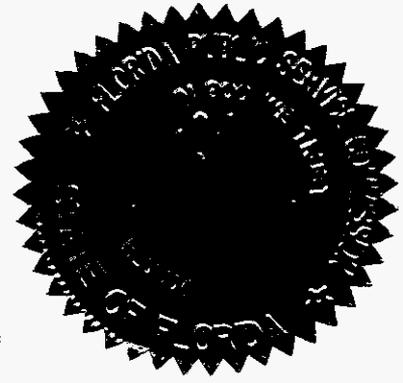


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED
COMPTON REPORTING
1998-12-08 11:14 AM
FORT MYERS, FLORIDA

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In the Matter of : DOCKET NO. 950387-SU
:
Application for Increased :
Wastewater Rates by :
Florida Cities Water :
Company - North Ft. Myers :
Division in Lee County. :



VOLUME 9
Pages 1132 through 1314

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN JULIA L. JOHNSON
COMMISSIONER J. TERRY DEASON
COMMISSIONER JOE GARCIA

DATE: Wednesday, December 8, 1998

TIME: Commenced at 9:15 a.m.
Concluded at 1:20 p.m.

PLACE: Harborside Convention Center
Room C1
1375 Monroe Street
Fort Myers, Florida

REPORTED BY: JOY KELLY, CSR, RPR
Bureau Chief, Reporting and
H. RUTHE POTAMI, CSR, RPR
Official Commission Reporters

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE
14404 DEC 21 1998
COMPTON REPORTING

I N D E X

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1 P R O C E E D I N G S

2 (Transcript continues from Volume 8)

3 (Hearing reconvened at 9:15 a.m.)

4 **CHAIRMAN JOHNSON:** We're going to go ahead
5 and reconvene the hearing. And I believe -- Staff
6 counsel.7 **MR. JAEGER:** Yes. Shall I read the notice
8 again?9 **CHAIRMAN JOHNSON:** No.10 **MR. JAEGER:** There's two preliminary matters
11 I want to address before I call Mr. Crouch.12 I think -- I have that Karen Dismukes'
13 Appendix was not moved into evidence and I want to
14 make sure I was wrong or it had been done.15 **CHAIRMAN JOHNSON:** I have it as admitted
16 into evidence. But if it was not, then let the record
17 reflect that it was admitted.18 **MR. JAEGER:** Okay. And I was 99% certain I
19 had Richard Addison's testimony inserted into the
20 record as though read, but somebody said they weren't
21 sure I did that. I wanted to make sure it was
22 inserted into the record as those read.23 **CHAIRMAN JOHNSON:** In an abundance of
24 caution let's make sure that we reflect that Addison's
25 testimony was inserted into the record as though read.

1 **MR. JAEGER:** I call Robert Crouch to the
2 stand.

3 - - - - -

4 **ROBERT J. CROUCH**
5 was called as a witness on behalf of Staff of the
6 Florida Public Service Commission and, having been
7 duly sworn, testified as follows:

8 **DIRECT EXAMINATION**

9 **BY MR. JAEGER:**

10 **Q** Mr. Crouch, could you please state your name
11 and business address for the record?

12 **A** My name is Robert J. Crouch. My business
13 address is 2540 Shumard Oak Boulevard, Tallahassee,
14 Florida 32399.

15 **Q** By whom are you employed and in what
16 capacity?

17 **A** I'm employed by the Florida Public Service
18 Commission as a supervisor of Water and Wastewater
19 Engineering.

20 **Q** Have you prefiled direct testimony in this
21 docket consisting of 13 pages?

22 **A** Yes, I did.

23 **Q** Do you have any changes or corrections to
24 your testimony?

25 **A** No, I do not.

1 (For the continuity of the record, Mr. Crouch's
2 prefiled testimony has been inserted here.)
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DIRECT TESTIMONY OF ROBERT J. CROUCH

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Q. Please state your name and business address.

A. Robert J. Crouch. Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399.

Q. Please state a brief description of your educational background and experience.

A. I received a B.S. in Engineering from the Air Force Institute of Technology in 1970. I completed post graduate work in Industrial Management from the Industrial College of the Armed Forces and graduated in 1976. I was certified as a Professional Engineer in March, 1976. I retired from the U.S. Air Force in 1979 as a Lieutenant Colonel after 23 years military service, primarily as an engineer and a manager. From 1979 to 1984, I was employed by Southwestern Bell Telephone Company as a design engineer.

In September, 1984, I started working for the Florida Public Service Commission (PSC) as a supervisor of an engineering section in the Division of Communications. In April, 1987, I transferred to the Division of Water and Wastewater where I supervise engineers in investigations of regulated water and wastewater utilities.

I am currently, or have been in the recent past, a member of the Florida Engineering Society, the Texas Society of Professional Engineers, National Society of Professional Engineers, Society of Military Engineers, American Water Works Association, Water Environment Federation, and the Florida Pollution Control Federation.

Q. By whom are you presently employed and in what capacity?

1 A. I am employed by the PSC as the Supervisor of Engineering in the
2 Division of Water and Wastewater. As I stated earlier, I have worked
3 for the PSC for over fourteen years and have been in my current position
4 for more than eleven years.

5 Q. What are your general responsibilities at the PSC?

6 A. As Supervisor of Engineering in the Division of Water and
7 Wastewater, I supervise assigned engineers who conduct field evaluations
8 and prepare recommendations pertaining to rate cases and technical
9 complaints for Commission review. The Engineering Section inspects and
10 evaluates regulated water and wastewater utilities and makes
11 recommendations to the Commission regarding utility compliance with
12 applicable PSC rules and state and federal regulatory standards. The
13 Engineering Section is also responsible for making recommendations on
14 what portion of a utility is "used and useful" for current customers.

15 Q. Have you ever testified before?

16 A. Yes. I have been accepted and testified as an expert witness in two
17 separate hearings held by the U.S. House of Representatives, Military
18 Appropriations sub-committee. I testified before this Commission in
19 Docket No. 910560-WS, application for a rate increase by Tamiami Village
20 Utility, Inc.; Dockets Nos. 920733-WS and 920734-WS, application for
21 a rate increase by General Development Utilities, Inc.; and Docket No.
22 940847-WS, application for a rate increase by Ortega Utility Company.
23 I also testified before the Division of Administrative Hearings (DOAH)
24 in the challenge to proposed Rule 25-30.431 (Margin Reserve).

25 Q. What is the purpose of your testimony today?

1 A. The purpose of my testimony is to respond to the remand of the First
2 District Court of Appeal whereby the Court stated that the Commission's
3 use of annual average daily flow (AADF) in the numerator was not
4 supported by competent, substantial evidence and represented an
5 unsupported change in Commission policy. In order to respond, first,
6 I would like to discuss the methods and procedures used by staff when
7 calculating used and useful percentages and second, the need to use
8 comparable periods of time for determining average wastewater flows in
9 both the numerator and denominator of the Used and Useful (U&U)
10 equation.

11 Q. What information have you relied upon in preparing your testimony?

12 A. As stated earlier, I have been a registered professional engineer
13 for more than 22 years and have worked as an engineer evaluating water
14 and wastewater rate cases for almost 12 years. Therefore, my testimony
15 is based upon the evidence in the record, my knowledge and expertise on
16 used and useful calculations, and past Commission decisions. The used
17 and useful determinations in recent cases have been controversial and
18 it is important to me that the Commission have all available information
19 and facts before reaching a decision. If the facts justify 100% U&U,
20 that will be my recommendation. Conversely, if the facts do not justify
21 100% U&U, I will not recommend 100%.

22 Q. How does the Commission determine a revenue requirement for purposes
23 of setting rates in a rate case?

24 A. The Commission's rules contain filing requirements (MFRs) that
25 companies have to file containing information about the operation of the

1 utility based on a test year. The purpose of this is to get
2 representative data about the utility for a year in which to determine
3 what revenues the utility is entitled to. This includes actual
4 revenues, expenses, customers and usage data. The fact that these
5 elements are all expressed in like terms (i.e., actual or average data)
6 illustrates an important concept in ratemaking, which is the matching
7 principle. This principle is not unique and is widely used by other
8 regulatory bodies throughout the country. It would be clearly erroneous
9 and unfair to the utility to determine a revenue requirement using
10 average expenses and maximum month revenues. It would be just as
11 incorrect, and unfair to the customers, if the Commission considered
12 maximum month expenses and annual average revenues in determining a
13 revenue requirement.

14 The determination of engineering used and useful is an extension
15 of the matching principle. Used and useful is determined by dividing
16 the flows during the test year by the capacity of the treatment plant.
17 The matching comes into play in that it is important to express the
18 numerator and denominator in like terms. For instance, if the numerator
19 is expressed on the basis of maximum month flow, it is imperative that
20 the denominator be expressed on the same basis. To do otherwise, would
21 be similar to matching average expenses with maximum month revenues,
22 thereby distorting the results. This concept is discussed in more
23 detail later in my testimony.

24 Q. Why does the Commission make a used and useful determination?

25 A. The purpose of making a used and useful determination is to try to

1 | balance the interests of the current customers and the utility's
2 | obligation to stand ready to provide service to future customers. The
3 | basic principle of used and useful is that current customers should pay
4 | only for the facilities needed to provide them service and that growth
5 | should pay for itself. However, since there is a time lag before
6 | capacity can be added, there is an inherent need for some amount of
7 | excess capacity to serve the growth as it occurs. The Commission's
8 | regulatory process is a balancing act among these diverse factors.

9 | Q. How does the Commission's current practice of calculating used and
10 | useful allow a utility to build for future growth?

11 | A. First of all, it is important to realize that a wastewater plant is
12 | constructed to a design capacity determined by a professional engineer.
13 | In practice, the DEP permitted capacity, based on average flows, is
14 | generally lower than actual design capacity. Therefore, even when the
15 | Commission has determined a plant to be 100% used and useful based on
16 | permitted capacity, there is a built-in cushion to allow the wastewater
17 | treatment plant to handle peak flows. Further, in determining used and
18 | useful, the Commission allows a second buffer, which is the margin
19 | reserve. Margin reserve is designed to allow for anticipated growth for
20 | some specified period of time, usually 18 months. Additionally,
21 | utilities are allowed to recover the carrying costs of the non used and
22 | useful plant through a one time charge called Allowance for Funds
23 | Prudently Invested (AFPI). AFPI is charged to all new customers to help
24 | recover the utility's cost of having plant on line and ready to serve
25 | future customers. I believe this process allows the utility to

1 reasonably build for growth while protecting the current customers from
2 shouldering too much of the cost of growth.

3 Q. What does staff consider when calculating used and useful for a
4 wastewater system?

5 A. Historically, in calculating used and useful percentages for a
6 wastewater plant in a rate case, staff considers the following factors:

7 First, the capacity of the plant being evaluated is determined.
8 This capacity becomes the denominator in the used and useful equations.
9 Staff currently uses the capacity taken from the permit issued by DEP.

10 Second, staff determines the customers' demand or flows placed
11 upon the system; normally this is the average day demand as selected by
12 the utility.

13 Third, staff considers a Margin Reserve or projected short-term
14 growth demand if requested and justified by the Utility in its filing.
15 Whereas a water system must be capable of meeting customer demands at
16 any instant, a wastewater plant with a surge (or equalization) tank has
17 the ability to "save" peak flows or surges and treat those flows after
18 the surge has passed. Surge (or equalization) tanks ease the peaks
19 allowing the plant to be designed to meet an average daily flow.

20 The permitted capacity of the plant is the denominator while the
21 average daily flow, either Annual Average (AADF), Three Month Average
22 (3MADF), or Maximum Month Average (MMADF) plus a margin reserve (if
23 requested and justified) minus excess infiltration or inflow goes in the
24 numerator. The result is the used and useful ratio.

25 Q. Is there a rule in place now which governs how flow data is

1 | determined?

2 | A. Not at this time. However, Staff has submitted a proposed rule, 25-
 3 | 30.432, which will codify a simple, logically elementary, mathematical
 4 | fact. Anyone who has taken beginning Physics in school knows that an
 5 | equation must always be dimensionally consistent; this means that two
 6 | terms may be equated only if they have the same units. These units are
 7 | treated just like algebraic symbols with respect to multiplication or
 8 | division. This fact is illustrated by page 7 of University Physics,
 9 | Seventh Edition, which I use as a reference and have attached to my
 10 | testimony. (RJC-1). In layman's terms, "You cannot divide apples by
 11 | oranges and get a valid result". This fact is basic mathematics.

12 | Q. Is the actual average flow data different from permitted flow data?

13 | A. Yes, the permitted flow is just what is permitted by DEP. The
 14 | actual flow is what is measured and treated at the plant. While the
 15 | quantities may differ, the basis for determining average flows should
 16 | be the same basis used to permit the plant capacity. I give several
 17 | mathematical examples:

18	12 feet		12 feet
19	----- equals 3	<u>BUT</u>	----- does <u>NOT</u> equal 3
20	4 feet		4 yards
21	\$4000 expenses in maximum month		
22	-----		does NOT equal 400%
23	\$1000 average monthly revenue earned		

24 | Likewise, you cannot divide the average daily flows treated by a
 25 | wastewater treatment plant in the maximum month by the permitted annual

1 average daily flows and get a valid percentage of used and useful
2 capacity. It is imperative that terms or time periods under
3 consideration be the same for both the numerator and the denominator of
4 a legitimate equation. That is only logical.

5 Q. What procedure was used by staff in past cases?

6 A. For many years, the PSC staff has relied upon the permits issued by
7 DEP to determine the permitted capacity of a wastewater treatment plant.
8 That permitted capacity went in the denominator of the equation. Prior
9 to 1992, the DEP issued permit did not indicate the basis which the
10 utility specified. Since the basis was not shown on the permit, the PSC
11 staff had no way of knowing what that basis was; consequently, staff
12 selected the Maximum Month Average Daily Flow, or MMADF, as the flow to
13 be used in the numerator. While use of the MMADF gave the benefit of
14 any doubt to the Utility, it must be emphasized that there was no basis
15 shown for the denominator; therefore, staff had no way of knowing if a
16 mismatch existed.

17 Q. When and why did staff change its method or practice for setting up
18 the Used and Useful equation?

19 A. Starting approximately 1992, DEP began to show the basis for
20 determining permitted flow (AADF, MMADF, 3MADF) which was selected by
21 the utility in its permit application (RJC-2). When DEP started listing
22 the flow basis in the permits (the denominator), it became imperative
23 that the same basis be used in the numerator flow data. I want to
24 emphasize that there has never been an established rule or commission
25 policy stating how the used and useful equation had to be configured.

1 It has been staff's practice to treat each docket on a case by case
2 basis using the data and justification presented by the utility in its
3 minimum filing requirements (MFRs). For the past 12 years, since I have
4 been engineering supervisor, staff has always used flow data provided
5 by the utility in the numerator and permitted capacity issued by DEP in
6 the denominator. The flow data may have been taken from monthly
7 operating reports (MOR) if flow data was not available in the MFRs, but
8 in either case, the data was provided by the utility. As pointed out
9 earlier, the data submitted to DEP for the permit is also provided by
10 the utility. It, the utility, selects the time frame for the permit and
11 when DEP started listing that time frame or basis on the permit, staff
12 was obligated to use the same basis or time frame in the numerator.

13 Although staff should have been aware of DEP's permitting change,
14 several cases were processed where staff continued to give the utility
15 the benefit of any doubt and use MMADF in the numerator despite the
16 permit being based on AADF. This was in error and resulted in a
17 mismatch. (See. Dockets Nos. 951027-WS, 951258-WS, and 951591) In Docket
18 No. 951591-WS the mismatch did not matter, as the system was 100 percent
19 used and useful no matter what was used in the numerator. In Docket No.
20 951258-WS, the hearing was held on April 1-2, 1996, and the
21 recommendation was considered at the August 13, 1996 Agenda Conference.
22 The original hearing in this current case was on April 24-25, 1996, and
23 staff's final recommendation was also considered at the August 13, 1996
24 Agenda Conference. It was not until the second day of this latter
25 hearing that staff realized the significance of the fact that DEP was

1 now permitting its plants on the basis of either AADF, MMADF, or 3MADF.
2 Therefore, at the August 13, 1996 Agenda Conference, staff assigned to
3 this docket recommended that the matching concept be employed.
4 Unfortunately, the staff assigned to Docket No. 951258-WS continued to
5 give the utility the benefit of the doubt (even though there was no
6 longer any doubt on which the permit was based), and used MMADF in the
7 numerator even though the permit was based on AADF. In Docket No.
8 950828-WS, Rainbow Springs Utilities, the wastewater plant was permitted
9 based on the three maximum month average daily flow (3MADF) and staff
10 accordingly used the 3MADF actual flows in the numerator of the used and
11 useful equation to match flows. Also, in Docket No. 951056-WS, Palm
12 Coast Utility Company (Palm Coast), the plant was permitted based on
13 AADF and staff accordingly used AADF in the numerator. Likewise, staff
14 attempted to match flows in the numerator of the used and useful
15 equation pursuant to how each system of Florida Water Services
16 Corporation (Florida Water) in Docket No. 950495-WS was permitted by
17 DEP. Both the Florida Water and Palm Coast cases were appealed. Based
18 on the above, staff does not believe that it changed its practice, but
19 merely adapted to the change in DEP's permitting practice.

20 Q. Did the DEP advise the PSC staff of its change in permitting
21 procedures?

22 A. By letter dated July 30, 1992, Richard Harvey, Director, Division
23 of Water Facilities (DEP), commented on our then pending Used and Useful
24 rule (RJC-3). In that letter, Mr. Harvey suggested that the number [in
25 the numerator] be defined as the same time period as that used [in the

1 denominator] for the capacity of the plant. Based on this intimation,
2 staff investigated and found that DEP had started showing on the permit
3 the basis or time period selected by the utility for average flows.
4 However, because the proposed used and useful rule was withdrawn, the
5 significance of this letter was not noted at the time. It was not until
6 1995 that staff started seeing new permits listing the timeframes for
7 the permitted capacity.

8 Q. Who is responsible for selecting the permitted flow basis?

9 A. As stated earlier, the utility selects the basis for its permitted
10 flows. The Utility decides which basis is most advantageous to them
11 (RJC-2). In this case, the utility chose to have its plant permitted
12 on the basis of AADF, and DEP decided that this basis was appropriate.

13 Q. What is the difference between an "AADF" flow basis and a "MMADF"
14 flow basis?

15 A. The AADF results in the lowest average daily flow; consequently, the
16 utility may not have to "man" its plant with as many personnel as they
17 might had they selected the MMADF (which results in the highest average
18 daily flow). In many instances the actual hydraulic capacity of the
19 plant as constructed is larger than the permitted capacity. (It is
20 curious to note that the Capacity Analysis Report used by DEP to
21 determine when a utility must expand its plant is based upon the Three
22 Month Average Daily Flow [3MADF] which is more than the AADF but less
23 than the MMADF.) On the other hand, this same utility wants to obtain
24 the highest possible Used and Useful percentage so that the maximum
25 amount of the plant they have constructed will be placed in rate base

1 and rates collected from existing customers to pay for that plant. If
2 the utility had its way, the MMADF (largest average flow) would be used
3 in the numerator while the AADF (smallest average flow) would be used
4 in the denominator. It is easy to see that this would result in a much
5 larger Used and Useful percentage, a larger rate base, and higher rates.
6 In other words, the utility would enjoy the best of both worlds: It
7 would not have to hire personnel to support a "larger permitted plant",
8 while at the same time, it would enjoy higher rates since a larger U&U
9 percentage would result if the MMADF was divided by the AADF. The
10 existing customer gets the short-end of the stick both ways.

11 Q. What is the solution?

12 A. The solution is simple: The Utility must decide whether it wants a
13 smaller permitted capacity (AADF) or a larger permitted capacity based
14 upon the MMADF. At the same time, the utility should consider which
15 flow basis will result in the larger U&U percentage. I must reemphasize
16 that it is the utility's choice. The utility selects the basis it
17 thinks is appropriate when it applies for a permit from DEP.

18 Q. Will AADF/AADF be larger or smaller than MMADF/MMADF?

19 A. Normally, the results will be very close. The mismatch comes when
20 the utility attempts to divide the MMADF by the AADF. Under no
21 circumstances should the utility be allowed to get an abnormally large
22 U&U percentage by calculating $MMADF/AADF$. . . this is a mathematical
23 mismatch that is not ethical, and should not be valid or authorized.

24 Q. Then what do you propose in this specific case?

25 A. In this particular case, Florida Cities submitted an application to

1 | DEP for renewal of its wastewater treatment plant permit. Florida
2 | Cities, or its designated representative, selected AADF as the basis for
3 | its flows upon which it wanted the permit issued. In order for staff,
4 | and the Commission, to remain consistent with the "matching principle"
5 | as well as comply with the basic mathematical rule that an equation must
6 | be "dimensionally consistent", it is imperative that the flow data in
7 | the numerator must match the flow data in the denominator of the
8 | equation. As stated above, the Commission must match flows just the
9 | same as it matches revenues with expenses. While this may not result
10 | in a used and useful percentage desired by Florida Cities, the results
11 | were dictated by Florida Cities' choice of AADF and not a change in
12 | either staff practice or Commission policy.

13 | Q. Does this conclude your testimony?

14 | A. Yes.

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1 Q (By Mr. Jaeger) Could you briefly
2 summarize your testimony?

3 A I have been the supervisor of water and
4 wastewater engineers since early 1987. My Staff is
5 responsible for calculating the used and useful
6 percentages for water and wastewater cases filed with
7 the Public Service Commission. We then prepare
8 recommendations for consideration by the
9 Commissioners.

10 One of the major considerations in a
11 wastewater rate case is what is the percentage of
12 flows processed by the plant compared to the flows the
13 plant is permitted to process? In other words, what
14 percent of the permitted capacity is used by current
15 customers?

16 The primary question being argued today, and
17 discussed in detail in my prefiled testimony, is what
18 time period, annual average, three-month average or
19 max month average daily flow should be used in the
20 used and useful equation? Should these periods of
21 time match?

22 I contend that it is a simple mathematical
23 fact, a law of physics, that an equation must be
24 dimensionally consistent. These laws are not
25 debatable. They are fact.

1 When the Department of Environmental
2 Protection starting showing the basis or time frame on
3 permits they issue, those time frames became part of
4 the dimensions. And it became imperative that the
5 Public Service Commission Staff use those same time
6 frames or dimensions in our calculations of used and
7 useful.

8 Prior to the change in DEP's rule, the
9 permits did not state the time frame. And Staff
10 selected the maximum month average daily flow for the
11 numerator. This gave the utility the highest possible
12 used and useful percentage. When DEP changed their
13 rule, we, the PSC Staff, had to follow their rule.

14 **MR. JAEGER:** Chairman, may we have
15 Mr. Crouch's testimony inserted into the record as
16 though read?

17 **CHAIRMAN JOHNSON:** It will be so inserted.

18 **Q** **(By Mr. Jaeger)** Mr. Crouch, did you also
19 file exhibits RJC-1 through RJC-3?

20 **A** That's correct.

21 **Q** Do you have any changes or corrections to
22 any of those exhibits?

23 **A** No, I do not.

24 **MR. JAEGER:** Chairman, may we have those
25 exhibits identified as Exhibit No. 38 composite.

1 **COMMISSIONER DEASON:** It will be identified
2 as Composite 38.

3 (Exhibit 38 marked for identification.)

4 **MR. JAEGER:** I tender this witness for
5 cross.

6 **CHAIRMAN JOHNSON:** Okay.

7 **MR. GATLIN:** May I proceed.

8 **CHAIRMAN JOHNSON:** Yes.

9 **CROSS EXAMINATION**

10 **BY MR. GATLIN:**

11 **Q** Over on Page 12 of your testimony,
12 Mr. Crouch, there's a sentence, starts on Line 20. It
13 says "Under no circumstances should the Utility be
14 allowed to get an abnormally large used and useful
15 percentage by calculating MMADF over AADF. This is a
16 mathematical mismatch and is not ethical." Are you
17 saying that those of us who favor max month are not
18 acting ethically?

19 **A** I say nothing about ethics on this. It's
20 simple a mathematical fact that dimensions have to be
21 consistent.

22 **Q** But you say it's not ethical to do
23 otherwise.

24 **A** It's not ethical for an engineer to do
25 otherwise if he knows those, the basis, the time

1 frame; it would not be ethical for him to do
2 otherwise.

3 Q So you're saying Mr. Acosta is not acting
4 ethically?

5 A I would leave that up to him.

6 Q Well, what are you saying there? Why is it
7 a matter of ethics?

8 A A professional engineer must follow laws of
9 physics, the laws of mathematics. To do otherwise
10 would not be ethical.

11 Q Isn't that a poor choice of words there, Mr.
12 Crouch?

13 A It --

14 Q Don't you want to strike "ethical" from
15 that?

16 A No. I stand by that.

17 Q Is it just the engineers that are unethical
18 or is it the lawyers too?

19 A Everybody has a choice of opinions. We have
20 several professional engineers here today who go along
21 with what I say. We have one professional engineer
22 employed by the Utility who disagrees with what I say.
23 I stand on the record.

24 Q And he's unethical?

25 A I stand on the record.

1 Q Is he unethical?

2 A I leave that up to him.

3 Q No --

4 A In my opinion he is not --

5 Q -- you're the one saying it, Mr. Crouch.

6 You're saying it's unethical. Is that what you're
7 saying?

8 A In my opinion, he is not complying with the
9 rules of physics and mathematics if he leaves out
10 dimension.

11 Q And if he has a different opinion than you
12 it's unethical?

13 A In my opinion, yes, sir.

14 Q And you want to stand by that?

15 A Yes, sir.

16 Q Have other engineers in other cases
17 contended that max month ought to be used in the
18 numerator?

19 A I don't know of any others yet.

20 Q How about Mr. Hartman in the Southern States
21 case?

22 A I think he has stated both ways, in fact, in
23 testimony.

24 Q So he is ethical and unethical; is that
25 right? Is that right?

1 A He's offered opinions. I would prefer not
2 to go into the ethics of everybody in their opinion.

3 Q Well, you said it's unethical. You said
4 it's not ethical to use a max month flow in
5 determining used and useful?

6 A It would not be ethical for me to do it.

7 Q How about Mr. Hartman?

8 A I'll leave that up to his conscience.

9 Q Well, you're passing judgment on these
10 folks. Is he unethical for using max month?

11 A In my testimony I'm talking about what would
12 be ethical for me to do.

13 Q You're not referring to any other engineer
14 then?

15 A Not necessarily.

16 Q You are or are you not?

17 A I will leave that up to their conscience
18 whether they are complying with the rules of ethics of
19 a professional engineering or not.

20 Q No. You say it's not ethical. What are
21 your talking about?

22 A In my opinion, it is not.

23 Q It is not ethical for what?

24 **MR. JAEGER:** Chairman Johnson, I'm going to
25 object. I think he's asked the same question. It's

1 been answered six different times.

2 **MR. GATLIN:** Six different ways.

3 **MR. JAEGER:** No, I think he's answered it
4 the same way, it just may not be the answer you want.

5 **MR. GATLIN:** I need to find out what
6 Mr. Crouch is saying here.

7 **Q (By Mr. Gatlin)** Let's just go back. Maybe
8 I have missed the answer then.

9 Your statement is -- let's get it exactly
10 right -- (Pause) -- the part of the sentence I'm
11 talking about is on Page 12, Line 22. "This is a
12 mathematical mismatch that is not ethical."

13 Now, am I correct in interpreting that, that
14 anybody that uses the maximum month annual daily flow
15 in the numerator is not ethical?

16 **A** If they mismatch it and use annual average
17 daily flow or some other time frame in the denominator
18 and intentionally use mismatched dimensions, I would
19 consider that not ethical.

20 **Q** Not ethical.

21 **COMMISSIONER GARCIA:** Mr. Gatlin, could you
22 explain to me what you're driving at, just so I have
23 an idea -- because we have been here for quite a while
24 now -- just for my curiosity sake what you're driving
25 at. Is it his moral dilemma with ethics, someone

1 else's? I mean, what is the meat of the issue here?

2 **MR. GATLIN:** Well, I think it goes to the
3 credibility of his testimony. I mean, to couch a
4 disagreement over what fraction to be used, I think,
5 as an ethical consideration is --

6 **COMMISSIONER GARCIA:** I think --

7 **MR. GATLIN:** -- incredible.

8 **COMMISSIONER GARCIA:** I can understand this
9 having the discussion about the math involved. I
10 think that this Commission is not here to figure out
11 the ethics or not ethics of Mr. Crouch. If you want
12 to make a point, I'd love to hear it. Maybe his
13 ethics are a little bit different than someone else's
14 but I don't necessarily see his definition of other
15 people's ethics as the central underlying issue.

16 **MR. GATLIN:** Commissioner, he says that if
17 you use max month annual daily flow in the numerator,
18 it's unethical as I understand it. And I don't think
19 it's a matter of the ethics. I think different people
20 can have reasonable disagreements on this, very
21 reasonable people, without judging them to be ethical
22 or unethical.

23 **COMMISSIONER GARCIA:** You've got that on the
24 record. Maybe we can move from there.

25 **MR. GATLIN:** You know, if he hadn't said it

1 we wouldn't be worrying with it.

2 **CHAIRMAN JOHNSON:** Mr. Gatlin, as it relates
3 to that line of questioning, are you about finished?

4 **MR. GATLIN:** Yes. I never got an answer but
5 I think I'll quit.

6 **CHAIRMAN JOHNSON:** Thank you.

7 Do you want this one marked?

8 **MR. GATLIN:** Yes. I think I might have
9 given my copy away, too.

10 **CHAIRMAN JOHNSON:** I'm going to mark it as
11 39, and the short title is "February 2nd, 1998 Memo
12 from Chuck Hill to Mary Bane, Used and Useful
13 Calculation Southern States and Palm Coast."

14 (Exhibit 39 marked for identification.)

15 **Q** **(By Mr. Gatlin)** Do you recognize this
16 document, Mr. Crouch?

17 **A** Yes, I do.

18 **Q** And was this a -- is this a memorandum from
19 Mr. Hill, who is the director of the Commission's
20 Division of Water and Wastewater, to Ms. Bane, subject
21 to the court decision in the Florida Cities case?

22 **A** Yes.

23 **Q** And the purpose of this memorandum was what?

24 **A** It was a discussion of the way used and
25 useful calculations are processed in the Southern

1 States and the Palm Coast case and the Florida Cities
2 case in question today.

3 Q Did you participate in the preparation of
4 this memorandum?

5 A Yes.

6 Q And you used some information from this
7 memorandum in your testimony, did you not?

8 A Yes.

9 Q Look in the first paragraph, if you would,
10 middle of the paragraph, the sentence says "The
11 first -- the very first time." Would you read that
12 sentence and the following sentence.

13 A "The very first time we noticed, or caught
14 this change in a proceeding before the Commission, was
15 during the hearing in the Florida Cities rate case."

16 Q That's this case?

17 A Yes.

18 Q Continue on, if you will.

19 A "We did the best we could under the
20 circumstances to get some evidence in the record and
21 believe that the permit itself would be ample.
22 However, since we were mid-stream with this case, our
23 efforts to obtain record evidence were less than we
24 had hoped for. And according to the recent first
25 District Court of Appeals decision, the evidence was

1 insufficient."

2 Q And do you agree with that?

3 A Yes.

4 Q In the last paragraph on that page,
5 reference is made to a reorganization. What is that
6 about? The last paragraph that says "Finally the
7 reorganization you and Mr. Talbott approved ensures
8 that we will have testimony."

9 A There was a recent reorganization in the
10 Division of Water and Wastewater in which Staff was
11 divided between the Staff that would prepare testimony
12 and Staff that would write the recommendation.

13 In previous cases, the person who wrote or
14 prepared testimony was not allowed to participate in
15 the recommendation. Consequently, we came up
16 shorthanded many times; if I had somebody testify, I
17 had to get somebody else to do the recommendation and
18 that put my staff shorthanded.

19 We are reorganized now to where there is a
20 completely different section in the division who will
21 prepare the recommendation. They will have nothing to
22 do with testimony but they will prepare the
23 recommendation.

24 Q Now, that reorganization was subsequent to
25 the opinion in the Florida Cities case; is that right?

1 **A** Yes.

2 **Q** And that decision had some effect on the
3 Staff, on your Staff, to make this reorganization?

4 **A** Probably.

5 **Q** In the next sentence you say "The only time
6 we might have a problem with competent and substantial
7 evidence would be a situation like the Florida Cities
8 case where we discover a problem during the hearing."
9 And you're referring to what you talked about a while
10 ago, that you did not -- that the problem occurred
11 during the hearing in this case, the second day, I
12 think you said -- you've said earlier. Isn't that
13 what you're referring to there?

14 **A** Yes, sir. We did not notice in the Florida
15 Cities case that the annual average daily flow was a
16 dimension until the second day of the hearing after
17 testimony had been provided by all parties.

18 **Q** And then you say in that event it will be
19 necessary to do extensive cross examination of
20 witnesses and possibly even discovery at the hearing.
21 Both of these extensive -- extensive cross and
22 discovery are things that the Commission has frowned
23 upon in the past. Does that mean you were not
24 permitted to put on witnesses?

25 **A** Not at all. It means that the Commission

1 Staff normally does not do discovery during the
2 hearing itself. Discovery is performed beforehand,
3 and then put on the record during the hearing. But we
4 do not do discovery during the hearing as a normal
5 procedure.

6 Q Well, the part I'm asking you about, had the
7 Commission taken some action that discouraged you from
8 testifying or conducting discovery in these cases?

9 A The Commission had taken no specific action
10 on this case, no.

11 Q On any case?

12 A Just in that it was not normal for us to do
13 discovery. Our legal Staff has advised us in many
14 cases we should not do discovery during the hearing.
15 That had been just common procedure for Staff.

16 Q Well, go ahead. I thought you were
17 finished.

18 A That carried over into the Florida Cities
19 case. We did not do discovery; did not cross examine
20 on this particular issue during the hearing.

21 Q Was there any prohibition by the Commission
22 that said you could not do that?

23 A Not that I'm aware of.

24 Q Well, what is the significance of the phrase
25 in there that the Commission has frowned upon this in

1 the past?

2 A I think these are Mr. Hill's words to
3 explain that, here again, our legal Staff, speaking
4 for the Commission, in order to keep us straight, has
5 advised us not to do discovery. There have been times
6 we have done discovery during the hearing, but it is
7 rare and not recommended courtroom procedure by our
8 Staff.

9 Q Was there any action on the Commission's
10 part that said you cannot cross examine at a hearing?

11 A No.

12 Q Was there any action on the Commission's
13 part that said you could not put on a witness at a
14 hearing?

15 A No.

16 Q Over on the next page does the second
17 paragraph on that -- do you agree with the second
18 paragraph on that page?

19 A Yes.

20 Q And the next paragraph, the third paragraph
21 says "Beginning in 1993, the DEP started to indicate
22 on some of their permits the flow basis upon which the
23 wastewater treatment plant capacity is based
24 (denominator)." Is that correct?

25 A Yes.

1 Q 1993 or 1992?

2 A We weren't sure the exact time that their
3 rule came out. I've heard late '91. I've heard '92.
4 Beginning in '93 the permits started showing up.

5 Q Haven't you testified that the letter from
6 Mr. Harvey in 1992 was the first time that you knew
7 that the permit would indicate the time frame?

8 A The letter from Mr. Harvey in '92 did state
9 that we should be consistent with those. And upon
10 later research we found out that this complied with
11 their rule, yes.

12 Q And is it your intention to comply with DEP
13 rules?

14 A Yes.

15 Q Down at the bottom of the page it says
16 "Again, Staff first observed this mismatch during this
17 case when our engineer picked up on the continued use
18 of the term 'annual average' by the Company's
19 witness." Is that correct?

20 A Yes.

21 Q Should it be "annual average" or "annual day
22 average"?

23 A Well, it's annual average daily flow is what
24 he's referring to.

25 Q That's what you're referring to when you say

1 "annual average"?

2 A That's what Mr. Hill is referring to, yes.

3 Q Is that what you refer to when you say

4 "annual average"?

5 A Annual average daily flow.

6 Q When you say "annual average" you're talking
7 about annual average daily flow?

8 A Yes.

9 Q The docket entitled Docket 950387-SU, Bob
10 Crouch, (Barefoot Bay Division) end of parens -- may
11 we have an exhibit number for that one?

12 CHAIRMAN JOHNSON: It will be marked as 40
13 and identified as just stated.

14 MR. GATLIN: 40.

15 CHAIRMAN JOHNSON: Yes.

16 (Exhibit 40 marked for identification.)

17 Q (By Mr. Gatlin) Would you look at
18 Exhibit 40 please, Mr. Crouch.

19 A Yes.

20 Q And the first document in that exhibit is a
21 memorandum dated June 13th, 1996.

22 A Yes. That is the cover page for dockets
23 that we prepared in recommendation to the Commission.

24 Q Right. And there are -- when it says the
25 Staff -- well, it says "from the Division of Water and

1 Wastewater" and then there are some names listed. And
2 then there are some initials. What's the purpose of
3 all of that?

4 A Those are the Staff members from the
5 different bureaus who participate in preparing this
6 recommendation. You usually have a lawyer and an
7 accountant, an engineer, a rate specialist.

8 Q Who was the engineer on this one?

9 A Ed Fuchs.

10 Q Okay. And there's an initial just above him
11 that looks like "Ed" something?

12 A "EF" for his initials.

13 Q What about the "BC"?

14 A That's mine.

15 Q So it indicates you've read and approved
16 this recommendation?

17 A Yes.

18 Q When this Barefoot Bay case was being
19 processed, who was on your engineering staff?

20 A At that time I believe I had John Starling,
21 Tom Walden, Ed Fuchs, Karen Amya. I'm not sure
22 whether Lee Munroe -- I think Lee Munroe was on the
23 staff at that time.

24 Q And isn't it one of your responsibilities to
25 make sure certain that the recommendations of your

1 staff are consistent?

2 A Yes.

3 Q With each other?

4 A Yes.

5 Q How do you do that?

6 A We usually meet, the entire engineering
7 staff, and discuss the cases that we're working on in
8 a roundtable discussion. And if something new comes
9 up, we try to make sure that that information is
10 shared with all of the engineers. If there's
11 something controversial, we try to discuss it.

12 Q And I believe you testified that this case
13 appeared on the Commission agenda on August 13th,
14 1996.

15 A I don't recall that it appeared on August
16 13th, no, sir. The agenda date shown here on this
17 memorandum is June 25th, '96.

18 Q Do you have your testimony there with you?

19 A Yes, I do.

20 Q Look on Page 9 starting -- the paragraph
21 that starts on Line 13. Oh, that sentence on Line 19,
22 you say "The hearing in Docket 951258 was on April 1st
23 and 2nd, and the recommendation was considered on
24 August 13th, 1996."

25 A Okay. I see that the recommendation was

1 considered then, yes.

2 Q Well, you'll see there's more than one
3 recommendation. So it might have not been this
4 recommendation that was on August the 13th. But look
5 on the next sheet is a portion of the June 13th, 1996,
6 recommendation. Do you see that?

7 A Where are you now?

8 Q The next sheet after the cover sheet of the
9 memorandum?

10 A Oh, okay, which is Page 25.

11 Q I just put the part that related to used and
12 useful. I deleted the other portions of the
13 memorandum.

14 A Yes.

15 Q And what's the issue? Would you read
16 Issue 8 there?

17 A The issue?

18 Q Yes.

19 A "Issue 8. What is the appropriate used and
20 useful percentage of the wastewater treatment plant?"

21 Q The Staff recommended it was 100% used and
22 useful?

23 A That's correct.

24 Q Turn to the next page, if you will now.
25 It's the first paragraph after the quote, and it says

1 "Staff calculations using formulas previously accepted
2 by the Commission are shown on Attachment B of the
3 used and useful percentage calculation to 95.54%." Do
4 you see that?

5 A Yes, sir.

6 Q Isn't it safe to assume that Attachment B
7 uses the maximum day flow, maximum month flow for the
8 numerator and denominator for the permit?

9 A Yes.

10 Q Okay. Would you turn to the next sheet?

11 A Wait a minute. I'd like for you to state
12 that again. I think you said maximum month in both
13 the numerator and denominator.

14 Q I don't mean to if I said that. Annual
15 average annual daily flow was in the -- is in the
16 denominator.

17 A That's correct. Annual average in the
18 denominator; maximum month in the numerator.

19 Q On the next page is an Issue 2 in that case.
20 Would you read what the Staff recommendation is.
21 That's -- what is the capacity of the plant that
22 should be used in determining used and useful?

23 A Staff recommendation. The plant is
24 constructed and permitted to operate at an annual
25 average daily flow of .75 MGD. Therefore, the

1 construction and DEP permitted flows should be used to
2 calculate the used and useful percent.

3 Q Office of Public Counsel did not agree with
4 that, did they? We couldn't under OPC's position?

5 A No, they did not.

6 Q And would it be fair to say that without
7 using the word -- what OPC is proposing there is a
8 matching of the flows?

9 A Yes.

10 Q Okay. In the sentence -- in the Staff
11 analysis, there's a sentence -- fourth line down that
12 says "Staff uses the average daily flow from the max
13 month for calculations." Is that accurate?

14 A Staff uses the average daily flow from the
15 maximum amount per calculations, that's correct.

16 Q And that's what was done in the Barefoot Bay
17 case?

18 A Yes.

19 Q This is the one you said was an error, I
20 think, in your testimony?

21 A Yes. This was done prior to our noticing
22 these changes in the Florida Cities case. This
23 hearing was several weeks prior.

24 Q But you knew, though, what the basis of the
25 permit was that was issued by DEP, didn't you?

1 A We did not know at the time, did not note
2 that it was listed on the permit. Although we knew
3 that that was what they were using, we did not notice
4 it was listed on the permit during that hearing.

5 Q The Staff recommendation at the top of the
6 page says "permitted to operate at an annual average
7 daily flow of .75 MGD," doesn't it?

8 A That's correct.

9 Q So they got that information off the permit,
10 didn't they?

11 A I do not know where he got that information
12 when he wrote that. I assume it may have been from
13 the permit but I do not know.

14 Q It was a permit that was issued well after
15 1992, wasn't it?

16 A Yes.

17 Q So it would have presumably shown the basis
18 for the issuance of the permit, wouldn't it?

19 A Yes.

20 Q Did you ask him where he got that from at
21 the time?

22 A After the fact I did. At that time I did
23 not. I was involved in another case and not watching
24 this one as closely as I possibly should have.

25 Q The last sentence on that page says "Staff

1 believes that since this plant was designed,
2 constructed and permitted at 0.75 MGD capacity, and
3 the company may not routinely operate at flows above
4 that amount. According to the DEP requirements, the
5 recommendation is that the average annual flow
6 capacity be considered to be .75 MGD as constructed by
7 the utility and permitted by the DEP." Does that
8 indicate to you that he must have seen the permit?

9 A Very possibly he did, yes.

10 Q Turn to the next page. There's another
11 memorandum on this same case, dated August 6th, 1996,
12 from water and wastewater. Again, it shows Mr. Fuchs
13 as the engineer, and I believe that "BC" is your
14 initial, which indicates you've read and approved this
15 recommendation?

16 A That's correct.

17 Q All right. And this recommendation
18 indicates that it would be on the agenda on August
19 13th, 1996, doesn't it?

20 A That's correct.

21 Q Which is the same date that the
22 recommendation in this case was on the agenda.
23 Commission agenda. This case being the North Fort
24 Myers case. Isn't that true? Isn't that what you
25 said?

1 A Yes.

2 Q Turn to the next page. Under the "Staff
3 Analysis", and this is under the issue No. 8, "What is
4 the appropriate used and useful percentage of the
5 wastewater treatment plant?" Do you see that?

6 A Yes, sir.

7 Q At the top of the page?

8 A Yes, sir.

9 Q Then under "Staff Analysis" there's a
10 sentence that says "The new facility built to satisfy
11 advanced wastewater treatment requirements set forth
12 by DEP was approved to be 100% used and useful." What
13 is that referring to, do you know?

14 A We go back up a couple of sentences earlier,
15 "This issue was voted on by the Commission at the June
16 25th, 1996, agenda conference. Of the Commission
17 approved a level of 80% used and useful for the
18 original wastewater treatment facility. There was a
19 new facility, however, built to satisfy the advanced
20 water treatment requirements set forth by DEP, and
21 that new facility was approved to be 100% used and
22 useful."

23 Q All right. Now, look over on the next
24 couple of pages, there's a copy of Order
25 No. PSC-96-1147-FOF-WS, issued on September 12th,

1 1996. And the Commissioners on that case -- the case
2 being the Barefoot Bay case -- are Commissioners
3 Deason, Garcia and Johnson; is that correct?

4 A That's correct.

5 Q And the Commissioners in the North Fort
6 Myers case were Commissioners Garcia, Johnson and
7 Kiesling; is that correct?

8 A I will accept that. I don't know that for a
9 fact.

10 Q Okay. Now, turn to Page 17 of the Order,
11 which is the next page in the packet that you have
12 there. The first sentence in the first -- second full
13 paragraph says that "DEP operating permit reflects
14 .75 MGD more or less." Is that true?

15 A Yes, sir.

16 Q So the Staff and the Commission knew what
17 the permit authorized?

18 A Yes, sir.

19 Q Turn to the next page if you will. You'll
20 find a Motion for Reconsideration filed by the
21 Citizens of the State of Florida. Do you recall that
22 motion?

23 A Yes.

24 Q And what did that motion say, essentially?

25 A Basically, that there were errors, and that

1 this decision by the Commission should be
2 reconsidered.

3 Q And they said in Paragraph 7 on Page 5, "The
4 Commission erred in using the max month average daily
5 flow to determine the pre-AWT used and useful
6 percentage. Use of the peak month average daily flow
7 is inconsistent with a recently issued decision of the
8 Commission for a different division of the same
9 utility. In order No. PSC-96-1133-FOF-WS issued on
10 September 10, 1996, just two days prior to the instant
11 order, the Commission found--" and would you read that
12 paragraph?

13 A "The flows to be considered should be annual
14 average flows as specified in the DEP permit and as
15 testified to by witnesses Cummings and Acosta. Flows
16 shown in the MFRs for the used and useful calculations
17 are not annual average flows but, instead, are average
18 flows from the peak month. These flows do not match
19 the plant design, the permitting consideration in the
20 DEP construction permit. For these reasons, the flows
21 shown in the MFRs are rejected."

22 Q So you and your Staff knew specifically
23 then, in the Barefoot Bay rate case, that there was a
24 different policy being applied in the North Fort Myers
25 case than there was in the Barefoot Bay case?

1 **A** The Barefoot Bay case was prior -- the
2 hearing was prior to the North Fort Myers case.

3 **Q** Excuse me, go ahead. I thought you were --

4 **A** It did not come to our attention. I had
5 different Staff working on different cases. It did
6 not come to our attention that DEP was listing on the
7 permit the dimension of, or the time basis for the
8 permit -- that did not come to our attention until the
9 North Fort Myers case. The hearing for the Barefoot
10 Bay case was several weeks prior to that case.

11 **Q** If that was an error in the Barefoot Bay
12 case, you certainly could have corrected it based on
13 Mr. McLean's motion for reconsideration, couldn't you?
14 He's told you that you're doing two different things.
15 You still have the Barefoot Bay case before you. It's
16 an open docket. And you could have corrected it,
17 couldn't you?

18 **A** It could have been corrected at a later
19 time, yes.

20 **Q** It could have been corrected based on this
21 motion for reconsideration, couldn't it?

22 **A** Yes.

23 **Q** So you knew at that time, as far as Barefoot
24 Bay rate case was concerned, the basis for the DEP
25 permit, and you used flows from the max month as

1 opposed to what you used in the North Fort Myers case;
2 isn't that correct?

3 A Yes. In 20/20 hindsight we knew after the
4 fact that there was a difference.

5 Q You knew it much before 20/20 hindsight.
6 You knew it on September 27th, 1996, didn't you?

7 A This was after the Florida Cities hearing
8 yes, North Fort Myers hearing.

9 Q Yes. So the Barefoot Bay rate case was
10 still open, and you had an opportunity if, indeed, you
11 thought it was an error, to correct it then, didn't
12 you?

13 A Yes, sir.

14 Q But you didn't do it. You didn't do it.

15 A No.

16 Q You did not recommend to the Commission that
17 they were inconsistent?

18 A No, I did not.

19 Q Then this motion for reconsideration had to
20 go back to the Commission for consideration, didn't
21 it?

22 A I believe it did, yes.

23 Q And turn over to the next document, which is
24 Florida Cities Water Company's response to Citizen's
25 Motion for Reconsideration and Cross-Motion for

1 Reconsideration. And it's filed on October 9th, 1996.
2 And look over on Page 5, which is the next sheet under
3 the heading "Used and Useful Methodology." Do you see
4 that paragraph there?

5 A Yes.

6 Q Read the second sentence in that paragraph,
7 would you please?

8 A "OPC correctly observes that the use of such
9 flows is inconsistent with an order for Florida Cities
10 Water Company's North Fort Myers division issued two
11 days prior to the instant order."

12 Q So there you have Florida Cities agreeing
13 that the two orders are inconsistent, aren't you?

14 A Would you like to restate that question?

15 Q You have had OPC come in and file a motion
16 for reconsideration that you're following inconsistent
17 practices in the cases, which you acknowledge is true?

18 A Yes.

19 Q And then, indeed, Florida Cities Water
20 Company comes in and agrees with OPC, don't they?

21 A Yes.

22 Q Would not that have given you a basis, if
23 you, indeed, thought it was an error in the Barefoot
24 Bay rate case, that you could have corrected it then?

25 A Yes.

1 Q And in this document, however, Florida
2 Cities took the position that the correct method was
3 Barefoot Bay, not North Fort Myers, didn't it?

4 A Yes.

5 Q So the question was squarely before you?

6 A Yes, sir.

7 Q Squarely before you. Okay.

8 Look over on a few pages over is a
9 memorandum dated January 23rd, 1997. Do you have that
10 before you?

11 A Yes.

12 Q This is another recommendation from the
13 Division of Water and Wastewater. And it lists your
14 name as one of the Staff members who worked on this
15 recommendation. Is that true?

16 A Yes, sir.

17 Q And you initialed it; is that correct?

18 A Yes.

19 Q Did you prepare this recommendation?

20 A I supervised the preparation of it. I did
21 not prepare it. I supervised the preparation of the
22 engineer's portion of it.

23 Q All right. Look over on Page 14, on
24 Issue 6. Look on the second paragraph under the Staff
25 recommendation, the second sentence, would you read

1 that sentence, please?

2 A The two calculations are unrelated.

3 Q No. I'm sorry. It's the paragraph that
4 starts with "Further," and the second sentence it says
5 "The used and useful calculations."

6 A That was the third sentence. "The used and
7 useful calculations must be concerned with the maximum
8 flows a treatment plant may experience in order to
9 allow for that event."

10 Q That's an error, is that true?

11 A That is an error now, yes.

12 Q And read the second sentence in the next
13 paragraph, starting with "Therefore."

14 A "Therefore, consistent with Commission
15 policy, and since this utility is subject to severe
16 seasonal fluctuation, Staff calculated the used and
17 useful percent for the treatment plant using maximum
18 month average daily flows, and infiltration and inflow
19 percent average annual daily flows, which is supported
20 by the record."

21 Q That indicates you wanted to have this
22 recommendation consistent with the Commission policy,
23 doesn't it?

24 A Those were the words used, yes, sir.

25 Q Well, the words being what they mean, don't

1 they? I mean, is that what it says?

2 A That's what it says.

3 Q That's what you meant for it to be.

4 A Okay.

5 Q Yes?

6 A Yes.

7 Q Then look on the next page, is an Order in
8 the Barefoot Bay case, dated February 25th, 1997.
9 Turn over to Page 7 of that order and look at the
10 second paragraph. Let me read a sentence to you.
11 It's on the sixth line of the first paragraph under
12 "OPC's method of calculation." "FCWC argues that OPC
13 provides different flows for our calculation." I'm
14 sorry. I missed a line. "FCWC argues that OPC
15 provides no record support to indicate that we made a
16 mistake by utilizing different flows for our
17 calculations other than alleging that consistency
18 required the use of maximum month average daily flow
19 for calculating both used and useful and I&I for the
20 wastewater systems." And the next sentence says "We
21 agree." This is the Commission speaking. Did I read
22 it correctly?

23 A Yes, sir.

24 Q Was the term "consistency" used there --
25 used as a synonym for matching?

1 **MR. JAEGER:** Objection. I think it calls
2 for speculation. Go ahead and answer the question.

3 **WITNESS CROUCH:** Other than alleging --
4 excuse me.

5 **CHAIRMAN JOHNSON:** I'm sorry. You said you
6 wanted him --

7 **MR. JAEGER:** I think it calls for
8 speculation of the witness. That's the PSC talking
9 through its order, and I'm not sure if he can answer
10 that question.

11 **Q** **(By Mr. Gatlin)** Was that your word, Mr.
12 Crouch?

13 **A** The word here, if I may reread that
14 sentence, we made a mistake by utilizing different
15 flows for our calculation, other than alleging that
16 consistency required the use of maximum month average
17 daily flow for calculating both used and useful."

18 In that case consistency, or the matching
19 principle, should have required that we use the annual
20 average in the numerator as well as the denominator if
21 that was what was on the permit. But we made a
22 mistake.

23 **Q** And you had an opportunity to correct it if
24 it was a mistake?

25 **A** Yes.

1 Q And then in the last paragraph on that page
2 it says "Therefore, consistent with Commission policy,
3 and since this utility is subject to severe seasonal
4 fluctuations, we calculated the used and useful
5 percent for treatment plant using maximum month
6 average daily flows and I&I percent using the average
7 annual daily flows, which is supported by the record."
8 That's what you say is an error?

9 A Yes. I now say that was an error.

10 Q Okay. Look over on Page 9 of that order.
11 Second full paragraph down from the top of the page.
12 Read that paragraph, would you please?

13 A The second full paragraph.

14 Q Yes, sir.

15 A "OPC argues that the Commission erred in
16 using the maximum month average daily flow to
17 determine the pre-AWT used and useful percentage.
18 Stating that it is inconsistent with Order
19 No. PSC-96-1133-FOF-SU, issued September 10th, 1996,
20 in Docket No. 950387-SU. We disagree with OPC. Each
21 case stands on its own merit and is based on the
22 evidence in the record."

23 Q So you considered the matching principle and
24 rejected it?

25 A At that time, yes, sir.

1 Q Let me ask you if you agree with a couple of
2 things, Mr. Crouch, about this case. The North Fort
3 Myers plant had a capacity of 1.0 MGD, which the
4 Commission had determined to be 100% used and useful;
5 is that correct?

6 A Yes.

7 Q Based upon a DEP Capacity Analysis Report,
8 FCWC was required by DEP to expand the plant and go to
9 advanced wastewater treatment. Do you agree with
10 that?

11 A Yes.

12 Q Florida Cities complied. Do you agree with
13 that?

14 A Yes.

15 Q And then this current application in this
16 case was filed for a rate increase?

17 A Yes.

18 Q And in its final order, which was appealed
19 to the District Court, the Commission determined that
20 the percentage used and useful of the plant was 90.9%.

21 A Okay.

22 Q Is that true?

23 A Yes.

24 Q And this percentage was applied to total
25 plant, the old plant, the new plant, the investment in

1 new plant and the investment in the reuse plant. Is
2 that true?

3 A Okay. Yes.

4 Q And so the result was that plant which had
5 been determined to be -- the old plant, which had been
6 determined to be 100% used and useful was now 65.9%
7 used and useful; is that correct?

8 A Yes.

9 Q And all investment above 65.9% was excluded
10 from rate base; is that correct?

11 A Yes.

12 Q And then any investment to treat peak or max
13 flows was not allowed in the rate base?

14 A I don't agree with that.

15 Q The Commission did not, in measuring used
16 and useful, use any recognition or have any
17 recognition of peak flows, did it?

18 A Peak flows are handled by surge or
19 equalization tanks which are an integral part of the
20 plant, and, therefore, considered in the used and
21 useful equations. The capability of that plant to
22 handle peak flows is determined by, here again, the
23 surge tank or equalization tank. And that is
24 considered in the used and useful equation.

25 Q That was 65.9%?

1 **A** Yes.

2 **Q** So any measure of peak flows was -- any
3 investment that would have resulted from a measurement
4 of peak flows was eliminated and not allowed in the
5 rate base?

6 **A** I don't agree that any measurement was
7 eliminated, no.

8 **Q** I'm going to show you Page 17 of the order
9 in this docket. Read the last sentence on the bottom
10 of that page. Out loud, if you will?

11 **A** "In part, the above-mentioned \$800,000
12 approximate reduction is due to elimination of peak
13 flow measurements."

14 **Q** Who was the engineer assigned to this case
15 by you?

16 **A** The Florida Cities North Fort Myers case was
17 Tom Walden.

18 **Q** And is he a PE?

19 **A** He is not.

20 **Q** Does he have a degree in engineering?

21 **A** He does not.

22 **Q** Has he ever designed a wastewater plant?

23 **A** No.

24 **Q** But he's called an engineer; is that right?

25 **A** His job classification with the State of

1 Florida is that he is an utilities system engineer.

2 Q All right. And is he assigned to make the
3 recommendation to the Commission after this hearing,
4 after this proceeding?

5 A After this today.

6 Q Yes.

7 A No, he is not.

8 Q Who would be the engineer assigned to that?

9 A James McRoy.

10 Q Is he a new engineer?

11 A He has been with the Commission for, I'd
12 say, approximately eight years. I'm not sure of the
13 exact length of time. He is an engineer.

14 Q A PE?

15 A He has not completed the PE requirements
16 yet, but he is a graduate, School of Engineering.

17 Q Is he here today?

18 A He is here today.

19 Q Would you point him out to me?

20 A He's sitting in the back row. James, would
21 you please stand up? (Mr. McRoy complies.)

22 MR. GATLIN: Good morning.

23 Q And has he been on your staff the whole
24 eight years?

25 A He is on the other staff. As I said, in the

1 reorganization, we divided the division to where we
2 have the litigation, or the testimonial staff, and we
3 have those who write the recommendation. He is a
4 member of the staff who is assigned to write the
5 recommendation.

6 Q So he's not under your supervision?

7 A He's not under my direct supervision, no.

8 Q I'm sorry. I think I missed the answer to
9 your question. I asked if he had been with the Water
10 and Wastewater Division for the full eight years that
11 he's been at the Commission?

12 A Yes, he has been with the Water and
13 Wastewater Division, yes.

14 Q He is a PE?

15 A He is not a PE. He is an engineer. He is
16 graduated from the School of Engineering.

17 Q Just graduated?

18 A No. But prior to coming to work for the
19 Commission.

20 Q What is his experience in the designing of
21 water and wastewater plants? Do you know? Wastewater
22 plants?

23 A I'm sure he has no experience in designing a
24 plant.

25 Q And would it be safe to assume that he has

1 never certified one to the Department of Environmental
2 Pollution (sic)?

3 **A** That's true.

4 **CHAIRMAN JOHNSON:** Mr. Gatlin, is this a
5 convenient breaking point? We're going to need to
6 take about a five-minute break.

7 **MR. GATLIN:** Sure. Absolutely.

8 **CHAIRMAN JOHNSON:** Let's take a five-minute
9 break.

10 (Brief recess taken.)

11 - - - - -

12 **CHAIRMAN JOHNSON:** I think we're about
13 ready. Commissioner Garcia will be a little bit late
14 coming in.

15 Mr. Gatlin?

16 **MR. GATLIN:** Yes.

17 **Q** (By Mr. Gatlin) Mr. Crouch, you're not a
18 PE in the state of Florida, are you?

19 **A** No, I'm not.

20 **Q** You're a PE in the state of Texas?

21 **A** That's correct.

22 **Q** And that certificate is not transferable to
23 Florida?

24 **A** It could be if I wanted to pay for it. I
25 get no monetary gain by having it transferred to

1 Florida.

2 Q And your training was in the -- electrical
3 engineer?

4 A That is my degree, yes.

5 Q Would you agree that the plant investment by
6 a utility in plant necessary to treat max month flows
7 should not be ignored?

8 A Yes, I agree.

9 Q And would you agree that no matter which of
10 the permitting choices are made by the utility that
11 the plant -- that a utility still has to have
12 investment in plant so as to treat peak and maximum
13 flows?

14 A Yes.

15 Q And there's no question, is there, but that
16 max and peak flows are processed in a wastewater plant
17 even though the plant -- strike that -- there are max
18 and peak flows in a wastewater plant that go through
19 the plant that are -- they're above the annual daily
20 average?

21 A Yes.

22 Q If a plant is used and used and useful under
23 Chapter 367, it should be recognized in rate base,
24 shouldn't it?

25 A Yes.

1 Q But in the instance -- it's your position
2 that in the instance where the permit is based on
3 annual average daily flow, that plant ought not be in
4 rate base; is that true?

5 A Would you rephrase that question, please?

6 Q If wastewater treatment plant is based on
7 annual average daily flow, the permit, then it's your
8 position that the max -- or the investment for plant
9 to treat maximum and peak flows should not be allowed
10 in rate base?

11 A No.

12 Q Should be allowed.

13 A I'm saying that the equipment necessary to
14 handle those peak flows is the surge tank --

15 Q The what?

16 A The surge tank, the equalization tank, et
17 cetera, that holds those flows, smooths out those
18 peaks; and the investment in that would be considered
19 in the used and useful equation, yes.

20 Q Well, in this instance we've already found
21 out that there's at least an \$800,000 difference in
22 used and useful plant allowed between using maximum
23 flows and between using annual average day flows in
24 the equation, haven't we?

25 A That 800,000 was disallowed because of the

1 inconsistency in the dimensions, yes.

2 Q Inconsistency in what?

3 A In the dimensions. When you try to use max
4 month in the numerator over annual average in the
5 denominator, that gave you an inflated used and useful
6 figure. When it was corrected to read annual average
7 over annual average, then \$800,000 was disallowed.

8 Q So less plant was recognized if you use
9 different formulas?

10 A Yes, sir.

11 Q If you use the max month formula as the
12 numerator, the \$800,000 would have been included,
13 wouldn't it?

14 A It would have given you an inflated used and
15 useful, and the 800,000 could have been included, yes.

16 Q Would have been included.

17 A Okay.

18 Q In fact, it was included in the old rate
19 case, in the 1992 rate case?

20 A That's correct.

21 Q But other than the change in the wording of
22 the permit, there was no difference in the plant, was
23 it, as far as the old plant was concerned?

24 A That's true.

25 Q A utility has to make reasonable assurances

1 to DEP that a plant that is being permitted is capable
2 of treating average flows, max flows, peak flows and,
3 above all else, that the waste discharge will meet the
4 quality requirements of the State of Florida; is that
5 true?

6 A That's true.

7 Q And that's true whether it's annual average
8 daily peak flow, or a max month?

9 A That's true.

10 Q And is it your position that the matching
11 principal that you're talking about this in case is a
12 policy of the Commission or is not a policy of the
13 Commission?

14 A It is a law of mathematics and physics. It
15 is not debatable on whether it's a policy of the
16 Commission.

17 Q It is, then, a policy of the Commission; is
18 that correct?

19 A The policy of the Commission is to accept
20 laws of physics and mathematics; that's by definition,
21 yes.

22 Q Is it the policy of the Commission to use
23 the matching formula that you propose in this docket?

24 A Yes.

25 Q Didn't the Staff tell the Commissioners at

1 an Internal Affairs conference that there was a policy
2 of matching?

3 A I believe they did, yes.

4 Q If the Commission follows your
5 recommendation and adopts your way of determining used
6 and useful, and if for some reason the case is
7 appealed to the District Court of Appeal, is it your
8 position that the Commission's action is justified on
9 the selection of the time frame for the permit?

10 A Would you say that again, please?

11 Q Sure. If the Commission uses your formula,
12 as you're talking about it in this case, is its reason
13 for using that kind of formula, using the annual
14 average day, because of the selection of the time
15 frame for the issuance of the permit?

16 A Yes. The utility selects a time frame for
17 the permit. That's what goes in the denominator. We
18 will match that in the numerator. If they were to
19 pick max month average for the denominator, we would
20 put that in the numerator.

21 Q And that's the reason that you would depart
22 from your previous policy of having maximum day in
23 the --

24 A There was no previous policy.

25 Q There's no policy.

1 **A** There is no policy. There is no statute.
2 There is no rule. On a case-by-case basis we will
3 treat each individual case. Although there have been
4 times where people have said, well, that's Commission
5 policy, Commission policy is to accept or reject
6 Staff's recommendation. That is the only thing you
7 could say is Commission policy.

8 **Q** When the Court says in the opinion in this
9 case "The use of average daily flow in the max month
10 to calculate how much treatment capacity is used and
11 useful in a wastewater rate case has been repeatedly
12 articulated by the Commission as its policy," you
13 disagree with the Court?

14 **A** I disagree with their use of that word, yes,
15 that that was policy.

16 **Q** And you disagree with Commission orders that
17 that's the policy?

18 **A** I think it's a poor choice of words; yes, I
19 disagree.

20 **Q** You disagree with it. And when the Court
21 says "Therefore, consistent with Commission policy,
22 insists this utility is subject to severe seasonal
23 fluctuations, we calculated the used and useful
24 percent for the treatment plant using maximum month
25 average daily flows," that's not true? That's not the

1 Commission policy?

2 A Would you say that again, please?

3 Q The Court in quoting the Barefoot Bay rate
4 case of Florida Cities says, "Therefore, consistent
5 with Commission policy, insists the utility is subject
6 to severe seasonal fluctuations, we calculated the
7 used and useful percent for the treatment plant using
8 max month average daily flows."

9 A I think that was incorrectly worded when we
10 said "consistent with Commission policy." I do not
11 think that was --

12 Q Don't think there was a policy?

13 A No.

14 Q The Court was wrong in thinking there was a
15 policy?

16 A The Court is quoting a statement in there.

17 Q Yes.

18 A Think that that statement was wrong?

19 Q They're relying on the Commission that the
20 statement made?

21 A No. I think -- the Court was not lying, the
22 Court was quoting a Commission --

23 Q That's what I'm saying.

24 A -- a Commission order.

25 Q In determining there was a Commission

1 policy, they quoted that order.

2 A Yes.

3 Q And that was incorrect for them to do that?

4 That was an error?

5 A That was not incorrect for the Court to
6 quote that, no.

7 Q No?

8 A I'm saying that the order, the wording in
9 the order was incorrect.

10 Q The Court relied on that order, among other
11 things, in determining what the Commission policy was,
12 and they should not have relied on that order?

13 A They can rely on anything they want to. I'm
14 not saying they're wrong for relying on it, no.

15 Q But in their interpretation that there was a
16 Commission policy based on that Commission order, that
17 was wrong?

18 A If they state -- make a blanket statement
19 that it is policy, is Commission policy to do
20 something, then that is wrong.

21 Q They should not have relied on that
22 Commission order?

23 A Not alone, no --

24 Q Is that what you said?

25 A Not by itself, no.

1 Q What else could they have relied on?

2 A Other cases.

3 Q That say there's no policy?

4 A There have been other cases where we did not
5 use max month prior to the Florida Cities case.

6 Q And what was the policy then?

7 A It was not a policy. It was a case-by-case
8 basis depending on the information provided by the
9 utility and the facts of the case.

10 Q When the Commission told the court there was
11 a policy, was that in error?

12 A I think that was in error, yes.

13 Q Is it your position that margin reserve, the
14 allowance of margin reserve, has any application in a
15 situation like we're talking about in this case?

16 A I think it could, yes. In this particular
17 case there was some margin reserve granted. It
18 depends on what the utility asks for and justifies.

19 Q Do you know how much was granted in this
20 case?

21 A Right offhand I'm thinking 4%. I don't
22 remember the exact number. There was a small margin
23 reserve asked -- or justified.

24 Q But that doesn't make up for the 65.9%
25 investment that was disallowed, does it?

1 A No.

2 Q And you would agree, I believe, that the
3 design engineer in this case, Black & Veatch, had to
4 assure DEP before the permit was granted that all
5 flows would be treated at all times, including max and
6 peak flows?

7 A Yes.

8 Q And that the treatment by the plant would
9 meet the water quality standards of the state of
10 Florida?

11 A Yes, sir.

12 Q To get an average -- an annual average daily
13 flow of a plant, don't you take the flow through that
14 plant for a year and divide it by 365 days?

15 A Yes.

16 Q And there would be some periods of time that
17 was higher than that average, correct?

18 A Yes.

19 Q But in this case you're recommending that
20 the used and useful portion be determined only based
21 on the average, the annual daily average; is that
22 correct?

23 A That's correct.

24 Q If the DEP were to issue a permit based on
25 three-month max flows, would you use that flow in the

1 numerator of your fraction?

2 A Yes.

3 COMMISSIONER GARCIA: For the record, I
4 just -- I'm going to have to look at the transcripts.
5 My wife has been put in the hospital, so I'm going to
6 be taking off, but I just want to let you know for the
7 record and for those who are listening in the
8 Internet. All right.

9 Q (By Mr. Gatlin) You testified at the
10 deposition that DEP is concerned that there is
11 capacity to treat the wastewater, all the wastewater
12 that flows through the plant; is that correct?

13 A Yes.

14 Q But you're not concerned?

15 A I didn't say that.

16 Q You said it's not part of your job.

17 A It is not up to me to determine whether it
18 is capable of it or not. As long as they meet DEP
19 standards, we accept DEP's statement on the permit
20 that it is capable of it.

21 Q And if a utility doesn't meet those
22 requirements and those standards, doesn't the
23 Commission take steps, the Public Service Commission
24 take steps, to make sure that the utility does meet
25 those standards?

1 **A** If the utility was guilty of violating the
2 parameters established by DEP, we would possibly
3 punish them accordingly, yes.

4 **Q** Under Chapter 367 the utilities are expected
5 to abide by the DEP rules, aren't they?

6 **A** Right. Yes.

7 **MR. GATLIN:** Madam Chairman, this is a
8 document entitled Docket 950387-SU, Robert J. Crouch
9 hearing exhibit, and we need an exhibit number for it.

10 **CHAIRMAN JOHNSON:** It's going to be Exhibit
11 No. 41. The document that you gave me before had the
12 same short title.

13 **MR. GATLIN:** It does.

14 **CHAIRMAN JOHNSON:** Yeah. It says -- yeah.

15 **MR. GATLIN:** I thought the other one,
16 earlier one, had a Barefoot Bay reference to it.

17 **CHAIRMAN JOHNSON:** Docket --

18 **MR. GATLIN:** Exhibit 40.

19 **MR. JAEGER:** That's Barefoot Bay Division.

20 **CHAIRMAN JOHNSON:** Oh yeah; it does say it
21 at the bottom, Barefoot Bay Division.

22 **MR. GATLIN:** All right.

23 **CHAIRMAN JOHNSON:** This one will be 41,
24 but -- what's the short title? What is this? I don't
25 want to just use the same docket number and his name.

1 What's another caption?

2 Is this all Southern States or is it --

3 **MR. GATLIN:** No. This is a variety of
4 documents that I've just bound up so that we wouldn't
5 have them floating around, but it's mainly deposition
6 exhibits. It's deposition exhibits in the main.
7 There may be one or two --

8 **CHAIRMAN JOHNSON:** Okay. It will be
9 Composite Exhibit 41 consisting of 19 tabbed items.
10 And I'll use the same docket number, but describing it
11 as consisting of 19 tabbed items, and it's Docket
12 No. 950387-SU.

13 (Exhibit 41 marked for identification.)

14 **MR. GATLIN:** All right.

15 **CHAIRMAN JOHNSON:** Let me be clear. I don't
16 know if I said 9 or 19. I should have said 19 tabbed
17 items.

18 **Q** (By Mr. Gatlin) Mr. Crouch, do you have
19 that Exhibit 41 before you?

20 **A** Yes.

21 **Q** Would you turn to Tab 1. I made a public
22 records request to the Commission for any documents
23 relating to the used and useful formula discussion,
24 and this is one of the documents that was furnished to
25 me. It has Mr. Tom Walden's name up in the left-hand

1 corner.

2 Have you seen this document before?

3 A Yes.

4 Q Do you think this is Mr. Tom Walden's
5 document?

6 A I believe it is, yes.

7 Q I'm sorry?

8 A I believe it is, yes.

9 Q All right. Look over on the second page, if
10 you would, please, and there's a paragraph in the
11 middle of the page that -- let me ask you this first:
12 When Mr. Walden uses the term "annual average" in this
13 document, do you suppose he really means annual daily
14 average? Several places he uses that, like in the
15 second paragraph from the top he says the plant design
16 was annual average.

17 A I think he means annual average daily flow.
18 That would be my interpretation.

19 Q The middle paragraph on page -- on the
20 second page of the document, the last sentence says,
21 referring to the max month use and numerator, he says,
22 "I have no -- I know of no previous cases where the
23 Commission varied from the average daily flow max
24 month for wastewater plants in used and useful
25 calculations."

1 I take it you disagree with that?

2 A He said he knew of no cases, but we have
3 since determined that there were cases, yes.

4 Q What was the occasion that caused the
5 writing of this document?

6 A The North Fort Myers case was the first in
7 which we had to make a determination on what to use in
8 the numerator and denominator. This was the very
9 first case that this became an issue, and there had
10 been much research done after that time. But the
11 North Fort Myers case, the case at hand here today,
12 was the first case where this became an issue.

13 Q Well, Mr. Crouch, I thought we agreed that
14 it was an issue in the Barefoot Bay case.

15 A It was an issue, yes, and the matching
16 principal was not an issue that the Commission Staff
17 worried about in the Barefoot Bay case.

18 Q But OPC made it an issue, did they not?

19 A Yes.

20 Q So it was an issue?

21 A It was an issue.

22 Q And that case was going along about the same
23 time this case was?

24 A Just a few weeks prior, yes.

25 Q Let me read this to you in the middle

1 paragraph, talking about the presentation by the
2 Commission at the Court. "Our counsel explained to
3 the Court that it was correct that there was a switch
4 between the 1992 proceeding for the system and this
5 proceeding in the way used and useful was calculated.
6 Counsel correctly stated that used and useful
7 calculations using average daily flows from the max
8 month have been a long-standing practice that the
9 Commission abandoned for the first time in this case.
10 Counsel inferred that the mismatch of average annual
11 and daily -- daily flows to average max month is a
12 miscalculation, and that this miscalculation recurred
13 repeatedly in numerous cases over several years.
14 Either counsel misspoke or was misinformed."

15 Do you concur with that statement?

16 A Yes.

17 Q Turn, if you would, to Tab 2. This is from
18 the prehearing order in this case. You'll notice it
19 has the same docket number up at the top, 950387.
20 I've just used parts of the prehearing order that are
21 relevant here today.

22 What is Issue 4 -- would you read Issue 4?

23 A "What capacity of the wastewater treatment
24 plant and what flows should be used to calculate used
25 and useful?"

1 Q And the utility, Florida Cities, took the
2 position that you should use 1.25 and that you should
3 use the flows that are set forth in Schedule F-6 of
4 the MFRs; isn't that true?

5 A That's correct.

6 Q And OPC said that you should match the flows
7 in the numerator and the denominator depending on the
8 time frame for the permit; is that correct?

9 A That's correct.

10 Q Turn the page, and Staff said that you were
11 going to determine the flows from the record; is that
12 correct?

13 A Yes, sir.

14 Q And that you were presenting two witnesses
15 on that issue, Shoemaker and Barienbrock; is that
16 correct?

17 A That's correct.

18 Q Is that true?

19 A That's correct.

20 Q And in Issue 6, the issue was, what is the
21 appropriate amount of used and useful. And the
22 utility said 100%, OPC said 49.34%, and Ms. Walla said
23 54%, and Staff said "The proposed agency action order
24 states that the plant is 100% used and useful, but
25 Staff has no position pending further development of

1 the record."

2 What does that mean?

3 A That means that once the case is protested,
4 anything determined in the proposed agency action
5 order is nonexistent. We have to wait for the
6 testimony. We have to wait for the order to be
7 established in the hearing, and then we would make our
8 decision.

9 Q Why didn't the Staff decide then to put on a
10 Staff witness? You knew it was an issue as to the
11 flows and the capacity.

12 A We probably should have. At that time I did
13 not have a Staff witness available.

14 Q You do not what?

15 A I did not have a Staff witness available.

16 Q And that's the reason; you did not have a
17 Staff witness available?

18 A I would like to testify in a lot of cases
19 that I was not able to strictly because of manpower.

20 Q But Mr. Walden attended the hearing. Did
21 you know that?

22 A That's correct.

23 Q Was there any reason he couldn't have
24 testified?

25 A If he had testified, he could not have

1 written the recommendation.

2 Q So somebody else would have had to write the
3 recommendation?

4 A That's correct.

5 Q So that caused you to decide not to have a
6 Staff witness?

7 A At that time it was not considered
8 necessary. We had the DEP witnesses who were
9 testifying for Staff.

10 Q So Staff decided it was not necessary, and
11 also you didn't have anybody to testify?

12 A We had DEP witnesses testifying for Staff.
13 We considered that enough. We didn't need anybody
14 else.

15 Q Look over on the next page. It says
16 "Excerpt from Exhibit 1," in this docket and it's
17 Schedule F-6 from the MFRs. Does that show the
18 capacity of the plant?

19 A Yes.

20 Q At least what the utility, what Florida
21 Cities, was contending was the capacity of the plant?

22 A Yes.

23 Q But that was an issue in the case, wasn't
24 it?

25 A Yes.

1 Q And the Staff determined in its
2 recommendation that that was not the capacity of the
3 plant?

4 A Yes.

5 Q And weren't you supplied in this document
6 with average daily flow in max month and the average
7 daily flow during the year?

8 A Yes.

9 Q So you had the information?

10 A Yes.

11 Q And you knew what the company's position was
12 at that time?

13 A Yes.

14 Q Turn the page, if you will, which is
15 Page 272 from the transcript of the hearing in this
16 case.

17 Didn't Mr. Young testify on behalf of
18 Florida Cities very explicitly as to the numbers that
19 should be used in the numerator and denominator in
20 determining used and useful?

21 A Mr. Young testified as to his opinion, yes.

22 Q So you knew then what the company's position
23 was?

24 A Yes.

25 Q You just didn't know whether you disagreed

1 with it? Is that what it was? You didn't know you
2 disagreed with it then?

3 A The company has always wanted the maximum
4 used and useful that they could get. It was not until
5 in the middle of the hearing that we noted that the
6 permit itself designated the dimension, annual average
7 daily flow.

8 Q Turn to the next page, if you will, which is
9 Page 577 of the transcript in this proceeding. Go
10 down to Line 13. Would you read that line, please?

11 A Before that the question was "On what basis
12 was the plant capacity expansion designed and rated?"

13 The answer, from Mr. Thomas Cummings, was
14 "The plant expansion was originally designed to treat
15 1.30 MGD on an average annual daily flow basis."

16 Q Didn't that indicate to you what the permit
17 would provide?

18 A No.

19 Q Why?

20 A That didn't show anything at all on what the
21 permit was going to say. That's what it was designed.
22 It doesn't say anything at all about the permit.

23 Q Does the DEP issue permits different from
24 what the design capacity is?

25 A The DEP permit is predicated on what the

1 person who prepares the permit application checks on
2 the block.

3 Q And Mr. Cummings, you heard him testify
4 yesterday that he was the one that checked the box,
5 didn't he?

6 A Yes.

7 Q Well, he was the design engineer, wasn't he?
8 Didn't this tell you that the permit was going to be
9 average annual daily flow?

10 A This does not tell me that, no --

11 Q Doesn't tell you. Does it make you
12 suspicious that it might be?

13 A No.

14 Q No indication at all?

15 A No.

16 Q Go down to the answer, Line 18. Would you
17 read that answer?

18 A Going back to the question: "Did Florida
19 Cities Water Company direct you to change the design
20 after the preliminary design report was prepared and
21 the FDEP permit application was filed?"

22 The answer: "Yes, Florida Cities Water
23 Company directed us to change the design capacity to a
24 maximum of 1.25 MGD based on the annual average daily
25 flow and the designed waste concentration associated

1 with this flow."

2 Q All right. Turning to the next page, if you
3 will, which is Page 578 from the transcript, the
4 question is on Line 14. I'll read the question and
5 you read the answer.

6 "What is the capacity of the facility that
7 was actually constructed by Florida Cities?"

8 A "The plant capacity will be equal to
9 1.25 MGD based upon the average annual daily flow and
10 the waste concentration associated with this flow."

11 Q And that doesn't yet tell you that it's
12 going to be based on a 1.25 MGD annual average daily
13 flow? You said that's what was built.

14 A If doesn't say anything about the permit
15 yet.

16 Q But that's why you said this was built.

17 **MR. JAEGER:** Chairman Johnson, I didn't want
18 to interrupt, but it seems like we're going a long on
19 time on when Staff or how early we should have known
20 it, and Staff is willing to stipulate that our Staff
21 engineer did not discover the change in the permit to
22 annual average daily flow until the date of the first
23 hearing and that there was ample discovery time to
24 have discovered it. So if this could shorten it, we
25 will stipulate that we should -- we could have known

1 and should have known.

2 **MR. GATLIN:** Well, I think that's very
3 gracious of you to do that, Mr. Jaeger, but I think
4 that it's important that we test why and what effort
5 the Staff made; because apparently the failing of the
6 Staff to do that has caused an appeal and the Staff
7 could have made those determinations. There was
8 nothing to stop them. And we've had to go to Court
9 and, from what I understand, it may be likely that we
10 have to go to Court again; and I think the Court ought
11 to consider in making its determinations why we had to
12 do this twice.

13 **MR. JAEGER:** Well, the Court gave us the
14 discretion to reopen the record. The Commission did
15 take that discretion. You appealed that decision to
16 reopen the record already, and the court affirmed our
17 discretion to reopen the record, so I'm not sure where
18 we're going with this.

19 **MR. GATLIN:** Well, the Court certainly
20 affirmed it, but left the question open. They said
21 that it could be considered when the -- if there was
22 another appeal.

23 **CHAIRMAN JOHNSON:** Is there an objection?

24 **MR. JAEGER:** I was just trying to shorten
25 this as to when Staff discovered or should have

1 discovered, and he's rejected our stipulation, so I
2 guess we can go ahead. But I just think we're -- I
3 don't see the relevance, but he's admitted that our --
4 Staff is willing to stipulate that we should have
5 known.

6 **CHAIRMAN JOHNSON:** Go ahead, Mr. Gatlin.

7 **MR. GATLIN:** Well, I don't wish to
8 stipulate.

9 **Q** (By Mr. Gatlin) Look on the next page,
10 which is an excerpt from the Staff recommendation in
11 this docket. Do you see that?

12 **A** Yes, sir.

13 **MR. JAEGER:** I'm sorry. I turned the page
14 back to look at something. What page are we on now,
15 Mr. Gatlin?

16 **MR. GATLIN:** It's Page 22 from the Staff
17 recommendation in this docket, still under Tab 2.

18 **MR. JAEGER:** Right.

19 **Q** (By Mr. Gatlin) Do you see that?

20 **A** Yes, sir.

21 **Q** Turn the page down to Page 23. It says
22 there that "The flows to be considered should be
23 annual average flows." Annual average flows, doesn't
24 it? This was in the Staff recommendation in this
25 docket. It says "should be annual average flow."

1 Does that differ from annual average day flows?

2 A No. We're talking the same thing.

3 Q But annual average flow is a terminology
4 that is also used by DEP, is it not?

5 A Would you say that again, please?

6 Q DEP uses annual average flows and then they
7 use annual average day flows do they not?

8 A These are used interchangeably many times,
9 yes.

10 Q They are separate definitions of the two
11 terms of the DEP rules, are they not?

12 A I believe they are, yes.

13 Q The flows to be considered should be the
14 annual average flows as specified in the DEP permit
15 and as testified by Witness Cummings and Acosta.
16 Where does the information come as to what was in the
17 DEP permit? Where did you get that information?

18 A We noticed it on the DEP permit on the
19 second day of the hearing. The DEP permit itself in
20 parentheses says "annual average".

21 Q And when did you have that?

22 A We had that quite a bit prior to the
23 hearing. We did not notice it until the hearing
24 itself.

25 Q And then the Staff goes on to say and --

1 let's see; this Staff is Mr. Walden: "Flows shown in
2 the MFRs are -- for the used and useful calculations
3 are not annual average flows, and instead are average
4 flows from the peak month. These flows do not match
5 the plant design nor the permitting considerations in
6 the DEP construction permit. For that reason, the
7 utility's suggestion of using the flows as presented
8 in the MFR should be rejected."

9 Is that a correct reading?

10 A Yes.

11 Q Isn't that the first document that Staff or
12 Commission had that they used the term "matching"?

13 A Yes; to my knowledge, I believe that's
14 correct.

15 Q So did Florida Cities Water Company know
16 about this matching principal when it applied for a
17 permit?

18 A I'm sure the engineers are aware of the
19 dimensionally consistent or matching principal as a
20 law of physics, but they probably did not apply it in
21 this case when they applied for a permit, no.

22 Q They did not know, and Florida Cities did
23 not know, that the Commission was going to talk about
24 matching as far as the permit -- in the permit, were
25 they, for the permit and the denominator?

1 A That's probably correct.

2 Q Right. So when you say -- and you said it
3 several times, I think, that it was up to the utility
4 to make that selection when it applied for the permit,
5 and if it had selected something else, Florida Cities
6 could have avoided this problem in this case?

7 A Yes.

8 Q Right. But the Staff -- I mean, the company
9 had no way of knowing that the Commission was going to
10 follow this so-called matching principal, did they?

11 A They may not have. They probably did not.

12 Q I asked you about that at the deposition,
13 and you at first indicated that you thought that I had
14 been notified or the company had been notified that
15 that was going to be what the Staff was going to
16 consider, didn't you?

17 A That was my understanding at the time. I
18 since found out that no, you were not notified.

19 Q Well, there was no notice?

20 A There was no notice.

21 Q And you thought that Mr. Walden had sent
22 some kind of notice, didn't you?

23 A Yes, sir.

24 Q And you found out he had not?

25 A That's correct.

1 Q So until this document, this memorandum,
2 this Staff recommendation we're looking at, that was
3 the first time the company had any notice about it?

4 A Yes, sir. Somebody had to be first.

5 Q On the bottom of the Page 16 of that same --
6 I'm sorry. Turn to the next page. This is an excerpt
7 from the order. Do you see that?

8 A Yes, sir.

9 Q And the bottom paragraph on that page is the
10 first time that the Commission considered used and
11 useful and talked about matching as the reason it did
12 whatever it did?

13 A Okay.

14 Q Is that true?

15 A Okay. Yes.

16 Q Read the sentence on the top of Page 7, if
17 you will. 17; I'm sorry.

18 A The next page?

19 Q Yes. Right.

20 A "Due to the constraints in the DEP permit of
21 annual average flows, as testified to by the utility
22 witnesses, and the change from the use of average
23 daily flow from the maximum month, the used and useful
24 percentage decreases from the last rate case."

25 Q So what had been 100% used and useful before

1 was now 65.9% used and useful?

2 A That's correct.

3 Q And nothing had changed as far as the plant,
4 the old plant is concerned; is that correct?

5 A That's correct. The plant had been given an
6 inflated used and useful percentage in the previous
7 case because the actual month was used in the
8 numerator, and we had no knowledge of what time frame
9 was in the denominator.

10 Q Well, that 100% used and useful calculation
11 was an error, then; is that right?

12 A 100% was inflated, yes.

13 Q It was an error?

14 A Yes.

15 Q And so you were correcting an error?

16 A Yes.

17 Q Okay. Even if the permit did not say
18 whether it was annual average daily flow prior to
19 1992, it should -- you should still have used annual
20 average daily flow as -- in the numerator; is that
21 correct?

22 A We gave the utility the benefit of the doubt
23 and used maximum month daily flow, average daily flow,
24 in the numerator because we had no dimension in the
25 denominator, and so we gave the utility the maximum

1 used and useful allowed.

2 Q Is that documented someplace that that was
3 what you were doing was giving the utility the benefit
4 of the doubt?

5 A I don't know that in that exact phrase, but
6 in standard operating procedures in a number of places
7 it was documented that we would use the maximum month
8 average daily flows in the numerator.

9 Q But it didn't say anything about not knowing
10 what was in the permit, did it?

11 A Didn't say anything about it because there
12 was --

13 Q Well, it --

14 A -- nothing designated in the permit.

15 Q Well, it never occurred to anybody that
16 there might be a difference, had it?

17 A There was not an issue at the time. It
18 was --

19 Q No.

20 A -- not in the permit.

21 Q It had not occurred to you that there was a
22 difference, had it?

23 A Probably not. There was nothing designated
24 in the permit.

25 Q Right. Right. So what about those permits

1 that are still in existence and still not designated?

2 What do you do?

3 A I think permits come up for renewal, and all
4 of them should have been renewed by now, so I don't
5 believe there should be any in existence now that
6 don't --

7 Q Suppose there's one?

8 A If there was one --

9 Q And there's no indication on the permit as
10 to whether it's annual average daily flow or max
11 month.

12 A If that dimension was not there, then
13 technically we could not match a dimension in the
14 numerator. But I think if we got one today that did
15 not show the basis in the denominator, we would reject
16 it and ask them for a current permit or ask for DEP's
17 background information on it, because we do know now
18 that the annual average is what is supposed to be used
19 and --

20 Q And if you went back and got an annual
21 average day, you would use that in the numerator?

22 A Yes.

23 Q And if you went back and got a max month
24 permit, you'd use that in the --

25 A Yes, sir.

1 Q Same plan?

2 A Yes, sir.

3 Q Same plan?

4 A Yes, sir.

5 Q No difference in the structure, nothing else
6 there?

7 A It depends on what the utility picks for
8 their permit.

9 Q Just a change in the permit?

10 A Yes.

11 Q Is all the difference there is; that's
12 correct?

13 A Yes.

14 Q Okay. In a deposition I asked you did you
15 not think that it was an issue as to which flows and
16 which denominator to use in this case prior to
17 hearing, and you said you knew it was an issue, but
18 you didn't think it was a controversial issue. Is
19 that what you said?

20 A I didn't think it was an abnormal issue or
21 controversial issue at the time. It has always been
22 discussion on which flows should be used in the
23 numerator and denominator. In virtually every case a
24 utility tries to get as large a used and useful
25 possible. Public Counsel will usually try to get a

1 smaller used and useful if possible, and Staff comes
2 in, compares both of them, and comes up with the best
3 recommendation we can. So that's normal practice for
4 Staff to come with up with a recommendation based on
5 the record.

6 Q So how does an issue become a controversial
7 issue as differentiated between a normal issue?

8 A Well, it's obvious this was a controversial
9 issue and became a controversial issue when it was
10 challenged.

11 Q Well, you had the prehearing order and the
12 Staff -- and the OPC testimony and our testimony, and
13 they were contending it was 40 something percent used
14 and useful and we were contending it was 100%, and we
15 said use the max month flows, and they said use
16 something else to make it match.

17 That did not indicate to you it was
18 controversial?

19 A Looking at it now, yes, it was
20 controversial, and we should have put more emphasis on
21 it at the time. We did not, unfortunately.

22 Q I think you indicated there was nothing that
23 prevented the Staff from presenting evidence and
24 testimony at the case; is that true?

25 A That's true.

1 Q And if you had put that testimony and
2 evidence into the record and the Commission agreed
3 with you as to this so-called matching principal and
4 put it into order, then the Court would know in the
5 first appeal what the reason the Commission -- the
6 reason the Commission used what they did. Isn't that
7 right?

8 A I think the Court would possibly have had a
9 more clearer view of it, yes.

10 Q Well, what you're talking about now putting
11 into this record is the same thing that you would have
12 put in the record back then, isn't it?

13 A Yes.

14 Q So the Court would have known -- they could
15 have said, well, that's good or that's okay or not
16 okay, couldn't they, as far as they're concerned?

17 A Yes.

18 Q If that had happened, we wouldn't be here at
19 this hearing probably, would we?

20 A I think the possibility that you would have
21 challenged it is still there. Even if we had had
22 testimony and more testimony on this, there was still
23 a possibility that you would have challenged it.

24 Q But if the court -- if we had appealed and
25 the Court looked at it and said, well, that matching

1 principal, that's good stuff, we affirm the
2 Commission, we wouldn't be back here on a remand,
3 would we?

4 A That's correct.

5 Q You have -- I don't remember what the
6 exhibit number is. It's the letter from Mr. Harvey to
7 Mr. Hill that was identified as RJC-3 attached to your
8 testimony. Do you recall that?

9 A Yes, sir.

10 Q The letter to Mr. Hill says that its
11 reference in Rule 25-30.432 --

12 A Mr. Harvey saying that to Mr. Hill, yes.

13 Q Yes?

14 A Yes.

15 Q And that is -- was that the used and useful,
16 proposed used and useful, rule that the Commission was
17 considering at that time?

18 A That is correct. We sent the draft rule to
19 DEP for their comments and recommendations on that
20 draft rule.

21 Q That rule dealt with margin reserve used and
22 useful percentages. What all did it deal with other
23 than that?

24 A Well, as I state in my testimony on how we
25 look at used and useful, it goes into all the

1 different considerations, all the different parameters
2 considered in setting up a used and useful equation.
3 And there were a number of things -- there is no
4 statute, there is no rule to date. It is on a
5 case-by-case basis.

6 So this was trying to codify and bring
7 together different practices and procedures and put it
8 into a rule. It just discussed the ways that Staff
9 computed or calculated used and useful.

10 Q But it dealt more -- with more than just the
11 fraction that we're talking about in determining used
12 and useful?

13 A Yes, quite a bit more.

14 Q Talk about margin reserve?

15 A Margin reserve, unaccounted for water,
16 infiltration, inflow, fire flow.

17 Q Right. And did the Commission adopt that
18 rule?

19 A No.

20 Q Did it adopt any of the rules?

21 A No.

22 Q What happened?

23 A That rule was withdrawn because of the
24 controversy behind it. It was withdrawn and -- for
25 further study and it has never been --

1 Q Still being studied?

2 A -- recodified.

3 Q Is the Staff still studying it?

4 A The Staff is still studying it. We'd like
5 to come up with some way to codify used and useful or
6 come up with something.

7 Q But you have a new proposed rule on used and
8 useful, don't you?

9 A No. We proposed a rule on margin reserve.

10 Q All right. You have a rule -- you're
11 proposing a rule to codify this matching principal,
12 aren't you?

13 A I have a proposal for that, yes.

14 Q What's the status of that?

15 A It is -- right now I'm not sure where it is.
16 Our Appeals section has it. I'm not sure what they
17 have done with it at this stage of the game, but there
18 is a proposal to simply put into the rules the
19 matching principal that the equation must be
20 dimensionally consistent.

21 Q Weren't you told to wait until this case is
22 over until it --

23 A I was not told to wait, no. I submitted the
24 rule. I've gone through everything I can do on it.
25 It is up to hierarchy farther up. What they're doing

1 with it I don't know.

2 Q This case has no effect on that rule
3 proposal?

4 A I have no idea.

5 Q In Mr. Harvey's letter in his second
6 paragraph he suggested that reuse should be considered
7 100% used and useful on the statute -- under the
8 statute; is that true?

9 A Would you repeat that, please? It says that
10 reuse what?

11 Q Sure. In the second paragraph Mr. Harvey
12 points out in his opinion that 403.064(6) requires
13 that all reuse investment that is prudent should be
14 100% used and useful and suggests that the Commission
15 ought to adopt that policy; is that true?

16 A I don't find that in the second paragraph of
17 Mr. Harvey's letter that you're referring to, but I
18 know that he has taken that position.

19 Q He says in the second paragraph -- and I'm
20 looking at the July 30th, 1992 letter. I hope it's
21 the same one -- he says in the last sentence, "The
22 intent of this statutory provision was that the full
23 cost of capital investments be included in the costs
24 recoverable through rate structure. In essence, the
25 entire cost of reuse projects should be considered

1 used and useful. We recommend --

2 A I see that, yes, sir.

3 Q Did the Staff or the Commission follow that
4 recommendation?

5 A It has since been decided by the courts that
6 yes, we will consider the reuse 100% used and useful
7 if it's a prudent investment.

8 Q You did not adopt that practice or procedure
9 until the recent Southern States District Court
10 opinion?

11 A Right.

12 Q So from the adoption of that statute until
13 that District Court opinion, you have not followed
14 that?

15 A There was quite a bit of controversy and
16 debate on whether or not reuse would be considered
17 100% used and useful.

18 Q In fact, the Commission did not allow 100%
19 used and useful?

20 A We recommended against that, and the
21 Commission accepted our recommendation at that time.

22 Q Okay. Look at the next paragraph, the last
23 sentence. Would you read that, please?

24 A "We believe that Chapter 25-30 Florida
25 Administrative Code should allow utilities to recover

1 investment for timely expansion of needed wastewater
2 treatment facilities consistent with our rule
3 requirements.

4 Q Do you agree with that?

5 A Not entirely. That is why the margin
6 reserve rule was submitted, and it is being debated
7 right now as to the time period that we will allow a
8 margin reserve.

9 Q Do you agree with it in principle?

10 A Basically, yes, that the utility should for
11 prudent investment be able to recover that; yes.

12 Q If a utility is not able to recover it, it's
13 a disincentive to make the investment, isn't it?

14 A The utility claims that, yes.

15 Q You don't think that's true?

16 A I think it's debatable.

17 Q In this letter over on the next page,
18 Mr. Harvey in his comments on Item 4 talks about the
19 margin reserve. Was the proposal in that rule that
20 the margin reserve be 20%?

21 A I believe that they were going to
22 automatically allow 20% unless a utility justified
23 more, but we would default to 20% if there was no
24 other justification.

25 Q 20% of what?

1 A Of their investment; 20% of what they had in
2 plant they could consider in margin reserve.

3 Q Right. Has the Commission followed the 20%?

4 A Not by that terminology. We have used a 20%
5 limitation on margin reserve and that their margin
6 reserve could not exceed 20%.

7 Q And it certainly was not applied in this
8 case, was it?

9 A It did not exceed 20% in this case, no.

10 Q I mean 20% was not allowed in this case?

11 A No, we did not default to 20%.

12 Q It was less than 20%?

13 A Yes.

14 Q 4%, I think you said?

15 A Yes.

16 Q Margin reserve is considered part of the
17 rate base, is it not?

18 A Yes, sir.

19 Q And CIC is imputed against margin reserve,
20 is it not?

21 A In most cases, yes.

22 Q And that means that the total margin reserve
23 that you found, the total investment is not allowed?

24 A That's correct.

25 Q Would you turn to Tab 3. That's some

1 testimony presented by Mr. Harvey in Docket
2 No. 960258, which was relative to the margin reserve
3 proceeding, I believe. Isn't that correct?

4 A I believe so, yes.

5 Q Would you turn over to Page 12 and start --
6 would you read, for the record, please, starting the
7 second line on Page 12 "the 18-month margin reserve"
8 and continue?

9 A "The 18-month margin reserve for wastewater
10 treatment plant is inadequate for the purpose,
11 particularly when considered together with the
12 Commission's use of the annual average daily flow to
13 such plants to calculate used and useful."

14 Q Continue on, if you will.

15 A "No reputable engineer would ever design a
16 plant with capacity to meet only the average annual
17 daily flow. To be 100% used and useful a plant would
18 have to maintain flows every day of the year at 100%
19 of capacity. This is not only impossible, it also
20 flies to the face of attempts by environmental
21 regulators to ensure that this situation does not
22 occur, because overflows would be inevitable."

23 "Third, Commissioner Deason referred to
24 construction lead times. Certainly such lead time
25 must include the time to design, permit, bid out,

1 contract, as well as construct, the facilities."

2 Q Turn to Tab 4, please.

3 CHAIRMAN JOHNSON: Mr. Gatlin, how much more
4 do you think you'll have of this witness?

5 MR. GATLIN: It was going fast for a while
6 and then it slowed down. I think another hour.

7 CHAIRMAN JOHNSON: Okay.

8 Q (By Mr. Gatlin) This is a Staff
9 recommendation in this docket dated August 1st, 1996,
10 and this is the issue, the Staff recommendation on the
11 issue, for what capacity of the wastewater plant and
12 what flows should be used in -- to calculate used and
13 useful. Do you see that?

14 A Yes, sir.

15 Q And the Staff is recommending that the
16 capacity of the plant is what? 1.5 of the disposal is
17 1.3?

18 A We actually had two recommendations; the
19 primary recommendation that it be 1.5 limited by
20 disposal to 1.3, and the alternate recommendation that
21 the wastewater treatment plant is 1.25 MGD. There was
22 controversy and debate as to which was the actual
23 capacity.

24 Q Right. Okay. And the same person made the
25 primary recommendation and the alternate

1 recommendation?

2 A Yes, sir.

3 Q Turn over to Page 17 of that Staff

4 recommendation and look at the paragraph -- it says

5 "Primary Staff is not persuaded by the testimony of

6 Witness Cummings that the plant's true capacity is

7 1.25 MGD when considering the biological loading

8 criteria. It is obvious that the 1.0 MGD plant prior

9 to expansion could effectively treat the flows

10 considerably in excess of the plant's capacity and for

11 an extended period of time." Is that correct?

12 A Yes, sir.

13 Q And this is Mr. Walden talking who is not a

14 professional engineer?

15 A That's correct.

16 Q And he's disagreeing with a professional

17 engineer who designed the plant; is that true?

18 A That's true.

19 Q And he's disagreeing with DEP; is that true?

20 A I don't see that he's disagreeing with DEP

21 here, no.

22 Q Well, the DEP had ordered Florida Cities to

23 expand the plant, hadn't they?

24 A I don't see that stated here, but okay.

25 Q No. No, it's not stated there, but you said

1 earlier that the DEP ordered Florida Cities to expand
2 the plant?

3 A Yes.

4 Q Right. So it could not continue to operate
5 as a 1.0 plant, the DEP said; is that correct?

6 A That was because of the disposal limitations
7 and not the plant itself. It was limited by what it
8 could dispose, and that was --

9 Q What was the design capacity of the plant
10 before it was expanded? Wasn't it 1.0?

11 A 1.0 MGD, I believe.

12 Q And after it was expanded, pursuant to DEP
13 instructions or order, however you want to
14 characterize it, it was 1.25; is that true?

15 A Actually they arrived at that figure -- if I
16 may correct you, the original permit was 1.08 MGD, and
17 then they got a construction permit to modify, and at
18 that time they designated it as 1.0 MGD annual
19 average, to construct a modification to the existing
20 1.0 --

21 Q Right.

22 A -- by expanding it to 1.5 --

23 Q Right.

24 A -- limited to 1.3. Now, that is in the
25 permit that was issued by DEP, that it was --

1 Q That was --

2 A -- limited to 1.3 --

3 Q That was a construction permit?

4 A Yes.

5 Q And the testimony is clear that the permit
6 was issued at 1.25, isn't it?

7 A And then the permit was issued at 1.25
8 because the utility requested that it be designated
9 1.25.

10 Q Well, is that all you've got to do is just
11 designate what you want it to be?

12 A Basically as long as it's capable of
13 handling the flows, DEP doesn't care what's on the
14 permit as long as the plant is capable of handling the
15 flows.

16 Q Well, we know that DEP wanted it expanded
17 from 1.0, don't we?

18 A Yes.

19 Q And Mr. Cummings of Black & Veatch designed
20 the plant which ultimately was permitted, and which he
21 gave assurances to DEP that you're referring to, and
22 it was permitted at 1.25; is that correct?

23 A That's correct.

24 Q So DEP issued the permit on the basis of
25 1.25 MGD?

1 A Yes, sir.

2 Q But Mr. Walden says it didn't need to be
3 increased in size at all, does he?

4 A He said that the plant itself, that the true
5 capacity -- and since considering it is obvious that
6 at 1.0 MGD prior to expansion -- could effectively
7 treat the flows existing at that time.

8 Q But DEP disagreed with that, didn't they?
9 They ordered a larger plant?

10 A For different -- for various reasons.

11 Q Yes. But Mr. Walden disagrees with that?

12 A He's -- okay.

13 Q Turn the page, if you would, to Issue 6.
14 And this is the recommendation by Mr. Walden that the
15 plant was 65.9% used and useful; is that true?

16 A That's the primary recommendation.

17 Q Alternate recommendation said it was 79%
18 used and useful; is that correct?

19 A That's correct.

20 Q Turn, if you will, to Tab 5: You prepared
21 that document, didn't you, Mr. Crouch?

22 A Yes.

23 Q And you presented it to a reuse coordinating
24 committee meeting on November 19, 1996?

25 A Yes, sir.

1 Q And the hearing at which you determined that
2 this was a controversial issue had occurred in April
3 the 25th, 1996?

4 A Yes.

5 Q So we're well after that time; is that true?

6 A Yes, sir.

7 Q We're well after the time that the matching
8 principal was announced by the Staff and the
9 Commission in its final order in this case, aren't we?

10 A Yes, sir.

11 Q And in describing how you determined used
12 and useful for wastewater treatment plants, in the
13 middle of the page you say you take the permitting
14 capacity and the average daily flows in max month; is
15 that true?

16 A Yes, sir. If I may expand on this --

17 Q Sure.

18 A -- this is a briefing paper that I had used
19 for a number of years. I actually should have had a
20 2A and 2B, because in the MFRs they are required to
21 submit the average daily flows in the max month and
22 annual average daily flows. Both of those are in the
23 MFRs, and I should have had a 2A and 2B; but this is a
24 briefing paper for very nontechnical people as far as
25 used and useful is concerned.

1 Q Was it unethical not to do that?

2 A I was negligent in not updating this, yes.

3 Q Was it ethical? Was it a question of
4 ethics?

5 A I guess it could be, yes. To intentionally
6 not do something like that would have been unethical,
7 yes.

8 Q Turn to Tab 6, if you will, and this is a
9 letter from me to the Commission dated January 10th,
10 1996, in this docket, and it's filing the testimony of
11 Mr. Acosta; is that true?

12 A Yes, sir.

13 Q And with that testimony he has an exhibit
14 which is attached to his testimony which is
15 Exhibit MA-1, which is DEP Rule No. 17-600 -- I don't
16 remember what the other number is, but it's Part 2,
17 the treatment facilities; and this is a rule that says
18 that -- about selecting, "shall specify the time frame
19 for the permit." Is that true?

20 A Yes.

21 Q And is that the rule that you've referenced
22 earlier that became effective in 1991 and 1992 that
23 provides for the selection of that permit?

24 A I believe it is. If I may quote that, the
25 department shall include the permitted capacity in a

1 construction and operating permits and shall specify
2 the time frame; annual average daily flow, maximum
3 month average daily flow, three-month average daily
4 flow. The permit capacity shall not exceed the design
5 capacity. The department shall establish a permitted
6 capacity less than the design capacity if -- and it
7 goes on.

8 Now, there are corrections to that since
9 that time because they no longer issue a construction
10 and an operating permit. They only issue a permit.

11 But it does state that "The department, DEP,
12 shall establish a permitted capacity less than the
13 designed capacity if," and it gives reasons why it
14 could.

15 Q Go to the next tab, if you would, which
16 would be Tab 7, and this is a letter dated April 3rd,
17 1996, from me which filed the testimony of Mr. Tom
18 Cummings in this proceeding. This was April -- the
19 hearing was, I think you said, April 24th, 25th of
20 1996.

21 And look over at the testimony. It's
22 Page 572 of the transcript. And down at the bottom of
23 the page there was an exhibit identified as TAC-1,
24 which was the notification of completion of the
25 construction will be identified as Exhibit 24; is that

1 correct?

2 A Yes, sir.

3 Q And didn't that notification that was filed
4 at this time with the Commission indicate it was going
5 to be a 1.2 -- it was indeed a 1.25 MGD plant?

6 A Yes, sir.

7 Q The next page is 573 from the transcript,
8 but -- over on Page 577 on Line 11 -- I think you've
9 already agreed to this -- that the question is "On
10 what basis was the plant capacity expansion designed
11 and rated." And the answer was "The plant expansion
12 was originally designed to treat 1.3 MGD on an average
13 annual daily basis." Is that correct?

14 A That's correct.

15 Q And then the next testimony is that Florida
16 Cities directed Mr. Cummings to change the design
17 capacity to a maximum of 1.25 MGD; is that correct?

18 A Florida Cities directed them to change the
19 preliminary design -- to change the permit
20 application.

21 Q To 1.25?

22 A Yes.

23 Q All right. And on Page 578 on Line 16,
24 doesn't that indicate that the plant capacity will
25 be 1.25?

1 A Well, the question was "What is the capacity
2 of the facility that was actually constructed by
3 Florida Cities?" And the answer was "The plant
4 capacity will be equal to 1.25 MGD."

5 Q All right. And on the next page on Line 18,
6 doesn't it say the basis of design flow is the annual
7 average daily flow?

8 A Yes, it does.

9 Q Attached is that exhibit, the notification
10 of completion of construction for wastewater
11 facilities. Do you see that?

12 A Not yet. (Pause) Okay.

13 Q And this was filed before the hearing in
14 Attachment B to the exhibit. Do you see that? Turn
15 the page about four pages over. At the top it says
16 "Attachment B, description of substantial deviations
17 from the permit approved --

18 A Yes.

19 Q Doesn't the last item there indicate that it
20 would be a 1.25 MGD based on annual average daily
21 flow?

22 A Yes, sir.

23 Q Turn to Tab 8, if you will, please. This is
24 a Staff memorandum dated March 12th, 1998, in this
25 docket. Do you see that?

1 **A** Yes, sir.

2 **Q** This is a Staff recommendation that went to
3 the Commission relative to the remand as to whether to
4 reopen the docket or not. And would you turn, if you
5 will, over to Page 10 of that memorandum and look at
6 the paragraph, the second one from the bottom.

7 It says "Since the specific issue of what
8 flows should be used in the numerator was never
9 considered and was not one that was specifically
10 before the Commission, the Commission should take
11 additional evidence and reconsider its decision in
12 light of it." Is that correct?

13 **A** That's correct.

14 **MR. McLEAN:** Ken, I think either I misheard,
15 or you misread --

16 **MR. GATLIN:** I probably misread.

17 **MR. McLEAN:** -- between "could" and
18 "should".

19 **Q** **(By Mr. Gatlin)** "The Commission could take
20 additional evidence."

21 **A** I believe that's why we're here today.

22 **Q** Right. Right. But why did the Commission
23 tell the -- Staff tell the Commission that it was not
24 one that was specifically before the Commission?

25 We've looked at the prehearing order; we've

1 looked at the testimony of the parties; and Florida
2 Cities took one position and OPC took another. The
3 flows were in the prehearing order, the question of
4 what flows, the question of what capacity.

5 Why would the -- in view of that, why would
6 the Staff tell the Commission that it was not one that
7 was before the Commission?

8 **A** This specific issue of what flows was not an
9 issue by itself. It was not considered, argued. In
10 fact, I believe that was your argument as to why this
11 should not even be brought up again.

12 Since parties were not given adequate
13 opportunity to argue pro and con on what should be in
14 the numerator and denominator, the Court decided that
15 the Commission could reopen this and that additional
16 testimony could be taken.

17 At the time of the original hearing, we did
18 not have that as a specific issue, and decisions made
19 since was that not -- parties were not given adequate
20 time to argue pro and con.

21 **Q** Mr. Crouch, that's not true, is it? Didn't
22 the prehearing statement -- prehearing order in this
23 docket state an issue as to what the flows should be
24 used in determining used and useful?

25 **A** Yes, sir.

1 Q All right. So it was an issue; isn't that
2 correct?

3 A But the matching principal was not an issue
4 and was not argued pro and con.

5 Q No. But what flows should be used in the
6 numerator was an issue, and that's part of the
7 matching principal, isn't it?

8 A Yes.

9 Q And what the denominator should be was an
10 issue in the case, wasn't it?

11 A Yes, sir. And there was testimony given by
12 Public Counsel that we should use --

13 Q Match it.

14 A -- the same flow --

15 Q Match it.

16 A That we should match it.

17 Q So there was testimony on it?

18 A Yes.

19 Q And Florida Cities contended that you should
20 use the permitted capacity and that the numerator
21 should be the max month flows?

22 A Yes.

23 Q How could the issue be any clearer?

24 A We thought that it was clear enough. We
25 thought there was enough evidence in there to make the

1 recommendation we made.

2 Q Well, this says the Staff says that it was
3 not before the Commission. Is that true?

4 A I was going to say, is that a statement or a
5 question?

6 Q Yeah, that was a question.

7 A We say that since the specific issue was
8 never considered -- we think it was considered, Staff
9 thought it was considered, but in the --

10 Q But you thought it was considered, but you
11 were telling the Commission that it was not
12 considered?

13 A We didn't write this. We didn't write this
14 recommendation.

15 Q Okay.

16 A The engineering staff thought it had been
17 considered.

18 Q And then over on Page 11 at the bottom of
19 the page there's a sentence "Staff believes at the
20 time of the hearing, none of the parties or Staff
21 realized the change in DEP's permitting practice and
22 its significance and effect." Is that true?

23 A Yes.

24 Q And no party had an opportunity to put on
25 evidence as to the flows that should be used in the

1 numerator. That's not true, is it? That's what it
2 says, but that's not true, is it? There was testimony
3 as to what flows should be in the numerator.

4 A I think that nobody realized the
5 significance or the effect of the DEP's permitting
6 change.

7 Q There was testimony put on as to what flows
8 should be used in the numerator; that's true, isn't
9 it?

10 A Yes, sir.

11 Q Turn to Tab 9, please. This is a transcript
12 of the Commission's Internal Affairs conference on
13 February 3rd, 1998, isn't it?

14 A Yes, sir.

15 Q And you attended that --

16 A Yes.

17 Q -- Internal Affairs? For this item you
18 attended --

19 A Yes.

20 Q Look on Page 6 of the transcript. It
21 indicates Mr. Hill is talking, and Mr. Hill is the
22 director of the division of water and wastewater; is
23 that not true?

24 A Yes.

25 Q And he's your supervisor?

1 A Yes.

2 Q And he says, "It's my understanding, as I
3 tried to explain too my bosses, that our practice has
4 been to try to match." Do you agree with that?

5 A Yes.

6 Q Then on Line 21 Mr. Hill says "And so if one
7 stated as a monthly average, then we would use monthly
8 average; if one stated as an annual average, we would
9 use an annual average." Is that correct?

10 A That's correct.

11 Q And Commissioner Clark says "So we didn't
12 change our policy." Is that correct?

13 A That's correct.

14 Q She apparently thought there was a policy;
15 is that true?

16 A Pardon me?

17 Q She apparently thought there was a policy.
18 You've said there wasn't a policy.

19 A I don't know whether she thought there was
20 one or not. She is making a statement that we did not
21 change a policy.

22 Q Right.

23 A If there was no policy, then there could
24 have been no change.

25 Q On Page 8, Mr. Hill on Line 18 says "We've

1 looked at 20 or 30 past cases, and that has been our
2 attempt to match." Is that correct?

3 A Line 8?

4 Q Yes. Do you agree with Mr. Hill?

5 A Yes.

6 Q How about Page 13, line 18? Mr. Hill says
7 "We didn't have a policy of mismatch." Do you agree
8 with that?

9 A Yes.

10 Q "And to my knowledge, we haven't had. We
11 have had, to the extent the permit was silent, we used
12 the max month. If the permit had something on it, we
13 would be consistent with the permit. And as I went
14 back and looked at the -- I don't know how many years
15 we went back, 15 or 20 cases, I didn't see an apparent
16 mismatch in the schedule that I have given Dr. Bane
17 and Mr. Talbott when they were asking me for the -- an
18 explanation of what was happening." Do you agree with
19 that?

20 A That's what he said, yes, sir.

21 Q Yeah, but do you agree with it? Do you
22 agree with the accuracy? Do you think it's accurate?

23 A There were a couple cases that we found that
24 there were mismatches, but they were rare.

25 Q Right. So his statement is accurate, as far

1 as you're concerned?

2 A Yes.

3 Q What was Mr. Talbott and Dr. Bane asking for
4 an explanation about?

5 A Basically whether or not this was a change
6 in policy and whether or not the Commission should
7 reopen the record and have the hearing that we're
8 having today.

9 Q Would you turn to Page 32. On Line 20,
10 Commissioner Clark says "If you're nervous about the
11 records for it, and what the Court seems to indicate
12 is it's critical when you want to change your policy,
13 but we're not changing our policy." Is that what it
14 says?

15 A That's what it says.

16 Q Would you agree with that?

17 A Yes.

18 Q Will you turn to Tab 10. This is a document
19 entitled "Recent Wastewater Treatment Plant Used and
20 Useful Calculations." It's got Exhibit 14 from your
21 deposition up in the right-hand corner. And is this
22 the examination of the cases that Mr. Hill referred
23 to?

24 A Yes.

25 Q In the Internal Affairs?

1 A Yes, sir.

2 Q Turn to Tab 11, if you would. Let me see if
3 I can summarize it, and maybe we can cut down on the
4 time. This is a memorandum from Mr. Jim Collier who
5 was a professional engineer and was on the Staff of
6 the division of wastewater; is that true?

7 A That's correct.

8 Q And he's describing the method for
9 determining used and useful for wastewater and water
10 plants?

11 A Yes. This was dated April 14th, 1975, many
12 years ago.

13 Q Right. And the Commission followed what he
14 laid down in this recommendation for years up until
15 probably 1992 maybe?

16 A The Staff --

17 Q The Staff.

18 A -- followed his guidelines in their
19 recommendation to the Commission, yes.

20 Q And the Commission usually adopted those
21 Staff recommendations?

22 A Usually.

23 Q And in the main, Mr. Collier was saying you
24 needed to use a maximum number in the numerator to get
25 an accurate reading of the used and useful percentage?

1 A That was --

2 Q That was his position?

3 A Yes, sir.

4 Q That was his position.

5 A Yes, sir.

6 Q And you didn't disagree with him at that
7 time, did you?

8 A I was not even with him at that time, but
9 when Mr. Collier trained me, that was still --

10 Q Still the policy.

11 A Still the procedure that Staff was supposed
12 to use.

13 Q Right. Right. Okay. And part of this
14 memorandum has to do with a request by the
15 Commissioners who wanted a formula that would be a
16 shortcut or assist in determining used and useful in a
17 more -- in a quicker fashion than might otherwise be
18 used; is that true?

19 A That's true. I think everybody has always
20 wanted something that we could use that would
21 simplify --

22 Q Right. Right.

23 A -- used and useful.

24 Q Right; because this could be very, very
25 complicated, could it not, in determining used and

1 useful if you went by component to component in a
2 wastewater treatment plant?

3 A It could become very complicated --

4 Q Right.

5 A -- yes.

6 Q All right. And Mr. Collier noted in his
7 memorandum that it was indeed complicated, and he was
8 somewhat reluctant to come up with a formula, but he
9 thought that it was in the end the thing to do; is
10 that true?

11 A That's true.

12 Q Okay. Good. Look under Tab 12. This was
13 in the rulemaking hearing before the PSC on the margin
14 reserve rule, and it was December 10th, 1996, and it's
15 a transcript of that proceeding, and it has some of
16 your testimony in it. And Mr. Schiefelbein was asking
17 you some questions about the document that was
18 included under Tab 5, which was the document that you
19 distributed to the reuse committee. Do you recall
20 that?

21 A Yes, sir.

22 Q And in this situation, did not you take --
23 did you not testify that -- in summary that this was a
24 pretty fair summary of what the used and useful policy
25 of the Commission was in determining wastewater

1 treatment plant used and useful?

2 A If I used the terminology "policy," I
3 misspoke at that time, but I think I did say to the
4 best of my knowledge -- or Mr. Schiefelbein says "To
5 the best of your knowledge, is this a pretty fair
6 summary of what PSC used and useful policy is?"

7 And I said, "Yes; to the best of my
8 knowledge, yes. I explained to the people at the
9 reuse committee that we do not have rules, but these
10 are the guidelines that we try to follow." And then I
11 elaborated on it.

12 It was Mr. Schiefelbein's "policy," not
13 mine.

14 Q Turn over to Page 268. Would you read your
15 answer on Line 2. This is you talking now, not
16 Mr. Schiefelbein.

17 A Line 3?

18 Q Line 3.

19 A I used -- if I misspoke there -- I said
20 "That's the normal policy we use for figuring the
21 capacity."

22 Q All right, sir.

23 A I'm not saying that that was Commission
24 policy; I was talking about what Staff does.

25 Q Staff has a policy, but that -- what

1 relationship --

2 A I misspoke using the word "policy" in that
3 case. That was just --

4 Q What is the relationship of the Staff having
5 a policy and the Commission -- do they -- do you
6 recommend a policy to them? Is that what you do?

7 A I would recommend a policy to the
8 Commission, but I do not prescribe policy and Staff
9 does not have a policy.

10 Q Every now and then you slip up and say
11 "policy"?

12 A Yes, sir.

13 Q Let's look at Tab 13: Do you recognize that
14 as your testimony that you presented on
15 October 18th -- it was filed on October 18th, 1996,
16 which was the -- in Docket 960258-WS, and this was
17 before the administrative law judge at DOAH, and you
18 were testifying on behalf of the Public Service
19 Commission?

20 A On margin reserve, yes.

21 Q Yes, margin reserve; quite correct. Look on
22 Page 5 of your prepared testimony. The question is
23 "How does Staff calculate used and useful for a
24 wastewater treatment plant." And would you read your
25 answer?

1 **A** "Whereas a water system must be capable of
2 meeting customer demands at any instant, a wastewater
3 plant with a surge or equalization tank has the
4 ability to save peak flows or surges and treat those
5 flows after the surge has passed. Surge or
6 equalization tanks ease the peaks, allowing the plant
7 to be designed to meet an average daily flow. The
8 permitted capacity of the plant is the denominator,
9 while the average daily flow from the max month plus a
10 margin reserve if requested and justified minus excess
11 infiltration or inflow goes in the numerator."

12 **Q** That's far enough, as far as I'm concerned.
13 You can read as much as you like. But this was in
14 October of 1986 when you were describing that you use
15 max flows in the fraction; is that true?

16 **A** Yes.

17 **Q** And you had become aware there was a
18 controversial issue on the second day of the Florida
19 Cities hearing on April 25th, 1996; is that correct?

20 **A** That's correct.

21 **MR. McLEAN:** Mr. Gatlin, before you leave
22 that tab, I'm a little confused. This was in -- just
23 clerical here. This was testimony which was offered
24 to the ALJ in the hearing we had last year in
25 December?

1 **MR. GATLIN:** That's a good question. I was
2 going by the day it was filed. The dates don't
3 compute. You're right.

4 **MR. McLEAN:** I remember the hearing well,
5 because it was during Christmas, essentially, of '97.

6 **MR. GATLIN:** Right. I don't have the
7 transcript as to the date it was actually presented.
8 I was just using the date it was filed is what I was
9 going by.

10 **MR. McLEAN:** I think this may be the
11 testimony that was offered in the rule hearing before
12 the Commission, which was also submitted to the ALJ
13 somewhat later, but I'm not sure about that. And I
14 don't have any objection. I was just trying to figure
15 out what this is.

16 **MR. GATLIN:** I think you are probably right.
17 I don't have any way of making that determination now,
18 but that sounds right to me. Like I say, all I did
19 was go about the date that it was --

20 **MR. McLEAN:** Either way it's Mr. Crouch's
21 testimony. I have --

22 **MR. GATLIN:** That's right.

23 **WITNESS CROUCH:** And if I may explain, I did
24 misspeak on that because I was talking to a group
25 about something other than the used and useful. I was

1 talking about the margin reserve rule, and I should
2 have elaborated on this more, but I did not.

3 Q (By Mr. Gatlin) Was that a question of
4 ethics in that case, Mr. Crouch?

5 A It was a mistake on my part. It was not an
6 intentional mistake.

7 Q Under that same tab, there are the exhibits
8 that were attached to your testimony, and I think if
9 we can move over rapidly, they are explained in your
10 testimony and we don't need to do that here as far as
11 I'm concerned; but if you want to, I don't want to
12 stop you.

13 A You're saying under that Tab 13?

14 Q Yes, sir.

15 A I have nothing else under Tab 13, no other
16 exhibits.

17 Q You don't have Exhibit RJC-1, Page 4 of
18 seven?

19 A All I have in what you gave me here is
20 Pages 4, 5 and 6 of my testimony.

21 MR. GATLIN: Well, does anybody else have
22 those?

23 MR. McLEAN: No, sir; mine is missing, too.

24 MR. GATLIN: Okay. Well, there's no
25 problem, then.

1 Q (By Mr. Gatlin) Turn to the next tab, if
2 you would, Page 14. This is the transcript of the
3 hearing on December 9th, 1997, and Ms. Chris Moore
4 from the Commission was asking you some questions, and
5 Ms. Moore asked the question on Line 10, "Does the
6 used and useful calculation before an allowance for
7 margin reserve, is that -- it includes some allowance
8 for or recognition in the variation of usage of
9 current customers?" And would you read your answer?

10 A "We try to consider that by taking the peak
11 flows, possibly the maximum five days that have
12 been -- water -- that have used during the test year
13 to consider their worst case scenario. In wastewater,
14 we would take their maximum month, the average flows
15 for the maximum month so that we could consider their
16 worst case scenario, especially for the seasonal
17 treatment that we have here in Florida."

18 Q Now, this is in December 1997; is that
19 right?

20 A Yes.

21 Q Now, on the next page, you explain that a
22 little bit starting on Line 19; is that true?

23 A Yes.

24 Q Turn to Tab 15.

25 A May I read what I had on --

1 Q Sure. Be my guest.

2 A -- to qualify that? I said that you have to
3 qualify that. The utility chooses what the permitted
4 capacity is. If the utility selects peak flows, then
5 that's what the permitted capacity is in the
6 denominator. If the utility selects annual average,
7 that's what's in the denominator. And recently the
8 Commission has followed the utility and DEP's choices.
9 We take what the utility chose. It is not our choice.

10 Q And read the question and answer on Line 12.
11 Let me read the question. "But you would agree that
12 if you use annual average flows, then you are not
13 necessarily taking into the account peak conditions?"
14 And what's your answer?

15 A Where are you? Line 12?

16 Q 486.

17 A Oh. Next page, okay.

18 Q Yes.

19 A And I say "That's true."

20 Q Right. Okay. Under Tab 15 there's some DEP
21 rules, and this relates to staffing of wastewater
22 plants. Do you recognize those rules?

23 A Yes.

24 Q And are those the rules that you referred to
25 when you talked about the staffing that a utility

1 might have to have for a wastewater treatment plant
2 relative to the permitted capacity?

3 A Yes, sir.

4 Q Look under Tab 16, if you would, please. Do
5 you see it?

6 A Yes, sir.

7 Q Do you recognize what it is? Isn't it some
8 additional pages from a physics book that you had
9 here; on the counter to the left of you right here?

10 A Right.

11 Q Do you disagree with anything in those
12 pages?

13 A Well, I haven't read it, but that's
14 usually -- a textbook is usually pretty reliable --

15 Q All right. Go down to the second paragraph
16 under the title "Introduction," that first sentence
17 there. Do you agree with that?

18 A Okay. "Any number used to describe a
19 physical phenomena quantitatively is called a physical
20 quantity."

21 Q All right. Turn over to the next page.
22 There's the discussion as to standards and units. You
23 may have already read that. Well, you read it when
24 you were school, didn't you?

25 A Yes.

1 Q Okay. Would you accept what this book says
2 about standards for describing physical quantities?

3 A Yes.

4 Q And I believe you've discussed dimensionally
5 consistent, which is over on Page 7 of this book. And
6 you would agree with that definition there, would you
7 not?

8 A Yes. I might point out that of the
9 professional engineers that have testified here so
10 far, only Mr. Acosta disagrees with the dimensionally
11 consistent rule. Mr. Cummings, Mr. Addison, and I, as
12 well as one that will be following me, will agree with
13 the dimensionally consistent rule.

14 Q I don't think Mr. Acosta disagrees with you
15 about the rule, do they? Does he? He just --

16 A He disagrees that it's --

17 Q -- disagrees about what --

18 A -- applicable in this case.

19 Q I'm sorry?

20 A He disagrees that it's applicable in this
21 case.

22 Q Under Tab 17, do you see that?

23 A Yes, sir.

24 Q That's a Commission order in Docket
25 No. 940963-SU in the Tamiami Village Utility case?

1 **A** Yes, sir.

2 **Q** And it was a hearing before Commissioners
3 Garcia, Johnson and Kiesling; is that correct?

4 **A** Yes, sir.

5 **Q** And would you turn to the next page, which
6 is Page 219 in the Reporter, and look at paragraph --
7 under the term -- under the heading "Use of Average or
8 Peak Flow to Set Charge." Do you see that?

9 **A** Yes, sir.

10 **Q** Have you read that paragraph?

11 **A** Not -- recently I have not, no.

12 **Q** Well, would you look it over and let me ask
13 you about it.

14 **A** I see nothing I disagree with yet.

15 **Q** Would you agree that the paragraph that I
16 pointed out to you is a recognition by the Commission
17 that the DEP rule allows three time frames; annual
18 average daily flow, max month daily flow, and
19 three-month average daily flow for permitting?

20 **A** Yes, sir.

21 **Q** And this was an order in -- issued on
22 May 9th, 1995; is that true?

23 **A** I believe it's true, yes, sir.

24 **Q** And is an issue in the case what denominator
25 to use and what numerator to use in determining the

1 service availability fees over on Page 220, the
2 second -- the first full paragraph? "We agree with --

3 A "We agree that in plant design and
4 permitting, it is necessary to meet the peak demands
5 that the customers will place on the system. We also
6 agree with OPC that pursuant to DEP
7 Rule 17-600.400(3)(a), the design capacity takes into
8 consideration the maximum monthly average daily flows;
9 three-month average daily flows, and average daily
10 flows."

11 Q So the Commission was recognizing that it --
12 I mean, the Commission recognized that there was this
13 question of permitted capacity and peak flows relative
14 to determining used and useful?

15 A Yes.

16 Q And this was in 1995?

17 A Yes. I don't think this had any indication,
18 though, that -- of what was designated on the permit.

19 Q Are you still looking at the --

20 A No. I'm waiting for you.

21 Q Well, whatever the order says, if they
22 recognized the -- what was on the permit, then that's
23 what the order says, isn't it? Or do you want me to
24 find it for you?

25 A I haven't seen anyplace in here that it

1 talked about what is shown on the permit that it
2 designated on the permit.

3 Q All right.

4 A Later on it says Mr. Reeves, Tony Reeves,
5 who was a Florida Cities employee was unable to cite
6 any orders --

7 Q No. He wasn't a Florida Cities employee,
8 not at this time.

9 A Pardon me?

10 Q Mr. Reeves was not a Florida Cities employee
11 in this case.

12 A Okay. He is now. Or was --

13 Q No, he's not --

14 A Or was again. Excuse me.

15 Q I'm sorry. No, no. So you don't know
16 whether the Commission or the record showed what the
17 permit was based on or not then?

18 A In Tamiami, in this case that we're
19 discussing here right now, I don't see anything in
20 this quote that you have given me in Tab 17 that says
21 what was designated on the permit.

22 Q But it does indicate that the Commission
23 knew there were those choices for the issuance of a
24 permit. Mr. Crouch, all I'm asking you is, in that
25 paragraph the Commission says DEP allows three time

1 frames.

2 A Yes.

3 Q All right. So the Commission and the Staff
4 presumably knew that those kind of things existed; is
5 that true?

6 A Yes.

7 Q Okay. That's all I asked you.

8 Look under Tab 18, if you would. This is a
9 letter to Mr. John Williams, dated June 29th, 1995,
10 from Mr. Harvey; is that correct?

11 A That's correct.

12 Q And isn't the essence of this letter that he
13 was recommending, among other things, a five-year
14 margin reserve?

15 A Yes, sir.

16 Q And he was again recommending the Commission
17 allow 100% of the investment of reuse facilities --

18 A I believe he was.

19 Q I'm sorry.

20 A I believe he was.

21 Q All right. And he attached to that letter
22 some comments on that proposed rule, did he not?

23 A Yes, sir.

24 Q Look under Tab 19. I believe this is a rule
25 that several people have referred to, and I think you

1 have referred to them, also. It starts on the bottom
2 of the front page which starts with Rule 62-600.200,
3 which is the definitions, and it has the definitions,
4 among other things, of like under Item 3, "Annual
5 average daily flow means the total volume of
6 wastewater flowing into a wastewater facility during
7 any consecutive 365 days divided by 365 -- do you see
8 that?

9 A Yes, sir.

10 Q And expressed in units of MGD?

11 A Yes, sir.

12 Q And it defines average daily flow. It
13 defines design capacity under subsection (19). Under
14 subsection (42) over on the next page it defines
15 maximum flow and maximum monthly flow in units of MGD;
16 is that correct?

17 A Yes, sir.

18 Q And the same is -- for minimum flow it's
19 expressed in units of MGD?

20 A Yes, sir.

21 Q Monthly average flow is defined under
22 subsection (50), peak hourly flow over on the next
23 page under 60, subsection (60); says it means the
24 average flow rate during the one-hour period of day
25 when wastewater flows are at a maximum expressed in

1 units of MGD; is that correct?

2 A Yes, sir.

3 Q And subsection (62) defines permitted
4 capacity. It means the treatment capacity for which a
5 plant is approved by department permit expressed in
6 units of MGD; is that right?

7 A And it says the permit shall specify the
8 time frame.

9 Q Right. Right. I was going to continue on.
10 The permit shall specify -- in addition to the units,
11 it's supposed to specify the time frame with the
12 capacity it's associated; is that correct?

13 A Yes, sir.

14 Q And on page -- the next couple pages,
15 there's a copy of Rule 62-600.45, which has been
16 referred to in several instances in this case, which
17 is the planning for wastewater facilities expansion
18 which talks about the flows for three months compared
19 to the permitted capacity. Is that the rule that's
20 been talked about? You talked about it and a couple
21 other people talked about it.

22 A Yes, sir.

23 Q Do you have a copy of the prehearing order
24 with you, Mr. Crouch?

25 A I don't have it in front of me, no.

1 **MR. GATLIN:** Does anybody have a copy of the
2 prehearing order that I can look at?

3 **MR. McLEAN:** (Handing document to witness.)

4 **MR. GATLIN:** Thank you, Harold.

5 **Q** **(By Mr. Gatlin)** Let me ask you a couple
6 questions first, and then I'll want to know something
7 about Staff's position in the prehearing order.

8 As I understand it, you're the witness on
9 behalf of the Staff, and your testimony represents the
10 Staff's position; is that correct?

11 **A** Yes.

12 **Q** And how was that arrived at?

13 **A** Basically we sit around the table in
14 informal Staff meetings. I say it represents, Staff;
15 it represents the staff engineering position. And in
16 meeting with the other engineers and then presenting
17 this position to our attorneys and to my bureau chief,
18 they make recommended changes to it. We come to a
19 consensus of opinion, and that is the recommendation.
20 Or the testimony.

21 **Q** Was there any disagreement about the Staff
22 position in those conferences?

23 **A** Not that I'm aware of, no.

24 **Q** So this is the Staff position of the
25 division of water and wastewater; is that what it is?

1 A Yes.

2 Q Does any other Staff have to agree with it,
3 the legal Staff or whatever?

4 A None of the engineering Staff disagreed with
5 it. I don't know of anybody else on up the line. My
6 bureau chief and my division director both concurred
7 with it. Our legal counsel concurred with it.

8 Q Would you look at the prehearing order now
9 under the first issue.

10 A Okay.

11 Q Under Staff Position, it starts out -- it
12 says something to the effect -- just read what it
13 says.

14 A Well, the issue: "Should the Commission
15 ignore average daily flow in the peak month in
16 determining used and useful plant to be included in
17 rate base?"

18 And Staff position is: "No. Staff Witness
19 Crouch believes that the Commission is not ignoring
20 the average daily flow in the peak month any more than
21 the utility."

22 Q That's far enough for my question. I'm
23 asking why does the position say -- Staff's position
24 say Mr. Crouch believes that? Does that mean that
25 just you believe it, or what?

1 **A** I have no idea why it was worded this
2 particular way. They could have said "Staff
3 believes."

4 **Q** Right. And that's what it said in the first
5 draft of the prehearing order, and do you know why it
6 was changed to what it is now?

7 **A** I have no idea.

8 **Q** But there's no significance by them reciting
9 Mr. Crouch believes that, is there?

10 **A** I don't believe there's any significance to
11 that, no.

12 **Q** And I think that appears in Issue 2 also,
13 doesn't it?

14 **A** In Issue 2 it says "Staff Witnesses Crouch
15 and Addison."

16 **Q** Right, okay; it adds Mr. Addison. And
17 there's no significance, as far as you know, about
18 that; is that true?

19 **A** No, none that I'm aware of.

20 **MR. GATLIN:** May I have just a minute, Madam
21 Chairman?

22 **CHAIRMAN JOHNSON:** Uh-huh.

23 **MR. GATLIN:** (Pause) I think that's all I
24 have, Madam Chairman.

25 **CHAIRMAN JOHNSON:** Public Counsel, will you

1 have any questions?

2 **MR. GATLIN:** May we have a short break.

3 **CHAIRMAN JOHNSON:** We'll take a five-minute
4 break.

5 (Brief recess.)

6 - - - - -

7 **CHAIRMAN JOHNSON:** We're going to go back on
8 the record. Public Counsel?

9 **MR. McLEAN:** I have no questions, Madam
10 Chairman.

11 **CHAIRMAN JOHNSON:** Okay. Redirect?

12 **MR. JAEGER:** I have just a few.

13 **REDIRECT EXAMINATION**

14 **BY MR. JAEGER:**

15 **Q** Mr. Crouch, do you have Exhibit 40 there in
16 front of you? That was the Barefoot Bay portion.

17 **A** Yes, I do.

18 **Q** And could you turn to the last page of that
19 document, and that's the Order No. PSC 970223-FOF-WS,
20 and it's Page 9.

21 **A** I have it.

22 **Q** I think Mr. Gatlin had you read the second
23 paragraph in its entirety. Could you read the third
24 paragraph, also. And this is in dealing with whether
25 we were going to use maximum month average daily flow

1 or annual average daily flow in the numerator.

2 A "Since this utility is subject to unusual
3 seasonal flow variations and must be equipped to treat
4 them, we have utilized the maximum month average daily
5 flows in our calculation of the used and useful
6 percentages for the wastewater treatment plant."

7 Q Now, could you go to that Exhibit 41 and
8 Tab 8. That's the big thick one. This is the
9 recommendation by Staff to the Commissioners about
10 reopening the record; is that correct?

11 A Okay.

12 Q And on the second to last paragraph on
13 Page 10, Mr. Gatlin had you read, and it's "Since the
14 specific issue of what flows should be used in a
15 numerator was never considered and was not one that
16 was specifically before the Commission, the Commission
17 could take additional evidence and reconsider its
18 decision in light of it."

19 And then he -- do you remember Mr. Gatlin
20 apprising the Commission of the issues that were set
21 out in the prehearing order at this Agenda Conference?

22 A Yes.

23 Q And so the Commissioners were aware that the
24 prehearing order did have that -- the issue of flows
25 in the prehearing order; is that correct?

1 **A** Yes.

2 **Q** And they still voted to reopen the record?

3 **A** Yes, sir.

4 **Q** Mr. Crouch, regardless of whether you call
5 it policy, practice, procedure, methodology, now that
6 DEP is stating the time frame for the permit, when DEP
7 permits the plant on the basis of either annual
8 average daily flow or three months average daily flow
9 or some other basis other than maximum month average
10 daily flow, is it proper to use max month average
11 daily flow in the numerator of the used and useful
12 equation?

13 **A** In my professional opinion, the periods of
14 time must match and are part of the dimensions used to
15 designate an average flow.

16 **MR. JAEGER:** That concludes my redirect, and
17 I would like to move Exhibit 38 into the record.

18 **CHAIRMAN JOHNSON:** Show that admitted
19 without objection.

20 (Exhibit 38 received in evidence.)

21 **MR. GATLIN:** I would like to move
22 Exhibit 40, 41.

23 **CHAIRMAN JOHNSON:** And 39.

24 **MR. GATLIN:** Yes.

25 **CHAIRMAN JOHNSON:** Show those admitted

1 without objection.

2 (Exhibits 39, 40 and 41 received in
3 evidence.)

4 **CHAIRMAN JOHNSON:** Thank you. You're
5 excused.

6 (Witness Crouch excused.)

7 - - - - -

8 **CHAIRMAN JOHNSON:** Should we go back to
9 Mr. --

10 **MR. McLEAN:** To Mr. Biddy, yes, ma'am.
11 Citizens call Mr. Biddy.

12 **CHAIRMAN JOHNSON:** I don't think you've been
13 sworn, have you?

14 **WITNESS BIDDY:** No, I have not.

15 - - - - -

16 **TED L. BIDDY**

17 was called as a witness on behalf of the Office of
18 Public Counsel and, having been duly sworn, testified
19 as follows:

20 **DIRECT EXAMINATION**

21 **BY MR. McLEAN:**

22 **Q** Mr. Biddy, would you state your name and
23 work address, please?

24 **A** My name is Ted L. Biddy, B-I-D-D-Y. My
25 address is 2308 Clara Kee Boulevard, Tallahassee

1 32303.

2 Q By whom and in what capacity are you
3 employed, sir?

4 A I am an engineer in private practice.

5 Q And you're under contract with the Office of
6 Public Counsel?

7 A That is correct, yes.

8 Q Did you -- in connection with that contract,
9 did you -- pursuant to that contract, did you cause 11
10 pages of direct testimony to be filed in this case?

11 A Yes, I did.

12 Q Were I to ask you those same questions as
13 reflected in that testimony, would your answers be the
14 same today?

15 A Yes, they would.

16 Q Mr. Bidy, you also prepared two exhibits,
17 did you not?

18 A Yes, I did.

19 Q That's TLB-1, TLB-2?

20 A Right.

21 Q And TLB-2 is in error, isn't it?

22 A Yes, it is.

23 Q Would you explain to the Commission how
24 that's so?

25 A Well, TLB-2 was intended to be the utility's

1 September 1, 1993, application for permit. It was
2 actually the reuse facility permit that was filed. It
3 should be replaced properly by an exhibit that
4 Mr. Acosta filed, which is MA-5.

5 Q I understand, sir. Now, does the
6 replacement of that exhibit change any of the opinions
7 that you're going to offer to the Commission today?

8 A No, it does not.

9 MR. McLEAN: Madam Chairman, may we have
10 TLB-1 marked for identification? And TLB-2 may be
11 stricken. We will not be relying on TLB-2.

12 CHAIRMAN JOHNSON: Okay. Show TLB-1 marked
13 as Exhibit 42 and identified as TLB-1, and TLB-2 will
14 be stricken.

15 (Exhibit 42 marked for identification.)

16 Q (By Mr. McLean) Mr. Bidy, at Page 7,
17 Line -- I believe it is 8, you make a reference to
18 TLB-2; is that correct?

19 A That is correct, yes.

20 Q And it's my suggestion that you can strike
21 the last sentence of the sentence which begins on
22 Line 8; is that correct?

23 A That's correct.

24 Q All right, sir.

25 MR. JAEGER: I'm sorry, Harold. I was

1 writing. What page are you on?

2 **MR. McLEAN:** We're on Page 7, Line 8. I'm
3 sorry -- Line 7.

4 **Q** (By Mr. McLean) You can strike the portion
5 that says "See the attached Exhibit TLB-2." It is --

6 **A** That is correct.

7 **Q** Now, with the exception of that change,
8 Mr. Bidy, I take it there are no other corrections,
9 additions, or deletions, or are there?

10 **A** There are none.

11 **Q** Thank you, sir.

12 **MR. McLEAN:** Madam Chairman, I move the
13 testimony into the record as though read.

14 **CHAIRMAN JOHNSON:** It will be inserted.

15 **MR. McLEAN:** And I believe you marked
16 Mr. Bidy's exhibit TLB-1 as what number?

17 **CHAIRMAN JOHNSON:** 42.

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1 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

2 A. My name is Ted L. Bidy. My business address is Route 5, Box 65, Havana,
3 Florida 32333.

4 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

5 A. I am currently self-employed as a professional engineer and land surveyor.

6 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND WORK
7 EXPERIENCE?**

8 A. I graduated from the Georgia Institute of Technology with a B.S. degree in Civil
9 Engineering in 1963. I am a registered professional engineer and land surveyor
10 in Florida, Georgia, Mississippi and several other states. I was the vice-
11 president of Baskerville-Donovan, Inc. (BDI) and the regional manager of
12 Tallahassee Office from April 1991 until February, 1998. Before joining BDI in
13 1991, I had operated my own civil engineering firm for 21 years. My areas of
14 expertise include civil engineering, structural engineering, sanitary engineering,
15 soils and foundation engineering and precise surveying. During my career, I
16 have designed and supervised the master planning, design and construction of
17 thousands of residential, commercial and industrial properties. My work has
18 included: water and wastewater facility design; roadway design; parking lot
19 design; stormwater facilities design; structural design; land surveys; and
20 environmental permitting.

1 I have served as the principal and chief designer for numerous utility
2 projects. Among my major water and wastewater facilities designs have been a
3 2,000 acres development in Lake County, FL; a 1,200 acres development in
4 Ocean Springs, MS; a 4-mile water distribution system for Talquin Electric
5 Cooperative, Inc. and a 320-lot subdivision in Leon County, FL.

6 **Q. WHAT ARE YOUR PROFESSIONAL AFFILIATIONS?**

7 A. I am a member of the Florida Engineering Society, National Society of
8 Professional Engineers, and Florida Society of Professional Land Surveyors.

9 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A STATE OR
10 FEDERAL COURT AS AN ENGINEERING EXPERT WITNESS?**

11 A. Yes, I have had numerous court appearances as an expert witness for cases
12 involving roadways, utilities, drainage, stormwater, water and wastewater
13 facilities designs.

14 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA
15 PUBLIC SERVICE COMMISSION (PSC OR COMMISSION) FOR USED
16 AND USEFUL ANALYSIS AND OTHER ENGINEERING ISSUES?**

17 A. Yes, I have testified before the PSC for Docket Nos. 950495-WS, 950387-SU,
18 951056-WS and 960329-WS on engineering issues and used and useful analysis.

19 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

20 A. The purpose of my testimony is to provide additional engineering testimony on

1 the used and useful calculation issues for this rate case. In particular, I address
2 why it is appropriate, from an engineering perspective, to use annual average
3 daily flow in both the numerator and denominator of the used and useful
4 calculation for Florida Cities Water Company's (FCWC) wastewater treatment
5 plant.

6 **Q. DO YOU AGREE WITH THE USED AND USEFUL METHODOLOGY**
7 **PROPOSED BY THE FCWC FOR ITS WASTEWATER TREATMENT**
8 **PLANT (WWTP), AND EXPLAIN WHY?**

9 A. No, I do not. FCWC asserts that the average daily flow of the maximum month
10 (ADFMM) should be used for the numerator in the calculation of used and
11 useful percentage, regardless of how the plant capacity (denominator) is
12 permitted or designed. FCWC argues that ADFMM should be used even though
13 the plant is permitted on the basis of annual average daily flow (AADF). It is
14 clear that AADF and ADFMM are not the same basis.

15 A wastewater treatment plant's capacity can be permitted as AADF or
16 ADFMM by the Florida Department of Environmental Protection (FDEP).
17 Likewise it can be designed by the engineers as AADF or ADFMM. I can not
18 agree with FCWC's proposal because it does not match the flow with the
19 permitted capacity of the plant.

20 **Q. WHAT ARE THE APPROPRIATE NUMBERS TO BE USED FOR THE**

1 **NUMERATOR AND DENOMINATOR IN CALCULATING THE USED**
2 **AND USEFUL PERCENTAGE FOR A WASTEWATER TREATMENT**
3 **PLANT?**

4 A. It depends on what basis the wastewater treatment plant capacity is permitted by
5 FDEP or designed by the engineers. If the plant capacity is permitted or
6 designed on the basis of AADF, then the test year AADF should be used for the
7 numerator. On the other hand, if the plant capacity is permitted on the basis of
8 ADFMM, then the test year average daily flow of maximum month (ADFMM)
9 should be used. Generally, the designed capacity is the same as the FDEP
10 permitted capacity.

11 This method will insure that both numerator and denominator are arrived
12 at from the same basis, i.e. apples to apples or oranges to oranges. To compute
13 the used and useful percentage as FCWC suggests would be to mix comparisons
14 of ADFMM to AADF and would yield a percentage with no meaning, as would
15 comparing apples to oranges.

16 **Q. CAN YOU USE AN EXAMPLE TO DEMONSTRATE THE**
17 **APPROPRIATE METHODOLOGY?**

18 A. Yes. See the following examples for a simple demonstration.

19 Example 1 Wastewater Plant A:

20 Plant Design Capacity = 1.0 MGD on ADFMM basis

1 FDEP Permit Capacity = 1.0 MGD on ADFMM basis

2 Plant ADFMM = 0.9 MGD during the test year

3 Then, Used & Useful % = $0.9 \text{ MGD} / 1.0 \text{ MGD} = 90\%$

4 Example 2 Wastewater Plant A:

5 Plant Design Capacity = 1.0 MGD on AADF basis

6 FDEP Permit Capacity = 1.0 MGD on AADF basis

7 Plant AADF = 0.7 MGD during the test year

8 Then, Used & Useful % = $0.7 \text{ MGD} / 1.0 \text{ MGD} = 70\%$

9 Example 3 Wastewater Plant A:

10 Plant Design & Permit Capacity = 1.0 MGD on ADFMM basis

11 or 0.8 MGD on AADF basis

12 Plant AADF = 0.7 MGD during the test year

13 Plant ADFMM = 0.9 MGD during the test year

14 Then, Used & Useful % = $0.7 \text{ MGD} / 0.8 \text{ MGD} = 87.5\%$

15 or $0.9 \text{ MGD} / 1.0 \text{ MGD} = 90\%$

16 The inappropriate methodology requested by FCWC can be seen from
17 the following example.

18 Example 4 Wastewater Plant A:

19 Plant Design & Permit Capacity = 1.0 MGD on AADF basis

20 Plant ADFMM = 0.9 MGD during the test year

1 Then, Used & Useful % = 0.9 MGD/ 1.0 MGD = 90%

2 This method of computing the used and useful percentage artificially
3 inflates the results by using the ADFMM value in the numerator rather than the
4 AADF value which would obviously be much lower.

5 Note: The above used and useful calculations do not include any adjustments
6 for margin reserve, excess inflow and infiltration, etc.

7 Examples 1 and 2 illustrate the significance of plant flow design and permit
8 basis in calculating the used and useful percentages. Example 3 demonstrates
9 that the AADF match calculation generates a similar used and useful percentage
10 as the ADFMM match to account for the peak flows. Example 4 illustrates a
11 meaningless used and useful percentage.

12 Although the FDEP permit may be expressed in AADF, the plant still
13 can handle a higher hydraulic peak flow as designed by the engineer. Therefore,
14 it is fair and logical to use AADF flows to AADF capacity for the used and
15 useful calculation. This certainly does not mean all hydraulic peak flows are
16 ignored, it just assumes the peak flow to average flow ratio stays the same as
17 designed by the engineer.

18 **Q. DOES THE FDEP PERMIT ALWAYS HAVE A CLEAR DESIGNATION**
19 **OF THE PLANT'S PERMITTED CAPACITY?**

20 **A. No. Sometimes the FDEP permits may not have a clear statement for each**

1 wastewater plant's capacity; whether they are AADF or ADFMM. For example,
2 the permit of Waterway Estate WWTP only says the plant is expanded to 1.5
3 MGD. It does not specify again that it is AADF, like the original plant's
4 capacity of 1.0 MGD (annual average). See Exhibit TLB-1 for a copy of part of
5 the permit which states the plant capacity. Therefore, technically someone could
6 incorrectly argue that the 1.5 MGD capacity is for ADFMM. However, this
7 confusion can be clarified by checking the original permit application. See the
8 attached Exhibit TLB-2. It is clear that the Basis of Design Flow is checked for
9 AADF.

10 In recent years, the FDEP permits are very clear on the plant capacity
11 basis as either AADF or ADFMM. Therefore, there should be nothing to
12 dispute or argue about in the wastewater plant's used and useful calculation. It
13 is all dictated by the FDEP permits and/or the design capacities. Utilities
14 certainly have taken advantage of the ADFMM to AADF mismatch to obtain
15 higher used and useful percentages in past rate cases. Therefore, it is appropriate
16 for the PSC to correct the previously mismatched used and useful calculation for
17 wastewater treatment plants. In the case of FCWC, however, in Order No. PSC-
18 96-1133-FOF-SU, the PSC correctly matched the AADF to AADF in the used
19 and useful calculation.

20 **Q. DOES THE METHODOLOGY PROPOSED BY FCWC INFLATE THE**

1 **USED AND USEFUL PERCENTAGE AND ADVERSELY IMPACT THE**
2 **CURRENT CUSTOMERS?**

3 A. Yes, the mismatch of ADFMM to AADF will create a higher used and useful
4 percentage than the correct match of AADF to AADF calculation. Therefore,
5 the current customers will pay higher rates because the rate base will be inflated.

6 **Q. WILL THE CORRECT MATCH OF AADF PLANT FLOW TO AADF**
7 **PLANT CAPACITY OR ADFMM PLANT FLOW TO ADFMM PLANT**
8 **CAPACITY GENERATE UNFAIR USED AND USEFUL**
9 **PERCENTAGES FOR UTILITIES?**

10 A. No, there will be no unfair used and useful percentages calculated for the
11 utilities. The correct match of plant flows to plant capacities will generate fair
12 used and useful percentages for the customers and the utilities. The reason is
13 that a WWTP is designed by engineers, and the FDEP uses the engineer's
14 preliminary design report to rate the permit capacity. In the preliminary design
15 report, the plant design flow is determined by engineers: it could be AADF,
16 ADFMM, three-month average daily flow or other flows as permitted by FDEP.
17 The engineers also determined the appropriate design influent characteristics:
18 such as biochemical oxygen demand (BOD), total suspended solids (TSS), total
19 nitrogen, total phosphorous, etc. for the particular flow designed for.

20 FDEP generally will not reduce or increase the plant capacity in its

1 permit unless the design is so abnormal that FDEP has to make adjustments to
2 the design capacity. Therefore, the wastewater plant can handle the permitted
3 capacity unquestionably. However, sometimes the FDEP permit capacity is less
4 than the design plant capacity due to a limited effluent disposal capacity.

5 Waterway Estate WWTP is an typical example of this limitation.

6 **Q. IS THERE ANY BENEFIT THE UTILITY CAN ENJOY FROM THE**
7 **CORRECT MATCH OF PLANT FLOW TO PLANT CAPACITY**
8 **CALCULATION?**

9 A. Yes. The PSC is only comparing the hydraulic loading rate to the WWTP's
10 capacity which is based on both hydraulic loading and biological loading rates,
11 i.e. the design flows and wastewater strength. Normally during rain storm
12 events, WWTP's will have higher flows and the wastewater concentration is
13 diluted due to the excess inflow and infiltration. Therefore, the WWTP still can
14 handle more flows with diluted wastewater, but the design plant capacity is still
15 used as the denominator for the used and useful calculation. Utility witness Mr.
16 Cummings testified that the Waterway Estate WWTP was designed to handle a
17 hydraulic flow rate at twice that of the designed AADF rate.

18 In reality, the PSC could increase the plant capacity and lower the used
19 and useful percentage, however, I would not recommend that because it will be a
20 time consuming and controversial task. Some components in a WWTP are

1 designed for not just the maximum day flow but the peak hourly flows, although
2 an equalization tank is already designed to dampen the peak hourly flows. Most
3 of the time, the PSC calculates a single used and useful percentage based on the
4 total plant design capacity instead of separate used and useful calculations for
5 each component of the plant. Therefore, I believe that the utilities still benefit
6 from the correct match of plant flows to plant design capacities for used and
7 useful calculations.

8 **Q. DOES THE PSC'S CORRECT MATCH FOR PLANT FLOW TO**
9 **DESIGN CAPACITY SUGGEST THAT A WWTP SHOULD BE**
10 **DESIGNED SOLEY ON AADF?**

11 A. No. The PSC is just using the available information from the MFR's and
12 documents provided by the Utility. AADF information for plant flows and plant
13 capacity is available from the MFR's and FDEP permit. If FCWC can provide
14 documented peak flows, with excess inflow/infiltration adjustments, and design
15 peak month flow capacity, then the PSC could use this information to calculate
16 the used and useful percentage. Nevertheless, there is generally not a big
17 difference between the calculations because the ratio of average annual daily
18 flow to the designed average daily flow capacity should be the same or close to
19 the ratio of actual peak flows to the designed peak flow capacities of the plant.
20 Therefore, the used and useful percentages which compare FCWC's average

1 flows to its designed average flow capacity should be approximately the same as
2 its peak flows to its designed peak flow capacities.

3 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

4 **A.** Yes.

1 **MR. McLEAN:** Thank you, Madam Chairman.

2 Mr. Bidy is available for cross-examination.

3 **CROSS EXAMINATION**

4 **BY MR. GATLIN:**

5 **Q** Mr. Bidy, in determining used and useful of
6 a wastewater treatment plant in a Commission
7 proceeding, should the average daily flow in the month
8 be ignored?

9 **A** No, it should not be ignored. It is by
10 virtue of the plant cost being multiplied by the used
11 and useful percentage that's determined. It's the
12 peak capacities of the plant and those facilities
13 within the plant that handle peak flow such as the
14 maximum month are included and, therefore, far from
15 ignored, those dollars are in the cost of the plant
16 and, therefore, in the rate base.

17 **Q** As all investment that is used and useful
18 should be in the rate base?

19 **A** Absolutely.

20 **Q** Does the fact that the DEP is now using
21 different language in its operating permit justify a
22 departure from the Commission's past policy of
23 recognizing daily flow in the max month in determining
24 used and useful?

25 **MR. McLEAN:** Objection. I'm not sure that

1 Mr. Biddy knows whether there is such a policy.

2 Q (By Mr. Gatlin) You've disagreed, have you
3 not Mr. Biddy, in the past when the Commission would
4 use max day -- max month as the numerator in
5 determining used and useful, have you not?

6 A I have disagreed, yes.

7 Q So you are aware that they were using max
8 day -- max month in the numerator to determine used
9 and useful; is that correct?

10 A Well, I was aware that that was their
11 methodology, yes.

12 Q Right. And would a change in the language
13 of the DEP permit justify departure from that policy?

14 A Well, I think it's certainly a clarification
15 that everybody recognizes, and it was well taken by
16 DEP to spell it out as to what they were permitting so
17 that we could all be comparing apples to apples.

18 Q Yes, but the change in the wording itself
19 would have no influence? You thought they ought to do
20 that before, didn't you?

21 A Yes, I thought they should have done it
22 before.

23 Q Right. So the change in the permit wording
24 would not change your position at all?

25 A No, it would not.

1 Q And I believe you agree that a utility must
2 apply and receive from DEP a permit authorizing the
3 construction and operation of a wastewater treatment
4 plant; is that true?

5 A Yes, that's absolutely true.

6 Q And a utility has to give reasonable
7 assurance to DEP that the peak flows to be received by
8 the plant will be treated to meet water quality
9 parameters; is that true? Yes?

10 A Yes.

11 Q And before that permit is issued, has to
12 concur in those assurances or accept those assurances;
13 is that true?

14 A Yes.

15 Q All flows have to be adequately treated by a
16 wastewater plant to meet DEP requirements; isn't that
17 true?

18 A That is correct, yes.

19 Q And you would agree that a plant permitted
20 on max flow -- max month annual daily flow would not
21 have a greater capacity than a plant permitted on
22 annual average daily flow?

23 A All the various flows that are required to
24 be treated are included in the design and the approved
25 permit. So --

1 Q Both permitted plants would have the same
2 capacity, wouldn't they?

3 A That's true.

4 Q And what you want the Commission to do as a
5 result of this hearing is what they did in the
6 original order; is that correct? You're supporting
7 what the Commission did then?

8 A No. What I am supporting is a used and
9 useful calculation that is based on a measure of the
10 usefulness of the plant by comparing the same units of
11 time that the -- whatever basis you're using for
12 describing the plant, such as average annual daily
13 flow compared to the capacity of average annual daily
14 flow, or you could use max month to max month
15 permitted flow. You'd get essentially the same
16 percentage.

17 The point is, whatever percentage you get is
18 then multiplied by the dollars, and all the peaking
19 factors and the high peak flows, the high maximum
20 month flows are included in the dollars, or at least
21 the facilities that would have been built for those --
22 to handle those flows are included in the dollars.
23 So, therefore, the percentage that you get for used
24 and useful is multiplied by those dollars and take
25 into account the peak flows.

1 Q I hand you Page 17 of the -- (Inaudible
2 comments away from microphone) -- and ask you to read
3 the last sentence on that page.

4 CHAIRMAN JOHNSON: Mr. Gatlin, you're going
5 to have to be at a microphone. She can't hear you.

6 Q (By Mr. Gatlin) Page 17, and ask you to
7 read the last sentence on that page.

8 MR. JAEGER: Mr. Gatlin, I couldn't hear you
9 also. Where are we at?

10 MR. GATLIN: Okay. I've handed Mr. Bidy a
11 copy of Page 17 of Order No. PSC-961133-FOF-SU, and
12 ask him, would you read aloud the last sentence on
13 that page.

14 A It says "In part, the above mentioned
15 \$800,000 approximate reduction is due to elimination
16 of peak flow measurements."

17 Q (By Mr. Gatlin) And you believe that's
18 proper?

19 A I'm not sure I agree with that statement.
20 It did say "in part".

21 Q Yes. I understand. There are other
22 considerations. But as to that part of it, is that
23 proper?

24 A To eliminate the \$800,000?

25 Q Yes.

1 A Yes, it is proper.

2 MR. GATLIN: All right. I have no further
3 questions.

4 CHAIRMAN JOHNSON: Okay.

5 **CROSS EXAMINATION**

6 **BY MR. JAEGER:**

7 Q Mr. Biddy, I just have one question. In the
8 used and useful equation, can you divide 1.173 max
9 month average daily flow by the 1.25 annual average
10 daily flow and get a meaningful number?

11 A No, you cannot get a meaningful number by
12 such an operation.

13 MR. JAEGER: No other questions.

14 CHAIRMAN JOHNSON: Redirect?

15 MR. McLEAN: Yes, ma'am. Thank you.

16 **REDIRECT EXAMINATION**

17 **BY MR. McLEAN:**

18 Q Mr. Biddy, that order that Mr. Gatlin just
19 read you said that some \$800,000 was to be eliminated
20 from something.

21 Did you understand the something that it was
22 to be eliminated from was the Commission findings in
23 the last case, the 1992 case?

24 A I didn't know what it was to be eliminated
25 from.

1 Q Okay. But your testimony is that it should
2 be eliminated if it's not shown to be used and useful?

3 A That's correct, yes.

4 Q Do you believe any portion of the property
5 which is the investment which is found to be used and
6 useful should be eliminated from rate base?

7 A No, it should not be.

8 MR. McLEAN: Thank you, sir. No further
9 questions.

10 MR. GATLIN: Excuse me.

11 CHAIRMAN JOHNSON: I'm sorry.

12 MR. GATLIN: May I ask a question in
13 response to that? May I ask one question?

14 CHAIRMAN JOHNSON: Uh-huh.

15 RE CROSS EXAMINATION

16 BY MR. GATLIN:

17 Q Does it make any difference that this was an
18 elimination of \$800,000 from plant which had
19 previously been determined to be 100% used and useful
20 in the prior case?

21 A Not from my perspective it does not make any
22 difference at all.

23 MR. GATLIN: Okay. That's all I have.

24 CHAIRMAN JOHNSON: Anything?

25 MR. McLEAN: No redirect. No re-redirect.

1 **CHAIRMAN JOHNSON:** Exhibit?

2 **MR. McLEAN:** Well, I can't remember the
3 number.

4 **CHAIRMAN JOHNSON:** 42.

5 **MR. McLEAN:** Yes, ma'am; move admission of
6 Exhibit 42.

7 **CHAIRMAN JOHNSON:** Show that admitted
8 without objection.

9 (Exhibit 42 received in evidence.)

10 **CHAIRMAN JOHNSON:** Mr. Bidy, you're
11 excused. Thank you.

12 (Witness Bidy excused.)

13 **CHAIRMAN JOHNSON:** Mr. Acosta?

14 - - - - -

15 **MICHAEL ACOSTA**

16 was called as a rebuttal witness on behalf of Florida
17 Cities Water Company and, having been duly sworn,
18 testified as follows:

19 **DIRECT EXAMINATION**

20 **BY MR. GATLIN:**

21 **Q** Mr. Acosta, you have previously testified;
22 is that correct?

23 **A** That's correct.

24 **Q** And you were sworn in earlier?

25 **A** Yesterday.

1 Q Is that true? And have you prepared
2 rebuttal testimony for presentation in this proceeding
3 consisting of 12 pages?

4 A Yes.

5 Q And if I were to ask you those questions set
6 forth in that prepared testimony, would your answers
7 be the same?

8 A Yes.

9 Q Are there any corrections or additions that
10 you wish to make to the testimony?

11 A No.

12 **MR. GATLIN:** Madam Chairman, I would request
13 that this be inserted into the record as though read.

14 **CHAIRMAN JOHNSON:** It will be so inserted.

15 Q **(By Mr. Gatlin)** Mr. Acosta, you had
16 exhibits to the rebuttal testimony; is that true?

17 A Yes.

18 Q And they're identified as MA-5, which is DEP
19 permit applications submitted 9/1/93, MA-6, which is
20 FDEP Application 51889, and MA-7, which is a copy of
21 Rule 62-69.310-311 FAC; is that correct?

22 A Instead of 62-69, it's 62-699.

23 Q Right.

24 A But yes to the balance.

25 Q Is it okay now?

1 **A** **Yes.**

2 **MR. GATLIN:** May we have those identified as
3 a composite exhibit?

4 **CHAIRMAN JOHNSON:** It will be identified as
5 Composite Exhibit 43.

6 (Exhibit 43 marked for identification.)

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FLORIDA CITIES WATER COMPANY
REOPENING OF RECORD WATERWAY ESTATES
ADVANCED WASTEWATER TREATMENT PLANT
DOCKET NO. 950387 - SU
REBUTTAL TESTIMONY OF MICHAEL ACOSTA

Q. Please state your name and business address.

A. Michael Acosta, 4837 Swift Road, Suite 100, Sarasota, Florida 34231.

Q. Have you previously provided remand testimony in this Docket?

A. Yes.

Q. What is the purpose of your rebuttal testimony?

A. The purpose of my testimony is to rebut certain aspects of the direct testimony of Kimberly H. Dismukes and Ted L. Bidy, appearing on behalf of the Office of Public Counsel, and Robert J. Crouch, appearing on behalf of Staff.

Q. On Page 3 Lines 9-19, Mr. Bidy states that average daily flow in the maximum month (ADFMM) and annual average daily flow (AADF) are not the same basis and as such he can not agree with the use of ADFMM in the numerator and AADF in the denominator of the used and useful formula because they do not match. Do you have any observations?

A. First, there is no requirement to "match" the numerator actual flows and denominator basis of design permitted flows. The Florida Public Service Commission (FPSC) has for years used ADFMM in the numerator and permitted capacity in the denominator without regard to

1 the basis of design in the calculation of used and useful for
2 wastewater treatment plants. The alleged "mismatch," or as Mr. Bidy,
3 Ms. Dismukes and Mr. Crouch repeatedly say, comparing apples and
4 oranges, is not a mismatch at all. The use of ADFMM in the
5 numerator and AADF in the denominator recognizes that peak flows
6 occur and that plant must be in place to treat those flows when they
7 arrive. On Page 6 lines 12-17 Mr. Bidy acknowledges that peak
8 flows must be accounted for in the treatment plant design. However,
9 he says for calculation of used and useful it should not be taken into
10 account. This clearly would create a situation in which the utility would
11 have to have plant available to treat the peak flows yet the peak flows
12 would not be recognized for ratemaking purposes. It can not be both
13 ways.

14 Q. On Page 5 Lines 9-15, Mr. Bidy seems to suggest that a plant whose
15 capacity is 1.0 million gallons per day (mgd) with a basis of design of
16 ADFMM is equal to a plant whose capacity is 0.8 mgd with a basis of
17 design of AADF. Do you agree?

18 A. No. A plant with capacity based on AADF does not have a higher
19 capacity than that plant would have if the basis of design were
20 changed to ADFMM. The flows are generally related with ADFMM
21 being higher than AADF, but there is not any change in capacity if the
22 basis of design were changed. The design of this expansion at
23 Waterway is such that the basis of design can be either AADF or
24 ADFMM. Regardless of the basis of design, the capacity of the plant
25 would be 1.25 mgd. I agree with the rebuttal testimony of Dr. Harley

1 Young, P.E., Section Manager supervising the permitting of domestic
2 wastewater systems, collection systems, underground injection control
3 and compliance and enforcement for the South District, Florida
4 Department of Environmental Protection. Dr. Young was asked the
5 question: "If a plant is permitted based on maximum month average
6 daily flow, would it be permitted at a greater capacity than if it was
7 permitted based on average annual daily flow?" Dr. Young answered:
8 "No. The capacity is the capacity. The basis of design simply tells
9 you that it's designed based on a peak seasonal flow."

10 Q. There seems to be confusion regarding when and if the basis of
11 design for Waterway was available. Mr. Bidy at Page 6 Lines 18-20
12 and Page 7 Lines 1-9 states that the original plant's capacity was not
13 clear and offers exhibit TLB-1 and TLB-2 as evidence of the such. On
14 Page 6 Lines 1-21 and Page 7 Line 1, Ms. Dismukes implies that the
15 information regarding the basis of design was not available and
16 therefore the Commission could not "match" the numerator and
17 denominator of the used and useful calculation. Mr. Crouch from
18 Page 8 Line 5 through Page 11 Line 7, expounds on the alleged lack
19 of knowledge of the basis of design and why it took Staff four years to
20 recognize any change. Please clear up the confusion regarding this
21 issue.

22 A. The argument that no one knew the basis of design of Waterway,
23 simply put, is not valid. Mr. Bidy offers up exhibit TLB-2 as the
24 "original permit application" that resulted in the permit of which exhibit
25 TLB-1 is part. This is not correct. A simple check of the dates shows

1 this to be an impossibility. Exhibit TLB-2 is a portion of the permit
2 application submitted on June 23 1997 to operate Waterway's reuse
3 system, the "Revised 6/97" imprint at the bottom right of the page
4 shows that this form could not have been the permit application that
5 resulted in the permit issued June 2, 1994 of which exhibit TLB-1 is
6 part. Exhibit ____ (MA-5) is the permit application submitted
7 September 1, 1993 which resulted in the permit issued June 2, 1994.
8 A review of the permit application shows that in not less than four
9 places the basis of design is designated as annual average daily flow.
10 Mr. Crouch on Page 8 Lines 10-11 testifies that "the PSC staff had no
11 way of knowing what the basis was; consequently staff selected the
12 Maximum Month Average Daily Flow, or MMADF, as the flow to be
13 used in the numerator." This permit application has been a public
14 document since it was submitted and received by FDEP on
15 September 2, 1993. The Commission staff, to my knowledge, made
16 no attempt to find out what the basis of design was for this or any
17 other plant nor in my opinion did they care what the basis was. The
18 staff has traditionally used ADFMM in the numerator, and only
19 changed its policy in response to this highly contested rate case of in
20 which one of the issues was which flow to use as the numerator of the
21 used and useful formula. A review of the permit application, Exhibit
22 ____ (MA-6) submitted and received by FDEP on May 18, 1989 for the
23 upgrade of Waterway to meet advanced treatment standards shows
24 the "Flow characteristics as Average daily flow: 1.0 mgd, Peak flow:
25 3.0 mgd and Minimum flow: 0.50 mgd." The average daily flow is

1 indeed the basis of design of AADF. The basis of design has always
2 been specified in engineering reports on the expansions or upgrades
3 of plants. The claim that the information was not available is clearly
4 unsubstantiated, baseless and being used as a smoke screen to
5 change a long standing Commission policy.

6 Q. On Page 9 Lines 3-5, Mr. Bidy says that "sometimes the FDEP permit
7 capacity is less than the design plant capacity due to limited effluent
8 disposal capacity. Waterway Estate WWTP is an typical example of
9 this limitation." Please comment.

10 A. Mr. Bidy is mistaken. The effluent disposal system at Waterway is
11 not the limiting constraint on plant capacity. The plant components
12 are properly sized to a 1.25 mgd plant. The components are not
13 oversized. For example, the aeration system is designed only to the
14 permitted capacity of the plant (1.25 mgd). Waterway can not treat
15 additional flows without additional expansion.

16 Q. On Page 9 Lines 6-20 and Page 10 Lines 1-7, Mr. Bidy claims that
17 utilities benefit from the "correct match" of plant flow to plant capacity
18 calculation. Do you agree?

19 A. No. Mr. Bidy does point out that different plant components have
20 different capacities based on peak hourly flows, etc.. That is correct.
21 As an example the disinfection system is required to meet disinfection
22 criteria during peak hourly flows. However, his analogy that the
23 Commission could increase the plant capacity based on only hydraulic
24 loading is baseless. Similar to a chain, which is only as strong as its
25 weakest link, all plant components have to be evaluated with the most

1 limiting component, the one with the smallest capacity, limiting the
2 capacity of the plant. FDEP would not allow the plant to be permitted
3 at any higher capacity.

4 Q. On Page 4 Lines 15-18 and on Page 7 Lines 2- 25, Page 8 Lines 1-5,
5 Ms. Dismukes and Mr. Crouch, respectively, express that the units of
6 measurement must be consistent. Do you agree?

7 A. Yes. The item measured in this case is flow and flow is measured in
8 volume per unit of time. Examples include gallons per day (gpd),
9 million gallons per day, gallons per minute (gpm), etc. Any flow
10 chosen, be it AADF, ADFMM or three-month average daily flow are
11 expressed in the same units, i.e. gpd or mgd. Therefore, the claim
12 that the (dimension) units do not match is incorrect. ADFMM, AADF,
13 and three-month average daily flow express flow over certain time
14 frames but they all express the same unit of measurement, i.e. gpd,
15 mgd, gpm, etc.

16 Q. Mr. Crouch uses an example on Page 7 Lines 16 through 23, that he
17 asserts shows the alleged mismatch of using expenses in the
18 maximum month divided by average monthly revenue earned does not
19 equal 400%. Do you agree.

20 A. No, in fact the units of both numbers are expressed in units of dollars
21 and cancel when divided, providing a number with no units that when
22 multiplied by 100 yields a percentage. The calculation shows that for
23 a particular month the expenses were four times the revenue. Mr.
24 Crouch both here and on Page 4 Lines 8-13 attempts to draw an
25 analogy between expenses and revenues and the flows used in the

1 used and useful calculation. The analogy simply does not work. In
2 the example used on Page 7, the additional expense can be covered
3 using short term borrowing or some other source. In addition, those
4 expenses can be paid over time and a grace period (as much as one
5 month) usually applies when an invoice arrives. The very nature of
6 the measurements would mean that in another month the expenses
7 would be less than the revenue and the extra money could be saved.
8 Obviously, the same flexibility is not available at a wastewater
9 treatment plant when a peak flow arrives. You can not go borrow
10 treatment plant capacity and there is certainly no grace period. Nor
11 can you "save" or put capacity in the "bank". As an example, if the
12 capacity of the plant is 1000 gpd and today only 900 gpd arrive at the
13 plant, that does not translate into a capacity of 1100 gpd tomorrow, or
14 any other day. Each day the capacity of the plant must be capable of
15 treating whatever flow arrives at the plant on that day. If the flows are
16 not treated when they arrive, either the tanks will overflow or effluent
17 not meeting all water quality parameters will be discharged from the
18 plant. Either scenario results in violations of permit conditions which
19 can lead to enforcement actions. This analysis, while generic in
20 nature, applies to Waterway and to all other wastewater treatment
21 plants.

22 Q. On Page 8 Lines 4-6, Ms. Dismukes states that the use of annual
23 average daily flow to calculate used and useful does not limit the
24 Waterway's ability to meet peak demands, nor does it understate the
25 used and usefulness of the plant. Do you agree?

- 1 A. I agree that the use of AADF does not limit Waterway's ability to meet
2 peak demands. I strongly disagree that the use of AADF in the
3 numerator of the used and useful formula does not understate the
4 used and usefulness of the plant. The plant is in place and was
5 designed appropriately to meet all FDEP standards. That includes the
6 treatment of the inevitable peak flows when they arrive. FCWC has
7 never argued that the plant could not treat peak flows. FCWC has
8 argued that a plant designed to meet only AADF would not be capable
9 of meeting peak flows. As stated earlier in this testimony (Page 2
10 Lines 22-24), in the case of Waterway the basis of design can be
11 either AADF or ADFMM without affecting the plant capacity. The
12 existing customers are the only source of wastewater flow for this
13 plant. Peak flows are generated by these customers and as such they
14 should be responsible for paying for the plant to treat those peak
15 flows. The use of AADF in the numerator of the used and useful
16 formula vastly understates the used and usefulness of this plant. The
17 use of AADF does not recognize the peak flows for ratemaking
18 purposes and requires the utility to build plant to handle peak flows, if
19 it wants to stay in environmental compliance, that will not be
20 recognized as used and useful even though the current customers are
21 generating the peak flows.
- 22 Q. On Page 8 Line 20, Ms. Dismukes computes the used and useful
23 percentages for ADFMM and AADF as 94% and 75%, respectively.
24 Do you agree?
- 25 A. No, as contained in my direct testimony, Page 10 Line 20 and Page 10

1 Line 15 respectively, the percentages should be 79.94% say 80% and
2 98.61% say 100%.

3 Q. On Page 5 Lines 13-17, Mr. Crouch states: "In practice, the DEP
4 permitted capacity, based on average flows, is generally lower than
5 actual design capacity. Therefore, even when the Commission has
6 determined a plant to be 100% used and useful based on permitted
7 capacity, there is a built-in cushion to allow the wastewater treatment
8 plant to handle peak flows." Please comment.

9 A. The statement by Mr. Crouch regarding permitted capacity being lower
10 than actual design capacity has no basis in fact. It is not "practice" to
11 have the permitted capacity of the plant be anything but the actual
12 design capacity, regardless of the basis of design: AADF, AFDMM or
13 three-month ADF. I am aware of no treatment plants where Mr.
14 Crouch's contention is borne out. Mr. Crouch offers no examples of
15 any such plants to support his statement. In regards to peak flows,
16 there are usually designed into the plant factors associated with
17 hydraulic and organic loadings that will enable the plant to meet water
18 quality parameters under all flow scenarios including peak flows.
19 These factors bear no relationship nor are they accounted for in the
20 calculation of used and useful. As stated above, the plant is designed
21 to meet the water quality parameters under all flow scenarios including
22 peak flows. However, under Mr. Crouch's proposal, peak flows would
23 not be recognized for ratemaking purposes. The capacity of the
24 Waterway plant, both design and permitted, is 1.25 mgd.

25 Q. On Page 6 Lines 16-19, Mr. Crouch says that "a wastewater plant with

1 a surge (or equalization) tank has the ability to “save” peak flows or
2 surges and treat those flows after the surge has passed. Surge (or
3 equalization) tanks ease the peaks allowing the plant to be designed
4 to meet an average daily flow.” Please comment.

5 A. Flow equalization tanks of sufficient size, allow the plant to be
6 operated in a more constant feed mode. This means that the flow
7 going to the treatment trains can be maintained at a more constant
8 rate which allows the units to be sized based on the smaller more
9 constant feed flow. This point can not be over emphasized. The
10 addition of a sufficiently sized flow equalization tank allows the
11 treatment units downstream of the equalization tank to be sized for a
12 narrower range of flows, making those components smaller. During
13 the course of the day, the level in the equalization tank will rise and
14 fall as the influent into the plant goes up and down. A flow
15 equalization tank is designed to eliminate the diurnal flow pattern that
16 occurs over the course of the day. While it does have some capability
17 to trim the high end off of peak flows it is not designed to store peak
18 flows over an extended period of time. In the case of Waterway, not
19 only was the equalization tank already in place prior to the expansion
20 of this plant, it is not sufficiently large, due to site constraints, to
21 function as a completely true equalization tank. The pumps which
22 move the influent from the equalization tank to the treatment trains are
23 controlled by variable frequency drives which operate off a signal from
24 the level contained within the equalization tank. The higher the level
25 the faster, and thus the more influent is delivered to the treatment

1 trains, the pumps operate. Over an extended period of time, such as a
2 month, the equalization tank is inconsequential in regards to removing
3 peak flows. Even consecutive days of peak flows could eliminate the
4 capability of the equalization tank to trim peak flows. Another issue
5 related to equalization tank and storing of wastewater influent which
6 Mr. Crouch does not address is the limitation on holding raw
7 wastewater in an equalization tank. If held too long, the raw
8 wastewater becomes septic which results in odors and upset the
9 biological treatment process when it enter the treatment process train.

10 Q. On Page 11 Lines 13-25 and Page 12 Lines1-10, Mr. Crouch states
11 that the result of using AADF is "the utility may not have to 'man' its
12 plant with as many personnel as they might had they selected the
13 MMADF" and that "the utility would enjoy the best of both worlds: It
14 would not have to hire personnel to support a 'larger permitted plant'
15 while at the same time, it would enjoy higher rates since a larger U&U
16 percentage would result if the MMADF was divided by the AADF."
17 Do you agree?

18 A. Mr. Crouch does not understand the staffing requirements contained
19 in Rule 62-699.310-311, F.A.C. Exhibit ____ (MA-7) is a copy of Rule
20 62-699.310-311, F.A.C. which delineates the staffing requirements
21 associated with both water and wastewater treatment plants. As is
22 clearly shown by the rule, the basis of design has absolutely nothing
23 to do with the staffing requirements. The staffing requirements are
24 based on the type of treatment plant and the size of the plant. The
25 basis of design, be it AADF, ADFMM, or three-month ADF, is not

1 mentioned in the entire Chapter. The staffing requirement for
2 Waterway before the expansion was 16 hours per day, 7 days per
3 week. The expansion from 1.0 mgd to 1.25 mgd did not change this
4 requirement. In addition, if Mr. Crouch were correct, the "larger plant"
5 that he says would benefit the utility would require more staffing, not
6 less, as he would have you believe. The idea espoused by Mr.
7 Crouch that somehow the utility benefits from the staffing increasing
8 because of a "larger plant" and then not meeting the staffing
9 requirement because of the basis of design is ridiculous. In fact,
10 FCWC has reduced the plant expansion at other facilities below the
11 threshold which would require additional staffing in order to save the
12 customers that additional staffing expense. FCWC received no
13 benefit from this reduced staffing level, only the customers did.
14 Finally, the staffing requirements of any plant have absolutely nothing
15 to do with peak flows or the calculation of used and useful.

16 Q. Please summarize why ADFMM should be used in the numerator of
17 the used and useful calculation.

18 A. When flows on a monthly basis exceed AADF, sufficient plant must be
19 in place and available to receive and treat those flows above AADF.
20 The Commission's calculation using AADF in the numerator and
21 denominator does not recognize, for ratemaking purposes, that
22 additional necessary plant.

23 Q. Does this conclude your rebuttal testimony?

24 A. Yes, it does.

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STATE OF FLORIDA)
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COUNTY OF LEON)

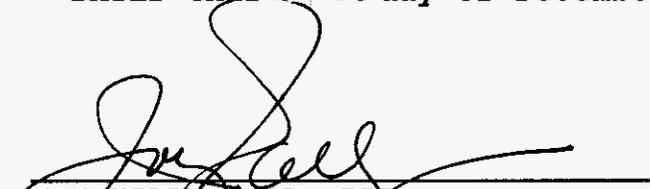
CERTIFICATE OF REPORTERS

We, JOY KELLY, CSR, RPR, Chief, Bureau of Reporting and H. RUTHE POTAMI, CSR, RPR, Official Commission Reporter,

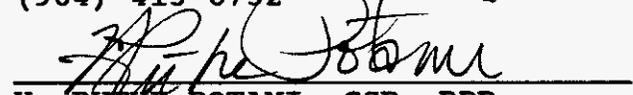
DO HEREBY CERTIFY that the Hearing in Docket No. 950387-SU was heard by the Florida Public Service Commission at the time and place herein stated; it is further

CERTIFIED that we stenographically reported the said proceedings; that the same has been transcribed under our direct supervision; and that this transcript, consisting of Volumes 7, 8 and 9, constitutes a true transcription of our notes of said proceedings and the insertion of the prescribed prefiled testimony of the witness.

DATED this 21st day of December, 1998.



JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
(904) 413-6732



H. RUTHE POTAMI, CSR, RPR
Official Commission Reporter
(904) 413-6734

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