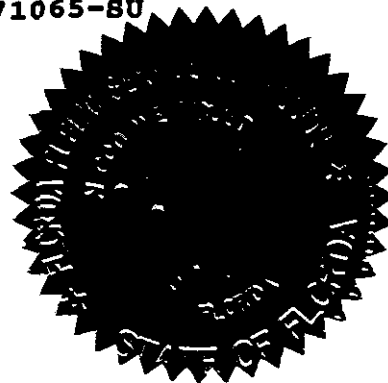


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of :
Application for rate :
increase in Pinellas :
County by Mid-County :
Services, Inc. :

DOCKET NO. 971065-SU



VOLUME 2

Pages 111 through 305

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER SUSAN F. CLARK
COMMISSIONER JULIA L. JOHNSON

DATE: Monday, June 21, 1999

TIME: Commenced at 1:15 a.m.

PLACE: Dunedin City Hall
City Commission Chambers
542 Main Street
Dunedin, Florida

REPORTED BY: H. RUTHE POTAMI, CSR, RPR
KIMBERLY K. BERENS, CSR, RPR
FPSC Commission Reporters

APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER - DATE

07968 JUL-18

FPSC-RECORDS/REPORTING

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P R O C E E D I N G S

(Technical reconvened at 1:15 a.m.)

COMMISSIONER DEASON: Call the hearing back to order. Mr. Melson, I believe your witness is scheduled next.

MR. MELSON: Yes, sir, and I've got a few preliminary matters. I have handed out an affidavit of notice that I would like to have marked, if we could, as Exhibit 2.

COMMISSIONER DEASON: It will be so identified.

(Exhibit 2 marked for identification.)

MR. MELSON: We also will want to mark as an exhibit a proof of publication of notice. That proof has not been returned to us by the newspaper. If I could get that marked as Late-filed Exhibit 3.

COMMISSIONER DEASON: It will be so identified.

(Late-Filed Exhibit 3 identified.)

MR. MELSON: And I'd like to move Exhibit 2 into the record.

COMMISSIONER DEASON: Without objection, it will be so moved.

(Exhibit 2 received in evidence.)

MS. BRUBAKER: Commissioner Deason, If I

1 could also move Staff's official recognition list into
2 the record.

3 **COMMISSIONER DEASON:** I think it's been
4 done, but if it is not, it is now.

5 **MR. MELSON:** I'd like to also have the MFRs
6 marked at this time as exhibits. Mr. Wenz is
7 sponsoring a portion of the MFRs, and Mr. Rasmussen's
8 stipulated testimony is sponsoring another piece.

9 If we could, I'd like to identify the basic
10 accounting MFR book as Composite Exhibit 4.

11 **COMMISSIONER DEASON:** It will be identified.

12 **MR. MELSON:** That would include revised
13 Pages A-18, A-19, B-10, and E-5 that were filed in
14 response to a Staff deficiency.

15 **COMMISSIONER DEASON:** That's been prefiled
16 and all parties have that?

17 **MR. MELSON:** Yes, sir. And I'd like to move
18 that MFR book into the record.

19 **COMMISSIONER DEASON:** That's being sponsored
20 by Mr. Rasmussen?

21 **MR. MELSON:** Mr. Wenz and Mr. Rasmussen. I
22 can do it again, whatever your preference is. I don't
23 think there's going to be an objection to it.

24 **COMMISSIONER DEASON:** Is there any
25 objection? (No response.) No objection. Show that

1 admitted.

2 (Exhibit 4 marked for identification and
3 received in evidence.)

4 **MR. MELSON:** We also submitted a volume of
5 engineering information as part of the MFRs. I'd like
6 to have that engineering volume identified as
7 Exhibit 5.

8 **COMMISSIONER DEASON:** It will be so
9 identified.

10 **MR. MELSON:** And I would move that into the
11 record.

12 **COMMISSIONER DEASON:** Without objection.
13 Showing no objection, it is admitted.

14 (Exhibit 5 marked for identification and
15 received in evidence.)

16 **MR. MELSON:** There was also the utility's
17 1996 cost allocation study that was filed as part of
18 the MFRs. I'd like to have that identified, if I
19 could, as Exhibit 6.

20 **COMMISSIONER DEASON:** It will be so
21 identified.

22 **MR. MELSON:** And I would move it into the
23 record.

24 **COMMISSIONER DEASON:** Without objection,
25 show it admitted.

1 (Exhibit 6 marked for identification and
2 received in evidence.)

3 **MR. MELSON:** And then --

4 **COMMISSIONER DEASON:** Mr. Melson, let me
5 interrupt just a second. At some point are we going
6 to be able to respond to one of the customer's
7 questions concerning the rate structure and allocation
8 of costs and that sort of thing?

9 **MR. MELSON:** We don't have a rate structure
10 witness, per se. I think Mr. Wenz is probably the
11 best of our available witnesses to deal with rate
12 structure.

13 With regard to the odor issue, we will
14 have -- we will put Mr. Rasmussen on the stand at some
15 point to deal with that. If it looks like we're going
16 to -- I'd like to do him after the customer testimony
17 this evening so that if we have any additional, you
18 know, service territory specific issues, we can handle
19 them all at once.

20 **COMMISSIONER DEASON:** Very well.

21 **MR. MELSON:** And the final sort of
22 housekeeping matter, I'd like to identify the system
23 map that was filed with the MFRs as Exhibit 7.

24 **COMMISSIONER DEASON:** They will be so
25 identified.

1 (Exhibit 7 marked for identification.)

2 MR. MELSON: At this point Mid-County calls
3 Carl Wenz.

4 COMMISSIONER DEASON: Mr. Wenz was
5 previously sworn?

6 WITNESS WENZ: Yes.

7 COMMISSIONER DEASON: Mr. Melson, could you
8 identify for me once again what the late-filed
9 Exhibit 3 was?

10 MR. MELSON: It is the proof of publication
11 in the newspaper.

12 COMMISSIONER DEASON: Thank you.

13

- - - - -

14

CARL J. WENZ

15 was called as a witness on behalf of Mid-County
16 Services, Inc. and, having been duly sworn, testified
17 as follows:

18

DIRECT EXAMINATION

19

BY MR. MELSON:

20

Q Mr. Wenz, would you state your name and

21

address for the record, please?

22

A My name is Carl J. Wenz. My business

23

address is 2335 Sanders Road, Northbrook, Illinois

24

60062.

25

Q And who is your employer and what is your

1 job title?

2 A I'm employed by Utilities, Inc. and I'm
3 vice-president of regulatory matters.

4 Q And Utilities, Inc. is the parent of
5 Mid-County, the applicant in this proceeding?

6 A Yes, it is.

7 Q What are your responsibilities as
8 vice-president of Utilities, Inc.?

9 A Utilities, Inc. operates about 350 water and
10 sewer systems in 15 different states.

11 (Microphone adjusted.)

12 I'm responsible for all of the Commission
13 regulation ratemaking activities for all of those
14 subsidiaries in all the different states.

15 Q And would you just briefly describe your
16 educational background and professional experience?

17 A I'm a certified public accountant. I have a
18 Bachelor's Degree in accounting from Western Michigan
19 University. I've been employed by Utilities, Inc. for
20 almost 15 years. 13 of those years have been devoted
21 primarily to regulatory activities.

22 Prior to joining Utilities, Inc. I worked as
23 a senior accountant for another entity for about two
24 years.

25 Q And have you previously testified before

1 this Commission and other state commissions on issues
2 of utility management, accounting and ratemaking?

3 **A** Yes. I have testified before this
4 Commission on numerous occasions as well as
5 commissions in several other states.

6 **Q** And have you prefiled direct testimony in
7 this docket, Mr. Wenz, consisting of 14 pages?

8 **A** Yes, I have.

9 **Q** Do you have any changes or corrections to
10 that testimony?

11 **A** No.

12 **Q** And with the clarifications regarding
13 construction work in progress and insurance expense
14 that are going to be contained in your rebuttal
15 testimony, if I were to ask you the same questions
16 today, would your answers be the same?

17 **A** Yes, they would.

18 **MR. MELSON:** Mr. Chairman, I'd ask that
19 Mr. Wenz's direct testimony be inserted into the
20 record as though read.

21 **COMMISSIONER DEASON:** It will be so
22 inserted.

23 **Q** **(By Mr. Melson)** And, Mr. Wenz, did you
24 have three exhibits attached to your direct testimony
25 identified as CJW-1 to CJW-3?

1 **A** Yes. I think there was a 3(a) also.

2 **Q** Actually, I believe there are probably
3 1(a)'s and 2(a)'s as well.

4 **A** Yes.

5 **Q** Were those exhibits prepared by you or under
6 your direction and supervision?

7 **A** Yes, they were.

8 **Q** Do you have any changes or corrections to
9 those exhibits?

10 **A** No.

11 **MR. MELSON:** Mr. Chairman, I'd like to ask
12 that CJW-1 through 3 and their subparts be identified
13 as Composite Exhibit 8.

14 **COMMISSIONER DEASON:** It will be so
15 identified.

16 (Exhibit 8 marked for identification.)

17 **Q** **(By Mr. Melson)** And just for the record,
18 Mr. Wenz, you were sponsoring the accounting billing
19 data and rate related MFRs that had previously been
20 identified as Exhibit 4?

21 **A** Yes, that's correct.

22 **Q** And you're also sponsoring the cost
23 allocation study that's previously been identified as
24 Exhibit 6?

25 **A** Yes.

1 **Q** Do you have any changes to either of those
2 documents other than that, or is it referred to in
3 your prefiled testimony and attached exhibits?

4 **A** No, not at this time.

5 **MR. MELSON:** I think that does the
6 preliminaries.

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1 **Mid-County Services, Inc.**

2 **Docket No. 971065-SU**

3 **Direct Testimony of Carl J. Wenz**

4 **February 8, 1999**

5

6

7 **Q. Please state your name and business address for the record.**

8 A. My name is Carl J. Wenz. My business address is 2335 Sanders
9 Rd., Northbrook, IL 60062.

10

11 **Q. By whom are you employed and what is your position?**

12 A. I am the Vice President of Regulatory Matters for Utilities, Inc.
13 and all of its subsidiaries, including Mid-County Services, Inc.

14

15 **Q. Please state your professional and educational experience.**

16 A. I have been employed by Utilities, Inc. since 1984. Utilities, Inc.
17 owns water and/or wastewater utilities in fifteen states. Over the
18 last twelve years I have been involved in all phases of the
19 regulatory process. I have testified on numerous aspects of utility
20 regulation, including cost of service, rate design, and cost of
21 capital. I have testified before the Commissions in several states,
22 including Florida, North Carolina, South Carolina, Louisiana,
23 Maryland, Nevada, Illinois, and Indiana. In my present position I
24 am responsible for all aspects of utility commission regulation for
25 the group of 65 Utilities, Inc. subsidiaries.

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10 **Q. What is the purpose of your testimony?**

11 A. The purpose of my testimony is to sponsor the Company's
12 application for rate relief. I will specifically address the
13 accounting issues raised in Mid-County's protest of the proposed
14 agency action order (Order NO. PSC-98-0524-FOF-SU) issued on
15 April 16, 1998. Mr. Seidman's testimony will address the used
16 and useful issues raised in the Company's protest.

17

18 **Q. Are you sponsoring any exhibits in this proceeding.**

19 A. Yes. I am sponsoring the accounting and billing data minimum
20 filing requirements ("MFRs") for the test year ended December 31,
21 1996, including the cost allocation schedules.

22

23 I am also sponsoring the schedules attached to my testimony as
24 Exhibits 8 (CJW-1) to 8 (CJW-3). These schedules show Mid-
25 County's position after taking into account the portions of the

1 PAA order that were not protested (and are therefore deemed to be
2 stipulated) and the Company's position on the issues that were
3 protested.

4

5 **BACKGROUND**

6 **Q. Please describe the background of this proceeding.**

7 A. Mid-County's last rate case, Docket No. 921293-SU, was filed in
8 April 1993. That proceeding resulted in PAA Order No. PSC-93-
9 1713-FOF-SU, dated November 30, 1993. A protest of the Order
10 was filed by a developer, but was limited to the issue of Service
11 Availability Charges. Final rates and Service Availability Charges
12 were established in Order No. PSC-94-1042-FOF-SU dated
13 August 24, 1994.

14

15 The MFRs in this current proceeding were determined to be
16 complete on October 21, 1997. For the test year ended December
17 31, 1996, Mid-County had "adjusted" revenues of \$913,593. Rate
18 base at December 31, 1996 was \$1,687,022. Mid-County's
19 adjusted test year operating income under current rates was
20 (\$36,136). This resulted in a (2.14%) return on rate base.

21

22 Due to the inadequacy of the current rates, Mid-County filed the
23 instant request for rate relief. In order for Mid-County to recover
24 prudently incurred operating expenses and earn a fair return on
25 its used and useful rate base, approximately \$341,000 of

1 additional annual revenues are justified.

2

3 **Q. Why is it necessary for Mid-County to pursue rate relief at**
4 **this time?**

5 A. As stated earlier in my testimony, Mid-County's current rates are
6 insufficient to allow the utility to recover operating expenses and
7 provide a fair return on investment. Fully compensatory rates are
8 absolutely essential so that Mid-County can continue its public
9 utility obligation to provide safe, reliable and efficient service.

10

11 The proper balance of ratepayer and shareholder interests occurs
12 when the Commission authorizes a public utility a rate of return
13 on its rate base equal to its overall cost of capital. If the
14 authorized rate of return on rate base exceeds the overall cost of
15 capital, then ratepayers bear the burden of excessive prices.
16 Conversely, if the authorized rate of return on rate base is lower
17 than the overall cost of capital, then the utility will be unable to
18 raise capital at a reasonable cost. Ultimately, the utility may be
19 unable to raise sufficient capital to meet demands for service,
20 thereby impairing service quality. Therefore, ratepayer interests
21 are served best when the authorized rate of return on rate base is
22 neither higher nor lower than the overall cost of capital.

23

24 **Q. Does Mid-County provide good quality service?**

25 A. Yes. In direct contrast to the operation of this utility prior to

1 Utilities, Inc.'s acquisition in May 1991, the Mid-County sewer
 2 system is now in compliance with all health and environmental
 3 standards.

4
 5 In conjunction with this rate case, a customer hearing was held
 6 in Mid-County's service area in Dunedin, on January 13, 1998.
 7 Of the estimated 6,100 customers served by Mid-County, fewer
 8 than 20 attended the hearing. Of those 20, about 10 testified.
 9 There was one odor complaint and no service complaints. The
 10 low attendance at the hearing in the "peak" season is an
 11 indication that the vast majority of customers are satisfied with
 12 the quality and value of the service provided by Mid-County.

13
 14 **Q. What are the current Commission approved wastewater**
 15 **rates?**

16 A. The currently approved wastewater rates are:

17
 18 Base Charge \$14.40
 19 Usage Charge per 1,000 gallons \$1.51

20
 21 Based on the average residential consumption of 8,200 gallons
 22 per month, the average bill is \$26.78 under the current rate
 23 structure.

24
 25

1 **Q. What are the wastewater rates you propose?**

2 A. The rates for residential customers that we are proposing are the
3 following:

4

5 Base Charge \$19.33

6 Usage Charge per 1,000 gallons \$2.02

7

8 **Q. What is the impact of the proposed rates on the typical
9 residential customer served by Mid-County?**

10 A. Assuming our customers maintain their current average monthly
11 consumption, a residential customer will pay \$35.89 for
12 wastewater service per month. This represents an increase of
13 34% over the present rate structure.

14

15 **Q. Can you explain what has changed since the last rate case?**

16 A. Yes. In the previous rate case, Docket No. 921293-SU, Mid-
17 County utilized a projected test year ending March 31, 1994. In
18 this current proceeding, Mid-County has used the historic test
19 year ended December 31, 1996, adjusted for known and
20 measurable changes.

21

22 Comparing the used and useful rate base in the order from Mid-
23 County's last rate case to the rate base at the end of the test year
24 in this rate case indicates that Mid-County has continued to
25 invest capital in its facilities. In fact, rate base has increased by

1 approximately \$328,000, or 24% over the last rate case.
2 Moreover, operating expenses and depreciation have also
3 increased. These factors have combined to erode Mid-County's
4 earnings to the point where rate relief is needed.

5
6 As shown in the order from Mid-County's last rate case, the
7 existing rates were intended to generate about \$128,000 in
8 operating earnings. Since the last rate case, the increase in
9 expenses has outpaced revenue growth. As adjusted, Mid-
10 County's operating income for the test year was (\$36,000).

11

12 **Q. How was this rate case filed?**

13 A. This rate case was filed under the Commission's proposed agency
14 action procedures in an attempt by the utility to reduce rate case
15 expense. The proposed rate increase in the PAA Order, however,
16 is insufficient to allow the utility to cover its operating expenses
17 and earn a fair rate of return on its used and useful plant. The
18 company therefore protested a number of specific issues on which
19 it disagreed with the Commission's preliminary determination. I
20 will discuss the accounting issues below. Mr. Seidman's
21 testimony discusses the used and useful issues. In preparing
22 final schedules, I have taken into consideration Mr. Seidman's
23 conclusion that the utility plant is 100% used and useful.

24

25

1 **SPECIFIC ISSUES**

2 **Q. Are there any issues raised in Mid-County's protest which you**
3 **believe are non-controversial?**

4 A. Yes, I believe that the accounting treatment of the Curlew Road,
5 US 19 and Belcher Road main relocation project and the issue
6 regarding key man life insurance are not controversial. Once the
7 facts are clearly understood, the proper ratemaking treatment of
8 these items should not be an issue.

9
10 **Q. Describe the accounting issue regarding the main relocation**
11 **project.**

12 A The main relocation project was completed in 1997, and was
13 required by the widening of US19 and Belcher Road. Because this
14 project was non-elective, the cost of the project is an appropriate
15 pro forma addition to the 1996 test year rate base. The total cost
16 of this project was \$292,159. In the MFRs, the utility mistakenly
17 included only one-half of the cost of the project in rate base by
18 recording that amount as construction work in progress (CWIP).

19
20 In the PAA Order, the Commission reclassified the entire project
21 from CWIP to Plant in Service, increasing Plant in Service by
22 \$292,159 and reducing CWIP by the same amount. However,
23 because only half the cost of the project had been included in
24 CWIP to begin with, this accounting treatment left a negative
25 CWIP balance. The net effect is that only half of the cost of the

1 project --instead of the entire cost --is included in rate base under
2 the PAA Order. Exhibit 7 (CJW-1) properly includes the entire
3 cost of this project as Plant in Service and zeros out the CWIP
4 account.

5
6 **Q. Describe the accounting issue with regard to key-man life**
7 **insurance.**

8 A. The PAA Order removed \$3,983 of allocated expenses on the
9 grounds that they represented premiums on key man life
10 insurance that should not be recovered through rates. The utility
11 agrees that it is proper to remove key man life insurance
12 expenses. However, the MFRs actually included only \$1,876 of
13 key man life insurance expense and the adjustment in the PAA
14 order incorrectly removed amounts that were not included in the
15 MFRs in the first place. Exhibit 8 (CJW-2) includes the proper
16 adjustment to exclude \$1,876 of key man life insurance expense.

17
18 **Q. What is the controversial accounting issue raised in the**
19 **protest?**

20 A. The controversial issue is the appropriate method to allocate
21 common costs from Water Services Corporation (WSC) to Mid-
22 County. The utility allocated these costs based on customer
23 equivalents, whereas the PAA order allocated them based on
24 equivalent residential connections. The allocation methodology
25 used by the Commission seriously understates the costs that

1 should properly be borne by Mid-County customers.

2

3 **Q. What is Water Service Corporation (WSC) and what services**
4 **does it provide to Mid-County?**

5 A. WSC is a subsidiary of Utilities, Inc. It manages the operations of
6 approximately 300 utility systems owned and operated by
7 Utilities, Inc. WSC provides the management, administration,
8 engineering, accounting, regulatory, billing, and data processing
9 for the 300 utility systems in fifteen states, including Mid-County.
10 It should be noted however, that Pinellas County bills for Mid-
11 County's wastewater services on its monthly water bill.

12

13 **Q. How are the costs associated with WSC billed to Mid-County?**

14 A. Costs are assigned to the operating companies, including Mid-
15 County, directly or by various allocation formulas. The allocation
16 formulas are based on customer equivalents, bills printed,
17 accounts payable invoices keyed, payroll, and duties of WSC
18 personnel. These services are billed to the individual operating at
19 cost. There is no markup.

20

21 **Q. Please explain what is meant by a customer equivalent in the**
22 **utility's allocation methodology?**

23 A. The utility's methodology treats each residential living unit as a
24 customer equivalent, whether that unit is a separately metered
25 detached single-family residence, a separately metered unit in a

1 mobile home park, or a unit in a master-metered apartment,
2 condominium, or mobile home park.

3

4 **Q. Why did the utility use this allocation methodology in the**
5 **current case?**

6 A. Mid-County's parent company, Utilities, Inc., owns and operates
7 utilities in 15 states. For many years, the utility has used this
8 customer equivalent methodology to allocate costs for which a
9 more direct allocation methodology cannot be identified. It is
10 important to use a single allocation methodology for all the
11 utilities in all jurisdictions. Otherwise, the utility is placed in a
12 position where the total costs recovered through rates are
13 different from (typically less than) the total costs subject to
14 allocation. The methodology that the PAA Order proposes to apply
15 to Mid-County results in that system covering substantially less
16 common costs than under the utilities' uniform allocation
17 methodology. This means that there is a substantial amount of
18 common costs that cannot be recovered from any system in any
19 jurisdiction.

20

21 **Q. Has the Commission accepted Mid-County's allocation**
22 **methodology in the past?**

23 A. Yes, this method has been used for all of the Utilities, Inc.
24 subsidiary systems in Florida for many years and has
25 consistently been accepted by the Commission for ratemaking

1 purposes. In addition, the Commission staff performed a separate
2 audit of the allocation methodology in 1997 and that audit did
3 not suggest any modifications to the methodology. Importantly,
4 this uniform allocation methodology has also been accepted by
5 regulators in other states where Mid-County's sister companies
6 do business.

7
8 **Q. Was this allocation methodology accepted by the Commission**
9 **in Mid-County's last rate case?**

10 A. Yes, with one exception. For most of the Utilities, Inc. systems,
11 billing functions are provided by WSC. Because Mid-County is a
12 wastewater only system, and Mid-County therefore does not read
13 water meters, billing for Mid-County is performed on a contract
14 basis by Pinellas County. Thus it would not be appropriate to
15 allocate WSC billing costs to this Mid-County. At the time of the
16 last rate case, it was not possible to isolate WSC's billing costs.
17 Accordingly, the company took the conservative approach of
18 applying a one-third weighting to Mid-County's actual customer
19 equivalents to prevent any possible overallocation of common
20 costs to Mid-County.

21
22 By the time this case was filed, it was possible to isolate WSC's
23 billing costs. Consequently, Mid-County's allocation of common
24 costs has been determined by applying the full customer
25 equivalents to WSC costs, excluding billing costs. In addition, the

1 actual billing charges from Pinellas County are directly assigned
2 to Mid-County.

3

4 **Q. Does this result in a larger allocation of common costs to**
5 **Mid-County than in the prior case?**

6 A. Yes, but the allocation is more accurate. In hind sight, the one-
7 third weighting applied in the last case resulted in understating
8 Mid-County's proper share of common costs. This means that
9 Mid-County customers have been paying artificially low rates
10 since the date of the last case. The current methodology more
11 properly allocates these common costs and results in Mid-County
12 customers paying their fair share -- no more and no less -- of
13 those common costs.

14

15 **Q. Other than the used and useful issues addressed by Mr.**
16 **Seidman, were there any other issues raised by Mid-County's**
17 **protest?**

18 A. Yes. The other primary issue is the amount of rate case expense.
19 The amount awarded in the PAA Order reflected only costs
20 through the PAA stage of this proceeding. As a result of the
21 protest and hearing process, those costs will increase. The
22 attached schedules include \$151,779 of rate case expense, which
23 represents the utility's current best estimate of the total cost of
24 this case through hearing and a final order. I will update this
25 amount at the time of my rebuttal testimony as we have more

1 information on actual and estimated costs.

2

3 In addition, there are a number of "fall-out" issues which depend
4 on the Commission's resolution of the issues that were protested.
5 The attached schedules reflect these fall-out adjustments.

6

7 **Q. Does this conclude your testimony?**

8 **A. Yes.**

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1 Q (By Mr. Melson) Would you please briefly
2 summarize your direct testimony?

3 A The purpose of my testimony is to sponsor
4 the company's application for rate relief. My
5 testimony specifically addresses the accounting issues
6 raised in the company's protest of the April 16th,
7 1998 PAA order issued in this case.

8 The specific issues are as follows:

9 CWIP: In the MFRs, the company included
10 only one-half of the cost of the various pro forma
11 CWIP balances. This was a mistake, and the company
12 should not be penalized for this oversight. The
13 prudence of this project is not in question, nor does
14 the total cost of the projects appear to be an issue.

15 The PAA order includes \$292,159 in plant and
16 service for the pro forma CWIP projects. 189,138 of
17 this total relates to the cost of relocating mains
18 resulting from the widening of Belcher Road. This
19 cost was not discretionary and is properly included in
20 rate base. The other projects are completed and
21 should also be included in rate base.

22 Insurance costs: The PAA order makes a
23 \$3,983 adjustment to operating expenses for various
24 types insurance on the basis that these expenses are
25 appropriately classified as nonutility --

1 (inaudible) --

2 (Court reporter asked for clarification.)

3 A Nonutility expenses.

4 Included in the total is \$1,636 for the cost
5 of key man life insurance. I agree that these
6 expenses should not be borne by ratepayers.

7 The other types of insurance include
8 directors' and officers' liability, fiduciary
9 liability related to sponsorship and administration
10 for the pension and ESOP plans, and life insurance on
11 all employees for which the company is not the
12 beneficiary. These are ordinary operating expenses
13 and should be included in rates in this proceeding.

14 Account expense methodology: This issue
15 relates to the methodology the company uses to develop
16 the number of customers served. This number is then
17 used to allocate the common costs. These are costs
18 which are not directly attributable to a specific
19 system company's customer. The company treats each
20 individual residence as one customer whether or not
21 that residence is individually metered.

22 Mid-County provides wastewater service to
23 many mobile home parks and apartment buildings which
24 are master metered. The PAA order uses average flow
25 of 245 gallons per day for SFE to develop the customer

1 account, which is then used to allocate common costs.
2 This method severely understates the allocations.

3 The company's methodology for counting total
4 customers in this proceeding is consistent with the
5 method used in the last rate case. Furthermore, the
6 PSC Staff performed an audit of Utilities, Inc.
7 affiliate transactions in 1986 to 1997. 1996, 1997,
8 the methodology for counting customers was not
9 challenged in that proceeding either.

10 The company's methodology is consistent
11 within Florida and the other 15 states -- 14 states
12 where Utilities, Inc. operates. To treat the
13 Mid-County customers differently puts the company in a
14 position where it is unable to recover its prudently
15 incurred costs.

16 This concludes my summary.

17 **MR. MELSON:** Mr. Wenz is tendered for cross.

18 **COMMISSIONER DEASON:** Mr. Burgess?

19 **MR. BURGESS:** Commissioners, I would like to
20 begin with voir dire for purposes of validating the
21 deposition that was taken --

22 (Technical problems.)

23 **COMMISSIONER DEASON:** Mr. Burgess, would
24 you -- we're going to go off the record to check out
25 the system.

1 (Brief recess.)

2 - - - - -

3 **COMMISSIONER DEASON:** We'll go back on the
4 record. I just ask all the parties to try to speak as
5 directly into the microphone as possible, and we will
6 proceed.

7 **CROSS EXAMINATION**

8 **BY MR. BURGESS:**

9 **Q** Mr. Wenz, do you recall receiving a notice
10 of telephonic deposition signed by Jennifer Brubaker,
11 senior attorney for the Public Commission Staff?

12 **A** Yes, I do.

13 **Q** And did you have your deposition taken by
14 Ms. Brubaker on Wednesday June 16, 1999?

15 **A** Yes.

16 **MR. BURGESS:** Commissioners, I would ask
17 that in lieu of a number of cross-examination areas on
18 specific issues, that pursuant to the Rules of Civil
19 Procedure, that this be -- that this deposition, along
20 with the notice of taking deposition, along with the
21 errata sheet that Mr. Wenz has put together and the
22 exhibits to the deposition be entered into the record
23 in lieu of cross on some of those issues.

24 **COMMISSIONER DEASON:** Mr. Melson?

25 **MR. MELSON:** No objection. I have provided

1 copies of the errata sheet and deposition exhibits to
2 each of you. I assume Mr. Burgess is taking care of
3 the copies of the deposition itself.

4 **MR. BURGESS:** I'll be happy to. I do not
5 have those. As I understand, all parties have them,
6 and I will provide the requisite number of copies for
7 the record, if you will indulge me to provide that
8 when we return to Tallahassee.

9 **COMMISSIONER DEASON:** Any objection?

10 **MS. BRUBAKER:** Staff has no objection.
11 However, I'd like to reserve the opportunity to ask
12 some of the similar questions in the deposition with
13 regard to certain matters.

14 **COMMISSIONER DEASON:** With the understanding
15 that entering the deposition does not curtail your
16 opportunity to conduct cross-examination.

17 **MR. BURGESS:** Absolutely not my intention.

18 **COMMISSIONER DEASON:** The deposition, along
19 with the notice, late-filed deposition exhibits, and
20 the errata sheet, will be identified as Exhibit 9; and
21 it's been moved into the record without objection.

22 (Exhibit 9 marked for identification and
23 received in evidence.)

24 **Q (By Mr. Burgess)** Mr. Wenz, we have spoken
25 of the CWIP mistake that has been made. Would you

1 refer to Schedule A-6 of the MFRs, Page 3 and 4 of
2 that schedule; and that is on Page 10 of the MFRs
3 themselves.

4 A Yes, I've got it.

5 Q And it appears that there is a calculation
6 of 296,659 of costs for specific projects, and then
7 you have an indication that there is an adjusted
8 average balance; is that right?

9 A Yes, that's correct.

10 Q And how is this adjusted average balance
11 calculated?

12 A Just taking the 296,659 divided by two; just
13 a simple average.

14 Q So what was the mistake?

15 A Taking the average and adding that to rate
16 base instead of taking the entire 296,659 and adding
17 that to plant or rate base as a pro forma adjustment.

18 Q You mean this calculation here was not a
19 conscious effort; it was just an error? I'm trying to
20 understand the nature of the mistake.

21 A It was just an error. It was just a simple
22 error. It should not have been averaged. It should
23 have just been added to plant as a pro forma
24 adjustment.

25 Q It was an error in mathematics or an error

1 in --

2 A Well, the --

3 Q -- judgment?

4 A Well, the mathematics, just the total
5 divided by two, that's not the error. The error is
6 dividing it by two and then adding only half the
7 balance to rate base. It wasn't dividing by two that
8 was done incorrectly.

9 Q It was the choice to --

10 A Dividing 296 by two is simple. That
11 calculation was not goofed up. It was the step of
12 making it by two and adding that half from that
13 average balance to rate base.

14 Q But it appears here that -- from what I'm
15 reading that you knew what it was, because it says
16 "adjusted average balance." So it was a -- there was
17 a decision made to seek the average balance; is that
18 correct?

19 A Yes. The analyst who put this together took
20 that number and divided it by two and added it to rate
21 base. That was erroneous. The analyst should have
22 taken the entire balance and added that to rate base.

23 Q Now, these MFRs, are they prepared under
24 your direction and supervision?

25 A Ultimately, yes.

1 Q So you are aware of the filing and what was
2 included in this MFR?

3 A I wasn't aware of this specific adjustment,
4 but I'm responsible for it. It's under my area of
5 responsibility. An analyst named Frank Garcia
6 prepared this. He reported to Mark Cramer, who
7 reported to me. Both of those gentlemen are no longer
8 employed. But ultimately I'm responsible for
9 everything here, so --

10 Q Are you saying that you did not know that
11 average balance was being sought in the filing and
12 through the entire process of the proposed agency
13 action procedure? You did not know that you were
14 seeking average balance CWIP?

15 A No.

16 Q When did you become aware of this?

17 A When the PAA order was issued.

18 Q So you sign off on this which says "adjusted
19 average balance," and your representation is that you
20 did not -- you were not aware of this. Was your
21 counsel aware of this that you know of?

22 A I can't speak for what my counsel knew.

23 Q Have you not discussed this with counsel
24 throughout all of this process of what we've been
25 talking about, about the issue here?

1 **A** Yeah, we've discussed the adjustment and the
2 error, but I never asked my counsel if he knew
3 specifically that this error was made before the case
4 was filed. I didn't ask that question.

5 **Q** You never asked him was he aware of this?

6 **A** No.

7 **Q** As vice-president of the company you never
8 asked your lawyer was he not aware that you were
9 asking for average balance?

10 **MR. MELSON:** Objection; asked and answered.

11 **MR. BURGESS:** Yes, that's correct. I'll
12 withdraw the question.

13 **COMMISSIONER DEASON:** Objection sustained.

14 **Q** **(By Mr. Burgess)** Let me ask you about rate
15 case expense, Mr. Wenz, and if I could direct your
16 attention to the MFR at Page 33, 0033, what is MFR
17 B-10.

18 **A** Okay.

19 **Q** Can you tell me what is reflected in the
20 78,510 that is near the bottom of that schedule?

21 **A** That would be the unamortized rate case
22 expenses on the books of Mid-County at the time of
23 this filing.

24 **Q** Can you tell me what rate case that is,
25 please?

1 A It would be the rate case that just preceded
2 this one. I don't have the docket number with me.

3 Q Was that a proposed agency action?

4 A Yes, it was, but it was protested.

5 Q By whom was it protested?

6 A A developer in the service area.

7 Q What issues did the developer raise?

8 A I think the protest was confined to the
9 issue of service availability charges.

10 Q Did the customers, per se, intervene in this
11 case, intervene in the protest?

12 A I don't recall that the customers were
13 involved, no; it's my belief they were not.

14 Q Did they raise any issues?

15 A No, I don't believe so.

16 Q And what was the disposition of the case,
17 then, of the protested PAA?

18 A Well, the issue, if I recall, was that the
19 developer wanted a lower service availability charge.
20 And we fought for that, and I think the Commission
21 ultimately decided that the service availability
22 charge was either appropriately set in the PAA or they
23 maybe even pumped it up a little bit in the final
24 order. But, you know, to the extent that we were able
25 to preserve that, the customers benefit through the

1 higher service availability charge because of the
2 lower rate base.

3 Q And what was the determination of this -- is
4 this rate case expense reflective of the amount of
5 costs that the utility incurred in fighting the
6 developer on this particular issue?

7 A Yes. Well, some of this would be a portion
8 of the costs associated with litigating after the PAA
9 order was issued.

10 Q Do you determine -- do you have any
11 recognition or understanding of how much is for prior
12 to the PAA and how much is subsequent to the PAA?

13 A I think the cost associated with the
14 post-PAA litigation dispute is around 45,000. (Pause)
15 Around 44,753.

16 Q So basically the customers are paying that
17 amount to resolve a dispute between the utility and
18 the developer of which they were not intervened and of
19 which they raised no issue?

20 MR. MELSON: Commissioner Deason, I'm going
21 to object on the grounds of relevance. The final
22 order in the last case indicated that the utility
23 would be permitted in its next case -- which is where
24 we are today -- to recover the amount of rate case
25 expense prudently incurred over \$110,000.

1 Public Counsel, that order is final. It
2 sounds as if Public Counsel is going to challenge in
3 how our right to recover those costs in this case --
4 and that is not on the table, because that order has
5 been final for four years.

6 **MR. BURGESS:** Commissioner, I am not trying
7 to challenge whether that should be incorporated.
8 This is part of the MFR. I'm trying to understand
9 what of the MFR, what of the rate case expense in
10 here, what it involves and what it represents. It's a
11 number that they've filed. I'm simply trying to
12 understand what it is and what it reflects.

13 And I've asked the final question that I
14 have on this, and that is -- which Mr. Melson
15 objected -- and that is, so basically this reflects
16 the cost of the utility to fight in a dispute with the
17 developer in which the customers were not involved and
18 raised no issue.

19 **COMMISSIONER DEASON:** I'll allow the
20 question.

21 **Q (By Mr. Burgess)** Am I correct in
22 understanding that this reflects the cost that the
23 utility incurred in a dispute with a party that did
24 not involve the customers and the customers raised no
25 issues in that dispute; is that correct?

1 **A** It was the developer's protest of a
2 Commission PAA order, and that's what the dispute
3 involved.

4 **COMMISSIONER JOHNSON:** Sir, it would be
5 helpful if you tried to answer the question yes or no
6 and then clarify if you could. Because I missed --
7 did he answer your question?

8 **MR. BURGESS:** No.

9 **COMMISSIONER JOHNSON:** So if you start off
10 with a yes or no, that's helpful, and then you can
11 elaborate on your answer.

12 **MR. BURGESS:** Should I repeat the question?

13 **WITNESS WENZ:** No. I understand the
14 question. The answer is yes.

15 **MR. BURGESS:** Thank you. That's all I have.
16 Thank you, Commissioners. Thank you, Mr. Wenz.

17 **COMMISSIONER DEASON:** Staff?

18 **CROSS EXAMINATION**

19 **BY MS. BRUBAKER:**

20 **Q** On Page 4 of Staff Witness Charleston
21 Winston's testimony he recommends removing \$4,500 for
22 a charge booked twice from CWIP, and from your
23 testimony it appears that the utility is not
24 contesting that; is that correct?

25 **A** That's correct.

1 Q Also on Page 4 of Witness Winston's
2 testimony, he refers to AFUDC being charged to CWIP.
3 Did all the CWIP on A-6, Page 3 of four of the MFRs
4 draw any AFUDC?

5 A Yes.

6 Q Have you prepared a list of each of the nine
7 projects that were charged to AFUDC?

8 A Yes, I have.

9 Q And that was pursuant to your deposition?

10 A Yes.

11 Q Which has been entered into the record. Is
12 it correct that these nine projects were presented as
13 average balances?

14 A Yes, in the MFRs.

15 Q In the MFRs?

16 A Yes.

17 Q And in also in the MFRs, it's correct that
18 the depreciation was recorded calculated on the
19 average balance of those nine projects?

20 A Yes, that's correct.

21 Q Was that same depreciation amount entered in
22 accumulated depreciation?

23 A I don't recall if we used an entire year of
24 depreciation expense and added that to accumulated or
25 if we used a half-year convention.

1 **Q** Could we request that confirmation be
2 provided through a late-filed exhibit?

3 **A** Yes.

4 **MS. BRUBAKER:** At this time I would like to
5 have identified Late-filed Exhibit -- we were on
6 No. 10?

7 **COMMISSIONER DEASON:** That's correct.

8 **MS. BRUBAKER:** Short titled "Confirmation of
9 Depreciation."

10 **COMMISSIONER DEASON:** It will be so
11 identified. The witness understands what's being
12 requested?

13 **WITNESS WENZ:** Yes.

14 (Late-Filed Exhibit 10 identified.)

15 **Q** **(By Ms. Brubaker)** With respect to these
16 items, what treatment does the company recommend?
17 What I mean is, do they recommend that the full amount
18 should be recorded in plant as if it had been in the
19 entire year?

20 **A** Yes. I proposed that the entire balance be
21 added to plant and that it not be averaged, and that
22 we not be penalized, so to speak, for the mistake that
23 was made in the MFRs.

24 **Q** And how should depreciation be calculated
25 for the entire amount?

1 **A** Consistent with the way we calculate
2 depreciation on other plant components using the
3 plant-specific, Commission-approved rates for an
4 entire year on the entire balance.

5 **Q** And what about these amounts with respect to
6 accumulated depreciation?

7 **A** To add a year of accumulated -- add a year
8 of depreciation expense to accumulated depreciation,
9 consistent with common practice.

10 **Q** Does your CJW-4 represent the entire book
11 cost -- excuse me -- actual book cost of the nine
12 projects listed in the MFRs as CWIP?

13 **A** Yes, that's the final cost of all of those
14 projects.

15 **Q** And with respect to the exhibit provided
16 pursuant to your deposition, have you prepared a
17 document listing the retirements from the plant and
18 accumulated depreciation associated with that project?
19 Is that a part of the exhibit?

20 **A** Yes, the retirements are listed on there.

21 **Q** Should these retirements also be reflected
22 in rate base?

23 **A** Yes.

24 **Q** With respect to that document, do Items 2,
25 "Relocate sanitary sewer lines along Curlew Road,"

1 and, 3, "Relocate sanitary sewer lines along Belcher
2 Road," refer to the US19 road relocation project?

3 A Yes.

4 Q These items total 1,000 -- excuse me --
5 \$189,138. Would this correspond to the \$195,891 on
6 Page 2 of your rebuttal testimony?

7 A Yes.

8 MS. BRUBAKER: As a point of clarification,
9 have we stipulated that we'll be taking direct and
10 rebuttal testimony concurrently?

11 COMMISSIONER DEASON: It's not been brought
12 to my attention. I assume that we'll be taking it
13 separately.

14 MR. MELSON: That's correct.

15 MS. BRUBAKER: Could Staff request a few
16 minutes to make sure that they're not venturing into
17 rebuttal?

18 COMMISSIONER DEASON: Well, I will leave
19 that to if you ask a question in rebuttal, I will rely
20 upon Mr. Melson to make an objection.

21 MR. MELSON: Commissioner Deason, we intend
22 to call our witnesses back. There is some overlap,
23 and to the extent they're trying to tell a coherent
24 story, I don't object to their asking them questions
25 now.

1 **MS. BRUBAKER:** Thank you.

2 **Q** **(By Ms. Brubaker)** With respect to that
3 same exhibit, Items 4, "Remove sand and grit from the
4 wastewater treatment plant tankage," and, 6, "Clean
5 and televise portion of sewer lines impacted by
6 telephone cable installation," they appear to be
7 maintenance. Why aren't these capitalized?

8 **A** Well, they were extraordinary -- they were
9 not repairs; they were extraordinary to improve the
10 efficiency and the life of those pieces of equipment.

11 **Q** The next series of questions I have are with
12 respect to the allocation methodology currently
13 employed by the utility.

14 **COMMISSIONER CLARK:** Can I interrupt you for
15 just a minute and go back to that question? I don't
16 understand the answer to why those expenses were
17 capitalized.

18 **WITNESS WENZ:** To improve the efficiency and
19 extend the life of the piece of equipment.

20 **COMMISSIONER CLARK:** So you're cleaning the
21 grit out of something and you -- doesn't all
22 maintenance do that in some form or another?

23 **WITNESS WENZ:** No. It's only done
24 periodically. I mean, it's not done on a routine
25 basis.

1 **COMMISSIONER CLARK:** I'm still having
2 trouble understanding why it was appropriate to
3 capitalize this. Can you point to anything in the
4 Uniform System of Accounts --

5 **WITNESS WENZ:** I think the Uniform System of
6 Accounts has the language that -- that kind of an
7 expenditure improves the efficiency; it extends the
8 useful life of the items to be capitalized.

9 **COMMISSIONER CLARK:** What exactly was this
10 that you did?

11 **WITNESS WENZ:** All I know about those
12 projects is what is stated here; "remove sand and grit
13 and --

14 **COMMISSIONER CLARK:** From what?

15 **WITNESS WENZ:** The water and wastewater
16 treatment plant, the tank.

17 **COMMISSIONER CLARK:** And that sand and grit
18 occurred because of the relocation of the mains?

19 **WITNESS WENZ:** No. That project is
20 unrelated to the road widening, the main relocation
21 projects. Some of these projects on this list,
22 several of them are unrelated to the road widening
23 project.

24 **COMMISSIONER CLARK:** Okay. So you removed
25 sand and grit from a tank, and you capitalize that?

1 **WITNESS WENZ:** Yes.

2 **COMMISSIONER CLARK:** In every instance?

3 **WITNESS WENZ:** Well, I wouldn't say every
4 instance. I mean, everything is a case-by-case basis.
5 Generally speaking, though, a project like this would
6 be capitalized and either depreciated or amortized
7 over a period of years.

8 **COMMISSIONER DEASON:** How often do you do
9 this procedure?

10 **WITNESS WENZ:** Well, I couldn't say. We're
11 amortizing this one over five years.

12 **COMMISSIONER DEASON:** That would seem to
13 indicate that you do it once every four or five or six
14 years?

15 **WITNESS WENZ:** Yeah.

16 **COMMISSIONER CLARK:** Are you capitalizing
17 it, or are you just amortizing it?

18 **WITNESS WENZ:** Well, these two projects went
19 into a deferred charge account which are capitalized
20 in my mind and they're amortized over five years.
21 Both of these are five-year amortizations.

22 **COMMISSIONER CLARK:** Thanks.

23 **COMMISSIONER DEASON:** It may be -- I'm not
24 trying to put words in your mouth -- it may be that
25 it's an expense item, but to normalize those expenses,

1 to have a reasonable amount in test year is the reason
2 you're treating it as you are. Would you agree with
3 that, or do you have a different characterization?

4 **WITNESS WENZ:** I wouldn't characterize those
5 as repairs. They were --

6 **COMMISSIONER DEASON:** Well, the question was
7 trying to normalize the amount of the expense; since
8 it's only done once every number of years as opposed
9 to yearly, it was necessary to reflect that as
10 expenditure regardless of whether it's capital or
11 whatever --

12 **WITNESS WENZ:** Yeah, amortizing those costs
13 does normalize the expense.

14 **COMMISSIONER DEASON:** Okay.

15 **Q (By Ms. Brubaker)** In your testimony you
16 reference the methodology by which common costs are
17 allocated among the systems for Utilities, Inc.,
18 correct?

19 **A** Yes.

20 **Q** The methodology that's currently being
21 employed is not the same one that was used
22 approximately four years ago; is that correct?

23 **A** Well, in the last rate case we did use the
24 same methodology for weighting the number of customers
25 in that all of the multifamily units were weighted as

1 one; all of the mobile home parks, each mobile home
2 park was rated as one without regard to how many
3 accounts or how many meters provided service to those
4 customers.

5 We then, in the last rate case, took that
6 and multiplied by one-third, but the beginning point
7 of actually counting the number of customers, we used
8 the same methodology.

9 Q So there has been an evolution of that
10 methodology between that time period and now?

11 A Well, the methodology for actually counting
12 the number of customers served really has not changed
13 between this case and the last case. What has changed
14 was in the last case we didn't have the ability in our
15 expense allocation to segregate the costs of providing
16 billing services because the county provides billing
17 services for our wastewater customers on the same bill
18 as they bill for water.

19 So what we did is we just took the customer
20 account, this approximately 6,000 customers, and
21 multiplied by one-third, and that was just a rough
22 guesstimate on recognizing that -- even there should
23 be no billing costs which are included in this common
24 expense allocation that's the controversy here.

25 Q It appears that the company has gone through

1 a fairly detailed process of weighing factors that
2 comprise the common costs allocation methodology. Any
3 sense of why so much consideration has gone into this,
4 factor?

5 A Well, it's been my experience that -- you
6 know, in every rate case we -- this allocation is
7 scrutinized. It's common for various jurisdictions to
8 think that they are paying too much, and they refine
9 or suggest changes in some cases to tweak the
10 allocation process to move them around; and we've seen
11 that in this case.

12 So over the years this allocation process
13 has evolved to, you know, the complicated book it is
14 now. It used to be, you know, several sheets of
15 paper. Now it's a book, and it has evolved because of
16 concerns such as what we're seeing here. Every
17 jurisdiction has got some different ideas on how to do
18 things.

19 Q So based on your experience with different
20 systems throughout the country, it's your belief that
21 the current methodology fairly allocates costs?

22 A Yes. We use the same weighting methodology
23 for all of our customers in all of our states, in that
24 multifamily general service customers are treated as
25 one residential unit; and that puts everybody on the

1 same plane without regard to how much water they
2 consume, how much wastewater flow is generated. A
3 unit -- a residential unit is a residential unit.

4 Q What support can you provide to demonstrate
5 that this is a reasonable form of allocation?

6 A Well, I can point to the last rate case
7 where the Staff did not make any adjustments to the
8 weighting. I can point to the Staff audit report from
9 the 1987 -- I think it was March of '87 they issued
10 their audit report on the allocation process. Those
11 in my mind, you know, bolster my contention that
12 they're reasonable.

13 Q Other than just a gradual process of
14 evolving and working on the methodology, there are no
15 specific studies or reports or that sort of thing that
16 was conducted to look at the methodology to determine
17 its reasonableness?

18 A Well, various states have looked at the
19 allocation process both in the context of various rate
20 cases and in isolation like the Florida Staff did in
21 looking solely at the allocation process; but there's
22 no outside consultant study or anything of that nature
23 that I can provide to you that is going to lock up my
24 case and conclusively determine that it's a reasonable
25 allocation.

1 Q How are your equivalents determined for
2 commercial customers since they typically have no
3 residential units?

4 A The weighting for many of the commercial
5 customers was done by Pinellas County because they do
6 the billing.

7 Generally speaking, the customers are
8 weighted according to the estimated flow calculation
9 or scale that's included with our tariff. When you're
10 calculating how much a commercial customer should pay
11 in a tap feed, for example, you go to that cable and
12 if it's a restaurant, it's based on the number of
13 seats, et cetera, and that's where you develop your
14 ERC weight.

15 Q So that would explain why one commercial
16 customer with a 1-inch meter is rated as 10 customer
17 equivalents and another is 7 customer equivalents?

18 A Yes.

19 Q With respect to the exhibit provided in your
20 deposition -- I believe it's revised CJW-6 -- is the
21 company claiming the PSC auditors' travel expenses as
22 rate case expense?

23 A No, we're not.

24 **MS. BRUBAKER:** Thank you. That completes my
25 questions.

1 **COMMISSIONER DEASON:** Redirect?

2 **REDIRECT EXAMINATION**

3 **BY MR. MELSON:**

4 Q Mr. Wenz, could you give us again the date
5 that you believe that Staff audit was finished? I
6 think you might have had the decade wrong.

7 A March of -- '97?

8 Q Is that correct; March of 97? Do you have a
9 copy of it in front of you?

10 A I know there's a copy in this room
11 somewhere. I don't have it up here.

12 **COMMISSIONER DEASON:** Can the parties
13 stipulate it was in the '97 time frame? I guess we'll
14 need to determine that.

15 **MR. MELSON:** Hang on one moment. (Brief
16 pause.) (Document handed to witness.)

17 Q **(By Mr. Melson)** Mr. Wenz, I stumbled over
18 and handed you a copy. Is that the audit that you
19 were referring to?

20 A Yes.

21 Q And what's the date on that?

22 A This must be a trick question. March of
23 '97.

24 Q Right. Thank you.

25 **COMMISSIONER DEASON:** Any other redirect?

1 (Pause)

2 The witness had indicated '87, but now it's
3 being corrected in the record. It is '97.

4 **MR. MELSON:** And after that confusing
5 redirect, I'm done. (Laughter)

6 (Witness Wenz excused.)

7 - - - - -

8 **COMMISSIONER DEASON:** Exhibits?

9 **MR. MELSON:** Move Exhibit 8.

10 **COMMISSIONER DEASON:** Without objection show
11 Exhibit 8 admitted.

12 (Exhibit 8 received in evidence.)

13 **MS. BRUBAKER:** And Exhibit 9. Oh; excuse
14 me. I'm sorry. That was a late-filed exhibit.

15 **COMMISSIONER DEASON:** I have Late-filed --
16 it's 10.

17 **MS. BRUBAKER:** Is it 10?

18 **COMMISSIONER DEASON:** Yes. 9 is the depo
19 with the exhibits, errata sheet and notice, and that's
20 been admitted.

21 Mr. Melson, my recordkeeping may be
22 incorrect, but I have that Exhibit 7 was never moved,
23 and that's the system map that was filed with the
24 MFRs. Do you wish to move that?

25 **MR. MELSON:** Yes, please.

1 **COMMISSIONER DEASON:** Without objection,
2 show Exhibit 7 admitted.

3 (Exhibit 7 received in evidence.)

4 **COMMISSIONER DEASON:** To bring us up to
5 date, all exhibits, 1 through 10, have been admitted
6 except for 3 and 10, which are late-filed.

7 **MR. MELSON:** Thank you.

8 The company calls Frank Seidman. And,
9 actually, while Mr. Seidman is coming to the stand,
10 it's probably the appropriate time to deal with
11 Mr. Rasmussen's stipulated direct.

12 **COMMISSIONER DEASON:** Yes, let's go ahead
13 and address that. Are there exhibits to the direct?

14 **MR. MELSON:** Yes, sir. Let me look at my
15 cheat sheet. (Pause) There was direct testimony of
16 two pages, and I ask that that be inserted into the
17 record as though read.

18 **COMMISSIONER DEASON:** Without objection, it
19 shall be so inserted.

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1 **Q. Please state your name and business address.**

2 A. My name is Don Rasmussen and my business address is 200 Weathersfield Avenue,
3 Altamonte Springs, Florida.

4

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

6 A. I am employed by Utilities, Inc., the parent company which owns 100% of the stock
7 of Mid-County Services, Inc. (Mid-County). Presently, I serve as Vice President and
8 Regional Director of Operations and am responsible for the administration and
9 operation of all water and wastewater systems in Florida owned and operated by
10 subsidiaries of Utilities, Inc.

11

12 **Q. Please summarize your background and experience in the water and wastewater
13 industry.**

14 A. I was hired by Utilities, Inc. in 1970. I was soon promoted to the position of Area
15 Manager, where I was responsible for the operations of several water and wastewater
16 plants. During this time I acquired the highest Illinois licenses awarded in the water
17 and wastewater fields and continue to hold a Class A certificate in water and a Class 1
18 certificate in wastewater. I also conducted safety seminars for the company and was
19 a licensed paramedic.

20

21 In 1982, I was transferred to Altamonte Springs and accepted the position of
22 Regional Director for Utilities, Inc. of Florida. In 1990, I was given the title of Vice
23 President of the Utilities, Inc. of Florida systems. I currently maintain a Grade A
24 certificate in water and a Grade C certificate in wastewater in the State of Florida. I
25 have attended numerous seminars dealing with operations and maintenance of water

1 and wastewater systems and serve on the Board of Directors of the Florida Water
2 Works Association.

3

4 **Q. What is the purpose of your testimony in this proceeding?**

5 A. The purpose of my testimony is to sponsor the one volume of engineering information
6 and the system maps that were filed as part of the Minimum Filing Requirements for
7 the test year ending December 31, 1996. The information in those exhibits is correct
8 and complete as it relates to the utility's 1996 test year.

9

10 **Q. Does that conclude your direct testimony?**

11 A. Yes, that concludes my direct testimony.

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1 **MR. MELSON:** He had no attached exhibits,
2 but he did sponsor the engineering volume and system
3 maps that have previously been admitted.

4 **COMMISSIONER DEASON:** Very well.
5 Mr. Seidman, have you been sworn?

6 **WITNESS SEIDMAN:** Yes, I have.

7 - - - - -

8 **FRANK SEIDMAN**

9 was called as a witness on behalf of Mid-County
10 Services, Inc. and, having been duly sworn, testified
11 as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. MELSON:**

14 **Q** Would you state your name, address and
15 profession?

16 **A** My name is Frank Seidman. I'm a consultant
17 in -- can you hear me?

18 **Q** Just barely. You'll need to lean in.

19 **A** I'm a consultant in the field of utility
20 regulation and management with Management and
21 Regulatory Consultants, Inc.; business address Post
22 Office Box 13427, Tallahassee, Florida.

23 **Q** And what was the scope of your engagement by
24 Mid-County in this case?

25 **A** I was engaged by Mid-County in this case

1 basically to take a look at rate base items, rate base
2 issues; specifically methodology regarding the proper
3 formula for determining used and useful for the
4 wastewater treatment plant, methodology for
5 determining margin reserve, and to comment on whether
6 or not CIAC should be imputed against margin reserve.

7 Q Could you briefly describe your educational
8 and professional background?

9 A I have a degree, a Bachelor of Science in
10 electrical engineering. I'm a professional engineer
11 certified in the state of Florida. I also have had
12 additional graduate level courses in economics,
13 including public utility economics. And for all of my
14 professional career I have been involved in utility
15 regulation and management positions.

16 During that time, I was with the Public
17 Service Commission as a member of its engineering
18 Staff approximately nine years. I served as a
19 director of rates and research for a water and sewer
20 holding company for approximately four years that had
21 holdings in six states. I was a planning engineer
22 with a Florida telephone company. I also served for
23 approximately three years as a director of technical
24 affairs for an electric consumers group, an industrial
25 consumers group, and for close to 20 years I've been

1 working as a consultant, a private consultant, all in
2 this field.

3 And during that time my work has involved
4 all phases of regulatory and regulatory administrative
5 concerns, determination of used and useful in
6 evaluation of plants, cost of service studies, rate
7 filings, both filing rate cases and evaluating rate
8 case filings. That pretty much is the general
9 pattern.

10 Q Mr. Seidman, have you previously given
11 expert testimony before the Commission on utility
12 engineering and ratemaking issues, including used and
13 useful calculations?

14 A Yes, I have given expert testimony.

15 Q Have you prefiled in this docket 21 pages of
16 direct testimony?

17 A That's correct.

18 Q Do you have any changes or corrections to
19 that testimony?

20 A No, I don't.

21 Q If I were to ask you the same questions
22 today, would your answers be the same?

23 A Yes, they would.

24 MR. MELSON: I ask that Mr. Seidman's direct
25 testimony be inserted into the record as though read.

1 **MS. BRUBAKER:** Commissioner --

2 **COMMISSIONER DEASON:** Is it rebuttal or
3 direct that you had concern with on Mr. Seidman's
4 testimony?

5 **MR. MELSON:** It was rebuttal.

6 **MS. BRUBAKER:** It was rebuttal.

7 **COMMISSIONER DEASON:** Without objection,
8 show the prefiled direct will be inserted into the
9 record.

10 **Q** **(By Mr. Melson)** And, Mr. Seidman, did you
11 have two exhibits attached to your direct testimony
12 identified as FS-1 and FS-2?

13 **A** Yes, that's correct.

14 **Q** And those were prepared by you?

15 **A** They were.

16 **Q** Any changes or corrections?

17 **A** No.

18 **MR. MELSON:** Mr. Chairman, I'd ask that FS-1
19 and FS-2 be identified as Composite Exhibit 11.

20 **COMMISSIONER DEASON:** They will be so
21 identified.

22 (Exhibit 11 marked for identification.)

23

24

25

1 TESTIMONY OF FRANK SEIDMAN
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE APPLICATION FOR RATE INCREASE
4 IN PINELLAS COUNTY
5 BY MID-COUNTY SERVICES, INC.
6 DOCKET NO. 971065-SU
7

8 **Q. Please state your name, profession and address.**

9 A. My name is Frank Seidman. I am President of
10 Management and Regulatory Consultants, Inc.,
11 consultants in the utility regulatory field. My
12 mailing address is P.O. Box 13427, Tallahassee, FL
13 32317-3427.

14
15 **Q. What is the nature of your engagement with the**
16 **Applicant, Mid-County Services, Inc. (Mid-County)?**

17 A. I was engaged by Mid-County to address three
18 issues: (1) the appropriate methodology for
19 determining that portion of Mid-County's
20 wastewater treatment plant assets that is used and
21 useful in the public service, (2) the appropriate
22 methodology for determining the margin reserve
23 component of used and useful for Mid-County's
24 wastewater treatment plant, and (3) whether CIAC
25 should be imputed against margin reserve.

1 **Q. State briefly your educational background and**
2 **experience.**

3 A. I hold the degree of Bachelor of Science in
4 Electrical Engineering from the University of
5 Miami. I have also completed several graduate level
6 courses in economics at Florida State University,
7 including public utility economics. I am a
8 Professional Engineer, registered to practice in
9 the state of Florida. I have over 30 years
10 experience in utility regulation, management and
11 consulting. This experience includes nine years as
12 a staff member of the Florida Public Service
13 Commission, two years as a planning engineer for a
14 Florida telephone company, four years as Manager of
15 Rates and Research for a water and sewer holding
16 company with operations in six states, and three
17 years as Director of Technical Affairs for a
18 national association of industrial users of
19 electricity. I have either supervised or prepared
20 rate cases, rates studies, certificate
21 applications and original cost studies or testified
22 as an expert witness with regard to water and
23 wastewater utilities in Florida, California,
24 Indiana, Michigan, Missouri, North Carolina and
25 Ohio. I have participated in, and appeared as a

1 witness at, many of this Commission's rulemaking
2 proceedings with regard to water, wastewater and
3 electric rules, as well as proceedings before the
4 Department of Administrative Hearings.

5

6 GENERAL CONCLUSIONS

7 **Q. What is your conclusion regarding the appropriate**
8 **methodology for determining that portion of Mid-**
9 **County's wastewater treatment plant assets that is**
10 **used and useful in the public service?**

11 **A.** The appropriate methodology is the peak demand
12 methodology. The peak demand methodology, which is
13 the ratio of average daily flow during the maximum
14 month (plus capacity for margin reserve) to the
15 firm reliable capacity of the treatment plant is
16 the appropriate measure of that portion of Mid-
17 County's wastewater treatment plant assets that is
18 used and useful in the public service.

19

20 **Q. What is your conclusion regarding the appropriate**
21 **methodology for determining the margin reserve**
22 **component of used and useful for Mid-County's**
23 **wastewater treatment plant.**

24 **A.** The appropriate methodology is to express the
25 margin reserve component of used and useful

1 wastewater treatment plant as the capacity
2 necessary to serve the equivalent of five years
3 annual growth.

4

5 **Q. What is your conclusion as to whether any CIAC**
6 **should be imputed against margin reserve?**

7 A. No amount of CIAC should be imputed against margin
8 reserve.

9

10 USED AND USEFUL METHODOLOGY

11 **Q. You have concluded that what you refer to as**
12 **the peak demand methodology is the appropriate**
13 **methodology for determining that portion of**
14 **Mid-County's wastewater treatment plant assets**
15 **that is used and useful in the public service.**
16 **How did you come to that conclusion?**

17 A. I came to that conclusion as a result of applying
18 my knowledge, developed over a period of more than
19 30 years, of the concept of used and useful as
20 utilized in the regulation of public utilities.

21

22

23

24

25

1 Q. Could you explain what you mean by the "concept" of
2 used and useful?

3 A. Yes. Used and Useful is not a mathematical or
4 scientific term. It is a concept, an abstract idea,
5 that, to my knowledge is found only in laws
6 relating to the regulation of public utilities.
7 And, to my knowledge, there is no definition of
8 used and useful in any of the statutes that utilize
9 the term. That is not to say that the concept is
10 without definition, but any definition has been
11 developed by regulators in order to put the idea
12 into words.

13
14 Q. Has this Commission ever defined "used and useful"?

15 A. Yes, at least with regard to the regulation of
16 water and wastewater utilities. In 1977, in Order
17 No. 7684 regarding a petition for a rate increase
18 by the Deltona Utilities Division of Deltona
19 Corporation, the Commission presented a definition
20 that still holds true, more than 20 years later.
21 The definition in Order No. 7684 provides such
22 clear guidance that it bears restating in the
23 record of this proceeding. In Order No. 7684,
24 issued March 14, 1977, the Commission stated:

25

1 The concept of "used and useful in the
2 public service" basically an engineering
3 concept, is one of the most valuable
4 tools in utility regulation and rate
5 making. It is basically a measuring rod
6 or test used to determine the portion or
7 amount of the utility's assets which are
8 to be included in its rate base and upon
9 which the utility has an opportunity to
10 earn a return.

11
12 Basically a two-step determination, the
13 first step is to establish the physical
14 existence and cost of the assets which
15 the utility alleges are in its
16 operations. This is done by any of
17 several methods, either individually or
18 in combination. These include previous
19 rate case determinations, original cost
20 accounting records coupled with field
21 verifications and engineering cost
22 evaluations.

23
24 Once the existence and cost of a
25 utility's assets has been established,

1 the second step in defining used and
2 useful is to determine which identified
3 assets are really used or useful in
4 performing the utility's service
5 obligation. The asset must be reasonably
6 necessary to furnish adequate service to
7 the utility's customers during the course
8 of the prudent operation of the utility's
9 business.

10

11 Generally, any asset which is required to
12 perform a function which is a necessary
13 step in furnishing the service to the
14 public is considered used and useful.

15

16 In addition, good engineering design will
17 give a growing utility a sufficient
18 capacity over and above actual demand to
19 act as a cushion for maximum daily flow
20 requirements and normal growth over a
21 reasonable period of time.

22

23

24

25

1 Q. That definition provides several criteria for
2 evaluating whether assets are used and useful, but
3 it does not offer any methodology or formulas.
4 Where does the methodology or formula approach come
5 from?

6 A. The methodology or formula approach evolved over a
7 period of several years as an attempt by both
8 utilities and the Commission to find a simplified,
9 mathematical expression of the criteria defined in
10 Order No. 7684. In 1982, in response to the
11 expressed desire of the Commissioners for a
12 "formula" that would help resolve many ambiguities
13 the Commissioners faced, the Commission Staff
14 prepared a Memorandum that presented simplified
15 formulas as an illustration of "the function of key
16 considerations in determining the percentage of a
17 plant system to be used and useful." For
18 wastewater treatment plants, the formula presented
19 by Commission Staff was:

20

21 Average Daily Flow in Test Year + Margin Reserve

22

Capacity of Plant

23

24

In the Staff Memorandum, "Average Daily Flow" was

25

defined as "an average of the daily flows during

1 the peak usage month during the test year. Care
2 should be exercised to be sure the flow data is not
3 influenced by abnormal infiltration due to rainfall
4 periods."

5

6 **Q. How does the methodology or formula you have used**
7 **for Mid-County compare to that developed by**
8 **Commission Staff in 1982?**

9 A. It is the same except for a refinement of the term
10 plant capacity to mean firm reliable capacity
11 rather than simply hydraulic rated capacity as used
12 in the 1982 Memorandum. This is the term suggested
13 in workshops and proceedings related to the
14 Commission's attempt to develop rules regarding
15 used and useful.

16

17 **Q. Are you aware that in recent rate cases, and even**
18 **in the Proposed Agency Action (PAA) for this Mid-**
19 **County case, that Commission Staff is recommending**
20 **a change in the formula under discussion with**
21 **regard to definition of flow in the numerator?**

22 A. Yes, I am. It is my understanding that Staff is
23 recommending that the flows in the numerator,
24 rather than being the average daily flow in the

1 maximum month, should be the average daily flows
2 for the same period designated in the FDEP permit.

3

4 **Q. Do you agree with that recommendation?**

5 **A.** No. Regardless of the period designated in the FDEP
6 permit, the numerator should reflect flows for the
7 peak period.

8

9 **Q. Why?**

10 **A.** Because in this "simplified" formula we are not
11 merely expressing some mathematical relationship;
12 we are trying to reflect the considerations and
13 criteria for evaluating the abstract concept of
14 used and useful in the public service. Recall from
15 Commission Order 7684, that these criteria were to
16 be considered: (1) is the asset reasonably
17 necessary to furnish adequate service during the
18 course of prudent operation, (2) is the asset
19 required to perform a function which is a necessary
20 step in furnishing service to the public, (3) does
21 it have sufficient capacity over and above actual
22 demand to act as a cushion for maximum day flow
23 requirements and (4) does it have sufficient
24 capacity over and above actual demand for normal
25 growth over a reasonable period of time?

1 Whether a system or plant meets these criteria can
2 be determined by an engineer's evaluation of the
3 system, but the results of that evaluation are not
4 necessarily going to be reflected by a simplified
5 formula, unless that formula is designed to
6 specifically acknowledge criteria (3) and (4). The
7 inclusion of margin reserve in the numerator of the
8 formula addresses criterion (4). The inclusion of
9 the average daily flow during the peak usage month
10 addresses criterion (3). In my opinion, the
11 Staff's choice, in its 1982 Memorandum, of the
12 average daily flow during the peak usage month was
13 not happenstance. It had a purpose which is still
14 relevant.

15

16 **Q. Are you aware that the most recent permit granted**
17 **to Mid-County by FDEP rates the wastewater**
18 **treatment plant at 900,000 gpd on an annual average**
19 **daily flow basis?**

20 Yes.

21

22

23

24

1 Q. Is it your testimony that even though the plant
 2 capacity is expressed on an annual average daily
 3 flow basis, the appropriate methodology for
 4 determining that portion of Mid-County's
 5 wastewater treatment plant assets that is used and
 6 useful in the public service, is to express the
 7 numerator in terms of the average daily flow in the
 8 maximum month?

9 A. Yes.

10

11 Q. Aren't you concerned about a mismatch of maximum
 12 monthly flows with annual capacity?

13 A. I might be concerned if I were trying to explain
 14 some physical phenomenon in mathematical terms
 15 instead of trying to express an abstract regulatory
 16 concept in numerical form. In any case there is
 17 not a mismatch. I believe this becomes more
 18 understandable if we separate the formula into
 19 components. Disregarding the margin reserve
 20 component, the used and useful formula can be
 21 expressed in either of two ways. First, is the form
 22 that we are used to seeing:

23

$$24 \quad \frac{\text{Average Flow Max Month}}{\text{AADF Capacity}} = \frac{828,000}{900,000} = .92$$

25

26

1 But the same information can be expressed this way:

2
$$\frac{\text{AADF}}{\text{AADF Capacity}} \quad \times \quad \text{Peaking Factor} =$$

4

5
$$\frac{721,000}{900,000} \times 1.148 = .92$$

7

8 In each of these formats, the quantities shown are
9 actual for Mid-County for the test year.

10

11 In this second format, the peaking factor is the
12 actual ratio of the maximum month flow to annual
13 average flow for Mid-County and is a legitimate
14 measure of the range of flows that the treatment
15 plant must be capable of meeting. It is not
16 uncommon for formulas to be adjusted for
17 relationships such as peaking factors or safety
18 factors in order to provide more information than
19 the original formula can provide. Apparently the
20 combining of components has caused some confusion
21 and directed attention away from its purpose.

22

23

24

25

1 Q. Is the peak demand methodology you are recommending
2 consistent with the methodology that this
3 Commission has approved in the last Mid-County rate
4 cases?

5 A. Yes. The last rate case filed by Mid-County was
6 addressed in PAA Order No. PSC-93-1713-FOF-SU,
7 issued November 30, 1993, and in Final Order No.
8 PSC-94-1042-FOF-SU, issued August 24, 1994. In the
9 PAA, the percentage of used and useful wastewater
10 treatment plant was determined using the peak
11 demand methodology. In the final order, the parties
12 stipulated to a used and useful percentage that was
13 determined using the peak demand methodology.

14

15 Q. Have there been any changes to the wastewater
16 treatment plant since the last rate case that have
17 resulted in a change in its capacity?

18 A. No.

19

20 Q. Have there been any changes in the basis for the
21 design flow since the last rate case?

22 A. No.

23

1 Q. In Final Order No. PSC-94-1042-FOF-SU, issued
2 August 24, 1994, what was the stipulated percent
3 used and useful for the wastewater treatment plant?

4 A. The stipulated percent used and useful was 88% for
5 a projected test year ended March 31, 1994.

6

7 Q. And what plant capacity was that based on?

8 A. A capacity of 900,000 gpd, annual average daily
9 flow.

10

11 Q. Since the test year in the last rate case, has
12 there been any change in the number of ERCs served
13 or in the flows treated by the plant?

14 A. Yes. As summarized in Exhibit (FS-1) 11, the
15 number of ERCs served increased by 11.70%, the
16 annual average daily flows increased by 9.14% and
17 the average daily flows in the maximum month
18 increased by 10.70%.

19

20

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22

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24

1 Q. If the ERCs served and the flows treated have
2 increased since the test year in the last rate
3 case, and the plant capacity has remained the same,
4 shouldn't the percent used and useful for the
5 wastewater treatment plant be higher in this case
6 than it was in the last case?

7 A. Yes. That is intuitive.

8

9 Q. If the flows for the test year in this case had
10 been less than in the last case, should the percent
11 used and useful for the wastewater treatment plant
12 be reduced?

13 A. No. Once a level of used and useful has been
14 reached for a plant, that establishes that the
15 investment was actually necessary to serve the
16 public. Even though the flows in every subsequent
17 year do not necessarily rise to that particular
18 level, it doesn't make the investment any less used
19 and useful. A utility cannot, and should not be
20 expected to, add and subtract investment at will to
21 follow load exactly. Neither should it be penalized
22 in subsequent years because it had the necessary
23 capacity in prior years.

24

25

1 MARGIN RESERVE COMPONENT OF USED AND USEFUL

2 Q. You have indicated that the appropriate methodology
3 to express the margin reserve component of used and
4 useful wastewater treatment plant is as the
5 capacity necessary to serve the equivalent of five
6 years annual growth. Would you please explain why?

7 A. Yes. A regulated utility must maintain, at all
8 times, sufficient capacity to meet its statutory
9 responsibilities. Those responsibilities include
10 meeting the existing and changing demands of
11 present customers and the demands of potential
12 customers within a reasonable time and in an
13 economic manner. This Commission has identified
14 that portion of plant, used and useful in the
15 public service, that serves to meet the changing
16 demands of existing customers and demands of
17 potential customers in a reasonable period of time
18 and in an economic manner, as margin reserve. The
19 margin reserve portion of plant, used and useful in
20 the public service, must be in place and available
21 to serve until the next economic capacity addition
22 can be placed in service without causing a
23 deterioration in the quality of service. For
24 wastewater treatment plants, giving due recognition
25 to today's permitting requirements of the FDEP,

1 five years is considered a minimum period during
2 which sufficient capacity must be available while
3 an economically sized expansion is being planned,
4 designed, permitted and constructed. A measure of
5 the capacity necessary to be available during that
6 period is the capacity associated with annual
7 customer demands over a five year period.

8

9 **Q. Have you made a calculation of the margin reserve**
10 **capacity required for Mid-County?**

11 A. Yes. A capacity of 112,905 gpd is required for an
12 adequate margin reserve. The calculation is shown
13 in Exhibit (FS-2) II.

14

15 **Q. Have you made a calculation of the percentage of**
16 **investment in wastewater treatment plant that is**
17 **used and useful in the public service, including**
18 **the margin reserve component?**

19 A. Yes. 100% of the investment in wastewater treatment
20 plant is used and useful in the public service.
21 That calculation is also shown in Exhibit (FS-
22 2) II.

23

24

25

1 IMPUTATION OF CIAC AGAINST MARGIN RESERVE

2 Q. You have stated that CIAC should not be imputed
3 against margin reserve. Would you please explain
4 why?

5 A. Yes. Imputation of CIAC against investment in
6 margin reserve is a mismatch of investment and
7 contributions from different accounting periods. As
8 previously discussed, margin reserve is a component
9 of plant used and useful in the public service. The
10 investment in margin reserve capacity is a real
11 one. The costs have been incurred during or prior
12 to the rate case test year. The costs were incurred
13 to enable the utility to meet its statutory
14 obligations to its customers and to the state. CIAC
15 is contributed funds received from customers and
16 offsets all or part of the costs incurred by the
17 utility in providing service. Any CIAC received
18 prior to or during the rate case test year is a
19 legitimate offset to those costs incurred by the
20 utility prior to or during the rate case test year.
21 The matching investment and offsetting CIAC from
22 the same accounting periods are properly reflected
23 in rate base.

24

1 Imputed CIAC is CIAC that has either not been
2 collected prior to or during the rate case test
3 period or is CIAC associated with plant not
4 included in the test year rate base. It is
5 potential CIAC that may be collected some time in
6 the future from potential customers. If and when
7 potential customers become actual customers, any
8 CIAC they pay will be recorded on the books of the
9 utility and will offset the costs incurred by the
10 utility, thus reducing the amount of investment on
11 which it is entitled the opportunity to earn a fair
12 rate of return. Between the time when a utility
13 makes an investment and the time it receives CIAC
14 to offset the investment, the utility has expended
15 actual funds upon which it is entitled to earn a
16 return. Imputing CIAC assumes that the time period
17 between investment and offsetting CIAC either does
18 not exist or is arbitrarily reduced. The result is
19 that the utility is denied the opportunity to ever
20 earn a return on its investment.

21
22
23

1 **Q. For Mid-County, how much of its investment in**
2 **margin reserve assets would be included in rate**
3 **base if CIAC is imputed against it?**

4 **A. The imputation of CIAC would result in absolutely**
5 **none of the utility's investment in margin reserve**
6 **being included in rate base.**

7

8 **Q. Does that conclude your direct testimony?**

9 **A. Yes.**

10

11

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15

1 Q (By Mr. Melson) Mr. Seidman, would you
2 please summarize your testimony?

3 A Yes, very briefly. My direct testimony
4 addresses three issues. First is the appropriateness
5 of methodology for determining that portion of
6 Mid-County's wastewater treatment plant assets that is
7 used and useful in the public service.

8 Second issue is the appropriate methodology
9 for determining the margin reserve component of used
10 and useful for the wastewater treatment plant; and the
11 third, whether CIAC should be imputed against margin
12 reserve.

13 And in my testimony I point out that the
14 appropriate methodology for determining that portion
15 of Mid-County's wastewater treatment plant assets that
16 is used and useful in the public service is a peak
17 demand methodology in which the average daily flow
18 during some defined period of the test year is
19 measured against the firm reliable capacity of the
20 treatment plant; and the firm reliable capacity of the
21 treatment plant in this particular company is the same
22 as its permitted capacity.

23 The appropriate methodology for determining
24 margin reserve components of used and useful for the
25 wastewater treatment plant is to express that margin

1 reserve component as the capacity necessary to serve
2 the equivalent of five years' annual growth.

3 The peak demand methodology coupled with the
4 five-year margin reserve methodology, I believe, best
5 captures the essence of the used and useful concept
6 that's been set down by this Commission; and that is
7 they identify first the assets required during the
8 course of the prudent operation of the utility's
9 business to perform functions that are a necessary
10 step in furnishing service to the public; identify the
11 assets necessary to provide capacity over and above
12 actual demand as a cushion for maximum daily flow
13 requirements, and identify the assets necessary to
14 provide for normal growth over a reasonable period of
15 time.

16 Based on these methodologies, I concluded
17 that Mid-County's wastewater plant is 100% used and
18 useful.

19 I also point out in my testimony that there
20 seems to be something wrong when the PAA was issued in
21 this case. The calculations of used and useful for
22 the 1996 test year result in a lower amount than was
23 determined for the last test year, which was in 1994,
24 because during that two-year period the ERC is
25 increased by almost 12%; the annual average daily flow

1 was increased by over 9%, and the maximum month
2 average daily flow is increased by only 10%, while the
3 plant capacity has remained the same. So it seems
4 counterintuitive that the used and useful should have
5 gone up, and it's gone down.

6 With regard to CIAC, I point out that no
7 amount should be imputed against the margin reserve.
8 The imputation of CIAC from future periods imputed
9 against the current investment in margin reserve has
10 the effect of denying the utility the opportunity to
11 earn on its actual test year investment in margin
12 reserve assets.

13 In the case of Mid-County, imputation
14 results in zero investment in margin reserve assets
15 being included in rate base.

16 That concludes my summary.

17 **MR. MELSON:** Thank you. Mr. Seidman is
18 tendered for cross.

19 **COMMISSIONER DEASON:** Mr. Burgess?

20 **CROSS EXAMINATION**

21 **BY MR. BURGESS:**

22 Q Mr. Seidman, isn't it correct that the
23 reduction in used and useful from the '94 test year to
24 '96 test year is a result of the Commission in the PAA
25 changing its approach to the calculation of the used

1 and useful ratio?

2 **A** It's the result of them changing the
3 numerator of the calculation.

4 **Q** Correct.

5 **A** Yes.

6 **Q** So that's where it lies? When you say it's
7 counterintuitive, it lies in the fact that the
8 Commission's approach to the numerator should be
9 changed?

10 **A** That's correct.

11 **MR. BURGESS:** Commissioner --

12 **WITNESS SEIDMAN:** I should say that the
13 approach, we felt, should have remained consistent.

14 **MR. BURGESS:** Yes, I understand.

15 Commissioners, there is one -- I have a
16 situation that I'm not sure whether to ask
17 cross-examination now or not.

18 We raised in our testimony, with regard to
19 the reasonableness of used and useful, the design
20 capacity of 1.1 million gallons per day, and
21 Mr. Seidman addresses that with some specific
22 technical testimony in his rebuttal testimony. I
23 would like the opportunity for the engineer who is
24 going to testify on behalf of the citizens to address
25 that.

1 I don't know whether in order to do that I
2 need to elicit testimony from Mr. Seidman,
3 cross-examination here, or whether you would simply
4 allow us to present that testimony when Mr. Bidy
5 takes the stand.

6 **COMMISSIONER DEASON:** Mr. Melson?

7 **MR. MELSON:** It's not -- it sounds -- well,
8 let me back up.

9 The contention that the plant may have a
10 capacity of 1.1 MGD was something raised for the first
11 time in Mr. Bidy's testimony. Mr. Seidman
12 appropriately responded to that through rebuttal.
13 What it sounds like Public Counsel is asking
14 permission to do is surrebuttal, and if you decide
15 that's appropriate, I guess he can do it; but it seems
16 to me that's not your normal procedures.

17 I would prefer that Mr. Seidman's testimony
18 on that issue come after he has had a chance to hear
19 what Mr. Bidy actually says on the stand. And what I
20 hear Mr. Burgess saying is he wants Mr. Bidy to
21 expand his rebuttal testimony and anticipate some
22 things that Mr. Seidman has said.

23 **COMMISSIONER DEASON:** Mr. Burgess?

24 **MR. BURGESS:** Yes. I think -- yes, it could
25 be characterized as an issue of surrebuttal. I would

1 say in this case, though, what we have is a company
2 seeking a .9 million gallon-per-day capacity as
3 reflected in its capacity, and yet the design capacity
4 is 1.1 million. And we've simply took the 1.1 million
5 design capacity.

6 It strikes me that an explanation of that as
7 to why you're not using -- as to why they're not using
8 design capacity, if we're going to hold a company to a
9 tight evidentiary standard, that should have taken
10 place in direct testimony; but it did not. And what
11 I'm saying is out of a sense of fairness, rather than
12 getting into that, allowing us to address the same
13 issue that Mr. Seidman addresses in his rebuttal
14 testimony on about a half a page, three-quarters of a
15 page worth of testimony to address that and the same
16 technical aspects to address the same explanation that
17 he has addressed as to why they are not using the
18 design capacity.

19 **COMMISSIONER DEASON:** Mr. Burgess, I'm going
20 to direct you to ask -- limit your questions to his
21 direct testimony. If you feel necessary to engage in
22 certain questions if they are related to his direct
23 testimony or what you consider to be a flaw in his
24 direct testimony, I'll allow you that latitude.

25 Obviously Mr. Melson is free to make an

1 objection when he feels like you've strayed too far.

2 MR. BURGESS: We have no further questions.

3 Thank you.

4 COMMISSIONER DEASON: Staff?

5 CROSS EXAMINATION

6 BY MS. BRUBAKER:

7 Q Mr. Seidman, did you participate in the
8 preparation of the engineering portion in the MFRs for
9 this rate case?

10 A No, I did not.

11 Q Did you participate in the preparation of
12 the engineering portion of the MFRs for the previous
13 rate case for Mid-County? That's Docket
14 No. 921293-SU.

15 A The MFR portion itself, no.

16 Q Did you participate in this rate case prior
17 to Mid-County's protest of the PAA decision?

18 A No.

19 Q Do you know who actually prepared the
20 engineering portion for the MFRs?

21 A No.

22 Q Have you reviewed the MFRs filed by the
23 utility in this rate case?

24 A I reviewed the engineering portion.

25 Q What about the MFRs filed in the previous

1 rate case?

2 A I reviewed the engineering portion of that,
3 too.

4 Q When the utility prepared the request for
5 margin reserve in the prior rate case, they referred
6 to a Draft Rule 25-30.4325(a), Florida Administrative
7 Code; is that correct?

8 A The prior case being --

9 Q I'm sorry; 921293-SU, the one four years
10 ago.

11 A I don't know. I don't recall.

12 Q Do you know whether Mid-County relied upon
13 the same draft rule for requesting the 20% margin
14 reserve in this case?

15 A They relied on that draft rule for this
16 case; that, I know. Whether they relied on it in the
17 last one I just don't recall.

18 Q Do you know whether any other justification
19 was provided for the request for the 20% margin
20 reserve other than this draft rule?

21 A I don't believe there was any, no.

22 Q Do you know whether or not this rule was
23 actually -- or excuse me -- this draft rule was
24 actually implemented?

25 A No, it was not.

1 Q Did Mid-County ask Staff to consider such
2 factors as economies of scale, abnormal growth
3 projections, or need for extra time for construction?

4 A In this MFR?

5 Q Yes.

6 A There's no mention of that in the MFR itself
7 in the schedules. I don't know if they presented it
8 in the MFR.

9 Q Do you happen to know whether it's Staff's
10 normal procedure to use linear regression based upon
11 historical growth to forecast the anticipated growth
12 and then calculate a margin reserve if extenuating
13 circumstances are presented by the utility?

14 A It's my understanding that that has been the
15 practice in the past several years.

16 Q Do you know whether the utility presented
17 any extenuating circumstances which would justify a
18 larger margin reserve than which Mid-County
19 submitted in the MFRs for this case?

20 A I'm not sure I understand it. Would you say
21 that again?

22 Q Did the utility present any extenuating
23 circumstances which would justify a margin reserve
24 that was requested in the MFRs for this case?

25 A I'm sorry, but the fan got me. Say it one

1 more time.

2 Q Essentially what I'm looking for is, are
3 there any extenuating circumstances that would justify
4 a larger margin reserve in this case than that which
5 Staff typically looks at that would justify a 20%
6 margin reserve requested by the utility?

7 A I don't know if I can answer that straight
8 on. My margin came out to be a larger number than
9 theirs, okay. If you're asking me if there's
10 justification for that, yes, I feel there is; and I've
11 justified it.

12 The percent margin reserve that they used in
13 their MFR based on what they had thought was the rule
14 in effect, which wasn't, was 20% of the capacity of
15 the plant; and they obviously come up with different
16 numbers.

17 The question I think you asked was if there
18 were any extenuating circumstances that would justify
19 a larger margin reserve than that the Staff used. Did
20 you say that; the Commission?

21 Q If I did, I misspoke.

22 A Okay.

23 Q The Staff calculated a projected growth of
24 73 ERCs based upon the information provided by the
25 utility in the MFRs. Do you agree with that

1 projection?

2 A I didn't challenge it. I used it.

3 Q Based upon historical flows, each ERC used
4 approximately 245 gallons per day during the test
5 year. Do you agree with that at all?

6 A My figure is different than that. I used
7 the engineering exhibit to determine mine. So if it's
8 different, I don't know why. Mine is higher than
9 that.

10 Q A margin reserve of 73 ERCs multiplied by
11 245 gallons per day would result in -- and this is
12 subject to mathematical check -- 26,825 gallons per
13 day; is that correct?

14 A I'll accept your calculation.

15 Q (Inaudible, due to extraneous noise in
16 room.)

17 (Court reporter asked for clarification.)

18 Q And that equals 3% in treatment plant
19 capacity. Would you agree that the margin reserve
20 recommended by Staff, based upon the data provided by
21 the utility, represents more realistic, supportable
22 margin reserve?

23 A Say that last question again.

24 Q Would you agree that the margin reserve
25 recommended by Staff based upon the data provided by

1 the utility represents a more reasonable, realistic
2 margin reserve?

3 A Than the one I calculated? No, or else I
4 wouldn't have filed it the way I did. I disagree with
5 what Staff came up with. The annual amount I don't
6 disagree with. You know, if it's 245 gallons per day
7 and it's per ERC and it's 73 ERCs, I'm not contesting
8 that. The difference is that Staff's margin reserve
9 is based on an 18-months' time period and mine is
10 based on five years, and that's what I'm supporting.

11 Q Is it correct that you have objections to
12 Staff's use of matching flows in the numerator and
13 denominator of the used and useful equation?

14 A That's correct.

15 Q In your opinion, does it matter whether the
16 average flow data that's used in the numerator is
17 expressed in the same time frame, the same basis, as
18 the permitted capacity used in the denominator?

19 A I think I addressed that in my direct
20 testimony that it could be expressed either as the
21 same time frame with a peaking factor or expressed as
22 a different -- for purposes of determining used and
23 useful. I believe that the numerator should be a
24 peaking factor number.

25 Q So, in your opinion, it shouldn't matter

1 whether the numerator and denominator time frames
2 match or not?

3 **A** No; not for this particular purpose, no. As
4 I've already indicated in my testimony, I recalculated
5 with them matching, applying the peaking factor to
6 show the relationship. That's really what that ratio
7 does.

8 It shows what the ratio is of the average
9 use to average capacity with a peaking factor to take
10 into account for the capital investment that's in the
11 assets to be able to provide service to all of its
12 flow.

13 **Q** I'd like to walk through a hypothetical
14 situation and maybe see if you could work through it
15 with me.

16 **A** I'll try.

17 **Q** Okay. That's all I can ask.

18 **MS. BRUBAKER:** What we're handing out is for
19 everyone's ease of being on the same page with the
20 numbers and everything. It's just a quick written
21 sample of the hypothetical I'll be walking through.

22 **Q** **(By Ms. Brubaker)** I'd like to set up a
23 scenario and have you help me with the calculations.

24 Let's assume that you have a water company
25 serving a few hundred customers. The parameters are

1 as follows: It costs about \$1.00 per thousand gallons
2 to produce and distribute water to the customers. You
3 charge the customers \$1.50 per thousand gallons. Your
4 annual average daily flows are 1 million gallons, and
5 during the peak month you have an average daily flow
6 of 2 million gallons.

7 If you take the average daily flows from the
8 maximum month and divide it by the annual average
9 daily flows, am I correct that this would this give us
10 2 million -- 2 million gallons per day divided by
11 1 million gallons per day?

12 A (inaudible)

13 (Court reporter asked for clarification.)

14 A During the peak months you have average
15 daily flows of 2 million. That's what you have here.
16 And the annual average daily flows is 1 million. So
17 2 million divided by 1 million, yes.

18 Q In your opinion, is this equation correct in
19 the sense that we don't need to be concerned with the
20 time frames from which the averages have been derived?

21 A It produces what it says.

22 Q If you multiply the averages by the revenue
23 collected for these flows, would it not be correct
24 that this would result in \$1.50 multiplied by
25 2 million, which equals \$3,000? That's \$1.50 per

1 1,000 gallons.

2 A Okay.

3 Q And if you multiply the annual average daily
4 flow by the costs associated with producing that
5 water, would that not result in \$1 multiplied by
6 1 million, or \$1,000?

7 A Okay.

8 Q And, again, that's 1 per 1,000 gallons, or
9 150 (as spoken) per 1,000 gallons.

10 For clarification, is it your opinion that
11 the time frames don't matter; we're just dividing
12 gallons by gallons per day or dollars divided by
13 dollars?

14 A In what you're doing here, it does matter.
15 I didn't say that it didn't matter in all cases. I
16 think I -- you know, I hate to be repetitive by
17 explaining that what I've done in my case is I divided
18 average annual daily flows by average annual capacity
19 and multiplied it times a peaking factor, which is
20 really what that equation says.

21 I mean, I'm sorry, but, you know, the
22 relevancy of running this through with dollars to
23 determine something else doesn't seem critical to me,
24 because nothing I'm going to do in the way I've
25 proposed used and useful is ever going to result in

1 more dollars being collected by the customer than the
2 cost that's -- than the total cost that the utility's
3 incurred at 100%.

4 It's never going to go over 100 %. It's a
5 way of expressing utilization. It's not perfect, but
6 it captures something that I think is important.

7 Q So the hypothetical I provided, to take it
8 to the next step, if you take the \$3,000 by the
9 average expense to produce the water, \$1,000 you might
10 get a percent of profit of 300%. Would you disagree
11 with that calculation?

12 A No, I'm not going to disagree.

13 Q Would you agree that's the appropriate
14 treatment?

15 A No, I won't -- I haven't thought about it.
16 You know, it's been irrelevant to what I'm talking
17 about. I don't know what the purpose is.

18 Q If you were to calculate the hypothetical
19 that I provided you to a profit of 300%, would you --
20 it be, in your opinion, a misleading or inaccurate
21 percent of profit?

22 A I haven't looked at it carefully, but I
23 imagine it would be.

24 Q Would you also agree, then, that it would
25 also yield a misleading or inaccurate used and useful

1 percentage when time frames aren't considered?

2 **A** These numbers?

3 **Q** (Nodding head.)

4 **A** Don't have anything to do with used and
5 useful; just talking profit and cost per unit. I'm
6 not talking about -- that that doesn't come into the
7 formula of used and useful.

8 **Q** So in your mind those are wholly divisible
9 factors?

10 **A** Absolutely. What I'm trying to determine is
11 what are the assets that are used and useful in public
12 service by this utility in this wastewater treatment
13 plant; and there's lots of factors to consider.

14 It's not a -- it's more subjective than it
15 is objective. These things here are pretty objective.
16 And there's lots of factors to consider, and I think
17 I've listed all of them that come out of a previous
18 Commission order in -- trying to capture everything
19 through this one little formula.

20 I think if you're going to capture
21 everything, I mean, I think you have to take into
22 regard the peaking factor that plays a part in this,
23 because although this plant may have an average annual
24 daily flow capacity, and although the -- you know, it
25 meets the annual average daily flow with regard to

1 flows it goes through, in order to be able to meet
2 peak flows, they come at a cost.

3 They come at a cost of designing the plant
4 to be able to take care of those flows that come in at
5 different times and in different circumstances. In
6 other words, what I guess I'm saying is that if you
7 built a plant to serve just the average, and that was
8 it, and that actually became the average and became
9 the cap, too, you'd have a smaller plant.

10 But you need a plant which has different
11 parts of the plant and different sizes, and those have
12 capital costs; and I don't think you can capture them
13 with just an annual average.

14 Q In your professional opinion, then, it could
15 be appropriate to divide a maximum month flow figure
16 by an annual average flow figure?

17 A Yes, for purposes of determining used and
18 useful in the context which the Commission has been
19 using that formula in water and wastewater regulation;
20 yes, I think it's perfectly legitimate, and I've been
21 doing it for a long time knowing that it's legitimate.

22 **MS. BRUBAKER:** I have no further questions
23 for direct.

24 **COMMISSIONER DEASON:** Redirect?

25 **REDIRECT EXAMINATION**

1 BY MR. MELSON:

2 Q Just a couple, Mr. Seidman. The margin
3 reserve shown on your exhibits is in actuality a 13.6%
4 margin reserve; is that correct?

5 A Yes.

6 Q Not the 20% identified in the MFRs?

7 A No. The 20% in the MFRs was a percent of
8 capacity. This is -- my margin reserve comes out to
9 13.6% of flows.

10 Q And you used this, in essence, by accepting
11 the Staff's number of ERCs used toward -- (inaudible)
12 their linear regression methodology in developing your
13 numbers; is that correct?

14 A I accepted the number they determined. I
15 didn't look at what was behind it, and that was the
16 determination. So I came out with a margin reserve
17 that was shown in terms of gallons per day; converted
18 that to a percent, which comes out to their 13%. In
19 looking at margin reserve as a percent of the peak
20 flows, margin reserve as a percent of the load on a
21 plant is typical.

22 I mean, you do that with electric utilities.
23 It's not something thought up just for this industry.

24 Q Is the real point of the debate one and a
25 half years of growth versus five years of growth as

1 the basis for calculating margin reserve?

2 A Yes. Between me and the Staff, yes.

3 Q And are you aware of the Governor's recent
4 action signing into law Senate Bill 1352?

5 A Yes, I'm aware of that.

6 Q And are you aware that by the terms of that
7 statute, it does not apply to cases that were pending
8 on March 11th, I believe it is, of 1999?

9 A Yes.

10 Q Do you have an opinion from a ratemaking
11 perspective as to what consideration the Commission
12 ought to give to that legislation in resolving the
13 issues in this case?

14 MR. BURGESS: I object. This is beyond
15 the -- this is not in the prefiled testimony. This is
16 beyond the scope of the direct and this is beyond the
17 scope of the cross.

18 COMMISSIONER DEASON: Mr. Melson?

19 MR. MELSON: Staff asked questions to try to
20 highlight the difference between their 3% based on a
21 year and a half and his higher percent based on five
22 years. I'm asking him now is he aware of other
23 factors that ought to influence the decision on the
24 choice between a year and a half and five years. I
25 believe it's proper cross.

1 **COMMISSIONER DEASON:** I'll allow the
2 question.

3 **WITNESS SEIDMAN:** As to my opinion with
4 regard to how the Commission should consider the
5 passage of this legislation that the Governor signed?

6 **Q** **(By Mr. Melson)** Yes, sir.

7 **A** I would hope the Commissioners would take it
8 into consideration, since it's forward-looking and
9 we're setting rates for the future; and although I
10 know there's no obligation to do that, since this case
11 was filed long before March 11, I think it would be
12 consistent with what the intent was of that
13 legislation.

14 **MR. MELSON:** No further questions. Thank
15 you, Mr. Seidman.

16 **COMMISSIONER DEASON:** That concludes
17 Mid-County's direct case; is that correct?

18 **MR. MELSON:** Yes. I would move Exhibit 11.

19 **COMMISSIONER DEASON:** Without objection,
20 show Exhibit 11 as admitted.

21 (Exhibit 11 received in evidence.)

22 **MR. MELSON:** And, Commissioner Deason, if
23 you give me one minute, I think I've got copies of my
24 official recognition list brought in. I'd probably
25 like to get that out as part of my direct case.

1 **COMMISSIONER DEASON:** Please let's do that.

2 (Pause) We're still on the record, Mr. Melson.

3 **MR. MELSON:** I've handed out an official
4 recognition list. I've asked that that be identified
5 as Exhibit 12.

6 **COMMISSIONER DEASON:** It will be so
7 identified.

8 **MR. MELSON:** And I would move it into the
9 record.

10 **COMMISSIONER DEASON:** Without objection,
11 show it admitted.

12 (Exhibit 12 marked for identification and
13 received in evidence.)

14 **MR. MELSON:** And, Commissioner Deason, I've
15 got some other copies here. Frankly, it would help me
16 to have a five-minute break before we begin with
17 Public Counsel's witnesses.

18 **COMMISSIONER DEASON:** We're going to take a
19 longer break than that because it's been a while since
20 lunch. We're going to recess until 3:00.

21 (Brief recess.)

22 - - - - -

23 **COMMISSIONER DEASON:** Call the hearing back
24 to order. Mr. Burgess.

25 **MR. BURGESS:** Commissioner, I will call

1 Mr. Biddy to the stand.

2 COMMISSIONER DEASON: We're taking Mr. Biddy
3 out of order; is that correct?

4 MR. BURGESS: I don't know.

5 COMMISSIONER DEASON: I had him listed after
6 Mr. Larkin.

7 MR. BURGESS: If you prefer Mr. Larkin, we
8 can. It just seemed like since Mr. Seidman had just
9 testified that --

10 COMMISSIONER DEASON: I have no objection.
11 I was just clarifying. Is there any objection to
12 taking Mr. Biddy at this time?

13 MR. MELSON: No.

14 MR. BURGESS: Thank you, Commissioner.

15 COMMISSIONER DEASON: Very well.

16 TED L. BIDDY

17 was called as a witness on behalf of the Citizens of
18 the State of Florida and, having been duly sworn,
19 testified as follows:

20 DIRECT STATEMENT

21 BY MR. BURGESS:

22 Q State your name and business address,
23 please?

24 A Ted L. Biddy, B-I-D-D-Y. Address is 2308
25 Clara Kee Boulevard, Tallahassee, 32303.

1 Q Mr. Biddy, would you state your occupation?

2 A I am a professional engineer in private
3 practice doing consulting work for the general public,
4 in particular in this case the Office of Public
5 Counsel, is my client.

6 Q Would you give us a brief description of
7 your relevant educational background?

8 A Yes. I received a degree in civil
9 engineering from Georgia Tech in 1963. After that, I
10 was registered as a professional engineer in about
11 seven states, including Florida. Also, I am a
12 registered land surveyor in several states.

13 Q Would you give us a brief description of
14 your employment background since becoming an engineer?

15 A Well, that was 35, almost 36 years ago I
16 started as a professional engineer. I worked for a
17 major national consulting firm for the first seven
18 years of my employment, all over the southeast,
19 essentially. I then was in private practice with my
20 own firm from 1969 until 1991, with an average
21 employment of 20 to 50 employees. I then was manager
22 of Baskerville-Donovan's Tallahassee office for a
23 period from 1991 to 1998, to October of 1998. And in
24 October of '98 I went back into private practice as a
25 sole proprietor.

1 Q Are you a member of any professional
2 associations or societies?

3 A Yes, quite a number of them. Florida
4 Engineering Society; Florida Society of Surveyors and
5 Mappers; the National Engineering Society; the
6 American Council of Engineering Consultants; the
7 American College of Forensic Examiners. Past member
8 of American Society of Civil Engineers. I think that
9 covers most of them.

10 Q Have you been qualified to testify as an
11 expert witness before in any forums in this state or
12 other court systems?

13 A Yes, sir. I have testified in many courts
14 and jurisdictions throughout the State of Florida,
15 Alabama, Georgia, Mississippi, Louisiana, South
16 Carolina, and a few other states.

17 Q Have you ever testified before the Florida
18 Public Service Commission as an expert for used and
19 useful analysis?

20 A Yes, I have, on probably seven or eight
21 different occasions.

22 Q Mr. Bidy, have you prefiled testimony in
23 this docket?

24 A I have.

25 Q Does that testimony include exhibits

1 identified in the testimony as TLB Exhibits 1 through
2 10?

3 A They do.

4 MR. BURGESS: Commissioners, I would, at
5 this point, ask Mr. Bidy to present a summary of his
6 testimony in this docket.

7 COMMISSIONER DEASON: Would you like to have
8 those exhibits identified?

9 MR. BURGESS: Yes. Excuse me. Yes, I would
10 like to have them identified.

11 COMMISSIONER DEASON: They will be
12 identified as Composite Exhibit 13.

13 MR. MELSON: Commissioner Deason, there are
14 three of those exhibits that we are ultimately going
15 to object to because they relate to issues that have
16 been ruled out of the case. I don't know if that
17 affects the way you want to number them. Otherwise,
18 we will end up admitting part of them; potentially
19 part of an exhibit. I'm going to object to Part 2 of
20 Exhibit 8 and all of Exhibits 9 and 10.

21 MR. BURGESS: Commissioner, we are going to
22 argue the relevance of those exhibits and some of the
23 testimony. At this point, I suggest that -- well,
24 either way you want. I was thinking we would go ahead
25 and finish with the testimony and then deal with the

1 issue of whether it should be stricken from the
2 record.

3 **COMMISSIONER DEASON:** I appreciate counsel
4 putting us on notice of the coming objection, but for
5 purposes, at this time the entire composite exhibit
6 will be identified as 13. We will deal with specific
7 objections at the appropriate time.

8 (Exhibit 13 marked for identification.)

9 **MR. BURGESS:** Commissioners, at this point,
10 I was going to seek Mr. Bidy to provide a summary of
11 his testimony and it's my intention to move into the
12 record his prefiled testimony and his -- his prefiled
13 testimony after he provides a summary. Either way. I
14 mean, it doesn't matter. Otherwise, I simply move
15 this in. Again, we're going to get into a situation
16 where Mr. Melson has specific items that need --

17 **COMMISSIONER DEASON:** Well, perhaps it would
18 be better to go ahead and move the testimony and if
19 there's an objection, then we'll know to what extent
20 the summary can take place.

21 **MR. BURGESS:** Very good. I would then move
22 the prefiled testimony offered by Mr. Bidy into the
23 record.

24 **MR. MELSON:** And we would object to portions
25 of the testimony that deal with used and useful for

1 effluent disposal and used and useful for collection
2 lines. The corresponding Issues 5 and 6 were the
3 subject of an earlier motion which basically took
4 those issues out of the case. I had attached to my
5 memorandum an identification of the testimony that was
6 at issue.

7 Let me -- it's fairly short. Let me just
8 read it. It is Page 4, Line 8. I would move to
9 strike the words, "and the effluent disposal
10 facilities". At Page 9, Lines 15 through 16, I move
11 to strike, "and the effluent disposal facilities." At
12 Page 12, Line 5, I move to strike the words, "and the
13 effluent disposal facilities." Page 13, Line 1, I
14 would move to strike the words "and the effluent
15 disposal facilities." And I move to strike Page 13,
16 Lines 2 through Page 14, Line 14, all of which
17 testimony relates to used and useful for collection
18 lines.

19 And then I will have an objection to the
20 corresponding exhibits which are Part 2 of Exhibit
21 TLB-8 and all of Exhibits TLB-9 and TLB-10.

22 **COMMISSIONER DEASON:** Mr. Burgess.

23 **MR. BURGESS:** Yes. I will first say that
24 the identification of those lines I don't disagree
25 with as falling into the category of the issue in

1 question. So, we'll get back to that. I'm not going
2 to -- I don't disagree that these lines that he has
3 identified covered the subjects that he is speaking
4 of.

5 I further, at this point, understand and
6 accept the Commission's decision to restrict this
7 hearing to the issues raised by the utility. Why I
8 think this, nevertheless, remains relevant is because
9 this gives the Commission an overall picture of what
10 the company has already received or what the company
11 has received in the aggregate of the Proposed Agency
12 Action on this particular issue, on used and useful.

13 In other words, our contention is that you
14 grant -- in arriving at a judgment on any number of
15 things, you grant an amount that reflects a judgment
16 on the reasonableness in its aggregation, used and
17 useful. There are all these things for which some
18 amount might be a more aggressive approach and some of
19 that amount might be a more liberal approach. And
20 this is just pointing out to the Commission that there
21 are some sections, even if we are not allowed to raise
22 them and get the Commission -- and seek the Commission
23 to make an adjustment for those items that we have
24 made, it still reflects that on whole, on this issue
25 of used and useful, the company has been given,

1 through the PAA process, a very liberal amount, and
2 this just presents the whole picture of that used and
3 useful calculation.

4 **COMMISSIONER DEASON:** Any response to that,
5 Mr. Melson?

6 **MR. MELSON:** I think the relevant question
7 is: When you are considering the used and useful
8 calculation for the wastewater treatment plant, and
9 Mr. Bidy's views on what used and useful for effluent
10 disposal might have been, and will his views on what
11 used and useful for collection system might have been
12 be relevant to your decision on wastewater treatment
13 plant, I submit the easy answer to that is no.

14 **COMMISSIONER DEASON:** Consistent with my
15 understanding of the Commission's decision on Issue A
16 I am going to grant the objection, recognize the
17 objection, and those portions as identified by
18 Mr. Melson will be stricken from the prefiled
19 testimony of Mr. Bidy and that also includes portions
20 of Exhibit TLB-8 as well as all of Exhibits TLB-9 and
21 all of Exhibit TLB-10.

22 **MR. BURGESS:** Subject to that ruling,
23 Commissioner, I would then move the testimony of
24 Mr. Bidy into the record.

25 **COMMISSIONER DEASON:** Consistent with the

1 prior ruling, then the remainder of the testimony will
2 be inserted into the record.

3 (Whereas Part 2 of TLB-8, TLB-9 and TLB-10
4 of Composite Exhibit No. 13 were stricken.

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1 Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

2 2 3

2 A. My name is Ted L. Bidby. My business address is 2308 Clara Kee Boulevard,
3 Tallahassee, Florida 32303.

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.

21 I have served as the principal and chief designer for numerous utility
22 projects. Among my major water and wastewater facilities designs have been a
23 2,000 acres development in Lake County, FL; a 1,200 acres development in
24 Ocean Springs, MS; a 4-mile water distribution system for Talquin Electric

1 Cooperative, Inc. and a 320-lot subdivision in Leon County, FL.

2 2 4

2 **Q. WHAT ARE YOUR PROFESSIONAL AFFILIATIONS?**

3 A. I am a member of the Florida Engineering Society, National Society of
4 Professional Engineers, and Florida Society of Professional Land Surveyors.

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A STATE OR
6 FEDERAL COURT AS AN ENGINEERING EXPERT WITNESS?**

7 A. Yes, I have had numerous court appearances as an expert witness for cases
8 involving roadways, utilities, drainage, stormwater, water and wastewater
9 facilities designs.

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA
11 PUBLIC SERVICE COMMISSION (PSC OR COMMISSION) FOR USED
12 AND USEFUL ANALYSIS AND OTHER ENGINEERING ISSUES?**

13 A. Yes, I have testified before the PSC for Docket Nos. 950495-WS, 950387-SU,
14 951056-WS and 960329-WS on engineering issues and used and useful analysis.

15 I also testified on the remand case of Docket No. 950387-SU on behalf of the
16 Citizens of State of Florida.

17 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

18 A. The purpose of my testimony is to provide engineering testimony on the used
19 and useful calculation issues for this rate case, including the wastewater
20 treatment plant, effluent disposal system, collection system and other
21 engineering related issues. In particular, I address why it is appropriate, from an
22 engineering perspective, to use annual average daily flow in both the numerator
23 and denominator of the used and useful calculation for the WWTP of Mid-
24 County Services, Inc.'s (Mid-County).

1 **Q. DO YOU AGREE WITH THE USED AND USEFUL METHODOLOGY**
2 **PROPOSED BY MID-COUNTY FOR ITS WASTEWATER**
3 **TREATMENT PLANT (WWTP), AND EXPLAIN WHY?**

4 A. No, I do not. Mid-County asserts that the average daily flow of the maximum
5 month (ADFMM) should be used for the numerator in the calculation of used
6 and useful percentage, regardless of how the plant capacity (denominator) is
7 permitted or designed. Mid-County witness Mr. Seidman argues that ADFMM
8 should be used even though the plant is permitted on the basis of annual average
9 daily flow (AADF) because PSC has been using it for numerous rate cases.
10 However, it is clear that AADF and ADFMM are not on the same basis. I agree
11 with PSC staff's recommendation to use the correct match method to calculate
12 the used and useful percentages.

13 The capacity of a wastewater treatment plant can be designed on the
14 basis of either AADF or ADFMM. The Florida Department of Environmental
15 Protection (FDEP) generally depends on the engineering design report to issue
16 the plant permit capacity. Therefore, if AADF is used in the design report, the
17 permit will be in AADF or vice versa. I am not aware of any case that FDEP
18 had issued a permit in a different flow basis than the one used in the engineering
19 design report. Therefore, I cannot agree with Mid-County's proposal because it
20 does not match the flow with the permitted capacity of the plant.

21 **Q. IS IT CORRET THAT USED AND USEFUL IS A CONCEPT, AN**
22 **ABSTRACT IDEA, SO MATHEMATICAL RULES AND SCIENTIFIC**
23 **TERMS DO NOT APPLY?**

24 A. No, that is incorrect. The used and useful determination indeed is a concept but

1 it is not an abstract idea. However, all the mathematical rules and scientific
2 terms should be followed and applied to the concept. The used and useful
3 process is a combination of economic regulation and engineering design
4 concept. The engineering design perspective still should dictate the economic
5 regulation in the used and useful calculations.

6 **Q. WHAT IS THE APPROPRIATE METHOD IN CALCULATING THE
7 USED AND USEFUL PERCENTAGE FOR A WASTEWATER
8 TREATMENT PLANT ~~AND THE EFFLUENT DISPOSAL FACILITIES?~~**

9 A. It depends on what basis the wastewater treatment plant capacity is permitted by
10 FDEP or designed by the engineers. If the plant capacity is permitted or
11 designed on the basis of AADF, then the test year AADF should be used for the
12 numerator. On the other hand, if the plant capacity is permitted or designed on
13 the basis of ADFMM, then the test year average daily flow of maximum month
14 (ADFMM) should be used. Generally, the FDEP permitted capacity is the same
15 as the original designed capacity. Normally the treatment plant and its effluent
16 disposal facility have the same capacities.

17 This method will insure that both numerator and denominator are arrived
18 at from the same basis, i.e. apples to apples or oranges to oranges. To compute
19 the used and useful percentage as Mid-County suggests would be to mix
20 comparisons of ADFMM to AADF and would yield a percentage with no
21 meaning, as would comparing apples to oranges.

22 **Q. CAN YOU USE AN EXAMPLE TO DEMONSTRATE THE
23 APPROPRIATE METHODOLOGY?**

24 A. Yes. See the following examples for a simple demonstration.

1 Example 1 Wastewater Plant A:
 2 Plant Design Capacity = 1.0 MGD on ADFMM basis
 3 FDEP Permit Capacity = 1.0 MGD on ADFMM basis
 4 Plant ADFMM = 0.9 MGD during the test year
 5 Then, Used & Useful % = 0.9 MGD/1.0 MGD = 90%

6 Example 2 Wastewater Plant B:
 7 Plant Design Capacity = 1.0 MGD on AADF basis
 8 FDEP Permit Capacity = 1.0 MGD on AADF basis
 9 Plant AADF = 0.7 MGD during the test year
 10 Then, Used & Useful % = 0.7 MGD/1.0 MGD = 70%

11 Example 3 Wastewater Plant C:
 12 Plant Design & Permit Capacity = 1.0 MGD on ADFMM basis
 13 or 0.8 MGD on AADF basis
 14 Plant AADF = 0.7 MGD during the test year
 15 Plant ADFMM = 0.9 MGD during the test year
 16 Then, Used & Useful % = 0.7 MGD/0.8 MGD = 87.5%
 17 or 0.9 MGD/1.0 MGD = 90%

18 The inappropriate methodology requested by MID-COUNTY can be
 19 seen from the following example.

20 Example 4 Wastewater Plant D:
 21 Plant Design & Permit Capacity = 1.0 MGD on AADF basis
 22 Plant ADFMM = 0.9 MGD during the test year
 23 Plant AADF = 0.7 MGD during the test year
 24 Then, Used & Useful % = 0.9 MGD/ 1.0 MGD = 90%

1 On the other hand, the correct used and useful percentage should
2 be 0.7 MGD/1.0 MGD = 70%. This is a 20% difference which should
3 not be granted to the utility.

4 Clearly, this method of computing the used and useful percentage
5 artificially inflates the results by using the ADFMM value in the numerator
6 rather than the AADF value which would obviously be much lower.

7 Note: The above used and useful calculations do not include any
8 adjustments for margin reserve, excess inflow and infiltration, etc.

9 Examples 1 and 2 illustrate the significance of plant flow design and permit
10 basis in calculating the used and useful percentages. Example 3 demonstrates
11 that the AADF match calculation generates a similar used and useful percentage
12 as the ADFMM match to account for the peak flows. Example 4 illustrates a
13 meaningless used and useful percentage and demonstrate the unjustified extra
14 used and useful credit given to the utilities in the past.

15 Although the FDEP permit may be expressed in AADF, the plant still
16 can handle a higher hydraulic peak flow as designed by the engineer. Therefore,
17 it is fair and logical to use AADF flows to AADF capacity for the used and
18 useful calculation. This certainly does not mean all hydraulic peak flows are
19 ignored, it just assumes the peak flow to average flow ratio stays the same as
20 designed by the engineer.

21 **Q. DOES THE FDEP PERMIT ALWAYS HAVE A CLEAR DESIGNATION**
22 **OF THE PLANT'S PERMITTED CAPACITY?**

23 A. In the past, the FDEP permits normally did not specifically state the permitted
24 plant capacity is in terms of AADF or ADFMM. However, since 1992 or 1993

1 all FDEP permits are clear on the flow basis because the permit applicants are
2 required to fill out the basis of design flow in the permit application forms.

3 **Q. DOES THE METHODOLOGY PROPOSED BY MID-COUNTY**
4 **INFLATE THE USED AND USEFUL PERCENTAGE AND ADVERSELY**
5 **IMPACT THE CURRENT CUSTOMERS?**

6 A. Yes, the mismatch of ADFMM to AADF will create a higher used and useful
7 percentage than the correct match of AADF to AADF calculation. Therefore,
8 the current customers will pay higher rates because the rate base will be inflated.

9 **Q. WILL THE CORRECT MATCH OF AADF PLANT FLOW TO AADF**
10 **PLANT CAPACITY OR ADFMM PLANT FLOW TO ADFMM PLANT**
11 **CAPACITY GENERATE A FAIR USED AND USEFUL PERCENTAGE**
12 **FOR THE UTILITY?**

13 A. Yes. The correct match of plant flows to plant capacities will generate fair used
14 and useful percentages for the customers and the utilities. The reason is that a
15 WWTP is designed by the utility's engineer, and the FDEP uses the engineer's
16 preliminary design report to rate the permit capacity. In the preliminary design
17 report, the plant design flow is determined by the engineer: it could be AADF,
18 ADFMM, three-month average daily flow or other flow basis as permitted by
19 FDEP. The engineers also determined the appropriate design influent
20 characteristics: such as biochemical oxygen demand (BOD), total suspended
21 solids (TSS), total nitrogen, total phosphorous, etc. for the particular plant flow
22 designed for. Therefore, the correct flow basis match will generate a fair used
23 and useful percentage because everything is based on the engineering design.

24 **Q. DOES THE CORRECT MATCH METHOD IGNORE THE**

1 **ASSOCIATED PLANT COSTS TO HANDLE THE PEAK FLOWS?**

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2 A. No. Though most of the time engineers use AADF as the basis of design flow,
3 peak flow conditions are still considered in the hydraulic loading design.
4 Historic peaking factors are generally used to project the peak flow conditions
5 from the AADF. Therefore, the used and useful percentage should be the same
6 or very close, whether AADF or ADFMM is used as the basis for used and
7 useful calculation.

8 The correct match method does not ignore peak flows since the
9 costs of plant facilities to handle the peak flows are included in the total plant
10 construction costs (i.e. plant in service or rate base). The ratios or peaking
11 factors between AADF and ADFMM are determined by the utility engineer.
12 That relationship cannot be skewed by only applying peaking factors to the test
13 year flow and not the plant capacity.

14 **Q. IS THERE ANY BENEFIT THE UTILITY CAN ENJOY FROM THE**
15 **CORRECT MATCH OF PLANT FLOW TO PLANT CAPACITY**
16 **CALCULATION?**

17 A. Yes. The PSC is only comparing the hydraulic loading rate to the WWTP
18 capacity which is actually based on both hydraulic and biological loading rates,
19 i.e. the design flows and wastewater strength. When the influent wastewater
20 strength is less than the original design, the same plant will be able to handle
21 more flow because less solids are generated. However, the original plant design
22 capacity is still used as the denominator for the used and useful calculation.
23 Generally speaking a WWTP is designed to handle a hydraulic flow rate greater
24 than the designed AADF flow rate.

1 In reality, the PSC could increase the plant capacity and lower the used
 2 and useful percentage. However, I do not recommend that practice because it
 3 will be a time consuming and controversial task for the PSC staff. Some
 4 components in a WWTP are designed for not just the maximum day flow but the
 5 peak hourly flows. In addition, an equalization tank is normally designed to
 6 dampen the peak hourly flows for small wastewater treatment facilities. Most of
 7 the time, the PSC staff calculates a single used and useful percentage based on
 8 the total plant design capacity instead of individual used and useful calculation
 9 for each component in the plant. Therefore, I believe that the utilities still will
 10 benefit from the correct match of plant flows to plant design capacities for the
 11 used and useful calculations.

12 **Q. DO YOU HAVE ANY COMMENTS REGARDING THE FIRM**
 13 **RELIABLE CAPACITY USED IN THE MFR'S SCHEDULE F-6 AND**
 14 **WHAT IS THE APPROPRIATE PLANT CAPACITY THAT SHOULD**
 15 **BE USED IN THE CALCULATIONS OF WWTP ~~AND EFFLUENT~~**
 16 **~~DISPOSAL FACILITY?~~**

17 A. Normally the term of firm reliable capacity is applied to the groundwater wells
 18 and water storage tanks. For example in the *Recommended Standards for Water*
 19 *Works*, 3.2.1.1 Source Capacity, the similar concept is stated:

20 The total developed groundwater source capacity shall equal or
 21 exceed the design maximum day demand and equal or exceed the
 22 design average day demand with the largest producing well out of
 23 service.

24 In the wastewater industry, Class I reliability is frequently used and it is

1 required for a WWTP discharging effluent to surface waters. I assume the firm
2 reliability used by the Utility is referring to the Class I reliability requirement. 2 3 2
3 However, according to the general guidance of MCD-05 in Chapter 62-
4 610.300(1)(C), F.A.C., the remaining components are not required to handle the
5 full design plant flow when one unit is out of service. For example, with one
6 chlorine contact chamber (CCC) out of service, the remaining CCC shall handle
7 50% of the total design flow. For final sedimentation basins and filters, with
8 one unit out of service, the remaining unit(s) shall be able to handle 75% of the
9 total design flow. Apparently the reliability requirement does not mandate the
10 remaining treatment unit(s) to handle the full design plant flow. Therefore, I
11 believe that using the firm reliable plant capacity and the test year plant flow
12 will inappropriately inflate the used and useful percentages.

13 According to Mid-County's consulting engineers, the plant design flow
14 is 1.1 MGD. This information has been stated in several documents and they are
15 attached as Exhibits TLB-1, 2 and 3. It is my understanding that in 1980 a
16 600,000 GPD plant expansion was made to the original 500,000 GPD plant.
17 Though the existing permitted capacity is 0.9 MGD AADF, I believe that the
18 plant still has 1.1 MGD capacity. The 0.9 MGD permit capacity was derived
19 from converting 200,000 gallons of the aeration basin into the existing
20 equalization basin. Other than that, all the treatment and effluent disposal
21 facilities are still designed for 1.1 MGD. For example, the denitrification filters
22 are designed and constructed at 1.1 MGD for the average flows and 3.3 MGD
23 under the peak flow condition. See Exhibit TLB-4 for the specification of
24 gravity deep-bed filters.

1 Mid-County's WWTP is an advanced wastewater treatment plant 2 3 3

2 because it discharges treated effluent to Curlew Creek. To meet the stringent
3 standards, this facility utilizes chemical treatment to remove the nitrogen and
4 phosphorous nutrients. Ferric sulfate is added at aeration basins for phosphorous
5 removal and methanol is applied at the denitrification filters to remove nitrogen.

6 In other words, this is not a biological nutrient removal plant. Therefore, the
7 nutrient removal process is not heavily dependent upon the hydraulic retention
8 time of the aeration basins. To maintain the 1.1 MGD design capacity, the
9 current design mean cell residence time or solids retention time (SRT) needs to
10 be maintained and that can be achieved by keeping a higher concentration of
11 mixed liquor (MLSS) in aeration basins and wasting less sludge. The normal
12 MLSS range is 3,000 to 6,000 mg/L. The hydraulic retention time (HRT) loss to
13 the equalization basin will make the WWTP operation toward the modified
14 extended aeration mode. For 1.1 MGD design flow the HRT will be 19.6 hours
15 instead of 24 hours. However, it is still within the design range of 18 to 36
16 hours for the extended aeration process. See Exhibit TLB-5 for the normal
17 ranges of process design parameters. Therefore, it is fair to say this plant still
18 has the 1.1 MGD design capacity with 900,000 gallons of aeration basin volume.

19 During my file review at FDEP Tampa Office, I found out that the plant
20 capacity has been in question throughout the years. In the past, the original
21 utility owner had requested the plant to be rated at a lower permit capacity than
22 the actual design capacity to reduce the testing and operator requirements. This
23 is stated in the May 25, 1993 letter from Mid-County to FDEP, per Exhibit
24 TLB-6. On the other hand, when the committed flows were near or exceeding

1 the permit capacity, Mid-County requested FDEP to add 100,000 GPD capacity
2 back to the permit and recalculated the committed flows to prove adequate plant
3 capacity to serve new development. This is also documented in Exhibit TLB-7.

4 Therefore, I believe that 1.1 MGD capacity should be used for calculating the
5 used and useful percentages of WWTP ~~and effluent disposal facilities.~~

6 **Q. IS IT APPROPRIATE TO USE A PEAKING FACTOR TO INCREASE**
7 **THE USED AND USEFUL PERCENTAGE?**

8 A. No, it is inappropriate to apply a peaking factor after the used and useful
9 calculation as proposed by the Utility's witness Mr. Seidman. Peaking factors
10 are used to estimate the peak hourly flows and maximum daily flows from the
11 average daily flows when engineers are designing water or wastewater treatment
12 process units. For example on pages 10-4 and 10-5 of the *Recommended*
13 *Standards for Wastewater Facilities*, a peaking factor is used to estimate the
14 hydraulic capacity for a wastewater facility to serve its collection system.
15 Therefore, the treatment plant is designed to handle the anticipated peak flow
16 conditions, though the design flow basis may be in AADF instead of ADFMM
17 or maximum daily flow. Applying a peaking factor to the test year plant flow
18 and not to plant capacity will again artificially inflated the used and useful
19 percentage. Arbitrarily applying a peaking factor in the used and useful
20 determination is incorrect, and it is controversial because the peaking factors can
21 vary in a wide range.

22 **Q. HAVE YOU PREPARED ANY USED AND USEFUL CALCULATION**
23 **SCHEDULES FOR THIS CASE?**

24 A. Yes, please see Exhibit TLB-8 for the recommended used and useful

percentages of the wastewater treatment plant ~~and the effluent disposal facilities.~~

~~Q DO YOU AGREE THAT THE COLLECTION SYSTEM SHOULD BE
100% USED AND USEFUL? IF NOT WHAT IS THE APPROPRIATE
USED AND USEFUL PERCENTAGE?~~

235

A. No. Though the Mid-County's service area apparently is reaching the build-out condition, there are still many vacant lots that can be developed in the future. For example, the Brookfield Villas subdivision was under development during the test year 1996. According to Mid-County's August 1998 Capacity Analysis Report on page 3, "The major known development in this service area, Brookfield Villas Project, could add approximately 150 additional units over the next 5 - 10 years." See Exhibit TLB-1. Currently it still has one house under construction at the Brookfield Villa Phase II. Therefore, it is not justified to request 100% used and useful for the collection system. These new units will utilize the existing collection system which is already constructed, including gravity sewers and lift stations. This condition is revealed by the service area map filed with the MFR's.

I do not separate the gravity sewer systems and the force main systems because they are integrated together and individual used and useful percentage will be difficult to determine. For example, when a force main discharge wastewater into a gravity sewer downstream, it will be more meaningful and feasible to determine the overall used and useful percentage for the force main and the gravity sewer systems together.

Normally the used and useful percentage of the collection system is ~~based on the test year ERC and total ERC available of the existing system. It~~

1 ~~this case, Mid County only provides sewer service and the water service is~~
2 ~~provided by adjacent municipalities. It is difficult to figure out exactly how~~
3 ~~many gallons of water are used by an average single family customer. In~~
4 ~~addition, there are so many commercial customers within the service area.~~
5 ~~Therefore, no accurate ERC information was provided in the MFR's. For~~
6 ~~example, Mid-County used 275 gpd/ERC as the yard stick to calculate the~~
7 ~~existing and total ERC numbers for Schedules F-8 and 10. Actually 275~~
8 ~~gpd/cap is the EPA guideline for excess inflow determination.~~

9 ~~Therefore, the regular procedure is not feasible for this case. One~~
10 ~~alternative is to count the gravity sewer linear footage to determine the used and~~
11 ~~useful percentage. Wherever the gravity sewer line runs through undeveloped~~
12 ~~property, that section of sewer line is considered non-used and useful. By this~~
13 ~~method, the collection system should be 90.47% used and useful. See Exhibit~~
14 ~~Table 9 for more details.~~

15 **Q. IS A 5-YEAR MARGIN RESERVE APPROPRIATE FOR THE USED**
16 **AND USEFUL DETERMINATION?**

17 **A.** *No. This issue has been discussed in many prior cases that I have been*
18 *involved. The rationale used for the 5-year time period is from the FDEP rules*
19 *Chapter 62-600.405(8)(a), F.A.C. The purpose of this rule is to ensure that the*
20 *utilities will make timely planning, design and construction of needed*
21 *expansion. However, the only requirement is to have a professional engineer*
22 *registered in Florida to sign and seal a statement that "planning and preliminary*
23 *design of the necessary expansion have been initiated" when the permitted*
24 *capacity will be equaled or exceeded within the next five years. It is not*

1 justified to require existing customers to pay for the future 5-year plant capacity
2 just based on that statement. The utility owner is required to comply with the
3 rules not the existing rate payers.

4 **Q. DO YOU HAVE ANYTHING ELSE TO ADD TO YOUR TESTIMONY?**

5 A. Yes. There is a total amount of \$296,659 of Construction Work in Progress in
6 Schedule A-6 on page 10B of the MFR's. Besides two of the nine projects
7 which are operation and maintenance related, the remaining projects are capital
8 investment,

9 The two operation and maintenance projects are: (1) Line No. 4-Remove sand
10 and grit from the WWTP tankage; and (2) Line No. 6-Clean and televise portion
11 of the sewer lines impacted by the telephone cable installation.

12 However, two of the remaining seven projects are associated with
13 relocating sanitary sewer lines along Curlew Road and Belcher Road. These
14 projects are required because the roadways were widened and all utility lines
15 need to be relocated according to the new right of way line. The total of these
16 two projects are \$195,891.

17 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

18 A. Yes.

1 Q (By Mr. Burgess) Mr. Bidby, would you
2 provide -- recognizing the limitations that have been
3 placed on your testimony by the previous ruling, would
4 you then provide a summary to the Commission of your
5 testimony?

6 A Yes, sir. My testimony will deal with the
7 used and useful calculations for the wastewater
8 treatment plant for the Mid-County treatment plant
9 here -- located here in this area. Particularly, my
10 testimony deals with why it's appropriate to use the
11 same flow basis in both the numerator and denominator
12 in the used and useful calculation.

13 Specifically, my testimony is that the used
14 and useful calculations, that you should use the same
15 flow basis, whether it be average daily flow or
16 maximum month daily flow, in both numerator and
17 denominator.

18 And in this case, we will use the average
19 daily flow as presently existing as compared to the
20 design capacity of the treatment plant and average
21 daily flow. Otherwise, to use anything else is
22 dimensional and meaningless, is an artificial number
23 and artificially inflates the used and useful
24 calculation.

25 Peak flows are not ignored when one uses the

1 average daily flow in the capacity of the plant, or in
2 the flow of the numerator, for that matter.

3 When you design a sewage treatment plant,
4 each component of that plant, there is a peaking
5 factor that you use to up-size that particular part of
6 the plant in accordance with procedures that are
7 required for designing sewage treatment plants per the
8 regulatory agencies. So your peaking factors are
9 already built into the components of the plant and the
10 dollars for those particular items are already there,
11 so you do not use an artificial peaking factor to peak
12 those flows, but they're already there and anything
13 else would be dimensionally meaningless to try to
14 compare maximum daily flow -- maximum month flow to
15 annual average flow. I know that's been done in the
16 past but that was a gift to the utilities, in my
17 opinion.

18 Also, my testimony deals with the actual
19 capacity of this plant as presented by the utility
20 itself in their Capacity Analysis Report, which is my
21 TLB-1 exhibit, and the Operation and Maintenance
22 Report by their consulting engineers, which is TLB-2
23 to my testimony, both of which clearly state the
24 design capacity is 1.1 million gallons per day. And
25 their average daily flow is something like 720,000

1 gallons per day, which yields a used and useful
2 percentage of 64%, not including any margin reserve
3 which the Office of Public Counsel, of course, opposes
4 in any form.

5 So, essentially that's the gist of my
6 testimony without considering collection systems and
7 any other factors.

8 Q You say then you have used -- you came upon
9 the use of the 1.1 million-gallon per day design
10 capacity based on documents of the utility itself?

11 A That's correct. Yes, sir.

12 Q Are you aware of why the utility did not use
13 1.1 million gallons per day?

14 A Yes, sir, I am. That's other exhibits to my
15 testimony where they request the DEP to lower the
16 permitted capacity in order to not have to present
17 certain reports which certain levels of treatment
18 plants trigger, and that's understandable that they
19 would want to do that.

20 So in one case they ask the DEP to lower it
21 to 800,000 gallons per day and then when the DEP gave
22 them a notice that they were exceeding that, they
23 said, "oh, well, let's borrow another 100,000, since
24 we've really got a 1.1 million gallon capacity" and
25 the DEP did so.

1 So, it's whatever is convenient from an
2 operational standpoint for them, and in order to
3 classify this plant from a permitting capacity, that's
4 what design capacity plant for facilities to treat
5 sewage is, 1.1 million gallons per day.

6 Q Do you know whether the utility agrees with
7 you, that this 1.1 million gallons per day can be
8 achieved without additional expenditure of capital?

9 **MR. MELSON:** I'm going to object. I
10 probably indulged longer than I should. This goes
11 beyond his direct testimony. He is trying now to
12 respond Mr. Seidman's rebuttal, and it's simply beyond
13 the scope of his direct.

14 **COMMISSIONER DEASON:** Mr. Burgess.

15 **MR. BURGESS:** Yes. Commissioner, we took
16 the documents as they were as -- I laid the predicate
17 for this, as Mr. Bidy indicated, the utility
18 documents. And we simply relied on them as to the
19 capacity of the plant, as to the true capacity of the
20 plant.

21 It is true then for the first time in
22 rebuttal testimony Mr. Seidman then presents the
23 reason the utility, he says for the first time -- he
24 gives the reason that he believes, as a practical
25 matter, the utility cannot achieve this \$1.1 million

1 without additional expenditure of capital. And I
2 think we should have the opportunity to present --
3 since this is the first time that this has come out.
4 This is new data. This is new information. That we
5 should have the opportunity to at least respond to the
6 information that's brought forward.

7 **COMMISSIONER DEASON:** Mr. Burgess, I'm going
8 to limit the summary to what is in the prefiled
9 direct, and obviously, you will have the opportunity
10 to conduct cross examination on the rebuttal testimony
11 of Mr. Seidman. And at the conclusion of that, if you
12 feel that it's necessary to bring Mr. Bidy back, I
13 will engage in a motion to have Mr. Bidy brought back
14 and Mr. Melson then can respond to that at that time.

15 **Q** (By Mr. Burgess) Mr. Bidy, are you
16 familiar with the peaking factor that has been brought
17 forward by Mr. Seidman?

18 **MR. MELSON:** Same objection. Beyond the
19 scope of his direct.

20 **MR. BURGESS:** Commissioner, on Page 12 of
21 Mr. Bidy's direct testimony, he addresses
22 specifically, in response to an explicit question,
23 about the peaking factor. He addresses this.

24 **MR. MELSON:** I'm sorry. Objection
25 withdrawn.

1 **WITNESS BIDDY:** Yes. I am familiar with the
2 peaking factor that Mr. Seidman testified to.

3 **Q** **(By Mr. Burgess)** Would you explain your
4 understanding of what that is and what it actually
5 does?

6 **A** As I understood Mr. Seidman testify, he
7 testified that the peaking factors take into account
8 the peak flows that occur in the plant so that those
9 facilities could be taken into account to handle those
10 peak flows.

11 **Q** Is that, in fact, what happens when one uses
12 this peaking capacity -- this peaking factor?

13 **A** No, it does not. Since the components are
14 already designed with a peaking factor, it's simply
15 double-dipping to use a peaking factor.

16 **MR. BURGESS:** Commissioner, those are all
17 the questions that I have. I would ask, if it's
18 appropriate at this point, to enter the exhibits into
19 the record and tender Mr. Bidy for cross examination.

20 **COMMISSIONER DEASON:** I will allow you to
21 move exhibits after cross examination.

22 **MR. BURGESS:** Very good.

23 **COMMISSIONER DEASON:** Mr. Melson.

24 **MR. MELSON:** Commissioner Deason, with
25 regard to order of cross, Mr. Bidy's issues, the

1 Staff's position much more aligned with Mr. Bidy's
2 than it is with the utility's. We would like to ask
3 the Staff cross first and we be permitted to cross
4 last.

5 **COMMISSIONER DEASON:** Staff have any
6 objection to proceeding with cross at this point?

7 **MS. BRUBAKER:** Staff has no objection.
8 However, might we have one minute?

9 **COMMISSIONER DEASON:** Sure.

10 (Brief pause.)

11 **CROSS EXAMINATION**

12 **BY MS. BRUBAKER:**

13 **Q** Just one question, Mr. Bidy. A treatment
14 plant is designed to handle peak flows by the use of a
15 surge tank; is that correct?

16 **A** That's one of the methods to buffer the
17 flows into the plant, but no, the actual components
18 inside the plant are designed to handle peak flows as
19 well.

20 **MS. BRUBAKER:** Thank you. That's all Staff
21 has.

22 **COMMISSIONER DEASON:** Mr. Melson.

23 **CROSS EXAMINATION**

24 **BY MR. MELSON:**

25 **Q** Mr. Bidy, I'm Rick Melson representing the

1 utility.

2 Your background in the wastewater field is
3 primarily as a design engineering; is that correct?

4 **A** Design, yes, I would say that is correct.

5 **Q** Okay. Is it fair to assume you've designed
6 a number of wastewater treatment plants during your
7 career?

8 **A** Yes.

9 **Q** Is it also fair to say that none of the
10 wastewater treatment plants that you've designed was
11 for a PSC-regulated wastewater utility?

12 **A** That is correct.

13 **Q** Would you agree with me that used and useful
14 is a ratemaking concept, not an engineering design
15 concept?

16 **A** No, it's not an engineering design concept.
17 It is a ratemaking concept based on engineering
18 concepts and engineering formula.

19 **Q** Is it fair to say that you've never employed
20 any used and useful concepts in deciding how to size
21 any of the wastewater treatment plants that you
22 designed?

23 **A** Normally you do not make that consideration
24 unless you're doing it for an investor-owned utility.

25 **Q** And that's because when a public utility,

1 such as a municipality or a county, builds a plant,
2 they include -- they recover the entire cost of that
3 plant for their customers without a used and useful
4 type consideration; is that right?

5 **A** They recover whatever they set their rates
6 at. They hold public hearings and decide what rates
7 to charge for their system.

8 **Q** Is it fair to say that your first real
9 introduction to used and useful concepts was in late
10 1995, early 1996, in conjunction with some testimony
11 you submitted on behalf of Public Counsel in the
12 Southern States rate case?

13 **A** No. It would have been earlier than that.
14 Probably about '92 when I first testified on a case
15 involving a water system utility on St. George Island
16 in which I represented the developer of the system.

17 **Q** Did you testify to used and useful in that
18 case?

19 **A** No. But I collaborated with the people who
20 prepared those documents.

21 **Q** Including the Southern States case, am I
22 correct that you testified on used and useful issues
23 in four rate cases, Southern States, Palm Coast, Gulf
24 Utilities and probably a couple times in the Florida
25 Cities case?

1 A I think in others, too. North Fort Myers
2 Utilities, I believe, have two ongoing now. One with
3 Buccaneers Treatment Plant for North Fort Myers.
4 Another one for the Florida Water Services. So,
5 including those you mentioned, that's a good summary
6 of them.

7 Q Okay. So the ones -- the additional ones
8 you've listed here are ones that your testimony is
9 coming out in the future?

10 A Yes.

11 Q All right. Have you ever taken any courses
12 in ratemaking for water or wastewater utilities?

13 A No, I have not.

14 Q Have you ever taken any courses in the
15 application of used and useful principles?

16 A No, I have not.

17 Q Is it fair to say that your knowledge of
18 used and useful principles essentially comes from --
19 I'm going to call it "on the job training" in these
20 cases that we've discussed?

21 A Essentially so. As a measure of the
22 usefulness of the facilities that are designed and
23 what flows play a part in that.

24 Q In your testimony, and I don't think -- I
25 think you'll recognize the statement. It appears at

1 Page 4, Lines 18 through 21. You essentially say that
2 when comparing average daily flow from the maximum
3 month to annual average daily flow would yield a
4 percentage with no meaning. Does that sound like
5 something you would have said?

6 A Yes, that's precisely correct.

7 Q All right. In the Southern States rate
8 case, isn't it true that you sponsored an exhibit
9 showing that the used and useful percentage for
10 wastewater treatment plant facilities was equal to
11 average daily flow for the maximum month divided by
12 total capacity on an average -- annual average daily
13 flow basis?

14 A That's correct.

15 Q So to the extent that's a meaningless
16 calculation, or I think you said in your summary it
17 was a gift to the utility, you've done that kind of
18 calculation once?

19 A At the time the policy of the Public Service
20 Commission was to provide maximum month daily flow by
21 average annual daily flow or the permitted daily flow
22 to reach the annual -- the used and useful percentage.
23 I didn't agree with that, but that was their policy,
24 so we went along with it. It was that simple.

25 Q So, in other words, you presented testimony

1 you did not believe in because you thought it
2 represented the Commission's policy?

3 A I calculated it based on the Commission's
4 policy.

5 Q In the Palm Coast rate case, isn't it true
6 that you testified to the used and useful percentage
7 for wastewater treatment plant facilities was equal to
8 the maximum average daily flow of three months divided
9 by the total capacity on an annual average daily flow
10 basis?

11 A I think that's correct.

12 Q And had the Commission changed its policy
13 from max month to three months at that time?

14 A Well, I have forgotten the exact
15 circumstance for the three months, but I think that
16 was the information that was available, rather than
17 max month at that time.

18 Q But it was still your belief when you gave
19 that testimony that the more proper calculation, the
20 only meaningful calculation, would be average --
21 annual average daily flow?

22 A Yes. Simply because the -- all the
23 facilities are already peaked by design within the
24 plant.

25 Q And I guess that sort of leads to my next

1 question. I guess you agree with me that no reputable
2 design engineer would ever design a wastewater
3 treatment plant to meet only annual average flows?

4 A That's not the way you design them, no.

5 Q Okay. Now, in this case, you're advocating
6 used and useful methodology that matches annual
7 average daily flow in the numerator with annual
8 average daily flow in the denominator; is that right?

9 A In this case I am advocating the use of an
10 annual average daily flow in the numerator versus the
11 annual average daily flow of design capacity in the
12 denominator.

13 Q All right. Would you agree that in order to
14 be 100% used and useful under this methodology, a
15 plant that is permitted or has a design capacity on an
16 annual average daily flow basis would have to have
17 flows every day of the year equal to that annual
18 average?

19 A No, I don't agree with that.

20 Q Well, would you agree that in order to be
21 100% used and useful the flows on every day of the
22 year would have to average out to be the maximum --

23 A Yes.

24 Q -- design capacity?

25 A Yes.

1 Q Okay.

2 COMMISSIONER DEASON: Is that ignoring a
3 reserve margin?

4 MR. MELSON: Yes. I'm -- we're -- I'm not
5 dealing with margin reserve.

6 Q (By Mr. Melson) And so putting aside
7 margin reserve, if the annual average daily -- for a
8 plant designed on an annual average daily flow basis
9 is actually designed with the capacity to treat peak
10 flows, it would never be 100% used and useful under
11 your methodology?

12 A At build-out it could be.

13 Q All right. And that would be in a situation
14 where the average flow on every day of the year --

15 A Not all every day of the year, but average
16 flow of all days of the year.

17 Q All right. Give me one minute.

18 MR. MELSON: I've got no further questions.
19 Thank you, Mr. Bidy.

20 COMMISSIONER DEASON: Redirect.

21 MR. BURGESS: No redirect. I would move the
22 exhibits of Mr. Bidy.

23 MR. MELSON: I don't remember whether I need
24 to object again or not. But I object to the second
25 part of Exhibit TLB-8 and all of TLB-9 and 10.

1 **COMMISSIONER DEASON:** I think, so that
2 perhaps the record is clearer, we're going to identify
3 Exhibit 13 as all of the prefiled exhibits. We
4 will -- and that exhibit will not be admitted. We
5 would identify as Exhibit 14, Exhibits 1 through 7
6 prefiled, and the first part of TLB-8, and it would
7 exclude TLB-9 and 10. That would constitute the
8 exhibit --

9 **MR. BURGESS:** When you say the first part,
10 we are speaking of the used and useful calculation for
11 the wastewater treatment plant.

12 **COMMISSIONER DEASON:** It would include the
13 wastewater treatment plant but no other calculations
14 concerning either collection or effluent disposal. Is
15 that understood? That's clear?

16 **MR. MELSON:** Yes.

17 **COMMISSIONER DEASON:** Very well. So 13 is
18 not admitted, but Exhibit 14 is admitted. Thank you,
19 Mr. Biddy.

20 (Exhibit 14 marked for identification and
21 received in evidence.)

22 **COMMISSIONER DEASON:** Mr. Burgess, you may
23 call your next witness.

24 **MR. BURGESS:** I call Mr. Larkin.
25

1 **HUGH LARKIN, JR.**

2 was called as a witness on behalf of the Citizens of
3 the State of Florida and, having been duly sworn,
4 testified as follows:

5 **DIRECT EXAMINATION**

6 **BY MR. BURGESS:**

7 **Q** State your name and address, please?

8 **A** Name is Hugh Larkin, Jr. Address is 15728
9 Farmington Road, Livonia, Michigan 48154.

10 **Q** Would you tell me your occupation, please?

11 **A** I am a CPA and I specialize in regulatory
12 consulting.

13 **MR. BURGESS:** Can we get a stipulation that
14 Mr. Larkin is qualified as an expert to offer
15 testimony on the issues for which he has presented
16 prefiled testimony?

17 **COMMISSIONER DEASON:** Does the company so
18 stipulate?

19 **MR. MELSON:** I thought we were being a
20 little more informal today and not actually tendering
21 people as experts. Let me have just a minute with
22 Mr. Burgess.

23 Commissioner Deason, I believe the parties
24 would stipulate that each of the witnesses who has
25 testified today is competent to testify, give opinion

1 testimony in the area in which he's giving testimony.
2 Matters such as qualifications and so forth would go
3 to the weight rather than to the ability to give the
4 opinion testimony. Is that --

5 **MR. BURGESS:** We concur.

6 **COMMISSIONER DEASON:** Staff concur?

7 **MS. BRUBAKER:** Staff concurs.

8 **COMMISSIONER DEASON:** Very well.

9 **Q** (By Mr. Burgess) Mr. Larkin, have you
10 provided prefiled testimony in this docket?

11 **A** Yes, I have.

12 **Q** If you were asked the questions that are
13 posed in the prefiled testimony, would your answers be
14 substantially the same?

15 **A** Yes, they would.

16 **Q** Would you provide a -- let's go ahead --

17 **MR. BURGESS:** Commissioners, I move the
18 prefiled testimony of Mr. Larkin into the record.

19 **MR. MELSON:** And, Commissioner, I will
20 object to Page 22, Lines 10 through 22 of Mr. Larkin's
21 testimony. That's testimony regarding cost of equity
22 and overall cost of capital which relates to Issues 9
23 and 10. I believe the numbers were previously ruled
24 out of this proceeding.

25 **COMMISSIONER DEASON:** Mr. Burgess.

1 **MR. BURGESS:** Pursuant to the ruling that
2 has been made, I agree that that is testimony that
3 would be -- that would go to evidence that -- or to
4 issues that have been disallowed. I proffer the
5 testimony notwithstanding the ruling by the
6 Commission. I make an offer of proof of Lines 10
7 through 22 on Page 22 of Mr. Larkin's testimony for
8 the purpose of preserving that if we are ultimately
9 able to prevail on the issue of the propriety of the
10 Commission's ruling, earlier ruling.

11 **COMMISSIONER DEASON:** Well, let me ask
12 Mr. Melson a question. The testimony in question
13 addresses an updated leverage formula; is that
14 correct?

15 **MR. MELSON:** That's correct.

16 **COMMISSIONER DEASON:** Explain to me how is
17 it relevant then for this Commission to consider
18 legislation that was enacted and passed -- I'm
19 sorry -- enacted and signed by the Governor that is
20 permissible for us to do, in essence, at the time and
21 it's not permissible for us to consider an updated
22 leverage formula in this proceeding?

23 **MR. MELSON:** Updating the leverage formula
24 relates to cost of capital which is an issue that the
25 Commission has ruled is -- has been deemed stipulated

1 because it was not protested. There is an open issue
2 as to the appropriate used and useful -- excuse me --
3 appropriate treatment of margin reserve imputation of
4 contributions made in construction.

5 In the absence of an effective Commission
6 rule on those issues, despite the fact that your
7 rulemaking authority was recently upheld by the 1st
8 District Court of Appeals, it is my understanding that
9 these rules have not been filed, and I guess my
10 expectation is that they are unlikely to be filed, so
11 we've got no effective rule on margin reserve. We've
12 got a Commission policy in prior cases. We've got a
13 legislative statement of what the policy of the state
14 is on a going-forward basis. We believe it's
15 appropriate for you to consider that legislative
16 policy in weighing what methodology to adopt in this
17 case.

18 Having said that, I think even without
19 consideration of that legislative policy,
20 Mr. Seidman's testimony amply provides a record basis
21 for you to conclude that the utility's position on
22 margin reserve and imputation of CIAC should be
23 adopted. The Legislature's declared policy is simply
24 another factor that we believe you're entitled to the
25 consideration to. But, it's on an issue that is a

1 live issue in the case.

2 **COMMISSIONER DEASON:** And that's where you
3 draw the distinction, that the distinction being that
4 one is a quote/unquote "live" issue and one is a dead
5 issue?

6 **MR. MELSON:** Yes, sir. If we have protested
7 cost of capital and six months had passed and the
8 Commission had adopted a new leverage graph, then the
9 propriety of using that new leverage graph would be on
10 the table.

11 **COMMISSIONER DEASON:** Staff have any
12 comments?

13 **MS. BRUBAKER:** Staff has no comments.

14 **COMMISSIONER DEASON:** Okay. Then consistent
15 with the previous ruling concerning Issue A, and
16 consistent with the previous ruling concerning
17 testimony of Mr. Biddy, show then that -- is it
18 Page 22, Lines 10 through 22; is that correct,
19 Mr. Melson? That will not be part of the prefiled
20 testimony that is inserted?

21 **MR. MELSON:** Yes, sir.

22 **COMMISSIONER DEASON:** Okay. Show then that
23 Mr. Larkin's prefiled testimony shall be inserted into
24 the record with the exception of Page 22, Lines 10
25 through 22.

1 DIRECT TESTIMONY OF HUGH LARKIN, JR.
2 ON BEHALF OF THE CITIZENS OF FLORIDA
3 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
4 DOCKET NO. 971065-SU

5 Introduction

6 Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?

7 A. My name is Hugh Larkin, Jr. I am a Certified Public Accountant licensed in the States of
8 Michigan and Florida and the senior partner in the firm of Larkin & Associates, Certified
9 Public Accountants, with offices at 15728 Farmington Road, Livonia, Michigan 48154.

10
11 Q. PLEASE DESCRIBE THE FIRM LARKIN & ASSOCIATES.

12 A. Larkin & Associates is a Certified Public Accounting and Regulatory Consulting firm.
13 The firm performs independent regulatory consulting primarily for public service / utility
14 commission staffs and consumer interest groups (public counsels, public advocates,
15 consumer counsels, attorneys general, etc.). Larkin & Associates has extensive experience
16 in the utility regulatory field as expert witnesses in over 400 regulatory proceedings,
17 including numerous water and sewer, gas, electric and telephone utilities.

18
19 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC SERVICE
20 COMMISSION?

21 A. Yes, I have testified before the Florida Public Service Commission on numerous

1 occasions. My qualifications as an expert on utility regulatory matters have been accepted
2 by this Commission.

3 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

4 A. The purpose of my testimony is to respond to the protest by Mid-County Services, Inc. to
5 the Proposed Agency Action (PAA) Order No. PSC-98-0524-FOF-SU in Docket No.
6 971065-SU.

7
8 Q. HOW WILL YOUR TESTIMONY BE ORGANIZED?

9 A. My testimony will respond to the Company's witnesses who are sponsoring testimony in
10 opposition to the Commission's PAA. I am also recommending that the Commission
11 change its overall rate of return in the Proposed Agency Action to reflect the current
12 authorized range of return on common equity authorized by the Commission on July 6,
13 1998 in Docket No. 980006-WS, Order No. PSC-98-0903-FOF-WS.

14
15 Used and Useful

16 Q. WHAT IS YOUR UNDERSTANDING OF THE STAFF'S RECOMMENDATION
17 AND THE COMMISSION'S ADOPTION OF STAFF'S RECOMMENDATION IN
18 THE PROPOSED AGENCY ACTION RELATED TO THE USED AND USEFUL
19 CALCULATION?

20 A. The Staff recommended, and the Commission adopted, an approach to calculating the
21 used and useful percentage which applies a consistent utilization of data in calculating the
22 percentage of plant which is used and useful. The Staff recommendation utilizes a recent

1 historical approach in determining the used and useful percentage which is consistent in
2 the use of data. This approach is fair to both the Company and the ratepayers. The recent
3 historical approach used by the Staff determines what flow data was used by the Florida
4 Department of Environmental Protection (FDEP) in issuing an operating permit for the
5 plant in question. As pointed out in the Staff analysis, the flow data utilized by the FDEP
6 is chosen by the plant owners and operators themselves. In other words, the flow data is
7 not a choice made by the FDEP, rather, it is a choice of design flows chosen by the plant
8 owners and operators themselves.

9
10 Q. WHY IS THAT IMPORTANT?

11 A. It is important because the operator and owner of the plant chooses the flow data which,
12 in its opinion, represents the operating characteristics of the plant. In other words, if the
13 operator thought that the annual average daily flow was the most important statistic in the
14 design and operation of the plant, and felt that the FDEP should permit the plant to
15 operate based on that designed flow, then the plant owners and operators would choose
16 that statistic as a basis for the operation of the plant. If, on the other hand, they felt that
17 the maximum monthly average daily flow were the most relevant data on which the plant
18 should be permitted, then they would have chosen that statistic in order to determine the
19 basis upon which the FDEP should allow the plant to operate.

20
21 The basis on which the utility chose to request a permit from the FDEP is an important
22 decision. It tells the Florida Department of Environmental Protection what statistic the

1 Company's plant operators feel is the most important in determining the way the plant
2 should operate. It is clear that the utility controls the determination of the permitting of
3 the plant and determines what statistic is used by the FDEP in issuing the operating
4 permit.

5
6 Q. WHAT EFFECT DOES THIS HAVE ON THE USED AND USEFUL
7 CALCULATION?

8 A. I believe the Staff has correctly determined that when making a used and useful
9 calculation, the data used in determining the used and useful percentage should be based
10 on the same statistical information. In other words, if the Company chose the annual
11 average daily flow as the basis for obtaining a permit from the FDEP, then that average
12 annual daily flow should form the basis of determining what percentage of the plant is
13 used and useful.

14
15 Q. WHAT RECOMMENDATION IS THE COMPANY MAKING REGARDING USED
16 AND USEFUL?

17 A. The Company is recommending that the Commission use a mix and match approach in
18 determining used and useful. The Company is recommending that the average annual
19 daily flow be used as the denominator while the maximum monthly average daily flow be
20 used as the numerator. This self-apparent mismatch results in a used and useful ratio
21 which is unfair, as well as inaccurate. The numerator must be based on the same
22 measurement as the denominator in order to obtain a fair result. Suppose, for example,

1 the Commission reversed the mismatch and based the numerator on the average annual
2 flow, but based the denominator on the maximum daily flow. Such a mismatch would
3 unfairly and inaccurately understate the used and useful ratio, and the utility would
4 justifiably complain.

5
6 As it is, however, the utility is seeking a self-serving mismatch merely because it results in
7 a higher percentage of used and useful. The Staff's approach, on the other hand, is proper
8 because it is consistent in its use of data. It utilizes average annual daily flow capacity of
9 the plant as the denominator and actual average daily flow in the test year as the
10 numerator. This consistent use of data assures a more accurate result, because the
11 equation is consistent in its use of statistical information.

12
13 Used and useful is a regulatory concept based on actual plant statistical data. As such,
14 used and useful should be determined on a basis that takes into consideration normal or
15 average uses throughout the historical period of time. To utilize only statistical data
16 which will result in the absolute highest used and useful percentage is not fair to the
17 ratepayers. It assigns plant capacity which will, in fact, be utilized by other customers in
18 the future.

19
20 Q. COMPANY WITNESS SEIDMAN ARGUES THAT THE USED AND USEFUL
21 PERCENTAGE DETERMINED BY THE STAFF IS LOWER THAN THE
22 PERCENTAGE UTILIZED IN THE LAST RATE CASE. WOULD YOU PLEASE

1 COMMENT?

2 A. As pointed out in Company Witness Seidman's testimony, on page 14, lines 11 through
3 13, in the last rate case "...the parties stipulated to a used and useful percentage..." It is
4 my understanding that stipulations have no precedential value in any future hearing.
5 Therefore, the fact that the used and useful percentage was a stipulated percentage that
6 used a particular methodology would have no precedential value in any future docket.
7 Additionally, it would be appropriate for the Commission to adopt a more reasoned
8 approach to calculating the used and useful percentage, as recommended by the Staff.

9
10 Q. THE COMPANY WITNESS ALSO INDICATES THAT THE NUMBER OF
11 EQUIVALENT RESIDENTIAL CONNECTIONS HAVE INCREASE SINCE THE
12 LAST RATE CASE, AND BASED ON THE INCREASE, IT IS UNREASONABLE TO
13 CONCLUDE THAT THE USED AND USEFUL PERCENTAGE SHOULD NOT BE
14 INCREASED FROM THE LAST RATE CASE.

15 A. I believe that the witness is placing reliance upon a stipulated percentage where both the
16 plant capacity was lower because of limits placed on it by the FDEP and a calculation was
17 stipulated to. It is my understanding that the FDEP had limited the plant capacity to a
18 800,000 gpd average annual daily flow. The current permit has increased that to 900,000
19 gpd based on the new permit. This increase in capacity is a result of the changing of the
20 permit rather than any change in the actual capacity of the plant. Further, it is my
21 understanding that the plant can actually qualify for a 1.1 million gpd permit if the
22 Company chose to. The new used and useful calculation should consider this change in

1 the permitted capacity and the true capacity, rather than merely being based on an
2 argument that ERCs have increased from the last case.

3
4 In conclusion, I agree with the Staff's use of consistent data in determining the used and
5 useful percentage, as adopted in the Commission's PAA. Moreover, the use of 900,000
6 gpd, instead of 1.1 million, greatly benefits the utility and results in a used and useful
7 percentage that is imminently fair to Mid-County.

8
9 Margin Reserve

10 Q. WHAT MARGIN RESERVE CALCULATION DO YOU SUPPORT?

11 A. It is my position, and the position of the Office of Public Counsel, that a margin reserve
12 component should not be added to the capacity requirements in calculating the used and
13 useful percentage of plant. Having stated the position of the Office of Public Counsel and
14 myself in regard to this issue on numerous occasions in the past, the Commission has
15 permitted a margin reserve in most instances that I am aware of.

16
17 If a margin reserve is allowed, the Staff's approach to calculating the margin reserve
18 appears to be the most reasoned approach. It is not based upon a hypothetical 20%
19 increase, which the Company is requesting. It is based upon the statistical analysis of past
20 growth using a linear regression analysis. This statistical analysis, in my opinion, is more
21 realistic than the arbitrary 20% addition approach utilized by the Company. The Staff's
22 approach calculates a statistical growth rate which takes into consideration both time and

1 customers. It is more accurate than an average growth rate. The Staff then allows an 18-
2 month customer growth rate and annualizes that by the average residential annual
3 gallonage consumption. Allowing the Company a margin reserve based on 18-month
4 growth in customers is far superior to arbitrarily concluding that a 20% increase for
5 margin reserve is appropriate.

6
7 Q. DIDN'T THE COMPANY'S WITNESS STATE THAT, IN HIS OPINION, IT WOULD
8 TAKE FIVE YEARS TO CONSTRUCT ADDITIONAL PLANT CAPACITY?

9 A. Yes, he did, but this misses the entire point of the Commission's jurisdiction. The
10 Commission is charged with the responsibility of assuring that reasonably incurred costs
11 are equitably distributed among the various customers for whom those costs are incurred.
12 An eighteen month margin reserve does not prevent a utility from earning a return on plant
13 held for customers who will be added after the eighteen month period; rather, it merely
14 allots a fair portion of the cost to those specific customers for whom the plant is being
15 held. The utility will receive a return on, and a return of, its entire investment.

16
17 Further, I believe Mr. Seidman may be overstating the time needed to construct new plant
18 facilities. It has been my experience that electric utilities can construct major power plant
19 additions in less time than five years. It is unlikely that an increase in capacity in sewage
20 plant would take as long as five years to construct, given the fact that many of these
21 facilities are pre-engineered and off-the-shelf type purchases. Even if five years was an
22 accurate estimate of the time period to obtain approval, permits and construct a

1 wastewater facility, there is no reason that a utility should not plan that facility and obtain
2 permits several years prior to the necessity to construct the facility. Under the Company's
3 theory, the utility should run out of capacity and then have five years to plan, construct
4 and obtain permits for any addition to the wastewater treatment facility. Clearly, the
5 burden of this lack of prior planning and analysis of probable growth should not be placed
6 upon the ratepayer. It is the responsibility of the utility to anticipate future needs prior to
7 current capacity being fully utilized.

8
9 Imputation of CIAC Against Margin Reserve

10 Q. THE COMPANY WITNESS HAS TAKEN EXCEPTION TO THE COMMISSION
11 IMPUTING CIAC AGAINST THE MARGIN RESERVE. WOULD YOU PLEASE
12 DISCUSS THAT ISSUE?

13 A. Company Witness Seidman discusses the imputation of CIAC against the margin reserve
14 on pages 19 and 20 of his direct testimony. In that testimony, on page 19, he states,
15 "Imputation of CIAC against investment in margin reserve is a mismatch of investment
16 and contribution from different accounting periods." It appears to me that Witness
17 Seidman's testimony is at odds with both the Commission's view of margin reserve and
18 his own testimony. In his own testimony, at page 17, he indicates that the margin reserve
19 component of used and useful wastewater treatment plant should be the equivalent of five
20 years annual growth. The margin reserve is, in his opinion and in the opinion of the
21 Commission, an addition to used and useful capacity necessary to serve some future
22 annual growth. The Commission has the view that the margin reserve should be sufficient

1 to serve customer growth for 18-months past the end of the test year. The Commission
2 then concludes that it is appropriate to match that future capacity utilization with the
3 average CIAC, which the Company will receive as a result of that additional capacity
4 being utilized.

5
6 However, according to Mr. Seidman's testimony, he views margin reserve as currently
7 utilized and currently necessary for the service of current customers, while at the same
8 time indicating that the reserves should be calculated considering future growth. This
9 seems to be entirely inconsistent with his theory that there is an accounting mismatch
10 between the addition of margin reserve to used and useful capacity and the calculation of
11 imputed CIAC against that margin reserve.

12
13 It is clear that the appropriate view is that of the Commission. We are dealing with
14 hypothetical growth in the future when we add margin reserve to used and useful capacity;
15 therefore, it is also appropriate to use hypothetical CIAC which would be received as a
16 result of that capacity actually becoming used and useful. Rather than the Commission
17 being wrong as to the proper matching of accounting periods, the Company's witness is
18 wrong as to what period the CIAC is attempting to match against the investment.

19
20 Q. MR. SEIDMAN CLAIMS THAT IF CIAC IS IMPUTED AGAINST MARGIN
21 RESERVE, THEN THE COMPANY WILL NOT RECEIVE A RETURN ON ITS
22 INVESTMENT. WOULD YOU PLEASE RESPOND?

1 A. Yes. If the Company has investments made in plant which will not be utilized until some
2 future period, it has the authority to record an allowance for funds prudently invested
3 (AFPI). AFPI allows a carrying cost to be recorded on that unutilized or non-used or
4 useful plant until it is actually used to serve customers. AFPI allows the Company to
5 properly match the carrying cost with the customers that the plant will actually serve. To
6 include a margin reserve which would be utilized to service future customers in current
7 rates without offsetting that amount by CIAC would result in current customers
8 subsidizing future customers who will receive service from the plant. It should also be
9 kept in mind that CIAC actually returns all or part of the utility's investment in plant to the
10 utility. Future customers will make that contribution to the utility, not current customers.
11 Additionally, it is the Company's choice to include margin reserve in the ratemaking
12 process. The Company could choose to exclude margin reserve in rates and instead
13 accumulate AFPI on the related plant.

14
15 The current customer is only utilizing the capacity as calculated in the actual flows during
16 the test year. The addition of margin reserve allows for future customer additions. To
17 require a current customer to pay the carrying charge for a plant that will be utilized to
18 service a future customer creates intergenerational inequity. In other words, current
19 customers are subsidizing plant utilized by future customers. The proper way to fund
20 current investment that will be utilized in a future period is through AFPI, not through the
21 creation of a phony margin reserve based on an exorbitant number of future customers
22 without the imputation of CIAC in order to give the Company a current cash return. The

1 Company's approach is inequitable to current customers. It shifts the risk of the plant not
2 actually being utilized at any point in the future from the Company to current customers.
3 The risk of determining what capacity plant should be constructed and when it will be
4 utilized is a risk that should be borne by the Company and its stockholders who earn a
5 "risk premium" on their investment. Current customers do not plan, construct nor operate
6 wastewater facilities; they have no knowledge of what amount of capacity would be
7 utilized at any point in time. To include any margin which causes current ratepayers to
8 pay a rate of return on plant which is not utilized specifically for their own service results
9 in current ratepayers bearing the risk of paying a cash return for plant which may not be
10 utilized by future customers and for which they themselves receive no service. This is
11 clearly not the purpose or intent of regulation.

12
13 Q. WHEN DISCUSSING IMPUTING CIAC RELATED TO THE MARGIN RESERVE
14 ON PAGE 20 OF HIS TESTIMONY, MR. SEIDMAN STATES: "THE RESULT IS
15 THAT THE UTILITY IS DENIED THE OPPORTUNITY TO EVER EARN A
16 RETURN ON ITS INVESTMENT." DO YOU AGREE WITH THAT STATEMENT?

17 A. No, I do not. One need only look at the Commission's discussion of CIAC and the margin
18 reserve associated with that CIAC to conclude that the Company is not harmed. In fact,
19 in most instances, the Company will earn more than its authorized rate of return under a
20 scenario where margin reserve is included without a CIAC offset.

21
22 Q. WOULD YOU PLEASE EXPLAIN?

1 A. On page 10 of the Commission's PAA, the Commission discusses the imputation of the
2 CIAC related to the margin reserve. The Commission states that its calculation of the
3 margin reserve would add \$50,733 to the rate base. This would represent the margin
4 reserve associated with the addition of 109 ERCs. The Commission's calculations
5 determine that these additional ERCs would be added in the next 1.5 years. According to
6 the Commission's calculations the Company, during that same period of time, would
7 collect CIAC in the amount of \$135,220. This is 166% greater than the margin reserve
8 which the Commission states is necessary to service additional customers in the next 18
9 months. If the 109 ERCs are added ratably over the next 18 months, the Company would
10 have collected all of the margin reserve of \$50,733 in the first seven months after rates are
11 established. After that point, every new customer added decreases the Company's
12 investment, as determined by the Commission during the test year. The utility is still
13 earning at the level that the Commission established seven months earlier, but its
14 investment is decreasing each and every month after, so it is earning in excess of the
15 authorized rate of return in each accounting period after the first seven months. If rates
16 are never reestablished, the Company continues to over-earn because the investment is
17 overstated by the amount in excess of margin reserve. Consequently, Mr. Seidman's
18 statement that the utility will be denied the opportunity to ever earn a return on its
19 investment is blatantly incorrect. In fact, it will over earn based on the test period on
20 which rates are established. The ratepayer will never receive credit for the additional
21 CIAC until the next rate case. That additional CIAC will always flow to the benefit of the
22 Company and its stockholders.

1 Under Mr. Seidman's scenario, the utility would have an additional \$50,000 of investment
2 earning a rate of return after the Company has fully recovered its investment, then the
3 utility would continue to earn on that additional \$50,000 up until the time rates are
4 reestablished.

5
6 Curlew Road, US-19 and Belcher Road Main Relocation

7 Q. WOULD YOU PLEASE DISCUSS THE PROJECT RELATED TO THE CURLEW
8 ROAD, US-19 AND BELCHER ROAD MAIN RELOCATION WHICH MR. WENZ
9 DESCRIBES IN HIS TESTIMONY AS NON-CONTROVERSIAL?

10 A. In his direct testimony, on page 8, Company Witness Wenz describes this as a non-
11 controversial adjustment. His adjustment, which he describes as more or less a correction
12 of a mistake, effectively includes all construction work in progress in plant in service as if
13 it had been in service since January 1, 1996. Mr. Wenz describes the entire amount of
14 construction work in progress of \$296,659 as the cost associated with the relocation of
15 the Curlew Road, US-19 and Belcher Road main project.

16
17 As Schedule 1 of Exhibit 15 (HL-1), I have included the Company's schedule from its
18 MFRs which details the amounts associated with the \$296,659 of construction work in
19 progress. As can be seen by an examination of the details of that schedule, the entire
20 amount of \$296,659 is not associated with the Curlew Road, US-19 and Belcher Road
21 main relocation. Only \$195,891 of the amount is associated with that project. These
22 amounts are shown on lines 2 and 3 of the schedule and are explained in the description of

1 the projects on the same line numbers in the description at the bottom of the page. The
2 other projects, which comprise the remaining \$100,768, are not identified as being
3 associated with the relocation project. Thus, I assume these are capital expenditures for
4 normal repair and replacement projects. If this is correct, then these projects should be
5 either included as a test year average balance or totally excluded from the rate base for
6 1996 because: (1) they were not in service and did not provide benefit to the ratepayer;
7 and (2) they represent on-going replacement and repairs which would normally occur in
8 any accounting period.

9
10 Replacement and repair projects take place on an ongoing basis, and are regularly in some
11 phase of the process. Each phase in the process is reflected by the appropriate accounting
12 entry. A test year generally should be limited to the transactions of a particular 12-month
13 period and is intended to be representative of a company's ongoing operations. Any given
14 test year is likely to have a certain amount of CWIP related to various projects before they
15 are closed to plant-in-service. Unless there is a compelling reason to do otherwise, the
16 average balance of CWIP is more representative of the operations associated in an average
17 test year (just as revenue from an average number of customers is used, rather than year-
18 end; CIAC collections are on an average basis, rather than year-end).

19
20 Accordingly, since the utility has not identified any valid reason to treat the \$100,768 in a
21 special way, it should have been treated as CWIP is normally treated. This CWIP should
22 either have been excluded from rate base and allowed AFUDC, or it should have been

1 included as an average, rather than year-end, basis.

2
3 Key-Man Life Insurance

4 Q. WOULD YOU PLEASE DISCUSS THE KEY-MAN LIFE INSURANCE ISSUE?

5 A. The Staff removed \$3,983 from allocated expenses for various insurance costs, which the
6 Staff properly concluded should be paid for by stockholders. Company Witness Wenz
7 claims that the Staff has the wrong dollar amount, and that the amount which should have
8 been excluded is only \$1,876. I have included as Schedule 2 to Exhibit 15 (HL-1) the
9 Staff calculation of the allocated expenses. It seems clear that the Staff has examined the
10 total Company insurance expense and has shown the allocation percentage to Mid-
11 County. Staff appears to have calculated the correct dollar amount. Mr. Wenz has
12 presented no evidence which controverts the Staff calculation of the items which should be
13 excluded from above-the-line expenses. I, therefore, recommend that the Commission
14 exclude the full \$3,983, which I believe the Staff correctly excluded from cost allocated to
15 ratepayers.

16
17 Allocation of Common Costs

18 Q. COMPANY WITNESS WENZ HAS TAKEN EXCEPTION TO THE COMMISSION'S
19 ADOPTION OF THE STAFF'S RECOMMENDED ALLOCATION METHODOLOGY
20 FOR COMMON COSTS. WOULD YOU PLEASE DISCUSS THAT ISSUE?

21 A. Mr. Wenz discusses the allocation methodology recommended by Mid-County on pages
22 10 through 13 of his direct testimony. Mr. Wenz provides no additional evidence which

1 refutes the Commission's concern regarding this allocation methodology. Essentially, Mr.
2 Wenz's testimony argues that this is the way the Company has done it in other
3 jurisdictions, and this is the way we have done it in other utilities in the State of Florida;
4 therefore, the Commission should ignore the Staff's analysis which clearly shows that this
5 allocation methodology results in an unfair and substantial increase in an allocated cost to
6 the customers of Mid-County.

7
8 The Company witness fails to refute the Staff's contention that counting each apartment
9 or mobile home resident as a customer clearly overstates the customer equivalence when
10 converted to ERCs or compared to consumption on a customer basis. The Staff's analysis
11 shows that Mid-County is unique in its customer base. It contains more master metered
12 customers than the other entities in Florida. Therefore, the customer equivalent allocation
13 methodology which the Commission has accepted for other sister companies of Mid-
14 County results in a distortion when applied in the Mid-County rate case. It is not enough
15 for the Company to contend that the Commission has used this methodology elsewhere. It
16 is not enough for the Company to contend that it is used in other jurisdictions. It is
17 incumbent upon the Company to show that its proposed allocation methodology results in
18 a fair allocation of expenses to Mid-County customers when compared to the
19 Commission's accepted ERC allocation methodology. The Company has failed to do that.
20 It cannot be permitted to just argue that you have accepted this elsewhere, we've used it
21 elsewhere, therefore you ought to accept it. The Commission must focus on a results
22 oriented methodology and compare that methodology to what other similarly situated

1 utilities would be allocated under similar circumstances. The Staff analysis clearly shows
2 that the methodology proposed by Mid-County results in over-allocation of expense to
3 this utility and is the primary underlying basis for the increase requested in this docket. It
4 is my opinion that the Staff analysis justifies the allocation it made, which is the one
5 adopted by the Commission in the PAA. Consistent with the Staff analysis, the
6 Commission should reject the Company's protest of the PAA as it relates to the allocation
7 of parent company costs.

8
9 Rate Case Expense

10 Q. ON PAGE 13 OF MR. WENZ'S TESTIMONY, HE REQUESTS AN INCREASE IN
11 RATE CASE EXPENSE. WHAT IS YOUR POSITION ON THIS REQUESTED
12 INCREASE IN RATE CASE EXPENSE?

13 A. It is my position that the Commission should deny any increase in rate case expense over
14 that authorized in the PAA. It is not clear from Mr. Wenz's testimony, since no detail was
15 provided, where the cost increases are being incurred. The Commission authorized the
16 amortization of \$94,959 of rate case expense in the PAA issued April 16, 1998.

17 According to Mr. Wenz's testimony, on page 13, line 22, the Company's schedules
18 include the amortization of \$151,779 of rate case expense. This is \$56,820 higher than the
19 amount authorized in the PAA.

20
21 Q. WHY SHOULD THE INCREASE BE DENIED?

22 A. The Company's protest, in this instance, seeks to reargue issues that the Commission has

1 decided in the past or has concluded, based on an analysis, that such costs are
2 inappropriate for ratepayers to pay. The Company protested the Staff's disallowance of
3 insurance cost, but provided no evidence that the Staff calculations were in error. The
4 Company stated Staff has the wrong insurance cost. The Staff received their information
5 from the Company, so if it is in error, the Company was at fault. The issues related to
6 used and useful calculations, margin reserve and imputed CIAC are included in the PAA
7 based on prior Commission precedent. For the Company to reargue those issues, and
8 attempt to charge ratepayers for the expense associated with its rearguing, is egregious.
9 The issues related to CWIP are factual in nature and could have been determined or
10 clarified through a conference with the Staff as to the proper treatment that the Staff
11 intended. In any case, it is clear that CWIP, which Mr. Wenz claims is related to the
12 relocation of water mains, is in large part related to normal repair and replacement
13 projects which should not be included in the rate base.

14
15 Finally, the issue of the common cost allocation methodology does not provide the
16 Commission with any additional information. Mr. Wenz just reargues the Company
17 methodology, restating facts already known to the Commission. The Commission knew
18 the Company used this methodology in other water company cases within the state. The
19 Commission analyzed that fact and determined that it was not appropriate to use the same
20 methodology for this particular utility. The Commission knew the Company used this
21 methodology in other states; that fact has little or no impact in the State of Florida.
22

1
2 This case was entirely unnecessary, given the invalidity of almost all of the issues raised by
3 the Company. The only two issues raised by Mid-County that merit any serious
4 consideration are (1) the CWIP treatment for the road widening projects and (2) the key
5 man insurance.

6
7 My understanding is that from the start, the Staff has been willing to accept Mid-County's
8 proposed treatment for the CWIP associated with the road-widening. Since its
9 intervention, the Office of Public Counsel likewise has been willing to accept Mid-
10 County's proposed treatment (despite some legitimate counter arguments that can be
11 raised) of the CWIP that is shown to be part of the road-widening projects.

12
13 My understanding is that from the start, Staff has been willing to examine any evidence
14 that the insurance expense sought by Mid-County is in compliance with the concerns
15 raised by the audit exception. The Public Counsel also has been willing to concede the
16 issue that if Mid-County shows that the customers would be the beneficiaries of insurance
17 proceeds, then they should bear the premiums. Thus far, however, Mid-County has made
18 no such demonstration.

19
20 The point is that there was never a need for a hearing for Mid-County to obtain a
21 favorable resolution to these two issues.
22

1 The only reason this case is proceeding to a hearing is for Mid-County to pursue two
 2 other major issues: (1) margin reserve/CIAC imputation, and (2) allocation of common
 3 costs. As shown earlier in this testimony, as well as in the Staff analysis, both of these
 4 issues are meritless. The cost for Mid-County to pursue these meritless issues, therefore,
 5 should be borne by the utility, rather than its customers.

6
 7 To request an increase in rate case expense of over 50% of that authorized by the
 8 Commission without raising substantial issues or presenting new evidence attempts to
 9 unjustly place the burden upon ratepayers. In addition, it should be pointed out that the
 10 Company's MFRs had to be resubmitted because they did not meet the filing requirements
 11 of the Commission Staff. This additional expense has, in part, been allowed by the
 12 Commission, even though, in my mind, this is an expense which should be borne by the
 13 Company's stockholders due to the failure of the Company to provide the proper
 14 documentation as required in the minimum filing requirements.

15
 16 In addition, it should also be pointed out that the rate case expense allowed by the
 17 Commission in the PAA of \$94,959 includes additional rate case expense from the prior
 18 docket in the amount of \$44,753. The additional rate case expense in the prior docket
 19 was incurred as a result of a protest filed by a developer, Suntech, Inc. The developer's
 20 protest was limited to the service availability charges. In other words, the developer's
 21 protest was self-centered, it related to the developer's ability to sell future lots within the
 22 service territory of Mid-County. However, the additional rate case expense is now being

1 placed upon the current ratepayers who receive no benefit from Suntech's protest. Thus,
 2 the Commission's determination of rate case expense in the PAA was eminently fair to the
 3 Company. It allowed the Company to recover rate case expense incurred by a developer
 4 who had a vested interest in future development not related to providing service to the
 5 current customers. The future development would also add to the customer growth, while
 6 having no affect on cost incurred to service the customers on-line when those rates were
 7 established. To summarize, I would recommend that the Commission not allow any
 8 increase in rate case expense beyond that authorized in the PAA.

9
 10 ~~Range of Return on Common Equity~~

11 Q. WHAT RECOMMENDATION ARE YOU MAKING TO THE COMMISSION IN
 12 REGARDS TO THE RETURN ON COMMON EQUITY?

13 A. The Commission issued a new authorized range of return on common equity for water and
 14 wastewater utilities on July 6, 1998, in Docket No. 980006-WS, Order No. PSC-98-0903-
 15 FOF-WS. The range of return on common equity in that Order was a low of 8.57% to a
 16 high of 9.85%, with a mid-point being 9.21%. The Commission should reflect the current
 17 cost of capital in the capital structure of Mid-County. This is the current return on equity
 18 which would allow the Company stockholders a fair rate of return in current market
 19 conditions. It will reduce the overall rate of return authorized in the PAA from 9.34% to
 20 8.91%. Again, this is an appropriate adjustment because it reflects the current authorized
 21 rate of return on equity and reflects the Company's current cost for that component of

1

2 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

3 A. Yes, it does.

1 **MR. BURGESS:** Commissioner, for purposes of
2 preserving -- again just for purposes of preserving
3 the opportunity to have the record necessary for the
4 Commission to make a determination should the Court
5 determine that the Commission has been in error in its
6 ruling, I make an offer of proof of these lines, Lines
7 10 through 22 on Page 22 of the Mr. Larkin's prefiled
8 testimony.

9 **COMMISSIONER DEASON:** Mr. Melson.

10 **MR. MELSON:** Commissioner Deason, I believe
11 that is unnecessary because I believe you have granted
12 Mr. Burgess official recognition of leverage graph
13 order and if the Court told you that you should have
14 considered cost of equity in this case, you would have
15 the new leverage graph in the record. You would have
16 all the subsidiary facts based on your prior PAA order
17 and your ruling on the issues in this case. I don't
18 see that Mr. Larkin's testimony is necessary to that
19 purpose.

20 **MR. BURGESS:** Mr. Larkin's testimony is the
21 only testimony that suggests the Commission should use
22 that. And the fact that the Commission takes official
23 notice of the existence of an order does not, of
24 itself, provide a record basis for the Commission to
25 make such a decision should the Court decide that such

1 issues are open and objections to Proposed Agency
2 Actions.

3 **MR. MELSON:** Commissioner Deason, we will
4 not object to the proffer.

5 **COMMISSIONER DEASON:** Staff?

6 **MS. BRUBAKER:** Staff has no objection.

7 **COMMISSIONER DEASON:** Very well. Show that
8 that is proffered.

9 **MR. BURGESS:** Commissioner, then at this
10 point, I intend to ask Mr. Larkin, cognizant of the
11 rulings that have been made, removing the testimony
12 from the record of -- except in terms of the offer of
13 proof by this party, I would ask Mr. Larkin to
14 summarize the testimony that he's provided, prefiled
15 testimony to the Commission.

16 **WITNESS LARKIN:** Yes. My testimony supports
17 the Staff's calculation of the used and useful
18 percentage. It points out that consistent data for
19 statistical analysis is a commonsense approach, and
20 that Staff's calculation uses consistent data and the
21 Commission ought to follow its Staff's recommendation.

22 My testimony points out that Mr. Seidman
23 says that the used and useful percentage recommended
24 by the Staff is actually lower than what was used in
25 the last case. My testimony points out that in the

1 last case, based on his own testimony, was a
2 stipulated percentage. And that one can't just use a
3 stipulated percentage to argue that because ERCs have
4 gone up and flows have gone up, therefore,
5 intuitively, the used and useful percentage ought to
6 go up.

7 My testimony deals with the margin reserve.
8 It supports the Staff's position. I point out that
9 the Public Counsel did not then, before, or have we
10 ever, supported margin reserve. But, Staff's approach
11 to this calculation is sensible and reasonable and
12 uses a Linear Regression Analysis to project the ERCs
13 to be added within the next 18 months and that's
14 eminently fair to the utility.

15 It provides a margin reserve for additional
16 capacity necessary to serve those customers and would
17 be appropriate if, in our opinion, it were appropriate
18 to include that kind of additional capacity for
19 current ratepayers to pay to support fewer customers.

20 I also support the imputation of CIAC
21 against margin reserve because both of those
22 adjustments are pretty forward-looking adjustments.
23 They were not based on capacity to serve current
24 customers. They're based on adding capacity to the
25 system to serve a future customer. So if you're going

1 to go out and get the cost it makes sense that you go
2 out and you get the offsetting revenues that the
3 company will collect from those customers as they come
4 on line.

5 Also in that section of my testimony I can
6 state that the company really is not at risk for
7 losing any money, that they can accumulate allowance
8 for a plant prudently invested and charge that against
9 any future customer that comes on line.

10 The next section of my testimony deals with
11 the company's stated error in CWIP. This is -- this
12 and the Keyman Insurance really have been difficult to
13 deal with because they've really been misstated by the
14 company in its original testimony.

15 First of all, Mr. Wenz said that this total
16 dollar amount of \$296,659 in direct testimony had to
17 deal strictly with this relocation of these mains.
18 And that isn't the case. That the majority of it has
19 to do with those relocations, but there are a lot of
20 other projects that do not have to do with the
21 relocation of those mains.

22 Many of those projects -- or not many of
23 them. A number of them are really maintenance
24 projects. While it might be appropriate to defer and
25 amortize a maintenance project, if it's shown that the

1 level of maintenance expenses in the test year were
2 unusually low or that these projects were unusual,
3 none of that was done. The company never supported
4 that. They never came along and said, "here are
5 projects we need special treatment for." And if you
6 look at the work orders, what they've done is -- if
7 you look at the work order numbers, what they've done
8 is take work orders that have stretched over a
9 three-year period.

10 The first work order has a number of
11 116-95-11. That would indicate to me that it started
12 in 1995. Then there are one, two, three, four, five
13 more projects that have 96 numbers. And then they are
14 one, two, three projects that have 97 numbers.

15 So what they've done is to catch a bunch of
16 projects, pull them into the test year and the Staff
17 generously gave them half of that. And they said,
18 "That's not enough. Give it all to us," even though
19 at least two or three of these projects are
20 maintenance in nature.

21 Then I want -- I'm looking at the
22 retirements. There is no retirements shown for these
23 relocations of Curlew Road movement. There is no
24 retirements shown for the -- to relocate the sanitary
25 sewer lines along Belcher Road.

1 It seems to me if you're relocating
2 something and you've got a -- you're abandoning a pipe
3 and you're putting in a new one, so it seems to me
4 there should have been some retirements.

5 And the same with those projects which
6 are -- replaced broke sewer main. That's shown as a
7 capital item, but in my mind that's really repair and
8 maintenance and shouldn't be capitalized in the first
9 place. So there's a lot of questions about how these
10 things have been treated for accounting purposes,
11 which could have been raised by the Public Counsel.
12 Public Counsel looked at the end result and said,
13 "Well, we're happy with the end result, even though
14 there are things within there that may not be
15 appropriate."

16 Keyman Insurance. Mr. Wenz's testimony, he
17 indicates, well, the Staff just has the wrong number
18 and here's the right number. But that wasn't the
19 issue at all. The issue is really there are other
20 classes of insurance that the company put in that the
21 Staff said ratepayers shouldn't pay for.

22 Officers liability insurance. This is the
23 type of insurance that the company pays to protect the
24 officers of the company from being sued by the
25 stockholders. There's no protection there for the

1 ratepayer. If the stockholder is unhappy with the
2 operation of the company because of something the
3 officers did, if they sue the officers, they can't
4 come to the ratepayer and say, "Our officers made a
5 mistake. They ran this company into the ground.
6 We're going to charge you." So there is no benefit to
7 the ratepayer there.

8 The same with the insurance that covers the
9 pension plans, the ESOP plans. That's insurance to
10 guarantee the fiduciary responsibility of those
11 officers. If they don't treat those funds, or they
12 waste or lose those funds -- the ratepayer is not
13 responsible for replacing the pension funds. He's
14 already made his contribution through his rates. If
15 employees' pension funds go down the tube, then the
16 people that are responsible are the officers, not the
17 ratepayers. So the Staff correctly analyzed this,
18 correctly took those dollar amounts out. To reargue
19 this now is unfair to the ratepayer.

20 Now the allocation of common costs. The
21 company says, "Well, we've used this system and other
22 systems within Florida, used them in other states and
23 you've accepted it in other systems and you accepted
24 something here that was quasi the system, and
25 therefore, that's enough. You have to give us this

1 dollar amount."

2 Well, the Staff analyzed this and they said,
3 "Well, you know, the majority of this rate increase is
4 due to this change in the allocation. And what we've
5 done in the past is we've looked at this based on our
6 view of how common costs ought to be allocated, and in
7 the past, they were pretty close; their methodology
8 was pretty close to using ERCs. But now it isn't
9 close to using the ERC? So, Company, come and justify
10 it." There is no justification.

11 The justification is, "We've done it other
12 places. We've done it here before. You ought to
13 accept it." There is no study. There is no study
14 that shows that cost associated with common costs are
15 directly related to customers and that's what they
16 have to show in order to get around the Staff's
17 analysis. That burden is on them.

18 So I think that the Staff is eminently
19 correct in their analysis and that the Commission
20 ought to stick with the PPA -- PAA.

21 Rate case expense. I went through what I
22 thought the issues were; in effect, that they're all
23 kind of policy issues, that they are very few factual
24 issues really involved. But then the company comes in
25 and says, "Well, the ratepayer ought to pay \$56,000

1 more in rate case expense for us to come in and
2 protest these policy kinds of issues." We just don't
3 think that ratepayers ought to be stuck with those
4 kinds of expenses for things that aren't factual; for
5 things that can be shown to be factually different.
6 So that concludes my summary.

7 **MR. BURGESS:** Thank you, Mr. Larkin.

8 Commissioner, Mr. Larkin also had two
9 exhibits attached to his testimony, one of which is
10 simply a page from the utility's MFR, Page 10-B. It's
11 Page 3 of 4 of Schedule A-6. And the other is a page
12 from the Staff Audit Exceptions.

13 Therefore, neither one has been directly
14 authored by Mr. Larkin. He attached them for purpose
15 of ease of reference. As one looks at the testimony
16 they're readily available. I would ask to identify
17 them, nevertheless, just as -- for Composite Exhibit
18 HL-1. I mean -- he has it as Composite Exhibit HL-1,
19 Schedules 1 and 2.

20 **COMMISSIONER DEASON:** It will be identified
21 as Exhibit 15.

22 (Exhibit 15 marked for identification.)

23 **MR. BURGESS:** Thank you. And I would ask
24 that Mr. Larkin's prefiled testimony be entered into
25 the record subject to the Commission ruling on the

1 evidence offered on Page 22.

2 **COMMISSIONER DEASON:** I think we've already
3 done that.

4 **MR. BURGESS:** Okay. Thank you. I would, at
5 this point, offer the entry of the exhibits into the
6 record just for ease as well, because as I say, they
7 are simply matters that have come up and they --
8 Mr. Larkin actually -- verification of them would not
9 be what would be credible at this point.

10 **MR. MELSON:** No objection.

11 **COMMISSIONER DEASON:** Show then Exhibit 15
12 admitted.

13 (Exhibit 15 received in evidence.)

14 **MR. BURGESS:** Thank you. We offer
15 Mr. Larkin for cross examination.

16 **MR. MELSON:** Again, on the allocation issue
17 I think the Staff should probably go first.

18 **COMMISSIONER DEASON:** Staff would you like
19 to go first?

20 **MS. BRUBAKER:** That's fine.

21 **COMMISSIONER DEASON:** Please proceed.

22 **CROSS EXAMINATION**

23 **BY MS. BRUBAKER:**

24 Q Mr. Larkin, I'd like to refer you to Page 15
25 of your testimony. You testify there that CWIP in the

1 amount of \$100,768, which is not related to the
2 relocation, should have been excluded from rate base
3 and allow AFUDC where it should have been included as
4 an average. If the CWIP in question is to be included
5 in rate base, are you proposing that it be average
6 plant or average CWIP?

7 **A** Well, it would be average plant because what
8 the treatment the company has asked for is that the
9 amount of forward-looking CWIP be included as
10 plant-in-service.

11 **Q** Referring to the company's allocation method
12 based on customer equivalents, is it reasonable to
13 assume that a secretary at the home office would spend
14 more time on Mid-County's than rather on their other
15 systems, say Alafaya?

16 **A** No, not based on customers.

17 **Q** Is it reasonable to assume, once again
18 taking example of a secretary at the home office,
19 spending more time on Mid-County -- I'm sorry. I'm
20 just repeating my question. That's all.

21 **COMMISSIONER DEASON:** Is that all the
22 questions?

23 **MS. BRUBAKER:** Staff has no more questions.

24 **COMMISSIONER DEASON:** Very well.

25 Mr. Melson.

CROSS EXAMINATION

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BY MR. MELSON:

Q Mr. Larkin, Rick Melson representing the utility.

You indicated that the company had made no showing that common costs could be directly related to number of customers in your summary; is that correct?

A That's correct.

Q Isn't it the nature of common cost that they can't really be directly related to anything?

A No, that's not true. There are cost causers and those cost causers have an indirect effect on the common cost. For instance, let me give you an example.

Q Well, you've answered my question. You say that they -- there's a method. Let me ask you this: Do you believe that a secretary at the home office, that that person's time spent on Mid-County is related in any way to the average wastewater flows in Mid-County?

A No, but I think that it is -- could be related to ERCs. And as long as the Florida Public Service Commission used a system that is consistent across the state, then that's appropriate.

Q Are you aware that for other sister

1 companies of Mid-County, the Commission has
2 consistently used the methodology the company is
3 using?

4 **A** I think I touched on that. And what I said
5 was --

6 **Q** Go ahead.

7 **A** I said I was aware of that and I was aware
8 also that the Staff had looked at that and those
9 others and found that their methodology was somewhat
10 similar or close to what the company was allocating,
11 so they didn't take exception to it. And they
12 wouldn't have taken exception to this if the use of
13 ERCs as an allocation methodology was close to the
14 company's. It's just this big differential which is
15 driving this rate case.

16 **Q** Let me back up a step. The Commission has
17 previously applied the company's methodology to other
18 sister companies, correct?

19 **A** Yes and no. Yes --

20 **Q** To what other sister company has it not
21 applied that methodology?

22 **MR. BURGESS:** Excuse me. Commissioners,
23 what I would ask is that Mr. Melson allow the witness
24 to fully answer the question and understanding that we
25 start with an affirmative or a negative, but allow the

1 witness to explain the answer. That's the second
2 question that he has cut the witness off in
3 mid-sentence.

4 **COMMISSIONER DEASON:** Mr. Melson.

5 **MR. MELSON:** From the way Mr. Larkin
6 started, I foresee exactly the same answer to this
7 question as I got to the last one, and I'm trying to
8 get a yes or no.

9 **COMMISSIONER DEASON:** I'm willing to direct
10 Mr. Larkin to respond yes or no. He may clarify his
11 response. Mr. Larkin.

12 **WITNESS LARKIN:** The answer, as I said, was
13 yes and no. Yes, they did use the company's system in
14 other utilities owned by Utilities Inc. in the state.
15 But no, it didn't result in any different or
16 exceptionally large differential between what they
17 would have used had they used ERCs. So what the Staff
18 did was, they looked at your allocation, did their own
19 and said there is substantially no difference; we'll
20 accept what the company did. But you can't bootstrap
21 that over to this case.

22 **Q (By Mr. Melson)** To the extent the
23 Commission applies one methodology to one sister
24 company and a different methodology to another one,
25 would you agree with me that creates the very real

1 possibility that not all of the costs -- that 100% of
2 the costs will not be allocated?

3 A It depends. That would only occur if rates
4 were set in every jurisdiction and every water company
5 at the same date using the same data. And that never
6 happens.

7 Q Your testimony on this matter at Page 17
8 Line 17, you say it's incumbent on the utility to show
9 that its proposed allocation methodology results in a
10 fair allocation when compared to the Commission's
11 accepted ERC methodology. When you say, "accepted ERC
12 methodology," do you mean that the Commission has a
13 rule that specifies an ERC-based method?

14 A No. I think you know what I mean. What is
15 meant is that they have a test, Staff has a test, and
16 essentially they're testing allocations based on the
17 ERC methodology. And if that test indicates that the
18 allocation is within reason, then they don't fool with
19 it.

20 Q So, in essence, you're saying the Commission
21 has got a nonrule policy that they apply in these
22 cases?

23 A Well, I don't think the Commission has a
24 rule, but I think the Staff has a procedure or policy.

25 Q Do you know whether that Staff procedure or

1 policy is set out in any of the internal procedure
2 manuals?

3 A Not to my knowledge.

4 Q All right. With regard to the calculation
5 of a used and useful percentage -- and I'm on Page 6
6 of your testimony at Lines 10 through 22. I just want
7 to be sure I'm clear as to what you understand the
8 facts to be. As I read your testimony, it's your
9 understanding that the stipulated used and useful
10 percentage in the utility's last rate case was based
11 on an DEP permit capacity of 800,000 gallons per day;
12 is that right?

13 A No, I think it was based on 900. It might
14 have been 900.

15 Q Well, read the first couple of sentences
16 there and tell me what -- tell me what you believe it
17 was based on?

18 A I'm not sure it's clear by that sentence
19 there. But it's my understanding the calculation
20 was -- stipulation was based on a calculation that
21 included 900,000.

22 Q 900,000. All right. So that -- strike
23 that. And would you agree with me then that there has
24 been no change in the permitted capacity of the plant
25 or the terms of that permit since the figure that was

1 stipulated in the last rate case?

2 A Yes.

3 Q So that the only difference we're talking
4 about in this case is whether the Commission, with the
5 same plant and with the same permit, uses a different
6 numerator in their used and useful fraction as
7 compared to what was used as the basis for the
8 stipulation in the prior case?

9 A I don't know what was used in the prior case
10 in the stipulation.

11 Q All right. Have you attempted to -- have
12 you looked at the original PAA order in the last case
13 at which time the plant capacity was, in fact,
14 800,000?

15 A I probably have.

16 Q And do you know what used and useful
17 percentages the Staff calculated or that the
18 Commission adopted on a proposed basis based on
19 800,000?

20 A It was higher.

21 Q Would you accept, subject to check, that it
22 was 97%?

23 A I think that that's probably correct.

24 Q And would you also accept, subject to check,
25 that in that PAA Order the calculation was maximum

1 month average daily flow divided by annual average
2 daily flow?

3 A That was my understanding.

4 Q And would you also accept that if you simply
5 substitute 900,000 for 800,000 in that calculation in
6 the last case's PAA order, you come up with the number
7 that was, indeed, stipulated to?

8 A You may.

9 Q You don't know?

10 A I don't know, but that's irrelevant.

11 Q With regard to rate case expense, as I
12 understand it, your primary basis for recommending
13 disallowance of rate case expense is that the company
14 is seeking to reargue policy-type issues where -- in
15 circumstances where the Commission's initial decisions
16 were consistent with past precedent; is that a fair
17 statement?

18 A In part. I also point out how generous the
19 Commission was to the company by allowing it to recoup
20 from ratepayers costs that were not caused by those
21 ratepayers, and that by allowing them -- the company
22 to get the additional \$44,000, they should take that
23 into consideration in looking at this rate case.

24 Q So when the Commission has a final order
25 that says dollars incurred in a prior rate case

1 involving service availability charges will be
2 recoverable in this rate case, it's your testimony
3 that that decision should affect the amount of new
4 rate case expense that is allowed in the new rate
5 case?

6 A That they ought to consider that, giving
7 weight to the fact that the consumers that are paying
8 that got no benefit from the protest by a builder of
9 service availability fees. That was strictly a
10 selfish protest of that builder to benefit his own
11 business. Ratepayers didn't get anything from that.

12 Q Would you agree with me that if the utility
13 had not opposed that protest, that its service
14 availability charges that it's collected over the
15 intervening four years could have been substantially
16 lower and it could have substantially more rate base
17 at this time?

18 A I don't know.

19 Q All right. On Page 19, going back to
20 your -- part of the basis for your recommendation,
21 which is, the company should not be able to recover
22 rate case for rearguing issues, you cite at Page 19,
23 Line 6, three examples of the types of things where
24 the Commission's attempted to reargue Commission
25 precedent; that's used and useful calculations, margin

1 reserve and imputed CIAC; is that correct?

2 A Yes.

3 Q And with regard to used and useful, are you
4 aware that the 1st District Court of Appeals has twice
5 told the Commission that it has improperly changed its
6 policy on the used and useful percentage calculation
7 without adequate basis in the record?

8 A I am aware of that. I am aware that there
9 were court cases, but what the basis is --

10 Q But you don't regard that as a live issue,
11 that the utility ought to be able to litigate?

12 A No. I think that since 1992 the Commission
13 has followed a precedent of using average daily flows
14 over average annual capacity in arriving at that
15 percentage. To me that's a policy and I think that
16 that's already set. When you come back in, you
17 reargue that and say let's go back to the old policy,
18 I think that you ought to bear the cost of doing that.

19 Q So you disagree with the testimony Mr. Bidy
20 just gave that when he testified in the Southern
21 States and Palm Coast rate cases in 1995 and 1996,
22 that the Commission policy was to use something other
23 than annual average daily flow?

24 A I can't remember the exact date of the
25 change in the policy, but it -- 1992 came to mind. It

1 might have been after that. It might have been '95.

2 Q With regard to margin reserve and imputed
3 CIAC, are you aware that at the time the protest was
4 filed and at the time even your testimony was filed,
5 the Commission ruled that it attempted to codify the
6 Commission's margin reserve and imputed CIAC policy
7 and to have it invalid by an Administrative Law Judge?

8 A Yes, that there wasn't a rule.

9 Q Are you aware that as we sit here today, the
10 Governor has signed into law some amendments to
11 Chapter 367 that at least on a prospective basis adopt
12 as the policy of the State of Florida the rule that
13 the utility is advocating in this case?

14 A That has no bearing in my mind on this case.

15 Q Okay. So in this case the utility should
16 not be free to litigate those issues, even though
17 there was no rule?

18 A Not at the expense of the ratepayer. You
19 can litigate them. Just don't charge the ratepayer
20 for them.

21 Q Your testimony, again with regard to rate
22 case expense, is that on construction work in progress
23 and Keyman issues, the Staff has been willing to
24 accept Mid-County's position if it only gave them a
25 little more backup, and that we didn't -- the utility

1 should not have protested an order to get relief that
2 it could have got by dealing with the Staff? Is that
3 a fair reading?

4 A No -- well, it is a fair reading because
5 this testimony was based on Mr. Wenz's Direct
6 Testimony which misstated the facts. I mean, I
7 prepared this testimony based on what he said. But
8 those aren't really the issues. He said "these are a
9 couple issues that are noncontroversial. You got the
10 wrong insurance number." That wasn't the issue at
11 all. "You got the wrong CWIP." That wasn't the issue
12 at all. So, he misstated his testimony.

13 Then as we get farther down, now we're
14 finding out what the real issue is; that you really
15 want more CWIP. Not that they included the wrong
16 number. That you really want more CWIP. Not that
17 they got the wrong insurance number. It's that you
18 think that these particular policies should be paid
19 for by the ratepayer when they don't benefit the
20 ratepayer.

21 Q Let me ask you this: Say an officer of the
22 company was sued by EPA for alleged activities that
23 caused permit violations over here at the Mid-County
24 plant, and assume that the insurer, under this D&O
25 policy, successfully defended that suit and completely

1 exonerated the officers. Without the insurance
2 policy, wouldn't the cost of a defense of that lawsuit
3 be a cost that would be borne by the ratepayers?

4 A I don't think so. I think what you're
5 saying is that the officer violated the --

6 Q No. I'm saying the EPA alleged that he did
7 it. And after a full trial, which the insurance paid
8 for, they were exonerated and found there was no
9 violation at all.

10 A That is a different kind of policy. This is
11 a policy that protects the Board of Directors from
12 malfeasance in the operation of the company. That is
13 not the type of policy that you're talking up here.

14 Q Have you reviewed the policy, Mr. Larkin?

15 A No. But it's an allocation from the parent
16 company down to the operating company. And D&O
17 policies are of that nature.

18 Q And do you know whether D&O policies would
19 include the defense of that type of a lawsuit by the
20 EPA?

21 A They may, but generally, they do not.

22 Q But you have not examined the policy in this
23 case?

24 A No, and neither has the company come forward
25 to show that they do.

1 Q Also, at Page 21, Lines 9 through 11 you
2 indicated another reason the rate case expense would
3 be disallowed is because of the -- MFRs had to be
4 resubmitted because they didn't meet the filing
5 requirements of the Commission Staff; do you recall
6 that?

7 A Yes.

8 Q Let me hand you an exhibit and ask if this
9 is the refiling to which you're referring.
10 Mr. Larkin, does this appear to be the utility's
11 response to Staff's deficiency letter?

12 A It states that, but I'm not sure whether
13 that is the complete response or other things were
14 required.

15 Q Well, the file will reflect that. Let me
16 ask you to accept, subject to check, that this is the
17 entire deficiency response; that the rate case expense
18 associated with making the changes reflected on these
19 four pages that you're suggesting is improper to place
20 on the ratepayers?

21 A Yes. It still -- regardless of what the
22 dollar amount would be, it would be improper for the
23 ratepayers to pay for those.

24 **MR. MELSON:** That's all I've got. Thank
25 you.

1 **COMMISSIONER DEASON:** Redirect.

2 **MR. BURGESS:** No, sir. No redirect.

3 **COMMISSIONER DEASON:** Okay. I think we've
4 already addressed Mr. Larkin's exhibit.

5 **MR. BURGESS:** That's correct.

6 **COMMISSIONER DEASON:** Very well. And that
7 concludes Public Counsel's direct case?

8 **MR. BURGESS:** It does.

9 **COMMISSIONER DEASON:** We're going to take a
10 recess at this time. Let me put everyone on notice
11 that we're going to continue to work up until 6:30 and
12 we will convene the customer hearing at that time, and
13 we will just evaluate things at that point.

14 But, for -- at this time we're going to take
15 a 10-minute recess and we'll reconvene at 25 to 5:00.

16 (Brief recess.)

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18 (Transcript continues in sequence in
19 Volume 3.)

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	2	adjusted 119/11, 142/7, 142/10, 143/16, 144/18 adjustment 137/23, 142/17, 142/24, 144/3, 145/1 adjustments 160/7 administration 138/9 administrative 169/4, 199/6 admitted 116/1, 116/13, 116/25, 163/11, 163/20, 164/2, 164/5, 167/3, 212/20, 213/11 ADMTD 113/3 affairs 168/24 Affidavit 113/4, 114/7 affiliate 139/7 AFUDC 150/2, 150/4, 150/7 agency 144/12, 146/3 agree 138/5, 157/2, 201/25, 202/5, 202/19, 202/24, 207/13, 207/24 allocate 138/17, 139/1 allocated 157/17 allocates 159/21 allocation 113/9, 116/17, 117/7, 121/23, 154/12, 158/15, 158/24, 159/2, 159/6, 159/10, 159/12, 160/5, 160/10, 160/19, 160/21, 160/25 allocations 139/2 allow 148/19, 196/4, 197/24, 212/1 allowing 197/12 amortizations 156/21 amortized 156/6, 156/20 amortizing 156/11, 156/17, 157/12 amount 147/4, 147/17, 147/24, 150/21, 151/17, 151/25, 157/1, 157/7, 193/22, 194/7, 203/5 amounts 152/5 analyst 143/19, 143/21, 144/5 annual 193/2, 193/25, 203/5, 205/4, 205/8, 205/16, 206/3, 206/18, 208/23, 208/25, 209/13, 209/16 answer 149/5, 149/7, 149/11, 149/14, 154/16, 201/7 answered 145/10 answers 120/16, 169/22 anticipate 196/21 anticipated 200/11 apartment 138/23 APPEARANCES 111/23 applicant 119/5 Application 111/6, 137/4 apply 211/7 applying 204/5 approach 194/25, 195/8, 195/13 appropriate 155/2, 164/10, 192/8, 192/14, 192/23, 196/15, 207/13, 209/15 appropriately 137/25, 146/22, 196/12 appropriateness 192/4 April 137/6 area 144/4, 146/6 areas 140/17 aspects 197/16 assets 192/6, 192/15, 193/7, 193/11, 193/13, 194/12, 194/14, 204/11, 208/11 associated 147/8, 147/13, 152/18, 206/4 attached 120/24, 122/3, 167/1, 170/11 attachments 113/11 attention 145/16, 153/12 attorney 146/11 attributable 138/18 audit 139/6, 160/8, 160/10, 162/5, 162/18 auditors' 161/21 availability 146/9, 146/19, 146/21, 147/1 available 117/11 average 138/24, 142/8, 142/10, 142/13, 142/15, 143/13, 143/16, 143/17, 144/11, 144/14, 144/19, 145/9, 150/13, 150/19, 192/17, 193/25, 194/2, 203/16, 204/8, 204/9, 205/4, 205/5, 205/7, 205/8, 205/14, 205/16, 206/3, 206/18, 207/9, 208/23, 208/25, 209/7, 209/8, 209/13, 209/16 averaged 142/22, 151/21 averages 205/20, 205/22
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