

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----  
In the Matter of : DOCKET NO. 991643-SU  
:  
APPLICATION FOR INCREASE IN :  
WASTEWATER RATES IN SEVEN :  
SPRINGS SYSTEM IN PASCO :  
COUNTY BY ALOHA UTILITIES, :  
INC. :  
-----

\*\*\*\*\*  
\* ELECTRONIC VERSIONS OF THIS TRANSCRIPT \*  
\* ARE A CONVENIENCE COPY ONLY AND ARE NOT \*  
\* THE OFFICIAL TRANSCRIPT OF THE HEARING \*  
\* AND DO NOT INCLUDE PREFILED TESTIMONY. \*  
\* \*  
\*\*\*\*\*

VOLUME 4

Pages 364 through 492

PROCEEDINGS: HEARING  
  
BEFORE: COMMISSIONER E. LEON JACOBS, JR.  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ  
  
DATE: Tuesday, October 3, 2000  
  
TIME: Commenced at 9:00 a.m.  
Concluded at 12:05 p.m.  
  
PLACE: Spartan Manor  
6121 Massachusetts Avenue  
New Port Richey, Florida  
  
REPORTED BY: KORETTA E. STANFORD, RPR  
TRICIA DeMARTE  
Official Commission ReporterS  
  
APPEARANCES: (As heretofore noted.)



## I N D E X

## WITNESSES

NAME:	PAGE NO.
HUGH LARKIN	
Cross Examination by Mr. Jaeger	367
TED L. BIDDY	
Direct Examination by Mr. Burgess	390
Prefiled Testimony Inserted	402
Cross Examination by Mr. Wharton	420
Redirect Examination by Mr. Burgess	487

## EXHIBITS

NUMBER	ID.	ADMTD.
8 Schedules 1-7 of HL-1		390
9 TLB-1, 2, 3 and 4	401	490
10 Deposition of Ted Bidy, Taken 8-16-2000	486	490
CERTIFICATE OF REPORTERS		492

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

(Transcript continues in sequence from Volume 3.)

COMMISSIONER JACOBS: Good morning. Before we get started, we probably need to discuss a bit of housekeeping. We're trying to figure out what our schedules are. All of us have to be back for a panel in Tallahassee in the morning.

So, we want to make sure we get done today, if we possibly can because, as I understand it, for the 2nd, we have -- even though it's one person's testimony, there is a good bit of testimony.

So, I don't want to leave very much hanging until the 2nd, if absolutely possible. Because if I understand, we're under time restrictions under this docket already; is that correct?

MR. JAEGER: Yes.

COMMISSIONER JACOBS: So, to the extent that we can get everybody done today -- if we go until the 2nd, I'll do that, but we'll be there all day, because we will finish on the 2nd. But let's see if we can get done today as much as possible, okay?

And as I understand it, Mr. Deterding, you completed your cross of Mr. Larkin. Staff?

MR. JAEGER: Yes, Commissioner.

HUGH LARKIN

FLORIDA PUBLIC SERVICE COMMISSION

1 continues his testimony under oath from Volume 3.

2 CROSS EXAMINATION

3 BY MR. JAEGER:

4 Q Mr. Larkin, do you have a copy of the amended  
5 and restated and consent final judgment that was attached  
6 to Volume 3 of the MFRs there in front of you?

7 A Yes, I do.

8 Q Could you turn to page 3, it's 186, I think, is  
9 in the back of the consent final judgment and look at the  
10 very bottom there. It says, "Every 90 days Aloha shall  
11 report in writing to the department the results of the INA  
12 program." Had you reviewed that requirement?

13 A I knew it was there, yes.

14 Q Okay. And then, on page 10, that's 193, could  
15 you read me lines 2 and 3, the sentence there starting  
16 with "Aloha shall...", could you read that?

17 A "Aloha shall further instruct the accountants to  
18 prepare and submit to the department on a monthly basis a  
19 new development capacity report providing the results of  
20 their examination and a recap of new development  
21 connections to date and a running total of connections to  
22 the plant."

23 Q Okay. Would you consider these reports to be  
24 new administrative requirements developed by the DEP on  
25 Aloha?

1           A     Well, obviously, the company must keep track of  
2 the new connections anyway. I mean, the only difference  
3 there is that somebody has to come out and look at them  
4 and verify them and send that information to the DEP. As  
5 far as the INA report, I would assume that part of that  
6 program that the company that's doing the repairs would be  
7 preparing some report. And that would be included within  
8 that document, could be forwarded to DEP.

9           So, there is some additional requirements, but I  
10 think that they are requirements that would flow -- could  
11 be satisfied flowing from the documents that are within  
12 the company's grasp already.

13          Q     So, it would be minimal additional?

14          A     I would think so.

15          Q     Okay.

16          A     We're not talking hundreds of hours to prepare  
17 these things.

18          Q     Okay. Mr. Larkin, moving to a new area, is it  
19 correct that you have testified that an adjustment should  
20 be made to disallow Aloha's capitalization of previously  
21 expensed invoices?

22          A     Yes.

23          Q     Could you expand on your reasoning why? If they  
24 made an error and previously expensed it and found out it  
25 should have been capitalized, why can they not correct

1 their error at this time?

2 A Well, it's retroactive in nature. I mean, we  
3 can't retroactively go back; for instance, let me give you  
4 an example.

5 The Staff's audit report indicated that  
6 Mr. Speer has been charging his gasoline credits, he's  
7 been charging Seven Springs for his vehicle use or the  
8 gasoline that goes into his vehicle. That's  
9 inappropriate. And the Staff has recommended that that be  
10 taken out on a going-forward basis.

11 Now, if I were to come in here and say, well,  
12 let's go back 20 years and figure out every dime that  
13 Mr. Speer charged to the rate payer and recapture that,  
14 that would be retroactive ratemaking, and the company  
15 would say, yeah, you can't do that. You're going back and  
16 you're retroactively collecting from us expenses that may  
17 have been inappropriate, but they're, thereby, passed.

18 And the same is true with items that should have  
19 been capitalized but were recovered and expensed. That's  
20 retroactive in nature. And additionally, the company's  
21 rate of return was in the range that would allow them to  
22 have recovered an appropriate rate of return. So, in  
23 theory, they've recaptured or covered the expenses anyway.

24 Q Okay. So, in each of the years that they had  
25 these adjustments, they did have a positive rate of

1 return; is that correct?

2 A Yes.

3 Q And if they've had a positive rate of return,  
4 does that indicate that they recovered all their expenses,  
5 plus some return on their investment?

6 A That's correct.

7 Q Do you know what the minimum rate of return that  
8 was calculated by the utility to be in those years?

9 A What their lowest rate of return was --

10 Q Yes.

11 A -- or what they're authorized?

12 Q What the utility calculated to be their lowest  
13 rate of return in those years.

14 A I think, it was somewhere around 9%. It might  
15 have been 9.17.

16 Q And so, you're saying that Aloha has already  
17 recovered all those expenses in those years, then?

18 A Yeah, in my opinion.

19 Q Now, if the accountant for the utility show that  
20 they did not overearn in those years, has that been  
21 audited or is that -- I mean, is there any way to tell if  
22 he'd made any errors?

23 A Well, there's no way to tell if those  
24 calculations are on a Commission regulatory basis, whether  
25 the -- for instance, the working capital was calculated in

1 the same manner we would do it now.

2 Q So, if Staff went back and found, in fact, they  
3 disagreed with Mr. Nixon or found corrections or  
4 adjustments, could we go back and do an overearnings  
5 investigation for those years?

6 A No. Unless it was fraud or some kind of  
7 criminal act, those years are dead and buried.

8 Q So, it's possible that if we went back and  
9 really looked at that, we could find that they were  
10 actually having a much higher rate of return than  
11 indicated?

12 A That's possible.

13 Q Are the accounting systems or recordkeeping of  
14 Class C water and wastewater utilities more or less  
15 sophisticated than that of Class A and B water and  
16 wastewater utilities?

17 A I would assume they're less sophisticated.

18 Q Do most Class C utilities retain accounting  
19 consultants or have employees with a high level of  
20 accounting expertise of the NARUC, that's N-A-R-U-C,  
21 uniform system of accounts?

22 A I don't know, but I would assume not. I assume,  
23 most of those would have Staff-assisted rate cases.

24 Q But how about Class A or Class B utilities,  
25 would they be more likely to retain accounting

1 consultants?

2 A I think, the larger you get, the more  
3 sophisticated you are and the more there is a need for  
4 professional help.

5 Q So, basically, you would expect a higher level  
6 of compliance from Class A and B as opposed to Class C  
7 utilities?

8 A Yes.

9 Q Going to the vice president's salary, I think,  
10 you made an adjustment that agreed with Staff; is that  
11 correct?

12 A That's correct.

13 Q And what did you tie the vice president's salary  
14 to or how did you calculate what the appropriate salary  
15 would be?

16 A Well, I didn't make a calculation. I adopted  
17 the Staff's calculation. I thought it was a reasonable  
18 approach.

19 Q And what did Staff do?

20 A Staff tied their calculation to Mr. Watford's  
21 salary and took a proportional percentage of that in  
22 determining what level of salary she should receive.

23 Q Okay. So, Mr. Watford was the president, and  
24 they gave Ms. Speer the same hourly rate as the president,  
25 but presumed that -- or took their word that she worked 20

1 or, what was it, 20%?

2 A 20% of the time, which would be 8 hours a week.

3 Q So, basically, she was making the same as the  
4 president, but just working on a part-time basis?

5 A That's correct.

6 Q Do you think that Staff assumed that all  
7 employees are of equal worth when they made this  
8 calculation?

9 A No. I think, it was just a methodology to  
10 adjust for an overstatement of salary.

11 Q And how many companies have you seen where the  
12 vice president makes the same equivalent salary as the  
13 president?

14 A Well, I don't think you run into many companies  
15 where you have a vice president as part time. So, I think  
16 it's -- I mean, if you weren't the owner of the company,  
17 you couldn't say I'm going to work part time, I'm going to  
18 work 8 hours a week. If there's a position there and a  
19 need for it, then it should be a full-time person.

20 Q Now, Ms. Speer owns about 62% of the stock of  
21 this company; is that correct?

22 A That's correct.

23 Q And she gets, by a rate of return that we give  
24 on their investment, is that where she gets her -- she  
25 recompenses as an owner?

1 A Yes, as an investor.

2 Q Has the utility provided any evidence that shows  
3 the vice president's time is worth more than the  
4 president's, in your opinion?

5 COMMISSIONER JABER: Let me understand what you  
6 just testified to.

7 Mr. Jaeger, your question was first that  
8 Ms. Speer is a shareholder in the corporation?

9 MR. JAEGER: That's correct.

10 COMMISSIONER JABER: You agree that Ms. Speer is  
11 a shareholder in the corporation?

12 THE WITNESS: Yes.

13 COMMISSIONER JABER: And is it your testimony  
14 that part of her salary --

15 THE WITNESS: No.

16 COMMISSIONER JABER: -- goes -- tell me what you  
17 just said with respect to how she's compensated as a  
18 shareholder for the company.

19 THE WITNESS: Okay. As a shareholder, she must  
20 look to the rate of return on equity as compensation for  
21 her investment. So, when the Commission's leverage graph  
22 says that the return on equity should be -- and I can't  
23 remember exactly what it was in this case. I think, it  
24 was 9.27 or maybe it was 10%, that's where she's  
25 compensated for her investment in this company, her equity

1 interest.

2 She cannot look to that 9.10% and a higher  
3 salary as an officer. Those are two separate sources of  
4 earnings. And in order to justify a salary as a vice  
5 president, then, she has to do equivalent work that would  
6 justify the salary.

7 And what the Staff did was they took her salary  
8 and they said, well, this is 20%. If she were here 100%,  
9 her equivalent salary would be higher than the  
10 president's. It would be, I think, something around 2 or  
11 \$300,000. And the Staff rightly concluded that that  
12 doesn't seem right, that if she's the vice president, she  
13 shouldn't be compensated on an annual basis greater -- not  
14 on an actual basis, but on an annual basis, on a full-time  
15 basis, greater than the president. So, they scaled that  
16 salary down to 20% of what the president would have got  
17 which, I thought, was a reasonable approach.

18 COMMISSIONER JABER: Thank you.

19 COMMISSIONER JACOBS: I understand from your  
20 cross examination yesterday that you looked at some of her  
21 qualifications and you participated or you reviewed the  
22 transcript of her deposition --

23 THE WITNESS: Yes.

24 COMMISSIONER JACOBS: -- to look at what her  
25 duties had been with the company?

1 THE WITNESS: Yes.

2 COMMISSIONER JACOBS: Okay. I've not seen any  
3 reference to any time records or any scope of duties  
4 documentation.

5 THE WITNESS: Nobody keeps time records.

6 COMMISSIONER JACOBS: Okay.

7 THE WITNESS: And when asked what did you do?  
8 "Well, I spent a lot of time on the phone. We have a  
9 4-hour meeting every Tuesday with the officers." And when  
10 asked details, she would always refer to Mr. Watford;  
11 "Mr. Watford takes care of that. Mr. Watford tells me  
12 about that."

13 COMMISSIONER JACOBS: Thank you.

14 COMMISSIONER JABER: What about job  
15 descriptions, though? I mean, is it unusual for a  
16 corporation not to have time sheets and time records?

17 THE WITNESS: No, especially something this  
18 size. I mean, it would be nice. It would be nice if they  
19 had a budgeting process, too.

20 COMMISSIONER JABER: Do they have job  
21 descriptions for their employees?

22 THE WITNESS: I don't know, but I don't think  
23 so. Nobody's asked that question, and I don't think that  
24 they exist, but I wouldn't swear to that.

25 BY MR. JAEGER:

1 Q Mr. Larkin, you said that Staff's approach was  
2 reasonable. Wouldn't you consider it more than reasonable  
3 and actually an abundance of caution they've given her --  
4 they've been very generous?

5 A Well, as I stated yesterday, if you took the  
6 study that the company did in the prior case that they  
7 said justified salary, and you looked at vice presidents,  
8 which was on average about 90 grand and you took 20% of  
9 that, I think, you'd come out with about \$18,000. Staff's  
10 adjustment leaves her salary higher than that.

11 And you've got to remember -- I mean, there are  
12 other perks she's good at getting out of this company.  
13 She's charging all of her gasoline through here. She's  
14 got a vehicle that the company claims she responds to  
15 emergencies with. She's getting, probably, medical  
16 benefits. So, it's not like we're nailing her to the  
17 cross. We're leaving her a reasonable compensation, I  
18 think, for the time she puts in.

19 Q Okay. Moving to another area, are you familiar  
20 with the utility's \$5.2 million loan from the Bank of  
21 America?

22 A Yes.

23 Q I think, the covenants of that loan require the  
24 utility to have all of its systems audited; is that  
25 correct?

1 A Yes.

2 Q And isn't it correct that this loan was  
3 guaranteed with the revenues of all of the utility's  
4 systems?

5 A It's totally guaranteed.

6 Q So, would you agree that all of the utility's  
7 systems benefits from the annual financial audit?

8 A I would think that they benefit from the  
9 standpoint, at least, that part of the capital -- debt has  
10 been allocated to them in the proposed capital structure.  
11 So, to the extent that it's allocated to them, I think,  
12 it's appropriate to assign some of the audit costs.

13 Q Okay. Are you also aware that the utility  
14 allocates its contractual services accounting expenses to  
15 all of its systems based on ERCs?

16 A Yes.

17 Q And are you aware that the utility recorded the  
18 annual financial audit cost to the contractual services  
19 accounting expense account?

20 A Yes.

21 Q So, if the Commission were to determine that the  
22 annual financial audit costs should be allocated to all  
23 the utility systems, would it be appropriate to allocate  
24 this cost based on ERCs?

25 A Well, that's not what I've done. I've allocated

1 it based on the portion of the debt component allocated to  
2 the other systems. And, I think, there's a relationship  
3 between if you're saying we've got this loan of \$5.9  
4 million, and we're allocating 14% of it to the other  
5 systems, then I don't think that they should bear more  
6 than the benefit that they receive from the loan through  
7 the capital structure. If the ERC allocations allocates  
8 more of that audit cost, I don't think that would be  
9 appropriate.

10 Q Mr. Larkin, we'll move on to another area.

11 You've made an adjustment to reduce the  
12 utility's materials and supplies account by \$15,266; is  
13 that correct?

14 A Yes.

15 Q And, I think, the basis for this adjustment was  
16 because the utility had not explained the increase from  
17 December 31st, '98 to September 30th, '99; is that  
18 correct?

19 A Yes.

20 Q Did you review Mr. Nixon's rebuttal Exhibit  
21 RCN-3?

22 A Yes.

23 Q Does this exhibit provide a comparison of the  
24 12-month ending balance at September 30th, 1998 and the  
25 September 30th, 1999 base year?

1           A     Adjusted for inflation, and then made a  
2 comparison and accounted for the difference.

3           Q     I'm sorry. Could you take a look at the  
4 exhibit, RCN-3, and show me where they did that? Do you  
5 have that available?

6           A     If you look at RCN-3, he took the 1998 balance  
7 and adjusted it for customer growth and inflation. That's  
8 on Line 2. And then, compared that to the test year  
9 balance and then got a difference and then accounted for  
10 the items she said were unusual and nonreoccurring.

11          Q     Okay. Mr. Larkin, I see five numbers there  
12 starting on Line 5, 7, 8, 9, and 10. It's 12,703 for  
13 exception 3, disclosure 5; then, 5,847 in the electrical  
14 and mechanical. Is there any way of telling if those  
15 numbers are, you know -- is there a breakdown showing how  
16 that was more than the year before or -- I just don't see  
17 how these numbers can show you whether they actually  
18 compared them to the September 30th, 1998.

19          A     Well, they don't. And, apparently, he did that  
20 on his own or looked through and knew that these were  
21 unique items and pulled them out.

22          Q     Is there any way for us to tell, other than just  
23 we'd have to ask Mr. Nixon?

24          A     You'd have to ask Mr. Nixon or you'd have to go  
25 back and look at the record yourself. But as I review

1 these items myself, it seems to me that they are items  
2 that might have been connected with the replacement of two  
3 blower motors. And some of the items are, obviously, to  
4 me, not expense items.

5 For instance, there's one invoice here for a  
6 Peabody Barnes single phase 2-HP. That's got to be a  
7 2-horsepower motor. I don't know if you'd expense that.  
8 A lot of the items were electrical items. So, I think  
9 that there was probably a major redoing of the electrical  
10 system when the two blower motors were replaced.

11 And in addition, one of the items that I see in  
12 here, it's on page 18 of 36, and it's an invoice for  
13 \$1,118.30 for a breathing apparatus. That was one of the  
14 items that the Staff pulled out and capitalized. So, that  
15 can't be part of the explanation. That's been capitalized  
16 already.

17 And I suspect that many of these other items, if  
18 they are related to some major replacement of blower  
19 motors, should have either been all capitalized or  
20 amortized over a longer period of time, together with the  
21 blower motors.

22 Q So, again, the utility might be expensing items  
23 that should be capitalized here?

24 A Yes. There's another item, page 31 of 36, a  
25 cylinder mounted vacuum regulator, 100 pounds, 100 PPD

1 maximum plugged, dual cylinder electronic scale. I mean,  
2 those are -- to me, are capital items. They're not  
3 expense items.

4           And a very large item on page 34 of 36, 31 cubic  
5 yards of filter sand and Pumatic truck. I don't know what  
6 that was used for. The sand was installed somewhere in  
7 the system or it was used as a temporary filter while they  
8 replaced something. But the fact that you could look at  
9 one account and compare it to a prior year and say these  
10 items are unique are nonreoccurring, would seem to me to  
11 be a reason to adjust.

12           Q     Mr. Larkin, you've made an adjustment to reduce  
13 the material utilities and supplies account by \$16,155; is  
14 that correct?

15           A     Yes, I think, that's correct.

16           Q     Okay. And your basis for this adjustment was  
17 because the utility had not explained the increase from  
18 December 31st, '98 to September 30th, 1999; is that  
19 correct?

20           A     Yes.

21           Q     Have you reviewed Mr. Nixon's rebuttal exhibit,  
22 RCN-4?

23           A     Yes.

24           Q     Does this exhibit provide a comparison of the  
25 12-month ending balance September 30th, 1998 and the

1 September 30th, 1999 base year?

2 A No, it doesn't. It does the same thing as the  
3 other.

4 Q So, would you agree that without having a  
5 comparison of the 12-month ending balance as of September  
6 30th, 1998 and September 30th, 1999, base year, one cannot  
7 ascertain the reason for the total increase between these  
8 two periods?

9 A Not unless you look at them and you know that  
10 the items that are in there are unique and nonreoccurring.

11 Q Going back to that amended and restated consent  
12 final judgment between the utility and the DEP, is it  
13 correct that two new plant operators for Aloha Seven  
14 Springs solid wastewater treatment plant were required as  
15 a result of this judgment?

16 A Yes.

17 Q And, I believe, the utility hired at least two,  
18 if not more, employees; is that correct?

19 A I think so. Well, I assume that they did.

20 Q Have you reviewed Mr. Nixon's rebuttal exhibit,  
21 RCN-4?

22 A Yes.

23 Q Aren't part of the expenses or costs of the  
24 items listed as advertising appear to be for these new  
25 employees required by the DEP?

1           A     Yes.

2           MR. DETERDING:  Commissioner, I want to object  
3 to this continuing line of questioning.  What Mr. Jaeger  
4 is doing is while this is something that is within the  
5 scope of the type of adjustments made by Mr. Larkin, what  
6 Mr. Jaeger is doing is bolstering Mr. Larkin's direct by  
7 asking him questions about rebuttal exhibits that  
8 Mr. Nixon submitted that have not even been entered into  
9 the record.

10           And my concern is that he is -- rather than  
11 doing cross examination of Mr. Larkin's direct, he is  
12 eliciting additional direct from Mr. Larkin based upon  
13 rebuttal exhibits.  He's effectively eliciting rebuttal  
14 testimony to Mr. Nixon's rebuttal.

15           MR. JAEGER:  I'll make no more reference to the  
16 rebuttal exhibits, Commissioner.

17           COMMISSIONER JACOBS:  Okay.  Well, to the extent  
18 that it's within the scope of his direct, he can present  
19 demonstrative evidence that's not entered yet into the  
20 record; can he not?

21           MR. DETERDING:  Well, he can certainly ask  
22 Mr. Larkin questions about his direct testimony, but what  
23 he is doing is eliciting additional direct testimony.

24           COMMISSIONER JACOBS:  That will be of concern.  
25 To the extent that it goes outside the scope of his

1 direct, then I think that is a concern. What he's saying  
2 is you'll limit the scope of those questions.

3 BY MR. JAEGER:

4 Q Would advertising expense for the hiring of new  
5 employees, in your opinion, be a recurring expense?

6 A I would not think so.

7 Q Mr. Larkin, could you explain or illustrate how  
8 you calculated your recommended 26.9-year amortization  
9 period for contributed taxes?

10 A I didn't calculate it. I went right to the  
11 Staff work paper and looked at the Staff work paper where  
12 the Staff had audited the amortization of CIAC. And the  
13 Staff audit, page 23, page 1 of 3, it is stated, "1998 and  
14 prior CIAC is amortized using a composite rate of CIAC  
15 assets, which exclude intangibles, lands, and general  
16 plant. A composite rate of the CIAC for assets for 1998  
17 is 26.9 years or 3.2%."

18 So, prior to 1998, when the taxes were  
19 collected, the company was amortizing the CIAC over 26.9  
20 years, and that's why I used that number.

21 MR. JAEGER: I have no further questions,  
22 Commissioner.

23 MR. BURGESS: No redirect.

24 COMMISSIONER JACOBS: Any questions?

25 COMMISSIONER JABER: I have a question.

1 COMMISSIONER JACOBS: Go ahead.

2 COMMISSIONER JABER: Mr. Larkin, let me take you  
3 back to Ms. Speer's salary.

4 THE WITNESS: Okay.

5 COMMISSIONER JABER: As you were going through  
6 the percentage, 20%, I did some calculations of my own,  
7 and I need you to help me understand why my calculation  
8 might be wrong, because it doesn't do what the audit does.  
9 You said in your testimony that Ms. Speer performs 20% of  
10 her work week for Aloha duties.

11 THE WITNESS: She puts in -- yeah. She states  
12 that she works 20% of the time.

13 COMMISSIONER JABER: All right. And you also  
14 said, you know, if we look at the president who works full  
15 time for Aloha and divide that by half, Ms. Speer's salary  
16 is actually more than half of Mr. Watford's salary.

17 THE WITNESS: Yes.

18 COMMISSIONER JABER: All right. Why isn't it  
19 appropriate to take 20% of Mr. Watford's salary, subtract  
20 that 20% amount, which according to the audit, is \$24,519?

21 In other words, you take his salary, which is  
22 122 and 595 --

23 THE WITNESS: Right.

24 COMMISSIONER JABER: -- and subtract 24,519.

25 THE WITNESS: And that's her salary?

1           COMMISSIONER JABER: That would be his salary  
2 reduced by 20%. Would you agree with that, subject to  
3 check, that --

4           THE WITNESS: Well, let's talk in theories and  
5 not the numbers.

6           COMMISSIONER JABER: Okay. Let me give you some  
7 numbers. And if you could write these down, just indulge  
8 me a bit.

9           THE WITNESS: Let me get a calculator. I've got  
10 a pad of paper here. Now, we're starting with his salary  
11 which is 168,5. And you want to take --

12           COMMISSIONER JABER: Well, the president's  
13 salary, according to the audit, and I'm just looking at  
14 the audit, is \$122,595.

15           THE WITNESS: Okay.

16           COMMISSIONER JABER: Would you agree that's what  
17 the audit on disclosure number 4 indicates, page 11.

18           THE WITNESS: Okay.

19           COMMISSIONER JABER: Now, what's 20% of that?

20           THE WITNESS: \$24,590.

21           COMMISSIONER JABER: Now, subtract 122,595 or  
22 subtract 24,519 from the president's salary.

23           THE WITNESS: That's 98,000.

24           COMMISSIONER JABER: And 76 dollars?

25           THE WITNESS: Okay, yes.

1           COMMISSIONER JABER: Now, according to your  
2 testimony and Staff's recommended adjustments, that would  
3 be what Ms. Speer could be entitled to, if she were a  
4 full-time employee; is that correct?

5           THE WITNESS: If she were a full-time -- I guess  
6 -- no, I don't -- I don't know what the -- no, I don't  
7 think that's my testimony.

8           COMMISSIONER JABER: All right. Then, I need to  
9 understand your testimony, because I thought your  
10 testimony was that she was actually making more as a  
11 part-time employee than the president, who is a full-time  
12 employee, if we divided his salary in half.

13          THE WITNESS: Oh, no. If you take her salary --  
14 and I can't remember the exact number, but if it's 68,900  
15 or somewhere around there.

16          COMMISSIONER JABER: Would you agree it's  
17 \$68,250?

18          THE WITNESS: Okay, let's start with that,  
19 68,250; and you divide that by 20%, you get \$341,250. So,  
20 based on what she gets for 20% of the time, if you  
21 annualize that to 100% of the time, she'd be making  
22 \$341,250.

23                 And the Staff said, well, she should make no  
24 more than the president. So, they said let's take 20% of  
25 the president's salary and adjust out everything else

1 above that. And that's the adjustment they make. And  
2 that's the adjustment I agree with.

3 COMMISSIONER JABER: Fine. But let's go back to  
4 my hypothetical. Remember, I started out and said I want  
5 you to understand, I want you to help me understand, why  
6 my calculation would be incorrect.

7 THE WITNESS: Well --

8 COMMISSIONER JABER: So, help me understand why  
9 it wouldn't be appropriate to take the president's salary,  
10 minus the 20% of his salary, and you said you get 98,076  
11 and then divide that by half. Why is that not  
12 appropriate?

13 THE WITNESS: Because the \$98,000 is  
14 representative of the president's salary for somebody  
15 that's working 60% of the time. Because that's what that  
16 calculation gets you. You take 100%, and you take 20% off  
17 of that 80% of the time. So, you're saying \$98,000 --  
18 \$98,360 is equivalent to the president's salary for  
19 somebody that's working 80% of the time.

20 COMMISSIONER JABER: Okay.

21 THE WITNESS: And that's what that calculation  
22 does.

23 COMMISSIONER JABER: Thank you.

24 COMMISSIONER JACOBS: No redirect? Exhibits?  
25 I'm sorry, you had a question, Mr. Jaeger?

1 MR. JAEGER: I just wanted to make sure we move  
2 the exhibits.

3 COMMISSIONER JACOBS: Exhibits?

4 MR. BURGESS: Commissioner, I would ask that  
5 Mr. Larkin's composite exhibit, which has been identified  
6 as Exhibit 8 to this hearing, be entered into the record.

7 COMMISSIONER JACOBS: No objections? Show it  
8 admitted.

9 (Exhibit 8 admitted into the record.)

10 COMMISSIONER JACOBS: No other questions? Thank  
11 you, Mr. Larkin.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 COMMISSIONER JACOBS: Call your next witness,  
15 Mr. Burgess.

16 MR. BURGESS: Call Ted Bidy to the witness  
17 stand.

18 TED L. BIDDY

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

22 DIRECT EXAMINATION

23 BY MR. BURGESS:

24 Q Mr. Bidy, have you been sworn?

25 A Yes, I have.

FLORIDA PUBLIC SERVICE COMMISSION

1 Q Would you state your name and business address,  
2 for the record, please?

3 A My name is Ted, middle initial L, Biddy,  
4 B-I-D-D-Y. Address is 2308 Clara Kee Boulevard,  
5 Tallahassee 32303.

6 Q Mr. Biddy, have you prefiled testimony in this  
7 docket on July 31st, 2000?

8 A Yes, I have.

9 Q Mr. Biddy, if you were asked the questions that  
10 are posed in this prefiled testimony, would your answers  
11 today be the same?

12 A I have some adjustments to make, based on  
13 discovery that has been given to us since the testimony.

14 Q Okay. Let's go ahead and do that.

15 MR. BURGESS: Commissioners, I've been, for the  
16 last couple of days, trying to determine the best way to  
17 do this, and I'm not sure there is a best way. But in  
18 Mr. Biddy's prefiled testimony, he states on 9 and the  
19 context begins on page 8 about four particular components,  
20 which he states here in his testimony he has applied the  
21 percentage of 72.97, as I understand it.

22 And yet, if the capacity that he was seeking at  
23 that point through discovery, which had not been to which  
24 we had not received response that that used and useful  
25 would be adjusted to 48.65, as you can see on line 1 of

1 page 9.

2 And then following, it says if we can verify  
3 these, the components were actually installed and in  
4 various other specific qualifiers here, then he would make  
5 that adjustment. Subsequently the utility kindly  
6 responded to our discovery and it provided the  
7 confirmation that Mr. Bidy was looking for.

8 We have that in written testimony.  
9 Unfortunately, that written testimony also included some  
10 testimony that we've discussed a little bit earlier that  
11 would taint the entire thing at this point.

12 And so, therefore, what I would seek to do is  
13 elicit response to testimony that would ask whether the  
14 verification that is posed from lines 1 through 4, on page  
15 9 of the testimony, has been effectuated. And if it has,  
16 what the used and useful that he would recommend from that  
17 be.

18 COMMISSIONER JACOBS: Can we just do that by him  
19 updating his testimony? Is there a problem with that?

20 MR. BURGESS: Certainly he can. I wanted what  
21 we intend to do out there first for the procedural  
22 propriety of allowing parties to address that.

23 COMMISSIONER JACOBS: Mr. Wharton.

24 MR. WHARTON: Exactly. I'm going to assume what  
25 you've got before you is a motion. And, clearly, we

1 object. You're about to change the substantive testimony,  
2 based on discovery just described to you by OPC as timely  
3 responded to.

4 This case started in February. It is a novel  
5 concept that I can wait until August to send discovery,  
6 get the responses after the testimony date, and then  
7 change the used and useful percentage.

8 I'll tell you what I'm holding in front of me,  
9 questions for Mr. Bidy. There is not one question here I  
10 don't know the answer to, because he's already said it in  
11 deposition. That's the way I do cross examination. And  
12 we're about to fly off somewhere else.

13 This is clearly objectionable. It is not a  
14 correction. It is a substantive change. I've just heard  
15 the used and useful percentage is going to change. Well,  
16 Mr. Larkin testified yesterday that he accepted  
17 Mr. Bidy's used and useful percentage.

18 Was he saying that he had accepted the used and  
19 useful percentage that Mr. Bidy hadn't testified to yet?  
20 Certainly, our assumptions at the time as we crossed that  
21 was that he was talking about the used and useful  
22 percentage that was in the prefiled testimony.

23 Now, with all due respect, we just saw a case,  
24 with all due respect to the Staff, where the Staff is  
25 given a lot of latitude to ask someone his prefile

1 testimony a lot of questions, but prefile testimony has  
2 got to mean something. I waited until this man filed his  
3 testimony, I took his deposition, we were together 3 1/2  
4 hours, and now we're going to change these. And it is not  
5 based on anything Aloha has done. And the timing of this,  
6 in terms of we got the information, is clearly based on  
7 the timing of the discovery.

8           The discovery was sent in August. It was timely  
9 responded to in September. It could have been sent in  
10 April or June or May. And we do object, and we think that  
11 it's highly prejudicial now to -- I'm going to have to  
12 essentially take a deposition, ask questions I don't know  
13 the answers to, if you allow him to change his  
14 percentages.

15           COMMISSIONER JACOBS: Now, let me ask this  
16 question. As I understand it, in Mr. Bidy's present  
17 direct testimony, he indicates that -- and I'm  
18 specifically on page 8 and on line 20, he indicates that,  
19 beginning on line 20, that he thought that a more accurate  
20 projection used and useful was this number here, if we can  
21 verify the capacity components that were actually  
22 installed in the system.

23           So, in my mind, his testimony was that his  
24 opinion -- in his opinion, this number could apply, and he  
25 wanted to verify these numbers -- the underlying

1 components of that number. Now, tell me what it is you  
2 want to do now, Mr. Burgess.

3 MR. BURGESS: Commissioner, you have captured  
4 exactly what the essence is; that is, the sentence here  
5 reads, "For these four components, a more accurate used  
6 and useful percentage would be -- leave out some numbers  
7 -- 48.65." That was in the testimony that Mr. Wharton had  
8 the opportunity to take deposition on.

9 And all we're saying now is we have the  
10 verification that now we would change that to, basically;  
11 A, more accurate used and useful would be 48.65, and I  
12 have verified that.

13 COMMISSIONER JACOBS: And the components that go  
14 into the makeup of that number were testified to here as  
15 well. I assume, those are the other issues that were  
16 stated above line 20 on page 8?

17 MR. BURGESS: Yes, whether the design  
18 calculations indicate a 2.4 million gallons per day  
19 capacity.

20 COMMISSIONER JACOBS: Okay. Mr. Wharton?

21 MR. WHARTON: Well, Commissioner Jacobs,  
22 respectfully, does that change anything I just said, the  
23 fact that they put this sentence in here?

24 You know, to use a technique that Mr. Bidy used  
25 in the rebuttal that was disallowed, if Mr. Bidy would

1 have given a more complete answer, he would have said  
2 well, since we didn't send discovery until August, I can't  
3 testify about that now on this due date.

4 Let me tell you two questions I asked Mr. Bidy  
5 in his deposition. "In between the time of filing your  
6 prefiled testimony on August 16th, as we sit here today,  
7 you haven't learned any additional information that would  
8 cause you to modify or change your testimony? No. You  
9 have not come upon any new information which you deem  
10 particularly relevant or which cause you concern with  
11 regard to your testimony? No."

12 And I'm not sitting here right now telling you  
13 Mr. Bidy didn't say, "Well, there's some other stuff out  
14 there I'd like to see." He did. But just putting that  
15 line in the testimony, we sit here right now on the horns  
16 of a dilemma that is not the fault of Aloha.

17 COMMISSIONER JACOBS: Here's what I'm going to  
18 rule. I believe that he can stand by his statement that's  
19 in his testimony. And that statement, very simply, is  
20 that a more accurate used and useful percentage is, as he  
21 stated here. Now, on the basis of his substantiation of  
22 that, then you get to cross him on that. But that  
23 statement is in his testimony. I don't think we would  
24 require him to abandon that statement.

25 Now, as to your bolstering the support for that,

1 I think, Mr. Wharton may have some -- because sounds like  
2 he did ask at the time of the deposition whether or not  
3 you had support to bolster or change that and was not  
4 given that information.

5 So, as to your opportunity to bolster that  
6 statement, I think, his concerns are valid. And I'm going  
7 to rule you can't bolster that statement now by later  
8 discovered information, but you can stand on the  
9 statement, as it exists, in your prefiled direct.

10 MR. BURGESS: Okay. And I want to make sure --  
11 first of all, I didn't think we were offering any change.  
12 I wanted to be so totally above board about everything  
13 that it was totally beyond reproach. I don't see that  
14 there's really any change.

15 Basically, he says in his testimony that the  
16 calculations appear to be to indicate this 2.4. And he  
17 says under that scenario, it would be a 48%. And I'm  
18 trying to verify that. And we sent out discovery that,  
19 basically, asked that, can you confirm that it's 2.4. We  
20 received response.

21 And I was going to add that, but I understand  
22 the ruling, and I respect the ruling, but I want to make  
23 sure I understand it perfectly; and that is that we cannot  
24 add anything now, and he cannot add anything in his  
25 summary, but if he is asked questions, he need not block

1 from his memory that which we have received from the  
2 company on discovery subsequent to this testimony.

3 COMMISSIONER JACOBS: Cross opens the door.

4 MR. WHARTON: Is that -- well, the problem is,  
5 Commissioner, is that first of all, it is roundly frowned  
6 on by every judge I know where you give a different answer  
7 under oath in the trial than you gave in your deposition.

8 While, it's true, cross opens the door, but  
9 prefiled testimony has got to mean something. And it  
10 shouldn't mean that was true when I said it to you, but I  
11 changed my mind. And I understand your ruling, I think,  
12 although I'm not sure I understand Mr. Burgess's  
13 characterization.

14 But let me just point out one thing, quickly.  
15 What he said at the top of page 9 is I kind of think this,  
16 but I can't give the opinion. Now, he's going to say I  
17 give the opinion. That's a major change.

18 COMMISSIONER JABER: Commissioner Jacobs, can I  
19 ask a question to kind of move this along. I may have  
20 misunderstood Mr. Burgess, but I think what I'm hearing  
21 him saying is that there may not be a change. He's just  
22 trying to close up the loop as to whether the information  
23 has been verified or not.

24 MR. BURGESS: Basically, I didn't want surprise  
25 to be upon response to cross examination that we received

1 this. I mean, this basically is just -- I mean, we do  
2 stand by his testimony, and we put absolutely as much as  
3 we could in here.

4 COMMISSIONER JACOBS: Here's the ruling, and  
5 here's my understanding of how evidence works. He gets to  
6 stand by what's in his prefiled direct. You can get to  
7 cross him on it, but when you cross him on it, you open up  
8 the door for him to bring forward what he needs to support  
9 your questioning. That's my understanding of how evidence  
10 works.

11 MR. WHARTON: Well, I'll tell you, Commissioner  
12 Jacobs, if I say, "Isn't it true, sir, that in your  
13 prefiled testimony you said you don't have the information  
14 to verify that there should be a 48.65% adjustment to  
15 these four components," which is exactly what he says  
16 here, under your theory, he can then say, "I verified it  
17 yesterday"?

18 I mean, obviously, I'm not going to ask any  
19 questions about these four components, if that's your  
20 ruling, because -- which leaves an unchallenged opinion.  
21 It's just -- I don't know. To me, the important thing is  
22 -- I mean, let's look at what happened with Mr. Watford's  
23 testimony.

24 We filed a motion saying it was newly discovered  
25 and it was contentious and we talked about it for 40

1 minutes yesterday on reconsideration. There's no  
2 allegation here this is newly discovered.

3 COMMISSIONER JACOBS: The distinction here is  
4 that he clearly indicated in his prefiled testimony that  
5 this was his opinion, a preliminary opinion, albeit, but  
6 this was his opinion, and he indicated the rationale for  
7 why it was preliminary and that he was seeking to confirm  
8 that rationale. I think that, in my mind, is a  
9 distinction from the prior episode. Staff, did you have  
10 any view, comments?

11 MR. JAEGER: I think, you've analyzed it  
12 appropriately, Commissioner.

13 COMMISSIONER JACOBS: Okay.

14 MR. WHARTON: I understand your ruling,  
15 Commissioner.

16 COMMISSIONER JACOBS: Thank you.

17 BY MR. BURGESS:

18 Q With the exception that's been discussed, if you  
19 were asked the questions posed in your prefiled testimony,  
20 would your answers today be the same?

21 A Yes.

22 Q Mr. Bidy, did you also prepare exhibits which  
23 you identified as TLB-1, 2; 3 and 4 and attach those to  
24 your testimony?

25 A Yes, I did.

1           Q       Commissioner, I would ask that Mr. Bidy's  
2 prefiled testimony be entered into the record, as though  
3 read, and that his exhibits attached to his testimony be  
4 identified on a composite basis.

5           COMMISSIONER JACOBS:  Okay.  Without objection,  
6 show his prefiled direct entered into the record as though  
7 read.  And we'll identify as Exhibit 9 the composite  
8 exhibit as TLB-1 through 3?

9           MR. JAEGER:  4 also.

10          MR. BURGESS:  Yes, TLB-1, 2, 3 and 4.

11          (Exhibit 9 marked for identification.).

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

2 A. My name is Ted L. Biddy. 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 their  
12 Tallahassee Office from April 1991 until February 1998. I left the employment  
13 of BDI on September 30, 1998. Before joining BDI in 1991, I had operated my  
14 own civil engineering firm for 21 years. My areas of expertise include civil  
15 engineering, structural engineering, sanitary engineering, soils and foundation  
16 engineering and precise surveying. During my career, I have designed and  
17 supervised the master planning, design and construction of thousands of  
18 residential, commercial and industrial properties. My work has included: water  
19 and wastewater facility design; roadway design; parking lot design; stormwater  
20 facilities design; structural design; land surveys; and environmental permitting.

1 I have served as the principal and chief designer for numerous utility projects.  
2 Among my major water and wastewater facilities designs have been a 2,000 acre  
3 development in Lake County, FL; a 1,200 acre development in Ocean Springs,  
4 MS; a 4-mile water distribution system for Talquin Electric Cooperative, Inc.  
5 and a 320-lot subdivision in Leon County, FL.

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

7 A. I am a member of the Florida Engineering Society, National Society of  
8 Professional Engineers, Florida Institute of Consulting Engineers, American  
9 Consulting Engineers Council, American College of Forensic Examiners and the  
10 Florida Society of Professional Land Surveyors.

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

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

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

19 A. Yes, I have testified before the PSC for Docket Nos. 940109-WU, 950495-WS,  
20 950387-SU, 951056-WS, 950387-SU, 960329-WS and 971065-SU on various

1 engineering issues and used and useful analyses.

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

3 A. The purpose of my testimony is to provide engineering testimony on the used  
4 and useful calculation issues for this rate case.

5 **Q. DURING YOUR REVIEW OF THIS CASE WHAT DOCUMENTS DID  
6 YOU REVIEW AND WHAT INVESTIGATIONS DID YOU MAKE?**

7 A. I studied all the MFR filings and exhibits as filed by the Utility, all PSC Staff  
8 and Utility correspondence, all discovery furnished by Aloha to the PSC Staff. I  
9 also attended the depositions of Aloha's engineer and accountant, Messrs. David  
10 Porter and Robert Nixon. I also made an onsite inspection of the construction  
11 work in progress at Aloha's Seven Springs Wastewater Treatment Plant  
12 (WWTP) and conducted a field inspection of all the service area. I further  
13 interviewed Florida Department of Environmental Protection (FDEP) permitting  
14 and enforcement staff regarding Aloha's WWTP and read all FDEP files  
15 concerning Aloha since 1996. I also obtained copies of pertinent parts of  
16 FDEP's file.

17 **Q. DO YOU AGREE WITH THE 100% USED AND USEFUL ANALYSIS  
18 PROPOSED BY THE ALOHA UTILITIES, INC. (UTILITY OR ALOHA)  
19 FOR THE SEVEN SPRINGS WASTEWATER COLLECTION SYSTEM?  
20 IF NOT, PLEASE EXPLAIN WHY YOU DO NOT AGREE AND WHAT**

1           **IS THE APPROPRIATE METHODOLOGY FOR CALCULATING THE**  
2           **USED AND USEFUL PERCENTAGE?**

3    A.    No, I do not agree that the collection system is 100% used and useful. Aloha  
4           asserts that all the wastewater collection systems are fully contributed in  
5           Schedule F-7. However, according to the Schedule A's, Aloha has constructed  
6           many force mains and pumping stations which were not contributed by the  
7           developers. Moreover, during the projected test year ending 9/30/01, Aloha  
8           proposes to construct a major pumping station and force mains and  
9           improvements to the gravity collection system at a cost of \$1,657,815, none of  
10          which is shown as contributed by developers. Therefore, a used and useful  
11          adjustment to the rate base is necessary. Because there is no detail system  
12          information available the appropriate methodology should be the comparison of  
13          connected lots and total potentially available lots. For my determination, the  
14          most recent aerial photos and the Pasco County Tax Assessor's online database  
15          were used to identify the build out percentages in each section of Aloha's service  
16          area.

17   **Q.    WHAT IS THE APPROPRIATE USED AND USEFUL PERCENTAGE**  
18   **FOR THE WASTEWATER COLLECTIONS SYSTEM?**

19   A.    By my methodology, I have computed a used and useful percentage for the  
20          collection system of 78.7%. See my attached Exhibit TLB-1 for the detailed

1 calculations.

2 **Q. DO YOU AGREE WITH THE UTILITY'S WITNESS MR. PORTER**  
3 **THAT ALOHA SHOULD EXPECT 350,000 TO 1,400,000 GPD**  
4 **INFILTRATION TO ITS COLLECTION SYSTEM?**

5 A. No. It is correct that there are many guidelines suggesting different allowances  
6 of infiltration amounts for wastewater collection systems. However, many of  
7 those numbers are intended for older types of sewer systems, such as clay pipes  
8 with non-compression type joints. I believe a stringent standard should be used  
9 for this system because it has mostly PVC gravity sewers, which are not prone to  
10 infiltration, because the joints are sealed with rubber gaskets or synthetic  
11 material. If the PSC were to allow 1,400,000 GPD flow for normal infiltration  
12 as requested by Aloha in MFR Schedule F-6 page 2 of 3, then 87.5% of the 1.6  
13 MGD plant capacity will be wasted because it would be treating groundwater in  
14 addition to the domestic wastewater. Even a flow of 350,000 GPD will equate to  
15 21.8% of the 1.6 MGD plant capacity. From today's engineering and economic  
16 standpoint, the infiltration allowance range of 350,000 to 1,400,000 GPD flow is  
17 definitely unacceptable for the general ratepayers. It is certainly not economical  
18 or cost effective to devote so much plant capacity to treat groundwater instead of  
19 domestic wastewater. The familiar FDEP rule of 200 GPD per inch of pipe  
20 diameter per mile of sewer line should be used as the limit for any I/I. By this

1 rule and for Aloha's 35 miles of average 8 inch diameter sewers, the I/I  
2 allowance would be 56,000 GPD.

3 **Q. DO YOU BELIEVE THERE IS EXCESS INFILTRATION IN THE**  
4 **WASTEWATER COLLECTION SYSTEM AND HOW MUCH**  
5 **ADJUSTMENT SHOULD BE MADE TO THE TREATED PLANT**  
6 **FLOW?**

7 A. Yes, I believe this system does have inflow and infiltration (I/I) problems and  
8 the amount is excessive because this issue was specifically identified in the DEP  
9 consent final judgment (Case No. 93-4356). In that Judgment, the Utility is  
10 entitled to a half-gallon credit for each gallon of flow to the plant that is  
11 eliminated as a result of the I/I program. Currently the Utility has identified that  
12 a flow reduction of 140,000 GPD can be achieved when just a portion of the  
13 collection system is repaired. At this point, however, the I/I reduction program  
14 has not been completed. Rather, the program is still in the process of seeking to  
15 identify other areas of the collection system that might reduce I/I if repaired.  
16 This amount of I/I reduction will be higher when the I/I reduction program has  
17 studied the entire collection system. Since the entire projected cost of the I/I  
18 reduction program has been included in the filing, the entire reduction effect also  
19 should be recognized.

20 There is evidence in the March 1, 2000 Capacity Analysis Report, Update

1 Number 2, prepared by Mr. David Porter for Aloha Utilities, Inc., that indicates  
2 excess inflow/infiltration in the collection system. For the flow projection, a  
3 flow reduction close to 210,000 GPD was made to the 1998 plant flow because  
4 abnormally high groundwater level/surface flooding occurred in that year. Since  
5 Aloha's Engineer, at his deposition of 7/24/00, could not confirm what  
6 percentage of the system has been investigated, I have used the assumption that  
7 the total infiltration reduction can achieve 280,000 GPD after the I/I study is  
8 complete. We know that only a small portion of the collection system has been  
9 examined with a finding of 140,000 GPD of I/I which can be eliminated, and  
10 therefore it is not unreasonable to assume that at least another 140,000 GPD of  
11 I/I will be found and eliminated from the remainder of the collection system.  
12 Therefore, the plant flows I used for the used and useful calculations have been  
13 adjusted downward for the removal of 280,000 GPD excess I/I. If the study  
14 update information becomes available after my filing, I will revise my I/I  
15 adjustment accordingly.

16 **Q. SHOULD THE OPERATING EXPENSES BE ADJUSTED FOR THE**  
17 **EXCESS INFLOW AND INFILTRATION?**

18 A. Yes, consistent with the reasoning explained above, I believe the power and  
19 chemical expenses should be adjusted for 23.37% (i.e. 280,000 GPD/1.198  
20 MGD). This number may increase, if more I/I study reports become available

1 after my original pre-filed testimony. I also believe that the maintenance of new  
2 equipment which is shown as 5% of the value of new equipment is overstated  
3 because the equipment manufacturer and general contractor must guarantee and  
4 repair any defects during the first year of service. The new equipment will be  
5 operational about October 1, 2000 and therefore the equipment guarantee will  
6 last almost exactly the full projected test year. Because Aloha has not adjusted  
7 for this factor, this overstated estimate should be removed.

8 **Q. WHAT IS THE APPROPRIATE USED AND USEFUL PERCENTAGE**  
9 **FOR THE WASTEWATER TREATMENT PLANT?**

10 A. See my attached Exhibit TLB-2 for methodology and Exhibit TLB-3 for details.

11 The percentage adjustment of 72.97% for the year 2006 which gives a full 5  
12 years margin reserve should be applied to the Rate Base for the plant capacity  
13 increase to 1.6 MGD. I have recently received the design calculations for the  
14 plant which was a part of the FDEP permit application. These design  
15 calculations indicate that portions of the current upgrade to the plant were  
16 designed for the ultimate capacity of 2.4 MGD. These components were the  
17 equalization tank and the new headworks. Moreover, two of the existing  
18 components consisting of the reuse chlorine contact chamber and the seven-cell  
19 filter are also shown in the design calculations to be sized for the ultimate flow  
20 of 2.4 MGD. For these four components, a more accurate used and useful

1 percentage would be 1,167,574 GPD/2,400,000 GPD or 48.65%. If we can  
2 verify that these ultimate capacity components were actually installed and if the  
3 accountant can isolate the costs of these components, then a further used and  
4 useful adjustment should be made to these components. I will file a revised  
5 Exhibit TLB-3 once this information can be verified.

6 **Q. DO YOU BELIEVE A USED AND USEFUL ADJUSTMENT SHOULD BE**  
7 **MADE TO THE REUSE FACILITIES?**

8 A. Though the reuse facilities are required to comply with the FDEP requirement, I  
9 believe that equity and fairness would dictate that existing customers should  
10 only pay for their own share but should not pay for the future customers.  
11 Therefore, the used and useful adjustments should be applied to all the reuse  
12 facilities and reuse force mains. When there is no detail design information  
13 available, the treatment plant used and useful percentage (72.97%) should be  
14 applied to the reuse facilities, pumping station and force mains. If more detail  
15 information became available after my pre-filed testimony, I intend to update the  
16 used and useful percentages before the public hearing. Based on my field  
17 investigation and verbal information provided by Mr. Porter, I believe the reuse  
18 system can have a 2.5 MGD capacity without additional upgrade. The 2.5 MGD  
19 should provide enough capacity to serve additional demand for the next 20  
20 years. This capacity is based on the reported 24, 18 and 12 inch force mains

1 with two 1,750 GPM pumps and one 1750 GPM spare pump at the reuse  
2 pumping station. If this design information is confirmed, the used and useful  
3 percentage with a 5 year margin reserve would be substantially lower than the  
4 72.97% adjustment discussed above.

5 **Q. WHAT IS THE EFFECT OF SECTION 367.0817, FLORIDA STATUTES,**  
6 **ON THE PERMISSIBILITY OF MAKING USED AND USEFUL**  
7 **ADJUSTMENTS ON REUSE FACILITIES?**

8 **A.** I am aware that Section 367.0817 addresses this issue. That provision was only  
9 recently passed, and to my knowledge, it has not been interpreted by a Florida  
10 court. Since I am not a lawyer, I do not feel qualified to render a legal opinion  
11 as to how that statutory provision would be applied in this particular situation. It  
12 is inconceivable to me, however, that the Florida legislature could have intended  
13 that today's customers should be saddled with the capital carrying costs for  
14 facilities that will not be needed until the year 2021.

15 **Q. WHAT ARE THE EXHIBITS TLB-4A, TLB-4B AND TLB-4C WHICH**  
16 **YOU HAVE ATTACHED TO YOUR TESTIMONY AND WHY DID YOU**  
17 **PREPARE THESE EXHIBITS?**

18 **A.** Exhibits TLB-4A, B & C are summaries of the Utility's Schedules A-4(A), A-  
19 4(B), and A-4(C) which they filed. I prepared my exhibits as summaries of  
20 starting, ending and 13 month average balances of wastewater plant in service

1 for the three years ending 9/30/01; 9/30/00 and 9/30/99 using the identical  
2 amounts shown on the Aloha Schedules. The reason that I prepared these  
3 schedules was for ease in reading the schedules and to add a remarks column in  
4 which I have computed and shown the amount of increase in each plant category  
5 item for each of the three years. I have also added totals for the proposed plant  
6 additions for each year. Please refer to the Exhibits and note that one can now  
7 easily see that Aloha stated that it had added total plant in the amount of  
8 \$2,316,543 in the historical test year ended 9/30/99; \$5,602,489 during the  
9 intermediate year ending 9/30/00 and proposes \$1,657,815 in plant additions  
10 during the projected test year ending 9/30/01. The grand total of plant additions  
11 shown for the three years would therefore be the amount of \$9,576,847.

12 **Q. DURING YOUR INVESTIGATION, HAVE YOU BEEN ABLE TO**  
13 **VERIFY THAT ALOHA HAS ADDED, IS ADDING AND PROPOSES TO**  
14 **ADD TO THEIR TOTAL PLANT THE AMOUNTS WHICH YOU**  
15 **COMPUTED ON YOUR EXHIBITS TLB-4(A), TLB-4(B) AND TLB-4(C)?**  
16 **IF NOT, WHAT IS YOUR ADVICE IN THIS MATTER?**

17 **A.** No, I have not been able to confirm that as of the preparing of this testimony. I  
18 would advise that we continue on with discovery and investigations in this  
19 matter after the filing of the direct testimony and present revised testimony at the  
20 hearing of this matter.

1 Q. HOW MUCH OF THE \$9,576,847 ADDITION TO WASTEWATER  
2 PLANT IN SERVICE AS PROPOSED BY ALOHA HAVE YOU BEEN  
3 ABLE TO VERIFY DURING YOUR INVESTIGATION?

4 A. I have been able to verify a total of approximately \$4,000,000 which is the total  
5 of four construction contracts let on/about October 1, 1999 for upgrades at the  
6 treatment plant which are nearing completion. I also have been told verbally by  
7 Aloha's engineer, David Porter, that a part of the total consists of the new reuse  
8 force mains which were constructed during the historical test year and a part will  
9 consist of a new major pumping station and force main presently under design  
10 and to be constructed during the projected test year. I also understand from Mr.  
11 Porter that approximately \$571,000 of engineering fees to several engineering  
12 firms is probably included in the total. I propose to continue my investigation  
13 after this testimony is filed to try to verify the \$9,576,847 total. I would request  
14 the opportunity to file revisions to this testimony, should it be necessary and  
15 relevant.

16 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

17 A. Yes.

1 BY MR. BURGESS:

2 Q Mr. Biddy, you've heard the discussion about --  
3 that led to Commissioner Jacobs' ruling on evidence.

4 A Yes, sir.

5 Q And I admonish you to be aware and heed that  
6 ruling. And with that, can you provide a summary of your  
7 testimony?

8 A Yes, sir.

9 Q Thank you.

10 A The purpose of my testimony was to provide  
11 engineering testimony concerning used and useful  
12 calculation for the various components of the total plant  
13 of Aloha. The background information that I studied first  
14 was MFRs, the correspondence between the Staff and the  
15 utility, all the Aloha discovery that had been gathered to  
16 date by Staff, the prefiled testimony of Mr. Porter and  
17 Mr. Nixon.

18 I also attended a deposition of Mr. Porter and  
19 Mr. Nixon. I performed an on-site inspection of the plant  
20 that was under construction and also did an inspection, a  
21 field inspection, of the entire collection system, in the  
22 Aloha service area.

23 I obtained from the Pasco County Tax Assessor's  
24 office all the aerial maps with the latest text  
25 information on them concerning all properties within the

1 Aloha service area. I also had explained to me by the tax  
2 assessor how to access their on-line information for all  
3 parcels that were either vacant or occupied.

4 I went to the DEP office in Tampa and  
5 interviewed staff person, Mr. David MacColeman, who is an  
6 enforcement director with his division, concerning Aloha  
7 and was afforded the opportunity to read the DEP's  
8 complete file on Aloha and make copies of certain parts of  
9 the files, which I did do; particularly, the capacity  
10 analysis report file by Mr. Porter in March of this year;  
11 the last report that he filed or that Aloha filed with DEP  
12 for the I/I program, reduction program, that they're  
13 undertaking now; and also, the design computation  
14 submitted to DEP with the permit application for the  
15 permit for the improvements.

16 I also was able to read their consent final  
17 judgment. I think, it's called amended and modified  
18 consent final judgment between Aloha and FDEP. With that  
19 background, I immediately saw that the I/I was an  
20 important part of the case. And I made an analysis of the  
21 I/I into the system.

22 Mr. Porter had stated in his March report to DEP  
23 that they had found already, in a very small part of the  
24 system, 140,000 gallons per day of infiltration, and they  
25 had measured that and they were in the process of

1 repairing it.

2 He'd also said in his capacity analysis report  
3 filed with the department in March 1 of this year that  
4 during an excessively wet year of 1998 that excessive --  
5 let me not put that word. He said massive amounts of  
6 inflow and infiltration entered the Aloha system.

7 So, it was obvious that there was a considerable  
8 amount of I/I in the system. I computed the allowable I/I  
9 in the system by the only formula that exists that the DEP  
10 has for measuring I/I, and that is the 200 gallons per day  
11 per inch per mile of sewer. I did that for Aloha's 35  
12 miles of sewer, and I got 56,000 gallons per day. That's  
13 the allowable I/I in the system.

14 So, with that, as a preliminary number, I took  
15 Mr. Porter's 140,000 gallons per day that they --

16 MR. WHARTON: Commissioner Jacobs, I apologize  
17 for interrupting the witness, but we're passed the five  
18 minutes. It is in bold print in the prehearing order --

19 COMMISSIONER JACOBS: I'm sorry, I hadn't been  
20 keeping time. Staff, is that your correct time?

21 MR. JAEGER: I had about another 20 seconds.

22 COMMISSIONER JACOBS: We'll just wrap it up,  
23 then, so we're all clear.

24 THE WITNESS: All right. I assumed, we could  
25 find another 140,000 gallons per day in the remainder of

1 the system. Mr. Porter had outlined in the capacity  
2 analysis report that there was an extra 240,000 gallons of  
3 inflow that had flowed into the system due to the storms  
4 in '98. He'd already found 140. I thought I was being  
5 very conservative by saying okay, well, just double the  
6 140 and say there's 280,000 gallons of I/I in the system.

7 If I added everything, the '98 inflow plus the  
8 140, I would have had even more. So, I used in my  
9 calculations the 280,000 gallons per day as excess I/I,  
10 assuming that they were repairing the system so that the  
11 allowable 56,000 would still be in the system.

12 COMMISSIONER JACOBS: Getting close to the edge.  
13 If you could go ahead and finish up your summary, that  
14 would be good.

15 THE WITNESS: Okay. I then computed the I/I  
16 percentages for the collection system, the treatment plant  
17 and -- I did not have further information other than what  
18 I stated in my testimony for the excess capacity of  
19 certain elements in the treatment plant. And I stated  
20 those in my testimony of what they would be, if what I had  
21 read was, indeed, true. And, I then went through an  
22 exhibit of determining --

23 MR. WHARTON: I would renew the objection at  
24 this point, Commissioner.

25 COMMISSIONER JACOBS: I think, you're about out

1 of time.

2 THE WITNESS: All right, sir.

3 COMMISSIONER JACOBS: All righty? Anything  
4 else?

5 MR. BURGESS: We'd tender the witness for cross  
6 examination.

7 MR. WHARTON: Commissioner Jacobs, I do this  
8 with some trepidation. I want to make a motion. I  
9 understand that we want to expedite the proceeding, and  
10 I'm sorry, if it sounds like I'm the cog in the wheel, but  
11 I started my legal career at the PSC, and as I move into  
12 more forums, it's just sometimes I'm trying to extrapolate  
13 that experience here, because we're under the APA, and  
14 this is part of the motion. We're under the APA here,  
15 just like every other agency, and now we're now under the  
16 uniform rules the Commission doesn't have some procedure  
17 rule. I think, I should be allowed to do my cross last.

18 I am adverse to this witness. There is no doubt  
19 about that. The Staff has been described as playing the  
20 role of the judge's law clerk. And, I think, in the case  
21 of Mr. Larkin, they elicited a lot of testimony that we  
22 should have been allowed, respectfully, in my opinion, to  
23 have engaged in cross after that testimony was elicited.  
24 And I would make that motion without any further argument  
25 and won't belabor the point.

1           COMMISSIONER JABER: Commissioner Jacobs, if I  
2 can offer a suggestion, that we bring this witness back at  
3 the end of today or just hold him as the last witness. I  
4 think that that will take care of a lot of -- it's just a  
5 suggestion for the purposes of moving today along.

6           MR. WHARTON: Based on the length of -- and I'm  
7 sorry, Commissioner Jaber, if I've given that impression.

8           MR. JAEGER: I'm sorry. I'm confused what your  
9 motion is, John.

10          MR. WHARTON: I'm moving now that the Staff  
11 would engage in cross now, and then we engage in cross  
12 afterwards.

13          COMMISSIONER JACOBS: He wants your cross to go  
14 first.

15          MR. JAEGER: That's fine.

16          COMMISSIONER JACOBS: How much do you have?

17          MR. JAEGER: The Staff has no cross.

18          MR. WHARTON: That's a comfort.

19          COMMISSIONER JACOBS: Your motion stands?

20          MR. WHARTON: Okay. So, do you want me to go  
21 ahead?

22          COMMISSIONER JACOBS: I think, even if you have  
23 extended cross, I think, it would probably be better to go  
24 on and finish him now. Because it's my understanding that  
25 some other witnesses on rebuttal that we're going to be

1 here for a while with them, so sounds better at least to  
2 get going now. Go ahead.

3 CROSS EXAMINATION

4 BY MR. WHARTON:

5 Q Mr. Bidy, isn't it true that you have neither  
6 designed or permitted any facility that had reuse as a  
7 method of effluent disposal?

8 A That had -- repeat the question, please.

9 Q That you have neither designed or permitted any  
10 facility that had reuse as a method of effluent disposal?

11 A That is correct.

12 Q Sir, let's talk about this subject of I/I, which  
13 you have proposed a used and useful adjustment based on  
14 your determinations, correct?

15 A That's correct.

16 Q The concept of I/I is, as you've described, that  
17 you've determined there was an allowable amount of  
18 infiltration and inflow in the system, correct?

19 A That's correct.

20 Q And then, to the extent that you believe there  
21 was I/I above that amount, you have termed that as  
22 excessive I/I?

23 A That's correct.

24 Q And you believe to the extent there is excessive  
25 I/I in the system, the plant's treating something that

1 ought not be in there and then, therefore, there's a used  
2 and useful adjustment 5 percentage.

3 A You've summed it up correctly.

4 Q Okay.

5 COMMISSIONER JACOBS: One of the instances that  
6 you used the analogy is when there was flooding in the  
7 system. So, that means that the flooding -- how does  
8 flooding work with that?

9 THE WITNESS: All right. The two components of  
10 inflow and infiltration, infiltration is the entrance of  
11 groundwater into the sewer pipes through defects, also  
12 into manholes. Inflow is either the connection of illegal  
13 storm drains to the storm sewer pipe or water from the  
14 surface water runoff from these storms entering manholes  
15 through the stops or through imperfections in the manholes  
16 themselves.

17 COMMISSIONER JACOBS: I see.

18 THE WITNESS: And many times the inflow is as  
19 much as infiltration. And, as I said, Mr. Porter said it  
20 was at least that much in his capacity analysis report.

21 COMMISSIONER JACOBS: Okay, thank you.

22 BY MR. WHARTON:

23 Q Let's make sure that we've got our figure  
24 straight. It's your belief that there are 300 --  
25 approximately, 336,000 gallons per day of I/I in the

1 system and that 280,000 gallons of that is excessive I/I,  
2 correct?

3 A Yes. The 280,000 is excessive I/I, yes, at  
4 least that much.

5 Q Out of 336,000 gallons of I/I total?

6 A Well, I don't know where you got that  
7 arithmetic. I said there was 140 that they had found. In  
8 my testimony, I said let's assume there's at least another  
9 140. I have also identified, by Mr. Porter's capacity  
10 analysis report, another 240 that he says are inflow  
11 separate from infiltration.

12 I did not use all of that. I took a  
13 conservative approach and said let's just assume there's  
14 another 140. So, there's 280,000 gallons of excessive I/I  
15 in the system, and that was the basis of my calculations.

16 Q Okay. I'll let you know where I got the  
17 arithmetic, sir. Do you recall that I took your  
18 deposition on Wednesday, August 16th, 2000?

19 A Yes.

20 Q And at page 145, thereof, line 2, "Question: So,  
21 you actually believe there was 336,000 gallons of I/I?  
22 Answer: Yes. Around 280,000 gallons of that is excess  
23 I/I? Answer: That's correct."

24 A Yes, I just confirmed that.

25 Q You stand by that testimony?

1 A Yes, I do.

2 Q Okay. And you agree that the whole issue of  
3 I/I, as it relates to used and useful, is that if I/I is  
4 lower than you calculated then used and useful is higher?

5 A Yes.

6 Q And that's because what the plant's treating, in  
7 that case, would be not I/I, it would be wastewater  
8 generated by customers, correct?

9 A That's right.

10 Q And if I/I is higher than you calculated, then  
11 used and useful is lower?

12 A That's correct.

13 Q Okay. Now, you mentioned that Aloha's currently  
14 undertaking an I/I reduction program, right?

15 A That is correct, based on the consent final  
16 judgment.

17 Q Isn't it true that regarding I/I's reduction  
18 program, you can't even guess or estimate what portion of  
19 the system Aloha has looked at to this point?

20 A Aloha has stated that -- Mr. Porter has stated  
21 that they have examined one small area, which is the Seven  
22 Springs area and the Veterans Village area, and that  
23 they've found a total of 140,000 gallons per day of I/I in  
24 that one small area.

25 Q But isn't it true, Mr. Bidy, that you can't

1 even guess or estimate what portion of the system Aloha  
2 has looked at?

3 A At this point, the only way I can characterize  
4 it is a small proportion.

5 Q So, you couldn't quantify, say, a percentage?

6 A It's a small portion. It's in the neighbored  
7 of, you know, less than 30%, certainly.

8 Q Okay, sir. And you do recall that I took your  
9 deposition on August 16th?

10 A Yes, sir.

11 Q And on page 124, line 11, "Question: Have you  
12 attempted to guess or estimate that portion of the system  
13 for the purposes of your testimony? Answer: Had not.

14 Question: So, you don't know if it's 5%, 10%, 50%?

15 Answer: No."

16 A That's right.

17 Q Do you stand by that testimony?

18 A That's right, it's real small.

19 Q And the way that you came up with your 280,000  
20 of excess I/I was merely that you took 140,000 GPD of I/I  
21 that had been discovered by Mr. Porter in the production  
22 program you talked about, and then you doubled that  
23 because you believed that was the reasonable thing to do?

24 A A very conservative, on the utility side,  
25 reasonable thing to do, yes.

1 Q Okay, but you doubled the 140, under the  
2 circumstances I just described, because you believed that  
3 was the reasonable thing to do?

4 A That is correct.

5 Q Okay. And you didn't make any assumptions in  
6 terms of the percentage of what portion of the system had  
7 been done when you wrote your testimony, did you? You  
8 didn't assume, for instance, that Aloha's I/I reduction  
9 program was less than 45% thinner?

10 A No, I did not.

11 Q You just doubled gallonage Mr. Porter had found  
12 in the reports you saw.

13 A That's correct.

14 Q Regarding the actual pipes that are under the  
15 ground, that would be the subject of the I/I, you don't  
16 have any personal knowledge about the quality of the work  
17 the developers did when they installed the systems out  
18 there, do you?

19 A I wasn't there when it was done.

20 Q And you don't have any personal knowledge about  
21 substandard work by developers in laying those pipes, do  
22 you?

23 A I don't have any personal knowledge, no.

24 Q Okay. Let's discuss the basis, then, for the  
25 calculations you made regarding what was allowable and

1 what was excess.

2 In your opinion, the allowable sewer line  
3 leakage rate for new PVC pipe with rubber leak-resistant  
4 joint should be 200 gallons per day per inch diameter per  
5 mile; isn't that correct?

6 A I did not qualify, and the rule does not  
7 qualify, the 200 gallons inch per mile rule to any  
8 particular type of pipe or any particular type of joint.  
9 For all pipe, it's the only rule the DEP has for both new  
10 sewers and rehabilitated sewers. And I have seen it  
11 applied right here in this county to rehabilitated sewers.

12 Q So, you don't agree with my question, then?

13 A No.

14 Q Okay. Do you recall that I took your deposition  
15 on August 16th?

16 A Yes.

17 Q And at page 47, line 12, you stated that you  
18 believe that "An allowable sewer line leakage rate for new  
19 PVC pipe with rubber leak-resistant joint should be 200  
20 gallons per day per inch diameter per mile; is that  
21 correct? Answer: That's correct."

22 A It would be correct for that kind of pipe and  
23 all other kinds of pipe, yes.

24 Q You stand by the testimony?

25 A Yes, but you seem to be trying to limit it to

1 PVC pipe with rubber joints. That's not a limitation in  
2 the rule.

3 Q All I'm doing, sir, is repeating a question and  
4 answer we exchanged in the deposition. I don't want to be  
5 argumentative, but your lawyer will have a chance to talk  
6 to you about --

7 MR. BURGESS: I suggest Mr. Bidy be given the  
8 opportunity to look at the particular area of the  
9 deposition and look at the full context.

10 MR. WHARTON: And, certainly, to the extent that  
11 I am misleading the Commission, then, that should be  
12 brought out now, otherwise, it ought to be done on  
13 redirect. I mean, we've all got the deposition.

14 COMMISSIONER JACOBS: If he would like to review  
15 his questions and answers in the deposition, I think, he  
16 should have the opportunity to do that.

17 THE WITNESS: What page are we on?

18 MR. WHARTON: Mr. Bidy, that was a question  
19 that I asked you on page 47, line 12.

20 COMMISSIONER JACOBS: Why don't we take this as  
21 a moment to take a break. We'll take 10 minutes.

22 MR. WHARTON: That's fine, Commissioner.

23 (Brief recess.)

24 COMMISSIONER JACOBS: You can continue,  
25 Mr. Wharton.

1 MR. WHARTON: How would you like me to proceed,  
2 Commissioner? Just take up where --

3 COMMISSIONER JACOBS: Yes.

4 BY MR. WHARTON:

5 Q Okay. Mr. Bidy, you have had an opportunity to  
6 review the statement on Page 47, Line 12 of the  
7 deposition?

8 A Yes, I have.

9 Q Is the question and the answer that I recited a  
10 correct reflection of what's contained in your deposition?

11 A Yes, but I continued on to explain just what I  
12 explained a minute ago. It not only applies to PVC but  
13 all other types of pipe, on Page 48, Line 20.

14 Q Okay. But do you stand by your testimony, Page  
15 47, Lines 12 through 17?

16 A Certainly.

17 Q Okay. Sir, do you understand that particular --  
18 first of all, we're talking about the ten states standards  
19 that we had the long discussion about yesterday, right, in  
20 the motion hearing?

21 A Yes, we are.

22 Q Okay. So these are the ten states standards  
23 that we talked about?

24 A Yes.

25 Q And you understand that, in fact, that rule that

1 leakage exfiltration or infiltration shall not exceed 200  
2 gallon per inch of pipe diameter per mile per day in any  
3 connection of the system to be a rule applied to new  
4 construction, don't you?

5 A I understand it will be a rule applied to both  
6 new construction and rehabilitated sewers.

7 Q Okay. So you understand then that it is a rule  
8 to be applied only to new construction or rehabilitated  
9 sewers?

10 A When you are rehabilitating them, that's the  
11 rule. When you've got new sewers, that's the rule as  
12 well.

13 Q What is a rehabilitated sewer?

14 A When you do an I/I improvement program such as  
15 Aloha is doing, when you televise and clean the lines and  
16 repair the joints, the manholes. I've seen it in this  
17 very county with Lindrick Utility where the DEP used this  
18 same rule for rehabilitated sewers.

19 Q What about older sewers?

20 A That was older sewers.

21 Q Do you apply the rule to older sewers?

22 A That was older sewers, yes.

23 Q Okay. Let's talk about that for a minute. Sir,  
24 were you a witness in the -- for OPC in the Southern  
25 States rate case that is sometimes referred to as the mega

1 docket?

2 A Yes.

3 Q And in that case, you testified about the ten  
4 states standards, didn't you?

5 A I don't remember, but I probably did. It comes  
6 up often.

7 Q Do you recall that the Commission put in the  
8 order on that case, Mr. Bidy acknowledged that the WPCF  
9 guideline is a more appropriate allowance for old systems;  
10 whereas the ten states standards guideline is a more  
11 appropriate guideline for new systems?

12 A When you said the word, "allowance," that threw  
13 me because the other rules that you're referring to or  
14 other citations are not rules at all. There's only one  
15 rule, and that is 200 gallon per inch per mile. There are  
16 other textbooks that tell you how much you might expect in  
17 older systems, and I'm sure that's what I testified to.

18 Q But what I really asked you, Mr. Bidy, was  
19 whether you recall that the Commission put in the order  
20 when they were discussing your testimony the ten states  
21 standards guideline is a more appropriate guideline for a  
22 new system. You either do recall that or you don't.

23 A I don't recall it, but --

24 Q Okay. We will put it in the brief then. And in  
25 fact, sir, do you recall that in your deposition at Page

1 49, Line 7, I said, "Sir, is that a rule," and I was  
2 referring to the ten states standards, "that is to be  
3 applied to new construction," and at Line 9 your answer  
4 was, "Yes, it is"?

5 A That is correct. It is to be applied in new  
6 construction.

7 Q Would you expect clay piping to have I/I that  
8 was much greater than PVC or some other materials you're  
9 familiar with?

10 A Yes.

11 Q And you agree that clay pipe is much more  
12 susceptible to I/I than modern PVC pipe, don't you?

13 A Yes.

14 Q And as we sit here today, you're unable to  
15 project or quantify what you would expect the leakage rate  
16 to be from, say, 10-year-old clay pipes which are laid  
17 below a heavily traveled roadway at depths of over  
18 10 feet; isn't that true?

19 A Nobody knows until you test it.

20 Q So you would agree with the statement?

21 A That's correct.

22 Q Okay. So regardless of the condition of Aloha's  
23 collection system or the material of which it was  
24 constructed, it's your opinion that any I/I that exceeds  
25 200 gallons per day per inch diameter per mile is

1 excessive, isn't it?

2 A That is correct.

3 Q And that's because you believe that 200 gallons  
4 per inch per day per mile is the limit to what is  
5 tolerable, and anything other than that under any  
6 circumstance, it should be considered excessive?

7 A That is the only rule we have by the DEP to go  
8 by, and it's been applied, in my experience, on projects  
9 that I have worked on on both new construction and  
10 rehabilitation projects. So, yes, the answer to your  
11 question is a yes.

12 Q When you say that the 200 is a rule, what do you  
13 mean?

14 A It is a rule of the ten states standards that  
15 the DEP has adopted.

16 Q Have you -- is this the ten states standards,  
17 recommended standards for wastewater facilities that seems  
18 to have a picture of ten states on the front?

19 A Well, the copy I have is -- yes, that's it also.  
20 I have a copy of the inside page.

21 Q Let me show you this, Mr. Bidy.

22 COMMISSIONER JACOBS: You may approach.

23 MR. WHARTON: Thank you.

24 A Yes, that's it.

25 MR. WHARTON: And, in fact, Mr. Burgess and

1 Commissioners, this is a document that I obtained from  
2 Staff that is the portion of the ten states standards on  
3 which they have requested judicial notice.

4 BY MR. WHARTON:

5 Q So you're holding the same document, just a  
6 different copy of it, Mr. Biddy?

7 A Yes, I am.

8 Q Okay. Do you agree that the 200 gallons per  
9 inch of pipe diameter per mile per day for any section of  
10 the system is found on Page 30-6 at Section 33.94 of this  
11 particular --

12 A Yes, that's correct.

13 Q And isn't it true that that entire section is  
14 labeled, "Design of Sewers"?

15 A Yes.

16 Q Okay. You design sewers before you put them in  
17 the ground, don't you?

18 A Of course.

19 Q You don't design sewers 20 years after they have  
20 been put in the ground, do you?

21 A Well, you design a rehab program for them just  
22 as Aloha is doing now.

23 Q Can you show me anywhere in here where there is  
24 anything to support -- or do you have anything in the ten  
25 states standards that supports what you're saying about

1 the rehab program?

2 A I'm telling you that the DEP enforces this rule  
3 for both new construction and rehab systems. They see no  
4 difference in them, apparently.

5 Q Would you agree that, in fact, there are  
6 numerous formulas which can be used to calculate I/I  
7 depending on the age and type of collection systems?

8 A There are numerous textbook and manual citations  
9 that give an opinion as to how much I/I you might expect  
10 in a system depending on its age and so on. There's only  
11 one rule concerning how much you should have in the  
12 system.

13 Q Okay. So you do agree with my statement that  
14 there are numerous formulas which could be used to  
15 calculate I/I depending on the age and type of collection  
16 system?

17 A Yes.

18 Q Sir, you can't estimate or project what rate of  
19 I/I might be expected from, say, 10-year-old clay pipes or  
20 20-year-old clay pipes below a heavily traveled roadway or  
21 that were, say, asbestos cement pipes, can you?

22 A No, you cannot.

23 Q So is it a fair summary of your testimony that,  
24 in your opinion, for both new PVC or for 10- or  
25 20-year-old clay pipes, the limit of what is tolerable,

1 that is, what should be considered not to be excessive  
2 would be the same, and that's 200 gallons per inch  
3 diameter per mile per day?

4 A That is correct.

5 Q Okay. Do you believe that to be the same  
6 whether there have been made any connections to that  
7 system or not?

8 A Say that again.

9 Q Do you believe that to be the same whether there  
10 have been any connections made to the system or not?

11 A Yes, because it's applied equally by DEP both to  
12 new sewers and rehabilitated sewers with connections.

13 Q Isn't it true that you're not able to quantify,  
14 as we sit here today, what parts of Aloha's collection  
15 system that relate to this proceeding are made up of one  
16 type of material as opposed to another type of material?

17 A Only to the extent of what Mr. Porter has  
18 reported can I quantify what types of piping are in the  
19 ground.

20 Q And those are the reports you testified about in  
21 your summary?

22 A Yes.

23 Q Okay. Do you recall, sir, that I took your  
24 deposition on August 16th? I'm assuming you do by your  
25 prior answers.

1 A Yes.

2 Q At Page 57, Line 7, "Question: Would it be a  
3 fair characterization of your testimony that for both new  
4 PVC or for 10- or 20-year-old clay pipes, the limits of  
5 what is tolerable, that is, what should be considered not  
6 to be excessive, would be the same, and that's 200 gallons  
7 per inch" -- I'm sorry, I misread that -- "200 gallons per  
8 day per inch per mile? Answer: Yeah. It wouldn't matter  
9 what the material was."

10 A That's correct.

11 Q You stand by that testimony?

12 A I do.

13 Q You also don't know what the age of the various  
14 portions of Aloha's collection system that are issued in  
15 this proceeding, do you?

16 A Generally speaking, yes, but not specifically,  
17 no.

18 Q Okay. Sir, I'll direct your attention to Page  
19 59, Line 9 of the deposition. "What about the same  
20 question regarding the portion of Aloha's collection  
21 system that we're concerned with in this proceeding as to  
22 its age? Answer: I have no idea other than just  
23 generally some of it is older obviously just looking at  
24 it."

25 MR. BURGESS: I think that's consistent with his

1 answer now, generally not specifically.

2 MR. WHARTON: If so, I apologize.

3 A That's what I said, and that's generally the  
4 truth. I know the general age of the pipe system. I was  
5 out there inspecting it while some of it is being  
6 installed as we speak. There's new systems going in all  
7 the time.

8 Q But you would agree, Mr. Biddy, that you have no  
9 idea as to its age other than just generally some of it's  
10 older obviously by just looking at it?

11 A Well, I have read everything Mr. Porter has  
12 reported in this case, and he talks about the old systems  
13 that are perhaps 20 years old in the Seven Springs and the  
14 Veterans Village area. I also have seen the extreme, the  
15 other side, where they are only just now putting it in the  
16 ground. So zero to 20 years, that's pretty general, and  
17 that's all I know of it.

18 Q And I'm sorry, Mr. Biddy. I don't want to  
19 belabor the point, but you do agree with the question and  
20 answer on Page 59 I read into the record?

21 A Fifty-nine, Page 9?

22 Q Page 59, Line 9 through 12.

23 A Yes.

24 Q Thank you. Mr. Biddy, you had testified earlier  
25 that you were a witness in the Southern States case that

1 we talked about; correct?

2 A Yes, I was.

3 Q Do you recall whether one of these documents  
4 that was put forth in that case was the EPA manual,  
5 "Handbook for Sewer System Evaluation and Rehabilitation?"

6 A Probably was. I don't remember it specifically,  
7 but it probably was.

8 Q Are you familiar with that document?

9 A I have read it, yes.

10 Q Okay. Do you recall that there is an  
11 infiltration and inflow analysis chapter in that document?

12 A There's a discussion on it. I don't know if  
13 it's a chapter by itself or not.

14 Q Okay. Let me ask you something, sir. Do you  
15 know -- taking Aloha's system as a whole, the portion of  
16 the system that's involved in this proceeding, are you  
17 aware -- are you able to quantify with specificity the  
18 type of sewer system?

19 A Would you be more specific with your question,  
20 please, sir.

21 Q Well, the EPA manual I'm referring to says,  
22 "i.e., separate or combined system or combination." As we  
23 sit here now, can you quantify with specificity the type  
24 of sewer system?

25 A When you say, "specificity," you mean down to

1 the quantities of clay pipe versus PVC?

2 Q Correct.

3 A Just generally, just as I've explained.

4 Q What about the same question for the age of the  
5 sewers?

6 A Zero to 20 years, as I've explained.

7 Q But you couldn't say this portion is 5 and this  
8 portion is 15?

9 A Just as I've explained. I've already answered  
10 that question.

11 Q What about sizes and lengths of sewer pipes?

12 A Well, I have seen some sewer drawings of the  
13 entire system, so I know that they are generally  
14 eight inches. It's generally eight-inch gravity systems  
15 within the subdivisions. It's generally force mains and  
16 pumping stations in the major roads leading back to the  
17 treatment plant.

18 Q But have you attempted to ascertain with  
19 specificity with regard to the collection system here at  
20 issue the sizes and lengths of all the sewer pipes?

21 A No.

22 Q Have you attempted to ascertain -- and again,  
23 Mr. Biddy, all the questions that I'm asking you relate to  
24 that portion of Aloha's collection system which is at  
25 issue in this proceeding. Okay. Have you attempted to

1 ascertain with specificity the pipe materials?

2 A On a general basis only.

3 Q Have you attempted to ascertain with specificity  
4 the types of joints and joint materials?

5 A Well, that's important, of course, in an I/I  
6 evaluation, but I have not done it with specificity if you  
7 mean to the -- how many joints of clay pipe versus how  
8 many joints of rubber gasket PVC pipe, no.

9 Q Have you attempted to ascertain with specificity  
10 the numbers of manholes and catch basins?

11 A No.

12 Q Have you attempted to ascertain with specificity  
13 the maximum, minimum, and average depth of sewers?

14 A You know, on a general basis, yes, but I have  
15 not done any quantities with specificity. It's not  
16 necessary.

17 Q What about, have you attempted to ascertain with  
18 specificity the bedding and backfill materials?

19 A No.

20 Q Have you attempted to ascertain with specificity  
21 the construction techniques?

22 MR. BURGESS: I think he answered two questions  
23 ago that he had not done any quantitative ascertaining  
24 with specificity of any of these variables because he  
25 didn't feel it was necessary for his conclusion.

1 MR. WHARTON: I'll withdraw the question unless  
2 I don't get the answer I want, and if I don't, we'll  
3 discuss it.

4 BY MR. WHARTON:

5 Q All right. Mr. Biddy, would it surprise you to  
6 know that what I am reading you from the EPA manual is a  
7 litany of the items that you need to know in order to do  
8 an I/I analysis?

9 A No, it wouldn't surprise me.

10 Q First of all, do you agree with your attorney's  
11 characterization of your testimony?

12 A Yes, I do.

13 Q Okay. So no matter how long this list is, to  
14 the extent that it says you specifically needed to know  
15 things about the sewer in the ground, you have not  
16 undertaken that analysis?

17 A Well, I think you're mischaracterizing what I  
18 did. I think you're mischaracterizing what the rule is in  
19 this State. EPA guidelines are not the rule in this  
20 State; ten states standards are. If DEP requires the rule  
21 of 200 gallons per inch per mile, this is what I applied  
22 to the system. I did not even look at the EPA guidelines  
23 for it.

24 MR. WHARTON: I would ask to be allowed to  
25 finish this list. There's only three more items.

1                   COMMISSIONER JACOBS: Well, I think he's already  
2 given you an answer, though. He said he didn't look at  
3 the list.

4                   MR. WHARTON: No. I understand, but he's  
5 acknowledged what I'm looking at is an EPA reference  
6 manual on how you do this kind of analysis, and so far, he  
7 hasn't done any of it. And there's 11 things here, and  
8 I've gone through 8. I mean, let me ask a question.

9 BY MR. WHARTON:

10           Q     Mr. Bidy, no matter what the last three things  
11 this list says, do you think you probably haven't done it?

12           A     I did not even look at the EPA guidelines  
13 because they are not appropriate to the job.

14           Q     I'm not asking you if you looked at the EPA  
15 guidelines, sir. I'm asking you if when you came up with  
16 this percentage for I/I that you then made this  
17 significant used and useful judgment based on whether what  
18 you did conforms with these guidelines, not whether you  
19 looked at the guidelines. I'm trying to find out what you  
20 did.

21           A     I did not do the things that you're reading to  
22 me, no.

23                   COMMISSIONER JABER: Mr. Bidy, are the EPA  
24 guidelines more comprehensive than the ten states  
25 standards?

1           THE WITNESS: More comprehensive, when you say,  
2 "more comprehensive," probably so in terms of an engineer  
3 who would go in and plan a design of a rehabilitated  
4 system. The ten states standards simply give the limits  
5 of what the I/I should be. DEP adopted that a long time  
6 ago, and that's the only rule there is. This is the one  
7 they enforce.

8           If I were to design, go in, as Mr. Porter  
9 supposedly has done or someone in Aloha's organization,  
10 and design a rehabilitated system, you would -- to get an  
11 idea of what you had first, you would quantify all your  
12 clay pipe, all your PVC pipe, what types of joints you  
13 had, what the depths were, where are the water tables at,  
14 all those factors, and then you would know if you could go  
15 in with a TV and camera crew and clean and TV the lines,  
16 and then repair the joints, or whether or not you might  
17 want to do some slip lining of joints. It could be below  
18 the water table, and you couldn't do the TV camera work.  
19 So it's a lot of things you would do in design of  
20 rehabilitating systems, and that's essentially what he's  
21 reading there.

22           COMMISSIONER JABER: So DEP didn't incorporate  
23 the EPA guidelines in their ten states standards at all.

24           THE WITNESS: No, ma'am, they did not.

25           COMMISSIONER JABER: So who uses the EPA

1 guidelines then?

2 THE WITNESS: Well, I think it's a good thing  
3 for an engineer who's sitting down to design a  
4 rehabilitation of a system to look at is the EPA  
5 guideline.

6 COMMISSIONER JABER: Well, then does someone  
7 have to approve or come and check the rehabilitation of  
8 the system?

9 THE WITNESS: Yes. The DEP will approve the  
10 program you set up, you design, and those are just  
11 textbook guidelines is basically what he's reading.

12 COMMISSIONER JABER: All right. But does DEP  
13 expect that the companies will rely on the EPA guidelines  
14 in rehabilitating the system?

15 THE WITNESS: In design, yes, ma'am.

16 COMMISSIONER BAEZ: But ultimately it's going to  
17 be held to that 200 gallon per day --

18 THE WITNESS: Standard. Yes, sir, that's the  
19 rule.

20 COMMISSIONER JACOBS: Now, when you came up with  
21 your 140,000, you say that was based on an analysis done  
22 by Mr. Porter. Was that an observation or a projection?  
23 What was the basis of that analysis?

24 THE WITNESS: That was based on nighttime flow  
25 isolation studies which Mr. Porter reported that the crew

1 that they hired did on a certain small portion of the  
2 system. I took that number and doubled it. I thought  
3 that was being very fair to the utility to just double it.  
4 And that's all the information I had at the time I  
5 prepared those.

6 COMMISSIONER JACOBS: Thank you. Mr. Wharton.

7 MR. WHARTON: May I approach?

8 COMMISSIONER JACOBS: By all means.

9 BY MR. WHARTON:

10 Q Mr. Bidy, would you agree that once again what  
11 I'm showing you is the document we discussed earlier,  
12 which is the excerpt from the ten states standards which  
13 Staff has had official recognition taken of?

14 A The two pages attached to it appear to be  
15 another document. It doesn't appear to be the same  
16 document.

17 Q In point of fact, for whatever reason that the  
18 document that I have obtained from the Staff also has the  
19 DEP's administration code rule; correct?

20 A Apparently so.

21 Q And that is the administrative code rule that  
22 you have said incorporates the ten states standards?

23 A Yes.

24 Q And, in fact, that administrative code rule  
25 incorporates by reference about 30 different documents,

1 doesn't it?

2 A A bunch of them.

3 Q Okay. About 20 to 30, maybe? I'm not holding  
4 you to the number.

5 A Two pages' worth, it looks like.

6 Q Of little bitty type?

7 A Yes.

8 Q And, in fact, this document I'm holding in my  
9 hand, "Design of Municipal Wastewater Treatment Plants,"  
10 is also incorporated in the rule, isn't it? See, I've got  
11 a blue mark there by it.

12 A Apparently so, yes.

13 Q And I'm looking at Page 2-42 of that book, and  
14 there's a section called, "Infiltration and Inflow," isn't  
15 there?

16 A Yes, there is.

17 Q And there's a paragraph here that begins with in  
18 italics "Recommended standards for wastewater facilities  
19 (Great Lakes 1997)," that's the ten states standards,  
20 isn't it?

21 A That's correct.

22 Q Would you read that paragraph into the record,  
23 sir?

24 A Recommended standards for wastewater facilities  
25 (Great Lakes 1997) defines an allowable infiltration or

1 exfiltration rate of 19,000 milliliters per meter per day  
2 per meter or 200 gallons per day per inch per inch of  
3 diameter per mile for new pipe construction. Acceptable  
4 infiltration values before (sic) replacement or  
5 rehabilitation become appropriate in older existing sewers  
6 can be 10 or more times higher. The determination depends  
7 on a case-specific economic analysis of each sewer system.

8 Q Thank you, sir. And just so the record is  
9 clear, you would agree with me that according to this  
10 document, acceptable infiltration values for replacement  
11 or rehabilitation can be as much as 10 times higher on a  
12 case-by-case basis?

13 A That's what it says.

14 Q And do you agree, sir, that since this is  
15 incorporated in the same section of the administrative  
16 code rule to which you have relied, this is just as much a  
17 rule as the ten states standards is?

18 A That is not the limitation that is applied by  
19 the FDEP in Florida. It's certainly attached to --  
20 apparently as a -- one of the guidelines. In fact,  
21 they're called guidelines, guidance and related rules, but  
22 that one is not enforced. The one that is enforced is the  
23 200 gallons per day per inch per mile.

24 Q Do you agree, sir, that to the extent you  
25 understand that administrative code rule incorporates by

1 reference both the ten states standards and this document,  
2 "Design of Municipal Wastewater Treatment Plants," that  
3 they seem to have equal force and effect?

4 A I don't agree that they have equal force and  
5 effect, but they are both included along with, like you  
6 say, about 30 others.

7 Q Okay. And you're not an employee of DEP, are  
8 you?

9 A I have worked under their approval on hundreds  
10 of projects over the last 37 years, but I'm not an  
11 employee.

12 Q Okay. Sir, would you characterize a flow rate  
13 of 60 gallons per capita as significantly lower than the  
14 national average?

15 A It depends on where you are at. If you say as  
16 an average for a system if everybody is present and you've  
17 got only 60 gallons per capita, yes, that's low. If  
18 there's great absentee ownership in an area, it may or may  
19 not be low.

20 Q Sir, referring you to Page 64, Line 7 of your  
21 deposition.

22 A Sixty-four?

23 Q Yes, sir. Are you there, sir?

24 A Yes.

25 Q Page 64, Line 7, "Question: Okay. Would you

1 characterize a flow rate of 60 gallons per capita compared  
2 to the national average that we talked about? Is it  
3 significantly lower? Answer: Yes, it is." Do you stand  
4 by that testimony?

5 A Yes, but I gave you the same qualification to  
6 that answer immediately below it that I have here. You  
7 choose not to read those parts, but I said, areas where  
8 there is a high concentration of what we call snowbirds or  
9 people who have homes in the North and come down in the  
10 wintertime, it would probably be pretty typical.

11 Q You do agree, sir, that I just read into the  
12 record the complete question and complete answer; correct?

13 A One of them, yes.

14 Q Well, as contained on Page 64, Lines 7 through  
15 10?

16 A Yes.

17 Q All right. Do you believe that the flow  
18 information in the MFRs indicates low flow per ERC?

19 A Yes.

20 Q And you agree, don't you, that generally there's  
21 a positive relationship between excessive I/I and higher  
22 flows?

23 A As a rule, yes.

24 Q Because the more I/I coming into the system, the  
25 higher the flows?

1 A As a rule, yes.

2 Q Okay. And you agree that there's a positive  
3 relationship between lower I/I and lower flows?

4 A As a rule, yes.

5 Q Because the lower the I/I, the lower stuff  
6 that's coming in so the lower the flow?

7 A Yes.

8 Q You had talked a minute about ago about some of  
9 the factors you consider, but as we sit here, you're not  
10 able to quantify for this particular service area what  
11 percentage of absentee ownership you believe there is, are  
12 you?

13 A Only in general terms that there's quite a bit.

14 Q Okay. Referring to your deposition, sir, Page  
15 61, Line 11. "Question: Okay. For this particular  
16 service area, can you quantify, say, what percentage of  
17 absentee ownership you believe there is in terms of --  
18 Answer: No. I have no idea."

19 A Well, that's true. I have heard a lot of people  
20 testify here at this hearing about how they have gone and  
21 come and that many people do do that. I know they do.  
22 People who I subsequently talked to, even on the water  
23 case and took the samples at their home, I found out at  
24 that time that they do. So I have no idea what the  
25 quantity is. There are numbers of them. I have not

1 quantified it.

2 Q Okay. But, now, you're talking about something  
3 you have heard in this proceeding; right?

4 A Some parts of it, yes.

5 Q And you didn't take that into account when you  
6 came up with your opinions as reflected in your prefiled  
7 testimony, did you? Because it hadn't happened yet.

8 A True, of course.

9 Q Okay. Mr. Bidy, isn't it true that if you were  
10 designing a wastewater system in Florida today, you would  
11 assume 80 percent of 350 gallons and around 280 gallons  
12 per pay per household per ERC?

13 A Yes.

14 Q And if you were personally going to design a  
15 system in Pasco County, you would use the 280 per ERC  
16 average, wouldn't you?

17 A I would certainly try to.

18 Q Sir, you have referred to the consent order that  
19 there was some discussion about yesterday in your  
20 testimony. You agree that the consent order never uses  
21 the words "excessive I/I," does it?

22 A The words "excessive I/I" is not in the consent  
23 order.

24 Q Okay. Let's change the subject. When an  
25 engineer such as yourself is designing a wastewater

1 treatment plant, one of the things you take into account  
2 is, what is the appropriate horizon that plant should be  
3 designed for; right? In other words, this is four years'  
4 worth of capacity or five or seven or whatever.

5 A Based on population studies, yes.

6 Q Okay. And that concept relates to this case,  
7 doesn't it? Because, in your opinion, to the extent this  
8 plant or any of the components of this plant was designed  
9 for a horizon which you believe is inappropriately  
10 distant, then you believe that percentage of the plant  
11 should be determined to be not used and useful.

12 A That's correct.

13 Q And do you agree that for the purposes of this  
14 case, you assumed that the law provided for a five-year  
15 margin reserve over and above present capacity?

16 A It does, yes.

17 Q And you interpreted that five-year horizon as a  
18 mandate from the Legislature, didn't you?

19 A Yes.

20 Q Now, the laws that you determined in -- that you  
21 reviewed in making this determination, which is one  
22 statute that is DEP and one statute that is in the PSC's  
23 and the latter is in Chapter 367, the prior in 403, both  
24 say that these types of facilities should be considered  
25 100 percent used and useful if they are prudent; isn't

1 that correct?

2 A If they are prudently built -- you're talking  
3 about up to five years for a five-year margin reserve;  
4 right?

5 Q Well, that's your opinion; right?

6 A That's what it says.

7 Q Well, okay. In fact, Mr. Bidy, rather than  
8 having to go through this exercise, isn't it true that the  
9 five years comes from another section of Chapter 376 which  
10 is applicable to rate proceedings and which is applicable  
11 with this proceeding?

12 A That's correct.

13 Q Okay. But the section in 376 and the section in  
14 403 that provide that these types of facilities shall be  
15 considered 100 percent used and useful if they are prudent  
16 doesn't say anything about five years?

17 A Well, prudent I think is essentially the same  
18 thing is used and useful. Prudently built, to me, means  
19 was it overbuilt for the horizon or was it built in  
20 accordance for the horizon.

21 Q Okay. And that's fine. I just wanted to  
22 clarify about the statute. So in other words, it's your  
23 opinion that under the pertinent section of Chapter 367,  
24 the concept of a prudency is the same concept as used and  
25 useful?

1           A     I believe that to be the case, yes.

2           Q     And, therefore, you believe and it was the basis  
3 for your opinions in this regard that anything about the  
4 plant that was designed and is proposed to be implemented  
5 but will not be fully used until after the five-year  
6 horizon is automatically imprudent?

7           A     I didn't say that exactly. My opinion is that  
8 it is from a standpoint of ratemaking after the five-year  
9 horizon, it should not be in the existing customers' rate  
10 base. It should be -- you know, nobody is quibbling with  
11 the utility that they want to install facilities for a  
12 20-year horizon ultimate build-out, which they have done  
13 on some items. We're only quibbling about who should pay  
14 for that.

15                     It is our position that the future ratepayers --  
16 the utility should recover those costs for the excess  
17 capacity from future ratepayers by well-established means  
18 of CIAC and allowance of funds prudently invested based on  
19 hookup fees as the future customers come on-line. So in  
20 that definition of prudence, the additional facilities  
21 would still be prudent.

22           Q     Have you had a chance to review your deposition,  
23 Mr. Biddy?

24           A     I have it right here.

25           Q     Looking at Page 78, Line 20, "Question: Okay.

1 So is it correct for me to characterize your testimony  
2 then that you believe that anything that is designed and  
3 implemented which would not be used until after the  
4 five-year horizon is automatically imprudent? Answer:  
5 Yes." Do you stand by that testimony.

6 MR. BURGESS: I would ask that the witness be  
7 allowed to examine the context. We found the context to  
8 be -- to qualify the answers on a number of these.

9 COMMISSIONER JABER: Mr. Burgess, just give the  
10 Chairman a few minutes.

11 COMMISSIONER JACOBS: Just a second. I'm sorry.  
12 Go ahead.

13 COMMISSIONER JABER: Mr. Wharton, why don't you  
14 restate your question?

15 MR. WHARTON: Okay.

16 BY MR. WHARTON:

17 Q It's your opinion, is it not, that anything  
18 regarding this project that is designed and implemented  
19 but will not be used until after the five-year horizon is  
20 automatically imprudent?

21 A As far as prudence to put in the rate base, yes.

22 Q Do you agree that I have correctly recited into  
23 the record the question and answer contained on Page 78,  
24 Line 20 through 25?

25 A Yes, I do.

1 Q Was your entire answer the word, "yes"?

2 A It was.

3 Q Thank you. And it's also your opinion, isn't  
4 it, that any construction of plant that is intended to  
5 serve customers who will only come on-line after a  
6 five-year horizon cannot possibly be used and useful and  
7 by definition cannot be prudent, isn't it?

8 A That's correct. If it's past the five-year  
9 margin reserve period, it ought to be under another  
10 mechanism for recovering rates.

11 Q Now, let's set aside for a moment what you  
12 interpreted as a legislative mandate about the five years.  
13 We've talked quite a bit about some of these standard  
14 reference manuals that are incorporated in the DEP rule.  
15 Do you agree that, as we sit here now, you don't remember  
16 five years being mentioned in any of those standard  
17 reference manuals as the appropriate horizon for this type  
18 of plant?

19 A Do I remember five years? No, I do not remember  
20 five years.

21 Q Would you agree that, again setting aside what  
22 you believe was a legislative mandate and just thinking  
23 like an engineer, that prudence would require an engineer  
24 to consider marginal costs and providing component  
25 facilities now versus future costs of provision of the

1 same needed components, don't you?

2 A Well, there certainly is a margin and reserve  
3 period of five years that you think of in one vein when  
4 you think about ratemaking. When you're designing, you  
5 think of as much capacity as you can reasonably design on  
6 a cost effective basis. There is a lot of factors that  
7 you look at and cost effectiveness is one of them. But  
8 you also look at whether or not the utility is going to be  
9 able to recover that cost, and that means whether it's  
10 cost effective to them.

11 If there's a mechanism whereby a utility could  
12 collect that money, then it would probably make it cost  
13 effective to go ahead and put in the ultimate capacity  
14 size as they have done here. And I'm saying that they  
15 should seek a -- in their tariff a tap-on fee that would  
16 cover the costs of those excess capacities that they've  
17 built in to some of their components rather than try to  
18 make the existing ratepayers pay it through existing  
19 rates.

20 Q And I understand your testimony in that regard,  
21 Mr. Bidy, and you are fulfilling your role as a witness,  
22 but as an engineer, you agree, don't you, that when  
23 engineers are designing plants and they are thinking about  
24 what is prudent, sometimes they take into account the  
25 marginal cost of doing something now and having it last,

1 say, seven or eight years as opposed to doing it now and  
2 having to do it again in the sixth or seventh year;  
3 correct?

4 A Certainly.

5 Q Okay. And you agree that there might be  
6 economic reasons why it would be prudent to design  
7 components or systems which would not be used within the  
8 first five years which would make that decision prudent?

9 A I'd rather use the words "cost effective," but  
10 the way we're using the word "prudent" here, the way I'm  
11 using it in terms of ratemaking is the five-year horizon,  
12 which I interpret the law to allow for. This excess  
13 capacity if it's cost effective, I'd probably recommend it  
14 to my clients to go ahead and do it if they could collect  
15 money for it and there's certain mechanisms where they can  
16 recoup their investment through the PSC.

17 Q So if I understand your answer correctly, you're  
18 saying, again asking you to set aside what you believe is  
19 the mandate in this case, if you're an engineer and you're  
20 designing a plant, you agree there might be economic  
21 reasons why it would be prudent to design components or  
22 systems which would not be used within the first five  
23 years which would make that decision prudent?

24 A Yes, with the explanations I have given, I can  
25 give you a yes for that. Yes.

1 Q Well, let me ask you something in that regard.  
2 Looking at Page 80, Line 18 of your deposition.

3 A Line what?

4 Q Line 18, sir. "Question: But do you agree that  
5 there might be economic reasons why it would be prudent to  
6 design components or systems which would not be used  
7 within the first five years which would make that decision  
8 prudent? Answer: Yeah. That's a business decision a  
9 developer would have to make. That could be, yes." Do  
10 you stand by that testimony?

11 A Yes, I do. That's essentially what I've just  
12 said.

13 Q Okay. You agree, don't you, that the customers  
14 overall as a single body that there might -- that  
15 considering the customers overall as a single body there  
16 might be circumstances where the customers would pay less  
17 to undertake construction now rather than to postpone  
18 until after some five-year horizon?

19 A When you're considering the customers as a total  
20 body present and future, that could be true.

21 Q But it's your opinion, isn't it, that even if an  
22 engineer would be making a decision that would otherwise  
23 be prudent in designing or implementing components that  
24 might not be used within the first five years, that in  
25 this type of case that would automatically not be used and

1 useful?

2 A Yes, that's correct. It's not used and useful  
3 if it has a capacity greater than a five-year margin  
4 reserve. That doesn't mean that the utility shouldn't  
5 collect for the cost of that. It just means it needs to  
6 have a different mechanism.

7 Q You agree that there are economies of scale to  
8 be realized in some cases by building, say, one time for  
9 ten years as opposed to building twice in two five-year  
10 increments, don't you?

11 A That's true.

12 Q And you agree that many of today's customers are  
13 also going to be customers five years from now; correct?

14 A Yes.

15 Q And you agree, don't you, sir, that within the  
16 parameters of your expertise that when you're determining  
17 what the most pursuant horizon for which to design or  
18 construct a plant, there's nothing magical about a precise  
19 five-year horizon?

20 A That's true.

21 Q And you agree that this five-year period is not  
22 a period that comes from your expertise as an engineer,  
23 and that as an engineer if you were doing a design like  
24 this, you would balance your best judgments on future  
25 capacity that you design versus the client's budget and

1 what everything would cost?

2 A Well, it's more complicated than that. An  
3 engineer represents a client, and he represents the best  
4 interest of his client. If I were representing this  
5 utility, I would simply talk to them about what the  
6 regulation guidelines are and the fact that five years is  
7 the margin reserve period that's been established by the  
8 Legislature and heretofore was some other margin reserve  
9 periods as policies of the PSC.

10 And I would advise my client that it would be --  
11 depending on how he wanted to collect that money, he could  
12 collect -- put it in the rate base properly if he designed  
13 for five years of excess capacity, but there were other  
14 mechanisms. If his financial structure was such that he  
15 could stand that, we could include the excess capacity  
16 over five years in tap-on fees through CIACs and allowance  
17 for funds prudently invested. So, you know, it's not a  
18 simple, hey, I designed for a 20-year basis. You have to  
19 look at what your client's needs are and whether he's an  
20 investor-owned utility in this case, and it's an entirely  
21 different aspect then. You would do whatever is in the  
22 best interest of your client, or you would recommend to  
23 him that, and let him make the decision.

24 Q Well, I understand, Mr. Bidy, that if you  
25 accept the five years as a mandate, then you're going to

1 tell your client in any case let's never design for more  
2 than five years, but I'm asking you to set that aside.

3 A I didn't say that.

4 Q Okay. Well, I withdraw that comment. I'm  
5 sorry. I want you to set that aside. I'm just talking  
6 about you as an engineer, and we're talking about the  
7 concept of prudence based on your engineering expertise.

8 Do you agree with the question that I asked you  
9 that you gave a long answer to? Let me ask it again.

10 You agree, don't you, that this five-year period  
11 is not a period that comes from your expertise as an  
12 engineer, and that as an engineer, you would balance your  
13 best judgments on future capacity that you design for  
14 versus the client's budget and what the eventual cost  
15 effectiveness would be, and that you wouldn't want a hard  
16 and fast rule?

17 A I answered that by saying that it's -- you have  
18 to evaluate your client's needs, and I went through a long  
19 answer in answering essentially that same question by  
20 saying, in an investor-owned utility, there's a five-year  
21 margin where you can receive that excessive capacity in  
22 his present rates. And I would do whatever is best for my  
23 client, and I would advise him of what those rules were  
24 and what the costs were to do it with a five-year capacity  
25 and what the costs were to do it for longer capacities

1 that perhaps I might want to recommend to him. You can't  
2 divorce yourself and set yourself aside as an engineer  
3 without considering your client. You have to design it in  
4 accordance with the needs of your client.

5 Q Well, if this was a municipal utility or if it  
6 were an unregulated utility such as one for a co-op, you  
7 wouldn't be taking into account any five-year horizon,  
8 would you?

9 A No, you would not.

10 Q So based on the answer now that you've given  
11 twice, I'd like you to look at Page 96, Line 4 of your  
12 deposition. Do you recall at Page 96, Line 4, I asked  
13 you, "Question: But it's not a period that comes from  
14 your expertise as an engineer. That would be more  
15 flexible based on your experience if the statute didn't  
16 say that? Answer: Well, as an engineer, of course, you  
17 have to balance your best judgment on future capacity that  
18 you're designing for versus the client's budget and what  
19 the eventual cost effectiveness will be. So you can't  
20 just set out a hard and fast rule"? Do you agree with  
21 that testimony?

22 A I couldn't have said it better again.

23 Q You stand by the testimony?

24 A Yes, I do.

25 Q Thank you.

1           COMMISSIONER JABER: Mr. Biddy, can I ask you to  
2 clarify something you earlier? You're not testifying that  
3 it's not good policy or it's not cost effective for a  
4 company to build such that they have excessive capacity,  
5 that's not your testimony.

6           THE WITNESS: No, ma'am, not at all.

7           COMMISSIONER JABER: Your bone of contention, so  
8 to speak, is that the costs associated with the excessive  
9 capacity should be recovered from future customers?

10          THE WITNESS: Yes, ma'am, that's correct, and  
11 not the existing customers.

12          COMMISSIONER JABER: How do you gauge the  
13 benefits towards future customers from the benefits that  
14 the current customers do receive by having a more  
15 efficient running plant that is capable of providing  
16 additional, you know, sources to the company? Isn't it --  
17 shouldn't current customers share in the efficiency of a  
18 plant?

19          THE WITNESS: Well, I don't know that the word  
20 "efficiency" applies, though, to -- just because it's the  
21 different size. For instance, in the calculation of the  
22 design calculations for the equalization basins on this  
23 particular plant, Mr. Porter calculated a need for  
24 180,000 gallons per day -- a 180,000 gallon tank, and the  
25 facilities for that tank, it would hold the wastewater,

1 and then slowly, or at a lower rate, meter it out to the  
2 treatment process. He decided that it would be more cost  
3 effective to utilize a 500,000 gallon tank. In his  
4 computations, he shows that's for ultimate build-out.

5           The efficiency of either one, of the larger tank  
6 compared to the lower capacity tank, makes no difference  
7 to the existing customers. His needs are served by the  
8 180,000 gallon tank. The future customers are served by  
9 the balance of it. So they should pay -- by some  
10 mechanism, the future customers should pay for the  
11 capacity that was built for them, and the existing  
12 customers should pay for the capacity that was built for  
13 them. So I don't see that there's efficiencies being  
14 gained by just up-sizing sizes.

15           COMMISSIONER JABER: If we were interested in  
16 encouraging more private utilities to be forward looking,  
17 though, in their planning to meet the needs of Florida as  
18 a whole, as a regulator how did you go about then  
19 providing that sort of incentive?

20           THE WITNESS: Well, I think you do it through  
21 your mechanisms you have. The private utilities I've  
22 known before have very high tap-on fees, which CIACs and  
23 including the allowance for funds prudently invested. I  
24 don't see how they lose money if they are sound  
25 financially and ongoing -- they have got a 20-year

1 build-out, and they are sure it's going to keep growing.  
2 I think it's a good business for them to build it larger.  
3 I agree that it is a business decision, as I answered the  
4 question at depositions. But you have mechanisms to allow  
5 that for tap-on fees and have those kind of dollars put in  
6 to the tap-on fees for future customers, and that's  
7 appropriate for it to be that way.

8           The people that are there now certainly don't  
9 need to be paying for that capacity of that extra  
10 equalization tank that has been installed by the utility  
11 probably because it was more cost effective and had an  
12 economy of scale to it, but there's mechanisms where they  
13 can -- that future customers can be charged for.

14 BY MR. WHARTON:

15           Q     And let's make sure, Mr. Bidy, that to follow  
16 up on the Commissioner's question, it's clear. It's not  
17 your position that this entire plant is designed to an  
18 inappropriate horizon, is it?

19           A     No.

20           Q     This is a 1.6 -- this plant has been permitted  
21 as a 1.6 MGD plant, and you're okay with that?

22           A     Yes, I'm okay with that.

23           Q     But you believe some of the components of the  
24 plant are more than what was necessary to precisely serve  
25 those customers who would be on-line within the five-year

1 period?

2 A Yes. In some cases doubled.

3 Q You agree, sir, don't you, that based on your  
4 own expertise and what you know about used and useful that  
5 if you were designing and building a plant that would be  
6 in the best interest of the ratepayers, you would agree  
7 there's nothing magical about a five-year horizon?

8 A If the rates are structured properly, no.

9 Q You would agree with my statement?

10 A As best I understood it, yes.

11 Q Are municipal utilities an example of utilities  
12 that don't have a five-year horizon when they are  
13 designing their plants?

14 A Yes, they are.

15 Q And hasn't it been your experience that without  
16 that statutory horizon that municipal utilities will  
17 sometimes build to a horizon longer than five years?

18 A Yes.

19 Q And you can see circumstances where it would be  
20 prudent from the standpoint of an engineer for them to do  
21 that?

22 A Yes.

23 Q In the standard engineering handbooks that  
24 you're familiar with with regard to the design and  
25 construction of these types of plants, the planning

1 horizon run the spectrum, don't they, from zero to 20  
2 years depending on the circumstances?

3 A That's correct.

4 Q And there's no hard and fast formula that you're  
5 aware of that spits out what is the appropriate horizon?

6 A That is correct.

7 Q And you would agree, wouldn't you, that  
8 reasonable engineers could differ on what the opinion of  
9 prudence is in terms of this type of horizon?

10 A Yes. But I think you missed the point when you  
11 keep talking about separating yourself from a ratemaking  
12 scenario as an engineer. You can't do that. We're in a  
13 ratemaking scenario. An engineer must look at the equity  
14 to the existing customers when he's evaluating the used  
15 and usefulness of a system.

16 Q All right. Let's talk about that, sir. Do  
17 you -- what is it you understand Chapter 367 to say about  
18 this five-year horizon?

19 A Well, it says that -- I can quote it exactly if  
20 you'd like me to. Paragraph 367.081(2)(b). Well, (2)  
21 says, "For purposes of such proceeding, Commissioners  
22 shall consider utility property including land acquired or  
23 facilities constructed or to be constructed within a  
24 reasonable time in the future not to exceed 24 months at  
25 the end of the historic test base year used to set final

1 rates unless a longer period is approved by the Commission  
2 to be used and useful in the public service," and then (b)  
3 says, "If such property is needed to serve customers five  
4 years after the end of the test years used in the  
5 Commission's final order on a rate request as provided in  
6 Subsection 6 at a growth rate for equivalent residential  
7 connections not to exceed five percent per year."

8 Q All right, sir. And to you, is that the end of  
9 it?

10 A Well, that's the main provision, it seems to me,  
11 yes.

12 Q Is there anything else in that provision that  
13 you're aware of that's relevant?

14 A Well, you want to talk about --

15 Q Why don't you read Sub (c) into the record too?

16 A Paragraph Sub (c), Such property is -- if --  
17 it's also to be considered 100 percent used and useful if  
18 such property is needed to serve customers more than five  
19 full years after the end of the test year used in the  
20 Commission's final order on a rate request provided in  
21 Subsection 6 only to the extent that the utility presents  
22 clear and convincing evidence to justify such  
23 consideration. Notwithstanding the provision of this  
24 paragraph, the Commission shall approve rates for services  
25 which allow a utility to recover from customers the full

1 amount of environmental compliance cost. Such --

2 Q And, Mr. Bidy, I mean, unless you feel it's  
3 relevant, I don't think you need to read that paragraph.  
4 If you want to, go ahead.

5 A Well, if we're going to talk about reuse, I  
6 guess I should.

7 Q But I'm asking you about the five-year horizon.

8 A Well, okay. As far as the five-year horizon, we  
9 have covered that.

10 Q You read the first paragraph of Sub (c). So  
11 maybe we can really short circuit this whole line of  
12 questioning, which I think everyone here would probably  
13 appreciate.

14 Have you not even attempted to ascertain whether  
15 the utility is justified as provided for in the statute  
16 for building any component of this facility past of  
17 five-year horizon?

18 A The components of this facility that were built  
19 past the five-year horizon were built very much in excess  
20 of the five-year horizon. This is purely taking advantage  
21 of the situation, unless you're going to try to put this  
22 in a rate base scenario so that future customers pay by  
23 tap-on fees. I don't think it's a situation where it's  
24 clear and convincing evidence that it's necessary.

25 Q So if I interpret your answer correctly, is it a

1 fair characterization of your testimony that with regard  
2 to the components that you have said were oversized, were  
3 built to more than a five-year horizon, you don't believe  
4 that the utility has justified the inclusion of those  
5 particular components under Sub (c) that you just read?

6 A Absolutely not.

7 Q All right. We better go ahead then. And you do  
8 agree, Mr. Bidy, that reasonable engineers could differ  
9 on what the opinion of prudence is in terms of this type  
10 of horizon?

11 A Yes, I think the word "prudence" lends itself to  
12 differences of opinion.

13 Q Isn't it true that you haven't even attempted to  
14 analyze whether you believe the appropriate horizon for  
15 this particular plant was, say, four years or seven years  
16 or eight years because you perceived the five-year horizon  
17 as a legislative mandate?

18 A I have not attempted to measure the horizon that  
19 would be most cost effective. I didn't represent this  
20 client. I didn't design it. I looked at what was done.  
21 I considered the 20-year horizon which was adopted and  
22 designed for on several components within treatment was  
23 excessive.

24 Q But you agree with my question?

25 MR. BURGESS: I don't know if you can agree with

1 the question.

2 A No, I didn't agree with the question. I just  
3 explained why I didn't.

4 Q Okay. Will you take a look at Page 100, Line 14  
5 of your deposition?

6 COMMISSIONER JABER: Mr. Wharton, I'm sorry, I  
7 missed your question. What was your question?

8 MR. WHARTON: It was that Mr. Bidy has not even  
9 attempted to analyze whether he believes the appropriate  
10 horizon for this plant was four years or seven years or  
11 eight years because he was handed five years, and that's  
12 all that mattered to him.

13 BY MR. WHARTON:

14 Q Sir, did I ask you on Page 100, Line 14, "And  
15 therefore, have you attempted to analyze in depth whether  
16 you believe that the appropriate horizon for this  
17 particular plant was, say, four years or seven years or  
18 eight years? Answer: I haven't done so"?

19 A That's what it says.

20 Q Okay. You stand by the question and answer?

21 A Yes, I do.

22 Q And it wasn't your job to make that kind of  
23 in-depth determination as to the appropriate horizon, was  
24 it?

25 A No, indeed.

1 Q And you would agree, don't you, that even if as  
2 an engineer it appeared to you that it would be more  
3 economically prudent to have designed the plant to, say, a  
4 10-year horizon, that under your understanding of the law  
5 and OPC's policies, it would still only have been prudent  
6 for the utility to have designed to a five-year horizon?

7 A Well, since my client would have been an  
8 investor-owned utility in this instance, I would have  
9 advised him to -- if a 10-year was the most cost effective  
10 horizon, I would have advised him to do that and to also  
11 at the same time present his rate increase request to the  
12 Commission to include a mechanism for what he could be  
13 compensated and paid for that investment through future  
14 tap-on fees.

15 Q Let's go to Page 112, Line 12 of your  
16 deposition, sir. Question, Line 12, "But let me ask you  
17 again, if in fact as an engineer it appeared to you that  
18 it would have been more economically prudent to have  
19 designed it to, say, a 10-year horizon, do you believe  
20 under the OPC policy that you've talked about and under  
21 your understanding of the law that it would still have  
22 been prudent for the utility to have designed only to a  
23 five-year horizon? Answer: That's what the law requires  
24 and that's what it should be designed to, yes." Do you  
25 stand by the question and answer?

1 A Yes, I do.

2 Q And by that testimony, you're indicating that  
3 designing the plant to a five-year horizon even given  
4 those circumstances in this case would have been a prudent  
5 decision?

6 A Yes.

7 Q Okay. And if you were designing a plant and you  
8 weren't constrained by your reading of Chapter 367, as  
9 you've testified today that you read it, you would design  
10 it for the most effective horizon after running different  
11 scenarios about what was cost effective, wouldn't you?

12 A I would design it to meet my client's best needs  
13 and so advise him of it.

14 Q And that would involve you running different  
15 scenarios such as whether the most cost effective horizon  
16 was three, five, seven, ten?

17 A Of course.

18 Q And any prudent engineer would do that, wouldn't  
19 they?

20 A Of course.

21 Q Just for one example, say, as to line sizing,  
22 you believe the solution to building for five-year  
23 horizons as opposed to a longer horizon is that you come  
24 along after five years and if you need more capacity, you  
25 simply -- well, I totally garbled that question. I'm

1 sorry.

2 For example, as to one component of this type of  
3 horizon, as to line sizing, you believe that the solution  
4 to building for five-year horizons as opposed to longer  
5 horizons is by simply installing smaller lines, don't you?

6 A You come back and add lines later, yes.

7 Q And then six or eight or ten years down the  
8 road, your solution to increase capacity demands would be  
9 that you would just add additional lines?

10 A That's the way it's done.

11 COMMISSIONER JABER: What about the capacity of  
12 the plant, though? The plant itself doesn't have to be  
13 upgraded to meet future demand?

14 THE WITNESS: Yes, it does.

15 COMMISSIONER JABER: So in addition to upgrading  
16 the plant to meet future demands, you would put in  
17 additional lines?

18 THE WITNESS: Yes, ma'am. Line sizes have to be  
19 upgraded as population increases and density increases in  
20 an area. Plant size also has to be upgraded. A five-year  
21 horizon gives you a cushion of five years of capacity. If  
22 you so choose to built it with a 10-year horizon, you have  
23 a greater cushion, but you should have another mechanism  
24 that you're getting paid for it by. But, yes, you  
25 normally have to continually -- it's just a nature of

1 business when you're growing it 10 or 12 percent a year.  
2 You continually upgrade your lines and continually up-size  
3 pumping stations.

4 In cities you don't see that as much. They are  
5 more stagnant in growth as a rule. You usually don't have  
6 frequent upgrades in line sizes, but in growth areas,  
7 especially where a lot of it is subdivisions, as this is,  
8 you do have that and that's just the nature of the  
9 business.

10 COMMISSIONER JABER: What is Aloha's growth  
11 rate?

12 THE WITNESS: I don't know, but it's high, a  
13 very high growth rate.

14 BY MR. WHARTON:

15 Q Mr. Bidy, under your scenario, isn't that going  
16 to involve Aloha coming out into its growing subdivisions  
17 after the five-year horizon, say, for the pipe example we  
18 used and ripping up the roads and putting in another pipe  
19 if they are increasing capacity demands?

20 A As a general rule that eight-inch pipe will  
21 carry probably all that you have in a subdivision. So as  
22 far as the gravity lines, no. As far as the pumping  
23 stations and force mains, yes.

24 Q Okay. And you agree, don't you, that the  
25 construction cost difference between putting in, for

1 instance, a 10-inch PVC pipe versus a 12-inch PVC pipe on  
2 the same project would be small?

3 A That's correct.

4 Q But you just feel that the Legislature has  
5 mandated the five-year horizon?

6 A Well, that's your economy of scale argument, and  
7 it's certainly a good argument. It's true that there's an  
8 economy of scale, and it's a consideration you must make.  
9 The owner must make that -- it's a business decision he  
10 must make. If his economics can stand collecting that  
11 over a period of time as hookup fees are added to his  
12 system, well, then he may want to size for 20 years down  
13 the road, and that's all fine and good, but that's a  
14 business decision that he must make.

15 Q You're not aware of any reuse facility that has  
16 designed the central mains for step growth, are you?

17 A Say that again.

18 Q You are not aware of any reuse facility that has  
19 designed the central mains for step growth, are you?

20 A Well, apparently this one was designed for  
21 different growths because they had an original 12-inch  
22 force main going out to Mitchell Ranch for their reuse  
23 water, and they have now added a 24-inch line and an  
24 18-inch line. So in that respect, yes, they apparently  
25 did decide to go to a step growth.

1 Q Let's go to Page 162, Line 14, sir. "Question:  
2 Are you aware of any reuse facility that has designed the  
3 central mains for step growth? Answer: I'm not aware of  
4 any either way. No, I haven't evaluated it." Do you  
5 stand by that question and answer?

6 A Well, except for the Aloha system, which I just  
7 explained, where they are now adding additional lines.  
8 That's obviously a step growth or an increase in growth.

9 Q Why didn't you tell me at the time?

10 A I thought we were just speaking generically of  
11 my past history rather than specifically about this  
12 utility.

13 Q What's the basis for your statement that Aloha  
14 has replaced the reuse line?

15 A I didn't say they had replaced it. I said they  
16 have added to it. They have added 24-inch lines. They  
17 have added 18-inch lines. They started out with a 12.  
18 Twelve is still in use going out to Mitchell Ranch.

19 Q In other words, you're just talking about, they  
20 took a line and they have extended it?

21 A No. They have added additional lines. Coming  
22 away from the treatment plant as it's about to be  
23 finished, there's 24-inch line. Heretofore, it was  
24 12-inch line only.

25 Q What is the basis for your knowledge on that

1 statement, Mr. Biddy?

2 A Just materials that I read and the verbal  
3 questions I have posed to Mr. Porter.

4 Q Mr. Biddy, have you reviewed the initial reuse  
5 case which showed a 24 line all the way to Mitchell on?

6 A No, I have not.

7 Q All right. Let's talk about the oversizing of  
8 the components. And to the extent that I ask you a  
9 request which opens the door to you telling me about your  
10 new information, tell me so I can withdraw it. I'm only  
11 kidding, Mr. Biddy. But let me try -- none of my  
12 questions are intended to get into anything new. These  
13 are the same things that we talked about in your  
14 deposition about your prefiled testimony.

15 Just so the record is clear, as we discussed  
16 right after Commissioner Jaber asked you a question  
17 earlier, your testimony about what you have phrased as  
18 ultimate capacity is that you think some of the components  
19 of the plant have been sized to a size larger than they  
20 needed to be only to serve customers within the five  
21 years?

22 A That is correct.

23 Q Okay. And it's your opinion that anything sized  
24 for ultimate capacity -- and isn't that your phrase for  
25 that exercise?

1 A Yes.

2 Q And it's your opinion that anything sized for  
3 ultimate capacity would not be 100 percent used and useful  
4 for that reason alone?

5 A That's correct.

6 Q Okay. Regarding the four categories of  
7 components that you have testified you positively  
8 identified which had been sized for ultimate build-out,  
9 you never even attempted to quantify whether there was any  
10 cost saving or economy of scale in including those now as  
11 opposed to putting them in place again in five years, did  
12 you?

13 A I did not do that.

14 Q And one of these components was the chlorine  
15 contact chamber, wasn't it?

16 A It was. I did have subsequent information about  
17 the chlorine contact chamber, and the utility denied that  
18 they had sized it for ultimate capacity.

19 MR. WHARTON: I'll withdraw the question.

20 Q Sir, do you know whether or not the chlorine  
21 contact chamber was determined to be 100 percent used and  
22 useful in the prior rate case?

23 A I think it was, yes.

24 Q Okay. Sir, do you know whether the seven-cell  
25 filter was determined to be 100 percent used and useful in

1 the prior rate case?

2 A It was.

3 Q You don't know, do you, Mr. Bidy, whether the  
4 fact that Aloha has put in these four components that you  
5 say were sized for ultimate capacity, whether or not that  
6 ultimately would benefit the ratepayers over, say, a  
7 10-year period?

8 A I know that it would not benefit the existing  
9 ratepayers now. It certainly might benefit the future  
10 ratepayers.

11 Q What about just the ratepayers, sir, all the  
12 ratepayers?

13 A I haven't made an analysis of what the average  
14 would be for existing and future.

15 Q Okay. Sir, you don't know what the difference  
16 in plant and operation costs would be between a system  
17 that you would design under your understanding of what is  
18 prudent and the system proposed by Aloha, do you?

19 A I do not.

20 Q Okay. You do agree that Aloha was instructed by  
21 DEP to go to reuse; correct?

22 A Yes.

23 Q And in order to go to public access reuse, they  
24 had to have Class One reliability?

25 A Absolutely.

1 Q And in order to have Class One reliability,  
2 Aloha needed to upgrade the plant?

3 A That's true.

4 Q And you agree, don't you, that DEP required all  
5 components and portions of the system which you understand  
6 Aloha proposes to install?

7 A Would you repeat that?

8 Q Yeah. Do you agree that DEP required all  
9 components and portions of the system which you understand  
10 Aloha proposes to install?

11 A Yes, but not necessarily the sizes that were  
12 installed.

13 Q I understand. And you agree that Aloha's  
14 project must have meant DEP rules regarding the design of  
15 the various elements of the project since, in fact, it was  
16 permitted?

17 A Yes.

18 Q And you agree that all of the components of  
19 Aloha's application were required by DEP by virtue of the  
20 fact that they granted -- that DEP granted the permit only  
21 again you wouldn't necessarily agree as to the size?

22 A That is correct.

23 Q And you agree that if a particular applicant is  
24 granted a wastewater permit, then that means DEP rules  
25 regarding reliability of the various elements of the

1 project have been met in the eyes of the Department of  
2 Environmental Protection?

3 A Yes.

4 Q You're not able to quantify, are you, the  
5 difference between what Aloha initially conceptually  
6 proposed to DEP and what DEP ultimately required, are you?

7 A I don't know that.

8 Q I'm sorry, sir, I didn't --

9 A I said I don't know what was --

10 Q Okay. So you're not able to quantify the  
11 difference?

12 A No.

13 Q Sir, you don't consider yourself an expert in  
14 the economics or accounting part of ratemaking, do you?

15 A No, I do not. I'm not an accountant.

16 Q And you've never personally participated in the  
17 start-up and ongoing operation and maintenance of a new  
18 wastewater treatment plant the size of the Aloha facility,  
19 have you?

20 A No. No, I have not. I'm not in the utility  
21 business.

22 Q You agree, don't you, sir, that equipment  
23 manufacturers' warranties don't cover maintenance tasks  
24 after you get through start-up, do they?

25 A It depends on how you define maintenance. If

1 it's a breakdown or a repair, yes, it's covered within the  
2 first year by normal construction contract guarantees.  
3 Ordinary preventive maintenance that an operator does, no,  
4 it's not covered.

5 Q Let me have you look at Page 117, Line 20 of  
6 your deposition.

7 A What page?

8 Q Page 117, Line 20. Question: What kind of  
9 maintenance tasks are normally going to be covered by  
10 equipment manufacturers' warrants? Answer: For  
11 maintenance tasks? Question: Yes. Answer: I think  
12 after they get through start-up, they are finished except  
13 for defects. Do you agree with that question and answer?

14 A Yeah. And we discussed this a lot more than  
15 just what you've read there, and I think it said  
16 essentially the same thing.

17 Q I'm sure your lawyer will give you a chance to  
18 talk about that on redirect.

19 MR. BURGESS: Excuse me. I would ask that  
20 pursuant to a long-standing Commission policy that if the  
21 witness thinks additional information is necessary to make  
22 it clear that he be allowed to respond to that in response  
23 to the question that's been posed to him by counsel.

24 MR. WHARTON: The problem is,  
25 Commissioner Jacobs -- and I've probably got about two

1 more minutes of questions -- is that I'm -- he didn't make  
2 it clear in the deposition. I'm reading you the whole  
3 question and answer. Certainly -- I guess it doesn't  
4 matter whether he does it now or he does it later.

5 MR. BURGESS: I would just say just like today,  
6 there's a single question. There have been hundreds of  
7 questions, and you could take out one question and one  
8 answer, and it wouldn't provide the context of what the  
9 discussion covered. And that's all I'm saying is it has  
10 been happening, I believe, with these answers, and I'm  
11 just asking that the witness be allowed to put in the  
12 context of the deposition that he thinks is relevant.

13 COMMISSIONER JACOBS: The witness can give a  
14 yes-or-no answer, and then he can give a minimal  
15 explanation of his answer. I think that's been tried and  
16 true. If it contradicts what you think is in the  
17 deposition, you feel free to bring that out. Please  
18 proceed.

19 A Well, in the deposition, there were additional  
20 questions about whether this included preventative  
21 maintenance or not, and I said, no, it does not in a  
22 normal construction contract, and that it did include the  
23 breakdowns, but not ordinary maintenance that the  
24 operators would do.

25 COMMISSIONER JACOBS: Thank you.

1 MR. WHARTON: Just give me ten seconds,  
2 Commissioner Jacobs.

3 COMMISSIONER JACOBS: Okay. We'll go off the  
4 record.

5 (Brief recess.)

6 MR. WHARTON: I want to remove any inference  
7 that what was just suggested has occurred. I want to move  
8 Mr. Bidy's deposition into evidence. He's an expert and  
9 under the civil rules can be used for any purpose.

10 COMMISSIONER JACOBS: So you have no objection?

11 MR. BURGESS: I have no objection.

12 COMMISSIONER JACOBS: No objection?

13 MR. BURGESS: I have no objection.

14 COMMISSIONER JACOBS: We didn't mark it. Let's  
15 mark it. We don't have copies of it. Do you have copies?

16 MR. WHARTON: I do have an extra copy.

17 MR. JAEGER: Mr. Wharton, are you moving the  
18 exhibits also?

19 MR. WHARTON: Yes.

20 COMMISSIONER JACOBS: So we'll mark it as  
21 Exhibit 10, and that will be deposition of Mr. Bidy.

22 (Exhibit 10 marked for identification.)

23 MR. JAEGER: Okay. He just informed me there  
24 are no exhibits to Mr. Bidy's deposition, so it will just  
25 be the deposition.

1 BY MR. WHARTON:

2 Q All right. Sir, as opposed --

3 COMMISSIONER JACOBS: We would like to get  
4 copies of that later. You don't have to worry about it  
5 today, but maybe by the time of the 2nd, I'd like to have  
6 a copy. Well, maybe next week, let's get copies to each  
7 of us next week.

8 MR. WHARTON: Okay.

9 COMMISSIONER JACOBS: So you're about done,  
10 Mr. Wharton?

11 MR. WHARTON: Yeah.

12 BY MR. WHARTON:

13 Q As opposed to my prior question which talked  
14 about maintenance tasks, you agree, don't you, that  
15 manufacturers' warranties don't cover preventative  
16 maintenance, don't you?

17 A I do agree with that, yes.

18 Q Do you agree that as a rule, contributed lines  
19 are considered 100 percent used and useful?

20 A Yes.

21 MR. WHARTON: That's all we have, Commissioner.

22 COMMISSIONER JACOBS: Okay. Staff, still no  
23 questions? Redirect.

24 REDIRECT EXAMINATION

25 BY MR. BURGESS:

FLORIDA PUBLIC SERVICE COMMISSION

1           Q     Mr. Bidby, you were asked by Mr. Wharton about  
2 DEP permits and whether DEP had permitted this plant and  
3 had permitted the improvements. Does the permitting of  
4 DEP indicate that DEP considers that the size of the  
5 project which they have permitted to be the minimum  
6 necessary to serve the existing customer base?

7           A     No, it does not.

8           Q     Would DEP permit a -- any type of plant or  
9 addition or improvement that might exceed that necessary  
10 to meet existing demand?

11          A     It's been my experience that they are delighted  
12 to do so. The larger you make it, the happier they are.

13          Q     With regard to the maintenance tasks that you  
14 were asked about, do you -- would you anticipate that the  
15 maintenance tasks which have been -- which you would  
16 anticipate for this particular plant item would approach  
17 \$175,000 per year for the next several years?

18               MR. WHARTON: Commissioner, that is outside the  
19 scope of cross. All I asked is whether they were covered,  
20 never got into the numbers.

21               MR. BURGESS: I don't think that I necessarily  
22 need to ask the same questions Mr. Wharton has asked.  
23 This is a question that -- it's an issue that we raised in  
24 your initial testimony that we don't think that the  
25 175,000 has been justified. He asked him to break it down

1 between preventive maintenance costs and the costs of  
2 replacement and repair.

3 And I'm asking him, does he think that the  
4 preventive maintenance costs that he agreed in response to  
5 Mr. Wharton's questions that he agreed the company will  
6 have to undertake will approach the 175 that is in  
7 controversy for this particular issue.

8 COMMISSIONER JACOBS: I'll allow it.

9 MR. BURGESS: Thank you.

10 A No, it wouldn't be nowhere close to 175,000  
11 simply because it's brand new equipment. The only  
12 maintenance you will be doing will be preventive  
13 maintenance that the operator will do as he goes about his  
14 normal duties, and most of those are lubrication-type  
15 things. If there is a breakdown, it's covered by the  
16 warranties, so it would be a very small percentage of that  
17 175.

18 MR. BURGESS: Thank you. That's all we have.

19 COMMISSIONER JACOBS: Exhibits.

20 MR. BURGESS: I would ask --

21 COMMISSIONER JACOBS: You move Exhibit --

22 MR. BURGESS: -- that Mr. Bidy's exhibit be an  
23 exhibit.

24 COMMISSIONER JACOBS: -- 9?

25 MR. BURGESS: Exhibit 9, yes, sir.

1 COMMISSIONER JACOBS: And, Mr. Wharton, you move  
2 Exhibit 10?

3 MR. WHARTON: We would, Commissioner.

4 COMMISSIONER JACOBS: All right. Show those  
5 admitted.

6 (Exhibits 9 and 10 admitted into the record.)

7 COMMISSIONER JACOBS: Very well. Thank you,  
8 Mr. Biddy.

9 (Witness excused.)

10 COMMISSIONER JACOBS: We'd like to go ahead and  
11 take a lunch break, and we need to take an expedited  
12 lunch, a half hour, and come back at 12:30. And we will  
13 begin with the Staff witnesses?

14 MR. JAEGER: Yes, Commissioner.

15 COMMISSIONER JACOBS: Let me just announce now,  
16 as I indicated earlier, Commissioner Baez had the earliest  
17 flight, and he has extended his flight to later in the  
18 day, so we will probably be here -- we will be able to be  
19 here until around 3:30 or 3:45, 4:00 at the latest, in  
20 order for him to make his plane, and so we'll govern  
21 ourselves accordingly.

22 The way we are looking now, we may begin to  
23 think about even another day. I'll leave that up to the  
24 parties and whether or not that's going to be necessary or  
25 not, but as for today, that's what we anticipate. We are

1 recessed until 12:30.

2 (Lunch recess was taken at 12:05 p.m.)

3 (Transcript continues in sequence in Volume 5.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF FLORIDA)

2 COUNTY OF LEON )

CERTIFICATE OF REPORTERS

3 We, KORETTA E. STANFORD, RPR, and TRICIA  
4 DeMARTE, Official Commission Reporters,

5 DO HEREBY CERTIFY that the Hearing in Docket No.  
6 991643-SU was heard by the Florida Public Service  
7 Commission at the time and place herein stated; it is  
8 further

9 CERTIFIED that we stenographically reported the  
10 said proceedings; that the same has been transcribed under  
11 our direct supervision; and that this transcript,  
12 consisting of 129 pages, Volume 4, constitutes a true  
13 transcription of our notes of said proceedings.

14 DATED THIS 16TH DAY OF OCTOBER, 2000.

15 Koretta E. Stanford

16 KORETTA E. STANFORD, RPR  
17 Official Commission Reporter  
18 (850) 413-6734

19 Tricia DeMarte

20 TRICIA DeMARTE  
21 Official Commission Reporter  
22 (904) 413-6736