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August 29, 2002

Blanca S. Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 992015-WU

Dear Ms. Bayo:

Enclosed for filing in the above-referenced docket is the original and 15 copies of
Prefiled Testimony of Kimberly H. Dismukes.

Please indicate the time and date of receipt on the enclosed duplicate of this letter.

Sincerely,

Stephen C. Reilly
Associate Public Counsel

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**Prefiled Testimony
Of
Kimberly H. Dismukes**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ON BEHALF OF THE

CITIZENS OF THE STATE OF FLORIDA

DOCKET NO. 992015 -WU

**In Re: Application for Limited
Proceeding to Recover Costs of Water
System Improvements in Marion County
By Sunshine Utilities of Central Florida, Inc.**

August 29, 2002

DOCUMENT NUMBER 1711

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FPSC-COMMISSION CLERK

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1 TESTIMONY
2 OF
3 KIMBERLY H. DISMUKES

4
5 On Behalf of the
6 Florida Office of the Public Counsel

7
8 Before the
9 Florida Public Service Commission
10 Docket No. 992015-WU
11

12 **Q. WHAT IS YOUR NAME AND ADDRESS?**

13 A. Kimberly H. Dismukes, 6455 Overton Street, Baton Rouge, Louisiana 70808.

14 **Q. BY WHOM AND IN WHAT CAPACITY ARE YOU EMPLOYED?**

15 A. I am a partner in the firm of Acadian Consulting Group, which specializes in
16 the field of public utility regulation. I have been retained by the Office of the
17 Public Counsel (OPC. Public Counsel, or Citizens) on behalf of the Citizens
18 of the State of Florida to analyze Sunshine Utilities of Central Florida, Inc.'s
19 (Sunshine, Utility, or the Company) application for a limited proceeding to
20 increase rates.

21 **Q. DO YOU HAVE AN APPENDIX THAT DESCRIBES YOUR**
22 **QUALIFICATIONS IN REGULATION?**

23 A. Yes. Appendix I, attached to my testimony, was prepared for this purpose.

24 **Q. ARE YOU FAMILIAR WITH THE HISTORY OF THIS**
25 **PROCEEDING?**

26 A. Yes, I am. This docket was opened as a result of the application filed by
27 Sunshine Utilities of Central Florida, Inc. on December 21, 1999, for a limited
28 proceeding for an increase in water rates and charges. Sunshine is a Class B
29 Utility providing water service to approximately 2,871 customers in the Ocala

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1 area of Marion County. It currently serves these customers through 21
2 separate water systems.

3 The rate increase Sunshine requested was to be used to interconnect
4 and consolidate five of the 21 water systems. Sunshine proposed the project
5 as a means of resolving contamination problems affecting Lakeview Hill's
6 customers, and certain non-customers located near its Little Lake Weir service
7 territory. The five systems that were to be part of the project are Little Lake
8 Weir, Lakeview Hills, Oklawaha, Belleview Oaks and Hilltop. In addition to
9 the transmission mains necessary for the interconnection, Sunshine intended
10 to construct a water treatment, pumping, and storage facility that would serve
11 the new system. The Utility also proposed to extend service to two residents
12 outside the Utility's current territory. In addition, the project was to provide
13 for future growth. Funding for the project was to be provided through a grant
14 and a low-interest loan from the Department of Environmental Protection's
15 (DEP) State Revolving Fund.

16 The Utility requested a rate increase of 22.72% to all of its customers
17 to implement the project resulting from this first application.

18 **Q. WHAT WERE THE CONTAMINATION PROBLEMS THE PROJECT**
19 **WAS DESIGNED TO RESOLVE?**

20 A. There are two such problems. The first was the presence in the Lakeview
21 Hills water treatment plant of dichloroethylene, a known carcinogen. The
22 level of the contaminant was below the maximum contaminant level (MCL)
23 and, to date, no corrective actions have been ordered by DEP.

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1 The second problem concerned ethylene dibromide (EDB) found in
2 two private wells of residents located between the Little Lake Weir and
3 Hilltop systems. These residents are not currently customers of Sunshine.

4 **Q. WHAT WAS THE OUTCOME OF THE UTILITY’S APPLICATION?**

5 A. After meetings with Staff, in which Staff was not supportive of the project, the
6 Utility filed an amended application on September 8, 2000. In that filing the
7 Utility proposed two alternative projects. The first was essentially identical to
8 the originally proposed project; the second addressed the contamination issues
9 at Little Lake Weir and Lakeview Hills and also some sulfur issues in the
10 Oklawaha area. The first alternative requested a rate increase of 22.19%. The
11 second alternative offered two rate options: either a rate increase of 18.2% to
12 all customers, or a rate increase of 88.45% applied only to the customers of
13 the systems affected by the project.

14 On November 16, 2000, Staff filed a recommendation with the
15 Commission which recommended rejecting the application and rate increase
16 in its entirety. At the request of the Utility, the recommendation was deferred
17 from the scheduled agenda conference and was never considered by the
18 Commission.

19 On June 7, 2001, Sunshine filed an amendment to the September 8,
20 2000 amended application. In this second amended application, Sunshine
21 again proposed to interconnect the five systems of Little Lake Weir, Lakeview
22 Hills, Oklawaha, Belleview Oaks, and Hilltop. The Utility again proposed to
23 fund the project through grants and low interest loans from DEP. The
24 requested rate increase was 15.73% to all of the Utility’s customers.

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1 **Q. CAN YOU SUMMARIZE STAFF'S RECOMMENDATION**
2 **REGARDING THIS APPLICATION?**

3 A. Yes. On October 25, 2001, Staff filed its memorandum recommending that
4 the Commission deny the Utility's limited proceeding application as well as
5 all rate case expenses, and recommended that the docket be closed.

6 Staff determined that the interconnection of the five systems was not
7 necessary to resolve the contaminant problem at Lakeview Hills, nor was it
8 necessary to provide service to the residents whose wells were contaminated
9 with EDB.

10 Staff noted that the Lakeview Hills dichloroethylene problem had been
11 solved by the installation of a filter provided by Marion County at the water
12 treatment plant. Staff also stated that the residents whose wells were
13 contaminated with EDB could be provided water by an extension of the
14 Hilltop system's 6-inch main. The DEP had approved Sunshine to receive
15 \$682,570 in grants and \$1,475,314 in a low interest loan to finance its
16 proposed project. In talks with DEP and the Utility, Staff learned that
17 although DEP approved the project, it was not requiring the project to be
18 done. Staff concluded that the only reason for the project "would be to meet
19 future development plans." (Staff, Memorandum, October 25, 2001, p. 7.)
20 The Utility proposed to apply its requested rate increase to all customers. Staff
21 argued that "the cost of future developments should be offset mostly by higher
22 service availability charges which the company has not considered in this
23 application." (Ibid.)

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1 Staff also recommended that the rate case expense for the proceeding
2 be disallowed. In August, 2001, the Utility estimated rate case expenses,
3 including estimated costs through the Proposed Agency Action, to tota
4 \$115,338. These were broken down as follows:

5 Legal fees	\$45,692
6 Accounting fees	39,207
7 Engineering	<u>30,439</u>
8 Total	\$115,338
9 Annual Amortization	\$28,835

10 Staff recommended that this total amount be disallowed because “. . .
11 staff believes that the decision to file for rate relief was imprudent and the
12 customers should not have to bear this cost.” (Ibid., p. 9.) In support of this
13 position, Staff cited the Florida Statutes which state at Chapter 367.081(7) that
14 the Commission “shall disallow all rate case expenses determined to be
15 unreasonable. No rate case expense determined to be unreasonable shall be
16 paid by the customer.” Staff also cited previous instances in which the
17 Commission had disallowed rate case expense in a limited proceeding in
18 which the rate increase was denied, namely: Order No. PSC-98-1583-FOF-
19 WS, issued November 25, 1998 in Docket No. 971663-WS, Application of
20 Florida Cities Water Company for Recovery of Environmental Litigation
21 Costs; and Order No. PSC-99-1917-PAA-WS issued September 28, 1999, in
22 Dockets Nos. 970536-WS and 980245-WS, Aloha Utilities, Inc., limited
23 proceedings.

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1 In the event that the Commission did approve the project, Staff noted
2 “for informational purposes,” that the appropriate rate case expense would
3 then be \$74,929. This reflected a decrease of \$40,409 in legal and accounting
4 fees which Staff found to be attributable to the amended filings, and as such
5 were duplicative and unnecessary.

6 **Q. WAS THAT RECOMMENDATION ADOPTED BY THIS**
7 **COMMISSION?**

8 A. No. As stated in its Notice of Proposed Agency Action, (PAA or Order), of
9 May 14, 2002, at the November 6, 2001 Agenda Conference, the Commission
10 “found it necessary to obtain additional information before taking any action”
11 and directed Staff “to further investigate the Utility’s application and file
12 another recommendation to allow consideration of other options for allocation
13 of costs, alternative funding, the need for possible certificate amendments, and
14 rate case expenses.” (Commission, Order No. PSC-02-0656-PAA-WU,
15 Notice of Proposed Agency Action, May 14, 2002, p. 3.)

16 Since that time Staff met with the Utility and with the Marion County
17 Solid Waste Department. The Solid Waste Department suggested that an
18 additional 38 lots with contaminated wells be served by extending Sunshine’s
19 water system to them. In these talks funding for the project consisted of
20 grants and low interest loans from the DEP, with the possibility of a
21 contribution of \$175,000 from Marion County.

22 Staff also audited Sunshine’s books and records for the year ended
23 December 31, 2000 and reviewed updated schedules of rate base, net

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1 operating income and capital structure for the year ended December 31, 2001.

2 Staff filed a revised recommendation on April 11, 2002.

3 **Q. WILL YOU SUMMARIZE STAFF'S REVISED**
4 **RECOMMENDATION?**

5 A. Yes. Staff's recommendation of April 11, 2002 addressed the Utility's
6 application of June 7, 2001, for interconnection of the five systems and
7 construction of a water treatment facility. It also addressed the plan to extend
8 service to 38 additional lots, as proposed by the Marion County Solid Waste
9 Department. The recommendation contained both a primary and an
10 alternative recommendation. The primary recommendation was identical to
11 that of Staff's October 25, 2001 recommendation, i.e., that the Commission
12 deny the Utility's application and rate case expenses and close the docket.
13 The alternative recommendation stated that:

14 Staff believes that DEP considers "regional" systems
15 easier to operate and regulate, thus saving money for
16 the Utility as well as the regulators. Further, staff
17 believes that the elevated storage tank will provide a
18 more stable water pressure than the current hydro-
19 pneumatic tanks, although staff notes that the difference
20 probably would not be readily apparent to the
21 customers. Since the project is to be financed through
22 grants and low interest loans from DEP, staff believes
23 the project is reasonable. Based on the above, the
24 Commission should approve a rate increase pursuant to

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1 staff's recommendations in the following issues. (Staff,
2 Memorandum, April 11, 2002, p. 8.)

3 After adjustments to operating revenues, operating expenses,
4 depreciation, income taxes and rate base, Staff's alternative recommendation
5 resulted in an increase to all present service rates of 6.11%

6 **Q. WHAT WAS STAFF'S ALTERNATIVE RECOMMENDATION**
7 **CONCERNING RATE CASE EXPENSES?**

8 A. Staff's recommendation concerning rate case expenses is Issue 13 in the April
9 11, 2002, memorandum. As in its recommendation of October 25, 2001, staff
10 recommended that if the Commission approved the project, then \$40,409 of
11 the Utility's total estimated rate case expenses of \$115,338 should be
12 disallowed. The \$40,409 represents the costs incurred by the Utility in filing
13 two sets of revisions to its application, including \$27,239 in legal fees and
14 \$13,170 in accounting fees. These fees were incurred by the Utility from
15 August 2000 to April 2002. Staff recommended that these fees be disallowed
16 because they were incurred in filing amended applications that added nothing
17 that could not have been put in the original filing.

18 Staff believes that these additional and duplicative costs
19 to amend and then to completely re-do the filing should
20 not have been incurred and should not be passed on to
21 the ratepayers. This is consistent with Commission
22 decisions in Order No. PSC-00-1528-PAA-WU, issued
23 August 23, 2000, in Docket No. 991437-WU for
24 Wedgefield Utilities, Inc.; Order No. PSC-00-2054-

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1 PAA-WS, issued October 27, 2000, in Docket No.
2 990939-WS for Indiantown Company, Inc.; and Order
3 No. PSC-01-0327-PAA-WU, issued February 6, 2001,
4 in Docket No. 000295-WU for Placid Lakes Utilities,
5 Inc. In all three of those cases, the Commission denied
6 recovery of duplicative rate case expense associated
7 with filing revisions of minimum filing requirements.
8 (Ibid., p. 28.)

9 The breakdown of the rate case expenses and Staff's recommended
10 disallowance is as follows:

	UTILITY REVISED ACTUAL & ESTIMATE	STAFF ADJUSTMENTS	STAFF ADJUSTED BALANCE
16 Legal Fees	\$45,692	(\$27,239)	\$18,453
17 Accounting Fees	39,207	(13,170)	26,037
18 Engineering Fees	<u>30,439</u>	<u>0</u>	<u>30,439</u>
19 Total Rate Case Expense	\$115,338	(\$40,409)	\$74,929
20 Annual Amortization	<u>\$ 28,835</u>		<u>\$18,732</u>

21 **Q. WHAT WAS STAFF'S ALTERNATIVE RECOMMENDATION**
22 **CONCERNING THE PRESIDENT'S SALARY?**

23 A. Staff recommended that the president's salary be reduced by \$46,498. In
24 1990, in Order No. PSC-94-0738-FOF-WU, the Commission complied with
25 the First District Court of Appeals and set the salary of Sunshine's president
26 for 1990 at \$69,055. This salary level assumed 100% of the president's time

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1 was spent in the capacity of president of Sunshine. To estimate the
2 appropriate current salary for the president, Staff escalated the 1990 salary
3 from 1990 to 2001 by price index adjustment factors approved by the
4 Commission. This resulted in an annual salary of \$90,465. Staff stated that in
5 response to discovery, the Utility said that the officers' duties had not changed
6 since the last rate case. However, according to the Utility's annual report, the
7 president's salary was \$91,731 in 2001, and only 50% of his time was spent in
8 this capacity. Staff thus multiplied its calculated 2001 salary of \$90,465 by
9 50% to reflect the percentage of time now spent in this capacity, and arrived at
10 \$45,233. The recommended decrease in salary of \$46,498 was calculated by
11 subtracting the \$45,233 from the actual 2001 salary. Staff performed similar
12 calculations for the vice president's salary and recommended a decrease in
13 salary of \$28,503 for the vice president.

14 **Q. WHAT WAS THE COMMISSION'S DECISION REGARDING THE**
15 **UTILITY'S SECOND AMENDED APPLICATON AND STAFF'S**
16 **REVISED RECOMMENDATION?**

17 A. On May 14, 2002, the Commission issued Order No. PSC-02-0656-PAA-WU,
18 a Notice of Proposed Agency Action in which it granted, in part, the Utility's
19 application. The rates approved by the Commission in this PAA are those
20 recommended by Staff in its alternative recommendation filed April 11, 2002.
21 The Commission also approved an additional set of rates that are contingent
22 upon the Utility receiving the proposed \$175,000 in funding from Marion
23 County. At the time the Commission issued the PAA no final commitment
24 had been made by the county.

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1 The Commission accepted all of Staff's adjustments to rate base,
2 CIAC, pro forma rate base components and used and useful percentages, cost
3 of capital, loans to officers, long-term debt, revenues, pro forma expenses
4 associated with plant additions and retirements, rate case expenses, salaries of
5 Utility officers, net operating income, revenue requirements, and water rates.

6 **Q. WHAT OBJECTIONS DID SUNSHINE RAISE TO THE**
7 **COMMISSION'S PROPOSED ORDER?**

8 A. Sunshine has objected to three portions of the Order:

9 a) the proposed reduction in the annual salary of the Utility's president
10 from \$91,731 to \$45,233, as recommended by Staff;

11 b) the proposed disallowance of \$27,239 in legal fees incurred as rate
12 case expenses in this proceeding;

13 c) the resulting impact of the salary reduction and legal fee disallowance
14 on the Utility's revenue requirement and service rates.

15 **Q. WHAT OBJECTIONS DID THE OFFICE OF PUBLIC COUNSEL**
16 **RAISE TO THE COMMISSION'S PROPOSED ORDER?**

17 A. OPC objected to the Commission's approval of the interconnection project,
18 stating that it was neither prudent nor justified. OPC's protest encompassed
19 all aspects of the Commission's PAA Order including the rate increase
20 granted by the Commission.

21 **Q. MR. BARRINEAU HAS STATED THAT BECAUSE OF PUBLIC**
22 **COUNSEL'S PROTEST SUNSHINE HAS NOT SATISFIED THE**
23 **CONDITIONS NECESSARY TO RECEIVE DEP'S FUNDING FOR**

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1 **THE PROJECT DURING THE CURRENT FUNDING CYCLE. DO**
2 **YOU AGREE WITH THIS CHARACTERIZATION?**

3 A. No. Sunshine protested the Commission’s PAA prior to the protest filed by
4 Public Counsel. It is my understanding that while Public Counsel was not
5 happy with the Commission’s PAA decision, it was not going to protest the
6 decision unless a protest was first filed by Sunshine. Public Counsel was
7 concerned that Sunshine would protest only two aspects of the Commission’s
8 Order—rate case expense and the president’s salary—essentially putting the
9 odds in its favor and against ratepayers in terms of the ultimate outcome of the
10 protested PAA. Public Counsel therefore prepared a protest of the PAA in the
11 event the Utility protested the PAA Order. As expected, the Utility only
12 protested the two issues. Consequently, Public Counsel protested the
13 Commission’s PAA Order challenging the prudence of the proposed project
14 and any rate increase.

15 When asked to support Mr. Barrineau’s statement, the Company
16 responded that the only document which supported it was the prefiled
17 testimony of Mr. Timothy G. Banks. Mr. Banks indicated that the loan and
18 grants were contingent upon Sunshine “obtaining a final order from the
19 Florida Public Service Commission (the “Commission”) granting sufficient
20 rate increased (*sic*) for its water system improvements project that would
21 satisfy the pledged revenue requirement for funding.” (Banks Direct
22 Testimony, p. 8.) Later in his testimony Mr. Banks blames OPC for DEP’s
23 removal of the Sunshine project from its fundable list of the current funding

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1 cycle. (Ibid., p. 11.) Again, however, Mr. Banks indicated that removal
2 resulted because there was no final order of the Commission.

3 Even if OPC had not protested the Order and only Sunshine had
4 protested the Order, the PAA decision by the Commission would not have
5 been a final order. Therefore, even absent OPC's protest, Sunshine's protest of
6 the Commission's PAA Order would have made the funds in question
7 ineligible for the current funding cycle.

8 Any suggestion that it was the fault of Public Counsel that caused the
9 preliminarily approved funding of the project to miss the current funding
10 cycle should be rejected. To the extent blame is to be placed, it should sit
11 squarely on the shoulders of the Utility.

12 **Q. WHAT IS THE UTILITY REQUESTING NOW THAT THE PAA**
13 **ORDER HAS BEEN PROTESTED?**

14 A. Sunshine is requesting that the Commission approve an order increasing rates
15 by 15.73% or \$123, 245. This compares to the Commission PAA increase of
16 \$46,813 or 6.11%.

17 **Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION WITH**
18 **RESPECT TO THE INSTANT PROCEEDING?**

19 A. Public Counsel believes that the Commission should have upheld its Staff's
20 primary recommendation which would have rejected the proposed project and
21 any rate increase as being imprudent.

22 **Q. HAS THE UTILITY PROVIDED ANY NEW INFORMATION THAT**
23 **YOU BELIEVE WOULD WARRANT THE COMMISSION**
24 **EJECTING THE STAFF'S PRIMARY RECOMMENDATION?**

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1 A. No, it has not.

2 **Q. WHY DO YOU BELIEVE THAT THE COMMISSION SHOULD**
3 **REJECT SUNSHINE’S APPLICATION?**

4 A. There are several reasons. First, as testified to by Mr. Biddy, the project is not
5 needed by the five individual systems proposed by Sunshine for consolidation.
6 Each of these five systems presently receives adequate water meeting all
7 FDEP and USEPA standards.

8 Second, Sunshine proposes to increase the rates for all of its 21
9 systems even though there are only five systems that would be affected by the
10 proposed project. The Commission should seriously question raising rates to
11 customers that do not appear to benefit from the proposed project. Third, from
12 the used and useful analysis prepared by Mr. Biddy, the system proposed by
13 Sunshine is only 44% used and useful. One must question the real reason
14 for constructing the proposed project given that the majority of the project is
15 not used and useful to current customers even considering five years worth of
16 growth. Certainly, it would not be necessary to construct the facilities
17 proposed by Sunshine merely to correct the potential contamination problems.
18 The project proposed by Sunshine will be designed to do more than merely
19 correct potential contamination problems—it will serve additional customers
20 and help Sunshine expand its territory. The proposed water main extensions
21 between the five systems Sunshine proposes to interconnect pass through
22 many miles of property that is not within Sunshine’s current territory.

23 Fourth, it is not clear, as alleged by the Utility that rate relief is needed
24 to meet the DEP’s pledged revenue requirement. According to the testimony

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1 of Mr. Banks, DEP's accounting staff determined that Sunshine's existing
2 water rates do not generate sufficient revenues to satisfy DEP's pledged
3 revenue requirement to service the loan. (Banks Direct Testimony, p. 8.)
4 However, nowhere in the documents submitted with its filing is this claim
5 demonstrated. I was unable to find any documents that a pledged revenue
6 requirement was deficient.

7 The preconstruction loan agreement requires that Sunshine maintain
8 rates and charges for the services furnished by the water system which are
9 sufficient to provide pledged revenue equal to or exceeding 1.15 times the
10 sum of the semiannual loan payments due in each fiscal year. (Exhibit TGB-1,
11 p 12.) While I have located documents which show the amount of the revenue
12 requirement at 1.15 times the annual loan payments, I have not located any
13 documents where DEP indicated that existing and projected revenues were
14 insufficient to meet the pledged revenue requirement.

15 **Q. IF THE COMMISSION DOES NOT ADOPT YOUR PRIMARY**
16 **RECOMMEDATION BUT RELIES UPON ITS ORDER AND**
17 **THE STAFF'S ALTERNATE RECOMMENDATION, DO YOU**
18 **RECOMMEND ANY ADJUSTMENTS TO THIS OPTION?**

19 A. Yes. First, I recommend using the used and useful analysis presented by Mr.
20 Bidy. His recommendations have the impact of reducing any revenue
21 increase that might be needed under this scenario.

22 Second, I recommend adjusting the CIAC levels to include the
23 possible funding of a portion of the plant modifications by Marion County. In

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1 its PAA Order, which essentially adopted the Staff's alternative
2 recommendation, the Commission found:

3 We note that Marion County is considering contributing
4 \$175,000 toward this project with the understanding that the
5 utility would connect customers currently outside the utility's
6 service territory who are experiencing problems with
7 contamination of their water supply.

8
9 The rates approved in this Order shall be lowered automatically
10 by the effect of Marion County's contribution of \$175,000
11 toward the project and connection of the contaminated private
12 wells. The effective date of the new rates will be the date DEP
13 approves funding for this project. (Order, p 7.)

14
15 Rather than adjusting the rates at some possible future date in the event
16 that Marion County and Sunshine negotiate for Marion County to make a
17 \$175,000 contribution toward serving the customers with the 38 contaminated
18 wells, I believe it would be preferable to include these funds in the proposed
19 limited proceeding and reduce rates now, not at some point in the future. This
20 will provide Sunshine with an incentive to negotiate with the County to pay
21 for a portion of the water system improvements. If the Commission granted
22 the rate increase without including these funds there would be no incentive for
23 Sunshine to obtain this funding from Marion County. Accordingly, I have

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1 included this \$175,000 contribution in OPC's alternative scenario presented
2 below.

3 Third, I recommend that the Commission clarify in its order that any
4 rate increase that might result from this proceeding would not be effective
5 until the proposed project is complete and in service. In response to OPC's
6 Interrogatory 7 asking why AFUDC was included in the cost of the project's
7 costs, Sunshine responded: "Sunshine has never proposed or suggested that
8 customers pay for the water system improvements while they are under
9 construction. Sunshine has proposed that the rate approved in this proceeding
10 be effective only after the improvements are completed and placed in service.
11 Thus, AFUDC associated with the project is entirely appropriate." (Response
12 to OPC Interrogatory 7.) From this response it is clear that OPC and Sunshine
13 agree that customers should not bear any rate increase until the project is
14 completed and in service. The Commission's final order in this docket should
15 endorse this agreement between the two parties.

16 The Commission's PAA Order is not clear in this regard. The Order
17 makes the rate increase subject to several conditions, but not that the project
18 be complete and in service. The Commission ordered: "The utility shall file
19 revised tariff sheets and a proposed customer notice to reflect the appropriate
20 rates pursuant to Rule 25-22.0407(10), Florida Administrative Code. The
21 approved rates shall be effective for service rendered on or after the stamped
22 approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida
23 Administrative Code, provided the customers have received notice. The
24 revised tariff pages shall be approved upon our staff's verification that they are

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1 consistent with our decision herein, that the proposed customer notice is
2 adequate, and that the Department of Environmental Protection confirms that
3 funding has been approved for the project. The rates shall not be implemented
4 until proper notice has been received by the customers. The utility shall
5 provide proof of the date notice was given within 10 days after the date of the
6 notice.” (Order, p.20.)

7 While the Commission’s Order makes the rate increase contingent
8 upon a showing that the funding has been approved by the DEP, it does not
9 require that the project be completed prior to the rate increase being effective.
10 Since there is no disagreement between OPC and Sunshine on this matter, the
11 Commission should clarify its order to indicate that any rate increase would
12 not be effective until the project is complete and in service.

13 **Q. WOULD YOU PLEASE ADDRESS THE TWO ISSUES PROTESTED**
14 **BY THE UTILITY, BEGINNING WITH THE ISSUE OF THE**
15 **PRESIDENT AND VICE PRESIDENT’S SALARY?**

16 A. Yes. In adopting the Staff’s alternative recommendation, the Commission
17 essentially disallowed one-half of the President and Vice President’s salary.

18 The Utility protested the salary included in the PAA of Mr. Hodges,
19 President of Sunshine. As discussed above, the Commission disallowed
20 approximately 50% of the President’s salary. In its PAA adopting the Staff’s
21 alternative recommendation the Commission found:

22 However, according to Sunshine’s 2001 annual report, the
23 president’s salary was \$91,731 for 50% of his time spent under
24 this capacity. When annualizing the 2001 salary level, it

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1 represents an effective annualized salary of \$183,462. Given
2 our approved 1990 level of salary and the fact that the duties of
3 the president have not changed since the last rate case, we find
4 the 2001 president's salary to be excessive.

5
6 In determining an appropriate salary for the president, we find
7 it is appropriate to escalate the above 1990 salary by our
8 approved price index rate adjustment factors from 1991 to
9 2001. This would yield an appropriate salary level of \$90,465
10 for 100% of time spent under this capacity. While the duties
11 have remained the same, it appears that the president is
12 currently only spending 50% of his time under this capacity.
13 Thus, we find that the appropriate salary shall be \$45,233
14 (\$90,465 divided by 2). Based on the above, the president's
15 salary shall be decreased by \$46,498 (the difference between
16 the \$45,233 approved and the \$91,731 actually paid). (Order, p.
17 16.)

18 **Q. DID THE UTILITY PROVIDE ANY ADDITIONAL EVIDENCE**
19 **CONCERNING THE SALARY LEVEL OF THE PRESIDENT IN THIS**
20 **PROCEEDING?**

21 A. Not really. The Utility submitted testimony of Mr. Hodges indicating that he
22 spent 100% of his time on utility operations. In addition, Sunshine submitted
23 testimony of Ms. Schneider indicating that for the period 1991-97 the 50%
24 representation in the Commission's Annual Report concerning the time spent

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1 as an officer of the utility represented Mr. Hodges's ownership interest in the
2 Utility, not the time he spent as an officer of the utility.

3 OPC sought to obtain additional information that might provide some
4 insight into the time spent by Mr. Hodges on utility matters, and the job
5 responsibilities and salaries of other employees of Sunshine Utilities. With
6 respect to additional documentation about the time Mr. Hodges devoted to
7 utility matters, Sunshine indicated that there were no documents which
8 supported the time allegedly spent by Mr. Hodges on utility matters. In OPC's
9 Production of Document No. 2, OPC requested all documents which set forth
10 the time spent by Mr. James H. Hodges on Sunshine utility matters. The
11 Company responded: "Without waiving its objection and requests for
12 clarification, Sunshine states that there are no responsive documents." OPC
13 also requested all business calendars of Mr. James H. Hodges. The Company
14 responded that there were no responsive documents. (Response to OPC
15 Production of Document No. 4.)

16 OPC also sought information about the salary levels and job
17 responsibilities of the other employees of Sunshine. We believed that such
18 information would be useful in evaluating the reasonableness of Mr. Hodges's
19 salary. The decision concerning the compensation of Mr. Hodges should not
20 be made in a vacuum. If for example, the duties of a "president" are largely
21 being performed by another employee or officer it would be unreasonable to
22 even allow the salary allowed by the Commission in its PAA. Our requests
23 for information concerning the job descriptions and salaries of the officers and
24 employees of Sunshine, other than Mr. Hodges, have been met with

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1 objections. Citizens, on August 27, 2002, filed a motion to compel this
2 information.

3 **Q. DID YOU REVIEW ANY OTHER INFORMATION WHICH LEADS**
4 **YOU TO FURTHER QUESTION THE SALARY OF MR. HODGES**
5 **AND THE TIME HE DEVOTES TO UTILITY OPERATIONS?**

6 A. Yes. In response to OPC's Production of Document No. 1, the Utility
7 provided the personal tax return of Mr. and Mrs. Hodges. These tax returns
8 raise several questions. First, the tax returns for the years 1999 and 2000 show
9 that in addition to the salary earned from Sunshine, Mr. Hodges earned
10 additional business income of **Begin Proprietary** [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] **End Proprietary** Due to the

16 **expedited procedural schedule** set for this proceeding it was not possible by
17 **the time of the filing of** testimony to investigate further the nature of these
18 **management services and** the role played by Mr. Hodges in his capacity as
19 proprietor of the business.

20 In addition to this income, the tax returns for 1999, 2000, and 2001
21 also show **Begin Proprietary** [REDACTED]

22 [REDACTED]

23 [REDACTED]

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1 [REDACTED]

2 [REDACTED] **End Proprietary**

3 The tax returns also show other supplemental income attributable to
4 Mr. and Mrs. Hodges. In all three years, there is supplemental income **Begin**
5 **Proprietary** [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] **End**
13 **Proprietary**

14 The Staff's Audit of the Utility's operations also raises questions
15 concerning the President's salary. According to the Audit, Mr. Hodges was
16 paid a \$48,000 salary bonus in 2000 recorded in the account Contractual
17 Services- Testing. (Audit Report, p. 15.)

18 **Q. WHAT CONCLUSIONS CAN BE DRAWN FROM THE ABOVE**
19 **INFORMATION?**

20 A. There are serious questions that require answering before the Commission
21 should consider granting any salary to Mr. Hodges. The above information
22 indicates that Mr. Hodges is a proprietor of two other businesses in which he
23 participated materially. One of these businesses paid him an amount close to
24 the salary he is demanding from Sunshine. Clearly, the Commission must

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1 question the salary of Mr. Hodges even more so than was done in the PAA.
2 The Audit Report’s statement that Mr. Hodges also paid himself an additional
3 \$48,000 in 2000 should also be seriously questioned.

4 As importantly, the information that has been gathered so far regarding
5 Mr. Hodges, his salary, his other business dealings, and the rents extracted
6 from the Utility by Mr. and Mrs. Hodges should raise a red flag about the
7 need for rate relief for Sunshine to fund the water improvement project. The
8 nature of this “limited proceeding” does not allow the Commission to evaluate
9 the full extent of the revenues, expenses, and investment of the Utility. To the
10 extent that the Utility’s income is understated due to overstatement of
11 expenses, even under the Staff’s alternative recommendation adopted by the
12 Commission, no increase might be appropriate.

13 **Q. WHAT IS YOUR RECOMMENDATION WITH RESPECT TO THE**
14 **ISSUE OF THE PRESIDENT’S SALARY?**

15 A. I recommend that the Commission disallow all of the President’s salary until
16 the questions raised above can be answered. As indicated previously, OPC has
17 outstanding discovery on these matters and it intends to conduct additional
18 discovery. To the extent that circumstances warrant, I will amend my
19 recommendation once we receive adequate responses to our discovery.

20 **Q. WHAT ABOUT THE ISSUE OF RATE CASE EXPENSE? WHAT DO**
21 **YOU RECOMMEND?**

22 A. If the Commission does not accept OPC’s primary recommendation, then I
23 recommend that the Commission only allow the rate case expense found
24 reasonable in the PAA. I agree with the Staff and the Commission that the

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1 additional rate case expense incurred by the Utility to file amended limited
2 proceeding applications should not be passed on to ratepayers. These
3 additional expenses are not reasonable and therefore should be disallowed. I
4 agree with the Commission’s finding that:

5 The actual project has remained relatively unchanged, and it
6 appears to us that the ratepayers are being asked to pay for
7 three filings for the same project. We find these amounts to be
8 unreasonable.

9
10 Based on the above, the utility’s requested rate case expense
11 shall be reduced by \$40,409 to \$74,929. The total allowable
12 rate case expense shall be amortized over four years, pursuant
13 to Section 367.0816, Florida Statutes, at \$18,732 per year.”
14 (Order, pp. 18-19.)

15 For purposes of developing a revenue requirement under this
16 alternative scenario, I have used a rate case expense amount of \$74,929.
17 However, because it is our intent to propound additional discovery in this
18 proceeding, it may be necessary to amend this amount at a later date. In
19 addition, no additional rate case expense should be allowed as result of the
20 Utility’s protest of the Commission’s PAA Order.

21 **Q. ARE THERE ANY OTHER ISSUES THAT YOU WOULD LIKE TO**
22 **ADDRESS WITH RESPECT TO ADJUSTMENTS THAT NEED TO BE**
23 **MADE REGARDING THE PAA?**

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1 A. Yes. It appears that there is an error in the Commission’s calculations of the
2 revenue requirement shown in the PAA. The calculations depicted on
3 Schedule 3-A of the Order show income taxes related to the proposed rate
4 increase. However because Sunshine in a Subchapter S corporation it does not
5 pay income taxes. It has been the Commission’s policy¹ in the past to not
6 include income taxes in rates of a Subchapter S corporation. Therefore, it
7 appears that the income taxes included in the Commission’s Order allowing a
8 rate increase is in error. I recommend that this error be corrected. I have not
9 reflected any income taxes in the alternative scenario presented below.

10 **Q. UNDER THIS SCENARIO WHAT IS OPC’S RECOMMENDED**
11 **REVENUE REQUIREMENT?**

12 A. Including the adjustments that OPC recommends indicates that rather than a
13 rate increase, the Commission should reduce Sunshine’s rates.

14
15
16
17

¹ See for example, In re: Application for a staff-assisted rate case for Kings Cove in Lake County by J. Swiderski Utilities, Inc., Docket No. 900998-WS; Order No. 24941. “ JSUI is a Subchapter S corporation. Commission policy is that no income tax expense should be included in the rates of a Subchapter S corporation as the corporation does not pay taxes. Therefore, we find that the income tax expense for this utility is zero.” In re: Application for staff-assisted rate case for Arbor Oaks system in Pasco County by Century Group, Inc. Docket No. 900749-WS; Order No. 24640 “The utility owner, BDC, Inc., is a Subchapter S corporation. Therefore, there will be no income tax expense since Subchapter S corporations have no income tax liability.”

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1 The amount of the rate reduction would be approximately \$30,400 as shown
2 below.

Component	<u>Total Project</u>
Commission PAA Increase	\$ 46,740
OPC Incremental Used and Useful Adjustment	(20,432)
Remove President's Salary	(45,233)
Remove Income Taxes	(11,475)
Total revenue requirement	<u>\$ (30,400)</u>

3

4 **Q. DOES THIS COMPLETE YOUR TESTIMONY PREFILED ON**
5 **AUGUST 29, 2002?**

6 A. Yes, it does.

1 **APPENDIX I**

2 **QUALIFICATIONS**

3 **Q. WHAT IS YOUR EDUCATIONAL BACKGROUND?**

4 A. I graduated from Florida State University with a Bachelor of Science degree in
5 Finance in March, 1979. I received an M.B.A. degree with a specialization in
6 Finance from Florida State University in April, 1984.

7 **Q. WOULD YOU PLEASE DESCRIBE YOUR EMPLOYMENT HISTORY IN**
8 **THE FIELD OF PUBLIC UTILITY REGULATION?**

9 A. In March of 1979 I joined Ben Johnson Associates, Inc., a consulting firm
10 specializing in the field of public utility regulation. While at Ben Johnson
11 Associates, I held the following positions: Research Analyst from March 1979
12 until May 1980; Senior Research Analyst from June 1980 until May 1981;
13 Research Consultant from June 1981 until May 1983; Senior Research Consultant
14 from June 1983 until May 1985; and Vice President from June 1985 until April
15 1992. In May 1992, I joined the Florida Public Counsel's Office, as a Legislative
16 Analyst III. In July 1994 I was promoted to a Senior Legislative Analyst. In July
17 1995 I started my own consulting practice in the field of public utility regulation.

18 **Q. WOULD YOU PLEASE DESCRIBE THE TYPES OF WORK THAT YOU**
19 **HAVE PERFORMED IN THE FIELD OF PUBLIC UTILITY**
20 **REGULATION?**

21 A. Yes. My duties have ranged from analyzing specific issues in a rate proceeding to
22 managing the work effort of a large staff in rate proceedings. I have prepared
23 testimony, interrogatories and production of documents, assisted with the
24 preparation of cross-examination, and assisted counsel with the preparation of

1 briefs. Since 1979, have been actively involved in more than 170 regulatory
2 proceedings throughout the United States.

3 I have analyzed cost of capital and rate of return issues, revenue
4 requirement issues, public policy issues, market restructuring issues, and rate
5 design issues, involving telephone, electric, gas, water and wastewater, and
6 railroad companies. I have also examined performance measurements,
7 performance incentive plans, and the prices for unbundled network elements
8 related to telecommunications companies.

9 **Q. WOULD YOU PLEASE DESCRIBE YOUR WORK INVOLVING**
10 **PERFORMANCE MEASUREMENTS AND PERFORMANCE**
11 **INCENTIVE PLANS?**

12 A. I have assisted the Staff of the Louisiana Public Service Commission in
13 establishing BellSouth's performance measurements and performance incentive
14 plan. My involvement in this area began in August 1988 and continues through
15 the present. In this capacity I assisted the Staff by holding 9 technical workshops
16 consisting of 26 days of collaborative efforts between BellSouth and the CLECs
17 to craft a set of performance metrics that could be used to evaluate BellSouth's
18 performance to the CLEC community. In addition, these efforts also resulted in a
19 performance incentive plan to be used to incent BellSouth to provide CLECs with
20 parity service.

21 I also assisted the Staff of the Public Service Commission of Nevada in
22 holding workshops to craft performance metrics for Nevada Bell, Sprint, and GTE
23 (now Verizon). My assistance with the Staff of the Public Service Commission of
24 Nevada began in April 1998 and concluded in April 2000. The collaborative

1 efforts of the CLECs, the ILECs, the Staff, and the BCP resulted in a set of
2 performance metrics for each ILEC in Nevada. I filed testimony in Docket No.
3 97-9022 addressing a few issues that could not be resolved through the
4 collaborative efforts of the parties to that proceeding.

5 Through my work in Louisiana and Nevada I have become familiar with
6 various performance measurement plans and performance incentive plans of other
7 ILECs including Bell Atlantic-New York, Southwestern Bell Texas, Missouri,
8 Oklahoma, Kansas, and BellSouth Georgia and Florida.

9 **Q. WHAT IS YOUR EXPERIENCE CONCERNING COST OF CAPITAL?**

10 A. In the area of cost of capital, I have analyzed the following parent companies:
11 American Electric Power Company, American Telephone and Telegraph
12 Company, American Water Works, Inc., Ameritech, Inc., CMS Energy, Inc.,
13 Columbia Gas System, Inc., Continental Telecom, Inc., GTE Corporation,
14 Northeast Utilities, Pacific Telecom, Inc., Southwestern Bell Corporation, United
15 Telecom, Inc., and U.S. West. I have also analyzed individual companies like
16 Connecticut Natural Gas Corporation, Duke Power Company, Idaho Power
17 Company, Kentucky Utilities Company, Southern New England Telephone
18 Company, and Washington Water Power Company.

19 **Q. HAVE YOU PREVIOUSLY ASSISTED IN THE PREPARATION OF**
20 **TESTIMONY CONCERNING REVENUE REQUIREMENTS?**

21 A. Yes. I have assisted on numerous occasions in the preparation of testimony on a
22 wide range of subjects related to the determination of utilities' revenue
23 requirements and related issues.

1 I have assisted in the preparation of testimony and exhibits concerning the
2 following issues: abandoned project costs, accounting adjustments, affiliate
3 transactions, allowance for funds used during construction, attrition, cash flow
4 analysis, conservation expenses and cost-effectiveness, construction monitoring,
5 construction work in progress, contingent capacity sales, cost allocations,
6 decoupling revenues from profits, cross-subsidization, demand-side management,
7 depreciation methods, divestiture, excess capacity, feasibility studies, financial
8 integrity, planning, gains on sales, incentive regulation, infiltration and inflow,
9 jurisdictional allocations, non-utility investments, fuel projections, margin
10 reserve, mergers and acquisitions, pro forma adjustments, projected test years,
11 prudence, tax effects of interest, working capital, off-system sales, reserve
12 margin, royalty fees, separations, settlements, used and useful, weather
13 normalization, and resource planning.

14 Companies that I have analyzed include: Alascom, Inc. (Alaska), Arizona
15 Public Service Company, Arvig Telephone Company, AT&T Communications of
16 the Southwest (Texas), Blue Earth Valley Telephone Company (Minnesota),
17 Bridgewater Telephone Company (Minnesota), Carolina Power and Light
18 Company, Central Maine Power Company, Central Power and Light Company
19 (Texas), Central Telephone Company (Missouri and Nevada), Consumers Power
20 Company (Michigan), C&P Telephone Company of Virginia, Continental
21 Telephone Company (Nevada), C&P Telephone of West Virginia, Connecticut
22 Light and Power Company, Danube Telephone Company (Minnesota), Duke
23 Power Company, East Otter Tail Telephone Company (Minnesota), Easton
24 Telephone Company (Minnesota), Eckles Telephone Company (Minnesota), El
25 Paso Electric Company (Texas), Entergy Corporation, Florida Cities Water

1 Company (North Fort Myers, South Fort Myers and Barefoot Bay Divisions),
2 Florida Power and Light, General Telephone Company (Florida, California, and
3 Nevada), Georgia Power Company, Jasmine Lakes Utilities, Inc. (Florida),
4 Kentucky Power Company, Kentucky Utilities Company, KMP Telephone
5 Company (Minnesota), Idaho Power Company, Louisiana Gas Service Company,
6 Oklahoma Gas and Electric Company (Arkansas), Kansas Gas & Electric
7 Company (Missouri), Kansas Power and Light Company (Missouri), Lehigh
8 Utilities, Inc. (Florida), Mad Hatter Utilities, Inc. (Florida), Mankato Citizens
9 Telephone Company (Minnesota), Michigan Bell Telephone Company, Mid-
10 Communications Telephone Company (Minnesota), Mid-State Telephone
11 Company (Minnesota), Mountain States Telephone and Telegraph Company
12 (Arizona and Utah), Nevada Bell Telephone Company, North Fort Myers
13 Utilities, Inc., Northwestern Bell Telephone Company (Minnesota), Potomac
14 Electric Power Company, Public Service Company of Colorado, Puget Sound
15 Power & Light Company (Washington), Sanlando Utilities Corporation (Florida),
16 Sierra Pacific Power Company (Nevada), South Central Bell Telephone Company
17 (Kentucky), Southern Union Gas Company (Texas), Southern Bell Telephone &
18 Telegraph Company (Florida, Georgia, and North Carolina), Southern States
19 Utilities, Inc. (Florida), Southern Union Gas Company (Texas), Southwestern
20 Bell Telephone Company (Oklahoma, Missouri, and Texas), Sprint, St. George
21 Island Utility, Ltd., Tampa Electric Company, Texas-New Mexico Power
22 Company, Tucson Electric Power Company, Twin Valley-Ulen Telephone
23 Company (Minnesota), United Telephone Company of Florida, Virginia Electric
24 and Power Company, Washington Water Power Company, and Wisconsin
25 Electric Power Company.

1 **Q. WHAT EXPERIENCE DO YOU HAVE IN RATE DESIGN ISSUES?**

2 A. My work in this area has primarily focused on issues related to costing. For
3 example, I have assisted in the preparation of class cost-of-service studies
4 concerning Arkansas Energy Resources, Cascade Natural Gas Corporation, El
5 Paso Electric Company, Potomac Electric Power Company, Texas-New Mexico
6 Power Company, and Southern Union Gas Company. I have also examined the
7 issue of avoided costs, both as it applies to electric utilities and as it applies to
8 telephone utilities. I have also evaluated the issue of service availability fees,
9 reuse rates, capacity charges, and conservation rates as they apply to water and
10 wastewater utilities.

11 **Q. HAVE YOU TESTIFIED BEFORE REGULATORY AGENCIES?**

12 A. Yes. I have testified before the Arizona Corporation Commission, the
13 Connecticut Department of Public Utility Control, the Florida Public Service
14 Commission, the Georgia Public Service Commission, Louisiana Public Service
15 Commission, the Missouri Public Service Commission, the Public Utilities
16 Commission of Nevada, the Public Utility Commission of Texas, and the
17 Washington Utilities and Transportation Commission. My testimony dealt with
18 revenue requirement, financial, policy, rate design, cost study issues unbundled
19 network pricing, and performance measures concerning AT&T Communications
20 of Southwest (Texas), Cascade Natural Gas Corporation (Washington), Central
21 Power and Light Company (Texas), Connecticut Light and Power Company, El
22 Paso Electric Company (Texas), Florida Cities Water Company, Kansas Gas &
23 Electric Company (Missouri), Kansas Power and Light Company (Missouri),
24 Houston Lighting & Power Company (Texas), Lake Arrowhead Village, Inc.
25 (Florida), Lehigh Utilities, Inc. (Florida), Louisiana Gas Service Company,

1 Jasmine Lakes Utilities Corporation (Florida), Mad Hatter Utilities, Inc. (Florida),
2 Marco Island Utilities, Inc. (Florida), Mountain States Telephone and Telegraph
3 Company (Arizona), Nevada Bell Telephone Company, North Fort Myers
4 Utilities, Inc. (Florida), Southern Bell Telephone and Telegraph Company
5 (Florida, Louisiana and Georgia), Southern States Utilities, Inc. (Florida), Sprint
6 of Nevada, St. George Island Utilities Company, Ltd. (Florida), Puget Sound
7 Power & Light Company (Washington), and Texas Utilities Electric Company.

8 I have also testified before the Public Utility Regulation Board of El Paso,
9 concerning the development of class cost-of-service studies and the recovery and
10 allocation of the corporate overhead costs of Southern Union Gas Company and
11 before the National Association of Securities Dealers concerning the market value
12 of utility bonds purchased in the wholesale market.

13 **Q. HAVE YOU BEEN ACCEPTED AS AN EXPERT IN THESE**
14 **JURISDICTIONS?**

15 A. Yes.

16 **Q. HAVE YOU PUBLISHED ANY ARTICLES IN THE FIELD OF PUBLIC**
17 **UTILITY REGULATION?**

18 A. Yes, I have published two articles: "Affiliate Transactions: What the Rules Don't
19 Say", Public Utilities Fortnightly, August 1, 1994 and "Electric M&A: A
20 Regulator's Guide" Public Utilities Fortnightly, January 1, 1996.

21 **Q. DO YOU BELONG TO ANY PROFESSIONAL ORGANIZATIONS?**

22 A. Yes. I am a member of the Eastern Finance Association, the Financial
23 Management Association, the Southern Finance Association, the Southwestern
24 Finance Association, and the Florida and American Water Association.