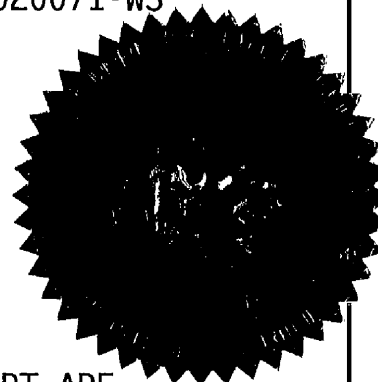


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 020071-WS

In the Matter of

APPLICATION FOR RATE INCREASE IN
MARION, ORANGE, PASCO, PINELLAS,
AND SEMINOLE COUNTIES BY
UTILITIES, INC. OF FLORIDA



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PAGES 1 THROUGH 165

PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
COMMISSIONER BRAULIO L. BAEZ
COMMISSIONER RUDOLPH "RUDY" BRADLEY

DATE: Wednesday, August 20, 2003

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR
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COMMISSIONER DEASON: Call the hearing to order.

Could I have the notice read, please.

MS. GERVASI: This time and place has been designated for a hearing in Docket Number 020071-WS, application for rate increase in Marion, Orange, Pasco, Pinellas and Seminole Counties by Utilities, Inc. of Florida.

COMMISSIONER DEASON: Thank you. Take appearances.

MR. BURGESS: I'm Steve Burgess here for the Office of the Public Counsel representing the citizens of the State of Florida.

MR. REILLY: Steve Reilly with the same office representing the citizens.

MR. FRIEDMAN: I'm Martin Friedman with the law firm of Rose, Sundstrom & Bentley. We represent Utilities, Inc. of Florida. Also with me is Mr. John Wharton and Ms. Valerie Lord of our office.

MS. GERVASI: Rosanne Gervasi and Lorena Holley representing the Commission.

COMMISSIONER DEASON: I'm sorry. Mr. Friedman, who is seated to your left?

MR. FRIEDMAN: This is Valerie Lord.

COMMISSIONER DEASON: Valerie Horn?

MR. FRIEDMAN: Lord, L-O-R-D. And this is Mr. Wharton.

1 COMMISSIONER DEASON: Yes. I know Mr. Wharton. He's
2 a very memorable person.

3 Okay. Staff, do we have any preliminary matters?

4 MS. GERVASI: We do have a few kind of housekeeping
5 matters. One is I think all the parties are aware now that
6 our, the seven DEP witnesses and the two Water Management
7 District witnesses have been excused. All parties have waived
8 their right to cross-examine those witnesses.

9 COMMISSIONER DEASON: Could you turn to the witness
10 list on Page 7 and identify those individuals, please?

11 MS. GERVASI: Certainly. The witnesses' names appear
12 on Page 7 of the prehearing order, and they are James H.
13 Berghorn, Peter H. Burghardt, Kimberly M. Dodson, Paul J.
14 Morrison, Gary P. Miller, William V. Ryland, Pepe Menendez, Jay
15 W. --

16 COMMISSIONER DEASON: And it is --

17 MS. GERVASI: I'm sorry. And two others. The Water
18 Management District witnesses are Jay W. Yingling and Dwight T.
19 Jenkins.

20 COMMISSIONER DEASON: It is your intent to insert
21 this testimony when we -- as we proceed through the witness
22 list?

23 MS. GERVASI: Yes, sir. We will do so at the
24 appropriate time.

25 We have one correction to make to Ms. Dodson's

1 testimony, which the parties are aware of, and we will do that
2 at the appropriate time as well.

3 To my knowledge the parties have not waived
4 cross-examination of any of the other witnesses.

5 COMMISSIONER DEASON: Very well.

6 MS. GERVASI: And it is my understanding that the
7 utility does not wish to have the direct and rebuttal
8 testimonies entered into the record all at one time, but that
9 Witness Gower, there's a request for him to testify first and
10 to give both his direct and rebuttal testimonies at the same
11 time.

12 And then Witness Ahern, who is a company witness,
13 because she's not available on Friday, there's a request for
14 her to go ahead and give her rebuttal today at the end of the
15 utility's direct case.

16 COMMISSIONER DEASON: I'm sorry. I understand
17 Mr. Gower and the second witness, that we will be taking direct
18 and rebuttal simultaneously.

19 MS. GERVASI: The second witness is Ms. Pauline
20 Ahern. She did not testify on direct. She did file rebuttal
21 testimony, and there is a request for her to testify on
22 rebuttal today at the end of the utility's direct case.

23 COMMISSIONER DEASON: We anticipate we will conclude
24 the direct case today?

25 MS. GERVASI: That would -- that's potentially

1 possible. I don't know.

2 COMMISSIONER DEASON: That's encouraging. I'm just
3 making a few notations here. And you did indicate that
4 Mr. Gower would be the first witness called today, is that
5 correct, or is it just that we're going to take the direct and
6 rebuttal when we get to him in order?

7 MS. GERVASI: Right. I don't think it appears in the
8 prehearing order, but there's a request for that to happen.

9 COMMISSIONER DEASON: Mr. Friedman, Mr. Gower, is he
10 going to be the fourth witness or the first witness?

11 MR. FRIEDMAN: I was going to go ahead and have him
12 as the very first witness. He has some scheduling problems.

13 COMMISSIONER DEASON: Very well. Is there any
14 objection to taking Mr. Gower first?

15 MR. BURGESS: None from us.

16 COMMISSIONER DEASON: Okay. Other preliminary
17 matters?

18 MS. GERVASI: Yes, sir. There are a number of
19 proposed stipulations that appear in the prehearing order, and
20 they begin on Page --

21 COMMISSIONER DEASON: Page 62.

22 MS. GERVASI: -- 62.

23 COMMISSIONER DEASON: We have a number of those,
24 Category 1 and Category 2.

25 MS. GERVASI: Yes, sir.

1 COMMISSIONER DEASON: My understanding as to the
2 Category 2 stipulations, Public Counsel is basically just not
3 taking a position. I think because of the nature of the issues
4 that you normally do not take positions on these type issues;
5 is that correct?

6 MR. BURGESS: That's correct.

7 MS. GERVASI: In addition to these proposed
8 stipulations, Commissioner, the parties have agreed to drop
9 Issue 2, and also we have reached a stipulation with respect to
10 Issue 3.

11 The proposed stipulation language for Issue 3 is, "No
12 additional adjustments are necessary to properly reflect the
13 condemnation and resulting retirement of the Lincoln Heights
14 wastewater treatment plant."

15 COMMISSIONER DEASON: Do you propose -- is your
16 proposal that we address the stipulation on Issue 3 when we
17 address the other stipulations?

18 MS. GERVASI: Yes, sir.

19 MR. BURGESS: Commissioner, may I interrupt here just
20 with regard to Issue 2 to make sure that this record reflects
21 the understanding at least of this party that while Issue 2 is
22 being dropped, that effectively adopts for purposes of
23 treatment for this rate case the positions taken by the Public
24 Counsel and the PSC Staff?

25 MS. GERVASI: That's correct as far as staff's

1 position is concerned.

2 MR. BURGESS: Thank you.

3 COMMISSIONER DEASON: Can you confirm that,
4 Mr. Friedman?

5 MR. FRIEDMAN: That's correct.

6 COMMISSIONER DEASON: Thank you. Very well.

7 Commissioners, is it your pleasure to address the
8 stipulations at this time or not?

9 COMMISSIONER BRADLEY: If that's in your opinion,
10 Mr. Chair, the most efficient.

11 COMMISSIONER DEASON: If, if you're comfortable going
12 forward with the stipulations, it's my desire to go ahead and
13 address those. I think it would maybe expedite things if we do
14 so.

15 COMMISSIONER BAEZ: Absolutely.

16 COMMISSIONER DEASON: So what I would do at this
17 time, if the Commissioners have any questions about the
18 stipulations, we will go ahead and entertain those. If there
19 are no questions, well, then we can entertain a motion.

20 COMMISSIONER BRADLEY: I don't have any.

21 COMMISSIONER DEASON: I'm sorry. You have no
22 questions?

23 COMMISSIONER BRADLEY: No, I have none.

24 COMMISSIONER BAEZ: I have no questions. Do you want
25 to take them all up at once?

1 COMMISSIONER DEASON: Let's just -- I think we can --
2 let's do it by -- we have two categories. Let's go ahead and
3 do Category 1, all the stipulations in that category. Would --
4 Issue 3 stipulation, that would be within Category 1.

5 MS. GERVASI: Yes, sir, it would.

6 COMMISSIONER DEASON: So if we have a motion to
7 approve all Category 1 stipulations, with the understanding
8 that that includes the stipulation for Issue 3 just described
9 by staff.

10 COMMISSIONER BRADLEY: I so move.

11 COMMISSIONER BAEZ: Second.

12 COMMISSIONER DEASON: Moved and seconded. All in
13 favor, say aye.

14 (Simultaneous affirmative vote.)

15 COMMISSIONER DEASON: Show that those are approved.

16 Then we have Category 2 stipulations, and I think we
17 all understand the reason we have two different categories.

18 COMMISSIONER BAEZ: I can move, I can move all the
19 Category 2 stipulations.

20 COMMISSIONER BRADLEY: Second.

21 COMMISSIONER DEASON: We have a motion and a second
22 for Category 2. Moved and seconded. All in favor, say aye.

23 (Simultaneous affirmative vote.)

24 COMMISSIONER DEASON: Show the Category 2
25 stipulations are approved.

1 MS. GERVASI: And then the only other thing that
2 staff has is that we have three composite exhibits that we
3 would like to have identified, marked for identification before
4 the utility begins its direct case.

5 COMMISSIONER DEASON: All right. We can go ahead and
6 identify those.

7 MS. GERVASI: These are three sets of discovery
8 responses that the, that we have provided copies of to the
9 parties.

10 Composite Exhibit Number 1, that's actually -- the
11 description is Staff Composite Exhibit 1, Engineering.

12 COMMISSIONER DEASON: We will identify that as
13 Exhibit 1.

14 (Exhibit 1 marked for identification.)

15 MS. GERVASI: And then Staff Composite Exhibit 2, Net
16 Operating Income.

17 COMMISSIONER DEASON: That will be identified as
18 Exhibit 2.

19 (Exhibit 2 marked for identification.)

20 MS. GERVASI: And Staff Composite Exhibit 3, Rate
21 Design.

22 COMMISSIONER DEASON: That will be identified as
23 Exhibit 3.

24 (Exhibit 3 marked for identification.)

25 MS. GERVASI: Thank you.

1 COMMISSIONER DEASON: You're just identifying them at
2 this point or is there an agreement to include these in the
3 record?

4 MS. GERVASI: There is an agreement, thank you, sir,
5 to have them moved in, and so we would so move at this time.

6 COMMISSIONER DEASON: And I would just confirm,
7 there's no objection by Public Counsel?

8 MR. BURGESS: We have no objection.

9 COMMISSIONER DEASON: No objection by the company?

10 MR. FRIEDMAN: We have no objection.

11 COMMISSIONER DEASON: Okay. Show then that Exhibits
12 1, 2 and 3 are admitted into the record.

13 (Exhibits 1, 2 and 3 admitted into the record.)

14 Okay. Other preliminary matters.

15 MS. GERVASI: None that I'm aware of.

16 COMMISSIONER DEASON: Mr. Burgess.

17 MR. BURGESS: Yes. We have two items we would like
18 to address. The first is just more for information purposes
19 for the parties and the Commissioners.

20 There was certain confidential information that we
21 obtained in response to discovery that we propounded to the
22 company. We wanted the parties to know at this point that we
23 do not intend, and the Commission know that we do not intend to
24 use that, so we will not be going through or seeking the
25 process whereby we use that confidential information. So that

1 can be put to rest. And then whatever Commission procedures
2 are affected, that will then determine the disposition of it
3 later.

4 The second item is one I'm not sure where we are with
5 it. On -- at 6:00 the day before yesterday we received a fax
6 from the utility with, giving us -- that has a cover letter
7 from the company to the Commission clerk saying, "Dear
8 Ms. Bayo: I enclose the following information for filing,
9 which was prepared in response to the deposition of J. Frances
10 Lingo." And it's E-1 schedule for Pasco County, E-2 schedule
11 for Pasco County, E-1 schedule for Seminole County,
12 E-2 schedule for Seminole County on down, and there are 13
13 different rate schedule filings. These are MFRs. This is
14 actually one day before the hearing since it came in at 6:00
15 the day before. So apparently the company is seeking to have
16 these filed.

17 Now this is not discovery response. It says, "In
18 response to the deposition of Ms. Lingo." Now Ms. Lingo is a
19 staff witness whom the company deposed. And then apparently in
20 response to that now the company is refiling E schedules.
21 E schedules are the schedules that they filed several times
22 already. And for them to come in with a new set of
23 E schedules, a new set of MFRs, which is what normally starts
24 the rate setting process, for them to come in the day before
25 the hearing with a new set of MFRs, I think is, is something

1 that just shouldn't be allowed. We cannot respond to it. Our,
2 our witnesses, our consultants were in route to Tallahassee at
3 the time we received this, so it's not something that we've had
4 any opportunity to respond to. And I just -- I don't know
5 whether the company intends to have it inserted in the record.
6 I don't know through what process they intend to. I just am
7 going by this that they intend it for filing, and so I'd move
8 to strike it as being an improper filing.

9 COMMISSIONER BRADLEY: Mr. Chair. Mr. Burgess, I
10 heard what you said and I appreciate, I can appreciate it. But
11 let me ask you this: If you would maybe give consideration to
12 taking some time to, to -- for you personally and your staff
13 to, to analyze this information to see if it is relevant and
14 germane to what we're considering here.

15 It's my understanding that Ms. Lingo did not have all
16 the information that she needed to have in order to determine
17 the rates for all of the counties and that this may be evidence
18 that may be germane. And I just -- that's the question that
19 I'm asking. I heard what you said.

20 MR. BURGESS: I appreciate that, Commissioner, and
21 we'd be happy to consider it. I guess I'd be interested to
22 know also Ms. Lingo's analysis of it, although I don't want it
23 in the record if it's something that's improper.

24 What troubles me about it is that it is the company's
25 burden to present actually at the beginning of everything the

1 minimum filing requirements necessary for the Commission staff
2 to, to make these recommendations. And not only were they
3 deficient at the outset, there has been iteration after
4 iteration of these things wherein, as I understand it, staff
5 has explained to them what the shortcomings of the various
6 filings have been and they've refiled these over and over and
7 over again in this hearing. And if there is not information
8 the day before the hearing starts upon which the Commission
9 staff, expert staff to be able to establish rates, well, that's
10 a deficiency the company has to live with from our standpoint.

11 So we'll be happy to look at it and see if we can
12 analyze it, but at this point our position has to be that
13 that's just not contemplated by the process. And that, it ends
14 up in a situation where the Public Service Commission's expert
15 staff says this means we don't have enough information to set
16 rates for these counties. Well, that's just something that the
17 company lives with.

18 COMMISSIONER BRADLEY: And right -- Mr. Chair. And
19 I'm not disagreeing with you, but I'm just wondering if it
20 might be more efficient in terms of this process that we're
21 beginning for maybe Mr. Burgess to have some opportunity to
22 look at this before we begin this, this long and arduous
23 process.

24 COMMISSIONER DEASON: I agree. And I think
25 Mr. Burgess is indicating a willingness to undertake that

1 review. Given the limited time frame involved, I think that's
2 a constraint, but I think he's willing to take that on.

3 What I would like to do at this point is give
4 Mr. Friedman an opportunity to describe the nature of this
5 filing, how he intends to use it just for information purposes
6 at this time, and then having that, then we will give
7 Mr. Burgess an opportunity to renew his objection, if it still
8 stands, or if it may be modified to some extent, allow him the
9 opportunity to renew that, and then we will allow, of course,
10 Mr. Friedman to respond to the objection.

11 But, Mr. Friedman, I'd like to have you provide us
12 your explanation as to the timing of this and what these
13 schedules represent and why it was necessary to file them and
14 what your intent is as to their utilization in this case.

15 MR. FRIEDMAN: Thank you, Commissioners. The -- Ms.
16 Lingo has filed prefiled testimony on the rate structure issue
17 and stand-alone, and stand-alone rates versus county-wide
18 rates, and so we took her deposition on that issue. And it
19 became apparent from her deposition that she has a methodology
20 of doing meter equivalencies that is different from that which
21 we filed. It doesn't mean we don't support our meter
22 equivalency filing, but she has a different methodology. And,
23 frankly, we felt that it was easier to switch than fight.

24 And so during that deposition we took a break, and
25 Public Counsel was on the phone too, I don't remember whether

1 it was Mr. Burgess or one of his associates, we took a break
2 and discussed at great length, Ms. Lingo did, what she wanted
3 to see in her meter equivalency calculations. And so, as I
4 mentioned, instead of arguing about whether our, whether her
5 meter equivalency methodology is the only way it can be done,
6 we thought it more prudent to provide the information to her in
7 the format that she liked rather than to, like I say, rather
8 than to fight about it. And so that's what the refiled
9 schedules accomplish is providing her with the information on
10 the billing meter equivalencies in a format that she can
11 determine for herself whether the rates should be county-wide
12 or system-specific. And we had intended, when Mr. Lubertozzi
13 testifies, to propose to substitute those schedules for the
14 previously filed schedules on those.

15 COMMISSIONER DEASON: So it is your intent then when
16 Mr. Lubertozzi takes the stand, he will, subject to objection
17 of course, but his intent to substitute these modified
18 schedules to take the place of those that were filed
19 previously.

20 MR. FRIEDMAN: That is our intent. Yes, sir.

21 COMMISSIONER DEASON: And it is also your position
22 that it is, it is a methodology, it reflects a methodology that
23 you're willing to concede to its utilization; not that it's
24 necessarily the only methodology, but you're willing to concede
25 its utilization in this case.

1 MR. FRIEDMAN: That is correct.

2 COMMISSIONER DEASON: Okay.

3 COMMISSIONER BRADLEY: Question, Mr. Chair, of Mr.
4 Friedman.

5 Mr. Friedman, based upon the new submission and the
6 modified methodology, to what extent does that change the
7 outcome in your opinion of what these would indicate?

8 MR. FRIEDMAN: Commissioner Bradley, it goes to the
9 issue of whether --

10 COMMISSIONER BRADLEY: And what I'm really trying to
11 do is get some discussion between you and Mr. Burgess maybe to
12 see if --

13 MR. FRIEDMAN: Yeah. The whole issue is whether
14 we've got two counties that have multiple systems. And the
15 question is do those two counties' rates have a county-wide
16 rate or are they, or should the rates be system-specific. And
17 so that's what the intent of those filings were.

18 I mean, it's -- what it is, it's a rate design, rate
19 structure type of, of filings.

20 COMMISSIONER DEASON: And it in no way impacts the
21 level of overall rate increase requested?

22 MR. FRIEDMAN: I don't think it -- no, it doesn't
23 change the overall rate request at all, I don't believe. No,
24 it does not.

25 COMMISSIONER BAEZ: Is that Public Counsel's

1 understanding as well?

2 MR. BURGESS: I would disagree strenuously as to its
3 effect of overall rate request, at least on the effect of that
4 which has been, can be justified.

5 In the prefiled testimony, timely filed testimony of
6 Ms. Lingo she reached the conclusion that the company had not
7 filed adequate information for her to establish rates, for the
8 staff to establish rates or the Commission on either
9 county-wide or individual system.

10 COMMISSIONER BAEZ: And given that, is --

11 MR. BURGESS: And that means the revenue requirement
12 for those two areas are zero. And they come in now with this
13 information saying, okay, well, here's a bunch more
14 information, maybe this'll do it. And that's our problem with
15 it.

16 COMMISSIONER BAEZ: Mr. Burgess, is this the kind of
17 information that gets elicited as late-filed or, you know,
18 further information that the staff asks for during the course
19 of a hearing?

20 MR. BURGESS: I, I would hope not. I apologize,
21 Commissioner. I'm not sure what you're asking. I don't, I
22 don't think so because they -- staff had asked for information
23 and had received numerous filings of this same information and
24 refilings and refilings of it throughout the course of the
25 hearing. And finally with that which was available at the time

1 for Ms. Lingo to make her testimony, to deliver her testimony,
2 the information she had required led her to the conclusion that
3 she reached.

4 And I don't know that staff had any intention of
5 asking for this information. I, I got the impression from the
6 testimony that they were saying, well, you've had many, many,
7 many opportunities up to this point, and based on every one of
8 them we can't make a finding in these particular areas. Now
9 I'm characterizing Ms. Lingo's testimony, and, and so that's --
10 there's a little bit of jeopardy there. But that's my
11 understanding of her prefiled testimony.

12 And so I don't, I don't see where staff, and, of
13 course, they need to speak for themselves, would then be asking
14 for information to come in now at the hearing to, to allow them
15 to file it.

16 The reason the information was, had to be refiled was
17 problems were found with it, inaccuracies, difficulties, all
18 kinds of problems with it. And so to now say this, that we
19 don't have time to go through with the fine-tooth comb that
20 they've gone through all the iterations and found all of them
21 deficient and to say but these are right now, these are
22 accurate, I think is just -- it just doesn't stand up to logic
23 as we see it.

24 COMMISSIONER BAEZ: If, if it is a -- is your
25 problem -- I guess I asked originally if this was rate, if this

1 was information related to rate structure, which is normally
2 not something that the Public Counsel gets involved in for
3 obvious reasons. But -- and you're saying that it is not
4 related to rate structure?

5 MR. BURGESS: It is related to rate structure, but it
6 is also related to revenue requirement in that --

7 COMMISSIONER BAEZ: Because in light of Ms. Lingo's
8 testimony there's two counties for which revenue requirement
9 would be zero?

10 MR. BURGESS: Exactly. Yes, sir. That's the tie-in
11 to revenue requirement.

12 COMMISSIONER DEASON: Well, that's -- Mr. Burgess, I
13 certainly understand that and I certainly respect the testimony
14 of Ms. Lingo.

15 However, I think you would agree that by statute this
16 Commission has to allow a company an opportunity, if it can
17 demonstrate the need for a revenue requirement, has to allow
18 them the opportunity to, to bill and collect that revenue in
19 order to earn a reasonable rate of return on their prudent
20 investment, and that absent the amount of detail we would
21 otherwise wish to have when it came to designing rates, absent
22 that we still have to provide some type of a rate to allow them
23 that opportunity. And I think it may be a stretch to say that
24 we could just simply assign a revenue requirement of zero
25 because there's some deficiency or some change in rate

1 structure information at the last minute. I would appreciate
2 your, your view on that.

3 MR. BURGESS: Yeah. I would say the statutes also
4 say that you -- that a company cannot charge any customer rates
5 that are unreasonable or discriminatory, and I would -- or
6 arbitrary. And I would say that if you do not have the
7 information necessary to determine that they are designed
8 properly, designed to avoid discriminatory rates, designed to
9 avoid arbitrariness in the establishment, designed to avoid
10 unreasonableness to any customer grouping, which is what Ms.
11 Lingo reached the conclusion of, then it would be a violation
12 of statute to allow that revenue requirement in. So that's our
13 take on the issue.

14 COMMISSIONER DEASON: Well, I think we're getting
15 more and more into argument here, which I was wanting to avoid
16 at this point. I wanted Mr. Burgess and his staff the ability
17 to review this information and either more narrowly focus the
18 objection, if possible, or just simply renew the objection
19 again after having the opportunity to review it, and then we
20 would further engage in, in argument concerning, concerning
21 that.

22 Mr. Friedman, I'll give you a brief opportunity to
23 make a response, if you are so inclined at this point. Or if
24 you just wish to wait until later, that would be fine.

25 MR. FRIEDMAN: I just wanted to make a brief comment

1 because I was on that telephone conference with Ms. Lingo. And
2 she -- I think that she requested us to provide this
3 information. In the deposition she had a list of saying this
4 is what I need and she had I don't remember how many items,
5 probably five or six. And if you read the deposition, you can
6 see where she addresses them. And she's saying this is what I
7 want, this is what I want, this is what I want, and she faxed
8 us that list. And we'll make some more arguments later.

9 COMMISSIONER DEASON: Well, I think that this is
10 something that is, falls in the category that it would probably
11 be helpful to engage in some further dialogue between Public
12 Counsel and the company and the staff since this involves
13 information that, depending upon your point of view, is either
14 requested by a staff member or a staff member, staff witness
15 indicated that she felt there were deficiencies or, or better
16 information to be obtained. Hopefully there will be an
17 opportunity to engage in those discussions before we conclude
18 the hearing. And we can further engage in hearing the
19 objection, if necessary.

20 Staff, is there anything you need to add at this
21 point?

22 MS. HOLLEY: Not necessarily to add. But I would
23 like to clarify to Mr. Burgess that the admission or
24 nonadmission of this information does not change Ms. Lingo's
25 testimony. It will be inserted into the record as it was

1 filed. Ultimately this information will be left up to advisory
2 staff to look at and evaluate for its correctness.

3 COMMISSIONER DEASON: Very well. Okay. Other
4 preliminary matters. Mr. Burgess, I think we addressed your
5 two items; is that correct?

6 MR. BURGESS: You did. Thank you.

7 COMMISSIONER DEASON: Okay. Mr. Friedman.

8 MR. FRIEDMAN: We have no other preliminary matters.

9 COMMISSIONER DEASON: Okay. I believe that opening
10 statements are permissible but not required in this proceeding.
11 Mr. Burgess, is it your intent to make an opening statement?

12 MR. BURGESS: It's my understanding that if we, if
13 opening statements were to be delivered, that the utility would
14 deliver first. I've spoken with Mr. Friedman. It's my
15 understanding from discussing with him that he had not intended
16 to give an opening statement. Based on that, I don't intend to
17 either. But I guess it's sort of --

18 MR. FRIEDMAN: I haven't changed my mind.

19 COMMISSIONER DEASON: Okay. Very well. So we can
20 dispense with opening statements.

21 MR. FRIEDMAN: That's correct.

22 COMMISSIONER DEASON: Okay. Ms. Gervasi, we're at
23 the point now where we can swear in witnesses?

24 MS. GERVASI: Yes, sir.

25 COMMISSIONER DEASON: Very well. I will ask all

1 witnesses that are present at this time to stand and raise your
2 right hand. And I would ask for counsel to make a notation of
3 which witnesses are present and ask those witnesses when they
4 take the stand if they have been sworn.

5 (Witnesses collectively sworn.)

6 COMMISSIONER DEASON: Thank you. Please be seated.
7 Mr. Friedman, I believe you can call Mr. Gower.

8 MR. FRIEDMAN: We call Mr. Gower.

9 (Discuss held off the record.)

10 HUGH GOWER

11 was called as a witness on behalf of Utilities, Inc. of
12 Florida, having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FRIEDMAN:

15 Q Would you please state your name.

16 A My name is Hugh Gower.

17 Q And, Mr. Gower, have you prefiled direct and rebuttal
18 testimony in this case?

19 A I have.

20 Q Were you previously sworn a minute ago when we did
21 that?

22 A Yes, I was.

23 Q Okay. And you did prefile direct and rebuttal
24 testimony in this proceeding?

25 A I did.

1 Q And you have copies of those with you?

2 A I do.

3 Q Okay. Did, did you have any exhibits with your
4 testimony?

5 A I did not.

6 Q Do you have any changes, corrections, additions or
7 deletions to your prefiled testimony, either your direct or
8 your rebuttal?

9 A No, sir, I do not.

10 Q And so if I ask you the questions in your direct and
11 rebuttal testimony, your answers would be the same?

12 A Yes, they would.

13 MR. FRIEDMAN: I would request then that Mr. Gower's
14 direct and rebuttal testimony be admitted into the record as
15 though read.

16 COMMISSIONER DEASON: Without objection, both the
17 direct and rebuttal testimony of Witness Gower will be inserted
18 into the record.

19 MR. FRIEDMAN: Thank you.

20

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25

DIRECT TESTIMONY OF

HUGH A. GOWER

1 **Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.**

2 A. My name is Hugh Gower and my address is 195 Edgemere Way, S.
3 Naples, Florida 34105.

4 I am self employed as a consultant on public utility financial, economic regulation
5 and cost containment and control matters. I also provide expert testimony on
6 topics related to public utility economics and rate regulation in cases before public
7 service commissions and courts.

8 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL AND**
9 **PROFESSIONAL BACKGROUND.**

10 A. After receiving a Bachelor of Science degree in Accounting and
11 Economics from the University of Florida, I practiced public accounting for more
12 than thirty years, specializing in the public utility area. I am, or have been,
13 registered as a Certified Public Accountant in several states and I am a member
14 of the American Institute of Certified Public Accountants and the Florida Institute
15 of CPAs.

16 **Q. BRIEFLY DESCRIBE THE NATURE OF YOUR WORK**
17 **EXPERIENCE IN PUBLIC ACCOUNTING.**

18 A. I performed independent audits of the financial statements issued by public
19 utilities and other companies in reports to investors and regulators. I participated
20 in and supervised audits of various statements and schedules and other data
21 required either annually or in connection with rate applications before federal or
22 state regulatory authorities. I have also supervised work in connection with the
23 issuance of billions of dollars of securities by public utilities.

24 I participated in the development of accounting and management information
25 systems designed to promote close control over utility resources such as materials,

1 fuel and construction costs. I have directed the preparation of financial forecasts,
2 conducted independent reviews of financial forecasts and directed the
3 development of financial forecasting models. I participated in management
4 audits, the purpose of which was to assess whether management systems and
5 procedures promoted economy and efficiency in utility operations.

6 I have directed depreciation studies which, based on analyses of utility plant
7 investments, retirement transactions, salvage or cost of removal, developed
8 equitable depreciation rates with which to effect capital recovery during the
9 service lives of the assets. I also developed plans which were accepted by
10 regulators to equitably assign the future outlays for spent nuclear fuel disposal,
11 nuclear plant decommissioning and fossil plant dismantlement costs to customers
12 receiving service, considering the effects of inflation, the time value of money and
13 other variables.

14 I have directed revenue requirements studies involving analysis of rate base,
15 operating revenues and expenses as well as the analysis of specific transactions
16 or alternative rate-making proposals for various cost-of-service components. I
17 have also directed studies to determine the proper assignment of cost of service
18 between customer classes, regulatory jurisdictions or between regulated and
19 nonregulated operations. I have provided expert testimony in cases before
20 regulatory commissions and courts.

21 I was a representative of the American Institute of Certified Public Accountants
22 on the Telecommunications Industry Advisory Group which advised the Federal
23 Communications Commission on certain matters in connection with the
24 development of its Uniform System of Accounts (Part 32). In this connection, I
25 chaired the Auditing and Regulatory Subcommittee which dealt with issues
26 involving compliance with generally accepted accounting principles ("GAAP")
27 when regulatory rate-setting methods were based on practices at variance with

1 GAAP.

2 From 1975 until 1992 I served as the Southeastern Area Director of the public
3 utility and telecommunications practice for Arthur Andersen & Co. (now
4 Andersen LLP). This area of the practice included work for electric, gas,
5 telephone and water & sewer utilities, motor carriers and airlines. I had
6 responsibility for supervising the work done for clients, training of firm personnel
7 and administrative matters, in addition to the direct responsibility for work done
8 for numerous
9 clients in this and other areas of the practice.

10 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
11 **PROCEEDING?**

12 A. The purpose of my testimony is to describe the proper ratemaking
13 treatment for the reported \$61,699 gain on sale of Utilities, Inc. of Florida's
14 ("Utilities" or "the Company") Druid Isle and a portion of its Oakland Shores
15 water systems and the reported gain of \$269,661 on sale of its Green Acres
16 Campground water and wastewater systems cited in Order No. PSC-02-0657-
17 PAA-WU dated May 14, 2002, of the Florida Public Service Commission
18 ("FPSC" or "Commission"). My testimony will show that the long run best
19 interests of both customers and utilities are best served when gains and losses on
20 sales of utility systems which occur prior to the end of useful life retirement of the
21 property are excluded from cost of service for ratemaking purposes.

22 **Q. WHAT IS THE PROPER RATEMAKING TREATMENT OF THE**
23 **GAINS ON SALES OF THESE UTILITY SYSTEMS BY UTILITIES?**

24 A. Like investments made to construct or acquire utility property from others,
25 sales of utility systems are capital transactions. Construction or acquisition of
26 properties are "investments" of capital supplied by investors. Sales of utility
27 systems are "disinvestments" or recoveries of the capital investors had previously

1 provided. Since either is a capital transaction, they both should be assigned to
2 investors, not customers. Neither gains nor losses on sales of utility systems
3 should be included in cost of service used for rate setting purposes.

4 **Q. WHAT IS “COST OF SERVICE” TO WHICH YOU REFER AND**
5 **HOW IS IT USED IN SETTING CUSTOMERS’ RATES?**

6 A. Although the term “cost of service” is exactly what it implies and is
7 conceptually simple, its application can be complex and it is often misunderstood,
8 misinterpreted or misapplied.

9 Almost universally, utility regulators with responsibility for setting the rates or
10 prices for utilities in the United States do so on the basis of the affected utility’s
11 actual cost of providing service to customers. Use of cost-based ratemaking has
12 a long history and is used because the regulated companies are not subject to
13 market forces or competition to limit either their prices or profits, at least to the
14 same extent as companies which offer products or services in completely open,
15 competitive markets.

16 Over a period of many years, actual applications of cost based ratemaking in
17 specific cases and the decisions of regulators and courts have developed a
18 regulatory framework which defines the rights and obligations of utility customers
19 and of utilities to maximize the benefits to both. This includes the procedures for
20 determining fair and reasonable prices.

21 **Q. HOW ARE FAIR AND REASONABLE PRICES DETERMINED**
22 **UNDER THE REGULATORY FRAMEWORK OF COST-BASED RATE**
23 **REGULATION?**

24 A. Fair and reasonable prices include all and only the costs of the activities
25 undertaken by the utility to provide service. Costs are limited to those reasonably
26 and prudently incurred for the provision of service. In addition to labor, supplies,
27 taxes, depreciation and other operating expenses, utilities are entitled to include

1 in their prices a reasonable return on the capital their owners and lenders have
2 invested for the provision of utility service. These costs are usually measured for
3 a year's period of time (a "test period") and are matched against the quantity and
4 quality of service expected to be provided during that period. "Cost of service"
5 thus includes the cost of resources used or consumed during that period rather
6 than the total amount the utilities may be committed to spend or may have already
7 spent for such resources, or the total return on capital the utilities will need for all
8 the years investors' capital is expected to be devoted to utility service. Further,
9 expenses of activities unrelated to the provision of utility service are excluded
10 from the price of utility services as are returns on capital not devoted to utility
11 service.

12 **Q. HOW ARE OPERATING EXPENSES, TAXES AND**
13 **DEPRECIATION LIMITED TO THOSE DEVOTED TO UTILITY**
14 **SERVICE IN THE COST-BASED RATE SETTING PROCESS?**

15 A. Operating expenses, taxes, depreciation, etc. are routinely accounted for
16 and reported by utilities to the applicable regulatory authorities using the Uniform
17 System of Accounts ("USOA") prescribed by the regulatory authorities having
18 jurisdiction. The USOA, through its detailed instructions, limits amounts
19 recorded in "operating expenses" to the cost of those resources consumed to
20 conduct utility operations.

21 Amounts applicable to nonutility activities are recorded in designated accounts
22 separate and apart from those for utility operations. Transactions related to
23 investors' capital--the issuance, repayment, repurchase or redemption of securities
24 or payment of interest or dividends--are also excluded from the accounts for utility
25 operations. Likewise, USOA instructions explicitly separate construction related
26 expenditures and costs from utility operating accounts as it does the sales of utility
27 systems.

1 This provides a high level of assurance that amounts recorded in utility operating
2 expense accounts are appropriately limited to the operating costs of providing
3 utility service and are appropriately classified for use in a rate setting proceeding.
4 In addition, nonrecurring, out-of-period or extraneous expenses would be
5 excluded from operating expenses used for rate setting following the rules or
6 practices and procedures employed by the regulatory authority to which
7 application for approval of a rate change is made.

8 **Q. WHAT DOES THE CAPITAL UPON WHICH THE UTILITY**
9 **INVESTORS ARE ENTITLED TO A RETURN CONSIST OF?**

10 A. The capital upon which investors are entitled to a return consists of debt
11 and equity capital invested in the utility company. Equity capital generally consists
12 of common stock outstanding, other paid-in capital and earnings retained in the
13 business. Some utilities also issue preferred stock shares to finance part of their
14 business. Debt capital generally used by utilities would include mortgage bonds,
15 debentures and long-term notes of various kinds. Some regulators also include in
16 a utility's capital structure other items of a more or less permanent or long-term
17 nature such as customer deposits, accumulated deferred income taxes and interim
18 bank debt financing, if any.

19 **Q. HOW IS THE AMOUNT OF CAPITAL DEVOTED TO THE**
20 **PROVISION OF UTILITY SERVICE DETERMINED?**

21 A. Although the total amount of capital invested in any utility enterprise is
22 usually easily identified from the company's books and records, it is not readily
23 determinable what part of that total capital is devoted to utility service in cases
24 where the utility operates in more than one jurisdiction, provides more than one
25 kind of utility service, or has nonutility operations. In addition, many companies
26 have capital invested in utility assets under construction, or, which, even if
27 complete and ready for service, are, for one reason or another, not considered to

1 be yet devoted to utility service. As a result, among those practices and
2 procedures which have developed over the years in the application of cost-based
3 rate regulation is the method of estimating how much capital is devoted to utility
4 service at the time of a rate setting proceeding.

5 **Q. HOW IS THE AMOUNT OF CAPITAL DEVOTED TO UTILITY**
6 **SERVICE ESTIMATED?**

7 A. The amount of capital devoted to utility service is mirrored by the dollar
8 value of the utility's net assets used in providing service. With the type of
9 detailed records maintained by most utilities, assets can be identified as to location
10 and function. Thus, employing values and/or transactions recorded on the utility's
11 books of account, analysts are able to identify the cost of assets devoted to the
12 provision of utility service. Such values include utility plant, inventories,
13 prepayments or other assets along with an allowance for the amount of money
14 needed to finance utility expenses prior to receipt of customers' payments for
15 service. These amounts are reduced by accumulated depreciation, amounts
16 advanced by suppliers or customers and by any other cost-free funds. The amount
17 determined by such a study has come to be known as "rate base".

18 Although "rate base" is derived from asset values shown on the utility' books of
19 account, rather than representing so many feet of pipe or numbers of meters and
20 pumps, it really is a surrogate for the amount of capital which investors have
21 supplied for the provision of utility service. This is the amount of capital upon
22 which investors are entitled to earn a reasonable return.

23 **Q. IS THE FACT THAT "RATE BASE" IS A SURROGATE FOR**
24 **INVESTORS' CAPITAL WELL ESTABLISHED?**

25 A. Yes. It is recognized in authoritative literature on regulation and was
26 clearly articulated in Justice Brandeis' minority opinion (concurring as to results)
27 in the United States Supreme Court's 1923 decision in a Southwestern Bell

1 Telephone Company case. Justice Brandeis wrote:

2
3 “The thing devoted by the investor to the public use is not specific
4 property but capital embarked in the enterprise. Upon the capital so
5 invested the Federal Constitution guarantees to the utility the opportunity
6 to earn a fair return The several items of property constituting the
7 utility, taken singly, and freed from public use, may conceivably have an
8 aggregate value greater than if the items are used in combination. The
9 owner is at liberty, in the absence of controlling statutory provisions, to
10 withdraw his property from public service; and, if he does so, may obtain
11 for it exchange value.” (Footnote omitted; emphasis added).
12 Southwestern Bell Telephone Company v. Public Service Commission of
13 Missouri, 262 U.S. 276, 290 (1923).
14

15 **Q. HOW DO REGULATORS WHO EMPLOY COST-BASED RATE**
16 **REGULATION DETERMINE WHAT TO ALLOW UTILITIES AS A**
17 **REASONABLE RETURN ON CAPITAL DEVOTED TO PUBLIC**
18 **SERVICE?**

19 A. The capital structure of each regulated company is reflected on its books
20 of account and shown on its annual reports to regulators and these records reflect
21 how much to the utility’s capital structure is common equity, preferred stock or
22 debt. The cost of preferred stock or debt capital can be calculated. The cost of
23 common equity is usually estimated using stock market data. The weighted cost
24 of all forms of capital employed by the utility (together with cost free capital, if
25 any) is the “reasonable return” which regulators allow on investors’ capital (“rate
26 base”).

27 These cost-based rate regulation practices yield prices for utility service based on
28 historic original costs rather than current values of the resources devoted to utility
29 service. Courts have held that, however calculated, a reasonable return is one
30 which is sufficient for the utility to maintain its credit standing and financial
31 integrity, sufficient to attract new capital at reasonable costs and commensurate
32 with returns being earned on investments attended by corresponding risks.

33 **Q. DO REGULATORS ADJUST THE RETURN THEY ALLOW A**

1 **UTILITY UPWARD IF THE MARKET VALUE OF THE UTILITY'S**
2 **OUTSTANDING SECURITIES INCREASES?**

3 A. No. The market value of the utility's outstanding securities is not
4 considered in the rate of return calculations; only book values.

5 **Q. DO REGULATORS ALLOW AN INCREASE IN THE AMOUNT**
6 **OF RETURN ALLOWED IF THE VALUE OF THE ASSETS DEVOTED**
7 **TO PUBLIC SERVICE AND INCLUDED IN RATE BASE INCREASES**
8 **ABOVE BOOK VALUES?**

9 A. No. Values other than historic original cost are generally not considered.
10 In its Order No. 25729 issued February 17, 1992 the Commission stated :

11 "This Commission has consistently interpreted the "investment of the
12 utility" as contained in Section 367.081(2)(a), Florida Statutes to be the
13 original cost of the property when first devoted to public service, not only
14 in the context of acquisition adjustments, but elsewhere as well."

15 Consequently, even when the book values of utility assets are far lower than
16 replacement values of those assets, customers are completely shielded from price
17 increases which might otherwise reflect those increased costs. In addition, for
18 those assets which provide service to customers until retirement from service,
19 neither depreciation nor return allowances included in utility service prices reflect
20 the higher costs which investors will face upon replacing such assets. This risk
21 rests squarely on the investors.

22 **Q. HOW ELSE DOES THE REGULATORY FRAMEWORK OF**
23 **COST-BASED RATE REGULATION DEFINE THE RIGHTS AND**
24 **OBLIGATIONS OF CUSTOMERS AND UTILITIES?**

25 A. Generally, under this regulatory framework, utilities are obligated to
26 provide safe, adequate, reliable service to all customers willing and able to pay for
27 service within their designated service area. Utilities are able to establish
28 reasonable rules and regulations concerning such matters as safety, payment terms

1 and other commercial aspects. Utilities providing service under such regulation
2 are, as are all businesses, entitled to legal protection of their privately owned
3 property. Among other things, this means that utilities are entitled to charge a fair
4 and reasonable price which covers the costs they incur to provide service and are
5 also protected against confiscation of their property.

6 Although entitled to safe, adequate and reliable service, customers must pay the
7 fair and reasonable prices set or approved by the applicable regulatory authority.
8 Customers' rights end with the payment for the service they receive and such
9 payments in no way entitles them to any interest in the property of the utility
10 serving them.

11 **Q. HAVE THESE RIGHTS AND OBLIGATIONS OF CUSTOMERS**
12 **AND OF UTILITIES BEEN SUBJECTED TO JUDICIAL REVIEW?**

13 A. Yes. For example, The Supreme Court of the United States ruled on this
14 issue in a 1926 New York Telephone Company case. In regards to the relative
15 rights, the Court said:

16 "The relation between the company and its customers is not that of
17 partners, agent and principal, or trustee and beneficiary."
18

19 and further:

20 "Customers pay for service, not the property used to render it. Their
21 payments are not contributions to depreciation or other operating
22 expenses, or to capital of the company. By paying bills they do not
23 acquire any interest, legal or equitable, in the property used for their
24 convenience or in the funds of the company. Property paid for out of
25 moneys received for service belongs to the company, just as does that
26 purchased out of proceeds of its bonds and stock." New York Telephone
27 Company, 271 U.S. 23, 31-32 (1926).
28

29 **Q. AREN'T UTILITY INVESTORS PROTECTED FROM RISK**
30 **WHEN RATES ARE SET AS YOU DESCRIBE?**

31 A. No, utility investments are not risk free. Although the rate of return
32 allowed on utility investors' capital is generally lower than might be earned in

1 some other types of businesses, this does not signify the absence of risk. As with
2 any business, utility investors carry the risk of the success or failure of the
3 enterprise. In particular, this includes weather, customer usage, management's
4 ability to control costs, competition from other providers, inflation and regulatory
5 lag, market risks and, particularly for the water industry, product risks.

6 Depending on factors both related and unrelated to the specific utility, some
7 investors have suffered substantial capital losses, while others who were more
8 fortunate realized capital gains on their investments. Clearly, investors are
9 exposed to capital losses on the utility securities they hold.

10 **Q. DOES THE REASONABLE RATE OF RETURN ALLOWED BY**
11 **REGULATORS LIMIT CAPITAL GAINS OR LOSSES INVESTORS**
12 **MIGHT REALIZE ON SALE OF THEIR INVESTMENTS?**

13 A. No, it does not. Regulators can limit the returns to be earned from
14 providing utility services to customers, but not on capital transactions such as the
15 sale of securities held by investors. Nor do regulators protect investors who are
16 unfortunate and lose money on the sale of their utility investments. Transactions
17 of this kind – whether complete or partial liquidations of an investor's holdings
18 – are capital transactions and investors should bear the risk of any losses and
19 should be entitled to any gains.

20 **Q. WOULDN'T THE FACT THAT CUSTOMERS PAY PRICES**
21 **WHICH INCLUDE DEPRECIATION AND RETURN ON PROPERTIES**
22 **SOLD AFTER THE RATES WERE SET SUGGEST THAT GAINS ON**
23 **SALES SHOULD BE GIVEN TO CUSTOMERS?**

24 A. No, it does not. Any depreciation and return which may be included in the
25 price customers pay for service cover only that part of those resources consumed
26 during the period when that service was provided. Thus customers' payments
27 covered nothing more than the cost of the safe, reliable, adequate service which

1 they received. The obligations of both utility and customer have each been
2 discharged and neither owes the other anything further.

3 It is important to keep in mind that it is investors who supply the capital which
4 finances the utility plant which serves the customers' needs. Payment of prices
5 which include something for return of and return on the capital investors have
6 provided doesn't change the fact that it is still the investors' capital and it is the
7 investors who own the properties which that capital financed. It is the investors
8 whose capital is exposed to the risks of ownership and to whom gains or losses
9 – including those from property sales – should accrue.

10 **Q. HOW CAN CAPITAL TRANSACTIONS SUCH AS GAINS OR**
11 **LOSSES ON SALES OF UTILITY FACILITIES BE DISTINGUISHED**
12 **FROM ORDINARY UTILITY OPERATING TRANSACTIONS WHICH**
13 **SHOULD BE INCLUDED IN COST OF SERVICE FOR RATE SETTING**
14 **PURPOSES?**

15 A. Capital transactions can be either “investments” or “disinvestments”. In
16 simple terms, construction or purchase of utility facilities would be an
17 “investment” (of investors' capital), while the sale of utility facilities would be a
18 “disinvestment” (of investors' capital). Sales such as Utilities' sales of facilities
19 to Maitland and Altamonte Springs can be either a complete or partial withdrawal
20 of investors' capital from the utility business. Transactions of that type are not
21 related to utility operations, but rather, are capital transactions. That is the reason
22 that the USOA directs accounting which distinguishes them from utility
23 operations.

24 **Q. HOW DOES THE USOA DISTINGUISH SALES OF FACILITIES**
25 **FROM UTILITY OPERATIONS?**

26 A. The USOA directs that retirements and dispositions of utility facilities in
27 the normal ongoing conduct of utility operations be recorded as “retirements”.

1 That is, the cost of the asset retired is removed from the utility plant accounts and,
2 along with any cost of removal and salvage value, be charged to the accumulated
3 depreciation accounts.

4 On the other hand, sales of “systems” such as those sold to Maitland and
5 Altamonte Springs are recorded in income accounts which reflect any gain or loss
6 (sales proceeds less depreciated plant value) and which signifies that investors’
7 capital has been withdrawn from the utility business, at least to the extent of the
8 sale(s). This is the kind of transaction which, in accordance with the previously
9 described regulatory framework of cost-based ratemaking, should be excluded
10 from cost of service in any rate setting proceeding in order to preserve the benefits
11 which flow from that framework to both utilities and utility customers.

12 **Q. HOW HAS THIS REGULATORY FRAMEWORK BENEFITTED**
13 **UTILITIES AND THEIR CUSTOMERS?**

14 A. This regulatory framework benefits utilities by making it easier for them
15 to finance the facilities required to meet customers’ needs.

16 The same regulatory framework benefits customers by assuring adequate, reliable
17 service at prices lower than they might otherwise be. Importantly, regulation
18 helps avoid duplicate facilities which might otherwise exist and also avoids price
19 increases as current values increase and the generally lower capital costs also have
20 a significant price lowering effect considering the capital intensity of the industry.
21 Finally, regulation avoids price increases which might otherwise occur when
22 unfettered demand collides with limited resources as has been shown by some
23 relatively recent attempts at deregulation.

24 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

25 A. Both utilities and their customers have benefitted from the historic
26 regulatory framework which recognizes and preserves the distinctly different
27 rights and obligations of utility customers and of utility owners. This framework

1 has benefitted utilities by making it easier for them to attract the large amounts of
2 capital needed to construct the facilities needed to meet customer usage needs.
3 Customers have also benefitted from this historic regulatory framework because
4 it results in lower, more stable prices. Customers' rights end when they receive
5 and pay for safe, adequate, reliable, reasonably priced service.

6 This regulatory framework and its consequent benefits should be maintained by
7 ratemaking practices which acknowledge that "rate base" is a surrogate for
8 investors' capital and assign to investors gains and losses from sales of utility
9 operating units or systems or which otherwise represent to withdrawal of assets
10 (capital) from the utility service business. Such transactions are (at least partial)
11 liquidations and are not operating, but capital in nature. Failure to assign to
12 investors gains or losses on sales of this type is not only confiscatory, unfair and
13 improper, but also has adverse implications to the utilities' ability to raise capital
14 at reasonable costs. Such a consequence would be detrimental to both utility
15 customers and utility owners in the long run.

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

17 **A. Yes.**

REBUTTAL TESTIMONY OF

HUGH A. GOWER

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Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.

A. My name is Hugh Gower and my address is 195 Edgemere Way, S., Naples, Florida 34105. I am self employed as a consultant on public utility financial, economic regulation and cost containment and control matters. I also provide expert testimony on topics related to public utility economics and rate regulation in cases before public service commissions and courts.

Q. ARE YOU THE SAME HUGH GOWER WHO PROVIDED DIRECT TESTIMONY IN THIS PROCEEDING?

A. I am.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to show that Office of Public Counsel (“OPC”) witnesses Ms. Kimberly Dismukes’ and Mr. Mark Cicchetti’s recommendation to give the gain on sales of utility properties realized in 1999 by Utilities, Inc. of Florida (“UIF” or “the Company”) to the Company’s remaining customers should be rejected because-

- (1) It is based on misinterpretations of prior regulatory decisions, precedents or rules or, is simply unfounded;
- (2) It is based on previously rejected regulatory precedents or inappropriate comparison to unlike regulatory decisions;
- (3) denies the importance of property rights;

- 1 (4) ignores the fact that “rate base” represents investors’ capital which is
2 entitled to protection against confiscation;
- 3 (5) proposes to pass the gains on sales of utility systems to customers who
4 were never served by and who never paid rates for service for service
5 from the properties in question; and
- 6 (6) would depart from the regulatory framework underlying historic
7 original cost based rate regulation which would be detrimental to the
8 best interests of customers and investors.

9 **Q. WHAT REGULATORY RULES OR PRECEDENTS HAVE BEEN**
10 **IGNORED, MISCONSTRUED OR MISINTERPRETED BY OPC**
11 **WITNESSES?**

12 A. They are numerous, but include their testimony about the Florida Public
13 Service Commission’s regulatory policies on gains(losses) on sales of
14 properties, abandonment losses, depreciation, CIAC, projected test periods,
15 allowed rates of return, the Uniform System of Accounts (“USOA”) and other
16 matters.

17 **Q. MS. DISMUKES ASSERTS (PAGE 6) THAT UNDER FLORIDA**
18 **PUBLIC SERVICE COMMISSION RATEMAKING PRACTICES,**
19 **CUSTOMERS HAVE CONSISTENTLY BORNE THE RISK OF LOSS**
20 **ON WATER AND WASTEWATER ASSETS. IS HER ASSERTION**
21 **CORRECT?**

22 A. No, it is not. Ms. Dismukes bases this position on misconstruction and

1 misinterpretation of Commission decisions and inappropriately mixes cases
2 involving sales of systems with those involving forced abandonments and
3 early retirements.

4 **Q. WHAT CASE INVOLVING SYSTEM SALES DOES SHE RELY**
5 **UPON?**

6 A. Ms. Dismukes cites Proposed Agency Action (“PAA”) Order No. 17168
7 issued February 10, 1987 relating to Florida Water Services’ (then Southern
8 States Utilities’) loss of \$5,643 on the sale of its Skyline Hills water system
9 to the Town of Lady Lake. This case has previously been urged by OPC as the
10 basis for assigning gains on sales to customers, and has previously been
11 rejected by the Commission as a basis for doing so. In its order on rehearing
12 of Southern States’ Docket No. 920199, the Commission stated in Order No.
13 PSC-93-1598-FOF-WS dated November 2, 1993:

14 “We have reviewed the 1987 rate case Order No. 17168 cited by OPC.
15 We find that it is the fact that SAS customers never contributed to the
16 recovery of any return on investment which distinguishes this case
17 from Order No. 17168. Because the facts of Order No. 17168 were
18 not fully explored at the hearing in Docket No. 920199, we find that
19 it is impossible to determine whether the facts in that case were the
20 same as presented in this docket. Even if the circumstances were the
21 same, we find that the order in that case was a proposed agency action,
22 which was not based on evidence adduced through the hearing
23 process.”

24
25 Thus, Ms. Dismukes’ reliance on the referenced decision was taken in spite
26 of the fact that the Commission had previously rejected it as probative
27 evidence.

1 **Q. MS. DISMUKES ALSO ASSERTS THAT “...THE COMMISSION HAS**
2 **CONSISTENTLY REQUIRED CUSTOMERS TO BEAR THE COST**
3 **AND RISK OF PLANT ABANDONMENTS” (PAGE 6) AS**
4 **JUSTIFICATION FOR ASSIGNING GAINS ON SALES TO**
5 **CUSTOMERS. IS HER ANALYSIS CORRECT?**

6 A. No, it is not. Ms. Dismukes treats “plant abandonment ” and “prudent
7 retirements” as if they were separate and totally independent from the
8 transactions and events to which they actually relate and ignores the benefits
9 which come from the replacements causing the retirements of existing plant.
10 Perhaps this error leads to her erroneous conclusion.

11 **Q. HOW ARE PLANT ABANDONMENTS AND PRUDENT**
12 **RETIREMENTS RELATED TO OTHER TRANSACTIONS AND**
13 **EVENTS?**

14 A. Plant abandonments and prudent retirements result from events unforeseen
15 when the plant in question was originally purchased or constructed and placed
16 into service, and result in the need to replace or retire the plant long before it
17 has provided service for the estimated service life on which its depreciation
18 (capital recovery) schedule directed by the Commission pursuant to rule was
19 based. Such unforeseen events might include the availability of more
20 technologically advanced equipment which can provide better service or lower
21 cost service or, more frequently, new environmental requirements with which
22 the existing plant cannot comply. When such circumstances occur, economic

1 and engineering analyses indicate the course of action which provides the best
2 service option at the lowest long-run cost, considering not only the cost of new
3 facilities and/or additional operating expenses, but also the unrecovered cost
4 of the property being evaluated for replacement. This situation is recognized
5 in the Commission's rules of practice which state:

6 "The amortization period for forced abandonment or the prudent
7 retirement, in accordance with the National Association of Regulatory
8 Utility Commissioners Uniform System of Accounts, of plant assets
9 prior to the end of their depreciable life shall be calculated" Rule
10 25-30.433(9), Florida Administrative Code (emphasis added)
11

12 Clearly, this rule demonstrates that (1) "prudence" is a prerequisite to recovery
13 of a plant abandonment, and (2) the value of guidance provided by the
14 Uniform System of Accounts, belittled by both Ms. Dismukes and Mr.
15 Cicchetti, is, at the very least, acknowledged by the Commission's own rules.
16 With respect to the issue of prudence, in its order on rehearing in Docket No.
17 911188-WS, the Commission emphasized that "prudence" is a key issue to the
18 allowance of the recovery of a forced abandonment. The Commission stated
19 at Page 5 of its order:

20 "We also agree with the utility's argument that the Mad Hatter case
21 was based on evidence that reflected the utility's actions were prudent.
22 That finding was critical to the Commission's determination that the
23 loss should be borne by the ratepayers. In the alternative, had the
24 Commission found the utility's decision to be imprudent, the
25 shareholders would have borne the loss. Consequently, we find OPC's
26 argument that the Commission routinely allows the recovery of losses
27 on utility plant to be in error." Order No. PSC-93-1023-FOF-WS,
28 issued July 12, 1993 (emphasis added).
29

30 In each of the plant abandonment cases cited by Ms. Dismukes, the

1 Commission's allowance of recovery was based on a finding of prudence,
2 which she ignores along with the benefits of service improvements resulting
3 from the new facilities or service arrangements. Likewise, Ms. Dismukes has
4 ignored the subsequent developments in the Mad Hatter case.

5 **Q. WHAT WERE THE SUBSEQUENT DEVELOPMENTS IN THE MAD**
6 **HATTER CASE MS. DISMUKES IGNORED?**

7 A. The Mad Hatter Utility case cited by Ms. Dismukes approved the recovery of
8 an abandonment loss in the Commission's Order No. PSC-93-0295-FOF-WS
9 issued February 24, 1993. The abandonment loss recovery authorized by the
10 Commission included the unrecovered cost of two wastewater plants and
11 related land. The utility had represented that, for several reasons, the land
12 could not be sold and should be included in the abandonment loss.
13 Subsequently, the Commission learned that the utility had, in fact, disposed
14 of the land to an affiliated officer. Following the utility's response to the
15 Commission's show cause order, on October 13, 1997, the Commission
16 issued Order No. PSC-97-1233-AS-WS directing the utility to refund to its
17 customers both the amounts of "loss" on the land previously collected from
18 its customers and the "gain" on disposition of the land attributed to the utility
19 as a result of its disposition.

20 **Q. WHAT DO THE SUBSEQUENT DEVELOPMENTS ON THE MAD**
21 **HATTER CASE UPON WHICH MS. DISMUKES RELIED**
22 **DEMONSTRATE?**

1 A. These developments demonstrate that Ms. Dismukes claims that customers are
2 consistently required to bear the cost and risk of plant abandonments are not
3 well founded.

4 **Q. CAN YOU COMPARE THE ELECTRIC COMPANY CASES CITED**
5 **BY MS. DISMUKES IN HER TESTIMONY (PAGES 8-11) TO UIF'S**
6 **SALES OF SYSTEMS WHICH ARE THE SUBJECT OF**
7 **CONTENTION IN THIS PROCEEDING?**

8 A. Ms. Dismukes cites several cases, most of which occurred in the 1980s in
9 which the Commission did direct that gains on sale of electric utility plant be
10 assigned to customers. It is important to note that although on the surface the
11 Commission's disposition of gains in these electric company cases appears at
12 odds with its disposition of gains on sales in a number of water and
13 wastewater cases, the electric company cases involved gains on dispositions
14 of specific assets in the course of operating their ongoing business. By
15 contrast, the water and wastewater cases involved sales of utility facilities,
16 service territories and the associated customers. The water and wastewater
17 utilities ceased serving those territories and experienced reductions in their
18 future revenue and earnings streams as a consequence of those sales. By
19 contrast, sales of specific electric utility plant assets did not result in loss of
20 customers or future revenue streams.

21 The 1997 case involving Florida Public Utilities Company cited by Ms.
22 Dismukes was, like the more recent 2002 case involving the same company

1 (Order No. PSC-02-1159-PAA-GU, issued August 23, 2002), a Commission
 2 ruling on the company's request to amortize gains on sales of specific plant
 3 items over a period of years. As noted by the Commission in Order No. PSC-
 4 93-1598-FOF-WS, issued November 2, 1993, as PAA orders, the evidentiary
 5 value of these cases is somewhat questionable.

6 **Q. ON THE BASIS OF A REFERENCE TO "JURISDICTION" AND**
 7 **"UNIFORM RATES" IN ORDER NO. PSC-96-1320-FOF-WS, ISSUED**
 8 **OCTOBER 30, 1996, MS. DISMUKES CONCLUDES (PAGE 20)**
 9 **THAT "JURISDICTION" AND "UNIFORM RATES" ARE MORE**
 10 **IMPORTANT ISSUES WITH REGARD TO REGULATORY**
 11 **DISPOSITION OF GAINS ON SALES THAN "LOST PROFITS" .**
 12 **WHAT IS THE BASIS OF HER CONCLUSION?**

13 A. The basis of her conclusion is unclear. The Commission has indicated that a
 14 number of factors are to be considered in deciding the disposition of gains on
 15 sales, but has provided no weighting of relative importance. Obviously,
 16 having jurisdiction would be key to the Commission's authority to direct the
 17 assignment of gains on sales. The issue of "uniform rates" is less clear.

18 **Q. WHY IS THE ISSUE OF UNIFORM RATES LESS CLEAR?**

19 A. Rates, whether "uniform" or not, represent prices found by regulators to be
 20 fair and reasonable on the basis of evidence presented in a rate case.
 21 Rates--the actual prices--are set by relating the total cost of service and the
 22 sales volumes found allowable for the test period. In addition, a number of

1 other factors are usually considered in devising the actual tariff prices. These
2 might include value, customer usage characteristics, conservation, consistency
3 with prior charges, ease of administration and customer understanding.
4 Consequently, actual tariff rates may not be equal to the exact amount of cost
5 of service for each class of customer or each volume category within classes.
6 In the case of UIF, the test period for the rate case preceding the current case
7 was 1993. It would be unreasonable to expect that the relationship between
8 the key variables used in the calculation of rates, such as number of customers,
9 weather, demand and sales volumes, as well as operations expense and capital
10 investment levels would remain the same as they were during the test period.
11 Prices set on any basis cannot provide a lasting link to or preserve the relative
12 values between the key variables which was the basis for their calculation.
13 Subsequent to any test period it simply isn't possible to ascertain with any
14 degree of reliability the amount of any particular cost of service element (such
15 as depreciation, operations expense or income taxes) such rates produce. As
16 such, "rates" are "just and reasonable" prices, no more and no less, until the
17 regulatory authority having jurisdiction finds otherwise. Whether rates were
18 set on a "stand alone" or "uniform" basis has little to do with whether such
19 rates were compensatory or not, or whether the cost of service elements (e.g.,
20 depreciation) can be "traced" for years. In my view "uniform" or "stand
21 alone" rates isn't a particularly significant or relevant factor in deciding the
22 regulatory disposition of gains on property sales, much less, "more important"

1 than some other factors which might be relevant. In fact, the notion that there
 2 is any “attachment” created by the rates customers pay for service and any
 3 particular element of cost of service was rejected by the courts many years
 4 ago.

5 **Q. WHERE DID THE COURTS REJECT THE NOTION THAT TARIFF**
 6 **RATES PAID BY CUSTOMERS FOR SERVICE CREATE AN**
 7 **“ATTACHMENT” BETWEEN THE PAYMENT AND ANY ELEMENT**
 8 **OF COST OF SERVICE?**

9 A. This was made clear by the Supreme Court of the United States in its decision
 10 in a 1926 case involving New York Telephone Company when the Court said:

11 “Customers pay for service, not the property used to render it. Their
 12 payments are not contributions to depreciation or other operating
 13 expenses, or to the capital of the company. By paying bills they do not
 14 acquire any interest, legal or equitable, in the property used for their
 15 convenience or in the funds of the company. Property paid for out of
 16 moneys received for service belongs to the company, just as does that
 17 purchased out of proceeds of its bonds and stock. Board of Public
 18 Utility Commissioners v. New York Telephone Company, 271 U.S.
 19 23, 31-32 (1926) (emphasis added).

20
 21 **Q. MS. DISMUKES CONCLUDES HER ANALYSIS OF PREVIOUS FPSC**
 22 **DECISIONS ON DISPOSITION OF GAINS ON SALES WITH THE**
 23 **STATEMENT “CONSISTENCY DICTATES THAT RATEPAYERS BE**
 24 **GIVEN THE GAIN WHICH IS A DIRECT RESULT OF PAYING FOR**
 25 **THE ASSETS THROUGH DEPRECIATION AND CIAC”. (PAGE 24)**
 26 **IS HER CONCLUSION CONSISTENT WITH ECONOMIC FACTS?**

27 A. No, it is not.

1 **Q. PLEASE EXPLAIN.**

2 A. First, it would appear that Ms. Dismukes confuses the balance sheet credit
3 represented by accumulated depreciation on assets sold (or not sold, for that
4 matter) as being a cause of a “gain” on the sale of such assets. This would
5 only be logical if the depreciation booked by the utility were in excess of the
6 amount needed to reflect the expiration of the assets’ useful lives. In Florida,
7 depreciable lives are specified by Rule 25-30.140, Florida Administrative
8 Code, so utilities have little flexibility in this regard. More importantly, it
9 suggests that Ms. Dismukes doesn’t understand what accumulated
10 depreciation represents.

11 **Q. WHAT DOES THE AMOUNT OF ACCUMULATED DEPRECIATION**
12 **RECORDED BY A UTILITY REPRESENT?**

13 A. The Commission’s own rules spell this out at 25-30.140(1)(i), Florida
14 Administrative Code:

15 “Depreciation - As applied to depreciable utility plant, the loss in
16 service value not restored by current maintenance incurred in
17 connection with the consumption or prospective retirement of utility
18 plant in the course of service from causes that are known to be in
19 current operation and against which the utility is not protected by
20 insurance. Among the causes to be given consideration are wear and
21 tear, decay, action of the elements, inadequacy, obsolescence, changes
22 in the art, changes in demand and requirements of public authorities.
23 The intent of depreciation per this rule is to provide for recovery of
24 invested capital and to match this recovery as nearly as possible to the
25 useful life of the depreciable investment.”

26
27 Amounts recorded in the accumulated depreciation accounts represent that
28 portion of the original cost of the plant sold which has been “consumed” in the

1 course of providing service. Such amounts don't have values which may, in
2 the ordinary course of business, be sold since such amounts equal the amount
3 by which the original cost has "lost service value". Contrary to Ms.
4 Dismukes' reasoning, potential purchasers don't pay for values already
5 consumed or expired. What buyers of utility assets or systems pay for is
6 physical or economic usefulness which remain; in other words, any value paid
7 for by a purchaser is the assets' remaining useful life for which no
8 accumulated depreciation has yet been recorded, no customer has yet been
9 "charged" and no amount of investors' capital yet recovered.

10 **Q. WHAT ABOUT THE CIAC MS. DISMUKES ASSERTS CUSTOMERS**
11 **HAVE PAID?**

12 A. First, it is usually true that at least some customers are required to pay
13 contributions-in-aid of construction ("CIAC"), or service availability fees,
14 pursuant to approved tariffs. It is also usually true that a large portion of the
15 CIAC reflected on utilities' books represent amounts contributed by property
16 developers. Regardless of the source, customers benefit from CIAC because
17 of the lower rates for service which result from CIAC being a negative item
18 in rate base and depreciation. More importantly, when customers pay CIAC,
19 it does not result in any proprietary rights with respect to the utility's property.
20 This question was decided quite emphatically by the Supreme Court of Florida
21 in its 1972 decision in the General Waterworks Corporation case. In that case,
22 the Court cited the United States Supreme Court opinion in Board of Public

1 Utility Commissioners v. New York Telephone Company, supra, which said:

2 “The manner in which defendants came to own this property does not
3 operate to exclude it from the otherwise applicable constitutional
4 requirements.

5
6 “ ‘Constitutional protection against confiscation does not depend on
7 the source of the money used to purchase the property. It is enough
8 that it is used to render service.’ Board of Public Utility
9 Commissioners v. New York Telephone Company, 271 U.S. 23, 46;
10 Dade County v. General Waterworks Corporation, 267 So.2d 633, 640
11 (Fla. 1972)

12
13 **Q. THE NATURE OF DEPRECIATION AND CIAC ASIDE, IS THERE**
14 **ANYTHING ELSE WRONG WITH MS. DISMUKES’ CONCLUSION**
15 **THAT CUSTOMERS SHOULD BE ASSIGNED THE GAINS ON**
16 **SALES BECAUSE OF HAVING PAID DEPRECIATION AND CIAC?**

17 A. Yes, she proposes to give the gains to customers who did not pay the
18 depreciation and CIAC on the properties sold. If any customers paid
19 depreciation and CIAC, it would have been those customers served by the
20 properties and who paid the rates for such service. The remaining customers
21 paid nothing for depreciation and CIAC applicable to the property sold.
22 Consequently, Ms. Dismukes proposes to give the gain to the “wrong parties”.

23 **Q. MS. DISMUKES CRITICIZES YOUR POSITION THAT CAPITAL**
24 **TRANSACTIONS SHOULD BE ASSIGNED TO INVESTORS AND**
25 **NOT CUSTOMERS AS HAVING “...NO LOGIC AND IS NOT BASED**
26 **UPON TRADITIONAL RATEMAKING PRACTICES AND**
27 **PRINCIPLES.” IS HER CRITICISM VALID?**

1 A. No, it is not. As early as 1926, the Supreme Court of the United States
 2 enunciated this very logic in Board of Public Utility Commissioners v. New
 3 York Telephone Company, stating in its order:

4 Customers pay for service, not the property used to render it. Their
 5 payments are not contributions to depreciation or other operating
 6 expenses, or to the capital of the company. By paying bills they do not
 7 acquire any interest, legal or equitable, in the property used for their
 8 convenience or in the funds of the company. Property paid for out of
 9 moneys received for service belongs to the company, just as does that
 10 purchased out of proceeds of its bonds and stock. Board of Public
 11 Utility Commissioners v. New York Telephone Company, 271 U.S.
 12 at page 32.

13
 14 For most who understand economic cost based rate regulation, not only is the
 15 “logic” contained in the Court’s statement perfectly clear, but also the date of
 16 the decision is sufficiently early to constitute “traditional” .

17 **Q. AT PAGES 28 AND 32 OF HER TESTIMONY MS. DISMUKES**
 18 **DISMISSES YOUR SUGGESTION THAT THE USOA PROVIDES**
 19 **STRONG GUIDANCE AS TO THE PROPER RATEMAKING**
 20 **TREATMENT OF VARIOUS TRANSACTIONS. IS HER**
 21 **DISAGREEMENT WITH YOUR POSITION AND HER DISREGARD**
 22 **FOR THE USOA WELL FOUNDED?**

23 A. No, it is not. First, Ms. Dismukes badly misinterprets my testimony to mean
 24 that the USOA absolutely controls what constitutes proper ratemaking and that
 25 regulators are “bound” to follow it completely without latitude. That is not
 26 and never has been my position. A more careful reading of my testimony will
 27 show that I recognize that regulatory authorities have wide latitude, subject to

1 statute, as to their regulatory treatment of transactions. On the other hand,
2 regulators place a great deal of emphasis on utilities' compliance with the
3 USOA with good reason. The importance of the USOA is recognized both by
4 regulators and in authoritative literature.

5 **Q. PLEASE PROVIDE AN EXAMPLE OF WHERE IS THE**
6 **IMPORTANCE OF THE USOA RECOGNIZED IN AUTHORITATIVE**
7 **LITERATURE.**

8 A. A good example is in The Economics of Regulation by Charles F. Phillips, Jr.
9 where he wrote about the historical development of the USOA as well as its
10 importance. Regarding the importance of the USOA, Dr. Phillips stated:

11 "Several basic objectives of accounting regulation can be realized
12 under uniform systems of accounts. In the first place, rate regulation
13 requires accurate records of operating costs, depreciation expenses and
14 investment in plant and equipment, among others."

15
16 In the second place, accounting regulation is needed so as to
17 distinguish between expenditures that should be charged to capital and
18 those that should be charged to income. ...Expenditures that represent
19 investment in capital assets (plant and equipment) should be charged
20 to fixed asset accounts rather than operating expense accounts.
21 Similarly, expenditures that represent costs of doing business should
22 be charged to operating expense accounts rather than capital. ...

23
24 In the third place, as regulated companies are entitled to a fair rate of
25 return on the fair value of their property, an accurate statement of a
26 company's property account is one of the most important objectives of
27 accounting regulation and the uniform system of accounts. ...

28
29 In the fourth place, carrier and utility business must be separated from
30 noncarrier and nonutility business....The commissions can permit a
31 company to earn neither more than a fair return to make up for other
32 unprofitable undertakings nor less when a company has additional
33 sources of income that are profitable. ...

1 In the fifth place, accounting regulation is of aid to the commissions
2 and companies in establishing rate structures. ...

3
4 Finally, accounting regulation is beneficial to investors. (emphasis
5 added)

6
7 While the USOA does not determine ratemaking practices, it does provide
8 fundamental guidance because it is based on widely accepted ratemaking
9 practices. As such its guidance should be given considerable weight. Its
10 guidance is sufficiently important that Rule 25-30-115, Florida Administrative
11 Code, requires water and wastewater utilities to maintain their accounts in
12 conformity with the USOA.

13 **Q. IS IT YOUR TESTIMONY, AS MS. DISMUKES SUGGESTS, THAT**
14 **USOAs WERE DEVELOPED TO DICTATE RATEMAKING**
15 **PRACTICES?**

16 A. No. USOAs were developed so that the accounting practices and reports
17 would be consistent with and conform to the regulatory practices of the
18 commission having jurisdiction. Only in this way would the reports be useful
19 to regulators as they monitored the adequacy of a utility's earnings or rates.
20 Regulators are always free to change regulatory practices, but, until they do,
21 the USOA provides important guidance as to what the proper regulatory
22 treatment of a given transaction is.

23 **Q. DO YOU AGREE WITH MS. DISMUKES' POSITION THAT THE**
24 **RATES CUSTOMERS PAY FOR SERVICE SHOULD NOT**
25 **DETERMINE THE DISTRIBUTION OF GAINS BETWEEN**

1 **CUSTOMERS AND STOCKHOLDERS (PAGE 27)?**

2 A. No, I do not. Her position is illogical.

3 **Q. WHY IS HER POSITION ILLOGICAL?**

4 A. Aside from the fact that the utility property is not owned by customers but
5 rather the investors who are entitled to the income it produces, as explained
6 in my direct testimony and above, even conceding the arguable assumption
7 that rates customers pay are equal to cost of service, what customers pay for
8 is “service” which they receive. Gains on sales are attributable to what
9 customers haven’t (yet) paid for, and wouldn’t pay for until the future if the
10 assets were to continue to provide service, rather than being sold.

11 **Q. MS. DISMUKES CLAIMS THAT CUSTOMERS’ RATES AREN’T**
12 **LIMITED TO ORIGINAL COST SINCE THE COMMISSION HAS**
13 **PERMITTED UIF AS WELL AS OTHER UTILITIES TO SET RATES**
14 **USING PROJECTED TEST YEARS (PAGE 28). IS HER ASSERTION**
15 **CORRECT?**

16 A. No, it is not. While it is true that the Commission has allowed utilities to base
17 their rate case data on projected test periods, it is not correct that this practice
18 represents a departure from original cost rate regulation. The cost data for
19 projected periods is projected cost, not fair value, reproduction cost or any of
20 the other methods of valuation which might be employed.
21 Perhaps more importantly, Ms. Dismukes has overlooked the fact that the only
22 rate cases filed by UIF for more than 20 years have been based on historical

1 test periods.

2 **Q. MS. DISMUKES CLAIMS THAT INVESTORS BEAR NO RISK OF**
 3 **LOSS, ABSENT IMPRUDENT ACTIONS (PAGE 29). DO YOU**
 4 **AGREE?**

5 A. No, I do not. The primary risk of loss faced by shareholders is inadequate
 6 earnings, the very reason UIF is before the Commission in this case.
 7 Shareholders also face the risk of regulatory disallowances of various kinds
 8 which preclude the recovery of all costs of service. In addition, there are
 9 general business risks (eg., weather, customer usage, ability to control costs,
 10 market risks, product risks, etc.). Should a utility suffer a loss on sale of
 11 assets, this clearly is their problem also. These investor risks are widely
 12 acknowledged.

13 **Q. WHO HAS ACKNOWLEDGED THAT INVESTORS FACE THE**
 14 **RISKS OF OWNERSHIP?**

15 A. Those who understand and acknowledge this fact are numerous and include
 16 the Commission who wrote in Order No. PSC-93-0301-FOF-WS, issued
 17 February 25, 1993:

18 "We also agree that it is the shareholders who bear the risk of loss on
 19 their investments, not the Lehigh ratepayers."
 20

21 **Q. MS. DISMUKES CITES SEVERAL RISKS (PAGE 29) SHE BELIEVES**
 22 **RATEPAYERS FACE. DO YOU AGREE?**

23 A. The specific risks cited by Ms. Dismukes are increased costs due to

1 environmental compliance and compliance testing, repairing plant and
2 equipment (reason not specified) and inflation. While utility prices clearly are
3 driven upward by the factors she cites, customers have the Commission to
4 stand between them and the utility and rigorously examine the utility's
5 application prior to permitting rates to be increased. In addition, Ms.
6 Dismukes suggests that customers are exposed to higher rates as older plant
7 retired is replaced with higher cost new equipment and depreciation and
8 capital costs rise. Before utilities can charge higher rates to cover such costs,
9 they must undertake financing the new investments and then seek regulatory
10 approval for new rates. In the meantime, such increased costs are absorbed
11 by the utility. All things considered, customers' risks are considerably less
12 than utilities' risks in this regard.

13 **Q. MS. DISMUKES ASSERTS (PAGE 39) THAT "THERE IS NOTHING**
14 **IMPROPER, UNFAIR, OR CONFISCATORY ABOUT ASSIGNING**
15 **GAINS TO RATEPAYERS." DOES THIS ASSERTION REFLECT A**
16 **GOOD UNDERSTANDING OF ECONOMIC AND FINANCIAL**
17 **FACTS?**

18 A. No, it does not. It's bad enough from a financial and economic point of view
19 when utilities are unable, for whatever reason, to earn a reasonable return.
20 Most rate of return analysts refer to the Bluefield Water Works (262 U.S. 679
21 [1923]) and the Hope Natural Gas (320 U.S. 591-660[1944]) cases as the
22 legal standards for setting appropriate rates of return. Both cases indicate that

1 rates which fail to include adequate returns are confiscatory. By comparison,
2 an outright taking of investors' property which results from assigning gains on
3 sales to customers, is blatant confiscation from a financial and economic point
4 of view, not to mention the legal implications. The Commission, in fact,
5 expressed the same conclusion in Order No. PSC-93-1821-FOF-WS, dated
6 December 22, 1993, deciding the North Fort Myers Utility case:

7 "We find that a refund to the customers or off-set of connection fees
8 is not appropriate because customers of utilities do not have any
9 proprietary claim to utility assets. Although customers pay a return on
10 utility investments through rates for service, they do not have any
11 ownership rights to the assets, whether contributed or paid for by
12 utility investment."

13
14 And further,

15
16 "The property rights that rest in the ownership of the utility land and
17 facilities are constitutionally protected. To deny this property interest
18 would constitute an unconstitutional taking by this Commission. Any
19 contribution to the system by the customers would have no value
20 without the risk and investment of the utility owner(s) in the land and
21 facilities that are now being removed from utility service."

22
23 **Q. MS. DISMUKES ALSO STATES (PAGE 29) THAT THERE WOULD**
24 **BE NO ADVERSE IMPLICATIONS TO UIF IN THE CAPITAL**
25 **MARKETS SINCE UIF COMPETES WITH OTHER UTILITIES**
26 **WHICH ARE SUBJECT TO THE SAME REGULATION. IS THIS A**
27 **SOUND CONCLUSION?**

28 **A.** No, it is not. Ms. Dismukes seems to forget that it is not only utilities with
29 which UIF must compete for funds in the capital markets, but other kinds of
30 businesses as well. In addition, investors are risk averse and tend to invest in

1 companies they perceive as having lower inherent risks. This applies to both
2 utilities and nonutilities. Clearly, confiscation of capital is a risk about which
3 investors would be concerned and attempt to avoid.

4 **Q. TURNING NOW TO MR. CICHETTI, HE ASSERTS THAT “ALL**
5 **OTHER THINGS BEING EQUAL, IF THE GAIN ON SALE OF**
6 **PROPERTY IS NOT ATTRIBUTED TO RATEPAYERS THEN THE**
7 **UTILITY WILL BE ALLOWED TO RECOVER MORE THEN (SIC)**
8 **THE COST OF PROVIDING SERVICE. THIS IS EQUIVALENT TO**
9 **CONSCIOUSLY ALLOWING A UTILITY A RETURN ON COMMON**
10 **EQUITY ABOVE THE REQUIRED RETURN.” (PAGE 10) IS THIS**
11 **CLAIM CORRECT?**

12 **A.** No, it is not. What Mr. Cicchetti overlooks is that “all other things” are not
13 equal because the sale of the property is outside the scope of providing rate
14 regulated service. It is, in fact, at least a partial withdrawal of that much of the
15 investors’ capital from the business of providing utility service. The purchase
16 price paid by the buyers of the utility property is not regulated as are the rates
17 customers pay for the service they receive. More importantly, it is not the
18 customers who pay the purchase price to the seller of the utility property, but
19 rather an independent third party. The gain (or loss) realized by the utility on
20 the sale of its utility plant is no more relevant to whether the utility earns
21 above its authorized rate of return than earnings it might realize from mowing
22 lawns for customers in its service territory because neither is a rate regulated

1 utility service. And as noted earlier, Dr. Charles F. Phillips, Jr. wrote:

2 “The commissions can permit a company to earn neither more than a
3 fair rate of return to make up for other unprofitable undertakings nor
4 less when a company has additional sources of income that are
5 profitable. The Economics of Regulation (page 147) (emphasis
6 added.)
7

8 **Q. WHAT WOULD BE THE EFFECT ON CUSTOMERS IF, AS MR.**
9 **CICCHETTI SUGGESTS, THE GAIN ON SALE IS ASSIGNED TO**
10 **UTILITY CUSTOMERS?**

11 A. They would receive a windfall and their rates would be set at less than the
12 actual cost of providing utility service.

13 **Q. IS IT THE POLICY OF THE COMMISSION TO ASSIGN LOSSES ON**
14 **SALES OF UTILITY PLANT TO CUSTOMERS AS MR. CICCHETTI**
15 **SUGGESTS (PAGE 11)?**

16 A. Not to my knowledge, nor have I ever encountered any regulatory authority
17 which had such a policy.

18 **Q. DOES MR. CICCHETTI’S CLAIM THAT THE ALLOWANCE OF**
19 **RECOVERY OF “STRANDED COSTS” INCURRED BY UTILITIES**
20 **IN CONNECTION WITH DEREGULATION (PAGE 11) LOGICALLY**
21 **SUPPORT HIS POSITION THAT CUSTOMERS ARE REQUIRED TO**
22 **ABSORB LOSSES ON SALES OF UTILITY ASSETS UNDER COST-**
23 **OF-SERVICE REGULATION ?**

24 A. No. “Deregulation” is the abandonment of cost-of-service regulation for at
25 least a part of a utility’s business, and insofar as it is applied, represents the

1 termination of the “social contract” implicit in cost based rate regulation.
2 When this occurs, the allowance of recovery of “stranded costs” is deemed to
3 be a “transition cost” to the new (at least partial) free market system and is
4 made in anticipation of net savings to be realized by customers even after
5 absorbing the transition cost of “stranded assets”. Since deregulation is the
6 polar opposite of cost-of-service regulation, Mr. Cicchetti’s claim is invalid
7 and inappropriate.

8 **Q. MR. CICCHETTI TAKES THE POSITION (PAGE 14) THAT**
9 **“REGARDING GAINS ON SALE OF PROPERTY UNDER COST-OF-**
10 **SERVICE REGULATION, OWNERSHIP IS NOT A RELEVANT**
11 **CONSIDERATION.” DO YOU AGREE?**

12 A. No, absolutely not. The issue of property rights was addressed in the
13 previously referenced Commission Order No. PSC-93-1821-FOF-WS, supra,
14 where the Commission wrote:

15 “The property rights that rest in the ownership of the utility land and
16 facilities are constitutionally protected. To deny this property interest
17 would constitute an unconstitutional taking by this Commission.”
18

19 **Q. MR. CICCHETTI ALSO SUGGESTS THAT THE RETURNS**
20 **ALLOWED ON EQUITY CAPITAL BY THE COMMISSION ARE**
21 **SUFFICIENT COMPENSATION TO COVER THE RISK OF LOSS OF**
22 **CAPITAL WHICH OCCURS IF GAINS ON PROPERTY SALES ARE**
23 **ASSIGNED TO CUSTOMERS. IS THIS CORRECT?**

24 A. No, it is not. The returns on equity capital allowed by regulators, including the

1 Commission, are intended to be compensation for the risks equity investors
2 face. These would include general business risks (customer growth, customer
3 usage and demand, weather, service area economics, etc.), but, under cost
4 based ratemaking, not the risk of loss of capital. Mr. Cicchetti himself
5 recommends 10.41% equity return in this case (Page 8), or only 126 basis
6 points more than the cost of debt (Exhibit No. __ (MAC-2)). This level of risk
7 premium, in my experience, would be woefully inadequate to attract capital
8 to investments whose risks included loss of capital.

9 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

10 A. Careful analysis of the assertions and recommendations in the testimony of
11 OPC witnesses Dismukes and Cicchetti show:

- 12 (1) They erroneously contend that there should be no difference in how
13 capital and operating transactions should affect rate setting;
- 14 (2) They fail to recognize that utility assets in rate base represent the
15 amount of capital investors have provided for utility service;
- 16 (3) They ignore equity investors' property rights in the face of earlier
17 contrary rulings by not only the Florida Public Service Commission,
18 but also the Supreme Court of the United States;
- 19 (4) They propose to confiscate investors' capital by giving gains on sales
20 of utility systems to customers who were never served by and who
21 never paid rates for service from the properties in question.

22 Adoption of the recommendations of OPC witnesses Dismukes and Cicchetti

1 would be a major departure from the regulatory framework which underlies
2 cost based rate regulation which has provided major benefits to customers and
3 utilities alike for many years. These recommendations should be rejected
4 because they will not serve the best interests of customers or utilities.

5 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

6 **A. Yes.**

7

1 BY MR. FRIEDMAN:

2 Q Mr. Gower, would you briefly summarize for the
3 Commissioners your testimony.

4 A Yes, I will. My direct testimony deals with the
5 subject of the ratemaking treatment of the gains on sales,
6 which Utilities of Florida realized on sales of systems to the
7 City of Altamonte Springs and to the City of Maitland. And my
8 suggestion is that the ratemaking decision be decided in light
9 of the regulatory framework which underlies historic original
10 cost ratemaking.

11 The most significant thing about the historic
12 framework which underlies original cost ratemaking is that,
13 number one, rate base really represents investor-supplied
14 capital and, therefore, it's entitled to treatment which
15 statute provides.

16 Secondly, historic original cost ratemaking provides
17 a number of very important benefits to consumers as well as to
18 utilities. These might include things like avoiding price
19 increases until they're justified before this Commission. It
20 would include limiting prices to actual cost of providing
21 service, and that would include Commission's policies with
22 respect to used and useful and so on. It avoids higher prices
23 due to duplicate facilities that would exist if utility
24 services were provided by competitors. And it avoids price
25 increases due to current value pricing which might occur if

1 there were no rate regulation.

2 So there are a number of important benefits to the
3 consumers which should be preserved. And the way it is
4 preserved is by adhering to that regulatory framework which has
5 been practiced for so long, and that precludes assigning gains
6 on sales of property represented by investors' capital to the
7 customers.

8 My rebuttal testimony contains further comments about
9 why the proposals of OPC witnesses should be rejected. Number
10 one, they're based on misinterpretations of this Commission's
11 prior regulatory decisions. Number two, they're based on
12 regulatory decisions that have been previously used by OPC and
13 have been previously rejected by this Commission. Number
14 three, and very importantly, it's based on the denial of
15 property rights, those of the investors. It ignores that the
16 rate base represents investors' capital and is entitled to
17 protection against confiscation. Perhaps more importantly it
18 proposes to pass the gains on these sales to customers who were
19 never served by these systems, who never paid rates for service
20 from these systems. And it would be a significant departure
21 from the regulatory framework which has served utilities and
22 customers so well for many years. That concludes my summary.

23 If I might say so, I'd just like to express my
24 appreciation for the -- everyone's accommodation of my schedule
25 in allowing me to appear first.

1 COMMISSIONER DEASON: Very well. Is Mr. Gower
2 tendered?

3 MR. FRIEDMAN: He is.

4 COMMISSIONER DEASON: Mr. Burgess.

5 MR. BURGESS: Thank you, Mr. Chairman.

6 CROSS EXAMINATION

7 BY MR. BURGESS:

8 Q Mr. Gower, would it be fair then from what I hear you
9 saying and having read your testimony to, to understand your
10 testimony to be that you believe the historic cost framework is
11 acceptable for all regulatory transactions, but you don't
12 consider the sale of, of any property to be a regulatory
13 transaction; is that right?

14 A I think that's a fair characterization. Yes, sir.

15 Q And you would agree though that there are other
16 jurisdictions that do consider a number of transactions that
17 you do not believe to be regulatory, where those jurisdictions
18 have interpreted them to be part of the regulatory scheme; is
19 that correct?

20 A I don't know that I can respond either positively or
21 negatively to that because I don't know what the other
22 commissions have decided.

23 If you're suggesting that there are other commissions
24 which have included gains on sales in the setting of rates and,
25 therefore, passed those gains on to consumers, yes, that's

1 correct, just that it's correct that there are some who have
2 not, who have in effect treated transactions like that just
3 like the Florida Public Service Commission has in the past.

4 Q So are you saying with the last part of that answer
5 that in the past the Florida Public Service Commission has
6 sometimes treated the sale of property as being a regulatory
7 transaction and you would disagree with that conclusion?

8 A I was actually addressing actions of other regulatory
9 bodies. But if your question is would I agree with a decision
10 to give gains on sales of utility systems such as we're dealing
11 with in this case to consumers, no, I wouldn't. I wouldn't
12 think that's appropriate.

13 Q To your knowledge has this Commission in the past
14 attributed gains on sale of property to customers in
15 circumstances that you believed those transactions should have
16 been treated as nonregulatory transactions?

17 A I can't really think of any in the water and sewer
18 industry. If you --

19 Q I broadened it to any industry.

20 A If you're referring to the series of electric cases
21 in the 1980s, as best I can recall those decisions and the
22 transactions involved, I probably would not agree with those.

23 And, further, I think those transactions were a
24 departure from the Commission's previous practice in the
25 electric industry.

1 Q Isn't it true that if the Commission did decide in
2 this case to treat these as regulatory transactions and pass
3 the benefits, the gain on sale through to the customers, isn't
4 it true that you do not think that that would, that that's an
5 illegal determination?

6 A Your wording of that question gives me a little cause
7 for pause.

8 Are you asking if I think it is illegal to do?

9 Q Yes, that's what I'm asking. Do you think it's
10 illegal for the Public Service Commission to find that the gain
11 on sales should be attributed to customers in these cases?

12 A Well, I think I probably should express -- refrain
13 from expressing a legal opinion. If we're talking about
14 transactions like we are in this case, I think it would be
15 improper to do. Whether the Commission has legal authority,
16 they probably do. But since I'm not a lawyer, I probably ought
17 to refrain from commenting on that. The Commission has in the
18 past done those things and that's just a fact.

19 Q Now, Mr. Gower, are you familiar at all with the, any
20 cases that have involved dealing with stranded costs in other
21 jurisdictions?

22 A Only in a general way.

23 Q Is it your understanding that, in a general way that
24 there are jurisdictions that have allowed utilities to obtain
25 stranded costs from their ratepayers upon the deregulation of,

1 to some extent of the industry?

2 A What generally happens is that either by statute or
3 by Commission decision, and I think this has occurred only in
4 the electric industry, I don't think it has occurred in the
5 water and sewer industry, that the decision is made that
6 consumers would be better off if the generating portion of the
7 electric business were deregulated. And that generates a
8 decision to require the utilities to divest of their electric
9 generating properties. Some of those properties are likely
10 worth a lot more than original cost, but when you move into the
11 area of peak shaving units and intermediate units that haven't
12 been operated on a 24-hour-a-day basis, those units probably
13 are not worth on a market value basis what the original cost
14 depreciated is. So there would be a combination of gains and
15 losses if all those plants were sold at current market value.

16 In those circumstances, because that business is
17 being deregulated, the social contract between the public
18 through the regulation and the utility is being broken, so the
19 payment is made to compensate the utility for the deregulation
20 and the loss on deregulation of those assets.

21 Q So if there is a stranded cost determination, that
22 means that the net of all the transactions is such that if the
23 utility were to try to sell those assets in the open market,
24 that they would have to sell them at a loss; is that right?

25 A Well, that's what's happened in most cases, I

1 believe.

2 Q And then those losses are passed through to the
3 customers?

4 A The stranded cost is considered to be a transition
5 cost so that the industry can transition from a totally
6 regulated electric service to a partially regulated electric
7 service and hopefully produce customers a net savings. Whether
8 that's happened or not, I think the history is mixed. It's
9 certainly not happened in the airline industry and it's
10 certainly not happened to me in the telephone industry.

11 However, I think to use that as a basis to justify
12 assigning gains to customers in the water and sewer industry is
13 not a good comparison because there is a departure from
14 regulation when stranded cost occurs. There is no departure
15 from regulation in water and sewer.

16 Q Isn't it true that the last act, the determination of
17 requiring the customers to bear the stranded cost is itself a
18 regulatory determination?

19 A It's either a regulatory determination or one that is
20 created by statute. It depends on the state.

21 Q Is it your philosophy that customers should bear the
22 cost of stranded costs in these, in these circumstances?

23 A Mr. Burgess, as we've discussed before, as I've
24 watched deregulation plans be put into place, I have come to be
25 a great fan of regulation. I don't think that the plans that

1 have been adopted and put in place so far have benefited either
2 utilities or their customers as compared to regulation.

3 Regulation has been a really good deal for customers in most
4 cases, and I don't think they're benefiting from deregulation.

5 Q Okay. But what does that mean with regard to your
6 opinion as to whether stranded costs or stranded benefits
7 should be passed to customers if an industry is deregulated?

8 A Well, like a famous politician on the national scene,
9 I'd prefer to cross that bridge when I come to it. And we
10 haven't come to it in the water and sewer industry and I
11 certainly hope we don't.

12 Q Do you recall these questions being asked you in
13 deposition by me in this, in this docket?

14 A There was a series of questions related to stranded
15 cost and deregulation, yes.

16 Q Did you answer in deposition that the stranded costs
17 should be borne by, by ratepayers?

18 A I think my answer was no. When we got to that point
19 I think I expressed similar sentiments that I was not a fan of
20 deregulation plans and that I just couldn't answer the
21 question.

22 I think the way you phrased the question was that did
23 I believe that the investors ought to get the gains and the
24 customers the losses, and I answered I can't answer that in the
25 positive.

1 MR. BURGESS: Thank you, Mr. Gower. That's all I
2 have.

3 COMMISSIONER DEASON: Staff?

4 MS. GERVASI: No questions.

5 COMMISSIONER DEASON: Commissioners? Redirect?

6 MR. FRIEDMAN: No redirect.

7 COMMISSIONER DEASON: Okay. And we have no exhibits.

8 Mr. Gower, thank you for being with us.

9 THE WITNESS: Thank you.

10 MR. FRIEDMAN: We can excuse Mr. Gower?

11 COMMISSIONER DEASON: Any objection to excusing
12 Mr. Gower?

13 MR. BURGESS: No.

14 COMMISSIONER DEASON: No objection. Yes, Mr. Gower,
15 you may be excused.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 COMMISSIONER DEASON: Is Mr. Flynn the next scheduled
19 witness?

20 MR. FRIEDMAN: That's correct. He is.

21 COMMISSIONER DEASON: Very well.

22 MR. FRIEDMAN: We call Mr. Patrick Flynn.

23 PATRICK FLYNN

24 was called as a witness on behalf of Utilities, Inc. of Florida
25 and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. FRIEDMAN:

Q Would you please state your name.

A Patrick Flynn.

Q And, Mr. Flynn, were you previously sworn when everybody was sworn?

A Yes.

Q And did you prefile testimony in this case?

A Not originally.

Q Okay. Did -- are you adopting the, a portion of the prefiled testimony that was filed on behalf of Mr. Rasmussen?

A Yes, I am.

Q All right. And which part of Mr. Rasmussen's prefiled testimony are you sponsoring?

A Those portions related to the counties of Pasco and Pinellas. Those systems located in Pasco and Pinellas.

Q Okay. And if I ask you the questions relating to Pasco and Pinellas Counties in Mr. Rasmussen's prefiled testimony, would you answer the same?

A Yes.

Q Okay. Thank you.

MR. FRIEDMAN: Commissioners, I don't know what your -- with regard to Mr. Rasmussen's testimony, we really have two witnesses that are adopting it. One is adopting certain counties and one adopting the other. I don't know

1 whether you would like, you would prefer to move the testimony
2 in at this time or wait until after Mr. Orr testifies to
3 complete Mr. Rasmussen's testimony.

4 COMMISSIONER DEASON: Let's just wait until we have
5 the second witness and complete the entire testimony.

6 MR. FRIEDMAN: Thank you very much. Then we'd tender
7 this witness for cross-examination.

8 COMMISSIONER DEASON: No summary?

9 MR. FRIEDMAN: No summary.

10 COMMISSIONER DEASON: Very well. Mr. Reilly.

11 MR. REILLY: No questions for this witness.

12 COMMISSIONER DEASON: Staff.

13 MS. GERVASI: We have a few questions.

14 CROSS EXAMINATION

15 BY MS. GERVASI:

16 Q Mr. Flynn, are you aware of any water pressure
17 problems that the utility has?

18 A No, I'm not.

19 Q Do you have a copy of staff's composite Exhibit 1, it
20 was marked and entered as Exhibit 1, in front of you?

21 A Okay.

22 Q If you would, please, sir, refer to Page 28 of that
23 Exhibit 1, which is Interrogatory Number 71.

24 A I have it here in front of me.

25 Q Could you take a moment and read the interrogatory

1 question?

2 A Okay.

3 Q This question concerns the utility's reliance on the
4 methodology prescribed in Community Water Systems Source Book
5 in calculating instantaneous flows for the small water systems
6 that don't have significant storage; is that correct?

7 A Yes, my understanding.

8 Q If you would look at the next page of that Exhibit 1,
9 on Page 29 at letter B.

10 A Yes.

11 Q The company has asked whether this source book
12 represents the standards of practice for calculating
13 instantaneous flows for small systems within the State of
14 Florida; right?

15 A Yes.

16 Q And the company's response to that question is that
17 the utility is not aware of a standard of practice for
18 calculating instantaneous flows for small systems within the
19 state; right?

20 A That's what it reads.

21 Q Do you know whether the practice of calculating
22 instantaneous flow was applied to the original construction
23 permit of any of Utilities, Inc. of Florida's systems in
24 Florida?

25 A I have no, no information to -- that describes the

1 original calculations.

2 Q So your answer is you don't know?

3 A I don't know.

4 Q Then do you know whether the practice of calculating
5 instantaneous flow applied to the original construction permit
6 of any of UIF's systems anywhere in the US, including the
7 Virgin Islands?

8 A I'm unaware.

9 Q Do you know if the maximum day or peak hour design
10 was applied to the original construction permit of any of UIF's
11 systems?

12 A I'm unaware.

13 Q Do you have any reason to believe that instantaneous
14 flow was the basis for the design of any of UIF's systems?

15 A I'm unable to, to ascertain one way or the other
16 without having any information, any familiarity with the
17 original construction design.

18 Q Thank you. I guess that would be the -- that would
19 go for -- your answer would be the same if I asked you whether
20 you knew whether maximum day was applied to any water line
21 extension of UIF's system, to the design of any water line
22 extension?

23 A Maximum day may be utilized by engineers in their
24 design. I'm not aware specifically one way or the other.

25 Q Okay. Do you have any reason to believe that

1 instantaneous flow is the basis for the design of any water
2 line extension of the UIF system?

3 A I'm unable -- I don't know.

4 Q Okay. I have a few questions about fire flow. Has
5 the utility been cited during the test year and up to the
6 present to your knowledge for any deficiencies in fire flow by
7 Pasco County for the Orangewood system?

8 A I believe there was -- I can't really say. Not, not
9 in my experience with the systems in Pasco. I've been involved
10 with them since the year 2000. There have been no deficiencies
11 that I'm aware of.

12 Q Has the utility been cited during the test year and
13 up to the present for any such deficiencies in fire flow by
14 Pasco County for the Wis-Bar system to your knowledge?

15 A No, not to my knowledge.

16 MS. GERVASI: Thank you. That's all we have.

17 COMMISSIONER DEASON: Commissioners? Redirect?

18 MR. FRIEDMAN: No redirect.

19 COMMISSIONER BRADLEY: Issue 26 deals with
20 unaccounted for water, and it states that Pasco-Orangewood,
21 Pasco-Summertree and Pinellas-Lake Tarpon systems have
22 excessive unaccounted for water. Is that true?

23 THE WITNESS: If that's what it states in the
24 document, yes.

25 COMMISSIONER BRADLEY: Okay. Just making sure I'm

1 reading what -- understanding what it says.

2 COMMISSIONER DEASON: No redirect?

3 MR. FRIEDMAN: None.

4 COMMISSIONER DEASON: Okay. We have no exhibits.

5 MR. FRIEDMAN: No exhibits.

6 COMMISSIONER DEASON: Okay. Mr. -- will Mr. Flynn be
7 appearing in rebuttal?

8 MR. FRIEDMAN: No. Mr. Orr has a little bit of
9 rebuttal. He is going to sponsor the portion of
10 Mr. Rasmussen's testimony for the other counties. He is our
11 next witness.

12 COMMISSIONER DEASON: Okay. Now Mr. Flynn is listed
13 under rebuttal, but he will not be appearing?

14 MR. FRIEDMAN: He was listed under rebuttal because
15 Mr. Rasmussen prefiled testimony direct and then he is no
16 longer with the company, and then so it was just a timing
17 thing. So when we filed -- we filed Mr. Flynn's testimony
18 adopting Mr. Rasmussen's at the time we were filing rebuttal.
19 It was technically not rebuttal testimony.

20 COMMISSIONER DEASON: Very well. So, so Mr. Flynn
21 will not be taking the stand again; is that correct?

22 MR. FRIEDMAN: That's correct.

23 COMMISSIONER DEASON: Okay. So he can be excused; is
24 that correct?

25 MR. FRIEDMAN: Certainly as far as we're concerned.

1 COMMISSIONER DEASON: Okay. Thank you, Mr. Flynn.
2 (Witness excused.)

3 MR. FRIEDMAN: We next call Mr. David Orr.

4 DAVID ORR

5 was called as a witness on behalf of Utilities, Inc. of Florida
6 and, having been duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. FRIEDMAN:

9 Q Would you please state your name.

10 A David Orr.

11 Q And, Mr. Orr, were you sworn when everybody else was
12 sworn recently?

13 A Yes.

14 Q All right. And, Mr. Orr, did you prefile testimony
15 in this case?

16 A The direct testimony I'm adopting is by Donald
17 Rasmussen. I did not file direct. I have filed rebuttal.

18 Q All right. In which counties are you adopting the
19 testimony of Mr. Rasmussen for?

20 A Marion County, Orange County and Seminole County.

21 Q All right. And if I ask you the same questions that
22 were asked in the prefiled testimony with regard to those three
23 counties, would you answer it the same?

24 A Yes.

25 Q All right. You have no changes or corrections?

1 A No.

2 MR. FRIEDMAN: Commissioners, at this time then I
3 would move that Mr. Rasmussen's testimony as adopted by these
4 two witnesses be admitted in the record.

5 COMMISSIONER DEASON: Without objection, it shall be
6 inserted into the record.

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1 TESTIMONY OF DONALD W. RASMUSSEN
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE APPLICATION FOR INCREASE
4 IN WATER AND WASTEWATER RATES AND CHARGES
5 IN MARION, ORANGE, PASCO, PINELLAS AND SEMINOLE COUNTIES
6 BY UTILITIES, INC. OF FLORIDA
7 DOCKET NO. 020071-WS

8 Q. Please state your name and business address.

9 A. My name is Donald W. Rasmussen and my business address is 200
10 Weathersfield Avenue, Altamonte Springs, Florida.

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

12 A. I am employed by Utilities, Inc., the parent company which owns 100% of the
13 stock of Utilities, Inc. of Florida (UIF). Presently, I serve as Vice President
14 and Regional Director of Operations and am responsible for the administration
15 and operation of all water and sewer systems in Florida owned by subsidiaries
16 of Utilities, Inc.

17 Q. Please summarize your background and experience in the industry of providing
18 water and sewer service to the public.

19 A. I have been employed by Utilities, Inc. since first being hired in 1970. I was
20 soon promoted to the position of Area Manager, where I was responsible for
21 the operations of several water and wastewater plants. During this time, I

1 acquired the highest Illinois licenses awarded in the water and wastewater
2 fields and continue to hold a Class A certificate in water and Class 1 certificate
3 in wastewater. I also conducted safety seminars for the company and was a
4 licensed paramedic.

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

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

12 A. I have come to the Commission to sponsor the additional engineering
13 information and explain the pro forma adjustments. My testimony will begin
14 with an explanation to the Commission of UIF's philosophy in providing
15 customer service. Then, I will discuss improvements made to the systems.

16 Q. Please explain UIF's philosophy in treating and serving its customers.

17 A. Our office staff and field personnel take great pride in providing quality service
18 to our customers. In many instances, we adapt our procedures to allow for
19 individual needs and requirements of our customers.

20 Customer calls, regardless of their nature, come into the branch office in
21 Altamonte Springs. Customers located out of the area are furnished with a toll

1 free number. During office hours, each call is answered by a customer service
2 representative.

3 If there is a problem related to field operations, a computer generated service
4 order is issued and directed to the operator responsible for that particular
5 system. The service orders are immediately relayed to the operator by means
6 of a fax machine or radio communications. Depending on the nature of the
7 service concern, the operator will include the service order in his schedule and
8 respond to it as necessary. Emergencies – such as water leaks or water quality
9 complaints – always require immediate attention. After the problem is
10 rectified, the operator relays the information to the customer service
11 representative, and the resolution is entered into the computer system as a
12 permanent record of the call.

13 Billing inquiries are handled much in the same way as service calls. All
14 inquiries are recorded on the customer's account by entering the information
15 into the computer system. Any billing inquiries or complaints are resolved as
16 soon as possible.

17 Customers using our toll free number after office hours are forwarded to our
18 answering service. There is an operator assigned to be "on call" during the
19 hours the office is closed. If an emergency should arise, the on-call operator
20 will handle the situation.

21 This is just a brief summary of our billing and customer service procedures.
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1 As a company, we are never completely satisfied with customer service and,
2 therefore, continue to strive to improve in every facet of service. Our ongoing
3 goal is to be the best water utility in the State of Florida. We believe that we
4 are well on our way to achieving that goal.

5 Q. Are all the plants presently in compliance with the Department of
6 Environmental Protection's regulations?

7 A. Yes. At the present time, there are no known compliance problems with any of
8 the systems.

9 Q. Were any of the Exhibits to the Application for Increase in Rates prepared by
10 you or under your supervision?

11 A. Yes. The Additional Engineering Information required by Commission Rule
12 25-30.440 which is attached as Exhibit "3" to the Application for Increase in
13 Rates was prepared under my supervision and is true and correct, Exhibit
14 (DWR-1) _____. Although obviously I did not prepare the detailed system maps
15 which are attached as Exhibit "4" to the Application for Increase in Rates, they
16 are business records which are under my control, Exhibit (DWR-2) _____. In
17 addition, I, or personnel under my supervision, provided the input utilized by
18 Mr. Seidman in preparing the Engineering section of the MRFs, previously
19 introduced as Exhibit "1" by Mr. Lubertozzi, Exhibit (SML-1) _____.

20 Q. Please discuss the Seminole County pro forma adjustments.

21 A. Work Order No. 115-98-12 in the amount of \$209,593 is for the replacement of
22

1 mains. This project in Weathersfield was in conjunction with the widening of
2 State Road 436. We had water and sewer mains that had to be relocated to
3 allow the road work to be completed. The contractor that did the relocation
4 work was the road contractor. The work was done through a joint planing
5 authority with the Florida Department of Transportation.

6 Work Order No. 116-01-01 in the amount of \$140,366 was to construct
7 a new lift station. Located at the south end of our office building in Altamonte
8 Springs. We had a lift station that was situated under the building. One floor
9 under the main level of the building was the pump room and the next lower
10 floor contained the bar screen. Because of the age and deterioration of the
11 station along with our concerns for safety in entering a confined space, we
12 reconstructed the lift station. This new lift station eliminated the confine
13 space.

14 Work Order No.116-01-02 in the amount of \$54,410 was for a gravity
15 sewer relocation. At one location in our Weathersfield system, we have a
16 gravity sewer main that runs along the Little Wekiva River. Because of
17 erosion caused by the river, Seminole County and St. Johns River Water
18 Management District entered into a project to install barriers along the bank
19 walls to prevent further erosion. During the engineering for this project, it was
20 discovered that our mains and manhole were in jeopardy of collapsing into the
21 river. In addition, they had to be moved to accommodate the construction of
22

1 the bank walls.

2 Q. Please discuss the pro forma adjustments in Pasco County.

3 A. Work Order No. 116-01-01 in the amount of \$24,758 was a lift station
4 rehabilitation. When we purchased the Wis Bar system, the lift station located
5 at the end of Flintwood Drive was in disrepair. It needed immediate attention,
6 therefore, we made the necessary repairs to the station to ensure its integrity.

7 Work Order No. 115-01-02 in the amount of \$114,510 was to replace a
8 4" water main. After purchasing the Buena Vistas system we discovered a
9 section of AC main that was deteriorated and having several breaks. To rectify
10 this problem, we had to replace 2600 feet of the AC main which was located in
11 the backyards of the homes.

12 Work Order No. 116-01-01 in the amount of \$27,510 was to remove
13 lateral pipes. In our Summertree system, we were having several sewer back
14 ups in the Point West section of the system. Upon TV of the mains, it was
15 discovered that the laterals entering the sewer mains protruded into the main
16 line and was causing the problem. We hired a company to cut these laterals
17 out and enable us to TV and clean the mains which prevented additional sewer
18 back ups.

19 Work Order No. 115-00-02 in the amount of \$16,594 was to relocate a
20 water main. In our Orangewood system, it was discovered that a 2" water main
21 serving some commercial customers was not located in an easement. Because
22

1 the property owner wanted to construct a building where the main was located,
2 we had to relocate the main into an easement.

3 Work Order No. 115-00-03 in the amount of \$48,398 was for a water
4 main interconnection. After purchasing the Wis Bar system, which is adjacent
5 to our Orangewood system, we interconnected the two systems. Wis Bar had
6 no water plants and was purchasing water from the neighboring Holiday
7 Gardens system, which we do not own.

8 Q. Please explain the pro forma adjustments for Pinellas County.

9 A. Work Order No. 115-02-01 in the amount of \$13,520 was for the installation of
10 isolation control valves. In our Lake Tarpon water system when we
11 experienced a main break we were unable to shut off sections of the system.
12 Therefore, we would have to shut down the entire system to repair any leaks.
13 With this not being in the best interest of our customers, we decided to install
14 valves at various locations in the system that would allow us to shut off part of
15 the system to make any necessary repairs without interrupting service to all of
16 the customers.

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1 MR. FRIEDMAN: He has no summary and we'll tender him
2 for cross.

3 COMMISSIONER DEASON: Very well. Public Counsel,
4 questions.

5 MR. REILLY: No questions.

6 COMMISSIONER DEASON: Staff.

7 MS. GERVASI: We have some questions.

8 CROSS EXAMINATION

9 BY MS. GERVASI:

10 Q We will -- first we'd like to hand out an exhibit
11 that we'd like to have marked for identification.

12 COMMISSIONER DEASON: Okay. This will be identified
13 as Exhibit 4.

14 (Exhibit 4 marked for identification.)

15 MS. GERVASI: And the description is response to
16 Staff Interrogatory Number 93.

17 BY MS. GERVASI:

18 Q Mr. Orr, would you please take a look at that exhibit
19 that was just handed to you marked as Exhibit 4 and tell me if
20 it appears to be, if it appears to be a true and correct copy
21 of what it purports to be?

22 A It appears to be without having the original, yes.

23 Q I'm sorry?

24 A Appears to be.

25 Q Thank you. Are you aware of any water pressure

1 problems that Utilities, Inc. of Florida may have?

2 A No, I'm not.

3 Q Have you read the testimony of staff witness
4 Yingling? Are you familiar with that testimony?

5 A Generally, not intimately.

6 Q Are you aware that according to Mr. Yingling actions
7 must be taken to reduce unaccounted for water?

8 A Yes, I am.

9 Q Okay. If you would please go ahead and take a look
10 now at that exhibit that was marked as Exhibit 4. And here the
11 company is describing actions that it intends to take to reduce
12 the amount of unaccounted for water; is that correct?

13 A That is correct.

14 Q Does Exhibit 4 describe the extent of the progress
15 that UIF has made to date to reduce unaccounted for water?

16 A No, it does not.

17 Q Could you please further describe what else the
18 company has done or intends to do?

19 A Sure. There have been several main leaks repaired
20 within the Golden Hills system. There have also been several
21 leaks within the Phillips system repaired. There have been
22 numerous meters changed out in the systems that have been
23 listed as well.

24 Q Thank you. Does the company intend to conduct a
25 water audit to determine the amount of unaccounted for water

1 used present in its systems?

2 A The unaccounted for water audit will be part of our
3 ongoing system to reduce our unaccounted for water. And an
4 official water audit will occur if our reduction is not below
5 the 12 percent that we have deemed appropriate.

6 Q Thank you. Do you have an idea of when you will make
7 that determination as to whether the water audit will be
8 necessary?

9 A It is estimated, I believe, that our, depending upon
10 the system obviously, that the meter replacement program, the
11 leak protection, et cetera, should be complete by the first of
12 this year, at which time after the first -- excuse me, the
13 first of 2004. After the first of 2004, if we are unsuccessful
14 at reducing it less than 12 percent, we will then solicit water
15 audits for those systems.

16 Q Thank you. Do you have a copy of what has been
17 marked and entered as Exhibit 1, staff composite Exhibit
18 1 before you?

19 A Yes, I do.

20 Q Could you please take a look at Pages 39 through 42
21 of that Exhibit 1.

22 A I am familiar with it.

23 Q Okay. And these pages relate to the Little Wekiva
24 water audit; is that correct?

25 A That is correct.

1 Q The utility is compiling and formulating a meter
2 change-out program for Little Wekiva; is that correct?

3 A That is correct.

4 Q And our understanding is -- and also if you look at
5 Page 26 of that same exhibit in response to Interrogatory
6 Number 69A on Page 26 of Exhibit 1, the company states that a
7 formal meter change-out program will be established and is
8 expected to be complete by September of 2003; correct?

9 A For the Little Wekiva system, that is correct.

10 Q Is that on target?

11 A Yes, it is.

12 Q Can you provide an update on any specific action
13 taken by the utility in this regard?

14 A I believe I have the information, if I may get it.

15 Q Certainly.

16 A I do not have it specific to the Little Wekiva system
17 specifics. However, I do know in the Little Wekiva system we
18 have initiated the meter change-out program and have
19 successfully changed out approximately ten meters that are of
20 the age 20 years and older and are continuing the testing. And
21 I believe, based upon the chronological order of the
22 installation of the meters, we are between the 10- and 15-year
23 period at present.

24 Q Thank you. What other progress has the utility made
25 towards reducing the amount of unaccounted for water?

1 A Specific to the Little Wekiva system?

2 Q Or any other system.

3 A Within the Park Ridge system we changed out the
4 register head for the master flow meter on 6/23/03. We have
5 converted to sodium hypochlorite specific to a plant
6 improvement, not related to unaccounted for water. And we have
7 changed out 14 out of 101 meters since January 1st of 2001.

8 In the Phillips system we have found and repaired a
9 four-inch water main leak on the 23rd of 2003 (sic.) as a
10 direct result of our leak detection. We have replaced a well
11 pump assembly and check valve which was not holding September
12 of 2002. We have found and repaired an additional four-inch
13 water leak on August 12th of 2003. And we have changed out
14 approximately ten out of 76 meters since January 1st of 2001.

15 In the Ravenna Park system we have changed out
16 approximately 63 of 339 meters since January 1st of 2001.

17 In the Golden Hills system we have changed out
18 approximately 40 meters out of 400 since January 1st of 2001
19 within the Golden Hills system, and 12 meters out of 94 in the
20 Crownwood system. We have also identified and repaired a
21 two-inch leak in the Golden Hills system.

22 Q Thank you. With respect to the Phillips system, if
23 you will take a look at Page 27 of that same Exhibit 1.

24 A Yes.

25 Q And in response to Staff Interrogatory Number 69B,

1 the utility states that the master meter for the Phillips, for
2 the Phillips system was being scheduled for replacement and
3 that upon the results of the next billing the utility would be
4 better able to quantify, pardon me, the relationship between
5 pumped and unaccounted for water; correct?

6 A That is what it says.

7 Q Has that master meter been replaced as of yet?

8 A I do not have information to the affirmative and I am
9 unaware.

10 Q Is there another witness who would know?

11 A I do not believe so.

12 Q Okay. Thank you.

13 A It is something I may be able to find out between now
14 and rebuttal.

15 Q Thank you. Would you please now turn to Page 2 of
16 that same Exhibit 1 to the utility's response to staff
17 Interrogatory Number 19?

18 A Excuse me. What page?

19 Q Page 2, and the response continues on Page 3.

20 A Okay.

21 Q This has to do with infiltration and inflow at the
22 Ravenna Park/Lincoln Heights wastewater system; correct?

23 A Correct.

24 Q And at the first full paragraph at the top of Page
25 3 the utility states that it's decided to further explore the

1 possible causes of increased flows in the system either due to
2 inflow or infiltration, and that it expects the investigation
3 and evaluation of the system to take approximately six months
4 and to cost approximately \$25,000 as a preliminary estimate;
5 correct?

6 A Within the entire response, yes.

7 Q Can you provide us an update on the utility's
8 progress with respect to this investigation?

9 A Yes. The utility has selected a contractor, Altyre
10 Environmental, to initiate investigation of what's called an
11 I/I study or an inflow and infiltration study. It is my
12 understanding that that investigation is supposed to start next
13 week. That is above and beyond what the utility itself has
14 already done and concluded, which was to go ahead and hire the
15 contractor based upon its preliminary investigation.

16 Q Thank you. Would you please refer now to Page 28 of
17 Exhibit 1 at Interrogatory Number 71.

18 A Okay.

19 Q And I want to ask you some of the same questions that
20 I posed to Mr. Flynn.

21 A Sure.

22 Q This question concerns the utility's reliance on the
23 methodology prescribed in the Community Water Systems Source
24 Book; correct?

25 A Yes, it does.

1 Q And it has to do with calculating instantaneous flows
2 for the small water systems without significant storage; right?

3 A Yes.

4 Q On Page 29 of Exhibit 1 at letter B the company is
5 asked whether this source book represents the standards of
6 practice for calculating instantaneous flows for small systems
7 within the State of Florida; right?

8 A Yes, it does.

9 Q And the company's response is that the utility is not
10 aware of such a standard of practice; correct?

11 A That is correct.

12 Q Do you know whether the practice of calculating
13 instantaneous flow was applied to the original construction
14 permit of any of Utilities, Inc. of Florida's systems within
15 the State of Florida?

16 A I do not.

17 Q Do you know whether this was the practice for any of
18 UIF's systems anywhere in the country, including the Virgin
19 Islands?

20 A I am unaware.

21 Q Do you know if max day or peak hour design was
22 applied to the original construction permit of any of UIF's
23 systems?

24 A I am unaware.

25 Q Or instantaneous flow?

1 A I am unaware.

2 Q How about to any of the water line extensions for the
3 UIF systems, do you know whether max day, peak hour or
4 instantaneous flow was the design basis?

5 A I do not, not from extensions, no.

6 Q Okay. And my last question, Mr. Orr. Do you know
7 whether the utility has been cited during the test year and up
8 to the present time for any deficiencies in fire flow by
9 Seminole County for the Oakland Shores system?

10 A No, they have not as I am aware.

11 MS. GERVASI: Thank you. No further questions.

12 COMMISSIONER DEASON: Commissioners? Redirect?

13 MR. FRIEDMAN: I do have one redirect.

14 REDIRECT EXAMINATION

15 BY MR. FRIEDMAN:

16 Q Mr. Orr, are you familiar with the conversations that
17 Mr. Lubertozzi has had with the operations staff and the
18 follow-up memo to the operations people to ensure that all the
19 other uses of water are properly and accurately recorded?

20 A Yes, I am.

21 Q Could you briefly describe what that's intended to
22 accomplish?

23 A To ensure that on a monthly basis filed with, to our
24 office in Altamonte Springs with the monthly operating reports
25 an unmetered use summary to further account for unaccounted for

1 water uses, and my understanding is that that will be provided
2 to the corporate office on a monthly basis.

3 Q And do you know why it's important to have an
4 accurate account of the other uses of water?

5 A Yes, I do.

6 Q Okay. Would you explain that?

7 A It's important to make sure that the unmetered uses
8 of water are adequately documented to ensure that all uses,
9 whether they be construction activity or fire flow testing,
10 flushing of the lines, et cetera, is documented in a way that
11 the utility can reduce and account for those unmetered uses.

12 MR. FRIEDMAN: No further questions.

13 COMMISSIONER DEASON: Okay. Exhibits?

14 MS. GERVASI: Staff would move Exhibit Number 4.

15 COMMISSIONER DEASON: Without objection?

16 MR. FRIEDMAN: None.

17 COMMISSIONER DEASON: Hearing no objection, show then
18 that Exhibit 4 is admitted.

19 (Exhibit 4 admitted into the record.)

20 COMMISSIONER DEASON: Thank you, Mr. Orr. You will
21 be returning on rebuttal?

22 THE WITNESS: Yes, I will.

23 COMMISSIONER DEASON: Very well.

24 Mr. Friedman, you may call your next witness.

25 MR. FRIEDMAN: Next witness --

1 MS. GERVASI: I'm sorry, Commissioner. Apparently
2 Mr. Orr had some prefiled exhibits that would need to be marked
3 and entered.

4 MR. FRIEDMAN: I think those -- I think it's
5 rebuttal. I think his exhibits are with his rebuttal
6 testimony, if I'm correct.

7 MS. GERVASI: Okay. Thank you.

8 Commissioners, perhaps this might be a good time to
9 take a short break to let the parties discuss their concerns
10 with the new information that was the topic of discussion
11 during the preliminary matters. It will have an effect on our
12 cross questions for Mr. Lubertozi as to whether that
13 information is going to be usable.

14 COMMISSIONER DEASON: Very well. Mr. Friedman, you
15 had something that you needed to address or not? I thought you
16 were -- you had a concern.

17 MR. FRIEDMAN: No. No. No. I was going to thank
18 Ms. Gervasi for making sure that I didn't miss any exhibits.

19 COMMISSIONER DEASON: Okay. Very well. That would
20 be, that would be good. We will take a recess until 11:15.

21 MS. GERVASI: Thank you.

22 (Recess taken.)

23 COMMISSIONER DEASON: Call the hearing back to order.
24 Okay. Staff, where are we at this point?

25 MS. HOLLEY: We are at witness Steven M. Lubertozi.

1 We met during the break, and I think the conclusion of those
2 discussions is that OPC and the utility agreed to disagree on
3 the allowance of those additional or corrected E schedules.

4 COMMISSIONER DEASON: Okay. And it's staff's intent
5 to ask questions concerning those updated E schedules?

6 MS. HOLLEY: Well, I suppose the best scenario would
7 be to have a ruling from the Commissioners regarding whether
8 those will be allowed, and then our cross questions will go to
9 whichever version we're dealing with.

10 COMMISSIONER DEASON: Okay. Mr. Burgess, do you need
11 to restate your objection?

12 MR. BURGESS: I would simply renew my objection. I
13 don't care to go through it all again. It's just our concern
14 is it doesn't seem like -- it just seems like it is counter to
15 the process and presumes too much for the company to basically
16 receive the same treatment when its filing comes in on day 300
17 and something as they would if they had filed it on day one
18 with the MFRs, filed it correctly on day one with the MFRs.

19 That said, I don't care to reargue any further and
20 I'd simply renew the objection.

21 COMMISSIONER DEASON: Very well. Mr. Friedman, you
22 may respond.

23 MR. FRIEDMAN: Yes. Thank you.

24 The revised E schedules -- you know, this -- and I
25 understand Mr. Burgess's concern about them coming in at a late

1 date, but the nature of this process is that things do change
2 as the process evolves. People's testimony changes as the
3 process evolves and as other testimony is given. This could be
4 analogized, I think, as one of the Commissioners mentioned
5 earlier, to like a late-filed exhibit. The Commission wants
6 something put in a different form than it was presented and
7 that is frequently done. And that's what this is. It doesn't
8 affect the revenue requirement. It is a revision of the
9 E schedule to do the meter equivalency calculations the way
10 Ms. Lingo wants them done. And we believe that that would be
11 something that could probably happen even at the hearing.
12 Somebody could suggest that and somebody could ask that we file
13 that as a late-filed exhibit. So I don't think the, the
14 process is that much abused, as Mr. Burgess would articulate,
15 because of this. We apologize for filing them late, but we
16 took Ms. Lingo's deposition and, and she gave us a list of what
17 she thought needed to be done to make it look, smell and taste
18 like what she wanted it to look like, and we took that
19 opportunity to provide the information in that format.

20 COMMISSIONER DEASON: Okay. Staff, do you have
21 anything to add at this point?

22 MS. HOLLEY: No, sir.

23 COMMISSIONER DEASON: Very well. I'm going to allow
24 Mr. Lubertozzi to take the stand. And, Mr. Friedman, I suppose
25 that you will have the witness identify this filing and support

1 it and sponsor it. And then at that point I will, I know that
2 it's subject to objection, but I will allow its admission.

3 MR. FRIEDMAN: Yes. That is the way I intended to do
4 it.

5 COMMISSIONER DEASON: Okay. You may proceed.

6 MR. FRIEDMAN: Okay. Mr. Lubertozzi.

7 COMMISSIONER DEASON: And, Mr. Burgess, your
8 objection is noted for the record.

9 MR. BURGESS: Thank you, Commissioner.

10 STEVEN LUBERTOZZI

11 was called as a witness on behalf of Utilities, Inc. of Florida
12 and, having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FRIEDMAN:

15 Q Would you please state your name.

16 A Steven Lubertozzi.

17 Q And, Mr. Lubertozzi, were you sworn earlier today
18 with everybody else?

19 A Yes, I was.

20 Q And did you prefile direct testimony in this case?

21 A Yes, I did.

22 Q And did you have -- did you sponsor any exhibits?

23 A Yes, I did.

24 Q All right. And do you recall what that exhibit
25 number is?

1 A No, I do not recall the exhibit number. No.

2 Q Did -- is it true that you have two exhibits?

3 A Yes.

4 Q All right. And they're identified with your prefiled
5 testimony as SML-1 and SML-2; is that correct?

6 A Yes. Correct.

7 Q All right. And do you have any changes or
8 corrections to your testimony or exhibits?

9 A Yes. We have changes to the exhibit based on the
10 information that was provided on August 18th.

11 Q Okay. And what, what information -- specify, if you
12 would, exactly what is, is being changed.

13 A The updated E schedules.

14 Q Okay. Is that what we've been talking about in
15 response to Ms. Lingo's --

16 A Yes. What you've been talking about in response to
17 Ms. Lingo's request.

18 Q Okay. And those are the same ones that have been
19 provided to everybody earlier this week?

20 A Yes.

21 COMMISSIONER DEASON: Mr. Friedman, let me ask you a
22 question. Would it be cleaner for purposes of the record to
23 simply identify the prefiled SML-1 and 2 as one exhibit and
24 then the subsequent filing as a different exhibit? Are you
25 actually wanting to substitute and not have part of what was

1 prefiled as SML-1 and 2 admitted?

2 MR. FRIEDMAN: I think you're probably right. The
3 only difference would be that this exhibit has got also, if
4 you'll look at the bottom, when it talks about his revised
5 deposition Exhibit 9, that is part of his rebuttal testimony.
6 I mean, I don't have any problem doing that. It just may
7 involve the issue of, of the admissibility of that.

8 COMMISSIONER DEASON: Let's do this. For purposes of
9 the record, we will identify prefiled SML-1 and 2 as composite
10 Exhibit 5 as they were filed.

11 We will identify the schedules attached to the
12 August 18th letter with Items 1 through 13 listed therein as
13 composite Exhibit 6. Is that satisfactory?

14 MR. FRIEDMAN: It is with us.

15 COMMISSIONER DEASON: Okay. If there are problems or
16 questions concerning particular sections and its admissibility,
17 if we need to delve further into that at some point, we will.
18 But just for purposes at this point we're just going to
19 identify them separately.

20 MR. FRIEDMAN: I think that makes sense.

21 (Exhibits 5 and 6 marked for identification.)

22 COMMISSIONER DEASON: You may proceed.

23 MR. BURGESS: Excuse me, Commissioner. I need a
24 clarification. SML-1 composite MFRs is Exhibit 5 for the
25 hearing, SML-2 at this point?

1 COMMISSIONER DEASON: SML1 and 2, I was just going to
2 identify that as a composite, and it would be hearing Exhibit
3 5.

4 MR. BURGESS: Okay. Thank you, Commissioner.

5 BY MR. FRIEDMAN:

6 Q If -- do you have any changes, any other changes or
7 corrections to your actual direct testimony?

8 A No, I do not.

9 Q And if I asked you the questions in your direct
10 testimony, would you answer the same as in your prefiled
11 testimony?

12 A Yes, I would.

13 MR. FRIEDMAN: Then I would request that
14 Mr. Lubertozzi's prefiled testimony be admitted in the record
15 as read.

16 COMMISSIONER DEASON: Without objection, it shall be
17 inserted in the record.

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1 TESTIMONY OF STEVEN M. LUBERTOZZI
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE APPLICATION FOR INCREASE
4 IN WATER AND WASTEWATER RATES AND CHARGES
5 IN MARION, ORANGE, PASCO, PINELLAS AND SEMINOLE COUNTIES
6 BY UTILITIES, INC. OF FLORIDA
7 DOCKET NO. 020071-WS

8 Q. Please state your name, occupation and business address for the record.

9 A. My name is Steven M. Lubertozzi. I am employed as the Director of
10 Regulatory Accounting at Utilities, Inc., 2335 Sanders Road, Northbrook,
11 Illinois 60062.

12 Q. Please summarize your professional background.

13 A. I have been employed by Utilities, Inc. since June of 2001. Since that time I
14 have been involved in many phases of rate-making in several regulatory
15 jurisdictions. I graduated from Indiana University in 1990, and I am a
16 Certified Public Accountant. I had four years of public accounting/financial
17 analysis experience prior to joining Utilities, Inc. I am a member of the
18 American Institute of Certified Public Accountants, the Illinois CPA Society,
19 and an Associate member of the Association of Certified Fraud Examiners. I
20 have successfully completed the utility regulation seminar sponsored by
21 NARUC, and have testified before the Illinois Commerce Commission and

1 South Carolina Public Service Commission.

2 Q. Please explain your job responsibilities at Utilities, Inc.?

3 A. My responsibilities encompass all aspects of utility Commission regulation in
4 sixteen of the states in which Utilities, Inc. operates (Georgia does not regulate
5 water and sewer utilities). These duties include preparation of rate case
6 applications, coordinating Commission audits, developing and delivering
7 testimony before Utility Commissions, obtaining Commission approval of
8 territory expansions and system transfers and keeping apprised of industry
9 trends and current events.

10 Q. In connection with your responsibilities with Utilities, Inc., were the Financial,
11 Rate and Engineering Minimum Filing Requirements prepared by you or under
12 your supervision?

13 A. Yes. The Minimum Filing Requirements (MFRs) are attached as Exhibit "1"
14 to the Application for Increase in Rates, Exhibit (SNL-1)____. The Financial
15 and Rate sections for the various systems were prepared by me or under my
16 supervision. The Engineering section was prepared by Mr. Frank Seidman of
17 Management and Regulatory Consultants, Inc., at my direction. The used and
18 useful percentages developed by Mr. Seidman in the Engineering section are
19 reflected in the Financial and Rate sections of the MFRs. Those MFRs
20 accurately reflect the financial books and records of Utilities, Inc. of Florida,
21 and the financial condition of Utilities, Inc. of Florida.

1 Q. Did you prepare the Billing Analysis Schedules?

2 A. Yes. The Billing Analysis Schedules attached as Exhibit "2" to the
3 Application for Increase in Rates were prepared by me or under my
4 supervision, and they accurately reflect the books and records of Utilities, Inc.
5 of Florida Exhibit (SNL-2)_____.

6 Q. Explain the adjustments that you made in connection with the forced
7 abandonment of the Raven Park/Lincoln Heights system in Seminole County.

8 A. We have estimated that the annual charge for the treatment of wastewater by
9 the City of Sanford will be \$100,296.

10 Q. Please explain generally why the rate increase is necessary.

11 A. A rate increase is necessary to allow the utility to recover the reasonable and
12 prudent costs of providing service and an opportunity to earn a fair and
13 reasonable rate of return on its invested capital. Rates granted in 1994 and
14 1995 do not reflect the 7 to 8 years of rising costs, many of which result from
15 stringent federal environmental regulations, and from increased investment.
16 For these reasons, the utility is not able to achieve a reasonable rate of return
17 on its investment. Rate relief is essential to ensure the continued availability of
18 capital at a reasonable cost and to maintain a high and professional level of
19 service.

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46**DIRECT TESTIMONY OF
STEVEN M. LUBERTOZZI**

Q.: WHAT IS YOUR NAME, BUSINESS ADDRESS AND OCCUPATION?

A.: My name is Steven M. LubertoZZi. My business address is 2335 Sanders Road, Northbrook, Illinois 60062. I am the Director of Regulatory Accounting for Utilities, Inc. and its subsidiaries, including Utilities, Inc. of Florida (“UIF”).

Q.: PLEASE SUMMARIZE YOUR PROFESSIONAL BACKGROUND.

A.: I graduated from Indiana University in 1990. I had four years of public accounting/financial analysis experience prior to joining Utilities, Inc. I have been employed by Utilities, Inc. since June 2001. Since that time I have been involved in many phases of ratemaking in several regulatory jurisdictions. I am a Certified Public Accountant and a member of the American Institute of Certified Public Accountants.

Q.: BRIEFLY DESCRIBE THE NATURE OF THE WORK YOU DO WITH UTILITIES, INC. OF FLORIDA.

A.: My responsibilities include the financial analysis of the subsidiaries of Utilities, Inc., preparation of applications for rate relief and other regulatory activities, facilitation of commission audits and the submission of financial testimony and schedules to support a request for an increase in rates.

Q.: WHAT IS UTILITIES, INC. OF FLORIDA?

A.: UIF was formed to provide Florida developers an alternative method for obtaining water and wastewater utility service in Florida. It is a direct subsidiary of Utilities, Inc., the largest privately owned company in this industry, operating over 400 utility systems in 17 states. UIF provides water and waste water service in approximately 22 service areas in five counties throughout the State, and it serves approximately nine thousand commercial and residential customers.

Q.: WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS DOCKET?

A.: I will (1) describe the decision-making process that led to UIF’s sale of the Druid Isle water system and a portion of the Oakland Shores water system of UIF to the City of Maitland in Orange County (*Maitland Sale*), and the sale of the Green Acres Campground water and wastewater system to the City of Altamonte Springs in Seminole

1 County (*Altamonte Sale*); (2) explain that the accounting treatment was
2 consistent with Florida Public Service Commission Order No. PSC-02-
3 0657-PAA-WU, (3) describe the subsequent reinvestment or use of the
4 proceeds of those sales; and (4) explain the policy of Utilities, Inc.
5 relating to the sales of the utility property of its subsidiaries and the
6 reinvestment of proceeds of sale, generally, including the accounting
7 treatment.

8

9 **Q.: PLEASE EXPLAIN THE CIRCUMSTANCES SURROUNDING THE SALES TO**
10 **THE CITY OF ALTAMONTE SPRINGS AND THE CITY OF MAITLAND.**

11

12 **A.:** UIF was approached by the City of Altamonte Springs to determine
13 whether UIF had any interest in selling its service territory and the City
14 of Maitland to determine whether UIF had any interest in selling its
15 utility property. UIF understood that the cities each had property near
16 UIF's service territory. UIF also understood that both cities had the
17 right of condemnation, and would have condemned the properties if
18 UIF had not agreed to sell them. Although sales of its assets is not its
19 usual practice, UIF decided that, in view of the potential for
20 condemnation, the sales were in the best interests of its shareholders
21 and the ratepayers.

22

23 **Q: WHEN WAS THE PURCHASE AGREEMENT FOR THE MAITLAND SALE**
24 **ENTERED INTO WITH THE CITY OF MAITLAND?**

25

26 **A:** UIF entered into a purchase agreement in October of 1998.

27

28 **Q: WHEN DID THE TRANSACTION FINALLY CLOSE?**

29

30 **A:** The transaction with the City of Maitland closed on February 15, 1999.

31

32 **Q: WHEN WAS THE PURCHASE AGREEMENT FOR THE ALTAMONTE SALE**
33 **ENTERED INTO WITH THE CITY OF ALTAMONTE SPRINGS?**

34

35 **A:** UIF entered into this purchase agreement in August of 1999.

36

37 **Q: WHEN DID THE TRANSACTION FINALLY CLOSE?**

38

39 **A:** The transaction with the City of Altamonte Springs closed on August
40 19, 1999.

41

42 **Q: HAVE YOU REVIEWED THE BOOKS AND RECORDS OF UTILITIES, INC.**
43 **OF FLORIDA WITH RESPECT TO THE SYSTEMS IT SOLD TO THE CITY**
44 **OF MAITLAND AND THE CITY OF ALTAMONTE SPRINGS?**

45

46 **A:** Yes.

- 1
2 **Q: WHAT WAS THE PURCHASE PRICE PAID BY THE CITY OF MAITLAND?**
3
4 A: The City of Maitland paid Utilities, Inc. \$159,000.
5
6 **Q: WHAT WAS THE NET GAIN FOR UTILITIES, INC. OF FLORIDA AS A**
7 **RESULT OF THE MAITLAND SALE?**
8
9 A: The net gain was approximately \$60,000.
10
11 **Q: WHAT WAS THE PURCHASE PRICE PAID BY THE CITY OF ALTAMONTE**
12 **SPRINGS?**
13
14 A: The City of Altamonte Springs paid Utilities, Inc. \$427,000.
15
16 **Q: WHAT WAS THE NET GAIN FOR UIF AS A RESULT OF THE**
17 **ALTAMONTE SALE?**
18
19 A: The net gain was approximately \$270,000.
20
21 **Q: HOW DID UTILITIES, INC. RECORD THE PROCEEDS FROM THE SALES?**
22
23 A: The proceeds were booked to the gain on sale of utility property
24 accounts of Utilities, Inc. This is consistent with PSC Order No. 02-
25 0657-PAA-WU and the Uniform System of Accounts.
26
27 **Q.: EXPLAIN WHAT HAPPENED TO THE PROCEEDS RECEIVED BY UIF**
28 **FROM THESE TRANSACTIONS?**
29
30 A.: The proceeds from the previously mentioned transactions were
31 deposited into the depository account of Water Service Corporation
32 (“WSC”). WSC is the service company for all of Utilities, Inc.’s
33 operating subsidiaries. The sources of the funds in this depository
34 account are the operating revenues from all of WSC’s operating
35 subsidiaries and other miscellaneous deposits. Deposits are made to
36 this account on a daily, weekly or monthly basis. The funds in this
37 account are used to pay expenses, payables, capital projects and other
38 expenditures incurred in the ordinary course of business. The proceeds
39 were used for general corporate purposes.
40
41 **Q: IF UIF KNEW THAT IT WOULD NOT BE PERMITTED TO RETAIN THE**
42 **ENTIRE GAIN ON THE SALE OF THE SYSTEMS TO THE CITY OF**
43 **MAITLAND OR THE CITY OF ALTAMONTE SPRINGS, WOULD IT HAVE**
44 **AFFECTED YOUR NEGOTIATIONS WITH EITHER PURCHASER?**
45
46 A: Yes.

- 1
2 **Q: WAS UIF'S DECISION TO SELL THESE SYSTEMS INFLUENCED BY THE**
3 **FLORIDA PUBLIC SERVICE COMMISSION'S PRIOR TREATMENT OF**
4 **THE SALE OF OTHER SYSTEMS?**
5
- 6 A: Yes, the issue of sharing the gain on sales of systems has been litigated
7 in a number of rate cases. The precedent that was established has been
8 applied consistently by the Florida Public Service Commission. The
9 Florida Public Service Commission has established a policy of
10 allowing shareholders to retain the gain on sales of their company's
11 facilities.
12
- 13 **Q.: PLEASE EXPLAIN HOW UTILITIES, INC. TREATS ANY LOSS OR GAIN ON**
14 **THE SALE OF THESE SYSTEMS FOR RATEMAKING PURPOSES.**
15
- 16 A.: Utilities, Inc. believes that gains and losses from the sale of utility
17 property should flow to the shareholders as a return of the capital
18 invested in the utility. The shareholders of Utilities, Inc. bear the entire
19 risk of loss of their investment in utility property. The rate payers do
20 not bear any of this risk. The rate payers never acquire a proprietary
21 interest in utility property. Utilities, Inc. treats gains and losses
22 consistent with these facts. Its position is consistent with the decisions
23 of the Florida Public Service Commission in prior cases.
24
- 25 **Q.: PLEASE EXPLAIN WHY UTILITIES, INC. BELIEVES THAT ANY GAIN ON**
26 **THE SALE OF THE SYSTEMS SHOULD NOT BE SHARED WITH ITS**
27 **REMAINING RATEPAYERS.**
28
- 29 A.: Since the investors provide the capital and bear the risks, they are
30 entitled to receive the return. Gains and losses on the sale of utility
31 property are properly assigned to the owners of the facilities, just as in
32 any other business enterprise. Utility investments are not risk-free and
33 may bear additional risks beyond the normal, predictable risks borne by
34 other business enterprises. There is little or no regulatory protection
35 for the investors who lose money on the sale other disposition of their
36 utility investments. Further, the ratepayers' use of the systems and
37 payment for the cost of service in the form of rates do not vest any
38 ownership interest in utility property. Therefore, because the owners
39 have taken on the risk of the success or failure of the utility, they
40 should be entitled to any gains received on the sale of assets.
41
- 42 **Q.: DOES UTILITIES, INC. AGREE THAT THE REMAINING CUSTOMERS**
43 **UNDER A UTILITY'S UNIFORM RATE STRUCTURE CONTRIBUTED TO A**
44 **PORTION OF THE RECOVERY OF ITS INVESTMENT IN A WATER SYSTEM**
45 **PRIOR TO THE TRANSFER IF THE SYSTEM? IF NOT, PLEASE EXPLAIN**
46 **IN DETAIL WHY THIS IS NOT THE CASE.**

- 1
2 A.: No, the remaining customers, like all customers, pay rates that are
3 based on the cost of providing service based on a specific test period.
4 It is not possible to determine whether, over a period of time, one
5 customer "contributed" to a portion of the other facilities that are
6 unrelated, except by virtue of their common rate.
7
- 8 **Q.: DOES THAT CONCLUDE YOUR TESTIMONY?**
9
- 10 A.: Yes, it does.

1 MR. FRIEDMAN: And we tender Mr. Lubertozzi.

2 COMMISSIONER DEASON: Okay. Mr. Burgess.

3 MR. BURGESS: Thank you, Commissioner.

4 CROSS EXAMINATION

5 BY MR. BURGESS:

6 Q Mr. Lubertozzi, at this point you are sponsoring your
7 direct testimony only and not your rebuttal testimony. Do I
8 understand that correctly?

9 A I believe so.

10 Q And if I -- do you have a copy of the prehearing
11 order?

12 A No, I do not. I think it was over by our attorney's
13 table.

14 Q I would like for you, if you wouldn't mind, to take a
15 look at Page 6 of the prehearing order. And just so you'll
16 know, my concern is that on my cross-examination that it stays
17 within the bounds of propriety with regard to limiting the
18 testimony that's being examined as to -- at this point just the
19 direct testimony. But I see in this prehearing order that you
20 are intending to address, it appears, in direct it looks like
21 about 15 issues. Is that correct?

22 A I think some of the issues, Number 2 and 3, we've
23 stipulated to earlier on.

24 Q Yes.

25 A I have not done a cross-reference as I sit here as to

1 the Numbers 4 through 29, absent the ones that are not
2 consecutively numbered, whether those are all addressed in my
3 direct testimony or not.

4 MR. BURGESS: Okay. Well, Commissioners, this is my
5 quandary. I don't want to get into rebuttal testimony, but at
6 the same time obviously I don't want to forgo the opportunity
7 to examine at the appropriate time. I am going to ask if, if I
8 can get an answer as to which issues you believe you have
9 addressed in your prefiled direct testimony.

10 THE WITNESS: I'm sorry. Is that a question towards
11 me? I thought you were addressing the Commissioners at that
12 time.

13 MR. BURGESS: Oh, I kind of, I kind of switched in
14 midstream.

15 BY MR. BURGESS:

16 Q Yes. Can you tell me which of these issues that you
17 testified to in your direct testimony.

18 A Okay. Well, the direct testimony -- there was two
19 direct testimonies. One was gain on sale and one was to
20 sponsor the MFRs.

21 Q Yes. And, and the gain on sale basically was Issue
22 28 with regard to the circumstances surrounding the particular
23 gains in question, and 29 with regard to the theoretical
24 discussions of the proper treatment of, of that issue.

25 Are there any other issues that you dealt with in

1 your prefiled direct testimony?

2 A Other than sponsoring the MFRs --

3 Q Other than sponsoring the MFRs.

4 A -- and the gain on sale, I don't believe so.

5 Q Okay. Would you check and see whether perhaps you
6 addressed in your prefiled direct testimony Issue 24, the issue
7 regarding using a 14-month average for the purchased sewage
8 treatment from the City of Sanford?

9 MR. FRIEDMAN: Commissioner Deason, we're not going
10 to object. We understand the, the problem with Mr. Lubertozzi
11 in that he sponsored the MFRs which are everything and then he
12 filed specific testimony in rebuttal. I mean, I don't -- if
13 Mr. Burgess wants to -- if he's trying to make sure he doesn't
14 cross the line to ask questions at the inappropriate time, I
15 mean, I certainly will give him all the latitude to ask
16 whatever questions as long as he doesn't ask them twice at the
17 appropriate time.

18 MR. BURGESS: I appreciate that. And if that's an
19 invitation to, direct and rebuttal are no longer segregated for
20 the purposes of this witness, for the purposes of this
21 testimony, that's fine.

22 COMMISSIONER DEASON: Why don't we do this. Why
23 don't you just go ahead and conduct your cross-examination as
24 you have it prepared. And to the extent that it unnecessarily
25 crosses the line or it addresses issues which this witness does

1 not address, well, then it could be subject to objection at
2 that time.

3 What I'm suggesting is that apparently I would
4 anticipate that you've got a line of cross-examination prepared
5 for this witness, and I'm just suggesting you proceed through
6 it. And if there's an objection, we'll deal with it.
7 Hopefully there will not be one.

8 MR. BURGESS: There's -- yes, that's correct. Okay.

9 COMMISSIONER DEASON: I'm not trying to curtail your
10 efforts or try to make it difficult. I'm actually trying to
11 facilitate it.

12 MR. BURGESS: I understand. I understand.

13 BY MR. BURGESS:

14 Q Mr. Lubertozi, with regard to Issue 4 -- can I get
15 you to look at Issue 4 in the prehearing order.

16 Am I correct that you did not provide any testimony
17 to this in your direct testimony?

18 A You are correct.

19 Q Okay. Am I correct that you didn't provide any
20 testimony to this issue in your rebuttal testimony?

21 A You are correct.

22 Q With regard to Issue 5, this looks like that
23 Utilities, Inc. agrees with the PSC staff's position with the
24 exception of their treatment of the computers; is that right?

25 A Correct. Except for the adjustments for the

1 computers.

2 Q Am I correct that in your prefiled direct testimony
3 you did not address the proper treatment for the computers?

4 A Correct.

5 Q Am I correct that in your rebuttal testimony you did
6 not address the proper treatment for computers?

7 A I don't believe that it was addressed in the
8 rebuttal.

9 Q Could I get you to look at Issue 6 in the prehearing
10 order, please?

11 A Okay.

12 Q Am I correct that neither your direct testimony nor
13 rebuttal testimony addresses this issue?

14 A I believe you are correct.

15 Q Could I get you to look at Issue 20, please, and
16 that's on Page 31 of the prehearing order.

17 A Okay.

18 Q Am I correct that your direct testimony, neither your
19 direct testimony nor your rebuttal testimony addressed this
20 issue?

21 A I believe you are correct.

22 Q Would you mind looking at Issue 21, please?

23 A Okay.

24 Q Am I correct that neither your direct testimony nor
25 your rebuttal testimony addressed this issue?

1 A You are correct.

2 Q Thank you. Now with regard to the testimony, your
3 direct testimony, and it's addressing Issue 24, as we discussed
4 earlier, the issue of the purchased wastewater treatment
5 expense.

6 A Okay.

7 Q Now am I correct that -- and do you have -- would you
8 look at that issue in the prehearing order, please?

9 A I have that in front of me.

10 Q Thank you. Am I correct that what's at issue here is
11 the proper level of purchased wastewater treatment expense for
12 the new interconnection with the City of Sanford?

13 A You are correct.

14 Q Okay. And it was connected, interconnected in July
15 of 2001; is that right?

16 A I think it was about that time, subject to check.

17 Q And so that means that the test year contains some
18 months but not an entire year's worth for purposes of
19 calculating expense.

20 A Correct.

21 Q So the point here is attempting to come up with the
22 proper expense, I guess, on a going-forward basis, is it not?

23 A Correct. There was an attempt to determine what the
24 O&M expense should be for Seminole County for the test year.

25 Q Now you accept staff's position on this; is that

1 correct?

2 A Correct.

3 Q And staff's position, as you understand it -- or is
4 staff's position that they took the first 14 months of actual
5 expense for this interconnection and annualized a figure from
6 that; is that right?

7 A You are correct.

8 Q Now are you familiar with Ms. DeRonne's testimony on
9 this issue?

10 A Yes, I am.

11 Q And isn't it her position that the first month and
12 the second month should be removed from the calculation; is
13 that right?

14 A I do believe that that's her testimony. I haven't
15 memorized what's in her testimony. But for summary purposes,
16 yes.

17 Q So she would use 12 months to calculate a year's
18 worth of expense; is that right?

19 A Correct.

20 Q Now isn't it correct that -- are you -- do you recall
21 responding to staff discovery on the first months of the
22 interconnection with the City of Sanford?

23 A No, I do not. But if I had the discovery in front of
24 me, I probably would be able to recall my memory of who
25 prepared the response.

1 Q Well, we may not need to do that. I appreciate that.
2 We may not need to do that.

3 Do you know whether the first month, the month of
4 July, included a billing from the City of Sanford that was
5 based on over 4,700,000 gallons?

6 A Yes, I do.

7 Q And is it not correct that that 4,700,000 gallons
8 included the gallons that were necessary for, for start-up
9 operations and calibration operations?

10 A Yes. I was informed of that information from our
11 operations department.

12 Q And so those would be in the first month; is that
13 right?

14 A Correct.

15 Q And as well in the 4,700,000 gallons it would have
16 also been included, all of the volume of liquid associated with
17 emptying the aeration bays and the clarifiers and the digesters
18 and anything else associated with that type of operation; is
19 that right?

20 A I do believe that was our response to the discovery
21 request.

22 Q Okay. So you had -- so in the first month you had
23 the emptying of all the existing system. And then there was
24 cleanup of that as well, was there not, flushing through to
25 clean up the existing system?

1 A I believe so.

2 Q So you had the emptying of the existing system, the
3 flushing through to clean up the existing system, and then all
4 of the testing necessary. And all of this was billed in the
5 first month; is that right?

6 A That was my understanding from communications and
7 conversations I had with the operations.

8 Q And as you understand it, Ms. DeRonne suggests that
9 that be removed because it is not indicative of future
10 operations; is that right?

11 A It was my understanding that, that her understanding
12 was that it was not atypical.

13 MR. BURGESS: Thank you. That's all we have,
14 Commissioners, on, on the issues in his direct testimony.

15 COMMISSIONER DEASON: Very well. Staff.

16 MS. HOLLEY: Thank you.

17 CROSS EXAMINATION

18 BY MS. HOLLEY:

19 Q Mr. Lubertozzi, are you the witness sponsoring the
20 utility's proposed rates in Pasco and Seminole Counties?

21 A Yes.

22 Q And currently in Pasco County, would you agree that
23 the utility's four systems in that county have stand-alone
24 rates?

25 A Yes, subject to check. But, yes, I believe you're

1 correct. They currently do.

2 Q Referring to your latest MFR E-2 schedules for Pasco
3 County, you propose a change to consolidated county-wide rates
4 for those four systems; correct?

5 A Correct.

6 Q And in Seminole County currently eight of the utility
7 systems have consolidated rates and one system, the Oakland
8 Shores system, has stand-alone rates; correct?

9 A I believe that to be true. I was counting the eight
10 systems. Yes. But subject to check, I believe that's the
11 correct number.

12 Q And with respect to Seminole County, you are also
13 proposing to consolidate those rates in Seminole County by
14 combining that Oakland Shores system with the other eight
15 systems; correct?

16 A Yes. Based on recommendations from and conversations
17 with staff, yes, we do.

18 Q Mr. Lubertozi, are you aware of Section 367.081 of
19 the Florida Statutes which requires the Commission to fix rates
20 which are just, reasonable, compensatory and not unduly
21 discriminatory?

22 A I have not memorized that statute but I am familiar
23 with it.

24 Q When you prepared the consolidated rates for Pasco
25 and Seminole Counties, did you perform any analysis to

1 determine whether the rates you were recommending were not
2 unduly discriminatory?

3 A An analysis was performed. We had obviously
4 customers at different rates and different gallonage charges.
5 So that was considered at the time when the rate was prepared
6 on how to get to a determination of what would be fair and
7 reasonable for all customers.

8 Q So it would be a fair statement to say that you
9 performed an analysis that looked at how much more or less the
10 customers would be paying under consolidated rates versus
11 stand-alone rates?

12 A I don't know if we would qualify it as an analysis,
13 but work was performed in that regard.

14 Q In your opinion would you agree that rates would be
15 considered unduly discriminatory if those rates caused one
16 group of customers to subsidize in some material way the rates
17 that another group of customers must pay?

18 A I don't know if I would disagree or agree with that
19 comment. There would have to be -- I don't want to say
20 additional analysis, but I don't know if it would be
21 discriminatory to call it subsidization.

22 Q Okay. I'd like to walk you through a hypothetical,
23 if you will.

24 Suppose that in Pasco County for one of the systems
25 you're proposing to consolidate on a stand-alone

1 nonconsolidated basis that a customer's typical bill would have
2 been \$20 per month. If that system were consolidated with the
3 other three systems, that same customer's bill would increase
4 to \$50 per month. Okay?

5 A Okay.

6 Q Now without any adequate cost to support such a large
7 increase in rates, everything else being equal, would you agree
8 that the additional \$30 per month that that customer would be
9 paying under the consolidated rate scenario in essence would
10 represent a subsidy flowing to the customers of the other three
11 systems?

12 A I would agree with that, that there would have been
13 some subsidization.

14 Q Thank you. If -- that's the end of the hypothetical.
15 Thank you.

16 If you wanted to perform an analysis to measure
17 potential subsidies between customer groups, in your opinion do
18 you think a reasonable approach to do this would be to compare
19 for each system to be consolidated a typical customer's bill
20 under the consolidated rate structure and a typical bill under
21 the nonconsolidated rate structure?

22 A Yes. I believe that would be acceptable.

23 Q And given the requirements of the Florida Statute
24 that we discussed previously which requires the Commission to
25 fix rates that are not unduly discriminatory, wouldn't you

1 agree that the Commission should have access to this
2 information in its analysis of rates?

3 A Yes, I would.

4 Q I'd like to now turn you to a page in your latest
5 revision of the MFR schedules, E-2. That was marked as Exhibit
6 6, I believe.

7 If you could turn to Seminole County's section, Page
8 1 of 6. I believe it's the 13th page in that packet.

9 A Okay.

10 Q Are you there?

11 A Yes, I am.

12 Q Okay. Under the general service category you show
13 two customer service groups or two customer groups with
14 one-inch meters; correct?

15 A Correct. Under general service there are two
16 subgroups for one-inch meters.

17 Q Right. And the second of these customers appears to
18 be differentiated from the first by the notation "OLS."

19 A Correct.

20 Q Can you please tell us what that notation means?

21 A Oakland Shores.

22 Q Thank you. And the first general service one-inch
23 customer listed on this E-2 schedule applies to the non-Oakland
24 Shores system in Seminole County.

25 A Correct.

1 Q Okay. And the general service one-inch customer with
2 the OLS annotation refers to the Oakland Shores system;
3 correct?

4 A Correct.

5 Q And that same OLS notation, I would assume, applies
6 to the rest of the E schedules where that notation is
7 indicated?

8 A Correct.

9 Q And referring to that same schedule now, would you
10 agree that this schedule shows the utility's test year revenues
11 before revenues have been annualized for any index increases?

12 A Page 1 of 6 is prior to the index for 2001.

13 Q So that would be a yes?

14 A Yes.

15 Q Thank you. And looking down at the bottom right part
16 of this page, do you see the amount, the dollar amount
17 \$9,385 shown for a miscellaneous charge?

18 A Yes.

19 Q Now turning to Page 2 of this schedule, this schedule
20 again shows test year revenues but after annualizing for the
21 price index increases; correct?

22 A Correct.

23 Q And again looking down at the bottom right of the
24 schedule, there's no entry for miscellaneous service charges
25 shown here.

1 A You are correct.

2 Q Is this an oversight?

3 A I don't think I'd call it an oversight. I mean, we
4 obviously had miscellaneous service charges of \$9,385 in
5 Seminole County.

6 Q So that same amount, \$9,385, should appear there as a
7 miscellaneous charge under that dollar amount of 19,000 shown
8 there?

9 A I don't know if it should or not. But the revenues
10 for the total water revenues, excluding the miscellaneous
11 surcharge, are presented on Schedule 2 of 6. If your question
12 is could I have put another line in there for miscellaneous
13 service charges to show that that would be the exact same
14 number as it was on Page 1, you know, we could have done that.

15 Q So to calculate the total revenues, those
16 miscellaneous charges should be added into them?

17 A I'm sorry?

18 Q To calculate the total revenues, the miscellaneous
19 charges, that amount should be added?

20 A To calculate the total revenues --

21 Q For Seminole County.

22 A Including miscellaneous revenues.

23 Q Yes.

24 A Yes.

25 Q That number that does not appear on this schedule

1 should be included.

2 A Correct.

3 Q Okay.

4 MS. HOLLEY: We have no further questions. Thank
5 you.

6 COMMISSIONER DEASON: Redirect?

7 MR. FRIEDMAN: None.

8 COMMISSIONER DEASON: Okay. Exhibits?

9 MR. FRIEDMAN: Yes. We would move, we would move
10 Exhibits -- I believe it's composites 5 and 6.

11 COMMISSIONER DEASON: 5 and 6. I understand there's
12 an objection to Exhibit 6 and that objection is noted. But
13 Exhibits 5 and 6 are admitted.

14 (Exhibits 5 and 6 admitted into the record.)

15 MR. BURGESS: Commissioner, I would like to make a
16 motion, if I could, at this point. I would move the Commission
17 consider a directed verdict on Issues 4, 6, 20 and 21. Those
18 were four of the issues that Mr. Lubertozi agreed he had not
19 offered direct testimony or rebuttal testimony. Mr. Lubertozi
20 is the only witness listed as addressing those issues. He is
21 the one both identified on the individual listing of the issue
22 itself with his name in parentheses, and at the witness list
23 he's the only one with those issues following. The company has
24 the burden of proof on these issues.

25 I understand the circumstance when sometimes fairly

1 scant direct testimony is filed because the company doesn't
2 know necessarily what issues are going to be raised, but these
3 are all the issues that were identified after that and upon
4 which testimony was offered by other parties.

5 On Issues 4 and 6 OPC and Staff agree to a position
6 contrary to the company. On Issues 20 and 21 OPC has a
7 position contrary to the company, and staff's position is no
8 position, waiting further development of the record. At this
9 point any, any questions that would deal with those issues,
10 since they're not addressed in Mr. Lubertoizzi's testimony,
11 would be beyond the scope of the testimony or the testimony
12 being offered whether it's direct or rebuttal. So, therefore,
13 this record cannot have any testimony in it supporting the
14 positions of the company on any of those four issues, so we
15 would move for directed verdict on the issues. Thank you.

16 COMMISSIONER DEASON: And those issues again, 4, 6,
17 20 and 21?

18 MR. BURGESS: 4, 6, 20 and 21 .

19 COMMISSIONER DEASON: Mr. Friedman.

20 MR. FRIEDMAN: Yes, Commissioner. Mr. Lubertoizzi's
21 direct testimony doesn't address those issues. Exhibit
22 SML-10 and SML-11 are the company's responses -- this is to his
23 rebuttal, those are exhibits to his rebuttal testimony -- are
24 his responses to the staff audit. And the company has filed
25 written responses to the staff audit that he has sponsored in

1 his rebuttal testimony which do address those issues.

2 COMMISSIONER DEASON: Okay. I will reserve judgment
3 on the motion until after we have heard rebuttal testimony.

4 MR. BURGESS: Thank you, Commissioner.

5 COMMISSIONER DEASON: Okay. Mr. Friedman, you may
6 call your next witness.

7 MR. WHARTON: We would call Mr. Frank Seidman.

8 FRANK SEIDMAN

9 was called as a witness on behalf of Utilities, Inc. of Florida
10 and, having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WHARTON:

13 Q Sir, would you state your name and employment
14 address.

15 A My name and what?

16 Q And your employment address.

17 A Frank Seidman, Post Office Box 13427, Tallahassee,
18 Florida.

19 Q Have you previously been sworn, Mr. Seidman?

20 A Yes, I have.

21 Q Have you been retained by Utilities, Inc. to provide
22 testimony and expert opinions in this proceeding?

23 A Yes, I have.

24 Q And in that regard did you prepare direct testimony
25 consisting of Pages 1 through 9?

1 A Yes.

2 Q And if I ask you those same questions here today,
3 would your answers be the same?

4 A Yes.

5 Q Do you have any corrections or additions or deletions
6 to make to that testimony at this time?

7 A I have some minor corrections that don't affect the
8 content.

9 Q Why don't you go ahead and put those into the record.

10 A Page 4 at Line 24, the word "four," the numeral four,
11 F-O-U-R, should be "five." And at the end of the sentence, the
12 number "three" should be "four." It's just errors in the text.
13 It doesn't affect anything with regard to exhibits.

14 Page 8, Line 6, where it says "three" at the
15 beginning of the line, it should be "four." And then Line
16 7 where it says "three," it should be "four."

17 And then if you could turn to my FS-3 exhibit, which
18 is a single page that shows a summary of the used and useful
19 percentages for all of the systems, on the top half of it there
20 is a column entitled "Wis-Bar" that shows used and useful
21 percentages for the water system. It should also be a column
22 that shows the used and useful percentages for the wastewater
23 system, and they would all be 100 percent. So I guess for the
24 record just indicate that FS-3, the summary should include a
25 column that shows Wis-Bar used and useful percentages for all

1 wastewater system plant items at 100 percent.

2 Q And you referred to the exhibits. Did you, in fact,
3 prepare in conjunction with your testimony exhibits labeled as
4 FS-1 through FS-3?

5 A Yes.

6 Q And do you also -- did you also sponsor Section F of
7 SML-1 which has already been admitted into evidence?

8 A I prepared the F schedules for SML-1.

9 Q And have you completed any corrections or changes to
10 the exhibits and your testimony?

11 A Not on my direct testimony, no. Have I completed it?

12 Q You have no others?

13 A Oh, no, I have no others. Yes.

14 MR. WHARTON: We would request that Mr. Seidman's
15 prefiled direct testimony be inserted into the record as though
16 read and that his attached prefiled exhibits be marked for
17 identification.

18 COMMISSIONER DEASON: The attached prefiled Exhibits
19 FS-1 through 3 will be admitted as composite Exhibit 7. And
20 without objection, the prefiled direct testimony shall be
21 inserted into the record.

22 (Exhibit 7 marked for identification and admitted into
23 the record.)

24

25

1 TESTIMONY OF FRANK SEIDMAN
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE APPLICATION FOR INCREASE
4 IN WATER AND WASTEWATER RATES AND CHARGES
5 IN MARION, ORANGE, PASCO, PINELLAS AND SEMINOLE COUNTIES
6 BY UTILITIES, INC OF FLORIDA
7 DOCKET NO. 020071-WS
8

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

10 A. My name is Frank Seidman. I am President of
11 Management and Regulatory Consultants, Inc.,
12 consultants in the utility regulatory field. My
13 mailing address is P.O. Box 13427, Tallahassee, FL
14 32317-3427.

15
16 **Q. What is the nature of your engagement with the**
17 **Applicant, Utilities, Inc. of Florida (UIF)?**

18 A. I was engaged by UIF to prepare a used & useful
19 analysis for each of the water and wastewater
20 systems included in this filing.

21
22 **Q. State briefly your educational background and**
23 **experience.**

24 A. I hold the degree of Bachelor of Science in
25 Electrical Engineering from the University of

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

1 Q. Are you sponsoring any exhibits in this proceeding?

2 A. Yes. I am sponsoring the "F" or Engineering
3 Schedules portion of Exhibit (SML-1) _____, the
4 Minimum Filing Requirements (MFRs). I am also
5 sponsoring Exhibit (FS-1)_____, a listing of the
6 systems evaluated, Exhibit (FS-2)_____, a summary
7 description of each of the water and/or wastewater
8 systems, by county, in this proceeding, and Exhibit
9 (FS-3)_____, a summary of the used& useful factors
10 determined for each system.

11

12 Q. Would you generally identify the systems that are
13 included in this analysis?

14 A. Yes. In total, there are seventeen (17) systems in
15 five (5) counties included in this analysis, as
16 follows: one system in Marion County providing
17 water service to all and wastewater to part; two
18 systems in Orange County providing water only
19 service; four systems in Pasco County, all
20 providing water service and two providing
21 wastewater service; one system in Pinellas County
22 providing water only service; and nine systems in
23 Seminole County, all providing water service and
24 one providing wastewater service. Exhibit (FS-

1 1) _____ identifies all of the systems by name and
2 county.

3

4 **Q. Can you further describe the general**
5 **characteristics of these systems?**

6 A. Yes. In general, all of the systems are small,
7 ranging in size from 60 customers to about 1,200
8 customers. Most of the systems are built out. Only
9 two of the seventeen systems, Summertree in Pasco
10 County and Golden Hills in Marion County have
11 experienced any measurable growth. In fact, the
12 average ERC growth rate for all seventeen systems
13 was less than 1 percent over the past five years.
14 Of the seventeen systems providing water service,
15 three purchase their water from other
16 governmentally owned or private systems. Of the
17 water systems that produce their own water, the
18 treatment provided is relatively simple, being
19 either by chlorination or aeration. The systems all
20 have minimal storage facilities in the form of
21 hydropneumatic tanks or the ground storage
22 associated with the aeration process. Some of the
23 systems have high service pumping, most do not. Of
24 the ~~four~~^{five} system providing wastewater service, ~~three~~^{four}
25 purchase the treatment and disposal serve from

1 other governmentally owned utilities. The single
2 system providing onsite treatment and disposal
3 service utilizes extended aeration and percolation
4 ponds. In general, UIF is composed of small,
5 simple, built out systems scattered through the
6 several counties served. Exhibit (FS-2)____
7 provides a general description of the facilities,
8 method of treatment, and size of each system, by
9 county.

10

11 **Q. Has a determination of used & useful been made**
12 **for any of these systems in any prior rate**
13 **proceedings?**

14 A. Yes, for nearly all of the systems. That is an
15 important observation, because in nearly all cases,
16 the prior findings of the Commission was that the
17 systems, including the production, treatment,
18 distribution and collection systems were found to
19 be 100% used and useful. And since most of these
20 systems were and are at build out, and no additions
21 have been made to capacity or areas served, they
22 are still 100% used & useful. For those systems
23 for which used & useful has been previously
24 determined, the docket in which it was determined
25 and the Commission's conclusion, is identified and

1 discussed in the applicable "F" schedule in the
2 MFR.

3

4 Q. Would you please describe your approach to the
5 analysis of used & useful for water production,
6 treatment, pumping and storage facilities of each
7 system?

8 A. Yes. Even though nearly all of the systems have
9 previously been found to be 100% used & useful in
10 previous dockets, I performed a used & useful
11 analysis for each system that produced and treated
12 water with its own facilities. The analysis is
13 shown on Schedule F-5 of the MFRs for each system.
14 The analysis included production, treatment,
15 pumping and storage plant. The format of the
16 analysis is the same for each system. It begins
17 with a listing of the various input parameters
18 including the number and rating of the wells, type
19 and size of the storage facilities, high service
20 pumping capacity, system demand, fireflow
21 requirements, and unaccounted for water. If system
22 growth is relevant that is addressed in the used &
23 useful formula.

24

1 I then briefly discuss how each system functions
2 and whether the system components should be
3 evaluated individually or together. Based on the
4 availability of well capacity, storage capacity and
5 high service pumping capacity I made a
6 determination as to whether demand should be
7 evaluated on the basis of maximum day demand or
8 instantaneous demand.

9
10 Finally, I made a calculation of used & useful
11 using the Commission's standard formula of dividing
12 the sum of (peak demand + fireflow - excess
13 unaccounted for water + property needed to serve
14 five years after the test year) by the firm
15 reliable capacity. If a system purchases water and
16 then distributes it, no used & useful analysis was
17 made. Any plant necessary to interconnect with the
18 serving utility and to deliver water to the
19 distribution system was considered to be 100% used
20 & useful.

21

22 **Q. Would you please describe your approach to the**
23 **analysis of used & useful for the wastewater**
24 **treatment and disposal facilities of each system?**

1 A. Yes. I performed a used & useful analysis on
2 Schedule F-6 for each system that treated and
3 disposed of wastewater with its own facilities.
4 Only one wastewater system, the Crownwood system in
5 Marion County, required any analysis. The other
6 ~~three~~^{four} systems purchased wastewater treatment and
7 disposal services. For those ~~three~~^{four} systems, any
8 plant necessary to tie in to the serving utility
9 was considered to be 100% used & useful. For the
10 Crownwood system, I performed a used & useful
11 analysis using the Commission's standard formula of
12 dividing (peak demand - excess inflow &
13 infiltration + property needed to serve five years
14 after the test year) by the rated capacity of the
15 system.

16

17 **Q. Did you also evaluate used & useful for the water**
18 **distribution and wastewater collection systems?**

19 A. Yes, where necessary. As I previously stated, most
20 of the systems have already been determined to be
21 built out and found to be 100% used & useful in
22 previous cases. I have cited those cases in
23 Schedule F-7 for each system. I reviewed each
24 system to determine whether there were any

1 significant changes that would warrant a change in
2 the previously determined used & useful factors.

3

4 **Q. What are the results of your used & useful**
5 **analyses?**

6 A. The results are summarized in Exhibit (FS-3)____.
7 All components of all systems, except one, were
8 found to be 100% used & useful. Only the
9 wastewater treatment & disposal system at Crownwood
10 in Marion County was found to have a used & useful
11 factor of less than 100%. The treatment & disposal
12 facilities at Crownwood were determined to be
13 68.72% used & useful. All other plant facilities at
14 Crownwood are 100% used & useful.

15

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

17 A. Yes it does.

1 MR. WHARTON: And we would dispense with summary and
2 tender the witness for cross.

3 COMMISSIONER DEASON: Mr. Reilly.

4 CROSS EXAMINATION

5 BY MR. REILLY:

6 Q Mr. Seidman, you're an electrical engineer; is that
7 correct?

8 A That's correct.

9 Q Your resume shows much experience in utility
10 ratemaking analysis but none in the design of engineering water
11 and wastewater systems. Do you feel qualified to testify on
12 civil engineering design of water and wastewater systems?

13 A No. I'm not testifying on civil engineering design.
14 I'm testifying on regulatory and economic matters and used and
15 useful.

16 Q So you do not believe that it's necessary to
17 understand design criteria or requirements for the construction
18 of these facilities to do a used and useful analysis?

19 A I -- yes, I feel you should understand it. I believe
20 I do.

21 Q And what is your education and/or experience in?

22 A I'm sorry. In what?

23 Q Your educational experience and practical experience
24 in understanding the design criteria for water and wastewater
25 systems.

1 A My educational experience is four years of college in
2 an engineering school, ending up with a bachelor of science in
3 electrical engineering.

4 The basic engineering courses of that include some
5 civil engineering matters, matters on hydraulics, flows,
6 strength of materials, matters like that. As far as
7 experience, I have been involved with working with utilities in
8 regulatory matters both within the Commission staff and outside
9 working for telephone utilities, water and sewer utilities and
10 as a private consultant dealing with all matters that, that
11 come before this Commission really. In doing all of that I
12 have accumulated knowledge over the years with regard to water
13 and wastewater systems.

14 Q But it is -- expertise and certification in civil
15 engineering is required to, to design systems; is that correct?

16 A Yes.

17 Q And you really require both the civil engineering
18 expertise and PE designation to sign and seal any such plans.

19 A That's correct.

20 Q And is it not necessary to fully understand what
21 these design criteria are before you can determine to what
22 extent such plants exceed those, those needs to make your used
23 and useful analysis?

24 A No. Used and useful analysis -- used and useful is a
25 regulatory term. It's not an engineering term. It's not a

1 factor in engineering itself. It's, it's a factor in how this
2 Commission or any regulatory commission reviews the plant that
3 a utility has in service to determine whether or not it's
4 serving the public. Lots of people get involved in it, in used
5 and useful. Some of your staff is involved in it who are not
6 engineers. I don't think it's necessary to be a civil engineer
7 to evaluate used and useful for water and sewer systems.

8 Q But when you're making expert testimony as to whether
9 a particular size of a component is appropriate or not, doesn't
10 that go to the very issue of civil engineering and what should
11 be the beginning point, what should be the standard that must
12 be met to determine whether you're above or below that standard
13 from a used and useful standpoint?

14 A I think it's sufficient to be able to read the
15 literature associated with it and then to interpret it within
16 the realm of the regulatory process.

17 Q How useful can a used and useful analysis be unless
18 there's some understanding of what the beginning point is?
19 What, what should be considered adequate size facilities to
20 serve this particular demand? I mean, isn't that the beginning
21 of all used and useful analysis is understanding whether we're
22 going to be requiring a max day flow or two times max day flow
23 or three times max day flow? Doesn't that necessarily
24 astronomically affect what the used and useful analysis will
25 be?

1 A Sure. You have to understand it. You asked me if I
2 understand it. I do. You asked me another question about
3 whether I design these systems, and I don't. I don't present
4 myself as an engineer that has the qualifications to design
5 these systems. That would be in violation of the statutes of
6 this state. I've never presented myself to that. I've never
7 sealed a document.

8 Q But hasn't Public Counsel offered a civil engineer
9 who's had years and years of experience designing systems to
10 establish what the proper demands are and have you not taken
11 exception in your testimony to what those demands should be,
12 and are you not going head to head with Public Counsel's civil
13 engineer witness as to what the appropriate used and useful
14 should be as a result of your disagreement of what
15 properly-sized plant should be?

16 A I don't think I said what properly-sized plant should
17 be. I have evaluated whether the plant is used and useful
18 within the realm of a regulatory scene.

19 Whether I, you know -- Mr. Bidy's qualifications, I
20 don't have any problem with him as an engineer. I might have
21 problems with him whether he understands used and useful.

22 So, you know, we're at odds not because of, of
23 understandings of systems. I think we're at odds understanding
24 what's before this Commission, what it has to do and what it
25 should take into consideration.

1 Q But doesn't what underlie these vast differences of
2 what we view the appropriate used and useful percentage should
3 be versus what you are recommending, it all begins with what
4 you as an electrical engineer have determined should be a
5 properly-sized component of a -- in the instance of a water
6 system, we're going to be going in that later, you know, as --

7 COMMISSIONER DEASON: Mr. Reilly, I think he's
8 answered that question. He said he did not size the systems,
9 if I understood his testimony.

10 THE WITNESS: Yes. And I've not even testified what
11 is the proper size. I've testified on how it -- whether or not
12 it's used and useful.

13 BY MR. REILLY:

14 Q Are you familiar with Chapter 62-555.330, Florida
15 Administrative Code?

16 A Am I familiar with it?

17 Q Yes.

18 A Yes, I've read it. I'm not familiar with all aspects
19 of it.

20 Q Is it this portion of the code that sets forth FDEP
21 rules for water system designs by reference to other
22 publications?

23 A Is it? I'm sorry.

24 Q The question is is it this portion of the Florida
25 Administrative Code that I just referred to, is this what sets

1 forth the DEP rules for water system design by referencing
2 other publications?

3 A Yes, generally.

4 Q Do you know if these design rules are mandatory or
5 optional?

6 A Rules are mandatory.

7 Q Is the recommended --

8 A Those portions of the rule that say "shall" are
9 mandatory.

10 Q Okay. Is the recommended standards for water works
11 commonly known as the Ten State Standards one of the
12 publications cited in this Chapter 62-555.330?

13 A Yes, it is. It's listed -- yes. Recommended
14 standards for water works, which is also called the Ten State
15 Standards, is included.

16 Q Okay. Do you know if these Ten State Standards and
17 the design guidelines therein are used by FDEP in review, in
18 reviewing submittal and approval of permitting of water
19 systems?

20 A If the DEP uses them?

21 Q Yes.

22 A Yes.

23 Q Are you familiar with Section 3.2.1.1 of the Ten
24 State Standards as it relates to groundwater source capacity?

25 A Yes.

1 Q Could you just briefly state your understanding of
2 what this standard requires in terms of what's an appropriate
3 groundwater source capacity?

4 A Basically it sets a, a minimum standard for designing
5 the groundwater source capacity.

6 Q Could you tell me what that standard requires? I
7 think it has two components.

8 A Sure. It's one sentence. I'll just read it to you.
9 "Total development groundwater source capacity shall equal or
10 exceed the designed maximum day demand and equal or exceed the
11 design average day demand with the largest producing well out
12 of service."

13 Q So it's evaluating from a maximum day standpoint or
14 average day demand with the largest producing well out?

15 A Correct.

16 Q Is there anything in this rule that requires the
17 groundwater source capacity to be based on either peaked hourly
18 or instantaneous flows to the system?

19 A No.

20 Q What is the FDEP rule for sizing water treatment
21 plants?

22 A Say that again.

23 Q What is the FDEP rule for sizing water treatment
24 plants? What is the DEP's requirement on sizing water
25 treatment plants?

1 A Sizing water treatment plant? I don't know offhand.

2 Q You do not know?

3 Now you have testified that you believe that this
4 Commission should require and it should allow an allowance to
5 the utility for instantaneous flows --

6 A Yes.

7 Q -- with reference to water treatment plants, but you
8 don't know what DEP would require?

9 A I'm saying the Commission should take into
10 consideration instantaneous demand for systems that have no
11 storage, negligible storage, because they have to meet it from
12 the well pumps.

13 Q If I told you that FDEP requires max day flow plus
14 whatever other demands on the system, would you agree to that,
15 subject to check?

16 A That it requires that it meet max day flow?

17 Q Yes.

18 A I would accept that. I would hope it would meet max
19 day flow.

20 Q And is there anything in this rule that requires the
21 sizing of water treatment plants to be based upon instantaneous
22 flows or other peaked flows?

23 A Are we still looking at 3.2.1.1?

24 Q No, because that relates to groundwater source
25 capacity. I think we're just talking about DEP requirements

1 concerning water treatment.

2 A Oh, water treatment plants?

3 Q Yes.

4 A Okay. I haven't, I haven't advocated use of
5 instantaneous demand for evaluating water treatment plants,
6 only those systems that have no storage or negligible storage.

7 Q Is it not your recommendation though that the
8 instantaneous flows be met, I think, by the system as a whole,
9 which you're viewing -- I mean, the treatment would obviously
10 be part of that entire system.

11 A Well, the systems that we're talking about here, I'm
12 talking about the small systems that basically are composed of
13 groundwater well, chlorinator, hydro-pneumatic tank to regulate
14 pressure, and that's it. There's nothing more there. There's
15 no other -- there's no storage, there's no treatment to speak
16 of which might have storage associated with it. So I'm
17 using -- I'm saying that those type of systems, regardless of
18 what it says here, which says equal or exceed with regard to
19 source capacity, that these systems will face instantaneous
20 demands, peak hour demands, average day demands, max day
21 demands, and there's nothing to buffer between those well pumps
22 and those instantaneous demands to give us something to work
23 with to take care of those things that are above max day or
24 above average. And, therefore, when the Commission is looking
25 at what's used and useful for a utility, what kind of

1 investment has been put out there by the utility that's really
2 serving the customers, that they should take that into
3 consideration. I mean, I don't think there's any argument that
4 those demands exist. The question is what can we look at as
5 far as these regulators are concerned as to whether or not the
6 money that's been spent by the company is proper for the
7 system.

8 Q There is, in fact, considerable disagreement as to
9 what kind of demands exist. Is it not true that, that the
10 actual historical flows that the company has presented in its
11 MFRs are radically different than, than what you've calculated
12 as these instantaneous flows, that the flows -- that there's no
13 evidence that, that these instantaneous flows that you're
14 requiring have, have shown up in any of the DEP reports of
15 actual flows?

16 A That's true. You're absolutely right. There is no
17 evidence of those, and that's part of the problem here. The
18 evidence that's before regulatory agencies is usually daily
19 flows, sometimes hourly flows. But we don't know what happens
20 between that area of max day flows and instantaneous
21 happenings. When we have a system that has storage, we don't
22 really worry about that because if the, if the wells aren't
23 sufficient to meet those demands, storage is there to buffer it
24 for the period of time that's needed until they come back out
25 to max their average. But in these systems there's nothing

1 there. I think it's just a practical matter of saying, okay,
2 let's look at this pump. Even a lay person can look at it and
3 say the demands are there. If the water is basically flowing
4 from the wells to the demand, somehow those demands are going
5 to be met. And all I'm trying to do is find some way to
6 measure that to take that into consideration.

7 Staff has measured it by saying peak hour. I've
8 measured it by saying instantaneous. We could measure it with
9 something in between. We're always estimating when it comes to
10 that point because we don't have much more information other
11 than daily flows.

12 Q So it's really a speculation and you apply your
13 formulas and you're projecting what you think this
14 instantaneous flow might be at any given moment in time.

15 A Well, it's speculation only to the extent that we
16 don't know what it is for these particular systems, but it's
17 not speculation as to the part that -- I didn't drum up these
18 numbers. They do come from sources. Whether you agree with
19 those sources or not, they're not my sources. They are sources
20 that are put out there to the public. And, you know, I used
21 one that we came upon over the years in the course of looking
22 at what are best ways to deal with small systems.

23 Q But there is a way to test whether your speculation
24 is, is a fiction or an exaggeration or is reality.

25 Is it not true that in your deposition staff had a

1 line of questioning to you, and they basically asked you -- I
2 think they had a series of questions that said is quality of
3 service satisfactory? Have you been getting complaints from
4 people about shifts in pressure? And you said, no, we've had
5 good quality of service. There have been no customer
6 complaints about loss of pressure.

7 And, of course, that raised the obvious question that
8 if these speculated numbers, these instantaneous flows that
9 you're producing are far in excess of what even the wells in
10 those high service pumps can produce at any given point in
11 time, these speculated and instant points in time, so if, in
12 fact, reality that these, these instant flows will be
13 occurring, surely we would have complaints from customers on,
14 on the loss of pressure. Could you comment on, on -- that is a
15 sanity check, is it not, as to whether --

16 A I understand what you're saying. And, first of all,
17 there's no high service pumps involved with these systems.

18 But, yes, it raises a question with regard to
19 customer service and pressure drops and customer complaints.
20 But the fact is that we've evaluated these systems on the basis
21 of, of two things. One is the firm reliable capacity. And
22 there are other wells out there. And hopefully what we've
23 experienced out there with these systems is that all well
24 capacity has been available during these times.

25 The other thing is, I'll admit, instantaneous demand

1 is a pretty short demand period. A system still has to meet
2 it, but it may not cause a drop in pressure for a long enough
3 period for somebody to complain about it, especially when we're
4 talking about the instantaneous demand here is the maximum
5 instantaneous demand for the system and maybe occurs once a
6 year. It still has to be met. That's what I'm trying to get
7 across. There may not be complaints because it doesn't happen
8 for a long enough period of time or often enough. But you're
9 right, we don't know. We do not know exactly whether that's
10 happening or not.

11 Q From an engineering standpoint what is the real
12 appropriate way to, to respond to these peak demands? And we
13 can disagree as to how high that peak should be, but is it
14 through storage or is it through wells and treatment?

15 A Well, I guess it's a matter of the size of the
16 system, its configuration, and what they had intended at the
17 time that they built it. We're dealing with systems that are
18 already there, most of them 20 to 50 years old that have --
19 they're basically closed systems, built-out systems. Nothing
20 has happened on them. There's been no reason because there
21 have been no complaints, I guess, to go ahead and do anything
22 further with regard to an additional capacity in storage or any
23 other way. They're meeting it.

24 Q Is it not far more economical though to meet peak
25 demands, and is it not considered engineering proper design to

1 meet peak demands through storage as opposed to well and high
2 service pump? I mean, in this case, the small system
3 hydro-pneumatic tank systems.

4 A Engineering analysis would dictate that you make that
5 economic analysis for the system, whether for a particular
6 system it's more economical to just pay for, for the wells and
7 the well pumps or to go to storage.

8 Q Do you have any personal knowledge as to whether it
9 is more economical to do it by way of the storage or, or the
10 wells?

11 A For these systems?

12 Q Yes.

13 A Well, at this point in time, looking back on these
14 systems that have already been there, I think it's much more
15 economical to just keep producing with these well pumps than to
16 go ahead and change out those well pumps to a smaller size,
17 incur that capital cost, incur the capital cost for more
18 storage to take that place, you know. I don't think that's an
19 economical choice at this time.

20 Q But you have no opinion as to what the correct
21 decision should have been when it was originally made as to the
22 economical way to, to meet these peak demands?

23 A Fifty years ago for some of these systems? No, I
24 have no opinion on what was the economical way to do it back
25 then.

1 Q Are you familiar with the changing water use patterns
2 and trend toward water conservation in Florida?

3 A Yes.

4 Q Isn't it a fact that water usage has substantially
5 decreased in Florida as a result of these factors?

6 A Well, I'm familiar -- I shouldn't say I'm familiar
7 with the trend. No. I am familiar with the water conservation
8 ethic. I am not familiar with what the trend is.

9 Q So you have no personal knowledge as to whether --

10 A I have no personal knowledge whether it's gone down
11 or how much it's gone down. I don't have any qualms that it
12 probably has gone down.

13 Q And to the extent that it has gone down, if that be
14 the case, you would assume that it would affect all the way
15 across the board: The average daily flow, the max day flow and
16 peak flow?

17 A No, not necessarily.

18 Q And what would be your thinking on that?

19 A And that's just based on -- well, for one thing, you
20 could say personal knowledge. And this would go towards
21 whether it's water or electricity, whatever. People tend to
22 conserve because they think it's the right thing to do or
23 because they're getting an economic signal to conserve. But
24 when push comes to shove and, and things happen that make them
25 uncomfortable or needy, they'll go ahead and they'll circumvent

1 that thought for a while.

2 I mean, a good example, an easy one to understand is
3 electric. We all try to conserve electricity. But, boy, when
4 the temperature gets up there to 99 degrees, you're going to
5 turn on an air conditioner and you don't care what it costs for
6 that by doing that. So you may have a high peak as a result of
7 that. But since you're conserving, if you want to say across
8 the board, the rest of the time you may have a lower average,
9 you may even have a lower max day, but you don't necessarily
10 have a lower instantaneous or short-term or five-minute or
11 ten-minute peak.

12 Q Did you examine the current water usage for the 17
13 systems in this case, water systems?

14 A The current water usage. I don't know what you mean.

15 Q The -- what the level of water usage is for ERC.

16 A Oh, global per customer?

17 Q Yes.

18 A No.

19 Q Do you know that the range of water usage -- would it
20 surprise you that such usage in this system ranges from a low
21 of 67 gallons per day per ERC to just over 300 gallons per day
22 per ERC?

23 A No, it wouldn't surprise me.

24 Q With an average of 211 gallons per day?

25 A That wouldn't surprise me at all.

1 Q Are you responsible for preparing all of the
2 F schedules in the MFRs?

3 A Yes.

4 Q When you prepared the F. schedules, were you aware
5 that data shown for two of the systems indicated more water
6 sold than pumped?

7 A Yes.

8 Q And did you see a problem with this?

9 A Yes.

10 Q What were the two systems with the faulty data?

11 A What were the two systems with --

12 Q The faulty data. I say faulty. It has to be --
13 there has to be a fault with it since more was sold than was --

14 A Oh, okay.

15 Q -- pumped.

16 A I believe it was Park Ridge and Oakland Shores. I'd
17 have to check though.

18 Q And when you got this data, what did you do about the
19 problem?

20 A I just asked the company to go back and check and see
21 what the reason was.

22 Q And that was how long ago?

23 A A year ago when I prepared these schedules.

24 Q Have we ever received a definitive answer on that,
25 what went wrong?

1 A Not other than the -- indicated by the note that I
2 made to the schedules at the time. I don't have any further
3 data.

4 Q If a water well meter showed less water pumped in the
5 test year than shown by customer meters, isn't that an
6 indication that well meters have slowed down and are faulty on
7 the low side?

8 A Would you repeat that? Let me get it in the right
9 context.

10 Q Okay. If water well meters show less water pumped in
11 the test year than shown by customer meters, isn't this an
12 indication that the well meters have slowed down and are faulty
13 on the low side?

14 A Yes, it could. Right.

15 Q If I could direct your attention on Page 4 of your
16 prefiled direct on Lines 8 through 11.

17 A Page 4, Lines 8 through 11.

18 Q Yes, sir.

19 A This is of my --

20 Q Of your prefiled direct.

21 A Oh, I'm sorry. I'm looking at the wrong one. Okay.
22 Okay.

23 Q Okay. On those lines you state, "Only two of the 17
24 systems, Summertree in Pasco County and Golden Hills in Marion
25 County have experienced any measurable growth."

1 This is not a true statement, is it?

2 A It's not true to the extent that, yes, there can be
3 some measurement. Probably the wording should have been
4 "significant measurable growth."

5 Q Isn't it a fact that 11 of the 17 water systems have
6 an average positive growth over the last five years as shown in
7 your F9 schedules of the MFRs?

8 A That they have some growth?

9 Q Yes.

10 A Yes, probably.

11 Q Isn't it also a fact that by Florida law we must
12 include a growth factor to the system demand equal to five
13 times the growth rate of the system?

14 A Yes.

15 Q And when a growth rate is one percent or more, as is
16 in a number of the water systems in this case, isn't it a fact
17 that we must increase water demand by five percent or more?

18 A Correct.

19 Q And my question is should we really have it both
20 ways? I mean, it seems that you're willing to take the growth
21 to increase the demand but, on the other hand, call it
22 insignificant growth and let's just call it build out.

23 And my question to you is is that a fair way to use
24 this growth both ways?

25 A No. I, I think there may be a, may be a

1 misunderstanding of how that came into, into use.

2 We evaluated the water plant itself and then we
3 evaluated -- or you look at distribution and collection systems
4 separately. The build out truly affects -- the build out
5 statement truly affects the distribution collection systems.

6 As far as the capacity or the demand on the system at
7 the water plant or at the sewer plants, it's a little different
8 because you can have growth from year to year in demand even
9 without having growth in customers. In other words, customers
10 can change their demand. Or if there are general service
11 customers involved, they can change their demand. And so their
12 usage from year to year may vary even though the customer base
13 itself may not change very much. So I think you have to look
14 at them in a little different way.

15 Q Isn't it also a fact that three of the five
16 wastewater systems in this case have had positive growth as
17 shown in the F10 schedules of the MFRs?

18 A Three of the five wastewater?

19 Q Yes, sir.

20 A I'll take your word for it. I'd have to look them up
21 individually.

22

23 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA)
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3

4 I, LINDA BOLES, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
10 transcript constitutes a true transcription of my notes of said
11 proceedings.

12 I FURTHER CERTIFY that I am not a relative, employee,
13 attorney or counsel of any of the parties, nor am I a relative
14 or employee of any of the parties' attorneys or counsel
15 connected with the action, nor am I financially interested in
16 the action.

17 DATED THIS 29TH DAY OF AUGUST, 2004.

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