1999-1666

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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

VOLUME 8

Pages 924 through 1131

PROCEEDINGS:	**HEARING**
BEFORE:	CHAIRMAN JULIA L. JOHNSON COMMISSIONER J. TERRY DEASON COMMISSIONER JOE GARCIA
DATE:	**Wednesday, December 8, 1998**
TIME:	Commenced at 10:10 a.m.
PLACE:	Harborside Convention Center Room C1 1375 Monroe Street Fort Myers, Florida
REPORTED BY:	JOY KELLY, CSR, RPR Chief, Bureau of Reporting Florida Public Service Commission (904) 413-6732

APPEARANCES:

(As heretofore noted.)

I N D E X

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EXHIBITS - VOLUME 8

NUMBER		ID.	ADMTD.
35	TAC-1 and TAC-2	930	979
36	LC-1, LC-1A , LC-1B	982	997
37	Dismukes Qualifications	1026	1053

PROCEEDINGS

(Hearing reconvened at 1:10 p.m.)

(Transcript follows in sequence from Volume 7.)

CHAIRMAN JOHNSON: Mr. Gatlin, are you ready?

MR. GATLIN: Mr. Cummings is our next witness and he's just behind me.

CHAIRMAN JOHNSON: We're going to go back on the record and Mr. Cummings is about to be seated. And you were sworn, weren't you, Mr. Cummings?

WITNESS CUMMINGS: Yes.

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THOMAS A. CUMMINGS

was called as a witness on behalf of Florida Cities Water Company and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GATLIN:

Q Would you please state your name and address for the record?

A Thomas Cummings. 201 South Orange Avenue, Orlando, Florida.

Q And by whom are you employed?

A With Black & Veatch Consulting Engineers.

Q Have you prepared written testimony for presentation today?

A Yes.

Q Consisting of 17 pages?

A Yes.

Q If I were to ask you those questions set forth in that testimony, would your answers be the same today?

A Yes, they would.

Q Do you have any corrections you should make?

A No.

MR. GATLIN: Madam Chairman, I request this be inserted to the record as though read.

CHAIRMAN JOHNSON: It will be inserted.

Q **(By Mr. Gatlin)** Mr. Cummings, I believe you have two exhibits, TAC-1 and TAC-2. TAC-1 is a Preliminary Engineering Design Report, Waterway Estates Wastewater Treatment Plant, and TAC-2 is Table 1-2 and 1-3 in the chapter entitled "Wastewater Parameters of Significance to the Design Engineer of MOP/8." May we have those identified, Madam Chairman?

CHAIRMAN JOHNSON: They will be identified as Composite Exhibit 35.

(Composite Exhibit 35 marked for identification.)

FLORIDA CITIES WATER COMPANY

NORTH FORT MYERS DIVISION

REMAND TESTIMONY OF THOMAS A. CUMMINGS

Docket No. 950387-SU

Q. Please state your name and business address.

A. My name is Thomas A. Cummings. My business address is Black & Veatch, 201 South Orange Avenue, Suite 500, Orlando, Florida 32801.

Q. Please describe your educational background and your professional qualifications.

A. I received my Bachelor of Science degree in Civil Engineering from Purdue University in 1979, and have completed Master of Science degree course work in Environmental Engineering and Science from the University of Missouri through 1985. I am a registered professional engineer in the Florida and Kansas. I was originally registered in Kansas, in March, 1984, after passing the examination in sanitary engineering, and registered in Florida in August, 1990.

Q. Please describe your professional engineering experience concerning water and wastewater utilities.

A. I have over 12 years continuous experience as a registered professional engineer specializing in studying, planning, designing, permitting and managing the construction of water and wastewater facilities for

public and private investor-owned utilities in the State of Florida. I have been engineer-of-record for the design and permitting of five wastewater and/or water treatment plants, and assisted with the design, permitting and construction management of numerous others. I have studied and designed water treatment facilities utilizing biological and chemical treatments. I have been involved in the hydraulic model analysis and mechanical review of over fifteen water and wastewater systems and the preparation of over 25 water and/or wastewater treatment plant facility designs. My design and permitting experience also includes over 30 miles of raw water mains, potable water mains and force mains ranging in size from 4 inches to 60 inches.

Q. By whom are you presently employed?

A. I am currently employed by Black & Veatch.

Q. Please briefly describe the services that Black & Veatch provides.

A. Black & Veatch is a professional engineering and consulting firm that has 80 offices and over 6,000 employees. The services that Black & Veatch can provide are capabilities in the environmental, civil, electric, power, building, process, and management consulting fields as well as procurement and construction.

Q. What is your position with Black & Veatch?

A. I am a project manager/project engineer.
Q. How long have you held that position?
A. I have held this position since 1985.
Q. What are your normal duties for Black & Veatch?
A. The majority of my time I am responsible for engineering duties for numerous projects and clients for which my role is either the project manager, or project engineer, depending upon the nature and scope of our services.
Q. Please describe the responsibilities of a project manager.
A. The responsibilities of a project manager include the establishment of the project structure, both technical and financial. The project manager is accountable to the company for meeting project financial goals and technical requirements. The manager will also ensure that the client's project goals are also met.
Q. Please describe the responsibilities of a project engineer.
A. The project engineer is responsible for the production of the project and product. The project engineer will coordinate all technical activities and disciplines to achieve project goals.
Q. What is the purpose of your testimony?
A. The purpose of my testimony is to describe the basis of design for the FCWC Waterway Estates Wastewater Treatment

Plant located in N. Fort Myers, Lee County, specifically as it relates to the issue and relationship of annual average daily flow and peak flows.

Q. Were you the Black & Veatch project manager for the Waterway Estates WWTP expansion to provide advanced wastewater treatment?

A. Yes, I was.

Q. Did you prepare the preliminary design report and the FDEP permit application for the Waterway Estates WWTP expansion?

A. Yes, I did. For purposes of this testimony, I will be referring to Figures 2-5 of that report. Exhibit ___ (TAC-1).

Q. Are you the engineer of record for this facility?

A. Yes.

Q. What are the responsibilities and duties of the engineer record?

A. The engineer of record is a Florida Registered Professional Engineer that develops the design criteria and concepts for the project and is responsible for the preparation of the construction documents.

Q. Did Black & Veatch provide the final design and construction management services for the Waterway Estates WWTP ("WWTP") expansion?

A. Yes, it did.

Q. What is the capacity of the WWTP that was actually constructed by FCWC?

A. The plant capacity is 1.25 MGD based upon the average annual daily flow and the waste concentration associated with this flow.

Q. Why did you design a 1.25 mgd plant based upon the average annual flow and waste concentration associated with this flow?

A. Based on our analysis of historical data it was Black and Veatch's professional opinion that a 1.3 mgd plant was the appropriate necessary and economically sized plant to treat the flows, including peak flows and to properly treat the pollutant loading associated with those flows. The size of 1.25 was determined to be the most economical size of plant to provide reuse water to the receiving area and to meet FDER requirements for discharging effluent over 1.0 mgd to reuse.

Q. Please explain how plant capacity is determined.

A. Wastewater treatment plants are normally designed to remove solids and dissolved pollutants contained in the raw wastewater received by the plant. The plants are normally permitted by the regulatory agency to meet effluent requirements on an annual average basis. Of course, the flow received by a wastewater treatment plant is not constant, but varies during the day in

relationship to the activities of the customers connected to the plant. The flows also vary daily and seasonally throughout any given year in response to weather conditions, the influx of seasonal and tourist population, changes in the number of wastewater customers, etc. Therefore, these variations must be considered when designing the plant and are normally calculated from historical or industry literature data as a multiple of the annual average daily design flow.

The peak hour flow results when customers are most active during the daytime hours and any plant design must be able to hydraulically allow this flow to pass through the plant to prevent the treatment units from overflowing and at the same time, provide full treatment.

Each individual unit process must be analyzed in relationship to accepted design standards to determine its ability to meet effluent quality limits under varying flow conditions associated with the annual average daily design flow. Even though these unit processes may provide acceptable effluent quality in response to short-term variations in influent flow, the plant generally will not be able to meet these limits on a continuous basis.

The plant capacity is not only based upon the hydraulic load received by the facility, it is also based

upon the load or quantity of pollutants carried by the flow which require treatment or removal in order to meet the effluent limitations. The pollutant load is normally determined based upon the average annual daily design flow and the associated design pollutant concentrations. Therefore, the plant capacity determination must also take into account the ability of the unit processes to remove the influent pollutant load down to levels that meet the effluent limitations.

The final determination of plant capacity is based upon the ability to respond to variations in raw wastewater flow and pollutant load, and whichever of these variables is the most limiting upon plant capacity is usually the final determining factor.

Q. Did you determine the 1.25 mgd capacity of the Waterway Estates WWTP using the considerations you just described?

A. Yes.

Q. What was the design process used by Black & Veatch to form the basis of design for the Waterway Estates Wastewater Treatment Plant?

A. The design process created an analytical model using the actual influent to this plant. Based on this influent, a biological model of the treatment process was made, and this model was compared to the existing plant facilities; tanks, mixers, and blowers to determine an economical

facility expansion that would provide proper treatment.

Q. What were the parameters input into the analytical model to determine the plant treatment capacity?

A. The plant biological process model and resulting plant expansion was based not only on an increase in plant hydraulic flow in million gallons per day (mgd), but also on the constituents in the incoming waste stream. The plant is required by its Florida Department of Environmental Protection (FDEP) discharge permit to remove specific constituents from the waste stream. These constituents include Biochemical Oxygen Demand (BOD), Total Suspended Solids (TSS), Total Nitrogen (TN), and Total Phosphorus (TP). It is only by designing around removal of these constituents that an economical plant expansion can be achieved. As stated in the Manual of Practice No. 8, Wastewater Treatment Plant Design, 1977, prepared by the national Water Pollution Control Federation (MOP/8):

"The selection of a process train or alternative process trains should be made on the ability of the individual unit processes to remove specific waste constituents. If the makeup of all wastes were identical, the selection of a process package would be relatively simple. However, variations in the constituents and the relative portions of waste

constituents in each phase complicate process selection unless the waste characterization is known. Knowledge of the wastewater condition and constituents is important so that the most applicable process train can be assembled."

The design of the WWTP was consistent with this standard of practice.

The constituents of interest by FDEP are listed in MOP/8 within Table 1-II and 1-III of the chapter entitled "Wastewater Parameters of Significance to the Design Engineer" Exhibit _____ (TAC-2). MOP-8 is a standard publication relied upon in designing wastewater treatment plants.

Q. How were the concentrations of incoming waste stream constituents determined?

A. Historical wastewater concentrations serve as the basis of design for sizing or setting the capacity of the expanded wastewater treatment facility. Process loading design criteria that were used in evaluating the unit operations and processes at the WWTP are as follows:

Average Design Loading - Mean concentration based on historical data. This load is used to estimate sludge production and turndown capability for blowers and RAS pumps.

Maximum Design Loading - Estimated as the mean plus two times the standard deviation of the data. This value

represents the 95th percentile of the constituents' concentration data range for the plant and is approximately equal to the maximum monthly value. This loading is used in the modeling and sizing of the biological treatment process and sludge treatment processes.

Peak Design Loading - Computed as the maximum design loading times a peaking factor of 1.5 for carbonaceous load and 1.3 for nitrogenous load. This loading represents the peak day load to the biological system. This load is used to calculate the peak standard oxygen transfer rate (SOTR) required for the biological system. This rate is utilized in sizing blowers for the aeration system.

This approach is consistent with MOP/8 in Chapter I under the section "Flows for Design." This section describes the design average flow rate as "the average flow during same maximum significant period such as 4, 8, 12 or 16 hours." The average monthly influent concentrations for the WWTP from January 1986 to March 1992 were reviewed and used to create the preliminary engineering design report Figures 2 and 5. Exhibit ___ (TAC-1). As identified in the preliminary engineering design report, the statistical analysis of the monthly average influent concentrations yielded the following for

the mean and mean plus two standard deviations (2S):

	Mean	Mean +2S
Biochemical Oxygen Demand (BOD_5), Mg/l	200	312
Total Suspended Solids (TSS), mg/l	242	379
Total Kjeldah Nitrogen (TKN), mg/l	33.3	53.2
Total Phosphorus (as PO_4), mg/l	7.8	12.4

The mean + 2S, or maximum design concentrations was used throughout the design. Average monthly BOD_5, TSS, TKN, and PO, are illustrated in Figures 2 to 5. Exhibit _____ (TAC-1). The average and maximum design concentrations are indicated on the figures for reference. The annual average BOD_5 concentration remained relatively constant during the 1986 to 1992 timeframe. The average influent TSS concentration appeared to increase with time. With the distinct exception of high values from October 1988 to February 1989, the average influent TKN concentration was very consistent during the timeframe studied. The influent phosphorus concentration appeared to decrease since 1986, except for the second half of 1989.

Q. Is the process described above consistent with standard design practice for wastewater treatment plants?

A. Yes.

Q. What are the target constituents required for removal at

the Waterways Estates Wastewater Treatment Plant?

A. Final effluent from the Waterway Estates WWTP is discharged into the Caloosahatchee River near the site, pursuant to FDEP Permit No. FL0030325. The FDEP has established the following maximum concentrations in milligrams per liter (mg/l) for this surface water discharge:

	Monthly Average Concentration
5-Day Biochemical Oxygen Demand (BOD_5)	20 mg/l (monthly average)
Total Suspended Solids (TSS)	20 mg/l (monthly average)
Total Nitrogen (TN)	3 mg/l (monthly average)
Total Phosphorus (TP)	0.5 mg/l (daily maximum)

The design of the plant expansion was based on achieving these permit limits as a minimum. The use of the denitrification filters to meet the total nitrogen limit resulted in an effluent TSS which was considerably lower than 20 mg/l. Likewise, the biological system design was controlled by the nitrification requirements, not the carbon removal, and effluent BOD_5 levels were well below the required 20 mg/l BOD_5 limit as a result.

Q. What analytical model was used to predict the then existing and potential expanded plant's biological treatment capacity and how does it work?

A. The biological system was modeled with the Black & Veatch

Completely Mixed Activated Sludge (CMAS) program. The program is set up for modeling the anoxic\oxic activated sludge process. The oxic portion of the model is based on first order kinetics for removal of organics as developed by Dr. Ross McKinney. Influent wastewater characteristics input into the model include: BOD_5, TSS, VSS/TSS ratio, alkalinity, peaking factors for the carbonaceous and nitrogenous load, and temperature. Other major parameters input include: the desired dissolved oxygen concentration in the mixed liquor; alpha and beta factors dependent on the type of aeration system selected; and the desired sludge age or mixed liquor suspended solids (MLSS) concentration to be maintained.

The anoxic/oxic mode of operation for the activated sludge is used because biological nitrification/denitrification can be accomplished as well as carbon removal. In the oxic zone, heterotrophic bacteria utilize the organics for synthesizing new biomass and oxidizing a portion to meet energy requirements for growth and maintenance. Autotrophic bacteria in the oxic zone (the nitrifiers) are responsible for the oxidation of ammonia to nitrate nitrogen. The mixed liquor from the oxic zone containing a high nitrate concentration must be recycled back to the anoxic zone where the denitrifying bacteria reduce the

nitrate nitrogen to nitrogen gas. The optimum mixed liquor recycle ratio has been found to be four times the influent flow into the anoxic zone.

The maximum design concentrations of 312 mg/l BOD_5, 379 mg/l TSS, and 53.2 mg/l TKN were utilized in the biological process model. Other model inputs supplied by Bob Dick of FCWC based upon actual wastewater constituents data are average influent alkalinity of 200 mg/l and average influent volatile suspended solids of 178 mg/l used in establishing the VSS/TSS ratio. A not to exceed maximum total nitrogen (TN) concentration of 14 mg/l was assumed for the treatment unit effluent which corresponds to the average design influent TN (14 mg/l) to the effluent filters.

Each biological treatment unit (BTU) was modeled separately to account for the differences in treatment capacity and aeration systems. The same mixed liquor suspended solids (MLSS) was input for BTU #1 and BTU #2 during successive model runs at a given temperature. The first model run was made using the maximum design concentrations. The addition of alum to the secondary clarifiers for phosphorus removal results in the accumulation of inert solids in the biological process via the return activated sludge (RAS). This reduces the volume available for active biomass thereby reducing the

biological capacity of the process. The results of this first run were used to recalculate the influent TSS of 475 mg/l and VSS/TSS ratio of 0.57 for use in the second model run.

Q. What were the results of the model?

A. The results of the modeling indicated that no additional tankage was required for the biological process at the Phase I average design flow of 1.25 mgd and at maximum design concentrations. The addition of a MLSS recycle was necessary to achieve an effluent TN concentration of less than 14 mg/l. The MLSS recycle supplies nitrates from the aeration zone to the denitrifiers in the anoxic zone. The addition of this recycle results in maximum TN concentrations of approximately 11.6 mg/l and average concentrations of 7.2 mg/l as loadings to the effluent filters.

The secondary clarifier effluent quality predicted by the modeling is approximately 2 mg/l BOD_5, 5 mg/l TSS, 12 mg/l TN, and, <0.5 mg/l TP. The solids loading to each clarifier is 10 ppd/sq.ft. At the maximum design MLSS of 3,300 mg/l. The surface overflow rates of 368 gpd/sq.ft @ average flow and 736 gpd/sq.ft @ peak hour flow are low. Modeling was also performed with the larger BTU completely out of service as required by DEP redundancy rules. This illustrated acceptable treatment

at 100% ADF, with the flow limiting factor being clarifier solids loading of 24 ppd/sq.ft at 3,500 MLSS. The results of modeling the Phase II design flow of 1.5 mgd at maximum design concentrations also indicate that no additional tankage is required.

Q. Based upon your analysis, including the modeling that you have described, what is your professional opinion as to the required size and facilities required to adequately treat the polluted loading at the Waterway Estates Plant?

A. It was my professional opinion and recommendation that a 1.3 mgd plant should be built at Waterway Estates with component necessary to treat the associated pollutant flow. The size of 1.25 was the most economical size to address the growth needs for the Waterway Estates and the FDER requirements to only discharge flows above 1.0 mgd to reuse.

Q. What is the meaning of hydraulic flow rate in the determination of treatment capacity?

A. The treatment plant facilities, pipes, pumps, tanks must be able to pass a hydraulic flow rate without overflowing at any point or facility. The flow rate used in the design is not the annual average flow of 1.25 mgd, but a daily peak flow rate that is twice the annual average rate. If the plant was designed for only the annual average flow rate, the plant would overflow during

periods when the flow was above the average. And by definition, these higher rates will occur.

Q. Does this complete your testimony?

A. Yes.

MR. GATLIN: Mr. Cummings is available for questions.

CHAIRMAN JOHNSON: Public Counsel.

CROSS EXAMINATION

BY MR. McLEAN:

Q Good afternoon, Mr. Cummings, sir.

A Hello.

Q You went to engineering school in Kansas, correct?

A No. In Indiana.

Q In Indiana. Okay. I'm sorry. You mentioned Kansas in your testimony? What. Did I miss?

A My first state or professional engineer's registration is in the state of Kansas.

Q Okay, I'm sorry. I remember now. You went to Purdue?

A Yes.

Q Did you have any courses in used and useful at Purdue?

A No, not specifically used and useful.

Q All right, sir. And you did study engineering at Purdue, correct?

A Yes.

Q Then you took the professional engineer's

exam in the state of Kansas?

A Yes.

Q Did your exam or your preparation for it include any considerations of used and useful?

A No. Only that of engineering economics.

Q I see. And you simply register in Florida, correct? You don't have to take a test to register in Florida?

A That's correct.

Q And, obviously, that registration process didn't address itself to issues of used and useful, did it?

A Yes, that's correct.

Q You don't have to show any competence in areas to do with used and useful to be able to practice professional engineering in the state of Florida?

A No.

Q I want to turn to your testimony, Mr. Cummings, Page 16 Line 21. You are discussing hydraulic capacity at this point, I believe, when you say "The flow rate used in the design is not the annual average flow of 1.25 million gallons a day, but a daily peak flow rate that is twice the annual average rate."

Now, I interpret from what you say there that this plant, which is the subject of this proceeding, has the capacity, at least on a one-day basis, to treat 2.5 million gallons per day; is that correct?

A It has the capability of passing 2.5 million gallons per day hydraulically speaking.

Q So I said "treat" when I should have said hydraulic capacity to accomodate, if not treat that load, correct?

A Yes.

Q Okay. But its design basis is 1.25 million gallons per day; is that correct?

A That's a nominal rating.

Q Yes, sir. Now, I want to ask you something about that nominal rating. When the box, the infamous box which is checked, when that box is checked, it says "average annual daily flow for this plant," that is a certification by the utility and by its engineer that the plant has the capacity of 1.25 million gallons per day average annual daily flow; is that correct?

A I don't know if I can make that determination that it is a certification of that. That box, along with the subsequent pages in the

permit, describe the treatment capacity of the plant.

Q Now, we know, of course, that the capacity will remain the same. That plant will not change as one determines what box to check. That's correct, isn't it?

A Correct.

Q Obviously correct. But my question is can one describe the same plant in terms of average annual daily flow and describe that same plant in terms of average daily flow max month and describe the same plant in terms of average daily flow maximum three-month, is it appropriate to describe the plant in each of those terms -- turn our attention away from numbers just for the moment.

A No, not singularly.

Q Would you explain what you mean? I don't quite understand your answer.

A Every plant is going to have a different peaking factor, if you will, between average and peak or average and max month, so that you could not just tell the DEP that it has a peak factor of a certain amount and fully describe the plant.

Q Maybe I didn't ask the question correctly.

Hold the plant constant. The plant does not change. It has a design basis of -- this plant has a

design basis of 1.25 million gallons per day average annual daily flow. Could I describe that same plant in terms of average daily flow maximum month?

A Yes. Given other information, you could.

Q Okay. And with that other information would it be true -- let me ask you first whether it would necessarily be true that the 1.25 number would change and would be a higher number?

A No. The number would not change. The plant is the plant, as you had said before.

Q The capacity of the plant would not change. But when I describe it in terms of some variant of peak, wouldn't the number necessarily change?

A Yes. The number would no longer be the annual average. You are changing the description of the plant then.

Q Yes, sir.

A Is that what you mean?

Q And the extent to which I shorten the time peak considered by the variant of peak, to the extent I shorten that time, the plant actually has the capacity to treat higher and higher numbers until we get down to the maximum minute or something, or the maximum hour or something, correct?

A Yes.

Q I could -- and I doubt the DEP would want me to do this, but I could describe that plant in terms of its capacity to treat a hydraulic flow expressed in maximum hour?

A Yes.

Q And if I wanted to know the extent to which on that hour that plant was used and useful for that purpose, wouldn't I have to put that maximum hour on the denominator and the maximum hour that it ever faces in the numerator?

A I don't -- I'm not sure I understand. You're getting into used and useful.

Q And you don't express an opinion on used and useful, do you, sir?

A Not a professional opinion.

Q Okay.

A We established I wasn't educated or registered in that.

Q Exactly. And you're not suggesting to the Commission which is the correct number to put in the numerator or the denominator or any other one. You're simply here to tell us about the design of wastewater treatment plants, correct?

A Yes. I'm here to tell you what is necessary in the treatment plant.

Q Okay. In this -- following with what you say at Page 16, Line 21, could I accurately describe the wastewater treatment plant -- the Waterway wastewater treatment plant as a plant which has the capacity to treat 2.5 million gallons per day on a daily -- a daily peak flow rate.

Let me ask the question again. Can I describe the Waterway treatment plant as a plant which has the capacity to accept, in a hydraulic sense, a maximum flow of 2.5 million gallons per day on a one-day basis?

A Yes.

Q And I believe you say -- that you're going to say if the plant was designed for only the annual average flow rate, the plant was overflow during periods when the flow was above the average. But this plant does, in fact, treat flows greater than 1.25 million gallons per day, doesn't it? Or do you know?

A Are you speaking from a design point of view or an actual point of view?

Q Actual, sir.

A I don't know what the current flows are going into the plant.

Q It's true, isn't it, that no reputable

engineer would design a plant and represent to the DEP it has 1.25 million gallons per day average annual daily flow capacity of that unless it also had the capacity to treat, at least in your recommendation, 2.5 million gallons per day. I said "treat" again. I should have said "flow."

A Yes. Yes. That's part of the permit application.

Q Page 10, Line 7 of your testimony you invite the Commission's attention to the bilogical loading of the plant, correct; and that's a separate issue for hydraulic loading, correct?

A Yes.

Q Now, in a hydraulic loading -- returning to hydraulic loading for a moment, the plant is permitted at 1.25, but will, in fact, at least in hydraulic sense, accommodate 2.5 million gallons a day, correct?

A Yes.

Q Now, I take it om Line 7 on Page 10 -- first of all, I think of that -- and correct me if I'm wrong -- I think of that -- that 100% over the permitted design or the permitted capacity of the plant is something of a safety factor in a hydraulic sense. It's permitted for 1.25. We'll accept 2.5. That indicates to me it has a 100% safety factor of

sorts, if you want to just put it in lay terms. Could you accept that?

A No. The plant will actually see flows -- can see flows up to that. So it's not really safety, it's required, as opposed to something built in.

Q Okay. I can accept that. It has more capacity on a shorter time basis than the permitted capacity because it occasionally has to face those kind of flows. But you're not telling the Commission -- I think I heard you say earlier, you're not telling the Commission that this plant actually faces 2.5 million gallons a day flows, are you?

A It is designed to pass that hydraulically based on flow projections.

Q I understand that, sir. But does it, in fact, face those flows? Do you know whether --

A Today?

Q Yes, sir.

A I don't know.

Q Okay. If I were interested in the extent to which this plant were used and useful -- and let me know if I drop off from your expertise -- I could look at the highest peak the plant has to face on a per-day basis and compare it with that 2.5, and I'd have my answer, at least for purposes of its capacity to deal

with the hydraulic aspects, couldn't I?

A Yes.

Q As a matter of fact, I think we have been through that.

Now, back to Page 10, Line 7, 8 and 9, that which I inadvisedly referred to as a safety factor, you advised, I think, as a design factor, because, in fact, the plant has to deal with the excess, or has to deal with peaks and hydraulic capacity. And I want to know about these two numbers here you use, 1.5, and 1.3. Is that a reasonable analog for the same phenomena that you're dealing with when you design a plant to treat twice its permitted capacity in terms of hydraulics? Is that the same phenomena we're dealing with?

A Yes. It's a peaking factor based on historic loadings, bilogical loadings at the plant.

Q Okay. And you can't tell the Commission whether those peaks have been achieved or have been reached or anything like that because you're not familiar with the daily -- the daily loads the plant has to deal with?

A These factors were based on flows from several years; around 1990.

Q Yes, sir. So you can't say to what extent

this capacity for 1.5 of whatever that is and 1.3 of whatever that is, you can't tell the Commission to what extent those are used and useful, if you'll accept that term?

A Not in today's loadings, no, but based on previous --

Q If you discovered that -- let's look at the first one, carbonaceous load. If it were true that it today faced a 1.5 for carbonaceous -- I'm sorry, a 1.0 for carbonaceous load, would it be reasonable to expect that it were two-thirds utilized?

A Mathematically speaking --

Q Yes, sir.

A -- I suppose that's right.

Q And the same principle would hold true for the -- I can't pronounce that one -- nitrogenous. Okay. The same principle would hold true for that, to what extent it was utilized?

A Yes.

Q No reputable engineer would represent to the DEP that the plant had 1.25 million gallons a day capacity without including in that representation or in the design some capacity to treat the peaks in a hydraulic sense, and some capacity to treat the peaks in a bilogical sense?

A That's correct. And DEP looks for that information in the permit application.

Q Now, I want to turn your attention to rule -- it's the exhibit I passed out a few moments ago. I don't know if you have it, sir. It's Exhibit No. 34.

A I don't know that I have it here.

A Okay, I have it.

Q Now, are you familiar with the rule?

A Yes.

Q Can you give the Commission a brief summary of what that rule is intended or what that rule does accomplish?

A In my opinion it helps the DEP on a relatively simple basis determine whether or not a utility needs to plan on plant expansion.

Q A very simplistic basis, isn't it? It simply compares the last three months with the permitted capacity and says, you know, if you get around 50%, it's time to start planning, right?

A From a hydraulic point of view?

Q Yes, sir. From a hydraulic point of view, absolutely no reference to "bilogical" anywhere in the rule; is that correct?

A I don't know. I'd have to go back and read

the rule to verify that. It's been a while since I read the whole thing.

Q If indeed --

MR. McLEAN: Madam Chairman, I don't want to wait for the witness to read the rule, but if he can find someplace where "biological loading" is mentioned in the rule, I'd be more than happy to accept or receive, whatever the appropriate term is, a late-filed exhibit on the point, or we can wait on him to read the rule, whichever makes more sense. Sometimes it's kind of hard to read a rule when you're sitting on a witness stand, I should imagine. So perhaps if Mr. Gatlin could offer a late-filed exhibit on that point, I can just move on.

MR. GATLIN: I think if the witness doesn't know, now, I think that's probably the answer.

MR. McLEAN: I can take time to let him find out. He can read the rule.

MR. GATLIN: I don't know that this is the appropriate situation for a late-filed exhibit.

MR. McLEAN: I agree.

CHAIRMAN JOHNSON: What's the question? You want him to read a provision?

MR. McLEAN: Let's make sure we get the question on the record appropriately.

Q (By Mr. McLean) Mr. Cummings, does that rule include any reference to anything other than hydraulic loading of the plant? (Pause)

A In Paragraph 6, near -- might be the last sentence in Paragraph 6 it states, "The report shall update the flow related end loading information contained in the Preliminary Design Report submitted as part of the most recent permit application." That to me refers to biological --

Q Biological loading. Okay. And that's what has to be in the report?

A Yes.

Q Once submitted. But is there anything in the triggering mechanism that requires the utility to submit the report that has to do with biological loading?

MR. GATLIN: I object to the question. I don't see anything in here that says "triggering mechanism." Is there some particular rule that Mr. McLean is talking about?

CHAIRMAN JOHNSON: Mr. McLean?

MR. GATLIN: As a triggering --

CHAIRMAN JOHNSON: Mr. McLean.

MR. McLEAN: I was waiting to see if the witness was confused. He seems to be looking.

I'll rephrase the question.

Q (By Mr. McLean) Mr. Cummings, would you look to Paragraph 3 of the rule. And let me know when you have it.

A (Witness complies.) Okay.

Q Would you agree with me that that Paragraph 3 is the main paragraph that triggers the filing of a Capacity Analysis Report that tells the utility whether they must file one. ?(Pause)

A Paragraph 3 sets the level of percentage that requires submittal. It relates to Paragraph 2 which requires the permitted facility to compare flows and permitted capacities of the treatment.

Q And it does so in terms of hydraulics, doesn't it?

A I read that to be permitted capacities, which would be a level of treatment also. It goes on to say "for residuals, reuse in disposal facilities." Residuals really don't relate to a hydraulic flow through the plant, biological solids.

Q So you believe that a Capacity Analysis Report can be triggered solely on the basis of biological loading without reference to hydraulics?

A I think that situation is definitely a possibility and something that DEP would require

action by the utility; if they were at 50% of their capacity, biologically speaking.

Q And your reference is to Paragraph 2 with respect to that observation you make about loading, correct?

A Yes. In reference to "permittee shall routinely compare flows being treated at the wastewater facilities with the permitted capacities of the treatment, residuals, reuse and disposal facilities."

Q Does that sense indicate to you that a given wastewater treatment facility can have more than one capacity?

A Yes, since "capacities" is plural.

Q Now, looking to Paragraph 3 by itself. Paragraph 3 doesn't have any reference to biological loading, does it? But for the fact that you believe Paragraph 2 is implicitly referenced in Paragraph 3, I'm asking you solely about Paragraph 3.

A Paragraph 3 as stated says -- and I won't read it all, "50% of the permitted capacity of the treatment plant or reuse and disposal systems, the permittee shall submit to the Department a Capacity Analysis Report. Again, getting back to the issues of reuse and disposal systems, which do not relate to the

hydraulic capacity of the plant.

Q You believe that even though the hydraulic capacity may be substantially less than 50%, if the biological loading is more than 50%, that triggers, if you'll accept the term, the filing of a Capacity Analysis Report, correct?

A I believe if the DEP knew that your treatment facility exceeded 50% capacity to treat biological loads, that they would require submittal.

Q Have you ever advised a client to file a Capacity Analysis Report on that basis?

A I've never had the occasion or opportunity to do that, no.

Q Because it's highly unlikely that the biological would be overloaded without hydraulic being overloaded as well?

A No, that's not true.

Q When you say you have never had the opportunity, what do you mean by that?

A I mean that it is not highly unlikely that biological load would increase faster than hydraulic load. It's very common in plants that deal with industrial -- that deal with industrial waste coming into the plant, especially if an industrial park expands in size, they discharge into the treatment

process highly biological and chemical waste streams in a low hydraulic condition.

Q That would be atypical for a residential wastewater treatment system, wouldn't it?

A Yes.

Q And atypical to Waterway Estates, too, perhaps as well?

A I can't make that statement right now.

Q Bear with me just a moment. I think that will take care of it.

I want to return to the statement you made Page 16, Line 24. You say if the plant was designed for only the annual average flow rate, the plant would overflow during periods when the flow was above the average. And I want to reword it a little bit to say -- and I'm going to ask you if that's what you really meant -- if the plant was designed for only the peak annual average flow rate, the plant would overflow during periods when the flow was above the average; is that what you were saying there?

A No, not at all.

Q What is it -- I don't understand what you're saying. You're saying on the one hand if it is designed for only the annual average daily flow, flow rate, which in this case is 1.25, that it would

overflow if it were confronted with a flow that was more than the average. But in your testimony you also say it can accommodate 2.5 million gallons a day, correct? And those appear to me to be mutually inconsistent, mutually exclusive. Can you clear up that confusion for me?

A Yes. This standpoint taken out of the context it's written, is presenting the example that if it was not designed with a peaking factor of 2, and was only designed as it says, designed for only the annual average flow, then a plant that would experience a higher level of flow over and above the average would potentially overflow.

Q So it's stated more or less as a hypothetical. We're not talking about Waterway Estates; is that correct?

A Yes.

Q Let me ask the question differently. Waterway Estates, in fact, is permitted, and the design basis for Waterway Estates is 1.25. But if it receives a flow of 1.26 million gallons a day, it doesn't overflow. The reason it doesn't is because it can accommodate a flow of 2.5 million gallons a day. Again, we're speaking solely about hydraulics at this point.

A Yes.

Q And the same phenomena is true with respect to the biological loading issues, correct?

A Yes.

Q Thank you, Mr. Cummings.

MR. McLEAN: I have nothing further.

CROSS EXAMINATION

BY MR. JAEGER:

Q Good afternoon.

A Hello.

Q Mr. Cummings, going straight to your testimony, starting on Page 4, Line 8, it appears that you prepared the DEP permit application; is that correct?

A Yes.

Q And filling out the DEP permit application, is that where the Utility asked for the wastewater treatment plant to be permitted based on max months average daily flow, three-month average daily flow or annual average daily flow?

A That is the part of the permit that asks you to check one of their four options.

Q And you requested -- and you checked or requested that the plant be permitted on the basis of annual average daily flow; is that correct?

A Yes.

Q And DEP approved this permit then?

A Yes.

Q I think Mr. McLean has gone over it. On Page 6, Line 10 go to their -- it says did you calculate what peak hour flow would be?

A We took it off of existing records.

Q And do you remember what that was?

A The peak hour coming into the plant?

Q Yes.

A Was -- I don't remember exactly. It was roughly three times what was considered to be the average daily flow.

Q And this plant is designed to handle the peak hour flow, right? The three times?

A Yes, the plant in total is. The plant has an equalization basin that shaves that peak down to two, which is what the rest of the plant can treat them, the most economical design.

Q Page 6, Line 2, you also talk about the flows varying daily and seasonally throughout the year. Did you calculate the daily peak flow? That was the 2.5, I think it was, on Page 16, Line 21.

A Yes.

Q You also said the plant had to be able to

take into account weather conditions, influx of seasonal and tourist population, the snowbirds -- I don't guess you said "snowbirds", that's our term here -- and these variations must be considered. And that they were normally calculated as a multiple of the annual average daily design flow; is that correct?

A That's what is standardly done in treatment plant design, yes. And those are the considerations given.

Q Though you considered this, you didn't calculate a seasonal peak flow, did you?

A We didn't calculate the effect of weather and seasonal population changes, no.

Q But at any given point in time this plant was designed to treat all projected peak flows, any peak flows that may be; is that correct?

A Yes.

Q Now, is there a difference -- was this an operating permit or a construction permit that you were -- that you filled out?

A Back then it was a construction permit. Now the DEP has since combined the permits into one. It was a Permit to Construct.

Q Okay. By the very definition of "average" you have as much flows above -- I mean, if it was

operating at its capacity of 1.25, on an average basis there would be as many flows above the 1.25 as there was below the 1.25?

A No. There may be some shorter duration that are higher. It's an arithmetic mean.

Q Well, if they averaged 1.2 million gallons per day for 11 months, and then they had like a maximum month of 1.4, would they be in violation of their permit?

A Not if their effluent limits set by the DEP did not get exceeded, and that's really what the permit is based on. The whole permit issue is set up to protect the waters of the state. So they look at discharge as far as permit violations more so than plant flow.

Q Okay. Would it be more realistic for the permit to be based upon peak flows rather than annual average daily flows? (Pause)

A No, not solely. Every plant has a different peaking factor.

Q So there's nothing wrong with permitting on annual average daily flows?

A It's a nominal value that the state uses to project a size of the plant.

Q Okay. You checked off annual average daily

flow. Do you know why you picked that as opposed to maximum month average daily flow?

A The belief there is that the maximum month box is there to help the DEP see the type of plant they are dealing with. As has been mentioned earlier, if it's a plant that is solely used only during a few months or a season of the year, it's going to have a different rating and the DEP is going to have to look at the design in a different way.

Q Okay.

A So by putting this on the first page it tells the DEP, basically, what type of plant they are looking at.

Q As opposed to, like, an RV park --

A Exactly.

Q -- or something that had really highly seasonal --

A Yes. Or there's a box for "Other," which could be some kind of industrial plant that operates two days a week.

Q Was this the first case you testified on used and useful calculations?

A Yes.

Q And so that is the extent of your familiarity of the calculation of used and useful?

MR. GATLIN: I don't believe he's testified on used and useful.

Q (By Mr. Jaeger) Well, are you familiar with the used and useful concept now?

A Yes.

Q And you've never testified on used and useful in any other case?

A No.

Q Now, as an engineer, I take it you took many math, chemistry and physics courses; is that correct?

A Yes, sir.

Q Are you familiar with the matching principle in fractions?

A Yes.

Q And is there a rule in chemistry and physics an equation must always be dimensionally consistent?

A Yes.

Q Could you, in your own words, tell me what "dimensionally consistent" means?

A In my own words it would mean that the units on either side of the equation are equivalent.

Q If like a numerator and denominator -- except for like acre, like you're measuring rain or something, but they have to be the same --

A Same units of measure or time or temperature

or whatever.

Q Would DEP have allowed you to permit the plant based on max month average daily flow if you checked that box?

A I don't know.

Q But in this case you thought it was more appropriate to check the annual average daily flow box; is that correct?

A Yes.

Q And I think you said in your deposition that unless it's like an RV or something with highly seasonal, it's almost always more appropriate to check the annual average daily flow box?

A For a municipal wastewater plant, yes.

Q Have you ever checked max month then?

A No.

Q Mr. Cummings, earlier today I think Mr. Acosta testified in his opinion the time frame, annual average daily flow and max month average daily flow did not matter in the used and useful equation; that all we were dividing was gallons per day. Do you agree with Mr. Acosta?

A Yes, I do. That equation is used throughout the Preliminary Engineering Design Report where we develop factors such as peaking factor, which, by its

definition, is peak hour million gallons per day divided by average million gallons per day, and it results in a percentage number.

Q I'd like to set up another equation and see if you agree with that calculation. And what I'm going to have is you have a water company serving so many customers, and it costs the utility $1 per 1,000 gallons to produce and distribute water. And the rates for this company are the $1.50 per 1,000 gallons. And your annual average daily flows are 1 million -- that's annual average daily flows -- and during the peak month you have average daily flows of 2 million gallons. Have you got that?

A I think so. Without a pencil.

Q Now, in this -- and you put average daily flows for the max month over annual average daily flows. You're wanting to -- strike that.

MR. GATLIN: Madam Chairman, I object to the question, the question being about a water plant.

MR. JAEGER: Okay. Wastewater plant.

MR. GATLIN: Okay.

Q **(By Mr. Jaeger)** Now, you have average daily flows from the max month of 2 million and you put that over annual average daily flows of 1 million. So in that one -- so you would have -- that would be

twice -- it would be two; is that correct?

A Yes.

Q Now, if you multiply the average daily flows from the max month by the revenue collected for those flows, $1.50 times the 2 million, you would get $3 million; is that correct?

A I don't know. State the question again.

Q I'm saying that the utility charges $1.50 for each thousand gallons treated. And you take the 2 million gallons that they treated in that month and they charge $1.50, they would have $3 million in revenues; is that correct?

A They charge $1.50 per 1,000 gallons, and they are treating -- or treating 2 million gallons.

Q 2,000 times $1.50 --

A I guess.

MR. GATLIN: Do you have a calculator with you?

MR. JAEGER: I have one.

MR. GATLIN: How about letting him have a calculator, see if that would help any. Pretty tough math problems. (Pause)

WITNESS CUMMINGS: Okay. Can you give me the question again, please.

Q **(By Mr. Jaeger)** Okay. The average daily

flows from the maximum month, can you calculate what the revenues would be?

MR. GATLIN: How about going back and start all over with the numbers, if you will.

WITNESS CUMMINGS: Yeah. That's what I need.

Q **(By Mr. Jaeger)** What I'm saying is, it costs this utility $1 per thousand gallons to treat wastewater.

A Okay.

Q But your rates are set at $1.50 per 1,000 gallons.

A Okay.

Q And you have -- annual average daily flows are 1 million gallons per day. But the peak month you had the average daily flows of 2 million gallons.

A Okay.

Q Now, in the peak month, how much in revenues do you get? (Pause)

A $3,000.

Q Okay.

A At $1.50 per 1,000 gallons, not per million gallons.

Q Right. Now, if you had annual average daily flow, you multiplied that by the cost of 1 million

times $1, your average cost would be how much?

A Would be $1,000.

Q Now, I think, according to Mr. Acosta, he's not worried about matching months or annual average. We're just dividing gallons per day by gallons per day or dollars divided by dollars.

Would you agree, then, that -- you said for the maximum month they would get $3,000 in revenues, would you agree that the costs would only be $1,000?

A No. The cost would be $2,000 per peak. If it cost you a dollar per gallon in cost and your peak month is 2 million gallons per day, then your cost is $2,000.

Q But on an annual average the cost is only $1,000 per month, isn't -- per day? I'm sorry.

A I suppose, if you just look at an annual average number.

Q So you do have to be aware of whether it's month or year; is that correct? Or max month or annual average day?

A For what? Be aware for what?

Q To you have meaningful figures of calculations of costs or revenues, in comparing the two.

A Your costs go up as your flow goes up. If

you've produced flow in a peak month, your costs are going to go up accordingly, if that's what you're --

Q If you divide the average revenue collected, $3,000 by the average expense to produce the water, 1,000, we should get the percent of profit or 300%. Is that correct?

A The math sounds correct, yes. In other words, if the utility wants to calculate used and useful using thise rules, it makes just as much sense to calculate their profit using these same rules, would you agree?

A I don't know.

MR. JAEGER: I have no further questions.

CHAIRMAN JOHNSON: Redirect?

MR. GATLIN: Yes, I do.

REDIRECT EXAMINATION

BY MR. GATLIN:

Q Mr. Cummings, you were asked about the statement on Page 16, "If the plant was designed for only the annual average flow --" this is Line 24 -- "the plant would overflow during the periods when the flow was above the average." What if the -- would that occur if the plant was built only to treat average flows? Or can you build a plant just to treat average flows?

A You can treat a plant to build -- you can build a plant to treat average flows.

Q And then what happens when you have maximum or peak flows?

A Then your plant would not have the capacity or capability to treat that flow.

Q If you just built a plant to treat the average flows, wouldn't it cost less than the plant that you built in this instance?

A Yes. If you had an average flow of 1.25, and you sized your piping, your pumps, your tanks everything, only to pass 1.25, then that would cost less than if you built your plant to handle a number greater than 1.25. Greater than the average.

Q So to build the plant that you designed, there had to be investment by the Company to treat the peak and maximum flows; is that correct?

A Yes, that is correct.

Q References have been made to the boxes to check on the permit application with DEP; annual average daily flow, max month flow -- I can't remember what they are all are. If you checked one of those other boxes other than annual average daily flow, what would be the capacity? Would that affect the capacity of the plant? Would the capacity of the plant be the

same no matter which box you checked?

A No.

Q The plant capacity would be the same. The plant is not designed based on a checked box. It's designed based on the requirements of the flow coming into the plant. The boxes are purely there to help the DEP understand and describe what is being presented to them in the application. The boxes are not set up by the design engineer. They are offered by the DEP and they are a box to be checked in filling out the application.

MR. GATLIN: Thank you. That's all I have. I move the exhibits.

CHAIRMAN JOHNSON: Show 35 admitted without objection.

(Exhibit 35 received in evidence.)

CHAIRMAN JOHNSON: Thank you, Mr. Cummings.

MR. GATLIN: May Mr. Cummings be excused?

CHAIRMAN JOHNSON: Yes.

(Witness Cummings excused.)

- - - - -

MR. GATLIN: Call Mr. Larry Coel.

MR. JAEGER: Could we take a five-minute break?

CHAIRMAN JOHNSON: Yes. We'll break for

five minutes.

(Brief recess taken.)

- - - - -

CHAIRMAN JOHNSON: We're ready to reconvene. Mr. Coel.

LARRY N. COEL

was called as a witness on behalf of Florida Cities Water Company and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GATLIN:

Q Have you been sworn?

A Yes, I have.

Q Would you state your name and address?

A Yes. My name is Larry N. Coel, C-O-E-L. And my business address is 4837 Swift Road in Sarasota, Florida.

Q By whom are you employed?

A Employed by Florida Cities Water Company.

Q In what capacity?

A Manager of Rates, Revenues and Budgets for the company.

Q Have you prepared for presentation in this proceeding testimony in the form of questions and answers consisting of four pages?

A Yes, I have.

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

A Yes.

Q Do you have any corrections or additions to make to the testimony?

A Only in the sense of updated rate case expense exhibits.

Q Sure. We'll get to that then.

MR. GATLIN: Madam Chairman, I request this be inserted into the record as though read.

CHAIRMAN JOHNSON: It will be inserted.

Q **(By Mr. Gatlin)** Mr. Coel, do you have an exhibit, a rate case expense exhibit?

A Yes, I do.

Q And is it not in three parts: One up in the upper right-hand corner is LC-1, and the second part is up in the corner is LC-1A, and the last one it's LC-1B; is that correct?

A That is correct.

MR. GATLIN: We would like to have that identified as the exhibit, Madam Chairman.

CHAIRMAN JOHNSON: It will be identified as Exhibit 36, Composite Exhibit 36. It was LC-1 -- how did you describe those? You said LC-1A and --

MR. GATLIN: Mr. Cummings' exhibits were 36, I believe. I thought. Maybe I've got them wrong.

CHAIRMAN JOHNSON: He was 35. So we're on 36. I was just looking for a short title.

MR. GATLIN: I believe you received those exhibits into the record. Mr. Cummings.

CHAIRMAN JOHNSON: Yes, they were admitted. You said 1A and --

MR. GATLIN: LC-1, LC-1A and LC-1B would all be one exhibit.

CHAIRMAN JOHNSON: They will be identified as just stated and it's Composite Exhibit 36.

(Exhibit 36 marked for identification.)

FLORIDA CITIES WATER COMPANY

NORTH FT. MYERS DIVISION

WASTEWATER OPERATIONS

REMAND TESTIMONY OF LARRY N. COEL

Docket No. 950387-SU

Q. Please state your name and business address.

A. Larry N. Coel, 4837 Swift Road, P.O. Box 21597, Suite 100, Sarasota, Florida 34231.

Q. Are you the same Larry N. Coel who previously filed testimony in this rate proceeding, Docket No. 950387-SU?

A. Yes.

Q. What is the purpose of this testimony?

A. The purpose of this testimony is to provide an update of rate case expenses for this continued proceeding under Docket No. 950387-SU.

Q. Has the PSC previously authorized rate case expenses in this proceeding?

A. Yes, in order no. PSC-96-1133-FOF-SU (9/10/96), pages 32-34, the PSC found the appropriate amount to be $90,863 as was supported by my Rebuttal Testimony, Exhibit 30 (LC-5). This amount covered the period from January 1995 through August 1996.

Q. Do you have any comments regarding rate case expenses for this continued rate proceeding?

A. Yes. I have generated a rate case expense schedule which summarizes the previously authorized amounts per PSC-96-1133-FOF-SU and then presents the second phase of this proceeding with a starting point of September 1996 (beginning point of appeal process), Exhibit _____(LC-1). This schedule shows the additional actual and estimated amounts to complete this rate proceeding. As of August 31, 1998, the total second phase actual/estimated amount of rate case expenses is $138,536. This amount plus the previously authorized $90,863 brings the total amount of rate case expenses for this entire proceeding to $229,399. Related documentation is attached to Exhibit ____(LC-1).

Q. Can you briefly describe the major cost components included in your rate case expense exhibit?

A. Yes, I can. As in most of FCWC's recent rate cases involving hearings, legal expenses have always been the largest component. The next three levels of rate case expenses have included: outside professional consulting services (engineering and/or rates); my services which have included rate case administration and preparing MFRs, testimony, and exhibits; and Avatar Utility Services Inc. (AUSI) which has provided for customer notice labeling and mailing, maintaining customer records, and maintaining duplicate billing

registers during periods of interim rates or rates subject to refund, as has been the situation in this extended proceeding since December 13, 1995.

Q. What is the purpose of this duplicate billing register?

A. First, it is the only record of each customer's bill calculated at the previously authorized, non-interim, rate structure. It is a record of active customers by class at that time, their meter size, and their consumption. Second, this register is utilized to tabulate, by class, revenues generated using the prior rates. These amounts are currently being used on FCWC's North Ft. Myers monthly reports to the PSC pursuant to order number PSC-96-0038-FOF-SU (1/10/96), since January 1996. These reports are required to show the amount of revenue billed each month and inception-to-date using interim rates, prior rates, and the difference.

Q. Has the PSC previously allowed FCWC to recover the duplicate register costs as a rate case expense?

A. Yes. Throughout the 1990's this expense has been accepted as a legitimate rate case expense when interim rates have been implemented. Specifically, in this current Docket No. 950387-SU, the PSC issued order no. PSC-96-1133-FOF-SU (9/10/96), which

identified AUSI rate case expenses of $18,358 on page 32. $6,144 of these costs ($1,024 x 6 months) were related to maintaining a duplicate billing register for six months. Unfortunately, this rate case will incur these costs for three years, while in other rate proceedings these costs were incurred for only a few months. From September 1996 through August 1998 these costs have accumulated to $20,521. From September 1998 through April 1999 an estimated additional $9,700 will be incurred for duplicate billing registers and customer notice mailings.

Q. Do you have any additional comments regarding rate case expenses for this rate proceeding?

A. Yes. FCWC will probably be filing an updated rate case expense exhibit prior to the hearing in order to provide more current actual rate case expenses.

Q. Does that conclude your testimony?

A. Yes, it does.

MR. GATLIN: The witness is available for questions.

CROSS EXAMINATION

BY MR. McLEAN:

Q Good afternoon, Mr. Coel. Just one question or perhaps one line.

Schedule F-6 from the MFRs bears your name in the upper right-hand corner.

A Yes.

Q What's the significance of that, sir?

A When I filed the MFRs, minimum filing requirements, basically my name is on every schedule in that booklet. I was the sponsor of those MFRs, I believe in the initial part of this case. And also certain schedules, and I believe that's one of them, were, say, formally testified by -- like F-6 may have been testified to by an engineer in the original case.

Q And Schedule F-6 is the used and useful -- by the name on the document itself it says "Used and Useful Calculation"; would you accept that?

A That's correct.

MR. McLEAN: Thank you, Mr. Coel.

MR. McLEAN: I have nothing further.

CROSS EXAMINATION

BY MR. JAEGER:

Q Mr. Coel, in your rate case expense exhibit you've included charges for Avatar Utilities Services or AUSI. Is AUSI a related party to Florida Cities?

A Yes, they are.

Q How is it related?

A They are not a utility, they are not regulated, but they provide billing, MIS services, computer services for ourselves, for Poinciana Utilities and also for nonaffiliated companies.

Q I'm sorry, how are they affiliated?

A I believe ultimately they are owned by the parent company, Avatar. My MFRs actually had an organizational chart in there, I believe, which might show the hierarchy.

Q AUSI charges to maintain a duplicate billing register, they total $42,654. Did that increase in that last filing you gave us?

A Let's see. Are we referring to the LC-1A and LC-1Bs that Ken is talking about?

Q Yes.

A And the latest one you have was just LC-1, I believe, or do you -- I'm not sure which -- you said

48,000, right?

Q Yes. Well, we had $42,654. I'm thinking that went up.

A On my LC-1B, which we've just submitted, I do have a update for Avatar Utility Services actual and some estimates for the rest of this proceeding. And that number now is $48,654.

Q Okay. And what are these charges for again?

A Primarily they are the duplicate billing register just under a thousand a month. In addition, to that there are some charges for customer mailings. The mailing of the notice, I believe, for this hearing. When once we have final rates, we'd have to do a Final Rates Notice. They basically have the customer information whereby they end up doing the mailings to those notices.

Q AUSI does the monthly billing for Florida Cities?

A Yes, they do.

Q Could you explain just what AUSI does, starting with the meter reading and ending with the mailing of the bills? Explain the monthly billing process and the steps involved.

A I'm not really an expert, AUSI expert in terms of how they do their monthly billings. I can

only possibly give you some information how it is done. Meters are read by cycles. That information is transported to AUSI via possibly a computer system of some sort, and billings do go out monthly from AUSI.

Q Okay. They have to keep a record of the gallonages used, the customers, and then they do a billing for you; is that correct?

A For that month, right. That's correct.

Q How what -- they are charging Florida Cities for a separate billing register. Can you explain what additional steps are needed to maintain the separate billing register?

A Based on a prior order that was issued in this proceeding, my understanding is we were instructed to maintain a detailed record of the accounts until rates are deemed final, I guess. And to do that you have to maintain a set of bills at one rate, and that would be the duplicate billing register. Those bills are kept at the rates prior to the rates we've implemented as the PAA rates. And the PAA rates, it's my understanding, is they are subject to refund; and we implement those, I guess, at this point a couple of years ago.

Q I'm trying to figure out -- it's just the difference in rates from what --

A Difference in rates times the appropriate number of customers and consumption.

Q But all of the other information is the exact same information it does for the billing; is that correct?

A Not necessarily. For instance, the normal billings customers, you know, they get their meters read, bills go out. But if a customer leaves a system that information is no longer on the system.

In this instance, this duplicate billing register, because the original rates were subject to refund, the Company had to maintain a set of records for those customers' bills at the prior rate level. And those customers have stayed on -- on the computer system.

Q All you're doing is keeping the old customers, you have to keep them for a longer time; is that correct?

A The duplicate billing register you'd have to keep basically I would say indefinitely until this proceeding is finalized.

Q Okay. According to your latest rate case expense filing, you're requesting to recover a total of what, $244,979?

A That's correct.

Q In the PAA rates, wasn't the Utility given $51,600 in the PAA rates for rate case expense; is that correct?

A I don't recollect that number. My exhibit shows toward the here, previously authorized per order PSC-96-1133 an amount of 90,863.

Q Okay. That was authorizing that final order that was appealed and reversed?

A Right.

Q Okay.

Q Do you know why AUSI charges Florida Cities to maintain a separate billing register?

A They charge for all customer records. If that customer record is maintained, there's a charge for doing that. That is the service they provide is maintaining the record since they are a data processing Company. They charge, I believe, a per record charge for the standard bills that go out. That's also the way they do customer bills that are not -- customers bills of other utilities that are not affiliated with Florida Cities, so there's definitely consistency there.

Q Couldn't AUSI do it all in one data base and just add one column, one for the rates, the prior rates, and one for the PAA rates?

A I'm not sure how their computer system actually works. It is a main frame operation, not a PC type thing.

Q To your knowledge -- were you finished? I'm sorry.

A Yes.

Q To your knowledge has anyone at Florida Cities ever asked AUSI why it was necessary to maintain that duplicate billing register?

A I think it wasn't a question of AUSI requesting -- my understanding is because the rates would be implemented were subject to refund a couple of years ago, and I believe it's in the PSC order, that we had to maintain customer records -- and I think the word is "detailed customer records" we have instructed AUSI to maintain the duplicate register until the end of this proceeding.

Q I'm sorry. I can't understand what they are doing extra. They are just keeping data that they've already recorded once?

A At a different --

Q Just keeping it over a longer period of time, are they not?

A They are keeping the name of the customer, the address, the consumption. But they are taking

that times -- multiplying it times a different rate for consumption, and they are using a different base facility charge creating that duplicate register which also shows the amount of revenue generated from that register. That duplicate register is one of the key pieces of information we use in filing our PSC-required monthly memo report, showing the amount of rates we've billed out through the PAA rates and the amount of revenue generated from the prior two rates.

Q Are you aware of any other utility besides Florida Cities that has passed along the cost of maintaining a separate billing register for refund purposes to its customers?

A Not any other utility, no.

Q Also it appears that AUSI has increased its costs for providing this duplicate billing services to Florida Cities twice since the appeal process began; is that correct?

A That's my understanding, yes.

Q Do you know what the reason for the increase was?

A Not specifically. Because I'm not -- I do not set that rate, only because it's been going on for a couple of years. One could assume that it's an

inflationary increase of some sort, but I formally do not know that.

Q But you're the sponsor of this rate case expense exhibit?

A Yes, I am.

Q I have a question of attorneys fees. In your revised rate case expense dated December 2nd, 1998, you included charges for three attorneys.

Did you ask why the law firm of -- Mr. Gatlin's law firm had to have three attorneys assigned to this case?

A Can you direct me to maybe a page or something?

Q Attachment A, your December filing, it shows Ken Gatlin, Kathryn Cowdery and Wayne Schiefelbein, all three attorneys in that firm, working on this case. Ms. Moniz will bring you --

A I may have found it, but I'm not 100% sure. (Pause)

I'm not specifically sure why all three attorneys would be there. I would guess that -- well, I didn't create this bill, and I really don't know --.

Looks like they are listed for separate functions, doing separate tasks, although they are part of the rate case. Mr. Ken Gatlin here is listed

as doing a task function. And then it looks like another day Catherine Cowdery, who also works at Mr. Gatlin's office, may have done some other work. I guess we would have to see a breakdown by person to see real specifically what task they did further beyond this. But this looks fairly detailed.

Q In doing work on this case, would you agree that all three attorneys would have to be somewhat familiar with the whole case to do this work?

A I'm not sure. It would depend -- it might depend on the task. I'm not sure.

Q Wouldn't there be a certain amount of duplication amongst attorneys, and in going back and forth between each other and just having -- each be familiar --

A I'm not sure that's true because you'd have to get into the specific tasks that each one of these attorneys performed. Maybe one attorney performed a general research. Maybe Wayne Schiefelbein performed some general research for Mr. Gatlin to use. Instead of Mr. Gatlin doing the research, maybe Wayne did it. I don't have the type of detail here.

Q Do you know if Ruden McClosky has paralegals that could do the research?

A I'm not very familiar with Ruden McClosky.

Q Okay. That's the law firm that Ken Gatlin --

A I understand that now. But their organization, you know, how they operate, I'm not too familiar with it.

Q Do you know how much a paralegal costs as opposed an attorney?

A I would guess less than an attorney. But I don't have it so --.

MR. JAEGER: I have no further questions.

CHAIRMAN JOHNSON: Commissioners? Redirect?

MR. GATLIN: I have no questions. I move the Exhibit 36.

CHAIRMAN JOHNSON: Show that admitted without objection.

(Exhibit 36 received in evidence.)

CHAIRMAN JOHNSON: Thank you, sir. You're excused.

MR. GATLIN: Madam Chairman, I've talked with Mr. McLean and Mr. Jaeger, and I think we're all in agreement that now would be a good time for me to call Mr. Young.

MR. GATLIN: Have you been sworn?

WITNESS YOUNG: Yes.

HARLEY W. YOUNG

was called as a witness on behalf of Florida Cities Water Company and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GATLIN:

Q Would you state your name and address?

A My name is Harley Young, 2295 Victoria Avenue.

Q In Fort Myers?

A In Fort Myers.

Q And by whom are you employed?

A The Florida Department of Environmental Protection.

Q And in what position are you employed?

A I'm supervisor of Domestic Wastewater Permitting and Compliance and Enforcement.

Q Have you prepared for presentation in this case testimony consisting of six pages in the form of questions and answers?

A Yes, sir.

Q If I were to ask you those same questions today, would your answers be the same as set forth in that prepared testimony?

A They would essentially be. There's three

minor changes.

Q All right. Let's take those.

A On Page 2, Line 8, the word "water quality standards" is used. It's used again on Line 15 and following Page 3, on Line 3. The word "water quality standards," I would feel more comfortable if it was replaced by "water quality based effluent limitations."

Q Okay. Water quality based?

A Effluent limitations.

Q Anything else?

A That's it.

MR. GATLIN: Madam Chairman, I request this testimony be inserted into the record as though read.

CHAIRMAN JOHNSON: It will be inserted.

FLORIDA CITIES WATER COMPANY

NORTH FORT MYERS DIVISION

REMAND TESTIMONY OF HARLEY W. YOUNG

Docket No. 950387-SU

Q. Would you please state your name and address.

A. My name is Harley W. Young; and my address, the office address, is 2295 Victoria Avenue, Suite 364, Fort Myers, Florida.

Q. And you are employed by the Florida Department of Environmental Protection (DEP)?

A. Yes.

Q. How long have you been so employed?

A. Nine years.

Q. What is your position with the DEP?

A. I am a section manager, supervising the permitting of domestic wastewater systems, collection systems, underground injection control and compliance and enforcement.

Q. Are you a professional engineer?

A. Yes. I have been a PE for ten years and have been practicing for 15 years.

Q. Would an application for a permit for a wastewater plant, such as Florida Cities at Waterway Estates treatment plant, be under your supervision?

A. Yes.

Q. Would the application be filed with your department and someone under your supervision make an examination of that application?

A. Yes.

Q. During the permitting process does the utility, in this instance Florida Cities Water Company, have to provide reasonable assurance that the peak flows to be received by the plant will be treated to meet the water quality ~~standards~~ base effluent limitations?

A. Yes. A utility has to provide reasonable assurance that all the flows that come into the plant will be treated to meet DEP standards.

Q. Does that assurance include peak or maximum flows?

A. Yes. Peak and maximum flows coming into a plant must be treated to meet DEP water quality ~~standards~~ base effluent limitations.

Q. Does the current review of the Florida Cites application and the engineering, design engineering report indicate that the plant is designed to treat both maximum and peak flows?

A. Yes. The design engineering report indicates that all the flows including the peaks will be treated adequately.

Q. Is Florida Cities required to treat all flows adequately at the Waterway plant?

A. The rule basically says that the plant must be designed to efficiently and reliably meet the limits; and one

infers that that means meet them at all times.

Q. Is it a violation if the Waterway plant exceeds the parameters of water quality ~~standards?~~ Ocean effluent limitations

A. Yes, it is.

Q. Should the design of the plant be such that there would not be exceedances?

A. Yes.

Q. What are the Ten State Standards?

A. The Ten State Standards is a set of standards for the design of wastewater treatment systems and transmission systems that's widely used in the United States.

Q. Does it have any particular application as to wastewater treatment plant design and capacity?

A. It is cited as a reference in the DEP rule and we rely on it.

Q. What is there in the ten state standards that is relevant to the design relative to capacity of a plant?

A. The Ten State Standards indicates that the plant must be designed to accommodate seasonal flows.

Q. What are seasonal flows?

A. Ordinarily we use as a kind of a basis for talking about flows to treatment plants the term "annual average flow." The annual average flow is the total volume of water that comes through the treatment plant in a 365-day period divided by 365 and expressed in gallons per day or

millions of gallons per day. The actual flow that comes into a treatment plant varies widely throughout the course of the year and how it varies depends on the locale of the treatment plant, how built out the region is, how many residents come and go throughout the course of the year. There may be periods of time when the flows are significantly higher. This flow variation is sometimes described as seasonal flows.

Q. Does the plant have to have the capability of treating flows; higher than the annual average daily flow.

A. Yes.

Q. Is there a DEP rule that requires the permittee to list the time frame for the flows on the permit application?

A. Yes. It says the permit shall specify the time frame associated with the permitted capacity, such as annual average daily flow, maximum monthly average daily flow, three-month average daily flow.

Q. Are you familiar with DEP wastewater application Form 2-A?

A. Yes. This is one of the forms that is filed with the application for a permit. The permittee is responsible for filling the form out. It is usually filled out by the engineer of record. The permittee indicates on that form the time frame for the flows.

Q. Should a plant have the capacity to treat flows of

greater volume than stated in the permit?

A. Yes. The assumption is that the permit application as it is submitted to us provides reasonable assurance that the plant can meet standards at all times.

Q. If a plant is permitted based on maximum month average daily flow, would it be permitted at a greater capacity than if it was permitted based on average annual daily flow?

A. No. The capacity is the capacity. The basis of design simply tells you that it's designed based on a peak seasonal flow.

Q. What do you mean by "peak seasonal flow"?

A. During the course of the year the actual flow is going to be less than during part of the year and more during part of the year; and if that number is significant, it is to be taken into account in the design of the plant. We'll have that listed as the basis for design. In other words, if the period, say, the three-month maximum daily flow or the month, one-month maximum daily flow is significantly greater than the annual average flow, we would expect that to be listed as the basis for design.

Q. Did the adoption of the DEP rule that requires the permittee to list the time frames for the flows change the requirement that a wastewater plant must have the ability to treat peak or maximum flows?

A. No. The plant is still required to meet the limits at all times; and regardless of what you write down on the permit as a basis of design or a permit capacity, it still has to meet the requirements.

Q. Prior to the adoption of the rule that requires the permittee to list the time frame for the flow did the permit show the time frame or the basis on the permit?

A. I don't believe so. Prior to that I'm not sure we even required that the engineer to submit what the basis of design was; but there was still the assumption that the plant would function at all times, seasonal and peak.

MR. GATLIN: Mr. Young is available for questions.

CHAIRMAN JOHNSON: Okay. Public Counsel.

CROSS EXAMINATION

BY MR. McLEAN:

Q Good afternoon, Mr. Young. I have a couple of questions for you, sir.

A Yes, sir.

Q For purposes of my next question I want you to assume that the disagreement upon which the Commission has to make a decision is one -- it involves the issue of used and useful to the extent to which the current plant is used and useful by customers. And in the process of that endeavor, we need to decide -- the Commission needs to decide whether it is best to express the load in terms of average annual daily flow or average daily flow maximum month. That will give us a fraction which will have later significance in the case. Do you appear to express an opinion on that issue?

A No, sir.

Q Is there a witness in this case with whom you disagree?

A I don't have any basis for making a judgment about used and useful.

Q Okay. So you don't know whether you disagree or agree with any particular witnesses?

A I don't have opinions about used and useful.

Q And there's no particular witness as such that you're rebutting; is that correct?

A No, sir.

Q Okay. Look to your testimony on Page 4, Page 4, Line 9, if you will. You are asked "Does the plant have to have the capability of treating flows; higher than annual average daily flow?" And you say "Yes." Correct?

A Yes, sir.

Q You have been in the room all day I think, correct?

A Yes.

Q Did you hear the considerable talk about Mr. Cummings' representation that the plant had the hydraulic capacity of roughly twice or exactly twice its permitted capacity?

A Yes, sir.

Q Okay. So is that what you're talking about there, not necessarily this -- with respect to this utility, but with respect to utilities in general, that's what you're talking about? The Utility has to have considerably more capacity to treat over shorter

periods of time then average annual daily flow, correct?

A Yes, sir.

Q Turn to Page 5, Line 5, if you will, please.

A Yes, sir.

Q You're asked "If a plant is permitted based on maximum month average daily flow, would it be permitted at a greater capacity than if it was permitted based on average annual daily flow?" You say "No. The capacity is the capacity."

Now, we all know that the capacity of the plant isn't going to change depending on what box you check on some application somewhere, right? The plant capacity remains constant no matter how you actually describe it?

A That's right.

Q Now, but it's possible, is it not, to describe the capacity of the plant in one of several ways; isn't that correct?

A I don't follow what you mean by that.

Q Okay. It's possible to describe the Waterways treatment plant in terms of its capacity to treat an annual average, perhaps a three-month maximum average, a monthly average, a daily average or an hourly average; you could describe it in any one of

those terms, couldn't you?

A I'm still at a loss as to what you're driving at.

Q Well, I'm not driving at anything other than the answer. Can you describe the wastewater treatment plant at Waterway Estates in terms of average annual daily flow; its capacity to treat an annual average daily flow?

A Well, in terms of describing the capacity of the treatment plant, capacity is what it is. It has the capacity to treat a flow based on the annual average. I'm sorry. Can you rephrase that for me?

Q I'll do my best.

A I'm at a loss.

Q The Utility in its application described this plant as having the capacity of 1.25 million gallons a day average annual daily flow, correct?

A That was listed as the basis of design, yes.

Q Now, without knowing more, do you believe if it faces a daily flow on one day of 2.5 million gallons a day, that it will, in fact, overflow? And I'm speaking only of the hydraulic aspects.

A No. I wouldn't presume that it would overflow.

Q Okay. But I could -- then if it won't, then

I could describe that plant as having the capacity of treating -- of accepting the flow of 2.5 million gallons on one day, couldn't I?

A When you say 2.5 million gallons on any particular day, the plant has the capacity to treat instantaneous flows, peak hourly flows, peak daily flows, peak monthly flows.

Q Exactly. If somebody says to me, "Harold, describe that plant over there." And I say, "I believe that plant can be described thusly. It will treat 5 million gallons over an instant or it will accept 5 million gallons over an instant." I could say that with some degree of confidence, couldn't I?

A I'm not sure what meaning that would have to me when you say "treat". If the plant hydraulically treats slow, it can still be in violation and we have to take action against it.

Q What did you mean when you said it had an instantaneous flow?

A The plant's piping and pumps must be designed to be able to handle instantaneous flows.

Q Okay. And I could describe that plant in terms of its capacity to handle instantaneous flows, couldn't I?

A I guess, yes.

Q And I could describe it in terms of its capacity to handle a peak hour flow, couldn't I?

A I'm not sure what you mean when you say that. I don't mean to be argumentative. I'm just not sure what you mean.

Q I understand. Perhaps you can tell me what you mean when you said it.

A When I say what?

Q When you said that that plant has a capacity to treat an instantaneous flow. It has to be able to accommodate an instantaneous flow. It has to accommodate the peak hour flow, a peak day flow and perhaps an average year flow, correct?

A Yes.

Q Couldn't I describe that plant in any one of those terms?

A I presume that you could. Again, I'm not sure what you mean by that.

Q Might not have any meaning to the DEP, but I could certainly describe it that way, couldn't I?

A Apparently.

Q I could drive by and say that plant has the capacity to treat, if it receives on a daily basis 2.5 million gallons a day?

A Again, I object to the word "treatment". I

don't go along with that.

Q You'd object to the word "treatment". Is that what you just said?

A Yes. You know, there's -- the plant might hydraulically be able to accommodate a given flow, but it may not be able to treat that flow.

Q Of course, but you don't know whether that's the case or not, do you?

A Presumably we have been given reasonable assurance that the plant can treat the flows.

Q If I describe that plant as having the capacity of 1.25 million gallons per day, does that necessarily neglect its concurrent capacity to treat varying degrees of peaks; for example, instantaneous, hour, day? It doesn't disregard any those things?

A No, certainly not.

Q Good. Let's look to your testimony on page -- I'm sorry, on Page 5 and Line 17. This gets back unfortunately to box checking, I think. You say, "In other words, if the period, say, the three-month maximum daily flow or the month, one-month maximum daily flow is significantly greater than the annual average flow, we would expect that to be listed as a basis for design."

A Yes.

Q Now, in this instance annual average daily flow is listed as the basis for design; is that correct?

A Yes.

Q And you say in this testimony just here that if the period, say, the three-month maximum daily throw or the month, one-month maximum daily flow is significantly greater, you'd expect them, if I can paraphrase you, to check that box?

A I would.

Q Good. Because they didn't do that, isn't it fairly reasonable to assume that those are much the same, each of those measuring criteria?

A One might make that assumption.

Q Is there any reason why I shouldn't make that assumption?

A There are -- as you already know, there's a great deal of complexity involved in the design of wastewater treatment plants. As Mr. Acosta said, it's not just a hydraulic load, it's the organic load at the same time. And I might even go further than that. It's the nature of the organic load, what kind of organic load. It's the not only the ratios of various peaks, it's the pattern of peaks that flow through the plant and their association with organics. It may

even be, in the case of this plant, be the ratio of nitrogen to carbonaceous BOD might be a critical factor.

There are safety factors built into estimates of flow. There are safety factors that are built into types and methods of design. And that's why the rule doesn't specifically lay out a given safety factor or a way of approaching the design of these plants, and leaves that entirely to the applicant's engineer to tell us what the design capacity is.

Q To which rule did you just refer.

A 62-600.

Q That's the Capacity Analysis Report?

A Enclosed in part of that rule.

Q Okay. Now, with respect to the used and useful calculation that the Commission makes, do you happen to know whether the Commission has ever considered anything other than hydraulic loading for that --

A I just don't know anything about used and useful. I've never been involved in that calculation and I know nothing about it.

Q I want to return to a question I just asked you, and I'd like to you to ask (sic) it in terms of

hydraulics, okay, and hydraulic loading.

My question to you was, and I think you answered it, that because the Utility submitted its application to you in terms of annual average daily flow, that it's reasonable to assume that none of these others would be significantly different, because were they different then they would have checked those boxes, correct?

A One would assume so, yes.

Q Right. Now, there are at least two different kinds of utilities which might apply that we've discussed so far. There's the utility with varying -- some varying degree of flow, seasonal variations that come to you, the DEP, and apply on the basis of average annual daily flow, correct? And then there are the ones you have significantly greater seasonal flows. And those utilities, one would think, would check the box which says "the average daily flow three-max month", perhaps, or maybe even the max month, correct?

A Yes.

Q Now, when you get an application for the average one where the box is checked in the design criteria -- by the way, let me back up here just quickly and ask you this: The design criteria, the

basis for design, which box is checked; is that correct?

A Yes.

Q Now, where the average annual daily flow box is checked, and thus the basis of design as average annual daily flow, the DEP knows that that does involve some seasonal variations, correct?

A The engineering report should address that, yes.

Q Implicit when you issue a permit, which is stated in average annual daily flows, you know as well as everyone else does, that occasionally the actual flow at the plant, instantaneous, monthly, weekly, whatever, will occasionally exceed the average annual daily flow?

A Of course.

Q Now, the degree to which it varies might prompt the design engineer to design a plant for average daily flow maximum month, correct?

A That's possible.

Q And I can conclude because of the design basis that this utility submits when it checks the box that this load does not vary to that extent; isn't that correct?

A One would assume that the hydraulic numbers

for monthly averages, or three-month averages are not significantly different than the annual average number. Now, again, there's more involved in that. Loading for instance. We're not second-guessing the design engineer.

Q Right. And we're dealing with hydraulics here, right?

A Well, you are. I have to deal with the whole plant.

Q Okay. Good. Do you know whether the Public Service Commission deals with things --

A I don't know what the Public Service Commission does.

Q So let's stick to hydraulic loading, may we please, sir, just for a moment. Would you agree to do that?

A Well, I can, to the extent that I can. But, I mean, reality is reality. It's a plant. It's going to operate or not operate.

Q I can accept that. When the DEP issues a permit which is stated -- which has on its face a notation of average annual daily flows -- do they do that first of all? Does DEP do that?

A I'm sorry. Say that again.

Q When a design engineer certifies to you that

a plant has a hydraulic capacity of 1.25 million gallons per day annual average daily flow, does the permit which you issue track that application in that the permit also says average annual daily flow in it, doesn't it?

A Yes. Yes.

Q Good. When you do that, Mr. Young, does the DEP ignore the peaks when they do that?

A The plant is required to meet its effluent limitations regardless of peaks or flows.

Q Exactly. So when you issue the permit, you know that it includes peaks and they better treat them or they'll get in trouble, correct?

A That's right.

Q Have you ever had a permit submitted that said "Now our average daily loading is X, but we get peaks at 3X, so would you please issue the permit for 3X?"

A Could you restate that, please?

Q Sure. Do you ever get an application from a utility which says "DEP, our average annual daily flows are X. But the fact is, they are always getting these peaks and we have to treat a peak from time to time, which is 3X. So rather than issue the permit in terms of X, would you please issue it in terms of 3X?"

A I'm not aware of any -- of that happening. They check off the box and that's put into the permit. It really has little consequence as far as the permit review itself goes.

Q And this utility checked the box, which is the box appropriate to the least seasonal flow variations of the boxes which they could have checked; isn't that right?

A Yes, sir.

Q Do you believe then in so doing they ignored the peaks that they'd have to treat?

A No.

MR. McLEAN: Thank you, Mr. Young. That's all I have.

CHAIRMAN JOHNSON: Staff.

CROSS EXAMINATION

BY MR. JAEGER:

Q Mr. Young, do you have a copy of Cummings' testimony with you?

A I don't believe I do.

MR. GATLIN: I'll get him one. (Hands document to witness.)

Q **(By Mr. Jaeger)** Could you turn to Page 10, Line 7? And just read the first two sentences starting with "peak design loading."

A "Peak Design Loading. Computed as the maximum design loading times a peaking factor of 1.5 for carbonaceous load and 1.3 for nitrogenous load." And the next sentence?

Q Yes.

A "This loading represents the peak day load to the biological system. This load --" I'm sorry.

Q That's all I need.

Okay. Is that saying they can treat a 1.5 peaking factor for one day for carbonaceous loading; is that what they say? Over the annual average?

A What he's saying here is that they are using a peaking factor of 1.5 for the maximum design loading. I don't know what the maximum design loading is. So they are just saying that their peaking factor is going to be one and a half times that for carbonaceous load.

Q Okay. Go to Page 16, Line 21.

A Yes, sir.

Q And that's where they can treat twice -- I'm sorry, hydraulic loading, they can handle twice the hydraulic loading; is that what it says to you? Of an annual average day?

A It says "The flow rate used in design is not the annual average flow of 1.2 but a daily peak flow

rate that is twice the annual average rate."

Q Okay. Mr. Young, you work for, what, the local DEP office?

A Yes, sir.

Q And do you know who establishes policy for DEP?

A It's established where it's established. It could be established in our office.

Q Does the headquarters in Tallahassee have anything to do with telling you how to do your job?

A They review the permits. They usually leave permitting decisions up to the office.

Q But the District Office actually approves and issue the wastewater treatment permits?

A Yes, sir.

Q And there's no longer separate permits for construction and operations, is there?

A That's right. It's one permit.

Q And when you process a permit application, you check to see if the plant is actually capable of hydraulically and biologically handling their flows; is that correct?

A Yes. We try and review, to the extent we can, how adequate the design is to meet what we feel is the actual loading.

Q If it was permitted, this plant's permitted based on 1.25 million gallons per day on annual average daily flow; is that correct?

A Yes.

Q If for 11 months it had flows of 1.2 million, and on the 12th month had a flow of 1.4 million, would they be in violation of the permit?

A They'd be in violation of the average.

Q Average?

A No. They would not -- what you just described would not produce the average you just said.

Q You look at the rolling 365 days to figure our if -- since they are based on annual --

COMMISSIONER GARCIA: Mr. Jaeger, you outran my ability to keep up with the changing question. Please ask the question again, because I don't think he answered it. Then he started getting into specifics. So ask the first question again about whether he would be in violation or not; that was a basic question.

MR. JAEGER: He changed and said they would not be in violation. And so I --

COMMISSIONER GARCIA: I just wanted to make sure that was his answer, because I didn't hear it.

WITNESS YOUNG: If I can clarify that.

MR. JAEGER: Go ahead.

COMMISSIONER GARCIA: Do me a favor: Ask the question again, just so I can understand your question.

Q **(By Mr. Jaeger)** If you had 11 months of 1.2 million gallons per day flow, and on the 12th month you had 1.4 million gallons per day average daily flow, would this plant be in violation of its permit?

A No, sir.

Q Now, if a plant has a history of high peak flows, like I say during snowbird season, or an RV plant that's only at certain times of the year -- anyhow, peak flows considerably greater than their annual average flows, would you ensure that the plant is capable of handling those peak flows?

A We would certainly review that information in our review of the permit application.

Q Well, if that same plant asked to be permitted based upon annual average daily flows and annual average flows were considerably lower than their historical peak flows, would you still issue the permit?

A We would ask the engineer to justify what he was asserting and provide reasonable assurance that

plant design could do what was intended.

Q So you'd have to see that annual average daily flow, or max month, which one would be the most appropriate?

A There may be a particular process the man has in mind or something that will enable him to make such a statement. We would ask for him to elucidate that.

Q Have you ever designed a wastewater treatment plant yourself?

A Yes, sir.

MR. JAEGER: No further questions.

CHAIRMAN JOHNSON: Commissioners? No questions.

MR. GATLIN: No questions.

CHAIRMAN JOHNSON: No redirect. No exhibits. You're excused, Mr. Young.

MR. GATLIN: May Mr. Young be excused?

CHAIRMAN JOHNSON: Yeah.

(Witness Young excused.)

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CHAIRMAN JOHNSON: I think we're prepared for OPC. Ms. Dismukes.

MR. McLEAN: Citizens call Kimberly Dismukes.

KIMBERLY H. DISMUKES

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

DIRECT EXAMINATION

BY MR. McLEAN:

Q State your name please, ma'am.

A Kimberly H. Dismukes.

Q What is your business address and by whom are you employed.

A My business address is 6455 Overton Street, Baton Rouge, Louisiana. I'm a self-mployed consultant.

Q Are you under contract with the Office of Public Counsel to provide testimony?

A Yes, I am.

Q Pursuant that that contract, did you file prefiled nine pages of direct testimony in the case?

A Yes.

Q Do you have any corrections, additions or deletions to that testimony?

A I have two corrections. The first correction is on Page 5, Line 14, --

A The word "give" should be "gave." And the second correction is on Page 8, Line 20, after the

figure of 94% insert a comma, and then add the words, "excluding margin reserve, period."

Q Yes, ma'am. Aside from those two corrections, were I to ask you the same questions which would be found in your testimony today, would your answers be the same?

A Yes, they would.

MR. McLEAN: Madam Chairman, may we have the testimony inserted into the record as though read?

CHAIRMAN JOHNSON: It will be inserted as though read.

Q **(By Mr. McLean)** Ms. Dismukes, I believe you attached a seven-page appendix to your testimony?

A Yes.

Q And that is -- the intent of those exhibits is to show your professional history and so forth; is that correct?

A That's correct.

MR. McLEAN: Mr. Chairman, may we have that appendix marked as an exhibit?

CHAIRMAN JOHNSON: It will be marked 37, with a short title, "Dismukes Qualifications."

(Exhibit 37 marked for identification.)

TESTIMONY

1027

OF

KIMBERLY H. DISMUKES

ON BEHALF OF THE CITIZENS OF FLORIDA

BEFORE THE

FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 950387-SU

Q. WHAT IS YOUR NAME AND ADDRESS?

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

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

A. I am a self-employed consultant in the field of public utility regulation. I have been retained by the Office of the Public Counsel (OPC), on behalf of the Citizens of the State of Florida, to address the annual average daily flow versus peak month flow issues remanded to the Florida Public Service Commission (Commission) by the First District Court of Appeals for the taking of additional evidence. Mr. Ted Biddy will address the engineering aspects of these issues and I will address the policy and regulatory aspects of these issues.

Q. DO YOU HAVE AN APPENDIX THAT DESCRIBES YOUR

QUALIFICATIONS IN REGULATION?

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

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. The purpose of my testimony is to explain why it was appropriate for the Florida Public Service Commission (the Commission) to use annual average daily flows in the numerator of the used and useful calculation in Florida Cities - North Fort Myers Division's (Florida Cities or the Company) rate case. In particular, I explain why it was appropriate for the Commission, in Order No. PSC 96-1133-FOF-SU, to use annual average daily flows to calculate the used and useful percentage to apply to Florida Cities' wastewater treatment plant. Likewise, I explain why it is appropriate for the Commission to continue to use the annual average daily flow in both the numerator and denominator to calculate the used and useful percentage for Florida Cities Waterway Estates Advanced Wastewater Treatment Plant.

Q. HAS THE COMMISSION EXPLAINED WHY IT USED THE ANNUAL AVERAGE DAILY FLOW IN THE NUMERATOR OF THE USED AND USEFUL CALCULATION FOR FLORIDA CITIES' WASTEWATER TREATMENT PLANT?

A. Yes. In Order No. PSC-98-0509-PCO-SU, dated April 14, 1998, the Commission explained its rationale in response to the First DCA's remand of its decision in Order

No. PSC-96-1133-FOF-SU.

In its opinion, the First DCA also reversed the portion of our Final Order, which calculated the used-and-useful percentage using annual average daily flows (AADF) in the numerator, citing the lack of competent substantial evidence. The use of AADF, as opposed to average daily flows for the maximum month (ADFMM), was precipitated because the DEP changed its method of permitting. Originally, in most cases and in this case in particular, the DEP had permitted the wastewater treatment plant without designating whether the capacity was based on AADF or ADFMM, or some other flow.

However, the DEP permit issued in 1994 for this wastewater plant stated the permitted capacity in terms of AADF. Based on this change, our staff recommended, and we approved, the use of AADF in the numerator. Other than the permit itself, there was no evidence justifying the use of AADF in the numerator of the used-and-useful fraction when the permit was issued based on AADF.

In essence, the Commission found that because the denominator of the used and

useful calculation was based upon the annual average daily flow capacity of the plant, it was appropriate and consistent to use the test year annual average flows in the numerator of the calculation. The Commission determined that because the Florida Department of Environmental Protection's (FDEP) permit of the wastewater treatment plant stated the capacity in terms of annual average daily flow, it was appropriate to use annual average daily flow in the numerator of the used and useful calculation. By using the same yard stick in the numerator and denominator, the Commission appropriately compared "apples to apples".

Q. WHY IS IT APPROPRIATE FOR THE COMMISSION TO USE THE ANNUAL AVERAGE DAILY FLOW IN BOTH THE NUMERATOR AND DENOMINATOR OF THE EQUATION?

A. It is appropriate because the permit for that plant reflects that the plant was permitted in terms of annual average daily flows. In the most basic terms, used and useful is a comparison of the capacity of a plant to the load (or flows) it must treat. In order to reach a meaningful result, the capacity and the load must be expressed in the same units of measurement. In other words, the numerator and denominator of the used and useful calculation must both be expressed in the same units of measurement.

The question is not whether it is proper to express flow in annual average daily flow or monthly peak flows: the issue is which of these two measuring methodologies is

correct where the plant capacity is clearly expressed in one or the other. It is clear that irrespective of which methodology is used, it should be used for both load (numerator) and capacity (denominator). Thus, where the FDEP has permitted a wastewater treatment plant in terms of annual average daily flow, the load should be expressed the same. Expressing the load in terms of monthly peak flows, as argued by Florida Cities, where the same plant is rated in annual average daily flow will not only yield a meaningless result, but it will also overstate the used and useful percentage. Florida Cities would have the Commission compare "apples with oranges" as opposed to correctly comparing "apples to apples."

Q. WHY DOES FLORIDA CITIES TAKE ISSUE WITH THE COMMISSION'S USE OF ANNUAL AVERAGE DAILY FLOW IN BOTH THE NUMERATOR AND DENOMINATOR OF THE USED AND USEFUL CALCULATION?

A. Florida Cities gave two primary reasons. First, Florida Cities appears to suggest that because the Commission used peak month flows in the numerator in past cases, it should likewise use that in the instant docket. The First DCA also suggested in its remand to the Commission that it had changed its policy without adequate explanation. Second, Florida Cities suggests that by using annual average daily flow in the numerator, the Commission somehow ignores the peak flows and fluctuations of the wastewater treatment plant.

Q. DO YOU AGREE WITH FLORIDA CITIES REASONS FOR DISAGREEING WITH THE COMMISSION'S "MATCHING" PRINCIPLE?

A. No, I do not. Concerning their first argument, I agree that the Commission has used peak month flows in the numerator in prior rate cases. Nevertheless, this is not a logical reason to continue to use peak month flows in the numerator when it is now known that the plant is permitted based upon an annual average daily flow, not a peak month flow. The Commission's change in the calculation of the treatment plant used and useful may be characterized by some as a change in policy.

In contrast to this view, I see it as a correction of past mistakes or as an acknowledgment of additional information and evidence that it available today, that was not available in the past. Concerning the latter, as acknowledged by Mr. Acosta, in approximately 1991, the FDEP changed the permit application form. This change required the permittee to designate the basis of design, as annual average daily flow, average daily flow in the max month, three-month average daily flow, or other. Prior to this change in the permit application form, there was no designation of the basis of the design capacity. Once this new information became available, it was possible for the Commission to correctly "match" the numerator and denominator of the used and useful calculation. Prior to this change in the permit application, the application did not indicate the basis of the design capacity. Therefore it was not possible to match the numerator and denominator of the used and useful calculation based upon the

plant's permitted capacity.

Q. WHAT ABOUT FLORIDA CITIES' SECOND CONCERN THAT USE OF THE ANNUAL AVERAGE DAILY FLOW IGNORES THE PEAK FLOW REQUIREMENTS OF THE TREATMENT PLANT?

A. Use of the annual average daily flow in the numerator and denominator of the used and useful calculation does not ignore the peak flow requirements of the treatment plant, as discussed in the testimony of Mr. Biddy. As acknowledged by Mr.Cummings, the hydraulic flow rate used in the design of the treatment facility was a daily peak flow rate that is twice the annual average rate. (Testimony, p. 16.) Consequently, even though the plant's permitted design capacity is based upon an annual average daily flow, it is still able to handle peak day flows that are twice the annual average daily flow. This concept is further described in the Preliminary Engineering Design Report prepared by Black & Veatch for Florida Cities. That report also addresses the relationship between the average and peak flows:

> A hydraulic analysis of the existing facilities was performed at the Phase I average and peak flow of 1.3 mgd and 2.6 at the Phase II average and peak flows of 1.5 mgd and 3.0 mgd, respectively. A peaking factor of two times the average daily flow was used for peak flow to account for diurnal fluctuations in excess of existing equalization basin capacity.

(Preliminary Engineering Design Report, p. 6.)

As both Mr. Cummings and the Preliminary Engineering Design Report show, use of the annual average daily flow and peak flow are considerations in the design and capacity handling ability of the treatment plant. Use of the annual average daily flow to calculate used and useful does not limit the plant's ability to meet peak demands, nor does it understate the used and usefulness of the plant.

Q. IF THE COMMISSION ADOPTED THE PROPOSAL OF FLORIDA CITIES TO USE THE PEAK MONTH FLOW IN THE NUMERATOR AND THE ANNUAL AVERAGE DAILY FLOW IN THE DENOMINATOR OF THE CALCULATION, WHAT IMPACT WOULD THIS HAVE?

A. If the Commission used this apples to oranges approach it would seriously overstate the used and useful percentage of the plant. This would directly increase the amount of plant included in rate base. This, in turn, would increase the revenues granted by the Commission in this rate proceeding. By overstating the amount of plant that is used and useful, the Commission would increase rates excessively to customers. The difference between correctly calculating used and useful, i.e., annual average daily flow to annual average daily flow, and incorrectly calculating used and useful, i.e., peak month flow to annual average daily flow, would increase the used and useful percentage from 75% to 94%, excluding margin reserve.

Q. IF THE COMMISSION FOUND THAT IT WAS MORE APPROPRIATE TO USE THE PEAK MONTH FLOW IN THE NUMERATOR OF THE USED AND USEFUL CALCULATION, WHAT SHOULD BE USED IN THE DENOMINATOR OF THE CALCULATION?

A. If the Commission found that the peak month flow was more appropriate in the numerator of the calculation, then it should likewise use the peak month design capacity of the plant in the denominator. Clearly, the peak month design capacity of the plant is higher than the annual average daily flow design capacity of the plant. By using the same "yard stick" in the numerator and denominator, the Commission could calculate a consistent used and useful calculation. As testified to by Mr. Biddy, using annual average daily flow in both the numerator and denominator, or using peak month flows in both the numerator and denominator would produce similar used and useful percentages. However, it is not appropriate or logical to mix the units of measure used in the numerator and denominator.

Q. DOES THIS COMPLETE YOUR TESTIMONY PREFILED ON OCTOBER 13, 1998?

A. Yes, it does.

MR. McLEAN: With that, Madam Chairman, we tender the witness for cross.

CHAIRMAN JOHNSON: Mr. Gatlin.

CROSS EXAMINATION

BY MR. GATLIN:

Q Is it your position that the average daily flow and the peak month in this case should be ignored when determining used and useful?

A No.

Q Does the change in the language on the face of the DEP permit bear any relationship to a change in the actual capacity of the wastewater treatment plant?

A No, it does not.

Q Would you agree that a utility must apply and receive from DEP a permit authorizing the construction and operation of a wastewater treatment plant?

A Yes.

Q Would you agree that in that permitting process a utility has to provide reasonable assurance to DEP that the peak flows to be received by that plant will be treated to meet water quality parameters?

A I believe that would be true. But I think that that question would be better directed to

Mr. Biddy, our engineering witness.

Q Do you know whether Florida Cities' application for a permit for the North Ft. Myers plant supports the proposition that all flows, including plants, will be treated adequately?

A No. I think that question would be better directed to Mr. Biddy.

Q Do you know whether the North Ft. Myers plant must efficiently and reliably meet treatment limits at all times?

A That question would better be directed to Mr. Biddy.

Q Do you know whether the North Ft. Myers plant exceeds the parameters of water quality control? Whether this exceedence is considered a violation?

A That question would be better directed to Mr. Biddy.

Q Does the use of the formula, the matching formula that you are proposing in this case, recognize all investment in plant necessary to meet water quality standards and avoid DEP violations?

A Could you repeat the question, please?

Q Sure. Does the use of the formula for determining used and useful that you're proposing in this case recognize all of the investment in plant

necessary to meet water quality standards and avoid violations and exceedences?

A It should, to the extent that those aspects of the plant are used and useful.

Q The answer is yes?

A Yes.

Q Would you agree that the annual average flows that you are recommending be used in the numerator in your used and useful calculation would be the total volume of wastewater flowing through the plant in 365 dayus divided by 365?

A Yes.

Q Are you requesting that the Commission enter an order in this part of the case which would be the same as the original order in the case? Are you supporting the original order that was appealed?

A I'm supporting the original methodology that was appealed. I would recommend that the Commission give greater explanation in terms of their rational for using the methodology that I'm proposing. But, essentially, I'm supporting the decision that they originally had.

Q And in that decision, in its final order the Commission eliminated peak flow measurements and thereby eliminated some investment by Florida Cities

in the plant; is that correct?

A I don't know that I'd characterize it that way. I think what the Commission did is they recognized that there was a change in the DEP permitting process which allowed them to confirm that the permitted capacity of the plant was based upon an average annual daily flow. And based upon that they changed the used and useful methodology.

Q I'm handing you Page 17 of the final order in this. And would you read the sentence that I've marked at the bottom of the page out loud?

A "In part, the above-mentioned $800,000 approximate reductions is due to the elimination of peak measurements."

MR. McLEAN: Ken, I'm not sure what document that is. Would you identify it? You can tell me, the final order in the -- the Commission final order or the Court?

MR. GATLIN: Final order of appeal.

MR. McLEAN: Of the Commission.

MR. GATLIN: Yes. Order No. PSC-96-1133-FOF-SU.

Q **(By Mr. Gatlin)** And that's what you want the Commission to do now; is that correct?

A I want the Commission to confirm their

decision that to correctly use average annual daily flow in the denominator as well as average annual daily flow in --

Q Eliminated the investment for the peak --

A I'm sorry?

Q You want the Commission to eliminate the investment in plant for peak full measurements?

A It's plant that is not used and useful. Yes, it should not be included in rate base.

Q Your answer is yes to my question?

A My answer is the plant is not used and useful, and, therefore, should not be included in rate base and charged to customers.

Q Do you agree with the sentence that you read a while ago from the Order?

A If you could hand me the order again.

Q Sure. (Hands document to witness.) (Pause)

A Okay.

Q Do you agree with that sentence from the Commission order?

A The Commission order basically says that changing from use of the peak month in the numerator of the used and useful equation from the prior rate case to use of average annual daily flow in the numerator in this case essentially eliminates

$100,000 worth of -- in part eliminates $100,000 worth of plant.

Q $800,000 was eliminated right?

A I'm sorry. $800,000. Yes.

Q That's what you want the Commission to do presently?

A Yes, that's correct. The plant is not used and useful, and, therefore, should not be included in rate base.

Q The investment to treat peak flow is not used and useful in your opinion?

A I don't believe that that's what the Commission's orders says.

Q I'm not asking what the Commission order -- I asked what is yours. Investment to treat peak flows is not used and useful?

A I think that there is -- the portion of the plant designed to treat peak flows in terms of what those components are, how they are sized, et cetera, that question would be better directed to Mr. Biddy. He's more familiar with that aspect of the plant.

Q If it is true that there is investment by the utility in the plant to treat peak flows, do you wish that investment to be eliminated and not included in used and useful?

A To the extent there is a specific piece of plant, I don't know that it would be eliminated because the Commission uses -- plant is an average. They are looking at a treatment plant on average. They are not looking at each individual piece of equipment and applying a used and useful -- separate used and useful percentages and saying, "Well, the peak investment, or the investment required to meet peak demand, is going to be completely excluded."

Q Do you agree, then, that the Commission should eliminate investment in plant to treat peak flows?

A No.

Q You don't agree with that?

A No.

Q It should be included?

A A portion of it would be included via the application of the used and useful percentage to the treatment plant.

Q Do you agree with the sentence that you read from the Commission order? "In part, the above-mentioned $800,000 approximate reduction is due to elimination of peak flow measurement."

A Yes, I agree with that. I don't dispute it.

Q You agree with that?

A Yes.

Q To eliminate the $800,000 investment for the treatment of peak flows?

A I don't interpret the Commission's order that way. I interpret it as saying when you switch from calculating used and useful based upon what the Commission did in the past, which is the peak month over an average annual daily flow, to an average annual daily flow over an average annual daily flow, that eliminates approximately $800,000 worth of investment. What the Commission has done, in my opinion, is correct mistakes they have made in the past.

Q I understand that. But that's what you want them to do, is eliminate that investment; is that correct?

A It's my position that that investment is not used and useful and should not be included in rate base, that is correct.

Q Even though the Commission has recognized in the order that that investment was previously made by the utility and was considered used and useful?

A That's correct. The Commission is correcting for a past mistake.

Q That's correct. You agree that that's what

the Commission did. I'm not sure, when you said "that's correct," I don't know what you're answering.

A I was answering your question.

Q What was my question?

A Good question.

Q Okay. The Commission eliminated, it says in the Commission order, "$800,000 approximate reduction is due to elimination of peak flow measurements." Is that true? Is that what it says?

A Yes. That's an interpretation.

Q And you agree with that approach if that's what the matching formula results in?

A To the extent that the matching formula and the formula that I'm recommending is the correct formula to use, then yes, that is my recommendation: That $800,000 worth of plant be excluded from rate base because it's not used and useful.

Q I detected a yes in there someplace. Was that the answer? And then you had the explanation, but the "yes" is the answer; is that correct?

A Ask the question again.

Q If the matching formula that you're proposing in this case results in elimination of investment to treat peak flows from used and useful, you agree with that result?

A I don't agree with that --

Q You don't --

A -- characterization.

Q You don't think it ought to be eliminated?

A No. I don't think that you can say that the $800,000 of investment that is being eliminated or removed from rate base is associated with the plant's ability to meet peak flows.

Q Well, isn't that what the Commission said in this order, that they -- the elimination of $800,000 is due to the elimination of peak flow measurements? That doesn't mean there was some plant investment to treat peak flows that were eliminated because they went to the matching formula?

A There may or may not have been.

Q There what?

A You are attempting to characterize the entire $800,000 as plant needed to meet peak flows. My understanding of how accounting works, MFRs, used and useful percentages are applied to plant, I don't think you can make that characterization.

Q Would the application of the matching formula that you're proposing result in less used and useful rate base or more used and useful rate base?

A To the extent that you have a mismatch. In

other words, if you're going to have the peak month flow over the average annual daily flow, that would result in a higher used and useful percentage than what my recommendation is, which is average annual daily flow over average annual daily flow.

However, if the Commission were to go with peak month flow over peak month capacity, there is -- it's my understanding -- and I've seen it in another docket -- very little difference between the used and useful calculations.

Q Does the application of the matching formula that you are proposing result in more -- does it result in more rate base?

A More than what?

Q More than less.

Does the application of the matching formula that you're proposing result in less rate base than that proposed by the utility in this proceeding?

A Yes.

Q So your position is that that investment that is eliminated is nonused and useful?

A That's correct, yes.

MR. GATLIN: Okay. Thank you. That's all I have.

CHAIRMAN JOHNSON: Okay. Staff.

CROSS EXAMINATION

BY MR. JAEGER:

Q Yes. Ms. Dismukes, the Utility is proposing that we use max month in the numerator and annual average daily flow -- average annual daily flow for the capacity in the denominator. Now, carrying that one step further, say the wastewater cost them $1 per thousand gallons; it costs $1 per 1,000 gallons to treat wastewater. You want to write this down?

A Please. Okay, go ahead.

Q It costs them $1 per thousand to treat it and yet they have a rate of $1.50 per thousand. Now, your annual average daily flows are 1 million gallons, but during the peak month you have average daily flows of 2 million gallons.

A Okay.

Q Now, in calculating the cost and the revenues that this utility would receive, do you have to match up -- okay. Scratch that.

Would it be proper to say, okay, you have 2 million gallons in the max month. You're going to charge $1.50 per thousand, so you'll get $3,000 in revenues in the max month; is that correct?

A Yes.

Q That's per day. And then would it be proper

to use annual average costs per day of only $1 per thousand, and they have that over a course of 365 days per year. So the cost would be -- they have 1 million gallons average annual per day and the cost is $1. And yet they had revenues in the max month of $2 million times $1.50 -- I'm sorry. I think I'm confusing you there.

Would it be proper to use the max month revenues on an average basis as opposed to the annual average cost in calculating a revenue requirement for this utility?

A No. You have a mismatch.

Q Okay. You can use --

A I wouldn't calculate a revenue requirement that way anyway. But for purposes of illustration, you do have a mismatch.

Q Now, if you multiplied the average annual daily flow by the cost associated with producing the water, you'd come up with annual average daily flow or a cost of about $1,000, would you not?

A Yes.

Q And yet if you used the max month, you'd have a revenue of $3,000 per day?

A That's correct.

Q And that would be a total mismatch, would it

not?

A Yeah. You substantially overstate the level of revenue generated compared to the level of expense that the Commission would be looking at for purposes of -- in this example revenue minus expense equals net operating income.

Q Now, you and I realize that wastewater usage may be capped at a certain level and that the max amount flows might reach or exceed that cap; is that correct?

A For customers --

Q Yes.

A Rate design.

Q Even with a cap on wastewater usage, is it still conceivable that the max month average daily usage could be twice as much as the annual average daily usage. ?(Pause)

A I don't know the answer to that question.

Q Well, could you explain how accounting and rate setting procedures dictate which time frames are normally used?

A Time frames?

Q I'm sorry.

A I don't understand what you mean "dictate what time frames are used."

Q Well, in rate peaking philosophy, annual averages are compared to annual averages, and peaks or max monthly average would be compared to peak or maximum monthly averages; is that correct?

A Yes.

Q If you have end of year customers -- you couldn't do average customers or end of year customers?

A I understand what you're talking about, I apologize.

From a matching principle, for ratemaking purposes, you want to match all components of the test year so that if you're using a year end rate base, for example, you'd want to use year end customers.

Q And that matching principle carries over into using annual average daily flow in the numerator as opposed to annual average daily flow in the denominator; is that correct?

A It would be consistent, yes. That you're -- matching the numerator and the denominator.

If you want to look at used and useful, you'd want to ensure that the flows that you're looking at are consistent with whatever your test period is.

Q So, in your professional opinion, dividing a

maximum month flow figure by an annual average flow figure would not be appropriate, would it?

A That's correct.

MR. JAEGER: No further questions.

MR. McLEAN: I have just a bit of redirect.

REDIRECT EXAMINATION

BY MR. McLEAN:

Q Ms. Dismukes, Mr. Jaeger asked you couple of questions about a hypothetical which alluded my thorough understanding. I want to ask you, I think, the same question. See if I understood your answer.

If you would, take your pencil and write down "ADFMM" which stands for average daily flow --

MR. GATLIN: I object to this as not being redirect of anything in cross. The witness answered those questions that Mr. Jaeger asked and that should be the end of it.

MR. McLEAN: It's exactly the area I want to go into.

MR. McLEAN: Mr. Jeager, I believe, was getting at the issue of putting average over peak -- I mean peak over average -- results in a mismatch. And to -- just because the constituent numbers of the average and the peak happen to be in similar units doesn't cure the problem.

I think that's what Mr. Jaeger was trying to get at. And I think she is my witness and left a rather confusing answer on the record.

CHAIRMAN JOHNSON: I'll allow the question.

Q **(By Mr. McLean)** Did you write down "ADFMM?"

A Yes.

Q And accept that that stands for average daily flow maximum month?

A Yes.

Q Draw a line under it and write down "AADF" which stands for average annual daily flow. Do you have that?

A Yes.

Q Is that -- does that appear to be a mismatch to you or not?

A Yes, that's a mismatch.

Q Is that the central mismatch which you object to in this case?

A Yes.

Q Write down in parenthesis behind each of those -- on the top write down "paren GPD close paren." Do you have that?

A Yes.

Q Same thing on the bottom?

A Yes.

Q Does that cure the mismatch?

A No.

Q Ms. Dismukes, Mr. Gatlin asked you some questions about $800,000 being eliminated, and I believe he read you a Commission order on that point?

A Yes, that's correct.

Q From what was that $800,000 eliminated?

A My reading of the Commission's Order is it was the change in the level of rate base from the prior rate case to the instant rate case. Then the Commission went on to explain why rate base was reduced by approximately $800,000. Part of it was changing the used and useful methodology.

MR. McLEAN: Thank you. That's all I have.

CHAIRMAN JOHNSON: Exhibits.

MR. McLEAN: I move exhibit --

CHAIRMAN JOHNSON: 37.

MR. McLEAN: 37.

CHAIRMAN JOHNSON: It's admitted without objection.

(Exhibit 37 received in evidence.)

CHAIRMAN JOHNSON: Thank you, Ms. Dismukes. You're excused.

(Witness Dismukes excused.)

MR. JAEGER: Since Mr. Biddy isn't here we'll do Staff witnesses. And we originally had Mr. Crouch scheduled to go next, but Mr. Addison is here today, and I'm not sure if we'll get through with Mr. Crouch, and we'd like to take Mr. Addison out of turn --

CHAIRMAN JOHNSON: Any objection to taking Addison?

MR. McLEAN: I have no objection.

CHAIRMAN JOHNSON: Mr. Addison, if you could come forward.

MR. JAEGER: And he has not been sworn.

MR. GATLIN: Chairman Johnson, I've got to re-order my stuff here.

CHAIRMAN JOHNSON: We'll take five minutes.

(Brief recess.)

CHAIRMAN JOHNSON: We're ready to go back on the record with Mr. Addison, and I believe Mr. Gatlin is prepared for cross.

CHAIRMAN JOHNSON: Sorry.

RICHARD L. ADDISON

was called as a witness on behalf of Staff of the Florida Public Service Commission and, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JAEGER:

Q Mr. Addison, please state your name and business address for the record, please.

A Richard Addison. Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida.

Q By whom are you employed and in what capacity?

A I'm employed by the Department of Environmental Protection as a professional engineer in the Domestic Wastewater Section.

Q Have you prefiled testimony in this case consisting of six pages?

A Yes.

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

A No, sir.

Q So there's no corrections at all to your testimony? Could you briefly summarize your testimony?

A A couple of points I previously discussed in my direct testimony. DEP has concise definitions for design capacity and permitted capacity.

Design capacity is the annual daily flow projected for the design year which serves as the basis for sizing and design of wastewater facilities. Design capacity is established by the permit applicant. The time frame, annual average daily flow, max month average daily flow, three-month average daily flow or some other time frame is specified by the permit applicant.

Permitted capacity is the treatment capacity approved by DEP in accordance with the rule time frame, annual average daily flow, et cetera, associated with permitted capacity must be specified in the permit. So design capacity is established by the permit applicant. And after DEP has obtained reasonable assurance that the plant can operate, it establishes the permitted capacity.

Another point for DEP compliance purposes, if a plant is permitted in terms of annual average daily flow, flows to the plant could exceed its permitted capacity during a maximum month because a treatment plant would not be out of compliance until the total volume of the wastewater flowing into a

facility during any consecutive 365 days, divided by 365, exceeded the permitted annual average daily flow.

MR. JAEGER: I'd like to have Mr. Addison's testimony inserted into the record as though read.

CHAIRMAN JOHNSON: It will be inserted.

DIRECT TESTIMONY OF RICHARD L. ADDISON

Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A. Richard Addison, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

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

A. I am employed by the Florida Department of Environmental Protection (FDEP) as a Professional Engineer in the Domestic Wastewater Section.

Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND QUALIFICATIONS?

A. I received my Bachelor of Science in Environmental Engineering from the University of Florida in August, 1979. I received a Master of Public Administration from Florida State University in December, 1987. I have been a registered professional engineer in the State of Florida since 1986.

Q. WHAT IS YOUR EMPLOYMENT HISTORY?

A. I was employed by the Florida Public Service Commission (FPSC) as an engineer involved in water and sewer regulation from October 1979 to January 1984. My responsibilities included the evaluation and review of rate applications of water and wastewater utilities under the jurisdiction of the FPSC. This involved field inspections of treatment plants and service areas, reviews of capital costs and operation/maintenance expenses for reasonableness, and evaluations of service quality, plant utilization, wastewater infiltration/inflow, water unaccounted for and service availability.

Since February 1984, I have been employed by FDEP. From February 1984 until February 1988, I was involved in the construction grants program for municipal wastewater works as delegated by the United States Environmental

Protection Agency (USEPA) to the State of Florida. This included review of user charge systems, sewer use ordinances, financial capability demonstrations, sewer system evaluation surveys and facilities plans. From February 1988 to the present, I have been in the Domestic Wastewater section in Tallahassee.

Q. WHAT ARE YOUR GENERAL RESPONSIBILITIES AT FDEP?

A. As a member of the Domestic Wastewater Section, I assist in development of regulations and policies for FDEP's domestic wastewater program. I assist FDEP permitting staff in interpretation of rules and policies on domestic wastewater management projects or issues. I also communicate with local governments, the public, and the USEPA on domestic wastewater management issues, as needed.

Q. HAVE YOU EVER TESTIFIED BEFORE?

A. Yes, I testified before the Division of Administrative Hearings (DOAH) and the Commission while I was employed at the FPSC.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?

A. The purpose of my testimony is to discuss FDEP permitting procedures for domestic wastewater treatment plants in Florida.

Q. WHO SPECIFIES THE TIME FRAME FOR DOMESTIC WASTEWATER PERMITTED FLOWS?

A. FDEP, based on the design capacity established by the permit applicant and his design engineer. FDEP has concise definitions for "design capacity" and "permitted capacity." Rules 62-600.200(19) and 62-600.200(62), Florida Administrative Code (F.A.C.), clarify the design capacity and the flow averaging period associated with the design capacity must be specified by the applicant. Typically, applicants will base their design on annual average

daily flow (AADF), maximum monthly average daily flow (MMADF), or three-month average daily flow (3MADF). Consistent definitions for these flow-related terms are provided in FDEP rule. For example, use of an AADF for purposes of design in a beach community that receives a significant influx of seasonal residents during a three to six-month period would not be appropriate. Time frames should reflect seasonal variations in flows, if any. Rule 62-600.200(62), F.A.C., defines "permitted capacity," as the treatment capacity for which a treatment plant is approved by FDEP. In accordance with the rule the time frame associated with permitted capacity must be specified in the permit. Circumstances under which FDEP may assign permitted capacities less than the design capacity specified by the applicant are described in Rule 62-600.400(3), F.A.C., and include when reuse or disposal permitted capacity is less than the design capacity or when the preliminary design report does not provide reasonable assurances that the proposed wastewater facility technology will function as intended at the design capacity requested by the permittee.

Q. IS THE BASIS OR TIME FRAME FOR PERMITTED FLOWS SHOWN ON THE PERMIT ISSUED BY FDEP?

A. Yes, Rule 62-600.200(62), F.A.C., requires the FDEP domestic wastewater permit specify a time frame associated with permitted capacity. This rule has been in effect since 1991.

Q. WAS THE PUBLIC SERVICE COMMISSION MADE AWARE OF THIS CHANGE?

A. Yes, by letter dated July 30, 1992 from Richard Harvey to Charles Hill. The letter provided comments on a draft FPSC rule concerning used and useful in rate cases.

Q. IF A PLANT IS RATED IN TERMS OF ANNUAL AVERAGE DAILY FLOW (AADF), CAN

THE FLOWS TO THE PLANT EXCEED ITS AADF RATED CAPACITY DURING A MAXIMUM MONTH?

A. Yes, looking at flows only, a treatment plant would not be out of compliance until the total volume of wastewater flowing into a wastewater facility during any consecutive 365 days, divided by 365, exceeded the AADF. It should be noted that other parameters will be checked for compliance during this time, including CBOD, TSS, pH and disinfection.

Q. WHY DID FDEP DEVELOP THE CAPACITY ANALYSIS REPORT CONCEPT?

A. A significant wastewater management problem in Florida involves overloaded wastewater facilities. Owners of domestic wastewater facilities must provide timely expansion and upgrade of their facilities to meet wastewater demands of a growing population within their service areas. Facilities that are not expanded in a timely fashion would be asked to treat volumes of wastewater that are greater than their capacities. This results in inadequate treatment and degradation of water quality in the receiving surface waters or ground waters.

Rule 62-600.405, F.A.C., contains requirements for capacity analysis reports (CARS). Reports are required once the 3MADF equals or exceeds 50% of a wastewater facility's permitted capacity. The 50% threshold was selected based on input from the rulemaking Technical Advisory Committee (TAC) together with the professional judgment of FDEP engineers in light of growth trends in Florida. (The TAC was a group of experts assembled by FDEP to help in development of the rule. It consisted of representatives of the Florida Engineering Society, The Florida Pollution Control Operators Association, The Florida Water and Pollution Control Operators Association (also representing a private utility), a public utility and representatives from two of FDEP's

District offices.) The 50% threshold was established to ensure that planning for the future expansions begins early enough that planning, design, and construction can be accomplished before capacities are exceeded.

A capacity analysis report is a detailed assessment of population and flow projections as they relate to future needs for expansion of domestic wastewater facilities. The report features development of a schedule for planning, design, construction, and placing into operation of expanded facilities. This is a pollution prevention measure designed to ensure that permittees conduct the planning necessary to allow for timely expansion of their wastewater facilities. The timeframes established in the rule for submittal of initial capacity analysis reports as well as updates of the capacity analysis reports and for planning, design, and construction of expanded facilities were based on professional judgment and input from the TAC as well as knowledge of common timeframes associated with planning, design, and construction activities for such facilities. The 180-day timeframe for submittal of the initial capacity analysis report was established based on input from the TAC and allows for procurement of a consulting engineering firm as well as production of the capacity analysis report. Once required, the capacity analysis report normally would be updated annually. If the capacity analysis report demonstrates that the wastewater facility has at least ten years of useful life before the permitted capacity will be exceeded, the capacity analysis report must be updated only once every five years or whenever a permit application is submitted to FDEP.

Q. WHY DOES FDEP RULE 62-600.405, F.A.C., ON CAPACITY ANALYSIS PLANNING USE THE 3MADF AS THE BASIS TO DETERMINE WHEN A CAPACITY ANALYSIS REPORT IS

NECESSARY, EVEN IF THE PLANT CAPACITY IS RATED IN TERMS OF AADF OR MMADF?

A. The 3MADF was selected based on input from the TAC together with the professional judgment of FDEP engineers. The 3MADF is used in this case as a cutoff for when the capacity analysis report is due. I was not on the TAC. However, it is likely that 3MADF was the best choice because choosing AADF would not account for facilities with seasonal variation in flow and choosing MMADF could force a facility into having to prepare a CAR prematurely.

Q. DOES THAT COMPLETE YOUR TESTIMONY?

A. Yes.

MR. JAEGER: Tender Mr. Addison for cross.

CROSS EXAMINATION

BY MR. GATLIN:

Q Mr. Addison, you are in the Tallahassee Office of DEP?

A Yes, sir.

Q And what are your responsibilities there?

A I do a lot of different things. I'm involved a lot lately with overviewing local programs. We delegate local program -- permitting, compliance and enforcement activities of various local programs throughout the state. I'm involved with delegating local programs and overviewing local programs. In the past I've reviewed permits sent up from the district offices for quality purposes. Just a lot of different things I have been involved in.

Q What is the local program you referred to?

A What is it?

Q You referred to being involved in local programs. What is that?

A It's when DEP delegates its permit compliance and enforcement activities through various local programs around the state. We've delegated to Hillsborough County, to Sarasota County, to Dade County, Broward County, palm Beach County some of our

permitting, compliance and enforcement activities.

Q You don't deal on a day-to-day basis with applications for permits for wastewater plants, do you?

A Not to a day-to-day basis. When we initially obtained MPDS delegation about -- which is national pollution discharge elimination system -- we obtained delegation from EPA to do that permitting in Florida in 1994. At that time I was heavily involved in reviewing permits from the district offices for quality purposes. And I did that for one or two years, around that time.

Q Do you have any supervisory control over the district offices?

A No, sir.

Q And, specifically, over the South Florida office here in Fort Myers here where Mr. Young works, do you have any supervisory responsibilities over them?

A No, sir.

Q And a permit application is filed with this office and processed with this office, is it not?

A Yes, sir.

Q And your office is sort of like a resource office if they need to get further help or something?

A Yes, sir.

Q Yeah. Did you have anything to do with the Florida Cities application for the North Ft. Myers wastewater AWT plant?

A No, sir.

Q Are you familiar with that application at all?

A I've seen some things in some testimony, I've seen some documents in this case.

Q In this case, but nothing separate from this case?

A No, sir.

Q It would not have been in your job responsibilities to review that application, would it?

A No, sir, it wouldn't have been.

Q Do you know Mr. Young?

A Yes, sir.

Q In the permitting process, does a utility have to provide reasonable assurance that the peak flows to be received by the plant will be treated to meet the water quality parameters?

A Yes, sir.

Q Do you know if the current application by Florida Cities Water Company for the North Ft. Myers plant indicate that the plant will be designed to

treat both maximum and peak flows?

A No, sir, I haven't seen --

Q You said no?

A No, sir.

Q What are the Ten State Standards that are referred to?

A What are they? They are a -- our rules list various technical publications. And one of those that are used for design purposes and so forth for engineers to use for design purposes of wastewater treatment plants, and one of those references listed on our rules is Ten State Standards.

Q And do those Ten State Standards indicate that a plant must be designed to accommodate seasonal flows?

A I couldn't --

Q You don't know?

A I couldn't see -- I couldn't see that wording in there. I'm sure it's implied somewhere, but --

Q When did you review the standards?

A You asked me that in my deposition. And I looked through Ten State Standards to see if there was any sentence in there that specifically said that and I couldn't find it. But I'm sure you can read into

other things that it's implied that a plant would be able to meet its flows.

Q If Mr. Young said that the Ten State Standards covered that kind of standard, would you have any reason to disagree with him?

A No, sir.

Q Is the annual average flow the total volume of water that comes through the treatment plant in a 365-day period divided by 365 and expressed in gallons per day or million gallons per day?

A Yes, sir.

Q Does a treatment plant have to have the capability to treat flows above the annual average day flow?

A Yes, sir.

Q You reference in your testimony, a letter to Mr. Hill from Mr. Harvey dated July 30th 1992, I believe?

A Yes, sir.

MR. GATLIN: Madam Chairman, this letter is an exhibit attached to Mr. Crouch's testimony, which I assume Mr. Crouch will need before Mr. Addison. But I'd like to make reference to it. And I assume that it will be identified as an exhibit, if I could just refer to the letter.

CHAIRMAN JOHNSON: Okay.

MR. GATLIN: In that letter -- for the record let me say it's attached to Mr. Crouch's testimony as RJC-3, entitled "The Harvey Letter."

Q **(By Mr. Gatlin)** Now, as I understand it, the Staff indicates that Paragraph 9 indicates that the numerator ought to match the denominator as far as the DEP is concerned in determining used and useful?

A This letter is written -- the PSC Staff, I guess, was working on a rule for used and useful, and this letter had numerous comments related to that rule. And that was one of the comments, yes, sir.

Q Which paragraph is that in the letter? Is it Paragraph 9 on Page 3?

A Yes, sir.

Q And what does that tell somebody? Tell us what that paragraph tells us.

A That's essentially what it tells us. I don't have the rule -- we were commenting on a proposed rule, and so I don't know exactly what the rule said and we were commenting on that -- on that rule.

Q So --

A I can't just read that paragraph and it makes sense, I don't think.

Q It doesn't say anything about matching, does it?

A It does. We suggest that No. 2 be defined as the same time period as that used for No. 1, capacity of the plant in order for the formula to be consistent.

Q And that -- and that, in your opinion, says they ought to match?

A The time periods.

Q When you say "time periods," what are you talking about?

A Annual average daily flow.

Q So that's what the permit says, annual average daily flow and that's in the denominator. Now, what should be in the numerator?

A That the same time period be used in the numerator.

Q Why the same time period?

A Sir?

Q Why the same time period?

A So the formula would be consistent.

Q Isn't what needs to be consistent the gallons per day, the million gallons per day?

A That should be consistent also. But the time period should be consistent as well.

Q If you didn't have the time periods there, would the numbers be consistent?

A I don't see how you can exclude the time periods.

Q If you knew the design capacity, hundred gallons, and you knew the flows, 90 gallons, are we consistent so far?

A Yes, sir.

Q So the capacity -- 90% of capacity is being used in that instance, isn't it?

A Yes, sir.

Q And we were able to determine that with the information that we had at hand?

A Yes, sir.

Q In that letter, Mr. Harvey -- and I believe you drafted this letter for Mr. Harvey's signature?

A Yes, sir.

Q And Mr. Harvey, what was his title at that time?

A He was Division Director of the Division of Water Facilities.

Q And Mr. Harvey in the letter made other recommendations -- let me back up.

Is it your understanding that the Staff is now proposing that it follow your recommendation in

Paragraph 9? Staff of the Public Service Commission.

A That they are doing it?

Q Yes.

A In this case it's my understanding they are, yes, sir.

Q How about the recommendation in Paragraph 2 of the letter that says the intent of this statutory provision was for the full cost of capital investments be included in the cost recoverable through a rate structure for reuse facilities. Did the Staff adopt that recommendation of yours?

A Yes.

MR. JAEGER: I'm sorry. Mr. Gatlin, where are you?

MR. GATLIN: Paragraph 2 of the letter to Mr. Hill, dated July 30th, 1992, which is exhibit RJC-3.

Q **(By Mr. Gatlin)** Did the Staff adopt -- did the Commission adopt that recommendation?

A I think there's been a court case where reuse is now going to be considered 100% used and useful. My understanding that's being --

MR. JAEGER: I'm going to object to relevancy. I'm not sure how this is relevant.

MR. GATLIN: It's in a letter that's going

to be made an exhibit.

MR. JAEGER: The only reference that this letter we refer to is the Paragraph 9. We could put in part of the letter.

MR. GATLIN: The letter is an exhibit and I think we have to examine the whole letter.

CHAIRMAN JOHNSON: What's your question, Mr. Gatlin?

Q **(By Mr. Gatlin)** Did the Staff or Commission adopt your recommendation in Paragraph 2 of the letter in 1992?

A No, sir.

Q And it's your understanding it was not adopted until a court case this year?

A Yes, sir.

Q Your recommendation in Paragraph 9 was in the context of all the other recommendations, was it not?

A Yes, sir.

Q And the paragraph, the last sentence in Paragraph 3 of Mr. Harvey's letter, says "We believe that Chapter 25-30 FAC should allow utilities to recover investment for timely expansion of needed wastewater treatment facilities consistent with our rule requirements." Is that true?

A Yes, sir.

Q And that 25-30 reference was to the Commission's proposed used and useful rules; is that not true?

A Yes, sir.

Q And wasn't it true that the Commission dropped all of this proposal and did not adopt any of the rules proposed that you were writing about?

A Yes. I don't know what ended up happening on PSC's end.

Q You don't know what?

A I don't know what ended up happening with what we wrote them.

Q So you don't know if they adopted any or not?

A Adopted what?

Q Any of the used and useful rules that were being proposed as amendments to Chapter 25-30 that were the subject of Mr. Harvey's rule.

A It's my understanding they haven't adopted --

Q None of it was adopted, was it?

A Yes, sir.

Q And wasn't reference made in the letter, in Paragraph 4 of the attachment, that you understood

that the margin reserve that was being proposed was 20%?

A Yes, sir.

Q And you had some questions about what that meant, didn't you?

A Yes, sir.

MR. GATLIN: That's all I have. Thank you.

CHAIRMAN JOHNSON: Public Counsel.

CROSS EXAMINATION

BY MR. McLEAN:

Q Mr. Addison, at some point the DEP used to issue both an operating permit and a construction permit; is that correct?

A Yes.

Q Now they issue just one of those two?

A All of the construction activity and operating activities now are combined in one permit.

Q And what's that permit called?

A Wastewater permit.

A It's not called construction or operation?

A Yes, sir. Yes, sir. It's not called either. It's just called a wastewater permit.

Q When did they begin that new policy, do you know?

A It was done around 1994.

Q Do you know what -- why that was the case?

A When we got MPDES delegation from EPA it was done in the context of all of that. We underwent a bunch of rulemaking activity, and it was done in the context of that back in 1994.

Q Shifting focus to a similar but perhaps different matter, at some point did -- you used to simply issue plant capacity, a permit, whatever it's called, for a wastewater treatment plant, simply plant capacity was 1.25 million gallons a day, period. No reference to any time or anything like that; is that correct?

A Yes, sir.

Q Okay. And I learned from this case that at some point the DEP began to designate some time frame, specifically average annual daily flow, or stated more correctly, the DEP didn't designate that. They required an applicant to designate that; is that correct?

A The applicant designates the time frame for design capacity and DEP would specify the time frame in the permit.

Q Do you know why the DEP made that change?

A I would think so everybody knew really what that plant could do. I mean, so you'd know the time

frame that that plant would be operating under.

Q Is that the concern you had or was it with respect to that general subject matter that you wrote Paragraph 9 for Mr. Harvey --

A Yes, sir.

Q -- in the attachment. Okay. All right. Thank you, sir.

MR. McLEAN: I have no further questions.

CHAIRMAN JOHNSON: Commissioners? Redirect?

MR. JAEGER: I have no redirect, Chairman.

CHAIRMAN JOHNSON: And there are no exhibits. You're excused.

(Witness Addison excused.)

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CHAIRMAN JOHNSON: Let me get an indication on the time for the witnesses that we have remaining. Starting with the cross for Crouch. Mr. Gatlin.

MR. GATLIN: Three hours.

CHAIRMAN JOHNSON: Okay.

MR. McLEAN: I will have none; maybe a question or two.

CHAIRMAN JOHNSON: Okay. Okay. Biddy.

MR. GATLIN: 20, 30 minutes.

MR. McLEAN: Of course, I won't ask him much.

CHAIRMAN JOHNSON: Staff.

MR. JAEGER: Just a few minutes, a very few questions.

CHAIRMAN JOHNSON: Okay. And then the rebuttal of Acosta.

MR. JAEGER: Very little. 15 minutes? Probably less.

MR. McLEAN: Probably 15 at the most.

CHAIRMAN JOHNSON: We're going to recess the technical portion of the hearing until tomorrow and we'll reconvene technical at 9:00 a.m. in the morning. And we will begin the customer portion tonight back here at 6:00. With that, we'll go into recess.

(Whereupon, a recess was taken at 4:15 p.m. and the hearing resumed at 6:00 p.m.)

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CHAIRMAN JOHNSON: Good evening ladies and gentlemen. This is our second customer hearing for today.

My name is Julia Johnson. I'm the Chairman of the Florida Public Service Commission and I wanted to welcome you here tonight. Counsel, do you need to read the notice again?

MR. JAEGER: I don't think it's absolutely necessary, Chairman. The notice was read and

announced but I can go ahead.

In accordance with the holding in Florida Cities Water Company v. State, a hearing on the First District Court of Appeals reverse on remand of the Commission's final order has been scheduled this time and place. Specifically this is the second session for the customers.

CHAIRMAN JOHNSON: Okay. I'll take appearances.

UNIDENTIFIED SPEAKER: Can't hear you.

CHAIRMAN JOHNSON: I'm going to take appearances of the parties. To the gentlemen that just spoke, he basically just did a procedural matter. He just announced why we were here, but very generally.

My name is Julia Johnson. I'm the Chairman of the Florida Public Service Commission, and right now I'm going to have all of the attorneys introduce themselves and state who they represent.

MR. GATLIN: By name is B. Kenneth Gatlin and I represent Florida Cities Water Company.

CHAIRMAN JOHNSON: Okay. The gentleman that is seated directly in front of me, and his back is turned to you and he's holding up his hand.

MR. McLEAN: And my name is Harold McLean

and I represent the citizens and customers of this utility, but the Citizens of the State of Florida. (Applause)

MR. JAEGER: My name is Ralph Jaeger. I represent the Staff of the Florida Public Service Commission.

CHAIRMAN JOHNSON: Again, my name is Julia Johnson and I'm the Chairman of the Public Service Commission and I'm going to be presiding over the customer hearing tonight. Seated to my right is Commissioner Terry Deason and to my left is Commissioner Joe Garcia.

THE AUDIENCE: (Applause)

CHAIRMAN JOHNSON: The Commissioners wanted you to know that that was awful nice. (Laughter)

I wanted to go over a couple more preliminaries. This equipment here is the equipment that's used so that the information and the testimony that you're presenting tonight is being transmitted over the Internet. So that your neighbors, those that have their computers and have the necessary equipment, can listen in by Internet. And even yourselves, if you want to go back in a couple of days, if you have the necessary equipment, you can log on and hear what you said and hear what your neighbors said this

morning. And I believe that we were set up so that even during the technical portions of the hearing, when the expert witnesses were testifying, that should also be recorded and it should be available for your listening pleasure.

The Special Report that you received when you came into the room from Ms. Crump basically outlines why we're here today. I know the Staff attorney went through a bit of it, explaining we're here on remand. But when the case was appealed, the First District Court of Appeals reversed the Commission on two issues. That was the capacity of the wastewater treatment plant and the calculation of used and useful.

The Court told the Commission that we had the discretion to reopen the record and take additional evidence, if necessary. The Commission determined that we would exercise our discretion, open the record, take additional information before making a final decision.

Someone had asked as they were coming into the room what does the mean for the case to be remanded -- or actually the person was explaining to me the case was remanned, wasn't it?

Well, that's why we're here today, because

of that remand. We have reopened the record. Public Counsel will put on witnesses. The Commission Staff will be putting on witnesses. The Company has also put on witnesses. And that's why I know that some of the customers have been a little confused. They were stating, "Well, haven't we already testified on these issues before?" And the answer to that is yes, we've taken public testimony in the hearings that were held before, I believe it was April 24th and 25th of 1996. But because we've reopened the record this is your opportunity to provide us with additional customer input into the process.

At the appropriate time I'll ask those of you who like to testify to stand and I'll swear you in.

We have a court reporter here who will be taking all of your comments down. The reason we do that is because your comments and testimony is just as important to us as the testimony of others. And by recording it, it will be information upon which we can use when we make our final decision and it's a part of our final deliberations. That's another reason why we swear you in just as we would any of the technical witnesses.

After you're sworn, Public Counsel will ask

you one by one to come forward, and we have a place over to my right for you to sit and prepare and state any of the comments that you'd like to make before the Commission.

If you're asked questions -- I'll ask you after you've stated your name, made your comments, I'll ask the parties if they have any questions to ask of you. If you want to answer those questions feel free to do so. But don't let the question session intimidate you. If you don't want to answer questions and you just want to let us know how you feel about the utilities, and how you feel generally about the issues that are being presented, we will accommodate that too.

And with that, are there any other preliminary announcements?

Well, there are several Staff members that are here to assist you if you have any questions or need special assistance. At the appropriate time I'll point out those Staff members and they can assist you with any issues or problems that you may have.

I don't think we have any other preliminaries other than swearing in the customers that would like to testify.

So with that if you could stand and raise

your right hand.

(Witnesses sworn collectively.)

CHAIRMAN JOHNSON: Thank you. You may all be seated.

Public Counsel, you can call the first customer.

MR. McLEAN: Mr. Chairman, Commissioners, citizens call Charles D. Jenkins, please.

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CHARLES D. JENKINS

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

DIRECT STATEMENT

MR. JENKINS: Honorable Chairperson Johnson, Commissioners Deason and Garcia, my name is Charles D. Jenkins. I live on the 4175 Prestwick Court, North Ft. Myers, Florida, where the zip is 33903.

I want to thank you and your Staff for taking time from your busy schedules in coming to Fort Myers to hear our concerns. I am here on behalf of the Lochmoor Civic Association to support your decision concerning Docket 971663-WS and to testify in document (sic) 950387-SU.

It is hard for me to follow all of these

different rate case activities. But speaking for all of the ratepayers of Florida Cities Water Company, located in North Ft. Myers, we were very happy that you came to our defense in Docket 971663-WS. You had the backbone and the courage to deny the unjustifiable rate increase Florida Cities Water Company wanted to impose upon it. Now, it seems they are back at it again. Will it ever end? Will we, the ratepayers in North Ft. Myers, ever have any peace and rate stability? Now, I don't fully understand how our resistance to docket 971663-WS suddenly became 950387-SU, but I do know I want to testify on the new docket.

Now, I don't understand the difference between average annual flows versus peak capacity flows, and what should be used in the numerator or the denominator of their rate base equation. That must be left up to you, our representatives, to deal with regulated monopolies.

But I can tell you that the water and sewer rates that Florida Cities Water Company charges us in North Ft. Myers is absolutely unreasonable. Our sewer rates in North Ft. Myers are over 135% higher than those of other North Ft. Myers customers who are fortunate enough to have Lee County Utilities as their

regulated water and sewer utility.

In fact, we, in North Fort Myers, are paying 95% more for sewer service than South Fort Myers Florida Cities Water customers are paying and less than 15 miles away. I think that is unconscionable.

It seems to me that Florida Cities Water Company should take their total capital and operating expenses, regardless of what part of the city they incur in, and establish a standard rate for all Florida Cities Water customers. I've never heard of a regulated public utility company establishing individual rates for different sections of a community. Does Sprint charge different phone rates depending upon where you live in town? I don't think so. If they spend capital dollars to upgrade a switching machine, they factor that cost back into their basic rate base cost. Then they establish a standard rate for all ratepayers in that region. I don't think they charge some customers on one side of the town extra just because they put in a new plant in that area.

In essence, I'm saying Florida Cities Water Company should not be allowed to charge ratepaying customers north of the river almost 100% more than they are charging south of the river.

Unfortunately, it appears some judge found reason to reopen the case. Now, I don't know -- now, I do know that this happened without -- it did not happen without Florida Cities Water Company filing an appeal. Consequently, if Florida Cities Water Company wants to fight your decision, then they should have to pay for it. I think it is totally unfair to expect the ratepayer to financially support Florida Cities Water Company in their litigation so they can merely raise their rates again. I would say none of their expenses connected with reopening of the record should be allowed to be part of their rate case, whether it be legal or nonlegal. No expenses should be allowed.

Florida Cities Water Company chose to appeal your decision, and they should be expected to absorb the cost. That means they should be prepared to live with the consequences. If they win, so be it. And I'm sure we, the ratepayers, will see a substantial increase in our rates. But if you deny their appeal, then they, management and shareholders, should pay the consequences. They, Florida Cities Water Company, should not be allowed to merely pass along the expenses of their own mismanagement to the unprotected ratepayers.

In summary, you, the Public Service

Commission, are our only hope. Somehow Avatar, a private company, got control of the water and sewer in some parts of North Ft. Myers, and they are now our regulated utility. We are appealing for your help. We place our final and lasting hope in you. But I don't want you to think that we are just crybabies and are not trying to help ourselves. We're trying to control the usage of water and sewage.

For example, many of us buy our own bottled water to drink. Many of us have converted to the 1.6 gallon toilets. Also many of us have converted to the water-saver showerheads. Both of these technology advances have helped us reduce the outrageous water and sewer charges we have to pay.

Now, in addition to these technical advances, some of us have taken the situation into our own hands. Do you remember as a wee wee tot when you used the toilet, your mother also said be sure you flush the stool after every use. Well, that was good motherly advice back then. But with Avatar's outrageous rates, some of us have had to modify that little bit. The new rule is: Use it twice, then flush, that's nice. And when it comes to taking a shower, we're also trying to save our water and sewage usage. We're seriously thinking about starting a

program entitled "It's no sin to shower with a friend." So you see, we are trying to help ourselves and save on our water and sewer charges. But we need your help. You are all we have to protect us from that greedy predator, Avatar. Thank you again.
(Applause)

CHAIRMAN JOHNSON: Thank you, Mr. Jenkins.
(Applause.)

CHAIRMAN JOHNSON: Any questions? There are no question. Appreciate your testimony.

MR. McLEAN: Citizen call JoAnne McCormick.

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JOANNE MCCORMICK

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

DIRECT STATEMENT

WITNESS McCORMICK: Good evening. I'm sorry to say I didn't have such a nice speech to make. I wasn't that prepared. But I do want to tell you I've lived in Fort Myers since August of '95, and I live close to the waste treatment plant. And I have made documented reports of calling the plant as late as 12:30 at night to report the smell. I have had the DEP out there. I live close enough where I hear the

traffic on the tractor trailer trucks coming in. They start on Tuesday in the middle of the night and they end Wednesday in the mid-afternoon.

They tell me it's a million-gallon plant and they are not allowed to release discharge into the river of more than a million gallons. I didn't realize they were discharging water, wastewater, into the river. And we get a scum on top of the water in Waterway Estates that I contribute to the plant. And I'm paying astronomical charges on my water as it is. And they are telling me the plant does not warrant any more customers being on it. And they wanted to build a new plant. What would this cost us if they were to build another plant in the area?

And also, Lochmoor Golf Course has the ability to reuse the wastewater for their lawns on the golf course, but we, as paying customers, have to use city water -- Florida Cities Water, not city water -- to do our lawns unless we are fortunate enough to have a well.

I'm very disgusted. There's only two people living in my house and I pay $68 a month for my water. We conserve. And we shower together at times and we don't flush after every -- on the weekend when we're home because we can't afford it. I have company come

over to my house for five days over Thanksgiving. My recent bill was up through the 30th of November, and my bill was $88. And there were only people there from Wednesday until Sunday. That's awful. That's terrible. And I have to pay utilities. But I can tell you that my husband called the superintendant of the waste treatment plant -- I have her name written down -- Suzanne Getler (ph). He called her December of 1995, got her up out of bed at 12:30 in the morning to report the odor. I have had -- my husband go over in the middle of the night and ring the buzzer at the gate for a person to come to. They tell us it's operational problems on April 12, 1997, the 9:25 p.m. We called again on the 13th of 1997.

COMMISSIONER GARCIA: You called on those days and did you call DEP or you called the plant?

WITNESS McCORMICK: I called the plant. I spoke to a Ron on April 12th, 1997; operational problem. Called Michael on April 13th, at 12:55 a.m. Operational problem. They had the odor control shut off. I called on September 17th of '97, spoke to Ron. Operational problems. Too much air going into the tank. He's going to shut the air off. Apologized for the inconvenience. On December 3rd, 19 -- I'm not going to repeat them all -- but December 3, 1998,

6:15 p.m. I spoke to Ron. He said the lift station level is up. He's calling someone to look into it because of the odor. He cannot adjust it.

COMMISSIONER GARCIA: Can I ask you a favor, could you get with Mr. Crouch from our Staff and he will look into that for you and maybe we can talk to DEP a maybe the health department about that.

WITNESS McCORMICK: Okay. The gentlemen that I spoke to that did come out to the plant, his name is Brian Shawl (ph).

COMMISSIONER GARCIA: Okay. He'll get all of that information from you and that way we can look into it for you.

WITNESS McCORMICK: I appreciate it. I know I have to pay for utilities, but it's true, 135% over South Fort Myers and it's the same company. I beg to differ. There's a problem here and I don't want to have a problem somebody get rich off of my statements.

CHAIRMAN JOHNSON: Ms. McCormick, you did a good job of recording the complaints you have had to file due to the odor problem. Have they been responsive? I know you went through -- how long and they told you what they thought the problem was. Did it clear up soon thereafter or did it continue?

WITNESS McCORMICK: It didn't clear it right

at the beginning. Sometimes it would go through the whole night. When I got home from work tonight at 5:00 there was an odor. I know the odor is there on Tuesdays and Wednesdays because of the trucks that come in and out to remove the sludge.

The gentlemen I have spoken to at the plant has been very friendly on the telephone. I know that his supervisor was not at all thrilled by getting a phone call at 12:30 at night. We got a response that time.

MR. JAEGER: Chairman Johnson, could we get her address?

CHAIRMAN JOHNSON: Ms. McCormick, could you give us your address?

WITNESS McCORMICK: Yes. My address is 4310 Harbor Lane, North Fort Myers, Florida.

COMMISSIONER GARCIA: Mr. Crouch will speak with you now.

CHAIRMAN JOHNSON: Thank you. (Applause)

MR. McLEAN: A. B. Weddle. W-E-D-D-L-E.

A. B. WEDDLE

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

DIRECT STATEMENT

WITNESS WEDDLE: My name is A. B. Weddle, and I, like Charles Jenkins, I live in the Lochmoor area. And I would like to thank both the Public Service Commission and Public Counsel for making this appearance here.

I don't have very many figures to bring out. The thing that I want to bring out was that this meeting we hoped would be supported by many people from the North Ft. Myers area. The only thing is previously we have had two meetings in North Ft. Myers that was attended by several hundred people. One being in the Luthern Church and the other being in North Ft. Myers High. I don't know who makes the arrangements for they meetings, and I don't claim to be an official on water flow or anything that has to do with the technical side, but I do think that I know something about people.

On this past Saturday and Sunday we worked quite hard to get this information out, even though many of them had already received letters. And the

main objection -- a lot of people said, "Oh, it's over in Fort Myers." Well, that might not seem like far if you live in Tallahassee, but the river that separates Fort Myers and North Ft. Myers is a natural boundary and both -- the river separates us. And then we had a 6:00 meeting. If you would go out on the bridge at 6:00 here you would see many people who are working people, who have worked hard all day, returning to their home in North Ft. Myers. It makes it a little bit hard for them to get home, cleaned up and come back to this meeting.

I think that it should be, if it's going to have meaning for people that are serviced by Florida Cities Water in North Ft. Myers. I think that the meeting should be held in North Fort Myers so the constituents of the water company can be there and voice their opinions. Thank you. (Applause)

CHAIRMAN JOHNSON: Sir, what were the locations that you suggested?

WITNESS WEDDLE: The first meeting that we had -- and I'm not for sure that the Public Service was at that meeting -- Florida Cities Water was at that meeting and it was held at the Luthern Church at the corner of Orange Grove and Hancock Bridge.

COMMISSIONER GARCIA: Luthern Church.

CHAIRMAN JOHNSON: You named one other location.

WITNESS WEDDLE: Yes. The North Ft. Myers High School. At both places I'd say from 3- to 500 people attended both meetings. And there should have been a stack of testimony given at those two meetings. I'm not for sure about the first one, whether that was recorded or not. But I think that probably Mr. Dick was there, I'm sure, then the other gentlemen -- I can't think what his name, Roger Eterburg (ph); is that correct? Does that name ring a bell? I think that they would verify my statement on that there.

CHAIRMAN JOHNSON: I appreciate you giving me those locations and I'm writing those down for future purposes. Perhaps we should use a closer location. Of course, we do have customers in North and South Fort Myers for this particular utility. And we have to have a place that will accommodate all of the equipment. But those are good suggestions and ones that were well-taken.

WITNESS WEDDLE: Well, you know, North Ft. Myers High School has a lot of seating capacity and the ability to project PA real well.

CHAIRMAN JOHNSON: Sure.

WITNESS WEDDLE: Okay?

CHAIRMAN JOHNSON: Thank you.

WITNESS WEDDLE: Thank you.

MR. McLEAN: Citizens call Irene Molina-Haws.

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IRENE MOLINA-HAWS

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

DIRECT STATEMENT

WITNESS MOLINA-HAWS: My name is Irene Molina-Haws. My address is 5957 Sonnet Court, North Fort Myers 33903.

I have lived in this area a short while and I noticed immediately that the water bill was quite high. My water bill generally runs to around $85 a month for two people. I started out to buy a house that was off McGregor and Winkler. And I contacted the Water Department and made a deposit of $98. However, that deal feel through. And when we purchased the house in North Ft. Myers instead, I was told the deposit is $140. I didn't understand at that time why I had to pay $42 more, but that's what it was. Of course, I found out right away when the bills started coming why it was so high. And we also shower

together, skip flushing, and do -- we have a well and with we still have very high rates.

The water -- the quality of the water is something else that I have found to be very poor. I had to buy a water filter even though I'm paying over $80 a month for water because the water that comes out of the faucets isn't drinkable. And it ruins the ice in the icemaker and the refrigerator. So I felt it was very necessary to do. And I mainly wanted to let you know that I feel like we're generally -- it sounds from everyone else, too, that we're paying a lot more money. And earlier today when I was here this morning someone mentioned that we get a 42-cent credit every month on our water bill. What kind of rebate is $5.04 a year? It just doesn't seem fair. And as you've heard over and over today, everything is much higher here than it is anywhere else in this area.

That's all.

CHAIRMAN JOHNSON: Thank you. Any questions? Thank you, ma'am. Appreciate you testifying. (Applause)

MR. McLEAN: Mr. Chairman, that lady was the the last to sign up to testify.

CHAIRMAN JOHNSON: Are there any other members of the public that did not sign up to testify

but would like to testify before the Commission this evening? Maybe we do have one coming in. Ma'am, did either of you want to testify this evening?

UNIDENTIFIED SPEAKER: Sure.

CHAIRMAN JOHNSON: Not to put you on the spot.

UNIDENTIFIED SPEAKER: No, you're not. Not at all.

CHAIRMAN JOHNSON: Whichever would like to testify, if you could come forward. And I'm over here. Just in time. If you can remain standing.

(Witnesses sworn.)

CHAIRMAN JOHNSON: You may be seated.

I'm Julia Johnson. I'm the Chairman of the Florida Public Service Commission. Seated to my right is Terry Deason. Seated to my left is Joe Garcia. We're the panel that will be hearing the testimony this evening. You are the fifth customer to come forward to testify. Public Counsel here, Mr. McLean, is your representative. This gentlemen here represents the Company. The Court Reporter is seated behind you. She's going to take all of your comments so they can be part of our official record. Gave you that background to give you time to just sit down and relax.

If you could, for purposes of the record, state your name and address, and then let us know whatever you'd like for us to know.

One other announcement I'd like for people to know that are testifying, this equipment here means that the testimony you are providing is being transmitted over the Internet, so that those around the state that would like to hear your comments can hear them live or later, if you want to go back, if you have the equipment, you can listen to yourself or listen to your neighbors and the statements they've made.

Sir, do you need to ask the question now? Do you want to talk?

UNIDENTIFIED SPEAKER: I had a phone call. That mike is not getting out on the Internet.

CHAIRMAN JOHNSON: Oh, I'm so glad you have that telephone and got that. This microphone or their --

UNIDENTIFIED SPEAKER: This is fine. That one is not. (Indicating)

CHAIRMAN JOHNSON: Ma'am, if you could maybe bring the microphone closer, that may be the problem. And if not, we just may be in trouble with this particular hearing. But I appreciate that

clarification. And we'll see what we can do. If you can speak directly into the microphone.

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JOANNE DENIGRIS

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

DIRECT STATEMENT

WITNESS DeNIGRIS: My name is Joanne DeNigris. I live at 983 Narcissus Street in North Ft. Myers. I wish we had more people here. Unfortunately, it's at a time where people are rushing home from work and trying get to the meeting at the same time.

I have been at a public hearing before. I do oppose the rate increase again.

During the last couple of months I noticed there's a foul smell to the water. I did get out and purchase some water equipment to help filter the water. In the past we have had some problems with the water system, whether it be the taste or quality or having Florida Cities Water come out and take a look at the systems. As long as I lived in North Ft. Myers, approximately 11, 12 years, I have yet to see anybody maintain that system. We've a Taj Mahal

at the end of Waterway Estates. I know that the people that live down there are complaining about trucks. Just the quality of water overall is bad.

And I'd like to address the Company as to why the water is declining in taste, and why are we trying to increase, you know -- we need to get more people involved with the cost of this water.

In North Ft. Myers we've got Lee County public utilities and then we've got Florida Cities Water. I don't know how many customers are served by Florida Cities Water -- and I know there are some well systems out there -- if we got the cost spread out to more customers, maybe it would lessen the cost to us directly. And I've asked that question before.

We have had some problems with sewers in our area. I know our pumping stations, they are always maintaining those or fixing problems that are out there. There's also problems with -- I wouldn't say the flow -- you know, if you're running the water in the sink in the kitchen and somebody is flushing, the pressure of the water is also a problem.

So there's some problems with the system itself. And, you know, I'm definitely opposed to an increase. We've got some senior citizens. We've got families that are on fixed incomes that cannot afford

rate increases. And, you know, for the quality of water we're getting versus what we're paying, I believe -- you know there was a study in the paper as to Florida Cities Water versus Florida Cities throughout the state of Florida. We're one of the highest areas that are paying for this water.

COMMISSIONER GARCIA: Let me ask you, ma'am, is the equipment that you installed in your house, does that fix the small problem?

WITNESS DeNIGRIS: Actually, it's a water purifier. It's the Brita. And I'm filtering the water through there. Because I notice within the last couple of months the water quality has decreased. It's got a foul smell to it.

COMMISSIONER GARCIA: Has that helped?

WITNESS DeNIGRIS: Yes, it has. Yes, it has. It's a charcoal filter system. I'm consider putting it on the house. But just the quality of water has declined.

COMMISSIONER GARCIA: Thank you.

CHAIRMAN JOHNSON: Any other questions for the witness?

MR. GATLIN: No questions.

CHAIRMAN JOHNSON: Ma'am, maybe one of the things we can do is we have an engineer here,

Mr. Crouch, and he can perhaps assist you with some of the issues you raised. You said it's a problem that's been worsening as opposed to getting better. And that one thing you have mentioned I haven't heard other witnesses mention that I think we should explore is the pressure problem. And I know you delineated quite a few things. Perhaps one of our engineers should get with you and come out and do any special research. Appreciate you coming out.

WITNESS DeNIGRIS: Thank you.

CHAIRMAN JOHNSON: Thank you. (Applause)

Yes, ma'am. There's one other lady that has not testified and I see she's raising her hand. I think she'd like to testify.

CHAIRMAN JOHNSON: Let me go ahead and swear you in at this time too. If there's anyone else in the audience that did not have the opportunity to testify and would like to testify, if you could stand I'll swear you in also.

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MARIA HARTZELL

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

DIRECT STATEMENT

WITNESS HARTZELL: Hi. My name is Maria Hartzell, last name if H-A-R-T-Z-E-L-L, and this is the second time I've spoke. Last time I spoke I did get a visit from the Florida Cities Water Company about three months down the road.

COMMISSIONER GARCIA: Ma'am, you need to speak right into the mike.

WITNESS HARTZELL: The last time I spoke here I got a visit three months down the road from the Florida Cities Water Company rep. He came out and wanted to know, you know -- said, "I called and came out to test the water quality." I said, "Well, I didn't call." And then as we talked, I realized he was there because I was speaking at the last meeting three months ago, or whenever that meeting was.

Anyway, he took a water sample. I said, "Are you going to get back to me?" And he says, "If we find something, we'll get back to you." Well, I never did hear from him and that was quite a while ago.

As far as -- I've lived in North Ft. Myers now for seven years. Since I moved into my house, we started paying water bills of $48. Now my water bills are about $85 each month. During the winter I pay more for water than I do for the electric. The quality, I can't see any difference. I know I keep paying more so I expect more and I'm not receiving more for my money.

I agree with her also. There's a stronger chlorine smell to the water lately. I don't drink the water anymore. I buy bottled water. I have three small kids and I'm kind of leery.

The pressure is also a problem in my neighborhood, which is next door to her neighborhood? And we've got our kids trained not to flush the toilet when someone is taking a shower because you loose the water pressure. So it's sort of a -- kind of a inconvenience when you're paying $85 that you have to watch how you use your water pressure. And, of course, we can't run a washer when anybody is in the shower.

I was wondering if management should be checked into. Because if I keep paying more money each year -- which is usually more than my pay increase for the year -- then where is the money I'm

paying going? And where is the better service? Because I'm still not seeing that.

Also, I know three people on the block that moved due to the increased water. They just couldn't afford it. Two were seniors on fixed incomes and they had to put their house up for sale and left. And then one was a single mom with kids. They all left. I thought it was a pretty shame that I'm losing good neighbors because of the price of water.

I just definitely oppose it. And I really would like to see if we could take it over, like by the county, and out of the hands of Florida Cities Water, and see if somebody new under management could run it better. And that's basically all I have to say. (Applause)

CHAIRMAN JOHNSON: Thank you. If the gentelman with the telephone could come forward.

COMMISSIONER GARCIA: While that gentleman comes forward, if you all notice on this blue sheet, on the front, towards the bottom right-hand side, there's a phone number, 1-800 number. If you have a problem with a Company and don't seem to be getting a resolution, call us up. We file a complaint. It goes into our computer system. The company has a limited amount of time in which it has to respond by. That's

something we can also use when this Company comes before us again in some future date. Our engineers and our technical Staff can look into those problems and make sure they are solved. And it doesn't cost you anything except some time. It usually takes about five minutes to get to it. But it's 1-800-342-3552.

CHAIRMAN JOHNSON: Okay. If you could state your name and address for the record.

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THOMAS SMITH

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

DIRECT STATEMENT

WITNESS SMITH: My name is Thomas Smith. I live at 4610 Mackinaw Avenue, North Ft. Myers in Waterway Estates.

Unlike a lot of people, I have been on this system since 1972. I know what it was and what it is now.

But when I came in here today I got this thing called a "Special Report," and something struck me as strange on it here. They say we serve 2,559 customers, and they are looking for a return of $2,591,000. And in some of the research I have been

doing here, I find that Avatar serves 43,000 customers and their revenues are a lot less percentagewise than that. And they are making good money. According to their corporate report, their water and sewer -- water and utilities divisions from '95 to '97 had an increase of 15.6% in revenue.

On that 43,000 customers reportedly in 1995 to '96, utility revenues increased $3 million. '96 to '97, revenues increased a 1.5. Utilities expenses over the same period, from '95 to '96 increased $582,000, and in 1996-'97 utilities expenses increased $122,000. This is on Avatar's SEC Report on Annual Revenues.

They quoted here "Utilities revenues increased 4.7% in 1997 when compared to '96; 10.4% during 1996 compared to '95, while their expenses in '97 increased one-half of a percent, and their expenses in '96 were up 2.3%.

One interesting quote they have back here in their report -- and I quote this, "Increases in interest rates affecting the Company's utilities operations generally are passed on to the consumer through the regulatory process." Now, this report also states that they have a credit line of $15 million in the utilities division, of which over

$14 million is still available. I quote here "Inflation has had a minimal impact on Avatar's operations over the past several years and management believes its effect has been neither significant nor greater than its affect on the industry as a whole."

Basically that's what I have. But it looks like percentagewise, with 43,000 customers and 34 million in revenue, they are looking for a lot more revenue out of our customers than in general in their whole utility system. And I'll leave this with your people.

CHAIRMAN JOHNSON: Thank you, Mr. Smith. You can pass that information over to the court reporter. (Applause)

You can leave it with the Court Reporter and we'll make sure that gets on the correspondence side of our record. There was another gentlemen. Yes, sir.

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DAVE DIETZEL

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

DIRECT STATEMENT

WITNESS DIETZEL: Dave Dietzel. I live at

9131 Palm Island Circle, North Fort Myers.

CHAIRMAN JOHNSON: Could you spell your --

WITNESS DIETZEL: D-I-E-T-Z-E-L. And I'm just here to plead ignorance. I was unable to attend the hearings in April due to a working schedule. And this is my first opportunity to come to one of these. And hearing that we are charged in North Ft. Myers 95% more than fellow customers in South Fort Myers, is it appropriate to ask why? That seems unconscionable to me for people in a certain part of a community to have to pay those higher rates than others using the same system.

And what's the reason for this recent request to increase the -- our water rates? I agree with the others that have spoken. We seem to be paying an undue large amount of money for what we receive, and it does continue to go up. And why are they coming back and wanting to do it again? Maybe everybody here knows the answer. If they do, why fine. But this just doesn't seem to be justice to me. And I just wanted to ask why. And can we receive an answer tonight or not?

CHAIRMAN JOHNSON: Sure. And I think you had two questions. One, why are the rate structures different? Why would one group of customers pay a

different rate than the other group of customers?

And your second question went to how did we get -- why are we here again today.

WITNESS DIETZEL: Yes? What's the reason for this rate increase.

CHAIRMAN JOHNSON: I'll.

WITNESS DIETZEL: And can the company justify that to us.

CHAIRMAN JOHNSON: I'll start with the second question first and I'll also allow Staff to follow up on both issues.

If you look at the Special Report, and I begin at the beginning talking about the remand, because we did have a rate case and the issues were resolved, and we did have customers. And when I mentioned April, it was April of 1996 they came in and testified.

We did put out a final order. And when we put out a final order to what the rate should be, and what the rate structure should be, and how the customer should be charged, the companies, as well as Public Counsel, they have the opportunity to take our final order and appeal that to the District Court of Appeals. And in this instance they did appeal our decision on quite a few grounds.

The reasons why we're back here today is the two reasons that the Court remanded, and that means the Court sent the case back to us. Some would say they ruled in favor of the Company; and others would say they told us that we had an opportunity to look at our record, reopen the record and make a determination on two issues. And that's what we're here about tonight.

Two issues. One is the capacity of the wastewater treatment plant, and the second is the calculation of used and useful plant.

The last time around in 1996, I know that the customers were very active in the case on used and useful and on the capacity of the wastewater treatment plant. And that's why it's kind of confusing because I know a lot of customers said "Didn't we resolve this? Hadn't we already heard these issues?" Well, we need to reopen the record in order to have sufficient evidence to make a decision based upon evidence in the record.

Now, what happens next? I think it was either you or another gentleman said could this get appealed again? We will make a determination -- and there are certain due process and legal procedural rights. Perhaps it will be appealed. We're hopeful

that whatever decision we make, if it's reviewed by the Courts that it will be upheld. But to the extent that it's not, then there may be continuous litigation on that one point.

The other point that you asked was with respect why are the rates in one system higher than the other system? These are treated as separate systems, aren't they, Mr. Willis? So that the cost structures are handled on a stand-alone basis. And what I mean by that is, we do a calculation as to the cost of the plant and the equipment and the actual investment for each of these systems separately. One of the gentlemen testified and said it should be like telephone companies or other companies where the costs are kind of averaged between customers.

With respect to water and wastewater, the systems are handled differently and oftentimes they are treated as stand-alone systems. Several years ago, the Commission, for a different company, started down the road of trying to implement uniform rates and that's been a very litigious process.

In this I think we continue to treat them, from a accounting purpose I'm almost sure, as stand-alone separate systems, so that the costs of one system are borne by the customers of that system, and

the costs of the system are borne by those customers and there's no cross-subsidy. In other words, your costs are higher than theirs.

WITNESS DIETZEL: They are higher in North Fort Myers than they are in south.

WITNESS DIETZEL: Why is that?

CHAIRMAN JOHNSON: Do you want to go over -- Mr. Willis is the chief of one of our water and wastewater divisions, and he could probably explain, in paneful detail, to why the cost structures are different.

WITNESS DIETZEL: Why are they almost 100% high in North Fort Myers?

MR. WILLIS: Well, I can't go through and give you every detail of it, but the the major reason why there is such a big difference in cost is that there are a far great number of customers in the South Fort Myers systems. And by having the far greater number of customers, you have the larger economy of scale effect, and, therefore, you can take the costs and spread them over a large number.

As in North Fort Myers, there's fewer customers and the costs are much greater. The plant's a smaller plant than they have in the South Fort Myers system, and it just doesn't have as large economy of

scale effect. That's the simpliest reason I can give you. But the costs are cost based. As the Chairman said, the South Fort Myers systems at this point are cost based for their system as well the North Fort Myers system.

Somewhere back in the 1980s, both wastewater systems were under a uniform rate, what we call a single-tariff pricing system. Back at that point South Fort Myers had to put in an advanced waste treatment plant and the company requested to unbundle that single tariff pricing, and they came in and put in a single rate for a stand-alone rate for the South Fort Myers system, and their rates went up much higher than North Fort Myers at that time. And as you all are very aware, at one point in time the company came in for a rather large rate increase for North Fort Myers when they had to put in the advanced waste treatment in the North Fort Myers system.

But I can assure you the costs now are stand-alone, only based upon the north system standing by itself and the South Fort Myers system standing by itself. At some point in time that could change.

WITNESS DIETZEL: But you said, sir, that the treatment plant in North Fort Myers is small and inadequate.

MR. WILLIS: No. What I'm telling you. It's a smaller plant than the one in South Fort Myers because the one in South Fort Myers handles probably three times the number of people than the North Fort Myers system. And in the business of water and wastewater, bigger is better, you might say, in that the bigger the plant you have and the more people you serve, you can serve it more efficiently than you can with a smaller plant. And that's just an economies-of-scale approach to dealing with costs, you might say.

WITNESS DIETZEL: So then if I may ask another question, Madam Chairman?

CHAIRMAN JOHNSON: Yes, sir.

WITNESS DIETZEL: So then the reason for this new increase is what?

MR. WILLIS: The reason for this new increase?

WITNESS DIETZEL: Yeah.

MR. WILLIS: The increase we're talking about here today is because of the District Court of Appeals overturning a Commission decision and giving the Commission the right to reopen the case and put on more evidence to support its prior decision at this point in time.

The rates that the Company has in effect right now are allowing them to recover the costs that were sent back to the Commission at this point in time. If the Commission is upheld, then there will be a slight rate decrease to take care of that and a refund to customers. The Commission is not upheld in the future by the Courts. I don't believe there will be a future rate increase but there certainly won't be a refund.

WITNESS DIETZEL: So you're saying you're not asking for a rate increase?

MR. WILLIS: I'm with the Staff of the Commission. I'm not with Florida Cities.

WITNESS DIETZEL: Oh. Florida Cities is not asking for an increase?

MR. WILLIS: Let me try and explain it a little better.

The Commission had a rate case and the Commission made a finding in that rate case. The Company didn't like the finding they made in that rate case and they appealed it to the First District Court of Appeal. First District Court of Appeal came back, like the Chairman said when we first started the hearing -- they came back and said, "We're overturning you on two points of your decision." One of those

dealt with the capacity of the wastewater treatment plant in North Fort Myers, and other dealt with how we calculated used and useful. And the used and useful decision the Court said you can to go and reopen the record and take more evidence on that to try and support your decision in that case.

What we're doing here today and tomorrow is taking additional evidence on that one decision to build a better record to support that decision. That's exactly what we're doing here today. We're still dealing with that rate case that was in existence back in 1995 when they filed that. It's been through the Commission, through the courts and now back to the Commission again for further evidence taking to defend our decision.

MR. GATLIN: Madam Chairman, I think just with minor correction I would agree with what Mr. Willis said. I don't think the capacity was referred back for further testimony.

MR. WILLIS: No, I don't think I said that. I said only the used and useful portion.

MR. GATLIN: I thought I heard a you say capacity.

MR. WILLIS: No. I said there were two parts remanned back to the Commission for action.

Only one of them required testimony, and that was the used and useful portion. The Commission was overturned on the capacity issue.

MR. GATLIN: I didn't think that was clear.

COMMISSIONER GARCIA: If I'm not mistaken, the customers are already paying the higher rate -- if I'm not mistaken.

MR. WILLIS: Yes, they are.

COMMISSIONER GARCIA: What we're trying to do here is get more evidence on the structure we believe. Make sure we can prove that up. If we prove that up, you will have to pay less. But it's based on the technical issue of how we calculated what their rates should be.

WITNESS DIETZEL: Okay. I'll go for that.

CHAIRMAN JOHNSON: Yes, sir. Thank you, sir. (Applause)

Ma'am, there's another question -- you're going to need to come up to the microphone just to make sure everyone can hear your statement.

WITNESS HARTZELL: Maria Hartzell again, and I have a question. I just wondered as you were describing, we have a smaller community to serve that's why our water is so high, the name of the other -- Lee County Utilities is also in North Fort

Myers -- what is the chance we can actually merge, serve all of Fort Myers, bring our rates down and make everybody happy?

COMMISSIONER GARCIA: The problem is it isn't the City's to serve, it's their water plant. The truth is that the city would basically have to buy them or decide to serve it. And that's a decision of your local elected officials. That's something -- we have no power over that.

WITNESS HARTZELL: Okay.

COMMISSIONER GARCIA: Sometimes companies sell to the local government because the government wants to step in. Other times the government privatizes and companies buy it. But that's something we really have no say over.

WITNESS HARTZELL: So that would be like a mayor-type issue.

COMMISSIONER GARCIA: Mayor, City Council. Sometimes cities have a utility board. We wouldn't know.

WITNESS HARTZELL: Do we have any Commissioners here representing us? (No response.) No.

COMMISSIONER GARCIA: That's something you should discuss with them. I don't think this is the

proper forum because we really have no .

WITNESS HARTZELL: Okay. Thank you.

CHAIRMAN JOHNSON: There's one more question. Mr. Smith?

WITNESS SMITH: Yes. My name is Tom Smith again. I've got a couple of questions I'd like to ask. Number one, we're talking capacity and what it's up to. I have spoken to people who have seen the proposals for Hancock Bridge Parkway between Moody Moody Road and Orange Grove. To quote what the gentlemen said, "It looks like the Grand Canyon between the high rises." Now, this is Florida Cities' territory.

There's a photograph from Avatar Utilities Services they use on the front page of their displays on the Internet that I gave the lady. Shows our water plan, wastewater plant. There isn't an inch of ground left on that site for anything unless they buy the Marina. Now, how do they plan to service all the rest of this North Fort Myers area all the way to Pondella (ph) Road with the plant they are running now?

COMMISSIONER GARCIA: They have to serve it. If it's their territory, they have to serve it. They have to be ready and willing to serve or someone else can serve it. You're going to find because of other

constraints of the law -- in other words, other requirements by other statutes, Department of Community Affairs, probably the local ordinances that are required, you can't build a building unless you can service it. And if this company can't service, somebody is going to find someone else who can. But they have to be able to serve it.

WITNESS SMITH: If they decide they want to service this area, and they've already stated that in the previous meetings, who is paying for all of this? You're talking new site, new plan, new everything.

COMMISSIONER GARCIA: Do you want to go into the technical explaination of how facilities -- basically you're not going to pay for that.

WITNESS SMITH: That's not what they have been trying to do.

MR. WILLIS: Let me explain something about expansion of territory.

The company will be probably sometime in the future, if they are wanting to expand, come to the Commission for the cost to do that. And they normally do that through what we call service availability charges.

COMMISSIONER GARCIA: It's sort of like an impact fee.

MR. WILLIS: Sort of like an impact fee, which they will be coming forward and trying to charge that new area. If they have to build a new facility at a new facility site because they don't have room at their current place, I doubt it will be tied into their system. It's possible. I don't know. Without knowing the area, knowing what's going on, I couldn't give you the specifics of anything dealing with it at this point in time. And they certainly have not come to us for anything dealing with the extention of the territory, if its not already their territory at this point.

WITNESS SMITH: Well, it is in the middle of their territory. It's just currently undeveloped. It's right smack in the middle of their territory.

And I believe the last year's -- or '96's meeting, they definitely wanted to serve that new addition. They said so. That's why we got into this capacity debate in the first place. And somebody researched it and found out they did their capacity upgrade far and above what they needed at the time. And they wanted to do it again. And this is where we won or we thought we won on the last case.

CHAIRMAN JOHNSON: Thank you, Mr. Smith. Did you have a question? When you come forward,

please pronounce your last name for me. I think I'm mispronouncing it.

WITNESS EBIE: I'm Lucille Ebie. E-B-I-E.

Anyway, what I wanted to say, if this company was smart enough, they would take and manage their money like other businesses do and they would have capital again, or whatever it takes, to make improvements when they needed it. And for me, I'll still never see why they can charge more in one area than the other. Because I'm like you, with what the other fellow said, with telephone companies and other companies, they all have one price. And if you are working for a company, they have certain guidelines that they pay you by. And that's the way it works. But here they are also wasting a lot of money, making you come clear from Tallahassee, down here. We're paying your wages out of our taxes, plus the building and everything that goes on -- they have wasted a lot of money in this community just since I've lived here almost nine years. And it just don't add up, to think that they don't wise up pretty soon. You know, because the people just can't cope with this kind of money. It's got to stop. Because they are just not going to be able to pay their bills. And then what are they going to do? If they don't have the money

coming in, they better keep their prices down where people can pay their bills. Because the time is coming when they are going to have a lot of outstanding bills who nobody pays. And then they might think twice because there comes a time you can just rip people off so long and they can't take it.

Thank you. Bye. (Applause)

CHAIRMAN JOHNSON: Thank you.

WITNESS GREEN: Hi. Harry Green again.

Just a couple of points. The gentlemen over here said impact fees pay for the increase in the facilities. Well, why does the $300,000 reuse increase get laid on the residents rather than on future growth? We shouldn't have to be paying impact fees for future growth that took the plant up to 1.3 MGD.

And secondly, for the residents, probably most of you don't know that a new nonprofit governmental agency is being formed in Tallahassee that's proposing to purchase Avatar potable and wastewater facilities throughout Florida, including the plants here in Lee County. And the last I heard from our Commissioner Koid (ph) was it looks like it's a deal that's going to go down. And once that happens, hopefully the county will be able to purchase

the facilities from this nonprofit utility in Tallahassee, and we would be coming under county jurisdiction rather than the Public Service Commission in Tallahassee. Thank you.

CHAIRMAN JOHNSON: Thank you. (Applause) Ms. McCormick.

WITNESS McCORMICK: JoAnne McCormick speaking again.

Is there another waste treatment plant in Waterway Estates on the corner of St. Clair and Orange Grove Boulevard behind the Farm Store? It's owned by Florida Cities Water. And there's a definite odor at times coming from behind the Farm Store. And I believe it is another treatment plant of some sort. Could somebody clear that for me?

CHAIRMAN JOHNSON: Staff, any indication?

COMMISSIONER GARCIA: Maybe the company can answer the question.

MR. GATLIN: See if I can get an answer.

UNIDENTIFIED SPEAKER: That's the water.

COMMISSIONER GARCIA: Why --

MR. GATLIN: He said that was a water plant.

WITNESS McCORMICK: That's a water plant? If it's a water plant, why is there an odor? Water is not supposed to smell unless it's sulfur, and I don't

believe we don't have sulfur water that we drink or is being processed. Do you have an answer?

MR. GATLIN: Well, if the Commission would like a report on some of these comments, we'd be glad to look into them and give you a report.

CHAIRMAN JOHNSON: If you could follow up with a report, that would be helpful. And perhaps Staff has some additional information.

MR. CROUCH: I was going to answer on a hypothetical on this. I don't know whether this is true in this particular case or not, but some water treatment plants do have an odor that comes from them; as they aerate the water you get hydrogen sulfide that comes off of that water.

WITNESS McCORMICK: But I believe that is lethal gas, and you could become sick from the smell.

MR. CROUCH: Hydrogen sulfied is, by itself, not a lethal gas unless you're in a very concentrated area; inside a pipe or something like that. Hydrogen sulfide is naturally occurring in most of the water in Florida. Many of the water treatment plants do aerate the water and that hydrogen sulfide just disipates into the air.

WITNESS McCORMICK: I understand that. But when we spoke to the representative from the DEP, he

says he has a meter. And when the smell is very bad, there's no one there to take a reading. I have a friend who lives in North Carolina who has a meter, and he was down here two years ago, and it was at high levels, which are not healthy.

MR. CROUCH: I know it can reach high levels, and at concentrated levels it could be hazardous. But by and large, in most of the cases, while it is esthetically unpleasing -- the rotten-egg smell stinks, to put it bluntly -- a lot of times if you've got our own well, your own well water will have hydrogen sulfide in it that you can taste.

WITNESS McCORMICK: I understand that.

MR. CROUCH: That's what I'm saying hypothetically in this case, may be the smell that you are getting is coming from an aerated water treatment plant somewhere. I'm not familiar with it in that area. I haven't been over there in several years, but we will sure look into it.

WITNESS McCORMICK: So there's the water plant that's just off of Orange Grove, on the corner of St. Clair and Orange Grove, and the waste treatment plant is at the end of Inlet Drive near the Marina, so they are two separate --

MR. CROUCH: We'll look into it.

WITNESS McCORMICK: I appreciate it. Because I am concerned. I have upper respiratory problems. When the odor is very bad -- I mean it's nauseating. I have to shut my doors when I don't need to in the wintertime just to eliminate the smell.

Thank you.

CHAIRMAN JOHNSON: Thank you, Ms. McCormick.

I'd like to thank you all for coming out tonight. I hope we were able to answer all or most of your questions. And to the extent that we couldn't answer them, there are Staff members here that can continue to take your name, number, and try to respond to any questions that you might have.

Also if you have noticed, I failed to mention that on the back of the blue sheets, if you have written comments, didn't want to testify, have additional questions, if you want to just simply write out comments; fold it over and our address is on the outside, and mail that to the Commission, your comments can be received that way. As Commissioner Garcia stated, there's the 1-800 number and there's also our Internet address, and you can use that to also fax any complaints or questions.

And with that, again, I'd like to thank you all for coming out and participating in our second

customer hearing.

If there are no further questions, I'd like to go ahead and adjourn the customer hearing for tonight. Thank you again. Appreciate your comments.

(Applause.)

(Whereupon, the hearing adjourned at 7:15 p.m. to be reconvened at 9:00 a.m on December 9th, 1998, at the same location.)

(Transcript continues in Volume 9.)

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