

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

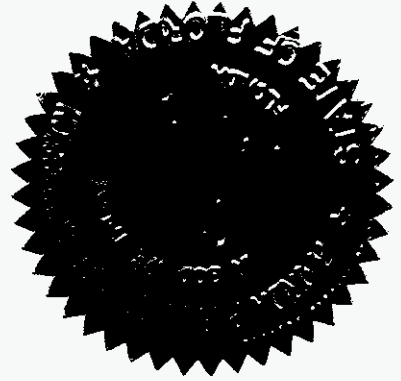
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In the Matter of :  
Application for Increased :  
Wastewater Rates by :  
Florida Cities Water :  
Company - North Ft. Myers :  
Division in Lee County. :  
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DOCKET NO. 950387-SU

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.)

DOCUMENT NUMBER-DATE

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

(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.

- - - - -

**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.

1 Q Have you prepared written testimony for  
2 presentation today?

3 A Yes.

4 Q Consisting of 17 pages?

5 A Yes.

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

9 A Yes, they would.

10 Q Do you have any corrections you should make?

11 A No.

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

14 CHAIRMAN JOHNSON: It will be inserted.

15 Q (By Mr. Gatlin) Mr. Cummings, I believe  
16 you have two exhibits, TAC-1 and TAC-2. TAC-1 is a  
17 Preliminary Engineering Design Report, Waterway  
18 Estates Wastewater Treatment Plant, and TAC-2 is Table  
19 1-2 and 1-3 in the chapter entitled "Wastewater  
20 Parameters of Significance to the Design Engineer of  
21 MOP/8." May we have those identified, Madam Chairman?

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

24 (Composite Exhibit 35 marked for  
25 identification.)

## FLORIDA CITIES WATER COMPANY

## NORTH FORT MYERS DIVISION

## REMAND TESTIMONY OF THOMAS A. CUMMINGS

Docket No. 950387-SU

1  
2  
3  
4  
5 Q. Please state your name and business address.

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

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

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

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

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

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

15 Q. By whom are you presently employed?

16 A. I am currently employed by Black & Veatch.

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

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

25 Q. What is your position with Black & Veatch?

1 A. I am a project manager/project engineer.

2 Q. How long have you held that position?

3 A. I have held this position since 1985.

4 Q. What are your normal duties for Black & Veatch?

5 A. The majority of my time I am responsible for engineering  
6 duties for numerous projects and clients for which my  
7 role is either the project manager, or project engineer,  
8 depending upon the nature and scope of our services.

9 Q. Please describe the responsibilities of a project  
10 manager.

11 A. The responsibilities of a project manager include the  
12 establishment of the project structure, both technical  
13 and financial. The project manager is accountable to the  
14 company for meeting project financial goals and technical  
15 requirements. The manager will also ensure that the  
16 client's project goals are also met.

17 Q. Please describe the responsibilities of a project  
18 engineer.

19 A. The project engineer is responsible for the production of  
20 the project and product. The project engineer will  
21 coordinate all technical activities and disciplines to  
22 achieve project goals.

23 Q. What is the purpose of your testimony?

24 A. The purpose of my testimony is to describe the basis of  
25 design for the FCWC Waterway Estates Wastewater Treatment

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

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

7 A. Yes, I was.

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

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

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

15 A. Yes.

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

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

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

25 A. Yes, it did.

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

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

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

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

18 Q. Please explain how plant capacity is determined.

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

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

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

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

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



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

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

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

17 A. Yes.

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

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

1 facility expansion that would provide proper treatment.

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

4 A. The plant biological process model and resulting plant  
5 expansion was based not only on an increase in plant  
6 hydraulic flow in million gallons per day (mgd), but also  
7 on the constituents in the incoming waste stream. The  
8 plant is required by its Florida Department of  
9 Environmental Protection (FDEP) discharge permit to  
10 remove specific constituents from the waste stream.  
11 These constituents include Biochemical Oxygen Demand  
12 (BOD), Total Suspended Solids (TSS), Total Nitrogen (TN),  
13 and Total Phosphorus (TP). It is only by designing  
14 around removal of these constituents that an economical  
15 plant expansion can be achieved. As stated in the Manual  
16 of Practice No. 8, Wastewater Treatment Plant Design,  
17 1977, prepared by the national Water Pollution Control  
18 Federation (MOP/8):

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

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

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

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

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

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

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

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

1 represents the 95<sup>th</sup> percentile of the constituents'  
2 concentration data range for the plant and is  
3 approximately equal to the maximum monthly value. This  
4 loading is used in the modeling and sizing of the  
5 biological treatment process and sludge treatment  
6 processes.

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

15 This approach is consistent with MOP/8 in Chapter I  
16 under the section "Flows for Design." This section  
17 describes the design average flow rate as "the average  
18 flow during same maximum significant period such as 4, 8,  
19 12 or 16 hours." The average monthly influent  
20 concentrations for the WWTP from January 1986 to March  
21 1992 were reviewed and used to create the preliminary  
22 engineering design report Figures 2 and 5. Exhibit \_\_\_\_  
23 (TAC-1). As identified in the preliminary engineering  
24 design report, the statistical analysis of the monthly  
25 average influent concentrations yielded the following for

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

2		<u>Mean</u>	<u>Mean +2S</u>
3	Biochemical Oxygen Demand (BOD <sub>5</sub> ),		
4	Mg/l	200	312
5	Total Suspended Solids (TSS), mg/l	242	379
6	Total Kjeldah Nitrogen (TKN), mg/l	33.3	53.2
7	Total Phosphorus (as PO <sub>4</sub> ), mg/l	7.8	12.4

8 The mean + 2S, or maximum design concentrations was  
 9 used throughout the design. Average monthly BOD<sub>5</sub>, TSS,  
 10 TKN, and PO<sub>4</sub>, are illustrated in Figures 2 to 5. Exhibit  
 11 \_\_\_\_\_ (TAC-1). The average and maximum design  
 12 concentrations are indicated on the figures for  
 13 reference. The annual average BOD<sub>5</sub> concentration  
 14 remained relatively constant during the 1986 to 1992  
 15 timeframe. The average influent TSS concentration  
 16 appeared to increase with time. With the distinct  
 17 exception of high values from October 1988 to February  
 18 1989, the average influent TKN concentration was very  
 19 consistent during the timeframe studied. The influent  
 20 phosphorus concentration appeared to decrease since 1986,  
 21 except for the second half of 1989.

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

24 A. Yes.

25 Q. What are the target constituents required for removal at

1 the Waterways Estates Wastewater Treatment Plant?

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

8 Monthly Average Concentration

9 5-Day Biochemical

10	Oxygen Demand (BOD <sub>5</sub> )	20 mg/l (monthly average)
11	Total Suspended Solids (TSS)	20 mg/l (monthly average)
12	Total Nitrogen (TN)	3 mg/l (monthly average)
13	Total Phosphorus (TP)	0.5 mg/l (daily maximum)

14 The design of the plant expansion was based on  
15 achieving these permit limits as a minimum. The use of  
16 the denitrification filters to meet the total nitrogen  
17 limit resulted in an effluent TSS which was considerably  
18 lower than 20 mg/l. Likewise, the biological system  
19 design was controlled by the nitrification requirements,  
20 not the carbon removal, and effluent BOD<sub>5</sub> levels were  
21 well below the required 20 mg/l BOD<sub>5</sub> limit as a result.

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

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

1 Completely Mixed Activated Sludge (CMAS) program. The  
2 program is set up for modeling the anoxic\oxic activated  
3 sludge process. The oxic portion of the model is based  
4 on first order kinetics for removal of organics as  
5 developed by Dr. Ross McKinney. Influent wastewater  
6 characteristics input into the model include: BOD<sub>5</sub>, TSS,  
7 VSS/TSS ratio, alkalinity, peaking factors for the  
8 carbonaceous and nitrogenous load, and temperature.  
9 Other major parameters input include: the desired  
10 dissolved oxygen concentration in the mixed liquor; alpha  
11 and beta factors dependent on the type of aeration system  
12 selected; and the desired sludge age or mixed liquor  
13 suspended solids (MLSS) concentration to be maintained.

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

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

4 The maximum design concentrations of 312 mg/l BOD<sub>5</sub>,  
5 379 mg/l TSS, and 53.2 mg/l TKN were utilized in the  
6 biological process model. Other model inputs supplied by  
7 Bob Dick of FCWC based upon actual wastewater  
8 constituents data are average influent alkalinity of 200  
9 mg/l and average influent volatile suspended solids of  
10 178 mg/l used in establishing the VSS/TSS ratio. A not  
11 to exceed maximum total nitrogen (TN) concentration of 14  
12 mg/l was assumed for the treatment unit effluent which  
13 corresponds to the average design influent TN (14 mg/l)  
14 to the effluent filters.

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



1 biological capacity of the process. The results of this  
2 first run were used to recalculate the influent TSS of  
3 475 mg/l and VSS/TSS ratio of 0.57 for use in the second  
4 model run.

5 Q. What were the results of the model?

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

17 The secondary clarifier effluent quality predicted  
18 by the modeling is approximately 2 mg/l BOD<sub>5</sub>, 5 mg/l TSS,  
19 12 mg/l TN, and, <0.5 mg/l TP. The solids loading to  
20 each clarifier is 10 ppd/sq.ft. At the maximum design  
21 MLSS of 3,300 mg/l. The surface overflow rates of 368  
22 gpd/sq.ft @ average flow and 736 gpd/sq.ft @ peak hour  
23 flow are low. Modeling was also performed with the  
24 larger BTU completely out of service as required by DEP  
25 redundancy rules. This illustrated acceptable treatment

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

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

10 A. It was my professional opinion and recommendation that a  
11 1.3 mgd plant should be built at Waterway Estates with  
12 component necessary to treat the associated pollutant  
13 flow. The size of 1.25 was the most economical size to  
14 address the growth needs for the Waterway Estates and the  
15 FDER requirements to only discharge flows above 1.0 mgd  
16 to reuse.

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

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

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

3 Q. Does this complete your testimony?

4 A. Yes.

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TAL:18538:1

1           **MR. GATLIN:** Mr. Cummings is available for  
2 questions.

3           **CHAIRMAN JOHNSON:** Public Counsel.

4                           **CROSS EXAMINATION**

5 **BY MR. McLEAN:**

6           **Q**     Good afternoon, Mr. Cummings, sir.

7           **A**     Hello.

8           **Q**     You went to engineering school in Kansas,  
9 correct?

10          **A**     No. In Indiana.

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

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

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

18          **A**     Yes.

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

21          **A**     No, not specifically used and useful.

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

24          **A**     Yes.

25          **Q**     Then you took the professional engineer's

1 exam in the state of Kansas?

2 A Yes.

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

5 A No. Only that of engineering economics.

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

9 A That's correct.

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

13 A Yes, that's correct.

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

18 A No.

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

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

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

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

11          A     Yes.

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

14          A     That's a nominal rating.

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

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

1 permit, describe the treatment capacity of the plant.

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

6 A Correct.

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

15 A No, not singularly.

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

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

23 Q Maybe I didn't ask the question correctly.

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

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

4 A Yes. Given other information, you could.

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

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

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

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

17 Q Yes, sir.

18 A Is that what you mean?

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

25 A Yes.



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

5           A     Yes.

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

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

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

15          A     Not a professional opinion.

16          Q     Okay.

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

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

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

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

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

12           A     Yes.

13           Q     And I believe you say -- that you're going  
14 to say if the plant was designed for only the annual  
15 average flow rate, the plant was overflow during  
16 periods when the flow was above the average.  But this  
17 plant does, in fact, treat flows greater than  
18 1.25 million gallons per day, doesn't it?  Or do you  
19 know?

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

22           Q     Actual, sir.

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

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

1 engineer would design a plant and represent to the DEP  
2 it has 1.25 million gallons per day average annual  
3 daily flow capacity of that unless it also had the  
4 capacity to treat, at least in your recommendation,  
5 2.5 million gallons per day. I said "treat" again. I  
6 should have said "flow."

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

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

13       A     Yes.

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

18       A     Yes.

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

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

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

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

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

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

17 A Today?

18 Q Yes, sir.

19 A I don't know.

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

1 with the hydraulic aspects, couldn't I?

2 A Yes.

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

5 Now, back to Page 10, Line 7, 8 and 9, that  
6 which I inadvisedly referred to as a safety factor,  
7 you advised, I think, as a design factor, because, in  
8 fact, the plant has to deal with the excess, or has to  
9 deal with peaks and hydraulic capacity. And I want to  
10 know about these two numbers here you use, 1.5, and  
11 1.3. Is that a reasonable analog for the same  
12 phenomena that you're dealing with when you design a  
13 plant to treat twice its permitted capacity in terms  
14 of hydraulics? Is that the same phenomena we're  
15 dealing with?

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

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

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

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

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

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

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

12 A Mathematically speaking --

13 Q Yes, sir.

14 A -- I suppose that's right.

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

19 A Yes.

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

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

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

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

8           A     Okay, I have it.

9           Q     Now, are you familiar with the rule?

10          A     Yes.

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

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

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

21          A     From a hydraulic point of view?

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

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

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

3 Q If indeed --

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

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

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

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

21 MR. McLEAN: I agree.

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

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



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

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

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

12          A        Yes.

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

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

21                 **CHAIRMAN JOHNSON:** Mr. McLean?

22                 **MR. GATLIN:** As a triggering --

23                 **CHAIRMAN JOHNSON:** Mr. McLean.

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

1 I'll rephrase the question.

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

5 A (Witness complies.) Okay.

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

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

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

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

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

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

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

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

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

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

14 A Yes, since "capacities" is plural.

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

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

1 hydraulic capacity of the plant.

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

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

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

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

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

17 A No, that's not true.

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

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

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

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

5 A Yes.

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

8 A I can't make that statement right now.

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

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

21 A No, not at all.

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

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

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

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

17       A     Yes.

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

1           A     Yes.

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

4           A     Yes.

5           Q     Thank you, Mr. Cummings.

6           MR. McLEAN: I have nothing further.

7                           **CROSS EXAMINATION**

8   **BY MR. JAEGER:**

9           Q     Good afternoon.

10          A     Hello.

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

15          A     Yes.

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

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

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

1           A     Yes.

2           Q     And DEP approved this permit then?

3           A     Yes.

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

7           A     We took it off of existing records.

8           Q     And do you remember what that was?

9           A     The peak hour coming into the plant?

10          Q     Yes.

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

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

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

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

24          A     Yes.

25          Q     You also said the plant had to be able to



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

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

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

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

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

17 A Yes.

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

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

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

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

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

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

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

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

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

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

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

25 Q Okay. You checked off annual average daily

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

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

10 Q Okay.

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

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

15 A Exactly.

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

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

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

23 A Yes.

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

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

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

5           **A**        Yes.

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

8           **A**        No.

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

11          **A**        Yes, sir.

12          **Q**        Are you familiar with the matching principle  
13 in fractions?

14          **A**        Yes.

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

17          **A**        Yes.

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

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

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

25          **A**        Same units of measure or time or temperature

1 or whatever.

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

5 A I don't know.

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

9 A Yes.

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

14 A For a municipal wastewater plant, yes.

15 Q Have you ever checked max month then?

16 A No.

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

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

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

4 Q I'd like to set up another equation and see  
5 if you agree with that calculation. And what I'm  
6 going to have is you have a water company serving so  
7 many customers, and it costs the utility \$1 per 1,000  
8 gallons to produce and distribute water. And the  
9 rates for this company are the \$1.50 per 1,000  
10 gallons. And your annual average daily flows are  
11 1 million -- that's annual average daily flows -- and  
12 during the peak month you have average daily flows of  
13 2 million gallons. Have you got that?

14 A I think so. Without a pencil.

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

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

20 MR. JAEGER: Okay. Wastewater plant.

21 MR. GATLIN: Okay.

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

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

2 A Yes.

3 Q Now, if you multiply the average daily flows  
4 from the max month by the revenue collected for those  
5 flows, \$1.50 times the 2 million, you would get  
6 \$3 million; is that correct?

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

8 Q I'm saying that the utility charges \$1.50  
9 for each thousand gallons treated. And you take the  
10 2 million gallons that they treated in that month and  
11 they charge \$1.50, they would have \$3 million in  
12 revenues; is that correct?

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

15 Q 2,000 times \$1.50 --

16 A I guess.

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

19 MR. JAEGER: I have one.

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

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

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

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

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

5           **WITNESS CUMMINGS:** Yeah. That's what I  
6 need.

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

10          **A**       Okay.

11          **Q**       But your rates are set at \$1.50 per 1,000  
12 gallons.

13          **A**       Okay.

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

17          **A**       Okay.

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

20          **A**       \$3,000.

21          **Q**       Okay.

22          **A**       At \$1.50 per 1,000 gallons, not per million  
23 gallons.

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



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

2 A Would be \$1,000.

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

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

10 A No. The cost would be \$2,000 per peak. If  
11 it cost you a dollar per gallon in cost and your peak  
12 month is 2 million gallons per day, then your cost is  
13 \$2,000.

14 Q But on an annual average the cost is only  
15 \$1,000 per month, isn't -- per day? I'm sorry.

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

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

21 A For what? Be aware for what?

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

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

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

3 Q If you divide the average revenue collected,  
4 \$3,000 by the average expense to produce the water,  
5 1,000, we should get the percent of profit or  
6 300%. Is that correct?

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

12 A I don't know.

13 MR. JAEGER: I have no further questions.

14 CHAIRMAN JOHNSON: Redirect?

15 MR. GATLIN: Yes, I do.

16 **REDIRECT EXAMINATION**

17 **BY MR. GATLIN:**

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

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

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

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

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

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

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

18          A     Yes, that is correct.

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

1 same no matter which box you checked?

2 A No.

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

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

14 CHAIRMAN JOHNSON: Show 35 admitted without  
15 objection.

16 (Exhibit 35 received in evidence.)

17 CHAIRMAN JOHNSON: Thank you, Mr. Cummings.

18 MR. GATLIN: May Mr. Cummings be excused?

19 CHAIRMAN JOHNSON: Yes.

20 (Witness Cummings excused.)

21 - - - - -

22 MR. GATLIN: Call Mr. Larry Coel.

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

25 CHAIRMAN JOHNSON: Yes. We'll break for

1 five minutes.

2 (Brief recess taken.)

3

- - - - -

4 **CHAIRMAN JOHNSON:** We're ready to reconvene.

5 Mr. Coel.

6

**LARRY N. COEL**

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

10

**DIRECT EXAMINATION**

11 **BY MR. GATLIN:**

12 **Q** Have you been sworn?

13 **A** Yes, I have.

14 **Q** Would you state your name and address?

15 **A** Yes. My name is Larry N. Coel, C-O-E-L.

16 And my business address is 4837 Swift Road in  
17 Sarasota, Florida.

18 **Q** By whom are you employed?

19 **A** Employed by Florida Cities Water Company.

20 **Q** In what capacity?

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

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

1           **A**     Yes, I have.

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

4           **A**     Yes.

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

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

9           **Q**     Sure. We'll get to that then.

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

12           **CHAIRMAN JOHNSON:** It will be inserted.

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

15           **A**     Yes, I do.

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

20           **A**     That is correct.

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

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

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

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

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

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

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

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

13                   (Exhibit 36 marked for identification.)  
14  
15  
16  
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25

1                                   **FLORIDA CITIES WATER COMPANY**  
2                                   **NORTH FT. MYERS DIVISION**  
3                                   **WASTEWATER OPERATIONS**  
4                                   **REMAND TESTIMONY OF LARRY N. COEL**  
5                                   **Docket No. 950387-SU**

6    Q.    Please state your name and business address.

7    A.    Larry N. Coel, 4837 Swift Road, P.O. Box 21597, Suite  
8           100, Sarasota, Florida 34231.

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

12   A.    Yes.

13   Q.    What is the purpose of this testimony?

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

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

19   A.    Yes, in order no. PSC-96-1133-FOF-SU (9/10/96), pages  
20           32-34, the PSC found the appropriate amount to be  
21           \$90,863 as was supported by my Rebuttal Testimony,  
22           Exhibit 30 (LC-5). This amount covered the period  
23           from January 1995 through August 1996.

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



- 1 A. Yes. I have generated a rate case expense schedule  
2 which summarizes the previously authorized amounts per  
3 PSC-96-1133-FOF-SU and then presents the second phase  
4 of this proceeding with a starting point of September  
5 1996 (beginning point of appeal process), Exhibit  
6 \_\_\_\_ (LC-1). This schedule shows the additional  
7 actual and estimated amounts to complete this rate  
8 proceeding. As of August 31, 1998, the total second  
9 phase actual/estimated amount of rate case expenses is  
10 \$138,536. This amount plus the previously authorized  
11 \$90,863 brings the total amount of rate case expenses  
12 for this entire proceeding to \$229,399. Related  
13 documentation is attached to Exhibit \_\_\_\_ (LC-1).
- 14 Q. Can you briefly describe the major cost components  
15 included in your rate case expense exhibit?
- 16 A. Yes, I can. As in most of FCWC's recent rate cases  
17 involving hearings, legal expenses have always been  
18 the largest component. The next three levels of rate  
19 case expenses have included: outside professional  
20 consulting services (engineering and/or rates); my  
21 services which have included rate case administration  
22 and preparing MFRs, testimony, and exhibits; and  
23 Avatar Utility Services Inc. (AUSI) which has provided  
24 for customer notice labeling and mailing, maintaining  
25 customer records, and maintaining duplicate billing

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

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

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

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

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

1 identified AUSI rate case expenses of \$18,358 on page  
2 32. \$6,144 of these costs (\$1,024 x 6 months) were  
3 related to maintaining a duplicate billing register  
4 for six months. Unfortunately, this rate case will  
5 incur these costs for three years, while in other rate  
6 proceedings these costs were incurred for only a few  
7 months. From September 1996 through August 1998  
8 these costs have accumulated to \$20,521. From  
9 September 1998 through April 1999 an estimated  
10 additional \$9,700 will be incurred for duplicate  
11 billing registers and customer notice mailings.

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

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

17 Q. Does that conclude your testimony?

18 A. Yes, it does.

1           **MR. GATLIN:** The witness is available for  
2 questions.

3                           **CROSS EXAMINATION**

4 **BY MR. McLEAN:**

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

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

9           **A**     Yes.

10          **Q**     What's the significance of that, sir?

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

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

21          **A**     That's correct.

22                   **MR. McLEAN:** Thank you, Mr. Coel.

23                   **MR. McLEAN:** I have nothing further.

24

25

**CROSS EXAMINATION**

1  
2  
3 **BY MR. JAEGER:**

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

7           **A**     Yes, they are.

8           **Q**     How is it related?

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

13          **Q**     I'm sorry, how are they affiliated?

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

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

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

23          **Q**     Yes.

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

1 48,000, right?

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

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

8 Q Okay. And what are these charges for again?

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

17 Q AUSI does the monthly billing for Florida  
18 Cities?

19 A Yes, they do.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           A     That's correct.



1           Q     In the PAA rates, wasn't the Utility given  
2 \$51,600 in the PAA rates for rate case expense; is  
3 that correct?

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

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

9           A     Right.

10          Q     Okay.

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

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

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

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

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

6           A     Yes.

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

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

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

21          A     At a different --

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

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

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

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

15 A Not any other utility, no.

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

20 A That's my understanding, yes.

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

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

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

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

5 A Yes, I am.

6 Q I have a question of attorneys fees. In  
7 your revised rate case expense dated December 2nd,  
8 1998, you included charges for three attorneys.

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

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

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

18 A I may have found it, but I'm not 100% sure.

19 (Pause)

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

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

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

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

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

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

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

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

25 A I'm not very familiar with Ruden McClosky.

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

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

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

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

10 MR. JAEGER: I have no further questions.

11 CHAIRMAN JOHNSON: Commissioners? Redirect?

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

14 CHAIRMAN JOHNSON: Show that admitted  
15 without objection.

16 (Exhibit 36 received in evidence.)

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

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

23 MR. GATLIN: Have you been sworn?

24 WITNESS YOUNG: Yes.

25

**HARLEY W. YOUNG**

1  
2 was called as a witness on behalf of Florida Cities  
3 Water Company and, having been duly sworn, testified  
4 as follows:

**DIRECT EXAMINATION**

5  
6 **BY MR. GATLIN:**

7 Q Would you state your name and address?

8 A My name is Harley Young, 2295 Victoria  
9 Avenue.

10 Q In Fort Myers?

11 A In Fort Myers.

12 Q And by whom are you employed?

13 A The Florida Department of Environmental  
14 Protection.

15 Q And in what position are you employed?

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

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

21 A Yes, sir.

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

25 A They would essentially be. There's three

1 minor changes.

2 Q All right. Let's take those.

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

9 Q Okay. Water quality based?

10 A Effluent limitations.

11 Q Anything else?

12 A That's it.

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

15 CHAIRMAN JOHNSON: It will be inserted.  
16  
17  
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FLORIDA CITIES WATER COMPANY

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NORTH FORT MYERS DIVISION

REMAND TESTIMONY OF HARLEY W. YOUNG

Docket No. 950387-SU

1 Q. Would you please state your name and address.

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

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

7 A. Yes.

8 Q. How long have you been so employed?

9 A. Nine years.

10 Q. What is your position with the DEP?

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

15 Q. Are you a professional engineer?

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

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

21 A. Yes.

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

4 A. Yes.

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

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

13 Q. Does that assurance include peak or maximum flows?

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

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

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

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

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

1 infers that that means meet them at all times.

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

4 A. Yes, it is.

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

7 A. Yes.

8 Q. What are the Ten State Standards?

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

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

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

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

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

20 Q. What are seasonal flows?

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

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

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

11 A. Yes.

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

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

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

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

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

1 greater volume than stated in the permit?

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

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

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

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

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

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

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

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

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

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1           **MR. GATLIN:** Mr. Young is available for  
2 questions.

3           **CHAIRMAN JOHNSON:** Okay. Public Counsel.

4                           **CROSS EXAMINATION**

5 **BY MR. McLEAN:**

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

8           **A**     Yes, sir.

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

21           **A**     No, sir.

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

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

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

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

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

6 A No, sir.

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

12 A Yes, sir.

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

15 A Yes.

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

20 A Yes, sir.

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



1 periods of time then average annual daily flow,  
2 correct?

3 A Yes, sir.

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

5 A Yes, sir.

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

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

16 A That's right.

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

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

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

1 those terms, couldn't you?

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

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

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

13          Q     I'll do my best.

14          A     I'm at a loss.

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

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

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

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

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

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

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

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

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

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

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

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

25 A I guess, yes.

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

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

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

8 A When I say what?

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

14 A Yes.

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

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

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

21 A Apparently.

22 Q I could drive by and say that plant has the  
23 capacity to treat, if it receives on a daily basis  
24 2.5 million gallons a day?

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

1 don't go along with that.

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

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

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

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

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

16 A No, certainly not.

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

25 A Yes.

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

4 A Yes.

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

10 A I would.

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

14 A One might make that assumption.

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

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

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

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

12           Q     To which rule did you just refer.

13           A     62-600.

14           Q     That's the Capacity Analysis Report?

15           A     Enclosed in part of that rule.

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

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

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

1 hydraulics, okay, and hydraulic loading.

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

9           A     One would assume so, yes.

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

21          A     Yes.

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



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

3 A Yes.

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

8 A The engineering report should address that,  
9 yes.

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

16 A Of course.

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

20 A That's possible.

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

25 A One would assume that the hydraulic numbers

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

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

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

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

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

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

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

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

24 A I'm sorry. Say that again.

25 Q When a design engineer certifies to you that

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

6 A Yes. Yes.

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

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

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

14 A That's right.

15 Q Have you ever had a permit submitted that  
16 said "Now our average daily loading is X, but we get  
17 peaks at 3X, so would you please issue the permit for  
18 3X?"

19 A Could you restate that, please?

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

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

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

9           **A**     Yes, sir.

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

12          **A**     No.

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

15                 **CHAIRMAN JOHNSON:** Staff.

16                         **CROSS EXAMINATION**

17 **BY MR. JAEGER:**

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

20          **A**     I don't believe I do.

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

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

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

5           Q       Yes.

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

8           Q       That's all I need.

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

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

18           Q       Okay. Go to Page 16, Line 21.

19           A       Yes, sir.

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

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

1 rate that is twice the annual average rate."

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

4 A Yes, sir.

5 Q And do you know who establishes policy for  
6 DEP?

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

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

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

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

15 A Yes, sir.

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

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

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

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

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

4 A Yes.

5 Q If for 11 months it had flows of  
6 1.2 million, and on the 12th month had a flow of  
7 1.4 million, would they be in violation of the permit?

8 A They'd be in violation of the average.

9 Q Average?

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

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

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

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

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

25 **WITNESS YOUNG:** If I can clarify that.

1           **MR. JAEGER:** Go ahead.

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

5           **Q**       **(By Mr. Jaeger)** If you had 11 months of  
6 1.2 million gallons per day flow, and on the 12th  
7 month you had 1.4 million gallons per day average  
8 daily flow, would this plant be in violation of its  
9 permit?

10          **A**       No, sir.

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

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

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

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



1 plant design could do what was intended.

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

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

9 Q Have you ever designed a wastewater  
10 treatment plant yourself?

11 A Yes, sir.

12 MR. JAEGER: No further questions.

13 CHAIRMAN JOHNSON: Commissioners? No  
14 questions.

15 MR. GATLIN: No questions.

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

18 MR. GATLIN: May Mr. Young be excused?

19 CHAIRMAN JOHNSON: Yeah.

20 (Witness Young excused.)

21 - - - - -

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

24 MR. McLEAN: Citizens call Kimberly  
25 Dismukes.

1 **KIMBERLY H. DISMUKES**

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

5 **DIRECT EXAMINATION**

6 **BY MR. McLEAN:**

7 Q State your name please, ma'am.

8 A Kimberly H. Dismukes.

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

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

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

16 A Yes, I am.

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

19 A Yes.

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

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

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

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

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

7 A Yes, they would.

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

10 CHAIRMAN JOHNSON: It will be inserted as  
11 though read.

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

14 A Yes.

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

18 A That's correct.

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

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

23 (Exhibit 37 marked for identification.)  
24  
25

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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 Bidy 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**

1 **QUALIFICATIONS IN REGULATION?**

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

3

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

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

15

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

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

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

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

12  
13 However, the DEP permit issued in 1994 for this wastewater  
14 plant stated the permitted capacity in terms of AADF. Based  
15 on this change, our staff recommended, and we approved, the  
16 use of AADF in the numerator. Other than the permit itself,  
17 there was no evidence justifying the use of AADF in the  
18 numerator of the used-and-useful fraction when the permit  
19 was issued based on AADF.

20  
21 In essence, the Commission found that because the denominator of the used and

1 useful calculation was based upon the annual average daily flow capacity of the plant,  
2 it was appropriate and consistent to use the test year annual average flows in the  
3 numerator of the calculation. The Commission determined that because the Florida  
4 Department of Environmental Protection's (FDEP) permit of the wastewater  
5 treatment plant stated the capacity in terms of annual average daily flow, it was  
6 appropriate to use annual average daily flow in the numerator of the used and useful  
7 calculation. By using the same yard stick in the numerator and denominator, the  
8 Commission appropriately compared "apples to apples".  
9

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

13 **A.** It is appropriate because the permit for that plant reflects that the plant was permitted  
14 in terms of annual average daily flows. In the most basic terms, used and useful is a  
15 comparison of the capacity of a plant to the load (or flows) it must treat. In order to  
16 reach a meaningful result, the capacity and the load must be expressed in the same  
17 units of measurement. In other words, the numerator and denominator of the used  
18 and useful calculation must both be expressed in the same units of measurement.  
19

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

1 correct where the plant capacity is clearly expressed in one or the other. It is clear  
2 that irrespective of which methodology is used, it should be used for both load  
3 (numerator) and capacity (denominator). Thus, where the FDEP has permitted a  
4 wastewater treatment plant in terms of annual average daily flow, the load should be  
5 expressed the same. Expressing the load in terms of monthly peak flows, as argued  
6 by Florida Cities, where the same plant is rated in annual average daily flow will not  
7 only yield a meaningless result, but it will also overstate the used and useful  
8 percentage. Florida Cities would have the Commission compare "apples with  
9 oranges" as opposed to correctly comparing "apples to apples."  
10

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

14 A. Florida Cities <sup>gave</sup> give two primary reasons. First, Florida Cities appears to suggest that  
15 because the Commission used peak month flows in the numerator in past cases, it  
16 should likewise use that in the instant docket. The First DCA also suggested in its  
17 remand to the Commission that it had changed its policy without adequate  
18 explanation. Second, Florida Cities suggests that by using annual average daily flow  
19 in the numerator, the Commission somehow ignores the peak flows and fluctuations  
20 of the wastewater treatment plant.  
21



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

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

9  
10 In contrast to this view, I see it as a correction of past mistakes or as an  
11 acknowledgment of additional information and evidence that it available today, that  
12 was not available in the past. Concerning the latter, as acknowledged by Mr. Acosta,  
13 in approximately 1991, the FDEP changed the permit application form. This change  
14 required the permittee to designate the basis of design, as annual average daily flow,  
15 average daily flow in the max month, three-month average daily flow, or other. Prior  
16 to this change in the permit application form, there was no designation of the basis of  
17 the design capacity. Once this new information became available, it was possible for  
18 the Commission to correctly "match" the numerator and denominator of the used and  
19 useful calculation. Prior to this change in the permit application, the application did  
20 not indicate the basis of the design capacity. Therefore it was not possible to match  
21 the numerator and denominator of the used and useful calculation based upon the

1 plant's permitted capacity.

2

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

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

16 A hydraulic analysis of the existing facilities was performed at  
17 the Phase I average and peak flow of 1.3 mgd and 2.6 at the  
18 Phase II average and peak flows of 1.5 mgd and 3.0 mgd,  
19 respectively. A peaking factor of two times the average daily  
20 flow was used for peak flow to account for diurnal  
21 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.*

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

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

15

16 Q. DOES THIS COMPLETE YOUR TESTIMONY PREFILED ON OCTOBER  
17 13, 1998?

18 A. Yes, it does.

19

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

3           **CHAIRMAN JOHNSON:** Mr. Gatlin.

4                           **CROSS EXAMINATION**

5 **BY MR. GATLIN:**

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

9           **A**     No.

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

13          **A**     No, it does not.

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

18          **A**     Yes.

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

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

1 Mr. Biddy, our engineering witness.

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

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

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

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

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

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

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

22 A Could you repeat the question, please?

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

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

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

5 Q The answer is yes?

6 A Yes.

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

12 A Yes.

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

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

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

1 in the plant; is that correct?

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

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

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

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

19           **MR. GATLIN:** Final order of appeal.

20           **MR. McLEAN:** Of the Commission.

21           **MR. GATLIN:** Yes. Order No.

22 PSC-96-1133-FOF-SU.

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

25           **A**     I want the Commission to confirm their



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

4 Q Eliminated the investment for the peak --

5 A I'm sorry?

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

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

10 Q Your answer is yes to my question?

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

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

16 A If you could hand me the order again.

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

18 A Okay.

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

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

1 \$100,000 worth of -- in part eliminates \$100,000 worth  
2 of plant.

3 Q \$800,000 was eliminated right?

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

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

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

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

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

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

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

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

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

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

13           A     No.

14           Q     You don't agree with that?

15           A     No.

16           Q     It should be included?

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

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

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

25           Q     You agree with that?

1           A     Yes.

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

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

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

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

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

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

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

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

3 A I was answering your question.

4 Q What was my question?

5 A Good question.

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

10 A Yes. That's an interpretation.

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

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

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

21 A Ask the question again.

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

1           A     I don't agree with that --

2           Q     You don't --

3           A     -- characterization.

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

5           A     No. I don't think that you can say that the  
6 \$800,000 of investment that is being eliminated or  
7 removed from rate base is associated with the plant's  
8 ability to meet peak flows.

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

15          A     There may or may not have been.

16          Q     There what?

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

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

25          A     To the extent that you have a mismatch. In

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

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

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

14           A     More than what?

15           Q     More than less.

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

19           A     Yes.

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

22           A     That's correct, yes.

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

25           **CHAIRMAN JOHNSON:** Okay. Staff.

## 1 CROSS EXAMINATION

2 BY MR. JAEGER:

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

10 A Please. Okay, go ahead.

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

16 A Okay.

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

20 Would it be proper to say, okay, you have  
21 2 million gallons in the max month. You're going to  
22 charge \$1.50 per thousand, so you'll get \$3,000 in  
23 revenues in the max month; is that correct?

24 A Yes.

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



1 to use annual average costs per day of only \$1 per  
2 thousand, and they have that over a course of 365 days  
3 per year. So the cost would be -- they have 1 million  
4 gallons average annual per day and the cost is \$1.  
5 And yet they had revenues in the max month of  
6 \$2 million times \$1.50 -- I'm sorry. I think I'm  
7 confusing you there.

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

12           A     No. You have a mismatch.

13           Q     Okay. You can use --

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

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

21           A     Yes.

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

24           A     That's correct.

25           Q     And that would be a total mismatch, would it

1 not?

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

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

11          A     For customers --

12          Q     Yes.

13          A     Rate design.

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

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

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

22          A     Time frames?

23          Q     I'm sorry.

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

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

5 A Yes.

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

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

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

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

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

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

25 Q So, in your professional opinion, dividing a

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

3 A That's correct.

4 MR. JAEGER: No further questions.

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

6 REDIRECT EXAMINATION

7 BY MR. McLEAN:

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

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

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

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

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

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

4 CHAIRMAN JOHNSON: I'll allow the question.

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

7 A Yes.

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

10 A Yes.

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

14 A Yes.

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

17 A Yes, that's a mismatch.

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

20 A Yes.

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

24 A Yes.

25 Q Same thing on the bottom?

1           **A**     Yes.

2           **Q**     Does that cure the mismatch?

3           **A**     No.

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

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

8           **Q**     From what was that \$800,000 eliminated?

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

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

16           **CHAIRMAN JOHNSON:** Exhibits.

17           **MR. McLEAN:** I move exhibit --

18           **CHAIRMAN JOHNSON:** 37.

19           **MR. McLEAN:** 37.

20           **CHAIRMAN JOHNSON:** It's admitted without  
21 objection.

22                   (Exhibit 37 received in evidence.)

23           **CHAIRMAN JOHNSON:** Thank you, Ms. Dismukes.

24           You're excused.

25                   (Witness Dismukes excused.)

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

7           **CHAIRMAN JOHNSON:** Any objection to taking  
8 Addison?

9           **MR. McLEAN:** I have no objection.

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

12          **MR. JAEGER:** And he has not been sworn.

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

15          **CHAIRMAN JOHNSON:** We'll take five minutes.

16                 (Brief recess.)

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

20          **CHAIRMAN JOHNSON:** Sorry.

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**RICHARD L. ADDISON**

1  
2 was called as a witness on behalf of Staff of the  
3 Florida Public Service Commission and, having been  
4 duly sworn, testified as follows:

**DIRECT EXAMINATION**

5  
6 **BY MR. JAEGER:**

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

9       **A**     Richard Addison. Florida Department of  
10 Environmental Protection, 2600 Blair Stone Road,  
11 Tallahassee, Florida.

12       **Q**     By whom are you employed and in what  
13 capacity?

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

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

19       **A**     Yes.

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

22       **A**     No, sir.

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



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

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

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

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

1 facility during any consecutive 365 days, divided by  
2 365, exceeded the permitted annual average daily flow.

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

5           **CHAIRMAN JOHNSON:** It will be inserted.

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## DIRECT TESTIMONY OF RICHARD L. ADDISON

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

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

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

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

8 Q. WHAT IS YOUR EDUCATIONAL BACKGROUND AND QUALIFICATIONS?

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

13 Q. WHAT IS YOUR EMPLOYMENT HISTORY?

14 A. I was employed by the Florida Public Service Commission (FPSC) as an  
15 engineer involved in water and sewer regulation from October 1979 to January  
16 1984. My responsibilities included the evaluation and review of rate  
17 applications of water and wastewater utilities under the jurisdiction of the  
18 FPSC. This involved field inspections of treatment plants and service areas,  
19 reviews of capital costs and operation/maintenance expenses for  
20 reasonableness, and evaluations of service quality, plant utilization,  
21 wastewater infiltration/inflow, water unaccounted for and service  
22 availability.

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

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

6 Q. WHAT ARE YOUR GENERAL RESPONSIBILITIES AT FDEP?

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

13 Q. HAVE YOU EVER TESTIFIED BEFORE?

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

16 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY TODAY?

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

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

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

1 | daily flow (AADF), maximum monthly average daily flow (MMADF), or three-month  
2 | average daily flow (3MADF). Consistent definitions for these flow-related  
3 | terms are provided in FDEP rule. For example, use of an AADF for purposes of  
4 | design in a beach community that receives a significant influx of seasonal  
5 | residents during a three to six-month period would not be appropriate. Time  
6 | frames should reflect seasonal variations in flows, if any. Rule 62-  
7 | 600.200(62), F.A.C., defines "permitted capacity," as the treatment capacity  
8 | for which a treatment plant is approved by FDEP. In accordance with the rule  
9 | the time frame associated with permitted capacity must be specified in the  
10 | permit. Circumstances under which FDEP may assign permitted capacities less  
11 | than the design capacity specified by the applicant are described in Rule 62-  
12 | 600.400(3), F.A.C., and include when reuse or disposal permitted capacity is  
13 | less than the design capacity or when the preliminary design report does not  
14 | provide reasonable assurances that the proposed wastewater facility technology  
15 | will function as intended at the design capacity requested by the permittee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 Q. DOES THAT COMPLETE YOUR TESTIMONY?

9 A. Yes.

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1                   **MR. JAEGER:** Tender Mr. Addison for cross.

2                                   **CROSS EXAMINATION**

3 **BY MR. GATLIN:**

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

6           **A**     Yes, sir.

7           **Q**     And what are your responsibilities there?

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

17          **Q**     What is the local program you referred to?

18          **A**     What is it?

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

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

1 permitting, compliance and enforcement activities.

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

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

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

15 A No, sir.

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

20 A No, sir.

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

23 A Yes, sir.

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

1           A     Yes, sir.

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

5           A     No, sir.

6           Q     Are you familiar with that application at  
7 all?

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

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

12          A     No, sir.

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

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

16          Q     Do you know Mr. Young?

17          A     Yes, sir.

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

22          A     Yes, sir.

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

1 treat both maximum and peak flows?

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

3 Q You said no?

4 A No, sir.

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

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

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

16 A I couldn't --

17 Q You don't know?

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

21 Q When did you review the standards?

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

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

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

6 A No, sir.

7 Q Is the annual average flow the total volume  
8 of water that comes through the treatment plant in a  
9 365-day period divided by 365 and expressed in gallons  
10 per day or million gallons per day?

11 A Yes, sir.

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

15 A Yes, sir.

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

19 A Yes, sir.

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

1           **CHAIRMAN JOHNSON:** Okay.

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

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

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

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

15          **A**       Yes, sir.

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

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

23          **Q**       So --

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

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

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

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

9 A The time periods.

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

12 A Annual average daily flow.

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

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

18 Q Why the same time period?

19 A Sir?

20 Q Why the same time period?

21 A So the formula would be consistent.

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

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

1 Q If you didn't have the time periods there,  
2 would the numbers be consistent?

3 A I don't see how you can exclude the time  
4 periods.

5 Q If you knew the design capacity, hundred  
6 gallons, and you knew the flows, 90 gallons, are we  
7 consistent so far?

8 A Yes, sir.

9 Q So the capacity -- 90% of capacity is being  
10 used in that instance, isn't it?

11 A Yes, sir.

12 Q And we were able to determine that with the  
13 information that we had at hand?

14 A Yes, sir.

15 Q In that letter, Mr. Harvey -- and I believe  
16 you drafted this letter for Mr. Harvey's signature?

17 A Yes, sir.

18 Q And Mr. Harvey, what was his title at that  
19 time?

20 A He was Division Director of the Division of  
21 Water Facilities.

22 Q And Mr. Harvey in the letter made other  
23 recommendations -- let me back up.

24 Is it your understanding that the Staff is  
25 now proposing that it follow your recommendation in



1 Paragraph 9? Staff of the Public Service Commission.

2 A That they are doing it?

3 Q Yes.

4 A In this case it's my understanding they are,  
5 yes, sir.

6 Q How about the recommendation in Paragraph 2  
7 of the letter that says the intent of this statutory  
8 provision was for the full cost of capital investments  
9 be included in the cost recoverable through a rate  
10 structure for reuse facilities. Did the Staff adopt  
11 that recommendation of yours?

12 A Yes.

13 MR. JAEGER: I'm sorry. Mr. Gatlin, where  
14 are you?

15 MR. GATLIN: Paragraph 2 of the letter to  
16 Mr. Hill, dated July 30th, 1992, which is exhibit  
17 RJC-3.

18 Q (By Mr. Gatlin) Did the Staff adopt -- did  
19 the Commission adopt that recommendation?

20 A I think there's been a court case where  
21 reuse is now going to be considered 100% used and  
22 useful. My understanding that's being --

23 MR. JAEGER: I'm going to object to  
24 relevancy. I'm not sure how this is relevant.

25 MR. GATLIN: It's in a letter that's going

1 to be made an exhibit.

2           **MR. JAEGER:** The only reference that this  
3 letter we refer to is the Paragraph 9. We could put  
4 in part of the letter.

5           **MR. GATLIN:** The letter is an exhibit and I  
6 think we have to examine the whole letter.

7           **CHAIRMAN JOHNSON:** What's your question, Mr.  
8 Gatlin?

9           **Q**        **(By Mr. Gatlin)** Did the Staff or  
10 Commission adopt your recommendation in Paragraph 2 of  
11 the letter in 1992?

12           **A**        No, sir.

13           **Q**        And it's your understanding it was not  
14 adopted until a court case this year?

15           **A**        Yes, sir.

16           **Q**        Your recommendation in Paragraph 9 was in  
17 the context of all the other recommendations, was it  
18 not?

19           **A**        Yes, sir.

20           **Q**        And the paragraph, the last sentence in  
21 Paragraph 3 of Mr. Harvey's letter, says "We believe  
22 that Chapter 25-30 FAC should allow utilities to  
23 recover investment for timely expansion of needed  
24 wastewater treatment facilities consistent with our  
25 rule requirements." Is that true?

1           **A**    Yes, sir.

2           **Q**    And that 25-30 reference was to the  
3 Commission's proposed used and useful rules; is that  
4 not true?

5           **A**    Yes, sir.

6           **Q**    And wasn't it true that the Commission  
7 dropped all of this proposal and did not adopt any of  
8 the rules proposed that you were writing about?

9           **A**    Yes. I don't know what ended up happening  
10 on PSC's end.

11          **Q**    You don't know what?

12          **A**    I don't know what ended up happening with  
13 what we wrote them.

14          **Q**    So you don't know if they adopted any or  
15 not?

16          **A**    Adopted what?

17          **Q**    Any of the used and useful rules that were  
18 being proposed as amendments to Chapter 25-30 that  
19 were the subject of Mr. Harvey's rule.

20          **A**    It's my understanding they haven't  
21 adopted --

22          **Q**    None of it was adopted, was it?

23          **A**    Yes, sir.

24          **Q**    And wasn't reference made in the letter, in  
25 Paragraph 4 of the attachment, that you understood

1 that the margin reserve that was being proposed was  
2 20%?

3 A Yes, sir.

4 Q And you had some questions about what that  
5 meant, didn't you?

6 A Yes, sir.

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

8 CHAIRMAN JOHNSON: Public Counsel.

9 CROSS EXAMINATION

10 BY MR. McLEAN:

11 Q Mr. Addison, at some point the DEP used to  
12 issue both an operating permit and a construction  
13 permit; is that correct?

14 A Yes.

15 Q Now they issue just one of those two?

16 A All of the construction activity and  
17 operating activities now are combined in one permit.

18 Q And what's that permit called?

19 A Wastewater permit.

20 A It's not called construction or operation?

21 A Yes, sir. Yes, sir. It's not called  
22 either. It's just called a wastewater permit.

23 Q When did they begin that new policy, do you  
24 know?

25 A It was done around 1994.

1 Q Do you know what -- why that was the case?

2 A When we got MPDES delegation from EPA it was  
3 done in the context of all of that. We underwent a  
4 bunch of rulemaking activity, and it was done in the  
5 context of that back in 1994.

6 Q Shifting focus to a similar but perhaps  
7 different matter, at some point did -- you used to  
8 simply issue plant capacity, a permit, whatever it's  
9 called, for a wastewater treatment plant, simply plant  
10 capacity was 1.25 million gallons a day, period. No  
11 reference to any time or anything like that; is that  
12 correct?

13 A Yes, sir.

14 Q Okay. And I learned from this case that at  
15 some point the DEP began to designate some time frame,  
16 specifically average annual daily flow, or stated more  
17 correctly, the DEP didn't designate that. They  
18 required an applicant to designate that; is that  
19 correct?

20 A The applicant designates the time frame for  
21 design capacity and DEP would specify the time frame  
22 in the permit.

23 Q Do you know why the DEP made that change?

24 A I would think so everybody knew really what  
25 that plant could do. I mean, so you'd know the time

1 frame that that plant would be operating under.

2 Q Is that the concern you had or was it with  
3 respect to that general subject matter that you wrote  
4 Paragraph 9 for Mr. Harvey --

5 A Yes, sir.

6 Q -- in the attachment. Okay. All right.  
7 Thank you, sir.

8 MR. McLEAN: I have no further questions.

9 CHAIRMAN JOHNSON: Commissioners? Redirect?

10 MR. JAEGER: I have no redirect, Chairman.

11 CHAIRMAN JOHNSON: And there are no  
12 exhibits. You're excused.

13 (Witness Addison excused.)

14 - - - - -

15 CHAIRMAN JOHNSON: Let me get an indication  
16 on the time for the witnesses that we have remaining.  
17 Starting with the cross for Crouch. Mr. Gatlin.

18 MR. GATLIN: Three hours.

19 CHAIRMAN JOHNSON: Okay.

20 MR. McLEAN: I will have none; maybe a  
21 question or two.

22 CHAIRMAN JOHNSON: Okay. Okay. Bidy.

23 MR. GATLIN: 20, 30 minutes.

24 MR. McLEAN: Of course, I won't ask him  
25 much.

1           **CHAIRMAN JOHNSON:** Staff.

2           **MR. JAEGER:** Just a few minutes, a very few  
3 questions.

4           **CHAIRMAN JOHNSON:** Okay. And then the  
5 rebuttal of Acosta.

6           **MR. JAEGER:** Very little. 15 minutes?

7 Probably less.

8           **MR. McLEAN:** Probably 15 at the most.

9           **CHAIRMAN JOHNSON:** We're going to recess the  
10 technical portion of the hearing until tomorrow and  
11 we'll reconvene technical at 9:00 a.m. in the morning.  
12 And we will begin the customer portion tonight back  
13 here at 6:00. With that, we'll go into recess.

14                   (Whereupon, a recess was taken at 4:15 p.m. and  
15 the hearing resumed at 6:00 p.m.)

16                                   - - - - -

17           **CHAIRMAN JOHNSON:** Good evening ladies and  
18 gentlemen. This is our second customer hearing for  
19 today.

20                   My name is Julia Johnson. I'm the Chairman  
21 of the Florida Public Service Commission and I wanted  
22 to welcome you here tonight. Counsel, do you need to  
23 read the notice again?

24           **MR. JAEGER:** I don't think it's absolutely  
25 necessary, Chairman. The notice was read and

1 announced but I can go ahead.

2 In accordance with the holding in Florida  
3 Cities Water Company v. State, a hearing on the First  
4 District Court of Appeals reverse on remand of the  
5 Commission's final order has been scheduled this time  
6 and place. Specifically this is the second session  
7 for the customers.

8 **CHAIRMAN JOHNSON:** Okay. I'll take  
9 appearances.

10 **UNIDENTIFIED SPEAKER:** Can't hear you.

11 **CHAIRMAN JOHNSON:** I'm going to take  
12 appearances of the parties. To the gentlemen that  
13 just spoke, he basically just did a procedural matter.  
14 He just announced why we were here, but very  
15 generally.

16 My name is Julia Johnson. I'm the Chairman  
17 of the Florida Public Service Commission, and right  
18 now I'm going to have all of the attorneys introduce  
19 themselves and state who they represent.

20 **MR. GATLIN:** My name is B. Kenneth Gatlin  
21 and I represent Florida Cities Water Company.

22 **CHAIRMAN JOHNSON:** Okay. The gentleman that  
23 is seated directly in front of me, and his back is  
24 turned to you and he's holding up his hand.

25 **MR. McLEAN:** And my name is Harold McLean



1 and I represent the citizens and customers of this  
2 utility, but the Citizens of the State of Florida.

3 (Applause)

4 **MR. JAEGER:** My name is Ralph Jaeger. I  
5 represent the Staff of the Florida Public Service  
6 Commission.

7 **CHAIRMAN JOHNSON:** Again, my name is Julia  
8 Johnson and I'm the Chairman of the Public Service  
9 Commission and I'm going to be presiding over the  
10 customer hearing tonight. Seated to my right is  
11 Commissioner Terry Deason and to my left is  
12 Commissioner Joe Garcia.

13 **THE AUDIENCE:** (Applause)

14 **CHAIRMAN JOHNSON:** The Commissioners wanted  
15 you to know that that was awful nice. (Laughter)

16 I wanted to go over a couple more  
17 preliminaries. This equipment here is the equipment  
18 that's used so that the information and the testimony  
19 that you're presenting tonight is being transmitted  
20 over the Internet. So that your neighbors, those that  
21 have their computers and have the necessary equipment,  
22 can listen in by Internet. And even yourselves, if  
23 you want to go back in a couple of days, if you have  
24 the necessary equipment, you can log on and hear what  
25 you said and hear what your neighbors said this

1 morning. And I believe that we were set up so that  
2 even during the technical portions of the hearing,  
3 when the expert witnesses were testifying, that should  
4 also be recorded and it should be available for your  
5 listening pleasure.

6           The Special Report that you received when  
7 you came into the room from Ms. Crump basically  
8 outlines why we're here today. I know the Staff  
9 attorney went through a bit of it, explaining we're  
10 here on remand. But when the case was appealed, the  
11 First District Court of Appeals reversed the  
12 Commission on two issues. That was the capacity of  
13 the wastewater treatment plant and the calculation of  
14 used and useful.

15           The Court told the Commission that we had  
16 the discretion to reopen the record and take  
17 additional evidence, if necessary. The Commission  
18 determined that we would exercise our discretion, open  
19 the record, take additional information before making  
20 a final decision.

21           Someone had asked as they were coming into  
22 the room what does the mean for the case to be  
23 remanded -- or actually the person was explaining to  
24 me the case was remanded, wasn't it?

25           Well, that's why we're here today, because

1 of that remand. We have reopened the record. Public  
2 Counsel will put on witnesses. The Commission Staff  
3 will be putting on witnesses. The Company has also  
4 put on witnesses. And that's why I know that some of  
5 the customers have been a little confused. They were  
6 stating, "Well, haven't we already testified on these  
7 issues before?" And the answer to that is yes, we've  
8 taken public testimony in the hearings that were held  
9 before, I believe it was April 24th and 25th of 1996.  
10 But because we've reopened the record this is your  
11 opportunity to provide us with additional customer  
12 input into the process.

13 At the appropriate time I'll ask those of  
14 you who like to testify to stand and I'll swear you  
15 in.

16 We have a court reporter here who will be  
17 taking all of your comments down. The reason we do  
18 that is because your comments and testimony is just as  
19 important to us as the testimony of others. And by  
20 recording it, it will be information upon which we can  
21 use when we make our final decision and it's a part of  
22 our final deliberations. That's another reason why we  
23 swear you in just as we would any of the technical  
24 witnesses.

25 After you're sworn, Public Counsel will ask

1 you one by one to come forward, and we have a place  
2 over to my right for you to sit and prepare and state  
3 any of the comments that you'd like to make before the  
4 Commission.

5           If you're asked questions -- I'll ask you  
6 after you've stated your name, made your comments,  
7 I'll ask the parties if they have any questions to ask  
8 of you. If you want to answer those questions feel  
9 free to do so. But don't let the question session  
10 intimidate you. If you don't want to answer questions  
11 and you just want to let us know how you feel about  
12 the utilities, and how you feel generally about the  
13 issues that are being presented, we will accommodate  
14 that too.

15           And with that, are there any other  
16 preliminary announcements?

17           Well, there are several Staff members that  
18 are here to assist you if you have any questions or  
19 need special assistance. At the appropriate time I'll  
20 point out those Staff members and they can assist you  
21 with any issues or problems that you may have.

22           I don't think we have any other  
23 preliminaries other than swearing in the customers  
24 that would like to testify.

25           So with that if you could stand and raise

1 your right hand.

2 (Witnesses sworn collectively.)

3 **CHAIRMAN JOHNSON:** Thank you. You may all  
4 be seated.

5 Public Counsel, you can call the first  
6 customer.

7 **MR. McLEAN:** Mr. Chairman, Commissioners,  
8 citizens call Charles D. Jenkins, please.

9

- - - - -

10 **CHARLES D. JENKINS**

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

14 **DIRECT STATEMENT**

15 **MR. JENKINS:** Honorable Chairperson Johnson,  
16 Commissioners Deason and Garcia, my name is Charles D.  
17 Jenkins. I live on the 4175 Prestwick Court, North  
18 Ft. Myers, Florida, where the zip is 33903.

19 I want to thank you and your Staff for  
20 taking time from your busy schedules in coming to Fort  
21 Myers to hear our concerns. I am here on behalf of  
22 the Lochmoor Civic Association to support your  
23 decision concerning Docket 971663-WS and to testify in  
24 document (sic) 950387-SU.

25 It is hard for me to follow all of these

1 different rate case activities. But speaking for all  
2 of the ratepayers of Florida Cities Water Company,  
3 located in North Ft. Myers, we were very happy that  
4 you came to our defense in Docket 971663-WS. You had  
5 the backbone and the courage to deny the unjustifiable  
6 rate increase Florida Cities Water Company wanted to  
7 impose upon it. Now, it seems they are back at it  
8 again. Will it ever end? Will we, the ratepayers in  
9 North Ft. Myers, ever have any peace and rate  
10 stability? Now, I don't fully understand how our  
11 resistance to docket 971663-WS suddenly became  
12 950387-SU, but I do know I want to testify on the new  
13 docket.

14           Now, I don't understand the difference  
15 between average annual flows versus peak capacity  
16 flows, and what should be used in the numerator or the  
17 denominator of their rate base equation. That must be  
18 left up to you, our representatives, to deal with  
19 regulated monopolies.

20           But I can tell you that the water and sewer  
21 rates that Florida Cities Water Company charges us in  
22 North Ft. Myers is absolutely unreasonable. Our sewer  
23 rates in North Ft. Myers are over 135% higher than  
24 those of other North Ft. Myers customers who are  
25 fortunate enough to have Lee County Utilities as their

1 regulated water and sewer utility.

2           In fact, we, in North Fort Myers, are paying  
3 95% more for sewer service than South Fort Myers  
4 Florida Cities Water customers are paying and less  
5 than 15 miles away. I think that is unconscionable.

6           It seems to me that Florida Cities Water  
7 Company should take their total capital and operating  
8 expenses, regardless of what part of the city they  
9 incur in, and establish a standard rate for all  
10 Florida Cities Water customers. I've never heard of a  
11 regulated public utility company establishing  
12 individual rates for different sections of a  
13 community. Does Sprint charge different phone rates  
14 depending upon where you live in town? I don't think  
15 so. If they spend capital dollars to upgrade a  
16 switching machine, they factor that cost back into  
17 their basic rate base cost. Then they establish a  
18 standard rate for all ratepayers in that region. I  
19 don't think they charge some customers on one side of  
20 the town extra just because they put in a new plant in  
21 that area.

22           In essence, I'm saying Florida Cities Water  
23 Company should not be allowed to charge ratepaying  
24 customers north of the river almost 100% more than  
25 they are charging south of the river.

1           Unfortunately, it appears some judge found  
2 reason to reopen the case. Now, I don't know -- now,  
3 I do know that this happened without -- it did not  
4 happen without Florida Cities Water Company filing an  
5 appeal. Consequently, if Florida Cities Water Company  
6 wants to fight your decision, then they should have to  
7 pay for it. I think it is totally unfair to expect  
8 the ratepayer to financially support Florida Cities  
9 Water Company in their litigation so they can merely  
10 raise their rates again. I would say none of their  
11 expenses connected with reopening of the record should  
12 be allowed to be part of their rate case, whether it  
13 be legal or nonlegal. No expenses should be allowed.

14           Florida Cities Water Company chose to appeal  
15 your decision, and they should be expected to absorb  
16 the cost. That means they should be prepared to live  
17 with the consequences. If they win, so be it. And  
18 I'm sure we, the ratepayers, will see a substantial  
19 increase in our rates. But if you deny their appeal,  
20 then they, management and shareholders, should pay the  
21 consequences. They, Florida Cities Water Company,  
22 should not be allowed to merely pass along the  
23 expenses of their own mismanagement to the unprotected  
24 ratepayers.

25           In summary, you, the Public Service



1 Commission, are our only hope. Somehow Avatar, a  
2 private company, got control of the water and sewer in  
3 some parts of North Ft. Myers, and they are now our  
4 regulated utility. We are appealing for your help.  
5 We place our final and lasting hope in you. But I  
6 don't want you to think that we are just crybabies and  
7 are not trying to help ourselves. We're trying to  
8 control the usage of water and sewage.

9           For example, many of us buy our own bottled  
10 water to drink. Many of us have converted to the 1.6  
11 gallon toilets. Also many of us have converted to the  
12 water-saver showerheads. Both of these technology  
13 advances have helped us reduce the outrageous water  
14 and sewer charges we have to pay.

15           Now, in addition to these technical  
16 advances, some of us have taken the situation into our  
17 own hands. Do you remember as a wee wee tot when you  
18 used the toilet, your mother also said be sure you  
19 flush the stool after every use. Well, that was good  
20 motherly advice back then. But with Avatar's  
21 outrageous rates, some of us have had to modify that  
22 little bit. The new rule is: Use it twice, then  
23 flush, that's nice. And when it comes to taking a  
24 shower, we're also trying to save our water and sewage  
25 usage. We're seriously thinking about starting a

1 program entitled "It's no sin to shower with a  
2 friend." So you see, we are trying to help ourselves  
3 and save on our water and sewer charges. But we need  
4 your help. You are all we have to protect us from  
5 that greedy predator, Avatar. Thank you again.

6 (Applause)

7 **CHAIRMAN JOHNSON:** Thank you, Mr. Jenkins.

8 (Applause.)

9 **CHAIRMAN JOHNSON:** Any questions? There are  
10 no question. Appreciate your testimony.

11 **MR. McLEAN:** Citizen call JoAnne McCormick.

12

- - - - -

13

**JOANNE MCCORMICK**

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

17

**DIRECT STATEMENT**

18 **WITNESS MCCORMICK:** Good evening. I'm sorry  
19 to say I didn't have such a nice speech to make. I  
20 wasn't that prepared. But I do want to tell you I've  
21 lived in Fort Myers since August of '95, and I live  
22 close to the waste treatment plant. And I have made  
23 documented reports of calling the plant as late as  
24 12:30 at night to report the smell. I have had the  
25 DEP out there. I live close enough where I hear the

1 traffic on the tractor trailer trucks coming in. They  
2 start on Tuesday in the middle of the night and they  
3 end Wednesday in the mid-afternoon.

4           They tell me it's a million-gallon plant and  
5 they are not allowed to release discharge into the  
6 river of more than a million gallons. I didn't  
7 realize they were discharging water, wastewater, into  
8 the river. And we get a scum on top of the water in  
9 Waterway Estates that I contribute to the plant. And  
10 I'm paying astronomical charges on my water as it is.  
11 And they are telling me the plant does not warrant any  
12 more customers being on it. And they wanted to build  
13 a new plant. What would this cost us if they were to  
14 build another plant in the area?

15           And also, Lochmoor Golf Course has the  
16 ability to reuse the wastewater for their lawns on the  
17 golf course, but we, as paying customers, have to use  
18 city water -- Florida Cities Water, not city water --  
19 to do our lawns unless we are fortunate enough to have  
20 a well.

21           I'm very disgusted. There's only two people  
22 living in my house and I pay \$68 a month for my water.  
23 We conserve. And we shower together at times and we  
24 don't flush after every -- on the weekend when we're  
25 home because we can't afford it. I have company come

1 over to my house for five days over Thanksgiving. My  
2 recent bill was up through the 30th of November, and  
3 my bill was \$88. And there were only people there  
4 from Wednesday until Sunday. That's awful. That's  
5 terrible. And I have to pay utilities. But I can  
6 tell you that my husband called the superintendant of  
7 the waste treatment plant -- I have her name written  
8 down -- Suzanne Getler (ph). He called her December  
9 of 1995, got her up out of bed at 12:30 in the morning  
10 to report the odor. I have had -- my husband go over  
11 in the middle of the night and ring the buzzer at the  
12 gate for a person to come to. They tell us it's  
13 operational problems on April 12, 1997, the 9:25 p.m.  
14 We called again on the 13th of 1997.

15 **COMMISSIONER GARCIA:** You called on those  
16 days and did you call DEP or you called the plant?

17 **WITNESS McCORMICK:** I called the plant. I  
18 spoke to a Ron on April 12th, 1997; operational  
19 problem. Called Michael on April 13th, at 12:55 a.m.  
20 Operational problem. They had the odor control shut  
21 off. I called on September 17th of '97, spoke to Ron.  
22 Operational problems. Too much air going into the  
23 tank. He's going to shut the air off. Apologized for  
24 the inconvenience. On December 3rd, 19 -- I'm not  
25 going to repeat them all -- but December 3, 1998,

1 6:15 p.m. I spoke to Ron. He said the lift station  
2 level is up. He's calling someone to look into it  
3 because of the odor. He cannot adjust it.

4 **COMMISSIONER GARCIA:** Can I ask you a favor,  
5 could you get with Mr. Crouch from our Staff and he  
6 will look into that for you and maybe we can talk to  
7 DEP a maybe the health department about that.

8 **WITNESS McCORMICK:** Okay. The gentlemen  
9 that I spoke to that did come out to the plant, his  
10 name is Brian Shawl (ph).

11 **COMMISSIONER GARCIA:** Okay. He'll get all  
12 of that information from you and that way we can look  
13 into it for you.

14 **WITNESS McCORMICK:** I appreciate it. I know  
15 I have to pay for utilities, but it's true, 135% over  
16 South Fort Myers and it's the same company. I beg to  
17 differ. There's a problem here and I don't want to  
18 have a problem somebody get rich off of my statements.

19 **CHAIRMAN JOHNSON:** Ms. McCormick, you did a  
20 good job of recording the complaints you have had to  
21 file due to the odor problem. Have they been  
22 responsive? I know you went through -- how long and  
23 they told you what they thought the problem was. Did  
24 it clear up soon thereafter or did it continue?

25 **WITNESS McCORMICK:** It didn't clear it right

1 at the beginning. Sometimes it would go through the  
2 whole night. When I got home from work tonight at  
3 5:00 there was an odor. I know the odor is there on  
4 Tuesdays and Wednesdays because of the trucks that  
5 come in and out to remove the sludge.

6 The gentlemen I have spoken to at the plant  
7 has been very friendly on the telephone. I know that  
8 his supervisor was not at all thrilled by getting a  
9 phone call at 12:30 at night. We got a response that  
10 time.

11 **MR. JAEGER:** Chairman Johnson, could we get  
12 her address?

13 **CHAIRMAN JOHNSON:** Ms. McCormick, could you  
14 give us your address?

15 **WITNESS McCORMICK:** Yes. My address is 4310  
16 Harbor Lane, North Fort Myers, Florida.

17 **COMMISSIONER GARCIA:** Mr. Crouch will speak  
18 with you now.

19 **CHAIRMAN JOHNSON:** Thank you. (Applause)

20 **MR. McLEAN:** A. B. Weddle. W-E-D-D-L-E.  
21  
22  
23  
24  
25

1                                   **A. B. WEDDLE**

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

5                                   **DIRECT STATEMENT**

6                   **WITNESS WEDDLE:** My name is A. B. Weddle,  
7 and I, like Charles Jenkins, I live in the Lochmoor  
8 area. And I would like to thank both the Public  
9 Service Commission and Public Counsel for making this  
10 appearance here.

11                   I don't have very many figures to bring out.  
12 The thing that I want to bring out was that this  
13 meeting we hoped would be supported by many people  
14 from the North Ft. Myers area. The only thing is  
15 previously we have had two meetings in North Ft. Myers  
16 that was attended by several hundred people. One  
17 being in the Luthern Church and the other being in  
18 North Ft. Myers High. I don't know who makes the  
19 arrangements for they meetings, and I don't claim to  
20 be an official on water flow or anything that has to  
21 do with the technical side, but I do think that I know  
22 something about people.

23                   On this past Saturday and Sunday we worked  
24 quite hard to get this information out, even though  
25 many of them had already received letters. And the

1 main objection -- a lot of people said, "Oh, it's over  
2 in Fort Myers." Well, that might not seem like far if  
3 you live in Tallahassee, but the river that separates  
4 Fort Myers and North Ft. Myers is a natural boundary  
5 and both -- the river separates us. And then we had a  
6 6:00 meeting. If you would go out on the bridge at  
7 6:00 here you would see many people who are working  
8 people, who have worked hard all day, returning to  
9 their home in North Ft. Myers. It makes it a little  
10 bit hard for them to get home, cleaned up and come  
11 back to this meeting.

12 I think that it should be, if it's going to  
13 have meaning for people that are serviced by Florida  
14 Cities Water in North Ft. Myers. I think that the  
15 meeting should be held in North Fort Myers so the  
16 constituents of the water company can be there and  
17 voice their opinions. Thank you. (Applause)

18 **CHAIRMAN JOHNSON:** Sir, what were the  
19 locations that you suggested?

20 **WITNESS WEDDLE:** The first meeting that we  
21 had -- and I'm not for sure that the Public Service  
22 was at that meeting -- Florida Cities Water was at  
23 that meeting and it was held at the Luthern Church at  
24 the corner of Orange Grove and Hancock Bridge.

25 **COMMISSIONER GARCIA:** Luthern Church.



1           **CHAIRMAN JOHNSON:** You named one other  
2 location.

3           **WITNESS WEDDLE:** Yes. The North Ft. Myers  
4 High School. At both places I'd say from 3- to 500  
5 people attended both meetings. And there should have  
6 been a stack of testimony given at those two meetings.  
7 I'm not for sure about the first one, whether that was  
8 recorded or not. But I think that probably Mr. Dick  
9 was there, I'm sure, then the other gentlemen -- I  
10 can't think what his name, Roger Eterburg (ph); is  
11 that correct? Does that name ring a bell? I think  
12 that they would verify my statement on that there.

13           **CHAIRMAN JOHNSON:** I appreciate you giving  
14 me those locations and I'm writing those down for  
15 future purposes. Perhaps we should use a closer  
16 location. Of course, we do have customers in North  
17 and South Fort Myers for this particular utility. And  
18 we have to have a place that will accommodate all of  
19 the equipment. But those are good suggestions and  
20 ones that were well-taken.

21           **WITNESS WEDDLE:** Well, you know, North  
22 Ft. Myers High School has a lot of seating capacity  
23 and the ability to project PA real well.

24           **CHAIRMAN JOHNSON:** Sure.

25           **WITNESS WEDDLE:** Okay?



1 together, skip flushing, and do -- we have a well and  
2 with we still have very high rates.

3           The water -- the quality of the water is  
4 something else that I have found to be very poor. I  
5 had to buy a water filter even though I'm paying over  
6 \$80 a month for water because the water that comes out  
7 of the faucets isn't drinkable. And it ruins the ice  
8 in the icemaker and the refrigerator. So I felt it  
9 was very necessary to do. And I mainly wanted to let  
10 you know that I feel like we're generally -- it sounds  
11 from everyone else, too, that we're paying a lot more  
12 money. And earlier today when I was here this morning  
13 someone mentioned that we get a 42-cent credit every  
14 month on our water bill. What kind of rebate is \$5.04  
15 a year? It just doesn't seem fair. And as you've  
16 heard over and over today, everything is much higher  
17 here than it is anywhere else in this area.

18           That's all.

19           **CHAIRMAN JOHNSON:** Thank you. Any  
20 questions? Thank you, ma'am. Appreciate you  
21 testifying. (Applause)

22           **MR. McLEAN:** Mr. Chairman, that lady was the  
23 the last to sign up to testify.

24           **CHAIRMAN JOHNSON:** Are there any other  
25 members of the public that did not sign up to testify

1 but would like to testify before the Commission this  
2 evening? Maybe we do have one coming in. Ma'am, did  
3 either of you want to testify this evening?

4 **UNIDENTIFIED SPEAKER:** Sure.

5 **CHAIRMAN JOHNSON:** Not to put you on the  
6 spot.

7 **UNIDENTIFIED SPEAKER:** No, you're not. Not  
8 at all.

9 **CHAIRMAN JOHNSON:** Whichever would like to  
10 testify, if you could come forward. And I'm over  
11 here. Just in time. If you can remain standing.

12 (Witnesses sworn.)

13 **CHAIRMAN JOHNSON:** You may be seated.

14 I'm Julia Johnson. I'm the Chairman of the  
15 Florida Public Service Commission. Seated to my right  
16 is Terry Deason. Seated to my left is Joe Garcia.  
17 We're the panel that will be hearing the testimony  
18 this evening. You are the fifth customer to come  
19 forward to testify. Public Counsel here, Mr. McLean,  
20 is your representative. This gentlemen here  
21 represents the Company. The Court Reporter is seated  
22 behind you. She's going to take all of your comments  
23 so they can be part of our official record. Gave you  
24 that background to give you time to just sit down and  
25 relax.

1           If you could, for purposes of the record,  
2 state your name and address, and then let us know  
3 whatever you'd like for us to know.

4           One other announcement I'd like for people  
5 to know that are testifying, this equipment here means  
6 that the testimony you are providing is being  
7 transmitted over the Internet, so that those around  
8 the state that would like to hear your comments can  
9 hear them live or later, if you want to go back, if  
10 you have the equipment, you can listen to yourself or  
11 listen to your neighbors and the statements they've  
12 made.

13           Sir, do you need to ask the question now?  
14 Do you want to talk?

15           **UNIDENTIFIED SPEAKER:** I had a phone call.  
16 That mike is not getting out on the Internet.

17           **CHAIRMAN JOHNSON:** Oh, I'm so glad you have  
18 that telephone and got that. This microphone or  
19 their --

20           **UNIDENTIFIED SPEAKER:** This is fine. That  
21 one is not. (Indicating)

22           **CHAIRMAN JOHNSON:** Ma'am, if you could maybe  
23 bring the microphone closer, that may be the problem.  
24 And if not, we just may be in trouble with this  
25 particular hearing. But I appreciate that

1 clarification. And we'll see what we can do. If you  
2 can speak directly into the microphone.

3

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4

**JOANNE DENIGRIS**

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

8

**DIRECT STATEMENT**

9

**WITNESS DeNIGRIS:** My name is Joanne

10 DeNigris. I live at 983 Narcissus Street in North  
11 Ft. Myers. I wish we had more people here.

12 Unfortunately, it's at a time where people are rushing  
13 home from work and trying get to the meeting at the  
14 same time.

15 I have been at a public hearing before. I  
16 do oppose the rate increase again.

17 During the last couple of months I noticed  
18 there's a foul smell to the water. I did get out and  
19 purchase some water equipment to help filter the  
20 water. In the past we have had some problems with the  
21 water system, whether it be the taste or quality or  
22 having Florida Cities Water come out and take a look  
23 at the systems. As long as I lived in North  
24 Ft. Myers, approximately 11, 12 years, I have yet to  
25 see anybody maintain that system. We've a Taj Mahal

1 at the end of Waterway Estates. I know that the  
2 people that live down there are complaining about  
3 trucks. Just the quality of water overall is bad.

4           And I'd like to address the Company as to  
5 why the water is declining in taste, and why are we  
6 trying to increase, you know -- we need to get more  
7 people involved with the cost of this water.

8           In North Ft. Myers we've got Lee County  
9 public utilities and then we've got Florida Cities  
10 Water. I don't know how many customers are served by  
11 Florida Cities Water -- and I know there are some well  
12 systems out there -- if we got the cost spread out to  
13 more customers, maybe it would lessen the cost to us  
14 directly. And I've asked that question before.

15           We have had some problems with sewers in our  
16 area. I know our pumping stations, they are always  
17 maintaining those or fixing problems that are out  
18 there. There's also problems with -- I wouldn't say  
19 the flow -- you know, if you're running the water in  
20 the sink in the kitchen and somebody is flushing, the  
21 pressure of the water is also a problem.

22           So there's some problems with the system  
23 itself. And, you know, I'm definitely opposed to an  
24 increase. We've got some senior citizens. We've got  
25 families that are on fixed incomes that cannot afford

1 rate increases. And, you know, for the quality of  
2 water we're getting versus what we're paying, I  
3 believe -- you know there was a study in the paper as  
4 to Florida Cities Water versus Florida Cities  
5 throughout the state of Florida. We're one of the  
6 highest areas that are paying for this water.

7 **COMMISSIONER GARCIA:** Let me ask you, ma'am,  
8 is the equipment that you installed in your house,  
9 does that fix the small problem?

10 **WITNESS DeNIGRIS:** Actually, it's a water  
11 purifier. It's the Brita. And I'm filtering the  
12 water through there. Because I notice within the last  
13 couple of months the water quality has decreased.  
14 It's got a foul smell to it.

15 **COMMISSIONER GARCIA:** Has that helped?

16 **WITNESS DeNIGRIS:** Yes, it has. Yes, it  
17 has. It's a charcoal filter system. I'm consider  
18 putting it on the house. But just the quality of  
19 water has declined.

20 **COMMISSIONER GARCIA:** Thank you.

21 **CHAIRMAN JOHNSON:** Any other questions for  
22 the witness?

23 **MR. GATLIN:** No questions.

24 **CHAIRMAN JOHNSON:** Ma'am, maybe one of the  
25 things we can do is we have an engineer here,



1 Mr. Crouch, and he can perhaps assist you with some of  
2 the issues you raised. You said it's a problem that's  
3 been worsening as opposed to getting better. And that  
4 one thing you have mentioned I haven't heard other  
5 witnesses mention that I think we should explore is  
6 the pressure problem. And I know you delineated quite  
7 a few things. Perhaps one of our engineers should get  
8 with you and come out and do any special research.  
9 Appreciate you coming out.

10 **WITNESS DeNIGRIS:** Thank you.

11 **CHAIRMAN JOHNSON:** Thank you. (Applause)

12 Yes, ma'am. There's one other lady that has  
13 not testified and I see she's raising her hand. I  
14 think she'd like to testify.

15 **CHAIRMAN JOHNSON:** Let me go ahead and swear  
16 you in at this time too. If there's anyone else in  
17 the audience that did not have the opportunity to  
18 testify and would like to testify, if you could stand  
19 I'll swear you in also.

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1                                   **MARIA HARTZELL**

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

5                                   **DIRECT STATEMENT**

6                   **WITNESS HARTZELL:** Hi. My name is Maria  
7 Hartzell, last name if H-A-R-T-Z-E-L-L, and this is  
8 the second time I've spoke. Last time I spoke I did  
9 get a visit from the Florida Cities Water Company  
10 about three months down the road.

11                   **COMMISSIONER GARCIA:** Ma'am, you need to  
12 speak right into the mike.

13                   **WITNESS HARTZELL:** The last time I spoke  
14 here I got a visit three months down the road from the  
15 Florida Cities Water Company rep. He came out and  
16 wanted to know, you know -- said, "I called and came  
17 out to test the water quality." I said, "Well, I  
18 didn't call." And then as we talked, I realized he  
19 was there because I was speaking at the last meeting  
20 three months ago, or whenever that meeting was.

21                    Anyway, he took a water sample. I said,  
22 "Are you going to get back to me?" And he says, "If  
23 we find something, we'll get back to you." Well, I  
24 never did hear from him and that was quite a while  
25 ago.

1           As far as -- I've lived in North Ft. Myers  
2 now for seven years. Since I moved into my house, we  
3 started paying water bills of \$48. Now my water bills  
4 are about \$85 each month. During the winter I pay  
5 more for water than I do for the electric. The  
6 quality, I can't see any difference. I know I keep  
7 paying more so I expect more and I'm not receiving  
8 more for my money.

9           I agree with her also. There's a stronger  
10 chlorine smell to the water lately. I don't drink the  
11 water anymore. I buy bottled water. I have three  
12 small kids and I'm kind of leery.

13           The pressure is also a problem in my  
14 neighborhood, which is next door to her neighborhood?  
15 And we've got our kids trained not to flush the toilet  
16 when someone is taking a shower because you loose the  
17 water pressure. So it's sort of a -- kind of a  
18 inconvenience when you're paying \$85 that you have to  
19 watch how you use your water pressure. And, of  
20 course, we can't run a washer when anybody is in the  
21 shower.

22           I was wondering if management should be  
23 checked into. Because if I keep paying more money  
24 each year -- which is usually more than my pay  
25 increase for the year -- then where is the money I'm

1 paying going? And where is the better service?

2 Because I'm still not seeing that.

3           Also, I know three people on the block that  
4 moved due to the increased water. They just couldn't  
5 afford it. Two were seniors on fixed incomes and they  
6 had to put their house up for sale and left. And then  
7 one was a single mom with kids. They all left. I  
8 thought it was a pretty shame that I'm losing good  
9 neighbors because of the price of water.

10           I just definitely oppose it. And I really  
11 would like to see if we could take it over, like by  
12 the county, and out of the hands of Florida Cities  
13 Water, and see if somebody new under management could  
14 run it better. And that's basically all I have to  
15 say. (Applause)

16           **CHAIRMAN JOHNSON:** Thank you. If the  
17 gentelman with the telephone could come forward.

18           **COMMISSIONER GARCIA:** While that gentleman  
19 comes forward, if you all notice on this blue sheet,  
20 on the front, towards the bottom right-hand side,  
21 there's a phone number, 1-800 number. If you have a  
22 problem with a Company and don't seem to be getting a  
23 resolution, call us up. We file a complaint. It goes  
24 into our computer system. The company has a limited  
25 amount of time in which it has to respond by. That's

1 something we can also use when this Company comes  
2 before us again in some future date. Our engineers  
3 and our technical Staff can look into those problems  
4 and make sure they are solved. And it doesn't cost  
5 you anything except some time. It usually takes about  
6 five minutes to get to it. But it's 1-800-342-3552.

7 **CHAIRMAN JOHNSON:** Okay. If you could state  
8 your name and address for the record.

9

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10

**THOMAS SMITH**

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

14

**DIRECT STATEMENT**

15 **WITNESS SMITH:** My name is Thomas Smith. I  
16 live at 4610 Mackinaw Avenue, North Ft. Myers in  
17 Waterway Estates.

18 Unlike a lot of people, I have been on this  
19 system since 1972. I know what it was and what it is  
20 now.

21 But when I came in here today I got this  
22 thing called a "Special Report," and something struck  
23 me as strange on it here. They say we serve 2,559  
24 customers, and they are looking for a return of  
25 \$2,591,000. And in some of the research I have been

1 doing here, I find that Avatar serves 43,000 customers  
2 and their revenues are a lot less percentagewise than  
3 that. And they are making good money. According to  
4 their corporate report, their water and sewer -- water  
5 and utilities divisions from '95 to '97 had an  
6 increase of 15.6% in revenue.

7           On that 43,000 customers reportedly in 1995  
8 to '96, utility revenues increased \$3 million. '96 to  
9 '97, revenues increased a 1.5. Utilities expenses  
10 over the same period, from '95 to '96 increased  
11 \$582,000, and in 1996-'97 utilities expenses increased  
12 \$122,000. This is on Avatar's SEC Report on Annual  
13 Revenues.

14           They quoted here "Utilities revenues  
15 increased 4.7% in 1997 when compared to '96; 10.4%  
16 during 1996 compared to '95, while their expenses in  
17 '97 increased one-half of a percent, and their  
18 expenses in '96 were up 2.3%.

19           One interesting quote they have back here in  
20 their report -- and I quote this, "Increases in  
21 interest rates affecting the Company's utilities  
22 operations generally are passed on to the consumer  
23 through the regulatory process." Now, this report  
24 also states that they have a credit line of  
25 \$15 million in the utilities division, of which over

1 \$14 million is still available. I quote here  
2 "Inflation has had a minimal impact on Avatar's  
3 operations over the past several years and management  
4 believes its effect has been neither significant nor  
5 greater than its affect on the industry as a whole."

6 Basically that's what I have. But it looks  
7 like percentagewise, with 43,000 customers and  
8 34 million in revenue, they are looking for a lot more  
9 revenue out of our customers than in general in their  
10 whole utility system. And I'll leave this with your  
11 people.

12 **CHAIRMAN JOHNSON:** Thank you, Mr. Smith.  
13 You can pass that information over to the court  
14 reporter. (Applause)

15 You can leave it with the Court Reporter and  
16 we'll make sure that gets on the correspondence side  
17 of our record. There was another gentlemen. Yes,  
18 sir.

19

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20

**DAVE DIETZEL**

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

24

**DIRECT STATEMENT**

25

**WITNESS DIETZEL:** Dave Dietzel. I live at

1 9131 Palm Island Circle, North Fort Myers.

2 **CHAIRMAN JOHNSON:** Could you spell your --

3 **WITNESS DIETZEL:** D-I-E-T-Z-E-L. And I'm  
4 just here to plead ignorance. I was unable to attend  
5 the hearings in April due to a working schedule. And  
6 this is my first opportunity to come to one of these.  
7 And hearing that we are charged in North Ft. Myers 95%  
8 more than fellow customers in South Fort Myers, is it  
9 appropriate to ask why? That seems unconscionable to  
10 me for people in a certain part of a community to have  
11 to pay those higher rates than others using the same  
12 system.

13 And what's the reason for this recent  
14 request to increase the -- our water rates? I agree  
15 with the others that have spoken. We seem to be  
16 paying an undue large amount of money for what we  
17 receive, and it does continue to go up. And why are  
18 they coming back and wanting to do it again? Maybe  
19 everybody here knows the answer. If they do, why  
20 fine. But this just doesn't seem to be justice to me.  
21 And I just wanted to ask why. And can we receive an  
22 answer tonight or not?

23 **CHAIRMAN JOHNSON:** Sure. And I think you  
24 had two questions. One, why are the rate structures  
25 different? Why would one group of customers pay a



1 different rate than the other group of customers?

2 And your second question went to how did we  
3 get -- why are we here again today.

4 **WITNESS DIETZEL:** Yes? What's the reason  
5 for this rate increase.

6 **CHAIRMAN JOHNSON:** I'll.

7 **WITNESS DIETZEL:** And can the company  
8 justify that to us.

9 **CHAIRMAN JOHNSON:** I'll start with the  
10 second question first and I'll also allow Staff to  
11 follow up on both issues.

12 If you look at the Special Report, and I  
13 begin at the beginning talking about the remand,  
14 because we did have a rate case and the issues were  
15 resolved, and we did have customers. And when I  
16 mentioned April, it was April of 1996 they came in and  
17 testified.

18 We did put out a final order. And when we  
19 put out a final order to what the rate should be, and  
20 what the rate structure should be, and how the  
21 customer should be charged, the companies, as well as  
22 Public Counsel, they have the opportunity to take our  
23 final order and appeal that to the District Court of  
24 Appeals. And in this instance they did appeal our  
25 decision on quite a few grounds.

1           The reasons why we're back here today is the  
2 two reasons that the Court remanded, and that means  
3 the Court sent the case back to us. Some would say  
4 they ruled in favor of the Company; and others would  
5 say they told us that we had an opportunity to look at  
6 our record, reopen the record and make a determination  
7 on two issues. And that's what we're here about  
8 tonight.

9           Two issues. One is the capacity of the  
10 wastewater treatment plant, and the second is the  
11 calculation of used and useful plant.

12           The last time around in 1996, I know that  
13 the customers were very active in the case on used and  
14 useful and on the capacity of the wastewater treatment  
15 plant. And that's why it's kind of confusing because  
16 I know a lot of customers said "Didn't we resolve  
17 this? Hadn't we already heard these issues?" Well,  
18 we need to reopen the record in order to have  
19 sufficient evidence to make a decision based upon  
20 evidence in the record.

21           Now, what happens next? I think it was  
22 either you or another gentleman said could this get  
23 appealed again? We will make a determination -- and  
24 there are certain due process and legal procedural  
25 rights. Perhaps it will be appealed. We're hopeful

1 that whatever decision we make, if it's reviewed by  
2 the Courts that it will be upheld. But to the extent  
3 that it's not, then there may be continuous litigation  
4 on that one point.

5           The other point that you asked was with  
6 respect why are the rates in one system higher than  
7 the other system? These are treated as separate  
8 systems, aren't they, Mr. Willis? So that the cost  
9 structures are handled on a stand-alone basis. And  
10 what I mean by that is, we do a calculation as to the  
11 cost of the plant and the equipment and the actual  
12 investment for each of these systems separately. One  
13 of the gentlemen testified and said it should be like  
14 telephone companies or other companies where the costs  
15 are kind of averaged between customers.

16           With respect to water and wastewater, the  
17 systems are handled differently and oftentimes they  
18 are treated as stand-alone systems. Several years  
19 ago, the Commission, for a different company, started  
20 down the road of trying to implement uniform rates and  
21 that's been a very litigious process.

22           In this I think we continue to treat them,  
23 from an accounting purpose I'm almost sure, as  
24 stand-alone separate systems, so that the costs of one  
25 system are borne by the customers of that system, and

1 the costs of the system are borne by those customers  
2 and there's no cross-subsidy. In other words, your  
3 costs are higher than theirs.

4 **WITNESS DIETZEL:** They are higher in North  
5 Fort Myers than they are in south.

6 **WITNESS DIETZEL:** Why is that?

7 **CHAIRMAN JOHNSON:** Do you want to go over --  
8 Mr. Willis is the chief of one of our water and  
9 wastewater divisions, and he could probably explain,  
10 in paneful detail, to why the cost structures are  
11 different.

12 **WITNESS DIETZEL:** Why are they almost 100%  
13 high in North Fort Myers?

14 **MR. WILLIS:** Well, I can't go through and  
15 give you every detail of it, but the the major reason  
16 why there is such a big difference in cost is that  
17 there are a far great number of customers in the South  
18 Fort Myers systems. And by having the far greater  
19 number of customers, you have the larger economy of  
20 scale effect, and, therefore, you can take the costs  
21 and spread them over a large number.

22 As in North Fort Myers, there's fewer  
23 customers and the costs are much greater. The plant's  
24 a smaller plant than they have in the South Fort Myers  
25 system, and it just doesn't have as large economy of

1 scale effect. That's the simplest reason I can give  
2 you. But the costs are cost based. As the Chairman  
3 said, the South Fort Myers systems at this point are  
4 cost based for their system as well the North Fort  
5 Myers system.

6           Somewhere back in the 1980s, both wastewater  
7 systems were under a uniform rate, what we call a  
8 single-tariff pricing system. Back at that point  
9 South Fort Myers had to put in an advanced waste  
10 treatment plant and the company requested to unbundle  
11 that single tariff pricing, and they came in and put  
12 in a single rate for a stand-alone rate for the South  
13 Fort Myers system, and their rates went up much higher  
14 than North Fort Myers at that time. And as you all  
15 are very aware, at one point in time the company came  
16 in for a rather large rate increase for North Fort  
17 Myers when they had to put in the advanced waste  
18 treatment in the North Fort Myers system.

19           But I can assure you the costs now are  
20 stand-alone, only based upon the north system standing  
21 by itself and the South Fort Myers system standing by  
22 itself. At some point in time that could change.

23           **WITNESS DIETZEL:** But you said, sir, that  
24 the treatment plant in North Fort Myers is small and  
25 inadequate.

1           **MR. WILLIS:** No. What I'm telling you.  
2 It's a smaller plant than the one in South Fort Myers  
3 because the one in South Fort Myers handles probably  
4 three times the number of people than the North Fort  
5 Myers system. And in the business of water and  
6 wastewater, bigger is better, you might say, in that  
7 the bigger the plant you have and the more people you  
8 serve, you can serve it more efficiently than you can  
9 with a smaller plant. And that's just an  
10 economies-of-scale approach to dealing with costs, you  
11 might say.

12           **WITNESS DIETZEL:** So then if I may ask  
13 another question, Madam Chairman?

14           **CHAIRMAN JOHNSON:** Yes, sir.

15           **WITNESS DIETZEL:** So then the reason for  
16 this new increase is what?

17           **MR. WILLIS:** The reason for this new  
18 increase?

19           **WITNESS DIETZEL:** Yeah.

20           **MR. WILLIS:** The increase we're talking  
21 about here today is because of the District Court of  
22 Appeals overturning a Commission decision and giving  
23 the Commission the right to reopen the case and put on  
24 more evidence to support its prior decision at this  
25 point in time.

1           The rates that the Company has in effect  
2 right now are allowing them to recover the costs that  
3 were sent back to the Commission at this point in  
4 time. If the Commission is upheld, then there will be  
5 a slight rate decrease to take care of that and a  
6 refund to customers. The Commission is not upheld in  
7 the future by the Courts. I don't believe there will  
8 be a future rate increase but there certainly won't be  
9 a refund.

10           **WITNESS DIETZEL:** So you're saying you're  
11 not asking for a rate increase?

12           **MR. WILLIS:** I'm with the Staff of the  
13 Commission. I'm not with Florida Cities.

14           **WITNESS DIETZEL:** Oh. Florida Cities is not  
15 asking for an increase?

16           **MR. WILLIS:** Let me try and explain it a  
17 little better.

18           The Commission had a rate case and the  
19 Commission made a finding in that rate case. The  
20 Company didn't like the finding they made in that rate  
21 case and they appealed it to the First District Court  
22 of Appeal. First District Court of Appeal came back,  
23 like the Chairman said when we first started the  
24 hearing -- they came back and said, "We're overturning  
25 you on two points of your decision." One of those

1 dealt with the capacity of the wastewater treatment  
2 plant in North Fort Myers, and other dealt with how we  
3 calculated used and useful. And the used and useful  
4 decision the Court said you can to go and reopen the  
5 record and take more evidence on that to try and  
6 support your decision in that case.

7           What we're doing here today and tomorrow is  
8 taking additional evidence on that one decision to  
9 build a better record to support that decision.  
10 That's exactly what we're doing here today. We're  
11 still dealing with that rate case that was in  
12 existence back in 1995 when they filed that. It's  
13 been through the Commission, through the courts and  
14 now back to the Commission again for further evidence  
15 taking to defend our decision.

16           **MR. GATLIN:** Madam Chairman, I think just  
17 with minor correction I would agree with what  
18 Mr. Willis said. I don't think the capacity was  
19 referred back for further testimony.

20           **MR. WILLIS:** No, I don't think I said that.  
21 I said only the used and useful portion.

22           **MR. GATLIN:** I thought I heard a you say  
23 capacity.

24           **MR. WILLIS:** No. I said there were two  
25 parts remanned back to the Commission for action.



1 Only one of them required testimony, and that was the  
2 used and useful portion. The Commission was  
3 overturned on the capacity issue.

4 **MR. GATLIN:** I didn't think that was clear.

5 **COMMISSIONER GARCIA:** If I'm not mistaken,  
6 the customers are already paying the higher rate -- if  
7 I'm not mistaken.

8 **MR. WILLIS:** Yes, they are.

9 **COMMISSIONER GARCIA:** What we're trying to  
10 do here is get more evidence on the structure we  
11 believe. Make sure we can prove that up. If we prove  
12 that up, you will have to pay less. But it's based on  
13 the technical issue of how we calculated what their  
14 rates should be.

15 **WITNESS DIETZEL:** Okay. I'll go for that.

16 **CHAIRMAN JOHNSON:** Yes, sir. Thank you,  
17 sir. (Applause)

18 Ma'am, there's another question -- you're  
19 going to need to come up to the microphone just to  
20 make sure everyone can hear your statement.

21 **WITNESS HARTZELL:** Maria Hartzell again, and  
22 I have a question. I just wondered as you were  
23 describing, we have a smaller community to serve  
24 that's why our water is so high, the name of the  
25 other -- Lee County Utilities is also in North Fort

1 Myers -- what is the chance we can actually merge,  
2 serve all of Fort Myers, bring our rates down and make  
3 everybody happy?

4 **COMMISSIONER GARCIA:** The problem is it  
5 isn't the City's to serve, it's their water plant.  
6 The truth is that the city would basically have to buy  
7 them or decide to serve it. And that's a decision of  
8 your local elected officials. That's something -- we  
9 have no power over that.

10 **WITNESS HARTZELL:** Okay.

11 **COMMISSIONER GARCIA:** Sometimes companies  
12 sell to the local government because the government  
13 wants to step in. Other times the government  
14 privatizes and companies buy it. But that's something  
15 we really have no say over.

16 **WITNESS HARTZELL:** So that would be like a  
17 mayor-type issue.

18 **COMMISSIONER GARCIA:** Mayor, City Council.  
19 Sometimes cities have a utility board. We wouldn't  
20 know.

21 **WITNESS HARTZELL:** Do we have any  
22 Commissioners here representing us? (No response.)  
23 No.

24 **COMMISSIONER GARCIA:** That's something you  
25 should discuss with them. I don't think this is the

1 proper forum because we really have no .

2           **WITNESS HARTZELL:** Okay. Thank you.

3           **CHAIRMAN JOHNSON:** There's one more  
4 question. Mr. Smith?

5           **WITNESS SMITH:** Yes. My name is Tom Smith  
6 again. I've got a couple of questions I'd like to  
7 ask. Number one, we're talking capacity and what it's  
8 up to. I have spoken to people who have seen the  
9 proposals for Hancock Bridge Parkway between Moody  
10 Moody Road and Orange Grove. To quote what the  
11 gentlemen said, "It looks like the Grand Canyon  
12 between the high rises." Now, this is Florida Cities'  
13 territory.

14           There's a photograph from Avatar Utilities  
15 Services they use on the front page of their displays  
16 on the Internet that I gave the lady. Shows our water  
17 plan, wastewater plant. There isn't an inch of ground  
18 left on that site for anything unless they buy the  
19 Marina. Now, how do they plan to service all the rest  
20 of this North Fort Myers area all the way to Pondella  
21 (ph) Road with the plant they are running now?

22           **COMMISSIONER GARCIA:** They have to serve it.  
23 If it's their territory, they have to serve it. They  
24 have to be ready and willing to serve or someone else  
25 can serve it. You're going to find because of other

1 constraints of the law -- in other words, other  
2 requirements by other statutes, Department of  
3 Community Affairs, probably the local ordinances that  
4 are required, you can't build a building unless you  
5 can service it. And if this company can't service,  
6 somebody is going to find someone else who can. But  
7 they have to be able to serve it.

8           **WITNESS SMITH:** If they decide they want to  
9 service this area, and they've already stated that in  
10 the previous meetings, who is paying for all of this?  
11 You're talking new site, new plan, new everything.

12           **COMMISSIONER GARCIA:** Do you want to go into  
13 the technical explanation of how facilities --  
14 basically you're not going to pay for that.

15           **WITNESS SMITH:** That's not what they have  
16 been trying to do.

17           **MR. WILLIS:** Let me explain something about  
18 expansion of territory.

19           The company will be probably sometime in the  
20 future, if they are wanting to expand, come to the  
21 Commission for the cost to do that. And they normally  
22 do that through what we call service availability  
23 charges.

24           **COMMISSIONER GARCIA:** It's sort of like an  
25 impact fee.

1           **MR. WILLIS:** Sort of like an impact fee,  
2 which they will be coming forward and trying to charge  
3 that new area. If they have to build a new facility  
4 at a new facility site because they don't have room at  
5 their current place, I doubt it will be tied into  
6 their system. It's possible. I don't know. Without  
7 knowing the area, knowing what's going on, I couldn't  
8 give you the specifics of anything dealing with it at  
9 this point in time. And they certainly have not come  
10 to us for anything dealing with the extension of the  
11 territory, if its not already their territory at this  
12 point.

13           **WITNESS SMITH:** Well, it is in the middle of  
14 their territory. It's just currently undeveloped.  
15 It's right smack in the middle of their territory.

16           And I believe the last year's -- or '96's  
17 meeting, they definitely wanted to serve that new  
18 addition. They said so. That's why we got into this  
19 capacity debate in the first place. And somebody  
20 researched it and found out they did their capacity  
21 upgrade far and above what they needed at the time.  
22 And they wanted to do it again. And this is where we  
23 won or we thought we won on the last case.

24           **CHAIRMAN JOHNSON:** Thank you, Mr. Smith.  
25 Did you have a question? When you come forward,

1 please pronounce your last name for me. I think I'm  
2 mispronouncing it.

3 **WITNESS EBIE:** I'm Lucille Ebie. E-B-I-E.

4 Anyway, what I wanted to say, if this  
5 company was smart enough, they would take and manage  
6 their money like other businesses do and they would  
7 have capital again, or whatever it takes, to make  
8 improvements when they needed it. And for me, I'll  
9 still never see why they can charge more in one area  
10 than the other. Because I'm like you, with what the  
11 other fellow said, with telephone companies and other  
12 companies, they all have one price. And if you are  
13 working for a company, they have certain guidelines  
14 that they pay you by. And that's the way it works.  
15 But here they are also wasting a lot of money, making  
16 you come clear from Tallahassee, down here. We're  
17 paying your wages out of our taxes, plus the building  
18 and everything that goes on -- they have wasted a lot  
19 of money in this community just since I've lived here  
20 almost nine years. And it just don't add up, to think  
21 that they don't wise up pretty soon. You know,  
22 because the people just can't cope with this kind of  
23 money. It's got to stop. Because they are just not  
24 going to be able to pay their bills. And then what  
25 are they going to do? If they don't have the money

1 coming in, they better keep their prices down where  
2 people can pay their bills. Because the time is  
3 coming when they are going to have a lot of  
4 outstanding bills who nobody pays. And then they  
5 might think twice because there comes a time you can  
6 just rip people off so long and they can't take it.

7 Thank you. Bye. (Applause)

8 **CHAIRMAN JOHNSON:** Thank you.

9 **WITNESS GREEN:** Hi. Harry Green again.

10 Just a couple of points. The gentlemen over  
11 here said impact fees pay for the increase in the  
12 facilities. Well, why does the \$300,000 reuse  
13 increase get laid on the residents rather than on  
14 future growth? We shouldn't have to be paying impact  
15 fees for future growth that took the plant up to 1.3  
16 MGD.

17 And secondly, for the residents, probably  
18 most of you don't know that a new nonprofit  
19 governmental agency is being formed in Tallahassee  
20 that's proposing to purchase Avatar potable and  
21 wastewater facilities throughout Florida, including  
22 the plants here in Lee County. And the last I heard  
23 from our Commissioner Koid (ph) was it looks like it's  
24 a deal that's going to go down. And once that  
25 happens, hopefully the county will be able to purchase

1 the facilities from this nonprofit utility in  
2 Tallahassee, and we would be coming under county  
3 jurisdiction rather than the Public Service Commission  
4 in Tallahassee. Thank you.

5 **CHAIRMAN JOHNSON:** Thank you. (Applause)  
6 Ms. McCormick.

7 **WITNESS MCCORMICK:** JoAnne McCormick  
8 speaking again.

9 Is there another waste treatment plant in  
10 Waterway Estates on the corner of St. Clair and Orange  
11 Grove Boulevard behind the Farm Store? It's owned by  
12 Florida Cities Water. And there's a definite odor at  
13 times coming from behind the Farm Store. And I  
14 believe it is another treatment plant of some sort.  
15 Could somebody clear that for me?

16 **CHAIRMAN JOHNSON:** Staff, any indication?

17 **COMMISSIONER GARCIA:** Maybe the company can  
18 answer the question.

19 **MR. GATLIN:** See if I can get an answer.

20 **UNIDENTIFIED SPEAKER:** That's the water.

21 **COMMISSIONER GARCIA:** Why --

22 **MR. GATLIN:** He said that was a water plant.

23 **WITNESS MCCORMICK:** That's a water plant?

24 If it's a water plant, why is there an odor? Water is  
25 not supposed to smell unless it's sulfur, and I don't



1 believe we don't have sulfur water that we drink or is  
2 being processed. Do you have an answer?

3 **MR. GATLIN:** Well, if the Commission would  
4 like a report on some of these comments, we'd be glad  
5 to look into them and give you a report.

6 **CHAIRMAN JOHNSON:** If you could follow up  
7 with a report, that would be helpful. And perhaps  
8 Staff has some additional information.

9 **MR. CROUCH:** I was going to answer on a  
10 hypothetical on this. I don't know whether this is  
11 true in this particular case or not, but some water  
12 treatment plants do have an odor that comes from them;  
13 as they aerate the water you get hydrogen sulfide that  
14 comes off of that water.

15 **WITNESS McCORMICK:** But I believe that is  
16 lethal gas, and you could become sick from the smell.

17 **MR. CROUCH:** Hydrogen sulfid is, by itself,  
18 not a lethal gas unless you're in a very concentrated  
19 area; inside a pipe or something like that. Hydrogen  
20 sulfide is naturally occurring in most of the water in  
21 Florida. Many of the water treatment plants do aerate  
22 the water and that hydrogen sulfide just disipates  
23 into the air.

24 **WITNESS McCORMICK:** I understand that. But  
25 when we spoke to the representative from the DEP, he

1 says he has a meter. And when the smell is very bad,  
2 there's no one there to take a reading. I have a  
3 friend who lives in North Carolina who has a meter,  
4 and he was down here two years ago, and it was at high  
5 levels, which are not healthy.

6 **MR. CROUCH:** I know it can reach high  
7 levels, and at concentrated levels it could be  
8 hazardous. But by and large, in most of the cases,  
9 while it is esthetically unpleasing -- the rotten-egg  
10 smell stinks, to put it bluntly -- a lot of times if  
11 you've got our own well, your own well water will have  
12 hydrogen sulfide in it that you can taste.

13 **WITNESS McCORMICK:** I understand that.

14 **MR. CROUCH:** That's what I'm saying  
15 hypothetically in this case, may be the smell that you  
16 are getting is coming from an aerated water treatment  
17 plant somewhere. I'm not familiar with it in that  
18 area. I haven't been over there in several years, but  
19 we will sure look into it.

20 **WITNESS McCORMICK:** So there's the water  
21 plant that's just off of Orange Grove, on the corner  
22 of St. Clair and Orange Grove, and the waste treatment  
23 plant is at the end of Inlet Drive near the Marina, so  
24 they are two separate --

25 **MR. CROUCH:** We'll look into it.

1           **WITNESS McCORMICK:** I appreciate it.  
2 Because I am concerned. I have upper respiratory  
3 problems. When the odor is very bad -- I mean it's  
4 nauseating. I have to shut my doors when I don't need  
5 to in the wintertime just to eliminate the smell.

6           Thank you.

7           **CHAIRMAN JOHNSON:** Thank you, Ms. McCormick.

8           I'd like to thank you all for coming out  
9 tonight. I hope we were able to answer all or most of  
10 your questions. And to the extent that we couldn't  
11 answer them, there are Staff members here that can  
12 continue to take your name, number, and try to respond  
13 to any questions that you might have.

14           Also if you have noticed, I failed to  
15 mention that on the back of the blue sheets, if you  
16 have written comments, didn't want to testify, have  
17 additional questions, if you want to just simply write  
18 out comments; fold it over and our address is on the  
19 outside, and mail that to the Commission, your  
20 comments can be received that way. As  
21 Commissioner Garcia stated, there's the 1-800 number  
22 and there's also our Internet address, and you can use  
23 that to also fax any complaints or questions.

24           And with that, again, I'd like to thank you  
25 all for coming out and participating in our second

1 customer hearing.

2           If there are no further questions, I'd like  
3 to go ahead and adjourn the customer hearing for  
4 tonight. Thank you again. Appreciate your comments.

5 (Applause.)

6           (Whereupon, the hearing adjourned at  
7 7:15 p.m. to be reconvened at 9:00 a.m on  
8 December 9th, 1998, at the same location.)

9           (Transcript continues in Volume 9.)

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