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August 11, 2000

Ms. Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

RE: Docket No. 990080-WS

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of the Direct Testimony of Kimberly H. Dismukes for filing in the above referenced docket.

Also Enclosed is a 3.5 inch diskette containing the Direct Testimony of Kimberly H. Dismukes in WordPerfect for Windows 6.1 format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess  
Deputy Public Counsel

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 3 Enclosures
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- LEG 1 \_\_\_\_\_
- OPC \_\_\_\_\_
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09749 AUG 11 8

FPSC-RECORDS/REPORTING

**ORIGINAL**

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint and Request for hearing )  
by Linda J. McKenna and 54 petitioners ) Docket No. 990080-WS  
regarding unfair rates and charges of ) Filed: August 11, 2000  
Shangri-La by the Lake Utilities, Inc. in )  
Lake County. )

**Direct Testimony**

**of**

**Kimberly H. Dismukes**

**On Behalf of the Citizens of the State of Florida**

**Jack Shreve  
Public Counsel**

**Office of the Public Counsel  
c/o The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, Florida 32399-1400**

**(850) 488-9330**

**Attorney for the Citizens  
of the State of Florida**

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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TESTIMONY  
OF  
KIMBERLY H. DISMUKES

On Behalf of the  
Florida Office of the Public Counsel

Before the  
FLORIDA PUBLIC SERVICE COMMISSION

Docket No. 990080-WS

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

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

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

16       **A.    I am a self-employed consultant in the field of public utility regulation. I have been**  
17               **retained by the Office of the Public Counsel (OPC), on behalf of the Citizens of the**  
18               **State of Florida, to address the Commission's Proposed Agency Action Order No.**  
19               **PSC-00-0259-PAA-WS issued February 8, 2000 which denied the petitioners requests**  
20               **for an injunction against Shangri-La (the utility) and revocation of its certificates,**  
21               **adjusted water and wastewater rates, established a new class of service for irrigation,**  
22               **and authorized collection of meter charges for irrigation.**

23       **Q.    DO YOU HAVE AN APPENDIX THAT DESCRIBES YOUR**  
24               **QUALIFICATIONS IN REGULATION?**

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

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

27       **A.    I will address the Commission's decision regarding the noticing of the utility's original**

1 certificate application, and the adequacy of the Commission's proposed rate  
2 adjustments to correct for prior errors made in calculating the utility's rate base and  
3 operating expenses. Mr. Ted Bidy will address the issue of the used and usefulness  
4 of the utility's facilities.

5 **Q. HOW IS YOUR TESTIMONY ARRANGED?**

6 A. My testimony is arranged in two parts. First, I will summarize the background of the  
7 case and the Commission's decisions as presented in its Notice of Proposed Agency  
8 Action Order. Second, I will examine both the original noticing and revised rate  
9 decisions and present my recommendations.

10 **Background of Proceeding**

11 **Q. WOULD YOU PLEASE DISCUSS THE BACKGROUND OF THIS**  
12 **PROCEEDING?**

13 A. Certainly. Shangri-La by the Lake Utilities, Inc. ("Shangri-La" or "the utility") is a  
14 Class C utility located in Lake County, providing water and wastewater service to  
15 approximately 129 mobile homes and five single family homes. The utility was  
16 established in 1983, but was unknown to the Commission until 1992. Had the mobile  
17 home park tenants been the only customers of Shangri-La, the utility would have been  
18 exempt from Commission regulation, pursuant to Section 367.022(5) of the Florida  
19 Statutes. However, because the utility also served the five single family home  
20 customers it did not qualify for this exemption. When the utility was informed by the  
21 Commission Staff that it was in violation of Section 367.031, Florida Statutes, it filed

1 an application for water and wastewater certificates.

2  
3 Shangri-La was granted certificates (Nos. 567-W and 494-S) by Order No. PSC-96-  
4 0062-FOF-WS, issued January 12, 1996 in Docket No. 940653-WS. That order also  
5 established the utility's rate base, return on equity, rate of return and rates and charges.  
6 The Commission's actions in that docket became final when no timely protests were  
7 received.

8 **Q. HOW DID THE COMMISSION ESTABLISH THE UTILITY'S RATES AND**  
9 **CHARGES?**

10 A. At the time of the utility's application for certification, the utility was charging the  
11 mobile home park tenants for service as part of their mobile home lot rent. It was  
12 charging the five single family homes a flat rate of \$10 per month, which it stopped  
13 doing when told its flat rate was in violation of Commission rules. There were thus no  
14 rates in effect at the time of the utility's certification. In addition, in its certification  
15 application, the utility had proposed a base facility charge rate structure for the five  
16 single family homes, but had proposed flat rates for the mobile home park customers.  
17 In its Notice of Proposed Agency Action, the Commission noted that its practice is "to  
18 calculate rates using the base facility charge rate structure and avoid use of flat rates  
19 unless absolutely necessary. We have recognized the benefits of the base facility charge  
20 rate structure in promoting water conservation for many years." (Commission, Order  
21 No. PSC-00-02590-PAA-WS, pp. 2-3.)

1 In the case of Shangri-La, an audit of the utility's records indicated that the utility had  
2 exceeded its consumptive use permit during the test year. These audit results  
3 supported the argument for metered consumption and usage specific charges. The  
4 Commission, therefore, approved rates that used the base facility rate structure for all  
5 customers, both the single family homes, and the mobile home park tenants.

6 **Q. WHAT DID THE COMMISSION RULE CONCERNING THE**  
7 **INSTALLATION OF METERS?**

8 A. At the time the Commission granted the certificates, none of the mobile home park  
9 tenants were individually metered. The Commission believed that "the preferable  
10 situation would be to meter the mobile home park at this time." (Commission, Order  
11 No. PSC-96-0062- FOF-WS, p. 10.) However, it granted the utility additional time  
12 for approval of the meter installations through the Mobile Home Landlord Tenant Act  
13 procedure. The utility was ordered to continue charging the mobile home park tenants  
14 as it had in the past, through a charge contained in the lot rent, pending installation of  
15 the meters. The single family homes, which were already metered, were to be charged  
16 the new rates immediately.

17 **Q. WHAT WAS THE REACTION OF THE MOBILE HOME PARK TENANTS**  
18 **TO THESE DEVELOPMENTS?**

19 A. Order No. PSC-96-0062-FOF-WS was issued January 12, 1996. The mobile home  
20 park tenants began to make inquiries of the Staff regarding the meter installations and  
21 separate charges for water and wastewater beginning in late 1998. At the January 14,

1 1999 "Open Mike" session of the agenda, several customers of Shangri-La addressed  
2 the Commission with their concerns. On January 19, 1999, Ms. Linda J. McKenna and  
3 54 additional customers of the utility filed the complaint which is the subject of this  
4 docket.

5 The chief charges brought by the petitioners are that:

- 6 ● they had not received notice of the utility's application for certification or its  
7 new rates, in accordance with Section 367.045(1), Florida Statutes and Rule  
8 25-30.030(6), Florida Administrative Code, and thus could not file a timely  
9 protest;
- 10 ● not all customers were being metered and charged the new rates;
- 11 ● there were quality of service problems;
- 12 ● the rates were unfair and unreasonable;
- 13 ● the expenses used to calculate the rates were too high, and the lot rent  
14 reduction was too little;
- 15 ● there should be a seasonal rate for part-time residents;
- 16 ● there was need for a formal hearing;
- 17 ● the Commission should issue an injunction against the utility to halt all charges  
18 for service, retroactive to January 1, 1999, pending resolution of the charges  
19 made in the petition; and
- 20 ● the utility's certificates should be revoked pending resolution of the issues.

21  
22 **Q. WOULD YOU DESCRIBE THE ACTIONS THAT FOLLOWED THE FILING**  
23 **OF THIS COMPLAINT?'**

24 A. Yes. On January 24, 1999, members of the Commission Staff met with the  
25 petitioners to discuss the issues they had raised. On February 24, 1999, Shangri-La  
26 filed its response to the petition. On February 9, 2000, the Commission issued Order  
27 No. PSC-00-0259-PAA-WS addressing the petitioners complaint and the utility's  
28 response to it.

29 **Q. WHAT DID THE COMMISSION RULE CONCERNING THE UTILITY'S**

1                   **NOTICING OF ITS CUSTOMERS?**

2           A.       In response to the petitioners' charge that they had not been notified of the utility's  
3                   application for certification nor of its approved rates and charges, the Commission  
4                   ruled that "the utility properly noticed its application for water and wastewater  
5                   certificates and rates approved in Docket No. 940653-WS, and that no further noticing  
6                   shall be required regarding Docket No. 940653-WS." (Commission, Order No. PSC-  
7                   00-0259-PAA-WS, p. 6.)

8  
9                   The Commission noted that Section 367.045(1), Florida Statutes, requires notification  
10                  of certificate applications, and an affidavit that such notice was provided. Rule 25-  
11                  30.030(6), Florida Administrative Code, requires that each customer of the utility be  
12                  noticed of the certification. The utility filed affidavits that it had noticed all customers  
13                  in accordance with the statute and rule, regarding both its certification application and  
14                  later, the approved rates and charges.

15  
16                  Shangri-La stated in its response to the petitioner's complaint that at the time of its  
17                  application, the mobile home park tenants were not customers of the utility. The  
18                  utility's only customers, who were all noticed, were the single family homes, and the  
19                  mobile home park office. Tenants of the mobile home park were notified of the  
20                  utility's certification and the new rates when they received a 90-day notice of the  
21                  upcoming change to their lease, as required by the Landlord Tenant Act, Chapter 723,



1 Florida Statutes.

2  
3 The Commission agreed with Shangri-La that, at the time of the certification and rate  
4 approval, the mobile home park was a customer of the utility and was duly noticed.

5 The mobile home park tenants, however, were not, at that time, customers of the  
6 utility, and the utility was not obligated to notice each of them individually. While all  
7 other issues decided in Order No. PSC-00-0259-PAA-WS, (except the utility's  
8 collection of rates in the event of a protest), were preliminary in nature, an exception  
9 was made for the decision regarding the adequacy of the original notice.

10 **Q. WHAT DID THE COMMISSION RULE REGARDING THE BILLING**  
11 **ISSUES RAISED BY THE PETITIONERS?**

12 **A.** The petitioners had questioned the equity of some customers being billed the new  
13 metered rates, while other customers still paid for service through their lot rent. Also,  
14 the petitioners charged that some customers had been issued bills under the new rates  
15 before their meter was installed.

16  
17 In its response, the utility explained that it had to amend the tenant's lease before it  
18 could charge separately for water and wastewater service. As the individual tenants'  
19 leases expire at different times throughout the year, the process of modifying leases  
20 and implementing the new rates extended from 1999 through January 2000. The  
21 Commission agreed that Shangri-La's phase-in of the meters and new rates following

1 the amendment of each lease was reasonable and in compliance with Order No. PSC-  
2 96-0062-FOF-WS.

3  
4 The question of customers being billed before their meters had been installed was  
5 determined to be a misunderstanding regarding the billing timing and methodology  
6 employed by the utility. Shangri-La elected to bill the base facility charge in advance,  
7 and the measured consumption portion of the bill in arrears. At the time of the cutover  
8 from the lot rent payment to metered service, the first bill, representing the base facility  
9 charge for the upcoming month, would be received the month prior to the installation  
10 of the meter and the metered billing.

11  
12 For some customers whose new leases went into effect in January and February, the  
13 utility was late in installing the meters. For those customers, the utility refunded the  
14 difference between what the customers had already paid through their lot rent, and  
15 what they were billed under the new rates. The Commission verified that the refund  
16 was calculated correctly. In summary, the Commission ruled that Shangri-La's  
17 installation of meters and implementation of the new metered billing was in accordance  
18 with its directives in Order No. PSC-PSC-96-0062-FOF-WS.

19 **Q. WHAT DID THE COMMISSION RULE ON THE QUALITY OF SERVICE**  
20 **ISSUES RAISED BY THE PETITIONERS?**

21 A. The petitioners raised several issues concerning the quality of service provided by

1 Shangri-La. These charges included a lack of professional management, lack of  
2 technical qualifications on the part of the utility manager, unavailability of management  
3 in times of emergency, inadequate water outage notification, inadequate "boil water"  
4 instructions in case of outages, insufficient water pressure, over-chlorination,  
5 impurities in the water, defective equipment at the water treatment plant and  
6 wastewater lift stations, improperly installed wastewater collection lines, and problems  
7 with water shut off valve locations. The Commission has also had complaints  
8 concerning Shangri-La's service outages, meter installations, meter accuracy, high  
9 consumption rates, water line leaks, and wastewater backups.

10  
11 The Commission Staff performed a field review of the service area during the January  
12 29, 1999 meeting with the petitioners. Additionally, the Commission Staff monitored  
13 the installation of a replacement tank at the treatment plant in February 1999. During  
14 this visit, the Staff also verified that the meters were installed correctly and were  
15 performing accurately. The high usage complained of by some tenants was found to  
16 be caused by their irrigation systems, which had not been previously metered, and  
17 consumed more water than the customers were aware of.

18  
19 The Commission also determined that Shangri-La has the necessary technical and  
20 professional management needed, noting that the treatment facilities are in compliance  
21 with Department of Environmental Protection ("DEP") rules, the utility has contracted

1 with a licensed operator, and its emergency procedures are adequate.

2  
3 In sum, the Commission found that the service Shangri-La provides its customers is  
4 satisfactory.

5 **Q. WHAT DID THE COMMISSION RULE REGARDING THE RATE ISSUES**  
6 **RAISED BY THE PETITIONERS?**

7 A. The petitioners raised three separate issues regarding the new approved rates. First,  
8 they charged that the rates were unfair and unreasonable, and questioned whether the  
9 facilities were worth their valuation in the rate base approved by the Commission in  
10 Order No. PSC-96-0062-FOF-WS. Second, they charged that the utility's operation  
11 and maintenance expenses approved by the Commission were too high, and that the  
12 lot rent reduction was too low. Third, some of the utility customers held lifetime leases  
13 from the mobile home park, and questioned whether the Commission could alter the  
14 rates they paid under these leases.

15 **Fairness and Reasonableness of Rates and Rate Base**

16 There were no acceptable rates in effect at the time of the utility's application for  
17 certification, which led the Commission to establish rates and rate base within the  
18 certification docket. Because the utility did not have complete records supporting the  
19 historical cost of its plant, it had hired an engineering firm to prepare a cost study, to  
20 support its rate base, which the Commission accepted as reasonable.

1 In considering the petitioners charge that some of the plant in service had been  
2 purchased used and was overvalued, the Commission determined that although some  
3 equipment was used, the valuation and depreciable life assigned it in the cost study  
4 were reasonable. In the course of this review, however, the Commission became  
5 aware that the study contained errors. The utility system plans used for the study  
6 were preliminary plans and included two development phases which had never been  
7 completed. The water transmission and distribution system and wastewater collection  
8 system for these two phases were mistakenly included in the cost study, and the dollar  
9 value of the lines was overstated.

10  
11 The Commission directed that the value of the plant attributed to Phase II and Phase  
12 III be removed from the utility's water and wastewater rate bases. These adjustments  
13 entailed corrections to the accumulated depreciation associated with the plant, the  
14 depreciation expenses, and the working capital allowance. At the same time, the  
15 Commission also made a correction for the billing expenses that had been omitted from  
16 the original rate calculations.

17  
18 This review of the utility's rate base also led the Commission to reconsider the  
19 accuracy of the 100% used and useful percentage of the wastewater plant, an issue not  
20 raised by the petitioners. However, the Commission decided not to adjust the used  
21 and useful rate at this time, but to do so in a rate case after the utility has had a full

1 year of metered usage history.

2  
3 The Commission did use the corrections to rate base, depreciation and working capital,  
4 to develop revised rates for water and wastewater service. Shangri-La was directed  
5 to file revised tariff sheets with the new rates within 30 days of the effective date of the  
6 Order. Customers were to be notified of the revised rates prior to implementation of  
7 the rates, and the utility was to provide proof of this notification to the Commission.

8 Operation and Maintenance Expense and Lifetime Leases

9 The petitioners charge that the operation and maintenance expenses approved by the  
10 Commission in setting rates were too high, is linked to its argument that the utility's  
11 reduction in the lot rent was insufficient. Shangri-La calculated this reduction to be  
12 \$14.31 per month per mobile home. The petitioners allege that only a portion of the  
13 operation and maintenance approved by the Commission in setting rates was used by  
14 Shangri-La in determining the rent reduction. They argue that either the rent should  
15 be reduced by a larger amount, or the rates should be lowered. There are also some  
16 customers with lifetime leases, which they claim prohibit any alteration of the rates  
17 charged for water and wastewater service.

18  
19 In its Order, the Commission stated that while the rent reduction and lifetime lease  
20 issues are under the jurisdiction of the Landlord Tenant Act, Chapter 723, Florida  
21 Statutes, Section 367.011(2), Florida Statutes gives the Commission exclusive

1 jurisdiction over the utility with respect to its authority, service and rates.

2  
3 The Commission also discussed court decisions regarding its precedence over  
4 contracts, in particular citing Cohee v. Crestridge Utilities Corp., 324 So. 2d 155 (Fla.  
5 5<sup>th</sup> DCA 1975). It quotes from this decision which stated that, “the PSC’s authority to  
6 raise or lower rates, even those established by a contract, is preemptive.” And the  
7 Commission noted that in other dockets it has determined that “[W]e have the  
8 authority to charge rates which we find to be in the public interest, even if they are  
9 contrary to a contractual agreement.” (Commission, Order No. PSC-00-0259-PAA-  
10 WS, p. 21.)

11  
12 The Commission, therefore, did not rule on the appropriateness of the size of the lot  
13 rent reduction. Instead, it determined that “[w]e do not find it appropriate to consider  
14 the lot rent reduction or lifetime leases in our determination of the utility’s rates. . .  
15 Adjusting those rates based upon the lot rent reduction or lifetime lease provision  
16 would be contrary to previously established precedent and Commission practice  
17 regarding rate setting.” (Ibid.)

18  
19 The Commission did consider opening a rate investigation, but as the utility will not  
20 have a full year’s operating history with metered service until 2001, it decided not to  
21 do so at this time.

1                    Vacation Rates

2                    The petitioners argued that part-time residents should not be charged the base facility  
3                    charge the months they were not in residence. The Commission noted that it had  
4                    approved such plans in the past, but that it was moving away from this practice. Also,  
5                    as the base facility charge is designed to recover the utility's fixed costs, these costs  
6                    are incurred whether a particular customer is or is not using water in a particular  
7                    month. The Commission thus ruled that a "vacation rate" would not be allowed for  
8                    this utility.

9                    **Q.    WHAT DID THE COMMISSION RULE ON THE OTHER CHARGES**  
10                   **BROUGHT BY THE PETITIONERS?**

11                   **A.**    The Commission denied the petitioners request for an injunction against Shangri-La  
12                   to stop all charges for service, retroactive to January 1, 1999, until the petition could  
13                   be heard and relief provided.

14  
15                   Shangri-La had indicated to the Staff that it did not intend to disconnect any customer  
16                   who refused to pay pending the Commission's ruling on the complaint, and Staff  
17                   received no complaints from any customers regarding disconnection. The Commission  
18                   therefore ruled that no injunction against the utility was required and denied the  
19                   petitioner's request.

20  
21                   The Commission also denied the petitioners' request that the certificates of Shangri-La



1 be revoked. The Commission noted that it has revoked certificates in the past, in cases  
2 of a utility's inability to provide service, unacceptable quality of service, abandonment  
3 of the utility, or refusal to comply with Commission orders. In each case, however, this  
4 action was taken only after the utility was given adequate opportunities to correct the  
5 existing problems and bring the utility into compliance with the Commission's rules.  
6 In this instance, however, the Commission found that revocation of Shangri-La's  
7 certificates was not necessary in order to address the issues raised by the petitioners.

8 **Original Noticing and Revised Rates Decisions**

9 **Q. WOULD YOU NOW DISCUSS THE ORIGINAL NOTICING OF THE**  
10 **UTILITY'S CERTIFICATE APPLICATION?**

11 **A. Yes.** As discussed above, Shangri-La noticed the five single family homes and the  
12 office of the mobile home park concerning its application for certification as a water  
13 and wastewater utility. It later noticed these same six customers of the rates and  
14 charges approved by the Commission as part of the certification proceeding.

15  
16 It has been stated by Shangri-La and by the Commission, that at the time of the initial  
17 notice regarding Shangri-La's application, the single family homes and the mobile  
18 home park office were the utility's only customers. The mobile home park tenants  
19 received their water and wastewater service for Shangri-La through bulk service  
20 provided to the mobile home park, and did not, at that time, receive separate billing  
21 from Shangri-La.

1  
2 In its Notice of Proposed Agency Action, the Commission explained its acceptance  
3 of Shangri-La's failure to notice the mobile home park tenants of its application. The  
4 Commission quotes from Rule 25-30.030(6) of the Florida Administrative Code, which  
5 states that "the utility shall also provide a copy of the notice, by regular mail or  
6 personal service, to each customer, of the system to be certificated." And it cites Rule  
7 25-30.210(1) of the Code, quoting its definition of customer: "... any person, firm,  
8 association, corporation, governmental agency, or similar organization who has an  
9 agreement to receive service from the utility." (Ibid. p. 6.)

10  
11 The Commission goes on to state that "we find that the utility did not violate the  
12 noticing rule, because by definition, the tenants of the mobile home park did not qualify  
13 as "customers" at the time of noticing, " (Ibid. The Commission knew, at the time of the  
14 certificate application, however, that certification of Shangri-La would result in the  
15 mobile home park tenants becoming customers of the new utility. The Commission  
16 would have been within its authority in such an instance in directing Shangri-La to  
17 notify all prospective customers, i.e., the mobile home park tenants, as well as the  
18 other, then current, customers. Such a step would have placed no undue burden on  
19 Shangri-La and would have given the mobile home park tenants an opportunity to  
20 participate in the certificate and rate setting proceeding — a proceeding in which they  
21 had direct interests.

1 But, even if the Commission did not believe that the mobile home park tenants  
2 qualified as customers for noticing of the application, it certainly considered them to  
3 be customers when, in the course of the certification proceeding, it determined the  
4 rates Shangri-La was authorized to charge them. The rates developed by the  
5 Commission were calculated assuming that the utility's revenue requirement would be  
6 achieved from rates charged to 120 plus mobile home park tenants, as well as the five  
7 single family homes. In its discussion of how it structured the utility's rates, the  
8 Commission notes that "[t]he utility's application included proposed rates for the  
9 metered single family homes using the base facility charge rate structure, and flat rates  
10 for the un-metered mobile home park tenants. . . . we approve rates for all customers  
11 using the base facility charge rate structure." (Ibid., p. 2.)

12  
13 If the mobile home park tenants were not considered customers of the utility at the  
14 time the Commission issued Order No. PSC-96-0062-FOF-WS, establishing rates and  
15 charges for Shangri-La, and need not be notified of these rates and fees, I do not see  
16 how they can be considered customers to whom these rates and charges apply.

17  
18 I cannot agree that it is reasonable or just to say, on the one hand, that the mobile  
19 home park tenants are not customers of this utility, and thus need not be noticed of the  
20 utility's rates, and at the same time, develop rates to be charged those same mobile  
21 home park tenants. The mobile home park tenants either are, or are not, customers of

1 the utility. If they are customers when rates are determined, they should be considered  
2 customers when the notices for those rates are sent out.

3  
4 OPC is aware that the Commission has not included its decision on the noticing of the  
5 certificate application among its preliminary rulings, and instead considers that decision  
6 final. Nevertheless, OPC objects to this decision which effectively prevented the  
7 majority of the customers of Shangri-La from participating in the certificate application  
8 and initial rate setting proceeding.

9 **Q. WOULD YOU NOW DESCRIBE THE COMMISSION'S PROPOSED**  
10 **REVISIONS TO SHANGRI-LA'S RATES?**

11 A. Certainly. As discussed above, the petitioners alleged that the rates charged by  
12 Shangri-La were unfair and inaccurate. An examination by the Commission Staff  
13 disclosed that the rate base for both the water and wastewater services had been  
14 overstated. The Commission thus directed that the utility's rate base be corrected by  
15 removing \$15,046 from the water system plant in service, and \$65,734 from the  
16 wastewater system plant in service. These corrections entailed changes to the  
17 accumulated depreciation of (\$25,482) for water and (\$44,017) for wastewater. They  
18 also led to a correction in the operation and maintenance expenses for depreciation  
19 expenses, and an adjustment to the working capital allowance. Finally, while making  
20 these adjustments, the Commission also corrected the utility's expenses for billing  
21 expenses inadvertently omitted in the original calculation. The utility's adjusted rate

1 base (as of June 30, 1994) was calculated to be \$52,454 for water (formerly \$62,185)  
2 and \$45,563 for wastewater (formerly \$84,367), and its revenue requirements were  
3 calculated to be \$36,950 for water, and \$39,715 for wastewater.

4  
5 The revised rates resulting from these corrections include a base facility charge for the  
6 water service that is minimally higher than the existing rate, with the rate for the 5/8  
7 x 3/4" size meter increasing one cent from \$12.86 to \$12.87 per month. The gallonage  
8 charge for water service decreased 4% from \$1.27 to \$1.22 per 1,000 gallons. These  
9 revisions result in typical residential bill that are between 1% and 2% lower than those  
10 calculated using the initial rates.

11  
12 The wastewater facility charge decreased 10% following the adjustments, and the  
13 wastewater gallonage charge decreased by over 14%. These revisions result in typical  
14 residential bills that are 12 to 13% lower than previously.

15 **Q. DID THE COMMISSION ORDER A REFUND TO CUSTOMERS AS PART**  
16 **OF MAKING THE CORRECTIONS FOR THE UTILITY'S INACCURATE**  
17 **ORIGINAL COST STUDY?**

18 **A.** No, it did not. The adjustments the Commission has made to the utility's rate base and  
19 revenue requirements result in lower rates, which the Commission proposes to  
20 implement on a going-forward basis. The Commission's Order includes a provision  
21 that, in the event of a protest of the revised rates, the utility could continue to collect

1 the original rates, including the difference between those rates and the revised rates,  
2 subject to refund. There is no proposal in the Commission's Order to refund to  
3 Shangri-La's customers the amount they had been overcharged for service from the  
4 date of implementation of the metered service to the date of the new rates  
5 implementation.

6  
7 The first customers to receive meters and measured monthly service from Shangri-La  
8 did so in January 1999. At the time of the Commission's Order, they had been billed  
9 for more than a year at rates that the Commission has since acknowledged were too  
10 high, because of a flawed study submitted by the utility. Accepting the revisions the  
11 Commission has made to the utility's rates, and with no adjustments at this time  
12 stemming from any changes to the used and useful percentage, a customer who has  
13 been metered since January 1999, and who consumes 3,000 gallons of water and waste  
14 water service per month, would have been overcharged by \$30.12 his first year of  
15 service. A customer consuming 10,000 gallons per month would have been  
16 overcharged by \$68.76 in the course of a year.

17 **Q. WHAT IS YOUR RECOMMENDATION CONCERNING THIS**  
18 **OVERCHARGING OF CUSTOMERS?**

19 **A.** I recommend that the Commission require Shangri-La to refund its customers the  
20 amount each has been overcharged from the date of inception of metered service to  
21 implementation of the lower rates that corrected for the erroneous cost study.

1 Fundamental fairness requires that the Commission refund the money overcharged  
2 customers due to misinformation supplied by the utility when the Commission  
3 established initial rates. If the customers had been noticed during the certification and  
4 initial rate setting proceeding, this issue would have likely been correctly addressed  
5 when initial rates were set. The Commission can help undo the lack of notice provided  
6 to customers by refunding the amounts customers have been overcharged.  
7 Furthermore, as I stated previously, fundamental fairness requires that the Commission  
8 order a refund of the amounts overcharged customers due to the faulty study submitted  
9 by the utility. Clearly, it would be unfair to allow the utility a windfall due to its own  
10 errors. The Commission should right this wrong and order a refund.

11 **Q. IS THERE ANY PRECEDENT FOR REFUNDING TO CUSTOMERS**  
12 **MONIES THAT WERE COLLECTED IN ERROR?**

13 A. Yes. In GTE Florida, Inc. versus Clark, the Supreme Court of Florida found that the  
14 Commission made two errors with respect to setting GTE's rates. First, the  
15 Commission erroneously disallowed expenses of GTE. The court remanded the case  
16 back to the Commission to correct for this error. In making its correction the  
17 Commission found that rates could only be adjusted prospectively and that GTE was  
18 not entitled to a surcharge for the period it did without the additional rates due to the  
19 Commission's error. Second, the court found that the Commission should not have  
20 allowed the rate increase only on a prospective basis, but that it should apply  
21 retroactively to customers who had received service from May 27, 1993 (the date the

1 Commission issued the erroneous order) until May 3, 1995 (the date the Commission  
2 issued its order allowing increased rates for its error on a prospective basis) as well.

3 The court found:

4 We view utility ratemaking as a matter of fairness. Equity requires that  
5 both ratepayers and utilities be treated in a similar manner. While the  
6 facts of *Village of North Palm Beach v. Mason*, 188 So. 2d 778 (Fla.  
7 1966), were different from those we now encounter, we find that  
8 Justice O'Connell's reasoning is appropriate in this case. He stated:

9  
10 It would be inequitable to defer the utility's right to the  
11 increased rates for approximately two years because of  
12 what we found to be a defect in the order entered by  
13 the commission. The soundness of what we do here is  
14 demonstrated by the fact that if the instant case had  
15 involved an order decreasing rates it would be equally  
16 inequitable to allow the utility to continue to collect the  
17 older and greater rates for the period between the entry  
18 of the first and second orders. (GTE Florida, Inc. v.  
19 Clark.)

20  
21 In addressing Justice O'Connell's decision, the court found that "equity applies to both  
22 utilities and ratepayers when an erroneous rate order is entered. It would clearly be  
23 inequitable for either utilities or ratepayers to benefit, thereby receiving a windfall,  
24 from an erroneous PSC order." (Ibid.)

25  
26 I agree that ratemaking should be a matter of fairness which should apply "to both  
27 utilities and ratepayers." Fairness requires that the Commission order the utility to  
28 refund the excess rates collected since January 1999 to present. To do otherwise  
29 would clearly be unfair to ratepayers.



1 The court also found that the surcharge in the GTE case did not constitute retroactive  
2 ratemaking:

3 We also reject the contention that GTE's requested surcharge  
4 constitutes retroactive ratemaking. This is not a case where a new rate  
5 is requested and then applied retroactively. The surcharge we sanction  
6 is implemented to allow GTE to recover costs already expended that  
7 should have been lawfully recoverable in the PSC's first order. .... If  
8 the customers can benefit in a refund situation, fairness dictates that a  
9 surcharge is proper in this situation. (Ibid.)

10  
11 The GTE situation is analogous to the instant case. The Commission issued an order  
12 that contained erroneous information supplied by the utility. While in the GTE case the  
13 court found that GTE should be reimbursed for costs already expended, in the instant  
14 case, customers should be refunded monies for costs not incurred by the utility. In my  
15 opinion, this case is analogous to the GTE case, however, the situation is simply  
16 reversed. That is, instead of a surcharge for the utility, the customers should receive  
17 a refund.

18 **Q. DOES THIS COMPLETE YOUR TESTIMONY PREFILED ON AUGUST 11,**  
19 **2000?**

20 **A. Yes, it does.**

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**APPENDIX**  
**OF**  
**KIMBERLY H. DISMUKES**

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**APPENDIX I**

**QUALIFICATIONS**

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

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

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

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

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

A. Yes. My duties have ranged from analyzing specific issues in a rate proceeding to

1 managing the work effort of a large staff in rate proceedings. I have prepared  
2 testimony, interrogatories and production of documents, assisted with the preparation  
3 of cross-examination, and assisted counsel with the preparation of briefs. Since 1979,  
4 I have been actively involved in more than 170 regulatory proceedings throughout the  
5 United States.

6 I have analyzed cost of capital and rate of return issues, revenue requirement  
7 issues, public policy issues, market restructuring issues, and rate design issues,  
8 involving telephone, electric, gas, water and wastewater, and railroad companies.

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

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

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

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

13

14 Companies that I have analyzed include: Alascom, Inc. (Alaska), Arizona Public  
15 Service Company, Arvig Telephone Company, AT&T Communications of the  
16 Southwest (Texas), Blue Earth Valley Telephone Company (Minnesota), Bridgewater  
17 Telephone Company (Minnesota), Carolina Power and Light Company, Central Maine  
18 Power Company, Central Power and Light Company (Texas), Central Telephone  
19 Company (Missouri and Nevada), Consumers Power Company (Michigan), C&P  
20 Telephone Company of Virginia, Continental Telephone Company (Nevada), C&P  
21 Telephone of West Virginia, Connecticut Light and Power Company, Danube

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

1 Company, Tucson Electric Power Company, Twin Valley-Ulen Telephone Company  
2 (Minnesota), United Telephone Company of Florida, Virginia Electric and Power  
3 Company, Washington Water Power Company, and Wisconsin Electric Power  
4 Company.

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

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

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

15 A. Yes. I have testified before the Arizona Corporation Commission, the Connecticut  
16 Department of Public Utility Control, the Florida Public Service Commission, the  
17 Georgia Public Service Commission, Louisiana Public Service Commission, the  
18 Missouri Public Service Commission, the Public Utility Commission of Texas, and the  
19 Washington Utilities and Transportation Commission. My testimony dealt with  
20 revenue requirement, financial, policy, rate design, and cost study issues concerning  
21 AT&T Communications of Southwest (Texas), Cascade Natural Gas Corporation

1 (Washington), Central Power and Light Company (Texas), Connecticut Light and  
2 Power Company, El Paso Electric Company (Texas), Florida Cities Water Company,  
3 Kansas Gas & Electric Company (Missouri), Kansas Power and Light Company  
4 (Missouri), Houston Lighting & Power Company (Texas), Lake Arrowhead Village,  
5 Inc. (Florida), Lehigh Utilities, Inc. (Florida) Jasmine Lakes Utilities Corporation  
6 (Florida), Mad Hatter Utilities, Inc. (Florida), Marco Island Utilities, Inc. (Florida),  
7 Mountain States Telephone and Telegraph Company (Arizona), North Fort Myers  
8 Utilities, Inc. (Florida), Southern Bell Telephone and Telegraph Company (Florida,  
9 Louisiana and Georgia), Southern States Utilities, Inc. (Florida), St. George Island  
10 Utilities Company, Ltd. (Florida), Puget Sound Power & Light Company  
11 (Washington), and Texas Utilities Electric Company.

12

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

18 **Q. HAVE YOU BEEN ACCEPTED AS AN EXPERT IN THESE**  
19 **JURISDICTIONS?**

20 **A. Yes.**

21 **Q. HAVE YOU PUBLISHED ANY ARTICLES IN THE FIELD OF PUBLIC**



1           **UTILITY REGULATION?**

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

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

6    A.    Yes. I am a member of the Eastern Finance Association, the Financial Management  
7           Association, the Southern Finance Association, the Southwestern Finance Association,  
8           and the Florida and American Water Association.

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**CERTIFICATE OF SERVICE  
DOCKET NO. 990080-WS**

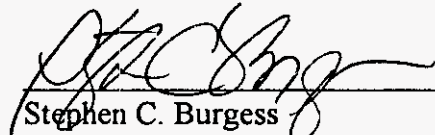
I HEREBY CERTIFY that a true and correct copy of the foregoing Direct Testimony of  
Kimberly H. Dismukes has been furnished by U.S. Mail or \*hand delivery to the following parties,  
this 11th day of August, 2000.

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