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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

_____		:
In the Matter of	:	
	:	DOCKET NO. 940109-WU
Petition for Interim and	:	
Permanent Rate Increase in	:	
Franklin County by St. George:	:	
Island Utility Company, Ltd.	:	
_____	:	

SECOND DAY - MORNING SESSION

VOLUME 4

Pages 439 through 585

PROCEEDINGS:

HEARING

BEFORE:

CHAIRMAN J. TERRY DEASON
COMMISSIONER DIANE K. KIESLING

DATE:

Thursday, July 21, 1994

TIME:

Commenced at 9:15 a.m.

PLACE:

Apalachicola Community Center
1 Avenue E
Apalachicola, Florida

REPORTED BY:

JOY KELLY, CSR, RPR
Chief, Bureau of Reporting
SYDNEY C. SILVA, CSR, RPR.
Official Commission Reporters

APPEARANCES:

(As heretofore noted.)

FILED
JUL 21 1994
APALACHICOLA

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

I N D E X

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GENE BROWN

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P R O C E E D I N G S

(Hearing reconvened at 9:13 a.m.)

Transcript continues in sequence from Volume

3.)

CHAIRMAN DEASON: If everyone will take their places, please, we will call the hearing to order.

I believe Mr. Brown was on the stand and was being cross examined by Mr. McLean. I'll just remind all witnesses who were sworn in yesterday and who will be testifying today that everyone is still under oath.

GENE BROWN

resumed the stand as a witness on behalf of St. George Island Utility Company, Ltd., and, having been previously sworn, testified as follows:

CONTINUED CROSS EXAMINATION

BY MR. McLEAN:

Q Good morning, again, Mr. Brown.

A Good morning.

Q Yesterday I asked you a line of questions about travel and I neglected one. Did you seek confidential treatment of those travel records at any point in this proceeding?

A I don't recall if we did or not. I don't know any reason we would have.

Before we get into this, I think you were

1 asking about these checks from Barbara Withers.

2 Q I don't have any questions about the checks.

3 Mr. Brown, Audit Disclosure No. 11, "This
4 disclosure is considered confidential. For further
5 information, see confidential document separately filed
6 with the Commission Clerk." Does this refresh your
7 memory in any way as to whether you actually requested
8 confidential treatment of your transportation expense?

9 A Could I see that?

10 A Yes, sir. (Witness provided document.)

11 (Pause)

12 Do you have a request where we filed asking
13 for confidential treatment?

14 Q I'm sorry, I didn't understand.

15 A Do you have something where we filed asking
16 for confidential treatment?

17 Q No, I'm asking you to state under oath whether
18 you ever filed and asked for confidential treatment.

19 A If you will give me a little time, I can look
20 through the records and determine that.

21 Q That will be fine.

22 A Okay. Do you want to take a break?

23 Q I'm not in charge here.

24 CHAIRMAN DEASON: Mr. McLean, if it would be
25 possible for you to go on to a different line and then

1 someone can be checking the records and then we can get
2 back to that.

3 MR. McLEAN: That would be fine. If the
4 witness doesn't recall what requests he made, I can
5 certainly do that.

6 CHAIRMAN DEASON: Mr. Pfeiffer, if you can --

7 MR. PFEIFFER: If my client can simply refer
8 to the document? If it's a document that's in evidence,
9 it would be an easy matter to simply refer to it and we
10 could move on to some other issue. I mean, Mr. Brown
11 obviously doesn't recall; he can refresh his
12 recollection, if he wants to.

13 CHAIRMAN DEASON: Mr. Brown says he does not
14 recall, and he would need to check records to verify
15 that. And the only thing I'm saying is, to try to speed
16 this along, if someone can be checking those records,
17 Mr. McLean can go on to a different line of questions
18 and then he can come back that. And then it can be
19 verified one way or the other.

20 MR. PFEIFFER: But Mr. McLean obviously has
21 something in mind with regard to --

22 CHAIRMAN DEASON: Well, it is not my job to
23 anticipate what's on Mr. McLean's mind. My job is to
24 get this hearing moving along and that's what I aim to
25 do. Mr. McLean, go along to a different line of

1 questions; and in the meantime, Mr. Pfeiffer, you direct
2 someone to check out to find out if confidential status
3 was requested of that document.

4 MR. McLEAN: Mr. Brown, yesterday --

5 MR. PFEIFFER: May I have a moment to make
6 that request?

7 CHAIRMAN DEASON: Mr. McLean, ask your
8 question. Mr. Pfeiffer, you can do what you please.

9 Q (By Mr. Mr. McLean) Mr. Brown, at the begin
10 of yesterday's hearing, you dropped a motion off in
11 front of me, a "Notice to Withdraw." Do you recall
12 that?

13 A Yes.

14 Q All right, sir. Do you know from your years
15 of practice of law whether it's customary to seek the
16 authority of the forum in which you have filed an
17 appearance to withdraw from representation?

18 A In 25-plus years of practice, it's more common
19 not to request --

20 Q Okay.

21 A -- court approval.

22 Q So it's your testimony that it's not the
23 custom to request withdrawal?

24 A Right.

25 Q Okay. Well, let me ask you a different

1 question then. Did you seek the authority of St. George
2 Island Utility Company, Limited, to withdraw?

3 A Yes.

4 Q What did they say?

5 A They said, "Okay with them."

6 Q Who did you talk to?

7 A Myself.

8 Q But St. George Island Utility Company is not
9 the firm which retained your services, is it?

10 A Yes.

11 Q Are you sure that it wasn't Leisure Properties
12 and the other corporate general partner of Leisure -- of
13 the Utility?

14 A I think I was working for the Utility company.

15 Q Is it hard to say?

16 A No, it's not hard to say, I just said.

17 Q You said, "You think you were."

18 A That's what I think.

19 Q Mr. Brown, would you turn to the exhibit which
20 is marked at the top "GDB-4"?

21 A If I can find that. (Pause) Okay.

22 Q Now, if you have a moment, would you examine
23 the exhibit, please?

24 MR. McLEAN: Mr. Chairman, I don't know that I
25 have asked this to be marked as an exhibit -- I'm sorry,

1 marked for identification.

2 CHAIRMAN DEASON: It has not been marked. Do
3 you wish it marked?

4 MR. McLEAN: Yes, sir, please.

5 CHAIRMAN DEASON: It will be identified as
6 Exhibit No. 10.

7 MR. McLEAN: Mr. Chairman, while we're at it,
8 we might mark some more for identification so we don't
9 have to deal with it when the time comes.

10 CHAIRMAN DEASON: Very well.

11 MR. McLEAN: GDB-5, which we passed out.

12 CHAIRMAN DEASON: That will be Exhibit No. 11.

13 MR. McLEAN: And 6.

14 CHAIRMAN DEASON: Will be exhibit -- I'm
15 trying to find that document. GDB-6 will be Exhibit 12.

16 MR. McLEAN: And 7?

17 CHAIRMAN DEASON: 13.

18 MR. McLEAN: 8.

19 CHAIRMAN DEASON: 14.

20 MR. McLEAN: And 9 and so forth.

21 CHAIRMAN DEASON: 9 will be 15.

22 MR. McLEAN: That's it. Thank you.

23 (Exhibit Nos. 10 through 15 marked for
24 identification.)

25 MS. HELTON: Did you mean to mark GDB-1 as

1 well? My records show it hasn't been marked.

2 MR. McLEAN: No, ma'am, thanks.

3 Q (By Mr. McLean) Okay, Mr. Brown, let's refer
4 to the exhibit marked No. 10. This is, as I recall, a
5 late-filed exhibit to your deposition. Do you recall
6 that?

7 A No, I don't recall that.

8 Q Okay. Mr. Brown, do you have reason to doubt
9 that it's exactly what we say it is?

10 A I recall it being a late-filed exhibit to
11 Barbara Withers' deposition, not mine.

12 Q Okay, I'm sorry.

13 In your deposition, you were asked to --
14 (Pause) You believe this to be a late-filed exhibit to
15 Barbara Withers' deposition?

16 A That was my recollection.

17 Q Okay. Well, I'll come back to that. (Pause)

18 Mr. Brown, would it fresh your memory for me
19 to show you your deposition, the transcript of your
20 deposition, do you think?

21 A Whatever you say, Mr. McLean. If it's
22 referred to in my deposition, that's fine. I haven't
23 read my deposition.

24 Q Well, I'm going to offer you to do so. You're
25 asking me to testify that it's yours, then I want you to

1 say whether it is or not. And if you won't, I'm going
2 to refresh your memory. What's your pleasure?

3 A I'll be happy for you to testify to it. You
4 know more about it than I do.

5 MR. MCLEAN: This is his deposition.

6 MR. PFEIFFER: I have a copy.

7 Q (By Mr. McLean) Mr. Brown, would you examine
8 that deposition and give me your best opinion as to
9 whether we asked you for a late-filed exhibit and
10 described it?

11 (Witness provided document.) (Pause)

12 A Which page or line would you like me to read?

13 Q You can read the whole thing if you need to.
14 If you really believe this is an issue which you want to
15 take the Commission's time with, you may be my guest. I
16 say it's a late-filed exhibit and I don't see a reason
17 why you can't agree with it.

18 A Mr. McLean, I'm trying to be helpful, but I do
19 not recall this retainer agreement being a late-filed
20 exhibit in my deposition. My recollection is that
21 Barbara Withers, during her deposition, pointed out that
22 there was a retainer and said she would furnish it. If
23 you would like to show me in this deposition that you
24 took of me where this retainer agreement is referred to,
25 I'll accept whatever is said there.

1 Q Mr. Brown, do you accept the authenticity of
2 the document which I have just handed to you?

3 A It looks like my signature.

4 Q All right.

5 A I don't think it was attached to my
6 deposition, but it looks like my signature.

7 Q Okay. Well, we'll try to get beyond that.

8 Now, with respect to that document, what does
9 that document purport to be?

10 A It purports to be a retainer contract
11 agreement between Barbara Withers of Richardson and
12 Withers, and St. George Island Utility Company, Limited.

13 Q Okay. And it purports to be, if I read it, in
14 the first paragraph, a confirmation of an understanding
15 as of September 1, 1990, correct?

16 A Yes.

17 Q And it appears to be dated on July 23, 1991.
18 Is that also correct?

19 A Yes.

20 Q Pages 2 and 3 are the retainer itself, right?
21 A memorandum of what the agreement between your two
22 firms was; is that correct?

23 A The document consists of two pages.

24 Q Yes, sir.

25 A And that is the agreement.

1 Q Is that your signature on the bottom?

2 A Yes.

3 Q And it's dated 7-23-91; is that correct?

4 A Yes, sir.

5 Q Okay. And that is for an agreement which you
6 say -- or which the agreement says, "began to be
7 effective in 1990?"

8 A Yes, sir.

9 Q Pages 4 through 16 of various bills and
10 billing records, is that also correct?

11 A Yes.

12 Q And those are the bills which you received
13 from Ms. Sanders?

14 A Ms. Withers.

15 Q I'm sorry, Ms. Withers. Pardon me, Ms.
16 Sanders.

17 A Ms. Sanders doesn't work for me, I don't
18 think.

19 Q Not yet.

20 A I think she offered to.

21 Q Some of those are statements and some of them
22 are bills, aren't they? Well, let me rephrase that.
23 Some of them are invoices and some of them are
24 statements?

25 A Some say "Invoices" and some say "Statements,"

1 yes, sir.

2 Q And the invoices are offered for current
3 monies due and the statements are offered for past bills
4 due, aren't they? (Pause)

5 A Well, I'm not sure as to that distinction.

6 Q Okay. Well, do you owe Ms. Withers money?

7 A Yes, I do.

8 Q How much?

9 A I'm not sure as to the amount. It's quite a
10 bit of money.

11 Q Well, "quite a bit," give us a dimension. You
12 owe Mr. Coloney 75 grand. What do you owe Ms. Withers,
13 anything like that?

14 A About half that, maybe. I think Ms. Withers
15 testified it was 25 or 30.

16 Q Okay. And for how long have you owed her
17 money?

18 A I've owed her money off and on for years from
19 the time she stopped working for my companies full-time.

20 Q Has there ever been an off time when you
21 didn't owe her any money since she started working for
22 you?

23 A When she left the firm, I didn't owe her any
24 money.

25 Q Okay. When was that?

1 A Along about '86. I think she left in '85,
2 came back briefly, and then left again in '86.

3 Q When did she start owing you money? I'm
4 sorry, let me rephrase that. When did you start owing
5 her money again?

6 A She continued to work for me from that date
7 until this date, and I have owed her money off and on
8 during that period of time.

9 Q How many of the witnesses who are going to
10 testify in this case on your behalf do you owe money to?

11 A I don't know, I'd have to figure it up.

12 Q Is it safe to say at least half?

13 A Now, like I said, I'd have to go through them.

14 Q Well, you just testified that you owed Barbara
15 Withers money. And you heard Mr. Coloney say he owes
16 you money?

17 A That he owes me money?

18 Q Whatever. Now, do you understand the
19 question? Do you want me to rephrase it?

20 A No, I think I understand.

21 Q Marvelous.

22 A I owe Mr. Coloney money. I owe Ms. Withers
23 money. I'm not sure when payday is, but I'll owe
24 Mr. Garrett and Ms. Chase money the end of this week.

25 Q And you normally keep them current, don't you?

1 A Try to. And I owe Mr. Seidman some money.

2 Q Is Mr. Seidman's bill past due?

3 A No, we're current on our agreement for
4 payment.

5 Q Did Mr. Seidman require you to deposit money
6 in a trust -- give money to him to put in a trust
7 account up front?

8 A No, I don't think he did.

9 Q How about Mr. Pfeiffer?

10 A I gave Mr. Pfeiffer a retainer.

11 Q Did you give him the retainer before he
12 performed services for you?

13 A Yes.

14 Q You have taken the position, have you not,
15 that Ms. Withers provided services to St. George Island
16 Utility Company, Limited, during the calendar year 1992?

17 A Yes.

18 Q And you have responded to a late-filed exhibit
19 in your testimony -- or perhaps in Ms. Withers
20 testimony, we don't know which -- and furnished us with
21 some bills; is that correct?

22 A We furnished you with some bills. I think --

23 Q Did you furnish us with all of the bills?

24 A We furnished you with the bills that we could
25 find. And I think Ms. Withers had some of them she

1 faxed over to our office, and Ms. Chase copied them and
2 furnished them to your office.

3 Q Now, are you inviting the Commission to infer
4 that there are bills which are not included here?

5 A No. I would invite the Commission to infer
6 that she did work during the test year that I don't see
7 a bill for --

8 Q All right.

9 A -- because I know that to be the case.

10 Q Because you know that to be the case. And
11 that would be dependent upon your recollection, wouldn't
12 it?

13 A And the record.

14 Q Well, which record?

15 A Well, I think we had a proceeding at the
16 Commission during '92 that she was an expert witness in.
17 And she constantly has helped and advised the Utility
18 company and myself. I think her testimony was that she
19 didn't always bill because she hadn't been paid and
20 didn't see much point in billing it. But she has always
21 done work.

22 Q But you're billing the people I represent for
23 the work for which she failed to bill you, right?

24 A No, I'm not billing them. I'm saying that
25 this Company, on an ongoing basis, needs accounting help

1 and services. And to that end, I've recently hired a
2 full-time accountant at \$40,000 a year. And it may be
3 in the future --

4 Q Well, I'm just asking you about Ms. Withers --
5 (Simultaneous conversation.)

6 Mr. Brown, I'm not asking you about all that
7 stuff you're going to do some day.

8 CHAIRMAN DEASON: I'm going to request both
9 parties here to not speak while the other is speaking.
10 Now, I'm not saying who is at fault. All I'm saying is
11 that you're both talking at the same time.

12 MR. McLEAN: Yes, sir.

13 CHAIRMAN DEASON: And I know the court
14 reporter cannot record that, it's impossible.

15 MR. McLEAN: I understand. Thank you, sir.

16 CHAIRMAN DEASON: So please be mindful.

17 Q (By Mr. McLean) Okay. Now, with respect to
18 Ms. Withers, you are inviting the Commission to approve
19 money to be collected from the people I represent to
20 compensate for Ms. Withers services; is that correct?

21 A Mr. McLean --

22 Q May I ask -- excuse me, sir.

23 A No, I --

24 MR. McLEAN: Mr. Chairman, I request an
25 instruction to the witness to answer my questions

1 directly, on point, with a yes or no; and then if he
2 wants to explain, that would be fine with me.

3 CHAIRMAN DEASON: The witness is so
4 instructed.

5 A No. What I'm asking the Commission to do is
6 to give this Company enough expense for ongoing
7 accounting services so we can keep our records straight.
8 That's been a problem, it is a problem. I acknowledge
9 that.

10 Q Okay. Now, your evidence that you need --

11 A But I --

12 Q I'm sorry. Go ahead.

13 A I'll try not to interrupt you, if you'll try
14 not to interrupt me, Mr. McLean.

15 Q I didn't hear you. You can go ahead.

16 A Okay. I don't believe it can be done for the
17 money that's requested in the MFRs. And I've reached
18 that conclusion after going through this extensive audit
19 and after having been told that "readily available" to
20 the PSC Staff means that you have to account for things
21 on almost an hourly, at least a daily, basis.

22 And we now have a procedure where we copy
23 every check, like this check we were talking about
24 yesterday which we had just made a copy of. We copy
25 every invoice, every check, and do it on an almost

1 hourly basis. Because of that, about six or seven weeks
2 ago, I have hired a full-time accountant for the Utility
3 company who -- Joanie Hanney, who worked for the Utility
4 company years ago when Bob Freeman and the PSC auditors
5 said the records were in the best shape they had seen
6 them before or since. And that's going to the Utility
7 company on an ongoing basis \$40,000 a year.

8 In the MFRs we thought it was adequate to have
9 16 hours a week part-time by Jeanie, the lady that was
10 here yesterday, and \$500 a month from Barbara Withers.
11 After going through this audit, I don't think that's
12 adequate. But I think it would be unfair and inadequate
13 to give this Company less than that request, because
14 that's not enough to do the job.

15 That's the long and the short of it.

16 Q Probably more long than short.

17 Mr. Brown, now, you testified --

18 MR. PFEIFFER: Commissioner Deason, I object.
19 I mean, Counsel has asked for an instruction of the
20 witness and I would ask for an instruction for Counsel
21 that comments like that are inappropriate.

22 CHAIRMAN DEASON: Mr. McLean, I would request
23 that comments be eliminated. If you can ask questions
24 and the witness is going to respond to those directly, I
25 think we can proceed much more expeditiously if we keep

1 it at that level.

2 MR. McLEAN: Well, then let me substitute for
3 my comment a motion to strike the entire answer with the
4 exception of "No" as being absolutely unresponsive to
5 the question and not explanatory of his no answer.

6 CHAIRMAN DEASON: And the motion is denied.
7 The question was responsive -- I'm sorry, the answer was
8 responsive to the question.

9 Q (By Mr. McLean) Okay. Now, Mr. Brown, I
10 asked you a question about whether you sought
11 compensation for Ms. Withers and your answer went, I
12 think in spirit, to, "Well, it may not be Ms. Withers
13 but we certainly do need accounting help," and then you
14 detailed some things, some measures you have taken, to
15 ensure that you'll have accounting help in the future;
16 is that correct?

17 A That's basically right.

18 Q Okay. And that's all based on your testimony
19 about things that you're going to do or things that you
20 have done; is that right?

21 A That's based on --

22 Q Okay.

23 A -- my testimony of things I have done and the
24 auditor records showing the payroll records where the
25 persons -- and by sworn testimony that Jeanie Drawdy has

1 been discharged. She's phasing out and we have a
2 full-time accountant. And I hope to be able to phase
3 Barbara Withers back so that I don't have to call on her
4 as much as we have in the past. Because having her as a
5 consulting CPA and having a part-time accountant has not
6 worked to the satisfaction of the PSC Audit Staff -- and
7 to my satisfaction, because I want to do it the way it's
8 required to be done.

9 Q Is any of that business in your direct
10 testimony?

11 A Yes. Well, no, not in my direct, it's in my
12 rebuttal.

13 Q Oh, it's in your rebuttal testimony?

14 A Yes.

15 Q Now, in your rebuttal testimony, you set out,
16 didn't you, to answer our criticisms of your case; isn't
17 that right?

18 A Yes, and to clarify these adjustments, --

19 Q And to add more --

20 A -- of which this is one.

21 Q Well, does this tend to add more support to
22 those adjustments?

23 A This clarifies and trues up the adjustment,
24 the pro forma adjustment regarding accounting services.

25 Q Okay. Now, with respect to the evidence that

1 tends to do what you just said, where is our opportunity
2 to test that evidence outside your testimony? We accept
3 your testimony, how about anything else?

4 A Well, Jeanie Drawdy was here yesterday and you
5 could have asked her.

6 Q But she was on her direct --

7 A Barbara Withers will be here this afternoon,
8 you can ask her. Sandra Chase is here this afternoon,
9 you can ask her. And Joanie Hanney, who is the new
10 accountant we hired, can be here in an hour-and-a-half,
11 if you'd like to ask her.

12 Q I may. So, in other words, our opportunity to
13 test the evidence where you intended to -- where you
14 have now at least hinted to the Commission that there is
15 additional support outside your direct case, our
16 opportunity to test that evidence begins today, doesn't
17 it?

18 A No, it began when we advised everyone that
19 that was done and when I put it in my rebuttal
20 testimony.

21 Q Okay. Now, with respect to these bills right
22 here, you sent these bills to us, did you not, when we
23 asked for these bills? And the idea behind these bills
24 was to substantiate the money that you were paying
25 Barbara Withers, right?

1 A The idea behind these bills was to respond to
2 a request on my deposition to show you bills that
3 Barbara Withers had submitted. I then asked somebody on
4 my staff to gather up the bills that we had and to give
5 them to your office, which was done.

6 Q Okay. Now to conclude that you need
7 accounting help in the future, the Commission may be
8 interested in whether you needed accounting help in the
9 past, don't you think?

10 A I think the Commission is interested in all
11 that. That's been an ongoing problem.

12 Q Okay. Let's look at the year 1992.

13 A Okay.

14 Q Where are the bills from Ms. Withers for 1992?

15 A I don't have any here before me today.

16 Q Thank you.

17 A I just have this retainer agreement.

18 Q The retainer agreement which I believe was
19 signed more than a year after it was made?

20 A It was signed about six months prior to the
21 beginning of the test year.

22 Q Was that a yes or a no?

23 A It was signed after the effective date in
24 1990. It was signed, I believe, in July of '91, which
25 was about five months prior to the test year which began

1 January '92.

2 Q Now, what I'm interested to know is when the
3 agreement was signed, did you sign the agreement on
4 September -- on July 23rd, 1991? And that agreement is
5 a memorandum of an agreement which took place, according
6 to this thing, in September of 1990?

7 A Yes.

8 Q Is that sound business practice?

9 A Well, I think it is.

10 Q Is it good evidence of when the agreement
11 actually took place?

12 A I think it's good evidence.

13 Q Do you think a better evidence of when that
14 agreement took place would be a contemporaneous
15 recording of that agreement?

16 A If it had been signed the date it was
17 effective.

18 Q That would make it easier to believe, wouldn't
19 it?

20 A I don't disbelieve it, I don't hear anybody
21 else that disbelieves it. Ms. Withers and I didn't
22 disbelieve it. We didn't need this. Bob Freeman asked
23 for this during the 1991 audit, so we memorialized our
24 agreement.

25 Q Mr. Brown, would you turn to Exhibit No. 11.

1 (Pause)

2 Do you have the exhibit, sir?

3 A Yes, sir.

4 Q That appears to be a bill from Ms. Withers to
5 the Utility; is that correct?

6 A Yes.

7 Q With some reservation, Mr. Brown, may I ask
8 you, is this the response that you provided to our
9 Request for Production No. 80?

10 A I assume it is, Mr. McLean. My staff handled
11 that. I have no reason to believe it's not.

12 Q Did you direct them -- okay, that's fine.

13 This appears to be Ms. Withers' bill to the Company for
14 the months of January, February and March of 1994, isn't
15 it?

16 A Yes.

17 Q It's a bill for \$3,450?

18 A Yes.

19 Q Would you look to the last page of the
20 exhibit. With the exception of two entries, Mr. Brown,
21 the rest of this bill deals with the rate case and
22 mostly the PSC audit; is that right?

23 A Yes, sir.

24 Q The regular accounting charges to the Company
25 were only \$200 for this three-month period; is that

1 right?

2 A Yes, sir.

3 Q The services performed by Ms. Withers that
4 were not rate case related concerned the Utility's
5 capitalization; is that right?

6 A Yes, sir.

7 Q Okay. Will you tell me and tell the
8 Commission, if you would, please, what is this
9 capitalization issue?

10 A Which line is that on, Mr. McLean? The first
11 line, "Capitalization structure"?

12 Q I believe so.

13 A Ms. Withers and I, along with some other
14 people, are now analyzing and trying to do a
15 debt-to-equity conversion which is contingent upon the
16 success of this rate case so that we can get long-term
17 bond financing to clean up all of the third-party debt.
18 Our plan is to convert all of the intercompany debt to
19 equity, to capitalize that debt, to clean up the balance
20 sheet, and that's what that reference is to. We've done
21 a lot more work on it since then, but that's what we're
22 working on.

23 Q Okay. That intercompany debt arises from the
24 sale of this Utility from Leisure Properties to the
25 Utility partnership for \$3 million in 1979, doesn't it?

1 A Part of it does. There's another -- well, it
2 started at \$384,000. There's that debt, and then
3 there's \$384,000 that was advanced in cash to meet
4 operating losses after that sale. And since then
5 there's been several additional loans from affiliated
6 companies. But the plan is to convert all of that
7 affiliated intercompany debt from debt to equity.

8 Q I see.

9 A To leave the Utility company with a balance
10 sheet with about \$1.1 million third-party debt, which is
11 about the same as our rate base.

12 Q Now, if you convert that debt to equity, will
13 that result in a higher cost of the money so converted?

14 A I think it will result in no cost of that
15 money. Our problem in analyzing it is to make sure that
16 there are no adverse tax consequences to the partners.

17 Q What kind of adverse consequences are you
18 speaking of?

19 A Taxes to pay by the partners.

20 Q Okay. Are there complications with regard to
21 this? Is that a word that you've used?

22 A It's not an uncomplicated tax issue, and we
23 want to be sure when we do it that it's done right. I
24 mean, as a normal matter, a debt-to-equity conversion is
25 tax-free, but you can mess it up and end up with some

1 tax consequences. But it's just on hold now until we
2 see if we can get the revenue up enough to get long-term
3 Farmers Home refinancing.

4 Q Okay. So the problem is that there may be a
5 transfer of the ownership of the Utility, and you're
6 concerned about the tax consequences of that change of
7 ownership?

8 A There'll be an adjustment in the ownership.
9 There will be a reduction in some partners' equity and
10 an increase in other partners, but there will not be
11 this big tremendous debt that can never be paid.

12 Q And Ms. Withers' expertise is required then,
13 as I understand your testimony, to avoid the partners
14 having any sort of tax problems; is that right?

15 A She's looking at it preliminarily, and then
16 we've conferred with a tax lawyer. And before we do it,
17 we're going to have a tax opinion from a Big Eight type
18 accounting firm. We're just not going to do it by the
19 seat of our pants. But we think it can be done and
20 that's our plan.

21 Q Okay. And the two hours which Ms. Withers
22 billed you on this bill are the only two hours, I think
23 you said, which are not related to proceedings before
24 the Commission; correct?

25 A Yes. We've primarily been working on this

1 audit and this accounting for the last six months or so.

2 Q How often does the Utility intend to concern
3 itself with the conversion of equity -- I'm sorry, debt
4 to equity?

5 A We intend to work on it until the order of
6 this Commission. And after the order of this
7 Commission, if we get rates sufficient to justify a
8 refinancing package with Farmers Home Administration, we
9 intend to move into that immediately and try to get a
10 long-term low interest bond refinancing.

11 We worked on two or three years ago and we
12 reached a roadblock when they looked at our balance
13 sheet and our revenue stream, with the losses and the
14 negative capital structure. And they said they just --
15 there's money available through the industrial bond
16 program at Farmers Home Administration for private water
17 companies. In fact, they encourage those type loans.
18 But this Company cannot obtain that financing with its
19 current balance sheet and its current revenue.

20 Q The question is and was, how often are you
21 going to do this? Often, how many times in the life of
22 the Utility is it going to do this?

23 A I'm not sure, Mr. McLean. We're going to do
24 whatever it takes to get it done.

25 Q Sure. At the NARUC seminar, did you learn

1 about nonrecurring costs?

2 A That was discussed.

3 Q Is this a recurring cost or a nonrecurring
4 cost?

5 A Accounting services --

6 Q No, sir, I'm not asking you about accounting
7 services, I'm sorry. I'm asking you about the two items
8 on that bill which regard capitalization.

9 A Once we get this capitalization done, we don't
10 expect to have to do that again.

11 Q Okay. Now, the whole object of the game, I
12 think your testimony says, is to avoid a tax problem.
13 When I asked you what the tax probable was, you said,
14 "taxable income to the partners." Is that a fair
15 summary of what's been said so far?

16 A Yes.

17 Q Of what interest is it to the people I
18 represent to avoid taxes to the partners?

19 A I don't know what their interest would be, as
20 far as that's concerned. I think the people you
21 represent should have an interest in the financial
22 stability and continuity of the Utility company. And I
23 think it's very important that we get it on a sound,
24 long-term bond financing basis so that we can stop
25 having these constant financial crises.

1 It can run very well; with a proper rate base
2 and proper revenue, this should be a very stable, easy
3 to operate Company.

4 Q Sure. You said the problem was that the
5 partners might get taxed. And my question is real
6 simple: Why are you asking the people I represent to
7 pay Ms. Withers to isolate you from problems that the
8 partners might have when they pay greater income?

9 A That's just part of the overall picture,
10 Mr. McLean. In order to do this debt-to-equity
11 conversion, we must analyze it from all directions. And
12 I think it's in the best interests of everybody
13 concerned -- the regulators, the Utility company and the
14 customers -- for the Company to have adequate revenues
15 so that it can be refinanced, clean up its balance sheet
16 and move on with a stable, ongoing responsible Utility
17 company. I think that's in your clients' best interests
18 as well as the Utility company.

19 Q Would you look to Exhibit No. 3, Mr. Brown.

20 MS. SANDERS: The memo from Gene to Seidman.

21 MR. McLEAN: Yes. For those who might not
22 have marked it, it is, GDB-2. (Pause)

23 A Okay, I have it.

24 Q You have the exhibit, sir? Would you turn to

25 Page 6.

1 A Okay.

2 Q Look down at the bottom of Page 6, the last
3 full sentence. You're referring to Ms. Withers, I
4 believe, when you say, "One of her main functions in
5 addition to the tax returns is to keep the partnership
6 accounting in order regarding the limited partnership
7 and all of its various general and limited partners."

8 A Yes.

9 Q Is that an accurate reading of what you said?

10 A Yes, sir. That's an accurate summation of
11 that.

12 Q I understand. Do you regard the expenses of
13 keeping the partnership accounting in order regarding
14 the limited partnership and all of its various general
15 and limited partners to be a cost of providing service
16 to the residents of St. George Island?

17 A Yes, I do.

18 Q Why is it of interest for the ratepayers to
19 pay for your keeping the expenses among the various
20 partners, various general and limited partners,
21 straight?

22 A Because that saves the ratepayers, your
23 clients, a great deal of money. This form of ownership,
24 this limited partnership form of ownership, which is not
25 a taxable entity, saves all of the taxes that would be

1 paid by an orthodox C corporation. All of those would
2 be passed on to the ratepayers, your clients; and if
3 that's 20% or 30% of the revenue, that would be added
4 right above the line as an addition to rates. And I
5 think it's a very small price to pay to pay somebody a
6 portion of \$500 a month to avoid that pass-through of
7 taxes.

8 Q The taxes of the C corporation?

9 A Yes.

10 Q Do you know whether Class B utilities in this
11 state are normally organized as C corporations?

12 A I think a lot of them are.

13 Q A lot of them are Sub S, too, aren't they?

14 A Some may be. But Sub S corporations are about
15 as complicated, if not more so, than limited
16 partnerships. In fact, they're more complicated because
17 they have so many limitations that -- and
18 disqualifications. It's very, very easy to lose your
19 Sub S qualification and then you're in big trouble. You
20 can't go back. And then you're a C.

21 Q More difficult to isolate yourself from
22 creditors with Subchapter S, isn't it?

23 A No. I think either one isolates you pretty
24 effectively from creditors.

25 Q Do you have a pretty good bit of expertise in

1 that area?

2 A I know that corporations provide some limited
3 liability that limited partnerships do not provide.
4 General partners like myself take that responsibility.

5 Q I see. And you need the expertise of Barbara
6 Withers to tell you about these things? Or do you have
7 that expertise yourself?

8 A I need the expertise of Barbara Withers to
9 handle the accounting on all of the partnership and
10 debt-to-equity conversion and all of the more
11 sophisticated accounting questions with which we have to
12 deal.

13 Q Are you inviting the Commission to believe
14 that the complications of keeping up with your various
15 general and limited partners is at least as complicated
16 if not more complicated -- or at least as complicated as
17 keeping up with Subchapter S?

18 A I don't know, Mr. McLean, if it's more or less
19 complicated. All I'm saying is that we have a limited
20 partnership that's been in effect from the time this
21 Commission gave this limited partnership a certificate.
22 And we can't just overnight change and say, "Well,
23 wouldn't it be nice to be a Sub S corporation?" It's
24 not just not that simple when you've got \$3 or \$4
25 million of intercompany department debt. And that's the

1 position I find myself.

2 I'm trying to work out of that into a
3 situation that's more stable with long-term bond
4 financing. And I think it's in the best interest of
5 everybody for that to be done, and it requires somebody
6 like Barbara Withers to help the Utility company do
7 that.

8 Q So if it turns out that having a limited
9 partnership does not avoid the additional taxes of a C
10 corporation, the customers should just hang in there
11 with you because that's the situation you find yourself
12 in?

13 A I don't think that's the issue, Mr. McLean.
14 There's no tax to the Utility company; if we were a Sub
15 S corporation, it's more likely that you could have some
16 tax because you could lose your Sub S qualification more
17 easily. The question is, can we convert this debt to
18 equity so we can get the company financed?

19 Q No, sir. I disagree. Let me ask you this.
20 Isn't it true that the issue is whether the Utility
21 ratepayers should pay the expense of you keeping all
22 your partnerships straight when, in fact, you could have
23 a Subchapter S corporation and avoid the same tax that
24 you avoided by this device?

25 A We're just talking about one partnership. The

1 Utility company is a partnership, and I think to keep
2 that straight is a boni fide partnership expense. The
3 only business of this partnership is to operate this
4 Utility company.

5 It would be just as complicated and more
6 dangerous, I think, from a tax point of view to try to
7 convert it to a Sub S and try to keep that qualification
8 intact. Because there are many, many ways that can be
9 disallowed and lost.

10 And I think either form of ownership would
11 have complicated tax issues when you're dealing with a
12 dozen or so partners, each of whom have individual tax
13 consequences and ramifications.

14 Q How many general partners are there in the
15 Utility corporation?

16 A It's a partnership, but the Utility
17 partnership has one general partner.

18 Q Well, would you look down to the last, the
19 third word in from the bottom of the page, where it
20 says, "various general." Doesn't that mean more than
21 one general?

22 A No. It's got a general partner and it's got
23 limited partners.

24 Q Oh, I understand that. But I think
25 Ms. Withers' services have been offered by you here to

1 mean -- this is an instruction from you to Frank
2 Seidman, right?

3 A Sure.

4 Q Okay. And in this instruction, you'll telling
5 Mr. Seidman what support you have for various expenses?

6 A Right.

7 Q Okay. And you're telling him that the reason
8 you need Ms. Withers is because she needs to keep up
9 with the accounting of "various general and limited
10 partners." Does that sound like one general partner or
11 two or more?

12 A As I explained yesterday, the Utility
13 partnership has one general partner, Leisure Properties,
14 Limited. That general partnership -- limited
15 partnership has two general partners, so in that sense
16 there are three general partners to be dealt with and
17 various and sundry limited partners.

18 Q But the Utility company only has one general
19 partner?

20 A The Utility company only has one general
21 partner. And the only reason that general partner
22 continues to exist is because the Utility company must
23 be operated to serve your clients. Otherwise, we would
24 have phased Leisure Properties out long ago. It has no
25 other reason to continue in existence.

1 Q When you say "Leisure Properties," are you
2 talking about Leisure Properties, Limited?

3 A Yes, sir.

4 Q Okay.

5 A Which is the general partner and part owner of
6 the Utility company.

7 Q And Ms. Withers is the one that helps you keep
8 all this straight?

9 A She does the best she can.

10 Q Mr. Brown, are you a judgment debtor at this
11 particular point in time?

12 A A judgment debtor, yes, sir.

13 Q Okay. Is Armada Bay Company a judgment
14 debtor?

15 A I don't believe so.

16 Q Is Leisure Properties, Limited a judgment
17 debtor?

18 A Yes.

19 Q How about St. George's Plantation?

20 A Yes.

21 Q How about Leisure Development, Inc?

22 A I'm sure it probably is.

23 Q How about Gene D. Brown, PA?

24 A I don't think so.

25 Q Okay. Now, it's your testimony that -- well,

1 tell me if this is true. The way that you have this
2 Utility and your various affiliates organized is to
3 provide the citizens or your customers with lower rates,
4 or is it, in fact, to isolate you and your various
5 affiliates from those judgments?

6 A I don't think it's any of that. This Company
7 was organized and certificated by the Commission in
8 1979. It still has the same form of ownership. I
9 pretty much inherited it in 1981 and I've been running
10 it to the best of my ability since then.

11 But the general partner was and still is
12 Leisure Properties, Limited. Leisure Properties was
13 formed in 1971. The Utility company was formed in '79
14 and has maintained basically the same structure since.

15 Q Okay. Let's look to -- let me ask you a
16 general question. You originally requested legal fees
17 for \$24,000 --

18 A Yes, sir.

19 Q -- as a pro forma adjustment; is that correct?

20 A Yes, sir.

21 Q This is for the day-to-day legal assistance
22 you provided to the Company?

23 A Yes, sir.

24 Q And you've revised that number in your
25 rebuttal testimony; is that right?

1 A I revised it down to \$1,000 per --

2 Q \$1,000 a month?

3 A Yes, sir.

4 Q Okay. Let's look at Exhibit 3, and look to
5 Page 7. To Paragraph No. 11.

6 A Okay.

7 Q These were the reasons that you gave
8 Mr. Seidman to support the \$24,000 fee, isn't it?

9 A Right.

10 Q Am I correct that you indicate that the Staff
11 had a big problem with the fact that you do not keep
12 detailed time records?

13 A The PSC Staff said they would look to see time
14 records for legal services. I said that I thought it
15 was more cost-effective to just have a flat retainer or
16 a not-to-exceed figure, because legal fees would
17 probably exceed that, based on my experience. But they
18 said they would like to see time records. Then we had a
19 co-manager, which I say here in the middle of that
20 paragraph, that the Commission and I agreed on a
21 co-manager, Mary LaBatt. And she asked me to keep time
22 records for about six weeks, which I did, and it came
23 out to about 4,000 to 6,000 a month during that time.

24 Q And that was offered by you in response to the
25 Staff audit request?

1 A I gave them those time records. They already
2 had them before because Mary LaBatt had given those to
3 the Commission Staff. And I also gave them estimates of
4 my time and lots of other things in references to the
5 type of work that I've done, the type of legal work I've
6 done for the Utility company.

7 Q Okay. Now, were those time records compiled
8 by you before or after the audit?

9 A The time records that I kept during the Mary
10 LaBatt co-management period were prior to the PSC audit
11 in this case.

12 Q Okay. Let me ask you a couple of questions
13 about that term "co-manager." What's the difference
14 between a co-manager and a manager?

15 A I guess a co-manager means that two people
16 have to agree on management decisions, whereas a manager
17 can make decisions on his or her own.

18 Q So Ms. LaBatt could frustrate your purposes by
19 not agreeing with you, could she?

20 A I suppose she could.

21 Q But didn't she report to you? Could you fire
22 her?

23 A No, I couldn't fire her, we had an agreement.
24 I guess we could have an impasse, which she decided to
25 quit, but I didn't feel like I could fire her.

1 Q But it's your testimony you couldn't fire her?

2 A I don't think I could fire her.

3 Q Did you have a contract with her?

4 A Seems like we did. We agreed to pay her. The
5 Commission Staff or the Commission picked her out. She
6 used to work there and had left on maternity leave; and
7 we paid her \$50 an hour, plus expenses. And I think we
8 did have a contract with her.

9 Q The term of that contract that you would
10 employ her over some period of time and could not
11 dismiss her except for cause?

12 A I'm not sure whether I had the right to
13 dismiss her or not.

14 Q Okay.

15 A I think under my agreement with the Commission
16 Staff, it wasn't that way. It was kind of a mutual
17 thing. They wanted her in there to sort of monitor and
18 report what was going on. She spent most of her time
19 taking notes so she could tell them what we did every
20 day.

21 Q If you had the right to fire that co-manager,
22 is there any difference between a co-manager and any
23 other employee in that regard?

24 A If I had the right to fire her, that would not
25 be any different from any other employee that I have a

1 right to fire.

2 Q Now, you have said on several occasions that
3 this is a PSC-designated co-manager, have you?

4 A This was a co-manager that was put in place by
5 agreement with the PSC Commission Staff. And if I said
6 PSC-designated, I just meant that is the person they
7 chose. I never knew her, never met her. She worked
8 over there, they had confidence in her. She was an
9 engineer -- is an engineer. And they designated her and
10 said that, "If you'll put her in, we'll agree to operate
11 with this co-management situation for a while.

12 Q Did they expect you to be able to fire her
13 during that period of time?

14 A I don't know what they expected. That subject
15 never came up.

16 Q With whom did you talk at the PSC -- at the
17 PSC Staff about that issue?

18 A I think John Williams was the primary point
19 man on all that. But Troy Rendell and some other people
20 were involved, Marshall Willis. We had a number of
21 meetings with Staff people, but I think John Williams
22 picked her out and he's the one that I talked to
23 primarily.

24 Q Speaking solely in terms of your perception,
25 what sanction did you think would attach to your failure

1 or your declining to hire Ms. LaBatt?

2 A I don't know what sanction. I mean, they had
3 about as many sanctions as they could, I guess, at the
4 time. They were trying to throw me out as manager,
5 going to taking me to circuit court. They had a
6 revocation proceeding pending. And I suppose if I had
7 refused to go along with the co-manager situation, there
8 was a likelihood that those efforts would have
9 continued. I was trying to avoid that and that's why I
10 wanted to work out this co-manager arrangement.

11 Q I see. Let's return to the time records for a
12 moment. You didn't keep detailed time records for your
13 time spent on legal activities in 1992 or 1993, except
14 for a period of four to six weeks when Mary LaBatt was
15 there, did you?

16 A That's correct.

17 Q Okay. And you state to Mr. Seidman in this
18 memo that you revised your legal retainer agreement
19 effective January 1, 1993?

20 A Yes.

21 Q Okay. Would you turn to Exhibit No. 12,
22 please, sir. Is this an agreement of -- I'm sorry.

23 (Pause) This is an agreement between the Utility and
24 your law firm, is it?

25 A Yes.

1 Q For the provision of legal services?

2 A Yes.

3 Q Pages 1 and 2 are an addendum to an earlier
4 agreement; is that right?

5 A I believe so.

6 Q And you're referring to an agreement that was
7 entered into on the first day of January 1993. That's
8 right at the top of Page No. 1; is that right?

9 A I'm referring to an agreement entered into
10 effective as of that date. They were not prepared or
11 signed on that date, but that was the effective date.

12 Q I see. They were prepared and signed later;
13 is that right?

14 A They were prepared and signed at the request
15 of Nancy Gaffney of the PSC Audit Staff. She and Bob
16 Freeman said, "We need to have an agreement." And I
17 said, "Fine, I'll go prepare one."

18 Q Did you believe that she would accept as
19 evidence for that expense an agreement which you
20 executed after the date of her audit, memorializing an
21 agreement which took place long before that date?

22 A I was not sure what she would accept. I told
23 her that it was all pursuant to just a verbal agreement,
24 where my left hand shook with my right hand. She said
25 she'd like to see it in writing. So we went, typed it

1 up and gave it to her.

2 Q Okay. Did she say she would like to see it in
3 writing in the future? Or did she say, "I'd believe
4 this more if I had a written agreement?" Or was she
5 inviting you to reduce to writing an agreement that had
6 been in place for a year or two before you --

7 A She constantly said, "Technically, we have to
8 have a written agreement." And I said, "Fine, we'll get
9 you a written agreement."

10 Q Did you promise to have better records in this
11 case than you had in the last case? Did you promise the
12 Commission that in sworn testimony?

13 A I probably said we'd try to have better
14 records in the future, and we do have better records
15 than we had in the past.

16 Q Okay. How about with respect to this issue,
17 did you think to write down a contract which was going
18 to bind the Utility to pay a lawyer money?

19 A I never saw a lot of reason to make an
20 agreement with myself, but --

21 Q But -- go ahead.

22 A -- the PSC Staff said they would like to see
23 it, even though it's between the same parties, so we did
24 that. When I was saying we'd keep better records in the
25 future, I was referring primarily to better utility

1 accounting records.

2 Q Don't you think that the money that a utility
3 spends on a lawyer has a place in those records?

4 A Yes.

5 Q Now, isn't that particularly true where the
6 lawyer is obtained by an arrangement which is less than
7 arm's length?

8 A Mr. McLean, I don't think it makes a lot of
9 difference whether you -- when you agree with yourself
10 whether you type it up or not. I mean, we could walk
11 out tomorrow and do another addendum and just --

12 Q You're probably right.

13 A -- it's form without substance.

14 Q I do agree with that. Is it offered as any
15 sort of evidence of anything by you?

16 A This wasn't offered. This was done at the
17 request of the PSC auditor. We tried to be very
18 accommodating and tried to do everything that they
19 suggested we do. And we're going to try to do that in
20 the future. This was one of those things.

21 Q When you say, "this," are you referring to
22 addendum or the actual memorial memorandum of agreement
23 that you had with the Utility?

24 A Both. I think both of these were prepared at
25 Nancy Gaffney's request after the audit started, my

1 recollection.

2 Q Were they prepared at the same time?

3 A No, I think they were prepared at different
4 times, as I recall.

5 Q When was the addendum prepared?

6 A I don't recall.

7 Q It doesn't have a date on it, does it?

8 A It has an effective date.

9 Q But it doesn't show us what time it was
10 executed?

11 A No, it doesn't.

12 Q Okay. But there is an interesting
13 modification in Paragraph 3 on Page 1, "The attorney
14 shall maintain detailed time records showing the
15 specific work by the attorney." Now, there's some
16 handwriting in there, which is customary when contracts
17 vary from the plain typewritten language when the
18 parties sign it, isn't there?

19 A Yes. I wrote that in; because this agreement
20 was signed after its effective date, so I had to clarify
21 that I was not going to keep time records for '93
22 because '93 was either almost over or over, so that
23 would have been impossible.

24 Q Right.

25 A So I wrote that in when I signed it.

1 Q And just to make sure that there wasn't any
2 question about that, you signed it, essentially, in a
3 few strokes for Gene Brown, for St. George Island
4 Utility Company, and for Gene Brown, PA as well; is that
5 right?

6 A I signed it for both parties.

7 Q Of course, you wouldn't have done any of this
8 if Nancy Gaffney hadn't asked for it, right?

9 A Right.

10 Q Okay. Now, I'm interested here, this is a
11 contract by the two principals, the two corporate
12 general partners of Leisure Properties. It was executed
13 by St. George Island Plantation and by Leisure
14 Development. And, of course, you're the president of
15 both of those organizations?

16 A Yes, sir.

17 Q But the Utility is managed by Armada Bay,
18 isn't it?

19 A Yes.

20 Q Does Armada Bay not have the authority to
21 retain legal representation on behalf of the Utility?

22 A I'd have to look at that agreement. I think
23 again that that really don't make much difference in
24 substance since I would make the decision in either
25 event. But I think the Utility company's general

1 partner -- in order to bind the Utility company, I think
2 the Utility company needs to sign through its general
3 partner.

4 Q So it couldn't sign through its manager?

5 A I don't think a manager -- I don't think
6 Armada Bay Management Company has the authority to
7 execute agreements, mortgages, deeds, or to normally do
8 business for the Utility company.

9 Q Wouldn't that be a test of whether the person
10 with whom they were negotiating knew what the capacity
11 of that agent, namely, Armada Bay, is?

12 A That would be one factor. It would depend
13 more on what the principal agency agreement or
14 relationship was between the Utility company and Armada
15 Bay, the management company.

16 Q Okay. As to arm's length persons, they
17 wouldn't know that unless they read the contract, would
18 they? They'd be justified in acting on the apparent
19 authority, wouldn't they?

20 A They might be. It would depend on the factual
21 circumstances.

22 Q Of, course, this isn't an arm's length
23 transaction, is it?

24 A No, sir, this was not.

25 Q The parties here, in fact, are St. George's

1 Plantation, you're the president; Leisure Development
2 Company, you're the president; Gene D. Brown, you're the
3 president; and the silent manager, Armada Bay, of which
4 you're the president?

5 A That's correct.

6 Q And Ms. Withers is the one we're going to pay
7 to keep all of this straight?

8 A No, she doesn't keep --

9 Q Or her replacement?

10 A She doesn't keep all this legal stuff
11 straight. I try to do that. She helps us a great deal
12 on accounting and tax matters regarding these
13 partnerships and corporations.

14 Q Did Armada Bay have any voice in whether this
15 contract was executed?

16 A It had a voice. It did not object.

17 Q In the last case, the '93 case which was
18 dismissed?

19 A Yes, sir.

20 Q Did you ask for \$24,000 in that case?

21 A I don't think so. I think we asked for
22 \$1,000.

23 Q Well, that would depend on whether that case
24 was filed before or after this addendum was entered
25 into, wouldn't it?

1 A I think it would depend on what the MFRs say
2 we requested.

3 Q Well, was the addendum executed before or
4 after?

5 A I think the addendum was executed after the
6 first case was filed.

7 Q You were acting on behalf of a number of
8 entities to whom you owe a fiduciary duty, weren't you?

9 A Yes.

10 Q And you don't know when the agreement took
11 place?

12 A I believe the agreement took place after the
13 first case was signed.

14 Q But you don't know when?

15 A I don't know the date, no, sir.

16 Q Isn't that a breach of duty to every one of
17 the listed entities there?

18 A No.

19 Q Why is that?

20 A Just isn't.

21 Q Well, you've bound their credit and you've
22 obtained services and you can't even say when you did
23 it?

24 A I don't think it matters; I don't think in
25 substance it matters when that was done. I think this

1 is an agreement effective as of the first day of
2 January, '93.

3 Q Do you know whether this addendum was signed
4 in 1994?

5 A I don't know if it was signed in late '93 or
6 early '94. It was signed sometime prior to the filing
7 of this case. It may well have been in January of '94.

8 Q You didn't keep detailed time records in 1993,
9 did you?

10 A No, except for that brief period.

11 Q Okay. Do you think -- do you invite the
12 Commission to infer that from that brief period, it
13 should know what services you offered for the entire
14 period, for the entire year?

15 A No. I think the Commission should look at all
16 the facts and evidence. I think the Staff has
17 completely analyzed all of our records and everything
18 that I do and they've spent weeks and weeks, 32 or 33
19 weeks, auditing us and talking to me about this. And
20 I've told them -- given them examples of the type of
21 things that I do on an ongoing basis.

22 I think any utility company needs legal
23 representation. And during the test year, we had -- was
24 paying me \$1,000 per month, which was a lot, lot less
25 than I would have charged any arm's length client. We

1 still had over \$24,000 of legal expenses during that
2 test year.

3 And all I'm asking the Commission to do is to
4 consider that this Utility company, like any utility
5 company, has a need for ongoing legal services. They've
6 been provided primarily by me in the past because that's
7 been more cost-effective and I don't think any other
8 lawyer would have taken this case and represented this
9 Company for the last three or four years.

10 Q Now, when you say, "taken this case," that's
11 used somewhat inadvisedly, isn't it? Because, in fact,
12 you aren't taking this case. You're not being paid for
13 the rate case; isn't that right?

14 A I'm not talking about this case, I mean this
15 Company. Just the --

16 Q Okay. This Company.

17 A -- ongoing legal problems of this Company.
18 I've shopped around, I've talked to at least half a
19 dozen lawyers. I've hired three or four PSC lawyers or
20 utility lawyers. I've had fees quoted in the \$50,000 to
21 \$100,000 range for just one-parts of the things we've
22 been doing.

23 And I've paid lawyers. I paid one utility
24 lawyer -- he billed about \$11,000 for one show cause or
25 one agenda conference and a couple of other conferences.

1 Q Did you pay that \$11,000?

2 A I paid him a \$2,500 retainer up front. And he
3 went over and told me not to go; and I read in the paper
4 the next day he just went over and said, "Well, I think
5 he's guilty." And then sent me a bill for \$11,000. So
6 I didn't pay the rest of that.

7 Q You're talking about John Marks, aren't you?

8 A Right.

9 CHAIRMAN DEASON: Mr. Brown, just so the
10 record is clear, when you say that you've hired a number
11 of PSC lawyers, those are lawyers that practice before
12 the PSC?

13 WITNESS BROWN: That's correct. I tried to
14 correct that. Utility lawyers. Lawyers with experience
15 over there, of which I'm one now.

16 Q (By Mr. McLean) Did you pay John Marks?
17 That's the one you paid 2,500 of the 11,000?

18 A Yes, I think his total bill was some 10,000 or
19 11,000. And I've paid others \$250 an hour; but just to
20 go to an agenda conference, the smallest bill I ever got
21 was about \$2,600 or \$2,700.

22 And this Utility cannot afford utility
23 lawyers. They're very expensive. But it does need
24 legal assistance in doing contracts and handling routine
25 legal matters. I hope it doesn't need the type of legal

1 assistance its had in the past three or four years.

2 Q Yes, sir. And you're convinced that that's
3 the truth, right?

4 A Yes.

5 Q Okay. Now, aside from your testimony, what
6 have you brought to this case to say it's true?

7 A Just my testimony and the other evidence that
8 we've presented.

9 Q Okay. Well, let's talk about some of that
10 evidence. Let's look at Exhibit No. 13. Mr. Brown,
11 have you received a Request for Production of Documents
12 No. 92?

13 MR. PFEIFFER: It's GDB-7.

14 MR. MCLEAN: Correct.

15 Q (By Mr. McLean) You received a Request for
16 Production of Documents No. 92, which asked you to,
17 quote, "Provide a copy of all legal bills rendered to
18 the Company in '93 and '94." Do you accept that as
19 true?

20 A Yes, I would accept that. I recall a request
21 for this.

22 Q Thank you, sir. Did you resist the response
23 that you gave us to '92?

24 A I haven't seen this, I assume somebody gave
25 you this response from my office.

1 Q So you are not responsible for knowing what
2 discovery was produced in this case?

3 A I'm responsible for it, but I have not
4 examined this particular document before now.

5 Q Do you have any reason to believe that this is
6 not what we asked for and were provided?

7 A No, I have no reason to believe that.

8 Q Okay. Now, the first page of that exhibit is
9 a schedule prepared by St. George Island Company
10 Utility; isn't that right?

11 A It appears to be, yes, sir.

12 Q Thank you, sir. For 1994, there are two
13 entries for Mr. Pfeiffer's law firm; is that right?
14 Look up at the top of the page --

15 A Yes, sir.

16 Q -- the first and third entries.

17 A Right.

18 Q So they're not part of the Company's normal
19 ongoing business expense; isn't that right?

20 A That's right.

21 Q Okay. That's rate case expense?

22 A Yes, sir.

23 Q Now, let's look at the first six months of
24 1994. The Utility incurred no legal expense except for
25 the rate case expense and the expenses charged by you in

1 your capacity as a lawyer; is that right?

2 A That's right.

3 Q Okay. Let's look at 1993 and go over each one
4 of these items. The first charge is from Pete Dunbar
5 for \$839.32. Correct?

6 A Yes.

7 Q Now, this is represented to be a bill from
8 1993, correct?

9 A Yes.

10 Q Okay. Let's turn to Page 11 of the exhibit,
11 if you would. And there's the number 829.32, the second
12 number from the bottom, right?

13 A Yes, sir.

14 Q Now, this is billed for January 1993? Up at
15 the top right corner, you can see that it is.

16 A I see a date there, 1-31-93.

17 Q Okay. \$829.32 is identified on that bill as a
18 previous balance, right?

19 A Yes. \$829.32 is a previous balance.

20 Q Okay. Is it fair to say that 829.32 is a 1992
21 bill?

22 A I believe that's true.

23 Q Thank you, sir. Now, let's look to --
24 incidentally, do you know whether you've paid that \$829
25 to Pete Dunbar?

1 A I believe that's been paid. It looks like
2 there's an error on this -- well, maybe it was to Pete
3 Dunbar, yeah, it probably is, okay. One of them is in
4 -- well, they total \$1,063.71, those two amounts, I
5 guess.

6 Q Yes, sir. One is a current statement and one
7 is a previous balance.

8 A Right.

9 Q Do you know how previous it is?

10 A This was all during a period of just a few
11 months. I believe this was probably late '92 and early
12 '93.

13 Q Okay. Let's look down the list to the Shelfer
14 bill for \$160.50?

15 A Yes.

16 Q It's 12-93, right? And the detail for that
17 bill is shown -- or the support for that bill is shown
18 on Page 15 and 16; is that right?

19 A Yes, sir.

20 Q Okay. Page 16 shows a bill of \$810.50. And
21 can I gather that the handwritten material there shows
22 that you paid \$650?

23 A It appears we paid \$650 on 10-19-92, leaving a
24 balance due of \$160.50.

25 Q And that balance due arose some time before

1 November 10, 1992, did it?

2 A Apparently so.

3 Q Okay. So that, too, would be a 1992 bill,
4 wouldn't it?

5 A Yes, sir.

6 Q Okay. The next one that I see is for Don
7 Caparello?

8 A Yes.

9 Q Okay. For 627.50?

10 A Right.

11 Q And that's for the month of -- rendered
12 December 11, 1993?

13 A Right.

14 Q Okay. And the detail for that is on Page 12
15 and 13?

16 A Yes, sir.

17 Q Now, this bill appears to be for 1992 as well,
18 doesn't it?

19 A Yes, sir.

20 Q Okay. Now, the next item for David Barrett is
21 \$1,076 for the month of 11-93?

22 A Which page is that on?

23 Q I'm sorry, look to your first page of the
24 schedule that you all apparently prepared, and it says,
25 "David Barrett for \$1,076.43." (Pause)

1 Doesn't appear to be any backup for that one,
2 does it?

3 A I don't see any bill from David Barrett.

4 Q Okay. We don't know whether that was for '92
5 or '93 then, do we?

6 A My recollection is that was for '92.

7 Q Okay. Let's look at the next one, that's for
8 Ben Girtman?

9 A Yes, sir.

10 Q And it's for \$2,800?

11 A Yes, sir.

12 Q It lacks backup as well; is that right?

13 A We have a bill, it's not in this package.

14 Q Why is it not in the package?

15 A I don't know, maybe we couldn't find it. But
16 I did get a bill from him.

17 Q Okay. So do you want the Commission to rely
18 to your representation that there is a bill and to infer
19 from that that the entry is correct here and probably
20 your recollection of the time, as well?

21 A I think the Commission should rely on its
22 audit Staff, which I believe documented all these
23 bills --

24 (Simultaneous conversation.)

25 Q So if Public Counsel asked for the bills, you

1 just give a look; and if you don't find it, the
2 Commission Staff can take care of it, right?

3 A No. There's just a limited amount of time and
4 resources to respond to this voluminous discovery. We
5 don't have 20 or 30 people to help us.

6 Q So you just didn't get to it?

7 A We've do the best we can with limited staff.
8 We've had a lot of people down there working until 3:00
9 to 4:00 in the morning, 12:00 many nights, and there's
10 just limited resources to handle things like this.

11 Q Does the Commission have a procedure if you
12 get voluminous discovery to provide you with some relief
13 from that voluminous discovery?

14 A I'm not sure what relief the Commission has
15 for that.

16 Q Are you not familiar with the Florida Rules of
17 Civil Procedure?

18 A I'm familiar. we tried to get some relief
19 from that, but --

20 Q But your argument just wasn't good enough, was
21 it?

22 A My legal argument was not good enough. All
23 I'm saying is that, legal arguments aside, there is a
24 limit to human endurance and employee response and
25 abilities. You cannot --

1 Q Why is it so difficult to find a bill which
2 was rendered to your Company?

3 A Well, we found this stuff over and over. We
4 found lots and lots of stuff and then the auditors would
5 come back and say the janitors threw it away. So we had
6 to start all over and spend another week or two to
7 getting the same stuff. I mean there's just lots of
8 problems.

9 It seems simple when you isolate one thing,
10 but it's really not that simple when you have two or
11 three people responding to duplicate staffs of six and
12 eight and 20 people, asking hundreds and hundreds of
13 questions. It's very easy to ask questions and ask for
14 documents; it's more difficult to respond and detail it
15 all out.

16 Q So let's just throw the \$2,800 in because you
17 were so busy?

18 A No. This was part of our test year expenses.
19 This was documented to the satisfaction, I believe, of
20 the PSC Audit Staff. If it was not, I'm sure that it
21 would have been shown as an exception in the audit
22 report. I don't recall it being an exception.

23 But for whatever reason -- I hadn't seen this
24 before today. For whatever reason, I don't see that
25 particular bill, the David Barrett bill, in here. I'm

1 just saying that I recall very specifically hiring his
2 firm during 1992 to handle matters for the Utility
3 company. I recall him doing the work. I recall getting
4 the bill.

5 Q Do you recall paying the bill?

6 A I recall paying part of some bills to David
7 Barrett, I don't know if all of that one was paid.

8 Q Well, I think I was talking this time about
9 the Ben Girtman bill. But how about the Ben Girtman
10 bill?

11 A I paid him some money. I don't know -- I
12 don't think he's been paid in full either.

13 Q How about Mr. Rayburn's bill for \$28? No
14 backup for that, the same story?

15 A I don't know if that's been paid. I believe
16 it has, but right now I don't recall if it's paid.

17 Q Okay. And if we look down at Pete's bill in
18 the second to the bottom?

19 A Right.

20 Q That's \$234.

21 A Right.

22 Q And the support for that one is shown, isn't
23 it?

24 A It is shown?

25 Q Yes, sir, it's shown on Page 11.

1 A It appears to be.

2 Q Of the ones we've talked about, that's the
3 only one you can say for sure occurred in 1993, isn't
4 it?

5 A According to this bill, all that work for the
6 \$234 was done in January of '93.

7 Q Exactly. And that's the only piece of work on
8 that bill that was done in 1993; is that right?

9 A Yes, sir, it appears to be.

10 Q Okay. Now, with respect to the front page
11 there, POD '92, it says up at the top of Page 1, with
12 respect to all of those billings under the subtotal,
13 except bills to yourself, all that stuff was done in
14 1992, except Pete Dunbar's \$234, right?

15 A I'll take your word for that. It appears to
16 be.

17 Q Okay. Let's look at the legal bills that you
18 rendered to the Utility. That would be GDB-8, or it has
19 been marked by the Chairman as Exhibit No. 14.

20 Mr. Brown --

21 A Which number? (Pause) Okay.

22 Q Mr. Brown, speaking of 1993, did you need
23 outside legal counsel during that year?

24 A During '93?

25 Q Yes, sir.

1 A I probably needed it. I'm not sure if we
2 hired any or not.

3 Q Okay. So you didn't pay any, did you?

4 A I don't recall.

5 Q Actually, I probably ought to ask another
6 question. You weren't even billed for any in 1993, were
7 you, other than bills which arose from services rendered
8 in 1992?

9 A Offhand, Mr. McLean, I don't recall hiring
10 outside lawyers for much of 1993, with the possible
11 exception of Pete Dunbar.

12 Q Okay.

13 A And then rate case lawyers.

14 Q Now, let's look at the legal bills that you
15 rendered to the Company. And that's from Gene D. Brown
16 to St. George Island Utility Company, Limited.

17 A I see one here.

18 Q One, yeah, okay, it's one bill with a number
19 of entries, right?

20 A Yes.

21 Q And that's April 12 through May 12, 1993?

22 A Yes.

23 Q Which you drew apparently -- you drew the bill
24 in 1993, May 24th of 1993, right?

25 A Yes.

1 Q Okay. Now, these bills were provided to us in
2 response to POD No. 78?

3 A Apparently so.

4 Q Thank you, sir. You didn't provide any other
5 bills, did you?

6 A No, sir, I don't believe I did.

7 Q Okay. At the bottom of the page, it says,
8 "Reduced as per agreement with the Utility. Total now
9 due, \$1,000."

10 A Right.

11 Q Now, referring back to the addendum and to the
12 original retainer, the original retainer billed at the
13 rate of \$1,000 a month; is that right?

14 A Right.

15 Q And then after consultation with apparently
16 the auditors and your notification or the letter from
17 Mr. Seidman, you decided to amend that agreement to
18 provide for \$2,000 per month, right?

19 A That's correct.

20 Q Now, I'm interested with respect to the
21 timing. There is a forgiveness of this bill or, I
22 should say, a reduction of this bill in Exhibit No. 14,
23 isn't there?

24 A Yes.

25 Q Now, my question is: Did you reduce this bill

1 before or after you increased retroactively the amount
2 of the retainer to be paid?

3 A I reduced this bill before that at the request
4 of Mary LaBatt. I prepared the bill at her request and
5 I kept time records at her request and I reduced the
6 bill so that she would co-sign a check for \$1,000 to my
7 law firm for the work I did.

8 Q Okay. Why did Mary LaBatt leave your employ?

9 A We reached an impasse regarding plans for the
10 third well.

11 Q And what was the nature of that impasse?

12 A I wanted to fulfill a financial commitment
13 that was made prior to the time that she came on as
14 co-manager to guarantee payment to Rowe Drilling, who
15 was putting the well in pursuant to an escrow account
16 that we had set up for \$75,000. In order for Rowe
17 Drilling to complete the well, he wanted me, or the
18 Utility company, to guarantee that if he finished the
19 well, he would be paid the \$75,000 that I had placed in
20 escrow to pay him.

21 Mary LaBatt -- and there was also a
22 disagreement. Another developer sent \$25,000 to us to
23 add to that and she didn't want to put that in the
24 escrow account to pay for the well; she wanted to put it
25 in a separate escrow account without any commitment that

1 it could be applied to the well. And the developer
2 said, "Well, if you are not going to use the money for
3 the third well, I don't want to give you the money." So
4 I sent the \$25,000 back. That was the first
5 disagreement.

6 The second bigger disagreement was that she
7 insisted we put it in an escrow account with a
8 Commission Staffer, who I never knew who it would be,
9 but somebody would make the decision at a later date as
10 to whether or not to pay for the third well. And that,
11 from a practical management point of view, made it
12 impossible to do business because nobody would go spend
13 \$75,000 worth of labor and materials if they don't know
14 if they're going to get paid.

15 And we had various and sundry meetings with
16 the Commission and the Staff, mainly the Staff, and we
17 could never resolve that and so she said that either I
18 agreed with her to put it in escrow without any
19 assurance that it would be used for its intended
20 purpose, and had I done that, the third well would not
21 have been completed. In fact, that held it up for
22 months, the arguing over that point.

23 So I finally made the decision. I either had
24 to let her leave and take my chances and go ahead and
25 complete the well or turn it over, lose total control of

1 it, and know that the well may or may not be completed.

2 So I refused to put the money in escrow
3 because that would have been a breach of our prior
4 agreement with George Marr and Lamar Rowe, who were
5 counting on that money to finish the well. And that's
6 when she left and that's the reason she left.

7 Q When the drilling company was negotiating to
8 build the well with you, they were negotiating with a
9 judgment debtor, weren't they?

10 A Well, Armada Bay is not a judgment debtor. We
11 were managing the Utility company. The Utility does
12 have a judgment that I got my mother to buy so that the
13 judgment would not be acted upon.

14 Q So Armada Bay has the authority to order up a
15 No. 3 Well for 75-grand, but doesn't have the authority
16 to hire a law firm for 1,000 a month?

17 A No, it has the authority to negotiate. It
18 doesn't have the authority to sign agreements, but it
19 has the authority to manage the Company.

20 Q Oh, I see. Now, when the well drilling
21 company wanted you to put the money in escrow, what gave
22 rise to their concern that they might not be paid such
23 that they wanted the money in escrow, if you know?

24 A I think there are a lot of reasons. They had
25 probably read in the paper that the PSC was trying to

1 throw me out as a manager. And the PSC had sent big
2 fliers to everybody on the island, all the customers,
3 saying that our certificate was going to be revoked.

4 We were operating under a great deal of
5 financial stress and public perception that was very
6 adverse. And I don't know if he would have required
7 that otherwise, but it was good business on his part and
8 everybody's part to -- and I wanted to do it that way
9 because I wanted to have the cash in the bank. And we
10 signed an agreement prior to this co-management
11 situation under which I said, "Mr. Rowe, this well has
12 got to be complete, it has got to be complete quick.
13 Now, if I put this cash in the bank so that all you have
14 to do is finish the well, you know you can just go down
15 there and get a check drawn. Will you get in there and
16 finish the well quick?" And he said, "I'll be on it
17 Monday morning." And he was. And then all of this came
18 up and it was held up for months.

19 Q And, Mr -- what's the well driller's name?
20 Well, let me just ask the question. The well driller
21 eventually had to sue you for the money anyway, didn't
22 he?

23 A The well driller had to sue me for the money
24 when the PSC Staff-designated co-manager refused to let
25 me comply with my commitment, legal commitment to him to

1 pay him.

2 Q So it wasn't Gene Brown's fault, it was Mary
3 LaBatt's fault?

4 A I'm not trying to say whose fault it was, I'm
5 just trying to say that there was a difference of
6 opinion, a serious difference of opinion between the --
7 well, Mary LaBatt initially agreed with me and signed a
8 letter, she was going to do it my way. I think at some
9 point she talked to somebody with the Staff and they
10 said, "No we can't guarantee. We want that money under
11 our control and after the well is finished, we will then
12 decide if we think that money should be used to pay for
13 the well."

14 And that may seem fine to the PSC Staff, but
15 to a well driller that didn't seem like an adequate
16 solution because he wanted to know very simply, "If I
17 finish the well, will you pay me?" And it was not
18 adequate to say, "Yes, Lamar, I'll pay you if some
19 unnamed, unknown Staff member believes that you should
20 get paid instead of somebody else." People just don't
21 do business that way.

22 Q So it turns out that it's Mary LaBatt's fault
23 that the well was four months late or four months at the
24 time --

25 A No, you're putting words in my mouth.

1 Q I am. And I asked you to agree with me.

2 A No, I disagree with you.

3 Q Okay, tell me how.

4 A I don't say that it's her fault. I think she
5 and I could have agreed; I think we did basically agree
6 verbally. And I think she signed one letter -- when we
7 said how we wanted to do it and we just couldn't get
8 that letter signed off on by the powers that be at the
9 Commission. And we had lots of discussions about this
10 and we agreed to disagree about it, and I just moved on
11 down the road and finished the well and Mary LaBatt
12 left.

13 Q She's the one that moved on down the road,
14 isn't she?

15 A I moved on down the road and finished the
16 well. She moved on down to road to take care of her
17 kids or run her business or whatever she wanted to do.

18 Q She moved on up the road. So when the
19 co-managers had a fight, Mary LaBatt was out and you
20 stayed in?

21 A That's right.

22 Q Okay. Now, if you were co-managers, why
23 wouldn't one of the options be you hit the road and she
24 stayed in?

25 A I don't think she wanted to stay by herself.

1 Q Was that one of the options at that time?

2 A I don't think she would have agreed. She
3 never offered that. Had she offered to stay and run it
4 and solve the problems and put up the money and time and
5 energy to solve the problems, then I would probably have
6 accepted that deal.

7 Q Why did Mr. Munt quit?

8 A George Munt quit because I asked him to quit.

9 Q And he was a co-manager at the time?

10 A No. He was the general manager.

11 Q He was the general manager.

12 A He was what I am now.

13 Q Okay. Was he working for Armada Bay or
14 working for the Utility?

15 A No, he worked for the Utility. There was no
16 Armada Bay back then.

17 Q Do you mean to say there was no Armada Bay
18 managing utility or it was, in fact, no Armada Bay back
19 then?

20 A I don't believe there was an Armada Bay
21 Corporation back then. It's been formed since then.

22 Q Okay. And why did you ask Mr. Munt to leave?

23 A For various reasons. I didn't think he was
24 doing the job and we were not making much progress and
25 he wasn't doing much work.

1 Q Didn't you represent to the PSC in the last
2 case that George Munt would make things a whole lot
3 better?

4 A I thought he would. I hired him on their
5 recommendation.

6 Q And aren't you making similar allegations in
7 this case about your current Staff?

8 A No, I'm not talking the future with my current
9 Staff, I'm talking about what we've done over the last
10 three years with the current staff. I'm asking the
11 Commission to look at what we've done since Hank Garrett
12 and I took it on full time, and judge whether we're
13 going to continue to do that. George Munt came on as a
14 result of a PSC order in '89 that said that we needed a
15 new manager with utility experience. And he was
16 recommended, he used to work for the Commission. He had
17 managed a utility company in Jacksonville, but he had
18 problems managing this one, at least from my perception.
19 So I got rid of him and hired another manager.

20 Q Which manager did you hire after that?

21 A Dick Voonsoosten.

22 Q Was that a PSC-designated manager?

23 A No, he was a manager with management
24 experience and ability.

25 Q How did that work out?

1 A It worked out pretty well. He was only
2 willing to work four days a week because he had another
3 consulting business. He was a CPA, had been a partner
4 with Price Waterhouse. And he worked for \$36,000 a
5 year, four days a week, plus benefits. And he said he
6 could only do that for a limited period of time, and he
7 said he would stay if, but only if I paid him \$50,000 a
8 year. And I didn't feel I could afford him at that time
9 and --

10 Q Well, the Utility is paying more than that for
11 a manager if the Commission should approve this case,
12 aren't they?

13 A No. If they approve what we're asking for --
14 the manager in the last case had a package of about
15 \$34,000. George Munt made in the low 40s, Dick
16 Voonsoosten wanted 50. We're asking for the manager,
17 general manager on an ongoing basis to be \$42,000 a
18 year, plus ordinary normal benefits like health
19 insurance and pension plan.

20 Q So it's no longer 48, it's 42 now?

21 A That's correct.

22 Q Was it ever 48?

23 A It was 48 initially.

24 Q Okay. And then it changed, right?

25 A Yes.

1 Q Changed since the MFRs?

2 A Yes.

3 Q But health allowance is still provided outside
4 that number and in addition to that number, isn't it?

5 A It would be, based on what I believe it's
6 going to take to have a manager, a general manager, a
7 professional manager to continue to run this Company.

8 Q And 12,000 -- and a mileage allowance?

9 A And a mileage allowance or an auto allowance
10 for the manager.

11 Q But no pension for the manager; is that right?

12 A No. I think at \$42,000 a year, I think the
13 manager should be on the pension plan. I think to
14 attract --

15 Q Okay. So there is the expense of the pension
16 plan to be added to that, right?

17 A That's what I think to be fair and reasonable.

18 Q Okay. Let's turn to Exhibit No. 10, it's also
19 known as GDB-9. Now --

20 CHAIRMAN DEASON: I believe that's Exhibit 15?

21 MR. McLEAN: No, sir, I believe it's
22 Exhibit 10.

23 CHAIRMAN DEASON: You said GDB-9?

24 MR. McLEAN: Oh, did I? I'm sorry, it is
25 Exhibit 15, I'm sorry.

1 Q (By Mr. McLean) Now, this is a rendition of
2 the bills that you ordered -- that you rendered during
3 that time, right?

4 A During which time?

5 Q That we spoke of earlier.

6 A When Mary LaBatt asked me to keep some time
7 records?

8 Q Yeah.

9 A No. This seems to be, the one I'm looking at,
10 seems to be --

11 Q You have the right one. This is '94.

12 A Seems to be some '94 bills.

13 Q Okay. Okay, I see the confusion. I believe
14 we asked for your 1994 bills and you sent us all these;
15 is that right?

16 A You asked for some recent bills within the
17 last months --

18 Q Yeah, I'm with you, right. These are the ones
19 you delivered to us on Friday, a week ago tomorrow?

20 A I think that's right.

21 Q Yes, sir. Okay. This is an update, then, of
22 a request we made earlier for your legal bills, right?

23 A Yes.

24 Q Okay. This has your time records through July
25 1, 1994?

1 A Yes. Apparently does.

2 Q Do you maintain your time records in
3 contemporaneous fashion?

4 A Normally I do.

5 Q Well, normally you don't keep any time records
6 at all, right, Mr. Brown?

7 A No, normally, I do.

8 Q Oh, normally you do. Well, for 1992 and 1993
9 and 1994, unless I'm seriously mistaken, we have the
10 period where Ms. LaBatt made you do it, or suggested
11 that you should, and this period, too.

12 A Normally I keep them. I've been keeping them
13 for the last six or seven months.

14 Q Oh, I see. So, normally is the last six or
15 seven months, not the last six or seven years?

16 A I've kept them for the 25 years with most
17 clients.

18 Q Okay. But not with this client?

19 A No. This client was on just a straight
20 retainer basis.

21 Q I see. Is this the only client you have that
22 is a regulated enterprise?

23 A I think most everybody is regulated these
24 days.

25 Q I guess so. Well, is this the only one you

1 have that's regulated by the Florida Public Service
2 Commission?

3 A Yes, sir.

4 Q Good. And your testimony is that you normally
5 keep contemporaneous but you did not with respect to
6 this client, namely, the utility, right?

7 A It depends on the agreement. If you have a
8 retainer agreement with a not-to-exceed monthly amount,
9 I normally would not keep detailed time records. And if
10 you have a flat fee, you wouldn't keep detailed time
11 records. If you have a billing arrangement or an
12 agreement with a client requiring an hourly billing
13 record, then I keep time records.

14 Q Okay.

15 A This was not required initially with the
16 Utility company on a retainer, but it is required by the
17 PSC Staff.

18 Q So some utility or some of your clients, when
19 they negotiate with you they apparently demand or at
20 least suggest that you keep that hourly time record,
21 right?

22 A If you have a client that you agree to
23 represent on an hourly basis, then it's incumbent upon
24 you to keep detailed time records.

25 Q Sure.

1 A If you have a client that's a retainer, it's
2 normally not done, or if you have a client that's a flat
3 fee, that's normally not done.

4 Q I understand that. But clients do have the
5 opportunity to negotiate for an hourly accounting, don't
6 they?

7 A Yes.

8 Q Now, did the Utility company have that option?

9 A The Utility company is managed by me.

10 Q Sure.

11 A The law firm is managed by me. I thought it
12 was more cost-effective, less confusing to not have
13 detailed time records for \$1,000 a month or \$2,000 a
14 month. But after I was requested to keep them, I've
15 been keeping them since then.

16 Q So what you're saying is essentially you sat
17 on both sides of the negotiating table and did what was
18 best for both parties; is that right?

19 A Yes.

20 Q Okay. And in the one instance you represented
21 yourself as a lawyer and in the other instance you were
22 also the lawyer of the Utility on whose behalf you were
23 negotiating, right?

24 A I have control of the Utility company and I
25 make decisions as a lawyer and I represent the Utility

1 company.

2 Q And you're appearing in a representative
3 capacity for the Utility company; is that right?

4 A I'm not right now. I have from time to time.

5 Q I understand. When you negotiated the
6 retainer with the Utility, you weren't a lawyer right
7 then for the Utility company?

8 A I don't know what I was at that instant in
9 time. I just set a fee that I thought was fair and
10 cost-effective and operated under that.

11 Q Well, I'm interested to know whether you
12 appeared in a representative capacity on one side of the
13 table, and on your own behalf on the other side of the
14 table.

15 A I can only sit on one side of the table
16 physically. Are you talking physically?

17 Q No, sir. I'm talking ethically.

18 A Well, are you suggesting there's an ethical
19 problem?

20 Q No, I want you to evaluate whether there's an
21 ethical problem.

22 A Well, if you think there is one, why don't you
23 refer me to the canons of ethics that you think I
24 violated.

25 Q Because I can't seem to get an answer out of

1 you. Were you appearing in a representative capacity on
2 one side of the table, and in your own capacity on your
3 side of the table?

4 A I agreed to represent the Utility company for
5 1,000 a month and then later changed that 2,000 a month.
6 I have now said in response to all of this hassle that I
7 think 1,000 a month, on an ongoing basis, is a
8 reasonable and necessary amount to represent this
9 Utility company.

10 Q What chance did the Utility company have to
11 negotiate a tough deal when their lawyer was sitting on
12 the other side?

13 A I've tried to negotiate tough deals with
14 lawyers. The best fee that I got from an competent law
15 firm to represent me in the revocation was \$100,000.
16 The fees in this rate case range from 30,000 to 50,000
17 and 70,000. Every time I have anything to do with the
18 Commission, it's 3,000 to 15,000. And every time I hire
19 lawyers, it's a lot more than I can do the work for. So
20 it's in the best interest of the Utility company that I
21 do a lot of this work, in my opinion.

22 Q That is your opinion, isn't it?

23 A Yeah.

24 Q But there's nothing in this agreement or any
25 of this that would lead one to that conclusion, is

1 there? Because it was an arms-length transaction, in
2 fact, you were sitting on both sides of the table. Can
3 you tell the Commission that the Utility couldn't have
4 gotten a better deal if they had dealt with some other
5 lawyer? What is your basis for that statement?

6 A The basis for that statement, Mr. McLean, is
7 my 25 to 30 years of practicing law and managing
8 companies and my intensive experience over the last
9 three to five years with this Company and its legal
10 problems. And it's my judgment that this Company could
11 not hire competent legal representation to do what I've
12 done for the past three or four years for any less than
13 2,000 a month. And it's my further opinion, based upon
14 my knowledge of what it takes to do the day-to-day legal
15 work for a utility company of this size and complexity,
16 that that will cost, on an ongoing basis, at least
17 \$1,000 a month.

18 Q I understand.

19 A Because lawyers charge from \$175 to \$250, in
20 my experience, competent lawyers with utility experience
21 and that's only a few hours a month. And we constantly
22 have documents to draft and matters to take care of and
23 I just believe that that's going to cost, on an ongoing
24 basis, \$1,000 a month. And that's what I'm asking the
25 Commission to accept. And if that's not reasonable,

1 then they will have to make the decision as to what is a
2 reasonable legal expense for this Utility.

3 I would like to remove the personalities from
4 this. I would like to ask the Commission to not make
5 this a Gene Brown-versus-whomever case. I'd like to ask
6 the Commission to view this as an ongoing utility
7 company with problems to solve and service to provide,
8 whether it's done by me or somebody else. And I
9 believe, based on all this experience, with regard to
10 legal fees, it's going to take \$1,000 a month or \$12,000
11 a year to handle the legal requirements of this Utility
12 company, whether I do it or somebody else does it.

13 Q Well, in order to reach that conclusion, do
14 you have any experience representing any other utility
15 company that you can compare with this?

16 A I represented Talquin Electric Cooperative for
17 many, many years, I have extensive experience.

18 Q In the regulatory theater?

19 A They were not -- were not and are not --
20 regulated by the Public Service Commission.

21 Q I guess that means no?

22 A That means no.

23 Q Okay.

24 A But they have other similar utility-type
25 problems.

1 Q Is Talquin's more similar to St. George Island
2 than the companies that Ms. Dismukes used?

3 A I don't know. I have not analyzed all the
4 companies that she used.

5 Q But you have just suggested that you have
6 experience there. Is that at all comparable to the
7 experience you have here?

8 A No. I've had experience with this company and
9 I've had experience with Talquin Electric. Those are
10 the only two utility clients of any substance that I've
11 represented over the years that I can recall.

12 Q Well, you called on your 25 years of
13 experience to say whether the fees in this case are
14 reasonable, right?

15 A Yes. And I'm primarily basing that on my
16 experience over the past six years or so with this
17 Company, managing it and representing it, and my
18 experience with hiring utility lawyers who represent
19 companies before the PSC. And I hope that phase of the
20 Utility's ongoing legal requirements will be decreased
21 substantially after this rate case is processed. But
22 it's still going to have things like -- I mean, like,
23 well, Mr. Day, he illegally hooked up his next door
24 neighbor and we had to go up and have a hearing. I
25 mean, somebody's got to --

1 MS. SANDERS: I object. (Simultaneous
2 conversation.)

3 A When Hank Garrett went down and found an
4 illegal meter that the developer had buried under four
5 feet and we tried to bill him for the last 12 months,
6 and we had to have a hearing at the PSC, those type
7 things require legal representation. Those type things
8 will continue. Hopefully, the revocation in some of
9 those things will not be continued.

10 Q (By Mr. McLean) All your experience with the
11 matters you just mentioned are connection with your
12 association with St. George Island Utility Company,
13 right?

14 A As I said, my belief that it will require
15 \$1,000 a month on an ongoing basis for legal services is
16 primarily based upon the last six years experience in
17 managing this Company and in dealing with utility
18 lawyers.

19 Q Well, have you managed any other company?

20 A I've managed lots of companies.

21 Q Any other utility company?

22 A No, this is the only utility company I've ever
23 managed.

24 Q So then you could not say, could you, whether
25 this is an unusually litigious utility, could you?

1 A I could say, with a great deal of certainty,
2 that this utility has been involved in more litigation
3 than a normal utility in the past fewer years. But I
4 could also say that any utility company operating on St.
5 George Island with the regulatory environment and the
6 customers and everything else is going to have a need to
7 continually meet with developers, customers, agencies,
8 the Fire Department, the Civic Club, the Homeowners
9 Association, the PSC, Northwest Florida Water Management
10 District, DEP, there's -- every time I go to a meeting
11 with developers or whoever, they have lawyers, the
12 Commission has lawyers, DEP has lawyers. Every time you
13 have to do one of these Fire Department hydrant
14 agreements, that has to be drafted. You have to do
15 bills of sales and easements. You have to do developer
16 agreements. There is an ongoing, everyday need for
17 legal services with the utility company, whether or not
18 that utility company is unusually "litigious," as you
19 say.

20 Q Don't all the other utilities face exactly
21 those same influences? Or is it just Gene Brown's
22 utility?

23 A No. I think all utility companies have some
24 common problems.

25 Q Uh-huh. But you would have to know that

1 measure of comparability, wouldn't you, to suggest
2 whether the fee, the legal fee, sought by St. George
3 Island Utility is reasonable or unreasonable, wouldn't
4 you?

5 A I would not have to know details about every
6 other utility company.

7 Q I didn't ask you about details. Go ahead.

8 A I would just have to know what I believe it's
9 going to take to run this one based on my experience in
10 the past.

11 Q All of which is self-serving, isn't it?

12 A I would like to get out of the business of
13 being personally involved. I don't really -- I'm not
14 going to make any money representing this Utility
15 company at \$1,000 a month or \$12,000 a year.

16 Q The only --

17 A -- if I could find somebody to do it for that,
18 I'd hire them.

19 Q Well, you pay, according to your testimony
20 before, you seemed to pay a good deal of money into the
21 utility frequently, right?

22 A I seem to pay a lot of money into it?

23 Q I think you said you made contributions to the
24 utility. Wasn't that your testimony?

25 A I never used the word "contributions."

1 Q Well, of course not. Do you want to choose a
2 better word?

3 A I've learned not to use that one. I've made
4 loans. We have an ongoing loan relationship between
5 some of my affiliates and the utility company.

6 Q Okay. So you're making loans from time to
7 time; you expect to have those loans repaid?

8 A Yes.

9 Q Okay. And the only compensation you receive
10 from the Utility is through Armada Bay Company, right?

11 A I receive compensation through Armada Bay
12 Company and through the law firm.

13 Q Oh, yeah, sure. But I understand the gist of
14 your testimony is that you won't get rich by
15 representing the law firm at \$1,000 a month. I
16 interpret that to mean that you're not being paid enough
17 now.

18 A I don't think anybody else would do it for
19 \$1,000 a month, currently. I think that on an ongoing
20 basis it will be possible and reasonable to assume that
21 this Utility company, whether it's next year or ten
22 years from now, can find a lawyer or have legal expenses
23 of \$1,000 a month, which is what, six hours or so at
24 normal rates per month? That's a couple of meetings and
25 a bill of sale and an easement. It's just not that much

1 money, based on my experience with what lawyers charge.

2 Q Let's look at a little bit more detail of your
3 time slips. Let's open to Page one, for example.

4 There's a code up at the top of each page and it says,
5 "L/M." Is that correct?

6 A Yes.

7 Q What does that mean?

8 A Over the past several days or weeks I've
9 started just putting "legal management" because I've
10 been working night and day on the rate case and it was
11 just hard to distinguish.

12 Q There's no record here from July 1 through
13 July 14, is there?

14 A I don't know if there is or not.

15 Q Well, you can have a look.

16 A I don't see any records for that period of
17 time.

18 Q Does that mean you haven't done any work
19 during that period of time for the Utility?

20 A No, I've done the work and I have time records
21 for that, but --

22 Q You didn't give them to us as of last Friday,
23 did you?

24 A Apparently, they haven't pulled them. It was
25 probably sitting on my desk on the little pad that I

1 keep. I fill these out every day; but the last week or
2 two, I've just been primarily writing down "Work on rate
3 case" and "General management," because that's all I've
4 been doing.

5 Q So the discovery that the Chairman ordered you
6 to answer, you just didn't pull it off the desk? Or was
7 that somebody else's fault?

8 A It is my fault if it didn't get answered,
9 but --

10 Q So you just didn't pull it off the desk?

11 A I don't know what the request was
12 specifically.

13 Q It was for your time records, Mr. Brown. I
14 think we agreed to that earlier.

15 A All the time records as of what date?

16 Q As of the day you handed them to us.

17 A Well, if that's the requirement, then we did
18 not give you all the time records as of, what's today,
19 the 20th? And we gave those to you --

20 Q Friday, which was the 14th.

21 A Okay. Well, I don't see any time records
22 here.

23 Q Is that maybe because you don't get around to
24 doing the time records until well after the fact?

25 A No. I do these about every day. Sometimes I

1 might miss a day and do it the next day, but I've been
2 keeping them current.

3 Q So it's your testimony that these things that
4 have different days on them -- each one is for a
5 different day, I happen to notice -- you didn't prepare
6 all of those on the same day, did you?

7 A I may have prepared one or two or three on one
8 day recently. Normally, back earlier this year when I
9 was keeping more detailed notes, I was doing it every
10 day pretty routinely.

11 Q But you didn't send us those, did you?

12 A We've sent you all of them for this year, I
13 believe; we made all of those available.

14 Q And your testimony would be that those would
15 be more detailed than these?

16 A The ones earlier in the year, which are when
17 we weren't as busy as we have been in the last several
18 weeks, would be more detailed because I took the time
19 and I was working more on other Utility company matters.
20 Recently, I've been spending just about all my time in
21 legal work in connection with this rate case.

22 Q Were you spending your time that way on the
23 bills that are listed on 7 and 8?

24 A No.

25 Q What were you doing on those days?

1 A I was working on a brief that relates to
2 Utility company matters.

3 Q Is the name of that lawsuit the Stocks Family
4 Trust v. Leisure Property, Limited, a Florida Limited
5 Partnership, St. George Island Plantation, Inc. and St.
6 George Island Utility Company, Limited?

7 A Yes.

8 Q Okay. Is that a rate case -- I'm sorry, is
9 that a cost of providing service to the people of St.
10 George Island?

11 A I don't know, that's for the Commission to
12 decide. I don't think that's a --

13 Q Well, I want to know what you think.

14 A I think when the Utility company gets sued and
15 it has to have a lawyer, that that's part of the Utility
16 company's legal expense.

17 Q And it's being sued by a Stocks Family Trust;
18 is that right?

19 A Yes.

20 Q And you feel it's the ratepayers'
21 responsibility to protect the Utility from the interests
22 of a former partner?

23 A I think it's the Utility company's
24 responsibility to provide legal representation to
25 protect it against lawsuits.

1 Q The Stocks Family Trust is Case 87-34; right?

2 A Right.

3 Q Okay. What's 85-62?

4 A That's another Stocks Family Trust case that
5 was consolidated.

6 Q What court is that case in, Mr. Brown?

7 A It's in the First District Court of Appeal.

8 Q Okay. So that's an appellate brief you're
9 working on?

10 A I worked on it there for two or three days and
11 filed it.

12 Q That's when you were too busy to keep detailed
13 time records for this case?

14 A I kept detailed time records.

15 Q Are these the detailed time records?

16 A I'm looking at it here.

17 Q Well, what's detail? It's eight hours a shot
18 on each day, isn't it?

19 A "Drafting brief."

20 Q Eight hours a day.

21 A Eight hours a day for two days, five hours
22 another day.

23 Q Mr. Brown, on Page 7 of the exhibit, there is
24 research --

25 CHAIRMAN DEASON: Mr. McLean? Mr. McLean?

1 MR. McLEAN: Yes, sir.

2 CHAIRMAN DEASON: How much more do you have
3 for this witness?

4 MR. McLEAN: Probably, it's hard to say, but
5 probably 20 minutes.

6 CHAIRMAN DEASON: We'll take 15 minutes now
7 then.

8 MR. McLEAN: Thank you, sir.

9 (Brief recess.)

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11 CHAIRMAN DEASON: Call the hearing back to
12 order. Mr. McLean?

13 MR. McLEAN: Yes, sir.

14 Q (By Mr. McLean) Mr. Brown, we were speaking
15 there, when we quit, about the entries on Page 7.

16 A Yes, sir.

17 Q There is reference there to a lease --

18 A Right.

19 Q -- a real estate lease. Can you tell us what
20 the nature of that lease was, who are the parties, et
21 cetera?

22 A That's a lease agreement between the Utility
23 company and Armada Bay Company, I believe.

24 Q Okay. That was prepared on, is that date
25 5-23-94?

1 A Looks like 5-23-94.

2 Q Okay. Now, when was this lease effective for?

3 A I don't know, if you have a copy there, I can
4 look at the effective date.

5 Q Actually, I don't. I was just going to ask
6 you to try to get it close.

7 A This is the famous office lease that
8 everybody's been looking for that I explained with a
9 verbal agreement, and I finally decided to put it in
10 writing.

11 Q And then if you wrote it down consistent with
12 that verbal agreement, well, that it would be more
13 persuasive, do you think?

14 A It wouldn't help persuade me, but it seems to
15 be -- I got tired of trying to explain that we don't
16 have one and thought it would be easier to just do one.

17 Q Was the lease made effective substantially
18 before this 5-23? And I guess I had better ask for some
19 sort of dimensions with respect to the time that passed
20 between when the lease was effective and when you drew
21 the lease.

22 A It was effective on the effective date shown
23 on the lease and it was drawn on the date shown on this
24 time record, I believe.

25 Q Was the effective date before or after the

1 time that you drew the lease?

2 A Oh, it was before.

3 Q How much before?

4 A It was probably about two years and five
5 months before. I'd have to look at it.

6 Q Okay. Now, that was the lease between Armada
7 Bay, that's Gene Brown the president, and the Utility,
8 that's Gene Brown the president, drawn by a law firm,
9 Gene Brown the president, right?

10 A That's right.

11 Q And it was sort of nunc pro tunc in that it
12 was now for then; is that right?

13 A Yes, memorializing the agreement which existed
14 earlier.

15 Q And you didn't have a written lease up until
16 then, did you?

17 A That's right.

18 Q Do you know whether leases for more than a
19 year should be recorded according to the statute of
20 frauds?

21 A Recorded in the Clerk's office?

22 Q No, sir, written down on a piece of paper
23 somewhere.

24 A I believe this is a month-to-month lease.

25 Q Oh, I see. So what was the need, then, to

1 draw a lease which is enforceable only on a
2 month-to-month basis for those past years?

3 A My need was to have something in writing so
4 that when people asked for it I could hand it to them,
5 instead of spending hours on end explaining what the
6 verbal agreement was.

7 Q Okay. And this is a month-to-month lease, so
8 Armada Bay could do like Mr. Seidman suggests, they
9 could run the Utility off and look for a new client, a
10 new tenant, could they?

11 A I don't know if Mr. Seidman suggested that,
12 but this is an arrangement that can be terminated on
13 short notice by either the lessor or the lessee.

14 Q And you're sitting on both sides of that
15 table, too, right?

16 A Yes, sir.

17 Q And in a representative's capacity on one side
18 and a personal basis -- no, you're a representative's
19 capacity on both sides of that issue, aren't you?

20 A Yes, sir.

21 Q Okay.

22 MR. McLEAN: Thank you, Mr. Brown.

23 WITNESS BROWN: Thank you.

24 CHAIRMAN DEASON: Ms. Sanders?

25 MS. SANDERS: Thank you, Mr. Deason.

CROSS EXAMINATION

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BY MS. SANDERS:

Q Mr. Brown, I asked Mr. Pfeiffer this morning to look at some tax records and I think he has shown them to you. Isn't it true that the Utility company has not paid its real property taxes for the land it owns?

A When? I think I testified yesterday, my recollection was we last paid ad valorem taxes back about '87, maybe? '88? '86? Along in there. Is that what the records show?

Q You can look at it. You've got -- I'll just give it to the witness, Your Honor.

(Witness provided document.)

A That's consistent with my recollection, Ms. Sanders. It shows zero for 1988; I think that's the last year we paid them. It shows some amounts due for '89, '90, '91, '92 and '93.

Q Okay. So you've not paid the taxes for those years, the real property taxes?

A That's right.

Q Okay.

A \$438 seems to be due.

Q For one parcel.

A For one parcel.

Q What about the other one?

- 1 A \$711.
- 2 Q What about the next one?
- 3 A \$6,742.
- 4 Q What about the next one?
- 5 A \$960.
- 6 Q What about the next one?
- 7 A \$959.
- 8 Q And the next one?
- 9 A \$959.
- 10 Q And the next one?
- 11 A \$659.
- 12 Q Okay. Now, you've also not paid the MSBU
- 13 taxes on that real property, have you?
- 14 A I don't think we've paid any taxes since '88.
- 15 Q Including the MSBU taxes, correct?
- 16 A If you say so.
- 17 Q Do you want to look at them?
- 18 A Yeah, let me look at them.
- 19 (Witness provided document.) (Pause) Okay.
- 20 Q So the MSBU taxes are outstanding also?
- 21 A \$50 a year, right.
- 22 Q Okay. And you have also not -- or the Utility
- 23 company has not paid its intangible taxes, either, has
- 24 it?
- 25 A Right.

1 Q Okay.

2 A If we owe any. I'm not sure we owe any.

3 Q All right. Got that one, too.

4 (Witness provided document.) (Pause)

5 A Where does it say these are intangible taxes?

6 Q On the bill that they send to you to collect
7 them.

8 A Is it somewhere on here?

9 Q Nope. Do you want me to call James Harris to
10 say those are intangibles?

11 A No, I just question whether these are
12 intangible or tangible. I think we have some tangible
13 taxes due. I don't know of any intangible taxes due.

14 Q Your tangible ones are the ones you just went
15 through, right? Your property taxes.

16 A Those are real estate ad valorem taxes. I'm
17 talking about tangible personal property taxes.

18 Q Okay. What's the amount --

19 A Maybe you're speaking of tangible personal
20 property, not intangible personal property.

21 Q Okay. What's the amount on that?

22 MR. PFEIFFER: Object. She's asking the
23 witness to read from an exhibit without knowing what the
24 numbers represent.

25 MS. SANDERS: Well, he just told me it

1 represents his tangible personal property taxes, right.

2 WITNESS BROWN: She was trying to get me to
3 agree it was intangible. And I'm just saying that I
4 think what you're talking about is tangible.

5 MS. SANDERS: Okay.

6 CHAIRMAN DEASON: Ms. Sanders, you need to try
7 to confirm with the witness what taxes these are, if he
8 knows.

9 MS. SANDERS: Okay.

10 Q (By Ms. Sanders) Do you know what those taxes
11 are?

12 A I think we owe some tangible taxes, but I
13 cannot agree with you that we owe intangible taxes.

14 Q All right. And what's the amount of the
15 tangible personal property taxes?

16 A Assuming this is tangible, which I think it
17 is, it's --

18 MR. PFEIFFER: Objection. Again, we don't
19 know what --

20 CHAIRMAN DEASON: He just said he thinks it
21 is.

22 MR. PFEIFFER: He said, "Assuming."

23 CHAIRMAN DEASON: No. He just said, he thinks
24 it. And there's been a lot of testimony he's been given
25 in this proceeding where he thinks it is. So this is

1 going to be like any other testimony, he thinks it is.

2 Mr. Brown, you may proceed.

3 MR. PFEIFFER: Thank you, Commissioner Deason.

4 A This amount is \$37,411.50.

5 Q (By Ms. Sanders) Thank you, Mr. Brown.

6 A Thank you.

7 Q Isn't it true, Mr. Brown, also that the
8 Utility company was just sued for foreclosure by
9 Apalachicola State Bank?

10 A Somebody showed me that in the paper this
11 morning. I haven't received any notice of any such
12 suit.

13 Q You've not been served with the suit, you do
14 not know about it.

15 A I know that they have a claim. I don't owe
16 them any money, but we have a disagreement about that.

17 Q As to whether you owe them the \$200,000?

18 A I do not owe them \$200,000.

19 Q The Utility owes them --

20 A Neither does the Utility. No, it's been paid
21 in full.

22 Q Was the mortgage stamped "satisfied"?

23 A No. I paid the person that the mortgage was
24 made to. And then he assigned it to the bank without my
25 knowledge and over my -- contrary to an agreement which

1 we had.

2 Q And you paid that -- that person would be
3 Walter Armistad (phonetic)?

4 A Uh-huh.

5 Q And you did not get a satisfaction of the
6 mortgage from him when you paid that amount of money?

7 A No, he had assigned it to the bank.

8 Q And so now you're involved in litigation
9 because of your failure to get the satisfaction of
10 mortgage when you paid him that money?

11 A I read in the paper that there's going to be
12 some litigation, right.

13 Q Okay. Isn't it true the last time you met
14 with the St. George Island Civic Club was in 1988, prior
15 to the last rate case hearing?

16 A That's the last time I made a presentation.
17 I've tried to come and talk to them and they said they
18 did not want to hear from anybody about this case, so we
19 were advised that they would not meet with us.

20 Q So that doesn't take an inordinate amount of
21 your time?

22 A No. But I have to deal with the meetings that
23 they call and go to and we have to respond to things
24 like when they call these meetings regarding fire
25 protection and other problems.

1 Q You've been to those meetings, Mr. Brown?

2 A I tried to go. And it was a meeting between
3 the PSC Staff and DEP and the Civic Club and Mr. Day and
4 others, and I found out about it the morning of the
5 meeting, it was to talk about fire protection on St.
6 George Island. And I called the State people and said,
7 "If we're going to talk about fire protection, the
8 Utility company needs to be involved, because we're the
9 only ones that can solve the problem." And I was told,
10 "No, you cannot come, do not come."

11 And so then I asked the Franklin Chronicle to
12 go and make a video of it because I was interested of
13 what was going to be said. And he went, and they told
14 him he couldn't stay, the newspaper, even though this
15 was state people meeting. The PSC --

16 Q I don't want to interrupt. The question is,
17 did you go to the meeting?

18 A I didn't go. But I --

19 Q Thank you.

20 A I was drafting for an injunction so that the
21 press could be there. And after they found out that we
22 were going to get a court order, they allowed Mr.
23 Whoever from the newspaper to go and video tape it.

24 Q And some of those meetings --

25 A But those type things take time.

1 Q To make those phone calls?

2 A To make those phone calls, to deal with things
3 like that that are initiated by the Civic Club and
4 people that, at least from my perception, seem more
5 interested in causing problems than in solving and
6 dealing with problems. Because if they -- I --

7 Q Because if they called you up and asked you to
8 provide fire protection, you'd say sure, right?

9 A Yes, exactly.

10 Q I'll be happy to do it.

11 A Exactly. And I've asked to meet with them.
12 And I came down, and Hank and I met with Mr. Abbott on
13 my insistence, but it's --

14 Q And those meetings with various regulatory
15 agencies with the developers, you go to those because
16 the Utility will get money from that, right?

17 A I go to the meetings and I meet with
18 developers and the developers' lawyers and engineers
19 because there's an ongoing issue on St. George Island
20 about fire protection, water capacity, all of which is
21 interrelated with the development capacity of the
22 island. And there is a strong no-growth sentiment on
23 the island that wants to use the shortcomings of the
24 Utility company as a means of preventing growth on the
25 island --

1 Q When you were --

2 A -- so I have to deal with agencies and
3 developers to try to interpret and define what our
4 capacity is.

5 Q When you were meeting with regards to the
6 developer agreements with Sunny Day and/or George Marr
7 or Ken Gordon and/or Phoenix Harbor, that was to get
8 money for the Utility company, right?

9 A Everything I do with regard to the Utility
10 company is to run it to get money to operate on to meet
11 the obligations to provide developer agreements to
12 provide service to customers.

13 But what I'm suggesting is that it's not real
14 simple on St. George Island, as you know, to get a
15 permit to develop property with the Utility company
16 involved. And it's just a time-consuming process; and
17 you have to negotiate, draft, and process developer
18 agreements and easements and bill of sales. Every time
19 a developer runs a line and contributes it, you have to
20 go through a process of drafting an easement, drafting a
21 bill of sale, a developer agreement, water users
22 agreement. And that involves meeting with his
23 engineers, his lawyers and him. And those type things
24 just take -- I don't know if it's that complicated on
25 other islands. I don't know of too many other islands

1 like St. George. But I'm telling you, based on my
2 experience, all that takes legal time as well as
3 management time.

4 Q But don't all utilities have to do whatever
5 has to be done to get new customers to sign up?

6 A Yes.

7 MS. SANDERS: Okay, thank you. I don't have
8 any other questions, Mr. Deason.

9 CHAIRMAN DEASON: Mr. Pierson?

10 MR. PIERSON: Thank you, Mr. Chairman.

11 CROSS EXAMINATION

12 BY MR. PIERSON:

13 Q Good morning, Mr. Brown.

14 A Good morning, Mr. Pierson.

15 Q How are you?

16 A I'm fine. How are you?

17 Q I'm fine, thank you. In your testimony, your
18 direct testimony, on Page 8, you stated that "During
19 1992 alone, my affiliated companies made capital
20 improvements of almost \$300,000."

21 A Capital improvements, or investments?

22 Q Yes. Can you explain, based upon that
23 testimony, why St. George Island Utility Company,
24 Limited is -- or why it doesn't have \$300,000 in equity,
25 at least?

1 A The Utility company doesn't have any equity
2 because it has more debt than value. So there is no
3 equity, there's a lot of debt.

4 As I was saying before, I'm trying to get to a
5 point to convert all of the third -- or the affiliated
6 debt to equity and deal with the third-party, hard debt
7 with one consolidated, long-term, low-interest debt
8 instrument. And then, depending on the rate base and
9 the decisions of the Commission, the Utility company may
10 or may not have some equity.

11 I'm trying to get it to a point of having
12 equity. But it certainly doesn't have any and never has
13 had any since it was formed.

14 Q I'm not sure I understand your answer. Are
15 you saying that this \$300,000 was an intercompany loan?

16 A It was an intercompany loan. There's an old
17 loan agreement, it's called Leisure Properties II. But
18 back before we ever even heard from the PSC, we had to
19 put in \$384,000 and signed the note. And that's called
20 Leisure Properties II on our financial statement. Since
21 then, that's been used as sort of an in-and-out account
22 where the affiliated companies have to put money in the
23 Utility company to make up operating cash deficits.
24 Some of which go to expenses and some go to capital
25 improvements.

1 Q During your deposition, I asked you to provide
2 a couple of late-filed exhibits --

3 A Right.

4 Q -- Schedules D-4 and D-5, I believe. And I'm
5 passing those around now. Were these prepared by you or
6 under your supervision?

7 A I believe they were prepared by Jeanie Drawdy,
8 who was here yesterday, who is an accountant for the
9 Utility company.

10 Q While this is being passed around. During
11 questioning by Ms. Sanders, you responded that the
12 Utility does not owe Apalachicola State Bank any money;
13 do you recall that?

14 A The Utility company owes Appalachia State Bank
15 \$200,000, which is a part of an overall debt instrument
16 with Capital City Bank. It's a loan participation.
17 That money is owed. I was speaking of another alleged
18 debt under a mortgage that has been paid by the Utility
19 company and its affiliates that was assigned without our
20 knowledge to Apalachicola State Bank. That's the one
21 Ms. Sanders was talking about.

22 This one is valid and is being paid every
23 month.

24 Q Can you tell us whether Schedule D-5
25 represents the Utility's long-term debt position --

1 current long-term debt position?

2 A Yes, I believe it does.

3 Q And does Schedule D-4 represent the Utility's
4 current short-term debt position?

5 A Well, I don't know about current. I see
6 Sailfish Enterprises on there, 52,780. That's all been
7 paid. This was as of a certain date, June 1, looks
8 like. I believe Sailfish has been paid in full since
9 then. And Fleet Financial has been paid in full. So
10 Items 2 and 4 have been satisfied completely since
11 January -- or June 1.

12 Q Do you know if there were any other changes?

13 A There's some additional debt. As I said
14 yesterday, I have put in -- my companies have put in
15 \$100,000 cash. We put in \$50,000 cashier's check the
16 morning of the Ben Johnson deposition. And my companies
17 put in another \$50,000 on Monday -- no, Tuesday of this
18 week. And that is not reflected here.

19 Q Can you provide us with another late-filed
20 exhibit?

21 A Yes.

22 Q Another D-4?

23 A Yes.

24 Q Detailing short term debt as of today?

25 A Yes, sir.

1 MR. PIERSON: Do I need to get that
2 identified, Mr. Chairman?

3 CHAIRMAN DEASON: Yes. This will be
4 Late-Filed Exhibit No. 16. Could I have a short title,
5 please?

6 MR. PIERSON: "Utility Short-Term Debt
7 Position."

8 MR. PFEIFFER: Mr. Pierson, I wanted to make
9 sure the date that you wanted?

10 MR. PIERSON: As of today.

11 MR. PFEIFFER: Okay.

12 (Late-Filed Exhibit No. 16 identified.)

13 Q (By Mr. Pierson) In your testimony and
14 previously today, you testified that you intend to
15 convert excess intercompany debt to equity, assuming
16 that the Utility ends up with a rate base somewhere near
17 the third-party debt of 1.2 million. Is that correct?

18 A Yes. We're going to try to do the
19 debt-to-equity conversion, irrespective of where the
20 rate base ends up. But if it ends up close to where we
21 calculate it should be, it will make the debt-to-equity
22 conversion and the long-term loan much easier to obtain
23 and certainly easier to service because there will be a
24 return on some investments that, according to our
25 figures, turns out to be very close to the long-term,

1 third-party debt.

2 Q You also discussed a plan to roll the \$1.2
3 million of third-party debt into a \$1.5 million
4 financing package with the local savings and loan
5 association. And you also stated that a savings and
6 loan association has given preliminary approval for this
7 loan based upon a successful conclusion to the pending
8 rate case and a 90% loan guarantee from the Farmers Home
9 Administration. Is that correct?

10 A That's correct.

11 Q How does the S&L define "a successful
12 conclusion to the pending rate case"?

13 A A successful conclusion would be a final
14 Commission order that allows sufficient revenue to
15 operate the Company and to service the third-party debt,
16 or to come very close to doing that, because that's the
17 only way this Company can survive on an ongoing,
18 permanent basis.

19 Q Is it correct to say then that any refinancing
20 or debt-to-equity conversion will not occur until after
21 the conclusion of the rate case?

22 A Yes, that's a correct assumption. But we
23 intend to work on it between now and then.

24 Q The pension expense that you're asking for in
25 this case, will that be placed in or contributed to an

1 externally-managed trust fund?

2 A Those funds will be deposited with the trust
3 department of First Union Bank, who, in turn, will
4 invest those at their discretion. Right now, the funds
5 that are in the pension fund have been invested with
6 IDS, which is a subsidiary of Merrill Lynch, and they're
7 in mutual funds. But yes, as of now, the
8 externally-managed trust is First Union Bank Trust
9 Department.

10 Q And who is the trustee?

11 A The First Union Bank Trust Department. Is
12 that correct? First Union Bank, right? Trust
13 Department.

14 MR. PFEIFFER: I'll sorry, Gene, you're not
15 allowed to do that.

16 A Trying to be helpful. That's my recollection.

17 Q Do you have a signed copy of an agreement?

18 A Yes, we have a copy that we'll provide before
19 the day is over or before this case is over. I expected
20 to do this in rebuttal. I want to go through all the
21 adjustments we've asked for to document where we are on
22 each of them, including the pension fund.

23 We just got in today an engineering analysis.
24 That's one of our adjustments. But that's already been
25 done. The hydrological for it's been done and finished

1 and filed. And that's all stuff that I intend to go
2 over before the case is over.

3 Q We'll just revisit that on rebuttal.

4 A Okay.

5 Q On Page 8, Lines 5 through 9, you mention
6 substantial other improvements to the system. Would you
7 please describe those improvements and when they will be
8 in service?

9 A What I refer to there is the desire of Hank
10 Garrett and myself to have complete redundancy
11 throughout the St. George Island water system. We've
12 used the analogy to a twin-engine airplane. Hank and I
13 want to get it to the point that if part of the system
14 breaks down, it continues to operate. We set up a dual
15 well field to operate alternatively so if one field is
16 out, the other can operate. We've set up a dual
17 chlorination system, dual alarm systems.

18 Just recently, we completed the installation
19 of two brand-new high efficiency 50 horsepower pumps
20 with variable speed drives -- or motors with variable
21 speed drives -- which will give us effective pumping
22 capacity that can deliver well over 1,000 gallons a
23 minute at pressures in excess of 100 psi. We've elected
24 to operate it as of now at 65 psi, but it's capable of
25 operating at much, much higher pressures.

1 And those improvements have all been
2 completed, they're in place and paid for. And that's --
3 some of the witnesses last night referred to that, to
4 the better pressures. So actually, the pressures can be
5 almost anything we want them to be at this point, within
6 reason.

7 And the water hammer problem, Hank and I did
8 some changes to the plans and got another engineering
9 firm to make some improvements to the original plans I
10 was referring to at this time.

11 But all the improvements referred to in this
12 part of my testimony have now been completed and are in
13 service.

14 Q How much did those improvements cost?

15 A About 90 -- we put \$96,000 in escrow and I
16 think those improvements are going to end up costing
17 about \$70,000 probably. We've got all the contracts and
18 it's pretty much all been paid for. There may be a few
19 more bills to come in, but about \$70,000.

20 Q Has Ben Johnson contributed approximately
21 \$10,240 worth of property to the Utility?

22 A Not yet. When he signs a bill of sale and an
23 easement and all, we will consider it to have been
24 contributed. But until he does that, we're not going to
25 book it as plant RCIC.

1 Q Have you provided Mr. Johnson with a bill of
2 sale?

3 A No. I've discussed it with him. I don't have
4 any doubt we're going to get it, and I'm going to try to
5 get it before the 3rd of August. I've just been busy
6 with other matters. I think he wants me to draft it all
7 myself and run it by his lawyers. And just like I was
8 talking to Ms. Sanders about it, that's one of the
9 things I have to do and I haven't done that yet.

10 Q Then he's attempted to contribute the
11 property; is that correct?

12 A Well, he hasn't attempted. We -- he gave us
13 some money and he paid other money for part of the
14 lines, and he will contribute the property and we will
15 book it.

16 Q Then it's not booked right now?

17 A It's not booked, on either side of the ledger.
18 And I agree with Staff that it should be booked on both
19 sides. But I do not agree if anybody says that we
20 should book CIAC but not book the plant. We don't book
21 the plant until we have the documentation. And we don't
22 have the documentation because Ben didn't provide it and
23 I didn't do all the work yet to satisfy his
24 requirements.

25 He's very meticulous and careful and I'm not

1 sure he's going to accept my form bill of sale and
2 agreement, like some other developers have.

3 Q What about Mr. Gordon, has he made any
4 contributions for Pebble Beach?

5 A I don't know what our books show about Ken
6 Gordon. He bought some -- we entered into some water
7 users agreements with him for about 16 lots, and he ran
8 some lines. I'd have to go back and check the books to
9 see how it's been handled.

10 Q Can you do that?

11 A Yeah.

12 Q And we'll revisit this on rebuttal, too?

13 A Yeah, let's make a note to revisit that and
14 document that.

15 Q Do you know if the Utility has any contributed
16 lines or other contributed property that's booked to
17 plant but not booked to CIAC through the end of 1992?

18 A Not that I know of. I don't believe we do.

19 Q Is it the Utility's policy not to connect
20 customers who donate property until it receives a bill
21 of sale?

22 A That is our policy now. There have been times
23 when we have connected lines without the bill of sale
24 and gone back and documented it or got the bills of sale
25 and the easements at a later date. But we have learned

1 that the time to get the bill of sale and the easement
2 is before you hook them up.

3 Q Do you give Mr. Garrett and your other field
4 operator a transportation allowance?

5 A Yes, I do.

6 Q And at one time, Mr. Garrett's allowance was
7 somewhere in the neighborhood of \$10,000 a year; is that
8 correct?

9 A Initially when I hired him, it was \$10,400 a
10 year and since then has been cut to \$5,200 a year. Yes,
11 sir.

12 Q Would you agree that that's enough to pay for
13 the truck?

14 A No, that's not enough to pay for the truck.
15 The truck costs about \$20,000 to buy, I believe. I
16 mean, a new four-wheel drive Chevrolet truck costs
17 upwards to 20,000, maybe 18,000.

18 Q Assuming you got a five-year loan, would
19 \$5,000 a year pay off the truck?

20 A I believe it would pay off the truck, but I
21 don't believe it would pay for the maintenance and gas
22 and all the attendant expenses and pay off the truck.
23 Nor do I believe the Utility company could operate a
24 truck like that, like he does, for that cost.

25 Q Well, if Mr. Garrett were to leave your employ

1 tomorrow --

2 A Right.

3 Q -- what would your interest be in that truck?

4 A Zero. He'd have a worn-out pickup truck and
5 no income to support it.

6 Q I meant your interest.

7 A I would have no interest. I would have no
8 liability; we would have no expense. I'd need an
9 operator at that point -- and I'd need a truck, I guess,
10 unless I could convince somebody like I did him to go
11 buy a new four-wheel drive pickup truck and place it in
12 service and use it every day.

13 Q Has the altitude valve been installed?

14 A Yes, I forgot to mention that earlier. That
15 is part and parcel -- we changed the location, instead
16 of putting it in a pit, which is more expensive, I
17 think, we moved it underneath the elevated tank where it
18 will operate better. And we changed the design and
19 that's been approved, I believe, but -- I'm sure it has
20 been.

21 We changed the engineers, changed the design,
22 and upgraded it and made it more efficient. But that
23 was done as part of the new pumping apparatus.

24 Q You also talk in your direct testimony on Page
25 8 about improvements, which we talked about briefly

1 before. Do these improvements include backup for supply
2 mains?

3 A As I mentioned earlier, we just -- and I
4 haven't even read it yet, but I went ahead and
5 contracted for this updated engineering analysis and it
6 was faxed in to me this morning. And part of the
7 improvements that I think we're going to come up with is
8 going to be paralleling the supply mains from the well
9 field and between the wells on the causeway for a large
10 extent, which would be a type of backup.

11 There's one place that Hank and I have
12 identified where there's tons and tons of rocks on the
13 bridge and the ductile iron is pressing and we're very
14 concerned that that's going to break; and if it does,
15 the island is going to be out of water for a month or
16 so. So we're trying to get a permit from DOT to bore
17 through the main structure of the bridge with a conduit
18 and have a parallel line that ties in at that point.

19 Then we plan, as I understand it, if the
20 engineer continues to agree with this, we're going to
21 parallel the eight-inch line on the causeway, which will
22 help the hydraulics of the system. And we believe we
23 can convince DEP that this will help the supply problem
24 that they're concerned with.

25 And the reason I got Les Thomas to do this

1 engineering analysis is I wanted to get away from
2 Baskerville-Donovan and Wayne Coloney, who have been at
3 loggerheads with DEP, and I wanted to get a fresh look.
4 I hope we can reach accommodation, but that's what we
5 plan to do, assuming this final report recommends that.

6 That will help the hydraulics and the head
7 dynamics of it, even though we will not be paralleling
8 or duplicating the ductile iron on the bridge. It will
9 still, having that dual line for that length of time in
10 two difference places will help the supply.

11 But we haven't done that. That's in the next
12 -- we're right now at a crossroads. DEP is saying the
13 next thing they want to see is a new eight-inch line
14 paralleling the one all the way. That would cost about
15 \$800,000; and my engineers and I don't think that's the
16 best way to spend the next dollars that we have, but we
17 do agree that we need to look at the supply.

18 The Baskerville-Donovan Report two years ago,
19 filed with the Commission and the DEP, said there was no
20 supply problem for the next ten years; and we have been
21 operating under that assumption. But now we're looking
22 harder at the supply side.

23 I think what we're going to do is parallel
24 those lines and then the next dollars to be spent on the
25 island would be a new elevated tank in the Plantation

1 probably on the Ben Johnson property. Ben Johnson has
2 agreed to -- and we've have spent lots and lots of time
3 drafting a detailed agreement, which we have, but we
4 haven't implemented it. But he want to contribute about
5 a half acre of his land in the Plantation for a new
6 elevated tank, and I think that's the next big
7 improvement this Utility company needs to make after
8 this supply line is paralleled for the length on the
9 causeway.

10 CHAIRMAN DEASON: Let me ask a question.
11 Assuming that that is the next large capital
12 improvement, do you know what that would do to the fire
13 flow capability of the system?

14 WITNESS BROWN: It would increase it. And
15 depending on the pumping capacity, it would help it.

16 I have asked in this rate case -- I initially
17 asked for \$30,000, now I asking for 12,000, which Les
18 Thomas can do because he is pretty familiar with the
19 system. I think we need to have somebody analyze the
20 fire flow protection issue on the island in conjunction
21 with his analyzing the entire system to tell us what it
22 will do.

23 But based on my best information and belief, I
24 think that a new elevated tank would certainly give you
25 more capacity. And if you combined that with more

1 pumping capacity, I think it would certainly help fire
2 flow.

3 We have already helped it. I mean, the tests
4 they ran the other night showed 750 gallons a minute at
5 one fire hydrant. The problem is when you get to the
6 extreme ends of the system, the capacity drops. So if
7 we can have more elevated storage in the Plantation and
8 eventually on the east end of the island -- the way I
9 see the island developing, I think eventually there will
10 be three elevated tanks, one on the east end near the
11 entrance to the state park, one on Plantation and one in
12 the middle. And if you have that capacity which can be
13 used for peak periods, which is our big problem on St.
14 George Island is three weekends a year, plus fire
15 fighting capacity, then that's the way I see the needs.

16 But we've asked in this case for \$12,000 for
17 an engineering analysis and \$12,000 for a fire
18 protection study, which are more or less interrelated.
19 and we've already commissioned the engineering analysis,
20 and I have the preliminary report which was faxed in
21 this morning. So that's done. But it will help the
22 fire protection.

23 Q (By Mr. Pierson) Do you intend to use that
24 report as an exhibit with your rebuttal testimony?

25 A Yes. What I would like to do in my rebuttal

1 testimony is go through all the adjustments with
2 late-filed exhibits or exhibits that I can give to the
3 Staff to show exactly where we are as of this date on
4 every adjustment. Like yesterday, you asked for the
5 hydrological study, that's been bought, paid for, filed,
6 it's all done. But that wasn't done when I testified,
7 it wasn't even contracted for, but it is all finished
8 now and you all have a copy.

9 MR. McLEAN: Mr. Chairman, this is probably a
10 good opportunity for us to state an objection to that
11 procedure, because it is the equivalent of filing a new
12 case. But we can deal with it when the time comes.

13 CHAIRMAN DEASON: Very well.

14 Q (By Mr. Pierson) Just to be very clear, the
15 paralleling you were talking about at the supply main?

16 A The what?

17 Q The paralleling.

18 A Paralleling? Yes, sir.

19 Q That would just be specific areas of the main,
20 not the entire main?

21 A There's an area that we're going to do as soon
22 as this case is over, Hank and I have been busy on other
23 things. But we are going to parallel some six-inch line
24 for about 1,000 feet or more between Well No. 2 and Well
25 No. 3.

1 Somebody suggested pulling up the six-inch,
2 replacing it with the eight. That would put us out of
3 service for a while. Instead of that, we're going to
4 parallel the six with the eight. That would help the
5 hydraulics.

6 In addition to that, assuming that Les Thomas
7 continues to advise us this way, we are going to
8 parallel a section of the eight-inch supply line between
9 the two main bridges on the causeway, because it will
10 help the hydraulics, number one.

11 And, number two, we're very concerned about
12 where the ductile iron is binding against those rocks.
13 And if those rocks shift and break that line, then we're
14 going to be in big trouble. And we're trying now to get
15 a permit. Hank identified that and we looked at it a
16 couple weeks ago, and Les Thomas is working on it, but
17 that will help.

18 That's the only two places we intend to
19 parallel the line, although we could do it between the
20 bridge and the plant -- the bridge on the island and the
21 plant.

22 Q Back to the altitude valve, has the Utility
23 requested clearance from DEP for that work?

24 A We have a permit. We've had a permit for that
25 work for some time. The permit was modified, as I

1 understand it, pursuant to some communications between
2 Les Thomas and Mr. Kintz, which allowed us to complete
3 it pursuant to Les Thomas' modified plans. Which we
4 have now done. They're done and in place and I believe
5 that's been done with DEP's approval.

6 Q Has DEP cleared the altitude valve?

7 A No, I don't think they cleared it for final
8 inspection. What I'm suggesting is that we changed the
9 location of it from a pit in front of the plant to
10 underneath the elevated tank, and I think they cleared
11 preliminarily that design change. They have not cleared
12 the final operation of it, because we just put it in
13 service a week or two ago.

14 Q Is that it?

15 A Yes, sir.

16 Q On Page 3 of your testimony, you discussed
17 litigation between you and Mr. Stocks.

18 A Right.

19 Q When was that resolved?

20 A It's still not resolved. They were asking me
21 this morning, there's one pending last gasp appeal by
22 Mr. Stocks regarding the Utility company; and that
23 appeal, unless he's successful, that will end the
24 litigation, I hope.

25 Q And what kind of effect did that have on the

1 Utility?

2 A The litigation with Mr. Stocks had an adverse
3 effect on the Utility throughout the early and mid '80s.
4 Because he was claiming he owned a substantial interest;
5 and the bank, pursuant to a forbearance agreement,
6 work-out agreement, they took half interest in the
7 Utility company, and it was kind of like a jumped ball
8 there for a while. And I don't think any of the three
9 parties were willing to make the necessary investments.
10 I made some investments in time and money back then but,
11 in retrospect, it probably wasn't enough to do the job.
12 And since '91 I have made a commitment in time and money
13 to make a total investment.

14 Q Did your insurance pay for all the expenses
15 associated with hurricane damage in 1985?

16 A I don't think they paid for all of it, but the
17 deductible was negligible, 1,000 or 2,000. They paid
18 everything but that. They paid a lot of money, and we
19 got the work done in a matter of days because we had the
20 money available.

21 Q If all that wasn't paid was the deductible,
22 how did that have a lasting negative effect on the
23 Utility?

24 A How did what have?

25 Q The hurricane. How did that have a lasting

1 negative effect?

2 A I'm not sure the hurricane had a lasting
3 negative effect on the Utility. The litigation did. I
4 must have misspoke, or if you can refer me to where you
5 are, what line is that on?

6 Q On Page 2, Line 19.

7 A Line 19? "After two hurricanes in the late
8 summer and early fall of 1985 which caused extensive
9 damage to the Utility's supply main on the bridge coming
10 to the island, the Utility began experiencing financial
11 difficulties due to inadequate rates."

12 Q And my question is, if the insurance paid all
13 but, say, 1,000 of those damages?

14 A Those two -- maybe that's not well-answered.
15 But those two aren't related. I mean, they just -- in
16 the time, they paid all the damages for that. But the
17 fact that the bridge was out for over a year and there
18 were other losses caused financial damage to Leisure
19 Properties, the development side. And Leisure was no
20 longer able to fund the losses like it had during the
21 late '70s and early '80s.

22 So it just correlated in time. It didn't have
23 a direct impact. But the fact that the hurricanes
24 happened and Leisure had financial problems impacted the
25 Utility company, because Leisure didn't have the money

1 to continue making intercompany loans.

2 Q Were you suggesting a moment ago that you were
3 essentially phasing Mr. Coloney out in favor of Les
4 Thomas because he wasn't at loggerheads with DEP?

5 A No. What I suggested was that I decided to
6 hire Les Thomas, and I have been very impressed with him
7 and he seems more economical and more down-to-earth and
8 nuts-and-bolts type engineer. I still have complete
9 confidence in Wayne Coloney. He's the smartest, best
10 engineer I have ever worked with. But he's off making
11 \$200 an hour and doing his thing, and he no longer has
12 the time and we don't have the money to pay him that.

13 I'm always going to use him, but I just
14 thought it would be better in trying to convince DEP and
15 other people as to what we should do if we used a
16 different engineer than the same engineers I've always
17 used, like Baskerville-Donovan and Wayne Coloney.
18 Because even though I think they're correct and Les
19 Thomas will end up agreeing with them, it's a new face
20 and maybe three engineers that all agree will convince
21 somebody that we know what we're doing and we're doing
22 the right thing.

23 But right now, until that's done, we have a
24 real problem with DEP because they say -- and have said
25 in writing and told me verbally -- that until and unless

1 we construct a new eight-inch supply line from the well
2 field to the island, we're out of capacity. And we
3 don't believe that to be the case.

4 And I doesn't want to be in a position of
5 disagreeing with DEP, but neither can I afford to just
6 go out and build a new line.

7 So I'm still going to have Wayne Coloney
8 review Les Thomas' work; and Wayne goes to the meetings
9 and looks over his shoulder and advises me, which he
10 will continue to do. So I've a consulting advising
11 engineer I have a lot of confidence in. I have a new
12 engineer that charges \$75 an hour, who's available when
13 I call him on the phone. And he gets the work done
14 quick and he doesn't have a secretary on his staff and
15 the bills don't come in with three or four layers of
16 engineering services because he doesn't even have
17 anybody helping him. He types his own things.

18 When he did the hydrological report, he came
19 to my office, he and I and Hank sat down and did the
20 report. Took us a day, but he started in the morning,
21 finished in the afternoon, and took it back and put it
22 together and brought it to the office that Sunday
23 afternoon and we filed it Monday. And I think that's
24 the most efficient way to operate.

25 Q You did a customer survey in 1992?

1 A We did a customer survey right after the
2 Commission sent a notice -- had headlines in all the
3 newspapers about they were going to revoke our
4 certificate. We were suffering a lot of bad press and
5 bad perceptions and we wanted to see what improvements
6 we could make or what our customers thought about us, so
7 we did a customer survey about 30 days after that
8 revocation action was filed.

9 Q And I believe they addressed three concerns,
10 or something like that?

11 A After we went through all the responses, we
12 identified three areas of concern.

13 Q What were those concerns?

14 A The sulfide problem in the water; low
15 pressure; and two quick cutoff notices. We were sending
16 cutoff notices after about 30 days. And because a lot
17 of people don't live on the island, the mail service and
18 one thing and another, a lot of people had problems with
19 that. So we went over and amended our tariff to provide
20 basically for a 55-day turnaround. So it's 55 days now
21 between the billing date and the cutoff date. In
22 between, we have what we call "a friendly reminder," but
23 they have almost two months to pay their bill.

24 And we've addressed the hydrogen sulfide
25 problem by having a complete hydrogen sulfide study done

1 and by doubling the size of the trays -- which,
2 according to our engineers and the specs on the aerator,
3 that's more than enough to handle the amount of water
4 and hydrogen sulfide. And I think the taste and sulfur
5 problem has been greatly reduced, if not eliminated.

6 This recent round of improvements has helped
7 the pressure problems. We've always more than met the
8 minimum DEP requirements, which is 20 psi at street
9 level at our meter. But a lot of people on the island
10 have two- and three-story houses, and they have a
11 problem on the second and third floors. And these new
12 pumps will allow us to turn the pressure up to almost
13 anything within reason.

14 We now operate it with 65 psi, which is our
15 design criteria right now, but it's very possible to
16 turn it up higher than that. I think what needs to be
17 done, however, is some more storage and more pumping at
18 the remote locations away from the central plant to
19 stabilize the pressure throughout the system a little
20 better.

21 So we have addressed, I think satisfactorily,
22 the three problems that our customers identified.

23 Q What happened between 1993 and 1994 to require
24 a second full-time field assistant?

25 A We've always needed a second man. When Hank

1 worked on the island, we had two, we have Hank and
2 another man, so we always had two full-time field
3 assistants. We had Harry Braswell, who was our plant
4 operator, Class C operator at the time. So as far back
5 as the early '80s, we had two full-time field
6 assistants, that was Hank Garrett and another man, Paul
7 Harvey, and then Reid Hicks.

8 But when I hired Hank, I explained to him that
9 if he would come and devote himself and work around the
10 clock and get the job done, that some day, as soon as we
11 got the level of service up to where it should be and as
12 soon as all these improvements were made, that we would
13 get him another man.

14 And other things that have happened relates to
15 the additional testing requirements that we have been
16 required to undertake. The additional flushing is a
17 very big factor. Because to address this hydrogen
18 sulfide problem, we looked at a brand-new forced
19 aerator, but our engineers wrote us a report and they
20 told me that that really won't solve the problem. They
21 have said -- and I agree with this, based on our
22 experience, Hank and I do -- that the real problem on
23 St. George Island is not the hydrogen sulfide level in
24 the water necessarily when it leaves the plant, it is
25 that it builds up in these lines.

1 A lot of the people on the island only use
2 their houses on the weekend. And as I pointed out
3 before, most of them are dead-end tee roads. Water sits
4 in those lines for days and days; and then somebody
5 comes in and turns on the faucet and the hydrogen
6 sulfide has build up again. And so the way to solve
7 that problem, according to the engineers, is to have
8 constant flushing on a daily basis, taking several
9 hours.

10 And so in addition to all the other duties,
11 the cross-connection control program has gotten to be a
12 horrendous problem, there's a constant vigilance to find
13 and identify and implement that program. We're always
14 doing the system audit, updating that. The new lead and
15 copper testing, there's just a multitude of reasons that
16 we have to have a third man.

17 But this is really not like adding a new man,
18 we've just -- instead of Hank being the operator and the
19 second field assistant, he simply doesn't have the time
20 to do that any more and he's got to do more management
21 and more work as an operator and less time in the ditch.
22 But he used to be in the ditch with another man when we
23 had another operator, so we've always had two field
24 people and an operator. The only difference now is that
25 we need a full-time operator and two people in the

1 field.

2 There's probably a lot of other reasons we
3 need a man, which Hank can talk about. But he is
4 needed.

5 Q Speaking of cross-connection, other than the
6 Public Service Commission and DEP, has anybody else
7 required or strongly pushed for that cross-connection
8 control program?

9 A That is strictly a statutory requirement of
10 DEP that that's a very serious health hazard. There are
11 evidences or cases where people have died from
12 cross-connection problems when pesticides back up in
13 water, for example. And on St. George Island where
14 people can just put in a shallow well without anybody's
15 knowledge for \$300, it's a real problem.

16 And people over there try to hide wells. We
17 took DEP around one time and showed them 11 wells on
18 one, one-acre lot they were trying to hide, and finally
19 they had to hook up.

20 But we're required to totally implement and
21 administer that program. And DEP advised us, two or
22 three years ago, that we were not doing the job because
23 we didn't have the personnel to do it. It's in addition
24 to the field people on the island, it's largely
25 administrative. You have to call people up, send them

1 certified letters and all that. They said we needed to
2 have more administrative help, so we have transferred
3 that to Tallahassee and Sandra Chase now handles that.

4 And as the DEP witnesses said in the testimony
5 filed in this case, that requires 100% of somebody's
6 time. And based on Ms. Chase's experience and our
7 experience, it requires almost all of her time. But
8 nobody, nobody but DEP and PSC has told us to do it, but
9 I don't think we have any choice.

10 Q Then the answer is no?

11 A That's a long answer. Nobody. But I'm just
12 trying to explain that we have to do that.

13 Q The Savannah Labs bid, are you familiar with
14 that?

15 A Yes.

16 Q Does that include collecting the samples?

17 A No.

18 Q Mr. Garrett will still collect the samples?

19 A Mr. Garrett will still collect the samples.

20 It does require -- it does include picking the samples
21 up. Because we've had examples when the old lab lost
22 our samples; and they will pick them up under that bid,
23 but we still have to collect them and we're responsible
24 for all that.

25 Q On Page 26 of your testimony, you stated that

1 the employees were promised a pay increase. And that
2 starts on Line 4, "These raises had been promised for
3 some time."

4 A Yes.

5 Q How much time are we talking about here?

6 A I've talked to Hank Garrett about raises as
7 far back as 1990. And I've talked to other employees as
8 we've gone -- I've been in a constant state of trying to
9 convince them to hang in with this Company until we
10 could get the level of service up and the improvements
11 completed to a level where we could come back to the
12 Commission and ask for increased rates.

13 And I told them that the first priority was we
14 had to get the improvements in, and there wouldn't be
15 much in the way of raises until we could get those
16 priority items finished. I don't remember the exact
17 dates I told them all that, but I've had them discuss it
18 with me from time to time, discuss the possibility of
19 leaving. And I've encouraged some of them to leave, and
20 fired some of them, and kept the ones I have now. And
21 they're very dedicated and they're good people.

22 Q Speaking of firing, haven't you essentially
23 had the power to fire all the managers that you've had?

24 A All general managers?

25 Q Yes.

1 A Yes. I mean, Leisure Properties has the
2 ultimate responsibility to run the Utility company and
3 we have the authority to hire and fire managers.

4 Q Following up on some line of questioning by
5 Ms. Sanders with regard to taxes, did you receive an
6 allowance for taxes in the last rate case?

7 A I'm sure there was some allowance in there,
8 maybe \$3,000.

9 Q And didn't you also receive an allowance for
10 insurance?

11 A I think I received an allowance, maybe that
12 was the \$3,000. I remember looking at it. It was --
13 our estimate was \$35,000. We've been negotiating around
14 for some time and finally found insurance for, I think,
15 about \$13,000 or \$14,000 that's now in effect. We paid
16 \$9,000 here several months ago to have it in effect.

17 But yes, we received an allowance, but it was
18 not adequate. Not in the real world. You just can't
19 buy insurance for that allowance.

20 Q But didn't you have insurance in effect during
21 the last rate case?

22 A We may have had liability insurance in effect.
23 I don't believe we had workmen's comp or casualty or
24 property insurance.

25 Q Do you know when the liability insurance

1 lapsed?

2 A No, I don't. It would have been sometime
3 after the last case, I believe.

4 Q Can you explain what benefit the Utility's --
5 I hesitate to use the term "corporate structure" but I
6 can't think of any way to put it, provides to the
7 ratepayers?

8 A The only benefit I can think of off the top of
9 my head is that there is no level of corporate tax to be
10 passed on, which is a considerable expense. If we had a
11 traditional C corporation, there would be corporate tax
12 to pay and that's an above-the-line expense to the
13 ratepayers. Otherwise, the corporate structure or the
14 partnership structure is just the same as it was when
15 the Commission issued the certificate and we have no
16 choice but to operate within that structure. Except I
17 am trying to make some changes, though, as I've
18 explained.

19 Q And St. George Island has one general partner?

20 A Yes.

21 Q Leisure Properties?

22 A Yes.

23 Q What is their share?

24 A 10%.

25 Q Under a limited partnership, the only deep

1 pocket is the general partner; isn't that correct?

2 A The only partner that's liable on a general
3 basis for corporate liabilities is the general partner.
4 In this case, our limited partners have much deeper
5 pockets, some of these doctors and all, but they haven't
6 been too forthcoming with any additional investments.

7 Q But their liability is limited to their share;
8 isn't that correct?

9 A Yes. That's correct. The only partner with
10 general overall liability is the general partner.
11 That's correct.

12 MR. PIERSON: I don't have any more questions.

13 MR. McLEAN: Mr. Chairman, Mr. Pierson's line
14 of inquiry opened up an area or two about which I'd like
15 to inquire. The whole works would take less than a
16 minute, with luck.

17 CHAIRMAN DEASON: Please proceed.

18 RECROSS EXAMINATION

19 BY MR. McLEAN:

20 Q Mr. Brown, did I hear you say you all knocked
21 out that hydrological study in one day, you, Les and Hank?

22 A No. I said, Hank, Les and I spent all of one
23 day going over it, during which time Mr. Thomas took
24 notes, we ran around the office, prepared everything.
25 He then spent the rest of the weekend working on it and

1 delivered it to my office where my new accountant was
2 working on July 4th, I think it was -- or some weekend,
3 or maybe it was Sunday. But she called me on the
4 mobile. And said "Well, he brought it in." And that
5 was finished.

6 Now, that is not the report. The hydrological
7 report took about a month, Jim Stidham did that for
8 \$7,000. That was an exhibit to the Les Thomas filing,
9 which is about yea high with all these exhibits. I gave
10 those to PSC Staff here recently.

11 The filing, I think Les Thomas knocked out in
12 three or four days with Hank and I working for about a
13 day on it with him.

14 Q And the total cost was \$12,000?

15 A The cost of the Stidham --

16 Q Would you give me a yes or no and then maybe
17 we can see if it needs an explanation?

18 A The total cost was \$12,000, which broke down
19 as follows: \$7,000 to Jimmy Stidham and Associates for
20 the hydrological study itself; and \$5,000 to Les Thomas
21 for processing the rest of the report and the
22 application, which has now been filed with the Water
23 Management District. And we have a temporary operating
24 permit to allow us more capacity and we expect to get
25 the permanent five-year permit within a reasonable

1 period of time.

2 Q Sure. You testified -- Mr. Pierson asked you
3 what would happen if Hank left and your answer was you'd
4 lose an operator and a four-wheel drive truck. And
5 you'd lose a backhoe, too, wouldn't you?

6 A I'd lose a backhoe.

7 Q Yeah.

8 A Unless he wants to sell it to us.

9 Q Well, you're paying for it now, aren't you?

10 A We're leasing it.

11 Q Leasing it from Hank?

12 A Correct.

13 Q And you pay the payments directly to John
14 Deere, occasionally?

15 A No, we pay them always to Hank now.

16 Q "Now." When is now"?

17 A For the last year or two. I think there was
18 one time when we made a direct payment.

19 Q Could there have been more than one?

20 A There may have been more than one, but we
21 don't do that anymore.

22 Q But Hank owns the backhoe?

23 A Hank owns the backhoe.

24 Q Now, I asked you a lot of questions the other
25 day -- yesterday, about a check from Ms. Withers. And I

1 understand you have better evidence now?

2 A I had somebody fax in the actual check that
3 Ms. Withers negotiated the next day. The check I showed
4 you yesterday was just taken from our file; because now
5 under these new accounting requirements we make a
6 simultaneous copy of every check, with the invoice, with
7 the filing or the bill. We have separate files set up
8 by NARUC accounts numbers and we do it hourly.

9 Q And so you have better evidence --

10 A When that was pulled out, somebody pulled out
11 our copy of the check before it left the office.

12 Q I understand. And now you have better evidence?

13 A We have better evidence of the check being
14 paid. We don't have any better evidence now of the
15 check being written.

16 Q Could you have furnished it when you furnished
17 the other copy? Is there any reason why you couldn't?

18 A Probably, we didn't have it.

19 Q Okay. Now, are you representing you didn't
20 have it?

21 A I said probably. Nobody asked for the
22 negotiated check, front and back.

23 Q So you ain't going to say yes or no, are you?

24 A The request, I believe, was for the retainer
25 agreement, Mr. McLean. It just happened that it was all

1 in the same file. So when my staff pulled it out, the
2 retainer agreement was in that file and that account
3 number. And the check, before it left the office, had
4 been copied, and they gave it to your office without my
5 knowledge or looking at it.

6 I don't know right now if at that time the
7 check had been negotiated, cleared the bank and had come
8 back in our monthly statement or not.

9 Q Thank you, sir.

10 A But we now have it, if you'd like to see it.

11 MR. MCLEAN: No. Thank you, Mr. Chairman.

12 CHAIRMAN DEASON: We're going to recess for
13 lunch before we do redirect. We will reconvene at 1:30.

14 MR. PIERSON: Mr. Chairman, before we leave, I
15 believe I failed to identify one of my exhibits, the
16 first exhibit I used, which was the long- and short-term
17 debt schedules.

18 CHAIRMAN DEASON: That will be identified as
19 Exhibit No. 17.

20 MR. PIERSON: Thank you, sir.

21 (Exhibit No. 17 marked for identification.)

22 CHAIRMAN DEASON: We'll reconvene at 1:30.

23 (Thereupon, lunch recess was taken at 12:40 p.m.)

24 - - - - -

25 (Transcript continues in sequence in Volume 5.)