

~~VOLUME 9~~

95-01122

~~CASE No. 95-01122~~

1026

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Interim and  
Permanent Rate Increase in  
Franklin County by St. George  
Island Utility Company, Ltd.

DOCKET NO. 940109-WU

THIRD DAY - AFTERNOON SESSION

VOLUME 8

Pages 1026 through 1247

RECEIVED  
AUG 11 1994  
COMMUNICATIONS SECTION

PROCEEDINGS: Hearing

BEFORE: CHAIRMAN J. TERRY DEASON  
COMMISSIONER DIANE K. KIESLING

DATE: Wednesday, August 3, 1994

TIME: Commenced at 8:30 a.m.

PLACE: 101 East Gaines Street  
Tallahassee, Florida

REPORTED BY: JANE FAUROT  
Notary Public in and for the  
State of Florida at Large

APPEARANCES:

(As heretofore noted.)

ACCURATE STENOGRAPHY REPORTERS, INC.  
100 SALEM COURT  
TALLAHASSEE, FLORIDA 32301  
(904) 878-2221

DOCUMENT NUMBER-DATE

07998 AUG-5 88

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

(Transcript continues in sequence from Volume 7.)

BY MR. McLEAN:

Q Mr. Seidman, would you turn to Exhibit No. 32?

A Could you tell me what that is? I don't have that number.

Q I'm sorry. It's kind of hard to keep up with. It's FS-2R. It is a letter from Mr. Brown to John Cullen, or at least it purports to be.

Now, you said that the Utility had not received the \$60,000 during the test year. Is that right?

A I'm looking at the payment schedule that was set out in the settlement. Based on that, they would not have received it.

Q I understand. Okay. Did you consult with Mr. Brown to determine whether your statement was true?

A No, I didn't go any further than that.

Q Okay. Would you look at that letter that's Exhibit No. 32, and familiarize yourself with it.

A I'm looking at this, yes.

Q Okay. Does that indicate to you that on or before January 25, 1993, that Mr. Brown advanced -- I'm sorry, assigned the right to receive those payments to someone else other than himself?

A Yes, that's what it say.



1 Q Okay. Now, if it became the case that, in fact,  
2 the Utility did receive those monies during the test year,  
3 would you have treated the \$60,000 in the same way that you  
4 treated the \$5,000?

5 A Yes, with one condition. I would want to make  
6 sure that the assets which it was supposed to pay for were  
7 also recorded in plant, so that there would be one-for-one  
8 corresponding entries. In other words, we wouldn't have  
9 \$65,000 of CIAC or advances on the books with nothing  
10 offsetting it yet.

11 Q Well, I understand the offsetting entry when  
12 you're booking -- I'm sorry. Were you done?

13 A Yes.

14 Q I understand the offsetting entry when you're  
15 booking plant on the one side and contributions on the  
16 other, but you say these are not contributions. What is the  
17 necessity to book any sort of assets to offset advances?

18 A I think its the same philosophy, if the capital is  
19 designated for a specific purpose then the improvements that  
20 it's designated for should be on the books at the same time.

21 Q Well, it seems to me that the gist of your  
22 testimony is that this money is not necessarily tied to  
23 assets, am I mistaken?

24 A No. I said, quoting from the agreement, it was  
25 supposed to be used for certain things to be done.

1 Q Are you saying that what is in that agreement  
2 determines whether this Commission can treat those funds as  
3 CIAC or something else?

4 A Well, yes, I'm saying that the agreement is the  
5 basis for determining whether or not it's CIAC or an  
6 advance.

7 Q Okay. Let's change focus a bit and move to Page  
8 87 of your rebuttal testimony, if you would, sir.

9 At Line 4 you were asked a question about a  
10 \$44,000 adjustment to CIAC. Do you recall that adjustment?

11 A Yes.

12 Q Okay. And that is one in which you agreed with  
13 Ms. Dismukes, is that right?

14 A Right.

15 Q Okay. Did you review Company documents to come to  
16 that conclusion that Ms. Dismukes was correct?

17 A No. Mr. Brown told me that that came up in the  
18 deposition, and he mentioned it to me, and I went ahead and  
19 said, "Well, if that is the case, then we should go ahead  
20 and agree with the adjustment."

21 Q Now, were you in the room when Mr. Brown testified  
22 at the last case, is that right? Not at the last case, I'm  
23 sorry, the last hearing in Apalachicola?

24 A Yes.

25 Q Okay. Do you recall any of Mr. Brown's testimony

1 which might have been contrary to that, what he told you?

2 A I don't recall one way or the other, no.

3 Q Okay. Would you look to Page 558 of the  
4 transcript. Do you have the transcript?

5 A No, I don't.

6 Q Okay. Let me see if I can get it for you. Pardon  
7 me just a moment.

8 Let me see if I can short-circuit this just a  
9 little bit. My intention is to determine whether you still  
10 agree with Ms. Dismukes that that adjustment should be made.  
11 If you tend to disagree, now that you have read Mr. Brown's  
12 testimony, I may have some more questions. But if you still  
13 believe that the \$44,000 should be booked as CIAC, then we  
14 can skip ahead.

15 A I don't think that changes anything. I can see  
16 what, you know, Mr. Brown on the stand and being asked a  
17 general question about CIAC and contributed property. And  
18 he says he doesn't believe that there is anything else. I  
19 am looking, though, at Ms. Dismukes' testimony at Page 70,  
20 where she quotes from his deposition, where he specifically  
21 talks about this amount, and he says that clearly CIAC  
22 should come off of rate base. And I don't know that what he  
23 said is any different.

24 Q I'm not trying to impeach or anything, I'm just  
25 trying to see is that still your position that that \$44,000

1 should be booked as CIAC?

2 A Yes.

3 Q Okay. Thank you, sir.

4 Moving back yet once again to your Schedule 5,  
5 Page 26, if you will. Again, toward the back of your  
6 exhibit is your audit response to exception -- the response  
7 to Audit Exception No. 18. Is that your work, do you know?

8 A Is that my work?

9 Q Yes, sir. Is that your response?

10 A Yes, it was. It was put together with the help of  
11 getting information from the Company.

12 Q Okay. I see, the second paragraph down, second  
13 double space, "SGI believes it is ludicrous."

14 A Uh-huh.

15 Q Is "ludicrous," your terminology?

16 A Yes, I am afraid so.

17 Q Okay. How about a little later in that paragraph,  
18 "In this exception the audit flippantly recommended," is  
19 that your characterization?

20 A That it is.

21 Q Is that meant in any way to impeach or -- it's  
22 true, isn't it, that you just disagree, right?

23 A Yes. I thought it was, you know, the Staff did a  
24 really thorough long-lived audit and got into really small  
25 nuts and bolts in this audit. And I thought, under those

1 circumstances, it was odd to say, "Well, let's write off  
2 50,000, because we haven't got time to go back and look for  
3 it." We went back and looked for it and found everything  
4 that had happened since the last case. And I think the  
5 witness for the volunteer fire department in this case found  
6 some other contributions that had not been recognized from  
7 prior periods, and we have acknowledge all of those. But we  
8 were able to find all the additions and match those with the  
9 additions of contributions with the volunteer fire  
10 department from 1988 forward.

11 Q Okay. So, do I understand your testimony, then,  
12 that the terms "ludicrous" and "flippantly," do not reach  
13 any motive that Ms. Gaffney may or may not have had?

14 A No, no. I have no problem with Ms. Gaffney.

15 Q Great. Let's move to Page 18 of your rebuttal  
16 testimony, if you will. Ms. Dismukes recommends an  
17 adjustment which would allocate the office rent half to the  
18 Brown affiliates and half to the utilities, is that correct?

19 A Yes. I disagree with what she has done, yes.

20 Q I understand that. You state your view of  
21 prevailing office rents in Tallahassee in answer to that,  
22 don't you?

23 A Yes, I did.

24 Q How do you know what the prevailing rents are in  
25 Tallahassee?

1           A     I looked in the newspaper, office ads, during the  
2 couple of weeks, you know, prior to preparing this.

3           Q     Did you do that, or did someone at the Utility do  
4 that?

5           A     No, I did that.

6           Q     You did that personally?

7           A     Yes.

8           Q     And you came up with enough ads of comparable  
9 properties so you can have a good feel for what the --

10          A     There weren't a lot of ads. There were a couple  
11 of them. And I am not familiar with Tallahassee,  
12 specifically, but I, you know, as having rented where I work  
13 in Palm Beach County, I know how rents are down there.

14          Q     And that might be a little different than they are  
15 up here, do you think?

16          A     Yes, sure. It depends.

17          Q     But it was good enough evidence for you to  
18 question that adjustment, right?

19          A     I think what I'm questioning is, is the method of  
20 looking at the adjustment, you know.

21          Q     Well, I understand that, but --

22          A     In other words, I thought she was -- she was  
23 allocating not -- she was allocating a cost to the lessor.  
24 And, normally, when you go out and you rent property, you  
25 know, you pay the prevailing rate. You don't ask the

1 person, "What are your costs, and what is your debt and what  
2 are your expenses."

3 Q But I think you criticized the adjustment for  
4 coming up with a number which you believe is contrary to the  
5 prevailing market rate, is that right?

6 A That's right.

7 Q Okay. And you went so far as to say on  
8 Line 17 of 19, that if it was so far below the market rate,  
9 it might be low enough to encourage Armada Bay to begin  
10 looking for another tenant. Is that right?

11 A That's possible.

12 Q Well, who is Armada Bay? Isn't that Mr. Brown?

13 A Yes.

14 Q And the Utility, that is Mr. Brown, too, isn't it?

15 A Yes, it is.

16 Q Now, I want to know when the Utility pays money to  
17 Armada Bay Company for management services, does it acquire  
18 any obligation of that manager to seek good deals on behalf  
19 of the Utility?

20 A No, I don't think so. The fee is a set fee.

21 Q You don't think that the manager has a fiduciary  
22 relationship to the Utility such that he must act in the  
23 Utility's best interest?

24 A I'm sorry. I misunderstood. You mean that he is  
25 obligated to look for good deals for rental space for the

1 Utility?

2 Q Sure.

3 A Okay. Sure.

4 Q Sure. He has undertaken to look out for the  
5 Utility and manage it?

6 A Right. That is why I said you should look and see  
7 if it's -- how it compares to the prevailing rate.

8 Q But you're saying if the deal gets too good,  
9 Armada Bay ought to run off the Utility and look for another  
10 tenant, is that right?

11 A Well, I think that the owner of that property or  
12 the person holding the lease/purchase arrangements has that  
13 right. I don't --

14 Q I'm sorry, are you done?

15 A I don't think that just because you're an  
16 affiliate you're obligated to provide facilities at less or  
17 lower return than you can get elsewhere.

18 Q How about if you're the manager, do you have the  
19 obligation to look for the cheapest place you can find?

20 A Considering the conditions of the place you find.

21 Q Sure. Well, suppose the Utility's trusted manager  
22 evicts it. Do you think the Utility might have cause to  
23 look for another manager?

24 A In this specific instance, again, I think we are  
25 crossing a line here. If the manager had gone ahead and



1 contracted for something that would not meet the test of  
2 market prices, I think that's questionable.

3 Q But the point is that Mr. Brown is on both sides  
4 of that table, too.

5 A Oh, I understand that, and that's why I tied it to  
6 a market test. You know, whether you agree with my ending  
7 number or not, I don't know that you can disagree with the  
8 market test as the way you test whether payments between  
9 affiliates are legitimate.

10 Q Well, you're suggesting to the Commission that  
11 Armada Bay might look for another tenant. Now, is that a  
12 realistic thing? Do you expect that to happen?

13 A I don't know. No, I'm not saying -- nobody has  
14 told me that, nobody has threatened that. I'm saying that  
15 if I had a property that I could rent out, and I could make  
16 more money renting it to somebody else, I would do so.

17 Q Of course. How about if you had undertaken to be  
18 that tenant's manager?

19 A As long as it didn't go over the prevailing market  
20 rate, you know, reasonable rate, I don't think it makes any  
21 difference.

22 Q The distinction here between Mr. Brown and Armada  
23 Bay, or the Utility and Armada Bay and Mr. Brown, those  
24 distinctions you find persuasive, then?

25 A I find my argument persuasive, yes. I mean, I

1 understand how you feel about it, and I don't necessarily  
2 expect you to agree with me.

3 Q Of course not.

4 A But that is my opinion. I think this is a  
5 legitimate price.

6 Q Yes, I understand that. And in order to get  
7 there, you invite the Commission and I think invite the rest  
8 of us to believe that these entities operate as independent  
9 functions in the marketplace; is that not true?

10 A With regard to some functions.

11 Q Sure. With regard to things like office rent, but  
12 not with regard to \$65,000 worth of CIAC, right?

13 A No, I don't see that -- I don't see where that  
14 compares. There was an arrangement made in a settlement.  
15 You know, I'm not a lawyer, but to me a settlement is a  
16 settlement. It involves lots of give and take, and you come  
17 out with, you know, a result that both parties are partially  
18 happy with and partially unhappy with, and it serves the  
19 purpose of settling that particular controversy.

20 Q Okay. Let's move onto the allocation of 10  
21 percent of the office salaries. You heard me discuss that  
22 with Ms. Chase, so you know what the disagreement is?

23 A Yes.

24 Q You characterized that as just reaching, I think.  
25 Is that a quote from your testimony?

1           A     Yes. I've watched these employees for several  
2 months now, and I really think, with regard to their  
3 specific utility employees, that they do practically nothing  
4 with regard to anything other than the Utility. It's really  
5 inconsequential.

6           Q     How many days have you been up there during those  
7 several months to which you just made reference?

8           A     I'd say at least a month.

9           Q     You have been up here for 30 days straight?

10          A     Oh, no, not straight.

11          Q     Oh, I'm sorry.

12          A     Off and on.

13          Q     I understand. But you have been up here for 30  
14 days, is that your testimony?

15          A     Yes, I have come for a couple of days at a time, a  
16 week at a time. I have been over there when I have been up  
17 for other things. I may have stopped by there, too. I have  
18 been there on weekends. You know, what can I say? I have  
19 seen whatever you see when you walk into an office and, you  
20 know, just observe how things are done and the jobs that  
21 they are doing.

22          Q     And one of the things they were doing is preparing  
23 a rate case, is that right?

24          A     Oh, yes.

25          Q     And I think that the judgment of the Commission

1 over time has been that that event should occur about once  
2 every four years?

3 A Well, that is a judgment of the legislature, I  
4 guess.

5 Q Yes, that's true, too. But it's true, isn't it?

6 A You only get paid for it every four years.

7 Q Well, of course, the question is whether when you  
8 observe them, number one, of course, whether you had a good  
9 opportunity to observe them, but we'll get to that. But  
10 were they doing their typical duties while you observed  
11 them?

12 A For the first part of the times I was there,  
13 because when I was initially there, which maybe involved a  
14 couple of weeks' time, they were not doing an awful lot with  
15 regard to the rate case, unless I asked them to do  
16 something. I mean, there wasn't any auditing going on yet.

17 Q And you were in a position to know who was on the  
18 other end of the phone when they were called and things like  
19 that?

20 A Downstairs, I could pretty much tell. You know, I  
21 hate to admit to eavesdropping, but, I mean, you can tell  
22 when somebody is talking about utility business, or whether  
23 it was a call for Mr. Brown and they went ahead and sent it  
24 up.

25 Q Some of the calls to Mr. Brown might be about law

1 business which also affected the Utility, wouldn't it?

2 A Yes. Well --

3 Q Okay.

4 A That's possible. I sure didn't see any clients in  
5 the time that I was there.

6 Q It would be hard to tell, I think.

7 A I did see people come in and come up and see  
8 Mr. Brown. And they were typically there for purposes of  
9 working out some type of utility financing, or something of  
10 that nature, or engineering.

11 Q Okay. But your testimony is with respect to the  
12 duties that the employees in question have --

13 A Uh-huh.

14 Q -- is that it was incidental and simply a matter  
15 of courtesy, is that right?

16 A Yes.

17 Q That is Mr. Brown's affiliates -- Mr. Brown's  
18 employees being courteous to Mr. Brown's affiliated  
19 employees?

20 A Were Mr. Brown's affiliate employees being  
21 courteous?

22 Q Yes. They were being courteous -- some of  
23 Mr. Brown's employees and the affiliates' employees are the  
24 same people, aren't they? They were just being courteous to  
25 each other? Is that what is going on?

1 A I'm talking about three utility employees.

2 Q I understand.

3 A That is all.

4 Q And when they extend a courtesy, aren't they  
5 extending a courtesy to their own employer?

6 A Yes. But I think the important thing here is not  
7 whether or not they were just being courteous, but the  
8 quantity of the courteousness.

9 Q Well, I think "courteous" was your word.

10 A There just weren't that many incidents that I  
11 noticed that involved other than utility work.

12 Q Well, you're advancing courteous to justify those  
13 incidental things, aren't you?

14 A Well, "courteous" is an adjective that was used by  
15 the deponents, the employees of the Company.

16 Q It is an adjective of your choice, then, because  
17 it appears in your testimony?

18 A I quoted or referred to their depositions.

19 Q Would you look at the exhibit that has been marked  
20 No. 33?

21 A Number 3R, did you say?

22 Q Yes, sir, that's correct.

23 Let me ask you, generally, are you familiar with  
24 the Commission's -- strike that, and let me ask you, do you  
25 know whether in your extended stay at the Utility there for

1 some 30 days, did you happen to notice whether these  
2 utilities -- whether these persons were keeping any records  
3 of the times of the incidental and courteous extensions of  
4 their resources to Mr. Brown's affiliates? Did you notice  
5 whether they were keeping any records about any of that?

6 A Like records of phone calls, for instance?

7 Q Yes, sir.

8 A No, they weren't.

9 Q Okay. And how about the times they spent at the  
10 Xerox, or the fax machine, or whatever, did they keep any of  
11 those?

12 A No, there was no record-keeping of that.

13 Q Do you know whether the Commission has ever  
14 addressed exactly this situation in any other case? For  
15 example, the Mad Hatter case to which you make reference?

16 A Allocation of time of people? Sure.

17 Q Yes, sir.

18 A Sure. I'm not asking them not to address it. I'm  
19 just saying that 10 percent is a big number, I think,  
20 compared to what I have seen.

21 Q Okay. And you say it's just reaching, right?

22 A Yes, I think it is.

23 Q Okay. And you say there was activity, although it  
24 may be, in your view, inconsequential, and you say that  
25 there were not records, is that right?

1           A     That's right.

2           Q     Would you turn to page, the numbered Page 25 of  
3 that exhibit, Mr. Seidman?

4           A     25 of -- oh, I see. Okay.

5           Q     The last paragraph on that page, Mr. Seidman. "In  
6 consideration of the above, we find it appropriate to  
7 allocate a portion of MHU's salaries to Scarecrow. The  
8 factor of greatest import here is that MHU did not keep, and  
9 therefore could not produce, time records in support of its  
10 position. Yet, Mr. DeLucenay admitted that MHU's employees  
11 devoted some time to Scarecrow, Mr. Nixon agreed to allocate  
12 telephone expenses to Scarecrow," and so forth. Did I read  
13 that correctly?

14          A     That's correct.

15          Q     Now, was the Commission just reaching in that  
16 instance?

17          A     I don't know. I don't know what they said. I can  
18 only tell you, you know, my observations. And based on my  
19 observations, I felt that that was -- that 10 percent was  
20 reaching.

21          Q     Okay. Well, let's look at what the Commission  
22 said in the Mad Hatter case, that time was spent, that there  
23 were no records and an allocation would be made, isn't that  
24 correct?

25          A     That is what it says.



1           Q     Great. Let's turn to Page 25 of your testimony,  
2 your rebuttal testimony. Page 25, Line 20, there is some  
3 characterization of Ms. Dismukes' testimony there. You  
4 infer, I believe, that she would like to take advantage of  
5 people or suggest that the Utility should take advantage of  
6 people, is that right?

7           A     I think so. I mean, when you're talking about  
8 holding down pay because of the economic environment today,  
9 I would think that means that the job market is kind of  
10 slack.

11          Q     Do you know that she was not, for example,  
12 referring to a noninflationary economy?

13          A     I don't know.

14          Q     Okay. In point, isn't it true that what she was  
15 dealing with in that paragraph are raises, isn't that right?

16          A     Yes.

17          Q     Okay. And in the context of discussing those  
18 raises, she discussed prevailing economic conditions, right?  
19 And from that you infer that she would like the Utility to  
20 be unfair to people?

21          A     I read into prevailing economic environment as  
22 more than just inflationary matters.

23          Q     Okay. But, obviously, inflationary might have  
24 been one of the things she was talking about, right?

25          A     It might be.

1 Q Okay. So, you don't really know what Ms.  
2 Dismukes' motives are, do you?

3 A I'm not ascribing any motives to her. She made a  
4 statement for something, and I've taken issue with it.

5 Q Then let's look to Page 24, if you would, Lines 1  
6 and 7. At Line 1, I think you accuse her of posturing?

7 A Yes.

8 Q And at Line 7, you say something about "Play well  
9 to the audience at hearing"?

10 A Yes.

11 Q Are those your words?

12 A Yes.

13 Q And that is what you believe is true today?

14 A I think that is the result of this, yes.

15 Q Well, I have the impression that you are directly  
16 addressing her motives there, Mr. Seidman. Do you say  
17 that's not true?

18 A I think that is the motive of Public Counsel.  
19 That's their perceived job. I don't agree with it.

20 Q Is to "posture" and "play well to the audience at  
21 hearing"?

22 A Yes.

23 Q Okay. Awhile ago you mentioned something about  
24 the judgment of the legislature. Do you know whether the  
25 judgment of the legislature put the Office of Public Counsel

1 where I sit today?

2 A Yes.

3 Q All right. So, do you think it was the intention  
4 of the Florida Legislature to establish a state office for  
5 posturing and playing well to the audience at hearing?

6 A No.

7 Q Okay. Do you suggest that Ms. Dismukes in  
8 posturing or playing well to the audience at hearing in any  
9 way sacrificed her professional judgment to that end?

10 A I don't know. You know, this is an advocacy  
11 proceeding, and we each take our own positions.

12 Q And we each swear to tell the truth, don't we?

13 A Yes.

14 Q Do you think posturing and playing well to the  
15 audience is inconsistent with an oath?

16 A Well, I don't think there is any violation of  
17 truth here.

18 Q Oh, okay. So you're agreeing with what she said,  
19 you are just saying that it's posturing?

20 A I believe that what came out of it is posturing,  
21 yes. It isn't because she didn't tell the truth about  
22 something. It's because of the end result. You know, this  
23 is discussed as, "Let's move ahead with -- forward with  
24 growth adjustments and take and show," you know, "Things  
25 that are happening into future years," and, you know, the

1 implication is that we are going to show more revenues, more  
2 expenses and whatever. But the fact is, when you come out  
3 of this thing, we came out with almost exactly the same  
4 amount of expenses on her 1993, I guess it is, adjusted test  
5 period as we had before we went into this case, and we feel  
6 that isn't adequate to begin with.

7 Q Do you think --

8 A I think there has been a lot of discussions of add  
9 this, subtract that, add this and subtract that, and the end  
10 result is we have gotten nowhere.

11 Q And you think that was the result of posturing and  
12 playing to the audience, right?

13 A You can call it what you want.

14 Q No, sir, I'm asking you what you call it.

15 A That is what I call it.

16 Q That is what you call it?

17 A Yes.

18 Q Now, I ask you again, do you think that affected  
19 Ms. Dismukes' professional judgment in any way, shape,  
20 manner or form?

21 A I don't know.

22 Q Then why is it relevant? Why is it in your  
23 testimony?

24 A It's my opinion.

25 Q Well, irrespective of whether it's your opinion,

1 it has to have some relevance here or it's subject to being  
2 stricken, isn't it?

3 A The relevance is that I believe that the way in  
4 which the information was presented would lead you to  
5 believe that there is going to be an adequate level of  
6 expenses at the end of her analysis, and it wasn't.

7 Q Would you turn to Page 55, Mr. Seidman, please,  
8 sir? On Line 4, I quote, "Ms. Dismukes is so upset because  
9 employees have not been keeping mileage records that she  
10 lost all perspective." And I want to ask you a question or  
11 two about that.

12 First, is that your characterization?

13 A Yes, it is.

14 Q What makes that behavior apparent to you?

15 A It was a harsh judgment, probably.

16 Q Do you withdraw it?

17 A I will withdraw it, yes.

18 Q Thank you, sir. Now, I want to ask you something  
19 about your perspective. Ms. Dismukes there was talking  
20 about the Utility's failure to keep records. Do you know  
21 whether every employee of the State of Florida who attended  
22 that hearing in Apalachicola is required to keep the very  
23 sort of records that you were addressing there?

24 MR. PFEIFFER: I object, it's irrelevant.

25 MR. McLEAN: The relevance is the witness is

1 suggesting, despite many years of regulatory experience,  
2 that the Utility ought to be in some way held harmless for  
3 failure to keep records. There is already a tremendous  
4 amount of testimony in the record about their failue to keep  
5 records. Mr. Seidman has chosen to characterize their  
6 keeping of records in a number of ways, and I would like to  
7 know why he thinks it so absurd to think this office  
8 believes that they should keep records.

9 CHAIRMAN DEASON: I will overrule the objection  
10 and allow the question.

11 THE WITNESS: You're asking me if I know if all  
12 state employees have to keep travel records?

13 MR. McLEAN: Yes, sir.

14 THE WITNESS: Yes, they do.

15 BY MR. McLEAN:

16 Q Good. Do you think that requirement is the result  
17 of some state official losing his perspective or her  
18 perspective?

19 A No. And I don't mean it to be viewed in that way.  
20 I'm not saying --

21 CHAIRMAN DEASON: Mr. McLean, I think that portion  
22 of the testimony has been withdrawn.

23 MR. McLEAN: I was asking about his perspective,  
24 but I will agree. I will move on to another question.

25 BY MR. McLEAN:

1 Q In order to reach a reasonable estimation or a  
2 reasonable view of what this Utility's travel expenses are,  
3 you have to rely on estimates, and recollections, and other  
4 indirect evidence, don't you?

5 A Yes, you do.

6 Q Well, what kind of perspective is that?

7 A Well, the point I'm making here is -- first of  
8 all, I'm not taking issue with the fact that record-keeping,  
9 or the fact that they are not keeping records is good, and  
10 the fact that other people keep records is bad. I think  
11 they should keep time records. I've told them that. The  
12 point is that this Utility incurs a transportation expense.  
13 And even though they do not have the time records to show  
14 it, there is a pretty good estimate of what those expenses  
15 are, and the Commission should recognize a legitimate amount  
16 of transportation expense. I'm trying to show that as best  
17 I can. As you know, in the initial MFRs, I used an IRS  
18 mileage test. And in the rebuttal, I went further and --  
19 which I think is probably a better way of looking at it --  
20 and looked at the alternative cost to the Utility of  
21 incurring transportation expenses by owning and running its  
22 own vehicles versus the employees doing that. That's the  
23 point. The point is that there is a basis for  
24 transportation expense. And the fact that they have not  
25 kept the record to legitimize all of those expenses does not

1 mean that they should not be allowed the revenues to recover  
2 that expense.

3 Q If the Utility is permitted travel expense in the  
4 absence of objective evidence, then what incentive does the  
5 Commission have to hold out to other utilities who might  
6 choose to avoid the duty of maintaining records when they  
7 can be assured that a guess will be good enough or an  
8 educated guess?

9 A Well, the Commission could go ahead and require  
10 them to keep the records.

11 Q Prospectively, I take it?

12 A It would have to be.

13 Q But with respect to other utilities which this  
14 Commission regulates, wouldn't the Commission also be  
15 telling them, "Well, if you don't keep the records, you will  
16 get travel anyway, because everybody knows you travel."

17 A Well, I certainly don't recommend that the  
18 Commission just allow an expense level without any basis.  
19 I've given a couple of bases. One is, as I indicated, is on  
20 an IRS mileage test, another is on the cost of running their  
21 own vehicles. The third test, I guess, is what they  
22 incurred and were allowed in the last case. You know, I  
23 think there is some evidence there of what is a reasonable  
24 level for the Commission to consider. That's all I can do  
25 is to provide you that in the absence of their time sheets.



1           Q     Exactly. And if the IRS test that you just  
2 mentioned, if one shows up at one's audit without the time  
3 sheets -- without the travel, rather, what happens to the  
4 travel expense, do you know?

5           A     To the Utility? Nothing.

6           Q     To anybody?

7           A     I guess if somebody couldn't substantiate their  
8 expenses, whether it's travel or anything else to the IRS,  
9 they are going to take issue with it unless you can give  
10 some other type of substantive evidence that they will be  
11 happy with. That doesn't change the concept here that I am  
12 promoting, which is to help the Commission determine what is  
13 a reasonable expense for this Utility, so that they can  
14 continue providing service.

15          Q     Let's move on to consultant fees. On Page 68 you  
16 have some testimony which addresses that issue. Line 7,  
17 "Ms. Dismukes suggested that perhaps you should have a --  
18 that the Utility should have a closed-end contract rather  
19 than open-ended," is that right?

20          A     Yes, she suggested that.

21          Q     And you disagree with that?

22          A     Yes, I did.

23          Q     And you say maybe that is how she operated when  
24 she was a consultnat. Are those your words?

25          A     Those are my words.

1 Q Okay. And you still think that?

2 A I don't know. I mean, I took offense at her  
3 remarks.

4 Q Did any of her -- what do you mean by "operate"?

5 A Where are you reading?

6 Q Line 7. And let me strike the question. My  
7 impression is that you used the term "operate" in a  
8 pejorative sense. Is that true or false?

9 A Yes. I don't know. It just seemed to me that's  
10 an accusation against consultants running up bills, you  
11 know. I am just saying I don't operate that way and maybe  
12 she does.

13 Q I think the gist of Ms. Dismukes' testimony was  
14 that in the absence of a closed-end contract there was no  
15 incentive to limit costs, is that right?

16 A Well, let me look at her testimony, just to know  
17 exactly what she said.

18 Q Well, let me ask you, generally, then, do you know  
19 if she launched any personal attack on you?

20 A No.

21 Q And you answered with one on her, didn't you?

22 A Well, it could be construed that way. I'm sorry.  
23 I certainly meant no personal attack with Ms. Dismukes. I  
24 have no problem with Ms. Dismukes personally.

25 Q Thank you. Would you turn to Page 79. The top of

1 that page, "She then tries to sell the Commission on the  
2 proposition that  $2 + 2 = 3$ ." Are those your words?

3 A Those are my words.

4 Q All right, sir. Did you just mean to say that you  
5 disagree with her?

6 A Yes, I disagree with her.

7 Q I want to ask you the question again. Is that all  
8 you mean to say, or is this another -- is this a personal  
9 attack on her integrity?

10 A No, that is not a personal attack at all. I think  
11 she has taken two things. It's like saying apples and  
12 oranges and coming up with pears.

13 Q Okay. Then you're saying --

14 A The parts don't match to get to the end result.

15 Q Then why did you use the term "sell"? I have the  
16 notion that you used it in the pejorative sense; true or  
17 false?

18 A No, that is not true. We are all advocates here.  
19 We are trying to sell our position to the Commission, as I'm  
20 trying to sell mine.

21 Q Would you believe Ms. Dismukes takes her oath more  
22 seriously than that?

23 A I would hope so, certainly, I do.

24 Q Would you turn to Page 32 of your testimony,  
25 please, sir.

1 Ms. Dismukes ventured a criticism of Utility  
2 management for being in trouble -- and I use the term  
3 loosely, if you will forgive me -- with the DER and now the  
4 DEP. Do you remember that?

5 A Yes.

6 Q And one of the ways you answered her criticism was  
7 to suggest on Page 32 that a consent order isn't any sort of  
8 evidence of Ms. Dismukes' observation, is that right?

9 A A consent order is not what?

10 Q Ms. Dismukes referred to a consent order as  
11 evidence that this Utility had been in some trouble with the  
12 DER. And the gist of your testimony is that a consent order  
13 is not a finding of a violation?

14 A That's right. It's on Line 10, yes.

15 Q And if Ms. Dismukes didn't know that, she should  
16 have, that is Line 8?

17 A That's correct.

18 Q Now, let's refer to FS-4R, which Chairman Deason  
19 has marked as Exhibit 34, I believe. Now, let's look at  
20 that -- do you see what the document is?

21 A Yes, a consent order.

22 Q It is the consent order to which you referred in  
23 your testimony?

24 A Yes, I believe so.

25 Q Okay. It is the one which Ms. Dismukes should

1 have known things about, but you say did not, correct?

2 A Uh-huh.

3 Q Okay. Let's look at the line -- about five lines  
4 down in the body, where it says, "The department finds and  
5 the Respondent admits the following," do you see that?

6 A Yes.

7 Q The department is the DER, isn't it?

8 A Yes.

9 Q Now the DEP. And the Respondent is St. George  
10 Island Utility Company, is that correct?

11 A Right.

12 Q Would you turn to Page 2 of the same exhibit.  
13 Look in the paragraph numbered 5, the last sentence in that,  
14 "The survey revealed numerous deficiencies."

15 A Right.

16 Q Is that among the things which the department  
17 found and the respondent admitted?

18 A They have admitted to deficiencies, yes.

19 Q Yes, sir. And they admitted -- didn't they also  
20 admit in Paragraph 6 to the -- well, let me rephrase that.  
21 Paragraph 6 says, "The inspection revealed the following  
22 deficiencies," and there is a list of deficiencies. And I  
23 believe those are included in the things which the  
24 department found and the respondent admitted, isn't it?

25 A That's correct.

1 Q And the same is true of Paragraph 7 and the list  
2 of deficiencies there?

3 A Uh-huh.

4 Q And in 8 the consent order refers collectively to  
5 the violations. Do you believe, as I do, that violations  
6 refers to the enumeration of each of those deficiencies  
7 which precede it?

8 A I agree that it indicates violations of the  
9 deficiencies. I don't think there is any admission of  
10 violations of the statutes or the regulations. These are  
11 deficiencies with regard to operation, and that is the way I  
12 think it reads. That is, to me, what a consent order is.

13 Q Respondent admits each of those deficiencies, is  
14 that right?

15 A They are referred to as deficiencies in the  
16 operation, yes.

17 Q Right. And in Paragraph 8, a document which bears  
18 the signature of both the respondent and the department  
19 refers to those deficiencies as violations, doesn't it?

20 A Violations of a deficiency.

21 Q Violation of a deficiency?

22 A That is the way I would see it.

23 Q Violation of a deficiency sounds like something  
24 they should be congratulated for?

25 A Well, no, I'm just saying that I don't think there

1 is any finding in the consent order that they violated a  
2 particular statute or rule.

3 Q Well, let's look to Line 10.

4 A And that is all that was -- that was what was  
5 talked about, that they are continually violating rules and  
6 regulations.

7 Q "As Ms. Dismukes knows or should know, a consent  
8 order is a mutual resolution of differences."

9 A Right.

10 Q "Not a finding of violations. The department  
11 finds and the respondent admits," Paragraph 8, "the  
12 violations." Now, am I missing or am I going out of context  
13 or something?

14 A No, the sentence should be completed with "of  
15 rules and regulations."

16 Q Oh, I see. Now, Ms. Dismukes --

17 A That is the context in which the sentence was  
18 given.

19 Q Well, the context is pretty much up to you, isn't  
20 it, Mr. Seidman, it's your testimony?

21 A I wrote it.

22 Q And if you didn't say it, how can Ms. Dismukes be  
23 expected to know that it had a more limited meaning than the  
24 one which its plain words implies?

25 A Well, this was written after hers.

1 Q You say there is something she should have known,  
2 right? And what it boils down to is she should have known  
3 that you omitted two words?

4 A In the context of the paragraph, yes.

5 Q On Page 32, Line 11, you say that the Utility  
6 complied with and continues to comply with this consent  
7 order, is that right?

8 A Yes.

9 Q Are you telling the Commission in any way that  
10 their compliance with this consent order, if any, has been  
11 voluntarily undertaken?

12 A I'm not quite sure I understand. You mean that  
13 everything without being called down or --

14 Q The whole thing here is in the context of  
15 criticism of management. You say they are not in trouble  
16 with DER because they signed the consent order, and the  
17 consent order doesn't have anything to do with violations of  
18 rules, or regulations, or whatever. And then you say that  
19 the Utility continues to comply, don't worry Commission, the  
20 Utility is doing fine here. And I'm going to say to you  
21 that the DER has had to ride herd on them from jump street.  
22 Isn't that about the size of it?

23 A I don't think we have tried to imply anything  
24 else. I think we have pretty well stated that this Utility  
25 has had problems and has been under the gun and has been



1 slow to react until about two years ago.

2 Q Okay. And if you look to Exhibit Number 35,  
3 FS-5R.

4 CHAIRMAN DEASON: Mr. McLean.

5 MR. McLEAN: Yes, sir.

6 CHAIRMAN DEASON: I take it you have a bit more  
7 for this witness.

8 MR. McLEAN: A bit more, sir.

9 CHAIRMAN DEASON: Okay. Now will probably be an  
10 appropriate time to take ten minutes.

11 MR. McLEAN: Thank you, sir.

12 (Brief recess.)

13 CHAIRMAN DEASON: Call the hearing back to order.

14 Mr. McLean, before you proceed, let me make an  
15 announcement. We will break for lunch today at  
16 approximately 12:30. This afternoon I will be attending a  
17 memorial service for former Commissioner Easley. I  
18 anticipate that I will not be able to be back at the hearing  
19 until approximately 3:00 p.m., maybe some earlier, but that  
20 is the general time frame.

21 We have two options: The hearing can reconvene at  
22 1:30 with the understanding I will not be here and  
23 Commissioner Kiesling can conduct the hearing, and I will  
24 review the record for the portion that I miss. The  
25 alternative is not to reconvene the hearing at 1:30, but

1 wait until I return, which probably will not be until 2:30  
2 or 3:00, somewhere in that time frame.

3 And also, I want to advise the parties, which I  
4 think you were advised earlier when we were in Apalachicola,  
5 is that Commissioner Kiesling and I have to catch a plane  
6 this afternoon to attend another hearing in Pasco County  
7 which starts tomorrow morning. So, we do not have the  
8 luxury of working late into the evening. That is the reason  
9 I'm explaining this. I am just giving you all this  
10 notification now. You can think about it until 12:30 when  
11 we break for lunch. I will just need to know what your  
12 plans are as far as reconvening at 1:30, or waiting until  
13 2:30 or 3:00.

14 MR. PFEIFFER: What is your schedule as far as  
15 having to conclude this afternoon so that you can catch your  
16 airplanes?

17 CHAIRMAN DEASON: We are looking at 5:00, maybe a  
18 few minutes after 5:00, definitely not past 5:30, preferably  
19 around 5:00.

20 MR. PFEIFFER: Well, I will say to you that from  
21 the perspective of St. George Island Utility, that we would  
22 be happy to proceed with Ms. Kiesling at 1:30, with the  
23 understanding that you would, of course, review those parts  
24 of the record for your part.

25 CHAIRMAN DEASON: Very well. Do other parties

1 wish some time to think about that? We will just wait until  
2 12:30.

3 Mr. McLean, you may proceed.

4 BY MR. McLEAN:

5 Q Mr. Seidman, we were discussing the compliance of  
6 the Utility with the consent order, just moments ago, and I  
7 think I asked you to look at Exhibit No. 35, which is also  
8 called FS-5R. Have you had a chance to examine that?

9 A I just browsed through it to see what it was.

10 Q Okay. It purports to be a final judgment --  
11 partial final judgment signed by Judge Hall.

12 A Yes, sir.

13 Q Okay. Would you look to Page 5 of the order. Do  
14 you know what -- I'm sorry.

15 A Excuse me, Page 5?

16 Q It's hand-lettered 5 over at the right-hand  
17 corner.

18 A Injunctive relief.

19 Q Yes, sir. Do you know what an injunctive relief  
20 means? Do you know what those words mean?

21 A No.

22 Q Do you know whether people can go to jail for  
23 violations of injunctions?

24 A No, I don't know.

25 Q You testified at some length about the term

1 relevance in your rebuttal testimony, didn't you?

2 A About relevance?

3 Q Yes, sir.

4 A Of what?

5 Q "Relevance," as a legal term, do you remember  
6 that?

7 A As a legal term? No, I don't recall that.

8 Q Well, let me skip beyond that, and ask you whether  
9 Mr. Brown and the DER is still arguing over hydrogen  
10 sulfide?

11 A Yes, they are.

12 Q Okay. Let me ask you one more question about  
13 Exhibit No. 35. Look all the way to the end -- I'm sorry.  
14 Wait a minute. I believe it is -- I think it's the last  
15 page, but I may stand corrected. Yes, sir. Which is Page  
16 No. 15?

17 A Yes, sir.

18 Q I read, "This stipulation shall not be deemed an  
19 admission by any party regarding the determination of  
20 penalties, the amount and necessity of which shall be  
21 determined at a subsequent hearing. My question is do you  
22 know whether that subsequent hearing was ever held?

23 A No, I don't.

24 Q Okay. Now, the stipulation which follows the  
25 partial final judgment, as I understand, is incorporated

1 into the final judgment, is that right?

2 A Yes.

3 Q Okay. Now, when you agreed with me that the DER  
4 had had some difficulty in obtaining compliance, were you  
5 thinking of things such as this partial final judgment to  
6 bring you to that conclusion?

7 A Yes. I don't think there is any question about  
8 the record with what's happened with this Utility. Nobody  
9 has hidden it. It has had a long haul getting to the  
10 conclusion of bringing its plant up to date.

11 Q So, when you testified in your rebuttal testimony  
12 back on Page 32, you didn't mean in any way to suggest to  
13 the Commission that the Utility was not, in fact, in trouble  
14 with the DER and has been for some time, did you?

15 A I don't know about the characterization of "in  
16 trouble."

17 Q Uh-huh. Well, I can rephrase it.

18 A There is no question that the items specified in  
19 the consent order and in the partial final judgment  
20 stipulation were not all done as quickly as the DEP would  
21 have liked them to have been done. There was a big time lag  
22 in getting started. And I think they have made a lot of  
23 progress and just about cleaned up this whole thing, with  
24 perhaps -- except with regard to coming to a common ground  
25 on hydrogen sulfide. And most of that has happened in the

1 last year, year and a half.

2 Q Are you testifying that the consent order has been  
3 complied with?

4 A Pretty much so, except, I believe, for the  
5 hydrogen sulfide issue.

6 Q Okay. Now, your testimony at Page 10 was not  
7 designed to make the Commission believe that the DER has not  
8 engaged in extensive enforcement activity with respect to  
9 this utility, was it?

10 A No.

11 Q Let's turn to the fascinating topic of unaccounted  
12 for water, Page 61 of your testimony.

13 A Yes, sir.

14 Q Page 61, Line 16.

15 A Yes.

16 Q Ms. Dismukes took something out of context?

17 A Yes, sir.

18 Q And on Page 62, Line 1, you say that Ms. Dismukes  
19 apparently chose to assume something; those are your words,  
20 I take it?

21 A Those are my words.

22 Q Okay. Is choose to assume any different than  
23 assume, by the way?

24 A No.

25 Q Okay. Now, the topic here is what is the

1 permissible unaccounted for water for this utility, right?

2 A Yes. The topic is what is the -- first of all,  
3 what is the unaccounted for water for the test year, whether  
4 or not that's excessive or not under the --

5 Q And on Page 61, Line 22, you reference a Staff  
6 interrogatory?

7 A Yes.

8 Q Would you look to Exhibit Number 38, also known as  
9 FS-8R, please, sir?

10 A FS-8R?

11 Q 8, yes, sir.

12 A Yes, sir.

13 Q I read it to say, "Please explain why the  
14 Utility's unaccounted for water is greater than 10 percent."  
15 Do you agree with that reading?

16 A That is what it says; yes, I agree.

17 Q I believe you said in your testimony that that  
18 interrogatory mentioned 15 percent, isn't that correct?  
19 Refer to Page 61, Line 23.

20 A Yes, I did.

21 Q But that's an error, isn't it?

22 A That must be an error.

23 Q Okay. But the gist of the question is please  
24 explain why the Utility's unaccounted for water is greater  
25 than 10 percent, no reference to time, is there?

1 A No.

2 Q And there is no reference to testing procedures,  
3 is there?

4 A No.

5 Q But Ms. Dismukes, you say, drew some conclusions  
6 about both time and testing procedures, didn't she? Isn't  
7 that what you say?

8 A Yes.

9 Q Okay. Let's look at the Utility's answer. The  
10 question: "Please explain why the Utility's unaccounted for  
11 water is greater than 10 percent?" the Utility's answer:  
12 "The Utility's unaccounted for water is not greater than 10  
13 percent. According to a recent independent study, an  
14 analysis by the Florida Rural Water Association, the  
15 Utility's lost water figure is approximately 2 percent after  
16 full implementation of a leak detection program implemented  
17 jointly by Florida Rural Water Association and the Utility,"  
18 correct?

19 A Yes.

20 Q Do you detect any reference there to time?

21 A No.

22 Q Do you think one could draw the inference that  
23 they were asked -- that the Staff, in fact, inferred or  
24 implied, rather, that the reference for 10 percent  
25 unaccounted for water was, in fact, an annual number?



1           A     Yes.

2           Q     Did the Utility's answer contain the same  
3 implication in any way?

4           A     On its face, yes.

5           Q     Okay. So the Utility, perhaps, rather than  
6 Ms. Dismukes, chose to assume or chose to invite the reader,  
7 actually, to believe that their answer was an annual number,  
8 didn't they?

9           A     I don't know that. I didn't prepare this, but I  
10 know the context and from which the 2 percent came from.

11          Q     Sure, we will get to that. What I want to know  
12 right now is about time?

13          A     There is no indication of time.

14          Q     Okay. But there is in the question, isn't there?

15          A     There is no indication of time in the question.  
16 There is my knowledge that the Staff would not ask for  
17 unaccounted for water for any other period than the test  
18 year.

19          Q     But the answer they got appears to be, to you at  
20 least, or should have occurred to Ms. Dismukes, that the  
21 period was different, is that right?

22          A     Yes.

23          Q     Yes, that it's atypical. Suddenly, the answer  
24 becomes atypical in your view; that 2 percent is not a  
25 recurring number, the sort of recurring number that the

1 Staff asked for, is that right?

2 A That's correct.

3 Q Great. Now, there is a marvelous reference and  
4 use of the term "lost water" in the answer, isn't there, as  
5 opposed to unaccounted for water?

6 A Yes.

7 Q And the lost water was used in a response to a  
8 question about unaccounted for water?

9 A Yes.

10 Q And from that, I suppose, Ms. Dismukes, and  
11 perhaps the Commission, should have known that the Florida  
12 Rural Water Association used a different sort of testing  
13 criteria than the Commission uses, right?

14 A I think Ms. Dismukes is knowledgeable enough to  
15 know what the Commission Staff's terminology is, and with  
16 access to the Florida Rural study, whether or not that met  
17 those terms.

18 Q What she chose to assume, isn't it, is that that  
19 answer was a fair response to a fairly asked question, isn't  
20 it?

21 A Yes, apparently, so.

22 Q So, there was no reason for her to believe that  
23 2 percent was not typical, and that 2 percent, the means by  
24 which one arrives at 2 percent, was not the same as that  
25 which is used by the Commission?

1           A     Well, I guess if I were in her position to have  
2 received that, I would have gone further with it.

3           Q     Well, would you have answered the question more  
4 honestly had the question been put to you?

5           A     I would have answered it differently. I don't  
6 think this is dishonest. I think the person that answered  
7 it wasn't that familiar with the terminology.

8           Q     I think that that person was trying to lead the  
9 Commission to believe that 2 percent was a typical  
10 unaccounted for water for the Utility, do you agree?

11          A     No.

12          Q     You think that they really wanted the Commission  
13 to know that it was something in excess of 10 percent, and  
14 that is why they answered that way?

15          A     No. I think the person that answered it wasn't  
16 fully cognizant of the terminology as used by the  
17 Commission.

18          Q     Would you look at the next four paragraphs and see  
19 if you think that's true? Notice the use of unaccounted for  
20 water in that answer as opposed to lost.

21          A     I understand. I understand. I've talked to  
22 Mr. Brown about this and told him I would not have answered  
23 it this way.

24          Q     It's misleading, isn't it?

25          A     Well, it ends up to be misleading because of the

1 failure of knowledge of that particular term and its use. I  
2 think Mr. Brown was trying to indicate that the Company has  
3 made a substantial movement towards cutting down on  
4 unaccounted for water. He was proud of the fact that there  
5 was a 2 percent loss from that study. I don't think he  
6 thought about it in terms that it was suddenly going to be  
7 used as an identification of the annual unaccounted for  
8 water.

9 Q That is one the troubles with answers, isn't it,  
10 sometimes they might be used for some other purpose?

11 A Well, it's the trouble with answers and questions  
12 in interrogatories.

13 Q Sure. The Staff asked an honest question about  
14 10 percent unaccounted for water and the answer they got  
15 was, "Don't worry, it's only 2 percent." Isn't that about  
16 the size of it?

17 A No. I mean, you're characterizing it more than I  
18 have. As I indicated, I think what Mr. Brown said here was  
19 he was proud of the fact that he was able to get it down to  
20 2 percent and related that through the study. I don't think  
21 he intended it to be misleading with regard to annual versus  
22 one-shot tests.

23 Q Okay. Well, let's hope the Commission thinks  
24 about this, Mr. Seidman, and let's move to a different area.  
25 I would like to move to your views of original cost in this

1 proceeding?

2 A Yes, sir.

3 Q And you have some years of experience before the  
4 Commission, and I want to ask you a couple of general  
5 questions about it, first. And that is that the focus of  
6 this Commission, frequently, when it's trying to determine  
7 the appropriate investment upon which it allows a return is  
8 to determine the original cost of assets at the time they  
9 are dedicated to public service, is that right?

10 A That's right.

11 Q Now, in the instances when they vary from that,  
12 they do so because, perhaps, there has been a sale and an  
13 attending request for an acquisition adjustment, is that  
14 correct?

15 A That's correct.

16 Q Okay. But you're suggesting in this case that the  
17 Commission consider something other than original cost at  
18 the time the assets were dedicated to public service, is  
19 that correct?

20 A No, sir.

21 Q Okay. So, you agree with the inquiry that the  
22 Commission normally makes and that is to determine original  
23 costs at the time the assets were dedicated to original  
24 service, right?

25 A Right.

1 Q What is the best evidence -- well, let me strike  
2 that and ask you if it isn't true that objective evidence  
3 isn't the best source of that sort of information. And by  
4 "objective evidence," I mean checks, drafts, receipts, time  
5 cards, professional bills, that sort of thing. Isn't that  
6 what the Commission prefers to rely on?

7 A Yes.

8 Q They don't have that in this case, do they?

9 A That's right.

10 Q Okay. They have other things. The Utility is  
11 inviting them to rely on Mr. Coloney's study which was  
12 accomplished some years after many of these assets were put  
13 in the ground, right?

14 A Yes, it was a typical original cost study as I  
15 would have performed.

16 Q Do you know of any other case in which the  
17 Commission has indulged in the consideration of an original  
18 cost study where the Utility is in the current ownership of  
19 the people who built it?

20 A Current ownership of the people who built it?

21 Q Yes. Let me rephrase that and just ask you a  
22 general question. It's typical when there's an original  
23 cost -- let me describe a situation, and you tell me whether  
24 it's typical. A "mom and pop," or a developer builds a  
25 water and sewer system. They lose interest in the water and

1 sewer system, and they sell it to a company such as Southern  
2 States or some other large utility. And lo and behold  
3 Southern States comes before the Commission, and they say,  
4 "We simply don't have any cost records. Sorry, we didn't  
5 build the system. Here is an original cost study." And  
6 then the parties might poke a few holes in it, but it's  
7 presented to the Commission, and they base their judgment  
8 upon that, right?

9 A That's correct.

10 Q And the Commission can hardly say to Southern  
11 States, "Well, you should have ferreted out the records.  
12 You should have ferreted out all of those records, so we are  
13 just going to give you nothing." They don't do that. They  
14 take the original cost study, right?

15 A Yes, typically.

16 Q Now, this case presents an unusual circumstance in  
17 my view. And I ask you whether you agree with with me that  
18 the Utility, although it has had a transfer from Leisure  
19 Properties, Inc. to St. George Island Utilities, Limited,  
20 is, in fact, in the control of the same people who  
21 controlled it from day one, with the notable absence of  
22 Mr. Stocks. Is that correct? Is that a correct scenario?

23 A I think that's correct, yes.

24 Q But you agree with me, don't you, I think you said  
25 so, that you think the Commission should focus upon original

1 cost of the assets at the time they were originally  
2 dedicated to public service?

3 A Yes.

4 Q Now, Ms. Dismukes in her testimony which you  
5 criticize in your rebuttal also believed that to be true,  
6 isn't that correct?

7 A That's correct.

8 Q There is no application for an acquisition  
9 adjustment in this case, is there?

10 A No, there isn't.

11 Q The sale from Leisure Properties to St. George  
12 Island Utility Company, Inc., do you regard that as an  
13 arm's-length transaction?

14 A I don't know. I mean, they are affiliated  
15 parties. In that sense it's not arm's-length.

16 Q Do you know whether anyone has ever characterized  
17 that sale under oath as a sale from us to us?

18 A No, I don't.

19 Q Do you know whether any person ever characterized  
20 under oath the note which was exchanged as a note from the  
21 right-hand to the left-hand?

22 A No, I don't.

23 Q Do you know what the sale price was when St.  
24 George Island Utility Company bought the system from  
25 Leisure?



1           A     I believe it was three million dollars.

2           Q     Now, Ms. Dismukes relied on three items to form  
3 her view about what the original cost was of the Utility at  
4 the time of that sale, didn't she? Do you recall  
5 criticizing each of those?

6           A     Yes, she did.

7           Q     There was two tax returns of Leisure, I think, and  
8 one audited financial statement. No, let me change that.  
9 She only relied on one tax return, one audited financial  
10 statement, and Mr. Bishop's study, is that right?

11          A     That's correct.

12          Q     And you criticize each one of those in their turn,  
13 right?

14          A     Yes. I think basically I started out criticizing  
15 it for having already been made available and considered in  
16 the last case. I came into this case starting with the rate  
17 base at 12/31/87. And that is the initial criticism, that  
18 there is nothing new here.

19          Q     Sure. I understand that. And that, of course, is  
20 a legal judgment for the Commission to reach, right?

21          A     That's right.

22          Q     Including whether they want to look to new  
23 evidence, or maybe even want to revisit old evidence, right,  
24 that would be a legal judgment, wouldn't it?

25          A     Yes.

1 Q Okay. They might even want to consider whether  
2 they were deceived in the last case, mightn't they?

3 A They certainly would, yes.

4 Q As a matter of fact, they entered a good bit of  
5 language in their order on that very topic. Not the topic  
6 of deceit, but on the topic of revisiting the issues, didn't  
7 they, do you remember that?

8 A I think there was one sentence, yes.

9 Q One sentence?

10 A One or two sentences.

11 Q What about three paragraphs. We don't have to go  
12 to that. It says what it says, right?

13 A It says what it says.

14 Q Page 75 of your testimony, you begin your  
15 criticism of the documents upon which Ms. Dismukes relied,  
16 is that right?

17 A That's correct.

18 Q And you call it evidence, in quotes?

19 A Yes.

20 Q Let's look to the 1979 financial statement, it has  
21 been marked Exhibit Number 20. Do you have that?

22 A That was from the last hearing?

23 Q Yes, sir.

24 A In Apalachicola?

25 Q Yes, sir. Do you have it?

1 A I know I don't have the one that was handed out.

2 Q I am going to ask you several questions about it,  
3 Mr. Seidman, and it will probably be well for you to get it.

4 A I've got a copy of it as it appeared in the Order  
5 20913.

6 Q I think that will probably do. If there are  
7 differences, they will probably jump out at us.

8 Mr. Seidman, I have characterized that thing as a  
9 financial statement, but I would like to know your view on  
10 it. This is a financial statement of which the Commission  
11 took official notice?

12 A Yes. Administrative notice, yes.

13 Q Administrative notice. Now, there is some  
14 discussion in your testimony about, I infer --

15 CHAIRMAN DEASON: I'm sorry. The Commission took  
16 official notice of what?

17 MR. McLEAN: Of the financial statement.

18 CHAIRMAN DEASON: Which has been identified as  
19 Exhibit 20.

20 MR. McLEAN: Yes, sir. That was in the last case.

21 CHAIRMAN DEASON: Oh, that was in the last case?

22 MR. McLEAN: Yes, sir, not in this case.

23 THE WITNESS: Yes, it was given administrative  
24 notice in Order No. 20913.

25 MR. McLEAN: Yes, sir.

1 BY MR. McLEAN:

2 Q Now, I noticed from your testimony that you  
3 apparently believe that there is some difference between  
4 judicial notice and administrative notice in the sense that  
5 administrative notice is some lesser standard than judicial  
6 notice?

7 A I got that implication from the Commission's  
8 order.

9 Q And you got that implication, didn't you, because  
10 the Commission in its order took notice of the audited  
11 financial statement, but declined to recognize the matters  
12 asserted therein as true or false, right?

13 A That's correct.

14 Q Now, you don't know whether that is different  
15 under standards of judicial notice, or administrative  
16 notice, do you, that is merely an inference on your part?

17 A That's right.

18 Q You don't pretend to be a legal scholar on issues  
19 of judicial versus administrative notice, right?

20 A That's right.

21 Q Are you familiar with the Commission, any  
22 Commission rules on the issue of admitting evidence?

23 A Not conversantly, no.

24 Q Just generally. And your business is the number  
25 side of things, right?

1           A     Yes.

2           Q     Well, let me ask you about this Exhibit Number 20.  
3     As I say, I characterized it as an audited financial  
4     statement. Do you find my characterization in error?

5                     In other words, do you think it's an audited  
6     financial statement?

7           A     I believe it is. I hate to say this, but the way  
8     the pages are ordered, and the order in which I am looking  
9     at it are out of order.

10          Q     Maybe that is the problem. Let me give you a  
11     better one.

12          A     Yes, this is an audited financial statement.

13          Q     And one of the ways you know that is it says right  
14     there in the second paragraph of Page Number 3, it says, "In  
15     our opinion, the financial statements referred to above  
16     presents fairly the financial position of Leisure  
17     Properties, Ltd., as of December 31, 1979," right?

18          A     Yes, sir.

19          Q     And you can't use that kind of language in Florida  
20     unless you're a CPA, unless you're willing to put your  
21     liability on the line with respect to a financial statement,  
22     isn't that right?

23          A     That is my understanding.

24          Q     And there is a measure of independence in this as  
25     well, a person who is not -- a CPA who is not independent

1 from the firm cannot certify and cannot present an  
2 unqualified audited financial statement, can they?

3 A That is my understanding, yes. I guess it's the  
4 same -- this one and the one of the Utility in the 1987, I  
5 guess, are similar --

6 Q Same standards, except the one in 1987 might be  
7 concerned with the replacement value, mightn't it? Well, we  
8 don't know that, let's wait until we get to that?

9 A It didn't say that.

10 Q We'll see.

11 A It wasn't concerned about it.

12 Q It's not in evidence in any case, or an exhibit  
13 before the Commission, is it?

14 A It was in the last case.

15 Q Well, perhaps we will get to it.

16 A It has been before the Commission. As a matter of  
17 fact it's identified in the order.

18 Q Mr. Seidman, I have no question outstanding. Are  
19 you answering --

20 A I'm just completing my answer.

21 Q To what question?

22 A You said it hadn't been identified, and I said it  
23 was in the last case, and it was referenced in the  
24 Commission order.

25 Q Now, all of my questions with respect to that

1 alleged 1987, none of them required that response, did it?

2 I just want to know if it is in this case, that is  
3 the only question I have with respect to any 1987 financial  
4 statement?

5 A Has it been entered?

6 Q Yes.

7 A No.

8 Q Now, we spoke of a transfer from Leisure  
9 Properties to St. George Island Utility Company, Ltd. Do  
10 you know the date of that transfer?

11 A I believe it was November of 1979.

12 Q About November 9th of 1979, wasn't it?

13 A Yes, sir.

14 Q Now, what is the date of this audited financial  
15 statement here? Well, let me ask you that two ways. The  
16 opinion was rendered on September 24th, 1980, right?

17 A That's correct.

18 Q But it reaches the operations, and so forth, of  
19 the Leisure Properties through December 31, 1979, right?

20 A Right.

21 Q Now, that was about a month and a half after the  
22 sale, right? Roughly.

23 A Yes.

24 Q And, of course, the opinion issued more than a  
25 year later. Now, I want to ask you to what extent, if any,

1 we can tell that this audited financial statement addressed  
2 the issue of that sale. So let's look to Page 14, I think  
3 it is, it's kind of hard to see the numbers. Another way to  
4 find it is it's note four, actually note four begins on Page  
5 13 and continues on to Page 14?

6 A Yes, sir.

7 Q Now, the auditor who looked at this firm had the  
8 following to say, didn't he, in note four, and I refer about  
9 halfway through the paragraph on Page 14, note four  
10 paragraph. The transaction has not been recorded as a sale  
11 for financial reporting purposes. Consequently, the water  
12 system is reflected in these financial statements at cost,  
13 830,145, less accumulated depreciation and so forth. Do you  
14 see those words, did I read them correctly?

15 A Yes.

16 Q Now that speaks to whether this CPA recognized  
17 that three million dollar asset, doesn't it?

18 A Yes.

19 Q And the CPA, if I read that statement correctly,  
20 and all of note four correctly, declined to recognize the  
21 three million dollar note, and declined to assign a value of  
22 three million dollars to the asset, and his reasons are set  
23 forth there correctly?

24 A Yes.

25 Q And if you look to the first part of that



1 paragraph you can see why. It says due to the continuing  
2 involvement of Leisure in the operation of the Utility  
3 system as general partner, and because the collection of the  
4 balance and sales price is largely dependent on future  
5 positive cash flows, and so forth. I'm going to translate  
6 that for you, I'm going to put my spin on it and ask you to  
7 agree with me. He is saying these two entities are so  
8 intertwined that this ain't an arm's-length transaction, and  
9 the appreciation which is allegedly reported here, namely  
10 from \$830,000 to three million dollars, I'm not going to  
11 recognize that for financial reporting purposes. Isn't that  
12 a fair characterization?

13 A I would have to ask you to repeat that.

14 Q I'm not sure I can. I think that the reason the  
15 CPA decided not to recognize that transaction is because he  
16 recognized it wasn't an arm's-length transaction. Do you  
17 agree?

18 A It seems that he recognized two things. One is  
19 that -- the involvement in the operation of the utility's  
20 general partner, and the other was apparently with regard to  
21 dependence on future cash flow.

22 Q But he didn't recognize any three million dollar  
23 asset there, did he?

24 A No. He indicates that the water system is  
25 reflected in the statement of cost.

1 Q The cost of \$830,145, right?

2 A Right.

3 Q Now, he doesn't say whether that's original cost,  
4 or tax basis, or anything, he just says cost, right?

5 A That's true.

6 Q Now, of the various numbers he could have used,  
7 original cost, book value, tax basis, it's typical, isn't  
8 it, that original cost would have been the least of all of  
9 those three, right?

10 A Typically, yes.

11 Q He also, in another part of this report, took  
12 accumulated depreciation away from that \$830,145 to arrive  
13 at a book cost, didn't he? And in order to answer my  
14 question you might care to look at Page 4 of the exhibit?

15 A Yes, that is true.

16 Q Investment in water system, note four, \$807,485,  
17 right? Now, I have the impression, Mr. Seidman, that that  
18 number fairly represents Leisure's investment, Leisure's  
19 original cost in the water assets, the water utility assets,  
20 do you agree with that?

21 A I don't know. We don't have any backup behind it.

22 Q Is it reasonable to assume that the CPA had the  
23 backup? Let me rephrase the question. Do you believe that  
24 that question I just asked you is what the accountant  
25 believed to be true?

1           A     Yes. I believe that's what the accountant  
2 believed to be true.

3           Q     But you don't know so much whether that is true  
4 because you can't look at the stuff he looked at?

5           A     That's right. I don't know if all of the assets  
6 of the water company are booked as water assets, whether  
7 they are booked as some other assets, the things that the  
8 Commission typically looks at when its trying to determine  
9 original costs.

10          Q     Well, what it does say is the investment in water  
11 system is \$807,485, right?

12          A     Right.

13          Q     Does the accountant have an incentive to overstate  
14 or understate that number?

15          A     No, I don't think he has an incentive either way.  
16 I don't think that's the problem at all.

17          Q     I do agree. I don't think it's a problem, I think  
18 he has an incentive to state it exactly as it is, right?

19          A     State it exactly as he sees it, I agree with you.  
20 And that is true of this one, as I said, and it's true of  
21 any financial statements.

22          Q     Now, Ms. Dismukes relied on that number, didn't  
23 she, the 830,145?

24          A     Yes.

25          Q     And you say she shouldn't have?

1           A     I'm saying the Commission shouldn't. I am saying  
2 the Commission shouldn't change its concept of determining  
3 an original cost, which is when you don't have the numbers,  
4 the invoices, the original documents behind the numbers and  
5 any financial statements, you have to go out and find and  
6 determine a cost through some type of study. I mean, I  
7 don't know what those dollars represent. I don't know what  
8 plant in the ground that dollars represents, whether it  
9 represents all of it or not.

10           Q     So you think maybe the CPA missed some of it, or  
11 just decided not to put it there, or what? You don't know,  
12 do you?

13           A     No, I don't know if it is entered there, or if it  
14 is entered under another account or what. And even if it  
15 does, it is only 1979. And that last case was trying to  
16 determine original cost of plant in 1987.

17           Q     We are going to get to that. But what I'm  
18 interested in is what the original cost was, what people  
19 thought the original cost was at the time of transfer.

20                     Now, I think you will agree with me that this CPA  
21 in an audited financial statement believed that it was about  
22 \$830,000, right?

23           A     Yes.

24           Q     Now, you say to the Commission, since you don't  
25 have the original documentation, ignore the CPA and go with

1 Mr. Coloney in his report some ten years later, right?

2 Isn't that the gist of your testimony?

3 A Well, I'm not asking them to ignore anything. I'm  
4 saying that they shouldn't take any document without the  
5 backup, without the determination of what the plant is, you  
6 know, the quantities, we don't know what is there, and they  
7 can't stop at that case, they have got a lot of other plant  
8 that has happened since then.

9 Q Sure. We are going to get to that. I'm just  
10 interested up to December 31, 1979 --

11 A My point is they weren't determining original cost  
12 of plant in 1979. They were determining plant in service in  
13 1987.

14 (Simultaneous conversation.)

15 COMMISSIONER KIESLING: Mr. McLean, I'm getting  
16 confused, because you start talking when the witness is  
17 talking.

18 MR. McLEAN: Yes, ma'am.

19 BY MR. McLEAN:

20 Q I interrupted your answer.

21 A I finished.

22 Q How is Mr. Coloney's report fixed for the original  
23 stuff that you say this should be ignored or thrown out  
24 because he doesn't have it? Do you understand the question?

25 A That it should be ignored because he didn't have

1 it.

2 Q The audited financial statement doesn't have the  
3 backup?

4 A That's right.

5 Q Where is Mr. Coloney's backup?

6 A Mr. Coloney has an inventory of the plant that's  
7 serving.

8 Q Which you say was absent from this?

9 A It's absent from that, yes.

10 Q It doesn't show on the face here?

11 A That's right.

12 Q And that the CPA was willing to place his only  
13 liability on the line in the absence of such things, right?

14 A I'm not saying that at all. I'm saying from the  
15 Commission's point of view, the Commission -- I don't know  
16 any case where the Commission has taken a financial  
17 statement and said that's the basis for original costs.

18 Q Do you know of a case in which the current owner  
19 is the one who lost or misplaced the records?

20 A Gee, there was a small utility down in Palm Beach  
21 County, I think Mangonia Park (phonetic) that had problems  
22 with losing its records, and I don't know what happened with  
23 that, whether that ended up being an original cost study  
24 determined for the missing records or not.

25 Q Would you hazard a guess with me, Mr. Seidman,

1 that the reason they hadn't ever relied on an audited  
2 financial statements in cases such as this, because they  
3 hadn't had one to rely upon?

4 A No.

5 Q You think they have?

6 A I'm not saying one way or the other. The  
7 Commission policy, as I know it, has not been to rely on  
8 just a statement, regardless of whether it was audited or  
9 unaudited.

10 Q Perhaps that is because they didn't have one,  
11 right?

12 A They don't ask for them.

13 Q They ask for anything you can produce when you  
14 can't find the original records, don't they? That is  
15 certainly what we asked for, do you agree?

16 A If the Commission asked for anything -- it can ask  
17 for, yes, it can get.

18 Q Let's look to the second item upon which Ms.  
19 Dismukes relied, that's Ms. Withers' affidavit. Now, there  
20 is a representation by you that Ms. Dismukes considered this  
21 affidavit out of context and I want to know a little bit  
22 more about what you mean when you say out of context. The  
23 affidavit to which we are referring is included in Ms.  
24 Withers' testimony, isn't it?

25 A I think so.

1           MR. PFEIFFER: I object. The document is not in  
2 evidence and at this point has not been marked for  
3 identification in evidence in the case, and therefore I  
4 object.

5           MR. McLEAN: I think that is kind of a weak  
6 objection, because it's their affidavit, it's their witness,  
7 and it's their rebuttal testimony. I didn't make 15 copies  
8 of it. I could have. I didn't, because I didn't want the  
9 Commission to have two of them. I learned just now we do  
10 have copies. If this is a genuine issue that we can't ask  
11 questions on this affidavit because we didn't provide you  
12 copies, we will provide them.

13           MR. PFEIFFER: It's not a question of copies, it's  
14 a question that it's not in evidence, it has not been marked  
15 for identification.

16           CHAIRMAN DEASON: We can remedy that. Mr. McLean,  
17 are you asking for that exhibit to be identified?

18           MR. McLEAN: Yes, sir, please mark it.

19           CHAIRMAN DEASON: Would you be more specific?  
20 It's attached to the testimony of Witness Withers?

21           MR. McLEAN: It's attached to Ms. Withers'  
22 testimony as an exhibit.

23           CHAIRMAN DEASON: That will be identified as  
24 Exhibit -- is that the only exhibit attached to the  
25 testimony of Withers?



1 MR. McLEAN: I think it is a composite exhibit.  
2 It has several -- no, I think it's composed as one entire  
3 affidavit.

4 CHAIRMAN DEASON: The exhibit attached to the  
5 testimony of Witness Withers will be identified as Composite  
6 Exhibit 42.

7 MR. McLEAN: Thank you, sir.

8 (Exhibit 42 marked for identification.)

9 BY MR. McLEAN:

10 Q Mr. Seidman, do you have a copy of that affidavit  
11 before you?

12 A No. (Pause)

13 Q Mr. Seidman, does that look like the affidavit to  
14 which you make reference on Page 77 of your testimony?

15 A Yes.

16 Q That's the one which Ms. Dismukes, you say, took  
17 out of context in some sort of way?

18 A Yes. Where are you referring to in my testimony?

19 MR. McLEAN: I'm trying to figure that out, Mr.  
20 Seidman.

21 BY MR. McLEAN:

22 Q Well, let me ask you generally. Do you say  
23 whether Ms. Dismukes considered that affidavit out of  
24 context?

25 A Yes. I think the affidavit, you know, speaks to

1 several things. Not just the amount of additions which she  
2 has referenced, but the fact that this was a reconciliation  
3 based on the tax audit, that it was the result of -- that  
4 there are two distinct entities involved, that the total  
5 amount of plant is the sum of the starting number from the  
6 IRS tax basis, plus the additions, and those have to be  
7 taken in context together to get to the bottom line.

8 Q It's a fair observation to say that Ms. Withers'  
9 talks about many things in that. One thing she does say is  
10 that the additions to plant from January 1979 through  
11 December 31, 1987, the \$612,948, doesn't she?

12 A That is what she says, yes.

13 Q Now, does she say that that is true, does she  
14 relate that to any particular purpose? Do the additions  
15 vary with the purpose? Let me read you the statement again,  
16 maybe it will help. "From 1979 through December 1987 the  
17 total additions to the system by St. George Island Utility  
18 Limited were \$612,948." Now, do you tell the Commission  
19 that that number and that statement which was rendered under  
20 oath is purpose sensitive?

21 A No.

22 Q Now, that statement is true, irrespective of what  
23 purpose anyone cares to make of it, right?

24 A That's correct.

25 Q And Ms. Withers says that is true?

1           A     Yes.

2           Q     Now, if we are interested to know the additions  
3 which were made since the point of sale, why can we not  
4 consider that number?

5           A     For the same reason you don't consider it even  
6 when we give you additions since the last rate case, without  
7 backup.

8           Q     Oh, so we shouldn't believe what the Utility said  
9 themselves without backup?

10          A     That's right. I don't think the Commission does.  
11 I don't think there is anything wrong with that. It's not  
12 that the Utility has lied on the report of what its assets  
13 are that have been added, but we don't know whether they are  
14 all booked in the proper place, whether they have all been  
15 accounted for, whether they all represent the plant that's  
16 in the ground. That is what we go through when we prepare  
17 for a rate case like this, is we went through the Staff of  
18 all of the original documents from January 1st, 1988,  
19 through the end of 1992 to determine whether what the book  
20 said represents the actual expenditures for plant. And they  
21 found lots of place that it didn't. And I'm saying that if  
22 this is -- if there is nothing behind this at this point to  
23 verify it, it could be subject to the same problems. I  
24 mean, I think that's pretty clear when you look at the  
25 inventory of plant that came out of the Coloney study, and

1 even the second Bishop study, that is not necessarily  
2 everything reflected there.

3 Q I see. So you're saying Ms. Withers' swore to a  
4 number that wasn't true?

5 A I can't speak for Ms. Withers', what the reason  
6 was.

7 Q Well, you said that Ms. Dismukes took it out of  
8 context, and now you're saying that the number shouldn't be  
9 believed, not for that reason, but because it lacks backup,  
10 isn't that it?

11 A Both.

12 Q Well, you didn't say that it lacked backup in your  
13 testimony, did you?

14 A I am saying two things in there. One is if you're  
15 going to take what Ms. Withers says, you take the whole  
16 thing, which was not only that the additions are 600,000,  
17 but the starting number is 2.2, and the balance at the end  
18 of her reconciliation is 2.8.

19 Q So we can't take her additions unless we consider  
20 the other things she said?

21 A I also imply on Page 79, when I conclude on this  
22 subject, that if you're going to take numbers like that off  
23 the books, then the Commission should do the same thing in  
24 this case, and take all the amounts that have been shown to  
25 be unsupported and give them to us, just because they are on

1 the books.

2 Q How about if they take the numbers off the annual  
3 reports, how would you feel about that.

4 A I wouldn't like it.

5 Q You wouldn't like that either, because you never  
6 know, the Utility might have told the Commission something  
7 in the annual reports that they didn't have backup for,  
8 right?

9 A That is possible, and they may have booked it  
10 incorrectly.

11 Q So what you ought to do is believe the stuff they  
12 bring up here in contemplation of the rate case? What what  
13 they ought to believe instead is the stuff that the Utility  
14 brings up in contemplation of a rate case, right, you  
15 shouldn't believe what they told the Commission for nine  
16 years straight?

17 A I don't think the Commission believes any report  
18 that is given by a utility on its face without an audit.

19 Q They can choose to do so, can't they?

20 A They certainly can.

21 Q It's kind of a party admission. Are you familiar  
22 with that, Mr. Seidman?

23 A Yes.

24 Q Good.

25 A But, again, the fact that the annual report

1 doesn't necessarily reflect plant isn't because of some  
2 intent to do something wrong, it may just be accounting  
3 errors, and that is what they are trying to find out.

4 Q And Ms. Withers may have made the same sort of  
5 error when she said the additions were 612?

6 A She might have.

7 Q Well, let's look at one of the errors she might  
8 have made just as an aside here, I'm kind of interested to  
9 know. The additions that she speaks of from December 1979  
10 through 1987, \$612,000, now, do you agree with me that that  
11 would include the additions made during 1979?

12 A I don't know without adding.

13 Q Well, we can look to her schedule in the back  
14 there, it looks to me like there was \$69,000 worth of  
15 improvements done in 1979.

16 Commissioners, and Mr. Witness, I'm looking at the  
17 fourth column over, Page 1 of the exhibit.

18 A It appears that all the additions listed are past  
19 1979, yes.

20 Q Now, the addition there, the 69, she starts with  
21 three million dollars, and gets to \$3,069,000 by the end of  
22 1979.

23 A Well, I guess that's what I can't tell. It says  
24 three at 12/31, and then the 69 under it. I don't know if  
25 the 69 is to add, what happened since the time of the sale,

1 or happened after that.

2 Q Okay. So you can't tell whether that \$69,000  
3 worth of improvement was done in 1979 or some other time,  
4 right?

5 A Right.

6 Q Now, that's despite the fact that the listing on  
7 the left-hand side of the column says 12/31/1979, and the  
8 69,000 occurs or is recorded opposite that time?

9 A I'm sorry, where are you?

10 Q I'm looking at the Exhibit 1 -- I'm sorry.

11 A Go ahead.

12 Q The one with the boxes, look to the fourth column  
13 over, I see \$69,243 listed, and to the left I see  
14 12/31/1979. That implies to me that something worth \$69,000  
15 occurred before 12/31/1979?

16 A I don't know that I see that. You're looking at  
17 this schedule?

18 Q I think so. Look to the top row of numbers,  
19 12/31/79, do you see that?

20 A Yes.

21 Q And look over to the right, plant balance per  
22 books?

23 A Three million dollars.

24 Q And then it changes to 3,069243, right?

25 A Right.

1 Q Now, there is 69,243 difference between those two  
2 numbers?

3 A Right.

4 Q I'm going to draw the conclusion, and ask if you  
5 join me, that \$69,243 represents the changes in plant  
6 balance per books during that year?

7 A During 1979?

8 Q Yes, sir. At the time of the sale.

9 A I just don't know whether it's in '79, or after  
10 '79, and it comes into the balance at 12/31/80. I mean,  
11 it's not a big deal, but I just don't know.

12 Q One thing that's a big deal is this, and that is  
13 the audited financial statement, which you and I have  
14 already discussed, was rendered as of December 31, 1979?

15 A Yes.

16 Q And if one chooses our point of beginning, of  
17 \$830,000, it's important to us to know whether the \$69,000  
18 worth of improvements took place in 1979 or sometime later.  
19 Because if they took place during 1979, they would have been  
20 picked up in the audited financial statement, right, so it  
21 is sort of a big deal. I understand that you're telling me  
22 that you can't look at this schedule and determine when  
23 those \$69,000 worth of improvements were made?

24 A Right.

25 Q Let's look to 1980. Now, the number in 1980 is



1 \$3,672,306, right, that is plant balance per books?

2 A Yes. That's the same set up all the way through.

3 Q Well, I'm going to ask from that same set up can't  
4 you conclude that the \$69,000 worth of additions were  
5 actually made in '79, doesn't that appear to be so?

6 A Yes. I think you're right, those are additive.

7 Q Now, if you were interested to know, the additions  
8 which were made to plant after the sale --

9 A Uh-huh.

10 Q -- then you might have to exclude that \$69,000,  
11 right, because the sale took place in late '79. You would  
12 have to exclude some of it. I mean, if you're going to get  
13 down to pennies, you would have to exclude some of it, I  
14 would think?

15 A I have no idea.

16 Q Because you don't know what 1979 looked like in  
17 terms of plant additions?

18 A Right, nor any year.

19 Q Now, the number that you have said lacked support,  
20 isn't that number derived directly from the fourth column of  
21 Ms. Withers' exhibit?

22 A The \$600,000?

23 Q Yes, sir.

24 A Yes.

25 Q You agree with me?

1 A Yes.

2 Q Now, it says plant balance per books. You think  
3 that is not adequate support for that number?

4 A To separate rate base without any documentation  
5 behind it, no.

6 Q In other words, the Commission shouldn't believe  
7 those, because those might not be supported by source  
8 documentation?

9 A That's right.

10 Q And instead of source documentation, you're going  
11 to refer us either on the one hand to the decision they made  
12 the last time, or on the other hand to the Coloney report,  
13 or to both?

14 A Well, the decision in the last case was depend on  
15 the Coloney report as one of the inputs.

16 Q And it was dependent in some part on a three  
17 million dollar sale, right, which didn't sound like an  
18 arm's-length transaction to you, right?

19 A I don't think the determination, the Commission's  
20 determination of what was the original cost of plant in  
21 service was dependent on the three million dollar sale.

22 Q Well, where did the number come from that they  
23 used?

24 A The end result that they allowed, about \$2.2  
25 million in 1987?

1 Q Yes, sir.

2 A It came from evidence from the Coloney report,  
3 from comments of Mr. DiMazzio (phonetic) regarding the  
4 accuracy of that report. They looked at the 1987 audited  
5 statement, they discussed the IRS tax audit. Those are the  
6 numbers I recall from the order that they worked between in  
7 determining original costs.

8 Q Were the authors of each one of those sources  
9 aware of the \$3 million transfer or do you know?

10 A No, I don't know.

11 Q Do you know whether the Utility alleged to the IRS  
12 that the \$3 million was, in fact, an arm's-length  
13 transaction?

14 A No, I don't know.

15 Q Do you know whether Ms. Withers in that exhibit I  
16 just showed you gave a great deal of recognition to that  
17 \$3 million transaction?

18 A I don't know.

19 Q Well, you can look to each one of the columns to  
20 see that she starts with 3 million and then goes on down,  
21 right? She, in fact, takes --

22 A Because this is a reconciliation of the taxes, and  
23 the tax audit started with the 3 million.

24 Q It's also a reconciliation of plant per books,  
25 isn't it?

1 A Right.

2 Q And but for the qualification which you see there,  
3 i.e., that there is no backup, that would be an excellent  
4 way to figure out what the additions would be, wouldn't  
5 they? The degree to which the plant per book changes on an  
6 annual basis?

7 A Oh, yes.

8 Q That's what additions is, isn't it?

9 A That's right.

10 Q So the only trouble is I might have left some out?

11 A The trouble is it has no support.

12 Q Right. And if it had support then we would know  
13 whether they had left something out, wouldn't we?

14 A That's right. Left something out or putting  
15 something in they shouldn't have.

16 Q Sure. But Ms. Withers' did hold that out to this  
17 Commission in the last case as being the truth, right?

18 A Yes, but she didn't hold it out as a basis for  
19 establishing original cost, I don't believe. She held it  
20 out as a basis for explaining the -- for reconciling the  
21 book to tax numbers.

22 Q Point well taken.

23 A That is what I understand is what the Staff had  
24 been interested in. They were trying to reconcile the book  
25 numbers and the tax numbers.

1 Q Are you suggesting if she was trying to prove  
2 something else she would have sworn to something else?

3 A She was trying to prove what?

4 Q Are you suggesting that if she was trying to prove  
5 to something else she would have sworn to something  
6 different than what she swore to here?

7 A No. I'm just saying that I don't take the fact  
8 that the number 3 million is on there is an indication that  
9 she thought that was necessarily the original cost of the  
10 plant in service.

11 Q Sure. Let's look to --

12 A I don't know if that's the sale price. I mean,  
13 that's indicated.

14 Q Okay. Let's change our focus to the Bishop  
15 report, another document which you say Ms. Dismukes should  
16 not have relied upon. Did I characterize the document  
17 correctly?

18 A The Bishop, the --

19 Q Yes, the 1979 Bishop report. The one to which you  
20 refer in your testimony.

21 COMMISSIONER KIESLING: Would you remind me of  
22 what exhibit number that is? I have such a stack.

23 MR. MCLEAN: 6, I believe, Commissioner.

24 COMMISSIONER KIESLING: Thank you.

25 THE WITNESS: Prepared as of July '78?

1 BY MR. MCLEAN:

2 Q Yes, sir.

3 A Yes.

4 Q And you say that Ms. Dismukes should not rely upon  
5 that. Let's see where you say that. Page 80.

6 A Yes.

7 Q You say Ms. Dismukes should not have relied on  
8 that, and that that doesn't tell the Commission anything it  
9 needs to know, is that right? It that a fair  
10 characterization?

11 A I think there was a couple of things about the  
12 timing difference between the report and the financial  
13 statement that you are also proffering.

14 Q Right, a year and a half later?

15 A A year and a half, yes. And the other thing was  
16 that she was proposing Mr. Bishop's report, and it had not  
17 been subject to cross examination as the Coloney report had.  
18 I'm not saying anything good or bad about Mr. Bishop's  
19 study. I don't have any problem with it, but it was a study  
20 that was done by the Bishop firm --

21 Q I understand.

22 A -- and had not been brought to the Commission  
23 before under evidentiary tests.

24 Q I understand. You said that it had never been  
25 entered in a formal proceeding. How do you know whether

1 that's true?

2 A It was not entered into the last case for the 1987  
3 test year. It was referred to, I think, in a question by  
4 Public Counsel. I think Mr. Byrd just asked Mr. Coloney if  
5 he was aware of it. But other than that, I don't think it  
6 was brought in.

7 Q Okay. Your answer, interesting, is, "No, the only  
8 entry of this document into the record of any formal  
9 proceeding is as an exhibit of Ms. Dismukes."

10 A Well, I overspoke on that. I was referring to the  
11 last docket.

12 Q I see. So, you're saying it wasn't entered in the  
13 last case?

14 A Right.

15 Q Okay. And that's all you meant to say?

16 A Right. I guess I had not forethought to think  
17 that it might be entered into the case of another utility.

18 Q Yes, sir. It might have been entered in circuit  
19 court, mightn't it somewhere, and you wouldn't know about  
20 that?

21 A No, I was talking about the Commission.

22 Q Now, with respect to that Bishop report, you said  
23 it hadn't been cross examined yet. You don't know whether  
24 that's true or not, you're saying it wasn't cross examined  
25 in this last Commission case, right?

1           A     Right.

2           Q     Do you know whether the Bishop report was ordered  
3 by the Utility? Do you know who ordered the Bishop report?

4           A     I think it was ordered by Leisure Properties.

5           Q     Well, let me ask you, then, if Leisure Properties  
6 ordered the Bishop report, why in the world would they want  
7 to cross examine it?

8           A     I'm not sure I understand what you're asking me.

9           Q     Well, people normally cross examine things which  
10 were asserted against them, don't they? And they would like  
11 to poke holes in something that criticizes them. Whereas,  
12 the Bishop study was ordered by the Utility, or by its  
13 predecessor. Why would they want to cross examine the very  
14 document that they ordered?

15          A     You mean in the last case?

16          Q     In any case. They ordered it, it's their  
17 statement; why would they want to cross examine it? Should  
18 they be afforded an opportunity to cross examine a document  
19 which was produced at their direction?

20          A     I guess I don't understand what you're getting at.  
21 I don't know.

22          Q     Well, you said it wasn't cross examined, right?  
23 And you say that's why the Commission shouldn't consider it?

24          A     Yes. I'm saying that since the study was done by  
25 an engineering firm, then the engineering firm should be the



1 one to introduce it if the Commission wants to know what is  
2 behind it.

3 Q So, you have -- but you told me that you didn't  
4 have a real good notion of the rules that the Commission  
5 used on the admission of evidence, right? My question is  
6 directed to this; I want to know about the reliability of  
7 that document. Did you attack the reliability of that  
8 document by saying it had not been cross examined?

9 A No.

10 Q Oh, okay.

11 A I don't know the reliability of the document.

12 Q But you say that it should -- well, I'm sorry, I'm  
13 at a loss to explain or to understand why you think that  
14 document should be cross examined, or more specifically why  
15 you think the Commission should not consider it because it  
16 hasn't been cross examined?

17 A Well, let's go back to the last case. In the last  
18 case the Company produced an original cost study by Coloney  
19 Associates, the Coloney Company. I mean, I can't imagine  
20 that the Commission would have allowed the Utility to just  
21 place that in the record, and say, "Here it is, this is our  
22 original cost", without having the opportunity to question  
23 the person that produced the study to see if they agreed  
24 with how it was done.

25 Q You're talking about the other side cross

1 examining that, right?

2 A Well, the Commission, I mean.

3 Q Oh, the Commission. So the objection here is the  
4 Bishop report shouldn't come in because the Commission  
5 hasn't had an opportunity to cross examine it?

6 A Right. It hasn't had the opportunity to cross  
7 examine Mr. Bishop or whoever produced it from his firm to  
8 determine whether or not they think it's an accurate study.

9 Q But the Commission has the option, does it not, to  
10 say that since the Utility produced it, we will accept it as  
11 true, don't they have that option?

12 A They sure do. Gosh, we would save a lot of time  
13 with hearings if the Commission accepted everything the  
14 Utility said was true.

15 Q But sometimes parties suggest to the Commission  
16 that a particular document ought to stand the test of cross,  
17 right?

18 A And it isn't even a matter of truth in a study  
19 like that, I don't think you come out with the fact that  
20 something in it is true or not true, it's whether the  
21 Commission considers the costs reasonable, or wants to know  
22 whether or not the inventory is correct, or how it was  
23 obtained. I mean, since they are looking at studies like  
24 this as a basis for determining what is the plant that the  
25 Utility has on which it's going to be allowed to earn, you

1 know, I would think they would want to have the opportunity  
2 to know, does this really represent everything that the  
3 Utility has, or more than it has, or if the cost  
4 determinations are correct, that's all.

5 Q But they could take the Utility at its word on  
6 this particular point, couldn't they, they could choose to  
7 believe the Bishop report?

8 A Yes, this Commission has a lot of leeway.

9 Q And the Bishop report says roughly that the  
10 investment, original cost investment was in the neighborhood  
11 of \$700,000, is that right?

12 A What?

13 Q That the original cost at the time -- actually  
14 that the replacement costs, as of July 1978, was in the  
15 neighborhood of \$700,000, is that right.

16 A Now who said that?

17 Q The Bishop report says that.

18 A Bishop determined a replacement cost of \$908,000.

19 Q Now, if the Commission chose to believe that,  
20 could they?

21 A Yes, certainly.

22 Q Good. But you don't want them to believe that,  
23 because you think they ought to cross examine it?

24 A I don't want them to believe it?

25 Q Right.

1           A     I just think that they ought to have the  
2 opportunity to cross examine it.

3           Q     But they can look at it now, can't they, and  
4 determine how complete it is, and they can take the Utility  
5 at its word, can't they?

6           A     They can take the Utility at its word, but there  
7 is nobody they can ask, if they want to ask questions.

8           Q     Now, that appears to be a study of utility in  
9 1979?

10          A     1978.

11          Q     1978, I'm sorry. And you think that because they  
12 can cross examine Mr. Coloney and his report which was done  
13 about eight years later, that the Commission should rely  
14 instead upon the Coloney report, is that it?

15          A     Well, whether they chose to rely on the Bishop  
16 study or not, they still have to rely somewhat on the  
17 Coloney report. The Bishop study goes through July of '78.  
18 What has happened since then? The only other studies that  
19 have been done since that time were another study that has  
20 either been introduced or discussed by Bishop in 1982 and  
21 the Coloney study in 1987. Coloney's study is the only  
22 study that covers all the inventory of plant up through the  
23 test year of the last case. If you wanted, you know, to  
24 cross check it against the previous Bishop studies, if the  
25 Commission wants to cross check it against the previous

1 Bishop, that is fine. I think if they do they will find  
2 that they are all in context, and you will still come out  
3 with \$2 million, approximately, of rate base in 1987. But I  
4 don't think there is any way the Commission can look at this  
5 Bishop study or the other Bishop study alone and draw a  
6 conclusion about what happened in 1987. These all proceed  
7 it.

8 Q But the Commission should direct its attention not  
9 to the annual reports, not to Ms. Withers' affidavit, which  
10 was at least facially balanced upon balance per books, but  
11 should look, instead, to the study which was done in 1987  
12 and to the other things you mentioned?

13 A I think they have to. I don't think there is  
14 enough information in the annual reports, in the financial  
15 statements, even Ms. Withers' tax reconciliation to support  
16 one way or another what actually went into the ground and  
17 was invested by the Utility or its predecessor in plant in  
18 service. There just isn't enough information there. That  
19 really was the basis for bringing in an original cost study  
20 and the basis for the Commission looking at some hard  
21 numbers.

22 Q And it is the basis for which you would like to  
23 push away those annual reports, isn't it? The annual report  
24 asked you for balance.

25 A I am not asking them to push away asking.

1 Q Are you asking them not to believe the annual  
2 reports?

3 A I'm asking them not to take the annual reports at  
4 their face value without them knowing what is behind them.

5 Q So when the utility sends numbers up here for the  
6 annual reports, the Commission should not believe those  
7 unless they come with backup?

8 A They should not take them for 100 percent  
9 accurate, or properly arranged, or the numbers in the right  
10 accounts without knowing more about them. I don't think  
11 there is any -- that is the purpose of the audit department  
12 here. We all know that when you make entries into books,  
13 sometimes you put them in the wrong account, sometimes you  
14 make some decisions about when they go in, or whether they  
15 should be capitalized or expensed.

16 Q I want to read you something from an annual  
17 report.

18 A Uh-huh.

19 Q "I hereby certify to the best of my knowledge and  
20 belief," number one, "The utility is in substantial  
21 compliance with the uniform system of accounts prescribed by  
22 the Florida Public Service Commission." Number two, "The  
23 utility is in substantial compliance with all applicable  
24 rules and orders of the Florida Public Service Commission."  
25 Number three, "There have been no communications from

1 regulatory agencies concerning noncompliance with or  
2 deficiencies in financial reporting practices that could have  
3 a material effect on the financial statement of the  
4 Utility." Number four, "The annual report fairly represents  
5 the financial condition and results of operations of the  
6 respondent for the period presented, and other information  
7 and statements presented in the report as to the business  
8 affairs of the respondent are true, correct, and complete  
9 for the period which it represents."

10 So the Commission was wasting its time when it  
11 asked Mr. Brown and similar Utility executives to make that  
12 certification?

13 A No, they are not wasting their time, and I think  
14 you are characterizing it as if these people are lying.  
15 They are not. They are representing what they believe is  
16 correct, and it doesn't mean that every entry is correct.  
17 For instance, look at the annual reports of this utility.  
18 They started, they had the \$3 million in their plant, are  
19 you willing to accept that?

20 Q No, sir. And they knew better, didn't they?

21 A Well, I don't know what they thought when they did  
22 that, because I wasn't there. But the fact is it was in the  
23 annual report.

24 Q And now you're suggesting that what the Utility  
25 certified to should not be held against the Utility unless

1 we take the whole ball of wax?

2 A I don't know what you mean.

3 Q Well, I mean that in order to accept what the  
4 Utility reports as additions, we have to accept also what  
5 they reported as the original sale price?

6 A You lost me.

7 Q Well, I think that's what you just said. I don't  
8 choose to believe the 3 million, I want to question that.  
9 But I want to believe the additions, what is wrong with  
10 that? Why can't I hold them to their certification with  
11 respect to some of the things, but not all?

12 A You can hold them to whatever you want. I'm just  
13 saying that I don't think the Commission should take any  
14 numbers in the annual report without looking behind them for  
15 purposes of determining rates. That's what this is all  
16 about.

17 Q What good are the annual reports if the Commission  
18 doesn't bind the Utility by what they say?

19 A Well, the annual reports are the best that any  
20 company can do, you know. They believe they are following  
21 the rules. There is always some type of either error, or  
22 something they find out after the fact that was adjusted, or  
23 whatever, that is different in the annual report. I doubt  
24 if you can go through the annual report of any utility under  
25 the jurisdiction of this Commission, and not find some



1 number in there that if you went behind it to say, "Oh, that  
2 is not right, or that was booked in the wrong account, or  
3 that should have been capitalized instead of expensed." I  
4 mean, it doesn't mean that they did it intentionally wrong,  
5 or that they lied on their affidavit, it just means that if  
6 you're going to know everything behind the information, you  
7 have to look behind all of it.

8 Q Their certification that it is complete  
9 notwithstanding, right?

10 A Yes.

11 Q And they might discover a whole lot of stuff on  
12 rate case day that they forgot to tell you about in the  
13 annual report, is that what you're saying?

14 A I don't know that they forgot to tell you.

15 Q But they didn't?

16 A It's different for whatever reason.

17 Q Plant additions depend on whether it's a rate case  
18 or whether it's an annual report?

19 A No.

20 Q Plant additions exist independently of all of  
21 those things, don't they?

22 A Right. But what is reflected in the annual report  
23 may not be the correct accounts.

24 Q They might send you something that's wrong?

25 A They might send you something that's wrong,

1 inadvertently, without knowledge.

2 Q Original cost remains constant?

3 A The what cost?

4 Q Original cost.

5 A Yes.

6 Q Remains constant, despite transfer of utility  
7 assets, doesn't it?

8 A Yes.

9 Q So irrespective of what happened after the  
10 transfer, you can't really say that any of those events  
11 affected the original cost before the transfer, can we?

12 A Events such as the sale?

13 Q No, sir.

14 A What events?

15 Q Any events, IRS audit, anything?

16 A Doesn't change the original cost.

17 Q Exactly. You agree with that?

18 A I agree with that.

19 MR. McLEAN: I have no further questions.

20 CHAIRMAN DEASON: Mr. Pierson.

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

22 CROSS EXAMINATION

23 BY MR. PIERSON:

24 Q Good morning, Mr. Seidman.

25 A Good morning, Mr. Pierson. It's a long way over

1 there.

2 Q Pardon me?

3 A It's a long way over there.

4 Q Yes, it is. I would like to follow up on one of  
5 Mr. McLean's questions, just briefly. Exhibit 34, would you  
6 refer to that, please, Page 2?

7 A Would you give me the FS number on it, because I  
8 don't have mine marked.

9 Q I believe that would be FS-4R?

10 A Yes, that is the consent order.

11 Q Yes, on Page 2.

12 A Yes.

13 Q Under Number 5D, insufficient chlorine residual at  
14 remote locations in the distribution system.

15 A Yes.

16 Q Do you know whether that's a DEP rule, formerly  
17 DER?

18 A There is a minimum residual requirement, I  
19 believe, in DEP rules, yes.

20 Q And the Utility was admitting, basically, by this  
21 document, to not complying with that rule, isn't that  
22 correct?

23 A I am reading Paragraph 5 which says that the  
24 survey revealed numerous deficiencies, yes, and the  
25 department finds and responds and admits, yes.

1 Q Have you provided any engineering expertise to the  
2 Utility for this case?

3 A No.

4 Q And can you tell us which engineering witnesses  
5 for the Utility that the Utility will be paying rate case  
6 expense for in this proceeding? Well, would you accept  
7 that it would be Coloney, Bidy and Baltzley?

8 A Yes. Are you reading from Schedule 6?

9 Q No, I'm not, not yet, although we can probably go  
10 there. We are going to eventually.

11 And can you tell the Commission why it should  
12 allow three engineering witnesses in rate case expense?

13 A They are speaking to different subjects, and I  
14 don't have the information in front of me. I think the  
15 summary I gave on Schedule 6 may indicate what it is. Mr.  
16 Coloney was testifying originally with regard to overall  
17 operations, and used and useful, and he came back on  
18 rebuttal with regard to some other information I think  
19 managerial comments, and with regard, I think, to his  
20 original cost study. The other witnesses, I think, are  
21 addressing specific direct testimony, I think, of DEP  
22 witnesses, in responding to that. It was work that they  
23 were, I think, specifically involved in.

24 Q In other words, the subjects that each of the  
25 engineering witnesses dealt with would have had to have been

1 done, regardless of who did it, is that what you're saying?

2 A Yes. And I am not too sure that others could  
3 have, that it could have all been done by one.

4 Q If you have Schedule 6 in front of you, 6A?

5 A Yes.

6 Q On Page 1 of 3, and right to the left of type of  
7 services rendered, you have a key actual A and estimated E?

8 A Yes.

9 Q Well, the last line, Wayne Coloney, 40 hours, \$200  
10 per hour, \$8,000, and that is E, correct, estimated?

11 A Correct. Estimated, yes.

12 Q And that is to prepare rebuttal testimony and  
13 testify at the hearing?

14 A Yes.

15 Q Didn't Mr. Coloney provide all of his testimony on  
16 the very first day of the hearing?

17 A Yes.

18 Q And that lasted approximately eight hours?

19 A Yes.

20 Q Have you looked at Mr. Coloney's testimony?

21 A Yes.

22 Q Isn't it about five pages?

23 A I will take your word for it.

24 Q Well, let's go back to column, I guess, 3.

25 A If you are suggesting that he just spent the time

1 writing five pages, I would argue with that, because I know  
2 he put in a lot of time and research to go back and look at  
3 things to refresh himself with regard to the questions that  
4 were coming up from the last case.

5 Q For the rate case, you mean?

6 A Yes.

7 Q For testifying at the rate case?

8 A Yes, and with regard to researching, again, the  
9 original cost problems that were brought forth into this  
10 case.

11 Q But the last column says prepare rebuttal  
12 testimony and testify at hearing?

13 A Yes. Well, I consider preparing rebuttal  
14 testimony as preparation for the rebuttal testimony, not  
15 just writing it down.

16 Q But didn't Mr. -- well, yes, let me get to that  
17 first. Since Mr. Coloney's services are essentially already  
18 rendered, shouldn't we have by this time actual data instead  
19 of estimated?

20 A I'm sorry. This was put together by me in time  
21 for the last hearing in Apalachicola, and we didn't get to  
22 my rebuttal at that point. And I have not updated it since  
23 then, so that the cost of the hearing, everything that says  
24 estimated here is still -- bills may have come in, but I  
25 have not changed it on here.

1 Q And your testimony is that part of this time  
2 represents time preparing rebuttal testimony, preparing to  
3 prepare rebuttal testimony?

4 A That's right. That was part of the estimate. I  
5 don't know actually how much he actually expended.

6 Q And isn't the majority of Mr. Coloney's testimony,  
7 rebuttal testimony, doesn't the majority of it deal with  
8 management, quality of management?

9 A And a substantial amount of it had to do with not  
10 the written part, but preparing for the cross part, a  
11 substantial amount had to do with his original cost study in  
12 relationship to the Bishop study.

13 Q Do you have an actual bill at this time?

14 A I have not seen it. I don't know if they have one  
15 or not.

16 Q Where did the estimate come from? Did Mr. Coloney  
17 provide the estimate?

18 A Yes, he did. As a matter of fact, I think the  
19 estimate may be included in here.

20 Q Yes, I believe you're correct. And it is right  
21 behind your bills. See, I'm just having a problem finding  
22 40 hours?

23 A I don't know that you will find 40 hours. This  
24 was an estimate made, you know, by him. I think assuming,  
25 first of all, that the hearing was going to go two days, and

1 he didn't know when he was coming down. Because of the  
2 expense of bringing him in, I know Mr. Brown made  
3 arrangements with him to not stay there for the whole  
4 hearing, but to come in at a certain time so that he could  
5 get it over with and leave. That certainly will mitigate  
6 the actual expense for his being there. I don't know if it  
7 will mitigate it enough to wipe out all of that, because  
8 like I say, I know he did substantial research with regard  
9 to the original cost issue, because I talked to him several  
10 times when he was doing it.

11 Q Can you provide us with the actual amount so that  
12 we can --

13 A Yes. As bills come in, I don't know when you want  
14 this, as a late-filed exhibit?

15 Q Yes, I would like it as a late-filed exhibit.

16 A We'll provide you with all the final costs. I  
17 guess they will be through this hearing is really all we  
18 could do, since the post-hearing costs will still continue.  
19 And if you would prefer, I will just update this so that it  
20 will still have some estimates, but it will be for  
21 post-hearing only.

22 MR. PIERSON: I would like, as well, a copy of the  
23 invoice.

24 THE WITNESS: Absolutely.

25 MR. PIERSON: Could I get that identified, Mr.



1 Chairman?

2 CHAIRMAN DEASON: It will be Late-filed Exhibit  
3 Number 43, and I assume we can just refer to that as an  
4 update of Exhibit 30.

5 MR. PIERSON: Exhibit what, 30?

6 CHAIRMAN DEASON: Yes.

7 MR. PIERSON: Is that what this is?

8 CHAIRMAN DEASON: Yes.

9 MR. PIERSON: Thank you.

10 (Late-filed Exhibit 43 marked for identification.)

11 BY MR. PIERSON:

12 Q Moving along. You have worked with a number of  
13 utility lawyers, isn't that correct?

14 A Yes.

15 Q You have worked for Mr. Gatlin. Have you worked  
16 for Bob Rose or Marty Deterding?

17 A Yes.

18 Q Do you know what they charge an hour?

19 A No, I don't.

20 Q Do you believe that they charge \$175 an hour?

21 A I don't know. If they are not at that, they are  
22 close to it.

23 Q Can you tell the Commission what services Mr.  
24 Pfeiffer provided to the utility that Mr. Brown was  
25 incapable of providing?

1           A     Objectivity. He is a party, and I think it puts  
2 him in a precarious position to be his own lawyer. In  
3 addition, I don't know this, but I had discussions with Mr.  
4 Brown, and I'm going to just put it out that my  
5 understanding is you can't be a witness and the attorney  
6 both. And it was very important that Mr. Brown be the  
7 witness in this case. And I advised him so, and he made  
8 preparation to get an outside attorney because of that.

9                     I think probably timewise, since he had an awful  
10 lot to do with having to respond to discovery, and to work  
11 with the auditors and a couple of counsel, that he probably  
12 would have had a time problem in putting together the case.

13           Q     Didn't the utility request legal fees of \$125 per  
14 hour in the MFRs?

15           A     I believe you're right. I don't have it with me,  
16 I think the MFR is Schedule B10.

17           Q     B10, Page 48, yes.

18           A     I don't have it up here, but I know I put a line  
19 in for an attorney to be determined, and I think I estimated  
20 \$125 an hour.

21           Q     Upon what did you base that estimate?

22           A     Just from my feelings about other cases in the  
23 past.

24           Q     From working with other firms like Mr. Gatlin's  
25 firm and Mr. Rose's firm?

1           A     Right, and Mr. Girtman. I think Mr. Girtman just  
2 went up to 150, I'm not sure. They change.

3           Q     With all due respect to Mr. Pfeiffer, do you  
4 believe that it's appropriate for the utility to pay \$175  
5 per hour for a person with less than a full expertise in  
6 utility matters?

7           A     I don't know. He may not have appeared before  
8 this Commission, I don't know often, or at all before, but  
9 he certainly has an outstanding reputation as an  
10 administrative attorney, which may have been what Mr. Brown  
11 wanted out of an attorney in this case, someone who was  
12 familiar with the administrative procedures more thoroughly  
13 than with the specific utility matters.

14          Q     That did not answer my question. Do you believe  
15 it's appropriate for the utility to pay --

16          A     I think if he got what he wanted out of it in that  
17 respect, yes.

18          Q     When you have an attorney who is not well versed  
19 in such matters, doesn't it take time to prepare that  
20 attorney?

21          A     He didn't seem to have any problem, and I don't  
22 know that he wasn't well versed. We seemed to be able to  
23 figure things out pretty readily.

24          Q     I can see I'm getting nowhere with this.

25                 Well, since I couldn't convince you of that, could

1 I convince you that the ratepayers shouldn't pay \$20.99 for  
2 Mr. Brown's lunch at Trios, which is in your rate case  
3 expense audit?

4 A Who went?

5 Q Mr. Coloney. Lunch with Gene Brown, \$20.99.

6 A That was one where Mr. Coloney picked up the tab  
7 and passed it on?

8 Q It would appear so.

9 A If they talked business, it sounds good to me.

10 Q Wouldn't one assume that lunches were part of Mr.  
11 Coloney's \$200 per hour?

12 A I wouldn't make that assumption. I mean, I don't  
13 know how he charges. I charge an hourly rate plus  
14 out-of-pocket costs, and I don't know if that's his  
15 arrangement or not.

16 Q In your May 16th, 1994 bill, that is the  
17 Management and Regulatory Consultants bill.

18 A Where are you looking?

19 Q It's on your rate case expense exhibit.

20 A The one presented today, or the one in the  
21 rebuttal book.

22 Q It's the one you provided today. And  
23 incidentally, how does the one that you passed out today  
24 differ from the previous one?

25 A The attachments to the one I handed out today are

1 not in the one in the rebuttal book. They are additional  
2 invoices that had not been provided.

3 Q But some of them are the same?

4 A I don't think so.

5 Q No?

6 A I don't think so. And the other thing that is  
7 different about it, of course, is the summary set up where I  
8 provided, I thought, a much more logical and easy to follow  
9 summary, and one following the setup in the MFRs, and then  
10 one providing an invoice-by-invoice location cross reference  
11 so that you could find them in that mass of documents that  
12 are in the rebuttal testimony attachment.

13 Q Well, since these pages aren't numbered --

14 A Give me the invoice date you're talking about.

15 Q Pardon me?

16 A You were asking me about a --

17 Q A May 16th invoice.

18 A May 16th invoice of mine?

19 Q Yes.

20 A Okay. That is in my -- what I have identified as  
21 Schedule 6, which is the one you have in your hand, yes.  
22 And I have it, yes.

23 Q I'm sorry, I'm getting confused myself. We are  
24 talking about Exhibit 30, and it is some of the backup that  
25 you have provided to, I guess, Schedule 6?

1 A Okay.

2 Q Your bills.

3 A The one I handed out today --

4 Q Yes.

5 A What is that number, officially?

6 Q 30.

7 A I'm looking at Exhibit 30, also. And there is a  
8 bill in there from me dated 4/16/94?

9 Q No, 5/16/94.

10 A Yes, okay.

11 Q But for 4/11/94, you have identified a memo on  
12 Brown affiliates settlement. Can you explain what that is  
13 and why the ratepayers should pay for that?

14 A Where are you looking, under invoice?

15 Q Yes, on the invoice.

16 A Oh, that was my looking at the settlement on the  
17 \$65,000 that Mr. McLean was asking about and giving him my  
18 opinion of how I read it to see whether I agreed with him or  
19 not, and then, of course, it ended up in my testimony.

20 Q On the very next page, next to 6/6/94, you have  
21 attend DEP sanitary survey. Can you explain what that is  
22 and why the ratepayers should pay for that in rate case  
23 expense?

24 A Yes. I did the walk-through of the sanitary  
25 survey out at St. George Island so I could be familiar with

1 where the utility stood with regard to DEP, and to ask the  
2 many questions I had with regard to clarification, and also  
3 to discuss it with Mr. Brown, you know, whether or not we  
4 should take any action in the rate case to respond to  
5 anything, or be ready to.

6 Q On both of the pages, in fact, on several of the  
7 pages there are lines for interest on previous outstanding  
8 balance?

9 A They are not included in the amount that we are  
10 requesting, I pulled them out.

11 Q Okay. Would you now turn to your rebuttal  
12 testimony?

13 A Yes.

14 Q And unnumbered Page 43 of Schedule 3, it's a  
15 ledger page titled St. George Island invoice, Jeanie H.  
16 Drawdy --

17 A Would you identify its location again?

18 Q Well, it's kind of difficult, since you didn't  
19 number the pages.

20 A I didn't hear what you said.

21 Q It's unnumbered Page 43 of Schedule 3.

22 A I will try to get close to it.

23 Q Can you describe this document?

24 A What is the date on it?

25 Q March 25th, 1994.

1 MR. McLEAN: Mr. Pierson, could you give us  
2 another hint? I'm still searching.

3 MR. PIERSON: I'm having problems with this.  
4 March 25th, 1994, it's the first page that looks like a  
5 ledger page in your schedules.

6 THE WITNESS: I see, it's \$640.

7 MR. PIERSON: It's \$540.00.

8 If anybody's still having trouble finding this --

9 THE WITNESS: \$540, Check Number 1933?

10 MR. PIERSON: Yes, sir.

11 BY MR. PIERSON:

12 Q Who prepared this?

13 A Ms. Drawdy.

14 Q And what is its purpose?

15 A These would be to show how she worked in those  
16 particular time periods on the rate case that would be over  
17 and above her contractual services.

18 Q Are there any actual time sheets?

19 A I'm sorry, that page is all of the hours she  
20 worked in that period. The page preceding it, which has a  
21 copy of a check --

22 Q Yes.

23 A For 540 shows that 140 of it was for hours she  
24 incurred with regard to the rate case, it will be over and  
25 above her contractual amount.



1 Q Do you have any time sheets to back these up?

2 A This is her time sheet, this is what she  
3 presented. These whatever you want to call them, ledger  
4 sheets, yellow pad sheets, whatever.

5 Q But they don't indicate -- I'm sorry.

6 A With just the time, the dates, and the hours in  
7 each day.

8 Q But they don't indicate what she was working on?

9 A They don't indicate specifically what she was  
10 working on, no, that's correct. And I don't think there is  
11 anything behind that in writing.

12 Q Are all of them like that, all of these pages?

13 A Of hers? I believe so, yes.

14 Q Isn't it normal practice for an accountant and  
15 other professionals to submit itemized bills for services?

16 A Yes. I think the specific arrangement with Ms.  
17 Drawdy was that she is working on an overall contractual  
18 basis for a certain number of hours a week. And the only  
19 reason she is even keeping anything here is because some of  
20 that time during that period was not associated with her  
21 regular duties, but specifically with the rate case.

22 Q How do we know when she was working on the rate  
23 case and when she wasn't, if they are not itemized?

24 A I can't tell you that. This is what she provided.

25 Q Do you know how the cost was divided between

1 regular accounting and deferred rate case expense?

2 A No. I just assume she -- everything over the  
3 contractual amount was assigned to the rate case. I guess  
4 the assumption there would have to be either that she may  
5 have not been doing rate case work during her regular  
6 contractual hours, if she was they were not being charged to  
7 the ratepayers. But everything in excess was related to the  
8 rate case, that would be why she would have to work more  
9 hours than contracted.

10 Q On Page 73 of the same schedule --

11 A Uh-huh.

12 Q Unfortunately, still unnumbered.

13 A If you could identify what is on it.

14 Q Sure, I'm sorry. It is a memo to St. George  
15 Island Utility Company from Ann Hills, re: overtime, rate  
16 case expense.

17 A Does it have a date?

18 Q It's 30 pages from the one we were just at.

19 A Is it the one that has Thursday, 3/17/94?

20 Q No. Well, wait a minute. Where are you looking?

21 A Under the dotted line.

22 Q Under the bottom line.

23 A Dotted line. I'm looking at a memo to St. George  
24 from Ann Hills re: overtime rate case expense that has a  
25 dotted line, and two lines of five hours each, and a total

1 of ten hours.

2 W Well, irrespective, isn't Ms. Hills a utility  
3 employee?

4 A Yes. This would be overtime hours that she would  
5 not normally incur.

6 Q What are her normal working hours?

7 A I don't know. Approximately eight to five from  
8 what I have seen.

9 Q Does she work 40 hours a week?

10 A Yes.

11 Q Do you know whether all the hours she worked  
12 beyond her regular hours were considered rate case work?

13 A I can't specifically say. I guess I would have to  
14 characterize it this way. I don't think they would have  
15 been working the overtime hours without the rate case work.  
16 So whether she actually did the rate case work overtime, or  
17 had to do overtime for regular work, but she was working on  
18 the rate case during regular hours, it comes out the same,  
19 as far as the justification that she has given.

20 Q Does Ms. Hill keep times sheets.

21 A I don't know. Mr. Brown may know.

22 Q Can you find out and submit them? I hate to ask  
23 for a late-filed exhibit of something we don't even know  
24 exists, but it seems to me we ought to have a little backup  
25 for that.

1           A     Let me ask Mr. Brown, and if he says he has them  
2 we will know.

3                     (Inaudible response by Mr. Brown.)

4                     Mr. Brown says they do have time sheets.

5                     MR. PIERSON: Could I get that identified,  
6 Mr. Chairman, as a late-filed exhibit.

7                     CHAIRMAN DEASON: It will be identified as  
8 Late-filed Exhibit 44. A short title, please?

9                     MR. PIERSON: Time sheets, Ms. Hills. We would  
10 like Ms. Hills and Ms. Chase, actually, because I am going  
11 to ask you to do the same thing for Ms. Chase.

12                     (Late-filed Exhibit 44 marked for identification.)

13                     CHAIRMAN DEASON: Mr. Pierson, how much more do  
14 you have for this witness?

15                     MR. PIERSON: A fair amount.

16                     CHAIRMAN DEASON: Perhaps now would be a good time  
17 to go ahead and break for lunch. Let me take just a moment  
18 and ask the parties again as to what their preference is  
19 concerning reconvening at 1:30 or until I return.

20                     Ms. Sanders?

21                     MS. SANDERS: That's fine, Commissioner.

22                     CHAIRMAN DEASON: To reconvene at 1:30.

23                     MS. SANDERS: For you to be gone -- to come back  
24 at 1:30 and for you to come back whenever, that's fine with  
25 us.

1 CHAIRMAN DEASON: Very well. Mr. McLean.

2 MR. MCLEAN: That's fine with us, too, sir.

3 CHAIRMAN DEASON: We have had a long and hard  
4 morning this morning, so we are going to go ahead and recess  
5 for lunch at this time. We will reconvene at 1:30.

6 (Lunch recess.)

7 COMMISSIONER KIESLING: Call the hearing back to  
8 order. Mr. Pierson, I believe you were inquiring?

9 MR. PIERSON: Yes, ma'am. Thank you very much.  
10 And contrary to what I said before we left, I really don't  
11 have that much more for Mr. Seidman. I thought I had  
12 considerably more, but I don't.

13 BY MR. PIERSON:

14 Q Mr. Seidman, earlier today Mr. Garrett in response  
15 to questions about Savannah Labs --

16 A Yes.

17 Q -- gave a number of answers regarding pick-up of  
18 the samples?

19 A Right.

20 Q And I'm not sure I really understood his answers.  
21 I was wondering if you could help us out a little bit. It  
22 appears from -- Mr. Starling has passed out an exhibit  
23 described as Savannah Labs' testing quotes, do you have a  
24 copy of that?

25 A Yes, I do.

1           MR. PIERSON: May I please get that identified as  
2 an exhibit?

3           COMMISSIONER KIESLING: It will be Exhibit 45.  
4           (Exhibit Number 45 marked for identification.)

5 BY MR. PIERSON:

6           Q     It appears from Page 2, numbered Page 2 at the  
7 bottom, that there are bi-weekly, monthly, quarterly and  
8 annual tests?

9           A     That's correct.

10          Q     And it appears that this quote is for Savannah  
11 Laboratories to pick up the samples for these tests and then  
12 perform the test, is that correct?

13          A     That's correct.

14          Q     And there is a mileage charge for each individual  
15 test. Well, not each individual, but each bi-weekly,  
16 monthly, quarterly, and annual for that series of tests,  
17 isn't that correct?

18          A     Yes.

19          Q     Is there any reason why Savannah Laboratories  
20 can't pick up that annual test, for instance, or the  
21 quarterly, or monthly for that matter, when they are picking  
22 up the bi-weekly sample?

23          A     Philosophically, I can't think of any reason. If  
24 they are going to be picking up tests and they are  
25 coincident with the bi-weekly test, pick them up all

1 together. I say that philosophically, because I don't know  
2 what went into putting this together. I'm looking at it,  
3 and seeing that there are different mileages involved with  
4 the hydrogen sulfide and bacterial test versus the group one  
5 test, and the nitrate tests. They are going -- it appears  
6 they are going in different places. But, however, if they  
7 are all places within the island area and on the mainland  
8 for where the wells are, if they are there, they should be  
9 able to put them together.

10 Q I believe if you look a little more carefully, and  
11 I don't mean to impugn how carefully you looked at this or  
12 anything like that, but I believe that is a flat mileage fee  
13 of \$68, which would be 40 cents per mile at 170 miles round  
14 trip. It appears to me that that is the same \$68, and the  
15 difference is how many times they have to pick up the  
16 sample, isn't that correct?

17 A Oh, I see. It's 26 times. I'm sorry, you're  
18 correct. Yes, I can't see any reason that they wouldn't be  
19 put together.

20 Q Would you agree it would be appropriate to take  
21 out the monthly, quarterly, and annual charges for mileage?

22 A Yes.

23 Q And should that adjustment be based on the numbers  
24 provided on that exhibit?

25 A Yes. I haven't checked this with anyone to

1 determine if there is anything, another underlying reason  
2 why they can't be, but on the basic assumption that if  
3 you're out there picking up samples, at the same time you  
4 can roll them altogether. And I would suggest that you ask  
5 Mr. Brown for confirmation, if he knows of anything, any  
6 other reason why they are separated.

7 Q Okay. And in the response to Audit Exception  
8 Number 14, the utility stated that the Coloney design fees  
9 are not a duplication of expenses and have never been  
10 capitalized. Do you remember that?

11 A Yes.

12 Q Can you explain how and why you arrived at this  
13 conclusion?

14 A From discussions with Ms. Drawdy, and my  
15 understanding is that they were booked, I think, through  
16 accounts payable and never entered onto either plant or  
17 expense.

18 Q Well, since you're sponsoring rate case expense,  
19 could I refer you -- and you may not be the appropriate  
20 witness to ask this, but if that is the case please let me  
21 know. Would you please turn to Page 2 of 2 of Schedule 6B,  
22 and I want to direct your attention to TMB Associates, and  
23 can you explain why there are no charges for TMB Associates?

24 A Why I didn't include them?

25 Q Yes, sir.



1           A     That was a judgment of mine. I felt that the  
2 services being provided were background philosophical  
3 information, and not directly related to the rate case  
4 itself.

5           MR. PIERSON: I believe that's all I have right  
6 now. Thank you.

7           COMMISSIONER KIESLING: Redirect.

8                                 REDIRECT EXAMINATION

9     BY MR. PFEIFFER:

10           Q     Mr. Seidman, if I can refer you first to the  
11 response to Audit Exception 19, where the word advanced has  
12 become an issue?

13           A     Yes.

14           Q     Do you know whether St. George Island Utility  
15 Company was a party to the litigation that was involved with  
16 regard to that audit exception?

17           A     No, they were not.

18           Q     Do you know whether Gene Brown or any of the  
19 affiliates, the so-called affiliates of St. George Island  
20 Utility gave up anything in that settlement negotiation?

21           A     I don't know for certain. I would assume, since  
22 it was a settlement, that both sides gave up something to  
23 get to where they were.

24           Q     What words would have been used, in your opinion,  
25 if the intention was for that \$65,000 to be something other

1 than an advance or a loan to St. George Island Utility?

2 A Well, as I indicated in that response, they could  
3 use the word give, donate, contribute, anything of that  
4 nature.

5 Q To your knowledge, have any of the parties to that  
6 litigation challenged the disposition of the settlement  
7 agreement in circuit court?

8 A I don't know. Mr. Brown may know or should know.

9 Q Moving to office rent, does St. George Island  
10 Utility receive any benefits from the rental that it pays to  
11 Armada Bay Corporation, other than merely space?

12 A Yes. They have use of some office equipment and  
13 furniture that belongs to Armada Bay or the law office.  
14 And, of course, they have use of office space in the law  
15 office portion where Ms. Chase sits, because she partially  
16 works for the utility and partially works for the law  
17 office. They have the use of the two law office phone lines  
18 as a back up for their own line, things of that nature that  
19 are over and above the normal rent.

20 Q With regard to the employee salary issue, does the  
21 10 percent allocation supported by Ms. Dismukes have any  
22 basis in reality?

23 A I don't think so. In my opinion, you know, as I  
24 have indicated before, the work that I seeing done and the  
25 procedures at the office, the three utility employees really

1 just don't do anything of consequence to be allocated, not  
2 to the degree of 10 percent.

3 Q Well, Mr. McLean showed you an exhibit where some  
4 other utility employees were apportioned to affiliate  
5 corporations or to some other entity, do you recall that?

6 A Yes.

7 Q Do you recall what the allocation was there?

8 A Something in the order of about 3-1/2 percent.

9 Q With regard to travel expenses, do you regard  
10 Ms. Dismukes' estimates of travel expense to be reasonable?

11 A No. As I indicated, they are substantially below  
12 what was allowed back in 1987, and that was with the use of  
13 only one vehicle, and now there is three vehicles involved.  
14 I mean, two field vehicles, plus administrative use within  
15 the Tallahassee area.

16 Q And you are aware that Hank Garrett submitted some  
17 time records in connection with his rebuttal testimony?

18 A Yes.

19 Q And have you reviewed those records?

20 A Not very thoroughly. I went over them, they  
21 seemed to be pretty consistent with what he has been saying  
22 about his mileage out there. He does quite a bit of  
23 driving.

24 Q You mean that he is under paid for mileage?

25 A On an annual basis, it's hard to tell. There is

1 some -- it really varies. He has got some pretty heavy  
2 weeks in there.

3 Q With regard to unaccounted for water, do you  
4 believe that unaccounted for water is 2 percent or a number  
5 higher than that?

6 A For the test year, it's higher than that. And for  
7 1993, I guess, which was what the 2 percent was related to,  
8 I calculated it would be approximately 9-1/2 percent on an  
9 annual basis based on the operating report information.

10 Q Moving to the issue of original cost. Can you  
11 verify that the estimate, or that the statement of the  
12 investment of the water system set out in Exhibit Number 20  
13 is accurate?

14 A What is Exhibit 20?

15 Q I'm sorry. It is the 1979 financial statement,  
16 Leisure Properties?

17 A No, I can't verify anything on those without any  
18 information behind it.

19 Q Have you seen any other audited financial  
20 statements that set out some estimate of original cost?

21 MR. McLEAN: I'm going to object to any discussion  
22 about any other documents which the gentleman could have  
23 included in his rebuttal case but declined to do so.

24 COMMISSIONER KIESLING: Mr. Pfeiffer.

25 MR. PFEIFFER: Well, Mr. McLean testified at some

1 length that the witness should give credence to an audited  
2 financial statement on account of it being an audited  
3 financial statement. I wanted merely to suggest that there  
4 are other audited financial statements that come to a  
5 different conclusion that ought to be given the same  
6 credence because they are audited. My purpose would not be  
7 to establish that some other audited financial statement  
8 establishes a better value, but only that audited financial  
9 statements are not the documents upon which the Commission  
10 should base its original cost determinations without  
11 supporting documentation.

12 MR. McLEAN: That's an appropriate issue for  
13 brief. The point is that he is attempting to talk about  
14 some financial statement which could have been included in  
15 their rebuttal case, but wasn't. If he wants to argue that  
16 you shouldn't pay attention to financial statements he will  
17 have a golden opportunity to do that in the brief.

18 MR. PFEIFFER: Let me add one other thing.

19 COMMISSIONER KIESLING: No, go ahead. I don't  
20 want to cut you off.

21 MR. PFEIFFER: I'm sorry. I don't mind  
22 interrupting Harold, but I certainly don't want to interrupt  
23 you. The only other point that I wanted to make is that  
24 Exhibit 20 itself is an exhibit that could very well have  
25 been included with the prefiled testimony of their witness

1 and was not.

2 MR. McLEAN: It was mentioned in that prefiled  
3 testimony, the utility could have determined that we were  
4 going to use it. They opened the door with respect to  
5 examination.

6 COMMISSIONER KIESLING: We haven't moved it yet.  
7 I think that when you move 20 is the time for all of that  
8 argument.

9 MR. McLEAN: Well, I think he just invited me to  
10 respond. I understand.

11 COMMISSIONER KIESLING: Well, I'm not inviting you  
12 to. The question that you had asked was whether he is aware  
13 there are other financial statements, audited financial  
14 statements. Have you asked him or do you intend to ask him  
15 any questions about what those are or any details regarding  
16 them?

17 MR. PFEIFFER: Yes, ma'am.

18 COMMISSIONER KIESLING: Well, I'm going to let him  
19 let his answer that there are some stand, but I'm going to  
20 sustain the objection to inquiring about them.

21 MR. PFEIFFER: All right. Well, may I make a  
22 proffer, then?

23 COMMISSIONER KIESLING: You can always make a  
24 proffer.

25 BY MR. PFEIFFER:

1           Q     Mr. Seidman, do you have in front of you a  
2 document called original cost of plant in service,  
3 12-31-1987?

4           A     No.

5           Q     It's coming. Oh, this is the wrong document.

6           COMMISSIONER KIESLING: Do you want to give me  
7 any, and the court reporter? Thank you. Actually, I need  
8 one for the Chairman, also. And should I take it that for  
9 purposes of the proffer you want me to put a number on it?

10          MR. PFEIFFER: Yes, ma'am.

11          COMMISSIONER KIESLING: All right.

12          MR. McLEAN: We are a little confused. You can  
13 put a number on it.

14          COMMISSIONER KIESLING: I'm going to.

15          MR. McLEAN: He mentioned an audited financial  
16 statement, but we have an engineering appraisal.

17          COMMISSIONER KIESLING: Well, I can see that.

18          MR. McLEAN: We don't object to the engineering  
19 appraisal, we don't have any reason to.

20          COMMISSIONER KIESLING: Do you need to take a  
21 moment and try to figure out what paperwork it is you are  
22 reaching for?

23          MS. HELTON: I think this is the same thing you  
24 just distributed.

25          COMMISSIONER KIESLING: Is it.

1 MR. PFEIFFER: Doesn't it say engineering  
2 appraisal of the St. George Island Water System for St.  
3 George Island? This is the document I would like marked.

4 MS. HELTON: This doesn't say financial statement.

5 COMMISSIONER KIESLING: Yes, that's why I think  
6 there was some confusion. You had called it an audited  
7 financial statement.

8 MR. PFEIFFER: Yes, Your Honor.

9 COMMISSIONER KIESLING: I don't that that is what  
10 this is.

11 MR. PFEIFFER: May I take a moment? I'm very  
12 sorry.

13 COMMISSIONER KIESLING: Yes. I will just keep  
14 piling these copies up here until you want to get them back.

15 MR. PFEIFFER: I am so appreciative. If I could  
16 take about 35 seconds to --

17 COMMISSIONER KIESLING: Yes.

18 MR. PFEIFFER: I'm very sorry, I thought I had all  
19 of these organized this morning, and I obviously allowed  
20 them to -- Mr. Brown disheveled them.

21 MR. PIERSON: Was that a stipulation?

22 (Laughter.)

23 COMMISSIONER KIESLING: Let's keep this banter off  
24 the record. I have not gone off the record, I'm just giving  
25 you a moment.



1 (Pause.)

2 COMMISSIONER KIESLING: Since it is a proffer, do  
3 you think you could let some of the other people try to look  
4 for it, and we could move on?

5 MR. PFEIFFER: Yes. I'm very sorry. I really  
6 thought that I was quite organized about these things.  
7 Clearly I'm not. I apologize to you for that.

8 COMMISSIONER KIESLING: No, that's fine. We  
9 already know we are running short on time, and I just wanted  
10 to use it efficiently.

11 BY MR. PFEIFFER:

12 Q For the record, Mr. Seidman, have you seen a 1987  
13 audited financial statement of St. George Island Utility  
14 Company?

15 A Yes, I have.

16 Q And are you aware --

17 COMMISSIONER KIESLING: Are you going to ask him  
18 questions about the document?

19 MR. PFEIFFER: No, ma'am. I'm just going to ask  
20 him to identify it for the record, and then I will move on.

21 COMMISSIONER KIESLING: Okay. It's identified as  
22 Exhibit 46, and I have already ruled that it's not going to  
23 be admissible, so shall I just mark it as proffered?

24 MR. PFEIFFER: Yes, ma'am.

25 COMMISSIONER KIESLING: All right.

1 (Exhibit Number 46 marked for identification.)

2 BY MR. PFEIFFER:

3 Q What does this document reflect with regard to the  
4 cost of the utility as of December 31, 1987, Mr. Seidman?

5 A Approximately \$2.7 million.

6 Q Can you testify as to the veracity of the entries  
7 in the 1987 financial statement?

8 A No. I haven't seen what is behind this, either.

9 Q Have you seen any appraisals of the St. George  
10 Island Utility system other than the 1978 Billy Bishop  
11 appraisal?

12 MR. McLEAN: Let me interpose another objection  
13 here about -- give you a little bit more detail. I object  
14 for the same reason, it wasn't included in the rebuttal  
15 case. However, I'm prepared to decline to object to its  
16 admission if I am afforded an opportunity to cross examine  
17 on this particular document.

18 COMMISSIONER KIESLING: On 46, the audited  
19 financial statement, or the one that I haven't got; that  
20 hasn't been marked yet?

21 MR. McLEAN: I'm sorry, have we left the proffer?

22 COMMISSIONER KIESLING: I thought we had.

23 Mr. Pfeiffer, is that the end of your proffer?

24 MR. PFEIFFER: With regard to Exhibit 46, yes,  
25 ma'am.

1 COMMISSIONER KIESLING: All right.

2 MR. McLEAN: Now, with respect to the  
3 engineering report --

4 COMMISSIONER KIESLING: Is that what you have  
5 already handed out twice?

6 MR. PFEIFFER: Yes, ma'am. And I would ask that  
7 it be marked as Exhibit Number 47.

8 COMMISSIONER KIESLING: It is so marked.

9 (Exhibit 47 marked for identification.)

10 MR. McLEAN: And I object to its introduction for  
11 the reason that it is not in the rebuttal case and could  
12 have been in the rebuttal case. However, if I am permitted  
13 to cross on it, I will withdraw my objection. But I haven't  
14 yet had an opportunity to cross on this document.

15 COMMISSIONER KIESLING: Mr. Pfeiffer, how do you  
16 feel about that?

17 MR. PFEIFFER: I'm happy to have the gentleman  
18 cross with regard to the document.

19 COMMISSIONER KIESLING: All right. I think we  
20 also were reserving your opportunity to cross on Exhibit 30,  
21 which was the one he filed today?

22 MR. McLEAN: Yes, ma'am.

23 COMMISSIONER KIESLING: So I will permit you to  
24 cross on both of those.

25 MR. McLEAN: I can probably cross on this while

1 Mr. Seidman is still here. I haven't really talked out the  
2 thing on the rate case expense yet, but I think Staff took  
3 care of some of our concerns, and we may not need to do  
4 that. But with respect to this document, there are three or  
5 four questions. I had this document ahead of time, the  
6 utility provided it to us in discovery, although they did  
7 not include it in their rebuttal case, at least I had some  
8 idea of what it might say. So, if I can take a few minutes  
9 before Mr. Seidman leaves the stand today I can ask a couple  
10 of questions about it.

11 COMMISSIONER KIESLING: All right. I at least  
12 have not ruled on it then, and you may proceed with your  
13 redirect.

14 BY MR. PFEIFFER:

15 Q With regard to Exhibit Number 47, Mr. Seidman,  
16 what does it reflect as to the cost of plant at St. George  
17 Island Utility?

18 A Well, this study reflects the cost of plant  
19 excluding land of about 1-1/2 million; 1.486. I guess  
20 that's July -- excuse me, January 1982.

21 MR. PIERSON: Excuse me, Mr. Seidman, could you  
22 refer us to someplace in this where we can find that?

23 THE WITNESS: I'm looking at -- it looks like Page  
24 14, and it's a sheet titled -- towards the back, about five  
25 sheets from the back. It says summary of engineering

1 appraisal, St. George Island water system. I'm looking at a  
2 line that has a total estimate of physical facilities near  
3 the bottom of 1,468,730.

4 MR. PFEIFFER: Mr. Pierson, are you okay with  
5 where the entries were?

6 MR. PIERSON: Oh, yes.

7 BY MR. PFEIFFER:

8 Q Mr. Seidman, have you made any attempt to evaluate  
9 impacts that the 1978 Billy Bishop appraisal would have on  
10 original cost estimates set out in the Coloney study?

11 A Yes, I did.

12 MR. McLEAN: Pardon me. Has it been shown that  
13 there would be any influence? I'm not sure I understood the  
14 question.

15 COMMISSIONER KIESLING: I think maybe I missed the  
16 predicate to it, too. I mean, it assumes that there was an  
17 influence that I haven't heard this witness testify that  
18 there is.

19 BY MR. PFEIFFER:

20 Q Well, Mr. Seidman, do you regard the Billy Bishop  
21 study as invalidating the Coloney study?

22 A No. I think this study and -- with the 1978  
23 study, and the 1982 study, and the Coloney study all pretty  
24 much go together. And I think I indicated that to  
25 Mr. McLean in response to a question, that when they are all

1 taken together and considered that we still end up with an  
2 original cost in 1987 in the \$2 million range.

3 Q I'm sorry, of what?

4 A You still end up with an original cost in 1987 in  
5 the \$2 million range. When you take all the studies  
6 together and give weight to the earliest studies, towards  
7 the earliest plant, so that you get the benefit of the  
8 knowledge closest to the installation applied for costing  
9 purposes. In other words, you get the benefit of the early  
10 plant being costed at the cost of the early study and the  
11 Middle Grove plant being costed at the rates of the middle  
12 study, and so on. It sort of was a check for me, again, of  
13 the validity of the Coloney study, which was costing  
14 everything with knowledge only available to him in 1987.

15 Q All right, sir. Was the 1979 tax return of  
16 Leisure Properties audited by the Internal Revenue Service?

17 MR. McLEAN: I don't recall asking a question on  
18 that point.

19 COMMISSIONER KIESLING: What's your objection?

20 MR. McLEAN: That it is outside the scope of  
21 cross.

22 MR. PFEIFFER: He asked a whole bunch of questions  
23 about the 1979 financial statement and about the 1979 tax  
24 returns, and certainly the results of an audit by the  
25 Internal Revenue Service would have a bearing on those lines

1 of inquiry.

2 MR. McLEAN: I disagree. I did not ask any  
3 question about the '79 tax return of this witness. I asked  
4 a couple of questions about the IRS determination which was  
5 made in 1984, but I had no plan to ask this witness, and did  
6 not ask this witness anything about the '79 tax return. I  
7 can't imagine what he would know about it, which is why I  
8 didn't ask him.

9 MR. PFEIFFER: Well, the '84 determination by the  
10 IRS related to the '79 tax returns; '79, '80, '81, '82.

11 COMMISSIONER KIESLING: Are you referring to a  
12 specific exhibit that was discussed?

13 MR. PFEIFFER: No, ma'am. I'm referring to the  
14 1979 tax return, which is Exhibit 21, not in evidence.

15 MR. McLEAN: About which I did not refer in this  
16 witness. And I think it's also true that he volunteered a  
17 number of things about the IRS settlement. The reason I  
18 didn't ask any questions of this witness on that subject is  
19 because I don't think he knows anything about it. I know  
20 for sure I asked him nothing about '79 tax returns. I have  
21 a line of questions about the '79 tax return for Ms. Withers  
22 and for Mr. Brown, but not for this witness, and I didn't  
23 ask any.

24 COMMISSIONER KIESLING: I don't recall any  
25 questions being asked about Exhibit 21 or the '79 tax

1 return, either. So what is it on cross that you're trying  
2 to --

3 MR. PFEIFFER: Well, I had thought that Mr. McLean  
4 asked him a question about a specific entry in the '79 tax  
5 return with the idea that it corroborated some specific  
6 entry in the 1979 financial statement of Leisure Properties.

7 MR. McLEAN: No, I asked Ms. Dismukes such a  
8 question, but not this witness.

9 COMMISSIONER KIESLING: Yes, I'm going to sustain  
10 the objection.

11 BY MR. PFEIFFER:

12 Q Can you verify the numbers in the Wither's  
13 affidavit?

14 A No.

15 Q Do you know whether the annual reports of  
16 St. George Island Utility were before the Commission in the  
17 last rate case, the 1989 rate case?

18 A The annual reports?

19 Q Yes, sir.

20 A I believe so.

21 Q Do you know whether the 1979 tax return of Leisure  
22 Properties was before the Commission in that rate case?

23 A Yes, it was.

24 Q Do you know whether the 1979 audited financial  
25 statement of Leisure Properties was before the Commission in



1 that case?

2 A Yes, it was.

3 MR. McLEAN: May I ask for a point of  
4 clarification, and it may be a little late, but I ran into  
5 this problem before. I don't know what "before the  
6 Commission" means.

7 COMMISSIONER KIESLING: I was having a little  
8 trouble with that myself. What does that mean, that it was  
9 part of the record in that case?

10 MR. PFEIFFER: That's what I intended to ask, yes,  
11 and I should perhaps rephrase the question and ask the  
12 witness if those documents were in the record of the  
13 proceeding in the last rate case.

14 MR. McLEAN: Well, the problem still arises as  
15 whether the substance of those documents were in or whether  
16 they were simply taken administrative notice of. The latter  
17 is true of the '79 tax return and of the audited financial  
18 statement. The Commission specifically declined to  
19 recognize the truth of any matters assert in either one of  
20 those documents. As to the annual reports, I don't know.

21 MR. PFEIFFER: Well, Your Honor, that's not  
22 correct. As a matter of fact, Exhibit 21 in the proceeding  
23 in the 1989 rate case included the 1979 tax return of  
24 Leisure Properties, and the 1979 audited financial statement  
25 of Leisure Properties.

1 MR. McLEAN: When the Commission took  
2 administrative notice of it, that's true.

3 MR. PFEIFFER: It was actually in the record  
4 before then.

5 MR. McLEAN: Well, then that was a strange thing  
6 to do, for the Commission to grant official notice of it.

7 COMMISSIONER KIESLING: Well, I'm going to  
8 overrule your objection.

9 BY MR. PFEIFFER:

10 Q So, Mr. Seidman, I'm not sure whether you answered  
11 the question or not, but do you know whether the 1979 tax  
12 return of Leisure Properties was in the record of the  
13 proceeding in the last rate case involving St. George Island  
14 Utility before the Public Service Commission?

15 A Yes, it was.

16 Q And how about the 1979 audited financial  
17 statement?

18 A Yes, it was.

19 Q How about the 1987 audited financial statement?

20 A Yes.

21 Q And how about tax returns of Leisure Properties  
22 for every year between 1979 and 1987?

23 A Yes, they were.

24 Q With regard to some of the questions that  
25 Mr. Pierson asked you, do you know whether Mr. Coloney had

1 his deposition taken in this proceeding?

2 A Mr. who?

3 Q Mr. Coloney.

4 A Had his deposition taken?

5 Q Yes.

6 A Yes, he did.

7 MR. PFEIFFER: Nothing further.

8 COMMISSIONER KIESLING: I will permit you to cross  
9 on Exhibit 47.

10 MR. McLEAN: Thank you, ma'am.

11 RE CROSS EXAMINATION

12 BY MR. McLEAN:

13 Q Mr. Seidman, Exhibit Number 47 purports to be an  
14 engineering report done by Mr. Bishop's firm, correct?

15 A That's correct.

16 Q Now, Page 1, the 12th line of the first paragraph  
17 of the exhibit says it is a depreciated replacement cost  
18 appraisal, is that right?

19 A That's correct.

20 Q It doesn't say anything about it being an original  
21 cost appraisal, does it?

22 A No, it wasn't. I know that.

23 Q It's purported to be in many instances a  
24 continuation of the '79 study, is that right?

25 A Yes.

1 Q And it was accomplished in January of 82? Did you  
2 understand the question?

3 A Yes. Yes, it was. I agree.

4 Q It was accomplished in '82? There are two years  
5 of improvements -- I'm sorry, two years of additions. Do  
6 you remember the Withers' affidavit we talked about, do you  
7 recall that that affidavit showed two years worth of  
8 improvements -- I'm sorry, two years worth of additions in  
9 that little box thing that she did?

10 A Yes.

11 Q Let's look to Page 14 of the report. I see an  
12 item for \$143,130 beside the state park system, right?

13 A Yes.

14 Q Mr. Bishop included that \$143,000 in this study,  
15 right?

16 A Yes, he did.

17 Q But we know those two have been contributed by the  
18 state park system, don't we, pursuant to the terms of  
19 refundable advance?

20 A I don't think that's what that's talking about.  
21 This is the state park system, I think, within the grounds  
22 of the state park, and not the line that was paid for by an  
23 advance.

24 Q So, you're testifying that there are assets within  
25 the state park system that are in the rate base of the

1 utility?

2 A No, I'm just saying that this is not the amount  
3 that was paid, the line that was paid for by the advance.

4 Q Okay. Now, speaking of those assets within the  
5 park, Mr. Bishop's study says that's part of the cost?

6 A Right.

7 Q But that's not part of the investment of this  
8 utility, is it?

9 A No. When I looked at this information I didn't  
10 include that in any evaluations I did.

11 Q Now, did you include the \$804,500, which is below  
12 that a little ways, about eight numbers down?

13 A No.

14 Q You didn't?

15 A All I used from this study in looking at,  
16 basically tying together all the studies, was the quantities  
17 of plants that he had indicated that were added, or the  
18 quantities of plants in 1982 versus the quantity of plants  
19 he indicated in 1978, so I had an idea of how many feet of  
20 pipe, or whatever, gate valves, or whatever were added, so I  
21 could do an incremental costing for additions between  
22 between '78 and '82.

23 Q Okay. What number did you use from the '82 Bishop  
24 report? Is it the 1530730 number there?

25 A No, I didn't use any numbers from this sheet, this

1 summary sheet. I used numbers from the Exhibit A attached.

2 Q Well, what number did you come up with to show the  
3 extent of investment in the system at this particular point  
4 in time? Did Mr. Bishop help lead you to some conclusion in  
5 this report?

6 A Well, basically what I did was, I put together an  
7 analysis that said, "Let's take advantage of the three  
8 studies that have been done in three different points in  
9 time. Okay. Let's take the earliest study, and use the  
10 quantities and prices in that study to price the earliest  
11 plant."

12 Q Let me interrupt for just a minute. Now, what  
13 number did you find from that original study, what is the  
14 level?

15 A Again, I used the units of the quantities of plant  
16 and the unit costs.

17 Q Did they add up to anything?

18 A From the first study, physical 817,679, excluding  
19 land.

20 Q And that, in your view, was the level of  
21 investment in this utility plant at what point in time?

22 A That would be in 1978, mid-'78.

23 Q Now, this second Bishop report takes us out to  
24 1982?

25 A Right.

1 Q Is there a number which corresponds to the 817?

2 A Yes.

3 Q What number is that?

4 A 401,521, which would be the cost of the additions  
5 since 1978 priced using his 1982 prices and the difference  
6 in quantities between the older study and the newer study.

7 Q Now, that 401, is that what was referred to on  
8 Page 1 as replacement costs?

9 A I don't think so. And the reason I say that is  
10 this, what's on his front page refers to the whole study.

11 Q Sure.

12 A As replacement costs, which would mean he was also  
13 repricing everything he had priced back in the '78 study.  
14 He would have repriced it at 1982 dollars. Okay. I have  
15 made just a blanket assumption that the additions between  
16 '78 and 82 -- I have used his 1982 dollars applied to just  
17 that amount.

18 Q Mr. Bishop, in the second study, would have to  
19 undertake, for example, for an asset which was added in  
20 1978, he would have to undertake some sort of study in 1982  
21 to determine what that asset cost in 1978, wouldn't he, if  
22 he was after original cost? Do you understand my question?

23 A If Mr. Bishop in 1982 wanted to determine the  
24 original cost of an asset in 1978?

25 Q If he wanted to determine the cost of an asset

1 placed in the ground in 1978, then he would have to figure  
2 out how much that asset would have cost in 1978, wouldn't  
3 he?

4 A Right.

5 Q Now, can you point to any part of his study which  
6 performs that calculation for any asset which was put in the  
7 ground at any time?

8 A Put in the ground at any time?

9 Q Sure. Well, let's think about the '78 asset. You  
10 sit down in 1982, as Mr. Bishop did, and you try to figure  
11 out what the original cost of that 1978 addition was, right?  
12 But you don't have the invoice. So what do you do? You go  
13 look to see how much it costs today and then you use the  
14 handy Whitman Index to figure out what it would cost in  
15 1978?

16 A Right.

17 Q Show me in this report where he did that?

18 A He did not do that in this report.

19 Q Doesn't that lead you to believe that it's an  
20 original cost report?

21 A That it is an original cost report?

22 Q I'm sorry. You should have said sure.

23 Doesn't it lead you to believe that it's a  
24 replacement cost study?

25 A Yes, it is a replacement cost study. It says that



1 in the agreement.

2 Q Now, the Commission is more concerned with  
3 original costs, aren't they?

4 A Absolutely.

5 Q And that's what this whole proceeding is about?

6 A That's right. That's what I'm trying to deduce  
7 from the information in here.

8 Q So, what you do is you take --

9 A That is why I have not repriced anything that he  
10 put in -- that he priced in the 1978 study. I haven't  
11 repriced it from this study. I've taken his earliest study  
12 and priced the early assets at those costs, and he had only  
13 adjusted a couple of items in that early study for  
14 replacement value, so those were taken into consideration.  
15 The 700 and whatever -- that first number I gave you?

16 Q Yes, sir. 817,671.

17 A Right. That would represent the original cost in  
18 1978 of plant put in through 1978 based on his first study.

19 Q The '78 Bishop study is, in fact, a replacement  
20 cost study, isn't it?

21 A Yes. But he indicated in that study those items  
22 which he had original cost numbers for versus indexed  
23 numbers for.

24 Q So you have done a calculation which reprices  
25 assets which Mr. Bishop found in 1982, you have repriced

1 them so that they will be reflected at their original cost,  
2 is that what you're saying?

3 A Yes and no.

4 Q Well, with respect to --

5 A I did two things. First of all, I subtracted out  
6 the quantity of items that were included in the '78 study,  
7 so I was only dealing with additions.

8 Q Sure.

9 A I then made the assumption that the '82 unit costs  
10 would be very close to the original cost for the additions.  
11 That is obviously a quick and dirty estimate.

12 Q Sure.

13 A I wasn't trying to, you know, reinvent the wheel  
14 here, but I was trying to make sort of a check comparison.

15 Q I see. Now --

16 A And those numbers were a lot closer to when that  
17 plant was put in than when Mr. Coloney did the study.

18 Q Okay. So you came up with, from when Mr. Bishop  
19 did his first study to when Mr. Bishop did his second study  
20 using your method of \$101,527 worth of additions, right?

21 A \$101,521, yes.

22 Q Now, you remember that Ms. Withers boxes  
23 affidavit. You agreed with me, I think, eventually that  
24 69,000 was done in '79, right?

25 A Uh-huh. That's what she shows there, yes. I

1 don't know what was done, but that's what it shows.

2 Q Okay. I'm referring again to Ms. Withers'  
3 affidavit. She showed \$3,063 worth of additions in 1980,  
4 didn't she? The way I arrived at that, Mr. Seidman, is I  
5 looked through her boxes, and looked to see how much the  
6 plant balance per book changed from the end of 1979 to the  
7 end of 1980, and I got \$3,063.

8 A Okay.

9 Q Right?

10 A Yes.

11 Q So that's 79 plus three -- are you with me? 69  
12 plus three, right? And then in '81, Ms. Withers shows a  
13 \$96,000 change, and in '82 I believe she shows -- I'm sorry.  
14 In '82 she shows 96, is that correct? Well, let me ask the  
15 question a little bit more generally, since I'm getting us  
16 all bogged down in numbers right here. If Mr. Bishop's  
17 study correctly reflects additions, it ought to pretty much  
18 coincide with what Ms. Withers shows the plant balance  
19 changing, the plant balance per books changing, is that  
20 right?

21 A No. I think Mr. Bishop's study correctly reflects  
22 additions. That doesn't mean it's going to match what  
23 Ms. Withers added in here, and I think that's the test.  
24 Because he is working from quantities of plant, and we don't  
25 know what is behind Ms. Withers' numbers here. So I don't

1 know that -- first of all, I don't know that they do match.  
2 I haven't checked them for that purpose.

3 Q But they should, shouldn't they?

4 A Well, yes. Theoretically, sure, they should.

5 Q And if they don't, you don't blame the Bishop  
6 report for being inaccurate, you say Ms. Withers' yearly  
7 additions to the books were wrong?

8 A Yes.

9 Q And that gets back pretty much to that debate you  
10 and I have already had, right?

11 A Right.

12 Q Which was Ms. Withers was keeping the books  
13 without support? Or you don't know whether she had support?

14 A I don't know what the basis is, and that's why I  
15 have turned to this.

16 Q You have turned to the Bishop report?

17 A To an original cost study approach.

18 Q Well, let me ask you this. Is this an original  
19 cost study?

20 A No, it isn't.

21 Q You tried to turn it into one, right?

22 A I tried to take advantage of the numbers in it as  
23 a test of the Coloney study.

24 Q A quick and dirty test, I think you said?

25 A Absolutely.

1 MR. McLEAN: No further questions.

2 COMMISSIONER KIESLING: I just had one so that I'm  
3 sure I understood. The point of your questions earlier was  
4 that the amounts that are listed on the Withers' affidavit  
5 for 1980 and '81 as additions should equal the difference  
6 between the \$817,000 and this one million.

7 MR. McLEAN: No, not just '80 and '81. And the  
8 utility can correct me if I'm wrong. I think they advanced  
9 this document to show additions from the point of the first  
10 Bishop study to the point of the second Bishop study. Now,  
11 if they correctly quantify additions, so be it. But they  
12 should also -- the Commission should pay at least as much  
13 attention, if not more, to Ms. Withers, who was an officer  
14 in the corporation and who compiled an exhibit to show what  
15 the additions were. To the extent they don't agree, I say  
16 that the Bishop report is more suspect than Ms. Withers'  
17 work.

18 COMMISSIONER KIESLING: And I'm just trying to  
19 understand whether you were including 1982 information from  
20 the Withers' affidavit in that comparison.

21 MR. McLEAN: It depends on the date.

22 COMMISSIONER KIESLING: Well, that's what I'm  
23 trying to figure out. The Bishop report is January of '82,  
24 so --

25 MR. McLEAN: You're exactly right.

1 COMMISSIONER KIESLING: -- we don't include '82.

2 MR. McLEAN: I would think not. I would think if  
3 you're interested in the additions, you should look to see  
4 what Ms. Withers said and look to this and then draw your  
5 conclusions.

6 COMMISSIONER KIESLING: You had raised '82 when  
7 you were originally questioning him, but I was trying to  
8 figure out --

9 MR. McLEAN: I get confused with numbers, but I'm  
10 better with exhibits.

11 COMMISSIONER KIESLING: All right. I guess then I  
12 need to give you an opportunity to redirect on just those  
13 questions on Exhibit 47, if you have any.

14 MR. PFEIFFER: I have a few questions.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. PFEIFFER:

17 Q Do you regard the 1982 Billy Bishop study as  
18 inconsistent with the Coloney report?

19 A No. I found all of the studies to be pretty  
20 consistent. I think there is a good progression there.

21 Q And when you used the 1982 Billy Bishop appraisal  
22 in conjunction with the 1978 Billy Bishop appraisal, what  
23 conclusion did you reach with regard to original costs?

24 A That the original costs up through '82 was in the  
25 ballpark at that point of about 1.2 million, including land.

1 Land is only about \$20,000. That was the cumulative effect  
2 of pricing the early plant based on the early study prices,  
3 and the later plant at the later study prices.

4 Q And is that, in your opinion, consistent with the  
5 Coloney report?

6 A Yes, because the next step was to price the  
7 remaining plant at the Coloney prices. What that really did  
8 was that before we were relying completely on the Coloney  
9 study for the pricing of all the plant from 1976 to 1987.  
10 And now we are relying on the Coloney study for pricing only  
11 from 1982 -- or actually 1983 to 1987. So it's a test of  
12 whether when you combine that amount with prices determined  
13 by other studies by other consultants, whether or not the  
14 total is in the same ballpark, and it was. It's still in  
15 the \$2 million range by the time of the test year of 1987.

16 MR. PFEIFFER: Nothing further.

17 MS. SANDERS: Commissioner, I apologize, but can I  
18 ask a question about that, because --

19 COMMISSIONER KIESLING: About his redirect?

20 MS. SANDERS: About what he just asked him.

21 COMMISSIONER KIESLING: No.

22 MR. PIERSON: Madam Chairman, if I may,  
23 Mr. Pfeiffer asked a question, and I would like to follow up  
24 on that.

25 COMMISSIONER KIESLING: Just in his redirect to

1 Mr. McLean's cross?

2 MR. PIERSON: No, ma'am, in his original redirect  
3 of Mr. Seidman. He asked about the deposition of Mr.  
4 Coloney.

5 MR. PFEIFFER: I have no objection to that.

6 RE CROSS EXAMINATION

7 BY MR. PIERSON:

8 Q Do you recall that, Mr. Seidman?

9 COMMISSIONER KIESLING: All right. I will permit  
10 that one.

11 MR. PIERSON: I'm sorry, did I jump in too  
12 quickly?

13 COMMISSIONER KIESLING: Yes. I will permit it.

14 BY MR. PIERSON:

15 Q Would you please refer to Exhibit Number 30, which  
16 is your rate case expense exhibit, I believe?

17 A Yes.

18 Q And I had been asking you about the very bottom  
19 line, which is an estimated bill, but would you look right  
20 above that at the actual bill for 1680.99?

21 A Yes.

22 Q Doesn't that say, "Appear at Staff deposition"?

23 A Yes.

24 MR. PIERSON: Thank you.

25 COMMISSIONER KIESLING: Exhibits.



1 MR. PFEIFFER: I would move Exhibited 29 and 30.

2 COMMISSIONER KIESLING: Without objection. What  
3 are we going to do about you crossing on 30?

4 MR. McLEAN: 30 is the one which Mr. Pfeiffer --  
5 I'm sorry, that's the rate case expense?

6 COMMISSIONER KIESLING: Yes.

7 MR. McLEAN: There are some of those things which  
8 Mr. Brown is probably in a better position to ask anyway, so  
9 perhaps we can just ask Mr. Brown about that. I think that  
10 that's subject to some sort of objection, because he didn't  
11 sponsor them, but I also heard Mr. Seidman defer to Mr.  
12 Brown on one or two questions about rate case expense.

13 COMMISSIONER KIESLING: Well, if 30 is admitted  
14 then you can ask Mr. Brown about it, even though he didn't  
15 sponsor it on those areas. So you have no objection to 30?

16 MR. McLEAN: Not with the understanding that I can  
17 ask Mr. Brown about 30.

18 (Exhibit Number 29 and 30 received into evidence.)

19 COMMISSIONER KIESLING: Exhibits, Mr. McLean?

20 MR. McLEAN: And the Citizens have a number of  
21 exhibits; 32, 33, 34 --

22 COMMISSIONER KIESLING: Wait, slow down. What  
23 about 31? That's one of your exhibits.

24 MR. McLEAN: No.

25 COMMISSIONER KIESLING: You are not moving it?

1 MR. McLEAN: No.

2 COMMISSIONER KIESLING: Okay.

3 MR. McLEAN: 32.

4 COMMISSIONER KIESLING: Any objection? Hearing  
5 none --

6 MR. PFEIFFER: Wait a second. 32 is which one,  
7 Harold?

8 MR. McLEAN: That's the letter that Mr. Brown  
9 assigns his interest to Sailfish, as I recall.

10 MR. PFEIFFER: Objection. The document has not  
11 been authenticated.

12 MR. McLEAN: The Commission has a great deal of  
13 leeway in these matters. Section 120.58 addresses things  
14 like technical authentication. It says that you can rely  
15 upon evidence which is relied upon by reasonably prudent  
16 persons in the day-to-day conduct of their affairs.

17 COMMISSIONER KIESLING: That's essentially what it  
18 says.

19 MR. McLEAN: Yes, I didn't quote it. I've got the  
20 quote here, but that's essentially what it says.

21 COMMISSIONER KIESLING: I've got it, too.

22 MR. McLEAN: And to worry about this being  
23 authenticated, should I put Mr. Brown on to say he actually  
24 wrote the letter? It doesn't seem to me a real good  
25 expenditure of time.

1           COMMISSIONER KIESLING: Okay. I'm going to  
2 overrule the objection on 32 and admit it.

3           (Exhibit Number 32 received into evidence.)

4           MR. McLEAN: With respect to 33, that's the  
5 Mad Hatter order, we move it.

6           COMMISSIONER KIESLING: Any objection?

7           MR. PFEIFFER: Well, it's my understanding that  
8 the Commission will take official recognition of all of its  
9 orders, so I suspect that it's unnecessary, but I do not  
10 object.

11           COMMISSIONER KIESLING: All right. 33 is  
12 admitted. 34.

13           MR. McLEAN: 34 is a consent order about which  
14 Mr. Seidman testified.

15           COMMISSIONER KIESLING: Objections? Hearing none,  
16 34 is admitted.

17           MR. PFEIFFER: It's already been received in  
18 evidence as part of the prefiled testimony of Mr. McKeown,  
19 and it's unnecessary. I would say it's redundant. It's  
20 just one more tree.

21           COMMISSIONER KIESLING: Well, it is, but it's  
22 already gone now. 35.

23           MR. McLEAN: A partial final judgment.

24           COMMISSIONER KIESLING: The same thing,  
25 Your Honor. It's already part of the record in this

1 proceeding, and we don't object.

2 (Exhibit Number 33, 34, and 35 received into  
3 evidence.)

4 COMMISSIONER KIESLING: 36.

5 MR. McLEAN: Have they been identified?

6 COMMISSIONER KIESLING: What do you mean have they  
7 been identified?

8 MR. McLEAN: Has 34 and 35 been identified as  
9 exhibits? Are those people who have already been stipulated  
10 in? Okay, no problem. 38 was the next one.

11 COMMISSIONER KIESLING: Okay. You're skipping  
12 37 and 36?

13 MR. McLEAN: That's correct.

14 COMMISSIONER KIESLING: Okay. 38.

15 MR. McLEAN: Unaccounted for water, the answer to  
16 the interrogatory.

17 COMMISSIONER KIESLING: Any objection to 38?

18 MR. PFEIFFER: Let me make that I'm caught up.  
19 Are 36 and 37 not being offered?

20 COMMISSIONER KIESLING: That's correct.

21 MR. McLEAN: Let me say a word or two about that.  
22 Chairman Deason invited us to bring around all of those  
23 things, and sometimes we use them and sometimes we don't.

24 COMMISSIONER KIESLING: I know. But since I'm  
25 kind of working from his list, I'm wanting to be sure that I

1 do them one at a time so that I know his list and the  
2 numbers we are using are synchronous.

3 MR. McLEAN: Okay.

4 MS. HELTON: Just so I can make sure I understand  
5 the code, 34 and 35 were admitted.

6 COMMISSIONER KIESLING: 34 and 35 were admitted.  
7 So far, 32, 33, 34 and 35 have been admitted.

8 MR. PFEIFFER: And what is 38?

9 MR. McLEAN: 38 is the answer that Mr. Brown gave  
10 to an inquiry by the Staff concerning unaccounted for water.

11 MR. PFEIFFER: That's the answer to the  
12 interrogatory?

13 COMMISSIONER KIESLING: Yes.

14 MR. PFEIFFER: No objection.

15 COMMISSIONER KIESLING: 38 is admitted.

16 (Exhibit Number 38 received into evidence.)

17 COMMISSIONER KIESLING: 39.

18 MR. McLEAN: No, ma'am.

19 COMMISSIONER KIESLING: You tell me.

20 MR. McLEAN: Sorry.

21 COMMISSIONER KIESLING: Which is your next one  
22 that you're moving.

23 MR. McLEAN: And the last issue is the Citizens'  
24 request administrative notice.

25 COMMISSIONER KIESLING: What number exhibit is it,

1 that is all I need.

2 MR. McLEAN: It doesn't have one as yet, the  
3 annual reports. We're going to ask for administrative  
4 notice of all the annual reports, and I have a rather  
5 specific request with respect to administrative notice.

6 COMMISSIONER KIESLING: So let me just be clear.  
7 You are not moving, then, 39 through 42?

8 MR. McLEAN: That is correct.

9 COMMISSIONER KIESLING: Let me finish the exhibits  
10 and then get back to your official notice request so that I  
11 don't leave anyone out. Staff, any exhibits you're moving.

12 MR. PIERSON: Yes. I would like to move 45, but I  
13 think that leaves a couple of numbers unaccounted for.

14 COMMISSIONER KIESLING: Which numbers?

15 MR. PIERSON: 43 and 44.

16 COMMISSIONER KIESLING: Those are late-filed  
17 exhibits that you had marked.

18 MR. PIERSON: Thank you. I'm sorry.

19 Yes, I would like to move Exhibit Number 45.

20 COMMISSIONER KIESLING: Without objection.

21 MR. PFEIFFER: No objection.

22 COMMISSIONER KIESLING: And, Mr. Pfeiffer, you had  
23 also an Exhibit 47.

24 MR. PFEIFFER: Well, 46 was the proffered  
25 financial statement upon which you have ruled. I won't

1 intrude there. Number 47, we would not offer that at this  
2 time.

3 COMMISSIONER KIESLING: Okay. Now --

4 MR. McLEAN: With respect to the annual reports, I  
5 would like the Commission to notice several things. First  
6 of all, that you have a rule which requires their filing.  
7 Second, that the utility did, in fact, file them for the  
8 years 1979 through this year. Thirdly, that you have a rule  
9 which requires certification. And, second, that SGU did, in  
10 fact, certify on each one of those that the things as set  
11 forth in them were true.

12 COMMISSIONER KIESLING: And so, what, you're  
13 moving that we grant official recognition to the annual  
14 reports from -- which ones?

15 MR. McLEAN: '79 through 1993, whatever the last  
16 one is they filed.

17 COMMISSIONER KIESLING: Okay. Do you have any  
18 more argument on your motion before I let them respond?

19 MR. McLEAN: No, ma'am.

20 COMMISSIONER KIESLING: Any response or  
21 objection?

22 MR. PFEIFFER: I would like to see them, and see  
23 what he is handing you. I would have no objection to the  
24 Commission taking official recognition of the entire record  
25 of proceedings in the last rate case, which would certainly

1 include those annual statements. And I would suggest that  
2 as an alternative.

3 COMMISSIONER KIESLING: I don't think that that  
4 bears any relationship to what he is offering.

5 MR. McLEAN: No. We had some testimony that that  
6 might have been included in the last case. I read the last  
7 case pretty carefully, and I don't remember that at all. My  
8 request for official notice is fairly -- I want you to  
9 notice the rule that requires that they be filed, that they  
10 were filed, that you have a rule which requires that they be  
11 certified, and that they were certified.

12 MR. PFEIFFER: Do you have them discreetly in your  
13 hand, Harold?

14 MR. McLEAN: I have most of them. They are the  
15 annual reports which we talked about with Mr. Seidman. And  
16 we think that they show, they tended to shed light on what  
17 the addition were, and that is the interest I have in them.

18 MR. PFEIFFER: I have no objection to them being  
19 received, Ms. Kiesling, but I would like to have those in my  
20 possession. And I think they ought to give them to me.

21 MR. McLEAN: We have one copy each which we  
22 went through tremendous trouble to get. You filed them, you  
23 ought to have them. You can certainly come and look at them  
24 any time you want, we don't have a problem with that. But  
25 we had to have them copied from microfiche.



1           COMMISSIONER KIESLING: Essentially, what you're  
2 doing is no different than asking us to take official  
3 recognition of an order, other than that it's not an order,  
4 it's a document that is required to be filed in the ordinary  
5 course of business.

6           MR. McLEAN: Precisely, yes, ma'am.

7           COMMISSIONER KIESLING: That are somewhere in the  
8 records of the Commission.

9           MR. McLEAN: Yes, ma'am.

10          COMMISSIONER KIESLING: Do you need copies of  
11 them? I don't have copies of them, either.

12          MR. PFEIFFER: So my question is how are they  
13 going to be probative of anything for anybody in this case.  
14 Are you and Mr. Deason going to dig through file cabinets to  
15 find them?

16          MR. McLEAN: No. We have a number of excerpts  
17 from those annual reports about which I am going to ask to a  
18 number of witnesses.

19          MR. PFEIFFER: Then I would like to have those in  
20 my hands, and I object until I have them in my hands.

21          MR. McLEAN: I have the excerpts, we'll have those  
22 in time. Is the utility denying that there is such a rule,  
23 are they denying that they filed them, and are they denying  
24 that they certified to them?

25          COMMISSIONER KIESLING: I don't think they are

1 doing any of those things. All they are saying is if you're  
2 going to ask witnesses questions from them, they would like  
3 an opportunity to see them, because they don't have them  
4 here.

5 Mr. McLEAN: I have excerpts from the annual  
6 reports, and I will furnish those as exhibits at the time.  
7 Now, do I have to prove up -- when I ask those questions, do  
8 I have to prove up the fact that the Commission requires  
9 them and that they were filed?

10 COMMISSIONER KIESLING: No. I don't think you  
11 have to prove those things. I think everyone here is quite  
12 willing to acknowledge that the rules require all of those  
13 things and to give official recognition to those rules.

14 MR. McLEAN: I'm asking you to do so at this  
15 particular point in time. I have been asked to authenticate  
16 some documents in this proceeding which everybody knows was  
17 authentic. A good example of that is the letter from Mr.  
18 Brown. Now, if I'm not going to run into any authentication  
19 problems in the annual reports, then I don't need to advance  
20 the request. But I'm anticipating running into  
21 authentication problems on pieces of annual reports, and I  
22 would like to avoid that now. I don't want to have to call  
23 a staff witness to say, "Yes, we got them. Yes, we have the  
24 rule."

25 COMMISSIONER KIESLING: If I understand your

1 point, let me try to deal with it this way. The Commission  
2 will take and always does take official recognition of its  
3 rules and statutes. Are you asking me to take official  
4 recognition of the actual annual report, or are you asking  
5 me to take official recognition of our rules?

6 MR. McLEAN: I don't know if I can answer, but I  
7 can tell you what my concern is. When I ask a witness a  
8 question about an annual report, I don't want to run into  
9 authentication problems. I need only ask the witness if the  
10 utility files an annual report, and if this thing looks like  
11 that annual report. With that done, I don't have a problem  
12 with this, I don't have to seek official notice.

13 COMMISSIONER KIESLING: I think you have no  
14 problem. First of all, it's premature, you haven't offered  
15 them and we haven't heard any objection to them. On the  
16 first one, on the first one that you try to use, if there is  
17 an objection then we can make a ruling that will apply to  
18 all filed annual reports.

19 MR. McLEAN: Sounds good.

20 COMMISSIONER KIESLING: But I think it's premature  
21 at this point.

22 MR. PFEIFFER: I'm not trying to be uncooperative,  
23 but if witnesses are going to be cross examined with regard  
24 to documents, I didn't bring the annual reports with me, I  
25 only brought four or five file boxes of stuff here, and I

1 didn't bring the annual reports, and I would like to have  
2 them in my hand while the witness is being cross examined  
3 about it.

4 COMMISSIONER KIESLING: But it hasn't happened  
5 yet. Save it.

6 MR. PFEIFFER: Okay.

7 COMMISSIONER KIESLING: Thank you. So we are  
8 through with this witness. Why don't we go ahead and take a  
9 few minutes while we switch witnesses and get all the  
10 paperwork straight.

11 (Brief recess.)

12 COMMISSIONER KIESLING: All right, we're back on  
13 the record. You may call you next witness.

14 MR. PFEIFFER: Your Honor, I believe the parties  
15 are prepared to stipulate that the testimony of  
16 Mr. Baltzley, Steve Baltzley, can be received into evidence  
17 with the exhibits attached to the testimony without the  
18 requirement for cross examination. We would move that his  
19 testimony be inserted into the record and that the exhibits  
20 attached to his testimony be numbered as the next --

21 COMMISSIONER KIESLING: Let me find it first. I  
22 seem not to have it.

23 MR. PFEIFFER: I'm sorry to be delighted that  
24 someone else is not finding something.

25 COMMISSIONER KIESLING: All right. So that's Mr.

1 Baltzley?

2 MR. PFEIFFER: Yes. There is an exhibit attached  
3 to his testimony that we would offer as a single exhibit.  
4 It begins with a letter that's headed by the Florida Rural  
5 Water Association letterhead, and we would offer that as the  
6 next numbered exhibit, I believe that it is 48.

7 COMMISSIONER KIESLING: It is. It's marked as 48.  
8 Any objection? It is admitted.

9 (Exhibit 48 marked for identification and received  
10 into evidence.

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2 **REGARDING THE APPLICATION FOR INCREASED RATES FOR**  
3 **ST. GEORGE ISLAND UTILITY COMPANY, LTD.**  
4 **IN FRANKLIN COUNTY**  
5 **DOCKET NO. 940109-WU**  
6 **REBUTTAL TESTIMONY OF**  
7 **STEVE BALTZLEY**

8  
9 **Q. Please state your name.**

10 **A. Steve Baltzley.**

11

12 **Q. Where do you work?**

13 **A. Florida Rural Water Association, as a State Circuit**  
14 **Rider for North Florida.**

15

16 **Q. Please describe your relationship with St. George**  
17 **Island Utility Company.**

18 **A. The Florida Rural Water Association is a non-**  
19 **profit/membership organization who's mission is to help**  
20 **small water and wastewater systems throughout Florida.**  
21 **One of the main ways we can help systems is through on-**  
22 **site technical assistance and providing training**  
23 **sessions. Our assistance is provided through member**  
24 **request and/or agency referrals to help systems**  
25 **maintain or gain compliance, improve operations,**

1 management, maintenance, etc. Our involvement with St.  
2 George Island Utility Company has been through requests  
3 from the system as a member and referrals to assist  
4 through the Department of Environmental Protection.  
5 The Association has made numerous visits to St. George  
6 Island Utility over the years to provide specific  
7 technical assistance activities. We have helped, for  
8 example, on water loss reduction within the system. In  
9 the past, St. George Island Utility Company has had  
10 large water losses. But, utility efforts,  
11 specifically Hank Garrett's efforts to address and  
12 reduce that loss has been successful in getting the  
13 utility into a much more efficient operating condition.  
14 A recent water audit performed by the Florida Rural  
15 Water Association shows the current efficiency of the  
16 system and is attached.

17 The Association has also assisted the utility upon  
18 request from the system and referral by Florida  
19 Department of Environmental Protection in assessing  
20 thorough analysis, past pressure and flow problems  
21 throughout the distribution system. Attached is a copy  
22 of the system's operating capabilities under peak  
23 conditions (July 4th weekend 1993). The report shows  
24 that the system supplied adequate pressure and flow at  
25 that time. Yet, the system has realized that

1 improvements were needed to accommodate future growth  
2 and water needs.

3 The system has, since the last report, made  
4 improvements through new well supply, increased high  
5 service pumpage capabilities and storage tank  
6 modifications (altitude valve) to improve service  
7 capacity of the system.

8 Through current system activities, needed system  
9 improvements have been made to improve operations for  
10 the system. Current operator, Hank Garrett, has  
11 accomplished many good improvements for the system  
12 since his system employment. Past operations personnel  
13 were not as successful in making positive contributions  
14 and improvements.

15 We have also been working with system personnel to  
16 comply with the Lead and Copper Rule through sampling  
17 plan submittal, sampling, water quality parameters  
18 analysis, desk top evaluations and proposed treatment  
19 and permit submittal. Florida Rural Water Association  
20 offers technical assistance to systems at no charge.

21

22 **Q. Does that conclude your testimony?**

23 **A. Yes, it does.**

24

25



1 COMMISSIONER KIESLING: The next witness.

2 MR. PFEIFFER: We would call Mr. Ted Bidy, and he  
3 has not previously been sworn, Your Honor.

4 COMMISSIONER KIESLING: Would you stand and raise  
5 your right hand.

6 (Witness sworn)

7 Thereupon,

8 TED BIDDY

9 was called as a rebuttal witness on behalf of St. George  
10 Island Utility Company, Ltd., and, having been first duly  
11 sworn, was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. PFEIFFER:

14 Q Please state your name and address.

15 COMMISSIONER KIESLING: Hold on one second while I  
16 turn these things over to the Chairman.

17 (Off the record briefly.)

18 BY MR. PFEIFFER:

19 Q I believe you were stating your name.

20 A Yes. My name is Ted Bidy, I am Tallahassee  
21 regional manager of Baskerville-Donovan, Inc. The business  
22 address is 2878 Remington Green Circle, Tallahassee.

23 Q What is your job with Baskerville-Donovan?

24 A What is my job?

25 Q Yes, sir.

1           A     I'm the Tallahassee regional manager for the  
2 consulting firm.

3           Q     Have you previously prepared prefiled testimony in  
4 this processing?

5           A     Yes, sir, I have.

6           Q     Do you have any additions, corrections, or changes  
7 to make in your testimony?

8           A     No, I do not.

9           Q     Have you sponsored any exhibits with your prefiled  
10 testimony?

11          A     Yes, sir, I have.

12          Q     Please describe them.

13          A     An engineering report. The original engineering  
14 report we did for system capacity analysis of the St. George  
15 Island Utility Company's water distribution system, and two  
16 addendums thereto, Addendum Number 1, and Addendum Number 2.

17          Q     Do you also include your professional resume, Mr.  
18 Biddy?

19          A     Yes, I did. I believe also the Florida Rural  
20 Water Association, two different studies on the island were  
21 attached to my testimony as well.

22                MR. PFEIFFER: All right, sir. Mr. Chairman, I  
23 would ask that the witness' professional resume be marked as  
24 the next numbered exhibit. I believe that it's Number 49.

25                CHAIRMAN DEASON: That's correct. It will be

1 identified as Exhibit 49.

2 MR. PFEIFFER: That the remaining records be  
3 marked as --

4 BY MR. PFEIFFER:

5 Q Mr. Bidy, could I ask you, does the material from  
6 Baskerville-Donovan begin with the technical memorandum  
7 dated May 25, 1994?

8 A Yes.

9 Q With a letter of transmittal that forwards that?

10 A Yes, it does.

11 MR. PFEIFFER: Mr. Chairman, I would ask that the  
12 material from Florida Association, which, for the record,  
13 begins with a letter on the letterhead of Florida Rural  
14 Water Association and proceeds through several of the  
15 so-called wheel charts, the final one being Chart Number 11  
16 be marked as Exhibit Number 50.

17 CHAIRMAN DEASON: That would be through Chart  
18 Number 11?

19 MR. PFEIFFER: Yes, sir.

20 CHAIRMAN DEASON: That will be identified as  
21 Exhibit Number 50.

22 MR. PFEIFFER: And we would ask that the remaining  
23 materials be marked as a Consolidated Exhibit Number 51.

24 CHAIRMAN DEASON: It will be so marked.

25 (Exhibits 49, 50 and 51 marked for identification.)

1 BY MR. PFEIFFER:

2 Q Please summarize your testimony, Mr. Biddy.

3 A Do you want me to summarize my testimony?

4 Q Yes, sir.

5 A My testimony was given as rebuttal testimony to  
6 the direct testimony that was prefiled from Mr. Kintz and  
7 Mr. McKeown of the DEP. I commented at length on difference  
8 of opinion on various and sundry items in connection with  
9 the water system.

10 MR. PFEIFFER: Your Honor, I would move the  
11 testimony of Mr. Biddy into the record, and ask that it be  
12 inserted into the record as if it were fully set out as  
13 questions and answers in direct examination.

14 CHAIRMAN DEASON: Without objection, it will be so  
15 inserted.

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- 1 Q. Please state your name, profession and address.
- 2 A. Ted L. Bidy, P.E., P.L.S., Tallahassee Regional Manager,  
3 Baskerville-Donovan, Inc., consulting engineers, 2878  
4 Remington Green Circle, Tallahassee, FL 32308.
- 5 Q. Please give us a brief outline of your educational and  
6 professional background.
- 7 A. (See attached detailed resume).
- 8 Q. Please outline your professional relationship with St.  
9 George Island Utility Company, Ltd.?
- 10 A. In late 1970's and early 1980's, I provided design and  
11 permitting services for water system extensions to  
12 various sub-divisions on St. George Island through former  
13 firm of Ted L. Bidy & Associates, Inc. During 1991,  
14 1992, 1993 and to date in 1994, the Tallahassee office of  
15 Baskerville-Donovan, Inc. has served as consulting  
16 engineer to the Utility for various projects including  
17 system capacity analysis, design, permitting and  
18 construction administration for Well No. 3; preparation  
19 of distribution system maps; preparation of aerator  
20 report; design and permitting for treatment plant  
21 improvements and miscellaneous services.
- 22 Q. Have you previously filed direct testimony in this  
23 proceeding?
- 24 A. No, I have not.
- 25 Q. What is the purpose of your rebuttal testimony.
- 26 A. The purpose of my rebuttal testimony is to respond to the  
27 direct testimony of PSC staff witnesses Kintz and  
28

1 McKeown.

2 Q. Have you reviewed and analyzed the testimony of John  
3 Kintz and Cliff McKeown?

4 A. Yes.

5 Q. Would you please give us your response to the testimony  
6 of PSC staff witness John Kintz?

7 A. Yes. My response will basically follow the issues as set  
8 forth by Mr. Kintz. Firstly, in answer to the question  
9 of what immediate, near-term or long-range actions the  
10 Utility needs to accomplish in order to accommodate  
11 current and future customers, Mr. Kintz states, "that the  
12 Utility would need to construct an additional raw water  
13 line from the mainland in order to supply potable water  
14 for additional development of St. George Island in excess  
15 of the allowable total of 1346 customer connections".

16 I do not agree that the allowable total customer  
17 connections is 1346 but is 1541 based on the detailed  
18 system capacity analyses performed under my direction by  
19 the Tallahassee office of Baskerville-Donovan, Inc. (See  
20 attached report dated May 27, 1992 and addendum report  
21 dated May 5, 1994.)

22 We have demonstrated in an addendum to the utility's  
23 hydraulic analysis, assuming the treatment plant  
24 modifications are on line, that the system has the  
25 capacity to serve 1541 ERU's under peak hourly flow.

26 In the course of providing model computations to support  
27 a construction permit application for Sunset Beach, we

1 have demonstrated the capability of the Utility to serve  
2 its existing service commitments; i.e. 1500 ERU;s, with  
3 resultant pressures of 30 psi +/- at Bob Sikes Cut and 35  
4 psi +/- near the East end (State Park gate). This  
5 analysis would indicate that the system has the capacity  
6 to serve additional customers beyond 1500 before  
7 resultant pressures reach the 20 psi minimum.

8 These system analysis reports were very detailed and  
9 rigorous computer modeling of the distribution system  
10 based on best available engineering data and the report  
11 of May 27, 1992 was described by Mr. Kintz in his letter  
12 to the Utility of June 5, 1992 as "an excellent and  
13 thorough evaluation of the water system's status".

14 Mr. Kintz's conclusion that an additional raw water line  
15 is required is apparently based on the limitation that  
16 Northwest Florida Water Management District has set forth  
17 in its consumptive use permit; i.e. 700,000 gpd is as  
18 much as can be pumped through the existing raw water  
19 main. However, the capability of the Utility to provide  
20 additional raw water supply may be increased by other  
21 means, a determination of which should be economically  
22 feasible as much as any other factor:

23 For Example:

- 24 1. Increase withdrawal rates specified in Consumptive  
25 Use Permits (Utility is pursuing).
- 26 2. Construct additional raw water supply wells.
- 27 3. Install pumping appurtenances to boost higher flows

1 thru existing main, taking into consideration  
2 design limitations of the existing pipe and  
3 practical constraints.

- 4 4. Increase finished storage on the island to  
5 accommodate future demand.

6  
7 Mr. Kintz statement that an additional raw water line  
8 needs to be constructed is puzzling and is not related to  
9 system capacity. The existing 8 inch raw water line will  
10 supply water to St. George Island at a rate of 500 gpm  
11 with Well No. 1 and Well No. pumping in tandem for 12  
12 hours and at a rate of 620 gpm with Well No. 3 pumping  
13 alone for 12 hours for a total of 806,400 gallons per  
14 day. This 806,400 gallons per day is more than the  
15 maximum daily demand of 801,320 gallons for 1541  
16 connections, at maximum daily demand of 520 gpd/ERU, not  
17 considering the 375,000-400,000 gallons of water storage  
18 which exists on the island. We contend that the water  
19 storage on the island should be considered along with raw  
20 water supply from the mainland when computing system  
21 capacity. A detailed analysis of finished water storage  
22 required would be dependent upon an analysis of average  
23 daily flow requirements as it relates to Department  
24 criteria and regulations. An evaluation of this scope  
25 has not been completed or reviewed by our office to date.

26 Calculations by our firm demonstrated that raw water  
27 supply simply is not a problem related to allowable  
28



1 number of equivalent residential connections. Rather,  
2 the distribution system pressure reaching the lowest  
3 allowable value of 20 pounds per square inch in the water  
4 main at the worst case as set forth in Section 17-555,  
5 F.A.C. should be the limiting factor for maximum  
6 allowable equivalent residential connections. The  
7 computer model capacity analyses which our firm performed  
8 computed the maximum number of connections which could be  
9 served while maintaining the minimum legal pressure of 20  
10 psi.

11 Mr. Kintz's calculation of system capacity by considering  
12 only the 700,000 gallons per day allowable withdrawal  
13 rate based on the Northwest Florida Water Management  
14 District's consumptive use permit is also puzzling.  
15 Adding this maximum daily raw water pumping rate of  
16 700,000 gpd to the total storage of 400,000 gallons gives  
17 a total of 1,100,000 gallons of water available per day  
18 compared to the maximum daily demand of 801,320  
19 gallons for 1541 connections. One must also keep in mind  
20 that these periods of maximum demand occur only for a 1  
21 to 2 day period at the three holiday periods of Memorial  
22 Day, Fourth of July and Labor Day with demand for all  
23 other times at much lower rates. Adequacy of supply is  
24 further documented in our firms' Technical Memorandum  
25 dated May 25, 1994 for Sunset Beach Subdivision attached  
26 hereto. Updating the ERU's in the memorandum to 1541  
27 instead of the 1500 as presented would only increase the

1 usage from the elevated tank to 101,320 gallons for  
2 maximum day. Mr. Kintz determination of capacity is  
3 apparently based on the single limiting factor of maximum  
4 withdrawal set forth in the standard water use permit.  
5 Mr. Kintz is apparently confusing system capacity with  
6 system reliability. His concerns as previously expressed  
7 to me center on catastrophic events such as hurricanes  
8 interrupting the raw water supply by causing broken lines  
9 at the bridge crossing areas.

10 If the Utility is to be held to the test that raw water  
11 delivery to the island must equal maximum daily demand,  
12 then it is obvious that the consumptive use permit  
13 withdrawal rate would need to be increased from the  
14 present maximum day of 700,000 gallons to 801,320.  
15 Reportedly the Utility has such a permit modification  
16 request before the Northwest Florida Water Management  
17 District.

18 The third well effectively added one hundred percent  
19 backup supply well capacity for greater system  
20 reliability. Perhaps, adding parallel lines for the  
21 bridge crossing areas could be added in the future for  
22 greater system reliability. It is noted that during  
23 storm periods, there would be very few people on St.  
24 George Island and next to no water demand.

25 Mr. Kintz's comments on required system improvements for  
26 fire flow requirements are correct as far as additional  
27 storage on the island and increased size of distribution

1 system mains.

2 However, a fire flow system analysis would require a  
3 great deal of study to determine precise requirements  
4 which would not necessarily include increasing the  
5 capacity of the raw water transport to the island. For  
6 instance, adequately sized storage and pumping with  
7 separate dedicated fire flow water mains would not  
8 require additional raw water transport to the island.

9 Mr. Kintz's opinion is formulated without benefit of any  
10 fire flow analysis directed specifically at the St.  
11 George system. Criteria required to be developed in such  
12 an analysis include but are not limited to minimum  
13 pressure, flow and duration of fire flow.

14 With the necessary criteria developed, not all or any of  
15 the items deemed necessary may be required. AWWA  
16 Standards suggest that the development of fire protection  
17 in private utilities include consideration of economic  
18 feasibility in providing the system.

19 Finally, I note with exception that Mr. Kintz in his  
20 February 17, 1994 memo to Allan W. Johnson (EXH JAK-3)  
21 states that the Baskerville-Donovan capacity analysis  
22 report used theoretical assumptions rather than measured  
23 flows. The basis for all computer simulations of the  
24 SGIU System has been well documented in our firm's May  
25 1992 report (attached) and is further discussed in the  
26 May 25, 1994 Technical Memorandum

1 (attached). We believe that our method of analysis has  
2 been an objective, reasonable and documented approach to  
3 evaluating system capacity in keeping with sound  
4 engineering principles.

5 Q. Would you please proceed now with your response to the  
6 testimony of PSC staff witness Cliff McKeown?

7 A. Yes. My response will follow the issues in the same  
8 order set forth by Mr. McKeown.

9 On Page 3 of his testimony, Mr. McKeown states that the  
10 Utility has experienced pressure related problems at the  
11 East end State Park entrance with 16 psi recorded by the  
12 Florida Rural Water Association (FRWA) on May 24, 1992  
13 and 11 psi recorded on July 4, 1992.

14 Taking the FRWA report as a complete document, the  
15 following data is derived.

16 1. State Park employees reportedly tampered with  
17 pressure recording equipment placed at this  
18 location during the May 24 weekend. This makes  
19 this data suspect and may explain the observed drop  
20 in pressure.

21 2. The recorded pressure of 11 psi on July 4 spanned  
22 over about a two hour period. This low pressure  
23 may have been coincident with the State Park  
24 personnel replenishing their water storage tanks.

25 It is common knowledge that the Utility and the  
26 State Park have coordinated the filling of the  
27 Park's storage tanks to minimize disruption or  
28

1 degradation of service to the rest of the island,  
2 primarily being accomplished by filling these tanks  
3 at off peak hours. A more striking illustration of  
4 the pressure recording chart included with Mr.  
5 McKeown's testimony is that pressures of 35-40± psi  
6 were maintained at this location throughout the  
7 remainder of the two day recording period. Other  
8 pressure recordings submitted with both the May 24,  
9 1992 and July 4, 1992 reports illustrate the system  
10 maintaining pressures above the 20 psi minimum.

11 Attached hereto are both FRWA reports.

12 On Page 6 of his testimony, Mr. McKeown discusses his  
13 concerns for the presence of a light gray to white clay  
14 like material often found in the system's aerator and  
15 states that this material is lime rock breakup within the  
16 Florida Aquifer and being pumped to the aerator from Well  
17 No. 2.

18 This statement by Mr. McKeown is sheer conjecture and  
19 guesswork with no basis for such an opinion. The more  
20 likely source of the light gray to white clay like  
21 material found in the aerator is the residue of granular  
22 chlorination of the ground storage tank which is  
23 sometimes performed by the Utility for disinfection of  
24 the raw water before it is treated and pumped.

25 Concerning Mr. McKeown's discussion of the requirement  
26 for the Utility to develop current and accurate water  
27 distribution system maps which were required by the

1 Partial Final Judgement, the following history of  
2 submittals of such maps to the best of my knowledge and  
3 belief is as follows:

- 4 1. August 31, 1992 - Two sets of maps submitted to  
5 FDEP for review with regard to requirements of PFJ.
- 6 2. Per telephone conversation with Cliff McKeown on  
7 September 2, 1992 confirmed in writing by letter  
8 dated September 10, 1992, our firm received FDEP  
9 review comments on the subject maps.
- 10 3. On August 24, 1993 two copies of the subject map  
11 were transmitted to FDEP with the remaining copies  
12 required by the PFJ being submitted to the Utility  
13 for distribution. During the period of time  
14 between September 10, 1992 and August 24, 1993,  
15 Baskerville-Donovan, Inc. coordinated collection of  
16 the additional information required for the maps  
17 and was also involved in negotiations with the  
18 Utility to secure payment for professional services  
19 associated with completing the maps.
- 20 4. On October 27, 1993 FDEP issued correspondence  
21 indicating a number of corrections that needed to  
22 be performed on the maps.
- 23 5. This firm has recently reached an agreement for  
24 payment of professional fees owed by the Utility to  
25 the firm and is proceeding with the completion of  
26 the maps, current and up to date according to the  
27 Utility's CIAC list dated May 18, 1994. We

1 estimate completion no later than July 31, 1994.

2 On Page 8 of his testimony, Mr. McKeown states that Well  
3 No. 3 exceeded the MCL for color. While Well No. 3 did  
4 initially fail the MCL for color, subsequent testing  
5 yielded results within the range of Department secondary  
6 standards.

7 Concerning Mr. McKeown's discussion on Page 9 of H<sub>2</sub>S  
8 removal and this firm's report on the matter, I offer the  
9 following:

10 The Department, as illustrated by the exhibits to  
11 the aerator analysis does not have a specific MCL  
12 for hydrogen sulfide in its drinking water  
13 standards. The subject analysis does discuss  
14 several sets of H<sub>2</sub>S data, a portion of which was  
15 supplied by the Utility, and a portion collected  
16 independently.

17 Concerning Mr. McKeown's discussion on Page 11 of request  
18 for an operating scheme for the three wells, I offer the  
19 following:

20 An operating scheme for the three supply wells was  
21 documented in the original construction permit  
22 application submitted to the Department, as well as  
23 by separate letter dated February 11, 1994. The  
24 proposed pumping scheme had been communicated to  
25 the Department in May, 1992, during the  
26 construction permitting phase.

1 Concerning Mr. McKeown's discussion on Page 12 of the  
2 aerator report, I offer the following:

3 The aerator report was submitted to the Department  
4 for review on August 24, 1993. Delay in its  
5 delivery was a direct result in prioritizing of  
6 Baskerville-Donovan, Inc.'s work effort by the  
7 Utility, and on-going negotiations by Baskerville-  
8 Donovan, Inc. with the Utility to secure payment  
9 for professional services rendered.

10 The Department provided review comments on the  
11 aerator report by letter dated November 18, 1993.  
12 For reasons previously cited with regard to  
13 contract negotiations with the Utility,  
14 Baskerville-Donovan, Inc. has not responded to  
15 those comments.

16 Since the recent agreement has been reached between  
17 the Utility and Baskerville-Donovan, Inc., a  
18 response to the Department's letter will be  
19 submitted no later than July 31, 1994.

20 With regard to the validity of the data submitted  
21 by the Utility's contract lab, we are not in a  
22 position to comment on the technique, accuracy or  
23 format of the lab results.

24 Q. After having reviewed all of the direct testimony filed  
25 by PSC staff witnesses Kintz and McKeown, have you  
26 changed any of the opinions or conclusions set forth in  
27 your engineering analysis, including the various  
28



1 amendments?

2 A. No.

3 Q. Mr. McKeown indicated that the system map was filed late.  
4 When was it actually filed?

5 A. First submittal was August 31, 1992.

6 Q. Was this map based upon the best engineering information  
7 available at the time?

8 A. Yes.

9 Q. Is this normal, for a map to be filed and then updated  
10 and revised at later dates?

11 A. Yes for large systems.

12 Q. Regarding the aerator analysis, do you believe that it  
13 was deficient or defective?

14 A. No.

15 Q. Why not?

16 A. I have fully commented on the aerator analysis in my  
17 response above to Mr. McKeown's testimony.

18 Q. Has Baskerville-Donovan, Inc. updated and revised the  
19 map?

20 A. Yes, and it will be delivered to the Utility no later  
21 than July 31, 1994.

22 Q. Have you updated and revised the aerator analysis as  
23 requested by DEP?

24 A. It is being done now and will be delivered to the company  
25 by July 31, 1994.

26 Q. What is the total amount of all professional fees charged  
27 to St. George Island Utility Company between January 1,

28

- 1 1992 and the current date?
- 2 A. Approximately \$141,140
- 3 Q. Have these fees been paid, or have satisfactory
- 4 arrangements been made for payment.
- 5 A. Approximately \$59,542 has been paid with an agreement
- 6 reached for payment over a period of time for the balance
- 7 of \$81,462.80.
- 8 Q. What would Baskerville-Donovan charge St. George Island
- 9 Utility Company to revise and update its engineering
- 10 analysis?
- 11 A. \$24,400.00.
- 12 Q. What would this cover?
- 13 A. Update of the 1992 Capacity Analysis report extended
- 14 through the year 2020.
- 15 Q. Was the St. George Island Utility system designed as a
- 16 fire protection system?
- 17 A. No.
- 18 Q. On what do you base this conclusion?
- 19 A. Familiar with system since initial installation.
- 20 Q. What would Baskerville-Donovan charge the utility company
- 21 for a complete fire protection analysis?
- 22 A. \$30,000.
- 23 Q. What would this cover?
- 24 A. Complete study of alternative fire protection systems and
- 25 costs estimates therefor.
- 26 Q. Based upon all that you know about the St. George Island
- 27 Utility system, do you have an opinion as to whether it
- 28

1 is in compliance with all of the state statutes, rules  
2 and regulations administered by the Department of  
3 Environmental Protection?

4 A. Yes.

5 Q. What is that opinion?

6 A. Utility is in compliance except for completion of some  
7 minor items of consent order.

8 Q. Is there anything about the St. George Island Utility  
9 Company system that makes it unique from other systems?

10 A. Very unique system, long distance from supply wells,  
11 sparse widely separated connections in some areas,  
12 private wells allowed in some areas, long narrow island  
13 does not lend itself to economical looped systems, loose  
14 sand conditions predominate with high water table making  
15 construction and maintenance difficult. Beach homes are  
16 typically 3 or more stories above ground.

17 Q. Base on all that you know about St. George Island Utility  
18 Company, does it seem to be well managed?

19 A. Yes, reasonably so and much better in recent years.

20 Q. If the utility company is in compliance, how do you  
21 explain all of the problems that the utility company  
22 seems to be having with DEP?

23 A. The utility company is a growing highly visible utility  
24 serving a resort type community where complaints from  
25 customers seem to be very vocal, although mostly  
26 unfounded. Such complaints have regularly been made to  
27 the FDEP who are sensitive to public comments. Over the

1 years, it seems that the utility owner, Mr. Gene Brown  
2 has been viewed as in an adversarial role to FDEP to the  
3 point where he is personally disliked by the agency.  
4 During the last three years as the utility has attempted  
5 to make substantial improvements, our firm, as consulting  
6 engineer for the improvements, has experienced unusual  
7 resistance from the agency in obtaining approvals and  
8 permits, seemingly related to the agency's dislike for  
9 Gene Brown.

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1 MR. PFEIFFER: And I would tender the witness for  
2 cross examination.

3 CHAIRMAN DEASON: Ms. Sanders.

4 MS. SANDERS: I have no questions.

5 CHAIRMAN DEASON: Mr. McLean.

6 MR. McLEAN: No questions.

7 CHAIRMAN DEASON: Staff.

8 CROSS EXAMINATION

9 BY MR. PIERSON:

10 Q Mr. Biddy, it's probably in your curriculum vitae,  
11 or resume, or whatever -- are you having trouble hearing me?

12 A Yes, I am.

13 Q I'm sorry, I will try to get as close as I can to  
14 the mike, but it's way over here.

15 How long have you been a regional manager of  
16 Baskerville-Donovan?

17 A Three years.

18 Q Do you hold yourself out to be an expert on  
19 management?

20 A On management of a company?

21 Q Yes, sir.

22 A To that extent, yes, sir. I ran my own  
23 engineering company in private practice for a period of  
24 22 years here in Tallahassee. For the last years I have  
25 been regional manager of the firm of Baskerville-Donovan.

1 Q On Page 10, Lines 13 through 19 of your testimony,  
2 you stated that Baskerville-Donovan was involved in  
3 negotiations with St. George to secure payment for  
4 professional services associated with completing the system  
5 maps, are you familiar with that?

6 A Yes, sir, I am.

7 Q What did these negotiations involve?

8 A The ability of the utility to pay professional  
9 fees, and to come to an agreement for the payment of those  
10 fees.

11 Q Okay. Were these amounts that had been billed and  
12 were past due amounts?

13 A Yes, sir.

14 Q What were the negotiations for? Was it to lower  
15 the fees or to set up a payment schedule?

16 A Set up a payment schedule basically, yes.

17 Q To fully pay the outstanding amounts?

18 A Yes.

19 Q How much money does the utility still owe  
20 Baskerville-Donovan?

21 A At the time of the testimony it was \$81,462.80.  
22 There has been at least one partial payment in accordance  
23 with our settlement agreement made since then, maybe two, in  
24 the amount of \$2,500 each.

25 Q Is that just for the system maps, or does that

1 include the aerator report?

2 A It includes everything we have done since 1991,  
3 the balance.

4 Q With regard to the aerator report, you stated on  
5 Page 12, Lines 7 through 9, that you were in ongoing  
6 negotiations with the utility. Is that similar to the  
7 negotiations with regard to the system maps?

8 A Yes. And those negotiations were completed, and  
9 the aerator report, or the addendum to the aerator report  
10 was finished and given to the utility on July 31st.

11 Q Have you submitted a bill to the utility for your  
12 participation at this rate proceeding?

13 A To date, not for participating at this hearing,  
14 no.

15 Q And the rate case expense exhibit sponsored by  
16 Mr. Seidman, it stated that you're charging the utility  
17 \$3,000?

18 A Yes, sir. That was an estimate of what time -- at  
19 the time I gave Mr. Seidman the estimate of how much time it  
20 would take to prepare for the hearing, and give testimony.

21 Q And what does that include? What is your hourly  
22 rate and how many hours did you estimate?

23 A The hourly rate is \$85 an hour. It included not  
24 only my time, but that of technicians in my office gathering  
25 data together, researching files, and appearance at this

1 hearing. I did not bring those cost figures with me today.

2 MR. PIERSON: We would like to get that as a  
3 late-filed exhibit, when that's filed.

4 Mr. Chairman, could I get a number for that. I  
5 think the next number is 50.

6 CHAIRMAN DEASON: It's 52.

7 MR. PFEIFFER: We will be happy to provide it, if  
8 we could, as part of Exhibit Number 43.

9 MR. PIERSON: That will be fine.

10 CHAIRMAN DEASON: So there is no need for a  
11 Late-filed 52, then.

12 MR. PIERSON: Yes.

13 CHAIRMAN DEASON: Very well.

14 BY MR. PIERSON:

15 Q Do I take it from your previous statements that  
16 the utility has not been prompt in paying  
17 Baskerville-Donovan?

18 A The utility has experienced financial difficulties  
19 on several occasions through the years, as we have  
20 represented them, and we have had to go into negotiations  
21 with them to restart our services at certain points.

22 Q Did any of those negotiations involve the utility  
23 paying Baskerville-Donovan with future CIAC payments?

24 A Those negotiations did involve that, yes, at one  
25 point.



1 Q And what happened to that?

2 A I believe the Public Service Commission ruled that  
3 it was not a proper developer agreement, and would not let  
4 us let the utility pay us in taps.

5 Q Is St. George currently in compliance with all  
6 state statutes, rules, and regulations?

7 A Say that again?

8 Q Is St. George currently in compliance with all  
9 DEP's statutes, rules, and regulations?

10 A Essentially, yes, except for the completion of  
11 certain consent items. We have been working on those  
12 consent items for some time. But all submittals have been  
13 made and remade, resubmitted, I believe the final ones are  
14 in now, the distribution system maps, the aerator report,  
15 the third well is finished, I believe the treatment plant  
16 improvements are finished. So essentially they are done.

17 Q But all of the items of the consent order are not  
18 complete at this time, is that correct?

19 A The items on which we were asked as a professional  
20 engineering organization to do have been in progress  
21 continuously since sometime in '91.

22 Q When designing a system such as St. George, do you  
23 believe that peak usage is a controlling factor?

24 A Peak usage is one controlling factor, yes.

25 Q What are some of the others?

1           A     Supply, obviously.  Transmission to the island  
2 from the well fields is another item.  Reliability of the  
3 system, growth rate, there is any number of factors that you  
4 would want to consider in designing a water system.

5           Q     But doesn't good utility design usually look at  
6 peak usage as the overriding concern of what do I have to  
7 build?

8           A     At any one time peak usage, the maximum hourly  
9 rate peak usage is the overriding factor to determine what  
10 the utility has to deliver to each customer, yes.

11          Q     And shouldn't all components of the system be  
12 sized accordingly?

13          A     Yes, it should.

14          Q     In order to -- just a moment, please.

15                 Is it your opinion that it would be correct to  
16 translate the utility's number of customers actually using  
17 water into ERCs in order to develop the peak gallon on usage  
18 per ERC?

19          A     Certainly.

20          Q     Assuming that we have the number of ERCs connected  
21 to the system, and the peak gallons day usage per ERC,  
22 wouldn't it then be correct to take the limiting component  
23 of either raw water supply or treatment and divide that  
24 number of ERCs into it to determine the maximum number of  
25 ERCs the utility is capable of serving?

1           A     No.

2           Q     Why not?

3           A     You said raw water supply.

4           Q     Yes.

5           A     No.  You have two different systems on St. George  
6     Island on this water system.  You have a supply system,  
7     which is totally separate, not connected to the distribution  
8     system, there is an air gap at the ground tank where the  
9     supply line dumps into the aerator.  Then you have a  
10    distribution system.  The correct analysis for capacity of  
11    the system is to analyze the distribution system or that  
12    peak hourly demand to make sure that you do furnish the  
13    volume and pressure at the furthest ends of the system  
14    that's required, and that pressure being 20 PSI.

15          Q     Don't you still have to have enough raw water to  
16    supply the system during peak usage?

17          A     You do in combination with storage, yes.

18          Q     Does the utility have adequate storage to meet  
19    that need?

20          A     In combination with the supply, yes.  I think  
21    you're referring to probably the withdrawal rate from the  
22    Northwest Florida Water Management District, the withdrawal  
23    rate permit.  That, in itself, is some 700,000 gallons per  
24    day.  There is an effective storage on the island with  
25    400,000 gallons for a total of, at any one day, starting off

1 the day of 1,100,000 gallons.

2 Q How would you consider --

3 COMMISSIONER KIESLING: Could I ask a question, I  
4 hate to interrupt you, but that would work for the first  
5 day.

6 THE WITNESS: Yes, ma'am.

7 COMMISSIONER KIESLING: But you can replenish that  
8 storage unless you subtract that from the next day?

9 THE WITNESS: Well, during the night, of course  
10 you have low flows, and that is when the storage is  
11 replenished. You have peak times during the day, typically  
12 6:00 a.m. to 8:00 a.m., and so on.

13 COMMISSIONER KIESLING: I understand that.

14 THE WITNESS: Typically your storage facilities  
15 are refilled at night.

16 COMMISSIONER KIESLING: Well, if you were  
17 calculating the maximum amount that they could pump based on  
18 a combination of what they can store, what they have in  
19 storage and what they are allowed to pump in a 24-hour  
20 period --

21 THE WITNESS: Yes, ma'am.

22 COMMISSIONER KIESLING: And you did that by adding  
23 those two, then in the next 24-hour period they can still  
24 only pump 700,000 gallons. So if 400,000 gallons of that is  
25 used to refill the storage, then the next day they can only

1 pump a max of 700,000 gallons, right?

2 THE WITNESS: And if you had those maximum days in  
3 a row, continuously, you would be correct. But the point is  
4 on St. George Island, historically you have three days of  
5 spikes during the year. You have Labor Day, the Fourth of  
6 July, and Memorial Day. Those days are usage days in the  
7 neighborhood of 530,000 gallons per day. The next day you  
8 may have 260,000, that is about the average daily flow. So  
9 it's very easy to refill the tanks in that scenario.

10 COMMISSIONER KIESLING: So on those weekends that  
11 are like Memorial Day and Labor Day, which is typically a  
12 three-day weekend, then you're still saying there is only  
13 one day of peak flow out of that weekend, and not the whole  
14 three days in a row?

15 THE WITNESS: That's true.

16 COMMISSIONER KIESLING: Okay. I just wanted to  
17 understand that. Thank you.

18 BY MR. PIERSON:

19 Q Why did the utility ask for three consecutive days  
20 on its water management permit application?

21 A Well, I think it's a growing system, and it is an  
22 ongoing system, and I think the history of St. George Island  
23 is that it's growing, and the tourists are coming regularly,  
24 and that it's going to continue in that way. And I am sure  
25 this is not the end of that supply problem. I'm sure that

1 is going to continue over the years as it continues to grow.

2 Q Based upon that growth, don't we have to look  
3 toward the future when determining the system needs?

4 A Yes.

5 Q You testified that the limiting factor is when 20  
6 pounds per square inch was reached, isn't that correct?

7 A That's correct.

8 Q And you are aware, of course, that that conflicts  
9 with the position of the Department of Environmental  
10 Protection?

11 A Say that, again. I can't hear you.

12 Q You're at odds in that respect with the Department  
13 of Environmental Protection, isn't that correct?

14 A Yes, I am. Mr. Kintz in his computation of  
15 capacity only considered the raw water supply, only, the  
16 700,000 gallons per day that's the withdrawal rate. He  
17 divided that maximum per connection demand and comes up with  
18 1300-some-odd connections that that would serve. The  
19 solution to that is very simple, as I understand it, the  
20 utility has applied for an extension of that permit to ask  
21 for further withdrawal rates. But presently, not only do  
22 you have the 700,000 gallons per day pumping rate by your  
23 wells, but you have 400,000 gallons of storage on the  
24 island.

25 Q Are you aware that the utility just put some new

1 high service pumps into service?

2 A Yes, sir. We did the design and permitting for  
3 those, the original design and permitting through DEP.

4 Q And are they currently experiencing flows or  
5 pressures, I should say, of about 65 pounds per square inch?

6 A I'm not privy. I have heard that, and I am not  
7 privy to that at this point. There is another engineer in  
8 charge of that work.

9 Q In your opinion, does that then give them that  
10 much more capacity?

11 A The capacity of the system, at the present time,  
12 is a total of, in our opinion, 1541 connections at the  
13 present time, with the pumping capacity as we designed it.

14 Q Then are you stating that the limiting factor  
15 isn't when 20 PSI is reached?

16 A It is. And that 1541 is the amount of connections  
17 that would drive the system to that pressure at the lower  
18 ends, under our original design of these pumps.

19 Q Including with the new high service pumps?

20 A Well, now as I understand it, and this is just  
21 what I have heard, since another engineer has taken over the  
22 engineering for this job, they have added even higher  
23 horsepower pumps that operate on a variable speed, and I  
24 understand that they will operate at even higher pressures,  
25 but I'm can't testify to that for sure.

1 Q Can you describe how Baskerville-Donovan defines  
2 an ERU?

3 A Yes. An ERU is an equivalent residential unit.  
4 In other words, you have certain connections on the island  
5 which are large users, such as the state park, such as the  
6 restaurants, motel. The typical average daily flow for a  
7 residential unit is divided into the total flow for one of  
8 these large connections, and a large connection might be  
9 equal to ten equivalent residential units.

10 Q How does an equivalent residential unit differ  
11 from an equivalent residential connection?

12 A It's does not. It's a matter of semantics.

13 Q Does it differ at all numerically?

14 A No.

15 Q Are you basing an ERU on average daily flow?

16 A In our original study of system capacity, we  
17 analyzed the average daily flow for three prior years as  
18 somewhere in the range of 260-some-odd gallons per day per  
19 connection. We took a conservative number of 300 gallons  
20 per day per connection as the average daily flow for each  
21 connection.

22 Q DEP apparently shows 520 gallons per day per  
23 connection. Can you explain the difference?

24 A You're talking about maximum day demand. You see,  
25 average daily demand is 300, is the number we took, 300



1 gallons per day, versus the records of 269.

2 Q Didn't you previously agree that the system has to  
3 be designed for the peak days?

4 A Certainly, yes. But you asked for equivalent  
5 residential connections. And you predicate that on average  
6 daily flow. Then for system capacity, you use a peaking  
7 factor for that average daily flow. We use a 3.4 peaking  
8 factor in our analysis, which makes it much higher than that  
9 520 you're talking about. That's maximum daily demand.  
10 When you analyze the system for capacity, you use maximum  
11 hourly demand, which is much, much higher than the 520.

12 Q You testified also that the utility has the  
13 capacity to serve 1,541 ERUs under peak hourly flow, do you  
14 recall that?

15 A Yes, sir.

16 Q What is that peak hourly flow, do you have that,  
17 or can you figure this out?

18 A Yes, I can tell you. It's approximately 920  
19 gallons per minute, 3.4 times 300.

20 Q Can you tell us whether the utility is capable of  
21 supplying that demand?

22 A Yes, it is.

23 Q In the Baskerville-Donovan report it stated on  
24 Page 17 that for a more rational determination of storage  
25 volume, the study involving accurate estimation of average

1 daily demand and maximum daily demand per ERU is necessary.

2 Have you or your firm conducted such a study?

3 A We have not, no.

4 Q Do you believe that the utility currently needs  
5 additional capacity to serve future growth?

6 A After the 1,541 I do. Yes, I think elevated  
7 storage on either extreme ends of the island would be  
8 advisable. I think it's a matter that needs studying on a  
9 year-by-year basis, projected through maybe a 20 or 30-year  
10 growth pattern.

11 Q Was that it?

12 A Yes.

13 Q Do you know the maximum amount in gallons per  
14 minute that the raw water main can handle?

15 A About 600 gallons per minute.

16 Q Can you walk us briefly through the utility's  
17 system from the time that the water comes out of the wells  
18 until it's pumped out to customers?

19 A Yes, sir. There are three wells on the mainland  
20 at Eastpoint. Those three wells, two of them are  
21 approximately 250 gallons per minute each. The third one  
22 will pump at a rate of somewhere in the range of 620 gallons  
23 per minute. Well No. 1 and 2 are the 250 gallon per minute.  
24 Those run in tandem when they run, and then they alternate  
25 with the third well, which is the new well, running by

1    itself. Raw water is pumped through an eight-inch main  
2    across the causeway, and across the bridge, to a ground  
3    storage tank on St. George Island, several miles. It is  
4    emptied into an aerator at the top of the ground storage  
5    tank. The ground storage tank has an effective capacity of  
6    about 250,000 gallons. It runs through an aerator, over an  
7    aerator for hydrogen sulfide removal, and is in the ground  
8    storage tank awaiting distribution to the system.

9            The distribution system that's hooked to that, you  
10   have high service pumps that pull suction from the ground  
11   storage tank and pump both to an elevated storage tank and  
12   to the system. The system is so configured that at certain  
13   pressures and certain flows the elevated storage tank will  
14   shut off, it will be what we call an altitude valve will  
15   come into play, and the elevated storage tank will go off  
16   line and the high service pumps will take charge and will  
17   pump to the system. Under normal operating circumstances,  
18   and that is 300 something days a year, your elevated tank  
19   only will ride the system, and the pumps will not be  
20   running.

21           Q    Was that aerator before -- did the water go  
22   through the aerator before it goes into the ground storage  
23   tank?

24           A    Yes, it is at the top of the ground storage tank,  
25   yes.

1 Q Is there any way for water from the storage tank  
2 to get into the aerator?

3 A No.

4 Q Well, you testified that granular chlorination  
5 from the ground tank can enter the aerator tray on top of  
6 this tank, didn't you?

7 A Yes. This is granular chlorination that is put  
8 into the top of the tank for cleaning purposes and  
9 disinfection purposes of the raw water.

10 Q Before or after the aerator?

11 A Say it again?

12 Q Is it put in before or after the water goes  
13 through the aerator?

14 A It is put in after.

15 Q I am still confused as to how granular  
16 chlorination could enter the aerator tray, then?

17 A How it could be on the aerator.

18 Q Granular chlorination in the aerator tray, yes.

19 A It's a simple matter of the utility manager on the  
20 island takes the granular chlorination and feeds, I suppose,  
21 by hand or with an instrument into the top of the tank for  
22 cleansing purposes, for disinfection of the raw water. Now,  
23 that is not the primary chlorination, but that is the way he  
24 cleans the aerator. And at times of low usage you have  
25 unchlorinated water in the ground storage tank, and this

1 disinfects that water sitting there.

2 Q Then the chlorination, the granular chlorination  
3 is added before the water goes into the aerator?

4 A No, it's not, it's added afterwards. As the pump  
5 takes suction from the ground storage tank, you have a  
6 chlorinator at that point. You also have a remote location  
7 down in the St. George Island Plantation where you have a  
8 second chlorinator that chlorinates in accordance with DEP  
9 standards. This granular chlorination we are talking about  
10 is a device not intended to chlorinate the water to the  
11 extent that is necessary for disinfection by DEP standards,  
12 but is for the cleansing of the aerator and also for  
13 disinfection of water, if it is standing there for a long  
14 time.

15 Q I think we can move along. In your opinion is it  
16 normal for a 15-year-old system not to have an accurate  
17 system map?

18 A I think all system maps are inaccurate to the  
19 extent that they have had growth since the last map was  
20 drawn.

21 Q Do you consider St. George to be a large system?

22 A It's a medium-sized system.

23 Q And how do you define medium versus large?

24 A Well, it's certainly nothing like the City of  
25 Tallahassee's, but it's large in terms of land mass, and

1 extent of coverage, and 1200 to 1300 customers.

2 Q Are you aware of water outages that the utility  
3 suffered in the late 1980s and possibly earlier during 1990  
4 during the peak usage periods?

5 A I have heard of those, but I was not their  
6 engineer at that time, and do not know the particulars of  
7 it.

8 Q But you're aware that they occurred occasionally?

9 A Yes. I think that was, as I understand it, before  
10 they had the emergency generator, and emergency power.

11 Q Well, in your opinion, is it possible that DEP  
12 monitors this utility so closely because of those outages  
13 and other past problems?

14 A Well, I'm not quite sure why they monitor it so  
15 closely, but that could be one reason.

16 Q The storage tanks, I believe, need certain  
17 repairs, isn't that correct?

18 A You will have to speak up, I can't hear you.

19 Q I'm sorry. The storage tanks need certain  
20 repairs, is that correct, the ground storage tank and  
21 elevated storage tank?

22 A Yes.

23 Q Are any of these repairs necessary due to any past  
24 neglect on the part of the utility?

25 A Well, I would say that maintenance of the ground

1 storage tank needs to be increased. To that extent, perhaps  
2 maintenance is not kept up probably as good as it should  
3 have been.

4 Q Can you explain the necessity to clean the pipes,  
5 and by clean I mean pig?

6 A For accumulated material in the pipes, yes, it's  
7 occasionally necessary to do so, if you have growth in the  
8 pipes, and that we will take an examination of the system  
9 and periodic intervals to determine that.

10 Q Does it have anything to do with the quality of  
11 the raw water?

12 A Yes, it does. You're pumping raw water from the  
13 mainland to the island. You would have a tendency to have  
14 much more growth in the pipe of various organisms and what  
15 not in the raw water, versus finished water on the  
16 distribution system.

17 Q How much did you charge the utility for the  
18 revised aerator study?

19 A For the revised aerator study? I don't have those  
20 numbers with me, it was somewhere in the neighborhood of  
21 \$5,000, about.

22 Q Do you believe that another -- I'm sorry, were you  
23 through?

24 A Yes.

25 Q Do you believe that another aerator study will be

1 required within the next five years?

2 A My recommendation was that the utility continue to  
3 employ the laboratory to make hydrogen sulfide tests on a  
4 periodic basis, and that that lab also include percentage  
5 removal, that if it is determined that the 90 percent  
6 removal is, in fact, being accomplished, that the situation  
7 would be solved. If, in fact, there is not 90 percent  
8 removal, and if that were accompanied by complaints from  
9 customers, then certainly another design of an aerator would  
10 be necessary.

11 Q Are you familiar with the level of fire protection  
12 that's available on St. George Island?

13 A I'm familiar with the fact that there is no fire  
14 protection designed on St. George Island.

15 Q Are you aware of any other fire protection  
16 alternatives on St. George Island other than the utility?

17 A Well, they do have a volunteer fire department.  
18 The system provides a measure of fire protection, obviously,  
19 when you don't have huge flows, like on a Fourth of July.  
20 However, the system was not designed for fire flow, and does  
21 not provide fire flow.

22 Q What would it take to get the system to be able to  
23 provide fire flow?

24 A There are several alternatives. One would be a  
25 totally dedicated fire flow system, its own storage tank,



1 high service pump, and distribution system, fire  
2 distribution system. That might be the most economical.  
3 You could even use salt water, for that matter, if you had a  
4 total dedicated system that was not a potable system.  
5 Another alternative would be to increase the main sizes in  
6 the distribution system, and have the combination of potable  
7 water and fire protection. All of them would require  
8 extensively more storage and more pumping capacity.

9 Q Which mains would have to be replaced, and I don't  
10 mean particular mains, but sizes?

11 A The eight-inch lines that run down the length of  
12 the island would need to be replaced with larger lines, and  
13 perhaps looped as well to provide the flow and pressure that  
14 would you need in addition to your maximum day usage.

15 Q You were aware that the utility has some two and  
16 four-inch lines, aren't you?

17 A Yes, I am.

18 Q Would these need to be replaced?

19 A It depends on how close a six-inch line, which is  
20 the minimum you need for a fire hydrant, is located to those  
21 areas. It's a matter of distance, it's a matter of flow,  
22 it's a matter of durational flow.

23 Q Mr. Abbott testified that money should be invested  
24 in equipment and not a fire study, what is your opinion on  
25 that?

1           A     I'm rather neutral about it.  If we were doing the  
2 fire flow study, I would like to do it.  I would like to see  
3 a fire flow system developed there.  I think it is coming,  
4 sooner or later.  I think the island is growing, and it is  
5 highly visible and very high-priced homes on the island, so  
6 I think it's a matter of time before fire flow will be  
7 designed and built on the island, and I would think it would  
8 be a matter of who is willing to pay for it.

9           Q     Do you believe that a study is necessary?

10          A     Yes, sir, I do.

11                 MR. PIERSON:  That's all the questions that I  
12 have.  Thank you.

13                 CHAIRMAN DEASON:  Redirect.

14                         REDIRECT EXAMINATION

15 BY MR. PFEIFFER:

16           Q     Mr. Bidy, at Page 4 of your testimony there is an  
17 entry that, I guess the sentence begins up on Line 9, the  
18 existing eight-inch raw water line will supply water to  
19 St. George Island at a rate of 500 gallons per minute with  
20 Well Number 1 and Well Number blank.  Is that meant to be  
21 Well Number --

22          A     Two.

23                 MR. PFEIFFER:  No further questions.

24                 CHAIRMAN DEASON:  Exhibits?

25                 MR. PFEIFFER:  We would move Exhibits 49, 50

1 and 51.

2 CHAIRMAN DEASON: Without objection, 49, 50 and 51  
3 are admitted. Thank you, Mr. Bidy.

4 (Exhibits 49, 50 and 51 received into evidence.)  
5 We have two witnesses remaining, is that correct?

6 MR. PFEIFFER: One for sure.

7 MR. McLEAN: I didn't hear their answer.

8 CHAIRMAN DEASON: He said one for sure.

9 MR. McLEAN: There are two listed in the  
10 prehearing statement, have they changed their mind in some  
11 way?

12 MS. SANDERS: And two that have filed prefiled  
13 testimony.

14 CHAIRMAN DEASON: I have Mr. Brown is still  
15 remaining to testify, and is it Ms. Withers.

16 MR. PFEIFFER: We are not sure she will be here,  
17 Your Honor.

18 CHAIRMAN DEASON: They are not sure Ms. Withers  
19 will be here.

20 MR. McLEAN: The question is are they going to put  
21 her on.

22 CHAIRMAN DEASON: Let's take five minutes at this  
23 time, and we need to make an assessment as to whether we  
24 think we can conclude this hearing today, or if we need to  
25 try to scramble around and see if there is another day, or a

1 Saturday, or whatever is available. We will take five  
2 minutes now, and do that when we get back, try to make that  
3 assessment, if we can.

4 (Recess.)

5 CHAIRMAN DEASON: Call the hearing back to order.

6 Let me make an inquiry as to the logistics for the  
7 remainder of the hearing. We have one witness that we know  
8 of, Mr. Brown. We have approximately an hour and ten  
9 minutes left before Commissioner Kiesling and I have to  
10 leave, and the question is if that is going to be sufficient  
11 time to do Mr. Brown, and I'm getting shakes of the head,  
12 no.

13 MR. McLEAN: No, sir. Let me elaborate. I have a  
14 number of questions for Mr. Brown that would take more than  
15 a hour and ten minutes by themselves. I have a number of  
16 questions for Ms. Withers, which would take more than an  
17 hour and ten minutes. If there is some notion that they  
18 might not call Ms. Withers, the sum will be considerably  
19 more than the two parts, because it is far more cumbersome  
20 to ask questions which were to be directed to the Company  
21 controller for years, the author of the annual reports, and  
22 the author of the affidavit about which we have talked a  
23 great deal. It will be more cumbersome to ask those  
24 questions of Mr. Brown. So we are looking at additional  
25 hours in total if Ms. Withers is not to be called, so we are

1 looking at a long time.

2 CHAIRMAN DEASON: So you're saying you have at  
3 least an hour and ten minutes for Mr. Brown --

4 MR. McLEAN: Even if Ms. Withers is going to be  
5 called.

6 CHAIRMAN DEASON: Ms. Sanders.

7 MS. SANDERS: That is the same in my case,  
8 Commissioner. I can ask the same questions of Mr. Brown  
9 that I would have asked of Ms. Withers, but it will take  
10 longer. I need to know whether they are going to call her,  
11 and I can tell you more definitely.

12 CHAIRMAN DEASON: Mr. Pfeiffer, do you know what  
13 you --

14 MR. PFEIFFER: We have not decided.

15 CHAIRMAN DEASON: Well, it's obvious we are not  
16 going to finish today, and that leaves us two options. One  
17 is Friday of this week, Friday morning is available, but not  
18 the afternoon. That may not be enough time. The other  
19 alternative is Tuesday afternoon of next week. And with  
20 that, if we had to, we could work into the evening on  
21 Tuesday to get it wrapped up. I would not want to do it  
22 Friday morning, and then still not finish, if that's going  
23 to be the question. But if it's perceived that Friday  
24 morning would be sufficient, then that would be fine, that  
25 would be that much quicker of getting the hearing done.

1           MR. PFEIFFER: Your Honor, for my part, I'm  
2 scheduled for a trial in front of Judge Davey here in  
3 circuit court Friday morning, and so I cannot be here  
4 Friday, but I'm available Tuesday afternoon and could work  
5 until --

6           COMMISSIONER KIESLING: Let me indicate for  
7 everyone, I'm flying in on Tuesday from Michigan. And my  
8 plane is scheduled to get here at 12:18. But if something  
9 happens to that plane, you may have to go forward in front  
10 of Mr. Deason without me until I can get here. And I am  
11 amenable to that, but I need to make sure that you all know  
12 that there is that possibly. And if it's not acceptable,  
13 then I don't know what we will do.

14           MR. McLEAN: That is acceptable to us.

15           MR. PFEIFFER: As with Mr. Deason, who will read  
16 the record of the proceedings that he missed --

17           COMMISSIONER KIESLING: Obviously.

18           MR. PFEIFFER: -- you will be the same, and I  
19 understand that, and that will be acceptable.

20           MR. McLEAN: There is an additional matter.  
21 Ms. Withers is listed in the prehearing statement. She has  
22 filed testimony. The witnesses have relied on that  
23 testimony and addressed that testimony quite a bit.

24                   It will prejudice our case if she is not called.  
25 Because a number of lines of questions I have are very

1 separate and distinct from Ms. Withers and Mr. Brown. If I  
2 am to question Mr. Brown today, it makes a great deal of  
3 difference whether Ms. Withers is going to show up in this  
4 proceeding. What I'm saying is that if there is the chance  
5 Ms. Withers is not going to be called, then I'm not prepared  
6 to go forward today with Mr. Brown. I need to sit back down  
7 with my notes, consolidate to the extent that I can to  
8 direct my questions and my concerns to Mr. Brown, which were  
9 hitherto addressed to Ms. Withers.

10 COMMISSIONER EASLEY: Mr. Chairman, could I just  
11 add that I think this late in the proceedings it's time to  
12 fish or cut bait, and I would not find it to be an  
13 acceptable position to reserve that decision until after  
14 Mr. Brown has been called under these circumstances. I  
15 think that they either have to say they are going to call  
16 her or not right now.

17 CHAIRMAN DEASON: Mr. Pfeiffer, I don't want you  
18 to divulge any of your client/attorney privileged  
19 information, but what is the problem with knowing whether we  
20 are going to call Ms. Withers or not?

21 MR. PFEIFFER: The problem is that we simply  
22 haven't decided, and I know nothing that requires me to  
23 decide. Certainly, if we are going to finish today, we  
24 would not be calling her. And that is just where we are.

25 CHAIRMAN DEASON: Ms. Helton, do you have some

1 advice to give this poor old overworked Chairman?

2 MS. HELTON: I have never seen this situation  
3 arise before, Chairman Deason, so I don't know if I have  
4 anything on point to add. I do know that it's my  
5 understanding that the parties are to let the Commission  
6 know and let the other parties know who their witnesses will  
7 be when they file their prehearing statements. And I have  
8 always worked under the assumptions that the witnesses that  
9 are listed in those prehearing statements will be the  
10 witnesses that are called for the proceeding.

11 CHAIRMAN DEASON: Well, does that mean that if you  
12 list someone with your prehearing statement you are  
13 obligated then to call them, or to give notice if you intend  
14 not to, and if you're required to give notice, is there some  
15 time frame of giving notice if you're not going to call  
16 them?

17 MS. HELTON: I certainly think that there is a  
18 strong argument that could be made on that behalf. It's my  
19 understanding that the parties have developed their case,  
20 and their line of questioning based on the witnesses that  
21 were listed in the prehearing statements, and in the  
22 prehearing order. Mr. Chairman, if I could add. The last  
23 ordering paragraph of the prehearing order states that --  
24 ordered that this order shall govern the conduct of these  
25 proceedings, unless modified by the Commission, for whatever



1 that's worth.

2 CHAIRMAN DEASON: Let me ask this. Mr. McLean,  
3 you have already indicated that without knowing whether Ms.  
4 Withers is or is not going to be called, you would prefer  
5 not to even begin cross examination of Mr. Brown?

6 MR. McLEAN: Yes, sir.

7 CHAIRMAN DEASON: Is that the same with you?

8 MS. SANDERS: That is exactly the same. I mean, I  
9 have a set of questions. I can ask them of either person.  
10 I prefer to ask them of Ms. Withers, since we had prepared  
11 all along from pre-prehearing, all the way through every  
12 step of the way. But if they want to, you know, sandbag us,  
13 I can modify, I can ask them of Mr. Brown, but I will need  
14 to prepare for that.

15 CHAIRMAN DEASON: Mr. Pfeiffer, it appears that  
16 there is no clear cut answer to the dilemma that we are in  
17 at this time. I understand that to a certain degree you  
18 should have latitude to call witnesses as you see fit. But,  
19 at the same time, I think the opposing counsel needs some  
20 type of guidance for them to prepare their case as well,  
21 that is the whole reason we go through all the effort and  
22 time devoted to prehearing conferences and prehearing  
23 orders, issue identification and witness identification.  
24 When do you think you will know?

25 MR. PFEIFFER: We propose to advise the forum at

1 the beginning of the proceeding Tuesday afternoon.

2 COMMISSIONER KIESLING: Mr. Chairman, could I  
3 just point out one other item that I think is of import on  
4 this. The parties agreed to let St. George take its  
5 rebuttal witnesses in a different order than that that was  
6 set forth in the prehearing. And as I recall, they said  
7 that they were willing to agree to that, as long as it was  
8 not to their prejudice. And had we stuck with the rebuttal  
9 order as it was in the prehearing, Mr. Brown would have  
10 testified first. And to that extent, I think that then the  
11 answer to that would have already been known. And I believe  
12 that it's prejudicial to the parties to, at this late date,  
13 permit St. George to decide at some later time who they are  
14 going to call. I mean, I think that if we had taken them in  
15 order, we would know the answer, and the parties would have  
16 been able to prepare adequately.

17 And I simply believe that it is a trial strategy  
18 that could prejudice the other parties in the case. I think  
19 there is authority for requiring them to make that  
20 disclosure at this time and not at the beginning of the last  
21 day of hearing.

22 MS. SANDERS: Commissioner Deason, to follow along  
23 with that, Ms. Withers was present in Apalachicola. I mean,  
24 all along, every time we have asked Mr. Pfeiffer he has  
25 named her in the order. I asked him again this morning and

1 he said Ms. Withers would follow Mr. Brown. We have been  
2 led to believe that all along.

3 CHAIRMAN DEASON: I hate to interrupt you, let  
4 me ask this legal question. If you think it's important to  
5 your case to have Ms. Withers here, do you have the  
6 authority to request the Commission to subpoena her, and if  
7 that is the situation what is the time frame involved in  
8 having that executed?

9 MS. SANDERS: I was going to ask the Commission to  
10 call her as your witness, since she is the lady that keeps  
11 all of these records that we can't keep track of, or the  
12 Company can't keep track of. I can subpoena her, yes, sir.  
13 I would have subpoenaed last week, if Mr. Pfeiffer had told  
14 me last week that he would not have her available for cross  
15 examination, after having presented her prefiled testimony.  
16 I don't believe that takes long. I can't imagine that -- to  
17 tell you the truth, I have never served a subpoena out of  
18 the PSC, but I guess I send it to the Leon County Sheriff.

19 CHAIRMAN DEASON: Well, I guess what I'm trying to  
20 determine is, if you have a right to have this witness  
21 appear anyway, since you have relied upon that, and if that  
22 is the situation, we can just go ahead and shortcircuit this  
23 and just have her appear. You have that right anyway. And  
24 I'm just trying to get to a logical conclusion as quickly  
25 and simply as possible with the least amount of trouble and

1 effort.

2 MS. SANDERS: I understand.

3 CHAIRMAN DEASON: Mr. Pfeiffer, do you --

4 MR. PFEIFFER: I know of nothing that permits them  
5 to offer additional testimony. We filed prefiled testimony  
6 in this proceeding. They filed prefiled testimony in this  
7 proceeding. We filed rebuttal testimony. I have reviewed  
8 your rules. I see nothing in your rules that requires us to  
9 call witnesses for whom we have submitted prefiled  
10 testimony. I understand that if we do not call them, their  
11 testimony will not go into the record.

12 CHAIRMAN DEASON: Mr. Pfeiffer, I agree with you  
13 that you have the right to prepare your case as you see fit,  
14 and call the witnesses that you see fit. But in an effort  
15 to streamline this case and put all parties on notice, we  
16 went through the prehearing process, we issued the  
17 prehearing order, and this person was listed, and the  
18 opposing counsel indicated that they have relied upon that.  
19 And now they are saying that if that person is not called,  
20 they would have relied to their detriment. And my question  
21 is if they think it's important enough to their case, if you  
22 choose not to call, do they have the ability to subpoena  
23 that witness anyway and have that witness appear.

24 MR. PFEIFFER: If we had never filed any prefiled  
25 testimony with Ms. Withers, if we had never listed her as a

1 witness, this record would be no different than if we simply  
2 do not offer her testimony. And they wouldn't have been in  
3 a position to call her or call any other surrebuttal  
4 witnesses as I understand your rules.

5 CHAIRMAN DEASON: We are going to take a  
6 five-minute recess at this time, I'm to discuss this with  
7 legal minds here at the Commission, and then we will come  
8 back.

9 (Brief recess.)

10 CHAIRMAN DEASON: Call the hearing back to order.  
11 I want to explain to the parties where I think we are at  
12 this point, and explain how we are going to proceed.  
13 Obviously, Mr. Brown is yet to testify on rebuttal. We are  
14 not going to conclude him today, therefore we are not even  
15 going to begin that cross examination today.

16 The question has come up as to whether the  
17 testimony of Barbara Withers is going to be presented by the  
18 utility. And I understand that the argument from opposing  
19 counsel is that they have replied upon having the  
20 opportunity to cross examine that witness, and if that  
21 witness is not available, they would have to change their  
22 case or preparation, in any event, for the cross examination  
23 of Mr. Brown, and they believe it would be much more  
24 expeditious to ask those questions directly to Ms. Withers.  
25 I hope I have characterized that correctly.

1           As I explained earlier, I think the Commission  
2 goes to a great deal of effort and time to go through a  
3 prehearing process where issues are identified, positions  
4 taken, and witnesses and exhibits identified. I think this  
5 is very advantageous to the process, it puts all parties on  
6 notice as to how the hearing is going to proceed, and  
7 everyone is supposed to judge themselves accordingly.

8           I believe that from the sense of equity and  
9 fairness that parties have relied upon the expectation that  
10 Ms. Withers would testify. And I believe that it is within  
11 the authority of the Commission to have her appear when this  
12 hearing resumes on Tuesday.

13           Now, if the utility company does not wish to  
14 sponsor her prefiled testimony, that's understandable, and  
15 she would not be required to provide that prefiled  
16 testimony. However, she will be made available, and subject  
17 to cross examination as an adverse witness. And if any of  
18 the parties wish to follow that up with a subpoena,  
19 certainly that is within their authority to do that. And  
20 with that we will reconvene this hearing on Tuesday of next  
21 week. What is the date, does anyone have a calendar?

22           MS. HELTON: The 9th.

23           CHAIRMAN DEASON: The 9th of August, here at this  
24 time, at 1:30. Any questions?

25           MR. PFEIFFER: Yes, sir. I want to make sure that

1 I understand what obligations are being imposed upon us.  
2 When you say that it's required that the witness be here,  
3 have you imposed an obligation on St. George Island Utility  
4 to produce the witness?

5 CHAIRMAN DEASON: Yes, I am ordering St. George  
6 Island Utility to produce this witness for the hearing on  
7 Tuesday afternoon. She is not obligated to sponsor the  
8 prefiled testimony, but she is obligated to be here and to  
9 be subjected to cross examination.

10 MR. PFEIFFER: Thank you.

11 MR. PIERSON: Mr. Chairman, Staff, of course, has  
12 no opposition to reconvening on Tuesday, or anything like  
13 that, but I would like to inform you that the case schedule  
14 is a little bollixed up right now, because we will have two  
15 weeks to write a recommendation, and right now we are  
16 already bucking up against the eight-month clock, so we may  
17 need to extend this out. We may need to get the utility --  
18 I don't have a CASR now -- eight-month expiration, 10/1/94.  
19 And currently we were going to an agenda on 9/26/94.

20 CHAIRMAN DEASON: So you're indicating that  
21 either -- something has got to give. Either the normal  
22 preparation time, which has already been reduced, as I  
23 understand it, for Staff. That would have to be further  
24 reduced, or else the Company would have to agree to an  
25 extension of the eight-month period?

1 MR. PIERSON: Yes.

2 CHAIRMAN DEASON: Are you making that request of  
3 them at this time?

4 MR. PIERSON: Yes, I am.

5 MR. PFEIFFER: I would need to consult with my  
6 client about this issue. I'm happy to take time to do that  
7 right now, but I'm not prepared to agree to that, without  
8 consulting with my client.

9 CHAIRMAN DEASON: Very well. We will address  
10 this on Tuesday.

11 COMMISSIONER KIESLING: I would just indicate that  
12 Mr. Brown just looked over and said, "No." I don't know how  
13 much more consultation you need.

14 MR. BROWN: I don't know how many witnesses the  
15 Commission is going to call, or what is going to happen  
16 here.

17 MR. PFEIFFER: Perhaps Mr. Brown needs the counsel  
18 of an experienced administrative law practitioner, Ms.  
19 Kiesling.

20 MR. BROWN: I don't know what new evidence is  
21 coming in.

22 CHAIRMAN DEASON: Very well. Is anything else to  
23 come before the Commission at this time? Hearing none, this  
24 hearing is adjourned and will be reconvened on Tuesday of  
25 next week at 1:30 p.m.



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(The hearing adjourned at 4:15 p.m. to reconvene  
on Tuesday, August 9, 1994 at 1:30 p.m.)

(Transcript follows in sequence in Volume 9.)

## CERTIFICATE OF REPORTER


STATE OF FLORIDA )

COUNTY OF LEON )

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 5<sup>th</sup> day of August, 1994.

  
\_\_\_\_\_  
JANE FAUROT  
100 Salem Court  
Tallahassee, Florida 32301  
(904) 878-2221

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 5<sup>th</sup> day of AUGUST, 1994, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,

1 STATE OF FLORIDA, BY THE ABOVE PERSON WHO IS PERSONALLY  
2 KNOWN BY ME.



*Melanie Y. Strubble*  
NOTARY PUBLIC  
STATE OF FLORIDA

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