

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a rate : DOCKET NO. 900816-WS
Increase in Martin County by :
SAILFISH POINT UTILITY : HEARING
CORPORATION :

FIRST DAY - MORNING AND
AFTERNOON SESSIONS

RECEIVED

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Pages 1 Through 152

Florida Public Service Commission Sailfish Point Clubhouse
2201 Southeast Sailfish Point Blvd.
Hutchinson Island, Florida 32399-0871

Met pursuant to notice at 10:00 a.m.

BEFORE: COMMISSIONER BETTY EASLEY, Hearing Officer
COMMISSIONER J. TERRY DEASON

APPEARANCES:

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Suite 210, Tallahassee, Florida 32301, Telephone No.
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Owners Representatives and Charles R. Buckridge.

FLORIDA PUBLIC SERVICE COMMISSION

DOCUMENT NO.
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21 REPORTED BY:

JOY KELLY, CSR, RPR
SYDNEY C. SILVA, CSR, RPR
Official Commission Reporters

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P R O C E E D I N G S

(Hearing convened at 10:05 a.m.)

COMMISSIONER EASLEY: Ladies and gentlemen,

I am Betty Easley, Commissioner with the Public Service Commission. Commissioner Deason has apparently been delayed. I suspect he's either made a wrong turn or miscalculated the time. I know he came into town last night. What I would like to do is go ahead and get some of the preliminary matters out of the way -- he is here even as we speak.

What we will do is first we will take the reading of the notice of the hearing, then we will ask for appearances of counsel, at which time you will hear them identify themselves and who they represent. Then I'll ask Mr. Reilly to check, see how many customers we have who wish to speak, and then we will swear everybody in at one time and take customer testimony.

So at this time, I will ask that the notice be read, please.

MS. BEDELL: This time, day and place was set for hearing in the Petition for a Rate Increase in Martin County by Sailfish Point Utility Corporation, Docket No. 900816-WS.

COMMISSIONER EASLEY: Thank you. And take appearances, please.

1 MR. GIRTMAN: I am Ben E. Girtman, 1020 East
2 Lafayette Street --

3 COMMISSIONER EASLEY: You're going to have to
4 get real close, Mr. Girtman.

5 MR. GIRTMAN: 1020 East Lafayette Street,
6 Suite 207, Tallahassee, Florida, 32301, representing
7 Sailfish Point Utility Corporation.

8 COMMISSIONER EASLEY: Thank you, sir.

9 MR. REILLY: My name is Steve Reilly, with
10 the Office of Public Counsel. We have our offices at
11 the Claude Pepper Building, 111 West Madison Street and
12 here representing the Citizens.

13 COMMISSIONER EASLEY: Thank you, sir.

14 MR. KING: William Reeves King of the firm of
15 St. John and King, Suite 600, 500 Australian Avenue,
16 West Palm Beach, Florida 33401, representing the
17 intervenors Sailfish Point Owners Representatives and
18 Charles R. Buckridge.

19 COMMISSIONER EASLEY: Thank you, sir.

20 MS. BEDELL: Catherine Bedell, 101 East
21 Gaines Street, Tallahassee, Florida 32399, appearing on
22 behalf of Commission Staff. And I also have appearing
23 with me Noreen Davis.

24 MR. PRUITT: And I'm Prentice P. Pruitt, same
25 address, Counsel to the Commissioners.

1 COMMISSIONER EASLEY: Thank you very much.

2 And Commissioner Terry Deason is with me. By reason of
3 seniority, not just age, I will chair the panel today.

4 COMMISSIONER DEASON: Madam Chairman, I would
5 like to apologize for being late.

6 COMMISSIONER EASLEY: No problem.

7 COMMISSIONER DEASON: It was a little bit
8 further out here than what we anticipated.

9 COMMISSIONER EASLEY: That's exactly what we
10 figured happened. It is not a problem. We had just tried
11 to get some of the preliminary things out of the way.

12 Mr. Reilly, do you have a number for us,
13 please, sir?

14 MR. REILLY: I have a list here.

15 COMMISSIONER EASLEY: All right. How many
16 are there, Ms. Davis, approximately?

17 MS. BEDELL: Eight.

18 MR. REILLY: As the Company testimony
19 progresses, if there are others in the audience who
20 think they would like to make comment, just let us know
21 and we'll put you on the list.

22 COMMISSIONER EASLEY: And as you're called up
23 -- and I assume, Mr. Reilly, you're going to call
24 people as they signed in and the order in which they
25 signed in -- I would ask that you try not to be

1 repetitive. We swear you in so that the comments that
2 you make to the Commission can be part of the record
3 and can be considered as part of the record. That's
4 the reason for swearing you in at this time.

5 It's not meant to be intimidating; we want to
6 hear whatever you want to tell us about we are
7 particularly concerned with the issues of quality of
8 service, of things directly concerning the Utility that
9 you think we need to know in order to make a decision
10 in this case.

11 So if somebody ahead of you has said what you
12 think needs to be said, you also have the opportunity
13 to adopt their testimony so that we're not being
14 unnecessarily repetitive.

15 I think, having said that, would all of the
16 people who have signed up to testify please stand,
17 raise your right hand and I'll swear you all in at one
18 time.

19 (Witnesses sworn simultaneously.)

20 COMMISSIONER EASLEY: Mr. Reilly, if you would
21 call your first witness. As he does, if you would come
22 over to the witness table and he will ask you to state
23 your name and address for the record.

24 Oh. While he's doing that, I almost forgot
25 one housekeeping detail I was asked to take care of.

1 Apparently, the clubhouse is going to be serving lunch,
2 but they need an idea of how many people will be having
3 lunch here. As I understand it, for those of us who
4 are not members, we have to be prepared to pay cash,
5 they do not accept credit cards or anything like that.
6 But we do need an idea of how many people and there are
7 two gentlemen standing in the back in blue suits, both
8 raising their hands; if you would let them know if you
9 are planning to stay for lunch, it would be very
10 helpful. Thank you.

11 Mr. Reilly, if you would call your first
12 witness.

13 Well, Mr. King, just came up with an even
14 better suggestion, let's have a show of hands. If you
15 know you're staying for lunch, raise your hand, please.
16 Mark, if you want to get a quick count? (Pause) You
17 made it too easy, Mr. King. This is like being back in
18 the classroom. Okay. Got it? Thank you very much.

19 Now, Mr. Reilly, if you will call your first
20 witness.

21 MR. REILLY: One of the representatives of
22 the country club and POA desired to go first because he
23 had other duties so I decided to call him first.
24 W. C. Whitson.

25 COMMISSIONER EASLEY: Over here, please, sir.

1 Thank you. And I believe you're going to have to turn
2 that microphone on and I suggest just to leave it on.
3 There you go. Thank you.

4 - - - - -

5 W. C. WHITSON

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

9 WITNESS WHITSON: I'm representing the
10 country club, the spa operations and also the security
11 department here at Sailfish Point. And from 1989 to
12 '90, we had a water and wastewater billing of
13 approximately \$25,000. We have anticipated, with the
14 requested rate increases, that that number will go up
15 to over \$144,000, an increase of approximately 457%.
16 We feel that's a bit outrageous and, certainly,
17 that's why we're here in front of the Commission
18 today.

19 Thank you.

20 COMMISSIONER EASLEY: Thank you, sir. Are
21 there any questions? Thank you, Mr. Whitson.

22 MR. REILLY: Next, we have Pat Rowe, who
23 represents the golf club.

24 - - - - -

25

PAT ROWE

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

WITNESS ROWE: Thank you. Mr. Commissioner, I was asked to produce the following figures on behalf of the Sailfish Point Golf Club. The golf club is a subset of the Property Owners Association and responsible for maintaining the golf course. We have forecasted the water bills for the upcoming year at the rates existing prior to the interim would be \$12,631; at the interim rate would be \$16,800; at the full rate would be \$56,296.

COMMISSIONER EASLEY: All right, sir. I'm sorry, were there any questions? Thank you, sir.

MR. REILLY: Warren Andrews.

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WARREN ANDREWS

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

COMMISSIONER EASLEY: Good morning, sir.

WITNESS ANDREWS: Good morning, my name is Warren Andrews, I'm a resident --

COMMISSIONER EASLEY: Mr. Andrews, you have

1 to get close to that microphone. I'm sorry.

2 WITNESS ANDREWS: My name is Warren Andrews.

3 I'm a resident here. I've lived here for six years.

4 During that time, we haven't found the water to be

5 particularly good. We have subscribed to bottled water

6 service. I think that the prices that the water

7 department is asking is more based on the fact that

8 Mobil discovered a beautiful island that nobody could

9 change, it's just wonderful to live here, and that the

10 rates for the water have no relationship to what

11 they're worth. Thank you.

12 COMMISSIONER EASLEY: Thank you, sir. Any

13 questions?

14 MR. GIRTMAN: May I ask a question to help us

15 out to try to address your concerns?

16 CROSS EXAMINATION

17 BY MR. GIRTMAN:

18 Q Could you tell us, please, what is your address.

19 A My address is 6759 Southeast South Marina Way.

20 Q And you say you have a problem with the

21 quality of the water? Can you be more specific in

22 that, please?

23 A Obviously, I'm not an expert on what makes up

24 water. It just doesn't taste good. So my wife and I

25 have, since we moved here, subscribed to the local

1 bottling company that delivers water. I guess that
2 might be true anywhere in Florida; however, I just
3 can't justify this rate increase. And I think that
4 we're all fortunate to be on this island, Sailfish
5 Point, and I think that might have a little influence
6 on what the people think they can charge for water and
7 maybe the resale of the water plant.

8 I can't prove it, but when I moved in here, I
9 was under the assumption that everything was going to
10 stay pretty level and that the more people we had,
11 indeed, the less it would cost to live here.
12 Fortunately, a lot of us can afford it but that isn't a
13 criteria of what you're going to charge when you're
14 using a public utility.

15 MR. GIRTMAN: Thank you.

16 COMMISSIONER EASLEY: Thank you, sir, any
17 other questions? Thank you very much, Mr. Andrews.
18 Mr. Reilly?

19 MR. REILLY: Richard Steenburg.

20

- - - - -

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RICHARD STEENBURG

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

25 WITNESS STEENBURG: Richard Steenburg, 6983

1 Southeast Harbor Circle. I have a file here which was
2 left to me by Hugh Stephenson when he left. It
3 contains a group of about 60 letters from residents of
4 Sailfish Point, all uniformly opposing the rate
5 increase.

6 From a personal point of view, when we first
7 bought here early in 1987, in reviewing the monthly
8 costs, the water bill was quite nominal. It was
9 further suggested to us at that time that, in
10 transition, the Utility would revert to the residents.
11 This was not documented in the documents that were
12 given us, but we were assured that that was down the
13 road what would happen. (Pause)

14 COMMISSIONER EASLEY: I'm sorry, Mr. Steenburg,
15 were you finished?

16 WITNESS STEENBURG: Yes.

17 COMMISSIONER EASLEY: Are there any questions?

18 MR. GIRTMAN: No questions.

19 COMMISSIONER EASLEY: Ms. Bedell? Mr. Steenburg,
20 could you hold on just a second? Staff counsel has a
21 question, please, sir.

22 MS. BEDELL: Do you have any comments to make
23 about the quality of your service?

24 WITNESS STEENBURG: I am not very choosy
25 about water. I have lived a great many places in this

1 world, we find it quite acceptable.

2 MS. BEDELL: Do you have any problem with the
3 wastewater service?

4 WITNESS STEENBURG: No.

5 MS. BEDELL: Thank you.

6 COMMISSIONER EASLEY: Thank you, sir.

7 MR. KING: Madam Commissioner, could I -- I
8 don't know whether the letters have been entered into
9 the record or whether you've received them, but I'd
10 like to move their entry into the record in lieu of the
11 testimony of those individuals.

12 COMMISSIONER EASLEY: Mr. King, we can accept
13 the letters into the correspondence side of the docket,
14 and we'd be glad to do so. If you would give those to
15 counsel right here, that will be fine. Thank you.

16 Call your next witness, Mr. Reilly.

17 MR. REILLY: Thomas Coburn.

18 - - - - -

19 THOMAS COBURN

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

23 WITNESS COBURN: Good morning, welcome to
24 Sailfish Point.

25 COMMISSIONER EASLEY: Thank you.

1 WITNESS COBURN: I'd like to adopt the
2 testimony of those people that have gone before me in
3 our behalf. I would like to add to Warren Andrews'
4 point that we probably can afford this water, but Mobil
5 can also afford to give it to us.

6 I question the tremendous increase because if
7 they -- well, let's put it this way. If it has taken
8 them this many years to decide to increase by five
9 times, I wonder how efficient they are in the water --
10 in the Utility. If it takes five years to discover a
11 bookkeeping error, it would seem to me there may be
12 some other reasons why this water is costing so much
13 money.

14 The only trouble I have with the water is our
15 water pressure. We did put in a system, a purifier
16 system, because of the odor, and we did put in a water
17 softening system. And not being an expert on water, I
18 don't know whether that was necessary or not but we
19 have good water as a result of it.

20 But thanks very much.

21 COMMISSIONER EASLEY: Sir, would you say your
22 name and address? I wasn't sure the --

23 WITNESS COBURN: Thomas Coburn --

24 COMMISSIONER EASLEY: Coburn.

25 WITNESS COBURN: C-o-b-u-r-n.

1 COMMISSIONER EASLEY: Thank you, sir. And
2 your address?

3 WITNESS COBURN: 6701 Southeast Harbor
4 Circle.

5 COMMISSIONER EASLEY: Thank you very much,
6 Mr. Coburn. Any questions for Mr. Coburn? Thank you,
7 sir, appreciate it.

8 MR. REILLY: H. P. Milne. I believe that's
9 M-i-l-n-e.

10 COMMISSIONER EASLEY: Ah-ha. Thank you.

11 MR. REILLY: For the court reporter.

12 - - - - -

13 H. P. MILNE

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

17 WITNESS MILNE: Good morning, my name is
18 Milne. I live at 6949 Southeast Harbor Circle. I
19 would like to adopt the testimony of those who have
20 gone before me and say that I just think it's outrageous
21 and feel that Mobil Utility is stabbing us in the back.
22 That's all I have to add.

23 COMMISSIONER EASLEY: Are there any questions
24 for Mr. Milne? Thank you very much, appreciate your
25 being here.

1 MR. REILLY: Paul Petros.

2 For those who think they might like to make a
3 comment, there will be a gentleman walking up to sign
4 you up. So if you have the desire to do so, just go up
5 to him.

6 COMMISSIONER EASLEY: Sir, would you state
7 your name again for the record.

8 - - - - -

9 PAUL PETROS

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

13 WITNESS PETROS: Paul Petros, 2808 Southeast
14 Dune Drive.

15 My understanding of the reason for this
16 hearing being held here was to give the residents an
17 opportunity to make their views known at this hearing.
18 And so many of us, and there's been a great deal of
19 discussion about this, are surprised that a date was
20 picked when about over 80% of the residents are not in
21 residence. I don't know whose fault that is; but if
22 the Commission was not advised of this by the developer,
23 who was well-aware of this from previous years, I think
24 that is a pretty bad thing. Could I ask how the date was
25 set?

1 **COMMISSIONER EASLEY:** Sir, the problem is
2 that, because the Company initiates the rate case, we
3 have no control over the time of the filing of the rate
4 case. And under the statutes, then the time for things
5 to occur takes place after the date of filing; and in
6 order to get the statutory requirement time frame met,
7 these were the dates.

8 We are aware of it. We have received many
9 complaints and many calls about it. There wasn't much we
10 could do about it, to tell you the truth, Mr. Petros.

11 **WITNESS PETROS:** The other thing, when I
12 bought here about six years ago, I had the impression,
13 I don't remember the words, that when we had an
14 acceptable rate for water that we had a captive
15 Sailfish Point Utility which, in effect, sheltered us
16 from problems that many communities had. And over the
17 years -- and I was a member of SPOR for several years
18 -- there were many references, including by
19 representatives from Sailfish Point, to the probability
20 that the Utility would revert back to the residents. So
21 I'm astonished that at this late date approaching
22 transition that this step is being taken, and I can only
23 question the motives behind it.

24 In terms of water quality, the water in our
25 apartment tastes very bad. We've installed a filter,

1 which adds to our expense.

2 Further, and I don't know whose fault this
3 is, we received a letter from the Utility in 1988
4 saying that if we don't use our water for six hours, we
5 should let it run for a couple of minutes to flush out
6 the lead; and their estimate was that this would add
7 about 200 gallons a month to water usage. Other than
8 that, I think I adopt some of the things that were said
9 otherwise.

10 COMMISSIONER EASLEY: Mr. Petros, let me ask
11 you about that. Is that something that is still going
12 on?

13 WITNESS PETROS: We have been doing it. We
14 received no advice to change it.

15 COMMISSIONER EASLEY: This was in 1988?

16 WITNESS PETROS: Yes.

17 COMMISSIONER EASLEY: And let me understand
18 that. If the water didn't run for six hours, you were
19 to run it briefly to flush out the lines? Is that --

20 WITNESS PETROS: We were told -- I have the
21 letter here. We were told to flush it for two minutes.

22 COMMISSIONER EASLEY: Okay. Are there any
23 questions for Mr. Petros?

24 MS. BEDELL: Yes, ma'am.

25 COMMISSIONER EASLEY: I'm sorry, Mr. Girtman,

1. *Chlorophyll a* (mg/g)

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1 people are having trouble hearing you.

2 Any other questions, Ms. Bedell?

3 MS. BEDELL: No.

4 MR. GIRTMAN: Could I follow up, please. As
5 far as the resolution of that bill, as to the
6 disposition of it. What was the disposition, did the
7 utility rescind that bill?

8 WITNESS PETROS: They reverted to what would
9 be a normal charge.

10 MR. GIRTMAN: Okay. Thank you.

11 COMMISSIONER EASLEY: Thank you very much.

12 Commissioner Deason, any questions?

13 COMMISSIONER DEASON: No questions.

14 COMMISSIONER EASLEY: Thank you very much,
15 we'll get that original back to you.

16 MR. REILLY: Morris Cohen.

17 - - - - -

18 MORRIS COHEN

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

22 WITNESS COHEN: My name is Morris Cohen, I
23 live at 6440 Southeast Harbor Circle. I have been a
24 resident of Sailfish Point since 1980.

25 I am asking this Commission to deny Mobil's

1 application for a rate increase for the following
2 reasons: At the time I purchased my townhouse in 1980,
3 I was given this information statement which I have
4 here. It's dated 3-25 of 1980. And I would like to
5 read you some excerpts from this.

6 MR. GIRTMAN: May I inquire, Commissioner,
7 just for a moment?

8 COMMISSIONER EASLEY: Yes.

9 MR. GIRTMAN: As you recall, we had raised
10 the question in prehearing matters about how much time
11 we were going to be spending in perhaps the customer
12 portion of today and tomorrow, if necessary, regarding
13 questions that had been brought up by the Sailfish
14 Point Owners Representatives. And I had a concern then
15 that there might be a great deal of duplication in
16 those two questions.

17 I'm sure this gentleman has some concerns
18 that he wants to express, and I have no problem as long
19 as we don't spend too much time, I have no objection as
20 long as we don't revert to that whole thing here.

21 COMMISSIONER EASLEY: Mr. Girtman, I
22 understand your concern. But we are not in the formal
23 part of the hearing; and to the extent that we're not
24 taking away from the time of other customers to testify
25 to anything they want to testify to, I think that's

1 where we are.

2 So you proceed, Mr. Cohen. (Applause)

3 WITNESS COHEN: Okay. This information is on
4 Page 20 and it's listed as "(b) Hook-up Charges and
5 Tariffs." And it's in the second paragraph. And it
6 says as follows: "These tariffs provide that SPUC will
7 charge \$2,000 to connect each residence constructed on
8 a single family detached lot and each townhouse
9 residence to the water and wastewater treatment
10 systems."

11 Okay, as far as that goes, the actual
12 charge was \$4,000 to me when I purchased a lot at 6440
13 where I now live. So they doubled up on that. I don't
14 really think that's quite legal to do that and maybe
15 all this money should be refunded to the residents who
16 were charged \$4,000 in contradiction of this legal
17 agreement which Mobil gave to me.

18 Okay, the next in the same (b) paragraph,
19 which is the third paragraph, it says as follows:
20 "Based on a current estimate of average monthly use of
21 potable water, an owner of a single family detached lot
22 or a townhouse residence may expect to pay
23 approximately \$25 per month for water. The estimated
24 monthly charges for wastewater services will be
25 approximately \$25 per month per single family detached

1 lot or townhouse residence. There may be a charge for
2 irrigation water. These figures are based on 1979
3 dollars and do not take into account the effect of
4 inflation which may cause these charges to increase."
5 So that's another statement they made to me and to all
6 of the other residents here at Sailfish.

7 Okay, and Part (c) of the same page, which is
8 entitled, "Ownership of SPUC Assets. At some time in
9 the future, but no later than 1987, we shall convey all
10 or any part of this facility and/or the assets of SPUC
11 to SPUC, or to the Association, or to Martin County, or
12 some other government entity, provided the facility is
13 maintained to provide water and wastewater treatment
14 facilities and services to all owners and users of
15 Sailfish Point property."

16 It goes on to say, "The Association shall not
17 be required to pay for such assets or shares but shall
18 have no right to refuse the conveyance." So it clearly
19 states here we shouldn't have to pay for this.

20 Okay. So I conclude with this that Mobil has
21 no legal right to include these assets in their
22 calculation of their cost to increase the Utility
23 rates.

24 Okay. The second reason I have is this: The
25 price we paid for our townhouse was approximately

1 double as compared to a similar unit outside of
2 Sailfish Point. We realized this, but the reason was
3 there there was an amenity package which was included.
4 One of the amenities was the utilities. Nobody is
5 going to pay several hundred thousand dollars for a
6 home or a lot and not have utilities. So therefore,
7 Mobil has already been paid for their assets in the
8 form of a higher price which they charged for these
9 properties. So it seems to me that Mobil wants to get
10 paid twice for the same item, which is certainly not
11 quite fair.

12 In addition, they could not sell any property
13 here without having a utility such as SPUC. Nobody
14 would buy any properties.

15 The third reason I have is that I believe the
16 reason for Mobil's actions in this matter is to create
17 a profit center out of SPUC in order to sell SPUC for
18 many times its earnings to an independent party, which
19 would then give them an additional huge amount of money
20 which they can profit by. The conclusion would be that
21 the residents would continue to be soaked, pardon the
22 pun, for the water it uses forever. (Applause)

23 WITNESS COHEN: That's all I have to say if
24 there are any questions.

25 COMMISSIONER EASLEY: Thank you, sir.

1 Are there any questions?

2 MR. GIRTMAN: Commissioner Easley, it might
3 help Mr. Cohen's understanding of that difference
4 between the 4,000 and 2,000 amount, if I may briefly
5 explain that for your information.

6 The Utilities regulated by the Florida Public
7 Service Commission are required to file tariffs with
8 the Commission and receive approval before they can
9 make any charge for service or service availability or
10 water, sewer, whatever. One of those items which has
11 to receive approval is the 2,000 or \$4,000 amount that
12 you're talking about.

13 Frequently, through the history of a utility
14 over the years that amount will change and the Florida
15 Supreme Court has ruled --

16 MR. REILLY: May I interject just a little
17 bit?

18 I want to give them the full latitude to
19 explain or develop the basis for questions, but I think
20 the proper forum is this is the time for him to ask
21 questions of the witness and not necessarily a forum
22 for an attorney to present testimony to the Commission.
23 I just thought I'd raise that point.

24 COMMISSIONER EASLEY: It's a valid concern.
25 Mr. Girtman, and I know this is not the normal formal

1 proceeding, and I know that it's quite loose, but --

2 MR. GIRTMAN: I don't mind explaining it to
3 them later. I'll be glad to do --

4 COMMISSIONER EASLEY: I think that would be
5 appropriate. I understand.

6 MR. GIRTMAN: I do have one question though.

7 Could I see the document that you have read
8 from there? (Hands document to attorney.)

9 WITNESS COHEN: If the Commission wants
10 copies of those.

11 COMMISSIONER EASLEY: I think we have those,
12 do we not? Do we have copies of those currently in the
13 record? Ms. Bedell, do you know?

14 MS. BEDELL: I don't know.

15 WITNESS COHEN: Would you like to have copies?

16 COMMISSIONER EASLEY: Yes, please, sir.

17 MR. KING: There is a copy in the exhibits to
18 Mr. Rasmussen's testimony.

19 COMMISSIONER EASLEY: I had a notion there
20 would be a copy of everything in there.

21 MR. KING: But I'm not sure that in the
22 record yet.

23 COMMISSIONER EASLEY: It is not in the record
24 yet.

25 Q (By Mr. Girtman) I do have a question. As

1 to the paragraph, I believe it was on Page 20,
2 paragraph Roman Numeral XII, subparagraph B, titled
3 "Hook-up Charges and Tariffs." The last paragraph
4 therein regards the disclaimer. Do you recall reading
5 that?

6 A Yes, sir.

7 Q Okay. For the record, would you please read
8 those four lines into the record beginning "We hereby
9 disclaim"?

10 A "We hereby disclaim any and all warranties,
11 whether express or implied, concerning the tariffs or
12 rates will be charged by SPUC for whatever entity
13 provides water and wastewater treatment services to
14 Sailfish Point residents."

15 But I would also add this: That may disclaim
16 the rates but it does not disclaim that -- it still
17 states in Part C that we are not going to be required
18 to pay for any such assets. So if we're not required
19 to pay for the assets, then how can they ask for a rate
20 increase which are based on the assets? It's illogical
21 and unreasonable.

22 COMMISSIONER EASLEY: Any other questions?

23 MR. GIRTMAN: One other point. For the
24 record, I would just like to reference the first
25 paragraph of that subparagraph B which talks about the

1 filing of applications and approvals by the Public
2 Service Commission.

3 COMMISSIONER EASLEY: All right, sir.

4 Mr. Reilly, any questions?

5 MR. REILLY: No questions from us.

6 COMMISSIONER EASLEY: Ms. Bedell, any
7 questions?

8 MS. BEDELL: No, ma'am.

9 COMMISSIONER EASLEY: Thank you very much,
10 Mr. Cohen.

11 (Witness Cohen excused.)

12 - - - - -

13 MR. REILLY: Arnold Simon.

14 ARNOLD SIMON

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

18 COMMISSIONER EASLEY: Good morning sir.

19 WITNESS SIMON: Dr. Arnold Simon. I live at
20 2802 Southeast Dune Drive.

21 I would first like to, without the testimony
22 of the gentleman who just preceded me, I think that the
23 intent of Mobil Corporation is clearly spelled out in
24 those paragraphs. They intended to be remunerated
25 through their fees for hookups and through the price of

1 the land for the water which they provided us; for the
2 wastewater which they were taking from us. They've
3 also indicated in Paragraph C under "Ownership of SPUC
4 assets" that in the event that weren't making money,
5 they would have the right to turn this facility over to
6 the residents and the residents would have no right to
7 refuse, which I think further cements the intent.

8 Now, I'd like to address myself to the
9 quality of the water. A few years ago there was an
10 episode in which the water tasted horrible, tasted as
11 if there were paint in the water. I made some
12 inquiries and found that they had painted some of the
13 tanks without any announcement to the people living
14 here, and apparently the bad taste was due to the
15 paint. The paint was supposedly a paint which had been
16 approved and which was nontoxic. The taste remained in
17 the water for a number of weeks.

18 I first couldn't understand why it was that
19 nobody in management had become aware of this and
20 nobody from the Water Department had said anything
21 about it. And when I investigated, I found that no
22 group involved in the management of this facility was
23 drinking the water produced by SPUC. That included the
24 president of Sailfish Point, Land, the head of the
25 Building Committee, the people in the Water Department,

1 the people in this club facility, the management of the
2 2800 Condominiums and the management of 2001
3 Condominiums. They were none of them using the water
4 that was coming out of their own plant.

5 I made some inquiries about the nature of the
6 paint. I eventually contacted the Department of
7 Industrial Toxicology at the University of Illinois and
8 found that the paint contained toluene, which is a
9 kidney poison. I was very concerned about this. We
10 eventually had the manufacturer of the paint come down,
11 but this was six or eight weeks later and by that time
12 the problem had fairly well cleared itself.

13 The taste of the water is extremely variable.
14 In addition, for several years there was rust in the
15 water in quantities large enough to ruin the laundry of
16 many of the people who were involved.

17 Sailfish Point Utility Corporation repeatedly
18 denied that there was anything in their structure which
19 could possibly have produced that rust. But after two
20 or three years, they did identify, within their
21 structure, the source of the rust, which they then,
22 after this long delay, did correct.

23 Because the taste of the water is variable, I
24 would say that the majority of the people here either
25 use bottled water or distill the water or filter the

1 water that's coming from the Utility plant.

2 COMMISSIONER EASLEY: Thank you. Do you have
3 -- one gentlemen mentioned water pressure. Do you have
4 any problems with water pressure?

5 WITNESS SIMON: Rarely.

6 COMMISSIONER EASLEY: Any questions?

7 MR. GIRTMAN: Please pardon me. I didn't get
8 your name when you introduced yourself.

9 WITNESS SIMON: Arnold Simon.

10 COMMISSIONER EASLEY: Do you have any
11 questions, Mr. Girtman?

12 MR. GIRTMAN: Yes.

13 CROSS EXAMINATION

14 BY MR. GIRTMAN

15 Q Mr. Simon, can you tell me what years this
16 was that you're talking about with the specific
17 problems of rust and paint?

18 A I don't think the rust problem ended until
19 probably early last year. You'd have to check with
20 them because they know when they didn't repair them
21 correctly.

22 Q Okay. And how long did that problem persist?

23 A Three or four years.

24 Q Continuously or intermittently?

25 A Fairly continuously.

1 Q Do you know whether it was throughout the
2 entire Sailfish Point community or isolated to a
3 particular area?

4 A I can't tell you whether it involved every
5 place, but I do know that there were people,
6 homeowners, who had a problem; and I know that the
7 Condominium at 2800 were severely affected.

8 Q Is that your residence?

9 A Yes.

10 Q You live at 2800 Condominiums?

11 A Yes.

12 Q Do you know anyone outside of 2800
13 Condominiums that may have been affected?

14 A I can't give you the specific name but I
15 suspect that if you ask in this audience, you would
16 find them.

17 COMMISSIONER EASLEY: There are some hands
18 going up behind you even as you ask the question.

19 Q (By Mr. Girtman) You mentioned in the
20 subsection C of the document that you have regarding
21 ownership of assets, regarding the possibility of a
22 transfer to the POA, you mentioned something about if
23 they were not making money. Are those words in there,
24 that if the Utility is not making money that it can be
25 transferred?

1 A I think the implication is fairly evident.
2 It says, "The Association shall not be required to pay
3 for such assets or shares but shall have no right to
4 refuse the conveyance."

5 MR. GIRTMAN: Thank you.

6 COMMISSIONER EASLEY: Thank you, sir.

7 Ms. Bedell, any questions?

8 CROSS EXAMINATION

9 BY MS. BEDELL:

10 Q Mr. Simon, when you were talking about the
11 paint problem, the paint taste in the water, what was
12 the response from the Company when you first called
13 them about that?

14 A They said that the paint was harmless; that
15 it had been approved by one of the environmental
16 agencies for use in tanks. Their eventual explanation
17 was that they had used it in accordance with
18 instructions but that apparently it had been tested in
19 tanks with wide openings so that it could dry. And
20 tanks that they used it in had a very narrow opening,
21 the paint did not dry in the prescribed time; it was in
22 the water.

23 Q Did you get a timely response from the
24 Company?

25 A Yes.

1 Q Okay.

2 COMMISSIONER EASLEY: How long ago was this,
3 Mr. Simon? You mentioned it was several years ago.
4 Can you put a time frame on it?

5 WITNESS SIMON: I can't exactly. I would say
6 it was three, maybe four years.

7 COMMISSIONER EASLEY: Okay. Thank you, sir.
8 Anything else?

9 Thank you, Mr. Simon.

10 (Witness Simon excused.)

11 - - - - -

12 MR. REILLY: Phyllis Cohen.

13 PHYLLIS COHEN

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

17 WITNESS PHYLLIS COHEN: My name is Phyllis
18 Cohen, and I live at 6440 Southeast Harbor Circle.

19 We do not drink the water here at Sailfish
20 Point out of the faucet. It has a terrible taste. We
21 buy bottled water from Bishop. I was going to ask for
22 a postponement this morning of this hearing because so
23 few of us can be here because most of the people live
24 here in the winter, but I've already gotten an answer
25 to this.

1 COMMISSIONER EASLEY: Sorry.

2 WITNESS COHEN: Also, I'd like to say that
3 Mobil did not disclose to my husband and I at any time
4 before purchase, or for ten years hence, the possible
5 obligation of enormous increases in water and
6 wastewater rates. It can be an added obligation of
7 many thousands of dollars per year. We would not have
8 bought at Sailfish Point had we known of this future
9 obligation.

10 If this ridiculous rate increase comes to
11 pass, it will surely devalue all our properties at
12 Sailfish Point because it will cause resale values to
13 go down greatly. New prospective buyers will not want
14 to pay such an unusual and exorbitant utility charge.
15 It will cause the present property owners undue
16 hardship in the event of resale.

17 COMMISSIONER EASLEY: Any questions?

18 Ms. Cohen, Ms. Bedell right here has some.

19 CROSS EXAMINATION

20 BY MS. BEDELL:

21 Q Have you had the need to contact the Company
22 at any time for any service problems, any billing
23 problems or anything?

24 A No.

25 MS. BEDELL: Okay. Thank you.

1 COMMISSIONER EASLEY: Thank you ma'am.

2 (Witness Cohen excused.)

3 - - - - -

4 COMMISSIONER EASLEY: Mr. Reilly?

5 MR. REILLY: Peter Moran.

6 PETER MORAN

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

10 WITNESS MORAN: Good morning. My name is
11 Peter Moran. 6761 Harbor Circle Drive, Sailfish.

12 I recognize that there probably is a lot of
13 documentation relative to this rate increase but I
14 think, and I hope, on behalf of everybody here, that in
15 the final analysis it would be a question of what
16 fairness represents, the test of fairness.

17 I'm looking at a water bill from my wife's
18 beauty parlor that she paid last month. Now, a beauty
19 parlor, I think you all will agree, the water probably
20 goes on when the door opens and it doesn't shut off
21 until the door closes at night. And here there are
22 5600 gallons of water; their water bill was \$9.96. My
23 latest water bill for 4,000 gallons, was \$65.53.

24 Now, if this rate increase is approved, it's
25 expected that we probably will be paying, or I probably

1 will be paying, using approximately 4,000 gallons of
2 water, in excess of \$200 a month. And you heard Will
3 say this morning that his rate increase representing
4 the country club, not to speak of the golf club, with
5 those over 400% increase, we probably will have -- that
6 will pass through an assessment to all the property
7 owners. I'm anticipating a water bill of approximately
8 \$3,000 a year.

9 Now, on the hottest hubs of Arizona where
10 there maybe isn't any water nobody is paying a water
11 bill or can anticipate a water bill that high. And,
12 again, I refer to this one for \$5,600 (sic) versus
13 ours, where they paid \$9.96, and I'm presently paying
14 \$65.53.

15 COMMISSIONER EASLEY: Mr. Moran, where is
16 that beauty parlor located?

17 WITNESS MORAN: I'm sorry. Right here in
18 Stuart, on Dixie Highway, three miles --

19 COMMISSIONER EASLEY: It's over on the
20 mainland; it's a different system?

21 WITNESS MORAN: I'm not sure. As I said in
22 the beginning, we're talking about the fairness to the
23 property owners. And whether it's a question or not of
24 whether we can afford it; it's a exorbitant bill. And
25 in all honesty, if I had known that a rate in excess of

1 \$200 was possible in the future, I probably would not
2 have bought at Sailfish. And I don't know anybody that
3 would be paying a water somewhere down the road in
4 excess of 200 and possibly \$250 a month. That's
5 outrageous. Thank you very much.

6 COMMISSIONER EASLEY: Any questions?

7 Ms. Bedell has a request, Mr. Moran, if
8 you'll hold on just a minute.

9 CROSS EXAMINATION

10 BY MS. BEDELL:

11 Q Is the \$9 bill just for water?

12 A Yes.

13 Q And is your 50-plus bill --

14 A Just for water.

15 Q -- just for water also?

16 A Yeah, \$65, yes.

17 COMMISSIONER EASLEY: Thank you very much,
18 sir.

19 WITNESS MORAN: Thank you.

20 MR. REILLY: Just one brief question.

21 COMMISSIONER EASLEY: Sure.

22 REDIRECT EXAMINATION

23 BY MR. REILLY:

24 Q May I assume that this bill approaching \$200
25 would include water and sewer service?

1 A No, I think that's just the water. I'm right
2 now paying \$65.53. Our latest bill was 65.53, and the
3 sewage was \$40. So my total water bill including the
4 sewage last month was \$105. 62. So if you add the
5 sewage on it, the grandkids are going to have to do
6 without Christmas gifts in the future. (Laughter)

7 COMMISSIONER EASLEY: Thank you, Mr. Moran.

8 (Witness Moran excused.)

9 - - - - -

10 MR. REILLY: Dean Crawford. Once again,
11 we'll have Mr. Gatlin circulating for those who think
12 they might want to --

13 COMMISSIONER EASLEY: Well, we'll take a
14 break if we need to and make sure.

15 MR. REILLY: Okay. All right.

16 DEAN CRAWFORD

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

20 WITNESS CRAWFORD: My name is Dean Crawford.

21 I live at 2001 Sailfish Point Boulevard, Unit 413.

22 Good morning.

23 COMMISSIONER EASLEY: Good morning sir.

24 WITNESS CRAWFORD: I certainly appreciate the
25 opportunity to express our concern. I thought about

1 taking my shoe off and putting it on the table to
2 remind you of how outraged we are, like somebody else
3 used to do.

4 On the quality issue, the water tastes like
5 iodine to us. It's very poor. We're in a condo so we
6 have few choices, in terms of filtration, to straighten
7 that out.

8 We are building a house here at Sailfish, and
9 we're going to great expense to straighten out the
10 water in terms of purification. Also, if you talk, as
11 we have this morning, with the residents and you talk
12 with other people around, there seems to be a question
13 about the quality of the water so we're putting in the
14 system. We're raising children; we don't want anything
15 to happen to them or their health. So we're very
16 concerned about it, so we're building a backup system
17 at great additional cost. We've already paid the
18 hookup fee and that's at great additional cost, we have
19 been here since 1988. Nowhere in the process of buying
20 the condo or the three lots that we purchased has
21 anybody ever mentioned anything about the substantial
22 rate increases that are proposed. To the contrary,
23 when we came here, all of the facilities were touted as
24 being part of the project, and that when we came here
25 we wouldn't have to pay extra for roads or water or

1 electricity or cable TV beyond the things that were
2 normal in the process. And by giving the estimates of
3 the bills, in stating that, you know, normal
4 inflationary kind of things could be expected, that's
5 certainly reasonable. But the kind of outrageous
6 approach that we have now is just totally unacceptable
7 by our standards.

8 I'd like to adopt the testimony, the prior
9 testimony, with the exception of Commodore Andrews;
10 maybe he can afford all this, not all of us can.

11 (Laughter)

12 COMMISSIONER EASLEY: Thank you, Mr.
13 Crawford. Were there any questions for Mr. Crawford?

14 Thank you very much, sir, appreciate it. You
15 realize, of course, you're dating yourself and me
16 because we both knew what you were talking about with
17 the shoe. (Laughter)

18 (Witness Crawford excused.)

19 - - - - -

20 COMMISSIONER EASLEY: Call your next witness,
21 Mr. Reilly.

22 MR. REILLY: Donald Housman.

23 DONALD HOUSMAN
24 was called as a witness on behalf of the Citizens of
25 the State of Florida, and having been first duly sworn,

1 testified as follows:

2 WITNESS HOUSMAN: My name is Donald Housman.
3 I live the 6600 Southeast Harbor Circle.

4 I'd like to extend my welcome to you here and
5 invite you back in February where you can meet 80 to
6 95% of the people who are living here. (Applause)

7 COMMISSIONER EASLEY: To be perfectly
8 truthful with you, Mr. Housman, I would have much
9 preferred to come in February. (Laughter)

10 WITNESS HOUSMAN: The weather is much nicer,
11 nice and crisp and cool.

12 You'd get some repetition, but I think that
13 you'd get the impact of a lot of people, like myself,
14 with what was represented to them when they purchased
15 in here. And I'd like to go over that with you. I
16 don't have any documentation. I think you have a big
17 package of documentation which will reflect what I'm
18 about to say.

19 It was represented to us by the
20 representatives of Mobil when we purchased in here that
21 we would get an amenity package that went along with
22 the property. And the amenity package includes such
23 things as: roads, tennis courts; where we are now, the
24 country club, and the associated grounds, the common
25 grounds that we have. Included in that is the water,

1 which we paid a \$4,000 hookup fee, as you're aware.

2 And we received information from the
3 salesperson that this facility that prepared the water
4 was being subsidized; that it would be eventually
5 turned over to us. So it's a little bit astonishing to
6 me that we have a meeting like this for our property.
7 Because I feel like when this thing is transitioned, it
8 will belong to us in one fashion or another.

9 I learned the other day that subsequent to
10 our purchase in here, Mobil unilaterally changed the
11 documents to reflect that this water facility can be
12 sold to a third party. That wasn't in the documents
13 before. We didn't know about it, had no part in it;
14 but it apparently occurred, and I'd like you to review
15 that when you go over this documentation.

16 I'd like to advise you that since we moved in
17 here, the water quality had been such that we bought
18 our own distillation outfit and we don't drink the
19 water. We use it for bathing; we use it for
20 irrigation; it does a wonderful job. The effluents
21 cause the grass to grow magnificently. But we use a
22 little still, and that's what we drink and what we cook
23 with. The water tastes bad.

24 I'd like to make one more point. We also
25 have a place in Orlando, and we had a terrible fight

1 with perhaps this very Commission; I wasn't there, but
2 we had a terrific increase in our rates. And they went
3 from 57 cents a thousand to 83 cents a thousand, so the
4 residents back there are still up in arms about paying
5 83 cents a thousand gallons.

6 I recognize it's a different system, it's not
7 reverse osmosis; but, nevertheless, we contrast those
8 very high rates, which are still irritating the
9 population up in Orlando, and contrast that with \$10
10 and something a thousand, which we're talking about
11 here, and it really is quite preposterous.

12 I'd like to ask you to bear that in mind; to
13 take these comments that you have had from less than 5%
14 of the population and multiply that by 95% to get the
15 impact on this community.

16 I'd like to make a comment also that I think
17 that this is supposedly the jewel in Mobil's crown. We
18 bought in here because of Mobil, because this is a very
19 unique piece of property, because they have got an
20 elegant reputation, because they've got the deep
21 pockets to support this type of a development. And
22 they still have roughly a hundred lots to sell.

23 I don't understand what they are doing. I
24 really don't think top management in Mobil understands
25 what's going on here. I think this is a terrible

1 mistake on the part of the low and middle management in
2 attempting to either get a chip for transition or to
3 make a profit-making enterprise out of something that
4 was originally intended to be transitioned to the
5 people who bought in here. (Applause)

6 That's the comments I have.

7 COMMISSIONER EASLEY: All right, Mr. Housman,
8 thank you.

9 Any questions?

10 MR. GIRTMAN: No questions.

11 COMMISSIONER EASLEY: Thank you very much. I
12 appreciate your being here.

13 (Witness Housman excused.)

14 - - - - -

15 MR. REILLY: Maurice Casey.

16 MAURICE CASEY

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

20 WITNESS CASEY: My name is Maurice Casey, and
21 I reside at 2804 Southeast Dune Drive.

22 I subscribe to the previous testimony and
23 complaints of a lot of people who went before me.

24 I'd like to raise an issue that really brings
25 to point -- I don't know what the legal problems are,

1 but I think it's a fairly obvious ploy. In other
2 words, number one, the original request in the interim
3 rate, as I understand it, was overturned because there
4 was no public hearing held. And then the developer
5 quite cleverly applies for the new rate when he knows
6 that the hearing would be held when the least amount of
7 people would be present. This at least smacks of a
8 lack of fair play, in my opinion.

9 Secondly, I'd like to question the manage the
10 of this Utility. It is, to me, inconceivable that
11 somebody can manage a plant and for seven or eight
12 years you don't notice that you should have an increase
13 in rates. I mean, could there be a tie-in between that
14 and the fact that they are trying to sell us properties
15 at the same time, and give us a low rate? Now, if you
16 will, when the fish is hooked, all of a sudden they
17 want to make up for lost time. That seems to me an
18 incomprehensible thing, that we should pay for their
19 ploy, their marketing ploy, or whatever motivation they
20 had. Certainly, the management must be called into
21 question if for eight years they've gone along and
22 everything's fine, and all of a sudden they discover
23 they need more income.

24 And the last thing I'd like to mention is the
25 fact that the documents certainly implied that the

1 Utility would be turned over to us.

2 If the purpose of this increase is to
3 increase the value of the Utility so that it may be
4 sold at a greater profit to either the County or an
5 outside person, in effect, they are asking us to
6 subsidize their profit on the sale of the Utility.

7 I submit that the -- this would be an unfair
8 burden on the residents, and I also submit that a
9 serious question should be raised as to why this amount
10 is coming now; why they are looking for the rate now;
11 and where was their management during the last eight
12 years? That's all, I guess.

13 COMMISSIONER EASLEY: Thank you, Mr. Casey.

14 Any questions? Ms. Bedell.

15 MR. KING: I have a question for Mr. Casey.

16 CROSS EXAMINATION

17 BY MR. KING:

18 Q Mr. Casey, I've heard something about some
19 underground lines having to be replaced on, and I'm not
20 sure whether that's Dune Drive or -- do you know
21 anything about that? Has that affected your property?

22 A I'm not aware of that.

23 COMMISSIONER EASLEY: Thank you, Mr. Casey.

24 Appreciate it.

25 MR. REILLY: We have no other names on the

1 list at this time. If you want to take a break and we
2 will determine any further --

3 COMMISSIONER EASLEY: Is there anyone here
4 who has not signed up to speak that wishes to do so?

5 I'll tell you what, for the court reporter --
6 that's my best excuse -- for the court reporter we will
7 take ten-minute break.

8 Mr. Reilly, you will have the opportunity to
9 see if anyone else has come in. If there are no other
10 public witnesses to testify, we will go into the
11 technical part of the hearing. You are welcome to
12 stay. This is the much more formal presentation by the
13 Company and the parties, and you are certainly welcome
14 to stay for it.

15 Thank you. We'll take a ten-minute recess.

16 (Brief recess.)

17 - - - - -

18 COMMISSIONER EASLEY: We will call the
19 hearing back to order. It is my understanding that
20 there are additional public witnesses that wish to
21 testify and that Mr. King wishes to recall the
22 gentleman who did have the information that he was
23 seeking. Those people who wish now to testify, I
24 assume, have not been sworn, is that correct? Mr. King
25 or Mr. Reilly?

1 MR. REILLY: I believe that is correct.

2 COMMISSIONER EASLEY: All right. Would the
3 people who have asked to testify in this second session
4 please rise to be sworn in?

5 (Additional witnesses sworn simultaneously.)

6 COMMISSIONER EASLEY: Call the first witness,
7 please.

8 MR. KING: Mr. Morris Cohen, would you take
9 the stand again?

10 COMMISSIONER EASLEY: All right. Mr. Cohen
11 is being recalled.

12 - - - - -

13 MORRIS COHEN

14 was recalled as a witness on behalf of the Citizens of
15 the State of Florida and, having been previously duly
16 sworn, testified as follows:

17 MR. KING: Mr. Cohen, my comment to the last
18 witness about the problem with the lines prompted you
19 to talk to me during the break. And you said you had
20 some personal experience about that that you wanted to
21 relate to the Commission. Would you do so, please?

22 WITNESS COHEN: Yes. On Marina Way, I used
23 to live at the townhouses, there were constant
24 breakdowns of the water pipe underneath the roadway
25 that went to all the homes on Marina Way and all the

1 townhouses. The reason for this breakdown was that the
2 plastic pipe that was put in to transport the water had
3 been not defective to start with, but had been lying
4 out in the open, you know, with the sun and the air and
5 the salt and it had deteriorated the pipe prior to
6 their installing the pipe. For this reason, the pipe
7 constantly breaks, it undermines the roadway. It goes
8 under, in some cases, under landscaping under houses,
9 et cetera, and it's cost quite a bit of money up to now
10 because it goes bad about every two months.

11 What they do then is that they splice the
12 pipe. They don't replace all the pipe, which entirely
13 needs to be replaced. So this will be a continuing
14 problem for many more years to come unless they do what
15 they're supposed to do, which is actually replace all
16 the pipe instead of just splicing the pipe.

17 And when I lived at the townhouse, I
18 experienced water shutoffs continually, rusty water
19 which took quite a while for it to drain through,
20 because when a pipe breaks you get all the sand and
21 dirt and everything in the pipe and it takes a long
22 time to get this dirt and debris out of the piping
23 system.

24 COMMISSIONER EASLEY: This is an ongoing
25 problem, Mr. Cohen, currently?

1 WITNESS COHEN: It's ongoing and it will be
2 ongoing unless Mobil replaces all of the pipe that goes
3 under that roadway.

4 Can I make a comment about one other item
5 which I had mentioned before?

6 COMMISSIONER EASLEY: Briefly, please, sir.

7 WITNESS COHEN: Okay. The \$4,000 charge,
8 which I understand speaking to one of the gentlemen
9 here, for the hookup charge goes against the -- sort of
10 like a credit against a rate increase, as I understand
11 it?

12 Now, if it goes against a credit of a rate
13 increase, I think the Commission should just be aware
14 that the credit should not go against the assets,
15 because the assets should not be charged to us to begin
16 with; and therefore, that credit of \$4,000 per person,
17 which could amount to \$2 or \$3 million, should come off
18 and give us a credit back on the charges we've already
19 paid for the water.

20 That's about it.

21 COMMISSIONER EASLEY: Thank you, sir. Any
22 questions? Thank you very much, Mr. Cohen.

23 MR. REILLY: Barbara Blews.

24 - - - - -

25

1 BARBARA BLEWS and GINNY ENDICOTT
2 were called as witnesses on behalf of the Citizens of
3 the State of Florida, and having been previously duly
4 sworn, testified as follows:

5 WITNESS ENDICOTT: Excuse me, my name is not
6 Barbara Blews. My name is Ginny Endicott and Barbara
7 and I are neighbors and shared these same experiences
8 together.

9 My name is Ginny Endicott, I was a next-door
10 neighbor with Ms. Blews and we shared these experiences
11 together.

12 WITNESS BLEWS: I didn't realize that this
13 would be an issue that was going to be addressed today
14 or I would have tried to come more prepared.

15 But I would say four or five years ago our
16 tiles in our bathrooms turned blue -- they're white --
17 our towels turned blue and we had a lot of color in the
18 water. And this wasn't the incidence with the paint,
19 this was totally separate.

20 I asked the cleaning people what they were
21 using different, there was nothing different. I asked
22 Ginny, my neighbor. Yes, everything of hers was
23 turning blue.

24 We called the water maintenance people, and
25 they said "Well, it is probably the water is harsh

1 coming in from desalinization and when it hits your
2 copper pipes it tends to turn things a bluish green."
3 And we thought about that for a while; and then our
4 goldfish died after we changed their water and that
5 sort of brought things to light that maybe things
6 weren't quite right.

7 At that point I called, I believe it was, HRS
8 and they directed me to the proper authority. And I am
9 almost positive I have all this documented at home with
10 papers from them. And I called them to tell them what
11 happened. Possibly before that I had spoken to Mr. Marks,
12 and he did say, Yes, there was a breakdown in the
13 equipment, a part was coming and that it would be
14 fixed.

15 But I felt that we should have been notified
16 that there was a breakdown and our small children
17 should not have been drinking this water, which I
18 presume they were. So meanwhile, the proper
19 authorities did come in, they did correct it because in
20 the end we did get the results of the water testing
21 after we had complained. But it was their decision not
22 to notify us of this breakdown, and I feel that that
23 was very improper and wrong; especially since it did
24 kill the fish, it couldn't have been very healthy.

25 COMMISSIONER EASLEY: But the problem has

1 been corrected.

2 WITNESS BLEWS: Oh, yes. It was corrected.

3 COMMISSIONER EASLEY: And there are has been
4 no recurrence of the problem.

5 WITNESS BLEWS: No, no. But I think we
6 should have had the choice to have been notified, and
7 then we could have chosen whether we were going to
8 drink the water or use it.

9 COMMISSIONER EASLEY: Yes, ma'am.

10 WITNESS BLEWS: I have small children and so
11 does Ginny and that's sort of frightening that they
12 would drink it.

13 COMMISSIONER EASLEY: I understand. Any
14 questions for either Ms. Cohen or Ms. Endicott? Thank
15 you very much, both of you. Ms. Endicott, do you have
16 something you want to add? I'm sorry.

17 WITNESS ENDICOTT: Yes. I would like to ask
18 a show of hands in the audience of the people on Marina
19 Way or otherwise that have had their water cut off due
20 to repairs in the street. (Some hands raised.)

21 WITNESS ENDICOTT: That's a small percentage
22 of what is here and all of this is being credited back
23 to an expense of the water company. The other question
24 -- I'm totally unprepared here.

25 There were two issues, I wonder if somebody

1 could help me. There were two questions about the
2 water disconnect -- I'm sorry. I can't think of it.

3 COMMISSIONER EASLEY: You can always, and if
4 thoughts occur to you, let me make this announcement
5 for everybody's benefit including those neighbors of
6 yours that you know are out of town. Correspondence
7 can continue to be received in this matter in the
8 correspondence side of the docket; so that if there are
9 things that do occur to you and you remember what the
10 issues are after the public part of the hearing is
11 over, feel free to write to the Commission. And while
12 it cannot be used as direct evidence in the case
13 itself, it can go into the correspondence side.

14 WITNESS ENDICOTT: I'm sorry, I do remember
15 my -- I also want to see a show of hands of those
16 people who have a separate water system purifier and
17 who do not drink the water and use bottled water. I
18 think that's also an important point.

19 (Some hands raised.)

20 COMMISSIONER EASLEY: Yes, that's almost
21 everybody. Thank you very much.

22 MS. BEDELL: May I ask a question?

23 COMMISSIONER EASLEY: Excuse me. Ms. Bedell
24 has a question.

25 WITNESS ENDICOTT: Yes, I'm sorry.

CROSS EXAMINATION

BY MS. BEDELL:

Q When you referred to the cutoff --

A (Witness Endicott) On the street damage?

Q Yes. Were you notified prior to that?

A No, ma'am. Those happened one at the time.

And the reason that Mr. Cohen feels that he was constantly shut off is anywhere down that street, wherever the breakage was, from there on down would be shut off. Mr. Cohen just happened to be at the end of the street. I lived on the street for five years, Ms. Blews has been there now --

WITNESS BLEWS: Eight.

A (Witness Endicott) -- eight. And we have seen every single -- if you go down the road you can see where the repairs have been made to each and every one of the houses.

Q Okay. And when those repairs were made, you are not notified?

A (Witness Blews) If it's not an emergency shutoff. If they notice a small leak --

Q When it's not an emergency, they do notify you?

A (Witness Endicott) Yes.

MS. BEDELL: Thank you.

COMMISSIONER EASLEY: Thank you very much.

1 MR. REILLY: Jeananne Petrus.

2 - - - - -

3 JEANANNE PETRUS

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

7 WITNESS PETRUS: My name is Jeananne Petrus,
8 and I live at 2808 Southeast Drive.

9 I just took this water, except it's been
10 sitting for a little while, and I don't know if that
11 does anything, from the faucet. And this is really
12 what made us switch to a filter for drinking, and I
13 thought you might be interested in seeing what happens
14 when you put a few drops of this in. This is what you
15 put in to test for chlorine.

16 You see how yellow it goes? That's the
17 chlorine in the water. It tastes awful.

18 COMMISSIONER EASLEY: Is that it?

19 WITNESS PETRUS: That's it.

20 COMMISSIONER EASLEY: Any questions?

21 WITNESS PETRUS: I just thought a picture
22 was worth a thousand words.

23 COMMISSIONER EASLEY: It always is. Thank
24 you very much, Ms. Petrus. And bless her heart, she's
25 going to leave it there for us to look at. (Laughter)

1 MR. REILLY: We're going to be looking at it
2 during the entire course of the hearing.

3 COMMISSIONER EASLEY: I did notice that.
4 Call your next witness, Mr. Reilly.

5 MR. REILLY: Michael Duerr.

6 - - - - -

7 MICHAEL DUERR
8 was called as a witness on behalf of the Citizens of
9 the State of Florida and, having been previously duly
10 sworn, testified as follows:

11 COMMISSIONER EASLEY: Would you spell that,
12 please.

13 WITNESS DUERR: Duerr, D-u-e-r-r.

14 COMMISSIONER EASLEY: Thank you, sir.

15 WITNESS DUERR: And I live in the 2800
16 Building, 2814 Southeast Dune Drive.

17 I would like mostly just to associate myself
18 with the previous testimony, particularly with regard
19 to two things. One, when I moved in here and bought my
20 place, I was led to believe that the utility service --
21 like the roads, like the tennis courts, like the beach
22 -- were part of the package and that's why I paid so
23 much money for this beautiful, beautiful place.

24 And the second thing is that not in my
25 wildest dreams would I ever have expected a rate

1 increase of such a large size. I mean, a rate
2 increase, of course; rate increases happen all the
3 time. But this is really a doozie.

4 Then I also have two other points. One, I
5 don't even know whether this is the responsibility of
6 the Utility. But in our building, on the specifications
7 and the as-built plans for the water lead-in that feeds
8 our, well, our sprinkler system, among other things, it
9 calls for an eight-inch line. Actually, there is a
10 six-inch line. And people who know about hydraulics have
11 told me that actually this reduces capacity about 50% and
12 there's at least some question as to whether we have
13 enough pressure to adequately fight fires. You might just
14 want to look into that.

15 The other thing is that before we moved here,
16 my wife and I lived in the Florida Keys and there is
17 kind of a joke down there that it's the most expensive
18 water system in the world with the possible exception
19 of Riad. (Laughter)

20 And they have an old pipeline which was
21 replaced by a new pipeline which takes water all the
22 way down from Homestead -- well, those of you who have
23 been to the Keys know about the pipeline. They can no
24 longer carry enough water in that pipeline so they have
25 had to build reverse osmosis plants similar to ours.

1 So we start off with a very expensive system;
2 we add reverse osmosis similar to what we have here,
3 and as of about 15 minutes ago when my wife called up
4 the Florida Keys Aqueduct Authority their exorbitant
5 rate was \$5.18/1000 for water, which contrasts with
6 \$10.19 proposed here.

7 That's all.

8 COMMISSIONER EASLEY: All right, sir. Any
9 questions? Thank you very much, Mr. Duerr, appreciate
10 it. (Applause)

11 MR. REILLY: John Kennedy.

12 COMMISSIONER EASLEY: While Mr. Kennedy is
13 coming up, I have Halfzeimers again, I remember half of
14 it. Are there any people here who did not raise their
15 hands that wish to have lunch here at the clubhouse? I
16 have been asked to give a second count. Anyone else?
17 If you raised your hand before, don't raise it again.
18 Okay. Thank you very much.

19 - - - - -

20 JOHN KENNEDY

21 was called as a witness on behalf the Citizens of the
22 State of Florida, and having been previously sworn,
23 testified as follows:

24 WITNESS KENNEDY: Welcome to Sailfish Point.

25 COMMISSIONER EASLEY: Thank you, sir.

1 WITNESS KENNEDY: My name is John Kennedy. I
2 live at 6680 South Marina Way.

3 As a slight aside, we bought our home about a
4 year ago. The lower portion of our driveway doesn't
5 match the rest and that's because it had been dug up
6 sometime in the past.

7 I'd like to raise a question concerning Mobil
8 Oil Company Sailfish Point and the cost of capital.
9 Welcome to Sailfish Point. You go through a beautiful
10 gate. You approach the gate house. The barrier goes
11 up, you drive on the roads. You pass the lighting, you
12 come to the country club. You see the tennis courts,
13 the pool, and the spa.

14 If you were to walk down to the water, you'll
15 find rick/rack out by the inlet, a sea wall which is
16 composed of sandbags. If you walk over to the marina,
17 you'll find bulkheading, and you'll also realize that
18 you have water and sewer service. These are what we
19 refer to as the amenities of a community.

20 The first time any of us went through that
21 gate and we saw all these amenities, we were told by
22 the sales office, i.e., a representative of the
23 developer, that this is what comes when you buy at
24 Sailfish Point. Whether you were to buy a lot to erect
25 a single family home or whether you were to buy an

1 existing townhouse or a condominium, this is what you
2 got. Notice I didn't mention the golf club, because
3 that's a separate corporation.

4 In any event, all this was provided by the
5 developer. The question is why? The answer is simple,
6 it was to sell property. If they did not have those
7 amenities that I mentioned they could not sell property
8 except for agriculture or wasteland, which is what it
9 was before. So now, for Mobil Oil to attempt to
10 recover the capital cost of their utility -- and I'm
11 not going to mention the gate house or the gate or the
12 roads, because people will look at me like I'm crazy,
13 why would you want to recover that, you had to have
14 that to sell the lots? -- for them now to attempt to
15 recover the capital cost of the Utility is sort of
16 like, in the expression, a "double dip."

17 Mobil receives the return of their capital
18 investment of that utility through the sale of the
19 property. Lots, the original lots went for about
20 \$100,000, maybe 150. There are lots today being sold
21 on the ocean for a \$1.750 million; on the inlet for
22 \$750,000. So clearly, Mobil made an investment and the
23 return on that investment has come through the sale of
24 their property and it should not come through assessing
25 the water users in return for that capital.

1 Thank you. (Applause)

2 COMMISSIONER EASLEY: Thank you, sir. Any
3 questions? Thank you very much, Mr. Kennedy,
4 appreciate it.

5 MR. REILLY: That's all the witnesses we have
6 listed at this time.

7 COMMISSIONER EASLEY: All right, sir. May I
8 ask if anyone knows whether or not there are residents
9 planning to appear at the public part of the hearing
10 tonight? I believe that's scheduled for 7:00, is that
11 correct?

12 MR. REILLY: 6:00, I believe.

13 COMMISSIONER EASLEY: 6:30 or 6:00?

14 MR. GIRTMAN: 6:00.

15 COMMISSIONER EASLEY: 6:00, okay. I'll get
16 the time straight in a minute.

17 MS. BEDELL: The notice says 6:00.

18 COMMISSIONER EASLEY: The notice said 6:00?
19 I was asking if you know of anyone who plans to speak
20 tonight? If not, okay.

21 MR. REILLY: I thought I would make a brief
22 announcement. At one of the breaks, one of the
23 customers came up and said would the customers be
24 receiving a bill from the Office of Public Counsel for
25 our services in this case? And I assured them that no,

1 our office was one of the amenities that came along
2 with the payment of taxes, general taxes, and they
3 would not receive any additional bill from our office.

4 COMMISSIONER EASLEY: Your government is at
5 work.

6 All right, Charlie, was there any specific
7 time frame given to us by the dining room for lunch or
8 is that at our pleasure, or do we have constraints on
9 that?

10 COMMISSIONER EASLEY: Mr. Reilly, I believe
11 you have another witness. You have not been sworn,
12 ma'am, or were you sworn? Just come here and have a
13 seat and we'll swear you in.

14 (Witness sworn.)

15 MONIQUE ALLEN
16 was called as a witness on behalf of Citizens of the
17 State of Florida, and having been first duly sworn,
18 testified as follows:

19 COMMISSIONER EASLEY: And if you'd state your
20 name and address for the record, please, ma'am.

21 WITNESS ALLEN: My name is Monique Allen. I
22 live on 6501 Harbor Circle.

23 It was represented to us that utilities were
24 part of the cost of the lot. The requested rate
25 increase is absolutely outrageous.

1 I bring here a brass valve that's only three
2 years old, and it's been eaten by the water through and
3 was leaking. We haven't been drinking the water since
4 we live here and the laundry was really really bad for
5 three years.

6 COMMISSIONER EASLEY: Thank you very much.
7 Is that all?

8 WITNESS ALLEN: Yes.

9 COMMISSIONER EASLEY: Are there any
10 questions?

11 MS. BEDELL: No questions.

12 COMMISSIONER EASLEY: Thank you very much.
13 Appreciate it.

14 Is there anyone else who wishes to be heard?
15 All right. What's the response on lunch?

16 MR. REHWINKEL: Whenever we want to.

17 COMMISSIONER EASLEY: It's 11:30. Counselor,
18 what do we have in the way of the preliminary matters
19 that we need to do prior to getting into the technical
20 part of the hearing?

21 MS. BEDELL: We have approximately six
22 outstanding motions, including a couple of -- one
23 formal additional Motion to Amend the Prehearing Order,
24 and I don't know if OPC wants to amend the Prehearing
25 Order as well.

1 **COMMISSIONER EASLEY:** All right. Can you give
2 me a feel for whether or not we can get into the motions
3 and deal with some of the motions early to allow for a
4 timely lunch break and then we'll get back? Because I
5 know once we get into some of these motions, there's not
6 going to be a good breaking point. And I'm trying to
7 figure out whether to do a break now or go ahead and start
8 the motions and get some of them out of the way. That's
9 what I'm trying to make a determination on.

10 **MS. BEDELL:** Probably half of the motions
11 relate to the prefiled testimony.

12 **COMMISSIONER EASLEY:** Those will have to wait
13 until after lunch.

14 **MS. BEDELL:** OPC's Motion to Compel that we
15 received last night that I have copies for you of now,
16 I don't know that you have had time to read.

17 **COMMISSIONER EASLEY:** All right. I'll tell
18 you what we're going to do. I just made a command
19 decision. We are going to break now for lunch. There
20 are motions that have been filed that I have not yet
21 seen. I will take the opportunity to review those with
22 Commissioner Deason. And we'll reconvene, it is now
23 11:35, we will reconvene at 1:00.

24 (Whereupon, lunch recess was taken.)

25

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

(Hearing reconvened at 1:00 p.m.)

COMMISSIONER EASLEY: We will call the hearing back to order. Ms. Bedell, what are the preliminary matters, please?

MS. BEDELL: Madam Chairman, we have several pending motions.

COMMISSIONER EASLEY: All right.

MS. BEDELL: We have one motion filed by the Utility to amend the Prehearing Order to allow them to list two additional rebuttal witnesses. I don't believe that OPC has had opportunity to file a written response to that motion.

COMMISSIONER EASLEY: All right. Mr. Girtman, it's your motion. If you would briefly explain, I'll give Mr. Reilly and Mr. King an opportunity to respond.

MR. GIRTMAN: Thank you, Commissioner.

The schedule which has been followed in this case regarding discovery and the effort by the Utility to make sure that all relevant documents are provided in a timely manner to the Office of Public Counsel resulted in, at the Prehearing Conference, a discussion about whether or not Mr. Reilly and Mr. DeWard would visit the Dallas accounting offices in regard to

1 certain tax documents.

2 We had presented some final documents that
3 they had requested based on their visit to the Overland
4 Development Company offices in Palm Beach Gardens.
5 Those documents were acquired from Dallas, a lot of
6 Schedule M-1s, that were the relevant portions for
7 Sailfish Point S and Sailfish Point Utility
8 Corporation. Those were provided, and in our letter
9 affording the last of the material that they had
10 requested, we made the offer that if this didn't
11 satisfy them, that we would be glad for them to go to
12 the Dallas office and confirm the fact that the data
13 from the M-1s, in fact, made it to the consolidated
14 return.

15 At the Prehearing Conference, it was
16 discussed when that trip might take place. And it was
17 never set but it eventually occurred; we worked out
18 terms of an agreement whereby the office of Public
19 Counsel would be allowed to view certain documents.
20 And because of the lateness of that ability for OPC to
21 view those documents, and our concern about whether
22 there would be an opportunity to rebut whatever, if
23 anything, we felt, and were totally confident, that the
24 issue had been resolved. But if they wanted to pursue
25 it that's fine, but we wanted to make sure, you know,

1 that we had a fair shot back if they came back with
2 something else, and so that's why we requested the
3 opportunity.

4 The two people I asked to have added are the
5 people who were the hosts to Mr. Reilly and Mr. DeWard,
6 the custodian of the documents, and also, one of them
7 is the author of the affidavit which is attached to
8 Mr. Seidman's testimony confirming how the tax
9 treatment resulted.

10 COMMISSIONER EASLEY: Thank you. Mr. Reilly?

11 MR. REILLY: Because of the importance of
12 this issue of tax treatment of the construction of the
13 utility plant, we did go to Dallas. We did carry out
14 discovery there. I, for one, have no objection to
15 these witnesses --

16 COMMISSIONER EASLEY: Fine.

17 MR. REILLY: -- being available for questions
18 because we do have questions on a number of these notes.

19 COMMISSIONER EASLEY: Mr. King, do you have
20 any objection?

21 MR. KING: I would like it understood that if
22 these witnesses are permitted to testify and we are not
23 able to explore facts which are logical and should be
24 explored as a result of their testimony, and I think if
25 they're going to testify in line with the comments in

1 this production of document, which is the subject of
2 the Motion to Compel by Public Counsel and also by my
3 Motion to Compel, I think it -- I don't want them to
4 come in here to make self-serving statements, which
5 those are obviously going to be, and we be precluded
6 from going any further on it.

7 I think it's all wrapped up in my request
8 that these issues, which were discovered on the eve of
9 trial, I learned of them yesterday when I saw this
10 motion for the first time and the response from the
11 Utility, and I think they are issues that raise -- they
12 raise fact issues that I would like to explore on
13 behalf of my clients, and we have not had the
14 opportunity to do that, because this was the first time
15 they were raised; because this was the first time the
16 response was made to the request that Public Counsel
17 had made way back in April.

18 COMMISSIONER EASLEY: You're not objecting
19 then to the addition of the two witnesses; you want to
20 make sure they are rebuttal witnesses and that you have
21 the opportunity to cross?

22 MR. KING: No. I want to make sure that I
23 have an opportunity to have the record kept open to
24 look at some of the things they are going to be talking
25 about. The documents that they are talking about, we

1 would like to see the documents. I don't want them to
2 be brought in here and they make sweeping conclusions
3 about what all of these things that are identified in
4 the records that they have produced, portions of the
5 records they have produced, have identified issues that
6 go to the crux of our argument. And I don't want to be
7 bound, have them come in and testify and me learning
8 about it yesterday and have no opportunity to prepare
9 adequate cross examination and rebuttal evidence.

10 COMMISSIONER EASLEY: Ms. Bedell?

11 MS. BEDELL: Mr. King, this is just the
12 Motion to Amend to allow these two people to
13 participate as rebuttal witnesses. We haven't gotten
14 to your motion and the other matters yet.

15 MR. KING: Well, with all due respect, my
16 comment is in relation to -- I can't treat them
17 separately in my mind. They may be in all separate
18 pieces of paper, but it's all tied up in the same
19 issue.

20 COMMISSIONER EASLEY: Well, Mr. King, let me
21 tell you that discovery, the process of discovery
22 stopped when this hearing began. Now, to the extent
23 that we allow rebuttal testimony by these two witnesses
24 as a result of the trip to Dallas, they have not
25 prefiled rebuttal testimony, so no one has had the

1 opportunity to prepare.

2 However, the request for the trip to Dallas was
3 also -- and that trip to Dallas -- also were after the
4 prehearing, so there is kind of a balance, I think, on the
5 discovery side between the Company, Public Counsel, and
6 the intervenors where everything occurred after the
7 Prehearing. But the cutoff date on discovery, and I want
8 everybody clear on that, was when this hearing began. And
9 Mr. Pruitt advises me discovery does not go forward from
10 this point. Is that correct, Mr. Pruitt?

11 MR. PRUITT: That is correct, ma'am.

12 COMMISSIONER EASLEY: So to the extent that
13 we allow these witnesses to be added, they will be for
14 rebuttal purposes. The testimony will have to stand as
15 the testimony stands. It will have to be given the
16 weight to which it is entitled.

17 MR. REILLY: Is it possible to make one more
18 comment?

19 COMMISSIONER EASLEY: One more comment and
20 then we're going to move on.

21 MR. REILLY: Perhaps the Commission has
22 already made its decision with rendering that about
23 discovery has stopped, but, as will be argued later in
24 the other motions, there were revelations discovered at
25 this eleventh-hour visit to Dallas that raised red

1 flags to our office which precipitated our Motion to
2 Compel. I guess we'll argue that at that time. But I
3 just --

4 COMMISSIONER EASLEY: We'll argue that at
5 that time.

6 MR. REILLY: -- felt that obviously one of
7 these witnesses has already signed a sworn affidavit as
8 to the truth of certain items. And I assume that he
9 will be restating those positions again for us today.
10 But there are enough statements against interest in the
11 file that would indicate that we would plead with the
12 Commission to allow one last verification that could
13 arguably be carried out after this hearing is conclude.

14 COMMISSIONER EASLEY: Mr. Reilly, I will deal
15 with that problem --

16 MR. REILLY: At the proper time.

17 COMMISSIONER EASLEY: -- when I get to that
18 problem. Right now I'm dealing with the motion to add
19 two additional witnesses. I'm going to grant the motion.

20 Next motion. (Pause)

21 MS. BEDELL: We have two motions that were
22 filed or -- I received a copy of last night and this
23 morning -- and they appear to be related. Staff would
24 suggest they might be ruled on together. One is the
25 Office of Public Counsel's Motion to Compel, and then

1 the SPOR's Motion to Compel and to keep the record
2 open.

3 COMMISSIONER EASLEY: Mr. Reilly, do you want
4 to lead off? I understand this is in three -- there is
5 really three requests in the Motion to Compel.

6 MR. REILLY: That's correct. And I'll take
7 the most important one first, I guess, and that is this
8 issue can there be some degree of discovery during or
9 after the conclusion of this hearing. And I know that
10 that is not customary to do that, but I want to just
11 very briefly touch upon how we have arrived at where we
12 are today.

13 The order suspending the proposed rates and
14 granting the interim rates was filed by the Commission
15 on March 5th. Our office intervened on March 15
16 shortly thereafter. Within one week our office
17 prepared, basically, the total package of discovery
18 that we were going to pursue in this case, and it was
19 Citizens First Set of Request for Production of
20 Documents.

21 And knowing we had a very limited time, about
22 a 90-day window really to accomplish all discovery, we
23 set it up with, in all fairness, with the full
24 cooperation of the Utility and Utility's Counsel a
25 relatively quickly-scheduled visit to the Palm Gardens

1 Center to really accomplish everything we hoped to
2 accomplish.

3 We went on that trip. Again, a picture is
4 worth 1,000 words. This is the result, basically, of
5 that trip. (Shows) We had a productive trip. I'm
6 here to tell you that the personnel at the Utility
7 worked, I think, cooperatively and with the proper
8 spirit to get our questions answered. And we
9 accomplished a lot in those three days on a wide range
10 of issues that were in that first request. This little
11 bit of material represents the only material we
12 received on one of those important issues, which is
13 what was the tax treatment of the construction of
14 plant?

15 It touched upon some of the numbers;
16 virtually no work papers; from my consultant, it was
17 clearly nothing that he could go on to check off that
18 issue.

19 We, of course, followed up our visit with a
20 letter confirming all the stuff that we had gotten, and
21 confirming also the materials that had not be received.
22 And I'm not going to bore you with all the details.
23 But I have two pages here of communications, basically,
24 between the Utility and the Office Public Counsel on
25 that one -- on those issues of tax treatment.

1 Needless to say, though, during the course of
2 all these status reports going back and forth, we
3 received subsequent materials. Basically, the bulk of
4 this is Schedule M adjustments, which was the Utility's
5 way of saying, "These investments were capitalized and
6 depreciated but they were not part of cost of goods
7 sold. This is our proof of it, review it." And, of
8 course, these were sent to our consultant and he did
9 this. This was all done --

10 COMMISSIONER EASLEY: Mr. Reilly, slow down a
11 little bit.

12 MR. REILLY: For the court reporter?

13 COMMISSIONER EASLEY: Well, not just for the
14 court reporter. You're losing me you're going so
15 fast.

16 MR. REILLY: Okay. All right. Well, this is
17 -- these larger materials that really began to get into
18 the meat of the documentation on the tax treatment came
19 in on March 25, May 1, and May 2.

20 Then that brings us up before the Prehearing
21 where we conceded -- our office conceded that these
22 Schedule M-1s tended to indicate that the plant was
23 capitalized and was depreciated. However, there was a
24 concern, since we had no tie-in, no way to get from
25 these purported treatments to the actual consolidated

1 tax returns, to see this is what really what made its
2 way to the IRS.

3 And that resulted in a letter that I sent to
4 Mr. Girtman confirming the deficiencies, admitting that we
5 had a lot of material but we still hadn't gotten what we
6 really needed to be able to certify to the customers what
7 this tax treatment was. And that's when Mr. Girtman then
8 returned the letter to us inviting us, basically, that if
9 we weren't satisfied to go to Dallas. We made that
10 decision, we went to Dallas.

11 I can just tell you in a nutshell that we did
12 confirm, again with the full cooperation of Mr. Olson
13 and Mr. Lopez, who, I can report to you, work very well
14 with our little two-member team to discover, and we,
15 basically, did see where these Schedule Ms that they
16 had previously given us did, and the numbers there, did
17 fit into the other 300 entities that made the
18 consolidated numbers that eventually were filed with
19 the IRS. And, frankly, that would have been the end of
20 it. We'd have gone back to Tallahassee and, frankly,
21 would have probably checked this off our list.

22 The problem was: once there, while we were
23 looking at the very files that were identified, and I'm
24 sure we're going to, before we're through with this,
25 talk about the Letter of Agreement that specified what

1 we would look at and how we would look at it and what
2 the scope of our review would be. Those same files
3 that SPOR -- the SPUC files and the SPI files that made
4 up for that consolidated return, looking in those
5 files, we came across a number of interoffice memos,
6 accountant's memos and attorney memos that were
7 disturbing to us. I will bring to your attention just
8 two little paragraphs that raised serious questions in
9 our mind.

10 What we're looking at I think you, hopefully,
11 have a copy.

12 COMMISSIONER EASLEY: It's attached to your
13 motion?

14 MR. REILLY: I can tell you, I have -- there
15 is going to be a line of questioning later when the
16 witness comes up. I'd be happy to give you that little
17 package because I'll be referring to the same documents
18 if I can pass that out at this time.

19 COMMISSIONER EASLEY: Fine. We need to
20 shorten this particular process as much as we can,
21 however. I'm getting ready to give you what the
22 schedule is going to be. (Hands documents to reporter
23 and Commissioners.)

24 COMMISSIONER EASLEY: All right.

25 MR. REILLY: There were, by the way, four

1 critical memos. They are numbered 16, 17, 18 and 19.
2 I will make reference for purposes of this argument to
3 only two of the memos.

4 COMMISSIONER EASLEY: And that's the hand-
5 written number at the top of the page.

6 MR. REILLY: Handwritten number at the top of
7 the page. These are just, again, selected pages from
8 the memos that we discovered in the files.

9 COMMISSIONER EASLEY: Well, now, after I said
10 that there are two handwritten numbers at the top of
11 some pages. Are you talking about a number 18 with
12 Page 11? Because I have a number 18 with Page 12.

13 MR. REILLY: Right. The number -- I see you
14 have -- I was going to say it's the circled number but
15 I noticed on No. 18 --

16 COMMISSIONER EASLEY: There are two circles.

17 MR. REILLY: Yeah. There's two circles.
18 It's 18 is the correct number.

19 COMMISSIONER EASLEY: 18, well, I have two
20 18s. Are we talking about 18-11 or 18-12, which was a
21 bad year as well. (Laughter)

22 MR. REILLY: Let me say -- let me just refer
23 you to the third page, if you would. It's got a
24 circled No. 16 on it. It's identified more
25 particularly as a --

1 COMMISSIONER EASLEY: It's marked "Memo to
2 File, December 14, 1979?"

3 MR. REILLY: That's correct. It's identified
4 a little more particularly by Mr. Girtman's response
5 and this is just Page 3 of that. And I'll direct your
6 attention to the bottom paragraph on Page 3. It reads
7 "Sailfish Point Utility Corporation, SPUC, will
8 construct and operate a water facility at Sailfish as a
9 regulated public utility." This is a fairly key
10 sentence. "Sailfish will drop land into SPUC and will
11 try to translate its investment in SPUC into its land
12 basis."

13 So there it seems that it's being stated as a
14 tax strategy that they will both attempt to contribute
15 these assets, these utility assets, to SPUC and at the
16 very same time attempt to --

17 MR. GIRTMAN: Objection. Commissioner,
18 Mr. Reilly is characterizing this document. I think it
19 speaks for itself. Those words are those words, and if
20 he wants to argue about what that means that's one
21 thing, but he's mischaracterizing the document.

22 COMMISSIONER EASLEY: Well, I think --

23 MR. REILLY: I'm allowed to argue at this
24 point. I'm arguing my motion.

25 COMMISSIONER EASLEY: The point -- gentlemen

1 -- the point of Mr. Reilly's presentation right at the
2 moment is to, I assume, show me the importance of
3 allowing these additional documents. So I will allow
4 the explanation without going too far into the merits,
5 please, sir?

6 MR. REILLY: Right. Well, needless, the
7 Commission will draw its own conclusion as to what
8 these words say. But to me they draw an inference and
9 a concern that there was perhaps a dual strategy of
10 conveying it on one part to the Utility and at the very
11 same time including it in the cost basis of the land.

12 The only second one I bring to your attention
13 would be, this would be Item No. 17, and it would be
14 Page 3.

15 COMMISSIONER EASLEY: Now, this is the one,
16 the handwritten memo to file --

17 MR. REILLY: That's correct.

18 COMMISSIONER EASLEY: -- January 7th, it
19 doesn't show a date. But it shows "1980 tax rev."

20 MR. REILLY: According to Mr. Girtman, this
21 is a 1980 memo to file. It's apparently dated January
22 9, 1981. I'm afraid your copy doesn't show that. It
23 is a 1981 --

24 COMMISSIONER EASLEY: Okay.

25 MR. REILLY: -- on there relating to various

1 MLDC projects. And with reference to the Sailfish
2 Point project, the very last paragraph on Page 3 reads,
3 "In 1981 when assets and land transferred to SPUC --"

4 COMMISSIONER EASLEY: Hold the phone. You
5 are -- okay.

6 MR. REILLY: I'm sorry. This would actually
7 be C.

8 COMMISSIONER EASLEY: You're on the third
9 page of attachment No. 7.

10 MR. REILLY: 17.

11 COMMISSIONER EASLEY: 17, all right.

12 MR. REILLY: And we're actually reading where it
13 says "Tax Questions No. 3" and then we're reading C.

14 COMMISSIONER EASLEY: I have it now.

15 MR. REILLY: Paragraph C. And it said,
16 "In/or 1981 when assets and land transferred to SPUC,
17 dash, should SPUC depreciate and claim ITC while SPI
18 includes in basis in order to protect audit position?"

19 Now, I would hate to even suggest what that
20 possibly means. We have some witnesses today that we
21 will hopefully explore some of the meaning, but, again,
22 this is a pretty strong inference that -- as I said, it
23 would have been a closed -- it is an inconsistent
24 treatment to have capitalized and to have depreciated
25 those assets while at the same time, you know, doing

1 the cost of goods sold.

2 Because of these flags and because of
3 discovery of these memos, we became very concerned that
4 we could look the customers in the face, and say, "Yes,
5 we can really check this item off." Because, and I'll
6 give you from my personal experience, in a case not
7 long ago in ITT Community Development Corporation.

8 MR. GIRTMAN: Objection, Commissioner.

9 COMMISSIONER EASLEY: State the objection.

10 MR. GIRTMAN: Mr. Reilly has a case before
11 him and we need to treat that case.

12 Now, if he wants to paint with such a broad
13 brush with innuendo, then I suggest that it might be
14 fruitful some other place. But this really is not the
15 place to make accusations against this Company and this
16 case from something else somewhere that you may have
17 seen or done.

18 COMMISSIONER EASLEY: Well --

19 MR. REILLY: Could I respond to that before
20 you rule?

21 COMMISSIONER EASLEY: Very briefly, Mr. Reilly.

22 MR. REILLY: Very briefly, I want to make it
23 perfectly clear today that I'm not casting any
24 accusations. There is a question that has been raised
25 that needs to be resolved. I have no preconceived

1 conclusion as to what we will find when we carry out
2 what I think would be a four to eight-hour investigation
3 of this documentation that needs to be checked on.

4 I can't venture a guess. I'm not saying that
5 this -- that Mobil has, in fact, done what they say
6 they contemplate -- they appear to say they
7 contemplated doing. I'm just saying, in light of this
8 fact, it would have been very easy for Public Counsel
9 to say, you know, "They've shown us document, it's
10 several days before the hearing, let's sweep it under
11 the rug." But I just simply could not do that, and I
12 thought it was appropriately brought to this Commission
13 to do with it what it would choose to do.

14 COMMISSIONER EASLEY: That's a slightly
15 different argument than where you were headed and I
16 think is a more appropriate argument. Are you finished
17 with your presentation?

18 MR. REILLY: No. Because I only touched on
19 the one issue. I have for touch on the other two.
20 Remember --

21 COMMISSIONER EASLEY: That's right. I'm
22 almost separating these into three motions.

23 MR. REILLY: Well, basically just to conclude
24 the first.

25 COMMISSIONER EASLEY: All right.

1 **MR. REILLY:** It's a terribly important issue.
2 There are these serious red flags, I do -- I'm very
3 mindful of what Mr. -- you know, what has been said
4 about discovery, that is normal. Obviously, I'm
5 hopeful that the Commission can also be advised that it
6 has been -- that certain items have been kept open even
7 after the hearing.

8 **COMMISSIONER EASLEY:** Tell me specifically
9 what this motion seeks to do.

10 **MR. REILLY:** I would seek that, upon the
11 conclusion of this hearing, that because of these red
12 flags being raised, that the Office of Public Counsel
13 be permitted to go to the offices of Mobil Land
14 Development Corporation, right here in Palm Beach
15 Gardens, and just double-check the calculations that
16 make up the cost of goods sold for SPI only for the
17 years 1980 through 1984.

18 **COMMISSIONER EASLEY:** And then do what with
19 the information after you get it, if it's after the
20 hearing?

21 **MR. REILLY:** If it be after the hearing, we
22 would submit the results of that investigation, which
23 might be that it confirms everything that the Company
24 has said is absolutely correct. If it does not confirm
25 it, then obviously the Utility would be given an

1 opportunity to rebut, and the Commission itself, heaven
2 forbid, could even schedule a very brief hearing in
3 Tallahassee for the sole purpose of receiving oral
4 argument. But an oral argument would not be
5 necessarily granted. It would be just like briefing.
6 And if an oral argument was deemed necessary, the
7 Commission could so order it. If not, it could so
8 order it.

9 COMMISSIONER EASLEY: All right. Before we
10 go on to the other two parts of this motion, let me go
11 ahead and hear from Mr. King on this part of his motion
12 and we'll get Mr. Girtman's response on this part of
13 the motion. I would think I would rather keep them in
14 a piece, if you don't mind. Mr. King.

15 MR. KING: Thank you, Madam Commissioner.

16 I think this whole topic brings us right to
17 the crux, certainly, of what the intervenors' position
18 is in this case. And what you heard from the customer
19 testimony this morning, which was I thought, very
20 articulately stated, that they feel that they were
21 promised, and we contend that the documents show and
22 are consistent with such promises, that the entire cost
23 of these utilities were contributed by Mobil to this
24 development as part of the infrastructure of this
25 development. We have. Now, that I saw yesterday for

1 the first time, and let me back up just a minute.

2 We did not get into this case officially
3 until May 9 when the order was allowed allowing us to
4 intervene. By that time, Mr. Reilly's attempts, and
5 Public Counsel's attempts to get information from the
6 Utility were already underway. They'd had a three-day
7 session where their people looked here at Sailfish
8 Point and also down at Palm Beach Gardens.

9 We had hired beforehand an accountant to help
10 us. When we found out Mr. DeWard was going into these
11 kinds of things, we talked with Public Counsel
12 deliberately, did not go into those because, as Mr.
13 Girtman had stated I think in the motion objection to
14 us intervening, that he said we would just piggybacking
15 on Public Counsel, or we were double-whammying him is
16 what I would say is what his argument was.

17 So in a attempt to avoid that, we agreed that
18 Mr. DeWard would go ahead and look at these accounting
19 issues, and, frankly, his initial response, as I
20 understood it, would be it looked like they'd given it
21 proper accounting treatment. But there were some
22 things they had not yet seen, and Mobil Land and Palm
23 Beach Gardens said they were not available, they were
24 going to get them from Dallas and they would make them
25 available.

1 Now, what happened I understand they never --
2 apparently were not made available sufficiently and
3 they went to Dallas. Dallas has now produced -- the
4 Utility has produced a document that it has chosen to
5 expurgate certain portions of that relate to Sailfish
6 Point, the developer, which is inextricably involved in
7 this whole rate case.

8 COMMISSIONER EASLEY: You're on your Motion
9 to Compel now, Mr. King.

10 MR. KING: Yes, ma'am, I understand. And I
11 want -- I mean, this is the crux. And if the
12 Commission doesn't get anything but this, then I will
13 have done my job, if you get this.

14 COMMISSIONER EASLEY: Well, we're on the
15 first part of the motion is what I'm trying to remind
16 you of, that's the --

17 MR. KING: Well, I'll take this from my time
18 for the second part if it's okay.

19 COMMISSIONER EASLEY: All right.

20 MR. KING: My point is that here we find in
21 their own documentation that the Mobil people sat some
22 place, sometime in West Palm Beach, some place in
23 Dallas sometime, to talk about exactly the thing we're
24 talking about here. And that is, whether these
25 facilities were to be contributed to this development

1 as part of the cost of the real estate sales. They had
2 meetings about it, they talk about meetings that they
3 had about it. They make reference to studies about it.
4 They also go ahead and have some self-serving
5 statements that say, "Well, we abandoned all of that."

6 I contend that we have a right to go into
7 what has been divulged by these documents. I further
8 contend that no due process that I'm aware of should
9 permit the developer in this case -- Mobil, whoever it
10 is, Sailfish Point, SPUC, they're all intertwined --
11 Mobil has chosen to treat their taxes as a consolidated
12 tax basis. It's chosen to make these memorandums with
13 regard to other people. We did not do that.

14 And I think no due process requirement of
15 which I'm aware would permit a party to come in on the
16 day, the eve of trial, and say, "Okay, I'm going to let
17 you see just what I want you to see and you're not
18 entitled to see any more of it and it's too bad,
19 because it's the day of trial and just tough. We just
20 can't -- you just can't deal with it." And if that's
21 the kind of due process that we get before this
22 Commission, I think it is in error and I do not think
23 it should be allowed.

24 Now, whether you can deal with that by merely
25 adjourning these proceedings until we can have an

1 opportunity to explore this and we may come out and
2 find that, yes, they're absolutely right. But until
3 you can adjourn, I think you take the testimony here,
4 adjourn the proceedings, if that's possible, and then
5 have it scheduled again sometime to go into what we
6 have discovered.

7 Now, that's what, basically, I think needs to
8 be done. And I just think it would be -- this is the
9 very crux what have we're talking about here. And for
10 them to come in on the day before trial and say, "Here,
11 we're going to give you this amount but yet we show you
12 in here that we talked about it, but we abandoned
13 that," I think it's absolutely improper to permit that
14 kind of tactic in these kinds of proceedings.

15 COMMISSIONER EASLEY: Thank you. Mr. Girtman?

16 MR. GIRTMAN: Thank you, Commissioner. At
17 2:38 yesterday afternoon, I received the fax of a
18 Motion to Compel that was signed by someone for Stephen
19 C. Reilly and I just want to confirm for the record who
20 the signatory for is, first of all. Who signed it?

21 MR. REILLY: Of course, I was already here at
22 the hearing.

23 COMMISSIONER EASLEY: I understand.

24 MR. REILLY: So it was generated in our
25 office and, of course, faxed to everybody to try to

1 give as quick a notice as possible. I have a hard time
2 making out that signature myself, but I believe it is
3 Rick Mann who is an attorney in the Office of Public
4 Counsel. And it is our practice to sign pleadings for
5 attorneys that happen to be out of the office.

6 COMMISSIONER EASLEY: All he asked was who it
7 was.

8 MR. REILLY: I believe that's Rick Mann.

9 COMMISSIONER EASLEY: Thank you.

10 MR. GIRTMAN: My second question is just to
11 confirm for the record that this is your motion and
12 that, had you been in Tallahassee, you would have
13 signed this motion?

14 MR. REILLY: Absolutely, yes. (Pause)

15 MR. GIRTMAN: Okay. Commissioners, if I had
16 had time, I would have prepared and filed a written
17 response to this document. I know there are very few
18 people here that are concerned about it, but when I
19 received this document and I read it, in my 17 years of
20 practice of law, I have never been so disappointed in
21 reading something that has been filed in a legal
22 proceeding.

23 If I had an opportunity to have filed a
24 written response, I could have more clearly provided a
25 presentation on it -- certainly, more clear than I can

1 verbalize in the short period of time I have had to
2 review it, to search for documents and to present a
3 coherent response. And certainly everyone could speed
4 read a written document far faster than they can speed
5 hear my slow southern drawl.

6 The request, essentially, is in three parts,
7 as you have noted. And I will deal first with just the
8 first part.

9 COMMISSIONER EASLEY: Limit it to that at
10 this point, please, Mr. Girtman.

11 MR. GIRTMAN: I will. The First and Second
12 Requests for Production were fully complied with in a
13 timely manner, and there were only two or three requests
14 which the Utility found objectionable out of all of the
15 numbers and volumes of documents which Mr. Reilly has even
16 shown you today.

17 What they are requesting today was never in
18 the first or second requests, nor is it in the third
19 request, for that matter. I would like to recite for
20 you, and I will do it as short as I can, the relevant
21 dates.

22 The case was filed in December 1990. March
23 15th, 1991, OPC filed its Notice of Intervention.
24 March 22nd, OPC filed its First Request for Production.
25 March 29th, the Utility filed General Objections to the

1 OPC's First Request. Primarily, those objections were
2 based upon the fact that they did not have the
3 documents which were being requested. However, despite
4 the objection, the Utility stated that they would try
5 to get them and provide them.

6 By telephone request, the Office of Public
7 Counsel was given the opportunity on the dates they
8 wanted, April 1st, 2nd and 3rd, to come to Palm Beach
9 Gardens to look at the records, to come to Sailfish
10 Point to examine the plant. They brought their
11 engineers, they brought their accountant, they brought
12 their lawyer.

13 I, being mindful of rate case expense in this
14 case, did not come as I ordinarily would have. I
15 ordinarily would not allow an opposing attorney and CPA
16 and engineer to sit down with my client. But I did not
17 -- I did not come down here because I was sensitive to
18 about three-and-a-half days of expenses that would have
19 loaded into this rate case expense.

20 On April 10, Mr. Reilly sent me a letter
21 acknowledging receipt of certain documents responding
22 to the First Request for Production. And in that
23 letter, he made what I thought were some at least
24 misinterpretations and I subsequently responded to
25 those, which I'll mention in a minute.

1 On April 15th, OPC filed its Second Request
2 for Production. On April 19, the Utility filed another
3 general objection, reciting that it did not have the
4 documents but it would try to get them and provide them
5 to OPC.

6 As a part of that second objection, there's a
7 paragraph here I'd like to read it into the record.

8 This is from the Utility's Objections to Citizens
9 Second Request for Production of Documents, and I
10 submitted it April 19. Paragraph 3, "By hand delivery
11 on April 11, counsel for the Utility received OPC's
12 letter dated April 10 acknowledging receipt of certain
13 documents in response to the Citizens First Request for
14 Production. The Utility objects to representations in
15 that letter that any documents or information would be
16 made available except through an appropriate discovery
17 request. The Utility's counsel did not attend the
18 three-day discovery visit to the Utility so as to help
19 minimize rate case expenses, but the Utility's counsel
20 was available by telephone to discuss any additional
21 matters. Therefore, the Utility takes exception and
22 objects to any representation that any document or
23 information would be made available in response to an
24 improper discovery request made directly to an employee
25 utility-related personnel regardless of that person's

1 response. The Utility further requests that any
2 discovery by OPC be filed in accordance with the
3 controlling rules of discovery so that it can be
4 reviewed and handled in the proper manner." (Pause)

5 Although it is not required by the Rules of
6 Civil Procedure or the rules of this Commission, having
7 dealt with the problems of discovery in similar
8 circumstances, I took it upon myself to file a status
9 report periodically during this preparation of the
10 documents to be presented to OPC. The first status
11 report, April 19, recited that most of the documents
12 had been provided April 1st through the 3rd during
13 their visit here in Sailfish Point. (Pause)

14 The second status report recited that most of
15 the documents had been provided April 24th and 25th.
16 It was filed April 25th.

17 Our third status report, filed May 2nd,
18 recited that most of the documents remaining or the
19 documents remaining had been served May 1st and 2nd.

20 Now, it is significant to note that in the
21 third request -- excuse me, the Utility's Third Status
22 Report of Response to Citizens' First and Second
23 Requests for Production, it, like the other two status
24 reports, recited first all the documents that had been
25 provided since the previous status report and when they

1 were provided. The first, second and third status
2 reports also at the end recite all of the remaining
3 documents which had yet to be provided in the First and
4 Second Requests for Production filed by OPC.

5 In that third status report dated May 2nd,
6 1991, the last paragraph states, "In conclusion, the
7 Utility's response to OPC's First and Second Requests
8 for Production has been completed." May 2nd, 1991.

9 June 17th, OPC files its Third Request for
10 Production based upon its visit to the Dallas Accounting
11 Offices on June 13th, which was based upon the Letter
12 Agreement of June 12th.

13 On June 21st, Mr. Reilly -- while I was
14 trying to prepare and finalize and get all these
15 documents together and get my client to waive any
16 confidentiality questions on the documents other than
17 16 through 19, to waive attorney/client privilege, to
18 waive accountant/client privilege as to those matters
19 in documents 16 through 19 that were relevant to this
20 case. I succeeded in doing that.

21 This company has been very forthcoming in
22 providing information, in being receptive to the dates
23 requested, providing people to find the documents, find
24 the information, provide it to OPC, explain it to OPC
25 where they had a question. I offered for them to go to

1 Dallas to look at those records if they couldn't be
2 satisfied that the M-1s that were filed with the tax
3 returns, in fact, got to the tax returns.

4 While I was doing all that, Mr. Reilly called
5 me by telephone with a friendly request, he wanted to
6 have an accountant go into the MLDC offices in Palm
7 Beach Gardens to confirm that the operating expenses of
8 the Utility had not been written off as a cost of goods
9 sold. That was a request. That's what he wanted.

10 At first blush, I couldn't understand what
11 relevance how those expenses might have been treated --
12 they're expenses, regardless of where they go or what
13 they do. But regardless of that, I had gone through
14 two days of getting everything together to give to the
15 Office of Public Counsel. I had deferred preparing for
16 this case because I was trying to deal with and get all
17 this stuff approved and released so that we wouldn't
18 have accusations and innuendoes about hiding something.

19 On June 21st, I filed our response to the
20 OPC's Third Request for Production. And in the process
21 of doing this, I had tried to find a way to speed up
22 the delivery and not have to come to the Commission and
23 ask for confidential handling. In the process of
24 drafting the June 12th Letter of Agreement for the
25 visit and in subsequent considerations of how to get

1 the information to them, it had been my thought that
2 any document in there which might have to have
3 something blacked out, I would have Mr. Reilly come to
4 my office, I'd sit one set down here, I'd sit one set
5 down there, and let him see that it didn't relate; it
6 was not relevant to this case.

7 When I found out that the four documents in
8 question were covered by the attorney/client privilege
9 and the accountant privilege, I won't go into all my
10 thoughts, but it made it impossible for Mr. Reilly --
11 for me to have Mr. Reilly to come to my office and
12 confirm that because it would, in fact, constitute a
13 waiver.

14 On June 25th, I received Mr. Reilly's Motion
15 to Compel. On our conversation last Friday, I objected
16 to his request, informal request, to go down there. It
17 was not based on any written discovery. He insisted.
18 And it was my understanding he probably filed a motion.
19 I called the head of the Office of Public Counsel and
20 complained about it because of the late discovery.

21 I got a call back from the head of the Office
22 of Public Counsel and, after discussions within their
23 office, they had decided that since this was a late
24 request, they would not pursue it. Mr. Reilly's words
25 and the head of Public Counsel both said, "We'll save

1 this for next time."

2 Mr. Reilly came to my office subsequent to
3 that and confirmed again that it was late.

4 Had nothing to do with all of this stuff in
5 this Motion to Compel.

6 As I said before, the Utility has fully
7 complied with the Request for Production No. 1 and No.
8 2, and it stated so in its May 2nd status report. His
9 Motion to Compel was filed June 25, one month and 23
10 days after we had finished filing and had stated in our
11 status report, "This is all there is, we have complied
12 with your request." There had been no objection; there
13 had been no compliant; there had been no telephone call
14 to me, "We need more stuff." One month and 23 days.
15 And here the day before the hearing, I get a motion
16 faxed to me that reads the way that thing does.

17 Now, I'm getting pretty close to the end, it
18 won't take a minute or two.

19 COMMISSIONER EASLEY: You've covered two out
20 of the three, by the way.

21 MR. GIRTMAN: Have I? Okay, excuse me.

22 I think I've said enough on that.

23 COMMISSIONER EASLEY: All right. Ms. Bedell,
24 do you want to get in on this?

25 MS. BEDELL: I don't need to add anything

1 more.

2 COMMISSIONER EASLEY: Thank you.

3 MR. REILLY: Do I have any opportunity to
4 respond to all that was said?

5 COMMISSIONER EASLEY: Let me ask a question
6 before I give you the opportunity to respond extremely
7 briefly. Let me tell you all, we have just spent 45
8 minutes on the first part of this motion and we've got
9 a problem if we're going to go at this speed on the
10 rest of this. I just want to call this to your
11 attention.

12 Let me ask you, Mr. Girtman, would you be
13 able, since you're producing some rebuttal witnesses in
14 addition to those on the Prehearing Order now, would
15 either one of those witnesses or another individual
16 from the Company be able to answer any questions that
17 have been raised by OPC in their motion concerning
18 specifically the inconsistent treatment, apparent
19 inconsistent treatment by Mobil in the costing and
20 putting the assets into the utility?

21 MR. GIRTMAN: We have Mr. Olson here, who
22 provided the affidavit. And he is going to testify
23 about the tax treatment, how it happened. Now, the
24 problem with these documents -- and I knew there would
25 be a flail with Mr. Reilly on this stuff and I said,

1 "Disclose it, there is nothing there that hurts the
2 case, disclose it." And they did.

3 COMMISSIONER EASLEY: Well, the answer to my
4 question is somebody is going to be here to respond to
5 questions on those two specific areas that have been
6 raised by the motion? Is that correct?

7 MR. GIRTMAN: Yes, ma'am. He'll respond. I
8 do want to clarify one point.

9 COMMISSIONER EASLEY: Okay.

10 MR. GIRTMAN: And that is my concern, and I
11 won't go into it in this proceeding, but my concern
12 about the fact that these are privileged documents.
13 Mr. Reilly suggested that maybe the privilege had been
14 waived, but I'm not going to go into all of that, but we
15 claim it wasn't waived.

16 We want to give the Commission everything
17 that's relevant and perhaps -- let me ask, maybe we can
18 focus on this thing and get right to it if Mr. Reilly
19 has got a concern or a thought or something. When he
20 was in my office, he pointed to -- took it down the
21 hall and looked at it and came back. Pointed to, I
22 think it was Document No. 17, where there's a name
23 Sailfish Point, Inc. that's blank on Pages 1 and 2.
24 And he said something about it contains something, he'd
25 read it, contains something and I don't remember

1 exactly what it was. If you'll explain to me exactly
2 what it was --

3 MR. REILLY: We will get into No. 2 any time
4 the Commission wants to do it, but are we still on 1?

5 COMMISSIONER EASLEY: Well, I think we've been
6 into it for a few minutes, Mr. Reilly. I'm going to give
7 you an opportunity to respond to No. 1 and No. 2, and I
8 hope you can keep it brief because I have a suggestion, in
9 a few minutes, that may get us out of here.

10 MR. REILLY: There was -- let me say we
11 always like to treat people fairly and there was a
12 legitimate concern in our office about any eleventh
13 hour discovery. You know how we've gotten into it
14 because of the Dallas trip. You've saw what we found.
15 Again, sweep it under the rug or go with it.

16 So, frankly, we had a practical problem. I
17 didn't even have an accountant. Mr. DeWard was going
18 to be in Nevada that entire week. So we were able at
19 the end of the week to find an accountant who could go
20 in there and do that.

21 The issue about him calling Jack Shreve up to
22 get him involved in all this, I don't want to get into
23 all that except to say that, of course, Mr. Shreve
24 didn't have the benefit of the full information. He
25 implied that we that surely could have gotten this

1 information on the cost of goods sold when we were down
2 on the 1st to the 3rd.

3 When Mr. Shreve had the opportunity to talk
4 to Mr. DeWard and myself and found out what we did
5 receive there and after our request -- like I said, it
6 was a very productive trip. Everyone -- there's been
7 general cooperation. We've not been before this
8 Commission in this case seeking Motions to Compel. And
9 I mean that says a lot. Our office does that when we
10 can't get what we need to get. So I won't even
11 disagree with a lot of what he has said today about the
12 flow of all this.

13 I do take exception with his statement that
14 as of a certain date we hereby certify that everything
15 is settled and we have given you everything we have.
16 He neglected to mention that I did respond to that
17 statement by the Utility saying that you didn't and, of
18 course, it was as a result of that letter that we went
19 to Dallas.

20 MR. GIRTMAN: No, sir.

21 COMMISSIONER EASLEY: Hold it, we are not get
22 this started. I will not permit it.

23 MR. REILLY: So it is regrettable. I admit that
24 on the 11th hour. But it was so disturbing and, again, I
25 wasn't allowed to bring out that we have faced this is

1 prior cases where this kind of double treatment had
2 happened and I just could not sweep it under the rug.

3 COMMISSIONER EASLEY: Mr. Reilly, would you
4 address the second part of this as to the four documents?

5 MR. REILLY: Okay. Supplying the deleted
6 language?

7 COMMISSIONER EASLEY: Please.

8 MR. REILLY: Here we've got a "He said/they
9 said" business. Basically, what he told you was my
10 understanding, too, that he was doing what he could to
11 make this as streamlined as possible to avoid
12 confidentiality problems, because we agreed that, to
13 the extent anything was proprietary business and wanted
14 to be handled in a confidential manner, that would
15 something we'd be -- I'm talking too fast, that we
16 would bring to the Commission. So all that was
17 understood.

18 But he made a lot of statements about what
19 was in the scope of what we were going to look at, and
20 I contend that the Letter of Agreement spelled that out
21 fairly quickly. If you will turn to that, that would
22 be his Exhibit B on his rather lengthy "Utility's
23 Response to OPC's Third Request for Production."

24 In the first page, it says, referring to an
25 earlier letter, it says, "If after receiving the

1 additional confirmation here, you feel it's necessary,
2 your witness will be provided access to the tax returns
3 at Mobil's Dallas office for all years relative to the
4 Utility so that he can confirm the inclusion of
5 Schedule 1s," which Mr. Girtman mentioned many, many
6 times was our supposed sole purpose for going there,
7 and any other relevant information he wants to examine
8 was the letter of understanding.

9 Please go to Page 2 in the top of one, two,
10 three, four, five lines down, this is again talking
11 about in addition to separate -- this is what we're
12 going to look at. In addition to this Schedule M, all
13 that's talked about up there. In addition, you will
14 look at the separate return files and related
15 workpapers for Sailfish Point Utility Corporation and
16 Sailfish Point, Inc., which were the very files we did,
17 in fact, look at when we were there. And it was in
18 those files that the memos were found.

19 And final argument on scope is to me the most
20 important sentence of the entire Letter of Understanding;
21 and that is we have said that you are going to look at all
22 these things that we think will solve all these problems
23 but we understand, this is the last sentence in the first
24 paragraph on Page 2, "We understand that the Public
25 Counsel is attempting to verify the final tax treatment

1 given to the construction of utility plant in service at
2 Sailfish Point." Therein lies the scope of this discovery
3 and it was well within that scope, well within the proper
4 files, that we discovered these memos.

5 Now as for waiver. I do believe, and you'll
6 remember -- here's this next paragraph that dealt with
7 the issue of what we'll do once we've identified what
8 we want to have. And he will go through confidentiality.
9 I do not believe that that paragraph there is operative on
10 the issue of labor. I think that he said he was concerned
11 that my even looking in his offices at the material that
12 was extracted versus the material that was not -- that my
13 mere looking at that would cause a waiver.

14 Guess what, I agree with him. It does.
15 That's what the law says. You know, if you voluntarily
16 give it to someone, you've waived the attorney/client
17 accountant/client privilege.

18 I contend that when they gave us the files
19 that we were supposed to look at and they put those
20 memos in those files constituted a waiver. Whether you
21 accept that argument or not, Mr. Girtman in his
22 response, if I can find it here, he waives it again.

23 Let's look on Page 2 of his Utility Response
24 to OPC's Third Request for Production, Paragraph 4. He
25 says, one, two, three, four lines down, "hereby agrees

1 to a limited waiver of attorney/client and
2 accountant/client privileges as to those four
3 documents," this is documents 16 through 19, "only to
4 the extent that the four documents relate to Utility
5 assets currently or previously held by Sailfish Point
6 Utility Corporation or Sailfish Point, Inc., but not as
7 to any other subsidiaries or as to any other matters
8 unrelated to the Utility at Sailfish Point."

9 When I -- it did happen. When he gave me the
10 materials, I thanked him for them, I was walking down the
11 hall. If first darned thing I did was I pushed to some of
12 the memos, and I came across "Sailfish Point, Inc."
13 blotted all out. And I went back to our Letter of
14 Understanding that said if it had to do with Sailfish
15 Point, Inc. -- and by the way, please understand, we're
16 talking about 1980, '81, '82; Sailfish Point, Inc.
17 owned, operated constructed the utility assets in those
18 years. If the project Sailfish Point, Inc. is not
19 relevant and subject to this waiver, I honestly don't
20 know what would be.

21 So I contend, unlike what he suggests, that
22 our narrow objective was only for Schedule M, you know,
23 carry-through, which we did investigate and which we
24 did confirm. I contend the Letter of Agreement as well
25 as his response makes it clear. What I had understood

1 -- and I even agreed to it on the phone as you will see
2 other entities in here, and I'll wrap this up. There
3 are other entities in some of these memos that are
4 clearly Brickton, Suwannee Creek, that's what I thought
5 he was going to white-out when he says, "You won't have
6 to review it."

7 I said "Fine. I don't have to review that. I
8 can see that that doesn't have to do with our
9 proceeding." But you're telling me a 1980 document on
10 tax treatment of utility -- you know, dealing with
11 Sailfish Point, Inc. is not relevant and not subject to
12 the scope, I strongly take exception to.

13 COMMISSIONER EASLEY: All right, I'm --

14 MR. GIRTMAN: If I could briefly respond,
15 Commissioner, I think I can help out this.

16 COMMISSIONER EASLEY: We're going to have to
17 make it real brief and it had better be helpful.

18 MR. GIRTMAN: All right. When Mr. Reilly
19 came back into my office concerned about Document No.
20 17, the Sailfish Point Inc. reference, he said he had
21 read it and it was relevant. Okay. I figured I'd
22 better follow up. So I did. I made some phone calls.
23 He said "No, it's not relevant. It has nothing to do
24 with the Utility, it's not relevant to this."

25 I said, "Look, Mr. Reilly says there's

1 something in there, he says it's relevant to this case.
2 If I go down there and I can't do something to convince
3 the Commissioners that's not true, then we are just
4 going to be painted with a great big black brush."

5 I went to the well the last time and I got
6 them to agree to include that paragraph in the limited
7 waiver, and I have it here and I will file it right now
8 with the Commission.

9 COMMISSIONER EASLEY: All right, what I'm
10 going to do: Number one, I'm going to defer the ruling
11 on the first part of the Motion to Compel. The Company
12 has said that they have a witness who can answer some
13 of the questions. After the completion of that
14 testimony, if it is necessary to renew the motion, I
15 will deal with the motion at that time. It may not be
16 necessary to renew that after that cross examination is
17 over.

18 As to pages of memoranda and notes numbered
19 16, 17, 18 and 19, I wish to be provided specifically
20 with those pages now. I want to see the expurgated
21 copy and I want to see the actual copy and I will rule
22 on them page-by-page.

23 MR. REILLY: A 10-second comment. Please
24 understand, we were looking at these in Dallas real
25 quickly and I can't tell you today whether that

1 paragraph reading, you know, is, in fact, relevant.

2 **COMMISSIONER EASLEY:** Mr. Reilly, that's why
3 I'm asking for the pages because there's no way from
4 this discussion that I can figure out how to rule on
5 this.

6 **MR. REILLY:** Nor I.

7 **COMMISSIONER EASLEY:** I'm going to look at
8 the pages and make a ruling. We'll take a five-minute
9 recess while we get the pages.

10 **MR. GIRTMAN:** Commissioner, could I ask?
11 Just a moment. I need to make a phone call --

12 **COMMISSIONER EASLEY:** We will make a
13 ten-minute recess --

14 **MR. GIRTMAN:** And provide it to you in
15 camera, fine.

16 (Brief recess.)

17 - - - - -

18 **COMMISSIONER EASLEY:** Let's come back to
19 order.

20 **Mr. Girtman,** I understand you bring the stone
21 tablets.

22 **MR. GIRTMAN:** They're about that heavy,
23 Commissioner.

24 **COMMISSIONER EASLEY:** That's what I figured.

25 **MR. GIRTMAN:** It's sometimes difficult to get

1 hold of these folks, and when you do these tax people
2 are most reluctant to let any of their documents out
3 for any reason.

4 I have been in communication with the
5 appropriate personnel and they have consented to
6 present to Commissioner Easley, in camera, for
7 consideration, for a side-by-side consideration for
8 each of the redacted paragraphs, these four documents,
9 No. 16, 17, 18 and 19. It is our understanding that if
10 the Commissioner rules that any part of these documents
11 is relevant exclusively to this Utility proceeding,
12 that portion then will be made available in response to
13 discovery; and if not, it will not be made available in
14 response to the discovery.

15 Quite frankly, we ourselves had thought about
16 the question of presenting to one of the Commissioners,
17 or the Commissioner's attorney, these documents for an
18 in camera examination. The questions arose as to
19 waiver of the privileges, and we were also concerned
20 about improperly putting a burden on a public official
21 to make a decision in this kind of forum under these
22 circumstances because we're convinced that none of
23 these paragraphs are relevant to this proceeding.

24 We do ask that in the consideration that when
25 the judgment is made, that due consideration be given

1 to the position of the owners of the documents, that
2 they are internal tax documents, that they are
3 preferred not to be disclosed, that the standard be
4 when reviewing them not be one of disclosing any
5 portion of that just so that it would be available and
6 would then show that it's not applicable, but we
7 request a proper high standard on applicability, and I
8 will now present you these four documents.

9 COMMISSIONER EASLEY: Before you do so, Mr.
10 Girtman, let me ask specifically the confidentiality
11 and the reason for the in camera that you are
12 requesting. Is it based on proprietary or is it based
13 on attorney/client privilege or --

14 MR. GIRTMAN: We don't waive any right. We
15 claim them all.

16 COMMISSIONER EASLEY: All right. So the
17 issue -- the bottom line issue then is relevancy, and I
18 will have to make a determination of number one, as to
19 relevancy; number two, whether or not proprietary or
20 attorney/client prevails.

21 Mr. Pruitt, tell me the procedure for dealing
22 with this now.

23 MR. PRUITT: I think this will be a first
24 impression procedure with the Commission at least.

25 COMMISSIONER EASLEY: I should have known the

1 answer to that one. (Laughter)

2 MR. PRUITT: Anyway, I don't know how much
3 time it's going to take you to do that. You might want
4 to do that overnight.

5 COMMISSIONER EASLEY: That is not a bad idea.

6 MR. PRUITT: And you could do that, and
7 there's nothing to prevent you from --

8 COMMISSIONER EASLEY: The only question that
9 comes to mind is, is there a way, say, rather than
10 doing it overnight alone, because I may have questions,
11 and I assume that the attorneys would be present for
12 such an in camera inspection.

13 MR. PRUITT: There's no question about that.

14 COMMISSIONER EASLEY: So that I could ask any
15 questions I needed to ask for clarification.

16 MR. PRUITT: Absolutely.

17 COMMISSIONER EASLEY: In that case, I think
18 what we'll do -- I had planned to break at about 5:00
19 for supper, figuring that we would then come back for
20 the customer hearing at 6 and continue on with the
21 technical aspect of this hearing, which we haven't
22 gotten to yet.

23 I think what I'll do, instead of interrupting
24 at this point, and doing an in camera, would be at 5:00
25 we will do an in camera on the documents. Can you give

1 me any idea of how many pages we are talking about, how
2 much material we are talking about?

3 MR. GIRTMAN: Seventeen pages, but most of
4 that has already been disclosed, so it's only those
5 selected paragraphs.

6 COMMISSIONER EASLEY: So there's what, half a
7 dozen paragraphs, maybe?

8 MR. GIRTMAN: A dozen. It should not take
9 long.

10 COMMISSIONER EASLEY: Once you get the first
11 couple of rulings it's going to be easy after that?

12 MR. GIRTMAN: Not necessarily.

13 COMMISSIONER EASLEY: Ah-hah.

14 MR. GIRTMAN: I would think that -- most of
15 the things, like Mr. Reilly said, they relate to
16 developments, some of them out of state.

17 COMMISSIONER EASLEY: All right.

18 MR. GIRTMAN: So that should be very simple.

19 COMMISSIONER EASLEY: So we should be able to
20 finish in the hour between then and the customer
21 hearing without too much difficulty?

22 MR. GIRTMAN: Probably a half hour.

23 COMMISSIONER EASLEY: Probably a half hour?

24 All right, that's what we're going to do. I'll reserve
25 ruling on the second part of the motion. We will hold

1 an in camera hearing at 5:00, at which only the
2 attorneys and the Commissioners will be present.

3 MR. GIRTMAN: May I have our tax people from
4 Dallas with me, because they can perhaps assist me.

5 COMMISSIONER EASLEY: I think they have to be
6 since -- the only other personnel would have to, if
7 it's somebody from OPC or somebody from the interveners
8 would have to, as I understand in camera, be instructed
9 as to the confidentiality of anything seen or heard in
10 that proceeding subject to the appropriate penalties
11 for disclosure of anything so heard. So it would be
12 limited to those people specifically necessary and a
13 roll call, in effect, will be taken of those people who
14 are required to be present.

15 MR. GIRTMAN: Commissioner, I'm hearing
16 something I have concern about. Are you suggesting
17 that we give copies of these to everybody?

18 COMMISSIONER EASLEY: No, sir.

19 MR. GIRTMAN: Oh, excuse me, okay.

20 COMMISSIONER EASLEY: I am not suggesting any
21 such thing. At this moment I am not suggesting
22 anything. I'm trying to deal with the logistics of
23 getting into this and dealing with who is going to
24 physically be present. We will deal with who gets to
25 see what when we get there. I'm not going to try and

1 prejudice that because I don't know yet what we're
2 talking about.

3 MR. GIRTMAN: Okay, for my part there are --
4 if you want the names of them.

5 COMMISSIONER EASLEY: Not now. We'll do this
6 at 5:00.

7 MR. GIRTMAN: Okay. For the record, I would
8 like the record to reflect that because we're doing all
9 four documents in camera, I am withdrawing my offer to
10 present the Paragraph 1-A of Document No. 17.

11 COMMISSIONER EASLEY: I understand.

12 MR. GIRTMAN: Thank you.

13 COMMISSIONER EASLEY: We'll deal with that
14 later.

15 As to the third part of the Motion to Compel,
16 can we do this fairly quickly?

17 Company, have you got any problem returning
18 their notes to them?

19 MR. GIRTMAN: Yes, ma'am. And I'll tell you
20 why as soon as I can find my papers.

21 COMMISSIONER EASLEY: All right. Now about a
22 redacted copy of their notes to them?

23 MR. GIRTMAN: The problem of it is, and we
24 spent -- I spent all day one day working with Mr.
25 Reilly. We went through ten drafts of the letter

1 before we agreed upon the terms upon which OPC would
2 go. There was no discovery filed. It was merely a
3 request to go to Dallas and confirm that the M-1s had
4 gotten into the consolidated tax return.

5 COMMISSIONER EASLEY: Okay.

6 MR. GIRTMAN: We went through that and set
7 forth specifically -- let me get to the page.

8 COMMISSIONER EASLEY: Do me a favor both of
9 you, let's not rehash the entire Dallas trip.

10 MR. GIRTMAN: No. Okay. On Page 14 of our
11 response, Paragraph 17, our June 12th letter agreement
12 for them, to visit, it says: "Although OPC may request
13 that certain pages be identified for possible further
14 consideration in the referenced utility rate
15 proceeding, OPC will not copy or otherwise transcribe
16 any portion of Mobil's consolidated tax return, or any
17 portion of SPUC's or SPI's separate return files, or
18 any other document viewed during its visit, or any
19 information derived therefrom."

20 Apparently, Mr. DeWard didn't fully
21 understand the terms of the agreement because he
22 expected to leave Dallas with a bunch of documents,
23 notes and a bunch of things. And what he has done, he
24 has, in violation of this paragraph, he has transcribed
25 information directly from those documents which it was

1 agreed he would not do, no one would do.

2 COMMISSIONER EASLEY: Mr. Reilly?

3 MR. REILLY: First of all, that is not true.

4 We did not believe that we were going to leave Dallas
5 with either our notes or the copies or anything. We
6 understood that when we left the room that everything
7 would be left there for them to review to determine
8 confidentiality and so forth.

9 Secondly, I think we need to read a little
10 further in the letter of understanding.

11 It was our understanding that we would --
12 that, in fact, we would prepare a list and, basically,
13 how it happened is from the time that we were there,
14 Mr. DeWard began a list of items that he would either
15 A, need a copy of, or B, to keep them from the
16 difficulty of going to the trouble of make a copy, make
17 a very brief reference to the exact same scope and
18 discovery of the same type of material. So his is
19 basically like a list that will be provided to Mr.
20 Olson during the June 13th, identifying each page and
21 document within which it is located. His quote,
22 unquote, "list" was, I guess, a little more than a list
23 because if it wasn't an item that he specifically asked
24 for, which showed up on those 1 through 34 items, he
25 would say, "don't need a copy of this, it's just --

1 "and, by the way, let me explain also in the
2 duplicative, the fact that a lot of these documents
3 were -- he made a big deal out of the fact that they
4 asked for copies of things they had already gotten.
5 That's good news for the Utility, that's why we went
6 there was to see that this was duplicative. So, for us
7 not to duplicate that, he made a little list of
8 notations for the list contemplated in this agreement.

9 It was our understanding that so long as it
10 was relevant and it was within the scope of this
11 discovery that, of course, we would get our list back.

12 COMMISSIONER EASLEY: Well, there's a
13 difference between a list and transcribing or copying
14 information from documents that you've looked at. Now,
15 I'm having a little trouble here because I hear you
16 talking about a list and I hear Mr. Girtman talking
17 about something slightly more than a list. Am I going
18 to have to look at this one, too?

19 MR. REILLY: I honestly have not looked at
20 this list/documentation. It's my understanding that
21 both is on there.

22 COMMISSIONER EASLEY: Well, now, Mr. Reilly,
23 if you haven't looked at it, I don't know how in the
24 world you're going to defend it.

25 MR. REILLY: I defend it because Mr. DeWard

1 has told me what his list/documentation -- he said it
2 included both. It's my understanding, if I'm
3 characterizing it, he would make a list of a certain
4 document and say, "need copy of." And then, another
5 document, he would write down and say, "do not need a
6 copy of."

7 COMMISSIONER EASLEY: Let me get you to the
8 bottom line. What is it you're asking for back, are
9 you asking for the list of documents and not the
10 copies, or the transcriptions of the contents of those
11 documents? Is that what you're asking for?

12 MR. REILLY: I believe we're asking for and,
13 it's totally appropriate, totally relevant, to get a
14 copy of his list/notes. And there's nothing in those
15 -- there should not be anything in those notes that
16 would be something that would not be discoverable.

17 COMMISSIONER EASLEY: All right. Would you
18 have a problem -- because as I read the agreement the
19 Company was to review those notes and decide what was
20 proprietary, what was not and then return them to you.

21 MR. REILLY: Precisely.

22 COMMISSIONER EASLEY: Would you have a
23 problem if the Company looked at that list/notes, and
24 expurgated those sentences that appear to be
25 transcriptions of the contents of the documents, and

1 then return to you the list/notes that they have left?

2 MR. REILLY: Well, I would say, A, I would
3 not have a problem with that; but, B, the letter said,
4 "if there was a problem of confidentiality and they
5 claim confidentiality," we did not at that point waive
6 our right to argue before this Commission that it is,
7 in fact, not appropriately subject to confidentiality.

8 COMMISSIONER EASLEY: That's what I'm asking
9 you for, Mr. Reilly. I'm asking you if that's what
10 you're trying -- I'm trying to figure out what you guys
11 want me to rule on here when I don't have anything in
12 front of me.

13 MR. REILLY: If they could give us everything
14 that they feel they can give us short of
15 confidentiality, and identify those items that they
16 feel is appropriate for that, we would like to get
17 that.

18 COMMISSIONER EASLEY: All right, I'm prepared
19 to rule, Mr. Girtman. Do you want in on this?

20 MR. GIRTMAN: Yes. I certainly do.

21 COMMISSIONER EASLEY: All right. Very
22 quickly.

23 MR. GIRTMAN: We have a witness here who has
24 expressed grave concern to me about the contents of
25 those things, and all we're going to do -- if we mark

1 out some of this stuff, Mr. Reilly's going to be right
2 back here with a motion and we're going to spend
3 another two hours on that motion.

4 COMMISSIONER EASLEY: No, we're not, I
5 guarantee you we're not.

6 MR. GIRTMAN: But the problem is, there was
7 only one list authorized by agreement. That list is
8 Nos. 1 to 34 and that was it. We gave them that list.
9 They asked for those documents and that's a separate
10 issue.

11 We specifically said in our agreement that
12 there would be no transcriptions. In fact, the
13 documents contain --

14 COMMISSIONER EASLEY: Mr. Girtman, let me --

15 MR. GIRTMAN: -- specific data taken out of
16 those records which we all agreed would not be done.
17 We would not have allowed that visit to take place if
18 we thought this agreement wasn't going to be complied
19 with.

20 COMMISSIONER EASLEY: I have heard enough on
21 this and I'm prepared to rule on it, and then we're
22 going to deal with this, if we have to, at 5:00, the
23 results of the ruling.

24 Mr. Girtman, between now and 5:00 you will
25 have your people make a redacted copy of those notes

1 made by OPC. And you will have given them to OPC by
2 5:00. If there is a problem, and if you're going to
3 claim that there is no confidentiality, we will deal
4 with the document at 5:00.

5 MR. GIRTMAN: May I just confirm we have it
6 here? Just a moment.

7 COMMISSIONER EASLEY: I would hope you do.
8 (Pause) You're kidding.

9 MR. GIRTMAN: We'll have it at 5:00.

10 COMMISSIONER EASLEY: All right. I believe
11 that takes care then of the Motion to Compel, at least
12 for now -- for both motions to compel, at least for
13 now.

14 MS. BEDELL: Yes. I believe you addressed
15 earlier the motion to keep the record open for further --

16 COMMISSIONER EASLEY: I said I would defer
17 ruling on the first part of the motion until after the
18 testimony.

19 MS. BEDELL: Okay. We have also pending
20 three related motions.

21 COMMISSIONER EASLEY: Before we get into
22 this, let me tell you all what I have in mind, and I
23 hope you will govern yourselves accordingly, as those
24 of you in the legal brethren are prone to say. We will
25 go until 5, at which time we will break for dinner for

1 some, for the in camera hearing for the rest of us. We
2 will have a 6:00 customer hearing. It is my intention
3 after the customer hearing to come back into the
4 technical aspect and we will work until probably 10:00,
5 maybe a little later, depending on how things are
6 going.

7 We will come back in here by 8:30 tomorrow
8 morning, maybe earlier, depending on how things are
9 going. And we will work -- hopefully, we will finish
10 by 2:00 tomorrow afternoon. If we do not, because of
11 the problems of getting out of here, for Tallahassee, I
12 have a hearing in Tallahassee at 9:30 on Friday morning
13 so there's some time constraints for me, and I believe
14 Commissioner Deason also has some obligations on
15 Friday.

16 We will aim at 2:00. If we can't make that,
17 we'll look at it, but it would be my inclination to
18 adjourn this hearing and continue it, if we have to
19 finish it in Tallahassee. So I thought I'd just let
20 you all know that we're operating under a time
21 schedule.

22 Now, for the rest of the motion.

23 MS. BEDELL: We have the Utility's Motion to
24 Strike Addendum and to strike all prefiled testimony
25 and the exhibits of Roger W. Rasmussen that was filed on

1 June the 18th.

2 We have Utility's Supplement to the Motion to
3 Strike that was filed on June 20th. We have also
4 related to that the response of the intervenors to the
5 supplement to the Motion to Strike, as well as the
6 intervenors' Motion to Strike the additional and second
7 rebuttal testimony of Mr. Seidman. And that was
8 received by me last night at the hotel.

9 COMMISSIONER EASLEY: All right. And this is
10 one that we've kind of gone over a little bit.

11 I had asked that intervenors identify those
12 portions of the testimony on which they were going to
13 rely based upon a ruling at the prehearing. And that
14 ruling was that our jurisdiction does not extend to the
15 determination of ownership; that we can deal with the
16 results of any impact on the rate case, but we have to
17 be limited to that.

18 We asked Mr. King to provide a list of the
19 pages on which his witness would rely. We have
20 received that list. We further asked for
21 identification of those issues that the list pertained
22 to. We have received that; we have received the
23 response from the Company which is the Motion to
24 Strike.

25 My understanding, Ms. Bedell, is that you

1 asked the intervenors to provide an extracted copy of
2 those pages cited so that we might have a reasonable
3 way to look at them.

4 And my understanding, Mr. King, is you have
5 that available, is that right?

6 MR. KING: Yes, na'am. I have put them all
7 in one volume.

8 COMMISSIONER EASLEY: You're a gentlemen and
9 a scholar. Would you like to share those with us?

10 MR. KING: I have 12 copies of them.

11 COMMISSIONER EASLEY: All right, sir.

12 (Documents distributed.)

13 COMMISSIONER EASLEY: Mr. King, I can't
14 resist asking you the question: How many pages are in
15 this document?

16 MR. KING: I have no idea.

17 COMMISSIONER EASLEY: We were trying to
18 reduce a thousand-page document. That's why I asked.

19 MR. KING: I note that on the cover sheet I
20 had instructed my secretary to change this to show it
21 was a combined exhibit, and it should be to the
22 prefiled testimony of Mr. Rasmussen. He also gave a
23 deposition on May 29 at which a portion of this, the
24 condominium document portion was put in, so that's in
25 error on the front. This is for all of it.

1 I have taken the liberty also of what we call
2 RWR-6, which is the addendum which you were working
3 with, was the one I had prepared and I accidentally
4 failed to put the issues on. I have a couple of typos
5 on that so it was hard to follow. I've redone that and
6 have on the front that the intervenors state that the
7 documents identified herein relate to Issues 3 and 4 of
8 the Prehearing Order, which were 4 and 5 of the one we
9 were dealing with before just so -- I don't know.

10 COMMISSIONER EASLEY: It caused some
11 confusion.

12 MR. KING: I'm talking about 3 and 4, and 4
13 and 5, which are the same.

14 COMMISSIONER EASLEY: I understand that. Got
15 you.

16 All right, I'm going to need some help in how
17 to try and deal with this. Somebody come up with a
18 suggestion because I'm not about to read this page by
19 page.

20 MR. KING: Well, it would seem to me what I
21 had proposed was, and what I thought would happen, Mr.
22 Rasmusen has said that these are the documents on which
23 he bases his opinion.

24 COMMISSIONER EASLEY: Yes, sir.

25 MR. KING: I think they come into evidence

1 that way. We deal with them in briefs, on the closing
2 of briefs, and I cite to you those. He has cited in
3 his prefiled testimony already certain provisions of
4 them, I don't think there's any mystery about them, and
5 the connection, the way I think they should be
6 connected, I don't see anything about the
7 admissibility. I think it weakened, and the admissible --

8 You may conclude, after we explain to you
9 what the connection is there, that you don't agree that
10 they support his opinion. But it would seem to me that
11 they clearly are admissible if his opinion is going to
12 be admissible. I think his opinion is admissible as a
13 resident who has looked at these and relied upon these
14 and had to make a personal decision about purchasing
15 property. He did that, and he says in his opinion this
16 supports -- these support his view of the same thing
17 you heard from the customers; that, indeed, all of
18 these facilities were to be contributed by Mobil as a
19 part of what they call their addendum package.

20 So, I mean, I don't see that it's a huge
21 problem. I thought that's what the procedure was, that
22 I would connect it up in my final brief. He has
23 already connected up a lot of them in his prefiled
24 testimony.

25 COMMISSIONER EASLEY: Well, just as a

1 reminder, Mr. King, so that we're both talking from the
2 same script here, one of the purposes in going through
3 this exercise of trying to match up issues and the
4 portion of that thousand-page document that related to
5 specific issues, or related to specific things that Mr.
6 Rasmussen was going to rely on, was because of the
7 Motion to Strike. And if you'll recall, it was
8 virtually impossible at the prehearing for me to deal
9 with a motion to strike portions of the testimony when
10 I couldn't relate it to anything in that exhibit. We
11 were trying to deal with getting it to a manageable
12 size. That was the purpose of coming up with this
13 document. Would you agree with that?

14 MR. KING: Well, yes, I think I agree with
15 that. I do apologize for admitting the issues in my
16 addendum. I did not really understand. If you'll
17 recall, I asked was I going to get an order. But at
18 any rate, we only have basically two issues, and I want
19 the record to be clear that we contend that all of the
20 documents are relevant and that it's only because the
21 Commission has directed us to pare them down to those
22 particular provisions that we think are the most
23 relevant that we have complied with that. And I want
24 the record to show we're not waiving our contention --

25 COMMISSIONER EASLEY: I understand.

1 COMMISSIONER EASLEY: I understand.

2 MR. KING: -- that all of them are relevant.

3 COMMISSIONER EASLEY: Mr. Girtman. Mr.

4 Reilly, do you want to say anything about this before I
5 let Mr. Girtman respond? I mean, we're on the --

6 MR. REILLY: I'll let Mr. Girtman speak first
7 and I'd like to speak after him.

8 COMMISSIONER EASLEY: Well, we're not going
9 to play ping pong now. Go ahead, Mr. Girtman.

10 MR. GIRTMAN: Commissioner Easley, I think as
11 far as the Utility is concerned, we have adequately
12 addressed the concerns of the applicability of the
13 documents and the testimony to matters which are within
14 the jurisdiction of the Commission.

15 And I will not go through all of that again.
16 What I would like to do is that there are two
17 paragraphs that I would like to state as my position,
18 and then I think I'm through.

19 COMMISSIONER EASLEY: Okay.

20 MR. GIRTMAN: The documents identified in
21 RWR-6, besides failing to support the contentions by
22 Sailfish Point Property Owners Representatives in
23 Issues 3 and 4, do not establish any fact either
24 compelling or authorizing the Commission to make any
25 finding in this utility rate case. The documents

1 designated in RWR-6 are offering statements, zoning
2 agreements or covenants between the developer and lot
3 purchasers. None of those documents establish the cost
4 of utility facilities. Those documents are contained
5 in the -- excuse me, those costs are contained in the
6 books and records of the utility and are summarized in
7 the MFRs.

8 None of those documents establish the
9 portions of the utility's facilities that are used and
10 useful in serving the public. Used and useful is
11 determined from evaluating the records and operations
12 of the Utility. None of those documents established
13 the service availability charges authorized by this
14 Commission or record the amounts collected and recorded
15 as CIAC. That information is found in the books and
16 records of the Utility and in its tariffs, and is
17 summarized in the MFRs. None of those documents bind
18 the Commission nor does the Commission regulate those
19 documents. They are just irrelevant to the proceeding
20 at hand.

21 The documents listed in RWR-6 were originally
22 filed by SPOR to challenge ownership of the lines and
23 mains by the utility, an issue which the Prehearing
24 Officer has previously ruled is beyond the jurisdiction
25 of the Public Service Commission. Thank you.

1 MR. REILLY: It is clearly within the
2 jurisdiction of this Commission to determine what makes
3 up the rate base, and an integral part of that is to
4 determine what portions of that rate base might have
5 been contributed. It is the contention of this witness
6 that major portions, if not all, of the water and sewer
7 rate base were in fact contributed by the Utility, and
8 the basis of that are these exhibits.

9 It's not the cost which is the issue in 3 and
10 4, I mean, it's the cost which should be, and I
11 underline, included in the rate base calculation. And
12 so I would just second the argument made by Mr. King
13 that this evidence should be admitted and that the
14 Commission should weigh whether they're persuaded by
15 that evidence.

16 COMMISSIONER EASLEY: All right. Gentlemen,
17 I am going to remind you both of -- or all three -- of
18 the ruling that I made at the prehearing, and that is
19 that the issue of ownership and the determination of
20 ownership is outside the jurisdiction of this
21 Commission.

22 Having reminded you of that, I'm going to
23 rule to allow the documents in; however, as we get into
24 the testimony and we rely on these documents, if we go
25 beyond and into ownership issues, I will be receptive

1 to objections at that time.

2 So I'm allowing the documents in to give them
3 the weight to which they're entitled and ask that we
4 hold to the ruling of the Prehearing Officer as to the
5 jurisdiction of the Commission.

6 All right, anything further?

7 MS. BEDELL: Yes, ma'am. We still have
8 Intervenor's Motion to Strike Additional and Second
9 Rebuttal Testimony of Frank Seidman.

10 MR. GIRTMAN: I don't have a copy of that.

11 MR. KING: It is included in my response to
12 your Motion to Strike.

13 MR. GIRTMAN: I'm sorry, hold on just a
14 minute.

15 COMMISSIONER EASLEY: Very briefly on your
16 motion, Mr. King.

17 MR. KING: Madam Commissioner, this motion
18 seeks to strike the additional second rebuttal
19 testimony of Mr. Seidman. My understanding that
20 rebuttal testimony was to be filed by the 31st of May.
21 By the 31st of May. I think on May the 9th we had
22 filed all of Mr. Rasmussen's prefiled testimony and the
23 exhibits that related to it.

24 Mr. Seidman filed rebuttal testimony and his
25 only rebuttal is contained on Page 16. And he was

1 asked if he had read the prefiled testimony of Mr.
2 Rasmussen, he says he has. Asked to give an opinion and
3 he states that -- and he was asked to give an opinion
4 as to his allegations regarding ownership; that is,
5 Rasmussen's allegations regarding ownership of the
6 Utility property and authorized level of rates. And he
7 commented upon that, and he attached a document which
8 is a warranty deed which he contends shows that the
9 Utility owns the facilities.

10 So, and that concluded his rebuttal testimony
11 except he did say with regard to the limitation on
12 rates, the Utility is subject to regulation by the
13 Florida Public Service Commission and the Commission is
14 the only body that has the authority to set the rates.
15 And that was all the rebuttal testimony that he gave.

16 Now, you have ruled that ownership is not an
17 issue. We submit that Mr. Rasmussen also said that in
18 his opinion that all of these facilities had been
19 contributed by the developer. There was no rebuttal
20 testimony offered on that. All they are attempting to
21 do now is in the guise of in support of this or because
22 of this addendum issue -- and the addendum didn't
23 change a single underlying thing; all the addendum did
24 was to focus upon and reduce the numbers of pages of
25 Mr. Rasmussen's testimony.

1 It is true that as part of Mr. Seidman's
2 first rebuttal testimony that points out that the
3 addendum did not contain a listing of the issues; and
4 as to that part, you issued an order on the 21st, I
5 believe it was. Anyway, that has been ordered and you
6 ordered me to do that and I've done it. So I don't see
7 any necessity for that.

8 He then goes on and attempts then to talk
9 about issues that, if they should have been brought up
10 at all, they were properly brought up in his initial
11 rebuttal testimony. There's been nothing changed since
12 May 31st that should permit him to go into the kinds of
13 issues that he goes into in his additional and second
14 rebuttal testimony. And I think they should be stricken.

15 COMMISSIONER EASLEY: Mr. Girtman?

16 MR. GIRTMAN: Is Mr. Reilly going to get a
17 shot?

18 MR. REILLY: I would be happy to go if it
19 will make people more comfortable.

20 I have very, very serious concern with one
21 aspect of this second additional rebuttal testimony of
22 Frank Seidman.

23 I agree with everything that Mr. King has
24 said and I would support him. But the thing that I
25 want to emphasize and be somewhat of a different

1 position is what is attempted on Page 4 of his
2 testimony. Mr. Seidman goes on: Because of the
3 extreme uncertainty, I am compelled to take the unusual
4 step of then proceeding to attempt to adopt legal
5 argument presented by counsel in motions and exhibits
6 with those motions as his, adopt it as his own sworn
7 testimony. And I believe that this practice is totally
8 inconsistent with Commission practice and procedure.
9 You're basically almost falling into what Mr. King said
10 some time ago, Mr. Girtman is bringing testimony before
11 this Commission is what he's accused of; and now we're
12 seeing this come full circle and actually to be
13 presented to this Commission as testimony.

14 And to have unsworn legal argument, motion
15 argument, to be then incorporated and made his
16 testimony is unprecedented. And I think is contrary to
17 practice and procedure and should not be permitted.

18 As for these other pages, where he makes his
19 other arguments about it is not relevant and you've got
20 to look to the books and pages of the Company records,
21 the Commission can decide whether they want that in.
22 But I would strongly argue that is contrary to the
23 Commission practice and procedure and should not be
24 permitted.

25 COMMISSIONER EASLEY: Mr. Girtman?

1 **MR. GIRTMAN:** Commissioner Easley, we have
2 sparred for weeks, I guess, on the question of all of
3 this stack of paper and its relevance to this
4 proceeding and how do we find out what SPOR is really
5 trying to rely on and what's the issue and what's the
6 position?

7 As I recall, there was a motion -- I don't
8 have the thing right in front of me, but as I recall,
9 when we filed Mr. Seidman's rebuttal testimony with the
10 copy of the deed in it, we also had filed a Motion to
11 Strike. And I believe there was a contingent motion, I
12 don't know exactly the style of the thing, but if the
13 motion was denied, that we have an opportunity to
14 respond in detail. Because you talk about rate case
15 expense, that's some stack of reading. So we tried to
16 pare it down, at least we've got it down to this now.

17 Based on the Prehearing Conference and the
18 rulings of the Prehearing Officer at that time, Mr.
19 King was to be given an opportunity to provide a list
20 of the pages that Mr. Rasmussen sought to rely on. He
21 provided that list; we objected; he provided an
22 annotated list referencing the two issues to which
23 those documents were supposed to apply. And as I
24 recall, it was a telephone conference because of the
25 shortness of the time available, apparently, the Staff

1 attorney was directed to call us all and tell us what
2 we were going to do.

3 COMMISSIONER EASLEY: That's correct.

4 MR. GIRTMAN: And part of what we were going
5 to do, were told to do, is that we had an opportunity,
6 I think we had two days to file -- no, a weekend and a
7 day.

8 COMMISSIONER EASLEY: Something brief.

9 MR. GIRTMAN: -- something like that -- to
10 file whatever we were going to file. I didn't hear any
11 limitation in there. It was my understanding to be
12 testimony, whatever. Whatever we were going to do,
13 we'd have to do it within those three days or so.

14 And the problem is that the substance of a
15 lot of these remaining documents was addressed in the
16 motion, the original Motion to Strike. It recites the
17 specific pages and it shows where that interpretation
18 is incorrect. It's clearly applicable in response to
19 this. It doesn't cite cases and make a lot of legal
20 arguments. It does point out specifically here's what
21 the document says, here's what SPOR says it says,
22 here's the full text of what was in the document,
23 here's what we say it says. About as close to
24 testimony as you can get.

25 So I agree -- and we said so in our filings.

1 This is, I would consider, an unusual technique to have
2 to follow. But under the circumstances of what we were
3 facing, that's the only alternative we had,
4 Commissioner. And we believe that if you go through
5 those paragraphs, you know, it reads just like
6 testimony.

7 COMMISSIONER EASLEY: Well, I think the
8 difficulty that I've got here is that this has been,
9 because of the time constraints and because of the
10 last-minute nature of much of this, that we're in a
11 little bit of an unusual situation. It would seem to
12 me that we don't even need to strike some of the
13 rebuttal testimony that refers to the documents
14 submitted by the Intervenor, that has since been, in
15 effect, corrected. The original rebuttal testimony
16 really doesn't even apply any more.

17 Not all of that -- not all of the testimony
18 in that document comes under that category; but it
19 would seem to me that it would be far easier to deal
20 with this by either striking or allowing you to
21 withdraw that portion of the rebuttal testimony that
22 relates to the document prior to the last submission.

23 MR. GIRTMAN: Any document that didn't
24 survive your ruling, we would, I see no reason why we
25 shouldn't and couldn't withdraw it.

1 COMMISSIONER EASLEY: Yeah. Some of it is no
2 longer relevant. It just doesn't apply any more
3 because of things changing. You responded prior to the
4 time that Mr. King had in which to develop this
5 document so that we've got some mismatched pleadings.

6 MR. GIRTMAN: It's called a timing
7 difference.

8 COMMISSIONER EASLEY: Timing difference. You
9 all were on eastern time, I was on central daylight, I
10 think. I'm not sure what was going on, but I think
11 this particular motion takes care of itself in my
12 opinion. I can either defer ruling and let you all
13 withdraw it, or I can rule that that testimony that was
14 filed prior to the receipt of this corrected document
15 be stricken. I think frankly it's more of a technical
16 problem than anything else.

17 MR. GIRTMAN: If we could, we would like to
18 have an opportunity to look at it and take out --

19 COMMISSIONER EASLEY: Prior to the time of
20 getting to Mr. Seidman's rebuttal, I'd suggest that you
21 do that and I'll reserve ruling until that time. It
22 may be that there will be nothing to rule on.

23 MR. GIRTMAN: Thank you.

24 COMMISSIONER EASLEY: Mr. King?

25 MR. KING: May I make one comment?

1 COMMISSIONER EASLEY: Yes, sir.

2 MR. KING: Mr. Reilly did point out a part
3 that I had in my motion about the attempt to
4 incorporate this 81 pages that Mr. Girtman had attached
5 to a motion that was ruled upon and disposed of already
6 by the court.

7 COMMISSIONER EASLEY: Well, I think that one
8 has been, that one goes, if I recall the timing on it,
9 that one goes with this ruling. No?

10 MR. KING: Well, what Mr. Seidman has
11 attempted to do is that he now incorporates verbatim as
12 if he were making that testimony which first came from
13 Mr. Girtman's mouth now in his sworn testimony. And
14 that puts the record in a crazy position because I
15 don't know how to bring that in.

16 And secondly, 47 pages of it are the exact
17 same document that he has fussed about me putting in
18 verbatim.

19 MR. REILLY: And Mr. -- correct one thing,
20 and this is, I'm sure, will say this is not an instance
21 of first impression. Because he presented a number of
22 cases in the Palm Coast case on this precise issue
23 where legal argument was tried to get into in the
24 record and it was not permitted to be done. I don't
25 know if you still have those cases here.

1 MR. GIRTMAN: Let me respond if I may,
2 please, briefly?

3 COMMISSIONER EASLEY: Thank you.

4 MR. GIRTMAN: Some of the documents which Mr.
5 Rasmusen seeks to rely upon were documents that were
6 submitted by SPOR in its response to our objection to
7 the intervention. Those are the same documents he's
8 trying to rely on in his testimony and in here
9 (indicating). The same documents, exactly. And they
10 have survived the sifting out from here.

11 And we have provided for the Commission's
12 consideration an interpretation of those documents that
13 we feel is more clear. It doesn't select pieces out of
14 relevant paragraphs; it provides, in effect, testimony
15 in rebuttal to Mr. Rasmusen's positions on those
16 documents.

17 And they have clearly -- if he's going to
18 have them in and if he's going to talk about them, we
19 have to have a right to rebut that. And given the
20 short period of time -- Mr. Seidman worked with me on
21 preparing that thing and we talked about it and we
22 looked at those documents and we went through drafts.
23 And that's what we consider in the short period of time
24 that we had, in my opinion, given the constraints that
25 we're all suffering under, we really didn't have an

1 adequate time to review even -- it took my secretary
2 two hours just to mark those pages that they said were
3 relevant. And then I started getting into that stuff.

4 We didn't have time to adequately file,
5 prepare and file, a rebuttal testimony clean, pure,
6 just start from the beginning. If we had, we would
7 have taken the document Mr. Seidman is adopting, cut
8 out the style of the case, cut out the certificate of
9 service, pulled a lot of those paragraphs with
10 questions and it would have gone right into prepared
11 testimony. We didn't have time even to do that.

12 COMMISSIONER EASLEY: Mr. Pruitt? Help me.

13 MR. PRUITT: Well, Madam Chairman, I think
14 we're kind of losing the sight of the procedures of the
15 Public Service Commission. We're not a court. We are
16 not bound by strict rules of proceedings, we're not
17 bound by strict rules of evidence as courts are.

18 I think what all the parties -- and I've said
19 this before and I'm sure that some people have heard it
20 before. But the purpose of the hearings is to educate
21 the Commissioners. And if there's evidence out there
22 that you need to hear to decide this case, and if it's
23 legal evidence, you're entitled to it.

24 And I can't recall really very many cases
25 that were involved in a controversy where the parties,

1 either Public Counsel, intervenors or the applicants,
2 would amend pleadings, amend testimony, correct
3 testimony, supplement testimony, and offer additional
4 rebuttal testimony at the time of the hearing. I think
5 you have the authority to allow it.

6 COMMISSIONER EASLEY: I am going to allow the
7 testimony to remain. It will be given the same weight
8 and the same constraints that I have put on the
9 document to be presented by Mr. Rasmussen.

10 What else?

11 MS. BEDELL: We have, I believe, three small
12 matters. We are finished with all the motions pending
13 unless other counsel --

14 COMMISSIONER EASLEY: Are there any other
15 motions pending?

16 MR. REILLY: There's no -- you're going to
17 bring up that?

18 MS. BEDELL: Yeah. The Office of Public
19 Counsel brought to my attention shortly after you
20 signed the Prehearing Order that there were a couple of
21 matters that needed to be corrected. I know that one
22 of them -- correct me if I'm wrong, Steve -- is on
23 Issue 13, on used and useful plant in service amounts
24 that is to be net of accumulated depreciation?

25 MR. REILLY: Yes. We discussed that right

1 after the Prehearing Conference and that was understood
2 to be the language. I think our numbers as well as the
3 Utility's numbers anticipates, at least that's what I'm
4 told, anticipates that that is the question or the
5 issue.

6 MR. GIRTMAN: Excuse me, what page?

7 MS. BEDELL: I'm sorry, I'm on Page 10, of
8 the Prehearing Order, it's on the bottom of Page 10,
9 Issue No. 13.

10 MR. REILLY: My consultants say even the
11 Utility's numbers would not be correct unless those
12 one, one, two, three, four words are put in.

13 MS. BEDELL: That's correct. I believe we
14 all agreed that that was to be net of accumulated
15 depreciation. I did not put it in the actual stated
16 words of the issue.

17 MR. GIRTMAN: Is that at the end of the
18 sentence?

19 MS. BEDELL: Uh-huh.

20 Let me just go ahead and make sure we're all
21 straight and I'll read this for the record. Issue 13
22 should read: "What are the appropriate amounts of
23 nonused and useful utility plant in service net of
24 accumulated depreciation?"

25 MR. GIRTMAN: My consultant tells me that's

1 right.

2 MS. BEDELL: Okay. And Mr. Reilly, I don't
3 know, do you have another?

4 MR. REILLY: It's an extremely minor one. We
5 had suggested our position on Issue 36, or newly
6 numbered Issue 36, would be, instead of a fallout
7 number, would be, "Agree with Staff." That's about
8 all I have.

9 MS. BEDELL: I'm not aware of any other
10 changes that we need to make to the Prehearing Order.

11 MR. GIRTMAN: There are a few minor ones that
12 I would like to suggest. On Page 2, Case Background,
13 second paragraph, the last line begins "Interim water,"
14 should add "and wastewater."

15 On Page 11, this is just a punctuation
16 matter. Issue 15, Staff position, third line, "cannot
17 be offset by credit deferred taxes, period, capital F
18 C."

19 Page 13, Issue 20, Staff position, second
20 line, "structures" should read "structure is."

21 Page 18, the last line above issue 33,
22 "Adjustment should not be made," I believe the word
23 "not" should be removed.

24 COMMISSIONER EASLEY: Wait a minute, that
25 doesn't sound like just a little technical error there.

1 The difference between "should" and "should not" could
2 be rather substantive.

3 MR. REILLY: What line are we on? This is
4 page 18?

5 MR. GIRTMAN: Page 18, the second line from
6 the top of the page, "Adjustment should not be made"?
7 (Pause)

8 MS. BEDELL: Madam Chairman, on Issue 32,
9 that's Staff's position and it is preliminary and we
10 would request that it remain in that fashion.

11 MR. GIRTMAN: No problem. No problem.

12 COMMISSIONER EASLEY: Well, let me understand
13 this now, wait a minute. Because I understood you were
14 making errata type of corrections. But if I read this,
15 the first sentence is "Should be made, a parent debt
16 adjustment should be made if the capital structure is
17 used. If the capital structure is not used, the
18 adjustment should not be made."

19 MR. GIRTMAN: Maybe I'm wrong.

20 COMMISSIONER EASLEY: I think you're wrong.

21 MR. GIRTMAN: Okay, I'll withdraw the
22 suggestion.

23 On Page 36, the Utility's position -- excuse
24 me, Page 19, Issue 36, the Utility's position says,
25 "Yes." I would like to insert, "That is what the

1 statute says, ..."

2 I also would like the record to reflect that
3 we have previously filed with the Public Service
4 Commission Clerk the original proof of publication of
5 this hearing of the notice in the newspaper.

6 COMMISSIONER EASLEY: That should be, if I
7 recall, marked as Exhibit 1, should it not?

8 MR. FRUITT: Yes.

9 COMMISSIONER EASLEY: That will be the proof
10 of publication.

11 (Exhibit No. 1 marked for identification)

12 COMMISSIONER EASLEY: All right, anything
13 else preliminary?

14 MS. BEDELL: Yes, ma'am. Staff prefiled DER
15 testimony. We are aware that none of the parties have
16 any cross examination questions for them and would be
17 willing to stipulate their testimony in at the
18 appropriate time. And I just wanted to get that on the
19 record so that we could take those guys off the waiting
20 list of people to testify.

21 COMMISSIONER EASLEY: All right. Do you want
22 to identify those witnesses?

23 MS. BEDELL: That was Mr. Thiel and Mr.
24 Perez. T-h-i-e-l --

25 COMMISSIONER EASLEY: So at the appropriate

1 time without objection their testimony will be inserted
2 into the record as though read; and there being no
3 cross examination, they will be excused.

4 MR. GIRTMAN: We would have no objection so
5 long as our rebuttal is accepted in like form.

6 MS. BEDELL: That was also discussed with --

7 MR. REILLY: No objection.

8 COMMISSIONER EASLEY: Mr. King, no objection?

9 MR. KING: I don't understand the effect of
10 Mr. Girtman. He says so long as his rebuttal --

11 COMMISSIONER EASLEY: To those witnesses --

12 MR. KING: -- to those witnesses is accepted
13 in like form, meaning that they are not going to be
14 here either, those witnesses.

15 COMMISSIONER EASLEY: That rebuttal testimony
16 will not be taken live. I don't know whether it
17 involves any of the people who will be testifying on
18 anything else or not.

19 MR. GIRTMAN: My major point is that it would
20 not be objected to.

21 MR. KING: That procedure is okay.

22 COMMISSIONER EASLEY: Anything else?

23 MS. BEDELL: One small last matter. And Mr.

24 Girtman, I apologize I didn't get to you on this one.

25 But we did not have an issue about the current leverage

1 that is actually necessary at this point; but we would
2 like to have a stipulation that should the leverage
3 formula be necessary, that we would be able to use the
4 current leverage formula.

5 MR. GIRTMAN: That's fine.

6 MR. REILLY: In effect when the order is
7 issued?

8 MS. BEDELL: The one that's in effect when
9 the order is issued.

10 MR. REILLY: Okay, no objection.

11 MR. KING: The Intervenor does not plan to
12 offer testimony on that issue and we just pass on the
13 question of the stipulation.

14 COMMISSIONER EASLEY: All right. Anything
15 else?

16 MS. BEDELL: That's it.

17 COMMISSIONER EASLEY: Hot dog. All right,
18 we're going to give Mr. Seidman about five minutes to
19 get set up and then we'll actually get the hearing
20 under way.

21 (Brief recess.)

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23 (Transcript follows in sequence in Volume
24 II.)

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