

1 BEFORE THE
 2 FLORIDA PUBLIC SERVICE COMMISSION

3 DOCKET NO. 990696-WS

4 In the Matter of:

5 APPLICATION FOR ORIGINAL
 6 CERTIFICATES TO OPERATE WATER AND
 WASTEWATER UTILITY IN DUVAL AND
 ST. JOHNS COUNTIES BY NOCATEE
 UTILITY CORPORATION.

7 -----
 8 APPLICATION FOR CERTIFICATES TO
 OPERATE A WATER AND WASTEWATER
 UTILITY IN DUVAL AND ST. JOHNS
 9 COUNTIES BY INTERCOASTAL UTILITIES
 INC.

DOCKET NO. 992040-WS

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14 VOLUME 8
 PAGES 1168 THROUGH 1291

15 PROCEEDINGS:

HEARING

16 BEFORE:

17 CHAIRMAN E. LEON JACOBS, JR.
 COMMISSIONER J. TERRY DEASON
 COMMISSIONER LILA A. JABER
 COMMISSIONER BRAULIO L. BAEZ
 COMMISSIONER MICHAEL A. PALECKI

19 DATE:

Wednesday, May 9, 2001

20 TIME:

Commenced at 10:00 a.m.
 Concluded at 5:00 p.m.

22 PLACE:

Clarion Hotel Banquet Room
 1300 Ponce DeLeon Boulevard
 St. Augustine, Florida

24 REPORTED BY:

TRICIA DeMARTE
 Official FPSC Reporter

25 APPEARANCES:

(As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 6496 MAY 23 2001

FPSC-RECORDS REPORTING

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P R O C E E D I N G S

(Transcript continues in sequence from Volume 7.)

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3 MR. WHARTON: Chairman Jacobs, before I retire,
4 because I'm not going to do the last two witnesses, we've now
5 agreed, I think, on the procedure for Mr. Forrester. The
6 entire deposition will come in, and perhaps it should be marked
7 as an exhibit now. And I assume that Mr. Melson has the
8 original, although I'm not hung up on that.

9 MR. MELSON: I would just put in one of the condensed
10 copies so that we don't waste more paper than we need to.

11 MR. WHARTON: The condensed copies are okay with me.

12 CHAIRMAN JACOBS: Very well. So we will mark as --

13 MS. CIBULA: I think we might have already marked
14 that as an exhibit.

15 MR. WHARTON: I guess we would jointly move its
16 admission.

17 CHAIRMAN JACOBS: I'm sorry, you're right, we do. So
18 we will admit into the record Exhibit 15.

19 (Exhibit 15 admitted into the record.)

20 MR. WHARTON: Our redirect will be filed in a single
21 document, not broken into direct, rebuttal, et cetera, because
22 I'll be working within the scope of a single deposition, will
23 be filed the day before the transcripts are due, on the 22nd.
24 And that would be subject, I assume, to appropriate motion.

25 CHAIRMAN JACOBS: Okay. All the parties understand

1 that?

2 MR. MELSON: It's acceptable to Nocatee Utility
3 Corporation.

4 CHAIRMAN JACOBS: Okay. You don't need to identify
5 that as anything. You'll just file that for the -- I don't
6 think we do. Do we?

7 COMMISSIONER DEASON: Let me ask a question. You're
8 going to be filing that in the form of question-and-answer
9 testimony; correct?

10 MR. WHARTON: Correct.

11 COMMISSIONER DEASON: With the intent that it would
12 be inserted in the record as though read.

13 MR. WHARTON: And that is an excellent point,
14 Commissioner. I would ask now that there be a stipulation,
15 that it be inserted into the record as though read and that it
16 be treated as if sworn.

17 COMMISSIONER DEASON: And let me ask this question.
18 How then -- if you are going to do it the day before the
19 transcript with the idea that it would be incorporated into the
20 transcript, I assume, then would there been sufficient time to
21 entertain objections to the scope or relevancy of the
22 testimony?

23 MR. WHARTON: I believe there will not be. The only
24 thing that the Posthearing Officer would be able to do, I
25 think, is to issue an order saying that line and that line and

1 that line and that line is out. The order will say it, and you
2 have to relate it back to the transcript.

3 COMMISSIONER DEASON: It would be stricken after the
4 fact.

5 MR. WHARTON: I believe so.

6 COMMISSIONER DEASON: And, Mr. Melson, you're okay
7 with that?

8 MR. MELSON: We're okay with that. And we'd be okay
9 with a deadline, say, seven days after the transcript comes out
10 if we had any motions to strike to file a motion to stike, give
11 us a week to look at it and see if there is anything that needs
12 to be stricken, we believe.

13 MR. WHARTON: Just to make sure that we do have
14 sufficient representations in the record that the testimony
15 will be inserted as though read and will be as though sworn.
16 All the parties are in agreement with that.

17 COMMISSIONER DEASON: And when are the beliefs due
18 after the filing of the transcript?

19 MS. CIBULA: The briefs are June 6th, 2001.

20 COMMISSIONER DEASON: And the transcripts are due
21 when?

22 MS. CIBULA: Two weeks after that.

23 CHAIRMAN JACOBS: No.

24 MS. CIBULA: Two weeks before that, I'm sorry.

25 MR. WHARTON: Two weeks before that, the 23rd. What

1 we endeavored to do, Commissioner Deason, and it is not my
2 agenda, is not to move back the whole schedule. I'll tell you
3 what I told these guys. If that's what it comes to, I'm going
4 to say this is all caused because M.L. is in the hospital. You
5 know, I'll probably cry during the motion. I'll say this is
6 what -- a consequence of that. We need to move everything
7 back. So this is what I've gone to try to accommodate that.
8 And I understand what you're saying, that means they may be
9 filing a motion only seven days before the brief is due, and
10 then I have a response period, and then you've got to rule.

11 MR. MELSON: And, Commissioner, we may filing a brief
12 with a footnote in it that says, you know, this is subject to a
13 motion to strike or words to that effect. I expect that we can
14 work in good faith if we've got differences, and if not, we
15 clearly can get a ruling by the time you vote at agenda
16 conference, which is when the rubber really hits the road.

17 COMMISSIONER DEASON: And then we may have a Staff
18 recommendation that says this may or may not be evidence in the
19 record.

20 MR. MELSON: Correct.

21 MR. WHARTON: We're willing to accommodate
22 the request that the schedule stay, but will not be against --

23 COMMISSIONER DEASON: Well, I would just request that
24 the parties try to work together. And to the extent that there
25 is to be some type of an objection, we'll try to move on it.

1 I'll commit to you that I'll try to move on it as quickly as
2 possible. The idea is not to continue this schedule anymore
3 and try to go ahead and abide by the current schedule and get
4 this matter before the Commission.

5 MR. WHARTON: Maybe we should say three business days
6 to object and three business days for me to respond. That
7 would take us to the 30th.

8 MR. MENTON: It's Memorial Day weekend.

9 MR. WHARTON: Never mind. It's too complicated.

10 MR. MELSON: We would file something as quickly as we
11 can. We would not take all the time we've talked about if we
12 could avoid it.

13 CHAIRMAN JACOBS: Very well. We'll leave it then
14 with the seven-day deadline with the understanding that you
15 file as soon as you get --

16 MR. MELSON: No later than seven days after -- as
17 soon as possible, but no later than seven days after the
18 transcript.

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1 **Q: Are you the same M.L. Forrester who has previously provided testimony in this**
2 **docket?**

3 A: Yes.

4 **Q: Mr. Melson asked you a few questions about Intercoastal's present plan of service**
5 **as opposed to the plans which Intercoastal put before the St. Johns County Water**
6 **& Sewer Authority in 1999. Please describe the evolution which Intercoastal has**
7 **undergone since that initial plan of service was proposed in 1999.**

8 A: As described in Intercoastal's original March 1999 application and my prior testimony
9 in this proceeding, Intercoastal has planned since 1996 for regional plants to be
10 installed to provide service within the territory for which it has applied. The
11 announcement of the Nocatee Development, after Intercoastal's original application
12 was filed, resulted in the submission of an April 1999 revised engineering plan to the
13 Authority which described how the Nocatee announcement would accelerate
14 Intercoastal's design and installation of the first phase of those new plant facilities, to
15 be completed within the first two to three years expected to be required for approval
16 of the Nocatee DRI.

17 Intercoastal was unable to obtain detailed plans and development schedules from DDI
18 for the entire Nocatee Development until the current application to this Commission
19 was filed and discovery procedures forced the disclosure of such information. The
20 information obtained from that discovery allowed Intercoastal to develop and submit,
21 with its application to this Commission, its December 1999 Conceptual Master Plan
22 which addressed service to all phases of the Nocatee Development.

23 In its pre-filed Direct Engineering testimony, DDI/NUC made further changes to the
24 first phase plans for Nocatee; to which Intercoastal responded by submitting its
25 Revised March 2000 Conceptual Master Plan.

1 The evolution of Intercoastal's plan of service to this territory since its initial
2 application to St. Johns County has been in direct response to the increase in
3 availability of detailed development information. In my opinion, the "evolution" of
4 Intercoastal's plans attests to the technical and planning capability of Intercoastal to
5 ensure that superior services will be provided to this territory if Intercoastal's
6 application is approved.

7 **Q: Mr. Melson asked you some questions about the amount of reclaimed water which**
8 **is "committed" to the Plantations. Please discuss that issue.**

9 A: There is no commitment of a specific amount of reclaimed water to the Plantations
10 development. The connection proposed for the provision of reclaimed water service to
11 Plantations is purely a "backup" to the Plantations' use of its storm water system as a
12 primary irrigation supply and as such does not constitute a firm commitment against
13 Intercoastal's reclaimed water supply.

14 **Q: Mr. Melson asked you about Nocatee Utility Corporation's technical ability to**
15 **provide service to the Nocatee development. In your opinion, does Nocatee Utility**
16 **Corporation have the requisite technical ability?**

17 A: No, in my opinion, Nocatee does not have the technical ability to serve the
18 development. Instead of attempting to hire individuals with the necessary experience
19 and ability to operate a utility such as NUC has proposed, NUC has chosen to
20 completely contract for those services with an unrelated party who will not even
21 arguably be under NUC's control or subject to NUC's direction. It is an unrelated
22 utility, JEA, who will send the bills, read the meters, make repairs and perform routine
23 operation and maintenance, answer the phones whenever there are complaints, and who
24 will provide the service. NUC will really exist in name only. I would have to agree
25 with the testimony of Bill Young, prefiled on behalf of St. Johns County, that NUC is

1 essentially a strawman for the provision of service by JEA.

2 In my opinion, Nocatee Utility Corporation (NUC) has not demonstrated any technical
3 ability to provide service to the Nocatee Development. NUC's principals have no prior
4 experience in the water and wastewater utility industry as managers, operators or
5 investors.

6 **Q: Mr. Melson asked you several questions about the technical ability of Intercoastal.**
7 **Please comment upon Intercoastal's technical ability.**

8 A: I believe Intercoastal's situation, as it relates to Intercoastal's utilization of JUM, is
9 completely different than the relationship between NUC and JEA. Intercoastal and
10 JUM are related parties in that there are shareholders who are common to each
11 operation, and more importantly, the two entities have worked together in this type of
12 arrangement for many years. Intercoastal and JUM operate as they do because of the
13 cost efficiencies which Mr. James explained during the hearing. However, the JUM
14 employees who perform work for Intercoastal are essentially Intercoastal employees,
15 and they consider themselves such. Those employees are specifically designated to
16 perform specific tasks on behalf of Intercoastal and those same individuals are
17 responsive to the needs of Intercoastal with regard to its billing, collection, operation,
18 maintenance, customer concerns, etc. In my opinion, it is a certainty that if the
19 relationship between JUM and Intercoastal were ever severed, for some unforeseeable
20 reason, those same employees who are considered by JUM to be Intercoastal
21 employees would in fact become, as a technical matter, Intercoastal employees. I can
22 not foresee any situation where Intercoastal would suddenly be without employees or
23 without the experience and expertise of the individuals who operate the Utility now.
24 Those same individuals are going to be onboard with Intercoastal no matter what
25 happens between Intercoastal and JUM.

1 Intercoastal's stockholders and directors have a long history of experience in the water
2 and wastewater industry, both as individuals and as a corporate body. Intercoastal's
3 president has over 45 years of planning, construction and operational experience in this
4 industry, and Intercoastal's other officers and directors have actively cooperated and
5 participated in guiding Intercoastal's management, financing, regulatory affairs and
6 systems operations for nearly two decades. In addition, several of those officers and
7 directors have been intimately involved in those same activities for other utility
8 systems since approximately 1955.

9 In my opinion, Intercoastal Utilities – as a corporate entity - has superior technical,
10 managerial, and operational capabilities and experience to carry out its proposed plan
11 of service to the territory it has requested. Intercoastal's long-standing affiliation with
12 Jax Utility Management and its other engineering, legal, and rate consultants only
13 enhance Intercoastal's capabilities and experience.

14 **Q: Mr. Melson asked you several questions about the possibility that Intercoastal**
15 **would be willing to explore the provision of bulk service by JEA. Is Intercoastal**
16 **willing to explore such a relationship?**

17 A: Only if such a relationship resulted in the ability of Intercoastal to provide services in
18 a more economical or more reliable fashion than the plan Intercoastal has proposed.
19 However, Intercoastal feels that its current service proposals have the capability to
20 provide those services at least as reliably and in the long term, more economically than
21 any arrangement that we can presently envision with JEA. Because of those conditions,
22 any arrangement with JEA for bulk service would most likely be limited in scope and
23 longevity.

24 Intercoastal will continue to be willing to explore any provision of service to the
25 territories for which it has applied to see if any particular option is the best option for

1 both the Utility and its present and future customers. It would be irresponsible for
2 Intercoastal to rule out any option in the future, and Intercoastal would not do so.

3 **Q: Would Intercoastal ever entertain the idea of obtaining operation and**
4 **maintenance services from JEA?**

5 A: No. I cannot envision Intercoastal ever seriously entertaining such a notion.
6 Intercoastal can and will provide those services as reliably and efficiently as JEA, and
7 we believe more economically than JEA. Moreover, such an arrangement with JEA
8 would effectively circumvent the ability of Intercoastal and this Commission to control
9 the costs and quality of service to this territory and its future customers.

10 As opposed to (at least) exploring the potential for obtaining either water, wastewater
11 or reuse service from JEA, I cannot imagine a scenario where Intercoastal would ever
12 entertain the idea of using JEA to perform its O&M. Intercoastal already has the
13 individuals in place who are more than capable of performing that operation and
14 maintenance, and would obviously hire whatever personnel were necessary, as
15 Intercoastal's customer base grew, so that operation and maintenance services, and our
16 response to our customers, would not diminish. Unlike NUC, Intercoastal is and has
17 been a regulated utility for many years and is more than capable of continuing to
18 operate its own regulated utilities as the company grows and expands.

19 **Q: Mr. Melson asked you several questions about the borrowing arrangement**
20 **between Intercoastal and First Union. Please comment on Intercoastal's**
21 **relationship with First Union and the letter which Mr. Hogshead wrote which was**
22 **put into evidence in this proceeding.**

23 A: In my opinion, the June 1, 2000 letter from Mr. Hogshead clearly indicates that based
24 on its long-standing relationship with the utility's principals, First Union Bank is ready
25 and willing to provide the funding necessary for Intercoastal to effectuate its plan of

1 service. The letter unquestionably shows that First Union has confidence in the
2 financial capacity of Intercoastal's stockholders as well as the managerial and technical
3 capabilities of Intercoastal and its principals to support these operations.

4 **Q: Mr. Melson asked you several questions about Intercoastal and past discussions**
5 **concerning the possible acquisition of Intercoastal by St. Johns County or JEA.**
6 **What is your understanding of the status of these matters at this time?**

7 A: Right now, I don't understand that there are any discussions ongoing with JEA, nor
8 have there been any such discussions in recent months. I also understand that, as
9 testified to at the hearing, there are no ongoing discussions with St. Johns County and
10 that it's the clear and unequivocal position of Intercoastal that if this Application is
11 granted by the PSC, Intercoastal is not for sale and does not wish to negotiate any
12 possible sale.

13 **Q: You were asked several questions about the pending rate case which Intercoastal**
14 **had contemplated filing with St. Johns County. What is the status of that matter?**

15 A: It's my clear understanding that if Intercoastal comes under the jurisdiction of the
16 Public Service Commission, any proceeding that is currently being conducted by the
17 County will cease to continue. This would apply to any potentiality that Intercoastal
18 will be filing a rate case with St. Johns County or the PSC in the near future given our
19 Principals' commitment in recent months to reduce rates if the requested territory is
20 granted.

21 **Q: Mr. Melson asked you some questions about how Intercoastal and Jax Utility**
22 **Management handle bids for the construction of facilities. Please state for the**
23 **record what you know about how that process has worked in the past.**

24 A: As I understand it, all the significant jobs which Intercoastal has engaged in for the
25 construction of facilities have been bid by Intercoastal. I am certainly not aware of any

1 instance, ever, where utilizing JUM has resulted in the Utility incurring additional or
2 unnecessary costs on any given project. It has been Intercoastal's experience that the
3 utilization of JUM for these types of services has consistently resulted in costs which
4 were at or below market cost.

5 **Q: Mr. Melson asked you questions about Intercoastal's proposed wet weather**
6 **discharge. Do you anticipate that Intercoastal's wet weather discharge would be**
7 **made to the Tolomato River?**

8 A: No, as I explained elsewhere in my testimony, Intercoastal's discharge will not be
9 made into either the Tolomato River or its tributaries.

10 **Q: Mr. Melson asked you several questions about the Development Order in this**
11 **case. Why do you understand the Development Order has the conditions**
12 **regarding the provision of water and wastewater and reuse service to the**
13 **development that it has?**

14 A: I think it is pretty clear that the Development Order only has the conditions which it
15 has because the developer specifically asked those conditions be placed upon the
16 development. And, it certainly does not appear to be any coincidence to me that that
17 request, that the Development Order contained those conditions, is in fact consistent
18 with the service to the development that is planned by the Applicant's related party and
19 that it is inconsistent with Intercoastal's plan of service. I believe it is clear that neither
20 the Water Management District nor the Department of Community Affairs either
21 requested these conditions to be place in the Development Order, nor investigated
22 whether the conditions were even appropriate. I also know there was no evidence or
23 testimony in this case from either Duval County or St. Johns County that either of
24 those entities require these conditions to be put in the Development Order.

25 **Q: Mr. Melson asked you several questions about the Local Sources First policy. Do**

1 **you understand your interpretation of Local Sources First policy to in fact be very**
2 **much like the Water Management District's present interpretation?**

3 A: Yes, as I understand it, it is the position of the Water Management District that the
4 Local Sources First policy is implicated when water is transported from one
5 jurisdiction to another, such as from JEA's water wells in Duval County to consumers
6 in St. Johns County. The Water Management District took this into account when it
7 processed JEA's last Consumptive Use Permit Application and Caroline Silvers
8 testified about those matters at the hearing.

9 **Q: Mr. Melson asked you about the need for service in the areas adjacent to the**
10 **Nocatee development. Do you believe there will be a need for service in those**
11 **areas in the future?**

12 A: Yes, I believe there may be a need for service in those areas in the future. Initially, it's
13 obvious that JEA has, through the construction of the "joint projects", anticipated
14 service east of the Nocatee development. Perhaps JEA knows something right now
15 that they are not sharing with us. Additionally, those lands are no different than the
16 lands on which the Nocatee development will lie were, at least to the public's
17 perception, a couple of years ago. The principals who own the land on which the
18 Nocatee development lies were quoted in the paper a few years ago as saying the land
19 would never be developed. Obviously, that changed and so could the status of the
20 other lands located within Intercoastal's proposed certificate expansion also.

21 I would note that the testimony in this case has been that the comprehensive plan
22 provides that these areas are appropriate for silviculture. However, I would note that
23 silviculture, at least as that word is normally used in this area, normally refers to pine
24 tree farming which would seem to be at odds to the great "environmental ethic" that
25 was promoted by the landowner and which was suggested as entirely at odds with the

1 location of any utility facilities on a small portion of the land. Locating the facilities
2 outside the development on a small parcel located on the other lands for which
3 Intercoastal has proposed to expand its certificate, would obviously satisfy the
4 requirements of the Development Order that the facilities be located offsite. It is
5 interesting to note that the Development Order from St. Johns County doesn't require
6 that the facilities "not be located in St. Johns County". They only require that they be
7 located outside the development. Assumably, if St. Johns County had been insistent
8 upon a condition that the facilities not be located in St. Johns County, it could have
9 clearly so stated in the Development Order.

10 **Q: Mr. Menton asked you whether it was true that JEA's Consumptive Use Permit**
11 **includes water designated for the northern St. Johns County area. What is your**
12 **understanding in that regard.**

13 A: As I testified, I have not reviewed the permits. But, I understand now that a significant
14 question in that regard arose at trial based upon the testimony of the witness from the
15 St. Johns Water Management District. It now appears that JEA's pertinent
16 Consumptive Use Permits do not provide for the provision of water to the portion of
17 the Nocatee development which lies with St. Johns County, as JEA previously thought
18 they did.

19 **Q: Mr. Menton asked you several questions about the conditions in the Development**
20 **Orders and their effect on the future of the development. If Intercoastal's**
21 **Application is granted, how do you anticipate the Development Orders will be**
22 **brought into harmony with Intercoastal's plan of service?**

23 A: I believe that if Intercoastal's Application is granted that the service will be able to be
24 provided in complete harmony with the Development Order one way or another.
25 Intercoastal would be willing to investigate options which complied with the

1 Development Order as it currently reads. Additionally, I understand from a review of
2 his deposition that the only individual in this case who can really claim to be an expert
3 in the area of processing Development Orders, Mr. Charles Gauthier from the
4 Department of Community Affairs, felt that in his opinion any modification to the
5 Development Order of these conditions would be a minor modification, which I
6 understand can be rather easily and quickly accomplished.

7 Accordingly, I believe Intercoastal could either provide service in some way such that
8 plants were not located on the development or, under a much more likely scenario, and
9 the one that I believe would be in the best interest of Intercoastal and its present and
10 future customers, the Development Orders can be easily be modified to accommodate
11 Intercoastal's plan of service.

12 **Q: Mr. Menton asked you questions about Intercoastal's commitment to provide**
13 **reuse to Sawgrass. Please explain what you understand Intercoastal's**
14 **commitment to be in that regard?**

15 A: Intercoastal is obligated by its FDEP Permit to provide at least 300,000 gallons per day
16 to the Sawgrass development. We do not agree with any contention on the part of
17 Sawgrass or any other party that the obligation is any greater than that.

18 **Q: Does Intercoastal discharge now to an Outstanding Florida Water?**

19 A: No, there seems to be confusion about where the Intracoastal Waterway and the
20 Tolomato River begins. Intercoastal currently discharges Intracoastal Waterway north
21 of the 210 Bridge. The "Tolomato River" is the name used for that same water body
22 south of the 210 Bridge. DEP already allows Intercoastal to discharge into that water
23 body, and did not express any particular concerns in permitting that activity just two
24 years ago. Of course, Intercoastal's plan of service would actually result in less
25 discharge going into the Intracoastal Waterway, not more. Intercoastal's plan of

1 service would allow the elimination of routine discharges into the Intracoastal
2 Waterway and would reduce those discharges to only wet weather discharges as and
3 when needed.

4 Not only are the Intracoastal Waterway and the Tolomato River two different bodies
5 of water located in two different areas, but the Intracoastal Waterway, at the point
6 where Intercoastal currently discharges and at the point where Intercoastal proposes to
7 discharge, is not a tributary of the Tolomato River. A tributary is water "flowing into
8 a larger stream or lake, and which is secondary, dependant, or subordinate to that larger
9 stream or lake". There is no reasonable argument that the Intracoastal Waterway, north
10 of the 210 Bridge, fits that definition as it relates to the Tolomato River, south of the
11 210 Bridge.

12 **Q: Mr. Menton asked you some questions about the water quality findings in the**
13 **Nocatee groundwater supply plan. What do you understand the plan to**
14 **determine with regard to the quality of the water which lies beneath the proposed**
15 **Nocatee development?**

16 A: The groundwater supply plan specifically determined that the ample amount of water
17 which Ch₂M Hill found beneath the development was "high quality" water. To this
18 date, I have never seen anything which is inconsistent with that determination.

19 **Q: Mr. Menton asked you several questions about the land upon which Intercoastal**
20 **would propose to locate its facilities. What do you anticipate Intercoastal will do**
21 **in order to obtain land on which to locate its facilities?**

22 A: It has been my experience, and the experience of all the principals of Intercoastal, that
23 once a utility obtains the legal right to provide service to a development, the developer
24 and the utility work hand-in-hand to allow the provision of that service. It is rather
25 absurd to think that if Intercoastal receives the certificate that the Nocatee developer

1 would refuse to cooperate in the provision of service which is a prerequisite to the
2 development of the property. Intercoastal would immediately meet with the
3 landowners and negotiate a fair price, or a contribution if possible, of the land on which
4 the facility should be located. It is obvious from the filings in this case and from my
5 knowledge of the area that there is ample land on which to locate the facilities
6 necessary to implement Intercoastal's plan of service. If necessary, (which is unlikely)
7 Intercoastal has condemnation authority as a public utility.

8 **Q: You were asked several questions about JEA's provision of service and the monies**
9 **JEA has invested in making water, wastewater, and reuse available to that**
10 **portion of Duval County in which the Nocatee development will lie. Do you**
11 **believe JEA's investment creates a powerful incentive to sell those products, if**
12 **they were approached by a willing buyer?**

13 A: It is clear to me that JEA, who has made a substantial investment in locating and sizing
14 lines necessary to provide services to areas south of the Duval County/St. Johns
15 County line, has a powerful incentive to sell those services. JEA has certainly argued
16 that it has ample capacity available, and as with any utility, it has an incentive to sell
17 that capacity. Notwithstanding Mr. Kelly's recent testimony about JEA's "new policy"
18 regarding the provision of bulk service in the future, it seems a bit unbelievable to me
19 that JEA would not be willing to sit down and discuss the possibility of providing
20 service to Intercoastal (such as supplying reuse or a backup source of reuse to the
21 development) when the time was right to do so. Particularly with regard to the
22 provision of reuse, JEA is a utility which is currently only reusing a tiny portion of its
23 daily discharge. It would seem to be in everyone's interest, including JEA's and its
24 present customers, for JEA to find as many customers as it can for that reuse. I believe
25 that any suggestion by the Nocatee development that its reuse needs will not be met if

1 Intercoastal's Application is granted, to be completely unfounded and unsubstantiated,
2 both based upon Intercoastal's plan of service and based upon the location of the JEA
3 reuse facilities near the Nocatee development.

4 **Q: Mr. Menton asked you several questions about the prior extension case before**
5 **St. Johns County. In what ways do you believe this present PSC case is dissimilar**
6 **to that prior case?**

7 A: Certainly, the PSC Application differs from the prior Application which was filed
8 before the Authority in that it proposes a different plan of service, proposes a project
9 for a different cost, has been filed pursuant to a different set of rules and statutes, it is
10 a litigation which involved different parties, it is an Application for a different service
11 territory, it is an Application that is responsive to the additional information we now
12 have about the Nocatee development, and it is an Application that is simply being filed
13 in a different time frame to the extent that things are not the same in St. Johns County
14 as they were in the prior case. Really, the only thing that is similar about the
15 Applications is that they were both requests for an extension of Intercoastal's present
16 service territory. Otherwise, the Applications are dissimilar in many, many ways.

17 **Q: What do you understand to be the status of any acquisition discussions regarding**
18 **Intercoastal if in fact Intercoastal's Application is granted?**

19 A: It's my understanding that if Intercoastal's Application is granted, Intercoastal is not
20 for sale.

21 **Q: You were asked a few questions about alleged odor problems at Intercoastal's**
22 **existing wastewater treatment plant. Is it your understanding that such**
23 **complaints have decreased dramatically since Intercoastal finished the**
24 **improvements at its wastewater treatment plant?**

25 A: Yes, it's our perception that the recent modification to the treatment plant have gone

1 a long way to satisfying the odor concerns that we had occasionally heard in the past
2 from residents who lived near the plants.

3 **Q: Mr. Melson asked you several questions about Intercoastal's relationship with**
4 **JUM and questions about JUM's construction of the recent improvements to**
5 **Intercoastal's water treatment plants. What is your recollection as to the cost of**
6 **Intercoastal's recent improvements to its plants in Ponte Vedra as those costs**
7 **relate to the projections for the cost of that particular project?**

8 A: The original cost projections for that project, submitted to First Union National Bank
9 to obtain the project loan commitment, totaled \$ 2,700,000. The final cost to complete
10 that project was \$2, 570,070; nearly 5% less than the original cost estimate. In my
11 experience, the final costs of such complex projects are much more likely to exceed the
12 original estimates than to come-in under budget. I would like to think that project cost
13 control performance of this type is one reason the Intercoastal team enjoys excellent
14 relationships with its lenders.

15 **Q: Mr. Melson asked you about Intercoastal's position that rates for existing**
16 **customers would fall if Intercoastal's Application was granted. Do you anticipate**
17 **that those rate decreases could become a reality if the Application were granted?**

18 A: Yes, not only do I believe the rates, as projected by Mr. Burton, will fall if the
19 Application is granted, I know that the shareholders have committed to reduce the rates
20 if the Application is granted. The shareholders were informed of the commitment
21 necessary in order to put into place such a rate reduction, and the shareholders made
22 the commitment necessary in order to make such a rate reduction come to fruition. The
23 shareholders have the wherewithall to make this commitment, they did make the
24 commitment and I would expect Intercoastal's present and future rate payers to benefit
25 from that commitment.

1 **Q: Does this conclude your testimony?**

2 A: Yes.

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1 CHAIRMAN JACOBS: Very well. Thank you. And we're
2 now to Mr. Burton. I don't know why I keep saying Bruton. It
3 must be somebody I know.

4 MR. DETERDING: Commissioners, I think we have an
5 agreement here about Mr. Burton, so we can hurry things along
6 and just stipulate his testimony in under a couple of
7 conditions, and let me try and explain it. Perhaps Mr. Melson
8 can correct me if I get it wrong. We would be stipulating in
9 his Intervenor, supplemental Intervenor, rebuttal, and
10 additional rebuttal. Specific pages of his additional
11 rebuttal, those that were not stricken, and that's pursuant to
12 a Commission order. We would be stipulating in his exhibits,
13 MB-2, which I believe is already in, as a matter of fact.

14 CHAIRMAN JACOBS: Yes, it is.

15 MR. DETERDING: MB-3 is already in. Then attached to
16 his supplemental Intervenor was MB-4 through MB-7. And the
17 exhibits that were not stricken as part of his additional
18 rebuttal, MB4-1 and MB4-2, and so I guess to get this done as
19 simply as possible, we would identify those based upon which
20 testimony they were attached to probably would be the simplest
21 way.

22 The only additional thing I think we agreed to is to
23 stipulate -- Ms. Swain gave some figures about the amount of
24 debt that the utility currently had versus what it would be
25 required ultimately to provide as far as additional debt to

1 serve Nocatee, and those figures were in error. And we wanted
2 to get the right figures on the record, and that's the figures
3 I want to give you now. The actual current debt of the
4 utility, those two pieces of debt incurred in the last couple
5 of years --

6 CHAIRMAN JACOBS: Before you do that, that, I assume,
7 is a part of Mr. Burton's --

8 MR. DETERDING: No.

9 COMMISSIONER JABER: Stipulation.

10 CHAIRMAN JACOBS: It's just part of the stipulation
11 you're going to insert, put this in the record.

12 MR. DETERDING: Yes, part of the stipulation.

13 CHAIRMAN JACOBS: That's fine.

14 MR. DETERDING: It is those two recent pieces of debt
15 that I discussed with Ms. Swain; then on redirect, she gave
16 some figures, I think, that were erroneous.

17 CHAIRMAN JACOBS: Very well.

18 MR. DETERDING: And that's what we want to clarify.
19 The two most recent pieces of debt total slightly more than
20 \$7 million that this utility has incurred. The amount of
21 additional debt necessary to serve Phase I would be 12.6, and
22 these are all water and sewer combined figures. And the
23 Phase II additional debt required would be 9.1, for a total of
24 additional on top of the 7 that they have recently incurred of
25 21.7 additional.

1 Now, to get back to the exhibits, what I would
2 suggest, and again, Rick, interrupt me if I'm getting anything
3 of this wrong, as far as exhibits, MB-2 is already in, MB-3 is
4 already. To mark MB-4 through MB-7 as whatever the next
5 numbered exhibit is.

6 CHAIRMAN JACOBS: It will be marked as composite
7 Exhibit 43.

8 (Exhibit 43 marked for identification.)

9 MR. DETERDING: Okay. And those exhibits that were a
10 part of Mr. Burton's additional rebuttal that were not
11 stricken, which are MB4-1 and MB4-2, you --

12 CHAIRMAN JACOBS: You want to make those a
13 separate --

14 MR. DETERDING: Yes, make those a separate
15 Exhibit 44.

16 CHAIRMAN JACOBS: Yes, composite Exhibit 44.

17 (Exhibit 44 marked for identification.)

18 MR. DETERDING: And based on that stipulation, I'd
19 like to move that his testimony, Intervenor testimony,
20 supplemental Intervenor testimony, rebuttal testimony, and
21 additional rebuttal, just those pages not stricken by the
22 Commission's prior order, be inserted in the record as though
23 read.

24 CHAIRMAN JACOBS: Without objection, show those
25 testimonies of Mr. Burton as amended entered into the record as

1 though read.

2 MR. DETERDING: And would to move those exhibits,
3 43 and 44.

4 CHAIRMAN JACOBS: Show exhibits 43 and 44 are
5 admitted into the record.

6 (Exhibits 43 and 44 admitted into the record.)

7 CHAIRMAN JACOBS: Very well. Thank you. That works.
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Intervenor's Testimony of Michael E. Burton

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Q: Please state your name and professional address for the record.

A: My name is Michael E. Burton. My professional address is Burton & Associates, Inc. at 440 Osceola Avenue, Jacksonville Beach, Florida 32250

Q: By whom are you employed and in what capacity?

A: I am employed by Burton & Associates, Inc. as its President.

Q: Please state your education and professional experience in matters related to water and wastewater utility rates and rate making.

A: I received a Bachelors of Industrial Engineering degree from the University of Florida in March of 1970. I have over 21 years of experience in water and sewer rate making, including 10 years with Arthur Young & Company, now Ernst & Young, where I last served as a Principal in charge of the Firm's Florida Utility Economics Practice Area. I founded Burton & Associates 11 years ago and we have specialized in water and sewer rate making since the Firm's inception. I have conducted water and sewer rate studies and related financial analyses for over 60 governmental and private clients. I have also served as the regulatory rate consultant for St. Johns County for 9 years and as the regulatory rate consultant for Flagler County for three years.

Q: Have you been accepted as an expert witness in an administrative proceeding?

A: Yes, in cases before the St. Johns County Water and Sewer Authority, the Flagler County Utility Regulatory Interim Authority and the Florida Public Service Commission.

1 Q: In what areas?

2 A: Utility rates, rate making and related issues.

3

4 Q: Are you familiar with Intercoastal's application and its proposal?

5 A: Yes.

6

7 Q: Have you reviewed the prefiled testimony of Deborah Swain and the other witnesses for
8 Nocatee Utility Corporation (NUC) and the deposition of Mr. Doug Miller taken on
9 March 1, 2000?

10 A: Yes.

11

12 Q: Does Ms. Swain's analysis assume a certain level of connections relative to the system
13 capacity?

14 A: Yes, Ms. Swain assumed that the system was at 80% of capacity to establish initial rates
15 and she projected that would occur at the end of year four, which would be 2005.

16

17 Q: Is that a correct approach to the establishment of initial rates for a new investor owned
18 utility?

19 A: It is in accordance with FPSC rules.

20

21 Q: Does this method for establishing initial rates reflect the costs of the utility, either prior to
22 or after the period at which the utility will be at 80% of capacity?

23 A: No, it represents a snapshot at a point in time in the growth of the utility. It effectively
24 shows the cost of service only at the most efficient point of operations during Phase I.

25

1 Q: Have you reviewed the prefiled testimony of Mr. Doug Miller?

2 A: Yes.

3

4 Q: Was the development plan, in terms of number and timing of growth ERC's in Mr. Doug
5 Miller's prefiled testimony the same as was assumed by you and Intercoastal's engineer,
6 Mr. Jim Miller, in your original Direct Testimony in this case?

7 A: No, the information submitted in NUC's Direct Testimony, was somewhat different from
8 the information used to prepare my prefiled testimony, which we had obtained from them
9 in discovery and from their original application for development approval.

10

11 Q: What was the result of the difference in NUC's plan relative to Intercoastal's plan?

12 A: Mr. Jim Miller had to adjust his Conceptual Master Plan to conform with Nocatee's
13 revised development plan as presented in Mr. Doug Miller's prefiled testimony.

14

15 Q: Did that effect your financial analysis as filed in your prefiled testimony?

16 A: Yes. I had to adjust the growth assumptions and capital improvements program in my
17 analysis to match Mr. Jim Miller's Conceptual Master Plan.

18

19 Q: Did those changes effect the results of your analysis?

20 A: Yes, the chart on the following page presents the difference in my prefiled testimony and
21 my current intervenor testimony. This chart, as well as the other charts in my intervenor
22 testimony- except for the chart on page 11 which is a comparative analysis of Intercoastal
23 and JEA's retail rates, is both: (1) a summary of the results of my analysis as submitted
24 with this intervenor testimony and (2) a comparison of the results of the direct testimony,
25 submitted by Intercoastal and NUC, to my intervenor testimony .

Description	Monthly Water and Sewer Bill					
	5,333 Gallons per Month			10,000 Gallons per Month		
	2002	2005	2009	2002	2005	2009
Intercoastal - Stand Alone Service Plan: Direct Testimony	\$54.64	\$42.96	\$36.84	Not Incl.	Not Incl.	Not Incl.
Intervenor Testimony	\$54.64	\$49.27	\$40.51	\$79.70	\$71.71	\$58.59
Percentage change from 2002	NA	-9.83%	-25.86%	NA	-10.03%	-26.49%

As you can see, the changes in the growth, and capital requirements to respond to growth, cause the Intercoastal rates to be about \$3.67 per month higher in 2009 than they would have been with the prior data. However, this still represents a decrease of 25.86% from the rates anticipated in 2002.

I also included an evaluation at an assumed monthly water usage of 10,000 per month. I used 5,333 gallons per month in my prefiled testimony because that is the average usage in the Intercoastal system for a 5/8 x 3/4 inch metered residential single family customer. However, this includes individually metered condominiums, many of which have seasonal occupancy. Therefore, I believe that this average is lower than the monthly consumption would be in a system with predominantly single family homes with year round occupancy. Furthermore, the developments in the western area of Intercoastal's current service area are single family homes with year round occupancy (see pictures on the following page) .

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*Sample Views of Single Family Homes in the
Western Portion of Intercoastal's Current Service Area*



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To the extent that the Nocatee development is more like the developments in the western portion of Intercoastal's current service area, I believe that the average usage per single family customer will be higher than the 5,333 average for Intercoastal's current service area. Therefore, I used 10,000 gallons per month as a example.

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As you can see, if average usage for a single family customer is 10,000 gallons per month, the decrease from the rate impact in 2002 is 26.49%, which is slightly more of a decrease than the 25.86% decrease which results if it is assumed that average usage is 5,333 gallons per month.

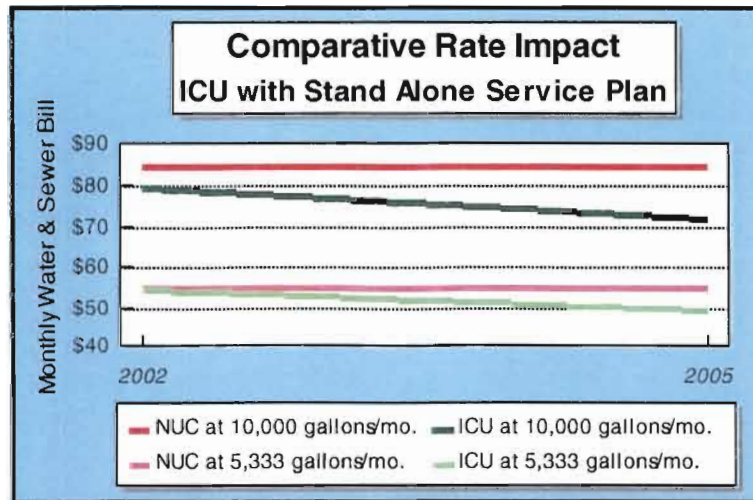
Q: How does that compare to Ms. Swain's analysis for NUC's initial rates?

A: Ms. Swain developed initial water and sewer rates for NUC. The chart below shows that if you calculate the monthly bill of an average single family customer using 5,333 gallons per month with NUC's proposed initial rates, the monthly bill would be \$54.77 per month, which is approximately the same monthly bill as the current Intercoastal rates will produce. However, if you assume water usage of 10,000 gallons per month, the monthly bill for a single family customer of NUC would be \$84.78 per month, which is

1 approximately 6.37% greater than the \$79.70 which the current Intercoastal rates will
 2 produce at that usage. By 2005, Intercoastal's bill will be only \$49.27 with 5,333 gallons
 3 usage and \$71.71 with 10,000 gallons usage while NUC's bill will remain at \$54.77 and
 4 \$84.78 for 5,333 and 10,000 gallons of usage respectively. Therefore, by 2005 NUC's bill
 5 will be 11.16% higher at 5,333 gallons per month of water usage and 18.23% higher at
 6 10,000 gallons per month water usage.

Description	Monthly Water and Sewer Bill					
	5,333 Gallons per Month			10,000 Gallons per Month		
	2002	2005	2009	2002	2005	2009
Intercoastal - Stand Alone Service Plan: Intervenor Testimony	\$54.64	\$49.27	\$40.51	\$79.70	\$71.71	\$58.59
NUC - Direct Testimony	\$54.77	\$54.77	Not Incl.	\$84.78	\$84.78	Not Incl.
Amount that NUC rates are higher than Intercoastal's	\$0.13	\$5.50	NA	\$5.08	\$13.07	NA
Percentage that NUC rates are higher than Intercoastal's	0.24%	11.16%	NA	6.37%	18.23%	NA

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16 A graphical representation of this chart follows:



1 Q: Will NUC's rates remain constant at the initial rates level?

2 A: It is my understanding that Ms. Swain set initial rates assuming connections at 80% of
3 capacity and that she projects that will occur in the fourth year of her projection period, or
4 2005. Therefore, I assume that NUC's rates will stay at their initial level until 2005 which
5 is reflected in the chart and graphs above.

6

7 Q: Can you please summarize this comparative analysis?

8 A: Yes. The effect of NUC's rates and Intercoastal's rates upon a single family customer's
9 monthly water and sewer bill with 5,333 gallons of water usage per month would be
10 essentially the same in 2002 at about \$54.77 and \$54.64 respectively per month.
11 However, by 2005 the effect of Intercoastal's rates upon the bill for this same customer
12 would be only \$49.27 whereas, the bill for the same customer in 2005 under NUC's plan
13 would remain at \$54.77 per month, which is approximately 11.16% higher than
14 Intercoastal's projected rate impact in 2005.

15

16 Assuming 10,000 gallons per month average usage, in 2002 the effect of Intercoastal's
17 rates would be a monthly water and sewer bill of \$79.70, whereas, the bill for the same
18 customer in 2002 under NUC's initial rates would be \$84.78 per month, which is
19 approximately 6.37% higher than Intercoastal's projected rate impact in 2002. In
20 addition, by 2005 the effect of Intercoastal's rates upon this same customer would be a
21 monthly water and sewer bill of only \$71.71, whereas, the bill for the same customer in
22 2005 under NUC's plan would remain at \$84.78 per month, which is approximately
23 18.23% higher Intercoastal's projected rate impact in 2005. The chart and graph in the
24 answer to the previous question present these results in tabular and graphical form.

25

1 Q: Did you conduct any other comparisons of Intercoastal's plan to NUC's plan?

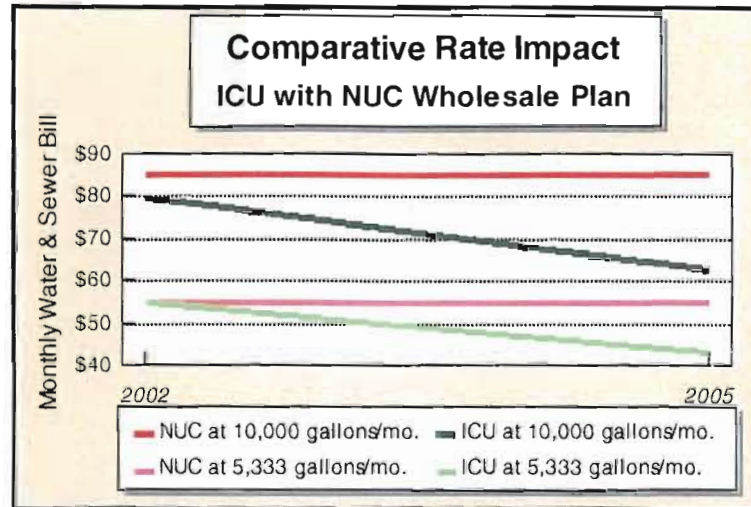
2 A: Yes. NUC's plan includes the assumption that the JEA will provide wholesale water and
 3 sewage treatment service, whereas Intercoastal's plan assumes that Intercoastal will
 4 provide "stand alone" water and wastewater treatment services in its new service area.
 5 Therefore, I conducted an analysis that assumed that Intercoastal adopted NUC's plan in
 6 the requested service area, including the assumption of wholesale water and sewage
 7 treatment service from the JEA.

8
 9 Q: What were the results of this analysis?

10 A: The following chart shows that the assumption of NUC's plan for the requested service
 11 area in the Intercoastal analysis causes the rate impact for Intercoastal to reduce from
 12 \$54.64 in 2002 to about \$43.07 in 2005, compared to NUC's rate impact of \$54.77 in
 13 2005.

Description	Monthly Water and Sewer Bill					
	5,333 Gallons per Month			10,000 Gallons per Month		
	2002	2005	2009	2002	2005	2009
Intercoastal Intervenor Testimony with NUC Wholesale Service Plan	\$54.64	\$43.07	NA	\$79.70	\$62.52	NA
NUC - Direct Testimony	\$54.77	\$54.77	Not Incl.	\$84.78	\$84.78	Not Incl.
Amount that NUC rates are higher than Intercoastal's	\$0.13	\$11.70	NA	\$5.08	\$22.26	NA
Percentage that NUC rates are higher than Intercoastal's	0.24%	27.17%	NA	6.37%	35.60%	NA

24
 25 A graphical representation of this chart is on the following page:



Q: What would happen after 2005?

A: NUC did not project past 2005, so we do not have any capital improvement program numbers for their plan during that period.

Q: Did you project for Intercoastal after 2005?

A: No, in order to be consistent with NUC's plan we only projected through the years of their plan which ends in 2005.

Q: What will happen to NUC's rates after 2005?

A: Ms. Swain did not address that in her testimony. However, the reason that the Intercoastal rate impact is less than NUC's in 2005 is primarily due to the fact that Intercoastal is a mature utility with over 5,500 existing water ERCs and 2,900 existing sewer ERCs. When Intercoastal adds capital investment to rate base to serve the requested service area, it has continuing reductions in its existing rate base through depreciation to offset, at least to some extent, the increases in total rate base resulting from expansion in the requested service area. Whereas, NUC's total rate base is the new

1 investment in the requested service area and it has no increasing accumulated depreciation
2 on an existing investment to serve 5,500 and 2,900 existing water and sewer ERCs
3 respectively, as does Intercoastal, to counteract the increases in investment, and thus
4 return, to serve expansion in the requested service area.

5
6 Also, Intercoastal is already covering the fixed administrative and operations costs of an
7 ongoing utility in its current rates. Additional administrative and operations costs to serve
8 the requested service area will only be marginal costs. Also, Intercoastal's current
9 administrative and operations costs and other fixed costs will be spread over a larger base
10 of customers as growth occurs in the requested service area causing downward pressure
11 on rates due to these economies of scale.

12
13 NUC will enjoy none of these advantages. And even assuming NUC is awarded the
14 service area and matures as a utility over time, a comparative analysis over the same time
15 period assuming that Intercoastal is awarded the territory, and "stands in NUC's shoes"
16 regarding implementation of the same capital and wholesale service plan as proposed by
17 NUC in the requested service area, would show that Intercoastal will always be able to
18 have lower rates than NUC because of the advantages of Intercoastal's greater economies
19 of scale due to its existing base of customers.

20
21 Q: Is consideration of the JEA's retail rates relevant to NUC's and/or Intercoastal's
22 respective applications?

23 A: If one wants to understand the possible rate impacts of awarding the requested service
24 area to either NUC or Intercoastal, I believe that the clause in the letter of understanding
25 regarding the provision of wholesale service to NUC from JEA that gives to the JEA the

1 right of first refusal to acquire NUC requires an evaluation of the JEA's retail rates.

2
3 Q: Have you performed a comparative analysis of Intercoastal and the JEA's retail rates?

4 A: Yes, it is included in the chart below.

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Description	Monthly Water and Sewer Bill					
	5,333 Gallons per Month			10,000 Gallons per Month		
	2002	2005	2009	2002	2005	2009
Intercoastal Intervenor Testimony with Stand Alone Service Plan	\$54.64	\$49.27	\$40.51	\$79.70	\$71.71	\$58.59
JEA Retail Rates - Average of summer and winter months rates	\$35.63	NA	NA	\$56.44	NA	NA
Total amount that JEA rates would have to increase to equal Intercoastal's	NA	NA	\$4.88	NA	NA	\$2.15
Total percentage that JEA rates would have to increase to equal Intercoastal's	NA	NA	13.70%	NA	NA	3.81%
Annual percentage that JEA rates would have to increase to equal Intercoastal's	NA	NA	1.437%	NA	NA	0.427%

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1 Q: Will you please describe that analysis?

2 A: This analysis compares the impact of current JEA retail rates upon a single family
3 customer to the current and projected Intercoastal rates for the same customer with 5,333
4 and 10,000 gallons of water usage respectively. The JEA rate impact was calculated for
5 each assumed level of water usage, using the average of the JEA retail rates for summer
6 and winter months, the difference being that during the summer months (April through
7 September), wastewater is billed at 90% of water usage.

8

9 The analysis shows that by 2009, Intercoastal's rates will result in impacts of \$40.51 and
10 \$58.59 for 5,333 and 10,000 of monthly water usage respectively, whereas, the JEA's
11 current retail rates would result in an impact of \$35.63 and \$56.44 for 5,333 and 10,000
12 of monthly water usage respectively. If the average water usage for a single family home
13 in the requested service area is closer to 10,000 gallons per month than to 5,333 gallons
14 per month, which I believe it will be, by 2009 Intercoastal's rates will be only 3.81%
15 higher than the JEA's current rates.

16

17 This does not include consideration of any increases in the JEA's retail rates over the next
18 nine years. It would only take a total increase in the JEA's retail rates of 3.81% over this
19 nine year period for the rate impact of JEA retail rates and Intercoastal's rates to be the
20 same. This equates to only a 0.417% increase per year.

21

22 Q: Did Ms. Swain present reclaimed water rates for NUC?

23 A: Yes.

24

25 Q: Did you compare those rates to projected reclaimed water rates for Intercoastal?

1 A: Yes. Conversion of NUC's proposed reclaimed water rates results in monthly reclaimed
 2 water cost per reclaimed water ERC of \$14.78. This conversion of rates to ERCs
 3 assumes that a reclaimed water ERC is equivalent to 261 gallons per day which equates to
 4 7,830 gallons per month.

5
 6 If Intercoastal provides reclaimed water under its stand alone plan, the cost per ERC for
 7 reclaimed water would be \$16.17 in 2002, \$15.52 in 2003, \$13.55 in 2004, \$12.11 in
 8 2005 and \$10.84 by 2009. This shows that Intercoastal can provide reclaimed water
 9 under its stand alone plan at a cost that, although initially is slightly more than NUC
 10 (approximately 9% higher), will be 8% lower than NUC's costs by 2004, will be 27%
 11 lower by 2005 and will continue to decrease through 2009 as economies of scale are
 12 realized by growth in reclaimed water customers. In fact Intercoastal would probably
 13 implement reclaimed water rates at the level calculated for 2005 (the fourth year of the
 14 plan and consistent with the timing of NUC's initial rate calculations) which means that
 15 Intercoastal will have lower reclaimed water rates than NUC from 2002 onward.

16
 17 Also, it is important to realize that NUC will not enjoy the same benefit of economies of
 18 scale from growth as will Intercoastal. This is because according Ms. Swain's testimony,
 19 NUC will purchase reclaimed water from the JEA for an annual cost (at 80% of capacity)
 20 of \$119,988. This is approximately 50% of the \$238,278 annual O&M costs for reclaimed
 21 water (at 80% of capacity) as represented in Ms. Swain's testimony. This is important to
 22 note, because as reclaimed water customers increase, *no economies of scale will be*
 23 *realized by NUC relative to this purchased reclaimed water cost.* In fact, as reclaimed
 24 water customers increase, the cost to NUC of this purchased reclaimed water will increase
 25 proportionately.

1 Q: Mr. Burton, what is Exhibit MB-2?

2 A: Exhibit MB-2 is my revised financial analysis. It is based on
3 the change (reflected in NUC's direct testimony) in growth and
4 capital assumptions from the data I used in my prefiled
5 testimony (which came from NUC's original application for
6 development approval and discovery documents).

7 Q: Does Exhibit MB-2 reflect your work product and your opinions?

8 A: Yes.

9 Q: Mr. Burton, does the above testimony reflect your opinions
10 regarding all the issues discussed?

11 A: Yes.

12 Q: Does this conclude your testimony?

13 A: Yes.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Applications For An Amendment Of Certificate For An Extension Of Territory And For an Original Water And Wastewater Certificate (for a utility in existence and charging for service)

Docket No. 992040-WS

In re: Application by Nocatee Utility Corporation for Original Certificates for Water & Wastewater Service in Duval and St. Johns Counties, Florida

Docket No. 990696-WS

Supplemental Intervenor's Testimony of Michael E. Burton

Q: Are you the same Michael E. Burton who has previously filed testimony in this case?

A: Yes I am.

Q: What have you reviewed in preparation for your participation in this case.

A: I have reviewed the testimony and exhibits previously filed in this case.

Q: Have you also reviewed specifically the Supplemental Direct Testimonies of Douglas Miller and Ms. Deborah Swain, filed July, 2000 on behalf of Nocatee Utility Corporation (NUC) in this proceeding?

A: Yes I have.

Q: Were there portions of these testimonies that caused you concerns?

A: Yes. Ms. Swain's testimony include a rate comparison of NUC's new rates, as adjusted for the final terms of the wholesale service agreement with the JEA with Intercoastal's current rates. The rate comparisons presented in her Exhibit DDS-12, Page 2, actually are comparisons of monthly water and wastewater bills of a single family residential customer with a 5/8 x 3/4 inch meter at various levels of water usage.

Ms. Swains's comparison includes assumed monthly water usages of 3,000 gallons per month, 5,000 gallons per month, 5,333 gallons per month, 10,000 gallons per month and

1 25,000 gallons per month. If one examines the results of Ms. Swain's comparison, for a
2 customer with both water and wastewater service, the total monthly water and wastewater
3 bill would be 1) lower for NUC than for Intercoastal at the assumed water usages of 3,000,
4 5,000 and 5,333 gallons per month, 2) slightly higher for NUC than for Intercoastal at the
5 assumed water usage of 10,000 gallons per month, and 3) significantly higher for NUC than
6 for Intercoastal at the assumed water usage of 25,000 gallons per month.

7 The problem that I have with this comparison is that the only relevant ranges of water usage
8 for comparison are 10,000 gallons per month and higher. Three of the assumed water
9 usages, namely 3,000, 5,000, 5,333 gallons per month show that NUC's rates result in lower
10 monthly bills than would Intercoastal's. However, this is misleading because these ranges
11 of water usage are not relevant for comparison because the water usage for the vast majority
12 of single family residential customers in the Nocatee development will be significantly
13 greater than that.

14 Q: How do you know that?

15 A: Well, for one thing, NUC's own engineers have prepared usage projections for the phasing
16 of the Nocatee development which show that a single family residential customer is expected
17 to use 350 gallons per day of water. This converts to 10,646 gallons per month (350 gpd x
18 365 days per year / 12 months per year).

19 Q: Do you think that is a reasonable expectation of water usage for a single family residential
20 customer?

21 A: Yes, for planning purposes.

22 Q: Can it be tested or verified in any way?

23 A: Yes. Intercoastal's service area includes a number of single family residential developments
24 in the western portion of its service area along SR 210, between Highway A1A and the
25 Intracoastal Waterway. I have included Exhibit MB-4 which presents the results of a bill

1 frequency analysis of Sawmill Lakes, one of these subdivisions. This analysis shows that
2 the actual water usage of single family customers similar to the single family customers that
3 will live in Nocatee is considerably higher than even the 10,646 gallon per month planning
4 estimate used by NUC.

5 Q: Would you please explain the results of the analysis shown in Exhibit MB-4?

6 A: Exhibit MB-4 presents the graphical results of what is commonly referred to as a bill
7 frequency analysis. This analysis compiles the number of bills issued at 1,000 gallon
8 increments from 0 gallons per month usage to the largest gallons per month for which a bill
9 was issued. For single family residential customers the number of bills issued for usage over
10 50,000 gallons per month is very small so the graphical representations of a bill frequency
11 analysis are typically limited to the most relevant range of usage, which is what I have done
12 in Exhibit MB-4.

13 The results of this analysis, as presented in Exhibit MB-4, Page 1 of 3 show that in Sawmill
14 Lakes, 77.5% of all bills issued were for usage greater than 10,000 gallons per month.
15 Furthermore, 50% of all bills issued were for usage greater than 15,000 gallons per month
16 and the average usage is 18,000 gallons per month.

17 Based upon this analysis and the rate comparisons presented in Exhibit MB-7, Intercoastal's
18 rates will result in lower monthly water and wastewater bills than NUC's rates for over
19 77.5% of all single family residential customers in Nocatee.

20 Looked at another way, the results of Exhibit MB-4, Page 2 of 3 show that if one considered
21 the "proper bill comparison range" to be that range which comprised 60% of the bills issued,
22 with 20% falling below that range and 20% falling above that range, that range would be
23 from 9,500 to 26,500 gallons per month.

24 Based upon this analysis and the rate comparisons presented in Exhibit MB-7, Intercoastal's
25 rates will result in lower monthly water and wastewater bills than NUC's rates for all single

1 family residential customers with usage in that range.

2 Exhibit MB-4, Page 3 of 3 shows that if the definition of the "proper bill comparison range"
3 were that range which comprised 80% of the bills issued, with 10% falling below that range
4 and 10% falling above that range, that range would be from 7,000 to 30,000 gallons per
5 month.

6 Based upon this analysis and the rate comparisons presented in Exhibit MB-7, NUC's rates
7 will result in slightly lower monthly water and wastewater bills than Intercoastal's rates for
8 single family residential customers with usage at the lowest end of that range but the vast
9 majority, approximately 90%, of the customers with usage in that range would have lower
10 bills with Intercoastal's rates than with NUC's rates.

11 Q: This is quite different from your original testimony which stated that the average single
12 family residential usage in the Intercoastal service area is 5,333 gallons per month. How do
13 you explain the difference?

14 A: When looked at for the entire Intercoastal service area, the average single family residential
15 usage is 5,333 gallons per month. However, this includes a large number of individually
16 metered condominiums that actually exhibit usage characteristics more like multi-family
17 users. Also, most of these condos are located in the resort area of Intercoastal's service area
18 in the Ponte Vedra Beach and Sawgrass area and include the effects of seasonal occupancy,
19 which always causes an average usage to be lower than if there were year round occupancy.

20 Q: Then, you believe that the usage in Sawmill Lakes is more representative of the usage to be
21 expected from Nocatee?

22 A: Yes. In fact, I have included in Exhibit MB-5 pictures of three typical single family homes
23 that are located in Sawmill Lakes and the other subdivisions in the western portion of
24 Intercoastal's service area. I believe that based upon what has been presented regarding the
25 nature of the Nocatee development, these homes are representative of the types of homes that

1 will be constructed in Nocatee. Furthermore, based upon all accounts of the Nocatee
2 development, it will be an extensive residential community, not a resort destination.
3 Therefore, one would expect year round occupancy.

4 Q: Is there any concrete evidence that the Nocatee development will be predominantly a
5 residential community?

6 A: Yes. I have included Exhibit MB-6 which includes an analysis of the first two phases of the
7 Nocatee development in terms of projected water demands by the types of land uses expected
8 in Nocatee.

9 Q: What is the source of this analysis?

10 A: The projected water usage by land use type presented on page 3 of Exhibit MB-6 was
11 provided to my by Jim Miller, Intercoastal's engineer in this case. It is my understanding
12 that Jim Miller obtained this information from an analysis of NUC's engineers.

13 Q: What does Exhibit MB-6 show?

14 A: It shows that based upon the water demand analysis of NUC's engineers, single family
15 residential customers will comprise 72.33% of the water demands and 68.75% of the
16 wastewater flows or approximately 70% of the combined water and wastewater demands in
17 the development. This is based upon conversion of the water and wastewater demands of
18 NUC's engineers to ERCs by land use type using NUC's assumed demands per ERC of 350
19 gallons per day for water and 280 gallons per day for wastewater.

20 Q: Can you summarize your conclusions regarding the testimony you have just given?

21 A: Simply stated, I believe that the documentation provided in my testimony and exhibits
22 clearly supports the conclusion that any comparisons of the effects of the rates of Intercoastal
23 and the rates of NUC upon the monthly bills of customers 1) should focus on the single
24 family residential class as it will be the predominant land use in Nocatee, 2) must consider
25 that the predominant amount of billed water usage for such comparisons should be at least

1 10,000 gallons per month, and 3) Intercoastal's rates are lower than NUC's rates in all
2 relevant ranges of expected water usage from 10,000 gallons per month and higher.

3 Q: Do you have any other concerns regarding Ms. Swain's testimony?

4 A: Yes. Ms. Swain's Exhibit DDS-12 presents a rate comparison of NUC's rates and
5 Intercoastal's rates, assuming Intercoastal's rates today. Her testimony also indicates that
6 NUC's proposed rates are set based upon year four, when build out is expected to be 80%.
7 However, I have provided extensive testimony that supports the projection that Intercoastal's
8 rates will be significantly lower by 2005 if awarded this service area extension. In fact, the
9 analysis presented in my rebuttal testimony showed that if Intercoastal "stood in NUC's
10 shoes" with regard to their contract with the JEA and implemented NUC's service plan,
11 Intercoastal's rates would result in a monthly water and wastewater bill of \$64.62 in 2005
12 for 10,000 gallons per month water usage, compared to NUC's rate of \$79.71 per month for
13 the same usage, a rate which is 23.4% higher than Intercoastal's rate.

14 I believe that the valid comparison would be to compare the effects of NUC's and
15 Intercoastal's rates for ten years from the beginning of the development. Since NUC has not
16 provided testimony as to their projected rates beyond 2005, such a multi year comparison can
17 only be made through 2005. I have prepared such a comparison which is presented in
18 Exhibit MB-7.

19 Exhibit MB-7 shows that in 2000 Intercoastal's current and projected water and sewer rates
20 are less than NUC's rates for all water usage 10,000 gallons per month and greater, and in
21 2005 Intercoastal's rates are projected to be significantly lower than NUC's rates for all
22 water usage 10,000 gallons per month and greater.

23 Q: Have you analyzed the effects of the changes that Ms. Swain made to NUC's rates based
24 upon the final wholesale service agreement with the JEA?

25 A: Yes. It is interesting that the final terms of the JEA agreement result in rates for NUC that

1 virtually equal the Intercoastal rates at 10,000 gallons per month of water usage, the amount,
2 as I have testified earlier, that NUC's engineers used in calculating projected water demands.
3 Without the Intercoastal alternative, I wonder if the terms of the final agreement would have
4 had the same result.

5 Q: Will the terms of the final JEA wholesale service agreement affect your analysis of
6 Intercoastal's rates, and if so how?

7 A: Yes. The terms of the JEA agreement would result in a reduction in the Intercoastal rates
8 projected in my prior rebuttal testimony of approximately .5% in the scenario where
9 Intercoastal would implement NUC's wholesale plan of service. However, the terms of the
10 JEA wholesale agreement would obviously not effect Intercoastal's stand alone plan of
11 service, which still would result in rates in 2005 for 10,000 gallons per month of water usage
12 of \$71.84, an amount that is approximately 10% lower than NUC's rates of \$79.71 at the
13 same usage. This fact, that Intercoastal has a viable service plan alternative that is not
14 dependent upon the JEA and which still results in rates that are lower than NUC's proposed
15 rates, should give the rate payers in the Nocatee service area comfort and should be
16 compelling evidence to the Commission that Intercoastal will provide quality utility service
17 to this service area at the lowest possible cost to the rate payer.

18 Q: Does this conclude your testimony?

19 A: Yes.

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Rebuttal Testimony of Michael E. Burton

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3 Q: Please state your name and professional address for the record.

4 A: My name is Michael E. Burton. My professional address is Burton & Associates, Inc. at
5 440 Osceola Avenue, Jacksonville Beach, Florida 32250

6 Q: By whom are you employed and in what capacity?

7 A: I am employed by Burton & Associates, Inc. as its President.

8 Q: Please state your education and professional experience in matters related to water and
9 wastewater utility rates and rate making.

10 A: I received a Bachelors of Industrial Engineering degree from the University of Florida in
11 March of 1970. I have over 21 years of experience in water and sewer rate making,
12 including 10 years with Arthur Young & Company, now Ernst & Young, where I last
13 served as a Principal in charge of the Firm's Florida Utility Economics Practice Area. I
14 founded Burton & Associates 11 years ago and we have specialized in water and sewer
15 rate making since the Firm's inception. I have conducted water and sewer rate studies and
16 related financial analyses for over 60 governmental and private clients. I have also served
17 as the regulatory rate consultant for St. Johns County for 9 years and as the regulatory
18 rate consultant for Flagler County for three years.

17 Q: Have you been accepted as an expert witness in an administrative proceeding?

18 A: Yes, in cases before the St. Johns County Water and Sewer Authority, the Flagler County
19 Utility Regulatory Interim Authority and the Florida Public Service Commission.

20 Q: In what areas?

21 A: Utility rates, rate making and related issues.

22 Q: Are you familiar with Intercoastal's application and its proposal?

23 A: Yes.
24
25

1 Q: Have you reviewed the Intervenor Direct Testimony of Deborah Swain and Doug Miller?

2 A: Yes.

3 Q: Mr. Miller listed as a concern of his in his testimony the fact that Intercoastal has included
4 Walden Chase in its application, whereas Walden Chase has an agreement with St. Johns
5 County to provide water and sewer services as soon as May, 2000. Is this statement true?

6 A: Intercoastal has assumed that Walden Chase would be in the requested service area in its
7 application. At the time the application was filed, it is my understanding that the issue of
8 St. Johns County serving Walden Chase was under legal appeal. However, in light of Mr.
9 Miller's concerns, I have run our model assuming that Walden Chase is served by St.
10 Johns County. The implication is the removal of Walden Chase's projected connections
11 and resultant revenues, marginal expenses and property and cash CIAC. No adjustment
12 was made to the CIP because Walden Chase would be served with the same backbone
13 system as the rest of the requested service area and the elimination of Walden Chase's
14 connections would not be sufficient to resize the system.

13 Q: Do you have the results of your projections without Walden Chase?

14 A: Yes. I have included Exhibit MB-3 which includes these adjustments. I should point out
15 that Exhibit MB-3 also includes a scenario to demonstrate the effect with the assumption
16 of funding with 40% equity and 60% debt in response to Ms. Swain's testimony as
17 described later in my testimony.

17 Q: With regard to the exclusion of Walden Chase, what are the results of your analysis?

18 A: Assuming Intercoastal's proposed capital plan and plan of financing, the exclusion of
19 Walden Chase causes the rate impacts, assuming an average single family residential water
20 usage of 10,000 gallons per month, to go from \$79.70 with current rates to \$58.87 in
21 2009. Compared to the analysis in MB-2, where the rate impacts of Intercoastal's plan in
22 2009 were \$58.59, the removal of Walden Chase would have the effect of increasing the
23 projected monthly water and sewer bill of the typical residential customer by
24 approximately \$0.28 per month by 2009.
25

1 Q: Now let's turn to Ms. Swain's testimony. Does Ms. Swain present testimony regarding
2 her opinion as to the financial viability and strength of Intercoastal with which you
3 disagree?

4 A: Yes. Ms. Swain concludes that Intercoastal has been unable to pay its debt service from
5 operating earnings for the years 1997 and 1998 and that Intercoastal has had to increase
6 wastewater rates over 40% in part to pay for new debt and that it is unclear whether this
7 increase will provide revenues adequate to pay for new debt.

8 Q: Do you disagree with her conclusion?

9 A: Yes. First, for the moment, assume that Ms. Swain's concerns regarding the ability to pay
10 debt service from operating income are valid. Under the scenario of service proposed by
11 NUC, this concern about inability to meet debt service with net income would be even
12 more apparent in the case of NUC during its start-up years. NUC will have to invest in
13 substantial amounts of infrastructure as a condition of being able to serve the first
14 customers within its service territory and the monies required to fund debt (even at a 60%
15 debt level) to cover that substantial investment will for years be far beyond the net income
16 derived from revenues from customers actually served. This is because the utility will
17 have to invest in those distribution, transmission and collection facilities and will not have
18 any customers online (as does Intercoastal) prior to the construction of at least the first
19 phase. Therefore, to the extent that Ms. Swain's concern is a legitimate one, it will be
20 substantially more apparent and of greater concern under the service proposed by NUC
21 where there is no existing mature service area (such as with Intercoastal), revenues from
22 which will help to lessen the impact of this new area of growth.

23 That being said, the rate regulation criteria of St. Johns County and the Florida Public
24 Service Commission do not provide for an investor owned utility to generate sufficient net
25 income, on an accrual basis to pay for its debt service. Investor owned rate regulation
provides only that a utility be allowed to recover 1) interest, in its return on rate base
based upon the weighted cost of capital of the utility, and only to the extent that rate base
reflects used and useful plant, and 2) principal in the form of depreciation on the assets
funded with debt, and only to the extent that those assets are used and useful.

There is no specific provision, or for that matter requirement, that a utility recover the

1 total amount of its debt service, and in fact my comments in the prior paragraph show that
2 the regulations specifically disallow the recovery of principal and interest related to non
3 used and useful plant.

4 Therefore, Ms. Swain's testimony that Intercoastal's financial strength is somehow
5 suspect because of this condition is misleading, wrong and indicates that she either does
6 not understand the dynamics of the rate regulation process as it relates to the recovery of
7 debt service or is trying to mislead any readers of her testimony regarding Intercoastal's
8 financial strength in this regard.

9 Q: Do you disagree with any of Ms. Swain's other conclusions?

10 A: Yes. Ms. Swain concludes that Intercoastal's recent rate increase of over 40% was to pay
11 for new debt and that it is unclear if that new debt can be paid from the resultant revenues.
12 Again, Ms. Swain either does not understand or is trying to mislead the reader of her
13 testimony. Intercoastal's recent rate increase was awarded by St. Johns County solely
14 because of the impact of the requirement of the Florida Department of Environmental
15 Regulation that Intercoastal install a wastewater effluent discharge line to the Intracoastal
16 Waterway and upgrade its wastewater treatment processes to a level sufficient for such a
17 surface water discharge. This was all to protect the Guana River system from effluent
18 overflows that were coming from the Sawgrass retention ponds, where Intercoastal's
19 effluent was being discharged. The rate increase awarded was what Intercoastal was
20 entitled to under the rules of the St. Johns County Water and Sewer Authority.

21 Also, as with my answer to the previous question, if Ms. Swain's concern about the ability
22 to pay debt service with revenues is legitimate, it should be of much greater concern
23 regarding NUC's proposed plan of service because of the significant investment required
24 to serve even the first customer, without an existing customer base such as Intercoastal
25 has.

26 Q: What about Ms. Swain's conclusions about Intercoastal's highly leveraged position?

27 A: Ms. Swain concludes that because of Intercoastal's highly leveraged position there is a
28 high financial risk and that this raises questions regarding the continued financial viability
29 of the utility over the long term, particularly in light of its plans to finance its expansion

1 into the requested territory entirely through debt.

2
3 First, I will respond as to Ms. Swain's assertion that it is bad to use debt to finance utility
4 improvements, that it indicates a lack of financial strength and that it is risky is simply
5 wrong. Debt is simply an alternative source of capital. The decision as to whether to use
6 debt or equity as a source of capital is made in part based upon the cost of each source of
7 capital and the impact upon the rate payers of the utility. In Intercoastal's case, its cost of
8 debt is 6.5% and the cost of equity is about 10.0%. Therefore, using debt to finance
9 capital improvements results in lower rates than if equity were used, thus benefitting the
10 rate payer. Also, the interest payments associated with debt are a deductible expense for
11 the purposes of computing federal income taxes, thus having a beneficial impact on rates,
12 whereas, return on equity is not deductible.

13 Q: What about Ms. Swain's assertion that being highly leveraged is risky?

14 A: Some may say that as a general rule higher leveraged systems have more risk. This may
15 be a theoretical truism, however, from the actual rate making standpoint of Intercoastal
16 and this service area, any alleged financial risks that may apply to the general case, either
17 do not exist in Intercoastal's case or are more than substantially outweighed by other
18 decreases in risks and benefits to the customers as a whole.

19 From a pure revenue generation viewpoint, there is no more risk associated with debt than
20 there is with equity, because rate regulation provides that the utility can recover the cost
21 associated with each source of capital. In fact, by not depleting the financial reserves of
22 the utility owners by large equity infusions to the utility to fund capital, not only do the
23 rate payers of Intercoastal benefit through lower rates, but they also benefit by the fact
24 that the utility owners preserve those equity resources to draw upon in the event of
25 unforeseen temporary revenue shortfalls and to use to cover any cash flow deficits that may
26 occur during periods when the utility's used and useful percentage does not allow for full
27 recovery of debt service. Therefore, at least in Intercoastal's case, the use of debt is
28 actually less expensive to the rate payer and less risky than the use of equity as a source of
29 capital.

Also, Intercoastal has maintained a highly leveraged position ever since the current owners

1 acquired the utility. The strength of this capital financing strategy and the testimony to the
2 long term financial viability of the utility is this long history of successful financing and
3 operation of the utility as it has grown into a large regional utility in northeast St. Johns
4 County.

5 Q: Have you tested the impact of assuming the same percentage of equity financing as NUC
6 used in Intercoastal's proposed plan for the requested service area?

7 A: Yes. NUC used 40% equity and 60% debt in its application. Therefore, to demonstrate
8 the effect of this equity/debt ratio upon Intercoastal's plan I reran our analysis using the
9 assumption that 40% of the required capital improvements would be funded with equity at
10 10.0% and 60% would be funded with debt at 6.5%.

11 The results of this analysis are shown in Exhibit MB-3, which also assumes that Walden
12 Chase will not be served by Intercoastal as discussed earlier in my testimony in response to
13 one of Doug Miller's concerns. Exhibit MB-3 shows that for Scenarios 1a and 1b, which
14 project the rate impact of Intercoastal's plan to serve the requested service area, the use of
15 100% debt financing (Scenario 1a) results in an average residential water and sewer bill of
16 \$ 58.87 in 2009 assuming 10,000 gallons of water usage per month, whereas, the use of
17 40% equity financing and 60% debt financing (Scenario 1b) results in an average water
18 and sewer bill of \$61.42. Therefore, by 2009, *Intercoastal's proposed capital finance
19 plan results in a monthly savings of \$2.55 compared to funding with 40% equity.*

20 Also, Exhibit MB-3 shows that for Scenarios 2a and 2b, which project the rate impact of
21 Intercoastal adopting NUC's proposed plan to serve the requested service area, the use of
22 100% debt financing (Scenario 2a) results in an average residential water and sewer bill of
23 \$64.31 in 2005 (the last year of NUC's capital plan) assuming 10,000 gallons of water
24 usage per month, whereas, the use of 40% equity financing and 60% debt financing
25 (Scenario 2b) results in an average water and sewer bill of \$64.62 by 2005. Therefore,
*Intercoastal's proposed capital finance plan results in a monthly savings of \$0.31
compared to funding with 40% equity.*

1 Q: What about Ms. Swain's continued assertions that Intercoastal will not be able to pay its
2 projected interest from operating income in the projection in your exhibits.

3 A: Again, I must state that if Ms. Swain's concerns are legitimate, NUC, under its proposed
4 plan of service will be even less able to fund its interest payments from revenues (even
5 though it proposes to utilize 60% debt), simply because of the fact that it will be a start-up
6 utility with no additional sources of revenue from a mature service area to lessen the
7 impact, as has Intercoastal. That being said, regulation of investor owned utilities does
8 not provide or require that operating income cover interest, and in fact specifically does
9 not allow for it in times when used and useful plant is less than 100%. Furthermore, the
10 ability to pay interest on debt is not limited to operating income. In the calculation of
11 operating income, the non cash expense of depreciation is deducted, however, the cash
12 recovered for depreciation is available to the utility. Therefore, the more appropriate
13 measure of the utility's ability to pay its cash expenses would be an analysis of cash flows.

11 Q: Have you conducted such an analysis of cash flows?

12 A: Yes. Figure 18 in Exhibit MB-3 presents an analysis of cash flows for each year in the ten
13 year projection period for all scenarios considered. For Scenario 1a, which reflects
14 Intercoastal's proposed plan, this figure shows that during the forecast period from 2000
15 through 2005 that there will be adequate cash flows in each year to cover all of the
16 utility's cash expenses, with the exception of 2002 and 2003. In these years equity
17 subsidies of \$460,987 and \$204,162 respectively will be required to cover all cash
18 expenses. However, positive cash flows in 2004 and 2005 of \$253,941 and 272,070
19 respectively offset to a great extent the requirement for equity in 2002 and 2003 so that
20 the net equity subsidies required by 2005 will be \$139,138. From 2006 to 2009 the only
21 years with negative cash flows are 2008 and 2009, and in those years the negative cash
22 flows are \$441,929 and \$526,071 respectively. In summary, Figure 18, Scenario 1a in
23 Exhibit MB-3 shows that the maximum cumulative equity subsidy required to cover
24 negative cash flows through 2005 is projected to be \$665,149, in 2003, and the maximum
25 cumulative equity subsidy required through 2009 is projected to be \$968,000, in 2009.

It is important to note these maximum cumulative equity subsidies with 100% debt
financing compare to maximum equity contributions of \$5,051,694 through 2005 and
\$5,217,261 through 2009 if 40% of the capital used to finance capital improvements were

1 equity as is shown in Figure 18, Scenario 1b in Exhibit MN-3. I believe that this
2 demonstrates my earlier point that by not using equity to fund capital initially, the utility's
3 owners can preserve those equity resources to cover any cash flow shortfalls that result
4 from operating the utility under the regulatory constraints regarding recovery of the cost
5 of capital.

6 Q: Ms. Swain states that Intercoastal's plan will increase its current debt significantly in the
7 next couple of years. Does this alarm you?

8 A: No. In fact, I believe that Intercoastal's continued ability to attract debt capital is a
9 measure of its financial strength and the judgement of its financing resources that
10 Intercoastal has a viable long term financial outlook. And as I stated earlier, adjustment of
11 its capital finance plan to a larger equity percentage will only cause rates to be higher.

12 Q: Could Intercoastal implement its capital plan with 40% equity and 60% debt funding?

13 A: Yes. I believe that Mr. Jim Bowen's testimony indicates that Intercoastal's owners have
14 adequate financial resources to provide that level of equity funding. However, as I have
15 continually stated, the proposed plan provides lower rates and less risk to the rate payer.

16 Q: Ms. Swain makes a number of comments about NUC's proposed rates compared to
17 Intercoastal's proposed rates and concludes that rates should not be a major factor in the
18 Commission's decision in these dockets. Do you agree with Ms. Swain's statements and
19 conclusions?

20 A: No. First, NUC has provided only what is required for a new utility application, that is a
21 snapshot of its rates at 80% of capacity, whereas Intercoastal has provided the
22 Commission with a ten year projection of the impact of serving the requested service area
23 upon its rates. Therefore, Intercoastal has surely provided the Commission with a better
24 basis to assess the impact upon the customers' rates in the requested service area over the
25 long term than has NUC. Ms. Swain's statement regarding her assessment that NUC's
rates should decrease over time as additional customers are added is not substantiated by
any analysis that she has presented.

Ms. Swain also presented a rate comparison and concludes that because the monthly bills
of a customer with 5,333 gallons per month of water usage (Intercoastal's average

1 customer) with NUC's rates and with Intercoastal's rates are virtually identical, rates
2 should not be a major factor in the commission's decision in these dockets. As I stated in
3 my Intervenor's Testimony, 5,333 gallons per month is the average residential customer's
4 usage for Intercoastal's current customer base. However, this includes many individually
5 metered condominiums east of highway A1A which have highly seasonal occupancy. The
6 development that will occur in Nocatee will likely be more similar to the development in
7 the western portion of Intercoastal's service area, which is single family homes with year
8 round occupancy.

9 In my Intervenor's Testimony, I provided several pictures of homes in this part of
10 Intercoastal's current service area. Since that time, I have also reviewed an analysis of
11 water usage for the Sawmill Lakes subdivision, which is a subdivision in the western
12 portion of Intercoastal's current service area along CR 210. The homes pictured in my
13 Intervenor's Testimony, all in the western portion of Intercoastal's current service area,
14 are similar to the homes in Sawmill Lakes and at least one of the homes pictured is in
15 Sawmill Lakes.

16 This water usage analysis shows that the average monthly water usage for this subdivision
17 for the three months ending 1/31/2000 was 18,590 gallons per month per home. It is
18 important to note that these three months are historically the lowest months of usage
19 throughout the year. Therefore, I believe that this level of water usage is a conservative
20 indicator of what might be expected in the requested service area. However, we choose
21 to use only 10,000 gallons per month in our customer impact analysis to be doubly
22 conservative. In Exhibit MB-3, which updates Exhibit MB-2 from my Intervenor's
23 testimony, Scenario 1a, Intercoastal's plan, shows that when the monthly water and sewer
24 bills are compared with Intercoastal's current rates (projected to 2002) and NUC's
25 proposed rates for 10,000 gallons per month of water usage, the bill would be \$79.70 with
Intercoastal's rates and \$84.78 with NUC's rates, an amount that is 6.37% higher than
with Intercoastal's rates.

Furthermore, these rate impact comparisons are for 2002, the first projected year of
development in the requested service area, and the projections provided in Exhibit MB-3
show that under Scenario 1a, Intercoastal's proposed plan, *Intercoastal's rates will*

1 decrease from an impact of \$79.70 per month to an impact of \$58.87 per month by 2009
2 which is a reduction of approximately 26% and NUC has presented no evidence that its
3 rates will decrease in the future. Even if one accepts Ms. Swain's opinion that NUC's
4 rates will also decrease in the future as customers are added, it could not happen until the
5 utility exceeds 80% of capacity, the assumption under which its initial rates were
6 calculated. Also, NUC will never have the comparative economies of scale that
7 Intercoastal has in the form of its current customer base west of the Intracoastal
8 Waterway. This customer base will always give Intercoastal more customers than NUC
9 over which to spread its fixed costs, resulting in lower rates than can be achieved by NUC.

8 Therefore, when a rate impact comparison is performed for the 10,000 gallons per month
9 (the level of water usage that is more like what will occur in the requested service area)
10 the favorable impact of Intercoastal's rates over NUC's rates is very large. NUC's
11 proposed rates result in monthly water and sewer bills that are 6.37 % higher than
12 Intercoastal's using 10,000 gallons per month in 2002, 18.01% higher than
13 Intercoastal's in 2005 and 44.01% higher than Intercoastal's in 2009. Therefore, I
14 believe that the level of rates must be a significant factor in the Commission's decision in
15 these dockets.

15 Furthermore, if, as Ms. Swain opined, NUC will experience some level of reduction in
16 rates after the 80% of capacity level is reached, I submit that if that were true, she would
17 have prepared an analysis to support her opinion. It seems that the importance of these
18 proceedings to NUC would dictate that if an analysis could support such an opinion, it
19 would be worth doing. Therefore, without a supporting analysis, one must assume that
20 the initial NUC rates will not decrease, otherwise NUC would have substantiated such a
21 claim. Also, it must be considered that the initial NUC rates may in fact increase in the
22 future, which would be further reason for NUC to avoid presenting an analysis of future
23 rate impacts and to rely upon opinions unsupported by an analysis.

23 Q: Ms. Swain states that Intercoastal's rates simply mirror the rates that are currently in
24 effect under regulation by St. Johns County and that they do not include any pro forma
25 effect of expanding the system to serve west of the Intracoastal Waterway and that they
may not include the full rate making effect of water and wastewater plant expansions

1 which are in progress or have been recently completed. Are these statements correct?

2
3 A: No. It is very curious to me that Ms. Swain can make such claims if she read my
4 testimony because the essence of my testimony and Exhibit MB1 (replaced by Exhibit
5 MB2 in my Intervenor's Testimony) was a pro forma ten year analysis of the full rate
6 making effect upon Intercoastal's rates. This pro forma analysis clearly includes projected
7 units west of the Intracoastal Waterway (Figure 2 in Exhibits MB-1, MB-2 and MB-3)
8 and a ten year capital plan (Figure 11 in Exhibits MB-1, MB-2 and MB-3) to provide
9 service to those units. This analysis also clearly includes the recent wastewater system
10 improvements and a projected expansion to the water system east of the Intracoastal
11 Waterway (Figure 11 in Exhibits MB-1, MB-2 and MB-3).

12 This proforma projection, which presents the full effect of all aspects of rate making in
13 detail in the figures in Exhibits MB-1, MB-2 and MB-3, provides a much more detailed
14 projection of not only the specific costs to serve the requested service area than does
15 NUC's testimony, but also of the effects of those costs through a full rate effects analysis
16 for ten years, which was not provided at all in NUC's testimony to date.

17 Q: Ms. Swain states that your projections include an excessive level of CIAC resulting in an
18 artificially low projection of future rates due to the assumption that Intercoastal would
19 only invest in the backbone mains running along CR 210 and that the backbone
20 wastewater mains in Phase I appear to be inadequately sized. Do you agree with her
21 statements?

22 A: No. Mr. Forrester and Mr. Miller will address the issue of sizing of backbone wastewater
23 mains and the level of contributed lines to be expected from developers versus the utility's
24 expected investment in lines in their testimony. However, even if one accepted Ms.
25 Swain's contention regarding the level of CIAC, Scenario 2 in Exhibit MB-2 in my
Intervenor's Testimony and in Exhibit MB-3 submitted with this Rebuttal Testimony both
assume that Intercoastal simply adopts the capital plan proposed by NUC. I must assume
that NUC's capital plan includes the level of investment in mains and sizing of mains that
NUC feels would be appropriate. Even assuming implementation of NUC's capital plan
by Intercoastal, comparison of the results of Scenario 1 (Intercoastal's plan) with Scenario

1 2 (Intercoastal implementing NUC's plan) in Exhibits MB-2 in my Intervenor's Testimony
2 in Exhibit MB-3 submitted with this testimony shows that all of the advantages that
3 Intercoastal as the utility in the requested service area has over NUC, assuming
4 Intercoastal implemented its proposed capital plan, would exist even if Intercoastal
5 implemented NUC's proposed capital plan.

6 Q: Ms. Swain also stated that it appeared that developer contributed lines may have been
7 excluded from your projections of future CIAC as a percentage of future plant and that
8 your conclusion that Intercoastal's CIAC will remain within Commission guidelines is
9 suspect and cannot be verified. Do you agree?

10 A: No. This statement by Ms. Swain indicates that she either did not examine my
11 projections, does not understand the projections, or is trying to deliberately plant negative
12 seeds of doubt regarding my projections with her unfounded speculative "may have
13 excluded" statements. Developer lines are clearly included in my projections on Figure 7,
14 page 2 of 2, line 1 in Exhibits MB-2, MB-2 and MB-3. Figure 9, line 1 and 17 in Exhibits
15 MB-1, MB-2 and MB-3 shows that CIAC as a percentage of future plant is within
16 Commission guidelines throughout the projection period and this percentage calculation
17 includes total CIAC, including developer contributed lines, from Figure 7 in Exhibits MB-
18 1, MB-2 and MB-3.

19 Q: Can you summarize the financial implications of your rebuttal testimony?

20 A: Yes. Exhibit MB-3 revises Exhibit MB-2 to exclude Walden Chase from the projections.
21 I will summarize the effect of this change and other scenarios of financing evaluated based
22 upon two assumptions. The first assumption is that Intercoastal implements its proposed
23 capital plan. This assumption is embodied in Scenarios 1a and 1b in Exhibit MB-3. The
24 second assumption is that Intercoastal implements NUC's proposed capital plan with
25 wholesale service from the JEA. This assumption is embodied in Scenarios 2a and 2b in
Exhibit MB-3. The a and b versions of these scenarios assume that capital projects are
funded with a 100%/0% debt/equity ratio or a 60%/40% debt/equity ratio respectively.

Assume that Intercoastal Implements its Proposed Stand Alone Capital Plan

The results of this analysis are that, assuming Intercoastal's proposed capital plan and

1 100% debt financing, by 2009 the average monthly water and sewer bill of a single family
2 residential customer with 10,000 gallons per month of water usage is projected to be
3 \$58.87, whereas with Walden Chase included in the projections it was \$58.59. This is
4 shown in the chart and graph on page 14.

5 The results of assuming a plan of financing that includes 60% debt and 40% equity instead
6 of Intercoastal's proposed 100% debt financing are that by 2009 the average monthly
7 water and sewer bill of a single family residential customer with 10,000 gallons per month
8 of water usage is projected to be \$61.42, whereas with Intercoastal's proposed 100% debt
9 financing plan (adjusted to remove Walden Chase) it was \$58.87. This is also shown in
10 the chart and graph on page 14.

11 Finally, a comparison of Intercoastal's plan with 100% debt financing with NUC's
12 proposed rates shows that by 2005 NUC's rates will be approximately 18% higher than
13 Intercoastal's. Under this financing plan, if NUC's rates remain at the proposed levels
14 through 2009 (NUC has presented no projections of future rate reductions), they will
15 exceed Intercoastal's projected rates by approximately 44%. This is also shown in the
16 chart and graph on page 14.

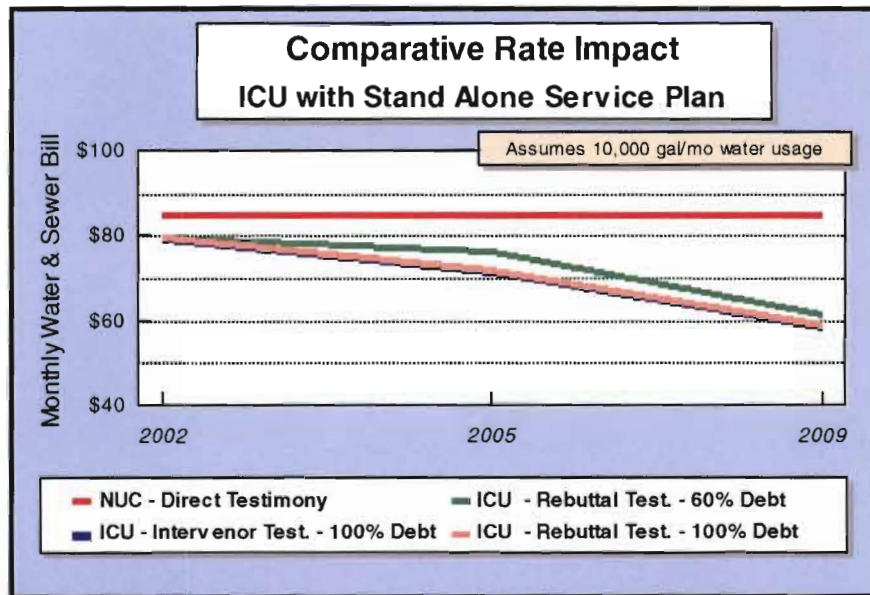
17 Comparing Intercoastal's plan with 60% debt and 40% equity financing with NUC's
18 proposed rates shows that by 2005 NUC's rates will be approximately 11% higher than
19 Intercoastal's. Under this financing plan, if NUC's rates remain at the proposed levels
20 through 2009 (NUC has presented no projections of future rate reductions), they will
21 exceed Intercoastal's projected rates by approximately 38%. This is also shown in the
22 chart and graph on page 14.
23
24
25

Assume that Intercoastal Implements its Proposed Stand Alone Capital Plan

Description	Monthly Water and Sewer Bill with 10,000 gal/Mo Usage					
	Intercoastal's Financing Plan			Nocatee's Financing Plan		
	100% Debt, 0% Equity			60% Debt, 40% Equity		
	2002	2005	2009	2002	2005	2009
Intercoastal - Assumes Proposed Stand Alone Service Plan:						
Intervenor Testimony	\$79.70	\$71.71	\$58.59	NA	NA	NA
Rebuttal Testimony (1)	\$79.70	\$71.84	\$58.87	\$79.70	\$76.12	\$61.42
NUC Direct Testimony - Assumed 60% debt financing (2)	\$84.78	\$84.78	\$84.78	\$84.78	\$84.78	\$84.78
Amount that NUC rates are higher than Intercoastal's	\$5.08	\$12.94	\$25.91	\$5.08	\$8.66	\$23.36
Percentage that NUC rates are higher than Intercoastal's	6.37%	18.01%	44.01%	6.37%	11.38%	38.03%

(1) Revised to remove Walden Chase

(2) NUC did not project any adjustments to their initial rates.



1 Assume that Intercoastal Implements NUC's Proposed Capital Plan with Wholesale
2 Service from the JEA

3 The results of this analysis are that, assuming Intercoastal implements NUC's proposed
4 capital plan with wholesale service from the JEA and 100% debt financing, by 2005 (the
5 last year of NUC's projected capital plan) the average monthly water and sewer bill of a
6 single family residential customer with 10,000 gallons per month of water usage is
7 projected to be \$64.31, whereas with Walden Chase included in the projections it was
8 \$62.52. This is shown in the chart and graph on page 16.

9 The results of assuming a plan of financing that includes 60% debt and 40% equity instead
10 of Intercoastal's proposed 100% debt financing are that by 2005 the average monthly
11 water and sewer bill of a single family residential customer with 10,000 gallons per month
12 of water usage is projected to be \$64.62, whereas with Intercoastal's proposed 100% debt
13 financing plan (adjusted to remove Walden Chase) it was \$64.31. This is also shown in
14 the chart and graph on page 16.

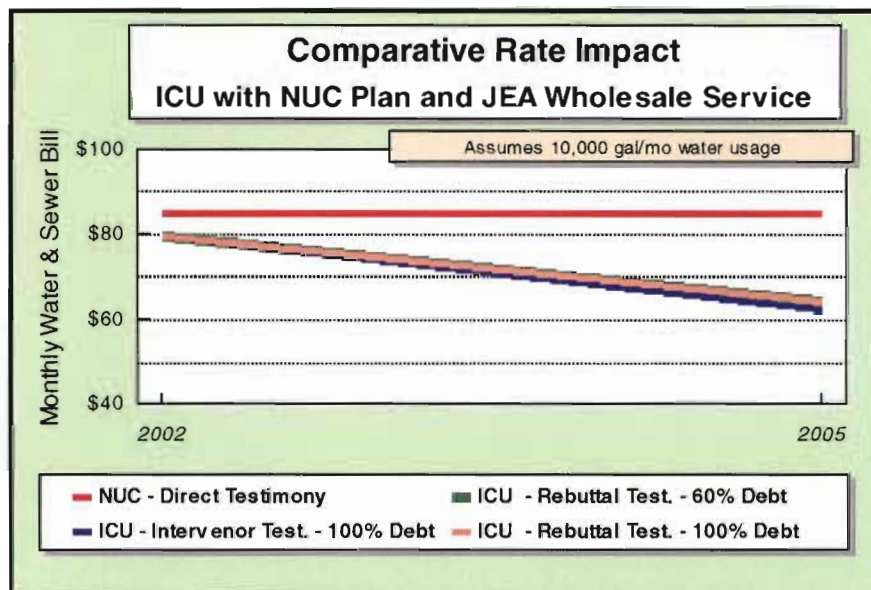
15 Finally, a comparison of Intercoastal's plan *with 100% debt financing with NUC's*
16 *proposed rates shows that by 2005 NUC's rates will be approximately 32% higher than*
17 *Intercoastal's.* This is also shown in the chart and graph on page 16.

18 Comparing Intercoastal's plan *with 60% debt and 40% equity financing with NUC's*
19 *proposed rates shows that by 2005 NUC's rates will be approximately 31% higher than*
20 *Intercoastal's.* This is also shown in the chart and graph on page 16.
21
22
23
24
25

1 **Assume that Intercoastal Implements NUC's Proposed Capital Plan with Wholesale**
 2 **Service from the JEA**

Description	Monthly Water and Sewer Bill with 10,000 gal/Mo Usage					
	Intercoastal's Financing Plan			Nocatee's Financing Plan		
	100% Debt, 0% Equity			60% Debt, 40% Equity		
	2002	2005	2009	2002	2005	2009
Intercoastal - Assumes NUC Proposed Service Plan with JEA Wholesale Service:						
Intervenor Testimony	\$79.70	\$62.52	NA	NA	NA	NA
Rebuttal Testimony (1)	\$79.70	\$64.31	NA	\$79.70	\$64.62	NA
NUC Direct Testimony - Assumed 60% debt financing (2)	\$84.78	\$84.78	NA	\$84.78	\$84.78	NA
Amount that NUC rates are higher than Intercoastal's	\$5.08	\$20.47	NA	\$5.08	\$20.16	NA
Percentage that NUC rates are higher than Intercoastal's	6.37%	31.83%	NA	6.37%	31.20%	NA

- 13 (1) Revised to remove Walden Chase
 14 (2) NUC did not project any adjustments to their initial rates.



1 Q: Is there one simple statement that you can make or aspect of your analysis that you can
2 highlight that will bring into sharp focus how and why Intercoastal is a better choice than
3 NUC to serve the requested service area?

4 A: Yes. To compare, it is best to compare "apples to apples" as the saying goes. When you
5 make the adjustments to produce as close to an apples to apples comparison as possible of
6 Intercoastal's and NUC's proposals, you get Scenario 2b in Exhibit MB-3. This scenario
7 assumes that Intercoastal will implement NUC's capital plan with wholesale JEA service
8 and that it will finance the capital plan with 40% equity and 60% debt. This adjusts
9 Intercoastal's proposal in response to the major objections of NUC, that being
10 Intercoastal's capital plan and funding that plan with debt by simply incorporating NUC's
11 preferences as to how to accomplish these items in Intercoastal's plan.

12 The results of this comparative analysis are profoundly in favor of Intercoastal. The chart
13 on page 16 shows the summary results of this comparative analysis and the detail is
14 presented as Scenario 2b in Exhibit MB-3. These analyses show that, *if Intercoastal*
15 *"stands in NUC's shoes" with regard to its capital plan and debt/equity finding ratio,*
16 *Intercoastal's rates are projected to be approximately 31% lower than NUC's rates by*
17 *2005.*

18 Also, if NUC had provided a ten year capital plan, we could extend this analysis through
19 2009 and I expect that the difference would get larger. Furthermore, NUC will not reach
20 80% of capacity (the level at which their proposed rates were calculated) until at least
21 2005, so no NUC rate reductions would be possible until then. And when NUC gets to
22 that point, more capital will be needed, and always, because of Intercoastal's current and
23 future customers in its existing service area, NUC will have fewer customers than
24 Intercoastal over which to spread its fixed costs causing it to always have proportionately
25 higher rates than Intercoastal would have.

23 B: Does this conclude your testimony?

24 A: Yes.

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 ADDITIONAL REBUTTAL TESTIMONY OF

3 MICHAEL E. BURTON

4 ON BEHALF OF

5 INTERCOASTAL UTILITIES, INC.

6 DOCKET NOS. 990696-WS & 992040-WS

7
8 Q: Are you the same Michael E. Burton who has previously filed testimony in this case?

9 A: Yes I am.

10 Q: What have you reviewed in preparation for your participation in this case.

11 A: I have reviewed the testimony and exhibits previously filed in this case.

12 Q: Have you also reviewed specifically the Additional Direct Testimony of Ms. Deborah
13 Swain, filed March 22, 2001 on behalf of Nocatee Utility Corporation (NUC) in this
14 proceeding?

15 A: Yes I have.

16 Q: Were there portions of these testimonies that caused you concerns?

17 A: Yes. Ms. Swain's testimony purports to correct an error. According to her testimony,
18 the results of her error correction caused NUC's rates to go down substantially. In fact,
19 in her additional direct testimony, Ms. Swain presents a comparison of her "corrected"
20 rates with Intercoastal's rates, as they effect the monthly water and sewer bill of a single
21 family residential customer with a 5/8x3/4 inch meter at various assumed levels of
22 monthly water usage. In that comparison, NUC's "corrected" rates result in a monthly
23 bill for this customer at 10,000 gallons per month that is now \$70.71 compared to \$84.78
24 in her Intervenor Direct Testimony. According to her comparison, NUC's "corrected"
25 rates produce a monthly bill for this customer at 10,000 gallons per month of water usage

1 which is now lower than Intercoastal's bill for the same customer, whereas NUC's rates
2 in Ms. Swain's original testimony resulted in a monthly bill for this customer at 10,000
3 gallons per month that was about 6% higher than Intercoastal's.

4 Q: What is the problem if the "corrected" rates of NUC are in fact now correct?

5 A: ~~There are two problems. First, it was Intercoastal's position from the beginning of this~~
6 ~~case that Intercoastal's rates, as they affect the monthly bill of a single-family residential~~
7 ~~customer with 10,000 gallons per month of water usage, should and would be no more~~
8 ~~than, and preferably slightly less than NUC's rates, beginning in 2002, the first year of~~
9 ~~service to the Nocatee service area. Based upon Ms. Swain's original testimony,~~
10 ~~Intercoastal's present rates achieved that goal without the need for a reduction. However,~~
11 ~~now with her "corrected" rates, Intercoastal's posture with regard to its rates from 2002~~
12 ~~through 2005 has been undermined at the eleventh hour. This is only a short period~~
13 ~~during the start-up of the service area and our projections show that Intercoastal's rates~~
14 ~~will have to be reduced to levels lower than NUC's after 2005 in any event. However,~~
15 ~~had Intercoastal known that NUC's rates would produce a lower monthly water and~~
16 ~~sewer bill for the subject customer, Intercoastal would have initially proposed a~~
17 ~~reduction in its current rates, and a commitment to those reduced rates through 2005,~~
18 ~~in order to achieve that objective.~~

19 Q: Are you making such a proposal now?

20 A: Yes. Mr. H.R. James, on behalf of Intercoastal's principals, has instructed me to prepare
21 an analysis that would reduce Intercoastal's rates in 2002 to a level that would result in
22 a monthly water and sewer bill for the subject customer which will be approximately 5%
23 to 6% lower than that customer's bill would be with NUC's rates, and to hold those rates
24 constant through 2005, which is the year in which NUC states that they will reach 80%
25 capacity and therefore, the year upon which NUC's rates are based. This is about the

1 ~~same percentage by which Intercoastal's rates were lower than NUCs rates for this~~
2 ~~subject customer based upon Ms. Swain's original testimony. Intercoastal will commit~~
3 ~~to those rates through 2005.~~

4 Q: Have you prepared such an analysis?

5 A: Yes. But first I must address the second issue that I have with Ms. Swain's additional
6 direct testimony. In order to determine the level of decrease in Intercoastal's rates that
7 will accomplish the objective stated in my answer to the previous question, I had to make
8 a comparison with Ms. Swain's "corrected" rates. Based upon my examination of her
9 Additional Direct Testimony and POD #5, which is the document in which the rates
10 included in her Additional Direct Testimony are calculated and which was submitted in
11 Nocatee Utility Corporation's Response to Staff's Second Set of Interrogatories and
12 Second Request for Production of Documents (hereinafter referred to as POD #5), I
13 believe that her rate calculations are still incorrect.

14 Q: In what way?

15 A. Ms. Swain bases her sewer rate calculations upon sewer ERCs and sewer gallonage
16 estimates derived from the sewer ERCs. However, for rate making purposes, sewer
17 ERCs should be equal to water ERCs, since growth units in the Nocatee service area will
18 be both water and sewer customers, and sewer gallons should be the same as water
19 gallons for rate making, since the gallonage charge portion of sewer bills will be
20 calculated based upon water meter readings.

21 Q: What effect does this have on Ms. Swain's "corrected" rates.

22 A: Since, in the calculation of the sewer rates, Ms. Swain used sewer ERCs which are
23 21,048 instead of water ERCs which are 20,016, her "corrected rates" for the sewer base
24 facility charge are too low because they are derived by dividing the base facility charge
25 revenue requirement by too many ERCs, thus resulting in a lower charge than had she

1 used water ERCs.

2 Q: Does this affect the gallonage rate also?

3 A: Yes. There are two problems with Ms. Swain's calculation of the sewer gallonage rate.
4 First, according to her testimony in her recent deposition, she used sewer gallons derived
5 from sewer ERCs instead of water gallons. Second, she calculated residential and
6 general service sewer gallonage rates as 80% and 96% respectively of the base gallonage
7 rate calculated by dividing the sewer gallonage revenue requirements by the sewer
8 gallons. Even, if the gallons that Ms. Swain used were the correct gallons that would be
9 billed a sewer gallonage charge, she appears to have failed to adjust those gallons by the
10 80% and 90% allowances for residential and general service customers discussed above
11 to calculate the "base" gallonage rate.

12 The sewer gallons used for calculating the base gallonage rate, must be adjusted by those
13 factors so that sufficient revenue will be generated by the billed gallons given that the
14 residential and general service rates are calculated as 80% and 96% respectively of the
15 calculated base gallonage rate. In Ms. Swain's calculation, if you multiplied the portion
16 of her sewer gallons associated with residential usage times the residential rate, and the
17 portion associated with general service usage times the general service rate, the resultant
18 total gallonage revenue would be less than the revenue requirement used in calculating
19 the rates.

20 Q: Did you calculate what you think would be the correct rates for NUC based upon your
21 analysis of Ms. Swain's testimony and the issues that you just discussed?

22 A: Yes. I have performed such calculations on Exhibit MB4-1 and Exhibit MB4-2.

23 Q: Would you explain those Exhibits?

24 A: Yes. Exhibit MB4-1 calculates NUC's water rates and essentially replicates the schedule
25 presented in Ms. Swain's POD #5. The result of my calculation of NUC's water rates

1 is the same as Ms. Swain's. However, I have added an analysis of water gallons at the
2 top right of the Exhibit in anticipation of using the breakout of gallons to residential and
3 general service for calculating sewer rates in Exhibit MB4-2.

4 Q: How did you determine the allocation of total water gallons to residential and general
5 service?

6 A: In my Supplemental Intervenor's Testimony, filed on January 26, 2001, I presented
7 Exhibit MB-6. Page 3 of this exhibit is NUC's projections of units by type and water
8 usage for Phase I. Page 2 of this Exhibit is a compilation of page 3 and it shows that
9 approximately 72.33% of the projected water demands will be from residential customers
10 (assuming the multi-family customers will be classified as general service). Therefore,
11 I used an allocation of 72% of the total water gallons to residential and the rest to general
12 service.

13 Q: Does this affect the water rate calculations?

14 A: No. But it does affect the sewer rate calculations.

15 Q: Can you explain how?

16 A: Yes. In Exhibit MB4-2, I have calculated NUC's sewer rates based upon the costs
17 presented in Ms. Swain's POD #5. However, rather than use the sewer ERCs and sewer
18 gallons that Ms. Swain used, I used water ERCs and water gallons from Exhibit MB4-1.
19 They are shown in the upper right of Exhibit MB4-2 in the column G titled Billable
20 Gallons - Equal to Water. However, the billing units used in the rate calculations are
21 those in column H titled Adjusted for Rate Making by Gallonage Adjustment Factor. In
22 this column, the ERCs are unchanged but the residential and general service billed
23 gallons are adjusted by the factors for water not returned to the sewer in column I titled
24 Gallonage Adjustment Factor for Water not Returned to the Sewer. As you can see the
25 gallons in Column H are less than the billable gallons in column I. This calculates a

1 higher base rate so that when the lower rates for residential and general service are
2 calculated as 80% and 96% of the base calculated rate, application of the higher billable
3 gallons in column G will generate the revenue requirement when the gallons in column
4 G are actually billed.

5 Q: What is the result of this calculation?

6 A: Exhibit MB4-2 calculates NUC sewer rates that are higher than those calculated by Ms.
7 Swain in her POD #5. The gallonage rates are almost the same because the sewer gallons
8 used in Ms. Swain's POD #5 happened to be almost the same as the adjusted gallons in
9 column H in my Exhibit MB4-2. However, the base facility charge calculated in Exhibit
10 MB4-2 is \$11.47 per ERC compared to \$10.91 per ERC in Ms. Swain's Additional
11 Direct Testimony.

12 Q: Does this affect the rate comparison presented in Ms. Swain's Additional Direct
13 Testimony?

14 A: Yes. Ms. Swain's rate comparison shows that with her "corrected" rates, the monthly
15 water and sewer bill of a residential single family customer with 10,000 gallons of water
16 usage will be \$70.71. However, my analysis indicates that this monthly bill would be
17 \$71.17 using the rates calculated in Exhibits MB4-1 and MB4-2.

18 Q: ~~Have you prepared a comparison of the effect of NUC's rates as you have recalculated~~
19 ~~them to Intercoastal's rates adjusted as you were instructed by Mr. James.~~

20 A: ~~Yes. Exhibit MB4-3 presents such a comparison.~~

21 Q: ~~Would you please explain Exhibit MB4-3?~~

22 A: ~~Yes. Exhibit MB4-3 presents a comparison of Intercoastal's rates to NUC's rates after~~
23 ~~two adjustments to Intercoastal's rates. First, Intercoastal's rates as presented in Exhibit~~
24 ~~MB4-3, Page 1 of 2 on lines 8 and 9, columns D, H and L, reflect an allocation of costs~~
25 ~~similar to the allocation of costs in NUC's rates. The allocation of costs is presented in~~

1 Exhibits MB4-4 and MB4-5 for water and sewer respectively. As can be seen in Exhibits
2 MB4-4 and MB4-5, these reallocated rates were developed to recover the same revenue
3 as is projected in 1999 in MB4-8, the summary results schedule of my Financial Analysis
4 3rd Revision. As can also be seen on Exhibit MB4-3, Page 1 of 2, line 24, columns D,
5 H and L, recalculation of Intercoastal's rates using similar allocation criteria as NUC
6 used in allocation of its costs results in a rate impact for the subject 10,000 gallon per
7 month residential customer which is less than Intercoastal's current rates, but not as low
8 as NUC's "corrected" rates as adjusted.

9 However, as instructed by Mr. James, I have presented proposed reduced Intercoastal
10 rates shown on Exhibit MB4-3, Page 1 of 2, lines 12 and 13, columns E, I and M. These
11 rates reflect a 5% and 13% reduction in water and sewer rates respectively from the
12 reallocated rates on lines 8 and 9, columns D, H and L.

13 Exhibit MB4-3, Page 1 of 2 then presents a comparison of the impact of NUC's corrected
14 rates as adjusted and the impact of Intercoastal's current, reallocated and proposed rates
15 upon a single family residential customer with 3,000, 5,000, 5,333, 10,000 15,000 and
16 25,000 gallons per month of water usage. Line 24 presents the comparative results for
17 such a customer with 10,000 gallons per month of water usage. This line shows that
18 NUC's proposed rates result in a combined water and sewer bill for this customer of
19 \$71.17, whereas, Intercoastal's proposed rates will result in a monthly bill of \$67.01,
20 5.85% less than NUC.

21 Q: What does Page 2 of 2 of Exhibit MB4-3 show?

22 A: Page 2 of 2 of Exhibit MB4-3 shows the same comparison as is shown on Page 1 of 2 but
23 also includes the monthly effect of amortizing the Service Availability Charges of NUC
24 and Intercoastal in the monthly cost impact. When this component of cost is included,
25 the impact of the NUC rates upon this customer with 10,000 gallons per month of water

1 usage is a combined monthly water and sewer cost of \$82.63, whereas, Intercoastal's
2 proposed rates and Service Availability Charges will result in a monthly cost of \$74.17,
3 10.24% less than NUC.

4 Q: What is the significance of this comparison?

5 A: The comparisons in Exhibit MB4-3, Page 1 of 3, show that Intercoastal's proposed rates
6 result in a combined monthly water and sewer bill for single family residential customers
7 which is virtually equal to that of NUC at 5,333 gallons per month, is 5.85% lower than
8 NUC at 10,000 gallons per month, is 10.81 % lower than NUC at 15,000 gallons per
9 month and is 18.25% lower than NUC at 25,000 gallons per month.

10 Furthermore, when the cost of the Service Availability Charges is factored into the cost
11 comparison by amortizing over 10 years, the impact of Intercoastal's rates and Service
12 Availability Charges upon the total monthly cost of a single family residential customer
13 is lower than that of NUC for all ranges of water usage, ranging from 4.65% lower at
14 3,000 gallons per month to 20.33% lower at 25,000 gallons per month.

15 Q: What does Exhibit MB4-3, Page 3 of 3 show?

16 A: Exhibit MB4-3, Page 3 of 3 presents comparisons of Intercoastal's proposed reclaimed
17 water rates, which are calculated on Exhibit MB4-6, to NUC's proposed reclaimed water
18 rates. Lines 1 through 25 show a comparison including the rates only, and lines 27
19 through 48 show a comparison including the effective cost of amortizing the service
20 availability charge for reclaimed water for 10 years. These comparisons show that for
21 all levels of reclaimed water usage, Intercoastal's rates result in monthly bills that will
22 be lower than with NUC's rates. Considering rates only, Intercoastal's rates result in
23 monthly reclaimed water bills that are lower than NUC's by 9.51% to 10.31% from
24 3,000 to 25,000 gallons per month of usage respectively. Considering rates and the
25 amortized cost of the service availability charges, Intercoastal's rates result in monthly

1 reclaimed water costs that are lower than NUC's by 23.84% to 19.69% from 3,000 to
2 25,000 gallons per month of usage respectively.

3 Q: Have you provided a summary schedule of Intercoastal's proposed rates in response to
4 Ms. Swain's Additional Direct Testimony?

5 A: Yes. I have included a summary of Intercoastal's proposed water, sewer and reclaimed
6 water rates in response to Ms. Swain's Additional Direct Testimony in Exhibit MB4-7.
7 The calculation of these rates is included in Exhibits MB4-4, MB4-5 and MB4-6 for
8 water, sewer and reclaimed water respectively.

9 Q: You mention an Exhibit MB4-8. What is that exhibit and why have you included it?

10 A: Exhibit MB4-8 presents the results of the same projection as was presented in Exhibit
11 MB3 - Financial Analysis 2nd Revision with my Rebuttal Testimony. I have presented
12 it with this testimony in order to show the impacts of the rate proposal included in my
13 testimony. Obviously, reducing rates will cause the achieved return to be less from 2002
14 through 2005 than with Intercoastal's original rate proposal, therefore, it was necessary
15 to include this exhibit to demonstrate that these effects will be within acceptable ranges
16 and what impact it will have upon the Intercoastal's projected rate plan subsequent to
17 2005, the year through which Intercoastal will commit to the reduced rates presented
18 herein.

19 It is important to note that the willingness of Intercoastal's stockholders to accept less
20 than allowed returns during these "start up" years for this new service area is similar to
21 NUC's position of setting initial rates at 80% capacity, which by their own testimony
22 will occur in 2005. Therefore, NUC stockholders are accepting the same type of
23 situation from 2002 through 2005, that being achieved returns which will be less than
24 allowed returns. Intercoastal's rate proposal will put Intercoastal stockholders in a
25 similar position as NUC's stockholders for the short start-up period of the new service

1 area 2002 through 2005. However, our projections are that Intercoastal's rates will have
2 to be reduced in subsequent years, whereas, NUC has produced no such evidence
3 regarding its rates.

4 Q: Can you briefly summarize the impacts as shown in Exhibit MB4-8 of Intercoastal's
5 proposed rates.

6 A: Yes. Exhibit MB4-8 shows that by 2009, in order for Intercoastal's achieved return to
7 not exceed its allowed return, reductions in Intercoastal's water and sewer rates will be
8 required such that by 2009 the combined monthly water and sewer bill of a single family
9 residential customer using 10,000 gallons per month of water will be \$59.30, a reduction
10 of 11.85% from the \$67.27 shown as the impact of Intercoastal's proposed rate upon this
11 customer in 2002 in Exhibit MB4-3 Page 1 of 2, line 24, column M.

12 Q: Will these proposed rate require more subsidy during 2002 through 2005 from
13 Intercoastal's stockholders than was originally projected with Intercoastal's current rates?

14 A: Yes. However, Intercoastal's stockholders have been informed of the order of magnitude
15 of the range of subsidy that will be required, and have committed to provide any subsidies
16 that may be required.

17 Q: Is it your understanding that the Intercoastal stockholders are willing and able to commit
18 to such investments.

19 A: Yes. Mr. James indicated to me that the Intercoastal stockholders were willing and able
20 to make such a commitment.

21 Q: Are there any other changes reflected in Exhibit MB4-8 other than the reduced
22 Intercoastal rate proposal?

23 A: Yes. In preparing for my deposition and during my deposition, we discovered several
24 adjustments that needed to be made to the projections to make them more accurate.

25 None of the adjustments had a material effect upon the outcome of the projections in that

1 ~~the projected combined water and sewer bill for a single family residential customer with~~
2 ~~10,000 gallons per month of water usage was projected to be \$58.87 in 2009 in Exhibit~~
3 ~~MB3 (which was submitted with my Rebuttal Testimony), whereas that combined bill in~~
4 ~~Exhibit MB4-8 is projected to be \$59.30, a difference of only \$0.43 or about 0.73%.~~

5 Q: Does this conclude your testimony?

6 A: Yes.

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1 MR. DETERDING: We would call Jim Bowen. Were you
2 previously sworn, Mr. Bowen?

3 THE WITNESS: No.
4 (Witness sworn.)

5 CHAIRMAN JACOBS: Thank you. You may be seated.

6 JIM L. BOWEN
7 was called as a witness on behalf of Intercoastal Utilities,
8 Inc., and, having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DETERDING:

11 Q Mr. Bowen, please state your name and employment
12 address.

13 A My name is Jim Bowen. I'm a CPA and partner in the
14 CPA firm Smoak, Davis & Nixon, 1514 Nira Street, Jacksonville,
15 Florida 32207.

16 Q And have you been retained by Intercoastal Utilities
17 to provide testimony and expert opinions in this proceeding?

18 A Yes, I have.

19 Q Did you prepare a document referred to as rebuttal
20 testimony of Jim L. Bowen consisting of six pages?

21 A Yes, I did.

22 Q If I ask you the questions in that testimony today,
23 would your answers be the same?

24 A Yes, they would.

25 Q Do you have any changes or corrections to that

1 testimony?

2 A No, I don't.

3 MR. DETERDING: I request that Mr. Bowen's rebuttal
4 testimony be inserted in the record as though read.

5 CHAIRMAN JACOBS: Without objection, show Mr. Bowen's
6 testimony entered into the record as though read.

7 BY MR. DETERDING:

8 Q In conjunction with that testimony, did you also
9 prepare exhibits titled JLB-1, JLB-2, and JLB-3?

10 A Yes, I did.

11 Q Do you have any changes or corrections to make to
12 those exhibits?

13 A No, I don't.

14 MR. DETERDING: I would request that those be marked.

15 CHAIRMAN JACOBS: Show them marked as composite
16 Exhibit 45.

17 (Exhibit 45 marked for identification.)

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 REBUTTAL TESTIMONY OF

3 JIM L. BOWEN

4 ON BEHALF OF

5 INTERCOASTAL UTILITIES, INC.

6 DOCKET NOS. 990696-WS & 992040-WS

7

8 **Q. Please state your name and business address.**9 A. My name is Jim L. Bowen. My business address is 1514 Nira Street,
10 Jacksonville, Florida 32207.11 **Q. Please state your employer and your current position.**

12 A. I am a CPA and Partner with Smoak, Davis & Nixon LLP.

13 **Q. Please state your professional qualifications, experience, and education post**
14 **high school.**15 A. I have worked in the CPA firm of Smoak, Davis & Nixon LLP since 1974. I
16 received my Florida CPA Certificate in 1975 and I became a partner in 1982.
17 I graduated from Auburn University with a Bachelor of Science degree in
18 1970 and a Masters in Business Administration in 1973. I have over twenty
19 years of experience consulting with water and sewer utility companies which
20 are regulated by the Florida Public Service Commission or St. Johns County.21 **Q. What documents have you reviewed and what information do you rely upon**
22 **for your testimony?**23 A. I have reviewed the financial statements of five major stockholders, as
24 referenced herein and a letter from the Vice President of First Union National
25 Bank of Florida dated June 1, 2000 which documents an intent on the part

1 of the bank to provide financing for the expansion of Intercoastal's service
2 territory, which letter is attached hereto as Exhibit "JLB-3". I have also
3 referenced the financial analysis and the revised financial analysis prepared
4 by Mr. Mike Burton for this case. I have also reviewed the filings of Ms.
5 Deborah Swain in this case. I also rely upon my knowledge of Intercoastal
6 and my working relationship with Jax Utilities Management and my general
7 knowledge of the water and wastewater industry from the perspective of my
8 own expertise.

9 **Q. Please discuss your relationship with Intercoastal Utilities, Inc.**

10 A. I have provided tax, accounting and consulting services to Intercoastal
11 Utilities, Inc. since 1987.

12 **Q. What is the purpose of your testimony?**

13 A. The purpose of my testimony is to provide information related to the
14 application filed by Intercoastal Utilities, Inc. to serve the territory West of
15 the Intercoastal Waterway which includes the Nocatee development. I will
16 make specific comments related to the Intervenor Direct Testimony of
17 Deborah D. Swain.

18 **Q. What comments do you wish to make about Ms. Swain's testimony?**

19 A. Ms. Swain made several comments about the financial statements of
20 Intercoastal for the year ended August 31, 1998. Ms. Swain used outdated
21 information that did not include the additional rates that were recently
22 approved and, therefore, cannot possibly be a reasonable basis for evaluating
23 the utility's ability to pay debt service in the future. The financial statements
24 changed significantly in the subsequent year due to the plant expansion and
25 related increase in rates effective November 1, 1998. The financial

1 statements for the year ended August 31, 1999 were reviewed by Smoak,
2 Davis & Nixon LLP who issued its report dated November 12, 1999 (see
3 Exhibit JLB-1). These financial statements reflect operating income of
4 \$641,931 and net income of \$181,370 for the year ended August 31,
5 1999. The retained earnings deficit was reduced to \$1,383,100 at August
6 31, 1999. The statement of cash flows reflects net cash provided from
7 operating activities of \$314,807 for the year ended August 31, 1999.
8 (Operating activities includes interest expense but does not include
9 repayment of debt and acquisition of utility plant). Repayment of debt was
10 \$67,080 for the year and was projected to vary from \$116,181 to
11 \$196,391 for the years ended 2000 through 2003. The construction loan
12 is scheduled to mature on January 15, 2004 and the company plans to
13 refinance the balance due on that date.

14 Ms. Swain indicated that the financial statements for the year ended August
15 31, 1998 reflected a sharp increase in the scheduled principal payments
16 during the year ended 2003. However, this was not a regular scheduled
17 payment but was the original maturity of the construction loan which was
18 amended and restated in January, 1999 and is now scheduled to mature on
19 January 15, 2004. It is normal for this type of loan to provide for principal
20 payments which would amortize the loan over a longer period than the actual
21 loan period. Therefore, the loan has a balloon payment due on the maturity
22 date which will be refinanced.

23 Ms. Swain indicated that Intercoastal had to increase wastewater rates in
24 part to pay for new debt. She said that it is unclear if the rate increase is
25 adequate to pay for the new debt. The financial statements for the year

1 ended August 31, 1999 appear to support the fact that the utility has
2 adequate operating income to cover its debt service. The limited proceeding
3 rate case provided additional revenue to cover the direct costs of the plant
4 expansion including depreciation, property taxes, rate case expense and a
5 return on investment. The return on investment provides funds to pay
6 interest and recovery of depreciation provides funds to repay the debt.
7 Therefore the sole purpose of the limited proceeding was to provide
8 adequate additional revenue to cover direct costs of the plant expansion
9 including debt service. Ms. Swain said that negative equity and the highly
10 leveraged position of the utility indicates a high financial risk and raises
11 questions regarding the continued financial viability of the utility in light of
12 its plans to finance its expansion entirely through debt. However, many
13 utilities and other businesses leverage their operations with significant debt.
14 A utility has the ability to request rate proceedings which allow a recovery
15 of its costs including debt service. The utility's decision to use debt instead
16 of equity benefits the customers. The cost of equity as determined in the
17 Commission's most recent leverage formula (Order No. PSC-99-1224-PAA-
18 WS issued on June 21, 1999) calls for a minimum return on equity of
19 8.93% even at the 100% equity level. An utility capitalized at 40% equity
20 or lower would be entitled to a return on equity of 10.12%. However,
21 Intercoastal has been able to finance construction of water and wastewater
22 facilities at a debt cost substantially lower than 10.12% and to deduct the
23 interest payment for tax purposes. Therefore, the utility's decision to use
24 debt instead of equity is beneficial to the customers through reduced rates.

25 **Q. Do you anticipate that Intercoastal will be able to secure the financing or**

1 otherwise attract the capital necessary to effectuate its application if its
2 application is granted by the Commission?

3 A. Based on my knowledge of the utility industry and specifically Intercoastal,
4 I would anticipate that Intercoastal will be able to attract the capital
5 necessary to follow through on the representations in its application. My
6 opinion in that regard is based upon the information that I referenced within
7 my testimony including, but not limited to, the financial strength of the major
8 stockholders of the utility and a letter from First Union National Bank of
9 Florida dated June 1, 2000 which documents an intent on the part of the
10 bank to provide financing for the expansion of Intercoastal's service territory.
11 Also, Intercoastal has secured its debt in the past with the guarantees of
12 certain major stockholders. I have been provided with copies of the most
13 recent financial statements of five major stockholders who own 56.75% of
14 the stock in Intercoastal. There are fourteen other stockholders who own
15 the balance of the stock. These financial statements are the representation
16 of the five major stockholders and have not been audited. Therefore, I do
17 not give an opinion or any other form of assurance on these financial
18 statements. Financial institutions and the Florida Public Service Commission
19 often rely on unaudited financial statements prepared by stockholders as a
20 general indication of their net worth and ability to attract capital. Four of the
21 financial statements are personal financial statements which have not
22 provided for estimated income taxes on the differences between the
23 estimated current values of assets and their tax bases as required by
24 generally accepted accounting principles for personal financial statements
25 and the effect of these omissions has not been determined. The maximum

1 current individual income tax rate is 39.6%. However the long-term capital
2 gain rate of 20% is likely to apply to certain assets held for investment. The
3 total combined net worth of the five major stockholders as reflected in their
4 financial statements was \$33,700,000. These five major stockholders
5 should be able to attract capital and obtain significant credit for the utility
6 based on their net worth and business experience.

7 Ms. Swain said that it did not appear that Intercoastal could pay for the
8 increased debt based on the projections in Mr. Burton's Exhibit 21. MB-1.
9 She said that the utility is unable to pay its interest out of operating income
10 in any year shown. However, a cash flow projection for the years 2000
11 through 2005 taken from information included in Mr. Burton's Exhibit MB-1
12 shows that the utility would have positive net cash flow after interest and
13 debt payments when you add back expenses which do not use cash flow
14 (depreciation and amortization) and you consider cash CIAC collections (See
15 Exhibit JLB-2).

16 **Q. Does this conclude your testimony?**

17 **A. Yes, it does.**

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1 BY MR. DETERDING:

2 Q Mr. Bowen, please provide us with a brief summary of
3 your testimony.

4 A I disagree with the direct testimony of Deborah Swain
5 regarding her evaluation of Intercoastal Utilities, Inc., in
6 its ability to service its debt. My testimony and the related
7 exhibits support the fact that Intercoastal Utilities does have
8 adequate operating income and cash flow to cover its debt
9 service. Exhibit JLB-1 includes final statements for
10 Intercoastal for the year ended August 31, 1999, which were
11 reviewed by me. The statement of cash flows on Page 5 reflects
12 net income of \$181,370, and cash flows from operating
13 activities of \$314,807. In addition, the utility collected
14 cash contributions in aid of construction of \$474,459 during
15 the year. The cash flow from operating activities and the cash
16 flow from CIAC could both be used to service the principal
17 portion of the debt and any fixed asset additions required.
18 The net income number, which was positive, already covers any
19 interest requirement. So the utility could clearly cover its
20 debt service with excess funds after doing so.

21 Deborah Swain also indicated that Intercoastal could
22 not pay for its increased debt under any of those scenarios
23 included in Mr. Burton's projections. However, JLB-2 includes
24 a cash flow analysis from information included in the original
25 financial projections prepared by Mr. Burton for the years 2000

1 through 2005. This analysis reflects cumulative positive net
2 cash flows of \$1,143,069.

3 The limited proceeding rate case for Intercoastal
4 increased its rates effective November 1st, 1998, to provide
5 additional revenues to cover the cost -- to cover the direct
6 cost of the recent plant expansion. The return on investment,
7 which it was allowed, provides funds to pay the interest, and
8 the depreciation, which was allowed, provides funds to repay
9 the debt. The utility's decision to use debt instead of equity
10 to finance the expansion should benefit the customer, as a cost
11 of capital allowed in rates as a return on investment would be
12 lower.

13 Also, I anticipate that Intercoastal will be able to
14 arrange bank financing for future plant expansions required by
15 this application. I have reviewed the letter from First Union,
16 which is included as Exhibit JLB-3. I've also had subsequent
17 telephone conversations with their banker which indicate that
18 First Union's position has not changed. I have also reviewed
19 the financial statements of five major stockholders with
20 Intercoastal who have a combined net worth in excess of
21 \$30 million. These stockholders have indicated that they are
22 committed to this project and are ready to make whatever
23 capital contributions are required and to secure whatever debt
24 is needed. That concludes my summary.

25 MR. DETERDING: We tender the witness for cross.

1 CHAIRMAN JACOBS: Mr. Melson.

2 CROSS EXAMINATION

3 BY MR. MELSON:

4 Q Mr. Bowen, Rick Melson. How are you doing today?

5 A Hey, just fine.

6 Q You're testimony included as an exhibit

7 Intercoastal's financial statements for the year ended 8/31/99,

8 I believe you testified?

9 A That's correct.

10 Q And those statements were reviewed by your firm, or

11 by you I believe you said; is that right?

12 A That's correct.

13 Q A review is something less than an audit; is that

14 right?

15 A That's correct.

16 Q And you're firm -- prior to 1999, your firm had

17 reviewed the financial statements of Intercoastal for every

18 year going back to when the current shareholders acquired the

19 utility; is that right?

20 A We've reviewed the final statements for several

21 years, and my recollection is probably back to the original

22 year, but I couldn't say that for a fact without reviewing my

23 files.

24 Q Now, if you turn to Page 2 of the financial

25 statement -- it's actually probably the fourth sheet of paper.

1 It's page number 2 in the lower right-hand corner -- that shows
2 a negative net worth of roughly a little over 1.3 million at
3 August 31st of '99; is that correct?

4 A That's correct.

5 Q And to the best of your recollection, this utility
6 has never had a positive net worth since it was acquired by its
7 current owners; is that correct?

8 A I don't recall. Certainly for the last several
9 years, they have had a negative net worth.

10 Q Now, your firm was not asked to review Intercoastal's
11 financial statements for the year ended August 31, 2000; is
12 that correct?

13 A Yes, we have been asked to review those statements,
14 and we plan to do so. We have not completed that review yet.

15 Q At the time I took your deposition, you had not been
16 asked to review them; correct?

17 A That's correct.

18 Q And you did not expect at that point to be asked to
19 review them; is that correct?

20 A I really didn't know that -- at the time of my
21 deposition, I was not aware that they were going to require a
22 review, but subsequent to the deposition, they have asked for a
23 review. And they do plan to complete the review; however, we
24 did many of these same procedures in doing the year-end work
25 and preparing the tax returns that we always do for

1 Intercoastal, which includes preparation of depreciation
2 schedules, amortization of CIAC schedules, and we prepare the
3 income tax returns, and we prepare many of the year-end
4 adjustments that they use when they file their annual report
5 later on.

6 Q Let's me ask you to turn to your accountant's review
7 report on the 1999 financial statement, the first page. That
8 review report is dated November 12, 1999?

9 A That's correct.

10 Q And is that the forth quarter of the calendar year
11 following the close of the fiscal year when you have typically
12 done your reviews?

13 A We typically do our review two or three months after
14 the end of the fiscal year.

15 Q And this one has come further after the end of the
16 fiscal year and after you testified during your deposition that
17 you had not been asked to do one?

18 A We did the work. Most of the work that needs to be
19 done to complete the review was all done prior to the end of
20 the calendar year 2000. We simply had not issued the review
21 report.

22 Q Is that a yes?

23 A Ask the question again, please.

24 Q You were not asked to perform a review of the 2000
25 financial statements until after your deposition was taken

1 within the past three weeks?

2 A That's correct.

3 Q Now, if I wanted to look at the financial statement
4 and see how much money the shareholders of Intercoastal
5 Utilities had invested in the utility in the past, where would
6 I find that number?

7 A The investment would most likely be in the numbers
8 common stock and paid in capital, which amounts to about
9 \$69,623.

10 Q Let's turn for a minute to Note 5 of the financial
11 statement. It's on Page 9. I want to look at Note 5, related
12 party transactions. The first paragraph of that note says,
13 "The company has a management agreement with a related party
14 that is a subsidiary of a stockholder. Management fees were
15 \$100,000 in 1999 and \$100,000 in 1998." Is the related party
16 JAX Utilities Management?

17 A Yes.

18 Q And as we sit here today, JAX Utilities Management is
19 50 percent owned by Mr. H.R. James. Is that your
20 understanding, if you know?

21 A I do not know what the stockholder detail is of JAX
22 Utilities Management. I did not think it's that high.

23 Q Would you agree to accept Mr. James's testimony as to
24 whatever it was?

25 A Well, I would.

1 Q You also say in the next paragraph, "The management
2 company also charged Intercoastal \$1,054,081 in 1999," and then
3 it gives some -- "and \$1,099,162 in 1998 for certain operating
4 expenses." What would those operating expenses be?

5 A Well, JAX Utilities Management Company pretty much
6 purchases everything that the utility needs, and the utility
7 reimburses JAX Utilities Management Company. This includes the
8 employees that do the work that are considered employees. They
9 work full time for Intercoastal. They do draw a JAX Utilities
10 Management Company paycheck, but this is not unusual for
11 affiliated companies. There is a procedure called a common pay
12 master which allows one company to include another company on
13 its payroll and file payroll returns that way. That allows an
14 economies of scale, so I don't see anything unusual about that
15 arrangement.

16 Q Let me ask you this. If you turn to Page 3, the
17 operating expenses, excuse me, yes, Page 3, operating expenses,
18 where in the operating expenses would this 1,054,081 for
19 1999 be found?

20 A It's going to be a combination of operations and
21 maintenance and administrative and general.

22 Q Is it fair to say that the majority of the operations
23 and maintenance and administrative and general expenses shown
24 on Intercoastal's book are, in fact, the result of these
25 related party transactions?

1 A That's correct. Like I say, JAX's Utilities
2 Management, as I understand it, incurs the cost and simply
3 charges Intercoastal for reimbursement. I see nothing unusual
4 about that arrangement.

5 Q Also, in Note 5, continuing in the same paragraph, it
6 indicates the management company charged Intercoastal
7 \$2,839,727 in 1999 and \$587,919 in 1998 for costs which were
8 capitalized. Is that construction projects performed for the
9 utility by JAX Utilities Management?

10 A That's correct.

11 Q And do you know if that charge that was capitalized
12 included an element of profit for JAX Utility Management on
13 those contracts?

14 A I don't do any work for JAX Utilities Management, but
15 I would assume there would be a profit factor in those numbers.

16 Q The amount reflected on the -- that was capitalized
17 was the -- whatever contract price Intercoastal paid JUM?

18 A That's correct.

19 Q Now, from a ratemaking perspective, would you agree
20 that because of its negative net worth, Intercoastal Utilities
21 would have 100 percent debt capital structure?

22 A That's correct.

23 Q And is it your understanding that Intercoastal
24 expects to finance 100 percent of new plant additions with debt
25 as well?

1 A I'm not sure about that. I know in Mr. Burton's
2 projections there were several scenarios. Some had the utility
3 putting in -- up to 40 percent equity. I think maybe there was
4 one where they put in 30 percent equity and another 100 percent
5 debt.

6 Q Your analysis was done at the time that MB-1 was the
7 most recent version of his analysis?

8 A That's correct.

9 Q And MB-1 included only 100 percent debt scenario; is
10 that correct?

11 A I believe that's correct.

12 Q So your testimony regarding the financial help of
13 Intercoastal is in the context of 100 percent debt finance?

14 A That's correct.

15 Q Now, I believe you disagree with Ms. Swain's
16 conclusion that the high percentage of debt results in a high
17 financial risk; is that right?

18 A Yes, I disagree with that.

19 Q And so in your judgment, a utility with 100 percent
20 debt capital structure does not have high financial risk?

21 A I don't think a utility necessarily has high
22 financial risk because of the 100 percent debt structure. I
23 see no additional risk to the customers due to that. They get
24 a lower cost of capital; therefore, their rates should be
25 lower. I see no risk to the bank. The bank is going to have

1 the security of the stockholders. I see no risk to the
2 stockholders because if they put in equity, that equity is at
3 risk. If they guarantee the debt, then their guarantee on the
4 debt is at risk. I see no difference. I think the customer
5 comes out better, and I believe that's what my testimony
6 indicated.

7 Q Okay. Well, your testimony really indicated two
8 things. You indicated you didn't think there was high
9 financial risk, and you indicated you thought the customer came
10 out better. And you believe both of those?

11 A Yes, I do.

12 Q And the reason the customer comes out better is
13 because the cost of debt is typically lower than the cost of
14 equity and because interest on the debt is deductible for tax
15 purposes; is that fair?

16 A That's correct.

17 Q Now, you mention -- you observe in your testimony the
18 Commission's leverage graph which is used to set the cost of
19 capital. The lower the percentage of equity, the higher the
20 cost of capital; is that right?

21 A At 40 percent level, the cost of capital would be
22 maximized. Anything between zero and 40 percent, it would stay
23 at that rate. Anything above 40 percent, the cost of capital
24 would decrease.

25 Q Do you know why the Commission includes that

1 40 percent as a cutoff point in the leverage graph?

2 A I'm sure they wanted to limit the amount of cost that
3 they would allow an entity to earn on this investment, and
4 that's a way of doing that.

5 MR. MELSON: Let me hand out a copy of the
6 Commission's most recent leverage order, and this is one that
7 has been officially noticed in this docket, Commissioners.

8 Q Could you turn to page numbered 5 of order -- and
9 it's page numbered 5 on a copy I downloaded from the Web site.
10 I don't know what it would be if we bought one from the Clerk's
11 Office. But I'd like you to go to the second ordering
12 paragraph on Page 5, and read that aloud, if you would, please.

13 A You mean the third paragraph starting with "Ordered
14 by the Florida Public" --

15 Q There are a series of paragraphs that start with the
16 work "ordered." The second paragraph that has the word
17 "ordered" in it.

18 A Read it to myself?

19 Q No, read it out loud, if you would, please.

20 A "Ordered that returns on common equity are hereby
21 capped at 9.94 percent for all water and wastewater utilities
22 with equity ratios of less than 40 percent in order to
23 discourage imprudent financial risk."

24 Q Does that imply to you that the Commission regards an
25 equity ratio of less than 40 percent as an area of which

1 potentially involves an imprudent level of financial risk?

2 A I'm not sure. That could be. That could be the
3 answer -- the interpretation that you should make from that.

4 Q Is that an interpretation -- well, let me ask this.
5 Would you agree that a utility with an equity ratio of less
6 than 40 percent is entering the range where it may be incurring
7 imprudent financial risk?

8 A I don't believe so, no.

9 Q Are you familiar with Dr. Morin's work on utilities
10 cost of capital?

11 A No, I'm not.

12 Q So you don't know what Dr. Morin would say about
13 financial risk?

14 A I've never met the gentleman.

15 Q Have you ever read the 1995 leverage graph order in
16 which the Commission considered Dr. Morin's testimony on
17 financial risk?

18 A I don't recall.

19 Q Now, your testimony also addresses Intercoastal's
20 ability to obtain additional debt financing and the financial
21 capability of some its stockholders to assist in that endeavor;
22 is that correct?

23 A That's correct.

24 Q One of the pieces of information that you use in
25 reaching that conclusion is a letter from Mr. Andrew Hogshead

1 at First Union Bank; is that correct?

2 A That's correct.

3 Q And I believe that letter is attached as
4 Exhibit JLB-3 to your testimony; is that right?

5 A Yes.

6 Q Now, you have never worked for a bank or another
7 lending institution; is that right?

8 A No.

9 Q And you've never been called on by a lender to issue
10 any formal opinions regarding financial applications?

11 A No.

12 Q And you have never rendered an opinion regarding the
13 ability of an enterprise to obtain financing on favorable
14 terms; correct?

15 A No.

16 Q Now, the last paragraph of the letter that's attached
17 as JLB-3 says, we feel confident in our ability to provide
18 financing upon receipt of the appropriate regulatory approvals
19 and a financial analysis of the expanded service area. Do you
20 know whether First Union Bank has ever been provided a
21 financial analysis of the expanded service area?

22 A I don't know.

23 Q Would you agree with me that this letter is not a
24 firm lending commitment?

25 A I think there's another level that they would have to

1 go through before it's a firm commitment, that's correct. And
2 it shows an intent of the bank to provide the debt as needed.
3 They have got a longstanding relationship with this customer.
4 They financed the sewage treatment plant for the \$4.5 million
5 debt at very favorable terms. LIBOR plus 1.75 with an interest
6 swap agreement that capped it at 7.375 about a year or so ago,
7 which was a pretty good rate. And they have refinanced
8 recently both that debt plus their water treatment plant debt,
9 which was a \$2.7 million debt. And they have got a pretty
10 favorable rate of 7.25. So I think that shows that they have
11 got a good relationship with the bank. They can get good
12 rates. And through my 15 years' experience working with this
13 client, they have never had a problem in servicing their debt
14 or getting their debt approved.

15 Q That's all very interesting, but this is not a firm
16 commitment letter. Would you agree with that?

17 A I think I indicated that it's not.

18 Q And, in fact, would you read aloud the last sentence
19 of the second paragraph of the letter? That will be the very
20 last page you have.

21 A Second paragraph?

22 Q Yes, sir, the last sentence of it.

23 A "A firm commitment, on behalf of First Union, would
24 be subject to appropriate regulatory approvals and our
25 satisfaction with updates of necessary financial information as

1 the service planning advances."

2 Q Now, Mr. Hogshead states in the last paragraph of
3 this letter that we have reviewed the financial statements of
4 six of the approximately 16 shareholders on Intercoastal, who
5 collectively produce a net worth of over \$30 million. Do you
6 see that?

7 A Yes, I do.

8 Q Do you know if that review was conducted by
9 Mr. Hogshead himself or by some other personnel within
10 First Union?

11 A I don't know.

12 Q So you don't know whether Mr. Hogshead had any
13 personal knowledge of the contents of those financial
14 statements when he wrote this letter?

15 A I think if he signs the letter saying we have
16 reviewed, then he's either reviewed it personally or he's
17 discussed with the individual that reviewed it to get their
18 input. I think that would be the only professional way to
19 handle drafting a letter of this sort with that language.

20 MR. MELSON: These are copies of two letters. I
21 don't have enough for everybody. I think most of the parties
22 already have these.

23 Q Mr. Hogshead -- take two. Mr. Bowen, have you had an
24 opportunity to look at the two letters from Mr. Hogshead that I
25 have just distributed?

1 A Yes.

2 Q Do they appear to be similar in substance to the
3 letter that is attached to your Exhibit JLB-3 other than they
4 are dated earlier?

5 A Yes, they do seem to be similar.

6 Q When I inquired of Mr. Hogshead about the earlier
7 letters in proceedings before the St. Johns County Water and
8 Sewer Authority, I asked him did he author those letters, and
9 he said no. Do you know whether he authored the letter that is
10 attached to your testimony?

11 A I know I talked to him on the telephone on two
12 different occasions, and he indicated that he drafted the
13 letter, and he agreed with what it said, and his position had
14 not changed. So I don't understand --

15 Q Let me read you a series of questions and answers
16 that he gave under oath in front of the Water and Sewer
17 Authority about a year ago or almost two years ago, I guess,
18 with regard to the earlier letters, and then ask you a
19 question. I asked him, Question: Did you author it?

20 No.

21 Who authored it?

22 It was drawn up by Steve Franklin, who is the senior
23 underwriter for North Florida. He is the person responsible
24 for taking a credit request once it becomes a formal loan
25 request and approving it as a formal loan.

1 Question: Second, with regard to the letter that was
2 submitted today as an exhibit, you indicated that you reviewed
3 the current financial statements of six of the approximately 16
4 shareholders who collectively produce a net worth of over \$30
5 million.

6 Answer: No, I -- I haven't done that. It was not --
7 personal financial statements are very closely guarded in
8 First Union, especially with high net worth individuals. Those
9 are distributed on a need-to-know basis. It is sufficient that
10 Mr. Franklin reviewed them.

11 Do you know whether if Mr. Hogshead were here today
12 whether he would tell us he had reviewed these financial
13 statements or not?

14 A I have no way of knowing that.

15 Q That's not something you asked him in the couple of
16 conversations you've had with him?

17 A I asked him whether or not his position as described
18 in this letter had changed, and he indicated no, that they
19 still wanted to work with Intercoastal on the financing for the
20 Nocatee expansion. And I am familiar with Mr. Franklin, and I
21 believe Mr. Hogshead works for Mr. Franklin, so I see no
22 problem with either Mr. Franklin or Mr. Hogshead drafting a
23 letter of this nature. I think it shows -- that Mr. Franklin's
24 involvement shows even a greater intent on the part of the bank to
25 work with the utility to reach their goal.

1 Q Mr. Bowen, that's very nice, but you don't know, as
2 you sit here today, whether Mr. Hogshead authored this letter,
3 or Mr. Franklin authored it, or somebody else authored it;
4 correct?

5 A I would assume Mr. Hogshead authored it since he
6 signed it, but I don't know for a fact who did.

7 Q In addition to the letter from Mr. Hogshead, I
8 believe you indicated that you have reviewed the financial
9 statements of five of the stockholders of Intercoastal
10 Utilities; correct?

11 A That's correct.

12 Q I believe you testified this morning to a net worth
13 in excess of \$30 million; is that right?

14 A That's correct.

15 Q And that is a little less than what was contained in
16 your prefiled testimony; is that right?

17 A I think I gave a more precise number --

18 Q Mr. Bowen, could you answer yes or no, and then
19 explain? It really would make it easier. Is that a lower
20 number --

21 A Well, in excess of 30 million --

22 CHAIRMAN JACOBS: Excuse me. We're going to have
23 problems with the court reporter if we both talk. Why don't
24 you restate your question. And then you give him a yes-or-no
25 answer, and then you can explain, Mr. Bowen.

1 Q Mr. Bowen, was the number of in excess of \$30 million
2 that you gave this morning intended to reflect something less
3 than the \$33 million that was contained in your prefiled
4 testimony?

5 A Well, it implied the number could be less. In excess
6 of 30 million is also what 33.7 million would be. They are
7 both in excess of 30 million.

8 Q Let me ask you this. Have you referred more recent
9 financial statements than the ones that you reviewed to in your
10 prefiled testimony?

11 A Yes, I have.

12 Q And did the net worth on those more recent financial
13 statements, was it lower than it was on the financial
14 statements?

15 A It was lower, but it's in excess of 30 million. It's
16 still a substantial number.

17 Q Now, Intercoastal has not filed with the Commission
18 any of the financial statements that you reviewed; is that
19 correct?

20 A Not to my knowledge.

21 Q And you did not audit any of those financial
22 statements?

23 A No, I didn't audit those statements. It's very
24 unusual to have audited personal financial statements. I have
25 many clients that secure debt and guarantee debt, and they

1 don't get audited personal financial statements.

2 Q And you did not perform a review of those financial
3 statements in an accounting sense; is that correct?

4 A I did not.

5 Q And with the one exception, those financial
6 statements did not include any provision for income taxes on
7 unrealized gains; is that correct?

8 A That's correct. I indicated that in my testimony.
9 And again, that's not unusual for personal financial statements
10 to exclude that. That's a CPA computation, and generally the
11 statements will be prepared by a CPA, if prepared by a CPA,
12 that would include the computation. However, these
13 stockholders are involved in so many different investments that
14 you would have to track the cost versus fair value of each of
15 those investments in order to determine the tax on the
16 appreciation, and that would be a pretty time-consuming
17 endeavor.

18 Q Did those financial statements include any value for
19 the stockholders' interest in Intercoastal Utilities?

20 A My recollection is that it did.

21 Q All of them?

22 A I'm not sure that it was on all of them, but it was
23 on several.

24 Q And how was the value of Intercoastal -- how was the
25 value of their interest in Intercoastal determined for purposes

1 of those financial statements?

2 A I don't recall an explanation of how that number was
3 determined anywhere in those statements.

4 Q Do you know if the basis for the determination of the
5 value of their interest in Intercoastal was consistent from one
6 financial statement to the next?

7 A My recollection is that it was consistent.

8 Q But you don't recollect what it was?

9 A I do not.

10 Q Did those financial statements reflect any contingent
11 liability related to the guarantees of the First Union debt?

12 A You know, I don't recall that. I don't recall one
13 way or the other.

14 Q Did those financial statements reflect any other
15 contingent liabilities for guarantees of any of the other many
16 enterprises you've testified these individuals are involved in?

17 A I don't remember.

18 Q Do you know what percentage of that over \$30 million
19 of net worth is represented by liquid assets?

20 A I did not compute that percentage.

21 Q Do you know what percentage of the net worth is
22 represented by marketable securities?

23 A I did not compute it.

24 MR. MELSON: That's all I've got. Thank you.

25 CHAIRMAN JACOBS: Mr. Menton.

1 MR. MENTON: No questions.

2 CHAIRMAN JACOBS: Mr. Korn.

3 MR. KORN: Thank you, Mr. Chairman.

4 CROSS EXAMINATION

5 BY MR. KORN:

6 Q Mr. Bowen, with respect to JLB-1, financial statement
7 for Intercoastal Utilities ending in August of '99, you
8 reference in the financial statement some rate case expenses,
9 specifically found at what appears to be -- let me try to find
10 the number.

11 A Okay. I see it.

12 Q You see it? Okay. And this is at Page 3 of the
13 statement of income under operating expenses.

14 A It's also on the balance sheet.

15 Q Okay. What is your understanding based on your
16 knowledge of the financial affairs of Intercoastal that that
17 figure encompasses the rate case expenses?

18 A Well, that encompasses the cost of the most recent
19 limited proceeding rate case and the amortization of that.

20 Q And when we say "the expenses," we are talking about
21 the expenses of any experts that Intercoastal might have
22 retained in order to --

23 A Generally, the consultants plus -- I'm sorry. Go
24 ahead.

25 Q -- the consultants or experts that Intercoastal may

1 have retained as well as any counsel they may have retained in
2 support of their rate case applications?

3 A It includes that. It also included some fees paid to
4 St. Johns County and their consultants.

5 Q Are you aware that for the period ending August 31,
6 1999, that Intercoastal Utilities had incurred any expenses in
7 connection with proceedings in front of the Water and Sewer
8 Authority seeking certification of the St. Johns portion of
9 this docket?

10 A Yes.

11 Q Where are those expenses shown on this balance
12 statement -- on this financial statement, sir?

13 A They are not on the income statement. They are
14 capitalized as another deferred charge, other deferred asset.

15 Q Can you point to exactly where those figures would be
16 included then, referring to JLB-1?

17 A Can I break to pull a file?

18 Q Certainly; with the Chair's permission, of course.

19 MR. KORN: I was seeing if that was okay with you,
20 Mr. Chairman.

21 CHAIRMAN JACOBS: Sounds reasonable.

22 BY MR. KORN:

23 Q Are you ready to answer now, Mr. Bowen?

24 A Yes. Was your question specifically on the
25 certificate expansion cost?

1 Q My question was relating to the proceedings in front
2 of the St. Johns County Water and Sewer Authority that occurred
3 in approximately June of 1999 that pertain to Intercoastal's
4 application or request to the County's Water and Sewer
5 Authority to expand their territory into the portion in
6 St. Johns County that comprises Nocatee. Okay?

7 A Yes. The certificate expansion costs appears to be
8 included in the construction in progress number. It is another
9 deferred charge type asset. There has been no amount expensed
10 as of the balance sheet date.

11 Q The construction in progress number on the balance
12 sheet showed \$3,490,110?

13 A That's correct.

14 Q So you're saying somewhere in that almost
15 \$3.5 million there's some cost for Intercoastal's expenses?

16 A Right.

17 Q Would it be fair to say that based on your knowledge
18 of Intercoastal's financial affairs that Intercoastal has
19 incurred expenses in connection with this docket?

20 A Yes.

21 Q And you've already testified in response to
22 Mr. Melson's question that you are in the process of reviewing
23 financial statements for Intercoastal for the period, I guess,
24 ending August 31st of 2000?

25 A Yes.

1 Q Would it be fair to say then that any financial
2 expenditures that Intercoastal has made in connection with
3 expenses in this docket up to that point in time would be
4 accounted for in the same line if we had that document in front
5 of us today?

6 A Yes.

7 Q And what is the disposition of that amount? In other
8 words, the construction in progress is shown here at least on
9 what you pointed as an asset.

10 A Yes.

11 Q Is that something that is utilized by the utility in
12 determining its rates?

13 A When the certificate expansion, if and when it became
14 awarded, it would be included in rate base at that point. It
15 would be included in the franchises and consents account.

16 Q Would you expect that Intercoastal would have to
17 specifically delineate the amount of those expenses rather than
18 just rolling them into a line item construction in progress?

19 A Yes.

20 Q Can you tell me what was it you were referring to in
21 helping to refresh your recollection as to these amounts? I
22 noticed you were looking at a rather large stack of documents.

23 A That's the file we generally put together when we do
24 a review.

25 Q In other words, this is your office work file, work

1 papers?

2 A Yes.

3 Q Can you tell me how much Intercoastal spent on the
4 1999 Water and Sewer Authority case that is part of the
5 \$3,490,110 shown on the construction in progress line?

6 A I'm not sure I could give you that number
7 specifically. They have incurred costs related to certificate
8 expansion, which may include both of the proceedings that
9 you're referring as one lump sum number.

10 Q Could you estimate how much that might be,
11 recognizing it may not be an exact figure?

12 A Over 200,000.

13 MR. KORN: Thank you, Mr. Bowen. I have no further
14 questions.

15 CHAIRMAN JACOBS: Staff.

16 MS. ESPINOZA: No questions.

17 CHAIRMAN JACOBS: Commissioners. Redirect.

18 REDIRECT EXAMINATION

19 BY MR. DETERDING:

20 Q Mr. Bowen, you were asked about the shareholder
21 commitments to fund. Are you aware of whether those
22 shareholders have put those commitments in writing?

23 A My understanding is that they have signed affidavits
24 that they agreed to fund whatever is necessary to fulfill to
25 satisfy the requirements related to this expansion.

1 Q Are you aware of any circumstances under which the
2 Florida Public Service Commission requires audited financial
3 statements in one of their proceedings?

4 A I'm not aware of any. My experience is utilities
5 normally don't get audits, and same is true with personal
6 financial statements which I have already alluded to.

7 Q Are you aware of a change in the shareholder
8 ownership of Intercoastal versus JUM that occurred sometime in
9 the last two to three years?

10 A Could you restate that?

11 Q Yeah. Are you aware of any change in the ownership
12 structure, who owns what, in JUM versus Intercoastal in the
13 last three years?

14 A Well, my understanding is that the Intercoastal
15 stockholder group is -- has been pretty constant. I think
16 there's been some changes in the JUM group.

17 Q Do you know -- do you have a feel for what percentage
18 of the -- what percentage of the shareholders are common
19 shareholders as far as percentage ownership between the two?

20 A I understand it's a pretty small percentage of common
21 ownership for the two groups.

22 Q Less than 20 percent?

23 A That's my understanding.

24 Q Less than 15?

25 A I'm not sure exactly.

1 Q Okay. There were some questions of you concerning
2 the costs that are shown in the financial statements as coming
3 from JUM, the cost to operate Intercoastal. Do you recall
4 those?

5 A Right.

6 Q Did the utility undergo an audit by the regulator in
7 St. Johns County in approximately a year and a half, two years
8 ago?

9 A Are you referring to the 1998 audit?

10 Q I'm talking about the audit by Larkin & Associates.

11 A Done for 1998, yes, I'm familiar with that.

12 Q Would you agree that to the -- that the level of
13 disallowance of related party expenses was relatively
14 immaterial even in that case?

15 MR. KORN: I'm just going to the object to the extent
16 that the term --

17 MR. DETERDING: All right. Let me ask him to
18 characterize it.

19 BY MR. DETERDING:

20 Q Can you recall the level of disallowance in that case
21 by the auditor of related party expenses?

22 A I'm sorry, I don't remember the specifics of the '98.
23 I do remember overall that the company came out of that audit
24 in pretty good shape in terms of their earnings. They were
25 looking for overearnings. They were looking for related party

1 type transactions and whether or not there was a problem with
2 those, whether or not they were at arm's length. And my
3 recollection is that the bottom line was that there was no
4 irregularities that were found, and overall, the company came
5 out of that audit in pretty good shape, in my opinion.

6 Q Was there any rate change proposed as a result of
7 that audit?

8 A No.

9 Q You were referred to the leverage graph and
10 specifically provided a copy of the leverage graph order from
11 last year, and specifically referred to on Page 5, the ordering
12 paragraph that talks about, "to discourage imprudent financial
13 risk." Do you remember that?

14 A Right.

15 Q To your knowledge, is it uncommon in this State for a
16 utility to have less than 40 percent equity in a water and
17 sewer utility?

18 A My experience is very common to have less than
19 40 percent. Most of the ones that I've dealt with have less
20 than 40 percent.

21 Q The majority?

22 A The majority, right.

23 Q Are you aware of anything that the Commission has
24 ever done to suggest that any of those companies that you've
25 dealt with increase that above that level?

1 A I have never seen an instance where that has
2 occurred.

3 Q Has Intercoastal Utilities offered to increase its
4 equity ratio in this proceeding?

5 A My understanding is that Intercoastal is ready to
6 infuse capital into the company to satisfy whatever
7 requirements they have in order to get the expansion.

8 Q If you will, refer to JLB-3, the letter from
9 Mr. Hogshead with First Union. In the second paragraph and in
10 the third paragraph, I believe -- well, first, to the third
11 paragraph because that's where you were led originally. In the
12 second to last sentence, and I'll quote the provision that
13 we're talking about and that you were referred to, "We feel
14 confident of our ability to provide the necessary financing
15 upon the receipt of the appropriate regulatory approvals and
16 financial analysis of the expanded service area." Do you know
17 what they mean by "appropriate regulatory approvals"?

18 A No, I don't. I assume they are implying appropriate
19 regulatory approvals of the expansion itself plus whatever
20 banking requirements that there may be.

21 Q And so Intercoastal could not have provided them with
22 the appropriate regulatory approvals if that's what they are
23 talking about until this Commission acts, could they?

24 A That's correct.

25 Q And I believe the same -- well, I will ask you:

1 Would your answer be the same with regard to that same phrase
2 utilized in the prior paragraph, near the end of the prior
3 paragraph?

4 A Yes.

5 Q Might it also deal with approvals for permitting any
6 facilities that would be financed?

7 MR. MELSON: Objection, leading, and the witness has
8 already stated he doesn't know what it refers to.

9 MR. DETERDING: I apologize. I'll withdraw the
10 question.

11 BY MR. DETERDING:

12 Q Now, you said you had discussed this letter with
13 Mr. Hogshead in the last few questions?

14 A Yes, I talked with him in April.

15 Q What does the continuing -- the fact that they have
16 written three different letters on this subject suggest to you
17 about their commitment?

18 A I think it suggests a pretty strong commitment. Like
19 I have indicated before, I think they have got a longstanding
20 relationship with this client and the stockholder group.
21 First Union is a very big organization. They certainly have
22 the money to lend, and I think they have shown -- have
23 indicated they want to work with Intercoastal in this project
24 like they have in other projects.

25 Q Mr. Melson directed you to the terminology that

1 suggested that at the beginning of that letter, "we have
2 considered," and at the beginning of the last paragraph, "we
3 have reviewed." Do you think it's uncommon for an organization
4 like the size of First Union Bank to delegate responsibilities
5 for reviewing such things between different individuals?

6 A No, I don't think it's unusual at all.

7 Q In fact, if you'll refer to your accountants' review
8 report from your own firm, what are the first three words in
9 your review report?

10 A Right. We generally use the term "we" as a firm and
11 not any one individual.

12 Q Because the responsibilities for preparing this
13 review are on more than one person, are they not?

14 A That's correct. We have several people in my
15 organization that may work on this job from time to time. I,
16 as a partner, would have final responsibility, just like either
17 Andy Hogshead or Steve Franklin would have final responsibility
18 for First Union, and they hire the appropriate people that they
19 use to satisfactory their internal requirements on debt
20 approval.

21 Q Mr. Korn referred you to the rate case expense within
22 the financial statements. In St. Johns County, I believe they
23 have a rather unusual setup for payment of rate case expenses
24 incurred by the County. Can you briefly explain that to the
25 Commission?

1 A Are you referring to the requirement that the utility
2 has to cover not only its own consultants but also the
3 County's?

4 Q Yes.

5 A And plus I think there's an up front fee that has to
6 be paid to the County before you have a proceeding. So the
7 cost can be pretty extensive.

8 Q And is the same true in a certificate matter with
9 St. Johns County?

10 A That's my understanding.

11 MR. DETERDING: That's all I have.

12 CHAIRMAN JACOBS: Exhibits.

13 MR. KORN: Mr. Chairman, if I might, and I hate to do
14 this. There is one question which I think I need to ask on
15 recross. And the reason I ask it is because Mr. Deterding's
16 question which elicited some responses from this witness
17 pertaining to a 1998 audit were totally outside the scope of
18 his prefiled. And as such, I just want to ask one question to
19 clarify which audit he was referring to or talking about with
20 respect Intercoastal.

21 MR. DETERDING: Well, if he --

22 CHAIRMAN JACOBS: Excuse me. As I remember, the
23 original line of questioning went to whether or not there
24 was -- whether or not it was viable that the level of debt
25 represents undue risk. And this line of questioning had to do

1 with whether or not, I thought and correct me, whether or not
2 there had been audits of the company, whether or not concerns
3 had been raised with regard to the debt, and that was going
4 back to the issue of negative equity and all that. Why would
5 this -- why would your qualification of the audit's timing go
6 to that? Help me understand.

7 MR. KORN: Well, Mr. Chairman, because the Commission
8 has already heard testimony regarding a 1999 audit which is
9 still in progress. And I just wanted to clarify to the extent
10 this witness has knowledge that his testimony as to the
11 1998 audit, which he referred to a few moments ago, does not
12 encompass this other audit that is still as Mr. James said
13 didn't -- was not aware of.

14 MR. DETERDING: We'll stipulate to that.

15 CHAIRMAN JACOBS: Okay.

16 MR. KORN: Okay. So you'll stipulate that this
17 witness did not have knowledge of the --

18 MR. DETERDING: He was not talking about the
19 1999 audit.

20 MR. KORN: He was only referring to the 1998 audit?

21 MR. DETERDING: Correct.

22 MR. KORN: With the record being resolved in that
23 fashion, I will stand down --

24 CHAIRMAN JACOBS: Very well. Thank you.

25 MR. DETERDING: Thank you.

1 MR. KORN: -- now that it's clarified.

2 MR. DETERDING: We would move Exhibit 45.

3 MR. MELSON: Objection. And I'm going to object to
4 JLB-3, which is a letter from Mr. Hogshead.

5 CHAIRMAN JACOBS: Basis.

6 MR. MELSON: As we sit here today, that letter is
7 hearsay. Its author is not here to be cross examined. When I
8 cross examined him in St. Johns County about a similar letter a
9 couple of years ago, he admitted he had not authored it and had
10 not reviewed the financial statements it referred to. So it
11 was hearsay then. It could be potentially double hearsay now.
12 And I believe in regard to an exhibit yesterday by Ms. Arenas,
13 the Chair ruled that a letter such as this where the author was
14 not here fell within that hearsay issue and would not be
15 admitted.

16 CHAIRMAN JACOBS: Your assertion that it's hearsay,
17 normally that means that this is intended to assert the truth
18 of the matter as asserted herein?

19 MR. MELSON: Correct. That letter purports to assert
20 that the bank will lend money to Intercoastal.

21 CHAIRMAN JACOBS: Well, I thought the whole essence
22 of the cross examination of that was to establish that it does
23 not.

24 MR. MELSON: It was to diminish the value of that
25 letter in the event my objection were overruled.

1 CHAIRMAN JACOBS: Well done, I should say. I think
2 on the face --

3 MR. MELSON: I'll withdraw the objection.

4 CHAIRMAN JACOBS: Yeah. On the face of it, it says a
5 firm commitment -- it anticipates a firm committment later on.
6 So I'll deny the objection. And show that Exhibit 45 is
7 admitted.

8 (Exhibit 45 admitted into the record.)

9 CHAIRMAN JACOBS: Thank you, Mr. Bowen.

10 (Witness excused.)

11 CHAIRMAN JACOBS: And so we come to the end. Staff,
12 do you want to brief us on a schedule from here? I think we
13 talked about it somewhat.

14 MS. CIBULA: Staff would just suggest that a date be
15 set up for the late-filed exhibits to be submitted.

16 CHAIRMAN JACOBS: What would be recommended, 14 days?

17 MS. CIBULA: Okay. That would be May 23rd would be
18 14 days.

19 MR. MELSON: The transcript, I believe, is due on the
20 22nd, 23rd.

21 MS. CIBULA: The 23rd.

22 CHAIRMAN JACOBS: Ten days then. How about ten says?

23 MS. CIBULA: Ten days, I guess that would fall on a
24 Saturday. Nine days would be May 18th.

25 CHAIRMAN JACOBS: Okay. That sounds reasonable,

1 May 18th.

2 MR. DETERDING: Just to make sure everybody knows, is
3 there anybody who can give us some kind of listing of what
4 those are prior to --

5 CHAIRMAN JACOBS: Let me make sure. This would be a
6 good idea, and somebody can confirm my notes.

7 MR. DETERDING: I know we have a legal description in
8 electronic format we're supposed to provide, but I'm not sure
9 if there's anything else.

10 CHAIRMAN JACOBS: Okay. I show Exhibit 13 --

11 MR. MELSON: Ms. Swain's recalculation.

12 CHAIRMAN JACOBS: -- Ms. Swain's recalculation. I
13 show Exhibit 15, the deposition redacted -- oh, no, it's no
14 longer redacted, so the whole can come in. Good, I'm glad we
15 went through this because -- so Exhibit 15 is no longer a
16 late-filed. You're just going to submit that into the record;
17 is that correct?

18 MR. MELSON: Correct.

19 MR. WHARTON: Well, maybe that will be a late-filed.
20 I'll get it over to the Commission tomorrow.

21 CHAIRMAN JACOBS: Okay. Very well. Exhibit 34,
22 which is the consumptive use permit of JEA.

23 MS. ESPINOZA: Excuse me, we also have Exhibit 26.
24 That was Staff's, the legal description of Intercoastal's
25 existing service territory.

1 CHAIRMAN JACOBS: That's correct, it is. And that's
2 it. That's all I show.

3 MS. ESPINOZA: Exhibit 35.

4 CHAIRMAN JACOBS: I thought we had 35. I thought he
5 had a copy --

6 MS. ESPINOZA: The second revised technical staff
7 report?

8 CHAIRMAN JACOBS: Yeah, Mr. Perkins had a copy. I
9 thought they were going to provide a copy. He did not --

10 MR. DETERDING: I haven't seen it.

11 CHAIRMAN JACOBS: Actually, this is a permit, it
12 says. No, I'm sorry, you're right. This is the technical --
13 this is it. So this is Exhibit 35, so that is not late-filed.
14 Does that agree? So the others will be due on May 18th.
15 Briefs are due?

16 MS. CIBULA: June 6th.

17 CHAIRMAN JACOBS: And we've agreed on the timing for
18 the other document.

19 MR. WHARTON: May 22?

20 CHAIRMAN JACOBS: May 22. Anything else to come
21 before the Commission today? Mr. Melson.

22 MR. MELSON: Commissioner, I'd like to spend just a
23 minute addressing the page limit on the briefs. I forget, I
24 know there was a modest expansion granted in the prehearing
25 order, but I forget what it was.

1 CHAIRMAN JACOBS: I have it here. I thought it was
2 75 pages, but let me check.

3 MR. MELSON: I don't believe it was that long.

4 CHAIRMAN JACOBS: Okay. Fifty it is.

5 MR. MELSON: In light of the two or three additional
6 legal issues, I'd like to request that that be expanded
7 slightly, let's say, to 60 pages.

8 CHAIRMAN JACOBS: We'll grant that. That's not
9 excessive. So the brief page limit will be expanded to
10 60 pages. Anything else? Staff?

11 MS. CIBULA: That's all.

12 CHAIRMAN JACOBS: Congratulate the parties. This has
13 been an involved case, and we've gone through it, I think,
14 with -- on most occasions with very good -- what's that, I
15 can't think of -- esprit de corps. That's the word. So thank
16 you, and we're adjourned.

17 Amend my comments that Exhibit 35 is not in custody,
18 and it is a late-filed exhibit.

19 (Hearing concluded at 5:00 p.m.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
6 certify that the foregoing proceeding was heard at the time and
7 place herein stated.

8

9 IT IS FURTHER CERTIFIED that I stenographically
10 reported the said proceedings; that the same has been
11 transcribed under my direct supervision; and that this
12 transcript constitutes a true transcription of my notes of said
13 proceedings.

14

15 I FURTHER CERTIFY that I am not a relative, employee,
16 attorney or counsel of any of the parties, nor am I a relative
17 or employee of any of the parties' attorneys or counsel
18 connected with the action, nor am I financially interested in
19 the action.

20

21 DATED THIS 23rd DAY OF MAY, 2001.

22

23

Tricia DeMarte

24

TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736

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