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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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|------------------------------|---|-----------------------------|
| In re: Petition for a rate | : | DOCKET NO. 900816-WS |
| Increase in Martin County by | : | |
| SAILFISH POINT UTILITY | : | <u>HEARING</u> |
| CORPORATION | : | |
| | : | <u>IN CAMERA PROCEEDING</u> |

Pages 243 Through 281

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

Met pursuant to notice at 1:00 p.m.

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

APPEARANCES:

(As heretofore noted.)

Confidentiality expired 1/10/23
DOCUMENT NUMBER-DATE

06952 JUL 10 1991

P R O C E E D I N G S

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

I N C A M E R A

C O N F I D E N T I A L M A T E R I A L

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5 **COMMISSIONER EASLEY:** The transcript of this
6 portion of the hearing, and the discussion related
7 thereto, shall be prepared and filed under seal, to be
8 opened only by order of the Commission. The transcript
9 is, and shall be, nonpublic record exempt from Section
10 119.07 (1). Only the attorneys for the participating
11 parties, Public Counsel, Commission Staff and the
12 Commissioners, shall receive a copy of the sealed
13 transcript.

14 **Everyone remaining in this room is instructed**
15 **that the testimony and evidence about to be received is**
16 **proprietary, confidential business information which**
17 **shall be kept confidential. No one is to reveal the**
18 **contents or substance of this testimony or evidence to**
19 **anyone not present in this room at this time.**

20 **The court reporter shall now record the names**
21 **and affiliations of all persons present in the hearing**
22 **room at this time. I will start with Mr. Pruitt.**

23 **MR. PRUITT:** I'm Prentice P. Pruitt, 101 East
24 **Gaines Street, Tallahassee 32303, Counselor to the**
25 **Commissioners.**

1 COMMISSIONER EASLEY: Commissioner Betty Easley.

2 COMMISSIONER DEASON: Commissioner Terry Deason.

3 MR. DeWARD: Thomas C. DeWard, Certified Public
4 Accountant, registered in Michigan, with the firm of
5 Larkin and Associates, 15728 Farmington Road, Lovonia,
6 Michigan 48154.

7 COMMISSIONER EASLEY: For OPC.

8 MR. DeWARD: Representing OPC.

9 MR. REILLY: Steve Reilly, with the Office of
10 Public Counsel.

11 WITNESS SEIDMAN: Frank Seidman, Management
12 and Regulatory Consultants, 11380 Palm Beach Gardens,
13 Florida, rate consultant to the Applicant, Sailfish
14 Point Utility Corporation.

15 MR. BRADFORD: Hal Bradford, counsel for
16 Sailfish Point, Inc. Do you need an address?

17 MR. OLSON: Terry Olson, Manager of Federal
18 Compliance, 1201 Elm Street, Dallas, Texas 75221, Mobil
19 Administrative Services, Inc.

20 MR. LOPEZ: Steve Lopez, Mobil Administrative
21 Services, Inc. I'm Supervisor in the Tax Compliance
22 Group, same address as Terry.

23 MR. GIRTMAN: Ben Girtman, 1020 East
24 Lafayette Street, Suite 207, Tallahassee, Florida
25 32301, representing Sailfish Point Utility Corporation.

1 MR. KING: William Reeves King, of St. Johns
2 and King, West Palm Beach, attorney for the
3 intervenors.

4 MR. O'GORMAN: Joe O'Gorman, Mobil Land
5 Florida, Controller, 4440 PGA Boulevard, Palm Beach
6 Gardens.

7 MS. DAVIS: Noreen Davis, 101 East Gaines
8 Street, Tallahassee, PSC Legal Department.

9 MS. BEDELL: Catherine Bedell, 101 East
10 Gaines Street, Tallahassee, Florida, for the Commission
11 Staff.

12 COMMISSIONER EASLEY: All right.

13 MR. GIRTMAN: Commissioner, excuse me one
14 moment. The material that you placed at the beginning of
15 this meeting regarding how the material would be handled,
16 I would like to please clarify and make sure that we
17 preserve our rights in regard to attorney/ client
18 privilege, accountant/client privilege, and any other
19 rights or privileges that we may have available to us.

20 COMMISSIONER EASLEY: The language is
21 directed toward proprietary but is inclusive of all of
22 those privileges that you cite.

23 MR. GIRTMAN: Thank you.

24 COMMISSIONER EASLEY: All right. Tell me
25 where we need to begin.

1 MR. OLSON: This is Document 16, as we
2 provided, and this is the unredacted document. These
3 do not deal with Sailfish Point, Inc. or the Utility.

4 COMMISSIONER EASLEY: I see. All right.
5 What we're dealing with are --

6 MR. OLSON: Other real estate developments
7 that are in the Mobil.

8 COMMISSIONER EASLEY: Do you have -- Mr. Pruitt,
9 come over here.

10 MR. GIRTMAN: Steve, do you have a copy?

11 MR. REILLY: Not of the unedited version.

12 COMMISSIONER EASLEY: Where is Bear Island
13 Investments, Inc. located physically? It's not in
14 Florida?

15 MR. O'GORMAN: Certainly not.

16 COMMISSIONER EASLEY: It's not in Florida?

17 MR. O'GORMAN: It's not in Florida.

18 COMMISSIONER EASLEY: Thank you.

19 MS. BEDELL: Georgia.

20 COMMISSIONER EASLEY: It's not in Florida.
21 Big Creek/Little Creek is it in Florida?

22 MR. O'GORMAN: No.

23 MR. REILLY: For the record, those are the
24 ones I thought we would excise. I expected those.

25 COMMISSIONER EASLEY: Then you have no

1 objection to excising these?

2 MR. REILLY: I have no objection to the
3 entities that have nothing to do with Sailfish Point
4 being excised.

5 COMMISSIONER EASLEY: Fine. Then maybe it
6 would be quicker too as we go through these, deal with
7 the ones you have an objection to.

8 MR. REILLY: That's really -- I just thought
9 I'd help out.

10 COMMISSIONER EASLEY: Fine. I assumed this
11 first one --

12 MR. OLSON: I think we took it out because it
13 didn't deal with the Utility at all or its operation.

14 MR. O'GORMAN: There are many facets of
15 Sailfish Point, Inc. which do not deal with the
16 Utility.

17 COMMISSIONER EASLEY: I'm going to ask, for
18 purposes of the court reporter, that we kind of limit
19 how many people are talking. Because otherwise the
20 record is going to get a little confused.

21 Where'd Mr. Reilly go? Oh, there he is. Do
22 you have any problem with that? I'm not sure what it
23 does, one way or the other, to be truthful with you.

24 MR. REILLY: I don't have a problem with
25 that. I mean, I don't know why they have a problem

1 with it either.

2 COMMISSIONER EASLEY: I just don't know that
3 it does anything, one way or the other.

4 MR. REILLY: That's correct. It's not
5 something that is going to affect us. Okay. No
6 problem.

7 COMMISSIONER EASLEY: Okay. That takes care
8 of Page 16, it will remain as excised.

9 17 we go to -- (Pause) -- I'm not sure. I
10 don't see anything in there that gets very direct that
11 I can recognize.

12 MR. DeWARD: It could have tangential tax
13 treatment of subordinated sales, which could deal with
14 the cost of sales of those.

15 COMMISSIONER EASLEY: Yeah, but we could --

16 MR. REILLY: Keep reading on. It gets in
17 context I think the whole page is blocked out.

18 COMMISSIONER EASLEY: Okay. Down to B. All
19 right. I don't see anything having to do with the
20 Utility, unless the only -- subordinated sales and
21 installment sales, tell me what those are.

22 MR. OLSON: Prior to 1987, Mobil in a lot of
23 its sales may take back notes when they sell lots,
24 okay, and it's a method of the way we treated things
25 for tax purposes as to bringing all of the sales

1 proceeds in an 8-year sale. We would bring it in as
2 the customer paid us cash. So it's just the
3 methodology of the way we sold the lots.

4 MR. DeWARD: Per se, we can --

5 COMMISSIONER EASLEY: I don't see anything
6 relevant.

7 MR. DeWARD: I think we can live with that.

8 COMMISSIONER EASLEY: The language that is
9 redacted on Pages 1 and 2 of Docket No. 17 will remain
10 redacted.

11 MR. OLSON: Okay.

12 COMMISSIONER EASLEY: And then the next one
13 appears to be --

14 MR. OLSON: 17 was all left in.

15 COMMISSIONER EASLEY: The rest of 17 is
16 intact.

17 MR. OLSON: So we can --

18 COMMISSIONER EASLEY: There is nothing there.
19 17 is now taken care of. 18.

20 MR. OLSON: The way I understand, it says
21 sales center \$375,000. Life of project, it's hard to
22 read upside down, 150%, eight years, which presumably
23 is the depreciation, method and life.

24 COMMISSIONER EASLEY: Or what?

25 MR. REILLY: Development cost, and I don't

1 think that would have to do with the Utility.

2 MR. OLSON: Nothing to do with the utility.

3 COMMISSIONER EASLEY: All right, the language
4 on Page 18 --

5 MR. GIRTMAN: It's an unnumbered page.

6 COMMISSIONER EASLEY: Unnumbered Page 18 at
7 the bottom of the page relating to sales summary
8 remains redacted.

9 This is not in Florida, is that correct?

10 MR. OLSON: It's Brickton, and I think it was
11 covered under the other that we mentioned before.

12 COMMISSIONER EASLEY: All right.

13 MR. GIRTMAN: TP&J is another development down
14 south of Stuart.

15 MR. DeWARD: We're not concerned with those two.

16 MR. OLSON: It just talks about the number of
17 units sold.

18 COMMISSIONER EASLEY: All right. The
19 language on Page 18, item 18, Page 9, that is redacted
20 shall remain redacted. (Pause)

21 I see nothing there.

22 MR. REILLY: I don't see anything.

23 COMMISSIONER EASLEY: Item 18, Page 10, is
24 redacted, shall remain redacted.

25 MR. OLSON: Again, this is the golf club.

1 **COMMISSIONER EASLEY:** Yeah. And the
2 clubhouse, the marina and the rest of this is in
3 beginning with the utility corporation.

4 **MR. REILLY:** I don't read as fast as you, I
5 guess.

6 **COMMISSIONER EASLEY:** Sorry. I've been doing
7 this a lot longer than you have.

8 Item 18, Page 11, the redacted language will
9 remain redacted.

10 **MR. OLSON:** We talked about dunes earlier.

11 **COMMISSIONER EASLEY:** Yeah. California region
12 we also talked about. Item 18, Page 12, the items
13 redacted will remain redacted.

14 **MR. OLSON:** That's all of 18.

15 **COMMISSIONER EASLEY:** That takes care of
16 Document 18. We are now in Document 19. Golf club.
17 What's POA.?

18 **MR. REILLY:** Property Owners Association.

19 **COMMISSIONER EASLEY:** Oh, of course, I'm
20 sorry. (Pause)

21 **MR. DeWARD:** I think this POA will not have a
22 tax basis for assets contributed to it by Sailfish to
23 the extent that Sailfish includes the cost of such
24 assets as cost of lot sales. I think that's relevant.

25 **COMMISSIONER EASLEY:** To what?

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22 tax basis for assets contributed to it by Sailfish to
23 the extent that Sailfish includes the cost of such
24 assets as cost of lot sales. I think that's relevant.

25 **COMMISSIONER EASLEY:** To what?

1 MR. DeWARD: The whole cost of sales issue
2 and if it's been costed out --

3 MR. OLSON: But we are not talking about the
4 POA here. We're talking about the cost of sales for
5 Sailfish Point, Inc.

6 MR. DeWARD: We're talking about contributing
7 the assets to the POA, which, if they are contributing
8 them to the POA and they're writing them off, it's cost
9 of sales issue and there could be no basis then.
10 That's relevant.

11 MR. REILLY: Didn't the POA make a claim
12 about the common properties, at least as it related to
13 the utility assets outside the utility parcel, so that
14 that gets into the distribution system.

15 MR. DeWARD: To further expand on that, we
16 have discussion in these other memos of a tri-party
17 agreement, which is the POA, Sailfish Point, Inc. and
18 Sailfish Point Utility Corporation. So it's all
19 intertwined and we're talking now about tax basis and
20 tax treatment.

21 WITNESS SEIDMAN: I didn't see anything in
22 there about utilities being transferred.

23 MR. OLSON: Right.

24 WITNESS SEIDMAN: It just says assets that it
25 transferred.

1 MR. OLSON: All the common areas were
2 contemplated to be turned over to the POA. These are
3 defined common areas.

4 COMMISSIONER EASLEY: I think I see where
5 you're going. I think I see where they are going. The
6 difficulty is going to be, I believe, that this is
7 going to be your basic problem and how in the world are
8 you going to break out that and just taking the
9 property owners association dues portion of it, I'm not
10 sure is going to get you there anyway.

11 MR. REILLY: May I throw the ball in the
12 other corner? What is the problem about that
13 information being discovered? Does it compromise
14 Sailfish Point, Inc. or something?

15 MR. GIRTMAN: Let me suggest --

16 MR. BRADFORD: Corporate policy.

17 (Simultaneous conversation.)

18 COMMISSIONER EASLEY: Now, wait a minute,
19 guys, hold the phone. Because we have a court
20 reporter, we've got to do one at a time now. So, just
21 please.

22 MR. GIRTMAN: Let me comment first on this.

23 When you have a business operation, large or
24 small, whether it be Mobil Corporation with all its
25 subsidiaries, or ABC Mom and Pop Utility Corporation,

1 there are certain internal business operations that are
2 not made available to the general public on any number
3 of reasons.

4 As a matter of policy, regardless of whether
5 this page of documents recited the ABCs, it is still
6 significant to that business that, as a matter of
7 precedence, outside interests do not have a right to
8 come in and just pick up information from them. If
9 there is a need for information, if it is relevant,
10 specifically relevant to a specific purpose to be used
11 for something else, then perhaps it can be used for
12 that purpose.

13 But the point we're trying to make, and we've
14 made successfully in all three of those documents, is
15 they are not relevant to the proceeding. As a matter
16 of precedent, the Mobil Corporation will not turn them
17 over to anybody without a good reason, you see. If
18 there is a relevant specific, directly relevant reason
19 for something to be used in this proceeding, that's the
20 question.

21 And I'll defer to whoever is going to speak
22 back here in addition to what I had to say.

23 MR. REILLY: I have a comment.

24 COMMISSIONER EASLEY: Briefly, because I have
25 a question.

1 MR. REILLY: Briefly, the burden is on the
2 Utility in this case to prove the harm that will be
3 caused by the disclosure of this information. This
4 burden must be met if the information is not going to
5 be disclosed.

6 MR. GIRTMAN: Well, I take exception to that
7 but go ahead.

8 MR. REILLY: I would say that, you know, just
9 to be worried about precedence does not meet that
10 burden. The need, the specific need he made reference
11 to is that it has been alleged by intervenors in this
12 case that it is the fact that the POA who has been
13 suggested as a possible party for the tri-party
14 agreement, which was or was not ever entered into, but
15 that it is going to be the ultimate owner of the common
16 property, common elements of which part of that common
17 elements are lines, collection lines and distribution
18 lines of the utility system.

19 MR. GIRTMAN: Let me register an objection to
20 that.

21 MR. REILLY: Okay. This is an allegation
22 that has been made by one of the parties that's at
23 issue. This could bear on it.

24 MR. DeWARD: I'm only interested not in 5 and
25 6 but just in 4. I don't know if I made that clear.

1 MR. OLSON: What does it have to do with the
2 Utility?

3 MR. DeWARD: Well, because the other
4 documents that we have that are part of the POD No. 3
5 suggest that the plant was going to be donated to the
6 POA and costed in cost of sales. And here it suggests
7 will not have a tax basis for assets contributed.

8 COMMISSIONER EASLEY: Let me ask you a
9 question, and I think maybe this is where part of the
10 problem is coming in. POAA has not had transfer of
11 ownership take place, has it?

12 MR. DeWARD: That's my understanding.

13 COMMISSIONER EASLEY: It has not occurred yet.

14 MR. KING: That's correct.

15 COMMISSIONER EASLEY: If it has not occurred
16 yet, then this is not operative until such time as the
17 assets are transferred, is that correct?

18 MR. KING: I have not seen what you're
19 talking about, but it would seem to me that we're
20 talking about evidence of whether they had made a
21 decision to contribute these assets and how to handle
22 this development, and whether that has taken place yet
23 or not seems to me is not relevant to that issue.

24 COMMISSIONER EASLEY: Well, it's relevant to
25 this extent, Mr. King, and here's my problem. This

1 specifically says "will not have a tax basis for assets
2 contributed to it to the extent Sailfish includes the
3 cost of such assets in its cost of lot sales." If the
4 assets have not yet been contributed, how can I assume
5 what the result of a future action is going to be?

6 MR. KING: Because they have given it certain
7 tax treatment and they have made a decision, and as far
8 as a corporate plan and a development scheme as to how
9 they are going to treat those things.

10 COMMISSIONER EASLEY: But, Mr. King, until
11 the treatment occurs and the tax liability or credit
12 occurs, I cannot make an assumption of something that
13 hasn't happened yet and is going to happen in the
14 future, or may not happen.

15 COMMISSIONER DEASON: Just one second, let me
16 interrupt here.

17 If you read that very carefully, it seems to
18 me that it's not stating any more than just a fact of
19 the way the tax law operates. Because it's saying to
20 the extent something is done. The real issue, has that
21 been done or will that be done, and that's a factual
22 determination that can be determined somewhere else.

23 But this is just really a statement of the
24 tax law unless I'm reading it incorrectly. And I don't
25 see how a statement of what the tax law is could harm

1 the company if disclosed. Of course, I don't see where
2 it's that beneficial to the Public Counsel either
3 because they know what the tax law says, too.

4 MR. GIRTMAN: The burden is not on us. The
5 burden is on the movant seeking the discovery to show
6 that it's relevant and overcomes the privacy.

7 COMMISSIONER EASLEY: All right. I'm going
8 to tell you something. I really think Commissioner
9 Deason just solved my problem for me. I think looking
10 at the content and the forward-looking nature of it,
11 but I think Commissioner Deason is right. The law is
12 what the law says it is and because it has -- I'm going
13 to combine the two together; because such tax basis has
14 not yet occurred, we're going to leave that language
15 redacted.

16 MR. DeWARD: Could I just add a comment?

17 COMMISSIONER EASLEY: I've already ruled. Do
18 you want to push your luck? I'd leave it alone if I
19 were you.

20 MR. DeWARD: Okay.

21 COMMISSIONER EASLEY: Okay. You might get it
22 on the next one if you leave it alone now.

23 5 and 6 you don't have any problem with,
24 right?

25 MR. REILLY: My consultant says he didn't so

1 I don't.

2 COMMISSIONER EASLEY: Page 2 of Document 19
3 will remain redacted. (Pause)

4 MR. DeWARD: This is definitely relevant, No. 8.
5 (Pause)

6 COMMISSIONER EASLEY: I think it is. Tell me
7 how it harms you.

8 MR. GIRTMAN: Let me take a look, please.
9 (Pause)

10 MR. REILLY: I haven't heard anything in a
11 long time that -- there couldn't possibly be any harm.

12 MR. OLSON: Is this the same concept as the
13 other?

14 COMMISSIONER EASLEY: No.

15 MR. GIRTMAN: Have you seen that?

16 MR. BRADFORD: Are you talking to me?

17 MR. GIRTMAN: Yes. No. 8.

18 COMMISSIONER EASLEY: The difference between
19 that and the other it does not restate tax law.

20 MR. BRADFORD: I was going to say -- this is
21 Hal Bradford speaking -- that it was the same as the
22 last one, that it is a statement of tax law.

23 COMMISSIONER EASLEY: Do you think it is?

24 MR. LOPEZ: If it's committed.

25 MR. BRADFORD: Are we still talking about

1 what was going to be --

2 COMMISSIONER DEASON: You're talking again
3 about prospective things that may occur in the future.

4 COMMISSIONER EASLEY: I understand about the
5 prospective things, I still don't -- let me see.

6 MR. DeWARD: I guess if we're talking about
7 tax law putting it in the record is no big deal then,
8 right? I mean it's tax law.

9 MR. GIRTMAN: The point of it is, it's
10 private. If you want the tax law, get the tax law.
11 That's our position. (Pause)

12 COMMISSIONER EASLEY: Do you know whether or
13 not we're just restating the tax law with this? You
14 knew in the other one, but I'm not sure. But at this
15 date, I don't know. I don't know enough about it to know
16 that. Just a minute. (Pause)

17 COMMISSIONER DEASON: I don't claim to be a
18 tax law expert but reading that it appears to me that's
19 a statement of what the tax law is. Maybe Mr. DeWARD
20 can add to that, explain if that's not a restatement of
21 what the applicable tax law is.

22 MR. REILLY: Go ahead. You can say it, but
23 when they're asking tax advice, you're going to hope
24 that you're going to get good and correct tax advice
25 from your tax counsel so that's going to hopefully

1 always be permeated in here, but go ahead, Tom.

2 MR. DeWARD: I think it's important we're
3 going after the fact and that's why our motion was so
4 we can go back and look at the actual cost of sales.
5 We're talking now another piece of evidence here that
6 suggests that this is costed out. It's just another
7 piece, it may not have carried through, but it's
8 another piece of evidence that the intent was to donate
9 this property to Sailfish or to the Utility --

10 (Simultaneous conversation.)

11 Donated to the POA and costed out on Sailfish
12 Point's books and that's what we're trying to prove.

13 COMMISSIONER EASLEY: Guys, hold the phone.
14 I told Mr. King he could put a comment in here.

15 MR. KING: I think, if there is going to be
16 rebuttal testimony that the plan to do all of this cost
17 of sales was never carried out, that that provision
18 would be relevant for cross examination purposes.

19 COMMISSIONER EASLEY: My problem, gentlemen,
20 is that I believe the language is relevant. Where
21 you're confusing me is if it is a restatement of the
22 fact that you all are complying with the tax law, I
23 don't understand why it's harmful to you. But on the
24 other hand, I don't understand why Public Counsel
25 benefits by knowing they are complying with the tax

1 law. So I'm having a little bit of difficulty
2 understanding what the big hooah is about on this one.

3 MR. BRADFORD: Let me just state -- this is
4 Hal Bradford -- that it's just our corporate policy not
5 to reveal anything. I don't know if it would harm us
6 or not but it would be going against our corporate
7 policy.

8 COMMISSIONER EASLEY: Well, corporate policy
9 and the regulated requirement may not be compatible.

10 MR. BRADFORD: I understand.

11 COMMISSIONER EASLEY: I will not willingly,
12 knowingly, rule something not confidential that has
13 attorney/client privilege or proprietary information,
14 but to have a restatement of the law and say that in
15 this particular case this entity is doing this because
16 that's what the law requires, I'm not sure that it
17 harms you. I don't know that it gets you anything. I
18 don't know why we're even arguing over it, to be
19 perfectly truthful with you.

20 MR. REILLY: Well, it does display the
21 thinking processes that are going on in the minds of
22 Sailfish Point.

23 COMMISSIONER DEASON: Madam Chairman, let me,
24 and I hate to regress, but I'm going to do it. And I
25 debated whether to do this or not.

1 We passed over an item on the previous page,
2 Document 18, Page 12, Paragraph 5. Now, that statement
3 right there does go directly to a policy of the
4 Company. This is not a restatement of tax law. This
5 is a statement of how the tax law is going to affect
6 their corporate policy to do something.

7 COMMISSIONER EASLEY: But that's the country
8 club.

9 COMMISSIONER DEASON: But I think that what
10 is being debated here on the other item, Paragraph 8 on
11 Document 19, as to whether the cost of the utility
12 assets or one of the amenities that is anticipated to
13 be transferred in this Paragraph 5 on Document 18 shows
14 that one of those amenities, which is the country club,
15 is going to be treated a certain way.

16 What I'm saying this is a specific point. It
17 seems to me this would be a whole lot more relevant
18 than that, which is more speculative and really a
19 restatement of tax law. I'm not saying to go back and
20 change this. I just saying it's these type statements
21 that are specific which would be relevant. I'm not so
22 sure that is relevant. That's my two cents worth.

23 MR. BRADFORD: I agree.

24 COMMISSIONER EASLEY: I will tell you that
25 I'm going to leave it out, but I'm not happy leaving it

1 out, only because I don't know what harm it does to put
2 it in. I'm leaving it out because the Company has
3 requested it, and I don't know that it does anybody any
4 good to put it into the record. I don't think I've
5 learned anything.

6 MR. GIRTMAN: That's exactly our point.
7 Right.

8 COMMISSIONER EASLEY: But I will tell you
9 that the general reaction on the Commission is going to
10 be ask for confidential treatment of information like
11 this, that I can read in a tax journal or in the Wall
12 Street Journal, is going to get met with a great deal
13 of resentment, and I suggest to you that in the future
14 you all have your ducks in a row on what you're
15 requesting confidentiality on. You know what I'm
16 saying.

17 MR. GIRTMAN: I know what you're saying.

18 COMMISSIONER EASLEY: Okay.

19 MR. REILLY: Was that it on that page?

20 COMMISSIONER EASLEY: So what's redacted on
21 Item 19, Page 3 remains redacted. Page 4.

22 MR. OLSON: The next page is all included.

23 (Pause)

24 COMMISSIONER EASLEY: That appears to be all
25 marina. I see no reference, no relationship. I'm

1 **sorry. I'm reading ahead of you again.**

2 **MR. DeWARD: The point Commissioner Deason**
3 **brought out earlier, whether we should have gone back**
4 **to the country club and seen their policy that could**
5 **apply to the marina discussion, too, and how they are**
6 **going to cost it out for tax purposes on property**
7 **donated.**

8 **COMMISSIONER EASLEY: I am going to rule that**
9 **this is not relevant on the marina, golf club, not**
10 **relevant to the utility.**

11 **Page 19, or Document 19, Page 5, 6 --**

12 **I understand until such time as a transfer**
13 **takes place and a result actually occurs there is**
14 **nothing to do with it. Unless you have a problem, I'm**
15 **going to rule that the rest of Document 19 remains**
16 **redacted. Is that it?**

17 **MR. GIRTMAN: Would the record please reflect**
18 **that all pages which were previously redacted remain**
19 **redacted and that there was no order of disclosure of**
20 **any of the information.**

21 **COMMISSIONER EASLEY: That's fine.**

22 **MR. GIRTMAN: Thank you.**

23 **MR. REILLY: Do we have another item to look**
24 **at, the notes?**

25 **COMMISSIONER EASLEY: Yeah. Thank you. I**

1 was about to --

2 MR. REILLY: Assuming I, of course, know my
3 consultant would not write down anything that's not
4 relevant. Another question is, is it going to do harm.

5 COMMISSIONER EASLEY: I'm not worried about
6 relevancy at this point. I am concerned that what we're
7 talking about is what I understood to be a list versus
8 transcription of documents.

9 (Simultaneous conversation.)

10 MR. PRUITT: I think we'd better close the
11 record on this. It's getting pretty jumbled up and the
12 reporter can't get it.

13 COMMISSIONER EASLEY: We're not through, Mr.
14 Pruitt.

15 MR. PRUITT: We're not?

16 COMMISSIONER EASLEY: No, sir. We still have
17 another list.

18 MR. PRUITT: I beg your pardon.

19 MR. GIRTMAN: Commissioner, if I could make a
20 comment preparatory to going through this list. One of
21 the concerns that we have, and a major concern that I
22 have had in dealing with trying to get relevant
23 information to intervenors or to the Commission, as it
24 may be, has been trying to develop vehicles to do that.

25 The Florida Rules of Civil Procedure provide

1 certain guidelines for us to follow. Sometimes they
2 are difficult, cumbersome and not productive, and so in
3 this case there was no discovery filed. It was merely
4 a telephone call between Mr. Reilly and myself to try
5 to work out a mechanism to allow them to confirm data
6 in the consolidated tax return. And we worked out an
7 agreement to do that, and took a great deal of time, I
8 think -- my first draft, Mr. Reilly chopped to pieces
9 and I agreed with him.

10 COMMISSIONER EASLEY: I'm going to ask you
11 not to do this again,. We have been through this one
12 already. Let me go directly to the documents. We have
13 15 minutes before the next customer hearing. I'm sorry
14 to cut you off but I really do remember the explanation
15 and how this occurred, and I remember the Letter of
16 Agreement.

17 MR. GIRTMAN: Okay.

18 COMMISSIONER EASLEY: I need to go to the
19 documents. Tell me what this first page represents.

20 MR. DeWARD: This is information that was
21 taken from probably the SPUC's tax return which shows
22 taxable income loss and the various Schedule M items.
23 It is no different than -- what I was trying to do is
24 transcribe certain information from some pages. Other
25 pages I actually requested complete copies. There is

1 nothing in here, as far as I know, and if it's anything
2 to do with other than SPUC or SPI, I'd be more than
3 happy.

4 I don't think I entered any Montgomery Ward
5 information or anything. It's the same type of
6 information that I transcribed down here that you have
7 provided to us with the whole page, and I simply copied
8 some information down. And then the purpose was to
9 take it back and verify it with the original
10 information we already had because we were working
11 under a limited time frame. And we were only there for
12 a day, and it was impossible to verify everything back
13 so I just simply copied some information.

14 COMMISSIONER EASLEY: It is your
15 representation that these numbers we have in our
16 possession at this time is part of the official record?

17 MR. DeWARD: If there is anything in there
18 from other than SPUC or SPI, I didn't mean to put it in
19 there. I don't believe it's in there. I haven't seen
20 this back.

21 MR. OLSON: I thought all this information
22 was already provided under -- Mobil Land Development
23 had already provided it.

24 COMMISSIONER EASLEY: If it's already been
25 provided, then what's the problem?

1 MR. OLSON: The problem was it was
2 transcribed and he wasn't supposed to transcribe the
3 numbers.

4 MR. GIRTMAN: Wait a minute. Now, are we
5 sure that the information that is in -- let's go to
6 these pages, the redacted pages. This one is okay,
7 that's just the list. We have no problem with it. The
8 first page, third page, fourth page, with numbers on
9 it, the next page is --

10 MR. LOPEZ: The listing.

11 MR. GIRTMAN: The list again.

12 COMMISSIONER EASLEY: Let me clarify what I'm
13 looking for. If these are -- and when you're dealing
14 with numbers -- if these are the equivalent of this,
15 only this is documents, these are compilations of
16 numbers contained on documents that we already have.
17 If I understand the explanation, that's what I
18 understand these to be. If that's what these are, do
19 you have a problem with having those -- this is a
20 summary, that would also be a summary, you have a
21 problem with that?

22 MR. GIRTMAN: Are we sure those are in --

23 COMMISSIONER EASLEY: That's my question.

24 MR. GIRTMAN: That's the question, I don't
25 know. Frank is not here, is he? How about checking

1 and see.

2 COMMISSIONER EASLEY: Because the difficulty
3 I have, and I accept your representation that it was
4 your intention to deep the numbers SPUC and SPI --

5 MR. DeWARD: With the years that were --

6 COMMISSIONER EASLEY: But you recognized that
7 damage could be done if the numbers contain anything
8 else, and I'd make them public record.

9 MR. LOPEZ: Can I ask one thing, ma'am? I
10 think that's why the purpose was set out ahead of time
11 to clip the documents he requested. It's much easier
12 to clip one page than transcribe 15, 16 items off of a
13 page.

14 COMMISSIONER EASLEY: Well, I also understand
15 the need of an accountant to put down on a piece of
16 paper the numbers that he sees that are relevant. I
17 understand that. And I under the need to run a total
18 on those numbers. Whether or not they need to be part
19 of the public record is something else again. Or
20 whether you have had the opportunity to count the
21 totals that can be part of the public record, I don't
22 know that. But I'm trying to ascertain number one, is
23 this indeed what I just described it as.

24 MR. DeWARD: It's the same information that
25 would have been on these that they actually copied the

1 whole sheet but not the same. Obviously, I didn't --

2 MR. GIRTMAN: Duplicate.

3 MR. DeWARD: Duplicate. But in some I
4 transcribed, in others I wanted the whole sheet and I
5 thought transcribing was a simpler way to go.

6 COMMISSIONER EASLEY: So what I see -- all
7 right. So what this represents, for instance, would
8 not appear anywhere on this list. You took this
9 instead of listing --

10 MR. DeWARD: The whole page. But it's the --

11 COMMISSIONER EASLEY: Ah-hah.

12 MR. DeWARD: The exact same information.

13 COMMISSIONER EASLEY: But the difference is
14 the information contained on 1987, letter re, whatever
15 it is, CIAC, does not have this on it.

16 MR. DeWARD: Well, could I point out one
17 thing, though. What Mr. Girtman said is everything
18 that we -- a good number of items that we asked for
19 here, we already had through discovery, and the reason,
20 again, we were short of time and I wanted the copy that
21 later checked back to the material we had, and the same
22 would be true of this.

23 COMMISSIONER EASLEY: All right. What is the
24 position -- these appear to be taxable income.

25 MR. DeWARD: Terry, you can look at that and

1 see if there is anything that looks different than what
2 you provided me on --

3 COMMISSIONER EASLEY: Noreen, what is the
4 situation where we're dealing with -- you need to come
5 look over his shoulder probably -- dealing with
6 corporate income tax figures for subject such a
7 corporation. Would that -- that information is public
8 record normally?

9 MS. DAVIS: Tax returns are often -- the
10 companies often ask for confidential treatment of tax
11 returns.

12 COMMISSIONER EASLEY: And what is the
13 situation on that? Is that generally granted?

14 MS. DAVIS: Yes.

15 COMMISSIONER EASLEY: Because they are
16 corporate income tax returns?

17 MS. DAVIS: I believe so. I'd have to -- can
18 I check with Jane? Because she has those things fairly
19 regularly.

20 MR. DeWARD: You did provide to us your
21 Florida returns, which is Florida tax returns, is that
22 correct?

23 MR. GIRTMAN: That's correct.

24 COMMISSIONER EASLEY: These are federal.

25 MR. DeWARD: Right. But, again, this is only

1 the -- it's not the entire consolidated return, it's
2 only information related to SPUC and SPI.

3 MR. REILLY: We needed to have the utility
4 assets.

5 MR. DeWARD: Right.

6 MR. GIRTMAN: One of the problems I have had
7 when I had first seen this document was that some of
8 these pages, they have numbers on it but they don't
9 have a company name on it. Part of the reason for
10 requesting that the documents be clipped so they can be
11 copied is to provide adequate control. If we have a
12 document that comes out of a tax return, or whatever,
13 we know exactly what that is, we know which subsidiary
14 it relates to and those which it doesn't. And that can
15 provide the security control, and that's why it's
16 necessary to preclude a bunch of transcriptions.

17 MR. DeWARD: That's fine. Steve and Terry
18 can tell you there's nothing different basically on the
19 information than what you provided to us.

20 COMMISSIONER EASLEY: However, the difficulty
21 is you are oftentimes provided with information that
22 remains confidential even though you have it. And my
23 concern now is not the fact that you've had access to
24 the information, my concern is whether or not to make
25 that information public, and that is what I'm not sure

1 of at the moment.

2 MR. GIRTMAN: I understand.

3 COMMISSIONER DEASON: Let me ask a question:
4 Does Public Counsel now in their possession have this
5 information?

6 MR. REILLY: We have been denied it up to
7 this point.

8 COMMISSIONER DEASON: So it is a question of
9 access?

10 MR. REILLY: Yes.

11 MR. LOPEZ: Think Tom said you had a lot of
12 this information and wanted to check it back.

13 MR. DeWARD: I don't have these notes. What
14 I have, this is an analysis of Schedule M-1s. I have
15 their Schedule M-1s and the object was to note this and
16 then check it back to the Schedule M-1.

17 COMMISSIONER DEASON: The M-1s you have are
18 for the Utility Company Florida returns which --

19 MR. DeWARD: No, no, no. I have the M-1s for
20 SPUC from '79 through '89, and from SPI from '79 to
21 '83. So I have the M-1s from their individual returns.

22 COMMISSIONER DEASON: This is information taken
23 from the consolidated return that applies only to SPI and
24 SPUC and you want this information to validate --

25 MR. DeWARD: Right.

1 **COMMISSIONER DEASON:** Compare those numbers
2 and make sure they are the same.

3 **MR. DeWARD:** Right.

4 **MR. REILLY:** One of the primary reasons we
5 went out there.

6 **MR. OLSON:** That's why it was made access to
7 the Company files and consolidated return so he could
8 do that.

9 **COMMISSIONER EASLEY:** Under other sets of
10 circumstances, we have made information available to
11 Public Counsel for their review and held that
12 information confidential. That generally has taken
13 place where the company is -- where they can do like
14 they did, go to Dallas and review it. The trouble is,
15 this is a set of notes that was made as a result of
16 that.

17 Now, Public Counsel says "I can't use my own
18 notes" and the Company says "it's confidential
19 material." Public Counsel says "I can't review what
20 I've got in my possession, which I've already got,
21 without my notes to compare it to." And I'm trying to
22 figure out a way to give you the opportunity to compare
23 it without making the numbers public. There is a
24 difference. I see no reason to put the consolidated
25 tax returns on the public record. I understand why you

1 would wish to use the work product from out there. I
2 think, can we do this -- let me ask can we do this:
3 Can we keep these confidential, in the possession of
4 the Commission for want of a better place to keep them,
5 and allow Mr. DeWard to come over and look at them for the
6 purposes of making his comparison.

7 MS. DAVIS: Commissioner, I believe with our
8 confidentiality procedures which, fortunately, we don't
9 have to use too much in water and sewer so I'm not 100%
10 up to speed, but as soon as it comes into the
11 Commission's possession --

12 COMMISSIONER EASLEY: Oh, that's the problem.

13 MS. DAVIS: -- a request has to be made for
14 confidential treatment, and until that determination is
15 made it has temporary confidential treatment. So it's
16 best not to ever take it into our possession. Perhaps
17 the parties can work out a protective agreement.

18 MR. LOPEZ: The parties worked out an
19 agreement that stipulated nothing would be transcribed.

20 MS. DAVIS: A supplemental one, perhaps.

21 (Laughter)

22 MR. DeWARD: I mean, you were willing to give
23 us pages, just go through here and find the pages that
24 I took this from and give us the pages, and you can
25 keep the notes.

1 MR. REILLY: That sounds like a capital idea.
2 That's why you did it in the first place was to save them
3 the trouble of running and picking --

4 MR. DeWARD: So go run your copies if it's
5 that easy. That's, you know, if you can --

6 COMMISSIONER EASLEY: Guys, look, look.
7 Let's not get into this.

8 I have no problem with trying to get you
9 where you want to go, but I'm not going to make these
10 numbers public. I don't think that's the proper thing
11 to do, and I'll tell you point blank, I'm not ready to
12 release these as public documents. Now, you tell me
13 how I can get where I need to go.

14 MR. GIRTMAN: May I ask a question?

15 COMMISSIONER EASLEY: Yeah.

16 MR. GIRTMAN: Exactly what is it that you
17 want to do with those numbers?

18 MR. DeWARD: Well, the M-1s that I have that
19 you've provided through discovery are, I presume, are
20 public documents now.

21 COMMISSIONER EASLEY: Yeah. They'd have to
22 be now. There's been no request for confidentiality
23 that I'm aware of.

24 MR. DeWARD: Well, I guess getting a copy of
25 that is -- if it's not confidential --

1 MR. GIRTMAN: My question is what do you want
2 to do with it?

3 MR. DeWARD: I want to verify it back to the
4 stuff you had given us previously.

5 MR. GIRTMAN: How long would it take you to
6 do it? 20 minutes?

7 MR. DeWARD: Yeah.

8 MR. GIRTMAN: I'll tell you what, let's
9 consider this possibility: To avoid the possession
10 problem, to avoid the whole Chapter 119, if those
11 things remain in our possession -- not the Commission's
12 possession, not your possession, and not OPC's
13 possession, but remain in our possession -- you get to
14 sit down beside me and look at it and do what you need
15 to do to confirm, would that do? Would that solve your
16 problem? We don't have a confidentiality problem? We
17 don't have, you know, the whole bit? You sit right
18 down beside me, and it's my document and you're looking
19 at it. And it's under the same conditions which we
20 agreed, you know, you would not take possession and
21 control, or whatever, and the Public Records Law would
22 not apply.

23 MR. REILLY: As we were in Dallas, you mean?

24 MR. GIRTMAN: Yeah.

25 MR. REILLY: Whatever he wants to do is fine

1 with me. My big problem on your great concern about
2 making all this information public is I have yet to
3 hear one single word of what harm would be caused under
4 the statute.

5 COMMISSIONER EASLEY: Mr. Reilly, let me tell
6 you what my problem is. Mr. DeWard tells me that he
7 tried to make this company-specific information. He
8 cannot say it is company-specific. He says, "I think
9 it is. I did everything I could to keep it from being
10 anything else."

11 The damage, or potential damage of releasing
12 the numbers, if it is not inadvertently not
13 company-specific, I think, is not a risk I care to
14 take, thank you. Especially if we can work it out to
15 where you can utilize the information in the way you
16 need to utilize it. No damage is done to either party
17 that way. Can you live with that?

18 MR. DeWARD: Fine.

19 MR. REILLY: That means "yes."

20 COMMISSIONER EASLEY: All right. I'm going to
21 ask that, based on the oral, supplementary, temporary
22 protective agreement, which you have just entered into,
23 that we dispose of the note motion. All right?

24 MR. GIRTMAN: When would you like to do that?
25 This evening?

1 **COMMISSIONER EASLEY:** We will now close the
2 in-camera proceedings. Thank you, gentlemen.

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Draft
In Camera

IN CAMERACONFIDENTIAL MATERIAL

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4
5 COMMISSIONER EASLEY: The transcript of this
6 portion of the hearing, and the discussion related
7 thereto, shall be prepared and filed under seal, to be
8 opened only by order of the Commission. The transcript
9 is, and shall be, nonpublic record exempt ^{from} Section 119.07
10 (1). Only the attorneys for the participating parties,
11 Public Counsel, Commission Staff and the Commissioners,
12 shall receive a copy of the sealed transcript.

13 Everyone remaining in this room is instructed
14 that the testimony and evidence about to be received is
15 proprietary, confidential business information which
16 shall be kept confidential. No one is to reveal the
17 contents ^{of} substance of this testimony or evidence to
18 anyone not present in this room at this time.

19 The court reporter shall now record the names
20 and affiliations of ^{all} persons present in the hearing room
21 at this time. I will start with Mr. Pruitt.

22 MR. PRUITT: I'm Prentice P. Pruitt, 101 East
23 Gaines Street, Tallahassee 32303, Counselor to the
24 Commissioners.

25 COMMISSIONER EASLEY: Commissioner Betty

1 Easley.

2 COMMISSIONER DEASON: Commissioner Terry

3 Deason.

4 MR. DeWARD: Thomas C. DeWard, Certified^{ed}
 5 Public Accountant, registered in Michigan, with the
 6 firm of Larkin and Associates, 15728 Farmington Road,
 7 Lovonia, Michigan ~~48154~~⁴⁸¹⁵⁴

8 COMMISSIONER EASLEY: For OPC.

9 MR. DeWARD: Representing OPC.

10 MR. REILLY: Steve Reilly, with the Office of
 11 Public Counsel.

12 WITNESS SEIDMAN: Frank Seidman, Management *and*
 13 Regulatory Consultant,^S 11380 ~~Cherry Pines Road (????)~~
 14 ~~on pres <W-R> <AE-S>~~ ^{Beach} Palm Gardens, Florida, rate
 15 consultant to the applicant utility, Sailfish Point
 16 Utility Corporation.

17 MR. BRADFORD: Hal Bradford, counsel for
 18 Sailfish Point, Inc. Do you need an address?

19 MR. OLSON: Terry Olson, Manager of Federal
 20 Compliance, 1201 Elm Street, Dallas, Texas 75221, Mobil
 21 Administrative Services, Inc.

22 MR. LOPEZ: Steve Lopez, Mobil Administrative
 23 Services, Inc. I'm Supervisor in the Tax Compliance
 24 Group, same address as Terry.

25 MR. GIRTMAN: Ben Girtman, 1020 East

1 Lafayette Street, Suite 207, Tallahassee, Florida
2 32301, representing Sailfish Point Utility Corporation.

✓ 3 MR. KING: William Reeves King, Office of St.
4 Johns and King, West Palm Beach, attorney for the
5 intervenors.

6 MR. O'GORMAN: Joe O'Gorman, Mobil Land
✓ 7 Florida, Controller, 4440 PGA Boulevard, Palm Beach
8 Gardens.

9 MS. DAVIS: Noreen Davis, 101 East Gaines
10 Street, Tallahassee, PSC Legal Department.

11 MS. BEDELL: Catherine Bedell, 101 East
✓ 12 Gaines Street, Tallahassee, Florida, ^{the} for Commission
13 Staff.

14 COMMISSIONER EASLEY: All right.

15 MR. GIRTMAN: Commissioner, excuse me one
16 moment. The material that you placed at the beginning of
17 this meeting regarding how the material would be handled,
18 I would like to please clarify and make sure that we
19 preserve our rights in regard to attorney/ client
✓ 20 privilege, accountant/client privilege, and any other
21 rights or privileges that we may have available to us.

22 COMMISSIONER EASLEY: The language is
23 directed toward proprietary but is inclusive of all of
24 those privileges that you cite.

25 MR. GIRTMAN: Thank you.

1 COMMISSIONER EASLEY: All right. Tell me
2 where we need to begin.

3 MR. OLSON: This is Document 16, as we
4 provided, and this is ~~then~~ the unredacted document.
5 These do not deal with Sailfish Point, Inc. or the
6 Utility.

7 COMMISSIONER EASLEY: I see. All right.
8 What we're dealing with are? - -

✓ 9 MR. OLSON: Other ^{real estate} ~~real estate~~ ^{ments} developers
10 that are in the Mobil.

11 COMMISSIONER EASLEY: Do you have -- Mr. Pruitt,
12 come over here.

13 MR. GIRTMAN: Steve, do you have a copy?

14 MR. REILLY: Not of the unedited version.

15 COMMISSIONER EASLEY: Where is Bear Island
16 Investments, Inc. located physically? It's not in
17 Florida?

18 MR. O'GORMAN: Certainly not.

19 COMMISSIONER EASLEY: It's not in Florida?

20 MR. O'GORMAN: It's not in Florida.

21 COMMISSIONER EASLEY: Thank you.

22 MS. BEDELL: Georgia.

23 COMMISSIONER EASLEY: It's not in Florida.

✓ 24 ~~COMMISSIONER EASLEY:~~ Big Creek/Little Creek
L 25 is it in Florida?

1 MR. O'GORMAN: No.

✓ 2 MR. REILLY: For the record, those are the
3 ones I thought we would excise. I expected those.

4 COMMISSIONER EASLEY: Then you have no
5 objection to excising these?

✓ 6 MR. REILLY: I have no objection to ^{the} entities that have
7 nothing to do with Sailfish Point being excised x

8 COMMISSIONER EASLEY: Fine. Then maybe it
9 would be quicker to go through these, ^{as we} and deal with the
10 ones you have an objection to.

11 MR. REILLY: That's really -- I just thought
12 I'd help out.

13 COMMISSIONER EASLEY: Fine. I assumed this
14 first one --

15 MR. OLSON: I think we took it out because it
16 didn't deal with the utility at all or ^{its} operation.

✓ 17 ^{Mr. O'berman; There are many facets of Sailfish}
18 COMMISSIONER EASLEY: I'm going to ask, for
19 purposes of the court reporter, that we kind of limit
20 how many people are talking. Because otherwise the
21 record is going to get a little confused.

22 Where'd Mr. Reilly go? Oh, there he is. Do
23 you have any problem with that? I'm not sure ^{what} if it
24 does, one way or the other, to be truthful with you.

25 MR. REILLY: I don't have a problem with
that. I mean, I don't know why they have a problem

I don't think we should do that with the utility x

1 with it either.

2 COMMISSIONER EASLEY: I just don't know that
 3 it does anything, *one way or the other.*

4 MR. REILLY: That's correct. It's not
 5 something that is going to ^affect us. Okay. No
 6 problems.

7 COMMISSIONER EASLEY: Okay. That takes care
 8 of Page 16 ^{it} will remain as excised.

9 17 we go to -- I'm not sure ^{(Pause) --} I don't see
 10 anything in there that gets very direct that I can
 11 recognize.

12 MR. DeWARD: It could have tangential ~~The~~
 13 tax treatment of subordinated sales, which could deal
 14 with the cost of sales of those.

15 COMMISSIONER EASLEY: Yeah, but could ^{all} --

16 MR. REILLY: Keep reading on. It gets ⁱⁿ
 17 context ~~X~~ ↗

18 ~~COMMISSIONER EASLEY: It gets more of this.~~

19 ~~MR. REILLY: I think the whole page is~~
 20 blocked out.

21 COMMISSIONER EASLEY: Okay. Down to B. All
 22 right. I don't see anything having to do with the
 23 utility, unless the only ^{subordinated sales and}
 24 installment sales, tell me what those are.

25 MR. OLSON: Prior to 1987, Mobil in a lot of

✓ 1. ^{its} ~~it's~~ sales may take back notes when they sell lots,
 2 okay, and it's a method of ~~the~~ the way we treated things
 3 for tax purposes ^{as} ~~is~~ to bring ^{ing} all of the sales proceeds
 4 in ^{an} 8-year sale we ^{would} bring it in as the customer paid us
 5 cash. So it's just the methodology of the way we sold
 6 the lots.

7 MR. DeWARD: Per se, we can --

8 COMMISSIONER EASLEY: I don't see anything
 9 relevant.

✓ 10 MR. DeWARD: I think ^{we can} live with that.

11 COMMISSIONER EASLEY: The language that is
 12 redacted on Pages 1 and 2 of Docket No. 17 will remain
 13 redacted.

14 MR. OLSON: Okay.

15 COMMISSIONER EASLEY: And then the next one
 16 appears to be --

17 MR. OLSON: 17 was all left in.

18 COMMISSIONER EASLEY: The rest of 17 is in
 19 tact.

20 MR. OLSON: So we can --

21 COMMISSIONER EASLEY: There is nothing there.
 22 17 is now taken care of.

✓ 23 ~~COMMISSIONER EASLEY: 18~~

✓ 24 MR. OLSON: The way ^{I understand, it} says sales center
 25 \$375,000. Life of project, it's hard to read upside

Intact

✓ 1 down, 150%, eight years, which presumably is the
✓ 2 depreciation, method and life.

3 COMMISSIONER EASLEY: Or what?

✓ 4 MR. REILLY: Development cost, and I don't
5 think that would have to do with the Utility.

✓ 6 MR. OLSON: Nothing ^{to do} with the utility.

✓ 7 COMMISSIONER EASLEY: All right, the language
8 on Page 18 - -

9 MR. GIRTMAN: It's an unnumbered page.

10 COMMISSIONER EASLEY: Unnumbered Page 18 at
✓ 11 the bottom of the page relating to sales ^{summary} remains redacted.

12 This is not in Florida, is that correct?

✓ 13 MR. OLSON: It's Brickton, ^{and} I think it was
✓ 14 covered under the ^{other that we mentioned before.} issue before.

15 COMMISSIONER EASLEY: All right.

16 MR. GIRTMAN: T P and J is another development
17 down south of Stuart.

18 MR. DeWARD: We're not concerned with those two.

19 MR. OLSON: It just talks about the number of
20 units sold.

21 COMMISSIONER EASLEY: All right. The
22 language on Page 18, item 18, Page 9, that is redacted
23 shall remain redacted. (Pause)

24 I see nothing there.

25 MR. REILLY: I don't see anything.

1 COMMISSIONER EASLEY: Item 18, Page 10, is
2 redacted, shall remain redacted.

3 MR. OLSON: Again, this is the golf club.

4 COMMISSIONER EASLEY: Yeah. And the
5 clubhouse, the Marina and the rest of this is in
6 beginning with the utility corporation.

7 MR. REILLY: I don't read as fast as you, I
8 guess.

9 COMMISSIONER EASLEY: Sorry. I've been doing
10 this a lot longer than you have.

11 Item 18, Page 11, the redacted language will
12 remain redacted.

13 MR. OLSON: We talked about dunes earlier.

14 COMMISSIONER EASLEY: Yeah. California region
15 we also talked about. Item 18, Page 12, the items
16 redacted will remain redacted.

17 MR. OLSON: That's all of 18.

18 COMMISSIONER EASLEY: That takes care of
19 Document 18. We are now in ^{Document} Docket 19. Golf club [^]
20 what's P, O, A?
=

21 MR. REILLY: Property Owners Association.

22 COMMISSIONER EASLEY: ^{of course,} Oh, I'm sorry. (Pause)

23 MR. DeWARD: I think this ~~is~~ POA will not
24 have a tax basis for assets contributed to it by
25 Sailfish to the extent that Sailfish includes the cost

✓ 1 of ^{such} its assets ^{as} in its cost of lot sales. I think that's
2 relevant.

3 COMMISSIONER EASLEY: To what?

4 MR. DeWARD: The whole cost of sales issue
5 and if it's been costed out --

✓ 6 MR. OLSON: ^{But} We are not talking about the POA
7 here. We're talking about the cost of sales for
8 Sailfish Point, Inc.

9 MR. DeWARD: We're talking about contributing
✓ 10 the assets to the POA, which, if they are contributing
11 them to the POA and they're writing them off, it's cost
12 of sales issue and there could be no basis then.
13 That's relevant.

✓ 14 MR. REILLY: Didn't ^{the} POA make a claim about
15 the common properties, at least as it related to the
✓ 16 utility assets outside the utility parcel, so that that
17 gets into the distribution system.

18 MR. DeWARD: To further expand on that, we
19 have discussion in these other memos of a tri-party
20 agreement, which is the POA, Sailfish Point, Inc. and
21 Sailfish Point Utility Corporation. So it's all
✓ 22 intertwined and we're talking ^{Now} about tax basis and tax
23 treatment.

24 WITNESS SEIDMAN: I didn't see anything in
25 there about utilities being transferred.

1 MR. OLSON: Right.

2 WITNESS SEIDMAN: It just says assets that it
3 transferred.

4 LARRY HEAR all the common areas were
5 contemplated to be turned over to the POA. These are
6 defined common areas.

7 COMMISSIONER EASLEY: I think I see where
8 you're going. I think I see where they are going. The
9 difficulty is going to be, I believe, that this is
10 going to be your basic problem and how in the world are
11 you going to break out that and just taking the
12 property owners association dues portion of it, I'm not
13 sure is going to get you there anyway? ✓

14 MR. REILLY: May I throw the ball in the
15 other corner? What is the problem about that
16 information being discovered? Does it compromise
17 Sailfish Point, Inc. or something?

18 MR. GIRTMAN: Let me suggest --

19 MR. BRADFORD: Corporate policy.
(*Simultaneous Conversation.*)

20 COMMISSIONER EASLEY: Now, wait a minute,
21 guys, hold the phone. Because we have a court
22 reporter, we've got to do one at a time now. So, just
23 please.

24 MR. GIRTMAN: Let me comment first on this.
25 When you have a business operation, large or

1 small, whether it be Mobil Corporation with all its
2 ✓ subsidies, or ABC mom and pop utility corporation,
3 there are certain internal business operations that are
4 not made available to the general public on any number
5 of reasons.

6 As a matter of policy, regardless of whether
7 this page of documents recited the ABCs, it is still
8 significant to that business that, as a matter of
9 precedence, outside interests do not have a right to
10 come in and just pick up information from them. If
11 there is a need for information, if it is relevant,
12 specifically relevant to a specific purpose to be used
13 for something else, then perhaps it can be used for
14 that purpose.

15 But the point we're trying to make, and we've
16 ✓ made successfully in all three of those documents, is
17 they are not relevant to the proceeding. As a matter
18 of precedent, the Mobil Corporation will not turn them
19 ✓ over to anybody without a good reason, You see. If
20 there is a relevant specific, directly relevant reason
21 ✓ for something to be used in this proceeding, that's the
22 ✓ question. And I'll defer to whoever is going to speak
23 back here in addition to what I ^{had} have to say.

24 MR. REILLY: I have a comment.

25 ✓ COMMISSIONER EASLEY: Briefly, because I have

1 a question.

✓ 2 MR. REILLY: Briefly, the burden is on the
✓ 3 utility in this case to prove the harm that will be
4 caused by the disclosure of this information. This
5 burden must be met if the information is not going to
6 be disclosed.

7 MR. GIRTMAN: Well, I take exception to that
8 but go ahead.

9 MR. REILLY: I would say that, you know, just
10 to be worried about precedence does not meet that
11 burden. The need, the specific need he made reference
12 to is that it has been alleged by intervenors in this
13 case that it is the fact ^{that} of the POA who has been
14 suggested as a possible party for the tri-party
15 agreement, which was or was not ever entered into, but
16 that it is going to be the ultimate owner of the common
17 property, common elements of which part of that common
18 elements are line^s, collection lines^o and distribution
19 lines of the utility system.

20 MR. GIRTMAN: Let me register an objection to
21 that.

22 MR. REILLY: Okay. This is an allegation
23 that has been made by one of the parties that's at
24 issue. This could bear on it.

25 MR. DeWARD: I'm only interested not in 5 and

1 6 but just in 4. I don't know if I made that clear.

2 MR. OLSON: What does it have to do with the
3 utility?

4 MR. DeWARD: Well, because the other
5 documents that we have that are part of the POD No. 3
6 suggest that the plant was going to be donated to the
7 POA and costed in cost of sales. And here it suggests
8 will not have a tax basis for assets contributed.

9 COMMISSIONER EASLEY: Let me ask you a
10 question, and I think maybe this is where part of the
11 problem is coming in. POA has not had transfer of
12 ownership take place, has it?

13 MR. DeWARD: That's my understanding.

14 COMMISSIONER EASLEY: It has not occurred yet.

15 MR. KING: That's correct.

16 COMMISSIONER EASLEY: If it has not occurred
17 yet, then this is not operative until such time as the
18 assets are transferred, is that correct?

19 MR. KING: I have not seen what you're
20 talking about, but it would seem to me that we're
21 talking about evidence of whether they had ~~an~~ made a
22 decision to contribute these assets and how to handle
23 this development, and whether that ^{has} ~~is~~ taken place yet
24 or not seems to me is not relevant to that issue.

25 COMMISSIONER EASLEY: Well, it's relevant to

POA ✓

Summed like
POA here ✓

1 this extent, Mr. King, and here's my problem. This
2 specifically says "will not have a tax basis for assets
3 contributed to it to the extent Sailfish includes the
4 cost of such assets in its cost of lot sales." If the
✓ 5 assets have not yet ^{been} be contributed, how can I assume
6 what the result of a future action is going to be?

7 MR. KING: Because they have given it certain
✓ 8 tax treatment and they have made a decision, and, as far
9 as a corporate plan and a development scheme as to how
10 they are going to treat those things.

11 COMMISSIONER EASLEY: But, Mr. King, until
12 the treatment occurs and the tax liability or credit
13 occurs, I cannot make an assumption of something that
14 hasn't happened yet and is going to happen in the
15 future, or may not happen.

✓ 16 COMMISSIONER DEASON: Just one second, let me
✓ 17 interrupt here. ^P If you read that very carefully, it
18 seems to me that it's not stating any more than just a
19 fact of the way the tax law operates. Because it's
20 saying to the extent something is done. The real
21 issue, has that been done or will that be done, and
22 that's a factual determination that can be determined
✓ 23 somewhere else. ^R But this is just really a statement of
24 the tax law unless I'm reading it incorrectly. And I
25 don't see how a statement of what the tax law is could

1 ✓ harm the company ^{it} as disclosed. Of course, I don't see
2 where it's that beneficial to the Public Counsel either
3 because they know what the tax law says, too.

4 MR. GIRTMAN: The burden is not on us. The
5 ✓ burden is on the ^{MOVANT} ~~movement~~ seeking the discovery to show
6 ✓ that it's relevant and ~~it~~ overcomes the privacy.

7 COMMISSIONER EASLEY: All right. I'm going
8 to tell you something. I really think Commissioner
9 Deason just solved my problem for me. I think looking
10 at the content and the forward-looking nature of it,
11 but I think Commissioner Deason is right. The law is
12 what the law says it is and because it has ⁻ I'm going to
13 ✓ combine the two together; because such tax basis has not
14 ✓ yet occurred, we're going to leave that language
15 redacted.

16 MR. DeWARD: Could I just add a comment?

17 COMMISSIONER EASLEY: I've already ruled. Do
18 you want to push your luck? I'd leave it alone if I
19 were you.

20 MR. DeWARD: Okay.

21 ✓ COMMISSIONER EASLEY: Okay. ^{you} Might get it on
22 the next one if you leave it alone now.

23 ✓ ~~COMMISSIONER EASLEY:~~ 5 and 6 you don't have
24 any problem with, right?

25 MR. REILLY: My consultant says he didn't so

1 I don't.

2 COMMISSIONER EASLEY: Page 2 of Document 19

3 will remain redacted. (Pause)

4 MR. DeWARD: This is definitely relevant, No. 8.

5 (Pause)

6 COMMISSIONER EASLEY: I think it is. Tell me
7 how it harms you.

8 MR. GIRTMAN: Let me take a look, please.

9 (Pause)

10 MR. REILLY: I haven't heard anything in a
11 long time that couldn't possibly be any harm.

12 MR. OLSON: ^{Is this the} Same concept as the other?
^{Comm. E: No}

13 MR. GIRTMAN: Have you seen that?

14 MR. BRADFORD: Are you talking to me?

15 MR. GIRTMAN: Yes. No. 8.

16 COMMISSIONER EASLEY: ^{the} Difference between that
17 and the other ^{it does} not restate tax law.

18 MR. BRADFORD: I was going to say -- this is
19 ^{Hal} ~~Tom~~ Bradford speaking -- that it ^{was} wasn't the same as the
20 last one, That it is a statement of tax law.

21 COMMISSIONER EASLEY: Do you think it is?

22 MR. LOPEZ: If it's ^{committed} compliment.

23 MR. BRADFORD: ^{are we} Still talking about what was
24 going to be --

25 COMMISSIONER DEASON: You're talking again

No recording notes?

1 about ^{so} perspective things that my occur in the future.

2 COMMISSIONER EASLEY: I understand about the
3 prospective things, I still don't -- let me see.

4 MR. DeWARD: I guess if we're talking about
5 tax law putting it in the record is no big deal then,
6 right? I mean it's tax law.

7 MR. GIRTMAN: The point of it is, it's
8 private. if you want the tax law, get the tax law.
9 That's our position. (Pause)

10 COMMISSIONER EASLEY: Do you know ^{whichever or not we're} just
11 ^{restating} ~~recently~~ ^{with this you knew} in the tax law? ¹ ~~It may be~~ in the other one, ^{but} but
12 I'm not sure. ^{but} ~~Look~~ at this date, I don't know. I
13 don't enough about it to know that. Just a minute.

14 (Pause)

15 COMMISSIONER DEASON: I don't claim to be a
16 tax law expert but reading that it appears to me that's
17 a statement of what the tax law is. Maybe Mr. DeWard
18 can add to that, ~~Explain~~ if that's not a restatement
19 of what the applicable tax law is.

20 MR. REILLY: Go ahead. You can say it, but
21 when they're asking tax advice, you're going to hope
22 that you're going to get good and correct tax advice
23 from your tax counsel so that's going to hopefully
24 always be permeated in here, but go ahead, Tom.

25 MR. DeWARD: I think it's important we're

1 going after the fact and that's why our motion was so
2 we can go back and look at the actual cost of sales.
3 We're talking now another piece of evidence here that
4 suggests that this is costed out. It's just another
5 piece, it may not have carried through, but it's
6 another piece of evidence that the intent was to donate
7 this property to Sailfish or to the Utility — —
8 (Simultaneous conversations.) donated to the POA and
9 costed out on Sailfish Point's books and that's what
10 we're trying to prove.

11 COMMISSIONER EASLEY: Guys, hold the phone.

12 I told Mr. King he could put a comment in here.

13 MR. KING: I think, if there is going to be
14 rebuttal testimony that the plan to do all of this cost
15 of sales was never carried out, that that provision
16 would be relevant for cross examination purposes.

17 COMMISSIONER EASLEY: My problem, gentlemen,
18 is that I believe the language is relevant. Where
19 you're confusing me is if it is a restatement of the
20 fact that you all ^{are complying} confined with the tax law, I don't
21 understand why it's harmful to you. But on the other
22 hand, I don't understand why Public Counsel benefits by
23 knowing they are complying with the tax law. So I'm
24 having a little bit of difficulty understanding what
25 the big hooah is about on this one.

1 ✓ MR. BRADFORD: Let me just state, this is Hal
2 ✓ Bradford. That it's just our corporate policy not to
3 ✓ reveal anything. I don't know if it would ^{us or not but} be harm it
4 would be going against our corporate policy. ¹

5 COMMISSIONER EASLEY: Well, corporate policy
6 and the regulated requirement may not be compatible.

7 MR. BRADFORD: I understand.

8 COMMISSIONER EASLEY: I will not willingly,
9 knowingly, rule something not confidential that has
10 attorney/client privilege or proprietary information,
11 but to have a restatement of the law and say that in
12 this particular case this entity is doing this because
13 that's what the law requires, I'm not sure that it
14 harms you. I don't know that it gets you anything. I
15 don't know why we're even arguing over it, to be
16 perfectly truthful with you.

17 MR. REILLY: Well, it does display the
18 thinking processes that are going on in the mind ^s of
19 Sailfish Point.

20 COMMISSIONER DEASON: Madam Chairman, let me, *and*
21 I hate to regress, but I'm going to do it. And I
22 debated whether to do this or not.

23 We passed over an item on the previous page,
24 Document 18, Page 12, Paragraph 5. Now, that statement
25 right there does go directly to a policy of the

1 ✓ company. This is not a restatement of tax law. This
2 is a statement of how the tax law is going to affect
3 their corporate policy to do something.

4 COMMISSIONER EASLEY: But that's the country
5 club.

6 ✓ COMMISSIONER DEASON: But I think ^{that} what is
7 ✓ being debated here on the other item, Paragraph 8 on
8 ✓ Document 19, as to whether the cost of the utility
9 assets or one of the amenities that is anticipated to
10 be transferred in this Paragraph 5 on Document 18 shows
11 that one of those amenities, which is the country club,
12 ✓ is going to be treated a certain way. ^P What I'm saying
13 this is a specific point. It seems to me this would be
14 a whole lot more relevant than that, which is more
15 ✓ speculative and really a restatement of tax law. I'm
16 not saying to go back and change this. I just saying
17 it's these type statements that are specific which
18 would be relevant. I'm not so sure that is relevant.
19 That's my two cents ^{worth} were.

20 MR. BRADFORD: I agree.

21 COMMISSIONER EASLEY: I will tell you that
22 I'm going to leave it out, but I'm not happy leaving it
23 out, only because I don't know what harm it does to put
24 it in. I'm leaving it out because the company has
25 requested it, and I don't know that it does anybody any

1 good to put it into the record. I don't think I've
2 learned anything.

3 MR. GIRTMAN: That's exactly our point.
4 Right.

5 COMMISSIONER EASLEY: But I will tell you
6 that the general reaction on the Commission is going to
7 be ask for confidential treatment of information like
8 this, that I can read in a tax journal or in the Wall
9 Street Journal, is going to get met with a great deal of
10 resentment, and I suggest to you ^{that} in the future you all
11 have your ducks in a row on what you're requesting
12 confidentiality on. You know what I'm saying.

13 MR. GIRTMAN: I know what you're saying.

14 COMMISSIONER EASLEY: Okay.

15 MR. REILLY: ^{was that it on that page?} ~~With a that it.~~

16 COMMISSIONER EASLEY: So what's redacted on
17 Item 19, Page 3, remains redacted. Page 4.

18 MR. OLSON: ^{the is all included} Next page. (Pause)

19 COMMISSIONER EASLEY: That appears to be all
20 Marina. I see no reference, no relationship. I'm
21 sorry. I'm reading ahead of you again.

22 MR. DeWARD: The point Commissioner Deason
23 brought out earlier, whether we should have gone back to
24 the country club and seen their policy of that could
25 apply to the Marina discussion, too, and how they are

1 going to cost it out for tax purposes on property
2 donated.

3 COMMISSIONER EASLEY: I am going to rule ^{that} this
4 ^{is not relevant} on the Marina, golf club, not relevant to the utility.

5 Page 19, or Document 19, Page 5, 6 --

6 I understand until such time as a transfer
7 takes place and a result actually occurs there is
8 nothing to do with it. Unless you have a problem, I'm
9 ^{that the rest of Document} going to rule 19 remains redacted. Is that it?

10 MR. GIRTMAN: Would the record/ please
11 reflect that all pages which were previously redacted
12 remain redacted and that there was no order of
13 disclosure of any of the information.

14 COMMISSIONER EASLEY: That's fine. Thank you.

15 ^{Mr. Girtman:} MR. REILLY: Do we have another item to look
16 at?, The notes?

17 COMMISSIONER EASLEY: Yeah. Thank you. I
18 was about to --

19 MR. REILLY: Assuming I, of course, know my
20 consultant would not write down anything that's not
21 relevant. Another question is, is it going to do harm.

22 COMMISSIONER EASLEY: I'm not worried about
23 ^{at this point} relevance. I am concerned that what we're talking about
24 is what I understood to be a list versus transcription of
25 documents. ~~We're not through, Mr. Pruitt.~~

(Simultaneous Conversation.)
Mr. Pruitt: I think we'd better close the
FLORIDA PUBLIC SERVICE COMMISSION
record on this. It's getting pretty jumbled up,
and the reporters can't get it.

24
Con. 2: We're not through, Mr. Pruitt
MR. PRUITT: We're not?

COMMISSIONER EASLEY: No, sir. We still have *another list.*

MR. PRUITT: I beg your pardon.

MR. GIRTMAN: Commissioner, if I could make a comment preparatory to going through this list. One of the concerns that we have, and a major concern that I have had in dealing with trying to get relevant information to intervenors or to the Commission, as it may be, has been trying to develop vehicles to do that. *He* Florida Rules of Civil Procedure provide certain guidelines for us to follow. Sometimes they are difficult, cumbersome and not productive, and so in this case there was no discovery filed. It was merely a telephone call between Mr. Reilly and myself to try to work out a mechanism to allow them to confirm data in the consolidated tax return. And we worked out an agreement to do that, and took a great deal of time, I think -- my first draft, Mr. Reilly chopped to pieces and I agreed with him. ~~I~~

COMMISSIONER EASLEY: I'm going to ask you not to do this again,. We have been through this one already. Let me go *directly* strictly to the documents. We have 15 minutes before the next customer hearing. I'm sorry to cut you off but I really do remember the explanation and how this occurred, and I remember the Letter of

1 Agreement.

2 MR. GIRTMAN: Okay.

3 COMMISSIONER EASLEY: I need to go to the
4 documents. Tell me what this first page represents.

5 MR. DeWARD: This is information that was
6 taken from the ~~one of the~~ probably the SPUC^s tax
7 return which shows ^{taxable income} ~~tax~~ loan loss and the various
8 Schedule M items. It is no different than what I was
9 trying to do is transcribe certain information from
10 some pages. Other pages I ^{actually} requested complete copies.
11 There is nothing in here, as far as I know, and if it's
12 anything to do with other than SPUC or SPI, I'd be more
13 than happy. ^{IP} I don't think I entered any Montgomery
14 Ward information or anything. It's the same type of
15 information that I transcribed down here that you have
16 provided to us with the whole page, and I simply copied
17 some information down, ^{and then} the purpose was to take
18 it back and verify it with the original information we
19 already had because we were working under a limited
20 time frame. And we were only there for a day, and it
21 was impossible to verify everything back so I just
22 simply copied some information.

23 COMMISSIONER EASLEY: It is your
24 representation that these numbers we have in our
25 possession at this time ^{is} part of the official record?

1 MR. DeWARD: If there is anything in there
2 from ~~(-)~~ other than SPUC or SPI, I didn't mean to put it
3 in there. I don't believe it's in there. I haven't
4 seen this back.

5 MR. OLSON: I thought all this information
6 was already provided under -- Mobil Land Development *had*
7 already provided it.

8 COMMISSIONER EASLEY: If it's already been
9 provided, then what's the problem. [?]

10 MR. OLSON: The problem was it was
11 transcribed and he wasn't supposed to transcribe the
12 numbers.

13 MR. GIRTMAN: Wait a minute. Now, are we
14 sure that the information that is in -- let's go to
15 these pages, the redacted pages. This one is okay,
16 that's just the list. We have no problem with it. The
17 first page, third page, fourth page, with numbers on
18 it, the next page is --

19 MR. LOPEZ: The listing.

20 MR. GIRTMAN: The list again.

21 COMMISSIONER EASLEY: Let me clarify what I'm
22 looking for. If these are -- and when you're dealing
23 with numbers -- if these are the equivalent of this,
24 only this is documents, these are compilations of
25 numbers contained on documents that we already have.

1 If I understand the explanation, that's what I
2 understand these to be. If that's what these are, do
3 you have a problem with having those -- this is a
4 summary, that would also be a summary, you have a
5 problem with that?

6 MR. GIRTMAN: Are we sure those are in --

7 COMMISSIONER EASLEY: That's my question.

8 MR. GIRTMAN: That's the question, I don't
9 know. Frank is not here, is he?[?] How about checking
10 and see.

11 COMMISSIONER EASLEY: Because the difficulty
12 I have, and I accept your representation^{that}, It was your
13 intention to deep the numbers SPUC and SPI --

14 MR. DeWARD: With the years that were --

15 COMMISSIONER EASLEY: But you recognized that
16 damage could be done if the numbers contain anything
17 else, and I^d make them public record.

18 MR. LOPEZ: Can I ask one thing, ma'am?[?] I
19 think that's why the purpose was set out ahead of time
20 to clip the documents he requested. It's much easier
21 to clip one page than transcribe 15, 16 items off of a
22 page.

23 COMMISSIONER EASLEY: Well, I also understand
24 the need of an accountant to put down on a piece of
25 paper the numbers that he sees that are relevant. I

1 understand that. And I under the need to run a total
2 on those numbers. Whether or not they need to be part
3 of the public record is something else again. ^{or} Whether
4 you have had the opportunity to count the totals that
5 can be part of the public record, I don't know that.
6 But I'm trying to ascertain ^{number} one, is this indeed what I
7 just described it as.

8 MR. DeWARD: It's the same information that
9 would have been on these that they actually copied the
10 whole sheet but not the same. Obviously, I didn't --

11 MR. GIRTMAN: Duplicate.

12 MR. DeWARD: Duplicate. But in some I
13 transcribed, in others I wanted the whole sheet and I
14 thought transcribing was a simpler way to go.

15 COMMISSIONER EASLEY: So what, I see, ⁻⁻ All
16 right. So what this represents, for instance, would
17 not appear anywhere on this list _{x =} you took this instead
18 of listing --

19 MR. DeWARD: The whole page. But it's the --

20 COMMISSIONER EASLEY: Ah-hah.

21 MR. DeWARD: The exact same information.

22 COMMISSIONER EASLEY: But the difference is
23 the information contained on 1987, letter re, whatever
24 it is, CIAC, does not have this on it.

25 MR. DeWARD: Well, could I point out one

1 thing, though. What Mr. Girtman said is everything that
2 we -- a good number of items that we asked for here, we
3 already had through discovery, and the reason, again,
4 we were short of time and I wanted the copy that later
5 checked back to the material we had, ^{and} the same would be
6 true of this.

7 COMMISSIONER EASLEY: All right. What is the
8 position, ⁻ these appear to be taxable income.

9 MR. DeWARD: Terry, you can look at that and
10 see if there is anything that looks different than what
11 you provided me on --

12 COMMISSIONER EASLEY: Noreen, what is the
13 situation where we're dealing with -- you need to come
14 look over his shoulder probably -- dealing with
15 corporate income tax figures for subject ~~such a~~
16 corporation would that -- that information is public
17 record normally?

18 MS. DAVIS: Tax returns are often ^{ies} the Company's
19 often ask for confidential treatment ^{of tax returns}.

20 COMMISSIONER EASLEY: And what is the
21 situation on that? Is that generally granted?

22 MS. DAVIS: Yes.

23 COMMISSIONER EASLEY: Because they are
24 corporate income tax returns. [?]

25 MS. DAVIS: I believe so. I'd have to -- can

1 I check with Jane[?] because she has those things fairly
2 regularly.

3 *Mr DeWard*
COMMISSIONER DEASON: You did provide to us
4 your Florida returns, which is Florida tax returns, is
5 that correct?

6 *Mr Girtman: That's correct.*
COMMISSIONER EASLEY: These are federal.

7 MR. DeWARD: Right. But, again, this is only
8 the -- it's not ^{the} entire consolidated return, it's only
9 information related to SPUC and SPI.

10 *we need to have*
MR. REILLY: ~~One~~ of the utility assets.

11 *Mr. DeWard: Right.*
MR. GIRTMAN: One of the problems I have had

12 when I first ^{had} ~~saw~~ ^{seen} this document was that some of these
13 pages, ^{they} have numbers on it but they ~~then~~ ^{don't} have a company
14 name on it. Part of the reason for requesting that the
15 documents be clipped so they can be copied is to
16 provide adequate control. If we have a document ~~that~~
17 that comes out of a tax return, or whatever, we know
18 exactly what that is, we know which subsidiary it
19 relates to and those which it doesn't ^{to} and that can
20 provide the security control, and that's why it's
21 necessary to preclude a bunch of transcriptions.

22 MR. DeWARD: That's fine, Steve and Terry can
23 tell you ^{there's} ~~it's~~ nothing different basically on the
24 information than what you provided to us.

25 COMMISSIONER EASLEY: However, the difficulty

Needed

1 is you are oftentimes provided with information that
2 remains confidential even though you have it. And my
3 concern now is not the fact that you ^{ve} had access to the
4 information, my concern is whether or not to make that
5 information public, and that is what I'm not sure of at
6 the moment.

Mr. Deason: I understand.

7 COMMISSIONER DEASON: Let me ask a question:
8 Does Public Counsel now in their possession have this
9 information?

10 MR. REILLY: We have been denied it up to
11 this point.

12 COMMISSIONER DEASON: So it is a question of
13 access?

14 MR. REILLY: Yes.

15 MR. LOPEZ: Think Tom said you had a lot of
16 this information and wanted to check it back.

17 MR. DeWARD: I don't have these notes. ^{what} But I
18 have, this is an analysis of Schedule M-1s. I have
19 their Schedule M-1s and the object was to note this and
20 then check it back to the Schedule M-1.

21 COMMISSIONER DEASON: The M-1s you have are
22 for the company utility Florida returns which --

23 MR. DeWARD: No, no, no. I have the M-1s for
24 SPUC from '79 through '89, and from SPI from '79 to '83.
25 So I have the M-1s from their individual returns.

1 **COMMISSIONER DEASON:** This is information taken
2 from the consolidated return that applies only to SPI and
3 SPUC and you want this information to validate --

4 **MR. DeWARD:** Right.

5 **COMMISSIONER DEASON:** Compare those numbers
6 and make sure they are the same.

7 *Mr. De Ward: Right*
8 **MR. REILLY:** One of the primary reasons we
9 went out there.

10 **MR. OLSON:** That's why it was made access to
11 the ~~companies~~ ^{Company} files and consolidated return so he could
12 do that.

13 **COMMISSIONER EASLEY:** Under other sets of
14 circumstances, we have made information available to
15 Public Counsel for their review and held that
16 information confidential. That generally has taken
17 place where the company is -- where they can do like
18 they did, go to Dallas and review it. The trouble is,
19 this is a set of notes that was made as a result of
20 that.

21 Now, Public Counsel says "I can't use my own
22 notes" and ^{the} company says "it's confidential material."
23 Public Counsel says "I can't review what I've got in my
24 possession, which I've already got, without my notes to
25 compare it to." And I'm trying to figure out a way to
give you the opportunity to compare it without making

1 the numbers public. There is a difference. I see no
 2 reason to put the consolidated tax returns on the
 3 public record. I understand why you would wish to use
 4 the work product from out there. I think, can we do
 5 this -- let me ask can we do this: Can we keep these
 6 confidential, in the possession of the Commission for
 7 want of a better place to keep them, and allow Mr. DeWard
 8 to come over and look at them for the purpose^s of making
 9 his comparison.

10 MS. DAVIS: Commissioner, I believe with our
 11 confidentiality procedures which, fortunately, we don't
 12 have to use too much in water and sewer so I'm not 100%
 13 up to speed, but as soon as it comes into the
 14 Commission's possession --

15 COMMISSIONER EASLEY: Oh, that's the problem.

16 MS. DAVIS: -- a request has to be made for
 17 confidential treatment, and until that determination is
 18 made it has temporary confidential treatment. So it's
 19 best not to ever take it into our possession. Perhaps
 20 the parties can work out a protective agreement.

21 MR. LOPEZ: The parties worked out an

22 *that stipulated nothing would*
 agreement ~~things wouldn't~~ be transcribed.

23 MS. DAVIS: ^a ^{one,} Supplemental perhaps. (Laughter)

24 MR. DeWARD: I mean, you were willing to give

25 us pages, just ^{go} do through here and find the pages that

1 I took this from and give us the pages, and you can keep
2 the notes.

3 *That sounds like a capital idea.*
MR. REILLY: That's why you did it in the first
4 place was ^{to save} them the trouble of running and picking --

5 MR. DeWARD: So go run your copies if it's
6 that easy. That's, you know, if you can --

7 COMMISSIONER EASLEY: Guys, look, look.
8 Let's not get into this. ^{PP} I have no problem with trying
9 to get you where you want to go, but I'm not going to
10 make these numbers public. I don't think that's the
11 proper thing to do, and I'll tell you point blank, I'm
12 not ready to release these as public documents. Now,
13 you tell me how I can get where I need to go.

14 MR. GIRTMAN: May I ask a question. ²

15 COMMISSIONER EASLEY: Yeah.

16 MR. GIRTMAN: Exactly what is it that you
17 want to do with those numbers?

18 MR. DeWARD: Well, the M-1s that I have that
19 you've provided ^{through} ~~true~~ discovery are, I presume, are
20 public documents now.

21 COMMISSIONER EASLEY: Yeah. They'd have to
22 be now. There's been no request for confidential ^{ity} that
23 I'm aware of. ¹

24 MR. DeWARD: Well, I guess getting a copy of
25 that is -- if it's not confidential --

Confidentiality

✓ 1 MR. GIRTMAN: ^{my} ~~I~~ question is what do you want
2 to do with it?

3 MR. DeWARD: I want to verify it back to the
4 stuff you had given us previously.

5 MR. GIRTMAN: How long would it take you to
6 do it. [?] 20 minutes. [?]

7 MR. DeWARD: Yeah.

✓ 8 MR. GIRTMAN: I'll tell you what, ^{let's} consider
9 this possibility: To avoid the possession problem, to
10 avoid the whole Chapter 119, if those things remain in
✓ 11 our possession, ^o not the Commission's possession, not
✓ 12 your possession, and not OPC's possession, ^{but} remain in
13 our possession [^] you get to sit down beside me and look
14 at it and do what you need to do to confirm, ~~Would~~
15 that do? Would that solve your problem? We don't have
✓ 16 a confidentiality problem. [?] We don't have, you know,
17 the whole bit? You sit right down beside me, and it's
18 my document and you're looking at it. And it's under
19 the same conditions which we agreed, you know, you
20 would not take possession and control, or whatever, and
✓ 21 the Public Records Law would ^{not} ~~in the~~ apply.

22 MR. REILLY: As we were in Dallas, ^{you mean?}

23 MR. GIRTMAN: Yeah.

24 MR. REILLY: Whatever he wants to do is fine
25 with me. My big problem on your great concern about

1 making all this information public is I have yet to
2 hear one single word of what harm would be caused under
3 the statute.

4 COMMISSIONER EASLEY: Mr. Reilly, let me tell
5 you ~~where~~ what my problem is. Mr. DeWard tells me
6 that he tried to make this company-specific
7 information. He cannot say it is company-specific. He
8 says, "I think it is. I did everything I could to keep
9 it from being anything else." ^P The damage, or potential
10 damage of releasing the numbers, if it is not
11 inadvertently not company-specific, I think, is not a
12 risk I care to take, thank you. Especially if we can
13 work it out to where you can utilize the information in
14 the way you need to utilize it. No damage is done to
15 either party that way. Can you live with that?

16 MR. DEWARD: Fine.

17 MR. REILLY: That means "yes."

18 COMMISSIONER EASLEY: All right. I'm going to
19 ask that, based on the oral, supplemental^{my}, temporary
20 protective agreement, which you have just entered into,
21 that we dispose of the note motion. All right?

22 MR. GIRTMAN: When would you like to do that?
23 This evening?

24 COMMISSIONER EASLEY: We will now close the
25 in-camera proceedings. *Thank you, gentlemen.*