

I N D E X

WITNESSES - VOLUME 10

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(REPORTER NOTE:

A complete index with titles
will be provided on Monday,
August 15, 1994.)

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P R O C E E D I N G S

(Transcript follows in sequence from Volume 9.)

CROSS EXAMINATION

BY MR. McLEAN:

Q Mr. Brown, in your rebuttal testimony, Page 41, Line 8 and 9, you say the reference to a rate case attorney in the MFRs was never intended to refer to me or my firm; is that a correct reading?

A Right.

Q Would you examine an exhibit which you have been provided. Up at the right-hand corner, I believe, it says, "GDB-1R". Do you have that, sir?

A Yes, sir.

Q Do you know what that document is?

A It's a memorandum agreement between me and the utility company.

MR. McLEAN: Mr. Chairman, may I have the item to which the witness just referred marked as an exhibit?

CHAIRMAN DEASON: And that is which item, Mr. McLean?

MR. McLEAN: I'm sorry, GDB-1R.

CHAIRMAN DEASON: That will be identified as Exhibit Number 62.

(Exhibit Number 62 marked for identification.)

BY MR. McLEAN:

1 Q That agreement was provided to the Citizens
2 pursuant to a request for production of documents which
3 read, "Provide a copy of all contracts which consultants and
4 attorneys hired to assist with the instant rate case", is
5 that true?

6 A Yes.

7 Q When was the contract executed, Mr. Brown?

8 A This memo is dated August 31, 1993.

9 Q I'm sorry, did I call it a contract? Is it not a
10 contract?

11 A It's a memorandum of agreement.

12 Q Is there a functioning difference between a
13 contract and a memorandum of agreement that we should be
14 aware of?

15 A I don't think so.

16 Q It was executed on -- what day did you say, or did
17 you?

18 A I didn't say. I said it was effective August 31,
19 '93.

20 Q I see. Do you know when it was executed by the
21 parties?

22 A I don't recall for sure.

23 Q It does not appear on the face of the document.
24 If I'm not mistaken, correct me.

25 A That's correct.

1 Q Okay. Who were the parties to the agreement,
2 Mr. Brown?

3 A The parties are Gene D. Brown and St. George
4 Island Utility Company.

5 Q I see. And were you functioning as the manager of
6 the utility company then?

7 A Yes.

8 Q And that was through your employment with Armada
9 Bay Utility? I'm sorry, Armada Bay Company?

10 A Yes, sir.

11 Q Now, I look to the last paragraph of the
12 agreement, and it says something about a guarantor, personal
13 guarantor; who is the guarantor?

14 A I'm the guarantor.

15 Q And what is it that you're guaranteeing?

16 A I'm guaranteeing this contract.

17 Q Well, does that mean that you are standing as a
18 third party to whom one of these parties can look for
19 performance or something of that nature?

20 A I think these parties could look to me to perform
21 this, yes.

22 Q So you're a guarantor on both sides of the table,
23 is that right, so to speak?

24 A Yes.

25 Q You personally guarantee the performance of

1 Gene D. Brown, Attorney, and personally guarantee the
2 performance of St. George Island Utility Company, is that
3 correct?

4 A I guarantee this memorandum of agreement, which I
5 think is a contract, right.

6 Q Okay. Do you ever guarantee obligations of the
7 utility, in a personal sense? Do you personally guarantee
8 obligations of the utility?

9 A I usually do. Usually I have to.

10 Q Do you have the authority to speak for the
11 utility?

12 A Yes.

13 Q Looking to Paragraph 11, there are two addresses,
14 one for you and one for the utility. And at the bottom of
15 11 paragraph it seems to contemplate that there shall be
16 some written communication between those two entities. Has
17 there been any?

18 A No.

19 Q Now, you say that it was never your intention to
20 charge the rate case for your services, yet this was
21 produced in response to a question which asked for contracts
22 with consultants and attorneys for the instant rate case, is
23 that right?

24 A Right.

25 Q Well, which is true? Is this a contract for the

1 instant case or is it not?

2 A What do you mean, "which is true"?

3 Q Well, is this a --

4 A This is a contract on the instant rate case. This
5 is not a contract that's intended to be charged to the
6 ratepayers in any way.

7 Q I see. So if I look down -- let's see,
8 Paragraph 3, it says, "The client and the firm agree that
9 the total fee for handling the above referenced case will
10 not exceed \$20,000." That's the same number that's in the
11 MFRs, isn't it?

12 A Yes.

13 Q Now, was this -- I see the agreement under
14 Paragraph 8 says that it has to be terminated by a writing,
15 is that right?

16 A Yes.

17 Q So, has that writing been sent?

18 A Not between these parties. We have filed a notice
19 of my withdrawal, which is in writing.

20 Q So the deal here is that there is an existing
21 contract between you and the utility to function for a rate
22 case which provides for payments, but it was never intended
23 to be billed to the ratepayers, right?

24 A I did not intend to bill this and try to charge
25 this. It was always my intent to handle this case up to a

1 point and to bring in another lawyer at some point.

2 Q Well, if the utility is charged \$20,000, do they
3 not intend to charge the ratepayers for that \$20,000?

4 A The utility intends to include as a part of the
5 rate case expense Mr. Pfeiffer's fees for representing the
6 utility since he has been involved. The utility does not
7 intend to include any of the fees paid to me as a rate case
8 expense.

9 Q And had never had that intention according to your
10 testimony, right?

11 A That was not our intent.

12 Q Who is "our"?

13 A Mine.

14 Q Okay. This letter seems to be written, look at
15 the last paragraph, Paragraph 12, "If it is acceptable to
16 you, please sign." Who is "you" in that instance?

17 A The utility company.

18 Q So this is a letter from you, attorney, to you,
19 utility company, to sign if you find the agreement
20 acceptable?

21 A Yes.

22 Q Okay. Were both signatures entered at the same,
23 essentially, stroke of the pen, if you will?

24 A Yes.

25 Q Let's turn to a different topic. Rheama, I think

1 I'm pronouncing that correctly, Rheama Business Systems and
2 Ben Girtman is the area of my inquiry. Rheama is the
3 corporate entity of Mr. Norman Mears, is that right?

4 A Yes, sir.

5 Q And Mears assembled draft MFRs for the dismissed
6 rate application?

7 A Yes.

8 Q And Mr. Mears presumably billed for those
9 services?

10 A Yes.

11 Q Do you recall how much he billed?

12 A No, I don't.

13 Q Do you know whether any part of this rate
14 application seeks recovery for any of the money for which
15 Mr. Mears bills?

16 A Yes, it does.

17 Q Do you know how much?

18 A No.

19 Q You inquired of Mr. Ben Girtman concerning the
20 preparation of a rate application?

21 A Yes.

22 Q And Mr. Girtman preferred that you deal not with
23 Mr. Mears, but with Mr. Seidman, is that right?

24 A That's correct.

25 Q So, essentially, you terminated the arrangement

1 with Mr. Mears on the strength of that view that Mr. Girtman
2 had, and began to do business with Mr. Seidman?

3 A No, I didn't do it on the strength of Mr.
4 Girtman's representation.

5 Q Okay. Did you tell Mr. Mears that's why you did
6 it?

7 A No, I told Mr. Mears that I had other people
8 suggest that he had never handled a Class B utility rate
9 case, and that we needed somebody with a little more
10 expertise and experience.

11 Q Is it your testimony that you did not relate to
12 Mr. Mears that Mr. Girtman was the reason that you were
13 going to do business with Mr. Seidman in place of Mr. Mears?

14 A No, I think what I told Mr. Mears was that
15 somebody on the PSC Staff told my banker that Mr. Mears was
16 not up to this case, and my banker strongly suggested to me
17 that we not continue with Mr. Mears, and that we find
18 somebody with more expertise and experience in Class B
19 utility rate case litigation. And at or about the same
20 time, Mr. Girtman recommended Mr. Seidman. I met with Mr.
21 Seidman, was impressed with him, and I hired him.

22 Q But not Mr. Girtman?

23 A I hired Mr. Girtman for some things, I did not
24 hire him to handle this rate case.

25 Q Is there any portion of Mr. Girtman's fees charged

1 to you that are in this rate case?

2 A No.

3 Q Okay. But there are for Mr. Mears, right?

4 A Yes.

5 Q What was Rheama's hourly rates, do you recall?

6 A It started off at \$90 an hour, and I think it went
7 to 125 at some point.

8 Q Did you incur any expense from Mr. Mears at the --
9 did you say 125?

10 A I think it went to 120 or 125 toward the end.

11 Q Well, at what rates did you incur charges from
12 Mr. Mears, do you recall?

13 A Some of both. He went up while he worked for me.

14 Q And some of both are still in this rate
15 application, right?

16 A I'm not sure. I would have to go back and review
17 his bills to see exactly what the hourly rates were.

18 Q But you do know that there is expense incurred by
19 the utility in hiring Mr. Mears in this rate case, I think?

20 A Yes, I know that. That's my understanding.

21 Q What were Mr. Girtman's hourly rates, do you
22 recall?

23 A It seems like it was \$135 an hour. 125 or 135, I
24 think it was 135.

25 Q Who handled the last rate case before the

1 Commission for St. George Island Utility Company Limited?

2 A Ken Gatlin.

3 Q Had Mr. Girtman appeared -- had Mr. Girtman
4 represented the utility on other matters before the
5 Commission?

6 A Mr. Girtman represented the utility on several
7 matters over here at the Commission over the last year or
8 two.

9 Q So there was -- Mr. Girtman was somewhat familiar
10 with utility practices and conditions and so forth, is that
11 correct?

12 A I think he was familiar with this utility company
13 to some degree.

14 Q And familiar with Commission procedures, practices
15 and so forth, no doubt?

16 A Oh, I think he's familiar with the practices and
17 procedures over here.

18 Q And Mr. Gatlin, of course, had represented you in
19 the last rate case, right?

20 A Correct.

21 Q Did you consider hiring either one of those two
22 gentlemen -- I didn't ask you what Mr. Gatlin's prevailing
23 rates were these days?

24 A I don't know. I never talked to him. I haven't
25 talked to him in years. I don't know what his current rate

1 is.

2 Q But he did handle the last rate case for you?

3 A He did handle the last rate case.

4 Q So, you didn't contact him to find out whether he
5 would care to handle this case, did you?

6 A No, I did not.

7 Q And what were your -- did you ask Mr. Girtman if
8 he would represent you in this case?

9 A Yes, I did.

10 Q And what did he say?

11 A He said he would.

12 Q Why did you not hire Mr. Girtman?

13 A Just a number of reasons. The price, I never
14 could get him pinned down on a price, or not to exceed. I
15 had to feel like I could cap it at some point, and I got cap
16 fees of \$50,000 and up, and I thought I had --

17 Q Why would you impose a cap on Mr. Girtman, but not
18 on Mr. Seidman?

19 A I didn't exactly want a cap, I wanted an estimate.
20 I just hate to hire lawyers with a totally open-ended
21 contract with high hourly rates. And Mr. Seidman would not
22 agree to a cap, and Mr. Girtman would not agree to a cap.

23 Q How about Mr. Pfeiffer?

24 A I'm not sure if he agreed to a cap. He made an
25 estimate of \$30,000, but I don't think he knew we were going

1 to get into original cost and all of this other stuff.

2 Q Well, you just said that the reason you didn't
3 hire, one of the reasons you didn't hire Mr. Girtman is
4 because he wouldn't come up with a cap, and you seemed to
5 stress that Mr. Seidman wouldn't, yet Mr. Pfeiffer didn't,
6 either. So that couldn't have been a very persuasive reason
7 as to why you didn't hire Mr. Girtman, right?

8 A Mr. Pfeiffer gave me an estimate of \$30,000, which
9 I felt fairly comfortable with until the last several weeks
10 when we got into all of this other stuff. But Mr. Girtman
11 just said that he couldn't give me an estimate, or a cap, or
12 anything that I could be very comfortable with. And Mr.
13 Seidman would not give me a cap, and Mr. Seidman was the
14 only consultant that I had talked to other than Ben Johnson
15 about this.

16 Q Do you owe Mr. Girtman money at this point in
17 time?

18 A Yes, sir.

19 Q How about Mr. Gatlin?

20 A Yes.

21 Q Mr. Gatlin has a continuing practice before the
22 Commission, doesn't he?

23 A Yes, that's my understanding.

24 Q Did you contact lawyers other than Mr. Pfeiffer,
25 Mr. Gatlin, and Mr. -- I'm sorry, you didn't contact

1 Mr. Gatlin. Did you contact others other than Mr. Girtman
2 and Mr. Pfeiffer?

3 A Oh, yes.

4 Q Who else did you contact?

5 A I contacted and met with Rick Melson, I contacted
6 and talked to Ken Hoffman, I talked to the Young, Van
7 Assenderp firm, and maybe some others. I almost hired
8 Rick Melson, but he said his fee would be at least 15,000 up
9 front to be applied on the end, and at least \$50,000, but it
10 could run to 100,000. And based on what I have seen of all
11 the issues we are getting into, it probably would have been
12 closer to 100 with Rick Melson.

13 Q Mr. Gatlin and Mr. Girtman had a professional
14 association each with the other at one time, didn't they?
15 Do you know?

16 A I was not aware of that.

17 Q Mr. Melson and Mr. Hoffman both have something of
18 a regular practice over here, don't they?

19 A I talked to Ken Hoffman, and I know that he
20 practices over here, and I know that Rick Melson practices
21 over here, and I met and talked with both of them.

22 Q Okay. Let's change focus to a deposition you took
23 in this case of Mr. Ben Johnson. You deposed Ms. Dismukes,
24 didn't you?

25 A Yes, I did.

1 Q You explored her association with Ben Johnson?

2 A Yes, I did.

3 Q And you explored her duties at Doctor Johnson
4 through your -- let me go back a question. You explored her
5 association with Ben Johnson when you spoke with
6 Ms. Dismukes, right? That was part of the subject of the
7 deposition when you were deposing Ms. Dismukes, correct?

8 A That's correct.

9 Q And you explored her duties there with her?

10 A Yes.

11 Q And you explored the services she provided on
12 behalf of the bank --

13 A Yes.

14 Q -- when you spoke with her? And you explored the
15 contact that she had in the somewhat fledgling rate case
16 from some years ago?

17 A Yes.

18 Q And you were able to explore her expertise as an
19 analyst from her?

20 A Yes.

21 Q And you explored her expertise as a manager,
22 correct?

23 A Yes.

24 Q And before you spoke with Ms. Dismukes, you
25 deposed Ben Johnson?

1 A That's correct.

2 Q And you understand that that's a point of
3 disagreement as to whether you should recover your expenses
4 for having done so, is that right?

5 A I don't think we have asked for any reimbursement
6 on the Ben Johnson deposition. I have not, but I would have
7 to look at the billing. I discussed it with Mr. Pfeiffer,
8 and told him I didn't think that ought to be included.

9 Q Okay. Well, do you now say that it should not be
10 included, and do you now forego any amount of money that you
11 might have claimed in this rate case for the Doctor Johnson
12 deposition?

13 A Yes. I haven't included any of my time or expense
14 from taking Ben Johnson's deposition, and I asked Steve
15 Pfeiffer to let me pay that separately, or just rather than
16 argue about it, I think he sat there for two or three hours.

17 Q Does four sound about right?

18 A Four hours, whatever it was.

19 Q Well, irrespective of how long it was, and
20 irrespective of what you told Mr. Pfeiffer, do you now
21 forego any claim to Mr. Pfeiffer's time for the Ben Johnson
22 deposition?

23 A Yes.

24 Q And you do not intend, and you forego charging the
25 ratepayers for that amount of money?

1 A Yes, sir.

2 Q With respect to TMB Associates, do you claim any
3 rate case expense for services rendered by TMB Associates?

4 A No.

5 Q Mr. Brown, on 57 of your rebuttal testimony, you
6 discuss a \$65,000 contribution or advance, as the case may
7 be. Do you recall that subject matter?

8 A I recall that subject matter. I haven't looked at
9 my rebuttal testimony in a while.

10 Q I understand. I have arranged for you to be
11 handed an exhibit which is marked NG-1. Do you have it,
12 sir?

13 A Yes, I do.

14 Q This is the document which I discussed at some
15 length with Mr. Seidman; do you recall that?

16 A Yes, sir.

17 MR. McLEAN: Mr. Chairman, may I have the document
18 to which the witness just referred to marked for
19 identification?

20 CHAIRMAN DEASON: Yes. It will be identified as
21 Exhibit Number 63.

22 (Exhibit Number 63 marked for identification.)

23 BY MR. McLEAN:

24 Q Now, Mr. Brown, if I can be permitted to discuss
25 it generally with you just a moment, this is an agreement

1 which concluded litigation between you and your affiliates,
2 some of your affiliates, perhaps on the one hand, and the
3 property owners association down at St. George Island
4 Utility -- I'm sorry, St. George Island, on the other hand.
5 And I believe each of you were suing each other, so to
6 speak, both direct and cross plaintiff, defendants, and so
7 forth, correct?

8 A That's correct.

9 Q Now, I would like to know in a little bit more
10 specific sense than that, and I understand recalling each of
11 the affiliates might be a bit of a task, but isn't it true
12 that on one side as plaintiff it was the property owners
13 association by themselves suing Brown and affiliates,
14 excluding the utility company, is that right?

15 A That's correct.

16 Q Now, who was the counter plaintiff, if there was
17 such a thing?

18 A The counter plaintiff or the counter defendant?
19 The people I sued back?

20 Q Right. Who was doing the suing back?

21 A The people who got sued filed a counter suit, so
22 they became counter plaintiffs.

23 Q Okay. So it's the same thing on both sides, then?

24 A Well, basically, we brought in a few more people,
25 like Mr. Day there and some others, third party defendants.

1 Q But you did not counterclaim standing alone; you
2 counter claimed with your various affiliates?

3 A Yes. I'm not saying that all affiliates had the
4 same claims, but, basically, there were affiliate counter
5 claims and third party claims.

6 Q I understand. And this document is something of a
7 settlement of that litigation, correct?

8 A Yes, sir.

9 Q Okay. And the settlement was essentially that the
10 property owners association would pay you 100 -- pay you,
11 when I say "you" in this instance, I mean you and your
12 affiliates. It would pay Brown and affiliates \$100,000,
13 correct?

14 A That's correct.

15 Q And you represented that 35,000 of that would go
16 to Stanley Bruce Powell, and that 65,000 would be used for
17 some utility purpose, right? Or to improve, to install some
18 utility assets?

19 A I represented that the affiliates would turn
20 around and loan 65,000 to the utility company to help with
21 some improvements, ongoing improvements.

22 Q Okay. And I think the term you used in the
23 agreement or that that the parties agreed to in the
24 agreement was not loaned, but the term "advanced", right?

25 A That's correct.

1 Q And you go to some length in your rebuttal
2 testimony to explain what you meant by advanced, right?

3 A Yes.

4 Q Okay. Now, I would like to know in terms of
5 remedies, who had what. And let me ask you a few specific
6 question about that. What would happen, in your view, in
7 terms of enforceability of this agreement, if there had been
8 no advance, suppose Brown and affiliates had declined to
9 advance money to the utility. What remedy was available, in
10 your understanding, at the time you signed this document to
11 the utility or to the property owners?

12 A I would think that the property owners remedy
13 would be to go back to circuit court and file some sort of
14 an action, either for specific performance or damages based
15 on this agreement. To require us to perform it or some sort
16 of damages because we didn't perform. I suspect the former
17 would be the approach; to specifically perform the agreement
18 to make the loan to the utility company.

19 Q Now, you say loan, but the term you used was
20 advance, wasn't it?

21 A Yes.

22 Q Now, let me ask you something about loan. There
23 are no repayment terms mentioned anywhere in this agreement,
24 are there?

25 A No.

1 Q So, in speaking of loan or advance, as the case
2 may be, a second hypothetical I would like to ask you,
3 focusing on the remedies here, is what if the money were
4 advanced or loaned, as the case may be, but it was advanced
5 or loaned on terms that no one would believe to be
6 reasonable? Would the property owners remedy be much the
7 same as it was if they hadn't advanced any money at all?

8 A I assume, if we were unreasonable, that they could
9 go back to circuit court and try to say that the affiliates
10 or I had violated this agreement in some way. The utility
11 company was not a party to this, as far as setting terms.

12 Q I understand. Now, in each case you answered that
13 the property owners association would have a remedy against
14 Brown and affiliates, is that fair of what you said?

15 A Yes. I think if we violated this agreement they
16 would have some remedy against us.

17 Q How about the utility, would it have a remedy if
18 you had not advanced the money?

19 A I suppose it could claim some sort of a third
20 party beneficiary status, that it was a beneficiary of a
21 loan or of an advance under this agreement. I hadn't really
22 thought about that.

23 Q Okay. Once advanced to the utility, if the
24 utility declined to make the enumerated -- incidentally, let
25 me ask you before I begin that, there are enumerated

1 specified improvements in that agreement, aren't there?

2 A What page is that on?

3 Q I was afraid you would ask.

4 A I see it here. It says it will be used for
5 capital improvements to enhance and increase the flow and
6 pressure of the water system, including installation of an
7 altitude valve and high speed pumps pursuant to
8 Baskerville-Donovon's recommendations.

9 Q If I interpret your testimony correctly, you view
10 those words there to be an enforceable -- enforceable from
11 the standpoint of the property owners association and from
12 the standpoint of the utility as against Brown and
13 affiliates, that they must do those things according to this
14 agreement, is that right?

15 A It says these funds would be used. In other
16 words, the funds are to be paid to settle claims and for the
17 property that I conveyed to the property owners association
18 we got \$100,000 to be received on certain dates. And then
19 to make this more palatable to the membership, I told them
20 that I had planned to take this money and advance it to the
21 utility company to help it meet its obligations to make some
22 improvements.

23 Q Palatable to one person is inducement to another
24 sometimes, isn't it?

25 A Say that again.

1 Q Palatable to one person might be inducement to
2 another, mightn't it?

3 A Well, it might be. I mean, this is something I
4 threw in the night before they were going to meet. In
5 discussions with Ms. Sanders I just made the point that I
6 wasn't going to go to Las Vegas with the money, that I was
7 going to loan it to utility company to try to improve
8 service.

9 Q When you say loan, of course, you mean that
10 advance?

11 A Loan or advance or whatever.

12 Q Okay. Now, with respect to the utility and the
13 property owners association, had the utility not performed
14 the improvements, did the property owners association have a
15 remedy against the utility?

16 A I'm not sure. It calls for legal speculation. I
17 guess they could always make a claim against the utility
18 company. I don't think they could do it pursuant to this
19 agreement, necessarily. You mean, if I advance the money or
20 my affiliates advanced it to the utility company and the
21 utility company kept it and didn't make the improvements?

22 Q Sure. And bear this in mind, I'm joining in with
23 your view that the utility company and the affiliates are,
24 in fact, different. I don't want to concede that point, but
25 for the purpose of the question let's think of them as

1 different. I would like to know if the property owners
2 association had a remedy against the utility if the utility
3 declined to do those things with the money?

4 MR. PFEIFFER: I object to the question. It calls
5 for legal speculation, although the witness is a lawyer, I
6 think it's inappropriate to have legal testimony from the
7 stand. That would be for the Commission to decide, I
8 suppose, if that were a legitimate issue in the case.

9 MR. MCLEAN: My response is that I'm asking -- and
10 I may have neglected to mention this -- I think I mentioned
11 a little earlier I'm asking for what the intentions of the
12 parties were at the time. I'm asking Mr. Brown to explain
13 this contract. He has an interpretation which appears
14 different from the face of the contract, and I was wondering
15 about his interpretation of the contract as a party to it,
16 not as legal --

17 CHAIRMAN DEASON: I will allow the question to the
18 extent that Mr. Brown can explain his understanding of the
19 agreement as a party to that agreement.

20 BY MR. MCLEAN:

21 Q So the question is, as a party to this agreement,
22 given the fact that -- did you negotiate the agreement
23 yourself with the property owners association?

24 A I think Stanley Bruce Powell and I negotiated it.
25 I probably had as much to do with it as anybody. In fact, I

1 probably negotiated this agreement.

2 Q Okay. Did you mean to memorialize an arrangement
3 between Brown and affiliates and the property owners
4 association to have an enforceable contract with respect to
5 these improvements?

6 A I never thought about whether the association
7 would have a claim against the utility company. And I can
8 think about it now. I just -- I'm not sure they would have
9 a direct claim against the utility company. It seems to me
10 their claim would be against me and the affiliates for not
11 performing, because the utility company was not a party and
12 had no liability under this agreement. And I don't think it
13 would have any -- it's a possible third party beneficiary,
14 but I don't think that brings on any liability on the
15 utility's part.

16 Q Well, you say that the utility had no obligation,
17 but that's the very issue we are dealing with here, isn't
18 it? You said, I believe, that the property owners
19 association would have a remedy against Brown and
20 affiliates, and I think you said that their remedy would be
21 specific performance?

22 A That would be one of them. I think if Brown and
23 affiliates, who are parties to this agreement, failed to
24 live up to this agreement, then I think the homeowners
25 association could ask that the agreement be enforced. But I

1 don't think the utility would be a proper party or have any
2 liability under this agreement.

3 Q So you don't think the utility would be an
4 indispensable party to an action for specific performance,
5 to put the assets in place?

6 A No, not in my opinion. I would resist that on
7 behalf of the utility company. I never intended for them to
8 have any liability. This was a way for them to get 65,000
9 in advances or loans.

10 Q With which you were going to put in some assets,
11 right?

12 A To be used for capital improvements to the utility
13 system, that's correct.

14 Q I think it says to be used strictly for capital
15 improvements, doesn't it?

16 A It says to be used strictly for capital
17 improvements to enhance and increase the flow and pressure
18 of the utility system, right.

19 Q Let's look over to the signature page. There is
20 quite a few signatures there, most of which are you're own,
21 is that correct?

22 A It looks like all but one of them are mine.

23 Q Right. Did the President of the corporate general
24 partner of the utility sign that document? That's you, Mr.
25 Brown.

1 A The utility company does not have a corporate
2 general partner, so that assumes facts not in evidence.

3 Q Yes, that's absolutely true. It's kind of hard to
4 keep up with all of this, isn't it?

5 A Not for me. Only if the questions are confusing.

6 Q Did you utility's lawyer sign?

7 A The utility's lawyer signed it.

8 Q Great.

9 A Not as the utility's lawyer, but one of the
10 utility's lawyers.

11 Q Okay. Now, St. George Island Utilities --

12 MR. PFEIFFER: Excuse me --

13 MR. McLEAN: You're right.

14 MR. PFEIFFER: -- Mr. McLean interrupted the
15 witness.

16 BY MR. McLEAN:

17 Q Mr. Brown.

18 A Go ahead, I'm through.

19 Q Now, the utility is a limited partnership, and
20 it's partners are who?

21 A The general partner is Leisure Properties Limited.

22 Q Who are the corporate partners, if any, of
23 Leisure?

24 A Leisure Development, Inc. and St. George's
25 Plantation, Inc.

1 Q And you signed on behalf of both of those
2 cooperations, right?

3 A Yes, I did.

4 Q And you are also the utility company's manager, is
5 that right?

6 A Yes, I manage the utility company.

7 Q And you are President of the corporation that
8 provides those management services?

9 A That's correct.

10 Q And it's your testimony that the utility was not
11 bound?

12 A It's my testimony the utility is not bound by this
13 agreement, that's correct.

14 Q Let's look to Paragraph Number 7. "Gene D. Brown
15 and all of his affiliated companies represent and warrant to
16 the association that there are no other firms, partnerships,
17 or corporations with which Brown is affiliated that could
18 have any possible claims against the association or any of
19 its past or current directors." Did I read that correctly?

20 A That's right.

21 Q It sounds like a release on behalf of the utility,
22 doesn't it? Assuming, of course, that all of his affiliated
23 companies includes the utility?

24 A Well, if you assume that it could be construed as
25 a release, that's correct.

1 Q Is that a reasonable assumption?

2 A Not in the context of this agreement. If somebody
3 made that argument, it could be construed as being
4 ambiguous, because Brown and the affiliated companies are
5 defined in the beginning of this agreement.

6 Q They are indeed. Brown and affiliated companies
7 are companies other than the utility?

8 A That's correct.

9 Q My question goes to Gene D. Brown and all of his
10 affiliated companies as contrasted with Brown and
11 affiliates?

12 A I think somebody could make that argument, I don't
13 think it would be successful. But if it were successful
14 that would mean that the utility company could not sue the
15 homeowners association.

16 Q Yes. One wonders who was on hand to speak for the
17 utility company in Paragraph Number 7?

18 A I don't think they are involved in Paragraph
19 Number 7.

20 Q You don't think that the utility company is an
21 affiliated company of Gene D. Brown?

22 A Not in the context of this agreement. The
23 agreement spells out who Gene Brown and affiliates are in
24 the opening paragraph.

25 Q And it designates an abbreviation to be used for

1 that purpose, right?

2 A It sets out a number of abbreviations.

3 Q Well, let's look at them. How many, in addition
4 to Gene D. Brown? I'm sorry, how many in addition to Brown
5 and affiliates is mentioned?

6 A They are all affiliates of Gene Brown.

7 Q Including the utility?

8 A The utility is not mentioned there, is it?

9 Q Well, that's the point, isn't it?

10 A That's my point, that I don't think they are
11 involved in this agreement. I think it would be reaching or
12 stretching a point to try to involve them in the agreement
13 to say that they are liable for anything under this
14 agreement.

15 Q Would you look to the tenth line down in the
16 agreement, "Herein after referred to as Brown and
17 affiliates", quote, close quote, right?

18 A What line is that?

19 Q That is the tenth line. "Brown and affiliates".
20 Quote, "Brown and affiliates", close quote.

21 A I see that.

22 Q Right. That's the language which is used in every
23 paragraph except Number 7, right?

24 A I haven't read the agreement to know that that's
25 true, but Paragraph 7 says Brown and all of his affiliates.

1 Q Right. There is no exclusion from that language
2 of the utility company, is there?

3 A No.

4 Q Let's change focus, Mr. Brown, and move to your
5 construction of the utility.

6 CHAIRMAN DEASON: Mr. McLean, I take it you have
7 considerable cross yet?

8 MR. McLEAN: Yes, sir, I do.

9 CHAIRMAN DEASON: I think now would be an
10 appropriate time to take a ten minute recess.

11 MR. McLEAN: Thank you, sir.

12 (Off the record).

13 CHAIRMAN DEASON: Call the hearing back to order.
14 Mr. McLean.

15 BY MR. McLEAN:

16 Q Mr. Brown, one more question on that last topic.
17 Exhibit Number 32, you may remember that, that was the
18 assignment, as I recall, of the monies due under this
19 agreement that we have just been discussing. I believe you
20 assigned the money due under that agreement to Sailfish, do
21 you recall that exhibit?

22 A I recall doing that. I don't know that I have
23 seen that exhibit lately.

24 Q Okay. That exhibit said, if I can paraphrase it,
25 "That the monies due me under that agreement would be

1 assigned to Sailfish." And my focus, of course, is the term
2 that you used "me". Do you recall that that is the term --

3 MR. PFEIFFER: Your Honor, I object. The document
4 is not in evidence. And I think it's inappropriate to have
5 testimony with regard to the document not in evidence.

6 MR. McLEAN: I kind of remember that it was
7 admitted.

8 CHAIRMAN DEASON: I believe that Exhibit 32 was
9 admitted.

10 MR. McLEAN: It was the one which Counsel and I
11 argued over the issue of authentication.

12 CHAIRMAN DEASON: My records indicate that 32 was
13 admitted.

14 MR. PFEIFFER: Ah, I see where it was admitted.
15 I'm sorry, I was looking in the wrong volume of the
16 transcript. It was admitted over --

17 MR. McLEAN: We have quite a few exhibits. No
18 problem to me.

19 BY MR. McLEAN:

20 Q The letter says, "This is to advise that all
21 remaining payments due to me under my settlement agreement
22 with St. George Plantation Owners Association, Inc. have
23 been assigned to Sailfish Enterprises", and so forth. I
24 assume -- well, what did you mean when you said, "Due me
25 under my settlement agreement"?

1 A Me and my affiliated companies named in the
2 settlement agreement.

3 Q I see. You meant to exclude from that, I take it,
4 the utility company?

5 A I don't think the utility company was due any
6 money under that settlement agreement, so, no, I did not
7 intend to include them.

8 Q So, in this instance when you said "me" and "my",
9 that spoke for your various affiliates except for the
10 utility?

11 A I haven't seen that letter, but if you would like
12 to show it to me, I can --

13 Q Sure.

14 A It's a letter dated January 25, 1993 to the
15 President of the association. It's a two sentence letter.
16 It just says under that certain settlement agreement, which
17 he is familiar with, and I had reference to my affiliated
18 companies as set forth in that agreement.

19 Q But you didn't say that, did you? You said "me"
20 and "my"?

21 A I said this is to advise that all remaining
22 payments due to me under my settlement agreement with the
23 association have been assigned to --" as one sentence.
24 Next, I said, "Accordingly, all payments should be made to
25 Sailfish."

1 Q Are there separate assignments from the other
2 affiliates?

3 A There is an overall assignment where the affiliates
4 named in the settlement agreement assigned their rights to
5 receive those funds to Sailfish.

6 Q Was that accomplished in a separate instrument
7 than that one?

8 A Than this agreement, than this letter?

9 Q Yes, sir.

10 A Yes, I'm sure it was. This is just to notify
11 John Cullen to send the payment to George Marr (phonetic)
12 instead of to me.

13 Q And you said, "Due me", and you used the term
14 "my". And my question to you is is that the way you spoke
15 of your affiliates who were plaintiffs in this case?

16 A Yes, that's how I referred to them in this letter.

17 Q And do you expect in any way people who read me
18 and my to know which of your affiliates might be bound or
19 excluded from the me and my?

20 A Yes, I expected John Cullen, who is President of
21 the association I had just settled with to know who I was
22 referring to, because he was the other party to the
23 agreement I had reference to.

24 Q So anyone who reads this letter, including the
25 Public Service Commission, can believe that that was meant

1 to exclude the utility, is that right?

2 A Well, I don't know what they can chose to believe,
3 I'm just telling you what I had reference to in talking with
4 the people that I had just settled with.

5 Q Let's change focus, Mr. Brown, to the history of
6 the utility in a general sense.

7 A Okay.

8 Q Construction began on the utility in December of
9 1975, is that right?

10 A I don't remember, Mr. McLean, the exact date the
11 construction commenced. We worked on developing that island
12 from about '72, pretty constantly during those years.

13 Q The utility was sold from Leisure, Leisure was the
14 builder, if you will, of the utility, is that right?

15 A Leisure started building the utility, and it was
16 placed in service at the same time it was syndicated to St.
17 George Island Utility Company, Limited.

18 Q It didn't provide service to anybody before that?

19 A Yes, we provided some service. We needed to test
20 out the system and make sure it worked and all, but it was
21 officially placed in service as new utility property at the
22 end of 1979.

23 Q And that's so -- if we can jump ahead just a
24 little bit -- that's what qualified it for investment tax
25 credit, isn't that right?

1 A Yes.

2 Q Your notion that it's new?

3 A Yes.

4 Q But the tax service took the position that, in
5 fact, it was old, didn't they?

6 A Well, that was one of the issues in litigation
7 that we had with the tax service. We finally settled it
8 after an audit, and they agreed that it was, in fact, new
9 property.

10 Q And they settled quite a few issues in that thing,
11 didn't they?

12 A They settled all of the issues regarding the cost
13 of the system, and investment tax credit, and depreciation,
14 right.

15 Q Okay. We will get back to that. The system was
16 sold from Leisure to St. George Island Utility Company on
17 November 9 of 1979, right?

18 A That sounds like the right date, right about that
19 time.

20 Q And the sales price was about \$3 million?

21 A Three million.

22 Q Now, with respect to the original cost, you say
23 that the -- if I understand you correctly, that these assets
24 were first placed into meaningful public service, if you
25 will, as of the date of the sale, is that right?

1 A I think the certifications were that they were
2 placed in service on or about November 15 of 1979, which was
3 about the same time of the syndication.

4 Q The syndication was the tax shelter which you
5 established, or attempted to establish?

6 A Well, it was a partnership that was put together
7 to put up money to buy these utility assets.

8 Q Have you referred to it as a tax shelter before?

9 A I probably have.

10 Q Under oath?

11 A I probably have.

12 Q You don't know whether you have?

13 A No, I don't know. I don't recall everything I
14 have said about it. It has been referred to as a tax
15 shelter, syndication. It was certainly a limited
16 partnership, and still is.

17 Q Now, what was sold -- speaking of the assets which
18 were sold, and speaking at the time they were sold, do you
19 now bring to the Commission objective evidence, meaning
20 checks, receipts, canceled checks, receipts, drafts, time
21 records and so forth to substantiate the money which Leisure
22 paid for that property?

23 A No, we have the same records that we had in the
24 '89 case when this was extensively litigated.

25 Q I understand. The utility upon sale -- when I say

1 utility, incidentally, I mean St. George Island Utility
2 Company, Limited. The utility immediately began to report
3 the \$3 million number to the Florida Public Service
4 Commission as its investment in-plant, didn't it?

5 A I believe so.

6 Q Was the sale an arm's-length transaction?

7 A Yes and no. It was arm's-length in the sense that
8 90 percent of the partners were new. Leisure Properties
9 remained as a 10 percent owner and general partner, but
10 there was a group of individuals who put up cash and notes
11 totalling \$1,300,000, so to them it was arm's-length, I
12 think. And it was at least 70 to 90 percent arm's-length.

13 Q Okay. With respect to the transfer from Leisure
14 to St. George Island Utility Company, Limited, you're saying
15 that was an arm's-length transaction?

16 A I'm saying that the people who formed St. George
17 Island Utility Company, Limited, who were represented by
18 their attorneys, and tax lawyers, and CPAs, who put up real
19 cash and real notes, that it was arm's-length in the sense
20 that they knew what they were doing and knew what they were
21 buying and paid good money for it. It was not arm's-length
22 in the sense that Leisure Properties totally removed itself
23 from the operation, because Leisure continued as the
24 managing general partner. And a 10 percent owner.

25 Q Is it true that most of the system had been built,

1 or was, in fact, built during 1976?

2 A No, that's not true.

3 Q Have you ever testified to the contrary?

4 A I probably have testified at different times over
5 the years about it.

6 Q Well, what I want to know --

7 A And if you're asking me right now, in 1994, if
8 most of the system was built in '75 or '76, the answer would
9 be no. At some point soon after '76, that may have been
10 yes.

11 Q How about 1981?

12 A In '81 it could have been that most of it was
13 done, but we have built a lot of plant --

14 Q Since then?

15 A -- since '81, after I took it over from John
16 Stock.

17 Q Okay. In your rebuttal testimony, you criticize
18 Ms. Dismukes for having taken into consideration the Bishop
19 appraisal, is that right?

20 A I've forgotten exactly what I said. I think I
21 basically criticized her for picking and choosing two or
22 three figures out of context, which are the same figures
23 that Public Counsel tried to take out of context in '89.
24 And I said then, and I say now that if the Commission wants
25 to reopen this entire issue then the Commission should look

1 at all the evidence and reopen the whole last case. But you
2 can't just look at one or two documents and say that's proof
3 of cost.

4 Q Well, that's what my questions are intended to do,
5 Mr. Brown. On Page 44, Line 1, you make this statement --
6 do you have your testimony before you?

7 A No, I don't. Do you want to give me a copy of it?

8 Q I will rely on your lawyer, Mr. Brown.

9 A That's on Page 41.

10 Q That's correct, sir. I'm sorry, 44, top line.

11 Let me ask you a question about something you said which
12 preceded that. 43, Line 24.

13 Question, "Do you agree that the utility rate base
14 should be decreased because of the newly discovered
15 appraisal by William Bishop?"

16 Answer, "No, I do not. The old William Bishop
17 study was completed well before the St. George Island water
18 system was purchased by the utility company on December 31,
19 1979."

20 That would be roughly a year and a half, wouldn't
21 it?

22 A Yes. There is a year and a half between those two
23 dates.

24 Q And then you say, "No consideration has been given
25 to additions to the system between the date of Mr. Bishop's

1 appraisal and the date that the system was sold." That's
2 affair reading of what you said, isn't it?

3 A I think that's verbatim.

4 Q Okay. And you say Mr. Bishop's report showed only
5 part of the system which actually existed on 12-31-79?

6 A That's correct.

7 Q Have you ever testified to the contrary?

8 A I don't know whether I have or not.

9 Q Have you testified to say in 1981 that, in fact,
10 Mr. Bishop's study showed the extent of the investment that
11 had been made?

12 A I don't recall what I might have said in 1981 or
13 whenever you're talking about.

14 Q Okay.

15 A I do know --

16 Q Let me see if we can refresh your memory, then.

17 Mr. Brown, with respect to the document you have
18 just been handed, would you look to the first page of that
19 document?

20 A Okay.

21 Q It purports to be a deposition of Gene D. Brown
22 taken at the instance of the plaintiffs in the case, which
23 is styled on the top of the page, correct?

24 A Yes.

25 Q Is this, in fact, a deposition -- excerpts from a

1 deposition in which you were the person being deposed?

2 A It appears to be, yes, sir.

3 MR. McLEAN: Mr. Chairman, may I have this
4 document marked for identification?

5 CHAIRMAN DEASON: It will be identified as Exhibit
6 Number 64.

7 (Exhibit Number 64 marked for identification.)

8 BY MR. McLEAN:

9 Q Mr. Brown, you said in one of my earlier questions
10 you could not remember exactly when the utility began
11 construction; do you remember that question?

12 A Yes.

13 Q Would you look to Page 68 of the exhibit numbered
14 68 in the upper right-hand corner of the exhibit I just
15 handed you. And I read a question, "When did actual
16 construction of the system begin?" The answer is, "December
17 31, 1975."

18 A Right.

19 Q Is that still true?

20 A It must be. That's what I said. There was a --

21 Q And you said that way back when, when the memory
22 needed less refreshing than perhaps it does now?

23 A Yes, sir. This says actual construction, when we
24 started digging the well. My point before was that we
25 worked for about four years before that trying to get the

1 right to build the system. We were sued by people in
2 conjunction with Franklin County and the Eastpoint water and
3 sewer district to stop us. We had to litigate that. We had
4 to get DRIs, we had to do lots of things, but I think actual
5 construction must have started on that day. That's what it
6 said.

7 Q And you did your own suing during that time,
8 didn't you?

9 A We got sued, and we sued. It was a real trip to
10 get anything done on St. George Island back in those days.

11 Q I understand. In fact, generically speaking, and
12 addressing the subject of this lawsuit, tell me if my
13 characterization is wrong in any way, you drew a number of
14 permits, you drew a number of permits from Franklin County
15 and from other regulatory authorities, and as you began to
16 act upon those permits and so forth, Franklin County, at
17 least in your perception, began to be less enthusiastic
18 about your development. And in some instances they were
19 even selective about who could build and who couldn't, and
20 at some point you had enough of that, and sued Franklin
21 County, is that right?

22 A Yes, we sued Franklin County on more than one
23 occasion. They sued us on more than one occasion. And the
24 Eastpoint water and district sued us to stop us from drawing
25 water out of there, and there was lots of litigation.

1 Q And this litigation right here is the one -- this
2 deposition comes from the litigation that I was describing,
3 didn't it?

4 A This comes as a result of Franklin County's
5 refusal to give us a building permit on 16 Gulf front lots
6 about ten days after they gave another person permits to
7 build a condo project on 16 adjacent or almost adjacent
8 lots.

9 Q And you asserted an equal protection of the law
10 sort of theory on that lawsuit, did you?

11 A Yes, successfully.

12 Q Yes, sir. And you also successfully asserted an
13 equitable estoppel argument, didn't you?

14 A I believe that was successful, also.

15 Q And two things you had to prove in that --
16 incidentally that survived appeal, didn't it?

17 A It went all the way to the Florida Supreme Court
18 upon appeal.

19 Q Yes, sir. Now, in equitable estoppel, what
20 Leisure had to allege and prove was that they had acted to
21 their considerable detriment in reliance upon authority
22 given by Franklin County, and that the Court should remedy
23 that situation by telling Franklin County to permit the
24 development that you had in mind, right?

25 A Yes.

1 Q And the detriment that you alleged was, in fact,
2 the building of this water system, wasn't it? And you,
3 meaning Leisure, you said to the Court, "We built this water
4 system in reliance on the permits; they are now getting cold
5 feet or whatever about the permits, and you should order the
6 Franklin County Commission to honor their permits", right?

7 A Well, that was part of our case.

8 Q And that part was you said we spent a lot of money
9 on the utility system, right?

10 A Yes.

11 Q And that subject is addressed in this deposition?

12 A Yes.

13 Q And to jump forward a little bit, the County said,
14 "Well, you may have relied to your detriment, but you sold
15 the system for \$3 million and was thus made whole, and you
16 should go hence and take nothing", right?

17 A I don't know exactly what they said. That could
18 have been their position.

19 Q They addressed the \$3 million sale, didn't they?

20 A I'm sure they knew about the sale.

21 Q And it was their position that since you had sold
22 it for \$3 million, that you could hardly be heard to
23 complain about \$800,000 of expenditure in reliance, right?

24 A I didn't handle this case, and I don't remember
25 exactly what their positions were, but that sounds like

1 something they would have said.

2 Q And you replied, of course -- you described that
3 sale to them in a number of ways, didn't you?

4 A I haven't read this, and this has been, what,
5 15 years ago? I don't remember exactly how I described the
6 sale. I'm sure I described it. If they asked me about it,
7 I would have described it.

8 Q Okay. Well, we will get to it. I asked you
9 whether it was true when you testified in 1981 or words to
10 that effect, that, in fact, as of that date most of the
11 system has been built in 1976, and I think you said you were
12 not sure. Would you turn to Page 69 of the exhibit,
13 Line 11.

14 Question, "When was most of the construction
15 performed on the system?"

16 Answer, "1976."

17 Does that refresh your memory?

18 A That's the question and that's the answer, right.

19 Q Yes, sir. Okay. Now, in your rebuttal testimony,
20 again, you say on Page 44, "No consideration has been given
21 to additions to the system between the date of Mr. Bishop's
22 appraisal and the date the system was sold." Incidentally,
23 you don't say that there were additions in that paragraph,
24 do you, in that sentence?

25 A In that sentence, no, sir.

1 Q You say, "No consideration has been given to
2 additions." Had you said, "No consideration has been given
3 to the additions", it would have a very different import,
4 wouldn't it?

5 A Yes, sir, it probably could.

6 Q But you didn't say that. Let's see. So, you say
7 Mr. Bishop's study showed only a part of the system which
8 actually existed on 12-31-79, that's from your rebuttal
9 testimony, right?

10 A Yes.

11 Q Okay. Now, do you think that Mr. Bishop's study
12 showed only a part of the system as of June '78? Now,
13 that's the date of Mr. Bishop's study, of course. In other
14 words, my question is did Mr. Bishop's study show only a
15 part as of its own date?

16 A I really don't know, Mr. McLean. I haven't gone
17 back and done a take off of his study. He worked for us for
18 many years back in those days, and there was an MAI
19 appraisal at a million dollars cost in '77 that I refer to
20 here this deposition, and I have read that appraisal from Ed
21 Sears, and he says it's a cost appraisal based on
22 information from Mr. Bishop. And I don't know how that can
23 be if Mr. Bishop appraised it for less six months later.

24 Q But Ms. Dismukes didn't rely on that so far as you
25 know, did she?

1 A Didn't rely on the Ed Sears' appraisal?

2 Q Exactly.

3 A No, she picked out this one and two other
4 documents.

5 Q And your rebuttal case criticizes her picking out
6 the Bishop report, right?

7 A My rebuttal case is critical of the approach of
8 taking a 1978 appraisal and adding numbers from one or two
9 other documents and coming up with an absolute value at
10 12-31-87. I don't think that's a proper way to the value
11 the --

12 Q Well, it may not be, and we will explore the
13 notion of whether that's what she did later. But my
14 question now is on Page 10 of your rebuttal testimony, you
15 say, "Public Counsel is now trying to take an old appraisal
16 of only a part of the system that existed at 12-31-79. Now,
17 that seems to me to be criticism of that Bishop report. And
18 I'm trying to figure out if it had only part of the system
19 that existed as of -- I'm sorry, it is not a criticism of
20 the Bishop report, it's a criticism of Ms. Dismukes having
21 relied on the Bishop report, am I right?

22 A Well, it just points out that no consideration was
23 given to additions between the date of the report and 12 of
24 '79.

25 Q Okay. So you don't mean to criticize the Bishop

1 report for being incomplete as of 1978?

2 A I have not personally gone through and done a take
3 off. I have talked to Wayne Coloney and Frank Seidman, who
4 have, and they say that it's totally consistent with Wayne
5 Coloney's report and --

6 Q Well, I didn't ask you about that.

7 A I mean, I don't know whether or not the Bishop
8 appraisal included all of the property in place at the time
9 of the appraisal. I would have to assume that it did,
10 because I've heard Mr. Coloney and others say that they have
11 analyzed it and it does.

12 Q When you were establishing your detrimental
13 reliance in 1981, let's see what you said about the Bishop
14 report. Let's look at Page 124. At that point you said, "I
15 mean, this Bishop appraisal --" I'm reading from Line 2.
16 The witness: "I think we started off with the main two. I
17 think these as built -- I mean, this Bishop appraisal comes
18 as close as an overall expense of this is anything we have."
19 Is that right, were those your words?

20 A That says it comes as close as anything we have,
21 right.

22 Q Yes, sir. Now, let's look at Page 72 of the
23 exhibit, to Line 9. "This is an as built take off or
24 appraisal of the system after we got it built by Wilson M.
25 Bishop, Consulting Engineers, which establishes the

1 replacement cost of 908." You said that, right?

2 A Yes.

3 Q And you also said he was the consulting engineer
4 for the project, right?

5 A Yes.

6 Q Okay. Now, on Page 73, Line 16, "I think the
7 Bishop appraisal was concerned more with actual costs. He
8 did a take off of what it costs us, combining that with what
9 it would have cost to replace it, and come up with
10 900-and-something-thousand", correct?

11 A Right.

12 Q That's what you said then?

13 A Right.

14 Q And on Page 125, Line 21, "He determined that it
15 would cost \$908,000 to replace it. I don't know what he
16 determined we actually had spent, he determined that if we
17 did it again, it would cost us \$908,000," right?

18 A Right.

19 Q In Page 126, Line 24, "So what I'm saying is, he
20 took the system part-by-part and compared that system and
21 all of its elements with our books to verify what we spent
22 and then he discusses those in here," right?

23 A Right.

24 Q Pardon me for just a second. And look to
25 Page 120 and 121. Now, in your testimony on that occasion,

1 you talked about replacement cost a little bit, and you
2 talked about original cost. And I kind of wanted to get a
3 little better idea of what you were talking about then. On
4 Page 120, you say, "Now, I think I indicated the loan we
5 took out was for \$505,000, and we did a calculation from
6 again, and just making allocations, we came up with
7 something in the range of \$700,000 that would be more or
8 less directly related to the water system."

9 A What page are you reading on?

10 Q I'm sorry, Page 120 at the bottom, Page 121 at the
11 top. "Now, I see the number \$700,000 there, more or less
12 directly related to the water system. And then if you put
13 that on top of some allocations, such as legal fees to
14 myself, a big portion of Clayton Anderson's salary and
15 others, then you would get up closer to the \$900,000
16 figure," right?

17 A That's what it says.

18 Q Now, when you gave this deposition you were in the
19 business --

20 A Was that a question?

21 Q Yes, sir.

22 A I was in what business?

23 Q I'm sorry, I was just pausing there for a moment.

24 When you gave this deposition, it was in
25 connection with a lawsuit in which you were attempting to

1 establish detrimental reliance, is that right?

2 A Right.

3 Q And it was in your interest to state that
4 detrimental reliance, obviously true, but if anything you
5 wanted to make sure you stated enough, right?

6 A Well, I wanted to tell the truth.

7 Q Sure. You testified on this topic in 1981, right?

8 A Right.

9 Q Now, you say in your testimony up there in Line
10 44, "No consideration has been given to additions to the
11 system," et cetera. When you testified in 1981 you didn't
12 give any consideration to additions either, did you?

13 A No, I think I was just ballparking it off the top
14 of my head based on the Billy Bishop appraisal.

15 Q And if there had been some additions, when you
16 were approving detrimental reliance that would be a good
17 time to mention it, wouldn't it?

18 A Well, I could have mentioned it had I known about
19 any, or if I had documentation regarding it at that time.

20 Q Now, on Page 44, Line 18, there is a phrase which
21 you use and, again, I believe it's in the context of your
22 discussing Mr. Bishop's appraisal. You say, "It also leaves
23 out a large block of time during which the utility company
24 was undergoing tremendous expansion." Those are your words?

25 A Yes, sir.

1 Q Tremendous expansion and growth, I believe, it
2 says in the late 1970s, right?

3 A Right.

4 Q And one of the reasons why Ms. Dismukes shouldn't
5 have relied on the Bishop report is because it ignores that
6 tremendous expansion and growth?

7 A Well, it doesn't pick up all the costs connected
8 with the system, that's right.

9 Q Look to the page of the exhibit I handed you,
10 Page 99 and 100.

11 A Okay.

12 Q Look to Line 13. There is a discussion of a
13 \$2.8 million -- how is the \$2.8 million to be paid. How
14 does that \$2.8 million, how does that come to be discussed
15 in this deposition? Isn't it true that that's the note
16 which supported the sale?

17 A That was the purchase money note and mortgage,
18 right.

19 Q Okay. And when the County said, "Don't complain,
20 you spent 800,000 or 900,000 -- don't complain, you did that
21 because you've got 3 million", among the things that they
22 were interested in is -- or among the things you would like
23 to show is that you, in fact, didn't get that 3 million,
24 isn't that right?

25 A Well, I didn't get the 3 million. I don't

1 remember what I wanted to show, I haven't read this.

2 Q Well, in order --

3 A In fact, I've never read it.

4 Q In order to prove up -- are you hinting in any way
5 that it is inauthentic?

6 A No, I'm just saying that I don't remember -- you
7 keep putting motives on it. I mean, I've said that I didn't
8 get the money, and I didn't get the money.

9 Q Well, I mean to put motives on it. The County
10 countered your equitable estoppel argument with the fact
11 that you had been made whole by a sale of \$800,000 worth of
12 assets, or thereabouts, to \$3 million. Now, didn't it fall
13 your way to show that you had not, in fact, been made whole?

14 A Mr. McLean, as I said earlier, I don't know what
15 the County's position was. Tom Pelham handled this. I was
16 practicing law, I was not involved as a lawyer handling this
17 case. They took my deposition, and I testified about what I
18 knew at that time. But I haven't reviewed the pleadings, I
19 don't know what positions the County took or didn't take.

20 Q Well, let's look at the position you took in 1994
21 when you said the utility company was undergoing tremendous
22 expansion and growth. Look to Page 100, Line 7. The point
23 of discussion there, if you will, if you care to read
24 beforehand is how come you say you didn't get paid for the
25 system. And you are saying that the payment is far in

1 arrears. And your answer, your explanation for why it is
2 far in arrears is because the water system has not been able
3 to develop sufficient tap-ins customers and, therefore,
4 revenues from which to produce the income from which to pay
5 their indebtedness back to Leisure Properties. We have a
6 total, I think, of about 100 customers now over these many
7 years, whereas our projections showed more than that per
8 year, I believe, like 150 a year. Does that sound
9 consistent with your characterization of tremendous
10 expansion and growth, or is it inconsistent with that
11 characterization?

12 A I think it's consistent when you understand the
13 facts. We were running lines all over the island, we were
14 running lines in the plantation. We got a DRI. We
15 litigated, and fought, and went through two DRIs, and we
16 finally got approval to start developing down there in
17 November of 1977. We started developing land, and we
18 started running lines in the plantation and in the old
19 subdivision, but we did not have customers for those lines
20 at that time. And I think what I'm saying here is that
21 there was not sufficient revenue to pay \$15,000 a month debt
22 service. Which there was not.

23 Q And you tell the Commission now that the utility
24 company was undergoing tremendous expansion and growth.
25 What you meant to say, then, if I understand your testimony,

1 was tremendous expansion and growth of facilities, but not
2 customers?

3 A Yes. We were building a lot more plant than we
4 could justify in terms of the customers that were hooking up
5 at that time.

6 Q And you didn't mention any of that plant in your
7 detrimental reliance lawsuit, right, in 1981?

8 A I don't remember what I mentioned or didn't. I
9 mean, I mentioned whatever it says here. Whatever it says
10 is what I testified to back then.

11 Q So when you went to the County with a detrimental
12 reliance theory, are you saying you just didn't tell them
13 about all the detrimental reliance that you had?

14 A No, I'm saying that we filed a lawsuit, we alleged
15 detrimental reliance, and I testified about what I knew or
16 understood back then. I don't know that I said what growth
17 we had and what growth we didn't have. They were trying to
18 stop us in 1977, early '78. After they give us a DRI, then
19 they wouldn't give us permits and that's when we filed suit.

20 Q And you came forward to show what your detrimental
21 reliance was, and you handed them the Bishop study, and the
22 handed them the Aero study. But you didn't say anything
23 about the tremendous growth, you didn't say anything about
24 the additions to the system which you hinted in your
25 rebuttal testimony, you just handed them the Bishop report?

1 A I don't remember handing it to them. I see that
2 they took my deposition, and I referred to the Sears report,
3 the Sears MAI appraisal for a million dollars and something
4 in '77, and I referred to a Bishop report in '78 of 900,000,
5 apparently.

6 Q Would you look to Page 72?

7 A Okay.

8 Q That's where your lawyer says, "I would like to
9 show you this document and ask you to explain what it is?"
10 And your answer is, "This is an as-built take off or
11 appraisal of the system after we got it built by Wilson M.
12 Bishop, which establishes the replacement cost at 908."
13 Now, that's what I meant when I said handed it to them.
14 Would you agree that it is the evidence which you held forth
15 to show detrimental reliance?

16 A It appears to me that Mr. Pelham handed me an
17 appraisal, and I said this was an as-built after we got it
18 built, meaning the basic plant and all. I think that's what
19 was established by the Bishop appraisal. I heard Wayne
20 Coloney testify that there wasn't near as much plant in that
21 appraisal as he thought, as he put in his for these early
22 years. But this had the basic one well, and one line, and
23 one storage tank, and had some part of the distribution
24 system. It did not have the line into the state park, I
25 don't believe, and I'm not sure it had the lines. I feel

1 sure it didn't have all the construction that had been done
2 as of December '79.

3 Q When it was in your best interest to marshal up
4 all the evidence you had -- this will be the last question
5 on the topic -- when it was in your best interest to marshal
6 up all the evidence you had to show the judge to what extent
7 you had relied on Franklin County's permits, you gave them
8 the Bishop report. What else did you give them?

9 A Mr. McLean, I was very busy back in those days and
10 was not that familiar with this utility operation. The
11 lawyers took my deposition, I knew about the Bishop study in
12 '78, I knew about the Sears MAI appraisal in '77, I referred
13 to both of them in the 900 to a million dollar range. I
14 felt like that was enough, and I guess my lawyers felt like
15 that was enough detrimental reliance. We weren't trying to
16 show every dollar that could be capitalized to the system, I
17 don't believe. I think a million dollars was probably
18 sufficient.

19 Q If you failed in your detrimental reliance
20 argument what would have become to your development on St.
21 George Island Utility Company, if you can say?

22 A If we had lost that particular law suit we would
23 not have been able to develop 16 lots on the Gulf in the old
24 subdivision. It didn't directly relate to the plantation
25 and it didn't relate to everything else we were doing. I

1 don't know what would have happened.

2 Q So you were too busy in those days to really check
'3 out and see whether you had marshaled up all the detrimental
4 reliance evidence, is that your testimony?

5 A I know just based on what we have said here today,
6 I know for a fact that I did not marshal up all the cost of
7 this system, because there were more costs of this testimony
8 than is reflected in the Billy Bishop appraisal.

9 Q You weren't too busy to file the lawsuit, were
10 you?

11 A I wasn't too busy to respond to a lawyer's
12 deposition.

13 Q That was your lawyer's deposition, wasn't it?

14 A We were not too busy to hire a lawyer to sue
15 Franklin County, that's correct.

16 Q And you weren't too busy to pursue it all the way
17 to the Florida Supreme Court, were you?

18 A We won it on summary judgment, I believe, at the
19 circuit court level, and the County appealed it to the First
20 DCA, and then appealed it to the Florida Supreme Court.
21 They wrote a lengthy opinion and we won it all the way up.
22 And I testified in that, and was involved to some degree,
23 but what I'm telling you is that I did not understand and I
24 didn't have any reason to try to go through and analyze all
25 of the costs of the utility system. The costs shown by

1 those two appraisals, around a million dollars actual cost,
2 as I referred to, seemed sufficient.

3 Q I believe when you said actual cost you said
4 700,000, didn't you?

5 A Whatever.

6 Q And what you're asking the Commission to believe
7 is that you were just too busy to get all the detrimental
8 reliance evidence and might have just got some of it, right?

9 A No, I'm saying if we had gone through and analyzed
10 this and spent all the ten of thousands of dollars we have
11 spent here recently, in the '89 case, I would have been much
12 more conversant in this deposition to understand what the
13 overall cost that should have been and were capitalized and
14 charged to the utility plant. This was just a very brief
15 appraisal by two different appraisers as of '77 and '78. I
16 didn't try to analyze or get accounting help or anything
17 else to really understand what the costs were. But we soon
18 found out, we had an IRS audit right after this deposition.

19 Q I didn't ask you about any of that.

20 A We know a lot more of it now.

21 MR. McLEAN: Pardon me, I object to his
22 continuing, because it is not responsive to any question
23 which is outstanding.

24 CHAIRMAN DEASON: The objection is sustained and
25 we are going to take five minutes.

1 (Off the record.)

2 CHAIRMAN DEASON: Call the hearing back to order.

3 Mr. McLean.

4 BY MR. McLEAN:

5 Q Mr. Brown, you said that you had not read the
6 deposition, and I wanted to make sure that there is not an
7 implication there that you did not have the opportunity to
8 read the deposition. Isn't it true that you asked Ms.
9 Dismukes a number of questions about this deposition in her
10 deposition?

11 A No, I didn't ask her a number of questions about
12 it, I asked if she had anything like this, and she said yes,
13 she had a deposition I had given years ago and we
14 subsequently got a copy. And all I'm saying now is I
15 haven't read this and, in fact, I've never read it. I have
16 been reading it here this afternoon, and there are several
17 things that are a little different than what you're
18 indicating, but --

19 Q Well, we will leave that to your lawyer to point
20 out, Mr. Brown, if it's true. By the way, did you waive
21 reading and signing of this deposition when it was given?

22 A I don't remember. I probably did. It's not my
23 practice to always read them.

24 Q Let's look at the transaction, the sale of St.
25 George Island Utility Company, or the water assets to St.

1 George Island Utility Company. The transfer price was
2 roughly \$3 million?

3 A Yes, sir.

4 Q And you reported that \$3 million to the Public
5 Service Commission, didn't you, as your new investment? I
6 think I asked you that already, I believe.

7 A I believe so.

8 Q And your answer was yes.

9 A That's my recollect.

10 Q Yes, sir. And you said a similar representation
11 to the Internal Revenue, didn't you?

12 A We filed tax returns that reflected that sale,
13 yes, sir.

14 Q And you showed that the cost to the utility entity
15 was \$3 million, correct, or thereabouts?

16 A Yes, to the utility. I think we had zero cost on
17 the tax return, a zero cost basis to the utility company --
18 I mean, to Leisure, and a \$3 million purchase price to the
19 utility company.

20 Q And you attempted, in fact, you did file returns
21 which showed a depreciation of that \$3 million, correct?

22 A That's correct.

23 Q And you maintain the \$3 million was the tax basis
24 in the utility?

25 A We maintain that that was the utility company's

1 investment and depreciable tax base.

2 Q Uh-huh. You did not allege, or did you need to
3 allege, was the IRS remotely interested, in fact, in what
4 your original cost was in those assets when they were
5 dedicated to the Public Service --

6 A Yes, they were very interested in that.

7 Q I think --

8 A The IRS was.

9 Q That they were interested in original cost in the
10 same way this Commission uses the term?

11 A Yes.

12 Q Well, then why did you say \$3 million to them?

13 A To the IRS?

14 Q Yes, sir.

15 A We said 3 million because that was the total of
16 the cash and the notes. The question you asked me was what
17 was the IRS interested in, and the answer is that they were
18 very interested and, in fact, intensely audited for three or
19 four years the question of Leisure's original cost.

20 Q Meaning the price they paid to --

21 A The price that it cost Leisure to build it,
22 because Leisure primarily built the system, and the cost
23 that could be capitalized and charged to the system is what
24 the IRS was interested in. They disagreed with my
25 \$3 million --

1 Q With your 3 million?

2 A -- figure.

3 Q Was this an arm's-length transaction, the sale to
4 the utility? I think I asked you that before. Let me skip
5 it. I did ask you that before. Did you represent to the
6 IRS that this was an arm's-length transaction?

7 A We represented the facts to the IRS, and we argued
8 to the IRS that it was arm's-length, because there was
9 1,300,000 in cash and notes from people that were very
10 astute investors represented by counsel and tax accountants,
11 and we argued that it was a totally arm's-length
12 transaction.

13 Q That's what you told the IRS, a totally
14 arm's-length transaction?

15 A We argued to the IRS that it was arm's-length.
16 That it was arm's-length enough to justify treatment as an
17 arm's-length transaction. That was one of the issues in the
18 audit which went on for three or four years.

19 Q Did you tell the IRS that it was referring to the
20 note, that it was a note from us to us?

21 A I gave them the original note and explained the
22 facts and circumstances.

23 Q And while you were maintaining that it was
24 arm's-length?

25 A It really is not a note from us to us, it's a note

1 from a syndication that's 90 percent owned by other people,
2 and those other people are the people who put up the
3 \$1,300,000. So we tried to argue that that was arm's-length
4 enough to qualify as an arm's-length transaction.

5 Q Would you turn to Page 97 of your deposition,
6 please, sir.

7 A Okay.

8 Q Line 19. Or Line 16.

9 A Right.

10 Q "How was the \$3 million paid by St. George Island
11 Utility Company to Leisure Properties, Limited, or how it
12 was to be paid?

13 Answer: "It never was paid. It was just a note
14 from us to us, basically. I mean, we signed the note."

15 A Right.

16 Q You said that then?

17 A Yes.

18 Q Did you say that to the IRS?

19 A We argued to the IRS that this was enough of an
20 arm's-length transaction to qualify for the tax treatment on
21 the tax return, because even though Leisure signed the note
22 to Leisure, Leisure did so in a representative capacity for
23 90 percent of investors who put up 1,300,000 cash and notes.

24 Q Look at Line 22. "We were the seller and buyer,
25 and we signed the note and mortgage to ourselves." Did you

1 tell the IRS that you were the seller and buyer?

2 A We told the IRS exactly what the facts were, and
3 they looked at the documents and formed their own conclusion
4 as a result of three or four years of litigation and audits.

5 Q Let's look to Page 99.

6 A Okay.

7 Q Up at the top -- well, let's look back to Page 98.
8 You say, "So that, then --" your lawyer says, "So that,
9 then, is the explanation for your statement that John Stocks
10 and Gene Brown gave the note for 2.8 million to John Stocks
11 and Gene Brown." That's what you said in 1981?

12 A I said exactly what this says I said in 1981.

13 Q Okay. Did you tell the IRS those things?

14 A I told the IRS exactly what I just said. We met
15 with them and their accountants and lawyers over three or
16 four years and we argued about this, and this was a big
17 issue as to whether this was arm's-length. And we finally
18 reached a result with them.

19 Q Did you say the words to the IRS that this is just
20 a sale from John Stocks and Gene Brown to John Stocks and
21 Gene Brown?

22 A I seriously doubt if I told the IRS that.

23 Q And I bet you didn't tell them it was a note from
24 us to us, did you?

25 A I probably wouldn't have used those words.

1 Q And you wouldn't have said we were the seller and
2 buyer, and we signed the note and mortgage to ourselves?

3 A We probably have explained that Leisure signed the
4 note for the utility company and Leisure was the mortgagee
5 and payee.

6 Q So the IRS decision as it came out was based
7 somewhat on the way you represented that sale, wasn't it?

8 A Oh, the IRS decision was based on all of their
9 lawyers and engineers and auditors in an intensive
10 litigation over three or four years. I don't think they
11 relied on my characterization that much. We had two or
12 three tax lawyers representing us.

13 Q And saying those things, right?

14 A And saying the things, basically, that I just
15 said. That we felt like this was an arm's-length
16 transaction.

17 Q And that's what you told the IRS? And you
18 represented it that way to the Commission too, right?

19 A We have always represented this the way that it
20 is. I mean, it's like I said before, you can answer yes or
21 no. It's an arguable point as to how arm's-length it was.
22 I think to the investors who put up the cash and the notes,
23 it was arm's-length, because they were putting up real
24 consideration for the system.

25 Q So according to the scenario that you set up, you

1 take an 8 or \$900,000 utility, sell it from Gene Stocks and
2 John Brown (sic) to Gene Stocks and John Brown, and tell the
3 Public Service Commission that it's worth 3 million, and
4 expect a return on 3 million?

5 A No, that's not at all true.

6 Q Okay. Let's substitute in 2.2 million for the 3,
7 and see how that works. Is that what you're telling me?

8 A We take the position after the IRS litigation and
9 settlement in which all the costs, original costs were
10 capitalized to the system, they came up with a total figure
11 of basically 2.2 million. And from that day till this, that
12 has been reflected on all financial statements as being the
13 depreciable original cost tax basis.

14 Q You routinely reported the \$3 million number to
15 the Commission, didn't you?

16 A We reported the \$3 million figure to everybody.

17 Q Well, except the Franklin County court, right?

18 A I told the Franklin County court what the deal
19 was.

20 Q You told the Franklin County court that that sale
21 shouldn't make a bit of difference and that it did not
22 offset your detrimental reliance, isn't that what you told
23 them?

24 A No, I certainly did not tell them that.

25 Q Well, then why did you tell them it was just a

1 sale from Gene Brown and John Stocks to Gene Brown and John
2 Stocks?

3 A I was answering questions of their lawyer, and I
4 explained that Leisure Properties signed a note to Leisure
5 Properties. I explained to them that I did not know the
6 overall cost of the system, and that to find that out I
7 would have to have auditors and accountants determine what
8 the cost was. But I did argue then that we had at least
9 900,000 to a million dollars in it, and that seemed like
10 enough. I said to really get a cost on it you would have to
11 have a complete audit. That's what I told the Franklin
12 County court reporter. I don't think we ever got to court.

13 Q You don't think this deposition was submitted in
14 evidence?

15 A This deposition was used as part of the summary
16 judgment; we never had a trial.

17 Q Well, summary judgment is issued by a judge, is it
18 not?

19 A Yes.

20 Q Did I say anything about trial?

21 A No.

22 Q Good. And this deposition, in fact, is cited in
23 the appellate case which arose from that case, didn't it?

24 A It probably is.

25 Q Would you turn to Page 182 of the deposition

1 exhibit, please, sir. Now, their lawyer was cross examining
2 you at this point, I believe?

3 A Right.

4 Q And you said, among other things on 181, "Since
5 it's essentially a sale from us to us." Then the other
6 lawyer said, "Well, that's not the way you reported it to
7 the Public Service Commission, is it?" And you said, "Yes."

8 The question: "The Public Service Commission
9 treats Leisure Properties, Limited as the owner and operator
10 of public utilities?"

11 "Answer: If they read that report they would read
12 it as being a sale from Leisure Properties to Leisure
13 Properties in substance, if anybody analyzed that
14 transaction and knew what they were doing."

15 Is that a correct reading?

16 A Where are you reading?

17 Q I'm reading from Line 8 on 82.

18 A That's what that says, right.

19 Q Right. And that's what you said, isn't it?

20 A Yes. And that's what I still say. That nobody
21 ever has attached a cost basis based on \$3 million. The IRS
22 and the PSC and everybody else that I have ever seen that
23 has looked at this thing that had any expertise, has gone
24 back to original cost of Leisure as being the depreciable
25 tax basis and the investment tax basis.

1 Q So you're saying you didn't report -- well, you
2 did, in fact, report 3 in this year, didn't you, in 1981?

3 A We reported 3 in '79 and 80. And at some point I
4 think I referred in this deposition I just noticed that I
5 talked in here about the intensive audit with IRS that we
6 were ongoing. So by this time they were already auditing
7 those returns. We took the position that it was a
8 \$3 million sale, but what I'm trying to explain is that the
9 Public Service Commission, the IRS, and everybody else that
10 has ever looked at this has never accepted that as the cost
11 basis of the system. They have always looked to original
12 cost of Leisure to come up with the actual cost of the
13 system. They have ignored this sale for those purposes.
14 The PSC has, and I think the IRS did.

15 Q The IRS said 1.55, right? That's what they said
16 your original cost was?

17 A No, they never said that.

18 Q Didn't they? What did they say?

19 A They said our original cost was 2.2 million.

20 Q No, sir. That's what you settled on, isn't that
21 correct?

22 A No, that's what they said. That's what they
23 agreed.

24 Q Do you say that they did not send an auditor out
25 and do their own study and come up with 1.55?

1 A They sent an auditor out -- they never sent an
2 auditor out, they sent two engineers out to see what -- you
3 could go down there and issue contracts and just build that
4 system. We argued successfully, I think, that that was not
5 the entire cost of the system. That you had to capitalize
6 things like two DRIs, lawsuits with the county, lawsuits
7 with the people in Eastpoint, overhead, there were lots of
8 costs that had to be added to that to get an actual cost,
9 which is the same thing I said in this deposition in '81.

10 Q I understand. The IRS said 1.55 and you said 3,
11 and you settled on 2.212?

12 A They didn't say that was our cost. They said that
13 you -- they said in their opinion they could go down and
14 rebuild it for that.

15 Q That would be replacement cost, wouldn't it?

16 A Replacement cost. But we took the position, and I
17 think successfully, because it was true, that on St. George
18 Island it's not like Tallahassee, or maybe that's not a good
19 example anymore, but you just can't go out and issue a
20 contract and say, "Go build a system." You've got to have
21 lots of things that go before that, such as land clearing.
22 A lot of that was probably capitalized on Leisure's books,
23 for example, to develop land and land under development.
24 They didn't take into account that you had to go through and
25 clear forest, and kill alligators, and drain swamp, and do

1 all the things we had to do to build this system.

2 Q Congratulations.

3 A Your clients are drinking the water.

4 Q Are you saying that the IRS -- you just gave me a
5 great treatise on what your position was, is that right?

6 A It wasn't very great. It's just the type of
7 things -- I have learned some accounting, and I have learned
8 something about NARUC and capitalizing costs.

9 Q I didn't ask you any of that. Let me ask the
10 question again. The paragraph or so which you just provided
11 to me was a summary of the position that you took before the
12 IRS, wasn't it?

13 A Leisure Properties --

14 Q Let me ask for just a yes or no, and then you can
15 do as you will?

16 A Yes. That is the position taken by Leisure
17 Properties, Limited and the utility company.

18 Q Right. That's all I need to know.

19 A This was an audit of both entities, and we took
20 the position, as I did back in '81, that to really know the
21 cost of this system in 1981, I said to get it, you've got to
22 sit down and get somebody's professional opinion. I refused
23 to -- they asked me the question, "Do you know how much you
24 spent on the water system that's at issue?" And I answered,
25 "Well, there is no way to know that with certainty. As I

1 said, you would have to get somebody's professional opinion.
2 You would have to have somebody qualified to go in and audit
3 the books and do a normal accounting audit procedure and
4 determine what share of overall overhead costs should be
5 allocated to the water system and should be allocated to go
6 somewhere else." That's what I said in '81, and that's what
7 I still believe. And that's what was done between '81 and
8 now.

9 MR. McLEAN: Pardon me, Mr. Brown. Mr. Chairman,
10 I asked the witness a question if his proceeding paragraphs
11 was a summary of the position that he took before the IRS.
12 The answer was a yes or no, and the explanation which
13 followed it was a reiteration of the same position all over
14 again which I didn't ask for. It is not responsive to the
15 question and I move it stricken from the record.

16 CHAIRMAN DEASON: I'm going to deny the motion,
17 but I am going to recommend and encourage very strongly to
18 the witness to try to answer questions yes or no, and to the
19 extent you need to explain the yes or no, please do so, but
20 do so briefly and do not go out on tangents and bringing in
21 information that has already been adequately covered before.

22 BY MR. McLEAN:

23 Q Now, changing focus to the position of the IRS, is
24 it true that the IRS position in summary was that the
25 replacement cost was \$1.55 million?

1 A The IRS --

2 Q May I ask you for a yes or no?

3 A Yes, if I can explain.

4 Q Yes, sir.

5 A The IRS, as a means of verifying our position that
6 the cost was greater, they had two engineers go down and do
7 a replacement cost analysis of the system and they came up
8 with \$1,550,000 as of 12-31-79, plus the line into the state
9 and some of those things. They did not represent that to be
10 all of the cost that Leisure Properties had incurred in
11 developing this system. We took the position that we had
12 costs as of 12-31-79 greater than that.

13 Q I understand your position. I'm asking about the
14 IRS position.

15 A Their position was that we could replace this
16 system -- their position was, in summary, that as of
17 12-31-79, this system as it existed on that date could have
18 been replaced for \$1,550,000 plus the line to the state park
19 and some things that are explained in their engineering
20 appraisal.

21 Q I understand. Now, would you believe me if I
22 ventured -- or let me venture an observation and ask if you
23 agree with it. That the number 2.12 is about halfway
24 between the number 1.55 and the number 3?

25 A It's a little bit closer to the IRS side it looks

1 to me, but it's --

2 Q I didn't ask you about IRS. I just wanted to know
3 the arithmetic.

4 A It's somewhere between. I haven't figured out
5 exactly where.

6 Q So it's fair to say, for whatever reason, that the
7 IRS settled for a number about halfway between what they
8 said and what you said, right?

9 A They settled, Mr. McLean, for a very detailed
10 capitalized plant account-by-account and the total was
11 2,216,000 or thereabouts as our actual cost at 12-31-79.

12 Q I want to ask you about some of the other issues
13 that they dealt with. I'm going to ask you about some of
14 the other issues that the IRS determined. Or settled for,
15 I'm sorry, I don't think they determined it, did they? They
16 settled, isn't that correct?

17 A The appellate hearing examiner made a
18 determination.

19 Q That the settlement was reasonable?

20 A And they provided audit computations for each of
21 the taxpayers and they provided us with a detailed list of
22 the investment and tax depreciation base account-by-account
23 and that's what has been used from that time to this. And
24 that was like \$2,212,480 plus a few other additions broken
25 down by all the various accounts with depreciable

1 capitalized and all of that.

2 Q I understand. I'm going to ask you a question
3 about some of the other things the IRS might have
4 considered. Let me run through the list and you can tell me
5 whether they also settled those things. You all allege
6 shorter lives for depreciable assets than the Commission
7 uses in the service preferred Commission rates, is that
8 right?

9 A I don't recall.

10 Q You don't know whether they dealt with that issue?

11 A Yes, I know that they dealt with it. That's
12 spelled out on the final audit report.

13 Q That's the gist of my question, did they deal with
14 it?

15 A They dealt with it. They dealt with it
16 account-by-account and gave useful lives ranging from 10 to
17 60.

18 Q And you all had taken two months -- you had taken
19 an entire years depreciation based on two months of 1979,
20 right?

21 A Yes.

22 Q And they dealt with that?

23 A I think they agreed with us on that, yes, sir.

24 Q And you depreciated the office and warehouse space
25 using 200 declining block, the IRS said 150 percent, they

1 settled that?

2 A We settled all of those issues.

3 Q Okay. Well, let me ask you about the next couple
4 of issues, and I will ask them fairly quick. You took ITC
5 on land, IRS said the land was not entitled to ITC?

6 A That's right.

7 Q You took ITC on new section property, IRS said it
8 was used property?

9 A This 1250 property, \$100,000 worth, we argued
10 about that and finally they gave in, I believe.

11 Q And the IRS settlement dealt with all of that,
12 right?

13 A The IRS settlement dealt with every aspect of
14 this --

15 Q Great. I want to ask you some -- go ahead.

16 A -- new and used property.

17 Q Sure. I want to ask you some questions about your
18 annual reports?

19 A Okay.

20 Q May I ask you some generic questions, if you will.
21 The utility has filed annual reports with the Commission for
22 a number of years?

23 A Yes, sir.

24 Q All right. In March of this year, Mr. Brown, the
25 Citizens, by way of Request for Production of Documents

1 Number 74, asked you to provide the Company's financial
2 statements, income statement, and balance sheet from 1979 to
3 the present, is that correct?

4 A Yes, sir.

5 Q And what you furnished us, I believe, was the
6 exhibit which I have just furnished you, or arranged to be
7 furnished, exclusive of the first page, which is our own
8 work. But from Page 2 through Page 24 is what you all
9 provided us?

10 A Right.

11 Q Were you responsible for discovery responses such
12 as these?

13 A In a general sense, I guess I'm responsible for
14 everything with the utility company. I did not personally
15 do this. I think that we did not have the financial
16 statements, detailed financial statements all the way back,
17 so somebody apparently pulled the statements out of the
18 annual reports.

19 Q All right. So it's fair to say that this exhibit
20 is pulled from the annual reports, is that right?

21 A This appears to be copies of schedules, balance
22 sheet, and income statement, P&L statements out of the
23 annual report.

24 Q And it's your annual reports, right?

25 A Yes, sir.

1 Q Do you know whether Ms. Withers pulled that
2 exhibit together for you?

3 A No, I don't believe she did.

4 Q Do you know who did?

5 A I believe Jeanie Drawdy pulled that together.

6 Q Now, these are the annual reports which are
7 required by Commission rule, to state the obvious, right?

8 A Yes, sir.

9 Q Now, in each of these annual reports there is a
10 certification that the information and statements presented
11 as to the business affairs of the utility were true,
12 correct, and complete for the period they represent; do you
13 know whether that's true?

14 A I don't think these reports are true, accurate,
15 and complete.

16 Q Well, that's not my question. My question is is
17 there a certification on each of the annual reports to that
18 effect?

19 A Yes, the certification says whatever it says.

20 Q Great. Did you sign the certification for these
21 various years?

22 A I'm sure I signed some of them. I may have signed
23 them all, but I'm sure I remember signing some, some other
24 people may have signed others.

25 Q Well, that's a matter of some interest to us,

1 Mr. Brown. Would you like me to go through each annual
2 report and ask you if you signed it, or are you willing to
3 concede that the annual reports, you signed them?

4 A I'm willing to concede whatever they say,
5 Mr. McLean. I haven't look at them. I know that I signed a
6 lot of annual reports, I'm just trying to indicate that I'm
7 not sure I signed every one of them. I think that I'm
8 responsible for those annual reports. People that work for
9 me prepared these numbers.

10 Q Well, Mr. Brown, it's a crime, isn't it, to
11 furnish false information to a public servant knowing that
12 the public servant might rely on that information and
13 knowing that the information is not true?

14 A I never signed anything at the time knowing it was
15 not true.

16 Q I understand. But my question was do you know
17 whether that is, in fact, a crime in the State of Florida?

18 A I think there are certain crimes if you have a
19 criminal intent and if you commit a crime you're guilty fo a
20 crime. I have not done that.

21 Q I understand. Does reckless disregard
22 occasionally amount to intent?

23 A I don't know. That's more legal speculation.

24 Q Well, let me ask you a different sort of question.
25 Do you want to draw distance from your certification in

1 these annual reports from where you are today? Do you want
2 to say that certification really wasn't seriously
3 undertaken, because I can accept that?

4 A It was seriously undertaken, but as you know, and
5 as the Commission knows, we have been cited time and time
6 again for having incomplete and inaccurate financial
7 records. And I have argued that for the last six or eight
8 or ten years, and we finally have good complete accurate
9 records. But over the years, they have been less than
10 complete and accurate in various respects. I have signed
11 these financial statements, they were based upon the best
12 information I had at the time and I thought they were true.

13 Q Did you ever represent it to -- oh, you thought
14 they were true?

15 A I have always thought that what I signed was true.
16 I have learned since I have become directly involved in
17 managing this company that we have been deficient in
18 accruing and capitalizing expenses, and we have been
19 deficient in a lot of other ways.

20 Q So you just learned that recently?

21 A No, that has been a long time coming. I have
22 learned that through -- I began to understand that in the
23 last case, and I have learned that in more detail since
24 then.

25 Q Are you prepared to tell the Commission that the

1 annual reports that you certified to were false?

2 A No, I'm not prepared to say they were false at the
3 time they were filed.

4 Q Well, truth or false, Mr. Brown, I don't think
5 changes over time, does it? The annual reports were true or
6 false when they were filed?

7 A No, that's not true, Mr. McLean.

8 Q Okay. Are they true or false now?

9 A I would have to go through and analyze them to
10 know exactly what you're talking about. And I think a lot
11 of these things would be subject to debate and argument
12 regarding what these account balances are. That's what we
13 are arguing about now.

14 Q Okay. So what you would like us to do is to
15 impeach the stuff that you filed with the Commission and
16 certified it true?

17 A I'm not asking you to do anything.

18 Q Okay. Well, I'm asking you to tell the Commission
19 whether these annual reports are true or false now?

20 A I'm not prepared to do that, because I do not --
21 have not reviewed them, have not looked at them, and there
22 is 10 or 15 years of annual reports with very complex
23 numbers, and I can't sit here and say that all of this is
24 correct from an accounting point of view, or that it's
25 incorrect. I can tell you that I have become convinced over

1 the past years that our accounting records were not accurate
2 and complete, and we have been endeavoring to bring those up
3 to a standard where they are, and I think we are there at
4 this point. But for me to sit here and say that every
5 statement in every annual report for the last 10 or 15 years
6 is absolutely correct is not something I could do.

7 Q How about true, correct and complete? You
8 couldn't do that either, could you?

9 A I could say they are true as of the date that I
10 signed them based on the information I had. I could say
11 that I have become convinced since then that that our
12 accounting records were not everything that they should be
13 under NARUC and PSC accounting, and we have been working
14 hard to bring that accounting up to the right level. And I
15 think we have done that.

16 Q Okay. That's fair. When you signed them you said
17 you were prepared to say that they were true then, does that
18 include complete when you signed them?

19 A I think true includes complete, yes.

20 Q Great. What sort of effort did you make at the
21 time you signed each of the annual reports to ensure that
22 they were true, accurate, and complete?

23 A The only effort I made was to hire accountants to
24 keep up with this and fill them out and give them to me to
25 sign.

1 Q So if they were not true, it's the accountant's
2 fault, not yours?

3 A No, I didn't say that.

4 Q Okay. Well, what did you say? What was that
5 comment made --

6 A I said just what I said. I said that I did not
7 personally go through and try to become an accountant or CPA
8 and do all of this. And as I sit here today, I don't know
9 what numbers might be inaccurate. Maybe they are all
10 absolutely accurate, but I can't sit here and say that they
11 are all completely true, accurate, complete, based on what I
12 know about the accounting history that we have gone through.

13 Q How many of these annual reports did Ms. Withers
14 have something to do with?

15 A She probably had something to do with them up
16 until the past several years, and she may or may not have
17 had much to do with them after that. She has only been
18 working as an consultant a limited time, since the past few
19 years. We have had other accountants who have worked on
20 these the last few years.

21 Q Addressing the issue of accountability, you're not
22 suggesting, are you, by referencing that you hired
23 accountants and so forth that you can in any way -- are you
24 suggesting that you should in any way escape the issue of
25 accountability with respect to the accuracy of these annual

1 reports at the time you signed them?

2 A No. I have said from the beginning I am
3 responsible for everything that happens with this utility
4 company and nobody else is. The buck stops here. But for
5 me to sit here and say that I know that all of these reports
6 for all of these years are absolutely correct in every
7 respect, that's just not possible to do.

8 Q Well, I wouldn't ask you to do that, Mr. Brown.
9 I'm just asking you whether they were accurate at the time
10 they were filed?

11 A I believe them to be accurate at the time they
12 were filed.

13 Q But now you have changed your mind?

14 A Since they were filed, I have become convinced
15 that we had accounting deficiencies, and I agree with the
16 Commission's order in the '89 case that we had accounting
17 deficiencies.

18 Q Speaking hypothetically, Mr. Brown, do you suppose
19 they were inaccurate to the tune of half of your rate base?

20 A I would doubt that.

21 Q Let's explore that, Mr. Brown. Let's look --
22 incidentally, the 3 million, let's look at the 1980. You
23 don't have your 1979 annual report, right? You didn't give
24 us that. I think the first page of the exhibit says --
25 Page 2, rather, says the Company does not have a copy of the

1 requested financial information for '79. That's still true,
2 isn't it?

3 A Right.

4 Q Let's look to -- okay. Let's look to Page 4,
5 where you show a plant balance of -- at the top of the page,
6 at the first of the year it's 3,692,043. At the end of the
7 year it's 3,072,306; do you see that?

8 A I see those figures.

9 Q That's --

10 MR. PFEIFFER: I object to testimony from exhibits
11 not in evidence.

12 MR. McLEAN: Oh, there is a clear remedy. Mr.
13 Chairman, would you mark that as an exhibit, please.

14 CHAIRMAN DEASON: This exhibit will be identified
15 as Exhibit Number 65. Mr. Pfeiffer, are you still
16 objecting, since it's not in evidence yet?

17 (Exhibit 65 marked for identification.)

18 MR. PFEIFFER: Yes, sir.

19 CHAIRMAN DEASON: I'm going to overrule the
20 objection. We will allow the questions. This exhibit is
21 being presented for purposes of cross examination and I will
22 allow the questions and then we will consider whether the
23 exhibit should or should not be admitted at a later time.

24 BY MR. McLEAN:

25 Q At the top of the page, Mr. Brown, there are those

1 \$3 million numbers which I read you. That is the \$3 million
2 which arose from the sale from us to us, and that you
3 reported to the Commission, is that right?

4 A That is the total plant account that we showed
5 from the date of that syndication. At least through the IRS
6 audit, we took the motion that was the total plant.

7 Q But before Franklin County, of course, you said
8 that was a sale from us to us, right?

9 A Yes, for \$3 million.

10 Q Now, derivatives of that \$3 million recur all the
11 way through this exhibit in the annual reports, don't they?

12 A Derivatives do. After the IRS audit, we got back
13 to the original cost of 2.2 million or thereabouts for
14 depreciable cost base.

15 Q Can you show me where you did that in any of the
16 annual reports?

17 A Well, if I look at them here I probably can.

18 Q You will generally find those on the balance sheet
19 portion of the exhibit. The fact is, Mr. Brown, you
20 continued to report the \$3 million number to the Commission
21 even in the face of the IRS settlement, didn't you?

22 A We have continued to report whatever is here. I'm
23 not sure the IRS settlement changed our plant account
24 balance. It changed the portion that could be depreciated
25 as relating to original cost and investment to bring it back

1 to 2.2, but there still is to -- to make the books balance,
2 you need a debit and a credit and there is still a liability
3 of the insurance of the utility company of 3 million, so I
4 imagine the plant account remained around that level. But
5 the books have been changed after the IRS settlement to go
6 back to 2.2 million of original cost or depreciable cost and
7 investment.

8 Q Well, we will see about the books, but the annual
9 report you told the Commission didn't change, did it?

10 A I haven't looked at these, Mr. McLean, I don't
11 know.

12 Q Have a look, Mr. Brown. There is a quick way to
13 do it. If you look on Page 1, there is a summary schedule
14 we prepared, and now you may want to worry about the
15 authenticity of that, but it's got the numbers we pulled off
16 the exhibits. And I was going to give you the opportunity
17 to pull them off each one at the time, but we could probably
18 skip a little time if you will accept those?

19 A What I was trying to focus on was this question of
20 how much of the plant was depreciated. That's what you're
21 asking.

22 Q No, sir, I'm not asking you anything about
23 depreciation. I'm asking you what you told the Public
24 Service Commission your plant account was?

25 A I told the Public Service Commission the plant

1 account was whatever these documents say I told them.

2 Q And the fact is that even in the face of the IRS
3 settlement you didn't change what you told the PSC in your
4 annual report, did you?

5 A No, I don't think that changed our overall books
6 in terms of the assets and the liability except for
7 depreciation or original cost.

8 Q So, in terms of filing the annual reports, you
9 didn't attach any credibility to the IRS settlement, did
10 you?

11 A I don't know if the IRS settlement changed what
12 should be filed on the annual reports.

13 Q It changed what ought to be filed with the IRS,
14 though, didn't it?

15 A It changed our original cost and it changed our
16 investment --

17 Q No, sir. Please --

18 A -- tax basis.

19 Q I asked you, sir, please, for a yes or no answer,
20 and then if you want to tell about the all the other stuff
21 you did, have at it. But I would like an answer to my
22 question.

23 A Which was?

24 Q I don't recall. The IRS settlement changed what
25 you report to the IRS, correct?

1 A That's correct.

2 Q Good. Now, is there anything else you want to
3 talk about that it also changed? You may certainly do so,
4 but it ain't responsive to any question I asked. Is there
5 anything else you want to say?

6 A I don't want to say anything that's not
7 responsive, Mr. McLean.

8 Q Thank you, Mr. Brown. I do appreciate that. We
9 can skip a good deal of cross here, Mr. Brown, if you would
10 accept that Page Number 1 as being representative and purely
11 derivative of your annual reports which are in this exhibit.
12 Now, here is what I'm going to do with it so you will know
13 whether you should agree with it or not. According to those
14 annual reports and according to this exhibit, there were
15 \$539,735 worth of improvement additions to the plant as
16 reported in your annual report. Now, I'm not going to ask
17 you if that's the real number of the additions. I only want
18 to know if that's what is actually reflected in the annual
19 report. If you can't agree to that, we can go through every
20 annual report?

21 A How many are there? There are six or eight?

22 Q We are missing '79, and you gave us '82, so there
23 is '80, '81, '82, '83, '84, '85, '86, '87, and they are all
24 right there in that exhibit.

25 A Why don't we just go through and check them off?

1 CHAIRMAN DEASON: Why don't we take five minutes
2 and allow you the opportunity to verify that?

3 THE WITNESS: Okay. Yes, sir.

4 (Off the record.)

5 CHAIRMAN DEASON: Call the hearing back to order.
6 Mr. McLean.

7 BY MR. McLEAN:

8 Q Mr. Brown, referring to Page 1 of the exhibit
9 which we have been discussing, do you not accept \$539,735 as
10 being the summary of the changes which are reflected to the
11 plant account Number 100 in the annual reports?

12 A That appears to be the change reflected in the
13 annual report. It's about \$3,700 off the tax return
14 figures, but it was close.

15 Q Only \$3,700 off the tax return?

16 A Yes.

17 Q Great. But now focusing on the annual report, the
18 539,735 is the total which was reflected in the annual
19 reports, am I right?

20 A 539,735, as I understand it, is the total of those
21 lines from 80 through 87.

22 Q Great. So we don't need to go through them on an
23 individual basis, correct?

24 A Right.

25 Q Thank you, sir. Let's move our attention to

1 Ms. Withers' affidavit, which has been marked Exhibit
2 Number 42, and is to be found in Ms. Withers' testimony at
3 the end of her testimony. Now, in your rebuttal testimony,
4 I think you disagree with Ms. Dismukes having given the kind
5 of consideration which she gave to Ms. Withers' affidavit,
6 is that right?

7 A I don't remember exactly what I said, Mr. McLean.
8 I basically had a problem with taking her affidavit out of
9 context without looking at the entire affidavit and without
10 looking at the entire original cost that she reflected in
11 the affidavit.

12 Q When she said that the additions were \$612,000 and
13 change, you believe that one should consider for what
14 purpose one is making that statement before one judges
15 whether that statement is true or not, is that correct?

16 A I think the first thing you need to know is
17 whether --

18 Q Pardon me, Mr. Brown. Would you give me a yes or
19 no and then explain?

20 A And what was the question?

21 Q Do you believe that if one reads an affidavit that
22 says that there were \$612,000 worth of additions to this
23 property, that one needs to consider the reason for which
24 that was made in determining whether it is true or not? Is
25 that --

1 A No, I don't believe that. I believe that you
2 would have to consider what was meant by total additions.
3 If you're talking about total third party vendor contracts,
4 or total book records from annual reports, or if you're
5 talking about actual capitalized costs, those those would be
6 two different things.

7 Q Well, of course. That makes sense. Let's see if
8 we can figure out what she was talking about. Now, it's not
9 your affidavit, right?

10 A That's correct.

11 Q But you say that Ms. Dismukes should not have used
12 the affidavit in the way she did, is that right?

13 A I take issue with Ms. Dismukes picking out two or
14 three numbers from 10 or 15 years of complex financial
15 records and ignoring the big picture just to reach a desired
16 result, yes.

17 Q Well, if that's what she did then you have reason
18 to doubt it. But my question is, if I can recall it. You
19 take issue with the way she used the Withers' affidavit, yes
20 or no?

21 A Yes, I took issue with that.

22 Q Great. In that affidavit, on Page 3, Ms. Withers
23 says quote -- let's see if I can get you a line. Paragraph
24 4, about the fourth or fifth line down. "From 1979 through
25 December 1987, the total additions to the system by St.

1 George Island Utility Company, Limited were \$612,948, right?

2 A That's what that says. The part of that sentence
3 that you read, right.

4 Q Yes, sir. And she said that under oath on behalf
5 of the utility in the last rate case, right?

6 A That's right.

7 Q Her statement addresses the additions by St.
8 George Island Utility Company, Limited, right?

9 A Her statement addresses the booked additions,
10 which I don't believe were accurate and complete.

11 Q So you --

12 A The part that was booked is accurate and complete,
13 it's just that all the costs were not booked, in my opinion.

14 Q Okay. But she doesn't talk about cost, booked or
15 nothing. She says total additions to the system by St.
16 George Island Utility Company was \$612,948, right?

17 A You have to read the entire sentence, Mr. McLean.
18 If you read the entire sentence, it says referring to the
19 information filed with the PSC, kind of like the stuff we
20 just looked at, and particularly the reconciliation which
21 was the reconciliation that she did based upon the books,
22 which I think were not totally accurate and complete.
23 Referring to those two documents, you just total up those
24 additions and you come to that figure. But I don't think
25 she meant to say that that was all of the cost that would be

1 properly capitalized to the plant if you went through and
2 capitalized everything that NARUC requires to be
3 capitalized, or suggests should be capitalized.

4 Q Okay. Well, Mr. Brown, to quote Robin Williams,
5 she did not say it, did she?

6 A She said what I just said. But she didn't just
7 say the last part, she said, "Referring to this
8 information."

9 Q That tells us where she got it, doesn't it?

10 A Yes. But what I'm saying is she got this from
11 particular documents, that is a PSC filing, and --

12 Q The utility's books.

13 A -- and the reconciliation which was filed in the
14 last case, and she is just totalling up those figures.

15 Q I see. Part of the reconciliation, part of the
16 numbers she used for that shows up on the first exhibit to
17 her affidavit, doesn't it; the little boxes? The exhibit
18 with all the boxes on it?

19 A That is the reconciliation that was filed as
20 Exhibit 20 in the last case, I believe. If it's not, it's
21 similar to it.

22 Q And it shows how the plant balance per books
23 changed from 1979 through 1987, right?

24 A It shows --

25 Q If that's not what it shows, would you please say

1 so?

2 A That's not what it shows. It shows more than
3 that, and I can't agree that it just shows that.

4 Q I understand. If you can't, that's fair.

5 A I mean, this is a ten-year or an eight-year
6 reconciliation with the plant balance as shown by the tax
7 return, the plant balance shown by the books, the
8 accumulated depreciation per the tax returns, and the
9 accumulated depreciation per the books. It traces the
10 history of it, and it shows the changes that were reflected
11 as a result of the IRS cost settlement agreement, and
12 reconciles that to the current tax returns and plant
13 balances. This is what she was requested to do in the last
14 case and --

15 Q By whom? Who made the request, Mr. Brown? I'm
16 sorry to interrupt, but I thought it might be nice to know.

17 A I think the PSC Staff made the request. I know
18 that by the time we got to the hearing, I know that during
19 the audit we had to go over with the PSC Staff over and over
20 all of the tax returns and financial statements for the
21 utility. And they didn't fully understand how those
22 original tax returns and financial statements in the '70s
23 tied in and could be reconciled to the current books and the
24 tax returns as of the test year end 12-31-87, and they asked
25 us to reconcile that, and Barbara Withers did that and

1 presented this as an exhibit in the last case, and testified
2 regarding that.

3 Q Column 3 and Column 4, Mr. Brown. Do you know
4 whether those numbers are true or false?

5 A Column 4 being the accumulated depreciation per
6 tax returns?

7 Q No, sir. Column 4 is plant balance per books.
8 And let me rephrase my question. Neither one of us know
9 whether those are true or false, so let me ask you are those
10 numbers accurate renditions of what your books said?

11 A I would assume so. I would have no way to know
12 that without going back and looking at the books
13 year-by-year.

14 Q That's what Ms. Withers did, isn't it, or
15 presumably did?

16 A Yes.

17 Q And we could look at the beginning of 1980 and the
18 end of 1987 and ascertain right from this exhibit here what
19 the extent of additions were to plant per books as of the
20 date of this affidavit?

21 A Yes. I just finish looking at that and it's about
22 \$3,700 different than your figure. That's what I was
23 reflecting that it seemed to be, and that seems to be in
24 '86.

25 Q Than whose figure, Mr. Brown? Didn't that figure

1 come from the annual reports that you filed?

2 A Yes. And that's what she says in her affidavit,
3 that this is off the filings with the PSC and the books.

4 Q Okay. We have three sources for a number showing
5 additions to be in the neighborhood of \$540,000, don't we?
6 We have the annual reports, we have the books of the
7 utility, and according to the third column there, what the
8 utility told the IRS?

9 A Well, these are our books that were audited by the
10 IRS, yes.

11 Q And it says per tax returns; that's a document
12 which you prepared, not the IRS, right?

13 A Right. But these tax returns were amended, and we
14 had to file amended returns for some of the later years, and
15 the IRS appellate conferee changed the tax returns, in
16 effect, by --

17 Q You don't mean to say that in response to a Staff
18 request Ms. Withers furnished numbers that she knew the IRS
19 had changed, do you?

20 A No. I think she is showing the numbers that were
21 changed by the IRS, is my understanding of this document.

22 Q Okay. And if you totaled --

23 A But they weren't changed at the time they were
24 filed, they were changed after the audit was over.

25 Q I understand. If you total Column 3, and if you

1 total Column 4, and if you total the annual reports, you
2 will come up with three numbers which do not differ in a
3 material sense each from the other, is that right?

4 A Yes, I think these numbers are all consistent.
5 That was my understanding of the purpose of this document,
6 was to reconcile from way back, the '70s financial
7 statements and tax returns all the way up through and
8 including the test year. That was the issue in the last
9 case. The '87 test year plant account and rate base.

10 Q So we are left with the notion that either those
11 numbers, those three numbers which do not differ materially,
12 actually represent the additions or some additions came from
13 somewhere else, right?

14 A I think if you're talking about overall cost of
15 the additions, you would have to either believe that the
16 overall cost was greater than this or you would have to
17 believe that this was every cost that should be capitalized
18 and could be charged.

19 Q And one thing we do know is that you reported
20 these numbers to this Public Service Commission, and to the
21 IRS, and kept books for your own purposes consistent with
22 these three numbers, right?

23 A We have changed the accounting treatment of these
24 numbers after the last case, because the Public Service
25 Commission did not accept our numbers. And that was why we

1 had that last trial, or hearing. We also changed our
2 numbers after the IRS audit, because the IRS did not accept
3 our numbers.

4 Q Does that have anything to do with the question I
5 just asked?

6 A I think so.

7 Q What?

8 A I think it's responsive.

9 Q Well, in what sense?

10 A Well, ask your question again.

11 Q I don't think so, Mr. Brown. Let's turn to
12 Exhibit Number 20.

13 A What is Exhibit Number 20?

14 Q Exhibit Number 20 is an audited financial
15 statement prepared by Thomson Brock and Company.

16 A Do you have a copy of that?

17 Q No, sir, but your lawyer may. I don't have an
18 extra copy.

19 MR. McLEAN: I'm also going to ask some questions,
20 Mr. Pfeiffer, on 21 and 22, I think.

21 BY MR. McLEAN:

22 Q Mr. Brown, do you know what Exhibit Number 20 is?

23 A This appears to be a financial statement of
24 Leisure Properties, Limited at 12-31-79.

25 Q Is that the firm -- did Leisure Properties hire

1 this firm to do a financial statement that year?

2 A Yes.

3 Q Did you participate in the decision to hire this
4 particular firm?

5 A Yes.

6 Q Okay. And did you get the firm you wanted?

7 A Well, I hired them.

8 Q You hired them. I could ask the question more
9 simply.

10 A Mr. Stocks and I hired them together. We were
11 both running the company.

12 Q I understand. For what purpose was it ordered?
13 Hired, your term. I mean, for what purpose did you all want
14 a financial statement prepared?

15 A We just needed to have a financial statement --

16 Q Well, you needed to borrow money --

17 A -- prepared by independent outside auditors.

18 Q Sure. And that's because the bank is interested
19 in things like that, and maybe other investors might be, is
20 that right?

21 A Yes.

22 Q The financial statement was issued in 1980 for the
23 year ending December 31, 1979, right?

24 A Yes.

25 Q And the transfer of the utility took place on

1 November 9th, 1979, correct?

2 A I think that's the date; somewhere around there.

3 Q Great. The utility is shown as an asset on the
4 books of Leisure even after the sale, isn't it?

5 A Yes.

6 Q And I note Number 4 speaks to that very issue,
7 doesn't it? That Number 4 can be found on Page 14 down at
8 the bottom. I'm sorry, Page 13, continued onto Page 14. Is
9 that correct?

10 A Number 4 on my copy looks like it's on Page 13 and
11 over onto 14.

12 Q Yes, sir, that's correct.

13 A Uh-huh.

14 Q Now, the audit was done of Leisure after the sale,
15 yet the assets, the water assets still show up on Leisure's
16 books after the sale. And I submit to you that Number 4,
17 and particularly that paragraph which is on Page 14, gives
18 us an explanation as to why that is so, right?

19 A Yes.

20 Q Now, in that paragraph it refers to a number of
21 \$830,000, and it uses the term cost, right?

22 A Where is that?

23 Q I'm sorry, it's the eighth line down, first word
24 in is statement.

25 MR. PFEIFFER: Mr. Chairman, I would simply want

1 to be consistent; I want to object to testimony from a
2 document that is not in evidence.

3 CHAIRMAN DEASON: The objection is noted and is
4 overruled.

5 BY MR. McLEAN:

6 Q The transaction has not been recorded as a sale
7 for financial reporting purposes, consequently the water
8 systems reflected in these financial statements at cost
9 \$830,145 less accumulated depreciation and so forth. That's
10 what it says, right?

11 A That's what it says.

12 Q Now, it was referring to the cost not which the
13 utility paid, but the cost which Leisure paid, is that
14 correct?

15 A I think it's referring to the out of pocket third
16 party costs that were on the books of Leisure Properties,
17 Limited.

18 Q Who is the third party?

19 A People that we wrote checks to outside the
20 Company.

21 Q Oh, I'm sorry, I understand. Great. So it's what
22 Leisure paid for assets in the utility, dealing with sales
23 of pumps, pipes, labor, and so forth, right?

24 A Leisure contracted to build the utility system
25 with third parties in part, and build it itself with its own

1 people in part, and it got built over a period of time.

2 Q So maybe a guy who was working for Leisure spent
3 200 hours building the plant, right? That's what you're
4 saying, and it's not in here?

5 A I don't know what's in here, Mr. McLean. I don't
6 think this is all the cost of the utility system, I can tell
7 you that.

8 Q Well, that's what I want to focus on. If this
9 audit report missed it, I want to know how come that's so?

10 A Well, I'm not sure this audit report missed all of
11 the costs.

12 Q Me neither, Mr. Brown. Do you say it missed any?

13 A I think a lot of the costs are reflected in this
14 statement in other places. I don't think -- these
15 particular auditors never recognized this as a stand-alone
16 sale or recognized it as a sale. I think a lot of the cost
17 of the utility plant is reflected in here under land
18 accounts, and under undeveloped land, land under
19 development, and developed land.

20 Q So when you said, "Consequently, the water systems
21 reflected in these financial statements at cost", I guess he
22 should have said and some other place, too?

23 A He was probably looking at our books, and he was
24 verifying that that account showed -- I mean, they were
25 satisfied that we could prove that much cost. But in the

1 next sentence, I think he refers to another
2 200-something-thousand dollars, and in the rest of this
3 financial statement there are asset categories such as the
4 various at least three land accounts that total two or three
5 million dollars.

6 Q He's talking about liabilities when he talks about
7 287. Do you say that that is a water plant asset?

8 A I'm not sure what that is. I would have to go
9 back and talk to the people that prepared this.

10 Q Well, you're not inviting the Commission to
11 believe that's so, are you, without knowing whether it's so?

12 A I'm not inviting the Commission to do anything
13 except analyze all of the facts and circumstances that they
14 did in the last case.

15 Q Good plan.

16 A And I think that a great many costs of this
17 utility plant as of this date are to the reflected in that
18 figure. And I'm trying to invite the Commission, I guess,
19 to look at some of the other parts of the statement, because
20 I think based on what we now know, it's clear that a lot of
21 the costs of the utility plant were in other places on
22 Leisure's books, and when they were jointly audited all of
23 that was pointed out and those figures were firmed up.

24 Q Well, I don't understand what you mean by firmed
25 up, because I see a CPA certifying, among other things, to

1 Note 4. Is there some other explanation that's just not on
2 the face of the document that tells us why he did that?

3 A This was not an audit of the utility company, this
4 was an audit of Leisure Properties. Back in those days
5 there was not any inclination toward trying to be careful to
6 reflect all the capitalized costs year to year that would go
7 to the utility plant. After there was a complete intensive
8 IRS audit of Leisure Properties simultaneously with an audit
9 of the utility company, and these costs which had been
10 miscalculated were firmed up and were put in the right
11 place, as it were.

12 Q What does firmed up mean?

13 A That means after you have an audit of two
14 companies, and you try to determine the cost, you come up
15 with the proper costs and put them in the proper places.
16 And after that, there was a -- there has only been one
17 certified audit of the utility company and it's cost, and
18 that was in the record in the last case, and it showed 2.6
19 million.

20 Q Uh-huh. Well, where is it in the record, Mr.
21 Brown? It's your representation that that was in the
22 record?

23 A I believe it was.

24 Q Well, sir, I would like to put you to your proof
25 on that question. I don't know exactly how to say show me

1 where, but I say it ain't in there.

2 A The '87 statement?

3 Q That's correct.

4 A I would probably refer you to Exhibit 21 in the
5 last case.

6 Q What document are you referring to, Mr. Brown,
7 may I ask?

8 A I'm referring to Bob Freeman's audit report, which
9 is the IRS -- I mean, the PSC Staff auditor. All of this
10 was admitted into evidence at the trial I was at, or the
11 hearing I was at in '89 as part of Composite Exhibit 21.
12 And he has an index of all of the tax returns and financial
13 statements.

14 MR. McLEAN: Mr. Chairman, there may be a simpler
15 way to do this. The director of records and reporting on a
16 routine basis certifies the record to appellate courts. We
17 have made an exhaustive search of the record and don't
18 believe that that audited financial statement is in there.
19 Now, I don't think it makes a whole lot of difference,
20 because what this boils down to is an argument of, "Well,
21 you thought you would consider this last time." We don't
22 give that argument any credence whatsoever, because I think
23 you invited us to bring forth evidence, in general. But I'm
24 going to be faced with that argument, and there is a
25 representation by the other side, it's a recurring

1 representation that that financial statement is in the
2 record. It's virtually impossible for us to prove that it's
3 not in the record. I should think the onus would be on them
4 to show if it is in the record.

5 THE WITNESS: I would like to show that to you,
6 Mr. McLean, if I could.

7 MR. McLEAN: If I can continue.

8 THE WITNESS: Well, could I finish answering the
9 question, please?

10 CHAIRMAN DEASON: Well, I think Mr. McLean is
11 directing this to me, and if you need to follow up after he
12 has finished with the answer to the previous question, I
13 will give you that opportunity. Continue, Mr. McLean.

14 MR. McLEAN: I think there is probably some
15 reasonable way that we can ascertain whether it's in the
16 record. We can ask for the clerk's certificate to that
17 effect and some response on our part. We don't believe it's
18 in the record. I want to give Mr. Brown full opportunity to
19 be heard, but I will say that it's recitation in the index
20 doesn't get it into the record, particularly for the truth
21 of the matters asserted therein.

22 CHAIRMAN DEASON: Mr. Brown, you may continue with
23 your answer.

24 THE WITNESS: My answer, Mr. Chairman, was that I
25 was there, by the way, unlike most of the other people here

1 today, and I remember Mr. Gatlin offering all of this into
2 the record. I remember that Barbara Withers' reconciliation
3 was received into evidence as Exhibit 21. I remember that
4 over a long discussion it was agreed, and it was admitted by
5 Commissioner Herndon that all of the documents that had been
6 presented by the utility to the PSC Staff, including the
7 ones that Commissioner Herndon referred to in his record
8 here, were admitted and received into evidence as Composite
9 Exhibit 21. Public Counsel, according to this, and this is
10 my recollection, they were given seven days to object after
11 Mr. Pruitt pointed that out as a compromise, and they made
12 no objection within the seven days. Instead, they did in
13 that case the same thing they are trying to do here, was to
14 pick out two or three and ask the Commission to take
15 judicial notice of them. Just the two or three they wanted.
16 But I think any fair reading of the hearing before on
17 Pages 524 through 539, which is basically Barbara Withers'
18 testimony, would show that all of this was admitted into
19 evidence as Composite Exhibit 21. So what I did then was to
20 go upstairs within the last couple of weeks after it seemed
21 that was going to be an issue, and I asked the PSC audit
22 Staff to give me all of those documents, or give me copies
23 of them, and they did, and I have them here. And what I was
24 referring to before was the Commission Staff index, which is
25 at the first of their filing, which is a three-page index in

1 which they go through all of the tax returns, financial
2 statements, including the audited Leisure financial
3 statement, and all of the other tax returns and financial
4 statements. In fact, all the way back to the mid-'70s. And
5 I think all of that was admitted and received into evidence.

6 Now, if we want to get technical about what the
7 record in the Clerk's Office shows, I guess that's what
8 Mr. McLean wants to do, but I was there and I have read this
9 testimony, and I think it's clear from this part of the
10 transcript that the intent of the parties, the Public
11 Counsel, the Commission, the utility, the intervenors, and
12 everybody last time was that all of these items that were
13 mentioned by Mr. Herndon, and I will quote here, "Federal
14 income tax returns of years '79 through '80, federal income
15 tax schedules, work papers, ledgers, financial statements,
16 summaries of tax depreciation, distribution of partners,"
17 and then Mr. Gatlin says, "And also the engineering
18 appraisals of the IRS and the revenue agent reports added to
19 the list that you have." And Commissioner Herndon says,
20 "All right. If the parties are in agreement and has no
21 problem." And then they go on for two or three pages, and
22 then the Staff --

23 CHAIRMAN DEASON: Mr. Brown, let me -- whether
24 it's in the record in the previous case or not, what
25 relevance does that have to what is before us today?

1 THE WITNESS: The relevance is, as I understand
2 it, the Commission in the last case said if there is new
3 evidence they would relook at this issue of original cost.
4 So it's very relevant as to whether this is new evidence, if
5 it was presented to Public Counsel, to the PSC Staff, and
6 especially if it was introduced as an exhibit, Composite
7 Exhibit 21, which it was, then obviously this is not new.
8 And it's the utility's position that the Commission should
9 not reopen this matter, because there is no new evidence.
10 Everything that has been mentioned here was fully discussed,
11 analyzed, and litigated before, including the Billy Bishop
12 '78 appraisal. I mean, Steve Burgess cross examined Wayne
13 Coloney on the basis of that. So they had that, they had
14 the '79 financial statement, they had everything then and
15 they tried in that case to pick and chose on a petition for
16 rehearing two or three things just like they are trying to
17 do here. And I think it's very relevant to show that this
18 is not anything new, and that all of this was fully
19 litigated last time. So I think it's important that the
20 Commission either not allow Public Counsel to pick and
21 choose two or three items like they tried to do before, or
22 if they are going to allow that, then I think the Commission
23 needs to look at all of this evidence as a whole.

24 COMMISSIONER KIESLING: Mr. Chairman, if I can
25 interject. Mr. Brown and the utility are ably represented

1 by counsel, and I think it's entirely inappropriate for a
2 witness who has, in fact, withdrawn as a representative for
3 the utility in a legal capacity to be making objections and
4 argument.

5 CHAIRMAN DEASON: Well, maybe I'm at fault. I
6 asked the witness the question as to why it's relevant as to
7 whether it was or was not in the record the last time. So
8 perhaps I'm at fault in that regard. But I'm just trying to
9 understand where we are and how we can proceed.

10 MR. McLEAN: I would like to hazard a quick
11 response to what the witness just said. Number one, it's
12 false that the Commission requested only new evidence.
13 Number two, it's false that all of these things were given a
14 total airing, and, number three, we don't mind if it comes
15 in this record. It's fine with us. We are ready to to show
16 what it says. But there is an issue, and I think it's a
17 bogus issue, as to whether it was considered in the last
18 case. Whether it was in the last case as a matter of law,
19 which is not subject to a witness' testimony from the chair
20 over here. It is either in the record or it is not. If it
21 wasn't in the record due to error, it wasn't in the record.
22 I don't know why it isn't in the record, and it has limited
23 significance to me but for the fact that I'm going to have
24 to answer the argument which you just heard that you heard
25 all of this stuff before. We don't think you did hear it

1 before.

2 CHAIRMAN DEASON: Well, let's proceed with your
3 cross examination of this witness.

4 MR. McLEAN: Thank you, sir.

5 BY MR. McLEAN:

6 Q Speaking of the old transcript, Mr. Brown, do you
7 have it before you? Were you reading from the old
8 transcript?

9 A I have part of it, Mr. McLean.

10 Q Okay. Would you see if you have Page Number 462?

11 A No, I don't have 462.

12 Q Okay. I don't think anyone else is likely to have
13 it. So, let me read you something that you said. Well, let
14 me ask you, first of all, you gave an answer to me about
15 this audited financial report which seemed to indicate,
16 which seemed to be an effort to impeach the \$835,145 because
17 of a deficit of records or something? I mean, why is that
18 number not correct?

19 A Why is which number not correct?

20 Q \$835,145 from Note 4 in the financial statement?

21 A Of the '79 Leisure statement?

22 Q Right.

23 A I think that's a correct reflection of the plant
24 account, or not the plant account, but the account that
25 Leisure was carrying more or less like construction work in

1 process. I think that's a correct reflection of what was
2 shown in that account. All I said was that I don't believe
3 -- in fact, I'm sure that that's not all of the capitalized
4 cost of the utility plant as of 12-31-79.

5 Q I see. Mr. Brown, did you testify as to the
6 subject of how complete the records were which supported
7 that audit in the last case?

8 A I probably did.

9 Q Did you attack it or support it? Did you say that
10 there were enough records or did you say there weren't
11 enough?

12 A I said, and I still say that there were not enough
13 records to document all of the cost of the utility plant
14 from day one as I understand the requirements to have those
15 records.

16 Q Do you know whether the auditor looked exclusively
17 to your records, or do you know whether that auditor
18 included such tests of the accounting records and such other
19 auditing procedures as we considered necessary in the
20 circumstances? Isn't it true that the auditor came in and
21 satisfied himself and was willing to put his liability on
22 the line that this statement accurately represented fairly
23 the financial position of Leisure Properties, Limited as of
24 December 31, 1979, isn't that correct?

25 A I think --

1 Q Isn't it correct, Mr. Brown, yes or no?

2 A -- that it reflected, in his opinion, the --

3 MR. McLEAN: Mr. Chairman, I'm entitled to an
4 answer. If he disagrees, let him say so.

5 CHAIRMAN DEASON: Mr. Brown, please answer yes or
6 no.

7 THE WITNESS: Yes, I think that this --

8 MR. McLEAN: Yes, what?

9 THE WITNESS: -- statement by the auditor
10 reflected the auditor's opinion as an accountant that this
11 accurately reflected the financial condition of Leisure
12 Properties, Limited as a whole, not the condition of the
13 utility company. There has only been one audit of the
14 utility company.

15 BY MR. McLEAN:

16 Q And the gist of this particular financial
17 statement, Mr. Brown, isn't it, is it there isn't one iota
18 of difference between the two? Isn't that what Note
19 Number 4 says?

20 A Not one iota between what?

21 Q Between the utility and Leisure. That's the gist
22 of Note Number 4, isn't it?

23 A Yes. That is a summary of what they decided.

24 Q Then let's go to Exhibit Number 21, please, sir.
25 Who is -- well, let me let you look at Exhibit Number 21.

1 Do you have it?

2 A Yes, sir.

3 Q What is it, sir, do you know?

4 A That's a copy of the tax return of Leisure
5 Properties, Limited for 1979.

6 Q Okay. And Mr. Brock was the accountant who
7 prepared that?

8 A Yes.

9 Q Now, did he do so at your direction? In other
10 words, did you hire Mr. Brock to prepare the tax return?

11 A Leisure Properties hired him to do the tax return
12 for the partnership.

13 Q And Leisure Properties at that time was Mr. Brown
14 and Mr. Stocks, right?

15 A Basically, right.

16 Q Great. Page 2 of Exhibit 21, Mr. Brown, shows
17 Schedule J, the third column over, cost or other basis shows
18 that you are depreciating \$658,584, right?

19 A Which column is that?

20 Q I'm sorry. It's Column 3. It's actually Column
21 C, at the bottom of the page, Schedule J.

22 A At the bottom of Page 2?

23 Q That's correct, sir. Hand-numbered Page 2 up at
24 the top.

25 A I see Schedule D.

1 Q How about Schedule J? Maybe you've got the wrong
2 exhibit?

3 A I see Schedule J, okay.

4 Q Okay. Now, doesn't that show that you are
5 depreciating an asset known as construction in progress
6 water system, and the number, corresponding number,
7 \$658,584?

8 A I don't see a reference to water system in process
9 here.

10 Q Construction in progress. Let's make sure you
11 have the same return I do. I have a 1978 return, Exhibit
12 Number 21, is that correct?

13 A I have the '79 return.

14 Q There is the problem. Exhibit Number 21, to my
15 recollection, is the '78 return; do I stand corrected?

16 A I'm looking at the one you gave me, or somebody
17 gave it to me.

18 MR. McLEAN: Not me.

19 MR. PFEIFFER: It was my appropriate copy.
20 Perhaps I reversed them, or perhaps Mr. McLean knows.

21 MR. McLEAN: I don't know, let's check with the
22 Chairman.

23 MR. PFEIFFER: Unless everybody reversed them but
24 me.

25 THE WITNESS: You want to look at '78, right?

1 MR. McLEAN: I want to look at '78, to make a long
2 story short.

3 THE WITNESS: All right, I've got it now.

4 MR. McLEAN: But I would like the record to
5 correctly reflect the exhibit number.

6 CHAIRMAN DEASON: The 1978 return is Exhibit 21.

7 MR. McLEAN: Yes, sir.

8 BY MR. McLEAN:

9 Q Exhibit Number 21, Schedule J, the second
10 hand-numbered page at the top. And the numbers which I'm
11 referring to are down generally in the lower left corner of
12 the page.

13 A Okay.

14 Q Construction in progress-water system, 658,584.
15 My impression is that that number and that notation
16 indicates that you're depreciating an asset or preparing to
17 depreciate an asset about \$658,584, right?

18 A That's how I would read that.

19 Q Good. Now, those improvements that you hinted
20 about, those additions back in your rebuttal testimony, no
21 considering has been given to additions to the system. Now,
22 they didn't make that financial statement either, did they,
23 those additions that you referred to?

24 A No. That financial statement does not reflect all
25 of the cost in the utility.

1 Q I'm with you, or so you say. Now, it didn't make
2 this tax return either, did it? Now, of course --

3 A It may be on this tax return in another place. It
4 did not make it under this particular part.

5 Q Which is construction in progress-water system,
6 right?

7 A Right.

8 Q Of course, it might have made it under something
9 else. Well, your lawyer will point that out on redirect, I
10 bet. Incidentally, the \$658 (sic) is after the Bishop
11 study, this tax?

12 A 658,000?

13 Q Yes, sir.

14 A This tax return was filed after the first Billy
15 Bishop appraisal, not the second one.

16 Q Exactly. Yes. You want to get in a little talk
17 about that second study, right?

18 A I want to make it clear which Billy Bishop
19 appraisal we are talking about.

20 Q Okay. Well, we have talked about only one today,
21 haven't we?

22 A Now you're asking about "the one".

23 Q No, sir. I haven't asked you the first question
24 about any other one.

25 A You have asked about "the one", I want to clarify

1 which one you're talking about.

2 Q I see. And then so you can talk about that '82
3 report, right?

4 A We will talk about that later, but I want to make
5 it clear that there is more than one.

6 Q Did I ask you any question about it?

7 A You asked about a Billy Bishop appraisal. I want
8 to clarify that we are talking about the '78 one.

9 Q Well, I appreciate that, because I don't have any
10 questions about any other one.

11 A I understand that.

12 Q Now, this number 658,000, I think I remember from
13 your deposition of you saying that it was the cost, original
14 cost was about 700,000, and that Mr. Bishop considered some
15 other things, and it went up to 900,000, right? Do you
16 remember that from your deposition testimony?

17 A No, that's not what I said on my deposition,
18 Mr. McLean.

19 Q Let's have a look at your deposition, again, then,
20 if we must. That would be Page 124, unless I'm mistaken.

21 I'm sorry to give you a bogus page number there,
22 Mr. Brown.

23 A I'm looking at Page 121.

24 Q Page 121, yes, that's a little better.

25 A I was asked if you know how much had been spent on

1 the system, and I said that I would have to get a
2 professional opinion, you would have to audit the books.

3 Q Where do you say that, sir?

4 A I say that on lines -- in answer to the question
5 of how much it cost to build the system.

6 Q Uh-huh.

7 A On Lines 10 through 16, I answered that question.

8 Q Yes. And before that you say, "Now, I think I
9 indicated the loan we took out was 505." On Page 120,
10 Line 23, you addressed the general question of how much you
11 spent on the system, right?

12 A On Page 123?

13 Q I'm sorry, Page 120, Line 23. "I'm just making
14 allocations. We came up with something in the range of
15 700,000." Who is the "we" you're referring to?

16 A Probably me and my attorney. I had probably
17 talked to him about this case before the deposition, and I
18 say that it was in the range of 700,000 directly related to
19 the water system. I then went on to explain down here when
20 they said what is the actual cost, I explained you would
21 have to get a professional opinion. I'm quoting, I said,
22 "You would have to have someone qualified to go in and audit
23 the books and do normal accounting/auditing procedures and
24 determine what share of general overhead items should be
25 allocated to the water system, and what should be allocated

1 to something else."

2 Q And you said that in the context where it was to
3 your advantage to state every bit of reliance you had made,
4 right?

5 A I said it when they were trying to pin me down and
6 say exactly what exactly what it cost to build the water
7 system. I said then and I say now that that is not a
8 question that can be answered without professional
9 accounting analysis, and without allocating overhead and
10 other type expenses that should properly be capitalized to
11 the plant.

12 Q Which is the very thing that you say Mr. Brock
13 failed to do in Exhibit Number 20, right?

14 A Mr. Brock was not auditing the water system. As I
15 said, there has only been one audit of the water system.

16 Q Who owned the water system when Mr. Brock did his
17 study?

18 A He said Leisure did. He never thought there was
19 any sale, he was just looking at Leisure.

20 Q He didn't change his mind in 1980 either, did he?

21 A He changed his mind. I'm sure he has changed his
22 mind, like all the other CPAs who have audited --

23 Q My question was 1980, Mr. Brown. Did he change
24 his mind in 1980?

25 A He didn't change --

1 CHAIRMAN DEASON: Hold on. Mr. McLean --

2 MR. McLEAN: You know, I sit here and listen to
3 these off point answers, he is trying to jam snuff in the
4 record which is not responsive to my question. I don't
5 think you ought to tolerate it.

6 MR. PFEIFFER: That's not correct.

7 CHAIRMAN DEASON: Just hold on here. I'm the one
8 that's going to talk right now.

9 Mr. McLean, I understand that the witness
10 sometimes avails himself of an opportunity to provide
11 information that you just as soon not hear. And given the
12 hour, maybe a lot of us would not like to hear. But,
13 nevertheless, you are interrupting him as he is speaking,
14 and the court reporter simply cannot record what is
15 happening. I'm going to ask you to not interrupt. If you
16 have to interrupt to make an objection, just simply state
17 that you have an objection. Right now we have a situation
18 where two people are talking at the same time and we just
19 can't continue this way.

20 MR. McLEAN: I understand, Mr. Chairman. I
21 apologize to you, the court reporter, and to the witness.

22 THE WITNESS: Thank you.

23 BY MR. McLEAN:

24 Q Let's turn to Exhibit Number 22, which is the '79
25 tax return?

1 A Yes, sir.

2 Q Well, I believe it's the 1979 tax return. That is
3 what it is, isn't it?

4 A It appears to be --

5 Q That's Leisure's.

6 A -- a copy of the Leisure Properties tax return for
7 '79.

8 Q Okay. Now, is it different than the tax return
9 except for its being a copy?

10 A If it's the same one filed in the last case and
11 all, I assume it is. I haven't prepared them, I have no
12 reason to believe it's not the same one.

13 Q The question recurs, Mr. Brown. Is it or isn't
14 it?

15 A I don't know unless I go through an examine it
16 against the original. If we can agree that it's the same
17 one filed in the last case that we filed, I will agree that
18 it is a correct copy.

19 Q Well, that would be kind of tricky, because that
20 would have me agreeing it was in the last case, wouldn't it?

21 A Well, I can't agree with everything you give me
22 without looking at it.

23 Q Okay. So you want to persuade the Commission
24 somehow that this is, in fact, different from what you filed
25 with the IRS?

1 A No, you're asking me to tell you without even
2 looking at it, that this is a true and correct copy.

3 Q It's in front of you, Mr. Brown, you can look at
4 it if you want to.

5 A I would assume that this is the same as the one
6 filed before. And if it is, it's true and correct.

7 Q The same firm, too, isn't it?

8 A Mr. Brock is a partner in Thomson and Brock,
9 right.

10 Q Okay. Now, Page 9, hand-numbered Page 9, up at
11 the top, there is a \$707,555 down at the bottom of the page,
12 Page 9, right?

13 A Right.

14 Q What is the significance of that number, if you
15 know?

16 A I don't know.

17 Q Does the words over there on the left-hand side
18 mean anything to you, adjust for difference in tax basis and
19 book basis, the water distribution system served?

20 A That means that it says what it says.

21 Q Okay. Now, is this the point at which you and Ms.
22 Withers would substitute the IRS settlement?

23 A No.

24 Q Where would you?

25 A The IRS settlement was not reached until later.

1 The IRS settlement was a settlement of this tax return and
2 at least two or three other years tax returns on both
3 Leisure and the utility company.

4 Q Okay.

5 A But that would not have anything to do with the
6 final settlement or appeal, IRS appeal court decision.

7 Q I understand. Now, there is a transfer of the
8 utility from Leisure to St. George, right?

9 A Yes.

10 Q We have talked a lot about that. Now, what you
11 all want to do, as I understand, is put the \$2.2 million in
12 the picture at the point of that sale, right?

13 A Yes, that's what our books -- that's what the
14 reconciliation is all about.

15 Q I see. So in there goes the IRS tax settlement,
16 and what becomes of the original cost?

17 A The original cost is the same as the depreciable
18 base and the investment tax credit base that the IRS
19 determined.

20 Q Now, that's the one Ms. Withers called the
21 official determined tax basis?

22 A It probably is, yes, sir.

23 Q Now, Ms. Dismukes took the audited financial
24 statement number of \$830,000, right, and added to that the
25 additions which Ms. Withers identified?

1 A Yes.

2 Q And she came up with a number of roughly \$1.4
3 million, right?

4 A That sounds about right.

5 Q And the number, that was her view of your
6 investment exclusive of depreciation as of the end of 1987?

7 A That's my understanding.

8 Q Now, what you all did instead was take the 200 --
9 I'm sorry, \$2.12 million settlement with the IRS and take
10 essentially the same additions and add to it to come up with
11 a number of about 2.8, right?

12 A That's what that reconciliation does, yes.

13 Q I see. So the difference between what Ms. Withers
14 did -- I'm sorry, what your theory of the case is, what
15 Ms. Withers and you do, and Ms. Dismukes, is roughly give or
16 take about twice what Ms. Dismukes did, right?

17 A It's about twice. We would have a negative rate
18 base in this right now. Based on her calculations we would
19 owe somebody money, I guess.

20 Q And the difference between the two is what didn't
21 make it on the annual report, what didn't make it on your
22 books, and what didn't make it on your tax return, right?

23 A No, I think it's on the annual reports. The
24 annual reports, if anything, are too high.

25 Q On additions?

1 A Not on additions, it's too high -- it's higher
2 than the Commission allowed in plant.

3 Q You're talking about the total, right?

4 A The total.

5 Q What about the additions, are they correct? We
6 have already been through that.

7 A We have been through that.

8 Q Yes. Are they substantially different from the
9 view Ms. Dismukes takes?

10 A No, I think she is taking those figures off of the
11 annual reports and off of Barbara Withers' affidavit.

12 Q Right. And added those to the \$830,000 from the
13 financial statement?

14 A That's my understanding of what she did, yes.

15 Q But you say she should have added it to the IRS
16 settlement?

17 A I don't think she should add those at all. I
18 think if she really wants to know what the original cost is
19 she should go back and read the record and all the documents
20 and analyze it from stem to stern, as the IRS did, to
21 determine what the total cost is. But you can't determine
22 total cost by picking one or two numbers out of 15 years of
23 complicated returns, and you can't determine the cost of the
24 plant if you're not willing to look at all of the other
25 asset accounts in the Leisure Properties '79 return that the

1 IRS later determined were properly capitalized as an
2 original cost to the plant. You can't do accounting like
3 that.

4 Q I'm interested to the extent to which you invite
5 the Commission to accept the IRS examination, when the IRS
6 settled for half way between what you wanted and what they
7 wanted. How much credibility does that have?

8 A We never asked the Commission to accept the IRS
9 settlement. They did not accept it. We did ask them to
10 accept our figures. They did not accept those figures.
11 They cut it back, way back from what we had, and they
12 established in the last case a plant account and a rate base
13 based upon a full and complete consideration of all of these
14 factors. They did not ever accept the IRS settlement as
15 gospel, or our books as gospel, or the annual reports, or
16 anything. They came up with a lower figure.

17 Q Who is "they"?

18 A They, the Commission. They, the Public Service
19 Commission. After looking at all of this, because this was
20 the issue, the paramount issue last time.

21 Q I was under the impression, Mr. Brown, correct me
22 if I'm wrong, that the paramount issue last time was, number
23 one, used and useful; number two, whether you had written
24 off as cost of goods sold the cost of this utility plant.

25 A The paramount issue last time was this whole issue

1 of original cost and the records and all of that. And the
2 Commission looked at all of the tax returns, all of the
3 financial statements, their Staff audited it for days on
4 end. We gave them all of these records, they said, and I
5 have always understood from the PSC Staff and everybody
6 else, that it was not acceptable to just give resulting
7 documents like financial statements and tax returns and all
8 of that, that that was not sufficient evidence of cost.
9 That you had to have the overall cost. And that was fully
10 litigated before, and they did consider the IRS settlement,
11 but they didn't accept that, either. They came up with
12 their own figures.

13 Q Uh-huh. Well, let's hope they are at least as
14 careful this time, huh? Thank you, Mr. Brown. I've got
15 nothing further.

16 CHAIRMAN DEASON: Ms. Sanders, how much do you
17 have for this witness?

18 MS. SANDERS: Chairman Deason, I have no questions
19 of this witness if Mrs. Withers is being called as a witness
20 either by the utility or the Commission. I guess I would
21 waive my right to cross examine this witness subject to
22 being able to reopen if they don't call her, or if the
23 Commission doesn't call her. I would note for the record
24 that Mrs. Withers is here and present today. We just
25 haven't discussed this issue.

1 MR. PFEIFFER: We were directed to have Mrs.
2 Withers here. We certainly have followed that direction.
3 In addition to that, Ms. Sanders took the pain to have
4 Ms. Withers subpoenaed to be here, so if for some reason
5 Ms. Sanders felt that we wouldn't follow your direction,
6 which we have had from the moment you made it every
7 intention to do, that she would have been here anyway. And
8 so she is here.

9 MS. SANDERS: No, not that Mr. Pfeiffer would not
10 comply with your order to have her here, but whether she is
11 going to be called as a witness pursuant to her prefiled
12 rebuttal testimony. That's where I'm unclear. And if I'm
13 splitting hairs, Mr. Pfeiffer, I apologize.

14 CHAIRMAN DEASON: Mr. Pfeiffer, do you plan to
15 actually have Ms. Withers take the stand and adopt her
16 prefiled testimony?

17 MR. PFEIFFER: Yes.

18 MS. SANDERS: Then I have no questions, Mr.
19 Chairman.

20 CHAIRMAN DEASON: Thank you. Staff, how extensive
21 is your cross examination?

22 MR. PIERSON: That's difficult to say. That,
23 again, depends on the length of the answers. I would
24 estimate anywhere from between one and three hours.

25 CHAIRMAN DEASON: And, Ms. Sanders, I take it that

1 you obviously have cross examination for Ms. Withers?

2 MS. SANDERS: Yes, sir. I estimate that to be an
3 hour to an hour and a half.

4 CHAIRMAN DEASON: Mr. McLean, how much cross do
5 you have for Ms. Withers?

6 MR. McLEAN: I'm proud to say very little. I will
7 endeavor to make it less than 30 minutes, maybe less than
8 that.

9 CHAIRMAN DEASON: And then, of course, Mr.
10 Pfeiffer, you are going to have redirect for Mr. Brown, and
11 you are going to have redirect for Ms. Withers.

12 MR. PFEIFFER: It seems only fair.

13 CHAIRMAN DEASON: Absolutely.

14 MR. PIERSON: Mr. Chairman, if we were to take a
15 brief recess to prepare for dinner or something like that,
16 I'm sure that we could cut some of these questions out.

17 CHAIRMAN DEASON: Well, that's the reason I'm
18 going through this exercise now before we take a recess is
19 to try to make a judgment as to how late we are going to be
20 here tonight. Also try to make a judgment as to whether if
21 there is no way to finish at a reasonable hour, if we want
22 to work late tonight, if we are going to have to come back
23 some other time anyway. That's the dilemma that I have. I
24 have gotten a general feel that we still have a long way to
25 go. We are going to take a recess at this time, and I will

1 make a judgment as to how late that we are going to work
2 tonight and whether there is the possibility of trying to
3 find another time later on to finish up. With that, we are
4 going to take ten minutes.

5 (Off the record.)

6 CHAIRMAN DEASON: Call the hearing back to order.
7 We are going to work a little bit into the evening tonight.
8 For your information, we have ordered dinner, if you want to
9 call it that. We are hopeful of finishing Mr. Brown's cross
10 examination, and hopefully redirect tonight. And if we can
11 do that, well, then we will probably conclude at that point.
12 Even if we don't finish that, if the hour starts approaching
13 too late we will just have to go ahead and recess and we
14 will have to reconvene tomorrow afternoon. That is if
15 everyone is available tomorrow afternoon. Hopefully,
16 everyone will be.

17 We would be looking at reconvening tomorrow at
18 1:30. Tonight, we are looking at getting out of here
19 tonight hopefully between eight and nine o'clock.

20 MS. SANDERS: Commissioner Deason, as to
21 availability, I had to reschedule an appointment with a
22 potential client, being the Gulf County Commissioners, that
23 was scheduled this evening. They are meeting right now and
24 are determining when they want to reschedule that. It will
25 be one day this week. I don't know at this point what day

1 that will be, but I would hate to ask them twice to
2 reschedule that. I will know first thing in the morning.

3 CHAIRMAN DEASON: Well, I can understand that
4 difficulty, but I just don't see -- if we don't do it
5 tomorrow afternoon, I don't know when we will be able to do
6 it. I just don't have any more flexibility beyond that
7 point. I'm going to be in fuel adjustment hearings Thursday
8 and Friday. The week after that is full, and the company
9 has already agreed to a 15-day extension, and I really don't
10 feel comfortable asking them to extend that period any more.
11 I just don't see where we have any other options, other than
12 working tonight until midnight or one a.m., whatever it
13 takes.

14 MR. PIERSON: Mr. Chairman, if I make make a
15 suggestion. We could put Ms. Withers on now and take
16 Mr. Brown later.

17 CHAIRMAN DEASON: Would that help that you? That
18 way we could finish Ms. Withers tonight, hopefully?

19 MS. SANDERS: Yes, sir. If the Commission would
20 also excuse my attendance tomorrow, but I know that Mr.
21 McLean and I discussed that, and he does not have that
22 preference. We will continue as you have planned, and I
23 think if we start with Ms. Withers tomorrow at 1:30, then
24 the Commission doesn't meet until the evening at 5:30, so I
25 will have time to travel. I need two hours to travel. I

1 will have time to travel, but I would also have to ask your
2 permission to be absent from the rest of the proceeding.

3 CHAIRMAN DEASON: Your absence will not be a
4 problem, and maybe that will be an incentive to make your
5 cross examination concise.

6 MS. SANDERS: Yes, sir. Thank you.

7 CHAIRMAN DEASON: All right, with the
8 understanding even if we do not finish Mr. Brown tonight we
9 will begin tomorrow at 1:30 with Ms. Withers, assuming there
10 is no objection.

11 MR. PFEIFFER: Could Ms. Withers be excused now if
12 there is no prospect that we will be taking her testimony
13 tonight.

14 CHAIRMAN DEASON: I think there is no way we are
15 going to get to Ms. Withers tonight, because it's my -- if
16 we get finished with Mr. Brown sooner than we anticipate, we
17 are just going to go home. Because I've got plenty to do to
18 get prepared for prehearing conference tomorrow morning.

19 MS. SANDERS: And I have no objection to Ms.
20 Withers being excused, since we won't get to her, if the
21 subpoena will be in effect, the order will still be in
22 effect and she will be here at 1:30 tomorrow.

23 CHAIRMAN DEASON: She will be here at 1:30, and
24 she will take the stand at 1:30, regardless of whether we
25 finish Mr. Brown.

1 MS. WITHERS: I have to cancel some appointments
2 with clients that I had already set, but I will be happy to
3 do that to accommodate the Commission.

4 CHAIRMAN DEASON: We appreciate you doing that.
5 We apologize to you that you are having to do that.
6 Obviously, we thought that we could take you and Mr. Brown
7 today and this evening, and finish at a reasonable hour.
8 And it just doesn't appear that that is going to be
9 possible. We appreciate you making that arrangement.

10 MS. WITHERS: Thank you.

11 CHAIRMAN DEASON: And you may be excused.
12 Anything further before we begin Staff's cross examination?

13 MS. SANDERS: No, sir.

14 CHAIRMAN DEASON: Mr. Pierson.

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

16 CROSS EXAMINATION

17 BY MR. PIERSON:

18 Q Good evening, Mr. Brown.

19 A Good evening.

20 Q Mr. Brown, you have a lease/purchase arrangement,
21 I believe, or I should say Armada Bay Company has a
22 lease/purchase arrangement for the building that you reside
23 in?

24 A Yes, that's correct.

25 Q And then Armada Bay has a lease agreement with

1 St. George Island Utility Company, is that correct?

2 A That's correct.

3 Q Who else does Armada Bay manage?

4 A Nobody really. We managed Covington Properties
5 for a period of time during 1991, and we handled some bank
6 accounts for some other entities but, basically, we just
7 manage the utility company.

8 Q And didn't you testify that you don't really have
9 much of a law practice going at this point?

10 A I do not have much of a law practice going.

11 Q Who else pays rent?

12 A Nobody else pays rent, per se. The only rent
13 check we get is the one from the utility company. There may
14 be an allocation on the books at the end of the year to
15 charge some rent to the law firm, I'm not sure. But I don't
16 right a check every month from the law firm or from any of
17 the other companies.

18 Q Let me see if I understand this. Armada Bay
19 doesn't manage anybody else, so the only person that's
20 actually paying rent or entity that's actually paying rent
21 is the utility company?

22 A The only entity that pays rent in the sense of
23 writing a check every month and all of that, is the utility
24 company. Armada Bay pays the expenses like repairs, and
25 taxes, and maintenance, and the condo fees, and all of that,

1 and we pay the lease payment, lease/purchase payment, lease
2 payment to the actual owner of the property.

3 Q When you say "we", you mean Armada Bay Company?

4 A Armada Bay Company.

5 Q If Armada Bay Company has no other income, since
6 they have no other clients, where does the rest of the rent
7 come from?

8 A Loans and transfers of cash. We have income from
9 the utility company. We manage the utility company and we
10 take money as a management fee.

11 Q And these loans and transfers come from where?

12 A Various sources. Wherever we can -- whatever
13 entity has any cash from time to time.

14 Q And which entities are we talking about?

15 A Leisure Properties, Armada Bay Company, the law
16 firm. Those are the only ones that I can think of that have
17 had any cash recently.

18 Q Okay. And Armada Bay Company doesn't have any
19 other income besides St. George Island Utility Company?

20 A Well, basically. I mean, I don't say we don't
21 have any. You all have seen the tax returns, it's whatever
22 it shows on there.

23 Q Does Leisure Properties, Limited have any other
24 interest besides being the general partner of -- well,
25 Leisure Properties, whatever, besides being the general

1 partner of St. George Island Utility Company?

2 A No, we don't have any other business. We have got
3 a portfolio of mortgages that are serviced by Fleet
4 Financial in Atlanta that are still technically owned, but
5 there is more debt pledged against those mortgages than they
6 are worth. And those were pledged to some of the utility
7 company construction projects, so, no, Leisure doesn't
8 really have anything.

9 Q Well, it sounds to me, and correct me if I'm
10 wrong, but it sounds to me as if the only source of capital
11 is the utility company?

12 A No, that's not at all true. We got \$210,000 into
13 Leisure the other day, and I put 100-something-thousand cash
14 in the utility company, as an example. And over the years I
15 have put close to right at 300,000 net cash since the
16 beginning of the test year in this case. I have put about
17 300,000 cash into the utility company from other entities.
18 So these other companies aren't living off the utility
19 company, the utility company is now and always has been
20 living off of these other entities. It could not have
21 existed without cash influx from these other companies and
22 from me personally.

23 Q I thought you testified that the only other
24 company that had anything to speak of was fairly debt
25 ridden?

1 A Which other company?

2 Q That would be Leisure Properties?

3 A Leisure Properties has a lot of debt, but Leisure
4 Properties does come up with cash from time to time. And
5 most of it has gone into the utility company recently, the
6 last two or three years.

7 Q Or to Armada Bay Company?

8 A Or to Armada Bay, and then some of that has gone
9 back into the utility company. But what I'm saying is we
10 have -- and I have gone over this in detail with the PSC
11 Audit staff, but I have put through my other affiliates
12 about 300,000 cash into the utility company net. And as I
13 said, within the last months or two, we got 210,000 cash
14 into Leisure, and I put at least 100,000 cash into the
15 utility company to carry through this rate case and do some
16 other things we needed to do in the utility company.

17 Q But those are loans, aren't they? Didn't you
18 testify --

19 A Those are loans. Those are loans, but without
20 those loans or advances, whatever you want to call them, the
21 utility company could not exist. Could not have existed the
22 past several years or before that.

23 Q I'm still at a loss to understand where the rest
24 of the rent comes from every month that Armada Bay Company
25 pays?

1 A It comes from Armada Bay Company, or Leisure, or
2 the law firm. The payments -- when we got the
3 lease/purchase, either I or Armada Bay paid 5,000 down for
4 the lease/purchase. Armada Bay Company pays the condo fees,
5 the property taxes, maintenance and repairs, those types of
6 things. The air conditioner, they tell me the compressor is
7 about to go out. Armada Bay is going to have to buy a new
8 compressor, things like that. All I was trying to say is
9 that we don't keep up with the bookkeeping, and we don't
10 write a check every month from any other company to Armada
11 Bay. Armada Bay just pays the rent directly, and that's
12 allocated by the accountants at the end of the year, as I
13 understand it.

14 Q Okay. Moving along. When you first -- first of
15 all, how did you arrive at Mr. Pfeiffer as your attorney?
16 How did that all come about?

17 A His law partner, Tom Pelham, used to be my law
18 partner. And Tom has represented me over the years, and Tom
19 highly recommended Mr. Pfeiffer, and I hired him based on
20 that recommendation, and my interviews with him, and my
21 knowledge that he was an acknowledged administrative law
22 expert.

23 Q When you first spoke with him did he tell you what
24 his hourly rate was?

25 A Yes.

1 Q What did he tell you?

2 A I think he had 175 or \$185 an hour, right in that
3 range.

4 Q You stated on your rebuttal testimony, Page 31,
5 Lines 10 through 13, that if the utility is successful in
6 getting its permit modified for increased withdrawal from
7 the water management district, then it will take the utility
8 through 1995 based upon current growth. Can you explain how
9 you arrived at that conclusion?

10 A If I could look at those documents that could not
11 be received in evidence, I can probably answer that. That's
12 all laid out in the application and the hydrological.

13 Q Is that the Les Thomas study?

14 A Well, there is the Les Thomas capacity study that
15 talks about the fact that the utility has adequate capacity
16 for the next five years; and then there is the Les Thomas
17 application and filing with the water management district,
18 dated July 11, in which he goes through and points out
19 that --

20 MR. McLEAN: Pardon me, I object. I don't think
21 the lawyer opened the door, I don't think the answer is
22 responsive, and I believe the chair ruled these documents
23 inadmissible based upon due process arguments. If we were
24 in circuit court, the witness would be flirting with
25 contempt. Here I think we just ought to put an end to his

1 talking about documents which were denied admission because
2 of due process violations. Thank you, sir.

3 CHAIRMAN DEASON: Mr. Pfeiffer.

4 MR. PFEIFFER: Well, I thought that the documents
5 were not received in evidence because they had not been
6 earlier distributed to the parties. I never heard either
7 the Commissioner or the Chairman say that it was a due
8 process issue. And I believe the witness was responding to
9 the question.

10 CHAIRMAN DEASON: I believe that the question did
11 open the door, and to that extent I'm going to allow Mr.
12 Brown the opportunity to answer the question in the manner
13 he sees fit. If it becomes obvious to the chair that he is
14 just using this as an opportunity to put in evidence matters
15 that have heretofore been ruled upon, I will deal with that
16 at that time. But I'm not convinced that that is being
17 done. At this point I believe that he is trying simply to
18 answer the question that was posed to him on cross
19 examination.

20 MR. PIERSON: Mr. Chairman, if I may, we could
21 probably be much more brief than we already are hoping to
22 be, if we can get those two Les Thomas studies received into
23 evidence. I know you have already stated that they wouldn't
24 be based upon Mr. McLean's objection, but these go to some
25 issues raised by Staff regarding capacity and things like

1 that. And if Mr. McLean has no objection to those two
2 particular documents, that would short circuit a lot of our
3 questioning.

4 MR. McLEAN: I withdraw my objection to -- the
5 Citizens will withdraw their objection to the two documents
6 and only those two documents which you just enumerated.
7 Thank you.

8 MR. PIERSON: Thank you, sir.

9 CHAIRMAN DEASON: Now, let's be specific,
10 Mr. Pierson. What exhibit numbers are those?

11 MR. PFEIFFER: Exhibits 52 and 53. That's the two
12 Les Thomas studies; one on capacity and the other being a
13 hydrological study.

14 MR. PIERSON: Yes.

15 CHAIRMAN DEASON: Mr. McLean withdraws his
16 objection. Ms. Sanders, do you still maintain an objection
17 to those exhibits?

18 MS. SANDERS: No, sir, I have no objection to
19 those two exhibits.

20 MR. McLEAN: And I might add, I'm doing so in the
21 spirit of moving things along. If we are to hear a great
22 deal of examination and talk about them, I would like an
23 opportunity to cross, but God knows, I don't want to spend
24 much time doing that. So if they are to be received in
25 evidence for Staff's evaluation, fine.

1 MR. PIERSON: That's essentially all. I don't
2 have a lot of questions, if any, on them.

3 CHAIRMAN DEASON: With that understanding, then,
4 Exhibits --

5 MR. PFEIFFER: Maybe I don't understand.

6 CHAIRMAN DEASON: What Mr. McLean is saying is
7 that if Staff is going to pursue these exhibits
8 extensively on cross examination, that he may want the
9 opportunity to ask questions on these exhibits as well if
10 they are going to be admitted. And with that understanding,
11 I'm going to allow Exhibits 52 and 53 be admitted. That's
12 contrary to a previous ruling, but in light of the fact the
13 objection has been withdrawn. Mr. Pierson, you may
14 continue.

15 MR. PIERSON: Thank you, sir.

16 BY MR. PIERSON:

17 Q Mr. Brown, my question was that in getting its
18 permit modified for increased withdrawal, the utility stated
19 -- you stated in your rebuttal testimony that it would take
20 the utility through 1995 based on the current rate of
21 growth. And I asked you then to explain how you came to
22 that conclusion?

23 A I came to that conclusion because the permit
24 requests a maximum day withdrawal of 939,640 gallons per
25 day, and if you take our anticipated rate of growth, which

1 is 7 percent a year, starting with our current ERCs, it
2 takes us into and well beyond 1995. And this study breaks
3 it down summarized under current Situation A is consumption
4 demand, which is currently 1347 ERCs totally that are
5 obligated, both connected and unconnected. And in B, he
6 talks about the aquifer capacity that's currently permitted,
7 which is 1346 ERCs, and they have given us a temporary
8 permit recently. Then he talks about the physical capacity
9 under B2 of 964,000 gallons a day, which equates to 1853
10 ERCs, and the withdrawal capacity the same. The raw water
11 transmission capacity he says is 3323 ERCs, because you can
12 pump 1,200 gallons a minute through the transmission line.
13 And the treatment capacity, he says is 1854 ERCs. And then
14 on Page 7 of this he spells it out year-by-year in terms of
15 the -- he's got future situation comsumptive demand, he
16 talks about the anticipated growth within the next three
17 years of 260 connections, and then the next five years
18 through '99, 200 more connections, year 2001 another 227
19 connections, 2004, another 388 connections, and then he
20 concludes that -- this quote, I'm quoting here, "The system
21 appears to be adequate to meet the needs over the next five
22 years provided additional water is granted from the water
23 management district." Which that permit application would
24 do if it's successful. The temporary permit is what is
25 allowing us to legally operate right now.

1 Q Is that the end of your answer?

2 A Yes.

3 Q Thank you. When do you expect the water
4 management district to approve or disapprove your modified
5 withdrawal amounts?

6 A Within the next two or three months I would think
7 that we would have that permit in hand.

8 Q I think in response to some of the issues, or one
9 of the issues raised by Staff in this case, you testified
10 that the issue regarding Well Number 3 not being on line by
11 March 1st, 1993 should have been handled in the prior
12 docket?

13 A Should what?

14 Q That the issue regarding Well Number 3 should have
15 been handled in the prior docket?

16 A Well, I don't remember what I said. I did point
17 out there was a prior docket that was closed.

18 Q Pardon me?

19 A The prior docket was closed on that issue after
20 the PSC Staff came down when we were testing the well in the
21 summer of '93.

22 Q Do you know whether that rate proceeding was
23 closed because the Commission believed that the well was
24 complete as of August 24th, 1993?

25 A I don't know if that's the reason. I know that I

1 worked with Cathy Bidell, who was Staff attorney at that
2 time, and she asked lots of questions and required lots of
3 documentation from the utility about the well, so it seemed
4 to be uppermost on her mind.

5 Q Let me read a statement from Order Number
6 PSC-93-1352, and this is the second to the last paragraph
7 before the ordering paragraphs. It says, "Based upon the
8 utility's recent effort to complete the well, and the fact
9 that the well is now complete, we find that no show cause
10 for the utility's failure to meet the March 1st, 1993
11 deadline in a previous Order PSC-92-1284, is appropriate."
12 Does that sound right?

13 A That sounds familiar.

14 MR. PFEIFFER: Could you give me that number
15 again.

16 MR. PIERSON: Sure. That's a quote from PSC --
17 and not a perfect quote, I might add. PSC-93-1352-FOF-WU.

18 MR. PFEIFFER: Thank you.

19 BY MR. PIERSON:

20 Q During cross examination under your direct
21 testimony, you were asked if Mr. Gordon has contributed any
22 property, and you have stated that you would check. Have
23 you checked?

24 A Yes. I checked, and I recall after checking that
25 we received money from Mr. Gordon, and we ended up giving it

1 back. We got CIAC from him, and he wanted to put a
2 condition on that that we could guarantee him all of that
3 money would be used to finish paying for the third well.
4 And as I explained on my testimony in Apalachicola, we had a
5 problem being able to certify to that, so we finally ended
6 up giving him his money back.

7 Q Was that money that was given to you for Sunset
8 Beach?

9 A No. This was money that was given to me before
10 Sunset Beach as a contribution so that we could use it to
11 complete the third well. That's what it was earmarked for.
12 I mean, he had in mind the Sunset Beach project, and DEP
13 wanted the third well complete before they would permit
14 Sunset Beach.

15 Q Have you received any money for Pebble Beach?

16 A We got some tap fees on Pebble Beach, yes.

17 Q Was that from Mr. Gordon?

18 A Yes, or from his customers. He sold a number of
19 lots and we sold them connections.

20 Q Do you know how that was booked?

21 A They were booked under the names of the various
22 people who bought the lots. They're all on the CIAC list
23 that I went over with Staff.

24 Q Was any system analysis completed prior to the
25 1992 Baskerville-Donovon analysis?

1 A Not in the recent years. We had some analysis and
2 studies in earlier years, but until the '92 system analysis
3 was completed, there had not been a recent analysis of the
4 system. Billy Bishop and possibly some other engineers did
5 some back in the '70s, maybe early '80s. In '82, I know
6 Billy Bishop did a report.

7 Q Are those the Bishop studies that we have already
8 discussed rather extensively?

9 A Yes. Well, there are one or more more I have seen
10 going back through this that we haven't discussed, but
11 between about '82 or '83 and the Baskerville report, I can't
12 think of any very complete system analyses of any type.

13 Q Do you believe that another aerator analysis will
14 be needed within the next two years?

15 A I don't know. We have just completed the second
16 aerator analysis, we did one in '92, and we just did one
17 that we completed last week or the week before. And we have
18 not yet received a response from DEP about that, and it just
19 depends on whether there are any complaints or whether --
20 there is no way to know for sure.

21 Q Did DEP require you to do the most recent aerator
22 analysis?

23 A Yes. They required us to reevaluate the one that
24 we did earlier.

25 Q Did they do that in conjunction with rejecting the

1 earlier analysis?

2 A They said that it was not complete or specific
3 enough regarding some chemical analyses and wrote us a
4 letter and asked us to reevaluate it. Then I met with them
5 and we had our chemist at our testing lab contact the DEP
6 chemist, and they talked. And we Baskerville redo the
7 analysis, and it's -- we have done everything as of right
8 now that I know that we can do, and we are waiting I guess
9 to hear back from DEP on what, if anything, they think we
10 need to do. As far as we are concerned, the aerator works,
11 we are removing hydrogen sulfide sufficiently, we don't get
12 complaints. We have doubled the size of the aerator, and
13 that's in accord with the plant specs and all, and we just
14 don't know what we are going to have to do about that.

15 Q Assume for the moment, if you will, that DEP
16 approves, however they do approve your aerator analysis?

17 A Yes.

18 Q Do you have any reason to believe that you will
19 have to perform another one within the next two years?

20 A No, if they approve it and we continue operating,
21 I would not plan to do another one. If they say that one is
22 fine, and if they say that we don't have to build a new
23 forced air aerator, or do anything other than just continue
24 with the one we have got, we think the aerator we have got
25 will take us through the next couple of years. We may have

1 to look at it at that point, that's discussed in these
2 Les Thomas reports we just talked about. In terms of he has
3 got a specific section in there about the aerator, and I
4 read them quickly, I have forgotten how long he thinks the
5 existing aerator will take us based on this projected
6 growth. It's on Page 5, I believe. No, that's aquifer.
7 It's in here somewhere. I don't know, Mr. Pierson. I think
8 the aerator we have got will take us through the next two
9 years. We may or may not need a study, or we will probably
10 have to have some engineering help in determining what to do
11 at that point. I think that the aerator we have got is
12 going to play itself out probably in about two years, two to
13 three years and we'll have to decide what to do, and some
14 engineer will have to help us.

15 Q Did you testify that the utility would have to
16 apply for another modification of its consumptive use permit
17 in 1996?

18 A Yes, I testified to that, and since then we have
19 modified. We filed a preliminary application that would
20 take us through two years, that was filed at the time I
21 testified, and the time we filed the MFRs. Since then we
22 have decided to go ahead and ask for more capacity than was
23 in our first application we filed. We amended it, and now
24 we are asking for enough capacity to take us through almost
25 a million gallons a day.

1 Q When do you expect to need a million gallons per
2 day?

3 A Probably in about three to five years.

4 Q You also stated that the utility is ready, willing
5 and able to provide fire protection. How do you intend to
6 finance the necessary plant improvements?

7 A The first thing we feel like we need to do is to
8 have a study, which we have gotten three or more bids, and
9 the best bid we have got is also from Les Thomas, who says
10 he will completely analyze it for \$12,000, and tell us what
11 we have got, what we need, and what it will cost. And at
12 that point, depending on a lot of factors, we will look at
13 financing the necessary improvements. And those may or may
14 not be done in time to do it on this next -- we plan to
15 immediately try to refinance all the third party debt with
16 Farmers Home Administration, but once that's in place and is
17 successful, I think we could probably get the necessary
18 funds to improve fire protection down there. If everybody
19 is willing to agree that we need it, and it will have to be
20 paid for. Somebody has got to determine the exact level of
21 fire protection, though, and in what places and what
22 pressures and flows.

23 Q How will you deal with fire protection if you do
24 not have a study? Let me ask you this first. If the
25 Commission doesn't allow the proposed cost for the study,

1 will you still have it performed?

2 A A formal study for that amount of money, I don't
3 know if I will do that or not. If that's not allowed, I may
4 or may not spend that money on our own. I'm not sure. We
5 will continue to do the best we can, including continued
6 efforts to increase the supply across from the mainland and
7 to enhance the pressures, which we have recently done. We
8 are getting a lot better flows and pressures now than we
9 ever have before, so there will be a certain amount of fire
10 protection that's going to go along with the general
11 upgrading of the system. But whether we would dedicate
12 separate funds to a separate fire protection system itself
13 is problematic.

14 Q Okay. Would you look at the mortgage and note
15 between Regional Investment and SGIU that has been passed
16 out.

17 MR. PIERSON: And I would like to get that marked
18 as an exhibit, and I have no idea what number we are on
19 right now.

20 CHAIRMAN DEASON: I believe the next number is 66.

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

22 (Exhibit Number 66 marked for identification.)

23 BY MR. PIERSON:

24 Q Can you tell us who the borrower and who the
25 lender are?

1 A Well, I've got several here. I'm trying to --

2 Q It says at the bottom, mortgage and note between
3 Regional Investment and SGIU.

4 A Right.

5 Q Would you tell us the borrower?

6 A The borrower is St. George Island Utility Company,
7 Limited. The lender is is Regional Investments, Limited.

8 Q And how much was loaned?

9 A I think this was 1.5 million or \$1.6 million. It
10 looks like 1.6 million.

11 Q Would you look on Page 18, and tell us whether
12 this loan is secured by utility plant?

13 A Yes, it is. Or was.

14 Q And what were these funds used for?

15 A They were used for various and sundry purposes.
16 Some utility and some overall operations, just to fund
17 operating deficits. This was a refinance of debt that had
18 gone on for years. This was one of many documents that were
19 -- and security instruments that were executed and recorded
20 in connection with this loan.

21 Q At your deposition you stated that the only funds
22 out of these funds that went to the utility was some
23 \$203,000 that was used for the elevated storage tank. Do
24 you recall that?

25 A If I said that, I misunderstood what document you

1 were talking about. Regional Investment made a separate
2 loan for 203,000 that we put into the utility plant at a
3 later date. At the time, that's the only money I could
4 recall separately identified. This money, I think I was
5 asked to think about this between now and the hearing, which
6 I have done, and I still don't recall where all the dollars
7 went except that this was done back in 1984, when Leisure
8 and the utility company were under a lot of financial stress
9 and strain, and we borrowed money from Regional and Andrew
10 Jackson to continue operating both the development side and
11 the utility side. And some of this money went to the
12 utility and some went to the other companies. It has all
13 been paid off since then.

14 Q But some of this money was used for non-utility
15 purposes?

16 A Yes.

17 Q Can I now refer you to the mortgage and note
18 between Pruitt Humphress and St. George Island.

19 A Right.

20 MR. PIERSON: And I would like to get this
21 identified, Mr. Chairman, as Exhibit Number 67.

22 CHAIRMAN DEASON: Yes, it will be so identified.

23 MR. PIERSON: Thank you.

24 (Exhibit Number 67 marked for identification.)

25 BY MR. PIERSON:

1 Q The borrower was St. George, is that correct?

2 A Yes.

3 Q And the lender was Pruitt Humphress?

4 A Yes.

5 Q What kind of collateral secured this loan?

6 A The water system assets secured this loan, as well
7 as other collateral. But this was part of it, a big part of
8 it.

9 Q How much was borrowed here?

10 A I'm not sure of the exact amount without going
11 back and looking at it. I think there was --

12 Q Well --

13 A There are two notes, as I recall, and then it
14 eventually became -- no, there was one note which eventually
15 two judgments. It seems like it was a total of like 140 or
16 150,000 plus about 22,000, maybe a total of 160 or \$170,000.

17 Q That's all right. Would you accept that it's
18 \$137,500?

19 A That sounds right.

20 Q And what was this money used for?

21 A It was used to pay part of the debt that the
22 utility owed on the first mortgage to Leisure Properties. I
23 mean, in terms of from the utility point of view, that's
24 what it was used for.

25 Q Didn't you state at your deposition that this had

1 something to do with the settlement of certain litigation
2 identified as Case Number 87-3881 in the Second Judicial
3 Circuit? Isn't this for advertising services which were
4 provided to St. George Island affiliates, as opposed to the
5 utility itself?

6 A The advertising services were provided to Leisure
7 Properties, Limited. Leisure Properties, Limited could not
8 pay for those services. Leisure Properties then gave this
9 note and mortgage, as I said at my deposition, to Pruitt
10 Humphress. After that, Pruitt Humphress got a judgment
11 based on this note and mortgage against various entities,
12 including the utility company. And then I got somebody to
13 buy that judgment and pay off that debt to them so it
14 wouldn't be a problem.

15 Q In other words, Leisure got some advertising
16 services from Pruitt Humphress?

17 A Leisure got some advertising services from Pruitt
18 Humphress. Leisure couldn't pay for it, then Leisure agreed
19 with the utility company in kind of a forbearance agreement
20 that we would take certain amount of the Leisure debt and
21 satisfy it by the utility company assuming that portion, a
22 sum equal to that to Pruitt Humphress. And as I think I
23 pointed out during my deposition, this was all thoroughly
24 audited and approved by the PSC Audit staff in writing at
25 the time it was done, or approved in the sense of not being

1 a disclosure or an exception in the audit after it was
2 explained to them.

3 Q Okay. But then somehow this note wasn't paid and
4 Pruitt Humphress sued?

5 A That's correct.

6 Q And the utility was named as a party because they
7 signed the note?

8 A That's correct.

9 Q Do you believe that you were practicing good
10 management when you used the utility property as collateral
11 as a note for non-utility debt?

12 A Yes.

13 Q Why?

14 A Because the other alternative would have been
15 bankruptcy for the utility company and all of the
16 affiliates, which could have jeopardized service.

17 Q How would that have bankrupted the utility?

18 A If Leisure Properties went into bankruptcy, and a
19 bankruptcy trustee took it over, the first thing they would
20 do is say, "Look at the balance sheet. What is your biggest
21 asset?" The biggest asset is a first money purchased
22 mortgage on the utility company. And that bankruptcy
23 trustee would immediately say, "Let's foreclose, take the
24 utility company assets and do away with all of the partners
25 and start all over again." And at that point the utility

1 company would either have to be destroyed financially or it
2 would have to place itself into bankruptcy.

3 Q Would you please refer to the mortgage note
4 between Peoples and Covington. Peoples First and Covington
5 is how it's described in the bottom?

6 A Yes.

7 MR. PIERSON: And, Mr. Chairman, I believe our
8 next number is 68?

9 CHAIRMAN DEASON: Yes. It will be identified as
10 Exhibit 68.

11 MR. PIERSON: Thank you, sir.

12 (Exhibit Number 68 marked for identification.)

13 BY MR. PIERSON:

14 Q And who were borrower and the lender here?

15 A The borrower was Covington Properties,
16 Incorporated, and the lender was Peoples First.

17 Q Was the utility in any way involved in this loan?

18 A Yes, the utility pledged assets of the utility as
19 additional collateral for this loan.

20 Q What was the purposes of the loan?

21 A The purpose of the loan was to pay a large debt
22 that Leisure and I had at Peoples First, and they agreed
23 that if we would come in and pay off that debt, they would
24 refinance provided we put up additional collateral,
25 including the mortgage on the utility company. Which turned

1 out to be a fourth or fifth mortgage, I believe.

2 Q How much was this mortgage for? Would you accept
3 for the record that it's \$1,250,000?

4 A Yes, that's my recollection.

5 Q Why should the utility be held liable for a
6 Covington debt?

7 A Because that's the -- at that time Armada Bay was
8 managing Covington, and we had a 10 percent interest in
9 Covington, and Covington requested that we sign this loan,
10 and in return they would pay Leisure's debt off and
11 Covington would receive additional funds, as well. But as
12 far as why the utility company should do it, the utility
13 company did it because it owed considerable money to Leisure
14 on a first mortgage, as well as several hundred thousand
15 dollars of advances since the mortgage, none of which had
16 been paid, and Leisure asked for its assistance in return
17 for Leisure not taking any action against the utility
18 company on those valid utility company debts. And at least
19 from my perspective, if Peoples hadn't been paid and Peoples
20 got a judgment against Leisure and/or me or other entities
21 and started foreclosing or started levying the same scenario
22 and domino effect could have applied here I mentioned
23 before. Because sooner or later if Leisure loses the
24 ability to operate financially and goes into bankruptcy or
25 somebody takes over, then they could go against the utility

1 company, and probably would.

2 Q Is Leisure a party on this mortgage here?

3 A I think Leisure was a party to the overall
4 transaction. I don't see Leisure on this particular
5 mortgage, because the only mortgagor on this is Covington
6 Properties, which owned the land. But Leisure did owe a lot
7 of money to Peoples First that was paid off with part of
8 these proceeds, and I think Leisure did sign as a guarantor
9 along with me, personally, and some other entities on the
10 overall financing package of 1,250,000. There were probably
11 eight or ten guarantors and borrowers, maybe 15.

12 Q Did you say you believe that Leisure signed this
13 mortgage?

14 A No, I said Leisure signed -- this is just one of
15 many documents on this overall financial transaction. What
16 I said was, I believe that Leisure, and I know I did
17 personally, but I believe Leisure also signed as a guarantor
18 and as a maker of the note, or at least a guarantor. There
19 were a number of guarantee agreements by various individuals
20 and companies and corporations.

21 Q Signed as guarantor on what?

22 A To guarantee the \$1,250,000. To guarantee that if
23 Covington did not pay this note, that any one of these other
24 companies and individuals, many of whom were investors in
25 Covington, would be jointly and severally liable on this

1 1,250,000 debt.

2 Q Where did Leisure assume responsibility for this
3 particular debt?

4 A I believe that Leisure signed a guaranty agreement
5 for this debt. I know that Leisure's debt at Peoples First
6 was paid off with part of these proceeds, and I believe that
7 Leisure -- and I know I did, and some other companies, and
8 I'm 99 percent sure Leisure signed a guaranty agreement to
9 guarantee this along with 10 or 15 other individuals and
10 companies.

11 Q Would that guaranty agreement be with Peoples
12 First or would that be with Covington?

13 A The guaranty agreement, all of them were executed
14 directly from the guarantor to Peoples First. If you mean
15 how it worked. I mean, at this point I think they have all
16 been returned to me or to Covington. Because this has all
17 been -- it has all been paid off, and I got a package of
18 documents sometime ago sending all of this stuff back when
19 the loan was paid in full. I think Leisure was one of the
20 guarantors, but I'm not absolutely sure.

21 Q How is Leisure related to Covington?

22 A It's not. It just did a deal with Covington that
23 it would provide some financial strength to this loan if
24 Covington would borrow the money on its land, borrow
25 1,250,000 and use a portion of that to pay off a debt that

1 Leisure and I owed to Peoples First.

2 Q Which Leisure are we talking about, by the way?

3 A Leisure Properties, Limited; which is the general
4 partner of the utility company.

5 Q Leisure Development, Inc. is Leisure Properties,
6 Limited's general partner?

7 A It's one of two corporate general partners of
8 Leisure Properties, Limited, that's correct.

9 Q Who are the principals in Leisure Properties,
10 Limited?

11 A The Brown Children's Trust owns about 96 percent
12 of the partnership interest, and then there are six or eight
13 other individuals who own the balance. And these two
14 partners, corporate general partners are the general
15 partners.

16 Q Who are the principals in Covington?

17 A The principals in Covington were Mr. and Ms. Roy
18 Talley, Roy Talley, Jr., Patrice Bidwell, Walter Armistead.
19 The Brown Children's Trust ended up with about 9 percent,
20 between 9 and 10 percent. There was Jerry McCallister,
21 there was Jack Youngblood, the football player for the Rams.
22 There was James Saddler, I think he he is a lawyer from
23 Gainesville. There was two doctors from Atlanta, or
24 Covington, Georgia, which is the name. I think there is one
25 or two doctors up there who put money into it. Doctor

1 Michael Forsthoefel was and is a part of Covington. He is a
2 local doctor in Tallahassee. I can't remember all of them,
3 but there were a lot of people and they came up with
4 probably 600,000 cash in addition to signing these notes.

5 Q And you said that some of this money went to pay
6 off some of Leisure's debt?

7 A Yes.

8 Q Did Covington owe Leisure money?

9 A No.

10 Q What did Covington get in return?

11 A Covington got assistance in financing their
12 property acquisition and development. They got assistance
13 from me, the utility company, Leisure, and the bank that got
14 paid by this transaction.

15 Q Was the utility in any way involved?

16 A The utility was involved as I described, that they
17 were part of the overall deal.

18 Q Legally speaking, I mean?

19 A Legally, whatever, right. They were involved to
20 the extent of pledging there assets at the request of their
21 major lender, Leisure Properties.

22 Q Were these funds used to buy 30 acres at Bob Sikes
23 Cut?

24 A Part of these funds -- these funds consisted of
25 1,250,000 plus around 600,000 or so in cash, and that money

1 was used to pay off an old Leisure/Gene Brown debt, and to
2 buy 29 or 30 acres at Bob Sikes Cut.

3 Q Was any of the money used for utility purposes?

4 A Yes. In the sense that I have described before,
5 just like the Pruitt Humphress that I described to the PSC
6 auditor, Bob Freeman, back in '89, '90, '91. In the sense
7 that there was a forbearance agreement where Leisure said
8 to the utility, "You owes us three point something million
9 dollars. We have put another 500,000 cash in there, we have
10 helped you and allowed you to exist all of these years, now
11 we need some help. So we want you to assume this portion of
12 Leisure's obligation, and in return we will give you a
13 credit. Number one, we will give you a credit against what
14 you owe Leisure, and, number two, we will agree not to take
15 any action to collect what you owe Leisure." So in that
16 sense, it was a utility purpose in terms of getting a credit
17 on the utility company debt and in getting a forbearance
18 from any action to recover that debt.

19 Q Did that credit show up on the utility's books?

20 A Yes, always.

21 Q The whole amount?

22 A The whole amount of each of these transactions,
23 the Pruitt Humphress showed up and this showed up. I mean,
24 all of this. As these transaction were done, they showed up
25 on the utility company books as a credit, yes. A credit

1 against the Leisure obligation that was owed by the utility
2 company.

3 Q The one that you described in your 1981 deposition
4 as from one hand to the other?

5 A That one, and the one that I would describe now as
6 being Leisure Number 2, which is all of the cash that
7 Leisure and affiliates have advanced since that initial
8 purchase money mortgage. That is on a year-by-year basis
9 when the utility company never had enough cash to operate
10 and Leisure would make advances or loans, we started calling
11 that Leisure 2, and did a promissory note. At the time we
12 did the note, it was 384,000. It's now about
13 600-something-thousand. 600-something plus interest.
14 Probably over a million.

15 Q Are these funds that you have talked about putting
16 into the utility, are they shown as advances or as loans?

17 A Loans. Tied to that note of 384,000. It's now in
18 excess of that, but --

19 Q That's a note to Leisure Properties, Limited?

20 A It's a note from the utility company to Leisure
21 Properties, Limited. At the time the note was executed, the
22 total principal debt was 384,000. Those were advances
23 between the time of the syndication and the time of the
24 note. Since then that amount is greater than 384,000.

25 Q In those instances where the utility has pledged

1 assets, utility assets for monies which are used for
2 non-utility purposes, how was that shown on the utility's
3 books?

4 A It was shown as a credit in favor of the utility
5 company against the debt that the utility company owed
6 Leisure. So there were offsetting debits and credits at the
7 time of each of those transactions. So in that sense, I
8 think it was for utility company purposes.

9 Q Is that reflected in your MFRs?

10 A Yes. All of these are reflected in the MFRs, to
11 my knowledge. I mean, this is all in the books, and the
12 MFRs are based on the books. If there is a problem, I don't
13 know about it. Certainly it was fully explained to Mr.
14 Seidman, who did the MFRs, and has been explained to the
15 Audit staff over and over.

16 Q If you will look at Page 11, please?

17 A Okay.

18 Q Nevermind.

19 A Okay.

20 Q Let me refer you instead to the mortgage note
21 between Capital City and Leisure.

22 MR. PIERSON: And I believe the next available
23 number, Mr. Chairman, is 69?

24 CHAIRMAN DEASON: That is correct.

25 MR. PIERSON: Thank you, sir.

1 (Exhibit Number 69 marked for identification.)

2 BY MR. PIERSON:

3 Q The borrower is Leisure, is that correct?

4 A Yes.

5 Q And the lender is, of course, Capital City?

6 A Yes, sir.

7 Q Would you please refer to the promissory note on
8 Page 5. And how much cash was loaned to Leisure?

9 A Under that particular promissory note \$500,001.

10 Q And what was that loan used for?

11 A It was used to fund general operations and
12 refinance debt. At this point I couldn't tell you exactly
13 where the money went.

14 Q Was any of the money used to purchase property on
15 St. George Island?

16 A Not that I know of or can recall. We were not
17 purchasing property back in '81. We were selling. Now, we
18 might have bought something from time to time, but nothing
19 of any significance that I can recall.

20 Q Would you refer, please, to 23?

21 A Page 23?

22 Q Yes, sir.

23 A Okay.

24 Q That's an assignment of profits from St. George
25 Island Utility Company to Capital City Bank?

1 A Right.

2 Q What was that for?

3 A This was an additional security collateral
4 agreement that the bank required as a condition of this
5 overall financing.

6 Q Would you look at Page 42, please? It appears at
7 Paragraph Number 1 that at this time you owed \$3,530,000 to
8 Capital City?

9 A That's correct.

10 Q Was the entire \$3,530,000 used for utility
11 purposes?

12 A No.

13 Q What was it used for?

14 A It was used for general operations and development
15 on the island and utility operations.

16 Q When you say general operations, what do you mean?

17 A Funds necessary to operate the development
18 company, and the utility company, and any other entities
19 that needed cash.

20 Q How much do you owe Capital City Bank at this
21 time? I mean, St. George Island Utility Company, Limited?

22 A We owe about 600-something-thousand dollars
23 principal and probably 70 or 80,000 interest. We have a
24 disagreement with them right now. They show figures about
25 80 or 90,000 higher than we do, and we think that we are

1 going to come out with an agreement in the next few days of
2 probably pretty close to my numbers. But they are about
3 80,000 off on their's, and they have acknowledged their
4 mistakes except there is a \$10,000 item and another 8 or
5 9,000 that we showed as a credit, we have agreed won't be a
6 credit. But this week we are going to sign an agreement
7 with them agreeing on the exact amount. But it has been a
8 point of some discussion for the last several months,
9 because there is an ongoing question about the debits and
10 credits which go back to the '70s. And we have got a new
11 accountant, and we are trying to document that. But I think
12 they have agreed their figures are too high by 50 or 60,000.
13 The total principal and interest is going to be less than
14 \$750,000.

15 Q Aren't there a number of liens on the various
16 utility properties?

17 A I don't know about a number. Capital City has a
18 lien, and Regional has a lien.

19 Q And Apalachicola?

20 A Apalachicola has a lien.

21 Q Your late mother's estate?

22 A My mother's estate has a lien. It's about 1.1
23 million to 1.2 million in real hard third party debt. Which
24 I testified about in Apalachicola that we intend to totally
25 refinance with a long-term bond type financing with Farmers

1 Home when this rate case is over.

2 Q Does Baskerville-Donovon also have a lien?

3 A Baskerville has a claim, a lien.

4 Q Can you think of any others?

5 A Not offhand. You have pretty much covered them.

6 Q Thanks.

7 A I have about 1.1 million to 1.2 million in my mind
8 as the debt that we have got to do as part of this debt to
9 equity conversion.

10 COMMISSIONER KIESLING: Do I recall correctly that
11 Wayne Coloney also had --

12 THE WITNESS: He filed one years and years ago,
13 but it has expired. He does not have a lien now. It
14 expired by operation of law.

15 BY MR. PIERSON:

16 Q Do you still owe Mr. Gatlin any money?

17 A Yes.

18 Q Do you know how much?

19 A I think I owe him 6 or \$8,000, which I intend to
20 pay with this refinancing. I have got a whole list of
21 people for the utility company that are going to get paid,
22 if and when I'm successful in refinancing this company.

23 Q How are you going to run the utility operations
24 when you're paying off all of these people?

25 A Just like I have been running it. Find money from

1 other sources and put it in there until I can get this done.

2 Q In Exhibit J of your rebuttal testimony, you
3 included a letter dated May 17, 1993 addressed to Ms.
4 Suzanne Summerlin, and you listed various escrow accounts
5 which have been established for St. George Island. One of
6 these was an escrow account set up by the Commission by
7 Order Number 21122 to escrow \$1,520 of service availability
8 charges, isn't that correct?

9 A I don't recall. I assume it is.

10 Q And it was set up so that this amount would be
11 escrowed pending the completion of certain plant
12 improvements and capacity increases, isn't that also
13 correct?

14 A I assume that it is, Mr. Pierson.

15 Q You're not making this any easier for me,
16 because --

17 A Well, I'm not trying to be difficult. I just
18 don't recall all of those escrow agreements. We have gone
19 over them and over them with the Audit staff.

20 Q Well, do you know whether the utility has
21 completed the plant improvements as ordered in Order
22 Number 21122, and generally in that docket?

23 A I know that we have completed all the plant
24 improvements ever ordered by anybody, plus some others that
25 we have done on our own.

1 Q Was the utility directed to file a service
2 availability case in that last docket?

3 A To file a service availability --

4 Q Case.

5 A -- case?

6 Q Case or proposal?

7 A In which docket?

8 Q Well, ordered in Docket Number 871177?

9 A Is that the '89 case?

10 Q Yes.

11 A We were ordered to file a tariff including service
12 availability charges, which we did.

13 Q Do you have Exhibit J in front of you?

14 A I probably do here somewhere.

15 Q It's part of your rebuttal testimony.

16 A No, I don't have that. I have it.

17 Q Can you tell us what Escrow Account Number 3 was
18 for?

19 A Where is that referred to?

20 Q In the second page of Exhibit J.

21 A I don't see any reference to an escrow account on
22 the second page of Exhibit J.

23 Q Are you looking at your rebuttal testimony?

24 A I'm looking at my rebuttal testimony, and I'm
25 looking at a letter dated August 12, '93 from

1 Baskerville-Donovon, which is marked as Exhibit J.

2 Q I'm sorry, there is another letter dated May 17th,
3 1993.

4 A Okay.

5 Q You don't really have to tell us what that escrow
6 account is for, because it states fairly succinctly what
7 it's for. But can you tell us whether that escrow account
8 was ordered by the Commission?

9 A I believe it was.

10 Q What about Escrow Account Number 4?

11 A I don't think that was ordered by the Commission.
12 I could be wrong, but as I recall we needed \$75,000 to work
13 on the third well, and I went to Fleet Financial in Atlanta
14 and pledged some of Leisure Properties mortgages and they
15 loaned \$75,000 based on those mortgages. And we set up an
16 account at Andrew Jackson. The lender wanted to make sure
17 that that 75,000 went into the third well.

18 Q So did the lender require that they be put in
19 escrow?

20 A They required it or we agreed to it. I think we
21 proposed it that way and they agreed. I don't recall the
22 Commission ordering that to be escrowed.

23 Q That's okay. How about Escrow Account Number 5,
24 was that required by Capital City First National Bank?

25 A As I said here in this letter, there was a verbal

1 agreement between Dubey Ausley and me that we would set up
2 an account which we called barrier island escrow account to
3 pool all of the funds. And we figured out that a certain
4 percentage of the funds, I think it was 38 percent of the
5 operating funds of the utility, would be sufficient to
6 service the debt at Capital City, and that's what we did.

7 Q Then the purpose of this escrow account was to
8 service the debt of Capital City?

9 A The purpose of the escrow account was to let
10 Capital City have a working knowledge of the revenue from
11 the utility company, and to assure them that we would make
12 timely payments on the first mortgage that they held.

13 Q How about Escrow Account Number 7, is this the
14 same escrow account referred to you in your letter dated
15 June 14th, 1993, and another letter dated June 21st, 1994?

16 A I believe it is. That escrow account is one that
17 George Mar and I established when he put up \$75,000 to help
18 the utility complete the third well.

19 Q Why did Mr. George Mar request and St. George
20 Island Utility Company agree to the condition that service
21 availability charges be escrowed in order to release the
22 \$75,000 loan?

23 A He was more or less giving a loan against the
24 probability that the utility would be receiving connection
25 fees, so we agreed that if he would put the money up in

1 advance we would escrow the connection fees so that his
2 \$75,000, which we were putting into the third well, would be
3 repaid from those connection fees. So there were two
4 separate accounts simultaneously established.

5 Q Would you look down the page at Paragraph
6 Number 4.

7 A All right.

8 Q As of May 17, 1993, the date of this letter, is it
9 true that the utility had two developer agreements approved
10 by the Commission?

11 A We have had at least two approved by the
12 Commission. I don't know the total number, but I think they
13 did approve one with Andrew Jackson and they did approve one
14 with Wilder Properties.

15 Q Before you there is a copy of a developer
16 agreement dated December 31, 1991. It's the smaller of the
17 two. Could you identify this for the record?

18 A If I can find it. Is this the one with Covington?

19 Q Yes.

20 A Yes. Well, that's the mortgage.

21 Q Well, while you're looking for that --

22 A Yes, here it is. This is a developer agreement
23 between the utility and Covington.

24 Q Yes. And what is the purpose of this developer
25 agreement?

1 A It was to have an agreement for them to acquire 22
2 connections that they would have a right to receive pursuant
3 to the terms of the agreement.

4 Q The letter attached indicates that this was
5 hand-delivered to the Public Service Commission. Do you
6 know whether, in fact, that happened?

7 A I'm sure it did. I mean, I didn't personally
8 deliver it, but somebody from the utility delivered it over
9 here.

10 Q Did you receive any evidence, such as a stamped
11 copy of the letter, or a letter from the Commission showing
12 receipt of that letter?

13 A I don't know if we did or not, Mr. Pierson.

14 Q Do you know whether this developer agreement was
15 approved by the Commission?

16 A I believe it was not approved by the Commission.

17 Q Did you, in fact, collect the \$49,000 shown in
18 this agreement?

19 A Yes.

20 Q Did you book that money?

21 A Yes.

22 Q Even though the developer agreement wasn't
23 approved?

24 A We booked the money and did not approve the
25 developer agreement, did not give them the rights to these

1 connections. We put them down in what we call Book 9.
2 There is a whole series of CIAC accounts in our Book 9 that
3 reflect funds that have been paid to the utility without a
4 reciprocal obligation to the utility to serve those people.

5 Q If you will look at the fatter of the two, if you
6 will.

7 MR. PIERSON: And, Mr. Chairman, before we go to
8 that, I would like to get this developer agreement between
9 St. George Island and Covington Properties identified as
10 exhibit, I believe, Number 70?

11 CHAIRMAN DEASON: Yes, that's correct.

12 MR. PIERSON: And then we have another composite
13 exhibit of developer agreements dated February 25, 1993,
14 blah, blah, blah. And I would like to get that identified,
15 if I could, as Exhibit Number 71.

16 CHAIRMAN DEASON: It will be so identified.

17 MR. PIERSON: Thank you.

18 (Exhibit Number 70 and 71 marked for
19 identification.)

20 BY MR. PIERSON:

21 Q Toward the back there is a March 2nd, 1994
22 amendment which was subsequently withdrawn, can you explain
23 why?

24 A Mr. Gordon wanted it withdrawn, and we agreed to
25 withdraw it. I don't see it here. Oh, amendment to

1 developer agreement?

2 Q Yes. It's behind the letter.

3 A Right. I see one dated July 2nd, 1993, amendment
4 to developer agreement.

5 Q March 2nd, 1994. It's toward the very back of the
6 exhibit.

7 A I see a letter dated March 2nd, 1994.

8 Q And if you will flip that over, there is an
9 amendment to agreement to provide water service.

10 A Right.

11 Q And this was subsequently withdrawn?

12 A Right.

13 Q Did St. George collect the charges?

14 A No.

15 Q Did St. George make the connections?

16 A St. George has made individual connections since
17 this developer agreement was rejected, yes. We have sold
18 individual connections to Mr. Gordon, but not pursuant to a
19 developer agreement.

20 Q Would you flip toward the front, Page 5, please.
21 And this is the original developer agreement dated
22 February 25, 1993?

23 A Right.

24 Q Can you explain why Ken Gordon requested and
25 St. George Island agreed to escrow service availability

1 charges at Capital City First National Bank?

2 A Mr. Gordon wanted to make sure, as I said before,
3 when he gave us money before this agreement, he wanted to
4 make sure that if he gave the utility company --
5 contributed, or gave, or advanced, whatever, funds, that
6 those funds would, in fact, be used for utility plant
7 improvements. And this was a negotiated agreement to escrow
8 these funds specifically for completion of the improvements
9 identified in this agreement.

10 Q Why do you suppose Mr. Gordon had that concern?

11 A Just good business. He just wanted to make sure
12 that we would be able to complete those improvements. He
13 knows the financial stress the utility company is under, and
14 he had just been through a series of events when he had put
15 up money with the utility company and then we weren't able
16 to guarantee him that we could use that for the third well.
17 And there were lots of people trying to stop this project,
18 and he didn't want it to be stopped. And he couldn't get
19 his project done unless he could get water.

20 Q Do you know if it's common practice in the utility
21 industry for developers to require utilities to escrow
22 service availability charges?

23 A I don't know if it's common practice in the
24 industry. Probably not. It has been common practice with
25 this utility company since the Commission started that

1 series of events in the last case, and it has caught on
2 pretty good.

3 Q Like wildfire.

4 A Like wildfire. It seemed like a good idea, I
5 guess. Everybody knows the utility doesn't have enough
6 money to operate on, and they know that if they put money up
7 for plant improvements and they can't get their project done
8 without those plant improvements, they want to make sure
9 that those improvements are made timely.

10 Q Are you familiar with Docket Number 920782?

11 A Not by that number.

12 Q That's the revocation docket, are you familiar
13 with that?

14 A I'm familiar with that docket.

15 Q Are you familiar with Order Number PSC-93-0370?

16 A Not my number. I don't keep up with the numbers.

17 Q Do you know whether there was an order issued in
18 that docket approving a proposed stipulation submitted by
19 the utility company?

20 A I remember in 1991 that there was an approved
21 stipulation by order of the Commission in October of '91.
22 It's my recollection. Is that the docket you're talking
23 about?

24 Q Well, this was a '92 docket, so I didn't think
25 that would work.

1 A I remember a big settlement, I thought in '91 with
2 the Commission, a comprehensive settlement of a number of
3 issues.

4 Q Do you remember the order which suspended the
5 hearing and placed Mary LaBatt as your co-manager?

6 A I remember that order, yes, sir.

7 Q Do you remember whether --

8 A And that was in '92, I remember that.

9 Q Do you remember whether the utility had proposed a
10 stipulation that was approved in that order? Do you know
11 whether the utility proposed to escrow all CIAC funds?

12 A I don't recall what the proposed stipulation was,
13 Mr. Pierson. Pete Dunbar was handling that, and we entered
14 into an agreement, and we did agree for a period of time to
15 have a co-manager, which was designated by the Commission as
16 Mary LaBatt.

17 Q Looking back to Exhibit J, if you will. To a
18 letter dated June 21st, 1993 to Mr. Troy Rendell (phonetic)?

19 A That's Exhibit J in the same document we are
20 talking about?

21 Q No, in your rebuttal testimony.

22 A Oh, in the rebuttal testimony. Okay.

23 Q Are you at the June 21st, 1993 letter to Mr. Troy
24 Rendell?

25 A I'm getting to that.

1 Q Okay.

2 A I see a letter dated June 21st, '93 to Mr. Troy
3 Rendell, right.

4 Q Would you agree that the essential purpose of this
5 letter is to break the approved stipulation agreement with
6 the Commission?

7 A Yes. That was the bottom line result of it, I
8 think.

9 Q And you stated on Pages 2 and 3 that both you and
10 Ms. LaBatt worked together as co-managers to devise a way
11 for the CIAC monies to be released to Mr. George Mar in
12 order to allow the third well to be placed into service;
13 would you agree with that?

14 A Yes. Whatever I said there, I agree with.

15 Q Okay.

16 CHAIRMAN DEASON: Mr. Pierson, we are going to
17 take ten minutes at this time.

18 (Off the record.)

19 CHAIRMAN DEASON: You may proceed, Mr. Pierson.

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

21 BY MR. PIERSON:

22 Q You have indicated at several places in this
23 letter and in your testimony that those inflexible Staff
24 just wouldn't help you out with this. But isn't it true
25 that the reason for St. George Island Utility's

1 noncompliance with the approved stipulation was the
2 utility's refusal to put Mr. Steve Tribble's name on the
3 CIAC escrow account?

4 A The bottom line is that we refused to put his name
5 on the escrow account because the other party to the escrow
6 account refused to allow that, and I considered that that
7 would be a violation of the escrow agreement we had, and
8 might result in us not being able to finish the third well.
9 I mean, I explained to Mr. Rendell in this letter why we
10 could not comply with that request to put his name on there,
11 and that basically was that the construction company that
12 was putting the well in, and the man who put up the money
13 wanted to make sure that we followed our written and verbal
14 agreement that was made prior to this time that, in fact,
15 that escrow money would be used to pay for that third well
16 when the well was completed. But I could not get any
17 agreement that if I agreed to put Steve Tribble's name on it
18 that he would go along with that and actually pay for the
19 third well.

20 Q Mr. Brown, I asked this of another witness, and I
21 might have even asked it of you at one point, but there are
22 a number of pro forma adjustments included in this case?

23 A Yes.

24 Q For instance, insurance expense?

25 A Yes.

1 Q Now, during the test year you did not have any
2 insurance in effect?

3 A During the test year we were without insurance.

4 Q Yes. And you did receive an insurance expense in
5 the last rate case?

6 A We received a partial expense, right, for one of
7 three types of coverage.

8 Q My question is how can you assure this Commission
9 that monies that you are given in this case for specific
10 purposes will be used for those purposes?

11 A I don't know how I can assure the Commission
12 except to point out that I have devoted the last three years
13 of my life and about 300,000 cash to operating this utility
14 company properly. And I'm dedicated to continue doing that,
15 and I want nothing more than to have this utility company
16 operate on a sound basis. But since the last case we have
17 been totally unable to do that, and I think there was maybe
18 \$3,000 in the last case for insurance, which was 10 percent
19 of the first bid we got, and about 25 percent of the final
20 bid that we got and now have in effect. So the funds from
21 the last case were totally inadequate to do what the utility
22 company needed to do. And I don't say that's the
23 Commission's fault, or the Staff's fault, or anybody's
24 fault. Maybe it's our fault for not presenting a good case,
25 but the reality was and is that never was sufficient. But

1 if there are sufficient funds this time, we will and I will
2 use that for these purposes. If I didn't want to run this
3 in the right way I wouldn't be going through all of this. I
4 wouldn't have put 300,000 in it and spent the last three
5 years trying to straighten it out.

6 Q Is the converse of your last statement also true,
7 that if there are not sufficient funds granted in this case
8 that they won't be used for their intended purposes?

9 A If there are not sufficient funds, I don't want to
10 sit here and say that I'm going to put another 300,000 into
11 this company.

12 Q Well, will you continue to pay the insurance
13 premiums?

14 A I will continue to pay the insurance premium if
15 they are allowed, no matter what, yes. I will commit to
16 that.

17 Q And the pension expense?

18 A The what?

19 Q The pension premiums?

20 A Yes, I will definitely promise to do that. I
21 think as an attorney, I think for anybody to say that I'm
22 going to rip off the company, and the employees, and the
23 ratepayers, it's just an unreasonable statement that I would
24 do that.

25 Q Mr. Seidman told me to ask you this. Do you know

1 any reason why Savannah Labs can't pick up all the samples
2 that are due at any particular time when they pick up their
3 monthly samples?

4 A No. I think we do hydrogen sulfide tests twice a
5 month, I'm not sure. I mean, there are some tests that have
6 to be done more than monthly, but certainly I have looked at
7 that proposal and I think there is some overlapping and some
8 transportation charges that could be consolidated. Maybe
9 all of them. And one of the first things I'm going to do
10 after this case is over is try to look at that and see
11 exactly what the bottom line is. But I acknowledge that's a
12 good point about not duplicating transportation and pick-up
13 expenses. I don't know of any reason you can't pick them
14 all up at once --

15 Q That's exactly my point.

16 A -- if that's the point.

17 MR. PIERSON: Thank you. No further questions.

18 CHAIRMAN DEASON: Mr. Pfeiffer, can you give me an
19 idea of how extensive your redirect is going to be?

20 MR. PFEIFFER: I anticipate that my redirect would
21 take approximately two hours. I can say to you that if I
22 have an opportunity to work with my notes in the morning
23 that I can probably substantially reduce that, or reduce it
24 somewhat. But at this point I would anticipate about two
25 hours.

1 CHAIRMAN DEASON: Well, given the lateness of the
2 hour and the indication that you may be able to expedite
3 things by having the opportunity to review your notes before
4 we proceed with redirect, I'm inclined to adjourn for this
5 evening. I think we did indicate earlier that when we
6 reconvened tomorrow that Ms. Withers would be the first
7 witness, and so that's to accommodate Ms. Sanders. And I
8 assume there is still no objection to that?

9 I'm going to put all parties on notice that I have
10 a prehearing conference tomorrow that starts at 9:30. I
11 fully anticipate that I will be concluded with the
12 prehearing conference by 1:30. I certainly hope so, since
13 the prehearing conference is going to be in this same room.
14 But if you for some unforeseen reason that prehearing
15 conference is extended past that time, I may need an
16 accomodation from the parties, and the understanding that I
17 will have to join you when I can and review the record for
18 any part of the proceeding which I missed.

19 MR. McLEAN: You said the prehearing conference is
20 going to be in this room?

21 CHAIRMAN DEASON: It's noticed for this room. I
22 would expect that we will be finished. I'm going to direct
23 everyone to reconvene here tomorrow at 1:30, and if there is
24 a conflict we will just have to decide if we move this
25 hearing to another room or if we just pick up the prehearing

1 conference and move it to another room.

2 MR. McLEAN: I was wondering about leaving our
3 boxes and things here tonight. That may be obtrusive for in
4 the morning, perhaps?

5 CHAIRMAN DEASON: It certainly may. I would
6 request that you clear the desk area, and you may leave your
7 materials in the rear of the room, or to the side somewhere.
8 Anything further at this time? Hearing nothing, we will
9 adjourn for this evening. We will reconvene tomorrow at
10 1:30 p.m.

11 (The hearing was adjourned at 8:05 p.m., to
12 reconvene on Wednesday, August 10, 1994 at 1:30 p.m. at the
13 same location.)

14 (Transcript following in sequence in Volume 11.)
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CERTIFICATE OF REPORTER

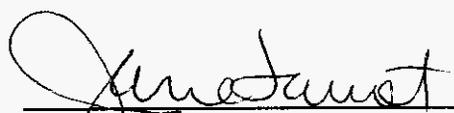
STATE OF FLORIDA)

COUNTY OF LEON)

I, JANE FAUROT, Court Reporter, do hereby certify that the foregoing proceedings was taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages are a true and correct record of the proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing action.

DATED THIS 12th day of August, 1994.



JANE FAUROT
100 Salem Court
Tallahassee, Florida 32301
(904) 878-2221

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 12th day of AUGUST, 1994, IN THE CITY OF TALLAHASSEE, COUNTY OF LEON,

1 STATE OF FLORIDA, BY THE ABOVE PERSON WHO IS PERSONALLY
2 KNOWN BY ME.



Melanie Y. Strubble
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