

Volume 10

CASE No. 95-01122

95-01122

1533

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 940109-WU

SIXTH DAY - AFTERNOON SESSION

VOLUME XI

Pages 1533 through 1673

RECEIVED
AUG 15 1994
STATE OF FLORIDA
PUBLIC SERVICE COMMISSION

PROCEEDINGS: Hearing

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

DATE: Wednesday, August 10, 1994

TIME: Commenced at 1:30 p.m.
Concluded at 5:35 p.m.

PLACE: 101 East Gaines Street
Tallahassee, Florida

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

APPEARANCES:

(As heretofore noted.)

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

DOCUMENT NUMBER-DATE

08233 AUG 12 1994

FPSC-RECORDS/REPORTING

I N D E X

WITNESSES - VOLUME 11

Name:	Page No.
BARBARA S. WITHERS	
Direct Examination by Mr. Pfeiffer	1537
Prefiled Testimony Inserted	1539
Cross Examination by Ms. Sanders	1547
Cross Examination by Mr. Pierson	1571
Redirect Examination by Mr. Pfeiffer	1576
Recross Examination by Ms. Sanders	1590
GENE D. BROWN	
Redirect Examination by Mr. Pfeiffer	1594

EXHIBITS - VOLUME 11

Number:	Identified	Admitted
---------	------------	----------

(REPORTER NOTE:

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

72		1549	
73		1558	
74		1587	
42			1593
75		1610	
76		1649	
52			1664
53			1664
66 - 71			1664
63			1664
64			1665
65			1666
61			1666
47			1668
75			1669
CERTIFICATE OF REPORTER			1673

P R O C E E D I N G S

(Transcript follows in sequence from Volume 10.)

(Hearing reconvened at 1:30 p.m.)

CHAIRMAN DEASON: Call the hearing back to order.

Any preliminary matters?

Ms. Sanders, I understand that you're not under a time constraint for today, is that correct?

MS. SANDERS: That is correct, Mr. Chairman. I appreciate it. No problems, all day today.

CHAIRMAN DEASON: Okay. Well, then, that raises a question would it be preferable to conclude Mr. Brown's redirect or would it be preferable to do Ms. Withers first as we had originally planned? I'm flexible.

MR. PFEIFFER: Based on what we knew leaving here last night, Ms. Withers has made some plans for later this afternoon that would be helpful for her to meet, and so we would ask that we take her as originally scheduled.

CHAIRMAN DEASON: Very well. You may call your witness.

MR. PFEIFFER: We call Barbara Withers.

Ms. Withers, have you been sworn as a witness in this proceeding?

THE WITNESS: No, I have not.

CHAIRMAN DEASON: Please stand and raise your

1 right hand.

2 (Witness sworn.)

3 Thereupon,

4 BARBARA S. WITHERS

5 was called as a rebuttal witness on behalf of St. George
6 Island Utility Company, Ltd., and having been duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. PFEIFFER:

10 Q Please state your name.

11 A Barbara S. Withers.

12 Q What is your business address?

13 A 2608 Bantry Bay Drive, Tallahassee, Florida 32308.

14 Q What is your occupation?

15 A I'm a certified public accountant.

16 Q By whom are you employed?

17 A I'm self-employed as a sole proprietor.

18 Q Have you previously prepared prefilled rebuttal
19 testimony in this proceeding?

20 A Yes, sir, I have.

21 Q Do you have it there before you, Ms. Withers?

22 A Yes, I do.

23 Q Do you have any additions, corrections or changes
24 to make in your testimony?

25 A There was an exhibit number missing on Page 2,

1 Line 20, and I believe that number should be FS-3.

2 Q Did you sponsor any exhibits with your prefiled
3 testimony?

4 A Yes, I have included the affidavit I provided to
5 the Commission in the last rate proceeding as an exhibit.

6 MR. PFEIFFER: We would ask that the exhibit
7 attached to the prefile rebuttal testimony be marked as the
8 next numbered exhibit.

9 CHAIRMAN DEASON: I believe it has already been
10 identified as Exhibit 42.

11 MR. PFEIFFER: 42?

12 CHAIRMAN DEASON: Yes.

13 MR. PFEIFFER: Thank you.
14
15
16
17
18
19
20
21
22
23
24
25

1 REBUTTAL TESTIMONY OF BARBARA S. WITHERS
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE APPLICATION FOR INCREASED RATES FOR
4 ST. GEORGE ISLAND UTILITY COMPANY, LTD
5 IN FRANKLIN COUNTY
6 DOCKET NO. 940109-WU
7

- 8 **Q. Please state your name, profession and address.**
- 9 A. My name is Barbara S. Withers. I am a CPA and sole
10 proprietor of Barbara Sheehan Withers, CPA., 2608
11 Bantry Bay Drive, Tallahassee, Florida 32308.
12
- 13 **Q. On whose behalf are you testifying in this**
14 **proceeding?**
- 15 A. On behalf of the applicant, St. George Island
16 Utility Company, LTD (SGI).
17
- 18 **Q. Have you previously presented expert accounting**
19 **testimony before this Commission?**
- 20 A. Yes. I testified in Docket No. 871177-WU, SGI's last
21 rate case. I testified at the initial hearings in
22 January, 1989 regarding reconciliation of tax
23 returns and financial statements. I also testified
24 in December, 1991 regarding the maintenance of the
25 books and records of SGI in compliance with the

1 instructions in the Uniform System of Accounts
2 (USOA).

3

4 Q. What is the purpose of your rebuttal testimony in
5 this proceeding?

6 A. To respond to the prefiled testimony of staff
7 witness Gaffney and OPC witness Dismukes.

8

9 Q. At page 3 of her prefiled testimony, Ms. Gaffney
10 discusses Staff Audit Exception Nos. 1 and 2,
11 regarding the condition of the company's books and
12 records. She concludes that SGI's books and records
13 are not kept on a monthly basis, that they are kept
14 on a cash rather than accrual basis, and infers that
15 they may not be in compliance with the NARUC USOA.
16 Do you agree?

17 A. No. The company has fully responded to these
18 allegations in its responses to Exception Nos. 1 and
19 2. Those responses are Schedule 5 of Mr. Seidman's
20 Exhibit FS-3. As the responses point out, SGI
21 maintains its books on a monthly basis as required
22 by the Commission. The books are closed by the 10th
23 of the following month, cash is balanced to the
24 books and bank statements are reconciled by the
25 15th. The audit staff has taken the position that

1 if the ledger accounts are not "posted" monthly,
2 this violates the USOA instructions to keep books
3 on a monthly basis. This is the same argument the
4 staff made in the December, 1991 hearing and the
5 same position which the Commission ruled against in
6 Order No. 92-0122. In that order, the Commission
7 ruled that SGI's books were in substantial
8 compliance with its rules. As Ms. Gaffney points out
9 in her opinion regarding Exception No. 2, the books
10 are in better condition in 1992 than they were in
11 1991, when the Commission ruled they were in
12 substantial compliance.

13

14 In addition, I would like to point out that SGI's
15 books are kept on an accrual basis. Monthly journal
16 entries are made for depreciation, amortization,
17 real estate taxes, interest on debt, payables,
18 receivables, revenues and extraordinary
19 transactions.

20

21 Q. In your opinion, are SGI's books and records in
22 substantial compliance with the NARUC USOA?

23 A. Yes.

24

1 Q. I would now like you to address portions of the
2 testimony of OPC witness Dismukes. On pages 60
3 through 64 of her prefiled testimony she discusses
4 the original cost of the water system at December
5 31, 1987. In her discussion she refers to an
6 affidavit you gave in Docket No. 871177-WU and
7 alleges certain conclusions. Have you read her
8 testimony in this regard?

9 A. Yes.

10

11 Q. What is your understanding of how Ms. Dismukes
12 reaches an original cost at December, 1987?

13 A. It appears that she has taken portions of my
14 affidavit out of context, taken a plant balance from
15 a financial statement of Leisure Properties, LTD and
16 added to it plant additions on the books of SGI to
17 arrive at a plant cost of the water system on SGI's
18 books.

19

20 Q. Is that an acceptable accounting procedure?

21 A. No.

22

23 Q. Why not?

24 A. This is best explained by referring to my Affidavit,
25 which I have included as Exhibit 42). First, my

1 affidavit is an explanation of the book/tax
2 reconciliation of Leisure Properties and SGI. My
3 affidavit points out that Leisure Properties and SGI
4 are two separate and distinct entities. Numbers from
5 one cannot just be combined with numbers from the
6 other. They are, however, reconcilable, and that is
7 what my affidavit shows. My affidavit points out
8 that the tax returns of both entities were
9 simultaneously audited by the IRS, and as result of
10 this simultaneous audit, a tax basis for the water
11 system was determined. Ms. Dismukes ignores this
12 process and ties two unreconciled numbers together
13 to reach an inappropriate conclusion.

14
15 Ms. Dismukes uses a Leisure Properties balance as
16 a starting point and adds SGI improvements. But she
17 ignores the statement in my affidavit that explains
18 the context of the SGI additions. Quoting from
19 Paragraph No. 4 of my affidavit:

20
21 4. Referring to the information filed with the
22 Public Service Commission on December 21, 1988
23 and particularly the attached reconciliation
24 (attached as Exhibit 1) prepared by me on
25 December 16, 1988, you will see that, from 1979

1 through December 1987, the total additions to
2 the system by St. George Island Utility Co.,
3 Ltd. were \$612,948. When these additions are
4 added to the IRS tax basis settlement of
5 \$2,212,482, the result is \$2,825,430, which
6 represents the tax basis of the utility system
7 for purposes of depreciation as of December 31,
8 1987; (emphasis added)
9

10 Q. Why is it important to consider the \$612,948
11 additions in the context of the entire statement?

12 A. Because these are SGI additions only, added to an
13 IRS determined tax basis. That is the officially
14 determined amount of depreciable plant that includes
15 all plant turned over to SGI by Leisure Properties.
16

17 Q. Is any of this information new to the Commission?

18 A. No. This was all part of the record in Docket No.
19 871177-WU.
20

21 Q. To refresh the Commission's memory, how does the
22 \$2,825,430 tax basis at December, 1987, compare to
23 the original cost at that date, determined by the
24 Coloney study?

1 A. The Coloney study determined original cost at
2 December, 1987 to be \$2,657,212 compared to the tax
3 basis of \$2,825,430. And according to Order No.
4 21122, in Docket No. 871177-WU, the OPC witness
5 determined original cost to be \$2,296,850.

6

7 Q. Does that conclude your rebuttal testimony?

8 A. Yes it does.

1 BY MR. PFEIFFER:

2 Q Ms. Withers, please summarize your testimony.

3 A My testimony relates to the books and records of
4 St. George Island Utility Company, and also to the original
5 cost of the utility system. It relates to a contention made
6 by Ms. Gaffney that the books were not in compliance with
7 the uniform system of accounts. And also goes to the
8 original cost of the system as in Ms. Dismukes' testimony.

9 Regarding the books and records, I previously
10 testified in the 1991 hearing where the Commission found
11 that the books and records were in compliance. And Ms.
12 Gaffney, herself, admitted in the report that in 1992 the
13 books were in even better shape than they were in '91. And
14 also the opinion on Page 3, the executive summary of the
15 audit by the Staff, indicated that they were in substantial
16 compliance.

17 So I just wanted to, you know, to make that
18 observation. And then in my -- regarding the original cost,
19 I explained the fallacy of Ms. Dismukes' approach in the
20 affidavit and in my rebuttal testimony.

21 And all of that was involved in the rate case that
22 was conducted in 1989 in which I also testified.

23 MR. PFEIFFER: And, Mr. Chairman, we would ask
24 that the Commission take official recognition of its Order
25 Number 92-0122, which, I believe, is the order that Ms.

1 Withers referenced.

2 CHAIRMAN DEASON: The Commission will take notice
3 of its own orders.

4 MR. McLEAN: Pardon me. Which order is that? Is
5 that the one on administrative notice?

6 MR. PFEIFFER: No, I believe it's the one with
7 regard to the determination that the books and records of
8 the utility were in substantial compliance.

9 MR. McLEAN: I'm sorry to interrupt. Thank you.

10 MR. PFEIFFER: And we would offer the witness for
11 cross examination, Mr. Chairman.

12 CHAIRMAN DEASON: Ms. Sanders.

13 MS. SANDERS: Thank you, Mr. Chairman.

14 CROSS EXAMINATION

15 BY MS. SANDERS:

16 Q Good afternoon, Ms. Withers. Thanks for being
17 here.

18 A Good afternoon.

19 Q I know you've testified before, but just to
20 refresh my memory, how long did you work for Leisure
21 Properties?

22 A I began work in July 1976 through --

23 MR. PFEIFFER: Ms. Sanders, I'm sorry to interrupt
24 you, and, Mr. Chairman, I neglected to ask that the
25 testimony of the witness be inserted into the testimony of

1 the record in this proceeding. I apologize for that. I'm
2 sorry to interrupt, but I would ask that that be done.

3 CHAIRMAN DEASON: Without objection. It will be
4 so inserted.

5 MR. PFEIFFER: Thank you.

6 (Reporter's Note: Ms. Withers' prefiled rebuttal
7 testimony inserted at Page 1539 for convenience of the
8 record.)

9 BY MS. SANDERS:

10 Q Started in '76 and then what? How long?

11 A Until I went on a part-time basis in '85 and '86
12 and went into public accounting at that time.

13 Q And you were an accountant since '76, right?

14 A I was an accountant then, and I am now. Is that
15 what you're asking?

16 Q Yes, ma'am.

17 A Right.

18 Q And during that period of time, you served -- one
19 of the capacities you served in was as comptroller, correct?

20 A That's correct.

21 Q So, you were directly involved in keeping the
22 books and records of Leisure Properties?

23 A Yes, ma'am.

24 Q And then you were directly involved in the keeping
25 of the books and records for the utility company, were you

1 not?

2 A Yes, ma'am.

3 Q And you recall in '79 that Leisure Properties sold
4 the utility company to St. George Island Utility Company,
5 correct?

6 A Yes, ma'am.

7 Q And you were the one that set up the books for the
8 utility company, correct?

9 A Yes, ma'am.

10 Q Now, I'm going to show you a couple of exhibits,
11 Ms. Withers, and it's going to take just a minute to get
12 them distributed, okay?

13 MS. SANDERS: Mr. Chairman, I would like to ask
14 that that exhibit be marked for identification with the next
15 number.

16 CHAIRMAN DEASON: It will be identified as Exhibit
17 Number 72. Could I have a short title, please?

18 MS. SANDERS: "Utility Company Depreciation
19 Schedule."

20 (Exhibit Number 72 marked for identification.)

21 BY MS. SANDERS:

22 Q Now, Ms. Withers, do you recognize this document?

23 A It's more than one document, but, yes, ma'am, I
24 do.

25 Q Okay. And what is it?

1 A It is the depreciation schedule, the original --
2 the first sheet is the original depreciation schedule for
3 St. George Island Utility Company, Limited.

4 Q Okay. And, briefly, the following sheets?

5 A The first one begins in 1979 and goes through '83.
6 The second sheet --

7 Q Mine is out of order, Ms. Withers. Your's might
8 be, too. I apologize. But go ahead, I'm sorry to interrupt
9 you.

10 A The second sheet appears to have the additions for
11 '83, and then the next sheet is 12-31-81. They are sort of
12 out of order. And then the next sheet is 12-31-84. The
13 first five sheets in my copy appear to be in my handwriting,
14 and then there are some other sheets for '85 and '86 of the
15 additions in the handwriting of another person.

16 Q Okay. So up through -- I'm sorry.

17 A They are depreciation schedules for the utility
18 company.

19 Q All right. And up through '84 they are in your
20 handwriting, is that correct?

21 A Except for a portion of the third sheet was in one
22 of my assistants' handwriting, but half of it is in mine,
23 the top half, and the bottom half was in another person's.

24 Q And are you familiar with the 1978 Billy Bishop
25 report?

1 A I've heard of it, yes.

2 MS. SANDERS: Okay. Mr. Chairman, that has been
3 marked as Exhibit 6, and I would like to show the witness a
4 copy of that. I don't have the other copies to distribute.

5 CHAIRMAN DEASON: That will be fine. I think that
6 since it has already been identified, everyone should have a
7 copy of it.

8 MS. SANDERS: Mr. Chairman, I apologize. We
9 didn't hand the witness the one that was actually admitted
10 to the record or -- I have other copies. I just don't have
11 my hands on it.

12 CHAIRMAN DEASON: As long as it's a copy of
13 Exhibit 6, I think that will suffice.

14 MS. SANDERS: Okay.

15 COMMISSIONER KIESLING: Ms. Sanders, you can use
16 my copy.

17 MS. SANDERS: Thank you, Commissioner Kiesling.

18 BY MS. SANDERS:

19 Q Now, Ms. Withers, in your depreciation schedule
20 you showed all of the depreciable assets that were purchased
21 by the utility company, did you not?

22 A Yes.

23 Q And those assets plus the land you valued at
24 \$3 million, is that correct?

25 A That's correct.

1 Q Now, in the Billy Bishop report, if you would,
2 look at Page 9. Have you got it, Ms. Withers?

3 A Yes.

4 Q Okay. Do you see in Paragraph 4.0 a line for a
5 10 HP vertical turbine pump?

6 A Yes.

7 Q Now, look at Line 7 of your depreciation schedule,
8 if you would, please, ma'am?

9 A Yes.

10 Q What does it say?

11 A \$26,130.

12 Q All right. Under the asset description?

13 A Ten HP vertical turbine pump.

14 Q Okay. Now, if you would, look at Page 11 of the
15 Billy Bishop report?

16 A Okay.

17 Q Do you see an item that totals \$4,864?

18 A Yes, I do.

19 Q All right. What does that total consist of in the
20 description column?

21 A Controls and altitude valve.

22 Q Now, if you would, look at Line 8 of your
23 depreciation schedule, and read the assets description?

24 A Controls and valve.

25 Q Now, if you would, look at Page 10 of the Billy

- 1 Bishop report. Do you see an item totaling \$30,848.10?
- 2 A Yes, I do.
- 3 Q And what is the description of 4.2 in Mr. Bishop's
- 4 report?
- 5 A Raw water transmission line.
- 6 Q All right. And, if you would, look at Lines 12
- 7 and 13 of your depreciation schedule, and read the asset
- 8 description for me?
- 9 A Raw water transmission lines, Well Site 2. It
- 10 looks like north end of bridge.
- 11 Q If you're having trouble reading it, you may want
- 12 to look back at 4.2 in Mr. Bishop's report, the full
- 13 description. Is it the same?
- 14 A Yes, it is.
- 15 Q If you would, look at Page 10 of the Billy Bishop
- 16 -- well, we are on Page 10. The next item is \$75,470.15, do
- 17 you see that?
- 18 A Yes.
- 19 Q And what assets does that total consist of?
- 20 A North end of bridge to water storage reservoir,
- 21 exclusive of two bridge crossings.
- 22 Q Now, if you would, look at Lines 14 and 15 of your
- 23 depreciation schedule, and read the asset description?
- 24 A North end of bridge to water storage reservoir.
- 25 Q And if you would look on Page 11 of the Billy

1 Bishop report. You have an item there for the
2 Thomas L. Cook Electric Company contract, the wiring
3 installation for 12,000?

4 A Yes, ma'am.

5 Q Do you see that?

6 A Yes, I do.

7 Q All right. And look on Lines 16 and 17 of your
8 depreciation schedule, what is the asset description?

9 A Wiring installation (elec) (in pumping station).

10 Q Okay. On Page 12 of the Billy Bishop report, do
11 you see an item totaling \$9,138.50?

12 A Yes, ma'am.

13 Q What is that for?

14 A Water distribution system, water storage reservoir
15 to intersection of Gulf Beach Drive and Franklin Boulevard.

16 Q Okay. And, now, if you would look at Lines 18 and
17 19 of your depreciation schedule. What is Line 18?

18 A Distribution system.

19 Q And Line 19?

20 A Reservoir to Gulf Beach Boulevard, and I assume it
21 says Franklin Boulevard. This copy is very difficult to
22 read.

23 Q Yes, it is. Can you make it out better if you
24 look at 4.4 of the Billy Bishop report?

25 A I already did.

1 Q Okay. On Page 12, also, you see an amount of
2 \$55,506.75. Do you see that?

3 A Yes.

4 Q And that's for Gulf Beach Drive to Eleventh Street
5 East, correct?

6 A Yes, ma'am.

7 Q Look at Line 20 of your depreciation schedule.
8 Can you make that out?

9 A The first word is "Gulf to Eleventh Street. I
10 can't read that real well, but --

11 Q Could it be Eleventh Street East or E?

12 A It appears to be.

13 Q Okay. Also on Page 12 of the Billy Bishop report,
14 you see an amount for \$37,436.75, do you not?

15 A Yes, I do.

16 Q All right. And look on Line 21 of your
17 depreciation schedule. Isn't that Eleventh Street East?

18 A To state park.

19 Q To state park?

20 A Yes, ma'am.

21 Q And on the Billy Bishop report it's Eleventh
22 Street East to state park, correct?

23 A Correct.

24 Q Page 13 of the Billy Bishop report, the first
25 item, \$57,581.75. That is for Gulf beach to 12th Street

1 West, Gulf Beach Drive and Franklin Boulevard intersection
2 to 12th Street West, correct?

3 A Yes, ma'am.

4 Q And Line 22 of your depreciation schedule?

5 A It's Gulf Beach to 12th Street West.

6 Q Okay. Page 13 and 14 of the Billy Bishop report,
7 you see on 13, Sea Dune Village, Sea Palm Village; and on
8 Page 14 you see Sea Pine Village?

9 A Yes, ma'am.

10 Q What do you have on Line 23 of your depreciation
11 schedule?

12 A It appears to say 150 lots; Sea Dune, Sea Palm and
13 Sea Pine.

14 Q Okay. On Page 9 of the Billy Bishop report. An
15 amount appears there for \$9,500, which is under the heading
16 "Production Well and Site." Would you look at Line 27 of
17 your depreciation schedule and tell me what it says?

18 A Production well.

19 Q On Page 10 of the Billy Bishop report, do you see
20 an amount for \$208,491.94?

21 A Yes, I do.

22 Q And that's the two bridge crossings, correct? A
23 total of the contracts on that?

24 A Yes, ma'am.

25 Q And on Line 28 of your depreciation schedule?

1 A Two bridge crossings.

2 Q Now just through this exercise, we can go on
3 through it, but it appears that you used the Billy Bishop
4 report in setting up your depreciation schedule, is that
5 true?

6 A Yes. I did this under the supervision of A.
7 Eugene Lewis (phonetic), our tax attorney, and I believe he
8 had me allocate the purchase price to the components of the
9 system according to this appraisal, which is as you have to
10 do when you make a bulk purchase of assets, more than one
11 asset in a component manner, yes.

12 Q So, the answer is yes?

13 A I said yes.

14 Q All right.

15 A You asked me if I did it myself, and I was just
16 explaining that while I did it, I did it under the
17 supervision of our tax attorney, Mr. Lewis.

18 Q Is that -- what's your point?

19 A My point is that I was directed to allocate the
20 purchase price to the various components of the system in
21 this manner.

22 Q My question is did you use the Billy Bishop report
23 to develop your depreciation schedule, and the answer to
24 that is yes?

25 A I used the categories, yes, ma'am.

1 Q Thank you.

2 A Yes, ma'am.

3 Q Now, I'm going to show you another document,
4 Ms. Withers, that's not in evidence. It's my tracking
5 summary, which I learned from Mr. Seidman that term.

6 Ms. Withers, if I can refresh your last statement,
7 you said when you make a bulk sale or a purchase like this
8 you must allocate the assets, is that correct?

9 A That is my understanding, yes, ma'am.

10 Q Okay. Now, look at the document I just gave you,
11 if you would, please, ma'am.

12 MS. SANDERS: Mr. Chairman, could I have that
13 marked as the next exhibit for identification.

14 CHAIRMAN DEASON: Yes, it will be identified as
15 Exhibit 73.

16 (Exhibit Number 73 marked for identification.)

17 BY MS. SANDERS:

18 Q Okay. Have you had a chance to just glance over
19 it?

20 A Yes, ma'am.

21 Q Let me just explain a little bit to you. The
22 column of numbers starting with 1 through 34, do you see
23 that?

24 A Yes.

25 Q That is the same line number off your depreciation

1 schedule, okay?

2 A Okay.

3 Q And then the next is your asset description
4 column, all right?

5 A Yes, ma'am.

6 Q The next column are the figures off the Billy
7 Bishop report that we just read out. We read out most of
8 them or some of them. Do you see that?

9 A I see that.

10 Q Do you want to take a minute and look at it?

11 A No, that's not necessary. I just -- I'm not
12 confirming that those are not without checking it.

13 Q I understand, sure. And then the column marked
14 "Replacement Cost" is what Mr. Bishop wound up with after he
15 escalated some of the prices, but that's his column, again,
16 okay? Are you with me? I understand you can't verify that.
17 I'm just explaining that to you?

18 A I don't know.

19 Q The last column, though, is your utility -- is the
20 amount of money from the utility's depreciation schedule.
21 Do you want to verify that? We can walk through it.

22 A Right. I would agree that the last column is from
23 the utility depreciation schedule. The others, you know,
24 without taking more time, I could not answer you one way or
25 the other.

1 Q You can't verify. I realize that, but will you
2 accept, just for purposes of discussion, that those numbers
3 are correct, and that Billy Bishop comes out with \$803,684
4 for replacement cost. You can --

5 A I see that number on the last page, on Page 14 of
6 his report. I don't see the number in the first column, and
7 the 803 is not the total.

8 Q No. It says on the Billy Bishop report, Page 14,
9 the 803 number, what does he have in capital letters off to
10 the side there?

11 A "Estimated replacement cost of physical
12 facilities."

13 Q And then he adds two other items to come up with
14 his total, correct?

15 A Correct.

16 Q And that's like a subtotal?

17 A Right. But it's not the total.

18 Q I understand. And 5.0 on the Billy Bishop report,
19 Page 14, and 6.0, those two items?

20 A Yes.

21 Q Those are not depreciable assets, are they?

22 A Yes, they are.

23 Q Engineering services is a depreciable asset?

24 A Under the uniform system of accounts and the NARUC
25 standards, they are. They are capitalizable and

1 depreciable.

2 Q Okay. Where is that on your depreciation
3 schedule?

4 A All of the hard costs and the soft costs are added
5 together here to get the total. They are not broken out
6 separately.

7 Q They are not allocated?

8 A The purchase price was allocated to the individual
9 components including the hard costs, the bare bones, brick
10 and mortar or pipelines, plus the soft costs over the years
11 of building the system, including these types of things, the
12 engineering, the supervision during construction. There
13 would be carrying costs for the use of money. There would
14 be legal fees. There would be property taxes, all of the
15 types of properly capitalizable items.

16 Q Let's go back to 1979, all right? So, there isn't
17 any over the years on this depreciation schedule first page,
18 is there?

19 A Not on the utility's, no, ma'am. That's correct.

20 Q This is what they bought?

21 A That's correct.

22 Q That they can depreciate?

23 A Yes, ma'am.

24 Q Where are engineering services on this schedule?

25 A They are included in each individual item.

1 Q Okay. You come up with \$3 million as your total,
2 is that right?

3 A That's correct.

4 Q How good are you at math, Ms. Withers?

5 A I should be proficient.

6 Q Well, I tell you what, I'm going to loan you my
7 calculator and I want you to do something for me, okay?

8 A Okay. I have my own calculator.

9 Q All right. Very good. I want you to divide
10 \$3 million by \$803,684.

11 A Okay. Do you want the answer?

12 Q You can round it to the nearest hundreds?

13 A 3.73.

14 Q Okay. Now, look back at my tracking summary, if
15 you would. Do you see the second to the last column, the
16 factor column?

17 A Yes, I do.

18 Q Look down that column. What are all of those
19 numbers?

20 A 3.73.

21 Q Isn't it true, Ms. Withers, that in order to
22 allocate these assets you divided the sales price of
23 \$3 million by the Billy Bishop 803 figure to determine how
24 you would allocate those assets?

25 A Yes.

1 Q Okay. Thank you. Now, Ms. Withers, I want to
2 talk about the Leisure Properties audited financial
3 statement of 1979, and that has also been previously
4 identified as Exhibit Number 20. Are you familiar with this
5 document?

6 A Yes, I am.

7 Q And is it what I just said it is?

8 A It's the audited financial statement of Leisure,
9 yes, ma'am.

10 Q Okay.

11 A For 12-31-79.

12 Q And you are a CPA now, right?

13 A That's correct.

14 Q And you have been a CPA since '86, am I right?

15 A I passed the CPA exam in November of '60, but I
16 got my certificate in February of '87.

17 Q '87, okay.

18 A Right.

19 Q Look on Page 3 of the '79 financial statement.

20 Isn't it true that this letter means that this is an
21 unqualified opinion?

22 A Yes, ma'am.

23 Q And isn't it true that an unqualified opinion
24 means that the CPA was able to determine to his or her own
25 satisfaction that the statements and the data that are in

1 that audit are correct?

2 A They are in conformity with generally accepted
3 accounting principles.

4 Q And they are reliable, right?

5 A It doesn't say that. It just says that they are
6 in conformity with generally accepted accounting principles.

7 Q Now, I'm asking you what an unqualified opinion
8 means.

9 A It means what it says. That in our opinion the
10 financial statements referred to above present fairly the
11 financial position in conformity with generally accepted
12 accounting principles.

13 Q Is "unqualified opinion" not a term of art in the
14 accounting field, Ms. Withers?

15 A A what?

16 Q A term of art, a buzz word in your business?

17 A It's used to determine whether or not there are
18 any -- you either have an unqualified opinion or you have,
19 you know --

20 Q Or a qualified opinion, right?

21 A A qualified opinion.

22 Q And this was unqualified.

23 A Actually, subject to, right.

24 Q Okay.

25 A I don't dispute that. I just don't see the word

1 "reliable," and I don't think any CPA would, you know,
2 because of litigation and that type of thing, would ever say
3 any language other than what the AICPA prescribes them to
4 say.

5 Q Oh, I understand.

6 A And the word "reliable" is not in there.

7 Q So, from a CYA (sic) point of view, you wouldn't
8 use the word "reliable," right? Or a CPA would not.

9 A A CPA would only say the approved language that
10 the AICPA has put forth.

11 Q On Page 4 of that document, under assets you see
12 an amount for \$807,485?

13 A Yes, I do.

14 Q And that's the investment in the water system, is
15 it not?

16 A Yes, it is.

17 Q That's the same as the original cost, is it not?

18 A No, not really. It's a portion of the original
19 cost.

20 Q Okay. It's less depreciation, right?

21 A There would not have been much depreciation at
22 that point in time.

23 Q Okay. Look on --

24 A It refers to Note 4.

25 Q Okay.

1 A I believe that -- or it's my recollection that the
2 only thing depreciated at that time was the office, which is
3 located in the front part of the -- the 200,000 gallon
4 storage tank and the office were all in one building, but
5 the office was being used by the employees, and so there was
6 some depreciation taken on the front part of the building,
7 but not the system as a whole.

8 Q Okay. Page 14 of Note 4 of the audited statement?

9 A Right.

10 Q This note also reflects cost of \$831,045.

11 A Yes.

12 Q I apologize. Right? Less the accumulated
13 depreciation of \$22,660, right?

14 A Yes, ma'am.

15 Q And you flip those or subtract those numbers and
16 you get 807,485, which is what is reflected on that other
17 page we just talked about, correct?

18 A Yes, ma'am.

19 Q Now, in your affidavit that was just put into
20 evidence, or your prefiled that was just admitted into
21 evidence, you talk about the total additions to the system,
22 do you not?

23 A Yes, I do.

24 Q And if you will look at your affidavit,
25 Ms. Withers?

1 A Excuse me. Okay. From 1979 through December '87,
2 the total additions. That would be from November 9th, 1979.

3 Q To December of '87, correct?

4 A Right.

5 Q I stand corrected. And that amount is \$612,948,
6 correct?

7 A Correct.

8 Q And in your affidavit you say to determine that
9 you refer to the annual reports on file with the PSC, did
10 you not?

11 A I don't know if I said that in here. Could you
12 point me to it?

13 Q Okay.

14 A What I was comparing were the plant balance per
15 the tax returns and the plant balance per the company's
16 ledgers, their books. And I don't see a column here for the
17 annual report.

18 Q On Page 3, Paragraph 4.

19 A Okay.

20 Q Referring to the information filed with the Public
21 Service Commission on December 21, '88?

22 A Right.

23 Q Is that the annual report?

24 A Right. And all these other documents, right. The
25 12-31-87 audit by Williams, Cox, Weidner and Cox was in

1 there. It was just a whole bunch of documents that we gave
2 to Mr. Freeman and Ms. Hicks of the Public Service
3 Commission.

4 Q To get the additions from November 9, '79 to
5 December 1987, did you refer to the annual reports on file
6 with the PSC to prepare this affidavit, ma'am?

7 A I referred to the books of the company, which I
8 presume would be the same as the annual reports, but I
9 cannot say, yes, I looked at the annual reports.

10 Q Page 3, Paragraph 4, first clause, what
11 information did you refer to to get any additions?

12 A I referred to the information that was filed with
13 the Clerk on December 21, 1988, which was this
14 reconciliation and the backup documents to it, which are in
15 the files of the Commission.

16 Q So, you never went to look at the annual reports
17 to prepare this affidavit?

18 A No, ma'am.

19 Q And what you mean to say in Paragraph 4 is
20 referring to the information that you filed with the PSC?

21 A It only -- it doesn't refer to the annual reports.
22 It refers to the December 21, 1988 documents that were
23 filed. One batch of documents that were given to the Audit
24 staff. I think it was in connection with Audit Disclosure
25 Number 9. That would be more specific.

1 Q So your own document is what you referred to?

2 A No, they were the documents in the possession of
3 St. George Island Utility Company that I went over with the
4 PSC auditors, and they wanted copies of them, so we filed
5 copies of them with the PSC on that date, including this
6 reconciliation.

7 Q And in Paragraph 4 you mean to say, then, that the
8 information that you referred to that's on file with the PSC
9 or filed with the PSC, is the information that you filed,
10 your reconciliation, right?

11 A Yes.

12 Q Okay. When you were comptroller of the company,
13 did you prepare or were you responsible for preparing the
14 annual reports?

15 A During part of that time, yes, ma'am.

16 Q Okay. Which part were you not responsible for?

17 A I would have to look at each year. I know I
18 probably did the initial reports and most of them through, I
19 think -- in the middle '80s we were very, very busy, so I
20 had additional staff who possibly did them under my
21 supervision.

22 Q Well, that was my question, you either prepared
23 them or you were responsible for preparing them?

24 A Yes, ma'am.

25 Q Up until you left the company probably?

1 A Yes, ma'am.

2 Q And --

3 A And I did one since then. I believe, 1990 or '91,
4 I'm not sure which.

5 Q And you were the one that either reported or were
6 responsible for reporting those plant additions over that
7 period of time, also, were you not?

8 A Yes, ma'am.

9 Q And are those numbers accurate?

10 A They are accurate as far as the hard costs and
11 they agree with the tax returns, yes, ma'am.

12 Q So, that's the number you could add since 1979 to
13 determine what the investment would have been from 1979,
14 correct?

15 A From November 15th of '79 forward, yes.

16 Q So, will you agree with the methodology that if
17 you could determine what costs were in the ground as of
18 December 9, 1979 and then add that figure, that that would
19 be an accurate cost figure for the water company?

20 A Yes, ma'am.

21 Q All right. Ms. Withers, hold on just one second.

22 MS. SANDERS: That's all I have, Mr. Chairman.

23 Thank you.

24 COMMISSIONER KIESLING: Ms. Sanders, would you
25 give me my exhibit now.

1 MS. SANDERS: Yes.

2 CHAIRMAN DEASON: Mr. Pierson?

3 CROSS EXAMINATION

4 BY MR. PIERSON:

5 Q Good morning, Ms. Withers.

6 A Good morning.

7 Q Getting back to this qualified -- by the way how
8 are you today?

9 A I'm fine, thank you.

10 Q Getting back to this qualified versus unqualified
11 bit that Ms. Sanders brought up, is the qualified opinion
12 something that you would rely upon?

13 A It would be qualified. It depends on what the
14 qualifications were. It depends if the qualification was a
15 going concern on --

16 Q I misasked that question. I meant an unqualified
17 opinion, is that something you would rely upon?

18 A Me, personally, as a CPA?

19 Q Yes.

20 A Generally speaking I would, yes, sir.

21 Q You stated in your testimony that St. George's
22 books and records were in substantial compliance with NARUC
23 uniform system of accounts. Are they in complete
24 compliance, in your opinion?

25 A They are in substantial compliance, probably not

1 complete. I'm not sure anyone is in complete total
2 compliance.

3 Q How would you define "substantial compliance"?

4 A Substantial would be the majority of the books or,
5 you know, a substantial portion or primarily enough to
6 satisfy the requirements that they are correct as opposed to
7 not being at all in compliance or if the deficiencies were
8 enough to make the end result not reliable or not
9 acceptable.

10 Q Would 51 percent be substantial compliance?

11 A I think it would be more than that, sir. I think
12 that would be the major portion, but I think substantial
13 goes toward maybe two-thirds to 85 percent or some higher --
14 I don't think the PSC auditors could have given the opinion
15 that they were, unless they were higher than 51 percent. I
16 think it would have to be closer to 80 or 90.

17 Q Do you know whether, when the PSC Staff auditor
18 was auditing the books, the support for each entry was
19 readily available for review?

20 A In many instances it was. There were a few items
21 that could not be located, but substantially they were. And
22 toward the end of the audit, they were even more so because
23 they had an employee there who worked full-time on getting
24 all of the records together.

25 Q Are you aware that the utility filed copies of

1 invoices and checks several weeks after the auditor had
2 completed her report?

3 A Items that could not be located when she was
4 there?

5 Q Yes, ma'am.

6 A I believe so. Not specifically with each item,
7 but --

8 Q Does Accounting Instruction 2 require the backup
9 be readily available?

10 A Yes, sir.

11 Q Does the utility maintain summary records for
12 accumulated depreciation?

13 A Yes, they do. As a matter of fact, we just looked
14 at some and they have always had -- they have it on the
15 computer now, but they have always had a depreciation
16 schedule from the very beginning.

17 MR. PIERSON: That's all I have. Thank you.

18 CHAIRMAN DEASON: Ms. Withers, I have just a few
19 questions. You mentioned the allocation of purchased price
20 to the original cost of assets, and that is the exercise
21 that you pursued under the direction of a tax attorney, is
22 that correct?

23 THE WITNESS: Yes, sir.

24 CHAIRMAN DEASON: Do you have an opinion as to
25 what the original cost of the assets were at the time that

1 the utility was sold?

2 THE WITNESS: Yes, I do.

3 CHAIRMAN DEASON: And what is that?

4 THE WITNESS: It would be approximately the
5 2.2 million that we reconstructed during the audit by the
6 IRS of both Leisure and the St. George Island Utility
7 Company. That would not include the land, though. The land
8 would be -- that was only the depreciable utility plant and
9 all the distribution systems, that type of thing.

10 CHAIRMAN DEASON: So, is it your testimony, then,
11 that you utilized the Bishop report for the categorization
12 of assets, but that you did not rely upon the cost of those
13 assets as contained within that report?

14 THE WITNESS: That's correct.

15 CHAIRMAN DEASON: But you used that cost to derive
16 a factor to allocate the 3 million?

17 THE WITNESS: Right. And if you didn't have
18 something like that available, you would use the tax
19 assessor's breakdown between the land and the building. You
20 have to pull out the land because that's not depreciable.
21 So, you have to have some way to pull it out, and then you
22 have to allocate it to the components, because the various
23 components have a different life.

24 CHAIRMAN DEASON: Now --

25 THE WITNESS: And you can't just arbitrarily do

1 it, you have to have some -- either the property appraiser's
2 allocation or an appraiser's.

3 CHAIRMAN DEASON: I understand you need an
4 objective basis to make that allocation, but it's your
5 belief that the 3 million -- I take that back, not the
6 3 million, but the 2.2 million which is the result of the
7 settlement with the IRS constitutes the original cost of
8 those assets?

9 THE WITNESS: It would be very close, yes, sir, in
10 my opinion.

11 CHAIRMAN DEASON: How do you --

12 THE WITNESS: That would not include -- there was
13 some 69,000 that was added to the system in December of '79,
14 that would not be in there, and then another 3,000 the
15 following year and so forth, but, yes.

16 CHAIRMAN DEASON: So, it would not include those
17 early year additions?

18 THE WITNESS: Right, '79, it would have to be
19 added to that, but that would be it.

20 CHAIRMAN DEASON: So, you believe that the
21 2.2 million would be a fair estimate of the original cost
22 incurred by Leisure to construct the assets that were in the
23 ground with related overheads being allocated?

24 THE WITNESS: With the overhead, the construction
25 supervision, salaries, carrying costs, the engineering and

1 feasibility, all of the costs that actually went into it,
2 yes, sir. And the IRS looked at all of that and --

3 CHAIRMAN DEASON: What accounts for the difference
4 between that 2.2 million and the value of the assets as
5 contained within the Bishop report?

6 THE WITNESS: I don't know. I think the Bishop
7 report is just too low. It definitely doesn't have -- I
8 guess you could compare it to the later report that had
9 closer to the 2.2 -- isn't there another, like a 1982 Bishop
10 report that has 2.2 million?

11 CHAIRMAN DEASON: I believe there are two reports.

12 THE WITNESS: Right. I mean, I'm not an engineer
13 and I'm not an appraiser, so I haven't studied it from
14 that standpoint.

15 CHAIRMAN DEASON: Okay. Redirect.

16 REDIRECT EXAMINATION

17 BY MR. PFEIFFER:

18 Q Ms. Withers, looking at Exhibit Number 72, do you
19 know whether those sheets were in the record before the
20 Public Service Commission in the rate case that was
21 conducted in 1989?

22 A What is Exhibit 72, I'm sorry?

23 Q It's the work sheets that Ms. Sanders showed you
24 and asked you some questions about. It's on legal size
25 paper.

1 A Yes, sir. Yes, I assume they were, yes.

2 Q Were they part of an audit response?

3 MS. SANDERS: I object. I want to know if she is
4 going to say that they were in the record.

5 THE WITNESS: I can check through them quickly.

6 BY MR. PFEIFFER:

7 Q Well, do you know if they were part of an audit
8 response?

9 A I believe they were part of Audit Response Number
10 9 that was filed with the Commission December 21, 1988.

11 Q And did you prepare --

12 CHAIRMAN DEASON: Ms. Withers, do you have a way
13 to verify that? And if you need some time, we will take a
14 break and give you that opportunity, if you have a way to
15 verify one way or the other.

16 THE WITNESS: Yes, sir. Thank you. It should
17 just take just a minute.

18 CHAIRMAN DEASON: If it's going to take just a
19 minute, then we will give that to you. We won't take a
20 formal recess.

21 THE WITNESS: Yes, they are. I have just located
22 it and can verify that they were.

23 MS. SANDERS: Mr. Chairman, I have no idea what
24 she's looking at. Could I look at what she's looking at?

25 CHAIRMAN DEASON: I will give you the opportunity,

1 if you want to cross examine her on that, to conduct further
2 cross, and then I will give Mr. Pfeiffer a chance for
3 further redirect, if he needs that.

4 What we will do is we will let Mr. Pfeiffer
5 continue his redirect, and we'll take a recess, and I will
6 give you, assuming Mr. Pfeiffer agrees, to allow you to look
7 at that and then if you need to ask questions, I will give
8 you that opportunity.

9 MS. SANDERS: Thank you.

10 BY MR. PFEIFFER:

11 Q With regard to that schedule, Ms. Withers, were
12 any changes -- let me check that. With regard to Exhibit
13 Number 73, which is the summary, apparently, prepared by Ms.
14 Sanders?

15 A Yes, sir.

16 Q There is a number at the bottom of that sheet
17 under utility schedule that says \$3 million?

18 A Yes, sir.

19 Q Did that number survive the IRS audit?

20 A No, sir.

21 Q Did the allocation of money to the various asset
22 descriptions survive the IRS audit?

23 A Yes, it did. And, actually, the 3 million did
24 too, except the land and nondepreciable portion became
25 787,000.

1 Q It has been suggested that the entry for
2 investment in water system that is set out in the 1979
3 financial statement of Leisure Properties is the total
4 amount of money that has been invested in the utility as of
5 December 31, 1979, is that correct?

6 A That's what has been set out.

7 Q Is it correct that that is the total investment?

8 A No, it's not.

9 Q What does the entry actually represent?

10 A It represents certain hard costs of the system
11 paid to third-party vendors, that type of expense.

12 Q What do you mean by "hard costs"?

13 A That would be the iron, the ductile iron pipe and
14 that type of thing, the bricks and mortar in the building
15 and the storage reservoir.

16 Q Are there any hard costs that would have not been
17 included in that 1979 financial statement entry?

18 A Yes.

19 Q What would those be?

20 A Those would be hard costs of construction when the
21 crews of Leisure Properties, the internal crews, were used
22 to lay some of the line, that type of thing. That would be
23 hard costs, but not involving third-party vendors.

24 CHAIRMAN DEASON: Let me ask a question. I hate
25 to interrupt, but if those costs were not capitalized as

1 part of the investment in the water system, were they
2 expensed during the period they were incurred?

3 THE WITNESS: They could have been capitalized
4 elsewhere on the company's books.

5 CHAIRMAN DEASON: They could have been capitalized
6 elsewhere or they could have been expensed?

7 THE WITNESS: It was a land development company,
8 so they had a lot of development type costs. And it might
9 not have been specifically identified to the water system as
10 opposed to other development expense.

11 CHAIRMAN DEASON: So, for example, if there were
12 labor dollars incurred in the construction of a line, you're
13 saying that those labor dollars may not have been part of
14 the investment in water system which was in the audited
15 financial statements?

16 THE WITNESS: Yes, sir.

17 CHAIRMAN DEASON: What most likely would have
18 happened with those labor dollars?

19 THE WITNESS: A portion of it probably got
20 expensed, some amount. But I think probably the major
21 portion might have been capitalized to the 2 or \$3 million
22 of land that was in that same balance sheet. They have
23 development, land under development, developed land of
24 312,000, land under development of 244,000.

25 CHAIRMAN DEASON: And if it had gotten capitalized

1 in one of the land accounts and then that land was
2 subsequently sold, it would have been part of the cost of
3 the land that was sold?

4 THE WITNESS: Yes.

5 CHAIRMAN DEASON: Okay.

6 BY MR. PFEIFFER:

7 Q Were the issues that Mr. Deason suggested among
8 the issues that IRS looked at when it conducted its audits
9 of the books of Leisure Properties and St. George Island
10 Utility?

11 A Yes, sir. They audited both simultaneously and
12 allowed only the costs that they could identify with the
13 water system that was not deducted by Leisure.

14 Q And would they allow --

15 A They were auditing both companies for the same
16 three years.

17 Q Would they allow the costs to be expensed in both
18 companies?

19 A No, sir.

20 Q Were there other costs, other than these hard
21 costs, that would not have been included in the entry
22 investment in water system in the 1979 financial statement?

23 A There would be soft costs.

24 Q What are "soft costs"?

25 A Those would be architectural, engineering costs,

1 feasibility studies, DRI costs, carrying costs, property
2 taxes and interest, that type of thing.

3 Q Overhead, construction --

4 A Legal fees --

5 Q I'm sorry.

6 A Excuse me. Legal fees and overhead costs.

7 Q Supervision and general office salaries and
8 expenses could be allocated there, as well?

9 A Yes, sir.

10 Q And would the financial statement, the 1979
11 financial statement, have included those expenses,
12 supervision and general office salaries, an allocation?

13 A No, sir, not in that figure.

14 Q Did you mention legal costs?

15 A Yes, sir.

16 Q And would those legal costs have been a cost that
17 would have been included in the 1979 financial statement?

18 A No, sir.

19 Q How about insurance expenses?

20 A No, sir.

21 Q Would any allowance for funds used during
22 construction have been allowed as a cost item or have been
23 included as a cost item in the 1979 financial statement?

24 A No, sir.

25 Q And is it your understanding, Ms. Withers, that

1 these soft costs that we have talked about here for the last
2 few seconds are cost items that would be included within
3 original costs under so-called NARUC, National Association
4 of --

5 A Association of Regulatory Utility Commissioners,
6 yes, sir.

7 Q Yes, thank you. Can you explain how an auditor
8 would not have observed that these costs were missing from
9 the entry investment in water system entry from that entry?

10 A They were auditing Leisure as a land development
11 company, not as a utility. And, in fact, at that time,
12 title to the water system had passed to St. George Island
13 Utility Company, Limited, so they were not, the auditors
14 were not auditing what they perceived as a utility company.

15 Q Were there any investments in the water system
16 between the time that St. George Island Utility Company
17 purchased the system and December 31st, 1979 that would not
18 have been reflected in the Leisure Properties entry?

19 A Yes, sir, there were. Additional expansion of the
20 system, I believe, into the Pebble Beach and the commercial
21 area was done in December 1979 by the utility company. That
22 was a substantial amount.

23 Q Can you suggest where we might go, Ms. Withers, to
24 learn what the actual investment in the water system would
25 have been as of December 31, 1979?

1 A You would go -- the best source that I know of is
2 the Internal Revenue Service depreciation schedule, which
3 sets forth -- I think it's 2.212 million of the depreciable
4 costs and investment credit property, because they actually
5 went back and tried -- I mean, they were trying to determine
6 the cost, because you can only depreciate costs --

7 Q And did IRS --

8 A -- investment credit on costs.

9 Q Excuse me. Did IRS simply accept what the utility
10 told it about soft cost allocations?

11 A No, sir.

12 MS. SANDERS: I object. I didn't ask anything
13 about the IRS. This is limited cross on redirect.

14 CHAIRMAN DEASON: His cross examination on
15 redirect is limited to what was raised on cross.

16 MS. SANDERS: And I did not discuss the IRS, so
17 that is my objection, sir.

18 CHAIRMAN DEASON: Do you care to respond to that?

19 MR. PFEIFFER: Well, yes, sir. Certainly many
20 questions were asked with regard to what is the appropriate
21 figure to represent original cost of the utility and the
22 utility system. And if the IRS audit is the best appraisal
23 of what those costs are that, certainly, information about
24 how the audit was conducted are important to this proceeding
25 and within the scope of the cross examination.

1 CHAIRMAN DEASON: I will overrule the objection
2 and allow the question.

3 BY MR. PFEIFFER:

4 Q Do you recall the question, Ms. Withers?

5 A What was -- and I think I answered it.

6 Q Well, the question was did IRS simply accept what
7 the utility told IRS about the allocation of soft costs to
8 the utility system?

9 A No, they did not.

10 Q Are you aware of any audited financial statements
11 of either Leisure Properties or St. George Island Utility
12 that are supported by unqualified opinions of CPA firms that
13 reached a different conclusion regarding investment in the
14 water system than the conclusion that is set out in the 1979
15 financial statement?

16 A Yes, sir, there are two. There is one audit of
17 the St. George Island Utility Company dated December 31,
18 1987 by the firm of Williams, Cox, Weidner and Cox. And
19 then there is another dated December 31, 1984 of Leisure
20 Properties by May Zima and Company, CPAs. I would have to
21 look at the opinion pages of those to just -- I have the '87
22 audit of the utility company

23 MS. SANDERS: Mr. Deason, I would ask that these
24 be marked and identified for the record, so that we will
25 know what she has got and what she is talking about.

1 CHAIRMAN DEASON: Mr. Pfeiffer, there has been a
2 request that the audit reports which the witness just
3 described be marked for identification.

4 BY MR. PFEIFFER:

5 Q Yes, sir. This would be -- the 1987 audited
6 financial statement has already been marked as Exhibit 46,
7 and I would show you Exhibit 46, Ms. Withers, and ask you if
8 you can identify it?

9 A Yes. This is the December 31, 1987 audit report
10 of St. George Island Utility Company, Limited, by the CPA
11 firm of Williams, Cox, Weidner and Cox. Now, they give an
12 opinion that it fairly presents the financial position, but
13 they do have one qualification in the second paragraph
14 because of the losses that have been incurred, sort of a
15 going concern question or exception. But, otherwise -- it
16 does not qualify the numbers; it only qualifies whether the
17 company will be able to continue to fund the operating
18 deficits and continue in business.

19 Q Does the exception serve to provide other than an
20 unqualified opinion with regard to the entries relating to
21 investment in plant?

22 A No, that entry is not included in the
23 qualification.

24 Q And I would show you --

25 MR. PFEIFFER: And I apologize, Mr. Chairman, I

1 have only one copy of the 1984 consolidated financial
2 statements. I hadn't intended to offer it as an exhibit,
3 but I will be happy to make the dozen or so copies that
4 would be required, and I would show it to the witness and
5 ask if she can identify it.

6 CHAIRMAN DEASON: Please proceed. Do you wish to
7 have it identified?

8 MR. PFEIFFER: Yes, sir. We will mark it as the
9 next numbered exhibit, and I apologize to the parties and to
10 the Commission.

11 CHAIRMAN DEASON: That will be Exhibit Number 74,
12 and this the 1984 financial statements of?

13 THE WITNESS: Leisure Properties, Limited,
14 consolidated financial statement, including the St. George
15 Island Utility Company, Limited.

16 MR. PFEIFFER: I'm sorry, Mr. Chairman, number?

17 CHAIRMAN DEASON: Number 74.

18 (Exhibit Number 74 marked for identification.)

19 BY MR. PFEIFFER:

20 Q Can you identify that document, Ms. Withers?

21 A Yes, sir, I can.

22 Q And there is an entry in that document that
23 reflects an investment in the utility or some original cost
24 estimate with regard to investment in the utility?

25 A Yes, there is.

1 Q Where is that entry?

2 A On Page 19, the consolidating schedule of
3 financial position, there is a column for the St. George
4 Island Utility Company, Limited, and it is property plant
5 and equipment net, which would be net depreciation of
6 1,953,761.

7 Q And is that financial statement supported by an
8 unqualified opinion of an accounting firm?

9 A Yes, it is.

10 Q And what accounting firm is that?

11 A That's May Zima and Company, which later merged
12 with Arthur Young, but it was the Tallahassee Office of May
13 Zima and Company.

14 Q And what accounting firm supported the 1987
15 St. George Island Utility financial statement?

16 A Williams, Cox, Weidner and Cox.

17 MR. PFEIFFER: Thank you. We will make and
18 distribute copies of Exhibit 77, Mr. Chairman. And, again,
19 I apologize.

20 CHAIRMAN DEASON: You mean 74?

21 MR. PFEIFFER: This is a problem of mine. Yes,
22 sir, Number 74.

23 CHAIRMAN DEASON: And that concludes your
24 redirect?

25 MR. PFEIFFER: No, sir.

1 BY MR. PFEIFFER:

2 Q With regard to entries in the books of St. George
3 Island Utility that represent new investment in plant
4 subsequent to 1979, would these entries have included all of
5 the soft costs that are properly attributable to original
6 costs under NARUC standards?

7 A No, sir, they wouldn't. I think in the more
8 recent years they do, but in the earlier years they would
9 not have.

10 Q Did you have a role in the 1989 rate case
11 involving St. George Island Utility Company?

12 A Yes, I did. I was a witness in that proceeding,
13 and I also participated in some of the audit response
14 questions.

15 Q Do you know whether the 1979 financial statement
16 and 1979 tax return of Leisure Properties were in the record
17 of that proceeding before the Public Service Commission?

18 A Yes, sir, I do. They were all included in that
19 Audit Response Number 9, which was before the Commission at
20 the hearing.

21 MR. PFEIFFER: We have no further questions,
22 Mr. Chairman.

23 CHAIRMAN DEASON: We are going to take a ten
24 minute recess. I'll allow Ms. Sanders an opportunity to
25 review the documentation relied upon by the witness to

1 verify what has been identified as Exhibit Number 72, and
2 also if there are any questions concerning Exhibit 74 for
3 which copies have not been made.

4 We are going to take ten minutes at this time.

5 (Brief recess.)

6 CHAIRMAN DEASON: Call the hearing back to order.

7 Ms. Sanders, do you have any further recross?

8 MS. SANDERS: Yes, please, Mr. Chairman.

9 RE CROSS EXAMINATION

10 BY MS. SANDERS:

11 Q Ms. Withers, the IRS settlement was in September
12 of '83, is that right?

13 A '84, I believe.

14 Q Okay. I have a document that --

15 A September 7, 1984.

16 Q '84, okay. And then the audited -- the 1984
17 audited financial statement was after that settlement?

18 A Yes, ma'am.

19 Q And then the 1987 audited financial statement was
20 after that settlement?

21 A Yes, ma'am.

22 Q Now, you talked about soft costs. Those soft
23 costs also did not make it into the annual report, is this
24 correct?

25 A Not in the earlier years, that's correct.

1 Q From '79 to '86 or '87?

2 A Yes, ma'am. I'm not saying there weren't any, but
3 I'm saying that probably not all of them made it.

4 Q Well, correct me if I'm wrong, and I'm not very
5 good at math, but are we talking about over a million
6 dollars in soft costs?

7 A Soft and hard costs.

8 Q That did make it in there, right, like maybe
9 1.4 million?

10 A That's correct.

11 MS. SANDERS: Thank you. Mr. Deason, I have no
12 further cross examination of this witness, but I would like
13 to get back to the issue of Late-Filed Exhibit 21 in the
14 1989 case, whenever it is appropriate to address that.

15 CHAIRMAN DEASON: Well, does that relate to
16 Exhibit 72?

17 MS. SANDERS: I believe so. That's correct.

18 CHAIRMAN DEASON: Okay. And what is your point?

19 MS. SANDERS: We have a dispute about what was in
20 the record in '79 -- I mean, in the '89 case, based on what
21 is available in your Clerk's Office, in your records office.
22 And I have no personal knowledge of this, either. I'm
23 relying on what Ms. Dismukes has told me, that in retrieving
24 that Late-Filed Exhibit 21, which is referenced in the
25 transcript of that hearing, that this is what she got, which

1 does not contain that Exhibit Number 72.

2 CHAIRMAN DEASON: Mr. McLean.

3 MR. McLEAN: And I don't think it contains the
4 annual reports, either, does it?

5 MS. SANDERS: It's some -- this is how thick it is
6 compared to what Ms. Withers -- and, for the record,
7 Ms. Withers is looking at a bound document that is some two
8 inches thick.

9 THE WITNESS: I'm sorry. Not all of this was that
10 exhibit, okay, just one section. Part of it was the
11 testimony I gave when the exhibit was admitted at the last
12 hearing.

13 MS. SANDERS: I think there was some redirect from
14 Ms. Withers about what was and was not admitted as
15 Late-Filed Exhibit 21 in the '89 rate case. She testified
16 using that document that I just referred to, and it is not
17 the same as what your records room will give you if you ask
18 for Exhibit 21.

19 CHAIRMAN DEASON: Very well. It seems to me that
20 the record is certainly unclear as to whether that
21 information was or was not in the record in the previous
22 case. It seems to me that that is something that should be
23 self-evident from what is contained within our files here at
24 the Commission. So, given that, Mr. Pfeiffer, do you have
25 any further redirect?

1 MR. PFEIFFER: No, sir. And we would be offering
2 testimony with regard to those issues through Mr. Brown's
3 redirect examination.

4 MR. McLEAN: As to what issues? As to whether the
5 evidence is in the record?

6 MR. PFEIFFER: Yes, sir.

7 MR. McLEAN: What does Mr. Brown know that the
8 Clerk doesn't know?

9 MR. BROWN: I was there; the Clerk was not.

10 CHAIRMAN DEASON: We will wait, and at the time
11 Mr. Brown takes the stand again for redirect, and if those
12 questions get raised, and there is an objection, we will
13 deal with it at that time, sir.

14 Exhibits for Ms. Withers?

15 MS. SANDERS: Do I go first?

16 CHAIRMAN DEASON: It doesn't matter. We have had
17 three exhibits identified and -- wait, I'm sorry -- four
18 exhibits identified, and one of those was Exhibit 42, I
19 believe, which was prefiled.

20 MR. PFEIFFER: Yes, we would offer Exhibit 42.

21 CHAIRMAN DEASON: Without objection, Exhibit 42 --

22 MS. SANDERS: Wait, wait. I'm sorry. Okay,
23 that's correct, no objection.

24 CHAIRMAN DEASON: Exhibit 42 is admitted.

25 (Exhibit Number 42 received into evidence.)

1 CHAIRMAN DEASON: Further exhibits?

2 MS. SANDERS: Okay. For my part, sir, the
3 depreciation schedule and the tracking summary, 72 and 73.

4 CHAIRMAN DEASON: You're moving those exhibits at
5 this time?

6 MS. SANDERS: Yes, sir.

7 CHAIRMAN DEASON: Without objection? Hearing no
8 objection, Exhibits 72 and 73 are admitted.

9 (Exhibit Number 72 and 73 received into evidence.)

10 CHAIRMAN DEASON: Thank you, Ms. Withers. And
11 once again, I want to apologize for not being able to take
12 you yesterday, but the hearing just took longer than we
13 anticipated. We appreciate you being with us today, though.

14 THE WITNESS: Thank you, Mr. Chairman.

15 MR. PFEIFFER: Thank you.

16 CHAIRMAN DEASON: Mr. Pfeiffer, you may call
17 Mr. Brown for redirect.

18 MR. PFEIFFER: I call Mr. Brown for redirect.
19 Thereupon,

20 GENE D. BROWN
21 resumed the stand as a rebuttal witness, and being
22 previously sworn, testified as follows:

23 REDIRECT EXAMINATION

24 BY MR. PFEIFFER:

25 Q Mr. Brown, beginning with issues relating to Gene

1 Brown, P.A. --

2 CHAIRMAN DEASON: Mr. Pfeiffer, I know this is a
3 formality, but this is the same Gene Brown that testified
4 earlier and he is now appearing on redirect and he is still
5 under oath and all of that is understood.

6 MR. PFEIFFER: Yes, sir.

7 BY MR. PFEIFFER:

8 Q And, Mr. Brown, your rebuttal testimony began
9 yesterday afternoon?

10 A Yes.

11 Q And you are the same person whose rebuttal
12 testimony and cross examination was conducted yesterday
13 afternoon?

14 A Yes, sir.

15 Q And evening, and you remain under oath?

16 A Yes.

17 Q With regard to issues involving Gene Brown, P.A.,
18 what, if any, compensation are you seeking from the
19 customers of St. George Island Utility Company for rate case
20 expenses related to legal representation of St. George
21 Island Utilities provided by Gene Brown, P.A.?

22 A None.

23 Q Do you intend to bill St. George Island Utility
24 for legal representation of the utility in this rate case
25 proceeding?

1 A No, not anything that hasn't been billed months
2 and month ago. I don't intend to bill anything else or
3 charge anything to the ratepayers.

4 Q And have you collected anything on those other
5 bills?

6 A I may have collected something. I probably did
7 early on, but it won't be passed on. Kind of a
8 below-the-line expense, I guess.

9 Q There were some questions on cross examination
10 regarding work done by Mr. Mears in connection with the rate
11 case that was dismissed prior to the filing of this instant
12 proceeding, do you recall that?

13 A Yes, I do.

14 Q Was any work done by Mr. Mears that was useful to
15 St. George Island Utility in preparing the instant rate case
16 petition?

17 A Yes. He did all the initial accounting on the
18 test year and then the adjusted test year, and he worked up
19 the original MFRs. And it was my understanding that
20 Mr. Seidman would, or has, or did make some allocations. I
21 don't think all of Norman Mears expenses should be charged,
22 but I do think that that portion that reduced Frank
23 Seidman's expenses, that is, to the extent that he was able
24 to use that accounting, I think that would be properly
25 chargeable.

1 Q There were some questions on cross examination
2 regarding a lawsuit between you and some affiliated
3 corporations on the one hand and a citizens group on
4 St. George Island on the other. What, if anything, did you
5 and the affiliate companies give up in order to settle that
6 lawsuit?

7 A We gave up a bona fide claim for millions of
8 dollars in damages. And we gave up land. We gave a deed to
9 the homeowners to substantial land within St. George's
10 Plantation.

11 Q What, if anything, did St. George Island Utility
12 give up?

13 A Nothing at all.

14 Q What was your intention regarding the advancement
15 of funds to St. George Island Utility for the purposes that
16 are stated in the settlement agreement?

17 A The intent was that when the affiliates received
18 that money for that land and that claim, that they would use
19 those funds to loan to the utility company, so the utility
20 company could do some things it needed to do, such as make
21 plant improvements. And I put that in, I think, the night
22 before the meeting to make it more acceptable and easier to
23 sell to the homeowners. But it was never intended as any
24 sort of a gift or contribution by them to the utility
25 company. They certainly would not have done that. They

1 gave that money -- they didn't give that money, they paid
2 that money to avoid substantial damages they would have
3 incurred had we gone to trial and to get a deed to
4 substantial property that Leisure Properties still owned in
5 the plantation that they wanted title to, and we gave them
6 title to the land. None of that land, however, was owned by
7 the utility company and the utility company gave up nothing.

8 Q Has the utility, has St. George Island Utility
9 made the improvements that were specified in the settlement
10 agreement?

11 A We made all of those and more.

12 Q Was \$65,000 enough money to accomplish that?

13 A No.

14 Q Has the utility paid back the advance?

15 A No.

16 Q Mr. Brown, do you recall Exhibit Number 32, which
17 is a letter from you to, I think, opposing counsel in that
18 lawsuit regarding an assignment of proceeds to Sailfish?

19 A I think it was actually -- I think it was from me
20 to John Cullen (phonetic), who was president of the
21 association. But it was to the other side, I recall that.

22 Q Did you intend to bind St. George Island Utility
23 when you used the words "me" and "my" in that letter?

24 A No, that letter had reference to the parties to
25 the settlement that we had just entered into with that

1 association that I was writing to. I think it was clear in
2 that context to him and certainly to me, that that's what I
3 was referring to.

4 Q Mr. Brown, when the utility was sold to St. George
5 Island Utility in 1979, what percentage of ownership was
6 maintained by Leisure Properties?

7 A 10 percent.

8 Q Do you have Exhibit 64 before you, Mr. Brown?
9 That's the deposition that was taken of you in 1981?

10 A I do now. I did not have it all yesterday, but I
11 -- it wasn't all given to me by Mr. McLean yesterday, but I
12 looked at it last night, and I do have it here.

13 Q All right, sir. What were the issues in that
14 lawsuit?

15 A The issues were equitable estoppel and reliance.
16 The issue was primarily the fact that Leisure Properties had
17 spent substantial money in around '75 and '76, which was
18 immediately prior to some zoning ordinances enacted in '77.
19 We had spent substantial funds in running a line across the
20 bridge and building the basic plant. And then we ran a line
21 from the plant to the state park. All of that occurred
22 around '75 or '76. And right after we did that, the county
23 started passing zoning laws, and we tried to get some
24 permits, and they refused to give us permits. And we sued,
25 alleging that we had relied upon the zoning as it was in '75

1 and '76. We couldn't get the building permits, so we filed
2 suit in '78 alleging that in '75 and '76 we had spent lots
3 of money on the system.

4 Q And when did --

5 A And had spent other money. That was just a part
6 of it.

7 Q When did Franklin County adopt land use
8 regulations that restricted the ability of Leisure
9 Properties to develop St. George Island?

10 A In '77, and right -- the very first, like January
11 or early February '78. They passed a moratorium, finally, I
12 think, in early '78, January or February. But they passed a
13 lot of zoning restrictions and things in '77, which was
14 right after we had completed the basic line across the
15 bridge.

16 Q When was the lawsuit filed?

17 A In '78. I'm not sure about -- I'm looking at it
18 here. It's Case Number 78, which means it was filed in
19 1978.

20 Q Detrimental reliance was among the issues that
21 were raised. When did you and the other plaintiffs contend
22 that you relied on permits or zoning ordinances of Franklin
23 County and took action to your detriment?

24 A In 1975 and 1976, primarily. That's when the bulk
25 of the system, I think I testified in here that's when most

1 of it was built, and that's what we were talking about.

2 Q When your deposition was taken in 1981, were you
3 contending that your total investment up until that time in
4 the utility was made in detrimental reliance on the '75 and
5 '76 zoning ordinances?

6 A No, that would not have been a proper position to
7 take. In other words, what I was referring to necessarily
8 was that portion of the costs which were incurred prior to
9 '77 and early '78, when the zoning ordinances were passed.
10 What we did on the system after '77, and the first month or
11 two of '78, would have been irrelevant to an equitable
12 estoppel or reliance question, because that would have been
13 to our detriment. We knew what the zoning was after '77.

14 Q Now, would you look at Page 79 of your deposition
15 please, Mr. Brown?

16 A Okay.

17 Q You testified that, quote, "Most of the
18 construction of the St. George Island Utility system was
19 undertaken in 1976." What does "most" mean?

20 A Most means more than half, 51 percent.

21 Q And was it true that by that definition most of
22 the construction of St. George Island Utility was undertaken
23 in 1976 when your deposition was taken in 1981?

24 A I believe on February 9, 1981, that it was true
25 that most of it had been constructed by the end of 1976.

1 But I'm not sure, when they said when was most of it done,
2 I'm not sure if I was referring to -- I was certainly
3 referring to a time prior to February of '81, and may have
4 been referring to a time prior to the lawsuit filing, but I
5 think in either event it's true that most of it was done in
6 the context of that time period. Most of it was completed
7 by the end of '76. But that statement would not be true
8 today, because in the past 15 years we have built quite a
9 bit of additional plant and certainly a lot of distribution
10 system.

11 Q Did you state in your deposition that the Billy
12 Bishop appraisal accurately expressed the original cost of
13 the utility at the time that the appraisal was rendered?

14 A No, I didn't. I was asked a direct question. I
15 said no.

16 Q What did you state with regard to cost, and I
17 would refer you to Page 121 of your deposition?

18 A Well, the question was asked, "Do you know how
19 much you have spent to build the water system that is at
20 issue in this litigation?

21 "Answer: Do you mean the dollars and cents?

22 "Question: Yes, sir.

23 "Answer: Right down to the -- well, there is no
24 way to know that with any certainty. As I said, you
25 would have to get somebody's professional opinion. You

1 would have to have somebody qualified to go in and
2 audit the books and do normal accounting auditing
3 procedures and determine what share of general overhead
4 items should be allocated to the water system and what
5 should be allocated to go somewhere else."

6 That was my testimony then and that would still be
7 my opinion.

8 Q To your knowledge, has anyone conducted the sort
9 of evaluation that you were referring to in your deposition
10 since the time your deposition was taken?

11 A Well, right after this deposition was taken, or at
12 about that same time, we received word from the Federal
13 Internal Revenue Service that they were going to do an
14 intensive audit of both Leisure Properties, the development
15 company, and the utility company, which was formed in '79.
16 And they started in to audit the books, and they audited
17 simultaneously all of Leisure's books and the utility
18 company for '79, '80 and '81. And while they did not
19 actually say they were auditing '82, while they were doing
20 this audit over this period of time, we filed an amended '82
21 return to reflect the findings of the audit. So it was
22 essentially a four-year audit simultaneously of both
23 companies. So they, essentially, did what I said needed to
24 be done, that is somebody go in and do auditing procedures,
25 quoting again, "To determine what share of general overhead

1 items should be allocated to the water system and what
2 should be allocated to go somewhere else." They came in and
3 did that for us, and we resisted it because we said that
4 appreciable base in the investment was a total of 3 million,
5 and they disagreed. And we went all the way to tax court,
6 and before we actually went to trial we reached a settlement
7 after engineer appraisals of the system regarding costs and
8 after intensive audits of the actual records, which we at
9 that time did have. That was before John Stocks and I
10 started all of our litigation and before a lot of other
11 events that resulted in all of the records not being kept.
12 But at that time, all the records were available when that
13 intensive audit was done of both Leisure and the utility.
14 So they were able to allocate the costs, put them in the
15 right place, if they had been misallocated before.

16 Q Well, was the IRS study relating to the issue of
17 depreciable assets based on replacement cost of the utility?

18 A The IRS audit was based on original cost. The IRS
19 did an engineering appraisal to verify that, and which they
20 discussed in the engineering appraisal there were three
21 approaches, traditional approaches; the market approach, the
22 income approach, and the cost approach. In their
23 engineering appraisal they adopted the cost approach, which
24 was essentially a study by them to determine what it would
25 cost to rebuild the system they saw in the ground as of

1 12-31-79. But that cost came up to 1,550,000, which was
2 less than we believed we had actually invested in the system
3 at 12-31-79. So we continued to argue with them, and
4 continued to show them additional evidence regarding soft
5 costs and overhead costs and other costs that I've since
6 learned can and should be properly allocated to utility
7 plant if you're doing proper utility accounting.

8 Q Moving from the IRS study just a moment, Mr.
9 Brown, to appraisals that were conducted with regard to the
10 area system. Were there -- do you recall the 1978 Billy
11 Bishop appraisal?

12 A I recall that.

13 Q Were there any additions to the utility plant that
14 were put in place between the time that that appraisal was
15 rendered and the time that the utility was sold?

16 A Yes.

17 Q How do you know that?

18 A I just know of it my own personal recollection.
19 We got a DRI finally in November of 1977 that did allow us
20 to start developing St. George's Plantation. We got into
21 litigation with the county because they refused to give us
22 permits on other places on the island, but we started
23 running lines in the plantation and we started the
24 distribution system in '78 and '79 in other parts of the
25 island. And while I don't know the exact amount of the

1 additions during that time, I do know that was a big point
2 of concern with the IRS audit and other appraisals that were
3 done to determine what was there at 12-31 of '79. And there
4 was another Billy Bishop appraisal --

5 Q All right, Mr. Brown.

6 A There were things -- I can't sit here and tell you
7 what they were, but Billy Bishop's appraisal was dated, I
8 think, around June or July of '78. I don't know when he
9 actually referred back. I think he was basically -- in
10 looking at it time very quickly, I think he basically was
11 looking at what we built in of '75 and '76 with maybe one or
12 two distribution line areas. But I think, for example, he
13 not include the line to the state park and he did not
14 include some subdivisions in some areas that lines were
15 running to later.

16 Q Do you know whether such items as legal fees,
17 supervisory fees, insurance costs, general office salaries
18 and expenses, taxes, and allowance for funds for the cost of
19 funds used during construction are part of the original cost
20 determination under National Association of Regulated
21 Utility Commission standards?

22 A I know now, whereas I didn't know then, that
23 there are certain overhead items and so called soft costs or
24 other items that can be capitalized and should be
25 capitalized under NARUC standards. And back then we did not

1 think like a utility company, we were not a utility company,
2 we were a land development company, and the utility was just
3 kind of a subsidiary or just part of it. But we were not
4 careful to try to allocate as we went along and capitalize
5 all of the costs that should or could have been properly
6 capitalized to utility plant. I think like Barbara Withers
7 just testified, we have finally come after the last case,
8 certainly between the '89 case and this case we now do that
9 and we do it almost daily and certainly monthly. But back
10 in those early years before '79, we didn't do it at all. We
11 didn't do it very much after '79 until the '89 rate case.
12 The orders of this Commission in that case repeatedly found
13 us to be guilty of improper and incomplete accounting
14 procedures, and while we resisted that at times, the
15 Commission certainly made findings of fact on more than one
16 occasion that our accounting was not proper and we weren't
17 following NARUC rules. And in retrospect, I think the
18 Commission was certainly right about that. We did not --
19 there were all kind of costs, Mr. Pfeiffer, that didn't get
20 charged. For example, before we ever got the water out of
21 the ground at East Point, we got sued. And we had a big
22 trial before Judge Ben Willis, and we had to litigate that.
23 They sued us, and the county joined with them, and they
24 tried to say that we had no legal right to pump water from
25 the mainland to the island. And there was a big

1 anti-development group down there then, as there is now,
2 that didn't want to see any development, and they knew if
3 they could stop water from going to the island, the island
4 couldn't be developed. So we had a big lawsuit. And I
5 think expenses like that should and could be capitalized to
6 the water system, because that's the only reason we were
7 doing that. We had two DRIs, for example. We started
8 working on a DRI -- I think Chapter 380 passed in 1972, we
9 bought the island in '72, right about the time it passed.
10 We had to fight through the first DRI that was denied, then
11 we had to fight through an additional DRI later that we
12 finally got in November of '77. And we spent well over half
13 a million, probably close to a million dollars just getting
14 from '72 up to '77, '78 and '79 to be able to really start
15 developing. And I think those are the type of expenses that
16 were properly chargeable in part to the water utility
17 system, but they were not charged on the Billy Bishop
18 report, or the '79 hard cost numbers that were on our tax
19 return and our financial statement. As Barbara Withers
20 said, that was basically an account, subsidiary account of a
21 development company that didn't include all of the other
22 items like insurance, construction loan interest, equipment
23 rental, overhead, employee benefits, allowance for funds
24 used during construction. I mean, I just made a copy on the
25 way over here of the NARUC plant accounting instructions,

1 and there are just all manner of things that are properly
2 chargeable to utility plant that were not done then. But
3 after the IRS audit, all of that got put in the right place
4 because they audited simultaneously Leisure Properties and
5 the utility company, and a question was asked earlier,
6 "Well, was all of this expensed?" Well, it wasn't expensed.
7 I mean, the IRS does not let you -- especially when they are
8 auditing companies simultaneously -- they would not look at
9 it and let you collect or expense things like overhead and
10 labor on Leisure's books on the one hand, but capitalize it
11 to Leisure's -- to the utility system on the other in the
12 same tax year, same companies, same IRS audit. That just
13 didn't happen. They were concerned with what was the actual
14 cost, and that's what depreciation is is recovery of cost.
15 It's not a recovery of what it would cost you to rebuild it.

16 Q Mr. Brown, were there any other appraisals
17 conducted with regard to the St. George Island Utility
18 System that you know about prior to the IRS audit that would
19 have a bearing on the original cost of the utility?

20 A Yes. There are two others, at least, that I know
21 about. In 1976, J. Ed Sayers (phonetic), who is an MAI
22 appraiser, did an appraisal of the utility plant as it
23 existed in '76. And he is an MAI, whereas Billy Bishop is
24 not, and he appraised it on a cost basis. Primarily, he
25 went through the traditional three approaches; the market

1 approach --

2 MR. PFEIFFER: One moment, Mr. Brown. I have
3 handed you a document that is entitled appraisal report of
4 the St. George Island Water System prepared by J. Ed Sayers,
5 MAI. And I would ask, Mr. Chairman, if we could identify
6 that document as the next numbered exhibit.

7 CHAIRMAN DEASON: It will be identified as
8 Exhibit 75.

9 (Exhibit 75 marked for identification.)

10 BY MR. PFEIFFER:

11 Q What is Exhibit 75, Mr. Brown?

12 MR. McLEAN: Objection. It is specifically
13 outside the scope of cross. I specifically declined to ask
14 any questions about this particular document.

15 CHAIRMAN DEASON: Mr. Pfeiffer.

16 MR. PFEIFFER: Well, the document has a direct
17 bearing on what weight should be given to the earlier
18 appraisal of the -- excuse me, in this case the later
19 appraisal of the water system undertaken by Billy Bishop.
20 Certainly there were questions regarding that exhibit, and
21 with regard to entries in other documents, including the
22 1979 financial statement and 1979 income tax return, the
23 1978 income tax return, and how they beared on the issue of
24 original cost. And certainly other appraisals would bear on
25 that issue, too, and it's within the scope of cross

1 examination.

2 MR. McLEAN: I'm sorry, it's not within the scope
3 of cross. That answer doesn't even answer the objection
4 that it's within the scope of cross. Moreover, the reason
5 that Mr. Pfeiffer gave is a great reason why it should have
6 been in their rebuttal case, and it wasn't in their rebuttal
7 case, and I would like to assert the same objection that I
8 did yesterday, that it effectively diminishes our point of
9 entry, the effectiveness of our point of entry into the
10 administrative process. If it does all those things that
11 Mr. Pfeiffer just said, how come they didn't put it in their
12 rebuttal case?

13 MR. PFEIFFER: May I respond?

14 CHAIRMAN DEASON: Yes, please.

15 MR. PFEIFFER: Also not in a party's case in this
16 proceeding, and identified as exhibits were a number of
17 exhibits that Mr. Brown was cross examined about, including
18 exhibits that were identified as Exhibits 20, and 21, and
19 22, all of which were referenced in the prefiled testimony
20 of the witness Kimberly Dismukes, but were not included with
21 her testimony, and certainly should and could have been
22 included with her testimony, and were instead offered on
23 cross examination of Mr. Brown. I mean, to the extent that
24 there is a quote, "due process problem" here, it is
25 certainly a two-edged one, and we are merely responding to

1 documents that have been offered in evidence in this
2 proceeding and the first time in the cross examination of
3 Mr. Brown.

4 MR. McLEAN: The difference, Mr. Chairman, is
5 these are consistent with what the witness said, and
6 everything that I introduced is inconsistent with what the
7 witness said, which is why cross examination supports the
8 introduction of the kind of exhibits that I did and not the
9 kind that Mr. Pfeiffer did.

10 COMMISSIONER KIESLING: I also am a little bit
11 confused, Mr. Chairman. My notes indicate that 20, 21 and
12 22 weren't admitted.

13 CHAIRMAN DEASON: There was a controversy
14 concerning that, and that was never ruled upon. I believe
15 Mr. McLean withdrew that motion and he was going to renew it
16 at a later time.

17 MR. McLEAN: That's correct, sir.

18 CHAIRMAN DEASON: As of now, those exhibits are
19 not admitted. There has not been a definitive ruling.

20 MR. PFEIFFER: And if it were determined that
21 those exhibits were not to be offered in the proceeding,
22 then we would have no need for further --

23 MR. McLEAN: There are prior inconsistent
24 statements and party admissions, and we are going to stand
25 by them. And there was no reason to put them in our direct

1 case, because your witness gave testimony contrary to those.
2 They are known as impeachment, Mr. Chairman. This is known
3 as bolstering something you forgot to say in your case.

4 CHAIRMAN DEASON: Ms. Helton.

5 MS. HELTON: I don't have as much experience at
6 the Commission as most people do in this room. I do know
7 that since I have been here it seems to me that the
8 Commission has been very liberal in the exhibits that it
9 allows parties to use for cross examination purposes. And
10 the Commission has also been very liberal in allowing
11 parties to file late-filed exhibits, none of which people
12 can see at the time that the hearing goes on.

13 CHAIRMAN DEASON: I do agree with what you have
14 stated. It does concern me that there is the possibility
15 that this is an opportunity for the Company to discuss and
16 perhaps insert into the record matters that should have been
17 more appropriately included in their direct, or at least
18 prefiled with their rebuttal. But, nevertheless, I do
19 believe that this entire subject matter has been covered in
20 enough detail during cross examination that I believe I
21 would be erring if I did not give the utility company an
22 opportunity to respond to those matters, and, therefore, I'm
23 going to allow questions on what has been identified as
24 Exhibit 75.

25 BY MR. PFEIFFER:

1 Q What is Exhibit 75, Mr. Brown?

2 A Exhibit 75 is an appraisal of the St. George
3 Island Water System by J. Ed Sayers, MAI appraiser, which
4 was obtained from the audit report in the last case, which
5 I'm looking at here. And it goes through the various
6 traditional approaches to value; the market approach, the
7 income approach, and the cost approach. They disregarded,
8 he did, the market approach, since there was no market for
9 the system. The income approach, because it would be
10 valueless based on income. And then he adopted on Page 10
11 of his appraisal, a cost approach, and he came up with a
12 total cost value as of the date of his appraisal, which
13 is --

14 MS. HELTON: I hate to interrupt, but I want to
15 make sure that we have the right exhibit. The one I have is
16 an appraisal by Mr. Bishop, not Mr. Sayer. Is that the one?

17 MR. PFEIFFER: Are you looking at Number 75?

18 MS. HELTON: I was given an exhibit which I was
19 told should be Number 75, but it seems to me that it's not
20 the right one.

21 MR. PFEIFFER: I apologize.

22 MS. HELTON: What we have is by Mr. Bishop from
23 January of 1982.

24 COMMISSION STAFF: I think so, but I think it's
25 all jumbled up.

1 MR. PFEIFFER: Well, I can explain the jumbled up,
2 but --

3 MS. HELTON: That's not what I have. I'm sorry
4 about that.

5 MR. PFEIFFER: I am, too.

6 CHAIRMAN DEASON: I believe I have the correct
7 exhibit, or at least what has been identified as 75, but
8 there is reference made to Page 10, I don't have page
9 numbers on mine.

10 THE WITNESS: It's on the third page, at the
11 bottom right-hand corner I see Page 10. Is that on
12 everybody else's?

13 CHAIRMAN DEASON: Okay. I see that.

14 MR. McLEAN: I've got two Page 10s.

15 THE WITNESS: This is the way it was in the Staff
16 audit report in the last case.

17 BY MR. PFEIFFER:

18 Q Yes. Mr. Brown, it does appear that there are
19 some pages out of order, including a title page, and then a
20 couple of other pages before you get to what appears to be a
21 cover page to the appraisal report. Can you explain why
22 that is?

23 A This was all thoroughly gone over by the PSC Audit
24 staff, Bob Freeman and Ms. Hicks and the other people in the
25 last case, and for some reason when they put this package

1 together as part of their audit summary, and this is volume
2 one of the three volume set I just picked up last week, they
3 did it this way. I guess they put the Page 10 as the first
4 page because it has this cost figure, and then behind that
5 it has the cost summary or cost estimate as of February
6 1976. And they come up with a total, he does, a total cost
7 approach to value of \$1,027,490. And then when he goes
8 through and equalizes everything out and makes his
9 adjustments, he comes up with 900,000. And I'm not sure in
10 looking at this if he was doing this as of February '76 or
11 the date on his appraisal, which is March 31, '77. But he
12 does discuss the fact that he went over this with Billy
13 Bishop, and relied somewhat on what Billy Bishop told him
14 about the cost, as the engineer.

15 Q What was the date of that appraisal, of the
16 Sayer's appraisal?

17 A As I just said, the actual date on the document is
18 March 31 of 1977, where he says 900,000. However, on his
19 cost approach to value, the \$1,027,490 figure he attaches
20 cost estimates dated February '76. Those are probably from
21 Billy Bishop's work, who did the original engineering on the
22 system.

23 Q Mr. Brown, I have given you a copy of an exhibit
24 that previously had been marked as Exhibit Number 47. Do
25 you see it?

1 A Yes, sir.

2 Q What is that?

3 A This is an updated appraisal by Billy Bishop,
4 which is essentially an update of his 1978 appraisal on the
5 system. And he acknowledges that in his appraisal letter
6 here. He also at that time had employed Louis Cook, who
7 used to be the City Auditor and Clerk of the City of
8 Tallahassee, who was very instrumental in developing the
9 Tallahassee utility system along with Arvah Hopkins, who had
10 more expertise in utility work, I believe. And they came up
11 with a value as of January 1982 of 1,550,000, I believe.
12 1,530,000 and some dollars as of January 25, 1982. And then
13 they added some capital facility charges and all which
14 really don't relate directly to cost.

15 Q Do you know whether this 1982 Billy Bishop study
16 and the 1977 Sayer's study were available to IRS when IRS
17 conducted its audits of the books and records of Leisure
18 Property and St. George Island Utility?

19 A All of these three appraisals, the '78 Billy
20 Bishop appraisal, the '82 Billy Bishop appraisal, and the
21 '77 or '76 Ed Sayers appraisal, were not only available to
22 the IRS, but they were specifically discussed in their
23 engineering appraisal of the system in coming up with an
24 overall cost of the system as of December '79. The IRS
25 engineering appraisal also has a section discussing the fact

1 that they met with engineers and others from the Florida
2 Public Service Commission back in those years, and they did
3 a very intensive study and looked at everything known about
4 the system. They also looked at all of our books and
5 records, which we were required to keep for a number of
6 years under IRS rules, and there was never any issue back
7 then that we didn't have the records. We did have the
8 records, and we not only had the records for the recently
9 formed utility company, we also had all the records of
10 Leisure Properties from the beginning. Because, in fact,
11 Leisure Properties had been audited all the way back
12 year-by-year by IRS from '72. So, the IRS had a very good
13 tracking record on all of our books and records for both
14 companies, and when they came up with their determination of
15 our actual cost at 12-31-79, they were doing it based on
16 allocating the proper costs from Leisure's books and
17 records, as well as the utility, which had not been done
18 prior to that time. But they certainly did not allow us to
19 capitalize or expense the same cost two different times.
20 That would not have been in accord with the law, and
21 certainly this was a very arm's-length process, and they
22 didn't do that. They came up with the actual cost.

23 Q It has been suggested that the entry for cost of
24 water system that is set out in the 1979 financial statement
25 of Leisure Properties states the cost of the utility as of

1 that date, as of December 31, 1979; do you agree with that?

2 A No. As I said yesterday, that's just not true.

3 That's not what that number represents.

4 Q What does that number represent?

5 A As I think Barbara Withers said, and as I said
6 yesterday, that number is essentially a hard cost, third
7 party vendor category. Leisure Properties was an up and
8 running development company, and it had a subcategory, and I
9 would like to point out that that '79 appraisal was of
10 Leisure, not the utility company. There has only been one
11 financial or audited statement on the utility company. But
12 that number represented hard costs that were identified as
13 we went along. Primarily where we wrote checks to third
14 party vendors and did outside work. There may have been
15 parts of that that were capitalized from our own internal
16 work on the utility, but I think certainly the major part of
17 it was just third party cost. I know that it did not
18 include all of these things that I have since learned should
19 and could have been included if we were doing proper NARUC
20 accounting on the utility company, which in 1979 we weren't
21 even thinking utility accounting, because we had just
22 established the utility company, basically, and put the
23 water system in service, which the IRS confirmed, and the
24 engineers and everybody else. It was not put in service
25 until at or about the time of the syndication.

1 Q Did IRS determine the cost of the utility as of
2 the date of the sale?

3 A Yes.

4 Q Did you agree with their initial determination?

5 A No, we did not agree. They came and looked at our
6 records, and we argued that our cost was \$3 million, and we
7 wanted to depreciate, and our partners tried to depreciate
8 and tried to take ITC or investment tax credit on the entire
9 \$3 million. And as Barbara Withers said, she initially did
10 allocations of soft cost from the Billy Bishop or from
11 numbers that were essentially the say as the Billy Bishop
12 plant category accounts over to a \$3 million figure. And
13 during the early part of the IRS audit, we tried to persuade
14 them that those were proper allocations for ITC and for
15 depreciation. But we were not successful. They first
16 brought in two engineers who did this detailed engineering
17 appraisal, which was primarily based on reproduction costs
18 as of 12-31-79. And, of course, we were real close to that
19 date then, so I guess they figured that the reproduction
20 costs would be a good check against our actual costs. But
21 they were auditing actual costs, and we were trying to argue
22 it was close to \$3 million. After they came down with a
23 figure of 1,530,000, or 1,550,000, we continued to argue
24 that there were lots of large costs that had been
25 capitalized or misallocated on Leisure's books that they

1 were also auditing, such as the types of things we mentioned
2 before, like construction loan interest, and overhead, and
3 supervision, and litigation fees, and two DRIs over a
4 seven-year period, and all of the other things that are
5 properly capitalized to that. And we tried to argue, and
6 did argue that this was not a system like your traditional
7 system where you can just go out and -- go out for bids and
8 in 30 days you get a bid, and you go out and start building
9 a system. This was a war down there on St. George Island to
10 ever build a water system. We had to fight lots of battles
11 to get the right to ever start the system, and we argued
12 that those should be capitalized to the system, and I think
13 that was proper. And as a result of all of that -- we also
14 argued that it wasn't like just going out and doing a
15 construction contract where you can go out and lay pipe. We
16 had to go through, as I said yesterday, and clear forest,
17 and go through wet areas, and there was lot of land clearing
18 and other things that had been originally capitalized
19 against the land accounts on Leisure, that during the audit
20 was reallocated, not allocated twice and not expensed on
21 Leisure, and then capitalized on the utility, they just --
22 we have been audited from '77 through and including '82, so
23 there is no way that the Internal Revenue Service, as much
24 as they were after us all the time, allowed a simultaneous
25 audit to expense things on the one hand and then recover

1 that expense through a depreciation allowance on the other
2 hand to the affiliate. And the result of all of that was
3 after we showed them that this was not your traditional
4 little water company --

5 MR. McLEAN: Pardon me, Mr. Brown. Is there an
6 autopilot objection? I mean, we are going on for pages and
7 pages and pages. The question was did the IRS accept your
8 position. And we have got pages of transcript that don't
9 have an imaginable connection to that issue. Prefaced by as
10 Ms. Withers said, prefaced as I said yesterday. Now we
11 heard it from Ms. Withers and we sure heard from him
12 yesterday.

13 CHAIRMAN DEASON: Mr. Brown, I'm going to ask you
14 to keep your answers more concise. Much of what you said I
15 have heard for at least three or four times now, and this
16 is, as I indicated to a group of people I spoke with earlier
17 today, we have in the fifth day of a two-day hearing.

18 THE WITNESS: Okay, sir. I will try to be more
19 brief. I would just like to summarize this point, then, by
20 saying that after all of that argument and litigation, we
21 ended up with a depreciable cost basis and an actual
22 investment in the system, original cost, depreciable cost of
23 \$2,212,000 or thereabouts, and this came directly from the
24 IRS hearing examiner or appeals officer who was handling the
25 case. And that came to us on September 7, it came to our

1 attorney September 7, 1984. And it broke down all of the
2 various plant accounts one-by-one. And, whereas Ms. Withers
3 had the \$3 million, it broke it back to the 2,212,000. So
4 we lost about 800,000 in depreciation.

5 BY MR. PFEIFFER:

6 Q Did IRS agree with the contention that the sale of
7 the utility from Leisure Properties to St. George Island
8 Utility was an arm's-length transaction?

9 A No.

10 Q Apparently, IRS did conduct a replacement cost
11 analysis.

12 MR. McLEAN: Objection, leading.

13 MR. PFEIFFER: Well, I haven't asked the question,
14 yet.

15 MR. McLEAN: You made a statement, and you ain't
16 under oath.

17 CHAIRMAN DEASON: Mr. Pfeiffer, if you could
18 rephrase the question, please.

19 BY MR. PFEIFFER:

20 Q Was the IRS determination of depreciable assets
21 based upon a replacement cost analysis?

22 A No.

23 Q Was the basis of the IRS settlement a splitting of
24 the difference between what the utility was trying to claim
25 as depreciable assets on the one hand and what IRS initially

1 determined depreciable assets to be?

2 A No.

3 Q Turning to annual reports. Were the annual
4 reports of St. George Island Utility from 1980 to 1987 that
5 reflect additions to plant, were these reports prepared in
6 accordance with NARUC standards for what costs would have
7 been allowed as additions to plant?

8 A No.

9 Q What costs do you believe should have been
10 attributed to additions in plant that were not?

11 A I think in retrospect that all of the costs that
12 the NARUC manual provided should be capitalized; overhead,
13 employee benefits, I mean, there is probably 20 or 30 items.
14 I won't list them here, they are all listed in the
15 accounting procedures, which we have learned a lot about in
16 the last few years. But back in those early years after
17 '79, at least between '79 and the test year '87, and through
18 '88, until we had that litigation and the rate case in '89,
19 we were not that familiar with the NARUC rules and
20 regulations. And while we may have capitalized some things,
21 some soft costs or overhead type costs, a great many were
22 not.

23 Q When you signed those annual statements, did you
24 believe them to be true?

25 A I believed they were true based on what I knew

1 then. I accepted the figures that were there. But this
2 Commission has found since then that our accounts and
3 records were not accurate or complete, and that we were a
4 long, long way from being in accord with NARUC accounting
5 standards. And I think that's pretty clear from the record
6 that that has been the finding of this Commission numerous
7 times up to and including '89.

8 Q Is there any study or analysis of the St. George
9 Island Utility System that provides a better estimate of the
10 original cost of plant additions from 1979 to 1987 than the
11 annual reports?

12 A Well, there are at least two actual unqualified
13 audits of Leisure and its affiliates, and that included the
14 utility company, even though it was done after the so-called
15 sale. And then there has only been one -- in the history of
16 the world there has only been one audit, unqualified audit
17 of St. George Island Utility Company.

18 Q Mr. Brown, I would ask to you look at Exhibit 46.
19 I think it's with you there. Do you have a copy of that?

20 A I don't know. I've got 47.

21 MR. McLEAN: Mr. Chairman, I'm going to object to
22 any question or any reference to that document. It was
23 ruled inadmissible by Commissioner Kiesling in your absence.

24 CHAIRMAN DEASON: This was the exhibit that was
25 identified as 46?

1 MR. McLEAN: That's correct, sir. As I recall, it
2 was ruled inadmissible for reasons which could not be cured
3 here at the hearing by questions about it or references to
4 it. It was ruled inadmissible because it wasn't part of the
5 rebuttal case.

6 MR. PFEIFFER: Mr. Deason, much was made during
7 the cross examination yesterday of the fact that an audited
8 financial statement from 1979, dated December -- an audited
9 financial statement dated December 31, 1979 that was audited
10 and accompanied with an unqualified opinion of an accounting
11 firm, has some binding kind of validity beyond what some
12 other document might have because of the fact that it's
13 accompanied by an opinion supporting the CPA firm supporting
14 the audit. This is a different audit, also supported by an
15 unqualified opinion of a certified public accounting firm,
16 and it is certainly is within the scope of cross examination
17 with regard to the amount of credence that should be given
18 to a document simply because it's an audited financial
19 statement supported by an unqualified opinion of an
20 accounting firm.

21 MR. McLEAN: It is a qualified opinion, and it was
22 ruled inadmissible on due process grounds.

23 CHAIRMAN DEASON: I am not going to overturn a
24 previous decision concerning the admissibility unless
25 Commissioner Kiesling knows of some reason why it should be

1 changed.

2 MR. PFEIFFER: May I suggest just one thing? At
3 the time that Ms. Kiesling ruled on this document,
4 Exhibits 20, 21 and 22 had not been offered into evidence.
5 We would certainly anticipate that these documents are going
6 to be offered into evidence at the conclusion of Mr. Brown's
7 testimony. And we think at that time that the issue of the
8 admissibility of Exhibit 46 would be a different issue than
9 the one that was raised when I presented this exhibit to
10 Ms. Kiesling before.

11 CHAIRMAN DEASON: I appreciate that, and I would
12 defer to Commissioner Kiesling.

13 COMMISSIONER KIESLING: I'm a little unclear who
14 you think is going to offer 20, 21 and 22.

15 MR. McLEAN: We are definitely going to offer it.

16 COMMISSIONER KIESLING: You are?

17 MR. McLEAN: Yes, ma'am.

18 MR. PFEIFFER: And I would point out that
19 Exhibits 20, 21, and 22, though mentioned in the examination
20 and the testimony of Ms. Dismukes, were not attached to her
21 testimony, and could well have been. And to the extent that
22 there is any sort of due process argument here, it is a due
23 process sword that has two blades.

24 MR. McLEAN: When you make party admissions, you
25 risk someone bringing forward those party admissions against

1 you. Party admissions are inadmissible by the party who
2 made the admission. Moreover, they weren't included in the
3 rebuttal case. We have the right to bring forth
4 inconsistent statements and party admissions outside
5 hearsay. I'll tell you the truth, if you're saying that you
6 want -- if Counsel is saying he wants the '87 financial
7 statement, and is willing to concede the admission of 20, 21
8 and 22, we have a deal.

9 CHAIRMAN DEASON: Mr. Pfeiffer.

10 MR. PFEIFFER: Well, I would, I suppose, state it
11 a different way. If 20, 21, and 22 are going to be
12 received, then we would think that 46 should be received, as
13 well.

14 MR. McLEAN: That sounds like what I said.

15 MR. PFEIFFER: So I would certainly agree with
16 Mr. McLean that if he wins on that issue, that we think we
17 should win on this.

18 MR. McLEAN: Well, do we have a deal or not?

19 CHAIRMAN DEASON: Well, I believe that perhaps
20 this needs to be addressed at the same time we take up 20,
21 21 and 22. And I certainly do not intend to change
22 Commissioner Kiesling's ruling on 46, but at the time 20, 21
23 and 22 are taken up, if she wishes to change that or
24 whatever, you can do that at that time.

25 COMMISSIONER KIESLING: With what we have right

1 now, I see no reason to change it. I think that we need to
2 hear what is going to be said about 20, 21 and 22.

3 MR. PFEIFFER: And you appreciate that I am
4 sitting here at this moment not knowing that 20, 21, and 22
5 are or are not going to be received.

6 CHAIRMAN DEASON: Well, let me ask this. Are you
7 indicating that -- you wish obviously to ask questions of
8 this witness concerning Exhibit 46, is that right?

9 MR. PFEIFFER: And I believe this would be my only
10 opportunity to do that.

11 CHAIRMAN DEASON: Perhaps we need to address all
12 four of these issues at one time, that way Mr. Pfeiffer will
13 know whether --

14 MR. McLEAN: I would concede that, Your Honor.

15 CHAIRMAN DEASON: Mr. McLean, I take it, then --
16 do you have any objection to taking up the entire matter at
17 this time of 20, 21, and 22?

18 MR. McLEAN: I object to taking up 47 at any time.
19 I mean, my offer was rejected, I think.

20 MR. PFEIFFER: Mr. Deason.

21 CHAIRMAN DEASON: Just give Mr. McLean a chance.

22 MR. PFEIFFER: I was going to ask if I could have
23 30 seconds to consult with my client, perhaps to resolve
24 that.

25 CHAIRMAN DEASON: Why don't we do this, let's take

1 five minutes and perhaps the parties can discuss this
2 amongst themselves.

3 (Off the record.)

4 CHAIRMAN DEASON: Call the hearing back to order.
5 Where do we stand as far as Exhibits 20, 21, 22, and 46 are
6 concerned? Is there any agreement among the parties?

7 MR. PFEIFFER: I'm sorry, we weren't able to
8 agree, but I think we do agree that it would be appropriate
9 to take up the admissibility of those documents at this
10 time.

11 MR. McLEAN: No, I don't agree to that. 46 has
12 been excluded, and he's trying to ask question on it, and
13 that's where we are.

14 COMMISSIONER KIESLING: Mr. Chairman, I think it
15 would be appropriate to take it up now, and I would request
16 that we do so, because I think that it's prejudicial to not
17 have that cleared up before we move on.

18 CHAIRMAN DEASON: I agree. I understand that 46
19 was excluded for a specific reason, I also understand that
20 the determination on Exhibits 20, 21 and 22, that could have
21 a bearing on whether it would be advisable to reconsider the
22 admissibility of 46. Therefore, what we are going to do at
23 this time is we are going to address all four issues, I
24 mean, all four exhibits at this time. I take it, Mr.
25 McLean, that you do intend to move Exhibits 20, 21 and 22,

1 and if we are going to take it up at this time you so move?

2 MR. McLEAN: That's correct, Mr. Chairman.

3 CHAIRMAN DEASON: Is there an objection?

4 MR. PFEIFFER: Yes, Your Honor, I object. And I
5 don't want to belabor the issue, because I believe that it
6 has been argued in substance during the course of this
7 hearing, but it is our position that Exhibits 20, 21 and 22
8 were mentioned in the testimony of the Public Counsel's
9 witness Kim Dismukes, that they clearly should, if Public
10 Counsel was going to offer these exhibits into evidence,
11 have been prefiled exhibits with the prefiled testimony of
12 Kim Dismukes. They were not otherwise identified as
13 exhibits in this case, they were not identified during any
14 of the prehearing exchanges that we had with regard to
15 exhibits that would be offered into evidence, and we think
16 under these circumstances it would be inappropriate to admit
17 these documents, and we object.

18 CHAIRMAN DEASON: Mr. McLean, do you care to
19 respond to the objection?

20 MR. McLEAN: Yes, sir, I do. That would be a well
21 founded objection if we sought to admit them based upon the
22 testimony of Ms. Dismukes. I don't mean to concede the
23 point, I mean, that would be an appropriate way to make the
24 argument. In fact, I think they are admissible on that
25 basis alone, but we must remember that Mr. Seidman spoke

1 extensively about Exhibit Number 20 under cross, Mr. Brown
2 testified about all three under cross. Now, the due process
3 argument here simply does not apply. We are entitled to
4 bring forth documents which tend to show that what the
5 witness says now is contrary to what that witness said at
6 some other time. In addition, we are entitled to bring
7 forth documents which amount to party admissions. Those are
8 an admission of a controverted issue by one of the parties
9 to the case, and the statement is invariably addressed by
10 the other side. They are admissible. They are admissible,
11 first of all, because you can listen to hearsay, you can
12 admit hearsay if you wish. They are also admissible because
13 they are not hearsay, they are party admissions, and they
14 are prior inconsistent statements. You have never -- the
15 Commission has never enforced any sort of rule which would
16 imply that if one is going to bring forth documents to
17 impeach a witness that they have to give the witness prior
18 notice of those documents. That's the nature of the
19 process. In fact, in each of those instances with Mr. Brown
20 and with Mr. Seidman, I laid a predicate to show that their
21 testimony now differs from what those documents say. They
22 are admissible on that basis. The due process argument --
23 now are we arguing 46 at this time, as well?

24 CHAIRMAN DEASON: No. We are arguing 20, 21 and
25 22.

1 MR. McLEAN: Okay, just those. So, in summary,
2 they are admissible over objection in civil court because
3 they are party admissions, they are also prior inconsistent
4 statements of some of the witnesses. But most important,
5 they are party admissions. They are admissions by
6 St. George Island Utility Company with respect to their --
7 they authorized the CPA to make a statement on their behalf,
8 they authorized the accounting firm who filed the tax
9 returns to make statements on their behalf in both the '78
10 and '79 tax returns. In short, they are admissible over
11 objection in circuit court and they are certainly admissible
12 here. Thank you.

13 CHAIRMAN DEASON: Thank you. Exhibits 20, 21 and
14 22 shall be admitted for reasons stated by Counsel. I agree
15 with the argument. I believe that they were submitted
16 primarily to be utilized during cross examination. I do
17 observe that Mr. Dismukes did address them as part of her
18 testimony, but they are being admitted because they were
19 extensively discussed during cross examination, they were
20 used for impeachment purposes, therefore, I consider them to
21 be admissible exhibits, and, therefore, do allow them to be
22 admitted. That is Exhibits 20, 21 and 22.

23 Now, Exhibit 46, which was previously ruled upon
24 by Commissioner Kiesling, can be discussed now if she is
25 willing to entertain discussion. I'm going to defer to her

1 for that. I understand that the admission of Exhibits 20,
2 21 and 22 may have a bearing on the admissibility of
3 Exhibit 46.

4 COMMISSIONER KIESLING: Thank you, Mr. Chairman.
5 I am willing to entertain argument from both parties on the
6 admissibility of Exhibit 46 in light of the admission of 20,
7 21 and 22, and the reasons for that admission. Do you wish
8 to give me some argument?

9 MR. PFEIFFER: Yes. I believe that Exhibit 46
10 bears very directly on the weight that should be given to a
11 single entry that Public Counsel has asserted should have
12 some binding effect on the Commission and on my client, on
13 St. George Island Utility in the case. I do not agree that
14 that single issue in the -- that single entry in the 1979
15 financial statement or in the other documents, the two tax
16 returns, have the effect of establishing the original cost.
17 I think that we have heard that there are many accounting
18 variables that could be applied to the determination of what
19 the cost of the utility would be, and I think that you have
20 heard good testimony in this case that that cost figure on
21 the books not of St. George Island Utility, but of Leisure
22 Properties, did not include all of the cost items that would
23 properly be attributable as cost items to the utility system
24 as a whole under NARUC standards. And that, indeed, it is
25 very unlikely that the audit of those books or that the

1 entries in that book were based on NARUC standards. They
2 simply would not have applied. Exhibit 46 is also an
3 audited financial statement of St. George Island Utility, in
4 fact, it's the only audited financial statement of any of
5 the annual reports of St. George Island Utility, and it
6 bears directly and has entries that bear directly on this
7 original cost issue, too. It's absolutely appropriate
8 evidence to be offered in response to these exhibits if they
9 are being offered either as an admission against interest,
10 which I do not agree they are, or for whatever cross
11 examination purposes that they were offered. It would be
12 very unfortunate for this Commission to go forward in this
13 case with a single entry from a single financial statement
14 when there are conflicting entries from other financial
15 statements that are entitled to at least equal dignity, and
16 we would suggest quite a bit more dignity. And we did not
17 know when we filed our rebuttal testimony that Exhibits 20,
18 21 and 22 would be received in evidence in this case. In
19 fact, we did not know that they would be offered. In fact,
20 I think that we were quite entitled to rely on the fact that
21 they would not be offered, because they simply were not
22 attached to the prefiled testimony. Thank you.

23 MR. McLEAN: Yes, ma'am. Mr. Pfeiffer just argued
24 that the documents have weight, and I take no issue with
25 that. They may have weight, they may have relevance. Mr.

1 Pfeiffer also tells you that he disagrees with a ruling the
2 Commission just made with respect to 20, 21 and 22. His
3 disagreement with the ruling, I think, rather speaks for
4 itself. Now, they are both financial statements. It sounds
5 like you ought to treat them the same, but I don't think you
6 should, and here is why. The financial statements which we
7 entered were mentioned in Ms. Dismukes' testimony, but even
8 if they weren't, we could bring them forward when we cross
9 examined Mr. Seidman and Mr. Brown, being party admissions,
10 and to call them to task for saying things which were
11 inconsistent with 20, 21 and 22. We do not need to rely on
12 Ms. Dismukes' testimony. That's why, I assume, you ruled as
13 did you on 20, 21 and 22. 46, too, is a financial
14 statement, but a very different one. It's one they
15 produced. Well, in that sense it's the same; both of them
16 are party admissions, but only a party against whom the
17 admission is made can introduce it. It is self-serving,
18 it's bolstering, and the reason you ruled as you did,
19 Commissioner Kiesling, was that we had not had an
20 opportunity to respond to it because it wasn't in the
21 rebuttal case. Mr. Pfeiffer says it has great weight, and I
22 say then why was it not in your rebuttal case? You had the
23 opportunity to answer our criticism of your case and you did
24 so. This is one thing you left out.

25 COMMISSIONER KIESLING: Any response?

1 MR. PFEIFFER: I don't know how we could have
2 known to put into our rebuttal case exhibits in response to
3 exhibits that were not identified and were not offered in
4 support of the testimony of parties that are intervening
5 against the position of St. George Island Utility in this
6 case. I simply don't understand that argument. I think the
7 argument is clearly appropriate redirect testimony and
8 redirect exhibit for the witness. We would move its
9 admission.

10 MR. McLEAN: May I have another word on the topic
11 I forgot before?

12 COMMISSIONER KIESLING: Sure.

13 MR. McLEAN: Thank you, ma'am. The admission of
14 20, 21 and 22 doesn't change any of the reasons why you
15 entered your initial ruling and there is no reason to change
16 it now.

17 COMMISSIONER KIESLING: Well, Mr. Chairman, having
18 heard argument, I am not disposed to reverse my ruling. I
19 think that there is a difference between documents that are
20 offered for impeachment, which 20, 21 and 22 were, and
21 documents that were identified by the utility in its
22 redirect of two of its rebuttal witnesses, and which were
23 not disclosed prior to the other day. And my ruling was
24 based on a due process right to cross examination of these
25 documents.

1 CHAIRMAN DEASON: So 46, then, is not admitted.
2 And I indicate here that it was proffered, and I assume that
3 the utility was intending to proffer Exhibit 46?

4 MR. PFEIFFER: Yes, sir.

5 CHAIRMAN DEASON: Very well. You may proceed with
6 your redirect, Mr. Pfeiffer.

7 BY MR. PFEIFFER:

8 Q Mr. Brown, I'm going to hand you a exhibit that's
9 marked as Exhibit Number 74. Could you identify this
10 exhibit?

11 A Yes. This is a consolidated financial statement
12 of Leisure Properties and affiliates, including the utility
13 company, dated December 31, 1984 by May Zima and Company.

14 MR. McLEAN: Objection to any testimony on that
15 document.

16 CHAIRMAN DEASON: What is the nature of the
17 objection?

18 MR. McLEAN: The nature of the objection, Chairman
19 Deason, is that it is direct evidence which bolsters an
20 existing case. They did not include it with their rebuttal
21 case, and they should have. It's complimentary to their
22 case, it's self-serving. It falls under none of the reasons
23 that you have admitted any document in this case, and it
24 falls precisely under the reasons why the Commission
25 excluded Exhibit Number 46.

1 CHAIRMAN DEASON: Mr. Pfeiffer, do you care to
2 respond to the objection?

3 MR. PFEIFFER: If Exhibit Number 20 has any
4 veracity in this proceeding, surely other audited financial
5 statements that reach a conflicting result with regard to
6 the same question have veracity, too. I certainly concede
7 that the issue regarding Exhibit Number 74 is similar to the
8 issue regarding the admissibility of Exhibit Number 46, but
9 it seems to me wholly inequitable and wholly improper for
10 this Commission to reach a decision with regard to the
11 original cost based on a single entry or a few single
12 entries from a few documents without having all the
13 documents before it. And we would move Exhibit Number 74.

14 CHAIRMAN DEASON: And 74 is the exhibit which we
15 do not have copies of?

16 MR. PFEIFFER: Yes, sir.

17 CHAIRMAN DEASON: No wonder I could not find it.

18 MR. PFEIFFER: I'm sorry.

19 COMMISSIONER KIESLING: Yes, I'm doing the same
20 thing.

21 MR. McLEAN: May I respond?

22 MR. PFEIFFER: I apologize.

23 MR. McLEAN: May I respond to that argument?

24 CHAIRMAN DEASON: Please.

25 MR. McLEAN: The question isn't veracity, the

1 question isn't rate, and the question isn't relevance, and
2 the question isn't hearsay. The question is if they had
3 information which bolsters their rebuttal case, where was it
4 when they filed their rebuttal case? When they took their
5 best hold, they ought to be held accountable for that, and
6 you are allowing them another grab if you should allow them
7 to introduce this kind of evidence.

8 CHAIRMAN DEASON: Well, that raises a good point,
9 Mr. McLean. Let me ask you this question. As I understand
10 the reasoning that this document is being produced and is
11 being attempted to be admitted, is that it is in response to
12 questions which were raised by you, or perhaps by Ms.
13 Sanders, I'm not sure, but nevertheless by opposing counsel,
14 and that it is part of the cross examination and that the
15 door has been opened.

16 MR. McLEAN: No, sir.

17 CHAIRMAN DEASON: Tell me why the door has not
18 been opened.

19 MR. McLEAN: Well, one good reason is because we
20 don't know this document existed. I mean, that's one good
21 reason we didn't open the door. When we inquire as to
22 original cost, we don't open the door as to any and all
23 sundry documents which they may have back in their warehouse
24 which address that issue. When I used the term open the
25 door down in Apalachicola, I was referring to specific

1 questions on specific documents. I think that when we
2 inquire as to original cost, to repeat myself, and I
3 apologize, we don't open the door as to any evidence which
4 they might trot out at hearing as part of the case which
5 they should have trotted out when they rerebutted our
6 criticism of their case. This is the first time we have
7 seen it. Perhaps I would like to acquire some professional
8 advice in addition to what I already have to evaluate and
9 test that evidence. I will never have the opportunity to do
10 that if you let it into evidence.

11 CHAIRMAN DEASON: Yes, and I understand that
12 argument. But the other side of that argument is that the
13 utility has to have perfect clairvoyance and anticipate
14 every exhibit which you may produce on cross examination,
15 which I just allowed to be admitted, and to have that
16 prepared as part of their rebuttal case before it would be
17 appropriate under your argument for this Commission to
18 admit. And at some point the cycle has got to stop. And I
19 agree that perhaps it would be beneficial to you that if
20 Exhibit Number 74 were to be admitted, that it would be
21 beneficial for you to have time to further review that, and
22 to have that subjected to some type of analysis by an
23 expert, but at some point the process has got to stop. And
24 it was your decision to have Exhibits 20, 21 and 22, one of
25 which is an audited financial statement of Leisure

1 Properties, produced during cross examination, and have
2 admitted. And what the utility is doing is presenting
3 another like document from a different time period, and
4 saying, "Well, here is another document which says something
5 different." Now, why there is a difference is something
6 else that can be debated, but nevertheless they are saying
7 there is a difference. And I'm having a hard time to
8 understand or to agree with you that if 20 -- yes, 20 is an
9 audited financial statement -- if 20 is admissible, why
10 isn't 74 admissible?

11 MR. McLEAN: I respect your point of view, Mr.
12 Chairman. Let me answer you the best I can. 20, 21 and 22
13 tends to impeach a case which they brought to us. The
14 nature of the documents which you are being asked to receive
15 now, they knew about, they knew they were likely to stand
16 impeachment on that particular issue, because that is a
17 major thrust of our witness' case in our direct case. If
18 they had these documents --

19 CHAIRMAN DEASON: But you do agree they had no way
20 of knowing that you intended to produce Exhibit 20 on cross
21 examination?

22 MR. McLEAN: No, sir, I do not agree with that.
23 As a matter of fact, they had every reason to believe that
24 we would bring forth every piece of evidence we possibly
25 could or considered relevant on the issue of original cost

1 when we questioned original cost, and criticized their view
2 of original cost which was set forth in their direct case.
3 At that point in time, when they got ready to file their
4 rebuttal --

5 CHAIRMAN DEASON: When you criticized that in the
6 form of prefiled testimony of Ms. Dismukes, she did not have
7 the audited financial statement which has been identified as
8 Exhibit 20. She did not have that part of her testimony at
9 that time.

10 MR. McLEAN: I agree with that, sir. There is --
11 when I impeach Mr. Brown, when I attempt to impeach Mr.
12 Seidman and Mr. Brown, I have the right to bring forth
13 documents without notice to them to impeach their case. And
14 that's why I did that. The documents brought forward, as
15 Commissioner Kiesling says, to impeach, are fundamentally
16 different from those brought forth to bolster an existing
17 case.

18 CHAIRMAN DEASON: What about having an opportunity
19 to respond to that impeachment? That is what redirect is
20 all about, and that is the mode which we are operating under
21 right now, is the redirect of this witness.

22 MR. McLEAN: The way they do that is to bring
23 forth everything they have in their rebuttal case. Because
24 they know that that issue is going to be presented to the
25 Commission. So they go to their records and they bring

1 forth everything they have. There is no claim of surprise
2 here, they could have put this in their rebuttal case, and
3 they should have brought it in their rebuttal case.
4 Original cost is Issue Number 2 in this case. They should
5 have brought forth every piece of evidence in rebuttal of
6 every kind they had in their rebuttal case to answer the
7 criticism of original cost. Now, if they bring some of it,
8 and we criticize some of it, aren't we, too, entitled to
9 rely that they brought forth what they had, or must we
10 prepare somehow to guess what they might have in their
11 storage shed or wherever they have it? Are we required to
12 guess about the nature of those things and to weigh them and
13 be prepared to address things which we have never seen? We
14 have the right to believe that their rebuttal case is, in
15 fact, what they have. It is their best hold, as
16 Commissioner Gunter used to say. Now they are grasping for
17 another hold in response to impeachment which they faced
18 when they came to trial day.

19 CHAIRMAN DEASON: But, Mr. McLean, isn't that why
20 we allow there to even be redirect, to respond to the cross
21 examination, the impeachment that has occurred as a result
22 of cross examination?

23 MR. McLEAN: You do, indeed, sir. And redirect is
24 limited to the scope of cross. And the open the door thing
25 which we talked about before, had I said, "Mr. Brown, is

1 there any other financial statement kicking around out
2 there?" And Mr. Brown might lay it on me, "Yes, sir, here
3 it is right here." And I have opened the door. But he
4 didn't do that, because I was careful never to ask that kind
5 of question, partially because I didn't know about some of
6 these documents, and partially because I knew there might be
7 some out there which I was not prepared to cross on and am
8 still not prepared to cross on. But the point is -- the
9 answer to your question is -- well, I think I have answered
10 your question as best I can. It has to do with the
11 fundamental fairness of the process. This is an adversary
12 system where we are all presumed to take our best hold, come
13 up here and have a fight. They are bringing in weapons to
14 serve their own interest which we have never seen. They
15 were entitled to bring weapons here to impeach Ms. Dismukes
16 which we have never seen. They can do that until the cows
17 come home, because that's impeachment. But what they can't
18 do is go back and take a better hold for a position which
19 they have already taken. They have now brought you a
20 tremendous volume of evidence to bolster a case which they
21 had already made.

22 MS. SANDERS: Mr. Deason, may I ask something as
23 to the fairness issue and the clairvoyance. We are talking
24 about documents that belong to the utility, and we are
25 talking about a history back in '89 when they said they had

1 no documents, no records, nothing from which they could show
2 the original cost. In the intervening four years, other
3 documents have surfaced. The '78 Bishop report being one of
4 those. We knew what we had, we didn't know what we didn't
5 have. And what Mr. McLean is --

6 CHAIRMAN DEASON: Ms. Sanders, isn't that what
7 discovery is all about? Don't you have some type of
8 responsibility and burden on yourself to conduct necessary
9 discovery so you know what is out there and you can prepare
10 for it?

11 MS. SANDERS: I think I have the right to rely,
12 too, on the representation that they had no documents, no
13 records, and what they had in '89 was there best shot. But,
14 yes, I have the opportunity to request those documents. We
15 haven't had a chance to look at this one. I don't know, I
16 don't think it matters, to tell you the truth, because it's
17 later in the time. But as to the clairvoyance issue, is
18 that when they represented they don't have it, we are the
19 ones in the clairvoyance.

20 CHAIRMAN DEASON: I agree with you. If this
21 utility company represented that they did not have a 1984
22 consolidated financial statement, and they are now producing
23 it, it would not be permissible. That would be fundamental
24 unfairness of the highest degree.

25 MS. SANDERS: No, I do not mean to imply that at

1 all.

2 CHAIRMAN DEASON: Okay. What are you implying?

3 MS. SANDERS: That they have made the
4 representation in the '89 case that they didn't have
5 documents and records that relate to original cost. That's
6 why they had to do use Mr. Coloney. None of this was
7 produced in the '89 case. But I don't want to imply that
8 there was a specific request for an '84 financial statement
9 and they said, "No, we don't have it." That's not the case.

10 MR. McLEAN: Commissioner Deason, may I answer
11 your concern about discovery?

12 CHAIRMAN DEASON: Yes.

13 MR. McLEAN: POD Number 74 tendered -- if that's
14 the word -- by the Citizens said, "Provide the Company's
15 financial statements, income statements, and balance sheet
16 from '79 to the present." What we got was that exhibit add
17 one. I can't remember the number, but it is a handful of
18 annual report sheets upon which we did some cross
19 examination. Now, it could be argued that what does "the
20 Company" mean? Well, "the Company" could mean St. George
21 Island Utilities, and perhaps it did. But this Company is
22 now coming forward with Leisure statements in an effort to
23 tell you something about the financial status of the
24 Company. We asked for financial statements, income
25 statements, and balance sheets from '79 to the present for

1 the Company. We didn't get it. apparently.

2 CHAIRMAN DEASON: Mr. McLean, I am glad that you
3 brought that forward, because to me that has a tremendous
4 bearing on what my ruling is. Because this consolidated
5 financial statement is being utilized for the purposes of
6 trying to ascertain, or to verify, or to determine the
7 original cost as it pertains to the utility company. And
8 your request for documents of that nature were addressed to
9 the utility company, and I think that if the Company wanted
10 to rely upon a consolidated financial statement for that
11 purpose they had an obligation to produce that in response
12 to your discovery. That being the case, Exhibit 74 is not
13 admitted, it is denied. You may proceed, Mr. Pfeiffer.

14 BY MR. PFEIFFER:

15 Q Mr. Brown, were the 1979 financial statement and
16 the 1979 tax returns of Leisure Properties, Limited in the
17 record of proceedings conducted by the Commission in the
18 St. George Island Utility rate case proceeding that was
19 conducted in 1989?

20 A Yes.

21 MR. McLEAN: I object to the question, because I
22 don't think Mr. Brown can say as a matter of law whether
23 they are in there or not. If Mr. Pfeiffer would like to ask
24 whether Mr. Brown thinks they were there, I think that's a
25 permissible question. But whether they are in there, as the

1 Chairman himself has said, is a question which speaks for
2 itself --

3 MR. PFEIFFER: How else could he think that?

4 CHAIRMAN DEASON: Okay.

5 BY MR. PFEIFFER:

6 Q Do you think they were, Mr. Brown?

7 A Yes.

8 MR. PFEIFFER: I would ask that you mark, Mr.
9 Chairman, the next exhibit which is a fat one with various
10 tabs as the next numbered exhibit.

11 CHAIRMAN DEASON: Yes. This will be identified as
12 Exhibit Number 76.

13 (Exhibit Number 76 marked for identification.)

14 BY MR. PFEIFFER:

15 Q What is that document, Mr. Brown?

16 A This is a compilation of parts of the transcript
17 and record of the '89 case involving the same parties and
18 the same issue that we have here now.

19 MR. McLEAN: Objection, for the recurring theme,
20 of course, that it violates our due process rights in the
21 same way that these others have. However, this one is a
22 little different. We have been down this road before in
23 1989, not to the extent Mr. Brown just said, but I think we
24 all know that the parties were the same in 1989. There is a
25 continuing issue of what is in the record and what is not in

1 the record. The Citizens will happily stipulate to the
2 admission into evidence of the record, and I mean that as a
3 term of art, which it is normally used by the courts of our
4 state. But I do object to any questions upon this document,
5 because it says excerpts from the record. Let's talk about
6 the whole record, and the record speaks for itself, it
7 doesn't need explanation by any particular witness.

8 MR. PFEIFFER: I'm certainly happy to stipulate
9 the record of proceedings before the Commission in the 1989
10 case into the record of this case. And that would satisfy
11 us. But there is an anomaly in the record as to what was
12 included in one of the exhibits and we would like to address
13 that issue.

14 MR. McLEAN: Well, I have no objection to --

15 MR. PFEIFFER: But as far as the excerpts are
16 concerned, I would say further that constantly through this
17 proceeding we have had excerpts of depositions identified,
18 it's for convenience, and so that we could show you those
19 parts of the testimony that we thought were important. And
20 we are happy for the entire transcript to be part of the
21 record, and to argue them to the Commission in briefs
22 hereafter. That will work fine.

23 MR. McLEAN: I think that's appropriate, but I
24 think that this document should be gathered up and put back
25 wherever it came from, because the record is the record and

1 it is the record as a matter of law. Courts make decisions
2 about that all the time. With respect to the excerpt from
3 the deposition, Mr. Pfeiffer knows well he has the right to
4 request that whole deposition, and I have it with me and he
5 has it with me if he wants it. With respect to this, it may
6 or may not be what is in the record. We don't know, and
7 nobody can tell us except the custodian of those records.

8 CHAIRMAN DEASON: Mr. Pfeiffer, explain to me why,
9 if all parties are going to stipulate the record from the
10 previous case is what that record is, and that it can be
11 utilized for purposes of this proceeding, why do you need
12 this exhibit and why do you need to explore that?

13 MR. PFEIFFER: If you would permit me a few
14 questions on redirect examination of Mr. Brown, I believe
15 that I can explain the issue best to you that way.

16 CHAIRMAN DEASON: I'm going to give you that
17 limited opportunity. At least through questions to explain
18 to the Commission why we cannot simply rely upon the record
19 as the record exists.

20 BY MR. PFEIFFER:

21 Q Mr. Brown?

22 A Yes.

23 Q Have you recently contacted the custodian of
24 records at the Public Service Commission in order to obtain
25 a complete copy of the record from the 1989 rate case

1 proceeding?

2 A Yes.

3 Q And were there any particular exhibits that you
4 were interested in seeing and in having before the
5 Commission in this proceeding today?

6 A Well, after the hearing in Apalach when this 20
7 and 21 -- when these exhibits came up, and there was some
8 allegation that we had not disclosed all of our financial
9 records before, I went back and read the record to refresh
10 my memory because it was there. And what I found was that
11 over about five pages of the record, mainly between
12 Pages 532 and 536, the Hearing Officer in that case,
13 Commissioner Herndon, allowed as Composite Exhibit 21 all
14 federal -- and I'm quoting from the record now.

15 Q What page are you quoting from, Mr. Brown, so that
16 everybody can look at it?

17 A I'm quoting from Page 532, and I was there, and I
18 heard this. And I remembered we gave all of this material
19 to the Audit staff, and we, through Mr. Gatlin, he asked
20 that everything that had been provided to the PSC auditors,
21 which was very voluminous material, all of these financial
22 records that we have been talking about, he asked that all
23 of that come into evidence, and Commissioner Herndon allowed
24 that after getting a ruling from Mr. Pruitt, the attorney at
25 that time. Mr. Pruitt, and the final on Page 536 ruled,

1 "What I'm trying to get across to the attorneys is --" this
2 is Mr. Pruitt talking on 536, Lines 8 through 10 -- "is that
3 is it's admitted conditionally, and if they have any
4 exceptions they can file them." And then he goes on. The
5 parties agreed, and Public Counsel agreed that if they had
6 any objection to admitting everything that had been
7 previously provided to the Staff in the way of these
8 financial statements, and I will quote what Commissioner
9 Herndon said. He said, quote, "Federal income tax returns
10 for the years '79 through '87, federal income tax schedules
11 and work papers, balance sheets, ledgers, financial
12 statements and summaries of tax depreciation and
13 distribution of partners -- that's out of the order. Well,
14 that doesn't have to be an order." And then Mr. Gatlin
15 chimes in and says, "And the engineering report with the IRS
16 and the revenue agent report added to that list that you
17 have. All right." And then Mr. Burgess, who was the Public
18 Counsel, says on Page 533, Lines 2 and 3, "I don't have a
19 problem with that going into the record." Then he goes on,
20 and then Mr. Pierson says, helping us out back then, he says
21 on Line 8 on Page 534, "Do you want to include the response
22 to Audit Disclosure Number 9?" Which was the comprehensive
23 response regarding the financial records, tax returns and
24 all. And Mr. Gatlin says, "Yes." And then Mr. Gatlin says
25 on Page 534, Line 22, he says, "Okay. I would like to offer

1 it." Then Commissioner Herndon says, "All right. And,
2 Staff, do you have any questions on the audit finding, other
3 than the comments that the Staff can go through the file and
4 determine precisely what was in the purview of the original
5 request for confidential treatment." "And I assume that
6 will be what comprises Exhibit 21, is it?" And Commissioner
7 Herndon says, "Right, 21." And then Mr. Gatlin says, "No,
8 there is some additional stuff." And they go on through,
9 and then Mr. Pruitt says on that same Page 535, on Line 16,
10 Mr. Pruitt, "I think it would be permissible to receive it
11 into evidence subject to written objections within a certain
12 period of time, and everybody will have a fair shot at it."
13 Commissioner Herndon says, Line 19, "Okay. Why don't we do
14 that. Why don't we admit it into the record, including --"
15 he is referring to all of the things he discussed before
16 including Audit Exception Response Number 9, "and give Mr.
17 Burgess seven days to --" and then Mr. Burgess breaks in,
18 and then they go on through a discussion. And then Mr.
19 Pruitt, as I said before, Page 536, he says, "Okay. It's
20 admitted conditionally. If they have exceptions, they can
21 file them." And what happened was, and I was there as an
22 attorney, and also a party to the utility company, Public
23 Counsel back then never filed any objection to all of that
24 coming into evidence within the seven days. Instead, they
25 filed a request for this Commission to take judicial notice

1 of the very same basic three documents. They have always
2 wanted this Commission only to look at three --

3 MR. McLEAN: Is that responsive to why? Well,
4 here --

5 THE WITNESS: This explains what happened.

6 CHAIRMAN DEASON: I think we understand. What
7 your assertion is is that through this discourse in the
8 transcript, there is certain information that should have
9 been part of the record, but when you go and look at the
10 record that particular exhibit does not contain everything
11 that you think is described within the transcript.

12 THE WITNESS: I'm not sure that if you go to the
13 record, Ms. Dismukes tells me if you go there that
14 Exhibit 21 is something less than this. What I'm saying is
15 that the intent -- the ruling of the Commission, I was there
16 and I can read this, the ruling of the Commission is that
17 everything that had been presented to the Audit staff was to
18 come into evidence. And it included the '84 audited Leisure
19 return, Exhibit 74 we just talked about. That was all
20 presented and well known to Public Counsel. It's no big
21 surprise. All of this was very carefully gone over in the
22 last case. And I went up and got this page, Commissioner
23 Deason --

24 MR. McLEAN: Commissioner, we are -- pardon me,
25 Mr. Brown. We are really varying from -- now we are going

1 to hear about something he did one time, and the question
2 which you permitted is how come you need this instead of the
3 record.

4 BY MR. PFEIFFER:

5 Q And I would like to ask the witness behind the
6 fourth tab, where did you get those documents?

7 A The fourth tab is Volume 3 of the official audit
8 conducted in late '88 and the first few days of '89 by the
9 Public Service Commission Staff, Mr. Bob Freeman. And if
10 you look at the index one of three, you see a three-page
11 index. This is Bob Freeman's handwriting. This is the
12 official index in the audit section with the Public Service
13 Commission of all of the documents that were disclosed by
14 the utility company, including these exhibits we have been
15 talking about; the audited '87 return and the audited '84
16 return. These are all there as part of the documents that
17 were specifically discussed and confirmed by the Hearing
18 Officer, Commissioner Herndon, and agreed to by all the
19 parties that would constitute Composite Exhibit 21. And to
20 say that somehow the utility is surprising somebody could
21 not be further from the truth. This was so fully discussed
22 and litigated last time everybody knew about it, and this
23 Billy Bishop appraisal, they have cross examined Wayne
24 Coloney on the basis of the so-called brand new Billy Bishop
25 appraisal. Public Counsel had it back in '89.

1 MR. McLEAN: This is in response to what is behind
2 Tab 4?

3 Q What is behind the final tab, Mr. Brown?

4 A First of all, let me clarify what's behind -- I
5 don't want to leave any misunderstanding. Behind Tab 4,
6 over to the IRS documents I got directly from the audit file
7 in that case in this Volume 3 of the three volume audit.
8 Starting after that there is the record from the IRS audit,
9 the engineer's report that we have been discussing, as well
10 as the final \$2.2 million settlement document. I did not
11 see that in the audit report, but that is specifically
12 discussed in the prior order of this Commission. It was
13 discussed at the hearing in '89, and it is specifically
14 identified as part of Composite Exhibit 21 by Mr. Gatlin on
15 Lines 20 and 21 on Page 532, as I said before. After
16 Commissioner Herndon went through all of the items up to
17 that, then Mr. Gatlin said, and I quote again, "The
18 engineering appraisal with the IRS and the revenue agent
19 report added to the list that you have," talking to
20 Commissioner Herndon. Commissioner Herndon replied, "All
21 right." So based on reading this record, and having been
22 there, it appears to me, as an attorney and a party, that
23 the intent was to admit as Composite Exhibit 21 all of the
24 documents between these Tabs 4 and 5, including the IRS
25 reports, because that's what the record says. And why it

1 didn't get into the official record in the Clerk's Office,
2 as we agreed it would be part of Composite 21, I don't know.
3 But certainly there was no surprise, and certainly there is
4 nothing that has been brought out in this case this year
5 that wasn't fully presented before, and I think it was
6 admitted into evidence as part of Composite 21 based on that
7 record.

8 CHAIRMAN DEASON: Let me just ask a very
9 fundamental question, and I will give everybody an
10 opportunity to answer to it. Regardless of whether this
11 transcript verifies or does not verify that there is
12 something that should have been in the record that wasn't in
13 the record or vice versa, the question that I have is, do we
14 today have any authority to amend what was in the record as
15 contained in the official records of the Commission? They
16 are as they are. And what authority does this Commission
17 today have to change a record that exists from a prior time?

18 MR. PFEIFFER: We aren't asking that you do that,
19 Chairman Deason. We are asking simply that the Commission
20 recognize what was identified as Exhibit Number 21, and that
21 it incorporate it into the record of this proceeding. And
22 the documents that Mr. Brown has talked to you about with
23 regard to Tab 4 are Exhibit 21 as articulated in the
24 transcript. It's very clear in the transcript.

25 CHAIRMAN DEASON: I read the transcript, and to me

1 there is still some question, Mr. Pfeiffer. When you read
2 the section that it lists this laundry list of everything
3 that's supposedly is to be included, in the very next page
4 Mr. Burgess is saying on Page 533, he is saying, "But I
5 can't agree with some type of blanket arrangement at this
6 point to allow everything that he says is therein." And
7 then there is further discussion about this and that. And
8 the only thing that stands out to me where Commissioner
9 Herndon specifically said would be included is some type of
10 an audit exception or a response to an audit exception. And
11 he doesn't specify to any degree what else is to be in
12 there. So to me it's vague. And what I have to rely upon
13 is what the Clerk of this Commission says is the record in
14 the case. And I just don't see how I can go and change
15 that.

16 MR. McLEAN: Your observation is exactly correct.
17 Here is what Mr. Burgess agreed to have come into the
18 Commission. It is identical, and we copied Exhibit 21 from
19 the Clerk's Office. I can put a live witness on to say what
20 the record is, too. Which won't agree with Mr. Brown.
21 That's my objection. Also, if you take Mr. Brown's point of
22 view, you have to assume that the utility did what they were
23 told to do, or did what they were asked to do, which is
24 bring all the stuff down here and put it in the record. But
25 you should know by this time that the utility doesn't always

1 do what they were told to do or even authorized to do. And
2 please remember the second prong of my objection, and that
3 is that even if it is in the record, we need not hear an
4 explanation of what that record is from Mr. Brown today.

5 MS. SANDERS: Commissioner Deason, obviously your
6 question answers itself. There would be no authority for
7 this Commission to change that record. But Mr. Brown was
8 represented by Mr. Gatlin in that '89 hearing. He went down
9 and apparently filed something with your Clerk's Office,
10 which we all call filing. Steve Burgess, we can speculate,
11 went in and looked at that and did not have an objection and
12 did not file his objection to what was filed as Exhibit 21
13 in your Clerk's Office. What was upstairs, what was
14 somewhere else, or what was forgotten, Mr. Burgess, as he
15 says in this transcript had no way of knowing about.

16 CHAIRMAN DEASON: Okay. Very well. I think the
17 record speaks for itself, and if the parties want to so
18 stipulate, that's fine. And I think that any further
19 questions on what has been identified as Exhibit 76 is
20 fruitless and a waste of the Commission's time. The record
21 is as the record is.

22 MR. PFEIFFER: So we would ask that the Commission
23 take official recognition of that record and that it be
24 available for consideration in this proceeding.

25 CHAIRMAN DEASON: Any objection?

1 MR. McLEAN: So long as we understanding that
2 official notice doesn't have anything to do with the truth
3 or accuracy of any of the numbers in that record, only that
4 they exist.

5 MS. SANDERS: I have no objection to you noticing
6 your own record.

7 CHAIRMAN DEASON: Is there any problem with that,
8 Ms. Helton?

9 MS. HELTON: I mean, I would think that the record
10 speaks for itself.

11 CHAIRMAN DEASON: Whatever is in the record is in
12 the record.

13 MR. PFEIFFER: And the reason we would be offering
14 it is to show you what is in the record

15 CHAIRMAN DEASON: Very well. Now, we can proceed
16 with redirect.

17 BY MR. PFEIFFER:

18 Q Mr. Brown, the business structure of St. George
19 Island Utility appears somewhat cumbersome and complicated.
20 What, if any reason is there for St. George Island Utility
21 to operate under this structure?

22 A I don't agree it's cumbersome or any of that, but
23 it's the way it was set up when the franchise was entered.
24 It does save taxes over what would be the case with the
25 standard C Corporation, and that's one benefit to the

1 ratepayers.

2 Q And does it serve to provide some of the benefits
3 of a corporate structure through an arrangement that does
4 not require payment of corporate income tax?

5 A Yes. That is the primary benefit of a partnership
6 over a standard C Corporation.

7 CHAIRMAN DEASON: Mr. Pfeiffer, how much further
8 redirect?

9 MR. PFEIFFER: Just a few minutes.

10 CHAIRMAN DEASON: Just a very little bit?

11 MR. PFEIFFER: Yes, sir.

12 CHAIRMAN DEASON: Because I have a semi-emergency
13 I need to attend to shortly. Let's take five minutes. Make
14 it ten minutes.

15 (Off the record.)

16 CHAIRMAN DEASON: Call the hearing back to order.
17 Mr. Pfeiffer, you may continue with your redirect.

18 BY MR. PFEIFFER:

19 Q Mr. Brown, do you have an opinion as to what the
20 original cost of the St. George Island Utility System was at
21 the time the Commission completed the proceedings with
22 regard to the last rate case, the 1989 rate case involving
23 St. George Island Utility?

24 A I think the original cost was what the Commission
25 determined during the last rate case.

1 Q And what was that? Do you remember approximate
2 what that figure was?

3 A I don't remember the exact figure. It was
4 somewhat lower than the IRS figures and lower than all of
5 our books. But I think that was a proper determination made
6 after full litigation on that issue and after examining all
7 of the records from back in the '70s up to and including
8 12-31-87, including audited financial statements of various
9 companies, and all the tax returns, and the IRS audits. And
10 that was totally and fully explored in the last case, and I
11 think that was a proper determination, and there is no basis
12 for changing it.

13 MR. PFEIFFER: No further questions.

14 CHAIRMAN DEASON: You were right when you said you
15 didn't have much left. Exhibits.

16 MR. PFEIFFER: We would offer 46.

17 CHAIRMAN DEASON: That's real smooth.

18 MR. PIERSON: 74, too?

19 CHAIRMAN DEASON: Any other exhibits want to be
20 offered?

21 MR. PIERSON: Staff would be ready to move 66
22 through 71, and I'm not really sure, but just to be on the
23 safe side, 52 and 53.

24 CHAIRMAN DEASON: 52 and 53 have already been
25 admitted.

1 MR. PIERSON: Okay.

2 CHAIRMAN DEASON: And you were moving at this time
3 66 through 71?

4 MR. PIERSON: Yes, sir.

5 CHAIRMAN DEASON: Without objection? Hearing
6 none, Exhibits 52, 53 and 66 through 71 are admitted.
7 Further exhibits.

8 (Exhibit Numbers 66 through 71 received into
9 evidence.)

10 MR. McLEAN: Yes, sir. The Citizens move 63, 64,
11 and 65.

12 CHAIRMAN DEASON: Without objection?

13 MR. PFEIFFER: We object.

14 CHAIRMAN DEASON: State your objection, please.

15 MR. PFEIFFER: I want to make sure that I
16 understand which of the --

17 MR. McLEAN: I can help you, Mr. Pfeiffer, I
18 think. 63 is the agreement which resulted in the \$100,000
19 payment which was split 35/65.

20 MR. PFEIFFER: No objection.

21 CHAIRMAN DEASON: 63 is admitted.

22 (Exhibit Number 63 received into evidence.)

23 MR. McLEAN: 64 is the deposition excerpt of which
24 we discussed some. That's the Franklin County Circuit Court
25 deposition.

1 MR. PFEIFFER: We object. We don't think the
2 document has any relevance to this proceeding. We think it
3 was a document that, in fact, supports the direct
4 examination of Mr. Brown, and it has no cross examination
5 effect in the case. We object.

6 MR. McLEAN: The document is a library of prior
7 inconsistent statements and party admissions by the
8 principal man in this utility given at a time when he had a
9 number of identified incentives and he honored those
10 incentives.

11 CHAIRMAN DEASON: The document will speak for
12 itself, and the Commission will give it due weight as the
13 Commission deems fit. And Exhibit 64 is admitted.

14 (Exhibit Number 64 received into evidence.)

15 MR. McLEAN: 65 is, as I recall, the pages from
16 the annual reports which SGI gave us in responses to POD
17 Number 74. Ms. Withers testified on it, I believe. And I
18 think Mr. Brown, as well. Although I'm not sure.

19 CHAIRMAN DEASON: This contains additions to plant
20 for the period from '82 to '87?

21 MR. McLEAN: That's correct, sir. It also is a
22 tracking schedule. The first page is a schedule which you
23 may recall was a compilation of the various numbers derived
24 from the annual report papers.

25 CHAIRMAN DEASON: I recall we took a break and I

1 gave the witness the opportunity to verify those numbers.

2 MR. McLEAN: That is the exhibit, sir.

3 MR. PFEIFFER: We object. There is no question
4 but that that document should have been included with the
5 prefiled testimony of Ms. Dismukes, that it should have been
6 identified as an exhibit to her testimony. It was not. The
7 effort here is to put the document in evidence other than
8 through the ordinary course. We think it's inadmissible.

9 CHAIRMAN DEASON: I would note that the document
10 was used for cross examination purposes and that the
11 contents therein were verified by the witness, and,
12 therefore, Exhibit 65 is admissible and will be admitted.

13 MR. McLEAN: We would move 61 and Exhibit 43A.

14 CHAIRMAN DEASON: Without objection, Exhibit 61
15 will be admitted. Exhibit 43A is moved. That is an update
16 of rate case expense. I believe Exhibit 43A has already
17 been admitted.

18 (Exhibit 61 and 65 received into evidence.)

19 MR. McLEAN: Is it not customary to allow the
20 parties to file a late-filed response to that?

21 CHAIRMAN DEASON: This was an update, but I
22 understand that there may be a final update yet to come.
23 And it is tradition to allow that information.

24 MR. PFEIFFER: We were asked to file it and we
25 have filed it and we intend to file the rest of it, sure.

1 MR. McLEAN: And we have an opportunity to respond
2 to it in writing, and I think we waive cross on it.

3 CHAIRMAN DEASON: I believe that is the normal
4 procedure.

5 MR. PFEIFFER: And I'm certain that the record is
6 absolutely clear, Your Honor, but I want it to be absolutely
7 clear, and we move the admission of Exhibits 54 through 60,
8 which are documents that are supplemental to the pro forma
9 exhibits that were included with Mr. Brown's prefiled
10 rebuttal testimony.

11 MR. McLEAN: Mr. Chairman, I believe those were
12 specifically --

13 CHAIRMAN DEASON: 54 through 60 have previously
14 been moved and were denied admission into the record, and
15 will remain so.

16 MR. PFEIFFER: And so that I can also be sure that
17 the record is clear, I believe that they have all been ruled
18 upon, but in the event that they haven't, we would move
19 Exhibits 46, 47, 74 and 75.

20 CHAIRMAN DEASON: 46, 47, 74, Mr. Pfeiffer? I'm
21 sorry, could you give me those numbers again, please?

22 MR. PFEIFFER: 46, 47, 74 and 75. And I believe
23 they have all been ruled upon, but I have a lingering
24 discomfort that for one reason or another one wasn't
25 offered, and I wanted to make sure that it was offered.

1 CHAIRMAN DEASON: 46 was moved and denied
2 admission, so that has been addressed clearly.

3 MR. PFEIFFER: Yes. 47 was the 1982 Billy Bishop
4 appraisal.

5 CHAIRMAN DEASON: I'm not sure what was done with
6 that. I believe Commissioner Kiesling addressed that.

7 COMMISSIONER KIESLING: It was never moved.

8 MR. PFEIFFER: I would move the exhibit.

9 MR. McLEAN: No objection.

10 CHAIRMAN DEASON: Exhibit 47, without objection
11 will be admitted.

12 (Exhibit Number 47 received into evidence.)

13 CHAIRMAN DEASON: And you also are moving 74,
14 which has already been addressed, and is not admitted into
15 the record. And 75 has not previously been moved. It has
16 been identified, and you are moving 75 at this time. Any
17 objection to the admission of Exhibit 75? Hearing none --

18 MR. McLEAN: Mr. Chairman, I thought that I
19 interposed an objection to that and was overruled.

20 CHAIRMAN DEASON: You posed an objection to it
21 being utilized to ask questions from, and we identified it,
22 and I allowed Mr. Pfeiffer to ask questions of Mr. Brown
23 concerning that report. But technically the Sayer's
24 appraisal report, which is Exhibit 75, was not moved, and
25 Mr. Pfeiffer is doing that now. Is there an objection to

1 the admission of it?

2 MR. McLEAN: May I have just a moment. No
3 objection, Mr. Chairman.

4 CHAIRMAN DEASON: Very well. Exhibit 75 is
5 admitted.

6 (Exhibit Number 75 received into evidence.)

7 CHAIRMAN DEASON: That concludes all testimony
8 from all witnesses. Anything further at this time?

9 MR. PIERSON: Yes, sir. I think we should discuss
10 the remaining case schedule. Yesterday we discussed a
11 special agenda date of October 7th of '94. I would propose
12 that briefs be due on August 26th. Staff's recommendation
13 on September 26th for the October 7th agenda conference.

14 MR. McLEAN: I didn't hear the last date, Mr.
15 Pierson.

16 MR. PIERSON: Which date?

17 MR. McLEAN: The last one you mentioned.

18 MR. PIERSON: The last one I mentioned was October
19 7th agenda conference.

20 CHAIRMAN DEASON: Let's go through this. The
21 proposal is to have briefs due August 26th. Recommendations
22 due September 26th, for a special agenda on October 7th.

23 MR. PIERSON: That's correct.

24 CHAIRMAN DEASON: Is this any objection to those
25 proposed dates?

1 MR. PFEIFFER: I wonder if it might be possible to
2 have the briefs due rather than on the 26th of August, on
3 the 29th, which would give the parties a weekend to ruin in
4 the event we haven't completed our efforts by that Friday.

5 CHAIRMAN DEASON: I have no objection to extending
6 that. And I'm sure Staff would give you the weekend to
7 work.

8 MR. PIERSON: We'll live with it.

9 MR. PFEIFFER: Are you going to take those briefs
10 home that weekend?

11 MR. PIERSON: We had planned to.

12 CHAIRMAN DEASON: Are you willing to state that
13 under oath, Mr. Pierson?

14 MR. PIERSON: No, sir.

15 COMMISSIONER KIESLING: Could I just ask a
16 clarifying question. There are a couple of late-filed
17 exhibits that are still outstanding. Is there a deadline
18 for those in terms of everyone preparing their briefs?

19 CHAIRMAN DEASON: There are a number of
20 late-fileds.

21 COMMISSIONER KIESLING: I have 16, an example.

22 CHAIRMAN DEASON: Yes, that addresses the
23 short-term debt position of the company.

24 MR. PIERSON: Did any of the others parties ask
25 for late-filed exhibits?

1 MR. McLEAN: Yes. We asked for the late-filed --
2 it's the old respond to the rate case expense drill. What I
3 would suggest is that we have a couple of days after the
4 utility files its final word on the point, and if we haven't
5 filed anything within that couple of days, we waive. Does
6 that make sense?

7 MR. PFEIFFER: Do we have an opportunity to rebut
8 with a couple of days as an opportunity, or no?

9 CHAIRMAN DEASON: No. As I indicated before, the
10 vicious circle has to stop somewhere.

11 MR. McLEAN: That's why we are waiving cross.

12 MR. PIERSON: As far as the Staff requested
13 late-filed exhibits, we can probably live with getting them
14 about the time of the briefs.

15 CHAIRMAN DEASON: And then Public Counsel has the
16 ability, if they wish to do so, to respond after their brief
17 is in concerning rate case expense?

18 MR. PIERSON: Pardon me, sir?

19 CHAIRMAN DEASON: Public Counsel is waiving cross
20 examination, which is customary. But they are given the
21 opportunity to respond to the last exhibit on rate case
22 expense. And my question is if we allow the late-filed on
23 that to be filed at the same time briefs are filed, well,
24 you're going to be having Public Counsel's brief filed and
25 then a few days later, if they deem advisable, filing some

1 type of a comment concerning the rate case expense. It
2 seems to me it may be better to have them file their brief
3 and their comments all at one time. Which would mean that
4 late-filed exhibits would need to be filed sometime before
5 briefs are due.

6 MR. PIERSON: I really meant everything but that
7 one that Public Counsel wanted to cross examine on or
8 respond to.

9 CHAIRMAN DEASON: Let's just simplify the matter
10 and just say that all late-filed exhibits, and there are not
11 that many. I don't believe it would be too burdensome.
12 That all late-filed exhibits will be due on August the 25th,
13 is that sufficient?

14 MR. PFEIFFER: Yes.

15 CHAIRMAN DEASON: Late-fileds are due August 25th.
16 I hope that's a week day. I believe it is. I believe
17 that's a Thursday.

18 MR. PIERSON: Yes, it is.

19 CHAIRMAN DEASON: Anything further at this time?
20 Hearing nothing, this hearing is adjourned. Thank you all.

21 (The hearing was concluded at 5:35 p.m.)
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA, BY THE ABOVE PERSON WHO IS PERSONALLY
KNOWN BY ME.



Melanie Y. Strubble
NOTARY PUBLIC
STATE OF FLORIDA