

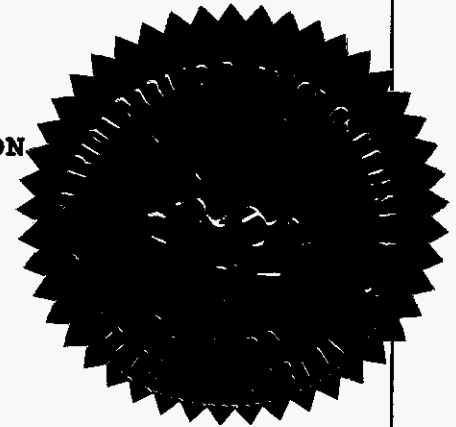
BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for rate) Docket No. 951056-WS
 increase in Flagler County by)
 Palm Coast Utility Corporation.)

THIRD DAY - MORNING SESSION

VOLUME 7

PAGES 765 through 964



PROCEEDINGS: HEARING

BEFORE: COMMISSIONER J. TERRY DEASON
 COMMISSIONER JULIA L. JOHNSON
 COMMISSIONER DIANE K. KIESLING

DATE: Friday, July 19, 1996

TIME: Commenced at 11:05 a.m.

PLACE: Betty Easley Conference Center
 Room 148
 4075 Esplanade Way
 Tallahassee, Florida

REPORTED BY: LISA GIROD JONES, RPR, RMR

APPEARANCES:

(As heretofore noted.)

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I N D E X - VOLUME 7

WITNESSES

3	NAME	PAGE NO.
4	TED L. BIDDY (Recalled)	
5	Cross Examination by Mr. Gatlin	771
	Redirect Examination by Mr. Reilly	785
6	Recross Examination by Mr. Gatlin	788
7	CHARLES D. SPANO, JR.	
8	Direct Examination by Mr. Schiefelbein	792
	Prefiled Rebuttal Testimony inserted	798
9	Cross Examination by Mr. Hadeed	849
	Cross Examination by Ms. Reyes	869
10	Redirect Examination by Mr. Schiefelbein	889
11	FRANK SEIDMAN	
12	Direct Examination by Mr. Gatlin	895
	Prefiled Rebuttal Testimony inserted	904
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

	EXHIBITS		
	NUMBER	IDENTIFIED	ADMITTED
1			
2			
3	25 - (Bidly) TLB 1-3.1, 6-28-96		789
4	27 - (Bidly) PCUC Current Operating Permit		790
5	36 - (Bidly) Attachment 65	772	789
6	37 - (Bidly) Attachment 35	782	789
7	38 - (Spano) CDS-1 - CDS-4	796	893
8	39 - (Spano) CDS-5	797	893
9	40 - (Spano) Listing of Appraisals for PCUC	883	893
10			
11	41 - (Seidman) FS-6 - FS-13B	900	
12			
13			
14			
15			
16			
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PROCEEDINGS

(Hearing reconvened at 11:05 a.m.)

(Transcript continues in sequence from
Volume 6.)

COMMISSIONER DEASON: Call the hearing to
order. Welcome everyone to Tallahassee.

I believe where we concluded in the previous
round of hearings was that Mr. Biddy was going to
reappear and was going to be cross examined, I believe
by Mr. Gatlin.

MR. GATLIN: That's my understanding.

COMMISSIONER DEASON: I believe that's where
we are. Is that correct?

MR. REILLY: I think that's correct, yes. We
did have some submittals that have been made by the
utility, some supplemental exhibits and supplemental
rebuttal testimony. You said we would take up at this
hearing the propriety of those filings. Would it be
appropriate to do that right at the start, or what's
your pleasure? I say that because --

COMMISSIONER DEASON: I don't have that. So
it has been filed?

MR. REILLY: I don't know that it's been
filed. It's been furnished to the parties. It may be
that the matter of whether it was going to be accepted

1 or not was going to be taken up today.

2 COMMISSIONER DEASON: Mr. Schiefelbein.

3 MR. SCHIEFELBEIN: Commissioner Deason, on the
4 12th, we prefiled a motion for leave to prefile
5 supplemental exhibits, and I've got extra copies of all
6 the stuff that we filed on Friday, if you'd like me to
7 distribute them to the commissioners before we get into
8 it. We prefiled it with the clerk's office, but I can
9 distribute them now also.

10 COMMISSIONER DEASON: Very well. Do that,
11 please.

12 MR. REILLY: But I believe it will be real
13 helpful to know how you'll rule on those various motions
14 as to how we'll proceed with some of these witnesses.

15 (Pause)

16 COMMISSIONER DEASON: I believe this should
17 have no bearing on the cross examination of Mr. Biddy;
18 is that correct?

19 MR. SCHIEFELBEIN: That is correct.

20 MR. REILLY: I'm not sure I agree with that,
21 because my argument will be that some of this
22 supplemental rebuttal testimony goes way beyond what we
23 had agreed that they were going to supplement it with,
24 as to the change that we made at the hearing date. And
25 if this -- all this other stuff is let in, then there

1 may need to be further response and revision on the part
2 of Mr. Bidy. But if we stick to what you ruled at the
3 hearing and stick with, you know, limiting the
4 supplementing of their rebuttal testimony to the subject
5 of that change, then there's no problem.

6 COMMISSIONER DEASON: And it's your position
7 it goes beyond?

8 MR. REILLY: Absolutely. I would like to have
9 an opportunity to try to show to you that what they did
10 with their supplemental rebuttal is to bootstrap in a
11 lot of arguments against our I&I methodology that have
12 no relationship whatsoever to the change that we offered
13 at the hearing.

14 COMMISSIONER DEASON: Staff? First of all,
15 were you all provided copies of this?

16 MR. EDMONDS: Yes. It was my understanding
17 that we got copies when it was filed with records.

18 MR. REILLY: Now there's two versions of the
19 supplemental rebuttal. There's the version that was
20 offered at the hearing, and then now this second new
21 supplemental rebuttal. Did you get the latest version
22 of it?

23 MR. EDMONDS: Yes.

24 MR. REILLY: And it's the new version that I
25 take exception to.

1 COMMISSIONER DEASON: Well, we're going to go
2 ahead with the cross examination of Mr. Biddy. And
3 we'll take up the question of the supplemental filing by
4 the Company. And it may need be that I'm going to have
5 to have a break and discuss this matter with Staff. I'm
6 being caught kind of right now unaware, which is an
7 unfortunate situation, but nevertheless we're going to
8 go forward with Mr. Biddy's cross examination. So if
9 you'll call your witness.

10 MR. REILLY: Mr. Biddy.

11 COMMISSIONER DEASON: Mr. Biddy, you're still
12 under oath. And he's already provided his direct.
13 Mr. Gatlin.

14 TED L. BIDDY
15 was recalled as a witness on behalf of Office of Public
16 Counsel, and having previously been duly sworn,
17 testified as follows:

18 CROSS EXAMINATION

19 BY MR. GATLIN:

20 Q Mr. Biddy, would you refer to your Schedule
21 3.1 that you modified at the hearing on July the 2nd?
22 And I believe it's been assigned Exhibit No. 25.

23 A Repeat that, please.

24 Q Your Table 3.1, part of Exhibit 25?

25 A Yes.

1 Q As amended at the July 2nd hearing?

2 A Yes.

3 Q Do you have that?

4 A Yes, I do.

5 Q The number on Line 1 is 1,242,000? I can't
6 quite read it.

7 A That's correct.

8 Q And what you wanted to do there was state the
9 average daily usage of water?

10 A Yes, that's right 1995.

11 MR. GATLIN: Mr. Chairman, I passed out an
12 exhibit that says Attachment 65. It's No. -- request
13 for production of documents No. 65 served on PCUC by
14 Office of Public Counsel.

15 COMMISSIONER DEASON: Do you wish to have this
16 identified?

17 MR. GATLIN: I would like to have it
18 identified.

19 COMMISSIONER DEASON: It will be identified as
20 Exhibit No. 36.

21 (Exhibit No. 36 marked for identification.)

22 MR. REILLY: Could I interpose an objection at
23 this time?

24 COMMISSIONER DEASON: Yes.

25 MR. REILLY: And the basis of that objection

1 is that I believe that the amount of billing units sold
2 in this line of questioning has nothing whatsoever to do
3 with the changed testimony that was provided at the
4 hearing. And I excerpted -- I won't go through it all,
5 but I excerpted our considerable discussion at the
6 hearing about limiting this cross examination to that
7 change and anything that results from that change.

8 And I anticipated that this might happen, and
9 I suggest that this first line of questioning is such an
10 example; that this is -- should have been put in the
11 supplemental rebuttal. It was available at the
12 hearing. It is going far beyond it.

13 And my greatest point that I would like to
14 make on that is that the very supplemental rebuttal
15 testimony that you've not ruled on yet addresses the
16 issue of the change that we talked about so much, and
17 the only reference -- that's the old one. Let me get
18 the new one. Here it is. The only reference in the
19 supplemental rebuttal that deals with the change is the
20 following language. It says:

21 "Did Mr. Bidy utilize the information on the
22 reject concentrate returned to the plant properly
23 in his revised Exhibit TLB 3.1?

24 "MR. SEIDMAN: Yes. The exhibit, as verbally
25 revised at the hearing on July 2nd, correctly

1 reflects only the reject sent to the plant for the
2 treatment, not all of the reject."

3 That is the total treatment in this great
4 change that we made at the hearing, and it basically
5 says, we agree with what Public Counsel did. And I
6 suggest that the entire line of questioning that I
7 vehemently objected to at the time -- I said, if you've
8 got questions on our methodology, on anything else, do
9 it now, at the proper place. And they said, no, we
10 will -- I will go over each of these particular
11 citations. But it was quite clear that the scope of
12 this cross examination was to be limited to the change
13 and any reasonable results from that change. And by
14 their own words they admit that we have no problem with
15 the change; we agree with it. And I can save this
16 Commission a great deal of time by making them hold to
17 what you ruled at the hearing.

18 COMMISSIONER DEASON: Mr. Gatlin.

19 MR. GATLIN: Mr. Chairman, at the hearing on
20 July 2nd, not having given any notice of doing so,
21 Public Counsel's Amended Table 3.1, which is part of
22 Exhibit 25 -- and we were caught by total surprise --
23 that's the main exhibit of Public Counsel on inflow and
24 infiltration. Mr. Reilly and I had a discussion through
25 the chair as to what was going to be the extent of the

1 cross examination, and I said I wanted to defer all
2 cross examination on inflow and infiltration. And
3 Mr. Reilly says, "If he's waiving any further cross
4 examination, that's fine." And I said, "The only cross
5 I have is related to the subject of infiltration and
6 inflow and to the exhibits and the resulting testimony
7 from those exhibits that were changed today."

8 MR. REILLY: That were changed today. Excuse
9 me.

10 MR. GATLIN: Mr. Reilly said, That will be the
11 limit of the cross examination, on that one subject,
12 inflow and infiltration. Okay, thank you. And with
13 that we went on to something else.

14 MR. REILLY: May I respond?

15 COMMISSIONER DEASON: Yes.

16 MR. REILLY: Throughout this transcript it's
17 made clear time and time again that the scope would be
18 relating to the change that took place on July 2nd. And
19 in the discussion on Page 503 of the transcript,
20 Commissioner Deason says, I'm going to allow this new
21 information, he says, but -- and it is -- he considers
22 the new information to be of such magnitude, well, then,
23 it appears, if we're going to have another day of
24 hearing, that perhaps will give Mr. Gatlin ample time to
25 prepare and have necessary information to cross examine

1 on whatever changes take place.

2 And on Page 507, Mr. Gatlin says,
3 Mr. Chairman, that's the main exhibit I wanted to
4 inquire about, on cross examination, but I'm not going
5 to be able to do that now if these changes are
6 accepted.

7 And he goes on -- Commissioner Deason on the
8 same page says, I'm going to allow this change, but,
9 however, I'm going to allow Mr. Gatlin, if he feels
10 necessary, to further explore this change with this
11 witness, and if that means having Mr. Bidy available
12 for further cross on these changes, that he would be
13 available when we reconvene the hearing in Tallahassee.

14 And then he says, that's what I'm saying, my
15 cross examination on this subject is now. I am not
16 prepared, because of this major change to 3.1.

17 Commission Deason goes on to say, I
18 understand. Well, I'm going to allow the changes with
19 that stipulation, that the witness would be available
20 for further cross examination as a result -- as a result
21 of the changes that were made here today.

22 And then flipping further, this continues to
23 be discussed and says -- Mr. Gatlin says on Page -- on
24 Page 525, Mr. Chairman, this changes the nature of this
25 exhibit entirely, and with this change we would have

1 permission to submit additional rebuttal testimony, and
2 we'll get into that later. But the subject -- when we
3 say "subject," that he refers to is taken out of
4 context, here it says, Mr. -- I'm speaking -- this is
5 after he defers and says, I'm not going to asking ask
6 any questions of this witness, and I get concerned.

7 I go on to say, may I inquire about
8 something? And I said, this will be limited to the
9 single subject that was the subject of this minor, and I
10 might suggest relatively minor change, again in the
11 context of the change. So then I've said, on Page 531,
12 if he's waiving any further cross, that's fine.

13 And then Mr. Gatlin then says what he quoted,
14 The only cross I have is related to the subject of
15 inflow, infiltration and to the exhibits, and the
16 resulting testimony from those exhibits -- and then I
17 underlined this -- that were changed today.

18 So I mean, throughout this entire transcript,
19 it was, he was available for cross examination, but
20 because of this change -- we suggested at the hearing
21 that this change was not consequential. Mr. Gatlin
22 suggested it was extremely consequential. And I contend
23 that that debate has been resolved with certainty today,
24 because here is their supplemental testimony where they
25 admit that we agree, no problem.

1 And I just -- in all fairness, anything that
2 has to do with that change is proper cross examination,
3 but I contend, as you'll see with this attempted
4 supplemental rebuttal, they go into matters totally
5 unrelated to the change. And we have started it with
6 this, questioning whether proper billing units were
7 used, and there's going to be some other critiques, all
8 that should have, could have and under our procedures
9 would have been handled at the hearing. And I just
10 interpose my objection.

11 MR. GATLIN: Mr. Chairman.

12 COMMISSIONER DEASON: Mr. Gatlin.

13 MR. GATLIN: At the hearing Mr. Bidy changed
14 one number, and that changed the entire conclusion to be
15 drawn from his exhibit. And frankly, I was not able,
16 and I don't think anybody else would have been able, to
17 sort out what changed, what's not changed, and what's
18 inferred, and all that kind of stuff. I need to look at
19 it. And I said, I'm not prepared to do cross
20 examination on this exhibit today. And that's when I
21 said I would limit my cross examination to inflow and
22 infiltration, and Mr. Reilly agreed to it, and I thought
23 that was the end of it.

24 COMMISSIONER DEASON: Proceed, Mr. Gatlin.

25 Q (By Mr. Gatlin) Mr. Bidy, that one million

1 two hundred some thousand dollars that you have there is
2 the average day usage for the year 1995; is that true?

3 A That's correct.

4 Q Gallons per day.

5 A Based on the document that was furnished to
6 us, that was a total that was shown on document No. 65,
7 OPC's request for documents, we took that -- only place
8 on that document it showed a total -- we took that total
9 and converted it to gallons per day -- yes, average
10 annual -- average flow per day.

11 Q And look at the document that's been
12 identified as Exhibit 36, on the last sheet of it, is
13 that the document you were referring to?

14 A Refer me to which document you're --

15 Q The last page on Exhibit 36, which is the
16 Response to Public Counsel's Request No. 65, that was
17 just passed out.

18 A Yes, that last page is the document I'm
19 referring to.

20 Q And what you assumed in making that
21 calculation was that on the third or fourth line from
22 the bottom, that the 455 million gallons was the total
23 of that column, weren't you?

24 A Yes, that's correct.

25 Q Looking over the left-hand notation on that

1 column, it says, total residential, three-quarter inch,
2 and then on that line is the 455 million; is that
3 correct?

4 A That is correct.

5 Q Now, to get the total usage, you need to add
6 up the general service and the multi-family, don't you?

7 A That is correct.

8 Q Have you done that now?

9 A I have done that now, yes.

10 Q What's the number then on Line 1 of your
11 Exhibit 3.1?

12 A It would be 1,561,866 gallons per day.

13 Q All right, sir, thank you. Now, that's going
14 to change the percentage on Line 9, isn't it?

15 A That's correct.

16 COMMISSIONER DEASON: Mr. Gatlin, when you
17 refer to 3.1, what is that exactly?

18 MR. GATLIN: It's a table, up at the top it
19 says, OPC Used and Useful Calculations, and up in the
20 right-hand corner is Mr. Biddy's number 3.1, and I
21 believe it was identified as Exhibit 25 at the hearing.
22 All his exhibits were, I think.

23 COMMISSIONER DEASON: These are his prefiled?

24 MR. GATLIN: Right, these are the exhibits
25 that were changed prior to the July 2nd hearing on the

1 Friday before that.

2 COMMISSIONER DEASON: Yes, I have it, thank
3 you.

4 Q (By Mr. Gatlin) Are service laterals a
5 potential source of infiltration?

6 A Service laterals are a potential source of
7 inflow, occasionally infiltration, but they are not
8 included in the test that's shown on this 3.1.

9 Q Well, to get the total footage of the pipe you
10 need to include it, don't you?

11 A No, not for the Ten State Standards Test, no.

12 Q Well, let me ask you about the Ten State
13 Standards. That's a standard used for a new system when
14 installed, isn't it?

15 A That's correct.

16 Q And this is certainly not a new system in Palm
17 Coast, is it?

18 A No, it is not.

19 Q You had -- look at attachment 35, which I ask
20 to be identified as Exhibit 37, that's been
21 distributed.

22 COMMISSIONER DEASON: I'm sorry.

23 MR. GATLIN: May we have that attachment 35 --

24 COMMISSIONER DEASON: Yes, it will be
25 identified as Exhibit No. 37.

1 (Exhibit No. 37 marked for identification.)

2 Q (By Mr. Gatlin) Look on the last sheet of
3 that exhibit. Up at the top is Palm Coast Utility
4 Corporation, the docket number and I&I work paper.

5 A I see it.

6 Q On the right-hand side, the column on the
7 right hand, that gives the feet of service laterals,
8 doesn't it?

9 A Yes, it does.

10 Q So this could be added to the number on Line
11 35, on your Table 3.1; is that correct?

12 A No, it's not correct.

13 Q Why isn't it correct?

14 A Service laterals were not -- are not part of
15 the test for Ten State Standards, 200 gallons per inch
16 per mile, gallons per day per inch per mile. It's only
17 eight-inch lines and above.

18 Q Well, that's only for that standard, isn't
19 it? That's not the standard that's set forth in Manual
20 9?

21 A We're not using Manual 9.

22 Q Well, I'm asking you about it.

23 A No, it's not the same standard as set forth in
24 other authorities, no.

25 Q In Manual 9 you would include the footage of

1 service laterals; would you not?

2 A Probably so, yes.

3 Q And that would be a complete test, then, of
4 all the lines and pipe of the system?

5 A Would be a complete what?

6 Q Test. Complete total would be -- if you added
7 the service laterals, you would have a complete total of
8 all the footage?

9 A Well, certainly, yes.

10 Q I couldn't quite hear you.

11 A I said certainly that would be true.

12 Q And the reason you're not going to do it is it
13 doesn't comport with the Ten State Standards way of
14 doing things?

15 A The test that we ran for the system on the
16 allowance for inflow and -- for infiltration, rather,
17 was the Ten State Standards of an allowance of 200
18 gallons per day per inch of diameter of main per mile,
19 which is for all lines eight inches and above, which
20 compares any existing system to a new system.

21 Q So just using that Ten State Standards rule,
22 you would not conclude service level?

23 A Would not.

24 Q What if you used Manual 9, wouldn't you
25 include it then?

1 A I did not use Manual 9.

2 Q I say if you did.

3 A I suppose so, yes.

4 Q Ten State Standards is for the design of new
5 systems to test the pipes, isn't it? Is that correct?

6 A Yes, that's true. And in this instance we
7 used it to compare the existing system to a new system.

8 Q But looking on Exhibit 37 on the right-hand
9 table, that shows the number you would use if you used
10 service laterals, doesn't it?

11 A Yes, it does.

12 Q If you included service laterals, that would
13 change Line 35 of your Table 3.1; would it not?

14 A If you included service laterals, yes.

15 Q Do you know how much it would increase it?

16 A No, I do not. I have not made that
17 calculation.

18 Q Does your test include anything for inflow?

19 A No, it does not.

20 Q Would -- if the total inflow and infiltration
21 is 205 GPD inch diameter mile, would that be a
22 satisfactory --

23 A You said 205?

24 Q Yes, I did.

25 A Would that mean the system is satisfactory; is

1 that what you're saying?

2 Q Yes.

3 A It would be very close to having zero excess
4 I&I.

5 Q Would you say about .66 percent?

6 A Something like that, yes.

7 Q Do you know the age of the pipe in the Palm
8 Coast system?

9 A I think it's varying ages, but I do know that
10 there's some that were put in some years ago.

11 Q Twenty-five years?

12 A As much as that, yes.

13 MR. GATLIN: That's all the questions I have,
14 Mr. Chairman.

15 COMMISSIONER DEASON: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. REILLY:

18 Q Mr. Bidy, do you agree that the 200 gallons
19 per day per diameter inch per mile infiltration
20 allowance should be applied to the 333,328 feet of
21 four-inch service lines?

22 A No, I do not.

23 Q Why do you feel that?

24 MR. GATLIN: Mr. Chairman, I object to this
25 question. We didn't talk about four-inch service lines.

1 MR. REILLY: I think we talked about service
2 lines.

3 MR. GATLIN: Service laterals.

4 COMMISSIONER DEASON: Just a second. Your
5 communication is going to be through the chair and not
6 directed at each other.

7 All right, there has been an objection made.

8 MR. GATLIN: I withdraw the objection. I
9 didn't understand his question.

10 Q (By Mr. Reilly) Can you say why you feel it's
11 inappropriate to include those service laterals in the
12 calculation that you performed?

13 A The Ten State Standards rule defines the
14 gravity of sewer as eight inches and above. They're
15 not -- this is not a test for any line less than eight
16 inches that would be a service lateral.

17 Q But as a practical matter, are these service
18 laterals -- where exactly do they fit into the system?
19 Where are they located?

20 A Two or three things about them. The reason
21 they're not included in that rule is that they are
22 laterals that run from the house to the underground
23 sewer main, generally above the water table, generally
24 not subject to infiltration, and therefore they're not
25 included in the test for infiltration.

1 Q So in a gravity system, it's really the
2 beginning of the drop, from the highest level, which is
3 just below the ground, until it reaches the street; is
4 that correct?

5 A That is correct.

6 Q You were shown a Manual 9, it was a cross
7 examination exhibit, and on Page 30 of that there's a
8 table. Do you still have that handy?

9 A Yes.

10 Q And I think there was several cross
11 examination questions that attempted to solicit from you
12 that this manual somehow suggests that service laterals
13 should be included in the calculation of this Manual 9.

14 A Yes.

15 Q But my question to you is, do you see anywhere
16 here on this exhibit under this table where four-inch
17 mains are included in this provision?

18 A Not -- no, it does not. Starts at eight
19 inches and goes up.

20 Q Okay, thank you. Are you aware of any
21 engineering manuals or references that supports the 500
22 gallons per day -- excuse me, gallons per day per
23 diameter inch per mile, as suggested by Mr. Seidman?

24 A No, I am not.

25 Q Isn't it correct that infiltration and inflow

1 are two separate things?

2 A Absolutely.

3 Q Should the allowance for inflow be rolled into
4 the allowance for infiltration?

5 A No, it should not.

6 Q Why not?

7 A It's an entirely separate item. Inflow is
8 usually the result of illegal connections from roof
9 drains or yard drains to the sanitary system. It's just
10 not the same thing. It should be eliminated with a
11 regular program of inspection by the utility, and I
12 think I've read some documents where they have done
13 smoke tests and so on in this system in an attempt to do
14 that.

15 MR. REILLY: No further redirect.

16 MR. GATLIN: May I ask one more question,
17 Mr. Chairman?

18 COMMISSIONER DEASON: Yes, Mr. Gatlin.

19 RECROSS EXAMINATION

20 BY MR. GATLIN:

21 Q Mr. Bidy, turn to Page 31 of Manual 9 that's
22 part of Exhibit 37.

23 A Yes, I have it.

24 Q The second full paragraph, in the middle it
25 says, "For small to medium sized sewers, it is common to

1 allow 30,000 GPD mile, for the total of mains, sewers
2 and laterals."

3 A That's what it says, yes.

4 Q Thank you.

5 COMMISSIONER DEASON: Mr. Reilly, further
6 redirect?

7 MR. REILLY: No, no.

8 COMMISSIONER DEASON: Exhibits?

9 MR. GATLIN: Move exhibits, Mr. Chairman, 36
10 and 37.

11 COMMISSIONER DEASON: Without objection --

12 MR. REILLY: We would move --

13 COMMISSIONER DEASON: -- 36 and 37 are
14 admitted.

15 MR. REILLY: And we would move Mr. Bidy's
16 composite Exhibit No. 25.

17 CHAIRMAN DEASON: Without objection, Exhibit
18 25 is admitted.

19 (Exhibit Nos. 25, 36 and 37 received into
20 evidence.)

21 COMMISSIONER DEASON: Thank you Mr. Bidy.

22 (Witness Bidy excused.)

23 * * *

24 MR. MELSON: Mr. Chairman, during the last
25 hearing while the DEP Witness Martin was on the stand,

1 we had identified a late-filed Exhibit 27, which was
2 current PCUC operating permit. I've distributed copies
3 of that this morning and would move that that be
4 admitted into the record at this time.

5 COMMISSIONER DEASON: This was Exhibit 27
6 which was to be late-filed, and you are filing it now;
7 is that correct?

8 MR. MELSON: Correct.

9 COMMISSIONER DEASON: Are you moving it into
10 the record?

11 MR. MELSON: Yes, sir.

12 COMMISSIONER DEASON: Any objection to Exhibit
13 27? Hearing no objection, show that Exhibit 27 has been
14 filed and is admitted.

15 MR. MELSON: Thank you.

16 (Exhibit No. 27 received into evidence.)

17 MR. REILLY: Could I take care of one other
18 preliminary matter before the next witness? As you
19 know, we included in the correspondence side of the file
20 literally thousands of petitions asking our office to
21 get involved in this case. Believe it or not, even
22 after the last hearing we continue to receive these
23 petitions. So if it's the pleasure of the chairman, I
24 would like to include these additional petitions with
25 the others in the correspondence side of the file.

1 COMMISSIONER DEASON: Yes, that would be
2 satisfactory.

3 MR. REILLY: Thank you.

4 COMMISSIONER DEASON: I believe we're at the
5 point where all of the direct testimony has been
6 concluded and we're about to proceed into the rebuttal
7 phase of the case. At some point we need to address the
8 petition, the motion for leave to file supplemental
9 exhibits. I'm going to leave -- is now the appropriate
10 time to do that, or can we go ahead and take the
11 testimony of Mr. Spano?

12 MR. SCHIEFELBEIN: You would like us to
13 address that now?

14 COMMISSIONER DEASON: Well, my question is,
15 does this affect the testimony of Mr. Spano?

16 MR. SCHIEFELBEIN: Yes, it does. It
17 affects -- the motion pertains to two exhibits. One is
18 CD-5, CDS-5, which would be Mr. Spano's. One would be
19 FS-13B, which would be Mr. Seidman's. The supplemental
20 rebuttal testimony of Mr. Seidman in response to Bidy
21 is not the subject of the motion itself. It's more a
22 follow-up of what happened at the hearing on July 2nd.
23 So shall I just, during this, address Mr. Spano's?

24 COMMISSIONER DEASON: At this stage, let's
25 address Mr. Spano's.

1 MR. SCHIEFELBEIN: May I do that in the
2 ordinary course of going through his testimony and his
3 exhibits, or --

4 COMMISSIONER DEASON: Yes, go ahead through
5 the preliminaries, and when you get to the point of
6 identifying that supplemental exhibit, we'll discuss
7 from the other parties the status of that exhibit.

8 MR. SCHIEFELBEIN: All right, thank you.
9 Mr. Spano, have you been previously sworn in this
10 proceeding?

11 WITNESS SPANO: Yes, I have.

12 CHARLES D. SPANO, JR.
13 was called as a witness on behalf of Palm Coast
14 Utilities Corporation, and having been duly sworn,
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. SCHIEFELBEIN:

18 Q Would you state your name and business address
19 for the record, please?

20 A My name is Charles D. Spano, S-P-A-N-O, Jr.
21 Business address is 800 South Nova Road, Suite M, Ormond
22 Beach, Florida.

23 Q Mr. Spano, did you prepare rebuttal, written
24 rebuttal testimony that has been filed in this case?

25 A Yes, sir, I did.

1 Q That testimony consists of 36 typewritten
2 pages?

3 A That's correct.

4 Q Would you turn to Page 5 of your prefiled
5 testimony, please?

6 A Yes, sir.

7 Q At Line 15.

8 A Correct.

9 Q Should the word "at," is that a typo?

10 A Yes, it should say A-C-T, "act."

11 Q Would you turn to Page 17, Line 9?

12 A Yes, sir.

13 Q Should the last word "parcels" be "parcel"?

14 A Correct, singular.

15 Q And lastly, would you turn to Page 25, Line 5?

16 A Yes, sir.

17 Q Do you have some changes or corrections
18 regarding the acreage given on Line 5?

19 A Two changes on Line 5, the 709.4 should be
20 709.9550. The second entry, 53.04, should read 55.8.

21 MR. REILLY: Could you read that first
22 number? I didn't quite get that.

23 WITNESS SPANO: The first number should be
24 709.9550.

25 Q (By Mr. Schiefelbein) And those minor changes

1 on the acreage are the result of your obtaining the
2 actual survey of the Con-Cor property?

3 A Yes, sir, that's correct.

4 Q With those changes, if I were to ask you the
5 same questions as are given in your prefiled rebuttal
6 testimony, would your answers remain the same?

7 A I have some additional corrections if I may.

8 Q Go ahead.

9 A Okay, on Page 2, Line 18, the third word, it
10 should say "programs," it should be plural.

11 COMMISSIONER KIESLING: Should be what?

12 WITNESS SPANO: Should be "programs," plural
13 instead of singular.

14 On Page 10, Line 9, the first word "King," it
15 should say "King's." It's referred to as King's Road.

16 On Page 11, Line 6, the second set of digits
17 has a typo. It reads 1920 -- 1976-1920. The 1920
18 should read 1820.

19 On Page 19, Line 2, second word from the end,
20 it should say "than," T-H-A-N, not "that." It should
21 say "than data."

22 And lastly, on Page 25, Line No. 6, it's more
23 appropriate to say -- in the first word it says four, it
24 should say "4-6" and that's the end of my corrections.

25 Q (By Mr. Schiefelbein) I don't understand your

1 last change on Page 25, Line 6, the "four" should be?

2 A It should read -- it's a matter of
3 interpretation depending on whether you view the
4 property after heavy rains or not, at which point some
5 of the lakes could be considered as a single lake rather
6 than multiple, individual lakes.

7 Q I see. With those changes and corrections, if
8 I asked you the questions given in your supplemental
9 rebuttal testimony, would your answers be the same?

10 A Yes, sir, they would.

11 MR. SCHIEFELBEIN: Commissioner, I ask then
12 that Mr. Spano's prefiled rebuttal testimony be inserted
13 in the record as though read.

14 COMMISSIONER DEASON: Without objection, it
15 will be so inserted.

16 Q (By Mr. Schiefelbein) Mr. Spano, you've also
17 sponsored several exhibits. First of all, CDS-1, is
18 that essentially a summary of your qualifications?

19 A Yes, sir, it is, a synopsis.

20 Q And CDS-2, is that the 1985 Appraisal Report
21 for the Spray Field?

22 A Yes, sir, with the 1979 valuation date.

23 Q And CDS-3, is that the 1990 Appraisal Report
24 for the RIB Site?

25 A Yes, sir.

1 Q And CDS-4, is that an Analysis of Flagler
2 County Assessment Sales Price Ratios for Nonresidential
3 Transactions?

4 A Yes, sir.

5 Q Could we have those -- and those four exhibits
6 were -- all accompanied your prefiled rebuttal
7 testimony?

8 A Yes, sir, they did.

9 MR. SCHIEFELBEIN: Commissioners, if we could
10 get those four, perhaps, identified on a composite basis
11 as Exhibit 38.

12 COMMISSIONER DEASON: Yes, composite Exhibit
13 38.

14 (Exhibit No. 38 marked for identification.)

15 Q (By Mr. Schiefelbein) Did you also prepare
16 what was prefiled on July the 12th and is marked with a
17 cover sheet Supplemental Exhibit CDS-5?

18 A Okay, what is that, Mr. Schiefelbein?

19 Q That would be your response to the various
20 sales data proposed by Mr. Sapp at the July hearing.

21 A Yes, sir. I did not have a number for that,
22 but if that is the correct number, then that's the
23 proper document.

24 Q Commissioners, this exhibit is one of the
25 subjects of our motion for leave to submit a

1 supplemental exhibit, and at this point I would ask that
2 the exhibit be given the next available number, which I
3 guess would be 39.

4 COMMISSIONER DEASON: It will be identified as
5 Exhibit 39.

6 (Exhibit No. 39 marked for identification.)

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1 REBUTTAL TESTIMONY OF CHARLES D. SPANO, JR., MAI
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 ON BEHALF OF
4 PALM COAST UTILITY CORPORATION
5 DOCKET NO. 951056-WS

ORIGINAL
FILE COPY

6 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

7 A. My name is Charles D. Spano, Jr. My business
8 address is 800 South Nova Road, Suite M, Ormond
9 Beach, Florida.

10 Q. PLEASE STATE THE NAME OF YOUR EMPLOYER AND YOUR
11 TITLE.

12 A. I am the President of Southern Appraisal
13 Corporation, a Florida for-profit corporation
14 chartered in December, 1984. The firm
15 specializes in the appraisal of real property,
16 highest and best use studies, and other
17 specialties in the field of real estate
18 appraisal.

19 Q. PLEASE PROVIDE DETAILS REGARDING YOUR TRAINING
20 AS AN APPRAISER.

21 A. My professional qualifications include the MAI
22 designation earned under the former American
23 Institute of Real Estate Appraisers, and the
24 SRPA (Senior Real Property Appraiser) under the
25 former Society of Real Estate Appraisers. Both

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

1 of these organizations have now joined to form
2 The Appraisal Institute. I am a Florida State
3 Certified General Real Estate Appraiser,
4 certificate number 0001159. I am past
5 president of the Daytona Beach Chapter of the
6 Society of Real Estate Appraisers and am a
7 southeast regional panel member of the Ethics
8 and Counseling Division of the Appraisal
9 Institute. I have also served on various
10 Admissions, Candidate Guidance, and
11 disciplinary committees of both the Society of
12 Real Estate Appraisers and the American
13 Institute of Real Estate Appraisers.

14 The Appraisal Institute (and its predecessors)
15 mandates a program of appraisal training
16 including mandatory and elective courses,
17 seminars, examinations, peer review, and
18 continuing education ^{Programs} ~~program~~. The State of
19 Florida requires a certain level of
20 demonstrable field appraisal experience coupled
21 with minimum education requirements. I am
22 currently certified under the continuing
23 education requirements of The Appraisal
24 Institute and the State of Florida.

25 Q. PLEASE SUMMARIZE YOUR EXPERIENCE IN THE REAL

1 **ESTATE APPRAISAL PROFESSION.**

2 A. I have been an independent fee appraiser in the
3 Greater Daytona Beach area since 1972. Over
4 the past twenty-four years, I have acted as an
5 independent contractor and commission-based fee
6 appraiser, and have also been involved in the
7 brokerage of real estate with respect to
8 residential acreage, development property,
9 motels, and other properties. A summary of my
10 professional appraisal training and experience
11 is provided in Exhibit 38 (CDS-1).

12 Q. **DOES YOUR EXPERIENCE INCLUDE APPRAISALS OF**
13 **UTILITY-RELATED SITES?**

14 A. Yes. During the past twenty-four years in the
15 real estate appraisal profession, I have
16 appraised numerous utility- related sites,
17 including sites and rights-of-way for power
18 companies (Florida Power & Light) These
19 assignments have included substation sites,
20 power generating plants, whole-parcel
21 acquisitions for power plant expansion, and
22 rights-of-way for power line easements. I have
23 also appraised various parcels for Southern
24 Bell, including improved and vacant acreage
25 parcels. Other clients have included various

1 private, municipal, or county level clients
2 seeking parcels for sewer plant expansion,
3 utility line rights-of-way, wellfield
4 expansion, and the like.

5 **Q. HAVE YOU PREVIOUSLY PROVIDED EXPERT APPRAISER**
6 **TESTIMONY?**

7 **A.** My prior experience as a qualified expert
8 witness in the field of real estate appraisal
9 includes numerous jury and bench trials, in
10 which I have provided testimony involving
11 realty/real estate related cases in various
12 local/county, state and federal courts.

13 **Q. ARE YOU AN INDEPENDENT APPRAISER?**

14 **A.** Yes. Virtually all of my assignments require
15 that I act in an unbiased, independent manner
16 with respect to valuation assignments. The
17 only exception involves representation for a
18 client in specific ad valorem tax assessment
19 matters, representing the client before taxing
20 authorities for the purpose of modifying ad
21 valorem assessments, in which I may be allowed
22 to act in an advocacy position for the property
23 owner.

24 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**
25 **PROCEEDING?**

1 A. The purpose of my testimony is to rebut certain
2 observations and conclusions of Commission
3 Staff witnesses Dodrill and Sapp regarding the
4 valuation of an 83.305 acre wastewater effluent
5 disposal field, and an 81.576 acre expansion of
6 that effluent disposal field. I prepared
7 independent appraisals of those two sites, in
8 1985 and 1990, respectfully. I will discuss
9 the methodology employed in those appraisals
10 and the reliability of the data used. The
11 complete 1985 appraisal report is submitted as
12 Exhibit 38 (CDS-2). The complete 1990
13 appraisal report is submitted as Exhibit 38
14 (CDS-3).

15 Q. IN THOSE TWO APPRAISALS, DID YOU ^{Act}~~IT~~ AS AN
16 INDEPENDENT APPRAISER?

17 A. Yes. Both appraisals were conventional
18 assignments requiring me as the appraiser to
19 act in an independent manner, consistent with
20 standard appraisal practice and in compliance
21 with stated and subscribed to conditions of
22 non-bias.

23 Q. PLEASE SUMMARIZE YOUR 1985 APPRAISAL OF THE
24 EFFLUENT SPRAYFIELD.

25 A. The 1985 appraisal report was completed on

1 December 4, 1985. I prepared this appraisal
2 with Carl P. Velie, SRA, who was an associate
3 at the time. This appraisal involved
4 approximately 83.305 acres to be used as a
5 wastewater effluent disposal field. The parcel
6 consisted of vacant land. Under assumptions
7 and conditions of the appraisal, the
8 improvements which existed on the site at the
9 time of the 1985 inspection were disregarded
10 for the purpose of estimating raw land value as
11 of the March 1, 1979 valuation date.

12 **Q. WHAT WAS THE PURPOSE OF THIS APPRAISAL?**

13 **A.** The purpose of the report was to estimate the
14 value-in-use for the fee simple interest in the
15 property.

16 **Q. WAS THE APPRAISAL BASED ON HIGHEST AND BEST
17 USE?**

18 **A.** Yes. Most appraisals reflect the concept that
19 the value estimated should reflect the highest
20 and best use of the property, whether it be
21 vacant or improved property. The 1985
22 appraisal contained a special assumption that
23 the property could be developed to its highest
24 and best use which, in my opinion, was for
25 residential development. The potential for

1 development of a vacant parcel to its highest
2 and best use follows the reasonable person
3 theory that an investor in real estate, under
4 normal circumstances, attempts to maximize its
5 return from an investment and would thus
6 develop, sell or buy a parcel for that form of
7 development or use which would maximize the
8 return to the land. Vacant parcels and the
9 underlying land of improved parcels are
10 virtually always valued on their highest and
11 best use as if vacant. Estimating value based
12 on highest and best use provides a common
13 measure of utility and comparability.

14 **Q. WHY WASN'T THE APPRAISAL BASED ON A SPECIAL**
15 **UTILITY USE?**

16 **A.** Attempting to limit a particular parcel to a
17 very restrictive use or range of use patterns
18 could create a highly hypothetical and non-real
19 world scenario. Normally, when attempting to
20 acquire utility sites, rights-of-way, and the
21 like, the prices paid represent fair market
22 value under current definitions as it reflects
23 a common ground between the grantor and
24 grantee; i.e., a seller would certainly not be
25 willing to sell its property for less than what

1 other similar property in the area is being
2 sold for and a potential purchaser would
3 normally expect to pay the "going rate" for
4 such property. Restricting a parcel to a very
5 narrow range of uses could have the effect of
6 artificially depressing values (at which an
7 informed seller would most probably not sell.)
8 Alternatively, if specialized site
9 characteristics, location, proximity to other
10 facilities, etc. dictate that a specific site
11 is especially needed for a certain project,
12 there is the possibility that the value could
13 be inflated to an unrealistic level as the
14 seller knows that the buyer must have that
15 specific site and could thus attempt to obtain
16 more than market value. This is one of the
17 primary reasons for condemnation powers and
18 standards which virtually always require that
19 the land to be acquired be appraised on the
20 basis of its highest and best use, using
21 comparable sales of property with similar
22 attributes and utility. This is an equitable
23 arrangement for both the grantor and the
24 grantee.

25 Q. PLEASE SUMMARIZE THE METHODOLOGY EMPLOYED IN

1 **THIS APPRAISAL.**

2 A. The basic methodology employed is a straight-
3 forward comparable sales analysis in which a
4 variety of sales of property with varying
5 degrees of comparability are compared to the
6 subject property and adjusted for differences
7 where necessary to arrive at an indicated value
8 for the subject property.

9 Q. **DID YOU PHYSICALLY INSPECT THE SUBJECT**
10 **PROPERTY?**

11 A. Yes. Both Mr. Velie and I inspected the
12 property, as well as the properties used in our
13 comparable sales analysis. In addition, we had
14 been involved in the appraisals or various
15 appraisal services involving some of the
16 properties used in our comparable sales
17 analysis.

18 Q. **PLEASE DESCRIBE THE PROPERTY.**

19 A. The subject of the 1985 report (1979 valuation)
20 consisted of a vacant land parcel (under the
21 assumptions of the report) containing about
22 83.305 acres and located approximately 500-600
23 east of Old Kings Road in the Palm Coast area
24 of Flagler County. At the time of our
25 inspection the parcel had been cleared. Palm

1 Coast Utility representatives informed us that
2 it had been naturally wooded in 1979. Access
3 was by two 40-foot wide easements. These
4 easements were not valued in the report. Old
5 Kings Road was a two-lane, asphalt-paved
6 roadway. Utilities of water and sewer were
7 approximately one mile distant; telephone and
8 electrical service were available along Old
9 ~~King~~^{King's} Road.

10 Q. DID YOUR APPRAISAL EXCLUDE SITE IMPROVEMENTS?

11 A. Yes. The parcel had been cleared and was used
12 as a wastewater effluent disposal field at the
13 time of physical inspection in 1985. These
14 improvements were not considered in estimating
15 the value as of March 1, 1979. The parcel was
16 considered as a vacant, naturally wooded parcel
17 as of the date of valuation.

18 Q. PLEASE SUMMARIZE THE COMPARABLE SALES USED IN
19 THE APPRAISAL.

20 A. Within the 1985 report, we reported twelve
21 somewhat comparable sales, with seven
22 considered the most useful in directly
23 estimating a value for the subject. These
24 sales are listed on page 22 of the report, with
25 comparable sales analysis sheets more fully

1 describing each transfer in the addendum
2 section of the report.

3 Pertinent sales data for these seven comparable
4 sales are as follows:

5	<u>Sale No.</u>	<u>Sale Date</u>	<u>Acre Size</u>	<u>Acre Price</u>
6	¹⁸²⁰ 1976-1920-	12/77	400	\$1,200
7	1991-0056	5/78	100	\$5,420
8	1983-0943	5/78	180	\$3,000
9	2052-0730	6/78	40	\$3,500
10	2002-0935	7/78	40	\$3,000
11	2014-1786	9/78	40	\$3,300
12	2028-1460	11/78	35	\$4,571

13 The sale numbers referenced above reflect
14 recording data - all of these sales were
15 relatively recent in relation to the March 1,
16 1979 valuation date for the subject property.

17 **Q. DID ANY OF THE COMPARABLE SALES INVOLVE RELATED**
18 **PARTIES?**

19 **A. No.** All of the sales used in direct comparison
20 were between non-related parties and complied
21 with the features of a normal, arms-length
22 transaction.

23 **Q. WERE THE COMPARABLE SALES SUITABLE FOR**
24 **RESIDENTIAL DEVELOPMENT?**

25 **A. Yes.** All of the comparable sales were suitable

1 for residential development, and have in fact
2 been so developed since their dates of sale.

3 Q. WAS THE APPRAISED PARCEL SUITABLE FOR
4 RESIDENTIAL DEVELOPMENT?

5 A. Yes. The subject property appeared suitable
6 for conventional residential development and
7 appeared typical of potential residential
8 acreage development parcels in a growth area.

9 Q. PLEASE SUMMARIZE THE CONCLUSION OF THE 1985
10 APPRAISAL.

11 A. The value of the subject property was concluded
12 to be \$4,375 per acre, for a total of \$364,500
13 as of March 1, 1979, under the conditions and
14 assumptions of the report.

15 Q. WAS THE VALUATION HIGHER THAN WHAT WOULD HAVE
16 BEEN PAID IN AN ARMS-LENGTH TRANSACTION?

17 A. No. The final value estimate was concluded to
18 be no higher than that which would have been
19 paid in a normal arms-length transaction, under
20 the assumptions and conditions of the
21 assignment.

22 Q. PLEASE SUMMARIZE YOUR 1990 APPRAISAL OF THE
23 SECOND EFFLUENT DISPOSAL SITE.

24 A. The 1990 appraisal was completed on December 5,
25 1990. I prepared this appraisal with Peter A.

1 Gagne, who was an associate at that time. This
2 appraisal involved approximately 81.576 acres
3 to used as an expansion area for an existing
4 effluent disposal field.

5 Q. WHAT WAS THE PURPOSE OF THE 1990 APPRAISAL?

6 A. The purpose of the report was to estimate the
7 market value for the fee simple interest in the
8 parcel as of October 29, 1990.

9 Q. WAS THE 1990 APPRAISAL BASED ON HIGHEST AND
10 BEST USE?

11 A. Yes, for the same reasons given for the 1985
12 appraisal, on pages 6 and 7 of this testimony.

13 Q. WHY WASN'T THE 1990 APPRAISAL BASED ON A
14 SPECIAL UTILITY USE?

15 A. For the same reasons given for the 1985
16 appraisal on pages 7 and 8 of this testimony.

17 Q. WAS THE METHODOLOGY EMPLOYED IN THE 1990
18 APPRAISAL THE SAME AS THAT FOR THE 1985
19 APPRAISAL?

20 A. Yes.

21 Q. DID YOU PHYSICALLY INSPECT THE SUBJECT
22 PROPERTY?

23 A. Yes. Mr. Gagne and I inspected the property,
24 as well as the properties used in our
25 comparable sales analysis. In addition, we had

1 been involved in the performance of various
2 appraisal services involving two of the
3 properties used in our comparable sales
4 analysis.

5 **Q. PLEASE DESCRIBE THE PROPERTY.**

6 **A.** The subject of the 1990 report consisted of a
7 vacant land parcel containing about 81.576
8 acres and located approximately 600 feet east
9 of Old Kings Road in the Palm Coast area of
10 Flagler County. At the time of inspection the
11 parcel had native forestation including small
12 pine trees, palmetto, and the like. The
13 property was encumbered by a 330 foot wide FPL
14 easement containing about 7.314 acres - this
15 portion of the site has limitations on use by
16 virtue of the easement. Access to the site is
17 by a 100 foot wide easement which connects the
18 site with Old Kings Road. Water and sewer
19 service were approximately 1.5 miles north;
20 telephone and electrical utilities were
21 available along Old Kings Road.

22 **Q. PLEASE SUMMARIZE THE COMPARABLE SALES USED IN**
23 **THE APPRAISAL.**

24 **A.** Within the 1990 report, we reported four
25 comparable sales considered the most useful in

1 directly estimating a value for the subject.
 2 These sales are listed on page 28 of the
 3 report, with comparable sales analysis sheets
 4 more fully describing each transfer also
 5 included within the report.

6 Pertinent sales data for these four comparable
 7 sales are as follows:

8	<u>Sale No.</u>	<u>Sale Date</u>	<u>Acre Size</u>	<u>Acre Price</u>
9	0359-0273	8/88	9.00	\$15,378
10	0372-0009	12/88	20.00	\$15,000
11	0391-0488	5/89	82.95	\$ 7,562
12	0406-0071	9/89	15.91	\$14,141

13 The sale numbers referenced above reflect
 14 recording data - all of these sales were
 15 relatively recent considering the stability of
 16 the market over the time interval represented.
 17 The valuation date for the subject property was
 18 October 29, 1990.

19 **Q. DID ANY OF THE COMPARABLE SALES INVOLVE RELATED**
 20 **PARTIES?**

21 **A. No.** All of the sales used in direct comparison
 22 were between non-related parties and complied
 23 with the features of a normal, arms-length
 24 transaction.

25 **Q. DID YOU PERFORM THE APPRAISALS FOR ANY OF THOSE**

1 **COMPARABLE SALES?**

2 A. Yes. Our firm appraised the property
3 identified as Sale Number 0391-0488 between
4 Allen as grantor and Flagler County as grantee.
5 This parcel was appraised for the County of
6 Flagler and was in fact appraised by two
7 separate independent appraisal firms (Southern
8 Appraisal Corporation and Hamilton Appraisal
9 Services) for the purpose of estimating market
10 value for negotiation purposes with the
11 property owner. This parcel has been referred
12 to in this proceeding as the County jail site.
13 Our firm also appraised the property identified
14 as Sale 0359-0273, as of October 22, 1987, for
15 Mr. George Lees, the grantor in that sale.

16 Q. **WHY DID YOU INCLUDE, IN YOUR COMPARABLE SALES,**
17 **AREAS OUTSIDE OF THE IMMEDIATE NEIGHBORHOOD OF**
18 **THE SUBJECT PROPERTY?**

19 A. This is discussed on page 28 of the 1990
20 Appraisal.

21 For many years there have been very few sales
22 within the Palm Coast Community due to the
23 reluctance of ITT to sell parcels to other
24 developers. Our firm was involved in helping
25 to establish prices for some of the very first

1 parcels which ITT considered for sale to
2 outside developers (such as parcels around the
3 I-95/Palm Coast Parkway Interchange; i.e.,
4 McDonald's, Denny's, the Charles Wayne
5 building; shopping center parcels west of I-95
6 along Palm Coast Parkway). Around the time of
7 the 1990 appraisal, there were virtually no
8 arms-length sales of potential residential
9 development parcels such as the subject parcel
10 and thus any search for comparable sales had,
11 by necessity, to be expanded outside of the
12 immediate Palm Coast core area. This is
13 typical in appraisal data research. An
14 appraiser normally starts with the subject
15 property and expands his search radius until
16 sufficient data is found, sometimes (in the
17 case of Palm Coast) requiring incursion into
18 neighboring counties for certain types of
19 property such as industrial parks, mini-
20 warehouses, and the like.

21 **Q. WERE THE COMPARABLE SALES SUITABLE FOR**
22 **RESIDENTIAL DEVELOPMENT?**

23 **A. Yes. All of the comparable sales were suitable**
24 **for residential development at the time of sale**
25 **and could have been so developed.**

- 1 Q. WAS THE APPRAISED PARCEL SUITABLE FOR
2 RESIDENTIAL DEVELOPMENT?
- 3 A. Yes. The subject property appeared suitable
4 for conventional residential development and
5 appeared typical of potential residential
6 acreage development parcels situated in growth
7 areas.
- 8 Q. PLEASE SUMMARIZE THE CONCLUSION OF THE 1990
9 APPRAISAL.
- 10 A. The value of the subject property was concluded
11 to be \$7,000 per acre for the land unencumbered
12 by the FPL easement and \$1,400 per acre for the
13 7.314 acres of easement-encumbered land; this
14 calculates to a total of \$530,000.
- 15 Q. WAS THE VALUATION HIGHER THAN WHAT WOULD HAVE
16 BEEN PAID IN AN ARMS-LENGTH TRANSACTION?
- 17 A. No. The final value estimate was concluded to
18 be no higher than what would have been paid in
19 a normal arms-length transaction, under the
20 assumptions and conditions of the assignment.
- 21 Q. WOULD YOU COMMENT ON MR. DODRILL'S USE OF
22 "HISTORICAL TRENDED COSTS" IN HIS VALUATION OF
23 THE TWO PARCELS?
- 24 A. In my opinion, Mr. Dodrill's methodology is a
25 misguided attempt to estimate market value for

1 a specific parcel of real estate. Mr.
2 Dodrill's index is nothing more ^{than} ~~the~~ data
3 manipulation unsupported by market data, and is
4 contrary to accepted real property appraisal
5 practice. The use of such a practice to
6 estimate market value for a parcel of real
7 estate is, in my opinion, ludicrous, and
8 reflects a complete lack of understanding as to
9 the dynamics which impact the real estate
10 market. It is for this reason that appraisals
11 are performed by local, competent appraisers
12 familiar with a localized market and reacting
13 to actual market data and local trends.

14 **Q. WHAT LOCAL MARKET FACTORS AFFECT THE VALUE OF A**
15 **PARCEL OF REAL ESTATE?**

16 **A.** Any parcel of real estate can be impacted by a
17 myriad of factors, including supply and demand
18 factors; zoning constraints; mitigation
19 concerns, if appropriate; costs of developing
20 in various areas; demographic considerations;
21 market conditions; competition for similar
22 product; employment stability; and the
23 infrastructure of the area, which can include
24 such things as proximity and quality of:
25 schools, shopping availability, public

1 transportation, police and fire protection,
2 crime rate, availability of cultural and civic
3 facilities and organizations, religious
4 facilities, medical-dental-outpatient
5 facilities, hospital facilities, and
6 recreational amenities of the area. Another
7 very important factor is the economic base for
8 the area which can have a direct bearing on
9 value stability and possible
10 appreciation/depreciation. In the case of a
11 community such as Palm Coast, where many of the
12 residents have moved from other areas such as
13 the northeast, the factors affecting the
14 ability or inability of property owners in
15 those areas to sell their properties has a
16 direct bearing on their ability to relocate to
17 the subject area. Additional factors include
18 the attitude of governmental authorities
19 towards growth; growth management plans, the
20 availability of natural resources and possible
21 salt-water intrusion in coastal communities.
22 Long-term growth management is becoming an
23 increasingly important issue in states such as
24 Florida and the factors of long-range traffic
25 planning including the roadway and mass transit

1 systems, maintenance of existing systems, and
2 the like become increasingly important. In the
3 case of the Palm Coast community, there are
4 additional factors such as protection from and
5 an evacuation plan for pending natural
6 disasters such as hurricanes and extensive
7 flooding as much of the county is low-lying
8 compared to other interior areas of the state.
9 A parcel of real estate is unique and all of
10 these factors must be considered in estimating
11 its value. Failure to consider factors which
12 impact value can severely distort the final
13 value indication.

14 Mr. Dodrill's mathematical manipulations, made
15 without the benefit of localized adjustment
16 factors such as those noted above, would, in my
17 opinion, most likely result in ethics and
18 professional practice charges being filed
19 against an appraiser who attempted to use and
20 rely on such manipulative practices.

21 I cannot conceive of any professional in the
22 real estate appraisal industry attempting to
23 use Mr. Dodrill's methods to estimate market
24 value for realty. Such methods to estimate
25 market value for real estate would, in my

1 opinion, be done only if the researcher had
2 neither the knowledge or expertise to
3 accumulate the necessary data and to then
4 employ standardized and recognized appraisal
5 methods to bring that data to a reasonable
6 conclusion/indication of value for a specific
7 property as of a specific valuation date.

8 Even the standard Cost Service manuals which
9 most appraisers utilize to estimate replacement
10 cost new for improvements contain local
11 adjustment factors. Appraisers of The
12 Appraisal Institute, when venturing into a
13 "new" geographical area are required to spend
14 sufficient time to become familiar with the
15 local market or to associate themselves with a
16 local professional in order to become cognizant
17 of factors affecting values in that particular
18 market which can be much different than in
19 other areas.

20 **Q. WHAT IS YOUR OPINION REGARDING MR. DODRILL'S**
21 **USE OF THE 1968 BULK SALE OF LAND IN HIS**
22 **VALUATION?**

23 **A. The use of a prior bulk sale involving a**
24 **substantial amount of land as a benchmark to**
25 **estimate the value of a relatively small parcel**

1 eleven to twenty-two years later is contrary to
2 accepted appraisal practice. Attempting to
3 apply some "index" to supposedly adjust for the
4 time interval differential is, in my opinion,
5 essentially worthless, as it does not take into
6 account changing economic conditions on a local
7 basis, the impact of infrastructure which may
8 not have been in place at the time of the
9 original transfer, and a myriad of other
10 factors as I discussed earlier in my testimony.
11 Sales of such large parcels typically contain a
12 certain amount of unusable or environmentally
13 sensitive land. The amount of such land in
14 relation to the total parcel size would
15 obviously have an impact on the price per acre
16 for the usable land. Similarly, the location
17 of the unusable areas could create some
18 additional engineering constraints and, hence,
19 increase costs relative to the development of
20 the usable areas. Mr. Dodrill's use of a
21 12,777 acre sale occurring eleven to twenty-two
22 years prior to estimate the value for a parcel
23 of less than 100 acres is, in my opinion,
24 absurd. I cannot imagine that a reasonable
25 person, simply utilizing common sense, would

1 employ such methodology when more accurate and
2 current data is available.

3 Q. WOULD YOU RESPOND TO MR. DODRILL'S USE OF THE
4 1996 SALE IN HIS DEVELOPMENT OF "HISTORICAL
5 TRENDED COSTS"?

6 A. The 1996 sale is not considered appropriate in
7 estimating 1990 and 1979 values for reasons
8 already explained. Factors affecting a 1996
9 transaction (or any other date for that matter)
10 were most probably not the same as of the dates
11 of valuation. This is why value estimates are
12 as of a specific date and not a range. 1996
13 data was not available in 1979 or 1990 and
14 would not have been used anyway in my opinion.
15 More current data was most certainly available
16 and again, using older or subsequent sales and
17 then attempting to "adjust" them by some
18 "index" is in my opinion nothing more than data
19 manipulation and is not an attempt to render an
20 unbiased estimate of value.

21 Q. WAS THE 1996 SALE OTHERWISE A COMPARABLE SALE
22 TO THE TWO EFFLUENT DISPOSAL FIELDS?

23 A. Only by virtue of its proximity to the effluent
24 disposal fields. The 1996 sale (to Con-Cor)
25 involved a long, narrow parcel north of SR-100

1 between Interstate 95 to the west and lying
2 along both sides of Old King's Road on the
3 east. According to available information
4 (survey data), this property contained a total
5 of ~~700.4~~ ^{709.9580} acres, of which ~~55.8~~ ^{55.8} acres lie within
6 ⁴⁻⁶ four borrow pits. ITT engineering thermal
7 imaging studies indicated that a total of 425
8 acres was usable land (outside of borrow pits
9 and/or jurisdictional lands;) the borrow
10 pits/jurisdictional lands are, for all
11 practical purposes, economically unfeasible to
12 develop. The grantor conveyed this parcel
13 based on 425 acres of net usable land; this
14 would change the correct figure to use in
15 calculating the sales price per acre.
16 When a parcel of land involves certain areas
17 such as swamp, water bodies, or other
18 economically undevelopable areas, the true
19 value of the land is generally considered to
20 lie in the developable uplands or usable area.
21 In this case, the total parcel involves a net
22 developable area of considerably less size than
23 the gross acreage size. It then becomes
24 appropriate to divide the sales price by the
25 net usable land area.

1 Recorded information indicates a sales price of
2 \$1,600,000; it is my understanding that neither
3 Mr. Dodrill nor Mr. Sapp have personally
4 confirmed this sale. If they had, they would
5 have discovered that there had been a contract
6 approximately two years earlier (by the same
7 parties) on this parcel and that a \$25,000
8 security deposit had been forfeited. This
9 deposit had been held by the title company
10 (Palm Coast Abstract and Title Co.) and the
11 holding of this deposit was contested by the
12 purchasers. The purchasers agreed to release
13 any claim on this deposit as a condition of the
14 current sale. This brings the actual
15 consideration to \$1,625,000. This is not a
16 large amount of money on a sale of this
17 magnitude, but it does point out that the lack
18 of personal confirmation as to actual usable
19 area and conditions of sale can lead to
20 erroneous and distorted conclusions. I don't
21 believe any reasonable person, and certainly
22 not an appraiser, would argue with the concept
23 that a parcel with say 500 acres (actually any
24 size) of all usable land is worth more than a
25 500 acre parcel which contains a certain amount

1 of unusable land and vice-versa.
2 In 1996 and for some time prior, Flagler County
3 and the Palm Coast Community in particular has
4 felt the impact of an economic slowdown, and
5 rumors of the impending demise or substantial
6 restructuring of the community, especially with
7 respect to existing undeveloped property, were
8 rampant. Rumors of workforce cutbacks
9 continued to escalate and the future of the
10 community has appeared uncertain for the past
11 several years. The factors affecting Palm
12 Coast also affected other real estate in
13 neighboring areas. The apparent slowdown of
14 real estate activity in other areas of the
15 country, particularly the northeast, delayed
16 the move of some northern residents to Palm
17 Coast due to their inability to sell their real
18 estate in their home states. Added to this was
19 the unemployment situation with plant closings,
20 etc., and the very limited employment
21 opportunities in the Palm Coast area.
22 Attempting to compare a much later (or prior
23 for that matter) sale with the subject
24 property, as of a specific valuation date about
25 six years earlier, is ridiculous at best and

1 reflects a total lack of understanding as to
2 the dynamics of the real estate industry and
3 the factors affecting supply and demand.

4 Q. WHAT IS YOUR OPINION REGARDING MESSRS. DODRILL
5 AND SAPP'S TESTIMONY REGARDING "DISQUALIFIED"
6 (OR "DQ") STATUS OF TWO OF THE COMPARABLE SALES
7 USED IN YOUR 1990 APPRAISAL?

8 A. The apparent contention by Mr. Sapp, the
9 Flagler County Property Appraiser, that the
10 sales used in the 1990 report may not be
11 comparable, is without merit. The Property
12 Appraiser's office utilizes mass appraisal
13 techniques and does not have the time or
14 manpower to verify the conditions of sale of
15 every property transfer. In the case of the
16 sale to Flagler County for the new jail site,
17 our firm was employed by the County itself to
18 establish fair market value so that
19 negotiations could continue for site
20 acquisition. The county did NOT use assessment
21 data for valuation or negotiation purposes,
22 but, rather, employed two independent appraisal
23 firms to establish market value so that a
24 "meeting of the minds" between the seller and
25 buyer could be effected. The same scenario

1 holds true for the sale of the school site,
2 with the school board having to follow similar
3 practices (hiring outside appraisers) rather
4 than using assessment data. Simplistically, if
5 tax assessment information and conclusions were
6 up- to-date and truly representative of market
7 values, then would not such data be used in
8 lieu of having to pay substantial fees to
9 outside appraisers? The Property Appraiser's
10 office may often label governmental purchases
11 as "DQ", as a "disqualified" sale. However, in
12 many cases such purchases, with public funds,
13 are in fact the result of independent market
14 value estimation by qualified experts (often
15 two or more appraisals), reacting to current
16 trends affecting value, who have been hired by
17 the governmental agencies so as to ensure
18 proper expenditure of public funds and non-
19 bias. In many instances these appraisals are
20 further reviewed by additional qualified
21 experts in the appraisal field before they are
22 accepted; this is characteristic of state
23 agencies such as DOT, DER, and others.
24 The two sales referred to as "DQ" by Mr. Sapp
25 were evidently so classified without

1 independent confirmation by the Property
2 Appraiser's office. Florida guidelines for ad
3 valorem tax assessment purposes do not require
4 that sales to governmental agencies be
5 automatically excluded. There is most
6 certainly no statute that requires the
7 automatic disqualification of such sales. Such
8 sales can often be, and usually are good sales
9 because the acquiring or selling agency has had
10 to have an appraisal done first and that such
11 property, if put up for sale, is normally
12 listed with a local broker. Determination that
13 such sales are in fact good comparables
14 requires research and confirmation by involved
15 parties. County Property Appraiser officials
16 are encouraged to comply with USPAP (Uniform
17 Standards of Professional Practice), though
18 there is no mandatory compliance. All of our
19 firm's reports are required to comply with
20 USPAP, as do all appraisal services for the
21 public. This is due in part to the fact that
22 County Property Appraiser offices provide a
23 different function than do independent
24 appraisers, and employ mass appraisal
25 techniques rather than having sufficient time

1 and personnel to estimate a separate value for
2 each individual parcel of real estate, taking
3 into account all the factors that impact value
4 as of a specific point in time.

5 Sales to a governmental authority MAY IN FACT
6 BE UTILIZED as comparable properties as long as
7 they have been properly researched. First, a
8 Sales Ratio Study is performed to determine if
9 the sale is out-of-line with other sales in the
10 area. Secondly, the sale must be confirmed
11 with both parties to determine if the
12 transaction was under threat of condemnation or
13 other undue influence. If it is determined
14 that the sale is an arms-length transaction,
15 then the sale may be used as a qualified sale
16 for ad valorem tax calculation purposes. If
17 the sale does not pass the tests outlined
18 above, then the sale is labeled "DQ"
19 (Disqualified Sale) and is not utilized for
20 calculation of ad valorem tax purposes for
21 other properties. The simple fact that the two
22 sales referenced in our 1990 appraisal report
23 were sales to governmental authorities does not
24 automatically disqualify them as useful
25 comparable sales. It may well be that the

1 Flagler County Property Appraiser's office does
2 not have the manpower nor the resources to
3 investigate such sales; however, they may still
4 be very valid comparable sales and should be
5 investigated further, as we have done in this
6 particular instance.

7 **Q. DO GOVERNMENTAL AGENCIES TYPICALLY PAY MORE FOR**
8 **PROPERTY THAN THE AVERAGE CITIZEN?**

9 **A.** No. Our firm prepares appraisals for the St.
10 John's River Water Management District, the
11 Department of Environmental Protection (DEP),
12 and other agencies. I am generally familiar
13 with their land acquisition policies.

14 The St. John's River Water Management District
15 acquires property based on "Fair Market Value,"
16 as determined by independent appraisals. The
17 District will typically average two such
18 appraisals and then pay 85 to 90% of the
19 averaged figure. The District often obtains
20 property at below market value and in some
21 cases even below assessed value.

22 Similar guidelines govern DEP's land
23 acquisitions. DEP, which now includes the
24 former Department of Natural Resources, is
25 responsible for acquisition of state lands. In

1 such capacity, DEP must adhere to very
2 stringent guidelines, as mandated by Chapters
3 253 and 259, Florida Statutes. Please see,
4 specifically, Sections 253.025(6) and
5 259.041(7). DEP requires one independent
6 appraisal on acquisitions of \$500,000 or less,
7 and two independent appraisals on acquisitions
8 over that amount. By statute, DEP cannot pay
9 more than fair market value and in the case of
10 divergent appraisals, it cannot pay more than
11 the highest appraised value. A 20% divergency
12 is permitted without requiring further study.
13 Please see Rule 18-1.006, Florida
14 Administrative Code.

15 Q. DO AD VALOREM TAX ASSESSMENTS TYPICALLY
16 REPRESENT FAIR MARKET VALUE?

17 A. No. If tax assessments represented actual fair
18 market values under the definition of same,
19 then such data would be used in mortgage loan
20 negotiations, eminent domain proceedings,
21 DNR/DER and other state or federal agency
22 acquisitions or divestitures, FNMA/RTC/FDIC
23 underwriting and/or portfolio loan
24 purchases/sales. In my twenty-four years of
25 real estate appraisal experience, I have not

1 personally encountered a single instance in
2 which the assessment was relied on for any of
3 the above-mentioned purposes. Obviously,
4 common sense would dictate that if assessments
5 were reliable as indicators of market value,
6 then such data would be usable for mortgage
7 loans and other purposes and the use of
8 appraisers and market analysis would not be
9 required, thus expediting the loan or other
10 process and reducing costs. It is obvious that
11 federally chartered financial institutions as
12 well as state and federal agencies rely on the
13 use of outside appraisal and related services
14 rather than tax assessments for valuation
15 purposes of specific parcels of real estate as
16 of a specific point in time.

17 Q. HAVE YOU PREPARED A STUDY TO DEMONSTRATE THE
18 RELATIONSHIP OF RECENT LAND SALES PRICES TO
19 ASSESSED VALUES IN FLAGLER COUNTY?

20 A. Yes. Attached as Exhibit 38 (CDS-4) is a
21 chart showing the results of a computer search
22 of Flagler County property transfer records
23 over the January 1, 1995, through June 13, 1996
24 period for non-residential parcels with a sales
25 price range of \$100,000 to \$1,000,000. Sixteen

1 additional sales were found but not included in
2 the chart. One of these sales involved an
3 extremely high ratio (7.22 to 1) of sales price
4 to assessment while another indicated a very
5 low ratio, .71 to 1 and thus these range
6 extremes were not included. Two other sales
7 had no assessment data so were not included.
8 The remaining 12 excluded sales involved
9 multiple parcel transactions.

10 The purpose of this ratio study was to provide
11 some information as to the relationship between
12 property assessment figures and actual sales
13 price of those same properties. Acreage and
14 vacant commercial sites were chosen for the
15 search. The chart reflects a mean ratio of
16 2.64 for the acreage data, i.e., properties
17 sold for a mean of 2.64 times assessment - the
18 range was 1.68 times assessment to 3.88 times
19 assessment. The ten vacant commercial sales
20 reflected a mean of 2.519 times assessment.
21 These sales are not confirmed and this chart
22 was included to primarily show that sales
23 prices are generally substantially higher than
24 assessments and as support as to why
25 assessments are not relied on for specific

1 parcel valuation services as of a specific date
2 in time by virtually all common users of
3 appraisal services. This research was based on
4 computer data services provided by Micro
5 Decisions, Inc., a provider of property
6 transfer and assessment data for various
7 Florida counties including Flagler and Volusia.

8 Q. DO YOU HAVE ANYTHING TO ADD?

9 A. Not at this time.

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1 Q (By Mr. Schiefelbein) Would you -- first of
2 all, do you have a brief summary of your testimony?

3 A Yes, sir, I do, for my rebuttal testimony.

4 Q Would you please proceed with a brief summary
5 of your prefiled testimony?

6 A Yes, and Commissioners, I'll attempt to keep
7 this as brief as possible without repeating material
8 contained in the deposition or the prefiled testimony.

9 I've been an independent fee appraiser in the
10 Volusia/ Flagler County area since 1972. We actually
11 serve the entire state, but we specialize in the
12 Volusia/Flagler area.

13 As an independent fee appraiser, we are
14 available to basically accept assignments from various
15 clients, including private parties, institutional
16 clients, federal, local, state, governmental entities,
17 condemnation authorities, et cetera. Basically, we
18 serve the public at large. We are not and never have
19 been employed nor subject to a relationship working for
20 any specific entity. We are available for whoever needs
21 our services.

22 In 1985 we were asked to appraise what we
23 refer to as the spray field site, using a retroactive
24 valuation date of 1979 and consisted of approximately
25 83.305 acres east of Old King's Road. We physically

1 inspected the property and the comparables in 1985. We
2 were familiar with the entire area as of 1979. At that
3 time and during that period, again, just for edification
4 purposes, we were probably one of, if not the largest,
5 appraisal firms in that particular area, the Volusia/
6 Flagler area. So we had a good working knowledge of the
7 activity in those counties.

8 In 1990 we were asked to appraise an expansion
9 to the south of that parcel containing approximately
10 81.576 acres, which has been identified in these
11 hearings as the RIB site. Basically the same location,
12 just adjacent to and south of the spray field site.

13 The methodology we used was a very
14 straightforward comparative analysis. There was nothing
15 peculiar about the assignment. We felt that in both
16 cases it was a very straightforward assignment involving
17 land valuation, land as if vacant. There has been, I
18 know, some discussion about, perhaps, special utility.
19 There were no characteristics of either one of these
20 parcels that would have indicated that they should have
21 been appraised in anyway as a special purpose property.
22 They were vacant acreage parcels, very similar to other
23 acreage parcels in the surrounding area. They were
24 vacant land parcels and should have been appraised as
25 vacant land, which is exactly what we did.

1 There was also some question, we addressed it
2 in our rebuttal testimony, about -- in some cases,
3 specifically the 1985 with the 1979 valuation date
4 appraisal -- relating to the distance of sales and why
5 were certain sales chosen that were -- on the surface
6 appeared somewhat remote from the subject properties.
7 This is typical in the appraisal business, especially in
8 Flagler County. I realize the Commission is at a
9 disadvantage in this area, as they are not intimately
10 familiar with Flagler County. It's always been a very
11 difficult county in which to appraise, simply due,
12 primarily, to the lack of transactions and the fact that
13 much of the land is under the control of several large
14 landowners. That always creates a very difficult
15 appraisal assignment.

16 So in appraising this property we had to -- in
17 1985, we had to investigate transactions involving
18 parcels that were impacted similarly by market factors.
19 And again, being familiar with the counties in which we
20 work, there was a wealth of information in Volusia
21 County to the south. So I would be glad to elaborate on
22 that at any point in these proceedings.

23 There was also a question as to perhaps the
24 utilization of earlier or later data. That is not
25 appropriate. Normally, in the case of an appraisal

1 assignment, you attempt to use sales as close to the
2 valuation date as possible. Again, in the case of
3 Flagler County, in some cases that had to be expanded
4 due to the limited data availability. But using sales
5 in 1968 or 1996, it is contrary to accepted appraisal
6 practice, it would not stand up under professional
7 scrutiny, as an appraiser, and I don't think it was
8 appropriate, nor did we employ that type of
9 methodology.

10 There was also some discussion of the Con-Cor
11 sale as perhaps of some use. The only use that that
12 particular sale has, in my opinion, is that it had some
13 proximity. It had no relation to the original
14 appraisals, either as of 1979 or 1990. If we were to
15 appraise the same properties today, then we would
16 certainly investigate that sale. By the same token,
17 it's still a very large sale, had a number of factors
18 impacting it, and even in today's market it may or may
19 not be a good comparable.

20 We are intimately familiar with that
21 particular sale. I've been on that property ever since
22 probably the mid 1970s. So there are multiple lakes on
23 that property, not just two. It was a former ITT borrow
24 pit for excavation purposes. We have met with the owner
25 of that particular parcel for -- in anticipation of

1 actually doing some appraisal assignments on that
2 property.

3 So I thought it was appropriate to enlighten
4 the parties to this hearing about some of the true
5 details of that transaction which could not have been
6 ascertained without diligent research and actually
7 meeting or talking with the parties involved.

8 Q Thank you, Mr. Spano. Mr. Spano, could you
9 also -- would you give a very brief summary of your
10 conclusions regarding this -- the sales data that
11 Mr. Sapp sponsored at the July 2nd hearing that's
12 contained in Exhibit CDS-5?

13 MR. REILLY: We would object to that. I know
14 that we have a procedure where he can summarize his
15 prefiled direct. But we're now trying to get into the
16 record his response to live testimony that was at the
17 hearing, which of course is the subject matter of this
18 disputed exhibit. So at some appropriate time I hope
19 that we'll take arguments on the propriety of this
20 supplemental exhibit.

21 COMMISSIONER DEASON: I think now is the
22 appropriate time, before he is permitted to provide any
23 summary testimony on the supplemental exhibit.
24 Mr. Schiefelbein.

25 MR. SCHIEFELBEIN: Yes, thank you. As you all

1 recall, in this proceeding, like all PSC proceedings
2 that I'm familiar with, there's been an obligation to
3 prefile testimony and exhibits. And Mr. Sapp, as a
4 Staff witness, prefiled testimony of about a page, page
5 and a half, verifying that he really made two comments
6 that were ascribed to him in Mr. Dodrill's testimony and
7 exhibits.

8 Now, under cross examination by the county
9 attorney, Mr. Spano, for the first time -- excuse me,
10 Mr. Sapp, for the first time, revealed that he had done
11 investigation into certain sales data. It was obviously
12 a very orchestrated, planned presentation of evidence.
13 He had a map, a person to stand by him and hold the map
14 up. He had handouts and so forth, throwing out some
15 very summary data as far as price per acre for six or
16 seven parcels of property in Flagler County. I think
17 it's -- I think doing that was perhaps inconsistent with
18 the obligation to prefile such testimony, if that was to
19 be his presentation.

20 Be that as it may, I think that we in good
21 faith, within three days of -- three or four days, of
22 receiving our own copy of this information, diligently
23 investigated and prefiled this supplemental exhibit,
24 which contains a paragraph on each of those seven sales
25 explaining the merits or the lack of merits of using

1 those in this proceeding.

2 I think it's entirely appropriate that we be
3 allowed to proceed with that.

4 COMMISSIONER DEASON: Mr. Reilly, do you care
5 to --

6 MR. REILLY: I would suggest that this should
7 not be permitted because this was live testimony. I
8 think that that's the risk of cross examination, when
9 you put a person on the stand, that he will be
10 responding to those questions. And Mr. Spano is
11 available. He's going to be subject to cross
12 examination. Likewise, this counsel will be permitted
13 to redirect. And some of this material through this
14 process could be done.

15 There's -- Public Counsel -- it would have
16 been no more appropriate for us to file supplemental
17 testimony to what might have been characterized as
18 friendly cross examination of Karen Amaya, for us to
19 then go back, after we had our opportunity, to try to
20 file some supplemental. I think our procedure is you
21 put a person on, they provide live testimony and then
22 you have a chance for cross and redirect.

23 You will find when we start looking into rate
24 case expense that this is called an exhibit. When you
25 really look at the exhibit, it's carefully crafted

1 testimony by this witness. It really isn't just some
2 new piece of information that's being brought in. In
3 fact, when you look at the record on rate case expense,
4 there's even submittals by counsel saying that we helped
5 develop and write and review, quote, unquote,
6 "additional testimony," which was even in the rate case
7 expense dockets called testimony. And any reasonable
8 reading of this is that it's inappropriate supplemental
9 testimony at this stage of the hearing.

10 This witness is here. I believe he's going to
11 be subjected to a number of questions by the county, and
12 it's going to perhaps give the other side, which is our
13 normal procedure, an opportunity for redirect. But to
14 have -- take this opportunity, after two weeks, to
15 massage and develop additional supplemental rebuttal
16 testimony, I think is beyond the scope of our
17 procedures.

18 Just to remind the commissioner, this exact
19 same thing was done, I believe, in the St. George Island
20 case. There was another third additional date, and the
21 utility tried to file a voluminous additional exhibit to
22 try to refute matters that came up at the hearing, and I
23 believe that ruling in that case was that it could not
24 be allowed. And I suggest that this case is very
25 similar to that. Thank you.

1 COMMISSIONER DEASON: Mr. Hadeed.

2 MR. HADEED: Mr. Chairman, for the benefit of
3 the court reporter, my name is Al Hadeed, and I
4 represent Flagler County.

5 Mr. Chairman, I am new to the procedures and
6 processes of the Commission, but the exhibit is not
7 written as testimony in the form that I have been seeing
8 throughout this proceeding. But its content and
9 substance is testimony. It is not a report -- for
10 instance it is not an appraisal report, as has been
11 previously introduced. So that goes to your protocol.
12 And I don't know what implication that has, but that is
13 what struck me about it when I first looked at it.

14 More importantly, and more germane to our
15 concerns about it, is that the witness, Mr. Sapp, was
16 subject to discovery, he was deposed by the utility.
17 The primary issue relative to Mr. Sapp -- actually,
18 virtually the only issue relative to Mr. Sapp -- is the
19 selectivity of the properties identified by Mr. Spano in
20 his appraisal. That is, he used or examined a defined
21 set of properties. He did not examine the universe of
22 properties that may have been within -- that should have
23 been within his analysis. That was the issue.

24 Mr. Sapp, not giving any opinion of value,
25 simply identified other transactions within the

1 neighborhood that were not addressed. That position of
2 Mr. Sapp was identified very early on through the
3 documentation provided to you through your Staff,
4 Mr. Dodrill, I believe was his name. That was always
5 the primary issue. He was deposed.

6 Second, in his testimony here, the question to
7 him -- I mean I don't know if you recall that, but I
8 simply asked, sir, what is your difference with the
9 appraisal? And then he proceeded to answer. And I
10 don't know if any of you noticed, a couple of times I
11 tried to get in a question and he just sort of just
12 kept -- he was a one-person show.

13 But during that time, which I think is
14 material in the kind of proceedings I've been associated
15 with, there was no objection from the utility. Now,
16 finally, finally, having read the information, I would
17 urge that it's totally irrelevant. The issue is not the
18 information that he has obtained about these other
19 sites, which is what this is. This is sort of like --
20 well, a speaking document -- well, it's actually a
21 letter to the counsel. And it says, this is what I
22 found out about all these properties that were
23 identified. That's not relevant.

24 The relevant issue is the date that these
25 sales occurred and whether they were included in the

1 written analysis at the time that the analysis was
2 performed. And on the face of the document that is
3 being tendered, all of the corroboration of the
4 information postdates the appraisal, follows the
5 appraisal, was not included within the ambit of the
6 research associated with the appraisal. Therefore,
7 while it might be interesting information, it's totally
8 irrelevant. Thank you.

9 MR. SCHIEFELBEIN: May I respond, please?

10 COMMISSIONER DEASON: I'm giving all the
11 parties an opportunity. Mr. Melson.

12 MR. MELSON: I'm going to stay out of this
13 one.

14 COMMISSIONER DEASON: Staff?

15 MR. EDMONDS: Staff would have no objection to
16 the exhibit.

17 COMMISSIONER DEASON: Mr. Schiefelbein?

18 MR. SCHIEFELBEIN: Very quickly, if
19 Mr. Hadeed -- and perhaps I misunderstood what he just
20 said -- but if Mr. Hadeed believes that Mr. Sapp's
21 information was irrelevant -- was that your statement?
22 Or is it --

23 MR. HADEED: If I said that, I misspoke.

24 MR. SCHIEFELBEIN: Then I misheard you. I
25 apologize. Because I was going to offer to withdraw

1 ours if you would withdraw yours. But commissioners,
2 this is the only way that we have an opportunity to
3 respond to that surprise testimony. This was far
4 afield, in my opinion, from Mr. Sapp's very abbreviated
5 testimony. It was far afield from his testimony at the
6 deposition exhibit. It's something that he did just
7 before the hearing. And I think that we've responded
8 appropriately by not saving our response till the last
9 minute, but getting it in within three, four days of
10 receipt of Mr. Sapp's actual information, and I think it
11 would be very reasonable to allow us to briefly explore
12 it.

13 As far as whether it's testimony or an
14 exhibit, I think that's a distinction without a
15 difference. Given the shortness of time, we certainly
16 cut corners in its preparation and basically wanted to
17 get the conclusions that Mr. Spano had reached about
18 these six or seven sales in summary form to the parties
19 and to the Commission just as soon as possible. So I
20 don't think that's very important, but it's -- whether
21 we call it an exhibit or a testimony, or what have you.
22 But I would ask that we be given an opportunity to
23 respond to Mr. Sapp's allegations.

24 COMMISSIONER DEASON: I agree with you, that
25 the form of the exhibit/testimony is not that

1 important. The question is, what is fair and
2 reasonable. I think all the parties realize that this
3 Commission goes to great lengths in having testimony and
4 exhibits prefiled. And the purpose of that is to put
5 all parties on notice as to what the issues are and what
6 the positions are, so that everyone can be adequately
7 prepared and that no one is caught by surprise, and more
8 importantly, so that the record is complete and the
9 commissioners have a complete record upon which to base
10 a decision.

11 We had a fairly unique situation in this
12 hearing in the first two days, in that there was
13 prefiled testimony by a witness but on the stand that
14 testimony was greatly expanded, and it was expanded
15 during cross examination by a party whose interests are
16 fairly akin to that of the witness and the individual
17 sponsoring that witness. To me it's a question of
18 what's fair and what makes the record complete.

19 I do note that this testimony/exhibit was
20 prefiled and the parties have had it for some time and
21 should be able to conduct cross examination on it. For
22 that reason, I'm going to allow this witness to
23 summarize Exhibit 39, and at an appropriate time, if the
24 utility so wishes, may move 39 into the record.

25 You may, Mr. Spano summarize what has been

1 identified as Exhibit 39.

2 MR. SCHIEFELBEIN: In the interest of
3 expedience, if I could -- I would like to make sure that
4 it is a quick summary, and if I could help Mr. Spano
5 along on this. Certainly the exhibit contains a lot of
6 information.

7 But Mr. Spano, the first, the Patterson to
8 Smith transaction --

9 MR. REILLY: I don't mean to be an
10 obstructionist, but if he has a summary of his
11 testimony, we can receive it, but to now create a new
12 form of cross examination contemporaneous to the hearing
13 is another departure from our procedures, and I'm just
14 going to object.

15 COMMISSIONER DEASON: I understand that the
16 purpose of the questions was to expedite, but since
17 there is an objection, I'm just going to ask the witness
18 to summarize, to the extent he deems it necessary, what
19 is contained within Exhibit 39. Please proceed.

20 WITNESS SPANO: Okay, thank you. First, I
21 must respond to Mr. Hadeed's comments that we did not
22 inspect the universe of property. Is that entirely
23 untrue.

24 COMMISSIONER DEASON: Let's just -- right now
25 you're summarizing what's in 39, and anything concerning

1 Mr. Hadeed's comments, I'm sure your attorney can bring
2 that out on redirect if it's appropriate at that time.

3 WITNESS SPANO: Okay. I'm sorry. Basically,
4 very briefly, the first sale -- they're in the same
5 order as they were in Mr. Sapp's exhibit. The first
6 sale was a dump, lots of costs involved in reclaiming
7 that parcel, making it usable. We had investigated that
8 sale, had inspected the sale. It's not applicable.

9 The other sales -- basically I can sum all of
10 them up, I think, briefly. With the exception of the
11 Pellicer to Wright sale, I think others can all be
12 grouped together. Basically when we do a sale search,
13 and these sales in particular -- these are essentially
14 rural residential acreage sales -- I don't think they
15 were appropriate for valuing the subject property. They
16 just -- they would come up in a sale search. We didn't
17 think they were proper. We did not use them, period.
18 The Pellicer to Wright sale, that was a small parcel on
19 the outskirts -- on the edge of Bunnell. And again,
20 that sale we were familiar with, but again, it was a
21 small parcel on the edge of -- we had what we felt were
22 better comparables. We didn't feel that was
23 appropriate.

24 The Gillespie to Flagler County, we did the
25 appraisals on that property also, prior to acquisition

1 by the county. And again, that property had hunting
2 club improvements on it, which was not reflected in
3 Mr. Sapp's information. All that is contained in this
4 short document, so that we don't need to repeat that.

5 The Cowart to Burger sale, which is the last
6 sale, that was a close friend, a sale in lieu of
7 foreclosure, essentially. That was most certainly not
8 an arm's length sale. Hopefully that succinctly covers
9 these sales. I would be glad to elaborate if you think
10 it's appropriate.

11 MR. SCHIEFELBEIN: Thank you. Having marked
12 the exhibits and moved the testimony, we would tender
13 the witness for cross.

14 COMMISSIONER DEASON: Mr. Hadeed.

15 MR. HADEED: Yes, thank you.

16 CROSS EXAMINATION

17 BY MR. HADEED:

18 Q Mr. Spano, in your 1990 appraisal of the --
19 what you refer to as the spray field site, approximately
20 an 80-acre site.

21 A Correct.

22 Q You make no reference to whether Old King's
23 Road on this stretch of the property is a public or
24 private road. You just refer to as Old King's Road. Do
25 you know whether it is a public or private road?

1 A No, sir, it's not.

2 Q I'm sorry? You're aware that it is a private
3 roadway?

4 A Yes, sir, most certainly. Still is.

5 Q Is there any effect in appraising property
6 that abuts a roadway that is not publicly dedicated or
7 publicly maintained?

8 A If you could rephrase that and make sure I
9 answer your question properly.

10 Q Would it be relevant to you for property that
11 you are appraising for development potential, whether it
12 had its access through a roadway that was not publicly
13 maintained or publicly dedicated?

14 A I think that's a factor that is always taken
15 into account. Any developer realizes he may have to, in
16 fact, pay for and install roadway improvements, in some
17 cases for very long distances, to access his property.
18 So is it considered? Yes, it is.

19 Q It is a relevant factor?

20 A It can be.

21 Q In your opinion that is essentially summarized
22 in the cover letter to the 1990 appraisal, which is
23 basically the -- I assume that's like the essence of the
24 whole package. On Page 2 of that document, you identify
25 all of the conditions under which your conclusions were

1 made, and you call them special assumptions. Tell me
2 what that means in the context of interpreting this
3 appraisal. Do you have a list of approximately -- well
4 not approximately. You have a list of six.

5 A Yes, sir, and another terminology would be
6 "additional assumptions," but that is not the limit of
7 the assumptions. The additional assumptions are on
8 Page 4, which is a standard insert in all of our
9 appraisals. So there are some additional constraints
10 that impact this particular appraisal. So it is not
11 limited to the six on the second letter of the page of
12 transmittal.

13 Q Would these six that you've identified here be
14 essential to the analysis that you've conducted?

15 A Yes, sir, they would, because these six, on
16 the second page of the letter of transmittal, are in
17 addition to and supplemental to the more conventional
18 and standard assumptions.

19 Q Do you have the 1990 appraisal in front of
20 you, sir?

21 A Yes, sir, I do.

22 Q Can you turn to Page 2 of that letter?

23 A Yes, sir.

24 Q Item No. 6 states as part of your special
25 assumption that this is going to be -- that the parcel,

1 the development of the parcel, is going to be consistent
2 with the Growth Management Act and that there would be
3 no impact by concurrency requirements. What does
4 concurrency -- what does that refer to?

5 A It is basically in concert with various
6 regulatory agencies, and it follows land use plans and
7 it's a very encompassing term, for lack of a better
8 word.

9 Q Are you referring to the concurrency that was
10 in the -- that's within the Growth Management Act?

11 A Yes, sir.

12 Q That the infrastructure will be in place at
13 the time that the development occurs?

14 A That it would be in harmony with the
15 infrastructure and would not create an undue burden or
16 an unusual circumstance which would require mitigation,
17 for lack of a better word, of the land use plan or the
18 concurrency plan.

19 Q If you made this special assumption and knew
20 that Old King's Road was not a publicly dedicated nor
21 publicly maintained road, how could you make that
22 statement without placing some kind of qualifier or
23 addressing it somewhere in your report?

24 A I'm not quite sure I understand exactly your
25 question. And not trying to be nonresponsive, but in

1 the case of -- and especially property such as this, and
2 this particular property, these properties are
3 generally -- would be purchased for long term growth,
4 not for immediate development. They are not suited for
5 immediate development at the time of the appraisal.
6 They're basically purchased for holding until such time
7 as economic conditions warrant, at which time some of
8 these other factors such as you allude to will basically
9 come into being, whether it be a road dedication,
10 installation of additional infrastructure, such as
11 utilities extension and things like that.

12 So when we do parcels like this that are on
13 the fringes of development, they are typically purchased
14 for holding or investment purposes until some time in
15 the future. I hope that that answers your question as
16 to my methodology or rationale.

17 Q I could find no discussion about the impact of
18 Old King's Road as a private road within this
19 discussion. However, it is true that you addressed the
20 utility extension problems; did you not?

21 A Yes, sir, I think -- I believe we addressed
22 the distance, or how far they were at that particular
23 point -- how far away they were at that particular point
24 in time.

25 Q And you also had a calculation made about what

1 the cost would be to extend the utilities; did you not?

2 A Yes, sir, sure did.

3 Q And did you not within the report discuss this
4 as a significant factor in the potential development of
5 the property?

6 A It would be factored into in the comparative
7 analysis versus a site which had utilities available at
8 the site. But again, a parcel of this size, only 80
9 plus acres, it would probably not be economically
10 feasible to pay those costs to extend those utilities to
11 this particular site at that point in time. Yes, we
12 mentioned it, and yes, we obtained the figures so that
13 we could do proper analysis with our comparables, and
14 such as that. But yes, it was most certainly taken into
15 account. That does not imply that somebody should go
16 out and develop this property tomorrow and just pay for
17 the -- it's, again, economically unfeasible.

18 Q Do I take from your reasoning, then, that you
19 found it immaterial to analyze or assess the potential
20 costs of upgrading a private road to a publicly
21 dedicated highway in order to permit development?

22 A Would you repeat that, please?

23 Q Do I take it from the -- your analytical
24 approach about how you dealt with the utilities and why
25 you thought it was relevant and what impact it had on

1 looking at comparable properties, that the private road
2 factor didn't rise to that level?

3 A No, sir. Again, that's not an atypical
4 scenario, and what would normally happen, based on our
5 experience with acreage parcel suitable for residential
6 development, at some time in the future, the purchaser
7 or landowner, would basically wait, again, until
8 economic conditions warrant development of that parcel,
9 but then they would also typically go in concert with
10 surrounding or adjacent landowners to share the costs of
11 those roads, and in many cases utilities extensions. So
12 the cost would not be borne to a single parcel. And
13 that would most certainly be the case here. Again, that
14 would be economically prohibitive for a single parcel of
15 this size to bear the cost of extending a road of this
16 distance. That was taken into account in our appraisal,
17 yes, sir.

18 Q It was taken into account?

19 A Again, as a matter of comparability to other
20 sales and potential market, we're talking \$7,000 an acre
21 land versus 30,000 in other places.

22 Q Can you show me, because I missed it, is there
23 anywhere where this is discussed within your 1990
24 appraisal?

25 A No, sir, that's where we rely on our judgment

1 and experience.

2 Q So you're telling me that you found the
3 extension of the utility infrastructure in order to
4 serve the project germane enough to address, but the
5 costs of upgrading a road to meet public highway
6 standards not germane enough to address?

7 A I wouldn't say it's not germane. It just
8 appears on the surface, I think, to any prudent
9 developer or purchaser, that that is such an obvious
10 item that there would be no way that anybody would even
11 consider extending a road for that distance just to
12 access an 80-acre parcel, and that, again, perhaps we
13 should have done that.

14 When we prepare these reports we -- anytime
15 you prepare an appraisal report you have to look at the
16 client that will be using that report, and we could have
17 written volumes, obviously. But in this case our report
18 was addressed to Palm Coast Utilities -- they're
19 certainly aware of the circumstances, and we were
20 serving the needs of that particular client and
21 addressing -- we thought it was redundant to continually
22 repeat information which, obviously, they're aware of,
23 and which basically people in the Volusia/Flagler area,
24 and especially potential investors or developers of a
25 parcel of this size, are also very much aware of.

1 Q So these are things that they would know. Did
2 you know what the function of the appraisal was?

3 A Basically to ascertain a market value for
4 placing this property into service, or to purchase it
5 from the existing landowner by PCUC, and to establish,
6 basically, a market value estimate.

7 Q Do you know why they needed to put a price,
8 other than to determine a transaction?

9 A No, sir, it was immaterial to us. We were
10 asked to prepare a market value estimate. That's what
11 we did.

12 Q Do you know whether a higher value, on a piece
13 of property, or a lower value, would have saved --
14 served the corporate -- the larger ITT corporate
15 interests?

16 A I have no knowledge either way, whether --
17 what impact it would have had either way.

18 Q You sat through the July -- the entirety of
19 the July 1st and July 2nd hearings?

20 A Yes, sir, I did.

21 Q And you still do not know, sir?

22 A You're asking me after the fact or as of date
23 of this appraisal?

24 Q Well, do you know today?

25 A Well, we hadn't really gotten to the

1 appraisal, and obviously it may have -- could have some
2 bearing, but the testimony that I listened to Monday --
3 or Monday and Tuesday, so much of it was way beyond me,
4 for lack of a better word. Obviously it involved a lot
5 of accounting and accountancy --

6 Q That's not my question, Mr. Spano. Do you
7 know -- if you had put a \$30,000 per acre on this
8 property, would it have helped the ITT corporate family
9 or hurt them?

10 A I really don't know, because I don't know what
11 the infrastructure is or the relationships, and I
12 certainly don't know anything about the accounting
13 practices of, you know, what goes in and what goes out.
14 I have no idea of what impact it would have, if any.
15 Not privy to that information.

16 Q I want to refer you to the 1985 appraisal
17 which you refer to as the spray field site.

18 A Yes, sir.

19 Q Appraisal. Also about 80 acres?

20 A Slightly in excess, yes, sir.

21 Q And it's true that this property, as well as
22 the previous one we discussed, none of them have any
23 frontage on Old King's Road?

24 A They're approximately 600 feet off the road.

25 Q Off the road. Now, in this report, and also

1 based on your deposition, is it fair for me to assume
2 that ITT corporation did not inform you about any
3 comprehensive land use restrictions from the state
4 relative to the Palm Coast development?

5 A No, sir. Again, that's going back 11 years,
6 but I don't recall anything unusual about this
7 assignment.

8 Q Are you aware through your -- well, 20 years
9 of experience in the Volusia/Flagler area, that Palm
10 Coast is a planned development?

11 A Yes, sir.

12 Q Would that mean to you that -- or wouldn't it
13 mean to you that certain lands in the plan would be
14 allocated for different kinds of development?

15 A Yes, sir. And if I may elaborate on that.

16 Q Yes.

17 A Again, anytime we do an appraisal, one of our
18 first stops is the county building and zoning
19 department, and our first questions are what can we do
20 with this property. And we have to rely on the
21 information that they give us at that time. And in this
22 case -- in both cases basically, we were given the
23 information that, yes, somebody coming in and purchasing
24 this property could in fact develop it.

25 Q And you have a specific recollection of

1 talking to someone and -- in the county government, of
2 authority, and representing to you that this property
3 can be developed in the way that you've described it
4 here in your appraisal?

5 A Yes, sir. Again, our files are purged after
6 five years unless they're involved in litigation at that
7 point, so I don't have any of the file memoranda. But
8 that is basically a normal course of -- or normal method
9 of operation. That's one of the first things we do,
10 because if we find some difficulties at that point, then
11 there may not be any point in completing an appraisal.
12 So first we have to make sure that the property can be
13 developed or used for a normal or conventional purpose.

14 Q In this report, as contrasted with the other
15 appraisal, you did not reference any discussion with any
16 county zoning or building authorities?

17 A Perhaps not, but again, it is always done.
18 It's mandatory.

19 Q Isn't it true that as of the 1979 date that
20 you fixed a value, that there were no zoning regulations
21 in Flagler County?

22 A That's correct. It was very loose.

23 Q Did it not strike you as odd that Palm Coast
24 was a planned community with development sectors but yet
25 there was no zoning code in Flagler County?

1 A No, sir, it didn't strike me, because anybody
2 that's been familiar with Flagler County for the past 20
3 or 30 years, if you're a developer, that's a great place
4 to develop because you have a lot of latitude.

5 Q Do you know what the comprehensive land use
6 plan for Palm Coast Community from the state provides
7 for this property that you have been appraising?

8 A No, sir, I can't recall that.

9 Q Well, do you -- did you ever know it?

10 A Yes, we did, and we used -- matter of fact we
11 used to retain all of that information in our office,
12 simply because we were doing a lot of work in ITT, not
13 necessarily for ITT, but within the ITT community,
14 obviously for lots of residences and things like that.
15 And we were furnished all of that information, including
16 the comp plan and such as that.

17 Q Would you expect that at the time you did the
18 analysis you knew that information and knew what the
19 comprehensive plan provided for in this area that you
20 were appraising?

21 A Yes, sir. And we also take that one step
22 further. And in verifying or eliciting information from
23 the appropriate authorities, such as the building and
24 zoning department, it's basically a very straightforward
25 question. If this property were to be sold to a new

1 purchaser, would there be any restrictions on
2 development, or any constraints on development? And we
3 were not informed of any, nor were we made aware that at
4 that particular time there would have been any
5 opposition to conventional development of this parcel
6 under a normal residential guidelines.

7 Q Then I'm sorry, I misunderstood your report
8 and your testimony in the deposition, because you said
9 you didn't know in your deposition, and it's not
10 addressed at all in your report. Can you help me?

11 A I can help you from the standpoint that if we
12 were to address every single issue, we would have to put
13 these things in three-ringed binders. We are hired for
14 our experience and our judgment and our expertise, and
15 our clients rely on those factors in retaining us to
16 prepare appraisals. And they have confidence in our
17 ability to research those sorts of things, along with
18 other factors.

19 And again, it becomes redundant in many cases
20 to a specific client to continually repeat that type of
21 information, or at least we felt that way this
22 particular time. Obviously if it had been perhaps for a
23 different client, going to an out-of-state institutional
24 investor, if this report were perhaps going to the
25 Department of Natural Resources at that time, that --

1 those kinds of sections or those things perhaps would
2 have been beefed up and more clearly explained with
3 additional corroboration, additional resource sources as
4 to the source of information, the dates they were
5 contacted and their responses, preferably in writing.

6 Q That's fine, but I'm concerned about the
7 dissonance between what I understand you're telling me
8 today and what you said in your deposition about not
9 knowing. Do you have your deposition?

10 A Yes, sir, I do.

11 Q Can you turn to Page 8?

12 A Okay.

13 Q Do you recall being asked the question on
14 Lines 1 through 4 of Page 8, where you are asked: "Did
15 you know what development zone within Palm Coast the
16 appraised site was in?" And your answer was, "No, I
17 don't"?

18 A Okay, I interpreted that comment or that
19 question to mean, did I know as of the date of this
20 deposition. There's no way I can remember what happened
21 11 years ago or what was in our file memorandum 11 years
22 ago. So when I was asked this question in deposition, I
23 most certainly did not recall what zone it was in.

24 Q In the research that you have done to prepare
25 for this hearing and for this proceeding --

1 A Yes, sir.

2 Q -- have you acquainted yourself, reacquainted
3 yourself, with what zone it was in?

4 A No, sir, I haven't.

5 Q In the filing you made -- well, not the filing
6 you made, but in the billing you've made, you and your
7 partner, looks like, have over 50 hours preparing for
8 the hearing?

9 A Easily.

10 Q In your report you identify, as a special
11 assumption, and you do it all throughout -- and this
12 is -- this was what was curious to me -- that the
13 parcel was available for single family residential.

14 A Correct.

15 Q Isn't that correct?

16 A Yes, sir.

17 Q Is your assignment of value to the property
18 dependent upon your determining or your assuming that
19 it's available for single family residential?

20 A Yes, sir, it was. Again, first we have to
21 come to a determination or an estimate of highest and
22 best use, which we felt -- and again, based on the
23 information that we were furnished by the zoning and
24 other regulatory agencies -- that the highest and best
25 use would have been for potential residential

1 development, as a typical subdivision scenario. So yes,
2 if property were restricted to some other use, that
3 could have a bearing on it.

4 Q That would have a bearing on?

5 A Could have a bearing.

6 Q You said the information from zoning, that
7 this was single family residential. I thought you
8 testified, and consistent with your report, that there
9 was no zoning in effect in 1979, as of the date that you
10 did the assignment of value.

11 A Yes, sir. There maybe no zoning, per se, but
12 that does not mean that Palm Coast would not impose
13 restrictions and some kind of constraints upon zoning.
14 Obviously they're not going to let anybody go out and
15 just develop at will anything that they want.

16 Q Would that have been -- those restrictions
17 you're talking about, have been in the state
18 comprehensive land use that governs Palm Coast?

19 A Most probably.

20 Q Now in the 1985 appraisal, the sites you found
21 to be comparable were all in Port Orange and Volusia
22 County; is that correct?

23 A Let me look. Okay, just looking briefly at
24 the map without going through the sales, it appears that
25 a number of them are in Port Orange, but not all of

1 them.

2 Q Can you tell me approximately how far away
3 Port Orange is from Palm Coast?

4 A Yes, sir. In reference to the deposition,
5 because I assumed you would ask this question again,
6 33.8 miles to be exact.

7 Q Do you know how far St. Johns County is from
8 Palm Coast?

9 A Several miles. Depends on where you measure
10 it from.

11 Q In this appraisal report you indicate that
12 there were so few sales in Flagler that you had to go
13 outside of the Flagler area.

14 A Yes, sir, that's correct.

15 Q Why did you not go to any sales that occurred
16 in St. Johns County, in the neighboring county?

17 A St. Johns was at that time, and it still is, a
18 very slow growing county. It did not have the
19 infrastructure nor the potential for substantial growth
20 that the Palm Coast community did. Port Orange was
21 experiencing the same kind of growth. It was the
22 fastest growing community in the Volusia County area.
23 That's why we went to Port Orange.

24 Q Do you know the population of Flagler today,
25 roughly?

1 A No, sir, I haven't had any reason to check.

2 Q Have any idea of magnitude?

3 A No, sir.

4 Q None? Could be 100,000?

5 A Could be.

6 Q Could be. And you've been appraising for 20
7 years?

8 A Yes, sir.

9 Q In the Flagler/Volusia area?

10 A In the Flagler/Volusia area. I can look that
11 information up. I don't have to retain that
12 information.

13 Q You said you've been working, even recently,
14 in the Old King's Road corridor. Do you know of any
15 residential building permit that has been issued in the
16 corridor that you're looking at to appraise? From south
17 of the developed area where the Palm Coast sewer plant
18 is and the Woodland subdivision is, all the way down to
19 State Road 100, either side of Old King's Road, do you
20 know of any residential building permit that's been
21 issued since 1979?

22 A I haven't had occasion to look for any.

23 Q Do you know if there have been any
24 subdivisions platted in the area I've just described
25 since 1979?

1 A Not that I'm aware of.

2 Q Do you know of any sales that have occurred in
3 that area where the purchase price of the land, since
4 1979 to date, was \$4,000 or more?

5 A Define the geographical limits again.

6 Q The Woodlands subdivision and the sewer plant,
7 Utility Drive, where you go to meet Palm Coast
8 Utilities, continuing south all the way to State Road
9 100 on either side of Old King's Road, east or west.

10 A No, sir. It's all under the control of ITT,
11 with very few exceptions, such as the Tidwell estate.

12 Q But you know of no sales of any of that land
13 that was \$4,000 an acre or more, at anytime from 1979 to
14 date?

15 A Property hasn't been for sale.

16 Q Hasn't been for sale?

17 A Not during those times that we're aware of,
18 not the ITT parcels.

19 Q And you're positive of that?

20 A Yes. Based on our research, there were a few,
21 perhaps, outparcels.

22 MR. HADEED: I don't have any further
23 questions. Thank you.

24 COMMISSIONER DEASON: Mr. Reilly?

25 MR. REILLY: We would not add any questions to

1 those asked by Mr. Hadeed.

2 COMMISSIONER DEASON: Mr. Melson.

3 MR. MELSON: No questions.

4 COMMISSIONER DEASON: Staff?

5 MS. REYES: Could we have just a few minutes?

6 I think we're going to try to narrow down some of our
7 questions.

8 COMMISSIONER DEASON: In that case, I will
9 give you 30. I am going -- if anybody wants to order
10 out for lunch, now would be the appropriate time, and it
11 would be permissible to bring sandwiches or things of
12 that nature into the hearing room. We are going to take
13 a very short break at this time. We will reconvene at
14 1:00.

15 (Hearing recessed from 12:30 p.m. until
16 1:05 p.m.)

17 COMMISSIONER DEASON: Call the hearing back to
18 order.

19 CROSS EXAMINATION

20 BY MS. REYES:

21 Q Good afternoon, Mr. Spano.

22 A Good afternoon.

23 Q Isn't it true that you have never testified
24 before this commission about either your 1985 appraisal
25 or your 1990 appraisal?

1 A Yes, ma'am, that's correct.

2 Q And isn't it true that you used the highest
3 and best use of land to appraise the spray field and the
4 RIB site?

5 A That's correct.

6 Q Isn't it also true that residential
7 development was the highest and best use of the spray
8 field which you appraised in 1985?

9 A That was our estimate of highest and best use,
10 yes.

11 Q And isn't it true that speculative investment
12 for future residential development was the highest and
13 best use of the RIB site which you appraised in 1990?

14 A Yes.

15 Q Could you please explain how a highest and
16 best use of residential development is different than
17 speculative investment for future residential
18 development?

19 A It's a matter of semantics. Actually, in this
20 particular context and within these two reports, they
21 are one in the same.

22 Q Would you agree that land whose highest and
23 best use is speculative investment for future
24 residential development would have a lower market value
25 than land whose highest and best use is residential

1 development?

2 A If you're talking about discounting for the
3 fact that a particular parcel of land will not be
4 developed until some time in the future, that is taken
5 care of in the comparative analysis, and especially in
6 this case if the parcel were ready and could be used at
7 that specific point in time, the value could have been a
8 good bit higher.

9 Q Isn't it true that none of your comparables
10 from the 1990 appraisal were properties which you
11 classified as speculative investment for future
12 residential development?

13 A Yes, ma'am. They were more appropriately
14 suited to development which would occur at a closer
15 point in time than the subject properties.

16 Q And why did you not use any comparables which
17 would have been classified as speculative investment for
18 future residential development?

19 A We felt that the sales that we did find were
20 the best comparables available. We investigate a wide
21 variety of sales, and the process involves weeding out
22 the -- coming up with the sales which we feel have the
23 highest degree of comparability which were the sales
24 that we included in this report.

25 Q Did you make any adjustments to your

1 comparables to recognize that the RIB site's highest and
2 best use is speculative investment with potential for
3 residential development, and not residential
4 development?

5 A Indirectly, was it taken into account, yes, it
6 was. Is there any specific delineation or percentage or
7 dollar adjustment? No.

8 Q Can you explain why the highest and best use
9 of these two sites changed from residential development
10 in your 1985 appraisal to speculative investment for
11 future residential development in your 1990 appraisal?

12 A Okay, I thought I had clarified that a moment
13 ago, that it was a matter of semantics, and that as far
14 as we were concerned, the terms were actually the same,
15 that the 1985 was also speculative. Perhaps, again, we
16 should have clarified that a little bit more. It was
17 obviously not ready for development at that specific
18 point in time, and there would be a holding period
19 required before economic conditions would warrant or
20 permit development. I think that's somewhat implicit
21 with any developer because we have to assume that this
22 property is placed for sale on the open market to a
23 potential developer or investor looking for this
24 particular type of property, and implicit in that due
25 diligence on behalf of one of those parties, it's very

1 obvious that they would have to wait a period of time
2 before they would develop the property.

3 Q In your 1990 appraisal, isn't it true you did
4 not consider the proximity of the spray field to the new
5 RIB site?

6 A Yes, ma'am. Well, let me back up for a
7 moment, if I may. It obviously was in existence, and,
8 yes, we did consider it, but we did not feel -- we have
9 appraised other parcels with somewhat similar scenarios,
10 and with the inclusion of appropriate buffer areas, we
11 didn't feel that it really had any impact, so we didn't
12 consider it any further than that, may have perhaps been
13 a better response.

14 Q And do you have any knowledge of Palm Coast's
15 purchase of an additional five acres of land as a buffer
16 for the RIB site in 1995?

17 A No, ma'am, I'm not familiar with that.

18 Q Let's assume for a second that we have two
19 comparables which are identical in every respect except
20 for their distance from the site being appraised. Isn't
21 it true that a comparable sale which is farther from the
22 site which is being appraised is less reliable as an
23 indicator of fair market value than a sale which is
24 closer to the subject site?

25 A Not necessarily.

1 Q And why not?

2 A Well, you did not qualify the -- you know, you
3 indicate two comparable sales, but additional qualifiers
4 have to be placed on that, because irregardless of where
5 a particular comparable sale may be located, if it's
6 impacted by the same market forces, such as --
7 especially supply and demand -- that even a sale
8 somewhat remote could be a better indicator of value
9 than a property which is in closer proximity to your
10 property, if the demand -- again, if the dynamics of the
11 real estate market are more comparable. So you simply
12 can't just take several properties and compare them
13 against each other without looking at a larger picture,
14 so to speak.

15 Q Right. And my hypothetical assumes that all
16 factors are equal between the two comparables. And
17 we're looking at the single factor of distance in
18 relation to the subject site being appraised.

19 A If they were basically identical except for
20 distance, then, yes, you would typically tend to use the
21 closer sale, certainly.

22 Q On Page 24 of your 1985 appraisal.

23 A Yes, ma'am.

24 Q You estimate the land value to be \$4,375.

25 A I'm sorry, I must have the wrong page number.

1 Would you repeat that?

2 Q Page 24 of your 1985 appraisal.

3 A I'm sorry, I had the wrong report. That's
4 correct.

5 Q This figure is not an average of the
6 comparable sales which you discuss in this report,
7 correct?

8 A It is not an average, no.

9 Q Isn't it true that this figure is a weighted
10 figure?

11 A Yes, ma'am, it is.

12 Q And isn't it true that the reason this
13 weighted figure is not discussed or explained in your
14 appraisal report is because the figure is based solely
15 on your subjective judgment?

16 A Yes, ma'am, that's what we're paid for.

17 Q On Page 31 of your 1990 appraisal.

18 A Yes.

19 Q You indicate under the utility's discussion
20 section that it would cost approximately \$328,000 to
21 extend water lines to the RIB site, and the cost to
22 provide sewer would have been around \$106,000?

23 A Yes, ma'am.

24 Q On Page 31 you also indicate that comparable
25 sale 0359-0273 did not have municipal utilities

1 available to it. Do you know what would have been the
2 cost to extend utilities to this comparable?

3 A We would have had that information at the time
4 that we did this report. I don't have it with me, nor
5 is it in our -- what file documentation we have
6 retained.

7 Q So you actually quantified the cost of
8 extending lines on your comparables?

9 A Yes, ma'am. It's obviously another factor of
10 comparison.

11 Q On Page 32 of your 1990 appraisal, you state
12 that a downward adjustment is indicated for comparable
13 sales 0391-0488 and 0406-0007. Isn't it true that this
14 adjustment was needed to recognize the difference in
15 cost between providing utility service to the
16 comparables and the RIB site?

17 A Okay, I can't find that reference. Would you
18 repeat the page?

19 Q It's Page 32 of the 1990 appraisal.

20 MR. SCHIEFELBEIN: Could you be more specific
21 on that page, please? Because I can't find it either.

22 WITNESS SPANO: Are we talking about '85 or
23 '90? (Pause) Page 32 talks about the easement.

24 Q (By Ms. Reyes) It's the very top of the
25 page. "These two sales are therefore considered

1 superior to the subject and a downward adjustment is
2 indicated."

3 A Okay, extending over from Page 31.

4 Q That's correct.

5 A Yes, ma'am. I've forgotten your initial
6 question.

7 Q That's all right. Isn't it true that this
8 adjustment was needed to recognize the difference in
9 cost between providing utility service to the
10 comparables and the RIB site?

11 A Did they require an adjustment? Yes.

12 Q And was this adjustment --

13 A Okay, I'm sorry. Took me a second to find the
14 references. Yes, obviously both of those sales were
15 superior to the appraised property with respect to the
16 utilities. So they were superior and they did require a
17 downward adjustment for that factor.

18 Q How much of a downward adjustment did you
19 make?

20 A I don't have that information.

21 Q Didn't sale 0391-0488 cost \$7,562 per acre?

22 A Yes, ma'am.

23 Q And you appraised the RIB sight at \$7,000 per
24 acre?

25 A That's correct.

1 Q Does the \$562 difference per acre, is that the
2 discount that you took into consideration in this
3 adjustment?

4 A No, ma'am. There are other comparative
5 factors that need to be applied to that particular
6 sale. Utilities is just one factor that needed to be
7 adjusted for. This was also a market condition and a
8 locational adjustment required.

9 Q So what we can say, then, is the adjustment
10 for the utility factor was obviously less than \$562 per
11 acre?

12 A No. It could have been higher than that, but
13 then offset by some of these other adjustment factors.
14 So it could have been higher, and it could have been
15 adjusted downward.

16 Q Okay.

17 A Again, that is data that was purged from the
18 file, and I don't want to attempt to recreate something
19 that we did six years ago and come up with something
20 that isn't -- wasn't true in fact at that time.

21 Q Why did you not determine the cost of
22 providing water and sewer service to the spray field
23 site which you appraised in 1985?

24 A Didn't really think -- again, trying to
25 recollect our thought processes at that particular time,

1 that parcel, obviously, would not be suitable for actual
2 physical development until some time in the future, at
3 which point we would normally assume that water and
4 utilities would have been extended to this site, or
5 perhaps closer. An alternative would have been to
6 install septic tank, drain fields and an on-site water
7 supply system, which many small subdivisions do. So at
8 that particular point, again just trying to recollect
9 our thought processes at that time, it was not an issue
10 of paramount importance because there are alternatives
11 to utilizing water and sewer. There are other sources
12 for waste disposal and water supply.

13 Q Isn't it true that you did not evaluate the
14 cost of providing utility service to the comparable
15 sales in your 1985 appraisal?

16 A Give me just a second to go back to that, if
17 you would. (Pause)

18 Again, not being able to recollect file
19 memorandums and that sort of documentation, again, in
20 these small parcels, 70 to 80 acres on the fringes of
21 development at that particular time in time, it's not at
22 all unusual to utilize a package plant, and again, an
23 on-site well system, and in that -- which is fairly
24 nominal in cost. And therefore it was -- again, trying
25 to rethink our comparative thought processes at that

1 time, we most probably did not feel that it was a real
2 big issue, for lack of a better word. I wish I could be
3 more responsive, but that's my best recollection. If we
4 had thought that it did require elaboration, then we
5 would have probably included a separate column for
6 that. And it very well could have been included in, for
7 instance, topographical features, even though it could
8 have said topo utilities, and again, the adjustments
9 perhaps could have offset each other. But again, I do
10 not have the benefits of that documentation, so I don't
11 want to mislead you with attempting to recreate, 11
12 years later, our thought processes at that time.

13 Q Isn't it true that you believe there is no
14 standard or upper limit on how far away a comparable
15 sale can be from the site which is being appraised?

16 A No, that's not true. And it is different and
17 it is certainly dependent on the type of property that
18 you're appraising. If you're talking about some
19 improved property, some special use properties, you may
20 have to go several states away, or perhaps the entire
21 other side of the country.

22 With respect to vacant land parcels such as
23 this, obviously there are -- is plenty of sales data
24 available in a neighboring county. Now there would have
25 been no reason to go further than that, simply because

1 there was data. If there had not been data available in
2 Volusia County, we would have continued to expand our
3 search, but there was plenty of data available in
4 Volusia.

5 Q Could we have a moment? (Pause)

6 Isn't it true that sale 0391-0488 from the
7 1990 appraisal has been referred to as the jail site?

8 A One moment, let me get to that. 0391-0488,
9 correct.

10 Q That's correct.

11 A Yes, ma'am.

12 Q Isn't it true that this property is located on
13 the edge of the city of Bunnell?

14 A Yes, ma'am, it is.

15 Q And isn't it true that the RIB site is not
16 located within any city or on the edge of any city or
17 development?

18 A Correct. It's within the Palm Coast
19 community, not a city.

20 Q Isn't it true that the jail site is located
21 closer to other commercial and residential developments
22 than the RIB site?

23 A Yes, it is, but that's not the end of the
24 story. If I may be allowed to elaborate.

25 Q Sure.

1 A The -- and again, I ask for the indulgence of
2 the Commission and the attorneys involved in these
3 proceedings. Palm Coast community is -- these two
4 particular sites are in what we -- the way we look at
5 it, are basically in the core area of Palm Coast. They
6 are prime development sites, again, as far as I'm
7 concerned, again long term -- or not necessarily long
8 term, but speculative residential development sites. If
9 these parcels placed on the open market were available
10 for purchase by an outside developer, non-ITT related,
11 the acquisition of these -- either one of these two
12 parcels would be a coup, for lack of a better word,
13 simply because of the growth of the Palm Coast area, the
14 potential for growth in the Palm Coast area, as opposed
15 to most other areas, including Bunnell, of the Flagler
16 County vicinity.

17 The Commission does not have the benefits of
18 being intimately familiar with the county, nor do most
19 of the attorneys that are here. They don't have, again,
20 the familiarity with the factors affecting development
21 in Flagler County as a whole. But the Palm Coast
22 community itself, especially the area east of 95, is
23 prime real estate. It's just that it has not been
24 offered in the market, or on the open market, until
25 recent times for acquisition by private developers.

1 And, to me, this is an extremely important fact. To be
2 able to pick up a parcel within the ITT core area only a
3 mile and a half south of Palm Coast Parkway, it would be
4 an incredible opportunity. And that's the extent of my
5 summation.

6 Q Being passed out is an exhibit described as a
7 listing of appraisal for Palm Coast Utility
8 Corporation.

9 COMMISSIONER DEASON: Do you wish to have this
10 identified.

11 MS. REYES: Yes, please.

12 COMMISSIONER DEASON: Exhibit 40.

13 (Exhibit No. 40 marked for identification.)

14 Q (By Ms. Reyes) Mr. Spano, these are
15 appraisals which you have performed for Palm Coast,
16 correct?

17 A Yes, ma'am. It's a list that I furnished to
18 your office.

19 Q Can you explain to me why the appraised values
20 for most of the properties listed in Item No. 7 are
21 lower than the appraised value of Item No. 1?

22 A Location.

23 Q It's the first page.

24 A I'm sorry, I meant the location of the -- the
25 location of the properties themselves.

1 Q Oh, okay.

2 A Obviously they do not enjoy the same location
3 that our particular properties have. They are basically
4 portions of lots.

5 Q Aren't values per acre, though, usually lower
6 for larger parcels than for smaller parcels of land?

7 A Not necessarily. It depends on the type of
8 property that you're talking about, but also impacted by
9 especially location. As a general rule, again, if
10 you're talking about exactly similar properties, the
11 only disparity being size, then yes, there would be an
12 economy of scale, normally.

13 Q Referring to Item 7 again, the fifth appraisal
14 is described as damages. Can you explain what this
15 means?

16 A Again, just to the best of my recollection,
17 the -- to the best of my recollection, some of these
18 particular well sites involved portions of lots -- could
19 have perhaps been at the rear of the lot with an
20 easement extending to that parcel, and by virtue of that
21 easement and the location of the well site, there could
22 have been a bisection of the property, leaving basically
23 an unusable remainder, which would have constituted
24 damages. That would be a normal scenario, and I'm sure
25 somewhat similar circumstances would have been apropos

1 to these particular items. But usually it implies an
2 unusable or lower value remainder due to use
3 limitations.

4 Q On Page 31, Line 10 of your testimony.

5 A Is this the prefiled rebuttal testimony?

6 Q That's correct.

7 A I'm sorry, Page 31?

8 Q Right.

9 A Line 10?

10 Q That's correct.

11 A Yes.

12 Q You state that, "To use a sale to a
13 governmental body, it must be confirmed whether the sale
14 was made under threat of condemnation."

15 A Yes, ma'am.

16 Q The jail site was not sold under threat of
17 condemnation, correct?

18 A To the best of our knowledge. And confirming
19 sources indicated it was not under threat of
20 condemnation.

21 Q Is the same true for the school board site?

22 A Yes, ma'am.

23 Q Now, if I could have you refer to the exhibit
24 marked CDS-5. I believe -- that's Exhibit 39.

25 A Okay, these are Mr. Sapp's sales, am I

1 correct?

2 Q I'm specific -- the letter that was dated July
3 12th, in which you discussed Mr. Sapp's comparables.

4 A Yes, ma'am.

5 Q If you could please look at sale OR-348 of
6 this letter. It's on the second page.

7 A Pellicer to Wright, correct.

8 Q Can you explain why you did not use this sale
9 as one of your comparables for the 1990 appraisal?

10 A We had better sales available, for one
11 reason. Number two, and again, this is -- this is why
12 the retention of qualified appraisers, attorneys or
13 whatever, endeavor, is extremely important. We did not
14 feel comfortable with that sale. We confirmed that
15 sale. The grantee, Mr. Wright, indicated that he got a
16 super good deal, and that just concerns me a little
17 bit, that I just don't feel comfortable hearing those
18 kinds of things. I mean how much do you adjust for it?
19 So we would prefer not to use that sale rather than
20 having to try and attempt to make an adjustment not
21 based on fact or documentation or some more solid
22 information. So we just felt uncomfortable with the
23 sale as a comparable. We did use it in the jail site
24 appraisal simply to indicate a minimum value limit.

25 Q What did you find to be the highest and best

1 use of the sale in your appraisal which you made for the
2 county?

3 A I'm sorry, which sale are you referring to?

4 Q The sale we were just talking about, sale
5 OR-348.

6 A Well, Mr. Wright purchased it for industrial
7 development, which would have required rezoning, which
8 also obviously impacted the sale price, because he would
9 have to go through the rezoning process.

10 Q And that's what you labeled to be the highest
11 and best use was industrial; is that correct? Am I
12 understanding?

13 A I don't recall as -- probably not. We
14 would -- again, I do not have that -- now we're talking
15 about a whole entirely different appraisal. We're
16 talking about the jail site appraisal, not the subject
17 of these proceedings. I do not have that appraisal with
18 me. I was not asked to bring that appraisal. I cannot
19 recall what we -- probably speculative residential
20 development simply because that was the existing zoning
21 at time of sale. But that was not Mr. Wright's
22 intention.

23 Q And was this sale made between a willing buyer
24 and a willing seller?

25 A To the best of our knowledge, yes, ma'am.

1 Q Was the sale of this land under any duress at
2 all?

3 A Not that we're aware of. We prefer, normally,
4 in the normal course of appraising these things, we're
5 not always able to confirm with both parties, and when
6 we can't do that, we prefer to confirm with the grantee,
7 simply because that gives us the real intended use of
8 the property, which I think in most cases sheds much
9 more light on the motivation behind the acquisition.

10 Q Is it normal for a buyer to accept the
11 seller's appraised value, or would a buyer get his own
12 appraisal and work out a compromise on value?

13 A Would a buyer normally get an appraisal?
14 Depends on the type of property. For commercial
15 properties it's very common, especially, obviously, if
16 they're going for institutional financing. We have a
17 number of clients that just do it as a matter of
18 self-preservation to make sure that they're not paying
19 too much. And in many cases, or in some cases, I should
20 say, we are asked by various realtors to provide
21 appraisals so they can properly list the property at an
22 equitable figure that they know will be received by the
23 market to effect a sale within a reasonable period of
24 time. So for the more sophisticated buyers and sellers,
25 when the particular property and the sale price, or the

1 asking price, warrants an appraisal, it's quite common.

2 Q Thank you, Mr. Spano. Staff has no further
3 questions.

4 COMMISSIONER DEASON: Redirect?

5 MR. SCHIEFELBEIN: If I could have a moment,
6 please.

7 COMMISSIONER DEASON: Surely.

8 REDIRECT EXAMINATION

9 BY MR. SCHIEFELBEIN:

10 Q Mr. Spano, I don't know if this was clear or
11 not in your discussion of this deposition exhibit. Was
12 this marked as an exhibit?

13 MS. REYES: Yes, it was. I think it was
14 identified as Exhibit 40.

15 COMMISSIONER DEASON: Yes.

16 Q (By Mr. Schiefelbein) Thank you. Is this a
17 listing of appraisals that your firm has prepared for
18 Palm Coast Utility and/or its affiliates since 1985?

19 A Yes, sir, subject to check. I have not
20 reviewed it line by line, but I assume it is the same,
21 subject to check, yes, sir, that's correct.

22 Q Now, is Palm Coast or ITT a -- did they
23 comprise a large percentage of your appraisal practice,
24 your work for them over the years?

25 A No, sir, they do not.

1 Q In an average year, how many commercial
2 properties do you perform appraisal services for? Let's
3 first say commercial and industrial.

4 A Depends on the year you're talking about,
5 because we now are very selective about the clients we
6 take. We don't do as many as we used to. We don't have
7 to.

8 Q Let's say, can you give an average figure from
9 roughly the last decade?

10 A We would typically average, I believe, in the
11 120 to 170 range, somewhere in there. I know I was
12 asked that question during deposition, and I did not go
13 back and check those numbers against my logs, but that
14 range, I think, would be reasonable.

15 Q And that wouldn't include residential
16 appraisals?

17 A No, sir, it would not.

18 Q And what would be a good annualized figure for
19 the last decade as far as residential appraisals per
20 year that your firm prepares?

21 A Annualized over that period of time, probably
22 200 to 250, probably as low as 150 up to a high of 900
23 to a thousand.

24 Q So probably a ball park for the last ten years
25 or so, probably 2,000 appraisals that your firm has

1 prepared?

2 A Yes, sir, subject to check.

3 Q There's been some examination by both
4 Mr. Hadeed and Staff regarding location of comparables,
5 and how far is too far, how -- and so forth. There's
6 been discussion about St. Johns County, Volusia County,
7 city of Bunnell. Now, is it fair to say that these
8 parcels that are at issue in this proceeding are within
9 the Grand Central? That's called the Grand Central area
10 of Palm Coast?

11 A Grand Haven.

12 Q Grand Haven, is that correct?

13 A Correct.

14 Q Now, looking in that neighborhood of Grand
15 Central, let's say from Palm Coast Parkway, would that
16 be to the north?

17 A Approximately a mile and a half to the north.

18 Q And State Road 100 to the south. How far is
19 that, about?

20 A Two to three miles.

21 Q So a few square mile area. Isn't it true that
22 parcels, during a comparable period of time as this RIB
23 site and spray field, have sold for vastly higher sums
24 than what you've appraised these parcels at?

25 A Yes, sir, that would be a correct statement.

1 Q Could you give us a feel for what some of
2 those prices, purchase prices, might have been in the
3 last, say, five to ten years, per acre?

4 A In the last five to ten years? Probably from
5 a low of \$30,000 an acre. And again depending on
6 location. Palm Coast Parkway and State Road 100 are
7 both commercial corridors. So you're now talking --
8 including that corridor, you're now talking about fast
9 food outparcel sites, talking about shopping center
10 sites. Again, subject to check, there are numerous
11 sales up in the 135 to 150 -- \$150,000 per acre range,
12 and it seems to me there have been a number higher than
13 that, but I would have to research my files to document
14 that.

15 Q And that's all within one to three miles, you
16 say?

17 A Yes, sir.

18 Q But you didn't use those parcels in your
19 appraisals, did you?

20 A They were not comparable, so I did not use
21 them.

22 Q I've got nothing further.

23 COMMISSIONER DEASON: Exhibits?

24 MR. SCHIEFELBEIN: Yes, sir. I would move
25 Exhibits 38 and 39.

1 MS. REYES: Staff moves Exhibit 40.

2 COMMISSIONER DEASON: Let's deal with 38 and
3 39. I know there was a previous objection. We
4 identified 39. Is there a continued -- is there an
5 objection to the admittance of Exhibit 39?

6 MR. REILLY: For the reasons previously
7 stated, yes, we object.

8 MR. HADEED: On grounds of irrelevancy, as
9 previously stated.

10 COMMISSIONER DEASON: Those objections are
11 noted for the record, and Exhibit 39 is admitted,
12 Exhibit 38, as well, and without objection Exhibit 40 is
13 admitted.

14 (Exhibit Nos. 38, 39 and 40 received into
15 evidence.)

16 MR. HADEED: Excuse me, sir. Do I not get an
17 opportunity to examine based on his redirect? I'm
18 sorry, I thought I did.

19 COMMISSIONER DEASON: That's not standard
20 practice, at least not at the Commission it's not. If
21 there is something that --

22 MR. HADEED: Let me do this then, in lieu.
23 Let me make an objection -- because I presumed that I
24 would have a chance to ask. Let me make an objection to
25 the question that was proffered by counsel relative to

1 acreage sales within the Palm Coast Parkway/State Road
2 100 area where there are no facts in the record relating
3 to the acreage values that he recited as ranging from
4 30,000 an acre to 135- to 150,000 an acre.

5 COMMISSIONER DEASON: You're objecting -- I'm
6 trying to understand what you're doing at this point.
7 You're objecting to a question and answer that has
8 already been asked and answered?

9 MR. HADEED: That's correct, on the basis that
10 I thought that I would have the chance to follow up and
11 put that into the context of the area in which the
12 appraisals occurred. In other words, the question was
13 improper because it did not confine itself to the area
14 where the properties are specifically located, the areas
15 that he has identified in his appraisals.

16 COMMISSIONER DEASON: Mr. Hadeed, I'm just
17 going to caution you, or suggest, that if you find a
18 question objectionable, to make your objection at the
19 point that the question is made, and we'll deal with
20 that. And if we find it necessary, well then we may
21 allow you the opportunity, after having dealt with that
22 objection, to go into further cross examination on an
23 area, if the counsel is permitted to pursue that area.

24 MR. HADEED: I will do so in the future.
25 Thank you, Mr. Chairman.

1 MR. SCHIEFELBEIN: Excuse me, Commissioners.
2 May Mr. Spano be excused?

3 COMMISSIONER DEASON: Yes, he may.

4 WITNESS SPANO: Thank you, Commissioners.

5 (Witness Spano excused.)

6 COMMISSIONER DEASON: You may call your next
7 witness.

8 MR. GATLIN: Mr. Seidman.

9 FRANK SEIDMAN

10 was called as a witness on behalf of Palm Coast Utility
11 Corporation, and having been duly sworn, testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. GATLIN:

15 Q Mr. Seidman, have you been sworn?

16 A Yes, I have.

17 Q Were you present at the hearings over in Palm
18 Coast on July 1st and 2nd?

19 A Yes, I was.

20 Q Did you hear a customer testify about her
21 concern that there was not a local office in which they
22 could pay their bill?

23 A Yes, I heard that.

24 Q And did you hear Commissioner Johnson ask for
25 a report on that?

1 A Yes.

2 Q What did you find out?

3 A Company personnel did some background checking
4 and provided me with some information. There is
5 basically three ways that customers can pay their bills
6 at Palm Coast. The first way, and most preferable for
7 them, and most cost-effective, is by mail. The second
8 way is at local drop boxes. There is a drop box at the
9 office, Palm Coast, and there's a drop box at the Publix
10 shopping center. And the third way is in the local
11 office. Palm Coast will accept payments at the local
12 office, especially if they are related to things like
13 cutoffs, something that would be to the customer's
14 advantage to have that transaction taken care of
15 immediately.

16 With regard to the use of the drop boxes, just
17 some background statistics. There's about 12,000 or so
18 bills per month that are processed in Palm Coast. Prior
19 to them going to using mail as the primary means of
20 paying bills, about 35 percent of the customers utilized
21 the drop boxes. Since they've gone to the mail as a
22 preference, that's dropped to about 5 percent. And it's
23 evenly divided between use of the drop box at the office
24 and at Publix.

25 Q Did you hear a customer testify as to some

1 concern about the maintenance of the fire hydrants?

2 A Yes. I don't recall the gentleman's name, but
3 there was someone that complained that the hydrant on
4 his street --

5 Q He had not seen any maintenance on the fire
6 hydrants?

7 A Right. I believe he said that nobody had come
8 by, and how would they know if the hydrant operated if
9 they don't come by and maintain it. We had the Company
10 records checked, and the hydrant on his street has been
11 flushed at least once a month for 14 out of the last 18
12 months.

13 Q There was another witness, Mrs. Soaper, I
14 believe, concerning the quality of water, that she
15 thought it was not up to standards, and she gave her
16 address. Did the Company make a check, a test check on
17 that water?

18 A Yes, they did. They made a test check the day
19 of the hearing.

20 Q What did they find?

21 A The water tested out fine. And the records
22 indicate that she has made several complaints in the
23 past. And they've tested the water at each of those
24 incidents, and it's always tested out fine with regard
25 to quality and color and odor. They can't find anything

1 with regard to the effect on water quality from their
2 lines. They have indicated to her that she might want
3 to have a plumber check to see if there's anything
4 internally in her plumbing. But other than that, all of
5 the tests have been favorable.

6 Q Had any of her neighbors complained?

7 A I'm not aware of any.

8 Q Mr. Seidman, have you prepared rebuttal
9 testimony and exhibits for presentation in this case?

10 A Yes, I have.

11 Q And the rebuttal testimony consists of 60
12 pages; is that correct?

13 A That's correct.

14 Q Are there some deletions to be made in this
15 testimony?

16 A Yes, there are.

17 Q Page 29?

18 A Well, there is -- I've got corrections at Page
19 16.

20 Q Right. What is that one?

21 A That is to remove a portion of testimony
22 concerned with an issue that was dropped at the
23 prehearing conference and that would call for the
24 deletion of Lines 12 through 25 on Page 16, and Lines 1
25 through 5 on Page 17.

1 Q Okay.

2 A Then I have a correction, let's see now, at
3 Page 25, Line 15, after the word MFR, near the end of
4 the line, add the phrase "and some recurring employee
5 benefits."

6 Q And some what?

7 A Recurring employee benefits. Also on Page 25,
8 at Line 17, change the number 3,281 to 10,369. On Line
9 21 of the same page, change the number 9,893 to 17,716.

10 The next correction is at Page 29, and again,
11 this is a deletion of testimony dealing with an issue
12 that was dropped at the prehearing conference. And that
13 would call for deletion of Lines 16 through 24 on Page
14 29, and Lines 1 through 24 on Page 30 and Lines 1
15 through 3 on Page 31.

16 The next correction is on Page 46, on Line 6,
17 change the number 88 to 86. On Line 15, change the
18 number 88 to 86. That's all the corrections in the
19 testimony.

20 Q Look on Page 56, the top question there.

21 A Oh yes.

22 Q The first question and answer. Excuse me.

23 A Yes, the question and answer on Page 56, Lines
24 1 through 13, should also be deleted because it also
25 deals with an issue that was dropped.

1 Q Are there any other corrections?

2 A No, sir.

3 Q If I were to ask you those same questions
4 today, with the corrections, would that be your
5 testimony?

6 A Yes, sir.

7 MR. GATLIN: Mr. Chairman, we ask that it be
8 inserted into the record as though read.

9 COMMISSIONER DEASON: Without objection, the
10 prefiled rebuttal testimony will be inserted into the
11 record.

12 Q (By Mr. Gatlin) Along with your testimony,
13 there are some exhibits, FS-6 through FS-32B. Are those
14 your exhibits?

15 A FS-6 through?

16 Q 13B, boy.

17 A Yes, sir.

18 MR. GATLIN: May we have those identified,
19 Mr. Chairman?

20 COMMISSIONER DEASON: Yes, composite Exhibit
21 41.

22 (Exhibit No. 41 marked for identification.)

23 WITNESS SEIDMAN: Let me also indicate that
24 Exhibit FS-9, I submitted some corrections and handed
25 them out at the July 2nd hearing. There were some

1 numerical corrections.

2 COMMISSIONER KIESLING: Could I get you to go
3 back to the exhibits, because I'm trying to find them
4 all. And attached to my copy of the rebuttal I have 6
5 through 11. And then under separate cover I have FS-12.

6 MR. GATLIN: Yes.

7 COMMISSIONER KIESLING: Where do I find
8 FS-13?

9 MR. GATLIN: It was filed with the Commission
10 on June 28th. That was the Friday, the deadline on the
11 exhibits before the hearing started on Monday. And
12 there was a 13A and a 13B.

13 COMMISSIONER KIESLING: I thought 13B you just
14 handed us. It wasn't attached to his testimony, was
15 it?

16 MR. GATLIN: 13B was filed on July 12th.

17 COMMISSIONER KIESLING: Right. That's the
18 ones you just handed us today. And where was 13 and
19 13A?

20 MR. GATLIN: 13A and 13B take the place of
21 13. 13 should be deleted. In our cover letter when we
22 filed it, 13 -- we said FS-13A provides more detail for
23 projected rate case expense, and then we said that it
24 was -- and then when we filed 13B, that was an addition,
25 on July 12th. Don't have them? Okay.

1 COMMISSIONER KIESLING: If I'm the only one
2 that doesn't have them, then it's my problem.

3 COMMISSIONER DEASON: I have 13B. That was
4 what was handed out today. And 13B is a supplement to,
5 or takes the place of, 13A?

6 MR. GATLIN: Well, it's a supplement to 13A,
7 and as we explained in our cover letter, 13A and 13B are
8 cumulative, and 13 we're not offering that now, just 13A
9 and B.

10 COMMISSIONER DEASON: I don't have 13A
11 either.

12 MR. SCHIEFELBEIN: May I, commissioners? We
13 did prefile it on June 28th, original and 15, but I
14 would be glad to lend or give you all my copy of 13A so
15 at least you have something.

16 COMMISSIONER DEASON: Does Staff have extra
17 copies?

18 MR. EDMONDS: I have one copy as well.

19 COMMISSIONER DEASON: Now let me make sure the
20 record is clear. Mr. Gatlin, it is your intent to have
21 exhibits FS-6 through FS-13B, which also would include
22 13A, and that's to all be included within composite
23 Exhibit 41?

24 MR. GATLIN: That's my request.

25 COMMISSIONER DEASON: Those exhibits will be

1 so identified.
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1 REBUTTAL TESTIMONY OF FRANK SEIDMAN
2 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
3 REGARDING THE APPLICATION FOR INCREASED RATES FOR
4 PALM COAST UTILITY CORPORATION
5 IN FLAGLER COUNTY
6 DOCKET NO. 951056-WS
7

8 **Q. Please state your name, profession and address.**

9 A. My name is Frank Seidman. I am President of
10 Management and Regulatory Consultants, Inc.,
11 consultants in the utility regulatory field. My
12 mailing address is P.O. Box 13427, Tallahassee, FL
13 32317-3427.

14

15 **Q. Have you previously submitted direct testimony in**
16 **this proceeding?**

17 A. Yes.

18

19 **Q. What is the purpose of your rebuttal testimony?**

20 A. To respond to the direct testimony of Public
21 Counsel witnesses Kimberly H. Dismukes and Ted L.
22 Bidby and Commission staff witness Robert F.
23 Dodrill.

24

25

26

1 **A. REBUTTAL TO TESTIMONY OF KIMBERLY DISMUKES**

2 **Q. Would you please address the testimony of witness**
3 **Dismukes?**

4 **A. Yes. Ms. Dismukes has organized her testimony into**
5 **the subjects of Cost of Capital, Revenue**
6 **Adjustments, Expense Adjustments and Rate Base**
7 **Adjustments. I will address it in the same order.**

8

9 **Cost of Capital**

10 **Q. At page 3 of her testimony, Ms. Dismukes's proposes**
11 **to impute \$125,569 in ITC's. Do you agree with that**
12 **adjustment?**

13 **A. Yes. As Ms. Dismukes points out, in Order No.**
14 **22843, the Commission determined that the utility**
15 **did not claim on its books certain amounts of ITC**
16 **in 1978 to which it would otherwise have been**
17 **entitled, and imputed the unamortized amount. Ms.**
18 **Dismuke's adjustment carries that unamortized**
19 **amount forward to the 1995 test year. That**
20 **adjustment was not made on the books as it is**
21 **imputed and not realized, but we will stipulate to**
22 **its being recognized for ratemaking purposes.**

23

24 **Q. At pages 4 through 7 of her testimony, Ms.**
25 **Dismukes recommends that nonused CIAC be included**

1 in the capital structure as cost free capital. Do
2 you agree with this recommendation?

3 A. No. This is the same recommendation that Public
4 Counsel made in PCUC's last rate case, Docket No.
5 890277-WS which, as Ms. Dismukes notes, was
6 rejected by the Commission in Order No. 22843. The
7 facts in this case are no different from the last
8 case regarding this issue.

9
10 Q. In rejecting Public Counsel's position in Order No.
11 22843, the Commission said, "We do not believe that
12 nonused CIAC should be considered in capital
13 structure. Mr. DeWard could cite no precedent for
14 such treatment." (underlining added) Has Ms.
15 Dismukes found any precedent for such treatment?

16 A. No. She specifically states at page 7 of her
17 testimony that no such precedent exists. There is
18 no basis for the Commission to reverse its
19 decision.

20
21 Q. What is the primary reason that the Commission
22 should continue to reject this adjustment?

23 A. The adjustment proposed by Ms. Dismukes violates
24 utility regulatory accounting principles and is
25 without precedent in this jurisdiction or any other

1 jurisdiction of which we are aware. Her proposal
2 is contrary to the concept developed and
3 consistently applied in Florida, namely to treat
4 CIAC as in offset to plant in service in rate base.
5 CIAC has not been treated as a part of the
6 utility's capital structure. NONUSED CIAC is not
7 and should not be an offset to used plant in rate
8 base, but Ms. Dismukes' proposal effectively does
9 just that. It is contrary to any regulatory
10 philosophy with which I am familiar to consider
11 NONUSED components in determining the revenue
12 responsibility of current customers. Ms. Dismukes'
13 proposal to make NONUSED CIAC a part of capital
14 structure results in a discriminatory mismatch of
15 funds by crediting CIAC from future customers
16 against the cost of serving current customers.

17

18 **Q.** Ms. Dismukes suggests that the Commission should
19 not let precedent stand in its way. Do you agree?

20 **A.** No. It is improper to disregard precedent just
21 because doing so produces a result that Ms.
22 Dismukes would rather see. Ms. Dismukes has not
23 shown that the precedent of offsetting plant with
24 CIAC in determining rate base is improper. She has
25 not shown that there is any precedent to include

1 CIAC, whether used or nonused, in the cost of
2 capital. She has not shown that including nonused
3 components in rate base or the capital structure is
4 proper. In fact, Ms. Dismukes wants CIAC treated
5 both ways. She recognizes used CIAC as a deduction
6 in determining rate base and at the same time
7 recommends NONUSED CIAC to be a part of the cost of
8 capital with respect to that rate base.

9

10 Q. In the last case, the Commission observed that the
11 utility had a significant investment in nonused
12 facilities. Ms. Dismukes points out that in this
13 case it has a smaller investment in nonused
14 facilities. Is this a reason to include nonused
15 CIAC as capital?

16 A. Not at all. All it shows is that investment in
17 nonused plant has been reduced as additional
18 customers have connected to the system over the
19 seven years that have passed since the last rate
20 case. Regardless, the Commission does not set rates
21 for nonused facilities. It sets rates for used
22 facilities. That's what rate base is - the
23 investment of the utility in property used and
24 useful in the public service. This is a fundamental
25 ratemaking concept, universally accepted, and is

1 the requirement under Chapter 367, Florida
2 Statutes. Whether the utility has a large, small or
3 no investment in nonused facilities is of no
4 consequence.

5

6 **Q. How has the relationship of capital to rate base**
7 **changed since PCUC's last case?**

8 **A.** It has improved considerably. In the last case,
9 capital exceeded rate base by \$12.2 million. In
10 this case, capital only exceeds rate base by \$2.1
11 million. However, if some of the proposals by
12 intervenors to reduce used and useful, reduce
13 margin reserve, impute CIAC against margin reserve,
14 etc. are adopted by the Commission, rate base will
15 be reduced and the gap between rate base and
16 capital will increase.

17

18 **Q. In determining rate base, has the company properly**
19 **accounted for all used CIAC?**

20 **A.** Yes it has. All of the CIAC paid by PCUC's current
21 customers has been properly accounted for in the
22 utility's books.

23

1 Q. Were there any exceptions in the Commission staff
2 audit report that would indicate that CIAC was not
3 properly accounted for?

4 A. No.

5

6 Q. Please turn to Ms. Dismukes' Schedule 3. What is
7 your understanding of the purpose of that schedule?

8 A. My understanding of the purpose of the schedule is
9 to show the relationship of nonused CIAC to nonused
10 plant, and specifically that nonused CIAC is
11 greater than nonused plant.

12

13 Q. Do you agree with the relationships presented in
14 the schedule and its conclusion?

15 A. No, for several reasons. Her schedule does not
16 appear to recognize all nonused components nor does
17 it include any means of reconciling those
18 components to the balance sheet and capital
19 structure. It is necessary to reconcile to the
20 capital structure and balance sheet in order to
21 assure that all components are accounted for. I
22 cannot tell whether all components are accounted
23 for or not.

24

25

1 Q. Have you made a determination of used and nonused
2 components and reconciled them to the capital
3 structure?

4 A. Yes. I have prepared Exhibit 41 (FS-6) for that
5 purpose. Exhibit 41 (FS-6) shows all the
6 investment in used and nonused assets and
7 reconciles it with the year end capital structure.
8 All components are accounted for. The entries in
9 the "Y/E 1995" column come directly from the
10 balance sheet and the total agrees with the total
11 unreconciled capital shown in MFR Schedule D-2. The
12 "Used [Rate Base]" column matches adjusted year end
13 rate base as shown on MFR Schedule D-2. Contrary to
14 Ms. Dismukes' conclusion, my exhibit shows that net
15 nonused CIAC is not in excess of net nonused plant.
16

17 Another problem with Ms. Dismukes' Schedule 3 is
18 that it incorrectly assumes that all prepaid CIAC
19 is applicable to the wastewater system. Although
20 all prepaid CIAC is recorded in one CIAC wastewater
21 subaccount, prepaid CIAC does, in fact, include
22 prepayments turned over to PCUC by ITT Community
23 Development Corporation (ITTDCDC) for both water
24 and wastewater. The reason these amounts are not
25 broken out is that funds are turned over to PCUC

1 from the developer in lump sums and the components
2 are not identified until a customer requests
3 service. At that time, the customer's prepayments
4 are specifically identified. For that reason,
5 neither the MFR's nor my Exhibit 41 (FS-6) show
6 water and wastewater prepayments separately.

7

8 **Q. What else does your Exhibit 41 (FS-6) show?**

9 A. It shows that in addition to an investment in
10 nonused plant, net of nonused depreciation, the
11 utility also has an investment in nonused deferred
12 tax debits. When all accounts are reconciled, PCUC
13 has a net investment of some \$2,000,000 in nonused
14 assets, as shown in the column titled "NonUsed" in
15 Exhibit 41 (FS-6).

16

17 **Q. What does this mean as it effects the determination
18 of rates?**

19 A. Nothing. All it reveals is a difference in the
20 timing of the construction of the assets that will
21 be used to eventually serve the total built-out
22 system and the collection of CIAC to be used to
23 offset a portion of that total built-out cost.

24

1 Q. Will a substantial amount of plant additions be
2 required to serve at build out?

3 A. Yes. Palm Coast is platted for some 46,000 lots,
4 but presently serves just under 12,000 customers.
5 Additions will have to be made to the water
6 transmission system, the wastewater PEP system and
7 incremental additions will be necessary for water
8 supply and storage capacity and wastewater
9 treatment and disposal capacity. PCUC has filed,
10 under separate docket, a request to increase its
11 service availability charges (SAC) because the
12 current SAC level will not produce net CIAC equal
13 to 75% of net plant even at the next buildout
14 horizon. Since PCUC strives to prudently phase in
15 its supply, treatment and disposal facilities to
16 match need, a considerable amount of plant will be
17 necessary to serve at buildout.

18

19 Q. What would be the result of the Commission adopting
20 Ms. Dismukes' proposal?

21 A. If Ms. Dismukes' proposal were to be adopted, the
22 cost of serving current customers would be
23 understated and their rates would be subsidized by
24 the utility's shareholders. This would have been
25 obvious had Ms. Dismukes proposed to treat nonused

1 CIAC as a deduction from rate base, as this
2 Commission requires used CIAC to be treated,
3 rather than proposing to treat it as a component of
4 capital.

5

6 **Q. Would you explain further.**

7 **A.** All of the CIAC paid by current customers of PCUC
8 has been properly accounted for and is reflected in
9 rate base as a reduction of used & useful plant.
10 Only the CIAC paid by current customers is used and
11 useful and only used and useful CIAC, or any used
12 component for that matter, is considered in
13 determining rate base. If Ms. Dismukes' proposed
14 adjustment were properly reflected it would show up
15 as a line item called "nonused CIAC" on the rate
16 base schedule. But it would be offsetting used and
17 useful plant since there cannot be any nonused
18 plant in rate base for it to offset. Since a
19 nonused component, be it CIAC or otherwise, is not
20 allowed in rate base, Ms. Dismukes elected to add
21 nonused CIAC to the capital structure where the
22 revenue impact is theoretically the same, but where
23 the violation of accepted ratemaking treatment is
24 not so obvious.

25

1 Q. Is there a simple way to illustrate the affect of
2 Ms. Dismuke's proposal and its impact on the
3 utility?

4 A. Yes. I have prepared Exhibit 41 (FS-7) for that
5 purpose. Turning to page 1 of the exhibit, Table 1
6 shows combined water and wastewater rate base as
7 determined in accordance with traditional
8 ratemaking treatment, as followed by this
9 Commission. This restatement of rate base ties to
10 Schedules A-1 and A-2 of the MFR. In Table 1,
11 Traditional Rate Base, rate base is equal to net
12 used plant less net used CIAC plus used advances,
13 used deferred debits and working capital. Table 2,
14 Dismukes Implied Rate Base - Reduced by Nonused
15 CIAC, restates the traditional rate base as shown
16 in Table 1, but in addition it deducts from net
17 used plant the amount of net NONUSED CIAC
18 identified by Ms. Dismukes in Schedule 2 of her
19 Exhibit 41 (KHD)-1, as "Cost Free CIAC.". As you
20 can see, although we show \$37.4 million of rate
21 base, Ms. Dismukes' adjustment would allow us to
22 earn on only \$26.3 million of it.

23
24 Finally in Table 3 I show the impact on the
25 utility's ability to a earn a return on equity.

1 After covering the cost of the debt portion of rate
2 base, the amount available for a return on equity,
3 under Ms. Dismukes' proposal, would only be
4 sufficient to provide a 6.02% return, even though,
5 under the leverage formula, PCUC should be allowed
6 the opportunity to earn 11.10%. On page 2 of
7 Exhibit 41 (FS-7), I repeat the same comparison
8 assuming that all of Ms. Dismukes' adjustment is
9 applied only to wastewater rate base. In that
10 case, the effective rate of return on the equity
11 portion of wastewater rate base is reduced to a
12 negative 0.74%.

13

14 Q. Would you please summarize your conclusions
15 regarding Ms. Dismukes' proposal to include nonused
16 CIAC as a component of capital structure?

17 A. It is Commission policy and established regulatory
18 precedent that neither nonused CIAC nor nonused
19 portions of any asset or offset to asset accounts
20 are included in determination of rate base. As
21 shown, the proposal to include a nonused CIAC
22 component in capital is equivalent to including a
23 nonused CIAC component in rate base. If a component
24 is not allowed to be in rate base directly, it
25 cannot be allowed indirectly. That is what Ms.

1 Dismukes' proposal does and that is why it should
2 be rejected. If the Commission accepts the
3 proposal, it will be establishing a precedent of
4 including nonused components in rate base that will
5 have ramifications for all regulated utilities, not
6 just Palm Coast. The Commission should reaffirm its
7 position in Order No. 22843 that nonused CIAC not
8 be considered in capital structure.

9

10 Q. Please turn to Ms. Dismukes' Schedule 5, in which
11 she portrays an analysis of nonused and useful
12 plant and guaranteed revenue. What is your
13 interpretation of the basis for and intent of her
14 schedule?

15 A. The basis for her schedule is a guaranteed revenue
16 agreement between PCUC and ITT Community
17 Development Corporation (ITT CDC). That agreement
18 provides a mechanism through which PCUC recovers
19 from ITT CDC, period costs associated with
20 unimproved lots in completed subdivisions; i.e.,
21 nonused plant. Apparently, the intent of her
22 schedule is to show that there is no nonused plant
23 and to allege that the return under the agreement
24 is "excessive."

25

1 Q. Do you agree with her conclusions?

2 A. No.

3

4 Q. Why not?

5 A. Ms. Dismukes' conclusions are erroneous because her
6 schedule does not correctly portray the calculation
7 performed under the agreement. First, Ms. Dismukes
8 understates nonused investment because she does not
9 include construction work in progress. CWIP is a
10 part of the utility's investment upon which it not
11 allowed to earn in rate base. Second, and more
12 importantly, she calculates the "used" components
13 using the used and useful methodology proposed in
14 this proceeding rather than the actual methodology
15 in effect in 1995, as approved by the Commission.
16 The actual amount charged in the 1995 historical
17 year is not supposed to match costs determined
18 using a proposed, but not yet approved, used and
19 useful methodology. The methodology actually in
20 effect during 1995 produces a lower rate base
21 (used) and a higher nonused investment than the
22 methodology being proposed by PCUC in this case.
23 Ms. Dismukes' resulting nonused investment is
24 severely understated, as are the associated period
25 costs.

1 Q. Other than the fact that Ms. Dismukes' Schedule 5
2 is incorrect, is there any significance to the
3 schedule for this proceeding?

4 A. No. The purpose of the charges calculated under
5 the revenue agreement are to recover the costs
6 associated with nonused plant. Whether those
7 charges are high or low, or whether they exist at
8 all, has no impact on and is of no consequence in
9 the determination of the cost to serve current
10 customers.

11

12 ~~Q. At page 7 of her testimony, Ms. Dismukes recommends~~
13 ~~reducing PCUC's requested cost of equity by 50~~
14 ~~basis points. Do you agree with this~~
15 ~~recommendation?~~

16 ~~A. No. In Order No. 22843 the Commission applied a 50~~
17 ~~basis point penalty to the equity cost "to send a~~
18 ~~signal to PCUC" that not taking accelerated~~
19 ~~depreciation on its tax returns was not in the best~~
20 ~~interest of its customers. PCUC responded to that~~
21 ~~"signal" and MFR Schedule C-6, page 3, reflects~~
22 ~~accumulated deferred taxes related to accelerated~~
23 ~~depreciation taken in every year since the last~~
24 ~~case. The continuation of a penalty ad infinitum is~~
25 ~~inappropriate. Even in the case when a utility was~~

1 ~~punished for mismanagement, as happened in Gulf~~
2 ~~Power Company Docket No. 891345-EI, the Commission~~
3 ~~limited the basis point reduction to two years.~~
4 ~~This penalty has been in effect for nearly six-~~
5 ~~years.~~

6

7 Q. At page 8 of her testimony, Ms. Dismukes recommends
8 that the total amount of customer deposits be
9 included in the cost of capital and not subject to
10 rate base reconciliation. Do you agree?

11 A. Yes. Ms. Dismukes is correct. Customer deposits
12 should not be subject to rate base reconciliation.
13 I agree with her adjustment.

14

15 Revenue Adjustments

16 Q. At pages 9 and 10, Ms. Dismukes proposes to
17 increase test year revenues by the amounts earned
18 by PCUC in performing services to other utility
19 systems and from Aqua Tech Utility Services. Do you
20 agree?

21 A. No. First, I believe that Ms. Dismukes has
22 misinterpreted how services to other utility
23 systems are provided and as result has counted the
24 revenues related to those services twice.

25

1 PCUC provides operating and/or maintenance services
2 to four systems - the Matanzas Shores wastewater
3 treatment plant, the Matanzas Shores lines, the
4 Searay wastewater treatment plant and the
5 Plantation Bay water treatment plant. All of these
6 services are provided through Aqua Tech Utility
7 Services Corp. a subsidiary of PCUC. It appears
8 that Ms. Dismukes proposes to increase operating
9 revenues by the gross revenues received for these
10 services and the net income received by Aqua Tech.
11 But the services performed for these four systems
12 are the services performed by Aqua Tech. The net
13 income from serving these systems and the revenues
14 of Aqua Tech are one and the same, except for
15 \$2,046 in misc. nonutility income. I would also
16 point out that the income of \$2,407 shown on Ms.
17 Dismukes' Schedule 7 for services to Plantation Bay
18 is in error. The income from Plantation in 1995 is
19 actually \$(3,244). The adjustment proposed by Ms.
20 Dismukes double counts and would increase operating
21 revenues twice for the same services. I believe
22 that this was just a result of a misinterpretation.
23
24 Regardless of the misinterpretation, I disagree
25 with the adjustment. The income for these services

1 are properly booked as nonutility income because
2 they arise from services not related to the utility
3 owned facilities or facilities providing service to
4 PCUC customers. The services are performed by PCUC
5 personnel, but the expenses for these personnel,
6 including allocated overheads, are already excluded
7 from the O&M expenses charged to ratepayers by
8 reflecting them in Account 690, Services (net), on
9 MFR Schedules B-5 and B-6. Including this income
10 on a gross or net basis overstates the revenues
11 received for utility services and understates the
12 revenue requirement properly assessable to utility
13 customers.

14

15 Q. At page 10 of her testimony Ms. Dismukes proposes
16 to adjust Misc. Revenues from the proposed amount
17 to the actual amount for the test year. Do you
18 agree with the adjustment?

19 A. No. This rate application is based on a 1995 test
20 year that, for all line items, is 6 months actual
21 and 6 months projected. It is inappropriate to pick
22 one line item and update it to the actual amount.

23

24 Q. At page 11 Ms. Dismukes recommends that the
25 consumption for Hammock Dunes not be adjusted to

1 reflect the proposed consumption level. Do you
2 agree.

3 A. No. The consumption levels for all customers has
4 been calculated to reflect anticipated levels. As
5 pointed out in my direct testimony, the consumption
6 level for Hammock Dunes has been adjusted to
7 reflect the anticipated level under normal, ongoing
8 conditions. Hammock Dunes experienced a level of
9 consumption in the first half of 1995 that is not
10 expected to recur because it has taken action that
11 will substantially reduce its needs for flushing.
12 The comparison of period consumption levels made by
13 Ms. Dismukes does not reflect that change. During
14 late 1994 and early 1995, Hammock Dunes
15 temporarily employed high levels of flushing to
16 maintain required chlorine residual levels. In the
17 summer of 1995, Hammock Dunes completed the
18 installation of chloramine booster stations in
19 order to maintain chlorine levels without resorting
20 to high levels of flushing. The water consumption
21 experienced in late 1994 and early 1995 will not
22 recur. When this is taken into account, there is a
23 significant decrease in annual consumption. When
24 Ms. Dismukes compared annual 1995 to annual 1994
25 consumption she noted a small drop in consumption

1 from 98 million gallons per year to 84 million, or
2 about 15%. Comparing those periods does not fully
3 reflect the difference in flushing associated with
4 the installation of the booster stations. However,
5 when you compare the more recent 12 month periods,
6 ending April, 1995 and April, 1996 you see the full
7 effect of the operational changes instituted by
8 Hammock Dunes in mid 1995. As shown in Exhibit
9 41 (FS-8), for this period annual consumption
10 dropped from approximately 127 million gallons per
11 year to 40 million, or about 70%. PCUC's test year
12 revenues are based on an annual consumption of 51
13 million gallons for Hammock Dunes compared to the
14 40 million gallons actually consumed in the 12
15 months ending April, 1996. If the test year
16 revenues are based on 84 million gallons as
17 proposed by Ms. Dismukes, they will be severely
18 overstated. The effect is that PCUC could not
19 achieve its allowed rate of return.

20

21

22

23

24

1 Q. Ms. Dismukes also proposes, at page 11 of her
2 testimony, that the test year revenue be increased
3 by the amount of reuse revenues requested by PCUC.
4 Do you agree with this adjustment?

5 A. No. PCUC does not now have reuse sales as a
6 revenue source, and adding such revenue to the test
7 year base only serves to understate the amount of
8 increase necessary to meet revenue requirements.
9 Whether or not the Commission authorizes a reuse
10 rate does not change the calculation of the amount
11 of increase necessary to meet authorized revenue
12 requirements. The only thing that the reuse revenue
13 does is reallocate the source of necessary revenues
14 from one customer class (wastewater) to another
15 customer class (effluent reuse) in the rate design.

16

17 Q. Beginning at page 12 of her testimony, Ms. Dismukes
18 recommends several changes to the used and useful
19 percentages for O&M expenses. Would you please
20 comment on these recommendations?

21 A. Ms. Dismukes makes adjustments that affect the used
22 and useful percentages for seven departments, but
23 some of those adjustments are the fallout result of
24 carrying forward changes in composite calculations.

1 Substantively, her recommendations are based on two
2 differences from my approach to the calculations.

3
4 First, consistent with OPC's general position, she
5 has removed any effect of margin reserve on used
6 and useful. The recognition of margin reserve is
7 the generally accepted policy of this Commission
8 and it should continue to be recognized where it is
9 used in these calculations. The use of a margin
10 reserve in the analysis for this case is consistent
11 with previous cases and has been accepted by the
12 Commission.

13
14 Second, she takes issue with my reliance upon used
15 and useful factors based on actual employee
16 interviews for certain top level PCUC management
17 positions rather than reliance on a lot ratio used
18 and useful percentage calculation. She sees this a
19 deviation from the methodology used in previous
20 cases. It is not. And although Ms. Dismukes'
21 proposal does not change the used and useful
22 percentage significantly, I believe an explanation
23 is warranted. In this case and in each of the
24 previous cases for which an analysis of O&M
25 expenses was prepared, the evaluation of used and

1 useful was based on employee interviews. Based on
2 the input from these interviews, choices were made
3 as to the best means of reflecting used and useful
4 for each employee and/or department. Based on
5 interviews in prior cases, it was decided the lot
6 ratio calculation best reflected the amount of time
7 necessary for management personnel to deal with
8 long term development related issues. Current
9 interviews reveal that the utility is operating in
10 a more mature stage. Based on those interviews I
11 concluded that the lot ratio calculation no longer
12 reflected time spent and I ,therefore, elected to
13 rely on the best estimates of the specific
14 personnel as to the time they devoted directly to
15 near term utility operations. In my opinion, Ms.
16 Dismukes proposal would understate that time and
17 the related costs.

18
19 **Q.** On pages 15 and 16 of her testimony, Ms. Dismukes
20 proposes two adjustments to the expenses for
21 personnel services, Department 0775. Do you agree
22 with those adjustments?

23 **A.** No. The first adjustment proposed is to express the
24 percent used and useful as a composite for all
25 other departments. I have proposed that the

1 expenses for personnel services, Department 0775,
 2 be 100% used and useful because the cost of
 3 providing the service remains the same regardless
 4 of whether a portion of any individual's time might
 5 be adjusted for used and useful. This is not a case
 6 of cost allocation as suggested by Ms. Dismukes,
 7 but rather a recognition that the costs incurred by
 8 this department will be incurred regardless, and
 9 should be recovered through rates.

10

11 Ms. Dismukes' second adjustment, the purpose of
 12 which is to remove nonrecurring charges, is
 13 calculated incorrectly. She deducts payroll taxes
 14 from the departmental O&M expense when they had not
 15 been included in O&M expenses in the MFR ^{and some recurring employee benefits.} As shown
 16 in my Exhibit 41 (FS-9), her adjustment is
 17 overstated by ~~\$3,281~~ ^{\$10,369} assuming her composite used
 18 and useful adjustment is recognized. If the
 19 Commission recognizes that Dept 0775 expenses are
 20 100% used and useful, as we propose, her adjustment
 21 is overstated by ~~\$9,893~~ ^{\$17,716}.

22

23

1 Q. Ms. Dismukes, at page 16 of her testimony, removes
2 the \$21,201 administrative service charge from ITT.
3 Do you agree with this adjustment?

4 A. No. This is a charge made by ITT for the
5 availability of expertise at the parent level. The
6 Commission, in prior PCUC rate cases, has allowed
7 the ITT administrative service charge requested in
8 this proceeding, as a part of used and useful O&M
9 expenses. The services provided by ITT include
10 corporate administrative, legal, accounting and tax
11 expertise. The services are not necessarily person
12 specific, although they can be. Rather they are
13 made available through the administrative,
14 corporate and financial policies; through auditing
15 and tax guidelines and advice; through the health
16 and safety programs; and through insurance
17 management and counsel for workers compensation
18 claims.

19
20
21
22
23
24

- 1 Q. Ms. Dismukes states that PCUC has refused to
2 provide the amount of the fee charged to other
3 subsidiaries as well as other information OPC
4 deemed necessary to test the reasonableness of the
5 charges. Is she correct?
- 6 A. No. PCUC explained in its filing that ITT charged
7 its subsidiaries an administrative service fee that
8 ranged between .25% and 1.0% of their revenues.
9 This is the same fee basis included in and accepted
10 in previous cases. PCUC explained that this was not
11 an allocation of costs, but a fee. PCUC also
12 explained that PCUC was charged the lowest fee -
13 .25% of revenues. It is not a charge for any
14 allocated portion of any individual's payroll
15 expense, but as I have described is for a multitude
16 of services. PCUC represents a very small portion
17 of consolidated ITT revenues - approximately \$8
18 million out of \$11 billion for all subsidiaries.
19 The annual fee to PCUC of \$21,000 would compare to
20 over \$280 million in fees charged to all
21 subsidiaries if all were charged just the minimum
22 fee. There is no information regarding subsidiary
23 fees and ITT employees that could be used to test
24 the reasonableness of the charge. The test of
25 reasonableness should be whether PCUC could receive

1 these services from another source for \$21,000 per
2 year. We contend that this is a reasonable expense,
3 one that the Commission has allowed as a reasonable
4 expense in all previous cases and one that it
5 should continue to allow.

6

7 **Q. Is all of the \$21,201 included in the MFR's as**
8 **recoverable from utility customers?**

9 **A. No. Based on the O&M Used and Useful Analysis, only**
10 **80% or \$16,961 is included.**

11

12 **Q. At page 17 of her testimony, Ms. Dismukes**
13 **recommends disallowing the \$10,564 PCUC pays ITTCDC**
14 **for accounts payable processing services. Do you**
15 **agree?**

16 **A. No. PCUC clearly receives accounts payable**
17 **processing services from ITTCDC. Ms. Dismukes**
18 **recommends the expense be disallowed in its**
19 **entirety because it has not been justified. Even if**
20 **Ms. Dismukes is not satisfied with the cost**
21 **justification, the services obviously have some**
22 **cost associated with them. However, cost**
23 **justification is evident from the comparison of**
24 **last year's cost with this year's cost. Last year,**
25 **PCUC employed one person to handle accounts payable**

1 processing at an annual expense of \$23,706
2 including benefits. This year, PCUC is paying
3 ITTCDC \$1,000 per month or \$12,000 annually for
4 this service. This information, shown on MFR p. 51
5 speaks for itself. If there is a question as to the
6 cost effectiveness of the change, the proper
7 adjustment would be to reflect the cost before the
8 change which is \$11,000 more per year.

9

10 Q. On page 18 of her testimony, Ms. Dismukes
11 recommends the adoption of four adjustments to O&M
12 expenses proposed in the PSC Staff audit. Do you
13 agree with those adjustments?

14 A. Yes, we do.

15

16 ~~Q. Also on page 18, Ms. Dismukes recommends that~~
17 ~~recoverable rate case expense be reduced by an~~
18 ~~amount allegedly over recovered from the last case.~~
19 ~~Do you concur?~~

20 ~~A. No. Ms. Dismukes adopts a position expressed in the~~
21 ~~PSC staff audit which is factually incorrect and~~
22 ~~suggests a solution which results in retroactive~~
23 ~~ratemaking.~~

24

1 ~~Ms. Dismukes claims that "the company failed to~~
2 ~~reduce its rates consistent with Section 367.0816~~
3 ~~of the Florida Statutes." However, the company was~~
4 ~~not subject to Section 367.0816, F.S. in the last~~
5 ~~case, because, as stated by the Commission at page~~
6 ~~62 of Order No. 22843, "PCUC, however, filed its~~
7 ~~application before the that section became~~
8 ~~effective." In Order No. 22843, the Commission~~
9 ~~authorized an amortization period of three years~~
10 ~~because the new statutory requirement for four~~
11 ~~years was not applicable. In addition, the~~
12 ~~Commission did not order the company to reduce~~
13 ~~rates at the end of the amortization period. Had~~
14 ~~the new statute been applicable, this also would~~
15 ~~have been required. The position taken by the~~
16 ~~Commission in Order No. 22843 is consistent with~~
17 ~~the Commission's policy regarding rate case~~
18 ~~expense prior to Section 367.0816, F.S. becoming~~
19 ~~law. Prior to this section of statute becoming~~
20 ~~law, the Commission used its discretion in~~
21 ~~approving an amortization period and did not~~
22 ~~require a reduction in rates at the end of the~~
23 ~~amortization period.~~

24

1 ~~Further, Ms. Dismukes' proposal to reduce future~~
2 ~~rates to recover a past expense involves~~
3 ~~retroactive ratemaking.~~

4
5 Q. With regard to income taxes, Ms. Dismukes, at page
6 19 of her testimony, recommends that the
7 appropriate federal tax rate for PCUC is 34% rather
8 than the 35% used in the MFR. Would you please
9 respond to her proposal?

10 A. The appropriate federal tax rate for PCUC is 35%.
11 PCUC files its income tax return as a part of the
12 ITT consolidated return. However, in its workpapers
13 for the consolidated return and in its calculations
14 for ratemaking purposes, its taxable income is
15 determined on a stand alone basis. The marginal
16 tax rate to which PCUC is subject, is the same as
17 for ITT or 35%.

18
19
20 Q. Ms. Dismukes reasons that since the Commission
21 treats PCUC on a stand alone basis for tax
22 purposes, the 34% should apply rather than the 35%
23 rate. Do you agree?

24 A. I would agree if the Commission truly treated PCUC
25 on a stand alone basis, but it does not. The

1 Commission takes advantage of the consolidated
2 relationship by requiring PCUC to make a parent
3 debt adjustment to interest expense for ratemaking
4 purposes. Based on the income level proposed in the
5 MFR, the revenue requirement difference between a
6 34% tax rate and a 35% tax rate is \$47,000. But,
7 the parent debt adjustment saves the ratepayers
8 \$499,000 in revenue requirements. The net parent
9 debt tax savings of \$452,000 [\$499,000-\$47,000] is
10 only possible because of the consolidated
11 relationship. If the Commission were to ignore the
12 consolidated relationship to justify a stand alone
13 34% tax rate, it follows that it should also ignore
14 the parent debt adjustment that is only possible
15 because of consolidation.

16

17 Q. On page 20 of her testimony, Ms. Dismukes
18 recommends two adjustments to miscellaneous
19 expense. One removes a nonrecurring expense and
20 another removes chamber of commerce dues for
21 ratemaking purposes, per Commission policy. Do you
22 agree with these adjustments?

23 A. Yes. I agree with both of these adjustments.

24

1 Q. Ms. Dismukes also recommends, on page 21 of her
2 testimony, an adjustment for a nonrecurring legal
3 expense. Do you concur with this adjustment?

4 A. No. Although the charges from the specific law firm
5 may not recur, legal expenses of this magnitude
6 most likely will recur. The total legal expense
7 projected for 1995, including the amount identified
8 by Ms. Dismukes, is already less than what would be
9 expected if measured against the combined increase
10 in customer growth and CPI since the last
11 authorized level.

12

13 **Rate Base**

14 Q. Beginning on page 21 of her testimony, Ms. Dismukes
15 addresses rate base related adjustments. Would you
16 please provide your response to those adjustments?

17 A. Yes. In her first three adjustments, she adopts the
18 recommendation of PSC staff auditor Dodrill with
19 regard to the cost of the land purchased for a
20 rapid infiltration basis (RIB) site and a
21 sprayfield site and with regard to reclassification
22 of the primary subaccount for the RIB site with its
23 related depreciation expense adjustment. Ms.
24 Dismukes merely adopts Mr. Dodrill's conclusions.
25 I and Mr. Spano have prepared rebuttal to Mr.

1 Dodrill's testimony as he is the primary source of
2 these adjustments, I will address the adjustments
3 later in this rebuttal testimony. My conclusion is
4 that I disagree with Mr. Dodrill's position and his
5 adjustments are inappropriate.

6
7 **Q. On page 25 of her testimony, Ms. Dismukes**
8 **recommends that the Commission include a negative**
9 **working capital to offset debit deferred taxes. Do**
10 **you agree with this adjustment?**

11 **A. No. The Commission has required PCUC, a class A**
12 **utility, to calculate working capital using the**
13 **balance sheet approach. Under the balance sheet**
14 **approach, current assets are matched against**
15 **current liabilities. MFR Schedule A-17 shows the**
16 **calculation of working capital using the balance**
17 **sheet approach. Net debit deferred taxes are not a**
18 **component of working capital since they clearly are**
19 **long term assets related to tax timing differences**
20 **of CIAC and depreciation and are amortized**
21 **generally over the life of related assets. The**
22 **Commission more clearly acknowledges this**
23 **distinction in its rule for the calculation of**
24 **working capital for Class B and C utilities. That**
25 **rule, which authorizes the calculation of working**

1 capital as one-eighth of O&M expenses, specifically
2 requires the offsetting of debit deferred taxes
3 against credit deferred taxes as a calculation
4 separate from working capital, under a separate
5 subparagraph. Beyond that, the inclusion of a
6 negative working capital at all in rate base
7 violates the intent of making working capital a
8 rate base component. Its intent is to recognize
9 that a utility has an ongoing need for liquid
10 assets to pay its current payables. A zero working
11 capital fails to recognize that need and is penalty
12 enough; a negative working capital further reduces
13 the cost basis of long term assets upon which the
14 utility is entitled an opportunity to earn.

15

16 Q. Ms. Dismukes final recommendation, at page 25 of
17 her testimony, is that water rates should be based
18 on a 13 month average rate base rather than a year
19 end rate base. Do you concur?

20 A. Obviously no, as we have requested that rates be
21 based on a year end projected rate base. With
22 regard to Ms. Dismukes reliance on Rule 25-
23 30.433(4), F.A.C., she is incorrect. First, this
24 rule does not address whether a utility may file on
25 an average or year end basis. It merely says:

1 (4) The averaging method used by the
2 Commission to calculate rate base and
3 cost of capital shall be a 13-month
4 average for Class A utilities and the
5 simple beginning and end-of-year average
6 for Class B and C utilities.

7 The purpose of this rule was to distinguish between
8 averaging methods for different classes of
9 utilities, not to require that rate base only be
10 based on an average year.

11
12 Second, her comment regarding a showing of
13 unreasonable burden is off point. The general
14 statement in the rule allows any party to deviate
15 from any rule upon a showing of unreasonable
16 burden. PCUC made no such claim. Its MFR's show
17 both year end and average balances on each schedule
18 and, in accordance with Rule 25-30.433(4), F.A.C.,
19 used a 13 month average to determine average
20 balances.

21
22 Third, neither the Commission rules nor the
23 regulatory statute addresses average versus year
24 end rate base. That choice has always been one for

1 the utility to request and the Commission to
2 consider.

3
4 PCUC has proposed a year end 1995 rate base because
5 significant amounts of plant added during 1995
6 would only be partially recognized if presented on
7 an average basis. In addition, PCUC has annualized
8 the revenues and incremental expenses to the year
9 end customers which this plant will serve. This
10 provides a better indication than an average rate
11 base of the cost of operations during the period
12 when adjusted rates would be in affect. It is
13 within the Commission's authority under the statute
14 to determine the prudent cost of providing service
15 during the period of time that rates will be in
16 effect following the entry of a final order. A
17 final order will not be forthcoming until late in
18 1996, nearly a year after the end of the rate base
19 and it will be another year before the full effect
20 of any allowed increase will be realized. A year
21 end rate base is appropriate in this case.

22

23

24

- 1 Q. Did Ms. Dismukes propose to use an average rate
2 base for the wastewater system?
- 3 A. No. Only for the water system because most of the
4 increase in plant additions is for the wastewater
5 system. It would be impractical to evaluate
6 revenue requirements on a split test year basis.
7 And it would be even more difficult to monitor the
8 earnings of the utility or to reconcile schedules
9 going into any future rate proceeding. The proposal
10 for a split test year should be rejected.
11
- 12 B. REBUTTAL TO TESTIMONY OF TED BIDDY
- 13 Q. Please turn to the testimony of Ted Bidy. Do you
14 have any responses to his testimony?
- 15 A. Yes. At page 5 of his testimony, Mr. Bidy
16 expressed concern with a negative unaccounted for
17 water amount in one month. He characterized it as
18 unusual. Neither negative amounts nor high amounts
19 of unaccounted for water in some months are at all
20 unusual. As Mr. Bidy should know, they result from
21 timing differences between the cycles when meters
22 are read and recorded and the calendar month
23 summaries for water pumped. This Commission has
24 always evaluated the level of unaccounted for water

1 on a 12 month basis to normalize any anomalies
2 resulting from these timing differences.

3
4 Mr. Biddy also testified that the Commission should
5 allow no more than 10% unaccounted for water to
6 encourage efficiency. For the test year, PCUC shows
7 only 4.68% unaccounted for water. No adjustments to
8 expenses or plant consumption have been made to
9 reflect a greater percentage of unaccounted for
10 water. Nevertheless, I believe it would be
11 inappropriate for the Commission to arbitrarily
12 limit the amount of unaccounted for water to a
13 specific percentage without looking at the specific
14 circumstances. The Commission should continue its
15 policy of allowing a specific percentage without
16 explanation, and then requiring the utility to
17 justify amounts greater than that.

18

19 **Q. Do you have any response to Mr. Biddy's testimony**
20 **on inflow and infiltration?**

21 **A. Yes. At page 11 of testimony, Mr. Biddy comments**
22 **that MFR engineering schedule F-2(S) did not show**
23 **the inflow and infiltration condition of the system**
24 **and he therefore could not reach a conclusion as**
25 **whether it was excessive. He is correct that the**

1 referenced schedule did not include such
2 information. It was not designed to. The schedule,
3 as designed by the Commission, only asks for plant
4 flow data. However, MFR Schedule E-13 does show the
5 wastewater gallons billed, so the information
6 necessary to estimate infiltration and inflow was
7 available.

8

9 Q. Mr. Biddy states that 200 gallons per inch of
10 pipe diameter per mile per day is the
11 guideline recommended. Do you agree?

12 A. No. First, that is the guideline for testing newly
13 installed pipe. Second, it is a criterion to test a
14 section of pipe, not for evaluating total system
15 infiltration. Third, it is a guideline for
16 infiltration only and does not consider inflow. The
17 standard allowance recognized by this Commission
18 for infiltration only for an operating system is
19 500 gallons for a system rather than the design
20 specification of 200 gallons for new sections of
21 pipe. PCUC is a working system for which the
22 majority of the gravity system is close to 20 years
23 old. In spite of the age of the system, the
24 infiltration and inflow for the total system is
25 only 210 GPD/inch diameter/mile.

1 C. REBUTTAL TO TESTIMONY OF ROBERT DODRILL

2 Q. Please turn now to the testimony of Commission
3 staff witness Dodrill. Do you have any responses to
4 his testimony?

5 A. Yes. I have responses to several of the exceptions
6 and disclosures in the audit report he is
7 sponsoring as Exhibit _____ (RFD-1).

8

9 Q. Did PCUC file a formal response to the staff audit?

10 A. Yes. The company's response to the audit is
11 contained in Exhibit 41 (FS-10).

12

13 Q. In Audit Exception No.1, summarized on page 2 of
14 his testimony, Mr. Dodrill proposes to reduce the
15 cost of 81.576 acres of land purchased for the RIB
16 site and an additional 4.601 acres for the buffer
17 strip adjacent to the RIB site. Do you agree with
18 his adjustment?

19 A. No. His adjustment is based on two erroneous
20 premises. The first premise is that someone other
21 than PCUC first devoted the land to utility
22 service. His second premise is that the independent
23 appraisal upon which the purchase cost of the land
24 is based is incorrect. I am not in a position to
25 argue the merits of the appraisal. Neither I nor

1 Mr. Dodrill are certified real estate appraisers
2 and I will not impose my judgement on the
3 appraiser's expertise, as Mr. Dodrill has
4 attempted. Mr. Spano, the certified appraiser who
5 conducted the appraisal is presenting testimony to
6 support his conclusions. I will, however, address
7 the portions of the exception as related to the
8 regulatory proposition that someone other than PCUC
9 dedicated this land to utility service.

10

11 Q. When was the RIB site devoted to utility service.

12 A. After considering alternative sites, the RIB site
13 was purchased by PCUC on July 12, 1991 and devoted
14 to utility service that same year. It was entered
15 on the books on June 30, 1995 at the value
16 appraised in October, 1990. Exhibit 41 (FS-10)
17 contains a copy of the deed, as contained in Mr.
18 Dodrill's exhibits, and a copy of the general
19 ledger entry.

20

21 Q. Prior to 1991, who owned the land?

22 A. The last owner before PCUC was ITT Community
23 Development Corporation (ITTCDC).

24

25

1 Q. To what use had ITTCDC put the land?

2 A. It had been put to no use; the land was idle and
3 available for agriculture or development.

4

5 Q. Is there any indication that this land had been
6 previously designated as a utility site by ITTCDC?

7 A. No.

8

9 Q. Who is the party that first devoted this land to
10 utility service?

11 A. PCUC. It is the entity that purchased the land for
12 utility purposes.

13

14 Q. The staff auditor, Mr. Dodrill, says that the first
15 person devoting this land to utility service is the
16 "ITT Group of Corporations." Why is that not
17 correct?

18 A. There is no legal entity called "the ITT Group of
19 Corporations." Mr. Dodrill may believe that this
20 is an insignificant point, but it becomes
21 significant when he is tries to justify a nearly
22 \$400,000 downward adjustment by attributing initial
23 devotion of service to a non-entity.

24

1 Q. Why is it so important to properly identify the
2 first person devoting the land to utility service?

3 A. Because Accounting Instruction No. 18A of NARUC
4 Uniform System of Accounts for Class A Sewer
5 Utilities, which this Commission has adopted
6 states:

7

8 18. Utility Plant - To Be Recorded at Cost

9 A. All amounts included in the accounts for
10 utility plant acquired as an operating unit or
11 system, shall be stated at the cost incurred
12 by the person who first devoted the property
13 to utility service. [Emphasis added]

14

15 Q. Why could not ITTCDC, the previous owner, have been
16 the one that devoted it to utility service?

17 A. The amount to be recorded is the cost to the first
18 person to "devote" the land to utility service, not
19 just the cost to the first owner. According to
20 Webster's dictionary, to devote is to dedicate, and
21 to dedicate is to "set apart to a definite use."
22 In order for ITTCDC to have set this land apart for
23 definite use for utility service it would have had
24 to be able to identify the parcel and know for what
25 purpose it was going to be used. ITTCDC purchased

1 the land, circa 1968 along with thousands of other
2 acres of land in Flagler County. It could not have
3 known, when it purchased the land, that this
4 specific parcel would be needed or used for utility
5 purposes. Unless it were the party responsible for
6 the design of the utility system, which it was not,
7 it would not be aware of when, where or for what
8 purpose the utility would require land. Certainly
9 it cannot be logically concluded that all land
10 owned by ITTCDC, wherever located, is automatically
11 devoted to utility service merely because there
12 exists a related company that is a public utility.
13 ITTCDC is not the party that placed this land in
14 utility service, and the cost to ITTCDC is not a
15 proper basis for the original cost of land devoted
16 to utility service.

17
18 The only party responsible for the design of the
19 utility system is PCUC and therefore only PCUC can
20 be and is identified as the party devoting this
21 land to utility service. The proper cost to be
22 stated, in accordance with the NARUC uniform system
23 of accounts is the original cost to PCUC.

24

- 1 Q. Hasn't the Commission previously recognized PCUC as
2 the person devoting property to utility service?
- 3 A. Yes. In Docket No. 890277-WS, as a part of a rate
4 case and in-depth investigation of the original
5 costs of PCUC's assets, the Commission examined the
6 transactions and valuations relating to ⁸⁶~~88~~
7 separate parcels purchased by PCUC from ITTDCDC. In
8 Order No. 22843, at page 36, the Commission
9 recognized, without exception, that "... it was
10 PCUC, not I[TT]CDC, that actually devoted the land
11 to public service." [Emphasis added]. The
12 circumstances surrounding the purchase of the RIB
13 site, and the sprayfield which Mr. Dodrill
14 addresses in Audit Disclosure No.1, are no different
15 than for those ⁸⁶~~88~~ other parcels. It is PCUC that
16 has devoted this land to utility service.
17
- 18 Q. Is it your understanding that Mr. Dodrill's concern
19 regarding the cost of this parcel is because it was
20 purchased from a related company?
- 21 A. Yes. That is a major concern to PCUC also. PCUC,
22 having made several land purchases from ITTDCDC, is
23 very much aware that the Commission closely
24 scrutinizes the purchase cost. That is exactly why
25 every major land parcel has been purchased from

1 ITTCDC at the value determined by an independent
2 certified appraiser. In this case, the property was
3 appraised in October, 1990 and purchased at the
4 October, 1990 appraised value in July, 1991.

5

6 **Q. Is there a second piece of land that was purchased**
7 **for this RIB site?**

8 **A. Yes.** On January 24, 1995, PCUC purchased an
9 additional 4.601 acre strip adjacent to the RIB
10 site in order to comply with the Florida Department
11 of Environmental Protection buffer requirements. A
12 copy of the deed, as contained in Mr. Dodrill's
13 audit workpapers, is included in Exhibit 41 (FS-
14 10), as is the book entry to the ledger in 1995.

15

16 **Q. Was a new appraisal performed to determine a cost**
17 **for this parcel?**

18 **A. No.** Because the land was contiguous to and similar
19 in character to the first purchase, and relatively
20 small, it was concluded that a new appraisal was
21 not warranted. The land was purchased in January,
22 1995 at the same per unit cost determined for the
23 RIB site in October, 1990.

24

1 Q. Is it unusual for the Commission to accept an
2 independent appraisal as the cost basis when land
3 is purchased from a related party?

4 A. No. It is consistent the Commission's historic
5 position for this utility. In Order No. 22843, the
6 last rate order for this utility, the Commission
7 stated, "A review of the prior order indicates a
8 preference to use independent appraisals when those
9 reports provide reasonable land values." The
10 Commission further stated, "Use of the original
11 cost to the developer plus allowances for inflation
12 may result in unreasonable and unrealistic
13 valuations and should only be used when reasonable
14 appraisals are not available." A certified
15 appraisal is available in this case and basing the
16 cost on indexed developer costs, as proposed by Mr.
17 Dodrill results in an unqualified valuation. The
18 cost of the RIB site and buffer zone should not be
19 adjusted.

20

21

22

23

24

1 Q. Mr. Dodrill, in Audit Disclosure No. 1, summarized
2 at page 3 of his testimony, recommends also
3 reducing the cost of sprayfield land purchased in
4 1985 based on his analysis regarding the cost of
5 the RIB site. Would you please respond to his
6 recommendation?

7 A. The cost of the sprayfield land was accepted by the
8 Commission at its appraised value without
9 modification in PCUC's rate base in Docket Nos.
10 870166-WS and 890277-WS. The wastewater rate base
11 schedule on page 27 of Order No. 18625 and on page
12 75 of Order No. 22843 reflects the recorded cost of
13 the sprayfield land. The sprayfield land cost,
14 recorded in 1986, is the appraised cost as of 1979,
15 the year PCUC devoted the land to utility service.
16 This is consistent with the Commission's treatment
17 in prior orders wherein the actual transfer of land
18 was at a different date from the date at which PCUC
19 devoted the land to utility service. Exhibit 41
20 (FS-11) contains copies of the schedules from the
21 respective referenced orders as well as page 13 of
22 PCUC's audit response, which reconciles the cost of
23 the sprayfield to the costs in the orders.

24

1 Mr. Dodrill's unqualified analysis of the RIB site
2 costs is not a reasonable basis for reversing a
3 transaction based on an independent appraisal which
4 has been accepted by the Commission in the
5 utility's last two rate cases.

6
7 Q. At page 2 of his testimony, Mr. Dodrill summarizes
8 Audit Exception No. 2, in which he states his
9 opinion that the cost of improvements to the RIB
10 site should be reclassified from Plant Account 380,
11 Treatment and Disposal Facilities to Plant Account
12 354, Structures and Improvements. Do you concur in
13 his opinion?

14
15 A. No. Based on the general descriptions in Account
16 380, PCUC has consistently classified RIB's as
17 treatment and disposal facilities and the
18 Commission has accepted this classification through
19 its approval of the related depreciation rates.
20 PCUC believes that the guideline depreciable life
21 for Account 380 fairly represents the expected life
22 of its RIB's. Neither Mr. Dodrill nor Ms. Dismukes
23 has provided any data to justify a change from the
24 guideline depreciation rate currently approved for
25 RIB's for this utility. We do not agree that this

1 RIB should be treated differently and reclassified
2 to Account 354 - Structures and Improvements.

3
4 The RIB's were designed and are being used for
5 further treatment and reuse/disposal of reclaimed
6 water. The reclaimed water is applied to the bottom
7 of the RIB's to allow for percolating through the
8 soil for further treatment prior to infiltration to
9 the ground water. The use of rapid infiltration
10 technology is relatively new and was not
11 specifically envisioned in the NARUC Uniform System
12 of Accounts, but a RIB is similar in function to
13 the oxidation ponds, lagoons and filtering
14 equipment described in Account 380 of the Uniform
15 System of Accounts.

16

17 Q. On page 3 of his testimony, Mr. Dodrill summarizes
18 Audit Exception No. 3 which calls for eliminating
19 certain capitalized major rehabilitation costs
20 from plant because, in his opinion, they are
21 recurring expenses. Do you agree with his
22 recommendation?

23 A. No. The projects in question are not routine, on-
24 going, recurring events.

25

1 Each line rehabilitation and replacement project
2 was a unique circumstance that required a response
3 to a failure which affected service continuity.
4 Each rehabilitation resulted in replacement and
5 retirement of line segments. The costs incurred, as
6 well as the costs of the retired property, were
7 properly accounted for as a retirement in
8 accordance with the uniform system of accounts. If,
9 as Mr. Dodrill suggests, the cost of the
10 replacement plant is expensed and the plant
11 balances are additionally reduced by the cost of
12 the retired units, there will be no cost on the
13 books for these line segments.

14
15 With regard to the cited projects for structural
16 interior and exterior elevated water tanks and
17 water plant softening basins, these are
18 nonrecurring major rehabilitation projects that add
19 to the life of the equipment and are properly
20 capitalized.

21
22 With regard to the cited well programs, each is
23 specifically a capital project. The first project,
24 costing approximately \$49,000 is for activation of
25 a new well. The second project, costing about

1 \$51,000 is for four new back-up diesel generators.
2 The third project, costing approximately \$115,000
3 is for redrilling two wells.

4
5 **Q. Mr. Dodrill recommended the removal of**
6 **approximately \$1.1 million from plant for the above**
7 **discussed projects. Does he recommend how to treat**
8 **these costs if they are removed from plant?**

9 **A. No. The audit report and his testimony are silent**
10 **on this. But if these costs are not capitalized,**
11 **they must be expensed. If the projects are**
12 **recurring, as Mr. Dodrill suggests, then we**
13 **estimate test year water expenses would have to**
14 **increased by \$54,000 to amortize the well projects**
15 **over four years. Wastewater test year expenses**
16 **would have to be increased by about \$100,000 to**
17 **recognize the average level of annual sewer line**
18 **replacement projects.**

19
20 **Q. The audit exception also notes that the test year**
21 **contains expenses for a well rehabilitation**
22 **program. Why do think that was mentioned?**

23 **A. Since his audit exception identified capitalized**
24 **well projects that he believes were**
25 **rehabilitative, I assume he thought the company was**

1 both expensing and capitalizing the same type of
2 work. That, however, is not the case. The costs
3 the company capitalized were for new wells,
4 redrilled wells and generators. The expenses
5 included in the test year for the ongoing,
6 recurring, well rehabilitation program, are to
7 restore the productivity of existing well by
8 inspecting them, acidizing them and redeveloping
9 the existing well areas to restore porosity. There
10 is no conflict between the well projects that are
11 capitalized and those that are expensed.

12

13 **Q. Do you have any comments regarding Audit Exception**
14 **Nos. 4 and 5?**

15 **A. PCUC accepts the recommendations in these**
16 **exceptions.**

17

18 **Q. What is the company's response to Audit Disclosure**
19 **No. 2?**

20 **A. PCUC agrees with the auditor's opinion.**

21

22

23

24

1 Q. At page 4 of his testimony, Mr. Dodrill summarizes
2 Audit Disclosure No. 3 wherein he concludes that
3 revenues from the last price index are understated.
4 Do you agree?

5 A. No. The disclosure concludes that the last price
6 index, effective October 24, 1995 was not applied
7 to the November billing, therefore revenues for the
8 test year were understated. This is incorrect. The
9 indexed rates were applied to service rendered
10 after the effective date. However, because of the
11 difference between billing cycles and the
12 accounting closing dates, billings for November at
13 the indexed rate did not appear on the books until
14 December. The 1995 revenues are correctly stated.

15
16 However, whether PCUC applied the price index rates
17 in November is of no consequence to this
18 proceeding. The starting point for determining
19 revenue requirements in this proceeding is the
20 adjusted revenue shown in column (5), line 1 of MFR
21 Schedules B-1 and B-2. This adjusted revenue for
22 1995 assumes the price index rate was in effect for
23 all 12 months of 1995 and was applicable to year
24 end 1995 customers.

25

- 1 ~~Q. Mr. Dodrill summarizes Audit Disclosure No. 4 at~~
2 ~~page 4 of his testimony, which alleges that PCUC~~
3 ~~was required to and failed to reduce its rates~~
4 ~~after the rate case amortization period approved in~~
5 ~~Order No. 22843. Would you please respond to this~~
6 ~~disclosure?~~
- 7 A. I responded to this disclosure in my rebuttal to
8 the testimony of OPC witness Dismukes, who adopted
9 Mr. Dodrill's opinion. The conclusion of my
10 response was that Order No. 22843 did not require
11 PCUC to reduce its rates. Neither the statutory nor
12 rule authority relied on by Mr. Dodrill were
13 applicable to PCUC.
- 14
- 15 Q. Do you have any response to Audit Disclosure No. 5
16 regarding reuse plant?
- 17 A. Mr. Guastella will address that disclosure in his
18 rebuttal.
- 19
- 20 Q. Would you please address Audit Disclosure No. 6
21 regarding capital structure?
- 22 A. This is a most difficult disclosure to respond to,
23 because, frankly I don't understand its rationale
24 or intent. Audit Disclosure No. 6, summarized at
25 page 4 of Mr. Dodrill's testimony, apparently

1 concludes that the lower debt cost benefits
2 available to PCUC as a result of a parent company
3 guarantee somehow "impairs" that debt.

4
5 We do not understand the auditor's opinion. The
6 interest rate is enhanced, not impaired by the
7 guarantee. The purpose of any guarantee is to
8 reduce the risk of non-payment and provide a basis
9 for a lower, or enhanced, interest rate. For stand
10 alone water and sewer utilities, lenders almost
11 always require the unconditional guarantee of the
12 individual stockholders. For affiliated companies,
13 such as PCUC, the unconditional guarantee of the
14 parent provides a similar benefit.

15
16 The auditor correctly points out that the cost rate
17 for PCUC's debt does not include a component for
18 "credit risk" because there is no risk of non
19 payment. To us that means, the interest rate is
20 again enhanced, not impaired. It almost appears
21 that the auditor would have preferred that PCUC
22 obtain debt without the parent guarantee in order
23 that a "true" market rate, one not influenced by
24 the parent-subsidiary relationship, would result,

1 even though the rate would most assuredly be
2 higher.

3

4 Q. Is the use of a parent guarantee a new means for
5 PCUC to secure debt?

6 A. No. A parent guarantee has always been part of all
7 debt issued to PCUC.

8

9 Q. As part of this disclosure, Mr. Dodrill recommends
10 that the Commission use the parent's capital
11 structure. Do you agree?

12 A. No. The disclosure suggests that because of the
13 parent guarantee, PCUC's outstanding debt is in
14 essence outstanding debt of the parent. If so he
15 recommends that the Commission require PCUC to use
16 the parent's capital structure for this rate
17 proceeding. But the debt obtained by PCUC is
18 clearly PCUC debt. The requirement for a guarantor
19 does not change that. If it did, in every case in
20 which debt was required to be guaranteed by
21 stockholders [which would include most small water
22 and wastewater utilities operating Florida], the
23 Commission would look to the capital structure of
24 the stockholder; i.e., recognize 100% equity
25 financing. PCUC has been treated as a stand alone

1 utility by this Commission in all of its rate
2 proceedings. There is no basis for substituting the
3 capital structure of the parent in this case. There
4 is no indication that either the capital structure
5 of the utility is unreasonable or that the cost of
6 debt is unreasonable.

7

8 **Q. What is the policy of the Commission regarding the**
9 **choice of capital structure for setting rates?**

10 **A. The policy of this Commission, expressed in Order**
11 **No. 21415, issued 6/20/89, is to use the capital**
12 **structure at the first level that attracts funding**
13 **from outside sources, regardless of whether a**
14 **guarantee exists. The Commission should continue**
15 **to use the capital structure of PCUC has it has in**
16 **all previous proceedings.**

17

18 **Q. Finally, would you address Audit Disclosure No. 7**
19 **regarding presentation of the capital structure of**
20 **the parent company?**

21 **A. Mr. Dodrill points out differences in the MFR**
22 **presentation of parent company and PCUC capital**
23 **structure as well as that the parent company of**
24 **PCUC reorganized as of November 30, 1995. However,**
25 **he also notes that this disclosure is to be**

1 considered only if Disclosure No.6 is acted upon by
2 the Commission. It is my opinion that Mr. Dodrill's
3 recommendation to use the parent capital structure
4 for PCUC is not in accord with Commission policy,
5 and Disclosure No.7 need not be considered.

6

7

8 **Q. Does that conclude your rebuttal testimony?**

9 **A. Yes it does.**

10

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1 (Transcript continued in sequence in
2 Volume 8.)
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