

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

DOCKET NO. 990696-WS

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

DOCKET NO. 992040-WS

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VOLUME 2
PAGES 190 THROUGH 388

PROCEEDINGS:

HEARING

BEFORE:

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

DATE:

Monday, May 7, 2001

TIME:

Commenced at 10:30 a.m.

PLACE:

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

REPORTED BY:

JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting

APPEARANCES:

(As heretofore noted.)

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1
2 (Transcript continues in sequence from
3 Volume 1.)
4 Thereupon,

5 DOUGLAS MILLER

6 resumed the stand as a witness on behalf of Nocatee Utility
7 Corporation and, having been previously sworn, testified as
8 follows:

9 COMMISSIONER JABER: Just a couple. Mr. Miller,
10 compared to JEA's rates, will the rates and charges assessed by
11 Nocatee to its customers, if the Commission agrees that your
12 application should be approved, would those rates and charges be
13 higher or lower than JEA's?

14 THE WITNESS: The proposed Nocatee Utility Corp's
15 rates will be higher for some classifications than JEA primarily
16 because of the additional investment that NUC will be making to
17 incorporate their environmental standards and particularly this
18 extensive reuse program. As you know, reuse is a very expensive
19 program to implement. JEA does not have retail reuse with one
20 exception in St. Johns County. They do provide retail reuse for
21 the Julington Creek Plantation. But other than that they in
22 general have not been in the retail reuse business, so their
23 rates don't reflect that.

24 COMMISSIONER JABER: The environmental standards you
25 are talking about, those are the environmental standards that

1 DEP or the water management districts would require you to meet,
2 correct?

3 THE WITNESS: No. Actually this particular project is
4 a set of standards that go far beyond that, and it is really one
5 of the cornerstones of the Nocatee project which you have heard
6 described, I guess, as what we call the environmental ethic of
7 the project. And as an example, the surficial groundwater
8 hydrology has been evaluated and all the systems are being
9 designed to make sure that the surficial groundwater doesn't
10 change, because we have 7,000 acres of wetland systems on-site.
11 Obviously they are primarily groundwater fed. We don't want, as
12 an example, shallow wells that would lower the surficial
13 groundwater. That would have an adverse effect on the wetlands,
14 and so that is one of the reasons it drove 100 percent reuse.

15 Besides just the fact we think it is a responsible
16 thing to do from a water resource point of view, there is also a
17 wetland protection component. Those things are not requirements
18 of the district necessarily or the DEP. There are other
19 standards, as well. As an example, the no discharge of any wet
20 weather discharges to the Tolomato River. You know, that is not
21 specifically prohibited or required by DEP, but it is a standard
22 that has been addressed because it is an outstanding Florida
23 water and aquatic preserve, and obviously we are very sensitive
24 to that. We are trying to maintain water quality.

25 There is an equal component to this on the stormwater

1 side that, you know, I won't get into, but this is a very
2 comprehensive water resource protection plan. And the utility
3 there is no question is what I would call the keystone piece of
4 being able to meet the standards that have been established for
5 this very unique project.

6 COMMISSIONER JABER: And you don't think that JEA on
7 its own would want to meet those same environmental standards?

8 THE WITNESS: Well, I can't speak to them as their
9 wants, but I can say that, you know, this landowner and this
10 developer and this plan are very unique. And I think you will
11 find it unique throughout the entire State of Florida, in some
12 cases throughout the nation. I mean, there is many, many
13 innovative things that are being done. You know, it is very
14 difficult, I think, for JEA, as an example, as a public body
15 that has to answer to all of their constituents including, you
16 know, they have constituents of ratepayers in St. Johns County
17 and Duval County, you know, for them to take a special case
18 which may cost more. I mean, somebody could say, well, you are
19 subsidizing, you know, something that is for the benefit of
20 Nocatee. But the real end result, as Mr. Skelton testified, is
21 being able to control the entire environmental program so that
22 you can ensure that you are implementing the principles that we
23 have outlined.

24 COMMISSIONER JABER: Okay. So other than Nocatee's
25 desire to control the environmental program, are you aware of

1 anything that prohibits or prevents JEA from providing service
2 directly to the development?

3 THE WITNESS: From a technical perspective or from a
4 legal perspective?

5 COMMISSIONER JABER: Technical, legal, procedurally,
6 permit.

7 THE WITNESS: Well, I think obviously they could
8 technically provide it because they are doing a piece of the
9 service now if they were doing the Nocatee portion, Nocatee
10 Utility Corp's portion. I am just simply not qualified to speak
11 to the legal aspects of that.

12 COMMISSIONER JABER: Okay. Let me ask the same
13 question a different way. Hypothetically, if the Commission
14 denied your application because you didn't have direct technical
15 ability to provide service to customers, and because as a matter
16 of public interest we found that this application would result
17 in higher rates and charges for those customers, what would
18 Nocatee do to obtain service to the development?

19 THE WITNESS: Well, I can honestly say, you know, we
20 haven't anticipated that outcome from a -- I would like for you
21 to know from a technical operation and maintenance point of view
22 we did seek and put out -- Nocatee Utility Corp put out a
23 request for proposals. JEA was not the only provider. United
24 Water Florida also responded to that with a substantial set of
25 qualifications. And so obviously we are out-sourcing for that

1 technical ability besides the things that we are doing, if you
2 will, Nocatee Utility is doing in-house. So I don't know, if
3 the question is if JEA wasn't found to be adequate technically
4 to provide service if we would have the option to choose another
5 provider, we have another provider that we have investigated and
6 has responded to us besides JEA.

7 COMMISSIONER JABER: No, I'm not asking about JEA's
8 technical ability. In your testimony and all the testimony,
9 actually filed by Nocatee, you acknowledge that it is not your
10 direct technical ability that you are putting forth for us to
11 consider. It is you have contracted with JEA and will rely on
12 their technical ability and their management experience.

13 So, in evaluating your application before us, if the
14 Commission were to find that you did not have direct technical
15 ability and because there is a difference in the rates and
16 charges assessed from Nocatee as would be assessed if JEA was
17 providing the direct service, what would Nocatee do to get
18 service to the development? Would you go to JEA and say provide
19 it directly?

20 THE WITNESS: Well, I think that from that perspective
21 it would be a legal issue as can they provide it directly since
22 it is in both counties, and I don't know the answer whether they
23 can or they cannot.

24 COMMISSIONER JABER: Thank you.

25 COMMISSIONER DEASON: I have a few questions. Did you

1 negotiate what I will call the 80 percent rate, the agreement
2 with JEA that they would be compensated for their services at 80
3 percent of their retail rate?

4 THE WITNESS: I participated in that negotiation, yes,
5 sir.

6 COMMISSIONER DEASON: Okay. And correct me if I'm
7 wrong, as I understand it that JEA would charge Nocatee Utility
8 80 percent of what they would have charged the customers if they
9 were actually providing direct retail access to those customers?

10 THE WITNESS: That is correct. It's a bundled rate.
11 You know, originally our agreement was just for wholesale
12 service and that's what our letter of intent was structured
13 around. Then when we sent out an RFP for operation and
14 maintenance, JEA came back along with their qualifications with
15 a proposal that they would like to do a bundled rate, if you
16 will, as opposed to having just a wholesale component for
17 treatment and a separate fee for operation and maintenance, that
18 they wanted to bundle it together.

19 And, you know, from our perspective we thought that
20 provided us some pretty good protections. That way if they
21 raised -- if they raised their wholesale rate but did not raise
22 their retail rate, then we didn't pay any more. And we thought
23 that that provided our customers with additional protection,
24 because JEA has got, I think, over 180,000 customers, and so for
25 them to raise their rates we would at least be in a much better

1 posture. We have a lot of people supporting keeping those retail
2 rates down as opposed to people keeping just the wholesale rates
3 down which only effect a limited number of customers. So that
4 is -- I hope I answered your question.

5 COMMISSIONER DEASON: You did. And what is the term
6 of that agreement, is that five years with renewal options?

7 THE WITNESS: We have a -- it is ten-year. The O&M is
8 ten years with, I think, three five-year renewals. I think that
9 is correct. And then after that it can be continued. But it
10 can be continued after the -- I think there is five-year
11 renewals after the initial ten-year increment.

12 CHAIRMAN DEASON: I have kind of a policy question,
13 and if you are not the appropriate witness, please tell me and
14 maybe I can ask someone else. Is it Nocatee's position that if
15 this application is approved that this Commission is somehow
16 approving the 80 percent rate and that we, as regulators, are
17 obligated to pass -- make sure that that is passed through in
18 your retail rates to your customers?

19 THE WITNESS: My understanding is that that is part of
20 our cost of service. But that you will be approving the rate
21 that you think is appropriate and it's not a pass-through. You
22 know, if it goes up and our rates aren't adjusted, then
23 obviously Nocatee Utility Corp, you know, will either have a
24 lesser return, or a no return, or deficit, but my understanding
25 is it is not a -- it's not a pass-through. It would be no

1 different than if we negotiated at the end of ten years for
2 United Water to provide the O&M and JEA to provide the wholesale
3 service, which is an option in our agreement. You know, we
4 would try to negotiate the best, the best cost for the
5 appropriate level of service. And I don't think it is tied to
6 our tariff.

7 COMMISSIONER DEASON: Let me switch gears a for a
8 moment and ask you a few questions about the CIAC policy of
9 Nocatee. As I understand it there will be -- there will be
10 lines that will be constructed by the developer that will be
11 donated to Nocatee, is that correct?

12 THE WITNESS: There will be, yes, sir.

13 COMMISSIONER DEASON: And then there also will be
14 service availability charges collected from customers when they
15 actually connect or request service, is that correct?

16 THE WITNESS: That is correct.

17 COMMISSIONER DEASON: And I understand that a portion
18 of those charges will be remitted to JEA and that it would be
19 equal to what would have been collected by JEA if they had
20 provided service directly, correct?

21 THE WITNESS: Yes, sir, that is correct. And the
22 difference being would be the infrastructure that Nocatee
23 Utility Corporation actually constructs versus CIAC.

24 COMMISSIONER DEASON: Repeat that last statement.

25 THE WITNESS: Well, the difference in the total

1 connection fee that the customer pays is their -- JEA's
2 facilities are all off-site, and we are primarily paying
3 connection fees to JEA for their treatment capacity, that they
4 are reserving for us and we are paying their connection fee for
5 that.

6 Nocatee Utility Corporation has on-site facilities. As
7 an example, we have a multi-million dollar reuse distribution
8 plan that we are funding. Storage tanks, high service pumps, et
9 cetera. We have a very large master pump station that
10 ultimately will pump 100 percent of the wastewater back to JEA.
11 There is trunk systems within -- remember this is a 15,000-acre,
12 very large development. So those facilities will be constructed
13 by Nocatee Utility Corporation. Now, the internal subdivisions,
14 if you will, will be CIAC, will be developer dedicated.

15 COMMISSIONER DEASON: Well, I guess this is my
16 question, then. Is the amount collected by JEA somehow
17 discounted for the fact that there are a number of on-site
18 facilities that are being constructed by Nocatee that they are
19 avoiding because they are not actually the retail provider of
20 service?

21 THE WITNESS: I am not that familiar with what is
22 included in JEA's connection fee. My understanding it is
23 primarily plant and not main or force main. But I am probably
24 not the correct person to answer that question of what their
25 connection fees go to. My understanding is primarily plant.

1 COMMISSIONER DEASON: Do you have an idea who may be
2 able to provide move information?

3 THE WITNESS: I would think, as I understand it, Mr.
4 Kelly with JEA is going to testify and he probably could answer
5 that question.

6 COMMISSIONER DEASON: Okay. And this may be a
7 question for Ms. Swain, and if it is, fine, just let me know.
8 Do you have an understanding as to how Nocatee is to account for
9 the collections from the customer for service availability that
10 they in turn remit to JEA? Does that CIAC remain on the books
11 of Nocatee or somehow is it erased off the books of Nocatee?

12 THE WITNESS: I think Ms. Swain would have to answer
13 that question.

14 COMMISSIONER DEASON: Very well. The monies that
15 are remitted to JEA, the service availability charges that you
16 collect from your customer and then you remit to JEA, what
17 happens if after ten years the contract is not renewed, is there
18 any reimbursement or are those monies gone?

19 THE WITNESS: Well, they are paid at the time of
20 connection. So the accounting should occur -- maybe I don't
21 understand the question, but it seems like they are --

22 COMMISSIONER DEASON: Well, it seems like service
23 availability charges are collected to provide -- have service
24 provided. The customer pays that not to have service for ten
25 years, but have service for as long as they reside there and

1 there is a utility there providing service.

2 THE WITNESS: That is correct.

3 COMMISSIONER DEASON: And I guess my question is what
4 protection is there for the customer, because as I understand
5 it, you are collecting money from them, then remitting it to
6 JEA, and then basically it is for ten years with options to
7 renew. I guess my question is what if after ten years there is
8 not a renewal of the JEA agreement. Are you going to go back to
9 your customers to look for more funds or have you thought about
10 that possibility?

11 THE WITNESS: Now I understand your question. The
12 ten-year term is only for the operation and maintenance, not for
13 the wholesale agreement. The wholesale agreement continues on.
14 The ten-year term just relates to operation and maintenance and
15 management, not the wholesale portion for treatment. So that
16 goes on in perpetuity, or for a long time under the contract
17 terms.

18 COMMISSIONER DEASON: Okay.

19 CHAIRMAN JACOBS: Commissioner Baez.

20 COMMISSIONER BAEZ: Mr. Miller, I want to try and
21 understand the significance of the development order a little
22 better. You say that there is two separate development orders,
23 one from each county, and they are both basically identical and
24 set out these four major conditions.

25 THE WITNESS: Related to utility service they are

1 pretty much identical.

2 COMMISSIONER BAEZ: Do they -- if the Commission came
3 up with a determination that somehow impacted these conditions,
4 I mean, what would happen to the development orders, do they
5 survive, do you have to go out and find an alternative that
6 matches these conditions, or are they fungible?

7 THE WITNESS: Well, I can tell you that they were
8 negotiated intensely with both counties, and particularly the
9 water supply portion and the reuse portion of the development
10 order. My personal feeling is if the plan of service was to
11 have on-site wells, and not meet the 100 percent reuse
12 commitment, I do not believe -- this is just my opinion -- that
13 we would be able to modify that development order at the two
14 counties to be able to successfully get that modification.
15 Because this environmental package was a very, very important
16 element to those government officials that voted for the
17 development order.

18 COMMISSIONER BAEZ: I understand. And I guess I'm
19 just trying to get a feel for how much of it was -- and, I'm
20 sorry, now I don't recall -- Mr. Skelton testified as to what,
21 you know, the environmental ethic that the company was trying to
22 employ, and I'm trying to get an appreciation for how much of it
23 is atypical in terms of how much of these conditions were
24 created or set based upon this environmental ethic that proceed
25 from the company itself or from the development itself. And how

1 much of it is typical, are typical conditions that are included
2 in development orders that are issued by the -- other
3 developmental orders that are issued by the county.

4 THE WITNESS: Well, I would clearly say it is unusual
5 to have these conditions on a DRI. I don't think there is any
6 question about that. But let me explain to you the process that
7 was used and how this came about. As I said, there was a
8 visioning process that was gone through to develop, you know,
9 these standards that were ultimately turned into a plan of
10 service. And there were literally hundreds of meetings that
11 were held and the consensus from those were both from a public
12 policy and from a government policy that certain things would
13 not be allowed to happen.

14 One of those as an example was that, you know, there
15 would not be on-site water wells. If we took an water cautionary
16 area in that part of the world with the water problems that St.
17 Johns County particularly has, that our project would not be
18 approved nor should it be approved if that was the ultimate
19 service plan. So, to suggest now after three years that, you
20 know, I guess we were just kidding, you know, and to go back to
21 St. Johns County Commission and the City Council for the City of
22 Jacksonville, I think the likelihood of being able to amend that
23 development order is pretty remote.

24 And I think the other ones, 100 percent reuse was
25 another. I mean, I'm sure that you all certainly work all over

1 the state, I know, and, you know, a project 15,000 acres, 15,000
2 homes to be built over 25 years is an extraordinarily large
3 commitment from local government. To give that bundle of
4 development rights they want significant commitments both
5 financially and transportation and human resources, but also in
6 environmental resources. And they expect those commitments and
7 they got those commitments. And I think the probability of
8 renegotiating that, or thinking that is some just modification
9 that we just file a piece of paper, I think is pretty
10 unrealistic. I don't think it is possible.

11 COMMISSIONER BAEZ: Is it fair to say, then that the
12 conditions contained in the development order are the ones that
13 would govern, or, in fact, control the development of water
14 service for the development?

15 THE WITNESS: If you cannot meet the terms and
16 conditions in your development order, then you cannot get a
17 permit to proceed regardless of anything else. So, yes, it will
18 govern this project.

19 COMMISSIONER BAEZ: Is that something -- nevertheless,
20 is the development order something less than the control that
21 you have alluded to on the development side? I mean, is it that
22 the company would maintain even more control over and above the
23 conditions or the requirements of the development order?

24 THE WITNESS: Yes, sir. I do think that there are --
25 besides the conditions that are outlined in the development

1 order, there are additional commitments that are not outlined
2 specifically in the development order that the company does want
3 to make sure or adhere to from an environmental ethic
4 perspective.

5 COMMISSIONER BAEZ: Thank you.

6 CHAIRMAN JACOBS: I have a couple of questions. I am
7 looking at a document attached, I believe, to your supplemental
8 direct testimony. And it is the Nocatee NEWRAP document.

9 THE WITNESS: Yes, sir.

10 CHAIRMAN JACOBS: And specifically under the
11 components, water supply, it mentions the water supply study
12 that was done.

13 THE WITNESS: Yes, sir.

14 CHAIRMAN JACOBS: And indicates that there is ample
15 groundwater on-site to handle the build-out of this development.
16 And what I hear you to be saying is that the decision to not
17 pursue that is primarily tied to the environmental ethic that
18 you have described previously.

19 THE WITNESS: That's right, as well as the public and
20 governmental policies of not putting wells in this area to serve
21 new developments.

22 CHAIRMAN JACOBS: So, is that a policy of St. Johns
23 County or Duval, are they actively engaged in that kind of a
24 policy? Because it sounds like the county was not there.

25 THE WITNESS: Well, and I know the county has

1 withdrawn, but their plan of service did not propose any wells
2 in Nocatee, either. They were trying to honor, as their
3 Commission directed, the county plan of service. If they were
4 going to serve the St. Johns County portion of Nocatee, did not
5 propose to put any wells either, in Nocatee. I think it is only
6 the Intercoastal plan is the only one that I have seen that
7 proposes wells that are contrary to the development order.

8 CHAIRMAN JACOBS: Going to the agreement briefly, and
9 following up on some of the questions that Commissioner Deason
10 asked. There is a provision in the agreement that if it is
11 terminated, I guess it is the O&M agreement, if it is terminated
12 that you still have the option to get bulk water from JEA, but
13 it goes back to their wholesale rates, correct?

14 THE WITNESS: Correct. Under that circumstance we
15 would not be paying 80 percent of retail for this bundled O&M
16 and wholesale treatment, we would just be paying their wholesale
17 rate in their rate structure at that point in time.

18 CHAIRMAN JACOBS: Are there noticing provisions and
19 such that you would have an opportunity to shop around for
20 alternative sources in the event that that would become a
21 prospect?

22 THE WITNESS: I don't know the answer to that.

23 CHAIRMAN JACOBS: Also in the agreement, in Section
24 8.5, you are providing easements to JEA within Nocatee at no
25 cost.

1 THE WITNESS: That is correct.

2 CHAIRMAN JACOBS: I assume that that is part of the
3 kind of integrated planning that went on here with the
4 development of the whole project?

5 THE WITNESS: Yes, because actually all of the
6 planning and engineering will be done by Nocatee Utility Corp,
7 not by JEA. And so it allows us to plan utility corridors where
8 they need to be where they can be efficiently integrated into
9 the master land use plan. And so it was appropriate for us to
10 provide those easements. And the only ownership that JEA would
11 have is on these potential joint use facilities which are
12 primarily in road rights-of-way anyway.

13 CHAIRMAN JACOBS: And the thought that struck me there
14 is because your ownership is not full on these lines, it sounds
15 like that this is a potential source of revenue that you have
16 chosen to not pursue.

17 THE WITNESS: Well, quite frankly, those joint use
18 lines are going -- if you look at the map, they go down the
19 proposed Nocatee Parkway which will be a public right-of-way.
20 So, quite frankly, there wouldn't be any easements required for
21 those joint use lines anyway, it would be a public right-of-way
22 that JEA or anybody else could run their facilities down.

23 CHAIRMAN JACOBS: That is for the joint use
24 facilities.

25 THE WITNESS: Yes, sir.

1 CHAIRMAN JACOBS: In other parts of the system that
2 would not be the case, though, would it?

3 THE WITNESS: Well, JEA has not identified any other
4 joint use facilities on any other part of the system. So all of
5 those will be owned by Nocatee Utility Corporation.

6 CHAIRMAN JACOBS: I see. So the easements, you
7 wouldn't give easements.

8 THE WITNESS: So we don't have a need for an easement
9 to JEA.

10 CHAIRMAN JACOBS: There was a question -- let me get
11 in my notes to that. Earlier there was a question about the
12 potential cost you would incur for these joint use projects, for
13 the joint projects, and as I understand it you would not incur
14 any costs -- because it looks like you could incur some costs if
15 there is a joint project which is designed to offer added
16 capacity. And I guess let me point you to where I am looking
17 at. Again, your supplemental direct testimony, Page 4, the
18 answer begins on about Line 13. With the sentence beginning in
19 the event.

20 THE WITNESS: I apologize. I'm having a hard time.

21 CHAIRMAN JACOBS: That's okay.

22 THE WITNESS: I'm sorry, what page was that?

23 CHAIRMAN JACOBS: Page 4, and beginning -- the
24 sentence that begins on Line 13.

25 THE WITNESS: Yes, sir.

1 CHAIRMAN JACOBS: It sounds like you can incur some up
2 front costs.

3 THE WITNESS: I don't think so. The JEA is obligated
4 to pay for any cost of up-sizing.

5 CHAIRMAN JACOBS: I heard your answer to that earlier,
6 but if you read this what it says is JEA will contribute to the
7 cost. So it sounds like somebody else is actually, you know,
8 figuring out what the whole cost of it is and committing to that
9 cost and then JEA will come in and figure out what its
10 proportion of that cost is. That's not what is going to happen
11 here?

12 THE WITNESS: No. And maybe this isn't artfully
13 stated, but Nocatee Utility Corporation will pay the cost of the
14 line as if there was no up-sizing. In other words, the capacity
15 that is necessary to serve the Nocatee Utility franchise area.
16 JEA pays any cost above that on a hydraulic share basis, which
17 means there should be a savings to Nocatee Utility Corporation,
18 because obviously as you upsize there are significant economies
19 because the capacity is related exponentially to the diameter.
20 So in our analysis we have assumed that there is no up-sizing,
21 which would generate the maximum cost that Nocatee Utility
22 Corporation could pay.

23 We think that on joint use lines NUC will actually pay
24 less because of this hydraulic share provision. This payment,
25 when JEA pays part of the hydraulic share, it will be more than

1 the incremental cost of up-sizing.

2 CHAIRMAN JACOBS: I see.

3 THE WITNESS: And so that is why we have structured
4 this as a hydraulic share payment and not that just an
5 additional cost of the pipe, as an example.

6 CHAIRMAN JACOBS: And you worked through those numbers
7 and -- because the thought of what you just said was what
8 intuitively struck me as how you might want to approach it. You
9 would figure out what it is going to cost you to build a pipe
10 that long and that distance for that capacity and then figure
11 out the difference between what you would have run and what the
12 extra is.

13 THE WITNESS: Well, we chose not to do that because we
14 don't get the benefits. Then we would pay the same cost
15 regardless. We would get no economies of scale as an example, a
16 24-inch line may have.

17 CHAIRMAN JACOBS: Are you okay?

18 THE WITNESS: Excuse me just a second. Okay. And so
19 the advantages on paying on a hydraulic share basis is that a
20 24-inch main does not cost twice as much as a 16-inch main even
21 though it might have twice the capacity. So therefore our
22 hydraulic share of the 16 capacity might be half the cost of the
23 24, versus -- I'm probably confusing things -- but versus the
24 differential between installing a 16 and a 24. So we believe
25 that it will be a savings to Nocatee Utility Corp.

1 CHAIRMAN JACOBS: Okay. Let's talk a little bit -- in
2 fact, this next question here goes to the other question I had.
3 It would appear that -- before I ask that question, let me
4 preface that question. You have stated in your testimony and
5 Ms. Swain in her testimony both say that as a result of the
6 proposal from JEA for the bundled rates, you will incur lower
7 costs than you originally anticipated, and then I believe now
8 you can project even lower rates than you originally
9 anticipated. Is that a fair statement?

10 THE WITNESS: Well, what I have testified to is that
11 there will be a savings on the joint use lines, and what is in
12 our current rate --

13 CHAIRMAN JACOBS: I'm sorry, I moved on from the joint
14 use lines. I'm talking about total system now.

15 THE WITNESS: Right.

16 CHAIRMAN JACOBS: That because you initially had the
17 rate where you were going to do the wholesale plus O&M and then
18 you got the now bundled arrangement for both. The concept, I
19 believe, at least as I gather from Ms. Swain's testimony, is
20 that you are incurring an overall reduction in cost as a result
21 of that development, of the new proposal from JEA.

22 THE WITNESS: Yes. I mean, my understanding is we
23 originally estimated the cost of providing operation and
24 maintenance and that was an estimate based on our experience
25 with other utilities similar in size. When we negotiated the

1 bundled rate with JEA, you know, obviously our target was to be
2 at that number or below, and we ended up slightly below that
3 number. So that is the savings that we are talking about now.
4 How that was incorporated into the rates, Ms. Lane would have to
5 address that.

6 CHAIRMAN JACOBS: Which was my next question. In
7 response to Commissioner Jaber, you indicated that you
8 anticipate that the rates -- I guess those are retail rates --
9 that Nocatee customers will pay will be somewhat higher than the
10 rates that JEA customers pay, is that a fair statement?

11 THE WITNESS: Yes. We think they will get a higher
12 level of service and their rate will be higher.

13 CHAIRMAN JACOBS: Now, the question I was going to ask
14 initially was it sounds like a good portion of the differential
15 can go to the cost, the additive cost that you will incur to
16 implement your environmental ethic. Is that a fair statement?

17 THE WITNESS: Particularly the reuse component, yes,
18 sir.

19 CHAIRMAN JACOBS: Okay. Much of that would appear to
20 be capital cost. Absent, take aside the bulk that you are going
21 to get because the bulk is going to come from JEA, right?

22 THE WITNESS: Certainly capital is a significant
23 component, but you also have the -- yes, I would agree with
24 that.

25 CHAIRMAN JACOBS: And would it be an alternative to

1 look at versus putting that expense into on-going rates looking
2 at it in connection fees or other kinds of fixed charges?

3 THE WITNESS: My understanding is that the majority of
4 it is in the connection fee, but I think Ms. Swain would be the
5 better person to answer that question.

6 CHAIRMAN JACOBS: Okay. I think I have one more
7 question. The agreement with JEA limits JEA to a cap of \$4,000
8 per maintenance issue. And I assume that is for the term of the
9 agreement?

10 THE WITNESS: Yes, I believe that is correct.

11 CHAIRMAN JACOBS: And this is my naivete, but that
12 sounded low to me for a project that seemed to be going at the
13 scope of this one.

14 THE WITNESS: Well, it's interesting you say that,
15 because it seemed low to me, too, because they started at
16 \$2,000. But we negotiated that point very hard. We actually
17 went -- and that is, by the way, per event. You know if there
18 is a line break, so that is per event. JEA researched to get
19 collectively what their costs were typically per event for a
20 repair. We then researched independently what the cost would be
21 for other repairs that we have seen, and we were able to
22 negotiate that up.

23 JEA's actually was less than, as I recall, \$2,000 per
24 event. We felt like that was low. We negotiated up to four. We
25 also looked at how many events we thought might exceed that, and

1 in our estimation they would be relatively few and wouldn't have
2 a significant economic impact on our rates, or our operations, or
3 costs.

4 CHAIRMAN JACOBS: And you include -- that applies also
5 to preventative maintenance, as well, does it not?

6 THE WITNESS: No.

7 CHAIRMAN JACOBS: It doesn't. I thought it did.

8 THE WITNESS: I may be mistaken, but my understanding
9 is that the preventative maintenance program included in their
10 80 percent rate. That is a repair cost only, that \$4,000.

11 CHAIRMAN JACOBS: Thank you. Any questions,
12 Commissioners? Redirect.

13 MR. WHARTON: Chairman Jacobs, I'm sorry, but I need
14 to ask a couple of questions about a response you elicited that
15 has never appeared in the testimony or the depositions, and I
16 think creates a serious misapprehension on the record. Never
17 heard it before.

18 CHAIRMAN JACOBS: Tell me how --

19 MR. WHARTON: I think I heard Mr. Miller say and saw a
20 bunch of pens dancing up there that he knew of some county or
21 governmental policy that prevented the on-site facilities.
22 Maybe I misunderstood him.

23 CHAIRMAN JACOBS: No, I think what he said is that St.
24 Johns County had intended -- or had not intended, rather, to put
25 wells on the site. It was only Intercoastal that had intended

1 to do that.

2 MR. WHARTON: But I did not understand him to say
3 there was no -- there was some county or governmental policy
4 that would prevent that?

5 CHAIRMAN JACOBS: I do believe that he indicated that
6 there may have been a county effort in that regard.

7 MR. WHARTON: That is brand new. I think that would
8 be pretty prominent in their testimony if that was his -- I
9 mean, may I inquire?

10 CHAIRMAN JACOBS: Briefly, just as to that point.

11 RE CROSS EXAMINATION

12 BY MR. WHARTON:

13 Q Mr. Miller, are you aware of some county or
14 governmental policy that would prevent on-site treatment plants
15 and wells in Nocatee?

16 A I think policy may be the incorrect word. It was a
17 desire by a significant amount of the public and the government
18 officials that wells not be located on-site within the
19 development. It was a personal policy, if you will, that we were
20 respecting, not a rule or a law.

21 MR. WHARTON: That's all I have, Mr. Chairman.

22 CHAIRMAN JACOBS: Very well. Redirect.

23 REDIRECT EXAMINATION

24 BY MR. MELSON:

25 Q Mr. Miller, turn first, if you would, to your Exhibit

1 DCM-4, which is the letter of intent between NUC and JEA.

2 A Yes, sir.

3 Q Turn, if you would, to Page 3 of that. I guess the
4 pages are numbered both at the top and the bottom.

5 A Okay.

6 Q You were asked a question by Mr. Wharton about an
7 agreement to provide JEA with well sites would you read to
8 yourself just for a moment Section 2.6, and then I'm going to ask
9 you a question about it.

10 A I have read it.

11 Q Is there any indication in that paragraph that the well
12 sites or the water plant site would be within the boundaries of
13 the Nocatee development?

14 A No. No, there is not.

15 Q And what do you understand to be the meaning of the
16 final part of that sentence that begins with consistent with all
17 permitting requirements?

18 A Well, that would include the development order as well
19 as the NEWRAP program.

20 Q I believe Mr. Wharton asked you a question about split
21 service to the Nocatee development at Duval and St. Johns County
22 portions, and you stated it would not be desirable. Could you
23 tell us why you think it is not desirable?

24 A Well, I think there will be several reasons. One, I
25 mean, this is an integrated plan, and it would be very

1 inefficient to have two utility providers literally and sometimes
2 on opposite sides of the street. There would be duplication of
3 lines. There would be duplication of reuse distribution plant.
4 There would be, you know, total inefficiency of operation. So,
5 you know, we think this would clearly not be in the best interest
6 of the customers to have two utilities trying to provide brand
7 new facilities side-by-side and investing the capital to do that.

8 Q Mr. Wharton also asked you if you were aware of a
9 proposal that JEA had made to the St. Johns County Commission and
10 then he asked you whether JEA had come to meet with Nocatee
11 Utility Corporation after that meeting. Do you recall that line
12 of questions?

13 A Yes, I do, and that meeting did occur. JEA came to --
14 as I recall, two representatives came, and just simply told the
15 Nocatee Utility Corporation representatives, of which I was one,
16 that they had been instructed or been asked by the County
17 Commission to come see if Nocatee Utility was interested in
18 receiving reuse service as part of this JEA plan to provide
19 service in other parts of northern St. Johns County. We told
20 them that, you know, we weren't interested. We weren't
21 interested in talking and we didn't even think it was
22 appropriate, because, one, we were obviously in this PSC
23 proceeding, but also there was no plan that had been approved by
24 the county. It was just some exploratory investigation as near
25 as we could tell.

1 There were no specifics of the plan as far as what the
2 area was and what the terms and conditions. We thought it was
3 totally inappropriate. I think the total meeting time lasted
4 about five minutes, and that was the extent of our conversation
5 about retail service from JEA.

6 Q I believe in an earlier portion of that answer you said
7 they came to meet with you about reuse service to Nocatee. Did
8 you mean retail service?

9 A I'm sorry, yes, retail service.

10 Q Could you show me on the large map where the lines that
11 JEA has designated as potential joint use lines would run, just
12 in a general sense.

13 A I'm sorry, are you talking about -- would you repeat
14 the question. Are you talking about joint use lines or reuse?

15 Q Joint use.

16 A Okay. The joint use lines are proposed to run along
17 what is known as the Nocatee Parkway. It really shows better on
18 this larger exhibit. It is really these dashed lines along the
19 Nocatee corridor that run from U.S. 1 back over to 210, so
20 approximately four and a half miles.

21 Q And I believe you indicated JEA has not told you why
22 they might want those particular lines to be upsized, is that
23 correct?

24 A That is correct.

25 Q Are you aware that Intercoastal Utilities has on

1 various occasions engaged in negotiations to sell their utility
2 to JEA?

3 MR. WHARTON: Objection. That is clearly outside the
4 scope of cross, and this witness' testimony.

5 CHAIRMAN JACOBS: Mr. Melson.

6 MR. MELSON: I believe it is proper redirect. He was
7 asked why those lines might be upsized and I'm trying to explore
8 if there are reasons known to him why they might be.

9 MR. WHARTON: He just said JEA never told him.

10 CHAIRMAN JACOBS: I'm trying to remember the question.
11 I think that was his response. I will ask you to ask what you
12 just said.

13 MR. MELSON: That was my question.

14 CHAIRMAN JACOBS: That had little to do with what
15 happened between Nocatee and the county. He asked was he aware
16 of -- your last response to what I asked was whether or not he
17 was aware of it and I will allow that.

18 BY MR. MELSON:

19 Q Do you recall the question?

20 CHAIRMAN JACOBS: No, actually it wasn't a question.
21 In clarification, you gave me a response back and that sounded
22 like the question and now I can't remember what the --

23 MR. WHARTON: Well, the question I objected to was him
24 saying has Intercoastal been in negotiations with JEA.

25 CHAIRMAN JACOBS: Right.

1 MR. WHARTON: That is way outside the scope.

2 CHAIRMAN JACOBS: I will allow the objection.

3 MR. MELSON: Sustaining the objection?

4 CHAIRMAN JACOBS: Yes.

5 BY MR. MELSON:

6 Q You were asked a question about the groundwater study
7 that has been done for this project, and told Mr. Wharton that
8 after the agreement with JEA the groundwater study became moot,
9 but that was not the reason it became moot. Can you tell me what
10 is the reason it became moot?

11 A Well, the reason that it became a moot issue was the
12 fact that in our opinion the project was not approvable using
13 groundwater resources within the Nocatee project. So that if
14 there was no development order, there was really no need for
15 service. And we did not believe based on our meetings with
16 literally hundreds of groups that we could get a development
17 order that allowed us to withdraw water from that location.

18 COMMISSIONER JABER: I have point of confusion in my
19 mind, and I had better go ahead and ask the question so that I
20 don't regret it later. Upsizing, that is using your present
21 mains, what you will construct to provide service to your
22 customers and adding to it. JEA will not in their request to
23 upsize will not be asking you to put in new mains, additional
24 mains that you will not be using, is that correct?

25 THE WITNESS: That is correct. As an example, let's

1 say that the main transmission water main for Nocatee needed to
2 be a 16-inch water main, but the JEA said we prefer for some
3 service, future service outside of Nocatee, say serving
4 Intercoastal, as an example, if they purchased Intercoastal.
5 That they wanted a 24-inch main. Then they said they would like
6 to make that main a joint use project and they would pay for the
7 upsizing and the payment structure would be on a hydraulic share
8 of capacity basis versus just paying the cost of upsizing.

9 COMMISSIONER JABER: Will that ever put Nocatee and
10 JEA in a position of competing for customers or in a position of
11 having duplication of facilities?

12 THE WITNESS: Just the opposite, I think. The
13 capacity of the line that is necessary to serve Nocatee will
14 always be reserved and owned, that capacity will be owned by
15 Nocatee Utility Corp. The additional capacity that is in the
16 line will be owned, if you will, by JEA. That makes it
17 substantially more cost-effective, so you have got one line --
18 and it just makes sense if JEA was going to provide a line
19 through and say they did buy Intercoastal, and they were going
20 to connect to Intercoastal.

21 Well, obviously they would like to not have to run a
22 parallel main. So by having this joint use facility, as an
23 example, that would give them the ability to have mains that were
24 simply more efficient. And it also benefits our customers
25 because we think it is cheaper to build lines that way. As a

1 practical matter, we also -- if they don't connect to anybody, we
2 also benefit by that additional capacity that they are not using
3 because it is all in the same line.

4 CHAIRMAN JACOBS: Mr. Melson.

5 BY MR. MELSON:

6 Q And let me skip forward in my redirect to the hydraulic
7 share question. I want to use a hypothetical example that may
8 bear no relationship to reality. Assume that Nocatee needs a
9 16-inch line, and assume that JEA asks for it to be upsized to
10 24-inch. And assume that the capacity, the hydraulic capacity of
11 that 24-inch line is exactly twice the hydraulic capacity of the
12 16-inch line. Are you with me?

13 A Yes.

14 Q Is that a ballpark reasonable set of assumptions?

15 A On order of magnitude.

16 Q Order of magnitude. Does the 24-inch line cost twice
17 as much as the 16-inch line to install?

18 A No, it does not. And I probably wasn't very
19 articulate, but let me use as an example --

20 Q Whoa. Just answer my question.

21 A Okay.

22 Q Does it cost twice as much as a 16-inch line?

23 A It does not.

24 Q Assume that it costs 50 percent more than a 16-inch
25 line so the cost of the 24-inch line is 150 percent of the cost

1 of the 16-inch line. Are you with me?

2 A Yes.

3 Q Under that circumstance, what would NUC pay for the
4 equivalent of a 16-inch line worth of capacity?

5 A If I've got all of those numbers correct, I think that
6 we would have paid 75 percent of what we would have paid if we
7 were building the reuse, the 16-inch main on our own.

8 Q And that is the economy of scale that you mentioned in
9 your testimony?

10 A That is what I was trying to say, yes.

11 MR. MELSON: Commissioners, there have been several
12 questions of Mr. Miller about the development orders. The
13 development orders have both been officially recognized. I have
14 documents that are excerpts of some relevant provisions from the
15 development orders, and for a couple of cross questions, I would
16 like to use those. And I will hand them out. They don't need
17 to be marked as exhibits because they are simply excerpts from
18 things you already have officially recognized, but I think
19 having the language in front of you will be helpful.

20 CHAIRMAN JACOBS: You said cross and meant redirect,
21 right?

22 MR. MELSON: I meant redirect, yes.

23 MR. WHARTON: So we are now going to use new documents
24 on redirect.

25 MR. MELSON: We are going to use -- excuse me.

1 CHAIRMAN JACOBS: Excuse me. It is my understanding
2 that these are documents that have been officially recognized.

3 MR. WHARTON: That were not asked about in direct. I
4 object, I think it is out the scope of cross. I didn't ask
5 about any documents that have been officially recognized.

6 CHAIRMAN JACOBS: I think it is within the scope of
7 redirect. Denied.

8 BY MR. MELSON:

9 Q Mr. Miller, do you recognize the two documents that I
10 have just distributed, the Ordinance 2001-13-E as being the
11 development order by the City of Jacksonville for the Nocatee
12 development?

13 A Yes, it is.

14 Q Or at least an excerpt from that development order?

15 A Correct.

16 Q And do you recognize Resolution 2001-30 as being an
17 excerpt from the St. Johns County development order?

18 A That is correct.

19 Q Would you turn to page, it is numbered 32 of the St.
20 Johns County resolution. Does Paragraph 21 contain the
21 development order conditions that you referred to in your answers
22 to some prior questions?

23 A Yes. Paragraph 21 relates to the potable water and
24 reuse provisions of the development order as well as the
25 prohibition of wells other than a backup source for wells.

1 Q And would you read Paragraph 21A to yourself, and I
2 just have one question about it for you.

3 A Yes, sir.

4 Q Do you understand that to mean that the provision of a
5 central water supply system with no on-site water treatment
6 plants and no on-site potable water wells is ultimately a
7 prerequisite to the issuance of any building permits for the
8 project?

9 A I believe that is exactly what 21A says.

10 Q And does a similar provision appear on Page 29 of the
11 City of Jacksonville ordinance in the comparable Paragraph 20A?

12 A Yes. I believe that this language is identical.

13 Q Let's turn back to the St. Johns County order, Page 32,
14 Paragraph C. You were asked about the ability to use backup
15 wells for reuse by Mr. Wharton, do you recall that line of
16 questions?

17 A Yes, I do.

18 Q In your mind, is a backup resource the same as a
19 supplemental resource?

20 A No, it is not. A backup resource, and I will give you
21 I think the best analogy I can. Think of it as electrical
22 service. You have a backup generator as an example. If the
23 electricity goes off, you know, you have a backup generator to
24 get you through during a hurricane or whatever. But that is not
25 a supplemental source of electricity. You are depending on the

1 power company to provide you electricity for 100 percent of the
2 needs unless there is some outage, some mechanical malfunction.

3 That is exactly what this backup provision is meant.
4 That it is only in case of an outage. It's not a supplemental
5 supply, it is a backup supply if there is some malfunction of the
6 system. Either a water quality problem at the plant for the
7 public access, reuse doesn't meet water quality standards, or if
8 there is a line break. So this is not intended, and since I
9 wrote this myself, I know what the author's intent was, it is not
10 meant to be a supplemental source, but simply an emergency
11 backup.

12 CHAIRMAN JACOBS: Does this agreement cover the
13 restriction on use of stormwater for reuse?

14 THE WITNESS: It does. You see at 21B(ii), it says
15 stormwater can be a component.

16 CHAIRMAN JACOBS: And it was my understanding that the
17 choice was not to use it, is that correct?

18 THE WITNESS: Well, our planning study showed that not
19 more than 20 percent of the reuse needs of this project at
20 build-out could be met by stormwater. And our preference is to
21 not use any stormwater, but we can use up to 20 percent. But in
22 the initial years you don't have enough stormwater ponds or
23 enough impervious area to generate stormwater to use much
24 stormwater to begin with.

25 And I would like to make a clarification because this

1 confusion has come up in other hearings I have been involved in.
2 When you see a stormwater pond and it is not raining, that water
3 in the pond is surficial ground water, it is not stormwater. So
4 the fraction of stormwater that is really available after a
5 rainfall is a very small fraction that is available to be
6 captured and used for reuse. So that is why we said no more than
7 20 percent will ever be available at any time in this project to
8 meet the irrigation needs. So that is why we are so dependent on
9 reuse and finding a reliable reuse supply.

10 CHAIRMAN JACOBS: Thank you.

11 BY MR. MELSON:

12 Q You were asked questions, a line of questions by Mr.
13 Wharton about Intercoastal's plan of service, and I believe you
14 indicated that that plan of service had changed over time. Do
15 you have any observation as to the circumstances under which that
16 plan changes?

17 A Well, each time I have reviewed the plan in one form or
18 another, either in hearings before the St. Johns County
19 Commission, or in depositions, or in testimony, we have done what
20 I will call a critique of their plan. And after each of those
21 critiques, their plan --

22 MR. WHARTON: Chairman Jacobs, I'm sorry, I must
23 object and move to strike. I asked him if the plan of service
24 in this case was the same as the plan of service in the other
25 case. They are just running wild on redirect with new

1 testimony. None of this is in the direct testimony. I asked
2 him whether it was the same plan of service in the two cases and
3 he said no. Which was testimony which was intended to go to
4 this argument that there is some res judicata or collateral
5 estoppel issue.

6 CHAIRMAN JACOBS: Very well. Mr. Melson.

7 MR. MELSON: He may have intended it for that purpose,
8 but once he asked that question he opens the door. And he asked
9 the witness if the plan of service has changed and the witness
10 has said yes. And I am now asking the witness if he has an
11 observation as to why it changes. I believe that is fair
12 redirect.

13 CHAIRMAN JACOBS: Given the question and the scope of
14 the answer, I think you have a very narrow latitude to explore
15 circumstances surrounding the import of that change. I think
16 that the question had to do with whether or not there was a
17 change, and given the answer that there was, and I can't recall,
18 to be honest with you. I would have to go back to the record to
19 confirm the answer was no. I think that conveys a very narrow
20 latitude to convey -- I mean, for you to inquire into specific
21 circumstances of the change. Did I sufficiently confuse you on
22 that?

23 MR. MELSON: I understand what you said, although I
24 disagree with it, respectfully.

25 CHAIRMAN JACOBS: So I am going to -- I am going to

1 limit your inquiry into this line of questioning, but I will
2 allow to inquire as to his knowledge, which I think was the
3 question that was initially asked. And if there is something
4 that came about in the answer, his response to that answer about
5 his knowledge then I think you can inquire further into that.
6 But my recollection on that -- if we need to we will go back and
7 figure out exactly what was said. But my recollection of that
8 is that he gave a fairly narrow response as to his knowledge of
9 the different plants.

10 MR. WHARTON: And as I recall, Chairman Jacobs, it was
11 the intervenor direct that Mr. Miller filed that got into the
12 plan of service. I mean, it wasn't even this testimony. And he
13 still has an opportunity to present that.

14 CHAIRMAN JACOBS: He covered something briefly, I
15 think, maybe in his summary. But what I hear you saying is you
16 would be more inclined to allow this line of cross in his
17 intervenor testimony.

18 MR. WHARTON: I just think it belongs there more than
19 it belongs here. But I agree with your ruling and don't -- I
20 certainly did ask him that question. What I perceive is we are
21 about to get into a bunch of criticism of the plan of service,
22 and I just don't think that is conversant with either my cross
23 or the direct.

24 MR. MELSON: I don't believe the witness was
25 criticizing a plan of service. He was making an observation

1 about the circumstances under which it had changed, and I
2 believe what he has testified so far is every time he comments
3 and provides Intercoastal with more information about
4 deficiencies, they come back and change their plan of service.

5 CHAIRMAN JACOBS: I would tend to agree that the more
6 substantial observations about the plan probably are more
7 accurately placed into his intervenor testimony, and I will
8 sustain the objection. Only because you get another bite at the
9 apple.

10 MR. MELSON: I hope you remember that.

11 BY MR. MELSON:

12 Q You were asked whether you evaluated Intercoastal's
13 technical ability, and you indicated you evaluated the technical
14 feasibility of their plan of service, do you recall that?

15 A That is correct.

16 Q In a very short answer, what conclusion did you draw?

17 A That their plan of service was not feasible to service
18 the Nocatee development.

19 Q You were asked a question by staff about off-site
20 facilities, and I believe you indicated that NUC was evaluating
21 the best route for an off-site reuse main to be constructed to
22 connect with a JEA main, is that correct?

23 A That is correct.

24 Q Will that off-site reuse main be constructed by and
25 owned by Nocatee Utility Corporation?

1 A Yes, it will.

2 Q You were asked a question by Commissioner Jaber about
3 the physical and legal ability of JEA to serve Nocatee on a
4 retail basis. Do you recall that line of questions?

5 A Yes, I do.

6 Q Do you recall what St. Johns County's position was on
7 JEA's legal authority before St. Johns County withdrew from this
8 case?

9 A Well, my understanding was that St. Johns County's
10 position was that JEA didn't have the legal right to serve the
11 St. Johns County portion of this area.

12 Q You indicated that the -- in response to a question by
13 Commissioner Baez about the development order conditions and the
14 likelihood that those might be changed, that in your view you
15 thought it would be difficult or impossible to renegotiate them.
16 Can you tell us what was the vote before the St. Johns County
17 Commission to approve the development order?

18 A They had five Commissioners and the vote was 3 to 2 to
19 approve this development order after many, many days and hours of
20 hearings and testimony.

21 COMMISSIONER JABER: Mr. Miller, did St. Johns County
22 believe anyone had the legal authority to serve this area other
23 than St. Johns County?

24 THE WITNESS: I don't know that I can answer that of
25 what they think. I believe they certainly would like to serve

1 this area based on, you know, information that they have filed
2 in this case.

3 COMMISSIONER JABER: So it might be then that they
4 believe that no one has the legal authority because they have
5 that exclusive service territory designated?

6 THE WITNESS: I think that is probably beyond my legal
7 ability.

8 COMMISSIONER JABER: Okay. As we take the questions
9 with respect to you selling the utility to JEA eventually, if
10 they exercise the right of first refusal and Nocatee ends up
11 selling the utility to JEA, does JEA ever have to go in front of
12 St. Johns County for approval of that sale?

13 THE WITNESS: I'm not sure of whether they do or not.
14 I think it probably depends on at what point in time. If 25
15 years from now if Nocatee Utility Corporation was to sell to
16 JEA, you know, I don't know what, you know, what the
17 jurisdictions would be at that point in time and what the legal
18 ramifications are. It's unclear to me.

19 COMMISSIONER JABER: Let me understand what you just
20 said. Is there something in the testimony that prohibits you
21 from selling to JEA prior to 25 years?

22 THE WITNESS: No, I was just using that as an example.
23 We don't have a plan to sell to JEA, so, you know, I was just
24 saying there is no current plan.

25 BY MR. MELSON:

1 Q Mr. Miller, one final question, I believe. You were
2 asked a series of questions by Mr. Wharton about the right of
3 first refusal and potential sale to JEA. Have there been any
4 discussions with JEA of potential sale outside of the discussion,
5 other than the discussions revolving about that right of first
6 refusal?

7 A No.

8 MR. MELSON: That's all I have.

9 CHAIRMAN JACOBS: Very well. Exhibits.

10 MR. MELSON: Move Exhibit 6 and 7.

11 CHAIRMAN JACOBS: Without objection, show Exhibit 6
12 and 7 are admitted into the record. Thank you. You are excused
13 until later.

14 (Exhibits 6 and 7 admitted into the record.)

15 MR. MELSON: And Nocatee calls Debbie Swain.

16 Commissioner Jacobs, I believe you indicated your
17 intention to break for the evening around 5:30 prior to the
18 customer meeting?

19 CHAIRMAN JACOBS: Yes.

20 MR. MELSON: Might I inquire how much cross
21 examination the other parties anticipate for Ms. Swain? I
22 wonder if it makes sense to start her now if we are going to be
23 unable to finish by 5:30.

24 CHAIRMAN JACOBS: Well, rather than pressure or place
25 any pressure -- hold on one moment.

1 MR. WHARTON: Mr. Chairman, there is a related
2 question, and that is tonight will just be the customer portion.
3 The witnesses can go home at the end for the day?

4 CHAIRMAN JACOBS: Just a moment. Okay. In the true
5 tradition of being flexible, we have determined that it will
6 probably be as good a plan as any for us to try and get this
7 witness on this evening, so we are prepared to go ahead and
8 proceed until 7:00 and then break and take customer testimony.
9 And then after the customer testimony break for the evening.

10 MR. WHARTON: So the rest of witnesses can go.

11 CHAIRMAN JACOBS: I assume your cross is going to last
12 for Ms. Swain until at least 7:00?

13 MR. DETERDING: I don't know about until 7:00, but it
14 will certainly last more than half an hour.

15 CHAIRMAN JACOBS: Okay. And I expect the next witness
16 will be Mr. Miller and it will take more time than a very short
17 time. So it will be my estimation that we will go ahead and try
18 to complete cross for Ms. Swain this evening and all other
19 witnesses can be excused for the evening.

20 MR. DETERDING: Excuse me. If I understand then we
21 are not planning on taking that 5:30 break, we are just going to
22 go straight --

23 CHAIRMAN JACOBS: No. We are going to go until, if
24 possible, complete up until 7:00 o'clock.

25 MR. WHARTON: And the hearing tomorrow is at --

1 Corporation in this proceeding?

2 A I was engaged by Nocatee to perform a study of rates
3 and proper rates and service availability charges in this case.

4 Q Have you filed direct testimony dated February 11,
5 2000, consisting of 10 pages?

6 A Yes, I have.

7 Q You also filed supplemental direct testimony dated July
8 31, 2000, consisting of five pages?

9 A Yes.

10 Q What was the purpose of the supplemental direct
11 testimony?

12 A The supplemental direct testimony was intended to
13 reflect certain changes that were made specifically as a result
14 of the finalization of the agreement with JEA for management
15 services.

16 Q Have you also filed additional direct testimony dated
17 March 22, 2000, consisting of two pages?

18 A That is correct.

19 Q What was the purpose of your additional direct
20 testimony?

21 A As a result of a request for clarification from the
22 staff, the Commission staff, I discovered an error that had been
23 made in my original calculations, and I made a correction to that
24 computational error and filed testimony to support it.

25 Q With the updates to the earlier testimony that are

1 reflected in the later pieces of testimony, if I were to ask you
2 the same questions today in those three pieces of testimony,
3 would your answers be the same?

4 A Yes, they would.

5 MR. MELSON: Mr. Chairman, I would ask that Ms.
6 Swain's direct testimony, supplemental direct testimony, and
7 additional direct testimony be inserted into the record as
8 though read.

9 CHAIRMAN JACOBS: Without objection, show those
10 testimonies entered into the record as though read.

11 BY MR. MELSON:

12 Q Ms. Swain, you are sponsoring supplemental Exhibits O,
13 P, R, S, T, and U to Nocatee's certificate application, is that
14 correct?

15 A Yes, it is.

16 Q And that is the document we have previously identified
17 as Composite Exhibit 4, is that right?

18 A Yes, that's right.

19 Q Now, is where the going gets complicated. You had
20 attached to your direct testimony five exhibits labeled DDS-1 to
21 DDS-5, is that correct?

22 A Yes, that is correct.

23 Q And DDS-2 to DDS-5 have been essentially updated and
24 replaced by later exhibits, is that right?

25 A Yes, that is correct.

1 MR. MELSON: Commissioner Jacobs, first I would ask
2 that Exhibit DDS-1 be marked as the next exhibit.

3 CHAIRMAN JACOBS: Very well. Show that marked as
4 Exhibit 8.

5 (Exhibit 8 marked for identification.)

6 MR. MELSON: The way I would propose to handle the
7 other four exhibits, they essentially now contain outdated
8 information, but there are references to them throughout the
9 testimony. I would propose to identify them as a separate
10 exhibit so that they would be available for anybody reviewing
11 the record, but I do not intend to move their admission when the
12 time comes. If that procedure would be acceptable to you, I
13 think it may make the record more understandable.

14 CHAIRMAN JACOBS: So what I hear you saying is that
15 you would want to mark --

16 MR. MELSON: I will mark them, but then when we get to
17 the end to move exhibits, I will not move that exhibit.

18 CHAIRMAN JACOBS: The original exhibits. You will
19 move the modified exhibits.

20 MR. MELSON: Correct.

21 CHAIRMAN JACOBS: Okay.

22 MR. MELSON: And with that I would ask that Exhibits
23 DDS-2 to DDS-5 be marked for identification as Exhibit 9.

24 CHAIRMAN JACOBS: Show those marked as Exhibit 9, as
25 Composite Exhibit 9.

1 MR. MELSON: Thank you.

2 (Composite Exhibit 9 marked for identification.)

3 BY MR. MELSON:

4 Q Ms. Swain, you also had attached to your supplemental
5 direct testimony four exhibits, DDS-12 to DDS-15, is that
6 correct?

7 A That is correct.

8 Q And Exhibit DDS-12 contains another rate summary which
9 has been superseded by a later exhibit, is that right?

10 A Yes, that is right.

11 MR. MELSON: Commissioner Jacobs, if we might add
12 DDS-12 to Composite Exhibit 9. It's the one that will not be
13 admitted.

14 CHAIRMAN JACOBS: Show that Exhibit 9 also includes
15 DDS-12.

16 MR. MELSON: And we would ask that Exhibits DDS-13,
17 14, and 15, be marked as Composite Exhibit 10.

18 CHAIRMAN JACOBS: Show 13 through 15, DDS-13 through
19 15 are Composite Exhibit 10.

20 (Composite Exhibit 10 marked for identification.)

21 BY MR. MELSON:

22 Q And, finally, you had attached to your additional
23 direct testimony one exhibit labelled as Revised Exhibit DDS-12,
24 is that correct?

25 A Yes.

1 MR. MELSON: Mr. Chairman, we would ask that Revised
2 Exhibit DDS-12 be marked as Exhibit 11.

3 CHAIRMAN JACOBS: Show that marked as Exhibit 11.
4 (Exhibit 11 marked for identification.)
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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2 DIRECT TESTIMONY OF

3 DEBORAH D. SWAIN

4 ON BEHALF OF

5 NOCATEE UTILITY CORPORATION

6 DOCKET NO. 990696-WS

7 February 11, 2000

8

9 **Q. Please state your name and business address.**

10 A. My name is Deborah D. Swain. My business address is
11 2025 Southwest 32nd Avenue, Miami, FL 33415.

12 **Q. By whom are you employed and in what capacity?**

13 A. I am a principal in the consulting firm of Milian,
14 Swain & Associates, Inc. I am currently Vice President
15 of that firm, which provides consulting services to
16 both public and private sector clients in the areas of
17 civil and environmental engineering, and financial and
18 management consulting.

19 **Q. On whose behalf are you appearing in this proceeding?**

20 A. I am appearing on behalf of the applicant, Nocatee
21 Utility Corporation (NUC).

22 **Q. Please summarize your educational background and
23 professional experience.**

24 A. A copy of my resume is attached as Exhibit ____ (DDS-1)
25 *Qualifications.*

1 Q. Have you previously been qualified as an expert in any
2 judicial or administrative proceedings?

3 A. Yes. I have been accepted as an expert in regulatory
4 accounting and in rate regulation matters in general by
5 the Florida Public Service Commission, and as a utility
6 expert by several Counties, District Courts, and by the
7 U.S. Bankruptcy Court.

8 Q. Have you previously testified before this Commission on
9 rate issues?

10 A. Yes I have. I have provided testimony in 19 separate
11 dockets over more than twenty years.

12 Q. What is the scope of your engagement by Nocatee Utility
13 Corporation?

14 A. I have been engaged by Nocatee Utility Corporation to
15 develop and support its proposed rates and service
16 availability charges.

17 Q. What is the purpose of your testimony?

18 A. My testimony describes the rate development process,
19 supports the proposed rates and charges that NUC is
20 asking the Commission to approve, and sponsors NUC's
21 proposed tariffs.

22 Q. Are you sponsoring any exhibits in this proceeding?

23 A. Yes. I am sponsoring Supplemental Exhibits O, P, R, S,
24 T and U to the Application, which are being filed
25 concurrently with this testimony. These are NUC's

1 proposed water and wastewater tariffs, the cost studies
2 supporting the rate development, and the calculation of
3 the monthly discounted AFUDC rate. I am also
4 sponsoring five additional exhibits that are identified
5 at the appropriate points later in this testimony.

6 **Q. How did you approach the rate development process for**
7 **NUC?**

8 A. In accordance with Commission policy for initial rates,
9 I developed rates that are designed to recover the
10 utility's cost of providing service, and a reasonable
11 return on its investment in property used and useful in
12 the public service, at the time the first phase of the
13 utility system is projected to reach 80% of capacity.

14 **Q. How did you perform these calculation - is there a tool**
15 **that you used?**

16 A. Yes, I used an electronic spreadsheet developed by the
17 Bureau of Certification entitled "Original Certificate
18 Program (revised by Troy Rendell and Mary LaBatt)."

19 **Q. Please explain how you used this spreadsheet.**

20 A. The spreadsheet was programmed so that the user simply
21 fills in the blanks. After inputting expenses, plant
22 construction costs, capital structure and ERCs, the
23 spreadsheet generates the rates.

24 **Q. Did you input the data and use the rates generated by**
25 **the program?**

1 A. Yes, but first I had to make some modifications the
2 program, and to how the data was input.

3 Q. Were these modifications corrections to the program?

4 A. No, I made the modifications to change some methodology
5 because I made different assumptions.

6 Q. Will you please explain the modifications.

7 A. Yes. First, the program allows the user to select
8 whether the program will be used for water, wastewater
9 or both. In the case of NUC, I had to also develop
10 rates for reuse, so I modified the water schedules to
11 use for that purpose.

12 The second modification I made was to the
13 calculation of gallons billed in the rate development.
14 The spreadsheet defines an ERC as 350 gpd, however
15 NUC's wastewater ERC equals 280 gpd and the reuse ERC
16 equals 261 gpd.

17 The third modification was amortize "other CIAC"
18 using the composite depreciation rate for plant. The
19 spreadsheet did not have a depreciation rate specified.

20 And the final modification was to the calculation
21 of federal income tax. The program assumes that the
22 utility is a stand alone entity for the payment of
23 federal income tax. A corporation pays lower income
24 tax rates for the lower income brackets. By assuming
25 that the utility is stand alone, these lower rates are
26 used. However, Nocatee's tax return will be filed on a

1 consolidated basis with its parent and sister
2 companies. Nocatee will pay to its parent company the
3 maximum federal tax rate applied to its income.
4 Similarly, if it incurs a loss, the parent company will
5 pay the resulting tax benefit to Nocatee.

6 **Q. Are these the only modifications you made to the**
7 **program?**

8 A. Yes.

9 **Q. Can you explain other assumptions you made in the rate**
10 **development.**

11 A. Yes. As part of this process, I developed a projected
12 capital structure for the utility using a 40-60 ratio
13 of debt to equity. For my rate calculations, I used
14 the cost of equity from the Commission's current
15 leverage graph. I also developed proposed service
16 availability charges that comply with the Commission's
17 guidelines for such items.

18 **Q. Is there anything unique about the rate development for**
19 **NUC?**

20 A. I would not call it unique, but the proposed wholesale
21 service arrangement with JEA is a major factor in
22 determining NUC's cost of service.

23 A significant portion of NUC's cost for utility
24 facilities will be replaced by the payment of plant
25 capacity fees to JEA, which is providing the water and
26 wastewater treatment facilities. Similarly, a large

1 portion of NUC's ongoing cost of service will be made
2 up of the rates paid to JEA for bulk water, wastewater
3 and reuse service.

4 **Q. Based on this service arrangement, what assumptions did**
5 **you make about NUC's cost structure?**

6 **A. My rate study was based on the following major**
7 **assumptions:**

8 (a) JEA will be responsible for all treatment
9 facilities and for the cost of all off-site
10 transmission lines and force mains up to the point
11 of interconnection with NUC at its service
12 territory boundary in Duval County.

13 (b) NUC will be responsible for all on-site
14 transmission, distribution and collection
15 facilities, the off-site reuse transmission main,
16 and for the on-site reuse storage and re-pumping
17 facilities.

18 (c) NUC will require the developer to contribute all
19 of the smaller distribution and collection system
20 lines, hydrants, services, meters and meter
21 installations.

22 (d) In addition to its own service availability fees,
23 NUC will collect JEA's connection fees from NUC's
24 retail customers, and remit them to JEA.

25 (e) NUC's service availability charges will also
26 include recovery of a portion of the utility's

1 investment in the water distribution system, the
2 wastewater collection system, and the reuse
3 transmission and storage system.

4 (f) NUC's monthly rates for service will include
5 recovery of its cost of wholesale water,
6 wastewater and reuse service, together with
7 recovery of the cost of contract management and
8 operation, whether obtained from JEA or some other
9 third-party.

10 **Q. Where did you obtain the information you used for the**
11 **cost of on-site facilities?**

12 A. Information on the cost of on-site facilities was
13 provided by the engineering firm of England-Thims and
14 Miller (ETM). I worked closely with them to review and
15 understand the capital cost assumptions, and to satisfy
16 myself that they are reasonable. In addition, I added
17 \$15,000 to each water, wastewater and reuse for
18 Organizational Costs, which are the costs associated
19 with the formation of the new utility.

20 **Q. Where did you obtain information about projected**
21 **operating costs for the utility?**

22 A. The cost of operating and maintenance expenses were
23 also obtained from ETM. I estimated insurance expenses
24 based on information I received from insurance
25 companies. I calculated property taxes and
26 depreciation expense based upon the capital costs. I

1 reviewed the level of all the expenses, and found them
2 to be reasonable.

3 **Q. In your professional opinion, is the information you**
4 **used to develop rates adequate for that purpose?**

5 A. Yes it is.

6 **Q. Have you prepared an exhibit which summarizes the**
7 **proposed rates and charges?**

8 A. Yes. Exhibit __ (DDS-2), *Schedule of Rates and*
9 *Charges*, summarizes NUC's proposed monthly rates and
10 service availability charges. As you can see, the
11 monthly rates use the Commission's normal rate
12 structure consisting of a base facility charge plus a
13 usage charge per thousand gallons.

14 Exhibit __ (DDS-3), Exhibit __ (DDS-4), and
15 Exhibit __ (DDS-5) provide more detail on how those
16 charges were developed for water, wastewater and reuse,
17 respectively.

18 **Q. Please describe how you approached the development of**
19 **the proposed reuse rates.**

20 A. Nocatee plans to implement a reuse system to provide
21 irrigation water throughout the development. Nocatee
22 will obtain bulk treated effluent from JEA and provide
23 it at retail to utility customers. The plant in
24 service includes the "reuse" system installed
25 specifically to transmit reused water through a

1 transmission main to a storage facility, then through a
2 pressurized distribution system to individual
3 customers. The rates for reuse were calculated using
4 the same basic principles as those for water and
5 wastewater.

6 **Q. You indicated earlier that you are sponsoring NUC's**
7 **proposed tariffs. How did you prepare those tariffs?**

8 A. I began with the Model Water and Wastewater Tariffs
9 provided by the Commission staff. Other than adding
10 the description of the certificated territory,
11 completing the rate schedules, and inserting a service
12 availability policy, I made no changes to the
13 Commission's standard tariff language.

14 **Q. In your professional opinion, do NUC's proposed rates**
15 **and charges, and the proposed tariffs, comply with the**
16 **applicable provisions of Chapter 367 and the**
17 **Commission's rules?**

18 A. Yes they do.

19 **Q. Did you prepare a calculation of monthly discounted**
20 **AFUDC?**

21 A. Yes, I did. I followed the formula and instructions
22 detailed in Rule 25-30.116. The annual rate is equal
23 to the weighted average cost of capital. The rule
24 requires that the monthly rate be discounted to remove
25 the effect of compounding. As shown on Supplemental

1 Exhibit U to the Application, the annual rate is 9.68%
2 and the monthly discounted rate is .7799%.

3 Q. Does that conclude your testimony?

4 A. Yes it does.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
SUPPLEMENTAL DIRECT TESTIMONY OF
DEBORAH D. SWAIN
ON BEHALF OF
NOCATEE UTILITY CORPORATION
DOCKET NOS. 990696-WS & 992040-WS
July 31, 2000

Q. Please state your name and business address.

A. My name is Deborah D. Swain. My business address is 2025 Southwest 32nd Avenue, Miami, FL 33415.

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

A. I am Vice President of the consulting firm of Milian, Swain & Associates, Inc.

Q. Have you previously filed direct, intervenor and rebuttal testimony in support of Nocatee Utility Corporation's (NUC's) certificate application in these consolidated dockets?

A. Yes.

Q. What is the purpose of your supplemental testimony?

A. This supplemental testimony presents the impact on NUC's costs and proposed rates of the final Agreement for Wholesale Utilities, Operations, Management and Maintenance (Agreement) that was entered into between NUC and JEA on July 24, 2000.

1 Q. Is the cost structure under the Agreement different
2 than what you had used to develop the proposed rates in
3 NUC's original application?

4 A. It is somewhat different. The original rates were
5 based on the assumption that NUC would pay JEA its
6 wholesale rates for bulk water, wastewater and reuse
7 service, and that NUC would incur various line-item
8 operation and maintenance (O&M) costs either directly
9 or through payments to a third-party manager.

10 Under the final structure, the cost to NUC of the
11 bulk service and the O&M services are bundled together
12 in a single charge based on the usage of water,
13 wastewater and reuse services in the Nocatee
14 development. This means that the cost to NUC of O&M
15 services will vary in proportion to the usage of
16 utility services within its service territory.

17 Q. Has there been any change in the arrangement with
18 respect to connection fees?

19 A. No. As in my original rate study, NUC will pay JEA the
20 prevailing JEA connection charges for each connection
21 within NUC's service territory and NUC will pass these
22 connection fees through to its end-use customers.

23 Q. What steps have you taken to determine the impact of
24 the final cost structure on the proposed rates for NUC?

25 A. In accordance with Commission policy, the initially

1 proposed water, wastewater and reuse rates were
2 designed to recover NUC's costs, and to provide a fair
3 rate of return on its investment, when Phase I of the
4 utility system reaches 80% of capacity, which occurs
5 for this utility in year four. In my rebuttal
6 testimony, I proposed reduced and restructured rates
7 for reuse service based on an increased level of
8 developer contributions toward the capital costs of the
9 reuse system and on a snapshot of year five, rather
10 than year four, of the utility's operations.

11 To quantify the impact of the final agreement on
12 NUC's proposed rates, I removed from my rate analysis
13 the costs that had originally been included in year
14 four for bulk utility services and for the O&M line-
15 items that relate to responsibilities that JEA has
16 assumed under the O&M portion of the Agreement. In
17 their place, I substituted the bundled rate that would
18 be paid under the Agreement in year four based on the
19 projections of water, wastewater and reuse sales by
20 customer class. I also included an allowance for
21 projected repair costs (i.e. those in excess of \$4,000
22 per event) that NUC will remain responsible for under
23 the Agreement. And finally, I removed all general
24 plant from water and wastewater since NUC will not need
25 to provide the facilities originally contemplated.

1 Q. Can you please explain the impact of the Agreement on
2 overall operating expenses?

3 A. My analysis shows that NUC's projected costs have
4 declined by \$66,521 (19%) for water and \$19,951 (3%)
5 for wastewater for year four, and have declined by
6 \$36,574 (13%) for reuse service for year five. This
7 means that the bundled rates that NUC has agreed to pay
8 JEA under the Agreement are somewhat less than the sum
9 of the unbundled rates that NUC originally projected.

10 Q. Can you please explain the impact of the Agreement on
11 any other costs?

12 A. Yes, because of the removal of general plant which NUC
13 will not require in light of the Agreement, utility
14 plant, accumulated depreciation and depreciation
15 expense were slightly reduced for water and wastewater.

16 Q. What impact do these reduced costs have on the proposed
17 rates for NUC?

18 A. I have found that the required revenues are similarly
19 reduced, resulting in lower rates for NUC. The
20 reductions in cost translate into rate reductions of
21 \$76,010 (13%) for water, \$26,251 (2%) for wastewater,
22 and \$38,244 (10%) for reuse service.

23 Q. Have you prepared an exhibit to show the new rates you
24 have calculated.

25 A. Yes, I have shown these rates on Exhibit ___ (DDS-12).

1 Page 1 of that exhibit compares the new rates for NUC
2 to the rates previously filed. Page 2 compares the new
3 rates for NUC to Intercoastal's existing rates.

4 I have also prepared Exhibit ____ (DDS-13) for
5 water, Exhibit ____ (DDS-14) for wastewater, and Exhibit
6 ____ (DDS-15) for reuse which contain the schedules
7 supporting the rate calculations.

8 **Q. In calculating revised rates, did you take into account**
9 **the possible reduction in capital costs for backbone**
10 **facilities that may result from the cost sharing**
11 **provisions that Mr. Miller described for "Joint**
12 **Projects"?**

13 **A.** No, I did not. At this time, the amount of upsizing
14 that JEA may request is unknown and the amount of any
15 cost savings to NUC would be speculative. At any time
16 that these costs are better defined, NUC may review the
17 potential impact on rates.

18 **Q. Do the rates on your Exhibit ____ (DDS-12) represent the**
19 **rates that NUC is now asking the Commission to approve**
20 **as initial rates in this proceeding?**

21 **A.** Yes, they do.

22 **Q. Does that conclude your supplemental direct testimony?**

23 **A.** Yes it does.

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2 ADDITIONAL DIRECT TESTIMONY OF
3 DEBORAH D. SWAIN
4 ON BEHALF OF
5 NOCATEE UTILITY CORPORATION
6 DOCKET NOS. 990696-WS & 992040-WS
7 March 22, 2001
8

9 Q. Please state your name and business address.

10 A. My name is Deborah D. Swain. My business address is
11 2025 Southwest 32nd Avenue, Miami, FL 33415.

12 Q. By whom are you employed and in what capacity?

13 A. I am Vice President of the consulting firm of Milian,
14 Swain & Associates, Inc.

15 Q. Have you previously filed direct, intervenor, rebuttal
16 and supplemental direct testimony in support of Nocatee
17 Utility Corporation's (NUC's) certificate application
18 in these consolidated dockets?

19 A. Yes.

20 Q. What is the purpose of this additional testimony?

21 A. This additional testimony corrects a computation error
22 in the calculation of wastewater rates that I
23 discovered when preparing a response to Staff's second
24 round of discovery to NUC in this case.

1 Q. Does that computation error affect any of your previous
2 exhibits?

3 A. Yes. It affects the presentation of wastewater rates on
4 Exhibit ____ (DDS-12) which was filed with my
5 supplemental direct testimony. A revised version of
6 that exhibit, containing corrected wastewater rates and
7 comparing them to Intercoastal's rates, is attached as
8 to this testimony as Revised Exhibit ____ (DDS-12).

9 Q. What was the cause of the error in the prior
10 computation?

11 A. In computing the monthly rates required to recover the
12 wastewater revenue requirement, I inadvertently
13 miscalculated the effect of defining a wastewater ERC
14 as 280 gallons per day (gpd) as compared to the water
15 ERC of 350 gpd. The effect was to produce rates that
16 over-recovered the wastewater revenue requirement.

17 Q. Do the rates on your Revised Exhibit ____ (DDS-12)
18 represent the rates that NUC is now asking the
19 Commission to approve as initial rates in this
20 proceeding?

21 A. Yes, they do.

22 Q. Does that conclude your additional direct testimony?

23 A. Yes it does.

1 BY MR. MELSON:

2 Q Ms. Swain, do you have any changes or corrections to
3 Exhibit DDS-1, Revised DDS-12, and DDS-13, 14 and 15?

4 A No, I don't.

5 Q And were those all prepared by you or under your
6 direction and supervision?

7 A Yes, they were.

8 Q Could you briefly summarize for the Commission your
9 direct, supplemental direct, and additional direct testimony?

10 A Yes, thank you. Good evening, Commissioners. The
11 testimony I am summarizing this evening describes the proposed
12 rates and the service availability charges that I developed for
13 Nocatee Utility Corporation. The current proposed rates that I
14 am sponsoring are on the revised Exhibit DDS-12. And as I stated
15 earlier, that exhibit corrects a calculation error that I made in
16 the computation of the wastewater rate that I had included on an
17 earlier version of that exhibit.

18 The rates that I have proposed for water and wastewater
19 were designed using the Commission standard policy for the
20 development of initial rates for a brand new utility. That is,
21 that they were developed to include the cost of service when the
22 utility reaches 80 percent of its capacity and that they are
23 designed to allow the utility to earn a fair rate of return on
24 its investment in that same year, at that same point in time.

25 The reuse rates that I am proposing are slightly

1 modified from that approach. To make the rates more affordable,
2 what I have done is ask that we earn rates based upon the cost of
3 service when the utility -- when the reuse utility reaches 100
4 percent of its capacity, and that would take place in the fifth
5 year, or final year of phase one. In addition, it includes a
6 component for earning a fair rate of return on investment when it
7 reaches that 100 percent capacity.

8 The rates are based on the costs that Nocatee will
9 incur under the current JEA agreement, plus some other operating
10 cost and additional investment by the utility. The Nocatee rate
11 structure is a little bit different than a typical new utility in
12 that so much of its cost of service is tied to the JEA management
13 fee. That is that fee that you have been hearing about that is a
14 bundled fee that includes a component for the purchase of bulk
15 service plus the operation and management and maintenance of the
16 utility. Because it is so tied to that, a large portion of the
17 rate tends to be variable or tied to consumption.

18 In addition, one of the rates that I am sponsoring is
19 also the service availability charge. I have developed a charge
20 for water, and wastewater, and reuse based upon Nocatee's own
21 investment in its own facilities. And in addition to that, on
22 top of that we are asking for a pass-through of the actual JEA
23 charge for capacity fees. The revised exhibit, DDS-12, shows
24 that Nocatee's combined rate for water and wastewater is
25 currently less than the present Intercoastal rate, and that is

1 for all consumption levels up to 25,000 gallons. And because the
2 rate for water and wastewater is tied to potable water use and
3 does not include reuse, which would be used for irrigation, it is
4 very unlikely that a customer, a residential customer would use
5 more than 25,000 gallons.

6 And that concludes my summary.

7 MR. MELSON: Ms. Swain is tendered for cross.

8 CHAIRMAN JACOBS: Mr. Menton.

9 MR. MENTON: No questions. Thank you.

10 CHAIRMAN JACOBS: Mr. Korn.

11 MR. KORN: No questions, Mr. Chairman.

12 CHAIRMAN JACOBS: Very well. Mr. Deterding.

13 MR. DETERDING: Thank you.

14 CROSS EXAMINATION

15 BY MR. DETERDING:

16 Q Ms. Swain, under the proposal for service by NUC to
17 receive bundled -- this bundled service agreement from JEA that
18 you talked about, who will do the meter reading?

19 A That service will be provided by JEA under the
20 management agreement.

21 Q Who will do billing and collection?

22 A That will be JEA.

23 Q Who will do turn on and turn offs?

24 A JEA's field personnel will do that.

25 Q Will there be any employees of NUC?

1 A We have currently in our plan one employee that has not
2 been determined whether that employee will be a DDI employee that
3 is allocated to Nocatee based upon the time spent at Nocatee, but
4 we envision that that person will have certain very specific
5 capabilities. For example, that one individual will oversee the
6 contract, be the direct contact and overseer of the JEA
7 activities, and hopefully will have the utility experience that
8 is necessary to be able to oversee those activities.

9 Q Well, there won't be anybody from NUC answering a
10 phone, will there?

11 A There will be an opportunity for customers, if
12 necessary, to call that individual or the DDI office with
13 probably some sort of dedicated system to be able to respond to
14 questions, if necessary. That will not be necessarily the
15 primary location for receipt of phone calls, but there will be a
16 phone call capability available.

17 Q Well, as far as what is on the customer's bill or what
18 is in your tariff as the contact information for the utility,
19 where will that phone number go?

20 A We have not developed that fully. We don't have that
21 documentation put together. But based on the testimony of
22 Mr. Skelton, I would imagine that it may very well include a
23 primary number for JEA and another number for DDI or Nocatee.

24 Q Well, as that number is I assume in order to answer
25 complaints either about needing something looked at, a concern

1 about a billing question, or a concern about a quality of service
2 question, do you think that it would be logical that NUC would
3 have anybody who would hold that type of position?

4 A The primary questions that customers would have
5 regarding service would go to the operator, which would be JEA.
6 However, that person on staff that we have identified would
7 certainly be capable and available to respond to questions when
8 appropriate.

9 COMMISSIONER JABER: Ms. Swain, what about questions
10 from the Commission staff, the Commission Consumer Affairs
11 Department, who would be answering those questions?

12 THE WITNESS: That would certainly be either the
13 Nocatee individual or an appropriately identified individual at
14 DDI. That would be a Nocatee responsibility.

15 COMMISSIONER JABER: But what is the difference? If
16 the Commission is calling you with respect to a question
17 regarding a consumer complaint that we have received, would the
18 Commission be contacting Nocatee versus the customer would
19 contact JEA? Help me understand that.

20 THE WITNESS: The Commission should contact Nocatee.
21 Nocatee is the utility company that would be responsible for
22 providing service. And to the extent that that question needs
23 to be pursued with JEA, then Nocatee would do that. To make it
24 easy on the customers, if there is a specific question that is
25 appropriate for a JEA response, then they should call JEA. And

1 I will give you an example. In Miami/Dade County where I live,
2 Miami/Dade County Water and Sewer Department provides billing
3 services for a number of different entities. And stated on
4 their bill is that they are providing the service of performing
5 the billing. And if they have a specific billing question, then
6 that question should go to the Miami/Dade Water and Sewer
7 Department. However, if it is a question about the provision of
8 service, or whatever else is determined to be appropriate, then
9 this is the entity to call. And it is stated very clearly on
10 the bill.

11 COMMISSIONER JABER: Well, let's say that
12 hypothetically a customer has contacted us and they have a
13 problem with the bill, and our Consumer Affairs Department has
14 received that phone call. Who will they call and why?

15 THE WITNESS: They should call Nocatee and give
16 Nocatee the opportunity, as the utility who is ultimately
17 responsible to you, to resolve that. That Nocatee has hired JEA
18 or anyone else to do the billing for them, if it is a billing
19 complaint or a meter reading complaint, then that shouldn't
20 interfere with the relationship between the Commission and its
21 regulated entity.

22 That is not intended to create a wall between you and
23 who you think is responsible for an error, or if you have a
24 question. It is simply to establish to you all that the
25 relationship should be with Nocatee, that we do take

1 responsibility for it.

2 COMMISSIONER JABER: And is that same relationship
3 critical also for the consumer, correct?

4 THE WITNESS: Absolutely. And the day-to-day
5 operations of the facilities and the meter reading and the
6 billing will be performed by JEA. And if there are going to be
7 questions from customers, it would certainly probably hold up
8 the process and frustrate the customers if they had to call
9 Nocatee and always then wait for a response. So it would make
10 sense that customer service be provided by JEA to the customers.

11 BY MR. DETERDING:

12 Q So it sounds to me like what you are saying is that any
13 time -- at least any normal concern a customer has, be it being
14 billing, quality of service, there is water shooting up a mile,
15 or sewage flowing in the street, or whatever it might be, that
16 that would be a call that would appropriately go to JEA?

17 A I don't know that every single one of the examples that
18 you gave me would be appropriate. And, like I said, we have not
19 worked out all the details. But certainly billing complaints and
20 immediate service complaints I would imagine would be more
21 quickly responded to if the question or the call went to JEA.

22 Q Well, if you are not doing the billing, you are not
23 doing the collecting, you are not doing the meter reading, you
24 are not doing the maintenance on the system, why in the world
25 would any of those situations I described be anybody other than

1 calling JEA? Why would it be appropriate to call anybody other
2 than JEA?

3 A When we begin to establish the finer points of the
4 relationship between JEA and Nocatee, I'm sure that all of that
5 will be worked out. You know, as I am sitting here today, all I
6 can tell you is our intention is to make it a very clear
7 relationship at some point with our utility customers and make it
8 easy for them to get a response when they need to.

9 Q Well, I understand that, but I think you have it
10 clarified in your agreement with JEA where the responsibilities
11 lie, and I guess what I'm saying is -- and if I'm wrong here,
12 then tell me why I'm wrong. But it sounds to me like every
13 customer inquiry is going to go directly to JEA and every PSC
14 inquiry is going to go directly to Nocatee, and most of those PSC
15 inquiries are then going to require Nocatee just to go to JEA and
16 get the answer to their question.

17 A And as I explained to the Commissioner, and possibly
18 not clear enough, the intention is not to create a wall between
19 the responding party and the Commission. The intent is that we
20 want -- we want to demonstrate and our intent is to demonstrate
21 that we do take the responsibility for it. If when we start
22 actually performing under this contract, things need to change
23 and telephone numbers need to change, then that will happen. We
24 have not gotten anywhere near the point of working out all of
25 those finer points.

1 Q Is that an answer to my question, then? I said it
2 sounds as though you are going to end up with all customer
3 inquiries going directly to JEA, and all PSC inquiries going
4 through Nocatee but ultimately being handled by JEA. Doesn't
5 that sound like the norm, based on the fact that they are doing
6 everything related to maintenance, billing, collection, meter
7 reading, et cetera?

8 A I think that in my mind if the Commission has a
9 question or a complaint from a customer that it is our
10 responsibility to respond to it. And I also envision that a
11 question from a customer may require -- it may be an emergency,
12 it may require an immediate response and we don't want to tie
13 things up by putting them on hold and making a phone call
14 ourselves.

15 But the Commission, unless it is an emergency, I would
16 hope that they view us as the utility, call us and let us be the
17 ones that make sure that the response is given properly and
18 appropriately. And if it means that the Commission always calls
19 Nocatee, then I think that we would like to try it that way and I
20 think it would work that way.

21 COMMISSIONER JABER: Do you realize that the
22 Commission has no authority over JEA as a water provider?

23 THE WITNESS: Yes, I do. And Nocatee realizes that
24 you do have authority over us, and that's why you should come to
25 us. We are the ones that are responsible to you.

1 COMMISSIONER JABER: Do you believe that quality of
2 service is part of the determination we should make with respect
3 to Nocatee's technical ability, whether Nocatee provides
4 adequate quality of service?

5 THE WITNESS: Absolutely. And in determining rates
6 over the life of this utility, you should consider that, as
7 well.

8 BY MR. DETERDING:

9 Q Well, I guess I will start over because I still don't
10 think I've got an answer to my question. Given the fact that JEA
11 is going to do the billing, meter reading, the meter
12 installation, the maintenance of the system, the collection,
13 isn't it correct that a customer would automatically call JEA or
14 that that would be expected to be the person they would call?

15 A I would envision that in most cases that would be where
16 the call may very well go.

17 Q Can you think of a situation where it would not be with
18 a customer concern?

19 A Yes. If a customer has a complaint about the service
20 that is being provided, if there is a complaint that has not been
21 resolved immediately by JEA, if there is a concern about any
22 issue, they can always call Nocatee, and Nocatee will resolve it.

23 Q Well, I assume that you are not going to give them some
24 kind of primer on who to call under what scenario, so there is
25 going to be a telephone number for the utility, I assume, on the

1 bill?

2 A And we may very well -- yes, and we may very well
3 decide that the phone number on the bill goes to a DDI office and
4 based upon the nature of the customer's call we may route it to
5 JEA or some other appropriate individual. We have not decided
6 that level of detail yet. All I can explain to you is that our
7 intent is to make it as simple and straightforward to the
8 customer at the time that that occurs.

9 Q Okay.

10 COMMISSIONER DEASON: Excuse me. Let me ask a quick
11 question.

12 MR. DETERDING: Certainly.

13 COMMISSIONER DEASON: The agreement between Nocatee
14 and JEA, does it spell out the procedure for handling consumer
15 complaints?

16 THE WITNESS: I don't believe that it does. I think
17 that is left to us to work out and make sure it works for us.

18 COMMISSIONER PALECKI: Would you anticipate that there
19 would be an additional charge by JEA for handling the consumers
20 directly?

21 THE WITNESS: No. At this point I believe that the
22 agreement states that it will do all of the billing related and
23 customer relations related activities included in the fee. Now,
24 to what extent we use that, I believe is up to us.

25 COMMISSIONER PALECKI: But that would include customer

1 service and having customer service representatives available
2 for your customers to call?

3 THE WITNESS: That is correct.

4 BY MR. DETERDING:

5 Q And along those same lines, would that include
6 participation in the things required under PSC rule regarding
7 customer conferences, if a customer concern cannot be resolved
8 informally?

9 A Give me a moment to look at the contract. I don't
10 believe that that is addressed at all. The intent is that all
11 the customer service related activities are included. I don't
12 think it is spelled out specifically, however.

13 Q All right. Well, unless you really want to look it up,
14 I don't really care. Okay. The rates design by you will allow
15 NUC to recover its expenses and a fair return on its investment
16 in the fourth year of operation, correct?

17 A Yes.

18 Q And this is based upon your projections of, I believe
19 it was something like 470 ERCs added a year, approximately?

20 A That is the approximate number, yes.

21 Q Over five years?

22 A That is correct.

23 Q And in the first three years of your analysis, the
24 revenues generated for NUC will not cover the expenses and
25 generate a fair return on investment, correct?

1 A I do not know that to be the case. I can't agree with
2 that.

3 Q Well, if they will cover those expenses and allow you
4 to generate a fair return in year four, are you suggesting that
5 it is possible they could allow -- generate a fair return in year
6 three, two, and one, even though you have fewer customers?

7 A It is unlikely, but it could be.

8 Q Have you done any analysis to determine whether or not
9 NUC will cover its expenses and earn a fair rate of return in
10 years one through three?

11 A No, I haven't.

12 Q How about any years after year four; five, six, seven,
13 any of those years?

14 A Phase one ends in year five. There is no analysis
15 available past year five.

16 Q Okay. So you have really only done as far as an
17 analysis of when you think they will earn a fair return year
18 four?

19 A Yes, but by definition in that the initial rates are to
20 be set based upon year four, which happens to be the year that we
21 reach 80 percent capacity.

22 Q I understand that is what you believe was required of
23 you in the filing. I'm just asking if you did any further
24 analysis to determine what return you would earn in those other
25 years. And I believe your answer is no, you have done none?

1 A That's right.

2 Q Okay. Now, as I understand your calculations, NUC will
3 make capital additions of \$1.9 million in year one for water,
4 \$3.3 million for sewer, and 4.9 million for reuse, all in year
5 one, correct?

6 A Just a minute. And if you could repeat the numbers for
7 me.

8 Q Sure. 1.9 million for water, 3.3 million for sewer,
9 and 4.9 million for reuse?

10 A That is correct.

11 Q And if you are making these type of additions, say, in
12 year one, and you have got 470 customers, and highly variable
13 expenses in addition to these fixed costs, wouldn't you agree
14 that it is very unlikely that you are going to recover your cost
15 and a fair return on that investment?

16 A I think my testimony was that it is unlikely, but I
17 don't know that for certain. A large part of the assets that are
18 added in the first year are contributed or are represented by
19 CIAC. But there is still a sizeable investment in the first
20 year, so it very well could be that a fair rate of return is not
21 earned in the first year.

22 Q And the same is true of years two and three, though you
23 have not done that analysis, correct?

24 A Certainly in year two and probably in year three.

25 Q What percentage debt and equity are you proposing for

1 DDI?

2 A I am proposing a 40 percent debt, 60 percent equity.

3 Q Okay. Would you agree that it is the norm in the water
4 and sewer industry for debt financing to have an amortization
5 period shorter than the average depreciable life of the assets
6 financed?

7 A Repeat that.

8 Q Sure. Would you agree that it is the norm in the
9 utility industry for debt financing to have an amortization
10 period shorter than the period of time recognized through
11 depreciation for those assets?

12 A I would say it is common, but certainly not the only
13 situation that I have seen.

14 Q So you don't think that would be the same as being the
15 norm?

16 A It's just a step above the norm.

17 Q Okay.

18 A And to explain my additional response, and I think I
19 also stated this in my deposition, that very often water and
20 sewer utilities see their debt as permanent debt. So although
21 there may be terms that are less than the life of the asset,
22 there is very commonly an intent to just roll that over into
23 additional debt. And you may see that level of debt have a life
24 far beyond the actual life of the asset. And I have seen that
25 commonly, as well.

1 Q Okay. But we were just talking about the amortization
2 period, not about whether or not the debt might be rolled over at
3 some later date, correct?

4 A That was your question, yes.

5 Q The rates for NUC are based upon 80 percent of the
6 retail rate of JEA plus NUC's other costs, correct?

7 A That is correct.

8 Q Who regulates the rates of JEA?

9 A My understanding is they are not regulated. They are a
10 public entity.

11 Q So JEA could change its retail rates and, therefore,
12 the amount charged to NUC at any time?

13 A I don't believe that any time is a good
14 characterization. They do have to undergo public hearing and
15 there has to be a cost -- a change in their cost of service to
16 justify a change in the rates.

17 Q Based on what do you conclude that there has to be a
18 change in the cost of service?

19 A In the agreement with JEA, between Nocatee and JEA.

20 Q They have to get approval from Nocatee to change their
21 retail rates?

22 A They have to conduct public hearings, and the rate has
23 to be based upon a different cost of service. In other words, it
24 has to be a cost of service based rate. It can't simply be an
25 arbitrary rate.

1 Q Well, if JEA decides to change all of their retail
2 rates, you're telling me they have got to get approval from
3 Nocatee before they can do it, or at least demonstrate something
4 to Nocatee's satisfaction?

5 A They have to demonstrate something to the satisfaction
6 of the public, and it has to be a cost of service based rate.

7 Q Who oversees that, just the public, is that what you
8 are telling me?

9 A I am not certain who is the authority for determining
10 the rates. If they determine it themselves after public hearing
11 or if there is some other entity. I'm not certain.

12 Q How about the connection fees charged by JEA, who
13 regulates those?

14 A It would be the same as whoever has the rate authority
15 over JEA.

16 Q Which is no one other than the public, correct?

17 A I'm not certain.

18 Q You don't know whether JEA is a regulated entity?

19 A No, I know it is not regulated. What I don't know is
20 if, for example, the City of Jacksonville is the authorizing
21 entity, or if Jacksonville -- JEA has its own authority, I'm not
22 certain.

23 Q But in any case there is not some regulatory oversight
24 authority?

25 A Not like a Public Service Commission. I don't know if

1 there is a different public entity that oversees it.

2 Q What ERCs did you use in your calculation of sewer
3 revenues? Just briefly explain to me how you derived them.

4 A The ERCs are a calculation of sewage flows divided by
5 280 gallons per day at the fourth year, which is the 80 percent
6 capacity year.

7 Q Okay. And in making this calculation of the billing
8 determinants that you utilize for water and for sewer, you came
9 up with a different figure for water and for sewer, correct?

10 A Yes, that is correct.

11 Q And you did that as a result of utilizing this capacity
12 and dividing it by some figure to arrive at those ERCs, correct?

13 A Not capacity, the actual flows.

14 Q I'm sorry, the expected flows?

15 A That is correct. And dividing it by a gallon per day
16 figure.

17 Q So you came up with approximately 5 percent more in the
18 way of sewer ERCs than you have in water ERCs?

19 A I know it was a little bit more, I don't know what the
20 percentage is without checking.

21 Q 20,016 versus 21,048, I believe, for sewer being the
22 latter?

23 A I will accept that subject to check.

24 Q Okay. And that is approximately 5 percent, just off
25 the top of my head. Are there going to be any sewer customers

1 who are not also water customers?

2 A No.

3 Q So shouldn't for purposes of billing determinants the
4 water and sewer ERCs be the same?

5 A Yes. And at the time that this was put together, I
6 didn't necessarily have all of that information available. We
7 were using flows, that is what was available, but in that meters
8 and numbers of meters and that type of thing are available now,
9 it would be probably a more appropriate use for the calculation.

10 MR. DETERDING: Give me just a second, Commissioner.
11 Commissioners, are we dealing with her intervenor testimony at
12 this point or only the direct, supplemental, and additional?

13 CHAIRMAN JACOBS: Right. Just the direct,
14 supplemental, and additional.

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

16 CHAIRMAN JACOBS: Very well. Staff.

17 CROSS EXAMINATION

18 BY MS. CIBULA:

19 Q Ms. Swain, you sponsored the utility's proposed tariff
20 sheets which was attached as Exhibit 0 to NUC's application,
21 which has been identified as Exhibit 4, correct?

22 A Yes, that is correct.

23 Q We have some questions about the tariff, and in
24 particular we would like to ask about some footnotes in water
25 tariff original sheet Number 17.

1 (Off the record.)

2 MS. CIBULA: Let me start over.

3 COMMISSIONER DEASON: I am surprised with this many
4 attorneys in the room someone didn't inquire of the --

5 MR. MELSON: We only do this boring stuff,
6 Commissioner.

7 BY MS. CIBULA:

8 Q Staff just handed out an exhibit to you, but we will
9 get to that a little bit later. I have a couple of more
10 questions first before we get to that.

11 A Okay.

12 Q Ms. Swain, you sponsored the utility's proposed tariff,
13 which was attached as Exhibit 0 to NUC's application, which has
14 been identified as Exhibit 4, correct?

15 A Correct.

16 Q We have some questions about the tariff, and in
17 particular we would like to ask about some footnotes on water
18 tariff original Sheet Number 17.0, and wastewater tariff original
19 Sheet Number 16.0. Could you please turn to those tariff sheets?

20 A Yes, I have them.

21 Q Could you explain the purpose of Footnote Number 2,
22 located beside the plant capacity charge and the system capacity
23 charge in the water and wastewater tariffs?

24 A Yes. JEA currently has what they call a capacity fee.
25 It is not titled plant capacity or system capacity, however, it

1 is a capacity fee. And the point I'm trying to make on the
2 tariff is that whatever that capacity fee is will be collected
3 and remitted to JEA in addition to the Nocatee service
4 availability fee. Since the titles aren't exactly the same, I
5 put a footnote on each one as an attempt at a catch-all.

6 Q The specific amount of the JEA charge is not listed in
7 the tariff, though, correct?

8 A That is correct, it is not.

9 Q How will the customers of NUC know what charges will
10 apply, whether directly from NUC or indirectly from JEA, if those
11 charges are not in the tariff?

12 A Well, I have a couple of options. I don't know which
13 one you may like, but we certainly would maintain a copy of the
14 JEA tariff to provide to customers as well that would include
15 that fee, or I don't know if your preference would be that we
16 include it on our tariff and change our tariff sheet every time
17 JEA makes a change to their tariff. But we would be willing to
18 do either one.

19 Q Would it be reasonable to include both the JEA charge
20 and the footnote which identifies it as a JEA charge in the
21 tariff?

22 A That would be fine. And I would be happy to include
23 that in a late-filed exhibit in addition to any other corrections
24 you have to the tariff.

25 Q Okay. Thank you. Now I have some questions for you

1 regarding how NUC's rates and charges were developed. I think
2 Mr. Deterding touched on some of them, but I'm going to have, I
3 guess, a more thorough analysis of that.

4 Isn't it true that the flow information, that flow
5 information as opposed to water meter information was the basis
6 for determining the initial ERCs for water, wastewater, and reuse
7 that were developed in Schedules DDS-13, 14, and 15?

8 A Yes, that is correct.

9 Q Could you please look at the composite exhibit that was
10 handed out to you by staff. And let me know if the documents
11 included in the exhibit are what they purport to be?

12 A Yes, they are.

13 MS. CIBULA: Mr. Chairman, may we identify the
14 composite exhibit with the next available exhibit number.

15 CHAIRMAN JACOBS: Show it marked as Exhibit 12,
16 Composite Exhibit 12.

17 (Composite Exhibit 12 marked for identification.)

18 BY MS. CIBULA:

19 Q Ms. Swain, did you create the schedule found in Exhibit
20 12?

21 A Yes, I did.

22 Q When you developed the rates found on Page 3 of that
23 exhibit, were you also using flow information to estimate ERCs?

24 A Yes, I was.

25 Q However, later you were able to calculate the purchase

1 reuse expense on the schedule found on Page 1 of Exhibit 12 using
2 ERCs based on meter size, correct?

3 A Yes, that is correct.

4 Q So would it be reasonable to use ERCs based on meter
5 size in calculating water and wastewater rates, as well?

6 A Yes, that would be reasonable.

7 Q Does the schedule found on Page 1 of Exhibit 12 also
8 reflect how you calculated purchased water and wastewater expense
9 to JEA?

10 A Yes, it does.

11 Q So looking at the schedule found on Page 1 of Exhibit
12 12, does the first column represent the number of customers by
13 meter size that NUC expects to have at the end of year four for
14 water, wastewater, and reuse?

15 A Yes, that is correct.

16 Q How many factored ERCs would those customers equate to
17 for water? Subject to check, would you agree that the total
18 factored ERCs for water is 1,505?

19 A Yes, subject to check. And, I'm sorry, that is for
20 year four?

21 Q For year four.

22 A Yes.

23 Q Is this the number of factored ERCs you used to
24 calculate the water rates shown on Page 3 of Exhibit 12?

25 A No, the factored ERCs on Page 3 were based on flows and

1 not on meters, and it would be appropriate to change that to
2 reflect factored ERCs based on meters.

3 Q On the schedule on Page 1 of Exhibit 12 you have broken
4 down the purchased water by residential and nonresidential
5 customers, correct?

6 A For water?

7 Q For water.

8 A Yes.

9 Q Are these the gallons you would be expecting to sell to
10 residential and nonresidential customers?

11 A Yes, that is correct.

12 Q So the total number of gallons you are expecting to
13 sell to residential and nonresidential customers in year four is
14 212,768,000 gallons, correct?

15 A That is correct.

16 Q So why did you use 213,087,000 factored gallons on the
17 schedule found on Page 3 of Exhibit 12?

18 A I believe it's probably just a rounding difference in
19 the number of ERCs and the dividing and multiplying of the
20 gallons per day. The intention is not that they be different,
21 it's probably just the calculation itself.

22 Q Do you know which gallonage number is more correct,
23 more accurate for rate setting purposes?

24 A I believe that the one on Page 1 is probably more
25 correct. I think the one on Page 3, since actually if you divide

1 the ERCs by equal number of years you would get like a decimal
2 point, and this was trying to round it to a whole number, so it
3 probably is rounded a little bit more.

4 Q On the schedule found on Page 1 of Exhibit 12, did you
5 use 350 gallons per day per ERC to calculate residential water
6 usage?

7 A Yes, I sure hope so.

8 Q For the factored nonresidential ERCs in gallons, is the
9 purchased water based on 534 gallons per day per ERC?

10 A I'm not sure what the gallons per day came to, but that
11 was off of a schedule supplied by Doug Miller's group that had --
12 he had when we first did these calculations very extensive
13 schedules showing the gallons per day from different sources, and
14 I just pulled these numbers off of that schedule.

15 Q Would you agree that it is subject to check?

16 A Sure.

17 Q Regardless of what the factored ERCs are, would you
18 agree that you need to be consistent with the number of factored
19 ERCs used in the calculations for CIAC growth, purchased water,
20 and calculating NUC's water rates?

21 A Yes. I think that once you determine the appropriate
22 method of calculation of the factored ERCs that it would be
23 appropriate it use that throughout.

24 Q Would you also agree that it is reasonable to use the
25 same number of factored ERCs to calculate purchased wastewater,

1 CIAC, and NUC's wastewater rates?

2 A Yes, that would be appropriate.

3 Q On the schedule found on Page 1 of Exhibit 12, would
4 you agree subject to check that you have used 1,455 factored ERCs
5 in the calculation of purchased wastewater?

6 A Yes.

7 Q When calculating the wastewater rates on the schedule
8 found on Page 5 of Exhibit 12, you use 1,754 factored ERCs,
9 correct?

10 A Yes, that is correct.

11 Q Why did you use a different number of factored ERCs to
12 calculate purchased wastewater in NUC's wastewater rates?

13 A Again, the factored ERCs on Page 5 that I used in the
14 initial calculations were based on flows whereas the Page 1 were
15 actual meters and meter equivalents.

16 Q Is it correct that NUC will pay JEA for purchased
17 wastewater based on the water usage for the wastewater customers?

18 A Yes, that is correct.

19 Q Since NUC will pay JEA for purchased wastewater based
20 on water usage by the wastewater customers, would you agree that
21 it would be reasonable to use the same number of water gallons to
22 calculate purchased wastewater in NUC's rates?

23 A With a slight difference. I believe that the contract
24 states that -- or the tariff states that for approximately six
25 months out of the year the water -- or, excuse me, the wastewater

1 rate is applied to 90 percent of the water bill. So it would not
2 be 100 percent of the water, but if you just use a simple
3 average, 95 percent.

4 Q Where is that located in the contract?

5 A I believe it is in the tariff.

6 Q Or the tariff, I'm sorry.

7 MR. MELSON: When you say tariff, do you mean NUC's
8 tariff or JEA's rate document, just for clarification?

9 THE WITNESS: Sorry. I call it a tariff, but it is
10 JEA's water and sewer rate document is what is it titled. And I
11 provided it as a late-filed exhibit to my last deposition, and
12 on that document it is on Page 14, Section 401, Paragraph A.
13 And it states that -- part of the sentence, anyway -- billings
14 rendered covering meter readings made during the months of
15 October through March shall be based upon 90 percent of actual
16 water usage up to a maximum of 30 CCF a month.

17 BY MS. CIBULA:

18 Q Did you use that document to calculate the gallonage on
19 Page 1 of Schedule 12?

20 A No. I used the sewer flows, which was incorrect, and
21 this would be the proper calculation would be to use the rate
22 document. And unfortunately every time I open a book, I find
23 something I didn't see last time I looked.

24 Q Would you agree with the principle that the appropriate
25 gallons for calculating purchased wastewater in NUC's wastewater

1 rates should be residential wastewater usage using a 10,000
2 gallon cap per bill plus your general service or nonresidential
3 water usage?

4 A I'm sorry to make you do this, but could you repeat
5 that.

6 Q Sure. Would you agree with the principle that the
7 appropriate gallons for calculating purchased wastewater in NUC's
8 wastewater rates should be residential water usage using a 10,000
9 gallon cap per bill plus your general service or nonresidential
10 water usage?

11 A I believe that that is the proper calculation.

12 Q Did you use the same wastewater gallons as water
13 gallons in your rate calculations shown on Page 5 of Exhibit 12?

14 A No, the factored gallons shown there are 80 percent of
15 the water gallons.

16 Q Do you agree that the wastewater gallons would have to
17 be adjusted to reflect the implementation of a cap and the
18 addition of nonresidential water usage?

19 A I believe that -- the intent is that that takes place,
20 but I believe that the way the rate is calculated, that it does
21 that to some extent in that after the rate is calculated for
22 wastewater based on 280 gallons per day or 80 percent of the
23 water, that an average gallonage rate is determined and then only
24 a percentage of that is applied for the calculation of the actual
25 rate. And I think it compensates for that. It is very difficult

1 without a billing analysis, but certainly the utility's intent is
2 to accomplish that. And if there is a better way to do it, then
3 we are ready, willing, and able to try it.

4 Q Okay. The next few questions relate to the development
5 of reuse water rates. When calculating reuse water rates, you
6 use 1,805 factored ERCs on the schedule found on Page 7 of
7 Exhibit 12, correct?

8 A Yes, that is correct.

9 Q You also use 1,805 factored ERCs on your calculation
10 shown for reuse on Page 1 of Exhibit 12, correct?

11 A Yes, I did.

12 Q On Page 7 of Exhibit 12, it appears that you used
13 448,222,000 factored gallons, correct?

14 A Yes, that is correct.

15 Q On Page 1 of Exhibit 12, it appears that you used
16 358,514,000 factored gallons, correct?

17 A That is for year four, and what I used for the
18 calculation of the purchased reuse was the number for year five,
19 which is the 448,142. Again, it is slightly different because of
20 rounding, but it is very close to the number I used on
21 schedule -- the schedule on Page 9.

22 Q Now I have some questions in regard to NUC's CIAC
23 charge. It appears that you use 4,705 factored ERCs in year five
24 in Exhibit -- I believe it was identified as Exhibit 10, which
25 was attached to your supplemental direct testimony when

1 developing your growth projections for CIAC for reuse, not 1,805
2 factored ERCs, correct?

3 A That is correct.

4 Q Would you agree that using 4,705 factored ERCs would
5 generate a much higher CIAC contribution level than if you used
6 1,805 factored ERCs?

7 A Not necessarily. I have defined an ERC as 261 gallons
8 per day. And one residential customer with a 5/8ths inch meter
9 is one ERC, and will use 261 gallons per day. And that is the
10 same number in both the flow-based ERC calculation and also the
11 meter-based calculation. Where the difference lies is in the
12 nonresidential, and in that we are defining it as 261 gallons per
13 day the calculation should come out okay. It would be more ERCs
14 using the 4,000 plus ERC calculation, but if I only use the 1,800
15 number, I would have to change the rate and the definition. So
16 it should come out to the same final payment, it's just -- it's a
17 mix between numbers of ERCs that each nonresidential customer
18 represent and the fee. They would offset each other.

19 Q Are you familiar with Rule 25-30.580, Florida
20 Administrative Code, which discusses guidelines for establishing
21 service availability charges by setting a minimum and maximum
22 contribution level?

23 A I am generally familiar with that, yes.

24 Q Is it your understanding of that rule that it states
25 that the minimum amount of CIAC shall not be less than the

1 percentage of such facilities and plant that is represented by
2 the water transmission and distribution and wastewater collection
3 system?

4 A Yes, that is my understanding.

5 Q And is it your understanding that the maximum amount of
6 CIAC charge net of amortization should not exceed 75 percent of
7 the total original plant cost net of accumulated amortization at
8 design capacity?

9 A Yes, that is my understanding.

10 Q Would you agree that it is reasonable to implement a
11 CIAC charge which does not exceed the minimum contribution level,
12 also recognizing that the minimum contribution level exceeds the
13 75 percent of the maximum level allowed by Rule 25-30.580?

14 A I agree, and I attempted to do that in this case. With
15 the exception of reuse, in which case I have a much higher level
16 of contribution to make the rate more affordable and, therefore,
17 encourage the use of reuse.

18 Q Okay. Now I have a couple of questions regarding how
19 income taxes --

20 COMMISSIONER DEASON: I'm sorry, let me ask a question
21 before you go to that next line. I didn't catch your answer.
22 Is your limiting factor the 75 percent or is it the amount of
23 distribution and collection?

24 THE WITNESS: The level I tried to target is 75
25 percent for water and wastewater. And in this case the minimum

1 requirement would have been higher than the maximum because we
2 don't have treatment plants, so most of the facilities are
3 lines. So I tried the target of 75 percent with the exception
4 of reuse, and reuse is much higher. It's more in the
5 90-something percent range.

6 COMMISSIONER DEASON: Okay.

7 BY MS. CIBULA:

8 Q Now I have a couple of questions regarding how income
9 tax expense was calculated for NUC.

10 A Okay.

11 Q Did you use a flat 39 percent tax rate in calculating
12 corporate income tax for NUC?

13 A Yes, I did.

14 Q Would it be reasonable to use the actual sliding tax
15 schedule and apply that to taxable income to order to calculate a
16 number for income tax expense?

17 A I think it should be the maximum taxable level and not
18 a sliding level, which I am understanding to mean a level that
19 changes with the level of income. It should be the maximum rate
20 because that will be part of the agreement with DDI, between
21 Nocatee and DDI, they will pay the maximum rate.

22 Q Would Nocatee file a separate tax return from DDI?

23 A No.

24 Q Now I have a couple of questions in regard to NUC's
25 return on equity. NUC calculated its proposed service rates and

1 AFUDC rate based on the 1999 PSC order containing the leverage
2 graph formula, correct?

3 A Yes, that's right.

4 Q Would you agree that it would be appropriate to update
5 these calculations using the 2000 leverage graph formula set
6 forth in Order Number PSC-00-1167-WS?

7 A Yes, absolutely.

8 Q Now I have a question in regard -- I'm sorry to make
9 you go back in regard to water tariff original Sheet Number 24.
10 Okay. The first sentence states that all meters will be donated
11 by developers, water and wastewater meters. Water and reuse
12 meters, I'm sorry. Would you agree that since all meters are
13 going to be donated that neither NUC nor JEA will be collecting
14 any meter installation fees?

15 A That is correct.

16 Q Would it be reasonable to include a footnote by the
17 meter installation fees that references the fact that all meters
18 are being donated by the developer, and there is no applicable
19 charge?

20 A That would be appropriate. We could do that on a
21 late-filed exhibit.

22 Q Would you be willing to provide a late-filed exhibit
23 showing the calculations for purchased wastewater, water, and
24 reuse, CIAC growth projections in the calculations for water,
25 wastewater, and reuse rates using consistent factored ERCs in

1 gallons for each type of service?

2 A Yes, we would be happy to do that.

3 CHAIRMAN JACOBS: Should we identify that, Counselor?

4 MS. CIBULA: Sure.

5 CHAIRMAN JACOBS: That will be Exhibit 13, that is
6 late-filed. A description would be --

7 MS. CIBULA: Rate calculation.

8 CHAIRMAN JACOBS: Rate calculations.

9 (Late-filed Exhibit 13 marked for identification.)

10 MR. MELSON: Commissioner Jacobs, might I inquire if
11 my witness understands exactly what she is supposed to do,
12 because I'm not 100 percent sure I do at this stage.

13 CHAIRMAN JACOBS: Sure. Do you want to give a --

14 THE WITNESS: I understand, but tomorrow I will have
15 forgotten all the details. I do want to write it down. If you
16 could just make a --

17 MS. CIBULA: Okay. The calculations for purchased
18 wastewater, water, and reuse, CIAC growth projections, and the
19 calculations for water, wastewater, and reuse rates using
20 consistent factored ERCs in gallons for each type of service.

21 THE WITNESS: Yes. And specifically you are asking
22 for meter equivalent as a basis for factored ERCs?

23 MS. CIBULA: Correct.

24 CHAIRMAN JACOBS: There was a mention of a late-filed
25 earlier, and I did not think that you were going to request that

1 one. Did you want to request the earlier one?

2 MS. CIBULA: No, we don't want that one.

3 CHAIRMAN JACOBS: Great.

4 MS. CIBULA: But we would like to have Composite
5 Exhibit 12 moved into the record.

6 CHAIRMAN JACOBS: Are you completed with your cross?

7 MS. CIBULA: Yes.

8 CHAIRMAN JACOBS: We will move it when we move all the
9 others, if that is okay. Questions, Commissioners?

10 COMMISSIONER JABER: Ms. Swain, what is the on-going
11 relationship with DDI and the utility going to be? Will there
12 be loans to the utility?

13 THE WITNESS: Yes. The debt and the start-up costs
14 for Nocatee will be supplied by DDI through both debt and
15 equity.

16 CHAIRMAN JACOBS: Any questions?

17 COMMISSIONER DEASON: Yes. That brings a question,
18 you are saying the debt that Nocatee will acquire will be money
19 that will be borrowed from DDI?

20 THE WITNESS: Yes, that is correct.

21 COMMISSIONER DEASON: And there is to be a
22 consolidated tax return, is that correct?

23 THE WITNESS: Yes, that is correct.

24 COMMISSIONER DEASON: So there will not be -- in
25 effect, there will not be a tax deduction associated with

1 interest on the debt if you consolidate that, correct?

2 THE WITNESS: I did not explore the possibility of a
3 parent debt adjustment, but that would be offsetting.

4 COMMISSIONER DEASON: Well, I guess my question is is
5 Nocatee going to get the benefit of what would be a tax
6 deduction on the debt if they filed a separate return?

7 THE WITNESS: Yes, they would. And the tax sharing
8 agreement between the two entities has not been developed yet,
9 but the intention is that it would include that Nocatee pays its
10 full share of taxes at the highest level in the year when it has
11 that taxable income and the years when it has taxable losses
12 that would be paid to the full extent down to the subsidiary.
13 And I had not explored the possibility of how the interest was
14 going to be handled, and did not include any calculations. I
15 did not include an exclusion of interest expense.

16 COMMISSIONER DEASON: Would you agree that that would
17 be within the discretion of the Commission when it establishes
18 rates other than these initial rates, that that would be within
19 our discretion regardless of what we approved here?

20 THE WITNESS: Oh, absolutely.

21 COMMISSIONER DEASON: You indicated that the tax rate
22 itself was going to be calculated at the highest rate, that
23 being that if there is a consolidated return then it would --
24 the combination of the income would be taxed at the highest
25 corporate rate, correct?

1 THE WITNESS: That is correct.

2 COMMISSIONER DEASON: And the benefit associated with
3 that is that in the years that there are losses is that there
4 would be losses that would be shared then with Nocatee, is that
5 correct?

6 THE WITNESS: The Nocatee losses would be shared with
7 Nocatee.

8 COMMISSIONER DEASON: So Nocatee does not keep its
9 losses, those just get shared with the overall return, is that
10 correct?

11 THE WITNESS: Well, what I mean is that if Nocatee
12 does experience a loss, then DDI would fund the tax benefit by
13 making a payment to Nocatee for that tax benefit. That is the
14 intention and, again, we do not have that in a tax sharing
15 agreement. But that is what we are intending.

16 COMMISSIONER DEASON: I asked Mr. Miller a few
17 questions about the collection of service availability fees,
18 that a portion of those that are collected from customers will
19 be paid to JEA, and that JEA would be collecting -- ultimately
20 would be receiving service availability charges as if they were
21 serving that customer directly. Is that the correct
22 understanding?

23 THE WITNESS: Yes, but only to the extent that they
24 are the capacity fee, not any other JEA charges, or cap fees, or
25 connection fees.

1 COMMISSIONER DEASON: Just for the capacity?

2 THE WITNESS: Just the capacity fee.

3 COMMISSIONER DEASON: Okay. Now, when Nocatee
4 collects that amount and remits it to JEA, how is that accounted
5 for on Nocatee's books?

6 THE WITNESS: It had not been my intention to report
7 it on Nocatee's books at all. That it would simply be a --
8 Nocatee would be a collection agency on behalf of JEA for that
9 portion of the fee. And in reality, since JEA will be providing
10 the customer service and collection, it very well could be that
11 the opposite ends up taking place, where JEA collects the entire
12 fee and only remits to Nocatee the Nocatee fee.

13 COMMISSIONER DEASON: Okay. I guess I have the
14 question then if there is -- if the customer, if the end use
15 customer is actually a customer of Nocatee and not of JEA, but
16 you are requiring them to pay the service availability fee to
17 JEA and there is not an on-going customer relationship there.
18 How is the customer protected?

19 THE WITNESS: The customer will be provided on a
20 continuous basis the bulk service from JEA --

21 COMMISSIONER DEASON: Let me interrupt just a second.
22 On a continuous basis. What is then the term of the agreement
23 with JEA for the capacity?

24 THE WITNESS: The agreement as it pertains to bulk
25 service is for a minimum of 25 years, and in my reading of the

1 agreement I don't see a maximum.

2 COMMISSIONER DEASON: So there is a minimum of 25
3 years?

4 THE WITNESS: That's right.

5 COMMISSIONER DEASON: Okay. Changing gears for just a
6 moment. The calculation of the required rate of return that the
7 fair rate of return is based upon a debt to equity ratio of 40
8 to 60, correct, 40 percent debt and 60 percent equity? How did
9 you determine that particular ratio?

10 THE WITNESS: Long ago, before filing this
11 application, I did a calculation of a variety of debt/equity
12 ratios, and based upon that analysis we decided to go with the
13 40 percent debt. And from what I recall, and I haven't looked
14 at that in some time, the cost that was in the 1999 leverage
15 graph formula resulted in a favorable return, a beneficial rate
16 for the customers with that debt/equity ratio. I don't know if
17 it would be the same using the 2000, but it was intended to have
18 a beneficial result.

19 COMMISSIONER DEASON: By beneficial you mean having
20 the overall -- minimizing the overall required rate of return?

21 THE WITNESS: Well, you know, after tax effecting and
22 everything else it was intended to result in something that was
23 beneficial to the customers. And it actually ended up having
24 very, very little impact. From what I remember we didn't detect
25 much of an impact at all.

1 CHAIRMAN JACOBS: That's it? No further questions?
2 Redirect.

3 MR. MELSON: Just a couple on redirect.

4 REDIRECT EXAMINATION

5 BY MR. MELSON:

6 Q Ms. Swain, are you aware of any other --

7 COMMISSIONER DEASON: Mr. Melson, I apologize. Just
8 one further question, and it will probably be better before you
9 do yours. It may not be resolved yet, and maybe its part of
10 some of the finer points that you are going to be resolving as
11 this goes along, but my question is will the end use customer be
12 notified either through a tariff or customer notice of some sort
13 the amount of the service availability fee that is being
14 collected that actually will be remitted to JEA, and what the
15 purpose of that particular amount is?

16 THE WITNESS: Yes. And what I propose is that a note
17 be added to our tariff that indicates very clearly what the JEA
18 fee is and that it will be remitted directly to JEA.

19 BY MR. MELSON:

20 Q Ms. Swain, you were asked a number of questions about
21 the management contract between JEA and NUC, and the way that
22 might work. Are you aware of any other party to this proceeding
23 which obtains management services on a contract basis?

24 A Yes. It is my understanding that Intercoastal
25 Utilities receives its management service on a contractual basis.

1 Q With regard to staff's questions about comparing some
2 gallons on Page 1 of Exhibit C to factored gallons that appear on
3 later pages, if I wanted to determine the magnitude of the
4 difference, and let me take water as the example. On Page 1, I
5 would add the residential and nonresidential gallons and compare
6 that sum to the number that appears in the upper right-hand
7 corner of Page 3?

8 A Yes.

9 Q Would you accept subject to check that that is a
10 difference of on the order of 1/10th of 1 percent?

11 A Yes. It is a very, very close number. That's why my
12 answer was that it is simply just a difference in rounding in the
13 calculation.

14 Q And, finally, you were asked a question by Ms. Cibula
15 about the ratemaking theory, and whether the fee payable to
16 JEA -- if I understood the question correctly, whether the fee
17 payable to JEA should on the wastewater side include usage up to
18 10,000 gallons. Do you recall that theoretical question?

19 A Yes, I do.

20 Q Is there a difference between the way the revenues that
21 NUC collects from its customers should be calculated and the way
22 the payments NUC makes to JEA should be calculated based on
23 differences between the NUC tariff on the one hand and the JEA
24 rate schedule on the other?

25 A Yes. I know that there is a difference in the way that

1 JEA charges -- first of all, it's on hundreds of cubic feet, so
2 you have to make a calculation to figure out what the gallons
3 are. And NUC has a 10,000 gallon cap on residential, and JEA's
4 cap is something different. And it is stated in CCF, and I would
5 have to go back and calculate it and verify that it is the
6 correct calculation.

7 Q From a theoretical basis, would it be appropriate to
8 calculate NUC's rates in accordance with the rate structure in
9 its tariff and to calculate the costs it will incur from JEA
10 under the rate structure in JEA's tariff?

11 A Yes, that is my intent.

12 MR. MELSON: That was all I had. Thank you.

13 CHAIRMAN JACOBS: Very well. Exhibits.

14 MR. MELSON: Mr. Chairman, I would go back and move
15 Composite Exhibit 4, which was the application that I think is
16 entirely now vouched for.

17 CHAIRMAN JACOBS: Without objection, show Exhibit 4 is
18 admitted.

19 (Composite Exhibit 4 admitted into the record.)

20 MR. MELSON: I would move Exhibits 8, 10, and 11.

21 CHAIRMAN JACOBS: Without objection, show Exhibits 8,
22 10, and 11 are admitted.

23 (Exhibits 8, 10, and 11 admitted into the record.)

24 MR. MELSON: And I specifically am not moving Exhibit
25 9 because those are superseded schedules.

1 CHAIRMAN JACOBS: Very well. Staff. Exhibits 12 and
2 13?

3 MS. CIBULA: Exhibits 12 and 13.

4 CHAIRMAN JACOBS: Show Exhibits 12 and 13 are admitted
5 into the record.

6 (Exhibits 12 and 13 admitted into the record.)

7 CHAIRMAN JACOBS: Thank you very much. You are
8 excused for now. That I think is about the extent of the
9 technical testimony we are going to take this evening. Well,
10 are we prepared to -- Intercoastal, are we prepared to take care
11 of Mr. Forrester now, or do you want to wait until the morning
12 to enter his?

13 MR. WHARTON: We can do that now.

14 CHAIRMAN JACOBS: To deal with the admission of his
15 testimony and exhibits into the record?

16 MR. DETERDING: I think we are.

17 MR. WHARTON: At this time, Commissioners, we would
18 move into evidence pursuant to the discussion on the record this
19 morning and the decision of the Chairman and the Commission, Mr.
20 Forrester's testimony as though sworn and read as I understand
21 it. That would be his direct, rebuttal, and supplemental
22 intervenor.

23 CHAIRMAN JACOBS: Without objection, show the
24 testimonies of Mr. Forrester are entered into the record as
25 though read.

1 MR. WHARTON: Likewise, we would move into evidence
2 Mr. Forrester's composite exhibit.

3 CHAIRMAN JACOBS: We will mark that as Composite
4 Exhibit 14.

5 (Composite Exhibit 14 marked for identification.)

6 MR. WHARTON: So Composite Exhibit 14 are those
7 documents that were MLF-1, Mr. Forrester, and then we would also
8 move into evidence MLF-2, which was an exhibit attached to his
9 rebuttal testimony.

10 CHAIRMAN JACOBS: Very well. I show MLF-3, is that to
11 the --

12 MR. WHARTON: And there is. There was an Exhibit
13 MLF-3 which was attached to his supplemental intervenor
14 testimony, and we would move that. Ask that it be marked and we
15 would move all the exhibits.

16 CHAIRMAN JACOBS: Do we want to mark his deposition as
17 a separate exhibit?

18 MR. MELSON: I believe that would be best to mark it
19 as a late-filed because it may come in in a redacted form.

20 CHAIRMAN JACOBS: Okay. We will mark that as Exhibit
21 15.

22 (Late-filed Exhibit 15 marked for identification.)

23 CHAIRMAN JACOBS: Show then that Exhibit 14 without
24 objection is entered into the record.

25 (Exhibit 14 admitted into the record.)

1 COMMISSIONER JABER: Mr. Chairman, just a point of
2 clarification. I heard Mr. Wharton say he moved the direct,
3 rebuttal, supplemental intervenor. There is intervenor
4 testimony too, right?

5 MR. WHARTON: Well, the supplemental intervenor is 1,
6 Commissioner. I'm sorry, that is the name of a third round of
7 testimony, supplemental intervenor.

8 CHAIRMAN JACOBS: Okay. So with the understanding of
9 all the parties that all of those testimonies are entered into
10 the record.

11 MR. MELSON: Commissioner --

12 MR. WHARTON: Perhaps I have made an error, I'm sorry,
13 Rick. I'm looking at two different things. I believe Mr.
14 Forrester did file direct, intervenor direct, rebuttal, and
15 supplemental intervenor. So Commissioner Jaber is correct.
16 There are those four rounds of testimony and the three exhibits
17 are encompassed within them. I would move those as though read
18 and sworn.

19 CHAIRMAN JACOBS: That request is granted as amended.

20 MR. WHARTON: Thank you.

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PREFILED DIRECT TESTIMONY OF M.L. FORRESTER

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Q: Mr. Forrester, please state your full name and employment address.

A: My name is M.L. Forrester and my employment address is 6215 Wilson Blvd., Jacksonville, FL 32210.

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

A: I am employed as a Vice-President of Jax Utilities Management, Inc.

Q: How long have you been employed by Jax Utilities Management, Inc.?

A: I have been employed by Jax Utilities Management, Inc. since 1984; a little over 15 years.

Q: Please list your professional and educational experience post-high school.

A: I received an Associate in Arts Degree in a Pre-Law course of study from Jacksonville University in 1958 with later non-degree courses in accounting and economics. I was certified as a Class "B" Practitioner by the Fla. Public Commission on February 6, 1989. From 1971 to 1984, I was employed by the City of Jacksonville Water and Sewer Division in several capacities including that of Commercial Planning and Development Coordinator, Special Utility Service Advisor, Utility Planning Officer, Utility Programs Controller, and Management Planning and Controls Officer.

While at the City, my responsibilities included service planning to new developments, water and sewerage rate studies management, federal and state legislation reviews, water and sewerage municipal code modifications, administration of the division accounting office, and private utility acquisition analysis. Some of my special assignments during that employment included that of City Council sub-committee member for private utility acquisition negotiations, and

1 membership in the Fort George Island Carrying Capacity Study Group. I was also
2 listed as a significant contributor to the 1972 Water Quality Management Plan for
3 Duval County; and I was one of three co-authors of the original 1972 Eight Phase
4 City of Jacksonville Master Water and Sewer Improvement Program which outlined
5 the City's water and sewerage service needs to the year 2002. From October, 1965
6 to April, 1971, I was the General Manager of the Jacksonville Division for Southern
7 States Utilities Inc. At that time my responsibilities included direction of the utility
8 systems operations, analysis of proposed systems acquisitions, integration of new
9 acquisitions, liaison with regulatory agencies, rate case management, and
10 management of the company-owned office building in Jacksonville.

11 From April of 1959 to October of 1965, I was employed by Stevens Enterprises Inc.
12 which included assignments as draftsman, estimator, and construction coordinator
13 for Stevens Southern Company [an utility construction company], also as
14 purchasing agent for Dixie Wholesale Distributors [a wholesaler of utility supplies];
15 and finally as manager of AFS Water Service Company. In addition to those duties,
16 I also implemented the company's first electronic data processing system and was
17 responsible for the utility billing system and general accounting. I also functioned
18 as an assistant to the president of all three firms, Mr. A.F. Stevens.

19 Q: Have you been qualified as an expert in the area of utility regulatory matters,
20 management and rates?

21 A: Yes, I have appeared numerous times before the Duval County and St. Johns
22 County Commissions, the Florida Public Service Commission and Duval County
23 Circuit Court; and have been qualified as an expert in utility operations and
24 management, service territory and rate matters, and utility valuation.

25 Q: Who is Intercoastal Utilities?

1 A: Intercoastal Utilities is a Class "A" regional utility providing water and wastewater
2 services, since 1983, to a 4,500 acre territory in Northeast St. Johns County;
3 which presently serves approximately 3600 retail water and wastewater accounts
4 and about 200 water accounts through a wholesale interconnection. Intercoastal
5 also provides reuse service to the Sawgrass Country Club for irrigation of its 27-hole
6 golf course.

7 Q: Who is JUM, and what is their relationship with Intercoastal?

8 A. Jax Utilities Management (JUM) specializes in water and wastewater utilities and
9 has two major divisions. The contracting division provides construction services for
10 land-clearing and water, wastewater and stormwater pipeline installation for a large
11 number of municipal and investor-owned corporations. The second division provides
12 water, wastewater, and stormwater utility management, as well as operations and
13 maintenance services. Over its 25 year history, JUM has provided those operational
14 services to a number of municipal utility corporations and private investor-owned
15 utilities in northeast Florida, concentrating its operations in the Duval, Nassau, Clay,
16 and St. Johns Counties. Since 1983, Jax Utilities Management has provided for the
17 operation, maintenance, and management of the Intercoastal Utilities water and
18 wastewater systems, as well as the administration of Intercoastal's business and
19 economic/ environmental regulatory affairs.

20 Q: Please identify the document which has been marked Exhibit MLF-1.

21 A: Exhibit MLF-1 is the application of Intercoastal Utilities Inc. to the Florida Public
22 Service Commission for an amendment of certificate for extension for territory and
23 for an original water and wastewater certificate, for an utility in existence and
24 charging for service.

25 Q: Are the representations in that application reasonable and true and correct to your

1 knowledge?

2 A: Yes, to the best of my knowledge and belief they are. I provided the information
3 required for this application, caused its preparation and reviewed the application
4 prior to its submission. However, I have one correction to make in that application.
5 Based on advice from Intercoastal's engineers, Intercoastal is no longer proposing
6 the use of storm water as a supplemental supply to the reclaimed water reuse
7 system for residential services in the proposed territory. Intercoastal's engineers,
8 Post, Buckley, Schuh and Jernigan (PBS&J) reported in Intercoastal Utility's
9 Conceptual Master Plan (CMP) that "although the addition of reclaimed water to
10 stormwater storage ponds would be permitted by FDEP, it is our opinion the
11 resultant solids concentration would cause considerable problems in residential
12 reuse systems (i.e. small orifice sprinkler heads). Treating the stormwater to a solids
13 concentration level of the reclaimed water would not likely be cost effective. We,
14 therefore, have not considered the use of stormwater as a supplemental supply to
15 the reclaimed water system."

16 Q: Why does Intercoastal feel the Commission should consider Intercoastal's
17 application after the County's denial?

18 A: Intercoastal has long awaited and prudently pursued the opportunity to provide
19 service to this territory. But, as a regulated entity, Intercoastal cannot proceed with
20 its applications for construction or consumptive water use permits, unless and until
21 it is granted the authority to serve this area.

22 The March 20, 1999 announcement of the Nocatee development, after
23 Intercoastal's application to St. Johns County, constituted a major change in
24 circumstances affecting Intercoastal's (application proposed) schedule for, and
25 scope of, service facilities construction; but much more so, the area of the territory

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proposed in that application and the jurisdiction required to properly adjudicate Intercoastal's application.

It is a matter of record that one of the issues given "great weight" in the County's decision to deny that application was the "inability of Intercoastal" to provide unified service to the Nocatee development. But more precisely, it was the inability of St. Johns County to grant Intercoastal a certificate to serve the Duval County portion of Nocatee; not a failure on the part of Intercoastal.

Filing this application gave Intercoastal the opportunity to correct several of the "conditions" upon which Intercoastal was "judged" in the County case.

Through discovery procedures available in these proceedings, Intercoastal was able to obtain significant information concerning the Nocatee development schedules and service requirements. This provided a foundation and, to a degree, justification for Intercoastal's preparation of a Conceptual Master Plan of service for both the Duval and St. Johns County parts of this territory. The absence of a plan of that scope (including Nocatee and its future phases) was another issue given allegedly "great weight" in the County's denial of Intercoastal's application.

Obviously, this Commission's jurisdictional authority to grant multi-county service certificates ensures that the County's previous lack of such authority will not be imputed to Intercoastal as an "inability" to provide service.

Further, consideration of Intercoastal's application by this Commission also affords Intercoastal the assurance of unbiased and objective consideration of Intercoastal's qualifications and capabilities to provide service to its requested territory.

The experience of the Commission and its staff also assures that all of the relevant and significant issues of this case will be given due consideration in light of what is best for Intercoastal and its customers.

1 Lastly, bringing this application to the Commission also provides the opportunity to
2 bring all of Intercoastal's existing and future customers under a system of service,
3 and rate monitoring and regulation, that will promote consumer confidence that their
4 best interests are being continuously examined, considered and served.

5 Intercoastal has become acutely aware that the professionalism of its regulatory
6 process is as much a part of superior service to its consumers as meeting water
7 demands and complying with environmental regulations. For all of the foregoing
8 reasons, Intercoastal has brought this application to the Commission.

9 Q: Why should this Commission approve Intercoastal's application?

10 A: For the reasons set forth in Intercoastal's application, my testimony and that of the
11 other Intercoastal witnesses, there is no need for any other entity to provide retail
12 services to the requested territory. As an existing, experienced and available Class
13 "A" Utility, Intercoastal can perform all of the functions required to provide the
14 needed services under any service scenario; including the construction of new
15 plants, bulk service purchase and distribution, or any other cost effective method.
16 In addition, it is in the best interest of the public to approve Intercoastal's
17 application. Intercoastal's rates and charges will compare favorably with any other
18 entity proposing retail service to this new territory, and there will be a positive
19 effect on Intercoastal's existing and future customer within its current service area.
20 Intercoastal's provision of services will be in compliance with environmental
21 regulations, comprehensive plans, and will supply a level of service equal to or
22 exceeding that of any other utility entity.

23 Expansion of Intercoastal's existing Regional Operations, under the jurisdiction and
24 oversight of the Commission, will be an orderly and efficient way to provide service
25 to the new territory, and will promote the continuing improvement of Intercoastal's

1 economy of scale.

2 Intercoastal has the qualifications, experience, capabilities, and resources to provide
3 excellent and reliable service to its proposed territory, and is willing to assume those
4 responsibilities.

5 Q: In your opinion, will Intercoastal be able to carry out the activities and the project
6 proposed by its applications.

7 A: Yes, in my opinion Intercoastal has the technical capability, operational expertise,
8 managerial experience and financial strength to accomplish all of its proposals.
9 Intercoastal is also well-supported in all of the necessary engineering, legal, and
10 economic disciplines by its consulting team to ensure that its plans are formulated
11 and carried out in an efficient and effective manner.

12 Q: Please explain for the Commission what Intercoastal proposes by its application.

13 A: Intercoastal is proposing the expansion of its authority to provide water and
14 wastewater systems and reuse services to a 23,000 acre area adjacent to the
15 western portion of its present regional service territory in northeast St. Johns
16 County. Approximately 2,000 of those 23,000 acres are located in the southerly
17 portion of Duval County, which would make Intercoastal a multi-county utility and
18 subject it to Commission jurisdiction. Therefore, the application includes bringing
19 Intercoastal's existing 4,500 acre St. Johns County certificated territory under the
20 Commission as well. In effect, Intercoastal's application proposes a consolidation
21 of the operations and management of the water, wastewater, and reuse systems
22 for the existing and proposed territories. The resulting regional utility operations
23 would considerably expand Intercoastal's already existing economies of scale to the
24 benefit of its current, as well as future, customers in both areas.

25 Q: Please describe the proposal of Intercoastal as it relates to reuse and reclaimed

1 water.

2 A: Intercoastal is proposing to construct and place into operation an area-wide
3 reclaimed water reuse pumping and transmission system, in conjunction with its
4 provision of potable water and wastewater services to this proposed territory.
5 Making reuse service available to new developments in this territory is in accordance
6 with Conservation Goal G.2 and Policy G.2.1.3 of the St. Johns County (SJC)
7 Comprehensive Plan 1990-2005 (the "Comp Plan") (Ref: GG-17, SJC Comp Plan
8 Adoption Document), which states, in part, that "new developments...shall...be
9 required to consider the use of effluents for irrigation."

10 Obviously, reuse service must be made available within this area as a prerequisite
11 to such consideration.

12 In its Potable Water and Sanitary Sewer Sub-Elements (Issues 4 and 5), the
13 Jacksonville/Duval County (DC) Comprehensive Plan cites requirements for reuse
14 by the St. Johns River Water Management District, which also includes "utilization
15 of reclaimed water for irrigation where available."

16 To that end, the SJC Comp Plan Policy G.2.1.4 (pg GG-18) requires that
17 "(w)astewater treatment plants with a minimum design capacity of 1.0 MGD,
18 planned and funded following adoption of the Plan, shall be designed and
19 constructed with the ability to provide reclaimed water for anticipated land
20 application and irrigation needs."

21 In combination, these (goals and) policies clearly reflect that the intent of the Duval
22 and St. Johns County Comp Plans is to ensure the availability and employment of
23 reuse services for and by new developments. Intercoastal's proposal to provide for
24 the availability of area-wide reuse service is responsive to that intent, and is clearly
25 in accordance with Conservation Goal G.2 of the SJC Comp Plan.

1 Q: Are there currently any utilities situated between the existing IU service area and the
2 proposed service territory?

3 A: The only existing utility located between Intercoastal's present service area and the
4 proposed service territory is that of Palm Valley Water Company, owned by Florida
5 Water Services. Palm Valley Water Company provides water service (only) to
6 approximately 200 residents and small commercials and purchases its water supply
7 wholesale from Intercoastal Utilities.

8 Therefore, Palm Valley Water Co. cannot provide the required services to this
9 territory, nor has it objected to Intercoastal's application to indicate that it desires
10 to do so.

11 Q: What is the "Local Sources First" policy?

12 A: "Local Sources First" is a term used in the St. Johns River Water Management
13 District Water 2020 Plan which refers to a declaration of State Legislature Water
14 Policy in Section 373.016 (4)(a), Florida Statutes. In that section, the Legislature
15 directed FDEP and the Water Management Districts to encourage the use of water
16 resources nearest the area of use or application, whenever practicable. Those
17 sources include nonpotable, reclaimed water and stormwater available in the area
18 of service, as well as the local aquifer supply.

19 Q: In your opinion, will the Intercoastal Utilities' plan of service be in compliance with
20 the Local Sources First policy?

21 A: Yes, in my opinion the Intercoastal Utilities plan of service will be fully in accord
22 with the Local Sources First policy. The Intercoastal plan is to reuse reclaimed
23 wastewater, generated within the service territory, for return to customers for
24 irrigation and other nonpotable purposes. Intercoastal's CMP also demonstrates that
25 Intercoastal's plan of service for water supply will utilize the local aquifer, in

1 combination with the above reuse system, in a way that will not adversely affect
2 the water resources in the area. Therefore, Intercoastal's plan of service will be in
3 compliance with the Local Services First policy of the state.

4 Q: What is the Nocatee Development?

5 A: Nocatee is a huge, multi-use, multi-phase, proposed Development of Regional
6 Impact and, if approved, would occupy about 15,000 acres of the territory planned
7 for service by Intercoastal Utilities. Nocatee's March 20, 1999 announcement,
8 including that it had been planned in secrecy over the prior 14 months, came as a
9 shock to the entire County, and to Intercoastal, because on November 7, 1997,
10 DDI's president had been quoted by a news article as saying, "this is all our
11 timberland, and we have no plans to sell it." Nocatee's 14,000 residential units and
12 over 5,000,000 square feet of mixed business space, hotels, schools, and
13 community service facilities strongly suggest rising land values for, and a continuing
14 urbanization of the territory, applied for by Intercoastal. That is essentially the same
15 scenario Intercoastal had previously envisioned for this territory.

16 Q: Did Intercoastal's interest in this area predate the Nocatee development
17 announcement?

18 A: Yes, it did. Intercoastal began its planning for this entire territory in mid-1996. That
19 long-standing commitment is a matter of public record. Intercoastal reviewed the
20 SJC 1994 Master Plan for Water and Wastewater Utilities which recommended
21 against extending the County's systems into this proposed territory (ref: Pg. 6-7,
22 par 2; Pg. 7-1, par 3). That Plan also recommended that water and wastewater
23 services within the proposed territory be provided by the adjacent private utility
24 systems. Therefore, in response to a 1996 request from the St. Johns River Water
25 Management District, Intercoastal submitted a Water Supply Needs and Sources

1 Assessment Plan through the year 2020 which addressed the future service needs
2 on both the east and west sides of the Intracoastal Waterway, including all of the
3 St. Johns County territory now being proposed for certification by Intercoastal.
4 Intercoastal recognized that the County Road 210 corridor, west of the Intracoastal
5 Waterway, would be the next logical area for continuation of the high rate of
6 development that Intercoastal has experienced in its existing certificated territory.
7 On November 20, 1997, one of Intercoastal's Board of Directors wrote a memo to
8 DDI's president, requesting a meeting to discuss Intercoastal's plans to certificate
9 this area and DDI's future needs for water and sewerage services for its properties.
10 My understanding is that the meeting request was verbally refused without mention
11 of any DDI planning for the Nocatee Development (Nocatee's announcement did not
12 occur until 3/20/1999 - eleven (11) days after Intercoastal filed its certificate
13 expansion application with the St. Johns County Water and Sewer Authority). On
14 January 1, 1998, the Water Management District produced a Water 2020 Plan map
15 of this proposed territory, indicating all of the sub-districts identified by Intercoastal
16 in its plan, as proposed areas of service by Intercoastal. Intercoastal also submitted
17 a copy of its planning calculations to the local water management district office,
18 with a request for review of those calculations as to their reasonableness and
19 application to the proposed territory. In its response to Intercoastal, the local office
20 confirmed the reasonableness of those calculations, but also cautioned Intercoastal
21 that the District could not begin review of a Consumptive Use Permit (CUP)
22 application, nor work extensively with Intercoastal to solidify a water resource plan,
23 until Intercoastal obtained the necessary authority to serve this proposed territory.
24 In its preparations to seek that authority, Intercoastal had already announced its
25 intent to certificate and provide service to this area within its management letters

1 to the St. Johns County Water and Sewer Authority, which were attached to
2 Intercoastal's 1996 and 1997 annual reports.

3 Q: Is Intercoastal presently regulated by St. Johns County?

4 A: Yes. Intercoastal's service area and rates are currently under the jurisdiction of the
5 St. Johns County Water and Sewer Authority, and have been since 1989 when St.
6 Johns County re-assumed that jurisdiction from the Florida Public Service
7 Commission.

8 Q: Did Intercoastal attempt to expand its territory to include much of the land area for
9 which it has applied in this case and all of the Nocatee development which is in St.
10 Johns County?

11 A: Yes. On March 9, 1999, Intercoastal submitted its application to the Authority for
12 extension of its certificates number 13 and 14 in order to provide water and
13 wastewater services to that area.

14 Q: Please briefly tell the Commission about that proceeding.

15 A: Subsequent to Intercoastal's application, objections were filed including DDI
16 Incorporated and Estuary Corporation, the landowners and developers of Nocatee;
17 the Jacksonville Electric Authority (JEA); the St. Johns County Utility Department;
18 United Water Florida, Inc; and the Hines Interests Limited Partnership. Ultimately,
19 the objections of United Water Florida and Hines Interests were withdrawn. All of
20 the remaining interveners were participants in one or more alternative proposals to
21 serve some portion of the territory included in Intercoastal's application. Because
22 both the St. Johns County Water and Sewer Authority and the St. Johns County
23 Utility Department are alter-egos of St. Johns County (and both are an extension of,
24 and controlled by, the St. Johns County Board of County Commissioners),
25 Intercoastal filed a motion for disqualification of the Authority and the Board of

1 County Commissioners of St. Johns County to hear that case. Ultimately, both the
2 Authority and the Board of County Commissioners denied that motion and quasi-
3 judicial hearings were held by both agencies on the matter, notwithstanding
4 Intercoastal's strong complaints as to their objectivity and the appearance of
5 impropriety. While they were not official interveners in the case, the Authority also
6 took public testimony from two current customers of Intercoastal Utilities and the
7 president and attorney of the Sawgrass Association, one of the many homeowner
8 associations in the area served by Intercoastal Utilities. Neither the developer, DDI
9 Incorporated, or Nocatee Utility Corporation presented themselves as competitors
10 of Intercoastal Utilities during these proceedings, only as objectors. The JEA role in
11 those proceedings appeared to be for the purposes of presenting its plan of service
12 for the area and supporting the objections of both DDI and the St. Johns County
13 Utility, with JEA being the ultimate benefactor, as service supplier, if Intercoastal's
14 application was disapproved.

15 In part, the objectors argued that Intercoastal's water transmission design was less
16 effective than that of JEA for initial fire protection service to the Walden Chase
17 project. This was resolved by Intercoastal's engineering testimony that Intercoastal
18 could match the JEA proposed transmission design at a lesser cost. (6/18/99 TR.
19 Vol III, pg. 452, et seq.). To a greater degree, objectors charged that Intercoastal's
20 initial plan of service did not adequately meet the Nocatee development schedules
21 and service demands.

22 It is worth repeating at this point that the announcement of the Nocatee
23 Development did not occur until after Intercoastal's filing of its application, and that
24 Intercoastal had made attempts to contact DDI, prior to Intercoastal's application,
25 regarding any possible plans that DDI might have for development of their lands in

1 this proposed territory. DDI did not respond to Intercoastal's earlier attempts to
 2 obtain that information, and subsequently ignored Intercoastal's January 15, 1999
 3 written offer to discuss the reasons for DDI's objection to Intercoastal's application
 4 (which was also prior to DDI's announcement of the Nocatee development).
 5 Therefore, Intercoastal Utilities was placed in the untenable position of attempting
 6 to respond to the Nocatee development schedules and demands for service (which
 7 were never presented to Intercoastal, but were only offered in DDI's engineering
 8 testimony) during the Intercoastal hearings. To avoid that situation in this case,
 9 Intercoastal has secured the information necessary for, and prepared, a Conceptual
 10 Master Plan (CMP) of service which provides for the relevant and reasonable service
 11 needs of this proposed territory. While that CMP will cost-effectively meet those
 12 needs with a level and quality of service equal to that of any other potential
 13 supplier, Intercoastal is willing to adapt its plans in any manner which might
 14 increase that cost-effectiveness. In short, if Intercoastal's application is approved,
 15 we would renew our January 4, 1998 request for wholesale service from JEA for
 16 the purpose of testing the ability of that alternative to reduce our future cost of all
 17 services to this proposed territory.

18 Q: Does Intercoastal believe that it received a fair hearing on its application in St.
 19 Johns County?

20 A: No. Intercoastal was placed at a severe disadvantage in those proceedings, and
 21 found itself defending an initial plan of service that was never intended to meet the
 22 first phase demands of the giant Nocatee Development. Intercoastal's engineering
 23 presentations did include the future installation of facilities which it believed would
 24 provide for the initial needs of Nocatee, [gleaned from news media reports of that
 25 development which appeared after Intercoastal's filing of its application, and prior

1 to Nocatee' presentment (in testimony) of its first phase and ultimate service
 2 needs]. We were amazed to find that the final order of the Authority, while
 3 disapproving the application of Intercoastal, stated that the Authority believed
 4 Intercoastal did indeed possess the managerial, operational, and technical abilities
 5 to provide service to the requested territory, and that Intercoastal could probably
 6 provide the necessary financing of a project to supply that service. Further, that the
 7 order also found Intercoastal's plan of service was not inconsistent with the St.
 8 Johns County Comprehensive Plan, all vital elements in considering Intercoastal's
 9 application. Despite the fact that the Authority found Intercoastal possessed all the
 10 essential elements to provide service to its proposed territory, the Authority and
 11 Board of County Commissioners still denied Intercoastal's application. This was not
 12 unanticipated since both the opponent and the judge in this matter were the same.

13 Q: Why did Intercoastal choose to file this application?

14 A: As I indicated, Intercoastal Utilities has long-anticipated providing service to the
 15 territory west of the Intracoastal Waterway. Intercoastal has believed the provision
 16 of that service to be its assigned responsibility in accordance with the 1994 St.
 17 Johns County Master Plan for Water and Wastewater Utilities; which recommended
 18 against extending the County's systems into this area and stated that those services
 19 could be provided by the adjacent private utility systems.

20 Intercoastal also believed that the SJC Comp Plan Policy J.1.1.5 (which states that
 21 "(o)utside the areas served by County facilities, the County will support and
 22 encourage provision of essential facilities and services through privately owned,
 23 publicly regulated regional systems") clearly confirmed that responsibility, and
 24 supplied reasonable assurance that Intercoastal's future request for certification of
 25 the area would be supported and encouraged by the County; and would be given

1 fair consideration by the County's utility regulators if Intercoastal demonstrated its
 2 ability to provide service to the territory. Following those beliefs and those County
 3 planning recommendations, Intercoastal responded to the 1996 St. Johns River
 4 Water Management District call for a survey plan of Intercoastal's long range water
 5 requirements, and Intercoastal saw to it that water resource needs of this territory
 6 were made a part of the District's Water 2020 Planning efforts.

7 Intercoastal also followed-up by announcing its intent to certificate and plan service
 8 facilities for this territory to Intercoastal's regulator, the St. Johns County Water
 9 and Sewer Authority, and, finally, continued its service plans with the next required
 10 step, the filing of the application for certificate expansion with the County
 11 Authority.

12 At the time of Intercoastal's application to the Authority, and prior to the Nocatee
 13 announcement, Intercoastal was unaware that its plan to provide service to this
 14 territory would necessitate the inclusion of a portion of Duval County land area. Had
 15 DDI responded to Intercoastal's original inquiry for DDI's future development plans,
 16 or even to Intercoastal's later request to discuss the objection filed by DDI,
 17 Intercoastal would have been aware of that need and would have filed its original
 18 application with this Commission, and not with the County Authority. In accord
 19 with the SJC 1994 Master Plan, the SJC and DC Comp Plans, and sound utility
 20 planning, Intercoastal is indeed the logical provider of service to this territory and
 21 has in place a managerial, planning and operational organization prepared to supply
 22 those services. Intercoastal already has a sizeable, existing customer base within
 23 the area adjacent to this territory, and the rate and volume of growth being
 24 projected for this territory would accelerate the improvement of Intercoastal's
 25 customer base and its economies of scale.

1 In summary, Intercoastal has filed this application for the purpose of following
2 through on its long-standing strategic plans to provide service to this territory,
3 improve its existing operations, and to respond to the additional need to extend
4 services into Duval County for the Nocatee Development.

5 Q: Will Intercoastal's plans adversely impact the potable water aquifer by its provision
6 of service?

7 A: No. In Section 5.1 of Intercoastal's Conceptual Master Plan, PBS&J has stated that
8 they are confident from their review of the Nocatee Water Resources Study that
9 adequate investigations have been made to assure that Intercoastal's proposed plan
10 of service will not adversely affect the water resources in the area.

11 Q: Why is a lack of adverse impact on the potable water aquifer important?

12 A: St. Johns County has been designated by the Water Management District as a
13 priority water resource caution area because it is a potentially high growth area.
14 According to the draft Water 2020 Plan (Introduction, Page VIII), currently there are
15 no regional adverse groundwater withdrawal impacts in this study area. The Plan
16 also states that while there have been some localized impacts, those problems are
17 not currently widespread. However, because of the potential of adverse impact, the
18 Water 2020 Plan cautions that utilities must develop alternative water supply
19 strategies to mitigate any high aquifer impacts from that anticipated growth.

20 Even though the Nocatee water resources study shows that there is an abundant
21 supply of water available in this proposed territory, Intercoastal's plan to provide
22 area-wide reuse service responds to that call for caution and is in conformity with
23 the type of strategy the Water 2020 Plan was designed to encourage. At the same
24 time, Intercoastal's Plan to reuse reclaimed wastewater is also in accord with state
25 ("Local Sources First") policy.

1 Q: Do you believe the granting of this application will provide for the orderly expansion
2 of an existing utility?

3 A: Yes, I do, and my belief is supported by Goal J.1 and Policy J.1.1.5 of the St.
4 Johns County Comprehensive Plan (Comp Plan). Goal statement J.1 says, in part:
5 "The Board of County Commissions shall ensure the orderly and efficient provision
6 of the following facilities or services: sanitary sewer, potable water,...(etc)"; and in
7 support of that goal statement, Policy J.1.1.5 says "Outside the areas served by
8 County facilities, the County will support and encourage provision of essential
9 facilities and services through privately owned, publicly regulated regional systems."

10 I believe those statements clearly demonstrate that the Comp Plan considers the
11 expansion of privately-owned utilities to be an orderly and efficient method of
12 providing those services. In this case those statements are particularly true, because
13 providing services for a territory that is "next door" to an existing utility would be
14 efficient and orderly. This is a logical progression of Intercoastal's operations.
15 Moreover, that expansion will benefit not only the new territory but Intercoastal's
16 existing service area as well.

17 From the standpoint of utility facilities planning, the approval of this application will
18 provide Intercoastal the opportunity to establish new service facilities with good site
19 locations and modern, efficient designs to meet the ever escalating environmental
20 and health standards of the future. And, in the long term, the Intercoastal Utilities
21 CMP suggests a real possibility, or probability, that those new facilities could at
22 least integrate with and support, if not replace, Intercoastal's existing treatment
23 installations. Therein is a reasonable expectation of saving operating costs and
24 increasing the reliability of Intercoastal's systems in its existing certificated area.
25 From a broader standpoint, approval of this application is the key element in

1 Intercoastal's long-range strategic plan for improving its economy of scale, which
2 will provide a hedge against future environmental and health regulation compliance
3 cost, and operating expense, increases, with a reasonable expectation of stabilizing
4 Intercoastal's service rates in both the short and long term. That would benefit
5 Intercoastal's existing customers, as well as its future customers, in both the
6 current and proposed territories.

7 Q: In your opinion, does Intercoastal have the operational expertise to effectuate its
8 application?

9 A: Yes, in my opinion it does.

10 Q: Please describe that operational expertise.

11 A: The operating agent for Intercoastal Utilities is Jax Utilities Management (JUM),
12 which has a 25-year history of providing operations service to both municipal and
13 investor-owned utilities. Together, Intercoastal and JUM have operated the
14 Intercoastal Water and Sewer Utility Systems for 16 years, providing service to high
15 value properties that require quality service. Throughout that period, both companies
16 have accumulated a reputation with regulatory agencies for being reliable,
17 cooperative and responsive. In addition, near the end of Intercoastal's last rate case
18 in St. Johns County, the presiding chairman of the St. Johns County Board of
19 County Commissioners noted that throughout all of the hearings, there had been
20 absolutely no complaints regarding service provided by Intercoastal and JUM. In my
21 experience, it is extremely unusual for any utility to complete a proceeding of any
22 nature, much less a rate proceeding, in which there are no complaints of the utility's
23 operations from either the environmental agencies or the utility's customers. In my
24 opinion, that is the best possible demonstration of operational expertise.

25 Q: In your opinion, does Intercoastal have the managerial expertise to effectuate its

1 application?

2 A: Yes, in my opinion it does.

3 Q: Please describe that managerial expertise.

4 A: Intercoastal's strategic planning and operational policies are established or approved
 5 by its corporate officers and Board of Directors, all of whom have a long history of
 6 investment in utility operations, utility management, and experience in obtaining
 7 financing for those operations. Intercoastal's corporate structure is supported by the
 8 JUM managerial team, the members of which have utility experience ranging from
 9 20 to 40 plus years each, with professional and technical qualifications in
 10 accounting, planning and design, construction, utility operation and regulatory
 11 matters. In my opinion, the simple fact that together these two groups have
 12 developed a major utility and sustained its operations over a 16 year period,
 13 demonstrates the necessary managerial expertise to continue to do so in the future.
 14 In 1989, this Commission approved a substantial expansion of Intercoastal's
 15 certificate area, citing Intercoastal's demonstrated ability to provide service to the
 16 additional territory for its finding that the expansion was in the public interest.
 17 Intercoastal's continuing operations over the past 10 years have only strengthened
 18 the basis for that perception and finding.

19 I think it is also appropriate to point to the decisions of both Intercoastal and JUM
 20 to assemble a consulting team composed of Post, Buckley, Schuh and Jernigan;
 21 Burton and Associates; and Rose Sundstrom & Bentley, each of which has
 22 extremely impressive qualifications and experience in the disciplines of, respectfully,
 23 engineering design and utility operations, water resources economics and utility rate
 24 design, and utility regulatory and environmental legal affairs. In my opinion,
 25 assembling such a high quality team to advise and assist in accomplishing

1 Intercoastal's objectives, in and of itself, demonstrates managerial expertise.

2 Q: In your opinion, does Intercoastal have the financial strength necessary to
3 accomplish its application?

4 A: Yes, I believe it does.

5 Q: Please describe that financial strength.

6 A: In my opinion, Intercoastal's financial strength is in the principal stockholders of the
7 company. Those principals have demonstrated a long-standing commitment to
8 provide quality utility services that meet or exceed regulatory standards. They have
9 always gathered the financial resources necessary to meet those service needs and
10 to satisfy environmental requirements in the process. By approving the submission
11 of this application, those stockholders have demonstrated that they are willing to
12 continue providing their personal financial guarantees in order to secure
13 Intercoastal's financing needed to carry out its plan of service. That very
14 considerable stockholder financial strength is also supported by Intercoastal's
15 excellent relationship with First Union Bank which provided the financing for
16 Intercoastal's recently completed upgrading of its wastewater treatment plant.
17 When Intercoastal approached First Union with these expansion plans, one of First
18 Union's top financial executives responded very positively, stating that First Union
19 considers Intercoastal's plan of expansion to be both practical and attainable.
20 Additionally, First Union will provide funding for Intercoastal's expansion at
21 competitive market rates and is very enthusiastic at the prospect of the plan's
22 benefit to future customers in St. Johns County. That response also noted that
23 Intercoastal has a track record of financial stability, and that First Union is confident
24 of Intercoastal's managerial and technical capabilities to carry out its plan of service
25 to this new territory.

1 Thirdly, I believe that with Intercoastal's financial projections of its plan's operating
2 results and positive rate impacts, Intercoastal has gathered all the necessary
3 supporting information to secure adequate financing for its accomplishment of this
4 application.

5 Q: Has Intercoastal recently had a rate increase in St. Johns County?

6 A: Yes, as I alluded to earlier, Intercoastal was granted an increase in its wastewater
7 rates by St. Johns County in October, 1998.

8 Q: Was that rate increase well-received by the customers?

9 A: While I personally talked to a number of customers in telephone conversations
10 during the course of those proceedings who were reasonably understanding of the
11 utility's need to make the capital improvements to its wastewater treatment plant
12 (for compliance with regulatory mandates which were the cause of that increase),
13 I would have to admit that very strong and active opposition did come from one of
14 the larger homeowner associations in Intercoastal's service area. In fact, that
15 opposition was so vehement that although the St. Johns County Water and Sewer
16 Authority and Board of County Commissioners did approve the increase, those
17 customers were successful in convincing those two agencies that Intercoastal
18 should be subjected to a later audit of its earnings. Recently completed at the time
19 of this writing, the final report of that audit indicated that even with the
20 recommendations of the auditor for very severe adjustments to Intercoastal's
21 operating expenses, the maximum calculated earnings of Intercoastal would only
22 exceed those allowed by approximately sixth tenths of one percent. Because the
23 opposition by that one homeowner association is continuing, notwithstanding the
24 results of that audit, Intercoastal has agreed to yet another, even later, audit of its
25 operations in an attempt to put that customer's concern to rest.

1 Q: Have you reviewed the Exhibit MB-1 and Exhibit JM-1?

2 A: Yes, I have reviewed both of those Exhibits and discussed the contents with their
3 authors.

4 Q: In your opinion, do those documents reasonably and accurately reflect Intercoastal's
5 proposal and its ability to effectuate those proposals?

6 A: Yes, in my opinion, Exhibit JM-1 fairly and accurately represents Intercoastal's
7 intended plan of service to its proposed territory, and Exhibit MB-1 is a reasonable
8 projection of the average operating results and rates that Intercoastal Utilities would
9 need to carry out that plan of service.

10 Q: Does this conclude your prefiled testimony?

11 A: Yes it does.

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REBUTTAL TESTIMONY OF M.L. FORRESTER1
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Q. Are you the same M.L. Forrester that has previously filed testimony in this case?

A. Yes, I am.

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

A. I have reviewed all the testimony and exhibits filed in this case, I have reviewed documents which were retained during the course of discovery or public records request or otherwise obtained from parties to this case, and I have reviewed many of the pleadings filed in this matter. Additionally, I have reviewed those documents which either support my testimony or which I relied upon in arriving at the opinions in my testimony.

Q. How did Intercoastal determine the portion of transmission systems reflected in its Conceptual Master Plan which would be invested by the utility, as opposed to those to be contributed by the developer?

A. Intercoastal included the portion of transmission systems it considered to be a proper investment on the part of the utility. Regardless of its large size, Nocatee is simply one, contiguous project being developed by a single entity. Therefore, all of the lines serving Nocatee are "onsite"; that is, within the boundaries of that development. Intercoastal's service availability policy calls for the developer to bear the cost of and contribute to the utility at no cost, all onsite lines.

Q: How does that practice affect Intercoastal's projected rates?

A: A result of that practice is that less of the total system costs find their way into Intercoastal's rate base, and future ratepayers do not pay a return on the contributed system assets. This helps to lower the projection of future rates.

Q: If all of the lines to be constructed are located within the Nocatee development, why would Intercoastal invest in any of those lines?

1 A: To the extent that the "backbone" lines will be employed to interconnect with
2 Intercoastal's existing easterly system, and may serve properties other than
3 Nocatee, Intercoastal believes it appropriate to add the cost of those lines to its
4 investment in the water production, wastewater treatment and reuse facilities.

5 Q: Will NUC require the developer to make the same degree of investment in the
6 systems serving Nocatee?

7 A: No. Ms. Swain made it clear in her direct testimony that NUC will be responsible
8 for the cost of all on-site transmission, distribution and collection facilities, with the
9 developer contributing only the smaller distribution and collection systems. In effect,
10 the NUC investment in a greater proportion of the onsite systems relieves the
11 developer of a large degree of cost responsibility and increases development profits.
12 Such an investment plan is in keeping with Nocatee developer documents I have
13 reviewed establishing priorities, goals, and objectives for NUC, which cite
14 infrastructure cost efficiencies to the developer ,through capital improvements, as
15 one of the reasons for creating their own utility.

16 Q: How would you expect NUC's system investment policy to affect their projected
17 rates?

18 A: I would expect a shifting of such system cost responsibilities from the developer to
19 the utility to escalate NUC's investment, its rate base, the total volume of return
20 dollars on that rate base, and therefore, to increase NUC's service rates to its
21 future customers. Although NUC will not be investing in plant facilities, in the first
22 few years I would expect NUC's rates to be comparable to those of any other
23 utility proposing plant construction. That's because NUC's policy for proportionately
24 greater investment in initial system costs, within those first years would tend to act
25 as a surrogate for investment in production and treatment facilities. However,

1 NUC's greater degree of investment in transmission system assets would depreciate
2 very slowly, providing a relatively stable rate base value. With a high rate of
3 development growth such as projected for Nocatee, the inventory of such assets
4 would continue to accumulate and their rate base value would escalate, thereby
5 increasing NUC's eligibility for more return dollars. Unless NUC's rate projections
6 indicate an intent to accept lower than allowed returns, those conditions will exert
7 upward pressure on NUC's rates.

8 Q: Does Intercoastal's current application differ from the one it filed in the previous St.
9 Johns County case?

10 A: Yes, there are very significant differences. As I explained in my direct testimony, the
11 St. Johns County application was prepared prior to the announcement of the
12 Nocatee development, and therefore did not include Nocatee's significant service
13 demands. Consequently, the St. Johns application only proposed service to the
14 initial phases of the Marsh Harbor and Walden Chase projects, by extension from
15 Intercoastal's existing easterly systems. That application also proposed permanent
16 service for those projects, and for reasonable incremental growth of the balance of
17 Intercoastal's requested St. Johns County area by the subsequent installation of
18 appropriately sized water production and wastewater treatment facilities west of the
19 Intracoastal Waterway. As such, that application followed the general plan of
20 service outlined by Intercoastal in its 1996 Water 2020 planning, and its 1997
21 management letter submitted to the St. Johns County Water and Sewer Authority.
22 The instant Intercoastal application has been prepared to specifically include service
23 to the Nocatee development, after gaining detailed knowledge of the very
24 aggressive development schedules and service projections for Nocatee. Accordingly,
25 the scope of and construction schedules for those plant and system installations

1 have been appropriately modified by Intercoastal for this proceeding. This
2 application was also prepared to enable Intercoastal to overcome a major "finding"
3 of the St. Johns Final Order denying Intercoastal's application; specifically, that
4 "Due to the multi-county nature of Phase I of Nocatee, Intercoastal cannot provide
5 service under its application to the entire area that has one of the most immediate
6 needs for service." Which of course referred to the Duval County portion of the
7 Nocatee development. Obviously, Intercoastal did not include that area in its
8 application because (a) Intercoastal had no knowledge of the Nocatee development,
9 or its protrusion into Duval County, when that application was prepared, and (b)
10 Intercoastal would not have prepared an application for submittal to St. Johns
11 County to include a Duval County area, when St. Johns County had no authority
12 to grant such an application. Somehow, that simple logic was lost in the Final Order
13 issued by St. Johns County.

14 Q: What is the "strong environmental ethic" and "environmental sensitivity" to which
15 the NUC witnesses refer?

16 A: In my opinion, those are advertising slogans tailored for the Nocatee development,
17 which have been stretched-over the NUC plan to wholesale water and wastewater
18 services from JEA. These concepts are just some of the roadblocks which NUC has
19 tailored for the apparent purpose of making it more difficult for the Commission to
20 approve Intercoastal's application. I believe there is no substance behind these
21 particular concepts. Like most such advertising, I believe that repeated use of the
22 "environmental ethic" slogan is designed to mesmerize us into acceptance of the
23 NUC plan of service as our moral duty and obligation to the environment. That term,
24 and the phrase "environmentally sensitive," have been sprinkled into the NUC
25 testimony without definition or factual support for their use, to the point of

1 becoming cliches.

2 Q: Is there factual support to indicate that those terms should not be applied to the
3 NUC plan?

4 A: Yes. If we disregard those slogans and examine the NUC plan in light of the state's
5 current environmental policies and objectives, the NUC plan is, at the very least, not
6 the best fit with the state's guidelines and directives. At most, the NUC plan is
7 contrary to state objectives.

8 Q: Please discuss how the NUC plan doesn't fit the state's environmental policies and
9 guidelines.

10 A: I think it's very clear that Florida's reuse rules, policies and guidelines include the
11 state's intent to encourage wastewater utilities to maximize their production of
12 high quality reclaimed water. First, in order to ensure the environmental
13 acceptability of the process discharge, and second, to enhance the supply of that
14 resource for reuse, for the obvious purpose of reducing the use and therefore the
15 withdrawals of potable groundwater. While both Intercoastal and NUC have stated
16 their intent to reuse reclaimed water, only Intercoastal has fashioned a plan to
17 ensure that 100% of the wastewater generated in both its existing and proposed
18 service territories will be treated to those high standards and made available for
19 reuse. Conversely, the NUC plan to send Nocatee's wastewater to the JEA
20 Mandarin Wastewater Treatment Facility (WWTF) will not accomplish that objective.
21 JEA's Mandarin WWTF is currently permitted for recycling only 33.3% (2.5 MGD)
22 of its total 7.5 MGD wastewater design flows into reclaimed water for reuse.
23 Therefore, 66.7% of the Nocatee wastewater would be discharged to the St. Johns
24 River each and every day. I don't see how that type of planning would be
25 deserving of a label like "environmentally sensitive".

1 Q: Is that the extent of the JEA Reuse Program?

2 A: To the credit of JEA, it is not the total extent of their reuse plan. According to the
3 Mandarin WWTF permit (Part VI, 2), by October 1, of the year 2004, JEA has
4 committed to increase its reclaimed water production and reuse up to 4.0 Million
5 Gallons per Day (MGD). However, that limited reuse target seems to apply to the
6 entire network of JEA's Wastewater systems, because the Mandarin permit says
7 JEA may use any combination of the City of Jacksonville's WWTFs to meet that
8 schedule. If the Mandarin WWTF is the only plant employed to meet that 4.0 MGD
9 reuse target, then the Mandarin facility, by 2004, would still recycle only 53.3% of
10 the wastewater flows it receives. However, JEA's Mr. Perkins seems to suggest
11 that the JEA Arlington WWTF may be utilized as part of that reuse plan. If we
12 compare the combined capacities of both the Mandarin and Arlington WWTFs (7.5
13 MGD + 15MGD = 22.5MGD) to the JEA reuse target of 4.0 MGD, then JEA would
14 recycle for reuse only 17.7% of the flows those facilities receive. If more plants are
15 added to the reuse system roster, but the 4.0 MGD reuse target is not raised, then
16 JEA's recycling percentage would decline even more.

17 Q: Would you briefly compare Intercoastal's reuse record and planning with that of the
18 NUC and JEA plans?

19 A: Yes. Intercoastal has for years treated all of its easterly system wastewater flows
20 to reclaimed water standards, in order to supply a golf course with reclaimed water
21 for irrigation reuse. About 36% (0.300 MGD-AADF) of Intercoastal's current flows
22 (0.833 MGD-AADF; 3/2000) are reused in that fashion. The balance of that
23 reclaimed water is discharged to the Intracoastal Waterway (ICWW). Intercoastal's
24 revised Conceptual Master Plan (CMP) describes how Intercoastal will not only treat
25 all of the wastewater flows from its proposed new territory to reclaimed water

1 standards and distribute it for reuse, it also shows how the permitted discharge
2 flows will be removed from the ICWW and converted to a supply resource for the
3 reuse system serving Intercoastal's proposed westerly service area. Therefore,
4 combining the new west area wastewater facility initial capacity (1.0 MGD) with
5 that east area permitted discharge flow (1.2 MGD), the west area reuse system will
6 recycle 2.2 MGD, while the (existing) east system recycling and reuse adds another
7 0.300 MGD, for a total recycling volume of 2.5 MGD; which would be 100% of
8 Intercoastal's east and (initial system) west area flows. On that basis, Intercoastal
9 will recycle 100% of its wastewater flows (including 100% of Nocatee's
10 wastewater) while JEA's Mandarin plant would recycle (a maximum) of 53.3% of
11 its (and Nocatee's) flows.

12 The bottom line is that while JEA may be throwing around some large numbers, its
13 commitment to reuse and its plans to reuse the wastewater generated by customers
14 in the Nocatee development is in no way superior to the reuse plan of Intercoastal.

15 Q: How does the NUC plan to wholesale water from JEA not follow state guidelines
16 or achieve state objectives?

17 A: In my intervenor's testimony, I quoted the St. Johns River Water Management
18 District's DWSP (District Water Supply Plan) comments related to JEA's year 2020
19 water supply deficit and how JEA proposes to meet its south water grid deficit by
20 transporting water from other areas. The state's "Local Sources First Policy" in
21 Section 373.016, F.S. says that this policy was designed to protect such areas with
22 "abundant water" from reallocation and transportation of their water resources,
23 which in the past has had adverse effects. Therefore, the Legislature has issued a
24 directive to the Department of Environmental Protection and the water management
25 districts "to encourage the use of water from sources nearest the area of use or

1 application whenever practicable". The Nocatee Water Resources Study
2 demonstrates and confirms by peer review that an adequate and sustainable supply
3 of water exists within the proposed service area, to meet the water supply needs
4 throughout its development. Consequently, the utilization of local sources for the
5 provision of water to this territory is "practicable"; and the Local Sources First
6 policy is applicable to water resource planning and permitting for this territory. As
7 a result, to the extent that the JEA plan to import water from another area proposes
8 utilizing such water for service to the Nocatee development, I believe that plan is
9 clearly not in accordance with the state's policy.

10 Q: Have you had an opportunity to review other materials which support your
11 interpretation of the intent of the "Local Sources First" policy and its application to
12 these circumstances?

13 A: Yes. According to page 7 of the April 7, 1997 House of Representatives Committee
14 On Water & Resource Management Bill Analysis & Economic Impact Statement, the
15 intent of that policy was clearly articulated: "This policy simply states that 'local
16 sources' are to be developed to the greatest extent feasible prior to importing water
17 from distant sources." (emphasis added).

18 Q: Are there provisions in that policy for transportation of water under any conditions?

19 A: Yes. The legislature recognized such a need may exist "under certain
20 circumstances" for environmental, technical, or economic reasons. However, all of
21 Intercoastal's testimonies and exhibits demonstrate that employment of available
22 local sources first for service to this new territory are environmentally sound,
23 technically feasible, and economically reasonable. Therefore, those "certain
24 circumstances" which might support the transport of water from a distant source,
25 into and for service to the disputed territory, do not exist.

1 Q: Doesn't that also cloud the possibility of Intercoastal wholesaling service from JEA?

2 A: Certainly it does. However, the wholesaling of water from JEA isn't Intercoastal's
3 exclusive plan for providing water services to its requested area. Wholesaling water
4 from JEA is merely an alternative which Intercoastal would not turn a blind eye to
5 if the Commission determined that such a relationship was in the public interest.
6 The purpose of Intercoastal's testimony regarding its willingness to explore that
7 option only exhibits that NUC does not propose anything by its utilization of JEA as
8 a wholesale source which Intercoastal could not also propose. It is not to intimate
9 that it is Intercoastal's opinion that utilizing JEA as a wholesale supplier is the
10 superior method of service.

11 Q: Intercoastal's plan to construct plants within the service area and the use of
12 groundwater to initially supplement reuse appears to be a concern of DDI. Are such
13 concerns justified?

14 A: No. The concern for plant construction appears to be one of aesthetics, however,
15 the DDI/JEA Letter of Intent (LOI) agrees to a similar contingent need for plant
16 construction on the part of JEA; and we can assure the Commission that
17 Intercoastal's plants will be at least as aesthetically pleasing as those of JEA. In
18 addition, the same LOI provision also provides for the contingent utilization of area
19 groundwater by JEA for service to Nocatee. Aside from that obvious agreement by
20 DDI to local plant construction and groundwater use, the Nocatee Water Resources
21 Study, and its review by Intercoastal's engineers, confirm that groundwater
22 withdrawals to provide the very significant projections of potable water needs for
23 this area will not adversely affect the area water resources. The use of groundwater
24 to supplement reclaimed water produced for irrigation is allowed by Section
25 373.250 (3) (a) F.S., is commonly permitted; is clearly identified by Intercoastal's

1 CMP as a relatively minor, temporary, and declining use over only the first 3 years;
2 and will draw from the lower Floridan aquifer to avoid impacting the upper aquifer
3 fresh water supply.

4 Q: Should there be any concern regarding occasional wet weather discharges or the
5 use of open basins for storage of the reclaimed water?

6 A: No. As I explained in earlier testimony, wet weather discharges of reclaimed water
7 to the Intracoastal Waterway, which given the reuse demands of Nocatee will be
8 very infrequent, will be Advanced Waste Treatment (AWT) quality; and in
9 accordance with F.S. 403.064 "shall be considered environmentally acceptable and
10 not a threat to public health and safety". . In addition to those facts, the revised
11 Intercoastal CMP provides a very unique cost-saving design for a combined flow
12 transfer and wet weather discharge mechanism which allows Intercoastal to
13 utilize the existing and future reclaimed water flows from its eastern service area.
14 This will effectively remove those currently permitted discharges from the
15 Intracoastal Waterway and convert them to beneficial reuse service; resulting in a
16 net reduction of discharge to area waters. Utilizing that design, the residual wet
17 weather discharge will be in the same location as currently permitted for
18 Intercoastal's eastern system, which is considerably north of the CR210 bridge
19 where the Intercoastal Waterway is generally considered to become an Outstanding
20 Florida Water. Finally, there will be no open basins used for reclaimed water
21 storage. Intercoastal's revised CMP already provides for closed tank storage of
22 reclaimed water to protect its quality.

23 Q: Has Intercoastal's wastewater force main been undersized for service to Nocatee's
24 first phase ?

25 A: No. The wastewater force main serving Phase 1 of Nocatee was resized based on

1 the new data provided by NUC's engineer in February. However, Intercoastal's
2 engineer has raised some rather serious questions regarding the size of transmission
3 systems designed by NUC's engineer for NUC's plan to receive service from JEA's
4 proposed systems. Those concerns are detailed in Mr. Jim Miller's Rebuttal
5 Testimony for Intercoastal.

6 Q: Will Intercoastal have a supply of reclaimed water sufficient to meet the initial and
7 future reuse demands of the Nocatee development?

8 A: Yes. As outlined in Intercoastal's revised CMP and discussed in my prior testimony,
9 Intercoastal will utilize the reclaimed water flows from its eastern and proposed
10 western wastewater systems to provide the vast majority of those needs. And if
11 actually necessary, will temporarily supplement those reclaimed water sources with
12 a declining withdrawal of lower quality groundwater for the first three years. While
13 Intercoastal's engineers continue to disagree with Mr. Miller's estimate of 650,000
14 gallons per day of reuse need for each golf course- as an annual average daily flow
15 - the revised CMP utilizes that demand for planning purposes and to show that such
16 needs can be met. However, Mr. Doug Miller's April 10, 2000 deposition testimony
17 appears to retreat from that excessive golf course reuse demand estimate,
18 recognizing that it would be more appropriate for dry weather conditions than as
19 an annual average daily flow. A more reasonable estimate of AADF for golf course
20 reclaimed water consumption would reduce that demand by approximately
21 300,000 gallons per day, eliminating Intercoastal's CMP estimate of need for such
22 a groundwater supplement.

23 Q: Is Intercoastal continuing to plan for services to the Walden Chase development?

24 A: Given the actual start of off-site utility construction for service to the Walden
25 Chase development by St. Johns County, that project has been dropped from

1 Intercoastal's planning. However, should such services to that development not
2 be adequately finalized, they could be reinstated as part of Intercoastal's CMP with
3 minimal financial effect.

4 Q: Can Intercoastal provide construction water services to Nocatee in 2001?

5 A: If in fact Nocatee has a need for construction water service in 2001, Intercoastal's
6 engineers advise that Intercoastal can provide temporary facilities to meet those
7 needs. However, a recent (3/31/2000) news article quoted the Nocatee developer
8 (Roger O'Steen, PARC Group) as saying: "The four-laning of CR 210 will start at
9 the end of this summer and will take about 2 years. It will be done before any
10 building begins in Nocatee, he said". Considering that information, and the
11 expectation that this proceeding will be decided by the Commission virtually
12 concurrent with the start of that road construction, Intercoastal can construct its
13 water production facilities within the subsequent two years, and such a need for
14 temporary service seems highly unlikely.

15 Q: Do you agree that Intercoastal's participation in the Water 2020 planning effort by
16 the SJRWMD should be given no weight in these proceedings?

17 A: No I do not. Mr. Doug Miller's intervenor testimony seems to discount
18 Intercoastal's participation, along with the entire Water 2020 planning process, by
19 labeling that process as simply a "general attempt to project supply and demand
20 for water resources in the district for planning purposes only". However, the District
21 indicated in their October 15, 1996 letter to Intercoastal that developing the Water
22 2020 plan information would be very important to the future of water resources
23 for the District. Intercoastal took that planning process very seriously, compiling
24 detailed responses it felt were in keeping with its responsibilities as a public service
25 provider. In my opinion, Intercoastal's participation in the Water 2020 process also

1 demonstrates managerial, planning, and technical capability on the part of
2 Intercoastal, which are all important to the Commission's decision in this
3 proceeding.

4 Q: Does such participation give any participant either a Consumptive Use Permit (CUP)
5 or a right to serve any particular area?

6 A: While I would agree that no such permit or right is granted by that participation,
7 there is no doubt in my mind that Intercoastal's cooperation with the District
8 demonstrates prudence on the part of Intercoastal. It was my understanding, from
9 a telephone conversation with Cynthia Moore of the SJRWMD District office, that
10 the information provided by such participation would facilitate District approval of
11 the expansion of Intercoastal's current CUP and new well permitting for service to
12 this proposed territory; and Intercoastal made reference to that advice in
13 Intercoastal's Management Letter attached to its 1997 Annual Report, to show that
14 those planning investments were prudent expenditures in preparation for future
15 consumptive use permitting of this territory.

16 Q: What do you see as other benefits of Intercoastal's participation in the Water 2020
17 planning process?

18 A: As a result of Intercoastal's efforts the vast majority, if not all, of the proposed
19 service area's year 2020 water resource requirements (including Nocatee) have
20 been included in the final St. Johns River Water Management District, Group V,
21 District Water Supply Plan (Ref: Tables 23, 24, 25, within Intercoastal Utilities'
22 listings; & pg. 106 describing Intercoastal's ability to meet its year 2020 demand
23 projections). I believe Intercoastal's participation and the adequacy of its service
24 projections are why the Nocatee planners showed no concern for joining in the
25 Water 2020 planning process, even though projections of service requirements for

1 Nocatee were available at least as early as mid-1998, while the 2020 process was
2 still on-going. Otherwise, I would expect that professional concern by the Nocatee
3 planners, with omission from such an important planning process, would have
4 driven a much earlier announcement of the Nocatee Development.

5 Q: Please summarize for the Commission why the Commission should take note of
6 Intercoastal's participation in the Water 2020 planning process.

7 A: In my opinion, the Commission should take particular note of all of the foregoing
8 facts as a demonstration of the managerial, planning, and technical capabilities of
9 Intercoastal as well as Intercoastal's professionalism and experience.

10 Q: Mr. Tim Perkins of the JEA has testified to his interpretation of the meaning of the
11 Local Sources First policy of the state, and to his opinion that such policy is
12 irrelevant to the water needs of southern Duval and northern St. Johns Counties.
13 Do you agree with his statements?

14 A: No, I do not. Mr. Perkins' interpretation of that policy's meaning is in direct
15 opposition to the meaning articulated within the House Committee Statement I
16 quoted earlier. The language in subsection 373.016 (4)(a), F.S. very clearly and
17 simply shows that policy's intent is to protect areas of the state which have
18 "abundant" water resources, from having those resources unnecessarily withdrawn
19 and transported to a distant area of use or application. The method of protection is
20 to require that available Local Sources are or will be utilized before such water
21 transports are authorized. Mr. Perkins' statement that JEA has not proposed to
22 transport any water out of the disputed service area strongly suggests an attempt
23 to divert attention from JEA's plan to withdraw from "abundant" water supplies
24 located in northern or western Duval County; and to transport water from those
25 distant sources in major part to provide a water supply for this disputed territory,

1 which already has adequate, if not abundant resources. In essence, Mr. Perkins'
2 testimony turns the circumstances in this issue upside down to support his
3 statement that this policy has no application or relevancy in this case, and to block
4 any recognition that the JEA water transport plan does not comply with that policy.

5 Q: How does Intercoastal's plan comply with the Local Sources First policy and the
6 JEA plan does not?

7 A: The Intercoastal CMP, supported in part by the Nocatee Water Resources Study,
8 demonstrates that Intercoastal's plan of service to utilize naturally occurring water
9 sources (groundwater), conservation, and reuse is environmentally acceptable,
10 technically competent, and economically feasible. Consequently, the "certain
11 circumstances" in subsection (4)(b) of that statute which might support a necessity
12 for withdrawals and transfer of water from a **distant** source, for service to this
13 area, do not exist. As a result, the Local Sources First policy in subsection (4)(a) is
14 "practicable" and applicable to the permitting of water resources for the proposed
15 territory. Therefore the Intercoastal plan of service to utilize the existing adequate
16 and sustainable water resources available within the area of intended use (the
17 proposed service area) would clearly be in accordance with that policy; whereas
18 a JEA plan to transport water from a **very remote** location, which includes
19 allocations for the purpose of serving an area with adequate and sustainable water
20 resources, would be in conflict with that policy.

21 Q: Who will ultimately make that decision; and how will that decision be triggered?

22 A: The St. Johns River Water Management District (the District) will likely make that
23 type of decision, possibly as a result of an Intercoastal application to expand its
24 Consumptive Use Permit (CUP) for service to this territory (if the Commission
25 approves Intercoastal's certificate request), or possibly as a result of a JEA (CUP)

1 application to withdraw and transport the water according to their plan. Beyond
2 that, the scenarios within which such a decision might be made become very
3 speculative.

4 Q: If the Water Management District has yet to make a decision on either application,
5 why should this Commission be concerned with the Local Sources First policy
6 issue?

7 A: Because the Legislature's creation of that policy in 1998 makes it the criteria upon
8 which the Commission should assess the viability of future service plans of utilities
9 proposing water service which are or may be affected by that policy, such as the
10 NUC plan. According to the District Water Supply Plan (DWSP), this policy "could
11 impact the development of water supply projects that are technically,
12 environmentally, and economically feasible." The DWSP also states that "SJRWMD,
13 in this DWSP, has not tried to specifically evaluate the feasibility of any identified
14 water supply solutions based on 'local sources first' criteria. Before any selected
15 option can be permitted, 'local sources first' criteria must be addressed by the
16 applicant." The JEA plan to transport water across the Duval- St. Johns County
17 boundary must undergo the seven scrutinies of Section 373.223(3),FS which will
18 evaluate whether such a potential transport and use of ground or surface water
19 across county boundaries is consistent with the public interest. Given the adequate
20 and sustainable water resources already available in the disputed area, I believe it
21 is reasonable to expect that process to at least present a high hurdle for the JEA
22 plan to overcome with respect to the wholesaling of water to NUC; and should give
23 the Commission some concern as to the viability of the NUC-proposed singular plan
24 of service to wholesale water from JEA. That same viability question would apply
25 to any attempt by Intercoastal to wholesale water from JEA. Conversely, with

1 respect to the Local Sources First policy, the existence of those adequate and
2 sustainable water resources within Intercoastal's proposed, contiguous service area
3 avoids any substantial hurdle in Intercoastal's CUP expansion permitting path, and
4 in fact adds credibility to the Intercoastal plan of service for conservative
5 employment of those resources. I believe that increases the viability of Intercoastal's
6 CMP-proposed plan of service.

7 Q: What hurdles might Intercoastal encounter with its application to expand its existing
8 CUP for service to this new territory?

9 A: It's difficult to imagine any significant hurdles Intercoastal could encounter in that
10 permitting process. According to the Intercoastal CMP, supported by the Nocatee
11 Water Resources Study, there will not be any adverse impact on the area's water
12 resources related to Intercoastal's water plans. Intercoastal's furnishing of water to
13 Nocatee's Phase 1 area, in Duval County, is not a transport of water from a distant
14 source; in fact the two use areas are intertwined into a contiguous service area; and
15 in relation to the overall requirements of the proposed service area, neither would
16 provision of that service be a substantial transfer of the available resources. Also,
17 Intercoastal's participation in the Water 2020 planning, which has become part of
18 the SJRWMD District Water Supply Plan , should facilitate such a permitting
19 process. In terms of the magnitude of Intercoastal's projected water withdrawals,
20 the DWSP has already incorporated and recognized the 1996 estimates of
21 Intercoastal's year 2020 water resource requirements, and further finds that
22 "Intercoastal Utilities has existing facilities that will meet the 2020 ADD (Average
23 Daily Demand). Its deficit is based on the permitted wellfield capacity and facilities
24 needs to meet the MDD (Maximum Daily Demand). A decrease in the system
25 demand ratio, possibly through additional water conservation or reuse activities,

1 could lessen the MDD." (clarification added). While those statements regarding
2 Intercoastal's facilities refer to Intercoastal's systems located east of the
3 Intracoastal Waterway; the demands to which they refer include 20 years of water
4 requirements for Intercoastal's proposed service territory [Identified on the District's
5 2020 Planning Maps of Intercoastal's Service Area as "Proposed Acquisitions"].
6 Intercoastal made it abundantly clear in its December 4, 1996 response to the
7 District's call for that planning, that Intercoastal's 2020 projections of water
8 resources needs included those outside of its existing franchise certificate area;
9 specifically including this proposed territory west of the Intracoastal Waterway.
10 Intercoastal's water production and reuse pumping facilities being proposed for
11 service to this territory are designed to meet all ADD and MDD needs of those
12 proposed territory demands and will therefore be in compliance with the DWSP. The
13 area-wide 100% wastewater recycling and area-wide reuse system Intercoastal
14 proposes will be the most efficient utilization possible of all the combined (existing
15 and proposed) Intercoastal service territories' wastewater flows. In our opinion,
16 that recycling and reuse system will reduce the Nocatee development's projected
17 demands for potable water, resulting in a more efficient and reasonable utilization
18 of the groundwater resource, as intended by Intercoastal. And the plan to convert
19 the existing (easterly system) permitted reclaimed water discharges to beneficial
20 reuse service will be in accordance with the District's objective for reduction of such
21 discharges. For all these reasons, I believe Intercoastal's CUP application will have
22 most of the earmarks of a successful effort. Of course, Intercoastal must first
23 receive this Commission's approval of its application before the District will review
24 Intercoastal's CUP application.

25 Q: Do you expect that final conditions of the Nocatee Application for Development

1 Approval (ADA) will exclude the possibility of service by Intercoastal, using
2 Intercoastal's proposed plan of service?

3 A: No. I believe the testimony of Mr. Gauthier makes it clear that if this Commission
4 approves Intercoastal's application, the developer may be required to make
5 appropriate modifications to the ADA to reflect service by Intercoastal. As Mr.
6 Gauthier points out, the most important consideration in the DRI approval process
7 with respect to utility service is to have a utility committed to provide service, and
8 Intercoastal is clearly willing to make such a commitment.

9 Q: Should the Commission's approval of Intercoastal's application include those lands
10 outside of the Nocatee development, as proposed by Intercoastal?

11 A: Yes, I believe such an approval would properly include those lands. Although Mr.
12 Skelton of DDI has testified that there are no plans to develop those lands outside
13 of the Nocatee development, Mr. Skelton was reported in a November 7, 1997
14 news article to have made a very similar statement regarding the whole of the
15 DDI/Davis owned properties, which would include those now being proposed for the
16 Nocatee project. That was about 90 days prior to the time the Nocatee development
17 planning is reported to have begun. That's a rather quick turnaround of intent to
18 initiate planning for a project of the magnitude of Nocatee, but at least suggests
19 a proclivity for recanting such statements when a profit opportunity presents itself.
20 Regardless of the present intentions of the owners of lands surrounding a giant
21 project such as Nocatee, I believe common logic tells us that even in the early
22 stages of the Nocatee construction, the adjacent properties will experience an
23 increase in both their desirability for development and also their value. The resulting
24 "spin-off development" pressure could (and likely will) change the intents of those
25 land owners with respect to land sales and create a concurrent need for additional

1 utility planning and service which Intercoastal can and will provide. As envisioned
2 by Intercoastal, further development north of Nocatee would enhance the feasibility
3 of a utilities interconnection between this western territory and the most northerly
4 portion of Intercoastal's existing easterly system, to create a major transmission
5 systems "loop", further improving the long range services to all of the Intercoastal
6 proposed region. Granting Intercoastal all of its proposed territory will allow
7 Intercoastal to continue expansion of its future master service planning for such
8 improvements.

9 Q: Should the Commission assign any weight to the developer's preference for service
10 by its own related entity, NUC, and its opposition to service by Intercoastal?

11 A: In my opinion, the Commission should assign little if any weight to the developer's
12 "preference" to create a new, related entity, in large part because a new utility is
13 simply unnecessary to ensure adequate services for the developer's proposed
14 project. I believe the testimonies and evidence presented in this proceeding very
15 successfully demonstrate that Intercoastal is an existing, qualified and experienced
16 utility with the ability to plan and provide services to the developments within its
17 proposed territory in a timely, efficient and economical manner. While the developer
18 of Nocatee might be considered the initial "customer", its desires should be
19 considered junior to the service and economic interests of the existing and
20 anticipated "ultimate consumers" within Intercoastal's requested certificate
21 territory.

22 Q: Would you briefly review some of those interests and how they would be best
23 served by granting Intercoastal's application?

24 A: Intercoastal's proposed expansion is a logical and reasonable outgrowth of its
25 current service area which will benefit both the existing and future consumers of its

1 services as well as the public at large. Intercoastal has shown the projected
2 consumer rate benefits of consolidating its present operations with those of the
3 proposed territory and how Intercoastal can fully utilize its existing reclaimed water
4 as a reuse service resource while achieving a reduction in surface water discharges.
5 I believe the testimonies also demonstrate that Intercoastal's service quality
6 provided by its new facilities will be at least equal if not superior to that of any
7 governmental utility, and that Intercoastal's wastewater plan is in fact a superior
8 effort to further the state's objective to recycle all wastewater into reclaimed water
9 and reuse those resources for irrigation, which is unquestionably in the public
10 interest.

11 Q: Would you comment on Mr. Doug Miller's intervenor testimony that if new facilities
12 were required to be constructed west of the Intracoastal Waterway, for service to
13 Nocatee, Intercoastal would not bring anything to the table that could not be
14 accomplished better by a new, developer related utility?

15 A: I believe my answers to the prior question are relative to Mr. Miller's comment on
16 that subject. All of those benefits I just outlined are provided exclusively through
17 service by Intercoastal. Conversely, service by NUC brings none of those added
18 benefits to the table. The service proposed by NUC has absolutely no potential for
19 economic or service benefits to Intercoastal's existing consumer population, and
20 due to NUC's lack of a very substantial, existing customer base such as
21 Intercoastal's, NUC could not for many years (if ever) achieve the same operating
22 economy of scale and potential for consumer rate suppression as service by
23 Intercoastal would provide. In fact, NUC's plan to invest heavily in the developer's
24 utility systems will have the opposite effect of pressing consumer service rates
25 upward. Environmentally, NUC's service plan could not provide the public benefit

1 of reducing an existing discharge, and would recycle no more than 53% of the
2 Nocatee produced wastewater. For that reason, reuse service as proposed by NUC
3 may very well be seen by the Nocatee residents as simply using the Nocatee
4 development for a JEA disposal site of Duval County's treated wastewater. Such
5 a perception would discourage residential reuse. Intercoastal's plan will promote
6 community pride in their reuse system as a 100% recycling of all of the local
7 service area's wastewater, including that of Nocatee.

8 Q: Are you aware of an instance in which a smaller developer was frustrated by years
9 of unsuccessful attempts to obtain service from Intercoastal?

10 A: I believe Mr. Doug Miller's vague allusion to that situation refers to the Marsh
11 Harbor development request for service, which Intercoastal received in mid summer
12 of 1996. I reviewed that file and found that the developer never responded to
13 Intercoastal's requests for an estimated \$ 7,500 deposit to initiate the legal
14 proceeding necessary for Intercoastal to obtain the authority to serve that project,
15 which was located immediately west of the Intracoastal Waterway, outside of
16 Intercoastal's existing service area. Intercoastal certainly never did anything to
17 "frustrate" the developer in that case.

18 Q: Would some additional discussion of the details of this project be informative to the
19 Commission, as to both this project and the later intervention of DDI into
20 Intercoastal's St. Johns County case and this proceeding?

21 A: Yes, I believe they would be of interest to the Commission. Within a few days of
22 the above request from Marsh Harbor, Intercoastal responded to the developer's
23 representative, informing him of Intercoastal's applicable tariff charges, the
24 developer's additional cost responsibility to design and construct extensions of the
25 existing systems, the time estimated to obtain the authority to serve, and soliciting

1 the developer's confirmation of his decision to proceed and his submission of the
2 above deposit. According to the file, no written response (or deposit) was received.
3 In late summer of the following year (1997) in response to telephone requests, at
4 least three meetings were held with the Marsh Harbor developer and his engineering
5 representatives who were members of Mr. Doug Miller's firm, England, Thims &
6 Miller, Inc. (ETM). Subsequent to discussion of possible service scenarios, ETM
7 requested instructions on how to get the process for service going again. Once
8 more, Intercoastal advised the developer's engineer of the need for the developer's
9 deposit of the above sum to initiate the legal proceedings (in the fall of 1997).
10 Neither a response nor the requested deposit was received. In both the
11 correspondence and meetings Intercoastal advised that if other projects were being
12 planned in the area, joint requests for service with that of Marsh Harbor would help
13 spread the developers' investments to extend the systems. In an effort to further
14 Intercoastal's own future planning for the territory, and to possibly assist the Marsh
15 Harbor developer, one of Intercoastal's board of directors (as recited in my prior
16 testimony), penned a memo to the president of DDI (Jay Skelton) (on November
17 20, 1997) requesting a meeting to discuss that firm's future development plans for
18 the DDI lands. My understanding is that the request was verbally rebuffed. In late
19 November of 1997, a news article reported that the Marsh Harbor project had run
20 into permitting problems, involving a proposal for docking facilities which was not
21 part of the project's original County approval. In December 1997, Intercoastal
22 correspondence provided ETM with requested pipe specifications for an Intracoastal
23 Waterway crossing and fire flow test results. In January of 1998, the project owner
24 contacted me, requesting a price estimate for the extension work and a letter of
25 service capacity availability. Since it is not the policy of Intercoastal Utilities to

1 provide such estimates to developers, I referred him to the construction manager of
2 Jax Utilities Management, Inc. (JUM) to possibly obtain what I considered to be a
3 courtesy estimate. JUM informed the owner that it was unaware of any plan
4 designs from which such estimates could be compiled. The owner then promised
5 to contact ETM and obtain such plans from which JUM might provide such an
6 estimate of the service extension construction costs. In that same conversation, for
7 the third time, I informed the owner of his need to furnish the requested legal
8 process deposit, and the owner asked me to hold off on the availability letter until
9 the construction cost estimates were available. JUM did furnish a construction cost
10 estimate of \$ 983,103.30 to ETM on February 27, 1998. On March 24, 1998, ETM
11 wrote to JUM requesting itemized breakdowns of that estimate, but also
12 acknowledging that final design drawings had not yet been produced. The file
13 reflects no contact between Intercoastal and either the development owner or his
14 engineers (ETM) beyond that point; but does contain news articles from mid-
15 summer 1999, indicating the intent of St. Johns County to purchase all or part of
16 the Marsh Harbor tract.

17 Q: Did the Marsh Harbor developer-owner ever complain to you that Intercoastal's
18 request for the legal proceeding deposit was unreasonable or, did you at any point
19 become aware as to why that owner never responded to Intercoastal's request for
20 that deposit?

21 A: My answer is No, to both questions.

22 Q: At any point in time, did Intercoastal Utilities ever refuse to provide service to the
23 Marsh Harbor project?

24 A: No.

25 Q: To the best of your knowledge and understanding, was the construction estimate

1 furnished by JUM based on information, if not final design drawings, produced by
2 England, Thims & Miller engineers?

3 A: To the best of my knowledge, ETM engineers were the only source of such
4 information.

5 Q: At any time, up to and including the March 24, 1998 date of last correspondence
6 from ETM to Jax Utilities Management, did ETM contact you to advise of their
7 involvement in any other projects being planned within the currently disputed area
8 or, to discuss or request Intercoastal's submission of a proposal for service to any
9 unnamed projects in this area?

10 A: No.

11 Q: How did you become aware of the Nocatee project and its prior planning?

12 A: On March 20, 1999, when the Nocatee project announcement appeared as the
13 headline article of the Florida Times-Union newspaper. According to that article, the
14 Nocatee project had been in planning for fourteen months prior to that
15 announcement.

16 Q: Would you explain the circumstances surrounding a failure of Intercoastal's North
17 Gate sewage lift station in December 1999?

18 A: Yes. A power service malfunction caused extensive damage to that station. To
19 restore service, field crews installed a temporary pump and hydraulic hose
20 connection from the pump discharge into the force main adjacent to the station. It
21 was necessary to maintain that temporary installation until new pumps and
22 mounting rails could be ordered, received and installed. Those new installations
23 were completed on approximately April 1, 2000. That failure did cause an overflow
24 of sewage from adjacent manholes, which was minimized as much as possible. Field
25 personnel applied lime to the landscaped areas of the overflows and sprayed sodium

1 hypochlorite on the paved areas to disinfect them. While such extensive damages
2 of equipment are not common, they do occur and field personnel take all reasonable
3 steps to return the system to proper operation as quickly as possible.

4 Q: Has Intercoastal experienced odor problems with its existing Sawgrass Wastewater
5 Treatment facility in the past; and if so, are those problems continuing at this time.?

6 A: Prior to the recent conversion, upgrade and expansion of that facility the incoming
7 flow fluctuations were buffered by an open basin, the use of which was approved
8 by the Florida Department of Environmental Protection (FDEP). Even though that
9 basin was aerated, and sodium hypochlorite was added to the flows at contributing
10 lift stations to help control odors, that basin was identified by FDEP as the major
11 source of odor complaints being received by Intercoastal and the FDEP. Subsequent
12 to completion of the new facilities construction, that basin was removed from
13 service, and cleaned of all waste material. Under the new plant design, that basin
14 now performs a similar flow equalization function, prior to final filtration. As such,
15 that basin receives only the treated and clarified flows produced by the new
16 Sequential Batch Reactors, and has been confirmed as no longer being a possible
17 source of unreasonable odors. During frequent visits to this facility by FDEP
18 inspectors and other utility experienced personnel, even during extended training
19 sessions being conducted at the site, no unusual odors were detected. But because
20 both the FDEP and Intercoastal continued to receive odor complaints from
21 customers after that conversion, Intercoastal also covered the open channels of the
22 new headworks, and added lime to the headworks removed material to remove any
23 possible residual odors from that material. As a last resort, upon the suggestion of
24 FDEP personnel, Intercoastal has also ordered odor neutralization equipment to be
25 installed around the headworks area. After becoming concerned that these very

1 extensive measures did not eliminate the odor complaints, I contacted Mr. Ed
2 Cordova of the FDEP and requested even more frequent inspections by FDEP
3 personnel to ascertain whether such complaints could be justified. According to my
4 May 11, 2000 conversation with Mr. Cordova, FDEP personnel have made daily
5 odor checks of the plant site and surrounding areas in morning and evening hours
6 and weekends; and are unable to verify that such complaints of unreasonable odors
7 are justified. Attached to my testimony as Exhibit MLF-2 is an April 26, 2000 letter
8 received from one of the original customer objectors to Intercoastal's application,
9 Mr. George Ely. Mr. Ely is a resident of the Fairfield development located
10 immediately west of this facility, from which many if not most of those odor
11 complaints have been received. Mr. Ely's letter very succinctly and unambiguously
12 also confirms that Intercoastal's efforts to eliminate both noise and odor from the
13 Sawgrass Wastewater facility have been successful, and that the consistent
14 response Mr. Ely has received to his calls have given him the feeling that someone
15 at Intercoastal was concerned with the problems affecting his neighborhood.

16 Q: Has Intercoastal provided water to its customers that is contaminated and a threat
17 to public health?

18 A: Absolutely not. I was sorely disappointed by comments of that sort in the testimony
19 filed in this proceeding by Mr. Olsen of the Sawgrass Association; which were at
20 least an uninformed misinterpretation if not a deliberate distortion, of the SDWA
21 mandated language contained in Intercoastal's 1998 Water Quality Report. His
22 reference to the December 1998 violation of the Total Coliform Bacteria violation
23 disclosure totally ignored the wording that subsequent retesting of the water,
24 which is a FDEP required procedure, showed the water to be free of that indicator.
25 If indeed Mr. Olsen was truly concerned about the quality of his water, he would

1 have called the utility number and person designated in that report to provide further
2 information, or the FDEP, or the EPA. Any of those sources would have informed
3 Mr. Olsen that such test results are very common, and when they are unverified by
4 the immediate retesting required, are typically considered to be caused by mistakes
5 in original sampling or subsequent laboratory handling procedures. His lack of
6 reference to such inquires on his part indicates to me that he had no genuine
7 concern as to the quality of the water he drinks, and strongly suggests that his sole
8 purpose in making such references was a vicious attempt to malign the operations
9 of Intercoastal. The direct testimony of Mr. Scott Trigg of the FDEP in this
10 proceeding provides a much more accurate description of Intercoastal's operations,
11 confirming that "Intercoastal has an excellent history of compliance..." and "has not
12 had any past problems in regard to safety, water quality, reliability, or customer
13 service...".

14 Q: Was it irresponsible for Intercoastal to nearly double the capacity of its Sawgrass
15 wastewater facility?

16 A: Of course not. Mr. Olsen's testimony reference in that regard leaps upon a much
17 too briefly worded attempt within the Intercoastal CMP to explain that very large
18 tracts of land, which in the past contributed to a very significant rate of growth in
19 the existing Intercoastal service area, are no longer available. While Mr. Olsen's
20 comment has no bearing on Intercoastal's instant application, it does provide the
21 opportunity to demonstrate that Intercoastal plans and acts in accordance with
22 regulations and good engineering practices. The design capacity of that facility was
23 properly and prudently determined by professional engineering analyses, as required
24 by regulations, in accordance with a 1991 Capacity Analysis Report and its
25 subsequent revisions, prepared pursuant to Rule 17-600.405, FAC which requires

1 a permittee to provide for the timely planning, design, and construction of
2 wastewater facilities capacities necessary to supply proper treatment and reuse or
3 disposal, based on the historical, current and projected wastewater flows within the
4 permittee's existing service area. The revised CMP demonstrates that, if the growth
5 of Intercoastal continues at its current and historical rate of plus or minus ten
6 percent, the majority of that expanded capacity of this facility will be utilized by the
7 year 2005. Because the very large tracts of previously available land in the present
8 service area are already under development, it is possible that reduced densities
9 resulting from future utilization of less developmentally desirable land areas,
10 redevelopment of sparsely populated areas, and fill-in construction of the remaining
11 small tracts may eventually reduce that historical growth rate and extend the time
12 frame for complete build-out of the service area. Table 2-3 of the CMP reflects
13 those two extremes.

14 Q. Do you have an opinion as to which of these applications should be granted by the
15 Commission?

16 A. Yes, for all of the reasons set forth in Intercoastal's testimony and for all of the
17 facts established by the testimony of all the parties in this matter, I believe that
18 Intercoastal's plan of service and proposal is in the best interest of both
19 Intercoastal's existing customers and of the ultimate customer, and by that I mean
20 the individuals who will ultimately receive water and wastewater service, in the
21 Nocatee development.

22 Q: Does that complete your testimony?

23 A: Yes, it does.

24

25

Intervenor's Testimony of M.L. Forrester

1
2
3 Q: Please state your name and professional qualifications for the record.

4 A: My name is M.L. Forrester. I received an Associate in Arts Degree in a Pre-
5 Law course of study from Jacksonville University in 1958 with later non-
6 degree courses in accounting and economics. I was certified as a Class B
7 Practitioner by the Fla. Public Commission on February 6, 1989. From 1984
8 to the present, I have been employed by Jax Utilities Management, Inc., and
9 I am presently a Vice President of that firm. During this employment I have
10 participated in the planning of water and wastewater systems for our clients,
11 as well as their permitting, construction, operations, management, and
12 certification before regulatory bodies, including this Commission. From
13 1971 to 1984, I was employed by The City Jacksonville Water and Sewer
14 Division in several capacities including that of Commercial Planning and
15 Development Coordinator, Special Utility Service Advisor, Utility Planning
16 Officer, Utility Programs Controller, and Management Planning and Controls
17 officer. While at the city my responsibilities included service planning to new
18 Developments, water and sewerage rate studies management, Federal and
19 State Legislation reviews, water and sewerage municipal code modifications,
20 administration of the division accounting office, and private Utility
21 acquisition analysis. Some of my special assignments during that
22 employment included that of City Council sub-committee member for private
23 utility acquisition negotiations, and membership in the Fort George Island
24 Carrying Capacity Study Group. I was also listed as a significant contributor
25 to the 1972 Water Quality Management Plan for Duval County; and I was one

1 of three Co-authors of the original 1972 Eight Phase City of Jacksonville
2 Master Water and Sewer Improvement Program which outlined the city's
3 water and sewerage service needs to the year 2002. From October 1965 to
4 April 1971, I was the General Manager of the Jacksonville Division for
5 Southern States Utilities Inc. At that time my responsibilities included
6 direction of the utility systems operations, analysis of proposed systems
7 acquisitions, integration of new acquisitions, liaison with regulatory agencies,
8 rate case management, and management of the company owned office
9 building in Jacksonville. From April of 1959 to October of 1965 I was
10 employed by Stevens Enterprises Inc. which included assignments as
11 draftsman, estimator, and construction coordinator for Stevens Southern
12 Company [a utility construction company], also as purchasing agent for Dixie
13 Wholesale Distributors [a wholesaler of utility supplies]; and finally as
14 manager of AFS Water Service Company. In addition to those duties, I also
15 implemented the company's first electronic data processing system and was
16 responsible for the utility billing system and general accounting. I also
17 functioned as an assistant to the president of all three firms, Mr. A.F.
18 Stevens.

19 Q. Have you ever qualified as an expert?

20 A. Yes, I have appeared numerous times before the Duval County and St. Johns
21 County Commissions, the Florida Public Service Commission and Duval
22 County Circuit Court; and have been qualified as an expert in utility
23 operations and management, service territory and rate matters, and utility
24 valuation.

25 Q: Have you reviewed the documentation filed by DDI and NUC on February 11,

1 2000?

2 A: Yes, as well as quite a bit of other information and documentation.

3 Q: What is the purpose of your testimony?

4 A: The purpose of my testimony is to support Intercoastal's position that NUC's
5 application should be denied and that the application of Intercoastal should
6 be granted. While it might seem a bit unusual to provide testimony
7 supporting the proposal of Intercoastal within the "intervenor's testimony",
8 the fact is that these two proceedings are consolidated and that this
9 proceeding is, at least to some extent, a comparative review of the two
10 utilities' proposals and applications for certification. Therefore, it is
11 impossible to talk about why NUC's application should be denied without
12 addressing why Intercoastal's application should be granted at the same
13 time.

14 Q: Focusing solely on the DDI proposal to create NUC, why is it better to have
15 Intercoastal provide services to this proposed territory?

16 A: Intercoastal is an existing utility, with the experience and capabilities to
17 provide all of the services needed by this new territory. It simply is not
18 necessary to create a new utility for the same purpose.

19 Q: Is it more or less beneficial to the public for an existing utility, such as
20 Intercoastal, to expand its operations and provide those services?

21 A: It is more beneficial to the public, particularly where the existing utility has
22 a sizeable and established customer base, has a record of providing efficient
23 service, and demonstrates that it is capable of serving both its existing
24 service area and the proposed territory in a cost effective manner.
25 Intercoastal already has a large, regional operation providing services to over

1 5000 water and 4000 wastewater (meter equivalent) ERCs at year-end 1999.
2 If Intercoastal's application is approved, there would be benefits to
3 Intercoastal's existing and future customers in both its present service area
4 and its proposed territory. For 16 years Intercoastal has constantly
5 reorganized, consolidated, and refined its operations to more effectively and
6 efficiently meet the service demands of its growing service area, producing a
7 steadily increasing economy of scale. That economy of scale has allowed
8 Intercoastal to expand its systems and sustain its operations for nearly 10
9 years now without a major increase in water rates and also produced the
10 same effect in its wastewater operations for 8 years, before environmental
11 conditions required a significant change in its treatment process which
12 forced a 1998 increase in wastewater rates to cover the added capital
13 investment. Even with that wastewater rate increase, Intercoastal's current
14 service charges are reasonable and still lower than those levied by the St.
15 Johns County government utility.

16 Approving Intercoastal's expansion of its operations into this proposed
17 territory will ensure its future growth, provide a larger systems base in which
18 to expand its use of automation for better deployment and utilization of its
19 manpower, improve its purchasing power, and provide the opportunity to
20 further consolidate its production and treatment facilities and, therefore,
21 continue to improve Intercoastal's present economy of scale. In fact,
22 Intercoastal's long range projections demonstrate that the effect of such
23 continued growth on consumer service rates will initially act to stabilize
24 Intercoastal's current rates, and subsequently will actually begin exerting
25 a downward pressure on those rates for all of Intercoastal's customers, in

1 both its present and proposed service areas. Conversely, NUC's rates show
2 no advantage over Intercoastal for future customers in the proposed territory
3 and, obviously, service by NUC to its proposed territory cannot possibly
4 produce any future service or rate benefit for the thousands of Intercoastal's
5 present customers. I believe this strongly supports my contention that
6 approval of Intercoastal's application will be in the greater public interest and
7 that NUC's application should be denied.

8 Q: Can Intercoastal Utilities plan and provide facilities for the future service
9 needs of developments within the proposed territory in an environmentally
10 sensitive, effective and efficient manner?

11 A: Absolutely. In fact, Intercoastal is uniquely qualified for, and has
12 considerable experience in, accomplishing those very objectives.
13 Intercoastal's corporate officers have decades of development planning
14 experience in creating large projects which meet or exceed very exacting
15 environmental and community planning standards. A prime example of that
16 experience is their management of the Pace Island project in Clay County,
17 the first of only 18 DRI-level undertakings in the state to receive the Florida
18 Quality Development designation for outstanding planning, governmental
19 cooperation, protection of Florida's resources, and protection of Florida's high
20 quality of life. That level of developmental concern for ecological and
21 environmental issues has been integrated into Intercoastal's utility planning
22 to ensure compatibility and coordination with the plans, objectives and
23 schedules of development projects connecting to Intercoastal's regional
24 systems.

25 Q. There was some talk by Mr. Doug Miller, the engineer for NUC, that they

1 intend to utilize stormwater to meet twenty percent of the reuse demand. Do
2 you have any comments in this regard?

3 A. It should be noted that the type of stormwater supplementation Mr. Miller is
4 referring to is not really even an utility issue. He is not talking about
5 blending treated sewage effluent reuse water with stormwater, but simply
6 utilizing stormwater where it is available on common areas and golf courses.
7 Normally this is a developer-owned and operated system and not an utility
8 issue. Intercoastal has within its service territory a system currently utilizing
9 stormwater for irrigation purposes within The Plantation development. This
10 is a system owned and operated by the developer and not by the utility
11 company. Even if utilization of stormwater in this separate manner was an
12 utility issue, I believe Intercoastal is in at least a good a position, if not a
13 better position, to operate, design and manage such a system. Certainly, the
14 principals of JUM have experience in such matters since several of them were
15 involved in the stormwater system currently operating within Intercoastal's
16 service territory.

17 Q: Would large-scale development in this territory adversely affect Intercoastal's
18 planning capability or its capacity to manage the provision of services to
19 multiple development projects simultaneously?

20 A: Not at all. The Intercoastal management and consulting teams together
21 possess literally hundreds of man-years of professional, technical, and
22 practical experience in planning, design, construction and management of
23 investor-owned and municipal water and wastewater systems, concurrently
24 creating services for large-scale and multiple-project developments. This
25 includes effectively and efficiently coordinating design work, permitting, and

1 construction schedules of the developments and utilities simultaneously as
2 well as resolving the ecological considerations and environmental concerns
3 of both throughout those processes. Intercoastal's growth alone has averaged
4 several hundred ERC's per year, with dozens of projects active and in
5 production at any one given time. Moreover, the management procedures and
6 systems to handle that work are already in place and a part of Intercoastal's
7 daily operations and could, if necessary, be quickly expanded to
8 accommodate any level of development activity arising in this proposed
9 territory.

10 Q: Are there other examples of Intercoastal's commitment to protection of the
11 environment in a cost effective and efficient manner?

12 A: Yes. Some technological examples include Intercoastal's decision to convert
13 its wastewater treatment facilities to a Sequencing Batch Reactor (SBR)
14 process, in order to meet the FDEP standards for discharge to the
15 Intracoastal Waterway. Conversion of those facilities, while maintaining daily
16 operations, was a difficult but economically and environmentally rewarding
17 project. Besides providing the nutrient removal required, the overall
18 treatment efficiency and operational reliability was vastly improved, at much
19 less cost, as a result of innovative design and the use of existing structures.
20 When the new high-level disinfection rules came into effect a few years ago,
21 Intercoastal was one, if not the first, in the state to install disk filters to
22 control Total Suspended Solids, which has proven to be an excellent and cost
23 effective tertiary treatment method. Intercoastal is now committed to adding
24 another new and more economical treatment process which will produce a
25 much more environmentally desirable, class "A" sludge, while other

1 comparable facilities are satisfied with meeting the class "B" sludge
2 standards. Intercoastal's Sawgrass wastewater plant was also one of the
3 state's pioneers in reuse of reclaimed water for irrigation of golf courses. Very
4 definitely, Intercoastal has been and continues to be sensitive to
5 environmental needs, and takes steps to satisfy those needs by means that
6 are both efficient and cost effective.

7 Q: If Intercoastal is granted the authority to serve this proposed territory, would
8 developers still have the ability to protect the local ecology from adverse
9 utility impacts?

10 A: Yes. Within actual development centers Intercoastal, like most utilities,
11 requires the developer to engineer, permit, construct and dedicate to the
12 utility the onsite water distribution and wastewater collection lines and
13 appurtenances. In doing so, developers are free to invest in whatever designs
14 or construction materials and methods are required to accommodate and
15 protect the ecology of their development areas so long as those local systems
16 meet the minimum standards of the utility, and do not compromise utility
17 functions or increase future operating costs of the utility to an unreasonable
18 degree.

19 Q: Would Intercoastal also protect the offsite ecology from the impacts of its
20 utilities?

21 A: Of course it would. Normal utility design permitting procedures and
22 approvals provide a large degree of that protection. But in a more general
23 sense, protecting the ecology and the environment are universal standards
24 of the utility industry. Intercoastal has the motivation, experience and
25 capability to achieve and maintain those standards in the proposed territory

1 as well or better than any other utility entity. In the case of very large
2 developments, such as those planned for this territory, most of the highly
3 sensitive tracts are "set aside" from actual development centers. In those
4 areas, utility lines and facilities are generally not required and therefore don't
5 affect the ecology. Good utility planning and engineering design attempts to
6 avoid contacting wetlands and preserves, and where contact is unavoidable
7 crossings are made at the narrowest points and employ high quality
8 construction methods and materials to minimize even those minor impacts.
9 Like any prudent utility, Intercoastal takes advantage of major
10 thoroughfares, local streets and development connector rights of way for
11 transmission line installations to avoid exacerbating the normal ecological
12 impacts of development. Given a cooperative attitude on the part of the
13 developer, Intercoastal plans in accord with and to support the ecological and
14 environmental objectives of their projects as opposed to in isolation from, or
15 in opposition to, those objectives.

16 Q: Will Intercoastal's plans for regional water production facilities adversely
17 affect the environment of this proposed territory?

18 A: No. In fact, those effects would be at the very most benign. Groundwater
19 withdrawals are the issue in terms of environmental impact. However, the
20 current District Water Supply Plan (DWSP) of the St. Johns River Water
21 Management District (WMD or District) notes that there are no known
22 regional adverse groundwater withdrawal impacts in this area. The DWSP
23 cites a lack of current, detailed studies on which to base an evaluation of the
24 ultimate capacity of water resources in this area. Due to that perceived
25 "uncertainty", and the projected high growth of its overall planning area, the

1 DWSP advises that further studies are required and that strong well
2 monitoring programs are needed to guide careful future planning, supported
3 by judicious application of water conservation efforts and the implementation
4 of reclaimed water reuse programs. Intercoastal's planning will meet all of
5 those needs. Moreover, recent detailed water resource studies conducted for
6 the Nocatee development in this particular portion of the DWSP planning
7 area virtually remove that uncertainty for the disputed area, concluding that
8 groundwater resources are adequate to meet the projected potable water
9 demands. Intercoastal's engineering consultants have reviewed those studies
10 and concur with their findings. Therefore, based on the most recent and
11 reliable information available, Intercoastal's plans for regional water facilities
12 in the proposed service area present no reasonably quantifiable disadvantage
13 to its environmental resources. I believe that same lack of environmental
14 resource impact is why DDI has agreed to provide JEA with both water plant
15 and well sites "...as may be reasonably necessary to service the (Nocatee)
16 property." (Clarification added).

17 Q: You said that Intercoastal's water plans would meet the needs identified by
18 the DWSP for resource monitoring, water conservation programs and reuse.
19 What are some of the ways those needs will be met?

20 A: Intercoastal will construct state of the art water production facilities in this
21 new area, which will include a well water quality and quantity computer
22 monitoring and control system. That system will be coupled with an
23 automated meter reading system, feeding data to not only consumer billing
24 processes but also water consumption data analysis programs. Intercoastal
25 intends to retrofit its existing service area for use of those same systems.

1 The information and control provided by those mechanisms will give
2 Intercoastal the capability to provide the best possible planning for, as well
3 as operation and management of, water resources and consumer demands
4 throughout its combined service areas. The eventual interconnection of these
5 new water facilities with the existing Intercoastal water system will increase
6 the flexibility of Intercoastal's control over resource utilization in response to
7 demands, thus improving its management of these important environmental
8 resources. The new plants will be designed to become an integral part of the
9 region's environmental focus, accommodating public tours to serve as part
10 of an expanded public water conservation education and demonstration
11 program. The plant areas will include landscape installation and reuse
12 irrigation system operation instruction areas, and will add a media center for
13 public education in water conservation practices and reuse system use
14 safety, and for the training of utility personnel in system operations.
15 Intercoastal's proposed areawide reclaimed water reuse system and
16 conservation programs will become models of the DWSP water resource
17 protection guidelines and a source of pride for residents of the service area.

18 Q: Will Intercoastal's plans for installation of regional wastewater facilities
19 within the territory adversely affect the area environment or the marketability
20 of the area developments?

21 A: No, to the contrary, we intend that installation of new regional treatment
22 facilities will be an asset to the environment of this territory and the
23 community at large. Given the public's interest in the environment and the
24 utility's role in its protection, these modern and very effective installations
25 will be a valuable marketing tool for developers. Intercoastal's new

1 Sequencing Batch Reactor (SBR) Advanced Wastewater Treatment (AWT)
2 facilities in its existing service area are producing reclaimed water of
3 outstanding quality and are expected to be a model for new regional facilities
4 in this proposed territory. The production and reuse of such high quality
5 reclaimed water throughout the area, as proposed by Intercoastal, is the
6 most desirable overall environmental improvement possible. Even older,
7 existing "municipal" treatment facilities are not likely to match, much less
8 exceed, the reclaimed water quality produced by such new technology as
9 Intercoastal proposes. Even on those rare occasions when reuse needs
10 decline, and a "wet weather" discharge is necessary (which occurs in any
11 reuse system), the quality of Intercoastal's SBR/AWT-produced reclaimed
12 water will most likely exceed that of the receiving stream ("background")
13 characteristics, resulting in a benign effect upon, if not an actual
14 enhancement of, the area's waters. A major advantage of Intercoastal's
15 wastewater plan is that the consumers will receive the safest, highest
16 possible quality of reclaimed water for their use, produced by new, state of
17 the art, computer controlled and continuously monitored advanced waste
18 treatment facilities. Public acceptance and utilization of areawide reuse will
19 largely depend on providing those assurances. We are convinced that the
20 utility's customers and the public are acutely interested in their utility
21 services and want the availability of some access to its operations. Areawide
22 reuse service will undoubtedly and significantly raise that level of interest.
23 With the treatment facilities locally available for public tours, as part of
24 Intercoastal's community participation and education focus, area residents
25 will have that access to the operations. This will provide a large part of

1 those assurances and will promote community pride in their utility's efforts
2 to supply quality services and environmental protection.

3 Q. Does Intercoastal propose an innovative reuse service demand solution
4 regarding the use of reclaimed water from Intercoastal's eastern service area
5 to meet demands in the proposed western service area?

6 A. Intercoastal's revised (3/2000) Conceptual Master Plan includes a very
7 innovative environmental improvement and reuse service demand solution
8 for facilities to transfer excess reclaimed water from Intercoastal's eastern
9 service area westward across the Intercoastal Waterway. This effectively
10 converts the existing discharge of reclaimed water (into the Intercoastal
11 Waterway) to a reuse water resource for the proposed western service
12 territory.

13 Those same facilities will serve "double-duty" as a wet weather discharge
14 mechanism for both the east and west wastewater treatment systems.

15 At an appropriate point in the development of the west area treatment
16 facilities, these same "transfer facilities" may be converted (again) to phase-
17 out the east service area (Sawgrass) treatment plant assuming, of course, a
18 concurrent and cost-effective capacity increase in the west area plant. This
19 would further consolidate Intercoastal's operations, escalate the utility's
20 economy of scale, and remove an existing treatment facility from the midst
21 of a heavily populated area.

22 If Intercoastal determines that the pursuit of wholesale service for this
23 territory would be cost-effective, that same eastern system phase-out
24 planning would still be feasible, and would still add value to Intercoastal's
25 role (versus that of NUC) to provide retail service to this proposed territory.

1 Q: With the absence of adverse environmental impacts of Intercoastal's plans
2 and the advantages of service by Intercoastal, why do you believe another
3 utility entity and other methods of service are being proposed for the Nocatee
4 development?

5 A: First of all, from my review of documents made available to Intercoastal in
6 these proceedings, it appears that Intercoastal was never even considered as
7 a potential service provider to Nocatee. Certainly, Intercoastal was never
8 approached by any of the planners or principals of Nocatee to submit a
9 proposal for service. In fact, as I said in prior testimony, 16 months before
10 Nocatee was announced, one of Intercoastal's board of directors contacted
11 DDI's president to invite discussion of DDI's possible need for future services,
12 with the result that the invitation was rebuffed. Even later, when DDI's
13 attorney submitted a formal objection to Intercoastal's notice of application
14 for certification to St. Johns County (pronouncing any need for area service
15 to be merely speculative; a little more than 2 months prior to the Nocatee
16 announcement), Intercoastal requested, in writing, a meeting with DDI to
17 discuss that objection and the advantages of service to the entire territory by
18 Intercoastal. To the best of my knowledge, that request letter was never even
19 acknowledged. Only after Intercoastal submitted its original certificate
20 application was the Nocatee development finally announced, which
21 (according to a media article) included a report that the developer would
22 apply for its own certificate to provide water and wastewater services to the
23 Nocatee development area alone. From all of those facts, I would have to
24 conclude that DDI did not want to even acknowledge Intercoastal's
25 availability or capability to provide service, much less have on record an

1 Intercoastal service proposal that might prevent the creation of its own utility
2 which, in turn, would nullify the possibility of a sale of that utility system to
3 JEA in accordance with the letter of intent between DDI and JEA.

4 Q: Do you consider the sale of NUC to JEA a real possibility?

5 A: The documents I have reviewed raise such a sale from the level of possibility
6 to one of high probability, at least with respect to the intent of the Nocatee
7 developers. However, without documentation of a JEA offer to purchase, such
8 a sale of NUC becomes just another possible scenario to be considered in
9 these proceedings.

10 Q: Are you aware of any conflict in the planning of the Nocatee development
11 with the present proposal of DDI to create a separate utility for service to
12 Nocatee?

13 A: In my opinion, there are references in the Nocatee development documents
14 which reflect a clear conflict with that present proposal. In the Nocatee
15 proposed Comprehensive Plan Amendments, filed with St. Johns County in
16 January, 2000, Nocatee, responding to an "infrastructure and services
17 needs" question says "Nocatee is more of an infill project than a development
18 in isolation, as it is in close proximity to Development Areas to the east and
19 south. Since these Development Areas are **served** by central utilities, the
20 extension of infrastructure and services will be efficient and cost effective."
21 (Emphasis added). Intercoastal Utilities serves the developed areas
22 immediately east of Nocatee. Developed areas to the south of Nocatee are
23 miles away. Also, in response to an "urban sprawl" issue, Nocatee says
24 "First, the development is contiguous or very close to existing urbanized
25 areas (Development Areas) and public infrastructure/services." The only

1 urbanized development areas and services contiguous or very close to
2 Nocatee are those of Intercoastal. In my mind, those statements create
3 considerable conflict with the developer's apparent past actions to "stonewall"
4 Intercoastal Utilities from any involvement with Nocatee and its present
5 proposal to create a duplicate service entity for the furnishing of water and
6 wastewater services to the Nocatee development.

7 Q: Is Intercoastal's service area adjacent to the Nocatee development, and would
8 service to Nocatee by Intercoastal result in continuity with Intercoastal's
9 present operations?

10 A: Of course Intercoastal's service area is adjacent to Nocatee. Yes, service to
11 Nocatee would be a logical outgrowth and expansion of Intercoastal's present
12 operations and, strangely enough, the Nocatee developers would appear to
13 agree with that concept. Referring again to Nocatee's proposed
14 Comprehensive Plan Amendments package, Nocatee says "Nocatee is
15 adjacent to the urbanized area of Ponte Vedra Beach/Palm Valley. In a sense,
16 Nocatee is a rational extension or outgrowth of this area...". That statement
17 is offered by Nocatee to refute any perception of "urban sprawl" which is in
18 context with the prior quotations I cited from this same document. However,
19 it isn't necessary to rely on statements by Nocatee to support the adjacency
20 of Intercoastal's service area, or the continuity of Intercoastal's operations
21 with service to Nocatee. Those are, plainly and simply, common sense
22 conclusions which I (and most likely, others) can reach by reasonable
23 envisioning of on-going regional service operations to the entire area
24 presently and proposed to be served by Intercoastal Utilities.

25 Q: Does the possible availability of wholesale water and wastewater services by

1 JEA, for service to Nocatee, in any way change your conclusion that
2 Intercoastal's operations should be expanded to provide services to its
3 proposed territory which includes the Nocatee area?

4 A: No, it does not change my conclusion. I believe the issue is whether another
5 **new** utility entity is needed for the provision of services to Nocatee. I also
6 believe the facts in this case demonstrate that Intercoastal can and should
7 provide those services to Nocatee, and that a new utility is not needed. The
8 possible availability of wholesale service is simply an alternative resource
9 Intercoastal should consider in its evaluation of providing the most effective,
10 efficient, and economical service to this territory. I believe I said in prior
11 testimony that if Intercoastal's application is approved by the Commission,
12 Intercoastal would renew its original contact with JEA for the purpose of
13 evaluating that alternative. This would include consideration of the
14 advantages and disadvantages of wholesale services by JEA in conjunction
15 with Intercoastal's plans for service to its proposed territory. However,
16 wholesale services from another utility, whose rates are not under
17 Commission jurisdiction, and whose rates are set by a governmental entity
18 in Duval County which may not be responsive to St. Johns County's end
19 consumers, carries the risk of becoming an uncontrollable, increasing cost
20 resource to Intercoastal in the future.

21 There is no assurance that, even with continued growth, the present cost of
22 JEA's wholesale service can be maintained, much less reduced, in future
23 years. Economies of scale have their limits. Otherwise, JEA's retail water and
24 wastewater rates would be a size-proportionate fraction of the rates charged
25 by much smaller utilities. Obviously, they are not. Conversely, it is axiomatic

1 that the projected high volume and rate of growth in this proposed service
2 area will produce economies of scale for Intercoastal's proposed regional
3 production and treatment facilities (in like manner and to a similar extent
4 as growth of the Duval County Systems has for JEA and its predecessors)
5 which will reduce Intercoastal's future resource costs to a point equal to or
6 possibly better than wholesaling from JEA. Certainly, such new facilities as
7 proposed by Intercoastal will immediately provide a level and quality of
8 services for this area equal to or better than the use of JEA as a resource
9 provider. Intercoastal would properly identify and weigh all those factors
10 before requesting Commission approval of a wholesale resource agreement
11 which may foreclose the opportunity to furnish more cost efficient service to
12 this proposed territory over the several decades necessary for its
13 development.

14 Q: You expressed a concern that the present cost of JEA's wholesale service may
15 not be maintained in the future. Other than your statement that economies
16 of scale have their limits, did you have a specific concern in mind?

17 A: Yes. The DWSP states that "By far the greatest cost uncertainty for Work
18 Group Area V relates to future water-supply development by JEA. If the 2020
19 deficit is met by construction of a Floridan aquifer wellfield north of the St.
20 Johns River with transport to the south grid service area, then new
21 investment requirements will be substantial. However, if most or all of the
22 increased demand can be met by optimization of freshwater withdrawal
23 locations south of the St. Johns River, then these costs could be
24 substantially reduced. Investigations are ongoing to more accurately
25 determine optimum withdrawal locations and additional facility

1 requirements." Table 25 of that report listed Utility-specific water supply
2 options identified by work group. For JEA those options also include a
3 surface water supply from the lower Ocklawaha River and seawater desalting.
4 Table 26 reflects estimated costs to meet 2020 public supply needs for
5 northern St. Johns County and southern Duval County (Work Group Area
6 V) public supply utilities. According to Table 26, the JEA Estimated Unit
7 Production Cost \$/1000 gallons is "Up to 0.87". According to a 2/16/99
8 quotation from JEA to St. Johns County for wholesale water service, JEA's
9 "lowest rates" for water service are \$0.63 per 1000 gallons. From those data,
10 I would conclude that unless the cost of JEA's solution to its south grid water
11 woes (which appear to be exacerbated by the intent to serve NUC) is
12 subsidized by all of JEA's water customers, JEA's wholesale water rate to
13 this area could rise by as much as 38%, simply to cover that cost. In
14 addition, the testimony of Mr. Jim Miller advises that JEA wastewater service
15 to Nocatee from JEA's Mandarin facilities will ultimately require expansion
16 of those facilities. In effect, there are peripheral capital and operating costs
17 associated with JEA service to Nocatee. Regardless of how JEA handles the
18 capital impact of such added costs, I believe it is fair to say that the operating
19 costs of those or other solutions (which may be marginally lower, or even
20 higher) will exert upward pressure on JEA's wholesale rates in the future

21 Q: Earlier we discussed the possibility of a sale of NUC to JEA. If NUC's
22 application was approved, and such a sale took place, how would that affect
23 service to Nocatee?

24 A: Assuming that NUC proceeded with its plans to initially receive wholesale
25 service from JEA, and also assuming that JEA would not treat service to

1 Nocatee as a separate cost district to fix consumer rates or impose a special
2 surcharge for that service, the Nocatee customer's rates would become the
3 then current retail rates of JEA. Consumers within Nocatee would continue
4 to transmit their wastes into Duval County and receive their water supply
5 from Duval County's resources. Those customers would also receive their
6 reclaimed wastewater, of whatever quality JEA could produce from those
7 Duval County treatment facilities, for their reuse. From a utility standpoint,
8 Nocatee would become a Duval County annex.

9 Q: Do you consider the NUC plan, to wholesale its utility services from JEA, to
10 be environmentally sensitive?

11 A: There is no "environmental magic" in simply connecting a development to
12 central utilities. That is done every day by developments much smaller than
13 Nocatee. And while the intent to provide areawide reuse service can be
14 considered innovative in this area, even that practice is very common in
15 other parts of the state. In the final analysis NUC as an affiliate of the
16 Nocatee developer can provide no more "environmentally sensitive" service
17 than any other such entity and, due to its lack of prior practical experience
18 in this industry, quite likely less. In sharp contrast, I believe that Intercoastal
19 Utilities has demonstrated that it is a very mature utility, which has and will
20 in the future provide quality services at the lowest reasonable cost, in the
21 best interest of the public and the environment.

22 Q: Does this conclude your testimony?

23 A: Yes.

24

25

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

1
2
3 In re: Applications For An Amendment)
Of Certificate For An Extension)
4 Of Territory And For an Original)
Water And Wastewater Certificate)
5 (for a utility in existence and charging)
for service))

Docket No. 992040-WS

6
7 In re: Application by Nocatee Utility)
Corporation for Original Certificates for)
8 Water & Wastewater Service in Duval)
and St. Johns Counties, Florida)

Docket No. 990696-WS

9
10 SUPPLEMENTAL INTERVENOR'S TESTIMONY OF M.L. FORRESTER

11 Q. Are you the same M.L. Forrester who has previously filed testimony in this case?

12 A. Yes, I am.

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

14 A. I have reviewed all the testimony and exhibits filed in this case, I have reviewed documents
15 which were obtained during the course of discovery or public records requests or otherwise
16 obtained from parties in this case, and I have reviewed many of the pleadings filed in this
17 matter. Additionally, I have reviewed various other documents which either support my
18 testimony or which I relied upon in arriving at the opinions in my testimony.

19 Q. Have you also reviewed specifically the Supplemental Direct Testimonies of Douglas Miller
20 and Ms. Deborah Swain, filed July 31, 2000 on behalf of Nocatee Utility Corporation (NUC)
21 in this proceeding?

22 A. Yes, I have.

23 Q. Were there portions of those testimonies which caused you any concerns?

24 A. Yes. During my review of page 2 of 2 in Ms. Swain's Exhibit DDS-12, I noted that the total
25 cost of water and wastewater service to NUC customers would equal or exceed the total cost

1 of water and wastewater service to those same customers of Intercoastal Utilities (ICU)
2 customers for at least the first ten years of operations. Her comparison of Service
3 Availability Charges shows that the combination of Plant Capacity Charges by JEA and the
4 Main Extension Charges by NUC are \$ 515.05 higher than similar charges by ICU. I believe
5 that higher cost differential constitutes a prepaid service cost addition or "premium" for an
6 NUC water and sewer customer to receive services. An NUC customer's recovery of that
7 premium (through the currently proposed, lower NUC service rates) over 120 months (or ten
8 years) amounts to approximately \$4.29 per month (without considering the customer's
9 interest costs for the prepayment). Looking at Ms. Swain's comparison of Combined Water
10 and Sewer Residential Bills at the 3,000 gallons per month level, and recognizing the added
11 monthly recovery cost of that premium brings the NUC charges, brings those bills into
12 virtual parity with the bill she shows for Intercoastal. The "savings" she shows for NUC
13 customer bills in those same comparisons at the 5,000 and 5,333 gallon levels is even less
14 than that \$4.29 per month premium recovery cost, which indicates that even more than ten
15 years would be required for an NUC customer to recover that higher initial cost to receive
16 service. Furthermore, NUC customers using at least 10,000 gallons could never recover that
17 service cost premium because the NUC and ICU rates are essentially the same at that level
18 of service. That situation substantially worsens for NUC customers at the indicated 25,000
19 gallon level, because the NUC bill without that premium recovery cost is even higher than
20 that of ICU.

21 Q. In your opinion, have Ms. Swain's rate comparisons emphasized customer usage levels
22 which you believe are reasonable and appropriate in this circumstance?

23 A. No. In addition to this premium cost recovery issue that I discussed above, I think it's
24 extremely important for the Commission to notice that Ms. Swain's bill comparison schedule
25 attempts to emphasize customer bills at use levels far below those anticipated to be

1 representative of typical customer consumptions. Based on the family-oriented development
2 planned for Nocatee and Intercoastal's similar experience in this geographic area, and based
3 on my knowledge and experience in these issues and in the general geographical area of the
4 Nocatee development, I would anticipate that the most typical family home use in this
5 requested territory will range between 10,000 and 25,000 gallons per month. In fact (while
6 countering a criticism of Nocatee's 350 gpd estimated single-family potable water
7 consumption), the Sufficiency Response attached to Mr. Douglas Miller's testimony
8 (Ex. DCM-14, Exhibit page Numbers 4 & 5) vigorously defended that engineering estimate
9 (of potable/indoor water use **in excess** of 10,000 gallons per month), and effectively rejected
10 as too low a Water Management District estimate of even 270 gpd (8,100 + gals./month)
11 potable/indoor use for a typical (2.7 person) single-family home. Apparently, the
12 development's own engineers categorically agree that Ms. Swain's schedule does not
13 emphasize gallonage levels which will actually be achieved in the Nocatee development. For
14 the above reasons, Ms. Swain's analyses do not reflect a reasonable comparison of residential
15 bills based upon expected use within the area. As a result of those facts, and in my opinion,
16 residential bill comparisons more closely grouped within the 10,000 to 25,000 gallons per
17 month usage range would be more representative. I believe it is apparent that utilization of
18 these more appropriate gallonage rates would actually favor service by Intercoastal as
19 opposed to NUC, in contrast to the way Ms. Swain has presented her bill comparison
20 schedules.

21 Q. Why did you use a ten year period to calculate the above monthly recovery charge?

22 A. I felt that it was reasonable to do so. We are comparing the rates of two entities for the
23 purpose of measuring, as best we can, the impact on future customers served under each of
24 the competing rate proposals, as presented. We therefore should consider how the customer
25 is affected by the rate and charge programs during a given period. While NUC's rate

1 projections cover a period of less than ten years, Intercoastal has projected rates over
2 approximately ten years. If I had assumed a five or even four year recovery period (reflective
3 of the NUC rate proposal and the combined rate comparisons Ms. Swain presented for that
4 period), the cost recovery requirement for an NUC customer would have ranged from \$8.58
5 to \$10.73 per month which, added to each level of NUC bills calculated by Ms. Swain,
6 would substantially exceed the comparable bills she calculated for Intercoastal. However,
7 it seemed reasonable to extend that cost recovery period to cover the greater range of
8 Intercoastal's proposed rate program, even though Ms. Swain's shorter-term rate
9 comparisons do not reflect the future customer rate advantage of service by Intercoastal.
10 Mr. Burton's projections do demonstrate this future customer rate advantage of service by
11 Intercoastal.

12 Q. What is your understanding of that future rate advantage?

13 A. I have reviewed Mr. Burton's projections and have supplied information to him as requested.
14 Very simply, Mr. Burton's projections show a declining trend in Intercoastal's rates
15 beginning in the year 2005, with progressively lesser costs to the future customer than
16 reflected by the current NUC rate proposal. This clearly indicates to me that , under either
17 of the foregoing cost recovery scenarios and appropriately revised cost comparison analyses,
18 the Intercoastal customer's costs are at the very least at parity with (and for the majority of
19 typical service - actually less than) those of NUC during the recovery period. More
20 importantly, before the end of that recovery period, ICU's rates will be even less than those
21 of NUC, making the issue of that added cost recovery moot – most likely beyond the year
22 2005 – but certainly within the ten years. In any case, I believe the evidence continues to
23 demonstrate that if Intercoastal's application is approved, all of Intercoastal's present and
24 future customers, in both its existing and requested service territories, will receive quality
25 service at a more reasonable cost than NUC proposes.

1 Q. Does the possibility of JEA's investment in "Joint Projects" with NUC change your prior
2 testimony with respect to NUC's system investment policies, and the effects you expected
3 those policies to have on NUC's future rates?

4 A. No, not based on either of the two testimonies filed on July 31, 2000. While Mr. Douglas
5 Miller's testimony suggested that such "Joint Projects" may reduce NUC's capital costs,
6 Ms. Swain said that she did not take into account (in her rate proposals) any possible
7 reductions in capital associated with such "Joint Projects" - because she did not know the
8 extent to which such cost sharing might be applied and that any potential cost savings to
9 NUC would be speculative. She did, however, leave open the possibility that NUC might
10 try to better define such costs and their impact on rates, but Ms. Swain did not comment as
11 to what might precipitate such an attempt, or at what point in these proceedings that may
12 occur. Therefore, it would appear that NUC intends to proceed with its plan to invest in
13 "... all on-site transmission, distribution and collection facilities...", and will require the
14 developer to contribute only "... the smaller distribution and collection system lines..."
15 (D. Swain, Direct, pg. 6, lines 13-21). As I discussed in earlier testimony, this additional
16 investment in on-site facilities by NUC (versus their contribution by the developer, which,
17 in my experience, is the norm for both regulated and unregulated utilities), and the resulting
18 return on such additional investments that can be achieved at customer expense, seems to be
19 a primary motivating factor for the creation of NUC as a go-between JEA and the customers
20 of NUC. The NUC investment in a greater proportion of the on-site systems also relieves
21 the Nocatee developers of a large degree of cost responsibility and increases development
22 profits. (ref: my Rebuttal Testimony, pg. 2, line 9 through pg. 3, line 7) In summary, this
23 investment policy of NUC can only result in an increased cost of service to NUC's customers
24 in the long run. This should be contrasted with Intercoastal. As a result of Intercoastal's
25 investment policies, Intercoastal's rates are projected to decline in future years.

1 Q. Do you have any concerns or comments regarding the new agreement between JEA and
2 NUC?

3 A. Yes. It would appear that after I pointed out that the original Letter Of Intent (LOI) between
4 JEA and DDI agreed to a contingent need for plant construction by JEA, and the contingent
5 utilization of the area's groundwater by JEA for service to Nocatee – (ref: my Rebuttal
6 Testimony, pg. 9, lines 15-19) – those provisions have been omitted from this new
7 agreement. However In my opinion, those omissions do not foreclose the same opportunities
8 for JEA plant construction or utilization of available groundwater – within the service area
9 – whether or not located specifically upon the Nocatee development property. I believe that
10 a reading of the omnibus provisions of subsection 1.5 – Governmental Acts, Part 1–
11 GENERAL CONDITIONS in this new agreement plainly demonstrates that the agreement
12 would allow for broad-ranging modifications in the JEA-NUC plan of service if during the
13 plan approval or permitting process it is determined (or possibly proposed) that a basis for
14 such modifications exists. While I believe this section is reasonable to include in this type
15 of agreement, it is clear to me that following the omission of those prior provisions, the
16 appearance of this new language in the current agreement accomplishes the same purpose
17 (to allow substantial modifications to the JEA-NUC proposed service plans) subsequent to
18 the close of these proceedings – even to the extent of simulating the service plans proposed
19 by Intercoastal.

20 Q. In your opinion, is there a possibility or probability that the JEA-NUC service plans would
21 change if NUC's application is approved?

22 A. Yes. For instance, if the JEA announced plans – to import water from the northern or
23 western parts of Duval County into its south grid and northern St. Johns County – which
24 were determined to conflict with the “Local Sources First” policy of the State, or were
25 discovered to be less desirable, less effective, or more expensive than utilization of the

1 groundwater resources available within the disputed area, I believe it's likely that those plans
2 to import water will change to provide for construction of full water supply and production
3 facilities within the Nocatee development, or adjacent to the Nocatee development. My
4 opinion is supported by the July, 2000 NEWRAP document – attached to Mr. Douglas
5 Miller's Supplemental Direct Testimony – which states that “despite” the availability of an
6 “ample supply” of groundwater, in and around Nocatee, “The groundwater at Nocatee will
7 be conserved.” (Orig. document pg. 6, renumbered as exhibit pg. 19). However, because that
8 supply is mutually agreed upon to be “sustainable” (ibid.), and “of high quality”, and
9 “sufficient “ to serve Nocatee at its build out with “minimal impacts offsite”, this should
10 raise some very logical approval agency questions such as: For what future use are the
11 Nocatee area supplies being conserved? Also, if the future, permanent water supplies for
12 Nocatee are being proposed to come from a distant source, at a cost that is likely higher than
13 utilizing these available and ample sources, does that “conservation” actually constitute
14 “hoarding” at public expense? And, if Nocatee is to be accepted as a self-sustaining
15 community, why should its available and ample resources not be utilized before drawing
16 water from a distant source? In my opinion, the most likely answer to these or similar
17 questions is that these groundwater supplies are not being “conserved”. More accurately,
18 they are being effectively “reserved” for use by JEA, to be eventually utilized in the same
19 fashion as Intercoastal proposes – for service to Nocatee and the surrounding areas of
20 St. Johns County. But, in the case of JEA, it is highly likely that those reserved groundwater
21 supplies would **also** add sufficient support for solution of the source of supply problems in
22 JEA's (adjacent) Duval County South Grid Service Area. I believe these are additional
23 reasons for the presence of the aforementioned subsection 1.5 in this JEA-NUC agreement,
24 and are also motivations for JEA's attempt to establish (in this agreement) that it has a
25 contingent right to the Duval County portion of NUC's proposed systems, as well as a First

1 Right of Purchase of all of NUC's proposed future systems. I further believe the above
2 questions, and my proposed answer, are appropriate for this Commission's consideration in
3 this proceeding because NUC and its witnesses have attempted to frame Intercoastal's plans
4 for service as insensitive to the environment and therefore less palatable than the JEA-NUC
5 plans that have been announced to date and described to the Commission. I also believe that
6 it is appropriate for the Commission, and in fact typical of the Commission in a proceeding
7 such as this, to attempt to look beneath the superficial representations of the parties and to
8 try to understand or anticipate what will really happen in the future in the area which is at
9 issue in any particular proceeding. In this case, that would involve this Commission
10 attempting to ascertain, as I have done, what will really happen in the future with regard to
11 utility service in the Nocatee development if the JEA-NUC plan of service is certificated by
12 this Commission.

13 Q. Is there anything else regarding NUC's testimony and exhibits which concerns you?

14 A. Yes. I believe it's important for the Commission to recognize that, as stated in the prior
15 referenced Sufficiency Response (Ex. DCM-14, Exhibit Numbered as pg. 3), the developer
16 has not explored options other than JEA wholesaling, for provision of these services to the
17 Nocatee development. This singular service source approach would produce a situation in
18 which JEA's future rates for service to NUC could not be controlled by NUC, this
19 Commission, or any objective regulatory entity. Neither would the St. Johns County
20 customers of NUC, which at build out would be the majority of customers in Nocatee, have
21 effective political standing before any local governmental body or regulatory agency which
22 might exert some influence over those charges. The same would be true of ICU and its
23 customers, if ICU's application was approved on the condition that it purchases services
24 from JEA. But, the critical difference between ICU's plan and NUC's plan, other than ICU's
25 lower rates, is that ICU, for the future well being of its customers, offers adequately planned,

1 cost-effective, and cost-controllable alternatives to the JEA by and through ICU's proposed
2 plan of service.

3 Q. Are you aware that it is the position of the Nocatee developer and NUC that Intercoastal can
4 not meet the "requirements" of the Development Order for the Nocatee development if
5 Intercoastal proposes to locate wastewater treatment plants or water treatment plants within
6 the Nocatee development?

7 A. Yes, I am aware of that testimony. Initially, I would point out that as I file this testimony,
8 the Development Order is not even issued yet. Additionally, I know the Department of
9 Community Affairs (DCA) has taken the position that when it reviewed the Nocatee ADA,
10 it did not "require" those facilities to be offsite, and it did not profer an opinion regarding
11 on-site vs. off-site. In my opinion, to present this as a "requirement" as if DCA had
12 "imposed that requirement" because they had reviewed or analyzed the matter, or because
13 they preferred or suggested or supported that the facilities be located offsite as opposed to
14 on-site, was misleading. DCA's review of the project's overall impacts was based on
15 Nocatee's representation in the Application for Development Approval. For whatever
16 reason, the Nocatee developer chose not to disclose in the ADA any plan of service other
17 than that proposed by its wholly-owned subsidiary. It failed to disclose that there was a
18 proposed alternative by ICU (for providing water and wastewater to Nocatee) even though
19 this case was pending before the Public Service Commission (PSC). The Department of
20 Community Affairs did not even consider the specific provider of utility services to the
21 development as part of its review. In other words, DCA made no comparison of NUC or its
22 proposals to Intercoastal and its proposals. It is the position of the Department of
23 Community Affairs that the service provider for the Nocatee development is not its primary
24 concern, and that its primary concern is only that adequate facilities are available to the
25 Nocatee development at the time of final permitting. I am attaching, as Exhibit MLF-3, a

1 Department of Community Affairs which addresses some of these points.

2 To the extent that the Development Order might have to be modified if NUC's Application
3 is denied, and the Application of Intercoastal is granted, then the developer will find itself
4 in a position into which it placed itself by only revealing half of the story in its ADA. That
5 is, the developer could have presented both plans of service in its ADA, but instead chose
6 to ignore Intercoastal's Application, this litigation, and the pending decision of the Public
7 Service Commission, and to present its plan of service as if it was the only alternative which
8 existed. It is clear that the Nocatee developer had several opportunities to present all of the
9 information regarding potential water and wastewater service to Nocatee, as opposed to just
10 some of the information, to the reviewers of the ADA. For instance, Mr. Doug Miller's own
11 Supplemental Direct Testimony contains an exhibit (DCM-14) in which the Nocatee
12 developer responded to two questions regarding potential water and wastewater service in
13 the development. One of the questions was from the Department of Community Affairs and
14 one was from St. Johns County. In its response to neither question did the Nocatee developer
15 bother to set forth the information that in fact two competing utility proposals had been
16 presented for the provision of water and wastewater service to the Nocatee development.
17 Certainly, these were not the only examples of the opportunities the developer had to supply
18 that information to the reviewing authorities, but these two examples are illustrative. If the
19 developer had been more forthcoming in the ADA, then the potential for having to modify
20 the Development Order probably would not exist.

21 Q. Does that complete your testimony?

22 A. Yes it does.

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1 CHAIRMAN JACOBS: And that takes care of Mr.
2 Forrester's testimony and exhibits. Very well. We will recess
3 the technical hearing until 9:00 a.m. tomorrow morning, and we
4 will reconvene the customer hearing at 7:00 o'clock. Until that
5 time. We are adjourned.

6 (The hearing adjourned at 5:35 p.m.)

7 (Transcript continues in sequence with Volume 3.)

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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

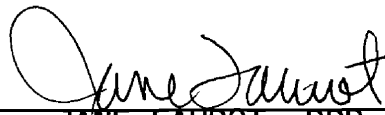
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5 I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
6 FPSC Commission Reporter, do hereby certify that the foregoing
7 proceeding was heard at the time and place herein stated.

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

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

18 DATED THIS 23RD DAY OF MAY, 2001.

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JANE FAUROT, RPR
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Chief, Bureau of Reporting
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