

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990696-WS

In the Matter of:

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

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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 6  
PAGES 878 THROUGH 1005

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: Wednesday, May 9, 2001

TIME: Commenced at 9:00 a.m.

PLACE: Clarion Hotel Banquet Room  
1300 Ponce DeLeon Boulevard  
St. Augustine, Florida

REPORTED BY: TRICIA DeMARTE  
Official FPSC Reporter

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 06494 MAY 23 2001

FPSC-RECORDS/REPORTING

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(Transcript continues in sequence from Volume 5.)

CHAIRMAN JACOBS: Good morning. We'll readjourn this hearing this morning -- reconvene. I know it's one of those fancy legal terms.

COMMISSIONER DEASON: Freudian flip, huh?

CHAIRMAN JACOBS: Yes, yes. Reconvene this hearing. And I believe we were at the point of -- we were taking some witnesses out of order, but we'll now revert back to the order we were on and Mr. Gauthier --

MS. CIBULA: That's correct.

MR. WHARTON: I guess, Mr. Chairman, we want to make a couple of suggestions. One is that you remember that we left Mr. Burton's additional exhibits up for some discussion.

CHAIRMAN JACOBS: Correct.

MR. WHARTON: And Mr. Melson has requested that if he can ask Mr. Burton a few more questions, he probably won't object to entering those into the record.

CHAIRMAN JACOBS: His corrected exhibit?

MR. WHARTON: Correct.

MR. MELSON: I've got about five minutes or less of questions, and if I'm able to ask those questions, I will not object to the corrected exhibit.

CHAIRMAN JACOBS: Okay. The first question is, is Mr. Burton available?

1 MR. WHARTON: He is. And I guess because I'm no  
2 longer sure whether I'm in my direct case or not, I want to  
3 proffer the additional rebuttal that was not allowed at this  
4 point.

5 CHAIRMAN JACOBS: Okay.

6 MR. WHARTON: So I would just like to proffer the  
7 additional rebuttal of H.R. James, the additional rebuttal of  
8 Jim Bowen, and the additional rebuttal of Mike Burton, and  
9 Exhibits MB4-3 through MB4-8.

10 CHAIRMAN JACOBS: And that's --

11 MR. WHARTON: I think that's all it takes. That's  
12 all we did in Aloha. We just said, here it is. Not that we  
13 would ever think about appeal, but if it ever came to that.

14 CHAIRMAN JACOBS: Very well. The proffer then is  
15 duly noted for the record.

16 MR. WHARTON: Thank you.

17 CHAIRMAN JACOBS: And we're prepared to do Mr. Burton  
18 now?

19 MR. MELSON: I'm prepared to do Mr. Burton now, yes.

20 CHAIRMAN JACOBS: And that works with Staff?

21 MS. CIBULA: That's fine.

22 CHAIRMAN JACOBS: Great. Mr. Menton.

23 MR. MENTON: Mr. Chairman, just so we can set forth  
24 where we're going here. There are some issues that we'd like  
25 to bring up after Mr. Burton is complete with his testimony

1 too, but we can wait until after Mr. Melson finishes.

2 CHAIRMAN JACOBS: Very well.

3 MR. MELSON: Mr. Deterding, did you have copies of  
4 Exhibit 3A that you could hand out to the Commissioners and  
5 parties?

6 MR. DETERDING: Yeah, I think we do. Hold on.

7 MICHAEL E. BURTON

8 was recalled as a witness on behalf of Intercoastal Utilities,  
9 Inc., and, having been previously sworn, testified as follows:

10 CONTINUED RECROSS EXAMINATION

11 BY MR. MELSON:

12 Q Mr. Burton, in your corrected Exhibit MB-3 --

13 MR. MELSON: And, Mr. Deterding, would you like to  
14 have that marked as an exhibit so we've got a number?

15 MR. DETERDING: Yes. And I think we should call it  
16 second revised MB-3.

17 CHAIRMAN JACOBS: We'll mark that as Exhibit 33.

18 (Exhibit 33 marked for identification.)

19 BY MR. MELSON:

20 Q Mr. Burton, I want to go over just a very small  
21 subset of the questions we did yesterday and primarily going to  
22 confine myself to Scenario 1a again. If you turn first it's  
23 under Tab 1 to Figure 1, Page 1 of 1, which is labeled  
24 "Intercoastal Utilities Water and Sewer System Summary." I had  
25 asked you yesterday if you agreed that in your original exhibit

1 there was a \$1.9 million shortfall between 2000 and 2003 or  
2 2004 between the allowed return and the achieved return. Do  
3 you recall that line of questions?

4 A Yes, I do.

5 Q Would you accept, subject to check, if we look at the  
6 shortfall in the revised exhibit for the period 2000 through  
7 2004, that it is approximately \$2,481,000?

8 A I would accept that subject to check. I assume  
9 you've calculated it.

10 Q I've calculated it, and tell me -- so somebody can  
11 check the calculations, I simply add the allowed return in  
12 those years and subtract from it the achieved return in those  
13 years on Lines 22 and 23.

14 A For years what?

15 Q 2000 through 2004. And those are the years on this  
16 exhibit during which the achieved return on Line 19 is lower  
17 than the allowed return on Line 20; correct?

18 A Yes.

19 Q I'd like you to turn to Figure 14, Page 1 of 11, and  
20 I guess there are no handwritten numbers on these pages, so it  
21 takes a minute to search for them. This is the weighted cost  
22 of capital analysis. Let me ask you first, your number for the  
23 year 2000 is now \$3,050,000. Do you see that on Line 18?

24 A I see that, yes.

25 Q That number is a change from the previous version.

1 Can you tell me what was the cause of that change?

2 A If you will give me just one moment.

3 Q Sure.

4 MR. MELSON: Commissioners, I would ask a leading  
5 question but this falls into the category of one I don't know  
6 the answer to, so I've done something a lawyer should never do.

7 A Just one moment. I'm going to the capital  
8 improvements schedule. You're speaking of 2000?

9 Q Yes, sir.

10 A It would be a change in the water plant cost from a  
11 million and a half dollars that was estimated to the actual two  
12 million seven.

13 Q All right. So that increase in the water plant cost  
14 that has been incurred occasioned an increase in the related  
15 borrowings?

16 A Yes.

17 Q Is it fair to say that but for the fact that the loan  
18 cost is now being dealt with and amortized separately that the  
19 borrowing amounts shown in the years 2002 and 2007 are  
20 essentially the same as they were in the prior exhibit? By  
21 "essentially the same," I guess I mean the 2002 number appears  
22 to be 12.6 million instead of 12.8 million.

23 A That's correct.

24 Q And the 2007 number appears to be a little under  
25 9.1 million versus 9.2 million.



1 A That's correct.

2 Q The number -- the other number on this schedule that  
3 I'm not sure I understand is on Line 16, subsidy loan from  
4 stockholders, showing an amount of 1,466,402. Can you tell me  
5 what that is?

6 A That comes from the cash flow schedule. And if  
7 you'll look --

8 Q It's Figure 18?

9 A Yeah. But before you go there, if you'll scroll  
10 through the pages on Figure 14 to Figure -- Page 1 to Page 2 to  
11 Page 3 to Page 4, you'll notice that as you get through Page  
12 3 there's starting out in about the middle of the page over to  
13 the right under the fiscal year 2001 heading, the numbers are  
14 zero for that subsidy loan from stockholders until you get to  
15 Page 4. And then there appears a beginning balance, and then  
16 on Page 5, it appears another beginning balance, and then it  
17 stays constant on Page 6. And what that is doing is picking up  
18 the cumulative subsidy required from the stockholders off of  
19 the cash flow analysis and assuming it's a loan and brings it  
20 into the weighted cost of capital analysis.

21 Q So that -- I did finally page through, and when I get  
22 to Page 11 of 11, I see a beginning balance for 2009 which  
23 matches the 1.466. So that's essentially the largest amount of  
24 subsidy required over that period of time?

25 A Yes, I believe that's what that's doing, calculating

1 the maximum of those beginning balance subsidies.

2 Q Now, if you'd turn to Figure 18, which is the last  
3 figure in this series, and again, let's make sure we're on the  
4 right one because there's two sets of numbers under this Tab 1.  
5 It's about halfway through Tab 1, and it's labeled at the top  
6 "Scenario 1a," and then it shows 100 percent debt, zero percent  
7 equity. Are you with me?

8 A Yes, it's the one right before the thick divider  
9 page.

10 Q Okay. The thick untabbed divider page.

11 A Untabbed, but thicker, yeah.

12 Q If I look at Line 46 labeled "net cash position of  
13 stockholders," if I understand that correctly, that is  
14 essentially the cumulative subsidy required on a year-by-year  
15 basis; is that correct?

16 A Actually, the Line 34 is the balance of the loan from  
17 the stockholders, and that's the number that's being pulled  
18 into Figure 14, and the area below is to show the financial  
19 dynamics to the stockholders in terms of interest they would  
20 get off of the loan and any paid back or principal and that  
21 type of thing.

22 Q All right. I believe in your prior version of  
23 MB-3 in year 2003, there was approximately a \$665,000  
24 stockholder subsidy. What this says on Line 34 in that year,  
25 that required subsidy has grown to 1.28 million; is that right?

1 A Where are you picking up the 1.28 million?

2 Q Line 34 year 2003.

3 A And what are you saying that number is?

4 Q I'm saying that's the total amount of subsidy that is  
5 funded in your analysis by a loan from the stockholders in that  
6 year.

7 A In that year, that's true.

8 Q All right. And my recollection is that in your prior  
9 exhibit, it showed subsidies in some early years which got paid  
10 down to zero out of cash flow, and then the balance began to  
11 build back up. If I look on Line 34, it appears there is sort  
12 of a continuing subsidy requirement from year 2002 through the  
13 end of your projection; is that right?

14 A That's true.

15 Q And then the last thing I would like you to do is  
16 turn to Figure 18 and Scenario 1b, which is the 60 percent  
17 debt, 40 percent equity scenario, and it's the last page before  
18 the Second 2 tab. If I understand this schedule correctly,  
19 this shows that if the stockholders were -- this shows the cash  
20 flow impact of the stockholders were putting in as equity  
21 40 percent of the future capital improvement program; correct?

22 A That's correct.

23 Q It doesn't get the corporation to an overall 60/40  
24 debt equity ratio because the equity is simply on the  
25 incremental investments, not on any of the embedded

1 investments; correct?

2 A That's true.

3 Q If I look at Line 46, net cash position of the  
4 stockholders, does this show that the stockholders essentially  
5 over this period have an investment which, I guess, ranges from  
6 a low of about 3.7 million in the year 2006 to a high of about  
7 6.5 million in 2007?

8 A That's true, including the equity and the loan.

9 Q All right. So the question I asked you yesterday, is  
10 it fair to say that your plan of service involves substantial  
11 subsidies or capital investments by the stockholders in  
12 addition to substantial borrowings, that remains true under  
13 your corrected analysis?

14 A I would say the numbers are there. You've just went  
15 through them. And I would leave the terminology of  
16 "substantial" up to the reader, and let them make their  
17 determination as to whether it's substantial relative to the  
18 operation, but what you have gone through are accurate  
19 representations.

20 Q Well, let me ask this. Rather than substantial, they  
21 are bigger than they were in Exhibit MB-3 before the  
22 corrections?

23 A Yes, they are.

24 MR. MELSON: Thank you. That's all I've got.

25 CHAIRMAN JACOBS: Very well. Any other cross?

1 MR. MENTON: No, sir.

2 CHAIRMAN JACOBS: Staff. Redirect.

3 COMMISSIONER DEASON: I'm sorry. While Mr. Burton is  
4 on the stand, yesterday and then again today, there's been some  
5 reference to a change in numbers because of a change in the  
6 cost of water plant. There was a projected number utilized. I  
7 believe it was somewhere in the neighborhood of 1.5 million.

8 THE WITNESS: Yes, sir.

9 COMMISSIONER DEASON: And now that number -- there's  
10 actual numbers in, and it's 2.7 million?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER DEASON: Which water plant is this?

13 THE WITNESS: On the east side. A water plant that  
14 would have to be done in any -- independent of the Nocatee  
15 service area.

16 COMMISSIONER DEASON: And I think you had a question  
17 earlier as to the reason for that change between actual and  
18 projected. I believe that you said that was a question best  
19 asked for someone else. Who would know that?

20 THE WITNESS: Unfortunately, it would probably be  
21 Mr. Forrester because Ellen Tilley works directly for him, and  
22 Ms. Tilley is the one who provided me with the information off  
23 of their cost records.

24 COMMISSIONER DEASON: Let me ask you this. Based  
25 upon your experience, does that seem like a wide disparity

1 between a projection and an actual number for a water plant?

2 THE WITNESS: The truth of the matter is that you  
3 best ask that of an engineering who looks at those types of  
4 things and analyzes the reasons more than I do. I've seen  
5 variances like that when you come in an estimate, and I know  
6 the actual is almost always not exactly what the estimate was.  
7 Whether that's a reasonable difference would be best asked of  
8 one of the engineers as an expert witness, I believe. I just  
9 don't have --

10 COMMISSIONER DEASON: And the cost of plant that you  
11 utilized in your analysis, your ten-year analysis, that was  
12 information that was provided to you by engineers?

13 THE WITNESS: The costs for the eastern water  
14 plant --

15 COMMISSIONER DEASON: No, no. I'm talking about now  
16 we're looking at the -- assuming that there is -- assuming that  
17 Intercoastal gets the certificate to serve Nocatee and you've  
18 done an analysis, the financial analysis of the impacts of  
19 that, and obviously, in that analysis you had to incorporate  
20 projected costs for facilities to provide that service. Those  
21 numbers were provided to you by the engineers?

22 THE WITNESS: Yes, by Mr. Miler.

23 MR. MELSON: Mr. Jim Miller.

24 THE WITNESS: Mr. Jim Miller.

25 CHAIRMAN JACOBS: Redirect.

1 MR. DETERDING: Yes. Let me just try and clarify  
2 that as best I can because I don't think there's anybody here,  
3 Commissioner, who knows the answer to your original question  
4 about what that difference was. Unfortunately, the only person  
5 who could tell us that would be Mister--

6 COMMISSIONER DEASON: And let me -- and I'll share  
7 this with you. I'm not so much concerned about that, that's an  
8 actual, and that's a -- right now is a utility we don't  
9 regulate, and of course, we may regulate the utility in the  
10 future depending on what happens in this proceeding. But I  
11 guess my concern is that if there's that much difference  
12 between what was projected and actual on that side of the  
13 operation, then how much reliance can we put upon the  
14 projections for the plant that's going to be built to serve the  
15 new development?

16 MR. DETERDING: And I understand. That's what I want  
17 to briefly get into with him on that issue.

18 CONTINUED REDIRECT EXAMINATION

19 BY MR. DETERDING:

20 Q Who provided you with the original estimate of the  
21 cost of the water plant that we were just talking about, the  
22 new water plant?

23 A As I said, I believe it was Ms. Tilley.

24 Q And she's also the person who provided you with the  
25 actual cost of the plant?

1 A Yes.

2 Q Who did the estimates of the cost of facilities on  
3 the eastern side?

4 A Mr. Jim Miller. No, I mean -- western or eastern?

5 Q I'm sorry, the western side.

6 A Mr. Jim Miller.

7 Q Okay. So the estimates on the eastern side were done  
8 by the internal bookkeeper for the utility?

9 A She provided me the numbers, yes.

10 Q And the estimates for the western side were done by  
11 the professional engineer?

12 A That's correct.

13 Q And you don't know whether there was a significant  
14 change in what was constructed from what was originally  
15 estimated?

16 A I don't know. That could be.

17 Q Mr. Melson pointed you to the net deficits in the  
18 revised MB-3, the second revised MB-3, of over \$2 million for  
19 the first four years on the -- as far as the shareholder. I  
20 guess we'd call it a shareholder subsidy because it is a net  
21 shortfall, and then on the 40 percent -- 60/40 set of schedules  
22 also to larger ones that reached as high as \$6 million. Are  
23 those the deficits and subsidies that the shareholders have  
24 been made aware of?

25 A The answer is, yes, but I think I need to correct



1 what you asked. I think you said on the Scenario 1, you said  
2 in upwards of \$2 million, but the actual subsidy that he talked  
3 about was 1.28 in year 2003. The \$2 million number was when he  
4 was talking about the difference in the allowed return and the  
5 achieved return, and these numbers are actual cash. Those are  
6 returns. So the cash subsidy is a little bit different number,  
7 but subject to that change, I would say, yes, the stockholders  
8 are aware of those numbers.

9 Q And that is what they have pledged to support  
10 financially?

11 A Yes.

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

13 CHAIRMAN JACOBS: And move Exhibit 33?

14 MR. DETERDING: Yes.

15 CHAIRMAN JACOBS: Without objection, show  
16 Exhibit 33 is admitted into the record.

17 (Exhibit 33 admitted into the record.)

18 CHAIRMAN JACOBS: Thank you, Mr. Burton.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 CHAIRMAN JACOBS: Staff, you may call your next  
22 witness.

23 MR. MENTON: Mr. Chairman?

24 CHAIRMAN JACOBS: Oh, I'm sorry. Mr. Menton.

25 MR. MENTON: Yes, sir. Thank you. Before we move to

1 any new witnesses, we did want to raise a few issues in an ore  
2 tenus motion related to the last witness that testified last  
3 night. As you'll recall, Ms. Caroline Silvers from the Water  
4 Management District appeared yesterday and amended her prefiled  
5 testimony. Specifically, she changed her opinion from saying  
6 that JEA had demonstrated its ability to provide water to the  
7 Nocatee development to it is likely that JEA will be able to  
8 demonstrate its ability to provide water to the Nocatee  
9 development.

10 In addition, in response to some cross examination  
11 questions from Mr. Wharton, Ms. Silvers offered for the  
12 first time some testimony that was not in her prefiled  
13 testimony regarding the status of JEA's permits with respect to  
14 provision of service to this area and indicated that there  
15 might be a need for a modification of those permits.

16 And then later on in her testimony, she changed some  
17 testimony she had given in her deposition regarding the local  
18 sources first provision. All of those changes came to us  
19 yesterday for the first time, and we would like to, at this  
20 point, request that the Commission give us an opportunity --  
21 first of all, we would point out that Mr. Perkins and  
22 Mr. Kelly, who testified yesterday, had submitted prefiled  
23 testimony over a year ago in which they had stated that JEA had  
24 no permitting issues with respect to the provision of service  
25 to this area. Ms. Silvers' testimony was also filed over a

1 year ago in which she had originally opined that JEA had  
2 already demonstrated its ability to provide service to this  
3 area. So the issues that came up yesterday were brand new to  
4 us and were not ones that we had prepared to address yesterday  
5 nor had we had an opportunity to address in rebuttal.

6 As you'll recall yesterday when Mr. Perkins  
7 testified, he presented both his direct testimony and his  
8 rebuttal testimony. His rebuttal testimony related to some  
9 issues that had come up in some of the Staff testimony. We  
10 agreed to take the rebuttal out of turn simply because we  
11 didn't think there was any big controversy and we could move  
12 this proceeding along. If we had known about the testimony  
13 that Ms. Silvers was going to amend and make last night, we  
14 certainly would have included some rebuttal from Mr. Perkins  
15 directly related to those issues that she raised.

16 So it would be our position that, first of all, we  
17 think that the amendments and the changes that she made to her  
18 testimony are untimely, so we would request that they be  
19 stricken, but I realize it's kind of like asking a jury to  
20 disregard the last remark. So as an alternative or in  
21 conjunction with that, we would request an opportunity to  
22 submit some additional rebuttal testimony that would at least  
23 allow JEA an opportunity to present its side with respect to  
24 those issues to cure what we believe is a discrepancy or  
25 inconsistency in the record at this point in time.

1           CHAIRMAN JACOBS: The additional rebuttal would be  
2 from Mr. Perkins?

3           MR. MENTON: From Mr. Perkins. It would be very  
4 short, Mr. Chairman. I don't think it's more than, you know,  
5 five or ten minutes. I think we can just put those issues out  
6 there. Quite frankly, in the long run, I'm not sure it's all  
7 that important because I think Ms. Silvers' testimony still  
8 said it's likely that JEA will be able to get the approval, so  
9 I'm not sure it's all that important. But I think we do want  
10 to make sure that we get our position straight, because if we  
11 had known the District was going to take this position -- I  
12 mean, the permits had been issued for a year; the testimony has  
13 been filed for a year. We didn't think there was any question  
14 at all regarding our ability to provide service consistent with  
15 those permits. And I think we just would like an opportunity  
16 to have Mr. Perkins explain that from JEA's perspective.

17           MR. WHARTON: Mr. Chairman, may I?

18           CHAIRMAN JACOBS: Let's check with Staff first. It  
19 was their witness.

20           MS. CIBULA: Staff believes that JEA had the  
21 opportunity to ask these questions to Ms. Silvers on cross, and  
22 the testimony that they are at issue with came up during a  
23 cross examination question of Ms. Silvers, and Ms. Silvers gave  
24 the answer that she believed it was the best of her knowledge.  
25 As for the late-filed documents, Staff believes that JEA could

1 have used these documents on cross examination of Ms. Silvers;  
2 however, Ms. Silvers is not here now. So Staff would oppose  
3 that those documents be allowed in as a late-filed exhibit.

4 MR. WHARTON: Mr. Chairman?

5 CHAIRMAN JACOBS: Mr. Wharton.

6 MR. WHARTON: You know, if I would have known that my  
7 main witness was going to be in the hospital, I would have  
8 mentioned that in the last motion to continue. There's no  
9 reason to go live just because JEA has heard something they  
10 don't like. You know what they didn't hear yesterday? They  
11 didn't get the consumptive use permit. The testimony in this  
12 case has been that they're the 9,000-pound gorilla. This is a  
13 governmental entity that calls the head of it the CEO, and  
14 people have title of vice president. And that consumptive use  
15 permit is a piece of paper that was issued months ago and is  
16 now final. I'll bet some fancy lawyers looked at that and  
17 decided not to file for a hearing at the Division of  
18 Administrative Hearings. I'm sure it was done in the form of a  
19 PAA. That's not new. That didn't just come up.

20 If the consumptive use permit says something than  
21 Ms. Silvers says, well, they ought to be here with it sticking  
22 it in front of you. There's no reason to go live now. I mean,  
23 frankly, Mr. Doug Miller said some things in response to your  
24 questions yesterday that I was unpleasantly surprised with, but  
25 I don't have any reason to come in here and make a motion to go

1 live. We need to stay with the process. Everybody has filed  
2 their testimony. As it relates to the motion to strike, I  
3 remember that I think I moved to strike some of Ms. Wood's  
4 testimony in the Aloha case, and the indication was that that  
5 should be denied because it needed to be made at the time. So  
6 I believe that is moot. And in point of fact, you've heard  
7 from the attorney's mouth, it's not that important. I don't  
8 think we should disrupt the whole process if something is not  
9 that important. But the consumptive use permit is not  
10 something they saw yesterday. That's something they decided to  
11 let become final.

12 CHAIRMAN JACOBS: Mr. Menton.

13 MR. MENTON: Mr. Chairman, if I could, just briefly  
14 in response to Ms. Cibula's comments. I would simply point out  
15 that the witness made changes to her prefiled testimony  
16 yesterday for the first time that we never saw before. We had  
17 no notice of those changes until she got up and sat there  
18 yesterday. Now, in addition to that, the witness also changed  
19 her testimony from her deposition. We didn't think there were  
20 any issues here. None of these issues had ever been raised.  
21 We took her deposition three weeks ago, and she did not at that  
22 point in time indicate that she was going to change her  
23 prefiled testimony. She didn't raise any of these issues that  
24 she talked about yesterday, and we just think that it's as a  
25 matter of fairness.

1           I think it's kind of funny that Mr. Wharton can bring  
2 a witness in here who after his deposition changes all of his  
3 schedules and changes all of the calculations that he made and  
4 offers them up to you as new testimony to be considered after  
5 the fact when everybody at least had an opportunity to know  
6 what those issues were. The issues we're talking about here  
7 were not known. The testimony that was submitted by Mr. Kelly  
8 and Mr. Perkins was submitted over a year ago. Nobody during  
9 the course of a year of discovery has ever raised an issue with  
10 respect to any of those matters. There was no way we could  
11 know that anybody was going to raise those issues yesterday. I  
12 think -- again, this is going to be very brief. We've already  
13 spent more time arguing about it than it's going to take to  
14 just have Mr. Perkins get up there and explain his position on  
15 behalf of JEA. I think we can finish it in about five minutes  
16 and we can move on. We can all get on with our lives.

17           CHAIRMAN JACOBS: And Staff was concerned about  
18 additional documents. You're not intending to offer an  
19 additional evidence -- I mean, exhibits, are you?

20           MR. MENTON: Well, here's the thing -- and  
21 Mr. Wharton talked about the permit -- the permit application  
22 and the permit are about this big because it relates to the  
23 whole entire South Grid field. Mr. Perkins has with him the  
24 application and the permit, and there are a couple of pages --  
25 given the time frame that we're working under, we haven't been

1 able to copy all of the stuff, and we haven't even been able to  
2 make copies of the relevant pages. But I think what  
3 Mr. Perkins will be able to show is that JEA submitted to the  
4 District an application that showed 3.3 million gallons per day  
5 to provide service to the northern St. Johns County area; that  
6 the District never raised any concerns with respect to that;  
7 that the District issued a permit that included the full  
8 requested quantities that JEA had asked for. So that's all we  
9 wanted to do, is to just set the record straight that in JEA's  
10 mind, they submitted a permit application that showed  
11 3.3 million for this northern St. Johns County area. It did  
12 not come up as an issue with the District. The first we ever  
13 heard about it was yesterday afternoon when Ms. Silvers was  
14 testifying.

15 In addition, with respect to the local sources first,  
16 the technical staff report that was issued by the Water  
17 Management District in connection with the permit that was  
18 issued last year specifically included a provision indicating  
19 that the local sources first provision had been considered and  
20 deemed to be met in connection with these permits. We just  
21 want to get that in the record because we didn't think there  
22 were any issues with respect to that.

23 CHAIRMAN JACOBS: Now, as I recall the testimony,  
24 there was -- and I don't want to go off too deeply into this,  
25 but there was no official application for service territory in



1 St. Johns County in the consumptive use application, and that,  
2 I believe, was Ms. Silvers testimony, and therefore, any  
3 authority under that would have to be amended to include this  
4 territory. And what you are wanting to establish is that while  
5 the territory wasn't there, the capacity to serve that  
6 territory was there. Did I understand what you are saying?

7 MR. MENTON: Mr. Chairman, I think that that's  
8 correct. What I think Mr. Perkins will testify to is that the  
9 District doesn't regulate territory. What they regulate is  
10 allocations. And as part of the consumptive use permit, you  
11 have to show them where you intend -- or where you need the  
12 allocations that you're requesting. As part of that, JEA had  
13 specifically included in its application 3.3 million gallons  
14 per day for the first ten years to provide service in the  
15 northern St. Johns County area. That is more than enough water  
16 to serve the Nocatee development, and that was approved by the  
17 District without question. Now --

18 CHAIRMAN JACOBS: Excuse me. Here's my concern  
19 because I can see where this is going to go to. Mr. Perkins  
20 can't render an opinion as to what the District would do or not  
21 do. The only thing he can do, as I understand, and the only  
22 thing you want to establish is his understanding and  
23 observations about what he saw in the course of the original  
24 proceedings.

25 MR. MENTON: Yes, sir.

1           CHAIRMAN JACOBS: So we cannot deal with what the  
2 District -- what was in the District's mind when they issued  
3 the consumptive use permit or what would have been their  
4 thoughts about what the scope of that authority was, as I  
5 understand.

6           MR. MENTON: That's correct, Mr. Chairman. I agree  
7 that Mr. Perkins can't speak for the District. All we want to  
8 do is just to clarify the record. As Mr. Perkins and Mr. Kelly  
9 have already testified, JEA has been operating from the  
10 beginning with the understanding that there were no issues with  
11 respect to the permits. Now, if the District thinks there's  
12 some, we may have to work that out. I think Ms. Silvers has  
13 already indicated that it's likely that those issues will be  
14 resolved, and I'm sure that during the course of, you know,  
15 some subsequent discussions that will all get worked out. But  
16 in the meantime, we do think that it's important that we be  
17 able to provide our version of that since it was not an issue  
18 prior to yesterday just to make sure that the record in this  
19 proceeding is --

20           MR. WHARTON: Mr. Chairman, please.

21           CHAIRMAN JACOBS: Very briefly.

22           MR. WHARTON: Understand something, this is  
23 supplemental Intervenor direct. I will have no chance for  
24 rebuttal. I will be deprived of my opportunity for rebuttal.  
25 Local sources first is a traffic light you go through in order

1 to get to that consumptive use permit. Let them pull out the  
2 deposition and find out where Ms. Silvers ever said, yes, this  
3 consumptive use permit authorizes you to do that. It's not in  
4 there. She's not contradicting that in terms of something she  
5 said in her deposition; otherwise, they knew her testimony was  
6 filed a year ago. They are the ones responsible to know what  
7 that consumptive use permit holds. What they applied for is  
8 irrelevant. I know what we're applying for, and I don't think  
9 if you deny it a year from now we're going to say, well, we  
10 applied for it. I won't have the chance for rebuttal.

11 Surprises sometimes come up in trial.

12 MR. MENTON: Mr. Chairman, if I could just respond to  
13 that. This is a classic rebuttal that we're asking to --

14 CHAIRMAN JACOBS: Yes, here's what the ruling will  
15 be. For the limited --

16 COMMISSIONER DEASON: Chairman, before -- may I ask a  
17 question before you do?

18 CHAIRMAN JACOBS: Sure. Go ahead.

19 COMMISSIONER DEASON: I'm just trying to understand.  
20 Is the consumptive use permit part of this record?

21 MR. MENTON: No, sir it's not.

22 COMMISSIONER DEASON: Okay. And why is it not part  
23 of the record?

24 MR. MENTON: Because I don't think anyone had raised  
25 an issue with respect to it. Mr. Perkins and Mr. Kelly had

1 testified in their prefiled a year ago that JEA had no  
2 permitting obstacles in order to provide this service in this  
3 territory.

4 MR. WHARTON: They're the Intervenors. They --

5 MR. MENTON: And that's what she said too.

6 CHAIRMAN JACOBS: Excuse me.

7 COMMISSIONER DEASON: Okay. I was just going to ask  
8 the question, if it were part of the record, couldn't it just  
9 speak for itself, but it's not part of the record.

10 MR. MENTON: It's not, no, sir.

11 CHAIRMAN JACOBS: And there's no official recognition  
12 of it?

13 MR. MENTON: No, sir.

14 CHAIRMAN JACOBS: Here's what we'll do. For the  
15 limited purpose of -- and let me first step back for a moment.  
16 In normal course, I don't think there would be any question  
17 that this would not be a persuasive position to bring back this  
18 witness. However, I am persuaded by the idea that the central  
19 point raised was an amendment to prefiled testimony that was  
20 done on the stand. For the limited purposes of getting  
21 Mr. Perkins' observations and knowledge about what he saw in  
22 this proceeding, I will allow it. However, as to what the  
23 District thought, perceived, ruled in this consumptive use  
24 permit, that is not to be a part of this cross and any  
25 subsequent. I'll allow Mr. Wharton an opportunity to question

1 as well.

2 MR. MENTON: Okay.

3 CHAIRMAN JACOBS: And so we can do that.

4 MR. MENTON: Thank you, sir. And this will be very  
5 brief, I believe.

6 CHAIRMAN JACOBS: Very well. You may proceed,  
7 Mr. Menton. I'm sorry.

8 MR. MENTON: Thank you, sir.

9 TIMOTHY E. PERKINS

10 was recalled as a witness on behalf of Jacksonville Electric  
11 Authority and, having been previously sworn, testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. MENTON:

15 Q Mr. Perkins, as you may have heard by now,  
16 Ms. Silvers amended her prefiled testimony to indicate  
17 yesterday that while it's likely JEA could get District  
18 approval to provide wholesale service to Nocatee, the District  
19 had not yet granted such approval. What is your understanding  
20 as to the status of JEA's permits as it relates to northern  
21 St. Johns County?

22 A It's not an understanding. I have a permit where I  
23 applied for 3.3 million gallons per day to provide service in  
24 northern St. Johns County up to the year 2010. I received an  
25 allocation that included that amount. I received a technical

1 staff report that stated that they had reviewed the service in  
2 St. Johns County, and it met local sources first criteria.

3 Q And do you have the permit application that you  
4 submitted with you today?

5 A I have a document entitled, "The Supplemental  
6 Information for Consumptive Use Permit Application," which is  
7 referenced in our permit in regards to our reuse requirements  
8 in the permit and were submitted as a part of our permit  
9 application.

10 Q In that supplemental permit application, do you  
11 specifically break down projected new service within northern  
12 St. Johns County area?

13 A Yes, I do.

14 Q What is the amount that you indicate in there that  
15 you will be providing in the northern St. Johns County area?

16 A It is 3.3 million gallons per day, of a total of 52.6  
17 million gallons per day for the entire South Grid in the year  
18 2010.

19 Q And Ms. Silvers yesterday talked about the District  
20 approving JEA providing 1 million gallons of service pursuant  
21 to its wholesale agreement with St. Johns County. Is that  
22 anywhere referenced in your permit application or in your  
23 permit itself?

24 A No, it is not.

25 Q Did the District object or require any changes with

1 respect to your requested allocation of 3.3 million gallons per  
2 day for the northern St. Johns County area?

3 A No, they did not. In fact, last month we did a minor  
4 modification to the permit to add an additional well on the  
5 North Grid, and the allocation remained the same when it was  
6 reissued.

7 Q Ms. Silvers yesterday referenced a handbook that she  
8 indicated required the submission of contracts by utilities  
9 that don't have designated service areas. Are you familiar  
10 with that handbook?

11 A Yes, I am.

12 Q And what is your understanding as to the requirements  
13 of that handbook?

14 A The handbook requires that municipal utilities  
15 providing service outside their legal boundaries provide a copy  
16 of the contract with the entity they are providing service to  
17 the District.

18 Q In your role as the permit director, or the  
19 consumptive use permitting person for JEA, is it your opinion  
20 that the District rules give the District any authority with  
21 respect to approval or rejection of the contracts that are  
22 submitted pursuant to that provision with the handbook?

23 A No, it does not.

24 Q Has the District ever raised with you before any  
25 issues regarding the provision of service to the northern

1 St. Johns County area?

2 A No, they have not.

3 Q Would you agree that it is likely that JEA will  
4 ultimately get District approval in order to provide service to  
5 the Nocatee development?

6 A I believe we already have that permission, but I do  
7 believe that the District staff, as Caroline indicated, would  
8 still reapprove it if we had to go through that process.

9 Q Now, Ms. Silvers testified that there still needed to  
10 be a local sources first review of the provision of service in  
11 northern St. Johns County. Did the District in connection with  
12 your permit application actually conduct a local sources  
13 first review?

14 A Yes, they did. The technical staff report that was  
15 sent to the Board in support of passage of the permit contained  
16 a paragraph addressing that review and stated that our  
17 requested use of water from Duval County to serve St. Johns  
18 County was in conformance with that policy.

19 Q Do you have a copy of the technical staff report with  
20 you?

21 A Yes, I do.

22 Q And that technical staff report is part of what the  
23 District staff prepares and submits to the District Board at  
24 the time it considers the consumptive use permit; is that  
25 correct?



1 A Yes, that's correct.

2 Q What is the date of the technical staff report that  
3 you have here?

4 A February 8th, 2000.

5 Q And could you refer specifically to the provision in  
6 the technical staff report which, I believe, appears on Page 8,  
7 and read that into the record, please.

8 MR. WHARTON: Objection. That's hearsay. That's  
9 gross hearsay. And if it's the kind of information that an  
10 expert would normally rely on in rendering an opinion, it's an  
11 opinion formed while I was sleeping last night. That's putting  
12 the document in the record, just in another form.

13 CHAIRMAN JACOBS: Mr. Menton.

14 MR. MENTON: This is the permitting director for JEA.  
15 This is a technical staff report issued by the District to JEA  
16 as part of the permit that was issued to JEA. This man is the  
17 one that this -- that has the authority for maintaining these  
18 records on behalf of JEA, and all I'm asking him to do is to  
19 confirm what his understanding is of the permit that was issued  
20 to JEA.

21 CHAIRMAN JACOBS: This document is -- Mr. Menton,  
22 this document is issued in normal course of --

23 MR. MENTON: (Nodding head affirmatively.)

24 CHAIRMAN JACOBS: For what purposes again?

25 MR. MENTON: This is the technical staff report that

1 the Water Management District staff prepares with respect to  
2 the permit application that is filed. In this case, JEA filed  
3 it's permit application with the District. The staff conducted  
4 its review, prepared a technical staff report, which is  
5 detailed in this letter regarding various aspects of the  
6 application. That is then presented to the District governing  
7 Board for approval at the time they consider the permit. So  
8 this becomes an integral part of the deliberations of the  
9 District Board in approving the permit application.

10 COMMISSIONER JABER: So like a Staff recommendation.

11 MR. MENTON: Exactly.

12 CHAIRMAN JACOBS: Okay. It is hearsay, but I think  
13 it meets the business records exception. And it can only be  
14 used to refresh his recollection; is that correct?

15 MR. MENTON: I think a business record can come in  
16 independently, not just to refresh recollection.

17 CHAIRMAN JACOBS: We haven't gotten there yet, but  
18 I'll rule that it does meet that exception.

19 MR. MENTON: Okay. Thank you.

20 BY MR. MENTON:

21 Q Mr. Perkins.

22 A This is Paragraph 7, entitled "Local Sources  
23 First" on Page 8 of the document. "JEA provides water to a  
24 small portion of Clay County and will provide water to northern  
25 St. Johns County in the future. Since this water comes from

1 wells located in Duval County, this transfer of water occurs  
2 across county boundaries and is, therefore, subject to local  
3 sources first legislation adopted in 1998. Staff have reviewed  
4 this project pursuant to the requirements of local sources  
5 first set forth in Subsection 373.223(3), Florida Statutes, and  
6 have concluded that the proposed withdrawal and use of water to  
7 be authorized in this permit meets the requirements of the  
8 local sources first legislation. Staff's comments regarding  
9 the evaluation are contained in Exhibit E."

10 MR. MENTON: Thank you. No further questions.

11 COMMISSIONER JABER: May I ask just a couple of  
12 questions, Mr. Perkins?

13 THE WITNESS: Yes.

14 COMMISSIONER JABER: In your permit application and  
15 in your supplemental application, you included the 3 million  
16 gallons per day.

17 THE WITNESS: Yes, 3.3.

18 COMMISSIONER JABER: And in the technical staff  
19 report, it sounds like they recommended approval of your  
20 consumptive use permit based on the 3.3 million gallons per  
21 day.

22 THE WITNESS: Yes. And the total amount for our  
23 permit agreed with our total for all the sources that we were  
24 going to provide water to.

25 COMMISSIONER JABER: But that's not your actual

1 permit. Your actual permit application has to be approved by  
2 the District governing Board; is that correct?

3 THE WITNESS: That's correct.

4 COMMISSIONER JABER: Now, what did the District  
5 governing Board do?

6 THE WITNESS: They approved their permit as submitted  
7 by the staff for the amount -- 52.6 million gallons per day on  
8 the South Grid which included the 3.3 million gallons per day.  
9 There were no conditions or special conditions in the permit in  
10 any way addressing the specifics on provision of service to  
11 St. Johns County.

12 COMMISSIONER JABER: And if that's correct, would  
13 those numbers be on the face of the permit someplace? Would  
14 they be included in your consumptive use permit as what was  
15 actually approved by the governing Board?

16 THE WITNESS: Yes, they are. And they total the same  
17 as our request, 52.6 million gallons per day.

18 COMMISSIONER JABER: Can you provide us the  
19 consumptive use permit as a late-filed exhibit?

20 THE WITNESS: Yes, I can. I have it with me.

21 COMMISSIONER JABER: The permit, not the  
22 applications. I want as a late-filed exhibit the permit that  
23 was approved by the District governing Board.

24 THE WITNESS: Yes, I have that with me today.

25 MR. MENTON: Commissioner Jaber, if I might just --

1 the permit itself indicates a total flow that is allowed for --  
2 under the permit, and it's not -- what I think Mr. Perkins has  
3 testified to is that total flow that's in the permit ties  
4 directly to the flow that's in the application. So it doesn't  
5 say -- it doesn't break down service areas in the permit per  
6 se, but the application broke it down specifically by service  
7 areas and indicated that amount. And the full amount that was  
8 requested was approved by the District with --

9 COMMISSIONER JABER: Well, Mr. Menton, all I want as  
10 a late-filed exhibit is the permit.

11 MR. MENTON: Okay. Mr. Chairman, we would provide  
12 the permit as a late-filed exhibit. We would also request an  
13 opportunity to include the permit application as well.

14 MR. WHARTON: And I would certainly object to that.

15 CHAIRMAN JACOBS: I think the request was simply for  
16 the permit. In view of the somewhat precarious territory we  
17 find ourselves in, I'm going to deny the request to include the  
18 application. And that will be Late-Filed Exhibit 34.

19 (Late-Filed Exhibit 34 identified.)

20 COMMISSIONER PALECKI: I have an additional question.  
21 I'm having trouble reconciling what I'm hearing today with the  
22 testimony I heard yesterday. Are you saying that what we heard  
23 yesterday that the 3.3 million gallons was not allowed in the  
24 consumptive use permit was mistaken, was incorrect?

25 THE WITNESS: I don't believe I said that yesterday.

1 COMMISSIONER PALECKI: No, I mean the testimony. Was  
2 it Ms. Silver that we heard?

3 THE WITNESS: Yes, I think she is mistaken.

4 COMMISSIONER PALECKI: Thank you.

5 MR. MENTON: And, Mr. Chairman, I would, for the  
6 record, also move in the technical staff report, and ask that  
7 that be submitted as a late-filed exhibit as well.

8 MR. WHARTON: Why don't we finish the cross before we  
9 do the exhibits?

10 CHAIRMAN JACOBS: Very well. Well, you want to mark  
11 the technical record as an exhibit. We'll mark that  
12 as Exhibit 35.

13 (Late-Filed Exhibit 35 identified.)

14 MR. MENTON: We can do the whole thing, or we can  
15 just do the one page that he read from, whichever way is  
16 easier.

17 CHAIRMAN JACOBS: And this is the St. Johns River  
18 Water Management District Staff Summary Report. Is that the  
19 title of it?

20 MR. MENTON: It's the second revised technical staff  
21 report which states that staff will recommend approval of the  
22 application with the conditions as stated in the technical  
23 staff report.

24 CHAIRMAN JACOBS: That's -- I just need a title. The  
25 second revised technical staff report. Mr. Wharton.

1 MR. WHARTON: Well, since I am to be deprived of any  
2 opportunity for rebuttal, I would like to go last. Mr. Melson  
3 and Mr. Korn --

4 CHAIRMAN JACOBS: I'm sorry. Were there any other  
5 cross?

6 MR. MELSON: No questions.

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

8 CHAIRMAN JACOBS: Okay.

9 CROSS EXAMINATION

10 BY MR. WHARTON:

11 Q Good morning, Mr. Perkins.

12 A Good morning, sir.

13 Q Do you moonlight for the Water Management District,  
14 sir?

15 CHAIRMAN JACOBS: Mr. Wharton.

16 Q Are you an employee of the Water Management District?

17 A No, I am not.

18 Q Who decides to issue a consumptive use permit, the  
19 Water Management District, or the applicant?

20 A The Board of the Water Management District makes that  
21 decision.

22 Q Okay. Now, I want you to understand something about  
23 my next series of questions. I'm not asking you about your  
24 application. I'm not asking you about some local sources first  
25 handbook. I'm not asking you about a staff recommendation.

1 I'm asking you about the consumptive use permit. That's a  
2 document, isn't it?

3 A Yes, it is.

4 Q And when did JEA received that document?

5 A It was passed by the Board on February 8th of 2000.  
6 Unfortunately, they had some difficulty producing it, and we  
7 received it on February 26th of 2001.

8 Q Do the administrative code rules then provide you a  
9 certain amount of time to request a hearing if you're  
10 dissatisfied with that permit?

11 A Yes, they do, and we weren't dissatisfied with the  
12 permit.

13 Q And that time has passed; correct?

14 A Yes, it has.

15 Q Okay. We heard some testimony or either statements  
16 of your lawyer last night that you were showing your  
17 application to Ms. Silvers yesterday. Why were you doing that?

18 A I was discussing the potential issue that I had heard  
19 yesterday might come up about the 1 million gallons a day.

20 Q So you already knew about this issue before you  
21 testified yesterday; is that correct?

22 A I was aware that the County had issued a letter  
23 stating that they were going to accept 1 million gallons a day;  
24 that was all I was aware of yesterday.

25 Q But did you hear for the first time last night --



1 were you here during Ms. Silvers' --

2 COMMISSIONER DEASON: I'm sorry, I'm sorry. I just  
3 heard something I need to ask a question about. The County --  
4 you understood that the County was going to issue a letter?

5 THE WITNESS: Ms. Silvers told me yesterday that the  
6 County gave them a letter saying that they would accept  
7 1 million gallons a day of water from us, which is the amount  
8 that's in our local service agreement with them, our wholesale  
9 service agreement.

10 COMMISSIONER DEASON: This was a letter -- has this  
11 letter ever been written, or is this just something that was --

12 THE WITNESS: No. It was written from the County. I  
13 haven't seen a copy of it, but --

14 COMMISSIONER DEASON: Okay. This was a letter from  
15 St. Johns County to the Water Management.

16 THE WITNESS: To Water Management.

17 COMMISSIONER DEASON: And it said they would accept  
18 1 million gallons per day from JEA to serve in northern  
19 St. Johns County?

20 THE WITNESS: To serve their wholesale service  
21 agreement that we have with them.

22 COMMISSIONER DEASON: Okay. Explain to me -- I  
23 apologize, Mr. Wharton. I'm just trying to understand.  
24 Explain to me the relevance of that. What difference does that  
25 make in relation to your consumptive use permit and the amount

1 of resource that you have at your disposal to serve the Nocatee  
2 development?

3 THE WITNESS: The only impact on our service  
4 agreement is that we need to provide that in addition to the  
5 amount that we provide Nocatee. That's the only concern with  
6 our ability to serve.

7 COMMISSIONER DEASON: So you accept that there is an  
8 obligation to provide 1 million gallons per day in St. Johns  
9 County in addition to whatever you may have to provide to the  
10 Nocatee development?

11 THE WITNESS: Yes, we do.

12 COMMISSIONER JABER: But the problem with what the  
13 permit says then, just to follow up Commissioner Deason, if  
14 you're only approved for 1 million gallons per day and you're  
15 going to provide that to St. Johns County, then you're unable  
16 to provide water wholesale to Nocatee. Is that the problem?

17 THE WITNESS: No. The permit doesn't address  
18 1 million gallons per day or 3.3 million gallons a day. It  
19 addresses 52.6 million gallons a day from the South Grid, which  
20 includes all the areas that we're serving.

21 COMMISSIONER JABER: See, I'm trying to understand  
22 why you were a bit panicked about the letter of the County  
23 going to the Water Management District. Is it because the  
24 Water Management District would not have given you -- modified  
25 your consumptive use permit to allow you to serve additional --

1 THE WITNESS: No. Caroline stated yesterday that she  
2 thought that even if we did have to modify the permit, that  
3 they would still likely approve that. My concern was that she  
4 seemed to think that that was all that had been addressed, and  
5 that's why I showed her the document to refresh her memory that  
6 we had asked for 3.3, and it was still in the total that was  
7 issued by them.

8 COMMISSIONER JABER: But if they believe the permit  
9 says 1 million gallons per day, you'd have to modify -- go  
10 through the modification process.

11 THE WITNESS: We don't believe we do.

12 COMMISSIONER JABER: But that was your fear  
13 yesterday, wasn't it?

14 THE WITNESS: That was my fear, that they would think  
15 we needed to, but I don't believe that we need to. And that's  
16 what I was trying to address with her.

17 BY MR. WHARTON:

18 Q Just so the record is clear, JEA has built water and  
19 wastewater mains all the way down U.S.1 with the intention of  
20 providing service as far south as Marshall Creek; correct?

21 A Yes, we have. And that's the 1 million gallons per  
22 day that we're talking about.

23 Q Right. Is any part of the 3.3 million gallons that  
24 you've mentioned to be utilized for service to Julington Creek  
25 Plantation?

1 A No, it is not.

2 Q Does the permit have service areas on its face?

3 A No, it does not.

4 Q Okay. All it just has is some big lump sum of the  
5 amount of water that you're allowed to withdraw up in your  
6 wells in Duval County; correct?

7 A Our permit has -- it breaks it out into the North  
8 Grid and the South Grid allocation by year for each grid, and  
9 it identifies the location of the wells that we are to use to  
10 provide the water. It does not identify our service area.

11 Q But that's all in Duval County?

12 A All of our wells are in Duval County.

13 Q Again, I want to ask you a question that I asked you  
14 before the Commissioners asked you a couple of questions.

15 A Yes.

16 Q Is this the first time you've heard of this  
17 interpretation?

18 A Yesterday was the first I heard of it.

19 Q When yesterday?

20 A Yesterday morning.

21 Q How did you hear of it?

22 A I saw Caroline Silvers, and then we were just  
23 discussing with Bill Young, and when he brought up the letter,  
24 she had mentioned that she had thought -- her interpretation  
25 was that that was what they had included. And that's why I

1 showed her our submittal because that didn't line up with what  
2 she thought.

3 Q But at that time, you learned that it was the Water  
4 Management District's interpretation that the only portion of  
5 St. Johns County that the consumptive use permit covered was  
6 the 1 million gallons for Marshall Creek?

7 A I stated my position, and she stated hers. I didn't  
8 know whether she was going to bring it up or not.

9 Q Yes. But at that time, you learned her position as I  
10 just stated it?

11 A That that was her position, yes.

12 Q And that was prior to the time you gave your  
13 testimony yesterday?

14 A Yes.

15 Q Okay. So as we sit here right now, it is not JEA's  
16 intention to apply for a modification of that consumptive use  
17 permit?

18 A No, at this time, it is not. We don't think it's  
19 necessary.

20 Q What are you-all going to do about that? Go talk to  
21 the Water Management District?

22 A Yes.

23 Q And if you cannot prevail upon them that your point  
24 of view is the correct one, will you then entertain modifying  
25 the consumptive use permit?

1 MR. MENTON: Mr. Chairman, I would object as that  
2 calls for speculation. I believe Ms. Silvers indicated  
3 yesterday it's likely that the approval is going to be granted.  
4 It's just a question of, you know, how they are going to get to  
5 that point. So at this point, it's all speculations as to how  
6 they are going to get there.

7 CHAIRMAN JACOBS: I think he was simply asking for  
8 what Mr. Perkins anticipates JEA's actions might be rather than  
9 what the District might do. I'll allow the question.

10 MR. WHARTON: And I'll rephrase it also.

11 BY MR. WHARTON:

12 Q If the Water Management District does not accept your  
13 position and their position remains the position that was taken  
14 by Ms. Silvers last night, it will be necessary to modify the  
15 consumptive use permit in order to provide the water required  
16 by the agreement between NUC and JEA; is that correct?

17 A We would only have two options. We could either  
18 apply to amend the permit, or we could try to defend our  
19 interpretation of it.

20 Q But it has been more than 21 days, would you agree,  
21 since you have received the consumptive use permit?

22 A Yes, just slightly.

23 MR. WHARTON: That's all I have.

24 CHAIRMAN JACOBS: Now, I think that about covers the  
25 waterfront. Staff, do you have any questions?

1 MS. CIBULA: No questions.

2 COMMISSIONER PALECKI: I have one further question.  
3 I'm still having difficulty with this. Are you saying that you  
4 have a legitimate difference of opinion with Ms. Silvers, and  
5 if so, what is that difference of opinion? I'm just unable to  
6 understand because your testimony is so completely different  
7 from what we heard.

8 THE WITNESS: I didn't think after we discussed it  
9 yesterday that she was still thinking that the 1 million  
10 gallons was the limit.

11 COMMISSIONER PALECKI: And she testified --

12 THE WITNESS: I know what she testified, and that's  
13 why I came back.

14 COMMISSIONER PALECKI: She testified to that after  
15 you had already had a discussion with her and showed her that  
16 you had applied for 3.3 million; correct?

17 THE WITNESS: Yes, I showed her our application. I  
18 showed her that the 3.3 was in the total that was granted to  
19 us, and I left it at that with her. I mean, I thought I had  
20 convinced her that we had the allocation. We do have the  
21 allocation. We asked for 3.3 to serve northern St. Johns  
22 County. I had a permit that included that amount. I had a  
23 technical staff report that said that they had reviewed us  
24 providing that service and recommended that we do so. I didn't  
25 really think that she was going to continue to hold that

1 position after we had our discussion.

2 COMMISSIONER JABER: You have the allocation if the  
3 Board says you have an allocation; correct?

4 THE WITNESS: Yes, and we have it.

5 COMMISSIONER JABER: But the Board witness yesterday  
6 said they didn't. So does the Board issue an order?

7 THE WITNESS: They issue a permit.

8 COMMISSIONER JABER: But do they issue, like, a  
9 memorializing opinion with a permit?

10 THE WITNESS: They generally adopt the  
11 recommendations of the technical staff report. And all these  
12 special conditions and conditions of the permit are included in  
13 the technical staff report, and they extract all those  
14 conditions and produce a permit document.

15 COMMISSIONER JABER: But I am sure that it's been  
16 your experience that they can modify the permit application or  
17 deny a permit application.

18 THE WITNESS: Certainly they can. And that's why I  
19 was confused yesterday, because our whole development of the  
20 river crossing we put in place is to bring water from outside  
21 caution area five into the area so that we can minimize  
22 withdrawals which includes both our portion in Duval County and  
23 the portion in St. Johns County. They both are considered  
24 water caution areas because of the water quality concerns and  
25 limitations on withdrawals in those areas. The District has



1 supported us doing that; in fact, made it a condition of our  
2 permit that we construct the river crossing to provide water  
3 from our North Grid to the South Grid. So I was somewhat  
4 confused because I thought the development of that resource was  
5 in alignment with the recommendations of the 2020 plan, the  
6 needs and sources study, and our permit.

7 COMMISSIONER PALECKI: Are you aware upon what  
8 document or information Ms. Silvers based her opinion on?

9 THE WITNESS: She said that she based it on the  
10 technical staff report, which is why I went back last night and  
11 re-reviewed it. And I found no reference to 1 million gallons  
12 per day or 3.3 million gallons per day in the copy I was  
13 provided at the time of the Board hearing.

14 MR. WHARTON: A brief follow-up, Mr. Chairman?  
15 Again, I am deprived of --

16 COMMISSIONER DEASON: Before you do that, one quick  
17 question. Is it your understanding that the 1 million is part  
18 of the 3.3, or is that two separate amounts?

19 THE WITNESS: No, it's part of the 3.3.

20 CHAIRMAN JACOBS: Brief follow-up, Mr. Wharton.

21 CONTINUED CROSS EXAMINATION

22 BY MR. WHARTON:

23 Q Mr. Perkins, just to make sure the record is clear,  
24 in response to some of the Commissioners' questions, you've  
25 indicated this is not some simple understanding between you and

1 Ms. Silvers; correct? You did make your position, "your" being  
2 JEA's position, known to her?

3 A Yes, I did.

4 Q And you laid out to her what you thought you had  
5 gotten?

6 A Yes.

7 Q And she still determined that she was going to  
8 indicate the position of the District was adverse to that  
9 position in her testimony; right?

10 MR. MENTON: Mr. Chairman, I would object the extent  
11 the question asked what Ms. Silvers determined. I think it's  
12 clear the Board makes the determination. Ms. Silvers is just  
13 one of the staff members that can make a recommendation.

14 MR. WHARTON: I'll withdraw the question.

15 BY MR. WHARTON:

16 Q So after you had this discussion with Ms. Silvers and  
17 you indicated to her what JEA's interpretation of this series  
18 of events was, she still elected to give the testimony that she  
19 gave?

20 A Yes, she did, obviously.

21 CHAIRMAN JACOBS: Okay. Thank you. Very well. Yes,  
22 this is your witness. I guess you get to close out. Very  
23 quickly.

24 MR. MENTON: Redirect, yes, just a couple of  
25 questions.

## REDIRECT EXAMINATION

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BY MR. MENTON:

Q Mr. Perkins, in your experience, are specific allocations of service areas ever reflected on a consumptive use permit issued by the District?

A Not in any of the permits that I have gotten.

Q And in your experience, in order to determine how the quantities were assigned that are set forth in a consumptive use permit, do you need to refer to the application?

A Yes. The application is the source of the -- we provide the historical water use and our projections for water use for the duration of the permit request.

Q And with respect to the specific permit that was issued by the District to JEA, did the Board make any modifications or amendments or reductions to the requested quantities that were shown in your permit application?

A No, they did not.

COMMISSIONER JABER: What's the quantity needed for the Nocatee development? What is the quantity needed?

THE WITNESS: The development is constructed in five phases of five years each. The first phase, which would end in 2007, needs 729,000 gallons per day of water. The second phase, which ends in 2012, needs 1.44 million gallons per day of water. And the third phase, which ends in 2017, needs 3.33 million gallons per day.

1           COMMISSIONER JABER: So you had asked for  
2 3.33 million just for the total project.

3           THE WITNESS: We asked for 3.3 million for the  
4 duration of the permit which ends in 2010. We had also  
5 submitted a request for a 20-year permit which we included a  
6 request of 5.3 million gallons per day for northern St. Johns  
7 County.

8           COMMISSIONER JABER: So if the District is correct in  
9 their interpretation that your permit only allows you 1 million  
10 water use, you have a problem with respect to showing us  
11 technical ability, don't you?

12           THE WITNESS: We don't believe we do because we  
13 included the amount in the amount that withdraw from the North  
14 Grid. We did hydraulic hydrogeologic modeling on the North  
15 Grid for the withdrawal amount using the District's model as  
16 boundary conditions for our model. We submitted that model to  
17 the District showing what the impacts of withdrawal would be,  
18 and they issued us a permit showing us -- transferring that  
19 amount of water from the North Grid to the South Grid.

20           COMMISSIONER JABER: But hypothetically, if their  
21 interpretation is correct, you will not be able to serve  
22 Nocatee until you modify your consumptive use permit; is that  
23 correct? I'm just trying to understand where we go from here,  
24 that's all.

25           THE WITNESS: I'm not a lawyer. I can't answer that

1 question. I believe that they have granted us the right to  
2 provide the service, and their permit does not address service  
3 areas.

4 COMMISSIONER JABER: But if it's not allocated to  
5 you -- just walk me through this hypothetical. Let's say,  
6 hypothetically, their interpretation is correct, they are  
7 right. You can't provide what you haven't been allocated; is  
8 that right?

9 THE WITNESS: That's true, we can't provide what we  
10 haven't been allocated, but we believe we have been allocated  
11 the amount.

12 COMMISSIONER JABER: All right.

13 CHAIRMAN JACOBS: Mr. Menton.

14 BY MR. MENTON:

15 Q Mr. Perkins, how many permitting processes have you  
16 been involved with before the Water Management District in the  
17 past?

18 A I would probably lose count. I've done, you know,  
19 hundreds of permits for DEP for construction of, you know,  
20 waterlines and water mains, water plants, wastewater plants.

21 Q How many about the St. Johns River Water Management  
22 District?

23 A I've been involved in one major renewal of our major  
24 permit and several modifications to our permit and some  
25 modifications to minor permits that we have for systems that

1 are not contiguous or connected with our major system.

2 MR. MENTON: No further questions. Thank you.

3 CHAIRMAN JACOBS: Very well. Exhibits.

4 MR. MENTON: We would -- in response to

5 Commissioner Jaber's request, we would submit as a late-filed  
6 request the application -- I mean, not the application, the  
7 permit.

8 CHAIRMAN JACOBS: You still got it in your mind, I  
9 understand.

10 MR. MENTON: And we would also offer the technical  
11 report, which is Exhibit 35.

12 MR. WHARTON: And we would object. I've been  
13 deprived of the opportunity to ask Ms. Silvers about the  
14 technical report in deposition. It's a surprise. There's no  
15 chance for rebuttal. It's nothing but a staff recommendation,  
16 as Commissioner Jaber established. It doesn't shed any light  
17 on what the ultimate result was.

18 CHAIRMAN JACOBS: I think it can be given that it can  
19 be weighed with its proper weight. I'll deny the objection.  
20 And we'll show that admitted to the record. We need to get  
21 copies for the court reporter.

22 MR. MENTON: We will do that as a late-filed exhibit.

23 CHAIRMAN JACOBS: Thank you, Mr. Perkins. You're  
24 excused.

25 (Witness excused.)

1 CHAIRMAN JACOBS: Staff, your next witness.

2 MS. CIBULA: Staff calls Charles Gauthier to the  
3 stand.

4 MS. CIBULA: Have you been sworn in?

5 THE WITNESS: No, I have not.

6 (Witness sworn.)

7 CHAIRMAN JACOBS: Thank you. You may be seated.

8 CHARLES R. GAUTHIER

9 was called as a witness on behalf of the Staff of the Florida  
10 Public Service Commission and, having been duly sworn,  
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MS. CIBULA:

14 Q Please state your name and your business address for  
15 the record.

16 A Yes. My name is Charles Richard Gauthier. My  
17 business address is 2555 Shumard Oak Boulevard, that's in  
18 Tallahassee, Florida 32399.

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

20 A I'm employed by the Florida Department of Community  
21 Affairs. My role -- my job assignment is chief of the Bureau  
22 of Local Planning.

23 Q Have you prefiled direct testimony in this case  
24 consisting of four pages and prefiled supplemental testimony  
25 consisting of two pages?

1 A Yes, I have.

2 Q Do you have any changes or corrections to that  
3 testimony?

4 A Yes. I have updates for that testimony.

5 Q What are those updates?

6 A I would like to update the record with regard to the  
7 approval status of the Nocatee comprehensive plan amendments  
8 and development of regional impact. I can do that now or as  
9 part of my presentation summary.

10 Q Would you please do that now.

11 A Yes. My testimony was prefiled in May 1st, 2000 and  
12 supplemented July 5th, 2000. Since then several events have  
13 happened with the Nocatee development. Part of my testimony  
14 has to do with the need for water and sewer service within the  
15 area. In the testimony, I indicated that there was not at that  
16 time a need for water or wastewater service; however, that  
17 there would be a need should Nocatee receive proper approvals  
18 and those approvals go into effect. I can report now that  
19 St. Johns County and the City of the Jacksonville have approved  
20 comprehensive plan amendments for the Nocatee development.  
21 Those two local governments have also approved development and  
22 regional impact orders. Once more, the Department of Community  
23 Affairs has published notices of intent to find the  
24 comprehensive plan amendments in compliance; however, the  
25 amendments are not yet in effect, and I guess I need to explain



1 that.

2 Under Chapter 163 of the Florida Statutes  
3 comprehensive plan amendments do not go into effect until a  
4 final order is issued. In the case of the St. Johns County  
5 comprehensive plan amendment for Nocatee, two petitions have  
6 been received to challenge the in compliance determination.  
7 One petition has been dismissed by the Department due to legal  
8 insufficiency. A second petition from the Florida Wildlife  
9 Federation has been accepted and is being referred to the  
10 Division of Administrative Hearings. Because a valid petition  
11 has been received relative to the St. Johns County plan  
12 amendment, a final order cannot issued, cannot be deemed as  
13 issued until the administrative litigation is resolved.

14 Based on my experience and working with comprehensive  
15 plan administrative litigation, it would take between 4 and  
16 12 months, typically, to resolve a case and reach a final order  
17 which will allow a plan amendment to go into effect. I need to  
18 note also that the period of time within which third parties  
19 may challenge these plan amendments and the notice of intent  
20 hasn't elapsed yet. The window of 21 days for the St. Johns  
21 County amendment ends, in fact, today, May 9th, the end of  
22 business. Relative to the City of Jacksonville amendment, the  
23 Department has not received any petitions to challenge;  
24 however, the window of time through which challenges may be  
25 submitted runs through May 18th, so that window has not yet

1 closed.

2           So on the question of need for the water and  
3 wastewater service, I need to report that there is not now a  
4 need as demonstrated by the in effect comprehensive plans and  
5 there won't be a need unless those plan amendments go into  
6 effect. I do want to indicate, though, that the local  
7 governments and the developer have made substantial progress  
8 toward establishing these plan amendments in demonstrating the  
9 need. After all, the local governments have adopted the  
10 development orders. The Department has issued a favorable  
11 notice of intent; however, at this time, the amendments are not  
12 in effect.

13           MS. CIBULA: Chairman, may we have Mr. Gauthier's  
14 direct and supplement testimony with the updates indicated  
15 inserted into the report as though read?

16           CHAIRMAN JACOBS: Without objection, show the  
17 testimonies of Mr. Gauthier entered into the record as though  
18 read.

19 BY MS. CIBULA:

20           Q     Mr. Gauthier, did you also prefile three exhibits  
21 with your testimony, CRG-1, CRG-2, CRG-3?

22           A     Yes, I did.

23           Q     Do you have any corrections or changes to these  
24 exhibits?

25           A     Only to the extent of my previous discussion, the

1 update.

2 MS. CIBULA: Chairman, may we have those exhibits  
3 identified as a composite exhibit?

4 CHAIRMAN JACOBS: Show them marked as composite  
5 Exhibit 36.

6 (Exhibit 36 marked for identification.)

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## 1 DIRECT TESTIMONY OF CHARLES R. GAUTHIER

2 Q. What is your name and business address?

3 A. My name is Charles R. Gauthier, and my business address is 2555 Shumard  
4 Oak Boulevard, Tallahassee, Florida 32399-2100.

5 Q. By whom are you employed and what is your position?

6 A. I am employed by the Florida Department of Community Affairs (DCA) as  
7 Chief of the Bureau of Local Planning. My responsibilities include the review  
8 of comprehensive plans and developments of regional impact throughout the  
9 state including Duval and St. Johns Counties. I supervise 47 professional  
10 planners. Approximately 500 comprehensive plan amendment packages are  
11 reviewed each year.

12 Q. How long have you been employed with DCA?

13 A. I was appointed Bureau Chief in March of 1999. From October 1994 to  
14 March 1999, I served as Growth Management Administrator. During the 1980s,  
15 I was employed by DCA for approximately two and one half years.

16 Q. How long have you been employed as a professional planner?

17 A. I have been employed in the planning field since 1977 in the areas of  
18 environmental regulation, comprehensive planning, development review and  
19 growth management. A copy of my resume is attached as CRG-1.

20 Q. What is the purpose of your testimony?

21 A. Pursuant to the Memorandum of Understanding between the Public Service  
22 Commission (PSC or Commission) and the Department of Community Affairs (DCA),  
23 my staff conducted an analysis of the applications by Nocatee Utility  
24 Corporation (NUC) and Intercoastal Utilities, Inc. (Intercoastal) for  
25 original certificates to provide water and wastewater service in St. Johns and

1 Duval Counties, with respect to issues of concern for the DCA. The analysis  
2 for NUC's application was provided via a letter dated July 23, 1999, from  
3 myself. The analysis of Intercoastal's application was provided via a letter  
4 dated March 15, 2000, also from myself. These letters are attached as Exhibit  
5 CRG-2 and CRG-3. The purpose of my testimony is to authenticate and clarify  
6 these letters.

7 Q. Could you please summarize your comments regarding NUC'S and  
8 Intercoastal's applications?

9 A. The proposed applications for utility service by both utilities are  
10 inconsistent with the current local comprehensive plans of both St. Johns and  
11 Duval Counties. The areas at issue in both applications are predominately  
12 rural and designated as Rural/Silviculture on the Future Land Use Map of the  
13 St. Johns County Comprehensive Plan and as Agricultural on Duval County's  
14 Future Land Use Map. From a land use planning standpoint, there is no need  
15 for the expansion of central water and sewer into the rural area at the  
16 present time. In Duval County, the proposed service area is located in the  
17 Rural Service Area, which by definition in the Comprehensive Plan, is an area  
18 not intended to be developed with urban services or at urban densities during  
19 the long-range time frame of 2010. In St. Johns County, the lands in the  
20 proposed service area are located beyond the St. Johns Urban Service and  
21 Reserve Area boundaries.

22 Q. Could you explain how this determination of need might change?

23 A. Yes. The determination of need would change if the proposed Nocatee  
24 Development of Regional Impact (DRI) and associated comprehensive plan  
25 amendments are approved by the local governments and DCA. Provided these

1 | plans are approved, the land use designations would change and allow  
2 | development at an urban density and intensity. It would then be appropriate  
3 | for the area to be served by central water and wastewater.

4 | Q. Could you briefly explain what is the purpose of a Development of  
5 | Regional Impact?

6 | A. The Development of Regional Impact (DRI) program is authorized by Chapter  
7 | 380 of the Florida Statutes to allow for review of large developments by State  
8 | and regional agencies in order to ensure that regional impacts are addressed.  
9 | Because of its size, the Nocatee development must receive DRI approval and  
10 | provide mitigation for significant impacts on regionally important natural  
11 | resources and public facilities.

12 | Q. What is the estimated time required for the process to amend the local  
13 | comprehensive plans and for the Nocatee development to receive DRI approval?

14 | A. If the process proceeds without unusual problems, it is possible that  
15 | the comprehensive plan amendments and DRI could be approved by the end of this  
16 | year. The review process may, however, extend into calendar year 2001.

17 | Q. Is there a requirement in the DRI process that a developer specify a  
18 | utility service provider in its plan?

19 | A. Yes. The DRI review is based on the specific proposal of the applicant.  
20 | In this case, the developer has indicated that NUC will operate and maintain  
21 | internal utility service. The DRI application also indicates that water  
22 | supply will be wholesaled from JEA to NUC.

23 | Q. In your estimation, has NUC applied to the Commission prematurely for  
24 | a certificate to operate a utility?

25 | A. No, I don't believe so. The DRI process requires very detailed

1 | information in order to evaluate the development's regional impacts. It seems  
2 | consistent that since the owners of the development have formed a separate  
3 | utility to provide service to the area which is described in the DRI  
4 | application, that they have also applied to the PSC for certification of that  
5 | utility. Since the process for approval of the comprehensive plan amendments  
6 | and DRI is lengthy, it makes sense to allow concurrent processing with regard  
7 | to PSC approvals.

8 | Q. Would there be any impact in the DRI process if the Commission denied  
9 | NUC's application and approved Intercoastal as the utility service provider  
10 | for the Nocatee DRI?

11 | A. It may or may not extend the DRI approval process. The final result of  
12 | the DRI process will be a development order which authorizes specified  
13 | development including utility facilities. Although the applicant has  
14 | specified NUC as the utility, it is possible that the development order will  
15 | require that water and wastewater service be provided in a particular way,  
16 | which may be different than that originally proposed by the developer. If  
17 | that were to happen, then the DRI development order could reflect that change.  
18 | I do not anticipate any difficulties as long as there is a utility committed  
19 | to serving the development.

20 | Q. Does that conclude your testimony?

21 | A. Yes, it does.

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## 1 SUPPLEMENTAL TESTIMONY OF CHARLES R. GAUTHIER

2 Q. Did you previously state that the Nocatee development, as currently  
3 proposed, is inconsistent with the existing comprehensive plans of St. Johns  
4 and Duval Counties?

5 A. Yes, that is correct. However, the development could be consistent if  
6 the comprehensive plans for Duval and St. Johns Counties are amended.

7 Q. Has there been any activity by Duval County and/or St. Johns County to  
8 amend their comprehensive plans related to the Nocatee development?

9 A. Yes. The Department of Community Affairs (DCA) received for review a  
10 proposed amendment to the St. Johns County plan on June 1, 2000. The DCA will  
11 issue an Objections, Recommendations and Comments Report to St. Johns County  
12 by August 10, 2000. Also, Duval County recently sent its request for an  
13 amendment to its comprehensive plan. That amendment was received on June 14,  
14 2000, and the DCA will issue an Objections, Recommendations and Comments  
15 Report to Duval County by August 20, 2000.

16 Q. When would the comprehensive plan amendments be adopted and go into  
17 effect?

18 A. It is not possible to predict when adoption will occur since it will  
19 depend in part on how quickly the Development of Regional Impact (DRI) review  
20 proceeds. The DRI application is currently insufficient. Once it is declared  
21 sufficient it will be possible to generally forecast an adoption date for the  
22 comprehensive plan amendments and development orders. The comprehensive plan  
23 amendments would go into effect about two months after adoption, presuming  
24 that the DCA finds them in compliance and there are no challenges from  
25 affected persons. If there is a finding of not in compliance and/or if there



1 | is a third party challenge, then the effectiveness of the comprehensive plan  
2 | amendments would be delayed until the issues are resolved.

3 | Q. What does this mean?

4 | A. This means that the DRI analysis and the comprehensive plan amendments,  
5 | which are the two review processes which must be completed for the final  
6 | approval of the Nocatee development, have both been initiated and are  
7 | proceeding as prescribed by Chapters 380 and 163, Florida Statutes.

8 | Q. Does this conclude your testimony?

9 | A. Yes.

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1 BY MS. CIBULA:

2 Q Mr. Gauthier, could you please briefly summarize your  
3 testimony.

4 A Certainly. And I guess I should say good morning,  
5 Mr. Chairman and members of the Commission. It's an honor to  
6 be here today. It's also been an educational experience for  
7 the Department of Community Affairs to observe your hearing.  
8 For the last three years, we have had a relationship with the  
9 Public Service Commission in that the Department has assisted  
10 the Commission with the review of original and amended  
11 certificates for water and wastewater service. We, in fact,  
12 have a memorandum of understanding between our agencies in  
13 which the PSC provides these applications for DCA review. DCA  
14 provides a report back to your Staff on the comprehensive plan  
15 for the area where the service is being requested and report on  
16 what land use categories are within the area, what uses and  
17 intensities and densities of uses are permitted under the  
18 comprehensive plan. We offer an opinion on whether there's a  
19 need for central wastewater or water service given the  
20 comprehensive plan. Finally, under our memorandum, we are also  
21 available to provide testimony, which is what I'm here doing  
22 this week.

23 Pursuant to that memorandum and the exhibits that  
24 have been mentioned, on July 23rd of 1999, DCA did provide  
25 correspondence to the Public Service Commission regarding the

1 Nocatee Utility Corp application. In that, we indicated that  
2 there was not, at that time, a need for water or wastewater  
3 service. Within -- and let me explain the comprehensive plans  
4 as they currently exist. Within the City of Jacksonville, the  
5 area of Nocatee, approximately 2,000 acres, is designated for  
6 agricultural use. Under that particular agricultural land use  
7 category, one unit per 240 acres is allowed within the City of  
8 Jacksonville. Within the St. Johns County portion of the  
9 Nocatee area, the current in effect comprehensive plan calls  
10 for rural silvicultural use. In addition to silviculture, low  
11 density residential is allowed one unit per five acres. The  
12 July 23rd correspondence noted, however, that the Department's  
13 comments would be revised if the Nocatee comprehensive plan  
14 amendments were to be adopted and go into effect.

15 We also reviewed the Intercoastal Utilities' proposal  
16 and transmitted comments via a March 15th, 2000 letter. Again,  
17 we indicated that at that time there was not a need for  
18 service, but should Nocatee be approved and go into effect,  
19 then there would be a need for service. And that would  
20 complete my summary.

21 MS. CIBULA: The witness is tendered for cross.

22 CHAIRMAN JACOBS: Very well. Mr. Melson, you want to  
23 go first?

24 MR. MELSON: Yeah.

25 CROSS EXAMINATION

1 BY MR. MELSON:

2 Q I'll come up to the map just a minute. Mr. Gauthier,  
3 if I understand your testimony correctly, the Department's  
4 position would be that if the administrative litigation  
5 involving the comp plan amendments is resolved in the favor of  
6 the developer, at that point there would be a need for service  
7 to the Nocatee development; is that right?

8 A Yes, sir. In favor of the local governments, yes.

9 Q I'm sorry, in favor -- that's one issue where we're  
10 on the same side. Let me ask you, with respect to the portions  
11 of Intercoastal's requested service territory in St. Johns  
12 County -- and that's represented by crosshatches on this map.  
13 I'll represent to you that the Nocatee development is the light  
14 yellow -- would the Department consider there to be a need for  
15 service in the nonNocatee portions of St. Johns County where  
16 Intercoastal has requested an application?

17 A Generally, no. However, there are exceptions where  
18 there are existing development areas.

19 Q Do you know whether there are any existing  
20 development areas in the yellow or in the green?

21 A I do not know the exact locations of the  
22 developments. The Intercoastal proposal called for a service  
23 area of 21,900 acres. The Nocatee portion would consume  
24 13,000, almost 14,000 acres. The application materials also  
25 identified two other developments, a development known as

1 Walden Chase, a development known as Marsh Harbor. Also, the  
2 application indicated that service would be provided to some  
3 scattered development areas along U.S.1. That leaves, based on  
4 my calculations, about 8,000 acres unaccounted for either in  
5 those two developments, the existing areas on septic tanks or  
6 Nocatee.

7 Q And so would it be your testimony that for areas  
8 outside those, the Walden Chase, the Marsh Harbor,  
9 U.S.1 corridor, and existing developments on wells and septic  
10 tanks, that there would be no need for any balance of the area  
11 outside of Nocatee that Intercoastal may have applied for?

12 A The balance of the area within St. Johns County with  
13 the rural silvicultural designation would not have the need for  
14 service.

15 COMMISSIONER PALECKI: What does that mean, "rural  
16 silviculture"?

17 THE WITNESS: It's a future land use map category  
18 that's part of that County's plan, and within that category,  
19 certain uses would be allowed. The County intends under the  
20 plan as it's written that it remain a very low intensity, low  
21 density development, primarily silvicultural in orientation.

22 COMMISSIONER PALECKI: I'm unfamiliar with the term  
23 "silvicultural."

24 THE WITNESS: Yes, sir.

25 COMMISSIONER PALECKI: How do you define that term?

1 THE WITNESS: In the part of the State, pine trees,  
2 the commercial raising of tree crops.

3 COMMISSIONER PALECKI: Thank you.

4 BY MR. MELSON:

5 Q Mr. Gauthier, I've got a couple more questions that  
6 don't need the map. You indicated the Nocatee development  
7 orders had been approved by both St. Johns County and Duval  
8 County; is that correct?

9 A Yes, sir.

10 Q And the Department of Community Affairs is not the  
11 party that approves or issues development orders; correct?

12 A That's correct. I do need to add, though, that the  
13 Department of Community Affairs has the opportunity to appeal  
14 or challenge development orders. We don't approve them.

15 Q Have you made a decision on whether to challenge  
16 either of the two Nocatee development orders?

17 A Yes, sir.

18 Q And what is that decision?

19 A The Department elected not to appeal either of the  
20 development orders.

21 Q So that as we sit here today, those development  
22 orders are binding on the developer?

23 A I do not believe the development orders are  
24 effective.

25 Q Why is that?

1           A     The comprehensive plan amendments to which the  
2 development orders are tied are not yet effective.

3           Q     And on what is that -- on what is your understanding  
4 of the effective date of the development orders? What's that  
5 based on?

6           A     The effective date -- the development orders include  
7 language stating the effective date and generally express the  
8 effectiveness as being upon rendition or submittal or  
9 transmittal of the development orders. However, the  
10 development orders are interwoven in particular with the  
11 St. Johns County plan amendment, and I don't believe the  
12 development orders are in effect until the comprehensive plan  
13 amendment is in effect.

14          Q     Do you know whether St. Johns County and the City of  
15 Jacksonville believe that the development orders are in effect?

16          A     I do not know their opinion.

17          Q     Do you know what the vote was in St. Johns County to  
18 approve the Nocatee development order?

19          A     I understand it was a -- I'm afraid I do not. I was  
20 going to refer to the comprehensive plan amendment.

21          Q     Do you know what the vote was to approve the  
22 comprehensive plan amendment?

23          A     I understand it was a three-to-two vote.

24          Q     Does the Department of Community Affairs play a role  
25 if there were a request for an amendment to a development

1 order?

2 A Yes, sir.

3 Q And what is that role?

4 A The Department participates in the review process for  
5 an amendment to a development order both as a commenting and  
6 participating reviewer. Once a development order is approved  
7 by the local government, the Department of Community Affairs  
8 undertakes a consistency review relative to the requirements of  
9 Chapter 380 of the Florida Statutes.

10 Q So is it essentially the same role you have in the  
11 initial, it's you are not the decision maker, but you may have  
12 an appeal right if you believe there is a problem with the  
13 order?

14 A That's correct.

15 Q And is it, in fact, the -- in St. Johns County the  
16 elected Board of County Commissioners of St. Johns County and  
17 in Jacksonville the elected City Council of the City  
18 Jacksonville that are the decision-making bodies for their  
19 respective jurisdictions?

20 A That's correct.

21 Q And are you aware that the development orders for  
22 Nocatee contain a provision spelling out the circumstances  
23 under which particular modifications would or would not require  
24 approval by both counties as opposed to just one county or the  
25 other?



1 A The development orders do address that.

2 Q And finally, are you aware that under Chapter 367,  
3 which is the statute governing the Public Service Commission,  
4 that they are not required to consider consistency with the  
5 local comprehensive plan unless the local government has  
6 objected to an application that comes before them?

7 A Yes, sir.

8 Q And it is true, is it not, that neither St. Johns  
9 County nor the City of Jacksonville has filed an objection to  
10 Nocatee's application?

11 A I'm unaware of any objection.

12 MR. MELSON: Thank you. That's all I had.

13 CHAIRMAN JACOBS: Mr. Menton.

14 MR. MENTON: No questions.

15 CHAIRMAN JACOBS: Mr. Korn.

16 MR. KORN: No questions.

17 CHAIRMAN JACOBS: Mr. Wharton.

18 CROSS EXAMINATION

19 BY MR. WHARTON:

20 Q Morning, Mr. Gauthier.

21 CHAIRMAN JACOBS: Excuse me, Mr. Wharton. Do you  
22 have much cross? I don't want to rush you.

23 MR. WHARTON: A bit.

24 CHAIRMAN JACOBS: Okay. Why don't we take a break  
25 for ten minutes and come back?

1 (Brief recess.)

2 CHAIRMAN JACOBS: We'll go back on the record. And  
3 we're in cross examination of Mr. Gauthier. I believe,  
4 Mr. Wharton, you are up.

5 MR. WHARTON: Thank you, Mr. Chairman.

6 BY MR. WHARTON:

7 Q You would agree, Mr. Gauthier, that you have  
8 testified in your prefiled testimony about this DRI/ADA process  
9 that the Nocatee development went through?

10 A Yes.

11 Q And you're very familiar with that particular  
12 process, aren't you?

13 A Yes, I am.

14 Q In fact, those types of reviews are what you do in  
15 your job on a day-to-day basis?

16 A That's correct.

17 Q And the Bureau of which you are the chief has  
18 responsibility for overseeing the applications for developments  
19 of regional impact?

20 A That's correct.

21 Q And it would be your estimation that you've been  
22 involved in over a hundred ADA reviews over the years?

23 A Yes, sir.

24 Q In your experience, would you agree that it's not  
25 unusual for developers who are filing applications for

1 development approval for large tracts such as Nocatee to  
2 propose water and wastewater plant sites that are located  
3 within the development?

4 A I agree, that's not unusual.

5 Q And you would agree in this case that the Nocatee  
6 developer made a representation in the ADA about how utility  
7 service would be provided, and that is by bulk service from  
8 JEA, and that that was a given that was assumed by the staff as  
9 they went through and reviewed the application?

10 A That's correct.

11 Q And you would agree that you aren't aware of any  
12 investigation by the staff to find out whether there might be  
13 better alternatives than those mentioned in the ADA for utility  
14 service?

15 A That's correct.

16 Q And you're not aware of whether any of the other  
17 commenting agencies conducted any kind of independent  
18 investigation as to alternatives for utility service to the  
19 Nocatee development that weren't mentioned in the ADA?

20 A I am not.

21 Q Okay. Now, there are two ways to amend a development  
22 order, aren't there?

23 A Yes, sir.

24 Q One is a substantial deviation, and the another one  
25 is a notice of proposed change?

1 A That's correct.

2 Q Now, the notice of proposed change process is a  
3 simpler process than the substantial deviation process;  
4 correct?

5 A Yes.

6 Q And the substantial deviation process is necessary  
7 when there is a proposed change which creates a reasonable  
8 likelihood of additional regional impact; is that correct?

9 A That's generally correct, yes.

10 Q Okay. Now, if a modification to a development order  
11 is a substantial deviation, then the local government makes the  
12 decision to allow that; right?

13 A The local government either for a notice of change or  
14 a substantial deviation amendment would take the final action,  
15 either scenario.

16 Q Okay. In this case, if you wanted to modify the  
17 development order of St. Johns County so that the plants could  
18 be located in that portion of the development in St. Johns  
19 County, that decision would be made by the St. Johns County  
20 Commission; correct?

21 A That's correct.

22 Q And you have heard of development orders for large  
23 developments that have been modified in the past; correct?

24 A Certainly.

25 Q And you agree that any property owner within the

1 development has the ability to request a modification to a  
2 development order?

3 A Yes.

4 Q In your experience, is it true that usually in a  
5 development covering 15,000 acres, as this one does, that there  
6 is some way to locate water and wastewater plants in harmony  
7 with the rules and statutes that are applicable to DRIs?

8 A I don't know that. I have worked with many  
9 developments of 15,000 acres, but I think there are generally  
10 ways to accommodate those facilities on-site.

11 Q Do you agree that in this case it would have been  
12 possible for the applicant to have explained in the application  
13 that the question of utility services was still up in the air,  
14 and that there were two proposals for utility service, and that  
15 utility service was likely to be provided by one entity or the  
16 other?

17 MR. MELSON: Object to the form of the question.  
18 He's asking this witness to speculate on what the landowner and  
19 developer might put in a DRI application under circumstances  
20 that don't exist here.

21 MR. WHARTON: I'm asking what can possibly be put  
22 into a DRI application, or is it impossible to put that in an  
23 application. I'm not even talking about the Nocatee developer.

24 CHAIRMAN JACOBS: Restate your original question.

25 MR. WHARTON: Is it -- would it have been possible

1 for the applicant to have set forth in the application that  
2 this was not a settled question. The JEA/NUC deal was not a  
3 certainty. This process was still going on. This is a  
4 question that he answered in deposition. And certainly if I  
5 can't ask it, I'm going to proffer it, hoping that one of you  
6 will ask it or the Court of Appeals will attach some importance  
7 to it. These are the questions the Commissioners have been  
8 asking about, where these conditions came from. We've heard  
9 Mr. Miller, who has a vested interest, talk at length about  
10 this 15,000 acres isn't permissible unless the plants are  
11 off-site. Well, we have only got two witnesses here who know  
12 anything about that, really, and we've already heard from  
13 Ms. Silvers, and the other is Mr. Gauthier who's an expert at  
14 these areas.

15 CHAIRMAN JACOBS: I'll allow the question.

16 THE WITNESS: Could you repeat it, please.

17 BY MR. WHARTON:

18 Q Yes. You would agree that in this case it would have  
19 been possible for the applicant to have explained in the  
20 application that the question of utility services was  
21 unsettled, and that there were two proposals out there, and  
22 that utility service was likely to be provided by one or the  
23 other of these two entities?

24 A That sort of approach is potentially acceptable, yes.

25 Q And you think that kind of representation would have

1 been taken into account, and that there might have been likely  
2 conditions in the development order addressing that scenario?

3 A Yes, I think it would be likely there would be  
4 conditions addressing it.

5 Q And you understand that these development orders, and  
6 really, for the sake of this question, you can just concentrate  
7 on the development order in St. Johns County, does have this  
8 condition about the off-site facilities?

9 A That's correct.

10 Q You have heard quite a bit about that as you've sat  
11 out in the audience the last few days; right?

12 A I've sat one day and two hours. Yes, I have. It  
13 just seemed longer.

14 Q In your opinion -- do you agree, sir, that it's your  
15 opinion that those particular conditions in the development  
16 order would not seem to fall into the defined categories of  
17 substantial deviations?

18 A I don't follow that question. Substantial deviation  
19 category is a category of change, and there are defined limits  
20 above with the change is a substantial deviation. You're  
21 referring to conditions, not an amendment?

22 Q Well, I guess that is what I'm referring to. I'm  
23 referring to if you wanted to amend that particular condition.

24 A Okay. Of course, the review process would determine  
25 whether it's a substantial deviation or not. I suspect it

1 would be unlikely -- it would be a substantial deviation. It  
2 doesn't on the surface meet the standardize substantial  
3 deviation categories; however, one substantial deviation  
4 consideration is if additional significant impacts would be  
5 allowed to an area set aside for preservation of listed plants  
6 or animals. So if there were that kind of impact by virtue of  
7 some amendment allowing facilities on-site, it may trigger a  
8 substantial deviation.

9 Q But you would agree that based on what you know  
10 today, that type of modification wouldn't seem to meet any of  
11 the standard substantial deviation categories?

12 A It wouldn't seem to.

13 Q You gained some familiarity with the lands covered  
14 within the Nocatee ADA review during your agency's review of  
15 that application, didn't you?

16 A Yes.

17 Q And you didn't see anything in particular about the  
18 Nocatee development that would lead you to believe the property  
19 would not be permittable with on-site water and wastewater  
20 plants, did you?

21 A I did not.

22 Q And you agree that the primary concern of the  
23 commenting agencies in the DRI process is whether or not  
24 central service will be there when it's needed as opposed to  
25 which entity provides it; is that correct?



1 A That's correct.

2 Q And do you agree that you don't recall seeing in any  
3 of the materials in the application or in the development  
4 orders any indication that Intercoastal's proposal to serve  
5 those areas was something that was specifically considered?

6 A I've seen no indication that that was considered.  
7 That wasn't part of the application.

8 MR. WHARTON: That's all we have.

9 CHAIRMAN JACOBS: Very well. Any other questions,  
10 Commissioners? Staff.

11 MS. CIBULA: No redirect.

12 CHAIRMAN JACOBS: Then exhibits.

13 COMMISSIONER PALECKI: I have one question I'd like  
14 to ask.

15 CHAIRMAN JACOBS: I'm sorry. Go ahead, Commissioner.

16 COMMISSIONER PALECKI: In a circumstance where we  
17 have environmentally sensitive land, are off-site utility  
18 facilities, specifically water treatment and sewage treatment,  
19 is that generally viewed favorably, or doesn't it have any  
20 consideration one way or the other?

21 THE WITNESS: I think it depends very much on the  
22 specific facts, the particular proposal that's being put  
23 forward, what kind of environmentally sensitive land, how  
24 close, what kind of impacts are possible. I think the answer  
25 comes through the particular request. It's more hard to

1 generalize.

2 COMMISSIONER PALECKI: Do you have any opinion with  
3 regard to Nocatee?

4 THE WITNESS: Well, in reviewing the Nocatee site,  
5 there is a very significant wetland systems as well as  
6 estuarine systems that are proximate. The wetlands are in a  
7 north/south sort of serrated pattern, a pattern that follows up  
8 the coast. So there are certainly some geographic constraints  
9 as far as uplands and the sizing and location of uplands. It  
10 does appear to me, though, that there are substantial upland  
11 areas away from wetlands, away from estuarine systems where it  
12 would be possible to accommodate water or wastewater  
13 facilities. The area I would be concerned the most with would  
14 be wastewater treatment facilities and the method of discharge.

15 COMMISSIONER PALECKI: Thank you.

16 CHAIRMAN JACOBS: Exhibits.

17 MS. CIBULA: May we have composite Exhibit 36 moved  
18 into the record?

19 CHAIRMAN JACOBS: Without objection, show Exhibit 36  
20 as entered into the record.

21 (Exhibit 36 admitted into the record.)

22 CHAIRMAN JACOBS: Thank you, Mr. Gauthier.

23 (Witness excused.)

24 CHAIRMAN JACOBS: We are now back to Intervenor  
25 testimony. And I believe --

1           MR. MELSON: I believe the first one would be  
2 Mr. Skelton, but before we do that, I've got one preliminary  
3 matter. I woke up at 5:00 this morning puzzling over a  
4 question that Commissioner Jaber has been asking for the past  
5 couple of days, which is what policy ramifications if the  
6 Commission should decide to deny both certification  
7 applications that are before it, and, you know, would JEA be  
8 able to serve on a retail basis.

9           That is not -- I think that is as much or probably  
10 more a legal question than a policy question. And we, frankly,  
11 don't have the witnesses in this hearing, I believe, on either  
12 side that are the ones that would answer that. And it goes  
13 the -- as Paul Harvey says, you need to know the rest of the  
14 story. There is a two-year history now in St. Johns County  
15 with the Nocatee development, with JEA, with JEA's acquisition  
16 of JCP Utilities with an interlocal agreement, with an  
17 ordinance, with a resolution, and much of that would have come  
18 in had the County not withdrawn last Friday. And we  
19 necessarily would have developed through cross examination of  
20 some nonlawyer county witnesses sort of what the County's  
21 position is.

22           COMMISSIONER JABER: Did anyone think to bring the  
23 County in as an indispensable party?

24           MR. MELSON: I don't believe they are an  
25 indispensable party, and besides, they were here. And we

1 certainly didn't expect them to withdraw on the Friday before  
2 the Monday.

3 MR. WHARTON: Yeah, they were here until the day  
4 before trial.

5 MR. MELSON: Anyway, long story short, I think if we  
6 are able to put in perspective what that background has been,  
7 we will be able to persuade you that it is, really, your  
8 obligation under Chapter 367 to act on the applications before  
9 you, and that you should not either as a matter of policy or  
10 law deny both of them and hope that JEA might then serve at  
11 retail. I tried to prepare that presentation for this morning,  
12 and I've got at least 15 minutes, and it isn't finished yet.  
13 And I know the other parties have not had a chance to think  
14 about it. What I would like to propose is that we mark as an  
15 exhibit, not for the truth of what's in it, but for its  
16 statement of the legal position of the County, Mr. Bill Young's  
17 direct testimony and exhibits, and that we then in Tallahassee  
18 at some point before the agenda conference schedule an oral  
19 argument on the legal and policy question of, should you ever  
20 deny both competing applications, and in this case, what  
21 ramifications might there be of denial.

22 I think that's going to be the best way to tell you  
23 the story. If not, I'm going to try to ask some supplemental  
24 questions to some of my witnesses and see if we can get it out  
25 piecemeal, but I don't think you will get all the information

1 you need to make an educated decision.

2 CHAIRMAN JACOBS: Is there agreement on this,  
3 Mr. Wharton?

4 MR. WHARTON: Well, I was sleeping like I baby at  
5 5:00 a.m.

6 MR. MELSON: I had finished reviewing Mr. Perkins'  
7 exhibit.

8 CHAIRMAN JACOBS: Somehow I'm relieved to hear that.

9 MR. WHARTON: I do have a problem with the  
10 supplemental questions because I think we've gone live enough.  
11 Frankly, I don't have a problem with that procedure except for  
12 the supplemental questions, and I had intended the whole time  
13 to move Mr. Young's deposition into evidence. And I think  
14 there is a phrase here in the civil rules that are incorporated  
15 by the uniform rules about -- that such exceptional  
16 circumstances exist as to make it desirable in the interest of  
17 justice, that we could do just that, and perhaps that fits  
18 neatly also with what Mr. Melson has proposed. So I think the  
19 record should -- I don't want to say we should frustrate the  
20 County's attempt to frustrate the record, but I think it would  
21 be helpful to have some of those things in the record.

22 CHAIRMAN JACOBS: Mr. Menton or Mr. Korn, do you want  
23 to be heard on this?

24 MR. KORN: Mr. Chairman, we would have no objection  
25 to late introduction of either Mr. Young's prefiled or his

1 deposition.

2 MR. MENTON: We're willing, we're easy. We'll go  
3 along with what the consensus of the Commission is. We would  
4 just reiterate that, obviously, there is some disagreement with  
5 respect to Mr. Young's testimony. It includes what we believe  
6 is a lot of legal conclusions, and we were probably going to  
7 object if it was offered in if it came at hearing. But just  
8 noting those objections in terms of its legal conclusions, we  
9 don't disagree that it's helpful to give you some perspective  
10 on some of the background and what's been going on.

11 MR. KORN: Yeah, if I might, Mr. Chairman. As  
12 Mr. Melson indicated, I don't think that any of that is  
13 necessarily going to be offered for the truth of its  
14 assertions. I think it's going to be merely offered for  
15 whatever informational purposes and for whatever weight the  
16 Commission deems it appropriate in light of the fact that one  
17 piece of the puzzle voluntarily removed itself on the literally  
18 eve of trial. Now, to the -- I guess we still haven't  
19 addressed Mr. Melson's suggestion as to whether additional  
20 testimony would be helpful to the Commission elicited from the  
21 witnesses today since you may be hearing part of Mr. Young's  
22 assertions, and perhaps they can be flushed out through other  
23 witnesses. I mean, that's still an issue that maybe -- unless  
24 Mr. Melson is comfortable with that as it is.

25 MR. MELSON: Mr. Chairman, let me tell you what I

1 would ask. I would ask that Mr. Young's prefiled direct  
2 testimony, which as Mr. Menton indicated is mostly legal  
3 conclusions, and it's got a couple of relevant documents  
4 attached to it, that be marked as an exhibit; that it be  
5 admitted not for the truth of anything in it but simply to  
6 reflect the position, one legal position the County has at one  
7 time taken. And with that, I think we will have -- with what  
8 is already in the record from other witnesses, we will have  
9 everything we need to then tell you the rest of the story.

10 COMMISSIONER JABER: How can we legally do that?  
11 That is a County witness. The County has withdrawn its case.  
12 How can you try to put his testimony in? He's not here.

13 MR. MELSON: If I was trying to put it in for the  
14 truth of it, I could not.

15 MR. WHARTON: And actually, Commissioner, I don't  
16 know that I agree with that. Again, I'm going to say as many  
17 times as I can that prefiled testimony is okay until it becomes  
18 the engine pulling the train, and it changes the outcome of the  
19 proceeding. If this were DOAH, I might have put a subpoena on  
20 Mr. Young, and he'd be here and ask him these questions. And  
21 so I'm prepared independent of this to make argument that the  
22 deposition should come in for the truth of the matter asserted.  
23 It's sworn testimony. The other stuff is not sworn testimony.  
24 It certainly can't come in for the truth.

25 COMMISSIONER JABER: Mr. Melson, can you satisfy my

1 concern and answer my concern in your brief? And my simple  
2 question just in layman's terms is: What ramifications are  
3 there if the Commission denies both applications? Can't you  
4 address that in the brief?

5 MR. MELSON: In a very summary way, I can address it  
6 right now. The ramification is, the County has staked out a  
7 legal position under which the County would claim JEA cannot  
8 serve. That matter would wind up likely in the courts between  
9 JEA and the County. All the time, Nocatee can't go forward.  
10 There's a need for service, but two governmental agencies are  
11 fighting it out in court. Whereas, if you grant Nocatee a  
12 certificate, we believe that that would take precedence over  
13 anything else the County might do. Again, even that case might  
14 go to court, but we believe under the Lake Utility Service's  
15 decision, that result is pretty clear.

16 COMMISSIONER JABER: Well, and that's -- see, and it  
17 sounds like a legal answer, and you-all the day before  
18 yesterday said you would address the Lake Utility's case in  
19 your brief. To satisfy your concern, is there anything wrong  
20 with just identifying another issue that you-all can address in  
21 the brief?

22 MR. MELSON: The only one additional thing I would  
23 like to have, and I don't know if it is an exhibit to someone  
24 else's testimony, is there is an interlocal agreement between  
25 St. Johns County and JEA. And in order to fully address the



1 legal issue in the brief, I believe that document needs to be  
2 part of the record.

3 COMMISSIONER JABER: Can we take official recognition  
4 of an interlocal agreement?

5 MS. CIBULA: I think we could, Commissioner.

6 MR. MELSON: Yes.

7 COMMISSIONER PALECKI: I would like to see that  
8 matter addressed in the brief. And I would like to see an  
9 additional matter, and I don't want it addressed now, but I  
10 believe that the last witness who testified stated that there  
11 was a pending complaint or petition by a wildlife federation of  
12 some type, and that there was not yet a need in Nocatee, and it  
13 was unclear as to whether or not there would be a development.  
14 And I have an issue as to whether or not we should defer our  
15 decision until after the Department of Community Affairs makes  
16 a determination.

17 MR. MELSON: And Commissioner Palecki, we will be  
18 happy to address that in the brief. As in any -- there are not  
19 many of them. As in 15,000 acre developments, there are a lot  
20 of pieces that have to come together, and simply because one  
21 piece gets appealed, in our view, doesn't mean you should stop  
22 the other pieces. But we will be happy to address that in the  
23 brief.

24 COMMISSIONER PALECKI: Thank you.

25 CHAIRMAN JACOBS: So it sounds like we have a

1 resolution to -- another thought I had, and we were just  
2 discussing this, whether or not to take official notice of  
3 JEA's charter. Is the interlocal agreement adequate? Because  
4 it appears that that's getting a lot of attention.

5 MR. MENTON: Mr. Chairman, I think the only place the  
6 charter came up was in Mr. Young's prefiled testimony. And  
7 just to warn you, the charter consists of a special act that  
8 was enacted by the Legislature a while ago. There have been  
9 some amendments to the special act. Then pursuant to the  
10 authority in the special act, there have been numerous  
11 ordinances that have been adopted. It's not an easy document  
12 to assemble because it really -- it comes in bits and pieces.

13 CHAIRMAN JACOBS: If you don't think you need it to  
14 make the story, I don't necessarily need to have it.

15 MR. MELSON: Chairman Jacobs, let me give you another  
16 reason I don't think we need it to make the story, because at  
17 the end of the day, I don't think this Commission is going to  
18 decide whether JEA has the legal authority or not.

19 MR. MENTON: And I don't --

20 MR. MELSON: But you need to consider, and we will  
21 ask you to consider, the positions people may take about that  
22 and the time it might take to get it resolved and how it might  
23 delay this development or ultimately be the death now for this  
24 development if it dragged on long enough. And so it's not  
25 who's right or wrong. It's what position would be taken if you

1 were to deny both certificates, and that's what I think we need  
2 to address.

3 CHAIRMAN JACOBS: Okay. It sounds like it doesn't  
4 seem to be the case that anybody deems it necessary, so I will  
5 withdraw that suggestion.

6 Now, let's move to the second part of the proposal;  
7 that being that there will be some need for further argument.

8 COMMISSIONER JABER: The issue I would propose that  
9 that brief, Chairman, would be what ramifications are there if  
10 the Commission denied both applications. And then in addition  
11 to identifying that issue, just taking official recognition of  
12 the interlocal agreement, and that all would be sufficient.

13 MR. MELSON: And, Commissioner Jaber, I think that's  
14 a reasonable resolution. I would like to have the opportunity  
15 on reflection when we file the brief, if we think oral argument  
16 would be helpful, to make a separate request for oral argument  
17 at that time, and after you-all had reviewed the briefs, you  
18 could decide as you normally do whether you think oral argument  
19 would help or not.

20 CHAIRMAN JACOBS: Sounds like a reasonable process.

21 MS. CIBULA: There is a provision in the rule that  
22 says once a final hearing has been ended, parties can't  
23 participate at that agenda conference, but there is a provision  
24 that said oral or written presentation by any party whether by  
25 way of objection, comment, or otherwise is not permitted unless

1 the Commission is considering new matters related to but not  
2 addressed at the hearing. So I don't know whether that would  
3 fall within that exception to allow the parties to participate  
4 at the agenda conference by oral argument.

5 CHAIRMAN JACOBS: I don't think we wanted today to  
6 absolutely establish oral argument, but what I hear gives us  
7 latitude to make that decision, and we can proceed on. I think  
8 that would be adequate to proceed from here.

9 MR. MELSON: And, Chairman Jacobs, I understand you  
10 are granting official recognition. Let me just give you the  
11 document and where you can find it.

12 CHAIRMAN JACOBS: Okay.

13 MR. MELSON: It is the St. Johns County/JEA Water and  
14 Wastewater Interlocal Agreement. It is Exhibit WGY-3 to  
15 Mr. Young's testimony, and it consists of 59 pages, including  
16 attachments.

17 CHAIRMAN JACOBS: Very well. We will note that that  
18 Exhibit 1 is amended to include -- Exhibit 1 is amended to  
19 include that document. And I assume, Staff, you have a copy of  
20 the exhibit?

21 MS. CIBULA: Yes.

22 CHAIRMAN JACOBS: Okay. Very well.

23 MR. WHARTON: Mr. Chairman, if that concludes that  
24 matter, while we are discussing this --

25 CHAIRMAN JACOBS: I think does.

1           MR. WHARTON: Okay. Well, while we're on the  
2 subject, I want to move one tenus that the deposition of  
3 Bill Young be marked as an exhibit and moved into evidence.  
4 The rules of civil procedure provide under Rule 1.330, use of  
5 depositions in court proceedings, which is applicable to this  
6 proceeding under the uniform rules, that the deposition of a  
7 witness, whether or not a party, may be used by any party for  
8 any purpose if the court finds (e) upon application and notice  
9 that such exceptional circumstances exist as to make it  
10 desirable in the interest of justice and with due regard to the  
11 importance of presenting the testimony of witnesses orally in  
12 open court to allow the deposition to be used.

13           I don't think you can get hung up on the argument,  
14 well, if the County withdrew, is he a witness, because  
15 Provision A says the witness is dead. So I don't think it's  
16 just someone who's a witness. It's anyone who has been  
17 deposed. If you're holding his deposition and he's dead or  
18 he's a skilled witness, which this deposition also probably  
19 proves Mr. Young is, I believe it's admissible, and I believe  
20 it sets forth matters that should be taken into account by the  
21 Commission.

22           CHAIRMAN JACOBS: Mr. Wharton, what are the  
23 circumstances which you deem warrant this?

24           MR. WHARTON: Certainly, the fact that the County's  
25 withdrawal at the 11th hour and 59th minute and 59th second is

1 something that's unprecedented to my knowledge, and that the  
2 parties have conducted their activities in accordance with the  
3 reasonable assumption that the County would participate in the  
4 case, and that the County's withdrawal has thus created an  
5 evidentiary vacuum which might otherwise have been filled if  
6 the County had withdrawn at perhaps in a more timely fashion,  
7 for lack of a better phrase.

8           CHAIRMAN JACOBS: The essential legal issue that the  
9 County joined into -- I guess there were two. The one we've  
10 just addressed; the other was the County's comments as to the  
11 quality of particular applications before us. It occurs to me  
12 that the County's comments as to those applications were not to  
13 the level of being overly persuasive. Unless I'm mistaking, I  
14 did not take the County's comments as to the applications as  
15 being -- going to the very fundamental essence and merits of  
16 the applications, and so I cannot see Mr. Young's comments on  
17 those would be that critical.

18           As to the legal issue, I think we have developed a  
19 mechanism by which you can get at some of those legal issues.  
20 What else would there be?

21           MR. WHARTON: Well, it might not surprise you that my  
22 agenda has more to do with the case I'm putting on than the  
23 sanctity of the record. I mean, this deposition -- forget what  
24 he said in his prefiled testimony -- is something that I  
25 believe can come in under the rules. And for instance, it

1 makes clear in abundance that it's the position of the County,  
2 we don't want those rascals, JEA, coming in here. They are  
3 going to take over the whole northern part of the County. And  
4 I'm speaking for the Board of County Commissioners. And I  
5 think that's this Commission ought to consider, and it's sure  
6 something I was going to get out of Bill Young if he'd  
7 appeared.

8 CHAIRMAN JACOBS: It's -- and what I -- if I recall,  
9 the counterposition to that, I think, by Staff is that the  
10 preference of either the developer and/or third parties as to  
11 who would provide service is not a driving factor in the final  
12 decision.

13 MR. WHARTON: I don't believe those cases are  
14 directly applicable to this scenario, and I think this  
15 Commission has in their minds that there are four utilities  
16 involved here and that any one of them could wind up providing  
17 retail service to the Nocatee development. I just believe it  
18 fills an evidentiary vacuum. I seriously doubt it will be  
19 objected to by any other party. I could be wrong.

20 MR. MELSON: I think you may be wrong.

21 MR. WHARTON: Yeah. And I just think it's admissible  
22 under the rules and that we have an extraordinary circumstance  
23 here. I mean, I've got to tell you, I thought Mr. Young was  
24 the only witness in this proceeding I was really going to kill.  
25 I had a good outline for him based on this deposition.

1 CHAIRMAN JACOBS: That stretches the bounds of  
2 credibility, Mr. Wharton.

3 MR. WHARTON: Well, I just mean that I thought that  
4 there was a lot of good evidence that was going to come from  
5 Mr. Young that he said in his deposition which we felt was  
6 relevant to our perspective of the case.

7 CHAIRMAN JACOBS: I understand, I understand.

8 MR. WHARTON: Mr. Young is a very credible witness,  
9 and he really knows the lay of the land in St. Johns County.  
10 And I think that's all established in his deposition, and  
11 something that ought to be taken into account.

12 CHAIRMAN JACOBS: I understand. Mr. Menton.

13 MR. MENTON: Thank you, Mr. Chairman. Real quickly.  
14 This is news that we haven't really had time to digest it. But  
15 I do want to point out, I think Mr. Wharton is just wrong in  
16 terms of the provision of the rules. That provision in the  
17 rules that he talks about deals with witnesses, and it only  
18 deals with witnesses. Mr. Young is not a witness in this  
19 proceeding. Although he was at one point in time, he is not a  
20 witness in this proceeding. He voluntarily absented himself  
21 from the proceeding, and the provision that he's talking about  
22 only goes to when during the course of a legal proceeding you  
23 can offer in a deposition. That provision only applies to  
24 witnesses. It's not applicable. So the legal authority that  
25 he's relying upon is wrong, and just from that standpoint, I



1 don't think we can let the deposition --

2 MR. WHARTON: Provision A says that the witness is  
3 dead. I just don't know how that fits with what Mr. Menton  
4 just said.

5 MR. MELSON: It doesn't say the person is dead.

6 CHAIRMAN JACOBS: Mr. Melson, you had a point?

7 MR. MELSON: That is the first one. It doesn't say  
8 the person is dead.

9 CHAIRMAN JACOBS: I hope we communicate to Mr. Young  
10 that he's not.

11 MR. MELSON: I think Mr. Young may actually be in the  
12 back listening to this. Mr. Young's deposition took place over  
13 two different days. It went to a County plan of service to  
14 serve Nocatee which the County is now not pursuing at least in  
15 this forum. It went to a lot things that have nothing to do  
16 with this proceeding. I, frankly, have not reread Mr. Young's  
17 deposition since it was taken, but there is a lot in it that I  
18 would not want come into the record for the truth of what it  
19 purports to be, because I would have cross examined him on it  
20 and shown what I think were some -- that some of what he was  
21 testifying to were positions, not things that should come into  
22 the record. And for that reason, I've got to oppose the  
23 request.

24 MR. WHARTON: May I close, Mr. Chairman, briefly?

25 CHAIRMAN JACOBS: Yes, very briefly.

1 MR. WHARTON: I think this argument about -- that  
2 some of the statements in there shouldn't come in for the truth  
3 of what they purport to be, that's hearsay language. This is  
4 sworn testimony. This man stood for deposition all day long  
5 for two days, and that was the opportunity to engage in cross.

6 CHAIRMAN JACOBS: So you maintain that Mr. Young is a  
7 witness, and so the rule applies?

8 MR. WHARTON: Yes, I do.

9 CHAIRMAN JACOBS: Okay. Staff, have you --

10 MR. KORN: Mr. Chairman, if I might.

11 CHAIRMAN JACOBS: Very briefly.

12 MR. KORN: I just observed that we seem to be taking  
13 a bit different standard with Mr. Forrester's. You know,  
14 unusual circumstances came up. There was discussion about what  
15 portions of the deposition were going to be admitted and, in  
16 fact, agreement between counsel as to how to resolve that --

17 MR. WHARTON: It's changed, Michael.

18 CHAIRMAN JACOBS: Excuse me.

19 MR. KORN: It's changed.

20 MR. WHARTON: We've decided to put in all of  
21 Mr. Forrester's deposition.

22 MR. KORN: I see.

23 MR. WHARTON: Sorry. I had not told Mr. Korn that.  
24 There's just not time to do it the other way. The transcripts  
25 come out two weeks from today.

1 CHAIRMAN JACOBS: Did that change --

2 MR. KORN: That was news to me until about five  
3 seconds ago.

4 MR. WHARTON: I'm sorry, Michael. My apologies.

5 CHAIRMAN JACOBS: Very well. Do you have a  
6 recommendation, Staff?

7 MS. CIBULA: Staff doesn't believe that Mr. Young's  
8 deposition should be entered into the record. I think that  
9 provision has to do with the witness being unavailable, and no  
10 attempts have been made to have Mr. Young subpoenaed for this  
11 hearing or request that he be produced at the hearing;  
12 therefore, I don't think that would be applicable.

13 CHAIRMAN JACOBS: Okay. I agree that the timing is  
14 an issue because probably had there been sufficient notice, you  
15 probably could have done a subpoena or some other things, but  
16 the truth of the matter is, he is not a witness. The party  
17 withdrew, and therefore, he ceased to be a witness, and I think  
18 the rule would apply to him only as a witness. So we will  
19 deny.

20 MR. WHARTON: Mr. Chairman, just because me and the  
21 five of you don't sit around and chat much, can I subpoena a  
22 witness in a PSC proceeding and drag him in and use him live in  
23 the future? I'll remember that.

24 CHAIRMAN JACOBS: If I'm not mistaken, I would defer  
25 to counsel. But I think I'm of the opinion that we can

1 subpoena a witness, yeah. Yeah, it has happened. I'm informed  
2 by very experienced counsel that it has happened.

3 COMMISSIONER JABER: I would encourage you to go  
4 through the Division of Records and Reporting and file a  
5 request --

6 MR. WHARTON: I understand. Maybe I should make a  
7 more tenus motion that you order him to come up here and sit  
8 down.

9 COMMISSIONER JABER: And then the second thing I  
10 would do is encourage you to read the uniform rules on  
11 subpoena, which it tells you --

12 MR. WHARTON: I have, but it's just the prefiled  
13 testimony is a different animal.

14 MR. MELSON: I have seen both situations. I've seen  
15 situations in which it was allowed in which people were told,  
16 well, you subpoenaed somebody, but he didn't prefile testimony,  
17 so you can't put him on.

18 MR. WHARTON: That's the concern.

19 MR. MENTON: I think we need to get Harold to do a  
20 briefing paper on that one.

21 CHAIRMAN JACOBS: This case is setting many  
22 precedents.

23 COMMISSIONER DEASON: While we're on this, just a  
24 question. Who defines the term "witness"? Who makes that  
25 determination as to who is a witness? Is it this Commission,

1 or is it the parties who determine who a witness is?

2 MR. MELSON: I assume -- that's the construction of a  
3 particular Florida Rule of Civil Procedure. I assume it's  
4 whatever construction the courts have put on it. Because of  
5 the way the term "witness" is used, it appears to me that it  
6 means a person who was -- who was supposed to be here in person  
7 and couldn't be. But as I sit here today, I'm not familiar  
8 with any judicial interpretations of it.

9 COMMISSIONER JABER: I just want to say, I think we  
10 should get CLE credit for the last three days.

11 MR. KORN: A witness is someone who intends to be a  
12 witness.

13 MR. WHARTON: Well, I've had witnesses who didn't  
14 intend to be witnesses.

15 MR. KORN: Voluntarily or involuntarily.

16 MR. WHARTON: Yeah, there you go.

17 CHAIRMAN JACOBS: So that takes us finally then to  
18 Mr. Skelton.

19 MR. MELSON: Mr. Skelton, yes. Let me call him. And  
20 while he's coming to the stand, Commissioner Palecki, I didn't  
21 write down the last question you asked that we brief, and I  
22 know it will be in the transcript, but can you tell me one more  
23 time just so I can write it down?

24 COMMISSIONER PALECKI: I'm just interested as to -- I  
25 think we heard from the Department of Community Affairs --

1 MR. MELSON: Oh, the finality --

2 COMMISSIONER PALECKI: -- that they had not found the  
3 need yet for the development, and whether or not that should  
4 result in a deferral of our decision as opposed to not granting  
5 a certificate for either party.

6 MR. MELSON: Sure. Thank you.

7 COMMISSIONER DEASON: Excuse me. I just want to  
8 understand the status of Mr. Forrester's deposition. The  
9 parties have now agreed to put that deposition in in its  
10 entirety?

11 MR. WHARTON: Let me address that.

12 MR. MELSON: Nocatee had agreed with Mr. Wharton that  
13 if he preferred to do that, we would not object to it. We are  
14 also willing to go through and identify the portions we  
15 affirmatively want to put in. We were trying to accommodate  
16 his request to save time.

17 MR. WHARTON: Yeah. As we looked at the schedule and  
18 the transcripts are due two weeks from today, which is pretty  
19 fast, and the -- obviously, this should be filed because it  
20 should be -- the redirect should be because it should be part  
21 of the transcripts. It just was very difficult. The schedule  
22 we finally came up with last night, and that I woke up at  
23 6:00 a.m. thinking about, was that I had given them seven days  
24 or so to decide what they want to do and given myself two days  
25 to do the prefiled. And I just think and what I would suggest

1 and what I have not discussed with Mr. Menton and Mr. Korn have  
2 just heard about because Mr. Melson and I just discussed this,  
3 let's just put it all in. I think it's fine. I've read that  
4 deposition several times.

5 And then the prefiled redirect, I would file the day  
6 before the transcripts are due, so that they can be  
7 incorporated into the transcript by the court reporter, and if  
8 there is a motion practice after that, the other side can go at  
9 it.

10 COMMISSIONER DEASON: Parties -- what I understand is  
11 that Mr. Korn, Mr. Menton may not have had a lot of time to  
12 digest that. But, Mr. Melson, you're in agreement with that?

13 MR. MELSON: I'm not sure I think it's the best, but  
14 I'm in agreement with it for efficiency purposes, yes, sir.

15 MR. KORN: And, Commissioner, I think I am, but if I  
16 could have just a few moments to think about it and maybe even  
17 occasion to look at the deposition, again, I'll be able to, I  
18 think, put on the record our position.

19 COMMISSIONER DEASON: Perhaps we can discuss it one  
20 final time before we conclude to make sure --

21 MR. KORN: I don't think it's going to be a major  
22 issue. I just, you know, wasn't expecting that surprise.

23 MR. WHARTON: Well, we'll work it out today?

24 CHAIRMAN JACOBS: Yes.

25 MR. KORN: Oh, yeah, I think so.

1 CHAIRMAN JACOBS: Yes. Very well. You may proceed,  
2 Mr. Melson.

3 H. JAY SKELTON

4 was recalled as a witness on behalf of Nocatee Utility  
5 Corporation and, having been previously sworn, testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MR. MELSON:

9 Q Mr. Skelton, you understand you are still understand  
10 oath?

11 A Yes, I do.

12 Q Have you prepared and filed Intervenor direct  
13 testimony dated March 17, 2000 consisting of four pages?

14 A I have.

15 Q Do you have any changes or corrections to that  
16 testimony?

17 A I do not.

18 Q If I were to ask you the same questions today, would  
19 your answers be the same?

20 A Yes.

21 MR. MELSON: I'd ask that Mr. Skelton's Intervenor  
22 direct testimony be inserted into the record as though read.

23 CHAIRMAN JACOBS: Without objection, show  
24 Mr. Skelton's Intervenor direct is entered into the record as  
25 though read.



1 BY MR. MELSON:

2 Q You had attached to that testimony one exhibit, a  
3 map, marked as HJS-3; is that correct?

4 A Yes.

5 MR. MELSON: Mr. Chairman, I ask that the map, HJS-3,  
6 be marked as Exhibit 37.

7 CHAIRMAN JACOBS: Show it marked as Exhibit 37.

8 (Exhibit 37 marked for identification.)

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1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2                   INTERVENOR DIRECT TESTIMONY OF  
3                   H. JAY SKELTON  
4                   ON BEHALF OF  
5                   NOCATEE UTILITY CORPORATION AND DDI, INC.  
6                   DOCKET NOS. 990696-WS AND 992040-WS  
7                   March 17, 2000  
8  
9   **Q.**   Please state your name and business address.  
10  A.   My name is H. Jay Skelton. My business address is 4310  
11       Pablo Oaks Drive, Jacksonville, Florida 32224.  
12  **Q.**   By whom are you employed and in what capacity?  
13  A.   I am President of DDI, Inc. I am also President of  
14       DDI's wholly-owned subsidiary, Nocatee Utility  
15       Corporation (NUC).  
16  **Q.**   Have you previously filed direct testimony in support  
17       of NUC's certificate application in these consolidated  
18       dockets?  
19  A.   Yes.  
20  **Q.**   What is the purpose of your intervenor direct  
21       testimony?  
22  A.   The purpose of my testimony is to summarize some of the  
23       reasons that the Commission should deny Intercoastal's  
24       application for a certificate to serve the area that  
25       makes up the Nocatee development and some adjacent land

1 in St. Johns County that is owned by affiliates of DDI  
2 but is not planned for development. This testimony is  
3 offered both on behalf of DDI, Inc. which (through a  
4 wholly-owned affiliate) owns all of the land within the  
5 boundaries of Nocatee and on behalf of NUC, which is  
6 our subsidiary that has filed its own application to  
7 serve the Nocatee development.

8 **Q. Have you had your engineers prepare a map which shows**  
9 **the land holdings of DDI, Inc. and related parties in**  
10 **the vicinity of the Duval/St. Johns County line?**

11 A. Yes, I have attached a copy of that map to this  
12 testimony as Exhibit \_\_\_ (HJS-3). In addition to the  
13 DDI/Estuary/Davis family land holdings, this map also  
14 shows the Nocatee development, Intercoastal's existing  
15 service territory, and Intercoastal's requested service  
16 territory extension. The boundaries of NUC's proposed  
17 service territory are the same as the boundaries of the  
18 Nocatee development.

19 **Q. Is there a need for service in the portion of**  
20 **Intercoastal's proposed service territory that consists**  
21 **of DDI/Estuary/Davis family lands in St. Johns County**  
22 **outside of the Nocatee development?**

23 A. Absolutely not. There are no plans to develop the  
24 lands owned by DDI and its related parties that fall  
25 outside of the boundaries of Nocatee. Thus there is no

1           foreseeable need for utility service to these lands.  
2           In this situation, no one should be granted a  
3           certificate to serve these areas.

4   **Q.   Is there a need for water, wastewater and reuse service**  
5   **for the Nocatee development?**

6   A.   Yes.  As I stated in my direct testimony, utility  
7       service will be needed beginning in 2001 to serve the  
8       Nocatee development.  That service will have to be  
9       expanded in phases to meet growth over a period of  
10      approximately 25 years.

11  **Q.   Does DDI want the Nocatee development to receive**  
12  **utility service from Intercoastal?**

13  A.   No.  DDI wants to receive service from NUC.  When  
14       Intercoastal filed an application with St. Johns County  
15       in March 1999 for a certificate to serve the St. Johns  
16       County portion of the Nocatee development, DDI  
17       intervened and successfully opposed that application.  
18       Nothing has happened since that time to change our  
19       position that NUC is better qualified than Intercoastal  
20       to provide service to Nocatee.

21  **Q.   Why does DDI not want Intercoastal to serve the area?**

22  A.   There are several reasons.

23           As landowner, we have instructed the developer and  
24       our consultants that the plans for development of  
25       Nocatee must reflect a high degree of environmental

1 sensitivity. We have been advised that by retaining  
2 control over utility planning and operations, we are in  
3 the best position to ensure that our environmental  
4 goals are realized. As Mr. Miller will testify in more  
5 detail, there are at least two important ways in which  
6 Intercoastal's plan of service is inferior to NUC's  
7 plan of service. First, Intercoastal's plan involves  
8 the construction of on-site water and wastewater  
9 treatment facilities, rather than having those  
10 facilities located off-site. Second, unlike NUC,  
11 Intercoastal does not have a source of reuse sufficient  
12 to meet the irrigation needs of the development,  
13 particularly in the early years.

14 In addition, DDI believes it is important to  
15 ensure that utility service is available on a timely  
16 basis in quantities that meet the needs of Nocatee. I  
17 know that DDI has the financial strength to see that  
18 these needs are met through NUC. We do not have the  
19 same degree of confidence in Intercoastal's ability to  
20 satisfy these needs over the long term.

21 **Q. Does that conclude your intervenor direct testimony?**

22 **A. Yes.**

23

24

25

1 BY MR. MELSON:

2 Q Mr. Skelton, over the past few days there have been  
3 some questions from the Bench about the obligation in the  
4 development order -- or the source of an obligation to reuse  
5 water within the Nocatee development. I believe those  
6 questions came primarily from Chairman Jacobs. Could you  
7 briefly explain what the reuse obligation is and what its  
8 source is?

9 A Well, I really need to give a little background, and  
10 I will try to be as brief as possible.

11 MR. WHARTON: I apologize for interrupting the  
12 witness. Is this something you asked for, or are we about to  
13 go into some new live testimony? I'm not sure what we're doing  
14 right here.

15 CHAIRMAN JACOBS: I had asked questions about how  
16 would developers be held accountable to extend the reuse  
17 facilities.

18 MR. WHARTON: Does that mean you're going to ask a  
19 question, though, like the Commissioners always do, or that  
20 we're going to have a new direct live presentation?

21 MR. MELSON: Commissioner Jacobs, my only attempt is  
22 to --

23 CHAIRMAN JACOBS: Well, first of all, there was a  
24 representation yesterday that they would -- when I asked a  
25 question, they did offer to provide an answer from one of their

1 witnesses. So I assume that's what this is in response to?

2 MR. MELSON: Yes, sir.

3 CHAIRMAN JACOBS: Okay.

4 A Well, I need to give a little background on the whole  
5 DRI process. A landowner/developer does come up with a plan  
6 for development of regional impact and submit that to various  
7 agencies and governmental bodies. And so the plan is initially  
8 developed by the developer, and then it's commented on several  
9 times with various agencies. In our case, we had two comment  
10 letters. And so during the process of developing our plan, we  
11 meet with a lot of governmental officials and get their input.

12 And on the reuse of water, it was in a meeting --  
13 well, first of all, that was one of the plans -- one of the  
14 items in the plans we put forth as part of our environmental  
15 ethic to do the thing right, like giving up the 26,000 acres  
16 along the Intracoastal Waterway for a preserve, the 7,000 acres  
17 of greenlands that will be preserved, and it was also our idea  
18 to have 100 percent reuse of water. In discussing that with a  
19 number of people, one of which was Henry Dean, who is the  
20 executive director of the St. Johns River Water Management  
21 District, he said that would be an absolute necessity for him  
22 to approve Nocatee.

23 I will also tell you that in talking with the County  
24 Commissioners in St. Johns County -- by the way, the vote was  
25 three to two in favor of Nocatee. The three that voted in

1 favor of us said reuse was necessary. I will tell you that the  
2 DRI process is very complicated. It's very lengthy, and it  
3 comes under scrutiny by so many agencies.

4 CHAIRMAN JACOBS: But it sounds like the DRI is not  
5 going to be the process that's going to hold. It sounds like  
6 the consumptive use process is going to be what it is. It is a  
7 DRI? Okay. Go ahead. I'm sorry.

8 THE WITNESS: The Nocatee development is a  
9 development of regional impact. It's the most stringent type  
10 of development a landowner/developer can do. I could have  
11 developed that property without a DRI; I would not have had to  
12 spend \$100 million on road improvements outside the  
13 development. There are a lot of things I would not have had to  
14 have done, but the Davis family, through their ownership and  
15 DDI, asked that I not try to maximize profits, but rather I try  
16 to optimize the development so it would be a win-win situation  
17 for the community as well as for DDI, the landowner. And  
18 that's what we've done. We made the concession of the  
19 preserve. We made the concession --

20 MR. WHARTON: Mr. Chairman, I object at this point.  
21 This is not -- it's a speech about the development. It is not  
22 the answer about the reuse.

23 CHAIRMAN JACOBS: If you would, Mr. Skelton, walk me  
24 through how -- what process imposes the obligation on  
25 developers to extend reuse infrastructure into the residential.



1 And I think I understand for the commercial, or at least for  
2 those that have to go get consumptive use permits, but I do not  
3 understand how the DRI imposes on Nocatee the requirement to  
4 extend reuse infrastructure.

5 THE WITNESS: I will be brief. The DRI is a plan.  
6 It has to be approved by the Water Management District, by the  
7 County Commissioners, which it was, but we were told by  
8 Henry Dean of the Water Management District and three County  
9 Commissioners, if we didn't use 100 percent reuse, in other  
10 words, avoid drilling wells for irrigation on the property,  
11 that our project would not be approved.

12 CHAIRMAN JACOBS: So there is some covenant, some  
13 provision, a condition in your DRI --

14 THE WITNESS: Yes.

15 CHAIRMAN JACOBS: -- which imposes that on the whole  
16 development.

17 THE WITNESS: Yes, sir.

18 CHAIRMAN JACOBS: And you now can impose that on  
19 every builder that comes in to build in that development.

20 THE WITNESS: Absolutely. You will not get a  
21 building permit if you don't comply. And it's two things.  
22 It's in the DRI which ultimately gets wrapped up in the  
23 development order which the County approves, and we were told  
24 that it has to be in there as a condition of the development  
25 order, which is part of the DRI and the approval process. And

1 if we try to change that today, I will tell you we would get a  
2 five-zero vote in St. Johns County that would tell us we can't  
3 change that 100 percent reuse.

4 MR. WHARTON: Objection. I move to strike that  
5 testimony. That's pure speculation.

6 MR. MELSON: I think it's in for the weight you care  
7 to give it, Commissioner.

8 CHAIRMAN JACOBS: It was speculation, but I don't  
9 think it was given to stand for the truth of what was asserted.  
10 In fact, it was a conditional statement, that if there were  
11 something to happen, so I will allow it. Okay. You may  
12 proceed.

13 BY MR. MELSON:

14 Q I've got one more I need to ask which is a follow-up  
15 to a question that Commissioner Deason asked, and it relates to  
16 potable water wells on the property. I believe you asked an  
17 earlier witness if there is a groundwater study that shows an  
18 abundant supply of water under Nocatee why no wells on the  
19 property, and I think Mr. Skelton can address that from a  
20 similar point of view.

21 A There is a lot of water under Nocatee. The Nocatee  
22 area is a discharge area, but it's a political and an emotional  
23 issue in St. Johns County. Again, we were told by -- in our  
24 discussions with what we had to have in our plan to have it  
25 approved, three County Commissioners told us that they could

1 not approve our plan if we were going to put in place wells on  
2 the property --

3 MR. WHARTON: Objection. I object to the hearsay  
4 nature of this testimony. If this would have been prefiled,  
5 it's something I could have checked out, something I could have  
6 asked Bill Young about in the deposition that did not come in.  
7 This is live testimony. It's not been prefiled. It's hearsay.  
8 The head of the St. Johns Water Management District told me  
9 this, the County Commissioners told me this, none of it has  
10 been prefiled.

11 CHAIRMAN JACOBS: A lot of conditions being -- been  
12 mentioned here, Mr. Melson. Why don't we stick to what  
13 Mr. Skeleton's experience was and how the requirement -- how  
14 the policy decision was reached. And I'll defer to  
15 Commissioner Deason as to --

16 COMMISSIONER DEASON: Well, let me just say this. If  
17 this is for my benefit, it concedes. And if I want to pursue  
18 anything further, I will ask the question directly myself.

19 MR. MELSON: Thank you.

20 BY MR. MELSON:

21 Q In that case, Mr. Skelton, let me ask you if you  
22 would briefly summarize your Intervenor testimony that has  
23 perviously been inserted into the record.

24 A My Intervenor testimony summarizes the reasons that I  
25 believe the Commission should deny Intercoastal's application.

1 In addition to the 15,000 acre Nocatee development,  
2 Intercoastal's application covers approximately 10,000  
3 additional acres owned by other Davis family interest in  
4 St. Johns County, and there is absolutely no need for service  
5 now or in the future in those approximately 10,000 acres. This  
6 additional area is part of the Davis family D-DOT Ranch, and  
7 the land will not be developed in our lifetime. We make all of  
8 our plans to preserve that land in its natural state the way it  
9 is now forever, if we can do that.

10 For the Nocatee development, Intercoastal's  
11 application is simply inferior to our plan to serve through  
12 Nocatee Utility Corporation. Our other witnesses will testify  
13 about the details of Intercoastal's application. From my  
14 perspective, the major flaw with Intercoastal's application is  
15 their plan to put new utility plants in the middle of Nocatee  
16 and their inability to provide 100 percent reuse to meet our  
17 irrigation needs. In addition, dealing with a third-party  
18 utility, particularly one whose financial strength which  
19 appears to be undercapitalized, does not begin to compare to  
20 ours. It will make it much harder for us to ensure that  
21 utility services are provided when and where needed over a  
22 25-year development horizon and harder for us to ensure that  
23 those services are provided in a way that meet our standards  
24 for environmental sensitivity. This concludes my summary.

25 MR. MELSON: Mr. Skelton is tendered for cross.

1 CHAIRMAN JACOBS: Mr. Menton.

2 MR. MENTON: No questions.

3 CHAIRMAN JACOBS: Mr. Korn.

4 MR. KORN: Just a couple of questions.

5 CROSS EXAMINATION

6 BY MR. KORN:

7 Q Mr. Skelton, the philosophy of the developer in  
8 determining that new plants for water and wastewater were not  
9 to be sited within the Nocatee development, what was the  
10 rationale of the developer in determining that that was a  
11 significant factor to be considered?

12 A Well, that was all tied up in 100 percent reuse and  
13 not drilling any water wells for irrigation on the property,  
14 and to some extent, the problems that we're experiencing in  
15 Sawgrass with the sewer plant --

16 MR. WHARTON: Objection. This is outside the scope  
17 of rebuttal. There's nothing in his rebuttal about this.

18 CHAIRMAN JACOBS: Sustained.

19 MR. KORN: If I might, Mr. Chairman. Specifically at  
20 Page 4, Lines 7 through 9, he's talking about the -- that  
21 Intercoastal's plan for construction of on-site water and  
22 wastewater treatment facilities, which was one of the things  
23 that he's described as forming the basis for their --

24 MR. WHARTON: I'll withdraw the objection.

25 MR. KORN: Thank you. I have nothing further of the

1 witness.

2 CHAIRMAN JACOBS: Very well. Mr. Wharton.

3 CROSS EXAMINATION

4 BY MR. WHARTON:

5 Q Sir, in the response to Mr. Melson's question prior  
6 to your giving your summary, you talked about Water Management  
7 District approval. Now, neither the Nocatee developer nor the  
8 Nocatee Utility Corporation is applying or intends to apply for  
9 any consumptive permits, does it?

10 A No, but they approve other things in connection with  
11 the DRI.

12 Q But you've got your DRI; right?

13 A Well, as it was pointed out earlier today, there has  
14 been a challenge by the Florida Wildlife Federation, and that's  
15 not a governmental agency, but it has filed an administrative  
16 challenge to our DRIs.

17 Q Since you mentioned that, tell us about that. What  
18 allegations have they made?

19 A I really can't tell you that. I have not had time to  
20 read their complaint.

21 Q Is it fair to say that their complaint is tailored  
22 toward their concern for the environmental considerations of  
23 the project?

24 A I really can't answer that because I haven't read  
25 their complaint.

1 Q Would you guess that just based on their name?

2 MR. MELSON: Objection.

3 A No, I would not.

4 Q Would you defer to Mr. Miller, Mr. Doug Miller, as to  
5 why or how the development orders wound out with the conditions  
6 they did?

7 A Not necessarily. I think I can respond to that.

8 Q Isn't it true that the conditions about reuse and  
9 on-site plants are in the development orders because you  
10 offered them as conditions in the applications for development  
11 approval?

12 A That's partly correct. We did up front lead the way  
13 on a number of environmental issues, but as I mentioned in my  
14 testimony earlier, that also became a requirement by the Water  
15 Management District for their support and approval. They said  
16 we had to commit to that and live up to our commitment, and we  
17 couldn't back off of that.

18 Q Do you know whether that's required by any  
19 administrative code rule of the Water Management District?

20 A No, I don't know. But I know you've got to get their  
21 approval, and you've got to do things somewhat the way they  
22 want it done, or you don't get their approval.

23 Q Do you know whether that's required by any written  
24 policy of the Water Management District?

25 A I do not.

1 Q Do you know whether that's required by any past order  
2 of the Board of the Water Management District?

3 A I do not.

4 Q You talk a little about Intercoastal, sir, in your  
5 rebuttal. Isn't it true that you don't have any knowledge or  
6 experience or expertise with regard to other large developments  
7 working with private utilities that aren't related parties?

8 A I've never done that before, if that's what you mean.

9 Q So you don't have any knowledge or experience or  
10 expertise in that area?

11 A Well, you're going to have to explain a little bit.  
12 I have business experience. I have a lot of financial ability  
13 to see Intercoastal's financial condition and their lack of  
14 capital and being undercapitalized in my viewpoint.

15 Q I'm referring to the testimony you gave about your  
16 concern about the integrated planning aspects of it.

17 A Well, I'm still not sure I understand your question.

18 Q Okay. Do you recall that I took your deposition on  
19 July 25th, 2000?

20 A Yes, I do.

21 Q And on Page 15, Line 22 thereof, do you recall this  
22 exchange:

23 Question: Do you have any knowledge or experience or  
24 expertise on past or prior developments in the state of  
25 Florida? Let's say, large developments and their experience



1 working with private utilities.

2 Answer: I do not.

3 A And that is correct.

4 Q Okay. You're not able to quantify what negative  
5 impact might be visited on the development if Intercoastal were  
6 granted that territory, are you?

7 A At this moment I'm not. I could, but I can't at this  
8 very second.

9 Q It's your belief, isn't it, that the harm in  
10 Intercoastal certificating those territories which you claim  
11 are not slated for development -- so we're talking about the  
12 other related lands -- is that if Intercoastal has it, then you  
13 can't have it if you change your mind?

14 A Not necessarily. That's not the only -- the main  
15 reason is, I don't want Intercoastal's facilities on land  
16 that's never going to be developed. And it's not planned to be  
17 developed, and we don't want facilities on there. We're trying  
18 to keep it in a pristine, natural area.

19 Q Sir, do you recall that I took your deposition on  
20 July 25th, 2000?

21 A I sure do.

22 Q And on Page 12 thereof, do you recall this exchange:

23 Answer: Well, if it's not going to be developed, I  
24 don't know why Intercoastal wants to have it certified for  
25 their territory. And by the same token, if they want it

1 certified, even though it's never going to be developed, I  
2 guess I would just as soon have it certified for me.

3 Question: What's the harm?

4 Answer: Well, the harm is, if you have it, I can't  
5 have it if I change my mind.

6 Do you stand by that testimony?

7 A Absolutely.

8 Q There are no deed restrictions that would prohibit  
9 the development of the property you say is not slated for  
10 development, are there?

11 A That's correct.

12 Q And there aren't any conservation easements on that  
13 property either, are there?

14 A There is not.

15 Q Sir, is it fair to say that before the Nocatee  
16 development was publicly announced that the position of the  
17 landowner was that the property wouldn't be developed?

18 A No, that's not correct.

19 Q You weren't quoted in the paper or individuals  
20 representing DDI weren't quoted in the paper saying exactly  
21 that in the Florida Times Union?

22 A About Nocatee?

23 Q Right.

24 A No, not that I saw.

25 Q Not that you recall?

1 A No, sir.

2 MR. WHARTON: That's all I have.

3 CHAIRMAN JACOBS: Staff.

4 MS. CIBULA: Staff has no questions.

5 CHAIRMAN JACOBS: Commissioners.

6 COMMISSIONER PALECKI: I have just a couple of  
7 questions. We have heard a lot of testimony over the last few  
8 days that that green-hatched area will never be developed, not  
9 in our lifetime. We have also heard testimony from  
10 Intercoastal that they are frustrated because they are  
11 landlocked, and they don't have any room to expand. And I'd  
12 like to ask you a hypothetical question.

13 If the Nocatee development was certified to Nocatee  
14 Utilities, would you agree to allow Intercoastal the  
15 green-hatched area so that they did have in the future some  
16 room to expand? And I'm asking you that question based upon  
17 the representation that it's not going to be developed anyway,  
18 and that would only be facilities in the location if it was  
19 developed. And if it wasn't developed, then Intercoastal could  
20 never put any facilities in the location.

21 THE WITNESS: I would find that very acceptable.

22 COMMISSIONER PALECKI: So you would agree that if it  
23 was developed, that it would be okay with you if Intercoastal  
24 served that green-hatched area?

25 THE WITNESS: Yes, sir.

1 COMMISSIONER PALECKI: Thank you.

2 COMMISSIONER DEASON: I'm a little hesitant, but I  
3 guess I'll pursue this a little bit. The fact that there are  
4 adequate water resources on the Nocatee development site and  
5 the fact that the developer decided to go forward with a  
6 proposal which would not require on-site facilities, I'm asking  
7 your opinion. Is your opinion that the site would not be --  
8 you would not get authorization to develop if you had on-site  
9 facilities, or it just made it easier facilitated getting the  
10 necessary approval?

11 THE WITNESS: Well, the Nocatee is in a water caution  
12 area notwithstanding the fact there's a lot of water. It's a  
13 discharge area. It has a lot of water underground which we  
14 verified with our study. But we were told by three County  
15 Commissioners that there's no way they would approve us putting  
16 wells on the Nocatee property to furnish our own water. So it  
17 was an approval process concession. We think --

18 COMMISSIONER DEASON: Let me ask you this, and this  
19 may be a legal question, and if you're not comfortable  
20 answering, that's fine. But as a landowner, don't you have  
21 certain rights that even if a County Commission said, we don't  
22 think it's politically popular, so we're going to deny you,  
23 don't you have some type of a right to have that appeal to some  
24 higher authority?

25 THE WITNESS: We probably could have, but it just

1 wouldn't have been worth it to us to do that. I might add, if  
2 you'd just give me a second. We made a decision when we went  
3 forward with this when we met with all the regulatory agencies.  
4 We said -- we presented a plan -- if you don't like it, tell  
5 us, and we're going to go away. We will fight the no-growthers  
6 who don't want any growth; notwithstanding, this is  
7 well-planned growth and good growth, in our opinion. But if  
8 DEP, the Water Management District, Northeast Florida Regional  
9 Planning Council, the Wildlife, Fish and Game, if all of those  
10 folks had objected to our plan, there would be no Nocatee.  
11 We're not going to do battle with state regulatory agencies.  
12 We're just not going to do that. That's not our way of doing  
13 business.

14           We will fight people that we think are wrong and  
15 don't want us to do something just because they don't want us  
16 to -- they want to look at our trees, so to speak. But we did  
17 not think it was worth it to upset the County Commissioners by  
18 trying to drill wells to furnish water to Nocatee.

19           COMMISSIONER DEASON: Did the Water Management  
20 District tell you that you could not drill wells on-site?

21           THE WITNESS: They did not tell us that, no. I don't  
22 recall them telling us that.

23           COMMISSIONER DEASON: Okay. Thank you.

24           CHAIRMAN JACOBS: Mr. Melson.

25           MR. MELSON: One redirect.

## REDIRECT EXAMINATION

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BY MR. MELSON:

Q I'm going to go back to your deposition that Mr. Wharton read from earlier and read one question and answer that he asked at that time and the succeeding question and answer that he asked at that time but did not read this morning.

What's the harm?

Answer: Well, the harm is, if you have it, I can't have it if I change my mind.

Question: But so to the extent -- so in other words, even if Intercoastal was awarded the ability by the Public Service Commission to serve Nocatee, you would --

CHAIRMAN JACOBS: Mr. Melson, would it be better to have your witness read this into the record?

MR. MELSON: I think he'll remember saying it.

CHAIRMAN JACOBS: Okay.

BY MR. MELSON:

Q -- you would still want to hold that other piece of property so that you might put your own utility there some day?

Answer: No. I want to keep it in its natural state, so it can never be developed.

Do you recall giving those questions and answers?

A Yes, sir, I do.

Q And is that still the position today?

1 A Yes, sir.

2 MR. MELSON: That's all.

3 CHAIRMAN JACOBS: Very well. Exhibits.

4 MR. MELSON: Hang on. Move 37.

5 CHAIRMAN JACOBS: Without objection, show Exhibit 37  
6 is admitted into the record.

7 (Exhibit 37 admitted into the record.)

8 CHAIRMAN JACOBS: Thank you. You're excused,  
9 Mr. Skelton.

10 (Witness excused.)

11 CHAIRMAN JACOBS: How much cross do you think you'll  
12 have for Mr. Miller?

13 MR. WHARTON: Not very long.

14 CHAIRMAN JACOBS: Okay. Why don't we go ahead and do  
15 him before we break for lunch then?

16 MR. MELSON: Call Mr. Doug Miller. Commissioner,  
17 could we have about a five-minute comfort break? Unless it's  
18 going to be very, very short.

19 MR. WHARTON: It's going to be less than ten  
20 questions.

21 MR. MELSON: Okay. Fine.

22 CHAIRMAN JACOBS: Sounds reasonable.

23 (Transcript continues in sequence with Volume 7.)

24 - - - - -

25

1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

4 I, TRICIA DeMARTE, Official Commission Reporter, do hereby  
5 certify that the foregoing proceeding was heard at the time and  
6 place herein stated.

7 IT IS FURTHER CERTIFIED that I stenographically  
8 reported the said proceedings; that the same has been  
9 transcribed under my direct supervision; and that this  
10 transcript constitutes a true transcription of my notes of said  
11 proceedings.

12 I FURTHER CERTIFY that I am not a relative, employee,  
13 attorney or counsel of any of the parties, nor am I a relative  
14 or employee of any of the parties' attorneys or counsel  
15 connected with the action, nor am I financially interested in  
16 the action.

17 DATED THIS 23rd DAY OF MAY, 2001.

18 *Tricia DeMarte*  
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