

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.

-----  
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 7  
PAGES 1006 THROUGH 1167

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 10:00 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 06495 MAY 23 2001

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WITNESSES

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## EXHIBITS

NUMBER:		ID.	ADMTD.
38	DCM-9 through DCM-13	1011	1048
39	DDS-6 and DDS-7	1050	1083
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## P R O C E E D I N G S

(Transcript continues in sequence from Volume 6.)

DOUGLAS C. MILLER

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

## DIRECT EXAMINATION

BY MR. MELSON:

Q Mr. Miller, do you understand that you are still under oath?

A I do.

Q Have you prepared and filed Intervenor direct testimony dated March 17, 2000 consisting of 14 pages?

A I have.

Q Have you also filed rebuttal testimony dated June 2, 2000 consisting of four pages?

A Yes, I have.

Q Do you have any changes or corrections to either of those two pieces of testimony?

A I do not.

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

A They would be.

MR. MELSON: I'd ask that Mr. Miller's Intervenor direct testimony and rebuttal testimony be inserted into the

1 record as though read.

2 CHAIRMAN JACOBS: Without objection, show the  
3 Intervenor direct and rebuttal testimony as entered into the  
4 record as though read.

5 BY MR. MELSON:

6 Q Mr. Miller, you had five exhibits attached to your  
7 Intervenor direct testimony as DCM-9 through DCM-13; is that  
8 correct?

9 A That is correct.

10 Q Do you have any changes to those exhibits?

11 A I do not.

12 MR. MELSON: Mr. Chairman, I'd ask that those  
13 exhibits be marked as composite 38.

14 CHAIRMAN JACOBS: Show DCM-9 through DCM-13?

15 MR. MELSON: Yes, sir.

16 CHAIRMAN JACOBS: Oh, that's right, 13a was the other  
17 one. Great. Show those marked as composite Exhibit 38.

18 (Exhibit 38 marked for identification.)

19 BY MR. MELSON:

20 Q And you had no exhibits to your rebuttal testimony;  
21 is that correct?

22 A That's correct.

23

24

25

1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2                   INTERVENOR DIRECT TESTIMONY OF  
3                   DOUGLAS C. MILLER  
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 Douglas C. Miller. My business address is  
11        14775 St. Augustine Road, Jacksonville, Florida 32258.  
12   **Q.    By whom are you employed and in what capacity?**  
13   A.   I am President of England-Thims & Miller, a full  
14        service civil engineering firm. I am Engineer of  
15        Record for the Nocatee development and have performed  
16        the master planning for Nocatee Utility Corporation  
17        (NUC).  
18   **Q.    Have you previously filed direct testimony in support**  
19        **of NUC's certificate application in these consolidated**  
20        **dockets?**  
21   A.   Yes.  
22   **Q.    What is the purpose of your intervenor direct**  
23        **testimony?**  
24   A.   The purpose of this testimony is to provide some  
25        history of Intercoastal Utilities, Inc.'s plans for

1 serving the territory applied for by NUC and to give my  
2 assessment of Intercoastal's current application in  
3 this docket. I will also respond to some claims made  
4 in the prefiled testimony submitted by Intercoastal's  
5 witnesses in support of its application.

6 **Q. On whose behalf are you presenting this testimony?**

7 A. I am testifying on behalf of NUC and its parent  
8 company, DDI, Inc., both of which have filed objections  
9 to Intercoastal's certificate application. As Mr.  
10 Skelton has testified, DDI, Inc. also controls SONOC  
11 Company, which owns all of the land that will comprise  
12 the Nocatee development that NUC has applied for  
13 certificates to serve.

14

15 **INTERCOASTAL'S APPLICATION TO ST. JOHNS COUNTY**

16 **Q. Are you familiar with the certificate extension**  
17 **application that Intercoastal filed with St. Johns**  
18 **County in March, 1999?**

19 A. Yes. I participated in that proceeding as an advisor  
20 to DDI and its attorneys. I also presented expert  
21 testimony in that case on behalf of DDI, which was one  
22 of several objectors to Intercoastal's application.

23 **Q. Did that certificate extension application cover the**  
24 **same territory in St. Johns County that is covered by**  
25 **Intercoastal's application in this docket?**



1 A. Yes. Intercoastal's application to St. Johns County  
2 included approximately the same territory in St. Johns  
3 County that is at issue in this case. The initial  
4 filing also included a tract of land located within  
5 the Marshall Creek development, but Intercoastal's  
6 application was later amended to delete that portion  
7 of the proposed territory.

8 **Q. Please summarize the certificate extension proceeding**  
9 **in St. Johns County.**

10 A. After Intercoastal filed its certificate extension  
11 application in March, 1999, several parties filed  
12 formal objections to the application, including DDI,  
13 JEA, and the St. Johns County Utility Department.

14 The St. Johns County Water and Sewer Authority  
15 (Authority) held six days of formal hearings on  
16 Intercoastal's application in June 1999. At the  
17 conclusion of the hearing, all the parties filed  
18 proposed orders with the Authority. On August 4,  
19 1999, the Authority issued a Preliminary Order denying  
20 Intercoastal's application to extend its certificated  
21 territory. The Preliminary Order was confirmed by the  
22 Board of County Commissioners of St. Johns County in a  
23 Final Order issued on September 7, 1999. I have  
24 attached copies of these orders to my testimony as  
25 Exhibit Nos. \_\_\_\_ (DCM-9) and \_\_\_\_ (DCM-10).

1 Q. Does Intercoastal's current application differ from  
2 the application filed with St. Johns County in 1999?

3 A. Yes, it differs in a couple of respects. Intercoastal  
4 has now included in its proposed certificated area the  
5 portion of the Nocatee development that lies in Duval  
6 County. Intercoastal also says they now plan to serve  
7 the territory West of the Intracoastal Waterway from  
8 new water and wastewater plants built within the  
9 Nocatee development. This contrasts with their  
10 previous plan to provide initial service from existing  
11 plants on the East side of the Intracoastal Waterway.

12

13 INTERCOASTAL'S PLAN OF SERVICE

14 Q. Have you reviewed Intercoastal's current plan for  
15 providing service to Nocatee and the other properties  
16 on the West side of the Intracoastal Waterway?

17 A. Yes. I have reviewed Intercoastal's application and  
18 the prefiled testimony of its witnesses, including the  
19 Conceptual Master Plan attached as an exhibit to Mr.  
20 Jim Miller's testimony.

21 Q. Just for the record, are related in any way to Mr. Jim  
22 Miller?

23 A. No.

24 Q. Please summarize what you see as the key features of  
25 Intercoastal's plan of service.

1 A. Intercoastal plans to serve Nocatee and other  
2 developments on the West side of the Intracoastal  
3 Waterway from new water and wastewater plants to be  
4 constructed on County Road 210, in approximately the  
5 middle of Nocatee. Intercoastal plans to provide  
6 irrigation service to Nocatee with wastewater effluent  
7 (reuse) produced in its wastewater treatment plant,  
8 supplemented by groundwater withdrawals when  
9 irrigation demand exceeds the amount of available  
10 effluent. Intercoastal proposes wet weather  
11 discharges to the Intracoastal Waterway (Tolomato  
12 River, an Outstanding Florida Water) during periods  
13 when effluent production exceeds reuse demand.  
14 Intercoastal indicates that it will provide storage in  
15 open ponds for approximately 3 days of treated  
16 effluent.

17 **Q. Do you see any problems with this plan of service?**

18 A. Yes. This plan of service is inconsistent with the  
19 strong environmental ethic that has been developed for  
20 Nocatee and that is reflected in the Application for  
21 Development Approval (ADA) for the project as a  
22 Development of Regional Impact (DRI) under Chapter  
23 380.06 of the Florida Statutes. Simply put, the  
24 landowner and the developer have committed to an  
25 environmentally sensitive project and that commitment

1 is reflected in the way that they have proposed in the  
2 ADA to provide utility service to Nocatee. I expect  
3 that the approach to utility service set out in the  
4 ADA will be incorporated into conditions in the final  
5 development order for the project. This means that  
6 the development will not be able to proceed unless  
7 utility service meets these conditions. I have  
8 attached a copy of Questions 17 (Water Supply) and 18  
9 (Wastewater Management) from the ADA as Exhibit No.  
10 \_\_\_\_ (DCM-11).

11 **Q. What are the specific commitments regarding utility**  
12 **service that you believe will become conditions of the**  
13 **development approval?**

14 **A.** There are several.

- 15 • There will be no water or wastewater treatment  
16 plants located within the boundaries of Nocatee.
- 17 • There will be no reliance on groundwater  
18 withdrawals within the project to meet potable  
19 water or irrigation water demands from the  
20 project.
- 21 • There will be no effluent discharges to the  
22 Tolomato River, an Outstanding Florida Water.
- 23 • Irrigation demand will be met by reuse of either  
24 wastewater effluent or stormwater.

25 **Q. Is NUC's plan of service consistent with these**

1           **commitments?**

2    A.    Yes.  As I stated in my direct testimony, NUC will  
3           obtain water, wastewater and reuse service on a bulk  
4           basis from JEA.  JEA's plants are located off-site.  
5           On-site groundwater withdrawals will not be required  
6           to provide utility service; there will be no on-site  
7           effluent discharges; and irrigation demand will be met  
8           through a combination of treated effluent provided by  
9           JEA and on-site stormwater.

10   **Q.    Is Intercoastal's plan of service consistent with**  
11           **these commitments?**

12    A.    No.  Intercoastal proposes to construct water and  
13           wastewater plants within Nocatee and to rely on  
14           groundwater withdrawals within the project to meet  
15           potable water demands.  Because Intercoastal will have  
16           insufficient reclaimed effluent to meet irrigation  
17           demands, it proposes to use groundwater to supplement  
18           the irrigation supply.  And Intercoastal proposes wet  
19           weather discharges to the Tolomato River.

20   **Q.    In addition to the fact that Intercoastal's plan of**  
21           **service is inconsistent with the commitments made in**  
22           **the ADA and the overall environmental ethic for**  
23           **Nocatee, have you identified any other questions or**  
24           **concerns regarding Intercoastal's Conceptual Master**  
25           **Plan?**

1 A. Yes. First, Intercoastal's plan to use open ponds for  
2 storage of reuse water is a concern. At Nocatee,  
3 public access reuse water will be provided for  
4 irrigation to every single family residence.  
5 Therefore, maintaining reuse water quality is  
6 paramount and a potential public health issue. Open  
7 ponds as proposed by Intercoastal are less reliable  
8 for maintaining water quality. Open ponds are more  
9 susceptible to contamination from wildlife, algae  
10 growth, and airborne particulates, as well as  
11 difficulties in maintaining chlorine residual. For  
12 these water quality reasons NUC proposes to use the  
13 more expensive, but more secure, closed storage tanks  
14 for reuse storage.

15 Second, Intercoastal's Master Plan indicates  
16 construction of a water treatment plant in 2002. This  
17 is not consistent with the proposed development plans  
18 for Nocatee, which will require construction water for  
19 line pressurization and other uses beginning in 2001.

20 Third, the wastewater force mains proposed by  
21 Intercoastal for Phase 1 are inadequately sized to  
22 meet the needs of the first phase of the Nocatee  
23 development.

24 Fourth, Intercoastal has included Walden Chase in  
25 its application, whereas Walden Chase has an agreement

1 with St. Johns County to provide water and sewer  
2 services and these services will be provided as soon  
3 as May, 2000.

4 Fifth, the Conceptual Master Plan for  
5 Intercoastal includes a reuse demand of only 300,000  
6 gallons per day for the golf courses. Our experience  
7 has been that during dry weather months the demand  
8 could be 650,000 gallons per day. This would make  
9 Intercoastal's reuse system more reliant upon  
10 groundwater because the wastewater effluent generated  
11 can not meet the reuse demands.

12 **Q. In your professional opinion, does Intercoastal have**  
13 **the technical ability to serve the Nocatee**  
14 **development?**

15 **A.** No. While Intercoastal may be capable of constructing  
16 and operating water and wastewater utility systems,  
17 their conceptual master plan for serving Nocatee is  
18 inconsistent with the regulatory requirements that  
19 will be imposed on the development. As such, that  
20 plan is not technically feasible.

21

22 **OTHER ISSUES**

23 **Q. Intercoastal's certificate extension application**  
24 **includes the Walden Chase development near the**  
25 **Southeast corner of U.S. 1 and County Road 210,**

1           **whereas NUC's application does not. How will service**  
2           **be provided to this area if Intercoastal's application**  
3           **is denied?**

4    A.    Walden Chase has an agreement with the County to  
5           provide water and wastewater service through a bulk  
6           service arrangement between JEA and the County. In  
7           May of this year, initial service will be provided to  
8           Walden Chase from the St. Johns County owned water and  
9           wastewater plants at Nease High School. I have  
10          included the agreement between Walden Chase and the  
11          County, and a letter regarding interim service from  
12          the facilities at Nease High School, as Exhibits \_\_\_\_  
13          (DCM-12) and \_\_\_\_\_ (DCM-13).

14                 Although JEA can probably provide more details,  
15                 I understand that the water transmission line and  
16                 wastewater force main to ultimately serve Walden Chase  
17                 are under construction and should be completed later  
18                 this year. These are the same lines to which NUC will  
19                 ultimately connect to provide service to Nocatee.

20                 Thus by the time the Commission votes on  
21                 Intercoastal's application, Walden Chase will already  
22                 be obtaining service through the County/JEA  
23                 arrangement. Furthermore, it should be noted that  
24                 Intercoastal's plan includes the provision of reuse  
25                 water to Walden Chase, but that project has not been



1 designed or constructed to include reuse water.

2 Q. At pages 10-12 of his testimony, Mr. Forrester  
3 describes Intercoastal's participation in the St.  
4 Johns River Water Management District's process  
5 leading up to the 2020 Water Plan. What importance  
6 should the Commission attach to that participation?

7 A. I would not give that participation any weight in the  
8 current certificate proceedings. The 2020 Water Plan,  
9 which is scheduled for adopted by the District in  
10 April 2000, is a general attempt to project supply and  
11 demand for water resources in the District for  
12 planning purposes only. It does not give any  
13 participant either a consumptive use permit or a right  
14 to serve any particular area. Those matters remain to  
15 be decided in permitting proceedings and cases such as  
16 this before the Commission.

17 Q. Why didn't NUC participate in the development of the  
18 2020 Water Plan?

19 A. Because neither NUC nor the Nocatee development  
20 existed at the time that process commenced.

21 Q. Mr. Forrester testifies at pages 9-10 that  
22 Intercoastal's plan of service meets the "Local  
23 Sources First" policy in the District's 2020 Water  
24 Plan. In this regard, how does Intercoastal's plan of  
25 service compare with NUC's?

1 A. The Nocatee franchise area includes land in both Duval  
2 and St. Johns County. Groundwater to serve the  
3 Nocatee development will be withdrawn from the JEA  
4 water grid in Duval County. This is consistent with  
5 the "local sources first" policy. More importantly,  
6 however, the NUC plan recognizes the Water Caution  
7 Areas outlined in the 2020 Water Plan in St. Johns  
8 County, which identifies the need for additional  
9 potable water sources for St. Johns County. The NUC  
10 plan provides this recommended additional potable  
11 water source by connecting the Nocatee development in  
12 both counties to the JEA water grid.

13 **Q. Mr. Forrester seems to imply at pages 10 and 11 of his**  
14 **direct testimony that there was some effort to "hide"**  
15 **the Nocatee development from Intercoastal so that it**  
16 **could not take Nocatee into account in its planning**  
17 **process. Would that be an accurate conclusion?**

18 A. No. As is the case with any large real estate  
19 development, a premature announcement before the  
20 project has been well defined can create speculation  
21 and concern that often translates into opposition to  
22 the project. It is true that Nocatee was not publicly  
23 announced until April, 1999 and that prior to that  
24 date all consultants and others involved in the  
25 project were charged with keeping it confidential. It

1 is wrong to suggest that this confidentiality had  
2 anything to do with Intercoastal.

3 **Q. Prior to forming NUC, did DDI ever consider seeking**  
4 **utility service from Intercoastal?**

5 A. In the early planning stages for Nocatee that option  
6 was considered and rejected.

7 **Q. Why?**

8 A. Intercoastal's existing territory and facilities are  
9 located across the Intracoastal Waterway from Nocatee.  
10 Our preliminary analysis suggested that it would not  
11 be economical for Intercoastal to extend its lines  
12 across the waterway to serve Nocatee. Given that,  
13 service would have to be obtained either from existing  
14 facilities on the East side of the waterway or through  
15 construction of new facilities. If new construction  
16 was required, Intercoastal would not bring anything to  
17 the table that could not be accomplished better  
18 through an affiliated utility that shared the  
19 project's environmental ethic.

20 In addition, we were aware of the frustration of  
21 a nearby smaller developer who had been unsuccessfully  
22 trying for several years to obtain service from  
23 Intercoastal. His experience led us to question  
24 whether Intercoastal could cost-effectively serve West  
25 of the Intracoastal Waterway.

1 Q. Please summarize your testimony.

2 A. Based on my evaluation, I believe that NUC's plan of  
3 service is superior to Intercoastal. In fact,  
4 Intercoastal's plan is infeasible in light of the  
5 expected conditions that will be placed on Nocatee in  
6 its final development order. The Commission should  
7 therefore award NUC its requested service territory  
8 and should deny Intercoastal's application to serve  
9 that territory.

10 Q. Does that conclude your intervenor direct testimony?

11 A. Yes it does.

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                                   **REBUTTAL TESTIMONY OF**  
3                                   **DOUGLAS C. MILLER**  
4                                   **ON BEHALF OF**  
5                   **NOCATEE UTILITY CORPORATION AND DDI, INC.**  
6                                   **DOCKET NOS. 990696-WS AND 992040-WS**  
7                                   **June 2, 2000**

8  
9   **Q.   Please state your name and business address.**

10   **A.   My name is Douglas C. Miller. My business address is**  
11        14775 St. Augustine Road, Jacksonville, Florida 32258.

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

13   **A.   I am President of England-Thims & Miller, a full**  
14        service civil engineering firm. I am Engineer of  
15        Record for the Nocatee development and have performed  
16        the master planning for Nocatee Utility Corporation  
17        (NUC).

18   **Q.   Have you previously filed direct and intervenor**  
19        testimony these consolidated dockets?

20   **A.   Yes.**

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

22   **A.   My rebuttal testimony responds to some statements or**  
23        positions in the prefiled testimony of Intercoastal's  
24        witnesses M.L. Forrester and Jim Miller.

25   **Q.   Mr. Jim Miller states at page 7 of his intervenor**

1 testimony that Intercoastal can meet and/or comply with  
2 all environmental concerns expressed by Nocatee's  
3 Application for Development Approval. Do you agree?

4 A. No. Although Intercoastal continues to modify its  
5 Conceptual Master Plan in an attempt to make it look  
6 more like NUC's proposal, there are still at least  
7 three areas in which Intercoastal's plan of service  
8 does not comply with the requirements that are expected  
9 to be imposed by the Development Order for the project.

10 • First, no potable water wells will be allowed in  
11 Nocatee and a water treatment plant is not  
12 proposed.

13 • Second, no wastewater treatment plant will be  
14 allowed in Nocatee and no wet weather discharge  
15 into the Intracoastal Waterway will be allowed.

16 • Third, no ground water as a primary source of  
17 irrigation water will be allowed in Nocatee.  
18 Reuse and stormwater are the only primary  
19 irrigation sources allowed.

20 The Intercoastal Utility Plan violates all three of  
21 these project covenants.

22 Q. Mr. Jim Miller's Conceptual Master Plan (Exhibit JM-2  
23 at page 3-14 to 3-15) proposes to provide reuse to  
24 Nocatee at least in part through a reclaimed water main  
25 to be constructed across the Intracoastal Waterway. Do

1           you believe that this is an appropriate plan of  
2           service?

3    A.    No.  We believe the cost and the environmental impacts  
4           of this pipeline have been understated.  In addition,  
5           Intercoastal does not own or control the proposed  
6           pipeline route from Nocatee to the proposed  
7           Intercoastal Waterway crossing.

8    Q.    Mr. Forrester concludes at pages 3 to 5 of his  
9           intervenor testimony it is more beneficial to the  
10          public for Intercoastal, as an existing utility, to  
11          serve the Nocatee development than for the Commission  
12          to certify NUC as a new utility to serve that  
13          territory.  Do you agree?

14   A.    No.  My prior testimony and that of other NUC witnesses  
15          gives a number of reasons why it is in the public  
16          interest for the Commission to grant certificates to  
17          NUC, rather than to Intercoastal, to serve the Nocatee  
18          development.  Mr. Forrester's view that service by an  
19          existing utility is preferable to service by a new  
20          utility does not change my conclusion.

21                 In this regard, I would like to make two  
22                 observations.  First, given the size of the Nocatee  
23                 development, a separate utility to serve just that  
24                 project will be of sufficient size to enjoy economies  
25                 of scale.  In fact, NUC will be approximately three

1 times as large as Intercoastal's existing customer  
2 base. Therefore, any public policy against the  
3 establishment of small systems is not violated by  
4 granting a certificate to NUC. Second, because  
5 Intercoastal's plan of service calls for entirely new  
6 treatment facilities to serve Nocatee, Intercoastal is  
7 essentially proposing to operate two separate utility  
8 systems -- its existing system to the East of the  
9 Intracoastal Waterway and a new system to the West of  
10 the waterway. In these circumstances, the normal  
11 arguments in favor of a single utility cease to apply.

12 **Q. Please summarize your testimony.**

13 A. Although Intercoastal continues to modify its plan of  
14 service, I believe that NUC's plan of service is still  
15 superior to Intercoastal's. Even with the most recent  
16 changes, Intercoastal's plan is still infeasible in  
17 light of the expected conditions that will be placed on  
18 Nocatee in its final development order. The Commission  
19 should therefore award NUC its requested service  
20 territory and should deny Intercoastal's application to  
21 serve that territory.

22 **Q. Does that conclude your rebuttal testimony?**

23 A. Yes it does.



1 MR. MELSON: Mr. Chairman, early in the hearing,  
2 Commissioner Jaber asked in light of the withdrawal of the  
3 County if there was anybody who could describe the County's  
4 plan of service and talk about Nocatee's view on the plan of  
5 service. Mr. Miller is that person. He had prepared and filed  
6 additional rebuttal testimony which does exactly that. I have  
7 not -- given the withdrawal of the County, I had not intended  
8 to offer that, but I am perfectly willing to do so if you would  
9 like to have that information in the record, or I'd use this  
10 opportunity to remind you that this would be the person to ask  
11 questions to.

12 COMMISSIONER JABER: Thank you for giving me the  
13 opportunity to ask additional questions, but I did want to ask  
14 you-all what this additional rebuttal is. So we need to  
15 disregard the additional rebuttal?

16 MR. MELSON: The additional rebuttal is rebuttal to  
17 the testimony of Mr. Young from Monday of last week. He filed  
18 on Monday; we rebutted on Thursday.

19 CHAIRMAN JACOBS: , So you do not need an answer to  
20 that. So thank you, but no thanks.

21 BY MR. MELSON:

22 Q Mr. Miller, would you please summarize your  
23 Intervenor direct and rebuttal testimony, please.

24 A I would be happy to. Commissioners, the testimony  
25 that I'm summarizing today points out the shortcomings of

1 Intercoastal Utilities' plan of service compared to Nocatee  
2 Utility Company's plan of services for the Nocatee franchise  
3 area, but more importantly, my testimony shows that ICU's plan  
4 of service is not implementable. ICU's plan of service for  
5 this area has changed several times since the initial service  
6 was proposed in 1999. However, I will focus my testimony on  
7 the current plan of service, which is spelled out in the  
8 revised March 2000 conceptual master plan prepared by  
9 Mr. Jim Miller for ICU.

10           You have heard much about the Nocatee development  
11 order and its conditions related to utility service. The  
12 development order is the binding instrument that establishes  
13 the development rights on Nocatee land that creates a need for  
14 service. If you cannot meet the development conditions for  
15 Nocatee, there is no need for service. The ICU plan of service  
16 violates all four of the utility-related development conditions  
17 imposed by both Duval County and St. Johns County.

18           Mr. Forrester and Mr. Jim Miller have both  
19 characterized in their testimony that Nocatee somehow  
20 orchestrated these development order conditions specifically to  
21 exclude ICU from providing utility service. As a professional  
22 in charge of developing the plan of service for Nocatee, I am  
23 here to tell you unequivocally and without reservation that  
24 these four utility development order conditions have absolutely  
25 nothing to do with ICU, but they do have everything to do with

1 securing the development rights to build a city for 35,000  
2 residents.

3 I'd like to review each of the four development order  
4 conditions with you, and go over where they originated from,  
5 how Intercoastal Utilities' plan of service violates those  
6 conditions, and lastly, why they cannot be changed.

7 The first condition is that no potable water wells  
8 can be on-site. And as I go through these, I'd like to remind  
9 you that we received a three-to-two vote before the County  
10 Commission for this approval for a city of 35,000 people. No  
11 potable water wells can be on-site --

12 COMMISSIONER DEASON: Let me interrupt you. I keep  
13 hearing this three-two vote. Are you representing that it was  
14 three to two to approve even with these requirements, and that  
15 the two votes were two votes against -- were against even with  
16 the requirements, or could we interpret that they thought that  
17 the requirements went too far, and they would have supported it  
18 regardless?

19 THE WITNESS: I would say the two votes that voted  
20 against, if we had promised to deliver a wheelbarrow full of  
21 gold to the County Commission's doorstep every day for  
22 25 years, would not have voted for this project. So I guess  
23 that's my best characterization. The three votes would not  
24 have voted --

25 COMMISSIONER DEASON: I guess just let me say that

1 from a resident of a northern rural county which would love to  
2 see any kind of development, it's just difficult to understand,  
3 I guess, some of the local politics.

4 THE WITNESS: If you could only have been there. If  
5 I could answer the second part of your question on the three  
6 affirmative votes. In essence, what I'm testifying is, the  
7 three affirmative votes would not have been affirmative votes  
8 had these four conditions not been opposed on the project;  
9 therefore, we would not have had a development order, and in  
10 fact, we would not be here today.

11 Intercoastal's plan of service, as you know, poses 14  
12 potable water wells within St. Johns County in clear violation  
13 of that development order and those affirmative votes. The  
14 second condition is that no wet weather discharges to the  
15 Tolomato River or its tributaries will be allowed from Nocatee.  
16 As you know, the support and endorsement of two environmental  
17 organizations -- or environmental organizations are critical to  
18 get a project of this size and magnitude approved. The two  
19 groups, the GAIN group, that's Guana Area Intracoastal Network,  
20 and the Audubon Society both endorse the environmental goals of  
21 this project with one exception, and that was, they were  
22 adamantly opposed to wet weather discharges to the Intracoastal  
23 Waterway.

24 In addition, the Chairman of the Board of County  
25 Commissioners was opposed to this discharge which is one of the

1 affirmative voters. Intercoastal's plan of service proposes to  
2 discharge up to 6.4 million gallons a day of wet weather  
3 discharge to the Intracoastal Waterway; that would be the  
4 1.2 million gallons that they are authorized from the east side  
5 and the 5.2 gallons a day that would be generated within the  
6 Nocatee project. And reality is, during wet weather, it  
7 doesn't seem like it now, but we do have wet weather, that  
8 there will be times, long periods, when we get continual rain  
9 where reuse cannot be discharged. There's only limited storage  
10 that can be affordably provided. There will be multiple days  
11 when the 6.4 million gallons a day at build out will have to be  
12 discharged under their plan in violation of the development  
13 order.

14 MR. WHARTON: Mr. Chairman, we're on point one of  
15 four just on this part, and we're over the five minutes even  
16 taken into account Commissioner Deason's question.

17 CHAIRMAN JACOBS: I would encourage you to note this  
18 is your summary, and if we can get it to the level of a summary  
19 would be great.

20 A I will speed it up. The third issue is on-site water  
21 and wastewater plants are prohibited. The reality with no wet  
22 weather discharge available and no wells on-site coupled with  
23 the fact of the previous problems of odor and aesthetics in  
24 Ponte Vedra, this was a Commissioner's request that really made  
25 sense since we couldn't do wells or wet weather discharge. The

1 last issue, 100 percent committment for reuse and no  
2 groundwater irrigation. Projects of this scale require the  
3 support of the environmental agencies of the State, both of the  
4 Department of Environmental Protection and the Water Management  
5 District. Early on in the plan of development, our team met  
6 with the DEP Secretary Struhs and his staff and Henry Dean, the  
7 executive director of the Water Management District. Both  
8 agencies were very enthused and supportive of the environmental  
9 plan we had prepared; however, they both wanted a commitment to  
10 100 percent reuse from day one --

11 MR. WHARTON: At this point, Mr. Chairman, I think  
12 we're also getting outside the testimony. I don't think what  
13 he's just talking here is any of the testimony he's sponsoring  
14 right now.

15 CHAIRMAN JACOBS: Where are we in terms -- your point  
16 just now was with regard to --

17 THE WITNESS: Well, I believe I testified that we had  
18 multiple meetings and visioning processes, and this was just  
19 elaborating on that with the various governmental agencies.

20 MR. WHARTON: Well, there it is. There you go.  
21 That's the problem. We're elaborating on the testimony in the  
22 summary.

23 CHAIRMAN JACOBS: Again, I would --

24 THE WITNESS: I understand.

25 CHAIRMAN JACOBS: Get to a summary.

1           A     Okay.  Secondly, on this issue of 100 percent reuse  
2 and no ground water discharge, the projections of reuse  
3 available that Mr. Jim Miller has prepared in his document are  
4 flawed.  In conclusion, after working on this development  
5 approvals and plan of service for Nocatee for three years, it  
6 is my professional opinion that the development order  
7 modifications required to implement Intercoastal Utilities'  
8 plan of service are unattainable, and therefore, Intercoastal  
9 Utilities' plan of service is not implementable.  That  
10 concludes my summary.

11           MR. MELSON:  Tender the witness for cross.

12           CHAIRMAN JACOBS:  Very well.  Mr. Menton.

13           MR. MENTON:  No questions.

14           CHAIRMAN JACOBS:  Mr. Korn.

15           MR. KORN:  No questions.

16           CHAIRMAN JACOBS:  Mr. Wharton.

17   CROSS EXAMINATION

18           BY MR. WHARTON:

19           Q     Mr. Miller, we've heard a lot of testimony about the  
20 Tolomato River.  What is the Tolomato River?

21           A     The Tolomato River is a portion of the Intracoastal  
22 Waterway adjacent to the Nocatee project and falls to the  
23 south.

24           Q     Is that a name that is popularly used for the  
25 Intracoastal Waterway south of the 210 bridge?

1 A I would say so, yes.

2 Q Okay. Sir, you've talked quite a bit about how you  
3 evolve from the groundwater study plan to the conditions that  
4 ultimately ended up in the development order. Isn't it true  
5 that it wasn't -- you didn't consider that groundwater study  
6 moot until you located JEA as a bulk supplier?

7 A No, that's not correct. The --

8 Q Okay. Let me ask you a question. Do you recall that  
9 you had your deposition taken on March 1, 2000?

10 A I do.

11 Q And do you recall at that time that you were sitting  
12 in that deposition as the corporate representative of Nocatee?

13 A I do.

14 Q All right. Let me ask you if you recall the  
15 following exchange at Page 49, Line 20.

16 Answer: Well, the water supply plan was something  
17 that was developed as an evaluation of what the water supply  
18 was available in that area.

19 Question: That's the groundwater --

20 CHAIRMAN JACOBS: Excuse.

21 MR. MELSON: He starts reading answers. It really  
22 would help if he would read the question that goes with the  
23 first answer. That's the second time he's started in the  
24 middle of an answer without letting the witness know what --

25 MR. WHARTON: That's because all I'm doing is



1 providing context to the statement I really care about, but  
2 that's fine.

3 BY MR. WHARTON:

4 Q At Page 69, Line 18, Question: Will you help me  
5 understand what those two things are?

6 Answer: Well, the water supply plan was something  
7 that was developed as an evaluation of what the water supply  
8 was available in that area.

9 Question: That's the ground water supply development  
10 plan?

11 Answer: Correct, which if implemented would have  
12 been a component of the overall water resource protection plan.  
13 Since that has been abandoned, the on-site wells have been  
14 abandoned as an alternative. It is now no longer a part of  
15 that. In fact, it is just the opposite. In essence, it is not  
16 anticipated in the plan because there are no wells projected.

17 Question: So locating JEA as a potential source, as  
18 we've talked about today, allowed that plan to become moot, for  
19 lack of a better phrase?

20 Answer: Yes.

21 Do you stand by that testimony?

22 A Yes, but I don't think that's the question you asked  
23 me. I think you asked me, is finding JEA was the reason that  
24 we abandoned the water wells on-site. And my answer was, no,  
25 it was not. The reason we abandoned the water wells on-site

1 was because we could not get three affirmative votes to approve  
2 a development order with water wells on-site; therefore, we  
3 then began to look at alternatives. And that is why we sought  
4 out the JEA as a potential water supply provider.

5 Q So it is your testimony today that locating JEA as a  
6 potential source was not what allowed the water supply plan to  
7 become moot?

8 A Well, it was from the perspective that locating JEA  
9 allowed the development to proceed. If we had not been able to  
10 locate an alternative source, it was my understanding that we  
11 would not be able to get the project approved, so we would have  
12 had to look for another source.

13 Q Do you think that the court reporter took this down  
14 wrong?

15 A Well, I don't know, Mr. Wharton. It's been -- You  
16 deposed me four times, and so, obviously, I don't remember  
17 every time.

18 Q Okay. So -- well, I wasn't deposing you on this day,  
19 was I? I was deposing Nocatee, and they sent you.

20 A It felt a lot like me.

21 Q Okay. And it looked a lot like you, and it sounded a  
22 lot like you. So does that mean you don't stand by this  
23 testimony?

24 A I'm sorry, I do stand by the testimony. I'm trying  
25 to give a clarification.

1 Q Okay. And I think you've done that in abundance.  
2 Sir, you haven't evaluated whether if by some circumstance  
3 Intercoastal entered into a similar agreement with JEA as NUC  
4 has whether Intercoastal could meet the environmental ethic  
5 that you've testified the development has?

6 A I don't know there's been any plan of service  
7 provided by Intercoastal for me to review to render an opinion  
8 on that.

9 Q So in other words, the answer would be yes to my  
10 question? You have not evaluated that.

11 A There's been nothing to evaluate.

12 Q So that means yes?

13 A That means I have not evaluated it.

14 MR. WHARTON: I'd ask you to instruct the witness to  
15 answer the question.

16 CHAIRMAN JACOBS: Restate the question.

17 MR. WHARTON: It's right in the prehearing order.

18 CHAIRMAN JACOBS: I'm sorry, restate the question.

19 BY MR. WHARTON:

20 Q Okay. You would agree, you have not evaluated --  
21 isn't it true that you have not evaluated whether Intercoastal  
22 could meet the environmental ethics of the development if by  
23 some circumstance they entered into a similar agreement as JEA  
24 has with NUC now?

25 A I have not made that evaluation.

1 Q And you haven't evaluated Intercoastal's operational  
2 or management competency, and you don't have an opinion in that  
3 regard; isn't that true?

4 A That is true.

5 Q Do you have any document in your possession that  
6 indicates that the County Commission would not have approved  
7 the development plan if it included on-site wells?

8 A I do not have any document, no.

9 Q Do you agree that the County Commission recently  
10 approved a plan of service to Nocatee by St. Johns County that  
11 would have involved withdrawal of all the water to serve the  
12 Nocatee development from within St. Johns County and to provide  
13 the sewage treatment service from wells that are located within  
14 St. Johns County?

15 A The County, is my understanding, did not approve a  
16 plan of service. They were -- reviewed a plan of service that  
17 showed well fields approximately 15 miles away from Nocatee and  
18 a wastewater treatment plant approximately 20 miles south of  
19 Nocatee. But I think even the County's plan of service  
20 respected the development order conditions with no wells  
21 on-site, no water plants on-site, no wastewater plants on-site,  
22 and no discharges to the Tolomato River.

23 Q That's an artful answer, but the question is: Do you  
24 understand that the County Commission -- first of all, you  
25 don't understand the County Commission approved that plan of

1 service a week ago Tuesday?

2 A My understanding is, what they did was approve a  
3 resolution that created an exclusive service area, and that --  
4 at that same meeting -- well, I guess it's a moot point. On  
5 the purchase of Intercoastal, they approved a resolution to  
6 proceed setting a public hearing as required by statute for the  
7 purchase of a private utility. That's my understanding of what  
8 occurred at that meeting.

9 Q You don't understand that there were three things on  
10 the agenda that day, and that the third, which went along with  
11 the resolution, was that they approved that plan of service?

12 A Just the opposite. I mean, as I heard the  
13 Commissioners, that there might be other alternatives besides  
14 that plan, and they weren't married to the plan, but they did  
15 proceed with the exclusive franchise area designation.

16 Q But you agree that the plan of service that the  
17 Commission considered that day involved all of the water to  
18 serve the Nocatee development and all of the wastewater  
19 treatment facilities to serve the Nocatee development being  
20 located in St. Johns County?

21 A Yes, I did. I mean, I heard that, and of course, I  
22 testified that I didn't think that was implementable either.  
23 But they did present a plan of service. I don't think it was  
24 the only plan of service that they have in mind.

25 COMMISSIONER DEASON: Excuse me, I'm sorry. Why

1 would that not be implementable, in your opinion?

2 THE WITNESS: Well, there's a number of reasons.  
3 One, they proposed a 9.5 million gallon well field to -- about  
4 approximately 15 miles away from the Nocatee project. It's  
5 west of the World Golf Village. That particular area has some  
6 significant water quality problems, and there is letters from  
7 the Water Management District saying that well fields in  
8 general in that area cannot be developed to -- beyond about 2.5  
9 million gallons a day.

10 The second problem was, they were proposing the U.S.1  
11 corridor as a utility corridor, and the Department of  
12 Transportation issued a statement that they didn't believe  
13 there was any room in that corridor to construct any more  
14 utility lines.

15 The other issue was the reuse issue. The County  
16 could not construct reuse -- did not have reuse available to  
17 serve Nocatee. And they proposed a storm water treatment plant  
18 to treat storm water on the Nocatee project. The problem with  
19 that is, there just simply won't be enough storm water  
20 available to meet the needs. The storm water is only a very  
21 small fraction of what would be needed, and so they would be  
22 forced to rely on groundwater for reuse. And that was a clear  
23 violation and a clear concern. I talked to most of the County  
24 Commissioners about that, and I don't believe they really in  
25 their hearts adopted that plan of service.

1           So that's just some -- it's all actually in my  
2 rebuttal testimony that -- to their plan that was withdrawn, so  
3 I guess my rebuttal testimony is withdrawn as well.

4           COMMISSIONER DEASON: Let me follow up then. I'm  
5 just trying to understand. So in your opinion, the County  
6 while denying Nocatee, the developer, the opportunity to drill  
7 wells for potable water, if they got the territory, they were  
8 going to drill wells for nonpotable water to use for  
9 irrigation.

10           THE WITNESS: That is their plan of service. Their  
11 claim was -- like, Nocatee has a backup well that's approved in  
12 the development order; their claim was, it's just a backup  
13 well. But in practice, when you review the volumes of storm  
14 water available versus the volume of irrigation required, that  
15 backup well would have had to have been used as the primary  
16 source of water.

17           MR. WHARTON: I take it back. I do have another  
18 question.

19           CHAIRMAN JACOBS: One, sir.

20 BY MR. WHARTON:

21           Q     Sir, in this testimony that you caused to be filed on  
22 May 3rd, 2001, which is not going to be allowed because the  
23 County withdrew, you have referred to that throughout as the  
24 County's plan of service, haven't you?

25           A     Yes, I have.

1 Q So you do understand that that plan of service that  
2 was attached to Mr. Young's testimony, that was the plan of  
3 service you and I were discussing a few moments ago, is the  
4 County's plan of service?

5 A That is the County plan of service that was presented  
6 at the hearing and I was provided a copy of.

7 MR. WHARTON: Okay. That's all we have.

8 CHAIRMAN JACOBS: Staff.

9 MS. CIBULA: No questions.

10 CHAIRMAN JACOBS: Commissioners. Redirect.

11 REDIRECT EXAMINATION

12 BY MR. MELSON:

13 Q Just to be clear, it's your understanding the plan of  
14 service was presented but not formally approved; is that  
15 correct?

16 A That is my understanding.

17 Q You were asked about the -- what is commonly  
18 considered to be the starting point of the Tolomato River, and  
19 I think you said the County Road 210 bridge. Could you point  
20 to that on the map for us?

21 A (Witness complies.)

22 Q And can you point on the map to where the  
23 Intercoastal's existing discharge is?

24 A (Witness complies.)

25 Q And you can sit down, and I'll ask you a question.



1 Is there tidal action in the Intracoastal Waterway which would  
2 cause discharges at Intercoastal's existing discharge point to  
3 essentially come down into the Tolomato River?

4 A Yes --

5 MR. WHARTON: I'm going to object that this is  
6 outside the scope of cross. I just asked him where the  
7 Tolomato River was, nothing else. Now we're getting into tidal  
8 action as it relates to Intercoastal's present discharge.

9 MR. MELSON: Commissioners, the only relevance of the  
10 Tolomato River is the development order condition that  
11 prohibits discharges to the Tolomato River or its tributaries.  
12 Mr. Wharton obviously, in my opinion, asked the question to try  
13 to frame a clever argument in the brief that his discharge  
14 point is north of County Road 210 and, therefore, does not  
15 violate the development order. I'm trying to find out this  
16 witness's understanding of whether discharge at that point  
17 affects the Tolomato River or its tributaries which is --

18 MR. WHARTON: Well --

19 CHAIRMAN JACOBS: Excuse me, excuse me. I understand  
20 the point. The point is that he didn't cover it in cross, and  
21 if I'm not mistaken, I think the witness did get into whether  
22 or not the plan of Intercoastal is permissible pursuant to  
23 these conditions.

24 MR. WHARTON: Briefly, Mr. Chairman. This is the  
25 clever argument. I don't want to get into a compliment

1 exchange with Mr. Melson, but if they wanted to say, well,  
2 you're not really discharging into the Tolomato River, but  
3 here's this, they should have done that in their testimony.

4 CHAIRMAN JACOBS: He did not address this specific  
5 condition. I will allow you to cover what he covers. And as  
6 to whether or not there are reasons why -- well, not the  
7 specific reason, but whether or not the Intercoastal plan is  
8 permittable given under the conditions of the DRI.

9 BY MR. MELSON:

10 Q Given the condition of the DRI that prohibits wet  
11 weather discharges to the Tolomato River or its tributaries, do  
12 you believe --

13 CHAIRMAN JACOBS: Be careful -- excuse me. You  
14 always be careful the leverage you give good lawyers.

15 MR. MELSON: That's what the development order says.  
16 I'm just quoting the development order.

17 CHAIRMAN JACOBS: Okay.

18 MR. MELSON: It has been officially recognized.

19 Given that condition in the development order --  
20 well, I can ask the witness if that's the condition.

21 CHAIRMAN JACOBS: Right.

22 THE WITNESS: It is the condition. The Tolomato and  
23 its tributaries, no wet weather discharge is allowed.

24 BY MR. MELSON:

25 Q Given that condition, does a plan of service that

1 involves a discharge at Intercoastal's existing outfall, in  
2 your opinion, comply with that development order?

3 MR. WHARTON: Same objection, Mr. Chairman.

4 A It does not --

5 MR. WHARTON: It's outside the scope, and I move to  
6 strike the answer. All I asked is where the Tolomato River  
7 started.

8 CHAIRMAN JACOBS: I'll allow the question. Go ahead.

9 A It is not in compliance because the Intracoastal to  
10 the north is the tributary that feeds the Tolomato River, so  
11 the discharge point that's proposed in the Intercoastal  
12 Utilities' plan is to a tributary, the Tolomato River.

13 MR. MELSON: That concludes my redirect. And I would  
14 move Exhibit 38.

15 CHAIRMAN JACOBS: Without objection, show Exhibit 38  
16 is admitted.

17 (Exhibit 38 admitted into the record.)

18 CHAIRMAN JACOBS: Thank you.

19 (Witness excused.)

20 CHAIRMAN JACOBS: We'll break for lunch and come back  
21 at 1:30, and let's kind of circle a little bit to see how late  
22 we think we will go, when we return.

23 (Lunch recess.)

24 CHAIRMAN JACOBS: We'll go back on the record and  
25 continue with Intervenor testimony, and Ms. Swain you are up.

1 DEBORAH D. SWAIN

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

5 DIRECT EXAMINATION

6 BY MR. MELSON:

7 Q Ms. Swain, you know you are still under oath;  
8 correct?

9 A Yes, I do.

10 Q Have you prepared and filed Intervenor direct  
11 testimony dated March 17, 2000 consisting of eight pages?

12 A Yes, I have.

13 Q Have you also filed rebuttal testimony dated June 2,  
14 2000 consisting of nine pages?

15 A Yes.

16 Q Do you have any changes or corrections to either  
17 piece of testimony?

18 A I have corrections to my testimony, my Intervenor  
19 direct testimony. On Page 4, the numbers that I'm using are  
20 based upon Mr. Burton's first exhibit, MB-1, that is no longer  
21 the valid exhibit. I have not corrected the numbers for the  
22 revision that he just supplied, but I have looked at it enough  
23 to determine that my conclusions would be the same if I did  
24 make those corrections.

25 Q And with that understanding, if I were to ask you the

1 same questions today, would your answers be the same?

2 A Yes, they would.

3 MR. MELSON: I'd ask that Ms. Swain's Intervenor  
4 direct testimony and rebuttal testimony be inserted into the  
5 record as though read.

6 CHAIRMAN JACOBS: Without objection, show the  
7 Intervenor testimony of Ms. Swain entered into the record as  
8 though read.

9 BY MR. MELSON:

10 Q And there was three exhibits attached to your  
11 Intervenor direct, DDS-6 through DDS-8; correct?

12 A Yes, that's correct.

13 Q And DDS-8 is one of those that's been superceded by a  
14 later exhibit; is that right?

15 A Yes, that's right.

16 Q Any changes to DDS-6 or 7?

17 A No.

18 MR. MELSON: Mr. Chairman, I asked that DDS-6 and  
19 7 be marked as composite exhibit.

20 CHAIRMAN JACOBS: Show that marked as composite  
21 Exhibit 39.

22 (Exhibit 39 marked for identification.)

23 MR. MELSON: And I'd ask that DDS-8 be marked as  
24 Exhibit 40.

25 CHAIRMAN JACOBS: Show that marked as Exhibit 40.

1 (Exhibit 40 marked for identification.)

2 MR. MELSON: And that's one that we will not be  
3 moving for the admission of.

4 BY MR. MELSON:

5 Q You also had three exhibits attached to your rebuttal  
6 testimony, DDS-9, 10, and 11; is that correct?

7 A Yes, that's correct.

8 Q And I believe it's 10 and 11 that are now superceded?

9 A Yes, that's right.

10 MR. MELSON: Mr. Chairman, if we could have DDS-10  
11 and 11 added as part of composite Exhibit 40.

12 CHAIRMAN JACOBS: 10 and 11?

13 MR. MELSON: Yes, sir.

14 CHAIRMAN JACOBS: So that Exhibit 40 is amended to  
15 include DDS-10 and 11.

16 MR. MELSON: And then we would ask that DDS-9 be  
17 marked as Exhibit 41.

18 CHAIRMAN JACOBS: Show that marked as Exhibit 41.

19 (Exhibit 41 marked for identification.)  
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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
2                   **INTERVENOR DIRECT TESTIMONY OF**  
3                   **DEBORAH D. SWAIN**  
4                   **ON BEHALF OF**  
5                   **NOCATEE UTILITY CORPORATION AND DDI, INC.**  
6                   **DOCKET NOS. 990696-WS & 992040-WS**  
7                   **March 17, 2000**  
8  
9   **Q.    Please state your name and business address.**  
10   **A.    My name is Deborah D. Swain. My business address is**  
11        **2025 Southwest 32nd Avenue, Miami, FL 33415.**  
12   **Q.    By whom are you employed and in what capacity?**  
13   **A.    I am Vice President of the consulting firm of Milian,**  
14        **Swain & Associates, Inc.**  
15   **Q.    Have you previously filed direct testimony in support**  
16        **of Nocatee Utility Corporation's certificate**  
17        **application in these consolidated dockets?**  
18   **A.    Yes.**  
19   **Q.    What is the purpose of your intervenor direct**  
20        **testimony?**  
21   **A.    This testimony contains my evaluation, on behalf of**  
22        **Nocatee Utility Corporation (NUC) and its parent**  
23        **company, DDI, Inc. (DDI), of the competing application**  
24        **filed by Intercoastal Utilities (Intercoastal) to serve**  
25        **territory West of the Intracoastal Waterway that**

1 comprises the Nocatee development. In particular, I  
2 have focused on the financial and rate aspects of that  
3 application.

4 **Q. Are you sponsoring any exhibits with this testimony?**

5 A. Yes. I am sponsoring three exhibits, which I refer to  
6 later in my testimony.

7 **Q. Have you reviewed Intercoastal's financial statements?**

8 A. Yes. Intercoastal did not provide any financial  
9 statements with its application in this docket. I  
10 therefore reviewed the Financial Report for the year-  
11 ended August 31, 1998, prepared by Smoak, Davis & Nixon  
12 LLP, that was submitted by Intercoastal to St. Johns  
13 County in support of its earlier attempt to extend its  
14 service territory. I also reviewed the financial  
15 section of the annual report that Intercoastal  
16 submitted to St. Johns County for the year ended  
17 December 31, 1998. Copies of these documents are  
18 attached for informational purposes as Exhibits \_\_\_\_  
19 (DDS-6) and \_\_\_\_ (DDS-7).

20 **Q. What observations do you have about these financial**  
21 **statements.**

22 A. They show that Intercoastal suffered net losses in 1997  
23 and 1998, and that by December 1998, Intercoastal had  
24 paid-in capital of approximately \$69,000 and a retained  
25 earning deficit of about \$1,656,000, resulting in



1 negative equity of almost \$1,587,000. The statements  
2 also show that Intercoastal had long term debt of over  
3 \$3.6 million. Furthermore, a note to the August 31  
4 Financial Report indicates that increased debt has been  
5 secured to fund plant improvements, resulting in a  
6 sharp increase in the scheduled principal payments on  
7 that debt from about the \$150,000 per year range in  
8 1999-2002 to about \$1.1 million in 2003.

9 **Q. What conclusions do you draw from this financial**  
10 **information?**

11 **A.** First, Intercoastal has been unable to pay its debt  
12 service from operating earnings for the years 1997 and  
13 1998. They have had to increase wastewater rates over  
14 40% in part to pay for new debt. It is unclear from  
15 the information provided if this increase will provide  
16 revenues adequate to pay for the new debt.

17 Second, the negative equity and highly leveraged  
18 position of the utility indicates a high financial risk  
19 and certainly raises questions regarding the continued  
20 financial viability of the utility over the long term,  
21 particularly in light of its plans to finance its  
22 expansion into the requested territory entirely through  
23 debt.

24 **Q. Does it appear that Intercoastal's shareholders intend**  
25 **to make any equity investment to support the funding**

1           **needed to serve the proposed expansion territory?**

- 2    A.    No. Mr. Burton's Exhibit \_\_\_ (MB-1) projects that the  
3           utility will finance its investment in new plant  
4           entirely through additional borrowings. For example,  
5           page 24 of his exhibit shows \$1,877,750 of projected  
6           borrowings in 2000 and another \$12 million of  
7           borrowings in 2002, with no equity additions  
8           whatsoever. This is an increase in current debt of  
9           400% in the next couple of years.
- 10   **Q.    Can you tell from the financial information provided if**  
11           **Intercoastal will be able to pay for its increased**  
12           **debt?**
- 13    A.    It does not look like they can, under any of the  
14           scenarios presented in Mr. Burton's Exhibit \_\_\_ (MB-1).  
15           Looking at Figure 1, Scenario 1 (page 8), the "Achieved  
16           Return" indicated on line 22 for the year 2000 is  
17           \$213,000, up to \$719,000 in 2005. "Achieved Return" is  
18           used to mean the level of income earned out of which  
19           interest is paid. However, interest expense in those  
20           same years, taken from Figure 14 (pages 24-27), line 31  
21           is \$605,000 in 2000, up to \$1,229,000 in 2005. In  
22           fact, according to Mr. Burton's exhibit, the utility is  
23           unable to pay its interest out of operating income in  
24           any year he has shown. It appears that this is because  
25           debt far exceeds rate base throughout the projection

1 period.

2 **Q. What particular significance do the years that you are**  
3 **referring to have?**

4 A. The initial rates that I have calculated for NUC are  
5 based upon the financial condition in the year the  
6 utility's Phase 1 reaches 80% capacity. This is  
7 expected to take place around 2005. The rates that I  
8 have determined for NUC would enable it to earn income  
9 adequate to fully pay its debt and equity obligations  
10 in that year.

11 **Q. Have you reviewed the rate projections and other**  
12 **financial analysis contained in Mr. Burton's Exhibit**  
13 **\_\_\_ (MB-1)?**

14 A. Yes I have.

15 **Q. Do you agree with Mr. Burton's conclusion that the**  
16 **extension of Intercoastal's territory to the West of**  
17 **the Intracoastal Waterway could reduce rate pressure**  
18 **over the long term?**

19 A. I agree at a theoretical level that if the fixed costs  
20 of service can be spread over a larger customer base,  
21 and all other things remain equal, one would expect  
22 rates to decrease. In fact, some preliminary analyses  
23 that I have performed for NUC show that its rates  
24 should decrease over time as Nocatee grows and  
25 additional customers are served.

1           Until I can review Mr. Burton's workpapers and  
2           assumptions in more detail, however, I cannot agree  
3           with his specific conclusions about Intercoastal.

4   **Q.   Have you compared Intercoastal's rates with those of**  
5   **NUC?**

6   A.   Yes.  I have compared Intercoastal's existing rates --  
7           which it proposes to apply to customers in the  
8           expansion territory -- with the initial rates that NUC  
9           has requested in this docket.  I have attached a chart  
10          which shows this comparison as Exhibit \_\_\_\_ (DDS-8).

11 **Q.   What conclusions do you draw from this comparison?**

12 A.   In general, Intercoastal's water rates are somewhat  
13          lower than NUC's proposed rates, while its wastewater  
14          rates are somewhat higher.  The combined water and  
15          wastewater bill for the consumption level that  
16          Intercoastal identifies as an average customer (5,333  
17          gallons per month) are virtually identical.  The level  
18          of rates therefore should not be a major factor in the  
19          Commission's decision in these dockets.

20 **Q.   Have you identified any differences in the assumptions**  
21 **that went into the development of these rates?**

22 A.   Intercoastal's proposed rates simply mirror the rates  
23          that are currently in effect under regulation by St.  
24          Johns County.  They do not include any pro forma effect  
25          of expanding the system to serve West of the

1 Intracoastal Waterway. They also may not include the  
2 full ratemaking effect of water and wastewater plant  
3 expansions which are in progress or have been recently  
4 completed.

5 NUC's proposed rates are based on projected costs  
6 when the first phase of the water and wastewater  
7 systems reach 80% of capacity. They thus include  
8 specific costs to serve the territory at issue.

9 **Q. In performing his financial analysis of future rate**  
10 **pressure, what assumptions did Mr. Burton make about**  
11 **utility investment in lines?**

12 **A.** Based on the Conceptual Master Plan prepared by Post  
13 Buckley, Mr. Burton apparently assumed that  
14 Intercoastal would invest only in the backbone mains  
15 running along County Road 210, and that all other  
16 transmission, distribution and collection mains would  
17 be contributed by the respective developers. As Mr.  
18 Doug Miller testifies, the backbone wastewater lines  
19 shown in Phase 1 do not appear to be adequately sized  
20 to serve the first phase of the Nocatee development.  
21 The combination of these two factors results in  
22 Intercoastal estimating an unreasonably low amount of  
23 utility investment in lines. This results in an  
24 excessive level of CIAC, and therefore an artificially  
25 low projection of future rates.

1           It also appears that these developer contributed  
2 lines may have been excluded from Mr. Burton's  
3 projection of future net CIAC as a percentage of future  
4 plant. If so, his conclusion that Intercoastal's CIAC  
5 will remain within Commission guidelines is suspect,  
6 and cannot be verified.

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

8 **A. Yes it does.**

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1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION  
2                                   REBUTTAL TESTIMONY OF  
3                                   DEBORAH D. SWAIN  
4                                   ON BEHALF OF  
5                   NOCATEE UTILITY CORPORATION AND DDI, INC.  
6                                   DOCKET NOS. 990696-WS & 992040-WS  
7                                   June 2, 2000  
8

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

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

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

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

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

19  A.   Yes.

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

21  A.   My rebuttal testimony responds to the prefiled  
22       testimony of Michael E. Burton and Caroline Silvers.

23  MICHAEL E. BURTON

24  **Q.**   Have you reviewed the testimony of Mr. Burton and his  
25       Exhibit MB-2 \_\_\_\_\_, Financial Analysis - Revised?

1 A. Yes.

2 **Q. What observations do you have about the financial**  
3 **analysis sponsored by Mr. Burton?**

4 A. My first observation regards the study procedure. On  
5 page 2 of Exhibit MB-2 \_\_\_\_\_, Mr. Burton indicates that  
6 he has developed a predictive model designed to project  
7 financial performance of any water and sewer utility  
8 regulated by the Florida Public Service Commission. At  
9 this point I have not been able to fully analyze his  
10 model. Intercoastal has claimed that the model is  
11 confidential and has refused to provide an electronic  
12 copy of the model in response to NUC's discovery  
13 requests, even under a confidentiality agreement. My  
14 review of Exhibit MB-2 nevertheless leads me to  
15 question whether his model accurately reflects the  
16 ratemaking principles applied by the Commission.

17 **Q. In Exhibit MB-2, Mr. Burton analyzes the impact upon**  
18 **customer rates of implementing Intercoastal's plans for**  
19 **service versus the impact of NUC's proposed rates.**  
20 **Assuming for purposes of this answer that Mr. Burton's**  
21 **model produces valid results, would his analysis be of**  
22 **any assistance to this Commission?**

23 A. No. And that is my second observation. Mr. Burton's  
24 analysis appears to be flawed because, rather than  
25 developing rates that recover Intercoastal's cost to



1 provide service, he develops rates that require  
2 Intercoastal's owners to subsidize the utility's cost  
3 of service.

4 **Q. Would you please explain?**

5 A. Mr. Burton analyzes two scenarios under which  
6 Intercoastal would provide water and wastewater service  
7 to Nocatee. In Scenario 1 service is proposed to be  
8 provided to Nocatee on what Mr. Burton call a "stand  
9 alone" basis. That is, Intercoastal would build a  
10 separate system west of the Intracoastal Waterway to  
11 serve Nocatee. The system would not be interconnected  
12 with the system east of the waterway, but the costs to  
13 serve would be combined and the rates would be the same  
14 for both service areas. In Scenario 2, Intercoastal  
15 would "stand in NUC's shoes" and serve Nocatee with  
16 services purchased from JEA. The costs to serve  
17 Nocatee would then be combined with those to serve east  
18 of the waterway and the rates would be the same for  
19 both areas.

20 The proforma income projections for Scenario 1 are  
21 shown at pages 19 and 20 of Mr. Burton's Exhibit MB-2  
22 \_\_\_\_\_. The proforma income projections for Scenario 2  
23 are shown at pages 47 and 49 of Mr. Burton's Exhibit  
24 MB-2 \_\_\_\_\_. A review of those pages shows that the  
25 revenues projected to be collected from customers are

1 inadequate to recover the full revenue requirement or  
2 cost to provide service to Intercoastal's customers.  
3 These inadequate revenues are the basis of Mr. Burton's  
4 rate comparison through which he implies that it would  
5 be advantageous to the customer for Intercoastal to  
6 provide service.

7 **Q. Have you determined just how much Mr. Burton has**  
8 **understated Intercoastal's revenue requirements?**

9 A. Yes. I have prepared Exhibit \_\_\_\_ (DDS-9), which  
10 summarizes Intercoastal's projected revenue  
11 requirements, based on Mr. Burton's assumptions. This  
12 exhibit shows that by 2005, Intercoastal's cumulative  
13 revenue deficiencies would be over \$1,900,000 under  
14 Scenario 1 and over \$600,000 under Scenario 2.

15 **Q. Is it advantageous to the customer, if Intercoastal is**  
16 **willing to subsidize rates?**

17 A. No. As I indicated in my Intervenor direct testimony,  
18 at year end 1998, Intercoastal had already accumulated  
19 a deficit of \$1.6 million. Mr. Burton's proposals  
20 would result in additional cumulative income deficits  
21 of between \$590,000 and \$1.8 million by 2005. The fact  
22 that Intercoastal's revenues are insufficient to pay  
23 debt expenses on its used and useful plant raises  
24 concerns about its ability to finance the investment  
25 that would be necessary to provide dependable service

1 to Nocatee's customers.

2 **Q. Should the Commission base its decision on which**  
3 **utility should serve Nocatee based on Mr. Burton's**  
4 **implication that Intercoastal's rates would be less**  
5 **than NUC's?**

6 A. No. The Commission should not base its certificate  
7 decision on rate projections that involve a subsidized  
8 rate for Intercoastal that does not fully recover its  
9 investment in used and useful plant. The Commission  
10 should not put customers at risk by granting a  
11 certificate based on "loss leader" subsidized rates,  
12 since the customers would have no protection against a  
13 major rate increase once a certificate is granted.

14 **Q. Do you have any other observations regarding Mr.**  
15 **Burton's testimony?**

16 A. Yes. The plan analyzed by Mr. Burton in Scenario 1,  
17 the "stand alone" plan, is not an acceptable plan for  
18 serving Nocatee. As testified by Mr. Douglas Miller,  
19 the plan of service analyzed by Mr. Burton is  
20 inconsistent with the Nocatee's Application for  
21 Development Approval as a Development of Regional  
22 Impact. Therefore, any conclusions reached by Mr.  
23 Burton regarding Scenario 1 are based on an infeasible  
24 plan and provide no useful information to the  
25 Commission.

1 **Q. What about Scenario 2, the "stand in NUC's shoes" plan?**

2 **A.** This plan also appears to be flawed because  
3 Intercoastal has presented no evidence that JEA would  
4 commit to such a wholesale arrangement with it. Mr.  
5 Burton's analysis of Scenario 2 is therefore a "what  
6 if" exercise with no factual basis.

7 **Q. Mr. Burton also analyzes the impact of Intercoastal's**  
8 **plan to provide reclaimed water. Do you have any**  
9 **observations regarding that analysis?**

10 **A.** Yes. As Mr. Douglas Miller testifies, Intercoastal's  
11 stand alone reclaimed water plan, which Mr. Burton  
12 analyzes under Scenario 3 in Exhibit MB-2 \_\_\_\_\_, is an  
13 unacceptable plan because Intercoastal has insufficient  
14 reclaimed effluent to meet Nocatee's irrigation needs  
15 and proposes to use ground water to supplement the  
16 irrigation supply. Further, Intercoastal has not filed  
17 proposed tariffs for its reclaimed water service nor  
18 asked the Commission to set a rate for such service in  
19 this docket. The financial conclusions reached by Mr.  
20 Burton in analyzing this plan are therefore speculative  
21 at best.

22

23 CAROLINE SILVERS

24 **Q. At page 10 of her direct testimony, Ms. Silvers**  
25 **expresses concern with the level of rates for reclaimed**

1           **water. Can you address that concern?**

2           Yes. NUC has proposed a base facility and gallonage  
3           charge rate structure for reclaimed water. The initial  
4           proposed gallonage charge was \$1.41 per 1,000 gallons  
5           and the monthly base facility charge varied from \$3.74  
6           for a 5/8" x 3/4" meter to \$229.20 for an 8" meter.  
7           Ms. Silvers is concerned that the \$1.41/MG gallonage  
8           charge may discourage large users such as golf courses  
9           from purchasing reclaimed water. If these potential  
10          users can show that the purchase of reclaimed water is  
11          not economically feasible, they may be able to support  
12          an application for a consumptive use permit and use  
13          groundwater for irrigation.

14   **Q. Does NUC share her concern?**

15   A. Yes, it does. It will be of no benefit to anyone if  
16          reuse of reclaimed water is not economically feasible.

17   **Q. Have you investigated alternatives to NUC's original  
18          rate proposal that would make the sale of reclaimed  
19          water more feasible, especially to large consumers?**

20   A. Yes. In response to the concerns about the reuse rate,  
21          I have developed an alternative rate proposal which is  
22          designed to reduce the charge to large users while  
23          keeping the average monthly residential bill at an  
24          affordable level. This alternative involves three  
25          basic changes from the original rate proposal.

1 Q. Can you please describe these basic changes?

2 A. Yes. First, the new proposal creates better balance  
3 between the base facility charge and the gallonage  
4 charge in the rate structure. In researching other  
5 rate structures I have found that other utilities often  
6 charge a higher base charge and lower gallonage charge.  
7 Some even charge a flat monthly charge to residential  
8 customers, but at a much higher level than NUC's  
9 originally proposed base facility charge. I have  
10 reviewed NUC's costs and believe there is cost  
11 justification to realign the base and gallonage charges  
12 in a way that will be fair to all levels of consumers  
13 and still recover NUC's cost of service.

14 Second, NUC now proposes to require the developer  
15 of Nocatee to contribute approximately 80% of the cost  
16 of the off-site reuse transmission main, or roughly  
17 \$1.2 million. This means that the amount of  
18 contributions-in-aid-of-construction for reuse plant  
19 will meet the Commission's guideline for a minimum CIAC  
20 amount equal to 100% of the cost of transmission and  
21 distribution facilities. Because so much of the gross  
22 reuse plant is represented by transmission and  
23 distribution facilities, the overall net CIAC for the  
24 reuse system will be approximately 94% of net plant.

25 Third, NUC proposes to calculate the reuse rates

1 based on costs and usage assumptions for the last year  
2 of Phase I (2006), rather than for the year (2005) when  
3 the Phase I system reaches 80% of capacity.

4 **Q. Have you prepared an exhibit to show the calculation of**  
5 **the new reuse rate?**

6 A. Yes. I have prepared Exhibit \_\_\_(DDS-10) for that  
7 purpose. The exhibit shows the revised rate proposal  
8 and the calculation of the revenues generated by those  
9 rates. I have also prepared Exhibit \_\_\_(DDS-11) which  
10 includes the schedules supporting the calculation. You  
11 can see from this exhibit that a typical residential  
12 bill for irrigation will be approximately \$15.00 per  
13 month or less while the usage rate, which has the most  
14 impact on large users, will drop from \$1.41/MG to  
15 \$0.35/MG.

16 **Q. Does that conclude your rebuttal testimony?**

17 A. Yes it does.

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1 BY MR. MELSON:

2 Q Ms. Swain, would you briefly summarize your  
3 Intervenor direct and your rebuttal testimony?

4 A Yes. Thank you. Good afternoon again,  
5 Commissioners. My Intervenor and rebuttal testimonies comment  
6 on the Intercoastal plan of service and respond to  
7 Intercoastal's criticisms of Nocatee's plan of service. It  
8 also describes that Intercoastal's financial picture raises  
9 concern for us, and as it should for you, about its ability to  
10 provide continuous service to Nocatee. It demonstrates that it  
11 has substantial negative net worth that's highly leveraged.  
12 Its debt is greater than rate base, meaning that it is not ever  
13 entitled to earn a return adequate to even cover it's interest  
14 expense; that it plans to finance new plant with 100 percent  
15 debt; therefore, continuing its high financial risk. The plan  
16 requires substantial subsidies from the stockholders,  
17 stockholders would have never made investments in the utility  
18 in the past. And it raises doubt about its ability to provide  
19 service, therefore, on a long-term basis.

20 Furthermore, Intercoastal places reliance on its  
21 expected economies of scale, and that causes us concern over  
22 Intercoastal's ability to keep up with the significant growth.  
23 We have found many errors in the financial model which many  
24 apparently have been corrected, but we have not been able to  
25 verify that all of them have been corrected without full access



1 to the spreadsheet without the password protection. The rates  
2 that are described in that model are less than fully  
3 compensatory. Whereas, Nocatee is requesting 100 percent of  
4 what we're entitled to, which is the Commission long-standing  
5 policy requiring that rates be set for a new utility at  
6 80 percent of build out, thereby preventing a subsidy and  
7 thereby preventing loss leader type rates. That puts us in a  
8 position of being very suspect of Intercoastal's motives.  
9 Furthermore, the reuse rates projected by Mr. Burton are not  
10 accompanied by a request to establish rates. That concludes my  
11 summary.

12 MR. MELSON: And Ms. Swain is tendered for cross.

13 CHAIRMAN JACOBS: Mr. Menton.

14 MR. MENTON: No questions.

15 CHAIRMAN JACOBS: Mr. Korn.

16 MR. KORN: No questions.

17 CHAIRMAN JACOBS: Mr. Deterding.

18 CROSS EXAMINATION

19 BY MR. DETERDING:

20 Q Ms. Swain, you know that there are earning deficits  
21 for Intercoastal in the two years you analyzed, '97 and '98;  
22 correct?

23 A Yes, that's correct.

24 Q Did you look at '96 or any earlier years?

25 A I did not look at each of the individual years. What

1 I looked at was that the balance to date demonstrated that over  
2 its -- since its inception it had a net loss, and that in the  
3 two years it looked at, it had net losses in those years as  
4 well. I did not look at individual prior years.

5 Q Did you look at '99 or 2000?

6 A I don't recall that I looked at '99 or 2000. I may  
7 have seen '99. I don't recall.

8 Q Yet you're aware that the utility was able to obtain  
9 additional debt financing at the end of 1998 and again in 2000;  
10 correct?

11 A I understand that to be the case, yes.

12 Q Okay. Are you aware that that debt financing was  
13 obtained at rates of less than 7.5 percent?

14 A I understand that to be the case as well.

15 Q Okay. Are you aware that Intercoastal had a  
16 substantial wastewater rate increase in 1999?

17 A Yes, I understand there was a limited proceeding that  
18 caused a tremendous increase in the rates.

19 Q How long have you worked in the area of water and  
20 sewer utilities in Florida?

21 A Twenty-three years.

22 Q Do you know how long Intercoastal has been in  
23 operation under its current ownership?

24 A I believe I heard that it was the early '80s.

25 Q Do you know how long JAX Utilities Management and the

1 principals of Intercoastal have been in the utility business?

2 A No, I don't.

3 Q How long have you known Mr. James?

4 A I've known Mr. James for as long as I've been in the  
5 water and sewer industry.

6 Q And he's been in it longer than you have by a long  
7 shot; correct?

8 A I understand that he's been at it longer than I have.

9 Q Do you know anyone in this State currently operating  
10 or constructing or managing water utilities whose been in the  
11 water utility business longer than Mr. James?

12 A I don't know whether I do or not. I'm not aware of  
13 the --

14 Q Can you think of anyone?

15 A No, I don't think of anybody.

16 Q Have you seen any years in which Intercoastal has  
17 been unable to meet its debt service?

18 A In that if you mean that they have not defaulted  
19 on -- whether they have defaulted on loans or not, I have not  
20 seen whether they have ever defaulted on loans. I know,  
21 however, that they have not earned enough in operating earnings  
22 to cover their interest expense.

23 Q Okay. I understand that. Have you seen a time when  
24 they have been unable to meet their debt service?

25 A I have not seen whether that has happened or not.

1 Q You don't know of any years in which they have been  
2 unable to meet their debt service?

3 A That's correct, nor have I seen that they -- perhaps  
4 they have.

5 Q Do you have anything to indicate to you that they  
6 have been unable to meet their debt service?

7 A No, I have never seen anything like that.

8 Q You're projecting growth for the Nocatee development  
9 in your analysis of an average of 471 units -- ERCs per year;  
10 is that correct?

11 A That sounds right, yes.

12 Q Do you know if any of the systems owned by or  
13 operated by the principals of Intercoastal have had similar  
14 growth rates in the past?

15 A No, I don't know.

16 Q So you don't know if they have ever had to deal with  
17 this level of growth?

18 A No, I have not seen whether they have or not.

19 Q Okay.

20 A Other than Mr. Burton's schedule, I haven't seen any  
21 other financial analysis of Intercoastal or its principals.

22 Q And Mr. Burton's schedule deals solely with  
23 Intercoastal, does it not?

24 A Yes, that's right.

25 Q Would you agree that the main difference between

1 DDI's commitment to fund NUC and the principals of  
2 Intercoastal's commitment to fund Intercoastal is primarily a  
3 level of comfort NUC has with DDI because they are a related  
4 party?

5 A I don't think that that's the only difference. I  
6 think that --

7 Q Well, let me interrupt you there. I didn't ask you  
8 if it was the only difference. Is it the primary difference?

9 MR. MELSON: Mr. Chairman, I think the witness is  
10 entitled to answer the question that explains --

11 MR. DETERDING: If she answers the question, I agree,  
12 and the question was, is that the primary difference.

13 CHAIRMAN JACOBS: Restate your question, and then  
14 we'll get the answer.

15 BY MR. DETERDING:

16 Q Would you agree that the main difference between  
17 DDI's commitment to fund NUC and the principals of  
18 Intercoastal's willingness to fund Intercoastal is primarily  
19 the level of comfort that NUC has with DDI because they are  
20 related parties?

21 CHAIRMAN JACOBS: Yes or no would be great, and then  
22 your explanation.

23 A I think that it is perhaps the main reason, but it is  
24 not the only significant reason. There are other reasons. One  
25 is -- and I'll elaborate on that -- the fact that it's a

1 related party entitles DDI to a more in-depth knowledge of the  
2 financial capability of its subsidiary than it would of  
3 Intercoastal. That relationship by definition would cause that  
4 to happen. But furthermore, DDI is on the brink of beginning  
5 what I understand is a multi-billion dollar development and  
6 would certainly prefer to place its fate in the hands of the  
7 utility in which it has confidence. Now, whether that be  
8 because it's a related party or because it has in-depth  
9 knowledge of that related party is certainly -- one or the  
10 other is a possibility; I think the latter.

11 Q Do you recall when I took your deposition on  
12 July 26th, 2000?

13 A Yes.

14 Q I refer you to Page 68, Line 19.

15 Question: Do you see any difference between the  
16 promise of DDI's parent developer company to make up whatever  
17 shortfalls may be experienced for Nocatee and the promise of  
18 the shareholders of ICU to make up any revenue shortfalls they  
19 may experience during this same period?

20 Answer: Yes, I do. It's primarily a level of  
21 comfort because of the relationship, and the developer who's  
22 making the commitment is the one that is -- the one that most  
23 is dependent upon that commitment being met. They need to have  
24 a utility -- they need to have the utility facilities installed  
25 as planned in order to do their development to complete their

1 development on a timely basis.

2 Do you stand by that testimony?

3 A Yes, absolutely. And I believe when you read that,  
4 that what I said was, the utility with which it has a  
5 relationship. And it does have a relationship certainly again  
6 by definition. It may be because it's a related party, but it  
7 does have a relationship with that utility and, therefore, has  
8 a greater level of comfort.

9 Q Isn't it true that DDI -- neither DDI or NUC have  
10 ever been in the utility business before?

11 A That's correct.

12 Q You made a statement, I believe, in your opening  
13 comments that I don't see in your testimony, but it -- I wanted  
14 to ask you about. You said Intercoastal's investors have never  
15 made investments in the utility in the past. Isn't it true  
16 that this utility company was started by those investors by an  
17 initial investment?

18 A Yes. And I do state in my testimony on Page 2, Line  
19 24 that that initial investment was \$69,000.

20 Q Okay. Do you know whether or not this utility has  
21 ever been funded by those shareholders for prior years' losses,  
22 shortfalls?

23 A To my knowledge, there's never be any additional  
24 investment that removes the negative equity other than that  
25 initial \$69,000. And --

1 Q Well, isn't it true -- I'm sorry, I apologize.

2 A And any investment that the stockholders may have  
3 made has been more than made up for by the negative equity, and  
4 that's a very important distinction, that the negative equity  
5 is demonstration that there has not been an investment by the  
6 stockholders.

7 Q So you believe that that negative equity demonstrates  
8 that there has never be any other investment by the  
9 shareholders to cover shortfalls?

10 A Yes, that's correct. And let me explain further.  
11 When there is negative equity, as is the case with  
12 Intercoastal, if the negative equity in any one year is  
13 completely offset by an investment by the stockholders, and  
14 there is evidence of an investment by the stockholders, but  
15 partial payments of cash that don't anywhere near compensate  
16 for the negative equity, in my mind, are not investments by the  
17 stockholders. Those are temporary cash placements that are  
18 offset by negative equity thereafter.

19 Q Well, do you know whether these shareholders have  
20 ever loaned money to Intercoastal Utilities?

21 A No, I don't know that. I don't know.

22 Q So you are saying only equity investments, not any  
23 investments by the shareholders?

24 A An investment in my definition is an equity  
25 investment.



1 Q Do you know whether they have ever infused capital  
2 into this utility in the form of debt?

3 A No, and I don't have any testimony regarding that.

4 Q You expressed again in your summary your concern that  
5 the -- that Intercoastal's rates and proposals and I guess,  
6 really, Mr. Burton's projections show a subsidy of Intercoastal  
7 by its shareholders, a required subsidy.

8 A Yes, that's correct. Even in his revised exhibit for  
9 the first number of years of his projection period, there  
10 continues to be a subsidy.

11 Q Isn't it true that the rates of NUC are established  
12 on rates that will provide a recovery of expenses and a fair  
13 return for the first three years of its operation?

14 A I'm sorry, I misunderstood your question. Could you  
15 repeat --

16 Q Isn't it true that your proposed rates in this case  
17 are those that will generate a fair return and recovery of  
18 expenses for NUC only after four years of operation?

19 A Yes. And that is all that I'm authorized to. I am  
20 asking for 100 percent to which I am authorized, and that's  
21 100 percent recovery of costs and a fair rate of return in the  
22 year that they reach 80 percent.

23 Q But they will not be generating that fair rate of  
24 return and recovery of expenses in the prior years, to your  
25 knowledge?

1           A     As I said the other day when you asked me that  
2 question, I don't expect that they will earn a fair return  
3 until year four that -- by definition, and I expect that some  
4 or all from my analysis of the operating expenses will be fully  
5 paid perhaps in the third year.

6           Q     But you don't know whether they will be in the first,  
7 second, or third year?

8           A     Well, I don't know about the first or second, but I  
9 know that in the third year that they will be.

10          Q     And if they are not in the first or second year, then  
11 that represents a subsidy of NUC by its shareholders, doesn't  
12 it?

13          A     Certainly the developer in this case and for any new  
14 utility is put in a position by the Commission that it must  
15 subsidize any shortfalls until the year that it reaches  
16 80 percent. And so, yes, there will be a subsidy most likely  
17 in the first year and possibly the second year, and that is by  
18 requirement.

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

20                   CHAIRMAN JACOBS: Staff.

21                   MS. CIBULA: Staff doesn't have any questions.

22                   CHAIRMAN JACOBS: Commissioners. Redirect.

23                                   REDIRECT EXAMINATION

24 BY MR. MELSON:

25           Q     Just one question, Ms. Swain. Mr. Deterding asked

1 you --

2 CHAIRMAN JACOBS: I'm sorry, I'm sitting here and I  
3 forgot I had a question. Ms. Swain, are you familiar with the  
4 testimony of Ms. Silvers in her analysis of the reuse rates?

5 THE WITNESS: Yes. And I did in my rebuttal  
6 testimony attach an exhibit that's a revision to the reuse  
7 rates. In response to her concerns, I absolutely agree. And  
8 so we've revised the rates to be -- basically what we did is  
9 shift some of the cost to the flat fee, base fee that the  
10 customer pays and out of the gallonage amount, and that's what  
11 her concern was. And now it's low enough that it's affordable  
12 to the customers.

13 CHAIRMAN JACOBS: Very well. And mainly for the  
14 large users was her concern, so that would continue to be the  
15 case.

16 THE WITNESS: Yes.

17 CHAIRMAN JACOBS: It would be attractive to the large  
18 users.

19 THE WITNESS: That's right. The single greatest  
20 user, of course, is the golf course. And this will be much  
21 more beneficial to them and yet still result in an average  
22 rate, monthly rate to the residential customers that's  
23 comparable with other areas that I looked at.

24 MR. DETERDING: Excuse me. If you don't mind, I  
25 forgot two questions. Very quickly.

1 CHAIRMAN JACOBS: Very briefly.

2 MR. DETERDING: It won't be difficult.

3 CONTINUED CROSS EXAMINATION

4 BY MR. DETERDING:

5 Q Isn't it true that the proposed service availability  
6 charges of NUC will include NUC's charge and a charge for JEA's  
7 service availability charge?

8 A Yes. Nocatee will collect both fees and remit the  
9 JEA portion to them.

10 Q And isn't it true that the service availability  
11 charges combined for those two that will be collected from each  
12 customer will be higher than those of Intercoastal?

13 A That's possible. I haven't looked at that.

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

15 COMMISSIONER JABER: The combination of those  
16 charges, are they higher than what JEA would charge service  
17 availability charges for its own customers?

18 THE WITNESS: I'm not certain because for their own  
19 customers they will also charge a connection fee, and I don't  
20 know if there's other fees. And all we're collecting is the  
21 capacity fee piece, so I haven't looked to see combined if it's  
22 greater than the total JEA.

23 CHAIRMAN JACOBS: You guys got me on another question  
24 I had forgotten. There was some critique by Mr. Burton, and it  
25 goes to your analysis that the rates would probably -- there

1 will be some concern that the rates would never produce a  
2 savings because the usage would be above what was projected.  
3 Are you familiar with that testimony?

4 THE WITNESS: Something along those lines.

5 CHAIRMAN JACOBS: Okay. And the question I have is,  
6 given that there's been recommendation for conservation rates  
7 here and given the prominent use of reuse and other measures,  
8 do you still have the concern that usage would go to the levels  
9 that you are projecting in your -- at one point I think you're  
10 suggesting maybe over 25,000 gallons per month.

11 THE WITNESS: Right. What we're anticipating is the  
12 average residential customer will use 10,000 gallons, and our  
13 rates are comparable or less than Intercoastal in every  
14 category up to 25,000. For the highest users, it tends to  
15 flipflop. And what my statement was, was that it's very  
16 unlikely that a customer would use over 25,000. We're  
17 expecting they are going to use 10,000.

18 CHAIRMAN JACOBS: Okay. Very well. Mr. Melson.

19 CONTINUED REDIRECT EXAMINATION

20 BY MR. MELSON:

21 Q Mr. Deterding asked if you were aware that  
22 Intercoastal had successfully obtained new borrowings I think  
23 he said in 1998 and 2000. Do you recall that question?

24 A Yes.

25 Q Do you recall what the order of magnitude of those

1 borrowings is compared to the borrowings that are projected to  
2 implement Intercoastal's plan of service for the Nocatee  
3 development?

4 A Yes. The number I recall from Mr. Burton's testimony  
5 this morning was in the neighborhood of \$3 million. And what  
6 we're looking at as the requirements for additional borrowings  
7 by Intercoastal is at least \$20 million, I believe, just for  
8 water and sewer and that doesn't include the reuse portion.

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

10 CHAIRMAN JACOBS: Exhibits.

11 MR. MELSON: Thirty-nine and 41.

12 CHAIRMAN JACOBS: Without objection, show Exhibits 39  
13 and 41 are admitted.

14 (Exhibits 39 and 41 admitted into the record.)

15 CHAIRMAN JACOBS: Thank you, Ms. Swain.

16 (Witness excused.)

17 CHAIRMAN JACOBS: And I think we're -- Mr. Miller.

18 MR. WHARTON: We would call Mr. Jim Miller.

19 CHAIRMAN JACOBS: Very well.

20 JIM MILLER

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

23 DIRECT EXAMINATION

24 BY MR. WHARTON:

25 Q Mr. Miller, do you recall that you are still sworn?

1 A Yes, I do.

2 Q Sir, did you cause to be prepared Intervenor direct  
3 testimony consisting of eight pages, rebuttal testimony  
4 consisting of eight pages, and supplemental Intervenor  
5 testimony consisting of six pages in this --

6 A Yes, I did.

7 Q Okay. And if we ask you those same questions here  
8 today, would your answers be the same?

9 A I believe so, yes.

10 Q Do you have any corrections to make to that testimony  
11 at that time?

12 A The only correction -- and it's just an update -- I  
13 think in one of these I mentioned that the Mandarin wastewater  
14 plant had an existing -- what I thought was an existing flow of  
15 5 MGD. I understand that's closer to 6 MGD now. And that's  
16 just what I'm hearing talking to plant personnel.

17 Q And, sir, you also had an Exhibit JM-2 that was  
18 attached to one of those testimonies, but that's already been  
19 put into evidence in this case; correct?

20 A That's correct.

21 MR. WHARTON: Okay. We would request that  
22 Mr. Miller's Intervenor direct testimony, rebuttal testimony,  
23 and supplemental Intervenor testimony be entered into the  
24 record as though read.

25 CHAIRMAN JACOBS: Without objection, show those

1 testimonies of Mr. Jim Miller entered into the record as though  
2 read.

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**INTERVENOR TESTIMONY OF JIM MILLER**

1  
2 Q: Are you the same Jim Miller who prefiled on behalf of Intercoastal Utilities?

3 A: Yes

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

5 A: My name is James H. Miller, Jr. and I am employed by PBS&J at 7785  
6 Baymeadows Way, Suite 202, Jacksonville, Florida 32256.

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

8 A: I am employed by PBS&J. I am a vice president and senior program manager  
9 for the Jacksonville water and wastewater program.

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

11 A: I am a registered professional engineer in Florida since 1979 (#24398), North  
12 Carolina since 1985 (#12802), and Alabama since 1985 (#15020). I hold and  
13 active Florida Engineering Society Certificate of Continuing Professional  
14 Development and am current with my required continuing education for both  
15 North Carolina and Alabama. I attended Georgia Institute of Technology,  
16 Atlanta, Ga., majoring in Civil engineering (1963-1967). I am an active member  
17 of the Florida Engineering Society, National Society of Professional Engineers,  
18 American Water Works Association, Water Environment Federation, Society of  
19 American Military Engineers, and Florida Water Resources Association. I have  
20 worked continuously in Jacksonville, Florida area since 1968. I was employed  
21 at RS&H as a project engineer/computer modeler from 1968-1972. In that  
22 capacity, I served as a project engineer for the 1968 City of Jacksonville Water  
23 Study, and various other water system studies for the City of Tallahassee, U.S.  
24 Navy, and City of North Miami Beach. I participated on the design team for the  
25 City of Jacksonville Water Improvement Program in 1969-1972, which included

1 design of numerous water transmission main extensions and water treatment  
2 plants. From 1972-1979, I served as the water and wastewater project  
3 manager for Fred Wilson & Associates. My primary clients included the Town  
4 of Orange Park, University of Florida, and U.S. Navy. During my tenure at Fred  
5 Wilson and Associates, I was project engineer/manager for both water and  
6 waterwater studies, plant expansions, and transmission, distribution, and  
7 collection mains. In 1979 I joined PBS&J as a project manager in their  
8 Jacksonville office and was responsible for several water and wastewater  
9 projects for the City of Panama City Beach, completion of the Cedar Hills  
10 Pumping Station for the City of Jacksonville, 201 Facilities Plan for the City of  
11 Panama City Beach, and water and sewer systems for Honeymoon Island State  
12 Park.

13 I was employed by Flood Engineers, as an associate vice president and project  
14 manager, from 1981 to 1983 and continued to serve a project manager for the  
15 City of Panama City Beach, as well as clients such as the City of St. Augustine  
16 and U.S. Navy. Projects included water and wastewater studies, treatment  
17 system design, and transmission/distribution system design. In 1983, I joined  
18 the firm of Connelly & Wicker, Inc. as one of the three principals and executive  
19 vice president in charge of company wide production. During my tenure at  
20 Connelly & Wicker, I served as project manager for all General Development  
21 Utility projects including plant design, low pressure sewer system design and  
22 rehabilitation, studies, and transmission/distribution systems. In 1990, I sold  
23 out my interest in Connelly & Wicker and rejoined PBS&J as a vice president  
24 and senior program manager to reopen the Jacksonville office. During my  
25 tenure at PBS&J, I have managed water and wastewater projects for the City

1 of Jacksonville and later JEA, City of Jacksonville Beach, City of Neptune  
2 Beach, City of Jasper, as well as numerous other private clients.

3 Q: Have you reviewed the prefiled testimony and other materials filed by NUC and  
4 DDI on February 11, 2000?

5 A: Yes, I have reviewed the prefiled testimony of Douglas C. Miller, on behalf of  
6 Nocatee Utility Corporation; Deborah D. Swain, on behalf of Nocatee Utility  
7 Corporation; H. Jay Skelton, on behalf of Nocatee Utility Corporation; and  
8 Nocatee Utility Corporation's Supplement and Amendment to Certificate  
9 Application. Additionally, I have reviewed the deposition of Douglas C. Miller,  
10 P.E. taken March 1, 2000.

11 Q: Do the latest filings by NUC and DDI on February 11, 2000 indicate a change  
12 in the Nocatee Development?

13 A: The February 11, 2000 filing by NUC and DDI, indicated a change to the  
14 previous data which was provided to Intercoastal Utilities. The new data refines  
15 the equivalent residential connections (ERC's) and flow projections for the  
16 water, wastewater, and reclaimed water systems. The documents, firmly  
17 identify JEA as the wholesale provider for NUC, and thus all onsite utility plants  
18 have been eliminated.

19 Q: Is such a change in a development of that scale, at this stage of the project  
20 unusual in your experience?

21 A: While minor changes to a development of this size relating to number and types  
22 of units can be expected as an ongoing process, it is unusual to make a change  
23 from the apparent intended use of on-site treatment facilities to a wholesale  
24 provider at this late date. This is particularly unusual in light of the time and  
25 expenses that have gone in the preparation of a ground water development plan

1 that did not indicate any major negative impacts to the area groundwater. In  
2 fact, the water supply impact is now shifted to the Mandarin area of Duval  
3 County, where well siting issues have drawn considerable public attention.

4 Q: Do you know whether or not Intercoastal attempted to obtain this type of  
5 detailed information from Nocatee in the past?

6 A: It is my understanding that Intercoastal requested all the latest information  
7 regarding ERC projections and phasing information, along with any utility related  
8 documents.

9 Q: Despite those efforts, was the filing of Nocatee on February 11, 2000 the first  
10 time that Intercoastal had been able to obtain much of the detailed information  
11 about Nocatee?

12 A: Yes, the filings of February 11, 2000 revealed many key details that previously  
13 weren't provided or available.

14 Q: And did the information filed on February 11, 2000 also alter some of the  
15 previous understandings and assumptions of Intercoastal which were based on  
16 information obtained from or about Nocatee in the past?

17 A: Assumptions regarding ERC's, phasing, and location of Phase 1 development  
18 were changed based on the information filed on February 11, 2000. Based on  
19 a more defined location of Phase 1 development, we can now more accurately  
20 locate proposed transmission mains and treatment facilities.

21 Q: Do the filings of DDI and Nocatee on February 11, 2000 change any aspect of  
22 Intercoastal's application or its filing?

23 A: Yes, because of changes in the development which are shown for the first time  
24 in the February 11 documents, the Conceptual Master Plan, prepared by PBS&J  
25 has been modified.

1 Q: Please describe Exhibit JM-2 and the reasons for filing Exhibit JM-2.

2 A: Exhibit JM-2 is a Revised March 2000 Conceptual Master Plan that has been  
3 prepared based on additional data made available in the NUC and DDI filing of  
4 February 11, 2000. Revisions include Table of Contents, List of Tables, List of  
5 Figures, Section 3.0, Section 4.0, and Section 5.0.

6 Q. Does Exhibit JM-2 reflect your work product and opinions?

7 A. Yes.

8 Q: Have you reviewed the representations of DDI and Nocatee as to the reuse  
9 demand for the Nocatee project?

10 A: Yes

11 Q: Do you have concerns or questions regarding that projected reuse demand?

12 A: I think the projections for reclaimed water usage are on the high side,  
13 particularly for golf course irrigation. The projections for golf course irrigation  
14 usage, approximately 650,000 gallons per day, appear to be more in line with  
15 what would be expected for south Florida rather than usage normally associated  
16 with central to north Florida, which are typically, 300,000 to 400,000 gallons  
17 per day annual average. Many of the area golf courses have a greater problem  
18 with drainage of standing or casual water than a high demand for irrigation.  
19 This is due in part to soil conditions and a relatively high groundwater table.

20 Q: Assuming that the reuse demand is Phase 1 is as represented, will Intercoastal  
21 be able to meet that demand?

22 A: Yes

23 Q: Please describe the various scenarios under which Intercoastal could meet that  
24 demand.

25 A: Even assuming the correctness of the reuse projections provided in the NUC and

1 DDI filing of February 11, 2000, Intercoastal can meet the demands utilizing the  
2 reclaimed water generated from the proposed wastewater treatment facility and  
3 the excess reclaimed water from Intercoastal's Sawgrass Wastewater  
4 Treatment Plant, plus a temporary water supply ranging from a negligible  
5 135,000 gpd the first year to 10,000 gpd the third year. This temporary water  
6 supply would only be needed, if the projected reuse demands, which appear to  
7 be high, are actually achieved and if additional stormwater over the projected  
8 20% cannot be utilized. The stormwater utilization issue is discussed later.  
9 This temporary water supply can be obtained from an irrigation well drilled into  
10 the lower Floridian aquifer, as recommended in the "Nocatee Groundwater  
11 Supply Development Plan".

12 Q: In point of fact, and from an engineering standpoint, if Intercoastal entered into  
13 the same sort of relationship with JEA that is apparently contemplated by NUC,  
14 could Intercoastal put into place the same plan of service proposed by NUC in  
15 a timely, cost-efficient and effective manner?

16 A: Certainly, Intercoastal already has in place the administrative and operational  
17 team needed to serve the immediate needs Nocatee. This service to Nocatee  
18 would be merely an extension of their existing service area and would need  
19 marginal expansion with the growth of Nocatee. If JEA is the wholesaler or if  
20 on-site treatment is provided, Intercoastal is still the most cost-efficient provider  
21 of utility service to Nocatee.

22 Q: Does NUC propose to use stormwater to meet part of the demand for reuse in  
23 the Nocatee development.

24 A: Yes

25 Q: Please describe their proposal in that regard.

1 A: According to their February 11, 2000 filing, they intend to supplement their  
2 reuse supply by an additional 20% from stormwater . This would primarily be  
3 in the public access areas, such as golf courses, where the reuse supply will  
4 supplement the lakes (stormwater ponds) that are used as the source for the  
5 public access irrigation. This additional supplement from stormwater is not part  
6 of the reuse system or utility, since the reuse system supplements the lakes or  
7 ponds where public access irrigation water is withdrawn.

8 Q: In your opinion, can Intercoastal meet and/or comply with all the environmental  
9 concerns expressed by Nocatee's Application for Development Approval?

10 A: Certainly, there is no magic approach to environmental issues. Permitting  
11 required by the regulatory agency(s) will dictate the impact on environmentally-  
12 sensitive areas of Nocatee. Any utility company providing service to Nocatee  
13 will be required to comply with all environmental issues and permitting  
14 requirements. The approach taken by NUC in the February 11, 2000 filing, to  
15 minimize the environmental impact on Nocatee by utilizing JEA as a wholesale  
16 supplier only serves to shift the environmental impact from Nocatee to areas of  
17 Duval County, where there is already concern by Mandarin residents over new  
18 wells and their impact on the existing private wells in the area. This plan will  
19 ultimately require the expansion of JEA's Mandarin WRF, in the already  
20 congested area near I-295 and SR 13, or construction of future facilities within  
21 or near Nocatee. It will also require construction or expansion of long water,  
22 sewer, and reuse lines to provide service from these distant treatment facilities.  
23 Intercoastal's plan to provide on-site water and wastewater treatment and  
24 return the Those large projects have both significant economic and  
25 environmental impacts not present with on-site services. Intercoastal's plan to

1 provide on-site water and wastewater treatment and return the reclaimed water  
2 to the recharge the area's water resources shows not only environmental  
3 concern for Nocatee, but also for the surrounding community.

4 Q: Does this conclude your testimony?

5 A: Yes

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**PREFILED REBUTTAL TESTIMONY OF JIM MILLER**

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Q. Are you the same Jim Miller who has previously caused testimony to be filed in this case?

A. Yes.

Q. Please tell the Commission panel what you have read or reviewed prior to filing this Prefiled Rebuttal Testimony.

A. I have reviewed the Direct Testimonies of Edward Cordova, Dr.T. James Tofflemire, P.E., Scott Trigg, Caroline Silvers, Charles R. Gauthier, Doug Miller, Deborah Swain, and Jay Skelton; the Prefiled Direct Testimonies of Scott Kelly, Tim Perkins, Richard Olson, and Patricia Arenas; the Intervenor's Testimonies of Mike Burton, M.L. Forrester, Jay Skelton, Doug Miller, and Deborah Swain; the Depositions of Doug Miller and Deborah Swain; and other related documents.

Q. Have you reviewed the deposition of Doug Miller?

A. I have reviewed both the May 1, 2000 deposition of Doug Miller, representing NUC and the April 10, 2000 telephonic deposition of Doug Miller taken at the instance of the staff of the PSC.

Q. Please explain any concerns which were raised in you mind by the review of this information.

A. The main concern that was raised in Mr. Miller's April 10, 2000 deposition, as it has been all along, is the seemingly high projections for reuse for Nocatee. Although, ICU has accepted these values for use in their plan, in order to show that demands can be met, I still question these high usage rates. While the golf course usage is now stated at 650,000 gallons per day during dry weather months, the annual average daily usage has not be stated. It can only be

1 assumed that Mr. Miller has now conceded that the annual usage rate for golf  
2 courses in north Florida are much lower, as originally noted by ICU.

3 Q. In his testimony, Mr. Miller states that he believes certain commitments  
4 regarding utility service will become conditions of development approval, and  
5 that Intecoastal's plan of service will be inconsistent with those commitments.  
6 Please comment on this aspect of Mr. Miller's testimony.

7 A. There is nothing unique about NUC's ability to meet the commitments that may  
8 become a part of the development approval. The environmental considerations,  
9 development schedules, etc. placed by in the Application for Development  
10 Approval appear to be no more than a tool used by the developer and NUC to  
11 portray NUC as the only viable candidate to serve the Nocatee development.  
12 Their exclusive Letter of Intent with JEA has put NUC in a position to force ICU  
13 or any other utility provider out of consideration. Many of the initial plans for  
14 utility service considered by NUC included on-site plants, etc. It was not until  
15 a Letter of Intent was signed with JEA that development constraints and other  
16 conditions began to appear in the various testimonies and application revisions.  
17 Had JEA been willing to negotiate with ICU, it is clear from the experience and  
18 economy of scale that a ICU/JEA arrangement would benefit the ultimate  
19 customer more than the NUC proposal. The proposed conditions of  
20 development (NEWRAP) that will likely become a part of the final development  
21 order, at first glance, appears to completely eliminate any environmental impact  
22 and create a "win-win" situation for everyone. However, this impact on the  
23 environment doesn't disappear, it is merely shifted to other areas outside the  
24 development, such as the Mandarin area of Duval County, which is already  
25 suffering because of uncontrolled growth and is currently under strict water

1 conservation orders by the St. Johns River Water Management District.

2 Q. Is the ICU proposal for supplying reclaimed water or reuse similar to the plan  
3 proposed by NUC?

4 A. ICU proposes to provided closed storage reservoirs and repumping facilities the  
5 same as NUC. However, ICU's reclaimed water supply will come from the  
6 existing and proposed ICU treatment facilities, unless a relationship with JEA  
7 is ultimately deemed by Intercoastal and the Commission to be in the ultimate  
8 customer's best interest.

9 Q. In your opinion, can ICU meet Nocatee's timetable for the provision of  
10 construction water by 2001?

11 A. I believe the timetable is achievable if the issues of this application are resolved  
12 in a timely manner. Initially, I am aware of Mr. Forrester's testimony regarding  
13 a possible discrepancy in the development's timetable between what has been  
14 said in the press and what was represented in NUC's application. I agree with  
15 Mr. Forrester's conclusion that IU will either be able to offer construction water  
16 by the provision of temporary facilities or, if in fact the development is delayed,  
17 by permanent facilities which will be in place at the time construction water is  
18 demanded. I would note that with regard to the effect of this proceeding on  
19 meeting these timetables, that this case will affect both applicants equally in  
20 terms of delaying their ability to put into place the facilities necessary to provide  
21 construction water.

22 Q. Please respond to the testimony of Mr. Miller that the wastewater force mains  
23 proposed by ICU are inadequately sized to meet the needs of the first phase of  
24 development.

25 A. It appears that Mr. Miller's statement was made prior to reviewing the revised

1 Conceptual Master Plan prepared by PBS&J. This revised plan was prepared  
2 after additional development information was released by Nocatee. Accordingly,  
3 Mr. Miller's statement in that regard is in error.

4 Q. Please comment upon Nocatee's suggestion that 650,000 gpd is the correct  
5 figure for Phase 1 reuse demand on the golf course.

6 A. Mr. Miller, in his telephonic deposition on April 10, 2000, finally clarifies that  
7 the 650,000 gpd is the peak demand during dry weather months. He still fails  
8 to state an annual average daily demand for golf course irrigation, which in our  
9 opinion is typically in the range of 300,000 to 400,000 gallons per day, as I  
10 stated in my intervenor's testimony of March 17, 2000.

11 Q. Based on your experience and expertise, would you anticipate that Intercoastal  
12 would be able to expand its existing consumptive use permit as necessary to  
13 provide service to the territory Intercoastal proposes to add to its certificated  
14 territory?

15 A. Yes. Based on my knowledge of Intercoastal and of the local area and the  
16 information which I have reviewed in preparation for my testimony in this case,  
17 I would expect that the Water management District would be receptive to the  
18 application of Intercoastal in that regard. Of course, this Commission's approval  
19 of Intercoastal's application is a prerequisite to that process. However, and  
20 particularly in light of the fact that Intercoastal has a history of working closely  
21 and cooperatively with the Water Management District, I would not anticipate  
22 any significant hurdles in the CUP process for Intercoastal if its application  
23 before the Commission has granted.

24 Q. From an engineering standpoint, do you believe that if in fact Intercoastal is not  
25 ultimately the service provider for the Walden Chase development that it will

1 affect Intercoastal's application or proposal in any material way?

2 A. No. Intercoastal's plan of service is adaptable, as any utility's plan of service  
3 must be, such that it can be implemented even if developments not currently  
4 foreseen are constructed and/or even if some developments which are currently  
5 planned do not, in fact, come to fruition. Intercoastal's plan of service could be  
6 implemented in harmony with the County's proposed plan to render service to  
7 that development.

8 Q. Have you reviewed the testimony of M.L. Forrester?

9 A. Yes

10 Q. Do you agree with the testimony of Mr. Forrester, on pages 10 and 11.

11 A. Yes, the ICU revised CMP force main sizing was based on new data provided  
12 by NUC's engineers. However, I do notice a considerable amount of conflict  
13 between the Direct Testimonies of Doug Miller (NUC) and Scott Kelly (JEA). In  
14 Scott Kelly's direct testimony and exhibit SDK-2 he indicated that JEA is  
15 constructing "oversized" lines (20" water and 16" sewer force main) to a point  
16 south of the intersection of U.S. 1 and C.R. 210 to serve Walden Chase and  
17 Phase 1 of Nocatee. In Doug Miller's direct testimony and utility maps prepared  
18 2/9/2000, the JEA lines were shown as 24" water and 20" sewer force main,  
19 with Nocatee requiring a Phase 1 connection of 18" for water and 16" for the  
20 sewer force main. Additionally Mr. Miller stated that the point of connection to  
21 JEA will be at the intersection of U.S. 1 with the Duval County line, while the  
22 maps prepared by his engineering firm indicates the Phase 1 point of connection  
23 at U.S. 1 and C.R. 210. This still leaves some confusion regarding line sizing  
24 and points of connection, particularly since JEA's lines serve not only Nocatee,  
25 but Walden Chase and Marshall Creek developments.

1 Q. Please discuss the provision of bulk service as proposed by JEA.

2 A. Wastewater treatment for Nocatee through the bulk service agreement with JEA  
3 will be initially provided at the Mandarin WRF located near Interstate 295 at  
4 State Road 13. This facility has a design capacity of 7.5 million gallons per day  
5 with current average daily flow of approximately 5.0 million gallons per day. The  
6 plant currently discharges its effluent to the St. Johns River. Construction of  
7 reclaimed water storage and pumping station is scheduled to get underway,  
8 shortly, to divert a portion of the effluent for reuse. Unless JEA is planning to  
9 provide future service to Nocatee from a new treatment facility, expansion of  
10 the Mandarin WRF will have to occur in the near future. Even Phase I flows will  
11 "trigger" design of expansion to the Mandarin WRF, unless other treatment  
12 facilities are planned in the area. Expansion of these facilities or even new  
13 facilities in or near the Mandarin area will likely cause "political turmoil" in an  
14 area that has historically been protective of its environment. In recent months  
15 the Mandarin residents have also been complaining about the impact JEA wells  
16 are having on existing private wells serving many of the residencies along the  
17 river. There will even more concern with the Mandarin residents find that their  
18 water supply will now be tapped by St. John's County (Nocatee) residents.  
19 Ultimate JEA planning provides a water supply coming from the westerly areas  
20 of the county via a submerged pipeline crossing the St. Johns River. However,  
21 this pipeline and supply will not be in place to minimize the perception that  
22 Mandarin is being sacrificed to preserve some self imposed environmental  
23 constraints initiated by the Nocatee developers. The Nocatee Groundwater  
24 Supply Development Plan, prepared by Nocatee but now apparently abandoned  
25 by the developer, outlines the orderly development of an on-site groundwater

1 supply for Nocatee that minimizes the impact on the environment. NUC has  
2 elected to forgo this extensive study in favor of a bulk agreement for water  
3 from JEA that will not impact Nocatee, but will have a definite impact on areas  
4 of Duval County. To rely on bulk service from JEA has no more of a positive  
5 environmental impact than providing on-site supply and treatment. It just shifts  
6 the environmental impact to other areas and serves no more purpose than a  
7 marketing tool for Nocatee. The ICU plan provides on-site supply, treatment,  
8 and disposal while still maintaining environmental sensitivity. It also utilizes an  
9 existing effluent source to supplement reuse demands, thus reducing or  
10 eliminating a discharge to the Intracoastal Waterway.

11 Q. Are you familiar with JEA's proposed reuse plans?

12 A. Yes.

13 Q. Have you reviewed Mr. Forrester's Rebuttal Testimony, at pages 5 through 7  
14 thereof, where he discusses that reuse program and are you in agreement with  
15 his conclusions?

16 A. Yes, I have reviewed that testimony and I share Mr. Forrester's opinions in that  
17 regard. Under any foreseeable scenario, JEA will only reuse a fraction of the  
18 water generated by the Nocatee development while Intercoastal proposes to  
19 recycle 100% of its wastewater flows (including 100% of Nocatee's  
20 wastewater).

21 Q. In your opinion, from an engineering standpoint, is the proposed plan of service  
22 of Intercoastal superior to the proposed plan of service of NUC?

23 A. Yes, based on my review of all the information and consistent with my  
24 testimony in this case, it is my opinion that ICU has proposed a superior plan  
25 of service to that proposed by NUC. Additionally, as discussed elsewhere in the

1 testimony of Intercoastal's witnesses, even to the extent the Commission  
2 determines that NUC has proposed a preferable plan of service by and through  
3 its utilization of JEA, that same type of cooperative agreement could in all  
4 likelihood be implemented between ICU, should it be certificated this territory  
5 by the Commission, and JEA. In other words, under either scenario, I believe  
6 that Intercoastal would be the superior provider of service and is the preferable  
7 applicant for this territory.

8 Q. Does this conclude your testimony?

9 A. Yes, it does.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Applications For An Amendment )  
 Of Certificate For An Extension )  
 Of Territory And For an Original )  
 Water And Wastewater Certificate )  
 (for a utility in existence and charging )  
 for service) )

Docket No. 992040-WS

In re: Application by Nocatee Utility )  
 Corporation for Original Certificates for )  
 Water & Wastewater Service in Duval )  
 and St. Johns Counties, Florida )

Docket No. 990696-WS

SUPPLEMENTAL INTERVENOR'S TESTIMONY OF JAMES H. MILLER

Q. Please state your name and business address.

A. My name is James H. Miller. My business address is 7785 Baymeadows Way, Suite 202,  
 Jacksonville, Florida 32256

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

A. I am a vice president of PBS&J, a full service engineering firm. I am a registered  
 professional engineer in Florida, North Carolina, and Alabama, and have prepared the Utility  
 Master Plan for Intercoastal Utilities, Inc.

Q. Are you the same James H. Miller who has previously filed testimony in this case?

A. Yes.

Q. What have you reviewed in preparation for your participation in this case?

A. I have reviewed the testimony and exhibits previously filed in this case.

Q. Have you also reviewed the Supplemental Direct Testimonies of Douglas Miller and  
 Ms. Deborah Swain filed July 31, 2000, on behalf of Nocatee Utility Corporation (NUC) in  
 this proceeding?

A. Yes.

1 Q. Were there any portions of those testimonies which caused you any concerns?

2 A. Ms. Swain's testimony included a rate comparison of NUC's proposed rates which I believe  
3 does not fairly present a picture of what is likely to happen, in terms of the type of customers  
4 that will present and the type of usage rates that will exist, in the Nocatee development. In  
5 Ms. Swain's testimony, there seemed to be a heavy emphasis on the lower water usage levels  
6 (3,000 and 5,000 gallons per month) in comparing rates of NUC vs. ICU. This is in direct  
7 conflict to the higher usage levels of 10,000 and 12,000 gallons per month used throughout  
8 testimonies by Douglas Miller. Based on my knowledge of this area, my understanding of  
9 the project, and the other information I have reviewed, and conversations in which I have  
10 participated, it would be my opinion that a more valid comparison would have to focus on  
11 water usage of 10,000 gallons per month or higher. In my opinion, it is very unlikely that  
12 three (3) of the assumed water usage benchmarks, namely 3,000, 5,000 and 5,333 gallons per  
13 month (all which show that NUC's rates will be lower than Intercoastal's), actually represent  
14 usage rates which are likely to be realized. In fact, in this "up-scaled" neighborhood, the  
15 lower rate categories would most likely be non-existent.

16 Q. What other specific concerns do you have?

17 A. I am still very concerned about some of the adverse environmental impact that "NEWRAP"  
18 may impose on other areas of St. Johns County, as well as Duval County. I mentioned Duval  
19 County because, to the extent that environmental considerations are important, I think it is  
20 important to remember that the "environment" does not stop at the boundaries of Nocatee.  
21 These proposals should be viewed within their larger context. This "NEWRAP" policy,  
22 imposed by the developers, appears to be in direct conflict with the "local sources first"  
23 policy that is adhered to in most areas of the State. The Commission is aware that the  
24 Nocatee developers commissioned an expensive and elaborate water resources study which  
25 essentially indicates adequate resources within the Nocatee development to support service

1 to that development as planned by Intercoastal. The water resources study prepared for  
2 Nocatee indicates an adequate water supply on-site to meet the needs of Nocatee, yet NUC,  
3 through "NEWRAP", the use of an on-site water supply is not permitted. This seems to be  
4 no more than an attempt to lock-in JEA as the utility supplying potable water to Nocatee.  
5 It also indirectly passes along to the Nocatee customer the hydraulic capacity cost of the  
6 proposed multi-million dollar raw water pipeline across the St. Johns River, which provides  
7 a new source of supply for the Mandarin and southside grid of JEA's water system. Another  
8 area of concern regarding "NEWRAP" is the supposed prohibition of providing on-site  
9 wastewater treatment at Nocatee. First of all, I am referring to this as a "prohibition" only  
10 because Nocatee has referred to it in that way. In fact, I am not aware that such a  
11 "prohibition" has really been imposed by any governmental authority. Under NUC's plan  
12 of service with JEA, the raw wastewater is transmitted long distances in oversized force  
13 mains to the Mandarin Water Reclamation Facility (WRF). The Mandarin WRF is currently  
14 plagued with intermittent odor problems from septic wastewater. The additional flows  
15 anticipated from Nocatee, transmitted via long and oversized force mains, seem to amplify  
16 an odor problem that already exists at the Mandarin WRF. As explained in earlier testimony,  
17 the lengthy travel time for any sewage in the these long force mains in and of itself  
18 exacerbates any odor problem which the receiving plant may already be experiencing.

19 Q. What about ICU's ability to provide the same level of service as proposed by NUC?

20 A. In my opinion, ICU can provide the same level of service as NUC. The current level of  
21 service, both water quality and O&M, meet or exceed the levels proposed by NUC through  
22 the Agreement with JEA. ICU has higher treatment constraints imposed on their wastewater  
23 treatment plant than JEA's Mandarin WRF. This has historically been the case with many  
24 of the smaller area utilities in northeast Florida. A good example of this is the treatment  
25 levels imposed on the Julington Creek Wastewater Treatment plant when it was originally

1 designed for General Development Utilities, prior to the acquisition by JEA. The initial  
2 discharge to the St. Johns River for the 250,000 gpd plant was AWT (5-5-3-1) standards,  
3 while the 7.5 mgd Mandarin plant, only a few miles downstream has a much less restrictive  
4 permit. JEA is gradually improving the levels of treatment in their wastewater system.  
5 Because of the size of the system and the capital costs of such improvements, the process is  
6 slow and will eventually be passed on to all JEA customers. ICU's wastewater treatment  
7 facility already meets the standards that JEA is trying to achieve. The capital costs presented  
8 by ICU reflect this level of treatment. It is not surprising that there would be increased costs  
9 attached to the services of any utility which was providing a higher level of treatment (and  
10 thus a higher level of service to its customers). While "NEWRAP", which is an arbitrary  
11 standard imposed by the developer, sets Nocatee aside as a "pristine" community while  
12 adversely impacting their neighbors, ICU can provide an environmentally sound plan to  
13 serve Nocatee. Clearly, with a wholesale agreement with JEA, ICU can provide an identical  
14 level of service as proposed by NUC. The only difference at this point is that NUC has  
15 imposed a "sole source" condition to the utility service provider. This "sole source service  
16 agreement" is no different than awarding a sole source contract for supplying equipment or  
17 other services without fair competitive negotiations. The one that ultimately pays the price  
18 is the consumer.

19 Q. What about the agreement to "upsized" the backbone water and wastewater transmission  
20 mains?

21 A. As I mentioned before, the "upsized" or "oversized" mains can have an adverse effect (i.e.  
22 septic sewage, which increases odor problems). As far as capital cost, I would agree there  
23 would be some savings, but I doubt it would be in the 50% range. Also, the connection cost  
24 to these "upsized" mains will be somewhat higher (i.e. 24" x 8" vs. 12" x 8" connection),  
25 negating some of the savings.

1 Q. What are the "joint projects"?

2 A. As I understand it, the joint projects are projects where JEA proposes to run lines larger  
3 through the Nocatee development than actually necessary to serve the development itself.  
4 At this point, the joint project we know about enters the development on the western side and  
5 exits on the eastern side. That exit point is in St. Johns County. Why JEA is proposing that  
6 line to be constructed in that fashion, and what customers will be served by that line, is  
7 unknown at this point. However, I would say it is a clear indication that JEA believes:  
8 (a) there is some need for service in that part of St. Johns County; (b) that JEA is the  
9 appropriate entity to provide that service; and (c) that it intends to provide that service when  
10 that need matures. Certainly, the way the joint project is configured indicates that JEA's  
11 intentions in this immediate area in St. Johns County are not limited to merely bulking  
12 service to NUC.

13 Q. Mr. Miller, have you read the testimony of M.L. Forrester?

14 A. Yes, I have.

15 Q. Do you agree with the testimony of Mr. Forrester to the extent that it touches upon matters  
16 which are also within your expertise, and have you discussed these matters with  
17 Mr. Forrester?

18 A. Yes, to both questions. Yes, I do share Mr. Forrester's opinion as reflected in his  
19 Intervenor's Testimony, and I agree that the possibility for substantial modifications to the  
20 JEA-NUC proposed service plans exists. In fact, I would hope that JEA and the Nocatee  
21 development would propose to provide service along the same lines as Intercoastal, to wit:  
22 they will implement whichever plan of service and method of service, during the long period  
23 of build out of this development, that is in the best interest of the customers, and that they  
24 will do so in the most environmentally sensitive, efficient, and effective manner possible.

25 Q. Have you reviewed Mr. Forrester's Intervenor's testimony regarding his anticipated usage

1 rates in the Nocatee development, and have you discussed the same with him?

2 A. Yes, again to both questions, and I agree with his conclusions in that regard. I don't believe  
3 Ms. Swain's analysis reflects a reasonable comparison of residential bills based upon  
4 expected use within the area, as I indicated earlier.

5 Q. Does this conclude your testimony?

6 A. Yes, it does.

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1 BY MR. WHARTON:

2 Q Mr. Miller, please provide a brief summary of those  
3 testimonies.

4 A My Intervenor's testimony primarily covered the  
5 corrections that were made in the Exhibit JM-2 which was the  
6 result of additional data being obtained from Nocatee and from  
7 England, Thims and Miller as to phasing, flows, things of that  
8 nature that caused us to produce a new document, the conceptual  
9 master plan that's labeled JM-2.

10 We also in the Intervenor's testimony discuss the --  
11 I discuss my feelings about the golf course flow projections  
12 for reuse irrigation where Mr. Miller had used a -- somewhat  
13 what we call a high number, in the 650,000 gallon a day range.  
14 We would expect that number to be closer to 300,000 to 400,000  
15 gallons a day on an average daily but on an annual average  
16 basis. I also noted here, based on our plan of service where  
17 we are utilizing the reuse from the easterly service area, or  
18 the existing service area, that we would have a -- just a very  
19 limited amount of need for water to meet the reuse demands.  
20 The first year would be 135,000 gallons a day, and the third  
21 year would be 10,000 gallons a day, and after that, we would  
22 have a balance and be able to meet the reuse demands utilizing  
23 the excess water of 1.2 MGD coming from the existing service  
24 area plus what we produce from the wastewater plant in the  
25 proposed Nocatee area. This would actually reduce or

1 essentially eliminate our discharge into the Intracoastal  
2 Waterway.

3 Now, I realize that it's wet weather discharge, and  
4 we're dealing with an annual average. An annual average is  
5 whole year put together. We may have a day that we are  
6 discharging 700,000, 800,000 gallons a day or 3 million gallons  
7 a day, but annual, we will be below what we are discharging  
8 now, which is as much as 1.2 which we are permitted for. And  
9 that line is located in the Intracoastal Waterway north of  
10 State Road 210, and the location was based on a location picked  
11 by DEP.

12 When they notified Mr. James that they could no  
13 longer discharge in the Guana Lake, they told him that if he  
14 would -- he could use a QBEL that was underweight, and he would  
15 contribute to the cost of that and they would pick a new  
16 discharge point. And based on the QBEL that was done for the  
17 Intracoastal Waterway, there was no harm found in that  
18 discharge that he was permitted for up to 1.2, but was told  
19 that he would be able to put more than that if he needed to at  
20 some point if he got permitted for it. But essentially, what  
21 we are proposing is reducing that amount by using the reuse  
22 coming from the existing facilities.

23 In my rebuttal testimony, again, I noted the  
24 corrections that Mr. Doug Miller made regarding the reuse for  
25 golf courses. We did say that it was -- you know, could be an



1 average of somewhat less than what he had mentioned before.  
2 That was in a telephone deposition of his. I also discuss the  
3 NEWRAP. Again, I feel like NEWRAP is something that was  
4 purposely or unintentional proposed by the developers that  
5 eliminated Intercoastal Utilities from serving Nocatee. Yes,  
6 we do now have to put plants on the Nocatee site because we  
7 don't have a facility like the Mandarin wastewater plant that  
8 they are proposing to use. However, Mandarin has only got  
9 about a million to a million and a half gallons of capacity  
10 left without expansion. Mandarin can be expanded to  
11 15 million gallons a day. That excludes everything else coming  
12 from the Mandarin area that be added in the future, which leads  
13 me to believe that JEA is going to have to build another plant,  
14 and it may be right next door to Nocatee. It may not be in the  
15 environmental boundaries, but it may be just right next door.

16 COMMISSIONER PALECKI: Let me ask you a question  
17 about that. It appears that Nocatee does not want the --  
18 especially the sewage treatment plant on its property because  
19 of odor. Why couldn't Intercoastal purchase a site off of  
20 Nocatee in order to eliminate that concern?

21 THE WITNESS: I would have to, I guess, direct that  
22 to Mr. James, but I see no reason why they couldn't find a site  
23 off of Nocatee if a site was available to put a plant.

24 COMMISSIONER PALECKI: Because the earlier testimony  
25 from Intercoastal was that they were unable to locate a sewage

1 treatment plant off the Nocatee site. And I just wondered, you  
2 know, there must be some property available somewhere where  
3 that could be accomplished.

4 THE WITNESS: Well, I think that site would have to  
5 be included in the franchise area. The area would have to be  
6 modified in order to encompass that site and finding that site.  
7 I'm sure there's something out there that's available. But  
8 certainly, in my opinion, JEA is going to have to do something  
9 off-site if they comply with Nocatee. They can't put  
10 everything in Mandarin. Mandarin already has odor problems,  
11 and all we're doing is adding more odors for the longer force  
12 mains going to Mandarin, and we're just shifting the  
13 environmental impact from Nocatee to Duval County up to  
14 Mandarin, which is already an environmentally sensitive area as  
15 far as the residents are concerned.

16 As far as water supply, again, we located the wells  
17 on Nocatee parcel because that was inside our proposed  
18 franchise area. Now, admittedly, JEA has got a CUP. They are  
19 now building a new 48-inch waterline across the St. Johns River  
20 to bring even more water from the west side, but that still  
21 doesn't discount the fact that the Mandarin, which is at the  
22 mediate area north of Nocatee, is the area that's been in the  
23 papers over the past six months about wells going dry and the  
24 neighbors complaining their irrigation well is going dry  
25 because of the water usage in that area. Now, again, I think

1 it's just a shifting of the environmental impact from Nocatee  
2 to another area to get it out of their neighborhood. Again,  
3 that's my opinion. And whether or not -- I mean, I think JEA  
4 does a good job with their system, but in this case, I think  
5 we're all being blindfolded by thinking that we're not going to  
6 get right adjacent to Nocatee and build something. And all  
7 it's doing is keeping it outside the artificial boundary of  
8 Nocatee.

9           So, again, we don't meet the conditions of the  
10 development order, but we also feel the development order can  
11 be changed. We will be reducing our discharge almost to zero  
12 in the Intracoastal Waterway, and the DEP has already found  
13 that to be suitable for discharge. In fact, they told  
14 Mr. James that he could discharge even more than what he's  
15 permitted for. I mean, the QBEL study -- I think about a  
16 \$400,000 study was done on that portion of the Intracoastal  
17 Waterway. And in fact, they picked the point they are  
18 discharging. I think that basically covers -- summarizes the  
19 points of my rebuttal testimony.

20           And in my supplemental testimony, again, I discussed  
21 the NEWRAP and the problems they have at Mandarin now with  
22 odors and all, and I also made a brief comment on  
23 Mr. Forrester's testimony about service area, which is nothing  
24 major. That concludes my summary.

25           MR. WHARTON: We would tender the witness for cross.

1 CHAIRMAN JACOBS: Mr. Melson.

2 CROSS EXAMINATION

3 BY MR. MELSON:

4 Q Just as a point of fact, how far north of the County  
5 Road 210 bridge is Intercoastal's existing discharge point?

6 A I believe it's about -- I want to say 5,000 to 6,000  
7 feet north of the bridge. I don't know exactly without --

8 Q Roughly a mile?

9 A A mile.

10 Q Okay. Is it your position that local sources  
11 first requires water used in St. Johns County to be produced in  
12 St. Johns County?

13 A That is my opinion, that if an adequate supply is  
14 available, it should be used first, yes.

15 Q Okay. You propose I believe it's 18 wells within the  
16 Nocatee development; is that correct?

17 A I proposed exactly what was in the water resources  
18 study provided by Nocatee.

19 Q Do you know what was in the water resources study  
20 provided by Nocatee?

21 A I'm sorry, repeat that.

22 Q Do you know what was in the water resources study  
23 provided by Nocatee?

24 A I read the water resource study, yes. I don't have  
25 it in front of me to quote different areas of it.

1 Q Do you recall whether it relied on 18 wells all  
2 located in St. Johns County?

3 A I don't recall. I basically use the capacity of the  
4 wells that they had shown. We didn't spot the wells for our  
5 conceptual master plan.

6 Q But you indicated that you plan to use the plan from  
7 the Nocatee groundwater study.

8 A We plan to use the water resources indicated in the  
9 Nocatee water resources study to obtain the water supply for  
10 Nocatee.

11 Q And are you aware that the water resources study  
12 designated specific well locations, and the study was based on  
13 those well locations?

14 A I'm aware that they did some test wells and things  
15 like that, but that also doesn't determine the final location  
16 of wells.

17 Q My question is: Do you recall the groundwater  
18 resource study specified specific well locations, and it was  
19 based on those well locations that there was a conclusion that  
20 there was an adequate water resource?

21 A I don't recall.

22 Q Okay. Are you aware that all of the wells shown in  
23 that groundwater study are located in St. Johns County?

24 A I couldn't tell you for sure, no.

25 Q Let me show you a map, and ask if you recognize that

1 as the map you reviewed from the Nocatee groundwater study.

2 A I believe it is.

3 Q And does that show well locations as green dots?

4 A Yes, it does.

5 Q And does it show golf course irrigation wells as red  
6 dots?

7 A Yes, it does.

8 Q And does it show that all of those wells are located  
9 in St. Johns County?

10 A That's what it indicates, yes.

11 Q Does it also show that the Nocatee development is  
12 located in both Duval and St. Johns County?

13 A Yes, it does.

14 Q Under your interpretation of local sources first,  
15 would that policy be violated by serving Duval County water  
16 demand out of wells in St. Johns County?

17 A No, it wouldn't.

18 Q But it would be violated in the opposite direction,  
19 if you served St. Johns County out of wells in Duval County?

20 A Yes, considering that the wells are not located in  
21 the area of the development.

22 Q And the area of the development is a primary water  
23 use caution area?

24 A That's correct.

25 Q And the wells that would serve Nocatee under its plan

1 of service are not in a primary water use caution area?

2 A I can't say that for sure. I know some of the South  
3 Grid wells are.

4 Q With regard to reuse --

5 MR. MELSON: And, Mr. Chairman, let me ask that this  
6 map be marked for identification as Exhibit 42.

7 CHAIRMAN JACOBS: Show it marked as Exhibit 42.

8 (Exhibit 42 marked for identification.)

9 BY MR. MELSON:

10 Q You have talked about discharges to the river of  
11 1.2 million gallons a day; is that correct?

12 A That's correct.

13 Q What is the average daily flow in the Sawgrass  
14 wastewater treatment plant today?

15 A Today's average daily flow -- if you don't mind, I'll  
16 look in my report. I don't know it exactly.

17 Q Sure.

18 A Okay. I believe the average flow right now is about  
19 .8 MGD.

20 Q All right. So about half the permitting capacity of  
21 the plant?

22 A Right.

23 Q The reuse available to Nocatee won't be a million two  
24 less what goes to Sawgrass, it will be whatever flows are  
25 actually being experienced there less what goes to Sawgrass;

1 correct?

2 A At the time of Nocatee's needs.

3 Q Right. And did you project when the existing  
4 Sawgrass plant will reach capacity?

5 A I believe we have projected Sawgrass out until --  
6 okay. It was projected all the way out taking a nominal  
7 6 percent growth out to 2010.

8 Q So under your projection, it's not until 2010 that  
9 there's actually 1.5 million gallons a day on an average daily  
10 basis?

11 A That's correct, but we're dealing with projections on  
12 both ends, Nocatee's projections and Intercoastal's  
13 projections. We have no way of knowing that either one of them  
14 are going to pan out.

15 Q And what is your projection of the average daily use  
16 for golf course irrigation?

17 A I believe I used Mr. Miller's projection of 650,000  
18 gallons a day, which I felt was fine. We used all of his  
19 projections.

20 Q What do you assume in your study goes to the Sawgrass  
21 golf course?

22 A They are obligated to provide 300,000 gallons a day  
23 on an average annual basis.

24 Q "They" meaning Intercoastal's obligation to provide  
25 to the golf course?



1 A That's true.

2 Q In your mind, is that a more typical average for a  
3 golf course?

4 A In north Florida, I think 300,000 to 400,000 gallons  
5 a day is.

6 Q And that's for an 18-hole golf course?

7 A That's correct.

8 Q Are you aware that the Sawgrass golf course is  
9 27 holes?

10 A Yes, I am.

11 Q So would a good annual average for it be about one  
12 and a half times 350,000 to 400,000 a day?

13 A It possibly could be, but it's my understanding that  
14 the arrangement is for 300,000 gallons a day on an annual  
15 average.

16 Q And you're not going to give them any more than  
17 you're obligated to?

18 A I'm not in a position to make that decision.

19 Q Commissioner Jaber asked Mr. Perkins, I believe, if  
20 the lack -- assuming -- she said, "Assume JEA's consumptive use  
21 permit does not include enough water for Phase I of the Nocatee  
22 development. Would that be an indication that JEA does not  
23 have the technical abilities to serve?" Do you recall that  
24 line of questions? Were you here when that was asked?

25 A I recall the question, yes.

1 Q Does Intercoastal have a consumptive use permit that  
2 allows the use of any water to serve Nocatee?

3 A At this time, they don't.

4 Q And, in fact, in the ordinary course of business for  
5 a private utility, isn't a PSC certification a prerequisite to  
6 even applying for a consumptive use permit?

7 A I believe so, yes.

8 Q Let me turn you now to your written testimony itself.  
9 And I'm going to start with your Intervenor testimony, and ask  
10 you to -- you don't need to read it aloud, but if you turn to  
11 Page 3 and read to yourself the question and answer that begins  
12 on Line 11 down through the end of Line 24.

13 A Page 3?

14 Q Page 3.

15 A I don't have a question beginning on Line 11. Hold  
16 on. Wait a minute.

17 MR. MELSON: Counsel, do you have a copy that matches  
18 up with his line numbers?

19 MR. WHARTON: Sure.

20 A This may have been printed out different.

21 MR. WHARTON: It may be a formatting --

22 BY MR. MELSON:

23 Q All right. Now, we're in the Intervenor at Page 3,  
24 Line 11, and just if you'd read --

25 A Line 11?

1 Q Yes, sir, read to yourself Lines 11 through 24, and  
2 then I've got a couple of questions.

3 A Okay.

4 Q And I want to get the timing of some documents. Your  
5 Exhibit JM-1, your first report, was December 1999; correct?

6 A Correct.

7 Q And your revised JM-2 was March of 2000; correct?

8 A Correct.

9 Q And March of 2000 is the time this Intervenor  
10 testimony was filed; correct?

11 A Yes, I believe.

12 Q And if I understand your testimony at Lines  
13 11 through 24, it's essentially that between the time of your  
14 December report and your March report, Nocatee Utility  
15 Corporation changed its plan of service to one which involves  
16 service from JEA; is that right?

17 A Based on the information that was furnished to me,  
18 the additional data provided by Nocatee to Intercoastal which  
19 is passed along to me, they did not indicate service by JEA.  
20 In fact, there were several different plans laid out on  
21 hand sketches and different hydraulic analysis, et cetera. And  
22 then after the report came out -- or after the direct testimony  
23 filing, we were able to get additional data, including the ADA,  
24 the final on it, the final submittal, and some additional  
25 phasing data that we didn't have before.

1 Q I believe you told us yesterday you were hired in  
2 this case in July of 1999?

3 A July, correct.

4 Q And went up until December '99 working on the  
5 first conceptual master plan?

6 A Yes.

7 MR. MELSON: Okay. Commissioners, I am handing out a  
8 copy of Nocatee's certificate application filed with the  
9 Commission on June 1, 1999. This is already part of a  
10 composite exhibit that has been admitted. I'm using the  
11 June 1, '99 portion of the filing just for the purposes of this  
12 cross examination. It's already in the record. I forgot there  
13 was two bundles full of them.

14 BY MR. MELSON:

15 Q Mr. Miller, would you turn to Page 4 of that  
16 application? They are numbered at the bottom of the page.

17 A Okay.

18 Q And in paragraph numbered 6, would you read what it  
19 says as indicate the type of treatment?

20 A "To be provided by JEA pursuant to wholesale  
21 agreement."

22 Q If you turn to Page 5, and read me Paragraph 5, the  
23 type of treatment for wastewater.

24 A "To be provided by JEA pursuant to wholesale  
25 agreement."

1 Q Would you turn to Exhibit A to this document?

2 A Exhibit A?

3 Q Yes, sir. It follows Page 11. It's a page of text.  
4 If you find Page 11, and then go to the next page, you'll be  
5 there.

6 A Okay.

7 Q Turn to Page 2 of that exhibit, and read to yourself,  
8 if you would, the paragraph at the top of the page, "DDI has  
9 organized."

10 A Page what?

11 Q You are there.

12 A Okay.

13 Q The first full paragraph.

14 A Okay. DDI --

15 Q You can just read it to yourself --

16 A Oh, I'm sorry.

17 Q -- and then I'm going to ask you a question about it.

18 A Okay.

19 Q Does that indicate that at the -- on June 1st of '99  
20 at the time this application was filed there was an existing  
21 letter of intent with JEA?

22 A That appears to be, yes.

23 Q If you turn to the next page, would you agree that  
24 Exhibit A-1 appears to be that letter of intent dated  
25 April 1999?

1 A Yes, it appears to be.

2 Q But it's fair to say when you prepared your first  
3 conceptual master plan between July and December of 1999, you  
4 were unaware that Nocatee's plan of service involved a  
5 wholesale agreement with JEA?

6 A Based on the information that was provided me, I knew  
7 that Nocatee was talking with the JEA, but I had numerous pages  
8 of calculations and sketches and analysis showing existing  
9 plant sites on Nocatee that were provided to us through Nocatee  
10 or England, Thims and Miller. And that's what I used as my  
11 initial thrust to develop the first report.

12 Q When you say "provided to you," all the documents  
13 were provided to you by counsel for Intercoastal; correct?

14 A Yes.

15 Q And to the extent that they had obtained documents in  
16 discovery about preliminary plans because they had asked for  
17 all preliminary plans, that may have been what you relied on  
18 rather than on the filing that was on record with the  
19 Commission?

20 A Possibly so, yes.

21 Q Turn to your Intervenor testimony, if you would, the  
22 same testimony, Page 7.

23 A Okay.

24 Q Line 12, you state, "Any utility company providing  
25 service to Nocatee will be required to comply with all

1 environmental issues and permitting requirements." In your  
2 mind, does that include compliance with the development order  
3 for the Nocatee development?

4 A It would, yes.

5 Q And I understand you don't have any firsthand  
6 knowledge of the process that would be employed to change an  
7 existing development order condition; is that correct?

8 A I don't have knowledge of the exact process, but I  
9 know it can be changed.

10 Q Let's turn to your rebuttal testimony, Page 3, Line  
11 25. There is a question that asks you to respond to the  
12 testimony of Mr. Miller that the wastewater force mains  
13 proposed by ICU are inadequately sized to meet the needs of the  
14 first phase of the development.

15 A Yes.

16 Q You answered, "It appears that Mr. Miller's statement  
17 was made prior to reviewing the revised conceptual master  
18 plan." Do you see that?

19 A Yes.

20 Q Mr. Miller's statement was made in testimony filed on  
21 March 17th; is that correct?

22 A I believe so.

23 Q And the revised conceptual master plan which shows  
24 larger mains was filed on that same date with the Commission;  
25 is that correct?

1 A Yes.

2 Q So you're not criticizing Mr. Miller for not knowing  
3 about something that hadn't been filed yet?

4 A I'm just making a statement.

5 Q Turn, if you would, to Page 7 of your rebuttal  
6 testimony, Lines 17 through 19. And you state that under any  
7 foreseeable scenario, JEA will only reuse a fraction of the  
8 water generated by the Nocatee development while Intercoastal  
9 proposes to recycle 100 percent of its wastewater flows. Do  
10 you see that statement?

11 A Yes, I do.

12 Q Would you agree that the Nocatee reuse requirements  
13 are the same whether that reuse water comes from JEA or whether  
14 it comes from Intercoastal?

15 A Yes. And I believe the statement was made  
16 incorrectly. I was talking about the plant flow and not the --  
17 actually, it's wastewater generated.

18 Q Let me ask this. I believe it is your opinion that  
19 the effluent that JEA discharges to the St. Johns River from  
20 its Mandarin plant is dirtier to use -- the only word I can  
21 think of right now -- than the wastewater that Intercoastal  
22 discharges from its plant; is that correct?

23 A I believe that the requirements for discharge are  
24 more stringent on Intercoastal than they are on the JEA plant,  
25 which is typical for most private utilities.



1 Q Is that consistent with saying that JEA is  
2 discharging a higher level of pollutants than Intercoastal is  
3 discharging?

4 A That's saying their permit requirements allow them to  
5 discharge at a higher level.

6 Q To the extent they, in fact, are discharging a higher  
7 level and the same amount of reuse is going to go to Nocatee,  
8 aren't you putting less burden on the environment by recycling  
9 water from Mandarin than you would be by recycling water from  
10 Sawgrass?

11 A No. You have a larger flushing effect to the  
12 St. Johns River versus what you have in the Intracoastal  
13 Waterway. So actually on a QBEL water quality analysis, it  
14 would be less impact on the Mandarin than it would be on the  
15 environment around the Intracoastal Waterway.

16 Q Turn, if you would, to your supplemental Intervenor  
17 testimony, Page 2.

18 A Okay.

19 Q On Lines 17 through 20, you say you are still very  
20 concerned about some of the adverse environmental impact that  
21 NEWRAP may impose on other areas of St. Johns County as well as  
22 Duval County. I mentioned Duval County because, to the extent  
23 that environmental considerations are important, I think it is  
24 important to remember that the environment does not stop at the  
25 boundaries of Nocatee. Do you see that?

1 A Yes.

2 Q That's essentially one of the things you said in your  
3 summary this morning; is that right?

4 A Yes.

5 Q Are you aware that the City Council of the City of  
6 Jacksonville approved the development order for Nocatee?

7 A Yes, I am.

8 Q Is it, therefore, fair to say that your concern about  
9 the export of environmental burdens to Duval County was not  
10 shared by the City Council of the City of Jacksonville at the  
11 time they made their decision to permit or not permit Nocatee  
12 with the conditions we've been talking about all week?

13 A The City Council doesn't always reflect the concerns  
14 of the people in the area.

15 Q Do you reflect those concerns better than City  
16 Council does?

17 A No, I don't, but I've talked to several councilmen  
18 that do.

19 Q Turn to Page 5 of your supplemental Intervenor  
20 testimony at Lines 18 through 19.

21 A Okay.

22 Q Actually, Lines 15 through 18. Before I get to that  
23 point, do you know what the vote was before the Jacksonville  
24 City Council on the Nocatee development order?

25 A I would expect it would be 19-0. I figure it was

1 fairly rubber-stamped.

2 Q Let me ask you: On Page 5, the question is, do you  
3 agree with the testimony of Mr. Forrester to the extent that it  
4 touches upon matters which are also within your expertise, and  
5 have you discussed these matters with Mr. Forrester? And says,  
6 yes, to both questions.

7 At the time of your deposition a couple of weeks ago,  
8 you did not recall specifically which opinions of Mr. Forrester  
9 were within the scope of this answer and which weren't. Is  
10 that a fair statement?

11 A That's correct.

12 MR. MELSON: That's all I've got. Thank you,  
13 Mr. Miller.

14 CHAIRMAN JACOBS: Mr. Menton.

15 MR. MENTON: Thank you, Mr. Chairman.

16 CROSS EXAMINATION

17 BY MR. MENTON:

18 Q Good afternoon, Mr. Miller.

19 A Good afternoon.

20 Q I'll try not to duplicate Mr. Melson too much. You  
21 would agree that it would be a good idea for Intercoastal to  
22 explore possible bulk service arrangements as an alternative to  
23 its current plan of service proposed in this docket, wouldn't  
24 you?

25 A I'm sorry, would you repeat that?

1 Q Don't you think it would be a good idea for  
2 Intercoastal to explore possible bulk service arrangements as  
3 an alternative to the plan of service that it has submitted in  
4 this docket?

5 A I think it could be an alternative to what they  
6 submitted. I still agree that the plan of service that we  
7 proposed is still the most cost-effective plan.

8 Q And isn't it true that in each of the four different  
9 versions of testimony you have submitted in this case, you have  
10 held out the possibility that Intercoastal might some day enter  
11 into a bulk service arrangement with JEA at some point in the  
12 future?

13 A I think I indicated that possibility, that if no  
14 other alternative were available.

15 Q Do you know whether or not JEA has a refused a  
16 request from Intercoastal to provide such wholesale service to  
17 Intercoastal?

18 A I couldn't tell you for sure, no.

19 Q You would agree that a bulk service arrangement from  
20 JEA would provide some unique benefits for this development,  
21 though, wouldn't you?

22 A I don't see that the unique benefits are any better  
23 than the benefits of Intercoastal's service, really.

24 Q Okay. Now, you have not actually analyzed whether or  
25 not a bulk service plan for ICU would be better than the

1 approach that they propose in this docket, have you?

2 A No, I haven't.

3 Q And in your Intervenor testimony, I believe you hold  
4 out a couple of possible options for bulk service arrangements,  
5 including the possibility of a bulk service arrangement with  
6 St. Johns County. Do you recall that?

7 A I think I mentioned that in my testimony, yes.

8 Q But you would agree that St. Johns County is not a  
9 viable option for bulk service because it has water supply  
10 problems; correct?

11 A In some areas of St. Johns County it does, yes.

12 Q And so the only other possible wholesale provider  
13 that might be able to serve the Nocatee development would be  
14 United Water?

15 A United Water is a possibility.

16 Q But you don't know whether they have the capacity to  
17 provide service to the Nocatee development?

18 A I'm not sure about United Water. I also understand  
19 that they are being pursued by JEA, so I don't know what their  
20 status is.

21 Q Now, in your testimony, you made reference several  
22 times to the JEA Mandarin plant. Do you recall that?

23 A Yes, I did.

24 Q And you would agree that the JEA Mandarin plant is  
25 well-designed; correct?

1           A     I think in most cases. I think we have odor control  
2 problems there.

3           Q     And your firm actually designed the JEA Mandarin  
4 plant; isn't that right?

5           A     We designed the Mandarin plant with exception to the  
6 odor control system which was specified by JEA, and we used  
7 their design.

8           Q     And you personally were actually involved in the  
9 design of the Mandarin plant?

10          A     I was a project manager, although  
11 Mr. Southwell (phonetic) was the project engineer on the plant.

12          Q     In fact, you would agree that the operations of JEA  
13 are going along quite well at the Mandarin plant?

14          A     I believe the Mandarin plant has operated quite well.  
15 I think the odors are primarily due to the length of force  
16 mains that are coming in the Mandarin plant, because when you  
17 drive down 295 and past the plant, the odors are mostly coming  
18 from vents from the force main. And that's my understanding  
19 from conversations with the plant superintendent.

20          Q     Have you ever submitted any complaints with respect  
21 to the odor from the Mandarin plant?

22          A     I live at the beach, so it doesn't bother me.

23          Q     Not in Intercoastal territory, I hope.

24          A     Well, no, I live in North Neptune Beach.

25          Q     Now, you testified about the current capacity for

1 JEA's Mandarin plant is 7.5 MGD; correct?

2 A That's correct.

3 Q And you haven't actually looked at the flows from  
4 JEA's Mandarin plant; correct?

5 A I understand from some of the operations staff that  
6 they are averaging in the range of 6 MGD.

7 Q The question, sir, was whether you have actually  
8 looked at the flows from JEA's Mandarin plant.

9 A No, I haven't. I've just depended on staff to tell  
10 me.

11 Q And you would agree that Mr. Perkins would be in a  
12 position to know what JEA's flows at the Mandarin plant would  
13 be?

14 A Certainly.

15 Q And do you know what he indicated in his testimony  
16 regarding flows at the Mandarin plant?

17 A I don't recall exactly.

18 Q Let's just assume for purposes of this question that  
19 the current flows at Mandarin are in the 5 to 6 MGD range.

20 A Okay.

21 Q That would indicate that JEA has a capacity, as we  
22 sit here today, of 1.5 MGD at Mandarin; correct?

23 A That's correct.

24 Q And isn't that the same size as the plant that  
25 Intercoastal is ultimately proposing to build on the Nocatee

1 site?

2 A That's correct, but Mandarin also has additional  
3 commitments.

4 Q And you don't know what those commitments are, do  
5 you?

6 A No, I don't, but I know the Mandarin area is growing  
7 rapidly.

8 Q And you, as the designer of the JEA Mandarin plant,  
9 would agree that the plant can be easily expanded up to 15 MGD;  
10 correct?

11 A The plant was designed for expansion to 15 MGD by  
12 basically duplicating what's there.

13 Q And that was part of the original design that you  
14 did, was to have the ability to easily expand it up to 15 MGD?

15 A Yes.

16 Q And JEA currently has the property there to do that;  
17 correct?

18 A Yes, it will fit on the property.

19 Q And do you know whether there are any plans in the  
20 long term for expansion of that plant?

21 A That I'm not aware of. I do know that if they are  
22 approaching 6 MGD, they are obligated by DEP to start making  
23 plans for expansion.

24 Q Okay. And do you know whether -- or let me try it  
25 this way. You do not know how easy or difficult it would be



1 for JEA to divert flows to its Arlington East wastewater plant  
2 if it was necessary, do you?

3 A I think it would be very difficult.

4 Q So did you review the testimony of Mr. Perkins in  
5 this docket?

6 A Which testimony are you referring?

7 Q His prefiled direct testimony.

8 A I believe I looked at it. It's been a while since I  
9 looked at it.

10 Q Do you know if Mr. Perkins indicated in his prefiled  
11 direct testimony that JEA had the ability to easily divert  
12 flows to its Arlington East wastewater plant?

13 A I couldn't tell you if it's in there or not.

14 Q And you know Mr. Perkins; correct?

15 A Oh, yeah.

16 Q And Mr. Perkins is a very good engineer?

17 A Yes, sir.

18 Q Okay. And you would agree that Mr. Perkins is in a  
19 better position to evaluate whether or not JEA had the  
20 capability of diverting flows to its Arlington East plant;  
21 correct?

22 A Yes, I agree.

23 Q And you do not know what JEA's long-term plans are  
24 with respect to the Arlington East plant, do you?

25 A I don't know. However, I know that the distance to

1 Arlington East, even the distance to Mandarin, cause a  
2 tremendous odor problem, particularly using initially oversized  
3 force mains.

4 Q Do you know whether or not JEA has any plans to  
5 develop systems that would be able to divert flows in either  
6 direction?

7 A I couldn't answer that. I don't know.

8 Q And, again, Mr. Perkins would be in a better position  
9 to assess what JEA's capabilities are in that regard?

10 A That's correct.

11 Q With respect to water, you would agree that you have  
12 not done any study as to how JEA's plans to interconnect its  
13 North and South Grids might affect its ability to provide water  
14 service to the Nocatee area; correct?

15 A I haven't done any recent studies. In the 1968 water  
16 study, which I was one of the project engineers on, we were  
17 looking at water from the westerly Duval County back then. And  
18 I do understand there is a 48-inch line that had been awarded  
19 or under construction across the river for raw water. There's  
20 also some indication there will be a 30-inch line put in the  
21 Ortega River next to a subaqueous force main we're working on.  
22 And there's also a 24-inch water main going to Julington Creek,  
23 which I am assuming they are planning to serve potable water to  
24 Julington Creek rather than using the plants down there,  
25 although those plants could be expanded too.

1 I do know right Nocatee is relying on one line to  
2 serve Nocatee. Whereby, an on-site plant gives you more  
3 reliability, because if you have that one line break coming  
4 down Phillips Highway, a 24 or larger line can't be repaired in  
5 10 minutes. You're going to have the whole development out of  
6 water for a period of time. Whereas, if you had a plant  
7 on-site, you are able to open valves and close valves and  
8 divert flow to serve.

9 Q Mr. Miller, isn't it correct that your last real  
10 involvement with respect to the JEA water system was over 20  
11 years ago?

12 A Yes, I believe so.

13 Q So you're not familiar, as we sit here today, with  
14 what interconnections have been done with respect to the  
15 various water plants that JEA has?

16 A I'm not familiar with all of them; however, I do know  
17 that the line to Nocatee is not a looped line. In other words,  
18 you've got a sole source line coming down U.S.1. It's not  
19 looped. There's, apparently, some intentions to loop because  
20 they've still got a large size line going east into the  
21 Intercoastal franchise area. So I assume there is some  
22 intention to loop up through the beaches area.

23 Q Okay. Do you know whether that line coming down to  
24 Nocatee is connected to JEA's grid system?

25 A Yes, it is.

1 Q Okay. And the grid system is a series of  
2 interconnected water plants; is that correct?

3 A It is north of Nocatee, but coming into Nocatee, you  
4 have a section of line that if it's broken or some accident  
5 happens, you cut off all the water to Nocatee.

6 Q Do you know whether or not JEA proposes a loop to  
7 Nocatee from Julington Creek Plantation down Racetrack Road?

8 A I haven't seen a proposal for that. I assume it  
9 would be a logical loop at some point.

10 Q So if JEA, in fact, has plans to connect a loop with  
11 the Julington Creek Plantation, that would alleviate some of  
12 the concerns you just talked about?

13 A It would alleviate some of the problems, but not all  
14 of it.

15 Q Now, you would agree that there are advantages from  
16 an engineering standpoint to an interconnected system that ties  
17 together water supply; isn't that correct?

18 A Oh, definitely.

19 Q And you mentioned a minute ago about the efforts that  
20 JEA has underway to interconnect at its North and South Grids?

21 A That's correct.

22 Q So you are aware that there is in process a  
23 connection between the South Grid and the North Grid?

24 A That's correct, yes.

25 Q And isn't it true that many of the wells that are in

1 JEA's North Grid are not within a water use caution area?

2 A Yes, that's correct.

3 Q And they're in an area that has an abundant supply of  
4 water that can easily be provided to alleviate resource  
5 problems in other areas within the network; correct?

6 A Yes.

7 Q Now, you mentioned a minute ago Mr. Perkins and you  
8 reviewed the prefiled testimony that was submitted by Mr. Kelly  
9 and Mr. Perkins in this docket; correct?

10 A Yes.

11 Q And at the time of your deposition, the only issues  
12 that you had with any of the statements that were in their  
13 depositions had to do with the local sources first provision;  
14 is that correct?

15 A I believe so, yes.

16 Q Now, Mr. Miller, isn't it correct that at the time of  
17 your deposition when I asked you what was the origin or the  
18 basis for the local sources first policy, you didn't even know,  
19 did you?

20 A Well, I knew it was in one of the state either  
21 legislative act or something. I didn't know exactly what bill  
22 it was or where it came from.

23 Q Well, you didn't know whether it was from the Water  
24 Management District or from the Legislature or --

25 A Well, I don't think I indicated. I do know it didn't

1 come from the Water Management District.

2 Q And you've never had a local sources first issue come  
3 up in connection with any permits that you've obtained or any  
4 consultations with which you have directly been involved prior  
5 to this case, have you?

6 A No, I haven't.

7 Q And you did not know whether the local sources first  
8 policy has ever been applied by any regulatory agency in the  
9 state of Florida, do you?

10 A I'm not aware of any.

11 Q Mr. Miller, I want to ask you a couple questions  
12 about your rebuttal testimony, if you have that.

13 A Okay.

14 Q Now, on Page 7 on Lines 21 and 22 -- I'm sorry, I may  
15 have the wrong one here. Bear with me just a second.

16 CHAIRMAN JACOBS: All right.

17 A All right.

18 Q I'm sorry. I'm talking -- this is your Intervenor  
19 testimony on Page 7.

20 A Okay.

21 Q Lines 21 --

22 A Intervenor, I'm sorry.

23 Q Too many testimonies going on here.

24 A Okay.

25 Q Lines 21 and 22, you are talking about why you

1 believe that the Intercoastal plan of service is better than  
2 the Nocatee plan of service, I guess. And on Lines 21 and 22,  
3 you talk about how the Nocatee plan of service will require  
4 construction or expansion of long water, sewer and reuse lines  
5 to provide service from these distant treatment facilities. Do  
6 you see that?

7 A That's correct.

8 Q Now, isn't it true, in fact, that the water and  
9 wastewater lines have already been installed down U.S.1 right  
10 to the point of connection where that triangle is?

11 A Yes. They have been installed and, I believe, have  
12 capacity to serve the first phase of Nocatee. That's part of  
13 the reason they were installed, I believe.

14 Q Okay. So to the extent here that you are assuming  
15 that it will require additional construction of water and sewer  
16 lines coming down U.S.1, that testimony is incorrect; correct?

17 A Well, it would require some future -- for the future  
18 needs.

19 Q Now, you have done no analysis as to at what point in  
20 time there may be a need for future lines coming down that way,  
21 have you?

22 A I haven't done one personally, no. I have seen some  
23 exhibits that showed some future Phase II lines.

24 Q And do you know when those lines were completed that  
25 are going down U.S.1 there?

1 A I couldn't tell you exactly. It's been within the  
2 last eight, ten months, I imagine.

3 Q So it's been in the last year that those lines were  
4 completed?

5 A I believe so.

6 Q And you understand that JEA deliberately oversized  
7 those lines in order to provide service to other areas in this  
8 vicinity that might need it; correct?

9 A I understand they were oversized. I assumed it was  
10 for Nocatee, maybe it was a wrong assumption on my part.

11 Q Now, Mr. Miller, you do not know the provisions of  
12 the agreement between Nocatee Utility Corporation and JEA with  
13 respect to cost allocations, do you?

14 A I'm not familiar with all of it. No, I'm not. You  
15 can give me the cost sharing of lines and things of that  
16 nature.

17 Q In your Intervenor testimony on Page 6 of Lines 19 to  
18 21 --

19 A Intervenor's?

20 Q Intervenor's, yes.

21 A What line was that?

22 Q Nineteen to 21.

23 A Okay.

24 Q You indicate here that if JEA is the wholesaler or if  
25 on-site treatment is provided, Intercoastal will still be the



1 most cost-efficient provider of utility service. Do you see  
2 that?

3 A Yes.

4 Q In making your determination as to who the most  
5 cost-efficient provider would be, you assumed that Nocatee  
6 Utility Corporation would have some responsibility for the  
7 costs involved coming down the U.S.1 transmission lines; isn't  
8 that right?

9 A I made the assumption that Intercoastal Utility would  
10 have the same arrangement as JEA -- as Nocatee has with JEA.

11 Q So at the time that you developed your testimony  
12 here, you were under the assumption that Nocatee Utility  
13 Corporation had some responsibility for the costs associated  
14 with those lines coming down U.S.1?

15 A Not total cost of them, no.

16 Q But you did assume that they had some responsibility  
17 for some of that cost; correct?

18 A Yes.

19 Q Now, Mr. Melson asked you a few questions with  
20 respect to the Intercoastal ability to provide reuse to the  
21 Nocatee development. Do you recall those?

22 A Yes, I do.

23 Q And just to follow up on a couple of those. As I  
24 understood your summary, you indicated that you have made a  
25 calculation that somehow indicates in the first year the

1 supplement that Intercoastal would need for the reuse needs of  
2 Nocatee would be 135,000 gallons per day?

3 A That was based just on the permitted capacity of  
4 what's discharging versus what's required by Nocatee, yes.

5 Q So you understand that at this point the first need  
6 for reuse by Nocatee would be in -- we're talking probably the  
7 latter part of 2002?

8 A That's correct.

9 Q So in making your calculation of the shortfall that  
10 would need to be made up of 135,000 gallons per day, you were  
11 assuming that the Intercoastal wastewater treatment plant was  
12 operating at full capacity at the end of 2002; correct?

13 A I made that assumption. I also made the assumption  
14 that the high -- using all the high -- what we consider were  
15 high projections for Nocatee assuming that the development is  
16 going to develop in the same scale as laid out in the phasing.  
17 I think we're dealing with a lot of assumptions. We don't know  
18 what the actual reuse demand is going to be, nor do we know  
19 exactly how fast Sawgrass is going to develop.

20 Q So in your conceptual plan that you have here, you  
21 project under the normal course of events that the Intercoastal  
22 plant would reach full capacity in the year 2010, but in making  
23 your determination of \$135,000 shortfall at the beginning of  
24 Nocatee, you're assuming it's going to be at full capacity in  
25 the year 2002; correct?

1           A     That's the way it's shown, but again, we're dealing  
2 with numerous assumptions.

3           Q     So if, in fact, Nocatee -- I mean, the Intercoastal  
4 plant does not actually meet full capacity to 2002, as you  
5 indicate in your conceptual plan, then you would agree that the  
6 shortfall for Intercoastal in terms of its ability to provide  
7 reuse to Nocatee would be significantly greater than 135,000  
8 you gave in your testimony; correct?

9           A     It could be higher, yes.

10          Q     In connection with that, your assumption of a  
11 135,000-gallon shortfall at the beginning of Nocatee assumes  
12 that the only obligation that Intercoastal has to the Sawgrass  
13 Country Club is 300,000 gallons per day; correct?

14          A     Yes, that is my understanding from Mr. Forrester of  
15 the agreement with Sawgrass.

16          Q     And to the extent that Sawgrass is actually taking  
17 larger than 300,000 gallons per day, then that would also  
18 increase the shortfall in terms of Intercoastal's ability to  
19 meet the reuse needs of Nocatee?

20          A     Well, as I stated before, it's my assumption that  
21 Intercoastal is only obligated to 300,000 gallons a day.

22          Q     And to the extent that the Intercoastal facility has  
23 obligations to provide reuse to the plantations, that could  
24 also affect your calculation in terms of the reuse shortfall of  
25 Nocatee?

1           A     It's my understanding there's no written agreement  
2 with Plantation to provide anything other than what  
3 voluntarily -- that Intercoastal would give them.

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

5           CHAIRMAN JACOBS: Mr. Korn.

6           MR. KORN: Thank you, Mr. Chairman.

7                               CROSS EXAMINATION

8 BY MR. KORN:

9           Q     Hello again, Mr. Miller.

10          A     Hello.

11          Q     I want to follow up on something you just said. You  
12 said that in response to Mr. Menton's question that it was your  
13 understanding that the only obligation was 300,000 gallons per  
14 day to the Sawgrass golf course; right?

15          A     That is what I have been told by Intercoastal  
16 Utilities.

17          Q     And you're not aware -- just as you've testified  
18 yesterday, you're not aware of the actual amounts that are  
19 actually being drawn down by Sawgrass County Club for that golf  
20 course irrigation?

21          A     I understand they are drawing down more than that;  
22 however, I have been told the obligation is only 300,000  
23 gallons a day.

24          Q     You have not reviewed a document called a "Utility  
25 Service Agreement," have you, sir?

1 A Which?

2 Q It's dated September 1983.

3 A With who, Sawgrass?

4 Q It was them between Arvida and Intercoastal  
5 Utilities.

6 A No, I haven't.

7 MR. WHARTON: Mr. Chairman, I think this is outside  
8 the scope of either of the testimonies.

9 MR. KORN: It is certainly following up on the  
10 witness's ability or inability to know the basis of his  
11 testimony that he has just given.

12 MR. WHARTON: Yeah, but the scope is not defined by  
13 his responses to questions on cross.

14 CHAIRMAN JACOBS: He's testified that he wasn't aware  
15 of any agreement. I assume you're trying to bring in some  
16 basis of an agreement.

17 MR. KORN: Mr. Chairman, I'm trying to understand  
18 because it appears that this witness's testimony and his  
19 assumptions are based upon figures which have been given to  
20 him, and I'm trying to understand what the basis of those  
21 figures are. And because, quite frankly, and I think as is  
22 pretty evident, those figures are in direct contravention to  
23 all the other testimony that we've been hearing throughout this  
24 hearing with respect to the obligations that Intercoastal  
25 Utilities currently has to Sawgrass.

1 MR. WHARTON: Well, that's a totally incorrect  
2 characterization of the testimony.

3 MR. KORN: Well, that's the first thing we haven't  
4 agreed on yet in this trial, Mr. Wharton.

5 CHAIRMAN JACOBS: As I understand where the  
6 questioning is, you asked him if he was aware of that document.  
7 He is not, as I understood the response.

8 THE WITNESS: I'm not aware of the document.

9 CHAIRMAN JACOBS: So that kind of leaves you where?

10 MR. KORN: It leaves me with my next question.

11 CHAIRMAN JACOBS: Let's see where that takes us.

12 MR. KORN: Certainly.

13 BY MR. KORN:

14 Q Mr. Menton asked you if the amount of irrigation that  
15 Sawgrass was using was greater than 300,000 gallons per day,  
16 that it would increase the shortfall that ICU would have to  
17 make up in order to serve Nocatee. And you said, well, it's  
18 just my understanding 300,000. I'd like you to answer that  
19 question. Isn't it true that if Sawgrass was drawing down more  
20 than 300,000 gallons per day, it would increase the shortfall  
21 that Intercoastal Utilities would have to make up if they plan  
22 to serve reuse to Nocatee? That's a yes or no.

23 A Yes, if they had a legal obligation to serve more  
24 than 3,000 (sic) gallons a day to Sawgrass.

25 Q Are you a member of the Florida Bar?

1 A No, I'm not.

2 Q Okay. And you haven't seen any contracts that define  
3 what the legal obligations of any of these parties are with  
4 respect to reuse at Sawgrass, are you?

5 A No, I have not.

6 Q Okay. Now, I want to, if I might, direct your  
7 attention to your rebuttal testimony, Mr. Miller --

8 A Okay.

9 Q -- specifically at Page 3. And if you could just  
10 read just to yourself the question that begins on Line 9 and  
11 your answer begins on Line 11 and runs through Line 21, and if  
12 you will tell me when you're done with that, I have one  
13 question to ask you.

14 A Okay.

15 Q Thank you. The question was basically put to you as  
16 to whether Intercoastal could meet Nocatee's timetable for  
17 provision of construction water by 2001. And for the record,  
18 what is "construction water"?

19 A It is what Nocatee would require for their building  
20 construction, infrastructure construction on-site.

21 Q Would that include construction of natural  
22 improvements such as golf courses?

23 A I would assume that the initial golf course would  
24 require some water, yes.

25 Q So that would be included in your definition, your

1 working definition?

2 A Yes.

3 Q All right. Now, specifically your answer that begins  
4 at Page 14 where you state, "I agree with Mr. Forrester's  
5 conclusion that IU will either be able to offer construction  
6 water by the revision of temporary facilities or if, in fact,  
7 the development is delayed by permanent facilities which will  
8 be in place at the time construction water is demanded," my  
9 question is: What is your assumption as to the location of  
10 those temporary facilities? Where would they be actually  
11 sited?

12 A It would have to be some kind of a siting agreement  
13 between Nocatee and Intercoastal Utilities.

14 Q They would not be east of the Intracoastal Waterway,  
15 would it?

16 A Well, if any reuse was needed or they needed some  
17 reuse water for golf course irrigation, we could certainly have  
18 that permitted, I think, in to meet their current schedule.

19 Q What is the standard that is required in order to  
20 provide construction water? In other words, is reuse eligible  
21 to be used as construction water?

22 A If it's for irrigation, it can be.

23 Q What other purposes are construction water put to  
24 other than irrigation?

25 A I'm sure you could use it for some of the road



1 construction and sprinkling and things like that. I think it  
2 would be up to what -- as long as it wasn't for potable  
3 consumption, you could use it as long as it met the public  
4 standards.

5 Q Does your testimony -- I'm sorry. I didn't mean to  
6 cut you off. Are you finished?

7 A Yes.

8 Q Does your testimony presume that the siting of  
9 temporary facilities would not be located in Intercoastal's  
10 current certificated area?

11 A Yes, it does.

12 Q Now, you were asked some questions about the amount  
13 of gallons per day that, in your opinion, a golf course needed.

14 A Yes.

15 Q Do you remember that testimony?

16 And as I recall your testimony, you said that you  
17 thought that Mr. Doug Miller's estimates of 650,000 gallons per  
18 day was on the high side, using your words.

19 A That's correct.

20 Q Were you here for the testimony of Mr. James  
21 yesterday which followed your testimony?

22 A Yes, I was.

23 Q Did you hear Mr. James's testimony regarding his  
24 estimates as to what he thought would be necessary in order to  
25 appropriately irrigate a golf course in this part of Florida?

1 A Yes.

2 Q And did you hear him say that in his view a range  
3 would be anywhere between 550,000 to 750,000 gallons per day  
4 for 18 holes?

5 A Yes, I heard that.

6 Q Do you disagree with Mr. James's assessment?

7 A I disagree somewhat, that on an annual average it's  
8 not that high.

9 Q Mr. Miller, are you aware of the current status of  
10 development within the Sawgrass Community?

11 A I haven't been in -- no, I'm not. I haven't been to  
12 Sawgrass in a while.

13 Q So you're not sure whether that development has been  
14 built out or anything of that nature?

15 A I assume that it's pretty close to built out, but I  
16 couldn't tell you.

17 Q And the purpose of your testimony, whether the direct  
18 or the Intervenor or rebuttal testimony, was not to do any type  
19 of a comparison between odor issues that might exist at JEA's  
20 Mandarin plant and the Intercoastal plant adjacent to Sawgrass;  
21 correct?

22 A No, it wasn't.

23 MR. KORN: Thank you, Mr. Miller. Thank you,  
24 Mr. Chairman. I have nothing further.

25 CHAIRMAN JACOBS: Thank you. Staff.

1 MS. ESPINOZA: Just one question.

2 CROSS EXAMINATION

3 BY MS. ESPINOZA:

4 Q You stated earlier in response to a question asked by  
5 Commissioner Palecki that if Intercoastal could find a site  
6 outside the Nocatee area, then the service area would need to  
7 be changed. Why do you believe that the utility service area  
8 would need to be changed if the plant site was physically  
9 located outside the proposed development area?

10 A I would assume, and I may be wrong, but it would have  
11 to be located in the franchise area.

12 MS. ESPINOZA: Thank you.

13 CHAIRMAN JACOBS: Thank you. Commissioners.

14 Redirect.

15 REDIRECT EXAMINATION

16 BY MR. WHARTON:

17 Q Mr. Miller, to the extent that that assumption is  
18 incorrect, would you then agree that that would expand  
19 Intercoastal's options in that regard?

20 A Yes.

21 Q Okay. Let's talk about this map that I think is  
22 marked as Exhibit 42?

23 A Yes.

24 CHAIRMAN JACOBS: Yes.

25 Q What are those light blue areas that exist within the

1 development?

2 A Labeled as out parcels.

3 Q What is an out parcel?

4 A It appears to be a parcel that is owned by someone  
5 else, is no part of the developer.

6 Q And do you think that Intercoastal would, if it  
7 deemed it advisable, investigate whether locating water and  
8 wastewater plant sites on those out parcels would be a  
9 possibility?

10 A That certainly could be a possibility.

11 Q Sir, you were asked quite a few questions about the  
12 location of the wells and the spacing of the wells. In fact,  
13 Intercoastal would have to get a consumptive use permit for  
14 those wells; correct?

15 A That's correct.

16 Q So wherever the wells were located, that would be in  
17 a location that the Water Management District had blessed?

18 A Correct.

19 Q You were also asked several questions about the local  
20 sources first policy. Do you agree that on Exhibit 42 some of  
21 these wells seem to be within 2,000 feet of the county line, at  
22 least one of them?

23 A Yes.

24 Q And would you expect that local sources first issues  
25 would be worked out with the Water Management District while

1 obtaining the consumptive use permits?

2 A I certainly think it would, yes.

3 Q Exhibit 42 also shows a couple of golf course  
4 irrigation wells, doesn't it?

5 A Yes.

6 Q And that apparently denotes that when CH2MHill did  
7 this study, they deemed that the water was suitable for the  
8 location of golf course irrigation wells in those locations?

9 A Yes.

10 Q Sir, isn't it true that before you filed the second  
11 round of your testimony that Mr. Melson asked you so much about  
12 that Intercoastal had obtained documents through discovery from  
13 DDI and NUC?

14 A Yes. I received quite a bit more documentation to  
15 use in the JM-2 conceptual plan.

16 Q Had Intercoastal also engaged in discovery with JEA,  
17 including public records requests?

18 A I'm sorry, repeat that.

19 Q Did Intercoastal also get documents from JEA during  
20 that same period?

21 A Yes.

22 Q And at the time that you filed that second round of  
23 testimony, do you -- I think Mr. Melson pointed out to you that  
24 there was a letter of agreement or a letter of intent in the  
25 application?

1 A Yes, that's what he indicated.

2 Q So at that time, that was only a letter of intent  
3 rather than the contract that those parties have entered into  
4 now; is that right?

5 A Yes, that's my understanding.

6 Q Do you know whether that letter of intent said that  
7 JEA and NUC would actually get together and do the contract if  
8 NUC got a certificate from the Public Service Commission?

9 A I honestly don't recall.

10 Q You were asked whether Intercoastal, for lack of a  
11 better phrase, intended to comply with the development order.  
12 Do you believe Intercoastal would attempt to comply with the  
13 development order in all respects?

14 A I think Intercoastal would try to comply with it.

15 Q But development orders can be modified, can't they?

16 A Certainly.

17 Q You were asked several questions about the quality of  
18 the effluent from the Mandarin plant. Have you heard testimony  
19 in this proceeding that has indicated to you that the effluent  
20 that will be delivered to Nocatee must meet public access  
21 standards?

22 A If it's going to be used for reuse, it's got to meet  
23 public access standards.

24 Q Do you understand that everything coming out of the  
25 Mandarin plant now meets that standard?

1           A     When the additional ultraviolet disinfection is put  
2 in and the reuse expansion is finished, it would meet it, yes.

3           Q     Sir, you were asked some questions about the vote of  
4 the City of Jacksonville with regard to the development order.  
5 Does the City of Jacksonville have a vested interest, to your  
6 knowledge, in JEA expanding its service territory?

7           A     I certainly would think so.

8           MR. MENTON: I'm going to object. This is going  
9 beyond the scope of anything that's really relevant to this  
10 proceeding at this time.

11           MR. WHARTON: You know, everything in this case is  
12 three on one, and they clearly asked this man about what he  
13 thought about what the City Council -- did he speak better for  
14 the people of Mandarin than City Council, wasn't the vote 19 to  
15 nothing. Let's at least put on the record that they make money  
16 from that 19-to-nothing vote.

17           MR. MENTON: What Mr. Wharton is asking this witness  
18 to do is to talk about what the relationship is between the  
19 City of Jacksonville and JEA. This witness does not work for  
20 either of them. He is not the person who can testify with  
21 direct knowledge regarding those things.

22           MR. WHARTON: I don't work for the City of  
23 Tallahassee, but I know they built the softball field for the  
24 electric revenue.

25           CHAIRMAN JACOBS: Well, as it relates to this

1 proceeding, let's keep it to his knowledge of exactly what he  
2 observed regarding those, not what he may have heard.

3 BY MR. WHARTON:

4 Q Mr. Miller, has it ever been your observation that  
5 the City of Jacksonville makes money off of the Jacksonville  
6 Electric Authority?

7 MR. MENTON: I'm going to renew my objection again.  
8 I listened to him talk about newspaper articles that have some  
9 undefined time without objection, but this is really getting  
10 him to try to speculate into areas that he is not the person  
11 who can testify to. He's just talking about "Joe Citizen"  
12 here. We've been here for three days, and we don't need to  
13 hear what this man thinks about the City of Jacksonville's  
14 arrangements --

15 MR. WHARTON: He wasn't "Joe Citizen" when he was  
16 being asked about what the vote was from the 19-member City of  
17 Jacksonville Council on the development order. He was  
18 apparently somebody else.

19 CHAIRMAN JACOBS: I'll sustain the objection.

20 BY MR. WHARTON:

21 Q Have you talked to councilmen in Duval County about  
22 the Mandarin plant and the situation there?

23 A I've had some discussions on a couple of occasions.

24 Q Why don't you tell us about those?

25 A Well, in my --



1 MR. MENTON: I'm going to object on the hearsay  
2 grounds. We're trying to get into hearsay comments of unknown  
3 commissioners regarding a plant that's not the issue before  
4 this Commission today.

5 CHAIRMAN JACOBS: We had testimony from Mr. Miller on  
6 this by his conversations with -- and experiences with County  
7 Commissioners, so I will allow it.

8 BY MR. WHARTON:

9 Q Go ahead.

10 A Just in summary, I've had conversations with a couple  
11 of the councilmen who -- one of them is a district councilman,  
12 the other one is a councilman at large, and they had concern  
13 that Nocatee was drawing from the resources of Duval County.  
14 But I think based -- you know, I think they felt -- or they  
15 indicated to me they felt like Nocatee was good for the whole  
16 area and didn't feel like it was worthwhile putting on a fight  
17 at City Council to defend their points. And that's basically  
18 what I've been told.

19 Q Sir, you were asked several questions about the  
20 potentiality for the receipt of bulk service from JEA by  
21 Intercoastal. Do you recall those?

22 A Yes.

23 Q Would you advise Intercoastal, if it were awarded the  
24 certificate in this case, to at least explore that option while  
25 it was finalizing its plans?

1           A     I think it would be worthwhile exploring it. I'm not  
2 sure in lieu of the Intercoastal's plan of service that it's  
3 the best route to go, but it may be -- to expedite development  
4 and not have to change development orders, it may be the only  
5 way something like this could be resolved.

6           Q     Sir, when you were responding to a question about  
7 odors at the Mandarin plant, you commented upon the length of  
8 the force main as being at least a partial cause of those  
9 odors. Do you recall that testimony?

10          A     Yes.

11          Q     Would you expect service from the Mandarin plant to  
12 the Nocatee development to exacerbate that problem?

13          A     It certainly wouldn't improvement it. I mean, the  
14 length of the force main from Nocatee is certainly as long or  
15 longer than some of the ones coming into Mandarin now. And  
16 particularly when you have an oversized force main with initial  
17 lower flows, you can get much longer retention time in the  
18 force main causing the hydrogen sulfide odors. And it's a  
19 problem that always occurs when you have a -- traveling sewage  
20 over a long distance.

21          Q     And would you say that that situation would be  
22 exacerbated even further if that sewage was sent to the  
23 Arlington East plant?

24          A     Well, it would be if it was sent directly to the  
25 Arlington East. There are certain ways that you could shift

1 flow around, and you'd still be stuck with the odor from the  
2 distance from Nocatee to the Mandarin.

3 Q You were asked quite a few questions about JEA's  
4 plans as they relate to St. Johns County. Are all of JEA's  
5 wells in Duval County, or is JEA operating some wells in  
6 St. Johns County now?

7 A Well, it's my understanding they operate wells at  
8 Julington Creek Plantation.

9 Q And that's in St. Johns County?

10 A I do believe that's under a separate CUP.

11 Q And that's in St. Johns County?

12 A Yes, it is.

13 Q Okay. And you had indicated that there is a  
14 waterline being constructed down to Julington Creek Plantation;  
15 correct?

16 A It's my understanding through what was published as  
17 an RFP to different engineers that there's a 24-inch potable  
18 waterline to Julington Creek, which indicates one of two  
19 things: That Julington Creek is going to be intertied and  
20 continue to operate the existing plant at Julington Creek, or  
21 the Julington Creek plant is going to be abandoned and supply  
22 all the water from the north.

23 Q And would it be your assumption that if we heard  
24 testimony from the Water Management District that JEA is going  
25 to have to satisfy certain criteria in order to have permission

1 to deliver water into St. Johns County through the facilities  
2 they have constructed along U.S.1, they are going to have to  
3 have that same permission to deliver it through the 24-inch  
4 water main that you have testified about?

5 MR. MENTON: Excuse me, just a second, Mr. Chairman.  
6 I'm going to object to the question. I'm not sure I understood  
7 it, first of all, and second, I think it calls -- if I  
8 understood it correctly, I believe it calls from speculation  
9 from this witness as to what the Water Management District may  
10 do.

11 MR. WHARTON: I'm asking for his professional opinion  
12 in terms of what he would anticipate the Water Management  
13 District would do.

14 CHAIRMAN JACOBS: It sounds like --

15 MR. MENTON: So you're asking for his profession --

16 CHAIRMAN JACOBS: Excuse me. It sounds like  
17 speculation, a very speculative answer as to what he would  
18 think the Water Management District would do on a hypothetical  
19 situation.

20 BY MR. WHARTON:

21 Q Do you know whether or not JEA will be able to  
22 deliver water to Julington Creek through the 24-inch water main  
23 that you've testified about without notifying the Water  
24 Management District if that is not an area that they had  
25 previously indicated when they applied for that CUP that they

1 were going to be serving?

2 A It's my understanding that the Julington Creek  
3 Plantation is under a separate CUP. And to my knowledge, that  
4 CUP probably could remain as a separate CUP until the next  
5 modifications to the JEA South Grid CUP. So they could, I  
6 think, essentially serve Julington without notifying the Water  
7 Management District or getting a modification to the permit.

8 Q Sir, again, you were asked several questions about  
9 JEA's intentions with regard to St. Johns County; is that  
10 right?

11 A Yes.

12 Q And you understand that there are certain lines that  
13 are proposed to be run through the northern part of the Nocatee  
14 development which ultimately JEA will own; is that correct?

15 A Yes.

16 Q And did you hear the testimony of JEA, why they said  
17 they wanted those lines?

18 A It was anticipating future service, future  
19 connections in that area.

20 Q And some of that service might be east of the  
21 Intracoastal Waterway?

22 A Yes, it could be.

23 MR. MENTON: Mr. Chairman, I hate that object again,  
24 but I do believe we are getting beyond the scope of cross now  
25 because I don't think there was any cross examination questions

1 regarding service to the east of the Intracoastal Waterway.

2 MR. WHARTON: Well, there were extensive questions  
3 about JEA's loop systems and JEA's intentions in St. Johns  
4 County.

5 CHAIRMAN JACOBS: Well, it sounds like he answered  
6 that last question already. Do you have further inquiry on  
7 that?

8 MR. WHARTON: Yes. Well, I mean, why don't we get to  
9 that question?

10 CHAIRMAN JACOBS: Yes, let's get to it and go from  
11 there.

12 MR. MENTON: I'll make my objection in advance.

13 BY MR. WHARTON:

14 Q Would you agree, Mr. Miller, that in that case JEA's  
15 facilities when they exit the eastern part of the Nocatee  
16 development will be going across property that is not part of  
17 Nocatee?

18 CHAIRMAN JACOBS: Before you answer that, you had an  
19 objection. Restate it.

20 MR. MENTON: Well, I have several. First, I believe  
21 it's beyond the scope of cross. Second, I believe the question  
22 itself was leading. And third, I think it's not relevant in  
23 terms of this witness's speculation as to what JEA might be  
24 intending in terms of oversizing lines, et cetera.

25 MR. WHARTON: Well, I tell you what, I can make it in

1 a way that is not leading and that doesn't refer to JEA.

2 CHAIRMAN JACOBS: It still doesn't go to the  
3 relevancy. What about the relevancy?

4 MR. WHARTON: Well, I think what this witness is  
5 going to easily be able to show and that is within the scope of  
6 the prior cross examination is that JEA is going to be locating  
7 facilities on and getting easements from the property that's  
8 been described as "that it would be impossible for Intercoastal  
9 to do that."

10 CHAIRMAN JACOBS: Okay. Let's hear your question.

11 BY MR. WHARTON:

12 Q Sir, if a hypothetical utility was going to provide  
13 service from the Nocatee development to areas east of the  
14 Intracoastal Waterway, do you think they would have to procure  
15 easements from land which is outside the Nocatee development?

16 MR. MENTON: I'll to the object to the extent it  
17 calls for speculation.

18 CHAIRMAN JACOBS: I'll allow it.

19 A I think some easements would be required, yes.

20 Q And that then facilities would be located on that  
21 land?

22 A Yes.

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

24 MR. MELSON: Mr. Chairman?

25 CHAIRMAN JACOBS: Yes.

1 MR. MELSON: I'm sorry. I would like one recross on  
2 the map, just one. He asked a question with regard to the out  
3 parcels, and this witness -- I want to ask one question to test  
4 his knowledge of those out parcels.

5 CHAIRMAN JACOBS: I assume none of your witnesses --

6 MR. MELSON: We're done.

7 CHAIRMAN JACOBS: You're done.

8 MR. WHARTON: They already had three shots at him.

9 CHAIRMAN JACOBS: I have to question because it was  
10 your map, and he knew nothing about it until he saw it.

11 MR. MELSON: Let me ask the question, and if it draws  
12 an objection --

13 CHAIRMAN JACOBS: A very narrow question.

14 MR. WHARTON: I'll make my objection in advance.

15 CHAIRMAN JACOBS: We're breaking new ground here on  
16 the practice of law anyway.

17 RECROSS EXAMINATION

18 BY MR. MELSON:

19 Q Mr. Miller, if I were to ask you which of these out  
20 parcels was wetlands, which was single family homes, which was  
21 a county park, and which was a spoil site for dredging from the  
22 Intracoastal Waterway, would you know?

23 A I couldn't tell from this map.

24 MR. MELSON: Thank you.

25 (Witness excused.)



1 CHAIRMAN JACOBS: Exhibits.

2 MR. WHARTON: Well, I want to follow up and say which  
3 of them is a perfect utility site. I guess --

4 CHAIRMAN JACOBS: I appreciate it.

5 MR. WHARTON: I think we've already moved them.

6 CHAIRMAN JACOBS: That's 42; right?

7 MR. MELSON: I move 42.

8 CHAIRMAN JACOBS: Without objection, show that  
9 admitted. We'll take a ten-minute break.

10 (Exhibit 42 admitted into the record.)

11 (Brief recess.)

12 (Transcript continues in sequence with Volume 8.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

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

8

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

14

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

20

21 DATED THIS 23rd DAY OF MAY, 2001.

22

23

*Tricia Demarte*

24

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FPSC Official Commission Reporter  
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