

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

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FLORIDA PUBLIC SERVICE COMMISSION,  
Plaintiff,

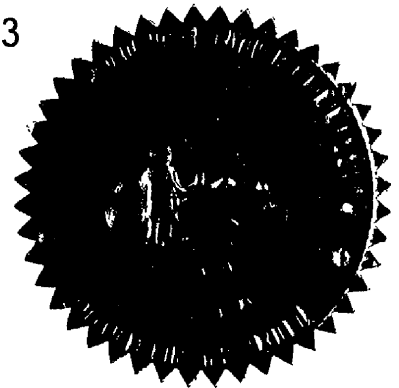
vs.

CIVIL DIVISION

FLORIDA WATER SERVICES CORPORATION, CASE NO.: 03-CA-358  
Defendant.

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A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: HEARING  
BEFORE: THE HONORABLE CHARLES A. FRANCIS  
Circuit Judge  
DATE: Friday, February 28, 2003  
TIME: Commenced at 9:00 a.m.  
Concluded at 1:25 p.m.  
PLACE: Leon County Courthouse  
Courtroom 3-C  
Tallahassee, Florida



REPORTED BY: JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732

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## 1 APPEARANCES:

2 BARRY RICHARD, Greenberg, Traurig, P.A., 101 East  
3 College Avenue, Tallahassee, Florida 32301, appearing on behalf  
4 of Florida Water Services Corporation and Florida Water  
5 Services Authority.

6 BRUCE CULPEPPER, Akerman, Senterfitt, 301 South  
7 Bronough Street, Suite 200, Tallahassee, Florida 32302,  
8 appearing on behalf of Florida Water Services Authority.

9 LONNIE N. GROOT, Stenstrom, McIntosh, Colbert,  
10 Whigham & Simmons, P.A., Suite 22 - SunTrust Building, 200 West  
11 First Street, Sanford, Florida 32772-4848, and MIKE DAVIS,  
12 Bryant, Miller and Olive, Tallahassee, Florida, appearing on  
13 behalf of the City of Palm Coast.

14 ARTHUR I. JACOBS, Jacobs & Associates, P.A., 401  
15 Centre Street, The Historic Post Office Building, Second Floor,  
16 Fernandina Beach, Florida 32034, appearing on behalf of Amelia  
17 Island Plantation Community Association, Inc.

18 MICHAEL B. TWOMEY, P. O. Box 5256, Tallahassee,  
19 Florida 32314-5256, appearing on behalf of Collier County,  
20 Florida, and Sugarmill Woods Association, Inc.

21 HAROLD McLEAN, General Counsel, and LORENA  
22 HOLLEY, FPSC General Counsel's Office, 2540 Shumard  
23 Oak Boulevard, Tallahassee, Florida 32399-0850,  
24 appearing on behalf of the Commission Staff.

25

1 APPEARANCES CONTINUED:

2 JOHN MARKS, ESQUIRE, Knowles, Marks and Randolph, 215  
3 South Monroe Street, Suite 130, Tallahassee, Florida,  
4 representing Charlotte County.

5 ROBERT SCHEFFEL WRIGHT, ESQUIRE, Landers & Parsons, 210  
6 West College Avenue, Tallahassee, Florida, representing Flagler  
7 County Utility Regulatory Authority.

8 MIKE MULLIN, ESQUIRE, representing Nassau County.

9 JOHN JENKINS, ESQUIRE, representing Marco Island.

10 JACK SHREVE, ESQUIRE and CHARLES BECK, ESQUIRE,  
11 representing the Office of Public Counsel.

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## P R O C E E D I N G

1  
2 THE COURT: All right. Good morning. We are here  
3 for Florida Public Service Commission versus Florida Water  
4 Services Corporation, et al. The case is 2003-CA-358. Let's  
5 go ahead and get our appearances on the record. I guess let's  
6 start with the Public Service Commission.

7 MR. McLEAN: Yes, sir. My name is Harold McLean,  
8 General Counsel at the Florida Public Service Commission. With  
9 me is Lorena Holley.

10 THE COURT: And Florida Water Services Corporation.

11 MR. RICHARD: Your Honor, Barry Richard. I am here  
12 representing the Corporation and also Florida Water Services  
13 Authority.

14 THE COURT: All right. The next issue I would like  
15 to resolve as far as introductions, I want to have everybody do  
16 it, but I'm not quite sure. I want to clarify the status as  
17 they do it. Judge Gary, I was reading the transcript of the  
18 temporary injunction hearing, did by, I think, agreement,  
19 authorize intervention for all of those who had filed. There  
20 had been seven of them at that time. I think we have had some  
21 since then. If that is incorrect, I would like that to be --  
22 as you are introducing yourself here today whether or not you  
23 were granted status. I know I saw -- let me go through the  
24 ones that I saw and we will see. He did not specify which  
25 ones. He said I had seven motions to intervene, and he said I

1 am letting everybody intervene. And there seemed to have been  
2 agreement with that, but I want to make sure we have that clear  
3 here. I know -- and I don't know if -- is Amelia Island  
4 Plantation Community Association, Inc. represented here today?

5 MR. JACOBS: Yes, sir.

6 THE COURT: And yes, sir, for the record.

7 MR. JACOBS: I am Arthur Jacobs here on behalf of the  
8 Amelia Island Property Owners Association, and we were allowed  
9 to be amicus curiae before Judge Gary. We have asked to be an  
10 intervenor with you, sir.

11 THE COURT: All right. We will take all of those  
12 issues up in just one moment. Let's go down to the City of  
13 Palm Coast.

14 MR. GROOT: Lonnie Groot representing the city. And  
15 Judge Gary did specifically name Palm Coast as an intervenor  
16 that was granted intervention. And with me also is --

17 MR. DAVIS: I'm Mike Davis with Bryant, Miller, and  
18 Olive also representing Palm Coast.

19 THE COURT: Very good. Nassau County.

20 MR. MULLIN: Good morning, Your Honor. I'm Mike  
21 Mullin, M-U-L-L-I-N, representing Nassau County.

22 THE COURT: Were you -- you had your motion pending  
23 at the time of that hearing with Judge Gary, or did you, sir?

24 MR. MULLIN: Your Honor, I think I filed it right  
25 after that hearing.

1 THE COURT: Okay. So your actual status as an  
2 intervenor has not been determined yet?

3 MR. MULLIN: Exactly.

4 THE COURT: Okay. Office of Public Counsel.

5 MR. SHREVE: Your Honor, Jack Shreve, Public Counsel.

6 THE COURT: Mr. Shreve, were you present as an  
7 intervenor at that hearing?

8 MR. SHREVE: I don't believe we were as an  
9 intervenor.

10 CHAIRMAN GARCIA:: So your status has not yet been  
11 determined. Collier County and Sugarmill Woods.

12 MR. TWOMEY: Mike Twomey, Your Honor, appearing on  
13 behalf of Collier County and Sugarmill Woods. Your Honor, we  
14 had filed an application or a motion to be heard as amicus  
15 prior to Judge Gary ruling. We have since requested permission  
16 to have intervenor status.

17 THE COURT: Very good. City of Marco Island.

18 MR. JENKINS: John Jenkins, Your Honor, on behalf of  
19 the City of Marco Island. And we had not yet filed our motion  
20 to intervene at the time of the temporary injunction.

21 THE COURT: All right. Flagler County.

22 MR. WRIGHT: Robert Scheffel Wright, Your Honor,  
23 appearing on behalf of the Flagler County Utility Regulatory  
24 Authority. We moved to intervene on Wednesday of this week,  
25 but we were not present at the previous hearing. Our status is



1 pending.

2 THE COURT: Very good. Charlotte County.

3 MR. MARKS: Yes, Your Honor. I am John Marks of the  
4 law firm of Knowles, Marks, and Randolph. We only filed our  
5 motion to intervene yesterday and we request status as an  
6 intervenor.

7 THE COURT: Very good. Do we have any more -- I  
8 don't know of any other motions to intervene. Have I missed  
9 anyone? All right. Let's address that issue before we get  
10 going further. And I don't know -- and I will let the primary  
11 parties first.

12 Public Service Commission, objection to any of the  
13 intervenors' requests?

14 MR. McLEAN: None, sir. Thank you.

15 THE COURT: All right. Mr. Richard.

16 MR. RICHARD: Your Honor, I do not object to  
17 intervention, per se, but I do have some serious concern over  
18 the extent to which the intervenors are going to be permitted  
19 to participate in this action, something which Judge Gary did  
20 not address. My concern is that the intervenors do not have  
21 the direct and immediate interest in this that the rule  
22 requires to be intervenors, although they were permitted.

23 This case really involves the interest of the PSC  
24 because it questions the PSC authority and the direct interest  
25 of my client that is now subject to the temporary injunction

1 that Judge Gary expressly made conditioned upon us having this  
2 hearing where I have the opportunity to establish that it  
3 should be lifted, or the PSC the opportunity to establish that  
4 it should be sustained.

5           The Supreme Court -- I'm not going to argue this at  
6 length, but the Supreme Court in Union Central versus Carlisle  
7 (phonetic) said that intervention should be limited to the  
8 extent necessary to protect the interests of the parties.  
9 Under the facts of this case, Union Central has demonstrated  
10 the requisite interest entitling it to intervene. Union  
11 Central, may monitor the trial as a spectator, but it cannot  
12 participate in any way other than to make appropriate motions  
13 to protect its interests.

14           My only concern, Your Honor, is that the time that is  
15 scheduled in this case, which I had estimated when I requested  
16 it, is time that is designed to permit the Public Service  
17 Commission and my parties to have an adequate opportunity to  
18 present evidence that was never presented in the first hearing.  
19 And I do not -- I would object to this being turned into an  
20 eight-ring circus in which we have a dozen lawyers  
21 cross-examining witnesses and trying to put on testimony when  
22 their clients have no direct interest in what is before the  
23 court. So that is my only request is that the court place some  
24 conditions upon the participation by the intervenors if Your  
25 Honor decides to allow them all in.

1 THE COURT: All right.

2 MR. McLEAN: May I respond, Your Honor?

3 THE COURT: Yes, sir, you may respond.

4 MR. McLEAN: Mr. Barry -- there I go again. Mr.  
5 Richard's argument -- I believe I called him Mr. Barry at least  
6 50 percent of last time, so if you will indulge me, Your Honor.

7 MR. RICHARD: I'm not offended.

8 MR. McLEAN: Thank you very much. I believe Mr.  
9 Richard's argument went slightly beyond the matter of  
10 intervention. I will feel like I need to comment. We are not  
11 trying Commission jurisdiction here, and the judge's order, of  
12 course, speaks for itself. With respect to his comments on  
13 intervention, we have no position at this time. We don't  
14 oppose the intervention.

15 THE COURT: I have read all of the motions to  
16 intervene, and it seems like most of them, if not all of them,  
17 are based mainly on the fact that the persons who request  
18 intervention are all those that have water systems that are in  
19 effect here that are subject to this matter or are in their  
20 particular areas or jurisdiction and that is their direct  
21 effect that the provision of water -- they are alleging anyway  
22 the provision of water services in their areas would not be  
23 regulated after this or might not be subject to regulation and  
24 a number of things of that nature.

25 But I do think they were pretty consolidated

1 arguments and most of them made the exact same positions as to,  
2 and pretty much were consistent as to -- and I don't want to  
3 get into all the merits of that yet. But let's do this, I  
4 think both Mr. Richard and Mr. McLean have stipulated as to  
5 yourselves, this is a final hearing on the merits, is that  
6 correct?

7 MR. RICHARD: Yes, sir.

8 MR. McLEAN: Yes, sir.

9 THE COURT: My thought on it is that we proceed. I  
10 will allow -- I don't want to -- if we grant the status, like I  
11 said, Judge Gary had ruled on the status of intervention on a  
12 number of these, and I noticed that the First District Court of  
13 Appeal at least three or four of these, I think, were addressed  
14 as to intervention granted on the writ of prohibition. One is  
15 amicus, I think, and the others as parties. But I would like  
16 to proceed this, the primary intervention, of course, comes in  
17 at the status of the pleadings.

18 Because of the nature of this case and the timing  
19 that was set, it is subject to what we have going here in the  
20 hearing that is scheduled now. I propose that we proceed with  
21 the Public Service Commission and Mr. Richard basically having  
22 the primary lead as to presentation, and that if we then have a  
23 situation where intervenors feel the necessity that they as to  
24 their status here need to take some position or contrary, we  
25 can argue those as they come up, I think, and take it from

1 there. But basically that the presentations and evidence today  
2 is primarily as to the Public Service Commission, Florida Water  
3 Services Corporation, and as to those -- and Florida Water  
4 Services Association as to those issues. And then we will  
5 address any particular need of an intervenor feeling the  
6 necessity to participate as and when that comes up.

7           And I don't want to cut anybody's right off to  
8 present the necessary legal positions if there is not proper  
9 representations through the main presentations made through  
10 Public Service Commission and/or through the defendants in this  
11 case. Is there any problem with proceeding on that basis?

12           All right. Let's see. I've got a list of exhibits  
13 here. Before we start, I would like to -- so we can limit  
14 where we are going. And for everybody's information that they  
15 have taken the time to prepare these documents, and I have  
16 actually read everything filed through last night as of 5:00  
17 o'clock. And when I say I have read it, I read it  
18 word-for-word. So I know what has been filed, I have a good  
19 feeling of the positions. I know where the arguments are and  
20 we need to have evidence and arguments on certain matters, but  
21 I want to try for the record to get what necessary, I think  
22 some basic stipulations if we can in so that I know where I am  
23 as far as what I need to have evidence on.

24           First, and I think you pretty much have done so in  
25 your pleadings, but just to make this record clear, the first

1 issue so we can avoid the need to authenticate it or otherwise,  
2 there is an order entered by the Public Service Commission that  
3 is attached to the pleadings, and that there is no question  
4 that order has been entered.

5 MR. RICHARD: Agreed.

6 MR. McLEAN: Yes, sir.

7 THE COURT: Secondly, that there is a contract to  
8 sell, that nobody disagrees there is a contract to sell, and it  
9 is the intention of the parties to sell the water system at  
10 some point in time under the conditions we might determine here  
11 or through the Public Service Commission. Is that correct?

12 MR. RICHARD: Yes, sir.

13 MR. McLEAN: Yes, sir.

14 THE COURT: Also there is, I imagine, an agreement  
15 that the initial contract did not have the contingency clause.

16 MR. RICHARD: Yes, sir.

17 MR. McLEAN: Yes, sir.

18 THE COURT: And that subsequently on December 22nd  
19 was it that the contingency clause was added to the contract?

20 MR. RICHARD: That is correct.

21 THE COURT: And that subsequently the contract was,  
22 in fact, a request for approval at some point in time was filed  
23 with the Public Service Commission?

24 MR. RICHARD: Yes, sir. And that contingency clause  
25 was amended again after that.

1 THE COURT: Very good.

2 MR. McLEAN: Judge, the contingency clause was  
3 amended after the Public Service Commission found that a  
4 contingency clause was inadequate and the agency invited the  
5 Authority to --

6 THE COURT: Well, we will get into that part on the  
7 specifics of it. There was a request for approval filed at  
8 some point.

9 MR. McLEAN: There was indeed, sir, and the adequacy  
10 of that request is at issue.

11 THE COURT: I understand. But we are in agreement a  
12 request for approval had been filed?

13 MR. McLEAN: Yes, sir.

14 THE COURT: Is there any -- not going to the legality  
15 of the order, I don't want to go to the merits of whether the  
16 order is legal or not -- is there any disagreement that as the  
17 order currently stands, the order, that a sale would violate  
18 the order?

19 MR. RICHARD: That is correct.

20 MR. McLEAN: Yes, sir.

21 THE COURT: All right. To me that is where we are at  
22 at this point in time. Now, what I would like counsel to tell  
23 me then in light of that, given the proceeding here is an  
24 injunction proceeding, is what evidentiary matters that we need  
25 to determine. I will let the Public Service Commission turn be

1 first.

2 MR. McLEAN: We think none, Your Honor. We believe  
3 that any evidence which is likely to be presented in this case  
4 is going to be a challenge in essence to the Commission order  
5 which stands as a legal order before you unchallenged, or at  
6 least unsuccessfully challenged thus far. There is no appeal  
7 of the order, and I suggest with due respect that this is the  
8 incorrect forum for a challenge of the Public Service  
9 Commission order.

10 So for a person to come forward and give you  
11 testimony that flies in the face of that order, I believe is a  
12 challenge to the order and thus inappropriate for this forum.  
13 We have a pending motion in limine which suggests that you  
14 should not receive any evidence which flies in the face of the  
15 order or is probative of any of the issues in the writ of  
16 mandamus because we will also argue to you that this is the  
17 improper forum for a writ of mandamus.

18 So our position is that you should receive no  
19 evidence. Now, there is one slight exception. I believe that  
20 if there has been a change in circumstances, a material change  
21 in circumstances since Judge Gary issued his temporary that we  
22 will not oppose their introducing evidence to show a change in  
23 circumstances. But partly I think it is also important for me  
24 to say at this point that we like the temporary injunction. We  
25 don't want it dissolved. We are content for it to run as long



1 as the case happens to run at the Public Service Commission.  
2 We want no change with the status quo. We like the legal  
3 landscape that we see.

4 In order to change that legal landscape, sir, I  
5 believe you either have to find that the order of the Public  
6 Service Commission is somehow flawed, or you have to find that  
7 there is no change in circumstances that would justify  
8 dissolution of Judge Gary's temporary injunction.

9 And before I leave the point, we have moved -- we  
10 have filed a complaint for a temporary injunction. I'm sorry,  
11 we filed a complaint for a permanent injunction. And as the  
12 rules require, we have to do that as a prerequisite to a  
13 temporary injunction. We have talked back and forth about  
14 permanent and temporary. We are content with the temporary.  
15 We don't need a permanent injunction except as a prerequisite  
16 to the temporary. And because that is what the rule calls it,  
17 when we are done with our case in July, or whenever the hearing  
18 happens, we will probably not need -- we may not need any  
19 injunction, because if the Commission decides that this deal  
20 should go through, then you don't need an injunction. If we  
21 need an injunction at that point we will have to move Your  
22 Honor to grant us a permanent at that point.

23 But what we need now is a temporary injunction, and  
24 we need a continuation of the temporary injunction that is  
25 actually in place. So the long answer to your question, Judge,

1 I don't believe you should take any evidence.

2 THE COURT: Mr. Richard, I will allow you to respond  
3 accordingly.

4 MR. RICHARD: Your Honor, the Florida Supreme Court  
5 has said numerous times that when the authority of the PSC to  
6 take action is challenged that the threshold question that it  
7 is appropriate for a court to address is whether the  
8 Legislature has granted to the PSC the authority that they have  
9 assumed to exercise. That is the threshold question. It is  
10 our position that the Florida Statutes are very clear that the  
11 PSC has exceeded its authority, that it has no discretion in  
12 this instance, and that is the first issue to be addressed  
13 today at this hearing.

14 And because the Supreme Court has said that that is a  
15 threshold question for determination by the courts, this is an  
16 appropriate forum for that to be determined. It has not been  
17 addressed as of this time by any court on the issues that we  
18 intend to bring before this court, either the District Court of  
19 Appeal or Judge Gary, who took no evidence.

20 The second issue before this court is whether it be a  
21 temporary or a permanent injunction is whether the Public  
22 Service Commission has the authority to seek an injunction  
23 under any circumstances. Because the Legislature has expressly  
24 granted it the authority to seek an injunction in this court  
25 under only one limited circumstance, and that is pursuant to

1 Section 367.121, Subsection 1(j), which says that they have the  
2 authority to seek relief in the circuit court, including  
3 temporary and permanent injunctions because the Legislature  
4 finds that violations of Commission orders or rules in  
5 connection with the impairment of a utility's operations or  
6 service constitute irreparable harm. The position of the PSC  
7 has been that anytime it seeks an injunction it has no  
8 obligation to prove anything because it automatically is  
9 assumed that it is irreparable, but that is not what the  
10 Legislature said.

11           And so the second issue before this court, and I  
12 would suggest, Your Honor, this is a de novo hearing since  
13 there was no evidence taken at the first hearing, the Public  
14 Service Commission has an obligation to show that there is some  
15 reason to assume that there is a threat to the impairment of  
16 the utility's operations or service.

17           And third, if the PSC is still seeking a temporary  
18 injunction, it has an obligation to do what it did not do in  
19 the first hearing. It presented no evidence whatsoever of  
20 irreparable harm, it presented no evidence whatsoever of the  
21 necessity for this injunction, it presented no evidence of a  
22 likelihood of success of the merits, and so we believe those  
23 are the issues that are for determination today.

24           THE COURT: All right. Let me ask this, the language  
25 of that particular statute, what do you think -- Mr. Richard,

1 what is your position as to what that language means as the  
2 Legislature finds the violation now? I understand the  
3 difference between -- I understand your first position is that  
4 your first position really is that they have to show that the  
5 order relates to the impairment of the provision of utility  
6 services on the utility, is that correct?

7 MR. RICHARD: Yes, Your Honor, that is correct.

8 THE COURT: Now, assuming it does relate to that,  
9 doesn't that statute clearly say they find there will be  
10 irreparable harm and no adequate remedy, if that is the issue  
11 that if their order does relate to that?

12 MR. RICHARD: That is true, assuming that they have  
13 any jurisdiction to begin with. Which by the way involves not  
14 only the chapter that they have been authorized to interpret  
15 and to enforce, which is 367, but also 163, which they have no  
16 authority under. It is our position that the statutes -- that  
17 the Legislature has made it crystal clear that in the  
18 particular factual circumstances here the PSC has no  
19 jurisdiction, no discretion. They must approve the application  
20 as a matter of right, and they have consistently done so in  
21 these precise same situations.

22 THE COURT: That is different than jurisdiction,  
23 though, isn't it? I mean, you are saying they have the  
24 jurisdiction to approve it.

25 MR. RICHARD: I'm sorry, Judge?

1 THE COURT: They have the jurisdiction to approve it.  
2 They have to approve it, but it is their jurisdiction to do so.

3 MR. RICHARD: Perhaps the better word would be they  
4 have no discretion. They have an obligation under these  
5 circumstances to approve it. What they have -- I would say it  
6 goes to jurisdiction, as well, Your Honor, because what the PSC  
7 has attempted to do here is to manufacture the jurisdiction and  
8 authority not to do what the statute says.

9 What the statute has done is it said under these  
10 circumstances, when A, B, and C is here, they must approve.  
11 There are two different entities here. One is a private  
12 entity, the other is a public governmental authority. What the  
13 Legislature has said was anytime a private entity desires to  
14 transfer its facility, it must file an application with the  
15 PSC. But if it is transferring it to a governmental authority  
16 as that is defined in Chapter 163, the PSC's authority ends  
17 there and they must approve it as a matter of right.

18 In addition, the Legislature, by the way, has said  
19 that where there is a contingency clause in the contract that  
20 we are entitled to close, period. There are no exceptions to  
21 that. And there is a reason for it, which we don't have to get  
22 into at this point.

23 My whole point is that the PSC cannot -- if you look  
24 at the case law, the Florida Supreme Court says that if there  
25 any doubt, which I have cited in our memo, any doubt as to the

1 authority of the PSC, then their conduct must be arrested. We  
2 think there is more than doubt here. We think that they have  
3 attempted to manufacture jurisdiction and authority to do more  
4 than the statute allows them to do and more than their rule  
5 permits them to do. And what they have attempted to do is to  
6 extend this into a long-term continuing interference with my  
7 client's due process right to sell its business to a qualified  
8 buyer based upon what the evidence will show is absolutely at  
9 best a phantom issue, which is whether or not my client is a  
10 governmental authority. And they don't have the authority to  
11 do that.

12 THE COURT: Let's do this. Mr. McLean, I would like  
13 for the Public Service Commission to respond to the evidentiary  
14 matter Mr. Richard raised as to evidence as to the order was  
15 entered in connection with the impairment of the utility's  
16 operations or service.

17 MR. McLEAN: Yes, sir. I believe Judge Gary found  
18 that very clearly in his order. He said that that is the kind  
19 of order it is, and he didn't say that is the kind of order it  
20 is for the purposes of a temporary injunction. He simply said  
21 that. He said it is an order entered in connection with  
22 impairment of service or operations.

23 And with respect to jurisdiction, Mr. Richard is  
24 asking you to mandate us and at the same time --

25 THE COURT: I understand. I don't want to go into

1 the final arguments. I understand that issue that jurisdiction  
2 versus authority, and we will go into arguments and give you  
3 full -- I want to go to whether or not we can take evidence is  
4 where I am right now, and if we do, on exactly what subject  
5 matter. And I want to start that and allow you all to make all  
6 of those arguments that --

7 MR. McLEAN: I understand. Judge Gary found it and  
8 the Public Service Commission found it. If you look at the  
9 paragraph in the Public Service order, the order itself --  
10 again, which we think this particular proceeding is a challenge  
11 to the order, the very last sentence of the paragraphs  
12 proceeding the ordering paragraphs in our order, Your Honor,  
13 say this directive is predicated on this Commission's inherent  
14 authority to protect the customers of the FWSC with the power  
15 that is enumerated in the statutes.

16 Protect to us means protect service and keep rates  
17 reasonable. That is what the Public Service Commission does.  
18 It ensures that a monopoly service continues to provide service  
19 at a reasonable rate. All of our orders, Judge, I believe go  
20 to the issue of impairment, ultimately with the issue of  
21 impairment of service or operations of the utility. The  
22 Legislature established us to keep an eye on monopolies and  
23 that is what we do. Make sure that the service and operation  
24 is continuous and that they charge a reasonable price for those  
25 things.

1 MR. RICHARD: Your Honor, if I might briefly.

2 THE COURT: Yes, sir.

3 MR. RICHARD: To cull it down, here are the three  
4 factual issues I think that need to be determined. First,  
5 there is a question, and we intend to present evidence that  
6 under this transaction as is proposed there is no way that it  
7 can pose a threat to the impairment of operation or service.  
8 And that is a factual issue that goes to that statute.

9 Second, the basis upon which the authority of all of  
10 its filings before the First District Court of Appeal, before  
11 Judge Gary, has based its claim of the right to deny my client  
12 the ability to close as the statues says it has, the basis for  
13 that that they have asserted continuously is that they need to  
14 determine whether or not my client is a governmental authority.  
15 We believe it is a phantom issue. We believe it is appropriate  
16 for us to present evidence today to show that my client is a  
17 properly constituted governmental authority under Chapter 163.  
18 We believe that the PSC would be incapable of presenting any  
19 evidence to indicate otherwise.

20 And, third, the second position that the PSC has  
21 taken as a justification for its refusal to approve this  
22 application is that the contingency clause in my client's  
23 contract is insufficient to meet the provisions of the statute  
24 which say that if we have a contingency clause we are  
25 absolutely entitled to close before the approval of the



1 Commission. And so the factual question there is whether the  
2 contingency clause meets the requirements of the statute and  
3 whether or not the Public Service Commission can present any  
4 evidence to suggest why it does not. Those I think are the  
5 three factual issues raised in today's hearing.

6 THE COURT: Let me ask this, Mr. Richard. We have an  
7 order of the PSC that has made those determinations rightfully  
8 or wrongfully. I'm not saying it was rightfully made. Isn't  
9 the jurisdiction to determine whether that was correct in the  
10 District Court of Appeal exclusively? What jurisdiction do I  
11 have to review that order?

12 MR. RICHARD: Well, it goes back to my initial issue,  
13 which is that the Florida Supreme Court in the cases cited in  
14 our memorandum has said that there is a threshold question as  
15 to whether or not the Public Service Commission has authority.  
16 I believe that properly lies with this court. The Public  
17 Service Commission is trying to place my client in a Catch-22  
18 for this reason, when we appeared before the District Court of  
19 Appeal, the PSC argued -- as a matter of fact, it was the  
20 thrust of their argument -- that the writ of prohibition should  
21 be denied. And, by the way, the courts addressed the very  
22 narrow question that the writ of prohibition should be denied  
23 because there were disputed factual issues that could not be  
24 determined that needed to be determined, and it was  
25 inappropriate for the court to issue an extraordinary writ

1 until those issues were determined. Of course, the appellate  
2 court cannot resolve factual issues.

3 We have now come to this court where the PSC says the  
4 only jurisdiction is a review by the District Court of Appeal  
5 so that I cannot present evidence to this court to establish an  
6 evidentiary record. So effectively what the PSC is saying is  
7 that there is no place that I can challenge the PSC's authority  
8 because of this Catch-22 until it takes as long as it desires  
9 to take and effectively destroys my client's constitutional  
10 right to sell its property. It has scheduled a hearing, by the  
11 way, in July of this year which effectively eliminates the  
12 ability to do it. They have said that there is no court that  
13 grant me relief. That even if they have no absolutely no  
14 jurisdiction and authority, they must continue as long as they  
15 want to because there is no court that can hear evidence and  
16 because nothing can be done until there is an evidentiary  
17 determination. I don't believe that is what the law is.

18 THE COURT: Let me ask you this, though. When we get  
19 into this question of authority versus jurisdiction, is there  
20 any question in your mind that they have jurisdiction to  
21 approve the sale although they are mandated to approve it?

22 MR. RICHARD: I think that is exactly where their  
23 jurisdiction lies. I think Your Honor hit it on the head.  
24 Their jurisdiction is to receive the application and to approve  
25 it.

1 THE COURT: So they have jurisdiction to enter an  
2 order of approval, but they haven't done so, is that basically  
3 correct?

4 MR. RICHARD: Yes, sir. But also I think they have  
5 no jurisdiction to order my client not to close under the  
6 factual circumstances of this case until they get around to  
7 approving it. I don't think they have the jurisdiction or the  
8 authority to do that. They cannot indefinitely keep my client  
9 from closing this deal when the statutes say that the only  
10 thing that they have the jurisdiction to do -- they have no  
11 jurisdiction over the governmental authority, period. The  
12 statute is very clear, they have no jurisdiction over my  
13 client.

14 THE COURT: But right now the jurisdiction is over  
15 Florida Water Services Corporation.

16 MR. RICHARD: And their jurisdiction ends when they  
17 receive -- well, their jurisdiction is limited to the fact that  
18 they are mandated as a matter of right to grant that  
19 application. If they want to take a year to do it, I don't  
20 think that is appropriate. But what they can't do is they  
21 cannot order us not to close while they take the year.

22 THE COURT: Do you have a right to go to the District  
23 Court of Appeal not on a writ of prohibition to prohibit them  
24 from proceeding, but to order them to approve the application  
25 that has been filed?

1 MR. RICHARD: Your Honor, the problem with that is if  
2 we return to the District Court of Appeal they will make the  
3 same argument, which is there are disputed issues of fact as to  
4 whether or not my client is a properly constituted governmental  
5 authority and whether or not we have a contingency clause that  
6 meets the requirements of the statute. The appellate court  
7 cannot resolve those facts and, therefore, we are in that  
8 Catch-22. I don't dispute their argument. If they dispute it,  
9 they dispute it. But it is the circuit court where disputed  
10 issues of fact are resolved. And if it is not, then  
11 essentially they can create, they can manufacture jurisdiction  
12 and authority by just refusing to approve it and not letting us  
13 have a forum to challenge that.

14 THE COURT: All right.

15 MR. McLEAN: Judge, may I respond?

16 THE COURT: Yes.

17 MR. McLEAN: There was so much in that. Yes, there  
18 are disputed issues of material fact which the Legislature puts  
19 before the Florida Public Service Commission, not before this  
20 court. If Mr. Richard says we have no jurisdiction, then let  
21 him tell the First District Court by means of an appeal that  
22 our order is flawed. Mr. Richard is attacking our order and  
23 its legality, sir, and that is for the First District Court of  
24 Appeal to consider. It is a matter of general law.

25 It is for the Public Service Commission to determine

1 whether this is a governmental authority, whether an impairment  
2 would occur, and I think they have already determined that.

3 But they have not determined whether it is a governmental  
4 authority, that is what the hearing is designed to explore.

5 Whether it is an impairment is a proper subject for the Florida  
6 Public Service Commission. The unresolved issues of fact that  
7 Mr. Richard argued to the First District Court of Appeal are  
8 rightfully resolved before the Florida Public Service  
9 Commission regarding Florida Statutes, not here. Exclusive  
10 jurisdiction over these matters lies with the Florida Public  
11 Service Commission, and review of those orders and all the  
12 extraordinary writs which go with it also lie in the First  
13 District Court of Appeal.

14           With all due respect, sir, it is not for this court  
15 to weigh the legality, the wisdom, or any other aspect of the  
16 Florida Public Service Commission order. That issue belongs  
17 before the First DCA. You ask, I think, if I could paraphrase,  
18 could they mandate us at the First DCA? Well, they might could  
19 have had they not gone up there and lost on the writ of  
20 prohibition, but I don't think so, because I think we would  
21 make the same argument there that we need to determine at the  
22 Florida Public Service Commission whether it is a governmental  
23 entity, whether perhaps any impairment would occur, or anything  
24 else like that.

25           Controverted issues of material fact addressing water

1 and sewer issues are properly heard at the First DCA. We come  
2 here simply to add your authority to our order. Our order is  
3 lawful, it is unchallenged. It is not successfully challenged.  
4 It could still be challenged. They could go try to get their  
5 mandamus there. We appeared here only to add the authority of  
6 this court to our order which Mr. Richard told Judge Gary they  
7 were prepared to violate. Which in my estimation is like  
8 running a stop sign because you think it is in the wrong place.  
9 We are entitled to determine these factual issues over at our  
10 place. And if Mr. Richard doesn't like the way we determined  
11 those things, he should take us to the First DCA, which he  
12 could do this morning, sir. Thank you.

13 THE COURT: All right.

14 MR. RICHARD: May I take issue with one comment that  
15 counsel said? I'm sorry --

16 THE COURT: Yes, you may. Only one?

17 MR. RICHARD: -- I know these issues could go on  
18 forever. Well, I presume you also know my objections to most  
19 of them.

20 THE COURT: Correct.

21 MR. RICHARD: Counsel said that the PSC has the right  
22 to determine exclusively whether or not my client is a proper  
23 governmental authority. That is not correct. The chapter that  
24 provides for the creation of governmental authority is Chapter  
25 163. The Public Service Commission has no jurisdiction under

1 163. It has no authority to interpret, or to administer, or to  
2 enforce 163. The whole issue in this case, which is whether my  
3 client is properly constituted, is a issue of fact and  
4 construction under Chapter 163. That is the whole basis for  
5 their claiming that they are not going to approve this.

6 And under 163 my client has the right to come into  
7 this court for at the very least a declaratory judgment and the  
8 lifting of this injunction if the court determines we are a  
9 properly constituted governmental authority, which leaves the  
10 Public Service Commission with no excuse for seeking this  
11 injunction.

12 And the last thing is that it is the Public Service  
13 Commission that invoked the jurisdiction of this court and  
14 obtained a temporary injunction against my client, and now they  
15 are seeking to prohibit us from being able -- having put on no  
16 evidence themselves, to be able to defend ourselves from that  
17 temporary injunction.

18 THE COURT: All right. Let me do this. Mr. McLean,  
19 I think we can go back and forth for awhile on this, but the  
20 issues are framed. I am at one point really. I am at the  
21 point of evidence as to the right to seek the injunction which  
22 is the impairment, the impairment issue. I think Mr. Richard  
23 is right, you are saying that all things deal with that, but I  
24 think whether or not the services are going to be impaired --  
25 not necessarily that, but whether or not the order itself, and

1 I don't see anything in Judge Gary's order, he issued the  
2 injunction, but it was a temporary injunction under the  
3 circumstances subject to them being able to get to a final  
4 hearing to see what the merits of the case would be that might  
5 change that. The bottom line is I don't see where he has made  
6 a specific finding, a permanent finding that entitles you to  
7 continue the injunction in light of a motion to dissolve that  
8 has been filed as to the impairment issue. To me that is the  
9 only issue in front of the court from a standpoint of  
10 evidentiary matters, whether or not the order itself related  
11 to the -- in connection with the impairment of provision of  
12 services and facilities. So that is where I am at. Are we  
13 ready to proceed on that?

14 MR. McLEAN: Yes, sir. And I am ready to present a  
15 witness on that point. However, we have a pending motion in  
16 limine, of course, and I don't want to waive my position on  
17 whether you should take testimony by putting my own guy on. So  
18 as I put my own guy on it would be more or less subject to a  
19 continuing objection as to whether you should receive evidence.

20 THE COURT: Let me do this, and I am comfortable with  
21 this part where I am at, Mr. Richard. I understand your  
22 arguments, but I don't think there is any question that the  
23 Public Service Commission -- I don't think it's an evidentiary  
24 matter, I think it is a legal question. I do not think there  
25 is any question they have authority to approve a sale. And the



1 only issue is to me are they required to do it because it is a  
2 governmental agency. That to me is not an issue that this  
3 court is allowed to address. The jurisdiction and the primary  
4 jurisdiction of the Public Service Commission to approve that  
5 sale is established, and if they fail to approve that sale, I  
6 think exclusive jurisdiction to review that is in the District  
7 Court of Appeal. I don't think there is any question about  
8 that.

9           The only question I think in front of me today is  
10 whether or not to continue this temporary injunction. And the  
11 only issue I see there is not irreparable harm and not adequate  
12 remedy, because I think the legislative findings are there, if  
13 this order relates to the impairment issue as indicated in the  
14 statute, then they are entitled to their injunction. And that  
15 is where I am at right now, and so I will limit the evidence to  
16 that unless proffer. I am not going to cut you off from making  
17 a proffer for your record. Anything you wish to proffer I  
18 think would be appropriate for the record, but that is where I  
19 am at.

20           I don't see my authority to review whether or not  
21 this is an appropriate governmental agency. I don't see my  
22 authority to review whether or not they have properly denied  
23 you the approval that you are entitled to. I am assuming you  
24 are right, that you are a governmental agency, that you are  
25 entitled to approval. I don't think that I have the authority

1 to review the order that doesn't grant that. And that is where  
2 I am at at this point in time. But I will hear evidence on the  
3 impairment issue to determine whether or not the order relates  
4 to a proper matter to which the Public Service Commission is  
5 entitled to come to this court for relief.

6 MR. McLEAN: Yes, sir.

7 THE COURT: You may proceed.

8 MR. McLEAN: Judge, is it our burden to go forward at  
9 this point?

10 THE COURT: I think it is your burden to show that  
11 the temporary was issued, but it was issued on an emergency  
12 basis in light of the fact of the possible significant impact.  
13 Because if it is correct and it is a proper order, then there  
14 is irreparable harm by legislative finding, but I still think  
15 you have the burden of showing that it does relate to the  
16 impairment.

17 MR. McLEAN: May we have five minutes to talk to the  
18 witness? Just for a moment.

19 THE COURT: Very good. Let's take a quick ten-minute  
20 break and let everybody gather and we will see where we go from  
21 there.

22 MR. McLEAN: Thank you, Your Honor.

23 (Recess.)

24 THE COURT: Please be seated. If anyone needs a  
25 seat, they are welcome to come up front if there are not seats.

1 MR. McLEAN: Your Honor, we are going to move to  
2 invoke the rule. The Public Service Commission moves to invoke  
3 the rule.

4 THE COURT: All right. All prospective witnesses in  
5 this case, please step forward to take the oath.

6 MR. RICHARD: I have two witnesses. Each of them,  
7 however, is the representative of one of the parties, so I  
8 assume that they are not barred from --

9 THE COURT: Representatives of the parties are  
10 allowed to remain. One representative for each party. Do we  
11 have anybody else?

12 MR. McLEAN: If there is no one else, we will  
13 withdraw the motion.

14 THE COURT: Very good. The motion is withdrawn.

15 MR. McLEAN: I'm ready to call the first witness when  
16 you are.

17 THE COURT: Very good. You may call your first  
18 witness.

19 MR. McLEAN: Charles Hill.

20 THE COURT: Charles Hill, please come forward.  
21 Before being seated, please raise your hand and take  
22 the oath, sir.

23 (Witness sworn.)

24 MR. McLEAN: May I approach?

25 THE COURT: Yes, you may.

1 MR. McLEAN: Thank you, sir.

2 Thereupon,

3 CHARLES HILL

4 was called as a witness on behalf of the Florida Public Service  
5 Commission, and having first been duly sworn, was examined and  
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. McLEAN:

9 Q Would you state your name for the court, please, sir?

10 A Charles Hill.

11 Q And your business address, please?

12 A 2540 Shumard Oaks Boulevard, Tallahassee, Florida.

13 Q By whom are you employed?

14 A The Florida Public Service Commission.

15 Q In what capacity?

16 A I am the Director of External Affairs.

17 Q And what was your position before that? How long  
18 have you had that position?

19 A About a year. And prior to that I was the Director  
20 of Policy Analysis and Intergovernmental Liaison. And prior to  
21 that the Director of the Division of Water and Wastewater.

22 Q Tell the court what it is that you do now. What are  
23 your job responsibilities now?

24 A Currently I am responsible for the interaction of our  
25 agency with federal agencies, Congress, the Florida

1 Legislature, and other agencies, and cities, counties, and  
2 political divisions, subdivisions.

3 Q And the position you had before that, the name of  
4 which has alluded me for the moment?

5 A Policy Analysis and Intergovernmental Liaison. It  
6 was kind of like that, but then you add policy analysis to it.

7 Q Your responsibilities there were similar, is that  
8 correct?

9 A Yes, sir.

10 Q And what was your position before that?

11 A I was the Director of the Division of Water and  
12 Wastewater. And we were responsible for the regulation of the  
13 water and wastewater utilities under the Commission's  
14 jurisdiction.

15 Q How long did you have that position?

16 A 13 years.

17 Q Did you have any responsibilities with respect to the  
18 orders issued by the Florida Public Service Commission during  
19 the time that you were water and wastewater director?

20 A Yes, sir.

21 Q Will you tell the court what those responsibilities  
22 were, please?

23 A Those were basically to carry out the decisions of  
24 the Commission.

25 Q Did you in your capacity give any advice to the

1 Commission on any occasions?

2 A Yes, sir, on nearly all occasions.

3 Q And as to what issues?

4 A Issues with respect to the provision of service and  
5 the operations of the utility.

6 Q Mr. Hill, will you please tell the court what in your  
7 view services are?

8 A Service and operations of a utility are basically all  
9 of the piece-parts functions of the business entity. It  
10 certainly is the pumping of water out of the ground and  
11 delivering it out of a faucet of a customer's home. And the  
12 reverse, the flushing of the toilet and the pumping of it back  
13 into the ground. But it goes much further than that.

14 It is the planning and construction of plant, future  
15 as well as maintenance replacement. It is the interaction and  
16 the interface of the utility personnel with customers, current  
17 customers and future customers for maybe billing problems,  
18 service, provision of service, maybe problems with the  
19 provision of service, and dispute resolution in the complaint  
20 process.

21 It is the interfacing liaison of these company with  
22 agencies that regulate them, the Department of Environmental  
23 Protection, the water management districts, the local health  
24 departments. It is the billing and collection functions of the  
25 company, the books and records of the company. It is the rate

1 people and the accountants that establish the cost of service  
2 and then develop, design, and implement mechanisms to recover  
3 that cost. It is all of these things that constitute the  
4 service and operation of the utility.

5 Q Yes, sir. During that time, were utilities  
6 transferred, private utilities transferred to both public and  
7 private entities during that time?

8 A Yes, sir.

9 Q Did you have occasion during any of those times to  
10 consider or advise the Commission on the issue of whether the  
11 transfer served the public interest?

12 A Yes, sir.

13 Q Do you believe that any of those things you have  
14 mentioned were probative of that issue?

15 A All of them are involved in that issue of whether or  
16 not it is in the public interest.

17 Q Is it true or is it not true that economic  
18 considerations as well as hydraulic flows and so forth are an  
19 aspect of utility service and operation?

20 A Yes, absolutely. I'm sorry if I didn't make that  
21 clear earlier. When it comes to the hydraulics and the actual  
22 mechanics of it, you know, the DEP, the water management  
23 district, the health department -- if you have sewer spilling  
24 in the street, you don't need the Public Service Commission to  
25 come in and say, oh, stop doing that. The DEP, the water

1 management district, the health department has all of the  
2 remedies to be able to do that. The Commission is an economic  
3 regulatory body. And so it is my opinion that that is what  
4 they come to us for. It is not necessarily that somebody  
5 turned the water off, or somebody is spilling sewage. It is  
6 more the economic aspects of it.

7 Q I don't recall whether I asked you if you can  
8 estimate how many orders were issued by the Commission during  
9 your tenure as water and sewer director?

10 A No, sir, but I would have to estimate thousands.

11 Q All right, sir. With respect to those orders, do you  
12 believe that any of those orders -- can you tell the court with  
13 certainty that those orders all effected and were issued in  
14 connection with service and operations or that some of them  
15 were?

16 A Again, I believe all of those -- all of those orders  
17 relate to one or more of those various functions that happened  
18 within, and so I believe every one of them relate to the  
19 operations and service of the utility.

20 Q Thank you, sir. Now, that said, I want to focus your  
21 attention on one particular order. Have you reviewed the order  
22 which is under consideration here today?

23 A Yes, sir, I have.

24 Q Do you happen to have that number with you?

25 A It is PSC Number PSC-03-0193-FOF-WS.



1 Q In very summary fashion, sir, would you tell the  
2 court what that order does or purports to do?

3 A To me what it says is that there have been serious  
4 issues raised in connection of the proposed sale of this  
5 utility that deal with the provision of service that should the  
6 Commission have to make a public interest determination would  
7 have to be considered, and that the dramatic change that could  
8 occur if this happened prior to the Commission making its  
9 determinations that the utility should not sell its assets  
10 until the Commission has finished doing its job.

11 Q Do you recall a recent Commission agenda conference  
12 at which the Commission considered a staff recommendation to  
13 issue this order?

14 A Yes, sir.

15 Q How did you become familiar with that agenda  
16 conference?

17 A Well, we have them typically the first, third, and  
18 fifth Tuesday of each month. And while I don't attend and sit  
19 there all the time, I do tend to listen in, and I heard some of  
20 this item.

21 Q Did you hear the debate that -- how much of it did  
22 you hear, two percent or 80?

23 A I heard probably 80 percent of it, although it was  
24 relatively long. I mean, it got boring at times. But my  
25 understanding of it was that the Commission -- there have been

1 issues raised, and I can give some examples. Concerns have  
2 been brought before the Commission with respect to the  
3 provision of service with respect to the -- and the change in  
4 provision of service. And let me explain that in a moment.  
5 And the change in terms and conditions of service. These deal  
6 with equity and fairness of the rates, and the changes in the  
7 due process available to the customers and other parties and in  
8 representation, notice, and the establishment of procedures and  
9 policies.

10           And specifically there are concerns, there were  
11 concerns raised, and I didn't hear about these on that  
12 particular agenda, but throughout this process, obligations of  
13 when Florida Water, the utility -- it used to be Southern  
14 States -- purchased the Deltona utilities. Deltona was a  
15 developer, and as a part of trying to sell lots and land they  
16 had a deal where if you bought property from them they  
17 guaranteed you water and wastewater service if you asked for it  
18 within a particular period of time, 60 days for water and 120  
19 for sewer.

20           In my humble opinion that should never have been  
21 done, but nevertheless they did. When Southern States bought  
22 Deltona, the Commission because these obligations were out  
23 there, required Southern States to maintain those obligations.  
24 And, in fact, they went through a process of trying to do a lot  
25 swap because this was a huge development spread out over miles

1 and miles, and if somebody way in the back decided to build and  
2 say I would like service, well, then they would have to run  
3 miles and miles of line.

4 So, as far as I am aware and the Commission is aware  
5 right now, if this were to proceed there has been no mention as  
6 to whether or not those obligations would be met.

7 Q Let me interrupt just for a moment to summarize a bit  
8 for the benefit of those present.

9 A I tend to ramble. I apologize.

10 Q To the court. Is it fair to say those experiences  
11 you just told us about, did you hear those raised before the  
12 Commission when it had its agenda conference?

13 A I heard similar, yes.

14 Q And were you in the courtroom when the intervenors  
15 introduced themselves a little while ago?

16 A No, sir, I was sitting outside.

17 Q Okay. Fine. With respect to the concerns you heard,  
18 you personally heard, voiced at the agenda conference --

19 A Yes, sir.

20 Q -- do you believe that this order that the Commission  
21 entered was issued in response to those concerns expressed?

22 A Yes, sir.

23 Q Do you believe that this order was issued in  
24 connection with the impairment of services or operations of  
25 this utility?

1 A Yes, sir.

2 MR. McLEAN: Your Honor, I have nothing further.

3 THE COURT: Your witness.

4 CROSS EXAMINATION

5 BY MR. RICHARD:

6 Q Good morning, Mr. Hill.

7 A Good morning.

8 Q Did you have occasion to review the contract between  
9 the parties that is at issue in this case?

10 A Oh, no, sir.

11 Q You did not review it?

12 A No, I have not seen that.

13 Q Did you have occasion to attend any of the hearings  
14 and meetings of the Authority or of the cities that formed the  
15 Authority?

16 A No, sir.

17 Q Did you have occasion to read the transcripts of any  
18 of those hearings or meetings?

19 A No, sir.

20 Q So you really have no idea what the nature of this  
21 transaction is so far as the details, do you?

22 A Do I have any idea as far as the detail?

23 Q I will make it simpler for you.

24 A Please.

25 Q Do you understand that this contract has been

1 structured with the specific intent of avoiding any rate  
2 increases for at least a period of three years?

3 A No, sir. I understand just the opposite.

4 MR. McLEAN: Your Honor, I have an objection.

5 THE COURT: Hold on. If you have an objection, make  
6 it.

7 MR. McLEAN: Yes, sir. It is leading the witness to  
8 an answer.

9 MR. RICHARD: Cross-examine.

10 THE COURT: Cross examination. You may proceed,  
11 overruled.

12 THE WITNESS: No, I understand just the opposite. I  
13 understand there has already been an announcement of an  
14 increase in service availability charges and an introduction of  
15 guaranteed revenue charges where they don't exist and an  
16 elimination of AFPI.

17 BY MR. RICHARD:

18 Q Yes. That was proposed, however, before this  
19 transaction application was made for the current corporation,  
20 is that correct?

21 A I don't know. That was my understanding of what had  
22 been announced that they intended to do.

23 Q Do you understand that this contract bases the  
24 conceived payment for the bonds upon an estimate of a certain  
25 amount of revenue which will be the source of a guarantee for

1 the bond payments, do you understand that?

2 A No.

3 Q Do you understand that this corporation, the seller,  
4 Florida Water Services Corporation has guaranteed those  
5 estimated revenues so that, in fact, if the revenues are not  
6 sufficient to pay the bond it is the corporation, not the  
7 Authority that will be obligated to make up the difference? Do  
8 you understand that that is in this contract?

9 MR. McLEAN: May I interpose an objection?

10 THE COURT: What is the objection?

11 MR. McLEAN: Mr. Barry is asking the witness if it is  
12 true that he knows in fact these things have occurred as  
13 opposed to if they occurred. It is the testimony of Mr.  
14 Richard as opposed to a question.

15 THE COURT: Overruled.

16 MR. RICHARD: And, Your Honor, I intend to introduce  
17 the contract.

18 BY MR. RICHARD:

19 Q Are you aware of the fact that the contract contains  
20 a guarantee by the corporation that if the estimates upon which  
21 the bond payments are based fall short it will be the  
22 obligation of the corporation, the seller, not the Authority to  
23 make up the difference?

24 A Could you explain that to me again. The corporation  
25 is --

1 Q Florida Water Services Corporation is the current  
2 owner.

3 A Okay.

4 Q It is the seller.

5 A Okay.

6 Q It has applied for this transfer.

7 A Yes.

8 Q It has obligated itself, it has guaranteed itself in  
9 this contract to make up any shortfall in the estimated revenue  
10 which is the only source of payment on the bonds. Do you  
11 understand that that is in this contract?

12 A I don't know whether it is in the contract or not.

13 Q All right. Do you know that under this contract the  
14 seller has obligated itself to pay \$176 million towards  
15 improvements of these facilities, which is based upon an  
16 estimate of -- a conservative estimate, or a liberal estimate  
17 of the cost of improvements necessary over the next several  
18 years, did you know that?

19 A No.

20 Q Did you understand, or do you understand that it is  
21 the contemplation of these parties that after the transfer  
22 takes place that the Authority will maintain in place without  
23 change the entire current administration, all of the current  
24 personnel at all of the current facilities?

25 A Yes, I knew that.

1 Q You understood that?

2 A Yes.

3 Q Now, tell me then based upon these factors which I  
4 submit to you are in the contract which will be introduced,  
5 what it is, what the factors are about this particular  
6 transaction that you mentioned in your earlier testimony that  
7 gives you reason for belief that there is concern over an  
8 impairment of the services for the facilities?

9 A I will explain it again. The service and operations  
10 include more than the physical plant, and I'm sure they need  
11 maintenance, and replacement, and addition. As I spoke to you  
12 before, there has been an announcement, and perhaps maybe they  
13 won't, but there was an announcement that the purchaser had  
14 intended to increase service availability charges. That is  
15 certainly a change in a provision of service. That there would  
16 be a change in guaranteed revenues. And, in fact, it is my  
17 understanding that perhaps they wouldn't notice that, maybe  
18 people would.

19 So, therefore, a current land owner who has a main  
20 running in front of their property that currently pays no  
21 guaranteed revenues, I'm talking about an end user now, the  
22 person that actually owns the land and the pipes running out  
23 there, suddenly will be obligated to pay guaranteed revenues to  
24 the purchaser, and they probably don't even know about it now.  
25 Those in my opinion are substantial changes that will occur



1 that I'm not sure it can be undone. It's not up to me whether  
2 it can or not, so those are what I'm talking about as a change  
3 in the provision of service.

4 Q Tell me what you know of in this contemplated  
5 transaction or in the contract that these parties bound  
6 themselves to that leads you to believe that that guarantee  
7 will fall upon the shoulders of the end users?

8 A They are the ones that pay -- I'm sorry, guaranteed  
9 revenues are a charge that a utility charges a customer. And  
10 if the Authority has announced they are going to remove AFPI --  
11 AFPI is an allowance for funds prudently invested, and what  
12 happens is -- perhaps you know this and I don't mean to --  
13 guaranteed revenues are paid by the end user to the utility  
14 company.

15 Q Let me interrupt you for just a moment.

16 A Sure.

17 Q Wouldn't you agree that if this contract has shifted  
18 the burden to guarantee those revenues to the seller that that  
19 is no longer a concern?

20 A No, sir. Maybe we are talking past each other, but I  
21 think it is a misunderstanding. Guaranteed revenues is a  
22 technical term that exists in utility operation, and it has to  
23 do with a specific rate and charge that an end user pays a  
24 utility. It has absolutely nothing to do with what a seller or  
25 a buyer may pay each other.

1 Q Well, why do you have reason to believe that under  
2 this transaction it will be any greater threat that the user  
3 will be obligated to pay more than they are now than there is  
4 in any other transaction in which there is a transfer from a  
5 private entity to a governmental authority? What is there  
6 about this particular transaction that leads you to believe  
7 that it needs greater protection than others?

8 A What leads me to believe is that there is going to be  
9 a change in the operation of the utilities, a dramatic change  
10 in how it currently operates and interfaces with its customers.  
11 And as far as I can tell from listening and reading, there has  
12 been an issue raised before the Commission that was not raised  
13 before, and that is whether or not that this legal entity you  
14 described is, indeed, a governmental body that is entitled to  
15 this. And the problem is if you get there, and if you cannot  
16 undo it, and those are ifs, then you have had this change that  
17 impacted customers to their detriment and you can't undo it.

18 Q Why can't you undo it?

19 A Well, I did hear that particular discussion, and the  
20 utility was asked several times if this happens and if you sell  
21 these bonds -- and I heard a new word, I like that, too -- how  
22 could you undo this? The bonds have been sold and the money  
23 has been sent somewhere else and they have paid off debt with  
24 it and they have done other things, how can you undo this? And  
25 --

1 Q So let me ask you that question. I assume you have  
2 no legal background?

3 A No, sir, I'm just a technocrat.

4 Q Let's assume that ultimately that this deal closes.

5 A Yes, sir.

6 Q This transaction closes because counsel doesn't like  
7 the word deal unless he is using it. But let's assume that it  
8 closes, and let's assume that ultimately the courts determine  
9 that the Public Service Commission indeed has jurisdiction, and  
10 the Public Service Commission refuses to approve this. And you  
11 understand that this contract has an unconditional contingency  
12 in it that says if it is not approved by the Public Service  
13 Commission the whole transaction is off. You understand that  
14 or accept my word for it?

15 A I will.

16 Q Let's assume that. So now the court has said it  
17 doesn't exist anymore. The buyer shall pay back to the seller  
18 or the seller shall pay back to the buyer, the Authority, all  
19 of the money it received, and the Authority shall pay back to  
20 the bondholders the money they received. In the meantime, the  
21 same administration, the same personnel, the same facilities  
22 have been in operation. Why can't it be unwound?

23 A Well, and that is what I was getting at. Mr. Hoffman  
24 said that somehow that they could defease (phonetic) the bonds.  
25 I think that is the word he used. And the Commission said can

1 you give us some comfort, any comfort beyond just saying trust  
2 me? Can you somehow lay out for us how you could undo this?  
3 And in my opinion it almost begged the utility, please give us  
4 some way that we could be comforted that this contingency would  
5 work and we could undo everything. And I have not heard a  
6 response yet, so I don't know how --

7 Q If it is undone, if ultimately the Public Service  
8 Commission refuses to approve it so it remains with this  
9 private utility, correct?

10 A Well, I can't get there yet, because --

11 Q Come with me here. Let's assume --

12 A Okay.

13 Q Let's assume that the courts ultimately say that the  
14 Public Service Commission has jurisdiction and authority.

15 A Okay.

16 Q Let's assume that the Public Service Commission  
17 refuses to approve this transfer.

18 A Okay, we will just say that.

19 Q Let's assume that.

20 A We will just say it.

21 Q And that, therefore, it remains with the Services  
22 Corporation.

23 A Yes.

24 Q Which is under the jurisdiction of the Public Service  
25 Commission, correct?

1 A Yes.

2 Q So that the Public Service Commission then has  
3 absolute control within due process limits over the rates,  
4 correct?

5 A Right.

6 Q So that who other than the bondholders who knowingly  
7 took the risk would suffer any loss?

8 A Every developer that paid, every customer that paid,  
9 every customer that had a problem with no resolution.  
10 Thousands, potentially hundreds of thousands of customers that  
11 interfaced with this utility during that time period.

12 Q But you're talking about the fact that they may have  
13 had some complaints that weren't resolved, is that correct?

14 A Or paid money.

15 Q What kind of money are you talking about?

16 A Well, I'm talking about \$2,000 for a service  
17 availability charge, or guaranteed revenues, or any of those  
18 things. But if you --

19 Q What does that have to do with this transfer? Why  
20 would this transfer make any difference if ultimately it is  
21 held that it is not -- that it is not going to take place? Why  
22 would that have made any difference?

23 A Because if the court says that you are correct and  
24 that we don't stop you and the sale goes ahead, then all of  
25 these things happen. And the question becomes how, if ever,

1 could you undo it and get everything back the way it should be  
2 according to the ultimate decision. But, on the other hand, if  
3 you wait a little bit and make those decisions, then no one is  
4 harmed.

5 Q Mr. Hill, are you familiar with the 2002 transaction  
6 in which a subsidiary of Avitar transferred utility services,  
7 water services to the Florida Governmental Utility Authority?

8 A I'm familiar with that.

9 Q Were you involved in that at all?

10 A A little bit, yes. That was right about the time I  
11 went from one position to another.

12 Q Is it fair to say you were at least as involved and  
13 knowledgeable about that as you are about this transaction?

14 A Yes.

15 Q All right. And you understand that the Florida  
16 Governmental Utilities Authority, or the FGUA for short, was  
17 composed of counties, is that correct?

18 A Yes.

19 Q And that it was seeking -- it did, in fact, obtain  
20 facilities that served communities outside of the boundaries of  
21 those counties, correct?

22 A Yes, sir.

23 Q And they applied to the Florida Public Service  
24 Commission for approval of that transfer, correct?

25 A Yes, sir, they did.

1 Q And the fact is that the Florida Public Service  
2 Commission approved that transfer in short time as a matter of  
3 right, correct?

4 A No, sir, they didn't. What happened was that issue  
5 never came before the Commissioners. And to the extent that  
6 happened before I moved, they might want to fire me, because  
7 that ended up being a managerial decision and it was handled  
8 administratively. And so that whole issue of whether or not  
9 they would be, that never ended up before the collegiate body.  
10 And I think I left right about -- and, in fact, it might have  
11 been, it may well have been -- this is great. It may well have  
12 been that a change in operation of the Commission much like the  
13 change in the operation of the utility resulted in that  
14 happening. And because that never went, to my knowledge the  
15 Commissioners never voted on that.

16 Q Well, I'm sorry. I may have misunderstood your  
17 answer, because my question was is it not true that one year  
18 ago the Florida Public Service Commission approved a transfer  
19 by that organization, by that private utility to the FGUA as a  
20 matter of right? Regardless of who it was that made the  
21 decision, is that not true?

22 A I don't know about a year ago. I guess I was a  
23 member of the --

24 Q Well, forget the year. They did it, did they not?

25 A I don't know. I was thinking about a couple of years

1 ago when I was leaving water and sewer and becoming the  
2 director of policy analysis, and that might have been when the  
3 FGUA was first formed and we never took that to the  
4 Commissioners.

5 Q All right. I apologize to you, I said 2002. It was  
6 2000. I'm showing you a copy of Docket Number 990489-WS, and  
7 let me ask you if you recognize that as being the order  
8 approving the transfer with respect to that transaction?

9 A Well, I would have to read it, but I will accept that  
10 it is because I didn't look at the order.

11 MR. RICHARD: Does counsel object to my introducing  
12 it out of order at this point rather than waiting?

13 MR. McLEAN: I'm sorry, say it again.

14 MR. RICHARD: Do you object to me introducing that as  
15 an exhibit at this time?

16 MR. McLEAN: No.

17 MR. RICHARD: I would like to offer that.

18 THE COURT: That will be Defendant's Exhibit 1, Mr.  
19 Clerk.

20 (Defendant's Exhibit 1 marked for identification and  
21 admitted into the record.)

22 BY MR. RICHARD:

23 Q Do you understand that among the members of the FGUA  
24 were a number of the counties that appeared before the  
25 Commission with respect to the current transaction to object to



1 if and that are intervenors in this proceeding?

2 A I think so.

3 Q And do you understand that that same organization,  
4 the FGUA, attempted to purchase this same group of facilities  
5 from the Florida Water Services Corporation prior to the  
6 current authority?

7 A And, again, just this last week made another offer.

8 Q And you understand that those negotiations broke down  
9 because my client, Florida Water Services Corporation, was  
10 dissatisfied with the manner in which FGUA wanted to make this  
11 acquisition?

12 MR. McLEAN: Your Honor, may I interpose an  
13 objection? The issue which, I believe, Your Honor wanted to  
14 hear evidence on was whether the Public Service Commission  
15 order was issued in connection with the operations of service  
16 of the utility. I have two objections. First of all, this  
17 testimony is irrelevant. And, second, it is well beyond the  
18 scope of the direct testimony. It goes into matters which I  
19 certainly never spoke to the witness about at all.

20 THE COURT: Mr. Richard.

21 MR. RICHARD: First of all, Your Honor, I think it is  
22 fairly within the scope of cross-examination, because this  
23 witness has testified that he is competent to speak to the  
24 issue of what the Public Service Commission should be concerned  
25 about and what its motives were in stopping this transaction.

1 So I have the right to ask him about prior activities of the  
2 Commission and also what the differences were between the two.

3 THE COURT: Overruled.

4 MR. RICHARD: I have no further questions anyway.

5 Thank you.

6 THE WITNESS: May I say, though --

7 THE COURT: Hold on. Wait until you are asked a  
8 question. Any redirect?

9 MR. McLEAN: Just briefly.

10 REDIRECT EXAMINATION

11 BY MR. McLEAN:

12 Q Mr. Hill, was the status of the acquiring utility in  
13 that FGUA deal Mr. Richard asked you about, was it contested  
14 before the Commission?

15 A No, sir.

16 Q Thank you, sir. With respect to the contract, if the  
17 Public Service Commission should find it necessary because of  
18 the legal conclusions they reached to indulge the question of  
19 whether this transaction serves the public interest, would you  
20 expect the Commission to take a long hard look at that  
21 contract?

22 A Yes, sir.

23 Q Did Mr. Richard -- did anything Mr. Richard said or  
24 anything you said change your mind about your earlier  
25 testimony, which I recall was that the Public Service

1 Commission order was issued in connection with the operation  
2 and service of the utility, did anything change your mind?

3 A No, sir.

4 MR. McLEAN: Thank you, sir. I have no further  
5 questions.

6 THE COURT: The witness may step down.

7 MR. RICHARD: Your Honor, are you going to allow the  
8 intervenors to inquire?

9 THE COURT: I am going to allow the intervenors -- if  
10 we have time, I am going to allow the intervenors if they need  
11 to ask a question.

12 MR. GROOT: May I proceed for Palm Coast?

13 THE COURT: Yes, you may, sir.

14 MR. GROOT: Mr. Hill, just a very short litany of  
15 questions.

16 CROSS EXAMINATION

17 BY MR. GROOT:

18 Q The statute that the judge asked us to focus on  
19 related to, as you know, the impairment of operations and  
20 services relative to a utility. Who is the regulated utility  
21 that the PSC regulates?

22 A I have to think about it because I have always known  
23 them as Southern States. But it is Florida Water Services  
24 Corp.

25 Q That is correct. And if this transfer that you have

1 been testifying about occurs, Florida Water Service Corporation  
2 will not be operating, will it?

3 A No, sir, it will not exist.

4 Q It will not be providing services, will it?

5 A No, sir.

6 Q So that is actually more than impairment, it just  
7 won't be providing services and it won't be operating, isn't  
8 that correct?

9 A Yes, sir.

10 Q Some other entity will be operating?

11 A That is what I was thinking.

12 MR. GROOT: Thank you.

13 THE COURT: Thank you.

14 MR. TWOMEY: Thank you, Your Honor. Mike Twomey on  
15 behalf of Collier County and Sugarmill Woods.

16 CROSS EXAMINATION

17 BY MR. TWOMEY:

18 Q Mr. Hill, in response to questions from Mr. Richard  
19 you had indicated that currently, did you not, the customers of  
20 this utility can make complaints if they have problems, make  
21 complaints to who did you say?

22 A They can go to the utility, and then if they are not  
23 satisfied then ultimately they can come to the Commission.

24 Q And do you consider that to be a benefit that the  
25 customers currently enjoy under their regulatory scheme that

1 the utility is currently under?

2 A Yes, sir.

3 Q And to the extent that you understand the proposal  
4 after the sale, who would those same customers, if you know,  
5 have the ability to complain to for poor quality of service?

6 A You raise a good point. I think they would maybe go  
7 to Milton and Seabreeze (sic), I think. And I do understand --  
8 I think it would be Milton and Seabreeze, and I probably  
9 shouldn't say any more than that because, you know, if they  
10 were a regulated utility then, yes, because I know there has  
11 been a lot of customers in Sugarmill Woods that never even  
12 liked what the Commission did. But nevertheless they had the  
13 opportunity to go to the utility and if not satisfied with how  
14 they were treated, or the quality of service that they were  
15 getting, they could come before the Commission and be heard.

16 Q Okay. To the extent that the ability to seek redress  
17 for poor quality of service through a complaint process is an  
18 advantage or a benefit to the customers under the current  
19 scheme, would it be your testimony that the change would result  
20 in an impairment of that benefit to the customers?

21 A Yes, sir. I think I was saying that earlier. If  
22 not, it was in my notes somewhere. But, yes, the whole  
23 complaint resolution process would change and would not afford  
24 customers -- I'm not sure what it would afford them now.

25 MR. TWOMEY: Thank you, sir. Thank you, Your Honor.

1 THE COURT: Mr. Richard, just hold on one second. I  
2 am going to let you inquire. Is there any other intervenor  
3 that feels the necessity to ask a question here? All right.  
4 Now, go ahead, Mr. Richard. I want you to have a chance to  
5 respond to all of them.

6 MR. RICHARD: I understand. Thank you.

7 RE CROSS EXAMINATION

8 BY MR. RICHARD:

9 Q Mr. Hill, with respect to the last several comments  
10 you made, do you think that that shift that once the transfer  
11 takes place that the customers will no longer be able to  
12 complain to the PSC, do you think that is reason enough for the  
13 PSC to consider denying this application?

14 A I think it is one of many. So the answer would be  
15 was that reason -- I don't know what the Commissioners might  
16 decide, but I certainly believe that is a change in the  
17 provision in an operation of the utility. Would that be  
18 enough. I don't know, I can't speak for the five of them.

19 Q And that is true in every case in which a private  
20 owner of a public utility transfers to a governmental  
21 authority, isn't it?

22 A No, sir, not at all. You see, the scheme back in the  
23 day or historically was it went to a city or a county and the  
24 customers, if ultimately come the end of day they weren't  
25 satisfied, they could vote in a new county commissioner or vote

1 in a new city commissioner. And so there was a scheme in  
2 place. These new legal entities -- and, quite frankly, in my  
3 mind the FGUA is also in question. Those aren't places where a  
4 citizen can go and say I have not been satisfied. In fact, I'm  
5 not satisfied with you, so I'm going to vote with my lever here  
6 and vote you out. And what I would say is it would be true if  
7 it were going to the FWSA or the FGUA.

8 Q Perhaps my question wasn't clear. The reason that  
9 the customers can no longer complain to the Public Service  
10 Commission is because Florida Statutes provide that once the  
11 facility is transferred to a governmental authority that the  
12 Public Service Commission no longer has jurisdiction. Is that  
13 not correct?

14 A Would you say that again.

15 Q Well, your testimony is that you think that one of  
16 the reasons that there is a problem with this transfer is that  
17 once the transfer takes place that the customers no longer have  
18 the ability to complain to the Public Service Commission. Is  
19 that not your testimony?

20 A No, it's not.

21 Q Well, I'm sorry, then I misunderstood. Explain your  
22 testimony.

23 A Sure. What I said was that is one change in the  
24 operation of the utility.

25 Q That's fine. But I am correct that the change that

1 you are referring to is that the customers no longer can bring  
2 their complaints to the PSC, correct?

3 A Yes.

4 Q And why is that, because the governmental authority  
5 is not under the jurisdiction of the PSC, correct?

6 A I guess you could say that.

7 Q Well, isn't that the reason?

8 A What I was thinking was it is a change in the  
9 operation. Good or bad is irrelevant. It is a change in the  
10 operation. That's really what it is.

11 Q And my point is that that will be true anytime a  
12 facility is transferred to a governmental authority under  
13 Chapter 163, isn't that correct?

14 A Yes.

15 Q And so the Legislature has already determined, has it  
16 not, that that is the public policy of the State of Florida?

17 A Well, I'm not sure.

18 Q Well, your testimony would suggest that the PSC has a  
19 right to consider this factor in deciding whether or not to  
20 approve an application anytime that the transfer is to a  
21 governmental authority, aren't you?

22 A I don't think I said that. I think what I said was  
23 in this particular instance there have been concerns raised  
24 about the change in provision of service such that the  
25 Commission says we are uncomfortable and you shouldn't do this



1 until we proceed. I think that is kind of in a nutshell what I  
2 was saying.

3 Q Of course, the Legislature having made this decision  
4 certainly has the power to change it and provide that these  
5 governmental authorities will be under the regulation of the  
6 Public Service Commission, doesn't it?

7 MR. McLEAN: May I object. Mr. Richard is referring  
8 to something the Legislature did, and he is telling the witness  
9 that they made a change in Chapter 163. The definition which  
10 Mr. Richard has referred to is not found in Section 163, it is  
11 found in Chapter 367. That exemption which sets forth that a  
12 governmental authority -- 367 says a governmental authority is  
13 entitled to the transfer as a matter of right, but the  
14 definition in Chapter 367 tells us what a governmental  
15 authority is. It is in 367, it is not in 163.

16 So the witness is being asked, first of all, a very  
17 controversial issue, like what section is this. And, second,  
18 Mr. Richard is telling him the Legislature made that decision.  
19 I don't think the Legislature has made that decision. The  
20 Legislature expressed its definition of governmental authority  
21 in 367.

22 THE COURT: Mr. Richard.

23 MR. RICHARD: Well, one thing that I think is clear  
24 is that the Legislature has said that transfers to a  
25 governmental authority shall be done as a matter of right. I

1 don't think anybody can question that, nor has anybody  
2 questioned it. This witness has expressed the opinion that he  
3 feels that those transfers are not necessarily in the best  
4 interest of the customer and, therefore, that is a factor that  
5 the PSC can take into consideration. And I am inquiring as to  
6 his taking issue with the Legislature as to that question.

7 THE COURT: I am going to overrule the objection.  
8 Let's finish the question.

9 THE WITNESS: I don't think that is what I said.

10 MR. RICHARD: Well, let me try it again.

11 BY MR. RICHARD:

12 Q I'm having some difficulty connecting with you.

13 A I know. I'm sorry. It's probably me. Some of my  
14 ex-wives would say that. What I'm saying is that if at the end  
15 of the day this is some governmental authority, then the  
16 Commission's approval will be granted as a matter of right. I  
17 certainly don't dispute that. What I am saying is that in this  
18 case there have been raised substantial concerns with respect  
19 to a change in operation and service that is an impairment.  
20 And the concern is if the Commission just says, well, go ahead  
21 and it can't be reversed, which I'm still not convinced it can  
22 be, that there will be irreparable harm and, therefore, don't  
23 do it until we find out. That's as simple as I can say it.  
24 I'm not saying that the Legislature is wrong and in my opinion  
25 they should have never done that. I would never be so

1 presumptuous as to say something like that.

2 Q Do you think that simply because some interested  
3 parties, among them those who would like to actually be the  
4 purchaser of the system, complained to the PSC that that  
5 automatically gives the PSC the right to disregard the statute  
6 that entitles you to close prior to approval of the contingency  
7 clause and take as long as they desire to look into the  
8 transaction, is that what you think is an appropriate PSC  
9 activity?

10 A I don't think that is what they did, and I don't  
11 think they are taking as long as they desire. I think they  
12 tried to find a hearing date as quickly as possible on the  
13 calendar.

14 Q Is this not an appropriate forum, as well, to inquire  
15 into whether or not there is any basis for those complaints?

16 A I'm a layperson.

17 MR. McLEAN: Objection. That is a pure legal --

18 MR. RICHARD: I will withdraw the question.

19 THE COURT: Objection sustained. Any redirect?

20 MR. McLEAN: None from the Public Service Commission.

21 May the witness be excused?

22 THE COURT: May this witness be excused? Very good.

23 You may step down.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Are you calling any further witnesses?

1 MR. McLEAN: No, sir. May Mr. Hill be excused?

2 THE COURT: He is excused, yes.

3 MR. McLEAN: Thank you, sir. No, sir, we have no  
4 plan to call further witnesses. However, Your Honor was going  
5 to reserve for a later decision as to whether you were going to  
6 permit intervenors to put witnesses on. If the intervenors are  
7 to be permitted to put witnesses on, we have no further  
8 witnesses. If not then we may want to present one or two.

9 THE COURT: All right. Is there an intervenor who  
10 feels the necessity of putting on a witness?

11 MR. WRIGHT: Yes, sir.

12 THE COURT: All right. Identify for the record.

13 MR. WRIGHT: Your Honor, Schef Wright appearing on  
14 behalf of Flagler County Utility Regulatory Authority. I wish  
15 to present the testimony of Doctor James Freeman.

16 THE COURT: All right. Let's go forward. I will  
17 allow that.

18 MR. RICHARD: Your Honor, if I may?

19 THE COURT: Yes.

20 MR. RICHARD: May we determine exactly how many  
21 witnesses the intervenors intend to put on so that I'm sure  
22 that I have time to put my case on.

23 THE COURT: All right. Let's do this. Let's  
24 identify how many intervenors feel the necessity to put a  
25 witness on. We have got three. Four or three? Four. And

1 let's go through. Let's start. What is the nature of the  
2 testimony from your witness?

3 MR. GROOT: Lonnie Groot from Palm Coast. The city  
4 manager of the City of Palm Coast relative to the matter of  
5 what the impacts would be and the effect would be on the city  
6 in terms of unwinding the transaction if it were to occur.

7 THE COURT: All right. Yes, sir, from Flagler.

8 MR. WRIGHT: Mr. Freeman will testify on the order  
9 going to service and operation on the transfer going to service  
10 and operations and on the unwind/undo issue.

11 THE COURT: All right. Yes, sir.

12 MR. TWOMEY: Doctor Lissack will testify on the  
13 inability to unwind the transaction rate by Mr. Richard and how  
14 that will result in impairment.

15 MR. MULLIN: The county coordinator -- Mike Mullin  
16 for Nassau County -- will testify as to the disruption of the  
17 service and the impairment of the ability to maintain the  
18 system on Amelia Island and the unwinding of the process  
19 itself.

20 THE COURT: All right. Thank you. Mr. Richard,  
21 let's see who those are. I don't know, we will have to see  
22 how -- how were you scheduled in?

23 MR. RICHARD: I have two witnesses, Your Honor. The  
24 direct examination will probably take 15 or 20 minutes for each  
25 of those.

1 THE COURT: I think we have time. I am going to  
2 allow the intervenors then to go ahead with their witnesses.

3 MR. WRIGHT: May I approach?

4 THE COURT: Yes, you may.

5 MR. WRIGHT: Thank you, Your Honor. The Flagler  
6 County Utility Regulatory Authority would call Doctor James  
7 Freeman.

8 THE COURT: Doctor James Freeman.

9 MR. RICHARD: Your Honor, I didn't realize we were  
10 going to have all these intervenors' witnesses and I would like  
11 to invoke the rule at this point.

12 THE COURT: I think you have a right to invoke the  
13 rule at this point, so let's invoke the rule. Any other  
14 witnesses, please come forward. If you can come forward right  
15 over to this area here. We are going to take the oath and  
16 invoke the rule. Okay. These all of the witnesses that are  
17 not party representatives? Okay. Will all witnesses please  
18 raise their hand and take the oath.

19 (Witnesses sworn collectively.)

20 THE COURT: All right. Now, I don't know if you are  
21 familiar with the rule. The rule of sequestration has been  
22 invoked, and that means that you must remain out of the  
23 courtroom except when you are called to testify.

24 While you are waiting to testify and after you have  
25 done so, you are not to discuss your testimony with each other



1 Business and Economics, University of Kentucky, Lexington, KY.

2 Q Will you please tell the court about your academic  
3 background?

4 A Yes, sir. I have been at the University of Kentucky  
5 23 years teaching business ethics, finance, economics type  
6 courses in the College of Business. My educational background,  
7 I have a Bachelor of Science in Economics with majors in  
8 Economics and Finance from the University of Pennsylvania. I  
9 have a Master's Degree in Economics with a concentration in  
10 finance from the University of South Carolina. A J.D. from the  
11 University of South Carolina and an L.L.M. degree from Harvard  
12 law school.

13 Q Thank you. Do you work outside your direct  
14 employment as a professor at the University of Kentucky?

15 A Yes, sir. I am on a nine-contract, and we are  
16 further allowed one day a week or 39 days during the nine-month  
17 period for outside activities.

18 Q And do you take advantage of that opportunity?

19 A Occasionally, yes, sir. I would probably never hit  
20 the 39 days, but I testify in various types of cases.

21 Q Okay. Have you testified before any utility  
22 regulatory authority?

23 A Yes, sir. Probably my guess would be perhaps 30  
24 states over the last 22 years.

25 Q Have you testified before the Florida Public Service



1 Commission?

2 A Yes, sir. I would say probably somewhere between a  
3 dozen to two dozen times over the last 20 years.

4 Q The same question with regard to the Kentucky Public  
5 Service Commission?

6 A Probably many more times. For approximately ten  
7 years I was the Attorney General's primary witness at the  
8 Public Service Commission. The Attorney General effectively  
9 would be like the Public Counsel in Florida, and so I would do  
10 the expert witness testimony for all the water, sewer,  
11 electric, telephone, gas cases that appeared before the Public  
12 Service Commission for somewhat over a decade.

13 Q Have you been accepted as an expert, accepted or  
14 qualified as an expert witnesses before these commissions  
15 before you testified?

16 A Yes, sir.

17 Q You have been engaged by the Flagler County Utility  
18 Regulatory Authority in connection with this matter, is that  
19 correct?

20 A Yes, sir.

21 Q What were you asked to do?

22 A I was asked to look at some of the issues involved in  
23 this transfer of ownership especially as it might relate to the  
24 changing the service, comparing the service under the new  
25 authority, and also the issues involving unwinding this

1 transfer should it become a legal necessity to unwind.

2 Q Have you reviewed any documents in connection with  
3 your preparation for your appearance today?

4 A Yes, sir.

5 Q Can you briefly tell the court what documents you  
6 have reviewed?

7 A I brought a list with me. I have reviewed the  
8 various pleadings and transcripts in the Florida PSC versus  
9 Florida Water Services Corporation, Case Number 03-CA-358. The  
10 Public Service Commission's order, preliminary official  
11 statement dated 12/20/02 for the proposed FWSA utility system  
12 revenue bonds, the interlocal agreement between the City of  
13 Gulf Breeze and the City of Milton. The resolution of the  
14 Florida Water Services Authority for the issuance of the \$550  
15 million in bonds. The amendment and restatement of asset  
16 purchase agreement by and between FWSC and FWSA. The December  
17 21, 2002 draft, 12/15/02.

18 Q In your testimony before the Kentucky Public Service  
19 Commission and other public utility regulatory authorities,  
20 have you addressed whether their actions relate to service and  
21 operations of utilities?

22 A Yes, sir. I have often testified on public policy  
23 implications of regulation and that type of thing in all of the  
24 relevant industries, including water and sewer.

25 Q And when you say public policy implications, does

1 that include matters that go directly to a regulated utility  
2 company's service and operation?

3 A Yes, sir.

4 Q And you did tell the court you have reviewed the  
5 Commission's Order 03-0193-FOF-WS, is that correct?

6 A Yes.

7 Q And have you formed an opinion as to whether that  
8 order relates to service and operations or to the potential  
9 impairment of the service and operations of the utility systems  
10 involved?

11 A Well, I think clearly it relates to the impairment.

12 Q Thank you. Does who runs a system affect the service  
13 and obligations?

14 A Yes, sir.

15 Q Operations, excuse me. And so who runs a system  
16 could indeed go to the impairment or potential impairment of  
17 service and operations?

18 A Of course. That's one of the big issues always.  
19 Sometimes the new people turn out to be better, sometimes they  
20 turn out to be worse, sometimes the commissions put a variety  
21 of restrictions and requirements to put make sure of what the  
22 outcome is going to be.

23 Q And when commissions impose such restrictions and  
24 requirements is that typically after a hearing based on factual  
25 determinations in the proceeding?

1 A Yes.

2 Q Does how much money a utility system have affect  
3 service and operations?

4 A Oh, yes, sir.

5 Q So if they don't have enough money it would be likely  
6 to impair the service, is that correct?

7 A Yes, sir.

8 Q Typically, will a transfer affect operations?

9 A Yes, sir.

10 Q And may affect service?

11 A Yes, sir.

12 Q There was a series of -- if the Public Service  
13 Commission were ultimately to issue a final order finding that  
14 this transfer -- that they have jurisdiction over the transfer  
15 and that pursuant to the statutory tests the transfer should  
16 not be approved as being not consistent with the statutory  
17 criteria, would attempting to restore the status quo and  
18 attempting to put things back to the way they were be likely,  
19 in your opinion, to affect the service and operations of the  
20 utility systems involved in this proposed transfer?

21 A Assuming that the transfer went through and that it  
22 was attempted to be unwound or undone, yes, sir, I think that  
23 would have severe implications for the service standards under  
24 almost any scenario.

25 Q Have you formed an opinion as to how likely it would

1 be to actually be possible to completely undo and put  
2 everything back the way it was?

3 A Yes, sir.

4 Q And what is that opinion?

5 A I think it would be virtually impossible to do that.

6 Q Can you elaborate and tell the court why?

7 A Yes, sir. I am involved in -- this isn't the only  
8 case, of course, that involves service transfers, and I am  
9 involved in another one. It is not particularly similar other  
10 than the fact that it involves a change of ownership. And one  
11 of the issues became undoing/unwinding the transaction. And,  
12 of course, one of the first things I attempted to do was find  
13 comparable situations to see how it had been done, how  
14 successful it had been done, what the implications were, what  
15 the costs were, and so on.

16 And I'm not going to say that there has never been an  
17 unwinding of a transaction after completion, but I will say  
18 that after significant search I have not been able to find one.  
19 So to the extent that these things occur, if they ever have,  
20 they are going to be extremely rare, which I think suggests  
21 that this is not an easy thing to do.

22 But, you know, when you look at this transaction,  
23 assuming this thing closes, what we are going to have is we are  
24 going to have \$550 million of bonds that are going to be issued  
25 and all kinds of various funds are going to be set up out of

1 those bonds to finance various sinking funds and capital  
2 budgets, and so on with the new authority. A whole bunch of  
3 money will be sent to the corporation, which will then  
4 presumably use the money to pay off bonds and that type of  
5 thing. And then the rest of the money will go to the  
6 shareholders of the corporation, thus effectively leaving the  
7 corporation a shell entity with no assets.

8           Employment contracts presumably involving retention  
9 bonuses will be paid so that all the employees of the  
10 corporation will become employees of the Authority. Like I  
11 said, all of these other various funds pursuant to the bond  
12 indenture will be set up. I understood there would have been  
13 bond insurance, but now I have understood that the bonds are of  
14 a low enough quality so that they don't qualify for bond  
15 insurance. So bond insurance will probably not be an issue,  
16 but presumably various derivative arrangements will be set up  
17 to take care of interest rate risks and so on. All of these  
18 financial transactions will have occurred.

19           If at some future time this has to be reversed, I  
20 think we have serious questions. One question is where is the  
21 money going to come from. We have got a \$550 million bond  
22 outstanding, we have a purchase price of 400-some-odd million,  
23 but that 400 million is no longer there. It has gone to pay  
24 off the bondholders for the corporation, it has gone to the  
25 shareholders of the corporation, which is primarily a Minnesota

1 corporation, as I understand it.

2           The jurisdiction of the PSC to do anything it seems  
3 to me is extremely, I think it is fair to say unclear. Does  
4 the PSC have jurisdiction over a Minnesota corporation? How  
5 would it pierce the corporate veil here? You know, does the  
6 Public Service Commission have jurisdiction over these new  
7 individual entity utilities, even if it doesn't have  
8 jurisdiction over the authority itself?

9           With respect to enforcement, who does the Public  
10 Service Commission fine? You know, does it go to Minnesota and  
11 fine somebody; does it try to fine the shell; does it try to  
12 fine the local utilities that are still in existence? You  
13 know, these are serious issues and these are going to be  
14 litigated for years, because this is huge amounts of money  
15 floating around. If it is going to be undone, we have the  
16 management issue. You know, all the employees of the  
17 corporation now work for the Authority. They are all under  
18 contract. We have economics issues.

19           Assuming this deal is undone, that would mean that  
20 the new entity is no longer the new service provider. The  
21 corporation, say, is no longer a tax exempt entity. It is  
22 going to have to pay 10 million in property taxes that the  
23 Authority didn't pay. It is going to have to pay market  
24 interest rates rather than tax exempt interest rates, so the  
25 interest expenses are going to go way up. And where does the

1 money come from? You know, the Public Service Commission may  
2 be able to tell somebody you have to unwind this deal, but the  
3 Public Service Commission can't force some lender to lend a  
4 corporation two or \$300 million to reverse the transaction.

5 I mean, these are all extremely serious issues. To  
6 the extent it does go through, and to the extent that there is  
7 \$10 million more in property taxes being paid, and say \$10  
8 million more in interest being paid, that is going to squeeze  
9 the ability of the corporation to fund its operations, which is  
10 almost certainly going to have a negative impact on  
11 maintenance, a negative impact on its capital budget.

12 And then, finally, you have the issue is even if it  
13 does go through, even if a sales price is reversed for \$400  
14 million, say, there is \$550 million of bonds outstanding. And  
15 I'm not a bond attorney, I'm not a bond expert, but I can't  
16 believe that the bond people are going to sit back and do  
17 nothing. They are going to be grabbing at every dollar that is  
18 out there, which is going to be the sinking funds, it's going  
19 to be the capital budget, it's going to be everything else.  
20 And to the extent we are arguing about all of that, no one is  
21 sure what the outcome will be.

22 The only thing I am fairly confident of is that if  
23 this deal somehow were to be reversed, somehow this corporation  
24 were to pay \$400 million back to the Authority and take back  
25 over the business, I can't imagine any other end result besides



1 a trip to bankruptcy court. And then you have a bankruptcy  
2 judge fighting it out with the owners of capital versus the  
3 customers and the PSC saying what they have to say, and arguing  
4 whether the bankruptcy judge can force increased rates to make  
5 the company viable and so on. And it seems to me just to be a  
6 catastrophic mess waiting to happen.

7 Q You have reviewed the contract for the asset purchase  
8 between Florida Water Services Corporation and Florida Water  
9 Services Authority, is that correct?

10 A Yes, sir.

11 Q Who is that contract between?

12 A Those two entities.

13 Q I would ask you to hypothetically assume that  
14 somewhere in that contract -- and this is a matter of dispute,  
15 but I'm just going to ask you to assume that somewhere in that  
16 contract there is a provision that says we'll unwind the whole  
17 thing. My question for you is what could the PSC do, the  
18 Florida Public Service Commission do, assuming that it has got  
19 a valid final order that is upheld by the highest appellate  
20 court that is going to rule on it, and there is a contract out  
21 here between these two entities that says we will undo it.  
22 What can the PSC do to enforce that contract?

23 A My understanding, like most public service  
24 commissions, is they have the ability to fine somebody.

25 Q And in your opinion is -- I will just ask you to

1 accept as a matter of law, and the court can take judicial  
2 notice of the statutory provision, the Commission can impose  
3 fines of up to \$5,000 a day for knowing violation of the  
4 statutes, rules, or orders. In your opinion, relative to the  
5 magnitude of this sale, would a fine of \$5,000 a day be  
6 sufficient to protect the service and operations in the  
7 interest of the customers?

8 A No. Plus, I'm not sure there would be anybody that  
9 could pay the fine even if it was adequate, because we have  
10 nothing left but a shell corporation that is under the  
11 jurisdiction of the Commission.

12 MR. WRIGHT: I have no further questions on direct  
13 examination, Your Honor.

14 THE COURT: Mr. Richard.

15 CROSS EXAMINATION

16 BY MR. RICHARD:

17 Q Doctor Freeman, are you aware of any facts, specific  
18 facts with regard to this corporation, Florida Water Services  
19 Corporation, and this Authority, Florida Water Services  
20 Authority, that would reasonably lead one to believe that any  
21 of these speculative problems that you have suggested are, in  
22 fact, going to occur in this instance?

23 A You mean in the unwinding or in the operations?

24 Q Let's start with the operations and service. Do you  
25 have any reason to believe that there is any greater fear in

1 this instance than in any other transfer that there will be an  
2 adverse impact upon operations and services?

3 A Well, as I understand it there is a pledge not to  
4 increase the rates for a certain period of time by the  
5 Authority. However, there is not -- the Authority has stated  
6 that they are going to raise the connection fees. Furthermore,  
7 there is a -- 2 percent of the gross revenues goes to the two  
8 cities involved out in the panhandle as part of the  
9 transaction, so that is money that otherwise would have gone to  
10 the operations of the business that will no longer be available  
11 to provide maintenance, capital improvements, or other expenses  
12 of the business.

13 And as I read the contract, quite frankly, I thought  
14 that particular section was rather poorly worded, and it is  
15 vague as to what fees will be paid to the two cities beyond the  
16 2 percent of gross proceeds. So we have the connection fees  
17 are going up, we have a certain percentage of the revenues will  
18 be funnelled to an entity that has nothing to do with operating  
19 the water system.

20 Q Of course, any Authority once they obtain the  
21 facility can raise impact fees, can they not?

22 A Any governmental authority can, yes, sir, because --

23 Q Any one of them could do that?

24 A Because they wouldn't need approval, right.

25 Q And what I'm asking you is, it seems to me that what

1 you are suggesting is that your concern would exist with  
2 respect to the transfer to any governmental authority of a  
3 major facility operation. Isn't that a fair statement?

4 A Well, no, sir. I think this one is different in the  
5 sense that the earlier witness said that, you know, when you  
6 have a natural monopoly, which water and sewer really is, going  
7 back to 1776, Adam Smith recognized back then in the Wealth of  
8 Nations that the invisible hand wouldn't work.

9 And the alternatives that have come to up to respond  
10 to this natural monopoly idea, one is governmental regulation,  
11 which is the PSC. The second means of handling this market  
12 failure is the ballot box. And that is the concept of  
13 governmental ownership, that if the government owns something  
14 and the people have the right to elect the officials who run  
15 the business, then that gives them a direct say so.

16 In this particular situation, of course, the entity  
17 that is running the business and the two governmental entities  
18 that it is ultimately responsible for have no connection at all  
19 with the ballot box of the people who are being served. So,  
20 both checks on monopoly breakdown there. So this one is --  
21 certainly if an economist were looking at it, not knowing  
22 anything, you would be inherently more suspicious of this  
23 transaction than a normal transaction just on the face of it.

24 Q All right. Let me limit my question down. Let's  
25 assume we are just talking about natural monopolies. In fact,

1 let's assume that we are just talking about water facilities.

2 A Okay.

3 Q It seems to me that your concerns would apply to the  
4 transfer of any water facility from a private entity which is  
5 regulated by the PSC to a governmental authority, or for that  
6 matter to a city, if portions of it are outside the boundaries  
7 of that entity. Isn't that true, the same concerns would apply  
8 in any of those situations?

9 A I think you have to distinguish between a total break  
10 between operations and incidental. I mean, there are numerous  
11 municipal utilities who have occasional customers or incidental  
12 customers outside the boundaries, simply because the municipal  
13 utility may well be able to serve people, you know, right on  
14 the edge --

15 Q Excuse me. I'm not referring to that. I am defining  
16 a very specific circumstance --

17 A Okay.

18 Q -- where you have a private entity which is regulated  
19 by the Public Service Commission that is transferring its water  
20 facility to a governmental authority or a municipality that is  
21 serving substantial populations outside of its boundaries.  
22 Fairly wouldn't you say all of the concerns that you have  
23 expressed would equally apply to any one of those transactions?

24 A They could, but not necessarily. You would have to  
25 look at the circumstances of the deal. For instance, if part

1 of the deal was a promise not to raise rates, if a part of the  
2 deal was a promise to invest more money in infrastructure than  
3 the previous owner had been able to do. Certainly those things  
4 might put it in a whole different light. In this particular  
5 situation, we have the recognized increase in connection fees,  
6 we have the 2 plus percent transfer to an entity unrelated to  
7 running the business, and we don't have the promises to  
8 increase infrastructure spending, or even to comply with the  
9 existing infrastructure schedules that were already in place  
10 from the private owner.

11 Q All right. I'm not trying to be unduly picky with  
12 you, but it seems to me like what you are saying is the only  
13 time that you think this should be able to take place, this  
14 type of a transfer with the circumstances I have described, is  
15 when you have a prior legal binding commitment by the receiving  
16 entity not to raise rates, not to raise connection charges, not  
17 to do any of the things that you have suggested because  
18 otherwise your fears would always apply. Isn't that fair?

19 A Well, I wouldn't say you would have to have all of  
20 those, but certainly you would have to have some. If you were  
21 going to have to get around the issue of there being no  
22 regulatory check at all, you would want some contractual  
23 provisions for protection from my standpoint in order to say we  
24 can ignore Adam Smith and we can let these people basically  
25 charge whatever they want in a natural monopoly.

1 Q That is inherent though in this statutory scheme, the  
2 ignoring of Adam Smith, isn't it? The Legislature has decided  
3 to ignore Adam Smith, hasn't it, because it has authorized a  
4 transfer to a body which can regulate water facilities outside  
5 of its boundaries?

6 A As I understand it that is an issue that a whole  
7 bunch of people are grappling with.

8 Q You think it is a bad public policy, apparently?

9 A Yes, sir, I do.

10 Q Now, with regard to your testimony about unwinding  
11 and the problems with it, why it can't be unwound, your  
12 speculative concern over the fact that this is a foreign  
13 corporation that might not be accessible if it had to be  
14 unwound and they had to be reached, that would be true in any  
15 case in which a foreign corporation is the owner of a facility  
16 that is being transferred to a governmental authority, wouldn't  
17 it?

18 A Yes, sir. That, of course, is one of my many, you  
19 know, concerns. The money is gone.

20 Q So you would believe that it would be better public  
21 policy if the Legislature prohibited such a transfer by any  
22 entity which is a foreign corporation unless there was some  
23 type of a guarantee, is that fair?

24 A No. No. You know, just as a for instance, this case  
25 that I am working on currently in Kentucky, what we have here

1 is we have a private utility, a private water and sewer  
2 company, a major one who is selling out to not only an  
3 out-of-state, but an out-of-country entity. The issue here,  
4 though, is different from your issue in that the Public Service  
5 Commission approved the transfer. The opponents of the  
6 transfer went to court and were turned down for an injunction  
7 and under Kentucky law the deal was allowed to close. And the  
8 closure was appealed again and ultimately approved by -- the  
9 right of the water and sewer company to close was ultimately  
10 approved by the public service commission and again by a  
11 circuit court.

12 Here we have a situation where, in fact, there is a  
13 regulatory order outstanding. So, you know, in my Kentucky  
14 case there is almost no likelihood that a reversal will be  
15 necessary because all the approvals have been obtained. No  
16 likelihood doesn't mean zero likelihood, but it certainly means  
17 close. In this instance we have a valid -- or at least at the  
18 current time we have a valid regulatory order outstanding and  
19 we have an attempt at the court level to overturn that which  
20 has failed. So in terms of the risks and the likelihoods, you  
21 know, there is a much greater likelihood of something like that  
22 here than there is in many other cases that involve transfers  
23 to out-of-state or out-of-country corporations.

24 Q Well, not that there is a greater likelihood, but  
25 your concern is that in this case, unlike the one that you gave



1 as an example, the Public Service Commission has not yet had an  
2 opportunity to review it and to satisfy itself that this  
3 foreign corporation is going to be available, isn't that really  
4 what you are saying?

5 A Well, no, I don't think the Public Service Commission  
6 has to satisfy itself that the foreign corporation is going to  
7 be available. I think they have to satisfy themselves of the  
8 statutory standards of whether this transfer can take place  
9 regardless of whether it is an out-of-state corporation or an  
10 in-state corporation.

11 Q I'm not trying to trip you up here. I'm just trying  
12 to help us understand what the underlining premise of your  
13 testimony is. And it sounds to me like you are saying you  
14 believe as a matter of public policy that a foreign corporation  
15 should never be permitted to transfer its facilities to a  
16 governmental authority unless the Public Service Commission has  
17 satisfied itself that it is in the public interest to do so.  
18 Is that fair?

19 A No. I'm saying that I can see any number of  
20 standards that the state might have, but until whatever those  
21 standards are have been met, that as long as there is a  
22 significant chance of reversal, what I'm saying is the reversal  
23 would be extremely difficult.

24 Q I think we may be finally coming together here. In  
25 the absence of those standards, then, written into law you

1 believe that such a transfer should not take place without a  
2 public interest determination by the regulatory body, is that  
3 fair?

4 A Well, I believe that, but I think that is really  
5 irrelevant to my testimony. Regardless of what the standard  
6 is, my testimony is, you know, whether it is a public interest  
7 standard, whether it is a public purpose of the investment  
8 standard, whether it is -- whether the authority meets the  
9 standards to be a public entity, my testimony really is  
10 regardless of what the standard is, under any standard it would  
11 be extremely difficult to undo the transaction once it is  
12 completed regardless.

13 Q Right. But with the exception of one thing that you  
14 mentioned, which is that the authority has announced an  
15 intention to increase impact fees, there is no distinction that  
16 you are aware of between this transaction and a transaction in  
17 which any other foreign corporation is seeking to transfer a  
18 water operation to a governmental authority in which residents  
19 outside the boundaries of the authority are customers?

20 A Well, I'm not aware -- I haven't studied this, but  
21 I'm not aware of other transactions where effectively the  
22 sponsoring city, which has nothing to do with the utilities, is  
23 getting a cut at --

24 Q I'm not asking you about specific ones. All I'm  
25 trying to say to you is with the exception of your comment

1 regarding the announcement of impact fee increase, you don't  
2 know of anything that would distinguish this transaction from  
3 others involving the same types of entities and the same types  
4 of facilities?

5 A Well, I did mention, again, the 2 percent fee.

6 Q Right. But other than that?

7 A And the connection fees. That is the two things, not  
8 one.

9 Q Now, explain to me -- and what was the 2 percent fee,  
10 again?

11 A The 2 percent fee is effectively the cities' cut for  
12 sponsoring the deal. That they get a minimum of \$1-1/2 million  
13 a year from the gross revenues of the authority, or 2 percent  
14 of the gross revenues of the authority plus some unspecified  
15 fees, which after reading the documents I have no earthly idea  
16 what the magnitude of them is or what the fees are for.

17 Q And if this is unwound, of course, the cities would  
18 not get that 2 percent fee if the Public Service Commission  
19 chose not to give it to them?

20 A Right. Presumably that money would be going to the  
21 water company to provide better maintenance, better capital  
22 improvements, and so on.

23 Q In fact, if you reviewed this contract carefully  
24 enough to realize that the 2 percent fee was taken into  
25 consideration in structuring financing and guarantees so that

1 it would not result in an increase in rates?

2 A Well, we don't whether it will or not.

3 Q All right. So you don't know what it is?

4 A That is correct.

5 Q And the last thing I wanted to ask you with respect  
6 to the impact fees is to tell us how that increase in impact  
7 fees upon new connections will impair, or create a fear, a  
8 reasonable fear of impairment of current operations and  
9 services?

10 A Well, if they increase the fees that will impair it.  
11 That is a detriment to the existing ratepayers. They are  
12 paying more than they were previously.

13 Q Isn't an impact fee upon new connections?

14 A Yes, but it is greater than it previously was.

15 Q But it's for new customers?

16 A New customers, right.

17 Q And that problem would exist with any governmental  
18 authority that chose to raise impact fees for new customers at  
19 any time, isn't that correct?

20 A Yes, except, of course, then we come back to the idea  
21 that there is no check and balance in the form of the ballot  
22 box. But other than that, yes.

23 Q The Legislature has chosen not to create that check  
24 and balance?

25 A I don't know.

1 MR. RICHARD: No further questions.

2 MR. TWOMEY: Your Honor, Mike Twomey to ask one  
3 cross, please.

4 CROSS EXAMINATION

5 BY MR. TWOMEY:

6 Q Mr. Freeman, you were asked a question about  
7 political accountability under the various results that might  
8 be obtained here depending upon whether the system is sold or  
9 not. Do you believe the loss of political accountability of  
10 the regulator, or the operator, or the owner of a utility to  
11 the customers is, A, an advantage to the customers, B, neutral  
12 to those customers, or, C, a detriment, and thus be considered  
13 an impairment to the service of those customers?

14 A I think it is clearly loss of political  
15 accountability in the absence of any other regulatory scheme is  
16 obviously a detriment, a negative.

17 MR. TWOMEY: Thank you, Your Honor.

18 THE COURT: Any questions, Mr. Mullins?

19 CROSS EXAMINATION

20 BY MR. MULLINS:

21 Q Doctor Freeman, let me ask you about the connection  
22 fees. If the connection fees are collected by a utility,  
23 regardless of who it is, and then used for the maintenance of  
24 that facility, I assume that is a positive for the ratepayer,  
25 is that correct? The connection fees.

1           A     Well, to the extent there is more money available,  
2 that is a positive for some ratepayers. It is a negative for  
3 the one who has to pay more.

4           Q     Exactly. But for the system itself, if you are  
5 keeping the connection fees within the system, i.e., used for  
6 maintenance, then there is some benefit, would you not agree  
7 with me on that?

8           A     Right. To the extent the money isn't wasted, sure,  
9 more money is better than less for the maintenance.

10          Q     If those connection fees are being collected for the  
11 purpose of paying some debt, what is the effect on the system?

12          A     Well, you know, of course, that is a real issue here  
13 because obviously the amount of debt has gone up  
14 astronomically, and so the amount of interest that the  
15 authority is going to pay is substantially higher than it was  
16 previously. So, of course, the greater percentage of the  
17 revenues of the corporation will have to go for debt service.

18          Q     And under this scenario, the connection fee that is  
19 already admittedly going to be raised are going towards debt  
20 and not toward maintenance?

21          A     Well, the money is fungible, it's hard to say. But  
22 certainly more of the revenues from whatever source, whether it  
23 is increased connection fees, whether it is the normal water  
24 rates or whatever, a greater percentage of that money will go  
25 to debt service than previously went to debt service.

1 Q And let me ask you since you have far more experience  
2 than I do in this, if the Public Service Commission were to  
3 determine at some point in time this is not a governmental  
4 authority --

5 A Yes, sir.

6 Q -- and Florida Water has closed because there is no  
7 injunction, and the new person on the block, so to speak, has  
8 paid these increased connection fees?

9 A Yes, sir.

10 Q How would you recover those? Do you have any idea  
11 how you would recover -- how the individual who paid those  
12 would recover those?

13 A So effectively the question is the Authority has  
14 turned out not to be a lawful governmental entity, but stays in  
15 business running the water company under the regulation of the  
16 PSC?

17 Q Well, let's assume this. Florida Water -- let's  
18 assume the corp. for whatever reason doesn't continue the  
19 injunction, and Florida Water, which they have already  
20 announced, goes ahead and closes in spite of the Public Service  
21 Commission order. And ultimately let's say the Public Service  
22 Commission determines they are not a valid governmental  
23 authority --

24 A Yes, sir.

25 Q -- under 367, as Mr. McLean had mentioned. How

1 would, in your opinion, the person who has paid those increased  
2 connection fees that have gone to pay debt, how would they  
3 recover those?

4 A You know, I hate to answer that question because  
5 under the scenario you have posited, the problem of the people  
6 who paid the higher connection fees, they would be the flea on  
7 the back of the elephant. Their problems would be so little  
8 compared to everybody else's problems that you wouldn't even  
9 think about them.

10 Q I understand that. But is there any way in your  
11 scenario they could recover those?

12 A No, because if your scenario is true, I don't think  
13 there is any question but that the authority would almost  
14 immediately be in bankruptcy court.

15 MR. MULLIN: Thank you.

16 THE COURT: Mr. Richard.

17 MR. RICHARD: No further questions.

18 THE COURT: All right. Any necessary redirect?  
19 Unless it is absolutely necessary, we have a limited time and  
20 intervenors are eating into Mr. Richard's time, I'm going to  
21 give extra time here. We will work through lunch hour, if we  
22 need to, but unless it is absolutely essential -- yes, sir.

23 MR. WRIGHT: Yes, sir. Two real fast questions.

24 REDIRECT EXAMINATION

25 BY MR. WRIGHT:



1 Q Mr. Freeman, Mr. Richard asked you some questions  
2 basically to the point that there is no distinction between  
3 this transfer and any other transfer by a foreign corporation  
4 to a governmental authority. What is the normal case of a  
5 transfer of assets to a governmental authority, who is going to  
6 be buying in the normal situation in your experience?

7 A The normal situation would be that the government of  
8 the county or city where the services are located.

9 Q Is this the normal case?

10 A No, sir.

11 Q Is the fact that there is no overlap between the  
12 customers to be served and the political authority that is  
13 intending to take over these systems, a significant distinction  
14 between this case and the ordinary case?

15 A I have never heard of a similar case.

16 MR. WRIGHT: That is all, Your Honor. Thank you very  
17 much.

18 THE COURT: Mr. Richard, anything further?

19 MR. RICHARD: Your Honor, when I realized that you  
20 were going to work through the lunch it reduced my interest in  
21 cross-examination of witnesses. (Laughter.)

22 THE COURT: May the doctor be excused?

23 MR. WRIGHT: That's up to you, Your Honor.

24 THE COURT: Well, he is unless somebody wants to hold  
25 him as a witness and send him outside, I will excuse him. All

1 right. You are excused, sir. You may remain in the courtroom  
2 if you wish, or you may go. Whatever you wish to do.

3 THE WITNESS: Thank you very much.

4 THE COURT: For the court reporter's benefit and all  
5 right now we are going to take a quick -- well, I will take 15  
6 minutes and we will go from there.

7 (Recess.)

8 THE COURT: Please be seated. All right. Collier  
9 County.

10 MR. TWOMEY: Your Honor, Collier County would like to  
11 call Doctor Michael Lissack.

12 THE COURT: Please summon him.

13 MR. GROOT: Your Honor, Bob Groot, Palm Coast. Mr.  
14 Kelton (phonetic), we're not going to call him as a witness, so  
15 could he come back in the courtroom?

16 THE COURT: If he is not being called as a witness,  
17 he's excused.

18 MR. GROOT: Thank you, sir.

19 MR. RICHARD: Your Honor, may I ask that in each of  
20 these instances that you inquire of the testimony to be sure we  
21 are not going to get cumulative, given the time. I'm worried  
22 about my time.

23 THE COURT: I am going to ask counsel to keep in mind  
24 that you have heard the testimony that has come forth so far.  
25 Let's try not to get cumulative as far as intervention

1 testimony if we could, and keep it as brief as we can. I want  
2 to give you the right to do what you need to do, but let's not  
3 double up if we can avoid it.

4 MR. TWOMEY: Yes, sir... We will do that to the best  
5 possible.

6 Thereupon,

7 MICHAEL LISSACK, Ph.D.

8 was called as a witness on behalf of Collier County and  
9 Sugarmill Woods Association, and having first been duly sworn,  
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. TWOMEY:

13 Q Doctor Lissack, have you been sworn?

14 A I have.

15 Q Tell the court your name and address, please?

16 A Michael Lissack. My physical address is 15508  
17 Monterosa Lane, Naples, Florida.

18 Q How do you spell your last name, sir?

19 A L-I-S-S-A-C-K.

20 Q Doctor Lissack, would you tell the court very briefly  
21 the extent of your undergraduate and graduate education?

22 A Yes. I was an undergraduate at Williams College. I  
23 got my MBA from Yale, and I got my doctorate of business  
24 administration from Henley Management College, which is part of  
25 Brunell University in the United Kingdom.

1 Q And tell the court your professional experience after  
2 receiving your MBA?

3 A For 13 years I was with Smith Barney, eight of those  
4 I was a managing director or its equivalent, and at Smith  
5 Barney I was in charge of supervising all of the quantitative  
6 and legal work done account in the public finance department.

7 Q Okay, sir. And in carrying out those  
8 responsibilities, what type of financing did you do and what  
9 amounts?

10 A All right. The public finance department at Smith  
11 Barney, of which I was a member, does municipal bond  
12 transactions. My specialty at that point was in infrastructure  
13 transactions. And while I was with Smith Barney I did well  
14 over \$35 billion worth of transactions.

15 Q Okay, sir. And what year did your employ at Smith  
16 Barney end and under what circumstances?

17 A I left Smith Barney in 1995. Beginning at around  
18 Thanksgiving or Christmas of 1993, I also began to do  
19 undercover work for the Federal Bureau of Investigation with  
20 regard to a municipal scandal that was known as Yield Burning.  
21 So after spending 15 months undercover, I did leave the  
22 municipal bond business and went on to get my doctoral degree  
23 and become a professor of ethics.

24 Q In connection with your witness activities for the  
25 federal government, did you have an opportunity to testify on

1 occasion?

2 A Yes. I was the qui tam plaintiff in the Yield  
3 Burning matter. We pursued civil and criminal complaints  
4 against more than 50 Wall Street firms and have caused the  
5 recovery for the United States of America in excess of \$250  
6 million.

7 Q Okay, sir. And the activities that you reported to  
8 the FBI on, were you involved in some of those activities  
9 yourself?

10 A Yes, sir, I was. And because I was indeed a party  
11 involved in those activities, I was sanctioned. The SEC did  
12 remove my license to practice. I am barred from the municipal  
13 bond industry. I was barred for a period of five years and  
14 have leave to reapply to go back to that industry if I should  
15 so wish starting next month.

16 Q Okay, sir. And lastly on that point, was your  
17 willingness to assist the federal government voluntary on your  
18 part?

19 A Absolutely. I could not sleep at night and decided  
20 to go undercover.

21 Q Doctor Lissack, what documents have you studied in  
22 connection with this proposed transaction between the utility  
23 and the authority?

24 A I have read the purchase agreement; I have read a  
25 version of the -- a draft at least of the preliminary offering

1 statement; I have read a draft of the bond indenture; I have  
2 read the documents that have been promulgated by the Authority;  
3 I have read the reincorporation papers of the Authority; I have  
4 read the tariff schedule that was put out by the Authority at a  
5 public meeting; I have read the transcripts of the proceeding  
6 before Judge Gary.

7 Q Okay, sir. Now, I believe you were still in the room  
8 before the rule was invoked and you heard, did you not, the  
9 questioning of Mr. Hill by Mr. Richard?

10 A I did.

11 Q Okay. And did you hear the questioning that related  
12 to the ability to unwind the deal if the Commission were later  
13 to find that the authority was not quote, unquote, a  
14 governmental authority and who would be impacted?

15 A I did hear the questioning and I did hear the  
16 answers.

17 Q Okay, sir. Based upon your 13 years of experience in  
18 the municipal bond business and the documents you have read, do  
19 you have an opinion on whether this deal could be unwound so  
20 that everybody would be placed back at the status quo and made  
21 whole, and if so, how long it would take?

22 A Given the way the deal is presently structured in the  
23 purchase contract, it is my professional opinion that the deal  
24 could not be unwound prior to a ten-year period, and that is  
25 because of the ten-year call provision that is insisted upon in

1 the purchase agreement. If you were to do what has been  
2 referred to as a defeasance, which has been suggested by Mr.  
3 Richard, there is an additional problem. And the additional  
4 problem relates to the tax exempt status of the bonds. And  
5 something that -- I have a document here, Mr. Twomey. Do you  
6 have it introduced into the record?

7 MR. TWOMEY: Yes, sir. With respect to the -- Your  
8 Honor, we have a document we would like to have identified.

9 THE COURT: Let's identify this as -- let's see. Mr.  
10 Twomey representing, again, I'm sorry?

11 MR. TWOMEY: Collier County and Sugarmill Woods, sir.

12 THE COURT: Intervenor Collier County/Sugarmill Woods  
13 Exhibit 1.

14 MR. TWOMEY: I have copies later, Your Honor, for the  
15 parties.

16 (Collier County/Sugarmill Woods Exhibit 1 marked for  
17 identification.)

18 BY MR. TWOMEY:

19 Q What is that document?

20 A That document is a request for a private letter  
21 ruling with regard to the tax exempt status of the proposed  
22 bonds that was asked of the Internal Revenue Service. And  
23 while a private letter ruling request is out there and without  
24 an answer, the true tax exempt status of the bonds cannot be  
25 determined. Regardless of the opinions of counsel who may be

1 expressing that opinion, the ultimate determination does rest  
2 with the Internal Revenue Service. If the Internal Revenue  
3 Service should hold that the transaction was indeed not  
4 eligible for tax exempt status, regardless of the effectuation  
5 of a defeasance, there are considerable tax and litigation  
6 expenses that will ensue and the bondholders will turn around  
7 and sue Florida Water Services Corporation even if the  
8 transaction is undone.

9           And based on my understanding of current interest  
10 rates and what that litigation exposure might be, we are  
11 talking about a potential exposure to Florida Water Services  
12 Corporation of between three and \$500 million, an amount that  
13 my understanding of the corporation's financial condition would  
14 render it insolvent.

15           Q    Okay, sir. First, let me ask you who was the letter  
16 request made by?

17           A    Yourself, sir, on behalf of Collier County.

18           Q    Okay, sir. Now, in the event that the bonds were  
19 found to be taxable, could that possibly in your experience  
20 impact others, including the customers, and not just the  
21 bondholders?

22           A    Absolutely.

23           Q    In what fashion?

24           A    Well, the first thing that will happen will be that  
25 there will be litigation regarding -- from the bondholders as



1 to who it is that needs to take care of this taxable event.  
2 That litigation will be directed not only against the  
3 professionals involved in the transaction, but due to the  
4 nature of the purchase agreement and the representations in the  
5 purchase agreement against Florida Water Services Corporation  
6 and its parent company, and if I may read from the purchase  
7 agreement, if you were to go to Section 10 --

8 MR. RICHARD: Excuse me, Your Honor. I would like to  
9 object to this based on the fact that I don't believe that a  
10 foundation has been laid for this witness to testify to the  
11 legal consequences or to the likely litigation with respect to  
12 this issue.

13 THE COURT: I would have to sustain that objection at  
14 this point.

15 MR. TWOMEY: Do you have any experience -- may I  
16 inquire, Your Honor?

17 THE COURT: You may.

18 BY MR. TWOMEY:

19 Q Doctor Lissack, do you have any experience in the  
20 matters that Mr. Richard just objected to in terms of your  
21 experience, both as an employee of Smith Barney and also in  
22 terms of your experience working with the federal government in  
23 the Yield Burn cases and thereafter?

24 A Absolutely. As part of my responsibilities at Smith  
25 Barney, I was its chief tax lobbyist with respect to municipal

1 bond matters. I participated in the writing of several of the  
2 Internal Revenue regulations. I served on many Internal  
3 Revenue Service committees. And with respect to the Yield  
4 Burning matter, I, as lead plaintiff and as lead witness  
5 directed a federal task force that amounted to well over 100  
6 federal employees with respect to municipal bond matters.

7 Q Okay, sir. Lastly, Doctor Lissack, in an effort to  
8 not replot ground completely here, you are aware, are you not,  
9 that the connection fees -- are you aware that the connection  
10 fees will be increased if the deal goes through?

11 A The authority at its hearing where it proceeded to  
12 pass the tariff schedule, indicated that connection fees will  
13 be increased and certain other fees with respect to quote,  
14 unquote, new customers would be increased above their present  
15 levels.

16 Q Okay, sir. If those connection fees are paid by new  
17 customers, if the Public Service Commission -- and the bond  
18 deal is closed, if the Public Service Commission subsequently  
19 finds that the authority is not in the legal sense, quote,  
20 unquote, a governmental authority, do you think as the deal is  
21 structured now that it will be possible for those people to get  
22 their monies back?

23 A With difficulty. There will be considerable  
24 litigation involved. One of questions is whether the customers  
25 will choose to embark upon that litigation, but there is no

1 provision currently made for refunding that money.

2 MR. TWOMEY: That's all I have, Your Honor. Thank  
3 you.

4 THE COURT: Thank you... Mr. Richard.

5 CROSS EXAMINATION

6 BY MR. RICHARD:

7 Q Mr. Lissack, I want to make sure I understand your  
8 last response. You were talking about an impossibility of the  
9 bondholders getting their money back?

10 A No, he asked me, sir, about if there was a new  
11 customer of the utility, and if the transaction had gone  
12 through and then was decided to be, quote, unquote, undone, how  
13 would the customer who had paid the increased connection cost  
14 get their money back.

15 Q And who would it be that the customer would be  
16 seeking to get the money back from?

17 A Florida Water Services Corporation, or the Florida  
18 Water Services Authority, or it's just not clear.

19 Q And you speculate -- well, if it is undone, the  
20 Florida Water Services Corporation is back in charge of the  
21 system, is that not correct?

22 A That would be my understanding.

23 Q And how is it now that they would not be able to get  
24 their money back from that corporation? Why do you speculate  
25 that that would be impossible?

1           A     Where, sir, in the present tariffs of the Florida  
2 Water Services Corporation is the provision for applying for a  
3 refund for connection fees?

4           Q     So then that is a problem that would exist in any  
5 instance in which a private corporation is transferring a water  
6 services facility to a governmental authority, is that not  
7 true?

8           A     If they are going to increase the charges above the  
9 existing charges and they are not going to manage to provide in  
10 their tariff schedule for how to take care of increased charges  
11 if there is an unwind, then, yes, sir, that would be true.

12          Q     So you are talking about the increase in impact fees  
13 to new customers?

14          A     Correct.

15          Q     With respect to the matter that you mentioned  
16 regarding your being barred from securities transactions, that  
17 occurred in 1998?

18          A     Yes, sir.

19          Q     And it is true, is it not, that the Securities and  
20 Exchange Commission found that you had intentionally engaged in  
21 deception and manipulation with respect to the securities  
22 market?

23          A     That was language that we negotiated jointly, sir.  
24 It was a voluntary agreement entered by myself. And with  
25 respect to the Yield Burning matter, one does not become a qui

1 tam plaintiff and is able to blow the whistle on 40 to 50 Wall  
2 Street firms without having been involved in the thick of it.

3 Q I believe the answer is yes or no. Is it not true  
4 that the Securities and Exchange Commission found in a formal  
5 order that you had engaged in intentional deception and  
6 manipulation with respect to security transactions? Is that  
7 not true?

8 A That is not true, sir. With respect to a particular  
9 transaction it would be true.

10 Q Okay. Then we agree that the SEC found that you had  
11 engaged in deceptive and manipulative practices with regard to  
12 a particular security transaction, correct?

13 A That is correct.

14 Q And that is not language that you volunteered, that  
15 you suggested go into that order, I presume?

16 A That is language we absolutely suggested and  
17 volunteered and that we negotiated over it for a period of nine  
18 months.

19 Q All right. So the SEC did not request that it find  
20 that you engaged in deception and manipulation, you just  
21 suggested to them that you thought it would be a nice idea to  
22 put that in the order?

23 A I would have to go back and consult on my notes as to  
24 how we did that, but there were lots of give and take back and  
25 forth, Mr. Richard. They did not wish to discipline me at all,

1 I volunteered for discipline.

2 Q You volunteered to be prohibited for five years from  
3 participating in any manner and not being able for five years  
4 to apply for re --

5 A Actually, sir, I volunteered for life.

6 Q That is very kind of you. The fact, though, is we  
7 agree that there is a formal finding in the public record of  
8 the United States Securities and Exchange Commission that found  
9 you guilty of those transactions?

10 A No, sir, there is neither a declaration of guilt nor  
11 innocence.

12 Q Excuse me, they found that you had engaged in  
13 deception and manipulation with regard to a significant  
14 securities transaction, did they not?

15 A They also neither affirmed nor denied guilt.

16 MR. RICHARD: Your Honor, I would like to introduce  
17 into evidence, if Mr. McLean has no objection to my doing it  
18 out of order, two orders of the Securities and Exchange  
19 Commission, and the court can reach its own conclusions.

20 THE COURT: Any objection?

21 MR. McLEAN: No, sir.

22 THE COURT: For the record, let's mark these as  
23 Plaintiff's Exhibits 2 and 3.

24 MR. RICHARD: Plaintiff's?

25 THE COURT: This would be plaintiff's. Excuse me,

1 I'm sorry. This would be Respondents. Defendants. We have  
2 got all these petitions going. This is the Defendants, I'm  
3 sorry.

4 (Defendant's Exhibits 2 and 3 marked for  
5 identification.)

6 BY MR. RICHARD:

7 Q May I correctly assume, Doctor Lissack, that when you  
8 engaged in the transactions that are characterized in this  
9 order as deceptive and manipulative, you were not doing that on  
10 behalf of the FBI?

11 A That is correct. I was doing it on behalf of Smith  
12 Barney per the direction of the people I worked for.

13 Q And the reason that you went undercover on behalf of  
14 the FBI was to avoid prosecution for those activities, is that  
15 correct?

16 A That is absolutely incorrect since I went undercover  
17 for the FBI before those activities even took place.

18 Q And you told them, I assume, when you went undercover  
19 that you were engaged in deceptive and manipulative  
20 transactions?

21 A I did not use that phrase, sir. I used the phrase  
22 of, I believe, fraud.

23 MR. RICHARD: I have no further questions.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION

1 BY MR. TWOMEY:

2 Q Doctor Lissack, notwithstanding the questions of --  
3 first of all, let me understand your response completely to Mr.  
4 Richard's questions. Is it your testimony that you voluntarily  
5 approached the federal government to serve as a witness for  
6 them to report behavior that you knew of that they weren't  
7 aware of at the time?

8 A Absolutely.

9 Q And is it your testimony that notwithstanding that,  
10 your view on the ability of this deal to be unwound and for the  
11 parties to be brought back to the status quo and made whole  
12 remains the same?

13 A Absolutely.

14 MR. TWOMEY: Thank you, sir.

15 THE COURT: May the doctor be excused? You may be  
16 excused and remain in the courtroom, sir. All right, next  
17 witness. Any further witnesses on behalf of the intervenors?  
18 Anymore on behalf of the Plaintiff?

19 MR. McLEAN: Your Honor, I don't know whether we will  
20 have rebuttal witnesses or not, but not at this point.

21 THE COURT: All right. Mr. Richard, are you ready to  
22 proceed, sir?

23 MR. RICHARD: Yes. I call Donnie Crandell. Your  
24 Honor, I am going to be referring -- this is not as bad as it  
25 looks -- do you want to swear the witness in?



1 THE COURT: Let's swear the witness in.

2 (Witness sworn.)

3 THE COURT: Please be seated.

4 MR. RICHARD: Your Honor, if I might approach the  
5 bench. I am going to refer to a series of exhibits, and to  
6 simplify matters I have bound them together and tabbed them.  
7 And I have provided a copy to Mr. McLean. I suspect that there  
8 will not be objection to these. Most of them have already been  
9 in the hands of the parties, and I'm not going to spend a lot  
10 of time on any of them.

11 Thereupon,

12 DONNIE CRANDELL

13 was called as a witness on behalf of Florida Water Services  
14 Corporation, and having first been duly sworn, was examined and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. RICHARD:

18 Q Mr. Crandell, what is your occupation?

19 A I am the president and CEO of Florida Water Services  
20 Corporation.

21 THE COURT: Let me do this. May I get your name  
22 again, sir?

23 THE WITNESS: Donnie Crandell, C-R-A-N-D-E-L-L.

24 THE COURT: Thank you, sir.

25 BY MR. RICHARD:

1 Q You are president and chief executive office of  
2 Florida Water Services Corporation?

3 A Correct.

4 Q And that is the current owner of the facility at  
5 issue here?

6 A Yes, it is.

7 Q And it is a private corporation?

8 A Yes, it is.

9 Q Where is it organized?

10 A It is organized in the State of Florida.

11 Q And what connection does it have to Allete?

12 A Allete, which is the successor name to Minnesota  
13 Power and Light, which is a New York Stock Exchange listed  
14 public utility, is the controlling shareholder of Florida Water  
15 Services Corporation.

16 Q Do you have a position with Allete?

17 A Yes, I do.

18 Q Is Allete authorized to do business in the State of  
19 Florida?

20 A No, it is not.

21 Q But it is authorized to do business through a  
22 subsidiary, the Florida Water Services Corporation?

23 A Yes, it is.

24 Q And how long has Allete been in the business of  
25 managing that authority in the State of Florida?

1           A     It owned the predecessor company, which was Southern  
2 States Utility, since 1984. So we have been in the business  
3 for about two decades.

4           Q     And how long has Allete through this or other  
5 subsidiaries been in businesses of this type throughout the  
6 United States?

7           A     Allete itself is about an 80-year-old corporation.  
8 It operates Superior Water and Light Company in Northern  
9 Wisconsin for the last 70 to 80 years.

10          Q     Has Allete ever been found by the Florida Public  
11 Service Commission or any regulatory agency to have abandoned  
12 its obligations in a state and left a shell corporation?

13          A     No, it has not.

14          Q     Would you tell the court briefly the history of the  
15 Florida Water Services Corporation in terms of the development  
16 of the facilities that are at issue in this case. When did the  
17 company come in, when did it begin to acquire them, how did it  
18 do so?

19          A     Yes. Briefly, I will try to characterize. Minnesota  
20 Power and Light, now Allete, acquired Southern States Utilities  
21 in 1984 as part of a conglomerate acquisition. It looked at  
22 the Florida market, at the 800 or so privately held water and  
23 wastewater utilities that were scattered around the state and  
24 determined that a program of investment consolidation in the  
25 industry particularly from real estate developers who were the

1 predominant original constructors of these systems would be a  
2 good business practice.

3           Being regulated and understanding monopoly  
4 responsibilities, we endeavored over really the first 15 years  
5 of our ownership to acquire through a series of about two  
6 dozens acquisitions an extensive network of water and  
7 wastewater treatment plants, which now total over 150, I guess,  
8 spread across 26 counties in Florida from the northeast area of  
9 Amelia all the way down to Marco Island, and situated in about  
10 eight municipalities. The customer base was grown from about  
11 8,000 connections in 1984 to a little over 250,000 connections.  
12 Our plants were about a dozen, and we have basically ten-folded  
13 that with 150 plus.

14           So we have substantially increased the breadth and  
15 scope of our holdings, and at the same time we have  
16 professionalized and actually integrated from a managerial  
17 standpoint the running of this utility. We have actually taken  
18 a lot of disparate, I guess, developer-owned systems and have  
19 put them into truly a statewide network that is centrally  
20 managed and controlled. Again, under the auspices and  
21 regulation of the various utility commissions both in the  
22 counties as well as the Florida Public Service Commission.

23           Q     How many employees approximately does the company  
24 have?

25           A     Approximately 500.

1 Q There came a point in time when the --

2 MR. RICHARD: And, Your Honor, I will refer to the  
3 Florida Water Services Corporation for purposes of simplicity  
4 as the Corporation, and I will refer to the other body as the  
5 Authority throughout this hearing.

6 BY MR. RICHARD:

7 Q Mr. Crandell, there came a point in time at which the  
8 Corporation decided to sell this facility, is that correct?

9 A That is correct.

10 Q When was that decision made?

11 A That decision was made in the summer of 2001.

12 Q And what were the reasons for the decision?

13 A There were two primary reasons. Capital will  
14 typically go where it is treated well. And, we, as a regulated  
15 entity, saw the writing on the wall with respect to the many  
16 regulatory agencies that we were dealing with, many of whom  
17 really wanted to own the particular facilities that they were  
18 regulating, point one. And, point two, in Florida, unlike the  
19 Mid-Atlantic states, the northeast, and indeed in Europe, there  
20 is a trend towards government ownership of water and wastewater  
21 essential utilities as opposed to investor-owned or privately  
22 held.

23 And so our view was that we were not going to be able  
24 to grow that segment of our total Allete holdings at any  
25 increasing rate. And since that was the case, our parent

1 company was actually growing in size as our water business was  
2 really flattening out. So that the contributions to our  
3 publicly held shareholders were driven down to less than 6 or 7  
4 percent of the total income, so we decided effectively to  
5 monetize and cash out of our investment in that particular  
6 operation and put the money into other corporate purposes where  
7 there was better growth opportunities.

8 Q After the decision was made to sell, did there not  
9 come a time when the corporation entered into negotiations with  
10 the Florida Government Utilities Authority, FGUA for short?

11 A Yes, it did.

12 Q And what was it that the FGUA was seeking to acquire?

13 A The FGUA, which is an interlocal entity established  
14 under Florida Statute 163 that had also been passed by the  
15 Legislature in Florida I think in about 1997 for the sole  
16 purpose of acquiring multi-jurisdictional utilities like  
17 ourselves, approached us as a potential seller now that we had  
18 made that announcement to exclusively negotiate the purchase of  
19 our entire network under that Authority's structure. So we  
20 entered into an exclusive arrangement with that Authority for a  
21 period from September 2001 to effectively May 2002, in which  
22 time we allowed representatives of the Authority to conduct due  
23 diligence, to promulgate various financial models, and so on  
24 and so forth in regards to the purchase of our network.

25 Q Do you recall what the membership was that that

1 Authority comprised?

2 A If my memory serves me correctly, it was about three  
3 counties, Polk, I'm not sure whether Nassau was in it at the  
4 time or not, and Citrus. There were three county  
5 representatives that made up that Authority.

6 Q During the course of these negotiations did they  
7 continue to offer to acquire all of the facilities together?

8 A No, the transaction devolved over time. Our original  
9 standards were we wanted to sell the entire network in its  
10 entirety, maintain the work force -- we have a number of  
11 stakeholders; employees, obviously there are shareholders, and  
12 certainly the ratepayers throughout the entire network. And  
13 our criteria for exclusivity with that authority was that they  
14 would take the whole package. As that Authority continued to  
15 get interference from -- some of the very plaintiffs that are  
16 involved in this particular case got to arguing with that  
17 Authority as to their price allocations, what the value of  
18 their particular systems were, the transaction devolved where  
19 the GUA was only proposing to buy a portion of our system  
20 leaving certain stranded assets with the seller.

21 Further, instead of maintaining the entire work force  
22 decided to slash in their pro forma budget basically operating  
23 expenses and to subcontract out both operations and  
24 administrative duties to other folks, including subsets of some  
25 professionals that were working on that transaction on behalf

1 of the FGUA.

2 So in the end it was not a satisfactory transaction  
3 from the seller's standpoint, and we would potentially be left  
4 with stranded assets and certainly no reasonable way to fulfill  
5 our responsibilities in running those stranded assets.

6 Q Well, whether it be to the FGUA or to individual  
7 cities or counties, why would it not be beneficial either to  
8 the corporation or to the customers to sell these facilities  
9 piecemeal? In other words, sell facilities to each of the  
10 cities or counties in which the customers exist?

11 A Mr. Richard, we did consider that as an option before  
12 signing up the exclusivity arrangement with the FGUA. We knew  
13 we had a market for a number of the large urban systems. When  
14 we started acquiring these networks they were predominately  
15 rural networks. In other words, the real estate developers  
16 would make large investments in planned residential communities  
17 such as the Deltona Corporation, ITT Community Development, the  
18 Punta Gorda Isle system, Gulfstream Land and Development.  
19 These were large publicly held developers that did a lot of  
20 what I would define as rural retirement type developments.

21 So when we entered this market effectively we didn't  
22 really have the population concentration or the  
23 municipalization that we see now as Florida continues to grow.  
24 So, the target -- the most attractive of our assets only  
25 constitute a very small proportion of our network. And only



1 seven or, say, ten of the systems are really large enough and  
2 economically viable enough on a stand-alone basis to be really  
3 attractive acquisition targets for the various municipal and  
4 county governments. The rest of the network, which range in  
5 size from six customers to 100 to 500 scattered all throughout  
6 the more rural counties, would be really left with no market.  
7 So we decided that that was really not the route to pursue, of  
8 breakup of the network.

9 A secondary consideration was really the cost of  
10 service to this stranded customer. In other words, we are a  
11 fully integrated managerially centralized company. Even though  
12 we have distributed throughout the state physical facilities  
13 and plant and a workforce that really operates and take care of  
14 the customers in those facilities, we do have a very large  
15 centralized component of engineers, environmental scientists,  
16 permitting experts, legal staff, customer billing, that  
17 effectively serve the entire network across the state.

18 And so on a per cost per unit basis it is much  
19 cheaper in the delivery of service both to the large systems  
20 and to the small systems by having that kind of scheme. Any  
21 transaction that broke the system up would necessarily cause  
22 either an erosion in service to the residual stranded customers  
23 or a commensurate increase in the cost to deliver the same  
24 kinds of service that we are now providing.

25 Q At the time that you commenced the negotiations with

1 the Authority for sale of this facility, were you aware of the  
2 fact that the Public Service Commission had previously approved  
3 as a matter of right a transfer to the FGUA of similar  
4 facilities?

5 A Yes, sir.

6 Q Did you rely upon the -- was that consistent to your  
7 knowledge with the PSC's history of handling these types of  
8 transactions?

9 A It was very consistent. And obviously being an  
10 acquirer of utilities, we were being competed against by lots  
11 of other units of government along Florida, and really it is  
12 not a level playing field. The other units of government that  
13 would acquire from other residential developers these systems  
14 would typically buy them and really be relieved of Public  
15 Service Commission regulation, and their approval process was a  
16 matter of right. Anytime we were lucky enough to purchase one  
17 we had to go through the public interest standard and go  
18 through the entire application process to make sure that our  
19 acquisition of that would be in the public interest of the  
20 customers who were served.

21 So we have relied on a long record in Florida of what  
22 I would define as governmental purchases from the private  
23 sector and how the Public Service Commission treated those  
24 transactions. And we certainly relied on that in our going  
25 forward efforts with both the FGUA, which failed, as well as

1 the Florida Water Services Authority.

2 Q Now, are you able to estimate for us the amount of  
3 money that the service corporation has spent in connection with  
4 bringing to reality the transfer to this Authority in reliance  
5 upon that past treatment by the PSC?

6 A On a cash basis --

7 MR. McLEAN: Pardon me, may I object. Judge, I  
8 thought the issue that you reserved for this hearing was  
9 whether our order was issued in connection with the impairment  
10 of a utility's operation of service. Essentially our key to  
11 the courthouse to get an injunction. This is really far  
12 afield, in my opinion, and thus I object as it being  
13 irrelevant.

14 THE COURT: I am going to overrule the objection. I  
15 am going to allow a little leeway here. There is no jury, and  
16 I know what I need to do to make my decision.

17 THE WITNESS: Could you repeat the question.

18 BY MR. RICHARD:

19 Q The question was could you estimate how much money  
20 the Corporation has spent in an effort to bring this  
21 transaction to this Authority about in reliance upon the past  
22 treatment of the PSC of similar transactions?

23 A Yes. Project to date approximately on a cash basis  
24 about \$6 million, accrued to date on a project basis about \$8  
25 million. So we have left unpaid about \$2 million.

1 Q Let me ask you to look at the booklet that you now  
2 have your hands on and turn to Tab 1. And tell me if you can  
3 identify that as the contract as of December 20th, 2002,  
4 between the corporation and the authority?

5 A Yes, it is.

6 Q Now, if you will turn to Tab 2, please. The document  
7 entitled, First Amendment to Asset Purchase Agreement. Look at  
8 that document and tell me if you can identify that as being  
9 what it purports to be, the first amendment to the document you  
10 have just previously identified?

11 A Yes, it is.

12 Q And tell us please what the purpose of this amendment  
13 was?

14 A Well, there were some allegations that the authority  
15 in its enabling activities and public hearings and in formation  
16 in its initial, I think, September 19th public hearing whereby  
17 it did approve the purchase agreement, acquisition agreement  
18 for Florida Water Service Corporation assets had not done so  
19 properly. And so in order to cure the perceived or alleged  
20 deficiencies, they held an additional public hearing in  
21 Orlando. So the Corporation effectively allowed the Authority  
22 to exit or terminate that agreement if as a result of that  
23 public hearing the acquisition was determined by that board as  
24 not being in the public interest without penalty, so on and so  
25 forth. So we let the Authority out of its contract with this

1 amendment.

2 Q If you will turn to Tab 3, please. It is a document,  
3 Exhibit 3, which is titled First Amendment and Restatement of  
4 Asset Purchase Agreement. Look at that and tell me whether you  
5 can identify that as a document that, in fact, was executed by  
6 the Corporation and the Authority for the purpose of amending  
7 Exhibit 1?

8 A Yes, it is.

9 Q And would you tell the court, please, what the  
10 purpose of that amendment was?

11 A Yes. In early February, the Public Service  
12 Commission had an agenda conference where they were complaining  
13 about lots of stuff. I think Mr. Hill testified about that  
14 earlier. One of which was the language that was in our asset  
15 purchase agreement amendment with the Authority concerning  
16 contingencies and statements that they would like to have  
17 extracted, and so we accommodated the Commission's concerns by  
18 amending the agreement as the proviso of it occurs now in their  
19 existing rules.

20 Q And the amended paragraph is 10.12?

21 A Yes, sir.

22 Q And that is the one that reads, "The sale and  
23 transfer of the assets pursuant to this agreement is contingent  
24 upon approval by the Florida Public Service Commission and  
25 other applicable county regulatory agencies"?

1 A Yes, sir.

2 Q And that is in the current agreement, is that  
3 correct?

4 A Yes, it is.

5 Q Are you familiar with Public Service Commission Rule  
6 25-30.0374, which is the rule that lays out the documents or  
7 the information to be submitted to the PSC on an application  
8 for transfer by a private entity to a governmental authority?

9 A I am generally familiar with that rule.

10 Q And are you aware of the fact that the service  
11 corporation submitted all of that information to the Public  
12 Service Commission along with its application?

13 A With the assistance of our legal counsel we did that,  
14 yes.

15 Q I would like to discuss with you for a moment the  
16 impact of the current transaction, or the structure of the  
17 current transaction with respect to future rates or rate  
18 increases. Was consideration given in the structuring of this  
19 transaction to that issue whether or not rates would have to be  
20 raised?

21 A Yes, it was.

22 Q And explain to the court, please, the manner in which  
23 it was structured in order to affect or not affect future  
24 rates?

25 A Well, in simple terms, we produced an economic or

1 financial model that had really one fixed variable, and that  
2 was current customer consumption rates. And we changed other  
3 variables, including the operation and maintenance costs that  
4 our company had experienced and thought going forward would be  
5 spent on the customer base. We changed expected administrative  
6 and general expenses going forward to reflect, again, no budget  
7 cuts and certainly the same work force and level of service  
8 going forward with the new owner.

9           And then we further projected additional capital  
10 needs that the system through the due diligence and engineering  
11 determinations that had been made to accommodate additional  
12 capital over and above what the corporation on an average per  
13 year spends as well as anticipated financing costs and interest  
14 rates to promulgate a model that said we have certain levels of  
15 cash flow going forward from this enterprise.

16           We then back-solved from the fixed variable of steady  
17 customer consumption rates to determine what the value of the  
18 system was in terms of the seller's price that he was going to  
19 receive, our corporation would receive from this transaction.  
20 That methodology which was really a production of a revenue  
21 bond fully serviced with debt, a level of debt payments,  
22 interest payments over a three-year term, is consistent with  
23 the majority of revenue transactions that are put together by  
24 municipalities or by units of government when they either buy  
25 these types of systems or when they expand these types of

1 systems. So in terms of our working with the Authority and our  
2 financial advisors, we tried to structure a transaction that  
3 would be very neutral to the ratepaying customer base at its  
4 inception.

5 Q Now, the financing of these bonds was based upon  
6 certain estimates as to the revenue and the increased usage by  
7 the Authority, correct?

8 A That is correct.

9 Q Was anything done to ensure that if the estimates  
10 were insufficient, if, in fact, there was a shortfall either in  
11 new customers or in revenue that the rates would not have to be  
12 increased?

13 A Yes. And there is a two-part answer to that. The  
14 company is a longstanding company and certainly knows from its  
15 operating history what we can expect year-to-year in customer  
16 growth, our expense streams, and what our revenue streams were.  
17 So we were very conservative in our projections as to what  
18 those growth amounts would be. So, in effect, in producing our  
19 economic models and our financing models we had the growth of  
20 new customers to be expected year-to-year, and we doubled what  
21 we had experienced in operating and maintenance expenses. So  
22 in producing the model we were very conservative.

23 Since we feel very comfortable as a seller that we  
24 are going to be able to achieve that, and the new Authority  
25 being not in that business yet was very uncomfortable in just



1 taking cart blanche our experiences as the basis for that  
2 model. We have guaranteed the top line from customer  
3 collections to the authority for a three-year period. The  
4 seller feels it is not taking a lot of risk in doing that  
5 insofar as we have very, very conservative assumptions in  
6 amounts.

7 Q Let meet see if I understand what you are saying.  
8 Are you saying that under this agreement if there is a  
9 shortfall of the estimates of the revenue to finance the bonds  
10 that the seller has agreed to guarantee the difference?

11 A The seller is guaranteeing the top line of consumer  
12 revenues to come to the system. How the Authority spends those  
13 monies, whether it be for O&M expenses, administrative  
14 expenses, debt service is still up to the Authority. We are  
15 not really telling the Authority how they spend those monies,  
16 we are guaranteeing the top line from consumer collections.

17 Q Well, the point I want to make clear is you are  
18 guaranteeing that the amount of revenue that was estimated as a  
19 basis for what it would take to secure the bonds without having  
20 to raise rates will be up to that estimate, correct?

21 A Yes, sir.

22 Q If it is below that estimate, the corporation is  
23 obligated to pay it to the Authority?

24 A Yes, sir.

25 Q Now, was there anything else that the corporation

1 committed itself to do with respect to the cost of maintenance  
2 and rehabilitation of this facility?

3 A Well, as part of our economic model, the corporation  
4 typically spends just north of \$20 million; 21, 22, \$23 million  
5 a year in both new facility construction as well as repair and  
6 rehabilitation. What we call capital expenditures. Through  
7 working with the Authority's engineers and our consultants, we  
8 have upped that number to not necessarily a levelized, but to  
9 accommodate about a \$30 million a year number, which is  
10 substantially larger than the company has historically  
11 expended.

12 And then we have also given the Authority the  
13 opportunity to have a trust fund set up, not necessarily a  
14 trust fund, but a fund set up if they experience additional  
15 capital expenditures needs it will come out of additional  
16 proceeds that are still owed to us. We are not collecting the  
17 entire purchase price at closing.

18 We are doing effectively a terms transaction where we  
19 are taking approximately \$420 million of the \$510 million bond  
20 issue as the initial down payment, so to speak. We are leaving  
21 \$36 million of a progress payment and a debt service reserve  
22 fund for a minimum of three years or until such time as it can  
23 be substituted by a surety or until such time as we can get  
24 insurance. We are further leaving with the authority for a  
25 period of up to six to eight years an additional \$36 million in

1 contingent future payments that have the ability to be offset  
2 if we have additional capital rehabilitation needs that are  
3 discovered post closing that the authority will need to dip  
4 into to fix something that we didn't discover before the  
5 closing occurred.

6           So we feel as the seller that we have given this  
7 Authority a wide latitude in really starting off on the right  
8 foot to make sure there is not an impairment of service and  
9 certainly sufficient funds there that are not being taken away  
10 to the parent corporation, that are being left with the  
11 Authority here in Florida to offset undiscovered problems.

12           Q     Now, is it also true that the deferred payments that  
13 the Authority is responsible for are available as a setoff  
14 should the Corporation default on its guarantee obligations?

15           A     Yes. And as typical with any sophisticated  
16 transaction, there are lots of representations and warranties  
17 as a condition of the assets, environmental matters, and so on  
18 and so forth. So as a offset to failures in these reps and  
19 warranties, post closing discoveries of problems, the seller  
20 has agreed to allow the buyer, which is the Authority, to  
21 offset from future payments those amounts. So we feel there is  
22 a lot of protections built in for the new public entity to be  
23 able to get the system to continue to run effectively.

24           Q     With regard to management, or workforce, or  
25 technology, or any other factors, is there anything else that

1 you can testify to that was done in order to avoid any  
2 impairment of operations or service as a result of this  
3 transaction?

4 A Well, unlike the other types of opportunities or  
5 options we had in disposing of this widespread asset, we wanted  
6 to keep the workforce intact and together. So the corporation  
7 has guaranteed that if the workforce would stay in place that  
8 out of seller proceeds we would give each of the employees that  
9 still remained employed with us a retention bonus. We tried to  
10 buy the loyalty of the 500 or so folks that are now scattered  
11 throughout the network with a bonus coming from the proceeds if  
12 they stay.

13 We have further made a requirement of the Authority,  
14 and really it was a contra-requirement, they certainly didn't  
15 want to go out and hire new operators and new engineers. It  
16 was also a requirement of the Authority that our entire  
17 executive management structure and all of our employees be  
18 transferred person-to-person to the Authority's ownership. Not  
19 ownership, but under the Authority's employment. So as part of  
20 this contract we have requirements for executive and management  
21 duties to be assumed by employment contracts for the existing  
22 workforce. So everybody in that company has the opportunity to  
23 stay in place with the exception of myself.

24 Q In the development of this contract, was there ever  
25 any consideration by the Corporation of structuring it in order

1 to avoid rate regulation by the State of Florida?

2 A Absolutely not.

3 Q Was there always a recognition of the fact that the  
4 Florida Legislature had the authority to place the Authority  
5 under the Public Service Commission or other regulatory body?

6 A Yes, there was.

7 Q In fact, to your knowledge were any offers made to  
8 discuss with the municipalities or counties involved the  
9 possibility of local rate regulation?

10 A It is my understanding there were offers made.

11 Q Let me ask you to look under Tab 4 of the booklet you  
12 have before you. This is a letter dated September 27th, 2002,  
13 to Kenneth Hoffman from Tim Devlin of the Public Service  
14 Commission, and it shows that you were copied. Do you recall  
15 receiving a copy of this letter?

16 A Yes, I do.

17 Q And do you recall receiving it on or about September  
18 27th, 2002?

19 A Yes, sir, on or about.

20 Q And do you recall that this letter acknowledges that  
21 pursuant to Section 367.0714(a) of the Florida Statutes that  
22 the Commission must approve as a matter of right the sale to a  
23 governmental authority?

24 A Yes, sir, it so states.

25 Q Did you rely upon that letter in the course of

1 proceeding with these discussions with the Authority?

2 A Yes, sir, we did.

3 Q Let me ask you to look under Tab 5, please. This is  
4 a letter dated October 4th, 2002, to Mr. Devlin from Mr.  
5 Hoffman, and you are shown as copied to this letter. Do you  
6 recall receiving it?

7 A Yes, I do.

8 Q And this letter enclosed a copy of the interlocal  
9 agreement, did it not?

10 A Yes, it did.

11 Q Please look under Tab 6. This is a November 12th,  
12 2002, letter to Mr. Devlin from Mr. Hoffman. Do you recall --  
13 you are shown as having received a copy, do you recall  
14 receiving it on or about the date shown?

15 A Yes, I do. And I might have participated in some of  
16 the answers with Mr. Hoffman.

17 Q Actually, I see that you are not shown, but you did  
18 receive a copy?

19 A Yes.

20 Q Now, this letter responds to a series of PSC  
21 questions, does it not?

22 A Yes, it does.

23 Q And it encloses a copy of an asset purchase  
24 agreement?

25 A Yes, it does.

1 Q And it informs the Public Service Commission in  
2 November of 2002 of the intention at that time of the  
3 Corporation and the Authority to close on December 15th, 2002,  
4 does it not?

5 A Yes, it does.

6 Q After this letter was sent, did you ever receive any  
7 indication from the Public Service Commission that it was going  
8 to object to the closure of this sale?

9 A No, we did not.

10 Q Did you ever receive any indication from them that  
11 they intended to order that the closure not take place until  
12 after their approval?

13 A Certainly not.

14 Q Let me ask you to turn to Tab 7, please. I'm sorry,  
15 Tab 7 is not for you.

16 MR. RICHARD: I have no further questions of this  
17 witness.

18 THE COURT: Mr. McLean.

19 CROSS EXAMINATION

20 BY MR. McLEAN:

21 Q How do you do, sir? Just a couple of questions.  
22 Respecting the Commission order, did you or your organization  
23 through its lawyers appeal that order, the Commission order?

24 A No, we have not appealed that order.

25 Q With respect to Tab 3, you testified briefly about

1 the new contingency clause?

2 A Yes, sir.

3 Q Has that clause ever been presented to the Public  
4 Service Commission as it is now written?

5 A I cannot say yes or no to that, I don't know.

6 Q Do you know whether the Commission order determined  
7 that the contingency clause that was presented to it was  
8 inadequate?

9 A I do not know.

10 Q You referred to a long line of cases upon which you  
11 relied, and I believe the question fairly was transferred to  
12 governmental authorities, is that correct?

13 A Yes, sir.

14 Q How many of those governmental authorities were  
15 Chapter 163 entities such as yours, do you know?

16 A I only personally know of one, which was the FGUA,  
17 the Avitar transaction.

18 Q Are you saying that there are no others or that you  
19 simply do not know of others?

20 A I do not know of others.

21 Q The transfer application that your organization did  
22 submit to the Public Service Commission, was it an application  
23 typical to a transfer which takes place as a matter of right or  
24 one which takes place and invites essentially a Commission  
25 inquiry into whether it meets the public interest?



1 A It was the former.

2 Q Sir?

3 A It was the former.

4 Q Do you know which of the two was ordered by the  
5 Public Service Commission?

6 A No, I do not.

7 Q The gist I got of your testimony was that there was  
8 some hold-back from the -- there will be some hold-back from  
9 the transfer which you will use to make the Authority whole if  
10 for some reason there are things which are out of order or  
11 something like that. Is that a fair assessment?

12 A That is a fair assessment.

13 Q What is going to be the situs of that hold-back,  
14 where will it be?

15 A It will be with the Authority. They retain the funds  
16 really through about a six to eight-year period from the  
17 transaction and their own cash flows. The situs of the  
18 original money is with the Authority.

19 Q Are you aware that there is a stipulation in this  
20 case that says that the Public Service Commission has no  
21 jurisdiction and makes no claim to jurisdiction over that  
22 Authority?

23 A Could you restate that?

24 Q Yes, sir. Are you aware that there is a stipulation  
25 among the parties that says that the Public Service Commission

1 exercises no jurisdiction over the Authority?

2 A I wasn't aware of that, no.

3 Q Well, do you have a theory as to how, if in the event  
4 the Authority defaults in some way and doesn't make the repairs  
5 and sends you the money without making the repairs of upgrades  
6 and so forth, is there a remedy for the Public Service  
7 Commission in that scenario?

8 A I think not under the statutory structure that we  
9 live upon in Florida where the PSC really doesn't have  
10 regulatory authority over municipal or other government-owned  
11 utilities.

12 Q So the wide latitude that you referred to is one  
13 which the Public Service Commission can't really enforce?

14 A Correct.

15 Q I want to ask you one last question here, and I have  
16 to -- it is true you mentioned Southern States and then Florida  
17 Water Services Corporation?

18 A Yes.

19 Q That is the regulated utility under Florida Statutes,  
20 isn't it?

21 A About 60 percent of our systems fall under the Public  
22 Service Commission jurisdiction, yes.

23 Q Good point. With respect to the Public Service  
24 Commission's jurisdiction, you are the utility, is that  
25 correct?

1 A Yes.

2 Q And I want to read a definition to you, and ask if  
3 that answer would still be the case. Quoting from Chapter  
4 367.021, a utility means a water or wastewater utility except  
5 as provided in 367.022, and those are the exemptions. It  
6 includes every person, lessee, trustee, or receiver owning,  
7 operating, managing, or controlling the system, or proposing  
8 construction of a system who has provided, proposes to provide  
9 water or wastewater service to the public for compensation.  
10 That is the utility that you are and the reason you are subject  
11 to jurisdiction today, is that correct?

12 A Correct.

13 Q Now, when this transfer takes place, will that  
14 utility continue to provide service in the State of Florida?

15 A That utility will not. Its assets will be conveyed  
16 to the government-owned entity.

17 Q If I characterize that as a total impairment of  
18 service, would you agree with me?

19 A No.

20 Q Are you going to continue to provide the service?  
21 You just said you were not.

22 A The Corporation is selling its assets in a business  
23 transaction.

24 Q So is the utility impaired? I agree with you that  
25 the service may continue, but I want to know if the utility

1 known as Florida Water Services Corporation, if its services  
2 will be entirely impaired as they are provided now by that  
3 corporation?

4 A The Corporation will have no assets to provide  
5 service.

6 Q So that would be a yes?

7 A That would be the Corporation has no assets to  
8 provide such service. I am not going to agree with your  
9 supposition that it is an impairment. The customers are immune  
10 to the impairment. They are going to get the same service one  
11 day that they are getting the next.

12 Q But you're not going to do it anymore?

13 A I'm not the owner.

14 Q Correct. And that is my very point. Isn't that a  
15 total impairment?

16 A No, it's not, not in my mind.

17 Q Are you going to continue to provide the service?

18 A No, we are exiting the state.

19 MR. McLEAN: Thank you, sir.

20 THE COURT: An intervenor has some questions?

21 MR. TWOMEY: Yes, sir. I will try to be as brief as  
22 possible.

23 CROSS EXAMINATION

24 BY MR. TWOMEY:

25 Q Good afternoon, sir. Mr. Crandell, you told Mr.

1 Richard, did you not, that under the deal if it is closed with  
2 the Authority you will have the same customers, the same  
3 utility workers, the same management, is that correct?

4 A That is correct.

5 Q Okay, sir. One difference will you not agree will be  
6 the total lack of accountable regulation for the authority, do  
7 you agree?

8 A Consistent with state statutes that exist now, yes, I  
9 would agree.

10 Q Okay, sir. You testified to Mr. Richard that one of  
11 the concerns that you had in your corporation, if I heard you  
12 correctly, was that you wanted to keep the systems together for  
13 the benefit of the customers, among other reasons, is that  
14 correct?

15 A That is correct.

16 Q To enjoy the economies of scale and things of that  
17 nature?

18 A That is correct.

19 Q Okay, sir. Now, isn't it true, Mr. Crandell, that  
20 that same result, that is the intactness of the systems would  
21 be maintained if you sold to an investor-owned utility?

22 A On the hypothetical that an investor-owned utility  
23 would come to this regulatory environment, yes. It would  
24 probably just be a hypothetical answer.

25 Q Okay, sir. Now, if there was such a purchase by a

1 investor-owned utility as opposed to a government of any kind  
2 the regulation would be maintained as currently for your system  
3 either at the PSC or by county regulation, is that correct?

4 A Yes.

5 Q Okay. Now, you had offers for your system, or your  
6 utility, did you not, from a number of investor-owned  
7 utilities?

8 A We had proposals, not offers.

9 Q Okay, sir. Why did you reject those offers as  
10 opposed to initially dealing with the FGUA and then  
11 subsequently with the Authority?

12 A There were too many contingencies with respect to  
13 local and governmental approvals and comfort that they would be  
14 able to actually acquire those assets. Long lead times to  
15 execute the transactions, and differences in evaluation and  
16 indemnity matters.

17 Q Okay, sir. With respect to the valuation issues, is  
18 it not true that the offers you obtained or the proposals that  
19 were made to you by the investor-owned utilities were  
20 substantially less in their amount than either the offers made  
21 by the FGUA or the Authority.

22 MR. RICHARD: Your Honor, I'm going to object to  
23 this. I realize that there is leeway, and I am not objecting  
24 to it here, but we are not here to determine whether one offer  
25 was better than another. And I think that is so far afield as

1 to be irrelevant.

2 THE COURT: Yes, sir. I don't see the relevancy here  
3 on our issues here. I mean, it might be an important matter to  
4 be done at some point in time to somebody, but I don't see --

5 MR. TWOMEY: The only reason I was trying to bring it  
6 in is that as Mr. McLean tried to observe, and you cautioned  
7 that it is the court listening, not a jury, Mr. Richard's cross  
8 or his direct was somewhat far afield of the original goal.  
9 And I just wanted to try and show Your Honor that they had  
10 other offers that could get -- maintain the goals they had  
11 while at the same time keeping the regulation --

12 THE COURT: I am going to sustain the objection.

13 MR. TWOMEY: Okay, sir. I will move on.

14 BY MR. TWOMEY:

15 Q Mr. Richard asked you specifically, I think, or in  
16 response to one of his questions you said that you wanted to  
17 cash out your investments?

18 A Yes.

19 Q Isn't it true that when you cash out by sale to  
20 the -- the proposed sale either to the FGUA or the current  
21 proposal to the authority, Mr. Crandell, that you are able to  
22 cash out effectively customer-contributed property that you  
23 otherwise probably wouldn't get from an investor-owned utility?

24 A That is probably correct.

25 Q And isn't it true, Mr. Crandell, that your current

1 regulated rate base within the counties and the state is about  
2 \$250 million?

3 A However that is germane to this case, yes.

4 Q And isn't it equally true that the  
5 customer-contributed property that I just asked you about, that  
6 I think you conceded you might be able to get more of through  
7 this deal than an investor-owned sale, isn't it true that that  
8 amount is in excess of \$150 million?

9 A Give or take.

10 Q Okay, sir. Do you know the exact amount?

11 A No.

12 Q Okay. Now, in response to questions by Mr. Richard,  
13 you mentioned that the precedent of the FGUA/Avatar deal is  
14 leading you, as I understood it, to feel confident that this  
15 deal would be approved as a matter of right?

16 A Yes.

17 Q Isn't it true, if you know, Mr. Crandell, that the  
18 FGUA/Avatar deal at the Public Service Commission was not  
19 challenged by any customers, or any county or city governments?

20 A It was challenged in the courts by the City of Fort  
21 Myers Beach as I recall. I'm not sure about the regulatory --

22 Q I meant at the PSC. Do you know?

23 A I don't think it was challenged.

24 Q Are you aware, Mr. Crandell, that during the  
25 FGUA/Avatar deal that the FGUA took pains to receive the



1 consents of the governments. In fact, all of the governments  
2 in which the service areas were located?

3 A I have no knowledge of that.

4 Q How many consents in the instant authority deal, Mr.  
5 Crandell, did the authority or Florida Water Services  
6 Corporation attempt to obtain, that is the affected service  
7 areas, before announcing the sales contract?

8 A None that I am aware of.

9 MR. TWOMEY: That's all I have, Your Honor. Thank  
10 you.

11 THE COURT: Mr. Jacobs.

12 MR. JACOBS: May it please the court.

13 CROSS EXAMINATION

14 BY MR. JACOBS:

15 Q Good afternoon, Mr. Crandell. I was going to good  
16 morning awhile ago, but it is now afternoon so I will try to do  
17 that appropriately.

18 How many customers do you have in the State of  
19 Florida?

20 A 250,000.

21 Q And what is your total revenues per year?

22 A From customer billing, I think in 2002 year ending  
23 about \$94 million, from various connection fees, another 17 to  
24 \$18 million.

25 Q How many customers of your 250,000 live in the towns

1 of Milton or Gulf Breeze?

2 A Right now, zero.

3 Q Isn't it true that the closest utility that you own  
4 to the towns of Milton and Gulf Breeze is 100 miles?

5 A In Washington County, yes.

6 Q And isn't it true that the next closest utility that  
7 you own to the towns of Milton and Gulf Breeze is 300 miles?

8 A I haven't done that --

9 Q That would be Marion County?

10 A If you say so, it is 300.

11 Q All right, sir. You have a deal here, a proposed  
12 deal between you and this authority created by these two towns.  
13 Now, if that deal is breached between you and the authority, do  
14 any of the customers have a right to enforce the deal that you  
15 have?

16 A Restate that.

17 Q In other words you have a lot of promises that are --

18 MR. RICHARD: Your Honor, he is asking this witness  
19 to address a legal question regarding third-party  
20 beneficiaries. He hasn't established that this witness has the  
21 foundation.

22 THE COURT: Mr. Jacobs, I think I will have to agree  
23 and sustain that objection.

24 MR. JACOBS: Let me ask it this way.

25 BY MR. JACOBS:

1 Q Have you made a provision in your agreement between  
2 you and this authority that there is an opportunity for  
3 customers to intervene in any of the breaches of the contract?

4 A I have not made that provision in the contract we  
5 have got with the Authority, no.

6 Q All right, sir. You say that you have frozen the  
7 rates for three years or some period of time. What if the  
8 Authority decides to raise the rates, what is the customers'  
9 recourse? Say my customers located over in Nassau County.

10 A I think he has got recourse with the Authority Board  
11 of public-minded citizens. It is a closed system. There is no  
12 really goals for the Authority Board other than continue to  
13 provide the public service. Secondly, they have the circuit  
14 court system they can go through and protest or file a lawsuit  
15 against it. It is well established in Florida law that the  
16 circuit court is the venue for customer complaints against  
17 their councilors or whatever their municipal-owned system.

18 Q All right, sir. So, in other words, we have to go --  
19 would we go sue you in Santa Rosa County, then?

20 A I don't know where you would sue them.

21 Q But you seem to be an expert on the legal matter of  
22 when we have to sue you, but you don't know where we have to  
23 sue you?

24 A I would assume the venue would be where the Authority  
25 is headquartered, which is Santa Rosa County.

1 Q All right, sir. Now, how far is that from Nassau  
2 County, do you know?

3 A You tell me, I don't know.

4 Q Would you believe it is 381 miles?

5 A You have probably driven it.

6 Q I have, yes, sir. More times than I would like. All  
7 right, sir. What services are being rendered by the Cities of  
8 Gulf Breeze and Milton that they should receive 2 percent of  
9 \$94 million in revenue each year?

10 A What services they are --

11 Q To my customers, what services would the City of  
12 Milton or the City of Gulf Breeze be rendering to my customers  
13 over in Nassau County so they should receive 2 percent of the  
14 revenues of this utility company?

15 A Well, they are appointing the board. As members of  
16 the interlocal agency or authority, they are responsible for  
17 appointing the directors that are overseeing and responsible  
18 for the running of the Authority and its customer base. And it  
19 is well established within, I think, the interlocal act that  
20 there is an opportunity to use excess monies for paying for  
21 those types of services. So I am assuming it is oversight and  
22 management compensation.

23 Q Well, you say excess monies. What if there is not  
24 enough money in any given year? This goes on forever. This 2  
25 percent goes on forever as I understand it. What if there is

1 not enough money that year to pay this fee, how do they get the  
2 money?

3 A You will have to ask Mr. Gray that, but it's my  
4 understanding that they don't get the money.

5 Q But what if the Authority decides to do anything at  
6 all with their money? Do we have to go sue you to rectify  
7 that, then, is that how it works out?

8 A I'm not the proper witness to answer that question.  
9 I don't know.

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

11 THE COURT: Mr. Mullin.

12 MR. MULLIN: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. MULLIN:

15 Q Good morning, Mr. Crandell.

16 A Good afternoon.

17 Q Excuse me, afternoon. Mr. Crandell, what is a POS?

18 A Preliminary offering statement.

19 Q And is that normally done in anticipation of a  
20 closing in your experience?

21 A It is normally done in trying to attempt to get  
22 investors like mutual funds to buy the securities that are  
23 being proffered for revenue bond issues. It's typical in these  
24 types of transactions.

25 Q Do you know has that already been accomplished in

1 this particular transaction?

2 A What been accomplished?

3 Q That the investors are lined up to buy the bonds?

4 A The investors are not lined up to buy the bonds.

5 Q Has a POS been done?

6 A Yes, it has.

7 Q And when was that done?

8 A Approximately two weeks ago.

9 Q And that is in anticipation of a closing to sell the  
10 bonds, is that not correct?

11 A It is in anticipation of an effort to try to market  
12 and sell these bonds to the investment community.

13 Q Was a POS ever done prior to two weeks ago?

14 A Drafts of it. No, it was not. Drafts were  
15 submitted.

16 Q So it was never finalized or formalized until there  
17 was an intent to sell, is that correct?

18 A That is correct.

19 Q So there is an intent to sell fairly quickly, would  
20 you not agree with me?

21 A Yes, I would agree with you.

22 Q And that could be done when?

23 A Well, we have to get the judge to lift our temporary  
24 injunction is step one, and then we have to get investors that  
25 will buy these bonds, step two.

1 Q Give me just an idea? You must have an idea.

2 A If the judge will rule quickly, we can move to try to  
3 market these bonds next week.

4 Q Okay. And is there anything else that would prevent  
5 you from doing that?

6 A I can't answer that.

7 Q Well, I mean, to your knowledge is there anything --  
8 let's say the Public Service Commission?

9 A Let's say what?

10 Q Would they prevent you from doing that?

11 A Would they prevent us from doing that?

12 Q Yes, sir.

13 A If they didn't have a court order stopping us, I  
14 think not.

15 Q So the only thing stopping you is the court order?

16 A Right now.

17 MR. MULLIN: Thank you.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION

20 BY MR. WRIGHT:

21 Q Good afternoon, Mr. Crandell. I have just a few  
22 questions.

23 A Good afternoon.

24 Q I understand your testimony to be that you are  
25 guaranteeing what you call top line revenues?

1 A Yes.

2 Q Now, is that just the service revenues exclusive of  
3 the connection fees?

4 A Yes.

5 Q So in the example for 2002 that you gave, that is \$94  
6 million, is that correct?

7 A Yes.

8 Q Are you guaranteeing the expense levels of the  
9 Authority?

10 A No, we are not.

11 Q Are you guaranteeing any tax exemptions for the  
12 Authority?

13 A No.

14 Q Do you know or do you have an opinion whether the  
15 deal would work if the interest on the bonds became taxable?

16 A It would not work. It would not be enough revenues.  
17 We would have to add another 2 or 3 percent on a \$500 million  
18 bond.

19 Q I understood your testimony in response to  
20 questioning by Mr. Mullin -- no, Mr. Jacobs, to be that the  
21 services that you believe the authority would perform to  
22 justify the 2 percent fee being paid by Nassau County customers  
23 would be that that was in the nature of management  
24 compensation. Is that your testimony?

25 A Yes.



1 Q How does that square with your testimony that all the  
2 management employees of Florida Water Services Corporation save  
3 yourself would be transferred person-to-person to the Authority  
4 and then be paid by the Authority?

5 A Well, there is management and governance. The  
6 Authority's governance lies with the cities and their appointed  
7 boards versus management. There is a big difference between  
8 governance and management. I am assuming -- for the  
9 responsibilities of taking on that government's responsibility  
10 they would get a fee.

11 MR. WRIGHT: Thank you.

12 THE COURT: Yes, sir, Mr. Groot.

13 MR. GROOT: May it please the court. I have a few  
14 real quick.

15 CROSS EXAMINATION

16 BY MR. GROOT:

17 Q Mr. Crandell, Lonnie Groot, I represent Palm Coast.  
18 In the continuing test of your Florida geographical skills, do  
19 you know where Palm Coast is?

20 A I certainly do.

21 Q Do you know it is about 425 miles from Milton and  
22 Gulf Breeze?

23 A If you say that is what the mileage is, I will agree.

24 Q You testified, as I understand it, that if the judge  
25 lifts the injunction that is currently in effect you will defy

1 the order of the Public Service Commission and proceed to  
2 closing the transaction?

3 A I didn't say that. I said we would try to market  
4 bonds and see if anybody will invest in the bonds.

5 Q Okay. But if you do market bonds and you do close  
6 you will transfer the assets of the Florida Water Service  
7 Corporation to Florida Water Services Authority?

8 A Consistent with our understanding of the existing  
9 statutory framework that allows us to do that.

10 Q In defiance of the Public Service Commission's order?

11 A Yes.

12 Q And are you aware of what -- you are aware that  
13 Florida Water Services Authority purports to be a governmental  
14 entity, you are aware of that, right?

15 A I am aware that it is a governmental entity. What do  
16 you mean, purports?

17 Q Well, that is something --

18 A Something for the courts to decide.

19 Q -- that is something the Public Service Commission  
20 can define in the courts. Florida Water Services Corporation  
21 is not a tax exempt entity, is it?

22 A Of course not. We pay \$8 million a year in federal  
23 income taxes.

24 Q And you pay ad valorem taxes in the 26 counties --

25 A \$55 million per annum in ad valorem taxes to the 26

1 counties, and pay \$3 million to the Florida Public Commission  
2 for regulatory fees.

3 Q And you pay other taxes, too, when you buy gas, when  
4 you sell --

5 A Sales tax, sure.

6 Q You are not exempt?

7 A No, sir.

8 Q Florida Water Services Authority would be a tax  
9 exempt entity, would it not?

10 A Consistent with the City of Palm Coast, yes.

11 Q So those revenues would be lost for the 26 counties  
12 and eight cities in which Florida Water Services Corporation  
13 operates?

14 A Yes, consistent with every other municipal-owned  
15 utility in the state.

16 Q And if we go one, two, five, ten years in the future  
17 and then try to unwind all of this, unwind the transaction,  
18 during that period of time all the ad valorem taxes, gas tax,  
19 and other taxes that Florida Water Services Corporation would  
20 have paid would not have been paid during that period of time?

21 A That's right.

22 Q Isn't that correct?

23 A Correct.

24 Q And would not be available to provide municipal  
25 services or county services for the citizens of the various

1 counties and cities in which Florida Water Services Corporation  
2 now operates?

3 A Consistent with every other government in Florida.

4 Q The answer is yes?

5 A The answer is yes.

6 MR. GROOT: Thank you.

7 THE COURT: Redirect.

8 MR. RICHARD: Yes, Your Honor. Short.

9 THE COURT: Excuse me. I'm sorry, I have another  
10 intervenor that has questions.

11 MR. JENKINS: Yes. I would just like to ask a couple  
12 of questions.

13 THE COURT: All right. Let's let them finish.

14 MR. JENKINS: Thank you, Your Honor. I'm John  
15 Jenkins, again, for the City of Marco Island.

16 CROSS EXAMINATION

17 BY MR. JENKINS:

18 Q Mr. Crandell, nice to see you again even under these  
19 circumstances.

20 A Good to see you, John.

21 Q Just two questions. Mr. Richard made a point about  
22 the revenue guarantee that the corporation has provided, and  
23 the revenue is, let's say, \$95 million. In a given year if the  
24 authorities expenses are, say, \$100 million, there is no  
25 obligation on the part of the corporation to bridge that \$5

1 million is there?

2 A No, that is correct.

3 Q And presumably the money to pay those additional  
4 expenses would have to come from some other source, such as an  
5 increase in customer rates, is that correct?

6 A Or from -- the money is fungible. Connection fees  
7 are fungible, cash is fungible on connection fees. They have  
8 reserve accounts that are built so that those monies would come  
9 from various sources within the authority.

10 Q Reserve accounts typically built up through customer  
11 revenue?

12 A Yes, sir, through profitability or whatever.

13 Q As far as the sale proceeds are concerned, when the  
14 corporation, Florida Water Services Corporation receives those  
15 from the sale, do you have debt to repay with those proceeds?

16 A Yes. We effectively have about \$120 million worth of  
17 first mortgage bonds that we will retire, we have approximately  
18 \$70 million in obligations to other parties, including prior  
19 developers such as the ITT Corporation, where we have not fully  
20 paid for the Palm Coast system that we need to retire. We have  
21 outstanding obligations, payables that totals about \$70  
22 million. We'll have a federal income tax liability of  
23 approximately \$90 million that we will owe the federal  
24 government on gain on sale that will be paid, so we have an  
25 extensive amount of obligations that will be liquidated as part

1 of the proceeds we are seeking.

2 Q So sale proceeds will go to pay down those  
3 obligations and also for other corporate initiatives that you  
4 have?

5 A Well, there will probably be a dividend of any  
6 residual monies left to the owner, which is the Minnesota Power  
7 Allete Corporation for other corporate purposes and their own  
8 reinvestment.

9 Q Approximately how much profit will the corporation  
10 book as a result of the transaction?

11 A I think it is approximately \$100 million.

12 Q And the corporation has been involved in probably,  
13 would you say, dozens of utilities purchase and sales over the  
14 last 20 years?

15 A In more friendly times you helped us, yes.

16 Q And in any of those circumstances did the Corporation  
17 not file an application with the PSC or other local regulatory  
18 body for approval?

19 A We always filed an application.

20 Q But in this case you didn't file the application  
21 until the PSC order had to be done, is that correct?

22 A That is correct.

23 MR. JENKINS: That's all I have, Judge. Thank you.

24 THE COURT: All right, Mr. Richard.

25 REDIRECT EXAMINATION

1 BY MR. RICHARD:

2 Q Mr. Groot asked you about the taxes that are paid by  
3 the Corporation currently?

4 A Yes.

5 Q Are those taxes currently passed on to the customers  
6 through the rate base?

7 A They are passed on to the customers as part of the  
8 ratemaking structure of various regulatory bodies, yes, sir.

9 Q So the customers ultimately pay for those taxes that  
10 you pay?

11 A Yes.

12 Q I believe it was Mr. Mullin that asked you about the  
13 intention of the parties to close this transaction as soon as  
14 they are able to if this injunction is lifted?

15 A Yes.

16 Q Will you tell the court what the potential impact  
17 would be if you are not able to close this transaction for an  
18 extended period of time?

19 A Yes. We are obviously trying to borrow, or the  
20 Authority is attempting to borrow all of the money in an  
21 environment that is about the low -- over the last 20 years the  
22 lowest interest rate environment in the markets here. And  
23 based on the arithmetic and our financial models, any raise of  
24 interest rates because of war efforts, economy rebounds and so  
25 forth, of half a percentage would cost the seller about \$30

1 million in proceeds. So effectively about \$60 million of  
2 reduction in purchase price per one percent of rate increase  
3 that the markets would demands for these bonds. So as far as  
4 the seller is concerned an elongated waiting period through  
5 July or whatever time frame that we are talking about here will  
6 have a material, at least risk impact on really the sales  
7 proceeds and the costs to the seller of this transaction.

8 MR. RICHARD: Thank you, Your Honor.

9 THE COURT: All right. May this witness step down?  
10 I know you are at the table. Sir, you may be excused or sit at  
11 the table. All right. Now, scheduling wise, people, at 1:15 I  
12 pretty much have to conclude this. Let's see if we can get our  
13 evidence in. I want you all to keep that in mind. It's not  
14 that I want to take the afternoon off. I am over at the  
15 Supreme Court at 1:45. I was not asked or given an option of  
16 whether I would go or not.

17 MR. RICHARD: I would call Edward Gray, Your Honor.  
18 Mr. Gray's testimony, at least in chief, will be shorter than  
19 the prior testimony.

20 THE COURT: Please come forward, sir.

21 (Witness sworn.)

22 THE COURT: Please be seated, sir.

23 . . . . .

24 EDWARD GRAY

25 was called as a witness on behalf of Florida Water Services



1 Corporation and, having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RICHARD:

4 Q Mr. Gray, what is your current position with the  
5 authority?

6 A I am the executive director of Gulf Breeze Financial  
7 Services, which is the contract administrator on behalf of the  
8 Authority.

9 Q Were you involved with the Authority in that position  
10 throughout the negotiations regarding the transaction at issue  
11 in this case?

12 A Yes, I was.

13 Q And did you attend the meetings at Gulf Breeze and  
14 Milton at which the Commission took up the issue of the  
15 Authority?

16 A Yes, I did.

17 Q Did you attend all the meetings of the Authority  
18 after its creation?

19 A Except one where I was ill with the flu and I could  
20 not attend. All others I did.

21 Q What is your understanding of the reasons that Gulf  
22 Breeze and Milton decided to create the Authority?

23 A The Florida Statutes expressly say that creation of  
24 an authority such as this is for the public purpose, whether it  
25 is within or without the boundaries of the municipalities

1 creating the entity. So the Statutes expressly provide that  
2 the public purpose is served by creating this for a statewide  
3 utility to be run effectively and integratedly such as it has  
4 been.

5 Q Is there a plan with respect to whether or not the  
6 current management and staff personnel will be retained if this  
7 transaction is closed?

8 A In the Authority's structuring of the transaction, it  
9 was a very definite requirement that we be able to retain the  
10 management that we felt was already in place doing a good job.  
11 We have heard, in fact, at the PSC meeting of February the 7th  
12 the chair of the Commission acknowledged that the management of  
13 the utility has been well run because of so few complaints  
14 submitted to the PSC from customers of the system. So the PSC  
15 has acknowledged and other due diligence that we did have  
16 acknowledged that there is effective management in place and we  
17 have done everything we can to retain them and they have agreed  
18 to stay.

19 Q Was avoidance of rate regulation ever a consideration  
20 by the Authority or the Authority members to your knowledge?

21 A No, sir.

22 Q Did you participate in any offer with respect to the  
23 counties or cities involved regarding the possibility of local  
24 rate regulation?

25 A I need you to ask that again, please.

1 Q Did you make any -- did you have any communications  
2 with the local commissions involved with respect to the  
3 possibility of local rate regulation?

4 A We attempted to schedule meetings with a number of  
5 the cities and commissions involved. We were only successful  
6 in one city agreeing to sit down and talk about the  
7 possibilities of involvement by that city and that took place.

8 Q Will you look at Tab Number 7 in the bound booklet  
9 that is before you, and tell me to your knowledge if that is  
10 the resolution that was passed by the City of Gulf Breeze for  
11 the creation of this authority?

12 A Yes, sir. Although it is -- yes, it appears to be  
13 the document.

14 Q Will you turn to Page 8 and tell me whether that is  
15 the resolution as you observed it by the City of Milton  
16 providing for the creation of the authority?

17 A Yes, sir, it appears to be.

18 Q Turn to Page 9, please, and tell me are you familiar  
19 with the interlocal agreement?

20 A Yes, sir.

21 Q Tell me if this, in fact, is a copy of the interlocal  
22 agreement?

23 MR. RICHARD: I will note, Your Honor, it is a  
24 certified copy that was obtained from the official records.

25 A Yes, sir, it is.

1 Q Will you turn to Tab 10, please, and tell me were you  
2 aware of the notices that were being placed in the media and  
3 that were being sent to various individuals with respect to the  
4 meetings of the Authority?

5 A Yes, sir.

6 Q And would you tell me if these, in fact, are copies  
7 of the notices that were placed in the Pensacola News Journal  
8 of the meetings of the Authority on the dates that are  
9 indicated, one is September 18th, and the other one was  
10 November 18th.

11 A Yes, sir, I believe under Tab 11 they are both  
12 September notices.

13 Q I'm sorry, these are September 19th, that's correct.

14 A Right. They were noticing the September 19th  
15 meeting, but they were actually published the 13th.

16 Q Now, if you will turn to Tab Number 11, please. Are  
17 you familiar with this document?

18 A Yes, sir.

19 Q Now, this document purports to be copies of newspaper  
20 advertisements with notices of a November 18th, 2000 meeting,  
21 and also of faxes that were sent to specific public officials  
22 in various communities, correct?

23 A Correct.

24 Q To your knowledge were these advertisements and  
25 notices actually published and sent as indicated?

1           A     Yes, sir, because I have signed checks paying the  
2 invoices on all of these.

3           Q     Now, was it the intent that these would appear in  
4 publications of general circulation in every community in which  
5 there were customers existing of this facility?

6           A     That was certainly our intent. And to my knowledge  
7 we were successful in that.

8           Q     And is that also true of the public officials that  
9 were notified by fax of the November 18th meeting?

10          A     Yes, sir.

11          Q     If you will look at the other two booklets that are  
12 beside you, the one that is marked Exhibit 15. Did you attend  
13 the November 18th, 2002 meeting of the Authority? I'm sorry,  
14 the September 19th, 2002 meeting?

15          A     Yes, sir.

16          Q     And can you identify that as the transcript of that  
17 meeting?

18          A     Yes, sir, it appears to be a full transcript.

19          Q     Can you tell me what the approximate length of that  
20 meeting was?

21          A     As I recall, without seeing it specifically here, it  
22 lasted well in excess of two hours.

23          Q     And would you turn, please, to the booklet now, the  
24 other booklet, the last one that is designated as Exhibit 16,  
25 and tell me if you that -- you did attend the November 18th

1 meeting, correct?

2 A Yes, sir.

3 Q And you have previously reviewed this, have you not?

4 A Yes.

5 Q And tell me if that is a transcript of the meeting as  
6 you recall it?

7 A As I recall it, yes.

8 Q And did that meeting take substantially -- a good  
9 part of the day?

10 A Yes, sir. This one began at 9:00 o'clock in the  
11 morning and did not end until after 5:00 o'clock in the  
12 afternoon.

13 Q Tell me who made presentations at that meeting, as  
14 you recall?

15 A As I recall many of intervenors here today made  
16 presentations. Our consultants who we have been using to  
17 assist the authority in determining the feasibility of the  
18 transaction made presentations. Our engineering firm was  
19 involved in the presentations. Any number of consultants that  
20 we used, as well as bond counsel for the Authority. So a  
21 number of professionals made presentations.

22 Q All right. Excuse me, please, but I think I  
23 neglected to ask you under Tab 12 whether you can identify the  
24 notices in newspapers and the faxes with respect to the  
25 November 18th meeting, and tell me whether those to your

1 knowledge actually went as indicated?

2 A Yes, sir, to my knowledge all areas were both noticed  
3 through formal means as well as fax communications.

4 Q Was it the intent of these notices to cover every  
5 area in which there were customers residing who were customers  
6 of this facility?

7 A Yes, sir.

8 Q If you will turn, please, to Tab 14. Can you  
9 identify this as the articles of incorporation which  
10 incorporated the Authority as a Florida not-for-profit  
11 corporation?

12 A Yes, it is.

13 Q Is that provided for in the interlocal agreement, the  
14 authority to become a not-for-profit corporation?

15 A Yes, it is.

16 MR. RICHARD: Your Honor, I would like to offer into  
17 evidence the exhibits that have been testified to by the two  
18 witnesses.

19 THE COURT: Any objection?

20 MR. McLEAN: No objection.

21 THE COURT: Without objection they will be admitted.  
22 That it is Exhibits 1 through 16 in these three bound booklets.  
23 Let's make them a composite so we don't mess up the order.  
24 This would be what, 4, 5, and 6 in this booklet? Composite 4,  
25 5, and 6. So the booklet containing Documents 1 through 14

1 will be Exhibit 4.

2 THE CLERK: Right.

3 THE COURT: The bound Exhibit 15 will be Exhibit 5.  
4 I mean, Document 15 will be Exhibit 5, and the bound Document  
5 16 will be Exhibit 6.

6 (Exhibit 4, 5, and 6 marked for identification and  
7 admitted into the record.)

8 BY MR. RICHARD:

9 Q Mr. Gray, are you aware of anything in this agreement  
10 or the intention of the authority that would have an adverse  
11 impact upon the current level of service?

12 A No, sir. We have gone at great lengths to maintain  
13 what we have already established is a good and appropriate  
14 level of service. And we through sustaining the stabilized  
15 workforce as well as through the financial mechanisms intend to  
16 maintain that service.

17 Q And the same question with respect to operations, are  
18 you aware of anything that would have an impairment?

19 A Actually we believe under the Authority's ownership  
20 operationally the customers will be better off because we are  
21 going to fund a capital plan in excess of what the Corporation  
22 was going to fund.

23 MR. RICHARD: I have no further questions.

24 THE COURT: Mr. McLean.

25 CROSS EXAMINATION



1 BY MR. McLEAN:

2 Q Mr. Gray, if there is a deterioration of service do  
3 you plan to offer -- to answer to the Public Service Commission  
4 for that deterioration?

5 A Mr. McLean, we intend to abide by the law, whatever  
6 it requires.

7 Q Would that include violating a published lawful  
8 Commission order?

9 A Again, I'm not a legal scholar. We are going to  
10 abide by the law according to what the legal advice is we  
11 receive that we should do.

12 Q And any advice you got about the impairment of  
13 service, you would answer to similarly legal advice?

14 A Whatever the law says we should uphold, we will  
15 uphold.

16 Q So with respect to any deterioration of the utility's  
17 operation, will you respond to the Commission's directions  
18 there?

19 A If the law requires us to respond to the Commission  
20 or any other regulatory body we certainly will.

21 Q What if the Commission issued an order like the one  
22 that is already on the books that tells you to do something,  
23 would you have any more reservation about violating it in  
24 service or operation than you have in telling the utility not  
25 to sell?



1 Journal?

2 A Among other means.

3 Q Among other means?

4 A Among other means.

5 Q What was the other means?

6 A It was my understanding at least for the City of Gulf  
7 Breeze they faxed notice of meetings to local radio and  
8 television stations and have other means of letting the media  
9 know of the meeting.

10 Q And that is the media that surrounds Gulf Breeze and  
11 Milton?

12 A Correct.

13 Q All right, sir. Now, whenever the Authority had its  
14 meeting, its first meeting where it signed this contract for  
15 \$545 million to buy this water company, that notice was in the  
16 Pensacola News Journal, is that correct?

17 A That is correct.

18 Q And you say that at the meeting in November the  
19 notices were sent to everybody where these customers, the  
20 250,000 customers reside. So this meeting you had in November  
21 to attempt to cure something, I guess, that meeting you got --  
22 everybody got notice. Do you know why the authority didn't  
23 notice those folks whenever you signed the contract for the  
24 \$545 million bond issue?

25 A Because I am advised as a matter of law it was not a

1 requirement to notice. We met the requirements of the law  
2 which was to notice there locally.

3 Q That's how you do requirements of the law?

4 A We uphold the law as the law provides.

5 Q You stated that there was a meeting, I guess,  
6 November the 7th or so was that first meeting in Orlando. I  
7 was there, you were there at the first meeting.

8 A November 18th.

9 Q November 18th, that's right.

10 A That wasn't the first meeting.

11 Q That was the second meeting.

12 A It was the third meeting.

13 Q All right. The first meeting was in --

14 A September.

15 Q In Milton or Gulf Breeze?

16 A No, sir, the first meeting was in Pensacola.  
17 Pensacola Junior College conference room in Pensacola.

18 Q And where was the second meeting?

19 A Gulf Breeze City Hall.

20 Q And the third meeting was the one in --

21 A Orlando.

22 Q But you didn't send notices to all of these people  
23 about the first meeting or the second meeting. You didn't do  
24 it until the third meeting, is that correct?

25 A For the second meeting it was a procedural meeting.

1 Mr. Twomey was present at that meeting, so we got notices out  
2 to the point that Mr. Twomey knew about it. It was a  
3 procedural meeting not effecting anything but the hiring of  
4 attorneys, so it was not a public hearing, so it was not  
5 noticed widespread. All the meetings since have been because  
6 they did affect widespread matters of the customers.

7 Q But it certainly would be a widespread matter to the  
8 customers to know that their utility company, Florida Water  
9 Service is selling to an authority for \$545 million that is  
10 located in Santa Rosa County. Wouldn't that be of interest to  
11 the customers of the utility company?

12 A Yes, sir, it would be of interest.

13 Q Now, at the hearing that we think is November 18th, I  
14 believe there were about 18 people who spoke against the deal,  
15 isn't that correct, in round numbers?

16 A Including attorneys for the intervenors, it probably  
17 was at least that many.

18 Q Was there anybody who wasn't paid by Florida Water  
19 who spoke for this transaction?

20 A Was there anyone who was not -- I honestly can't  
21 recall one way or the other on that question, I'm sorry.

22 MR. JACOBS: No further questions.

23 THE COURT: Mr. Twomey.

24 MR. TWOMEY: Thank you, Your Honor, I will be brief.  
25 First, Your Honor, I think I neglected to ask you to move the

1 IRS letter into evidence. I would ask you to do that.

2 THE COURT: Is there any objection?

3 MR. RICHARD: No objection.

4 THE COURT: Without objection that is admitted.

5 MR. TWOMEY: Thank you, Your Honor.

6 (Collier County/Sugarmill Wood's Exhibit 1 admitted  
7 into the record.)

8 CROSS EXAMINATION

9 BY MR. TWOMEY:

10 Q And with respect to that, Mr. Gray is there any --  
11 will that IRS letter ruling request having any impact on the  
12 POS or preliminary official statement that you all will  
13 publish?

14 A That would be an SEC law question, Mr. Twomey, that I  
15 can't answer. If it's a matter of disclosure as required by  
16 SEC, I'm sure it would be, but I really don't know the effect  
17 of that.

18 Q Okay, sir. Thank you.

19 A And I repeat, if the law requires it, it will be made  
20 a part of that POS.

21 Q Okay, thank you. Going back to the creation again  
22 that Mr. Richard asked you about and Mr. Jacobs just mentioned.  
23 Isn't it a fact, just briefly, Mr. Gray, that you and your  
24 cities were recruited by a Florida Water Services law firm to  
25 form this Authority, were you not?

1           A     I would disagree with the term recruitment. An  
2 inquiry was made to us through counsel that we have employed  
3 for a number of years as to our level of interest in  
4 entertaining this transaction. If you term that as  
5 recruitment, that would be your term. I would term it as an  
6 inquiry was made.

7           Q     Okay, thank you. Now, isn't it true, Mr. Gray, that  
8 the Authority, your Authority that you are executive director  
9 of is indemnified and held financially harmless pursuant to  
10 your agreement by Florida Water Services, the utility, pursuant  
11 to your contracts with them?

12          A     That is correct.

13          Q     And pursuant to that have they or have they not, Mr.  
14 Gray, expended to you a \$5 million line of credit?

15          A     No, sir, they have not pursuant to the due diligence  
16 period. We have been extended as a part of the contract a line  
17 of credit upon closing for us to use toward operating capital.  
18 So I don't know if you are asking the same thing, then, or  
19 whether or not we are talking about two different things. But,  
20 yes, there is a line of credit as a part of the contract, but  
21 that is only upon closing and only for usage by the utility  
22 operations as working capital.

23          Q     Okay. Thank you, sir. That is helpful. Now, is it  
24 not true then that prior to the closing and the activation of  
25 the \$5 million line of credit that all of the Authority's

1 expenses, including the stipends for the Authority Board  
2 Members, attorneys fees, city attorneys, and any expenses  
3 associated with this deal on behalf of the Authority, its  
4 employees, the two cities and their employees, and so on are,  
5 in fact, invoiced by you and paid for by the utility?

6 A The Authority is formed for the sole purpose of  
7 properly operating and maintaining the utility. It has no  
8 other assets except the contract. Pursuant to having no assets  
9 it requested of the corporation to cover all due diligence  
10 expenses and all other expenses you have just referenced and  
11 that has been done.

12 MR. TWOMEY: Thank you, sir. Thank you, Your Honor.

13 THE COURT: Mr. Mullin and then Mr. Groot.

14 MR. MULLIN: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. MULLIN:

17 Q Mr. Gray, how are you today?

18 A I'm fine.

19 Q Mr. Gray, let me ask you how long have you been  
20 executive director of the Florida Water Services Authority?

21 A I'm not the executive director of the Florida Water  
22 Services Authority.

23 Q I'm sorry, I thought that was what I heard. What is  
24 your position with Florida Water Services?

25 A I am the Executive Director of Gulf Breeze Financial



1 Services, which is the contracted party to serve as the  
2 administrator for the Authority.

3 Q So you don't work for Florida Water Services  
4 Authority?

5 A Contractually I do.

6 Q Through Gulf Breeze Financial?

7 A Correct.

8 Q And what is Gulf Breeze Financial?

9 A It is a wholly-owned department of the City of Gulf  
10 Breeze.

11 Q So the City of Gulf Breeze owns Gulf Breeze Financial  
12 Services that you are the executive director of and by contract  
13 you provide services to Florida Water Services Authority which  
14 the City of Gulf Breeze and the City of Milton?

15 A Absolutely.

16 Q And what is Capital Trust Agency?

17 A It is a Chapter 163 agency that the City of Gulf  
18 Breeze and another city formed some three or four years ago.

19 Q Who is the other city?

20 A The town of Century Florida.

21 Q And you work for Capital Trust Agency?

22 A Contractually.

23 Q And didn't you negotiate the original deal with  
24 Florida Water Services Authority -- or Florida Water Services  
25 on behalf of Capital Trust Agency?

1           A     No, sir. Originally I entertained to the board of  
2 the Capital Trust Agency their interest in being the purchaser  
3 of the utility. That board determined that that really wasn't  
4 what it was in the business to do, and so it was my  
5 recommendation to the Cities of Gulf Breeze and Milton that  
6 they entertain creating the Florida Water Services Authority  
7 under Chapter 163, because it would have the sole purpose and  
8 sole reason for being to operate this utility.

9           Q     So you have been involved in this from Capital Trust  
10 Agency to Gulf Breeze Financial and now under contract to  
11 Florida Water Services Authority?

12          A     Yes, sir.

13          Q     And am I correct in assuming, Mr. Gray, are you  
14 trying to tell the court today your only purpose in this whole  
15 involvement is because you wanted to help all the cities and  
16 counties in the State of Florida who are served now by Florida  
17 Water Services?

18          A     I don't know that I said that Mr. Mullin.

19          Q     Well, is that your intent or was it to make money?

20          A     Mr. Mullin, our intent is to formulate and  
21 successfully operate an authority that will, in turn,  
22 successfully operate a utility for the benefit of the customers  
23 and to enure benefits to the member cities as called for in the  
24 interlocal agreement. So it is a joint purpose there.

25          Q     How many cities or counties came to you originally

1 and asked you to form the authority to take over Florida Water  
2 Services Authority facilities in their cities or counties?

3 A None.

4 Q Let me ask you also, this was originally set to close  
5 as I understand it in December, is that correct?

6 A That is correct.

7 Q Mr. Crandell talked about the interest rates being in  
8 such a state now that it is necessary to close. Were the  
9 interest rates not good in December?

10 A The interest rates as I recall were favorable, but  
11 from a legal standpoint we simply weren't ready to close.

12 Q What was the legal standpoint?

13 A Mr. Mullin, if you gave me time to research that I  
14 would be happy to give you the answer. Believe me, I am not  
15 evading the answer, I just honestly don't recall, because there  
16 has been a lot of water under the bridge, no pun intended,  
17 since December and now. So I can't tell you what the  
18 circumstances were to stop us then.

19 Q Who made the decision not to close?

20 A Decisions such as that are always decisions based  
21 upon advice of various counsel as well as input from myself and  
22 then ultimately the board.

23 Q So you had input. Did Florida Water Services  
24 Authority make the decision not to close, or Mr. Crandell's  
25 company, Florida Water Services make the decision?

1           A     I assure you I'm not evading your question. I  
2 honestly don't remember.

3           Q     You can't remember who did it, but you didn't close  
4 in December?

5           A     Well, obviously we didn't close in December.

6           Q     And the POS is out now so you can close quickly next  
7 week if the judge lifts the injunction?

8           A     As you are aware, the purchase contract was amended  
9 for a closing date of February 14th, so the POS has been in  
10 preparation for the contractual closing date under the new  
11 agreement. So, yes, the POS has been prepared in anticipation  
12 of what was going to be a February 14th closing date, but that  
13 has since been put off by the injunction.

14          Q     If the injunction were lifted today, you would close?

15          A     We would try to sell bonds, but we are not going to  
16 close until we sell bonds.

17          Q     All right. Mr. Gray, I understand. If you sell the  
18 bonds, you are going to close?

19          A     Yes, sir.

20          Q     Okay. Let me ask you, do you know the status of the  
21 current maintenance necessary on the Amelia Island system for  
22 Florida Water Services?

23          A     I can certainly research and tell you the number, but  
24 I only am familiar with the system as a whole as far as what we  
25 know to be necessary for proper maintenance as well as capital

1 needs.

2 Q So you are not sure as we have sit here today how  
3 much money it's going to take for the immediate maintenance on  
4 the Amelia Island system?

5 A Specifically for that system, no, sir.

6 MR. MULLIN: Thank you. That's all I have.

7 THE COURT: Mr. Groot.

8 MR. GROOT: May it please the court.

9 CROSS EXAMINATION

10 BY MR. GROOT:

11 Q Mr. Gray, I'm Lonnie Groot representing Palm Coast.  
12 What experience do you have running utility systems in the  
13 State of Florida?

14 A As the mayor of the City of Gulf Breeze for the  
15 period 1984 to 1992, we ran both water, sewer, and gas systems  
16 as enterprises of the City of Gulf Breeze. Also, in 1989 we  
17 undertook the purchase of a system outside of the City of Gulf  
18 Breeze, successfully did that, successfully merged it into the  
19 city systems, and it is still operating today. And through all  
20 of those involvements, including remaining as an advisory board  
21 member on the purchased utility board up until just recently, I  
22 had involvement in utility operations principally through the  
23 City of Gulf Breeze.

24 Q So you have never run a utility yourself?

25 A The mayor is the chief executive officer under the

1 charter of the City of Gulf Breeze, so yes, sir, I have.

2 Q As the former mayor, you have an interest in property  
3 taxes in Gulf Breeze, do you not?

4 A Yes, sir.

5 Q And isn't it true that you have said instead of  
6 raising property taxes on our residential you will come up with  
7 other ways to raise revenue?

8 A Yes, we have.

9 Q That's speaking of the 2 percent of the gross  
10 revenues that Gulf Breeze and Milton share, isn't that true?

11 A No, sir.

12 Q That is not true?

13 A What you referenced is not true, no, sir.

14 Q Well, speaking of the 2 percent, let's assume once  
15 again that the two cities take that 1.5 million plus or minus,  
16 whatever, for the next five or ten years and then the  
17 transaction is deemed to be inappropriate and to be unwound.

18 A Okay.

19 Q The City of Milton and Gulf Breeze are not going to  
20 give that money back, are they?

21 A That is a hypothetical, Counsel, that I can't answer.  
22 I will tell you how to structure it today, and that is any  
23 payment to the member cities, be they Gulf Breeze, Milton, and  
24 others that through our interlocal agreement could be involved  
25 with the Authority and could be members of the Authority, so

1 whoever the cities and counties otherwise may be, governmental  
2 bodies participating in the Authority, any payments to the  
3 Authority is subordinate to all other debt service, operational  
4 needs, capital needs. It is the end result when everything  
5 else is paid for.

6 Q Right now there is two cities, they get 2 percent of  
7 the gross revenues, guaranteed \$1.5 million?

8 A Only if money is available.

9 Q Wouldn't reworking the legal -- would removing the  
10 legal cloud over the validity of the transaction which is what  
11 you spoke about earlier --

12 A Uh-huh.

13 Q -- result in lower interest rates?

14 A Yes, sir, it would.

15 MR. GROOT: The last thing I have, Your Honor, is I  
16 would like to introduce a self-authenticating document. It is  
17 certified by Ms. Zee Galiano (phonetic), Executive Assistant  
18 for Correspondence and Control of the Office of the Attorney  
19 General. Attached to it is a request for inquiry relative to  
20 the -- it is a request for inquiry to the Attorney General and  
21 the Secretary of State requesting that inquiry be made as to  
22 validity of the nonprofit corporation status of Florida Water  
23 Services Authority, Inc. I would like to introduce that.

24 THE COURT: Any objection?

25 MR. RICHARD: Yes. I object, Your Honor. I don't

1 see the relevance of the request being made.

2 MR. GROOT: The Articles of Incorporation were  
3 introduced, they were discussed in testimony, there is an  
4 inquiry now having been made to the appropriate officials of  
5 the State of Florida as to whether or not that corporate status  
6 is a valid corporate status, and I believe it is relevant, Your  
7 Honor.

8 THE COURT: I will overrule the objection and admit  
9 it as -- let's see, that will be Exhibit Number 1.

10 (Nassau County Exhibit 1 marked for identification  
11 and admitted into the record.)

12 MR. MULLIN: Your Honor, if I could have a similar --  
13 Your Honor, Nassau County has a similar certification. The  
14 exact same thing.

15 MR. RICHARD: Same objection, Your Honor.

16 THE COURT: All right. Objection overruled. It will  
17 be -- a certified copy will be admitted of that.

18 MR. MULLIN: Nassau County.

19 THE COURT: That's right, excuse me. Any redirect?

20 MR. RICHARD: No.

21 THE COURT: This witness may be excused. You can  
22 step down. All right, gentlemen, I have to conclude. Is there  
23 any further witnesses?

24 MR. RICHARD: No, Your Honor. Since I assume you  
25 will not be able to take argument, I would request leave to



1 file a brief memorandum.

2 THE COURT: I had planned to give them both. I want  
3 to make sure we have all our evidence in, though.

4 MR. RICHARD: You have all my evidence.

5 MR. McLEAN: And ours, too.

6 THE COURT: Very good. Let's do this. I have time  
7 to work on this opinion next week and read this stuff if I get  
8 the memorandums in time. So I'm going to leave it to you.  
9 It's you all's case. But my trials canceled for next week, so  
10 I'm here next week working with a little more flexible schedule  
11 than I usually have. So if you can have memorandums in by  
12 Wednesday, I will be able to get a fairly quick decision out.

13 MR. McLEAN: Yes, sir, that's fine. As I understood  
14 you would like the memorandums from us by Monday, was that  
15 correct?

16 THE COURT: I said Wednesday. The quicker the  
17 better.

18 MR. McLEAN: Yes, sir.

19 MR. RICHARD: We both agree that Monday afternoon  
20 would be fine.

21 MR. McLEAN: The Public Service Commission has a  
22 concern. We want to make sure that the injunction does not go  
23 away while we are waiting for you to make your decision.

24 THE COURT: The injunction still stays in effect. I  
25 have not dissolved the temporary injunction. Yes, it is still

1 in place.

2 And intervenors if they wish to submit memorandums  
3 too, let's get it in by Monday at 5:00. Very good. We are in  
4 recess. Thank you. I appreciate the presentations and the  
5 documentation. Thank you.

6 (The hearing concluded at 1:25 p.m.)

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

## CERTIFICATE OF REPORTER

4  
5             I, JANE FAUROT, RPR, Chief, Office of Hearing Reporter  
6 Services, FPSC Division of Commission Clerk and Administrative  
7 Services, do hereby certify that the foregoing proceeding was  
8 heard at the time and place herein stated.

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

19             DATED THIS 6th day of March, 2003.

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JANE FAUROT, RPR  
Chief, Office of Hearing Reporter Services  
FPSC Division of Commission Clerk and  
Administrative Services  
(850) 413-6732