

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 990696-WS

In the Matter of:

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

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

DOCKET NO. 992040-WS

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VOLUME 5
PAGES 756 THROUGH 877

PROCEEDINGS: HEARING

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

DATE: Tuesday, May 8, 2001

TIME: Commenced at 9:00 a.m.

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

REPORTED BY: TRICIA DeMARTE
Official FPSC Reporter

APPEARANCES: (As heretofore noted.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

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FPSC-RECORDS/REPORTING

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EXHIBITS

NUMBER:

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P R O C E E D I N G S

(Transcript continues in sequence from Volume 4.)

CHAIRMAN JACOBS: Very well. And we will call again Mr. Burton.

MR. WHARTON: Are we going to do Mr. Burton again?

CHAIRMAN JACOBS: Yes. And, Mr. Melson, you may continue.

MR. MELSON: And, Commissioners, I had the opportunity during the last couple of witnesses to go through and at least get some of my notes cross-referenced, so I'm going to try to do this as quickly as I can and yet not go so fast that I lose myself.

MICHAEL E. BURTON

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

CONTINUED CROSS EXAMINATION

BY MR. MELSON:

Q Mr. Burton, just to bring us back to where we were, I think we talked so far mostly about outputs of the model rather than inputs. Is that fair to say, if you recall?

A Mostly, I guess, yeah.

Q Would you agree with me that the outputs you get from a model are only as good as the inputs and logic that go into it?

A That's a pretty commonly held feeling, yes.

1 Q Is it a feeling you subscribe to?

2 A There's a lot that goes into the validity of
3 analysis. The data that goes into it is one of the things,
4 yes.

5 Q Okay. Let's turn to Figure 2 on page -- It's my page
6 numbered 18. I'm still in Exhibit MB-3 in Scenario 1a.

7 A On page --

8 Q Figure 2, which is hand numbered Page 18.

9 A Okay.

10 Q Now, I don't want to go into the details of it, but
11 where this page -- actually, I'm sorry, it's not on this page
12 anyway. In projecting some operating expenses, your model at
13 least originally included both a growth multiplier and an
14 inflationary multiplier; correct?

15 I'm looking at Lines 15 and 16 where you have an
16 effective multiplier for growth and an inflationary multiplier,
17 and then on Line 17 come to a growth and inflationary
18 multiplier.

19 A Yes, and that was one of the corrections.

20 Q Okay. Just so I understand the correction, in your
21 model, you no longer use the -- do you or do you not use the
22 growth component?

23 A No. Line 15 is zero in the corrected model. The
24 effective multiplier per growth -- actually, it starts on Line
25 14, that 25 percent goes to zero. The effective multiplier for

1 growth goes to zero, and Line 17 turns to 1.5 percent in all
2 years.

3 Q All right. And that change was the result of trying
4 to move to a more accurate model logic; is that right?

5 A Yes.

6 Q Now, on Line 28 of this exhibit, I believe you
7 indicated that you had made a correction to the east service
8 area wastewater ERC additional connections for the year 2007;
9 correct?

10 A I did.

11 Q And that's where the 470 becomes some other number?

12 A Yes.

13 Q And that was because you originally had projected
14 more connections to that plant than the plant was capable of
15 serving?

16 A That was right.

17 Q Were your projections for growth in the eastern area
18 limited by the land available for development, or were they
19 limited by the capacity of the treatment plant?

20 A Well, in the model, the model specifically is limited
21 by the plant, but it's my understanding that there's
22 effectively -- when that plant was built out, there would be
23 effectively minimal or no room for additional growth in the
24 land. That's my understanding.

25 Q So it's your understanding that the plant in the

1 eastern service territory sort of exactly matches the build out
2 potential at service territory?

3 A I would say it approximately matches it.

4 Q It approximately matches --

5 A And for the purposes of the model, it is matching in
6 the model.

7 Q Let's turn now to Figure 5. Page 1 of Figure 5 which
8 is page numbered 21. And I want to focus on Line 23, which is
9 total utility plant in service. Line 21 is a total estimated
10 original cost which is the sum of the lines above it; correct?

11 A Yes.

12 Q And Line 22, you made an adjustment to tie to the
13 annual report; correct?

14 A Yes.

15 Q And then the number on Line 23 was intended to tie to
16 the annual report; correct? This is a place you made another
17 correction. I'm just trying to establish what --

18 A I'm just making sure. Yes, yes, that's true.

19 Q Okay. Now, if I understand, during your deposition,
20 you learned that the acquisition adjustment, which is shown on
21 Line 20, is reported in the annual report in the way that
22 really would be in addition to Line 23, so the annual report
23 number would be higher; correct?

24 A That is the utility plant in service in the annual
25 report.

1 Q Let me ask the question this way. On Figure 5 in
2 MB-3, you show an adjustment in order to match the annual
3 report of roughly \$29,000.

4 A Right.

5 Q Once you correct your exhibit, how much does that
6 adjustment have to be in order to tie to the annual report?

7 A \$158,136 positive.

8 Q All right. Do you know why the estimated cost that
9 you used in your model are out of balance with the annual
10 report by the \$158,000?

11 A Well, because they were estimated. As I mentioned,
12 the reason for this was to be sure rather than taking a
13 depreciation number and running it annually for ten years, some
14 of those assets may come to the end of their depreciation
15 schedules during the ten years. So we tried to recreate the
16 depreciation schedules down below, and you can see that a few
17 of them do, not many, but a few. And the reason that it
18 doesn't match is because they were estimates, and that's just
19 pure and simple. All of that data was not available at the
20 current time when we did the -- it's not available today even
21 as far as I know.

22 Q All right. Turn to page -- Figure 6, Page 1 of 2,
23 which is the comparable schedule for wastewater. And tell me
24 after your correction to Line 20 how much the estimates in
25 Lines 1 through 18 are out of balance with the annual report.

1 A \$158,136.

2 Q I'm sorry, that sounds like it may have been a water
3 number. What about a sewer number?

4 A I'm sorry. Yeah, you're right, I did. I didn't turn
5 the page over here. \$552,763.

6 Q \$552,000 out of balance with the annual report?

7 A Yes, but the depreciation at the bottom is reconciled
8 to the annual report -- I mean, to the accounting records
9 provided to us by Mr. Bowen, so the actual depreciation still
10 is accurate. The schedules of depreciation on each of the
11 individual types of assets that are shown on Lines 20 through
12 39 are a function of the estimated original cost and to begin
13 the depreciation schedules and we see when they end their life.

14 And as you see at the bottom on Lines 40 on either
15 exhibit, the total depreciation does not match the accounting
16 depreciation. So we carried the additional amount throughout
17 the period because it was not determinable how it should be
18 appropriately depreciated from an original cost data and
19 original cost amount.

20 So to the extent that we tried to alleviate that
21 problem, the other alternative would have been to just take the
22 depreciation and project it annually every year. But we think
23 that this is a more accurate projection.

24 Q Well, a third alternative would have been to use
25 actual original cost rather than estimated original cost.

1 A If that would have been available, that would have
2 been the preferred alternative.

3 Q All right. On Figure 7, Page 2 of 2, and that's page
4 numbered 26, this calculates contributions in aid of
5 construction both from the eastern -- new connections in the
6 eastern service territory and connections in the western
7 service territory; correct?

8 A Yes, I believe that to be correct.

9 Q All right. Let's focus -- I know you made a
10 correction to the way you handled the eastern service
11 territory. Let's focus just for a moment on the western
12 service territory. If I understand correctly, you assume the
13 amount of lines, the dollar value of lines contributed in the
14 western service territory will be equal on a dollar per ERC
15 basis to the embedded cost of lines contributed in the eastern
16 service territory; is that right?

17 A Yes.

18 Q Now, in the original schedule you've got here -- so
19 to the extent the -- to the extent the average property
20 contributions in the western service territory are more or less
21 than the embedded average, you didn't attempt to project what
22 that difference might be?

23 A We don't know what they are going to be.

24 Q Okay. With regard to the eastern service territory,
25 as the schedule appears in Exhibit MB-3, you assume that there

1 would be additional contributions in the eastern service
2 territory for every new connection; is that right?

3 A Yes.

4 Q And do you understand from having read
5 Mr. Forrester's deposition that most of the growth in the
6 eastern service territory will be infill, so there won't be
7 additional property contributions recorded?

8 A We've made an adjustment based upon information
9 provided to me by Ms. Tilley, Ellen Tilley, to account for the
10 infill, and take it out of the ERCs that are getting applied to
11 the CIAC plant calculation.

12 Q And that was one of the things you mentioned at the
13 outset, but you didn't tell us what that adjustment was. What
14 did you assume about the percentage of growth in the eastern
15 service territory that occurs on existing lines and the
16 percentage of growth that requires additional property
17 contributions?

18 A It's not on any printed schedule, but it is on the
19 assumptions page which you've seen in your electronic version.
20 And if this gets entered and you get to see the thing -- I just
21 don't have it with me. I don't have it where I can check it.

22 Q So you don't recall, as you sit here today, what
23 assumption was made?

24 A No, but it affected the first approximately
25 three years, is what my recollection is. Lesser amounts as you

1 go from year to year as the infill gets more and more built
2 out. The other thing on that page, the '99 numbers are zero.
3 Do you see that?

4 Q Yes, sir.

5 A And on the new exhibit, we have new numbers coming in
6 in '99. That was one of the error corrections I mentioned.

7 Q On figure -- was the same correction to reflect that
8 some of the growth in the eastern service territory will be
9 infill, was that reflected on Figure 8, Page 2 of 2, which is
10 sewer as well as water?

11 A Yes.

12 Q Okay. Figure 13, Page 32, this is a calculation of
13 used and useful percentage; correct?

14 A Yes.

15 Q And I believe as Exhibit MB-3 -- the MB-3 we're
16 looking at, you essentially take to calculate the used and
17 useful percentage the ratio of connections to plant capacity
18 and add a margin of reserve to calculate a final used and
19 useful percent; correct?

20 A That's correct.

21 Q And on this schedule is presented when you show
22 additional capacity and ERCs on Line 4. That was additional
23 ERCs based on the maximum day capacity of the water treatment
24 plant; correct?

25 A Yes. And that's been corrected.

1 Q That's been corrected now to be an average day
2 capacity so that you've got the same units in your numerator
3 and denominator?

4 A Yes.

5 Q And that was a correction made as a result of some
6 thinking you did after your deposition?

7 A It was a correction made based upon a question you
8 asked in my deposition, and upon further reflection, I realized
9 that we had pulled a number from the maximum day page from
10 Mr. Miller's report instead of the average day page.

11 Q All right. On Line 13, you were including on MB-3 a
12 margin reserve of 36 months. I understand you have now
13 increased that to 60 months; is that correct?

14 A Yes.

15 Q And can you tell me just -- and let's use year 2000
16 as an example. How did you -- in your revision, how did you
17 calculate a 60-month margin reserve for that year?

18 A You would take the -- there's a new line in there
19 that calculates the ERCs to be used for margin reserve
20 calculation, and what that does is calculate the average over
21 the 60-month period, and then it multiplies it by five. It's
22 effectively gathering 60 months' worth of growth in the margin
23 reserve.

24 Q In Figure 16, as it's presented, you simply had taken
25 current year growth and multiplied by 3; correct?

1 A That's true.

2 Q So you've actually made two corrections to the way
3 you calculate the margin reserve. First, you have increased
4 from 36 to 60 months; correct?

5 A Yes.

6 Q And second, you have based it not on five times the
7 current year growth, but you have attempted to accumulate
8 projected growth over the next five years?

9 A Yes.

10 Q And those are both corrections that you've made after
11 taking into account questions you were asked at your
12 deposition?

13 A Yes.

14 Q At the time of your deposition, is it fair to say
15 that you were unaware of the Florida statutory provision that
16 contemplates the use of five-year margin reserve?

17 A I wouldn't say I was unaware of it. I guess my
18 thinking on that was more affected by the recent -- the
19 experience in the rate case that Intercoastal had and a
20 difficulty with the customers of achieving a five-year reserve
21 and not transferring my thought process over to the Public
22 Service Commission rule completely.

23 Q Now, the bottom line used and useful percentage for
24 water on Line 14 and wastewater on Line 34 are then carried on
25 to Figure 9 and used in the calculation of rate base; correct?

1 A Yes.

2 Q And if I understand your calculation of rate base,
3 you apply a singular water used and useful percentage to all
4 categories of water plant; is that correct?

5 A Yes. And that's been corrected.

6 Q What do you mean "that's been corrected"?

7 A We have an adjusted calculation, as I described in
8 the corrections, that separates the plant and the lines. It
9 also corrects where the percentages apply. In this exhibit,
10 it's applying to the acquisition adjustment and to working
11 capital, which shouldn't have been applying to, so it's
12 applying above that line, and those are coming in in their full
13 value under the adjusted rate base calculation.

14 Q Let me ask you this. You said you separated plants
15 and line. Do you apply the same used and useful percentage to
16 plants that you apply to lines?

17 A Well, we had the ability to apply a different
18 percentage.

19 Q I'm not asking you what you have the ability to do.
20 I'm asking what you did do.

21 A We applied the same.

22 Q You applied the same?

23 A Yes. And if I can explain that. We applied the same
24 percentage to plants and lines. We have the ability to apply a
25 different percentage, and we thought about whether we should

1 apply a different percentage to lines than plant. And if we
2 were applying for a rate increase, we probably would in any one
3 test year. And you may have an even more detailed component in
4 evaluation.

5 On a steady state, though, looking at a ten-year
6 projection, we believe that the line component would be at a
7 lower used and useful at some point and at a higher used and
8 useful at some other points. In that steady state, it should
9 be somewhere near the used and useful that the connections
10 represent to the capacity. So we left it the same. It is a
11 variable number, and it could be changed. And that's why we
12 did the sensitivity analysis, because this is such a
13 contentious type of projection because it's a very difficult
14 projection to do going forward ten years, not knowing the exact
15 configuration of the system in any one year. And so that's why
16 we said, well, let's just look at 100 percent used and useful
17 because that takes care of everything. And it's probably
18 somewhere between what we have and 100 percent, and then the
19 Commission can make its judgment as to whether they think that
20 is a reasonable approximation of what kind of pressures may be
21 operating on the Intercoastal rates.

22 Q With regard to -- you talked about -- I want to pop
23 back about three steps. You had talked about a correction you
24 made to additional wastewater connections in the final year so
25 that you didn't exceed the capacity of the wastewater treatment

1 plant. Do you recall that?

2 A Yes.

3 Q Do you remember what year it is that that wastewater
4 treatment plant reaches capacity?

5 A It appears from the schedules that it reaches
6 capacity in 2007.

7 Q All right. And that's a 1.5 MGD wastewater treatment
8 plant?

9 A I'll have to check the numbers on that.

10 Q Would you accept, subject to check, it's 1.5 MGD?

11 A Okay.

12 Q I guess my question is: That plant won't produce its
13 ultimate capacity in treated effluent until all of the
14 customers are connected to it; right?

15 A That's true.

16 Q So you wouldn't expect it in the year 2002 to be
17 producing 1.5 million gallons of reuse?

18 A Not if there's not as much coming in which as there
19 is later, and if there's more customers that will be coming in
20 later, more coming out.

21 Q All right. So to the extent projections of providing
22 reuse to Nocatee assume that there's 1.5 million gallons
23 available out of that plant beginning in 2002, that would
24 probably be an overstatement in those early years?

25 A I don't know whether that is or not. I'm not

1 familiar with the projections you're talking about.

2 Q But your projections that you use for financial
3 purposes assume that you grow into the capacity of that plant
4 between now and 2007?

5 A We took the system flows, converted them to ERCs,
6 capacity converted to ERCs, and pinned the growth against that
7 and determined when the plant would be built out that way from
8 the rate effect standpoint.

9 Q Well, let me ask you: What did you use as the
10 beginning point? What actual flows did you use and what year?

11 A Again, Mr. Melson, I believe all of that number is on
12 the spreadsheet copy where you can see is on the assumptions
13 page. I'm not sure the actual flows are on these -- well, let
14 me look. Wait a minute. Maybe it's on these assumption pages.
15 It's all brought into here converted to ERCs.

16 Q So you can't readily answer that question; right?

17 A Not without the model up and looking at it, but it is
18 a number that's in there. And you can see it. It's on the
19 assumptions input page.

20 Q But I've signed a protective agreement to get that,
21 so I can't give it to the Commission, can I, if you know?

22 A I think you'd have to ask my counsel about that. I
23 would be happy to share it with the Commission.

24 Q On Figure 14, Page 2 of 6, and this is Page 34, and
25 let's take the year 2001 as an example. The costs shown in the

1 column labeled "interest" is taken from an amortization
2 schedule that was provided to you by Ms. Tilley; is that
3 correct?

4 A Just one moment. Let me get to where you are.

5 Q Sure.

6 A Figure 14.

7 Q Page 2 of 6.

8 A Page 2 of 6. Okay. The year 2001, is that where
9 you're talking about?

10 Q Yes, sir. The figures in the interest column are
11 taken from an amortization schedule provided to you by
12 Ms. Tilley; correct?

13 A Those numbers are, yes.

14 Q In your cost of capital, weighted average cost of
15 capital calculation, however, you used the numbers two columns
16 further over to the right under cost of capital calc; correct?

17 A Yes. The way this is working has been corrected and
18 changed also.

19 Q And what change did you make here? I don't recall
20 you calling this out during your summary.

21 A It is. It's the fourth item I talked about, but
22 basically, the schedule in MB-3 takes the issuance cost at
23 1.5 percent of the principal amount and includes it in the
24 principal amount, and then calculates the interest off of that.
25 And the reason that it was calculated was because we thought it

1 gave a more true cost of capital than the amortization
2 schedule. We subsequently adjusted it to do the loan cost by
3 doing an annual amortization of the loan cost, calculating the
4 interest, and then bringing the annual amortization into the
5 total cost of capital. In consultation with Mr. Bowen, we
6 determined that that was probably a better way to do it and
7 more consistent with the way that he was doing it in the
8 preparation of the rate case exhibits. And so we made the
9 adjustments to do it that way here.

10 Q Let me ask this: Does your sum on Line 31 now match
11 for your interest column and your cost of capital calculation
12 column, or is it still --

13 A No, it's more.

14 Q Which is more?

15 A The cost of capital is more in the corrected version.

16 Q Because it includes amortization of issuance expense
17 now?

18 A Yes.

19 Q And that was an evaluation that you conducted after
20 being asked some questions at your deposition?

21 A After that and after consultation with Mr. Bowen.

22 Q Okay. Let's turn now -- I think I'm finished with
23 the Scenario 1. I would like to turn very briefly to Scenario
24 3, which is reuse. And I think --

25 COMMISSIONER DEASON: Mr. Melson, before you leave

1 that scenario, it appears -- and there was some question, and
2 it may not be significant, but there was some question about
3 the amount of the loan in the year 2007, whether it was 9.2 or
4 8.2. I think it's 9.2.

5 MR. MELSON: Do you have a copy you can read?

6 COMMISSIONER DEASON: Well, I just looked at the
7 amount of the -- in subsequent years, the amount of the
8 principal that would be reduced year by year, and to make it
9 calculate, the original amount would have to be 9.2.

10 MR. MELSON: Thank you.

11 BY MR. MELSON:

12 Q Mr. Burton, let's go to Scenario 3, which is reuse,
13 and Figure 7, Page 2 of 2, which is Page 38.

14 A Okay.

15 Q Now, this schedule is similar to one we looked at
16 previously where you calculated property contributions in the
17 future for the water system; correct?

18 A Yes.

19 Q And on this schedule, you have assumed that the per
20 ERC property contributions for the reuse system equal the
21 embedded per ERC property contributions for the water system;
22 correct?

23 A Yes. Being a dual distribution system, we felt like
24 those were the best numbers we had to make an estimate going
25 forward.

1 Q Would you agree with me at least that you wouldn't
2 expect to have hydrants on the irrigation system?

3 A Yes.

4 Q And on Line 7, you show new cash CIAC from the reuse
5 system. I believe that number was calculated simply by taking
6 your existing water service availability charge and assuming
7 the same service availability charge would be applicable to the
8 reuse system; correct?

9 A Yes.

10 Q Do you know whether Intercoastal in this -- in its
11 application in this docket has filed any request for either a
12 rate or a service availability charge for reuse?

13 A I'm not aware that we have. And the purpose of this
14 was to demonstrate what the order of magnitude of the reuse
15 cost would be for such a rate, that would support such a rate.
16 I don't think Intercoastal has filed for any rate changes in
17 this proceeding that I'm aware of.

18 Q And to the best of your knowledge, Intercoastal does
19 not have an existing residential reuse rate or residential
20 service availability charge; correct?

21 A That's correct, for reuse.

22 Q For reuse.

23 A Right.

24 Q Let me ask you -- I believe Mr. Forrester's
25 deposition, which has been admitted, he indicated that there

1 was a potential to phase out the existing wastewater treatment
2 plant in the eastern service area at some point in the future
3 if Intercoastal were granted its requested extension. Did you
4 include any phase out of that wastewater treatment plant in
5 your financial analysis?

6 A No.

7 Q Would you agree with me that the existing Sawgrass
8 wastewater treatment plant will not be fully depreciated, say,
9 over the next ten years?

10 A It will not be fully what?

11 Q Depreciated.

12 A You mean the plant that's just had all the -- the new
13 plant basically?

14 Q Yeah, the plant that's just had all the additions.
15 It won't be fully depreciated in ten years?

16 A I would expect that's probably true.

17 Q If it were taken out of service in the next ten
18 years, do you know from a ratemaking point of view how the
19 undepreciated balance of that plant would be treated?

20 A The plant would be taken out of service and be
21 replaced with some other asset; is that --

22 Q Let's assume that what Mr. Forrester had reference to
23 was the fact that perhaps you could build a larger new plant on
24 the west side of the Intracoastal Waterway and use it to treat
25 all of the wastewater from the east side and thereby phase out

1 the eastern plant. Let's assume that's sort of the
2 hypothetical situation we're talking about. In that case,
3 first, what would happen to the undepreciated balance of the
4 eastern plant that was being retired?

5 A Mr. Melson, I have to think on that and study it.
6 And I think it would have to be dealt with in some way. I
7 don't know whether there would be a way to deal with it to get
8 it overall at once or not, but I guess the answer to you today
9 is that I'm really not sure how that would be handled right
10 now.

11 Q Okay. And do you know whether it is likely that a
12 plant expansion built, say, five to ten years in the future
13 would cost more or less than an equivalent amount of capacity
14 installed at an earlier date?

15 A I don't know the answer to that. That would be
16 Mr. Miller, I guess, that could answer that question.

17 Q All right. But in any event, you didn't take any of
18 those potential effects into account in your financial
19 analysis?

20 A I did not. No, I did not.

21 Q Okay. I'm just about done. I want to see if there
22 are any of the other corrections you made this morning that I
23 have not asked about, so give me just a moment.

24 A Okay.

25 MR. MELSON: I don't believe there are any others I

1 need to ask you about. Thank you, Mr. Burton, for bearing with
2 me.

3 THE WITNESS: Thank you.

4 CHAIRMAN JACOBS: Very well. Mr. Menton.

5 MR. MENTON: No questions.

6 CHAIRMAN JACOBS: Mr. Korn.

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

8 CHAIRMAN JACOBS: Very well. Staff.

9 MS. ESPINOZA: No questions.

10 CHAIRMAN JACOBS: Commissioners. Redirect,
11 Mr. Deterding.

12 REDIRECT EXAMINATION

13 BY MR. DETERDING:

14 Q Mr. Burton, did I understand you to say in your
15 testimony that you have been the rate consultant on water and
16 sewer utilities for Flagler County as well as St. Johns?

17 A Yes, that's true.

18 Q And how long have you been in that capacity with
19 Flagler County?

20 A I served there for approximately two, two and a half
21 years.

22 Q How long were you the regulatory consultant on water
23 and sewer matters for St. Johns County?

24 A Approximately 10 years, from about 1990 until
25 somewhere in 2000.

1 Mr. Deterding, I just thought of something. When you
2 asked me about Flagler County, I probably misspoke in an answer
3 to one of Mr. Melson's questions earlier, about whether I had
4 ever prepared MFRs, the questions of that nature. In my duties
5 at Flagler County, we did perform a staff-assisted rate case
6 for Ocean City Utilities. So I actually prepared the filing on
7 behalf of the applicant as a staff-assisted type process.

8 Q Okay. Mr. Melson inquired of you about your
9 schedules prepared for your additional rebuttal that was
10 stricken. What portion, just roughly, of that was correction
11 of MB-3, just roughly? Fifteen schedules, was it not?

12 A What?

13 Q It consisted of 15 schedules, did it not?

14 A Marty, I'm sorry, I'm not understanding your
15 question.

16 Q Your additional rebuttal testimony.

17 A The part where some of it was accepted, and some of
18 it was not?

19 Q Correct. Now, as to your exhibits, there were 15
20 schedules attached to that testimony; correct?

21 A If you say there are. I --

22 Q All right. Well, subject to check. Don't bother.
23 What portions of that were revisions to MB-3?

24 A Yes, that's true.

25 Q What portions of that were revisions to MB-3?

1 A Okay. Now, I understand your question. It was
2 called Exhibit MB4-8, Page 1 of 4, 2 of 4, 3 of 4, and 4 of 4.

3 Q So it was four pages. Okay. Does the portion of
4 those -- does the changes that you made in that schedule affect
5 other than correction of errors? In other words, the new
6 proposal to subsidize affect any of the years in the
7 calculations after year four or five?

8 A No.

9 Q So, in other words, the later projections --

10 A Subsidy is for that period of time.

11 Q Is only for the earlier period?

12 A Right. And the rates would come back to the levels
13 projected in the corrections here even without the subsidies.

14 Q Okay.

15 A "Here" meaning in my corrected MB-3.

16 Q So the long-term projections are along the lines
17 regardless of the subsidy that you had suggested in your now
18 corrected MB-3?

19 A Yes.

20 Q Mr. Melson questioned you about the use of the
21 7.10 percent of rate of return shown after 1999 on your
22 schedules, MB-3 specifically. I believe he was referring to
23 Page 17. What would you expect a regulator to do with your
24 rate of return if the utility does or does not file a rate
25 case?

1 A With Intercoastal's rate of return it's now at 12.04?

2 Q 12.10 I believe was the number you had in there then.

3 A Was it? Whatever the number is. What would I expect
4 would happen if Intercoastal filed a rate case?

5 Q Well, for instance, they are supposed to be filing a
6 rate case; correct?

7 A Yes.

8 Q And those MFRs are due June 1?

9 A Right.

10 Q What would be expect the regulator to do with your
11 rate of return once that rate case is filed?

12 A To adjust it based upon the cost of capital analysis
13 in the rate case filing.

14 Q Which is what you have attempted to do by stating
15 7.10 as a cost of capital?

16 A Yes.

17 Q What the regulator -- what if you did not file a rate
18 case? Does this utility currently have a rate investigation
19 ongoing?

20 A Yes.

21 Q What would you expect the regulator to do with the
22 rate of return for the utility if that goes forward?

23 MR. MELSON: Objection. Calls for him to speculate
24 about what a regulator is going to do.

25 MR. DETERDING: Well, Mr. Burton is an expert in this

1 field. He is also the former regulator in this county.
2 Mr. Melson was questioning this witness about whether or not
3 the 12.10 percent was an appropriate rate of return or the 7.10
4 was an appropriate rate of return. And since this utility has
5 two ongoing rate proceedings, I'm trying to find out whether he
6 believes in his expert of opinion that that rate of return
7 would be altered.

8 CHAIRMAN JACOBS: Why don't you reword the question
9 to base it on his experience.

10 MR. DETERDING: All right.

11 BY MR. DETERDING:

12 Q Based upon your experience in St. Johns County and as
13 an expert in water and sewer utility regulatory matters, do you
14 believe that that rate of return would be adjusted by the
15 regulator?

16 A Yes.

17 Q Regardless of whether there's an ongoing rate
18 application?

19 A If the utility has not filed for a rate relief? Is
20 that what you're asking me?

21 Q I'm asking you, with the pending rate investigation,
22 would they adjust that, would you expect that to be adjusted?

23 A Marty, I'll have to tell you, I don't know the answer
24 to that because I have not been involved in the pending rate
25 investigation. I don't know the provisions that have been

1 made, the deals that have been agreed to on either side. So I
2 really don't know what that investigation can and can't result
3 in. I understand there's been a lot of controversy. There was
4 an initial audit. Its findings were determined not to be
5 valid. There's another audit, and I don't know what kind of
6 agreements have been entered into by the parties.

7 Q Okay. Mr. Melson was questioning you about the
8 cumulative shortfall in return through 2004 in a portion of
9 MB-3 in your calculations there. Do you believe there will be
10 a cumulative shortfall in NUC's rate of return?

11 A Yes.

12 Q Why?

13 A Well, by definition, they have set their rates in
14 accordance with the Commission regulations at 80 percent of
15 capacity, which when they are at 80 percent of capacity, they
16 will be compensatory. In their growth projections, they have
17 already testified that that will happen in year four, I believe
18 it was. So in year one, they will have a few customers, and
19 they won't be compensatory then, and in year two, they'll have
20 more, and in year four or five or whenever it was in
21 Ms. Swain's testimony that they reach 80 percent is when they
22 will be compensatory. And in early stages, it may not even
23 cover their actual cost. At some point in that progression it
24 will cover cost as growth occurs, and then start recovering
25 return until it gets fully compensatory.

1 Q To your knowledge, has anybody at NUC attempted to
2 estimate the amount of that shortfall?

3 A We have asked, but I have not seen anything
4 forthcoming in that regard.

5 Q Have the shareholders of Intercoastal agreed to
6 recognize and accept any shortfall?

7 MR. MELSON: Objection. I believe this witness
8 testified that all he knew about he had learned from -- in this
9 regard he had learned from Mr. Bowen or Mr. James, so this is
10 going to be hearsay.

11 MR. DETERDING: Well, he certainly discussed it with
12 the shareholders, so I'm asking him -- let me rephrase the
13 question.

14 BY MR. DETERDING:

15 Q Have the shareholders told you that they have agreed
16 to recognize and accept any shortfall?

17 A Yes, they have, through Mr. James.

18 MR. MELSON: Move -- well, that's a good answer.
19 Never mind.

20 THE WITNESS: That's a true answer.

21 BY MR. DETERDING:

22 Q You were questioned about the rate levels in the
23 later years where your schedules showed that a rate reduction
24 would be in order?

25 A Yes.

1 Q Do you believe that the regulator would require a
2 rate reduction if the utility were overearning in any of those
3 years?

4 A Yes. You may go a year -- you may go a short period
5 of time and overearn. I think if it's a one-time occurrence
6 and things are going to adjust, you will be back in sync with
7 your return. But on a steady state basis, the whole idea is
8 that if you are overearning, your rates should be adjusted, or
9 if you are underearning, your rates should be adjusted.

10 Q You were questioned by Mr. Melson about the water
11 treatment plant improvements, the difference between the
12 estimated values utilized in your schedules and the ultimately
13 determined actual cost of those facilities. Do you know what
14 difference in the improvements there were, and how they were
15 different?

16 A I really don't. I just know that the number is
17 different. You're talking about the change from a million five
18 to two seven? Is that what you're talking about?

19 Q Yes.

20 A I don't know what caused that to be different.

21 Q But that was the actual cost that you --

22 A That's what the actual cost was as represented to me
23 by Ms. Tilley.

24 Q Okay. Is it unusual to expect fluctuation in cash
25 flow for a utility from year to year?

1 A No.

2 Q Is it unusual to expect fluctuation in earnings from
3 year to year?

4 A No.

5 Q And, in fact, do you believe that new borrowings
6 would affect that cash flow from year to year substantially?

7 A Yes.

8 Q How about new construction?

9 A Yes.

10 Q Are the figures regarding shareholder subsidy, which
11 Mr. Melson pointed you to in MB-3, in line with your
12 understanding of what was expected as far as that subsidy?

13 A What was expected by whom?

14 Q By you.

15 A It's not out of line with what I would have expected,
16 no.

17 Q Mr. Melson questioned you about your new margin
18 reserve calculations, and I believe you said you utilized a
19 5 year instead of 36 months; is that correct?

20 A Yes.

21 Q And you utilized the actual projected growth
22 figures --

23 A Yes.

24 Q -- for that five-year period?

25 A Yes.

1 Q If the statute required a lower figure or if the
2 Commission policy required a lower figure than that actual
3 growth rate, what would the net effect of that be on rate base?

4 A If you could include less growth in margin reserve,
5 you would have less used and useful, and then you would have
6 less rate base.

7 Q Okay. And, therefore, what kind of pressure would
8 that put on your projected rates?

9 A If you have less rate base, you would have less
10 allowed return, and you would have downward pressure.

11 Q Okay. Given all the comments and things that were
12 pointed out to you, do you believe that your corrections as
13 noted at the beginning of your testimony take into account all
14 material changes that have been brought to your attention that
15 ought to be recognized in your projections?

16 A I don't know whether it's material. I'll leave that
17 to be determined later, but it includes everything except for
18 the hydrants in reuse which need to taken out also. They have
19 not been taken out in the corrections, and they should be.

20 Q And do you believe that your projections as contained
21 in your corrected MB-3 are still relatively accurate?

22 A Yes. For the purposes of a ten-year forecast of what
23 the financial dynamics would be under utility ratemaking
24 concepts for a utility -- for Intercoastal Utilities, I think
25 they're very representative of what one might expect. It's not

1 ratemaking. We're not asking for rates. We're not setting
2 rates here. We're just trying to demonstrate that this
3 tremendous surge of growth is going to happen, double digits.
4 The water system more than doubling the sewer system more than
5 tripling is the reason this occurs. It's very unusual, but
6 this utility is in a very unusual position, and the benefit
7 will go straight to the ratepayers because that's like rate
8 increases.

9 Those percentage growth -- upgrowth operate on
10 revenues just like rate increases and have very marginal
11 implications on the cost side even when capital is being
12 brought in compared to the revenues. So I think it is a very
13 fair representation of the order of magnitude that one might
14 expect that the rates would end up in, or that the pressures
15 that would be on the rates of Intercoastal if they are awarded
16 the Nocatee service area, and if growth occurs as projected
17 there.

18 Q And how about your MB-3 as last filed? Do you
19 believe that that has materially changed? I know you gave us
20 some figures for year nine about the difference between what
21 your corrected version had and what your latest filed
22 version -- I think it's MB-3 --

23 A Well, I don't think it's material in the overall
24 concept that we're trying to set forward here. The rate impact
25 now is 79.70 for that customer. MB-3 said it was 58.87. The

1 adjustments take it 62.10. It's not low 60s. That's a
2 substantial decrease. Even if you change some of the
3 assumptions, and don't worry, Mr. Melson, I'm not going to tell
4 them the number, but even if you set used and useful to
5 100 percent, it's still not a material impact in the scheme of
6 things as to what will happen to Intercoastal's rates.

7 And I might add that I don't believe the same type of
8 economies of scale will be experienced by Nocatee mostly
9 because of the wholesale nature of their service where they pay
10 on a unit basis for most of their O&M cost. They don't get to
11 spread a fixed number of O&M cost for an ongoing utility like
12 Intercoastal over all these new units, and they pay more, as a
13 matter of fact, for each new unit.

14 And the one who experiences the economies of scale
15 there would be JEA as it goes through Nocatee to JEA. So I
16 think this is a fair representation. I think it clearly
17 differentiates the forces that will be acting on the rates and
18 those effects upon ratepayers of the two alternatives.

19 Q And the numbers that you just gave me there for
20 comparison, 62-something versus 58-something. What --

21 A 62.10 versus 58.87.

22 Q So somewhere in the neighborhood of approximately 3
23 to 4 percent, it sounds like?

24 A It's \$3.23. And I'll leave to the observers to judge
25 the materiality of that. In my mind, it still supports the

1 argument that the dynamics that will be happening because of
2 this tremendous growth are going to put pressures on
3 Intercoastal's rates in these out years where they will have no
4 choice, not that they will necessarily be the ones who would
5 like to, but they will have to lower their rates.

6 COMMISSIONER PALECKI: I'd like to ask about these
7 economies of scale.

8 THE WITNESS: Yes, sir.

9 COMMISSIONER PALECKI: I can see where you would have
10 economies of scale on billing. I can see where you have the
11 effluent coming from the other system. You have an economy of
12 scale there. It seems that for potable water you're going to
13 be putting in an entirely new system, new wells, et cetera.
14 I'm not sure I see the economy of sale there. For wastewater
15 treatment, it looks like a brand new system. Are you going to
16 see these economies of scale across the line? It's almost in
17 most -- in most of the facilities you're putting in a new
18 system.

19 THE WITNESS: You have the -- a determinable amount
20 of cost in the utility; that's the cost of the utility being in
21 business. I'm calling it a management infrastructure, but
22 you've got the cost to be a utility. Those costs won't
23 increase substantially, and they be will spread over these
24 larger units as you add the units. The cost for the capital
25 will find its way into rates on a diluted basis. It's not

1 dollar for dollar like O&M is. The Nocatee cost is O&M. Okay.
2 They have already testified that a great percentage of their
3 cost is operation and maintenance expense as reflected in their
4 deal with JEA. That's a dollar-for-dollar impact.

5 When you bring capital into the utility, it hits the
6 rates on depreciation, so that's diluted by the effect of
7 depreciating this over whatever the lines of the asset is. It
8 hits the rates in return which is diluted by the rate of
9 return, 7 or 8 -- 7 cents on the dollar, or whatever that is.
10 So it doesn't have the same impact as it appears to have by the
11 magnitude of the dollars that are in effect going into the
12 ground.

13 The other dynamic that happens is that Intercoastal
14 has existing rate base that's out there that absent other
15 forces would tend to erode. And that counters some of the
16 increase in rate base that's happening over on the western
17 side. So you have a countering effect there that's not
18 available in the Nocatee thing, just the dynamics of how that
19 works as you go from year to year. The baseline utility is
20 continuing that rate base. It gets smaller because it's not
21 adding any more capital. So the dynamics when you add no more
22 capital on the eastern side, rate base would get smaller. That
23 counters the increase in the rate base on the western side.
24 And I don't know if you'd exactly call that an economy of
25 scale, but it is another factor, another force that would be

1 causing this pressure or these dynamics to press the rates
2 downward in the Intercoastal system. Whereas, on Nocatee, they
3 don't have an existing utility to counteract the additional
4 capital that's coming in, and their capital, if you will,
5 except for a small percentage that they will be doing, is
6 coming in dollar for dollar through the JEA wholesale rate,
7 80 percent of the JEA wholesale rate, which, by the way, is --
8 I've done an analysis. It's in one of my testimonies, and I
9 get confused about where we cover these things, in direct or
10 rebuttal or whatnot, of the JEA rates today compared to the
11 Intercoastal rates projected in 2009.

12 Based upon Mr. Kelly's testimony earlier today, he
13 said the JEA rates have increased at about 1 percent a year
14 since 1981. In the analysis in my testimony shows that the JEA
15 rates by -- between now and 2009, if they increase by a little
16 under half a percent a year, they would be equal to what the
17 Intercoastal rates would be at that time. Now, our rates are a
18 little higher now. It's 63 instead of 58. And so, you know,
19 even if you take that up, if the JEA rates increased at
20 1 percent a year like they did, I'm sure if I adjusted that
21 calculation, their retail rates, the average of the winter and
22 summer retail rates, would in all probability be equal to more
23 than Intercoastal's rates at that time. So it's very likely if
24 these dynamics occur with this growth that the Intercoastal
25 rates by the time you get to 2009 will be very competitive with

1 the JEA retail rates. And yet the customers are not going to
2 experience a benefit through Nocatee because they are going to
3 be paying 80 percent of the JEA retail rates plus the Nocatee
4 add-on, and they are not going to get the benefit of the
5 dilution of the capital impact in the ratemaking process
6 because it's coming in as O&M.

7 COMMISSIONER PALECKI: Well, I understand your
8 answer. I'm still looking for economies of scale, and I'm not
9 familiar with the geography here. I see the Intracoastal
10 Waterway separating the two systems. I understand you will be
11 able to share management between the two systems. Will you be
12 able to share lineworkers between the two systems, the system
13 at Nocatee and the existing system? Is there a nearby bridge?
14 Is it easy to get back and forth between the areas? Will
15 trucks be shared between the two systems?

16 THE WITNESS: Can I show you on the chart something?

17 COMMISSIONER PALECKI: Yes.

18 THE WITNESS: If I can get my bearings --

19 CHAIRMAN JACOBS: Yeah, I need you to take the mic
20 with you.

21 THE WITNESS: -- and not spill the water. I believe
22 this is 210. Is that right, Mr. Melson?

23 MR. MELSON: County Road 210 is in there somewhere.

24 THE WITNESS: Yeah, that's 210. And there is a
25 bridge right here that's being replaced by a four-lane bridge.

1 It's going to be a big bridge without a -- it now is a bridge
2 that has a -- what do you call it -- draw in it. It's an old
3 time bridge where they have to open it for the boats to go
4 under, and it's being replaced by a big bridge much like the
5 Vilano Bridge here in St. Augustine, a very high four-lane
6 bridge. So the access will be very easy back and forth here.

7 The operations plan, it's unfortunate that
8 Mr. Forrester is not able to be here because he could probably
9 speak to that better than me, but I will tell you this, that in
10 the projections that we did, we sat with Mr. Miller in several
11 conferences and went through line by line the O&M cost items,
12 the operations and maintenance cost items, and identified in
13 the years when the new capital was coming in what would happen,
14 what would we need. And we identified additional operators,
15 additional expenses that would be incurred, but because of that
16 capital, not just because the growth units were coming on but
17 because now you had a new plant to operate. So instead of
18 having one operator, you're going to have to have two or
19 whatever the number was. And that's all reflected in these
20 analyses here. So I would say that it's all been accounted
21 for.

22 And the economies of scale are two things. It's not
23 just dividing the cost by more units. That's one thing, but
24 it's just a tremendous surge in the revenues. When you get
25 these growth units -- let's say you put the plant in in 2002,

1 and then you start getting growth units. Well, those growth
2 units are adding boom, boom, boom, boom, boom, boom to your
3 revenue every unit that comes in without adding very much
4 marginal cost at all on the cost side, chemicals and the power
5 and a few things of that nature to actually deliver the
6 service. You don't have to hire more employees now once they
7 are in on the plant. So the big dynamic that's really causing
8 this to be possible and probably unusual is because of the
9 tremendous growth.

10 The growth numbers -- they are in the book, but in
11 2001, Intercoastal was experiencing -- well, and this is
12 somewhat like historical -- about 4.67 percent on water and
13 9 percent on sewer. In 2003, it goes to 12 -- I'm going to
14 round these to nearest percents -- 12 on water, 22 percent on
15 sewer. In '04, it goes to 11 on water and 19 on sewer. In
16 '05, it's 10 on water, 16 percent on sewer. Now, these are the
17 same number of units. The percentage is going down a little
18 bit now because they are pinning against bigger units each
19 year. But there is a tremendous number of new units coming in,
20 and it's operating very much like a rate increase in the
21 intervening years between '02 and '07, and then from '07 on.
22 And you take a hit in those two years because you have new
23 capital that comes in, you're bringing in some new O&M, and you
24 are bringing in some new capital impact into the rates, but the
25 net effect is that the revenues are just dwarfing all of these

1 other effects because it's just tremendous growth. I don't
2 know how many utilities experience that level of growth over
3 that period of time.

4 And now at the end of the period when the eastern
5 service area is built out, things will go back more to a steady
6 state, and we're not predicting that these rates will continue
7 to go down forever. Okay. This is a phenomenon that will
8 occur while they are experiencing growth on the eastern system
9 on a fully built system that's having some -- having a
10 deteriorating rate base and growth on a western side where they
11 have got a new system coming in with tremendous growth. The
12 old system growth will go away, and then the eastern service
13 area growth will go away in '08, I guess, is when it fully goes
14 away. And then you will still have the western, and you'll be
15 more back to a steady state. And we would think that the rates
16 would stay somewhat stable from then on. So we're not
17 predicting this to be an ad infinitum item effect. It is a
18 phenomenon. And the reason -- I mean, you're trying to decide
19 what to believe about all this testimony here, and you've got a
20 lot of stuff on the table, and you've got a lot of conflicting
21 arguments before you. But the believability all of this, one,
22 is in analyzing it and seeing that it's being calculated right;
23 the other is in the phenomenon that's causing it to occur and
24 is just tremendous growth. Water units going from 5,763 ERCs
25 in 2000 to 12,091 ERCs in 2009; sewer units going from 2,857

1 ERCs in 2000 to 9,328 at the end of the period, just tremendous
2 growth, tremendous increase in revenues, and that's what's
3 going to make it happen.

4 COMMISSIONER PALECKI: Thank you.

5 COMMISSIONER JABER: Mr. Burton, are you familiar
6 with any of the comprehensive plans filed by Intercoastal, JEA,
7 or the County?

8 THE WITNESS: Comprehensive plans filed under the
9 Growth Management Act?

10 COMMISSIONER JABER: Yes.

11 THE WITNESS: No, I'm not.

12 COMMISSIONER JABER: All right. So you don't know
13 then what was envisioned by the County for growth and provision
14 of water in this area, do you?

15 THE WITNESS: I do not. That would be other
16 witnesses that would need to testify to that.

17 COMMISSIONER JABER: I'll tell you why I'm asking,
18 and it's something I've been thinking about with the public
19 interest question, Mr. Burton, and maybe if you want to
20 elaborate on this, you can. As matter of policy, should the
21 Commission give any weight to allowing the creation of a new
22 utility versus allowing an expansion by another utility
23 existing, whether it be JEA, or Intercoastal, or the County,
24 for that matter?

25 THE WITNESS: Should they gave weight to --

1 COMMISSIONER JABER: How much should I take that into
2 account when I'm making my decision in this case?

3 THE WITNESS: Let me make sure I understand your
4 question. How much should you take into account what
5 specifically?

6 COMMISSIONER JABER: Allowing Nocatee Utility to be
7 certificated, which is a brand new utility, versus allowing --
8 approving Intercoastal's application or perhaps denying
9 Nocatee's application with the understanding that JEA is
10 available to serve.

11 THE WITNESS: Well, you know, you've asked my opinion
12 on that, so I'll tell you. I think the testimony I've heard,
13 the JEA ability to serve the whole area would be up in the air.
14 I think you would have people who would have different opinions
15 about that than what JEA has. In terms of Nocatee being a new
16 utility versus Intercoastal being an existing utility,
17 Intercoastal is an existing utility. They are right there.
18 They are adjacent to the service area. They have a long
19 history of being able to provide quality service, not
20 withstanding the complaints you've heard by some people that
21 are very proximate to a wastewater treatment plant, and I think
22 the testimony that the JEA plant also puts out odors also.

23 You have a utility that's been able to attract
24 capital, that continues to be able to attract debt at very
25 attractive rates. I personally don't see why you would need a

1 new utility in this area, and I guess that would be my opinion.
2 I think that the JEA issue doesn't have a -- even as it's
3 structured, I think Nocatee is very thin. I mean, I heard
4 testimony that you-all didn't even know who you were going to
5 have to call if you had a problem. If you're approaching
6 Nocatee, if I was in your shoes, I would say, am I effectively
7 approving JEA?

8 I think it's very likely with the right of
9 first refusal that it is very possible there would be an
10 acquisition. I don't know what's going to happen at that
11 point. And then you have a tremendous amount of this service
12 area. It's the yellow, I guess, compared to the green shaded
13 that's not accountable -- where the owners of the utility are
14 effectively not accountable to any regulation other than their
15 good graces of JEA. So I think in an abundance of conservative
16 caution and no reason not to because Intercoastal clearly can
17 provide this service. From what I can see, I would say
18 Intercoastal. I know there was testimony about development
19 orders and things of that nature, but I'm not the expert in
20 those things, and it seems to me that those things are fungible
21 over time. They are changeable over time based upon what
22 occurs. So I don't know that that would be a limited factor
23 here.

24 COMMISSIONER JABER: But in your review of the
25 testimony and of this case overall, you don't believe that JEA

1 doesn't have the technical or the financial ability; right?

2 THE WITNESS: You're saying I don't believe they do?
3 No, I believe they have the technical and financial ability to
4 serve the service area. Clearly, they are serving the
5 greater -- a huge service area in Jacksonville. I'm just
6 saying there's a lot of potential issues there with regard to
7 territorial issues with St. Johns County. Intercoastal is very
8 proximate. JEA is proximate now. They have run lines in
9 recent years down there to become proximate. The plant is a
10 long ways away. And by the time this all evolved and we went
11 through the case in St. Johns County and construction was going
12 on with JEA, they now have facilities that are relatively
13 close, but there was a time when they didn't.

14 Intercoastal appears to me to be an easy solution.
15 It appears to be one without conflict. Intercoastal is an
16 existing utility. They will be serving across county
17 boundaries. Your jurisdiction over that is pretty well
18 settled. It seems to me a better solution in all ways. The
19 approval of Nocatee -- if you were to approve Nocatee -- let's
20 just hypothetically say you were to approve Nocatee, and one
21 month later or one day later, JEA exercises its right of first
22 refusal. They have now procured the right to serve in
23 St. Johns County by your action. I don't know. You have to
24 judge whether that's what should happen out of this case and
25 whether that's likely to happen. I don't know what's going to

1 happen. That is a possibility, however, where JEA acquires
2 Nocatee soon after the approval or long after the approval,
3 whenever they might do it. And if they do it, then they have
4 acquired the right to serve in the county by -- I believe
5 that's what they -- the testimony has indicated they would
6 believe to be their right because they would have the
7 certificated service area. The utility would have had the
8 certificated service area. They would acquire that utility,
9 and then they would have the right to serve. That's what I
10 think I heard them say.

11 So I don't know what anybody's motives are on any of
12 this. I have no idea. I just know the perception would be if
13 that did occur, possibly that this was a process that allowed
14 JEA to do that. And I'm not accusing anybody of doing
15 anything, but it is a very real possibility, I think.

16 COMMISSIONER JABER: Mr. Burton, I interrupted your
17 counsel, so I better let him continue his redirect.

18 BY MR. DETERDING:

19 Q I just wanted to follow up on one of the questions by
20 Commissioner Palecki just for some clarification. You were
21 talking about the tremendous growth. And the only thing I
22 wanted to clarify is, this utility already has had tremendous
23 growth in its existing service territory, and I think you were
24 talking about the combined effect would be just this huge
25 number?

1 A It would be in the scheme of things that I see in my,
2 you know, 25 years of doing this kind of business with
3 utilities, this is some of the more astronomical growth figures
4 that I have ever seen.

5 Q And not just because of what's going to happen in
6 Nocatee, but because --

7 A The combination. First off, 9 percent growth on any
8 system is high. I mean, you know, some of the highest growth
9 recorded is around in Orange County is one of my long-term
10 clients. They look at 6, 7 percent growth, and that's strong.
11 That's down in the Orlando area where you've gotten a lot of
12 growth. These are very high growth numbers, and I would think
13 that this most anyone could look at them and feel that's true.
14 But it is a phenomenon, and it won't last forever. It will
15 last when there's a coincidence of growth happening on the
16 eastern and the western side. When the eastern sides builds
17 out, then it will be the western side. It will go more back to
18 a steady state.

19 So I don't want to think that -- for two reasons, I
20 don't want to think that we're projecting this will go on and
21 on. One is, that's not believable. There has to be a reason
22 this is happening, and this is the reason. And if you'd like,
23 I'll be happy to provide you copies with this graph that
24 clearly demonstrates what's going on out there. I forgot my
25 second point. I lost my train of thought.

1 MR. DETERDING: That's all I have. I wanted --
2 unless we're going to seek to clarify something else, I wanted
3 to address the exhibits.

4 CHAIRMAN JACOBS: Commissioner Melson.

5 MR. MELSON: Thank you for the promotion. I would
6 like to ask one follow-up to one thing he said in a rather
7 lengthy response to Commissioner Jaber. Just a point of
8 clarification.

9 CHAIRMAN JACOBS: I was very hesitant to do that
10 earlier. Could you explain it to me, please.

11 MR. MELSON: He talked about if JEA exercised a right
12 of first refusal the day after Nocatee got a certificate, and I
13 want to know if he understands what a right of first refusal
14 is.

15 CHAIRMAN JACOBS: I think he was speaking to the
16 specific clause in the --

17 MR. MELSON: Yes, sir. But I think he may have had a
18 right of first refusal confused with an option, and I'm trying
19 to find out if the witness understand the difference.

20 CHAIRMAN JACOBS: Okay. You can go to his
21 understanding of that briefly.

22 RECROSS EXAMINATION

23 BY MR. MELSON:

24 Q Mr. Burton, what do you understand a right of
25 first refusal to be?

1 A My understanding would be that if Nocatee desires to
2 sell the utility, that JEA would be the first one who had a
3 shot at buying it.

4 Q So you don't understand that a right of first refusal
5 first requires a contract to sell to some third party before a
6 right would exist in JEA? That's not your understanding?

7 A Let me clarify this a little bit, if I might. I have
8 not analyzed the contract in terms of the right of
9 first refusal very specifically. I wasn't actually arguing a
10 legal point of order. I was responding in terms of my opinion
11 about what might happen in the Commission's thought process
12 about what they should do. It's clear by the language that
13 there has been contemplation of an acquisition by JEA. It's
14 clear that when an acquisition occurs usually there has to be a
15 willing seller and a willing buyer. All I'm saying, if that
16 does occur, that's all I was saying, if that does occur, then
17 that's what would happen. I wasn't arguing whether JEA could
18 come in and just trigger something without any agreement from
19 Nocatee. So if that helps, that's all I meant.

20 MR. MELSON: That helps. Thank you.

21 CHAIRMAN JACOBS: Very well. You were done; correct?

22 MR. DETERDING: Yeah. I just wanted to address
23 before we get to -- well, let's go ahead, and I'll move
24 Mr. Burton's 29 and 30. I guess they were marked.

25 CHAIRMAN JACOBS: Yes. Exhibits 29 and 30, without

1 objection, show those are admitted in the record.

2 (Exhibits 29 and 30 admitted into the record.)

3 CHAIRMAN JACOBS: What did we decide about a
4 corrected MB-3? Is that necessary?

5 MR. DETERDING: Well, I would prefer you had it
6 because the numbers that you've got in MB-3 are slightly off
7 than what he was questioned at length here today about that he
8 agreed it ought to be changed in here. And if Mr. Melson
9 objects to that, then you're just going to have to rely on his
10 verbal representation of the affect of that and approximately
11 how much it affected it. Since I think we have agreed that
12 it's only those adjustments that he specifically mentioned, I
13 don't know why Mr. Melson would have a problem with that.

14 MR. MELSON: Commissioner Jacobs, let me suggest
15 something. If we are about ready to break for the evening, if
16 I could have a copy of revised Exhibit MB-3 to look at this
17 evening, I could let you know tomorrow whether I object or not.
18 It might be that I would not object if I were permitted to ask
19 a few questions about things in that exhibit that I'm
20 particularly interested in.

21 CHAIRMAN JACOBS: Okay. We'll take that approach,
22 and you can come back and make a decision on that. Okay.
23 Thank you, Mr. Burton. You're excused.

24 THE WITNESS: Thank you.
25 (Witness excused.)

1 CHAIRMAN JACOBS: Before we leave, as I understand
2 it, there was a possible stipulation. Is that possible?

3 MS. CIBULA: One of the attorneys has a question for
4 the DEP witnesses, but Ms. Silvers has asked to go tonight, to
5 give her testimony tonight, if that's possible.

6 CHAIRMAN JACOBS: Okay. Do we know what the extent
7 of cross would be for Ms. Silvers?

8 MR. MELSON: Actually, if you start at that end of
9 the table and after I hear Mr. Wharton's cross, I may not have
10 any at all.

11 MR. WHARTON: Well, I feel the same way.

12 MR. MELSON: I will waive cross if you will,
13 Mr. Wharton.

14 MR. WHARTON: Of Caroline Silvers?

15 MR. MELSON: Yes.

16 CHAIRMAN JACOBS: Yes.

17 MR. WHARTON: No.

18 CHAIRMAN JACOBS: No cross?

19 MR. WHARTON: No. No, I won't waive it.

20 CHAIRMAN JACOBS: Okay. How long?

21 MR. WHARTON: And in fact -- well, it's short, but I
22 just think Ms. Silvers is an important witness. So if
23 everybody feels robust, let's get her in; otherwise, let's do
24 it tomorrow morning.

25 CHAIRMAN JACOBS: This is really short?

1 MR. WHARTON: Well, it's not as long as -- it's
2 shorter than cross that would be longer, using an example we
3 heard earlier in the trial, but, I mean, it's 10 or 15 minutes.

4 CHAIRMAN JACOBS: Okay.

5 MR. WHARTON: And maybe not that long.

6 CHAIRMAN JACOBS: Let's go ahead and take Ms. Silvers
7 out of order.

8 MR. WHARTON: But was that who we were talking about,
9 Ms. Silvers? Or was there another witness that Mr. Korn had a
10 few questions of that --

11 MS. CIBULA: That's the DEP witnesses.

12 MR. WHARTON: And we're also going to try to do him
13 tonight?

14 MR. KORN: If he could do him tomorrow, that would be
15 fine with me, because I have no questions of Ms. Silvers no
16 matter what Mr. Wharton's cross examination might be.

17 CHAIRMAN JACOBS: What's the extent of the cross for
18 Mister-- the other DEP witness?

19 MS. CIBULA: I heard that there's only, like, a
20 couple of questions for the DEP witnesses.

21 CHAIRMAN JACOBS: How about for the second DEP
22 witness?

23 MR. MELSON: I have no cross for any Staff witness
24 that Mr. Wharton does not have cross for.

25 CHAIRMAN JACOBS: Okay. Why don't we shoot for that?

1 Are they prepared to go now?

2 MS. CIBULA: Yes.

3 CHAIRMAN JACOBS: Do you guys need time to pull
4 together your cross?

5 MR. KORN: No.

6 MR. WHARTON: No, I'm ready.

7 CHAIRMAN JACOBS: All right. We'll take about five
8 minutes literally in place, and then we'll get them all. In
9 fact, them can come on up.

10 (Brief recess.)

11 CHAIRMAN JACOBS: We'll go back on the record. And
12 we're going to take out of order Ms. Silvers and the -- I'm
13 sorry, I can't think of any other DEP --

14 MS. CIBULA: We're going to take Ed Cordova first,
15 and then Mr. Lear and then Ms. Silvers.

16 CHAIRMAN JACOBS: Oh, there are three witnesses.

17 MS. CIBULA: Rob Lear is also a DEP witness.

18 CHAIRMAN JACOBS: Okay. Now, are we still within 45
19 minutes or so to get done?

20 MS. CIBULA: I believe so.

21 CHAIRMAN JACOBS: Okay. Sounds like a winner. And
22 we'll begin -- it looks like we have a good bit left tomorrow.
23 So I think we should start at 9:00 a.m. in the morning again.
24 Very well. You may proceed.

25 THE WITNESS: Excuse me, Mr. Chairman.

1 CHAIRMAN JACOBS: You weren't here to be sworn.

2 MS. CIBULA: Yeah, he needs to be sworn in.

3 (Witness sworn.)

4 CHAIRMAN JACOBS: Thank you very much. You may be
5 seated. Thank you for reminding me too.

6 EDWARD CORDOVA

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

10 DIRECT EXAMINATION

11 BY MS. CIBULA:

12 Q Please state your name and business address for the
13 record.

14 A My name is Ed Cordova, and I reside at 8911 Deerberry
15 Court, Jacksonville, Florida.

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

17 A I am employed by the Florida Department of
18 Environmental Protection as the potable water section
19 supervisor in the northeast district office in Jacksonville.

20 Q Are you adopting the prefiled testimony of
21 Mr. Scott Trigg and Dr. James Tofflemire as your own?

22 A Yes, I am.

23 Q Do you have any corrections or changes to make to
24 that testimony?

25 A Yes, I do. Since I am adopting Mr. Trigg's and

1 Mr. Tofflemire's testimony, I would like to substitute my name
2 and address on Page 1, Lines 3 through 6 of Mr. Trigg's
3 testimony, and on Page 1, Lines 3 through 5 of Dr. Tofflemire's
4 testimony. I'd also like to substitute my education and
5 experience testimony found on Page 1, Lines 9 through 13 of
6 Mr. Trigg's testimony, and Page 1, Lines 8 through 13 of
7 Dr. Tofflemire's testimony with my educational background,
8 experience, which is as follows:

9 I have a Bachelor of Science in environmental
10 engineering from the University of Florida. I have
11 approximately four years' experience as a professional engineer
12 in environmental engineering. I have been with the DEP for
13 approximately eight and a half years. I have been the potable
14 water section supervisor since February 2001. I was previously
15 in the potable water section as permitting supervisor from
16 November 1997 to March 1998.

17 Finally, I'd like to substitute the testimony on
18 Page 1, Lines 15 through 18 of Mr. Trigg's testimony, and
19 Page 1, Lines 14 through 17 of Dr. Tofflemire's testimony with
20 my responsibilities at DEP which are currently as follows:

21 As the potable water section supervisor, I supervise
22 13 positions and perform administrative functions for the
23 section. I review and oversee all compliance and enforcement
24 activities. I am also the permitting supervisor in certifying,
25 which mean to sign and seal, all permits for the section.

1 MS. CIBULA: Chairman, may we have Mr. Cordova's
2 testimony inserted into the record with the changes stated by
3 Mr. Cordova as though read?

4 CHAIRMAN JACOBS: Very well. Show that the prefiled
5 testimonies of Mr. Trigg and Mr. Tofflemire as adopted by
6 Mr. Cordova and amended -- as amended are admitted into the
7 record as though read.

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DIRECT TESTIMONY OF SCOTT TRIGG

Q. Please state your name and business address.

A. ~~My name is Scott Trigg, and I am Professional Engineer III Program Supervisor for the Potable Water Section in the Northeast District of the Florida Department of Environmental Protection (DEP). My business address is 7825 Baymeadows Drive, Jacksonville, Florida 32256.~~
Ed Cordova, and I reside at 8911 Deerberry Court, Jacksonville, Florida.

Q. Please state a brief description of your educational background and experience.

A. ~~I have a Civil Engineering Degree from Florida Institute of Technology University of Florida. I have approximately four years' experience as a professional engineer (1992) I have been with DEP for 7 1/2 years, 5 1/2 in the Potable Water in environmental engineering. I have been with the DEP for approximately eight and a half years. Section (Section). I have experience as an Inspector/Permitting Engineer I have been the potable water section supervisor since February 2001. I was previously in (1992-96). I have been the Permitting Supervisor since May 1998 and became the potable water section as permitting supervisor from November 1997 to March 1998. a Program Supervisor in January 1999.~~
I have a Bachelor of Science in environmental engineering from the

Q. What are your general responsibilities at the DEP?

A. ~~As Program Supervisor, I supervise 12 positions and perform administrative functions for the Section. I review and oversee all compliance and enforcement activities. I am also the permitting supervisor and certify mean to sign and seal, all permits for the Section. (sign and seal) all permits for the Section.~~
As the potable water section supervisor, I supervise 13 positions and perform

Q. Have you testified on behalf of the DEP in previous Public Service Commission (Commission) proceedings?

A. No.

Q. What is the purpose of your testimony in this docket?

A. The purpose of my testimony is to provide information on the technical ability of Intercoastal Utilities, Inc. (Intercoastal) to provide water service to the area at issue in the original certificates application filed

1 by Nocatee Utility Corporation (NUC). My testimony will address the specific
2 concerns the DEP has with respect to water in this area and the ability of
3 Intercoastal to address and satisfy these concerns.

4 Q. Would you explain what you mean by concerns relating to water by the
5 DEP?

6 A. Yes. The area is experiencing increasing salt water intrusion;
7 therefore, the permitting of new water wells and the withdrawals from existing
8 wells is being more closely monitored by the DEP and the Water Management
9 District (WMD).

10 Intercoastal's level of sulfates has increased over the past several
11 years, but remains at approximately 60% of the MCL based on 1997 data.
12 Chlorides have consistently shown to be low and are not a problem.
13 Intercoastal has only deep wells.

14 The water quality of Intercoastal is satisfactory and meets all the
15 water quality standards required by the DEP based on our most recent
16 compliance testing. Sulfates and chlorides are secondary standards which are
17 considered mostly for aesthetic purposes and sodium is a primary standard
18 which is considered for health effects.

19 Q. Would you discuss the ability of Intercoastal to provide water to the
20 area at issue?

21 A. Intercoastal has two water plans gridded together to serve one
22 distribution system. Based upon current information in the DEP files, the
23 maximum rated capacity of both plants combined is approximately 4.75 MGD.
24 Based upon the previous 12 months of data, Intercoastal's maximum daily flow
25 was 3.7 MGD. It has uncompleted projects estimated to be 0.250 MGD. This

1 places its system at approximately 78% of capacity and leaves it with a
2 reserve of 1.05 MGD. A permit was issued in January 2000 to expand its
3 treatment facilities to a maximum daily capacity of 9.0 MGD.

4 Intercoastal has an excellent history of compliance and has adequate
5 staff to provide water to the area at issue.

6 Q. From a safety, water quality, system reliability, and customer service
7 standpoint, would the customers in the proposed area be better served by JEA
8 or Intercoastal?

9 A. To my knowledge, Intercoastal has not had any past problems in regard
10 to safety, water quality, reliability, or customer service that would indicate
11 that the customers would be better served by JEA. Although the DEP does not
12 regulate JEA directly, I am aware that JEA is a larger utility and has its own
13 laboratory facility and personnel. I believe that the customers of the
14 proposed area would be well served by either utility.

15 Q. Do you have any other comments on the ability of Intercoastal to provide
16 water service to the area at issue?

17 A. No, not at this time.

18 Q. Does this conclude your testimony?

19 A. Yes.

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1 DIRECT TESTIMONY OF DR. T. JAMES TOFFLEMIRE, P.E.

2 Q. Please state your name and business address.

3 A. ~~My name is Dr. T. James Tofflemire, P.E. I am a P.E. II coordinator for~~
~~Jacksonville, Florida.~~
~~the drinking water program in the Duval County Health Department (DCHD) at 900~~
~~University Boulevard North, Jacksonville, Florida 32211.~~

6 Q. Please state a brief description of your educational background and
 7 experience.

8 A. ~~I have a B.S. and M.S. in Civil Engineering (Sanitary Option) from South~~
~~Florida. I have approximately four years' experience as a professional engineer in~~
~~Dakota State University and a Dr. of Engineering (Environmental Engineering)~~
~~environmental engineering. I have been with the DEP for approximately eight and a half years.~~
~~from Rensselaer Polytechnic Institute, in Troy, New York. I have 32 years of~~
~~I have been the potable water section supervisor since February 2001. I was previously~~
~~experience as a P.E. in environmental engineering. The last six and a half~~
~~in the potable water section as permitting supervisor from November 1997 to March 1998.~~
~~years was with DCHD in the drinking water program. I have been P.E. II~~
~~Coordinator there since February, 1998.~~

14 Q. ~~As the potable water section supervisor, I supervise 13 positions and~~
~~What are your general responsibilities at DCHD?~~

15 A. ~~I coordinate six to seven staff in the drinking water plan review and~~
~~all compliance and enforcement activities. I am also the permitting~~
~~clearance program. I initiated a computer program to track water treatment~~
~~supervisor in certifying, which mean to sign and seal, all permits for the section.~~
~~plant capacities and see that it is updated.~~

18 Q. What is the purpose of your testimony in this docket?

19 A. My testimony concerns JEA's capability in providing water to the
 20 proposed Nocatee territory. The DCHD is officially delegated by the Florida
 21 Department of Environmental Protection (DEP) to handle the drinking water
 22 program for Duval County through an interagency agreement. My supervisor, Mr.
 23 Thomas R. Hamilton, also asked me to prepare this testimony in place of him.

24 Q. Would you discuss the ability of JEA to provide water to the area at
 25 issue?

1 A. The JEA South Grid system could potentially provide this water. The
2 current limiting Grid capacity is 123.2 mgd, with the recorded maximum day
3 flow of 67.3 mgd and the average day flow of 43.54 mgd. From permitting
4 records, the term limiting capacity is defined as the minimum of several
5 different capacities (well pump capacity, high service pump capacity, H2S
6 removal-storage capacity, and auxiliary power capacity at half maximum day).
7 The noted South Grid high service pumping capacity is 196.8 mgd. New water
8 pipe lines along U.S. 1 have been permitted to aid in providing flows to this
9 area (the Nocatee development). It appears that the South Grid has the plant
10 capacity to provide the projected needed demand increase (6.3 mgd) during an
11 average year. During periods of drought when there is heavy irrigation use,
12 as occurred in the summer of 1998, the South Grid system had difficulty
13 supplying water at adequate pressure to all areas. The grid flow peaked at
14 103 mgd, at a time when the limiting capacity was 86.5 mgd. JEA's Mandarin
15 plant was a low-pressure area during those conditions. Some piping changes and
16 new plant construction have since occurred to provide more pressure and flow
17 to the Mandarin areas and Southside. For example, the new Brierwood water
18 treatment plant and connecting mains have been added. I have not seen any
19 distribution system modeling data concerning supply to the Nocatee development
20 and Mandarin during drought conditions or high fire demand conditions.

21 Q. Is there any water quality concerns with JEA supplying this water?

22 A. I am not aware of any such concerns. Often some corrosion control may
23 need to be provided to address any lead and copper problems that develop.
24 Lead and copper come primarily from the plumbing in people's homes.

25 Q. Is the water provided by JEA corrosive?

1 A. Not unusually so. The water is typical of the Florida aquifer that
2 supplies most of N.E. Florida.

3 Q. Does JEA add chemicals to control corrosion in the South Grid system?

4 A. Yes, JEA adds sodium hydroxide or sodium hypochlorite to rise the pH
5 to a 7.8 - 8.0 range. This reduces copper solubility.

6 Q. If the water is corrosive, should the Nocatee development only use PVC
7 pipes in the homes and businesses to prevent the formation of black water
8 caused by the reaction of hydrogen sulfide and copper?

9 A. Some black water problems are caused by the metals in the water heater
10 reacting with the hydrogen sulfide in the water. JEA's plants remove most of
11 the hydrogen sulfide. There are pros and cons to the use of PVC pipe. The
12 use of PVC pipe lessens any potential copper problems.

13 Q. Does the water in the JEA system meet the DEP's primary and secondary
14 standards, as well as the radio nuclides, organics, and inorganic standards?

15 A. Yes.

16 Q. Does the water from JEA meet all of the DEP's requirements?

17 A. Yes.

18 Q. Does this conclude your testimony?

19 A. Yes.

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1 BY MS. CIBULA:

2 Q Mr. Cordova, could you briefly summarize your
3 testimony?

4 A I can briefly summarize my testimony. My testimony
5 concerns the technical ability of JEA through their agreement
6 with the Nocatee Utility Corporation and Intercoastal
7 Utilities, Incorporated to provide potable water service to the
8 proposed Nocatee territory. With respect to JEA, JEA has the
9 capacity from its South Grid system to supply the proposed
10 Nocatee demands. The water from the JEA South Grid system
11 currently meets all DEP requirements for water quality, and I
12 know of no reason why JEA cannot satisfy the potable water
13 requirements for the Nocatee development.

14 Intercoastal currently operates two plants on a
15 system on the east side of the Intracoastal Waterway. The
16 Intercoastal system is recently in the process of an expansion,
17 and to my knowledge, the water in the Intercoastal system
18 currently meets all DEP requirements for water quality. I do
19 not know of any reason why Intercoastal cannot satisfy the
20 requirements for the potable water needs of the Nocatee
21 development. However, it is my understanding that Intercoastal
22 intends to build a plant on the western side of the
23 Intracoastal to serve Nocatee, and because I have not received
24 a permit application or any details on that plant, I cannot
25 testify as to the adequacy of that proposed system.

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

2 CHAIRMAN JACOBS: Very well. That end first.

3 Mr. Wharton.

4 CROSS EXAMINATION

5 BY MR. WHARTON:

6 Q When you say that JEA does have the capacity, you're
7 referring to the capacity to serve Phase 1; correct?

8 A Yes.

9 MR. WHARTON: Okay. Thank you. That's all I have.

10 CHAIRMAN JACOBS: That's it.

11 MR. MELSON: No.

12 CHAIRMAN JACOBS: Mr. Menton.

13 MR. MENTON: No.

14 CHAIRMAN JACOBS: Mr. Korn.

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

16 CROSS EXAMINATION

17 BY MR. KORN:

18 Q Mr. Cordova, directing your attention to the prefiled
19 testimony of Mr. Trigg, specifically Page 3, Lines 9 through
20 11, do you have that in front of you, sir?

21 A I have on Page 3 my testimony goes to Line 10. I'm
22 not sure I have the same --

23 Q I'm referring to the direct testimony of Mr. Trigg
24 filed May 1, 2000.

25 A Yes. Are you sure that's Page 3?

1 Q That's what it says.

2 A Okay. It's a different format, sorry.

3 Q Okay. No problem. If you could just direct your
4 attention to Lines 9 through 11 of that page, sir.

5 A Yes, sir.

6 Q Okay. As I understand the purpose of your testimony
7 today is to discuss the ability of Intercoastal to provide
8 potable water and to be able to serve the Nocatee area along
9 those lines; that's correct?

10 A Yes, sir.

11 Q So your testimony here at Lines 9 through 11 where
12 you're talking about that Intercoastal has not had past
13 problems with regard to safety, water quality, reliability, or
14 customer service is related to the water issues that you are
15 being tendered for as a witness; correct?

16 A Yes, sir.

17 Q Were you here earlier during the testimony of
18 Mr. Flury?

19 A Yes, I was.

20 Q Were you made aware that Intercoastal made notice to
21 its customers at some point that there had been an elevated
22 level of coliform bacteria in its drinking water at some point
23 in time?

24 A I was not aware of that fact.

25 Q You were not aware of that before today's testimony?

1 A Yes, sir, I was aware of it.

2 MR. KORN: Thank you. I have no more questions.

3 CHAIRMAN JACOBS: Very well. Commissioners.

4 Redirect.

5 MS. CIBULA: No redirect.

6 CHAIRMAN JACOBS: Very well. No exhibits. Thank
7 you. You're excused.

8 (Witness excused.)

9 MS. CIBULA: Mr. Lear also needs to be sworn in.

10 CHAIRMAN JACOBS: And Ms. Silvers as well?

11 MS. CIBULA: Yes.

12 (Witnesses sworn.)

13 ROBERT H. LEAR

14 was called as a witness on behalf of the Staff of the Florida
15 Public Service Commission and, having been duly sworn,
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MS. CIBULA:

19 Q Please state your name and your business address for
20 the record.

21 A My name is Robert H. Lear, and my business address is
22 the Florida Department of Environmental Protection at 7825
23 Baymeadows Way, Suite B-200 in Jacksonville, Florida. The zip
24 is 32256.

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

1 A I'm employed by the Florida Department of
2 Environmental Protection. My capacity is as the domestic
3 wastewater permitting coordinator in the water facilities
4 program.

5 Q Are you adopting the prefiled testimony of
6 Edward Cordova as your own?

7 A Yes.

8 Q Do you have any changes or corrections to make to
9 that testimony?

10 A Yes, I do. Since Mr. Cordova's testimony was
11 adopted, I'd like to substitute the testimony on Page 1, Lines
12 3 through 6 with my name and my business address. Also, the
13 testimony on Page 1, Lines 8 through 9 with my educational
14 background. And I hold a degree of Bachelor of civil
15 engineering from the University of Virginia.

16 I would also like to substitute the testimony on
17 Page 1, Lines 11 through 18 with my experience at DEP, which is
18 a period of employment of a little over six and a half years in
19 which I have served in domestic wastewater permitting for
20 approximately two years, and in compliance and enforcement in
21 other programs for the past four and a half years. In the
22 middle of February of this year, I assumed my present position.

23 I'd also like to substitute the testimony on Page 1,
24 Lines 20 through 25 with my general responsibilities for DEP,
25 which is the coordination of all domestic wastewater permitting

1 activities. Finally, I'd like to substitute the testimony on
2 Page 2, Lines 3 through 5 with my experience. I testified
3 before the Public Service Commission of not having testified
4 before this Commission previously.

5 MS. CIBULA: Chairman, may we have Mr. Lear's
6 testimony inserted into the record with the changes stated by
7 Mr. Lear as though read.

8 CHAIRMAN JACOBS: Very well. Show the prefiled
9 testimony of Mr. Cordova as amended and adopted by Mr. Lear
10 entered into the record as though read.

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DIRECT TESTIMONY OF EDWARD CORDOVA

Q. Please state your name and business address.

~~A. My name is Edward Cordova, and I am employed in the Domestic Wastewater of Environmental Protection at 7825 Baymeadows Way, Suite B-200, in Jacksonville, Section in the Northeast District Office of the Florida Department of Florida. The zip is 32256.~~
My business address is 7825 Baymeadows Way, Suite B-200, Jacksonville, Florida, 32256

Q. Please state a brief description of your educational background.

~~I hold a degree of Bachelor of civil engineering from the University of Virginia.~~
A. I have Bachelor of Science degrees in Environmental and Aerospace engineering from the University of Florida.

Q. How long have you been employed with the DEP and in what capacity?

~~My experience at DEP, which is a period of employment of a little over six and a half years in which I have served in domestic wastewater permitting for approximately two years, and in compliance and enforcement in other programs for the past four years, and a half years. In the middle of February of this year, I assumed my present position.~~
A. I have been employed with the DEP for 8 years. I worked in the Industrial Wastewater Section, from October 1992 until November 1997, conducting compliance, enforcement, and permitting duties as an Engineer I, II, and III. In November 1997, I moved to the Potable Water Section as a Professional Engineer I, serving as the permitting supervisor. In March 1998, I moved to

the Domestic Wastewater Section as a Professional Engineer II, serving as the compliance/enforcement supervisor. My title was later changed to Compliance/Enforcement Coordinator as a result of a district re-organization.

Q. What are your general responsibilities at the DEP?

~~The coordination of all domestic wastewater permitting activities.~~
A. Presently, I coordinate all compliance/enforcement activities for the Northeast District's (District) domestic water facilities. I review all compliance documents and provide input on all enforcement activities related to the District's domestic water facilities. I also have reviewed several domestic water permit applications. I work with the permitting coordinator when facilities are subject of both enforcement and permitting issues.

1 Q. Have you testified on behalf of the DEP in previous Public Service
2 Commission (Commission) proceedings?

3 ~~A. No. I have testified in several hearings related to industrial wastewater~~
4 ~~permits that I issued, but I have not testified in any previous Commission~~
5 ~~proceedings.~~
6 *I testified before the Public Service Commission of not having testified*

6 Q. What is the purpose of your testimony in this docket?

7 A. The purpose of my testimony is to provide information on the technical
8 ability of Intercoastal Utilities, Inc., (Intercoastal) and Nocatee Utility
9 Corporation (NUC), through an agreement with JEA, to provide wastewater
10 service to the area at issue in NUC's certificate application. My testimony
11 will address the specific concerns the DEP has with respect to wastewater in
12 this area, and the ability of the two utilities to address and satisfy these
13 concerns.

14 Q. Would you explain what you mean by the DEP's concerns relating to
15 wastewater?

16 A. Yes. The DEP's concerns are related to effluent disposal, as this is the
17 primary concern for wastewater treatment plants in this area. For Duval and
18 St. Johns Counties, utilizing reuse and residential reuse is a high priority.
19 This has been reinforced by both the St. Johns River Water Management District
20 and the Commissioners of St. Johns County as a result of salt water intrusion
21 into interior water resources. The St. Johns River Water Management District
22 has designated both counties "Water Resource Caution" areas.

23 In addition, there are only a few large water bodies available for the
24 disposal of effluent in northern St. Johns County and southern Duval County.
25 In this area, there are several wetlands, the St. Johns River and the

1 Intercoastal Waterway (ICWW).

2 A portion of the St. Johns River has been designated an impaired
3 waterway. Any new or expanded discharge to any surface water body would
4 require an anti-degradation study in accordance with Rule 62-4.242(2), Florida
5 Administrative Code. As part of the anti-degradation study, the permittee
6 must demonstrate that their discharge will not impair the receiving water.
7 The permittee must also demonstrate that there is no other reasonable
8 alternative, specifically including reuse, to the discharge to surface water.

9 The recent expansion of JEA's Mandarin plant's discharge is an example
10 of the difficulties involved in obtaining an expanded discharge to surface
11 water. JEA's Mandarin plant recently expanded its discharge to the St. Johns
12 River from 5.0 MGD Annual Average Daily Flow (AADF) to 7.5 MGD AADF. As part
13 of the expansion, its effluent limits were reduced to the level necessary to
14 ensure that actual pollutant loadings to the St. Johns River were not
15 increased. Achieving this reduction required the introduction of biological
16 nutrient reduction (BNR) technology to JEA's Mandarin plant at significant
17 cost.

18 A portion of the ICWW, encompassing the Guana River State Park, has been
19 designated an Outstanding Florida Water (OFW). Any new discharge to the ICWW
20 in the vicinity of the OFW would require a demonstration that the OFW would
21 not be degraded.

22 Q. What would be the role of the DEP with respect to the issues of reuse?

23 A. As stated above, the DEP has significant concerns with new or expanded
24 discharges to the two major surface water bodies in the area. The primary
25 alternative to discharging to these water bodies is to implement reuse.

1 Further, in accordance with Section 403.064 Florida Statutes, all applicants
2 for permits to construct or operate a domestic wastewater treatment facility
3 located within a water resource caution area must prepare a reuse feasibility
4 report as part of its application for the permit. The only exceptions are for
5 those facilities with a design capacity of less than 0.1 million gallons per
6 day (MGD) or those facilities with a reuse capacity equal to or exceeding the
7 total permitted capacity.

8 As stated above, both Duval and St. Johns Counties have been designated
9 water resource caution areas. The purpose of the reuse feasibility report is
10 to have the utility determine if it has the ability to reduce or eliminate its
11 discharge. The report must include an evaluation of the economic,
12 environmental, and technical constraints associated with reuse. Reuse is
13 usually found to be technically feasible, but not economically feasible. The
14 cost of retrofitting existing developments with residential reuse is generally
15 cost prohibitive. If the report complies with the requirements of Section
16 403.064, Florida Statutes, the DEP must accept the findings of the report as
17 to reuse feasibility.

18 Q. Would you discuss the ability of each of the utility systems in this
19 docket to provide reuse?

20 A. NUC:

21 My answer assumes that JEA will provide wholesale wastewater service
22 from its Mandarin plant to the area at issue in NUC's original certificate
23 application. The most recent permit for JEA's Mandarin wastewater treatment
24 facility was issued on November 12, 1996, and expires on November 12, 2001.
25 This permit allows JEA to operate a 7.5 MGD AADF activated sludge plant. The

1 permit was revised on September 30, 1999, to authorize construction of a 2.5
2 MGD AADF public access reuse system. There are provisions to expand the reuse
3 capacity to 5.0 MGD. Several reuse customers have been identified and the
4 reuse distribution system is under construction. The reuse distribution lines
5 are being laid along a path that will place them within several miles of the
6 northwest edge of the Nocatee development. NUC has stated that the Nocatee
7 development's reuse demand will exceed the volume of wastewater generated in
8 the early stages of development. JEA's Mandarin wastewater treatment facility
9 should be able to meet the Nocatee development's excess reuse demands.

10 The last Capacity Analysis Report for JEA's Mandarin wastewater
11 treatment facility was submitted in April of 1994. The Capacity Analysis
12 Report determined that the plant will reach its 7.5 MGD AADF capacity by 2010.
13 This projection would likely have to be modified should JEA's Mandarin plant
14 serve the Nocatee development. The AADF for 1999 was 5.14 MGD.

15 Intercoastal:

16 The DEP issued a permit for Intercoastal's Sawgrass plant on July 31,
17 1997. This permit expires on July 30, 2002. The permit authorized an
18 expansion of the plant from 0.8 MGD to 1.5 MGD. The expansion is now
19 complete. The plant provides 0.3 MGD AADF of reuse for the Sawgrass golf
20 course. The plant discharges the remaining 1.2 MGD AADF to the ICWW. The
21 AADF for 1999 was 0.824 MGD. In a letter dated May 18, 1999, Intercoastal's
22 engineer, Sonny Waitz, stated that there is physically no room for further
23 expansion at Intercoastal's Sawgrass wastewater treatment facility site and
24 the plant will not be expanded beyond the 1.5 MGD current capacity.

25 From the application provided by the Commission, it appears that

1 Intercoastal is proposing to provide initial wastewater service to the area
2 west of its current certified area from a new 1.0 MGD wastewater treatment
3 plant centrally located in the Nocatee community. The plant would be
4 expanded, in phases, to provide treatment capacity through build out. The DEP
5 has no application or any other information regarding this proposed plant.
6 Without such information, it is not possible to fully evaluate the ability of
7 Intercoastal to provide reuse. The proposed plant will include a sequential
8 batch reactor (SBR) treatment unit with filtration and high level disinfection
9 for public access reuse. In theory, such a plant should be adequate to
10 provide public access reuse for the Nocatee development. It has been noted
11 above that in the initial stages of development, the reuse demand for Nocatee
12 will exceed the volume of wastewater being generated. Without an external
13 source for augmentation, such as a connection to Intercoastal's Sawgrass
14 wastewater treatment facility, Intercoastal may not be able to meet the full
15 reuse demand in the early stages of development.

16 Q. Could you discuss whether there are any other concerns the DEP has with
17 respect to NUC's and Intercoastal's facilities and the utilities' ability to
18 provide wastewater service to the area in question?

19 A. Neither JEA, through which NUC is proposing to provide service, nor
20 Intercoastal are currently serving residential areas with reuse. However,
21 this should not be a significant technical hurdle for either utility.

22 As stated above, Intercoastal proposes to construct a 1 MGD AADF plant
23 in the Nocatee development. Intercoastal's Commission application also
24 indicates the plant would have a wet weather discharge to the ICWW. The ICWW
25 has been designated an OFW from the SR 210 bridge south. The tide line is

1 | also very close to this point (i.e. north of the line the ICWW flows in and
2 | out to the St. Johns River, while south of the line, the ICWW flows in and out
3 | toward St. Augustine). Because of this, it would be difficult to approve a
4 | wet weather discharge unless the discharge point was considerably north of the
5 | SR 210 bridge.

6 | Q. Do you have any other comments on the ability of NUC or Intercoastal to
7 | provide wastewater service to the area in question?

8 | A. No, not at this time.

9 | Q. Does this conclude your testimony?

10 | A. Yes

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1 BY MS. CIBULA:

2 Q Mr. Lear, could you briefly summarize your testimony?

3 A Yes. The testimony in summary deals with the
4 technical ability of two proposals and the regulatory aspects
5 of the two proposals to provide wastewater treatment service to
6 the proposed Nocatee area. Both of the proposals, as we know
7 it, can be implemented within the existing regulatory
8 framework.

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

10 CHAIRMAN JACOBS: Mr. Wharton.

11 CROSS EXAMINATION

12 BY MR. WHARTON:

13 Q Sir, looking at your testimony at the bottom of Page
14 6, the Intercoastal -- or Intracoastal, rather, Waterway has
15 been designated an outstanding Florida water from State Road
16 210 bridge south; correct?

17 A That is my testimony, yes, sir.

18 Q Are you aware that Intercoastal's present discharge
19 is to the Intracoastal Waterway well north of the 210 bridge?

20 A I am now.

21 Q Okay. But let me just ask you this. Your testimony
22 is meant to say that if Intercoastal is proposing a wet weather
23 discharge -- I've confused myself because Intercoastal and
24 Intracoastal. Your testimony is meant to say that if
25 Intercoastal has a wet weather -- proposes a wet weather

1 discharge to the Intracoastal south of the 210 bridge, that
2 could be a problem because that's an outstanding Florida water?

3 A That's indeed the case. Thank you for stating it.

4 Q But if it is north of the 210 bridge, then that
5 particular problem as it relates to the outstanding Florida
6 water would not exist?

7 A It would be mitigated. It would become part of a
8 discharge that eventually joins the St. Johns River. And the
9 effect that the discharge would have on the Intracoastal
10 Waterway would have to be examined in great detail prior to its
11 being permitted.

12 Q And that's something that would be considered as part
13 of the application process?

14 A Yes, it would.

15 MR. WHARTON: Thank you, sir. That's all I have.

16 CHAIRMAN JACOBS: Mr. Menton.

17 MR. MENTON: Thank you, Mr. Chairman, just a couple
18 of quick questions.

19 CROSS EXAMINATION

20 BY MR. MENTON:

21 Q Good afternoon, Mr. Lear.

22 A Good afternoon.

23 Q My name is Stephen Menton, and I represent JEA in
24 this proceeding. On Page 4 of your testimony, beginning around
25 Lines 12 through 15, you talk about reuse, and you talk about

1 how reuse is commonly found to be not -- or commonly found not
2 to be economically feasible. Do you recall that?

3 A Yes, sir.

4 Q And, in fact, that's been one of the problems in
5 getting reuse implemented within the District is because it's
6 generally not a cost attractive for developers?

7 A For individual developers, yes.

8 Q So to the extent the developer voluntarily agrees to
9 implement a residential reuse program, the District would
10 consider that to be a positive development, wouldn't you agree?

11 A Indeed. The Department would support that position
12 to the degree that it was able to.

13 CHAIRMAN JACOBS: In this instance -- I've asked this
14 a couple of times, maybe you're the best person to -- who's
15 holding the developer's feet to the fire here in this proposal?
16 Whoever gets it, in any regard, what I've heard is that JEA is
17 going to provide bulk service to their connecting point. And I
18 assume whoever gets the service territory will provide some
19 facilities from that point into the development, but I have not
20 yet heard what are the requirements that will ensure that
21 developers overcome this natural disincentive for them to set
22 up facilities for reuse.

23 THE WITNESS: I believe the answer is dealt with in
24 the testimony, in the sensitive nature of the options, the
25 sensitivity of the environmental condition of the options to

1 which treated effluent might be disposed. Disposal of the
2 effluent is the critical factor here. And the difficulties in
3 finding a satisfactory economical place for disposal may indeed
4 be the impetus that you are looking for.

5 CHAIRMAN JACOBS: I agree that that would be for the
6 plant operator, the wastewater plant operator. But the
7 developers are -- I mean, let's be honest, the answer that I
8 had been expecting to hear somebody say is that they won't get
9 building permits unless they decide to put in reuse lines. I
10 have not heard that answer yet, and that's the concern I have,
11 is if they get building permits and they are not required to
12 put in reuse lines, I'm wondering how extensive this network
13 will be.

14 THE WITNESS: Now, are you specifically addressing
15 residential reuse in this case?

16 CHAIRMAN JACOBS: Yeah, but I understand the golf --
17 well, I don't know. Are -- the golf course is the same thing;
18 right? I don't know. I would suspect the golf course is the
19 same thing. If they get the permits to develop the golf course
20 and they don't have the requirements to put in the reuse lines,
21 yeah, they will probably take it, but they will have the
22 leverage at that point, i.e., the golf courses will have the
23 leverage at that point.

24 THE WITNESS: I believe the answer to your question
25 is probably very complex and a multifaceted one, and one that's

1 perhaps being wrestled with by others who are involved with
2 this question. And I don't think there is a simple response
3 that would give you a direct answer. I think there are -- it's
4 complex. There are many factors involved.

5 CHAIRMAN JACOBS: Okay. That's fair enough.

6 THE WITNESS: And however the -- you're planning to
7 receive testimony, I know, concerning drinking water usage or
8 potable water usage. That may lead you to a more direct answer
9 to your question, sir.

10 CHAIRMAN JACOBS: Very well. Thank you. I'm sorry I
11 interrupted you.

12 MR. MENTON: And, Mr. Chairman, I don't want to speak
13 for Mr. Melson, but I believe that Mr. Miller will be here
14 tomorrow, and he can directly answer that question for you if
15 you'd like.

16 CHAIRMAN JACOBS: Wonderful.

17 BY MR. MENTON:

18 Q Mr. Lear, do you know whether or not Intercoastal
19 Utilities will have the ability to meet the reuse needs of the
20 Nocatee development from its inception?

21 A My testimony includes a premise that flow from the
22 Sawgrass plant. Treated effluent from that plant might meet
23 the needs of the development in the early stages of growth.

24 Q And specifically then, on Page 5 of your testimony on
25 Line 19 where you talk about the existing Intercoastal plant

1 providing approximately 300,000 MGD of reuse to the Sawgrass
2 Country Club, that's part of the assumptions that you made in
3 determining whether or not Intercoastal can provide or
4 supplement the reuse needs of the development at the inception;
5 correct?

6 A That's correct. The figures on the page to which you
7 directed my attention indicate that there may be on an annual
8 average over a half a million gallons a day available for
9 reuse.

10 Q And if the obligations of Intercoastal Utility
11 Corporation to Sawgrass with respect to reuse were in excess of
12 300,000 gallons per day, then that would impact upon their
13 ability to meet the reuse needs of Nocatee; isn't that true?

14 A I think what is true is that it would reduce the
15 amount again on an annual average daily basis that was
16 available to be directed to other uses.

17 Q Okay. And Mr. Wharton asked you a question a minute
18 ago about the discharges to the Intracoastal Waterway. And if
19 Intercoastal Utilities was to build a new wastewater plant
20 within the Nocatee development, it would need to obtain a new
21 discharge permit from the Department; isn't that correct?

22 A That would be at least for a limited wet weather
23 discharge, yes, sir.

24 Q And that wet weather discharge would be most likely
25 to the Intracoastal Waterway?

1 A I believe that that would be the obvious location to
2 which it would be directed in wet weather.

3 Q And you would agree that the Department would give
4 great scrutiny to any new permits that are discharging to the
5 Intracoastal Waterway?

6 A Yes.

7 MR. MENTON: I don't have further questions. Thank
8 you.

9 CHAIRMAN JACOBS: Very well. Mr. Melson.

10 MR. MELSON: I think I've got maybe just one.
11 Commissioners, I've handed Mr. Cordova (sic) the excerpt from
12 the St. Johns County development order. It's the same excerpt
13 that I handed out to you yesterday. We didn't mark it as an
14 exhibit because the document had been officially recognized.

15 CROSS EXAMINATION

16 BY MR. MELSON:

17 Q Could you read the Paragraph B, reuse?

18 A Yes. Reuse. Irrigation demands within Nocatee shall
19 be met using reuse water. Reuse water shall consist of the
20 following sources: Wastewater effluent treated to public
21 access standards and delivered to the end user by the utility
22 provider; and two, storm water.

23 Q Do you know -- are you familiar with the DRI,
24 development of regional impact, process?

25 MR. WHARTON: Objection, Mr. Chairman. This is

1 outside the scope of direct.

2 MR. MELSON: I'm just trying to find out if he's
3 familiar.

4 MR. WHARTON: Well, the whole thing about the
5 development order and that he's reading is outside the scope of
6 direct.

7 MR. MELSON: I'll withdraw the question.

8 CHAIRMAN JACOBS: I'll allow as to his knowledge.

9 BY MR. MELSON:

10 Q Are you familiar with the DRI process?

11 A No, sir.

12 Q So you don't know whether or not this would create a
13 legally binding obligation on the developer to see that reuse
14 is used for irrigation purposes?

15 MR. WHARTON: Same objection, Mr. Chairman. He's
16 going to say no anyway, but I'll withdraw the objection.

17 CHAIRMAN JACOBS: I'll allow it.

18 BY MR. MELSON:

19 Q Do you remember the question?

20 A Yes, I do.

21 Q So you don't know whether or not this would create a
22 legally binding obligation?

23 A That is correct.

24 MR. MELSON: Thank you. No further questions.

25 CHAIRMAN JACOBS: Very well. Any questions,

1 Commissioners?

2 MR. KORN: Mr. Chairman, I have one question, if I
3 might.

4 CHAIRMAN JACOBS: Very briefly.

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

6 CHAIRMAN JACOBS: And it can't be about the
7 development order.

8 MR. KORN: No, sir, no, sir. I'm not that smart to
9 ask about that.

10 CROSS EXAMINATION

11 BY MR. KORN:

12 Q Mr. Lear, directing your attention to Page 5, Lines
13 19 and 20 of the prefiled testimony.

14 A Yes, sir.

15 Q And part of this is picking up on a question
16 Mr. Menton asked a moment ago. The data which you rely upon on
17 your assumption where you say that the existing Intercoastal
18 plant provides .3 MGD of reuse for the Sawgrass golf course,
19 where did you obtain that data from? What is the source of
20 that data, if you know?

21 A I'm sorry, I do not know.

22 Q As you sit here today, are you aware independently of
23 how much reuse water is actually provided to the Sawgrass golf
24 course?

25 A I rely on the testimony for that amount, even though

1 I do not know the source of the quantity given.

2 Q You don't have any independent knowledge of how much
3 actually may be drawn out by the golf course for irrigation
4 purposes at any particular time?

5 A That's true, I don't have information about that.

6 Q And you don't have any knowledge, do you, sir, of any
7 contractual obligations that Intercoastal Utilities might have
8 as far as providing reuse to the Sawgrass golf course?

9 A That is correct.

10 Q And your assumption that -- on Line 20 where it says
11 the plant discharges the remaining 1.2 MGD to the Intracoastal
12 Waterway, that assumes that the plant is processing its full
13 capacity at 1.5 million gallons per day; correct?

14 A That is true.

15 Q So if the plant was not processing that same amount,
16 then the numbers would have to concurrently be reduced.
17 Wouldn't that be also true?

18 A Yes, that's true, and the next line in the testimony
19 reflects that.

20 MR. KORN: Thank you. No further questions,
21 Mr. Chairman.

22 MR. WHARTON: Mr. Chairman, I do have a single
23 follow-up, meaning one question.

24 CHAIRMAN JACOBS: Since we've gone that direction,
25 why not.

RECROSS EXAMINATION

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BY MR. WHARTON:

Q Sir, to the extent that Intercoastal utilized effluent from its existing plant east of the Intracoastal to its proposed area west of the Intracoastal, that would be utilizing effluent that right now is being put into the Intracoastal Waterway; correct?

A That's correct.

Q So it would actually reduce those discharges?

A It would indeed reduce the discharges.

MR. WHARTON: That's all we have.

CHAIRMAN JACOBS: Thank you. Redirect.

MS. CIBULA: No redirect.

CHAIRMAN JACOBS: Very well. No exhibit. Thank you very much. You are excused, Mr. Lear.

THE WITNESS: Thank you.

MR. MELSON: I apologize, Mr. Lear, for calling you Mr. Cordova.

MR. KORN: On paper, he appears to be.

CHAIRMAN JACOBS: That's okay, we're being very fast and loose with names and titles today anyway.

(Witness excused.)

MR. KORN: And, Mr. Chairman, with the Chair's permission and based on my discussion with Ms. Cibula, since I have no questions for the remaining witnesses that Staff is

1 planning to sponsor today, I would ask to be excused for the
2 evening. I have another engagement.

3 CHAIRMAN JACOBS: Yes, you may be excused.

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

5 MR. WHARTON: Mr. Hoffman can take his place. We
6 won't be able to tell the difference.

7 CAROLINE SILVERS

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

11 DIRECT EXAMINATION

12 BY MS. CIBULA:

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

15 A Caroline Silvers, and I'm with the St. Johns River
16 Water Management District in the Jacksonville Service Center at
17 7775 Baymeadows Way in Jacksonville.

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

19 A I'm with the St. Johns River Water Management
20 District, and I'm the lead hydrologist in the Jacksonville
21 Service Center.

22 Q Have you prefiled testimony in this case consisting
23 of 12 pages?

24 A Yes, I have.

25 Q Do you have any changes or corrections to that

1 testimony?

2 A Yes, I do. I would like to substitute Page 5, Lines
3 3 and 4 with "JEA no longer has a pending consumptive use
4 permit application with the District. The consumptive use
5 permit was issued in February of 2000."

6 Page 11, Line 3, I would like to substitute my
7 testimony with "United Water Florida is now delivering
8 approximately .50 million gallons per day to Ponte Vedra Golf
9 Course.

10 Page 11, Line 24, I would like to substitute that "in
11 the water 2020 plan, Intercoastal Utilities apparently
12 addresses service for areas outside of its existing service
13 area which is evident."

14 Page 12, Line 3, I would like to substitute my
15 testimony with "although it is likely JEA has yet to
16 demonstrate to the District that they can supply the Nocatee
17 development without resulting in harm to the resource." And
18 that concludes my corrections.

19 MS. CIBULA: Chairman, may we have Ms. Silvers'
20 testimony inserted into the record as though read.

21 CHAIRMAN JACOBS: Without objection, show
22 Ms. Silvers' amended testimony entered into the record as
23 though read.

24

25

1 DIRECT TESTIMONY OF CAROLINE SILVERS

2 Q. Please state your name and business address.

3 A. My name is Caroline Silvers, and I am the lead hydrologist for the St.
4 Johns River Water Management District's (SJRWMD or District) Jacksonville
5 Service Center and officially hold the title of Hydrologist IV P.G.. My
6 address is 7775 Baymeadows Way, Suite 102, Jacksonville, Florida 32256.

7 Q. Please state a brief description of your educational background and
8 experience.

9 A. I have a Bachelor of Science in Geology (1980) from James Madison
10 University. I was a Senior Geophysicist, employed by LANDMARK GRAPHICS
11 CORPORATION (6/84 - 10/84) where I contributed geological and geophysical
12 expertise towards development of seismic stratigraphic software for use by a
13 company which manufactured 3D microcomputer graphic workstations now used by
14 oil industries worldwide. I also designed software architecture to illuminate
15 structural and tectonic features indicative of hydrocarbon traps, and worked
16 closely with programmers to ensure accuracy of geophysical functions and ease
17 of software design. I marketed Landmark Workstation by providing
18 demonstrations and training to exploration geophysicists with major oil
19 companies. I was a geophysicist, employed by DIGICON GEOPHYSICAL CORPORATION
20 (2/81 - 5/84) where I enhanced land and off-shore gas/oil prospect seismic
21 data for Marathon Oil. I evaluated, tested, and presented newly developed
22 advanced geophysical software. I also investigated geophysical seismic
23 modeling problems for sixty geophysicists.

24 Q. How long have you been employed by the SJRWMD?

25 A. It will be 15 years in August, 2000.

1 Q. What are your general responsibilities at the SJWMD?

2 A. My responsibilities include processing complex and resource sensitive
3 consumptive use permits for the five county Jacksonville Service Center area.
4 I coordinate multi-party resource and reuse negotiations and mediate divergent
5 interests among regulatory agencies, developers, utilities, industry,
6 consultants, and local government. I provide daily supervision and technical
7 support for the Jacksonville Service Center to two consumptive use permitting
8 hydrologists, water use compliance and well construction staff. I work
9 closely with the District surface water engineers and environmental
10 specialists to incorporate storm water treatment design aspects that minimize
11 ground water demands and wetland impacts. I collaborate with the District
12 Ground Water Modeling Group, USGS, Lower Basin SWIM Program, the Florida
13 Department of Environmental Protection (FDEP) and local government's technical
14 staff to ensure coordination and consistency with District and other agency
15 objectives and priorities. I am an active rule development participant (Water
16 Conservation rule, augmentation rule) and on agency reuse committees.

17 Q. What is the purpose of your testimony in this docket?

18 A. The purpose of my testimony is to identify the concerns the SJRWMD staff
19 has with respect to the provision of water service within the area included
20 in the original certificate application of Nocatee Utility Corporation (NUC).
21 My testimony will address the extent to which NUC, JEA, and Intercoastal
22 Utilities, Inc. (Intercoastal) are capable of providing potable water service
23 to the Nocatee development in a manner that is consistent with the goals and
24 objectives of the SJRWMD.

25 Q. Would you first discuss the issues of concern for the SJRWMD staff that

1 relate to the provision of potable water service by any utility in the
2 District?

3 A. Yes. The District is primarily concerned with ensuring the availability
4 of an adequate and affordable supply of water for all reasonable-beneficial
5 uses while protecting the water and related land resources of the District.
6 Also, the District is concerned with protecting existing surface and ground
7 water quality from degradation and, where appropriate, improving or restoring
8 the quality of water not currently meeting State water quality standards.
9 With respect to the concern of water supply, the District, through the
10 Consumptive Use Permitting process, evaluates whether the utility's proposed
11 use of water can be accomplished without causing unacceptable adverse impacts.
12 This process involves evaluating each utility for the following: 1) whether
13 the requested use is in such quantity as is necessary for economic and
14 efficient utilization (evaluated through audit process); 2) whether the use
15 is both reasonable and consistent with the public interest; 3) whether the
16 source of water is capable of producing the requested amounts of water; 4) the
17 environmental or economic harm caused by the consumptive use permit must be
18 reduced to an acceptable amount; 5) all available water conservation measures
19 must be implemented unless the applicant demonstrates that implementation is
20 not economically, environmentally or technologically feasible; 6) when
21 reclaimed water is readily available it must be used in place of higher
22 quality water sources unless the applicant demonstrates that it is not
23 economically, environmentally or technologically feasible; 7) the lowest
24 acceptable water quality source, including reclaimed water must be utilized
25 for each consumptive use; 8) the consumptive use should not cause significant

1 saline water intrusion or further aggravate existing saline water intrusion
2 problems; 9) the water quality of the source of the water should not be
3 seriously harmed by the consumptive use.

4 Q. Is the area included in NUC's original certificate application located
5 within a Priority Water Resource Caution Area?

6 A. Yes. A Priority Water Resource Caution Area (PWCA) is defined as an
7 area where a needs and sources assessment projects resource problems occur if
8 existing public water supply plans were implemented. The southeastern Duval
9 and northern St. John's County areas were given this designation because both
10 have significant planned growth without an identified source of water supply.

11 Q. What type of water demand is predicted for this area?

12 A. Public supply water use is expected to increase in this PRWCA area, also
13 designated as Work Group V in the Water 20/20 Planning process, from about
14 65.9 million gallons per day (mgd) in 1995, to approximately 112.1 mgd in
15 2020, or about 46 mgd (70 percent). The increase in public supply needs is
16 a direct result of increases in population. During the same period, the
17 population of St. Johns and Duval Counties is expected to increase by a total
18 of about 300,900 people, from 816,500 to 1,117,400. By 2020, all other needs
19 are also expected to increase by about 11.2 mgd, except for domestic self-
20 supply which is projected to decrease by 4.3 mgd in 2020. Therefore, the net
21 change in all other use categories is an expected increase of 7 mgd or 11
22 percent by 2020. This means that the total water use in the area of Work
23 Group V is expected to rise during the planning period by about 53 mgd to a
24 total water use of about 180 mgd.

25 Q. Are there other findings of the Workgroup that would relate to the

1 ability of NUC, JEA, and Intercoastal to provide water and wastewater service
2 to that area?

3 A. ~~Yes, JEA and Intercoastal have Consumptive Use Permit (CUP) applications~~
4 ~~pending with the SJRWMD.~~ *JEA no longer has a pending Consumptive use permit application with the District.*
The consumptive use permit was issued in February of 2000.

5 In the permit review process for this area, the
6 District's emphasis is in evaluating each utility's ability to adequately
7 supply the projected customer base without resulting in harm to water quality
8 or to native vegetation. Each utility provides a map defining its service
9 area, the projected population (for each of next 20 years) within that service
10 area, the requested allocations in million gallons per year (mgd), and the
11 sources (ground water, surface water, reclaimed water) that will be used to
12 satisfy its demands. In addition, utilities conduct Reuse Feasibility
13 Studies, perform audits of distribution systems, develop or update Water
14 Conservation Plans, and perform aquifer testing programs. The Workgroup V
15 Plan also assessed each water plant's design capability to satisfy the
16 projected 2020 water demand and identified potential physical deficits within
17 each plant. The plan then developed a matrix of utility-specific options to
18 meet the anticipated demand by the year 2020. Deficit estimates represent the
19 difference between projected needs for 2020 and the current permitted
20 capacity. Intercoastal was estimated to have an average day demand deficit
(ADD) of 2.78 mgd and JEA's ADD was 10.20 mgd. NUC is not yet in operation.

21 Q. What were the utility-specific options for these utilities to meet the
22 deficits?

23 A. The utility-specific options to meet the demand deficits were the
24 following. For Intercoastal, the study found that it has existing facilities
25 that will meet the 2020 ADD needs. Its deficit is based on the permitted

1 wellfield capacity and facilities needed to meet maximum daily demand. A
2 decrease in the system demand ration, possibly through either additional water
3 conservation or reuse activities may help in reducing the maximum daily
4 demand. JEA had the largest percentage of needs and deficits in the Duval
5 County portion of Work Group V. JEA appears to have most of the facilities
6 required to meet the projected 2020 needs. However, the needs are large
7 enough to require the development of other sources. Options include new
8 wellfields in the north grid portion of the JEA system, an interconnect from
9 the north to the south grid to convey new supply, surface water supply from
10 the lower Ocklawaha River, seawater desalting, and the potential of acquiring
11 other private utilities within the south grid service area around the year
12 2005.

13 Q. Are there any other concerns the SJRWMD staff have in regard to these
14 utilities providing service in the Nocatee development that are not identified
15 in the Workgroup V report, such as the ability of a system to satisfy its
16 water demands without resulting in harm to water quality or to native
17 vegetation and the ability of a utility to make reclaimed water available for
18 reuse?

19 A. In the Workgroup V area, ground water quality changes are occurring
20 rapidly concurrent with growth and increased withdrawals. In southeast Duval,
21 the concern is primarily with elevated chloride and sulfate concentrations and
22 the corresponding upward trends, which are evident in many of the wells. In
23 northeastern St. Johns County, the primary concern is with elevated chlorides.
24 In north central to north western St. Johns County the concern is primarily
25 with elevated sulfate and total dissolved solids concentrations in the

1 Floridan wells and harm to native vegetation from use of the surficial aquifer
2 wells. In central St. Johns County (location of St. Johns Co. wellfield), the
3 concern is with elevated chlorides and total dissolved solids in the Floridan
4 wells and harm to native vegetation from withdrawals from the surficial
5 aquifer.

6 Q. You mentioned that the use of reclaimed water is considered as part of
7 your CUP application review process. How much consideration will be given to
8 the ability of any of the aforementioned utilities to provide reclaimed water
9 for irrigation or other uses?

10 A. In this area of limited water resources, the ability to make reclaimed
11 water readily available for both golf courses, residential, and commercial
12 purposes will be a priority. This area is virtually undeveloped and is a
13 prime candidate for feasibly constructing dual distribution systems within
14 each large development. Since outside water use (irrigation) comprises
15 approximately 50-60% of a residential customer's consumption, it is critical
16 that lower water quality sources be used to offset what would otherwise be a
17 potable water demand. The provision of reclaimed water for golf course,
18 residential, and commercial use in new developments would prevent or delay the
19 need for locating and developing alternative water supplies. In addition, the
20 District is focusing heavily on reducing wastewater discharges to the lower
21 basin of the St. Johns River and Intracoastal Waterway. Reuse implementation
22 will either eliminate or significantly reduce effluent discharges to the St.
23 Johns River and Intracoastal Waterway. St. Johns County currently provides
24 reclaimed water for irrigation use to the World Golf Village and the St. Johns
25 County Golf Course, and is preparing to expand its wastewater treatment

1 facility (WWTF) and has committed to making 100% of its reclaimed water
2 available for golf course and landscape irrigation. Intercoastal currently
3 provides reclaimed water to the Sawgrass Country Club for golf course and
4 landscape irrigation and can make reclaimed water available to The Plantations
5 for golf course and landscape irrigation. The County's reuse feasibility
6 study indicated that any effluent in excess of what it could supply to
7 Sawgrass could be discharged to the lakes at The Plantations for golf course
8 irrigation, with any further unused portion being discharged to the
9 Intracoastal Waterway. JEA is proposing to wholesale approximately 1.0 mgd
10 of potable water to St. Johns County and will be accepting and treating
11 wastewater produced from the Nocatee development. JEA also recently acquired
12 Julington Creek Plantation Utilities in St. Johns County where it is retailing
13 reclaimed water.

14 Q. Will the District require the Nocatee development to do reuse?

15 A. Yes, it will be evaluated pursuant to Chapter 40C-2.30(f), Florida
16 Administrative Code.

17 Q. In your comments submitted on Nocatee's Development of Regional Impact
18 (DRI) submitted at the Department of Community Affairs (DCA), did you state
19 that NUC will be required to obtain a consumptive use permit pursuant to
20 Chapter 40C-2.041(g), Florida Administrative Code?

21 A. Yes.

22 Q. Will conservation rates be a requirement of the CUP?

23 A. Yes.

24 Q. Would that mean inclining block rates?

25 A. Typically, but not always. There are various methods of designing

1 conservation rate structures.

2 Q. If NUC will be providing reuse water for all irrigation needs, would
3 that eliminate the need for inclining block rates, at least initially?

4 A. Not necessarily, but that would be a consideration since a conservation
5 geared rate structure is typically geared towards outdoor or discretionary
6 uses.

7 Q. According to NUC's application, there will be many large reclaimed water
8 users, such as golf courses, parks, common areas, etc., correct?

9 A. Yes.

10 Q. Will these large reclaimed water users be required to apply for a CUP?

11 A. Possibly, if the user requires a back-up source to the reclaimed water
12 system and that source exceeds the Chapter 40C-2, Florida Administrative Code,
13 permitting thresholds, a CUP will be required.

14 Q. If, pursuant to the Water Management District Rules, these large users
15 could show that it was not economically feasible to pay NUC's reuse rates,
16 would the Water Management District issue a CUP?

17 A. Yes, if the large users satisfied all of the other Reasonable Beneficial
18 Criteria as outlined in Paragraph 10.3 of the Applicant's Handbook.

19 Q. Is the applicant's determination of economic feasibility final by
20 statute?

21 A. No, the Water Management District makes the final determination as to
22 whether or not reuse is economically feasible, not the applicant.

23 Q. Does the Water Management District have more leverage in requiring, or
24 is it better able to require, a brand new versus established golf course
25 seeking a CUP to use reclaimed water?

1 A. There is really no difference between new and established golf courses
2 in the leverage that the District holds to require the acceptance of reclaimed
3 water for irrigation.

4 Q. Is it important to set rates at levels that will encourage the use of
5 reclaimed water rather than ground water for irrigation?

6 A. Yes.

7 Q. Do you have any guidance as to what that rate level should be?

8 A. Not specifically.

9 Q. Are you aware that NUC proposes to charge all users \$1.41 per thousand
10 gallons for reclaimed water in addition to a base facility charge based on
11 meter size?

12 A. Yes.

13 Q. Is this the highest reuse gallonage charge you have seen in your
14 District?

15 A. Based on my knowledge of reuse rates in the area, these rates are
16 substantially higher than what is being charged elsewhere in Northeast
17 Florida. For example, JEA has a base facility and gallonage charge rate
18 structure for reuse, that is based on meter sizes. Up to 1-1/2" meters pay
19 \$0.58 per 100 cubic feet. Meters from 2" to 20" pay \$0.20 per cubic feet.
20 Some of the golf courses that will be obtaining reclaimed water under this
21 rate schedule are Deerwood, Deercreek, Mill Cove, Glen Kernan, UNF, Hidden
22 Hills, and the Dunes. St. Johns County recently changed from a rate of \$3.76
23 per 1,000 gallons to \$0.16 per 1,000 gallons for all large users. There are
24 no residential reuse customers. Golf courses in St. Johns County obtaining
25 effluent at the new rate include World Golf Village, King and Bear, Marsh

1 Creek and a county owned and operated course. Other golf courses in the
 2 vicinity obtaining free reclaimed water are Sawgrass, Marsh Landing and
 3 Players Club. ~~Ponte Vedra has an agreement with United Water Florida, but no~~
 4 ~~reuse has been delivered yet.~~ *United Water Florida is now delivering approximately .50 million gallons per*
 5 *day to Ponte Vedra Golf Course.* Finally, Clay County Utility Authority charges
 6 golf courses a reuse rate of \$0.20 per 1,000 gallons.

6 Q. What concerns do you have regarding NUC's reuse rate?

7 A. I am concerned that the gallonage charge may be too high to encourage
 8 reclaimed water use.

9 Q. Why?

10 A. It is important that there be incentives for use of reclaimed water,
 11 especially among large users like golf courses. In this case, projected
 12 irrigation needs of large users are more than double that of residential
 13 users. In order for the SJRWMD to achieve the goals of its water supply, it
 14 is extremely important to divert water usage from ground or surface sources
 15 to reuse.

16 Q. In reviewing the NUC development and water use plan, do you see any
 17 inconsistencies with the goals and objectives of the District's 20/20 water
 18 supply plan?

19 A. No, other than the fact that the development plan does not address water
 20 conservation and the efficient use of reclaimed water.

21 Q. In reviewing Intercoastal's development and water plan, do you see any
 22 inconsistencies with the goals and objectives of the District's 20/20 water
 23 supply plan?

24 A. ~~No, but in the District's 20/20 Water Use Plan, Intercoastal does not~~
 25 ~~address service for any areas outside of its existing service area.~~ *In the water 2020 plan, Intercoastal utilities apparently addresses service for areas outside*
of its existing service area which is evident.

1 Q. Do you have any other comments on the ability of the parties to provide
2 water service to the area in question?

3 A. ~~Although it is unlikely JEA has yet to demonstrate to the District that they can~~
4 ~~It is my opinion that JEA has demonstrated at this time that it can~~
5 ~~supply the Nocatee development without resulting in harm to the resource~~
6 ~~supply the Nocatee development without resulting in further water quality~~
7 ~~degradation or harm to native vegetation if the water supply is from the west~~
8 ~~side of the St. Johns River.~~

9 Also, the District is funding a St. Johns County Regional Reuse Study,
10 which will take a regional approach to addressing the reuse needs of the
11 entire County. It will incorporate and address the reuse potential of the
12 County, the City of St. Augustine and all other private utilities providing
13 service within the County boundaries (Intercoastal, St. Johns Service Co.,
14 JEA, and others).

15 Q. Does this conclude your testimony?

16 A. Yes.
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1 BY MS. CIBULA:

2 Q Ms. Silvers, can you briefly summarize your
3 testimony?

4 A The scope of my testimony is to identify any concerns
5 the District staff currently has with respect to the provision
6 of water service within the subject area and the ability of
7 resource to meet the projected demands of the various utilities
8 applying for the certificated area in a manner that is
9 consistent with the goals and objectives of the District.
10 Specifically, the District is concerned with ensuring the
11 availability of an adequate and affordable supply of water for
12 all reasonable beneficial uses while protecting the resource,
13 exiting legal users, and related land resources of the
14 District.

15 I will testify to the District's directives, rules,
16 and policies regarding water conservation and the use of
17 reclaimed water and to whether the resource can adequately
18 satisfy the demands of the proposed Nocatee development in
19 accordance with District rules. I will also testify to the
20 implications of being in a water resource caution area and any
21 items related to the existing consumptive use permits
22 associated with potential water suppliers.

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

24 CHAIRMAN JACOBS: Mr. Wharton. Mr. Menton.

25 MR. WHARTON: Well, there's two of them,

1 Mr. Chairman. I went first last time. There's only one of me.

2 MR. MELSON: Chairman Jacobs, I do not have questions
3 unless Mr. Wharton has something that I think --

4 MR. WHARTON: I'll just go ahead. I'll just go
5 ahead.

6 MR. MELSON: Thank you.

7 CHAIRMAN JACOBS: Oh, this is wonderful.

8 CROSS EXAMINATION

9 BY MR. WHARTON:

10 Q Ms. Silvers, you mentioned in your testimony that you
11 had commented on Nocatee's development of regional impact; is
12 that correct?

13 A Yes.

14 Q And that's that application filed by Nocatee that has
15 been referred to sometimes in this case as the ADA, the
16 application for development approval?

17 A I'm not clear on what you're asking. I commented on
18 the -- for the District.

19 Q Right. That's the ADA process.

20 A Okay.

21 Q And the Water Management District is one of the
22 commenting agencies?

23 A Correct.

24 Q And you represented the Water Management District in
25 commenting on the water supply issues associated with the

1 Nocatee ADA; correct?

2 A No, I did not.

3 Q Okay. Well, do you have a copy your deposition?

4 A No, I don't with me. But could you please repeat
5 what you said last because I think you spoke fast.

6 Q Yeah, and I'm sorry. I may not have stated the
7 question clearly. You represented the District in commenting
8 on the water supply issues associated with the development
9 order?

10 A Yes, I did.

11 Q Okay. I'm sorry. And you didn't get into whether or
12 not the facilities that would provide water or wastewater
13 services should be located either on-site or off-site of the
14 development; correct?

15 A Correct.

16 Q And to your knowledge, there were no others at the
17 Water Management District who got into that issue either?

18 A To my knowledge, no.

19 Q And you're not aware that the Water Management
20 District has ever taken the position that the property is not
21 permittable with on-site facilities; correct?

22 A Correct.

23 Q And you're not aware --

24 A Wait a minute. Could you repeat that? You're going
25 fast for me. I'm sorry.

1 Q I'm sorry. You're not aware that the Water
2 Management District has ever taken the position that the
3 Nocatee property is not permittable with on-site facilities?

4 A Let me clarify so I'm sure that we're on the same
5 track. The District in the commenting process is not reviewing
6 whether or not the water comes from on-site or off-site, if
7 that's specifically what you're asking.

8 Q It's helpful, Ms. Silvers, and I don't mean to be
9 rude, but let me see if I can get an answer to that question,
10 though. You're not aware that -- if the Water Management
11 District has ever taken the position that the Nocatee property
12 is not permittable with on-site facilities, you're not aware of
13 that position; is that correct?

14 A I'm not aware that we have taken that position.

15 Q Okay. In fact, you're not aware of the Water
16 Management District taking a specific position on that same
17 issue in the past in the review of other ADA applications; is
18 that correct?

19 A I only see the ones that I comment on, and I don't
20 see the final development orders in many instances, so I really
21 can only speak for the ones that I've commented on.

22 Q But you're not --

23 A And I have not seen that.

24 Q Okay. You're not aware of the District --

25 A I have not commented in that capacity. Whether or

1 not the District has, I can't speak for the District because I
2 do not see their final comments always.

3 Q But you're not aware of the District ever taking that
4 position?

5 A That is correct.

6 Q Okay. And you don't believe it was a requirement of
7 the Water Management District that the development orders in
8 this case require that there be no on-site potable water wells
9 and no surficial aquifer wells except those serving as a backup
10 supply for the reuse system; is that correct?

11 A That's correct.

12 CHAIRMAN JACOBS: I'm sorry that I -- to ask you this
13 question because I had intended to ask one of the DEP
14 witnesses, but there was a mention in the testimony in one of
15 the witness's prefiled testimony that there was a concern about
16 groundwater and saltwater intrusion. Are those significant
17 concerns in this area?

18 THE WITNESS: Those are concerns anywhere, south and,
19 you know, south of the river, we call it, or in the south area.
20 But as an agency, we give everybody the ability to demonstrate
21 whether or not they can meet our permitting criteria. And at
22 this point, not having an application, not having wells, I
23 cannot come to that conclusion.

24 CHAIRMAN JACOBS: But going by your prior answer, in
25 other developments that you've looked at, you have not tried to

1 address any concerns of that nature by imposing any
2 restrictions on groundwater wells?

3 THE WITNESS: Well, there are some restrictions that
4 we would, you know, comment, or we would like to see such as,
5 you know, not using ground water for irrigation --

6 CHAIRMAN JACOBS: I see.

7 THE WITNESS: -- if reclaimed water is available, and
8 we make that a requirement in our permitting process, you know,
9 no groundwater, and in our commenting process. But as far as
10 whether or not Nocatee can meet the -- if wells were put
11 on-site at Nocatee whether or not they could satisfy our
12 criteria, we have not reviewed that, so we cannot draw any
13 conclusions. You know, it's a pretty extensive process.

14 CHAIRMAN JACOBS: I understand.

15 THE WITNESS: We allow everybody the ability to go
16 through it.

17 BY MR. WHARTON:

18 Q You would agree that the Water Management District
19 wouldn't really know if on-site wells were appropriate until
20 they got the appropriate application?

21 A Right, and did all the appropriate testing.

22 Q And by that, you mean an application for a
23 consumptive use permit?

24 A That is correct.

25 Q Okay. Because you would have to meet the criteria

1 for a consumptive use permit in order to put any wells in there
2 anyway; right?

3 A That is correct.

4 Q There's been testimony today that all of St. Johns
5 County is a priority water resource caution area except for a
6 small area in the south. Does that sound about right to you?

7 A I don't know the area in the south that's not, but --

8 Q Okay. You think pretty much the whole county is?

9 A And parts of Duval, yes.

10 Q Okay. You agree that the fact that the area is
11 classified as a priority water resource caution area does not
12 mean that additional consumptive use permits would be
13 prohibited; correct?

14 A That is correct.

15 Q If you comply with the consumptive use permit
16 criteria, you can get a consumptive use permit in those areas?

17 A That is correct.

18 Q Do you agree that JEA will have to have its
19 consumptive use permits modified if they decide they want to
20 serve outside the area they indicated in their last consumptive
21 use permit application?

22 A Yes, I concur.

23 Q Do you know whether they had the entire Nocatee
24 development in that last CUP application?

25 A To my understanding -- and, you know, when their

1 application came in, Nocatee was not on the books. So I did
2 review it in the capacity that it included Nocatee. I only
3 included a portion for St. Johns County for a certain area.

4 Q So as we sit here right now, you don't know whether
5 that area that JEA set forth in his consumptive use permit
6 application included, say, all of Phase I of Nocatee?

7 A Not knowing where Phase I is, I don't know. You
8 know, I don't know the boundaries of Phase I.

9 Q So you don't know one way or another?

10 A To the best of my recollection, it was not in the
11 application that originally came in that identified their
12 service area boundaries. But I have not looked at that map in
13 five or six years, so I would have to go back.

14 Q But to the extent that that portion of Nocatee they
15 proposed to provide water to, whether in Phase I or not, was
16 not specifically delineated in that CUP application, they would
17 need to have the CUP modified; is that correct?

18 A They would have to have the consumptive use permit
19 modified if Nocatee was not included in that original service
20 area or if it was outside of Duval County in another county.

21 Q So to serve any portion of Nocatee in St. Johns
22 County, they would have to have their CUP modified?

23 A That is correct.

24 COMMISSIONER JABER: Ms. Silvers, yesterday we heard
25 testimony from the Nocatee witnesses that they have imposed --

1 there's a self-imposed desire on their part to be
2 environmentally sensitive to the degree that they are
3 addressing potential wetland mitigation concerns and the whole
4 method in which they propose to handle the reuse. Did I
5 understand your testimony to be that you haven't even reviewed
6 any of that proposal because they have not applied for a
7 consumptive use permit with the Water Management District?

8 THE WITNESS: That is correct.

9 COMMISSIONER JABER: All right. So you haven't
10 evaluated whether there are wetland mitigation problems in that
11 area?

12 THE WITNESS: And I would not be the one who would
13 look at that. I would look strictly at the consumptive use
14 permitting issues, and that is not specifically typically an
15 issue associated with consumptive use permitting unless they
16 have surficial wells or something, so no.

17 COMMISSIONER JABER: Do you know who does? Is that a
18 Water Management District --

19 THE WITNESS: Yes. It's a Water Management District
20 evaluation during other permitting activities, storm water
21 and --

22 COMMISSIONER JABER: Do you know if there has been a
23 storm water permit that's been applied for?

24 THE WITNESS: I'm not aware of one.

25 COMMISSIONER JABER: Thank you.

1 CHAIRMAN JACOBS: Mr. Menton.

2 CROSS EXAMINATION

3 BY MR. MENTON:

4 Q Good evening, Ms. Silvers.

5 A Hi.

6 Q Just a few questions for you. You would agree that
7 JEA has the capacity in its system now to provide water service
8 to the first phase of Nocatee, wouldn't you?

9 A To be honest, I don't know how many people are in the
10 first phase of Nocatee, so if you could, maybe give me a little
11 background.

12 Q I forget the flow. It's right here in Doug Miller's
13 testimony.

14 A I haven't evaluated any of the Nocatee --

15 Q Well, you know that JEA has excess capacity -- okay.
16 If Phase I was 700,000 gallons a day, you would agree that JEA
17 has that capacity within its existing system?

18 A As far as their allocation and in what time frame,
19 you know, those are factors I would have to consider.

20 Q Phase I is over five years.

21 A And when do we have Phase I done or completed?

22 Q 2007.

23 A If -- you know, that use can offset other use on the
24 South Grid, and they don't have the growth in the South Grid to
25 meet those demands that are in their allocation. They might

1 have that capacity, but not necessarily -- we have not reviewed
2 it if that is in St. Johns County, if you understand what I'm
3 saying.

4 Q Well, let me ask you this. In its submittal to the
5 District as part of the 2020 plan, JEA projected service to the
6 northern St. Johns County area; isn't that correct?

7 A In the -- repeat what -- in what document?

8 Q In its submittal to the District with respect to the
9 development of the 2020 plan, JEA projected service to the
10 northern St. Johns County area; correct?

11 A I can't verify that because I haven't looked at the
12 plan -- at all of the plan, but they may have.

13 Q And if Mr. Perkins testified earlier that JEA had
14 projected over 3 million gallons a day as to what it
15 anticipated to be the needs in the northern St. Johns County
16 area, you would not disagree with that, would you?

17 A I don't know. I have not seen that in the
18 development order.

19 Q In JEA's consumptive use permit application, it
20 included quantities designated for service of the northern
21 St. Johns County area, did it not?

22 A Yes, it did.

23 Q And it included quantities that equaled approximately
24 3.3 million gallons per day?

25 A He applied for that. That is not what we reviewed

1 and permitted.

2 Q The permit that's been issued by the District does
3 specifically reflect quantities that were set aside for the
4 northern St. Johns County area; correct?

5 A Well, 1.0 MGD is all that we evaluated and permitted
6 when we looked at the local sources first provision. And what
7 was, I think, part of Exhibit E of the consumptive use -- or
8 the technical staff report and consumptive use permit allowed
9 for only 1.0 MGD, and that was all I considered during the
10 review process. I have seen the 3.3 MGD, but that was not
11 approved because it has to go through the local sources
12 first provision.

13 Q The permit that was issued by the District to JEA
14 does include the 3.3 for the northern St. Johns County area,
15 does it not?

16 A No, it does not.

17 Q Isn't that on the face of the permit?

18 A No.

19 Q Did Mr. Perkins show that to you this morning?

20 A No. He showed me what was in his supplemental
21 application information, but that does not mean the District
22 approved the 3.3 MGD.

23 Q Did Mr. Perkins indicate to you this morning that it
24 was his understanding that 3.3 MGD had been set aside for the
25 northern St. Johns County area as part of the consumptive use

1 permit issued by the District?

2 A Yes.

3 COMMISSIONER JABER: What you're saying is, they
4 applied for that; the Water Management District did not approve
5 that.

6 THE WITNESS: That is correct.

7 COMMISSIONER JABER: Why not?

8 THE WITNESS: Because they have to go through the
9 Local Sources Provision Act. In order for an uncertificated, I
10 guess, or unregulated utility to satisfy our permitting
11 requirements, they have to have a contract or a binding
12 agreement to go outside of their county or vice versa in order
13 to supply that. And we do not have any agreements or contracts
14 between the parties or PSC approval. And I also think there is
15 a stipulation if there is any objections or there's any
16 controversy, that we're not going to approve it. And JEA never
17 submitted any contracts or agreements to serve outside of their
18 county. And the only thing we got and we required was that --
19 we looked at the local sources first provision because they
20 were going outside of the county, and that was for 1.0 MGD.

21 People commonly apply for a lot more than we approve.
22 And we had a letter, which was part of our Exhibit E of our
23 technical staff report, that was from St. Johns County allowing
24 them to provide just 1.0 MGD into their area. And my
25 understanding was that was for the corridor to supply

1 Marshall Creek and in that vicinity.

2 BY MR. MENTON:

3 Q Ms. Silvers, you would agree that in the application,
4 JEA indicated 3.3 million gallons per day for the northern
5 St. Johns County area; correct?

6 A In their supplemental, yes.

7 Q Okay. And prior to today, has the District ever
8 advised JEA that it was not approved for those 3.3 million
9 gallons per day in the northern St. Johns County area?

10 A I think that was very clear when we went through the
11 local sources first, and I met with JEA almost every day, and
12 we always talked just about the corridor for Marshall Creek and
13 the 1.0 MGD that would be wholesale to St. Johns County. Never
14 until today was I aware of the 3.3 other than seeing it, but as
15 far as -- JEA never brought it up during the whole review
16 process.

17 Q Well, JEA included it in its application; correct?

18 A They did provide a number.

19 Q And has the County ever in writing advised JEA that
20 that quantity was not approved?

21 A Which county?

22 Q Has the District ever advised JEA that that
23 3.3 million gallons per day was not approved?

24 A I think through the permit, yes.

25 Q And would you agree that today is the first time that

1 JEA was ever advised of that by the District?

2 A It's the first time they ever mentioned it or
3 suggested it to me, yes.

4 Q Is the requirement for attaching a contract part of
5 District rules for the consumptive use permit process?

6 A Yes, it is. Section 12.2.3 of the applicant's
7 handbook which is adopted by rule.

8 Q Okay. And you would agree that in your deposition,
9 you testified that the local sources first policy is not
10 applicable to this proposed arrangement between JEA and Nocatee
11 Utility Corporation; correct?

12 A Yes, but I have since been readvised by my legal
13 counsel that it is.

14 Q Is that an issue that's been taken before the Board
15 of the Water Management District?

16 A No, not that I'm aware of.

17 Q Okay. Is that anything that's in the District's
18 rules at this point in time?

19 A Well, it's in the -- when you read the Local Sources
20 Provision Act or Local Sources First Act, it does not specify
21 if you're going from -- if JEA is supplying the water to
22 another county or whether that county is supplying water back
23 to, for instance, Duval. So it looks like it can go either
24 way.

25 Q Okay. But that has never been a policy that has been

1 adopted of the Board of the Water Management District at this
2 point in time?

3 A I'm not aware of it. It was just adopted -- I mean,
4 I think the legislation just approved it in '98. So it's
5 fairly new, but we did review it in this consumptive use
6 permit.

7 MR. MENTON: I don't have any further questions.

8 CHAIRMAN JACOBS: Mr. Melson.

9 CROSS EXAMINATION

10 BY MR. MELSON:

11 Q Ms. Silvers, Rick Melson representing Nocatee Utility
12 Corporation. Just a couple of questions about the DRI review
13 process. Do you know who Mr. Craig McLean (phonetic) is?

14 A Yes, I do.

15 Q Who is he?

16 A He is, I think, the director of our planning
17 department.

18 Q Do you know if the District's comments on the Nocatee
19 DRI went out under Mr. McLean's signature?

20 A I do not.

21 Q Did you ever see the final comments that the District
22 made on the Nocatee DRI?

23 A No, I did not.

24 Q You provided input -- you and other staff members
25 provided input that was then collected and turned into some

1 sort of official Department communication; is that correct?

2 A That is correct.

3 Q And is it fair to say that you don't know whether or
4 not other staff within the Department may have had input into
5 that final letter so that the letter would have addressed, for
6 example, on-site wells or reuse or other matters we have talked
7 about today?

8 A That is correct.

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

10 CHAIRMAN JACOBS: Very well. Questions,
11 Commissioners?

12 Ms. Silvers, it looks like you've answered a couple
13 of my questions with regard to how we will implement reuse. It
14 looks like -- you say the Nocatee development will be required
15 to have reuse, and you have a rule that you cite to. Tell me
16 what that means.

17 THE WITNESS: Well, there's several scenarios. If
18 Nocatee Corporation is indeed wholesale reclaimed water from
19 JEA, that's one scenario, then they would require a secondary
20 users permit through Chapter 40(c)(2), which is the consumptive
21 use permitting rule. And in that capacity, we would evaluate
22 the efficiency of their use with the conservation and whether
23 or not they were maximizing the use of the lowest water quality
24 source or using reclaimed water. And we would more than likely
25 on a new development of this size and capacity require

1 residential and commercial and, you know, landscape and golf
2 course reuse.

3 CHAIRMAN JACOBS: And then golf courses have to come
4 in for their own consumptive use permit as well, and you'd
5 required that for them?

6 THE WITNESS: If they were to come in for a well as a
7 backup supply, which we typically guarantee to someone in case
8 a plant has a failure, then, yes, we would -- I just would
9 make -- we would make recommendations. Our Board would make
10 the final decision, but we would recommend that, you know,
11 unless they were -- you know, it was technically or
12 economically not feasible that they take reclaimed water, yes.

13 CHAIRMAN JACOBS: Thank you. Redirect.

14 MS. CIBULA: No redirect.

15 CHAIRMAN JACOBS: And no exhibits?

16 MS. CIBULA: No exhibits.

17 CHAIRMAN JACOBS: Great. Thank you very much.
18 You're excused.

19 (Witness excused.)

20 CHAIRMAN JACOBS: Well, that was relatively painless.
21 We will recess for the evening and come again at 9:00 a.m.
22 tomorrow morning. Thank you everyone for their assistance.
23 We're adjourned.

24 (Hearing recessed at 7:30 p.m. and will resume at
25 9:00 a.m. on May 9, 2001, at the same location.)

(Transcript continues in sequence with Volume 6.)

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2 STATE OF FLORIDA)

3 : CERTIFICATE OF REPORTER

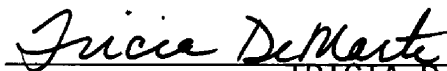
4 COUNTY OF LEON)

5
6 I, TRICIA DeMARTE, Official Commission Reporter, do hereby
7 certify that the foregoing proceeding was heard at the time and
8 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' attorneys or counsel
17 connected with the action, nor am I financially interested in
18 the action.

19 DATED THIS 22nd DAY OF MAY, 2001.

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TRICIA DeMARTE
FPSC Official Commission Reporter
(850) 413-6736