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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In The Matter of  Application of GULF POWER COMPANY for an increase in rates and charges.	: : : : : : :	DOCKET NO. 891345-EI  <u>HEARING</u> <u>NINTH DAY</u> <u>EVENING SESSION</u>
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VOLUME - XXVI

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**JUN 22 1990**  
  
 Florida Public Service Commission

Pages 40035 through 4213

FPSC Hearing Room 106  
 Fletcher Building  
 101 E. Gaines Street  
 Tallahassee, Florida 32399

Thursday, June 21, 1990

Met pursuant to adjournment at 1:00 p.m.

**BEFORE:** COMMISSIONER MICHAEL McK. WILSON, CHAIRMAN  
 COMMISSIONER GERALD L. GUNTER  
 COMMISSIONER THOMAS M. BEARD  
 COMMISSIONER BETTY EASLEY

**APPEARANCES:**  
  
 (As heretofore noted.)

**REPORTED BY:** JOY KELLY, CSR, RPR  
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4041

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CERTIFICATE OF REPORTERS

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EVENING SESSION

1 (Transcript follows in sequence from Volume  
2 XXV.L)

3 MS. RULE: Commissioners, my understanding is  
4 that the witness can provide the information and we can  
5 withdraw the last late-filed exhibit request.

6 CHAIRMAN WILSON: All right.

7 WITNESS BOWERS: It's approximately 35-37%.

8 Q (By Ms. Rule) Attributable to?

9 A Changeouts on the "Shine Against Crime"  
10 program.

11 Q And the rest would be attributable to new  
12 installations, correct?

13 A Right.

14 MS. RULE: No further questions. Staff would  
15 withdraw the request for Late-filed Exhibit 631.

16 CHAIRMAN WILSON: I'm sorry, I had to go out  
17 of the room for a minute, but did you explain your  
18 Schedule 1, Exhibit of Schedule 1; would you do that  
19 for me, please?

20 WITNESS BOWERS: Yes, sir.

21 What we've basically done is taken an average  
22 home in northwest Florida that met the Florida Model  
23 Energy Code and then compared it using different  
24 equipment in the home. Using the same SEER on air  
25 conditioning, we put in a 2.8 COP heat pump on Scenario  
1. And on Scenario 2, we included gas water heating

1 and a gas range. Scenario 3, it's gas heat with a 70%  
2 AFUE furnace with electric appliances. And Scenario 4  
3 is the total gas with gas water heating and gas range.

4           What it has done is summarized on kilowatt  
5 hours and therms used for that home. And you can see  
6 basically the total cost for a consumer in northwest  
7 Florida and we used an average cost for gas across our  
8 service territory. They range in prices, but we came  
9 up with 81 cents per therm; used that as the input for  
10 the average cost per therms. You can see what the net  
11 results are, total cost range from \$1,092 to I think  
12 the high is \$1,231. And then we segregated the heating  
13 cost out to show you what a heating only cost would be  
14 for that consumer.

15           On Scenario 3 and 4 why you would have  
16 kilowatt hours for the gas furnaces, it's the kilowatt  
17 hours used for running the fan in the furnace.

18           CHAIRMAN WILSON: Why are the heating therms  
19 in No. 4 less than those in No. 3?

20           WITNESS BOWERS: The internal heat gain from  
21 the gas appliances is greater than electrical  
22 appliances so the requirement of the BTUs in the home  
23 is not as great. It's what, 18 therms?

24           You also see the corresponding on the fan  
25 usage on kilowatt hours, too, where that dropped off

1 because of the same correlation.

2 CHAIRMAN WILSON: You expressed in your  
3 testimony what I took to be some concern about the  
4 Model Energy Code.

5 WITNESS BOWERS: Sir?

6 CHAIRMAN WILSON: About the Model Energy Code  
7 and how it could be manipulated.

8 WITNESS BOWERS: Yes, sir. The quote on Page 9?

9 CHAIRMAN WILSON: Yes. Would your Company's  
10 support revisions to the Model Energy Code.

11 WITNESS BOWERS: We're actively participating  
12 in that right now.

13 CHAIRMAN WILSON: Are you?

14 WITNESS BOWERS: Yes, sir.

15 CHAIRMAN WILSON: Is this in through  
16 legislation, or through community affairs revisions?

17 WITNESS BOWERS: It's a two-year review.  
18 Requirement of the Code; they are going through the  
19 revision process and I think your Staff's aware that  
20 our staff's been working diligently to try to come up  
21 with a fair and equitable way to measure energy  
22 efficiency in the Code.

23 CHAIRMAN WILSON: Okay. Thank you. Any  
24 other questions? Any redirect? Thank you very much.

25 WITNESS BOWERS: Thank you.

1 (Witness Bowers excused.)

2 - - - - -

3 CHAIRMAN WILSON: I believe the next witness --

4 MS. RULE: Staff has no questions of the next  
5 witness and would be willing to stipulate his testimony  
6 into the record.

7 MR. HOLLAND: Unless the Commissioners have  
8 questions, that's perfectly all right with us.

9 We have, I think, provided the court reporter  
10 with a corrected version. There were a few minor  
11 changes.

12 COMMISSIONER EASLEY: Hearing Exhibit 295?

13 MR. HOLLAND: Yes.

14 CHAIRMAN WILSON: I don't have any questions.  
15 Do either of you?

16 Mr. Hodges prefiled testimony then, by  
17 stipulation, rebuttal testimony, will be inserted into  
18 the record.

19 (Exhibit No. 295 previously stipulated into  
20 evidence.)

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GULF POWER COMPANY

Before the Florida Public Service Commission  
Rebuttal Testimony of  
J. E. Hodges, Jr.  
In Support of Rate Relief  
Docket No. 891345-EI  
Date of Filing May 21, 1990

Q. Please state your name, address and occupation.

A. My name is John E. Hodges, Jr. My business address is 500 Bayfront Parkway, Pensacola, Florida 32501. I am employed by Gulf Power as Vice President of Customer Service and Division Operations.

Q. Please describe your education and business background.

A. I received a Bachelor of Science Degree in Business Management from Florida State University. My career at Gulf Power started in 1966 when I joined the Company as a Residential Marketing Representative. I have held positions of increasing responsibility including Manager of Appliance Sales and Service, Director of Marketing and Load Management and General Manager of Western Division. I was promoted to Vice President of Customer Service and Division Operations on May 19, 1989. As a result of my 23 years experience at Gulf Power Company and because of my background in marketing and the direct implementation of the programs at the



1 customer level, I believe that I am familiar with the  
2 energy needs and demands of our customers.

3

4 Q. Mr. Hodges, what is the purpose of your testimony?

5 A. The purpose of my testimony is to provide rebuttal to  
6 the position taken by Mr. Helmuth W. Schultz, III  
7 concerning a regulated utility's Customer Service and  
8 Information programs.

9

10 Q. What is your position regarding these activities?

11 A. I believe that all energy suppliers have a moral if not  
12 legal responsibility to satisfy the needs of its  
13 customers for cost-effective products and services.  
14 Companies will not be successful in the future unless  
15 they understand the needs of their customers and are  
16 willing and able to provide for these needs. Customer  
17 Service and Information programs are the delivery  
18 mechanisms for meeting customer needs.

19

20 Q. How has Gulf Power met its customers' needs in the  
21 past?

22 A. We began offering a wide range of conservation oriented  
23 customer service programs that focused on reducing the  
24 amount of energy purchased by our customers that was  
25 not being efficiently used. These programs were

1 implemented in the mid-70's because our customers  
2 expressed a need, and not because of any regulatory  
3 requirements. These programs consisted of energy  
4 efficient homes, energy efficient commercial struc-  
5 tures, residential energy auditing services and consum-  
6 er education.

7 The objective of these programs was to lower the  
8 average cost of energy, improve the efficient utiliza-  
9 tion of the energy customers purchased and improve the  
10 customers lifestyle. Consumer response to these  
11 programs was very high when they were implemented and  
12 continues to be high 15 years later. We are very proud  
13 of these programs because of their success and the fact  
14 that they are indicative of how Customer Service and  
15 Information programs should be designed and implement-  
16 ed.

17  
18 Q. Mr. Hodges, what about your most recent efforts,  
19 specifically the five-year strategic plan?

20 A. I believe that our efforts were well thought out,  
21 beneficial to our customers and achieved the goals they  
22 were designed to accomplish. Customers reacted very  
23 favorably along with trade allies and the communities  
24 we serve.

25

1 Q. What do you believe is the perception held by some of  
2 the parties to this case regarding this plan?

3 A. The general perception is that the new programs we  
4 implemented from 1985 - 1989 were for the purpose of  
5 defeating the competition in the energy marketplace.  
6

7 Q. Do you believe that this perception is based on your  
8 programs' performance?

9 A. No. The program performed as we intended. The percep-  
10 tion of some is based solely on two minor occurrences,  
11 the closing of the Top Gun tape and Gas Busters  
12 T-shirts, and some comparative advertisements, that  
13 have overshadowed the real purpose of the programs and  
14 the results that have been achieved.

15 The decisions to include the controversial closing  
16 in the tape and make the t-shirts were in hindsight, an  
17 inappropriate reaction to the promotional efforts of  
18 other energy suppliers. It is unfortunate that two  
19 minor events over a five year period have distorted the  
20 purpose and benefits of the entire customer service and  
21 information efforts. Although not personally involved,  
22 looking back we now regret the decision. However, we  
23 do not regret the implementation of the programs and  
24 are proud of the results they achieved.  
25

1 Q. Mr. Hodges, what promotional practices are you refer-  
2 ring to with respect to the other energy suppliers?

3 A. Primarily the two sellers of natural gas, who are not  
4 regulated by the Commission. These Companies have  
5 engaged in promotional practices which we believe are  
6 misleading. We believe the Commission's position  
7 regarding "source neutrality" seeks to have the facts  
8 presented on the comparative benefits of electric vs.  
9 gas in a neutral, straightforward way to the benefit of  
10 the consumer. We have attempted to do this. The  
11 comparative advertisements were run in response to  
12 misleading information being presented to our custom-  
13 ers.

14

15 Q. Do the programs you are currently implementing contain  
16 any activities that may be in conflict with the Commis-  
17 sion's policy?

18 A. I have personally reviewed each and every program we  
19 are currently implementing and have satisfied myself  
20 that we are not in conflict with Commission policy.  
21 The managers responsible for the implementation and  
22 monitoring of the programs have been personally in-  
23 structed by me to ensure that we do not have any  
24 conflict.

25

1 Q. Mr. Hodges, do you believe the programs and expenses  
2 supported by Mr. Bowers are necessary in the fulfilling  
3 of its customer service obligation?

4 A. Yes. As Mr. Bowers states, we have become the primary  
5 source of information for our customers in a variety of  
6 areas. The programs for which we are seeking recovery  
7 are a vital part of this effort. As a result of my  
8 vast experience in the field with our customers, I am  
9 convinced that they expect and desire that we provide  
10 these services.

11

12 Q. Mr. Schultz argues that these are not services which  
13 should be provided by the utility and that they are  
14 available elsewhere. Do you agree?

15 A. No. The Commission has recognized that the utility is  
16 in the best position to provide the broad spectrum of  
17 services which are designed to promote energy efficien-  
18 cy and keep the customer satisfied. Rather than  
19 diminishing the role of the utility as the primary  
20 provider of energy services and information, I see our  
21 role continuing to increase. Since assuming my posi-  
22 tion as the Vice-President over both the Customer  
23 Service and Division Operation areas, I have continual-  
24 ly evaluated the proper role we should play in dealing  
25 with our customers. I believe it is appropriate and am

1 seeking to instill in our employees a culture which is  
2 totally customer oriented. This effort has received  
3 the full support of top management in the Company.  
4 What the customer wants, we believe, is to be treated  
5 fairly and to receive information which is straightfor-  
6 ward and unbiased. This is what we are attempting to  
7 provide.

8

9 Q. How are you implementing this change in culture?

10 A. Organizational change originates with the executives  
11 who must communicate with employees and constantly  
12 reinforce the new concepts; without executive commit-  
13 ment a lasting cultural change will not occur. I have  
14 implemented several internal initiatives since I  
15 assumed my current position that have resulted in  
16 creating a change in culture in addition to identifying  
17 methods of providing better customer service.

18

19 Q. Please describe these initiatives.

20 A. The first initiative consisted of several of focus  
21 group sessions with employees responsible for customer  
22 service and power delivery activities. I used these  
23 sessions to find out how we were reacting to the needs  
24 of our customers, what needs were not being met and how  
25 could we fill in the gaps. The employees provided

1 valuable information that was incorporated with direct  
2 input from customers that has formed the foundation for  
3 developing additional customer service programs. We  
4 found out that our customers were satisfied with their  
5 rates and the reliability of their service, however,  
6 they wanted us to make it easier for them to do busi-  
7 ness with us.

8 The second initiative was the formation of a  
9 working group consisting of three Division Managers,  
10 the General Managers of Power Delivery, and Marketing  
11 and other key management personnel. This group was  
12 charged with the responsibility of addressing customer  
13 needs and immediately researching and implementing  
14 programs that create customer satisfaction.

15 The third initiative was creating a system for  
16 obtaining employee suggestions on how we can improve  
17 customer service. Employees were encouraged to provide  
18 suggestions and in some cases participated in the  
19 implementation process even though it may not have been  
20 in their area of responsibility. I used this as a  
21 means of communicating to all employees that a cultural  
22 change was taking place and that every employee had an  
23 important part to play.

24 Another initiative is field visits to our local  
25 office by myself and corporate office department heads

1 responsible for customer service. These trips are used  
2 to update the employees on issues facing the Company,  
3 the programs that are being implemented to address  
4 customer needs and to receive feedback from employees  
5 on the status of programs currently being implemented.  
6

7 Q. What type of input have you received from your employ-  
8 ees?

9 A. The input from employees are mostly things that they  
10 either see or get brought to their attention by direct  
11 customer contact. This has always been the best source  
12 of qualitative data.  
13

14 Q. What are some of the results you have achieved from  
15 these initiatives?

16 A. There have been several programs implemented or in the  
17 research stage. We have extended the hours of opera-  
18 tion of our commercial offices so that they are open  
19 for the customers' convenience for paying bills and  
20 applying for service. Our phone centers are in opera-  
21 tion longer to allow customers who can't or don't want  
22 to, personally come in the office to conduct business.  
23 This customer service is especially important for  
24  
25



1 businesses and out-of-town customers. We have imple-  
2 mented a pilot program that allows a customer the  
3 option of applying for service by telephone instead of  
4 personally coming into an office. Our division custom-  
5 er accounting representatives give each customer they  
6 have contact with a business card with a phone number  
7 the customer can use to contact the same representative  
8 if the need arises.

9 Some of these programs may seem like the common  
10 sense thing to do but the fact is we were not providing  
11 these customer services. The change in culture has  
12 identified the need for these services and we have  
13 responded by providing them to the satisfaction of our  
14 customers.

15

16 Q. What are some of the customer service and information  
17 activities you are considering?

18 A. We are following up on a request by several customers  
19 to provide summary billing instead of individual bills  
20 for each account. Customers such as school boards and  
21 governmental agencies have dozens of individual ac-  
22 counts all coming due at different times of the month.  
23 Summarizing these accounts into a single bill will save  
24 both the customer and company the expense of processing  
25 multiple bills.

1           We are developing a brochure that will provide  
2 customers with information on how to apply for electric  
3 service, how to report outages, the customer programs  
4 and services that are available to them and who to call  
5 in order to participate in the programs.

6           An employee cross-training program is being  
7 developed that will enable our employees who do not  
8 have direct customer contact to better understand what  
9 programs and services are available and the importance  
10 of satisfying customer expectations.

11           We have designed a program this year called  
12 Quality Service Index which will enable us to monitor  
13 the level of satisfaction our customers have with the  
14 products and services we provide. We will use this  
15 information to make improvements in the current pro-  
16 grams and anticipate future needs.

17

18 Q.   Mr. Hodges are you considering any changes to your  
19 program planning process.

20 A.   Yes. I want the planning process to be expanded to  
21 include other functions in the Company and to solicit  
22 their input at the very beginning of the program  
23 planning process. I also want to create an environment  
24 that will encourage all employees to actively partici-  
25 pate in providing ideas for new programs or how to

1 improve existing ones. Finally, I would like to  
2 solicit the input from people and organizations that  
3 are external to the Company regarding significant  
4 changes in programs or strategic direction.

5

6 Q. When will you have achieved your goal of meeting your  
7 customers customer service needs?

8 A. Never. The energy marketplace is dynamic and we must  
9 be flexible enough to respond to the changes. Our  
10 customers expect their energy supplier to be totally  
11 committed to satisfying their needs. They do not want  
12 us to be just a supplier they want us to be a partner  
13 in arriving at the most cost-effective solution to  
14 their energy needs. We are continuing our commitment  
15 of an energy partner by providing superior customer  
16 service and information products and services that  
17 satisfy their needs. The Good Gents Home programs and  
18 Energy Education programs supported by Mr. Bowers are a  
19 vital part of this effort.

20

21 Q. What do you perceive to be your customers' needs in the  
22 future?

23 A. Customers want utility management to be committed to  
24 providing energy and energy related services at the

25

1 lowest possible cost at the convenience of the custom-  
2 ers and not the utility.

3 Service reliability will become even more impor-  
4 tant, especially for residential customers, as the home  
5 becomes more automated. The "Smart House" is an  
6 example of a step in that direction. Customers will  
7 want a wider variety of pricing and billing options  
8 and, in the case of industrial customers, ones that are  
9 tailored to their own individual needs.

10 Customers want their energy supplier to be social-  
11 ly responsible by protecting the environment, becoming  
12 involved in societal issues such as illiteracy and drug  
13 education and they will expect utility management to  
14 demonstrate total commitment to meeting their custom-  
15 ers' expectations for products and services. They will  
16 want their utility to take an active roll in community  
17 and economic development activities.

18

19 Q. Please summarize your testimony.

20 A. Gulf Power Company has consistently demonstrated a  
21 long-term commitment to providing the highest quality  
22 customer services. We intend to continue to meet  
23 customer expectations in the future and are asking the  
24 Commission to continue to recognize the benefits that  
25 are derived by the customer.

1           We understand the Commission's concern about some  
2           isolated activities. We would request, however, that  
3           the Commission consider what has actually been achieved  
4           by the customer service programs and not be distracted  
5           by the perception that has been created by the activi-  
6           ties.

7           The executive management at Gulf Power is commit-  
8           ted to creating a meaningful cultural change that will  
9           create a greater focus on providing superior customer  
10          services at the lowest possible cost to the total  
11          satisfaction of our customers, the Company and the  
12          Commission.

13

14   Q.    Mr. Hodges, does this conclude your testimony?

15   A.    Yes, it does.

16

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1 MS. RULE: Commissioners, I'd like to note  
2 for the record that I've passed out copies of Staff's  
3 Exhibits 536 through 538. That should be the last of  
4 the exhibits that Staff has stipulated into the record  
5 that were not earlier provided. Additionally, Staff  
6 will withdraw Exhibit 516 which can be deleted from the  
7 list.

8 CHAIRMAN WILSON: All right.

9 MR. HOLLAND: Call Mr. Fell.

10 GEORGE A. FELL

11 was called as a witness on behalf of Gulf Power Company  
12 and, having been first duly sworn, testified as  
13 follows:

14 DIRECT EXAMINATION

15 BY MR. HOLLAND:

16 Q Mr. Fell, would you state your name, your  
17 business address and your position with Gulf Power  
18 Company?

19 A George A. Fell, 500 Bayfront Parkway, P. O.  
20 Box 1151, Pensacola, Florida 32520. I'm the Manager of  
21 Internal Auditing and Security.

22 Q And Mr. Fell, have you caused to be filed in  
23 this docket testimony entitled "The Rebuttal Testimony  
24 of George A. Fell"?

25 A Yes.

1 Q Do you have any corrections to that  
2 testimony?

3 A Yes, I have a couple.

4 On Page 5, Line 15, it should read,  
5 "Inventory was either missing, or obsolete." Strike  
6 "and."

7 And Schedule 1, Page 1, the fifth paragraph  
8 under facts, starts out "the next shortage." Strike  
9 "next" and make it "net, n-e-t."

10 And then on Page 2, fourth paragraph, I  
11 guess. It says "year." The year "1981" should be  
12 "'83," and "'82" should be "'84." That's all the  
13 corrections.

14 Q Mr. Fell, with those changes, if I were today  
15 to ask you the questions contained in your testimony,  
16 would your answers be the same?

17 A Yes.

18 MR. HOLLAND: Mr. Chairman we'd ask that Mr.  
19 Fell's rebuttal testimony be inserted into the record  
20 as though read.

21 CHAIRMAN WILSON: Without objection it will  
22 be inserted into the record as though read.

23 MR. HOLLAND: I believe his exhibits have  
24 been premarked and stipulated to.

25

1                    GULF POWER COMPANY  
2            Before the Florida Public Service Commission  
3                    Rebuttal Testimony of  
4                    George A. Fell  
5                    In Support of Rate Relief  
6                    Docket No. 891345-EI  
7                    Date of Filing May 15, 1990

8 Q. Please state your name, address and occupation.

9 A. My name is George A. Fell, my business address is 500  
10 Bayfront Parkway, P. O. Box 1151, Pensacola, Florida,  
11 32520. I am employed by Gulf Power Company as Manager  
12 of Internal Auditing and Security.

13 Q. Please describe your educational and professional  
14 background.

15 A. I have a Bachelor of Science degree in Accounting from  
16 Bowling Green Business University and a Masters degree  
17 in Accounting from the University of Denver. I was an  
18 auditor with the firm of Arthur Andersen & Co., Public  
19 Accountants, for six years prior to joining Gulf Power  
20 Company in 1956 as an accountant. I have held various  
21 positions in the Accounting department and was Director  
22 of Accounting prior to assuming my present position in  
23 1980. My current responsibilities include the  
24 direction of the Internal Auditing department and  
25 Corporate Security.

Q. What is the purpose of your testimony?



1 A. The purpose of my testimony is to rebut items 1, 2 and  
2 3 of Roberta S. Bass' testimony, and to allay the  
3 concerns the Commission may have regarding the impact  
4 of these issues on the financial statements filed by  
5 Gulf Power in Rate Relief Docket No. 891345-EI.  
6 Essentially, my testimony will show that the  
7 allegations raised by Mrs. Bass have, at most, a  
8 minimal impact on this rate case.

9

10 Q. Have you prepared an Exhibit that contains information  
11 to which you will refer in your testimony?

12 A. Yes.

13 Counsel: We ask that Mr. Fell's Exhibit (GAP-1)  
14 comprised of 2 Schedules, be marked for  
15 identification as Exhibits 296 through 297.

16

17 Q. How are you certain that the issues raised in Mrs.  
18 Bass' testimony have no impact on the rate case?

19 A. The Company has conducted investigations of each  
20 individual issue and its impact on the accounting  
21 records of Gulf. The scope of these investigations  
22 included, but was not limited to, research of  
23 historical accounting records, interviews with both  
24 employees and vendor/contractors, as well as a review  
25 of vendor/contractor records, and analysis of the

1       accounting entries associated with these issues and  
2       their impact on the budget process.

3

4   Q.   Please describe the issues you will be addressing in  
5       your testimony?

6   A.   I will speak to the following issues raised in  
7       Mrs. Bass' testimony:

8       Item 1.   The allegation of a \$2,000,000 inventory  
9               shortage at the General Warehouse.

10      Item 2.   The misappropriations by Kyle Croft; and

11      Item 3.   The unsuccessful kick-back scheme perpetrated  
12               by a Gulf employee against a contract vendor.

13

14   Q.   At page 3 of Mrs. Bass' testimony, it is stated that  
15       Carolyn Sirmon, a former warehouse supervisor,  
16       testified in the Richard Leeper perjury trial and in a  
17       staff-conducted deposition that the 1983 audit was  
18       inaccurate because Gulf Power had concealed an enormous  
19       shortage, which she estimated at around \$2,000,000, by  
20       counting obsolete and damaged items as good items in  
21       the inventory. Please describe the audit that was  
22       performed and discuss the impact of any inventory  
23       shortage on the rate case.

24   A.   The audit in question began in August 1982 with an  
25       inventory count performed by the General Warehouse

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1 personnel. Carolyn Sirmon had been supervisor of the  
2 Warehouse since June, 1982. Auditing observed the  
3 inventory, conducted test counts, and controlled the  
4 flow of paperwork. The first inventory count indicated  
5 a net shortage of approximately \$400,000 (not "a net  
6 loss of \$10,000" as referred to in Mrs. Bass'  
7 testimony, page 2, line 21). Based on the results of  
8 the count and observations made of the Warehouse  
9 inventory, it was determined that the count was not  
10 accurate. As a result, Auditing and the management in  
11 charge of the Warehouse determined that a second count  
12 would be appropriate. Based on the observations made  
13 during the first count, Auditing provided Warehouse  
14 management with a list of items requiring corrective  
15 action before a second count would be performed. These  
16 items included the identification and segregation of  
17 all obsolete materials. Warehouse management requested  
18 and received permission to reorganize the warehouse in  
19 order to facilitate the second count. The second count  
20 was conducted in April 1983 by five count teams. Each  
21 team consisted of one Warehouse employee, one auditor  
22 and one member of General Services and Warehouse  
23 management. The auditor's responsibilities during this  
24 count included, but were not limited to, the following:  
25 o Observing and recording the count,

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- 1 o Ensuring that all items on the shelf were properly
- 2 marked and counted,
- 3 o Periodically verifying that boxes were full and
- 4 testing the count, and
- 5 o Although auditors are not experts regarding
- 6 materials, questioning the counting of any
- 7 material that appeared obsolete or damaged.

8

9 Observations made during the second count

10 indicated a considerable improvement in the

11 organization and identification of the materials since

12 the first count performed in 1982. The results of the

13 second count disclosed a net shortage of \$8,462. There

14 were no indications in either count that \$2,000,000 of

15 inventory was either missing or obsolete. It is

16 important to note that the alleged \$2,000,000 shortage

17 would have represented a 54 percent shrinkage of the

18 \$3,700,000 value of the inventory during that time.

19 Schedule 1 provides a detailed account of the audit as

20 well as a discussion of why the 1983 audit failed to

21 disclose the theft of materials by Kyle Croft.

22 The capacity of an audit to detect material

23 irregularity resulting from fraud and collusion is

24 addressed extensively by both professional standards

25 and experts in the field of auditing. Both the

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1 American Institute of Certified Public Accountants  
2 (AICPA) and the Institute of Internal Auditors (IIA)  
3 agree that auditors are not held accountable for  
4 detecting fraud accomplished through collusion,  
5 management override or falsification of documents - all  
6 three of which existed during the 1983 audit period.  
7 We consider the \$8,462 net shortage accurate and  
8 supported by a well documented audit performed in  
9 compliance with professional auditing standards. We  
10 consider the allegation of a \$2,000,000 inventory as  
11 undocumented and unsupported hearsay. Even Mrs. Sirmon  
12 characterized the amount as a figure she had heard.  
13 The accounting adjustment to the stores records to look  
14 the \$8,462 shortage discovered in the second inventory  
15 was processed in 1983 and has no impact on the 1989  
16 rate case.

17  
18 Q. At page 3 of Mrs. Bass' testimony, the issue is raised  
19 concerning the theft of Gulf Power property by Kyle  
20 Croft, and reports the amount misappropriated to be  
21 around \$300,000. Please describe the situation and any  
22 impact which the dollars associated with the  
23 misappropriations have on the 1989 rate case.

24 A. As reported in Mrs. Bass' testimony, the \$300,000 is  
25 somewhat of an estimate and represents not one

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1 situation, but several schemes perpetrated by Kyle  
2 Croft to defraud Gulf Power. Verified  
3 misappropriations amount to approximately \$133,000.  
4 Schedule 2 provides a detailed analysis of the verified  
5 schemes involved and their amounts. The last of these  
6 misappropriations occurred over five years ago and are  
7 not included in the expenses projected to be incurred  
8 in 1990. Gulf Power does not budget for employee theft.

9  
10 Q. At pages 5 and 6 of Mrs. Bass' testimony, she discusses  
11 an attempt on the part of a former Gulf Power employee  
12 to extort kickback money from a contract vendor. What  
13 are the facts relating to this situation, and are there  
14 any dollars associated with it included in the  
15 projected 1990 expenses?

16 A. First, there are no dollars associated with this matter  
17 included in the projected 1990 expenses. Second, since  
18 no money actually changed hands, and the employee  
19 involved was immediately terminated upon a  
20 determination of his involvement in the attempted  
21 extortion, this matter is irrelevant and should not be  
22 an issue in the rate case.

23 Very simply, when the Company security department  
24 learned that allegations had been made that Mark J.  
25 Rubenacker, an employee of Gulf Power, had solicited

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1 monetary kickback from a contractual window cleaning  
2 service, an investigation was immediately initiated.  
3 This investigation resulted in the determination that  
4 Mr. Rubenacker had, acting alone, solicited a kickback  
5 from the window cleaning company. Again, no payment  
6 was made. Gulf Power initially learned of the allega-  
7 tions on February 17, 1989. The investigation was  
8 concluded on February 24, 1989, with Mr. Rubenacker's  
9 termination.

10  
11 Q. On page 7 of Mrs. Bass' testimony, she refers to the  
12 West Florida Landscaping scheme in which \$40,000 in  
13 false invoices were submitted to Gulf Power for  
14 payment. Please describe the scheme and any impact it  
15 may have on the 1989 rate case.

16 A. The scheme referred to by Mrs. Bass involved Kyle Croft  
17 and Dave Cook, owner of West Florida Landscaping. This  
18 scheme is actually a component of the \$300,000 in  
19 misappropriations described above. Mr. Croft requested  
20 that West Florida Landscaping include in their invoices  
21 an amount of money for services that were not actually  
22 rendered. Croft would then submit to West Florida  
23 Landscaping a Line Power invoice for that same amount.  
24 Upon receipt of payment by Gulf, West Florida  
25 Landscaping would write a check to Line Power, which

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1 was supported by the bogus Line Power invoice. Kyle  
2 Croft and Lamar Brazwell then converted the West  
3 Florida Landscaping checks to Line Power into cash.  
4 Between November 1982 and February 1983, 28 false  
5 invoices, totalling \$40,023, for services that were not  
6 provided, were submitted by West Florida Landscaping  
7 and paid by Gulf. As shown in Schedule 2, this amount  
8 does not impact 1990 O & M expenses but is included in  
9 Cost of Removal. I am told that the effect of this is  
10 to increase rate base \$40,000.

11 The amount budgeted to be paid to West Florida  
12 Landscaping in 1990 is that amount provided for in the  
13 Company's contract with West Florida Landscaping for  
14 work to be performed in 1990.

15

16 Q. Mr. Fell, how can the Commission be certain that theft  
17 or fraud has not been committed, of which you are  
18 unaware, which might impact the 1990 budgeted amounts  
19 used in the Company's rate case?

20 A. Very frankly, the Commission is in a position somewhat  
21 similar to that of the Company. Neither can guarantee  
22 that this type of activity has not and will not occur  
23 again. What the Company can do and has done is to take  
24 those steps which are prudent and reasonable to deter  
25 this type of activity. Management has taken action



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1 deemed appropriate against those involved. Policies  
2 and procedures have been strengthened. The Company  
3 places great emphasis on the importance of and  
4 adherence to these policies and procedures and the  
5 Company's Code of Ethics. Our audit procedures are  
6 sound. Even Mrs. Bass concedes on page 7 of her  
7 testimony that Gulf has implemented enhanced safeguards  
8 to prevent future misappropriations. I believe that  
9 the steps which have been taken by management to deter  
10 the recurrence of this type activity in the future are  
11 working. As in any Company, some amount of theft will  
12 occur. Understandably, we do not specifically budget  
13 for this. To the extent practical, probably more so  
14 than with any company to come before it in the recent  
15 past, the Commission can be assured that theft or fraud  
16 within the Company has been thoroughly investigated,  
17 and will not be tolerated.

18  
19 Q. Mr. Fell, does that conclude your testimony?

20 A. Yes.  
21  
22  
23  
24  
25

1 Q Mr. Fell, have you prepared a summary of your  
2 testimony?

3 A Yes.

4 Q Would you please summarize it?

5 A The purpose of my testimony is to discuss  
6 three items discussed on Page 2 of Ms. Roberta Bass'  
7 testimony. These items are as follows: One, the  
8 contradiction between two Gulf Power employees  
9 concerning the results of the 1983 audit of the general  
10 warehouse facility. Two, the theft of Company assets  
11 by a former employee. Three, the attempt by a Gulf  
12 employee to obtain a kickback from a contract vendor.

13 The contradiction described by Ms. Bass  
14 occurred as a result of testimony given by Ms. Carolyn  
15 Sirmon in a Staff-conducted deposition. She stated  
16 that the 1983 audit of the general warehouse was  
17 inaccurate and she estimated the shortage at around  
18 \$2 million.

19 This testimony was based on undocumented and  
20 unsupported hearsay. I was the Director of Internal  
21 Auditing at the time the audit was conducted. Gulf's  
22 Internal Audit staff was well trained and supervised.  
23 The work papers and the audit staff supported the  
24 results of our review which indicated a net shortage of  
25 \$8,462.

1           Since 1980, the adjustments made as a result  
2 of audits at the general warehouse facilities totaled  
3 \$101,933. The adjustment for the inventory outage  
4 discussed in Ms. Bass' testimony occurred in 1983 and  
5 has no impact on this rate case.

6           The second item, theft of inventory by a  
7 former employee was perpetrated by collusion,  
8 management override and the falsification of documents.  
9 Both the American Institute of the Certified Public  
10 Accountants and the Institute of Internal Auditors  
11 agree that auditors are not held accountable for  
12 detecting fraud accomplished through collusion,  
13 management override or falsification of documents. All  
14 three of these existed during the period of  
15 misappropriations.

16           Misappropriations discussed in this item  
17 occurred over five years ago, and in my opinion, are  
18 not included in the expenses projected to be incurred  
19 in 1990 since Gulf does not budget for employee theft.

20           The third item was an attempted kickback  
21 to a Gulf Power employee from a contract vendor. This  
22 employee was acting on his own, and no money changed  
23 hands. This employee was terminated upon the  
24 determination of guilt. The matter is irrelevant and  
25 should not be included in this rate case.

1 I have been an employee of Gulf Power Company  
2 for almost 34 years and will retire at the end of June,  
3 1990. During this time, I have progressively been in a  
4 position to be aware of and involved in the control  
5 environment in the Company. Gulf Power placed strong  
6 emphasis in establishing, documenting and maintaining  
7 good internal accounting controls, with emphasis on  
8 compliance.

9 A number of different auditors, Federal  
10 Energy Regulatory Commission, the Florida Public  
11 Service Commission, Arthur Andersen and Southern  
12 Company Services internal auditors have reviewed our  
13 controls during the past ten years and assessed them as  
14 adequate to good.

15 Having said that, I'm certainly mindful that  
16 in the past few years Gulf experienced embarrassment  
17 from the less-than-ethical acts of a few employees that  
18 have cast a shadow over the Company and has given all  
19 of our employees a black eye.

20 These acts resulted primarily from collusion,  
21 and management override and which is extremely  
22 difficult to detect.

23 Three items I have discussed, although  
24 embarrassing, do not indicate mismanagement by Gulf.  
25 As far as this rate case is concerned, the only item

1 that requires an evaluation is the theft of material by  
2 a former employee.

3 The majority of the materials that were  
4 misappropriated were expense items, and since the theft  
5 occurred prior to 1984, it is my opinion that they  
6 should not -- there should be no impact on this rate  
7 case.

8 There were a few items that have been  
9 capitalized, and it is my understanding that all  
10 identified capitalized items have been removed from  
11 this rate case.

12 As Director of Internal Auditing, it was my  
13 responsibility to identify these items and report them  
14 to the appropriate accounting managers. The exact  
15 treatment of these items were discussed by Mr. McMillan  
16 and Mr. Gilbert.

17 That's all I have.

18 MR. HOLLAND: Tender Mr. Fell .

19 MR. BURGESS: No questions.

20 CHAIRMAN WILSON: Cross?

21 CROSS EXAMINATION

22 BY MR. VANDIVER:

23 Q Good afternoon, Mr. Fell.

24 A Good afternoon.

25 Q Now this first inventory was begun in August

1 of 1982, is that correct?

2 A Correct.

3 Q Now, what were the problems with that audit  
4 in August of 1982?

5 A This was a scheduled audit of the general  
6 warehouse at Pensacola. The audit was performed by the  
7 -- not the audit, but the inventory of the materials at  
8 the warehouse was performed by the warehouse personnel  
9 and the audit team tested the results of their  
10 inventory.

11 It was determined that there was a fairly  
12 large outage, shortage of about \$400,000.

13 In reviewing the results, it was determined  
14 that a good bit of the material had not been counted.  
15 And as a result of that, when we went over -- "we,"  
16 being the audit group and the managers of the warehouse  
17 -- found a lot of the material was there but had not  
18 been counted, primarily because it was bad arrangement.  
19 And we, as auditors, could not accept the results of  
20 that; and, therefore, the audit was not completed.

21 Q Okay. Now, when you say the audit team,  
22 that's the folks that work for you?

23 A That's right.

24 Q And they had a problem with the '82 audit  
25 conducted by Ms. Sirmon's people --

1 A That's correct.

2 Q -- over at the warehouse. Okay. Now, how  
3 many people work for you, Mr. Fell, in this auditing  
4 team group? How many folks are we talking about?

5 A Well, at that time, there were five auditors,  
6 supervisor.

7 Q And so these supervisors got the routine  
8 audit and they said, "Whoa, there's some problems with  
9 this."

10 A Correct.

11 Q And you decided to redo that audit?

12 A I didn't understand that.

13 Q And you decided to do another audit because  
14 the first one you believed to be faulty?

15 A That's correct, we could not accept the  
16 results.

17 Q Okay. Now, do you recall your deposition of  
18 February 21, 1989?

19 A I remember the deposition.

20 Q Okay. Now, the second time around, the  
21 warehouse people, in conjunction with your five  
22 auditors, went through and recounted everything, is  
23 that right?

24 A That is correct.

25 Q I learned a lot about inventory and auditing

1 in the course of your deposition, probably more than I  
2 wanted to know. But you explained in that audit or in  
3 that deposition that you never tell the people counting  
4 the inventory what the count is supposed to be, isn't  
5 that correct?

6 A Yes, sir.

7 Q Because once you tell them what that count is  
8 going to be, that's magically what it becomes, is that  
9 correct?

10 A That's possible.

11 Q But your people, during the second audit,  
12 knew what the count was supposed to be, didn't they?

13 A That's correct.

14 Q And that's contrary to the auditing  
15 philosophy expressed in your deposition?

16 A No, sir.

17 Q Well, your people knew what the count was --  
18 was supposed to be, because they had reviewed the first  
19 audit, right?

20 A Correct.

21 Q And then they came in and did the second  
22 audit.

23 A Let me explain. There were five teams made  
24 up of a warehouse warehouseman, a warehouse management  
25 person, and an auditor. The warehouse people did not



1 know the quantity. The auditor had access to the  
2 quantity, to the balance on the book, but the warehouse  
3 people did not know.

4 Q But one-half of that auditing team, in each  
5 case, knew how many bolts were supposed to be in that  
6 bin, didn't they?

7 A An auditor knew.

8 Q Okay.

9 A Only the auditor, and he was the checker.

10 Q Okay. Now, the first audit, I believe, or  
11 the first inventory showed a \$400,000 shortage?

12 A Yes.

13 Q Okay. And then this second audit that was  
14 conducted jointly by the warehouse people and your  
15 folks, showed an \$8,000 shortage?

16 A Approximately.

17 Q Yeah. And in your view, the second audit was  
18 much more accurate?

19 A Definitely.

20 Q Okay. In the course of preparing your  
21 testimony here today, did you review the deposition of  
22 Carolyn Sirmon?

23 A I believe somewhere along the way I may have  
24 seen her, Sirmon, but not specifically today.

25 Q Okay. Well, it's been referred to here that

1 Ms. Sirmon indicated that there was obsolete material  
2 counted in that second audit as good material.

3 A Yes.

4 Q Can you give me a reason why she would lie  
5 about that?

6 A No. I cannot give you a reason. And  
7 obsolete material, if it was on the books, would  
8 definitely be counted. All material would be counted.

9 Q I would like to hand you Exhibit 391,  
10 specifically Page 39 of 182, of that document.

11 MR. HOLLAND: Excuse me, Rob, what's the  
12 number? Exhibit what?

13 MR. VANDIVER: 391, Page 39, Ed.

14 (Document supplied to the witness.)

15 Q Now, this is the statement in the  
16 Baker-Childers Report of one of your warehouse people.  
17 And could you read the highlighted portion, please,  
18 sir?

19 A Yes, this is, yes, one of the warehouse  
20 people. "I am aware that an audit was conducted in  
21 April 83."

22 Q This is the second audit, excuse me, sir,  
23 that's the second audit that we're talking about here?

24 A That's correct.

25 Q Thank you. Go right ahead, I'm sorry.

1           A     "At that time, a large amount of old aluminum  
2 wire that had been picked up from Chipley was placed  
3 back in stock, so as to cover for a large amount of new  
4 aluminum wire that was short on the inventory. This  
5 old aluminum was on old wooden reels that was, at best,  
6 worth \$1000 as scrap. This wire was placed into  
7 inventory to cover approximately 30,000 pounds of new  
8 aluminum wire that was short and worth approximately  
9 20,000. Carolyn Sirmon knew that this was done."

10           Q     Okay.

11           A     Do you want me to read further?

12           Q     No, sir, that's just what I needed, thank  
13 you.

14                     Now, in Ms. Sirmons' deposition, she also  
15 indicated that this obsolete wire came from Chipley,  
16 she said. And I could show you that deposition if you  
17 --

18           A     I understand that.

19           Q     She said that that came from Chipley, too.  
20 And we've got two people now testifying to exactly the  
21 same thing. And it occurs to me that it's kind of  
22 difficult to construct a story; because the more you  
23 try to construct it and get everybody to sign off on  
24 it, the harder it gets to follow it?

25                     This kind of has a ring of truth to it. Can

1 you comment on this? These people in the warehouse  
2 know this material better than anybody, don't they?

3 A Well, they should.

4 Q Uh-huh.

5 A First of all, this gentleman happens to be  
6 one of the people that is no longer with us.

7 Q He had worked there, what, 11 years prior to  
8 this statement in 1984?

9 A Yes. He had. He was released.

10 Your question asked why would they -- would  
11 you repeat your question? I'm sorry.

12 Q I guess, why would they lie? Why would they  
13 make up this story about this phantom truck from  
14 Chipley, coming in and bringing in this obsolete wire,  
15 and counting it as a \$20,000 item in your inventory?

16 A That's a good question. Obviously, they  
17 could get together and make up such a story. No doubt  
18 materials are brought in from various places from time  
19 to time. It's not to say that the material was bad.

20 When the inventory was, the second inventory  
21 or the 1983 inventory was made, they had the benefit of  
22 engineers going over and reviewing the materials to  
23 determine if it was good material. Sometimes, the  
24 conductor on so-called "old reels" are still good, it's  
25 still good material. And I think that I would rely on

1 the comments and the opinions of the engineers to  
2 determine whether the material was good or not.

3 Q Now when those --

4 A More so than these people.

5 Q Now when those engineers went over there and  
6 looked at the warehouse, there was a mighty lot of  
7 stuff in that warehouse. Didn't they just spot check?  
8 They didn't look at every little thing, did they?

9 A I'm sure they didn't look at every item.

10 Q So this may or may not have been one of the  
11 things they looked at?

12 A That's entirely possible.

13 Q Is Ms. Sirmon still employed by Gulf Power?

14 A Beg your pardon?

15 Q Is Ms. Sirmon still employed by Gulf Power?

16 A Yes.

17 Q If what she and this other individual say is  
18 true, about the trucks unloading obsolete material to  
19 be counted in the second inventory is in fact true,  
20 that renders that whole second inventory suspect,  
21 doesn't it?

22 A I don't think so, no.

23 Q Now --

24 A You're saying, if in fact it is true?

25 Q Yes.

1 A That story is true?

2 Q Yes.

3 A This is a hypothetical?

4 Q Yes, sir. Yes, sir, it is. If what they  
5 say is true, that whole second inventory is suspect,  
6 isn't it?

7 A No.

8 Q Huh?

9 A No.

10 Q Why not?

11 A Why would you, why would you have an entire  
12 -- even though this is a hypothetical question you're  
13 asking -- why would one item out of such a large  
14 inventory render the whole thing wrong? I know, I  
15 realize I'm throwing a question back at you and you  
16 asked me the question.

17 Q Right, and I've been told at least once today  
18 I'm not allowed to testify.

19 COMMISSIONER GUNTER: That's right.

20 CHAIRMAN WILSON: You asked him a  
21 hypothetical and he asked you a rhetorical.

22 Q (By Mr. Vandiver) Right. No, my point here  
23 is, you all showed an \$8,000-and-some-odd shortage  
24 here?

25 A Yes.

1 Q And this testimony seems to indicate that, in  
2 fact, the shortage would be much more. I mean, there's  
3 at least another \$20,000 here from this one incident?

4 A Yeah, if you can rely on those people.

5 Q And that was my hypothetical.

6 A Yeah.

7 Q I said if, in fact, this story that these two  
8 people apparently independently gave, I have no reason  
9 -- that these two independent people gave is true, then  
10 that second audit is in fact suspect, isn't it?

11 A I don't agree with that, no, not at all.

12 Q And why is that?

13 A Because I don't think these are dependable  
14 people, if they're going to make such a statement.

15 CHAIRMAN WILSON: Mr. Fell, in a  
16 hypothetical, I think Counsel wants you to accept that  
17 if this is in fact true, and you can in fact rely on  
18 those statements, and this did in fact occur, would  
19 that not render second audit suspect?

20 A Well, the word "suspect," I guess is pretty  
21 broad.

22 CHAIRMAN WILSON: Well, what word would you  
23 use?

24 MR. VANDIVER: Fishy?

25 COMMISSIONER EASLEY: Let me try it one

1 different way.

2 CHAIRMAN WILSON: I think he's about to  
3 answer the question.

4 WITNESS FELL: Go ahead and try it.

5 COMMISSIONER EASLEY: No, you go ahead and  
6 answer it.

7 CHAIRMAN WILSON: Would you be more  
8 comfortable with the word "unreliable"?

9 WITNESS FELL: Well, on a very hypothetical  
10 basis, I would say, you know, you could perhaps  
11 question some portion of it. But that doesn't render  
12 the whole inventory unreliable.

13 COMMISSIONER EASLEY: Would you feel  
14 compelled to do the entire inventory again?

15 WITNESS FELL: For \$20,000? A mighty small  
16 percentage.

17 COMMISSIONER EASLEY: But would you redo that  
18 section again?

19 WITNESS FELL: Oh, certainly, you could.

20 Q (By Mr. Vandiver) Have you, in your internal  
21 auditing function, undertaken an investigation of any  
22 type into these particular allegations about the truck  
23 from Chipley?

24 A About trucks from Chipley?

25 Q Yeah. I've got two separate folks saying



1 almost exactly the same thing. And I want to know  
2 whether or not you, as the Chief Internal Auditor of  
3 Gulf Power, investigated those allegations?

4 A We did not specifically investigate that  
5 allegation. I think that as results of the preparation  
6 of the warehouse for this count -- with the five count  
7 teams, with the preparation that was made and the care  
8 that was taken, including having the engineers come in  
9 and review materials for whether it was obsolete or  
10 not, and where it was obsolete, so identified -- then I  
11 would say that that was a very good audit and could be  
12 relied upon.

13 Q Despite the fact that 50% of each one of the  
14 audit teams knew what the count was supposed to be?

15 A 50%?

16 Q Well, you had one warehouse person and one of  
17 your auditors as the counters in each case.

18 Q We had, the auditor had access to the  
19 quantity. The auditor was the person who was checking  
20 the other two, and we rely on our auditors for their  
21 integrity to make sure that those numbers are  
22 reasonable.

23 Q I see. But those three folk -- excuse me,  
24 were you going to confer? (Pause)

25 A Well, I'll relay that information, he was

1 just saying.

2 Q But those three folks, the two warehouse  
3 folks and your one auditor person, each of those little  
4 teams physically walked around the warehouse and looked  
5 at the stuff? That's what I understood from your  
6 deposition.

7 A That's correct. The two warehouse people  
8 were not aware of the count.

9 Q But your guy was?

10 A He had access to the quantity if he needed  
11 it.

12 COMMISSIONER EASLEY: Who was doing the  
13 counting?

14 WITNESS FELL: The -- we had one person who  
15 would count the material. The auditor would observe  
16 that count, would make test counts, would have them  
17 open boxes, where it was necessary, whenever he  
18 questioned anything, or if he questioned whether  
19 something was what it was supposed to be, he could get  
20 advice from an engineer. And so for that reason,  
21 that's probably -- that's an excellent approach to the  
22 count.

23 COMMISSIONER EASLEY: Mr. Fell, the only  
24 reason I'm doing this is because I'm familiar with  
25 taking inventory, and when you have a team -- and I

1 just wanted to be sure you did it the same way I'm  
2 familiar with -- when you have a team, there's an  
3 assignment, and the auditor or the person who knows the  
4 objective is not the one who does the count, even  
5 though he may observe.

6 WITNESS FELL: That's correct.

7 COMMISSIONER EASLEY: Then he may observe.

8 WITNESS FELL: He may observe and count if he  
9 questions the count.

10 COMMISSIONER EASLEY: Right. I just wanted  
11 to make sure we were talking about the same thing.

12 COMMISSIONER GUNTER: Mr. Fell, let me ask  
13 you one question. In a customary -- and I understand  
14 this was not a customary audit where you had the five  
15 teams, you had 15 people auditing an inventory of less  
16 than \$4 million, that's getting pretty heavy.

17 WITNESS FELL: You got it.

18 COMMISSIONER GUNTER: In a customary audit,  
19 do the warehouse people go count, do the audit,  
20 periodically by piece, and then submit that audit  
21 result?

22 WITNESS FELL: Yes, sir, they do now.

23 COMMISSIONER GUNTER: Then they have a  
24 reconciliation of where they look at outstanding orders  
25 which may have been drawn and not cleared and all the

1 rest of that kind of process?

2 WITNESS FELL: Yes, sir.

3 COMMISSIONER GUNTER: Well, the one thing  
4 that's sort of troubling to me just a little bit, that  
5 being the process in the preceding audit, to have had a  
6 preceding audit, which came in, virtually, on the  
7 money, and then the next audit that was taken having  
8 such extreme difficulty that it meant that you had to  
9 really overpower it to get control, because the  
10 preceding audit stuff was still -- you know, I haven't  
11 heard to where it went to hell in a hand basket, I  
12 guess, in a two- or three-year time period.

13 My first job with Pan American was working at  
14 the warehouse down at the Cape. So I'm -- even though  
15 that's when dinosaurs were on the earth, according to  
16 my son, that -- that was the first job after college.  
17 And so warehouses and supply yards and out-tool lockers  
18 and those kinds of thing, they just don't go to hell in  
19 a hand basket in a couple year time period. It's a  
20 long time period before your inventory gets untagged  
21 and in a disarray and what have you.

22 My trouble is, as I look at the 1980 audit,  
23 it is almost on it. Then the next scheduled audit,  
24 there were significant problems.

25 WITNESS FELL: Yes, sir.

1           COMMISSIONER GUNTER: And, you know, if you  
2 look at the -- and the only way I've done this is read  
3 depositions and find out where people didn't change  
4 jobs during that time period except for the new  
5 supervisor. The new lady was the only one of the new  
6 players, the cross of the worlds, and those that were  
7 still there, the management team at that level didn't  
8 change. It does -- doesn't that put a question in your  
9 mind as to how, you know, you as the internal auditor  
10 -- of how the previous one had been almost on the  
11 money, and the very next one, there being problems of  
12 that magnitude?

13           WITNESS FELL: Part of that could be some  
14 construction that was going on within the warehouse  
15 itself where there was being constructed what's called  
16 a "high bay" -- I don't know the technical terms, but,  
17 you know, they have bins that go very high.

18           COMMISSIONER GUNTER: One of those dexion  
19 bins that you used to have to bolt together?

20           WITNESS FELL: Well, they go very high and  
21 have to use a machine that takes you on up.

22           COMMISSIONER GUNTER: Yeah.

23           WITNESS FELL: So some of the material had  
24 been moved out in order for the -- facilitate this  
25 construction. So that could have caused some of the

1 problem, and then the material moved out, and then out  
2 in the outside part of the warehouse area was in  
3 somewhat disarray, had not been properly tagged, had  
4 not been tagged at all in some cases, and that's what  
5 caused the great confusion.

6 Q (By Mr. Vandiver) I'd like to continue along  
7 the lines that Commissioner Gunter was just discussing  
8 with you, sir. On Schedule 1, Page 2 of 4 --

9 A My schedule?

10 Q Yes, sir. Yes, sir. Excuse me.

11 COMMISSIONER BEARD: Let me, before you do  
12 that, I've been listening to this. You testified that  
13 the statements made by the -- what's the lady's name?  
14 Sirmons? That those statements coming from her meant  
15 they probably were unreliable, and, therefore, there  
16 was no real investigation done of the things that she  
17 said happened?

18 WITNESS FELL: I said that we did not make an  
19 investigation of that purpose -- I mean of the material  
20 that was brought in, specific on this comment; that  
21 because the warehouse -- because of the preparation  
22 that had been made, because of the rearrangement, the  
23 correction, the teams that we had and the care that was  
24 taken in doing this, with the engineers overseeing the  
25 -- and advising on the materials, whether it was

1 obsolete or not obsolete and so forth, that we could  
2 rely on that count.

3 COMMISSIONER BEARD: Well, do you believe  
4 that her five -- the report, the statement that she  
5 made that's contained in the Childers-Baker Report --  
6 Baker-Childers, whatever, that approximately five-page  
7 statement, do you believe that to be true?

8 WITNESS FELL: I didn't give much credit to  
9 it, sir.

10 COMMISSIONER BEARD: Well, I'll tell you,  
11 that's what bothers me, because she read that statement  
12 as part of her polygraph exam. And what you've got  
13 here is, you've got an expert in polygraph -- and I  
14 know it's an art, not a science -- it says that he  
15 believes it's true.

16 Now, we've got the president of the Company  
17 that says based on two anonymous letters you all went  
18 to investigation of this nature, pretty damn heavy one.

19 WITNESS FELL: Yes.

20 COMMISSIONER BEARD: But you've got a  
21 polygraph exam, two different, at least, people took,  
22 and parts of that they passed, but that's not  
23 sufficient for you to investigate.

24 WITNESS FELL: Well, we didn't make a  
25 specific investigation. We did talk with the people --

1 the managers in charge of the warehouse about the  
2 situation. They didn't believe that the -- the story  
3 either. So for that reason we did not investigate this  
4 specific item.

5 COMMISSIONER GUNTER: Let me ask you, I was  
6 going to get into this. I was just sticking to one  
7 place. Security folks work for you, too?

8 WITNESS FELL: They do now -- well, some  
9 portion of them.

10 COMMISSIONER GUNTER: Okay. But, the  
11 security folks, whoever they were working for, I guess  
12 Mr. McCrary. He's -- what, they have the old Harry  
13 Truman, "Buck stops here"?

14 WITNESS FELL: That's right.

15 COMMISSIONER GUNTER: So I just say they work  
16 for Mr. McCrary. And those were investigative  
17 personnel, apparently quite qualified. I've read the  
18 reports that they've done, you know, just little pieces  
19 that we get. You all know a whole lot more about them  
20 than I do. But, they were brought in from outside, and  
21 using investigative techniques, this -- I'm a little  
22 bit concerned the same way Commissioner Beard is --  
23 used investigative techniques, which I don't have the  
24 wildest idea whether any of those things are allowed in  
25 court or not, whether it's court evidence, polygraphs



1 are or not, I don't know, but you go through and there  
2 were -- as I recall, it's been a while since I read  
3 that report. There were even -- they were even to go  
4 -- able to go through and identify dollar amounts of  
5 where they felt that individuals had misappropriated  
6 materials that represented dollar amounts. If you  
7 recall, there was one that they said less than \$3,000,  
8 you know. Then they honed in, they were able to hone  
9 in, in a narrow band of what they felt was appropriate  
10 to charge to a guy or give him credit for. And yet  
11 when you have an opinion of that same group of  
12 polygraph operators as a result of that polygraph  
13 examination and statements by those personnel, am I not  
14 correct that Baker-Childers Report was submitted to the  
15 board, to the Board of Directors of the Company?

16 WITNESS FELL: Yes.

17 COMMISSIONER GUNTER: Now, that would put a  
18 great deal of credibility, to me, if management of the  
19 Company, at whatever level that Mr. Baker -- the  
20 Baker-Childers team, you know, Tonto and the Lone  
21 Ranger, whoever they reported to, and up through the  
22 reporting chain, that there had to have been a great  
23 deal of credibility to that entire report.

24 WITNESS FELL: Yes, sir.

25 COMMISSIONER GUNTER: For it to have been

1 submitted to the Board. Wouldn't you think? I mean,  
2 that's -- is that illogical for me to think that?

3 WITNESS FELL: Very logical; it is a good  
4 report.

5 COMMISSIONER GUNTER: Now, logically, the  
6 entire report with the polygraph examination saying  
7 folks told the truth, in part, and they even had some  
8 that the guy told the truth on everything but he told a  
9 lie here, because I think I read those pretty carefully  
10 several months ago, but it would appear that it would  
11 have been really a place to have -- that would have  
12 been step one in the investigation.

13 I'm a little bit troubled by your response to  
14 Commissioner Beard because I've thought about that  
15 process when -- you know, hell, you probably get  
16 reports from folks that you just say, "Oh, heck with  
17 that," throw that thing in the trash. But when it gets  
18 to the point that it's elevated to the level of the  
19 Board of Directors, there has to be some credibility to  
20 bring that to that level's attention, some credibility  
21 to that report, wouldn't you think?

22 WITNESS FELL: Yes, sir.

23 COMMISSIONER GUNTER: Okay, excuse me, go  
24 ahead.

25 Q (By Mr. Vandiver) Before I forget it, in

1 response to Commissioner Beard's question about the  
2 lack of investigation after you had reviewed these  
3 various reports and so forth, you said you talked to  
4 the managers of the warehouse and there was -- and they  
5 indicated there was no problem. Who are the specific  
6 managers you are talking about?

7           A     The people I'm referring to was the director  
8 of the function, Mr. Charlie Jordan, at that time, and  
9 Mr. John Monroe, who reported to him, whom Mr. Kyle  
10 reported to John Monroe.

11           COMMISSIONER BEARD: You reckon if you had  
12 asked Mr. Jordan that same question six months or a  
13 year before that he would have given you the same  
14 answer?

15           WITNESS FELL: Knowing Mr. Jordan, I think  
16 so.

17           COMMISSIONER BEARD: But there probably was a  
18 problem six months to a year before that, wasn't there?  
19 A hell of a problem.

20           WITNESS FELL: I'm having a little trouble  
21 following your line of thought.

22           COMMISSIONER BEARD: Well, if I'm  
23 understanding what you're saying, and maybe my timing  
24 is out of sequence, you're telling me that after all  
25 this went, you went to Mr. Jordan, who was the head at

1    That time, and asked him if there was any problem and  
2    he said no.

3                   WITNESS FELL:   Asked him to explain -- yes, I  
4    was aware of this thing, and I talked with he and Mr.  
5    Monroe about it.  I didn't make a specific -- or assign  
6    an auditor to review in detail the procedures or the  
7    possibility of this, but I did talk with Mr. Jordan and  
8    Mr. Monroe.

9                   COMMISSIONER BEARD:  What I'm trying to say  
10   is do you think that Mr. Jordan thought that there was  
11   a problem back when there was a problem in this area?  
12   I mean you got materials that are going out in odd  
13   manners and ways.

14                   COMMISSIONER GUNTER:  Well, there was  
15   collusion taking place.  I think the thing Commissioner  
16   Beard is asking, if you had gone and asked Mr. Jordan  
17   when the collusion was taking place and there was some  
18   misappropriation of Gulf Power equipment and Gulf Power  
19   was performing services for other people, would Mr.  
20   Jordan have told you at that time anything other than,  
21   no, there is not a problem?

22                   WITNESS FELL:  If he was aware that there was  
23   a problem, he would have informed me.  I'm not sure he  
24   was not aware of any collusion or any problem in the  
25   warehouse, or he would have put a stop to that pronto.

1           COMMISSIONER BEARD: And I'm accepting that.  
2 My point is that you don't just go ask somebody. If  
3 that's the case, I'd just say, "Hey, is the inventory  
4 okay in the warehouse?"

5           "Yep."

6           "Good enough for me."

7           WITNESS FELL: No, it's not that simple.

8           MR. HOLLAND: Excuse me, Mr. Fell. I think  
9 we can clear a lot of this up. Mr. Vandiver referred  
10 to the truck as a "phantom truck." We don't dispute  
11 the fact. In fact, we know that transmission wire was  
12 in Chipley; it was discovered that it was still in the  
13 inventory, that --

14          MR. VANDIVER: I'm going to have to object.

15          MR. HOLLAND: I'll do it on redirect. I was  
16 trying to save the Commission a lot of time.

17          COMMISSIONER BEARD: My point isn't whether  
18 the truck existed or not. I was referencing  
19 discussions we're having here with an individual that  
20 says that he resolved in his mind that everything was  
21 okay by asking the manager if it was okay.

22          MR. HOLLAND: I'll handle it on redirect.

23          COMMISSIONER BEARD: Go ahead.

24          Q     (By Mr. Vandiver) I think we were on your  
25 Schedule 1 of Page 2 of 4, Mr. Fell.

1 A Yes.

2 Q Now, there you show that the 1980, 1981, and  
3 1982 inventories are really, really close, is that  
4 correct? Being accurate?

5 A This is on Schedule 2, you say, of page 2 of  
6 Schedule 1?

7 Q Yes, sir.

8 A And in 1983 there was -- 1980 was 6243 and  
9 '83, 8462, and in '84, 25 --

10 Q You're getting a little ahead of me.

11 COMMISSIONER EASLEY: No, he changed those  
12 dates.

13 Q Oh. Oh. Okay, wait a minute.

14 A Yeah, we changed --

15 Q I'm sorry. I apologize, I didn't here that  
16 part. Go ahead and tell me them again.

17 A 1981 was changed to '83 and '82 to '84.

18 Q What year did you all put in your fancy new  
19 COPICS inventories?

20 A COPICS, the on-line inventory system?

21 Q Yes, sir.

22 A Let's see, what year was that. (Pause)

23 A January '84.

24 Q So that was January 1984. And you all were  
25 only .06% off for that year.

1 A Yes, sir.

2 Q Now, as I understood in your deposition, you  
3 all do inventories on a regular basis every two years,  
4 is that correct?

5 A At that time we were doing them every two  
6 years, that's right.

7 Q What I'd like to explore with you, sir, is  
8 the out years.

9 I would like to go -- what was the next year  
10 you all did inventory after 1984? And I've got a cite  
11 to your deposition with the percentages, if that would  
12 help you, and I've got it right here.

13 A I'm showing here we did one in '85

14 Q What was the outage figure there, sir?

15 A It was a shortage of \$29,885.

16 Q And what percent does that represent?

17 A Anybody have a --

18 Q Let me find your deposition --

19 A Well, we don't have the book balance of that,  
20 so that we can compute it.

21 Q Let me go to your deposition.

22 A But it will be, obviously will be small.

23 Q If you all would just give me a minute here.

24 COMMISSIONER GUNTER: What, about 1-1/4% of  
25 the value of your inventory was about the same. One

1 quarter.

2 WITNESS FELL: Yeah, probably in that  
3 neighborhood. It was 3.7 million in 1983, and so it  
4 would be a build up. It would be more than that in  
5 '85.

6 Q I think in your deposition -- oh, wait a  
7 minute. In your deposition you indicate that the  
8 \$29,886 shortage was .82%.

9 A I'll accept that.

10 Q And then in 1987 you had another shortage,  
11 didn't you?

12 A Yes, sir.

13 Q How much was that?

14 A 67,255.

15 Q 67,000. Okay. And what percent was that?

16 A The same situation. I do not have it.

17 Q Would you accept, subject to check, that your  
18 deposition says that's 1.7%?

19 MR. HOLLAND: He's got his deposition, if you  
20 can just give him the page number.

21 Q Page 43, sir. I'm sorry, I didn't realize  
22 you had it. It's right up there near the top of the  
23 page.

24 A Yes.

25 Q And it says on Lines 6 and 7, I'm quoting



1 now, "and then in 1987 the value of it went up to  
2 \$3,950,000 and your 1.7% there."

3 A That's correct.

4 Q With this new COPIC inventory system, which  
5 was adopted in partial response to the Kyle Croft  
6 theft, is that right?

7 A Well, no, not -- it was coming anyway.

8 Q Okay, with this new inventory system your  
9 outages seemed to be going up? Can you explain that?

10 A I would presume here -- one second.

11 Q Sure. (Pause)

12 A I would say that the system is more accurate  
13 and reveals the shortage more accurately.

14 Q I realize that you're one week from  
15 retirement and I'd promised myself I wasn't going to do  
16 this, but I'm going to ask you for a late-filed  
17 exhibit, please, Mr. Fell.

18 COMMISSIONER GUNTER: One week from  
19 retirement.

20 WITNESS FELL: Yes, sir.

21 COMMISSIONER GUNTER: Well, God bless you.

22 Q Next week, I'm sorry, sir

23 A In a week and a couple of hours.

24 COMMISSIONER EASLEY: But who is counting?

25 WITNESS FELL: My timing's off. This was

1 supposed to have taken place last year.

2 COMMISSIONER GUNTER: I understand. God  
3 bless you.

4 WITNESS FELL: Thank you.

5 Q What I'd like for that to show, Mr. Fell, is  
6 the inventory, either overage or underage for every  
7 year that you did an inventory from 1980 to 1990.

8 COMMISSIONER GUNTER: That's already been  
9 asked.

10 WITNESS FELL: Yeah, I was going to say,  
11 somewhere?

12 COMMISSIONER GUNTER: Yesterday, I asked for  
13 that information, plus I wanted the write-off's that  
14 had occurred during the time periods.

15 MR. VANDIVER: Very well, Commissioners,  
16 there is no need to ask Mr. Fell to do it, because he's  
17 almost out of here.

18 WITNESS FELL: I'm trying to -- you can keep  
19 your promise.

20 COMMISSIONER GUNTER: Now that has already  
21 been asked for.

22 MR. VANDIVER: If that's the case, I'll  
23 withdraw the request for the exhibit.

24 MR. VANDIVER: That's all the questions I  
25 have, Mr. Fell. Thank you very much.

1 CHAIRMAN WILSON: Questions, Commissioners?

2 COMMISSIONER GUNTER: Mr. Fell, I understand  
3 that certainly collusion between employees will whip  
4 any internal control system you've got, if they're  
5 positioned properly in the organization.

6 WITNESS FELL: Yes, sir.

7 COMMISSIONER GUNTER: Do you agree with that?

8 WITNESS FELL: Yes, sir.

9 COMMISSIONER GUNTER: And then you have  
10 circumstances that are available that inventory can --  
11 I mean materials can be diverted before they ever get  
12 to inventory and you don't have any way to know about  
13 it. Like a blanket purchase contract, you could have  
14 it diverted and the paper work never got processed, and  
15 away it went.

16 Now the sort of basic -- I've got another  
17 couple of questions. How did you determine -- I'm on  
18 Schedule 2, Page 1 of 2. How did you make a  
19 determination of, for instance, a diversion of  
20 materials and labor at Croft's home? You know, there's  
21 been a lot of stuff, let me just tell you what little  
22 bit, pieces I gleaned, you know, it was about the fence  
23 and on, and on, and on, those kinds of specific items  
24 that are referenced. How did you all arrive at a  
25 \$10,000 figure?

1           WITNESS FELL: Well, as you read the report  
2 of the Baker-Childers Report, there was alot of  
3 allegations in there. Taking those to the best that we  
4 could, I tried to estimate -- this is an estimated  
5 figure, for example, taking those hours that people may  
6 have worked on that, taking their salary and applying  
7 that, and coming up to an estimated figure.

8           COMMISSIONER GUNTER: Okay. Did we do the  
9 same thing when we talked about repair of equipment and  
10 trucks for line power?

11          WITNESS FELL: Yes, sir.

12          COMMISSIONER GUNTER: How about the theft of  
13 transformers.

14          WITNESS FELL: Yes. Well, that was an  
15 investigation where our security people went out to a  
16 number of the government facilities locations and  
17 actually inventoried certain types of transformers and  
18 we brought -- that information was brought back and we  
19 compared that to our records. In other words, we  
20 matched against our records, and these ten transformers  
21 came out. And we could we could actually apply the  
22 dollars to that.

23          COMMISSIONER GUNTER: Okay. Did the PCB  
24 transformer, where they were bringing their  
25 contaminated transformers in and Gulf was paying for

1 it, was that just an audit transaction to identify the  
2 transformer numbers and monies that had been paid for  
3 handling those transformers. Is that the way you  
4 arrived at that?

5 WITNESS FELL: Yes, sir.

6 COMMISSIONER GUNTER: I guess the thing that  
7 I'm trying to get at, and I'm drawing myself some  
8 little pictures, and if you have a work order that  
9 says, for instance, and you have the proper collusion  
10 that you go out here and it takes two poles or takes  
11 four poles and two transformers and, you know, some  
12 guide wires, all the gadgets that go with this job, and  
13 they take that and go down to inventory and they draw  
14 that, and they go out to do the job.

15 But then they put in two poles and one  
16 transformer and some wire and stuff, as far as your  
17 inventory system would know, or your folks in the  
18 warehouse would know, that job took two transformers  
19 and four poles and an amount of wire and what have you,  
20 and as far as the best accountants in the word would  
21 know, that's what took place.

22 WITNESS FELL: Whatever they requisitioned  
23 out of the warehouse.

24 COMMISSIONER GUNTER: That's right, because  
25 the paper trail is a closing paper trail?

1 WITNESS FELL: Yes, sir.

2 COMMISSIONER GUNTER: Well, from reading, and  
3 I'm asking you to bear with me for a second, and kind  
4 of help me a little, because from reading all the  
5 allegations that everybody has made, you know, about  
6 the gloves and the blankets and sticks and the  
7 transformers and the guide wires and, you know, on and  
8 on and on, ad infinitum of the allegation that have  
9 been made, recognizing that that can -- that can take  
10 place, I'm not saying -- not making any value judgment  
11 of how much took place or what didn't, because there  
12 are a number of things that concern me about this whole  
13 process.

14 But what really happens in that circumstance  
15 of where the work order, and I'm just restricting to  
16 that one little example, where that work order that  
17 called for more material than was actually installed to  
18 be drawn and leave the area to whatever destination  
19 that remain unknown. The effect of that, is it not, is  
20 one of two things has to be wrong in any collusion.

21 But in that one specific example that caused  
22 your rate base to be increased on the books, isn't that  
23 right?

24 WITNESS FELL: Yes, sir.

25 COMMISSIONER GUNTER: By the amount of all

1 those materiels they drew and the labor and what have  
2 you, that went to do that job?

3 WITNESS FELL: If they did not return any.

4 COMMISSIONER GUNTER: Yeah, that's the point.  
5 If they didn't bring any back, if they left there with  
6 it, whether they installed it or not, this has a rate  
7 base effect because of plant in service

8 WITNESS FELL: Yes, sir.

9 COMMISSIONER GUNTER: That's the piece that  
10 concerns me is I don't think -- maybe you know and  
11 maybe you're satisfied and, you know, you're an  
12 honorable man. But sitting where I am and reading all  
13 the allegations, and what have you, I don't know how  
14 escalated that ratebase is. Do you understand my  
15 concern?

16 WITNESS FELL: Yes, sir, I do.

17 COMMISSIONER GUNTER: And if there's an  
18 inventory problem, then you've got another piece of  
19 where, you know, you've got testimony and testimony and  
20 which is, you know, which way does it go? But where  
21 you could have a, you know, there could be an inventory  
22 problem, which is a working capital allowance item.  
23 Which affects both sides of it.

24 And I think you're -- I'm trying to put my  
25 fingers squarely on the problem that the Commission

1 has: with all this that is before us, it's not definite  
2 the way it is, except for this unfortunate circumstance  
3 that you all got all hung up in due to the acts of, you  
4 know, the folks down in the warehouse.

5 WITNESS FELL: Well --

6 COMMISSIONER GUNTER: Am I making myself  
7 clear?

8 WITNESS FELL: I'll following the trail, yes,  
9 sir.

10 COMMISSIONER GUNTER: And I'm at a point of  
11 trying to make sure I'm doing what's fair. I'm trying  
12 to think through what's fair about, one, is our working  
13 capital allowance right for inventory? Is it or is it  
14 not? Because you've got the interests of two -- well,  
15 more with the Intervenors; but you've really got the  
16 interests of the ratepayers and the Company, and the  
17 Company and its stockholders and the ratepayers.

18 Then, on the other side, I look and say to  
19 myself, "Have we -- do we really know? Does anybody  
20 really know as to how much materials and labor was  
21 diverted to nonutility purposes?" Which would have an  
22 effect on the rate base.

23 And that's a hell of a position, I'll be very  
24 honest with you, it's a hell of a position for me to be  
25 in.



1           WITNESS FELL: I can appreciate your  
2 position, whether it's Gulf Power Company or any other  
3 utility that's coming before you.

4           COMMISSIONER GUNTER: Anybody.

5           WITNESS FELL: I think, if I followed the  
6 trail that you led there, one is that the process, of  
7 course, starts with a work order. There is a reason to  
8 perform some work. And the work order is prepared and  
9 sent in by the engineers. And, based on that, the  
10 material is drawn; based on that work order, the  
11 material is drawn, set aside for those crews to pick up  
12 to go out to do whatever it is they're going to do with  
13 that material.

14           The collusion would have to be much broader.  
15 If you're going to begin to bring this into the  
16 picture, you'd have to then have collusion with the  
17 crews, because -- in following the trail there -- and  
18 there were materials left over and not returned, which  
19 we have MRSs and you have the supervisors on the crews  
20 overseeing that. If the material is not used, then our  
21 procedures are to bring it back into the warehouse  
22 through what we call an MRS.

23           COMMISSIONER GUNTER: Let me short-stop that.  
24 I see where you're going. But if you have -- and I've  
25 characterized that wrong. The crews didn't pick it up.

1 The crews picked up and took whatever they wanted to  
2 take to go do the job. But then you've got somebody in  
3 the warehouse who said, "Put this on that truck and  
4 we'll charge it to this job." Because there are  
5 additions to building materials, are there not, at the  
6 time period?

7 WITNESS FELL: Yes, sir.

8 COMMISSIONER GUNTER: There are additions to  
9 building materials, and all of sudden enters the  
10 culprit. and the way to hide the diversion is to add  
11 that to a bill of materials that was processing through  
12 that pulled it out of inventory. You know that, you've  
13 read them, too. And you've been involved to where  
14 there were statements made about putting stuff on Line  
15 Power's trucks or either having them on Gulf's trucks  
16 that were taken to Line Power.

17 WITNESS FELL: Yes, sir. That was in the --

18 COMMISSIONER GUNTER: And so the crew would  
19 not have to get involved in that. And you do have the  
20 ability of the warehouse folks with a signature, I'd  
21 almost bet you. Because most systems I've ever seen  
22 were that way, the proper signature in the warehouse,  
23 in Supply.

24 WITNESS FELL: Yes, sir. In effect, you're  
25 saying falsifying the document.

1           COMMISSIONER GUNTER: Yeah, you can falsify  
2 it and send it on. Now, that's part of collusion.  
3 You're falsifying all the way through, are you not?

4           WITNESS FELL: Right. And in any system, I  
5 guess you, can have that. Part of your controls is  
6 going to be --

7           COMMISSIONER GUNTER: Go ahead, I'm sorry.  
8 Excuse me, I'm sorry.

9           WITNESS FELL: I forgot where I was.  
10           Part of your system of controls, obviously,  
11 is going to be, have to be, honest employees. True,  
12 what you said could happen, did happen. We know in the  
13 testimony here that the manager instructed the  
14 supervisor to take certain things and put it on a  
15 pallet and send it over to the repair shop. And some  
16 documents were prepared and taking them out of the  
17 inventory.

18           COMMISSIONER GUNTER: Yes, sir.

19           WITNESS FELL: And we saw that. And I guess  
20 there is that possibility in any operation where you  
21 have a dishonest employee.

22           COMMISSIONER GUNTER: I'm not finding fault  
23 with Gulf. Let me make that very clear. I'm not  
24 finding fault with Gulf because of the actions of  
25 employees. I have personally fired employees for that

1 kind of activity. There wasn't any question. So, you  
2 know, we can dispense with that.

3 But I am saying, in order to get the pot  
4 right, now the pot is here before us with the numbers  
5 of dollars. And I'm troubled that some of the items  
6 still there are questions on.

7 WITNESS FELL: Well, as we see it, in this  
8 particular category, this is the pot.

9 COMMISSIONER GUNTER: Well, if we're  
10 estimating -- and I'm not trying to find fault with  
11 you. But if we're estimating and we've just hit the  
12 first two and we estimated them, and then we had -- I'm  
13 back to the Baker-Childers Report again, because maybe  
14 I put more significance on that than you do.

15 WITNESS FELL: I put significance on it. sir.

16 COMMISSIONER GUNTER: Well, I put a lot of  
17 significance on it, because, again, when I read the  
18 testimony -- it's not so much the testimony but sort of  
19 the verification by the investigative body, by the  
20 investigators themselves, through their getting someone  
21 else to assist them in making a determination of the  
22 validity of the testimony that they carried forward.  
23 That, "Well, maybe there's something there after all."  
24 And, you know, whatever.

25 WITNESS FELL: I want it understood --

1           COMMISSIONER GUNTER: I don't know what else  
2 to say. I really don't know what else to say. I'm  
3 just telling you about -- and I'm going to go back and  
4 read the record, only that that's in the record, and  
5 try and divorce myself from all that stuff. And that's  
6 the reason I told everybody I had read depositions and  
7 read everything I could read. I wasn't going to try to  
8 blindside anybody. I'm going to stay within this  
9 record.

10           But it is a troubling thing to accept that  
11 those were not -- those investigations were not carried  
12 forward turning over every pebble. Particularly when  
13 the investigators used corroborative evidence to  
14 indicate that that testimony was true, those statements  
15 were true. That is the biggest hooker that I have been  
16 looking for the whole time, and I haven't found that.

17           You know, if somebody makes an allegation,  
18 it's like been talked about that the President got two  
19 anonymous letters and he immediately turned loose the  
20 dogs, "Find out if this is true or not," and uncovered  
21 all this mess.

22           That was almost hearsay, you know. We got --  
23 hell, we had an unsigned during that time period, an  
24 unsigned allegation which we sent our Executive  
25 Director, and what have you, over to Pensacola. You

1 know, maybe it was the same kind of letter; maybe it  
2 was from the same person. We have no way of knowing.  
3 But we exhausted that as far as we could and got a  
4 letter from an attorney representing the Company that  
5 that had been looked at, and what have you.

6           So what I'm saying is that blind letters  
7 leads to uncovering the testimony with corroborative,  
8 you know, with something to say that, "Well, this is  
9 somebody not talking about catching a fish that big  
10 when they really caught one you could put in your shirt  
11 pocket," wasn't really every rock turned over. That  
12 just troubles me.

13           WITNESS FELL: Well, you have to remember,  
14 Commissioner, we did very extensive investigations into  
15 a lot of things during this period of time.

16           COMMISSIONER GUNTER: I understand. And you  
17 all probably had more than -- you had your plate full  
18 at the time.

19           WITNESS FELL: You got that right.

20           CHAIRMAN WILSON: Questions?

21           COMMISSIONER GUNTER: I'm through.

22           CHAIRMAN WILSON: Commissioner Beard?

23           MR. VANDIVER: Commissioner, I had omitted to  
24 ask several questions. It's rather late.

25           CHAIRMAN WILSON: That's all right. Go ahead.

1 Q (By Mr. Vandiver) Mr. Fell, concerning your  
2 audit in the fall of 1988 of Design Associates, that  
3 related to Ray Howell, didn't it?

4 A Yes, sir.

5 Q How much business did Mr. Howell do with the  
6 Company on an annual basis?

7 A What year are you referring to?

8 Q What was the last year you all did business  
9 with him?

10 A 1988, there was a total of \$379,892.

11 Q Where does that fall in the hierarchy of  
12 advertising contracts that Gulf Power has? Is that a  
13 big ticket advertising contract?

14 A Well, it's not the biggest one, but it was --  
15 (Pause) it's a fairly large one. Not the largest.

16 Q And in the course of your just normal  
17 internal auditing function, do you periodically review  
18 outside contracts that Gulf Power has?

19 A The procedure for internal auditing at Gulf  
20 has been a coordinative audit procedure that Gulf's  
21 internal auditors, Southern Company Services internal  
22 auditors, and Arthur Andersen. And audits are made on  
23 compliance procedures and we -- we or Southern Services  
24 -- will review those type contracts ever so many years.

25 Q You do or don't? I didn't hear that, I'm

1 sorry.

2 A It is done, yes, ever so often. It may be  
3 done by Southern Services' auditors for Gulf. It may  
4 be that they will pick a number of vendors and we'll  
5 test those vendors.

6 Q In the period between mid 1983 and 1988, were  
7 any of the advertising accounts picked up in these  
8 routine audits? Were they audited in the normal course  
9 of business?

10 A I cannot tell you specifically except that it  
11 is entirely possible that some of those items would  
12 have been test checked as they take a strata of  
13 payables to review and vendors to review. Did I make  
14 myself clear?

15 Q No, sir.

16 A Okay. I'm saying that in the process of what  
17 we call a "general office audit" performed by our  
18 Southern Services' internal auditors for Gulf Power  
19 Company, they would review various vendors. They would  
20 test certain payables. And through that process, they  
21 would have tested those.

22 Q Okay. We've got at least four advertising  
23 agencies that were involved in questionable ethical or  
24 illegal conduct during that time, is that correct?

25 A Yes, sir.



1 Q We've got Himmer and Yates, we've got Ray  
2 Howell, and there's two more. What are they? The  
3 names just escape me now.

4 A You mean the Appleyard. And Dick Leonard.

5 Q Thank you. What I'm asking you, sir, is I  
6 know that at certain specified times you were  
7 instructed by Mr. McCrary, or on your own, you had gone  
8 out and started auditing these folks. But they were  
9 never -- nothing ever turned up in the course of those  
10 routine audits apart from the specific incidents that  
11 gave rise to the audits?

12 A That's correct.

13 MR. VANDIVER: Okay. Thank you. I have no  
14 further questions at this time.

15 COMMISSIONER BEARD: I forgot some things  
16 that got referred to you. Of course, I think it was  
17 last week when they got referred to you. It's been a  
18 while.

19 Exhibit 412, there was a schedule that I  
20 guess came out of the \$500,000 settlement with, I guess  
21 it was IRS or the government?

22 WITNESS FELL: Is this the plea bargain?

23 COMMISSIONER BEARD: Yeah. It was a  
24 printout, a computer printout, Page 79 of 112, Exhibit  
25 412.

1 WITNESS FELL: I don't know as I have that  
2 particular thing, that particular --

3 MR. HOLLAND: Commissioner, there's one  
4 attached to Ms. Bass' testimony, I think. May not be  
5 the same one. I don't believe that's the plea bargain  
6 you're looking at.

7 COMMISSIONER BEARD: Why don't we get  
8 somebody to loan him Exhibit 412. What it is, is the  
9 -- this is the computer printout.

10 COMMISSIONER EASLEY: 412.

11 MR. HOLLAND: Let us find it and I'll give  
12 him the copy.

13 COMMISSIONER BEARD: It lists the items  
14 associated with the counts?

15 WITNESS FELL: I have the printout but I'm  
16 not sure it's --

17 MR. VANDIVER: I've got it. (Witness provided  
18 with a document.)

19 COMMISSIONER BEARD: Page 79, if you would.

20 Now, one of the questions that came up was  
21 the first four listed there was an amount of zero  
22 dollars and zero cents. And my best understanding or  
23 recollection was that, basically, Justice had you all  
24 in a hammerlock and was saying, "You're going to accept  
25 these, we're telling you that's there, we have an

1 ongoing investigation and we're not going to release  
2 some of this information to you. But if you want to  
3 get out of this thing, you're going to accept this is  
4 what it was." And there was no dollar amount  
5 associated with those first four. Am I fairly close?

6 WITNESS FELL: That was my understanding. I  
7 was not involved in the negotiation with the  
8 government. I obviously worked with the IRS  
9 considerably, but I wasn't involved in that.

10 COMMISSIONER BEARD: The very first item  
11 there, over there in the "Comments" column, it says,  
12 "To the knowledge of Gulf, DLG was paid \$5,280.13 for  
13 this service." Would that have come as a result of,  
14 once you got back, doing a little digging in and  
15 research to find out as best you could?

16 WITNESS FELL: Yes, sir.

17 COMMISSIONER BEARD: Okay.

18 WITNESS FELL: We could identify some  
19 invoices that pertained to that.

20 COMMISSIONER BEARD: Okay.

21 CHAIRMAN WILSON: You mean on the invoice it  
22 said that they -- what is this? They prepared a tape  
23 for --

24 WITNESS FELL: No, sir. The invoice at Gulf  
25 Power Company did not say that.

1           CHAIRMAN WILSON: What invoice did you have  
2 access to?

3           WITNESS FELL: We were able and we went down  
4 to the Dick Leonard office and discussed this with them  
5 and were able to look at their records and then compare  
6 it back to ours; and they were able to refer us to  
7 particular invoices that we got that that cost was  
8 included in.

9           CHAIRMAN WILSON: So you could -- you were  
10 able to trace -- do a paper trail?

11          WITNESS FELL: Yes, sir.

12          CHAIRMAN WILSON: From what they billed you  
13 for and what they actually did, and they showed you on  
14 the invoice, which invoice covered the making of that  
15 tape?

16          WITNESS FELL: Yes, sir.

17          COMMISSIONER BEARD: Did you do that kind of  
18 investigation generally with all of these?

19          WITNESS FELL: No. That's really sort of an  
20 unusual situation where you actually go into a vendor's  
21 office and review their records. First you have to  
22 have audit rights, and then a cooperative effort on  
23 their part. So, no, auditors for the most part do not  
24 go in and do that.

25          COMMISSIONER BEARD: I know they don't

1 normally, but you just paid a \$500,000 fine.

2 WITNESS FELL: Well, we did this before with  
3 the fine. We did this in a number of cases, more  
4 recently, that's right.

5 COMMISSIONER BEARD: You had this printout  
6 information before you did that?

7 WITNESS FELL: No, sir.

8 COMMISSIONER BEARD: Before you did the fine?

9 WITNESS FELL: Well, this is the results of  
10 the work that -- this is from the plea agreement, plea  
11 bargain and agreement.

12 COMMISSIONER BEARD: Go over to Page 83.  
13 Let's tak another example.

14 WITNESS FELL: All right.

15 COMMISSIONER BEARD: Third line down, August  
16 the 2nd, 1984, Hemmer & Yates; description, condominium  
17 rental, \$1,713, disguised as miscellaneous expense.

18 Now, where did that information come from on  
19 that line?

20 WITNESS FELL: That would have come from  
21 Hemmer & Yates. We would have no way to determine what  
22 that was. The invoice that was sent to Gulf Power  
23 Company was disguised as miscellaneous expense. It was  
24 only upon Mr. Yates' coming forth and talking with the  
25 IRS, the government, and admitting to this that that

1 was determined.

2 CHAIRMAN WILSON: Now, did you find that out  
3 from the IRS and the government, or did you find that  
4 out from Mr. Yates?

5 WITNESS FELL: From the government. We did  
6 not --

7 CHAIRMAN WILSON: So they told you --

8 WITNESS FELL: We got it from --

9 CHAIRMAN WILSON: They told you what  
10 transactions backed up the accounts?

11 WITNESS FELL: Yes, sir.

12 CHAIRMAN WILSON: In the plea agreement?

13 WITNESS FELL: In the plea agreement.

14 COMMISSIONER EASLEY: Was that the case in the  
15 first one that you all discussed? I don't remember the  
16 company name, DGS?

17 COMMISSIONER BEARD: No, that's a different  
18 company.

19 MR. HOLLAND: Commissioner, Mr. Fell is not  
20 totally familiar with what we were able to verify  
21 internal to our discussions with certain of these  
22 vendors.

23 CHAIRMAN WILSON: Who is?

24 MR. HOLLAND: I am, and Mr. Vandiver doesn't  
25 want me to testify. So I think I stated on the record

1 that we did, in fact, talk to Mr. Yates early on in the  
2 hearing.

3 COMMISSIONER BEARD: Let me keep asking  
4 questions of the investigator, okay?

5 MR. HOLLAND: That's fine.

6 COMMISSIONER BEARD: You settled the thing  
7 out, okay? Now, I guess I've lived around law  
8 enforcement too long, and I -- it's hard for me to let  
9 go of something. I know that my company has paid out  
10 \$1700 for a condominium rental. Now, we had this  
11 conversation last week, that you got -- I don't know  
12 what condominiums rent for over there, but I imagine  
13 this is probably for longer than a day, \$1700.

14 WITNESS FELL: I would hope so.

15 COMMISSIONER BEARD: Probably longer even than  
16 a week. Now, there are statements that have been made  
17 that one individual, or maybe one individual, and one  
18 or two in his employ, but I think one individual in  
19 this instance, was the only one that knew about this.  
20 Okay?

21 Now, I've got a condominium rental that has  
22 been handled. I suspect if I have gone that far, I'm  
23 going to go out and get the liquor and the groceries,  
24 or have somebody do it. And I guess the law  
25 enforcement part of me wants to go back and say, "I'm

1 making a statement that only one person is involved,  
2 and I've cleaned my company up."

3 As an investigator, I would have a sense of  
4 wanting to backtrack and find out if, in fact, I can  
5 live with that statement, if I had some bigger items  
6 like this that stuck out, not the -- understand \$70 is  
7 nickel and dime against the rate base of Gulf Power,  
8 but it's the principle of the issue.

9 WITNESS FELL: Yes, sir. Commissioner, in  
10 connection with the Hemmer & Yates situation, I defy  
11 anybody to be able to look at the invoices that we have  
12 and find where there's a problem.

13 COMMISSIONER BEARD: Didn't expect you to.

14 WITNESS FELL: Sir?

15 COMMISSIONER BEARD: I didn't expect you to.

16 WITNESS FELL: Right.

17 COMMISSIONER BEARD: Hemmer & Yates has the  
18 invoice.

19 WITNESS FELL: Hemmer & Yates, that's right,  
20 had the information. And at the time we were looking  
21 at that, the government was involved with Hemmer &  
22 Yates, and it was determined that we should not be  
23 involved with the Hemmer & Yates situation since the  
24 IRS was on top of it. Then we determined this  
25 information -- the information you're seeing here on



1 the plea agreement. We never had access to that  
2 information until the plea agreement, except that the  
3 attorneys who were dealing with the government in  
4 connection with that. But internal auditing was not  
5 involved in that.

6 COMMISSIONER BEARD: Well --

7 CHAIRMAN WILSON: Well, I'm kind of curious,  
8 what are we to make of this schedule that we have here  
9 then? What is that supposed to represent?

10 WITNESS FELL: On the plea agreement?

11 CHAIRMAN WILSON: Yes, sir, the items -- this  
12 goes through each account and tries to determine the  
13 dollars that are involved with it. You put this  
14 together, is that right?

15 WITNESS FELL: From the plea agreement.

16 CHAIRMAN WILSON: Well, you didn't get the  
17 dollars out of the plea agreement, did you? Or did  
18 you?

19 WITNESS FELL: It would be in the plea  
20 agreement.

21 CHAIRMAN WILSON: All of these dollars are in  
22 the plea agreement?

23 WITNESS FELL: That's my understanding.

24 COMMISSIONER EASLEY: There's one more  
25 question. Are all of those dollars taken out of the

1 rate base for the purposes of this docket?

2 WITNESS FELL: It's my understanding it is.

3 CHAIRMAN WILSON: These all occurred in years  
4 prior?

5 WITNESS FELL: Yes.

6 COMMISSIONER EASLEY: Are there any dollars  
7 that we don't -- we're unsure as to whether they've  
8 been taken out, whether they're prior year or not?

9 WITNESS FELL: It's my understanding that we  
10 definitely have taken them out; that they're not in the  
11 current rate base.

12 CHAIRMAN WILSON: It's my understanding the  
13 Company has committed any of these dollars that are  
14 involved in that plea agreement will be either refunded  
15 or whatever the disposition would be made.

16 Would you look on the first page of that? And  
17 I'm looking at the Hemmer & Yates. It says retainer  
18 fee, and the amount says, zero. It says "see  
19 comments," and over on the comments it says, "Retainer  
20 amount, net of all accounts and items specifically  
21 identified in the statement of facts as charged to  
22 retainer fees, \$46,890."

23 Now, if you know that amount of dollars that  
24 are associated with that count, why is the amount  
25 column showing zero?

1           WITNESS FELL: Commissioner, I don't know as I  
2 can give you a definite answer to that. There are a  
3 lot of other items on -- in this plea agreement  
4 associated with Hemmer & Yates, \$1,000, \$1,000, 500 and  
5 so forth. And it could be that that's related -- it  
6 came from the retainer, but I specifically do not know.

7           CHAIRMAN WILSON: Well, is that true for the  
8 other items on that page, those first four where there  
9 are zero dollars shown? (Pause)

10          WITNESS FELL: Excuse me just a minute.  
11 (Pause)

12          COMMISSIONER BEARD: Who was it that you said  
13 didn't want you to testify?

14          MR. HOLLAND: Mr. Vandiver.

15          COMMISSIONER BEARD: Oh.

16          MR. HOLLAND: If there is no objection, I can  
17 clear something up.

18          MR. VANDIVER: Commissioner Beard -- I have --  
19 no problem -- he can go ahead and say whatever. Mr.  
20 Holland is an honorable man. Mr. Holland is a --

21          CHAIRMAN WILSON: The problem is, your  
22 objection is rooted in 400 years of the English and  
23 American common law.

24          MR. VANDIVER: What can I say?

25          COMMISSIONER BEARD: Let me ask this.

1           MR. VANDIVER: I'll waive my objection for Mr.  
2 Holland to make a limited explanation to enable the  
3 Commission to better understand this particular  
4 exhibit.

5           MR. HOLLAND: Let me just state --

6           CHAIRMAN WILSON: I guess, let me see if I can  
7 put it in context, and this is just kind of a curiosity  
8 kind of thing.

9           MR. HOLLAND: I understand.

10          CHAIRMAN WILSON: Dollars aren't involved in a  
11 rate case. It really doesn't have anything to do with  
12 it.

13          MR. HOLLAND: You're right.

14          CHAIRMAN WILSON: I guess the question is, is  
15 what you know -- the only thing you know is what the  
16 government told you?

17          MR. HOLLAND: No.

18          WITNESS FELL: No, no.

19          CHAIRMAN WILSON: That's the impression I'm  
20 getting from you.

21          MR. HOLLAND: Let me just inquire of him, if  
22 you would like, and I think I can elicit.

23                 He was not present when the discussions were  
24 had with the representatives from Hemmer & Yates. I  
25 was there, and a partner of mine was there. We

1 obtained a draft of a potential plea agreement, and I  
2 took that plea agreement containing the allegations  
3 relative to the overt act and sat down and discussed it  
4 with the representative from Hemmer & Yates, and  
5 verified to my satisfaction that most, if not all, of  
6 what was contained in that document was accurate.

7           We did not have the ability, without subpoena  
8 power, to obtain the records that the Internal Revenue  
9 Service had from Hemmer & Yates, without some employee  
10 of the Gulf Power Company, other than Mr. Horton, who  
11 at the time we learned of this, had already died. We  
12 had no way other than Mr. Yates telling us that it was  
13 true to verify it. An audit would not have verified it  
14 because, number one, what you see in the item 1, 2, 3,  
15 4 down, most of what he paid for on behalf of, in most  
16 of these instances, Mr. Horton was through the  
17 retainer. And the \$50,000 figure you see is the total  
18 amount paid to Hemmer & Yates in retainer for 1985  
19 through 1987. The individual amount, the 46,890, is  
20 the total of the amounts that are itemized for Hemmer &  
21 Yates in this docket. So they're contained -- if you  
22 totalled up all the Hemmer & Yates items on this  
23 document, if I'm not mistaken, they would total to the  
24 46,890, and the rest of the retainer would be  
25 unaccounted for. Those are the amounts that are

1 contained in the plea agreement.

2           There are, as I stated very early on in this  
3 proceeding, certain items that are contained in the  
4 document, the overt acts, that we could not verify.  
5 Very few, very, very few, but a few. We were looking  
6 at the possibility of being indicted for the acts of  
7 Mr. Horton to what we were told was over 100 counts.  
8 And if you look at the overt acts, there's 100 more of  
9 them. We could have been indicted on each one and  
10 could have been indicted on a number of counts on each  
11 one.

12           There was a substantial -- and I forgot what  
13 it was, 200-, \$300,000 maximum fine each count. We  
14 were talking about a substantial sum of money. We  
15 could verify, as I stated earlier, the majority of  
16 these. The Dick Leonard. We were able to verify by  
17 the trip that Mr. Fell spoke to. The Appleyard  
18 amounts, when we obtained a ledger in October of '88,  
19 we were able to verify. I'm trying to think. And  
20 later, as I stated, we were able to verify some of the  
21 Hemmer & Yates amounts.

22           There are a few, and I think you all have  
23 identified one or two there that we were not able to  
24 verify. As I stated earlier, I was referenced  
25 specifically to, I believe Paragraph 17, in the plea

1 agreement. We argued strenuously with the government  
2 to keep that one out. The government said, "Take it  
3 this way or you don't take it." We had some evidence,  
4 although as I stated earlier, not sufficient evidence  
5 from which to indict based upon the allegation  
6 contained there, and we made a --

7 CHAIRMAN WILSON: You had some evidence, or  
8 the government had some evidence?

9 MR. HOLLAND: That's true.

10 CHAIRMAN WILSON: No, which? You or them?

11 MR. HOLLAND: We both did. They had a lot  
12 more, they said, then we did, but they would not share  
13 it with us.

14 And they were insistent that that paragraph  
15 stay in the plea agreement. It was either take it the  
16 way it was with those overt acts contained in it and  
17 limit it to two counts rather than a hundred counts, or  
18 it was to go to trial and subject the Company to  
19 substantial fines, and the employees to substantial  
20 questioning, and so on with reference to this. And it  
21 was based on that choice that we had that we made the  
22 choice to enter into the plea agreement.

23 COMMISSIONER BEARD: My situation in  
24 different, I think, than Commissioner Wilson's. I'm  
25 not faulting that decision at all.

1 MR. HOLLAND: But you're faulting the  
2 decision to plead to something that you didn't know for  
3 sure --

4 COMMISSIONER BEARD: No, I think I told you  
5 that was Commissioner Wilson's concern, okay? To me it  
6 happened. Okay. I don't doubt the majority of this  
7 stuff happened, okay. It happened in the past, I  
8 accept that, okay. And I accept that you've identified  
9 at least one person associated with that, okay, or the  
10 government has, okay.

11 My question is what do you do today, okay,  
12 going forward, to convince yourself, okay, beyond any  
13 reasonable doubt, that everyone associated is out of  
14 the Company, or whatever?

15 MR. HOLLAND: Let me inquire of Mr. Fell with  
16 respect to that.

17 COMMISSIONER BEARD: Well, let me finish.  
18 And I'm sorry, but statements like, "I asked the  
19 manager and he said it was okay," it may have been, it  
20 may not have been, and I firmly believe the manager  
21 thought it was okay.

22 MR. HOLLAND: Well, I want to pursue that  
23 one, too, because there is more to it than what's come  
24 out.

25 COMMISSIONER BEARD: Okay.



1 CHAIRMAN WILSON: Go ahead.

2 REDIRECT EXAMINATION

3 BY MR. HOLLAND:

4 Q Mr. Fell, let me start backwards and work my  
5 way to the beginning. Did the Company, in fact, as a  
6 part of the Appleyard -- not Dick Leonard but Design  
7 Associates -- audits interview any number of employees  
8 relative to their involvement?

9 A Yes, we interviewed many of them.

10 CHAIRMAN WILSON: You interviewed with Design  
11 Associates?

12 MR. HOLLAND: No, I'm talking about employees  
13 who dealt with Design Associates, and with Appleyard,  
14 and with the other advertising agencies who were  
15 involved?

16 WITNESS FELL: Yes.

17 Q Other than the individuals who have been  
18 identified in the plea agreement, to your knowledge,  
19 based upon your investigation were any other  
20 individuals identified as having been involved in  
21 collusion, with respect to the events that are  
22 described in the plea agreement?

23 A Repeat that, Ed; that's a long one.

24 Q Were there any other individuals that you  
25 interviewed who had knowledge that Mr. Horton was, in

1 fact, asking vendors to make expenditures, either in  
2 the form of political contributions or charitable  
3 contributions or for a condominium, or for whatever,  
4 other than Mr. Horton and the people who are named in  
5 the plea agreement?

6 A I don't think so. Not that I know of.

7 Q Okay.

8 In terms of the -- and I think this might  
9 clear something up. In terms of the routine audits  
10 that you would perform, if collusion is occurring  
11 between either an individual in the company and the  
12 vendor or between two or more employees, will a routine  
13 audit pick that up in the normal course? (Pause)

14 A Not in the normal course.

15 MR. VANDIVER: Ed, are we on redirect?

16 MR. HOLLAND: Yeah. Are you through?

17 MR. VANDIVER: Yes, I am. I was just curious  
18 as to where we were procedurally. I apologize.

19 CHAIRMAN WILSON: Go ahead.

20 MR. HOLLAND: Okay. (Pause)

21 Q (By Mr. Holland) Just for the record, Mr.  
22 Fell, to support what I've just stated, we were able to  
23 verify, were we not, the charges with respect to the  
24 Appleyard account?

25 A Yes.

1 Q And likewise with respect to the Dick Leonard  
2 group?

3 A Yes.

4 Q And, specifically, with respect to the Dick  
5 Leonard group, so that we can clarify what, in fact,  
6 occurred, looking at a Dick Leonard invoice would you  
7 have been able to ascertain that that invoice had, in  
8 fact, been padded?

9 A No way.

10 Q Did we receive product for what we were  
11 invoiced for?

12 A We received products, but we had some  
13 inflated invoices. (Pause)

14 Q With respect to Commissioner Gunter's  
15 questions about what we did to attempt to verify the  
16 amounts involved with respect to Mr. Croft, Mr. Croft  
17 sued us -- or when did Mr. Croft sue us, do you  
18 remember?

19 A Sometime in 1986. I don't know if I'm  
20 remembering correctly.

21 Q And did we file a counterclaim against him?

22 A Yes.

23 Q And prior to that time, and as part of that  
24 counterclaim, have we attempted to verify the amounts  
25 involved in his thefts from the Company?

1           A     Yes, we did, and that's these figures that  
2 we're finding?

3           Q     And is that what is contained in your  
4 Schedule 2?

5           A     Yes.

6           Q     Is it difficult sometimes, when an employee  
7 has stolen from the Company, to, in fact, verify the  
8 amount that he stole?

9           A     Very difficult.

10          Q     Do you sometimes reach a point of diminishing  
11 returns, such that it is not cost beneficial to the  
12 Company to continue to pursue that effort?

13          A     That is correct.

14                    COMMISSIONER BEARD: Can I back up for a  
15 second? I let something get away from the questions  
16 you were asking there.

17                    You were able to verify all the Appleyard  
18 items?

19                    WITNESS FELL: You're referring to the  
20 Appleyard -- the ledger that we received and the items?  
21 Yes, we were. When you say verify --

22                    COMMISSIONER BEARD: Well, the question was  
23 asked by your attorney and you said "yes," so if I  
24 misunderstood or am misquoting the question, then let's  
25 get it squared away.

1                   WITNESS FELL: Well, maybe we ought to go  
2 back and make sure I understood what he said when I  
3 said, "yes." To verify we were able -- excuse me.

4           Q       (MR. HOLLAND) Let me ask it this way: And  
5 specifically, the one that comes to mind, how much cash  
6 was involved in the Appleyard account, approximately?  
7 You don't have to --

8           A       About 17,000, 16 to 17,000.

9           Q       And did you, in fact, sit down with Mr.  
10 Horton and go through each of the items contained in  
11 the Appleyard ledger?

12          A       Yes. Mr. Horton provided a and Mr.  
13 Yarbrough also provided a list of each item describing,  
14 to the best of their memory, what it was for, and in  
15 alot of cases they couldn't remember. So we were able  
16 to get that information from both Mr. Horton and Mr.  
17 Yarbrough.

18                   COMMISSIONER BEARD: That was the case of  
19 Appleyard?

20                   MR. HOLLAND: Yes, sir.

21                   WITNESS FELL: Yes, sir.

22          Q       (BY MR. HOLLAND) And the point, let me ask  
23 it this way. Were you able to verify what the cash was  
24 spent for?

25          A       No, we could no verify in all cases.

1 Q Were you able to verify that, in fact, cash  
2 had been given?

3 A Yes.

4 COMMISSIONER BEARD: Okay, and you were able  
5 to do that for the Dick Leonard group as well?

6 WITNESS FELL: Well, we were able to verify,  
7 with the help of Dick Leonard, the items of, say,  
8 political contributions; this is what they, themselves,  
9 gave us. Obviously, you cannot identify that through  
10 the invoice that we had, because it was obviously a  
11 falsified invoice.

12 COMMISSIONER BEARD: And you were able to  
13 with Hemmer & Yates?

14 WITNESS FELL: In the case of Hemmer & Yates,  
15 the invoices, there was no way you could tell what the  
16 Hemmer & Yates invoice included, other than the  
17 description on the invoice. And as I was saying  
18 earlier, we did not actually talk with Mr. Yates at the  
19 time that I was starting to investigate that. I was  
20 advised by counsel that they and the IRS were  
21 investigating that and advised us to hold off.

22 I accepted that advice Ed just described a  
23 few moments ago.

24 COMMISSIONER BEARD: And Design Associates?

25 WITNESS FELL: Design Associates, we actually

1 reviewed those invoices for two years. We were able to  
2 test whether we got products for the invoices, although  
3 we paid for them. In some cases we received a service  
4 or a product; in some cases we were unable to determine  
5 if any service was received at all. And therein lies  
6 some of the questions that we have.

7 COMMISSIONER BEARD: Well, the second item on  
8 Page 79 -- and the problem is I'm asking Mr. Fell and  
9 it's probably going to be you who needs to answer it.  
10 Was there any, any proof, of any kind, or was that  
11 strictly, "You take this one or the whole thing goes  
12 away"?

13 WITNESS FELL: Commissioner, I know nothing  
14 about this item. I saw it when I saw the plea  
15 agreement.

16 COMMISSIONER BEARD: And no one knows but  
17 you.

18 MR. HOLLAND: No, there are other people who  
19 know.

20 COMMISSIONER BEARD: In the Company?

21 MR. HOLLAND: Yes.

22 COMMISSIONER BEARD: Would Mr. McCrary know?

23 (Pause)

24 MR. HOLLAND: Commissioner, Mr. McCrary would  
25 know. I don't know what relevance this has to this

1 proceeding, but if you, when he gets up, would like to  
2 inquire.

3 CHAIRMAN WILSON: Were you able to determine  
4 an amount from Design Associates for which there was no  
5 product or service identified?

6 WITNESS FELL: Not specifically. We know --

7 CHAIRMAN WILSON: If you went through their  
8 billing for two years, and you could identify a product  
9 or service that you got from them, there was obviously  
10 sums that you couldn't verify that. If you had the  
11 invoice, it seems to me that you would add them up and  
12 come up with a number.

13 WITNESS FELL: Right. We have an amount.  
14 (Pause) One moment, Commissioner.

15 CHAIRMAN WILSON: I just want to know. I  
16 know we have a separate investigation going on this. I  
17 just want to know, since we're here and we've got this  
18 witness and I see this exhibit, whether you're either  
19 continuing to investigate or you're finding out what  
20 those dollars are so that when we get to the end of  
21 that investigation that we're going to have some firmer  
22 numbers than three zeros with a decimal in the middle.

23 MR. HOLLAND: Well, we have filed a lawsuit  
24 against Mr. Howell. We've been unable to serve Mr.  
25 Howell because until recently he was unbound.



1           CHAIRMAN WILSON: His whereabouts were  
2 unknown. I understand.

3           MR. HOLLAND: Exactly. He has returned, he  
4 has testified, made statements to the government. He  
5 is supposed to be sentenced the 27th of this month. We  
6 hope to obtain service on him. The only way that we  
7 can verify an amount is --

8           CHAIRMAN WILSON: You'll know where he is,  
9 right?

10          MR. HOLLAND: We'll know where he is.

11          COMMISSIONER BEARD: May be out-of-pocket,  
12 but --

13          CHAIRMAN WILSON: Down to the courthouse.

14          MR. HOLLAND: Well, you know, it's like the  
15 blood out of a turnip. I don't expect that he's got a  
16 whole lot against which we can recover.

17          CHAIRMAN WILSON: Uh-huh.

18          MR. HOLLAND: But we do intend to pursue that  
19 lawsuit.

20                 We cannot verify today, without him, what  
21 amount was actually overbilled or was the result of  
22 padded invoices and what amount we actually received  
23 product for.

24          CHAIRMAN WILSON: So you really don't know,  
25 even the ones that you can't verify a product or



1 service for, you're not sure whether there may have  
2 been a product or service or not until you talk with  
3 him.

4 MR. HOLLAND: No. And in fact, and this is  
5 not testimony because it's in the record. I think it's  
6 in the February 6th Audit Committee Report where Mr.  
7 Horton stated to the Audit Committee that the Company  
8 had, in fact, received product for every invoice that  
9 the Company was billed by Mr. Howell. He maintained  
10 that. He could not back that statement up, but he  
11 maintained that that was in fact the case.

12 CHAIRMAN WILSON: And Mr. Fell has been  
13 unable to, going through those records, associate a  
14 product or service with the invoices to Design  
15 Associates?

16 MR. HOLLAND: That's correct. And as I  
17 stated I think very early on, we do know that the  
18 government has some of Mr. Howell's records. The  
19 extent to which as a result of a review of those  
20 records one can verify what we got product for and what  
21 we didn't, we won't know until we see them.

22 CHAIRMAN WILSON: Go ahead.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. HOLLAND:

25 Q Mr. Fell, let me start back at the beginning

1 now. There were some questions, a number of questions,  
2 asked of you relative to the inventory or count that  
3 was taken first in 1982 and then the subsequent count  
4 in 1983.

5 Reference was made to Mr. Harris' statement  
6 in the Baker-Childers Report. Was Mr. Harris later  
7 implicated in at least one of the schemes,  
8 specifically, the Leeper?

9 A Yes, he was.

10 Q Was he subsequently terminated?

11 A He was.

12 Q When I say "terminated," I mean fired, I  
13 don't mean --

14 A Yes, he wasn't really "terminated."

15 Q Got to be careful. (Laughter)

16 Was Ms. Sirmon, in fact, implicated in some  
17 of the schemes?

18 A Yes.

19 Q I think you stated that, at the time of the  
20 first count, that the warehouse was in fact being  
21 remodeled or renovations being done?

22 A Yes.

23 Q Were there, in fact, items that you verified  
24 had not been counted in that first audit?

25 A Yes.

1 Q Were at least some of those items out in the  
2 yard?

3 A They were.

4 Q With reference to -- and before I get into  
5 the audit itself, or the count, done in 1983, there was  
6 some reference made to the polygraphs and your reliance  
7 on those polygraphs. Are you aware that in Mr. Brazwell's  
8 polygraph that --

9 MR. BURGESS: I'll object to the leading  
10 structure, it's a leading question.

11 MR. HOLLAND: This is a matter of record.  
12 I'm trying to save a little time, but I'll show him the  
13 polygraph exam. (Hands papers to the witness.)

14 Q (By Mr. Holland) Mr. Fell, does that  
15 document appear to be the polygraph statement of Lamar  
16 Brazwell that was contained in the Baker-Childers  
17 Report?

18 A Yes.

19 Q How much does that polygraph indicate that  
20 Mr. Brazwell was truthfully testifying he stole from  
21 Gulf Power Company?

22 A It says only perhaps 4 to 5,000 worth of  
23 materials from Gulf.

24 Q Did Mr. Brazwell steal more than that from  
25 Gulf Power Company?

1 A Yes.

2 Q A great deal more?

3 A Yes.

4 CHAIRMAN WILSON: What page is that on?

5 MR. HOLLAND: I don't have your -- it's  
6 Exhibit VIII, it's Roman Numeral VIII, I believe to the  
7 --

8 COMMISSIONER BEARD: Page 152 of 182 is the  
9 Brazwell polygraph examination. I would like to know  
10 where you are in there.

11 MR. HOLLAND: I'm on the last page.

12 COMMISSIONER BEARD: The signature page?

13 MR. HOLLAND: Yes.

14 COMMISSIONER GUNTER: I don't have that  
15 before me. But isn't that -- is that the one where he  
16 started low and went high and came back? I just -- I  
17 could recall that, but I --

18 MR. HOLLAND: Yes. He cuts it off at \$6,000.

19 COMMISSIONER GUNTER: Yeah, okay. It's been  
20 a long time since I --

21 CHAIRMAN WILSON: Am I reading this report  
22 correctly that it says it's the examiner -- the  
23 examiner says that the examinee's peak appeared on the  
24 question of more than \$6,000 worth?

25 MR. HOLLAND: Uh-huh.

1           CHAIRMAN WILSON: So what you know from this  
2 is it was in excess of 6,000?

3           MR. HOLLAND: Right. But if you look at the  
4 questions above, he also asks, "Have you stolen more  
5 than 102, more than 122, more than 20"?

6           CHAIRMAN WILSON: Uh-huh.

7           MR. HOLLAND: And he didn't peak at that point.

8           CHAIRMAN WILSON: So the conclusion is that  
9 it's in the neighborhood of in excess of 6 and below 10?

10          COMMISSIONER BEARD: In excess of 6 and below 8.

11          MR. HOLLAND: Below 8.

12          CHAIRMAN WILSON: Below 8, I'm sorry.

13          COMMISSIONER BEARD: So the neighborhood of  
14 \$6,000.

15          MR. HOLLAND: That's correct.

16          COMMISSIONER BEARD: And he had testified  
17 prior to that that it was in the 4 to \$5,000 range?

18          MR. HOLLAND: That's correct.

19          COMMISSIONER GUNTER: But he was convicted of  
20 a whole lot more than that.

21          MR. HOLLAND: In fact, and the record will  
22 reflect that he was convicted in one scheme alone of  
23 more than 40.

24          CHAIRMAN WILSON: What does that tell us  
25 about polygraph?

1 MR. HOLLAND: Not very reliable.

2 COMMISSIONER BEARD: Well, if we're going to  
3 testify about polygraphs, we'd better get an expert in.  
4 Sometimes they are and sometimes they aren't. It is an  
5 art.

6 MR. HOLLAND: I agree, but it's very  
7 difficult to tell.

8 COMMISSIONER BEARD: Now can I ask a question  
9 of Mr. Fell? The words down here says, "Have you  
10 stolen more than \$6,000 at work?" Okay. Do you have a  
11 figure of about approximately how much Mr. Brazwell  
12 took for his own personal gain?

13 WITNESS FELL: I don't have a specific  
14 amount. I know that it's more than \$40,000.

15 COMMISSIONER BEARD: For his own personal  
16 advantage? I'm not talking about that he sent to  
17 somebody else or caused to be diverted or anything like  
18 that, through the schemes?

19 WITNESS FELL: I'm not sure I can testify to  
20 that, then, I don't know that.

21 Q (By Mr. Holland) He was charged -- was he  
22 charged for, was he charged by the U.S. Attorney in the  
23 West Florida landscaping scheme for having taken in  
24 excess of \$40,000?

25 A That's my understanding.



1 Q And that was a charge against him and not  
2 against someone else?

3 A Right.

4 COMMISSIONER BEARD: Mr. Fell, who benefited,  
5 if you can, who benefited from that \$40,000, that  
6 scheme?

7 WITNESS FELL: I would presume Mr. Brazwell  
8 did.

9 COMMISSIONER BEARD: Money in his pocket?

10 WITNESS FELL: That's what I would assume.

11 COMMISSIONER BEARD: Okay, I had not  
12 understood it to be that way. I misunderstood,  
13 apparently. Okay.

14 Q (By Mr. Holland) Mr. Fell, when you were --

15 WITNESS FELL: I don't know what he did with  
16 the money. I have to make that assumption.

17 Q (By Mr. Holland) He's in jail, is he not,  
18 Mr. Fell?

19 A Yeah.

20 COMMISSIONER BEARD: I just misunderstood, I  
21 wouldn't doubt that the money, the \$40,000, went. I  
22 had understood that it was not necessarily to his  
23 individual personal dollar gain. That's my mistake.

24 Q (By Mr. Holland) Mr. Fell, in conducting an  
25 audit or an inventory count, if you determined that

1 material had been taken out of the warehouse without  
2 the proper accounting taking place, and that material  
3 was later located and was returned to the warehouse,  
4 it's still coded, it's still showing up as being in the  
5 inventory but at the time you performed the count it  
6 was not there, when it came back, if it were determined  
7 to be obsolete, what would your choices be with respect  
8 to the treatment of that item?

9 A Well, if it was still on the books, it's  
10 still in inventory, obviously it should be counted.  
11 But if it was determined that it was obsolete, then it  
12 would have to be removed from the books and then  
13 segregated as obsolete material and disposed of in the  
14 normal procedure.

15 Q In the inventory in 1983, did the Company  
16 locate an amount of transmission line that was still in  
17 the inventory, in the inventory count, but was not in  
18 fact in inventory?

19 A I presume you're referring to some materials  
20 that was at a, stored at a substation?

21 Q Yes.

22 A That's correct.

23 Q And was that material brought back to the  
24 warehouse?

25 A Yes.

1 Q I want to show you a quote from Ms. Sirmon's  
2 deposition. It's in the '88 case that Gulf withdrew.

3 MR. VANDIVER: Ed, could you provide where  
4 you are in Ms. Sirmon's deposition?

5 MR. HOLLAND: I'm on Page 45.

6 MR. VANDIVER: Thank you. (Document provided  
7 to the witness.)

8 Q Mr. Fell, would you read the statement she  
9 makes, the last answer on that page?

10 A Yes. "Basically, when the truck comes in and  
11 we, the warehouseman, was instructed to unload it. I  
12 told him to take this particular item, put it in the  
13 scrap, that it was obvious that it was unuseable. When  
14 I did that, then Mr. Jordan said, 'No, no, no. This is  
15 a code number so-and-so.'" Should I proceed?

16 Q Yes.

17 A "'We need that.' I just kind of looked at  
18 him." End statement.

19 Q I want you just to examine above that and  
20 below that to determine whether in fact she was  
21 discussing the wire that was referred to earlier in the  
22 questions that you were asked by Mr. Vandiver. (Pause)

23 A It appears to be that.

24 Q Okay. If the material came in to the  
25 warehouse and were coded, as Mr. Jordan states there,

1 even if it were obsolete at that time, how would it  
2 have been treated?

3 A It would have to be treated as if it was good  
4 and accounted for, because it would be on the books.  
5 And then they'd have to make a decision as to whether  
6 it actually is usable or obsolete, remove it from the  
7 books, and dispose of it in the normal way.

8 Q If there were \$20,000 worth, and I think that  
9 was the figure that was mentioned, of that wire, would  
10 that have impacted the net outage that was calculated?

11 A Yes.

12 Q In what way?

13 A If it came in as \$20,000 of obsolete material  
14 and was on the books, it would have to be accounted for  
15 and, therefore, compared with the actual comparing with  
16 what's on the books.

17 Q Let me stop you there. Would that reduce the  
18 determination of the shortage; if that wire had not  
19 been recovered, had been left wherever it was and you  
20 showed \$20,000 worth of inventory, would that have  
21 affected the count?

22 A If you physically can't see it and can't  
23 count it, and it is on the books, obviously it makes a  
24 difference. It becomes a shortage.

25 Q And if it is -- if you do find it and you do

1 bring it back and it is counted, what impact would that  
2 have on the count?

3 A Well, if it physically wasn't there and you  
4 didn't count it the first time and it became an  
5 adjustment, and was removed from the books and later  
6 brought back, it had to be restored to the books.

7 Q Is Ms. Sirmon an engineer?

8 A No.

9 Q Would you think that she would be qualified  
10 to determine whether transmission line were, in fact,  
11 obsolete?

12 A I would say it would be questionable, very  
13 questionable.

14 Q Is Mr. Jordan an engineer?

15 A Yes, he is.

16 Q Did you discuss with him whether the wire  
17 was, in fact, obsolete?

18 A Yes, we had a conversation about it.

19 COMMISSIONER EASLEY: As long as you're on  
20 that, could I interrupt for a moment?

21 MR. HOLLAND: Yes, ma'am.

22 COMMISSIONER EASLEY: Did you say that Ms.  
23 Sirmon had been implicated in one of these problems?

24 WITNESS FELL: It was -- yes, yes, that's  
25 right.

1 COMMISSIONER EASLEY: But Ms. Sirmon is still  
2 employed?

3 WITNESS FELL: Yes, ma'am.

4 COMMISSIONER EASLEY: Do you know why?

5 WITNESS FELL: I can -- I probably should  
6 defer this.

7 COMMISSIONER EASLEY: Probably should.

8 Well, from a security standpoint, have any  
9 steps been taken to make sure she can't be in another  
10 problem?

11 WITNESS FELL: I think so.

12 Q (By Mr. Holland) Was Ms. Sirmon moved out of  
13 the warehouse at the same time the other actions were  
14 taken?

15 A She was removed from the warehouse and  
16 demoted.

17 COMMISSIONER EASLEY: And what?

18 WITNESS FELL: Demoted.

19 Q (By Mr. Holland) Mr. Fell, just so we don't  
20 lose sight of where we are in all of this, all of this  
21 took place how long ago?

22 A Early '84, '83 and '84.

23 Q Have significant --

24 A Well, the -- excuse me, the inventory was  
25 originally in '82. Then the one I think we are

1 referring to in '83, and Ms. Sirmon transferred in '84.

2 Q In the 1983 audit that we've been discussing,  
3 what's the gross overage versus the gross shortage that  
4 was calculated?

5 A One moment. (Pause) In '83, the gross  
6 overage was 591,449. The gross shortage was 599,911.

7 Q Could you explain what you mean by "overage  
8 versus shortage"?

9 A Yes. Of the more than 2,000 items of  
10 materiels, there were x-number of items showing an  
11 overage; that is, the physical count was over the book  
12 quantity, and the value of that was 591,000. And of  
13 those x-number of codes that were short, the value of  
14 that would be 599,911.

15 Q Did that indicate to you that additional  
16 improvements needed to be made in the inventory control  
17 system despite the fact that the net outage was only  
18 \$8,000?

19 A Yes.

20 Q Were those improvements in fact made?

21 A Many improvements were made.

22 Q Are there reasons other than theft that a  
23 shortage might occur?

24 A Yes. We have to keep in mind that there are  
25 literally thousands of transactions going on. Of these

1 more than 2,000 items, coded items of material, you are  
2 having thousands of transactions, and these materiels,  
3 coded materiels, have a number, eight- or nine-digit  
4 number that people have to print out in order to secure  
5 that materiel, and errors are made in putting down  
6 these numbers, recording the numbers. And that's where  
7 most of your outages and errors causing the outages  
8 occur.

9 Q Mr. Fell, in your testimony -- rebuttal  
10 testimony, you state that the value of the inventory at  
11 this point was 3.7 million and that Ms. Sirmon's -- I  
12 don't want to call it an estimate. I don't think  
13 that's how I would characterize it, but her number of  
14 \$2 million was 54%, or would be 54% of the inventory,  
15 is that correct?

16 A That's correct.

17 Q The \$3.7 million figure, is that a figure  
18 that's calculated as of a certain time?

19 A At the time of the inventory.

20 Q Okay. Would --

21 MR. VANDIVER: Excuse me. I don't recall  
22 asking this on cross, nor do I recall any of the  
23 Commissioners discussing that.

24 MR. HOLLAND: I think we've discussed at  
25 length what goes into an inventory, and that's what I'm



1 leading to.

2 MR. VANDIVER: I thought you were crossing on  
3 the 2 million. Okay.

4 Q (By Mr. Holland) Would more than \$3.7  
5 million in inventory flow through the warehouse in a  
6 given year?

7 A Yes, it would be more than that. I'm trying  
8 to determine the number of times of turnover.

9 Q The value would depend upon the amount of  
10 turnover, would it not?

11 A Yes.

12 Q With respect to the questions that were asked  
13 by Commissioner Gunter with respect to how the work  
14 order system would work, would an engineer sign the  
15 work order?

16 A Normally, yes, sir.

17 Q When the materiel was taken out and hopefully  
18 taken to a job and work performed, would the job be  
19 inspected to determine that the work had, in fact,  
20 occurred?

21 A That's correct.

22 Q And that the materiels that had been checked  
23 out had, in fact, been used on the job?

24 A Or returned, if not used. That's the  
25 procedure.

1 Q Would a supervisor normally check the  
2 paperwork also to verify that?

3 A They are supposed to.

4 Q If collusion occurs, can there be a  
5 circumvention of this procedure?

6 A Yes, it could if you had collusion.

7 MR. HOLLAND: Commissioners, that's all I  
8 have.

9 CHAIRMAN WILSON: Does this witness have any  
10 exhibits that aren't late-filed?

11 MR. HOLLAND: I think they've already been  
12 stipulated in.

13 CHAIRMAN WILSON: Thank you very much. Happy  
14 retirement.

15 WITNESS FELL: Thank you very much.

16 (Witness Fell excused.)

17 CHAIRMAN WILSON: Take about five minutes and  
18 come back and hasten to our dramatic conclusion.

19 (Brief recess.)

20

- - - - -

21 MR. HOLLAND: Mr. McCrary, are you ready?

22

D. L. MCCRARY

23 was called as a rebuttal witness on behalf of Gulf  
24 Power Company, and having been previously duly sworn,  
25 testified as follows:

## DIRECT EXAMINATION

1

2 BY MR. HOLLAND:

3 Q Have you previously testified in this docket?

4 A Yes, I have.

5 Q And have you caused to be filed in this  
6 docket testimony entitled "The Rebuttal Testimony of D.

7 L. McCrary"?

8 A Yes.

9 Q Do you have any corrections to that  
10 testimony?

11 A No.

12 Q If I were to ask you today those questions  
13 that are contained in your testimony, would your  
14 answers be the same?

15 A Yes.

16 MR. HOLLAND: Mr. Chairman, we'd ask that Mr.  
17 McCrary's rebuttal testimony be inserted into the  
18 record as though read.19 CHAIRMAN WILSON: Without objection it will  
20 be so inserted into the record.21 MR. HOLLAND: And I believe Mr. McCrary's  
22 schedule has already been premarked and stipulated into  
23 evidence.24 (Exhibit No. 5 previously stipulated in  
25 evidence.)

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NOTE: Page 4157 inadvertently omitted in numbering.



1       been involved in utility management for over 30 years. I  
2       am as proud of our successful efforts to rid Gulf Power  
3       of a relatively few dishonest and unethical individuals  
4       and to restore the good name of this utility and its  
5       employees as any effort in which I have been involved.  
6       This Company and its employees have been penalized  
7       enough. We have made mistakes, but we have not  
8       mismanaged. We invite the Commission to review our  
9       efforts and judge our successes.

10       On what standard should we be judged? Have the  
11       wrongs been righted? We believe they have. Have the  
12       ratepayers suffered? We do not believe so, and have  
13       removed from this case any identifiable costs associated  
14       with these wrongs. Finally, and the ultimate standard,  
15       have we provided to our customers low cost, reliable  
16       electric service? Undeniably, we have. This should be  
17       the focus of this rate case.

18       I have read with interest and will also address  
19       testimony of the witnesses from the Office of Public  
20       Counsel, Messrs. Rosen, Schultz, and Larkin. They reject  
21       out of hand the inclusion of the Company's investment and  
22       expenses related to Plant Scherer, which we, with the  
23       knowledge and consent of this Commission invested in for  
24       the benefit of our customers. It was then, and is now, a

25

1 good investment. These witnesses recommend, without  
2 basis, disallowance of millions of dollars of O & M  
3 expenses. As directed by this Commission in our last  
4 rate case, we have spent that amount necessary to provide  
5 the required level of service to our customers. Despite  
6 the slight increase in customer complaints in 1989 noted  
7 in the testimony of Staff Witness Kathryn Dyal Brown,  
8 which I attribute largely to the adverse publicity we  
9 have received, we have enjoyed a relatively low level of  
10 complaints over the past five years. I attribute our  
11 excellent history to the low rates and high reliability  
12 which our customers have and with appropriate rate relief  
13 will continue to enjoy.

14

15 Q. Mr. McCrary, you take issue with the management penalty  
16 recommended by Ms. Bass. Would you please elaborate?

17 A. Yes. Ms. Bass acknowledges the many positive steps we  
18 have taken to correct the wrongs which have been  
19 discovered since I became President just over seven years  
20 ago. She nevertheless concludes that because it has  
21 taken so long to discover and correct each of the wrongs  
22 that top management "condoned" the activities and that a  
23 management penalty is appropriate.

24 I strongly disagree. The numerous corrective steps  
25 we have taken are outlined in Schedule 1 to my direct

1 testimony. What is not reflected are the dates on which  
2 the most offensive of the acts occurred, the dates they  
3 were discovered, and the action taken. I have summarized  
4 these in Schedule 1 to this testimony.

5

6 Q. What does this exhibit show?

7 A. -First, the majority of the activities occurred or began  
8 prior to my coming to Gulf Power as President in May of  
9 1983.

10 -Second, the initial discovery of illegal activity on the  
11 part of Mr. Croft took place shortly after I came to the  
12 Company and immediate, decisive action was taken.

13 -Third, it was this initial decisive action which  
14 precipitated virtually all of the subsequent internal and  
15 external investigations.

16 -Fourth, when improper conduct was confirmed, immediate  
17 action was taken. The major offenders involved are no  
18 longer with the Company. In all cases, I feel it was the  
19 correct action.

20

21 Q. But, certain of the actions, particularly those contained  
22 in the plea agreement, while beginning prior to your  
23 becoming president, occurred over a number of years  
24 subsequent.

25 A. Yes, they did, and had I known of them, appropriate and



1 immediate action would have been taken. It is easy to  
2 criticize our failure to ascertain the actions of a  
3 senior management official acting alone or in concert  
4 with one or two employees. And yet one would not  
5 ordinarily suspect that a senior vice president and  
6 fellow Board member had been engaged in unethical and  
7 illegal activities.

8 My discovery of such activity did not occur until  
9 August or September of 1988. We believe the government  
10 had been aware of certain of these activities at least  
11 since 1985. The Company has no power to subpoena  
12 documents or compel employees or vendors to testify under  
13 oath. The government has this enormous power, and yet,  
14 even they took some four to five years to develop  
15 sufficient evidence upon which to base an indictment. In  
16 fact, despite our best efforts, because of the limited  
17 number of people involved and our inability to compel  
18 their testimony, we are yet unable to verify all of the  
19 overt acts contained in the Criminal Information  
20 associated with the Plea Agreement. I believe it is  
21 wholly unjustified and unfair to criticize and penalize  
22 the Company for our failure to discover that these acts  
23 were taking place any earlier than we did.

24  
25 Q. Mr. McCrary, did the top management of the Company allow

1 a culture to exist which condoned the illegal activity  
2 and allowed it to occur?

3 A. Absolutely not. It was not top management but an  
4 individual "top manager" that apparently created a  
5 "culture" whereby a very few individuals reporting to him  
6 or acting under his direction deemed it appropriate to  
7 circumvent Company policies and procedures. To this day,  
8 I do not believe that those involved were aware that they  
9 were engaging in illegal activity. They were or  
10 certainly should have been aware that the activity  
11 violated Company policy.

12 Did I as "top management" know of or condone such  
13 activity? The answer is an unequivocal no! As I stated  
14 earlier, Jake Horton was a trusted member of senior  
15 management and a trusted member of the Board. Despite  
16 the difficulties inherently involved in investigating  
17 "one of your own," I believe the investigative documents  
18 provided the Commission in this docket and in Docket  
19 890832-EI, the special investigative docket, clearly  
20 reflect that the audit committee of the Gulf Board acted  
21 in a timely, thorough manner.

22

23 Q. Mr. McCrary, the Company and you have placed a great deal  
24 of the blame for the illegal activities on Mr. Horton.  
25 Is this fair?

1 A. I have heard the accusations that we are attempting to  
2 place the blame on a dead man. To our knowledge, he is  
3 not to blame for all activities of Mr. Croft,  
4 Mr. Brazwell or the others involved in the illegal  
5 activities of the early 80's. He was, however, without  
6 doubt, the instigator of and the central figure involved  
7 in virtually all of the overt acts contained in the  
8 Criminal Information filed by the Government which formed  
9 the basis for the Plea Agreement. We did not write that  
10 document, nor did we write the government's Statement of  
11 Facts. It is the government which places the  
12 responsibility squarely on Mr. Horton and those few  
13 employees acting at his direction. The facts are that he  
14 is responsible and that neither I nor the Board were  
15 aware of any of these activities until late 1988.  
16 Neither we nor the government became aware of the illegal  
17 activities involving the Dick Leonard Group until after  
18 Mr. Horton's death. It is patently unfair to criticize  
19 or penalize the Company for failure to detect the  
20 collusion which was occurring under the circumstances

21  
22 Q. If penalizing the Company is inappropriate, what action  
23 should the Commission take?

24 A. I would not be so presumptuous as to recommend a  
25

1 particular course of action. I would request that the  
2 Commission take note of the Government's recognition of  
3 our own internal efforts to investigate wrongdoing and  
4 our cooperation with the Government's investigation. We  
5 have likewise, to the extent possible, attempted since  
6 1984 to keep the Commission and Office of Public Counsel  
7 informed of our efforts. The Company and its employees  
8 have suffered enough for acts they did not commit. With  
9 the substantial criminal fine and the cloud under which  
10 we have all lived for the past seven years, we have given  
11 "our pound of flesh." Mismanagement would have involved  
12 "sweeping these events under the rug." I firmly believe  
13 that had I not acted with swift, decisive action in the  
14 Kyle Croft matter, little, if any, of the other matters  
15 would ever have been discovered. That would have been  
16 mismanagement.

17 I am not asking the Commission to condone what has  
18 happened. I am asking that it refrain from taking the  
19 sensationalist viewpoint with which this matter has been  
20 portrayed in the media. Look at the very few people  
21 involved, the very limited amount of money, and the  
22 effort we have nevertheless made to correct the  
23 situation. The situation has been corrected and I am  
24 firmly convinced that nothing of the magnitude of what  
25 has occurred is likely to occur again. As I stated in my

1 direct testimony, we are attempting to start over. The  
2 healing process is well under way. This Commission  
3 should encourage the process, not hinder it.  
4

5 Q. Mr. McCrary, what has been the reaction of your customers  
6 to the events of the past several years?

7 A. Unlike the media, I believe most of our customers have  
8 continued to focus on our continuing high-quality, low  
9 cost service. They know that we have been an excellent  
10 provider of the services they demand. They also know we  
11 have been a good corporate citizen in Northwest Florida  
12 and that we have pledged to continue this effort.  
13

14 Q. To what then do you attribute the increase in customer  
15 complaints to the Commission in 1989?

16 A. I attribute it to the adverse publicity we received  
17 during the year. One cannot reasonably expect to go  
18 through the extensive media coverage we have received  
19 without some increase in the level of complaints. The  
20 fact is that our rates have not changed and the high  
21 quality of service we provide continued throughout 1989.  
22 I believe the customer complaint data for the first three  
23 months of 1990, contained in Ms. Brown's testimony,  
24 indicates that the number of complaints are returning to  
25 their historic low level. Even with the increase in

1 1989, her testimony indicates that consumer complaints  
2 received by the Commission related to Gulf Power Company  
3 are in very small numbers. Of the ones that are  
4 received, only a few are justified. Our consumer  
5 complaints show a definite downward trend since 1981, and  
6 1988 was the third year in a row in which Gulf Power  
7 maintained the lowest number of complaints per thousand  
8 customers of any of the four major electric utilities and  
9 the lowest number of justified complaints per 1,000  
10 customers.

11

12 Q. To what would you attribute this excellent performance?

13 A. Customer satisfaction in the utility business generally  
14 means that customers feel like they are getting proper  
15 value for their energy dollar. This can usually be  
16 summarized in two basic measures, reliability of electric  
17 service and prices being charged for that service.

18

19 Q. From a policy standpoint, how does a utility go about  
20 providing reliable service?

21 A. There are two basic components to providing reliable  
22 service; these are adequate capital facilities  
23 constructed to supply the customers' load and a proper  
24 level of attention continuously given to maintain those  
25 facilities in proper working condition. The high level

1 of customer satisfaction we enjoy, as evidenced by the  
2 consumer complaint activity, specifically the lack  
3 thereof, and our own internal measures of customer  
4 satisfaction, indicate that we are building the proper  
5 amount of capital facilities, as expected by our  
6 customers, and the facilities are being properly  
7 maintained. Were that not occurring, we know that our  
8 customers would not hesitate to let the Commission know  
9 this by way of consumer complaints.

10

11 Q. What does this level of consumer complaints indicate with  
12 regard to customer satisfaction with the cost of electric  
13 service?

14 A. Given that our level of service reliability has generally  
15 been good over the years, the cost of our product is  
16 probably the principal reason that we have seen the  
17 number of consumer complaints to this Commission  
18 decreasing over the years. I would also give credit to  
19 the employees of our Company who dedicate themselves to  
20 helping our customers whenever problems arise and in  
21 assisting our customers in managing their energy use. As  
22 I discussed in my direct testimony, the price of our  
23 product is low in relative terms and low compared to  
24 those of other utilities. It has also been on the  
25 decline for several years now. When consumers are

1 getting a bargain, the tendency is not to complain. Our  
2 customers are receiving a high service value, and their  
3 subconscious realization of that is the principal reason  
4 they are not burdening the Commission Office of Consumer  
5 Affairs with complaints.

6  
7 Q. Mr. McCrary, are there any of the specific areas of  
8 Ms. Bass' testimony which you wish to address?

9 A. Yes. I would like to speak to the questions raised  
10 relative to our continuing to do business with one of the  
11 vendors implicated in the kickback schemes and our doing  
12 business with one of our directors.

13  
14 Q. Would you please speak to the issue of continuing to do  
15 business with this vendor.

16 A. Yes. Since initially learning of the existence and  
17 magnitude of these various schemes, we have evaluated the  
18 merits of continuing to do business with those vendors  
19 involved.

20 In each instance, to the best knowledge of the  
21 Company, the vendor had acted upon the express  
22 instruction of a former Company employee. While this  
23 does not justify the vendors' actions, it did, along with  
24 the total cooperation provided to the Company and  
25 authorities, make the Company reluctant to immediately



1 terminate relations. Nevertheless, by December 31, 1988,  
2 the Company had severed its ties with all but one of the  
3 vendors.

4 The one remaining vendor is Mr. Dave Cook of West  
5 Florida Landscaping. To the best knowledge of the  
6 Company, Mr. Cook never profited from the improper  
7 actions requested of him by the few former Company  
8 employees involved. He has been extremely cooperative  
9 with and helpful to the federal authorities and the  
10 Company. West Florida Landscaping continues to be the  
11 low bidder for some of the Company's grounds maintenance  
12 work. The work performed is of superior quality at an  
13 extremely reasonable price. I see absolutely nothing to  
14 be gained by terminating the Company's relationship with  
15 Mr. Cook at this time.

16

17 Q. Mr. McCrary, the issue has also been raised with respect  
18 to Gulf's doing business with its directors,  
19 specifically, Mr. J.K. Tannehill. Would you please  
20 comment?

21 A. Yes. Over the years, Gulf has engaged in various  
22 business transactions with companies whose employees  
23 serve on Gulf's Board of Directors. To my knowledge, in  
24 every instance known to the Company, these transactions  
25 have been arms length and based on established purchasing

1 policies and procedures. Numerous legal and regulatory  
2 conflict of interest disclosure requirements provide all  
3 concerned with ample protection against wrongdoing. The  
4 Company's own internal policies and by-laws provide  
5 additional protections.

6 The details of Gulf's business relationship are  
7 provided in the testimony of Mr. Lee. As he indicates,  
8 Gulf was doing business with Stock Equipment Company for  
9 many years prior to Mr. Tannehill's coming on Gulf's  
10 Board in 1985. Stock Equipment has historically provided  
11 quality, competitively priced production equipment to  
12 Gulf Power. Purchases from Stock Equipment, before and  
13 after Mr. Tannehill's having come on the Board, have been  
14 in strict accordance with company purchasing policies and  
15 procedures. I am informed that the level of purchases by  
16 Gulf from Stock have, in fact, gone down since  
17 Mr. Tannehill became a member of the Board.

18 Mr. Tannehill is a very knowledgeable, effective  
19 member of Gulf's Board of Directors. His expertise in  
20 corporate management and his knowledge of the utility  
21 industry have been invaluable to Gulf Power Company.  
22 Were the companies of every Board member to be prohibited  
23 from doing business with Gulf Power, the ability of the  
24 Company to attract competent, effective Board members  
25 would be severely impaired. This would not be in the

1 best interest of Gulf or its customers.

2

3 Q. Staff and Public Counsel's witnesses have recommended  
4 that all expenses associated with Gulf's participation in  
5 Plant Scherer be disallowed. How do you respond?

6 A. As clearly shown in Mr. Howell's rebuttal testimony, such  
7 a position is extremely short-sighted. This Commission  
8 has been involved in our decision-making process with  
9 respect to Plant Scherer virtually every step of the  
10 way. To now deny recovery of this investment in rate  
11 base would violate the regulatory compact upon which we  
12 relied in making the investment. The indisputable fact  
13 is the Plant Scherer investment was and is in the best  
14 interest of our customers. It would be wholly  
15 inequitable to deny our shareholders a return on their  
16 investment in the short term and expect the Company to  
17 retain the Plant for the long term benefit of the  
18 customers. I have thoroughly reviewed our decisions over  
19 the past fifteen years with respect to our capacity  
20 planning. It is clear to me that in each instance we  
21 have acted in the best interest of our territorial  
22 customers.

23

24 Q. You have also criticized the proposed disallowances of  
25 O & M expenses. Would you please elaborate?

A. Yes. Our witnesses can and have justified those expenses

1 which are at issue. I know our overall level of expenses  
2 is extremely reasonable. In our Company, a great deal of  
3 emphasis has been placed on keeping our rates as low and  
4 competitive as possible. We have succeeded, at least  
5 partially, because of our efforts to keep O & M expense  
6 increases to a minimum. Just as important, however, has  
7 been meeting the mandate of this Commission to spend at  
8 the level necessary to meet our statutory obligation to  
9 provide quality, reliable service. We have done this,  
10 and as a result, our earnings and thus our financial  
11 integrity are suffering. Our existing residential rates  
12 are already 18.7 percent below those of the highest  
13 investor owned utility rates in the state and 6.6 percent  
14 below the next lowest. This is a clear indication of the  
15 reasonableness of our expenses, investments, and  
16 consequently our revenue requirements. If the  
17 recommendations of the Public Counsel witnesses to be  
18 adopted, our residential rates would be 22.4 percent  
19 below the highest and 10.8 percent below the next  
20 lowest. The unreasonableness of the position taken by  
21 the Public Counsel witnesses is apparent.

22

23 Q. Do you have any further comments with respect to the  
24 matters before the Commission?

25 A. Yes. We have a great deal of respect for this regulatory  
body and the process. We are entitled to, and believe we

1 will receive, a fair and unbiased evaluation of our  
2 case. It is clear from my testimony and that of the  
3 other Company witnesses in this case that Gulf Power does  
4 deserve to receive the revenue increase that has been  
5 requested. Plants Daniel and Scherer are critical to  
6 Gulf's provision of low cost, reliable electric service  
7 to Gulf's customers. An almost equal amount of  
8 transmission, distribution and other plant has been added  
9 since our 1984 rate case. This investment and the  
10 associated O & M expenses constitute the greater part of  
11 our need for rate relief. No utility should be expected  
12 to add this amount of investment without requiring an  
13 increase in rates to support it.

14 The Commission should base its decision on the facts  
15 before it, not on unsubstantiated rumor and innuendo.  
16 Again, however, should any continuing or future  
17 investigation by an authorized government entity produce  
18 any hard evidence which shows that any amount of revenue  
19 increase granted to Gulf in this Docket was based on data  
20 that was inflated because of any illegal activity on the  
21 part of Gulf Power Company or its employees, that portion  
22 of the increase will be immediately refunded, with  
23 interest, to our customers as soon as practical after  
24 such a conclusion has been reached. That is my personal  
25 and corporate guarantee to this Commission. As I stated

1 earlier, this Company is embarking on a new course. This  
2 new course will build on the strengths of the past, low  
3 rates and reliable service, and will emphasize character  
4 and integrity. In every area of our business, high  
5 quality customer service will be a top priority. If we  
6 are to achieve these worthwhile goals, we must have the  
7 revenues to support them. Based on the merits of the  
8 case before this Commission, I firmly believe we are  
9 deserving of the requested increase.

10

11 Q. Does this conclude your testimony?

12 A. Yes.

13

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1 Q (By Mr. Holland) Mr. McCrary, would you  
2 summarize your testimony?

3 A Yes. Commissioners, after two weeks of  
4 hearings I would like to summarize several things that  
5 are evident from Gulf's presentation of its case and  
6 which are contained in my rebuttal testimony.

7 Number one, to maintain our Company's  
8 financial integrity and continue our excellent record  
9 of service to our customers, we must have the rate  
10 relief that we have requested.

11 Two, Gulf's officers and employees are  
12 credible, highly qualified, knowledgeable and dedicated  
13 to providing low cost reliable electric service.

14 Three, the illegal activities which occurred  
15 in the warehouse took place in the late '70s and early  
16 80s. These problems and the people involved were dealt  
17 with properly and the warehouse is now in excellent  
18 shape. And this is not mismanagement.

19 Activities involving Gulf's senior vice  
20 president were investigated early on by Gulf Power, the  
21 FBI and the IRS. These agencies and two grand juries,  
22 with all their subpoena power and other resources,  
23 failed to find sufficient evidence to bring  
24 indictments. It was not until mid-1989 that much of  
25 the evidence of wrongdoing was uncovered by Gulf Power

1 and the U. S. Attorney. Certainly Gulf Power should  
2 not be held responsible for what the FBI, the IRS and  
3 two federal grand juries could not do earlier.

4           Ratepayers have not suffered as a result of  
5 these activities. To the contrary, they have benefited  
6 because of our delay in filing this case. Our service  
7 is good, and our rates are low, and this does not  
8 reflect mismanagement.

9           Mr. Horton's illegal and unethical actions  
10 were taken without the knowledge or approval of the  
11 Board of Directors, myself or the executive counsel.  
12 His actions were totally contrary to company policy and  
13 were far outside the scope of his authority.

14           Finally, in my opinion, it would be grossly  
15 unfair for this Commission to penalize this Company the  
16 current Board of Directors, executives and employees  
17 for illegal and unethical activities which they have  
18 had no part in, in which they have worked diligently to  
19 uncover and correct. Such a penalty would have a  
20 detrimental effect on our employees, the Company's  
21 financial health and a detrimental effect on our  
22 ratepayers. Thank you.

23           MR. HOLLAND: Tender Mr. McCrary.

24                           CROSS EXAMINATION

25 BY MR. VANDIVER:



1 Q Good evening, Mr. McCrary.

2 A Hello.

3 Q On Page 5 of your testimony, and also here in  
4 your summary just now, you indicated that the Company  
5 has no power to subpoena documents or compel employee  
6 or vendors to testify under oath, is that correct?

7 A That's correct.

8 Q It occurs to me that perhaps Gulf Power has  
9 an even bigger hammer over its vendors, and I wondered  
10 if you'd agree with me, that power being the power to  
11 cut off all dealings with the vendors?

12 A We do have that power.

13 Q So at a point in time when you would suspect  
14 a certain vendor or certain activities of that vendor  
15 to have been engaged in illegal activities with a  
16 member of your company, you could have picked up the  
17 telephone and called Dick Leonard or Hemmer & Yates and  
18 said, "I'm going to stop everything tomorrow unless you  
19 bring me all your records." Couldn't you?

20 A We could have done that. Had we called a  
21 vendor and told him that we were not going to do  
22 business with him any longer, he probably would not  
23 have given us any records period. However, in our  
24 efforts to try to find out the real truth about what  
25 was involved and what was going on, we did have vendors

1 that cooperated with us and with the IRS.

2 Q Who were the uncooperative vendors with you?

3 A I guess I'd have to put Ray Howell in that  
4 category. He disappeared without telling us what had  
5 gone on.

6 Dick Leonard did not want to talk with us.  
7 He did make some invoices available to us to look at,  
8 but that was the extent of his cooperation.

9 Q And you did not threaten to terminate  
10 business --

11 A No, we didn't threaten to terminate business,  
12 we did terminate business.

13 Q But I mean to see the records at the relevant  
14 times? In other words, show me the records or the  
15 contract is over?

16 A No.

17 Q Did you ever take that action?

18 A When we found out what had occurred, we  
19 terminated business with Dick Leonard.

20 Q Okay. On your exhibit, Mr. McCrary, you  
21 indicate that Carolyn Sirmon was demoted.

22 A That's correct.

23 Q Did she receive a cut in pay?

24 A No. She has -- her salary was frozen, as I  
25 recall. She has not had an increase since.

1           Q     But her demotion involved no reduction in  
2 salary?

3           A     No.

4           Q     I'd like to shift gears now to a more  
5 philosophical tack.

6           COMMISSIONER BEARD: Before you do, let me  
7 ask, why?

8           WITNESS MCCRARY: Carolyn Sirmon had only  
9 been in the warehouse for about six months, as I  
10 recall, when this first audit was done. She had been  
11 an stenographer, a secretary someplace, and they moved  
12 her into the warehouse.

13           Carolyn Sirmon, in my opinion, from what I  
14 can understand, knew very little about warehouse  
15 operation. She was not involved in theft of materials  
16 from the warehouse. Her involvement had to do with  
17 some records of transformers that had PCBs that were  
18 brought down and disposed of by Gulf Power. They were  
19 Line Power transformers. There was some question about  
20 whether or not she knew that these transformers were  
21 Line Power transformers or Gulf Power transformers.  
22 She was told by her supervisor, Kyle Croft, to fill out  
23 the records for -- to dispose of these transformers,  
24 which she did.

25           That, and the fact that she had had an old

1 desk painted by the repair shop, for which she  
2 reimbursed the Company, was the extent of her  
3 involvement. So we didn't feel, because of her lack of  
4 knowledge and experience in the warehouse, that what  
5 she had done was reason to do more than what we did.  
6 We moved her out of the warehouse into an area where  
7 she was not associated with it any longer and she has  
8 been a good employee since then.

9 COMMISSIONER BEARD: I don't want to spend a  
10 lot of time, but do you all's personnel practices have  
11 nobody in your personnel department review who is  
12 recommended to be hired in a position?

13 WITNESS McCRARY: As to who will be hired.

14 COMMISSIONER GUNTER: Let me be specific: In  
15 this case, from what I have read and seen, to say she  
16 didn't know anything about warehousing and inventory is  
17 an understatement, okay?

18 WITNESS McCRARY: I agree.

19 COMMISSIONER BEARD: Again, this is something  
20 I had a little familiarity with, the department head or  
21 whoever normally did the hiring, but as a Personnel  
22 Director, if I saw something like that, the very least  
23 I would do is say, "Wait a minute." And if the big  
24 boss wants to say, "Tough, the person's going on the  
25 job," then I've done my job; I've warned them what they

1 are getting and I walk on. Do you all have anything  
2 built into your system like that?

3 WITNESS McCRARY: Yes, sir. We did not at  
4 the time. But now all jobs, manager and above, are  
5 filled by the executive council of the Company, which  
6 is made up of me and all the officers. We do an  
7 extensive background investigation on qualifications.  
8 We take about a half day talking about all the  
9 candidates and the qualifications and the requirements  
10 of the job. And those jobs are filled by the unanimous  
11 vote of me and the executive council. We also have  
12 another group that's made up of mostly manager level  
13 that fills jobs below that in pretty much the same way.

14 COMMISSIONER BEARD: When you demoted her,  
15 you froze her salary such that inflation and adjustment  
16 ranges will eventually catch up with her.

17 WITNESS McCRARY: Yes, sir

18 COMMISSIONER BEARD: But you didn't do that  
19 for Mr. Baker when you demoted him because of  
20 reorganizational change.

21 WITNESS McCRARY: No, sir, we just froze his  
22 salary the same way.

23 COMMISSIONER BEARD: You did freeze his  
24 salary.

25 WITNESS McCRARY: Yes. Well, I say that.

1 The salary that he had put him very high in the range  
2 of the salary for the Resident Investigator. Depending  
3 on his performance level, and as the bracket for the  
4 Resident Investigator grows, it will eventually catch  
5 up. And if he performs in a excellent manner, then he  
6 is eligible to get some raise. So it's not frozen as  
7 such.

8           COMMISSIONER BEARD: When you reorganized and  
9 demoted him from the head to, I guess, a regular  
10 investigator or security man, did his salary at that  
11 point in time remain the same?

12           WITNESS MCCRARY: It remained the same.

13           COMMISSIONER BEARD: It was frozen then for  
14 all intents and purposes. Not upward frozen; when the  
15 time comes.

16           Q    'By Mr. Vandiver) Is it your testimony that  
17 Ms. Sirmon did not, in fact, falsify any Company  
18 records?

19           A    I can't be sure whether she actually knew  
20 that these transformers were Line Power transformers  
21 and she falsified the records or -- as I say, there is  
22 some question about what --

23           Q    I was just curious for purposes of the record  
24 because Mr. Fell had said she was implicated in various  
25 schemes or some words to that effect, and didn't go any

1 further. And you seem to have painted a somewhat more  
2 innocent picture, if you will, of Ms. Sirmon, and I was  
3 just curious as to --

4 A Well, to the extent that there was a question  
5 about the transformer records; and she admitted to  
6 having a desk painted for which she reimbursed the  
7 company. And given the situation that we had in the  
8 warehouse in those years, this was really not a big  
9 thing.

10 Q Okay. The word "mismanagement" has been  
11 thrown around in this hearing an awful lot. Would you  
12 define it for me, please?

13 A Well, I guess that would depend on what  
14 you're talking about and --

15 Q How about just your walking-around definition  
16 of mismanagement. What does mismanagement mean to you?

17 A Well, it would mean a total disregard for the  
18 policies, procedures of the Company. Disregard for the  
19 philosophy of the Company. Not paying attention to  
20 what you're supposed to be doing, not performing.

21 It could have a variety of meanings, I guess,  
22 depending on what phase of the Company you are talking  
23 about.

24 Q You would agree with me, then, that it could  
25 happen through negligence or omission as opposed to an

1 act of criminal or evil intent?

2 A I don't know that I would agree with that.

3 Q You would or would not?

4 A I don't think that I would in all cases, no.

5 Q Well, would you agree with me that  
6 mismanagement can occur with the most honest people in  
7 the world in charge?

8 A Yes. I don't think honesty has a, is a  
9 all-determining factor.

10 Q The managers could be negligent or stupid or  
11 whatever and just mismanage?

12 A Lazy.

13 Q Yeah.

14 A Could.

15 Q Would you also agree that mismanagement could  
16 be present where a manager waits too long to take  
17 action against unethical employees in the organization?

18 A That could happen.

19 Q At Page 2 of your testimony, at Lines 6 and 7,  
20 you indicate that the Company has been penalized enough.

21 A Yes, sir.

22 Q Has the Commission imposed any penalties?

23 A The Commission has not imposed a direct  
24 penalty, no.

25 Q And further along on Page 4 at Lines 7



1 through 9, you indicate that the majority of activities  
2 occurred prior to your time at Gulf Power?

3 A The activities in the warehouse, yes.

4 Q Oh, that's what you were referring to.

5 Because that was my follow-up question, and that is  
6 that only 33 of the 120 counts in the plea agreement  
7 took place prior to your time, isn't that true?

8 A I haven't counted them, but the situation in  
9 the warehouse occurred before I came here.

10 Q So you were not referring to those plea  
11 agreement counts in that statement?

12 A Not the, no.

13 Q Okay.

14 A Not the, if you, if you're going by the  
15 number of counts in the plea agreement, that would not  
16 be a true statement, if that's what you're driving at.

17 Q That is what I'm driving at, thank you, sir.

18 A I'm not sure that that would not be a true  
19 statement if you count dollars.

20 Q My next series of questions relate to Mr.  
21 Horton, sir. From the date you assumed the presidency  
22 of Gulf Power in mid 1983 until the time of Mr.  
23 Horton's death, did he ever receive a written  
24 reprimand?

25 A I don't believe so.

1 Q And you would know, because you would have  
2 been the one to do it, wouldn't you?

3 A Yes, sir. Not a direct written reprimand.  
4 We have, we have written some memos, we have had  
5 meetings and discussions, and I have reprimanded  
6 Mr. Horton many, many times.

7 Q Just not in writing?

8 A Not in writing.

9 Q In your direct testimony, we discussed the  
10 events surrounding the Graves contribution admitted in  
11 1984, do you recall that?

12 A Yes.

13 Q And is it correct that this same incident  
14 came to your attention again in 1986?

15 A No. It first came to my attention earlier  
16 than that, right after it happened.

17 Q Yes, sir, but it came up again --

18 A In 1986.

19 Q -- in 1986. And I understand Mr. Baker  
20 somehow brought this to your attention? Is that how it  
21 came up?

22 A Yes. In a casual conversation with Mr.  
23 Baker, as I recall, he mentioned the fact that the  
24 Company had reimbursed Bill Graves for that  
25 contribution.

1 Q And 1986 was when you found out the whole  
2 truth about the 1984 Graves situation, is that correct?

3 A That's correct.

4 Q And did Mr. Horton's instructions to bill the  
5 amount back to the Company raise your suspicion again  
6 in 1986?

7 A I'm not sure I understand just exactly what  
8 you said there.

9 Q Oh, okay.

10 MR. HOLLAND: Let me object, because I don't  
11 think the record anywhere reflects that Mr. Horton  
12 directed the Company to reimburse Mr. Graves.

13 Q (By Mr. Vandiver) Why don't we turn to  
14 Exhibit 396, Page 23 and 24 of 89.

15 CHAIRMAN WILSON: 396?

16 MR. VANDIVER: Yes, sir.

17 CHAIRMAN WILSON: I know it's behind me here  
18 somewhere.

19 MR. VANDIVER: I had trouble finding mine,  
20 Commissioner.

21 CHAIRMAN WILSON: Is it thick or thin?

22 MR. VANDIVER: Yea thick.

23 CHAIRMAN WILSON: It's a thick one. What  
24 does it say on the front?

25 MR. VANDIVER: "Gulf Power Company Report to

1 the Audit Committee."

2 CHAIRMAN WILSON: 396?

3 MR. VANDIVER: Yes, sir.

4 COMMISSIONER GUNTER: Is that the one that  
5 had the unsigned Horton check in it?

6 MR. VANDIVER: Yes, sir, it is.

7 COMMISSIONER GUNTER: I've read it but I am  
8 not even going to look for it.

9 COMMISSIONER BEARD: What page?

10 MR. VANDIVER: 24.

11 COMMISSIONER GUNTER: If I recall, wasn't  
12 that the April the 7th report, or something?

13 COMMISSIONER BEARD: January 9th of '89.  
14 Nice try.

15 COMMISSIONER GUNTER: Different one. There  
16 was one April the 9th or something.

17 COMMISSIONER BEARD: Would you like the look  
18 at mine?

19 COMMISSIONER GUNTER: No.

20 CHAIRMAN WILSON: May I, please? Thank you.

21 Q (By Mr. Vandiver) Do you have that document,  
22 sir?

23 A I have the report to the Audit Committee.

24 Q Okay. Could you go to Page 24?

25 A I think I have it now.

1 Q It's a memo from Mr. Scarbrough to the  
2 Executive File?

3 A Yes.

4 Q The last paragraph there on 24, "Mr. McCrary  
5 was unaware that Gulf Power had reimbursed Bill Graves  
6 and said he would not have agreed for Gulf to make the  
7 reimbursement"?

8 A That's correct.

9 Q Who could have possibly directed Gulf Power  
10 to make that reimbursement?

11 A I think, I think Mr. Scarbrough directed the  
12 reimbursement. And I believe he did it all in the open  
13 with memos to the Accounting Department to issue the  
14 check. And he did it, not knowing that it was illegal  
15 for us to reimburse a political contribution.

16 Q And you don't know the source of Mr.  
17 Scarbrough's impetus to pay this amount?

18 A Mr. Scarbrough did that on his own. At  
19 least, that's what he told me. And that's what his, I  
20 think his memo indicates that.

21 Q Okay.

22 A Mr. Scarbrough certainly was not trying to  
23 hide the fact that --

24 Q And I'm not trying to imply that, sir. I was  
25 just curious as to Mr. Horton's role in 1986 and your

1 reaction when you found out that this had in fact been  
2 billed back to the Company. And I want to know who you  
3 then went to to see about this. Did you talk to Mr.  
4 Scarbrough about it, or did you talk to Mr. Horton  
5 about it?

6 A I talked to both of them about it.

7 Q And what was -- and the upshot was Mr.  
8 Scarbrough's memo that we have here describing the  
9 events?

10 A Yes. I think that's right. I think he, as a  
11 result of that, I think he corrected the situation and  
12 wrote this memo to the files that described the event.

13 Q And Mr. Horton then wrote a check to Mr.  
14 Graves to cover the political contribution that Gulf  
15 Power had earlier made, and that got you all right with  
16 the IRS?

17 A That is correct.

18 Q Okay. I would now like to turn to the events  
19 immediately preceding Mr. Horton's death, if I could.  
20 The Audit Committee instructed you to sever the  
21 Company's relationship with Mr. Horton on April the  
22 7th, 1989, is that correct?

23 A That's correct.

24 Q When did you meet with Mr. Horton about this?

25 A I met with him about 11:20, as I recall, on

1 Monday morning, April the 10th.

2 Q And that was the Monday after the Friday they  
3 had instructed you to do this?

4 A That's correct.

5 Q Did you speak to anyone about this between  
6 April 7th and April 10th that was not on the Audit  
7 Committee?

8 A Yes.

9 Q Who was that?

10 A I talked to Mr. Holland. I talked to Ed  
11 Addison. I talked to one or more attorney with the  
12 Troutman Sanders firm in Atlanta. I also -- well, no,  
13 Dr. Reid Bell, but he was on the Audit Committee.

14 Q Okay. And in this 11:00 o'clock meeting, did  
15 you fire Mr. Horton or request that he resign?

16 A I told him that the Audit Committee had --  
17 the Audit Committee had made a recommendation, was  
18 planning to make a recommendation to the Board that he  
19 be separated from the Company.

20 And you understand the Audit Committee  
21 comprises most of the Board?

22 Q Yes, sir.

23 A And I told him that we could do this in  
24 several ways. He could resign or retire, or I would  
25 work with him to separate him from the Company in the

1 most palatable way possible. But that this would take  
2 place.

3 Q What was his reaction to your statement?

4 A His reaction was that he wanted to talk to  
5 his wife about it and that he would get back with me  
6 that afternoon.

7 Q Do you know why he was going to Atlanta?

8 A No.

9 Q What action has Gulf Power taken, or any of  
10 The Southern Company's subsidiaries, in terms of  
11 investigating the cause of the crash that killed three  
12 Southern Company employees?

13 A What action have we taken? Well, the NTSB  
14 has done --

15 Q That's the National Transportation Safety  
16 Board? Excuse me for interrupting.

17 A Yes. That's correct. They have done an  
18 extensive investigation, as they always do in a plane  
19 crash. Their, at least a part of their report has been  
20 issued in which they found no pilot error, no  
21 mechanical failure. No other indication that there was  
22 anything wrong with the aircraft.

23 Q In terms of Gulf Power or any of The Southern  
24 Company's subsidiaries, has any specific investigation  
25 been done or taken place, or is one contemplated?



1           A     No. We know that the FBI is investigating  
2 the crash. There is a lawsuit pending involving the  
3 plane crash; and to the extent that the attorneys have  
4 retained experts and done their own investigation, I  
5 can't speak to that.

6           MR. VANDIVER: I have no further questions,  
7 thank you, Mr. McCrary.

8           CHAIRMAN WILSON: Questions, Commissioners?

9           COMMISSIONER EASLEY: I have one. Mr.  
10 McCrary, I think you attended most, if not all, of the  
11 service hearings, didn't you?

12          WITNESS MCCRARY: Yes, ma'am, I did.

13          COMMISSIONER EASLEY: They weren't a lot of  
14 fun, were they?

15          WITNESS MCCRARY: No, ma'am.

16          COMMISSIONER EASLEY: I came away from them  
17 with the impression that, while Gulf may have at one  
18 point enjoyed a family type of relationship out there  
19 with its customers, that Gulf doesn't really have that  
20 kind of relationship any more, is that right?

21          WITNESS MCCRARY: I am sure that the negative  
22 publicity that we have received in the last few years  
23 has had an effect on our relationship with the public.

24          COMMISSIONER EASLEY: Well, one of the things  
25 we heard about was, and you'll forgive the expression,

1 the Taj Mahal building.

2 WITNESS McCRARY: Yes, ma'am.

3 COMMISSIONER EASLEY: What I would like to  
4 know, what are Gulf's plans, what are your plans for  
5 the corporate activity to try and do something about  
6 that customer relationship and the perception that it  
7 is affecting service, whether or not it is?

8 WITNESS McCRARY: Well, one of the programs  
9 that we have going right now is to do just that; to try  
10 to build a better relationship with our customers. To  
11 that extent, we have asked our employees to participate  
12 and to make suggestions on what we might do.

13 We have had something like 60 suggestions  
14 made by employees already, as I recall, and I may be  
15 off on that number, and about half of the suggestions  
16 have been implemented. They range from things such as  
17 being able to apply for service on the telephone, which  
18 we did not have six months ago, to being able to pay  
19 your bill at the corporate office. We have some people  
20 that will come in there thinking that that's where they  
21 should come to pay their bill. Up until we started  
22 this program, we would ask them in a nice way to go  
23 down to the Pace Boulevard building. But even though  
24 we are not set up there, not equipped to handle bills,  
25 and we don't have the computers and the records and

1 everything that they have in the Western Division, we  
2 will make arrangements. We will let a person pay their  
3 bill there.

4 That's just two examples. There are just  
5 many, many things that we are doing.

6 COMMISSIONER EASLEY: One of the other areas  
7 that was discussed at the service hearings were  
8 complaints about some of the affiliated companies and  
9 some of the perceptions, the appliance division and  
10 some of the others, some of the perceptions that you're  
11 in competition with local businesses and hurting them.  
12 What do you see as a way to mitigate that problem?

13 WITNESS McCRARY: Well, I think, as has been  
14 stated in these hearings, we have a study going now  
15 looking at our appliance sales business, to try to  
16 determine, number one, whether we can make it a  
17 profitable business, and to try to better define all  
18 the pros and the cons of us being in that business.

19 COMMISSIONER EASLEY: Have you thought of  
20 involving any of the customers in any of this  
21 suggestion period, discussion period?

22 WITNESS McCRARY: Yes, ma'am; yes, we have.  
23 We have had a number of focus groups where we get  
24 customers together with a facilitator who is not with  
25 the Company and just talk about things and ask them for

1 their honest opinion. And we have gotten some --

2 COMMISSIONER EASLEY: Take some transcripts  
3 of those service hearings. Thank you.

4 COMMISSIONER BEARD: If you have a first-line  
5 supervisor, for example, that commits an EEOC violation  
6 or a sexual harassment violation, and the Company has  
7 not in advance done some things to make employees aware  
8 of how they can combat that, okay, and how they should  
9 behave and/or after-the-fact don't take action, that  
10 Company will in fact be held liable, won't it?

11 WITNESS McCRARY: On an EEOC complaint,  
12 that's correct.

13 COMMISSIONER BEARD: Mr. Horton's actions  
14 we've described here, and/or other employees' actions,  
15 is it safe to say that those things certainly began  
16 probably well before you arrived?

17 WITNESS McCRARY: It's probably safe to say  
18 that.

19 COMMISSIONER BEARD: I mean, we're not  
20 talking about something that probably was occurring  
21 very short-term.

22 WITNESS McCRARY: Yes, sir.

23 COMMISSIONER BEARD: In this instance.

24 CHAIRMAN WILSON: Any other questions,  
25 Commissioners?

1 (No response.)

2 CHAIRMAN WILSON: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. HOLLAND:

5 Q I'll try not to make this very hard, Mr.  
6 McCrary. Was a purpose of the institution of the  
7 Ethics Code in 1984 to set forth the expectations that  
8 you had with respect to employee conduct?

9 A Yes.

10 Q Does that Code provide for -- I don't want to  
11 say termination -- firing for violation of the Code?

12 A Yes, it does.

13 Q In your opinion, has the Company begun the  
14 road back to regaining its respect in the communities  
15 in which it serves?

16 A I think it has. We track the public  
17 confidence level, and while it has not shown dramatic  
18 increases recently, it does appear that it has leveled  
19 out. And we think with the programs that we have going  
20 and getting this plowed behind us, that we will be able  
21 to rebuild the public confidence that we deserve.

22 CHAIRMAN WILSON: How do you track that  
23 public perception?

24 WITNESS MCCRARY: There is a survey done by  
25 an independent outfit every -- I think it's done every

1 two months, I'm not certain about that -- in which they  
2 make random calls to customers in our area, in our  
3 service area. It's actually done from Atlanta. But  
4 they have a computer that generates the random numbers  
5 and they take these samples by asking certain questions  
6 and put that into the computer, and it generates the  
7 index that's a public confidence level.

8 CHAIRMAN WILSON: How long have you been  
9 doing that?

10 WITNESS McCRARY: We've been doing that since  
11 I've been at Gulf, I know, for seven years.

12 CHAIRMAN WILSON: Was it done before that, or  
13 do you know?

14 WITNESS McCRARY: I'm not sure how long, when  
15 it first started, but I know it was being done in 1983.

16 CHAIRMAN WILSON: Do you keep those records?  
17 I mean, do you track them, a chart that shows level of  
18 public confidence and where it's gone up and down  
19 against the time line?

20 WITNESS McCRARY: We do keep them. Each  
21 report has -- I think it has the previous year and  
22 maybe the previous few months on it. Now, I'm not sure  
23 whether we have those records back to 1983. They  
24 probably would be available.

25 COMMISSIONER BEARD: When you have a policy

1 in your Company, as a part of that policy you say, "If  
2 you violate this policy, then the Company will take a  
3 certain action against you." For example, you said  
4 that you have a Code of Ethics that says that, "If you  
5 violate this, you" -- I don't think you said will be  
6 fired, "may, can be fired"?

7 WITNESS McCRARY: I think most of the  
8 policies that we have that include discharge say  
9 something to the effect that it's up to and including  
10 termination. That gives us some discretion because  
11 none of these things are ever absolutely black and  
12 white, or very few of them are.

13 COMMISSIONER BEARD: Was that the case when  
14 you instituted your drug policy?

15 WITNESS McCRARY: Our drug policy?

16 COMMISSIONER BEARD: Yes.

17 WITNESS McCRARY: Yes, sir, absolutely. And  
18 we spent weeks and weeks with employee groups, talking  
19 about the drug policy. We spent --

20 COMMISSIONER BEARD: Was it an up to and  
21 including being fired, or was it "you will be fired"?

22 WITNESS McCRARY: Up to and including  
23 termination. That is for off-the-job use of drugs, as  
24 I recall. I can look that up.

25 COMMISSIONER BEARD: That's not necessary.

1 My question --

2 WITNESS McCPARY: If you sell drugs, or use  
3 drugs on Company property, I think it's pretty clear  
4 that you'll be terminated. Off-the-job use of drugs,  
5 it's up to and including termination, depending on the  
6 circumstances.

7 COMMISSIONER BEARD: As a general rule, if  
8 you have a policy that says you will take a certain  
9 action and you don't take that action, what kind of  
10 signal does that send to the employees?

11 WITNESS McCRARY: Well, if you're talking  
12 about the drug policies --

13 COMMISSIONER BEARD: Actually, I really was  
14 thinking about the Code of Ethics thing, and the two  
15 instances I was thinking about is the Code of Ethics  
16 thing and the lady that was demoted, and I guess the  
17 up-to-and-including response to that. I was thinking  
18 about the DUI, which I assume violates Company policy.

19 WITNESS McCRARY: It is an indirect -- I  
20 think our Code of Ethics states that any action that  
21 would reflect negatively on the reputation of the  
22 Company should be avoided, or something to that effect.  
23 So it did reflect negatively on the Company.

24 COMMISSIONER BEARD: Would your drug policy  
25 address a DUI?



1 WITNESS McCRARY: I'm sorry?

2 COMMISSIONER BEARD: Would your drug policy  
3 address alcohol, DUI-type behavior?

4 WITNESS McCRARY: No, I don't think -- it's  
5 not addressed in the drug policy.

6 CHAIRMAN WILSON: Alcohol is not considered a  
7 drug under your drug policy?

8 WITNESS McCRARY: It is, and let me get that  
9 and just read you what it says, if I have it here.

10 CHAIRMAN WILSON: Is tobacco a drug under  
11 your drug policy? (Laughter)

12 WITNESS McCRARY: I don't think we consider  
13 tobacco --

14 COMMISSIONER EASLEY: No. (Laughter)

15 COMMISSIONER GUNTER: Careful what you say.

16 COMMISSIONER EASLEY: The answer is no.

17 COMMISSIONER BEARD: We have a little  
18 dissention behind the bench here once in a while  
19 ourselves. (Pause)

20 WITNESS McCRARY: I'll read you a couple of  
21 paragraphs from the druf policy: "The unlawful  
22 possession, use or sale of any drug or drug-like  
23 substance, including the abuse of prescription drugs,  
24 while on the job or Company property is a dischargeable  
25 offense. In accordance with Federal and State

1 Statutes, any illegal substance must be turned over to  
2 the appropriate law enforcement agency and may result  
3 in criminal prosecution."

4 The B part, "Off the Job: Illegal drug use,  
5 which could adversely affect an employee's job  
6 performance, or which may jeopardize the safety of  
7 other employees, the public or Company equipment, is  
8 proper cause for disciplinary action, up to and  
9 including termination of employment."

10 So that's generally -- there's some other  
11 language that amplifies that.

12 Q (By Mr. Holland) With respect to the  
13 customer satisfaction, would the change in number of  
14 employee complaints between 1989 and 1990, to which Ms.  
15 Brown testified and to which you refer in your  
16 testimony, indicate anything to you with respect to the  
17 direction that Gulf Power Company is headed?

18 A Well, I think at one time the number of  
19 complaints that we had went up. I'm not sure exactly  
20 what that period was, but I think it coincided with all  
21 the negative publicity that we had had.

22 However, the number of complaints that we  
23 have received recently is headed in the right  
24 direction.

25 COMMISSIONER EASLEY: You said "employee

1 complaints," did you mean "employee" or "customer"?

2 MR. HOLLAND: I'm sorry. Thank you very  
3 much, customer complaint. Is that what threw you, Mr.  
4 McCrary?

5 WITNESS MCCRARY: No. (Laughter)

6 COMMISSIONER BEARD: He read your mind, not  
7 your lips.

8 Q (By Mr. Holland) Mr. McCrary, there's been a  
9 great deal of -- great number of questions and  
10 discussions with respect to the Bill Graves situation.  
11 Did Mr. Horton instruct or direct Mr. Scarbrough for  
12 the Company to reimburse Bill Graves?

13 A It's my understanding that this decision was  
14 totally Mr. Scarbrough's.

15 Q Okay. Did you thoroughly investigate the  
16 situation and determine in your own mind that there had  
17 been a miscommunication with respect to all of that?

18 A Yes, I did.

19 Q Did the Audit Committee, likewise, make a  
20 thorough review of that situation and come to a similar  
21 conclusion?

22 A They did.

23 Q You were asked some questions about employee  
24 assessment. Did you in 1984 direct that a validated  
25 selection process be established?

1 A Yes.

2 Q Did you direct that this be done by an  
3 objective outside individual or company?

4 A Yes, I did. And I believe Dr. Myers from the  
5 University of Florida did that validation.

6 Q Is this validation selection process the only  
7 one that you know of in the southeast?

8 A It's the only one that I know of, yes.

9 Q Finally, Mr. McCrary --

10 COMMISSIONER GUNTER: This is going to be a  
11 spear right in the heart.

12 MR. HOLLAND: No. No, it's not.

13 Q It's a simple question that you know the  
14 answer to, Mr. McCrary. (Laughter)

15 A Thanks a lot.

16 CHAIRMAN WILSON: A real good confidence  
17 level.

18 Q (By Mr. Holland) I don't think this was  
19 intended to be put this way, but in Commissioner  
20 Beard's questions of you, on two occasions he indicated  
21 in that question that Mr. Baker had been demoted. Was  
22 he demoted or was his position abolished in a  
23 reorganization study and he was relocated?

24 A Well, I guess it depends on how you tell the  
25 story. The department was reorganized. The job that

1 he had was eliminated.

2 COMMISSIONER BEARD: Let me make it simple  
3 for you. I didn't mean to imply you demoted him, but  
4 he had achieved a lesser level job, okay? The net  
5 effect was the same. I didn't mean to be prejudicial  
6 in the terminology.

7 MR. HOLLAND: That's all I have, Mr. McCrary.

8 CHAIRMAN WILSON: Anything further from this  
9 witness? Thank you very much, Mr. McCrary. You may  
10 step down.

11 (Witness McCrary excused.)

12 CHAIRMAN WILSON: Well, here we are.

13 MR. STONE: I know this is somewhat  
14 anticlimactic but I do have a late-filed exhibit I'd  
15 like to hand out so I don't have to mail it to  
16 everybody.

17 CHAIRMAN WILSON: Give us a break.

18 (Laughter) Go ahead.

19 MR. HOLLAND: I don't think there are any  
20 outstanding objections to any of the exhibits, and just  
21 for the sake of Mr. Burgess not telling me about one  
22 that I didn't move in, I'd like to move all exhibits.

23 CHAIRMAN WILSON: It doesn't work that way.

24 COMMISSIONER BEARD: It's on you, not on Joy.

25 MR. HOLLAND: Unless there are some

1 objections to that.

2 CHAIRMAN WILSON: I think we have --

3 MR. HOLLAND: Not the late-fileds.

4 CHAIRMAN WILSON: We've taken care of all the  
5 exhibits that were actually handed out and admitted  
6 into evidence. Then the late-fileds and this  
7 stipulated -- if Mr. Burgess and Mr. Vandiver will  
8 agree that all --

9 MR. BURGESS: I would stipulate to everything  
10 that we haven't objected to.

11 CHAIRMAN WILSON: We just run into the  
12 problem in the past, the reporter having to go back and  
13 find in the record what has been moved and what hasn't  
14 and then correcting that. I think we got them all.

15 MR. HOLLAND: I think we did, too. It  
16 bothered me when --

17 MR. BURGESS: Except that one but --  
18 (Laughter)

19 CHAIRMAN WILSON: You mean the one -- oh,  
20 yeah, yeah, yeah. The one we weren't going to tell him  
21 about. Okay. CSAR. Briefs are due tomorrow.

22 COMMISSIONER BEARD: Bring Mr. Kilgore back  
23 up here so we can talk to him about this late-filed  
24 exhibit. Just kidding.

25 CHAIRMAN WILSON: Presently the briefs are

1 due on July the 9th.

2 MR. VANDIVER: Mr. Holland and I had a  
3 discussion about possibly extending that schedule. My  
4 problem is my clients are not here, and they need that  
5 to write their recommendation, and I would imagine they  
6 would have me for lunch if I took two days a way.

7 CHAIRMAN WILSON: When does the file and  
8 suspend run, do you know? Never mind, I'll probably  
9 figure it out from here. August the 15th.

10 COMMISSIONER GUNTER: We can't slip.

11 CHAIRMAN WILSON: Slip with a waiver by the  
12 Company. But that's the only way.

13 CHAIRMAN WILSON: Currently it is scheduled  
14 for August 9th and 10th for agenda, with the 14th also  
15 reserved, so we're smack up against that date.

16 MR. HOLLAND: We don't --

17 CHAIRMAN WILSON: Extending times is going to  
18 eat into Staff time, so --

19 MR. VANDIVER: Let's leave the briefs where  
20 they are, if that's acceptable to them. I just raised  
21 it because we had talked about it.

22 COMMISSIONER GUNTER: Think of July 4th as  
23 "independence day."

24 MR. VANDIVER: Here comes my client. He'll  
25 eat me alive.

1 CHAIRMAN WILSON: You haven't done anything.

2 MR. BURGESS: He tried.

3 COMMISSIONER BEARD: He managed to get his  
4 client to come downstairs. (Laughter)

5 CHAIRMAN WILSON: The only other thing, Mr.  
6 Vandiver, you mentioned to me was that briefs need to  
7 relate to issue numbers that are in the Prehearing  
8 Order.

9 MR. VANDIVER: And in the absence of that, in  
10 the recommendation, Staff is not going to go through  
11 the brief and pick out any party's position on the  
12 issue. They will not appear in the recommendation.

13 MR. HOLLAND: I understand.

14 CHAIRMAN WILSON: You also provided for  
15 submission of parties' position consistent with the  
16 spread sheet that has been attached to the Prehearing  
17 Order.

18 MR. VANDIVER: I think you should direct the  
19 parties to do that now.

20 CHAIRMAN WILSON: Do you have any problem  
21 with doing that?

22 COMMISSIONER EASLEY: Are all of the parties  
23 present?

24 CHAIRMAN WILSON: We'll make them aware.  
25 That's their tough luck. As far as I'm concerned, when



1 you sign up for the case you're here from the beginning  
2 to the end.

3 MR. BURGESS: Let me ask about that last  
4 requirement. Is there a particular problem, and I  
5 guess this is directed mostly to technical Staff, if  
6 that follows the brief by a day or two, because  
7 sometimes when we're scrambling for positions, and then  
8 they change and it alters that --

9 MR. VANDIVER: No problem.

10 CHAIRMAN WILSON: That's not a problem.

11 MR. HOLLAND: Would you restate what you want  
12 because I didn't hear. You want one of those done --

13 CHAIRMAN WILSON: When we go to agenda  
14 conference to make a decision, we're going to be  
15 referring to this spread sheet that has the Staff's  
16 position as well the Company's and other intervenors.

17 I'd like for them to be accurate so -- that  
18 may not have to be due on the day the briefs are due,  
19 but sometime very soon thereafter, maybe one week  
20 following that. If you'll make sure that your numbers  
21 in your final positions agree with what's in a spread  
22 sheet and provide those to Staff.

23 COMMISSIONER BEARD: It's really updating  
24 what's in there now. You've got a good head start.

25 MR. BURGESS: I appreciate that. It won't

1 even take that long, just a couple of days.

2 CHAIRMAN WILSON: You have this program,  
3 don't you? Don't you have the computer program so you  
4 can just --

5 MR. BURGESS: Yeah, we have some.

6 CHAIRMAN WILSON: If we don't, we'll give it  
7 to you.

8 CHAIRMAN WILSON: Anything further?

9 MR. VANDIVER: Thank you, Mr. Chairman.

10 CHAIRMAN WILSON: Thank you, Mr. Vandiver.  
11 Thank you.

12 (Thereupon, hearing adjourned at 7:24 p.m.,  
13 Thursday, June 21, 1990.)

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F L O R I D A )  
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C O U N T Y O F L E O N )

CERTIFICATE OF REPORTERS

We, JOY KELLY, CSR, RPR, SYDNEY SILVA, CSR,  
RPR, Official Commission Reporter and LISA GIROD-JONES,  
RPR,

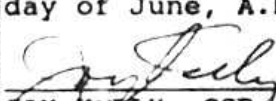
DO HEREBY CERTIFY that the hearing, in the  
captioned matter, Docket No. 891345-EI, was heard by  
the Florida Public Service Commission at the time and  
place herein stated; it is further

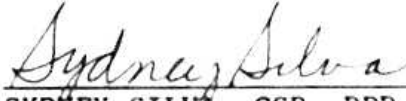
CERTIFIED that we reported in shorthand the  
proceedings held at such time and place; that the same  
has been transcribed under our direct supervision, and  
that this transcript, consisting of 4,211 pages,  
Volumes I through XXVI, inclusive, constitutes a true  
and accurate transcription of our notes of said  
proceedings; it is further

CERTIFIED that we are neither of counsel nor  
related to the parties in said cause and have no  
interest, financial or otherwise, in the outcome of  
this docket.

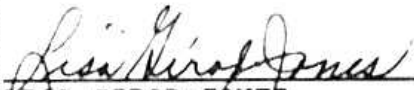
IN WITNESS WHEREOF, we have hereunto set our

1 hands at Tallahassee, Leon County, Florida, this 22nd  
2 day of June, A.D., 1990.

3   
4 JOY KELLY, CSR, RPR

  
5 SYDNEY SILVA, CSR, RPR

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