

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a rate : DOCKET NO. 900816-WS  
Increase in Martin County by :  
SAILFISH POINT UTILITY : HEARING  
CORPORATION :  
: SECOND DAY - AFTERNOON SESSION

**RECEIVED**

VOLUME - IV

Division of Records & Reporting

Pages 554 Through 699

JUL 10 1991

Sailfish Point Clubhouse

Florida Public Service Commission

2201 Southeast Sailfish Point Blvd.

Hutchinson Island, Florida 32399-0871

Met pursuant to notice at 12:45 p.m.

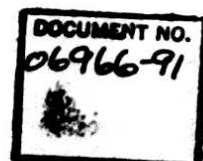
BEFORE: COMMISSIONER BETTY HASLEY, Hearing Officer  
COMMISSIONER J. TERRY DEASON

APPEARANCES:

(As heretofore noted.)

REPORTED BY:

JOY KELLY, CSR, RPR  
SYDNEY C. SILVA, CSR, RPR  
Official Commission Reporters



I N D E XWITNESSESName:Page No.

FRANK SEIDMAN (recalled)

Cross Examination by Ms. Bedell

556

Cross Examination by Mr. Reilly

557

HARRY DeNEZA

Direct Examination by Mr. Reilly

565

Resubmitted Prefiled Direct Testimony  
Inserted

567

Supplemented Prefiled Testimony Inserted

581

Cross Examination by Mr. King

584

Cross Examination by Mr. Girtman

585

Cross Examination by Ms. Davis

586

THOMAS C. DeWARD

Direct Examination by Mr. Reilly

599

Prefiled Direct Testimony Inserted

601

Cross Examination by Ms. Davis

615

Cross Examination by Mr. Girtman

621

ROGER W. RAMUSEN

Direct Examination by Mr. King

626

Voir Dire Examination by Mr. Girtman

632

Continued Direct Examination by Mr. King

635

Prefiled Direct Testimony Inserted

639

Cross Examination by Mr. Girtman

664

Cross Examination by Ms. Bedell

676

WILLIAM J. THIEL

Prefiled Direct Testimony Inserted

691

FRANCISCO PEREZ

Prefiled Direct Testimony Inserted

695



## 1 Index Continued:

2	<u>Number:</u>	<u>EXHIBITS</u>	<u>Identified</u>	<u>Admitted</u>
3	12	(Late-Filed) (Seidman) O&M Expenses Associated with Water Distribution and Wastewater Collection System	560	
5	13	(Late-Filed) (Seidman) Copies of Tri-Party Agreement and Related Documents	563	
7	14	(DeMeza) Schedules	567	599
8	15	(DeWard) Composite Schedules Nos. 1-8	600	625
10	16	(DeWard) Pages 6 through 9 of Deposition	617	625
11	17	(Rasmussen) Distribution System Deficiencies	631	635
13	18	(Rasmussen) Pages 5, 6 and 7 of Mr. Rasmussen's deposition taken on May 29, 1991	676	681
15	19	(Late-Filed) (Rasmussen) Expenditures by the POA on improvements	679	
18	CERTIFICATE OF REPORTERS			699

**AFTERNOON SESSION**

COMMISSIONER EASLEY: We'll go back on the record. Mr. Seidman has been recalled and has been previously sworn.

- - - - -

**FRANK SEIDMAN**

was recalled as a witness on behalf of Sailfish Point Utilities Corporation, and after being previously duly sworn, testified as follows:

COMMISSIONER EASLEY: Mr. Girtman, did you want to start out or --

MR. GIRTMAN: No, I believe didn't Staff have questions?

COMMISSIONER EASLEY: Staff had questions. Did you want to begin?

**CROSS EXAMINATION**

BY MS. BEDELL:

Q Mr. Seidman, isn't it correct that the Internal Revenue Code Section 168-E requires that public utility property placed in service after 1980 be normalized to qualify for ACRS depreciation?

A That is correct.

Q Was the Utility property placed in service by SPI prior to the transfer to SPUC?

A Yes, it was.

1 Q Isn't it correct that the Internal Revenue  
2 Code Section 46 requires normalization of ITCs taken on  
3 utility property?

4 A That's correct.

5 Q And isn't it also correct that the ITCs  
6 claimed by SPI should have been normalized?

7 A They should be, yes.

8 Q Do you know why this was not done?

9 A I don't know that it was or wasn't done, but  
10 it should have been done.

11 Q Shouldn't the deferred taxes and ITCs taken  
12 by SPI have been transferred to SPUC with the transfer  
13 of the assets?

14 A Yes, it should be.

15 MS. BEDELL: Thank you, that's all we have.

16 COMMISSIONER EASLEY: Mr. Reilly?

17 MR. REILLY: While this witness is up, could  
18 I ask just one question with the hope of trying to  
19 secure a late-filed exhibit, one quick question?

20 COMMISSIONER EASLEY: Go right ahead.

21 CROSS EXAMINATION

22 BY MR. REILLY:

23 Q It relates to O&M expenses associated with  
24 maintaining and repairing the water distribution and  
25 the wastewater collection system. There has been a lot

1 of talk about a dichotomy of the Utility parcel versus  
2 the Utility assets located on the common properties.

3           Could you provide a late-filed exhibit that  
4 would segregate out in your judgment the O&M expenses  
5 associated just with the water distribution and  
6 wastewater collection system on an annual basis?

7           A     I can only say I can try. This Utility is a  
8 Class C Utility, and the requirement for the books for  
9 this Utility did not require a breakout by classes by  
10 function, such as a source of supply or transmission  
11 system. It would require going in, and I'm assuming  
12 you're asking this for just the one year?

13           Q     For ratemaking purposes, what you have  
14 embedded. I understand -- I asked you off the record,  
15 you know, was there anything in the MFRs that  
16 segregated out those costs and you said that there  
17 wasn't?

18           A     That's correct. So talking about the  
19 historic year that's represented in the MFRs, we'd have  
20 to go back and look through basically the invoices paid  
21 to determine if parts that were purchased were parts  
22 for the transmission and distribution versus the  
23 plants. And other than that, make an allocation, you  
24 know, an estimate of what the time would be spent by  
25 the --



1           **COMMISSIONER EASLEY:** Do you have any feel  
2 for how many invoices? Are we talking about six or  
3 seven transactions or are we talking about 60 or 70  
4 transactions?

5           **WITNESS SEIDMAN:** Well, I don't know. To go  
6 through them, I have to go through all of them for 12  
7 months, which would be, I would say probably several  
8 hundred in that category of maintenance. But --

9           **Q**     **(By Mr. Reilly)** And then some allocation for  
10 what portion of people's time and so forth?

11          **A**     Yes. And that would be an estimate because  
12 their time is not broken down that way.

13          **MR. REILLY:** We would in this late-filed  
14 request accept his best faith effort in trying to  
15 quantify that figure.

16          **MR. GIRTMAN:** Commissioner, you know, I don't  
17 have an objection to the general concept of trying to  
18 provide some information. My concern here is the  
19 amount of time that it's going to take and, number one;  
20 number two, whether or not it can be done; and number  
21 three, I would not want to have put into the record a  
22 bunch of guesses. If we can do it, I have no objection  
23 to trying.

24          **COMMISSIONER EASLEY:** All right. I'll tell  
25 you what let's do. We will give a Late-Filed Exhibit

1 No. 12, we will call it "Breakout of Lines" -- how do  
2 you want to -- short title.

3 MR. REILLY: "O&M Expenses Associated with  
4 Water Distribution and Wastewater Collection System."

5 (Late-Filed Exhibit No. 12 identified.)

6 COMMISSIONER EASLEY: All right. Now, if you  
7 would, Mr. Seidman, ascertain if that information can  
8 be collected and to what extent it can be collected.

9 To the extent that it is information that you  
10 can determine from your records, file it as Late-Filed  
11 Exhibit 12. If you find that it is, as Mr. Girtman  
12 characterized it, nothing but a bunch of guesses, I  
13 would suggest to you that you inform the Commission and  
14 Mr. Reilly and Mr. King that that would be the result.  
15 And I would suggest, Mr. Reilly, that there would be no  
16 point in having an exhibit that is a bunch of guesses.

17 MR. REILLY: Right. Did you earlier say that  
18 I had to reaffirm the earlier request we had about any  
19 information that he could secure concerning the  
20 tri-party agreement, outside counsel, and so forth.

21 COMMISSIONER EASLEY: We had asked if they  
22 could ascertain if that information was available, yes.  
23 Is that information available from Mr. Bloomquist?  
24 Have we made that determination yet?

25 MR. GIRTMAN: We haven't been able to find

1 out from the phone calls we've been able to make up  
2 until now.

3 MR. REILLY: I would just reaffirm the  
4 request and then set some time period? Or what does  
5 the Commission feel is appropriate to close this out?

6 COMMISSIONER EASLEY: Will you be specific  
7 one more time for the record what it is you are  
8 requesting that they obtain from Mr. Bloomfield, if  
9 they can obtain it?

10 MR. REILLY: It's my understanding we are  
11 trying to seek copies of the tri-party agreement if any  
12 such agreement was prepared. Any drafts, any  
13 memorandums that would shed light on the issue of what  
14 ultimately was decided to be done and the reasons for  
15 that decision. Mr. Pizzasa's notes, specifically, and  
16 the outside general counsel notes that we mentioned  
17 earlier in the record.

18 MR. GIRTMAN: Commissioner, in the time that  
19 we have had since yesterday, there have been numerous  
20 telephone calls to various people trying to find out  
21 the information that has been elicited, and to date we  
22 have not been able to find out. We can certainly  
23 continue to look and will be glad to try.

24 COMMISSIONER EASLEY: Is it that you -- let  
25 me ask what it is you're asking. Are you looking for

1 Mr. Bloomfield and haven't found him or --

2 MR. GIRTMAN: No, Bloomquist.

3 COMMISSIONER EASLEY: Bloomquist, I beg your  
4 pardon.

5 MR. GIRTMAN: Yes, we have been able to talk  
6 to him.

7 COMMISSIONER EASLEY: Ah-ha. So what we  
8 haven't found the documents that have been requested.  
9 We have found the potential source of the documents,  
10 but that's it. Is that what you're telling me?

11 MR. GIRTMAN: Excuse me?

12 COMMISSIONER EASLEY: We have found the  
13 potential source of the documents; that potential  
14 source of the documents hasn't found the documents?

15 MR. GIRTMAN: Correct.

16 COMMISSIONER EASLEY: I see. I'm going to  
17 put a time limit on it. I'm going to call it  
18 Late-Filed Exhibit 13. I will tell the Company that if  
19 they have been unable to find the documents by the end  
20 of -- what is today? Today is Thursday -- by one week  
21 from today, they don't have to file it.

22 MR. GIRTMAN: We'll notify one way or the  
23 other what we're going to do.

24 COMMISSIONER EASLEY: Short title will be  
25 "Copies of Tri-party Agreement and Related Documents."



1           MR. GIRTMAN: I have been told that's the  
2 Fourth of July, maybe we can do it by the 5th?

3           COMMISSIONER EASLEY: I beg your pardon,  
4 let's make it on the 5th, by close of business on the  
5 5th. All right, notify the parties if you're unable to  
6 comply.

7           (Late-Filed Exhibit No. 13 identified.)

8           COMMISSIONER DEASON: Madam Chairman, I have  
9 a question.

10          COMMISSIONER EASLEY: That date for that  
11 late-filed exhibit will be for that late-filed exhibit  
12 only. We will set a date at the end for the other  
13 late-filed exhibits.

14          I'm sorry, Commissioner, go ahead.

15          COMMISSIONER DEASON: Thank you.

16          Mr. Seidman, earlier we had talked about Page  
17 41 of the MFRs, which is a balance sheet information.  
18 On Line 29, there is a category referred to as  
19 "Miscellaneous, Current and Accrued Liabilities," and I  
20 think we established that those amounts included the  
21 receivables and payables between the affiliates?

22          WITNESS SEIDMAN: Yes, sir.

23          COMMISSIONER DEASON: Or the advances, as  
24 they have been referred to. Can those numbers -- but I  
25 assume that those numbers also reflect some other

1 current and accrued liabilities. Can those numbers be  
2 broken out between the advances and the other current  
3 liabilities?

4 WITNESS SEIDMAN: I think that in essence all  
5 of the money that flows in flows through there, and I  
6 don't know that it's designated but I can check.

7 COMMISSIONER DEASON: If you could check and  
8 find out how much, if it can be broken out, and if you  
9 can, break it on out between the advances and whatever  
10 is left over just being other current liabilities?

11 WITNESS SEIDMAN: Advances for what  
12 particular reason? They're all advances.

13 COMMISSIONER DEASON: All advances, yes.

14 WITNESS SEIDMAN: That's what that category  
15 is, it's all advances.

16 COMMISSIONER DEASON: There's nothing else in  
17 there other than advances?

18 WITNESS SEIDMAN: No, as far as I know,  
19 that's it.

20 COMMISSIONER DEASON: The Company has no  
21 current liabilities other than advances?

22 WITNESS SEIDMAN: No, that's it, yeah.

23 COMMISSIONER DEASON: Okay, fine, thank you.

24 COMMISSIONER EASLEY: Anything on redirect,  
25 Mr. Girtman?

1 MR. GIRTMAN: No, na'an.

2 COMMISSIONER EASLEY: Thank you very much,  
3 Mr. Seidman. Now, you're excused.

4 (Witness Seidman excused.)

5 COMMISSIONER EASLEY: I believe we're ready  
6 for Mr. DeMeza. Mr. Reilly, is that right?

7 MR. REILLY: Yes, na'an.

8 COMMISSIONER EASLEY: Mr. DeMeza, were you  
9 sworn yesterday?

10 WITNESS DeMEZA: Yes, na'an.

11 COMMISSIONER EASLEY: Thank you.

12 - - - - -

13 HARRY DeMEZA

14 was called as a witness on behalf of the Citizens of  
15 the State of Florida and, after being previously duly  
16 sworn, testified as follows:

17 COMMISSIONER EASLEY: At your pleasure, Mr.  
18 Reilly.

19 DIRECT EXAMINATION

20 BY MR. REILLY:

21 Q Would you please state your name and business  
22 address for the record, please?

23 A My name is Harry DeMeza, 1800 Peachtree  
24 Street, Atlanta, Georgia.

25 Q As part of your involvement in this case, did

1 you prepare prefiled direct and supplemental testimony?

2 A Yes.

3 Q If I were to ask you the same questions posed  
4 in your prefiled direct and supplemental, would your  
5 answers be the same today?

6 A Yes.

7 Q In your prefiled testimony, you also sponsor  
8 and refer to a number of exhibits. Do you continue to  
9 endorse and sponsor those exhibits today?

10 A Yes.

11 MR. REILLY: What I would like to do at this  
12 time is move the prefiled direct testimony into the  
13 record as though read and that his exhibits be numbered  
14 as a composite exhibit.

15 COMMISSIONER EASLEY: All right, Mr. Reilly,  
16 I have two pieces of direct testimony from Mr. DeMeza,  
17 both of which have the same date stamp on them. One is  
18 called "Direct Testimony," the other is "Resubmitted  
19 Direct Testimony." Which should I use?

20 MR. REILLY: You should only use the  
21 Resubmitted Direct Testimony. It's the same substance,  
22 but there were some schedules in the body of his  
23 testimony that the Clerk requested that be removed from  
24 the text and put in the schedule portion.

25 COMMISSIONER EASLEY: All right, fine. I



1 just want to be sure we're using the right piece of  
2 testimony. The resubmitted direct testimony of Mr.  
3 DeMeza will be inserted into the record as though read.  
4 The schedules attached to that direct testimony?

5 MR. REILLY: I would suggest just one  
6 composite.

7 COMMISSIONER EASLEY: Yes, consisting of 14  
8 schedules will be Composite Exhibit 14.

9 (Exhibit No. 14 marked for identification)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

**PREFILED TESTIMONY OF HARRY DEMEZA  
REPRESENTING THE OFFICE OF PUBLIC COUNSEL  
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION  
SAILFISH POINT UTILITY CORPORATION  
PSC DOCKET 900816-WS**

**Q WILL YOU STATE YOUR NAME, POSITION, AND EMPLOYMENT ADDRESS?**

**A My name is Harry DeMeza. I am a Civil Engineer and the Chief Civil Design Engineer for Southern Engineering Company. My mailing address is 1800 Peachtree Street, Atlanta, Georgia 30367-8301.**

**Q COULD YOU OUTLINE YOUR QUALIFICATIONS AND WORK EXPERIENCE?**

**A I studied civil engineering at Georgia Institute of Technology for a period of four years (1948-1952) completing all civil engineering courses. For personal reasons, I did not complete the administrative requirements that the University has before conferring a Bachelor of Science degree. I immediately began work with the John J. Harte Company, a consulting engineering firm. Three years later in 1955, I joined two other partners to start the firm of Garcia and Associates, Inc., a consulting engineering firm. In 1958 I joined the Wiedeman and Singleton Consulting**

1       Engineering Firm where I remained until 1977 when I  
2       joined the firm of Southern Engineering Company. All  
3       of my thirty eight years experience has been with water  
4       and wastewater utilities engineering. This work has  
5       included preparation of engineering application and  
6       feasibility studies, accomplishment of design and  
7       preparation of plans and specifications for water  
8       distribution systems and water purification plants;  
9       impounding reservoirs and dams; wastewater collection  
10      systems and wastewater treatment plants. I have also  
11      performed rate studies for water and wastewater  
12      projects, construction management for civil projects  
13      and a variety of other consulting services including  
14      the preparation of operation and maintenance manuals  
15      for many of the facilities I have designed. This work  
16      has been accomplished for over one hundred clients in  
17      the Southeast including Georgia, Florida, South  
18      Carolina, North Carolina, Tennessee and Alabama. In my  
19      design experience, I have become very familiar with the  
20      design requirements as well as the rules and  
21      regulations of the Florida Department of Environmental  
22      Regulation and those of other southeast states. For  
23      the past thirteen (13) years, I have designed additions  
24      to the water distribution system and wastewater  
25      collection, treatment and disposal facility for Talquin  
26      Electric Cooperative, Tallahassee, Florida.

1 Q ARE YOU A REGISTERED ENGINEER?

2 A No.

3

4 Q ARE YOU A MEMBER OF ANY PROFESSIONAL OR TECHNICAL  
5 SOCIETIES?

6 A Yes. I am a member of the Georgia Water and Pollution  
7 Control Association.

8

9 Q HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC  
10 SERVICE COMMISSION?

11 A Yes. I have testified as a consultant to the Office of  
12 Public Counsel in the following rates cases:

13 1. Orange-Osceola Utilities, Inc.

14 Docket No. 87134-WS

15 2. St. George Island Utility Company

16 Docket No. 880520-WU

17 3. Southern States Utilities, Inc.

18 Docket No. 880520-WS

19 4. Southern States Utilities, Inc.

20 Docket No. 900329-WS

21

22 Q WHAT IS THE SUBJECT MATTER OF YOUR TESTIMONY?

23 A I am prepared to testify about the existing Water  
24 Supply, Treatment and Distribution Systems and  
25 Wastewater Treatment and Collection Systems at Sailfish  
26 Point and my calculations of Used and Useful.

27



1 Q WHAT MATERIAL HAVE YOU REVIEWED IN PREPARATION FOR THIS  
2 CASE?

3 A The following material I have reviewed to prepare my  
4 testimony.

- 5 1. Letter to Public Service Commission from Ben E.  
6 Gritman, dated October 26, 1990.
- 7 2. Public Service Commission "Memorandum" dated  
8 February 7, 1991.
- 9 3. Order Establishing Procedure  
10 Docket No. 900816-WS  
11 Order No. 24136  
12 Issued 2/19/91
- 13 4. MFR Volume I Application of Sailfish Point Utility  
14 Corporate For Increase Rates in Martin County.
- 15 5. MFR Volume II Application of Sailfish Point  
16 Utility Corporation For Increase Rates in Martin  
17 County.
- 18 6. MFR Volume III Application of Sailfish Point  
19 Utility Corporation For Increase Rates in Martin  
20 County.
- 21 7. Testimony of Frank Seidman.
- 22 8. Testimony of William D. Reese.

23  
24 Q IN YOUR CALCULATIONS OF U & U, DID YOU ALLOW FOR A  
25 MARGIN OF RESERVE AND WHY?

26 A No, I did not allow for a margin of reserve in my  
27 calculations because in my opinion a margin of reserve

1 is not the responsibility of the user of the utility  
2 but rather the responsibility of the utility company or  
3 developer. Although water treatment and distribution  
4 systems, as well as wastewater treatment and collection  
5 systems must be designed with a margin of reserve, it  
6 is a challenge for the engineer and utility company or  
7 developer to find the most cost effective system that  
8 will accept additions when required by additional  
9 development. The risk which the utility company or  
10 developer takes is compensated by the profit he makes  
11 on the return on his investment. Since the utility  
12 user has no equity in this development he has no  
13 responsibility for the return on the investment.  
14 Therefore, a margin of reserve is not appropriate for  
15 rate determinations. Typically, the utility company or  
16 developer recovers his margin of reserve with  
17 appropriate tap-on fees which are paid by new customers  
18 to the water and sewer systems.

19  
20 Q IF THE COMMISSION DOES NOT AGREE WITH YOUR  
21 RECOMMENDATION OF NO MARGIN OF RESERVE, DO YOU AGREE  
22 WITH THE METHOD USED BY THE UTILITY IN CALCULATING  
23 MARGIN OF RESERVE?

24 A No. The method used by the Utility is not the five-  
25 year average as recommended by Staff. For example,  
26 customer growth for the year ending June 1986 was 7;  
27 for year ending June 1987 was 24; for year ending June

1 1988 was 26; for year ending June 1989 was 24, and for  
 2 year ending June 1990 was 57. The average for the five  
 3 years is 27.6. Therefore, for the 18-month  
 4 construction time:  $27.6 \times 1.5 = 41.4$  ERC.

5  
 6 Based on water sold of 99,310 GPY or 272 GPD per ERC,  
 7 these ERC of  $41.4 \times 272$  GPD = 11,261 GPD. The  
 8 comparison between the five-year average and the method  
 9 used by the Utility is as follows:

		<u>Utility</u>
10		
11	6/90 11,261 GPD	29,941 GPD
12	6/91 11,261 GPD	35,548 GPD
13	6/92 11,261 GPD	39,285 GPD

14 These projections by the Utility are excessive.

15  
 16 Q HAVE YOU VISITED THE OPERATING SITE FOR THIS RATE CASE?

17 A. Yes. On April 2, 1991, I visited both the water  
 18 treatment plant and the wastewater treatment  
 19 facilities.

20  
 21 Q WHAT WAS THE PURPOSE FOR THIS VISIT?

22 A My purpose was to become familiar with some of the  
 23 different types of existing facilities, their physical  
 24 condition, their method of operation, their quality of  
 25 treatment, and the plans for future expansion.

26

1 Q WHAT CONCLUSIONS HAVE YOU MADE WITH REGARD TO THE  
2 UTILITY SYSTEM?

3 A Both the Water Treatment and Wastewater Treatment are  
4 in excellent condition and very well operated.

5  
6 Q WHAT GENERAL STATEMENT DO YOU HAVE WITH REFERENCE TO  
7 FIRE FLOW AS IT HAS BEEN PRESENTED IN THIS CASE?

8 A Fire flow requirements are set by local ordinance to  
9 protect the structures in the service area. The  
10 ability of the utility to provide this service depends  
11 on the ability of the water system to provide the  
12 required pumping and storage to meet the local  
13 ordinance requirements with the largest pump out of  
14 service. This system requires, in addition to the  
15 maximum daily flow (124 GPM), 1,500 GPM for a duration  
16 of 2 hours. This means that the system must be able to  
17 deliver at the hydrant located at the Condo's a flow of  
18 1,500 GPM at a minimum of 20 psi. The two (2) hour  
19 duration represents 180,000 gal. storage. The storage  
20 is available; however, when the largest pump (1,100  
21 GPM) is out of service, the system theoretically has  
22 630 GPM. Actually, it has less. The actual system  
23 capacity can be calculated by constructing system head-  
24 capacity and pump characteristic curves. This is  
25 usually done by the utility's engineer to assist him in  
26 the determination of system capability as to flow and  
27 pressure throughout the distribution system. In the



1 1990 test year, the system theoretically could provide  
 2 the maximum daily flow of 124 GPM and a minimum fire  
 3 flow of 500 GPM. In the 1991 and 1992 test year, the  
 4 system can only provide the maximum daily flow and the  
 5 remaining pumping capacity is less than the required  
 6 minimum fire flow. Therefore, in the U & U calculation  
 7 for 1991 and 1992, fire flow is not included.  
 8

9 Q WHAT CALCULATIONS OF EQUIVALENT RESIDENTIAL CONNECTION  
 10 (ERC) HAVE YOU USED TO EQUATE DIFFERENT FLOWS TO ERC?

11 A Based on the projected growth of customers and the  
 12 number of gallons of water sold as shown on MFR, Vol.  
 13 I, Schedule B-3, O & M Proj., I made my calculations  
 14 which can be found in Schedules 1 and 2.  
 15

16 Q DO YOU AGREE WITH THE CALCULATED PROJECTED PEAK DAY  
 17 WATER DEMAND?

18 A No. The test year ended 6/90 shows that the water sold  
 19 was 30,224,000 gallons and that the peak day was  
 20 178,600 GPD. If the projection for 6/91 water sales is  
 21 33,401,000 gallons and the same percent increase for  
 22 peak, then the following is the peak flow for 1991:  
 23

$$\begin{array}{rcl}
 \frac{30,224,000}{33,401,000} & = & \frac{178,600 \text{ GPD}}{X} \\
 X & = & 197,374 \text{ GPD}
 \end{array}$$

24  
 25  
 26  
 27  
 28  
 29

1 Likewise, the projection for the year ending 6/92,  
2 water sales of 37,134,000 gallons and the same percent  
3 increase for peak flow, then the following is the peak  
4 flow for 1992:

$$\begin{array}{rcl} 5 & \frac{33,401,000}{37,134,000} & = \frac{197,374 \text{ GPD}}{Y} \\ 6 & & \\ 7 & & \\ 8 & Y & = 219,433 \text{ GPD} \end{array}$$

9  
10 In my Used and Useful calculations, I have used these  
11 peak flows as calculated above.

12  
13 Q DO YOU AGREE WITH THE CALCULATED AVERAGE DAILY  
14 WASTEWATER FLOW?

15 A Yes.

16  
17 Q WHAT IS YOUR OPINION WITH REGARD TO THE NORMAL MEMBRANE  
18 LIFE AND CHANGE-OUT PROGRAM?

19 A At this time, I feel I do not have sufficient  
20 information on the new spiral wound membranes.  
21 However, a change-out program of replacement of two  
22 vessels (12 membranes) every two years at an estimated  
23 cost of \$25,000 each year seems excessive and requires  
24 additional research which shall be presented to the  
25 Commission on or before the hearing date.

26  
27 Q WILL YOU DESCRIBE THE WATER TREATMENT PLANT OPERATIONS,  
28 THE DISTRIBUTION SYSTEM AND THE FIRE FLOW?

1       A     The water treatment plant is a reverse osmosis type of  
2             water treatment process which produces 250,000 GPD.  
3             This is accomplished with two completely separate  
4             plants rated at 125,000 GPD each. Expansion to 350,000  
5             GPD is scheduled for completion in 1992. There are  
6             three raw water wells: one rated at 175 GPM and two at  
7             700 GPM. One well has a very poor water quality and is  
8             used only as a standby.

9  
10            After the water is treated, it is stored in two ground  
11            storage tanks with a capacity of 184,000 Gal. and  
12            281,104 gal; one 9,000 gal. clearwell and a system  
13            hydropneumatic tank with a capacity of 10,000 gal.

14  
15            Water is pumped into the distribution with three high  
16            service pumps rated at 210,420 and 1,100 GPM.

17  
18            The maximum daily flow for year which ended June 30,  
19            1990 was 178,600 GPD (124 GPM). The required fire flow  
20            as stated on Schedule F-3, Page 1 of 1 of the MFR is  
21            1,500 GPM for 2 hours for Condo's.

22  
23            With the largest pump out of service, the system cannot  
24            provide the required water demands of Sailfish Point.  
25            The system may be able to provide the maximum daily  
26            demand and a fire rating of 500 GPM for as long of a  
27            duration as set by local ordinance. In addition to

1 pump capacity, storage and minimum pressure, fire  
2 protection requires that the required fire flow, in  
3 this case 1,500 GPM, must be available at the fire  
4 hydrant located at the Condo's at a pressure not less  
5 than 20 psi. If this service of domestic water and  
6 fire flow is not available, it should not be considered  
7 in the Used and Useful calculation.

8  
9 Since the Water Treatment Plant addition is planned for  
10 completion during 1992, my Used and Useful calculation  
11 for year ending 6/92 will consider the addition of  
12 100,000 GPD for a total plant capacity of 350,000 GPD.

13  
14 Q WHAT ARE THE APPROPRIATE USED AND USEFUL CALCULATIONS  
15 FOR THE WATER TREATMENT PLANT AND WATER DISTRIBUTION  
16 SYSEM?

17 A The appropriate Used and Useful calculations can be  
18 found on Schedules 3, 4, 5, 6, 7 and 8 attached to the  
19 testimony.

20  
21 Q WILL YOU DESCRIBE THE WASTEWATER TREATMENT PLANT AND  
22 SEWER COLLECTION SYSTEM?

23 A The existing wastewater treatment facility is an  
24 extended aeration treatment plant with land application  
25 of the plant effluent. The original plant constructed  
26 has a capacity of 125,000 GPD and all of the plant  
27 final effluent is used for spray irrigation of the golf



1 course. DER requires very stringent treatment and  
2 plant reliability when applying the effluent on public  
3 access area.

4  
5 The regulatory requirements for equipment redundancy  
6 was addressed by the Utility at a time when the plant  
7 flows were over 65% of plant capacity. As a general  
8 condition of DER regulations permittee's when they  
9 reach this percentage of plant capacity plans for  
10 future expansion must be submitted. It has been  
11 projected that flows by June 30, 1992 will reach  
12 100,142 GPD average. This represents 80% of plant  
13 capacity and the DER rule says that construction starts  
14 at that time to provide for future expansion. The  
15 permit application submitted by the Utility for the  
16 present construction in progress is based on proposed  
17 growth and not redundancy; therefore, plant capacity of  
18 250,000 GPD will be used in the calculations for Used  
19 and Useful.

20  
21 Q WHAT ARE THE APPROPRIATE USED AND USEFUL CALCULATION  
22 FOR THE WASTEWATER TREATMENT PLANT AND SEWER COLLECTION  
23 SYSTEM?

24 A The Used and Useful calculations can be found on  
25 Schedules No. 9, 10, 11, 12, 13, and 14 attached to  
26 this testimony.

27

1 Q WHAT METHODOLOGY AND STANDARDS OF THE USED AND USEFUL  
2 DETERMINATIONS HAVE YOU USED IN YOUR CALCULATIONS?

3 A The methodology and standards of the Used and Useful  
4 determinations used in my calculations is based on  
5 MEMORANDUM dated November 14, 1982; TO: Dale A. Knapp,  
6 Director, Water & Sewer Department; FROM: J. D.  
7 Collier, Asst. Director, Water & Sewer Department; RE:  
8 Used and Useful Determinations - Water and Sewer Case -  
9 Project WE-81-11-012.

10

11 Q DOES THIS CONCLUDE YOUR TESTIMONY?

12 A Yes it does.

**PREFILED SUPPLEMENTARY TESTIMONY OF HARRY DE MEZA  
REPRESENTING THE OFFICE OF PUBLIC COUNSEL  
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION  
SAILFISH POINT UTILITY CORPORATION  
PSC DOCKET 900816-WS**

**Q WILL YOU STATE YOUR NAME, POSITION, AND EMPLOYMENT  
ADDRESS?**

**A My name is Harry De Meza. I am a Civil Engineer and  
the Chief Civil Design Engineer for Southern  
Engineering Company. My mailing address is 1800  
Peachtree Street, Atlanta, Georgia 30367-8301.**

**Q WHAT IS THE PURPOSE OF YOUR SUPPLEMENTARY TESTIMONY?**

**A The purpose of my prefiled supplementary testimony  
is to give my opinion with regard to the normal  
membrane life of the RO units and the Utilities cost  
of the Change-Out Program.**

**The original RO membrane system at the Sailfish  
Water Plant are of the hollow fiber configuration  
offering the greatest ratio of surface area to  
volume. This membrane system has offered an  
excellent water quality and a long life of as much  
as 10 years of service. This long life of the RO**

1 units can be attributed to the excellent operation  
2 of the plant particularly the operation of the raw  
3 water wells and the prefilter. The purpose of the  
4 prefilter is to protect the high pressure pump and  
5 membranes from large particles. The disposable  
6 cartridges are inspected and replaced at frequent  
7 intervals to produce a high efficient plant.

8  
9 This history of excellent operation must be  
10 considered in the life of the new membrane system.  
11 The new membrane system is of the spiral wound  
12 cellulose acetate. The proposed system will have  
13 seven (7) assemblies with six (6) membranes each or a  
14 total of forty-two (42) membranes.

15  
16 The standard life of the membranes is 3-5 years.  
17 The Utility is proposing a Change-Out Program which  
18 allows for a 3-year life when all 42 membranes are  
19 installed. The change-out will be accomplished  
20 every two (2) years with the first change-out in  
21 1994 replacing 14 membranes.

22  
23 The Utility is proposing a cost of \$25,000 per year  
24 as a replacement cost for the Change-Out Program.  
25 In my opinion, the life of the membranes should be  
26 four (4) years and not three (3) as suggested by the



1 Utility, based on the excellent history of operation  
2 and with a change-out of eleven (11) membranes in  
3 1995 at a cost of \$1,700 per membrane or a total of  
4 \$18,700. This represents a savings of approximately  
5 25% of the Utility's estimated cost of \$25,000. My  
6 estimated cost is based on \$1,480 (1991 dollars) per  
7 membrane installed plus 15% inflation cost for a  
8 total of \$1,700 per membrane in 1995.

9

10 Q DOES THIS CONCLUDE YOUR SUPPLEMENTARY TESTIMONY?

11 A Yes, it does.

1 MR. REILLY: I tender the witness.

2 COMMISSIONER EASLEY: Mr. King, you do not  
3 have cross, I assume, or do you?

4 MR. KING: No.

5 COMMISSIONER EASLEY: Mr. Girtman?

6 MR. KING: Excuse me, I do have one question.

7 COMMISSIONER EASLEY: All right.

8 CROSS EXAMINATION

9 BY MR. KING:

10 Q Mr. DeNeza, have you been furnished in your  
11 review of the facilities here any sort of information  
12 that is a description of the facility with a history of  
13 when certain components were put in?

14 A Yes, I have.

15 Q And does that document -- was it in the form  
16 of a document?

17 A Yes. Well, it's --

18 Q A writing, I mean.

19 A Yes, it's typed material.

20 MR. KING: Commissioner, this is a statement  
21 on the back of that. As I understand it, the source is  
22 from the Utility. What I would like to do is I think  
23 it quantifies the issue about the Southeast Marina Way  
24 and what the extent of that problem is; it's just one  
25 paragraph. Maybe I should have asked Mr. Girtman.

1 Maybe we can just read it into the record would be the  
2 easiest way to deal with it.

3 COMMISSIONER EASLEY: Mr. Girtman, have you  
4 seen what Mr. King is referring to?

5 MR. GIRTMAN: I have seen this. It doesn't  
6 have any indication who authored it or where it came  
7 from or the reliability of the information. I've read  
8 this thing, but I've got no idea where it came from and  
9 I would have to object to it on that basis. I have no  
10 idea.

11 Q (By Mr. King) Mr. DeMeza, where did you get  
12 yours from?

13 A It was mailed to me from the Office of Public  
14 Counsel.

15 MR. KING: Thank you.

16 COMMISSIONER EASLEY: Mr. Girtman?

17 CROSS EXAMINATION

18 BY MR. GIRTMAN:

19 Q Mr. DeMeza?

20 A Yes, sir.

21 Q How much experience have you had in designing  
22 and permitting reverse osmosis plants with the  
23 accompanying membranes?

24 A I have never designed a reverse osmosis  
25 plant.

1 Q Okay. Are you a Registered Engineer?

2 A No, sir, I'm not.

3 Q Therefore, isn't it true that you're not  
4 allowed to sign engineering plant applications or to  
5 sign permit applications?

6 A That is correct.

7 MR. GIRTMAN: No further questions.

8 COMMISSIONER EASLEY: Staff?

9 MS. DAVIS: Yes, ma'am.

10 CROSS EXAMINATION

11 BY MS. DAVIS:

12 Q Mr. DeNeza, on Page 5 of your testimony, you  
13 make the following statement concerning margin  
14 reserves, quote: "The risk which the Utility company  
15 or developer takes is compensated by the profit he  
16 makes on the return on his investment." Correct?

17 A That is correct.

18 Q Would you agree that margin reserve is one  
19 mechanism for ensuring that the utility company is  
20 compensated for the risk it takes to be ready to meet  
21 its obligation to serve?

22 A Yes, for future customers.

23 Q Referring to Schedule F-8 in the Company's  
24 MFRs, that's Page 143 -- (Pause)

25 Would you agree that the Utility has



1 overstated its margin reserve by using peak day to  
2 calculate margin reserve instead of using yearly flows?

3 A Yes.

4 Q Referring to Pages 7 and 8 of your testimony  
5 now, isn't it correct that in your testimony you  
6 allowed the Utility fire flow for 1990 but not for 1991  
7 and 1992 because the Utility fell short of its fire  
8 flow requirement?

9 A That is correct.

10 Q Would you agree that it would be more logical  
11 to perhaps penalize the Utility in some way instead of  
12 disallowing fire flow completely?

13 A Well, I'm not sure that I would put it that  
14 way, but I would say that the Utility has a  
15 responsibility, if they are providing fire flow, that  
16 they provide the fire flow that is necessary to meet  
17 those requirements of the County. And as you will  
18 notice, on the 1990 I did not give the  
19 1500-gallons-per-minute allowance, I gave the  
20 500-gallon-per-minute allowance, because they do have  
21 that particular responsibility in some areas of the  
22 facility but not necessarily all of it.

23 So, yes, I think that they should be given  
24 credit for that.

25 Q I see.

1 Referring to Schedule No. 4 attached to your  
2 testimony, you show the Utility as having 580 ERCs at  
3 build-out, is that correct?

4 A That is correct.

5 Q And isn't it correct that the Utility in its  
6 MFRs shows 580 as the number of potential connections  
7 and not ERCs?

8 A Yes, that is correct.

9 Q Okay. In your used and useful calculation  
10 then on Schedule 4, aren't you mixing ERCs and  
11 connections? (Pause)

12 A That may be possible, yes. I'd have to look  
13 at some more data to be absolutely sure, but that is a  
14 possibility.

15 Q Okay. On Schedule No. 1 of your testimony,  
16 if we add up the number of residential and other  
17 customers, it comes to 166 --

18 A What schedule is that again?

19 Q Schedule 1 attached to your testimony.

20 A Yes.

21 Q We add that 142 and 24, that comes to 166, I  
22 believe. And on Schedule 2 of your testimony, if we  
23 add up residential and others, the total number of  
24 customers for wastewater would be 154. Correct?

25 A I'm not sure I have it. Were you referring

1 to Schedule 1?

2 Q Schedule 1 attached to your testimony?

3 A That is the water treatment plant?

4 Q Right. And then Schedule No. 2 is the  
5 wastewater?

6 A Schedule No. 2 is the water distribution  
7 system.

8 Q Not in the testimony, the resubmitted  
9 testimony? As I have it, it's --

10 A I can find the sewage treatment --

11 Q Mine is titled "Wastewater Collection  
12 System."

13 A Oh, "Wastewater Collection System."

14 Q Right. Schedule No. 2 is what it's marked  
15 here.

16 A For what year, 6-90?

17 Q Yes.

18 A Sewage collection system?

19 MR. REILLY: Right here?

20 A Yeah, that's a little bit different than what  
21 I've got.

22 Q If we added the 142 and the 12, that would  
23 come to 154, I believe.

24 A That's correct.

25 Q Now, would you agree that, since the number

1 of water and wastewater connections are almost the  
2 same, that their transmission and collection line used  
3 and useful percentage should also be almost the same?  
4 But yet in your schedules for '92, you show 64% used  
5 and useful for water and a 75% used and useful for  
6 wastewater. Could you explain why that occurred?

7 A I'm not sure I follow you completely. But  
8 it's not necessarily true that these percentages would  
9 be the same. For instance, the capacity of the plant  
10 may be much less than the capacity of the distribution  
11 system or collection system.

12 Q We're talking about collection systems, not  
13 plant size.

14 A Right. Well, the collection -- well, I was  
15 just using that as an example that the percentages.  
16 Are you referring to the percentages of the water  
17 distribution system and the collection system?

18 Q Yes.

19 A Okay. Well, the capacity, the way those are  
20 determined are two different flows. In other words,  
21 two different ways that you find ERCs. One is based on  
22 the sewage flow and one is based on the water flow per  
23 connection.

24 Q All right, sir.

25 A It's very possible that you could have more



1 customers on a sewer system than you could have on a  
2 water system, and that happens.

3 Q What about this system where our figures in  
4 the schedule show that there are fewer wastewater  
5 customers than there are water customers?

6 A That's what the MFRs indicate, that they will  
7 have less sewer customers than they have water  
8 customers.

9 Q But yet you found the used and useful  
10 percentage for sewer to be higher than water, even  
11 though there are a fewer number of customers?

12 A The relationship between the number of  
13 customers compared to the amount of flow that would  
14 come into the plant in relationship to the size of --  
15 I'm getting the sewage treatment plant again in there.  
16 But the relationship between those customers and the  
17 total capacity of that system to carry those customers  
18 can have a different ratio than you would have for  
19 water.

20 Q I see. You were here earlier, I believe,  
21 when Mr. Reese was asked about the redundancy rules  
22 that DER has. Are you familiar with those rules?

23 A Well, the redundancy rules are different for  
24 the facility that you're speaking of in this particular  
25 case, a sewage treatment plant. Those redundancies,

1 I'm familiar with only with what was in the MFRs.

2 Q So did you or did you not take the redundancy  
3 requirements into account when you made your used and  
4 useful calculations?

5 A In my calculations I made -- or, rather, in  
6 my testimony I stated that when the plant reaches 65%  
7 of its capacity, you must make plans for addition. At  
8 the time that they permitted to the State for additions  
9 to the plant, which was identified as their redundancy,  
10 actually, their permit indicates that that plant is  
11 capable of processing twice as much as that flow. So  
12 their permit says \$250,000 gallons. Therefore, the  
13 redundancy is just immaterial because they had to do it  
14 anyway.

15 Q I see. And one final question.

16 On Page 2 of your supplementary testimony,  
17 you state that the life of the spiral wound membranes  
18 should be four years and not three as suggested by the  
19 Utility.

20 A Yes.

21 Q Could you explain why you chose that number?

22 A Well, the reason being that we have a history  
23 here of good operation. We have seen that the existing  
24 membranes have lasted almost 10 years. And the reason  
25 for that is that the operation of the plant is such that

1 there is a prefilter in front of this membrane. The  
2 cleaner we keep that water, the cleaner you keep those  
3 filters, the longer your membranes are going to last.

4 We're looking at a cost of maybe 15 or 20  
5 cents for a cartridge that can be disposed of as  
6 compared to \$1500 for an element. So, therefore, the  
7 good operation indicates that if you do take care of  
8 those prefilters, then your membranes are going to  
9 last.

10 Well, with that good operation history, I say  
11 that if a factory guarantees their filters for three  
12 years, with good operation it ought to last four, even  
13 though they say it could go as much as five. So I took  
14 it somewhere in-between.

15 Q I see. One follow-up to that: Have you, in  
16 your experience, worked with other utilities that have  
17 used this type of membrane? And if so, do they have  
18 any track record --

19 A No. The only track record in order to be  
20 able to testify to that was through the manufacturer,  
21 through contractors and other engineers who have used  
22 these membranes. Because I lacked that experience and,  
23 therefore, I had to go to some other source.

24 MS. DAVIS: I see. Thank you. We have no  
25 further questions.

1 COMMISSIONER EASLEY: I have one question,  
2 Mr. DeMeza.

3 When Mr. Seidman was here sometime earlier, I  
4 asked about the number of customers, and the answer I  
5 got was that in 6-90 there were 331 customers. When I  
6 look at your Schedule 1 and Schedule 2 and add together  
7 the four numbers showing number of customers at year  
8 end 6-90, I get 321. Just so we're all of the same  
9 songbook, do you have any idea why there's a difference  
10 of 10? Am I missing something?

11 WITNESS DeMEZA: I can explain how mine came  
12 about.

13 I used the historical data that was available  
14 at 6-90. Now, you had 142 residential customers. So I  
15 made a determination from those, based on the amount of  
16 water that was sold or used by those particular  
17 residential customers, of some 99,000 gallons a year.  
18 Then the other 16 million gallons of water that was  
19 sold in that year was done by another 15 customers,  
20 which represented 162 customers.

21 So when you add the two together, you get 304  
22 for the year 6-90. I think that's what my calculations  
23 show in the testimony. And I did that for the year '91  
24 and the year '92.

25 COMMISSIONER EASLEY: Now, you got me lost



1 because the numbers you just gave me aren't what I'm  
2 looking at in here. Let me walk you through and tell  
3 you what my question is again.

4 On Schedule 1, at the top of the page, Year  
5 Ended 6-90, Number of Customers: Residential shows 142;  
6 Others, 24. I added that together and got 166.

7 WITNESS DeMEZA: All right.

8 COMMISSIONER EASLEY: On the next page, the  
9 same lines, Number of Customers: Residential, 142;  
10 Others, 12. For 154.

11 I added those two numbers together, 154 and  
12 166, and I got 321. That isn't even right, 320.

13 WITNESS DeMEZA: And where did you say that  
14 was in my testimony?

15 COMMISSIONER EASLEY: Schedules 1 and 2. And  
16 I'm just trying to get to the same number of customers  
17 for historic year between you all and the Company, if I  
18 can do it.

19 WITNESS DeMEZA: My numbers came from the  
20 MFRs and I can look through and --

21 COMMISSIONER EASLEY: I'm not sure that it  
22 matters a whole lot. It just would be kind of nice  
23 using the same number of customers in some of these  
24 calculations.

25 WITNESS DeMEZA: Right. I'll correct myself.

1 I said 16 when I should have said 24, but you're  
2 absolutely right.

3 COMMISSIONER EASLEY: But you don't know why  
4 there's a difference between 331 and your 320?

5 WITNESS DeMEZA: No, I don't.

6 COMMISSIONER EASLEY: That's all I need,  
7 thank you.

8 Commissioner?

9 COMMISSIONER DEASON: Mr. DeMeza, I'm trying  
10 to understand the redundancy issue.

11 Is it basically a question of the chicken or  
12 the egg, which came first? And what I mean by that,  
13 is it a question of whether there needed to be  
14 redundancy and that was required by DER, and to meet  
15 that requirement, additional capacity was added? Or is  
16 it a situation of the Company was going to build  
17 capacity for customer growth anyway and that mooted the  
18 question of whether they needed to put in redundancy?

19 WITNESS DeMEZA: That's right. It just  
20 happened that at the time that they realized that they  
21 needed redundancy, that there was a lot of conversation  
22 which we're not privileged to between DER and the  
23 Utility. I'm sure there must have been a lot of  
24 correspondence.

25 During the time of that correspondence more

1 customers are coming in, so when the time came to  
2 actually do what DER had asked them to do, which was  
3 redundancy, it was time to enlarge the plant. So  
4 enlarging the plant met the redundancy, as well as  
5 increasing the capacity of the plant by twice as much.  
6 So they both kind of occurred at the same time.

7 COMMISSIONER DEASON: In your review of the  
8 Company's records, did you see -- did you review this  
9 correspondence or did you see a letter an order or  
10 mandate from DER that a certain measure be taken?

11 WITNESS DeMEZA: No.

12 COMMISSIONER DEASON: Okay. Thank you.

13 COMMISSIONER EASLEY: Redirect?

14 MR. REILLY: No redirect.

15 COMMISSIONER EASLEY: Thank you, Mr. DeMeza.

16 MR. GIRTMAN: Mr. DeMeza --

17 COMMISSIONER EASLEY: Oh, I'm sorry, I did  
18 leave you out all together, didn't I?

19 MR. GIRTMAN: You commented about a failure  
20 to meet at 1500-gallon standard flow. Do you mean that  
21 the Utility cannot meet that --

22 MR. REILLY: A point of clarification. I  
23 thought -- didn't you already cross examine this  
24 witness?

25 And she asked me for redirect and I said "no

1 redirect," so I don't know quite what we're doing right  
2 now. Maybe I'm wrong.

3 COMMISSIONER EASLEY: I think I'm tired. You  
4 did do cross, did you not, Mr. Girtman?

5 MR. GIRTMAN: Yes.

6 MR. REILLY: There's no second opportunity.

7 COMMISSIONER EASLEY: Unless it's something  
8 that's been raised since then, I'm afraid your  
9 opportunity --

10 MR. KING: He asked his qualifications,  
11 whether he was an engineer or not, and then he quit.

12 COMMISSIONER EASLEY: I remember now.

13 I think you're done, Mr. Girtman.

14 MR. GIRTMAN: I think you're right.

15 COMMISSIONER EASLEY: Thank you, Mr. DeMeza.

16 (Witness DeMeza excused.)

17 - - - - -

18 COMMISSIONER EASLEY: You almost had me.

19 Call your next witness, Mr. Reilly.

20 MR. REILLY: Mr. Tom DeWard.

21 COMMISSIONER EASLEY: Do you want to move any  
22 exhibits for Mr. DeMeza?

23 MR. REILLY: I would like to move his  
24 exhibits into the record. Thank you, Madam Chairman.

25 COMMISSIONER EASLEY: Without objection,



1 Exhibit 14 will be moved into the record. Composite  
2 Exhibit 14. Trust me.

3 (Exhibit No. 14 received into evidence.)

4 THOMAS C. DeWARD

5 was called as a witness on behalf of the Citizens of  
6 the State of Florida and, having been first duly sworn,  
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. REILLY:

10 Q Would you please state your name and address  
11 for the record?

12 A My name is Thomas C. DeWard. I work for the  
13 firm of Larkin & Associates, 15728 Farmington Road  
14 Livonia, Michigan 48154.

15 Q As part of your involvement in this case, did  
16 you prepare prefiled direct testimony?

17 A Yes, I did.

18 Q If I were to ask you the same questions posed  
19 in your prefiled testimony, would your answers be the  
20 same today?

21 A Yes, they would.

22 Q In your prefiled testimony, you sponsor and  
23 refer to a number of exhibits, actually you call them  
24 "Schedules." Do you continue to endorse and sponsor  
25 those Schedules 1 through 8 today?

**DIRECT TESTIMONY OF THOMAS C. DE WARD**

**601**

**ON BEHALF OF THE CITIZENS OF FLORIDA**

**BEFORE THE**

**FLORIDA PUBLIC SERVICE COMMISSION**

**SAILFISH POINT UTILITY CORPORATION**

**DOCKET NO. 900816-WS**

**I. INTRODUCTION**

**Q. WHAT IS YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS?**

**A. Thomas C. DeWard. I am a Certified Public Accountant, registered in Michigan, and a Senior Regulatory Analyst in the firm of Larkin & Associates, Certified Public Accountants, registered in Michigan and Florida, with offices at 15728 Farmington Road, Livonia, Michigan 48154.**

**Q. HAVE YOU PREPARED AN APPENDIX DESCRIBING YOUR QUALIFICATIONS AND EXPERIENCE?**

**A. Yes. I have attached Appendix I which is a summary of my experience and qualifications.**

1 Q. PLEASE SUMMARIZE YOUR FINANCIAL ACCOUNTING AND  
2 AUDITING EXPERIENCE.

3 A. For the past nine and one-half years, I have been employed by Larkin &  
4 Associates. During this time period, I have worked primarily on utility  
5 matters.

6 I spent nine years in public accounting with Peat, Marwick, Mitchell & Co.  
7 (PMM&Co.) During this time, I participated in or managed audits of  
8 industrial and commercial companies, including two large manufacturing  
9 firms. The larger clients required coordination with other PMM&Co. offices,  
10 both domestic and foreign. Some work involved registration statements and  
11 certain mandatory filings with the SEC.

12 I also served as Vice President-Finance of a manufacturing firm and as  
13 Treasurer of a firm involved in packaging, distribution and data processing  
14 services. As both of these firms were relatively small, my responsibilities  
15 were very broad and included work in virtually all of the accounting and  
16 financial areas. I prepared the financial statements, negotiated loans and  
17 payment schedules with banks, selected fringe benefit plans, negotiated  
18 insurance coverage, and prepared tax returns.

1 Q. IN HOW MANY UTILITY CASES HAVE YOU PARTICIPATED?

2 A. I have participated in approximately 100 utility cases since joining the firm  
3 in 1981. This includes multiple phases related to the cases such as partial  
4 and interim, final, rebuttal, and rehearing.

5 Q. WHAT ISSUES HAVE YOU ADDRESSED IN THOSE CASES?

6 A. I have addressed issues such as revenue requirements, rate base, operating  
7 income, capital structure, capital costs, wage levels, fringe benefits, fuel  
8 accounting, fuel refunds, fuel cost, fuel handling, insurance, O&M,  
9 contributions and memberships, advertising, inflation rates, property taxes  
10 and state and Federal income taxes including the Tax Reform Act of 1986.

11 Q. HAVE YOU PRESENTED ANY TRAINING SEMINARS ON THE SUBJECT  
12 OF PUBLIC UTILITY ACCOUNTING?

13 A. Yes. Along with two other members of the firm, we presented a one day  
14 seminar on utility accounting for the Legal Services Regional Utilities Task  
15 Force in Atlanta, Georgia. We also presented a two day seminar on utility  
16 accounting for the Utility and Rate Intervention Division of the Kentucky  
17 Attorney General. Individuals from that division as well as industry and



1 consumer groups attended the seminar. In September, 1988, we presented a  
2 two day seminar on utility accounting for the office of Consumer Advocate,  
3 Attorney General's Office, State of Pennsylvania. Individuals from that  
4 division as well as Commission Staff members attended.

5 Q. BY WHOM WERE YOU RETAINED AND WHAT IS THE PURPOSE OF  
6 YOUR TESTIMONY?

7 A. Our firm was retained by the Florida Office of Public Counsel ("OPC") to  
8 review the combined rate increase request of \$733,665 made by Sailfish  
9 Point Utility Corporation ("Sailfish Point", "Company", or "Utility").

10 Q. WHAT CONCLUSIONS HAVE YOU REACHED AFTER COMPLETING  
11 YOUR REVIEW OF THE COMPANY FILING?

12 A. The Utility's requested rate increase is significantly overstated.

13 Q. WHAT ARE THE MAJOR ISSUES WHICH RESULT IN THE  
14 SIGNIFICANT DIFFERENCE BETWEEN YOUR RECOMMENDATION  
15 AND THE COMPANY REQUEST?

1 A. The Company has overstated rate base and return requirements which  
2 include a requested recovery of Federal and State income tax expense.

3 Rate base is overstated because the Company did not remove the proper  
4 level of plant which is not used and useful. Harry DeMeza, the engineering  
5 witness for Public Counsel addresses the proper percentage of used and  
6 useful plant.

7 The capital structure as proposed by the Company is inappropriate for  
8 ratemaking purposes. I recommend the use of the Utility's capital structure  
9 as opposed to that of Mobil Corporation which the Company uses.

10 Q. HOW WILL YOUR TESTIMONY BE ORGANIZED?

11 A. I will address in order the following topics:

12 II. Rate Base

13 III. Capital Structure

14 IV. Operating Income

1     **II.     RATE BASE**

2           **A.     Utility Plant in Service**

3     **Q.     PLEASE EXPLAIN YOUR ADJUSTMENT TO REDUCE PLANT IN**  
4       **SERVICE BY \$10,247 FOR BOTH WATER AND SEWER.**

5     **A.     During a review at the Company offices, I discovered that Authorization for**  
6       **Expenditure (AFE) 4010 included items which were improperly capitalized.**  
7       **In total, \$39,877 was capitalized but only \$19,382 related to water and sewer**  
8       **modifications. Therefore, I reduced utility plant in service by \$20,495 which**  
9       **I allocated equally between water and sewer.**

10           **B.     Non-used and Useful Plant**

11     **Q.     PLEASE EXPLAIN THE ADJUSTMENT YOU ARE RECOMMENDING TO**  
12       **NON-USED AND USEFUL PLANT.**

13     **A.     The adjustments to non-used and useful plant are shown on Schedules 5 and**  
14       **6. I use the Company's recommended plant balances and accumulated**  
15       **depreciation balances and multiply these amounts by the non-used and**  
16       **useful percentages which were provided to me by Harry DeMeza, the**  
17       **engineering witness for Public Counsel.**

1 The calculated non-used and useful amounts for plant in service and  
2 accumulated depreciation are compared to the non-used and useful amount  
3 as calculated by the Company with the resulting adjustments shown on the  
4 schedule. These adjustments are then carried forward to increase the non-  
5 used and useful amounts which offset rate base.

6 C. CIAC

7 Q. ARE YOU RECOMMENDING ANY ADJUSTMENTS TO THE AMOUNT OF  
8 CIAC DEDUCTED FROM RATE BASE?

9 A. No. However, should the Commission adopt the Company's position, which  
10 includes a margin of reserve as an element of the used and useful  
11 percentage, there should be a corresponding increase in the amount of CIAC  
12 to correspond with this margin of reserve.

13 D. CIAC Deferred Tax Debits

14 Q. PLEASE EXPLAIN WHY YOU HAVE REMOVED THE CIAC DEFERRED  
15 TAX DEBITS WHICH THE COMPANY HAS INCLUDED AS AN ELEMENT  
16 OF RATE BASE.

17 A. I have removed the deferred tax debits from rate base and included these  
18 amounts as an offset to deferred income taxes in the capital structure. All



1 deferred taxes should be included in the capital structure and this  
2 adjustment properly transfers the deferred tax debit associated with CIAC to  
3 the capital structure.

4 E. Working Capital Allowance

5 Q. PLEASE EXPLAIN YOUR ADJUSTMENT TO THE WORKING CAPITAL  
6 ALLOWANCE.

7 A. I have removed the Company's requested working capital allowance from  
8 rate base because the Company has included an artificial allowance by  
9 multiplying 1/8 times operating and maintenance expenses. As this  
10 methodology always produces a working capital allowance but does not  
11 properly calculate a working capital requirement, it is appropriate to remove  
12 this artificial balance from rate base. The Company should not be allowed  
13 to earn a rate of return on an amount which is not supported by a proper  
14 methodology such as the balance sheet methodology of calculating working  
15 capital requirements.

16 III. CAPITAL STRUCTURE

17 Q. PLEASE EXPLAIN THE CAPITAL STRUCTURE WHICH YOU ARE  
18 RECOMMENDING IN THIS PROCEEDING.

1 A. The recommended capital structure is shown on Schedule 3. While the  
2 Company has chosen to utilize a capital structure of Mobil Corporation, I am  
3 recommending the Commission adopt the capital structure which is  
4 representative of the Utility.

5 Q. WHY IS THE UTILITY'S CAPITAL STRUCTURE MORE APPROPRIATE  
6 TO USE IN THIS PROCEEDING THAN THAT OF MOBIL  
7 CORPORATION?

8 A. The Utility's capital structure is more appropriate because it represents the  
9 actual conditions that exist and have existed since the formation of Sailfish  
10 Point Utility Corporation. The use of the Mobil Corporation's capital  
11 structure would be totally inappropriate and would allow the Utility to earn  
12 a return on an artificial capital structure which is not representative of the  
13 conditions which exist at the Utility.

14 Q. PLEASE IDENTIFY THE CONDITIONS THAT EXIST AND HAVE  
15 EXISTED AT SAILFISH POINT UTILITY CORPORATION.

16 A. The Utility Corporation financed the original transfer of utility plant with a  
17 mortgage payable to Sailfish Point, Inc. The interest rate is 11%. In 1983  
18 Sailfish Point, Inc., transferred to the utility, utility plant which had been

1 constructed as of that date. Sailfish Point, Inc., is the developer of the  
2 property.

3 From that date forward, the Utility financed additional plant additions and  
4 operating losses through cash advanced from its parent company. These  
5 cash advances and/or transactions between the Utility and its parent were  
6 recorded on the books of the utility as negative accounts receivable or  
7 intracompany accounts payable. I found no records to indicate that there  
8 was an intent to convert these cost-free, non-interest bearing advances to  
9 equity capital or to any debt arrangement.

10 It's obvious, as in the case of most utilities, the developers primary purpose  
11 is to sell lots to recover the original investment, including the cost of  
12 improvements, and to make a profit on the sales. In order to sell the lots, it  
13 is necessary to provide utility service. Obviously, the developer considered  
14 the utility a necessary cost of doing business. With few exceptions, the  
15 Utility has lost money in every year of its operation and this was acceptable  
16 to the developer. Furthermore, the arrangement to provide cost-free  
17 advances to the Utility was acceptable to the developer as there was no  
18 attempt to convert these advances to permanent capital or to interest  
19 bearing loans.



1 As this was an acceptable arrangement to the developer and to the Utility, it  
2 would be inappropriate at this time to allow the Utility to earn an artificial  
3 return, including an artificial level of income taxes, on an amount of equity  
4 capital which does not exist. The provision of these cost-free advances to  
5 the Utility is just another cost of business which the developer has willingly  
6 agreed to provide. The rules should not, and cannot be changed at this  
7 point in time which will allow the Utility to earn an artificial return on a  
8 capital structure which does not, or has not, ever existed.

9 Q. PLEASE EXPLAIN WHY YOU HAVE NOT INCLUDED ANY DEFERRED  
10 INVESTMENT TAX CREDITS AS A COMPONENT OF THE CAPITAL  
11 STRUCTURE.

12 A. The Company has stated that it has only taken investment tax credits on  
13 one small asset purchase. Furthermore, it stated in its minimum filing  
14 requirements that the policy of the parent corporation is that the  
15 investment tax credits were taken at the parent company level and  
16 immediately offset against taxes payable.

17 Q. IS THE COMPANY'S EXPLANATION ADEQUATE.



1 A. No. Should the Commission allow the Company any Federal income tax  
2 expense, which, in my opinion, would be inappropriate, the income tax  
3 expense should be offset by an amortization of investment tax credits as if  
4 the Utility had taken investment tax credits on all property eligible for  
5 investment tax credits.

6 IV. OPERATING INCOME

7 A. Rate Case Expense

8 Q. PLEASE EXPLAIN YOUR ADJUSTMENT TO REDUCE THE LEVEL OF  
9 RATE CASE EXPENSE.

10 A. I am recommending that the Company not be allowed to recover any of the  
11 rate case expense associated with the filing made by the Company in 1989.  
12 This case was dismissed by the Commission and the Utility should not be  
13 allowed to recover any of the expense associated with preparing that case,  
14 including the legal expense incurred by the Company. Ratepayers should  
15 not be required to pay for any of the costs of preparing a case which was  
16 later dismissed by the Commission.

17 I am also recommending that any of the legal costs incurred in this  
18 proceeding in opposing the intervention of the homeowners association be  
19 disallowed. Ratepayers should not be required to pay for any cost associated

1 with arguing against their rights to be fairly represented in a proceeding in  
2 which the Company is seeking rate increases of nearly \$750,000. The  
3 adjustment is shown on Schedule 7.

4 B. Depreciation

5 Q. PLEASE EXPLAIN YOUR ADJUSTMENT TO DEPRECIATION EXPENSE.

6 A. The adjustment to depreciation expense is shown on Schedules 5 and 6.  
7 Depreciation expense is reduced to a level based on the proper level of used  
8 and useful percentages recommended by the OPC Engineering Witness.

9 C. Property Taxes

10 Q. PLEASE EXPLAIN YOUR ADJUSTMENT TO PROPERTY TAX EXPENSE.

11 A. I have adjusted property tax expense to recognize the proper used and useful  
12 percentages. The adjustment is shown on Schedule 8.

13 D. Income Tax Expense

14 Q. PLEASE EXPLAIN YOUR ADJUSTMENT TO INCOME TAX EXPENSE.

15 A. I have removed income tax expense in total from this filing. The capital  
16 structure which I am recommending effectively includes only interest and

1 cost-free advances and therefore, as there is no equity component, there is  
2 no need to provide for Federal income tax expense.

3 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

4 A. Yes, at this point in time; however, there are certain unresolved issues  
5 which may need to be addressed in supplemental testimony. As of this date,  
6 OPC has yet to receive the tax returns, including the tax workpapers for the  
7 developer. As such, I have been unable to assure myself that all of the  
8 property which was transferred to the utility in 1983 represents a valid asset  
9 which was not expensed for tax purposes by the developer as a cost of goods  
10 sold.

11 Additionally, the Office of Public Counsel was not provided with complete  
12 copies of the consolidated tax return and therefore, it is impossible to  
13 determine at this time, whether the tax workpapers supplied by the Utility,  
14 accurately reflect the amounts included in the consolidated tax return.

1 MR. REILLY: I tender the witness.

2 COMMISSIONER EASLEY: Mr. Girtman? Mr. King,  
3 do you have anything?

4 MR. GIRTMAN: Since there is a similarity of  
5 interest here, could I ask Mr. King go next?

6 COMMISSIONER EASLEY: Do you have any  
7 questions, Mr. King?

8 MR. KING: No questions.

9 COMMISSIONER EASLEY: Thank you. Mr.  
10 Girtman?

11 MR. GIRTMAN: No questions.

12 COMMISSIONER EASLEY: Staff?

13 MS. DAVIS: Yes, ma'am.

14 CROSS EXAMINATION

15 BY MS. DAVIS:

16 Q Mr. DeWard, the Utility in its filing has  
17 requested a margin reserve but believes that no  
18 imputation of CIAC should be made. In your testimony,  
19 I believe you say that there should be no margin  
20 reserve, but if the Commission does use a margin  
21 reserve, CIAC should be imputed, is that correct?

22 A That's correct.

23 Q Would you agree that if there is imputation  
24 of CIAC, it should not exceed the amount of plant  
25 related to the margin reserve?



1           A     I would agree with that.

2           Q     Okay. Now, instead of asking you again the  
3 questions that were asked during your deposition, I'd  
4 like to have identified as an exhibit Pages 6 through  
5 9, and I believe you have a copy of it, of your  
6 deposition transcript. The deposition was taken  
7 telephonically on May 29th, and I'd like to ask you for  
8 to peruse that. And if I were to ask you those same  
9 questions today, would your answers be the same?  
10 (Pause)

11           MR. REILLY: We might want to give him a  
12 chance just to read this brief passage because he has  
13 not seen a copy of this deposition.

14           COMMISSIONER EASLEY: I thought that's what  
15 he was doing.

16           MR. GIRTMAN: While we're waiting,  
17 Commissioner, based upon your ruling yesterday  
18 regarding the notes which Mr. DeWard took in Dallas,  
19 although all the other documents remain redacted there  
20 was an agreement to let him look at those and do some  
21 comparisons.

22           We're bearing down on 2:00 o'clock, and I'd  
23 request that immediately after Mr. DeWard finishes, if  
24 we could perhaps do whatever he is going to do, because  
25 I would not want to leave here with that hanging open.

1 COMMISSIONER EASLEY: We won't leave with it  
2 hanging open.

3 MR. GIRTMAN: Thank you.

4 COMMISSIONER EASLEY: However, do not let me  
5 inadvertently leave with it hanging open. Remind me,  
6 please.

7 A Does this go through Page 10?

8 Q No. It's supposed to be only 6 through 9,  
9 but I may have not taken all the pages out on some of  
10 the copies. 6 through 9.

11 COMMISSIONER EASLEY: My copy, Mr. DeWard,  
12 has Page 10 but it has a line stricken through it so  
13 would not become part of the record.

14 A Okay, I've reviewed it.

15 Q And your answers would be the same today?

16 A Yes, they would.

17 MS. DAVIS: Commissioner Easley, may we have  
18 an exhibit number?

19 COMMISSIONER EASLEY: It will be Exhibit 16.  
20 (Exhibit No. 16 marked for identification.)

21 MS. DAVIS: Thank you. We have nothing  
22 further.

23 COMMISSIONER EASLEY: Anything, Commissioner?

24 COMMISSIONER DEASON: Mr. DeWard, on Page 14  
25 of your testimony there is a phrase on Line 9 and 10

1 and it says, it states, "Was not expensed for tax  
2 purposes by developer as a cost of goods sold."

3 What is your opinion today, after reviewing  
4 the documents as to whether that is or is not true?

5 WITNESS DeWARD: I probably should read the  
6 full sentence. "As such, I have been unable to assure  
7 myself that all the property which was transferred to  
8 the Utility in 1983 represents a valid asset, which was  
9 not expensed for tax purposes by the developer as a  
10 cost of goods sold."

11 It's clear right now that a portion of the  
12 assets, although I don't know yet, has been expensed as  
13 cost of goods sold was expensed for tax purposes in  
14 1981 and 1982 and, in fact, they took the investment  
15 tax credits on it.

16 I do not know for a fact yet, and that's the  
17 subject of the Motion to Compel, whether a part or all  
18 of these assets might have been included in cost of  
19 goods sold.

20 COMMISSIONER DEASON: Is the distinction  
21 between taking a tax deduction through depreciation or  
22 through cost of lot sales, is that distinction  
23 important as to whether the Commission needs to impute  
24 this as a contribution or not?

25 WITNESS DeWARD: My recommendation would be

1 that the difference between the tax depreciation taken  
2 on SPI's books in 1981 and 1982 of some 405,000, less  
3 the book depreciation, which is -- I'm not sure --  
4 120,000, that difference be taken either as an imputed  
5 CIAC or reduce the basis of the plant. So in my mind  
6 there is no real distinction on the ultimate treatment.

7 COMMISSIONER DEASON: So you're saying at  
8 least we need to take that difference --

9 WITNESS DeWARD: Yes.

10 COMMISSIONER DEASON: -- but absent proof  
11 that these costs were expensed in lot sales, then you  
12 would not advocate imputing or assuming that all of the  
13 cost of the utility property was recouped through sale  
14 of lots? (Pause)

15 You're going part of the way but you're not  
16 going all of the way, is that correct?

17 WITNESS DeWARD: I'm absolutely sure of my  
18 position that in this proceeding the rate base should  
19 be reduced either through an imputation of CIAC or a  
20 direct reduction of the cost for the difference between  
21 the tax depreciation that was taken by SPI in 1981 and  
22 1982 of 405,245 less the book depreciation of some  
23 100,000. I'm absolutely sure that that should be the  
24 treatment.

25 Now, whether there should be an additional



1 imputation of CIAC or reduction of plant, if, in fact,  
2 these assets were also included in the cost of sales, I  
3 don't know that yet and that's, again, information that  
4 came to light in these memos that really cast a doubt  
5 on just what may have happened and, is again, the  
6 subject to a Motion to Compel.

7 COMMISSIONER DEASON: Okay. Thank you.

8 COMMISSIONER EASLEY: Redirect, Mr. Reilly?

9 MR. GIRTMAN: Could we have a couple of  
10 minutes, please?

11 COMMISSIONER EASLEY: Yes, sir. We'll just  
12 take -- I understand that there may be a request for  
13 additional cross based on the last exchange. We're  
14 going to stand in recess for about seven minutes.

15 (Brief recess.)

16

- - - - -

17 COMMISSIONER EASLEY: Let's go back on the  
18 record.

19 Mr. Girtman, did you have a request?

20 MR. GIRTMAN: Yes. In relation to the  
21 deposition testimony which has been accepted in lieu of  
22 cross examination, we did not have that when he gave  
23 his direct testimony. And I would like to inquire on a  
24 couple of points that are made in this.

25 COMMISSIONER EASLEY: Limit it to the scope

1 of the cross.

2 CROSS EXAMINATION

3 BY MR. GIRTMAN:

4 Q Mr. DeWard, on Page 6 of the deposition  
5 testimony, beginning on Line 13, 14, actually, you say,  
6 "Basically, it would be ludicrous to use Mobil Oil  
7 Corporation's capital structure which has no relevance  
8 to this Utility."

9 Why is Mobil -- actually, would you like to  
10 correct this statement regarding Mobil Oil Corporation?  
11 I think it's Mobil Corporation, correct?

12 A That's correct.

13 Q Then why is Mobil Corporation's capital  
14 structure not relevant to this Utility?

15 A It's -- again, I think you referred to the  
16 Staff memo on capital structure, and it says right in  
17 that Staff memo that a parent capital structure that  
18 has very little utility in it may be totally irrelevant  
19 to use in a proceeding. And you referred to this Staff  
20 memo, and this apparently, according to Mr. Olson, is  
21 the only utility operation that Mobil has. And we've  
22 heard 300 consolidated subsidiaries, and I'm sure SPUC,  
23 or Sailfish Point Utility Corporation, is probably one  
24 of the smallest corporations that it owns, and it's  
25 owned through another series of companies.

1           So certainly there is absolutely no  
2 relationship whatsoever between Mobil Corporation's  
3 capital structure and Sailfish Point Utilities  
4 Corporation's capital structure. And as I said, it  
5 would be ludicrous to allow a return on assets based on  
6 Mobil's capital structure.

7           It would be just unfair, and that's the way  
8 it's been set up is cost-free advances with one  
9 mortgage payable at 11% and now to change the game,  
10 because you're coming in for a rate increase or because  
11 the Utility is coming in for a rate increase, would be  
12 just ridiculous.

13           Q     Okay. Now, if that capital structure is not  
14 relevant, then which capital structure should you use?

15           A     If you'd refer to my Schedule 3, that will  
16 give you the exact capital structure to use.

17           Q     I would like you to state -- you don't have  
18 to go through the whole capital structure, but just  
19 briefly tell me what other capital structure you would  
20 use.

21           A     The capital structure of the Utility, which  
22 has been the capital structure from inception through  
23 today. And I'm sure there's been probably some more  
24 cost-free advances and some intercompany payables and  
25 receivables recorded since the last financial statement

1 I looked at, but that's the capital structure to use.  
2 That's what's been the basis to finance all of these  
3 assets. And it would be, again, ridiculous to now go  
4 to Mobil Corporation's capital structure.

5 Q What is the source of a capital, where does  
6 it come from, for the Utility?

7 A Well, I have been in a lot of utility  
8 proceedings, Mr. Girtman, and a lot of people have  
9 always said it's impossible to trace funds. But in  
10 this case, they are probably advanced from Sailfish  
11 Point.

12 Q But the original source of the funds that is  
13 generated, isn't that from Mobil Corporation?

14 A Sailfish Point is a very, very profitable  
15 operation, and they generate all kinds of cash. I see  
16 no reason why the funds that they've been able to make  
17 on a cost-free, no-cost basis to the Utility didn't  
18 come right from Sailfish Point, Inc.

19 And it would be impossible, Mr. Girtman,  
20 according to all of my experience, to exactly trace  
21 where those funds have come from. But this is the  
22 capital structure that's existed all these years, and  
23 now you want to change the game and come up with some  
24 very high return, which is just totally inappropriate.

25 Q Do you know where Sailfish Point, Inc.'s



1 funds come from, other than earnings?

2 A Again, it would be impossible to trace funds.  
3 As a matter of fact, I don't know if Sailfish Point  
4 Inc., is a wholly owned subsidiary of another company,  
5 which is wholly owned of another, which is wholly owned  
6 of another. I don't know the chain. And it's  
7 irrelevant, because I've got the correct capital  
8 structure right here on Schedule 3. (Applause)

9 COMMISSIONER EASLEY: I wish you had an  
10 opinion on something, Mr. DeWard. (Laughter)

11 Q (By Mr. Girtman) On Page 7 of the deposition  
12 transcript, you state, beginning about Line 6 through  
13 9, "If they had wanted to contribute more funds to the  
14 Utility and convert cost-free payables or advances into  
15 capital, they would have done so. They didn't."

16 How do you come up with that conclusion?

17 A By a review of the financial statements, and  
18 it's been verified here by Mr. Seidman's testimony  
19 today.

20 Even though he calls one category in the  
21 MFRs, I believe, "long-term debt" and refers to other  
22 things as "long-term advances," they are intercompany  
23 payables; they are intercompany receivables which have  
24 a credit balance and are, therefore, payables also.

25 Q If they did, would you include that in

1 equity?

2       A     If it was reasonable and they had done it all  
3 along, not here at the eleventh hour, when they are  
4 coming in for a rate increase.

5           MR. GIRTMAN: No further questions,  
6 Commissioner.

7           COMMISSIONER EASLEY: Redirect?

8           MR. REILLY: No redirect.

9           COMMISSIONER EASLEY: Thank you very much.  
10          (Witness DeWard excused.)

11                               - - - -

12          MS. DAVIS: I'd like to move Exhibit 16,  
13 please.

14          COMMISSIONER EASLEY: Without objection  
15 Exhibit 16 is moved into the record.

16          MR. REILLY: I'd like to move 15, Composite  
17 Exhibit, Mr. DeWard's.

18          COMMISSIONER EASLEY: Without objection, No.  
19 15 will be moved into the record.

20          (Exhibit Nos. 15 and 16 received into  
21 evidence)

22          COMMISSIONER EASLEY: I believe Mr. Rasmussen  
23 is up. And you were sworn, were you not?

24          WITNESS RASMUSEN: Yes, I was.

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

**ROGER RASMUSEN**

was called as a witness on behalf of Sailfish Point Property Owners, and having been first duly sworn, testified as follows:

## DIRECT EXAMINATION

**BY MR. KING:**

Q Mr. Rasmussen, would you state your name and address for the record, please?

A Roger Rasmusen. 2001 Sailfish Point  
Boulevard, Stuart, Florida 34994.

Q And have you prefiled testimony in these proceedings?

**A** Yes, I have.

Q And did that testimony reference the certain exhibits that were filed with it?

**A** Yes, it did.

Q And pursuant to the Commission's order, and as a result of some of the motions, does Exhibit No. 5, which is, or contains extracts and portions of the documents that are referenced in the exhibits that are referenced in your prefiled testimony?

**A Was there a question?**

**Q The answer is "yes." (Laughter)**

COMMISSIONER EASLEY: We just established we got your exhibits into the record.

1 Q (By Mr. King) Do you say "yes"?

2 A Yes.

3 MR. KING: Commissioner Easley, when we  
4 talked -- identified Exhibit 5 and I produced that, I  
5 also had produced this corrected copy of the addendum,  
6 which we talked about. I think, for record purposes,  
7 that would be helpful. I take it somewhat as a table  
8 of contents of Exhibit 5. And could we identify it as  
9 say 5-A or something and have it attached, or however  
10 you'd like to deal with it?

11 COMMISSIONER EASLEY: I would like to have it  
12 as part of 5. Can you show it that way?

13 I'm going to let the court reporter tell me  
14 what's the easiest way to keep a clean record. (Pause)

15 It's really a table of contents.

16 We will show it as part of Exhibit 5.

17 Q (By Mr. King) All right. Mr. Rasmusen --

18 COMMISSIONER EASLEY: Before you go any  
19 further, Mr. King, would you have somebody give a copy  
20 to the court reporter so that we are certain that she  
21 has the record complete?

22 Thank you, sir. Now, I'm sorry.

23 Q (By Mr. King) Mr. Rasmusen, Exhibit 5  
24 contains, on the last part, in the very last document,  
25 a document that was referred to and identified in your



1 deposition testimony. Do you recall that?

2 A Yes.

3 Q And so that document is not identified in  
4 your prefiled testimony?

5 A That's correct.

6 Q And would you state what the document is and  
7 it is --

8 MR. KING: I have numbered my pages finally,  
9 Commissioner Easley, and I submit that if my numbering  
10 is correct, it's from Page 210 to 212 of Exhibit 5 --  
11 excuse me, 210 to 220 of Exhibit 5 is the document  
12 we're talking about. And if you would like, I would be  
13 happy to take your copies and I'll put numbers on them  
14 as well.

15 COMMISSIONER EASLEY: If you will further  
16 identify the document in the manner that we were doing  
17 earlier, I think I'll be able to find it.

18 MR. KING: The document comes after a cover  
19 sheet that refers to Exhibit RWR-5 to the deposition  
20 testimony of Roger W. Rasmussen taken on May 29, 1991.

21 COMMISSIONER EASLEY: It is the last document  
22 in the bound book, is it not?

23 MR. KING: It's the last document, and it  
24 begins with a page numbered 3.

25 Q (By Mr. King) And, Mr. Rasmussen, those are

1 portions of what?

2 A I don't have that right in front of me. As I  
3 remember, it's the declaration of condominiums.

4 Q And do you live in a condominium?

5 A Yes.

6 Q Is that the declaration of the condominium  
7 that you live in?

8 A Yes.

9 Q With regard to with to Paragraph 12.2 of that  
10 declaration, are you familiar with the provisions of  
11 that?

12 A Yes, I am.

13 Q Have you checked to see whether or not the  
14 other condominium on this property has the identical  
15 provision?

16 A 2800 Condominium has the identical provision  
17 in it.

18 Q And you live in what condominium?

19 A 2001.

20 MR. KING: All right. I would like  
21 identified for the record a document, which is the last  
22 page of a document. The part I want identified is  
23 entitled "Distribution System Deficiencies." And I  
24 only have the one copy at the moment.

25 COMMISSIONER EASLEY: Well, my problem is I

1 can't identify it until I've got copies that everybody  
2 can see.

3 MR. KING: Mr. Girtman is familiar with it;  
4 Mr. Reilly is familiar with it.

5 MR. GIRTMAN: If that's the same document I  
6 objected to awhile ago, I think Mr. King is going to  
7 try to get it in through this witness, and I renew my  
8 objection on the same grounds.

9 COMMISSIONER EASLEY: You all's memory is  
10 better than mine. I'm going to have to see it.

11 (Pause)

12 MR. KING: I'd make an offer of proof. If  
13 the witness were asked, he would say that he had  
14 received it from the operator of the Utility here when  
15 he went, he and another resident went and made an  
16 inquiry.

17 COMMISSIONER EASLEY: This is the document  
18 that Mr. DeWard, I believe, could not identify the  
19 source of, is that correct?

20 MR. KING: That's correct.

21 COMMISSIONER EASLEY: And why don't you  
22 establish first probity of the document and see if  
23 there is an objection after that.

24 MR. REILLY: Just to correct the record, I  
25 think it was Witness DeMaza that was asked.



1 COMMISSIONER EASLEY: All right. Thank you.

2 MR. KING: Do I refer to it by number on  
3 this?

4 COMMISSIONER EASLEY: I'll give it a  
5 tentative number, I guess.

6 Better to number it now, Mr. Pruitt?

7 MR. PRUITT: Yes, na'am.

8 COMMISSIONER EASLEY: All right. It will be  
9 No. 17. And a short title is "Distribution System  
10 Deficiencies."

11 (Exhibit No. 17 marked for identification.)

12 MR. GIRTMAN: That's a single paragraph,  
13 isn't it?

14 MR. KING: Yes. That's all I'm offering.

15 COMMISSIONER EASLEY: The one paragraph from  
16 that page?

17 MR. KING: Yes, na'am.

18 COMMISSIONER EASLEY: Is it first, second or  
19 third?

20 MR. KING: I'm offering the entire page.

21 COMMISSIONER EASLEY: Well, it's three  
22 paragraphs, on that page.

23 Q (By Mr. King) Mr. Rasmussen, would you tell  
24 the Commission how you came to get possession of that  
25 document?



1           A     Following the initial request for a rate  
2 increase, I think it was about a year and a half ago,  
3 myself and two other residents went over to the Utility  
4 to try and learn a little bit more about the Utility.  
5 In the process of spending a couple of hours there, we  
6 were given this document, which in its entirety is also  
7 a lot of information about the equipment that is over  
8 there. And we spent maybe the better part of a morning  
9 over there learning about the Utility, and this is what  
10 we received.

11           Q     From whom did you receive it? Who gave it to  
12 you?

13           A     The manager over there.

14           MR. KING: I would offer No. 17.

15           MR. GIRTMAN: May I inquire?

16           COMMISSIONER EASLEY: Well -- yeah.

17                       VOIR DIRE EXAMINATION

18 BY MR. GIRTMAN:

19           Q     Who is it by name that you say gave you that  
20 document?

21           A     I should be able to tell you right now. He's  
22 the present manager -- Marks.

23           Q     Richard Marks?

24           A     Yes.

25           Q     When he gave you that document, did he

1 indicate to you where it had come from?

2 A No. Not that I remember.

3 Q Did he say who the author of the document  
4 was?

5 A No. I assume that it was somebody there,  
6 because they talked about "our," and "we were  
7 informed," and since they were talking about the  
8 Utility, I assumed it was something that he had  
9 developed himself.

10 Q Okay. But that's your assumption; he didn't  
11 tell you that, did he?

12 A I don't remember. That's my assumption.

13 Q Did he tell you why he was giving you this  
14 document or explain the document?

15 All I'm trying to do is get the authenticity  
16 of this thing.

17 A We went over there, and none of us, there  
18 were three of us, really didn't know anything about  
19 utilities. And since we were going to be apparently  
20 socked with a real big increase, we went over and  
21 wanted to find out about the Utility, how it ran, and  
22 the cost structure and so forth. And he was very  
23 helpful and he gave us this information. Talks about  
24 the plan itself, the main plant components.

25 Q I understand that, but what I'm trying to get

1 to is what representation did Mr. Marks make to you  
2 about what this document is supposed to represent?

3 A As I remember, he just gave it to us to help  
4 us understand the Utility.

5 MR. GIRTMAN: Commissioner Easley, I  
6 understand that just that last page is being offered,  
7 and I'm trying to be helpful in this thing. But I've  
8 got a problem in that I don't understand the authorship  
9 or the accuracy of it. On that basis, I'll have to  
10 maintain my objection.

11 COMMISSIONER EASLEY: Mr. King?

12 MR. KING: I think he's identified where it  
13 came from. I think the Commission can admit it and  
14 take into consideration, giving the weight to it, what  
15 it deserves.

16 COMMISSIONER EASLEY: I am advised, Mr.  
17 Reilly, that while this -- I'm sorry, Mr. Girtman,  
18 while this may be hearsay, and hearsay, that we can,  
19 under our slightly more different Rules of Evidence,  
20 accept hearsay if it tends to prove a point of  
21 something and we can also give it the weight to which  
22 it is entitled.

23 I'm going to accept Exhibit 17 for admission.  
24 We're going to get copies of it so everybody will know  
25 where it is right now.

1           MR. KING: If I had known hearsay was a  
2 legitimate objection, I could have objected to a lot of  
3 things on this.

4           COMMISSIONER EASLEY: I didn't make it a  
5 legitimate objection, I just acknowledged the fact that  
6 it was hearsay.

7           MR. KING: All right.

8           COMMISSIONER EASLEY: I thought what I did  
9 was tell you hearsay can come in here.

10          MR. KING: I thank you. I shouldn't have  
11 made the remark. I apologize.

12          COMMISSIONER EASLEY: That's all right.

13          (Exhibit No. 17 received into evidence.)

14                   CONTINUED DIRECT EXAMINATION

15 BY MR. KING:

16           Q     Mr. Rasmusen, do you have any additions or  
17 corrections to your prefiled testimony?

18           A     In our condominium documents, I guess they  
19 have been now admitted, but there is some very specific  
20 information in that that says that --

21           COMMISSIONER EASLEY: Mr. Rasmusen, would you  
22 speak a little bit louder, please, sir? Thank you.

23           A     (Continuing) In our condominium documents,  
24 it very definitely says that we are expected to pay the  
25 cost of the maintenance and operation.



1           In one of the paragraphs, 12.2 in those  
2 documents, I'll just read part of that and it's a part  
3 that is in full caps; up until that point, it's  
4 regular: It says, "All unit owners in this  
5 condominium, by and through membership in the Property  
6 Owners Association, shall have the burden of  
7 contributing to the cost of maintenance and replacement  
8 of common areas and utilities. Including without  
9 limitation water and sewer lines in Sailfish Point, as  
10 incurred by the Property Owners Association, as part of  
11 the property owners' assessment due from unit owners,  
12 with such contributions being made on an equitable and  
13 pro rata basis with other properties serviced by the  
14 same common areas and utilities. And this shall be  
15 construed as a covenant running for the benefit of such  
16 other properties, each of which shall have a similar  
17 burden."

18           COMMISSIONER EASLEY: Mr. Rasmussen, I'm  
19 sorry, sir. I cannot understand you. I know the court  
20 reporter cannot --

21           MR. KING: Speak into the mike.

22           COMMISSIONER EASLEY: -- and I also  
23 understood that you were asking for corrections to his  
24 testimony, Mr. King. I need to understand what I'm  
25 hearing.

1           MR. KING: I asked for additions.

2           COMMISSIONER EASLEY: Oh, I'm sorry.

3           MR. KING: Additions or corrections.

4           COMMISSIONER EASLEY: But I thought what he  
5 was reading is included in this document. I need to  
6 understand what we're doing.

7           MR. KING: Well, he's really reading from  
8 some of his deposition. He is including what he was  
9 asked about on deposition that has reference to this  
10 document and I'm not sure procedurally how I should get  
11 that in.

12          MR. GIRTMAN: If I could comment, I think  
13 what Mr. King wants to do is his original prefiled  
14 testimony covered all the other documents. It did not  
15 include the last one he filed as a result of the  
16 deposition. And what he's trying to do is get this  
17 original testimony supplemented by what he has to say  
18 about that subsequent document that came as a result of  
19 the deposition.

20          COMMISSIONER EASLEY: So the language that  
21 he's reading in, while it is included in the exhibit,  
22 was not covered in his original testimony.

23          MR. KING: That is correct.

24          COMMISSIONER EASLEY: I now understand.

25 Thank you very much.

1 I'm sorry, Mr. Rasmussen. If you would,  
2 however, slow down just a little bit.

3 A Okay. Again, I'll just read the portion of  
4 Paragraph 12.2 that is in full caps: "All unit owners  
5 in this condominium, by and through membership in the  
6 Property Owners Association, shall have the burden of  
7 contributing to the cost of maintenance and replacement  
8 of common areas and utilities. Including without  
9 limitation water and sewer lines in Sailfish Point, as  
10 incurred by the Property Owners Association, as part of  
11 the property owners' assessment due from unit owners,  
12 with such contributions being made on an equitable and  
13 pro rata basis with other properties serviced by the  
14 same common areas and utilities. And this shall be  
15 construed as a covenant running for the benefit of such  
16 other properties, each of which shall have a similar  
17 burden."

18 Q Now, Mr. Rasmussen, if I were to ask you the  
19 questions that were posed to you in your prefiled  
20 testimony, would your answers to those questions today  
21 be the same as they were when you filed that on May 9?

22 A Yes.

23

24

25

1                   **TESTIMONY OF ROGER W. RASMUSEN**                   639  
2                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
3                   **REGARDING THE APPLICATION OF INCREASED RATES FOR**  
4                   **SAILFISH POINT UTILITY CORPORATION**  
5                   **IN MARTIN COUNTY**  
6                   **DOCKET NO. 900816-WS**

7       Q.    Please state your name and address

8       A.    Roger W. Rasmussen  
9            2001 Sailfish Point Blvd. #417  
10           Stuart, Florida 34996

11   Q.    Is that address located within the Sailfish Point  
12           Development?

13   A.    Yes

14   Q.    Are you a property owner at Sailfish Point?

15   A.    Yes.

16   Q.    When did you first purchase your property interest at  
17           Sailfish Point?

18   A.    November 1982.

19   Q.    Do you own a condominium unit or a single family home?

20   A.    Condominium Unit

21   Q.    Are you a member of the Sailfish Point Property Owners  
22           and Country Club Association?

23   A.    Yes. All property owners at Sailfish Point automatically  
24           become members of the Property Owners Association.

25   Q.    Do you serve in any official capacity on the Sailfish  
26           Point Property Owners and Country Club Association?



1 indicate to you where it had come from?

2 A No. Not that I remember.

3 Q Did he say who the author of the document  
4 was?

5 A No. I assume that it was somebody there,  
6 because they talked about "our," and "we were  
7 informed," and since they were talking about the  
8 Utility, I assumed it was something that he had  
9 developed himself.

10 Q Okay. But that's your assumption; he didn't  
11 tell you that, did he?

12 A I don't remember. That's my assumption.

13 Q Did he tell you why he was giving you this  
14 document or explain the document?

15 All I'm trying to do is get the authenticity  
16 of this thing.

17 A We went over there, and none of us, there  
18 were three of us, really didn't know anything about  
19 utilities. And since we were going to be apparently  
20 socked with a real big increase, we went over and  
21 wanted to find out about the Utility, how it ran, and  
22 the cost structure and so forth. And he was very  
23 helpful and he gave us this information. Talks about  
24 the plan itself, the main plant components.

25 Q I understand that, but what I'm trying to get

1 to is what representation did Mr. Marks make to you  
2 about what this document is supposed to represent?

3 A As I remember, he just gave it to us to help  
4 us understand the Utility.

5 MR. GIRTMAN: Commissioner Easley, I  
6 understand that just that last page is being offered,  
7 and I'm trying to be helpful in this thing. But I've  
8 got a problem in that I don't understand the authorship  
9 or the accuracy of it. On that basis, I'll have to  
10 maintain my objection.

11 COMMISSIONER EASLEY: Mr. King?

12 MR. KING: I think he's identified where it  
13 came from. I think the Commission can admit it and  
14 take into consideration, giving the weight to it, what  
15 it deserves.

16 COMMISSIONER EASLEY: I am advised, Mr.  
17 Reilly, that while this -- I'm sorry, Mr. Girtman,  
18 while this may be hearsay, and hearsay, that we can,  
19 under our slightly more different Rules of Evidence,  
20 accept hearsay if it tends to prove a point of  
21 something and we can also give it the weight to which  
22 it is entitled.

23 I'm going to accept Exhibit 17 for admission.  
24 We're going to get copies of it so everybody will know  
25 where it is right now.

1           MR. KING: If I had known hearsay was a  
2 legitimate objection, I could have objected to a lot of  
3 things on this.

4           COMMISSIONER EASLEY: I didn't make it a  
5 legitimate objection, I just acknowledged the fact that  
6 it was hearsay.

7           MR. KING: All right.

8           COMMISSIONER EASLEY: I thought what I did  
9 was tell you hearsay can come in here.

10          MR. KING: I thank you. I shouldn't have  
11 made the remark. I apologise.

12          COMMISSIONER EASLEY: That's all right.

13          (Exhibit No. 17 received into evidence.)

14                   CONTINUED DIRECT EXAMINATION

15 BY MR. KING:

16           Q     Mr. Rasmusen, do you have any additions or  
17 corrections to your prefiled testimony?

18           A     In our condominium documents, I guess they  
19 have been now admitted, but there is some very specific  
20 information in that that says that --

21           COMMISSIONER EASLEY: Mr. Rasmusen, would you  
22 speak a little bit louder, please, sir? Thank you.

23           A     (Continuing) In our condominium documents,  
24 it very definitely says that we are expected to pay the  
25 cost of the maintenance and operation.

1           In one of the paragraphs, 12.2 in those  
2 documents, I'll just read part of that and it's a part  
3 that is in full caps; up until that point, it's  
4 regular: It says, "All unit owners in this  
5 condominium, by and through membership in the Property  
6 Owners Association, shall have the burden of  
7 contributing to the cost of maintenance and replacement  
8 of common areas and utilities. Including without  
9 limitation water and sewer lines in Sailfish Point, as  
10 incurred by the Property Owners Association, as part of  
11 the property owners' assessment due from unit owners,  
12 with such contributions being made on an equitable and  
13 pro rata basis with other properties serviced by the  
14 same common areas and utilities. And this shall be  
15 construed as a covenant running for the benefit of such  
16 other properties, each of which shall have a similar  
17 burden."

18           COMMISSIONER EASLEY: Mr. Rasmussen, I'm  
19 sorry, sir. I cannot understand you. I know the court  
20 reporter cannot --

21           MR. KING: Speak into the mike.

22           COMMISSIONER EASLEY: -- and I also  
23 understood that you were asking for corrections to his  
24 testimony, Mr. King. I need to understand what I'm  
25 hearing.



1 MR. KING: I asked for additions.

2 COMMISSIONER EASLEY: Oh, I'm sorry.

3 MR. KING: Additions or corrections.

4 COMMISSIONER EASLEY: But I thought what he  
5 was reading is included in this document. I need to  
6 understand what we're doing.

7 MR. KING: Well, he's really reading from  
8 some of his deposition. He is including what he was  
9 asked about on deposition that has reference to this  
10 document and I'm not sure procedurally how I should get  
11 that in.

12 MR. GIRTMAN: If I could comment, I think  
13 what Mr. King wants to do is his original prefiled  
14 testimony covered all the other documents. It did not  
15 include the last one he filed as a result of the  
16 deposition. And what he's trying to do is get this  
17 original testimony supplemented by what he has to say  
18 about that subsequent document that came as a result of  
19 the deposition.

20 COMMISSIONER EASLEY: So the language that  
21 he's reading in, while it is included in the exhibit,  
22 was not covered in his original testimony.

23 MR. KING: That is correct.

24 COMMISSIONER EASLEY: I now understand.  
25 Thank you very much.

1 I'm sorry, Mr. Rasmussen. If you would,  
2 however, slow down just a little bit.

3 A Okay. Again, I'll just read the portion of  
4 Paragraph 12.2 that is in full caps: "All unit owners  
5 in this condominium, by and through membership in the  
6 Property Owners Association, shall have the burden of  
7 contributing to the cost of maintenance and replacement  
8 of common areas and utilities. Including without  
9 limitation water and sewer lines in Sailfish Point, as  
10 incurred by the Property Owners Association, as part of  
11 the property owners' assessment due from unit owners,  
12 with such contributions being made on an equitable and  
13 pro rata basis with other properties serviced by the  
14 same common areas and utilities. And this shall be  
15 construed as a covenant running for the benefit of such  
16 other properties, each of which shall have a similar  
17 burden."

18 Q Now, Mr. Rasmussen, if I were to ask you the  
19 questions that were posed to you in your prefiled  
20 testimony, would your answers to those questions today  
21 be the same as they were when you filed that on May 9?

22 A Yes.

23

24

25

1                                   **TESTIMONY OF ROGER W. RASMUSEN**                                   639  
2                                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
3                                   **REGARDING THE APPLICATION OF INCREASED RATES FOR**  
4                                   **SAILFISH POINT UTILITY CORPORATION**  
5                                   **IN MARTIN COUNTY**  
6                                   **DOCKET NO. 900816-WS**

7           Q.    Please state your name and address

8           A.    Roger W. Rasmussen

9                   2001 Sailfish Point Blvd. #417

10                  Stuart, Florida 34996

11          Q.    Is that address located within the Sailfish Point  
12                  Development?

13          A.    Yes

14          Q.    Are you a property owner at Sailfish Point?

15          A.    Yes.

16          Q.    When did you first purchase your property interest at  
17                  Sailfish Point?

18          A.    November 1982.

19          Q.    Do you own a condominium unit or a single family home?

20          A.    Condominium Unit

21          Q.    Are you a member of the Sailfish Point Property Owners  
22                  and Country Club Association?

23          A.    Yes. All property owners at Sailfish Point automatically  
24                  become members of the Property Owners Association.

25          Q.    Do you serve in any official capacity on the Sailfish  
26                  Point Property Owners and Country Club Association?

1       A.    No. However, I am a member of the Sailfish Point Owners'  
2       Representatives Committee which functions as an advisory  
3       committee to the Property Owners Association.

4       Q.    How long have you been a member of the SPOR?

5       A.    I was elected in the March 22nd, 1991 election. Although  
6       I was not earlier an elected member of SPOR, I was on the  
7       SPOR Utility Sub-Committee which was charged with  
8       reviewing the initial rate increase submitted by Sailfish  
9       Point Utility Corporation sometime last year.

10      Q.    Please state your educational experience and business  
11      background.

12      A.    I have an undergraduate degree in economics from Monmouth  
13      College and a MBA from Harvard University. I am a CPA.  
14      My business experience has been primarily in  
15      international and financial business operations. My last  
16      corporate position before retirement was Vice President  
17      of Finance for Baxter Laboratories. I held that position  
18      from 1979 through 1982. Before that, I was with DeKalb  
19      AgResearch, Inc., as Director of International  
20      Operations; Manager of Investment Planning and Financial  
21      Vice President and Treasurer. That was from 1966 through  
22      1979. Prior to that, I was with International Harvester,  
23      from 1962-1966 as Assistant to Comptroller of their  
24      French subsidiary.



1 Q. In your educational and business experience, have you  
2 been called upon to study capitalization structure and  
3 return on investment?

4 A. Yes.

5 Q. In your capacity as a member of the SPOR Utility Sub-  
6 Committee and now as a member of SPOR, have you examined  
7 any of the information that has been submitted by the  
8 Utility in support of its rate increase?

9 A. Yes. I have examined the initial request last year which  
10 subsequently was withdrawn. I have also examined the  
11 application of the Utility for the current rate case.

12 Q. Based upon that examination, do you have any observations  
13 or comments?

14 A. Yes. I believe the entire application should be  
15 stringently reviewed with respect to the year of the test  
16 period used in the application, the utilization of cost  
17 of assets, the appropriateness of expenses and parent  
18 company charges absorbed and the appropriateness of  
19 assuming the parent's capital structure, since no equity  
20 has been infused into the Utility. Other accounting  
21 procedures should be rigorously examined to determine if  
22 utility expenses and capitalized expenditures were taken  
23 as expenses on the parent's tax returns.

1 Q. Have you undertaken such an examination?

2 A. No. I was informed only on May 6th that the SPOR  
3 committee was allowed to intervene in these proceedings  
4 and I have not had an opportunity to review any of the  
5 data which would be necessary for me to examine in order  
6 to form opinions as to the correctness of the information  
7 contained in the application. I further understand that  
8 Public Counsel has engaged an accountant to examine that  
9 kind of information. I have been informed of his  
10 testimony but on such short notice, I am unable to make  
11 any detailed observations or comments as to the  
12 information contained in the application or background  
13 data made available to that accountant by the Utility  
14 since I have not reviewed that background data.

15 Q. Are there any areas that you believe that you can make  
16 any meaningful observations about?

17 A. Yes.

18 Q. What are those?

19 A. As a general observation from my perspective as a  
20 property owner and rate payer at Sailfish Point, I was  
21 under the impression that the Utility Facilities were to  
22 be provided by the Developer for the use and benefit of  
23 all Sailfish Point property owners and the rate payers  
24 would be required to absorb in the utility rates only the  
25 cost of operation and maintenance of those facilities.  
26 Not until I reviewed the rate application last year did

1 I become aware that the Developer was including the cost  
2 of those facilities in its capital rate structure and  
3 demanding a return on that capital at the parent  
4 company's capital structure.

5 Q. What is your basis for the statement that you expected  
6 those facilities to be provided by the Developer as a  
7 part of its development cost of Sailfish Point?

8 A. Before I purchased my unit, I paid a visit to Sailfish  
9 Point and was given a large packet of information,  
10 including Development Documents and a Sales Information  
11 Statement dated March 25, 1980. Before I signed the  
12 contract to purchase, the Developer's representative  
13 insisted that I read all of the documents and, as a part  
14 of the closing, I was required to sign a statement that  
15 I had read all of the documents. I recall that one of  
16 the advantages pointed out to me by the sales  
17 representative was that the development had its own water  
18 and sewage treatment plants.

19 Q. Were there any representations made to you about the  
20 projected cost of water and sewer services?

21 A. Yes.

22 Q. In what form was that representation made?

23 A. In the Information Statement to which I previously  
24 referred.

25

1 Q. Is the document at Tab-3 of Exhibit RWR-1 attached hereto  
2 a copy of the Information Statement to which you  
3 referred?

4 A. Yes.

5 Q. Would you explain what provision of that Statement you  
6 contend to make a representation about the charges?

7 A. In Section XII subparagraph (b) on page 20 points out  
8 that the tariffs include monthly charges based on the  
9 current estimate of average monthly use and an owner of  
10 a single family detached lot or townhouse could expect  
11 to pay approximately \$25.00 per month for water. Since  
12 I was purchasing a condominium unit, I expected that my  
13 charges would be even less than that.

14 Q. What has been your actual experience since becoming a  
15 resident of Sailfish Point with regard to the utility  
16 charges?

17 A. Well, in 1989, the total bill for our 64 units was  
18 \$16,364.94 for 2,481,000 gallons of usage. That averages  
19 about \$250.00 per year per unit. Thus, the average  
20 monthly rate per unit is less than the \$25.00 estimated  
21 charge contained in the 1980 Information Statement.

22 Q. What rates did you pay in the years before 1989?

23 A. My recollection is that in all prior years it was not  
24 more than the amount I just answered with regard to the  
25 year 1989.

26



1 Q. If the rates requested by the Utility in the present  
2 application are permitted, what will be the effect on  
3 your monthly charges?

4 A. The charge to the condominium would more than triple.  
5 Thus my monthly rate would also more than triple.

6 Q. In preparing for your testimony in this proceeding, have  
7 you had an opportunity to review the documents which are  
8 filed herewith as Exhibits RWR-2, RWR-3, and RWR-4?

9 A. Yes.

10 Q. Would you explain what those are?

11 A. Yes. They are the documents recorded in the Martin  
12 County Records which govern the uses and restrictions and  
13 set out the overall development plan of Sailfish Point.  
14 They govern and bind all owners within Sailfish Point.

15 Q. Is there anything in those documents which in your  
16 opinion is inconsistent with your conclusion that the  
17 Utility Facilities would be contributed by the Developer  
18 as a part of the development cost of Sailfish Point?

19 A. No. I think their provisions are entirely consistent  
20 with that opinion and conclusion.

21 Q. Could you summarize for the Commission the basis for your  
22 conclusion that the documents are consistent with your  
23 conclusion?

24 A. Sailfish Point was authorized as a planned unit  
25 development by Martin County in a PUD Zoning Agreement  
26 dated January 9, 1979 with Sailfish Point, Inc., the

1       Developer. Sailfish Point, Inc., the Developer is a  
2       wholly owned subsidiary of Mobil Land Development  
3       Corporation which is owned by its parent Mobil  
4       Corporation. That agreement, and the amendments to it,  
5       set forth the understandings and conditions by which the  
6       Martin County Commission authorized Sailfish Point, Inc.  
7       to develop the real estate known as Sailfish Point.

8       The original PUD Zoning Agreement and its amendments are  
9       contained in Volumes 1, 2, and 3 of Exhibit RWR-2 filed  
10      herewith. The Developer was required to submit plans and  
11      details of the proposed facilities to be constructed and  
12      the County would give approval for the construction to  
13      commence. Before the County approved the PUD Zoning  
14      Agreement, it required Mobil Corporation to execute a  
15      bond in the amount of \$4,000,000 conditioned upon the  
16      proper completion by Sailfish Point, Inc. of certain  
17      improvements and conditions set forth in the PUD Zoning  
18      Agreement. A copy of that "Subdividers Completion  
19      Agreement" is attached as Tab-1 to RWR-2. That document  
20      obligates Mobil Corporation to fund up to \$950,000 for  
21      construction of the water treatment plant and up to  
22      \$920,000 for construction of the waste water treatment  
23      plant. Should Sailfish Point, Inc. fail to construct  
24      those improvements, the Agreement further authorizes  
25      Martin County to complete construction of those  
26      improvements and obligates Mobil Corporation to fund the

1 cost of such completion up to the designated maximum  
2 limits.

3 The First Amendment to the PUD Zoning Agreement (Tab-3  
4 Exhibit RWR-2) authorized the Developer to construct the  
5 water and waste water treatment facilities on Parcel C  
6 of Plat #1 (the Utility Parcel).

7  
8 The Third Amendment to the PUD Zoning Agreement (Tab-5  
9 Exhibit RWR-2) authorized the Developer to proceed with  
10 "Interim Site Development Work" which included sub-  
11 surface and surface improvements among which were the  
12 installation of underground utilities.

13 The Fourth Amendment to the PUD Zoning Agreement (Tab-  
14 6 Exhibit RWR-2) authorized the construction of the  
15 Cluster Development on Parcel D of Plat 1 of Sailfish  
16 Point. It also approved an attached "Declaration of  
17 Cluster Protective Covenants and Restrictions of Sailfish  
18 Point Villas". That Declaration requires Cluster Common  
19 Expenses to be paid for by assessment against all owners  
20 of the approved Villa Lots and to include maintenance,  
21 improvements and replacement to the Common Elements,  
22 including utility collector lines or facilities located  
23 within or constructed upon that plat.

24  
25 The Sixth Amendment to the PUD Zoning Agreement (Tab-8  
26 Exhibit RWR-2) authorized the recording of the

1       Supplementary Declaration for Plat 6. Among other  
2       things, it required the Developer to construct an  
3       irrigation system for the entire Sailfish Point which  
4       was to be owned by the POA and the Golf Club. It  
5       authorized the construction of a twelve manmade lake  
6       system, ten of which are a part of the water management  
7       system and two are part of the irrigation system for the  
8       golf course.

9  
10       The Tenth Amendment to the PUD Zoning Agreement (Tab-12  
11       Exhibit RWR-2) authorized the Developer to construct and  
12       erect Phase II of the Water Treatment Plant.

13  
14       I think it is significant that all of those  
15       authorizations contained in the PUD Zoning Agreement and  
16       the Amendments authorized the Developer to construct  
17       those water treatment and waste water facilities.  
18       Although the utility facilities were also authorized to  
19       be owned and operated by a corporation known as Sailfish  
20       Point Utility Corporation or such other entity as is  
21       authorized by the Declaration which was required to  
22       receive a certificate from the Florida Public Service  
23       Commission before providing water and waste water  
24       treatment services, the Developer was required to convey  
25       or lease the Utility Parcel to SPUC or other operating  
26       entity subject to all applicable provisions of the



1 Declaration of Covenants and Restrictions and the  
2 Supplementary Declaration for Plat #1.

3  
4 The First Amendment to the PUD Zoning Agreement also  
5 authorized the substitution of a revised Declaration of  
6 Covenants and Restrictions, Articles of Incorporation and  
7 Bylaws for the Sailfish Point Property Owners and Country  
8 Club Association, Inc.

9 Q. Have you reviewed the provisions of that revised  
10 Declaration of Covenants and Restrictions, the Articles  
11 and Bylaws?

12 A. Yes.

13 Q. Are there any provisions contained in those documents  
14 which support your conclusion that the development scheme  
15 required the Developer to provide the utility facilities  
16 as a part of its developmental cost?

17 A. Yes.

18 Q. Would you point those out and explain how they affect  
19 your conclusion?

20 A. Yes. Those documents are contained in Exhibit RWR-3,  
21 which is filed herewith. The operative Declaration of  
22 Covenants and Restrictions (Tab-1 Exhibit RWR-3) is dated  
23 January 25, 1980. It has no specific reference to sewer  
24 and water lines or facilities. Instead, it uses the term  
25 "Utility Parcel" which is defined to mean and refer to  
26 all or any part of Parcel "C-1" of Plat 1A of Sailfish

1 Point. That plat (Exhibit RWR-4) was recorded  
2 concurrently with the First Amendment to the Declaration.  
3 Utility Parcel includes, where the context so requires,  
4 all improvements thereon and appurtenances thereto. That  
5 definition is found in Article I, Section 29 of the First  
6 Amendment to the Declaration. (Tab-4 Exhibit RWR-3).

7  
8 The Declaration recites that the Developer has caused to  
9 be incorporated Sailfish Point Property Owners and  
10 Country Club Association, Inc. which is and will become  
11 vested with primary authority and control over all Common  
12 Areas and is or will become owner of all real and  
13 personal property known as the Common Areas, including  
14 the Country Club. It is the organization with the sole  
15 responsibility to make and collect assessments from all  
16 members to be used to improve, construct, reconstruct,  
17 repair or replace, maintain and operate the Common Areas,  
18 including the Country Club. That provision is found in  
19 Article IV, Section 1.

20  
21 The Declaration defines Common Areas in relation to the  
22 Sailfish Point Property, which is a defined term  
23 including all of the Sailfish Point real estate described  
24 on Exhibit A to the Declaration. Common Areas are any  
25 portion of the Sailfish Point Property, whether real or  
26 personal, title to which is not held by the Developer,

1 by the Owner of a Residential Unit or Parcel, by the Golf  
2 Club, by the Marina Owner or by SPUC as those terms are  
3 defined in the Declaration. Common Areas is further  
4 defined to include any property, real or personal,  
5 submerged or unsubmerged, conveyed to the Association or  
6 reserved for use as a Common Area on any recorded Plat  
7 of any portion of Sailfish Point Property. That  
8 definition is contained in Article I, Section 6 of the  
9 Declaration. Copies of the Recorded Plats are in Exhibit  
10 RWR-4 filed herewith.

11  
12 According to the Unity of Title Agreement recorded as a  
13 part of the First Amendment to the PUD Zoning Agreement,  
14 the Developer originally had title to the entire Sailfish  
15 Point Property. Article III, Section 1 of the  
16 Declaration gives the Developer an election to retain  
17 legal title to all or part of the Sailfish Point Property  
18 which is to become the proposed Common Areas and/or the  
19 Country Club until, but not later than, title to 573  
20 residential units has been conveyed. When that occurs,  
21 legal title to the Common Areas shall be conveyed by the  
22 Developer to the POA. The POA is required to accept  
23 title and has no right to reject it.

24  
25 The Declaration gives to the Developer the option to  
26 retain title to the Utility Parcel or convey any parts

1 of it to SPUC, the POA or any governmental entity  
2 provided that at all times, it shall be subject to  
3 restrictions or uses limiting it to provide a water and  
4 waste water treatment facility and services to all owners  
5 and users of the Sailfish Point Property. That provision  
6 is found in Article III, Section 5 of the Declaration.

7  
8 The Declaration imposes upon the POA the duty to  
9 maintain, protect, repair and replace, at POA expense all  
10 Common Areas and to own, operate, govern, administer and  
11 manage the Common Areas and to insure compliance with the  
12 PUD Zoning Agreement and maintain all permits for  
13 operation of Sailfish Point Property as required by  
14 governmental entities having jurisdiction and to control  
15 the waterways, lagoons, lakes, and inlets in Sailfish  
16 Point and comply with all terms of the water management  
17 system and other permits, licenses, and governmental  
18 approvals in connection with the waterways and to insure  
19 that the provisions of the Declaration are duly enforced.  
20 All of those provisions are found in Article VII, Section  
21 1 of the Declaration.

22 On the otherhand, Sailfish Point Utility Corporation is  
23 required by the Declaration to be responsible only for  
24 the maintenance, repair and replacement of the Utility  
25 Parcel or any improvements thereon. That provision is  
26 found in Article VII, Section 5 of the Declaration.



1  
2 The Developer also is given responsibility by Article  
3 VII, Section 8 of the Declaration for maintenance, repair  
4 and replacement of all parts of the Sailfish Point  
5 Property owned by the Developer.  
6

7 The Declaration, Article VIII, Section 4, prohibits any  
8 owner except SPUC, the Golf Club, the Marina Owner, and  
9 the Developer from constructing any wells or septic tanks  
10 on the property and requires all owners, including the  
11 Golf Club, the Marina Owner, SPUC and the Developer to  
12 pay tap-in and connection fees required by the entity  
13 operating the water and waste water treatment facilities.  
14

15 Ownership and operation of irrigation systems is  
16 authorized by the Golf Club and the POA on property owned  
17 by each of them and each system is a part of and must  
18 comply with the terms of the water management system.  
19 That provision is found in Article VIII, Section 5 of the  
20 Declaration.  
21

22 Since title which SPUC may hold and the maintenance  
23 obligation of SPUC is expressly limited by the  
24 Declaration to the Utility Parcel and the improvements  
25 thereon, I think it is clear from the documents that SPUC  
26 has no ownership rights in and maintenance responsibility

1 for any of the waste water collection or water  
2 distribution lines that are constructed upon the Sailfish  
3 Point Property outside of the Utility Parcel. Until the  
4 Developer conveys the Common Areas on which those lines  
5 are installed to the POA, the Developer owns and is  
6 responsible for the maintenance of those lines. Upon  
7 conveyance of the Common Areas to the POA, the POA  
8 becomes owner of and responsible for maintenance of those  
9 lines.

10 There is nothing in the documents to indicate that anyone  
11 other than the Developer was to construct the utility  
12 facilities, including the waste water and water treatment  
13 plants located on the Utility Parcel. I believe that the  
14 authorizations by the County for the Developer to  
15 construct those facilities when viewed in light of the  
16 PUD Zoning Agreement provisions and the Subdividers  
17 Completion Agreement are clearly subject to the  
18 interpretation that the cost of those facilities will be  
19 borne by the Developer but that the Developer is to  
20 convey those facilities or lease them to an entity such  
21 as SPUC so that they can be operated by such entity,  
22 under the supervision of the PSC, for the benefit of the  
23 Sailfish Point Property Owners. That was, in my opinion,  
24 a deliberate requirement of the County in order to  
25 prevent the Developer from being in sole possession and  
26

1 control of the water and waste water treatment services  
2 and charging exorbitant rates for such services.

3  
4 There is nothing in the documents that says the Developer  
5 is authorized to convey those facilities to SPUC and  
6 establish a rate based upon capitalizing the costs of  
7 those facilities. Therefore, in my opinion, I think that  
8 the documents are entirely consistent with the concept  
9 that the Developer will absorb in its development cost  
10 the cost of construction of the Utility Facilities and  
11 waste water collection and water distribution lines.

12 Q. Are you aware of any documents other than the recorded  
13 documents that you have included and reviewed which  
14 indicate that the Developer may have shared your view and  
15 your conclusions about who was to bear the cost of the  
16 Utility Facilities?

17 A. Yes, in preparing for my testimony, I have reviewed three  
18 Offering Statements that were prepared by Sailfish Point,  
19 Inc. at various times during the development of Sailfish  
20 Point.

21 The March 25, 1980 Information Statement (Tab-3 Exhibit  
22 RWR-1) which I previously mentioned, states that the  
23 Developer owns the structures, pipes and pumps which  
24 constitute the water and waste water treatment facility  
25 and provides that the Developer can elect to convey them  
26 to the POA. If it does, the POA shall have no obligation

1 to pay for such assets or shares but shall have no right  
2 to refuse the conveyance.

3  
4 The May 20, 1985 Information Statement (Tab-2 Exhibit  
5 RWR-1) states that SPUC currently owns the structures,  
6 pipes, pumps and land which constitute the Sailfish Point  
7 Water and Waste Water Treatment Facilities; that the  
8 Developer has completed the waste water treatment plant  
9 which will serve the entire Sailfish Point Property and  
10 that the Developer has completed Phase I of the water  
11 treatment plant and that Phase II which will service the  
12 remainder of Sailfish Point is estimated to be completed  
13 in 1988. It also states, in the future, but prior to  
14 December 31, 1995, the Developer will either transfer its  
15 stock ownership in SPUC or will cause SPUC to convey all  
16 of the then existing facilities, including any  
17 liabilities relating to such facilities or the operations  
18 of SPUC, to one or more of the following entities only,  
19 the POA, the County or other governmental entity or an  
20 independent third party utility company. That statement  
21 further provides that if conveyed to the POA it shall not  
22 be required to pay for such water and waste water  
23 treatment facility or shares of SPUC so conveyed to it  
24 but shall have no right to refuse any such conveyance.



1 Pages 28 and 29 of that document contain a chart which  
2 is a summary of the existing and proposed improvements  
3 at Sailfish Point for Phases I and II. It states that  
4 the Developer is responsible for the construction of  
5 Phase II of the water treatment plant and that no direct  
6 cost will be borne by a purchaser. It points out that  
7 the PSC required Mobil Land Development Corporation to  
8 guarantee a commitment of such funds as may be necessary,  
9 but not to exceed \$240,000 to cover specific potential  
10 operating deficits and except for the guarantee of Mobil  
11 Corporation under the Subdividers Completion Agreement,  
12 Sailfish Point, Inc. is the only corporation financially  
13 responsible for the overall development of Sailfish  
14 Point. The Chart, on Page 29, specifically describes  
15 responsibilities for maintenance of the water treatment  
16 plant and waste water treatment plant as being imposed  
17 upon SPUC. The chart reflects that maintenance of the  
18 water distribution lines and waste water collection lines  
19 is the responsibility of the POA; except the townhouses  
20 where the Cluster Association has responsibility for  
21 maintenance of those lines within the townhouse area.

22  
23 The July 1, 1989 Information Statement (Tab-1 Exhibit  
24 RWR-1) states that SPUC owns and operates the potable  
25 water and waste water treatment facility, including  
26 collection and distribution lines and pipes and operates

1 the residential irrigation systems within Sailfish Point.  
2 It further provides that prior to December 31, 1995, the  
3 Developer will either transfer stock ownership in SPUC  
4 or cause SPUC to convey all the existing facilities,  
5 including liabilities relating thereto and to the  
6 operation of SPUC, to the POA, to Martin County or some  
7 other governmental entity or to a third party utility  
8 company. Water distribution and waste water collection  
9 lines are represented to be supplied to a point on the  
10 property line of each residence.

11  
12 In my opinion, those references are entirely consistent  
13 with and support my conclusion that the capital cost of  
14 the water and waste water treatment facilities and the  
15 water distribution and waste water collection lines were  
16 to be contributed by the Developer as a part of the  
17 infrastructure at Sailfish Point.

18  
19 The documents point out that the Utility Parcel, which  
20 contains the water treatment and waste water treatment  
21 plants themselves is to be operated and maintained by  
22 SPUC under typical PSC tariffs. To me, that means only  
23 that the operation and maintenance cost of those  
24 facilities is to be borne by the rate payers. Under PSC  
25 tariffs, base facility charges and connection charges are  
26 allowed to be imposed without regard to useages.

1 Charges related to the amount of use of those facilities  
2 are also allowed. That is perfectly consistent with the  
3 development scheme limiting SPUC's interest solely to the  
4 Utility Parcel. On the otherhand, the water distribution  
5 and waste water collection lines located outside of the  
6 Utility Parcel are to be owned and maintained by the POA  
7 as part of the common areas. As to those, the cost for  
8 maintenance is to be spread evenly, as a part of the  
9 maintenance assessment, among all of the POA members.

10  
11 Furthermore, it is clear that the irrigation systems are  
12 to be owned and operated by the POA and by the Golf Club.  
13 I can find no authority in the Development Documents  
14 which authorizes the SPUC to provide and charge for  
15 irrigation water.

16 Q. Are there any other provisions of the documents to which  
17 you would like to refer or make comment.

18 A. No. However, I would like to conclude with an  
19 observation that it would seem to me any utility company  
20 coming before a rate making body such as the Public  
21 Service Commission would be obligated to first prove that  
22 it is the owner of the improvements which it seeks to  
23 include as a part of its capital structure. Given the  
24 nature of the provisions in the documents that I have  
25 discussed in my testimony, it is clear to me that there  
26 is no document provision which authorizes the Developer

1 to transfer the cost of construction of those facilities  
2 to a wholly owned entity created by it under the  
3 Development Documents to operate and maintain those  
4 facilities and to require the residents of Sailfish Point  
5 to pay rates which provide the Developer a return upon  
6 that investment, especially since nearly ten years have  
7 passed before the Developer-owned utility has petitioned  
8 for a rate based upon such structure.

9  
10 I believe the testimony of Mr. DeWard, the accountant  
11 hired by Public Counsel, also shows that the Developer  
12 has given the Utility Facilities accounting treatment  
13 which is entirely consistent with my view that the  
14 documents envision these costs to be absorbed by the  
15 Developer as part of overall development cost.

16  
17 I made a brief review of some of the Developer's books  
18 incident to the filing last year. That review showed  
19 interest free loans and intracorporate transfers which  
20 are entirely consistent with my interpretation of the  
21 development plan contained in the documents. I would  
22 like to see the tax returns of the parent corporation to  
23 determine if the cost to construct the Utility facilities  
24



1  
2 have been expensed or otherwise treated as assets of the  
3 parent.  
4

5 Q. Does that conclude your testimony?

6 A. Yes. However, I am providing the attached index of the  
7 Exhibits to my testimony to facilitate understanding the  
8 basis of my comments and conclusions.  
9

10 311701ts.stl

11

1           Q     (By Mr. King) Would you like to summarize  
2 for the Commission your prefiled testimony?

3           A     Well, it's a little difficult to summarize  
4 because there's about a foot of documents. But I think  
5 maybe the best summary is one that's not done by me but  
6 it was a summary of all the documents that was done by  
7 the developer that they gave to me before I purchased.  
8 And that is in the part of the prefiled testimony; it  
9 was also mentioned by some of the residents that  
10 testified yesterday, and I think Commissioner Deason  
11 referred to it this morning.

12                 But in that one paragraph which I would like  
13 to read, it says, "Ownership of the SPUC assets. We  
14 currently own the facility, including structures, pipes  
15 and pumps, which constitute the Sailfish Point water  
16 and wastewater treatment facility. At some time in the  
17 future, but no later than 1987, we shall convey all or  
18 part of this facility and/or the assets of SPUC to  
19 SPUC, or to the Association, or to Martin County, or to  
20 some other government entity, provided the facility is  
21 maintained to provide water and wastewater treatment  
22 facilities and services to all owners and users of  
23 Sailfish Point property. Alternatively, we shall  
24 convey the shares of SPUC to the Association, or to  
25 Martin County, or to some other government entity,

1 provided that the facility is maintained to provide  
2 water and wastewater treatment facilities and services  
3 to all owners and users of Sailfish Point property.  
4 The Association shall not be required to pay for such  
5 assets or shares, but shall have no right to refuse the  
6 conveyance. In the event that SPUC assets or shares or  
7 any part thereof are conveyed to the Association, or to  
8 Martin County, or to any other government entity, the  
9 developer shall have no further obligation to complete  
10 any uncompleted portion of the facility which it has  
11 conveyed.

12 "In the event the SPUC assets or shares are  
13 conveyed to Martin County or any other government  
14 entity, the rates charged for water and wastewater  
15 treatment services will be regulated solely by Martin  
16 County and may be higher than the rates charged by  
17 SPUC."

18 This is really the summary that was given to  
19 me before I purchased and I think it's significant for  
20 maybe three reasons. First of all, they say they're  
21 going to convey or give the assets before 1987. The  
22 reason it was for then is they felt, the developer  
23 felt, that by that time they would have made all of the  
24 profit and sold all of the properties that they have  
25 here. And I think that goes to the fact that they

1 thought they would be in and out quickly, and they were  
2 not worried about setting up a real utility corporation  
3 or maintaining profit from the utility corporation.

4 I think this paragraph very definitely shows  
5 an invitation to give, to convey this, to the Property  
6 Owners Association. And again, I think that goes to my  
7 point that they expected to get their profit from the  
8 sale of assets and the charge to the unit owners was  
9 based upon maintenance and operation charges.

10 And again, they say in this same paragraph,  
11 if we do not accept the, if the Association does not  
12 accept the Utility and it's given to some governmental  
13 agency, our water rates may increase. So I think all  
14 of those, as summarized by the developer in an early  
15 declaration, indicate what their intentions were and  
16 that is why I feel the documents support the position I  
17 have taken in my testimony.

18 MR. KING: I tender the witness.

19 COMMISSIONER EASLEY: Mr. Reilly, do you wish  
20 to inquire?

21 MR. REILLY: No, no cross examination.

22 CROSS EXAMINATION

23 BY MR. GIRTMAN:

24 Q Mr. Rasmussen, let me confirm that the  
25 document that you are reading from is the Information



1 Statement for Sailfish Point, Phase I, dated March 25,  
2 1980?

3 A That's correct.

4 Q And may I direct your attention to --

5 MR. KING: Excuse me. I've been advised that  
6 I did not move the testimony in the record and I do so.

7 COMMISSIONER EASLEY: It will be so inserted  
8 into the record.

9 (Reporter's Note: Prefiled testimony of  
10 Roger W. Rasmussen inserted at Page 639 for convenience  
11 of the record.)

12 Q (By Mr. Girtman) Call your attention to Page  
13 2, Paragraph Roman Numeral II, Paragraph (a) "In  
14 general." Would you read that short paragraph into the  
15 record, please?

16 A II(a) just the first paragraph?

17 Q Yes, beginning, "The developer ..."

18 A Beginning (a) or (b)? "The developer,  
19 Sailfish Point, Inc., is a wholly-owned subsidiary of  
20 Mobil Land Corporation which, in turn, is a  
21 wholly-owned subsidiary of Mobil Corporation, a major  
22 publicly-held corporation whose stock is traded --"

23 COMMISSIONER EASLEY: Mr. Rasmussen, please  
24 remember we're not reading it with you.

25 A Okay. "The developer, Sailfish Point, Inc.,

1 is a wholly-owned subsidiary of Mobil Land Development  
2 Corporation which, in turn, is a wholly-owned  
3 subsidiary of Mobil Corporation, a major publicly held  
4 corporation whose stock is traded on the New York Stock  
5 Exchange."

6 Q Now, if you'll drop down two more paragraphs  
7 to the third paragraph of II(a) beginning "Sailfish  
8 Point," would you read the first sentence only?

9 A "Sailfish Point, Inc., has been formed for  
10 the purpose of developing Sailfish Point."

11 Q All right. Now, the information that you  
12 were quoting as an addition to your prefiled testimony  
13 is from Page 20 of that document, is that not correct?

14 A Yes.

15 Q And is that not subparagraph Roman Numeral  
16 XII, "Sailfish Point Utility Corporation, (c), Ownership  
17 of SPUC Assets"?

18 A Yes.

19 Q All right. Now, the paragraph that you  
20 quoted, what are the alternative recipients of the  
21 Utility assets? Who might get those assets?

22 A My understanding from the article is that it  
23 would be given to the Association; and if they did not  
24 receive it, they could give it to Martin County.

25 Q Let me call your attention, please, to the

1 points that I have highlighted for you there and ask  
2 you, is it not true that the paragraph states that, "No  
3 later than 1987, we shall convey all or part of this  
4 facility and/or the assets of SPUC to SPUC, or to the  
5 Association, or to Martin County, or to some other  
6 governmental entity"? Is that not correct?

7 A Yes.

8 Q All right. Going down the paragraph where it  
9 says, "Alternatively, we shall convey the shares of  
10 SPUC to the Association, or to Martin County, or to  
11 some other governmental entity," is that not in there?

12 A Yes.

13 Q All right, does not that give Sailfish Point,  
14 Inc., another set of alternatives?

15 A I'm not sure that they legally can have the  
16 right to do that, but --

17 Q All right, but isn't that what the document  
18 says?

19 A Yes.

20 Q So under this document, it would have been  
21 appropriate for Sailfish Point, Inc., to choose to  
22 convey the Utility assets to SPUC, is that not correct?

23 A I believe they had, well, as of '83, they had  
24 already --

25 Q Please just answer my question. This is a



1 March 25, 1980, information statement, correct?

2 A Yes.

3 Q 1980. And this is effective as of 1980. And  
4 as of that time, didn't Sailfish Point, Inc., have the  
5 right to convey the Utility assets under the first set  
6 of alternatives, to convey the Utility assets to SPUC?  
7 Isn't that what that says?

8 A Yes.

9 Q Okay. Now, you've been here through these  
10 two days of testimony, haven't you, or most of it?

11 A Yes.

12 Q Have you heard testimony given that the  
13 Utility assets were conveyed to SPUC in 1983?

14 A I have heard testimony that, yes, I heard  
15 testimony.

16 Q Okay. Now, if Sailfish Point, Inc., conveyed  
17 the assets to SPUC in 1983, did they not comply with  
18 this paragraph?

19 A Not to my understanding.

20 Q What is your different understanding?

21 A My understanding is that this was part of the  
22 amenity package and that this would be transferred to  
23 the Association, and these alternatives here were if  
24 under the unlikely case that the Association would not  
25 accept those that they have an alternative.



1           Q     Where is it said that that alternative is  
2 available and that condition and limitation is  
3 available, that they had to convey it to the POA first  
4 and if the POA didn't want it, then they had these  
5 alternatives? Where is that?

6           A     That's not in here.

7           Q     Okay. Let's turn, please, to -- let me  
8 identify it and then we'll find it. Public Offering  
9 Statement dated May 20th, 1985. For those who are  
10 looking, it may help; it was RWR-1, Volume I of 1, tab  
11 two.

12           MR. KING: If I may help, in Exhibit 5, it is  
13 the 17th page over where it begins.

14           COMMISSIONER EASLEY: 17th page over from  
15 what?

16           MR. KING: From the beginning.

17           COMMISSIONER EASLEY: Oh, okay. (Pause)

18           Q     (By Mr. Girtman) Page 8 of that document is  
19 where I would like to turn to first. Do you see it?

20           A     Yes.

21           Q     Okay. All right. We've established so far  
22 that in 1980 there was an Information Statement giving  
23 certain alternatives to Sailfish Point, Inc., as to how  
24 to deal with the assets, the Utility assets. And we've  
25 established that in 1983, Sailfish Point, Inc.,

1 transferred those assets to Sailfish Point Utility  
2 Corporation, right?

3 A I don't -- maybe there was a paper transfer,  
4 but I really don't think that was a bona fide  
5 corporation.

6 Q Let me focus your attention, please, to  
7 paragraph Roman Numeral I, "The developer, builders and  
8 Pennsylvania representative..." If you would read,  
9 just look at the first paragraph and identify, please,  
10 who the developer is indicated to be.

11 A Sailfish Point, Inc.

12 Q Okay. And going down to the third unnumbered  
13 paragraph of that document regarding -- let me see,  
14 over to Page 31. If you would please look at the  
15 paragraph identified at the top of the page, "C, Water  
16 Supply, 1, Central Water System." The second  
17 unnumbered paragraph, would you please read the first  
18 sentence?

19 A "SPUC currently owns the structures, pipes,  
20 pumps and land which constitute the Sailfish Point  
21 water and wastewater treatment facilities."

22 Q All right. So this document as of 1985  
23 acknowledges that SPUC is the owner, according to these  
24 words, correct?

25 A According to these words, yes.

1           Q     If you would, go on down into that paragraph  
2 beginning with the words, "At some," and through the  
3 word "property" that I've marked for you, would you  
4 please read that portion of the paragraph?

5           A     "At some time in the future, but in all  
6 events prior to December 31st, 1995, the Developer will  
7 either transfer its stock ownership in SPUC or will  
8 cause SPUC to convey all of the then existing  
9 facilities, including any liabilities relating to such  
10 facilities or the operations of SPUC, to one or more of  
11 the following entities only: Property Owners  
12 Association, Martin County, some other governmental  
13 entity, or an independent third party utility company,  
14 provided in all events that the facilities are  
15 maintained to provide water and wastewater treatment  
16 services to owners and users of Sailfish Point  
17 property."

18          Q     Will you focus your attention, please, on  
19 Page 33, Paragraph E, entitled, "Sewage Disposal  
20 Facilities, 1, Central Sewage System." And I direct  
21 your attention to the second unnumbered paragraph.  
22 Would you please read that paragraph into the record?

23          A     "Please refer to Section Roman Numeral  
24 VIII.C.1 (Central Water System) for details concerning  
25 ownership of the wastewater treatment facilities and to

1 section Roman Numeral VIII.C.2 (Water and Wastewater  
2 Charges) for details on wastewater charges."

3 MR. GIRTMAN: Let the record reflect that the  
4 Paragraph C which Mr. Rasmussen previously read into the  
5 record regarding ownership and right of transfer was  
6 part of Paragraph Roman Numeral VIII, Improvements and  
7 Their Maintenance.

8 Q (By Mr. Girtman) Now, given the fact that  
9 the first document in 1980 provided Sailfish Point,  
10 Inc., the options of transferring the Utility assets  
11 either to SPUC, or to the POA, or to a governmental  
12 entity, maybe Martin County, isn't it true that the  
13 conveyance in 1983 met those conditions and it  
14 exercised the alternative and the option that Sailfish  
15 Point, Inc., had under that paragraph?

16 A My understanding of that paragraph was that  
17 it dealt with the eventual turnover of the facilities  
18 to the Property Owners Association and it gave them  
19 some other alternatives.

20 Q Okay. So you don't read that paragraph the  
21 same way I do, then, do you?

22 A No.

23 Q Okay. Given the fact that the transfer  
24 occurred in December 1983 and now Sailfish Point  
25 Utility Corporation is the holder of title to those



1 assets in accordance with the 1980 --

2 MR. KING: I object to the form of the  
3 question as to who the holder of title is, that is a  
4 problem, and issue not in the jurisdiction of this  
5 Commission and I object to the way it's phrased.

6 COMMISSIONER EASLEY: I suggest you --

7 MR. GIRTMAN: I'll rephrase.

8 COMMISSIONER EASLEY: Thank you. You enjoyed  
9 doing that, didn't you, Mr. King? (Laughter)

10 Q (By Mr. Girtman) In view of the fact that  
11 page 31 of the 1985 document states SPUC currently owns  
12 the structures, pipes, pumps and lands which constitute  
13 Sailfish Point water and wastewater treatment  
14 facilities, in lieu of that statement -- in view of  
15 that statement -- it came to me all of a sudden.

16 COMMISSIONER EASLEY: It's been a long day.  
17 (Laughter)

18 Q (By Mr. Girtman) In view of that statement,  
19 is it not correct that in this document in that same  
20 paragraph then new options were available because the  
21 previous option had already been exercised and the  
22 selection of those available options was to transfer it  
23 to Sailfish Point Utility Corporation, isn't that true?

24 A I did not interpret it that way, but I can  
25 see that you might interpret it that way.

1 COMMISSIONER EASLEY: I'm having, you've got  
2 to remember, Mr. Rasmussen.

3 MR. KING: Speak up. Real close to the mike.

4 MR. GIRTMAN: If you would repeat that  
5 statement, please.

6 A I can see where you could make that  
7 interpretation. My impression was throughout that  
8 there was a commitment to turn the facilities over to  
9 the Property Owners Association and all of these other  
10 alternatives were just possibilities if that did not  
11 work out.

12 Q Do you know whether the Property Owners  
13 Association has ever maintained the lines and mains in  
14 Sailfish Point?

15 A I do not.

16 Q Do you know whether the Property Owners  
17 Association has ever paid for the maintenance or  
18 upkeep, repair, replacement or whatever, of any of  
19 those mains or lines?

20 A No.

21 MR. GIRTMAN: No further questions.

22 COMMISSIONER EASLEY: I have one I'd like to  
23 clarify before we go any further.

24 Mr. Rasmussen, I asked Mr. Seidman after we  
25 got through some of these documents when the Composite

1 Exhibit 5 was first introduced about the number of  
2 units that are represented in the PUD zoning document.  
3 It was 765 units and Mr. Seidman said that his  
4 understanding was that the authorized build-out was 600  
5 units and that currently build-out is sitting at 565  
6 units. Do those numbers sound about right?

7 WITNESS RASMUSEN: They're about right. I'm  
8 not certain that the 565 is cast in stone yet because  
9 there's some property at the end of the inlet here that  
10 I believe could be used either for a single family  
11 residence or a condominium. But those are in the  
12 ballpark.

13 COMMISSIONER EASLEY: Do you have any idea  
14 how many of these units have been actually sold?

15 WITNESS RASMUSEN: Again, these are ballpark  
16 figures. I think probably there's been around 400 to  
17 450 sales. Now, a lot of those would be of lots that  
18 have not yet been developed.

19 COMMISSIONER EASLEY: Okay. Thank you.  
20 Staff?

21 MS. BEDELL: We have an exhibit that we'd  
22 like to have marked for identification that is  
23 comprised of pages 5, 6 and 7 of the transcript of Mr.  
24 Rasmussen's deposition taken on May 29.

25 COMMISSIONER EASLEY: That will be Exhibit

1 No. 18.

2 MS. BEDELL: Thank you.

3 (Exhibit No. 18 marked for identification.)

4 CROSS EXAMINATION

5 BY MS. BEDELL:

6 Q Mr. Rasmusen, would you please refer to the  
7 exhibit?

8 A I have it in front of me.

9 Q Okay. And have you had a chance to look over  
10 it?

11 A Yes, I have.

12 Q And if Staff were to pose the same questions  
13 to you today, would your answers be the same?

14 A Yes, they would.

15 Q You said there was an error in spelling on  
16 one of those pages?

17 A On the second line on Page 5, the Company's  
18 name is misspelled.

19 Q The decal?

20 A It's DeKalb. D-e-K-a-l-b, one word.

21 And then Ag Research is one word.

22 A-g-R-e-s-e-a-r-c-h.

23 COMMISSIONER EASLEY: Where are you finding  
24 that?

25 MS. BEDELL: Top of Page 5. Excuse me, it's



1 not Page 5 of the exhibit but Page 5 of the deposition,  
2 which is Page 3.

3 COMMISSIONER EASLEY: Thank you.

4 MS. BEDELL: I have no other questions and  
5 would move it.

6 COMMISSIONER EASLEY: All right, Commissioner?

7 COMMISSIONER DEASON: No questions.

8 COMMISSIONER EASLEY: Redirect?

9 MR. KING: I noticed when Mr. Seidman and  
10 others have been on that he has conferred with other  
11 people who have information that he didn't have. Mr.  
12 Rasmussen says he doesn't know whether the POA has paid  
13 for any expenses or whatever. Some people in the  
14 audience say that if they can tell him, he will know,  
15 because they know; and I would like to have an  
16 opportunity to find that out, apparently, so that he  
17 could confer. Just take a second.

18 COMMISSIONER EASLEY: We'll take a second.  
19 It's a little bit different, and let me explain the  
20 reason that I hesitate, Mr. King.

21 MR. KING: All right.

22 COMMISSIONER EASLEY: Normally, the  
23 whisperings are from the technical or the expert  
24 assistants to the people who are testifying.

25 Because your witness is testifying as a

1 homeowner as well as, I guess, expert condominium  
2 owner, I'm not sure how to classify that (Laughter) but  
3 because of the nature of the witness and the nature of  
4 the kind of communication we're talking about, I'm  
5 going to permit it.

6 MR. KING: Well, it seems to me some of the  
7 things that we had conferences on were fact issues.

8 COMMISSIONER EASLEY: I understand.

9 MR. KING: Whether a certain thing had occurred  
10 at a certain time is purely a question of fact.

11 COMMISSIONER EASLEY: And I'm going to permit  
12 it. I simply felt the need to explain why I was  
13 permitting it to the record.

14 MR. KING: All right, I appreciate that. And  
15 the other thing is we have talked about it in some of  
16 the Commission's ruling, I would like to make sure the  
17 record is clear, and I would offer as a stipulation  
18 that there has been no turnover of control of the  
19 Property Owners Association to the homeowners and that  
20 the developer is still in control as we sit here of the  
21 Property Owners Association.

22 COMMISSIONER EASLEY: Thank you. Does  
23 anybody have any problem with agreeing to that  
24 statement?

25 MR. REILLY: We definitely stipulate to that.

1           MR. GIRTMAN: Not as far as that statement  
2 goes, I've got no problem with it.

3           MS. BEDELL: Staff has no problem.

4           COMMISSIONER EASLEY: It is accepted. We  
5 will take a five-minute break for conference.

6           (Brief recess.)

7           - - - - -

8           COMMISSIONER EASLEY: We will go back on the  
9 record. Mr. King?

10          MR. KING: While we were off the record, we  
11 conferred with some people who were aware of this  
12 information. As it turns out, the controller of the  
13 POA took off this morning for two days and we can't  
14 really confirm it. Is it possible that we could have  
15 the opportunity to file a, what is it, a --

16          COMMISSIONER EASLEY: Late-filed exhibit.

17          MR. KING: -- late-filed exhibit to reflect  
18 if there have been any expenditures by the POA on  
19 improvements which the Utility contends are utility  
20 improvements?

21          COMMISSIONER EASLEY: We will accept the  
22 Late-Filed Exhibit No. 19 --

23          (Late-Filed Exhibit No. 19 marked for  
24 identification.)

25          MR. GIRTMAN: Commissioner, if I could, for

1 clarification on that?

2 COMMISSIONER EASLEY: Yes.

3 MR. GIRTMAN: Have them differentiate  
4 expenses relating to irrigation, which the POA is  
5 responsible for, and water and sewer lines, potable  
6 water and wastewater lines, for which they are not, in  
7 our opinion, are not responsible. We need that  
8 differentiation to --

9 COMMISSIONER EASLEY: I think that the list  
10 of expenditures should be by category, differentiated  
11 in a manner that the figures are clear to all parties  
12 as to what is being represented. With --

13 MR. KING: I will represent if we cannot make  
14 it clear, if we can't differentiate, then we will tell  
15 you that and tell you what it is we say we include in  
16 that.

17 COMMISSIONER EASLEY: I think that would be  
18 satisfactory.

19 MR. GIRTMAN: Okay. My only concern is that  
20 I have no idea what's really going to come and I've  
21 have no way to rebut it. May I have the opportunity to  
22 also file a late-filed exhibit in rebuttal? I have  
23 never done that before.

24 COMMISSIONER EASLEY: No, we're getting into  
25 a little bit of a dilemma here. I think the



1 opportunity will come at the time of brief, we will  
2 have all late-filed, and file objections to a  
3 late-filed exhibit, that's correct. Mr. Pruitt has  
4 reminded me that you maintain the opportunity to object  
5 after you have received it.

6 MR. GIRTMAN: Okay, thank you.

7 MR. KING: I have nothing further of this  
8 witness.

9 MS. BEDELL: I'd like to move Exhibit 18 into  
10 the record.

11 COMMISSIONER EASLEY: Without objection,  
12 Exhibit 18 is moved into the record.

13 (Exhibit No. 18 received into evidence.)

14 MR. KING: I would like to move Exhibit 17.  
15 I believe 5 has already been admitted.

16 COMMISSIONER EASLEY: That's correct.  
17 Without objection, Exhibit 17 into the record.

18 (Exhibit No. 17 received into evidence.)

19 COMMISSIONER EASLEY: That completes the  
20 exhibit list. All the rest are late-filed. Now, we  
21 need to go through the CASR and determine dates on the  
22 late-filed exhibits. When are the briefs due?

23 MS. BEDELL: Madam Chairman, the briefs are  
24 due on 7-19-91; and about two weeks from now would be  
25 July 13th, which might be a good time for the

1 late-filed exhibits.

2 COMMISSIONER EASLEY: All right. Late-filed  
3 exhibits with the exception of the one which was  
4 Late-Filed 13, which has a one-week date on it, other  
5 late-filed exhibits will be due July 13th. The  
6 transcripts, when is the date on that?

7 MS. BEDELL: The transcripts are due on July  
8 the 5th.

9 COMMISSIONER EASLEY: July the 5th? Is there  
10 a problem, Joy? You look shocked.

11 REPORTER MS. KELLY: Do I? I guess I am. I  
12 don't know, do we have a few more days we can have?

13 COMMISSIONER EASLEY: That's on a Friday.  
14 What does it do to -- does it do you any good to get it  
15 until Tuesday?

16 REPORTER MS. KELLY: That's a four-day week.

17 COMMISSIONER EASLEY: Does it help you to get  
18 it to Tuesday? Does it do anything to the rest of the  
19 schedule if we move it to Tuesday?

20 MS. BEDELL: It gives the parties less than  
21 two weeks to do their briefs but I think we might be  
22 able to move that forward a couple of days as well,  
23 back.

24 MR. KING: Not forward, back.

25 MS. BEDELL: Back.

1 COMMISSIONER EASLEY: Back. I think I'd  
2 rather allow the two days on the transcript side  
3 because of the holiday weekend. Frankly, the parties  
4 aren't going to be ready to receive them anyway. I  
5 suspect there isn't anybody going to be around on July  
6 5th. We will move the date on the transcripts to --  
7 what is Tuesday following, is that --

8 MS. BEDELL: It looks like July the 9th.

9 COMMISSIONER EASLEY: July 9th, will that be  
10 enough time, Joy?

11 REPORTER MS. KELLY: Yes, ma'am.

12 COMMISSIONER EASLEY: That will move the date  
13 for the late-fileds to -- I'm going to leave the  
14 late-fileds to 7-13.

15 MR. GIRTMAN: Isn't that on a Saturday?

16 MS. BEDELL: Excuse me, I'm sorry, I'm sorry.  
17 The next Tuesday would be July the 11th.

18 COMMISSIONER EASLEY: Okay. Can I still  
19 leave the late-fileds on the 13th? Does that present a  
20 problem for anybody?

21 MR. GIRTMAN: Isn't that a Saturday?

22 COMMISSIONER EASLEY: I haven't the foggiest,  
23 I don't have a calendar. (Pause)

24 MR. GIRTMAN: July 13th is a Saturday.

25 COMMISSIONER EASLEY: The 13th of July is a

1 Saturday. We will make late-fileds due on the 15th of  
2 July, which is a Monday. Kathy?

3 MS. BEDELL: I'm sorry, my calendar is not  
4 working real well.

5 COMMISSIONER EASLEY: Late-fileds will be due  
6 on Monday, the 15th of July. We will move the deadline  
7 for briefs from the 19th to the 22nd, that will give  
8 you all a weekend. Kind of dirty pool, but at least it  
9 buys a couple of days.

10 Well, they got to work a weekend, you guys  
11 ought to have to work a weekend.

12 MR. GIRTMAN: Well, I appreciate that,  
13 Commissioner.

14 COMMISSIONER EASLEY: I thought you would.  
15 That way, however, we do not have to move the dates for  
16 Staff recommendation and the hearing, and the Special  
17 Agenda, and I suspect you'd rather work a weekend than  
18 have me do that.

19 Those will be the only dates then that will  
20 have to change, am I correct, counsel?

21 MS. BEDELL: Yes, ma'am.

22 COMMISSIONER EASLEY: Anything else?  
23 Anything else that needs to be done? Anything else by  
24 the parties before we adjourn? Mr. Reilly?

25 MR. REILLY: Yes. My understanding is we



1 have still outstanding a ruling on our primary Motion  
2 to Compel; and, of course, this is on the item that's  
3 probably been discussed as much as any other item -- on  
4 the cost of goods sold.

5 We would renew some way that we could permit  
6 someone from our office to do this investigation that  
7 would confirm the truth of this item that was in the  
8 last paragraph of the affidavit signed by Terry Olson.  
9 And as my only final argument on that, what we have  
10 learned in this hearing is that the person who has  
11 sworn that the these costs were not put into the costs  
12 of goods sold had not looked at the very records that  
13 we were hoping to look at. And we believe that this is  
14 a matter of enough gravity that we would hope that we  
15 would be afforded that opportunity.

16 Or if that could be scheduled again on a very  
17 expedited basis with the idea that, should the facts  
18 prove to be something other than what the Utility  
19 suggests they are, we would file a statement to that  
20 effect and of course give the Utility full opportunity  
21 to rebut and disagree with that interpretation. Then  
22 the Commission could take those two recommendations,  
23 rule on them as is, or if they felt it necessary to  
24 have a short oral argument, then that could be  
25 scheduled. That may well not be necessary, needless to

1 say, because the research could find and confirm the  
2 cost of goods sold. But that's the one outstanding  
3 issue.

4 COMMISSIONER EASLEY: Mr. Girtman?

5 MR. GIRTMAN: Commissioner, first of all, I  
6 think it's very clear that what Mr. Reilly seeks is not  
7 appropriate for a Motion to Compel. There has been  
8 nothing filed to compel. Until yesterday, -- excuse  
9 me, day before yesterday -- I didn't even know about  
10 what they wanted to do.

11 Now, I have also some concerns in that  
12 material was provided to them -- excuse me, that's on a  
13 different subject. I've given them so much stuff  
14 lately.

15 There is a concern that I have, concerns both  
16 substantively and procedurally. The documents I think  
17 which Mr. Reilly is suggesting need to be looked at are  
18 truly confidential proprietary business information.  
19 They deal with the cost of assets. There also is a  
20 problem here in that Mr. King represents both the  
21 Sailfish Point Property Owners Representatives in this  
22 case in which they are conducting discovery; he also  
23 represents them in what he has styled "turnover issues"  
24 in dealing with Sailfish Point, Inc. And documents  
25 which are given either to Mr. Reilly or to Mr. King

1 wind up on each other's desks.

2           The procedural problem that I've got is that  
3 it seems like in every case in which I have to do  
4 battle with Mr. Reilly, it's always right down to the  
5 last minute on discovery which should have been  
6 completed prior to the Prehearing Conference. It wears  
7 me out, Commissioner. It distracts from my ability to  
8 prepare my case. It does, as has been shown in this  
9 proceeding and all of this hullabaloo about the  
10 redacted portions of those documents doesn't amount to  
11 a hill of beans.

12           Now, if there is a way that we can find to  
13 provide in camera to the Commissioner an opportunity to  
14 examine those documents or to a person, a PSC  
15 accountant appointed by the Commissioner for the  
16 exclusive purpose of reviewing those documents in  
17 camera, that is a possible approach to get this thing  
18 done.

19           We can have the Commissioner and the  
20 accountant look at it, but I do not care to have Mr.  
21 Reilly or his accountant or Mr. King or his accountant  
22 look at those documents while they're in negotiations.  
23 That will cause substantial, serious damage no matter  
24 what's in those documents. We're not talking about the  
25 rate case here, we're talking about what they're trying

1 to do in that other turnover issue case.

2 MR. REILLY: Very brief, two --

3 COMMISSIONER EASLEY: Very, very briefly.

4 MR. REILLY: Two very quick arguments.

5 I think that to determine the cost of goods  
6 sold and to determine whether these Utility assets were  
7 included in that is absolutely not confidential,  
8 absolutely within the purview of this Commission, and  
9 has been so much discussed and so central to this case  
10 that the information should be made available and  
11 should be no issue of confidentiality.

12 As far as waiting until the last minute, I  
13 will not go over that again. You saw the chronology of  
14 events. Within seven days when this hearing started we  
15 began the process of attempting to get this  
16 information, and it came in to us piece by piece by  
17 piece that led us all the way to Dallas. So it's not  
18 like the Office of Public Counsel waited around for the  
19 90 days and then sprung its request at the last minute.  
20 I think that's an incorrect characterization.

21 I think all the arguments have been stated,  
22 I'll let it go at that.

23 MR. KING: Commissioner Easley, to the extent  
24 that the Intervenor's involvement in this issue clouds  
25 the problem and makes it difficult, we will, I don't



1 need to see, we don't need to see the documents --  
2 initially, I'm talking about. I don't know whether  
3 that persuades Mr. Girtman that --

4 MR. GIRTMAN: No, sir, I'm afraid not.

5 COMMISSIONER EASLEY: My concern, and I'm  
6 going to ask Mr. Pruitt to help me with this. My  
7 concern is not so much with the documents and who sees  
8 them at this point, my concern is the ongoing nature of  
9 discovery at this stage of the game. As you know --  
10 and if you don't know, you soon will -- there is a new  
11 memorandum out. Discovery, the time for cutoff on  
12 discovery and time for cut off on motions will now be  
13 included in all prehearing orders. Had this one gone  
14 out prior to that memorandum becoming effective, we  
15 would have had cutoff dates for this kind of discovery  
16 and for motions and we would not have found ourselves  
17 in this kind of situation.

18 Mr. Pruitt, I need some help, please, sir.

19 MR. PRUITT: Madam Chairman, it's my judgment  
20 that this case is over except for the filing of the  
21 late-filed exhibits, the filing of briefs, the  
22 recommendation of Staff and the Special Agenda.

23 COMMISSIONER EASLEY: I am inclined to agree.  
24 I think what occurs -- so that the parties will  
25 understand that I do not believe damage occurs to a

1 party -- because of the burden of proof issue, if the  
2 intervenors, if Public Counsel feels the Company has  
3 not met their burden of proof on their rate request and  
4 that this information was part of that burden of proof  
5 and you did not have it, you certainly have the  
6 opportunity to argue that.

7 By the same token, if the Company feels that  
8 this information was not needed or did not add to and  
9 that they have met their burden of proof, they  
10 certainly have the opportunity to argue that.

11 So I do not believe that denying you access  
12 to that information at this moment in any way  
13 jeopardizes the outcome of this procedure and I'm going  
14 to deny them the motion.

15 Is there anything else?

16 MR. REILLY: No, ma'am.

17 COMMISSIONER EASLEY: That being said, thank  
18 you very much, ladies and gentlemen.

19 MR. GIRTMAN: Thank you, Commissioners.

20 (REPORTER'S NOTE: Mr. Thiel and Mr. Perez's  
21 testimony inserted pursuant the order of witnesses in  
22 the Prehearing Order and Commissioner Easley's ruling  
23 at Page 151.)  
24  
25

1 Q. Please state your name and business address.

2 A. William J. Thiel

3 2745 S.E. Morningside Blvd.

4 Port St. Lucie, Florida 33452

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

7 A. B.S.Environmental Science, Florida Institute of Technology,. Six  
8 and half years in the Environmental Regulatory Field.

9 Q. By whom are you presently employed?

10 A. I am employed by the State of Florida Department of Environmental  
11 Regulation.

12 Q. How long have you been employed with the Department of  
13 Environmental Regulation and in what capacity?

14 A. Approximately six and half years, with the Department. Three  
15 years as an Environmental Specialist in Domestic Wastewater Compliance  
16 and enforcement, and Technical services section. I was three and a  
17 half years as lead technician in the Technical Services Section.

18 Q. What are your general responsibilities at the Department of  
19 Environmental Regulation?

20 A. My responsibilities include compliance assurance of Domestic  
21 Wastewater Facilities Completing Facility Inspections, Review of  
22 monitoring data, compliance with permit and consent order requirements  
23 and time schedules. My enforcement duties include legal case  
24 documentation initiation and tracking, preparation of consent orders,  
25 legal staff support and organization of and conducting informal

1 conferences to resolve enforcement actions.

692

2 WASTEWATER SYSTEMS ONLY

3 Q. Are you familiar with Sailfish Point Utility Corporation  
4 wastewater systems in Martin?

5 A. Yes.

6 Q. Does the utility have current operating or construction permits  
7 from the Department of Environmental Regulation?

8 A. Yes, the utility has a current construction permit to construct  
9 a 0.125 MGD. expansion with effluent disposal via public access spray  
10 irrigation of the golfcourse.

11 Q. Please state the issuance date and the expiration date of the  
12 operating or construction permits.

13 A. The construction permit DC 43-150566 was issued February 26, 1991  
14 and will expire August 1, 1991.

15 Q. Please state whether the permit is a temporary operating permit,  
16 and if so, please describe the permit terms.

17 A. No, it is not a temporary operating permit.

18 Q. Is the plant in compliance with its permit?

19 A. Yes, the plant is in substantive compliance with its permit.

20 Q. Are the wastewater collection, treatment and disposal facilities  
21 adequate to serve present customers based on permitted capacity?

22 A. Yes.

23 Q. Are the treatment and disposal facilities located in accordance  
24 with Section 17-600.400(1)(c)(2), Florida Administrative Code?

25 A. Yes.



1 Q. Has DER required the utility to take any action so as to minimize  
2 possible adverse effects resulting from odors, noise, aerosol drift or  
3 lighting?

4 A. Yes, the permit requires low trajectory sprinkler heads for spray  
5 irrigation near eating, bathing and drinking facilities, and the  
6 addition of advisory signs to post irrigated areas.

7 Q. Do the pump stations and lift stations meet DER requirements with  
8 respect to location, reliability and safety?

9 A. Yes.

10 Q. Does the utility have certified operators as required by Chapter  
11 17-602, Florida Administrative Code?

12 A. Yes, the utility's staffing is adequate.

13 Q. Is the overall maintenance of the treatment, collection, and  
14 disposal facilities satisfactory?

15 A. Yes.

16 Q. Does the facility meet all applicable technology based effluent  
17 limitations (TBELS) and water quality based effluent limitations  
18 (WQBELS)?

19 A. Yes, the facility has been meeting its limits.

20 Q. Does the facility meet the effluent disposal requirements of  
21 Sections 17-611 and 17-600.530, Florida Administrative Code?

22 A. Yes, the facility substantially meets the requirements.  
23 Following completion of permitted modifications the facility will be in  
24 compliance with all requirements of the reuse rules for spray  
25 irrigation.

1 Q. Are the collection, treatment and disposal facilities in  
2 compliance with all the other provisions of Title 17, Florida  
3 Administrative Code, not previously mentioned?

4 A. Yes, I know of no other problems.

5 Q. Has Sailfish Point Utility Corporation been the subject of any  
6 Department of Environmental Regulation enforcement action within the  
7 past two years?

8 A. No, it has not.

9 Q. Do you have anything further to add?

10 A. No, I do not.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Q. Please state your name and business address.

2 A. Francisco J. Perez, Florida Department of Environmental  
3 Regulation, 1900 S. Congress Avenue, Suite A, West Palm Beach Florida  
4 33406

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

7 A. I received a Bachelor of Science in Marine Biology from  
8 University of West Florida in 1983. I was Research Assistant with  
9 the Florida Medical Entomology Lab, until May 1985. From May 1985 to  
10 April 1987, I was a Biologist with DER. Since April 1987, I have  
11 worked as an Environmental Specialist with DER's Drinking Water  
12 Section.

13 Q. By whom are you presently employed?

14 A. Florida Department of Environmental Regulation

15 Q. How long have you been employed with the Department of  
16 Environmental Regulation?

17 A. I have been employed with DER since May 1985.

18 Q. What are your general responsibilities at the Department of  
19 Environmental Regulation?

20 A. I coordinate compliance and enforcement activities in the  
21 drinking water section.

22 WATER SYSTEMS ONLY

23 Q. Are you familiar with Sailfish Point Utility Water System in  
24 Martin County, particularly the water system?

25 A. Yes.

- 1 Q. Does the utility have a current operating or construction  
2 permit from the Department of Environmental Regulation?
- 3 A. Yes.
- 4 Q. Please state the issuance date and the expiration date of the  
5 operating or construction permit.
- 6 A. WC-43-147796 Issued April 8, 1988.
- 7 Q. Please state whether the permit is a temporary operating  
8 permit, and if so, please describe the permit terms.
- 9 A. The permit is a construction permit to install a calcite  
10 contactor which will make the water less corrosive.
- 11 Q. Is the plant in compliance with its permit?
- 12 A. No, the Langelier index is (-1.8) which indicates the water is  
13 still corrosive.
- 14 Q. Are the utility's treatment facilities and distribution system  
15 sufficient to serve its present customers?
- 16 A. Yes.
- 17 Q. Does the utility maintain the required 20 psi minimum pressure  
18 throughout the distribution system?
- 19 A. Yes.
- 20 Q. Does the utility have an adequate auxiliary power source in the  
21 event of a power outage?
- 22 A. Yes.
- 23 Q. Are the utility's water wells located in compliance with  
24 Section 17-555.312, Florida Administrative Code?
- 25 A. Yes.



1 Q. Does the utility have certified operators as required by  
2 Chapter 17-602, Florida Administrative Code?

3 A. Yes.

4 Q. Has the utility established a cross-connection control program  
5 in accordance with Section 17-555.360, Florida Administrative Code?

6 A. The utility serves residential units, marinas and a restaurant.  
7 The irrigation system is piped separately. Utility personnel inspect  
8 each service at the time of connection and require vacuum breakers in  
9 Marina hose bibs.

10 Q. Is the overall maintenance of the treatment plant and  
11 distribution facilities satisfactory?

12 A. Yes.

13 Q. Does the water produced by the utility meet the State and  
14 Federal maximum contaminant levels for primary and secondary water  
15 quality standards?

16 A. No. The Langelier Index is on the negative side (about -1.5)  
17 whereas the standard is -.02 to +0.2. The pH is around 9.0 which  
18 exceeds the 6.5 - 8.5 range required in Rule 17-550.320.

19 Q. Does the utility monitor the organic contaminants listed in  
20 Section 17-550.410, Florida Administrative Code?

21 A. Yes.

22

23 Q. Do recent chemical analyses of raw and finished water, when  
24 compared to regulations, suggest the need for additional treatment?

25 A. Yes. The Langelier index suggests the need for the addition of

1 calcium carbonate. (Permitting in progress)

2 Q. Does the utility maintain the required chlorine residual or its  
3 equivalent throughout the distribution system?

4 A. Yes.

5 Q. Are the plant and distribution systems in compliance with all  
6 the other provisions of Title 17, Florida Administrative Code, not  
7 previously mentioned?

8 A. Yes.

9 Q. Has Sailfish Point Utility been the subject of any  
10 Department of Environmental Regulation enforcement action within the  
11 past two years?

12 A. No.

13 Q. Do you have anything further to add?

14 A. No, I do not.

15 (Whereupon, hearing concluded at 2:48 p.m.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 F L O R I D A )

CERTIFICATE OF REPORTERS

2 COUNTY OF LEON)

We, JOY KELLY, CSR, RPR, and SYDNEY C. SILVA,

3 CSR, RPR, Official Commission Reporters,

4 DO HEREBY CERTIFY that the hearing in the  
5 captioned matter, Docket No. 900816-WS, was heard by the  
6 Florida Public Service Commission at the time and place  
7 herein stated; it is further

8 CERTIFIED that we reported in shorthand the  
9 proceedings held at such time and place; that the same has  
10 been transcribed under our direct supervision, and that  
11 this transcript, consisting of 698 pages, Volumes I  
12 through IV, inclusive, constitutes a true and accurate  
13 transcription of our notes of said proceedings; it is  
14 further

15 CERTIFIED that neither of us is counsel nor  
16 related to the parties in said cause and have no interest,  
17 financial or otherwise, in the outcome of this docket.

18 IN WITNESS WHEREOF, we have hereunto set our  
19 hands at Tallahassee, Leon County, Florida, this 10th day  
20 of July, A.D., 1991.

21   
22 JOY KELLY, CSR, RPR

  
22 SYDNEY C. SILVA, CSR, RPR

23 OFFICIAL COMMISSION REPORTERS

24 FPSC Bureau of Reporting  
25 Fletcher Building, Room 264  
101 East Gaines Street  
Tallahassee, Florida 32399-0871  
Telephone No. (904) 488-5980

FLORIDA PUBLIC SERVICE COMMISSION