

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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

DOCKET NO. 990696-WS

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

DOCKET NO. 992040-WS

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VOLUME 1
PAGES 1 THROUGH 189

PROCEEDINGS: HEARING

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

DATE: Monday, May 7, 2001

TIME: Commenced at 10:30 a.m.

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

REPORTED BY: JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

1
2 CHAIRMAN JACOBS: We will go back on the record. We
3 were in a brief recess to ensure that we allowed any consumers
4 who might want to testify a chance to arrive. I understand that
5 we did have some consumers who have arrived, but none have
6 indicated a desire to testify at this time. I would like to
7 just confirm that for the record that there are no consumers
8 here who would like to testify at this time. If there are,
9 please stand. Let the record reflect that no one has come
10 forward.

11 At this point we are now prepared, I assume that all
12 parties are here, we are now prepared that we can move into the
13 technical portion of the hearing at this point. Before we do
14 that, counsel for Nocatee Utilities has asked for an opportunity
15 to give a general overview of the project that is anticipated for
16 this service territory, and I understand that has been agreed to
17 by all the parties?

18 MR. WHARTON: It has, Mr. Chairman. The only thing
19 that occurs to me is whether we want to get into preliminary
20 matters before we do that.

21 CHAIRMAN JACOBS: Do you want to deal with preliminary
22 matters before that?

23 MR. WHARTON: We are going to move right now ore tenus
24 to continue this case.

25 CHAIRMAN JACOBS: It sounds like it may be useful to

1 do that, to have that discussion first. That will be your oral
2 motion. Now you didn't have a written motion to continue, did
3 you?

4 MR. WHARTON: No.

5 CHAIRMAN JACOBS: It was just St. Johns County. Okay.
6 That being the case, why don't you go ahead and make your
7 motion, Mr. Wharton.

8 MR. WHARTON: Commissioners, we do move at this time
9 to continue the case. Perhaps technically what I'm asking for
10 is a bifurcation, because I understand the notice has gone out
11 and I certainly would not be adverse to the taking of the
12 customer testimony tonight. These are some facts and
13 circumstances that to some extent Commissioner Deason is
14 familiar with. M.L. Forrester is a witness who filed well over
15 half the testimony for Intercoastal.

16 Mr. Forrester is a person with 40 years experience in
17 the utility business. He is a person who has been with Mr. Buddy
18 James for 27 years, who is the president of Intercoastal. He has
19 been with Intercoastal since it came into existence. Thursday
20 night Mr. Forrester was in a mall purchasing shirts to attend the
21 hearing and had a seizure and was taken by ambulance to a
22 hospital where he remains right now with blood clots in his lung.

23 Mr. Forrester is a very vigorous person. He is a
24 person who works through lunch. He and his wife own five book
25 stores. He goes home every night and works on those book stores,

1 but he obviously has not been around to help us prepare in this
2 case or obviously to present his own testimony, and this is not
3 just a minor witness for Intercoastal. Mr. Forrester filed well
4 over half of the prefiled testimony that we have filed.

5 There was absolutely no delay in bringing this motion.
6 As soon as I learned of Mr. Forrester's condition, I did contact
7 the staff and the parties and Bill Berg. And it was just not
8 possible for Commissioner Deason to accommodate a hearing on that
9 day on such short notice. And I understand that completely.

10 I want to emphasize something very carefully. First of
11 all, we don't know anything about why the county got out of this
12 case, and any inference to the opposite is patently incorrect. I
13 learned of that Saturday morning when I went in my office and saw
14 the withdrawal. And, frankly, I think that is a little
15 outrageous to withdraw like that. But for the purposes of this
16 motion, I just want you to know we had nothing to do with that.
17 No advance notice or anything else.

18 We have no hidden agenda. We opposed the continuance
19 that Commissioner Deason determined should not be granted on
20 Tuesday, vigorously opposed it. On the other hand, the only
21 reason we are sitting here today was that this case was supposed
22 to go to trial a month ago and a continuance that was requested
23 by the county and that all the other parties joined in and that
24 we vigorously opposed, was granted. I have since seen a
25 videotape of a person who is going to testify in this hearing,

1 Mr. Scott Kelly, talking to the St. Johns County Commission about
2 a proposal he was making that would involve JEA providing retail
3 service to all of northern St. Johns County, including Nocatee.
4 And he said right there on the tape, you know, it would all be in
5 our best interest if we moved to continue.

6 Now, I didn't see that tape after the continuance was
7 already granted and everything had been filed. What got filed
8 was something from the county saying something really big is
9 going to happen at the next County Commission meeting, and I am
10 here to tell you, nothing happened. Nothing happened. So if
11 that continuance wouldn't have been granted, we would have had
12 the trial back then and Mr. Forrester would have been fine.

13 Now, this hasn't just affected Mr. Forrester's ability
14 to come in here, it has affected the preparation this weekend.
15 Mr. Forrester is the most likely person, in fact, he had assigned
16 tasks for the way we were going to do this weekend when we were
17 working with the witnesses and what he was going to look at and
18 read and what we were going to talk about. He is the person most
19 likely to whisper in my ear during cross examination in this
20 case.

21 And certainly he is a person whose testimony needs to
22 be presented live. I think the value of live testimony is amply
23 demonstrated by the fact that say members of the staff have
24 chosen to attend this hearing. It is just not the same to read
25 it in a transcript. There is also no way to just put in his

1 prefilled testimony. They are going to say that deprives them of
2 cross examination. If we put in the depositions then not only
3 are the depositions full of things that are inadmissible, it
4 deprives me of redirect, and that is just on the issue of his
5 testimony.

6 I am here to tell you it affected preparation
7 substantially. Mr. Forrester is a major player. He is a person
8 who is extremely knowledgeable. His testimony is far-reaching.
9 He is the person I have coordinated with the entire time in
10 preparing this case. Certainly not to have Mr. Forrester testify
11 in this hearing means you are not going to hear half of our case.
12 It certainly affects the continuity of this case.

13 I know we are all here, and I know that it is
14 inconvenient, but I don't think that is the factor that ought to
15 drive this decision. This is not speculation about something the
16 County Commission is going to do, it is not speculation about
17 some future event, it is something that has occurred. Mr.
18 Forrester is in the hospital right now hooked up to machines.
19 And I don't want to overstate the case, but he has got IVs in
20 him, et cetera.

21 It certainly has affected our trial strategy and it has
22 affected the ability to cross-examine and it has affected our
23 ability to put on our case effectively. This case has been
24 pending for almost two years. We are sitting here because of a
25 continuance that NUC and the other parties got just for a hearing

1 that should have occurred a month ago over our vigorous
2 objection. They will agree that the development has now been
3 delayed according to their own testimony until the end of 2002.

4 This is not obviously, Commissioners, anything of our
5 own making. Again, it was timely brought, it is a substantive
6 objection, it is something that cannot be cured by any other
7 machination I can think of. We believe there is no harm in delay
8 and that the prejudice to Intercoastal is great. While it is not
9 a basis for our motion, perhaps the Commission would want to
10 consider the fact that St. Johns County's motion that was denied
11 on Tuesday, and that was a motion that we did object to, stated a
12 fact, and that is that a week ago Tuesday the St. Johns County
13 Commission did vote to hold a 125 hearing, which is a statutory
14 prerequisite to making an offer to Intercoastal. And that is
15 going to be on June the 6th.

16 The last continuance we would suggest is the reason we
17 are here today. It was one we opposed. It was a continuance
18 that the record will show and no one will be able to demonstrate,
19 and I don't think anyone will suggest was for nothing. Nothing
20 came of it. That County Commission meeting, the one that was
21 expressly listed in the county's motion that all the parties
22 agreed too.

23 Again, this is not something that is speculative. It
24 is something that has occurred. It is the kind of thing that I
25 think courts do grant continuances for even when they are

1 reluctant to do so. We believe that the other things that might
2 be done, some of the ideas I have heard do not cure the problem
3 that Intercoastal will suffer. This case has been going on a
4 long time, I know it is not easy to get the five of you together.
5 Maybe if the customer testimony goes forward today the hearing
6 could be held in Tallahassee. Clearly we are not talking about a
7 delay in the end of the hearing, because Mr. Forrester is going
8 to have to testify when he is well. And we assume that is going
9 to happen very quickly. And if it is not going to happen very
10 quickly, I am going to need to do something else in that regard.

11 So, Commissioners, again, we think that the prejudice
12 to Intercoastal of going forward far outweighs the prejudice to
13 any other party of granting the continuance. We have brought
14 this continuance in a timely fashion and, again, we wouldn't be
15 here if we hadn't had a phantom continuance a month ago from
16 those who are very likely to oppose this continuance. Thank you.

17 CHAIRMAN JACOBS: Very well. We will hear responses
18 to the motion.

19 COMMISSIONER PALECKI: Before we hear the responses,
20 could I ask a question?

21 CHAIRMAN JACOBS: By all means.

22 COMMISSIONER PALECKI: Have you spoken to the other
23 counsels as to whether or not they would waive cross examination
24 of Mr. Forrester?

25 MR. WHARTON: I have never asked them that particular

1 question, Mr. Palecki. We have spoken about -- or Commissioner
2 Palecki. We have spoken about some -- they have floated some
3 ideas, but that wasn't one of them.

4 COMMISSIONER PALECKI: Because I would like it hear
5 from the other parties on that issue, because I think that is
6 the most important issue as to their right of cross examination.

7 CHAIRMAN JACOBS: While we are in the questioning
8 stage, do you have an idea, Mr. Wharton, if we were to grant
9 your motion, when Mr. Forrester would be available?

10 MR. WHARTON: I would think that if Mr. Forrester --
11 and, again, I don't want to represent to you that I have any
12 more knowledge than I do, but I don't anticipate that Mr.
13 Forrester will be in the hospital, unless there is some kind of
14 unforeseen complication, that much longer in terms of the number
15 of the days. Then I would anticipate that he would need some
16 time to get completely back on his feet.

17 I certainly believe Mr. Forrester's health as I
18 understand it right now could accommodate a hearing before June
19 the 6th. If you believe that holding the hearing after June the
20 6th has some merit, then I would say, once again, that I believe
21 Mr. Forrester would be available at that time. So I don't think
22 we are talking about an inordinate delay.

23 CHAIRMAN JACOBS: Very well. Mr. Melson, you may
24 proceed.

25 MR. MELSON: Commissioners, Rick Melson for Nocatee

1 Utility Corporation. Our prayers and best wishes go out to Mr.
2 Forrester. I think everybody sitting at the table wishes that
3 it hasn't happened for a whole host of reasons, not the least of
4 which he is a fine gentleman. We do, however, oppose the
5 continuance.

6 We believe that this case has gone on -- our case was
7 originally filed in June of 1999. There have been two prior
8 continuances. At this point we are finished with the discovery
9 process, we have got the momentum, we are ready for hearing.

10 I believe I proposed to Mr. Wharton, and if I didn't, I
11 apologize, that we stipulate Mr. Forrester's testimony into the
12 record and put his deposition in in lieu of cross examination.
13 Nocatee Utility Corporation is willing to waive cross and to let
14 the deposition in. We recognize that it probably has some
15 material in it that is not relevant, and it is not exactly the
16 cross examination we would do at hearing, but we believe that
17 gives the Commission enough information to make an informed
18 decision.

19 As you all know, the county, St. Johns County withdrew
20 from this docket late Friday afternoon. I think I was the last
21 one to find out about it. I didn't find out until Saturday
22 afternoon. And like Intercoastal, Nocatee had absolutely nothing
23 to do with that decision and we have been unable as we sit here
24 today to find out what prompted that.

25 I do know that last week when the county had moved for

1 a continuance, they indicated -- their counsel indicated in
2 conversations with me that if the continuance was not granted
3 they were considering a host of options, including going to
4 circuit court for some type of relief. At this point a
5 continuance, I believe, serves -- is unneeded and simply creates
6 another two week, month long window in which the county could
7 take procedural steps in other forums, it could operate to the
8 detriment of my client.

9 With the five day prior to the hearing provision on
10 intervention, the county might even try to get back into the
11 case. I don't know what could happen. We are ready to go to
12 hearing and would urge you very strongly to do something to
13 accommodate Mr. Forrester's situation. Putting in his prefiled
14 testimony and deposition seems to us to be the right solution,
15 although we would be open to suggestions that others might have,
16 and go forward with this hearing as we have got it scheduled for
17 the next three days.

18 CHAIRMAN JACOBS: Mr. Hoffman.

19 MR. HOFFMAN: Thank you, Mr. Chairman. First, let me
20 say that the JEA and those that are with the JEA have a
21 longstanding relationship with Mr. Forrester, and our heartfelt
22 thoughts are with Mr. Forrester.

23 Secondly, the JEA would support Nocatee Utility
24 Corporation's opposition to the motion for continuance, and I
25 think that is sort of our bottom-line position. We are also

1 willing to abide by the offer made by Mr. Melson on behalf of
2 Nocatee Utility Corporation to waive cross examination and put
3 the deposition of Mr. Forrester into the record.

4 Two other things just to clear up what are in my view
5 extraneous matters. The most recent motion for continuance that
6 was filed by St. Johns County that was denied, that motion was
7 opposed by Nocatee Utility Corporation, and the JEA joined
8 Nocatee Utility Corporation in opposing the motion for
9 continuance. My recollection of the motion that was filed by St.
10 Johns County is that Intercoastal could not decide what its
11 position was, not that it was vigorously opposed.

12 We certainly have a different recollection concerning
13 statements that Mr. Kelly made before the St. Johns County Board
14 of County Commissioners. We do not recall that he ever said
15 anything that it would be in everyone's best interest to continue
16 the hearing. But just for the record, the pleadings filed before
17 this body the JEA joined Nocatee in opposing the most recent
18 request for continuance by St. Johns County.

19 CHAIRMAN JACOBS: Very well. Mr. Korn.

20 MR. KORN: Thank you, Mr. Chairman. On behalf of
21 Sawgrass Association, we stand in a slightly different position
22 than I think all the other parties since we don't have any
23 designs on the territory. We don't have a dog in that
24 particular part of the fight. In fact, we are not -- that can
25 be part of the case as to Nocatee Utility itself.

1 I spoke with Mr. Wharton on Friday when he first
2 alerted me to Mr. Forrester's sudden and very tragic illness, and
3 I am very sympathetic to their position. I am also very
4 sympathetic to the position of the other movants, Nocatee Utility
5 and JEA as intervenor. Because of the position that we hold,
6 which is primarily one in opposition to Intercoastal's
7 application for certification, I'm not sure that we take a strong
8 position on either side of this issue. I will leave it to this
9 body to make the determination.

10 I do think, just an observation, that there may be some
11 methods that could be used to -- if a continuance were to be
12 granted, for instance, if there were some potential problems that
13 were discussed, then I certainly think that, again, consistent
14 with your rules and regulation there could be, perhaps, some
15 basis to prevent other extraneous parties from intervening at a
16 later time who could have intervened at this point in time which
17 could potentially avoid any type of mischief that was suggested
18 as it being a potential issue.

19 As I said, we are sympathetic to all of the concerns,
20 and frankly all the arguments that have been made today I think
21 are valid, and we stand ready to either participate in this
22 hearing for the next three days or to take whatever steps this
23 body determines to be appropriate. Thank you, Mr. Chairman.

24 CHAIRMAN JACOBS: Very well. Thank you.

25 MR. WHARTON: Briefly, Mr. Chairman. May I close on

1 my position?

2 CHAIRMAN JACOBS: Yes. Before you do that, Mr. Korn,
3 I assume you don't oppose the offer to waive cross and enter Mr.
4 Forrester's deposition into the record?

5 MR. KORN: No, Mr. Chairman, I do not oppose that, as
6 I said.

7 CHAIRMAN JACOBS: Very well.

8 MR. WHARTON: First of all, and I appreciate you
9 terming it that way because I think that it brings the issue
10 right to the front. Four of this panel are attorneys, that is
11 not an offer to waive cross. Every single cross question I am
12 going to ask in this hearing is from a deposition. That is the
13 opportunity to put in all of your cross and a ton more. Maybe
14 we would like to see Mr. Miller for NUC not be crossed and I
15 will put in all of his depositions and we will put in his
16 testimony. That is not an offer to waive cross. That will not
17 have the opportunity for redirect.

18 We will have tons of stuff coming into the record that
19 doesn't belong there because of the way depositions work, and
20 that is totally different than waiving cross. I think in answer
21 to Commissioner Palecki's real question, these parties are not
22 willing to waive cross. They are willing to substitute the
23 deposition into the record in the place of cross. Thus, again,
24 they are denying me the opportunity for redirect, putting in a
25 very thick deposition that is probably filled with extraneous

1 inadmissible and outside the scope stuff. And it was totally
2 different than what Commissioner Palecki asked, and I think that
3 you all appreciate that.

4 I'm looking at this motion that said that something big
5 is going to happen on March 6th. And nothing happened. And this
6 is the motion that the county filed. And Mr. Hoffman was
7 referring to Tuesday's motion that JEA opposed. I am referring
8 to the motion six weeks ago that resulted in this hearing being
9 set today. It was originally set for April the 6th or something
10 like that. This says NUC in bold, the original applicant seeking
11 certification to provide water and wastewater service to Nocatee,
12 has joined in this motion to give NUC time to evaluate JEA's
13 proposal. And JEA's proposal was to take them out of the
14 picture, by the way. It also says counsel for ICU objects, so I
15 don't agree with the characterization there.

16 But, again, Commissioners, I don't see how you can put
17 in the unsworn testimony of a witness, he is not here to swear to
18 it. I guess we could stipulate, and then put the deposition in
19 and just call it even. Certainly that doesn't even go to the
20 issue of preparation, it doesn't go to the issue of assistance at
21 the time of trial, and it doesn't even solve the singular problem
22 of putting in the testimony in a way that affords us due process.

23 CHAIRMAN JACOBS: Very well. Staff.

24 MR. MELSON: Commissioner Jacobs, I feel like I need
25 to ask to be able it respond on two brief points.

1 CHAIRMAN JACOBS: I think I can guess what those might
2 be, and I'm guessing that those are superfluous points, but I
3 will give you a very brief moment to close.

4 MR. MELSON: Very brief. First, the JEA proposal that
5 Mr. Wharton has talked about twice was not a proposal to provide
6 retail service to Nocatee, and to that extent I just wanted to
7 clear that up. Secondly, Rule 1.330(a)(3), Florida Rules of
8 Civil Procedure provides that the deposition of a witness can be
9 used for any purpose. If the witness is unable to testify
10 because of age, illness, infirmity, or imprisonment. And so
11 whether Mr. Horton regards our offer to put the deposition as
12 waiving cross or not and whether he chose to redirect at the end
13 of that deposition or not, that is the purpose for which the
14 deposition lawfully can be used.

15 CHAIRMAN JACOBS: Very well. Staff.

16 MS. CIBULA: Staff would recommend that the hearing
17 not be continued and to allow Mr. Forrester's deposition in in
18 lieu of cross examination. However, staff would also suggest
19 that maybe Mr. Wharton could go through the deposition and point
20 out the parts of the deposition that he would be opposed to and
21 we could redact those portions of the deposition before it is
22 entered into the record.

23 CHAIRMAN JACOBS: Very well. Commissioners, any
24 further questions?

25 COMMISSIONER PALECKI: I have one further question.

1 The parties that had agreed to waive cross and have the
2 deposition introduced in lieu of live cross examination, would
3 you be willing to waive cross examination without the
4 introduction of the deposition?

5 MR. HOFFMAN: One alternative might be to put the
6 prefiled testimony in, to put the deposition in, and give Mr.
7 Wharton the opportunity to file written redirect to the
8 deposition or to portions of the deposition as he deems
9 appropriate.

10 MR. MELSON: Commissioner Palecki, I think bottom line
11 Nocatee thinks it would not be a good idea to put the prefiled
12 testimony in without the deposition. We believe the cross
13 examination in the deposition is necessary to get a full picture
14 of the proper import of Mr. Forrester's testimony. We would not
15 oppose JEA's suggestion to allow Intercoastal to file something
16 written in the nature of redirect on the questions that were
17 asked in the cross. That probably get's us as close to a live
18 presentation as we could be.

19 COMMISSIONER PALECKI: Mr. Wharton, with the offer
20 made by staff to go through the deposition to delete what you
21 consider objectionable portions, as well as the offer by the
22 parties to allow written redirect of Mr. Forrester's testimony,
23 would that eliminate your concerns? I understand you have
24 others with regard to your strategy here today and having Mr.
25 Forrester here to advise you, but it seems that those two

1 solutions provide pretty much a fair an equitable means to go
2 forward without a continuance.

3 MR. WHARTON: Sensing which way the wind is blowing,
4 perhaps that -- and that redirect is going to be subject to some
5 kind of objection, or -- I mean, it just gets a little more
6 complicated than that. But, yes, that will probably do it.

7 Now, we are going to get some kind of -- what is going
8 to have to happen is I am going to have to get some kind of
9 ruling on the deposition, then I will know the scope of the
10 redirect. Because certainly you never would have tolerated eight
11 hours of cross examination. This deposition went until late in
12 the evening. It is probably a workable solution. It is probably
13 not going to occasion any quicker resolution of this case than if
14 we had Mr. Forrester testify live in Tallahassee after he got
15 well, for instance, or if the case were continued.

16 Because like I say, I am going to have to make that
17 motion, I guess there is going to have to be a ruling, then I
18 will know what the redirect says and then I will file it.
19 Because the redirect will be after I have said, well, we talked
20 about this in the dep, but that is nowhere in his testimony. But
21 there is probably something in there, Commissioner Palecki, that
22 can be fashioned.

23 I guess the only other thing I would say is I think the
24 rule that Mr. Melson read was, that is how I put in the testimony
25 of my witness is sick. I am the one who gets to decide how to

1 put the testimony in. It's not how the other side calls how the
2 testimony works. But I think there is a framework there that
3 probably is something that could work. I still think I am
4 prejudiced in the other regard in that there is a minimal
5 prejudice to delay, but I think I have already laid all of that
6 out.

7 CHAIRMAN JACOBS: I want to review the rule very
8 quickly. And this is Rule 1.33 of the Rules of Civil Procedure.
9 It indicates that -- and here is the purpose here. Actually
10 this deposition is probably serving two purposes. The primary
11 purpose, I take it, is the parties in opposition to Intercoastal
12 are willing to allow the deposition in in exchange for their
13 opportunity to cross this witness. So you will be offering the
14 deposition for that purpose. And what I'm hearing is that
15 Intercoastal is not looking to offer it as redirect, you are
16 going to offer separate written redirect, is that correct?

17 MR. WHARTON: No. I didn't ask any questions in that
18 deposition. Not one.

19 CHAIRMAN JACOBS: Okay. And also all the parties who
20 have an interest have indicated they would waive their formal
21 verbal cross examination. It would appear to me that within the
22 scope of this rule that this would be an allowed procedure. And
23 while it is unfortunate and we would rather have your primary
24 witness here, I would say for primarily your opportunity to
25 present him as a witness would seem to be adequately covered if

1 we followed the procedure that is outlined, I do have some
2 concerns that you raised that he would be your primary expert
3 consultant at trial. However, my first thought on that is that
4 obviously, you know, while his illness was recent, you would
5 have had some time to come up with some additional advice or
6 consultant by the time of hearing. We have another day or so
7 here, and if you need a consultant, I'm sure you can acquire
8 that.

9 So while that is, I'm sure, an inconvenience, I don't
10 see it as a matter that deprives due process. And I think the
11 other issues have been dealt with by the process that has been
12 described. So in that light, we will deny the motion to
13 continue. And subject to the conditions that have been discussed
14 here today, primarily that Mr. Forrester's deposition will be
15 allowed into the -- entered into the record, and counsel for
16 Intercoastal will be allowed to proffer written redirect to that.

17 In the event parties want to inquire into the redirect,
18 I would suggest that you do that informally. And if there are
19 any problems that might come up, they can be referred to either
20 the prehearing officer or brought back before the Commission in
21 some form or fashion. But we hope that you could work through
22 those issues.

23 Does that sound reasonable enough to go forward?

24 Great.

25 COMMISSIONER DEASON: Mr. Chairman, let me ask a quick

1 question. Do you envision in your ruling that there would be
2 the opportunity for Mr. Wharton to review the deposition and
3 identify areas which should not be entered into the order, or is
4 your ruling that the entire deposition will be entered into the
5 record?

6 CHAIRMAN JACOBS: We had discussed that idea of
7 redacting portions of it. It was my understanding that that was
8 an agreeable option. And, quite frankly, for reasons of
9 efficiency and expediency, I would think it would be preferred.
10 And so I would amend the ruling to allow redacting those
11 portions.

12 I would allow the parties -- if you would make parties
13 aware of your intent at redactions and if there are any
14 controversy, the same process as we talked about would --

15 MR. WHARTON: I assume that is a pleading that I will
16 file and I will make them aware in that way and they will have
17 an opportunity to respond.

18 COMMISSIONER DEASON: That is precisely why I asked
19 the question. I'm not trying to determine -- I'm just trying to
20 understand what the ruling is and what the rules are going to be
21 going forward, because I anticipate that the parties have not
22 been shy of filing objections and motions and I would anticipate
23 that they probably would not be shy in this regard either, and I
24 would anticipate receiving such. And I just need an
25 understanding as to what the ruling is so I can act accordingly

1 if those motions come to me as prehearing officer.

2 I would note that we are at hearing now and perhaps
3 there is no more need for a prehearing officer because we are not
4 in the prehearing mode anymore. But, anyway if the burden falls
5 to me sobeit. I will not shirk my responsibility, but I just
6 want to understand. So there is going to be the opportunity for
7 Mr. Wharton to review the deposition and to come forward with his
8 position on portions to be redacted and the parties will be given
9 an opportunity to respond to that. I would just encourage the
10 parties if at all possible to do that in an informal manner and
11 perhaps there can be an agreement as to what, if any, portions of
12 the depositions should be redacted.

13 MR. MELSON: Mr. Commissioner, if Mr. Wharton is
14 willing to work with us and, for example, share a draft of what
15 he intends to have redacted, we would try to work everything out
16 informally with him and hopefully be able to file a stipulated
17 version of the deposition.

18 COMMISSIONER DEASON: I'm sure he would appreciate
19 that. It would be great.

20 MR. WHARTON: Sounds good.

21 CHAIRMAN JACOBS: Very well. That takes care of the
22 motion for continuance.

23 COMMISSIONER DEASON: One other thought, Mr. Chairman.
24 Maybe now is not the right time, but I would hope that before we
25 conclude this proceeding this week that there be some time

1 frames given as to when this is going to take place as far as
2 when we are going to have a proposed redacted version and
3 perhaps an agreement, when we are going to file written
4 redirect, and if when there is going to be objections if that
5 redirect perhaps is outside the scope of the deposition. And I
6 think it would be helpful to everyone to know what time frame we
7 are looking at.

8 MR. MELSON: Mr. Chairman, perhaps we can consult with
9 Mr. Wharton and at the end of the hearing when we are talking
10 about briefing schedule we can make a joint proposal.

11 CHAIRMAN JACOBS: I think that probably will work best
12 if you all come up with an agreed time. So we will defer that
13 until the end of the hearing. Very well. That takes care of
14 the motion for continuance.

15 There is a motion by NUC for official recognition. I
16 am informed by staff that the items that were the subject of that
17 motion have been included in staff's official recognition list
18 and you can agree with that. So if it is -- do you want to
19 maintain your motion or could we just deal with everything when
20 we enter staff's official recognition list?

21 MR. MELSON: We can deal with all of it with staff's
22 list.

23 CHAIRMAN JACOBS: Okay. So we will withdraw that
24 motion, then. Also, your notice of hearing exhibit, is that
25 separate from the -- I see a notice of hearing exhibit by NUC?

1 MS. CIBULA: Yes, that will be separate.

2 CHAIRMAN JACOBS: We don't need to rule on that,
3 though? Okay. Intercoastal has a motion for extension of time
4 to file responsive testimony.

5 MR. WHARTON: Well, I would withdraw that motion
6 because the county withdrew and apparently doesn't intend to put
7 the testimony in.

8 CHAIRMAN JACOBS: Amazing how these things work out.
9 Very well. That's good to hear. Are there any other
10 preliminary matters?

11 MR. WHARTON: There are, Mr. Chairman. I want to make
12 another ore tenus motion.

13 CHAIRMAN JACOBS: I was hoping that we -- I saw that
14 was possible, but I wasn't sure.

15 MR. WHARTON: Commissioners, I want to move for
16 reconsideration of Order Number PSC-011055-PCO-WS issued by the
17 prehearing officer on May 3rd, 2001, as it relates to
18 Intercoastal's rebuttal testimony or motion to accept additional
19 prefiled.

20 I understand that the prehearing officer has had a lot
21 to deal with in this case, and that it is -- and often the
22 Commissioners do not have the time for their schedule to allow
23 for oral argument and that there is a lot going on. But I want
24 to talk to the full panel about that order, which was only issued
25 two or three business days ago. In this case --

1 COMMISSIONER JABER: Mr. Wharton, excuse me. I'm
2 sorry, tell me again the title of the order and let me get my
3 hands on it.

4 MR. WHARTON: It is an order, Commissioner Jaber,
5 granting in part and denying in part Intercoastal Utilities,
6 Inc.'s motion to accept prefiled testimony and denying request
7 for oral argument and granting St. Johns County's motion to
8 accept additional intervenor testimony and denying motion for
9 continuance. The prehearing officer had a lot in front of him
10 on that particular day in this particular motion.

11 What occurred in this case, Commissioners, is that Ms.
12 Swain filed testimony, who is a financial expert on behalf of
13 NUC, filed testimony saying that she had discovered an error that
14 had been triggered by something that was brought to her
15 attention, and suddenly NUC's rates went down. And the
16 prehearing officer decided to allow that testimony and gave her
17 time for rebuttal testimony.

18 Well, Intercoastal then filed testimony saying, all
19 right, it has been our attention the whole time understanding
20 that we are in a pretty big fight here over a pretty big area
21 with two pretty well-healed opponents who have made an alliance
22 with each other, the Jacksonville Electric Authority and NUC.
23 And we pledge that we will project our rates over a ten-year
24 period that will be even lower than those rates that Ms. Swain
25 has now reduced at the eleventh hour NUC's rates to.

1 That testimony was made up of three parts. Someone
2 from the corporation saying we are committed to do it. Someone
3 who is a financial expert saying here is how much it would take.
4 And then a certified public accountant saying the corporation and
5 the shareholders who have made this commitment do have enough
6 money to do that. So those were the three parts of that.

7 That is something that Intercoastal had intended to do
8 the whole time, that certainly the bottom line with that
9 testimony that if Ms. Swain's testimony is not filed, we don't
10 file ours. If Ms. Swain's testimony is withdrawn right now, I
11 withdraw this motion.

12 I want to read to you, Commissioners, because I know
13 that I was involved with many of you in the two Aloha cases where
14 we had significant discussions about the nature of rebuttal
15 testimony. The attorneys pocket dictionary says rebuttal
16 testimony is evidence that is given to explain, repel,
17 counteract, or disprove facts given in evidence by the adverse
18 party. Black's Law Dictionary says evidence given to explain,
19 repel, counteract, or disprove facts given in evidence by the
20 adverse party. And I think that is what the prehearing officer
21 overlooked in this case is that it is completely proper for
22 rebuttal testimony evidence to be evidence that counteracts.

23 Rebuttal evidence is not just evidence saying you made
24 a mistake, I am pointing out a mistake you made. That is almost
25 the direction that we went in in the Aloha case and perhaps in

1 both directions. I think particularly in the case of prefiled
2 testimony and all the years I have been around the Commission I
3 have always understood why you do prefiled testimony, but I do
4 think in a way sometimes it drives the train.

5 I mean, certainly you would have different testimony in
6 this were live testimony in this case because things have been
7 happening all the time. I think particularly in the case of
8 prefiled testimony you want to be careful how narrow you construe
9 this concept of rebuttal. We filed testimony that was intended
10 to counteract that testimony. And I would understand why NUC
11 wants to keep out testimony that we pledge ourselves over this
12 ten-year period we have projected to pony up the money if
13 necessary in order to make these rates a reality, and they are
14 lower than NUCs. I understand why they want to keep that out. I
15 don't understand why you, Commissioners, as a policy matter want
16 to keep that out. That is to the benefit of the ratepayers.

17 What the testimony is we have got a bunch of
18 millionaire shareholders and they are willing to make this
19 commitment. And is that something that we shouldn't be allowed
20 to put into the record? And I have to contrast it to the
21 county's brand new testimony that was allowed in the exact same
22 order. And the order says, well, this is something that hasn't
23 happened before, and, therefore, the only way the county could
24 have filed this was to bring it in at the last minute. Well, if
25 the county was in this case, I would have shown through cross

1 examination they have been thinking about what they did last
2 Tuesday for months, and there is no reason that they didn't do it
3 until the eleventh hour.

4 We, on the other hand, were filing testimony, and it is
5 not voluminous testimony, that was exactly and specifically
6 responsive to the testimony that was allowed by Ms. Swain. I
7 should also say that I stood ready and communicated to the
8 parties and to Mr. Melson that I stood ready to give him the
9 alternative relief he requested in his objection to our
10 testimony. I had Mr. Burton ready to come to testimony last
11 Wednesday and I had the CD-ROM with all of his calculations on
12 it. And told Mr. Melson I would give it to him the second the
13 order was issued.

14 Commissioners, this is testimony that I think is in the
15 public interest. I should emphasize it is not some change in our
16 direct case. I know that is a distinction that is something that
17 is important for the Commission to appreciate. The rules don't
18 require us to project rates out for ten years. We are an
19 existing utility, who if we come under your jurisdiction our
20 rates are going to be grandfathered. That is just something that
21 we have done because let's face it, this is a little different
22 than most of the cases that you hear. It's like a comparative
23 review proceeding. It almost reminds me of a CON case where two
24 applicants are in there competing for one thing. And I
25 understand you have seen that before, but it's not the usual

1 case.

2 I just don't think the agent of prefiled testimony
3 should ever be what denies a party from coming in, putting in the
4 evidence, it's evidence that is responsive, it's evidence that is
5 relevant, and that's what we are talking about. Remember that.
6 If there were no prefiled in this case, this wouldn't be an
7 issue. I can say whatever I want in rebuttal and you would rule
8 on it then and I would tailor it to responsiveness.

9 I also think, Commissioners, this is a little bit of a
10 unique kind of motion for reconsideration, because it was an
11 order of the prehearing officer and now it is being heard by all
12 five of you. Usually a motion for reconsideration either comes
13 back to you after you have all ruled on it or comes back to the
14 same prehearing officer after he has ruled on it.

15 Four of you are hearing this for the first time, and I
16 understand well what the standard is that the Commission has put
17 in many of its orders, and I am arguing that I think the fact
18 that it is a proper purpose for rebuttal testimony to counteract
19 that that is what was overlooked. But I think this is testimony
20 that ought to be allowed, it is testimony that is specifically
21 responsive to Ms. Swain, it is a commitment the shareholders are
22 willing to make on the record and to be held to if this
23 Commission takes jurisdiction over this entity, and I don't think
24 the record should be silent on that point.

25 When Mike Burton is up there testifying, whether you

1 let in that testimony or not it is reality. The commitment has
2 been made. The corporation has made the commitment, the
3 shareholders have made the commitment. And he is going to have
4 to skirt around that or either talk about it.

5 So, Commissioners, it was not voluminous testimony, it
6 was filed within the time allowed for rebuttal. I do think that
7 it is proper rebuttal testimony, and it was testimony that was
8 specifically tailored to counteract the effect of Ms. Swain's
9 correction of her error that suddenly NUC's rates went down below
10 ours. We would ask that that order be reconsidered and the
11 testimony allowed.

12 CHAIRMAN JACOBS: Mr. Wharton, what would be your
13 point of law or fact that was overlooked?

14 MR. WHARTON: Well, I believe the fact that was
15 overlooked was that -- I believe the point of law that was
16 overlooked is that it is an appropriate agent, it is an
17 appropriate vehicle for rebuttal testimony to be not testimony
18 that just corrects, it is testimony that counteracts.

19 I think that this Commission has some discretion in
20 terms of what rebuttal testimony is. And I think when you are
21 deciding what rebuttal testimony is you need to think about the
22 nature of prefiled. Because, again, if there were no prefiled
23 testimony in this case, you would be hearing it for the first
24 time in my rebuttal case.

25 I believe that the point of fact that was overlooked is

1 that the order said this is something Intercoastal could have
2 done before, it had a line in there right to that effect. I
3 believe that overlooks the fact that that is not the case because
4 before their rates or the gallonage rates, usage rates that we
5 believe are really representative were not below Intercoastal's
6 and that afterwards they were.

7 CHAIRMAN JACOBS: Very well.

8 COMMISSIONER JABER: Mr. Wharton, so there are two
9 things that you believe the rebuttal testimony does, it
10 clarifies for you what the rates would have always been, and
11 that there was no change is what I hear you saying because --

12 MR. WHARTON: No. I have not made myself clear if
13 that is the case. No. When Ms. Swain filed the testimony
14 saying guess what, our rates just went down from 1.7 to 1.4 --
15 understand these are total fake numbers -- well, we said, then
16 guess what, we have said the whole time that we were willing to
17 do whatever it would take to make this where it would benefit
18 our existing customers and to make it more attractive to the
19 Commission. Understanding what that meant, our rates just went
20 down from 1.6 to 1.39. So, no, the rates did change. Now,
21 again, that wasn't part of our case.

22 COMMISSIONER JABER: So that is the counteraction and
23 the clarification you made in rebuttal.

24 MR. WHARTON: Correct.

25 COMMISSIONER JABER: With respect to the commitment

1 that the shareholders have with Intercoastal, that is also in
2 your direct case.

3 MR. WHARTON: But it was more money. It is going to
4 cost them more money to do these lower rates. What we have
5 effectively said is we will accept rates that are less than
6 compensatory during this four-year window. Then they will go
7 down below NUC's anyway. But that's why we had to refile that
8 and that's also why we had the CPA say, okay, I went in before
9 and said they have enough money to do the project. Now I have
10 gone in and looked and I say they have enough money to do this
11 new commitment. That's why we had to do it that way.

12 COMMISSIONER JABER: All right. And was it -- but you
13 discovered that before Ms. Swain filed her testimony, correct?

14 MR. WHARTON: We never intended to make this offer
15 that the rates would be at that level until Ms. Swain came in
16 and said that the projected rates were where she is now saying
17 they are. That was not something we intended to do because we
18 were going to keep them where they were at.

19 CHAIRMAN JACOBS: Mr. Melson.

20 MR. MELSON: Commissioners, Nocatee opposes the
21 motion. Let me tell you a little bit about what Ms. Swain's
22 corrected testimony was. Staff asked some interrogatories about
23 Ms. Swain's calculation of the wastewater rate. As you all
24 know, wastewater rates are set in a way that attempts to charge
25 the customer on the basis of 80 percent of their water usage.

1 In preparing the initial rate filing in this document, Ms. Swain
2 introduced an error into her calculation of the rate which
3 essentially double counted or counteracted that 80 percent
4 effect and filed a rate which if applied to our projected usage
5 would produce more than the revenue requirement.

6 We never would have discovered that and would not have
7 filed the additional testimony if staff had not served discovery
8 requests on us asking for more detail and backup as to how the
9 calculation was done. In the process of responding to those
10 discovery requests we discovered an error and we admitted it and
11 we filed two pages of prefiled testimony that said there was an
12 error in the calculation, here is the correction of the error,
13 here is the rate that now produces the proper revenue
14 requirement. And we also provided at the same time to staff and
15 the other parties in discovery the backup calculations and
16 explanation that the staff had asked for.

17 Chairman Deason granted -- or Prehearing Officer
18 Deason, excuse me, Mr. Chairman -- granted our motion for leave
19 to file that corrected testimony in part because staff took the
20 position that if we had not corrected the testimony they would
21 have cross-examined Ms. Swain at the hearing and pointed her
22 error out to her. So it was nothing that was not going to come
23 before the Commission in any event.

24 Mr. Wharton was granted leave to file rebuttal to that
25 and he did file some proper rebuttal. He filed some testimony of

1 Mr. Burton that among other things says I don't think Ms. Swain
2 has got it quite right yet. I think her number should be a few
3 pennies more than she calculated.

4 The testimony went beyond rebuttal, though. It said
5 for the first time our intent all along has been to have rates
6 lower than Nocatee. And now that Nocatee has corrected its rate
7 and we find our rate is slightly higher, we are going to come in
8 and change the rate we propose. We are no longer in a
9 grandfather situation where we are asking you to approve the
10 rates that we have today, we are asking you to approve rates that
11 are just enough lower that we can buy this service territory.

12 And, Commission, I honestly believe that is what is
13 going on. Intercoastal's position will change. Their plan of
14 service -- every time they learn more about Nocatee's plan of
15 service, they change their plan of service to look more like us.
16 Every time we make a correction to the rates, they come in and
17 want to change the approach they take to rate setting. We just
18 think it goes well beyond the scope of proper rebuttal. It is,
19 in fact, a change in their direct case and the prehearing officer
20 properly rejected that as improper rebuttal.

21 CHAIRMAN JACOBS: Mr. Hoffman.

22 MR. HOFFMAN: Thank you, Mr. Chairman. Very briefly.
23 The JEA would support Nocatee Utility Corporation's position. I
24 think when you are talking about a subject like rebuttal, it is
25 really -- and you are talking about the scope of rebuttal, it's

1 not unlike the rulings that you have to make, Mr. Chairman,
2 during the course of an evidentiary hearing on objections that
3 are raised on specific evidentiary issues.

4 In this case, I think that Intercoastal laid out
5 whatever reasons it had in support of the testimony it wished to
6 file and Nocatee filed a response. At that point, there clearly
7 was a judgment decision, a discretionary judgment decision to be
8 made by the prehearing officer as to what was proper rebuttal and
9 what was not. And our position simply is, number one, we believe
10 that that judgment was properly exercised and that there is no
11 legal basis to reverse that judgment.

12 And, secondly, from the arguments that I have heard
13 thus far from Intercoastal, I have not heard any compelling legal
14 principle that was overlooked. There is some discussion of a
15 definition of rebuttal from the attorneys pocket dictionary,
16 which I'm not familiar with, but in any case, if that specific
17 argument was not raised in the initial motion that was filed by
18 Intercoastal in support of this testimony, then obviously there
19 was nothing overlooked. And the Commission has issued orders in
20 the past basically saying you cannot raise a new argument, a new
21 basis for the relief you seek on reconsideration. So for those
22 reasons we would support Nocatee's position.

23 CHAIRMAN JACOBS: Mr. Korn.

24 MR. KORN: Thank you, Mr. Chairman. I will be brief.
25 We support Nocatee's position on this and would adopt Mr.

1 Melson's argument. I do believe that Commissioner Deason,
2 acting in his role as prehearing officer, did a very good job in
3 distinguishing those parts of the offered information that was
4 proper rebuttal and that which would not be proper rebuttal and
5 therefore we would join. Thank you.

6 CHAIRMAN JACOBS: Close, Mr. Wharton.

7 MR. WHARTON: Thank you, Mr. Chairman. You know, I
8 assume Mr. Hoffman is familiar with Black's Legal Dictionary,
9 which I also read the same definition from. But, again,
10 Commissioners, what we anticipated when we filed on this and
11 when we did respond to these motions was that appropriate legal
12 standards would be met. We think that you do have some
13 discretion. We acknowledge that the prehearing officer had some
14 discretion and acknowledge that he had a lot on his plate with
15 regard to that particular order which really encompassed quite a
16 few things. But, again, the fact that this testimony was
17 testimony that was intended to counteract and which certainly
18 would never have be proffered if Ms. Swain's testimony had not
19 been proffered, we believe is something that was overlooked and
20 that is just inconsistent with the order.

21 CHAIRMAN JACOBS: Very well. Staff, do you have a
22 recommendation?

23 MS. CIBULA: Staff recommends that the motion for
24 reconsideration be denied. The standard for a motion for
25 reconsideration is Diamond Cab Company of Miami versus King,

1 1466 So.2d 889, Florida,1962, which stands for the proposition
2 that the purpose of a motion for reconsideration is to bring to
3 the Commission's attention a point of fact or law which was
4 overlooked by the Commission or which the Commission failed to
5 consider when it rendered its order, and it is not intended as a
6 procedure for rearguing the case merely because a losing party
7 disagreed with the decision.

8 As to whether the testimony at issue is rebuttal
9 testimony or additional testimony, the prehearing officer
10 considered the nature of the testimony and determined that all of
11 Mr. James' and Mr. Bowen's testimony was additional testimony,
12 and that portions of Mr. Burton's testimony was additional
13 testimony.

14 Intercoastal has been representing throughout this case
15 that it intended to apply its existing rates to the Nocatee
16 development. Intercoastal's attempt to submit testimony that
17 changes its rates is new testimony. Therefore, there is no
18 mistake of fact.

19 As to the fairness issue that Intercoastal set out, the
20 order explained this, as well. The county was unable to file the
21 additional testimony sooner because the County Commission just
22 made the decision to place the St. Johns County portion of the
23 Nocatee development in its exclusive service area. However,
24 Intercoastal had ample time to file a request that it be allowed
25 to apply supply different rates to the Nocatee development, but

1 it failed to do so until a week before the hearing. Therefore,
2 staff recommends that the motion for reconsideration be denied.

3 CHAIRMAN JACOBS: Thank you.

4 COMMISSIONER PALECKI: Staff, I have a further
5 question on the issue of who is better able to serve more
6 economically in a territorial dispute. When that issue is
7 decided by the Commission, we generally look at traditional rate
8 setting notions, isn't that correct, as to who can more
9 economically serve?

10 MS. CIBULA: We look at if it is in the public
11 interest. That might be one of the aspects that we look at, the
12 rates. But the public interest is what we look at.

13 COMMISSIONER BAEZ: But when we compare the two
14 utilities' ability to serve, simply an offer by one utility to
15 subsidize rates through its stockholders isn't necessarily
16 something this Commission would even consider anyway.

17 MS. CIBULA: That is correct.

18 COMMISSIONER BAEZ: Thank you.

19 CHAIRMAN JACOBS: Any other questions, Commissioners?

20 COMMISSIONER JABER: Mr. Chairman, if Mr. Wharton is
21 correct that this comes to the whole panel, full Commission on
22 reconsideration, I can go ahead and move that we deny the motion
23 for reconsideration.

24 I do agree that once -- the original decision with
25 respect to rebuttal testimony, I do agree that there is

1 flexibility. I don't think there is flexibility now because the
2 standard is mistake of fact or law. So in that regard I would
3 move to deny the motion for reconsideration.

4 CHAIRMAN JACOBS: It has been moved. Is there a
5 second?

6 COMMISSIONER BAEZ: Second.

7 CHAIRMAN JACOBS: It has been moved and seconded.

8 Before we do that, I believe it is the case that a motion for
9 reconsideration does go before the full panel.

10 MS. CIBULA: That is correct.

11 CHAIRMAN JACOBS: And so all in favor, aye.

12 (Simultaneous affirmative vote.)

13 CHAIRMAN JACOBS: Opposed, nay. None. So then the
14 motion is denied. Let me say this, when I saw this it was a bit
15 disconcerting. I believe that the decision is correct, I do not
16 believe the prehearing officer overlooked any particular fact or
17 matter of law. However, these circumstances are really unique
18 for a development of this size. It weighs on my conscience a
19 little bit that such a substantial change in the facts comes in
20 at such a late time in the process.

21 I don't think it is at anybody's design or anything,
22 but it is a challenge. And I don't think there is much to be
23 done about it now. I think the rulings are proper. We would
24 hope to look to that in the future. And I guess I will challenge
25 staff, if there is a way in the future that we could refine our

1 process.

2 And it is not staff's fault, you simply were doing your
3 job in discovery. But in the event of something like this I
4 would at minimum think it would be incumbent upon the parties
5 that come along with this error to prove up that error. And that
6 may be what we see happening in the case. And I guess what I am
7 suggesting here is there is still an opportunity to cross and
8 challenge the basis of the error and to what extent it should
9 apply going forward. And that will give me some comfort in how
10 we deal with this on a going-forward basis. And I guess that's
11 about it.

12 MR. WHARTON: It would be even more disconcerting if
13 the county hadn't withdrawn. If they both decided to
14 participate for the first time in the case last week and then to
15 withdraw.

16 CHAIRMAN JACOBS: Very well. Enough said on that. I
17 can see bait, I think. Let's see, that takes care of the motion
18 for reconsideration. Do we have any other preliminary matters?
19 Let's see. Response testimony.

20 MS. CIBULA: Yes, there was. Like we just talked
21 about, Mr. Burton was allowed to file a portion of his testimony
22 in response, so we want to identify where that will be taken up
23 at the hearing. And staff would suggest that it would be taken
24 up at the time when his regular rebuttal testimony is taken up,
25 which would mean it would be inserted on Page 9 of the

1 prehearing order near the middle of the page.

2 CHAIRMAN JACOBS: Very well. That is agreeable?

3 MR. WHARTON: Yes.

4 CHAIRMAN JACOBS: Very well.

5 MR. WHARTON: And the matters for which official
6 recognition were requested is going to come in at a later date,
7 or it has already come in, or --

8 MS. CIBULA: Well, staff was going to request that
9 next.

10 MR. WHARTON: Sorry.

11 MS. CIBULA: Staff has prepared a list of items for
12 official recognition and all the parties have reviewed those
13 items, and there are no objections, so staff would ask that the
14 official recognition list be entered into the record. And we
15 have handed out copies to all the Commissioners and all the
16 parties.

17 CHAIRMAN JACOBS: Very well. We can take care of
18 that. This is as a good time to do that as any. Are there any
19 objections to the official recollection list?

20 MR. WHARTON: It's not that I have an objection, Mr.
21 Chairman, and I do not, it's that in a way I am a little
22 confused by some of the items on there. You know, the
23 Commission, of all the agencies that I have done trials in front
24 of, I think is the only one that sometimes takes recognition of
25 its own orders. And I remember when I did a lot of health care

1 work, HCA liked to take official recognition of its own
2 administrative code rule. So I think I don't understand what it
3 means to take official recognition.

4 Taking official recognition of an appellate court case,
5 that is just hard for me to understand like we have done here on
6 this list. I think I can use an appellate court case in any way
7 that anyone could use it with or without official recognition. I
8 certainly don't think that it means any of the facts in a
9 Commission order, like an appellate court case, somehow become
10 facts in evidence in this case. So I am a little confused why
11 the Commission orders and the appellate court cases are on there.
12 I don't object unless I am totally surprised later by why that
13 was done. I think I can refer to any Commission order I want in
14 the post-hearing filings and I think I can refer to any appellate
15 court case that I want.

16 COMMISSIONER JABER: How do you satisfy the
17 requirement under the APA to provide notice to the parties of
18 what you rely on?

19 MR. WHARTON: I have never seen that interpreted to
20 mean the legal theories you will rely on in your post-hearing
21 filings. In fact, Commissioner Jaber, I would think some of
22 those would only occur to you maybe even after the trial is over
23 because of the kind of things that come up at trial,
24 particularly live trials, for the first time.

25 COMMISSIONER JABER: Okay. And that is respect to

1 your post-hearing briefs. What about the decision-maker's
2 reliance, albeit everything has to be proven up, but the
3 decision-maker's reliance on that law, that order, that
4 decision?

5 MR. WHARTON: And maybe, Commissioner Jaber, that is
6 something that I need to enlighten myself on, but I would have
7 thought without official recognition -- and certainly as I
8 understand it this is not your list, this is staff's list -- you
9 could have said, well, here are these four Commission
10 precedents, and we have read them and we think they are okay and
11 we are going to follow them with or without recognition.

12 COMMISSIONER JABER: Well, when you enlighten yourself
13 on that, would you enlighten me, as well, because I have asked
14 that same question.

15 MR. MELSON: Commissioner Jaber, I think for the first
16 time today Mr. Wharton and I may agree. I think the
17 Commission's custom --

18 CHAIRMAN JACOBS: Progress.

19 MR. MELSON: -- has been to recognize its own orders
20 and on occasion to recognize Florida cases. I think there is
21 absolutely no requirement you do that. We are free to cite to
22 these orders or any others we find, but because it is the
23 Commission's custom we try to identify up front those we know we
24 are going to rely on just because we have always done it that
25 way.

1 COMMISSIONER JABER: It is that, or is it the noticing
2 requirement under the APA?

3 MR. MELSON: You have got no notice requirement under
4 the APA to advise people of the case law you are going to rely
5 on.

6 MR. McLEAN: Mr. Chairman, may I be heard just for the
7 moment. Harold McLean, General Counsel of the Commission, on
8 behalf of the Commission itself.

9 CHAIRMAN JACOBS: Go ahead, Mr. McLean.

10 MR. McLEAN: I happen to agree with both gentlemen.
11 This is a policy that I have marveled over for years. I have
12 never seen another agency do it.

13 COMMISSIONER JABER: That would be a good answer.

14 MR. McLEAN: We were in a rule hearing that I recall
15 Mr. Menton was there, Mr. Hoffman was there, and a party moved
16 for official recognition of the Southern Reporters. And I
17 didn't have them under my arm so I felt left out. But it is a
18 policy that I wanted to address as your general counsel. I am
19 going to suggest that for the purposes of this hearing that the
20 official notice of those documents stand solely for the notion
21 that they are the authentic orders of the issuing agency and
22 that it not go beyond that.

23 They sometimes seem to be offered up for the notion
24 that these orders are similar to something that is going on here.
25 That is a legal conclusion. No witness could tell you that and

1 no official notice could tell you. I will bring you a
2 recommendation in the next couple of weeks on that issue. As I
3 say, it is something that I have marveled over for years.

4 MR. HOFFMAN: Mr. Chairman, I don't want to be left
5 out of the round table discussion here. Let me just say I agree
6 with everything that Mr. Wharton, Mr. Melson, and Mr. McLean
7 said. I have asked these same questions to Mr. Menton. He has
8 not given me a satisfactory answer yet.

9 Frankly, I thought that this policy, this methodology,
10 this way of doing this before the Commission started a few years
11 ago perhaps legitimately so in the context of supporting non-rule
12 policy. So that, for example, if the PSC did not have a rule on
13 something, then through an evidentiary hearing it could use
14 either testimony or its own orders, and take official recognition
15 of those orders to support non-rule policy.

16 But it seems as though over the years it has sort of
17 mushroomed into this everybody needs to list the cases and orders
18 that they intend to use in their post-hearing brief. Which I
19 agree with Mr. Wharton and Mr. Melson that we can do that anyway.

20 CHAIRMAN JACOBS: Now that we have got that settled
21 and all the lawyers have had a -- well, Mr. Menton, are you sure
22 you don't want to weigh in on this? Very well. We will
23 anxiously await that recommendation, Mr. McLean.

24 Show the official recognition list identified as
25 Exhibit 1, and if there are no objections, show it as admitted

1 into the record.

2 (Exhibit 1 marked for identification and admitted into
3 the record.)

4 CHAIRMAN JACOBS: Well --

5 MR. WHARTON: There is one other thing, Mr. Chairman,
6 I'm sorry.

7 CHAIRMAN JACOBS: Very well.

8 MR. WHARTON: I have been remiss in not mentioning
9 this to the other parties. Mr. Burton has a longstanding
10 presentation to the water management district tomorrow. He is
11 our witness, he cannot be here before 2:00 p.m.

12 CHAIRMAN JACOBS: Today.

13 MR. WHARTON: Tomorrow. So that may entail taking him
14 out of order. I do apologize. In fact, without Mr. Forrester
15 it kind of looks like that is when we will, so if the other
16 parties --

17 CHAIRMAN JACOBS: Why don't you do this, discuss it
18 over lunch and come back.

19 MR. WHARTON: I will do that, Mr. Chairman.

20 CHAIRMAN JACOBS: Great. Very well. That, I assume,
21 takes care -- Mr. Melson, you had another matter?

22 MR. MELSON: One preliminary matter. We would like to
23 have marked as Composite Exhibit 2 the proofs of publication of
24 the notice of this hearing in the St. Augustine Record and the
25 Florida Times Union. The originals have previously been filed

1 with Records and Reporting. I have provided a copy to the court
2 reporter. I've got additional copies if you all would like
3 them, but I would ask that those two documents be marked as
4 Composite Exhibit 2.

5 CHAIRMAN JACOBS: Very well. Show the proofs of
6 publication notice marked as Composite Exhibit 2.

7 MR. MELSON: Move them into the record.

8 CHAIRMAN JACOBS: Are there any objections? Without
9 objection, show Exhibit 2 is admitted into the record.

10 (Exhibit 2 marked for identification and admitted into
11 the record.)

12 CHAIRMAN JACOBS: I would like to take the following
13 process from this point forward. I believe counsel for NUC
14 still wanted to do an introduction of the case.

15 MR. MELSON: Commissioner Jacobs, the prehearing
16 officer and the prehearing order have granted each party ten
17 minutes to make an opening statement. I had thought that there
18 was a little background just dealing with the map that would
19 probably be useful for the Commission sort of prior to the
20 opening statements.

21 Basically, I don't want a two-minute explanation of
22 where everything lies to count against my time. And I think Mr.
23 Wharton generously agreed that he thought it would be helpful to
24 spend just a couple of minutes with the map showing where
25 everything is before we launch into our opening statements.

1 CHAIRMAN JACOBS: Because it is your petition you are
2 going to go first anyway, correct, in opening?

3 MR. MELSON: Correct.

4 CHAIRMAN JACOBS: Why don't we just have you do that
5 and under that agreement it won't count against your ten minute
6 time.

7 MR. MELSON: Thank you.

8 CHAIRMAN JACOBS: And with that I think the next order
9 of business is to swear in the witnesses. Would all of those
10 who are here to testify in the technical hearing stand and
11 please raise your right hand.

12 (Witnesses sworn.)

13 CHAIRMAN JACOBS: Very well. We will begin with
14 opening statements. You may begin.

15 MR. MELSON: Commissioners, as you probably have
16 gathered by this point, we have competing applications for
17 certificates before you today. We have got a map here that
18 tries to just show some of the geographics involved, and you
19 have each got a copy in front of you, a smaller scale version of
20 it.

21 Let's begin with the county line. The Duval County
22 line is the red dashed line that comes across the middle, turns
23 and runs due north, and then runs east again. You have got
24 Intercoastal Utilities' existing service territory shown in pink.
25 That borders on the Atlantic Ocean and lies to the east of the

1 Intracoastal Waterway, which is the little blue waterway and then
2 river that you see.

3 The territory applied for by Nocatee Utility
4 Corporation is shown in light yellow, and that is co-extensive
5 with the bounds of the Nocatee development. The other darker
6 yellow areas on the chart are additional lands owned by DDI or
7 its subsidiaries, who are affiliates of Nocatee Utility
8 Corporation. They are not -- the dark yellow is not in Nocatee's
9 requested service territory. We have requested only the Nocatee
10 development.

11 Intercoastal's requested service territory is shown in
12 the cross-hatching. It includes both the Nocatee development,
13 some additional dark yellow, which is other DDI lands in St.
14 Johns County, and it includes some of the green in St. Johns
15 County, which is Estuary Corporation property. Estuary
16 Corporation is a Davis family interest, as DDI Corporation is a
17 Davis family interest, but they are different branches of the
18 family, and there is no affiliate type of relationship between
19 Estuary and DDI.

20 The cross-hatched area also includes some additional
21 territory in St. Johns County that is white that is owned by
22 neither -- that is not either in Nocatee or owned by DDI. Mr.
23 Wharton, you may have to help me here. There is a portion of
24 that as to which I believe you have withdrawn your application?

25 MR. WHARTON: There is at least one area, Walden Chase

1 (phonetic), that is a development that lies within the area for
2 which we have applied that is presently receiving service from
3 St. Johns County.

4 MR. MELSON: And I believe that is this white area
5 here?

6 MR. WHARTON: I believe that is right.

7 MR. MELSON: So with that as background, let me put up
8 my opening statement charts and proceed with the opening
9 statement.

10 I've got the logistics worked out. The territory for
11 which Nocatee has applied is the Nocatee development, the light
12 yellow. It is a 15,000 acre development of regional impact on
13 the west side of the Intracoastal Waterway. It is a development
14 of regional impact because of its size, and that means it has to
15 go through a separate land use permitting process, and it has
16 done that and it is now subject to DRI development orders issued
17 by St. Johns County and by the City of Jacksonville.

18 That territory for which we have applied, the light
19 yellow, is 100 percent owned by DDI, or through DDI through its
20 wholly-owned subsidiaries. You will hear testimony that this
21 Nocatee development is intended by the land owner and the
22 developer to be a unique development and has a strong
23 environmental ethic. There are other Davis family lands in St.
24 Johns County, listed here as Estuary Corporation, the light
25 green. The cross-hatched area of those Intercoastal has applied

1 for, Nocatee Utility Corporation has not. You will hear
2 testimony that there is no need for service in that territory.

3 The competing applicants here today are Nocatee Utility
4 Corporation, a subsidiary of DDI, and an affiliate of the land
5 owner. Nocatee Utility Corporation intends to provide service
6 under a comprehensive agreement with JEA. They will buy
7 wholesale utilities on a bulk basis from existing JEA off-plant
8 sites. I believe wastewater is in Mandarin, and I am frankly not
9 sure where their water site is. And also under that agreement we
10 will be getting operations, management, and maintenance services
11 from JEA. Although that portion of the contract has some
12 provisions, it could be terminated and us still continue to
13 receive the wholesale water/wastewater and reuse service.

14 Intercoastal Utilities' existing utilities is the pink
15 area on the east side of the Intracoastal Waterway. It proposes
16 to serve the Nocatee development through new plants located
17 either within or just on the boundary of the Nocatee development.

18 The other parties, JEA was the bulk provider to Nocatee
19 Utility Corporation, the county you can ignore. My opening
20 statement goes faster since they withdrew on Friday. And
21 Sawgrass Association, which represents some existing customers of
22 Intercoastal who oppose Intercoastal's application, and who as I
23 understand are basically taking no position on Nocatee's
24 application.

25 The key issues in considering NUC's application are

1 essentially the same issues you have in any certificate case. Do
2 you have jurisdiction? Yes. By law you have jurisdiction to
3 grant certificates to counties whose service territory traverses
4 a county boundary. You can see here the Nocatee development is
5 in both Duval and St. Johns County. In fact, the first phase of
6 the development, called the town center area, traverses the
7 Duval/St. Johns County line. And, as a matter of fact, there
8 will be lines owned by the utility that cross back and forth
9 across that boundary.

10 We don't need to talk about the exclusive service
11 territory, that is an issue that went away with St. Johns County.
12 Is there a need for service? Yes. In the Nocatee development it
13 is need for service beginning probably the end of 2002, first
14 quarter of 2003. It is a need for service that extends over a
15 development period of about 25 years. The development has its
16 DRI development orders and is pursuing other required permits and
17 approvals, including Nocatee Utility Corporation's certificate
18 application.

19 Is there a need for service to these other Davis family
20 lands in St. Johns County? No. Those lands are not slated for
21 development, and you will hear testimony that they will not be
22 developed in my lifetime or yours.

23 Financial ability. Does NUC have the financial ability
24 to serve the Nocatee development? Yes. It has a master service
25 agreement with its parent company, DDI, Inc. DDI has a net worth

1 of approximately \$2 billion. The master service agreement, which
2 is one of our exhibits, basically obligates DDI to provide
3 funding to the utility for the initial capital improvements and
4 until it is able to stand on its own two feet.

5 Do we have the technical ability? Yes. The technical
6 ability is provided through the agreement with JEA under which
7 they will provide contractual, management, and operation
8 services. No different than you have for many utilities that
9 out-source that type of operation.

10 What we think distinguishes us from Intercoastal is we
11 are the only party with a technically feasible plan of service.
12 As a result of development order conditions for the Nocatee
13 development, there can be no on-site water or wastewater
14 treatment plants. There can be no on-site potable water wells.
15 There is a requirement for 100 percent reuse for irrigation
16 purposes with wells as emergency backup only, and there can be no
17 wet weather discharges to the Tolomato River or its tributaries.
18 And the Tolomato River forms part of the Intracoastal Waterway
19 and with tidal action water passes back and forth throughout this
20 waterway. Nocatee's plan of service meets all of those
21 requirements, Intercoastal's does not.

22 Ultimately it is a public interest case. Once we have
23 proven financial technical ability, why it is in the public
24 interest? Well, first, land owner preference. And I think land
25 owner preference is entitled to more consideration in this case

1 than in many because of the unique nature of the Nocatee
2 development, because of the strong environmental ethic for the
3 project. There is an interest in having the people doing the
4 master planning for the development doing the master planning for
5 the utility so that the development order conditions can be met.
6 The project can be done in an environmentally sensitive way that
7 the land owner and the developer want to have it done, and so
8 that the utility will be there to meet the development needs in a
9 timely manner.

10 We offer competitive rates. The rates we have proposed
11 were set in accordance with the Commission's policy for new
12 utilities designed to produce a fair rate of return at the point
13 that phase one of the utility reaches 80 percent of capacity,
14 which is predicted to be in about year four of operation. The
15 rates are lower than Intercoastal's existing rates and the rates
16 that they have proposed in this proceeding. You will hear quite
17 a bit of testimony from their witness, Mr. Burton, about
18 potential future for rate decreases, and that is simply testimony
19 you are going to have to weigh.

20 I can't emphasize enough we have got the only plan that
21 complies with the development order conditions. Those
22 development orders issued again by St. Johns County Commission
23 and the City Council of the City of Jacksonville.

24 Do we duplicate or compete with any existing system?
25 No. Intercoastal does have an existing system, but they are

1 located on the opposite side of the Intracoastal Waterway, which
2 is a natural boundary. They also don't plan, except for some
3 reuse, to provide any service out of their existing system. They
4 plan to essentially construct a stand-alone water system and a
5 stand-alone wastewater system within the boundaries of the
6 Nocatee development in the territory they have applied for. And,
7 again, St. Johns County is taking itself out of play.

8 Let me talk for a minute about Intercoastal's competing
9 application. Do they have the financial ability? They have got
10 a negative stockholders equity of over 1.3 million. Their future
11 plans call for financing some \$17 million worth of improvements
12 in phase one with 100 percent debt, so they are going to continue
13 to be a 100 percent debt utility with no stockholders equity.

14 Their own witnesses' testimony will show that their
15 plan of service requires significant subsidies from their
16 stockholders. And what we believe is a telling point, that
17 utility is for sale. It has been for sale. The St. Johns County
18 Commission in June is going to consider again making another
19 offer for Intercoastal Utilities. The last time they had a
20 handshake deal with the county staff they were selling not only
21 their existing service territory, but they were getting value for
22 future connections in the Nocatee development for which they did
23 not hold a certificate. We simply don't think they can
24 demonstrate a long-term commitment to serve the territory they
25 have applied for.

1 With regard to technical ability, we provide through a
2 management contract with JEA; they provide through a management
3 contract with JUM, Jax Utilities Management. They probably have
4 the technical ability to operate a utility. But in this case
5 they have not proposed a technically feasible plan of service,
6 because they plan to put plants in Nocatee, which violates the
7 development order, they plan to put water wells in Nocatee, which
8 violates the development order. They plan to supplement reuse
9 with some groundwater during early years, which violates the
10 development order, and they have discharges to the Intracoastal
11 Waterway, which violates the development order.

12 Is granting Intercoastal's application in the public
13 interest? No. It is opposed by the landowner. I believe you
14 will hear it is opposed by the current customers of intercoastal.
15 Part of their case is a rate comparison. They project future
16 rate decreases over the next ten years, but you will hear cross
17 examination that shows those projections are unreliable.

18 They ignore the fact that they were supposed to have
19 filed a rate case with St. Johns County on May 1st and just got a
20 30 day extension to do that. They assume that they will reduce
21 their rates below compensatory levels, and in determining how
22 much shortfall they are willing to bear, they misapply PSC
23 ratemaking principles and don't show you the full effect of how
24 much they are willing to quote, subsidize. And as I have said
25 two or three times, their plan of service simply doesn't comply

1 with the development order.

2 You also need to know that their single county
3 application, in early 1999 they applied to the St. Johns County
4 Water and Sewer Authority to serve the St. Johns County portion
5 of this territory that is shown in the cross-hatched. That was
6 denied by St. Johns County Water and Sewer Authority and was
7 denied and then affirmed by the full St. Johns County Commission
8 after six days of evidentiary hearings before the authority.

9 In summary, Nocatee Utility Corporation meets all the
10 statutory requirements for a certificate and granting it a
11 certificate is in the public interest. There is a need for
12 service in its requested territory, although not in the
13 additional territory Intercoastal has requested. It is
14 financially strong, it is providing technical capability through
15 its agreement with JEA. It has a viable plan of service. It
16 meets the development order requirement. It has got reasonable
17 rates calculated in accordance with the Commission's policy for
18 new utilities. It does not duplicate or compete with any
19 existing system.

20 The fact that it is a wholly-owned subsidiary of DDI
21 means that it will enable the utility to do master planning in a
22 way that meets the needs of this unique development. And to the
23 extent there is any remaining issue about the county's action to
24 designate this area as their exclusive service territory, that is
25 a matter for the courts and not for you all. Thanks.

1 COMMISSIONER JABER: Mr. Melson, may I ask you some
2 questions?

3 MR. MELSON: Yes, ma'am.

4 COMMISSIONER JABER: The City of a Alifea (phonetic)
5 versus I think it was Utilities, Inc., are you familiar with
6 that case?

7 MR. MELSON: Not by name.

8 COMMISSIONER JABER: Okay. Would you recall that that
9 was the case where the Commission -- because you said not by
10 name, I am assuming you might recall some of the circumstances.

11 MR. MELSON: I have read several certificate dispute
12 cases and cases, I am just not recalling that one.

13 COMMISSIONER JABER: Okay. Are you familiar with any
14 cases where the Commission has acted on a certificate
15 application and the city or county did not participate and the
16 Commission process went to court and the court decision had the
17 effect of undoing what the PSC ordered or approved?

18 MR. MELSON: The one I am most familiar with is Lake
19 Utility Services.

20 COMMISSIONER JABER: That's it. I had the wrong --

21 MR. MELSON: And the court did not undo what the
22 Commission had done. There was a city that had designated some
23 territory as city territory to be served. Lake Utility -- in
24 fact, they did not serve when a request was made. The utility
25 came to the Commission, the county intervened in the case. The

1 county in almost deja vu withdrew prior to the hearing. The
2 Commission granted the certificate to Lake Utility Services and
3 the parties ended up in circuit court.

4 And the court said the controlling rule is he who had
5 the first right to serve wins. The city had the first right to
6 serve, but there is a caveat to that. When the time comes to
7 serve you have got to be there to do it. You're not there to do
8 it, so Lake Utility Service wins.

9 COMMISSIONER JABER: Okay. By analogy, could what the
10 City of Alifea did -- or was it the county that designated the
11 certain area to serve, is that analogous to St. Johns County's
12 exclusive service territory?

13 MR. MELSON: I think it is exactly. I think if you
14 grant us a certificate, as we think we will demonstrate you
15 ought to do, the county may very well move at some point to
16 enjoin us from construction. We will end up in circuit court.
17 The question the judge will face is who had the first right in
18 time and he may or may not find that resolution is sufficient
19 and counts as first in time. But assuming he does, the question
20 is can they serve. And if they were here and if we were trying
21 that case, we would point out to you that their existing
22 facilities end at World Golf Village.

23 They propose to extend lines across International Golf
24 Parkway up US-1 right-of-way in which there is no room for
25 additional lines, and into the town center area of the

1 development. And there are a number of Commission orders, and
2 they are included on the official recognition list, which says
3 there is no duplication or competition unless there is an
4 existing system, and under those orders a system that is 15 miles
5 away isn't an existing system for purposes of competition.

6 COMMISSIONER JABER: Do you have a witness that would
7 be able to tell us that, that would be able to testify as to
8 what St. Johns County is able to serve?

9 MR. MELSON: We filed additional rebuttal testimony of
10 Mr. Doug Miller to the county's testimony, that lays out what we
11 saw as the deficiencies for the county's plan of service.
12 Although I had not thought we would offer that with the county
13 not here, if you want to either see that testimony or hear it,
14 Mr. Miller is prepared to do that. He has done a thorough
15 analysis of the county's plan of service.

16 COMMISSIONER JABER: All right. Just two more
17 questions. In your opening statement you said that the utility
18 would be managed by JEA?

19 MR. MELSON: Correct. There will be a -- there is a
20 single agreement for wholesale service operations, management,
21 and maintenance under which JEA provides the wholesale service
22 and as agent for NUC handles the day-to-day operations and
23 maintenance.

24 COMMISSIONER JABER: All right. And isn't there a
25 statutory exemption for utilities that are managed by

1 governmental entities?

2 MR. MELSON: If you say so.

3 COMMISSIONER JABER: Okay.

4 MR. MELSON: There very well may be, Commissioner.

5 COMMISSIONER JABER: That just sets up the stage for
6 an issue I would like briefed, I think. But Intercoastal
7 Utilities' decision at St. Johns County, is that in the record
8 anywhere?

9 MR. MELSON: Yes. The order of the -- the preliminary
10 order of the water and sewer authority and the final order of
11 the St. Johns County Commission are on the official recognition
12 list, and I believe there are actually also copies of those
13 attached to some of Mr. Doug Miller's testimony. I have to be
14 careful, we have go two Mr. Millers in this case. Mr. Doug
15 Miller is an engineer for Nocatee Utility Corporation, Mr. Jim
16 Miller is an engineer for Intercoastal, and they are not
17 related.

18 COMMISSIONER JABER: All right. Commissioners, we
19 could certainly discuss this after all the opening statements
20 are completed, but I think I would like to ask that an issue be
21 briefed. And, Mr. Chairman, whatever your pleasure is as to the
22 timing of identifying that issue.

23 CHAIRMAN JACOBS: Why don't we go ahead and complete
24 the opening statements and then come back to that. That will be
25 fine. Mr. Hoffman, your opening statement.

1 MR. HOFFMAN: Thank you, Mr. Chairman. JEA is the
2 contract provider for Nocatee Utility Corporation in this case
3 and supports Nocatee's application. JEA opposes Intercoastal's
4 application.

5 If Nocatee prevails in this case, water, wastewater,
6 and reuse services for the Nocatee development will be integrated
7 into JEA's large regional system. JEA has over 180,000 water
8 connections, thousands of miles of transmission lines, and large
9 regional water and wastewater plants. JEA currently has water
10 and wastewater lines that are in very close proximity to the
11 Nocatee development. It will be a simple matter for JEA to tie
12 into those lines and integrate Nocatee into JEA's regional
13 network.

14 Such service will eliminate the need for new water
15 wells within the Nocatee development, which is important because
16 the Nocatee development is located in a priority water use
17 caution area. It will also enable JEA to more fully utilize the
18 existing capacity in its current facilities. Because of its size
19 and longevity, JEA is really in a unique position to assist the
20 developer in meeting its ambitious and what we believe to be
21 laudable environmental goals.

22 Through its contract with JEA, Nocatee Utility
23 Corporation has been able to secure a long-term commitment for
24 bulk services as well as operations and maintenance from one of
25 the largest and most experienced providers in the state, JEA.

1 This arrangement is not only cost-effective, it will help ensure
2 long-term rate stability with the best possible service.

3 Now let's talk about Intercoastal. Intercoastal is in
4 a small portion of St. Johns County with a service area of
5 approximately 5,000 acres, all of which, as Mr. Melson explained,
6 is currently east of the Intracoastal Waterway. It has one
7 wastewater treatment plant, a plant that has been the subject of
8 continued controversy, customer complaints, and lawsuits. And it
9 also has two water plants.

10 Although Intercoastal has been a consistent source of
11 controversy and customer complaints for its existing customers
12 and service area, it now seeks from you a certificate to serve
13 approximately 25,000 acres, roughly five times its current size.
14 The entire requested area is west of the Intracoastal Waterway,
15 which significantly limits Intercoastal's service options.

16 The Nocatee DRI alone within the requested territory
17 projects a build-out that is more than five times the size of the
18 current Intercoastal facilities. Intercoastal does not have the
19 ability to serve the Nocatee development from its existing
20 facilities. It will need to construct entirely new facilities on
21 the west side of the Intracoastal. It is not clear how
22 Intercoastal will integrate the new facilities that it says it
23 will build with its existing facilities east of the Intracoastal,
24 and it is not clear how Intercoastal will meet its obligations to
25 its existing customers through the new facilities that they say

1 they are going to build. In particular, it is not clear how
2 reuse will be provided to the Sawgrass Country Club.

3 JEA, on the other hand, has the capacity in place
4 today, today to serve phase one of the Nocatee DRI consistent
5 with the development orders that Mr. Melson discussed that have
6 been issued by St. Johns County and the City of Jacksonville and
7 consistent with Nocatee's plan of development. JEA has the
8 ability to meet the anticipated growth of the Nocatee development
9 within the framework of JEA's current plans for expansion of
10 water supply and wastewater treatment facilities.

11 In the summer of 1999, extensive hearings were held
12 before the St. Johns County Water and Sewer Authority. Mr.
13 Melson mentioned these. Those hearings were with respect to
14 Intercoastal's application that was pending at that time before
15 that authority to serve much of this very same territory,
16 including Nocatee in St. Johns County. In St. Johns County only.
17 All of the various plans that were proposed by Intercoastal in
18 that case were determined to be inadequate. They have now come
19 up with a new plan of service for this case, and that plan is
20 also inadequate. If for no other reason it does not comply with
21 the terms of the development orders for the Nocatee development.

22 Now, Intercoastal will argue in this case that the
23 development orders can be changed, but that is pure speculation.
24 Perhaps wishful thinking on their part. Unless and until those
25 development records are changed, there is no need for the service

1 proposed by Intercoastal because Intercoastal cannot meet the
2 service needs for the development as approved in those
3 development orders.

4 In other words, Intercoastal is essentially asking you
5 to overlook the development orders. If you overlook the
6 development orders, there is no demonstrated need for service.
7 So you can't overlook the development orders and you must
8 recognize the fact that Intercoastal's plan of service does not
9 comply with the development orders.

10 Now, Intercoastal will claim that it can provide the
11 best service to the requested territory, but you will hear
12 testimony from their customers. Their customers don't believe
13 it. Their only hope is that Intercoastal can get its existing
14 house in order. We had the hearing two years ago before the St.
15 Johns County Water and Sewer Authority. That authority didn't
16 believe that Intercoastal could serve the Nocatee DRI in St.
17 Johns County and neither did the St. Johns County Board of County
18 Commissioners. And not surprisingly, the developers in this case
19 don't believe it either.

20 What this case is really about in terms of the
21 Intercoastal application is an attempt to drive up the price for
22 the sale of the utility. Mr. James, who is the President of
23 Intercoastal, and his partners have purchased or developed some
24 25 utilities over the years and they sold all but two of them.
25 Mr. James has been pursuing the sale of Intercoastal on a

1 continuous basis since those hearings were held before the St.
2 Johns County Water and Sewer Authority in 1999, and perhaps
3 before that time.

4 As recently as April 24th of this year, St. Johns
5 County approved an offer to purchase Intercoastal and that
6 purchase price will undoubtedly be driven higher if
7 Intercoastal's application is granted in this proceeding. What I
8 am saying to you is that essentially what Intercoastal's
9 application is about in this case is nothing more than a land
10 grab to increase the possible sales price for a utility that does
11 not currently have the facilities to provide the needed service
12 in compliance with those development orders that I mentioned.

13 Mr. Melson briefly touched on, and I would like to talk
14 a little bit more about an issue that has been raised in this
15 case, and that is whether Intercoastal's application to serve the
16 St. Johns County piece of their application should be denied
17 based upon principles of collateral estoppel or administrative
18 finality.

19 As I mentioned, Intercoastal is currently regulated by
20 the St. Johns County Water and Sewer Authority and ultimately by
21 the St. Johns County Board of County Commissioners. In 1999,
22 Intercoastal filed an application in a preemptive effort to seek
23 certification to provide services in northern St. Johns County,
24 including a large portion of the territory that they seek before
25 you today.

1 At some point prior to the hearing on that application,
2 a public announcement of the Nocatee development was made. At
3 that point it became clear that the Nocatee development would
4 include territory in both Duval and St. Johns County. At that
5 point Intercoastal could have and should have withdrawn its
6 application before the St. Johns County Water and Sewer Authority
7 and filed the application, the cross-county application that is
8 before you today.

9 But Intercoastal did not abandon its application with
10 the St. Johns County Water and Sewer Authority. Instead,
11 Intercoastal took the parties, the Authority, and the County
12 Commission through six days of evidentiary hearings and follow-up
13 proceedings, which ultimately resulted in the denial of
14 Intercoastal's application. After that application was denied by
15 the county, Intercoastal, as you know, filed the application that
16 is before you today in which it seeks to use the Commission's
17 jurisdiction over multi-county utilities as a basis for its
18 so-called, what I will call a second bite at the apple on the St.
19 Johns County piece.

20 As I mentioned before, Intercoastal knew during the
21 1999 St. Johns County case that the Nocatee development spanned
22 two counties, but Intercoastal did not withdraw that case. It
23 kept going at the ultimate expense of its customers. In the
24 meantime, Intercoastal's customers are saddled with the expense
25 of this case. Perhaps this explains the level of discontent that

1 Intercoastal's existing customers have had with this utility.

2 But there are legal ramifications to their action, as
3 well. The JEA's position in this case is that the legal
4 principle of collateral estoppel and administrative finality
5 precludes Intercoastal's second try at the St. Johns County
6 portion of this application. In the St. Johns County proceeding
7 in 1999, DDI, who is the developer of Nocatee, Intercoastal, and
8 JEA participated throughout those proceedings.

9 In denying Intercoastal's application, the Water and
10 Sewer Authority, and ultimately the county, found numerous
11 deficiencies in Intercoastal's various plans for service. The
12 authority in the county also acknowledged the developer's plans
13 to serve Nocatee through bulk arrangements with JEA and made
14 specific findings as to JEA's ability to provide wholesale
15 service to Nocatee together with the benefits of service from
16 JEA.

17 Now, Intercoastal will say in this case that we now
18 have another -- that they have another new plan of service which
19 they would like to present before you in this case. And that
20 really raises the ultimate legal issue before you. Our position
21 is that Intercoastal cannot under the legal principles that I
22 have discussed, seek the same relief that it sought before St.
23 Johns County by presenting a new theoretical plan of service.
24 The relief that Intercoastal seeks, at least to the extent
25 Intercoastal seeks a certificate for substantially the same

1 territory in St. Johns County that it sought before the Water and
2 Sewer Authority after a full evidentiary hearing on the merits,
3 should be denied on the legal principle of collateral estoppel.

4 In addition, the recognition by the county and the
5 authority of the benefits of Nocatee's plan to obtain wholesale
6 service from JEA should not be second-guessed by this Commission
7 in this proceeding. To conclude, Commissioners, we believe that
8 Nocatee going back to the 1999 case and through this case has
9 anticipated a wholesale arrangement with JEA as the most viable
10 plan of service for its entire development. Only JEA has the
11 capacity to meet the needs of this large development without
12 unduly stressing the environment.

13 The wholesale service required by Nocatee can easily be
14 incorporated into JEA's large regionalized system. This
15 arrangement is the most efficient, cost-effective, and
16 environmentally sound approach for the provision of water,
17 wastewater, and reuse services in the Nocatee development.

18 Thank you.

19 CHAIRMAN JACOBS: Thank you, Mr. Hoffman.

20 Mr. Korn, did you have an opening statement?

21 MR. KORN: Mr. Chairman, it was my understanding that
22 I thought Mr. Wharton was going to -- since he has a certificate
23 application, he was going to go and then I was going to be the
24 last presenting the opening statement.

25 CHAIRMAN JACOBS: That's fine. You were aligned in

1 opposition, so I thought --

2 MR. KORN: And that's fine. I just wanted to point
3 out that that was one of the things we discussed at the
4 prehearing.

5 CHAIRMAN JACOBS: Does that work for you, Mr. Wharton?

6 MR. WHARTON: It certainly is a correct representation
7 of the conversation we had at the prehearing conference. I was
8 going to ask once again, though, that I be allowed rather than
9 being sandwiched in. I mean, these three parties are in lock
10 step. I think that is obvious to you now.

11 CHAIRMAN JACOBS: Well, unless you are opposed to
12 going now, you can go ahead and do your statement.

13 MR. KORN: That's fine. Thank you, Mr. Chairman. I
14 didn't want to be going out of turn. Thank you.

15 I will try to be as brief as I can because our
16 interests in this case are somewhat more limited than some of the
17 other applicants that are before you today. The Sawgrass
18 Association is the largest single group of customers that
19 currently are served by Intercoastal Utilities. We serve
20 approximately 1,500 property owners in the Sawgrass development
21 which is located east of the Intracoastal Waterway, and we are
22 the neighbors to the Intercoastal Utilities wastewater treatment
23 facility, which has grown over the years from a 250,000-gallon
24 per day plant to a 1,500,000-gallon per day capacity plant.

25 That plant, as the evidence will show, has generated

1 substantial odors both in the past and in the future despite
2 efforts by the utility to attempt to remedy them. As I say, we
3 are the largest group of existing customers and we oppose the
4 expansion of Intercoastal into the territory which is referred to
5 here as Nocatee, but those lands that are located west of the
6 Intracoastal Waterway.

7 You have already heard discussion about the 1999
8 proceedings that were held in St. Johns County before their water
9 and sewer authority. And at that time there was significant
10 discussion about Intercoastal's proposed plan of service for that
11 portion of the certificated area that lies within St. Johns
12 County which we are now here on again today.

13 We would submit that it would be a fair statement to
14 say that Intercoastal's plan of service changed at certain points
15 throughout that six days of hearing. Intercoastal will tell you
16 that the reason the plan of service changed is because they were
17 just at that point in time learning about the extent and
18 ramifications of the Nocatee development, and therefore were
19 required to adjust their plan of service as they learned about
20 what exactly was going to be needed in the Nocatee development
21 itself.

22 One of the things that had been discussed by
23 Intercoastal previously was the possibility that certain service
24 was going to be tied between its existing east territory with its
25 single plant located on our doorstep at Sawgrass and the area now

1 in the western part of the territory. And, in fact, one of the
2 reasons that Sawgrass intervened in this docket was to express
3 our extreme concern about any potential linkage or service of
4 Nocatee from the existing facilities, the existing plants.

5 We are pleased to say that one thing Intercoastal has
6 done in their changed plan of service is to represent that there
7 would be no service of their proposed territory -- we are coming
8 back to our plant, the plant that is our neighbor. And that
9 certainly is a helpful sign. And, again, one of the reasons that
10 we are here in this docket is to protect the quality of life that
11 the residents of Sawgrass have to minimize the odors and to
12 express to this body the continuing concerns which Intercoastal's
13 customers have about the operations of the utility.

14 You will hear testimony concerning Intercoastal's
15 technical ability. You will hear testimony about Intercoastal's
16 responsiveness with respect to repair, maintenance and the like.
17 As previously suggested, you will hear testimony concerning the
18 issues of odor that continue to plague this plant and the folks
19 that live around it and work near it and go to school near it.

20 You will hear testimony about the concerns that the
21 Sawgrass Association has expressed to Intercoastal on an on-going
22 basis and you will hear about a utility service agreement that
23 exists between the parties when Intercoastal first became the
24 provider of water and wastewater service back in 1983, which we
25 believe has a significant bearing on the relationship of the

1 parties.

2 You will also hear about concerns that have been
3 expressed at the St. Johns County level about Intercoastal's
4 rates. Intercoastal will have you believe that the reason we
5 have intervened in this docket is because we were mobilized about
6 their very, very extensive and large rate increase which was
7 approved by the county some years ago. And we would submit that
8 the evidence is going to show that while rates are certainly of
9 concern, in fact, such a concern that the St. Johns County Water
10 and Sewer Authority is currently undergoing an audit of
11 Intercoastal's books and records to determine the accuracy and
12 adequacy of their rates. We believe that it is their operational
13 and technical aspects as I have suggested already that will be
14 the deciding factor in determining whether Intercoastal can be a
15 good neighbor in its western proposed area. And we suggest that
16 past performance is often a significant indicator of future
17 performance.

18 These concerns are real, they are not hypothetical.
19 They are concerns that the folks at Sawgrass live with on a
20 regular basis, especially when there are other opportunities and
21 other alternatives for service, we believe, the Sawgrass, that
22 the Intercoastal application ought to be rejected.

23 Thank you, Mr. Chairman.

24 CHAIRMAN JACOBS: Thank you. Mr. Wharton.

25 MR. WHARTON: Thank you, Mr. Chairman. I hope I won't

1 need it, but I hope that if I do you will give me a little
2 latitude not only because some of the statements ran over ten
3 minutes, but because I am responding to quite a bit. I am
4 certainly not going to spend my opening statement responding to
5 motions for the application of res judicata or collateral
6 estoppel that have never been filed, but I do want to say a few
7 words about that.

8 CHAIRMAN JACOBS: I assume your request for brief
9 latitude was that, and I think it is fair to grant a brief
10 latitude.

11 MR. WHARTON: And I think I can get it in ten minutes
12 anyway.

13 CHAIRMAN JACOBS: And as to scope, I can agree that we
14 should stay fairly narrow to the scope. And we will do that
15 with witness testimony, I can assure you.

16 MR. WHARTON: Okay. You know, Commissioner Deason
17 during the prehearing conference, this same subject was raised
18 and he pretty much said, well, this is something that should
19 have come before now. Why do you think you are hearing it in
20 opening statement after 22 months? I will tell you why. I
21 would have knocked that motion over the wall. It's ridiculous.
22 Not only could I try this application in front of you, I could
23 try it in front of St. Johns County again. It is a different
24 territory, different parties, different costs, different plan of
25 service. Nothing was known about Nocatee at the time. They

1 weren't applying your rules, they weren't applying your
2 statutes. They weren't applying your precedence.

3 But let me just tell you one other thing. Imagine in
4 this hearing you are back in your homes in Tallahassee and you
5 have told the Commission staff to hear this hearing and then to
6 issue a recommendation to you and you will make a final order.
7 And sitting over there is the PSC utility that you own and
8 control. That is what happened to me in St. Johns County.

9 An opponent to the application who cross-examined the
10 witnesses, put on testimony, filed a petition saying it should be
11 denied, was the St. Johns County Utility Department. And they
12 claim they weren't St. Johns County. They were the St. Johns
13 County Utility Department, and yet they admitted in testimony
14 that, well, they had been ordered to be there by the Board of
15 County Commissioners.

16 When I then said, well, this authority that I'm trying
17 this case in front of is the Board of County Commissioners, the
18 court attorney admitted, yes, that is the alter ego of the Board
19 of County Commissioners. When I then said, well, I think you
20 need to recuse yourself, that motion was denied. So that is what
21 happened in front of St. Johns County. The judge was the county
22 and the opponent was the county.

23 COMMISSIONER JABER: Mr. Wharton, help me understand
24 that. The water and sewer board is who you brought your case in
25 front of. They make a recommendation to the Board of County

1 Commissioners?

2 MR. WHARTON: Correct. Correct.

3 COMMISSIONER JABER: And they recommended that your
4 application be denied?

5 MR. WHARTON: Correct.

6 COMMISSIONER JABER: The board ultimately agreed.

7 MR. WHARTON: And that the petition of the St. Johns
8 County Utility Department be granted, that the application
9 should be denied.

10 COMMISSIONER JABER: Of who?

11 MR. WHARTON: Of the St. Johns County Utility
12 Department, who was the opponent in the case.

13 Commissioners, the evidence in this case will prove
14 that Intercoastal is a well-run and well-operated utility that
15 has provided reuse before JEA decided that it was a good idea.
16 It is a utility whose rates and connection fees are reasonable by
17 comparison to other utilities in the area, particularly St. Johns
18 County. The kind of subsidy of rates that you have heard about
19 is something that only occurs for a short time. Our rates will
20 become very competitive with these rates after that short time
21 even if we are not allowed to put in the new testimony.

22 This is a utility who because of its proximity to the
23 sea and the Intracoastal Waterway cannot grow any more without an
24 extension of its territory and cannot realize the economies of
25 scale that that kind of growth provides. It is a utility which

1 has a vast amount of experience in both utility and development.
2 Intercoastal and its principals, many of whom have over 40 years
3 of experience in the utility business, has more experience in
4 terms of those individuals than certainly any of our clients
5 throughout the years or any other utility that I am aware of.

6 The evidence will show that this is an area that
7 Intercoastal has proposed to serve for a long time. It is an
8 area whose projections were put into the 20/20 water plan a long
9 time also, and also that this application is a logical extension
10 of its existing service area. The evidence will show that
11 Intercoastal's shareholders who do have the wherewithal to
12 effectuate Intercoastal's application are completely committed to
13 this project on a going-forward basis. And the evidence will
14 show that the plan of service is reasonable and achievable.

15 Well, you are going to hear a lot about the development
16 order in this case, and you are just going to have to wait until
17 you have heard it all. Because the evidence will show the
18 development order process was manipulated by this land owner so
19 that the requirements of the development fit into their plan of
20 service. This development order has been pending the whole time
21 this application has been pending. And what the evidence will
22 show is that the initial testimony in this case was only that we
23 have this environmental ethic and that we won't use groundwater
24 for reuse. In point of fact, this developer went and had a
25 groundwater study done that showed there is a substantial amount

1 of high quality groundwater under the development.

2 Well, like I say, the direct testimony is that we have
3 an environmental ethic of we won't use the groundwater for reuse.
4 Well, that suddenly and slowly changed into we have now told
5 these agencies we won't have any on-site plants. And, in fact,
6 long after this case had been going on, long after that
7 application had been pending, they finally made that clear just
8 before we almost went to hearing last August in July, and the
9 testimony was, well, the agencies were still confused so we came
10 right out and said it, no on-site facility.

11 In point of fact, these applications for development
12 approval, which were filed in February of 2000 and which had been
13 pending until about six weeks ago at the same time this case was
14 never mentioned this case. They never mentioned the word
15 Intercoastal at least in the representations of this developer.
16 Not once. And the testimony, the expert testimony not from my
17 expert, from the staff's expert, will be that, well, if they had
18 put that in there it would have been taken into consideration.
19 If we would have known that this fight was going on, if we would
20 have known there were other options. And also we just accepted
21 what they said in their application for development approval
22 about no on-site facility.

23 The testimony is also going to be that that is probably
24 not a substantial deviation even to change it. So to the extent
25 the developer is going to fall on the sword, it's a sword of

1 their own making. It's something that while this case has been
2 going on they put into the application because it fits with the
3 service with JEA.

4 You are going to hear a lot, too, about how
5 Intercoastal may not be able to meet these reuse demands. And
6 understand, these reuse demands are not that one house is hooked
7 up, you then have 250 gallons of reuse available. They are big
8 on the first day. You are going to hear that the requirements
9 for the golf course figures are large. They are conservative,
10 but the real point is there is going to be reuse available to
11 this development.

12 First of all, Intercoastal has proposed a plan of
13 service that will provide that reuse. Secondly, you are going to
14 hear again and again that JEA, who doesn't have any reuse now, is
15 running their first reuse line down by the development. Well,
16 JEA needs to get rid of that reuse. They are dumping 6 million
17 gallons approximately a day into the St. Johns River now from the
18 Mandarin plant. And if intercoastal is given the certificate in
19 a worst-case scenario JEA has already decided they have the
20 capacity, they want to get rid of the reuse. They are just going
21 to be able to run a line out there and JEA could provide the
22 reuse to the development. So either under Intercoastal's plan of
23 service or under a fail-safe that reuse is there.

24 JEA has no incentive to say, well, we would have sold
25 it to NUC, but not to you. Do you think they really care who is

1 on the other end of that tap? They want to get rid of that
2 reuse. The agencies have been on them to get rid of their reuse
3 and they are dumping millions of gallons a day now from that
4 exact plan into the St. Johns River. The reuse is going to be
5 available for this development certainly.

6 I believe that one thing that is going to become clear
7 once all the evidence in this proceeding is heard is that there
8 is going to be one of three entities that is going to provide
9 service to this development, at least in St. Johns County. And
10 that is going to be St. Johns County, that is going to be
11 Intercoastal, or that is going to be JEA. NUC won't own the
12 plants, JEA will own the plants. NUC won't do the operations,
13 NUC won't do the billing, NUC won't answer the phone when a
14 customer complains.

15 And guess what, the big trunks that run through the
16 middle of the development for reuse, water, and wastewater are
17 going to be owned by JEA. And not only that they are going to be
18 over-sized and they are going to come out the east side of the
19 development. Those are known as the joint projects, and that is
20 so that JEA can serve parts unknown to the east side of the
21 development where you have just heard argument there is no need
22 for service. And most of the rest of the system is going to be
23 contributed by developers.

24 Not only that, JEA has a right of first refusal if
25 anyone ever tries to buy or condemn that particular utility. And

1 they have testified in deposition, well, guess what, if someone
2 like St. Johns County ends up with that part of the utility in
3 St. Johns County, we reserve the right to turn off the spigot.
4 So what do you think someone is going to offer for that utility
5 that doesn't have its own plants? Not \$1.98. And that means if
6 JEA offers \$1.99, it's theirs.

7 They have rigged it up where they are going to end up
8 providing retail service. Not only did they make a proposal just
9 about six weeks ago to St. Johns County, which had all the
10 numbers on there showing them providing retail service in
11 Nocatee, St. Johns County doesn't want them in here. Just like
12 Clay County is trying to keep them out of Clay County. And you
13 are going to hear evidence of that.

14 Commissioners, part of what I think you are going to
15 have to think about is what apparently has dawned on St. Johns
16 County only recently, and that is the effect of JEA coming into
17 northern St. Johns County. First of all, they have said they
18 want to buy all the private utilities. To the extent the
19 customers are riled up, besides the fact that we had a 1998 rate
20 increase with substantial rates which energized the customers and
21 there is nothing wrong with that. But to the extent that the
22 customers are involved and we have seen no real evidence this
23 morning that they are, they then spread the word that if JEA buys
24 Intercoastal, no negotiations like that are going on now, they
25 will take the Ponte Vedra plant out. There is a lot of ifs in

1 between as we sit here today and that happening.

2 Well, so you need to think again about the Jacksonville
3 Electric Authority expanding this service into St. Johns County.
4 They are not going to have the kind of regulation you provide.
5 No matter how benevolent I could sit here and try to make
6 utilities, this is the scheme. That utilities need watchdogs.
7 There you are going to have a political entity in a neighboring
8 county providing service to individuals in a different county and
9 they are just not going to be as political responsive as they
10 would be if those persons were voters in Duval County. That is
11 just a fact.

12 Also, JEA has a right to level a surcharge in Duval
13 County. And while they will say they won't do that, they have
14 that right and they are going to continue to have that right and
15 things change. Understand, JEA is going to be doing all of these
16 things we have heard about, but they have said very clearly that
17 end user is not our customer. We will have one customer and that
18 is NUC.

19 I believe, and it is our position and I believe that
20 the evidence will show that to grant the certificate to NUC is to
21 guarantee that JEA will provide retail to the Nocatee
22 development. It is certainly the guarantee there is going to be
23 a circuit court about it in the future. You are also going to
24 hear from Sawgrass, and what you are going to learn is that all
25 of these lawsuits that you have heard about are a single lawsuit

1 It was filed two years ago and not one thing has happened in it.
2 You are going to hear a lot about the customers and yet what is
3 filed is the testimony of two individuals. One of them is not
4 even a customer. And we have had no customer testimony today and
5 that doesn't mean there aren't customers in Ponte Vedra who wish
6 they didn't live right next to a sewer plant. But the evidence
7 is going to show that Intercoastal has gotten a clean bill of
8 health in terms of that odor. It is certainly -- this is a plant
9 that is located in a residential development as sometimes occurs.
10 You are going to hear testimony that JEA's Mandarin plant also is
11 infamous for its odor complaints and the residents around there.
12 Some of that is just unavoidable.

13 Commissioners, we think the evidence is going to show
14 that this is a logical extension of Intercoastal's territory.
15 That NUC is exactly as they were described in the St. Johns
16 County testimony that now apparently won't be put on. They are a
17 strawman for the provision of retail service by JEA and that the
18 application of Intercoastal should be granted and the application
19 of NUC denied.

20 CHAIRMAN JACOBS: Thank you. Staff, did you have an
21 opening statement? Very well. And then that concludes our
22 opening statements.

23 We would like to now break for lunch and we will come
24 back in an hour. It will be my intent to work through -- I
25 understand the customer hearing this evening is to start at 7:00

1 p.m., is that correct? So it would be my intent to work through
2 until approximately 5:30, give us a brief break for dinner, and
3 then come back at 7:00, if that is agreeable with everyone.

4 MR. WHARTON: I believe the situation with Mr.
5 Forrester means that we certainly will finish within the three
6 days, so I think that is fine.

7 CHAIRMAN JACOBS: Very well. Great. Then we will be
8 back at 1:30.

9 (Lunch recess.)

10 CHAIRMAN JACOBS: We will go back on the record.
11 Before we begin with the witnesses, we had agreed to reserve a
12 question for briefing. Commissioner Jaber, do you want to pose
13 that question and make sure we have a clear understanding of it?

14 COMMISSIONER JABER: Sure. Staff and the parties are
15 welcome to iron out the language, but really what I had in mind
16 was something like if the Commission approves NUC's application,
17 will the utility be exempt pursuant to Section 367.022, Sub 2,
18 Florida Statutes. For the brief. This would be --

19 MR. MELSON: Commissioner Jaber, I'm wondering if we
20 might -- I would sort of ask what is the effect, if any, of that
21 section of the statute on Nocatee's application, so that it
22 doesn't presume that you have or haven't granted a certificate.
23 Just ask what is the effect, if any.

24 COMMISSIONER JABER: That's fine, Commissioner.

25 CHAIRMAN JACOBS: That sounds all right.

1 COMMISSIONER JABER: That's fine with me. And then
2 the second concern, but I think that you could probably
3 accommodate it in the briefs already is I would like to have an
4 analysis of the Lake Utility Services versus the City of Alifea
5 case. You know, kind of a brief of here were the facts, here
6 was the holding.

7 MR. MELSON: And, Commission Jaber, I think there may
8 still be another case. I believe Lake Utility Services is the
9 City of Clermont. I refreshed my recollection over the lunch
10 hour, and I'm still drawing a blank on Alifea, although there
11 may be an Alifea out there.

12 COMMISSIONER JABER: I think John Wharton's office
13 would be able to help us out on which case we are thinking
14 about. Clermont might be the right -- it was Clermont. So some
15 discussion of that case someplace in the brief would be helpful.

16 MR. MELSON: We had intended to do that in the
17 existing issues.

18 COMMISSIONER JABER: Okay.

19 CHAIRMAN JACOBS: Very well. We are prepared to
20 begin, Mr. Wharton. You have been sworn, correct?

21 THE WITNESS: Yes, sir.

22 CHAIRMAN JACOBS: Very well.

23 MR. MELSON: Chairman Jacobs, a couple of preliminary
24 matters. If I could have the small version of this map that was
25 used during the opening marked as Exhibit 3.

1 CHAIRMAN JACOBS: Okay. We will mark this as regional
2 map of Nocatee Utility's proposed service territory?

3 MR. MELSON: Why don't we just use -- we could just
4 use the title on the map, Nocatee Utility Corporation, regional
5 map.

6 CHAIRMAN JACOBS: Okay. Show that marked as Exhibit
7 3.

8 (Exhibit 3 marked for identification.)

9 MR. MELSON: I would also like to have marked as
10 Composite Exhibit 4, Nocatee's entire certificate application in
11 this docket, which again was filed in -- the original and 15
12 copies with Records and Reporting. Just so that we are clear
13 what it consists of, though, there are actually five different
14 pieces. There is the application itself filed June 1 of 1999;
15 there is the supplement and amendment to the application filed
16 February 11, 2000; and then there are three Late-filed Exhibits
17 M, N, and V, each of which is proof of publication of the intent
18 to apply.

19 And if we could have that entire five-part document
20 marked as a composite exhibit, my various witnesses are going to
21 sponsor their pieces of it and then we will move for its
22 admission once all of my witnesses are finished.

23 CHAIRMAN JACOBS: We will title that NUC certificate
24 application with exhibits, and that is marked as Composite
25 Exhibit 4.

1 (Composite Exhibit 4 marked for identification.)

2 MR. MELSON: And on Exhibit 3, if I could move Exhibit
3 3, the map, into the report.

4 CHAIRMAN JACOBS: Without objection, show Exhibit 3 is
5 moved into the record.

6 (Exhibit 3 admitted into the record.)

7 Thereupon,

8 H. JAY SKELTON

9 was called as a witness on behalf of Nocatee Utilities
10 Corporation, and, having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MELSON:

13 Q Mr. Skelton, would you state your name and address
14 for the record, please.

15 A My name is H. Jay Skelton. My office is 4310 Pablo
16 Oaks Court, Jacksonville, Florida.

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

18 A I am employed by DDI Inc. and Estuary Corporation and
19 other Davis related corporations, and I am CEO for DDI and
20 Estuary.

21 Q And what is your relationship to Nocatee Utility
22 Corporation?

23 A I am also president of Nocatee Utility Corporation.

24 Q Have you filed direct testimony dated February 11,
25 2000, consisting of 9 pages?

1 A Yes, I have.

2 Q Do you have any changes or corrections to that
3 testimony?

4 A Yes. The address in that testimony was listed as
5 Pablo Oaks Drive, and it should be Pablo Oaks Court.

6 Q And that would be on Page 1 at Line 11?

7 A That is correct.

8 Q Mr. Skelton, your direct testimony was filed over a
9 year ago, and I'm going ask you about three specific questions
10 on updates to it. At Page 7 at Lines 1 through 3, you stated
11 that on a fair market value basis DDI had a net worth at the
12 time of your testimony of over \$1 billion. Has that changed?

13 A Yes, it has. It is now somewhat over \$2 billion.

14 Q On the same Page 7 at Lines 17 through 22, you
15 describe a plan to enter into a bulk service arrangement with
16 JEA. Has that plan subsequently come to fruition?

17 A Yes, it has. We signed an agreement in July 2000.

18 MR. MELSON: And, Commissioners, that agreement will
19 be attached later as an exhibit to Mr. Millers' testimony.

20 CHAIRMAN JACOBS: Very well.

21 BY MR. MELSON:

22 Q And, finally, Mr. Skelton, on Page 8 at Lines 12
23 through 15, you state that NUC intends to contract with a third
24 party to provide various services to the utility. Has that
25 also been accomplished?

1 A Yes. That was also covered in our July 2000
2 agreement with JEA.

3 Q With the one correction to the address and those
4 updates, if I were to ask you the same questions today that are
5 in your prefiled testimony, would be your answers be the same?

6 A Yes.

7 MR. MELSON: Mr. Chairman, I would ask that Mr.
8 Skelton's direct testimony be inserted into the record as though
9 read.

10 CHAIRMAN JACOBS: Without objection, show Mr.
11 Skelton's direct testimony is entered into the record as though
12 read.

13 BY MR. MELSON:

14 Q Mr. Skelton, I understand you are sponsoring portions
15 of the certificate application that has been marked as
16 Composite Exhibit 4, specifically Exhibits H, I, J, M, and N,
17 is that correct?

18 A Yes, that is.

19 Q And do you have any changes to your portions of that
20 application?

21 A I do not.

22 Q And, finally, there were attached to your direct
23 testimony two exhibits labeled as HJS-1, which is a copy of the
24 financial statements that are also included in the NUC
25 application, and HJS-2, which is the master service agreement

1 between Nocatee Utility Corporation and DDI. Do you have any
2 changes to either of those exhibits?

3 A I do not.

4 MR. MELSON: Mr. Chairman, I would ask that Exhibits
5 HJS-1 and HJS-2 be marked as Composite Exhibit 5.

6 CHAIRMAN JACOBS: Very well. I assume HJS-3 is to be
7 entered later or is not included?

8 MR. MELSON: That will be entered later in his second
9 appearance. That goes with his intervenor testimony, which
10 comes probably tomorrow afternoon or Wednesday.

11 CHAIRMAN JACOBS: Very well. Show Composite Exhibit 5
12 consists of HJS-1 and HJS-2 as marked.

13 (Composite Exhibit 5 marked for identification.)
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DIRECT TESTIMONY OF

H. JAY SKELTON

ON BEHALF OF

NOCATEE UTILITY CORPORATION

DOCKET NO. 990696-WS

February 11, 2000

Q. Please state your name and business address.

A. My name is H. Jay Skelton. My business address is 4310 Pablo Oaks ~~Drive~~ ^{Court}, Jacksonville, Florida 32224.

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

A. I am President of DDI, Inc. I am also President of DDI's wholly-owned subsidiary, Nocatee Utility Corporation.

Q. Please summarize your background and experience.

A. In 1963, I was awarded a B.S. in Accounting from Central Missouri State University. I began my professional career with Peat Marwick Mitchell & Co. in Kansas City, Missouri in December 1962. I was transferred to Peat Marwick's Jacksonville, Florida office in January 1971 to head up the firm's tax department and I became a partner in the firm in June 1971. In 1978, I became Managing Partner for the Jacksonville office, a position I held until my early

1 retirement in 1988. In that year I joined DDI, where I
2 have served as President and Chief Executive Officer.

3 **Q. What is the purpose of your testimony?**

4 A. The purpose of my testimony is to support Nocatee
5 Utility Corporation's application for original multi-
6 county water and wastewater certificates to serve the
7 Nocatee development in Duval and St. Johns County. My
8 testimony demonstrates the need for service in the
9 proposed territory; summarizes the reasons that Nocatee
10 Utility Corporation is the preferred utility provider;
11 provides information on the financial capability of
12 Nocatee Utility Corporation and its parent company; and
13 outlines our plan for providing utility service.

14 Other witnesses will provide more detail in these
15 and other areas. Mr. Miller will discuss the
16 engineering and technical aspects of Nocatee Utility
17 Corporation's plan for service, including the details
18 of our arrangement with JEA. Ms. Swain will provide
19 support for the utility's proposed rates and charges.

20 **Q. Are you sponsoring any exhibits in this proceeding?**

21 A. Yes. I am sponsoring Nocatee's certificate application
22 which was filed with the Commission on June 1, 1999. I
23 am also sponsoring the supplement and amendment to that
24 application which was filed with the Commission on
25 February 11, 2000. I am specifically responsible for

1 Exhibits H, I, J, and Late-Filed Exhibits M and N. The
2 details of the application as amended and supplemented,
3 including the remaining exhibits, will be addressed by
4 other witnesses.

5 **Q. What is the basis for your familiarity with the**
6 **application and the exhibits you are sponsoring?**

7 A. The application was prepared at Nocatee Utility
8 Corporation's direction by our consultants. I reviewed
9 the Application and executed it on behalf of the
10 applicant. Exhibit I is the audited financial
11 statement of DDI, of which I am President. Exhibit H
12 is the Master Service Agreement between DDI and NUC
13 which I executed on behalf of DDI.

14 **Q. What is DDI?**

15 A. DDI is a closely-held corporation owned directly or
16 indirectly by members of the Davis family. It is a
17 holding company with a major investment in Winn-Dixie,
18 significant investments in land, a significant stock
19 portfolio, and ownership of an oil and gas company.

20 **Q. What is DDI's relationship to this certificate**
21 **application case?**

22 A. Among other assets, DDI owns through its affiliate
23 SONOC Company, LLC, approximately 15,000 acres in St.
24 Johns and Duval Counties that will be developed by The
25 PARC Group over the next 25 years as a multi-use

1 development known as "Nocatee." DDI created Nocatee
2 Utility Corporation, the certificate applicant in this
3 case, as a wholly-owned subsidiary to provide water,
4 wastewater and reuse service to the Nocatee
5 development. DDI is therefore both the owner of all of
6 the land included in the water and wastewater
7 certificate applications in this case and the owner of
8 the utility company.

9 **Q. Do DDI or other Davis family interests own other**
10 **adjacent land in Duval and St. Johns County?**

11 A. Yes. However only the property within the boundaries
12 of the Nocatee project is slated for development. The
13 certificate application is limited to the Nocatee
14 project, since there is no foreseeable need for service
15 to any of the other Davis family land holdings in the
16 area.

17 **Q. Is there a need for service in the territory that**
18 **Nocatee Utility Corporation has applied to serve?**

19 A. Yes. There is a need for service in the proposed
20 territory beginning in 2001. The utility is expected
21 to continue to grow to serve needs in the territory
22 over a development period of approximately 25 years.

23 **Q. How did you determine the estimated date that service**
24 **will first be required?**

25 A. Because of the magnitude of the Nocatee development,

1 the project is subject to review under Chapter 380,
2 Florida Statutes, as a Development of Regional Impact
3 (DRI). The Application for Development Approval (ADA)
4 required by that process has just been submitted to the
5 appropriate state and local government agencies. We
6 anticipate that final development approval will be
7 forthcoming in the late-2000 time frame and that on-
8 site development activities will begin almost
9 immediately. There will be a need for construction
10 water and reuse for irrigation at that time, and a need
11 for central water, wastewater and reuse service for the
12 first retail customers in Nocatee in late 2001.

13 **Q. Why did DDI organize Nocatee Utility Corporation to be**
14 **the retail utility service provider to the Nocatee**
15 **development?**

16 **A.** There are several reasons:

17 First, we believe that utility planning for a
18 large-scale development such as Nocatee should be
19 integrated with all other aspects of planning for the
20 project. As the landowner, we are in the best position
21 to see that this is done effectively and efficiently.
22 We are committed to ensuring that Nocatee is developed
23 in an environmentally sensitive manner, and control
24 over the provision of utility services helps us to meet
25 that goal.

1 Second, we know that DDI has the financial
2 resources to ensure that utility service is available
3 when and where it's needed to support the overall
4 development effort. With any outside party, you will
5 always have questions about their willingness and
6 capability to meet those needs, particularly over a
7 development horizon that spans 25 years.

8 Third, as Mr. Miller will testify in more detail,
9 we have been able to structure a bulk service
10 arrangement with JEA that will let us meet the need for
11 utility service in a timely manner and in a way that is
12 cost effective for the ultimate consumers within
13 Nocatee.

14 Finally, we have the potential to create
15 additional value for our shareholders by investing in
16 and operating the utility system.

17 **Q. Does Nocatee Utility Corporation have the financial**
18 **ability to provide service to the requested territory?**

19 **A.** Yes. As shown by the DDI financial statements included
20 as Exhibit I-1 to the certificate application, DDI had
21 assets of over \$164 million and a net worth of over \$29
22 million at November 30, 1998. For ease of reference, I
23 have attached another copy of these financial
24 statements as Exhibit ___ (HJS-1). Because these
25 financial statements are prepared in accordance with

1 GAAP, they value assets at original cost. At fair
2 market value, DDI currently has a net worth in excess
3 of \$1 billion.

4 To ensure funding for the utility, DDI and Nocatee
5 Utility Corporation entered into a "Master Service
6 Agreement," which was included as Exhibit H-1 to the
7 application. Again for ease of reference, I have
8 attached a copy to this testimony as Exhibit ____ (HJS-
9 2). Under this Agreement, DDI is obligated to provide
10 initial funding for utility construction and operations
11 until the utility becomes self-sufficient. Given the
12 integral role that utility service plays in the Nocatee
13 community, DDI is firmly committed to providing Nocatee
14 Utility Corporation the required financial resources.

15 **Q. What is Nocatee Utility Corporation's overall plan for**
16 **servicing the requested service territory?**

17 **A.** Nocatee Utility Corporation plans to enter into a bulk
18 service arrangement with JEA under which Nocatee will
19 purchase bulk water and reuse service from JEA at the
20 property boundary, and will deliver bulk wastewater to
21 JEA at the property boundary for treatment in existing
22 JEA facilities. Nocatee Utility Corporation will own
23 the on-site water and reuse transmission and
24 distribution system, and the on-site wastewater
25 collection system, and will provide retail service to

1 customers within its territory.

2 **Q. What is the status of the bulk service arrangement with**
3 **JEA?**

4 A. We have entered into a letter of intent for bulk
5 utility service. Mr. Miller, who participated directly
6 in the negotiations with JEA, can discuss the details
7 of that arrangement.

8 **Q. How does Nocatee plan to operate the utility on a day-**
9 **to-day basis?**

10 A. Because of the bulk service arrangement with JEA,
11 Nocatee is anticipated to own only limited treatment
12 facilities. Nocatee Utility Corporation intends to
13 contract with a third-party to provide line
14 maintenance, meter reading, billing, customer service
15 and other services. Under our letter agreement with
16 JEA, NUC has the option to obtain such services from
17 JEA.

18 **Q. In your opinion, does Nocatee Utility Corporation have**
19 **the technical ability to operate the proposed utility**
20 **system?**

21 A. Absolutely. DDI has a history of using third-party
22 contractors to handle day-to-day operations of our
23 various business ventures. For example, the overall
24 development of the Nocatee project is being managed for
25 us by The PARC Group, which in turn has a number of

1 subcontractors and consultants with expertise in all
2 the areas that are required to plan and implement a
3 large-scale development.

4 Mr. Miller has advised me that there is no
5 shortage of potential contract utility operators in the
6 Duval/St. Johns County area and that both JEA and
7 United Water are interested in providing these services
8 to NUC. Together with our utility consultants, Nocatee
9 Utility Corporation has the expertise to select a
10 qualified operator, negotiate a cost-effective
11 management contract, and supervise the contract
12 services. This is no different from what DDI does
13 every day in other aspects of its business.

14 **Q. In your opinion, is the certification of NUC to provide**
15 **utility service to the proposed territory in the public**
16 **interest?**

17 **A. Yes.** As an affiliate of the landowner of a major
18 development project, NUC is uniquely positioned to
19 provide service in a way that is consistent with the
20 overall plans and needs of the development. By
21 partnering with JEA, NUC will be able to provide
22 timely, reliable, cost-effective service that will
23 benefit the ultimate residents and businesses that
24 locate in Nocatee.

25 **Q. Does that conclude your testimony?**

26 **A. Yes.**

1 BY MR. MELSON:

2 Q Mr. Skelton, would you briefly summarize your direct
3 testimony?

4 A Good afternoon, Commissioners. I am here as
5 President of Nocatee Utility Corporation, and the purpose of my
6 testimony is to give you an overview of why DDI formed Nocatee
7 Utility Corporation as a wholly-owned subsidiary to provide
8 water, sewer, and reuse to the Nocatee development.

9 DDI is the owner through one of our subsidiaries of
10 15,000 acres of land in Duval and St. Johns County. This is
11 known as the Nocatee development of regional impact. The Davis
12 family, which owns DDI, is very concerned about the standards for
13 the development and has set very high standards for Nocatee
14 development. They have insisted on an environmentally sensitive
15 development that is done right.

16 As part of the environmental ethic for the project, we
17 have taken a number of steps setting aside 2,000 acres as a
18 preserve which includes 3-1/2 miles of frontage on the Tolomato
19 River, setting aside 7,000 acres of greenway preserve, including
20 over 1,000 acres of uplands. We have established a wildlife
21 management plan and have committed to 100 percent reuse for
22 irrigation through the development, including a residential reuse
23 system.

24 DDI organized Nocatee Utility because it offers the
25 best way to provide utility services to Nocatee. By controlling

1 the utility we can ensure that service is available when needed
2 and we can ensure that the utility services are provided
3 consistent with the development order conditions that govern the
4 project and consistent with the landowner's environmental ethic.
5 We know that we have the financial resources to see that the
6 utility service, like other aspects of the development, is done
7 right.

8 As Mr. Miller, Mr. Doug Miller will describe in more
9 detail, we will serve Nocatee through an agreement with JEA.
10 Under our contract with JEA, they will provide bulk service to us
11 from their existing plants and will also provide day-to-day
12 operations, management, and maintenance service. As Ms. Swain
13 will testify, this arrangement enables us to provide service to
14 our future residents at competitive rates.

15 One major factor in our selection of JEA as a wholesale
16 provider was their unique ability to provide us with 100 percent
17 reclaimed water for irrigation from day one of the development.
18 Based on the testimony you will hear over the next few days, I
19 urge you to find that Nocatee Utility Corporation is the best
20 choice for serving the Nocatee development and to grant us the
21 certificate that we have requested.

22 This concludes my summary.

23 MR. MELSON: Mr. Skelton is tendered for cross
24 examination.

25 CHAIRMAN JACOBS: We will begin with Mr. Menton.

1 MR. MENTON: No questions.

2 CHAIRMAN JACOBS: Mr. Korn.

3 MR. KORN: I don't have any questions.

4 CHAIRMAN JACOBS: Mr. Wharton.

5 CROSS EXAMINATION

6 BY MR. WHARTON:

7 Q Good afternoon, Mr. Skelton.

8 A Good afternoon.

9 Q Sir, you are the president of the utility company?

10 A Yes.

11 Q Do you agree that you don't have any experience
12 operating a utility?

13 A Yes, I do.

14 Q Okay. You had mentioned the agreement with JEA.

15 Now, JEA will provide the operations for the utility, correct?

16 A Yes.

17 Q And JEA will provide the management for the utility,
18 correct?

19 A That is correct.

20 Q And JEA will do the collections for the utility,
21 correct?

22 A Yes.

23 Q And JEA will do the billings for the utility,
24 correct?

25 A That is correct.

1 Q And JEA will provide the wholesale water to the
2 development, is that correct?

3 A That is correct.

4 Q And also will collect the wastewater from the
5 development?

6 A Yes.

7 Q And will provide the reuse service that you have
8 described?

9 A Yes, it will.

10 Q Okay. Sir, you haven't developed other properties,
11 have you?

12 A No, this is the first one.

13 Q So you are not really a developer, per se, then.
14 Would you agree with that?

15 A I would agree with that.

16 Q Okay. Mr. Skelton, isn't it true that you believe
17 that the type of integrated planning which you would like to
18 see for your development cannot be accomplished between an
19 unrelated utility and a developer?

20 A Yes.

21 Q And yet you have no personal experience with that
22 particular relationship, true?

23 A I'm not sure I understand the last question.

24 Q You haven't in the past attempted to develop a piece
25 of property that was served by an unrelated utility company?

1 A No, I have not.

2 Q Okay. You are aware as we sit here today that part
3 of the JEA agreement that you have described has something
4 called the joint projects, correct?

5 A That doesn't ring a bell with me, but go on.

6 Q Well, your answer makes that tough. We will go to
7 another subject.

8 You have seen the development orders for these
9 properties?

10 A I don't think I have actually read the development
11 orders.

12 Q Well, you are doing a good job getting yourself off
13 the hook here. Didn't you tell me in deposition that you
14 agreed that no particular utility was named in either
15 development order?

16 A Yes, I did.

17 Q Okay. Sir, isn't it true that it doesn't bother you
18 or concern you that if JEA ultimately provides retail to the
19 development, then those customers would be served by a
20 governmental entity that is not located in the county in which
21 they reside, at least as it relates to St. Johns County?

22 MR. MELSON: Objection, he has laid no foundation that
23 this development is going to be served at retail by JEA.

24 MR. WHARTON: All right.

25 BY MR. WHARTON:

1 Q Sir, I want you to assume hypothetically that --
2 well, let me ask you a question. You would be willing to
3 consider negotiating with JEA for retail service in both St.
4 Johns and Duval County, wouldn't you?

5 A I don't know that I would be unwilling to do that.

6 Q Is that the same as saying you would be willing to do
7 that?

8 A I would be willing to consider that.

9 Q Okay. Well, I want you to assume, hypothetically,
10 then, sir, that JEA does eventually come to provide retail
11 service to the development in St. Johns and Duval Counties,
12 okay?

13 A Okay.

14 Q And in that case it doesn't concern you, does it,
15 that if JEA ultimately provides that retail service to the
16 development, that customers in St. Johns County will be
17 receiving service from a governmental entity that is not in the
18 county in which they reside?

19 A That does not bother me.

20 MR. MENTON: Mr. Chairman, I would just interpose an
21 objection at this point. That calls for speculation.

22 MR. WHARTON: He apparently was able to handle it, Mr.
23 Chairman.

24 CHAIRMAN JACOBS: He was trying to get his objection
25 in, and I quite frankly didn't hear his answer.

1 MR. WHARTON: Okay. He said it did not bother him.
2 That did not concern him.

3 MR. MENTON: Mr. Chairman, the objection is simply
4 that that is not the issue that is before the Commission today.
5 What is before the Commission today is the application that
6 Nocatee has filed, and we should deal with issues that are
7 related to that application, not speculation as to what might
8 happen at some point in the future.

9 MR. WHARTON: Mr. Chairman, the evidence is yet to
10 unfold. It is very difficult to confine the questions to the
11 very first witness in a trial to what evidence has only been
12 developed out of his mouth. Give me some latitude here. I
13 think what this trial needs to deal with is reality.

14 CHAIRMAN JACOBS: Well, what we have to do is be held
15 to his prefiled testimony. And to the extent I think it was
16 very limited he covered that in his prefiled. I will allow you
17 that --

18 MR. WHARTON: He did touch upon the JEA agreement.

19 CHAIRMAN JACOBS: Very limited. I will allow you that
20 latitude.

21 MR. WHARTON: Okay.

22 BY MR. WHARTON:

23 Q And you told me in deposition, didn't you, that it
24 was your understanding that in that case JEA would have the PSC
25 to deal with?

1 A I think I did.

2 Q And that is because you thought that if JEA went into
3 more than one county they would fall under PSC jurisdiction?

4 A Yes. I was erroneous in that answer.

5 Q Okay. Did you say you are the president of Estuary
6 Corp?

7 A No, I did not.

8 Q I thought you did in your summary. Tell me what you
9 are the president of?

10 A I am President of DDI and I am the CEO of DDI and
11 Estuary.

12 Q And that is different than just Estuary Corp?

13 A Estuary Corporation is what I mean when I say
14 Estuary. Estuary Corporation is another company that I am also
15 the CEO of, as well as DDI, Inc.

16 Q So you are also the president of Estuary?

17 A I am not president.

18 Q What are you?

19 A I am vice-president.

20 Q Okay. That was something you mentioned in your
21 summary that you didn't mention in your testimony?

22 A I don't recall.

23 MR. WHARTON: Everything else is for rebuttal,
24 Commissioners. That's all we have.

25 CHAIRMAN JACOBS: Very well. Staff.

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

2 CHAIRMAN JACOBS: Commissioners.

3 COMMISSIONER JABER: Just one. Mr. Skelton, why not
4 allow JEA to serve directly?

5 THE WITNESS: We want to have the control to make sure
6 that we control it rather than JEA. We want to make sure that
7 we can have the infrastructure put in when we need it in our
8 15,000 acre development. We want to make sure we control the
9 quality of what is going in there. We are very concerned about
10 the environmental aspects of our development, and we feel to
11 turn it over directly to JEA would take that control away from
12 us. And we just have very high standards and we want to make
13 sure that we comply with our own standards.

14 COMMISSIONER JABER: And in that regard why is your
15 agreement only for a term of ten years?

16 THE WITNESS: Well, we can hire someone else, we don't
17 have to stay with JEA. We can terminate that agreement with JEA
18 if they don't perform.

19 COMMISSIONER JABER: What are the criteria upon which
20 you will decide whether they are performing?

21 THE WITNESS: Well, I guess it's proof of the pudding
22 is in the eating. Over that ten-year period we will see how
23 they perform.

24 COMMISSIONER DEASON: Mr. Skelton, I want to try to
25 concentrate just a moment on the customers' perspective. If

1 Nocatee Utility is allowed to provide service, is the
2 customer -- is it going to be represented to the customer that
3 they are a customer of Nocatee Utility?

4 THE WITNESS: Yes, serviced by JEA.

5 COMMISSIONER DEASON: Serviced by JEA. If a customer
6 has a complaint, who do they call?

7 THE WITNESS: Well, they could call either one of us.
8 We will be very responsive, as I'm sure JEA would be, but we
9 will be very responsive because the customer is a homeowner that
10 bought property in our development and we are going to make sure
11 they are taken care of.

12 COMMISSIONER DEASON: Okay. Now, as I understand the
13 proposal that all of the distribution, that level of
14 distribution and collection, those type lines would be owned by
15 Nocatee Utility and that perhaps there would be some large
16 transmission lines of some sort which may actually be owned by
17 JEA, is that correct?

18 THE WITNESS: That is my general understanding, but if
19 you are going to get into the details of that, I think Mr. Doug
20 Miller, our engineer, who has developed the plan is better able
21 to answer those technical questions than I am.

22 COMMISSIONER DEASON: Okay. But JEA would have the
23 requirement to maintain all facilities, both those that they own
24 obviously and those that would be retained -- ownership would be
25 retained by Nocatee, correct?

1 THE WITNESS: Yes, that is correct.

2 COMMISSIONER DEASON: Now, there was some exception
3 for repairs in excess of \$4,000, is that correct, or should I
4 ask of that a different witness?

5 THE WITNESS: I think Mr. Miller can better answer
6 that.

7 COMMISSIONER DEASON: I will ask him. Thank you.

8 THE WITNESS: Yes, sir.

9 CHAIRMAN JACOBS: Any other questions, Commissioners?
10 If the terms of your management agreement with JEA don't
11 comport, or for that matter if there are issues which the
12 customers, which as I understand it will be Nocatee customers
13 being serviced, if there are issues, concerns, problems, how
14 will you interact with JEA to bring about resolution of those
15 concerns?

16 THE WITNESS: Well, we are going to represent the
17 customers of Nocatee, and we would represent them in meetings
18 and whatever with JEA. I don't think that is a problem. Like
19 we would represent them in any other matter that would need to
20 be discussed with a provider of services.

21 CHAIRMAN JACOBS: Classic examples are issues that
22 have come up today in opening statements. Location of
23 pump stations, billing issues, rate issues. What I'm hearing
24 you say is that you would be involved as a direct intermediary
25 with JEA in addressing any concerns or issues that arose from

1 Nocatee's customers in those regards?

2 THE WITNESS: Absolutely.

3 CHAIRMAN JACOBS: Okay. No other questions.

4 COMMISSIONER DEASON: One follow-up. You are
5 president of the utility corporation, but are you also president
6 of the development that will be taking place on this property?

7 THE WITNESS: We will control the development because
8 we own the land, and we will have architectural control and we
9 are going to control everything that goes in there because we
10 have started out with very high standards and we are not going
11 to let anybody go in there and do anything that we can't be
12 satisfied they can live up to our expectations.

13 COMMISSIONER DEASON: Will you have a say as to how
14 this development and the property there will be marketed?

15 THE WITNESS: Yes, we will.

16 COMMISSIONER DEASON: Will you represent to potential
17 purchasers of property in the development that the underlying
18 services provided by JEA, that will be disclosed to customers?

19 THE WITNESS: We haven't gone that far in developing
20 those materials, but I'm sure we will. We believe in full
21 disclosure in all respects.

22 COMMISSIONER JABER: Just some more follow-up. You
23 will construct some of the lines and some of the mains and
24 contribute that to JEA, right?

25 THE WITNESS: I'm not sure that about the contribution

1 of facilities to JEA, and I think Mr. Miller can answer that
2 question.

3 COMMISSIONER JABER: All right.

4 CHAIRMAN JACOBS: Redirect.

5 MR. MELSON: Just a couple. And if my redirect should
6 be directed to Mr. Miller, as well, let me know.

7 REDIRECT EXAMINATION

8 BY MR. MELSON:

9 Q Mr. Skelton, JEA in dealing with customers will be
10 acting as agent for Nocatee Utility Corporation, is that
11 correct?

12 A Yes.

13 Q And as your agent, you will have the right to direct
14 the way in which they represent you, is that correct?

15 A Absolutely.

16 Q With regard to rates, the rates that JEA will charge
17 you for wholesale service and for management services are
18 simply a cost of your utility, is that right?

19 A That is correct.

20 Q And do you understand that this Commission will set
21 the retail rates for your utility based on whatever costs you
22 legitimately prove up to them?

23 A That is my understanding.

24 MR. MELSON: That's all I've got. Thank you, Mr.
25 Skelton.

1 CHAIRMAN JACOBS: Exhibits.

2 MR. MELSON: Move Exhibit 5.

3 CHAIRMAN JACOBS: Without objection, show Exhibit 5 is
4 admitted.

5 MR. WHARTON: That is Composite Exhibit 5?

6 CHAIRMAN JACOBS: Composite Exhibit 5, consisting of
7 HJS-1 and 2.

8 MR. WHARTON: And we do object, Mr. Chairman. There
9 has been absolutely no testimony or foundation for the admission
10 of the audited financial statements. Mr. Skelton didn't say he
11 was an accountant at that firm. It is clearly uncorroborated
12 hearsay.

13 CHAIRMAN JACOBS: Well, he has proffered them as
14 exhibits. You didn't cross him on them.

15 MR. WHARTON: True, but there is no evidence. I
16 object to its admission. That is like me bringing in a book and
17 asking that it be put in. I need to lay some foundation for
18 that.

19 CHAIRMAN JACOBS: Mr. Melson.

20 MR. MELSON: Commissioner Jacobs, Mr. Skelton
21 testified that he is the Chief Executive Officer of DDI, he
22 sponsored DDI's audited financial statements. He doesn't have
23 to perform the audit in order to say these are the audited
24 financial statements of DDI.

25 MR. WHARTON: If they are being put in for the truth

1 of the matters asserted in them, then they are hearsay. They
2 are essentially the out of court statement of their declarant
3 by somebody who is not here testifying.

4 MR. MELSON: They are put in for the --

5 CHAIRMAN JACOBS: Excuse me. As I understand,
6 traditionally witnesses can proffer documents that were prepared
7 under their supervision. We did not establish that these
8 documents -- to my recollection, I don't recall there being any
9 testimony, I don't recall in the summary whether or not that was
10 represented by Mr. Skelton, that these documents were prepared
11 under his supervision. Do you have another witness to this
12 exhibit?

13 MR. MELSON: I can call Mr. Skelton back and ask him
14 what he knows about those financial statements. It is unusual
15 in my experience to get a foundation objection to this type of
16 exhibit. If I need to lay a foundation for every exhibit for
17 every witness, I will do that as we go through. I have now
18 learned what is expected of me in this particular hearing.

19 CHAIRMAN JACOBS: I am going to allow that, Mr.
20 Wharton. If that were a serious objection, I would have
21 expected you to challenge, impeach Mr. Skelton on his background
22 to support that exhibit. So I am going to allow him to retake
23 the stand and allow counsel to establish a foundation to support
24 it.

25 MR. WHARTON: Sure.

1 BY MR. MELSON:

2 MR. MELSON: Nocatee calls Mr. Douglas Miller.

3 CHAIRMAN JACOBS: Do you want to do that later or do
4 it now?

5 MR. WHARTON: I'm sorry, I think you misunderstood.

6 MR. MELSON: I misunderstood, I apologize.

7 CHAIRMAN JACOBS: Yes.

8 MR. MELSON: Mr. Skelton, would you retake the stand.

9 COMMISSIONER DEASON: Before we do that let me -- I
10 mean, I have looked at these audited statements and they are
11 accompanied by a letter from the firm that actually conducted
12 the audit, and there is an opinion expressed thereon. I guess,
13 Mr. Wharton, that is insufficient for your purposes?

14 MR. WHARTON: Really, Commissioners, I don't want to
15 belabor the point, and I don't intend to try to put someone
16 through the ringer for everything they are putting in. But
17 these are clearly statements by someone other than the
18 declarant, they can't be cross-examined. I don't think it is
19 just enough to say here is our audited financial. We need to
20 either achieve a stipulation on this or to have called someone
21 to lay the foundation for them.

22 I mean, all this witness is going to be able to say is
23 that I hired these accountants to do this. I still believe they
24 are not self-authenticating, and they can't be cross-examined,
25 and they are an out of court statement that is being offered for

1 the truth of the matter asserted therein. I mean, I will --

2 COMMISSIONER DEASON: Why is it they can't be
3 cross-examined? You didn't even attempt to cross-examine on
4 these.

5 MR. WHARTON: He didn't do them and he didn't say in
6 his testimony he did. I guess I could ask every single witness
7 they call whether this line on this audited financial, where it
8 came from and how they made that calculation. It's just clear
9 to me and I didn't think at the time to speak up on that until
10 they were being proffered, actually admitted into evidence.

11 H. JAY SKELTON

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

14 DIRECT EXAMINATION

15 BY MR. MELSON:

16 Q Mr. Skelton, are the consolidated financial
17 statements of DDI Inc. attached to your testimony as HJS-1,
18 financial statements that are prepared for DDI in the ordinary
19 course of its business?

20 A Yes.

21 Q And they were prepared and reported on by your
22 independent auditors, is that correct?

23 A The financial statements were prepared by our staff
24 and then they were audited by the firm of KPMG, which expressed
25 an opinion on those financial statements.

1 Q And was the preparation of those financial statements
2 by your staff ultimately under your supervision and direction?

3 A Yes.

4 Q And are you familiar with the content of these
5 financial statements?

6 A Yes.

7 Q And to the extent there were questions about what
8 particular line items represent or the significance of
9 particular notes, do you believe you would be able to answer
10 those questions?

11 A Well, I can answer most questions about the financial
12 statements. There are so many numbers in there that several
13 working papers were prepared to get to those numbers and I
14 don't have them available today to give you all the totals that
15 might have been consolidated into one number on those financial
16 statements. But I basically can look at the financial
17 statements and answer probably most any question that might be
18 asked.

19 Q And what was your employment prior to becoming
20 president and chief executive officer of DDI?

21 A I was the managing partner of KPMG North Florida
22 office in Jacksonville, and spent 26 years in public
23 accounting.

24 Q And are you a CPA?

25 A No, I'm not. My certificate was retired several

1 years ago.

2 MR. MELSON: Commissioner Jacobs, with that
3 foundation, I renew the -- make the request that the financial
4 statements be admitted.

5 CHAIRMAN JACOBS: Very well. Objection?

6 MR. WHARTON: It's the same objection. I won't
7 belabor with any further argument, though.

8 CHAIRMAN JACOBS: Objection denied. Show Exhibit 5 is
9 admitted.

10 (Exhibit 5 admitted into the record.)

11 MR. MELSON: Thank you.

12 CHAIRMAN JACOBS: You may call your next witness.

13 MR. MELSON: Nocatee calls Douglas Miller.

14 Thereupon,

15 DOUGLAS MILLER

16 was called as a witness on behalf of Nocatee Utility
17 Corporation, and having first been duly sworn, was examined and
18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MELSON:

21 Q Mr. Miller, have you been sworn?

22 A I have.

23 Q Is your microphone on?

24 A That I don't know.

25 CHAIRMAN JACOBS: It doesn't sound like it. Before we

1 begin, did I miss or did we move Exhibit 3 into the record?

2 MR. MELSON: We had moved Exhibit 3. I have not yet
3 moved Exhibit 4, which was the composite --

4 CHAIRMAN JACOBS: Right, I realize that.

5 MR. MELSON: -- application because I've got two more
6 witnesses to sponsor other pieces of that.

7 CHAIRMAN JACOBS: Very well.

8 BY MR. MELSON:

9 Q Mr. Miller, would you state your name and business
10 address for the record, please.

11 A My name is Douglas C. Miller. My business address
12 is 14775 Old St. Augustine Road, Jacksonville, Florida.

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

14 A I am employed by England Thims & Miller Consulting
15 Engineers. I am the president of that company.

16 Q And what is your relationship and the relationship of
17 England Thims and Miller to Nocatee Utility Corporation?

18 A England Thims and Miller is the engineer of record
19 for Nocatee Utility Corporation, and I am the principal in
20 charge of that project and that account.

21 Q And have you filed direct testimony dated February
22 11, 2000, consisting of 13 pages?

23 A I have.

24 Q Have you also filed supplemental direct testimony
25 dated July 31, 2000, consisting of 6 pages?

1 A I have.

2 Q What was the purpose of the supplemental direct
3 testimony?

4 A The supplemental direct testimony was to really
5 update the status of Nocatee Utility Corporation and to
6 specifically bring into the record the agreement that has been
7 finalized between Nocatee Utility Corp and JEA for operation,
8 maintenance, and wholesale service that had previously been
9 agreed to only in a letter of intent. So that was finalized at
10 that point in time in the supplemental testimony.

11 Q Other than the updates made by your supplemental
12 testimony to the direct, do you have any changes or corrections
13 to either piece of testimony?

14 A No, I do not.

15 Q And if I were to ask you the same questions today,
16 would your answers be the same?

17 A They would.

18 MR. MELSON: Mr. Chairman, I would ask that Mr.
19 Miller's direct testimony and supplemental direct testimony be
20 inserted into the record as though read.

21 CHAIRMAN JACOBS: Without objection, show Mr. Miller's
22 direct and supplemental direct entered into the record as though
23 read.

24 BY MR. MELSON:

25 Q Mr. Miller, are you sponsoring Exhibits A through G,

1 K, L, and Supplemental Exhibit Q to Nocatee's certificate
2 application?

3 A I am.

4 Q Were those exhibits prepared by you or under your
5 supervision?

6 A Yes, they were.

7 Q Do you have any changes to those portions of the
8 certificate application?

9 A No.

10 Q You also had attached to your direct testimony eight
11 exhibits labelled DCM-1 through DCM-8, is that correct?

12 A That is correct.

13 Q And I believe after the original filing of that
14 testimony there was a revised version of the maps attached as
15 Exhibits DCM-6 and DCM-7 filed with the Commission, is that
16 correct?

17 A That is correct. DCM-6 and DCM-7 had a scrivener's
18 error that was corrected and refiled.

19 Q Mr. Miller, could you take just a moment and look at
20 your eight exhibits and determine if each of them were prepared
21 by you or under your direction or supervision? Let me ask it
22 in pieces. Were DCM-1 through DCM-3 prepared by you or under
23 your direction or supervision?

24 A Yes, they were.

25 Q Is Exhibit DCM-4 a letter of intent between Nocatee

1 Utility Corporation and JEA?

2 A That was prepared by myself and an attorney for the
3 development team, so I prepared that in concert with one of the
4 attorneys for the Nocatee Utility Corporation.

5 Q All right. Would you take a look at Exhibit 5 and
6 explain to us what Exhibit 5 represents?

7 A Exhibit 5 is a utility availability letter from JEA
8 to Nocatee Utility Corporation. This was requested and
9 provided as a part of the requirements of application for
10 development approval with the Nocatee development of regional
11 impact.

12 Q And is this the type of letter that in your capacity
13 as a professional engineer you routinely obtain and review on
14 behalf of clients?

15 A Yes, it is.

16 Q Page 2 of Exhibit DCM-5 appears to be the request
17 letter to JEA, is that correct?

18 A That is correct.

19 Q And did you participate in the development of that
20 request letter?

21 A Yes. I believe we drafted it for the review and
22 signature of Mr. Francis, who is, I believe, a vice-president
23 of Nocatee Utility Corporation.

24 Q And your firm, you or people working under your
25 direction and supervision prepared both Exhibits DCM-6 and

1 DCM-7 and the revised versions of those exhibits, is that
2 correct?

3 MR. WHARTON: Mr. Chairman, I think this is
4 supplemental testimony. I don't have any objections to any of
5 the exhibits that are attached. I know what Mr. Melson is
6 doing, and I understand why he is doing it. I don't intend to
7 make any objection to any of these exhibits. This is just --

8 CHAIRMAN JACOBS: Does that help you?

9 (Simultaneous conversation.)

10 MR. WHARTON: -- we normally don't get into before we
11 summarize.

12 CHAIRMAN JACOBS: Does that help you, Mr. Melson?

13 MR. MELSON: It helps me with this particular -- if
14 Mr. Wharton would be kind enough to tell me if he has
15 anticipated objections to exhibits, I will --

16 MR. WHARTON: I don't have any objections to anything
17 other than that audited financial statement.

18 MR. MELSON: Thank you.

19 CHAIRMAN JACOBS: That helps us out a bit.

20 MR. MELSON: With that, Mr. Chairman, I would ask that
21 Exhibits DCM-1 through DCM-8, including the revised versions of
22 DCM-6 and DCM-7 be marked for identification as Composite
23 Exhibit 6.

24 CHAIRMAN JACOBS: Show them marked as Composite
25 Exhibit 6.

1 (Composite Exhibit 6 marked for identification.)

2 BY MR. MELSON:

3 Q You also have attached to your supplemental direct
4 testimony two exhibits labelled DCM-13 and DCM-14, is that
5 correct?

6 A That is correct.

7 MR. MELSON: Mr. Chairman, due to a scrivener's error
8 in my office, we have two Exhibits DCM-13. I would ask that the
9 one we are looking at now, which is attached to his intervenor
10 testimony be relabeled as Exhibit 13A, it will then match what
11 we have included in the prehearing order.

12 CHAIRMAN JACOBS: It appears that we have done that in
13 the prehearing order? Okay. And so we are now going to mark
14 Exhibits DCM-13 --

15 MR. MELSON: 13A and DCM-14 as the next composite
16 exhibit.

17 CHAIRMAN JACOBS: Okay. Show that marked as Composite
18 Exhibit 7.

19 (Composite Exhibit 7 marked for identification.)

20 MR. WHARTON: And just so the record is clear, Rick,
21 you are just taking care of that as a matter of house cleaning.
22 We are not presenting the intervenor testimony now, right?

23 MR. MELSON: I'm sorry, it was not attached to his
24 intervenor testimony, it was attached to his supplemental
25 direct. I probably misspoke.

1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2 DIRECT TESTIMONY OF
3 DOUGLAS C. MILLER
4 ON BEHALF OF
5 NOCATEE UTILITY CORPORATION
6 DOCKET NO. 990696-WS
7 February 11, 2000
8
9 **Q. Please state your name and business address.**
10 A. My name is Douglas C. Miller. My business address is
11 14775 St. Augustine Road, Jacksonville, Florida 32258.
12 **Q. By whom are you employed and in what capacity?**
13 A. I am a principal in the civil engineering firm of
14 England-Thims & Miller. We are a full service civil
15 engineering firm that specializes in both public and
16 private infrastructure, including water and wastewater
17 utilities. I currently serve as President of that
18 firm.
19 **Q. Please describe your background and experience.**
20 A. I earned a Bachelor of Science degree in Civil
21 Engineering from the University of Florida in 1975. I
22 am a licensed professional engineer in the state of
23 Florida and have practiced professional engineering in
24 Florida for the past 25 years. I began my career
25 working for a consulting engineering company in

1 Gainesville, Florida and later worked as a municipal
2 engineer for the City of Jacksonville. I joined the
3 firm of England-Thims and Miller (ETM) as a managing
4 principal in 1980. Over the past 20 years I have
5 directed the design of both public and private projects
6 that require expertise in water resource management,
7 water and wastewater planning and design, stormwater
8 design, environmental permitting, transportation, and
9 solid waste management. My water and wastewater
10 utility experience includes work for the 10,000-acre
11 Argyle Forest DRI in Jacksonville, the 4,150-acre
12 Julington Creek DRI in St. Johns County, the 6,400-acre
13 Saint Johns DRI in St. Johns County, and for DuLay
14 Utility Company, which has a 10,000-acre water and
15 sewer utility franchise in Duval and Clay Counties. I
16 have attached a copy of my resume as Exhibit ____ (DCM-
17 1).

18 **Q. Have you previously been qualified by courts and**
19 **administrative agencies to give expert engineering**
20 **testimony?**

21 **A. Yes, I have been qualified as an expert in Water and**
22 **Sewer Utility Design, Environmental Engineering, Cost**
23 **Estimating, Stormwater Management, and Solid Waste**
24 **Management.**

25 **Q. Have you previously testified before the Florida Public**
26 **Service Commission on utility matters?**

1 A. Yes, as the Engineer of Record for DuLay Utility
2 Company in a PSC public hearing.

3 **Q. What is your relationship to Nocatee Utility
4 Corporation and its parent company, DDI, Inc.?**

5 A. ETM has been engaged by DDI, Inc. to perform a full
6 range of engineering services in connection with
7 planning, permitting and development of the Nocatee
8 development of regional impact. I am the principal in
9 our firm in charge of that engagement and I serve as
10 Engineer of Record for the project. One of my
11 responsibilities has been to advise DDI about utility
12 matters and to perform the master planning for the
13 water, wastewater and reuse system for the development.

14 **Q. What is the purpose of your testimony?**

15 A. The purpose of my testimony is to provide information
16 on the water, wastewater and reuse needs of the Nocatee
17 development and to describe Nocatee Utility
18 Corporation's plan for meeting those needs. To avoid
19 confusion, I will try to use the term "Nocatee" to
20 refer to the development and the term "NUC" or
21 "Utility" to refer to Nocatee Utility Corporation.

22 **Q. Are you sponsoring any exhibits in this proceeding?**

23 A. Yes. I am sponsoring portions of Nocatee Utility
24 Corporation's Application in this proceeding,
25 specifically Exhibits A through G, K and L and
26 Supplemental Exhibit Q. I have also attached several

1 other exhibits which are referred to at the appropriate
2 places in my testimony.

3 **Q. Please provide an overview of the Nocatee development.**

4 A. As Mr. Skelton briefly described, Nocatee is a 15,000
5 acre development of regional impact (DRI) located in
6 Duval and St. Johns Counties. The application for
7 development approval (ADA) for the project was filed in
8 early February 2000 and is in the process of being
9 reviewed by St. Johns County, Duval County, the
10 Department of Community Affairs, and other interested
11 agencies.

12 Nocatee will be developed in five phases over a
13 total development horizon of approximately 25 years.
14 Phase I, which covers the time period from
15 approximately 2001 to 2005, includes property in both
16 Duval and St. Johns Counties.

17 The map attached to my testimony as Exhibit ____
18 (DCM-2) shows the Nocatee development and highlights
19 the area included within Phase I.

20 **Q. How does NUC's proposed service territory relate to the
21 Nocatee development?**

22 A. The two areas are identical. The boundaries of the
23 Nocatee development have changed slightly since NUC's
24 Application was submitted last year. A revised
25 territory description which matches the final
26 boundaries of the Nocatee development is being filed

1 concurrently as Revised Exhibit K to the Application,
2 and is depicted on the maps being filed as Revised
3 Exhibit L.

4 **Q. Have you prepared an exhibit that summarizes the**
5 **projected water, wastewater and reuse needs for Nocatee**
6 **by phase over the life of the development?**

7 A. Yes, I have attached those projections as Exhibit ____
8 (DCM-3). As this exhibit shows, the Phase I needs for
9 Nocatee include a potable water demand of 0.729 million
10 gallons per day (MGD), a wastewater demand of 0.614
11 MGD, and a reuse demand of 1.535 MGD for irrigation
12 purposes. These increase to 6.120 MGD of potable
13 water, 5.208 MGD of wastewater, and 6.736 MGD of reuse
14 demand by build-out in around 2025.

15 **Q. How does NUC propose to meet the projected reuse**
16 **demand?**

17 A. NUC proposes to meet 20% of the reuse demand with on-
18 site stormwater, leaving 80% to be met by treated
19 effluent. This means that 1.228 MGD of treated
20 effluent will be required at the end of Phase I,
21 increasing to 5.390 MGD at build-out.

22 **Q. How did NUC arrive at the 80/20 split between treated**
23 **effluent and on-site stormwater?**

24 A. This was based on ETM's experience with Consumptive Use
25 permitting and operations of irrigation systems in
26 large scale community developments with golf courses

1 located in St. Johns County. These include Julington
2 Creek Plantation DRI and Saint Johns DRI, both of which
3 use reuse and stormwater as irrigation sources.

4 **Q. Can Nocatee's total requirement for treated effluent be**
5 **met by wastewater generated by the project?**

6 A. No. The requirement for treated effluent for reuse
7 exceeds the wastewater generated by the development in
8 every phase, and the shortfall is most significant in
9 the early stages of the development. At the end of
10 Phase I, for example, only about 50% of the need for
11 treated effluent can be met by wastewater generated on
12 site. This means that NUC must secure an off-site
13 source of treated effluent in order to satisfy the
14 needs of the service territory.

15 **Q. Could the shortfall be met by increased use of**
16 **stormwater?**

17 A. No, stormwater for reuse is derived from the runoff
18 component of rainfall. The highest irrigation demands
19 obviously occur during periods of low rainfall. This
20 is particularly true in years of low rainfall or
21 drought. Stormwater is simply not a reliable source of
22 reuse water for a large community that is committed to
23 meeting 100% of its irrigation demand by reuse.

1 **Q. Could the irrigation demands be met using a groundwater**
2 **source?**

3 A. No. Nocatee has committed in its DRI Application for
4 Development Approval to not use groundwater as a
5 primary source for irrigation. This commitment is part
6 of Nocatee's Comprehensive Water Resource Protection
7 Plan. Specifically, the Floridan Aquifer is the
8 region's primary potable water supply which should be
9 conserved for obvious reasons. The surficial aquifer
10 is problematic as an irrigation source for Nocatee
11 because of the approximately 7,000 acres of wetland
12 systems on the site. The wetland systems are primarily
13 supported by the surficial groundwater system in the
14 area. Large withdrawals from this source for
15 irrigation would likely impact these systems adversely.

16 **Q. Please describe NUC's plan for providing service to the**
17 **territory it has applied for.**

18 A. NUC plans to obtain bulk water, wastewater and reuse
19 service from JEA. JEA will provide that service at its
20 tariffed bulk rates from water and wastewater treatment
21 plants located in Duval County.

22 The point of connection between JEA's system and
23 NUC's system will be located in Duval County, at the
24 boundary of NUC's service territory. NUC will own the
25 water transmission and distribution facilities, the
26 wastewater collection facilities, and the reuse

1 transmission, storage and distribution facilities
2 within its territory. Large trunk mains will be
3 provided by NUC and smaller distribution mains will be
4 contributed by the developer. In addition, NUC will
5 provide on-site reuse storage and pumping facilities.

6 **Q. What steps have been taken to obtain bulk service from**
7 **JEA?**

8 A. On April 14, 1999, DDI and JEA entered into a Letter of
9 Intent which is included in the Application as Exhibit
10 A-1. The Letter of Intent outlines the general terms
11 of service that will be included in a detailed
12 Wholesale Service Agreement to be negotiated once NUC
13 has obtained a certificate from the Commission to serve
14 the Nocatee development. For ease of reference, a copy
15 of this Letter of Intent (without exhibits) is attached
16 as Exhibit ____ (DCM-4). In addition, NUC recently
17 obtained a letter from JEA confirming the availability
18 of wholesale water, wastewater and reuse service in the
19 quantities required by the project. See Exhibit ____
20 (DCM-5).

21 **Q. What is the basis for your familiarity with the JEA**
22 **Letter of Intent?**

23 A. I participated in the negotiation of the agreement with
24 JEA on behalf of DDI.

25 **Q. Has there been any further interaction with JEA since**
26 **the date of the Letter of Intent?**

1 A. Yes, because NUC's certification proceeding has been
2 delayed as a consequence of the Commission's order
3 denying its request for partial waiver of the filing
4 requirements, JEA and NUC have discussed attempting to
5 finalize a Wholesale Service Agreement even before NUC
6 obtains final certification from the Commission. I
7 currently expect that negotiations will begin before
8 the end of the first quarter of this year.

9 **Q. Why has NUC opted to provide service through a**
10 **wholesale agreement with JEA rather than through the**
11 **construction and operation of its own on-site water and**
12 **wastewater treatment facilities?**

13 A. The agreement with JEA offers a number of advantages.
14 JEA is the largest provider of utility service in the
15 area, and the partnership with JEA will enable NUC and
16 its customers to enjoy the benefits of JEA's experience
17 and economies of scale. By having the water and
18 wastewater treatment facilities located off-site, NUC
19 is able to help meet DDI's goal of minimizing the
20 environmental impacts of the Nocatee development.
21 Finally, from the outset of the development JEA can
22 provide treated effluent in sufficient quantities to
23 implement a reuse irrigation system throughout Nocatee.

24 In short, JEA can support NUC's provision of
25 reliable, timely, low-cost service in a manner that is

1 consistent with the overall environmental goals of the
2 development.

3 **Q. How does NUC plan to manage the day-to-day operation of**
4 **the utility?**

5 A. As stated in Exhibit H to the Application, NUC expects
6 to obtain operations, management and billing services
7 from a third-party provider with experience in water
8 and wastewater utility management. Under the Letter of
9 Intent with JEA, NUC has the option to obtain such
10 services from JEA. I expect that this will be a part
11 of the upcoming negotiations with JEA on a final
12 Wholesale Service Agreement.

13 **Q. What if NUC is unable to reach a satisfactory**
14 **management agreement with JEA?**

15 A. There are other qualified entities in the area that are
16 ready and willing to provide such services. In
17 December 1999, NUC issued a request for qualifications
18 and statement of interest in providing administrative,
19 operations and maintenance services for the utility.
20 In addition to JEA, United Water Resources submitted a
21 comprehensive response that detailed their interest and
22 ability to provide these types of services to NUC on a
23 contract basis.

24 **Q. What master planning work has ETM performed for the on-**
25 **site facilities?**

1 A. ETM has developed a master utility plan for water,
2 wastewater and reuse services for Nocatee. This
3 planning effort included groundwater studies,
4 alternative treatment options, as well as extensive
5 hydraulic modeling of project phases and alternatives.
6 Exhibit ___ (DCM-6) represents the proposed Phase I
7 service for Nocatee. Exhibit ___ (DCM-7) shows the
8 master plan for the project at buildout.

9 **Q. As part of that master planning effort, has ETM**
10 **prepared a cost estimate for the on-site facilities**
11 **that will be required to serve Phase I of the**
12 **development?**

13 A. Yes. Exhibit ___ (DCM-8) identifies the on-site
14 facilities that will be required to serve Phase I of
15 the development, together with their projected costs.
16 This information was furnished to Ms. Swain for her use
17 in developing proposed rates for the utility.

18 **Q. Is service by NUC consistent with the Duval and St.**
19 **Johns County Comprehensive Plans?**

20 A. Yes. I have reviewed the portions of each county's
21 comprehensive plan related to utility service and found
22 NUC's plan to be consistent with the goals, objectives
23 and policies of each plan. Specifics of this can be
24 found in the Comprehensive Plan Amendment for the
25 Nocatee Project to be submitted to each county.

1 Q. In your opinion, is there an advantage to having
2 utility service for Nocatee provided by NUC as opposed
3 to an unrelated third-party utility?

4 A. Yes. One of the major policy directions that we have
5 received in our role as Engineer of Record for Nocatee
6 is that the project is to be developed in the most
7 environmentally-sensitive manner possible. DDI's
8 commitment to protect the water resources in the area,
9 including its commitment to employ reuse for all
10 irrigation within the project, is just one example of
11 the way this sensitivity is being reflected in planning
12 for the project. These environmental concerns are much
13 easier to address in a comprehensive manner when
14 utility planning is conducted under the same roof as
15 planning for other aspects of the development. For
16 this reason alone, NUC is uniquely positioned to
17 provide service in a manner that is consistent with the
18 needs of the development.

19 Q. As advisor to DDI on utility planning matters, did you
20 consider whether the system proposed by NUC would
21 compete with or duplicate any existing utility system?

22 A. Yes I did. There is no other utility currently
23 providing service in any portion of the territory that
24 NUC has applied for. As of today, JEA has backbone
25 facilities in closer proximity to the property than any
26 other potential wholesale or retail provider. Based on

1 a preliminary analysis of potential service from other
2 utilities in the area, I concluded that retail service
3 by NUC, supported by wholesale service from JEA, is the
4 best plan for providing service to Nocatee.

5 **Q. Does that conclude your testimony?**

6 **A. Yes it does.**

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1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**
2 **SUPPLEMENTAL DIRECT TESTIMONY OF**
3 **DOUGLAS C. MILLER**
4 **ON BEHALF OF**
5 **NOCATEE UTILITY CORPORATION**
6 **DOCKET NOS. 990696-WS AND 992040-WS**
7 **July 31, 2000**
8
9 **Q. Please state your name and business address.**
10 **A. My name is Douglas C. Miller. My business address is**
11 14775 St. Augustine Road, Jacksonville, Florida 32258.
12 **Q. By whom are you employed and in what capacity?**
13 **A. I am President of England-Thims & Miller, a full**
14 service civil engineering firm. I am Engineer of
15 Record for the Nocatee development and have performed
16 the master planning for Nocatee Utility Corporation
17 (NUC).
18 **Q. Have you previously filed direct, intervenor and**
19 **rebuttal testimony in these consolidated dockets?**
20 **A. Yes.**
21 **Q. What is the purpose of your supplemental testimony?**
22 **A. The purpose is to update my earlier prefiled testimony**
23 to advise the Commission of recent developments.
24 **Q. What is the most significant update?**
25 **A. My direct testimony described the Letter of Intent**

1 which provided for NUC to obtain bulk water, wastewater
2 and reuse service from JEA pursuant to the terms of a
3 definitive service agreement to be negotiated by the
4 parties. It also described the option that NUC had
5 under the Letter of Intent to obtain management and
6 operation services from JEA. Consistent with the
7 Letter of Intent, NUC has now entered into a formal
8 agreement with JEA to finalize these arrangements.

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

10 A. Yes. I have attached as Exhibit ___ (DCM-13) a copy of
11 the Agreement for Wholesale Utilities, Operations,
12 Management and Maintenance (Agreement) dated July 24,
13 2000 between NUC and JEA. I have also attached as
14 Exhibit ___ (DCM-14) excerpts from the Sufficiency
15 Response filed by the developers of Nocatee to respond
16 to agency questions and requests for clarification
17 regarding the Application for Development Approval for
18 the Nocatee development.

19 **Q. First, could you please summarize the key terms of the**
20 **Agreement between NUC and JEA?**

21 A. Yes. This agreement obligates JEA to provide bulk
22 water, wastewater and reuse service to NUC for at least
23 25 years in sufficient quantities to meet the needs of
24 the Nocatee development. It also obligates JEA to
25 provide operations, management and maintenance (O&M)
26 services to NUC for a minimum of 10 years, with

1 automatic renewal for three additional 5-year periods.
2 JEA agrees to comply with the applicable provisions of
3 the Nocatee Environmental Water Resource and Area Plan
4 (NEWRAP) in the provision of these services. This
5 means that there will be no on-site potable water
6 wells, no use of groundwater as a primary or secondary
7 source for irrigation, no on-site wastewater treatment
8 facilities, and no effluent discharges to the Tolomato
9 River.

10 **Q. What price has NUC agreed to pay JEA for these**
11 **services?**

12 A. NUC had agreed to pay a bundled rate for the bulk
13 utility service and the O&M services that is equal to
14 80% of the JEA retail rates that would apply if service
15 were provided directly by JEA to end-users within NUC's
16 service territory. Under this approach, the charges to
17 NUC for O&M services will vary in proportion to the
18 amount of bulk service provided to NUC.

19 **Q. Please describe any other payments to JEA under the**
20 **Agreement?**

21 A. In addition to the monthly rates for bulk service and
22 O&M, NUC agrees to pay JEA's prevailing connection fees
23 for all connections within NUC's service territory.
24 Finally, NUC agrees to pay the cost of repairs to NUC's
25 system in excess of \$4,000 per event.

1 Q. What happens if NUC terminates the O&M portion of the
2 Agreement before the start of any of the renewal
3 periods?

4 A. In that case, the rate paid by NUC to JEA for the bulk
5 water, wastewater and reuse service would revert to
6 JEA's generally applicable rates for wholesale service.

7 Q. Are there any other features of the Agreement that you
8 wish to call to the Commission's attention?

9 A. Yes. NUC has agreed, upon request by JEA, to "upsized"
10 NUC's on-site facilities (such as the backbone water
11 transmission mains and wastewater force mains) as
12 needed to permit JEA to use those facilities to provide
13 regional service to areas outside Nocatee. In the
14 event JEA requests such upsizing, JEA will contribute
15 to the cost of construction of the Joint Project on a
16 hydraulic share basis. When the Joint Project is
17 placed in service, title will be transferred to JEA,
18 and NUC will retain the right to use its share of the
19 hydraulic capacity of the facilities.

20 Q. What is the benefit to NUC of this arrangement?

21 A. This arrangement may reduce NUC's capital cost for some
22 of its backbone system by allowing it to share in the
23 economies of scale that come from constructing larger
24 facilities. For example, there may be only a 25%
25 difference in cost between a smaller main and a larger
26 main that provides twice as much hydraulic capacity.

1 If JEA requests such an upsizing, and pays for its
2 share of the main on a hydraulic capacity basis (i.e.
3 50%), the cost to NUC of its share of the capacity will
4 have decreased.

5 Q. Even if JEA holds title to some backbone mains, will
6 NUC still own water, wastewater and reuse mains that
7 physically cross the Duval/St. Johns County line and
8 that will be used to provide service in both counties?

9 A. Yes.

10 Q. How do the costs that NUC will incur under this
11 Agreement compare to the cost estimates for bulk
12 service and O&M expenses on which the rates in NUC's
13 application were originally based?

14 A. Ms. Swain is filing supplemental testimony to address
15 these cost comparisons.

16 Q. When were the other parties to this docket made aware
17 of the Agreement?

18 A. The Agreement was provided to the other parties on the
19 morning of July 25, 2000. Because my third deposition
20 in this docket had previously been scheduled for that
21 day, I was able to answer almost two hours of questions
22 about the Agreement within less than 24 hours after it
23 was executed.

24 Q. Are there any additional updates to your previously
25 filed testimony?

1 A. Yes. My intervenor direct testimony included as
2 Exhibit ____ (DCM-11) excerpts from the water and
3 wastewater sections of Nocatee's Application for
4 Development Approval. In July 2000, Nocatee responded
5 to agency questions and comments on the ADA by filing a
6 Sufficiency Response. A copy of the portions of that
7 response related to utility items, including the
8 portion of the response which pulls together all of the
9 elements of NEWRAP, is attached to this supplemental
10 testimony as Exhibit ____ (DCM-14).

11 **Q. Has there been any change since your earlier testimony**
12 **in the date that utility service will first be required**
13 **in NUC's proposed territory?**

14 A. Yes, a minor one. Due to the DRI review process
15 proceeding somewhat slower than originally anticipated,
16 it now appears that the first need for service will be
17 in the 1st or 2nd quarter of 2002, rather than in late
18 2001 as referenced in my earlier testimony.

19 **Q. Does that conclude your supplemental testimony?**

20 A. Yes it does.

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1 BY MR. MELSON:

2 Q Do you have any changes or corrections to any of the
3 exhibits we have identified as Composite Exhibit 6 or Composite
4 Exhibit 7?

5 A No, I do not.

6 Q Would you briefly summarize your direct testimony and
7 supplemental direct testimony?

8 A I would be happy to. Commissioners, I am a
9 registered professional engineer, president of England Thims &
10 Miller, and serve as the engineer of record for Nocatee Utility
11 Corporation as well as for the Nocatee development. My
12 testimony relates to the water, sewer, and reuse needs of the
13 Nocatee development and Nocatee Utility Corporation's plan of
14 service to meet those needs.

15 Nocatee, as you have been told, is a 15,000-acre
16 project which straddles the Duval and St. Johns County line, and
17 it is a prototype master plan community designed using smart
18 growth principles. The cornerstone of this project is
19 environmental resource protection, and as it relates to this
20 utility application, particularly water resource protection.
21 Nocatee will be built in five phases over 25 years and will serve
22 a population at build-out of approximately 35,000 people.
23 Utility service needs begin in the fourth quarter of 2002.

24 The first phase of the project will have water demands
25 of approximately 700,000 gallons a day, wastewater generation of

1 600,000 gallons a day, and will have irrigation demands of
2 approximately 1.5 million gallons a day. Even using the limited
3 available stormwater that will be on site, obviously the
4 irrigation demands will substantially outpace the on-site
5 wastewater generated and, therefore, it creates a significant
6 reuse deficiency.

7 Because of the size of Nocatee and the fact that it is
8 in two counties, it is a development of regional impact and both
9 the City of Jacksonville and St. Johns County Commission have
10 issued separate development orders approving this project. Both
11 of those development orders have specific environmental
12 protection conditions that are identical for each county.

13 There are four that relate to this utility. One, there
14 will be no on-site water or wastewater treatment plants within
15 Nocatee. Two, there will be no on-site potable water wells
16 within the Nocatee project. Three, there will be no wet weather
17 discharge to the Tolomato River or its tributaries. The Tolomato
18 River is really the Intracoastal Waterway that runs along its
19 east boundary. And, fourth, that the project will have a 100
20 percent reuse for irrigation commitment and that wells can only
21 be used on an emergency basis for backup should there be some
22 malfunction of the reuse system.

23 The Nocatee plan of service that is before you today
24 meets every one of those four conditions that have been outlined
25 by the local government entities in their development orders that

1 they issued. As my testimony described, Nocatee Utility
2 Corporation has entered into a service agreement with JEA. JEA
3 will provide NUC with operation and maintenance as well as
4 wholesale treatment service for a bundled price equal to 80
5 percent of JEA's retail rate.

6 Complying with the development order, all of JEA plants
7 that are providing service to Nocatee are located off-site.
8 Nocatee Utility Corporation's point of connection to the JEA
9 system is in Duval County and the connection is to an existing
10 20-inch force main and 24-inch water main that is located at the
11 northwest corner of Nocatee. If you look on -- it's really the
12 red triangle that is just at the northwest corner of the project,
13 you should be on your reduced exhibits.

14 Reuse service requires Nocatee Utility Corporation to
15 build a pipeline north of Nocatee to connect into the JEA reuse
16 main and those costs are included in our cost estimates for
17 initial service and in Ms. Swain's calculations. Nocatee Utility
18 Corporation will be responsible for the construction of all
19 on-site water, wastewater, and reuse lines, lift stations, and
20 the construction of a state of the art reuse storage and pumping
21 facility to distribute reuse water at pressure throughout
22 Nocatee, including to every single-family residential home.

23 A critical issue in the JEA/NUC service agreement is
24 JEA's ability to meet the reclaim water needs of the project from
25 day one, and that was very critical in our agreement. And also

1 have capacity to provide reuse throughout the build-out of the
2 project. This eliminates any need to rely on groundwater for
3 irrigation and meets the requirements that have been outlined by
4 both governments in their development orders issued for the
5 approval of this project.

6 The first area to be developed in Nocatee will be the
7 town center, which is bisected by Duval County and St. Johns
8 County line. If you see the exhibit that I put below the
9 regional map, if you see the A on the town center village you see
10 a major loop road system that depicts the town center. Nocatee
11 Utility Corporation will construct water, wastewater, and reuse
12 throughout the town center through a grided distribution system
13 and collection system which will crisscross back and forth across
14 the county line and create one cohesive uniform utility in both
15 counties to serve this first phase of the downtown center.

16 That completes the summary of my testimony.

17 MR. MELSON: Mr. Miller is tendered for cross
18 examination.

19 CHAIRMAN JACOBS: Very well. Mr. Menton.

20 MR. MENTON: Yes, sir. Just a couple of questions,
21 Mr. Chairman. Thank you.

22 CROSS EXAMINATION

23 BY MR. MENTON:

24 Q Good afternoon, Mr. Miller.

25 A Good afternoon.

1 Q I just have a couple of quick questions for you. In
2 your direct testimony you indicate that you were involved in
3 the negotiation of the letter of intent agreement between DDI
4 and JEA. Do you recall that?

5 A Yes, I was.

6 Q Could you explain to the Commission how those
7 discussions and negotiations came about?

8 A Well, in order to meet the environmental standards
9 that have been established for the project, my job was to
10 develop a plan of service that would meet those standards.
11 And it became obvious to us in the early analysis of utility
12 service that we were going to have a reuse deficiency. And so
13 we initially contacted the JEA because it was our understanding
14 that they had excess wastewater effluent that they were
15 discharging to the St. Johns River. And we felt like that
16 would be beneficial if we could utilize that, that resource to
17 meet the reuse deficiency as well as eliminate that discharge
18 from the river.

19 Q So was it DDI then that approached JEA about this
20 arrangement to begin with?

21 A That is correct.

22 Q Were you also involved in the negotiations that lead
23 up to the wholesale agreement, which is Exhibit 13A to your
24 testimony?

25 A Yes, I was.

1 Q And who was the primary negotiator on behalf of DDI
2 with respect to that agreement?

3 A It was myself and one or two attorneys.

4 Q And during the course of those negotiations, did JEA
5 ever request Nocatee Utility Corporation to be a front or a
6 strawman for JEA retail service in St. Johns County?

7 A No, they did not.

8 Q Is that your understanding of the JEA/NUC
9 development?

10 A No, it is not.

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

12 CHAIRMAN JACOBS: Thank you. Mr. Korn.

13 MR. KORN: No questions, Mr. Chairman.

14 CHAIRMAN JACOBS: Mr. Wharton.

15 CROSS EXAMINATION

16 BY MR. WHARTON:

17 Q Good afternoon, Mr. Miller.

18 A Good afternoon.

19 Q Let's start with a question that Commissioner Jaber
20 asked earlier. You have got some color maps attached to your
21 supplemental direct, correct?

22 A That is correct.

23 Q And one of those maps is labeled Exhibit B, Page 19
24 of 26?

25 CHAIRMAN JACOBS: Actually I think that is the direct,

1 Mr. Wharton, where the color maps are. I may be wrong.

2 MR. WHARTON: I think we are talking about a later --
3 and it may very well be both, Mr. Chairman, but I think this is
4 a later.

5 CHAIRMAN JACOBS: Sorry.

6 MR. WHARTON: No, that's okay.

7 BY MR. WHARTON:

8 Q Those colored lines -- are you looking at that map
9 now, Mr. Miller?

10 A Yes, sir, I am. Exhibit B?

11 Q Yes.

12 A Yes.

13 Q Those colored lines running through the development
14 there, red is force main, blue is water main, and green is
15 reuse main, correct?

16 A Yes.

17 Q Okay. And those are the so-called joint projects,
18 correct?

19 A That is correct.

20 Q And the joint projects are facilities that are to be
21 over-sized per the request of JEA such that there will be more
22 capacity in those facilities than is necessary to serve only
23 the development, correct?

24 A These lines were identified by JEA as lines that they
25 would like the option to over-size if they so choose, that is

1 correct.

2 Q And that is an option that your agreement gave them?

3 A That is correct.

4 Q Okay. And those lines will be built to JEA's
5 specifications?

6 A Yes.

7 Q Who will pay for those lines?

8 A Well, it will be jointly paid for by Nocatee Utility
9 Corporation will pay for their hydraulic share of the capacity
10 needed to serve Nocatee Utility and all the service area for
11 NUC, and then the cost of upsizing for any excess capacity that
12 JEA wants to size them for to serve areas outside of NUC's
13 franchise JEA will pay for.

14 Q But NUC will pay for part of the lines, correct?

15 A Yes, that is correct.

16 Q And then they will be given to JEA, correct?

17 A JEA will have ownership of the lines and NUC will
18 have ownership of the hydraulic share necessary to serve the
19 Nocatee development.

20 Q But that portion of those lines that NUC paid for
21 will be contributed to JEA at no cost, correct?

22 A At no cost, no. JEA is going to pay for their share
23 of the line and Nocatee will pay for their share of the line
24 that they are going to reserve, and so it will be jointly
25 funded.

1 Q But afterwards JEA will own 100 percent of the line?

2 A JEA will own the pipe and NUC will own part of the
3 hole in the pipe.

4 Q So NUC will have reserved some of the capacity of the
5 system, but JEA will own the physical property, correct?

6 A That is correct, they will own the physical line.

7 Q All right. Sir, do you agree that when you filed
8 your direct testimony you only had a letter of intent agreement
9 with JEA, such as it is?

10 A That is correct.

11 Q And, in fact, that letter of intent only contemplated
12 that you would finalize the deal after NUC received a
13 certificate, correct?

14 A I don't recall that specific item, but it was not
15 finalized at that point in time.

16 Q Now, do you agree that initially when you were doing
17 the letter of intent with JEA there was language in the letter
18 of intent that contemplated the possibility of on-site well
19 fields?

20 A At that point in time it was -- JEA requested that
21 option in the letter of intent, but as I recall it also
22 required JEA to meet all the conditions of the development
23 order.

24 Q But that language regarding the potentiality for
25 on-site well sites was in there, correct?

1 A In the letter of intent, I would have to review it,
2 but it sounds right, yes.

3 Q Do you agree that your direct testimony only says
4 that there will be no groundwater for irrigation, it never says
5 there will be no on-site wells or facilities?

6 A I'm sorry, could you repeat that question.

7 Q Yes. Do you agree -- does your direct testimony say
8 anywhere in it that there will not be any on-site wells or
9 treatment plants?

10 A I don't recall specifically. I mean, I could review
11 it if it would be helpful.

12 Q Do you think it will speak for itself in that regard?

13 A Well, I just don't remember. It has been over a year
14 since I filed that.

15 Q Do you recall that when you filed that you did put in
16 there that there would be no groundwater for irrigation? And
17 that, sir, is at Page 7, Line 3.

18 A There is no groundwater for irrigation as a primary
19 or secondary source other than the backup, emergency backup for
20 reuse.

21 Q And do you agree at the time you filed your direct
22 testimony the application for development approval was already
23 filed?

24 A I, quite frankly, don't remember the timing.

25 Q I want you to take a look at Page 4, Line 6, of your

1 direct testimony.

2 A Okay.

3 Q So you would agree that when you filed this testimony
4 the application for development approval had already been
5 filed?

6 A What was -- if you would help me with the date of my
7 filing of the direct testimony.

8 Q I think it says on the front, Mr. Miller, February
9 11.

10 A Yes. And it says the project was filed in February,
11 so it was within probably days of this.

12 Q And it says is in the process of being reviewed?

13 A Yes.

14 Q Wouldn't that make you think it was already filed?

15 A Yes. I believe it was only a few days maybe before
16 this testimony was filed.

17 Q Let me ask you something. You said that NUC -- in
18 your summary you said that NUC would be responsible for all
19 on-site water and wastewater lines, is that right?

20 A That is correct.

21 Q Is NUC going to have a policy requiring developers to
22 contribute lines that lie within their development?

23 A That is correct.

24 Q Is the Nocatee -- what we have been referring to the
25 Nocatee development is really going to be possibly a series of

1 developments, correct?

2 A Correct.

3 Q Okay. And within each one of those the developers
4 will be required to contribute the types of facilities that
5 utilities normally require developers to contribute?

6 A Well, the internal development parcels will be
7 contributed lines by the developer and not the utility part
8 will provide the master what I will call the spine or backbone
9 system and master reuse wastewater/water transmission mains, if
10 you will, that go to each parcel. And costs of those
11 facilities are outlined in the cost estimates that I have
12 provided to Ms. Swain for phase one of this case.

13 Q Let me ask you a couple of questions about your
14 relationship with JEA. Do you agree that any specific type of
15 customer that hooks up on NUC's side of the point of delivery
16 will be charged a connection fee which will be collected as if
17 that customer was a customer of JEA and then that amount of
18 money will be sent to JEA?

19 A Well, not exactly, no. If you are a Nocatee Utility
20 Corporation customer you will pay -- there will be a connection
21 fee that is collected based on the tariff that is issued by
22 this Commission and that portion that is equivalent to JEA's
23 connection fee will be remitted to JEA.

24 Q So it's safe to say then that in each case the fee
25 will be larger than the fee that is owed to JEA?

1 A Assuming our current rates are approved, yes.

2 Q So that is the way the rates are set up, is that that
3 portion of what JEA would have charged will go to JEA and the
4 rest will go to NUC?

5 A That is correct. That pays for the cost of their
6 treatment facilities.

7 Q And I think I asked you this question a few moments
8 ago about the joint projects, but isn't it true that NUC is
9 required to design all of the facilities to JEA's standards and
10 specs?

11 A Yes. JEA's standards and specs are somewhat the
12 industry standard for northeast Florida, so that would be
13 pretty typical.

14 Q Do you agree that JEA required that your contract
15 with them contain a right of first refusal in favor of JEA?

16 A Yes, it does.

17 Q And so if the system is ever offered for sale to a
18 third party or a third party offered to buy it, in that case
19 JEA would be able to exercise that right of first refusal?

20 A I think the right of first refusal speaks for itself.

21 Q And JEA has indicated to you that at some point they
22 would be interested in buying the system, haven't they?

23 A Not directly, no.

24 Q Sir, do you recall --

25 MR. WHARTON: And you will have to forgive me,

1 Commissioners. Poor Mr. Miller has been deposed three times in
2 his own capacity and once sitting as the voice of NUC, so I am
3 wrestling with four different deposition transcripts here.

4 BY MR. WHARTON:

5 Q Mr. Miller, do you recall that I took your deposition
6 on July 25th, 2000?

7 A Yes, I do.

8 Q And at Page 45, Line 16 thereof, and I will let you
9 find that. It looks like you are wrestling with the same thing
10 I am.

11 A Bear with me, I'll get there.

12 Q Sure.

13 A I don't know if this means my answers are too long or
14 your questions are too many.

15 CHAIRMAN JACOBS: Probably equal parts of both, I'm
16 sure.

17 A I am on Page 45, what was the line?

18 Q All right, sir. Do you recall at Page 45, Line 16 of
19 that deposition:

20 "Question: Did JEA ever say, you know, we would be
21 interested in buying the system, or NUC or any affiliated party
22 ever say, you know, we would be interested in selling this system
23 at some point?

24 "Answer: Of course. That's what the right of first
25 refusal was about."

1 Do you stand by that answer today?

2 A Well, I think that is -- I wouldn't call that -- yes,
3 I stand by my answer.

4 Q Okay. And do you agree that the agreement requires
5 that if the system is ever sold that developer contributed
6 portions of the utility in Duval County would be given to JEA
7 free?

8 A If those lines are normally contributed under JEA's
9 policies, JEA would not be paying for those if it was an asset
10 purchase. If JEA purchased, or if JEA became the owner, that
11 is correct.

12 Q Okay. Let me make sure I have this straight. If
13 someone else bought the system, doesn't your agreement require
14 that that part in Duval County to the extent that it has been
15 contributed to the utility and not paid for by NUC, would be
16 given to JEA for free?

17 A No. No, that is not my understanding of the
18 agreement. If it is -- if the utility was bifurcated such that
19 the St. Johns County portion was sold to one-third party
20 utility provider and JEA purchased the Duval County portion of
21 the system, that those lines that would normally have been
22 contributed under JEA's policy, not NUC's policy which will be
23 different than JEA's policy, but under JEA's policy those lines
24 they would not pay for.

25 CHAIRMAN JACOBS: What happens with the lines that

1 would have been contributed under Nocatee's policy?

2 THE WITNESS: Well, if they were contributed, and I
3 think I have previously testified that I believe that NUC's
4 policy may be more stringent than JEA's policy, so we may have
5 more developer contributed lines than JEA's policy would
6 require. Under that circumstance, then JEA would have to
7 purchase the lines that were contributed to NUC, but would not
8 have been contributed under JEA's policy.

9 CHAIRMAN JACOBS: Thank you.

10 BY MR. WHARTON:

11 Q Well, let me ask you something, Mr. Miller, just so
12 the record is clear. You agree that if NUC was sold to a third
13 party, JEA would get all the portions in Duval County that NUC
14 had not paid for free?

15 A No, I think I just testified to the contrary.

16 Q Okay. Let's take a look at Page 48 of the deposition
17 that we took on July 25th, 2000.

18 A Okay.

19 Q And do you recall this question and answer starting
20 at Page 48, Line 6:

21 "Question: Tell me your understanding of what that
22 means.

23 "Answer: My understanding is that the portions of the
24 utility that the utility has not made an investment in within
25 Duval County, in other words, developer contributed portions of

1 the utility that JEA would not pay for if there was a third party
2 purchaser and that for those portions in Duval County.

3 "Question: So, in fact, if NUC was sold to a third
4 party purchaser, JEA would get all the portions in Duval County
5 that NUC had not paid for?

6 "Answer: That is correct."

7 A Well, I think I have just added a clarification to
8 that statement.

9 Q You are now saying that JEA would have to pay for
10 those portions?

11 A I'm saying they would have to pay for those portions
12 that were contributed but would not have been contributed under
13 JEA's policy. I mean, we are speculating what that might be,
14 but under that circumstance it's just a clarification.

15 Q And, Mr. Miller, I apologize for going backwards, but
16 while I am on this page. You did agree, sir, it seemed to me
17 like you gave an answer that was a little more complex, that
18 JEA has expressed at some point an interest in acquiring the
19 system?

20 A Well, and I think my answer was that we haven't --
21 there has been no direct expression other than what is in the
22 right of first refusal, and I think that that is exactly what I
23 testified to.

24 Q Do you recall in the same deposition we have been
25 referring to at Page 46, Line 22:

1 "Question: So JEA expressed at some point an interest
2 in acquiring the system?"

3 "Answer: Absolutely."

4 A What line is that?

5 Q Page 46, Line 22.

6 A Yes.

7 Q And you stand by that testimony?

8 A Yes, absolutely. Related to the right of first
9 refusal.

10 Q Okay. And you agree, sir, don't you, that if the
11 system is sold, JEA is the most logical purchaser?

12 A We are not evaluating sale.

13 Q Does that mean you don't agree with that?

14 A That means there has been no evaluation, so I don't
15 have an opinion one way or the other.

16 Q Well, let's take a look at Page 49 of that same
17 deposition. Do you see at Line 14 thereof your answer:

18 "Answer: I would say JEA is certainly the most logical
19 purchaser. I don't think there is any question about that."

20 A I would agree with that, yes.

21 Q And do you agree that the Nocatee developer would not
22 be desirous of seeing split service in the development unless
23 he was getting a very, very handsome price for the remaining
24 part of his utility?

25 A Yes, I don't think split service would be in the

1 developer's or the customers' best interest.

2 Q Well, but that would be unless the developer was
3 getting a very, very handsome price for the remaining part of
4 the utility, is that correct?

5 A Well, I think what I was saying is it is very
6 unlikely. I mean, obviously everything can be bought at a
7 price.

8 Q But you do agree that you made that statement in your
9 deposition?

10 A That is correct.

11 Q You agree, don't you, that it would be possible for
12 JEA to run a reuse line alone into the development and provide
13 reuse to Nocatee, that could be done?

14 A Well, we investigated that, and JEA said they would
15 not dot that. Although it physically is possible, they
16 declined to provide reuse only service.

17 Q Mr. Miller, did JEA make a proposal to St. Johns
18 County within the last couple of months that would have
19 involved JEA essentially forwarding monies to St. Johns County
20 so that the county would agree to allow JEA to provide retail
21 satisfaction over a large area in northern St. Johns County?

22 MR. MENTON: Mr. Chairman, at this point I would
23 interpose an objection. He is asking Mr. Miller, who is a
24 relative of Nocatee Utility Corporation, about a proposal that
25 JEA made to the County Commission in response to a request by

1 the County Commission for a proposal. Mr. Miller was not
2 directly involved in that presentation and cannot speak on
3 behalf of JEA with respect to the proposal, nor can he speak on
4 behalf of the county as to why the county requested such a
5 proposal from JEA.

6 MR. WHARTON: You know, neither one of those things
7 was my question. And I am less interested about hearing that
8 from JEA who has a contractual obligation to support everything
9 NUC says than I am about what this witness knows about the deal.
10 I am leading up to a meeting that he had with people from JEA.

11 CHAIRMAN JACOBS: Why don't you get to that meeting,
12 because I don't recall that that is a part of -- that particular
13 JEA encounter is a part of his testimony, is it?

14 MR. WHARTON: Well, but to the extent that he says
15 this is the arrangement we are going to have with JEA, and that
16 since that has been entered into they have had a sit down
17 meeting with JEA wanting to talk about acquiring them, I think
18 it is relevant.

19 CHAIRMAN JACOBS: I think it is a bit far afield. I
20 will allow questioning as to direct discussions that he was in
21 directly or indirectly through his association with NUC a part
22 of. Going into deliberations before JEA's governing body is a
23 bit far afield.

24 MR. WHARTON: And I will ask no questions in that
25 regard and did not intend to.

1 BY MR. WHARTON:

2 Q Mr. Miller, are you aware of the JEA proposal?

3 A Yes, I am.

4 Q And isn't it true that at some point JEA came to
5 inquire whether you were willing to discuss JEA's provision of
6 retail services to the development?

7 A Yes. As I understand JEA's proposal at the County
8 Commission, and I was not at that meeting, but my understanding
9 was that they made a proposal to service areas in the
10 northeastern part of St. Johns County exclusive of Nocatee, the
11 Nocatee Utility Corporation franchise. And that as I
12 understand it, St. Johns County requested them to meet with
13 Nocatee Utility Corporation to see if Nocatee Utility
14 Corporation would want to enter into or be a part of that
15 master agreement.

16 Q So they came in there, they came in to discuss the
17 provision of retail service with you by JEA?

18 A That is correct.

19 Q And that just occurred in the last couple of months?

20 A Yes, I would say in the last two months. Whenever
21 JEA -- shortly after the presentation to the County Commission.

22 Q Do you agree, Mr. Miller, that under your agreement
23 with JEA there could be other joint projects other than the one
24 that we have talked about?

25 A Yes. The agreement allows for JEA to choose other

1 pipelines that are proposed for construction to be considered a
2 joint project.

3 Q Okay. But the one that we talked about is the only
4 one they have identified at this time?

5 A That is correct.

6 Q And when I say the one, I mean all three lines,
7 correct?

8 A That is correct.

9 Q Has JEA indicated to you why they might want to build
10 lines with excess capacity that exit out the east side of the
11 development?

12 A No, they have not.

13 Q Okay. Would you agree that that appears to be headed
14 directly into lands that it is your client's position there is
15 not need for service for?

16 A That is correct with the exception of one small
17 development at the east end called Marsh Harbor, which you and
18 I have talked about many times in the many depositions.

19 Q Okay. So there is potential development lying in
20 between Intercoastal's service area and Nocatee referred to as
21 Marsh Harbor?

22 A That is correct.

23 Q You agree that your agreement with JEA indicates that
24 they only have the current capacity for phase one of the
25 development?

1 A The agreement is they have reserved capacity for
2 phase one and they have guaranteed capacity throughout the
3 build-out of the project.

4 Q And you agree that they will maintain total control
5 over how they will provide that capacity in the subsequent
6 phases?

7 A After phase one, that is correct.

8 Q Let's talk about the groundwater study that the
9 developer caused to have done. The Nocatee landowner did cause
10 a water supply study to be done to evaluate what water supply
11 was available in the lands beneath the Nocatee development,
12 correct?

13 A That is correct.

14 Q And you would agree that that was an elaborate study
15 of the availability of water resources within the development?

16 A It was an excellent study.

17 Q And one result of that particular data collection
18 effort was a determination that there were adequate water
19 resources under the development?

20 A That the development could be -- yes, that is
21 correct.

22 Q Now, that particular study to your mind became moot
23 once you entered the deal with JEA, correct?

24 A Yes. That wasn't why it became moot, but it did
25 become moot.

1 Q And as we sit here today you don't think there was
2 anything deficient or incorrect about that study, right?

3 A The study itself was correct.

4 Q Do you agree that your application for development
5 approval had several affirmative statements about getting
6 service from JEA even though when the ADA was submitted the
7 deal with JEA wasn't finalized?

8 A Well, the commitments that are in the development
9 order are commitments no matter who provides service, so those
10 are commitments regardless of who the service provider is.

11 Q I understand that, sir. But do you agree that your
12 ADA application had several affirmative statements about
13 getting service from JEA even though at that time your deal
14 with JEA wasn't finalized?

15 A I believe at that point in time we had a letter of
16 intent and we had a service availability letter that was a part
17 of the ADA submittal package, which is the standard documents
18 that are submitted as part of the ADA process.

19 Q And do you agree that in your ADA application you had
20 several affirmative statements about receiving service from
21 JEA?

22 A Yes.

23 Q Okay. And the parts of the application that you
24 drafted never mentioned Intercoastal, did they?

25 A No, they did not.

1 Q And in July of last year, you filed something called
2 a sufficiency response, didn't you?

3 A That is correct.

4 Q And is it fair to say that a sufficiency response was
5 required by the fact that the process allowed several of the
6 commenting agencies to send you several questions they still
7 had about your application?

8 A Is that a question?

9 Q Is it a fair statement?

10 A It's a fair statement.

11 Q Okay. And you agree that in that July sufficiency
12 response you made the following representation, and you were
13 referring to the groundwater study we have just been
14 discussing, "The study demonstrates that the site contains an
15 adequate and sustainable groundwater supply of high quality
16 water sufficient to serve the builder of the Nocatee project
17 with minimal impacts off-site or to existing users under the
18 Nocatee land"?

19 A I have not read that, but that sounds correct.

20 Q And that was a peer review study, is that right?

21 A That is correct.

22 Q And you still agree with the statement that the study
23 demonstrated there was enough high quality water under the
24 lands of Nocatee to serve the needs of the development all the
25 way through build-out?

1 A That is correct.

2 Q All right. Let me ask you a couple of questions
3 about when the Nocatee developer first began to look for
4 utility service. Do you agree that at some point you made a
5 decision about who you were going to solicit information from
6 in terms of potential utility providers?

7 A I don't recall that, no.

8 Q Well, do you agree that the only entities the
9 developer approached for utility service were JEA and United
10 Water?

11 A I don't know that that is totally correct, no. I
12 mean, there was an evaluation as part of the data collection
13 phase of all the potential sources and providers, and I believe
14 we decided that only JEA and United Water were potential
15 providers for the project.

16 Q And the reason that you decided that was based on the
17 fact that those were the two largest providers, rather than any
18 negative information you had about anyone else?

19 A Well, as I recall, they were the only ones that were
20 on the west side of the Intracoastal Waterway that had
21 substantial resources available to them. And we felt like they
22 were the only potential viable service alternatives.

23 Q And you made that decision because they were the two
24 largest providers rather than any negative feelings you had
25 about any other entities, correct?

1 A I mean, quite frankly, it has been about two and a
2 half years, so I don't recall specifically what the basis was.

3 Q Okay. Let's go to a new deposition. The one we took
4 on March 1, 2000. Are you there, sir?

5 A I'm sorry.

6 Q March 1, 2000. That was the very first one.

7 A I was thinking 2001, sorry. What was the page?

8 Q Page 54. Do you recall this exchange, Line 23:

9 "Question: So that then was the basis of the decision
10 on who to solicit the information from rather than any negative
11 feelings about anybody that you didn't solicit the information
12 from.

13 "Answer: I don't have any negative feelings about
14 anybody.

15 "Question: Really?

16 "Answer: Yes.

17 "Question: But that was the reason that you went to
18 United and JEA.

19 "Answer: It was because they were the two largest
20 providers."

21 Do you stand by that testimony?

22 A I do.

23 Q Okay. It is NUC's position, isn't it, that 20
24 percent of the irrigation demand for Nocatee can be satisfied
25 with stormwater?

1 A We do not believe more than it is feasible to -- more
2 than 20 percent could be satisfied by stormwater. Our desire
3 is to use no stormwater and use 100 percent reuse.

4 Q But you do believe that 20 percent of the irrigation
5 demand for Nocatee could be satisfied by stormwater?

6 A At build-out I do.

7 Q Okay. And that stormwater wouldn't be something that
8 would be going through the reuse system of the utility, it is
9 going to be in separate and delineated areas?

10 A That is correct.

11 Q And that may or may not be operated by the utility,
12 correct?

13 A That is correct.

14 Q Okay. So it is possible that 20 percent of the reuse
15 demand in the Nocatee development will be provided by entities
16 separate and apart from the utility?

17 A It may be.

18 Q Do you agree that the projections you have in your
19 application for reuse demand for your golf courses are on the
20 high end?

21 A I think they are appropriate for this stage of the
22 project for planning purposes.

23 Q But you would agree that those particular projections
24 are on the high end?

25 A Well, since none of the golf courses have been

1 designed and/or sited, I think it would be speculation to say
2 whether they are high or low. I think they are appropriate for
3 planning purposes.

4 Q Well, let me have you look at that same deposition,
5 March 1, 2000.

6 A What page?

7 Q Page 69, Line 6:

8 "Question: Would you say they are on the high end?

9 "Answer: The projections?

10 "Question: Yes.

11 "Answer: Yes."

12 Do you recall we were talking about the golf courses
13 there, if you go back a couple of lines. And if you think that
14 they are on the high end is appropriate, I mean, that reconciles
15 your answers. But you do agree those projections are on the high
16 end?

17

18 A As I recall we were talking about are these higher
19 than other golf courses that use less, and I believe I said
20 yes, there are, and there are ones that use more, and I said
21 yes, and you asked me to name some and so you said are these
22 high, and I said well --

23 Q I may be stupid, Mr. Miller, but I don't think I
24 asked you if they were higher than other golf courses who use
25 less. I think we were talking about the average golf courses

1 there in that northeast part of Florida and you agreed they
2 were on the high end. Let me just ask you if you agree with
3 that independently right now?

4 A Yes.

5 Q Thank you. Do you agree that JEA is discharging a
6 lot of effluent into the St. Johns River right now that they
7 would like to use as reuse?

8 MR. MENTON: I'm going to object to the question. I
9 don't know that he has established that Mr. Miller has the
10 adequate predicate to answer what JEA is doing.

11 MR. WHARTON: Mr. Miller has talked about JEA's
12 capacity to provide millions of gallons of reuse to this
13 development.

14 MR. MENTON: But I don't know that he is familiar with
15 what JEA is doing with respect to its treatment plants or how it
16 is disposing of its effluent at its treatment plants.

17 MR. WHARTON: That's what his answer will reveal.

18 CHAIRMAN JACOBS: Your question was did he know if JEA
19 was delivering the effluent into the river.

20 MR. WHARTON: St. Johns River.

21 CHAIRMAN JACOBS: And I think that is -- the objection
22 has some merit to that. Do you want to rephrase that? He has
23 not demonstrated he has any idea what is happening with JEA's
24 effluent disposal.

25 BY MR. WHARTON:

1 Q Do you have any idea what is happening with JEA's
2 effluent disposal from its Mandarin plant currently?

3 A I have a limited knowledge of JEA's system, yes.

4 Q There is some effluent coming out of that plant,
5 right?

6 A That is correct.

7 Q Where is it going?

8 A My understanding of today that it is being discharged
9 into the St. Johns River.

10 Q And within that understanding you understand that
11 about 6 million gallons a day is going into the St. Johns River
12 from that plant?

13 A That is my understanding, yes.

14 Q All right. Let me ask you some questions about your
15 applications for development approval. Those were applications
16 that you were the primary individual for working on, either you
17 or your firm?

18 A Well, the application for development approval was
19 worked on by a team of about 14 professionals representing five
20 or six different consulting firms, as well as the developer and
21 the owner.

22 Q Is it fair to say that you were the point man,
23 though, on that?

24 A I was the point man on the utility and water resource
25 issues.

1 Q And you understood throughout this process that all
2 of the commitments that you made in the application for
3 development approval would become binding, correct?

4 A In the development order or in the ADA or both?

5 Q That if you made a commitment in the ADA it was
6 likely to become a requirement of the development order?

7 A Yes. Ordinarily it's that plus some, yes.

8 Q And you drafted that ADA fully understanding that
9 everything you put in there, again, would be incorporated into
10 the final product that comes out of this process, the
11 development order?

12 A Not necessarily, no. The development order is
13 actually finally drafted and adopted by St. Johns County and
14 the City of Jacksonville. So they are, if you will, the
15 ultimate authors of the development order, not the ADA
16 applicant.

17 Q Well, let me ask you then, sir, to turn to the
18 deposition, again, that I took on July 25th, 2000.

19 A What pages?

20 Q Page 33. Do you recall this question and answer at
21 Line 24:

22 "Question: You had just said that you would expect
23 that when the development order comes out that the conditions
24 which the applicant had offered will most likely be in there.
25 How does the applicant make an offer like that?

1 "Answer: Well, the -- first of all, everything that is
2 in the ADA is incorporated in the development order."

3 Do you stand by that answer?

4 A Yes, that is correct.

5 Q And is it true, sir, that you are not aware of
6 anything other than the development orders that would forbid
7 wastewater discharges into the intercoastal?

8 A Well, there would have to be permitting.

9 Q But you are not aware of anything that would forbid
10 that, would prevent such permitting?

11 A I don't think any permitting has been applied for, so
12 I don't think I'm qualified to answer that.

13 Q Do you agree that you haven't evaluated whether
14 on-site service, the type that could be proposed by
15 Intercoastal could be permittable in the absence of the
16 development order or the conditions in the development order?

17 A Are you asking me if I have evaluated that?

18 Q Correct.

19 A The?

20 Q Correct.

21 A I have not done that.

22 Q Now, right around the time I took your deposition in
23 July, you had recently filed that sufficiency response we
24 talked about earlier, right?

25 A I believe that is correct.

1 Q And you would agree there was apparently some lack of
2 understanding about Nocatee's request for a condition that
3 there be no on-site utilities, correct?

4 A I don't recall that, no.

5 Q Sir, look at Page 106 of the deposition, July 25th,
6 2000, and see if that refreshes your recollection. And
7 starting at Page 6 thereof do you remember this exchange:

8 "Question: So the sufficiency response comes right out
9 and says that. We will accept that as a condition or we propose
10 as a condition in the development order that there not be any
11 on-site utility.

12 "Answer: What it says is there are no wells, there
13 are no wells proposed for Nocatee.

14 "Question: What about treatment plants?

15 "Answer: There will be no treatment plants on-site.

16 "Question: Did you feel like you needed to say that in
17 the sufficiency response because that hadn't been clearly said
18 before?

19 "Answer: Well, others had asked for clarification, so
20 we provided clarification.

21 "Question: Apparently those points weren't clear to at
22 least some of the readers of this document, so you clarified
23 them?

24 "Answer: That's right."

25 Do you stand by that testimony?

1 A Yes. I think we were at this point as I recall
2 talking about NEWRAP, and NEWRAP which was sort of the
3 environmental principles that were laid out for the development
4 of the Nocatee project, and it was not -- those principles in
5 that document were not formalized as part of the ADA submittal.
6 I believe what we are talking about in this exchange was that
7 NEWRAP, in fact, it was a request by the agencies to
8 incorporate those environmental principles that were outlined
9 in NEWRAP, which we did, and it subsequently became a part of
10 the ADA application.

11 Q And completely consistent with what you just
12 testified to, isn't it true that at that time the commenting
13 agencies appeared to be confused about whether you were
14 offering that as a condition and you clarified it?

15 A Because they were confused whether NEWRAP was part of
16 the application or not.

17 Q Okay. And you made clear that you did want that as
18 part of the application and you did want that as a condition?

19 A We provided NEWRAP and made it part of the ADA
20 application to provide that clarity.

21 CHAIRMAN JACOBS: Mr. Wharton, are you at a good
22 breaking point or do you have much more?

23 MR. WHARTON: It's probably a good point.

24 CHAIRMAN JACOBS: Why don't we break for 15 minutes,
25 we will come back.

1 (Recess.)

2 CHAIRMAN JACOBS: We will go back on the record. I
3 believe we were in the middle of cross-examination by Mr.
4 Wharton. You may proceed.

5 MR. WHARTON: Well, I think fortunately for all
6 concerned, Mr. Chairman, I'm not in the middle. I am very close
7 to the end.

8 BY MR. WHARTON:

9 Q Mr. Miller, do you agree that the sufficiency
10 response that we were just talking about was something that was
11 filed in July of last year?

12 A I don't recall the specific date. But we went
13 through two rounds of sufficiency, so I don't recall the
14 specific date. That sounds approximately correct.

15 Q And you would agree that the original ADA as we
16 discussed earlier was filed in February of 2000?

17 A I think that is correct, yes.

18 Q Do you recall that the ADA application represented
19 the following statement, the applicant believes Nocatee Utility
20 Corporation will be awarded the utility franchise by the PSC?

21 A I don't recall that specifically, no. But it could
22 have been in there as a response to one of the questions from
23 one of the agencies on the status.

24 Q I'm sorry.

25 A On the status. I think there was a question on what

1 was the status of the PSC proceedings, and I believe that was a
2 response to a either DEP, or water management district, or DCA
3 question in sufficiency.

4 Q And do you recall a similar response in that same
5 sufficiency response document which said the applicant has not
6 explored any other options for service?

7 A I think that had been presented -- as far as being
8 presented in the ADA, that is correct. We weren't proposing
9 any other form of service in our ADA application. It was the
10 NUC/JEA service program, that was our plan of service for
11 Nocatee that we submitted in the DRI application.

12 Q Okay. Do you agree there are three wells in the
13 development now that can be used as a back-up supply for the
14 reuse system?

15 A That hasn't been evaluated, they can be used from the
16 perspective of the development order allows them to be used, or
17 I should say doesn't prohibit that they be used for either fire
18 protection or for reuse. But whether or not they will be used
19 or are appropriate to be, used that evaluation hasn't been made
20 yet.

21 Q But the development order does allow them to be used
22 thusly?

23 A It does not prohibit their use, that is correct.

24 Q And you would agree you are not limited only to those
25 three wells that are currently in existence under the

1 development order?

2 A The only other wells that could be used are wells
3 that would be used as emergency backup for the reuse system in
4 the event there was some malfunction. As an example, a line
5 break on the JEA main that was coming to the reuse storage and
6 pumping facility, or if there was a water quality problem in
7 the reuse water. Obviously when you are in the retail reuse
8 business, you have got to be in it every day and so you do need
9 some backup in the event that there is some disruption of your
10 supply or some mechanical failure.

11 Q Just a few more kind of miscellaneous questions, Mr.
12 Miller. You do agree that the Nocatee development was kept
13 closely under wraps prior to its announcement to the public,
14 correct?

15 A I would say that is correct, yes.

16 Q And that agreement, that particular development was
17 publicly announced after Intercoastal filed its application
18 before the St. Johns County Water and Sewer Regulatory
19 Authority, correct?

20 A I honestly don't recall the timing. It could be, but
21 I'm just not sure.

22 Q You agree, don't you, that the application
23 Intercoastal filed in that case and the application
24 Intercoastal has filed in this case don't propose the same plan
25 of service?

1 A Well, I think I have reviewed all the plans of
2 services that Intercoastal has provided, and I think there has
3 been at least three that I recall, and each seems to be
4 evolving, but I believe that they have changed over time, yes.

5 Q And you agree, also, that Nocatee's plans for the
6 development, at least early on, continuously changed?

7 A No. I would say that the plan of service has been
8 very consistent since our filing. Once the plan was finalized
9 then I think we have been very consistent in our commitments
10 and our plan of service. I don't see it any different than
11 what we have proposed here today.

12 Q And, I'm sorry, Mr. Miller, I confused you. I
13 meant the plan for the development, at least early on
14 continuously changed, not the plan for the plan of service for
15 the utility?

16 A Well, the plan was an iterative process that you and
17 I have talked about previously. I mean, we spent almost a year
18 worth of visioning and data collection to achieve, you know,
19 the environmental goals, set the environmental standards. And
20 it really wasn't until we had gone through that process, and if
21 you want to call that part of the planning process, you can say
22 that was evolving, but it was really part of a data collection
23 process to see what should be incorporated into the plan, what
24 the principles behind the plan, both from a land use and from
25 an environmental prospective, what they should be. So once

1 that was set, then I don't think there has been much deviation
2 since the ADA was filed from that original plan or those
3 principles that we established.

4 Q Mr. Miller, isn't it true that even though you
5 attached the Water and Sewer Regulatory Authority's order as an
6 exhibit to your testimony, you haven't reviewed the findings of
7 that order and you weren't prepared to comment on those
8 findings at the time I took your deposition?

9 A I'm sorry, I'm not -- can you repeat that.

10 Q You attached the order from the authority to your
11 testimony, correct?

12 A Are you talking about the St. Johns County Water and
13 Sewer Authority?

14 Q Correct.

15 A That is correct.

16 Q But at the time I took your deposition, you told me
17 you hadn't reviewed the findings of the order and you weren't
18 prepared to comment on the findings, is that correct?

19 A I think that is correct. I did testify at that
20 hearing, but I don't recall -- as we sit here today, I don't
21 know if I have reviewed that final document or not.

22 Q Okay. Do you agree, Mr. Miller, that right now you
23 think we are looking at probably the end of 2002 as being the
24 date when service will be needed?

25 A Yes. I think fourth quarter 2002 will be when

1 service is needed for Nocatee.

2 Q Mr. Miller, isn't it true that you don't seek to
3 render an opinion on the managerial, operational, or technical
4 ability of Intercoastal?

5 A That is correct. I have not been asked to evaluate
6 nor have I evaluated Intercoastal's ability to manage or to
7 technically perform what is necessary for their utility to
8 serve Nocatee.

9 Q And you don't have an opinion one way or another
10 whether if Intercoastal were able to secure the same kind of
11 commitment from JEA that NUC got if Intercoastal would be able
12 to provide service to the development and meet the
13 development's environmental standards?

14 A If I could before I answer that let me just clarify
15 my last answer.

16 Q Please do.

17 A And that is I have evaluated their technical plan of
18 service to service Nocatee. I have not evaluated their ability
19 to manage utilities. And, I apologize, but could you repeat
20 the second question.

21 Q Yes. You don't have an opinion one way or another
22 whether if Intercoastal were able to secure the types of
23 commitments from JEA that NUC secured whether Intercoastal
24 would be able to provide service to the development and meet
25 the developments environmental standards?

1 We are proceeding with the master planning of the project. So
2 that is in anticipation of needing service in 2002.

3 Q What is the status of the off-site lines to the
4 development?

5 A Well, the off-site lines exist for water and
6 wastewater, as I previously testified. As you can see on this
7 map where the red triangle is there is an existing 20-inch
8 sewer force main and a 24-inch water main that we will be able
9 to connect to just as soon as you are kind enough to award us
10 the franchise, I guess. And on reuse, we are evaluating the
11 best route to access JEA's reuse system which is under
12 construction to come south to serve Nocatee.

13 Q You had previously mentioned that you had given to
14 staff an unexecuted copy of the deed upon which the ground
15 storage tank will be located. If NUC is granted a certificate
16 to serve the Nocatee development, would the utility execute and
17 file with the Commission a deed for the land upon which the
18 ground storage tank will be located within 30 days of any
19 Commission order rendered in the matter?

20 A Yes, they will.

21 MS. CIBULA: That's all the questions staff has.

22 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
5 FPSC Commission Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein stated.

6

7 IT IS FURTHER CERTIFIED that I stenographically
8 reported the said proceedings; that the same has been
9 transcribed under my direct supervision; and that this
10 transcript constitutes a true transcription of my notes of
11 said proceedings.

9

10 I FURTHER CERTIFY that I am not a relative, employee,
11 attorney or counsel of any of the parties, nor am I a
12 relative or employee of any of the parties' attorney or
13 counsel connected with the action, nor am I financially
14 interested in the action.

12

DATED THIS 23RD DAY OF MAY, 2001.

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JANE FAUROT, RPR
FPSC Division of Records & Reporting
Chief, Bureau of Reporting
(850) 413-6732