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CAMERA OPERATOR 199/1644 DATE PROCESSED 8-8-89

1-165pgs
CONT

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint :
of Ken Meek, :

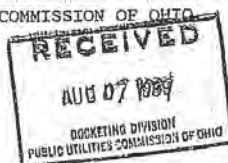
Complainant, :

vs. :

Case No. 85-1891-WW-CSS

Gem Beach Marina, Inc., :

Respondent. :



PROCEEDINGS

Before Honorable Christine Pirik, Attorney Examiner, held at
the offices of the Public Utilities Commission of Ohio, 180
East Broad Street, Columbus, Ohio, on Wednesday, July 26,
1989, commencing at approximately 10:00 o'clock, A.M.

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1
2 APPEARANCES:
3
4

5 Mr. David R. Pheils, Jr.
6 410 Louisiana Avenue
7 Perrysburg, Ohio 43551

8 On behalf of the Complainant.

9 Meyer & Kocher
10 By Messrs. John A. Kocher
11 and Bo Loeffler
12 101-1/2 Madison Street
13 P.O. Box 37
14 Port Clinton, Ohio 43452

15 On behalf of the Respondent.

16 Mr. William L. Wright
17 Assistant Attorney General
18 180 East Broad Street
19 Columbus, Ohio 43266-0573

20 On behalf of the Staff of the Public Utilities
21 Commission of Ohio.
22
23
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Wednesday Morning Session,
July 26, 1989.

EXAMINER PIRIK: The Public Utilities Commission
has assigned for hearing at this time and place Case
No. 85-1891-WW-CSS, that being in the matter of the
Complaint of Ken Meek, Complainant, versus Gem Beach
Marina, Incorporated, Respondent.

My name is Christine Pirik, I am an Attorney
Examiner with the Commission and have been assigned to
hear this case. At this time we will have appearances on
behalf of the parties. For the Complainant?

MR. PHEILS: Yes, Your Honor. David Pheils,
attorney for the Complainant. And Mr. Meek is here also.

EXAMINER PIRIK: Could you please state your
address for the record?

MR. PHEILS: 410 Louisiana Avenue, Perrysburg,
Ohio 43551.

EXAMINER PIRIK: On behalf of the Respondent,
please?

MR. LOEFFLER: On behalf of the Respondent,
Bo Loeffler, Meyer & Kocher, 101-1/2 Madison Street,
Port Clinton, Ohio. And John Kocher as well. We will be
trial counsel during the conduct of the hearing. Also
appearing as an expert witness on behalf of the Respondent

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1 is Dick Riethmiller of Burgess & Niple.

2 EXAMINER PIRIK: Thank you. On behalf of the
3 Staff?

4 MR. WRIGHT: Thank you, Your Honor. On behalf of
5 the Attorney General of Ohio, Anthony J. Celebrezze, Jr.,
6 Robert A. Tongren, Chief of the Public Utilities Section,
7 by William L. Wright, 180 East Broad Street, Columbus,
8 Ohio 43215.

9 EXAMINER PIRIK: It's my understanding that the
10 parties wish to take some time to have a conference prior
11 to the initiation of the actual hearing and taking of
12 opening statements. Would someone like to make a formal
13 request?

14 MR. PHEILS: Yes, Your Honor. The Complainant
15 would at this point indicate that there has been a
16 suggestion by Mr. Wright that we get together and review
17 the summary the Complainant prepared for this hearing to
18 see if there is any way to work out a resolution without
19 necessity for the hearing. My opinion is we will take
20 about 60 minutes and we will ask the Court to continue the
21 proceedings for about 60 minutes to give us an opportunity
22 to do that.

23 EXAMINER PIRIK: Yes. The continuance will be
24 granted and if you will notify me upon your completion of
25 your conference. Thank you.

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(Recess taken.)

EXAMINER PIRIK: Mr. Pheils, would you like to make a statement as to the progress of the conference and Complainant's wishes?

MR. PHEILS: Yes, Your Honor. I'm afraid that the conference accomplished nothing whatsoever. We were unable to arrive at some modification of the existing tariff. While there would be some attempt by the Respondent to install meters on various lines in order to get some actual consumption figures for various classes of users, and since we are unable to do that, we obviously will not have -- not only have no objection, but we will be asking this tribunal to direct the Respondent to in fact install meters not only as I understand they are going to propose what will be in Respondent's Exhibit 2, but also some additional meters for test purposes throughout the service area so that we can at sometime in the future, a year or a year and a half down the road, have better underlying data to work with and determine actual consumption of the various classes of users. Since we don't have any of that at present, there are no meters at all anyplace within the system that I'm aware of, we all have to work with what are observable uses by the various classes.

EXAMINER PIRIK: We will go forward with the

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1 hearing at this ti . We've already had the appearances
2 on behalf of the parties. As far as opening statement
3 goes, I will permit each of the parties' counsel to make
4 an opening statement if they wish. As far as closing
5 statement goes, I will wait until the conclusion of the
6 hearing to determine whether or not we will call for
7 closing statements or have briefs in this matter. If
8 there are briefs in this matter there will be a very
9 limited time frame in which to submit those briefs.

10 At this time, Mr. Pheils, do you have a further
11 opening statement that you would like to make?

12 MR. PHEILS: Yes, very briefly, Your Honor.

13 MR. LOEFFLER: Your Honor, before we proceed with
14 opening statement I would like to make a motion that I do
15 feel is appropriate at this time, and I would like to make
16 a motion to dismiss this particular hearing and the
17 objections filed by the Complainant on this basis. There
18 have not been in the objections a Complaint about service,
19 there has been an objection strictly about the rate design
20 and how the charges were arrived at.

21 It is our understanding that pursuant to 4901,
22 Administrative Rule 4901-1-27, the presiding --
23 specifically Rule C, the presiding Hearing Officer shall
24 permit members of the public to offer sworn or unsworn
25 testimony at the portion or session of the hearing

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1 designated for the taking of public testimony. Inasmuch
2 as there has not been a provision for the taking of public
3 testimony, and it is my understanding that with regard to
4 this section, it is specifically set for members of the
5 public and lay testimony to be given in rate cases in
6 which there are complaints of service, we don't have that
7 here. We are dealing with an area of expertise, we are
8 dealing with rate design.

9 It is our understanding and Respondent's position
10 that because the Complainants do not have an expert, that
11 they will be only offering lay testimony, that they will
12 not be able to introduce any new evidence that will
13 contradict the PUCO Staff's study setting for the rates
14 that are currently in effect as charged by Gem Beach
15 Marina.

16 Therefore, on those grounds, Your Honor, we would
17 move for dismissal because they do not have sufficient
18 evidence and will not have sufficient evidence to go
19 forward in this particular case.

20 EXAMINER PIRIK: Mr. Pheils, would you like to
21 respond?

22 MR. PHEILS: I am not sure what the motion is
23 other than apparently it is a motion that says that a
24 complainant must have expert testimony or they may not
25 proceed with a hearing and objection on setting rates. I

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1 think that the case law is very clear that if in fact the
2 underlying assumptions of the Staff and/or the Respondent
3 in support of the rates, factual assumptions are incorrect
4 that this Commission clearly has power to determine
5 whether or not the proposals by either the Respondent or
6 the Commission's Staff are adequately supported by
7 underlying factual basis, and that is exactly what we are
8 attacking here today.

9 We are not attacking the approach to setting the
10 tariffs. What we are talking about is that the Staff and
11 the Respondent, and Staff relying upon the Respondent's
12 representation as what the facts were, set tariffs that in
13 our position were based upon faulty and false underlying
14 suppositions, factual supposition From that standpoint
15 then the only thing that we are attacking are underlying
16 factual suppositions which do not require any expert
17 testimony. We only require an opportunity to present
18 factual lay witnesses who have observed the usage and can
19 testify as to the usage within the service area of the
20 Respondent as to the relative usage by the classes of
21 customers and then under those circumstances we do not
22 require an expert and ask that we go forward and that the
23 motion be denied.

24 EXAMINER PIRIK: Mr. Wright, would you like to
25 comment?

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1 MR. WRIGHT: Well, briefly, Your Honor. The
2 Staff would tend to support the motion made by the
3 Respondent in this case. In the opinion of the Staff this
4 is a case involving rate design and rate design matters.
5 Technically this is not a case to set rates as Mr. Pheils
6 suggested. That is entirely a separate and different
7 proceeding.

8 Staff would submit that it is inappropriate and
9 impossible to provide testimony on rate design matters by
10 a lay witness. That person would have to be an expert in
11 that area, would have to be qualified as such. That
12 person's testimony would then be subject to the brief
13 filing requirements that are set forth in the Commission's
14 rule. Staff is of the opinion that there would be no
15 compelling evidence presented in this proceeding, nor can
16 there be any compelling evidence presented in this
17 proceeding, which will in any way undermine the present
18 Staff structure which has already been approved and
19 adopted by this Commission.

20 In closing, Staff believes that the present
21 tariffs filed with the Commission are reasonable and fair
22 to all customer classes. Staff is not opposed to an
23 adjustment to those rates if one could be established. As
24 Mr. Pheils pointed out, and I believe as the Company would
25 agree, Staff would encourage and would request that this

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1 Commission order a metering of the present Company's
2 system so we can determine exactly who is consuming what.
3 That data will give us a better handle on the situation
4 and perhaps at some future time some adjustment may be in
5 order. There simply is insufficient information at this
6 time with which to make that determination and we would
7 submit that the present tariffs on file with this
8 Commission should be modified in no way. Thank you.

9 MR. PHELIS: If I could respond briefly.

10 EXAMINER PIRIK: No. I think that under the
11 circumstances I do not have authority as the
12 Attorney Examiner to dismiss this case. That motion needs
13 to be ruled upon by the Commission. I do have, however,
14 authority to make recommendations to the Commission for
15 their consideration as to the dismissal of this case.

16 However, considering the circumstances
17 surrounding this case I think we will go forward with the
18 hearing today and allow the Commission to rule on that at
19 a later time in the appropriate manner. So we will go
20 forward. Any other preliminary matters prior to opening
21 statements?

22 (No response.)

23 EXAMINER PIRIK: Okay. Mr. Phells then, do you
24 have a brief opening statement?

25 MR. PHELIS: Basically my opening statement is

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1 that the issues here are those of a factual basis. In
2 other words, as pretty much acknowledged by counsel for
3 the Staff, they want to get more factual information.
4 They don't say they want to get more expert testimony,
5 they want underlying factual information and that is what
6 we are here to give the Commission today, underlying
7 factual information that the assumptions made by the Staff
8 are incorrect and that if the Staff's expertise were
9 accurate, the proper underlying factual assumptions that
10 the Staff's own outcome would be considerably different
11 and that we are here to offer today, and the evidence will
12 show, we submit, that in fact the usage by the Marina,
13 including both its sales operation, its boat repair
14 operation and its dock rental operation such that it uses
15 approximately 62-1/2 percent of the total consumption of
16 the water used within the service area, and that the
17 seasonal cottages use 9-1/2 percent and the year-round
18 cottages 27.4 percent and that the application of \$31,726
19 we are not attacking, that would be the gross income
20 allowed to Respondent which was arrived at by the Staff,
21 we have no dispute with that. It's only as to the
22 allocation based upon usage, and we submit the evidence
23 will demonstrate that 62-1/2 percent usage is consumed by
24 the Respondent itself and its own commercial operations
25 and that less than 37 percent is consumed by the cottages.

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EXAMINER PIRIK: Thank you, Mr. Loeffler.

MR. LOEFFLER: Yes. Your Honor, in brief our opening statement, Respondent's opening statement, is such that we do concur with the Staff's recommendation to this point and that our expert, Mr. Riethmiller, who we will put on in support of our position today, will support as well the current tariffs that are on file.

EXAMINER PIRIK: Thank you, Mr. Wright.

MR. WRIGHT: The Staff has no opening statement.

EXAMINER PIRIK: Mr. Pheils.

MR. PHEILS: We move for separation of witnesses, Your Honor.

MR. LOEFFLER: We would also move for separation of witnesses, Your Honor.

EXAMINER PIRIK: The motion is granted. Prior to doing that I think that there are a couple exhibits that need to be marked prior to the Complainants initiating their case in chief. Mr. Pheils, with regard to your exhibits, would you like to mark that prior to —

MR. PHEILS: Yes, Your Honor, I would like to mark what is captioned Complainant's Hearing Position as Complainant's Exhibit 1. I have already given a copy to be marked to the court reporter.

EXAMINER PIRIK: That document shall be so marked.

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Complainant's Exhibit No. 1 was marked for the
purpose of identification.

EXAMINER PIRIK: Mr. Loeffler.

MR. LOEFFLER: If I can, Your Honor, is that the
only document that they are going to introduce?

MR. PHEILS: The only one I am introducing now.
I'm assuming that you are going to mark Respondent's
Exhibit 1 as the testimony of Mr. Riethmiller.

MR. LOEFFLER: I will mark it. I have got the
original here, Your Honor. I will have Respondent's
Exhibit 1 to be the testimony of Richard Riethmiller. I
will have Respondent's Exhibit 2 marked, which is the
proposed master meters of Gem Beach Marine. Extra copies
of Respondent's Exhibit 1 and 2 have been given to all
counsel.

EXAMINER PIRIK: The document shall be so marked.

Respondent's Exhibits Nos. 1 and 2 were marked
for the purpose of identification.

MR. LOEFFLER: Thank you.

EXAMINER PIRIK: Go off the record for a second.

(Discussion off the record.)

EXAMINER PIRIK: Mr. Pheils, would you like to

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1 proceed?

2 MR. PHEILS: Thank you, Your Honor. We will call
3 as on cross-examination Respondent's expert witness,
4 Mr. Richard Riethmiller.

5 (Witness sworn.)

6
7 RICHARD W. RIETHMILLER

8 called as a witness on behalf of the Complainant as upon
9 cross-examination, being first duly sworn, testified as
10 follows:

11 CROSS EXAMINATION

12 By Mr. Pheils:

13 Q. Mr. Riethmiller, my name is David Pheils and I
14 don't believe we have met before today, is that correct?

15 A. Just in the room earlier.

16 Q. And would you state your name and address,
17 please, for the record?

18 A. Richard W. Riethmiller, (spelling)
19 R-i-e-t-h-m-i-l-l-e-r.

20 MR. PHEILS: And would the reporter please hand
21 Respondent's Exhibit 1 to him to review?

22 Q. Do you have it?

23 A. Yes.

24 Q. And would you review that? Is that a true and
25 accurate copy of the testimony of yourself which was filed

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1 with the Commission?

2 A. It is.

3 Q. All right. Rather than burden the record, it was
4 already got your employment and background and everything
5 and I am not going to burden the record with that. I've
6 got some specifics as to this and you would turn to
7 Page 4, and particularly Question No. 14. I believe you
8 state there that the water system is small. What do you
9 mean by the water system is small? Small compared to
10 what?

11 A. Compared to most public water systems.

12 Q. All right. And this water system has how many
13 customers? Do you know? Do you have any independent
14 recollection at present or do you have to check?

15 A. I will look at the numbers.

16 Q. Go ahead and look at them then.

17 A. 257 cottages and 450 docks and marina, the yacht
18 club and miniature golf.

19 Q. About 800 customers approximately; would that be
20 fair?

21 A. Approximately.

22 Q. Do you consider that a small utility, is that
23 correct?

24 A. Yes, I do.

25 Q. And did you go around and personally examine each

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1 individual customer location, each individual cottage,
2 each individual dock?

3 A. I did not.

4 Q. Where did you get your information regarding this
5 system?

6 A. I visited the facility on two occasions and just
7 walked around a bit and looked over the facility.

8 Q. When you say the facility then you mean walked
9 down to the inlet area from the lake and pump station?
10 Did you look at that?

11 A. Intake of the water facility?

12 Q. Yes.

13 A. Yes, I did.

14 Q. Did you look at the pump station itself? Did you
15 go inside it?

16 A. Yes.

17 Q. You saw how the pumping was arranged and pumps?

18 A. Yes, sir.

19 Q. This system has no elevated storage, does it?

20 A. It does not.

21 Q. Does it have automatic pressure tanks? Do you
22 know?

23 A. There is one large hydropneumatic tank. I don't
24 know the exact size offhand.

25 Q. One thing you say, the water system is small, the

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1 consumption between customer classes is not large. There
2 is no fire service. What kind of customer classes were
3 you talking about there? Were you talking about the ones
4 that you have broken down at the end between the marina
5 itself, docks, summer and year-round cottages? Are those
6 the classes you were talking about?

7 A. That's correct.

8 Q. How do you know there is no fire service? There
9 are no fire hydrants?

10 A. There are no fire hydrants.

11 Q. You are not saying someone couldn't hook up a
12 hose but no hydrants as such?

13 A. That's correct.

14 Q. These were all based upon your examination of the
15 pump house, walking around the area a little bit and did
16 you actually go into the marina itself and look in all the
17 buildings when you went there?

18 A. I didn't look in each room in each building.

19 Q. Where did you get your figures then as to the
20 number of docks and number of summer cottages, and so
21 forth?

22 A. I accepted those from the previous Staff Reports
23 and in your report.

24 Q. You do continually refer to Harbor Island. Is it
25 your understanding now that that is not correct, that

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18

1 Harbor Island has its own water system?

2 A. That's correct.

3 Q. What you really meant was Harbor Estates, right?

4 A. Right.

5 Q. Now, you say that an additional opinion there on
6 Page 4, you say in my opinion the distribution expenses in
the case could be made essentially on the basis of
consumption. What do you mean by that?

7 A. With no great amount of diversity such as, for
8 instance, large commercial industrial, and without the
9 fire, I don't believe it would be appropriate to do an
10 elaborate cost of service. I don't think it would net
11 much. I think this is a flat-rate community now and one
12 way to establish the rate would be simply on the basis of
13 consumption at the present time.

14 Q. You are aware at present there are absolutely no
15 consumption figures available whatsoever, isn't that
16 right?

17 A. That is right.

18 Q. They don't even have overall gallons in these
19 numbers for a given year, is that correct?

20 A. That's correct.

21 Q. Now, is this usual for a water system not to have
22 any kind of records of consumption?

23 A. As an average utility they would have one, but
24
25

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19

1 this is, as mentioned earlier, a small utility and not
2 unheard of.

3 Q. How many pumps do they have on the system?

4 A. I believe there are three to my recollection.

5 Q. These all pump from a collecting outlet in the
6 lake, is that right?

7 A. Well, there is an intake system that pumps to a
8 sedimentation chamber and then filtered then pumped
9 through the system.

10 Q. And are you familiar with the capacity of the
11 size of the pumps that do this pumping?

12 A. I didn't do a detail study, no.

13 Q. But you could learn just by looking at them,
14 could you not have done that?

15 A. For what purpose? I am sorry.

16 Q. Well, could you have done that? That is my
17 station right now.

18 A. Certainly.

19 Q. There is a separate electrical meter on the pump
20 station, is there not? It's serviced by separate
21 electrical service?

22 A. I am not aware of that.

23 Q. You don't know whether it is or not?

24 A. I do not know.

25 Q. Would you assume for purposes of my next question

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1 that there is in fact a separate electrical service for
2 that pump station and that you could in fact determine
3 pumping capacity of those pumps and the electrical rating
4 of those motors on those pumps, could you not? You could
5 by going back over the electrical charges, the usage, you
6 could determine in fact how many gallons that system has
7 pumped over the period of time?

8 A. I could not.

9 Q. Why could you not do that?

10 A. Basically they are very small pumps and the
11 efficiency on a small pump can be anywhere. The pumping
12 conditions are higher when the tank is full, lower when
13 empty. If you attempted to use amp draws, or amp hour
14 draw, and compute the figures, in my opinion it would be
15 worthless. For a very large pumping system it would be
16 somewhat indicative, but not with this size.

17 Q. Okay. You talk about, at the bottom of Page 4,
18 examining the marina. Could you tell us what you did that
19 you described as examining the marina?

20 A. I am sorry. Where are we?

21 Q. The bottom of Page 4. Would you tell me what you
22 did to, as you call it, examine the marina?

23 A. Discussed the number of employees there on my
24 previous visit that I mentioned.

25 Q. You discussed the number of employees with who?

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1 A. With the owners.

2 Q. Who is that?

3 A. The owner's wife, Jack's wife. I am sorry.

4 Q. Jack Grummel's wife?

5 A. Yes.

6 Q. What did she tell you were the maximum number of
7 employees that they had during the season?

8 A. Well, I mentioned to her over the phone that I
9 was attempting to put together an average usage pattern
10 for the marina and that I was wondering about how many
11 employees there would be for a certain period of time. Of
12 course, the number of employees varies throughout the
13 year. We established over the phone that if I were
14 assuming about a four-and-a-half-month period that about
15 10, might have more in the summer, but fewer, lot fewer in
16 the winter, so that is where it was derived.

17 Q. Are you telling this Commission and me that a
18 four-and-a-half-month period would be encompassed by
19 summer and winter?

20 A. No. What I said was we were taking the average
21 high use period of where there would be a number of
22 employees. There would be fewer employees for a much
23 longer period of time and more employees through the very
24 highest period.

25 Q. You were aware, were you not, that this marina is

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1 open for business during most of the entire year as far as
2 the boat sales and the equipment sales and the boat repair
3 work is concerned?

4 A. I understand that most of the year, yes.

5 Q. You understand now. Did you when you made this
6 statement?

7 A. Yes, I did.

8 Q. Why didn't you include usage for the remaining
9 period of the year other than the four-and-a-half-months
10 which you talk about as the season?

11 A. Again I felt that using a four-and-a-half-month
12 period was easier for me to estimate. If we used the
13 nine-month season then we might have been at three as the
14 highest or something.

15 Q. Did you look at any other Respondent's employee
16 records to determine whether or not in fact their average
17 number of employees was 10?

18 A. I did not.

19 Q. So you took Mr. Jack Grummel's wife's word for
20 it, is that right?

21 A. Yes.

22 Q. Did you take her word for absolutely all the
23 information that you used?

24 A. No. That was the only thing.

25 Q. Now, I assume things like 30 gallons to take a

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1 shower and 7 gallons to flush a toilet, those are from
2 some standard reference manual.

3 A. These are averages that we use, yes.

4 Q. Okay. And you also estimate an average of two
5 and a half persons per boat when the boat is being used,
6 is that right?

7 A. Yes.

8 Q. Where did you get that figure?

9 A. That was my opinion.

10 Q. Based on what?

11 A. Based on being a boater.

12 Q. Being a boater, and what kind of boater are you?
13 What kind of boat do you own?

14 A. Skiff craft.

15 Q. About a 22 --

16 A. Twenty-two.

17 Q. And you dock that at Gem Beach Marina?

18 A. No, I do not.

19 Q. Where do you dock it?

20 A. Herls Harbor.

21 Q. You don't pretend to be any more of an expert as
22 to boat usage than any other boat owner, do you?

23 A. No.

24 Q. Your expertise here is supposedly as a civil
25 engineer, isn't that correct?

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1 A. That's correct.

2 Q. Okay. And as a civil engineer you have two
3 sources of information -- well, three actually. You have
4 your reference manuals you talked about for average uses
5 for certain functions, right?

6 A. That's correct.

7 Q. You have your own observations where you go out
8 separately and examine something and measure it or
9 whatever, and then you have information given to you by
10 other people who purportedly know what they are talking
11 about, isn't that right?

12 A. Yes.

13 Q. So those are three sources of information that
14 you used to come up with your overall opinion in this
15 case, is that right?

16 A. And my experience as a boater, yes.

17 Q. Well, okay. And you said that you estimate the
18 average season is three and a half months and most average
19 boaters visit their boat every other weekend during that
20 period. Is that what you do with your boat?

21 A. No. I don't make it quite that often myself.

22 Q. And I assume as a relatively successful civil
23 engineer you work 50 weeks a year approximately.

24 A. At least.

25 Q. At least. And there is a lot of weekends you

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1 have to work also when you have to turn a job out;
2 wouldn't that be a fair statement?

3 A. Some.

4 Q. So that you don't really consider yourself then
5 to be an average boater; would that be fair?

6 A. I think perhaps I am not. I use it a little
7 less.

8 Q. How many times were you out to the Gem Beach
9 Marina area?

10 A. I've gone down there for years.

11 Q. All right. When you did your examination, how
12 many times did you go into the Gem Beach Marina and
13 Gem Beach subdivision area to look at the system and look
14 at what was going on there and familiarize yourself with
15 the area?

16 MR. LOEFFLER: Objection. He already answered.
17 He said that he was up there two different occasions and
18 viewed the facilities, intake facilities, pump house.
19 That was covered.

20 EXAMINER PIRIK: Objection overruled. You can
21 clarify.

22 A. On two occasions.

23 Q. All right. And the first occasion that you were
24 up there then did you actually do a walk-around to look at
25 these things on the first occasion?

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1 A. Yes.
2 Q. What did you do on the second occasion up there?
3 A. Looked at the various ways the piping was going
4 to the docks, so forth.
5 Q. How long were you up there the first time?
6 A. About two hours.
7 Q. How long were you there the second time?
8 A. About the same I think.
9 Q. So you don't pretend to have spent any time up
10 there doing a survey and actually determining how many
11 boaters are there on a given weekend, what percentage of
12 the time they are there, how many times they wash their
13 boats or anything else, is that right?
14 A. No, sir.
15 Q. And then you say you were on vacation the week of
16 June 26, 1989, talk about the average week day, you were
17 talking about where you dock your boat, is that right?
18 A. That's correct.
19 Q. Now, so that your assumption as to the number of
20 showers taken, the number of weekends spent by the boater
21 and that, and the total gallons that were used by him per
22 year are based upon these estimates you have made as to
23 the number of weekends, how many people and so forth, is
24 that right?
25 A. That's correct.

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1 Q. And if those underlying figures are incorrect,
2 for example, if there were more weekends spent, more days
3 spend then we would have to adjust your opinion here for
4 that additional usage, isn't that correct?

5 A. Yes. I don't think we are going to know that
6 unless we measure the water.

7 Q. Okay. You do talk about, on the bottom of
8 Page 5, I am sorry, when you were up there -- the two
9 times you were up there. Were they during the week or on
10 the weekend?

11 A. One was during the week, one was on the weekend.

12 Q. Which was which?

13 A. The first was during the week.

14 Q. Did you go around to all of the 400 docks up
15 there and try to determine how many people were on the
16 boats during that week day that you were up there?

17 A. I did not.

18 Q. Did you do that on the weekend when you were
19 there?

20 A. I did not.

21 Q. Would you be surprised at all if I were to tell
22 you that during the last two weeks that there would be an
23 average of 55 automobiles on the boat docks each day
24 during the week, not on the weekend, but during the week?

25 A. I would be surprised.

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1 Q. So that your assumption is considerably less than
2 that?

3 A. Well, let's see.

4 Q. You say 1 in 20, and when we talk about 400 docks
5 at Gem Beach, it would be a maximum of 20, right?

6 A. Twenty.

7 Q. Now, you also talk about water usage for the
8 boats at the dock. It's pretty typical when a boat pulls
9 up to the gas dock and tops off the tanks, also to top off
10 the water tank, fill up their holding tank?

11 A. I don't think that is normal.

12 Q. You don't think that is normal?

13 A. No.

14 Q. Where do most of the boaters top off their
15 holding tanks at?

16 A. Well, from my own boat I don't top off the water
17 tank like I top off the gas tank.

18 Q. I am sorry. It's your testimony that at least
19 you make sure the tanks are full before you go out with
20 the boat?

21 A. I never do that. I don't know anybody that does
22 that.

23 Q. Okay.

24 A. 's not life threatening to be out of water on
25 the w c in the lake as it is to be out of gas. That

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1 is a problem.

2 Q. Okay. Now, when the gas tanks are filled on the
3 boats, generally there is some spillover, is there not, of
4 the gas?

5 A. Spillover?

6 Q. Yes.

7 MR. LOEFFLER: Your Honor, I have to object to
8 this line of questioning. What does this have to do with
9 water and sewer?

10 MR. PHEILS: Wait and I will get to it, okay?

11 EXAMINER PIRIK: I will overrule the objection.

12 Q. That is common?

13 A. Sometimes.

14 Q. All right. And isn't it common also then that
15 the gas pump attendant takes a water hose and washes off
16 that area of the boat where the gas tank is in order to
17 wash the gas off the boat, isn't it?

18 A. Sometimes will take a bucket and sometimes they
19 will have a hose.

20 Q. Now, you didn't consider the fact that they would
21 fill their holding tank in here because that was minimal
22 usage, is that right?

23 A. I think it's so incredibly small compared to what
24 we are looking at here that I didn't even make an
25 attempt.

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1 Q. Let's go to Page 6 as to the water consumed by
2 boaters at the dock.

3 A. Which page? I am sorry.

4 Q. That is Page 6 at the top. Now, when you are out
5 there during the week, when you were there on the weekend,
6 did you have an opportunity at all to look at the boats in
7 the dock areas at all, just glance as you went by? Didn't
8 you have an opportunity to look in that area?

9 A. In what area?

10 Q. Where the docks are, boat docks are.

11 A. Yes.

12 Q. And didn't you in fact see people with cardtables
13 set up on the dockside actually making meals and eating at
14 their docks?

15 A. I did not.

16 Q. Never saw any of that. Then even that would be
17 minimal water usage in your opinion, is that right?

18 A. For which?

19 Q. For cooking and for consumption.

20 A. I believe that, yes.

21 Q. So that the only real thing you took into account
22 for usage at the docks themselves was the boaters would
23 wash their boats once a day when they were there, is that
24 right?

25 A. Once a weekend.

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1 Q. Okay. So you are saying that the boater would
2 only wash his boat one time when he came down there, is
3 that right?

4 A. On any one weekend, wash it once, yes.

5 Q. Now, is it not common for bird droppings to get
6 on the boat that has sat out there all week?

7 A. Sometimes.

8 Q. Don't most boaters when they get there on the
9 weekend, Friday night or Saturday morning, don't they take
10 hoses and wash their boats off?

11 A. Each weekend, yes.

12 Q. Don't they normally get back after using the
13 boats, wash down the decks where they get dirty from shoes
14 before they leave on the weekend?

15 A. I don't think so. I wouldn't agree with that.

16 Q. You don't know whether the people at Gem Beach
17 would because you didn't watch to determine whether that
18 happened, is that right?

19 A. That's correct.

20 Q. Now, you also calculated it took 20 minutes to
21 wash the boats down. That was your assumption?

22 A. Yes.

23 Q. Where did you arrive at that 20-minute
24 assumption?

25 A. My estimate.

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1 Q. That is what time you use to wash your boat
2 down?

3 A. When I do it.

4 Q. When you do it?

5 A. Something like that.

6 Q. You didn't sit there and watch any particular
7 boater at Gem Beach wash their boat and time them?

8 A. I do not.

9 Q. All right. And you figure the water was used for
10 half of the time washing his boat, is that right?

11 A. Correct.

12 Q. That is because it has a nozzle on it and scrubs
13 a little bit and rinses it and scrubs, something like
14 that?

15 A. That's correct.

16 Q. So at least your opinion that whatever that
17 amount of time they take to clean their boats only about
18 half the time would be using water.

19 A. I think at the most, yes.

20 Q. So that in fact if boaters washed their boats
21 twice each weekend, in other words, once for each day,
22 then if we even use your 20-minute water usage figure we
23 would have to double that at least, isn't that right?

24 A. If you assume they washed it each day of the
25 weekend, yes.

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1 Q. And if they spent an additional average of 10
2 days there for holidays and vacation time and wash their
3 boat every one of those days that would make a difference
4 also in the water usage, would it not?

5 A. If you make that assumption.

6 Q. Well, again let us say that we don't make that
7 assumption but there is actual evidence that demonstrates
8 that is what they do. Then you would have to use that
9 evidence as a basis for calculating your assumption, would
10 you not?

11 A. If there was evidence of what?

12 Q. That the boaters actually wash their boats every
13 day when they are there, use them every day.

14 A. If I found out that all boaters wash their boats
15 every day when they are there at the dock, I would have to
16 agree with that.

17 Q. And you have a 26-foot Skiff craft, is that
18 right?

19 A. Correct.

20 Q. That is probably a boat that costs somewhere
21 around \$30,000 or so?

22 A. New perhaps. Not what I paid.

23 Q. Okay. And out there at Gem Beach that would be
24 an average size, smaller than average of the boats out
25 there?

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1 A. I think a 25-foot boat would be just about in the
2 middle.

3 Q. Okay. And there are other boats that are more
4 expensive than the Skiff craft?

5 A. Oh, certainly.

6 Q. And it would be fair to say, would it not, that
7 the boats at Gem Beach Marina average, at least new cost,
8 there would be an average of anywhere from around 25 to
9 \$30,000 and as high as \$100,000 or more?

10 A. I suppose. I don't know.

11 Q. Now, so you assume that someone has a 40, \$50,000
12 investment in the boat would spend less time on that boat
13 than would someone who invested money in a cottage which
14 they have the same amount of money invested?

15 A. Yes.

16 Q. I am not a boater, okay, but boaters are very
17 proud of their boats and they take care of their
18 investment, they spend a great deal of time working on
19 them?

20 A. I think they all start out that way and I think
21 it fades as years go on and as the summer goes on.

22 Q. Okay. Let's go to Page 7, your answer starting
23 at the top of the page regarding the use at the cottages.
24 Are you familiar with the Uniform Standards for Sewerage
25 Improvements published by the City of Cleveland?

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1 A. No, I am not.

2 Q. Are you familiar with their figures of 50 gallons
3 per person for a vacation cottage rather than 60 or 70?

4 A. No, I am not.

5 MR. PHEILS: I have only got one copy. I suspect
6 we can make some, but I would like to have that marked and
7 have him identify that.

8 MR. LOEFFLER: I would like to look at it too.

9 MR. PHEILS: I will ask questions on other issues
10 so we don't waste time.

11 EXAMINER PIRIK: I would like to look at this too
12 before you ask any questions so just let's take a few
13 minutes off the record.

14 (Discussion off the record.)

15 EXAMINER PIRIK: Back on the record. And you can
16 review that when we take our break.

17 Q. (By Mr. Pheils) You say that the average usage
18 for a residential community is 80 to 110 gallons per day.

19 A. Yes, that is a reasonable range.

20 Q. But that is on a full-time residential-type
21 usage, isn't that right?

22 A. Yes.

23 Q. Those people who not only drink water but use it
24 to cook with, take showers and/or baths and also wash
25 automobiles, isn't that right?

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- 1 A. Correct.
- 2 Q. And they water lawns?
- 3 A. Yes, depending where you are in the range, the
- 4 amount.
- 5 Q. And they use water sometimes to hose down
- 6 sidewalks, driveways, things like that?
- 7 A. Yes.
- 8 Q. And this is all consumption that is not normally
- 9 used at a cottage, isn't that right?
- 10 A. I'm not so sure of that.
- 11 Q. Are you familiar with the difference between
- 12 sewage flow gallons per person or occupant per residential
- 13 as opposed to water consumption usage?
- 14 A. Somewhat. There is a tremendous range in sewer
- 15 flows because of infiltration and exfiltration.
- 16 Q. But generally --
- 17 A. Can't directly compare the two.
- 18 Q. Generally your sewer flows are somewhat less than
- 19 water usage because of the amount of water that is used
- 20 and does not find its way into the drain.
- 21 A. Not necessarily. Oftentimes you have greater
- 22 sewage flow than water because of water leaking into the
- 23 sewers.
- 24 Q. All right. This would be primarily an older
- 25 system, would it not, not a fairly modern system?

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1 A. With a brand new system I would expect very
2 little of that, but it could happen. Any system has
3 infiltration.

4 Q. But any water that would be used for those
5 purposes, talking about washing a car, sprinkling the
6 lawn, things like that, would not find its way into the
7 sewage system.

8 A. That's correct.

9 Q. Then there are other things we do in a normal
10 house that might not be in the cottage, such as
11 dishwashers are used quite a bit, are they not?

12 A. Yes.

13 Q. And also washers and dryers in regular homes,
14 they use a lot of water also, do they not?

15 A. That's correct.

16 Q. So if these cottages do not have those kinds of
17 uses then that would be a good basis for determining the
18 cottage would use less water than a residential property,
19 isn't that right?

20 A. Well, if a dishwasher uses slightly more than
21 washing by hand in the sink. It depends upon how much you
22 rinse it, that sort of thing, and so there could be
23 somewhat less, that's correct.

24 Q. I would also assume that you are familiar that
25 with people in cottages they are not always cooking the

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1 kind of meals or using the kind of dishes that we use in
2 the everyday house and -- in other words, they use paper
3 plates a lot of times, isn't that correct?

4 A. I really wouldn't know.

5 Q. You don't know. Okay. Now, the yacht club in
6 here, and we've got a problem, in fact you were confused,
7 you were saying Harbor Island as opposed to Harbor
8 Estates, were you not, when talking about the yacht club
9 over there?

10 A. The yacht club is in Nor-Easter. I was
11 confused.

12 Q. With Harbor Island?

13 A. That's correct.

14 Q. You are aware then that the yacht club in
15 Gem Beach has showers so the members can use them, are you
16 aware of that?

17 A. Certainly.

18 Q. Let me see if I can summarize a little bit. Your
19 summary of estimated water consumption again is based upon
20 the actual assumption you made throughout this that we
21 already talked about as to how much time boaters spent at
22 their docks during a particular season, how much time the
23 cottage owners spend at their cottages and how many people
24 are there, and so forth, isn't that right?

25 A. I think I spell it out in the testimony.

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1 Q. Okay. So that if any of those underlying
2 assumptions are incorrect when you figured the usage you
3 would be, I presume, willing to change your opinion based
4 upon those changed underlying facts, isn't that right?

5 A. If we measured the flow and it turned out that
6 these were not correct, I would certainly be willing to
7 change.

8 Q. Well, if there was testimony or evidence produced
9 that, for example, that we already talked about, that
10 boaters washed their boats at Gem Beach Marina each time
11 they use them, at least once a day, either when they first
12 got there or when they left at the end of the weekend, you
13 would be willing to change your opinion as to that, would
14 you not?

15 A. I am not sure how we can sample all of them. I
16 don't know how to get to that point, I guess, without
17 measuring.

18 Q. One way to get to that is asking the people who
19 actually observed that going on, people who have personal
20 knowledge of that going on.

21 A. Some type of study.

22 Q. You would have to make some type of study?

23 A. Yes.

24 MR. PHEILS: Okay. I have no other questions.

25 EXAMINER PIRIK: Do you wish to pursue the

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1 document that you mentioned earlier?

2 MR. PHEILS: Yes. I am sorry. You want to take
3 a break?

4 EXAMINER PIRIK: Go off the record.
5 (Discussion off the record.)

6 ---
7 At 12:00 o'clock, noon, a recess was taken until
8 approximately 1:00 o'clock, P.M.
9 ---
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Wednesday Afternoon Session,
July 26, 1989.

EXAMINER PIRIK: Mr. Wright.

MR. WRIGHT: Yes. I have one quick matter. For purposes of completeness of the record in this case, and frankly because I didn't know there were going to be a number of references made to the Staff Report on both sides of the table, the Staff would propose to offer the Staff Report as evidence in the case. And in so doing we certainly agree to make the author of that report, Mr. Dewhurst, available for examination by all the parties at some appropriate point during the course of these proceedings.

Consistent with that I would at this time like to go ahead and have that marked, if I may. I will refer to it again, but I would like to go ahead and mark it at this point in time as Staff Exhibit No. 1. All parties would have a copy. If they need one I can get an extra one. I do have some extra copies if anyone would like one.

EXAMINER PIRIK: The document shall be marked as Staff Exhibit No. 1 entitled "Prepared by James G. Dewhurst, Energy and Water Analyst."

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1 Staff Exhibit No. 1 was marked for the purpose of
2 identification.

3
4 MR. WRIGHT: Would the Examiner also like a
5 copy? Do you have a copy?

6 EXAMINER PIRIK: I have a copy.

7 MR. WRIGHT: Thank you.

8 EXAMINER PIRIK: Mr. Phails.

9 MR. PHEILS: Thank you, Your Honor.

10 MR. WRIGHT: One more thing. I would like the
11 record to reflect that before Mr. Phails begins
12 questioning on this document captioned Uniform Standards
13 for Sewerage Improvements, that what Mr. Phails has
14 provided counsel is an excerpt of that document, certain
15 excerpted pages and it does not represent the entire
16 document.

17 MR. PHEILS: We understand that. It is the
18 entire Table of Contents but only the single page which is
19 numbered 3-15 which has to do with vacation cottages
20 because the other sections do not apply. If someone would
21 like to submit the other copies of the other pages, I have
22 no objection, but this is what was really relevant to the
23 issues in this case.

24 EXAMINER PIRIK: I would just like to note for
25 the record again that the document entitled Uniform

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1 Standards for Sewerage Improvements has been marked
2 Complainant's Exhibit 2.

3
4
5 Complainant's Exhibit No. 2 was marked for the
6 purpose of identification.

7
8 RICHARD RIETHMILLER
9 called as a witness by the Complainant as upon
10 cross-examination, being previously duly sworn, testified
11 further as follows:

12 FURTHER CROSS EXAMINATION

13 By Mr. Pheils:

14 Q. Mr. Riethmiller, do you have Complainant's
15 Exhibit 2 there?

16 A. Yes.

17 Q. And are you familiar with this document published
18 by the Cuyahoga County Sanitary Department?

19 A. I am not.

20 Q. Have you ever done any work of a sewage or water
21 system basis over in the Cuyahoga County area?

22 A. I personally have not.

23 Q. If you would refer to Page 3-15 which is the last
24 page of the exhibit. Down at the bottom of this page
25 there is a listing of estimated sewage flow, gallons per
day for various types of units. It has vacation cottages

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1 and it has listed 50 gallons per day per person.

2 Now, based on your discussions before in which
3 you indicated that you felt that, I believe, sewage flow
4 would be roughly comparable, in some cases even greater
5 than the water sewage at a unit, would it be fair to say
6 th n that for a vacation cottage at least over in the
7 Cleveland area that a 50 gallon per day per person is a
8 reasonable estimate of the usage per person?

9 A. Well, I have no idea what went into these
10 numbers. As I said, sewage flows are quite different than
11 water and it isn't necessarily true that they are higher.
12 They are higher or lower depending on the time of the
13 year. In general I would guess for the entire -- not
14 guess, but estimate for the average community it would be,
15 for the full year, it would be slightly higher. In the
16 summertime generally it's a little lower because
17 groundwater levels subside. And the main reason for the
18 difference is also the fact that people are not putting
19 all the water back in the sewer washing cars or whatever,
20 but also because of infiltration. Infiltration is much
21 more apparent than anything else apparently.

22 Q. Thank you. Just a couple other quick questions
23 then. I believe you have Complainant's Exhibit 1, the
24 document captioned Complainant Hearing Position.

25 A. Yes.

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1 Q. You have had an opportunity to review that, have
2 you not?

3 A. Yes.

4 Q. I would ask you, isn't it true that if in fact
5 the facts as set forth in Section III of that Hearing
6 Position are assumed to be true that the consumption
7 figures in the next section, which is also Roman numeral
8 III, and should be Roman numeral IV, I am sorry to say,
9 where it lists the gallons per year, would be accurate,
10 would it not?

11 I am asking for your opinion whether or not if
12 the facts listed under Section III on Page 2 and top of
13 Page 2, if they are assumed to be correct and accurate
14 that the gallons per year in the following table for
15 consumption would also be accurate.

16 A. I disagree with the numbers that we are looking
17 at here under No. III. I guess I am not sure I can answer
18 the question.

19 Q. Let's go to the bottom of Page 2 where it says
20 Marina and says Owner's Showers and Toilets. If there is
21 54 days per dock used per year and 2-1/2 persons average
22 per dock and they each use 60 gallons, which is a
23 60-gallon figure you use, isn't that right?

24 A. For the cottage.

25 Q. For the boaters.

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1 A. For the boaters.

2 MR. LOEFFLER: Your Honor, there has been no
3 factual basis established for where these figures were
4 derived and I believe it's up to Mr. Pheils to put on his
5 expert as to how these figures were derived.

6 Mr. Riethmiller has just been given this document earlier
7 this morning and he certainly is not the author of this
8 and I just think it's inappropriate to cross at this
9 point. The document speaks for itself too.

10 MR. PHEILS: This is a hypothetical. I am asking
11 the witness whether or not he has any basis to disagree.

12 MR. LOEFFLER: You are asking in terms of a
13 hypothetical and also, you know, if you are asking in
14 terms of a hypothetical, your answer is there, it's on the
15 paper, it's not a hypothetical question.

16 EXAMINER PIRIK: At this point I am going to have
17 to sustain the objection with regard to any
18 cross-examination on Complainant's Exhibit 1. It appears
19 to have been prepared by someone and you would need the
20 person who authored the document to present as an exhibit
21 or it would be objectionable. So at this point since
22 there hasn't been a witness to sponsor this exhibit, I
23 would think this would have to wait until
24 cross-examination and after Mr. Loeffler has presented his
25 direct case, that is if the author of the document is

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1 present to testify to it.

2 MR. PHEILS: All right. Let me frame it
3 differently then.

4 Q. (By Mr. Pheils) Just look at Page 2 for your own
5 reference purposes.

6 MR. LOEFFLER: I object to any questions at this
7 point along those lines.

8 EXAMINER PIRIK: That is in fact the objection I
9 sustained. Any examination at this point with regard to
10 Complainant's Exhibit 1 is objectionable and I will
11 sustain the objection at this point since it has not been
12 properly admitted into the record.

13 Q. (By Mr. Pheils) When you look at Page 11 of
14 Respondent's Exhibit 1 then, which is your summary of
15 consumption gallons per year?

16 A. Yes.

17 Q. Now, if in fact or rather than assuming that
18 there are 400 showers the week long at the marina 600
19 gallons each, and there were 400 weekend showers at 400
20 docks at 2400 gallons for the weekend, instead we assume
21 that there were 54 days used total by the dockers per
22 dock; that there were 2-1/2 persons in each boat for those
23 days, and each one used 60 gallons each, would not 450
24 docks then result in a usage of consumption of 3,654,000
25 rather than 1,240,000 as you have got here?

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1 MR. LOEFFLER: I am going to object to that
2 question. He is trying to subvert the objection that was
3 sustained, plus I think it's a compound question. I'm not
4 even sure if our expert understands what he is asking.

5 MR. PHEILS: Why don't you let the expert say?

6 MR. LOEFFLER: I do think the question is
7 inappropriate because this is an attempt by counsel to
8 subvert the Court's previous objection.

9 EXAMINER PIRIK: Objection sustained.

10 Q. (By Mr. Pheils) If there was any change in your
11 underlying assumptions on the shower usage at the marina
12 then that would change the consumption gallons per year,
13 would it not?

14 A. Obviously if you change either one of the two
15 numbers you are multiplying together you are going to get
16 a different figure on the other side.

17 Q. And if in fact you rather than estimating that
18 the boaters when they are on the average of every other
19 weekend for the period of three and a half months, now you
20 estimated that they were there three-quarters of the
21 weekends during 30 weeks plus an additional 10 days of
22 vacation and holiday, that would increase the consumption
23 per year that you have got calculated, would it not?

24 A. Yes. If you change both of them you would change
25 the other numbers, yes, that's correct.

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1 Q. Now, it's true for all your calculations if you
2 change the underlying assumptions then the amounts would
3 change.

4 A. That's correct.

5 Q. And we are talking about underlying assumptions
6 here, not talking about different gallons used for a
7 shower, anything like that, only talking about the times
8 that they were there, what the length of the season is,
9 what percentage of the season they are there, isn't that
10 right?

11 A. You would have to go through on a one-by-one
12 basis. I am not sure.

13 MR. PHEILS: Thank you. I have no other
14 questions.

15 EXAMINER PIRIK: At this time I think it would be
16 appropriate to move on with Complainant's case and reserve
17 this witness for Respondent's case. However, if there was
18 a feeling or discussion on behalf of either the Staff or
19 the Respondent as to the preservation of your motion to
20 dismiss based upon the case presented by the Complainant,
21 then you have specific questions with regard to this
22 document as on cross that was just presented by
23 Complainant's attorney, I would hear those arguments at
24 this time.

25 MR. LOEFFLER: There is no objection.

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1 MR. WRIGHT: I am sorry, Your Honor. I am not
2 sure I followed that.

3 EXAMINER PIRIK: I am saying that since this
4 witness was presented as part of Complainant's case, the
5 motion to dismiss was based upon the fact that the
6 Complainant's case could not substantiate the rationale of
7 their Complaint, if you felt that it would better preserve
8 your motion to dismiss at this point, then I would
9 entertain arguments for you to go forward and cross and if
10 not, then we will withhold direct and cross by both the
11 Staff and the Complainant until the Respondent's case.

12 MR. WRIGHT: The Staff would certainly agree with
13 that, Your Honor.

14 EXAMINER PIRIK: Thank you.

15 MR. LOEFFLER: I would ask, does Your Honor
16 request that Mr. Riethmiller wait outside until we call
17 him as direct or is he allowed to sit in the room whi-
18 the Complainant puts on their case?

19 EXAMINER PIRIK: Let's go off the record for a
20 second.

21 (Discussion off the record.)

22 EXAMINER PIRIK: Back on the record. With regard
23 to Complainant's Exhibit No. 2, Mr. Pheils, would you like
24 to make a motion?

25 MR. PHEILS: I will move that Complainant's

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