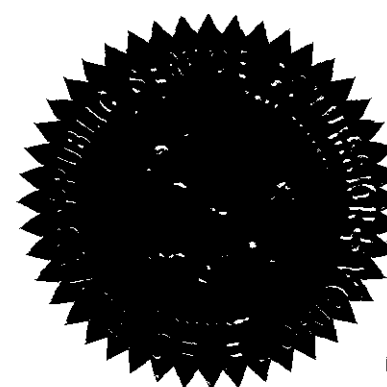


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 080121-WS

In the Matter of:

APPLICATION FOR INCREASE IN WATER AND
WASTEWATER RATES IN ALACHUA, BREVARD,
DESOTO, HIGHLANDS, LAKE, LEE, MARION,
ORANGE, PALM BEACH, PASCO, POLK, PUTNAM,
SEMINOLE, SUMTER, VOLUSIA, AND WASHINGTON
COUNTIES BY AQUA UTILITIES FLORIDA, INC.



VOLUME 6

Pages 772 through 853

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A CONVENIENCE COPY ONLY AND ARE NOT
THE OFFICIAL TRANSCRIPT OF THE HEARING,
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER KATRINA J. McMURRIAN
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP

DATE: Wednesday, December 10, 2008

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

TIME: Commenced at 9:37 a.m.

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

PARTICIPATING: (As heretofore noted.)

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I N D E X

WITNESSES

NAME:

PAGE NO.

KIMBERLY DISMUKES

Further Cross Examination by Ms. Bradley	775
Cross Examination by Mr. May	789
Cross Examination by Mr. Sayler	828
Redirect Examination by Mr. Beck	843
Recross Examination by Mr. May	848

CERTIFICATE OF REPORTER

853

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EXHIBITS

NUMBER:	ID.	ADMTD.
86		849
194 Rate Case Expense Disallowance	780	849
195 (Late-Filed) Aqua Response to Schedule	791	
196 Revised Schedule Variances	805	850
197 (Late-Filed) Highest and Lowest Bad Debt for Customers of Water and Wastewater Companies	842	

P R O C E E D I N G S

(Transcript follows in sequence from Volume 5.)

CHAIRMAN CARTER: Good morning.

COMMISSIONER EDGAR: Good morning.

CHAIRMAN CARTER: I'd like to call this hearing to order. And we'll pick up where we left off on yesterday in about five seconds.

MS. BRADLEY: Make it three.

CHAIRMAN CARTER: No problem. Good morning, Ms. Bradley. How are you doing?

MS. BRADLEY: Thank you, sir.

CHAIRMAN CARTER: Great. You're recognized. Hit your microphone there.

MS. BRADLEY: I keep forgetting that.

FURTHER CROSS EXAMINATION

BY MS. BRADLEY:

Q Ms. Dismukes, when we stopped yesterday, we were looking at, if I can find my page number again, Page 137, and at the time this was done you had not, I don't think Mr. Beck had gotten all the information from the company, and you said something about you couldn't give a recommendation on this at that time because of the lack of information you had. And I think as we were ending yesterday you indicated you had gotten that information and had developed an opinion.

A Yes.

1 Q And can you share that with us?

2 A Yes. I've examined the legal bills, the consultants'
3 bills and in-house charges from Aqua Services associated with
4 rate case expense.

5 I am recommending that the Commission disallow rate
6 case expense associated with billings from the Rutledge, Ecenia
7 Law Firm that were related to the last rate case. There's
8 \$40,000 worth of expenses associated with the 2006 rate case
9 that were included in the legal expenses. I'm also
10 recommending that legal expenses associated with the refund
11 reports associated with the last rate case be disallowed.

12 I'm recommending that expenses associated with the
13 townhall meetings be disallowed. I'm also recommending that
14 legal expenses associated with Mr. Rendell's -- the lawyers
15 spent a lot of time examining the ethical issues associated
16 with Mr. Rendell's employment, and I'm recommending that those
17 expenses be disallowed.

18 I'm recommending that the law firm, Holland &
19 Knight's expenses associated with Lake Suzy matters be
20 disallowed. They spent approximately \$8,000, \$9,000 on Lake
21 Suzy issues associated with the fact -- as I understand it from
22 reading the legal bills, that particular system was owned by a
23 Texas company and there were some concerns apparently about how
24 that particular system could be a part of this rate case. And
25 if you look at that legal bill, it's not even associated with

1 the rate case. It's an entirely different bill. It has a
2 different in re in terms of what they're billing for.

3 In addition, on that particular bill, on those
4 particular bills Mr. May charged, I believe it was \$460 an
5 hour; whereas, in the rate case he's charging \$365.

6 I'm also recommending that legal expenses associated
7 with certain discovery matters be disallowed. The company at
8 some point during the process changed their protocol in terms
9 of responding to OPC discovery. And rather than providing us
10 with information electronically, they kept the information at
11 Holland & Knight and required that OPC come and examine those
12 documents. In order for OPC to do that, the company had to
13 print the documents rather than provide that information
14 electronically, and I don't believe it's appropriate that the
15 ratepayers should pay for that added expense.

16 In addition, on the legal bills for Holland & Knight
17 there were charges associated with the return on equity
18 leverage proceeding. At one point in time it appears from
19 reading the legal bills that they were thinking about
20 intervening in that docket. They did not intervene in that
21 docket, so I'm recommending that those expenses be disallowed.
22 They're not associated with this rate case.

23 I'm also recommending that expenses from the law firm
24 be disallowed associated with the time to respond to the staff
25 deficiencies. I'm also recommending that expenses be

1 disallowed associated with the substitution of witnesses,
2 particularly with the one witness Mr. Rendell. His testimony
3 was taken over by Mr. Smeltzer and there are legal fees
4 associated with that.

5 I'm also recommending that the consulting fees be
6 disallowed for the deficiencies, and there's quite a bit of
7 expense there. And then I'm also recommending that \$67,000 be
8 disallowed associated with AUS Consultants' fees. In the last
9 rate case the -- that particular firm did the billing analysis
10 in this proceeding, and in the last case those functions were
11 performed by more or less in-house individuals. And so I'm
12 recommending that the difference in the hourly rate between
13 what was charged by AUS Consultants and the charge of the
14 individuals that are, they're in-house -- some are in-house but
15 others are consultants that primarily work for the company that
16 are charging \$100 an hour. So what I've done is substituted
17 the \$100 an hour for his time.

18 Q Do you have any additional comments?

19 A I'm just trying to make sure I've covered it all.

20 Q Okay.

21 A Oh, yes. In the rate case exhibit that was filed,
22 the company had additional expenses associated beyond the
23 actual dollars that they had expended thus far. And I'm
24 recommending that some of those expenses be disallowed,
25 primarily Mr. Guastella, who did not, is not at the hearing.

1 And so what I did with respect to his expenses was I disallowed
2 90 percent of those expenses. But it's only the additional
3 expenses, not, not what he spent in actually preparing his
4 testimony. It was just the additional beyond the expenses that
5 they had submitted at that time. I assume that 10 percent of
6 the expenses were associated with whatever preparation he did
7 beyond the actual invoices that were submitted. I did the same
8 thing with respect to Mr. Prettyman, who also was excused from
9 the hearing.

10 And then finally there were two individuals, Mr. Ward
11 and Mr., I'm not sure I'm going to get his name right, but it's
12 Pizzary (phonetic), who had in excess -- one of the individuals
13 had 500 hours, 500 hours to complete this case and the other
14 had 700. And I just -- where we are in this proceeding, I felt
15 that that was excessive, and so I'm recommending that only half
16 of those charges be included. And if you combine all of the
17 information I just gave you, that results in a disallowance of
18 \$276,256.

19 Q You mentioned something about staff deficiencies,
20 that you had disallowed the amount of attorney time spent on
21 responding to staff deficiencies. Can you explain to me what
22 you mean by that?

23 A Well, typically what happens in the rate case is the
24 staff examines the MFRs that are filed by the utility, and then
25 anything that staff finds deficient, they send out a deficiency

1 letter. And then the utility is required to respond to that
2 and either amend their MFRs or file additional information.

3 Q So anything that's not done correctly the first time,
4 they get another chance to correct that.

5 A They correct it, yes. And it's Commission practice
6 to disallow the costs associated with those deficiencies.

7 Q Okay. Mr. Beck handed me a two-page document that I
8 think had just come up at the end of our session yesterday.
9 And was this the document that you had prepared with some of
10 your information?

11 A Yes.

12 Q I notice in looking at this that there's numerous
13 comments about the attorneys' fees and it says "hours
14 deficiency."

15 MR. BECK: Ms. Bradley, if we're going to discuss
16 that, should we label this as an exhibit? I don't think the
17 Commissioners have it. If we're going to discuss the document,
18 should we label it and pass it out? Okay.

19 CHAIRMAN CARTER: Number, Commissioners, 194.
20 Mr. Beck, title.

21 MR. BECK: Rate Case Expense Disallowances.

22 (Exhibit 194 marked for identification.)

23 CHAIRMAN CARTER: You may proceed.

24 MS. BRADLEY: Thank you.

25 BY MS. BRADLEY:

1 Q In looking at this document, you have a number of the
2 attorneys' fees as well as some of the other consultants where
3 it says "Deficiency." Some say "Deficiency, no detail." The
4 attorneys' fees say "Hours deficiency." Can you go through
5 that and explain what you meant by those?

6 A With respect to the legal fees, it was fairly evident
7 in reviewing their invoices, the time, or at least there was an
8 indication of a block of time that was spent either filing the
9 deficiencies or reviewing the deficiencies that were responded
10 to by the company. So based upon looking at those invoices and
11 the descriptions, I disallowed the expenses associated with
12 that.

13 When you get to the other consultants like
14 Mr. Guastella, his invoice was fairly detailed and it was easy
15 to identify the deficiency time that he spent on this
16 proceeding.

17 When it says "No detail," what is on the invoice is,
18 for AUS I believe is on the invoice, it's just an amount. So
19 in that particular instance the consultant identified the
20 amount associated with the deficiencies, but his invoices were
21 not detailed enough. They actually had no explanation of the
22 services that were provided other than, you know, provided
23 billing analysis. There was no great detail. So when I say
24 "No detail," that's basically what I mean. Mr. Griffin's bills
25 were the same and the service company was the same. The amount

1 just appeared on the information that was supplied by the
2 company without any detail.

3 Q So when you're talking about for the attorneys' fees,
4 hours deficiency, that's actually the time they spent
5 responding to deficiencies versus deficiency in the invoice.
6 For instance, it looked like they had lumped everything
7 together and you couldn't tell how much time was spent on any
8 particular thing.

9 A In some -- I had to estimate the amount of time. So,
10 so there may be a block of maybe eight items, okay, that the
11 lawyer spent, and one of those eight items or three of those
12 eight items, okay, may have had something to do with
13 deficiencies. So based upon the time associated with that
14 block and the description of the other services that were
15 provided I estimated what I thought would have been spent
16 associated with those deficiencies.

17 Q All right. I notice on Page 109 of your testimony
18 you talk about the lobbying charge. And as I understand it,
19 you disallowed that.

20 A Yes.

21 Q Was that lobbying charge associated with the
22 Legislature or with other Cabinet officials?

23 A I'm not certain that it was associated with either.
24 The company had expenses in the test year for persons that
25 performed lobbying functions. Precisely who they may have

1 spoken to, I don't know.

2 Q All right. And is that typically disallowed in these
3 cases?

4 A Yes. The Commission routinely disallows lobbying
5 expenses.

6 Q And it looked like on Page 111, is that what you were
7 talking about a few minutes ago when you said you disallowed
8 some of the charges associated with other states?

9 A We're talking here about corporate acquisitions and
10 development expenses. No. This is the time -- it's the salary
11 basically associated with Mr. Smith and Mr. Kropilak, who is an
12 Aqua Services employee. And in responding to our discovery,
13 the company indicated that the primary functions of those
14 individuals was associated with the, Aqua America's acquisition
15 efforts for their -- when they go out, one of, one of their
16 objectives is to acquire other systems. And so what I've done
17 is I've taken out the salaries and wages associated with the
18 individuals that performed those functions. And, again, that's
19 been the Commission practice to disallow those expenses.

20 Q And on Page 113 you talk about disallowing fines and
21 penalties associated with the company. Could you explain a
22 little bit more about that?

23 A Yes. The company incurred fines and penalties and
24 late charges during the test year, and I am recommending that
25 those be disallowed. And I believe at this point the company

1 has agreed to that and it's a stipulated issue.

2 Q Okay. I'm sorry. And on Page 122 --

3 MR. MAY: Mr. Chairman, just for the record, the
4 fines and charges section of the rate case that Ms. Bradley
5 just inquired about has been stipulated to.

6 MS. BRADLEY: I believe that's what the witness just
7 explained to me, Mr. Chairman. I think it's kind of a moot
8 point since they've stipulated.

9 CHAIRMAN CARTER: What's -- so --

10 MR. MAY: I mean, if the counsel is going to ask
11 questions regarding issues that have already been stipulated
12 to, we could be here for quite a while today. I'd just point
13 that out for the record.

14 CHAIRMAN CARTER: We're getting a feedback. Chris,
15 have you got that? Did you hear that feed -- we're getting
16 feedback in our sound system here.

17 Ms. Bradley, can you --

18 MS. BRADLEY: Mr. Chairman, I'll withdraw that. It
19 was my error. I asked the wrong question.

20 CHAIRMAN CARTER: Okay.

21 MS. BRADLEY: I didn't mean to belabor it.

22 CHAIRMAN CARTER: Why don't we do this, staff.

23 Let's, let's take about five minutes and pull the list, get
24 with the parties and go through the list of stipulations and so
25 we can move forward. Let's do that. We'll take a recess.

1 (Recess taken.)

2 We are back on the record.

3 Staff, we, make sure that we've got everyone a copy
4 of the stipulations.

5 MS. FLEMING: Yes. All the parties have been
6 provided a copy of the stipulations and I think we should be
7 good to go.

8 CHAIRMAN CARTER: Okay. And we'll be hearing later,
9 Commissioners, from our good friend Steve Reilly who is really
10 working hard. You know, he's really, really working hard.
11 Mr. Kelly, did you hear that? Steve Reilly is working hard,
12 he's going to, working hard on trying to resolve some of the
13 outstanding issues.

14 Ms. Bradley, you may, you may proceed.

15 BY MS. BRADLEY:

16 Q And following that, Ms. Dismukes, let me ask you to
17 look at, I'm looking at Pages 121 and 122 where you're talking
18 about bad debt expenses. This is an issue that the customers
19 have been very concerned about is the billing errors and this
20 type of thing.

21 And can you explain -- I notice in your testimony you
22 talk about the fact that, if I can find the right place again,
23 that the company did not make any adjustments to the test year
24 for bad debt expense. Is this something that companies would
25 normally take into account?

1 A Well, the company does have bad debt expense in the
2 test year. And what I'm doing here in my testimony is
3 adjusting the amount of bad debt expense downward because of
4 the fact that they have very high bad debt expense compared to
5 other water and wastewater companies operating in the State of
6 Florida. And what I did was I compared their bad debt per
7 customer to the bad debt of all Class A water and wastewater
8 companies in the State of Florida and found that theirs was
9 extremely high compared to all other companies.

10 I did the same thing by examining test year revenue,
11 bad debt to test year revenue, and I also found that their bad
12 debt was substantially higher than the other water and
13 wastewater companies in the State of Florida. So I developed a
14 recommendation to bring their level of bad debt per customer
15 and as a percentage of revenue down to the level of the average
16 Class A water and wastewater utility.

17 Q Would this bad debt expense be an admission or a
18 recognition of the numerous billing errors by the company?

19 A The bad debt expense is basically a function of
20 customers not paying their bill. And to the extent that
21 customers are frustrated because of the billing errors or
22 because of the fact that there are billing errors --

23 MR. MAY: Objection. That calls for speculation on
24 the part of the witness.

25 MS. BRADLEY: Your Honor, she's giving an opinion

1 based upon the testimony and the testimony by the citizens who
2 have been here at the beginning of this as well as throughout
3 the past year testifying at hearings.

4 CHAIRMAN CARTER: Mr. Beck?

5 MR. BECK: Yes. It's perfectly appropriate for the
6 witness to give her opinion. I mean, that's, she's an expert
7 witness and that's what expert witnesses do.

8 CHAIRMAN CARTER: We'll allow. You may proceed.

9 THE WITNESS: In addition to that, to the extent that
10 the company has refunded or credited customers for overcharges,
11 those can conceivably come into the bad debt expense.

12 So if you look at my testimony, I talk about the fact
13 that the company's billing system, they've changed to a new
14 billing system, they've gone to radio frequency meters, all of
15 which should help improve the company's bad debt, on top of the
16 fact that it's already extremely high because of the fact that,
17 compared to other companies in the State of Florida.

18 BY MS. BRADLEY:

19 Q So despite the testimony about all the billing
20 problems, you've adjusted it down compared with other companies
21 and because of the new meters they put in; is that correct?

22 A Well, the new meters, one of the functions of the new
23 meters, as I understand it, is to hopefully eliminate some of
24 the billing errors that were caused by manual meter readers.

25 Q So it's a recognition of that?

1 A In part, yes.

2 Q Okay.

3 MR. MAY: Objection. She's leading the witness.

4 This is -- she's adopted the testimony and the positions of
5 this witness. She -- this witness is not an adverse witness
6 and therefore she cannot ask leading questions.

7 MS. BRADLEY: Mr. Chairman, this is --

8 CHAIRMAN CARTER: I think what he -- hang on a
9 second. I think what he means is -- okay. All right. Let's,
10 let's back up for a second here.

11 We have given great latitude. Ask her the questions,
12 Ms. Bradley, and move on from that. We've given great latitude
13 in terms of allowing testimony for witnesses. So, you know,
14 just ask the direct questions and proceed further.

15 MS. BRADLEY: Well, I only had one more. But after
16 this interruption I'm having trouble remembering what it was,
17 to be honest with you, but I guess that was the intent.

18 Can you repeat what you said last to help me out
19 here?

20 CHAIRMAN CARTER: We sustained the objection,
21 Ms. Bradley. You need to ask another question.

22 MS. BRADLEY: If you'll bear with me a minute.

23 BY MS. BRADLEY:

24 Q What was the other part of your factor in addition to
25 the billing errors that influenced this calculation?

1 A The other factor was that their bad debt expense is
2 five times as high as the average water and wastewater company
3 in the State of Florida.

4 Q All right. And can you tell us whether or not
5 Commissions typically look to other companies in assessing
6 whether or not it's an appropriate bad debt expense?

7 A The Commission has done that in prior proceedings.
8 They did it -- I talk about it in my testimony. They did it in
9 the St. George Island rate case where there wasn't enough
10 information to determine an appropriate bad debt expense, and
11 so therefore in that proceeding the Commission used a
12 comparable analysis approach exactly like I'm recommending in
13 this proceeding.

14 MS. BRADLEY: All right. I don't think I have
15 anything further at this time.

16 CHAIRMAN CARTER: Thank you.

17 Mr. May. Staff, I'll come to you after.

18 Mr. May, you're recognized.

19 MR. MAY: Thank you, Mr. Chairman.

20 CROSS EXAMINATION

21 BY MR. MAY:

22 Q Good morning, Ms. Dismukes.

23 A Good morning.

24 Q How are you doing?

25 A Good.

1 Q I'm going to ask you just a couple of questions
2 about, I guess it's your rate case expense schedule, Exhibit, I
3 guess it's been identified at this juncture as Number 194.
4 The -- if you'll turn to Page 2 of that, three lines from the
5 bottom there is an entry, an adjustment of 50 percent of rate
6 case expense passed on to customers. Do you see that?

7 A Yes.

8 Q Is that the, the 50/50 split that you're advocating
9 on Page 138 of your testimony?

10 A Yes.

11 MR. MAY: Okay. Mr. Chairman, to move things along,
12 I've spoken to Mr. Beck about this schedule. And I know that
13 it may be premature to talk about the introduction of this into
14 evidence, but since we're on it now, I'd just like to bring
15 your attention to the fact and the Commissioners' attention to
16 the fact that we do not have an objection to the introduction
17 of this schedule, this late-filed schedule into the, into the
18 record, with the understanding that we would have an
19 opportunity to file a late-filed response to this. I think
20 that would streamline the proceeding and allow us to move on.

21 CHAIRMAN CARTER: Okay. For a placeholder, Mr. May,
22 we'll give you Number 195. That will be Number 195.

23 Mr. Beck?

24 MR. BECK: Yes. We're agreeable with that. Thank
25 you, Mr. Chairman.

1 CHAIRMAN CARTER: That will be 195. Okay. You may
2 proceed.

3 (Late-Filed Exhibit 195 identified for the record.)

4 BY MR. MAY:

5 Q Ms. Dismukes, I'm with the law firm of Holland &
6 Knight, and you and I spoke several weeks ago at your
7 deposition. Do you recall that?

8 A Yes.

9 Q And I'm going to be asking you questions this morning
10 on behalf of Aqua Utilities Florida. In the interest of time,
11 I'm not going to rehash the details of our, our discussion on
12 the 21st of November, but I do want to, to touch on a few
13 points. And I think it would move things along this morning if
14 you would have a copy of your deposition transcript. This is,
15 the transcript of this deposition is part of staff
16 Comprehensive Exhibit 65, Tab 29.

17 Now, Ms. Dismukes, you work for a consulting firm in
18 Louisiana, do you not?

19 A Yes.

20 Q And your position with that consulting firm is a
21 Senior Research Consultant?

22 A Yes.

23 Q Okay. In fact, you've been retained in this case by
24 the Office of Public Counsel; correct?

25 A Yes.

1 Q And you're under a contract with the Office of Public
2 Counsel; correct?

3 A Yes.

4 Q And the Office of Public Counsel is a part of the
5 State of Florida; right?

6 A Yes.

7 Q Okay. So you're under contract with the State of
8 Florida; correct?

9 MS. BRADLEY: Objection to the question, Your Honor.
10 That's distorting and asking for a legal opinion, which
11 actually is incorrect.

12 CHAIRMAN CARTER: I think he laid the proper
13 foundation. And did you want to ask him whether or not the
14 Office of Public Counsel was a state agency? I'm saying --

15 MS. BRADLEY: I was responding to his question that
16 it's, this therefore is under contract with the State of
17 Florida, which is a legal issue that I don't think we can
18 expect this nonlegal person to address. And it's incorrect, as
19 a matter of law.

20 CHAIRMAN CARTER: I wouldn't go that far.

21 MR. MAY: Ms. Rollini is going to be distributing a
22 cross-examination exhibit.

23 CHAIRMAN CARTER: I don't think it's as a matter of
24 law, Ms. Bradley. I think that's going a bit far. We're going
25 to overrule the objection. You may proceed.

1 MR. MAY: Mr. Chairman, I think this will be simply a
2 demonstrative exhibit. I don't intend to introduce it into
3 evidence. I'm just using it as a guideline just to go over
4 some of Ms. Dismukes' duties in this case, give us a blueprint,
5 if you will, for the, for the cross-examination.

6 BY MR. MAY:

7 Q Now, Ms. Dismukes, your role in this proceeding is
8 governed by your contract with OPC; is that correct?

9 A Yes.

10 Q Can you turn to Page 2 of that contract?

11 A Yes.

12 Q Now I see on Page 2 that one of your duties with
13 respect to the OPC is the preparation of discovery to serve on
14 Aqua and other parties; is that correct?

15 A It says, "Preparation of discovery." Correct.

16 Q Ms. Dismukes, what is discovery?

17 A Discovery is preparing interrogatories and requests
18 for production of documents to obtain information to examine
19 the issues in this rate proceeding.

20 Q Would it be fair to say that discovery would give a
21 party the right to gather information from the opposing party
22 so as to test the accuracy of the opposing party's positions?

23 A Well, I think it goes beyond that as well. It's to
24 gather information above and beyond, if necessary, above and
25 beyond what, what your position is or what the opposing party's

1 position may be.

2 Q But you would agree, would you not, that one element
3 of discovery is that it gives the party a right to gather
4 information from the opposing party to test the accuracy and
5 the voracity of the other party's positions; correct?

6 A That's one component. Yes.

7 Q And I think you mentioned that interrogatories and
8 requests for production of documents are tools to be used as
9 part of the discovery process; correct?

10 A Yes.

11 Q And, Ms. Dismukes, isn't it true that you actively
12 participated in the preparation of interrogatories and
13 production of document requests which were served on my client
14 by OPC?

15 A Yes.

16 Q Okay. I think your contract with the, with the OPC
17 also requires you to testify and make recommendations as to
18 this rate case; correct?

19 A Yes.

20 Q Can you turn to Page 85 of your testimony? You and I
21 had a brief conversation on Friday, November 21st, about this,
22 and it was getting late in the day and I failed to ask a couple
23 of follow-up questions. But I wanted to talk with you a little
24 bit about the recommended adjustment on Pages 85 and 86.

25 On these pages you recommend that the Public Service

1 Commission reduce Aqua's pro forma plant by \$1,519,033;
2 correct?

3 A Well, I amended that number yesterday.

4 Q Okay. And what was that number amended?

5 A That number was \$1,514,894.

6 Q Thank you. And the adjustment that you recommend,
7 the \$1,514,894 adjustment, was because of concerns regarding
8 budget variances; is that correct?

9 A No.

10 Q What was, what was the recommended adjustment?

11 A Well, the recommended adjustment was \$1,514,800 --

12 Q What was the basis for the recommended adjustment? I
13 apologize.

14 A That's okay. The basis for the recommended
15 adjustment was the fact that the company was not progressing in
16 terms of how it was expending the funds for the budget.

17 Q Isn't it true that your adjustment was based on your
18 understanding of what AUF's 2008 capital expenditures were as
19 of July 31, 2008, and your projection of what AUF's
20 expenditures would be from July 31 to the end of the year?

21 A That would be correct. At the time I filed my
22 testimony, that was the only available information that I had.

23 Q And your adjustment assumes that Aqua will make
24 capital expenditures during the last five months of 2008 at the
25 same rate that it made capital expenditures in the first seven

1 months of the year; correct?

2 A Yes. That's correct.

3 Q Okay. And I think we established on Page 76 and 77
4 of your deposition that your recommended adjustment is based on
5 the assumption that budgeted expenditures will occur evenly
6 during the course of the year; is that correct?

7 A Yes. That's correct.

8 Q And you would agree that in the real world budgeted
9 expenditures don't always occur evenly during the course of the
10 year; is that correct?

11 A Yes, I would agree with that. However, in this
12 particular instance the company did not have a, an expenditure
13 path, so to speak, in terms of how it was projecting it was
14 going to expend those funds. And so in order to come up with a
15 reasonable estimate of where they were as of July 31st, I felt
16 that it was reasonable to examine those expenditures compared
17 to a constant rate of expenditures over the 12-month period and
18 that's how I came up with my adjustment.

19 Q I think we, we talked about your experience in
20 capital budgeting during the deposition. Do you recall that?

21 A Do you have a page reference?

22 MR. BECK: Do you have a reference?

23 BY MR. MAY:

24 Q Let me just, I'll just ask you straight up. Do you
25 consider yourself experienced in capital budgeting matters?

1 A I've examined capital budgeting matters in other rate
2 cases.

3 Q Okay. To help me better understand your adjustment,
4 I'd ask that you consider the following hypothetical. Let's
5 assume that Aqua has a 2008 capital project with a completion
6 deadline of December 31, 2008. Okay? And if work on that
7 project were to be laid, be delayed in the first half of 2008,
8 let's say for weather reasons, but then work picked up in the
9 fourth quarter, would you expect that the rate of capital
10 expenditures would increase as well?

11 A I think it would depend upon the project.

12 Q It would depend upon the project?

13 A Yes.

14 Q In what regard?

15 A Well, some projects may not be, you may only be able
16 to, you may have limited resources in terms of how you can
17 expend those funds or how many people can work on the project.
18 So the extent that that's limited, you may not be able to
19 expend more during that final fourth quarter than you would
20 have over the entire time period.

21 Q Let's assume for purposes of the hypothetical that
22 those restrictions do not apply. There's people to work and
23 there's money to be spent. Under the hypothetical that I just
24 laid out, would you expect that the rate of capital
25 expenditures would increase during the fourth quarter as the

1 work progressed?

2 A In this hypothetical? It's possible.

3 Q Okay. Now under that hypothetical your adjustment
4 wouldn't give Aqua credit for the increase in capital
5 expenditures during the fourth quarter, would it?

6 A Not under this hypothetical. But I'm not using a
7 hypothetical in my testimony.

8 Q Good. Let's turn to Mr. Griffin's testimony, I
9 think. Your testimony was filed prior to Aqua's capital budget
10 witness Griffin filing his rebuttal testimony; correct?

11 A Yes.

12 Q And your testimony was filed prior to Mr. Griffin's
13 deposition in this case; correct?

14 A Yes.

15 Q In fairness, Ms. Dismukes, when you filed your
16 testimony, you didn't have access to the actual budget numbers
17 and the actual capital expenditures that have occurred since
18 July 2008; isn't that correct?

19 A Yes.

20 Q And based on more recently filed testimony, the rate
21 of expenditures by Aqua in 2008 has increased in the latter
22 part of 2008, has it not?

23 A I'm not sure I have Mr. Griffin's rebuttal testimony
24 with me.

25 Q We'll let that testimony speak for itself. I'll move

1 on.

2 As part of your contractual duties with the Office of
3 Public Counsel in this proceeding, isn't it correct that you've
4 made calculations as to what you believe to be the appropriate
5 revenue requirement?

6 A Yes.

7 Q And based on those calculations, you've made
8 recommendations in your prefiled testimony regarding the proper
9 revenue requirement for AUF in this case; correct?

10 A Yes.

11 Q We discussed those calculations and your
12 recommendations at length during your deposition, did we not?

13 A Yes, we did.

14 Q Now you initially filed your recommendations on
15 revenue requirement on October 13th as part of your prefiled
16 testimony; correct?

17 A Yes.

18 Q Now following your prefiled testimony, Aqua, on
19 October 17, served the OPC with discovery that questioned some
20 of your revenue requirement calculations. Do you recall that?

21 A Yes, I do.

22 Q And that discovery was served on you around
23 October 17th, 2008; correct?

24 A Yes.

25 Q And that discovery caused you to revisit whether your

1 revenue requirement calculations were accurate, did it not?

2 A Yes.

3 Q And as a result of Aqua's discovery, you subsequently
4 determined that you made some errors in your calculations; is
5 that correct?

6 A Yes.

7 Q You and I had a lengthy discussion about those errors
8 and you -- during your deposition; correct?

9 A Yes.

10 Q Again, in the interest of time, I'm not going to
11 rehash that, that, that discussion, but I did want to follow up
12 on just a couple of items.

13 On Page 96 of your deposition -- are you there,
14 Ms. Dismukes?

15 A No, I'm not.

16 Q Just let me know.

17 A Yes. I'm there.

18 Q You agreed during your deposition, did you not, that
19 in your original calculation you had erroneously excluded
20 revenues and expenses from the South Seas wastewater and
21 Village wastewater systems which caused your initial
22 recommendation to understate rate base by \$2,388,943; correct?

23 A Yes. That's what I agreed to in my deposition.

24 However, since then I have examined the schedules that were
25 filed or the information with respect to South Seas and Village

1 water. And if -- the way the model works, some of the rate
2 base components would have pulled up into the revenue
3 requirement, but not the \$2.3 million that's there, that's in
4 my deposition that I agreed to.

5 Q What would be the understatement of rate base?

6 A I will have to get -- I'm sorry. I'll have to get my
7 computer to give you that information.

8 Q Okay. Let's just move on. On Page 92 of your
9 deposition you also stated that there were other errors caused
10 by you or someone in your office failing to hit the F9 button,
11 which in turn caused the Village water system not to be
12 recalculated; is that correct?

13 A Yes.

14 Q Ms. Dismukes, you also stated that your errors in
15 your original revenue requirement recommendation were material;
16 is that correct?

17 A Yes, I did.

18 Q On Page 94, Lines 7 through 12 of your deposition,
19 can you take a look at that? Are you there?

20 A Yes, I am.

21 Q When Aqua originally provided you and the OPC with
22 its MFR work papers, it also provided you with a validity check
23 file when it supplied you with those work papers, did it not?

24 A Yes, it did.

25 Q And you did not run that validity check file;

1 correct?

2 A We actually don't run the file. It's a file that's
3 generated as a result of the model.

4 Q But you didn't use the validity check file, did you?

5 A We did not have an opportunity to review the validity
6 check file. That's correct. But when I filed my revised
7 schedules, we did examine the validity check file.

8 Q And I also believe you stated that you discovered the
9 errors on your part when you got Aqua's discovery request; is
10 that correct?

11 A Yes, which was four days after we filed testimony.

12 Q So that was around October 17th, 2008?

13 A That's correct.

14 Q Now you didn't advise the parties of the specifics of
15 your calculation errors until your deposition on Friday,
16 November 21; is that correct?

17 A That's correct. We had not quantified them or had
18 the opportunity to understand the full impact of the errors
19 that were in the original schedules that I filed.

20 Q Now at your deposition you advised the parties that
21 you intended to revise your calculations in your schedules, did
22 you not?

23 A Yes, I did.

24 Q And you stated that you would try to provide the
25 parties with your revised calculations and your work papers the

1 Wednesday before Thanksgiving, given the fact that the
2 discovery cutoff was on December 1; is that correct?

3 A Yes. I said I would, it was, it was my goal to do
4 that.

5 Q You didn't meet that deadline, did you?

6 A I did not meet that deadline. That's correct.

7 Q Isn't it correct that the OPC didn't provide your
8 revised schedules until the Prehearing Conference on
9 December 1?

10 A I don't know the precise date. I do know that we
11 worked extensively and very long hours to get that information
12 to you as soon as we could. We worked weekends, we worked
13 nights, we worked all through the Wednesday before
14 Thanksgiving. I sent information to one of your, your
15 consultants the day of Thanksgiving so that he could get it as
16 soon as he could possibly get it. We just simply could not get
17 it to you when we intended to. I had every intention of doing
18 that.

19 Q Ms. Dismukes, I'm not here to cast aspersions or
20 blame you for anything. I mean, I'm here just to get the
21 facts. That's all we are. I mean, that's all I'm after.

22 Would you agree, subject to check, that we did not
23 receive the revised schedules until the Prehearing Conference
24 on December 1?

25 A I would agree, subject to check, that you did not

1 have a hard copy of the schedules until December 1. However,
2 the CD which had the electronic version of the schedules as
3 well as all of our work papers was Federal Expressed to you and
4 to employees of Aqua for that Saturday delivery.

5 Q And I received that on Saturday; is that correct?

6 A I said for Saturday delivery.

7 Q Less than 48 hours before the discovery deadline in
8 this case; correct?

9 A That's correct. And that's why I agreed in my
10 deposition to provide you with all of our work papers without
11 having to ask any discovery.

12 Q Ms. Dismukes, I think you and I previously had a
13 discussion regarding the purpose of discovery, and you agreed
14 that one element of discovery was to allow a party to gather
15 information and test the accuracy of the other party's
16 calculations and positions; is that correct?

17 A Yes.

18 Q Okay. And I think you agreed that the discovery
19 cutoff in this case was December 1, 2008; correct?

20 A That's correct.

21 Q And you provided your revised schedules, the hard
22 copies on December 1, 2008, subject to check.

23 A I answered that question. Yes.

24 Q I haven't had a chance really to go in detail with
25 respect to your last-minute revised calculations, but I'll do

1 my best. I don't want to, I'm not about to try to conduct a
2 discovery deposition, Commissioners, in the course, in the
3 midstream of this case. I've been here long enough not to do
4 that.

5 But just as a lawyer, just as a layman, a couple of
6 things with respect to your revised schedule still kind of
7 cause me a little bit of problems, Ms. Dismukes, and I wanted
8 to talk to you about that. I'm going to hand out a
9 cross-examination exhibit, and if we could get it numbered for
10 identification, please.

11 COMMISSIONER EDGAR: We can do that. And that would
12 be Number 196. And once it's distributed, I'll look to you for
13 a title.

14 MR. MAY: For lack of a better term, and Mr. Beck may
15 object to this, but I would propose Revised Schedule Errors.
16 I'll -- Revised, Revised Schedule Variances.

17 COMMISSIONER EDGAR: Revised Schedule Variances,
18 Exhibit 196. Thank you.

19 (Exhibit 196 marked for identification.)

20 BY MR. MAY:

21 Q Ms. Dismukes, I think you've been provided with a
22 three-page document which is entitled Revised Schedule
23 Variances. And on the first page of this exhibit is -- do you
24 have that, Ms. Dismukes?

25 A Yes, I do.

1 Q The first page of this exhibit is taken directly from
2 your revised, it's your Schedule 1. Not your revised, your
3 original Schedule 1.

4 A Yes.

5 Q And this has not been revised, has it?

6 A No.

7 Q Okay. The second page is Page 1 of 3 from your
8 revised Schedule 27 which was provided to the parties in hard
9 copy on December 1, 2008. Do you see that?

10 A Yes, I do.

11 Q And I think, Ms. Dismukes, at your deposition you
12 explained that Schedule 1 represents Aqua's requested rate
13 increase and it combines all of the 82 systems that are subject
14 to this case; correct?

15 A Yes.

16 Q And you further stated that the Per Books 2007 column
17 from Schedule 1 should track the information from Aqua's MFRs;
18 correct?

19 A Yes.

20 Q Now please to turn to Page 2 of the exhibit.

21 A Okay. I'm with you.

22 Q You explained at your deposition that your Schedule
23 27 summarizes your calculations with respect to Aqua's revenue
24 requirement; correct?

25 A Yes.

1 Q And if I understood you correctly at your deposition,
2 the numbers in the Per Books 2007 column in your revised
3 Schedule 27 is supposed to match the numbers in Aqua's MFRs;
4 correct?

5 A That's correct.

6 Q And those are supposed to be shown on the Per Books
7 2007 column in your Schedule 1; right?

8 A That's correct.

9 Q If that's the case, I'm still having problems seeing
10 how your Per Books 2007 column in your recently revised
11 Schedule 27 matches the corresponding numbers in the company's
12 MFRs. This is the same issue we had at the deposition. If
13 you'll turn to Page 3 of the exhibit, I've highlighted a couple
14 of those variances I'd like you to talk about, if you would.
15 Are you on Page 3?

16 A Yes, I am.

17 Q Now this is not from your, your filings. This is an
18 extract that we have put together very quickly just to compare
19 your 2007 in books column and your revised Schedule 27 to the
20 company's MFRs. Can you go down to Kings Cove water and
21 wastewater?

22 A I'm there.

23 Q Do you agree that your new Per Books column 2007,
24 excuse me, your new Per Books 2007 column in revised Schedule
25 27 understates O&M expenses by \$93,738?

1 A My revised Schedule 27 doesn't show Rosalie Oaks.

2 Q I'm talking about Kings Cove.

3 A I'm sorry. Kings Cove.

4 Q So it doesn't reflect --

5 A No. Revised Schedule 27 has all the systems in it.

6 Q Would you agree, subject to check, that your revised
7 schedule understates O&M for Kings Cove in the amount of
8 \$93,738?

9 A I could check that.

10 Q Can you turn to the Rosalie Oaks water and
11 wastewater?

12 A Okay.

13 Q Would you agree, subject to check, that your new Per
14 Books 2007 column in revised Schedule 27 understates O&M
15 expenses by \$45,950?

16 A I will check that as well.

17 Q Is it your testimony today that there are no errors
18 in your revised schedule?

19 A It is my testimony today that Schedule 27 represents
20 the accumulation of the information from my Schedules 28 and 29
21 up to the, as they're pulled from the company's model into
22 Schedule 27.

23 Q Let me ask that question again because I don't think
24 you answered it, but you may have. Let me see if I can be more
25 precise.

1 Is it your testimony today that there are no errors
2 in your revised schedule?

3 A I went through when we redid these schedules and I
4 checked every single adjustment that was in my testimony to
5 ensure that it was included on my Schedules 28 and 29, which
6 are the expense adjustments and the rate base adjustments that
7 I'm recommending.

8 I also went through and checked that all of the staff
9 adjustments, the staff audit adjustments that we recommended
10 were included on these schedules. To the extent that they did
11 not roll up into the -- what Schedule 27 does basically is it
12 rolls up the information, sorry, rolls up the information from
13 the running of the model and combines it for all of the
14 different systems.

15 Q But isn't it, isn't it correct, Ms. Dismukes, that
16 your schedule, revised Schedule 27 is the fundamental basis for
17 your recommended revenue requirement for Aqua in this case?

18 A The Schedule 27 is essentially a fallout of the
19 adjustments that I am recommending in this proceeding. So it
20 accumulates those and develops a revenue requirement. Yes, you
21 are correct with respect to that.

22 Q So back to my question, is it your testimony today
23 that there are no errors in your revised schedule?

24 A To the best of my knowledge, there are none.

25 Q Turn to Page 2 of your exhibit, please.

1 A Schedule 27?

2 Q Yes. Do you see Column 8, Line 10? What does that
3 calculation show?

4 A The return on rate base.

5 Q Now shouldn't the rate of return be calculated by
6 dividing the net operating income by the rate base?

7 A Yes.

8 Q Do you have a calculator?

9 A I do.

10 Q So according to that formula, you would divide the
11 net operating income of \$1,211,157 by rate base of \$19,682,455;
12 correct?

13 A Correct.

14 Q That calculation produces a rate of return of
15 6.15 percent; correct?

16 A That's correct.

17 Q And you have on your schedule 12.29 percent; correct?

18 A Correct. That's the calculation from the company's
19 model. We did not --

20 Q That's your, this is your schedule, Ms. Dismukes, is
21 it not?

22 A Yes, it is. I'm sorry.

23 Q This is not, this is not Aqua's schedule.

24 A You're correct about that.

25 Q Okay.

1 A We did not --

2 Q Is this an error in your schedule?

3 A We did not alter the formula that calculated the rate
4 of return.

5 Q But to say, well, to, to represent on Schedule 27
6 that the rate of return is 12.29 percent is incorrect; is that
7 correct?

8 A That's correct. It appears if you --

9 Q Excuse me. I'm sorry for that question.

10 I'm not going to belabor the point. Ms. Dismukes,
11 we'll move on.

12 A It appears what happened, if you look at the
13 schedule, it added the rate of return for the water operations
14 and the wastewater operations together as opposed to actually
15 physically calculate the rate of return.

16 Q And if you turn -- I guess if you wanted to talk
17 about that, turning back to Page 1, you made the same mistake
18 there, did you not? I mean, doesn't your Schedule 1 also have
19 the same rate of return calculation error? It shows a return
20 of 16.20 percent; correct?

21 A This is not our calculation. This came directly from
22 the company's model. We did not alter anything. This was
23 basically an output of the company's model. This is the
24 company's information.

25 Q This is your schedule, Schedule 1.

1 A It is my schedule, but it was taken directly from the
2 company's model and the output of the company's model. It was
3 a file that was provided.

4 Q So are you blaming the, are you -- I'm sorry.

5 A It was a file that was provided.

6 Q So you're blaming the company's model for these
7 errors?

8 A All I'm saying is, is that -- the same thing happens
9 here where the two were added together because you're combining
10 the two systems. And apparently what we did was we added the
11 8.08 and the 8.12 and we should not have done that. We should
12 have actually calculated it from the rate -- the net operating
13 income divided by rate base.

14 Q It's a pretty simple calculation, is it not?

15 A Yes, it is.

16 Q Let's turn to Page 30 of your testimony.

17 MR. MAY: Mr. Chairman, could I take two minutes to

18 --

19 CHAIRMAN CARTER: Yes.

20 MR. MAY: -- gather a document?

21 (Pause.)

22 CHAIRMAN CARTER: We're back on the record.

23 BY CHAIRMAN CARTER:

24 Q Ms. Dismukes, in your testimony, it's not on Page 30,
25 but -- well, it is on Page 39. I'm sorry. I said 30. It was

1 39.

2 Looking at Pages, well, Page 39, Lines 4 through 9.
3 Do you see on Page 39, Lines 7 through 9, you state that you
4 encourage the Public Service Commission to work with Aqua in
5 resolving the Chuluota situation; correct?

6 A Yes.

7 Q Now turn to Page 43 of your testimony.

8 A I'm there.

9 Q Now here you're recommending that the Florida Public
10 Service Commission reduce the salary of Aqua's president by
11 50 percent and also reduce the salary of the parent company's
12 president.

13 A That's correct.

14 Q Do you believe that by reducing the salary of Aqua's
15 president and substantially reducing the president of the
16 parent company's salary serves as an encouragement for Aqua to
17 resolve the Chuluota situation?

18 A What I'm recommending here is that the Commission
19 reduce those salaries so that they are not passed on to
20 ratepayers. And, yes, I do believe that if the Commission
21 makes an adjustment to reduce those individuals' salaries, that
22 it will get their attention so that they will in fact ensure
23 that customer service is, is excellent and that the quality of
24 water that is provided to the Chuluota customers is
25 substantially better than it is today.

1 Q Now I think, Ms. Dismukes, you know, you previously
2 admitted you've made some material errors in your calculations
3 of revenue requirement in this case; is that correct?

4 A I indicated that in my initial calculations. Yes,
5 that's correct.

6 Q As a result of making those material errors has OPC
7 terminated your consulting contract?

8 A No, they have not. But --

9 Q As a, as a result of those errors has OPC reduced the
10 amount of your consulting fees under your contract?

11 A I hadn't --

12 MR. BECK: Mr. Chairman, the witness was answering
13 yes or no but wanted to explain.

14 CHAIRMAN CARTER: You may, you may proceed. You may
15 explain your answer.

16 THE WITNESS: What I was going to say is my client
17 will not pay for the additional work that was required by my
18 firm to rerun the model.

19 BY MR. MAY:

20 Q But your contract has not been terminated; correct?

21 A No, it has not.

22 Q Okay. Let's turn to rate case expense, if you, if
23 you don't mind. I think we previously had a very brief
24 conversation in talking about Exhibit Number 194 regarding the
25 50/50 split that you recommend I think on Page 138 of your

1 testimony.

2 Ms. Dismukes, are you recommending that Aqua only be
3 allowed to recover 50 percent of the rate case expense found
4 reasonable by the Commission?

5 A Yes.

6 Q This has never been done before by the Commission,
7 has it?

8 A This has never been done in the State of Florida,
9 that's correct. It has been done in other jurisdictions.

10 Q Let me go back to our earlier discussion regarding
11 your role in preparing discovery. Do you recall our
12 discussions?

13 A Yes.

14 Q And I believe you previously said you were actively
15 involved in preparing interrogatories and requests for
16 production of documents that OPC served on my client.

17 A That's correct.

18 Q And during the deposition I think you stated you
19 didn't know the exact number of interrogatories or requests for
20 production of documents that you prepared or had been served on
21 Aqua; is that correct?

22 A I have that information.

23 Q And I think that at your deposition you stated that
24 there was some disagreement between Aqua and the OPC regarding
25 the total number of interrogatories; is that correct?

1 A Yes.

2 Q And I think you said you, that you were not aware
3 that the Florida Public Service Commission staff had actually
4 counted the number of interrogatories OPC had served on AUF in
5 this case; is that correct?

6 A Could you repeat the question?

7 Q In fairness, I'm going to have Ms. Rollini distribute
8 a cross-examination exhibit so we can be on the same page here.

9 CHAIRMAN CARTER: You're just using this as, not for
10 marking, you're just using it for cross-examination; correct?

11 MR. MAY: Yes, Mr. Chairman.

12 CHAIRMAN CARTER: Okay. You may proceed.

13 BY MR. MAY:

14 Q Ms. Dismukes, Ms. Rollini just distributed an order
15 of the Commission. It's Order Number PSC-080536. Do you have
16 that before you?

17 A Yes.

18 Q And this order granted the OPC's request to expand
19 the discovery parameters in this case. Do you see that?

20 A Yes, I do.

21 Q On Page 3 of this order I'd like you to read the
22 highlighted provision into the record.

23 A "Based on this criteria, our staff counted 1,377
24 interrogatories and subparts in OPC's first four sets of
25 interrogatories. This is 627 more interrogatories than was

1 allowed by the Order Establishing Procedure. Adding the
2 200 additional interrogatories requested by OPC, the total
3 number of interrogatories requested by OPC would be 1,577.
4 Although this is more than double the 750 interrogatories
5 authorized by the Order Establishing Procedure, I do not find
6 OPC's request to be unreasonable given the facts of this case."

7 "I note that many of AUF's 82 systems were once part
8 of the old Southern States, Inc. (Southern States) system. In
9 the last major rate case involving 152 systems of Southern
10 States, the Commission allowed 1,000 interrogatories for each
11 party. However, in that case, there were 16 parties listed.
12 In this case, there are currently only three parties listed.
13 Moreover, the AG has agreed to limit itself to 250
14 interrogatories. Therefore, at this point in time, not
15 counting staff discovery requests, it appears that the maximum
16 number of interrogatories that AUF faces is 1,827. This is a
17 large number of interrogatories and will almost certainly
18 increase rate case expense. However, OPC is charged with
19 representing the citizens of the State of Florida, and states
20 that it may need this amount of discovery to do so. With the
21 proposed limitation on the AG's discovery, it does not appear
22 that the discovery requests diverge greatly from the last
23 Southern States rate case, the past rate case most analogous to
24 this one."

25 Q Thank you. So you would agree that the Prehearing

1 Officer put the parties on notice that this large number of
2 interrogatories will almost certainly increase the rate case
3 expense in this case; correct?

4 A Correct.

5 Q Okay. And you would also agree that staff had
6 counted as of July 31, 2008, that OPC had propounded 1,377
7 interrogatories including subparts on Aqua; is that correct?

8 A Yes.

9 Q Would you also agree that subsequent to July 31,
10 2008, the OPC has issued four additional sets, not
11 interrogatories, but sets of interrogatories to Aqua; is that
12 correct?

13 A Four sets of just interrogatories, not PODs. Yes.

14 Q And you would also agree that subsequent to the order
15 OPC has issued another five sets of PODs.

16 A That's correct.

17 Q I think you would also agree that OPC has served a
18 total of nine sets of PODs in this proceeding on Aqua; is that
19 correct?

20 A That's correct.

21 Q In orders of magnitude how would the number of
22 interrogatories in this case compare to other proceedings in
23 which you've been involved in?

24 A Actually considering the fact that this is
25 essentially 52 individual rate cases, there are 52 companies

1 involved in this rate case, it's substantially less. If the
2 Commission granted 100 interrogatories per system, if you
3 counted 54 or 82, that's conceivably 8,000 interrogatories. So
4 it's substantially less than what the Commission has allowed in
5 other proceedings where you might have one system the size of
6 one of these systems as part of the rate proceeding.

7 Q Ms. Dismukes, are you aware of Florida Power &
8 Light's request for a need determination of a nuclear power
9 plant in Florida?

10 A I'm aware of it generally, yes.

11 Q Would you agree the anticipated cost of those nuclear
12 power plants would exceed \$10 billion?

13 A At least.

14 Q And you would agree that the rate increase requested
15 by Aqua is about \$8 million?

16 A That's correct. It's \$8 million. 8.4.

17 Q Do you know how many interrogatories and requests for
18 production of documents the OPC served on FPL in the course of
19 that billion dollar rate need determination proceeding?

20 A No, I don't.

21 Q Subject to check, would you agree that OPC served two
22 interrogatories and 17 PODs on FPL in that proceeding?

23 A Yes.

24 Q Do you believe that the number of interrogatories and
25 other discovery served in this case is attributable to the fact

1 that there are 82 systems and essentially 82 mini rate cases
2 intertwined in this proceeding?

3 A That's part of it, yes. I did an analysis of our
4 discovery, and approximately 51 percent of our interrogatories
5 were very system-specific questions.

6 Typically when I do a rate case for a water and sewer
7 company, I examine the expenses and the changes in expenses
8 from year to year and I ask questions about that. We did that
9 in this proceeding but we had to do it for every system so that
10 we could get to the, you know, individual system-specific
11 adjustments that may be necessary.

12 Q And, Ms. Dismukes, don't confuse my questions. I'm
13 not, I'm not casting aspersions. I mean, I understand the
14 complicated nature of this case. I'm just -- and maybe I'm
15 trying to work myself out of a job here, but there's got to be,
16 there's got to be a more efficient way to do this, don't you
17 think?

18 A A more efficient way to examine 82 different systems?
19 Well, you could start by producing all of your discovery
20 electronically. There are states that do that, all discovery
21 is served electronically.

22 Q Are you aware of Bates label requirements in the
23 Order on Procedure in this case?

24 A Yes, I am.

25 Q And to Bates label a document you have to print it

1 out and number it, don't you?

2 A I believe you can Bates label with .pdf, .pdf files.

3 Q Would you talk to our, our IT folks about that?

4 (Laughter.)

5 Let's move on to another subject. Ms. Rollini is
6 going to hand out another cross-examination exhibit. And, Mr.
7 Chairman, that was just a demonstrative exhibit. We don't need

8 --

9 CHAIRMAN CARTER: Commissioner Skop.

10 COMMISSIONER SKOP: I'll take this opportunity to try
11 to make a funny joke. I definitely would like to meet that guy
12 named Mr. Bates because I'm sure he's a wealthy man.

13 (Laughter.)

14 CHAIRMAN CARTER: He's still getting royalties even
15 as we speak.

16 You may proceed.

17 BY MR. MAY:

18 Q Ms. Dismukes, in fairness, this is a rule of
19 professional conduct that governs members of the Florida Bar.
20 And I know you're not a lawyer, but I would like your, your
21 help as a rate case expense expert in this line of questioning.

22 You've been provided with a rule of professional
23 conduct, Rule 4-3.4, fairness to opposing party and counsel.
24 (D) of that rule requires that a lawyer or prohibits a lawyer
25 from -- it says, "A lawyer shall not in pretrial procedure make

1 a frivolous discovery request or intentionally fail to comply
2 with a legally proper discovery request by an opposing party."

3 Do you see that?

4 A Yes.

5 Q Okay. Then you would agree that a licensed lawyer in
6 Florida has a duty to her or his client to confirm that a
7 response to another party's discovery request would cause -- is
8 proper?

9 A I'm sorry. Could you repeat that?

10 Q Let me repeat that.

11 Would you agree that in order to fulfill his or her
12 lawful discovery obligations, a party's lawyer would need to be
13 involved in reviewing discovery requests prior to making a
14 discovery response in order to fulfill that lawyer's
15 responsibilities under the rules of professional conduct?

16 A I hate to do this, but could you ask the question
17 again?

18 Q Sure. I've handed you a copy of Rule 4-3.4.

19 A I have all that.

20 Q And it says, and I quote, "A lawyer shall not in
21 pretrial procedure make a frivolous discovery request or
22 intentionally fail to comply with a legally proper discovery
23 request by an opposing party."

24 My question to you is would you agree that in order
25 to fulfill her or his lawful discovery obligations, a party's

1 lawyer would need to be involved in reviewing discovery
2 requests prior to making a discovery response?

3 A I guess what you're saying, is it appropriate, given
4 this, that the lawyers review the discovery request before his
5 or her client responds to that?

6 Q That's what I'm asking.

7 A Yes.

8 Q Okay. And you would agree that failing to do that,
9 an attorney could be subject to discipline by the Florida Bar.

10 A I can't answer that question.

11 Q Fair enough. Are you aware that there are Public
12 Service Commission decisions which have found it reasonable for
13 outside consultants in a water and wastewater case to spend
14 close to one hour per discovery request?

15 A No.

16 Q Okay. Subject to check, would you agree to that?

17 A You would have to give me the order number.

18 Q Okay. Do you recall us discussing the fact that
19 staff has now counted as of July 31, 2008, that OPC has served
20 1,377 interrogatories on Aqua; correct?

21 A Yes.

22 Q And I think you've previously said that you're the
23 rate case expense witness for OPC; correct?

24 A Yes.

25 Q So I'm going to need your help on some calculations.

1 Can you have your calculator handy?

2 A Okay.

3 Q And since you're a rate case expense expert, I'm
4 going to present you with a hypothetical. And you don't have
5 to agree to the, to the numbers, but I'd ask that you consider
6 the parameters of the hypothetical.

7 Now let's assume -- do you have your calculator?

8 A I do.

9 Q Let's assume that Aqua's outside Florida law firm had
10 an associate who's much smarter than I am and whose hourly rate
11 is lower than mine. Now let's assume that my law firm decided
12 to have this associate be primarily assigned to responding to
13 OPC's discovery in this case to minimize fees. Now let's also
14 assume to be conservative that the associate spent one-half
15 hour reviewing and responding to each discovery request to
16 fulfill her obligations to the Florida Bar rules, and let's
17 assume that the associate's hourly rate is \$190 an hour. Now
18 based on those assumptions, my calculations show that the legal
19 fees associated with responding to just the 1,377
20 interrogatories as of July 31 would be \$130,815; is that
21 correct?

22 A Your math is correct.

23 Q Now you would agree that that calculation would not
24 take into account attorney time required to respond to
25 interrogatories after July 31, 2008; correct?

1 A That's correct.

2 Q And you would agree that that calculation would not
3 take into effect the attorney time required to develop Aqua's
4 interrogatories which it propounded on OPC; correct?

5 A That's correct.

6 Q And you would agree that that calculation would not
7 take into account the need for Aqua to respond to over
8 600 requests for production of documents that the OPC served on
9 Aqua; is that correct?

10 A That's correct.

11 Q Would you agree that the larger the volume of
12 discovery in a rate case, the higher the rate case expense?

13 A Generally speaking, yes. Although I think it's
14 important to recognize that sometimes the reason discovery is
15 larger than it otherwise would have been is because the answers
16 were not sufficient the first time around.

17 Q Do you know if there was a motion to compel any
18 discovery filed in this case?

19 A There was no motion to compel. What we did was when
20 the company did not provide the information that we originally
21 requested, we asked another interrogatory. Sometimes the
22 information that by the third interrogatory we received it
23 could have been provided in the first interrogatory.

24 Q Let's turn to Page 30 of your testimony.
25 Ms. Dismukes, in your prefiled testimony on Page 30 you comment

1 on the quality of water supplied by Aqua, do you not?

2 A Based upon the customer testimony, yes.

3 Q Okay. And I think we established at your deposition
4 that you're not a water quality expert; correct?

5 A No.

6 Q And you're not a toxicologist?

7 A No.

8 Q You're not a hydrologist?

9 A No.

10 Q And you have no formal training in water quality
11 analysis, do you?

12 A No formal training. That's correct. Although I have
13 participated in numerous water and wastewater rate proceedings
14 in the State of Florida.

15 Q Can you turn to Page 27 of your testimony, please,
16 Lines 1 and 2? You testified that customers in Pennsylvania
17 complained of low water pressure, dirty water and inadequate
18 service; is that correct?

19 A Yes.

20 Q And on Footnote Number 40 you refer the Commission
21 and the parties to a Pennsylvania Public Utility Commission
22 docket entitled Docket Number R-00072711.

23 A Yes.

24 Q Now you're not quoting from the Commission's order
25 there, are you?

1 A No. That was a brief of the Office of the Consumer
2 Advocate.

3 Q So you're essentially quoting from a brief of the
4 parallel agency of OPC in Pennsylvania; correct?

5 A Yes.

6 Q You haven't advised the Commission of what the
7 Pennsylvania Public Utility Commission ruled in that case, have
8 you?

9 A That decision came out subsequent obviously to the
10 brief. Two months after the brief the Pennsylvania Commission
11 issued a decision on that matter. And I believe, I looked this
12 up after I filed my testimony, that they found that the data
13 that was relied upon by the OCA was actually taken from a
14 different location than it should have been taken from. The
15 company supplied the wrong information. And once that was
16 resolved, there was no issue associated with the MCLs.

17 Q The Pennsylvania Commission didn't reduce the
18 president's salary, did he, in that case?

19 A No.

20 Q Do you recall what the ROE was awarded to the utility
21 in that case?

22 A No.

23 Q Subject to check, was it 11.0 percent?

24 A I will check that.

25 Q And subject to check, was the date of the

1 Pennsylvania order July 31, 2008?

2 A It was in July. I know that. Yes.

3 Q Prior to the filing of your testimony?

4 A That's correct.

5 MR. MAY: No further questions.

6 CHAIRMAN CARTER: Commissioners, I'm going to go to
7 staff first. Staff, you're recognized.

8 MR. SAYLER: Thank you, Commissioner. I have a
9 request of our court reporter. Her thing is reflecting
10 directly into my eyes.

11 CHAIRMAN CARTER: Then you have to move your seat.

12 MR. SAYLER: Just to the right. Yes. Yes.

13 (Laughter.)

14 The thing in front of that. It's like a plastic
15 reflection. Ah, perfect.

16 CHAIRMAN CARTER: Lawyers are always picky. You know
17 that?

18 MR. SAYLER: Thank you.

19 CROSS EXAMINATION

20 BY MR. SAYLER:

21 Q Good morning, Ms. Dismukes. How are you today?

22 A Good. Thank you.

23 Q All right. The last time we met was telephonically
24 at a deposition in November; is that correct?

25 A Yes.

1 Q All right. There we asked you a series of questions
2 regarding your recommendation to reduce the utility's ROE;
3 isn't that correct?

4 A Yes, you did.

5 Q And your ultimate recommendation was 150 basis
6 points.

7 A That's correct.

8 Q All right. Would you agree that reducing a utility's
9 return on equity or ROE reduction is generally a penalty of
10 last resort imposed upon a utility?

11 A I don't know if it's a penalty of last resort, but
12 definitely if the Commission is going to reduce the return on
13 equity, it's a significant penalty for significant problems.

14 Q All right. Would you agree that the Florida PSC has
15 the authority to reduce both ROE and executive salaries as a
16 penalty for poor performance?

17 A Yes. Yes.

18 Q And I believe in your testimony you cited several
19 orders of the Commission where ROE was reduced by point, or 25
20 basis points, the 50 basis points and potentially up to
21 100 basis points; is that correct?

22 A Yes.

23 Q In your deposition testimony you said that you did
24 not consider recommending a fine as an alternative to ROE
25 reduction; is that correct?

1 A Yes.

2 Q Other than reducing ROE, reducing executive salary or
3 imposing fines, are you aware of any other authority that the
4 PSC has to impose upon a utility, excuse me, any other means or
5 authority by which the PSC may penalize a company for poor
6 performance?

7 A Those are the only ones I'm aware of.

8 Q All right. One moment. You submitted a Late-Filed
9 Deposition Exhibit 7 which contained calculations for the
10 revenue requirement impact of a 150 basis point reduction;
11 isn't that correct?

12 A Yes, I did.

13 Q All right. I have an exhibit for demonstrative
14 purposes which I would like to pass out.

15 CHAIRMAN CARTER: You're just using this for
16 cross-examination; right?

17 MR. SAYLER: Yes, Chairman.

18 CHAIRMAN CARTER: Thank you. You may proceed.

19 BY MR. SAYLER:

20 Q Now regarding the revenue requirement impact of the
21 150 basis point reduction you're recommending, would you agree
22 that based on OPC's recommended rate base of approximately
23 \$19.6 million that the annual revenue requirement impact of a
24 150 basis point reduction to return on equity is approximately
25 \$202,000?

1 A Yes.

2 Q Isn't it true that you're recommending a 50 basis
3 point reduction for poor customer service, a 50 basis point
4 reduction for customer dissatisfaction with water quality and a
5 50 basis point reduction for billing errors?

6 A Yes, I am.

7 Q Would you agree that you chose 50 basis points for
8 each of those categories based upon past Commission decisions?

9 A Yes, I did.

10 Q All right. Isn't it true that you cannot cite any
11 orders for which the Commission reduced ROE by 150 basis
12 points?

13 A You're correct that there are no Commission decisions
14 that I'm aware of where the Commission has explicitly reduced
15 the return on equity by 150 basis points.

16 But if you recall, in my deposition we had a
17 discussion about the Pine Island Utility rate case where the
18 Commission had addressed in the testimony that it was going to
19 reduce the return on equity by 1 percent. But in lieu, in lieu
20 of doing that because they felt that the penalty was not
21 sufficient enough, they set a fine of \$1,000 for that
22 particular utility.

23 If you take that fine and convert it into a return on
24 equity impact, that actually results in a 3.1 percent return on
25 equity impact associated with that \$1,000 fine.

1 Q Would you characterize a fine as being a reduction on
2 return on equity?

3 A It's not a reduction in return on equity in the sense
4 that the Commission explicitly said I'm going to reduce the
5 return on equity by 3.18 percent, but the impact of it is to
6 reduce the return on equity of the revenue requirement by that
7 amount. I mean, that's the impact on the company's return on
8 equity.

9 Q With regards to the length of time for the reduction
10 on return on equity, aren't you recommending a permanent
11 reduction for the Aqua Utilities Florida, a reduction without
12 time limitation?

13 A Yes. Basically it's without time limitations or
14 until the utility comes in for another rate increase.

15 Q And you're recommending a permanent reduction even if
16 Aqua Utilities corrects the various issues for which you're
17 recommending the reduction on return on equity?

18 A Well, I think first you'd have to address how we're
19 going to examine and determine whether or not the utility has
20 addressed those issues. So, I mean, I certainly don't think
21 that the utility should continue to be penalized if it has
22 addressed and corrected and the customers are satisfied with
23 the water quality, billing issues and the customer service that
24 they receive. It's just that I don't have any other
25 alternative to address that particular issue.

1 Q So for the utility the only way they can resolve or
2 to prove up that they haven't -- strike that.

3 The only way the utility can go about, for lack of a
4 better word, getting rid of the ROE reduction, they would have
5 to come in for a full rate case; is that correct?

6 A Well, as I explained in my deposition, there may be
7 other ways that that could be accomplished. You could do it
8 through some kind of a limited proceeding or some kind of an
9 investigation where the utility was given the opportunity or
10 filed with the Commission saying that, you know, we think we've
11 met the criteria that you've set, that our customer service is
12 satisfactory and provide evidence to that effect, that our
13 water quality, we don't have anymore problems with smelly
14 water, dirty water, et cetera, that there may be some mechanism
15 that the utility could come in and seek a change to its return
16 on equity, have that penalty basically taken away.

17 Q All right. Would you agree that it is important for
18 the Commission to follow not only its precedent but the case
19 law precedent that binds this Commission?

20 A Yes.

21 Q All right. Are there any orders or instances where
22 utilities have come in for a limited proceeding for that
23 purpose that you just suggested?

24 A No. There are -- not that I'm aware of. But I've
25 looked at several of the Commission's orders in terms of when

1 they've imposed a penalty, and two of them I'm aware of have a
2 two-year parameter associated with that penalty. The other
3 ones, I didn't see where there was any time limit associated
4 with the penalty either.

5 Q Thank you. Would you agree that -- strike that.

6 Based upon OPC's testimony by Mr. Rothschild, I
7 believe, isn't it OPC's recommended ROE to be set at
8 9.47 percent?

9 A I'll accept that.

10 Q Subject to check.

11 A Check.

12 Q And you are recommending a total reduction by 150
13 points. And if that is accepted, that would result in a
14 recommended ROE of 7.97 percent?

15 A Yes.

16 Q All right. When it comes to determining the ROE
17 range once the Commission has set the ROE, isn't the upper
18 limit of an ROE range 100 basis points above that ROE set?

19 A The Commission, it's my understanding that the
20 Commission in the past has established a range in that manner.
21 But I don't know that that is a, a rule or any, any other
22 requirement that the range be set at 1 percentage point above
23 or below the midpoint of the return on equity.

24 Q Then it would be fair to say that you are not aware
25 of any case law that would forbid the Commission from setting

1 the return on equity above 100 basis points?

2 A No.

3 Q Okay. Likewise, are you aware of any case law that
4 would permit the Public Service Commission to set the return on
5 equity more than 100 basis points below what it was set?

6 A I'm not aware of any case law in that.

7 Q I apologize if I'm repeating myself. So is it your
8 testimony that there's, you are not aware of any PSC precedent
9 allowing for the reduction of ROE by more than 100 basis
10 points; is that correct?

11 A I'm not aware of, yes, as I said before, where the
12 Commission has specifically had a penalty that is more than
13 100 basis points. However, I also went on to explain about the
14 Pine Island case and I won't repeat that.

15 Q All right. I actually pulled the Pine Island case
16 and I would like to pass it out as a demonstrative exhibit.
17 It's a quite lengthy order, so I just attached the first three
18 pages that deal with the background and the quality of service
19 and the discussion in that order, the Commission's discussion
20 concerning that proposed 1 percent reduction on ROE and then
21 the implication of the suspended \$1,000 fine.

22 Are you there, Ms. Dismukes?

23 A Oh, yes. I'm sorry.

24 Q Sorry. This is the order in which you were
25 referencing earlier; is that correct?

1 A Yes.

2 Q If you'll turn to Page 3 of that order, the last
3 paragraph right before the subheading Rate Base.

4 A Yes.

5 Q Would you read that for us, please?

6 A Sure.

7 Q I apologize for having you read the entire thing.

8 A "The dollar amount associated with a 1 percent
9 reduction in this utility's return on common equity is \$314.
10 We believe that in order to properly encourage the utility to
11 satisfy DER requirements in a timely manner, a \$314 fine is
12 insufficient. We therefore impose a \$1,000 fine or \$500 per
13 system for the utility's unsatisfactory quality of service.
14 However, with the purpose of encouraging compliance with DER
15 requirements in mind, we hereby suspend this fine for six
16 months, until December 10, 1991, in order to allow the utility
17 time to satisfy DER requirements. If all DER requirements are
18 not satisfied by this date, the fine is hereby reinstated and
19 thus becomes due and payable."

20 Q Thank you. Based on the return on common equity
21 being set at \$314, would it appear that Pine Island was a very
22 small utility?

23 A Yes.

24 Q And how would that compare with Aqua Utilities which
25 has 82 systems? Is there a bridge between the two that you can

1 see?

2 A Well, Pine Island would be equivalent to one of the
3 small systems of Aqua Utilities. Aqua Utilities though is a
4 much bigger company, it has much greater resources potentially
5 than a utility of this size in terms of the employees and the
6 individuals that are responsible for ensuring compliance. They
7 have compliance with water quality issues. They have a very
8 large customer service organization up in Bryn Mawr that
9 answers the phone and does billing on behalf of these smaller
10 systems. So there are differences. Clearly, you know, Aqua
11 Utilities has more resources than this particular small
12 company.

13 Q You would agree then that the facts pertinent to the
14 Pine Island order are distinguishable then from the facts of
15 this case; is that correct?

16 A Due to the size of the utility? Or, I mean, here the
17 Commission is -- they found that the quality of service was
18 unsatisfactory and they found that reducing the return on
19 equity by 1 percent was not sufficient, so therefore they
20 imposed a greater fine. And other than the -- there are
21 differences obviously between the two companies. But in terms
22 of the significance of the problems, it's not evident that,
23 that there's a difference.

24 Q All right. Thank you. You would -- would you agree
25 that both statute and the case law that governs this Commission

1 require that the Commission provide a utility an opportunity to
2 earn a fair rate of return on its investment, used and useful
3 assets?

4 A On its prudently, on its prudent used and useful
5 assets, yes.

6 Q All right. Are you familiar with the case law which
7 describes the upper and lower limits for ROE range?

8 A No, I'm not.

9 Q All right. I believe at our deposition I asked you
10 whether you're familiar with the following cases: Florida
11 Telephone Corp. versus Carter, 70 So.2d 580, Florida Supreme
12 Court, 1954; also Deltona Corp. versus Mayo, 342 So.2d 510,
13 Florida Supreme Court, 1977; and Gulf Power v. Wilson, 597
14 So.2d 270, Florida Supreme Court, 1992.

15 A Yes.

16 Q Since the deposition have you had a chance to examine
17 these cases?

18 A I've examined the Gulf Power case.

19 Q All right. In the Gulf Power case, I believe Gulf
20 Power was, had their return on equity reduced for two years by
21 50 basis points for poor management; is that correct?

22 A Yes.

23 Q All right. Are you aware, I believe it's in the Gulf
24 Power case where there's some background information about the
25 concept of confiscatory rates?

1 CHAIRMAN CARTER: Commissioner Skop. One moment,
2 please. Commissioner Skop.

3 COMMISSIONER SKOP: Thank you, Mr. Chairman.

4 Just one quick question to staff or actually to the
5 witness or probably staff. It's my understanding that the
6 decision in Gulf Power was in 1992 and the decision in the case
7 for Pine Island was in 1991. Would that be correct?

8 MR. SAYLER: That is correct.

9 COMMISSIONER SKOP: Thank you.

10 CHAIRMAN CARTER: You may proceed.

11 BY MR. SAYLER:

12 Q When reviewing the case for Gulf Power, I believe
13 there was some discussion on whether reducing the utility's ROE
14 by 50 basis points for the management decision resulted in
15 confiscatory rates, is that correct, or confiscatory rate
16 setting? I might have the terminology wrong.

17 A Do you have a specific citation within the body of
18 the decision?

19 Q Certainly. If you -- are you using a West Law or
20 LexisNexis decision?

21 A LexisNexis.

22 Q Okay. It would be approximately just after Page
23 273 in the decision where it says, "The reduction in Carter, a
24 case previously cited in the decision which resulted in a rate
25 of return that was well below the range found by the Commission

1 as being fair and reasonable." Are you -- have you found that
2 paragraph?

3 A Does it start with, "In Carter, the Commission
4 reduced the utility's rate of return below a reasonable range
5 on the grounds that the services were inadequate and
6 insufficient"?

7 Q Yes. Oh, it was the following page, but we're nearly
8 on the same page or part of the decision.

9 I was -- the purpose of my question was just whether
10 you're familiar with those three cases and the parameters by
11 which the Commission is governed as it navigates determining a
12 return on equity and how much it may reduce or increase a
13 return on equity for a company, whether good management or
14 mismanagement, for poor quality service, for good quality
15 service and things of that nature. And you, I believe, stated
16 that you were just familiar with the Gulf Power; is that
17 correct?

18 A I'm familiar with the Gulf Power case, yes.

19 Q Okay. But you are not familiar with any case law
20 where the Commission order has been upheld by when it has
21 reduced a return on equity by more than 100 basis points; is
22 that right?

23 A No, I'm not.

24 Q Okay. All right. And returning to a different
25 section -- I don't mean to belabor this area of return on

1 equity. I believe we also covered it quite well in the depo.

2 If you will please refer to Schedule 25 of your
3 deposition testimony. And, Commissioners, I have a
4 demonstrative exhibit to speed things along, and this is my
5 final set of questions to bring it in for a landing, so.

6 This demonstrative exhibit contains not only your
7 Schedule 25 but also your Late-Filed Deposition Exhibit Number
8 3, which is entitled Revenue to Bad Debt Ratio of Comparative
9 Companies.

10 Ms. Dismukes, in your Schedule 25 you reflected the
11 dollar amount of bad debt expense per customer for AUF's water
12 and wastewater systems; is that correct?

13 A Yes.

14 Q With regards to your late-filed deposition exhibit we
15 asked you to submit that. And that reflects the highest and
16 lowest bad debt percentage ratios of water and wastewater
17 companies.

18 A Yes.

19 Q Okay. Would you please provide for the Commission as
20 a late-filed hearing exhibit based upon your Late-Filed
21 Deposition Exhibit 3 the highest and lowest dollar amounts of
22 bad debt expense per customer of the water and wastewater
23 companies in your comparison group? Included with that please
24 include a copy of the applicable annual report schedules for
25 the respective water and wastewater companies used to derive

1 the lowest dollar amounts of the bad debt expense per customer.

2 A Sure. So you want me to provide of all of the
3 companies that were in the group the company that had the
4 highest bad debt per customer and the company that had the
5 lowest bad debt per customer?

6 Q Yes, ma'am.

7 A Okay. And the annual report pages that support that?

8 Q Yes, ma'am.

9 A The raw data? Sure.

10 CHAIRMAN CARTER: For the record, for the parties and
11 for the record, that will be Exhibit Number 197. Exhibit
12 Number 197.

13 You may proceed.

14 MR. SAYLER: All right. As for a -- do we have a
15 title for the late-filed exhibit? I don't --

16 CHAIRMAN CARTER: How about --

17 MR. SAYLER: How about --

18 CHAIRMAN CARTER: -- Highest and Lowest Bad Debt for
19 Customers of Water and Wastewater Companies?

20 MR. SAYLER: That would work. Thank you.

21 CHAIRMAN CARTER: I was anticipating on that one.

22 MR. SAYLER: Thank you, Chairman.

23 CHAIRMAN CARTER: Had that Yoda and Luke Skywalker
24 thing going on.

25 (Late-Filed Exhibit 197 identified for the record.)

1 BY MR. SAYLER:

2 Q And with regards to your changes that you made with
3 regards to your testimony, you had changed the acquisition
4 adjustment recommendation from approximately \$2.7 million to
5 \$1.8 million; is that correct?

6 A Yes.

7 Q Would you care to -- would you explain why it was
8 reduced that amount?

9 A Certainly. Yes. At the time I prepared -- the
10 \$2.7 million, basically the total amount of the acquisition
11 adjustment, the Commission's rule on acquisition adjustment
12 says that in the event the Commission establishes a negative
13 acquisition adjustment, then only 70 percent of that should be
14 reflected in rate base. That's the difference between the two
15 numbers.

16 MR. SAYLER: Thank you very much. Staff has no
17 further questions. Thank you for your time.

18 CHAIRMAN CARTER: Okay. Commissioners?

19 Mr. Beck.

20 MR. BECK: Thank you, Mr. Chairman.

21 REDIRECT EXAMINATION

22 BY MR. BECK:

23 Q Ms. Dismukes, you have quite a number of adjustments
24 that you've proposed that the Commission make in this case; is
25 that right?

1 A Yes.

2 Q Okay. Is a calculation of one of your -- does
3 Schedule 27 reflect a calculation of any of your adjustments
4 per se?

5 A Schedule 27 would essentially roll up adjustments
6 that are on Schedules 28 and 29.

7 Q Okay. Now Mr. May spent a significant amount of time
8 going over the calculations in those schedules. Is that -- do
9 you recall that?

10 A Schedule 27. Yes.

11 Q But those, that schedule is not actually an
12 adjustment you're proposing in the case, it's simply a
13 calculation of the impact, is it not?

14 A Exactly. Yes. Schedule 27 would be considered a
15 fallout type of schedule where it computes the revenue
16 requirement associated with the individual adjustments that I
17 propose as well as using the rate of return recommended by
18 Mr. Rothschild.

19 Q Okay. Would you describe briefly what it was like to
20 run the company's schedules and the problems you encountered?
21 The company's program. I'm sorry.

22 A The company's program is a very rigid program. It's
23 designed specifically for their system and the number of
24 systems that they have and the pro forma adjustments that they
25 were recommending. And if you make certain changes that you

1 would expect to ripple through the spreadsheets and the
2 program, that didn't always happen. And so what, what was
3 required of us was to basically go back and look at precisely
4 many formulas that may have been, you might have thought would
5 have been relative references were fixed references and we had
6 to expand those.

7 The -- there were instances within the model where
8 what you would have expected to happen did not happen, that --
9 for example, with respect to the used and useful issues, all of
10 those adjustments to used and useful were contained in one
11 spreadsheet and the used and useful percentages flowed through
12 to the other spreadsheets; however, the unaccounted for water
13 did not flow through to the other spreadsheets. So there were
14 nuances within the model that we had to address so that we
15 could make our adjustments flow through.

16 Q To the extent there may or may not be any errors in
17 the running of that program and as reflected in those
18 schedules, does that affect any of the adjustments you're
19 proposing in the case?

20 A No, it does not. My -- the way it worked is I had my
21 testimony and my other exhibits in this proceeding. And the
22 adjustments that are recommended in my testimony and the
23 adjustments that are recommended in my exhibits flowed into the
24 company's model. So my testimony doesn't change. And other
25 than the corrections that I made when I was on the stand, the

1 adjustments that I am recommending have not changed whatsoever.

2 Q Okay. You've made a number of proposals regarding
3 rate case expense; is that correct?

4 A Yes.

5 Q Okay. Do any of your proposed disallowances of rate
6 case expense relate to counsel for Aqua reviewing discovery
7 requests and responding?

8 A Only in the sense of where the company had a change
9 in the protocol with respect to how they were going to act with
10 respect to OPC's discovery. But as far as I know, I did not
11 disallow any expenses associated with their review of our
12 questions and how they might be responded to by the company.

13 Q Do you still have the Gulf Power case with you that
14 staff was asking you about?

15 A Yes.

16 Q Could you turn to that, please? Do you know from the
17 decision what the authorized range that the Commission set for
18 Gulf Power in that case, do you recall what it was?

19 A The range was 11.75 to 13.50.

20 Q So that's not a range of plus or minus 100 basis
21 points, is it?

22 A No, it's not.

23 Q Okay. And do you recall what the midpoint or the
24 rate setting number was that was set by the Commission?

25 A 12.55.

1 Q Okay. And is that halfway in between 11.75 and
2 13.50?

3 A I think so.

4 Q And then the Commission as a penalty put 50 basis
5 points below that point; is that right?

6 A Yes, it did.

7 Q Do you know whether the courts grant great deference
8 to the Commission in the setting of a rate of return range?

9 A The courts grant great deference to the Commission in
10 their overall ratemaking process.

11 Q Okay. And if you know, has the Commission always --
12 or obviously they haven't always used plus or minus 100 basis
13 points because Gulf Power it wasn't 200. Do you know of any
14 other instances where the Commission has used something other
15 than plus or minus 100 basis points for the range, if you know?

16 A Not as I sit here.

17 MR. BECK: Okay. That's all I have. Thank you.

18 CHAIRMAN CARTER: Thank you, Mr. Beck. And thank
19 you, Ms. Dismukes.

20 Let's deal with exhibits.

21 MR. MAY: Mr. Chair, I had one redirect from
22 Mr. Beck's questioning, just one line of questions. He wanted
23 to talk a little bit about the Gulf Power case and I needed to
24 clarify for the record.

25 CHAIRMAN CARTER: Tread lightly.

REXCROSS EXAMINATION

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BY MR. MAY:

Q Ms. Dismukes, the Gulf Power case that's been the subject of considerable attention over the last 20 minutes, are you generally familiar with that case?

A Yes.

Q Now that case involved allegations of corporate crime, did it not?

A Yes, it did.

Q It also involved allegations of corporate theft, did it not?

A Yes, it did.

Q And it also involved allegations of illegal campaign contributions, did it not?

A That one I'm not aware of.

Q None of those issues are part of this case, are they?

A No, they're not.

MR. MAY: Okay. No further questions.

CHAIRMAN CARTER: Mr. Beck?

MR. BECK: No questions.

CHAIRMAN CARTER: Thank you. Let me just kind of, I gave everyone, the parties a heads-up on what we'll be doing next. But let me also kind of give you a general reminder: Don't make any early dinner plans. Please don't make any early dinner plans. Okay?

1 Now let's deal with the exhibits.

2 Mr. Beck.

3 MR. BECK: Commissioners, we would move in --

4 CHAIRMAN CARTER: I think first, is it 86, is that
5 where we are?

6 MR. BECK: Yes, sir.

7 CHAIRMAN CARTER: Any objections?

8 MR. BECK: And 194 as well.

9 CHAIRMAN CARTER: Without objection, show it done.
10 Exhibit 86 and Exhibit -- were we doing 193 also? Is that --
11 that's the schedules of customer service correspondence.

12 MS. FLEMING: I believe 193 is going to be a
13 late-filed exhibit.

14 CHAIRMAN CARTER: Late-filed. Okay. That will be
15 late-filed. Any objections on 194? Without objection, show it
16 done.

17 (Exhibit 86 and 194 admitted into the record.)

18 Mr., Mr. May, you're recognized.

19 MR. MAY: Mr. Chairman, I think we would, I think the
20 exhibit number is 196. It's the schedule, Revised Schedule
21 Variances, and we would ask that that be moved into evidence.

22 CHAIRMAN CARTER: Also before we get there, on 195,
23 giving leave to AUF for a late-filed.

24 MR. MAY: Yes, sir.

25 CHAIRMAN CARTER: Okay. So 196, any objection,

1 Mr. Beck?

2 MR. BECK: No.

3 CHAIRMAN CARTER: Without objection, show it done.

4 (Exhibit 196 admitted into the record.)

5 And staff has asked for a late-filed on 197.

6 Okay. I think that concludes the testimony,
7 cross-examination, redirect, reredirect, recross on this
8 witness as well as the, the exhibits.

9 Commissioners, we will go ahead on, we've got a
10 couple of minutes, so we'll go ahead on and adjourn and
11 reconvene at 2:00.

12 Again, please don't make any early dinner plans. We
13 will be rolling.

14 MS. FLEMING: Excuse me, Chairman.

15 CHAIRMAN CARTER: Yes, ma'am. Oh.

16 MS. FLEMING: Can staff have a couple of moments?

17 CHAIRMAN CARTER: Oh, great. Let me do this also.

18 Mr. Reilly, we're going to get with you later on the matter
19 that you mentioned?

20 MR. REILLY: Excuse me?

21 CHAIRMAN CARTER: The great news.

22 MR. REILLY: Oh, I didn't think we were taking up
23 stipulations.

24 CHAIRMAN CARTER: Okay. Let's do this. Staff, you
25 need, how much time do you need?

1 MS. FLEMING: Just a minute.

2 CHAIRMAN CARTER: Let's kind of hold in place for a
3 minute, Commissioners. We'll just kind of hold in place.

4 MS. FLEMING: Staff is handing out at this time an
5 updated proposed order of witnesses. Staff discussed with the
6 parties yesterday, we propose, I think, after lunch on the list
7 Earl Poucher will be coming up, Patricia Merchant has been
8 stipulated, and Debra Dobiac. These are on the list.

9 We're proposing that the Water Management District,
10 Catherine Walker, be taken up after witness Dobiac, the DEP
11 witness Kimberly Dodson be taken up after Witness Walker, and
12 Aqua has requested that the rebuttal witness Mr. Luitweiler be
13 taken up after Dodson, and then we would continue as identified
14 on this list.

15 CHAIRMAN CARTER: Where is the good news?

16 MS. FLEMING: The good news is that it's organized.

17 CHAIRMAN CARTER: Thank you. It is good news. Thank
18 you, Ms. Fleming. Thank you. Commissioners, we all have that?

19 COMMISSIONER EDGAR: I'm sorry, Mr. Chairman. I just
20 want to make sure I understand, if that's okay, for just a
21 second.

22 CHAIRMAN CARTER: You're recognized.

23 COMMISSIONER EDGAR: So what has just been passed out
24 is to pick up after Ms. Dismukes as a new order separate from
25 and this new one that includes all witnesses from this point

1 forward?

2 MS. FLEMING: That is correct.

3 COMMISSIONER EDGAR: All right. Thank you.

4 CHAIRMAN CARTER: See, you have a new world order.

5 Anything further from staff? Anything further from
6 either of the parties?

7 Okay. We're on recess.

8 (Recess taken.)

9 (Transcript continues in sequence with Volume 7.)

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1 STATE OF FLORIDA)
 :
2 COUNTY OF LEON)

CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing proceeding was
6 heard at the time and place herein stated.

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 said
11 proceedings.

12 I FURTHER CERTIFY that I am not a relative, employee,
13 attorney or counsel of any of the parties, nor am I a relative
14 or employee of any of the parties' attorneys or counsel
15 connected with the action, nor am I financially interested in
16 the action.

17 DATED THIS 11th day of December,

18 2008.

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