

COMMISSIONERS:
MATTHEW M. CARTER II, CHAIRMAN
LISA POLAK EDGAR
KATRINA J. MCMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

March 10, 2009

Mr. Dale Bittner, SVP
Branch Banking & Trust Co.
1010 Kennedy Drive
Key West, FL 33040

REDACTED

Re: Release of funds in Escrow Account No.

(Docket 070293-SU)

Dear Mr. Bittner:

In accordance with Order No. PSC-07-0812-PCO-SU, issued on October 10, 2007, Escrow Account No. [REDACTED] was established for KW Resort Utilities Corp. Pursuant to Order No. PSC-09-0057-FOF-SU, issued on January 27, 2009, the Commission ordered that the escrow account opened pursuant to Order No. PSC-07-0812-PCO-SU may be closed upon verification that the required refunds had been made. Therefore, as the Commission's designated agent in such matters, I request that you release all escrowed funds in Escrow Account No. [REDACTED] to the utility and close this escrow account.

I have attached memorandum dated March 4, 2009, as proof of verification conducted by Commission staff, and a copy of the above mentioned orders. Please contact me if you have any questions.

Sincerely,

Handwritten signature of Ann Cole in cursive.

Ann Cole
Commission Clerk

Enclosures (4)

cc: Division of Economic Regulation (L. Roberts)
Office of General Counsel (R. Jaeger)
F. Marshall Deterding, Esquire

DOCUMENT NUMBER - DATE
01966 MAR 10 08
FPSC-COMMISSION CLERK

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made by and between BB&T Corporation (the "Bank"), the Florida Public Service Commission ("FPSC"), and KW Resort Utilities, Corp. (the "Utility"), a Florida corporation, upon the following terms, conditions and considerations:

W I T N E S S E T H:

WHEREAS, KW Resort Utilities, Corp. filed its application for increased wastewater rates in Monroe County, Florida on August 3, 2007 and;

WHEREAS, pursuant to the provisions of Chapter 367.082, Florida Statutes, the Commission authorized the Utility to implement interim rates during the pendency of its review of the Application and determination of the appropriate amount of the final rate increase and;

WHEREAS, pursuant to the provisions of Section 367.082, Florida Statutes and the Commission's decision of September 25, 2007, the Utility must implement those rates under appropriate security, including among other alternatives, escrow of all such increases and;

WHEREAS, on September 25, 2007, the FPSC voted to allow the Utility to implement increased interim rates subject to refunds during the pendency of this proceeding.


WHEREAS, the Bank has agreed to hold such funds in an interest bearing account, the parties agree as follows:

1. The foregoing representations are true and correct.
2. The difference between the prior approved rates of KW Resort Utilities, Corp.'s wastewater system and the increased rates being implemented as authorized pursuant to the Commission's decision of September 25, 2007 on interim, shall be deposited by the Utility in an escrow account held by the Bank.
3. The escrow account shall bear interest at the prevailing rate.
4. No funds will be withdrawn from the escrow account without the signature of both the ~~Director of the Division of Records and Reporting~~ ^{Commission Clerk} of the FPSC and the President of the Utility. Signature cards executed by the ~~Director of the Division of the Commission Clerk and Administrative Services~~ of the FPSC and the President of the Utility shall designate the appropriate authorized signature for each.
5. The Bank shall forward regular monthly statements (including canceled checks) to the Utility and shall mail a copy of the monthly account statement to the FPSC, Attn: Ann Cole, ~~Director, Division of the Commission Clerk and Administrative Services~~, 2540 Shumard Oak Boulevard 32399-0850.

6. The Bank may, without reason, withdraw from this Agreement upon thirty (30) days written notice to the FPSC and to the Utility.
7. The Utility shall indemnify and hold the Bank harmless from any claim, demand or loss suffered by the Bank, and the cost thereof (including court costs and attorney fees for negotiation, trial and appeal).
8. This escrow account is established pursuant to the provisions of Section 367.082, Florida Statutes for the benefit of the Utility's customers, in the event that the final rates approved by the Commission are less than those implemented by KW Resort on October 2, 2007.
9. Information concerning the escrow account shall be available from the Bank to the FPSC and its representatives at all times.
10. Pursuant to Cosentino v. Elson, 263 So.2d 253 (Fla. 3rd DCA 1972), escrow accounts are not subject to garnishment.

THIS AGREEMENT shall become effective and binding upon all parties upon the date that it becomes executed by all parties.

KW RESORT UTILITIES, CORP.

BY: 
 William Smith, Jr.

(Corporate Seal)


 BANK
 BB&T Corporation



(Corporate Seal)
Debra Oakes

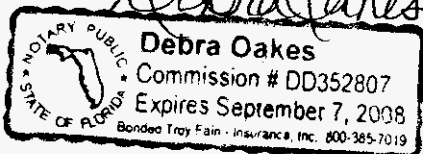
BY: 
 DAVE BITTER, SVP
 BRANCH BANKING & TRUST CO
 1010 KENNEDY DRIVE
 KEY WEST, FL 33040

FLORIDA PUBLIC SERVICE COMMISSION

BY: 
 FPSC Director, Division of the Commission
 Clerk and Administrative

(Seal)

kwresort\escrow.agr



2
 Certified
 Copy of Original

BB&T SIGNATURE CARD (FLORIDA)

NAME AND ADDRESS OF DEPOSITOR(S) KW RESORT UTILITIES CORP INTERIM RATE ESCROW ACCOUNT		
6450 COLLEGE RD KEY WEST FL 330404346		
ACCOUNT NUMBER [REDACTED]	ACCOUNT OPENING DATE 09/24/2007	REVISED CARD DATE 09/24/2007

OWNERSHIP DESIGNATION: CHECK ONLY ONE BLOCK

Personal Accounts

- Single-Party
- Multiple-Party With Right of Survivorship
- Pay-On-Death
- Uniform Transfers to Minors
- Other _____

Business Accounts

- Sole Proprietorship/DBA
- Partnership
- Corporation
- Non-Profit Corporation
- Public Funds
- LLC (including LLPI)

Other Accounts

- Estate
- Trust
- Bankruptcy
- Court Appointed Fiduciary
(Guardian/Custodian/Conservator, etc.)
- Lawyer's Trust Account or IOTA
- Escrow
- Other _____

TIN CERTIFICATION

Under penalties of perjury, I certify by my signature below that: (1) The number shown on this form is the correct Social Security or Tax Identification Number, or I am waiting for a number to be issued to me, and (2) I am NOT subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the Internal Revenue Service has notified me that I am no longer subject to backup withholding. (Depositor must cross out (2) above if the IRS has notified the depositor that the depositor is currently subject to backup withholding because of underreporting of interest or dividends.), and (3) I am a U.S. person (including U.S. resident alien). The Internal Revenue Service does not require your consent to any provision of this document other than the certification required to avoid backup withholding.

Check one only if applicable:

- Depositor is an exempt recipient of interest under the Internal Revenue Code.
- Depositor is exempt as a nonresident alien and has completed a Form W-8BEN. (All depositors must complete a separate W-8BEN form for this exemption.)

I understand that if a taxpayer identification number is not provided to the bank within 60 days, the account may be closed.

BY MY SIGNATURE, I HEREBY CERTIFY THAT: (1) the type of ownership designated is correct; (2)(a) if I have opened a personal account, I have received the "Bank Services Agreement", the "BB&T Interest Schedule", and the "BB&T Financial Services Pricing Guide" and agree to accept the terms of each document; or (2)(b) if I have opened a commercial account, I have received the "Commercial Bank Services Agreement" and the "BB&T Business Services Pricing Guide" and agree to accept the terms of each document; and (3), I grant permission to the Bank to verify any information about me including bank and credit references.

PERSONAL ACCOUNTS

SINGLE-PARTY ACCOUNT
Only one signer

SSN: _____ Date: _____
 Signature of Depositor _____

MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP
All account owners must sign

We understand that BB&T may pay any or all of the funds in the account on the order of any one person named on the account. Upon the death of a party to the account, the deceased party's ownership in the account passes to the surviving party or parties to the account. BB&T may pay the entire account balance to a creditor or other legal claimant pursuant to legal process despite notice to BB&T by a depositor not to permit such payment.

SSN: _____ Date: _____
 Signature of Depositor _____

SSN: _____ Date: _____
 Signature of Depositor _____

Centralized Document Scanning Operations
 100-99-15-11



DDASIGXXX506000146546471

PAY-ON-DEATH ACCOUNT
Can be single-party or multiple-party account

It is understood that by establishing a pay-on-death account that: (i) any one party may withdraw or transfer any or all the funds in the account; (ii) any party may change or remove any beneficiary by written notice to the Bank; (iii) upon the death of any party, the funds shall belong to the remaining party(s); and (iv) upon the death of the last party, the funds shall be payable to the beneficiaries then living and, if none, to the estate of the last surviving party.

SSN: _____ Date: _____

Signature of Depositor _____

SSN: _____ Date: _____

Signature of Depositor _____

Name of Beneficiary: _____ Relationship: _____ SSN: _____

Address of Beneficiary: _____

Date of Birth of Beneficiary: _____ Phone Number of Beneficiary: _____

Name of Beneficiary: _____ Relationship: _____ SSN: _____

Address of Beneficiary: _____

Date of Birth of Beneficiary: _____ Phone Number of Beneficiary: _____

Name of Beneficiary: _____ Relationship: _____ SSN: _____

Address of Beneficiary: _____

Date of Birth of Beneficiary: _____ Phone Number of Beneficiary: _____

UNIFORM TRANSFERS TO MINORS ACT ACCOUNT
Only one custodian and one minor permitted

I understand that the funds transferred into this account are being credited to this account in my name as custodian for the minor named below under the Florida Uniform Transfers to Minors Act. The gift of money to the minor named below is irrevocable and is made in accordance with and to include all provisions of said Act.

SSN: _____ Name of Minor: _____ Relationship: _____

Address of Minor: _____ DOB: _____

SSN: _____ Date: _____

Signature of Custodian _____

Business, Trust, Bankruptcy, Guardian, Custodian, Conservator, IQTA, Escrow and "Other" Accounts
 The undersigned expressly authorize BB&T to obtain any consumer report and/or any other Personal or Business credit reports.

13-3250037	KW RESORT UTILITIES CORP		(Seal)	09/24/2007
EIN/Tax ID Number	Printed Name	Signature for Entry	Your Title	Date
85-8012600	ANN COLE		Commission Clerk	9-27-07
58805	William L Smith			9/27/07
SS#	Printed Name	Signature and Title		Date
_____	_____	_____	INDIVIDUALLY	_____
Tax ID Number	Printed Name	Signature and Title		Date

IDENTIFICATION (Primary Account Holder)

Type of ID: SECY Issued By: FL ID Number: H34618 Expiration Date: 12/31/2049
 Second Type of ID: _____ Issued By: _____ ID Number: _____ Expiration Date: _____
 Employer: _____ Date of Birth: _____ Home Phone Number: (____) _____
 Address as listed on ID: _____ Work Phone Number: (305) 294-9578

IDENTIFICATION (Secondary Account Holder)

Type of ID: Drivers License Issued By: FL ID Number: C400-101-52-661-0 Expiration Date: 5-1-13
 Second Type of ID: Drivers License IL ID Number: 5530-9324-6148 Expiration Date: 05-24-09
 Employer: _____ Date of Birth: _____ Home Phone Number: (____) _____
 Address as listed on ID: _____ Work Phone Number: (____) _____

Opened By: YENNY S MONTOYA 52980 Approved By: Branch Location: 8520801

State of Florida



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Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: March 4, 2009

TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk

FROM: *JP* Lydia Roberts, Regulatory Analyst II, Division of Economic Regulation *DF CRE*
Ralph Jaeger, Senior Attorney, Office of the General Counsel *RJ*

RE: Docket No. 070293-SU - Application for an increase in its wastewater rates in
Monroe County by KW Resort Utilities. (KWRU)

On March 3, 2009, KWRU filed a refund report indicating the refunds that have been made pursuant to Commission Order No. PSC-09-0057-FOF-SU. All refunds have been made, and the only question remaining is whether the checks mailed to former customers totaling \$249.54 will be cashed. The Utility is requesting the Commission to authorize the release of all escrowed monies and any unclaimed refunds will be credited to CIAC. Staff has determined that there are no pending issues that need to be addressed by the Commission. Staff has approved the tariffs, verified the refunds and the expiration of the time for filing an appeal has passed. The Utility will file, in approximately sixty days, a report outlining the disposition of the \$249.54. Therefore, this docket may be administratively closed since the Utility has complied with Order No. PSC-09-0057-FOF-SU. The refunds are complete and, pursuant to Order No. PSC-09-0057-FOF-SU, the escrowed funds may be released to the Utility.

ok to close 3/04/09 hnw

cc: Division of Economic Regulation (Roberts, Bulecza-Banks, Fletcher, Rieger, Willis)
Office of the General Counsel (Brubaker, Jaeger)

DOCUMENT NUMBER-DATE

01776 MAR-4 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater
rates in Monroe County by K W Resort
Utilities Corp.

DOCKET NO. 070293-SU
ORDER NO. PSC-07-0812-PCO-SU
ISSUED: October 10, 2007

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman
MATTHEW M. CARTER II
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER SUSPENDING PROPOSED FINAL RATES AND APPROVING INTERIM RATES

BY THE COMMISSION:

I. Background

K W Resort Utilities Corp. (KW Resort or utility) is a Class A utility providing wastewater service to approximately 1,556 customers in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority. Wastewater rates were last established for this utility in its 1983 rate proceeding.¹

On August 3, 2007, KW Resort filed an application for the rate increase at issue in the instant docket. The utility requested that the application proceed directly to hearing for the establishment of rates as provided under Section 367.081(6), Florida Statutes (F.S.). KW Resort also requested interim rates. The test year established for interim and final rates is the period ending December 31, 2006.

KW Resort requested interim rates designed to generate annual revenues of \$1,326,943. This represents a revenue increase on an annual basis of \$280,632 (or 26.82%). The utility requested final rates designed to generate annual revenues of \$1,647,998. This represents a revenue increase of \$601,684 (or 57.51%).

The 60-day statutory deadline to suspend the utility's requested final rates is October 2, 2007. This Order addresses our suspension of KW Resort's requested final rates and approval of the appropriate interim rates. We have jurisdiction pursuant to Sections 367.081 and 367.082, F.S.

¹ See Orders Nos. 14620 and 13862, issued July 23, 1985 and November 19, 1984, respectively, in Docket No. 830388-S, In re: Petition of Stock Island Utility Company, Inc. for increased sewer rates in Monroe County, Florida.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

II. Suspension of Requested Final Rates

Section 367.081(6), F.S., provides that we may, for good cause, withhold consent to the implementation of the requested rates by a vote to that effect within 60 days after the date the rate request is filed. Further, Section 367.081(6), F.S., permits the proposed final rates to go into effect, under bond, escrow or corporate undertaking, eight months from the filing of the request if we have not taken final action on the request.

Upon review of the information filed in support of the rate application and the proposed final rates, we find it necessary to conduct further investigation of this information, including on-site investigations by our staff accountants and engineers. Based on the foregoing, we find that it is appropriate to suspend the utility's proposed rate increase.

III. Interim Rates

The utility has filed rate base, cost of capital, and operating statements to support its requested wastewater rate increase. Pursuant to Section 367.082(5)(b)1., F.S., the achieved rate of return for interim purposes must be calculated by applying adjustments consistent with those used in the utility's most recent rate proceeding and annualizing any rate changes. We have reviewed the utility's interim request, as well as Order No. 13862, in which we last established rate base. Our adjustments are discussed below, and the accounting schedules to illustrate our calculation of rate base, capital structure, and test year operating income amounts are attached to this Order. The rate base schedule is labeled as Schedule No. 1-A, with the adjustments shown on Schedule No. 1-B. The capital structure is set forth in Schedule No. 2, and the operating income schedule is labeled as Schedule No. 3-A, with the adjustments shown on Schedule No. 3-B.

A. Rate Base

Based on a review of the MFRs and Order No. 13862 from the utility's last rate proceeding, two adjustments are necessary to the utility's requested interim rate base. First, in its last rate case, we found that land was approximately 30% used and useful, which resulted in a used and useful amount of \$127,500. On MFR Schedule A-2(a), KW Resort reflected a land balance of \$375,000, which is the same balance reflected in its last rate case.

The utility has almost doubled its wastewater treatment plant capacity from 250,000 gallons per day (gpd) to 499,000 gpd since its last rate case. However, we cannot determine from the information provided in the utility's filing if any additional land has been utilized with the expansion of the wastewater treatment plant capacity. The burden of proof in a Commission proceeding is always on a utility seeking a rate change.² We find that the utility has not met its burden of proof that the same non-used and useful adjustment to land should not be made. Thus, for interim purposes, land shall be reduced by \$247,500 (\$375,000 less \$127,500).

² See Florida Power Corp. v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982).

Second, in the last rate case, we found that the wastewater treatment plant was 49% used and useful. On MFR Schedule A-2(a), KW Resort requested that the wastewater treatment plant be considered 100% used and useful. Pursuant to Section 367.082(5)(b)1., F.S., the achieved rate of return for interim purposes must be calculated by applying adjustments consistent with those used in the utility's most recent rate proceeding. Consistent with the last rate case, we calculate a used and useful percentage of 65.33%. Based on this percentage, the non-used and useful component for interim purposes shall be \$484,575. Accordingly, rate base and depreciation expense shall be reduced by \$484,575 and \$30,641, respectively.

With the above adjustments, we calculate a negative interim rate base of \$276,484. Consistent with our practice, rate base shall be adjusted to zero for interim purposes.³

B. Cost of Capital

In its interim request, KW Resort used a 12.50% return on equity (ROE). Because the utility's capital structure consisted of 100% long-term debt in its last rate case, a ROE has never been established for KW Resort. Section 367.082(5)(b)3., F.S., provides that the "last authorized rate of return on equity" means the minimum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the utility. Further, Section 367.082(6), F.S., states that we are allowed to establish interim rates for utilities which do not have an authorized rate of return previously established. Using the leverage formula approved in Order No. PSC-07-0472-PAA-WS, issued on June 1, 2007,⁴ we calculate the minimum of the required rate of return on equity to be 11.00%. This is the procedure we have consistently used in interim rate proceedings for utilities with no previously established ROE.⁵ Based on the above, we find the interim weighted average cost of capital to be 7.75%.

C. Net Operating Income

We have also made two adjustments to net operating income. First, pursuant to Section 367.082(5)(b)1., F.S., the achieved rate of return for interim purposes must be calculated by annualizing any rate changes during the interim test year. On MFR Schedule E-2(a), KW Resort annualized revenues using its present rates which became effective June 30, 2007. On MFR Schedule B-2(a), the utility made an annualized revenue adjustment of \$33,616. As stated previously, the test year established for interim and final rates is the historical period ending December 31, 2006. The rates in effect as of December 31, 2006, shall be used to annualize interim revenues. Using the appropriate rates, we calculate an annualized revenue adjustment of \$11,022. Therefore, test year revenues shall be reduced by \$22,597 (\$33,616 less \$11,022).

³ See Order No. 16238, issued on June 6, 1986, in Docket No. 840247-WU, In re: Application of Placid Lakes Utilities, Inc. for staff assistance on a rate increase in Highlands County, Florida.; Order No. PSC-94-0245-FOF-WS, issued on March 4, 1994, in Docket No. 930524-WS, In re: Application for a Staff-Assisted Rate Case in Marion County by Tradewinds Utilities, Inc.; and Order No. PSC-97-0540-FOF-WS, issued May 12, 1997, in Docket No. 960799-WS, In re: Application for staff-assisted rate case in DeSoto County by Lake Suzy Utilities, Inc.

⁴ In Docket No. 070006-WS, In re: Water and Wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to section 367.081(4)(f), F.S.

⁵ See Order No. PSC-96-1187-FOF-WU, issued September 23, 1996, in Docket No. 960444-WU, In re: Application for rate increase and for increase in service availability charges in Lake County by Lake Utility Services, Inc.

Second, in the utility's last rate case, we reduced purchased power and chemicals by 15% due to KW Resort's excessive infiltration and inflow (I&I). On MFR Schedule B-6, the utility has reflected \$141,282 in purchased power and \$50,763 in chemicals. In its filings, KW Resort did not provide the necessary information to determine if it has any excessive I&I, and, if so, what the amount is. As such, the utility has not met its burden of proof that the same 15% reduction to purchased power and chemicals should not be made. Thus, consistent with the last rate case, purchased power shall be reduced by \$21,192 (\$141,282 multiplied by 15%) and chemicals shall be reduced by \$7,615 (\$50,763 multiplied by 15%). These adjustments represent a total operation and maintenance expense reduction of \$28,807.

Based on the above, the appropriate test year operating loss, before any revenue increase, is \$194,828.

D. Revenue Requirement

Based on the above adjustments, we calculate a revenue requirement of \$1,227,722 which represents an interim increase in annual revenues of \$204,008 (or 19.93%). This will allow the utility the opportunity to recover its wastewater operating expenses, but earn no return (its negative wastewater rate base has been set at zero).

E. Appropriate Interim Wastewater Rates

We have found that interim wastewater service rates for KW Resort shall be designed to allow the utility the opportunity to generate annual operating revenues of \$1,227,722. To determine the appropriate percentage increase to apply to the service rates, miscellaneous service revenues must be removed from the test year revenues. Our calculation is as follows:

	<u>Wastewater</u>
1 Total Test Year Revenues	\$1,023,714
2 Less: Miscellaneous Revenues	<u>72,285</u>
3 Test Year Revenues from Service Rates	\$951,429
4 Revenue Increase	<u>\$204,008</u>
5 % Service Rate Increase (Line 4/Line3)	<u>21.44%</u>

The interim rate increase of 21.44% shall be applied as an across-the-board increase to the service rates in effect as of December 31, 2006. The approved interim rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1)(a), F.A.C., provided customers have received notice. The rates shall not be implemented until our staff verifies that the tariff sheets are consistent with our decision, the proposed customer notice is adequate, and the required security has been filed. The utility shall provide proof of the date notice was given within 10 days after the date of notice.

The utility's test year rates, present rates, proposed interim rates, requested final rates, and our approved interim rates are shown on Schedule No. 4.

F. Appropriate Security to Guarantee the Interim Increase

Pursuant to Section 367.082(2)(a), F.S., revenues collected under interim rates shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest. We have approved a total annual interim increase of \$204,008. In accordance with Rule 25-30.360, F.A.C., we calculate the potential refund of revenues and interest collected, under interim conditions to be \$173,904. This amount is based on an estimated ten months of revenue being collected from the approved interim rates over the utility's authorized rates as of December 31, 2006, shown on Schedule No. 4.

The criteria for a corporate undertaking includes sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. KW Resort's financial statements from 2004 to 2006 were reviewed and analyzed to determine the financial condition of the parent company. This analysis shows that KW Resort's average equity ratio and relative level of liquidity over the most recent three-year period are within acceptable parameters. However, both of these measures have steadily declined over the same period. Net losses have steadily increased and have averaged over \$210,000 per year. Based upon this analysis, we find that KW Resort cannot support a corporate undertaking in the amount of \$173,904. Therefore, the utility shall provide a letter of credit, bond, or escrow agreement to guarantee the funds collected subject to refund.

If the security provided is an escrow account, the account shall be established between the utility and an independent financial institution pursuant to a written escrow agreement. We shall be a party to the written escrow agreement and a signatory to the escrow account. The written escrow agreement shall state the following: that the account is established at the direction of this Commission for the purpose set forth above; that no withdrawals of funds shall occur without the prior approval of the Commission through the Office of Commission Clerk; that the account shall be interest bearing; that information concerning that escrow account shall be available from the institution to the Commission or its representative at all times; that the amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt; and that pursuant to Cosentino v. Elson, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.

The utility shall deposit 21.44% of interim revenues collected each month into the escrow account each month to secure for possible refund. The escrow agreement shall also state that if a refund to the customers is required, all interest earned on the escrow account shall be distributed to the customers; and if a refund to the customers is not required, the interest earned on the escrow account shall revert to the utility.

If the security provided is a bond or a letter of credit, the instrument shall be in the amount of \$173,904. If the utility chooses a bond as security, the bond shall state that it will be released or shall terminate only upon subsequent order of the Commission. If the utility chooses to provide a letter of credit as security, the letter of credit shall state that it is irrevocable for the

period it is in effect and that it will be in effect until a final Commission order is rendered releasing the funds to the utility or requiring a refund.

Regardless of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. Pursuant to Rule 25-30.360(6), F.A.C., the utility shall provide a report by the 20th day of each month indicating the monthly and total revenue collected subject to refund. Should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, F.A.C.

In no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and shall be borne by, the utility.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of K W Resort Utilities Corp. for interim rates is approved as set forth in the body of this Order. It is further

ORDERED that the proposed final rates of K W Resort Utilities Corp. are suspended. It is further

ORDERED that the existing rates shall be increased by 21.44% so as to produce increased revenues of \$204,008. It is further

ORDERED that the approved rates are as set forth in Schedule No. 4 attached to and made a part of this Order. It is further

ORDERED that all schedules attached to this Order are incorporated by reference herein. It is further

ORDERED that the approved rates shall be effective for service rendered as of the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code, provided customers have received notice. It is further

ORDERED that the rates shall not be implemented until our staff verifies that the tariff sheets are consistent with our decision, the proposed customer notice is adequate, and the required security has been filed. It is further

ORDERED that the utility shall provide proof of the date notice was given within ten days after the date of the notice. It is further

ORDERED that K W Resort Utilities Corp. shall file as set forth in the body of this Order a bond, letter of credit, or escrow agreement as security to guarantee any potential refunds of revenues collected under interim conditions. It is further

ORDERED that if the utility chooses to open an escrow account, it shall deposit 21.44% of interim revenues collected each month. It is further

ORDER NO. PSC-07-0812-PCO-SU

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ORDERED that if the utility chooses either a surety bond or letter of credit, it shall be in the amount of \$173,904. It is further

ORDERED that pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall provide a report by the 20th of each month indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that irrespective of the type of security provided, the utility shall keep an accurate and detailed account of all monies it receives. It is further

ORDERED that should a refund be required, the refund shall be with interest and undertaken in accordance with Rule 25-30.360, Florida Administrative Code. It is further

ORDERED that this docket shall remain open pending the Commission's final action on the utility's requested rate increase.

By ORDER of the Florida Public Service Commission this 10th day of October, 2007.



ANN COLE
Commission Clerk

(SEAL)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

KW Resort Utilities Corp. Schedule of Wastewater Rate Base Test Year Ended 12/31/06			Schedule No. 1-A Docket No. 070293-SU		
Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Commission Adjust- ments	Commission Adjust- ments Test Year
1 Plant in Service	\$9,371,002	\$0	\$9,371,002	\$0	\$9,371,002
2 Land and Land Rights	222,745	152,255	375,000	(247,500)	127,500
3 Non-used and Useful Components	0	0	0	(484,575)	(484,575)
4 Accumulated Depreciation	(2,740,042)	0	(2,740,042)	0	(2,740,042)
5 CIAC	(4,856,429)	0	(4,856,429)	0	(4,856,429)
6 Amortization of CIAC	686,844	0	686,844	0	686,844
7 CWIP	265,413	(265,413)	0	0	0
8 Advances for Construction	(2,777,630)	0	(2,777,630)	0	(2,777,630)
9 Working Capital Allowance	<u>0</u>	<u>396,846</u>	<u>396,846</u>	<u>0</u>	<u>396,846</u>
# Rate Base	<u>\$171,903</u>	<u>\$283,688</u>	<u>\$455,591</u>	<u>(\$732,075)</u>	<u>(\$276,484)</u>

KW Resort Utilities Corp. Adjustments to Rate Base Test Year Ended 12/31/06	Schedule No. 1-B Docket No. 070293-SU
Explanation	Wastewater
<u>Land</u> To adjust land consistent with the last rate case.	<u>(\$247,500)</u>
<u>Non-used and Useful</u> To reflect net non-used and useful adjustment to WWTP.	<u>(\$484,575)</u>

KW Resort Utilities Corp. Capital Structure-Simple Average Test Year Ended 12/31/06						Schedule No. 2 Docket No. 070293-SU			
Description	Total Capital	Specific Adjustments	Subtotal Adjusted Capital	Prorata Adjustments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost	
Per Utility									
1 Long-term Debt	\$1,475,869	\$0	\$1,475,869	(\$1,179,330)	\$296,539	65.09%	6.26%	4.07%	
2 Short-term Debt	38,462	0	38,462	(30,727)	7,735	1.70%	6.00%	0.10%	
3 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%	
4 Common Equity	555,435	0	555,435	(443,864)	111,571	24.49%	12.50%	3.06%	
5 Customer Deposits	39,746	0	39,746	0	39,746	8.72%	6.00%	0.52%	
6 Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%	
7 Total Capital	<u>\$2,109,512</u>	<u>\$0</u>	<u>\$2,109,512</u>	<u>(\$1,653,921)</u>	<u>\$455,591</u>	<u>100.00%</u>		<u>7.76%</u>	
Per Commission									
8 Long-term Debt	\$1,475,869	\$0	\$1,475,869	(\$1,701,359)	(\$225,490)	81.56%	6.26%	5.11%	
9 Short-term Debt	38,462	0	38,462	(44,338)	(5,876)	2.13%	6.00%	0.13%	
10 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%	
11 Common Equity	555,435	0	555,435	(640,297)	(84,862)	30.69%	11.00%	3.38%	
12 Customer Deposits	39,746	0	39,746	0	39,746	-14.38%	6.00%	-0.86%	
13 Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%	
14 Total Capital	<u>\$2,109,512</u>	<u>\$0</u>	<u>\$2,109,512</u>	<u>(\$2,385,995)</u>	<u>(\$276,483)</u>	<u>100.00%</u>		<u>7.75%</u>	
						<u>LOW</u>	<u>HIGH</u>		
RETURN ON EQUITY						<u>11.00%</u>	<u>13.00%</u>		
OVERALL RATE OF RETURN						<u>7.75%</u>	<u>8.36%</u>		

KW Resort Utilities Corp. Statement of Wastewater Operations Test Year Ended 12/31/06						Schedule No. 3-A Docket No. 070293-SU	
Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Commission Adjust- ments	Commission Adjusted Test Year	Revenue Increase	Revenue Requirement
1 Operating Revenues:	<u>\$1,012,695</u>	<u>\$314,248</u>	<u>\$1,326,943</u>	<u>(\$303,229)</u>	<u>\$1,023,714</u>	<u>\$204,008</u> 19.93%	<u>\$1,227,722</u>
Operating Expenses							
2 Operation & Maintenance	\$1,017,156	(\$5,429)	\$1,011,727	(\$28,807)	\$982,920		\$982,920
3 Depreciation	181,844	0	181,844	(30,641)	151,203		151,203
4 Amortization	5,297	(968)	4,329	0	4,329		4,329
5 Taxes Other Than Income	79,594	14,141	93,735	(13,645)	80,090	9,180	89,270
6 Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
7 Total Operating Expense	<u>1,283,891</u>	<u>7,744</u>	<u>1,291,635</u>	<u>(73,093)</u>	<u>1,218,542</u>	<u>9,180</u>	<u>1,227,722</u>
8 Operating Income	<u>(\$271,196)</u>	<u>\$306,504</u>	<u>\$35,308</u>	<u>(\$230,136)</u>	<u>(\$194,828)</u>	<u>\$194,828</u>	<u>\$0</u>
9 Rate Base	<u>\$171,903</u>		<u>\$455,591</u>		<u>(\$276,484)</u>		<u>(\$276,484)</u>
10 Rate of Return	<u>-157.76%</u>		<u>7.75%</u>		<u>70.47%</u>		<u>0.00%</u>

KW Resort Utilities Corp. Adjustment to Operating Income Test Year Ended 12/31/06	Schedule 3-B Docket No. 070293-SU
<u>Explanation</u>	<u>Amount</u>
<u>Operating Revenues</u>	
Remove requested interim revenue increase	(\$280,632)
To reflect the appropriate amount of annualized revenues.	<u>(22,597)</u>
Total	<u>(\$303,229)</u>
<u>Operation and Maintenance Expense</u>	
To reduce purchased power and chemicals by 15% due to excess I&I.	<u>(\$28,807)</u>
-	
<u>Depreciation Expense - Net</u>	
To reflect net non-used and useful adjustment.	<u>(\$30,641)</u>
<u>Taxes Other Than Income</u>	
RAFs on revenue adjustments above	<u>(\$13,645)</u>

KW Resort Utilities Corp. Wastewater Monthly Service Rates Test Year Ended 12/31/06			Schedule No. 4 Page 1 of 2		
	Rates Effective 12/31/2006	Rates Prior to Filing	Utility Requested Interim	Utility Requested Final	Commission Approved Interim
<u>Residential</u>					
Flat Rates	\$39.20	\$40.39	\$51.22		\$47.61
Base Facility Charge All Meter Sizes:				\$35.08	
Gallorage Charge - Per 1,000 gallons (10,000 gallon cap)				\$4.49	
<u>General Service</u>					
Base Facility Charge by Meter Size:					
5/8" x 3/4"	\$29.82	\$30.73	\$38.97	\$35.08	\$36.21
1"	\$72.51	\$74.72	\$94.76	\$87.70	\$88.06
1-1/2"				\$175.40	
2"	\$222.74	\$229.52	\$291.08	\$280.64	\$270.50
3"	\$441.20	\$454.63	\$576.57	\$526.20	\$535.80
4"	\$687.03	\$707.94	\$897.81	\$877.00	\$834.35
6"				\$1,754.00	
8"				\$2,806.40	
8" Turbo				\$3,157.20	
Gallorage Charge, per 1,000 Gallons	\$3.30	\$3.40	\$4.31	\$5.27	\$4.01
<u>Multi-Residential and Commercial</u>					
Flat Rate	\$39.20	\$40.39	\$51.22		\$47.61
Base Facility Charge by Meter Size:					
5/8" x 3/4"				\$35.08	
1"				\$87.70	
1-1/2"				\$175.40	
2"				\$280.64	
3"				\$526.20	
4"				\$877.00	
Gallorage Charge, per 1,000 Gallons				\$5.27	
<u>Reclaimed Water</u>					
Gallorage Charge, per 1,000 Gallons	\$0.44	\$0.45	\$0.57	\$0.69	\$0.53

KW Resort Utilities Corp. Wastewater Monthly Service Rates Test Year Ended 12/31/06		Schedule No. 4 Page 2 of 2			
	Rates Effective 12/31/06	Rates Prior to Billing	Utility Requested Interim	Utility Requested Final	Commission Approved Interim
Private Lift Station Owners					
5/8" x 3/4"	\$31.55	\$32.51	\$41.23	\$35.08	\$38.32
1"	\$72.51	\$74.72	\$94.76	\$87.70	\$88.06
2"	\$222.74	\$229.52	\$291.08	\$280.64	\$270.50
Gallage Charge, per 1,000 Gallons	\$2.66	\$2.74	\$3.47	\$5.27	\$3.23
Bulk Wastewater Rates					
Safe Harbor Marina					
13 Residential Units @ 1 ERC each	\$509.60	\$525.11	\$665.95	\$456.04	\$618.87
18 Live Aboard Boats @ .6 ERC each	\$423.32	\$436.20	\$553.19	\$378.86	\$514.09
27 Non-Live Aboard Boats @ .2 ERC each	\$211.66	\$218.10	\$276.60	\$189.43	\$257.04
6 Vacant Slips @ .2 ERC each	\$47.03	\$48.46	\$61.46	\$42.10	\$57.11
2 Bathhouses @ 1 ERC each	\$78.40	\$80.79	\$102.46	\$70.16	\$95.21
2 Commercial Businesses @ .5 ERC each	\$39.20	\$40.39	\$51.22	\$35.08	\$47.61
1 Commercial Bar	\$50.01	\$51.53	\$65.35	\$44.90	\$60.73
Total	\$1,359.22	\$1,400.58	\$1,776.23	\$1,216.57	\$1,650.67
South Stock Island Marinas (Peninsular Marina)					
13 Residential Units @ 1 ERC each	\$509.60	\$525.11	\$665.95	\$456.04	\$618.87
16 Live Aboard Boats @ .6 ERC each	\$376.28	\$387.73	\$491.72	\$336.77	\$456.96
26 Non-Live Aboard Boats @ .2 ERC each	\$203.84	\$210.04	\$266.37	\$182.42	\$247.55
Bathhouse @ 1 ERC	\$39.20	\$40.39	\$51.22	\$35.08	\$47.61
3 Commercial Businesses @ .5 ERC each	\$58.80	\$60.59	\$76.84	\$52.62	\$71.41
Total	\$1,187.72	\$1,223.86	\$1,552.10	\$1,062.93	\$1,442.39
General Service Multiple Agreement					
Large Swimming Pool (4 ERCs)	\$156.80	\$161.57	\$204.90	\$140.32	\$190.42
Small Swimming Pool (1.18 ERCs)	\$46.26	\$47.67	\$60.46	\$41.39	\$56.18
Temporary Service Agreement (Sweetwater Environmental, Inc.)					
Minimum Charge on 127,100 gallons	\$706.68	\$728.28	\$924.02	\$669.82	\$858.21
Gallage Charge, per 1,000 Gallons	\$5.56	\$5.73	\$7.27	\$5.27	\$6.75
Typical Residential Bills 5/8" x 3/4" Meter					
3,000 Gallons	\$39.20	\$40.39	\$51.22	\$48.55	\$47.61
5,000 Gallons	\$39.20	\$40.39	\$51.22	\$57.53	\$47.61
10,000 Gallons	\$39.20	\$40.39	\$51.22	\$79.98	\$47.61
(Wastewater Gallage Cap - 10,000 Gallons)					

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater
rates in Monroe County by K W Resort
Utilities Corp.

DOCKET NO. 070293-SU
ORDER NO. PSC-09-0057-FOF-SU
ISSUED: January 27, 2009

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
NANCY ARGENZIANO
NATHAN A. SKOP

APPEARANCES:

F. MARSHALL DETERDING, ESQUIRE, and JOHN L. WHARTON,
ESQUIRE, Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive,
Tallahassee, Florida 32301
On behalf of K W Resort Utilities, Corp. (KWRU).

STEPHEN C. BURGESS, ESQUIRE, Office of Public Counsel, c/o The Florida
Legislature, 111 West Madison Street, room 812, Tallahassee, Florida 32399-
1400
On behalf of the Citizens of the State of Florida (OPC).

RALPH R. JAEGER, ESQUIRE, Florida Public Service Commission, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, ESQUIRE, Florida Public Service Commission, 2540
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
Advisor to the Florida Public Service Commission

FINAL ORDER REQUIRING PARTIAL REFUND AND GRANTING IN PART AND
DENYING IN PART WASTEWATER RATE INCREASE

BY THE COMMISSION:

I. BACKGROUND

K W Resort Utilities Corp. (KWRU or Utility) is a Class A utility providing wastewater
service to approximately 1,556 customers in Monroe County. Water service is provided by the

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FPSC-COMMISSION CLERK

Florida Keys Aqueduct Authority (FKAA). Wastewater rates were last established for this Utility in its 1983 rate proceeding.¹

On August 3, 2007, KWRU filed an application for the rate increase at issue in the instant docket. The Utility had a few deficiencies in the Minimum Filing Requirements (MFRs). KWRU requested that the application proceed directly to hearing for the establishment of rates as provided under Section 367.081(6), Florida Statutes (F.S.).

By Order No. PSC-07-0672-PCO-SU, issued August 21, 2007, we acknowledged the Office of Public Counsel (OPC) intervention in this case.

KWRU also requested interim rates, which were granted by Order No. PSC-07-0812-PCO-SU, issued October 10, 2007. The Utility requested final rates designed to generate annual revenues of \$1,647,998. This represents a revenue increase of \$601,684 (or 57.51 percent).

Hearing dates were originally set for February 6 and 7, 2008. However, on January 7, 2008, KWRU filed its Emergency Stipulated Motion for Continuance (Motion). As the basis for its Motion, the Utility stated that there were on-going discussions concerning the sale of KWRU, and that the sale of the Utility would render this rate case moot. By Order No. PSC-08-0032-PCO-SU, issued January 8, 2008, we granted KWRU's request for a continuance of at least 60 days. By Order No. PSC-08-0129-PCO-SU, issued February 28, 2008, we granted the Utility a further continuance until April 7, 2008.

On April, 7, 2008, KWRU requested that we re-establish the hearing dates and other controlling dates so as to allow sufficient time for the parties to complete the discovery and appropriate rebuttal testimony. As justification for this request, the Utility stated that negotiations were not far enough along and resolution sufficiently imminent to warrant a request for further continuance. OPC agreed with this request. By Order No. PSC-08-0241-PCO-SU, issued April 15, 2008, we re-established the hearing dates and other controlling dates for this case. A hearing was held on October 1 and 2, 2008.

On November 25, 2008, KWRU agreed to our staff's request that this Commission have up to and including January 6, 2009, to take its final vote on the Utility's requested rate increase.

This Order addresses KWRU's request for final rates and whether a refund of a portion of the interim rates is appropriate. We have jurisdiction pursuant to Sections 367.081 and 367.082, F.S.

II. APPROVED STIPULATIONS

We found that the stipulations reached by the parties and supported by staff were reasonable, and accepted the stipulated matters set forth below at the hearing.

¹ See Orders Nos. 14620 and 13862, issued July 23, 1985 and November 19, 1984, respectively, in Docket No. 830388-S, In re: Petition of Stock Island Utility Company, Inc. for increased sewer rates in Monroe County, Florida.

1. To correct a misclassification of purchased land, plant shall be reduced by \$152,255. Corresponding adjustments shall be made to reduce Accumulated Depreciation by \$71,274 and Depreciation Expense by \$6,766.
2. To correct the misclassification of Florida Department of Environmental Protection permit and renewal application fees, taxes other than income shall be reduced by \$7,950 and plant increased by \$577. Corresponding adjustments shall be made to increase accumulated depreciation by \$52 and increase depreciation expense \$104.
3. KWRU purchased a beachcleaner which it expensed during the test year. The beachcleaner should have been capitalized. To correct this error, operating expenses shall be decreased by \$11,825 and average plant increased by \$910. Accumulated depreciation and depreciation expense shall be increased by \$493.
4. In accordance with Commission practice, temporary cash investments of \$168,265 shall be removed from working capital.
5. Sludge removal expense shall be reduced by \$9,129 to reflect the amortization of non-recurring amounts incurred during the test year.
6. Miscellaneous expenses shall be reduced by \$7,508 to remove non-utility telephone expenses.
7. In accordance with Rule 25-30.115(1), Florida Administrative Code (F.A.C.), materials and supplies, advertising, and miscellaneous expenses shall be reduced by \$1,203 to remove expenses related to political contributions and fundraising.
8. Contractual services – other shall be reduced by \$1,032 to reflect the amortization of non-recurring amounts incurred during the test year.
9. Pursuant to Audit Finding No. 12, the correct amount for the copier fee for Account 720, Materials and Supplies, shall not be \$5,378, but 50 percent of that amount, or \$2,689. This reduces operating expenses by \$2,689 for out of period charges, and increases prepaid expenses by \$2,689.
10. Pursuant to Audit Finding No. 17, the cost for the use of a golf cart recorded in Account 736, Contractual Services Other, shall be reduced from \$2,400 annually to \$852 annually. This reduces operating expenses by \$1,548. The Utility does not agree that this properly captures all costs related to the use of the golf cart, but has agreed to this adjustment because it is immaterial.
11. In order to reclassify expenses, plant shall be increased by \$51,663, and O&M expenses shall be reduced by \$51,663. Accordingly, accumulated depreciation and depreciation expense shall be increased pending further development of the record as to the appropriate primary accounts for these costs.

III. QUALITY OF SERVICE

Pursuant to Rule 25-30.433(1), F.A.C., we determine the overall quality of service provided by the Utility by evaluating the quality of the Utility's product, the operating condition of the Utility's plant and facilities, and the Utility's attempt to address customer satisfaction. The Utility's compliance history with the Department of Environmental Protection (DEP) and comments or complaints received from customers are also considered.

A. Quality of Utility's Product and Operating Conditions of the Utility's Plant and Facilities

Staff witness Johnson, from the DEP, testified that the Utility is upgrading the wastewater treatment plant to meet advanced wastewater treatment (AWT) standards and address maintenance-related repairs. Included with his testimony is a copy of a November 26, 2007, DEP warning letter to the Utility regarding disinfection reporting violations, total suspended solids exceedances for effluent discharged to the reuse system, and three separate wastewater spills over a three-month period. The letter noted that heavy rains and restrictions caused by the AWT upgrade may have caused the spills. Witness Johnson testified that the Utility has been cooperative and has taken action to correct the problem that caused the spill by undergoing repairs and upgrades, but that there was still is one outstanding issue dealing with an injection well that is being corrected.

B. Customer Satisfaction

Approximately 40 customers attended the morning and evening service hearings and seventeen provided testimony, three of whom were not customers of the Utility. Although most customers appeared to favor interconnecting small wastewater systems or septic tanks to a higher quality central wastewater system in order to preserve the environment of the Keys, the majority of the comments addressed the Utility's handling of the mandatory connection to the KWRU wastewater treatment plant resulting from a 2002 agreement with Monroe County.

The Florida Legislature enacted Chapter 99-395, Laws of Florida, which required existing wastewater treatment plants and onsite disposal systems, such as septic tanks, in Monroe County to cease discharge or comply with AWT standards by July 1, 2010. The Law further authorized the County to enact an ordinance that requires connection to a central sewerage system within 30 days of notice of availability of service. Monroe County subsequently passed Ordinance No. 04-2000, requiring the interconnections within 30 days of notice. The Ordinance further required the Utility to provide the required notices.

In July 2002, Monroe County and KWRU entered into a Capacity Reservation and Infrastructure Contract (Contract) which contained provisions for the County to purchase capacity from KWRU to provide service to the remaining 1,500 equivalent dwelling units (EDUs) on Stock Island that were on individual septic tanks or small package plants that could not be upgraded to AWT standards. KWRU agreed to convert its wastewater plant to AWT standards by January 1, 2007, in order to comply with Chapter 99-395. Further, the County agreed to advance funds to KWRU for the construction of the wastewater collection system on South Stock Island (SSI) in an amount not to exceed \$4,606,000, and the Utility agreed to

complete the system in 16 months from the commencement of the contract. The agreement further provided that KWRU would collect its authorized plant capacity charge of \$2,700 per EDU from new connections and remit \$2,100 per EDU back to the County in repayment of the construction advances. The \$600 per EDU retained by the Utility was designed to offset the cost associated with upgrading the wastewater treatment plant to AWT standards.

Pursuant to Rule 25-30.550, F.A.C., the Utility provided this Commission with a proposed developer agreement for the Harbor Shores Condominium Unit Owners Association, Inc., one of the areas that would be affected by the required interconnection. The agreement was acknowledged by our staff by letter dated March 21, 2003, and our staff recommended that the Utility use the agreement for all current and future connections.

In the summer of 2003, the Florida State Attorney's Office began receiving complaints from Monroe County citizens residing in the Stock Island area as well as two of the County Commissioners concerning the costs associated with the construction of the sewer system on Stock Island. In late 2003, the State Attorney ordered an investigation of the project and the complaints. The concerns were subsequently presented to the Grand Jury which completed its investigation in the fall of 2004. The Grand Jury concluded that Monroe County had provided little oversight for the connection of customers to the KWRU wastewater system and failed to effectively communicate with the citizens of Stock Island as to their potential financial burdens.

At the service hearing, customers expressed their frustration with the Utility regarding the cost of the interconnection, the impact on low income families, Utility mismanagement, and customer intimidation. With regard to the cost of the interconnection, customers testified that it had not been clear originally that, in addition to the \$2,700 connection charge, customers would also be required to bear the cost of extending onsite lines needed to connect their property to the Utility's collection system. Some customers paid \$10,000 to \$100,000 for design, permitting, and construction of onsite lines. In some instances, property owners were unable to connect to the collection system, even though they paid the Utility's fees and installed the required infrastructure on their property. Some commercial and multifamily property owners did not understand that the \$2,700 connection charge was for each EDU and not for each connection. There were allegations that unnecessary or excessive amounts were paid for construction, testing, and legal fees. Allegations were also made regarding money paid to Utility family members. Several customers testified that the Utility used less than professional actions and inappropriate behavior in requiring property owners to connect to the KWRU system. People were leery about speaking out against the Utility due to intimidation and retaliation of both a political and financial nature.

One of the Monroe County Commissioners, who had contacted the Florida State Attorney's Office during their investigation, but who is not a customer of KWRU, testified. He stated that the process with the Commission and OPC works to make sure that the residents get a fair shake. He also stated that regardless of the cost, a level of service should be expected by the residents from the standpoint of quality of service. In reference to some residents not being able to hookup to the Utility's system, he testified that it was an undue burden for the customer and that it was the obligation of the Utility to provide the service.

Another customer testified that the work the Utility has done is eco-friendly and supportive of the Legislature's laws to that effect. He also noted that such a project is a very expensive process, in light of the burden that the Utility is under and the decisions it has to make, and that it was very easy to sit back and pick on the Utility. He also thought that the infrastructure needs to be in place and the choice of the system installed was probably the smartest choice instead of wasting money on something inferior.

During the technical portion of the hearing, KWRU witness Smith acknowledged the customers' frustration over the way they were treated in connecting to the system. In response to questions about the use of deputies to deliver 21 connection notices, he testified that deputies were used to hand deliver notices requiring connection to the system, when notices sent out by certified mail were returned unsigned or not returned. He said that the Utility went to the County Code Enforcement Office and was told that unless the Utility served every single trailer with notice, the County would not take enforcement action. Also, some people may have signed for service for one of their trailers, but may not have signed for the second trailer, and that is the reason some got served the second time.

Witness Smith went on to say that there are 350 EDUs that are left to be connected, including residential, multifamily, and commercial customers. There is also one or two who have paid the connection fee but have not yet connected because of access problems to the Utility collection system. For example, witness Smith testified that the owner of the Elmar Mobile Home Park is unwilling to install a lift-station that is needed to connect the park to the collection system. However, he also indicated that the Utility is waiting on a purchase order from the County to complete projects to connect those remaining that have access problems. Also, in response to customer questions about access to Utility board meetings, witness Smith resolved that from now on he will have an annual board meeting in Key West and open it to the public.

In addition to comments received at the customer service hearing, a review was also made of complaints received by the Commission during the test year to the present. There are no active complaints against the Utility on file with this Commission at this time. During the test year, two complaints were received concerning the mandatory connection process and the use of sheriff deputies to intimidate homeowners into signing up for service. The Utility responded to these complaints with a report that referred to the Florida Statutes, the Monroe County Ordinances, and the 30-day connection notice letter with the application for service. Resolution letters were sent out to the customers; however, the complaints were closed due to a lack of customer response.

OPC's position is that the Utility's quality of service is unsatisfactory. OPC argues that customer relations are an integral component of virtually every business enterprise, and that, in a competitive market, customers who are mistreated will find another supplier of the service. For a protected monopoly like KWRU, however, OPC states that we are the only entity with the direct authority to assure appropriate treatment of Utility customers. When a Utility mistreats its customers, we have historically penalized the Utility, just as the market place would have penalized such behavior if competition were present. In its post-hearing statement, OPC indicates that the record contains many examples of customers who testified about the Utility's

abusive and intimidating tactics. OPC concludes that we should acknowledge the Utility's deficiencies in how it treats its customers and set any allowed return at the bottom of the authorized range.

In response, the Utility believes that the quality of service it provides to its customers is satisfactory. In its post-hearing statement, KWRU stressed that staff witness Johnson's testimony indicated that the Utility has been attentive and cooperative in its responses to DEP, and that the DEP has not required the Utility to take any action based upon concerns or problems resulting from odors, noise, aerosol drift, or lighting. Further, there was no customer testimony regarding the typical issues that customers address in a wastewater case, such as odor, plant shutdowns, interruptions in service during storm events, or billing issues. Neither were there overwhelming comments concerning expensive service, nor the prospect of paying higher rates. Instead, the Utility points out that the overwhelming concern brought out at the customer meeting was related to mandatory connection, the Utility's utilization of personnel not employed by the Utility to operate the company, related parties or contractors, and the related expenses charged to the Utility. The Utility acknowledged that the local governmental mandatory connection directives presented difficulties and controversy, but attempted to implement the mandatory connection directives of local government in the smoothest, most expedient, and most efficient manner possible. Also, the Utility points out that the presumption that the use of related or contractual parties is inherently adverse to the interest of customers might be a presumption that could be fairly applied to the Utility if they had advance notice of the same. While the concerns of the customers are absolutely legitimate, the Utility urges that we should allow the Utility an opportunity to earn a return on its costs and investments reasonably incurred, whether or not the same went to related or contractual parties or entities. The Utility believes that there is no genuine evidence upon which a finding that the quality of service is unsatisfactory could be made.

KWRU responded in even more detail to the concerns expressed by the customers in late-filed Exhibit 44. In reference to the customer comments made about the Utility's agreement with Monroe County, the Utility indicated that the Monroe County Board of Commissioners looked at this project with a fine-tooth comb. In 2004, the Monroe County Board of Commissioners authorized a study and spent \$150,000 on an engineering report to evaluate all possible connection scenarios for the property owners. The County accepted the findings of the study which concluded that the most cost effective way for private properties to connect to central sewers was to install a vacuum system rather than a gravity system. Section 381.00655, F.S., requires that if there is an available publicly owned or investor-owned sewerage system, residential consumers are required to connect. Monroe County, by ordinance, requires residential connection to the wastewater system within 30 days of connection notification. It has been determined that out of the 1,500 EDUs that the newly constructed vacuum system was intended to serve, there are four properties, which make up ten EDUs for which that service is not available. The Utility is still waiting for assistance from the County before any installation for the four properties without service can occur. Concerning comments and complaints regarding the findings of the 2004 Grand Jury Report over the construction of the Utility's sewer system, the Utility points out that it was found not guilty of any wrong doing in the Grand Jury Report. However, the Utility notes that the County Engineer was found to be incompetent in performing his duties and the County Administrator and the County Commission were found

negligent in their respective duties. Exhibit 44 also provided explanations justifying the costs saving using subcontractors, and the appropriate mark-up allowance for overhead and profit margin. There was also concern about special deals for the golf course, which is a family related business. The Utility claims that this was an unsubstantiated claim and that the golf course paid for sewer service and effluent water rates in accordance with the approved Commission tariff. As far as excessive fees and charges, the Utility points out that all fees paid are a result of a Commission-approved developer agreement. The Utility indicated that there was Community Development/Block Ship Grants available to assist low-income customers in the connection process.

The Utility provided additional explanations in Exhibit 44 in response to other customer claims made about the connection noticing process and the possible loss of homes, additional infrastructure costs, and lift-station backup problems which the Utility claims as non-existent.

C. Analysis and Conclusion

Based on DEP witness Johnson's testimony, it appears that the quality of the Utility's treated wastewater and the operational condition of the plant are satisfactory. Although the Utility has an outstanding DEP warning letter, it is working with DEP to correct the problems. Further, it appears that some customers were clearly intimidated by the Utility as a result of tactics used to notify them of the requirement to interconnect to the Utility's wastewater treatment plant, although the County also failed to properly communicate with customers regarding the need and cost to connect to KWRU. It is obvious that there is a certain level of animosity that exists between some customers and the Utility. This is unfortunate since it appears, in part, that the animosity is the result of activities supporting an agreement that relates to laws and ordinances designed to preserve the environment of the area in which the Utility and the customers it serves are located. For some customers, there appears to have been financial and emotional hardships related to the connection process. However, it appears that the Utility has generally been responsive to customer concerns, and has applied our rules and regulations in reference to approved rates and charges, and developer agreements. Therefore, we find that we do not need to take any action in regards to the procedures used by the Utility.

However, we do have concerns over the remaining 350 EDUs that have not connected. Possibly ten of these do not have service available, with one or two having paid the appropriate connection charges for service. We realize that connection enforcement is a problem for the majority of these EDUs, and that the Utility appears to be looking at Monroe County for support in that area. For the ten EDUs, which make up four customers, we find that the Utility has an additional responsibility in proving to us that it has made a good faith effort in making sure that service is available. Because the record is not clear concerning the status of all the 350 unconnected EDUs, the Utility shall provide a monthly report to this Commission addressing the status of the remaining 350 EDUs with particular attention given to the four potential customers that do not have service available. The report shall include a description of Monroe County's enforcement activities towards those who refuse to connect to the Utility, status of what is remaining to be done to connect the four customers who do not have service available, and a complete accounting of paid connection charges for those who are not connected. These reports

shall continue until such time as all of the 350 EDUs are connected and the conditions of the KWRU's 2002 contract with Monroe County have been fully satisfied.

Based on all of the above, the overall quality of service provided by the Utility shall be considered satisfactory. However, as set forth in the preceding paragraph, KWRU shall file monthly reports concerning the connection status of the remaining 350 EDUs left to be connected, until such time the conditions of the Utility's 2002 contract with Monroe County have been fully satisfied.

IV. RATE BASE

A. Plant in Service

1. Keys Environmental, Inc. (KEI) Hook-Up Fees

According to Audit Finding No. 3, staff witness Welch stated that KWRU has a contract with KEI that requires two full-time operators and an operations manager, which provide for, among other things, customer relations, periodic inspections, minor maintenance, daily pumping stations inspections, preventative maintenance programs, monitoring collection systems, reclaimed water lines, meters, pumps, and blowers. In addition, witness Welch stated that the contract includes sampling, testing, supervision, and inspection of new customer tie-ins; however, she stated that the description of KEI's work performed on customer connections appears to be more extensive. Witness Welch asserts that we should consider whether the work being done by KEI exceeds what is in the contract.

Utility witnesses Smith and DeChario asserted that KEI has a coordinator and inspector for all new connections for SSI residents, and they stated that the hook-up inspection involves an initial customer contact, review of plans and drawings, at least five field visits, as well as testing and coordination with the Utility's administrative staff. Utility witness Smith further asserts that the contract does not cover the hook-up fees. In its brief, KWRU contends that the extensive inspection and oversight of the customer connections to its vacuum system could not have been envisioned at the time KEI and KWRU executed its agreement in December 2004.

OPC witness Dismukes testified that we should treat the functions of inspecting and hooking up customers as part of the contract, for which KEI is paid a significant management fee. In its brief, OPC argues that the contract language clearly obligates KEI to inspect customer connections as part of its overall obligation to manage, maintain, and operate the system for which the general body of ratepayers pay the monthly management fees in exchange for the service to be rendered under the contract. Witness Dismukes asserted that plant should be reduced by \$252,690 to remove an apparent duplication of contractual operation service fees. Moreover, witness Dismukes stated that corresponding adjustments should be made to reduce accumulated depreciation and depreciation expense by \$10,983 and \$3,021, respectively.

We agree with OPC witness Dismukes that the contract includes the work related to hook-up fees. First, in accordance with the contract between KWRU and KEI, Article II – Responsibilities of Agent (which refers to KEI) states, among other things, that KEI is

responsible for supervising and inspecting new customer tie-ins. Based on the above, plant shall be reduced by \$252,690 to remove an apparent duplication of contractual operation service fees. In addition, corresponding adjustments shall be made to reduce accumulated depreciation and depreciation expense by \$10,983 and \$3,021, respectively.

2. Decommissioning of Jail Facilities

OPC witness Dismukes testified that the funds spent by KWRU to decommission Monroe County's wastewater treatment plant at its detention center should be removed because the Utility did not own the plant. In its brief, OPC argued that KWRU did not provide any rebuttal testimony to refute witness Dismukes' recommended adjustment. In addition, witness Dismukes discussed how KWRU was under no obligation to use customer money to dismantle the County's treatment facilities.

Utility witness Smith emphasized that the decommissioning of the existing sewage treatment plant at the Monroe County Detention Center (MCDC) was part of the agreement between the parties in order to obtain the detention center as a customer of KWRU. In its brief, KWRU asserted that the costs incurred are reasonable and appropriate in order to obtain a new customer to benefit KWRU and the general body of ratepayers.

The Utility agreed to pay \$10,000 to assist the detention center in decommissioning its treatment plant, as KWRU previously provided service to the detention center. We agree with OPC witness Dismukes that the ratepayers should not have to bear this apparent non-utility expenditure. Based on the above, plant shall be reduced by \$10,000 to remove costs associated with decommissioning the jail facilities. Accordingly, corresponding adjustments shall be made to reduce accumulated depreciation and depreciation expense by \$1,259 and \$315, respectively.

3. Green Fairways Jail Project Management Fee

OPC witness Dismukes asserted that KWRU paid Weiler Engineering a management fee to oversee the jail project. In addition, witness Dismukes stated that KWRU also paid Green Fairways, an affiliate, a management fee of \$32,198. When Monroe County auditors asked for Green Fairways' completion logs, they noted that the logs "were completed by the engineering firm and consisted of daily work reports of approximately one page per day." Witness Dismukes contended that it appears that Weiler Engineering oversaw the project and KWRU has shown no documentation to justify paying its affiliate, Green Fairways, the \$32,198. OPC believes that this amount should not be passed on to the ratepayers as they receive no benefit.

Utility witness DeChario testified that, "It would be imprudent for the Utility . . . to simply turn a project over to a contractor and wait for its completion . . . in this case, Mr. Smith, through Green Fairways, has the right and responsibility of oversight and supervision of all parties working on the project." In its brief, the Utility also asserted that there is little to nothing to support the proposed elimination of these contract fees, yet there is evidence in the record that they are not only the same fees charged to other clients of Green Fairways but that this is the norm for the area for large construction contracts. Based upon these facts, the Utility asserts that no adjustment is appropriate to these costs actually incurred by the Utility for oversight of

construction projects undertaken by Green Fairways above and beyond the day-to-day administrative duties related to operation and maintenance and the costs must be recognized.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse, 413 So. 2d 1187, 1191 (Fla. 1982). Additionally, we have previously disallowed undocumented capitalized salaries.² The Utility has failed to provide adequate documentation of the oversight provided by Green Fairways for the Jail Project; therefore, plant shall be reduced by \$32,198. Accordingly, accumulated depreciation and depreciation expense shall be decreased by \$2,823.

4. Management Fee for South Stock Island (SSI) Project

OPC witness Dismukes asserts that KWRU paid Weiler Engineering a management fee to oversee the SSI project. KWRU also paid Green Fairways, an affiliate, a management fee of \$301,180. When Monroe County auditors asked for Green Fairways completion logs, they noted that the logs "were completed by the engineering firm and consisted of daily work reports of approximately one page per day." Witness Dismukes contended that it appears that Weiler Engineering oversaw the project and KWRU has shown no documentation to justify paying its affiliate, Green Fairways, the \$301,180. OPC believes that this amount should not be passed on to the ratepayers as they receive no benefit.

Again, Utility witness DeChario responded that: "It would be imprudent for the Utility ... to simply turn a project over to a contractor and wait for its completion ... in this case, Mr. Smith, through Green Fairways, has the right and responsibility of oversight and supervision of all parties working on the project." In its brief, the Utility also asserted that there is little to nothing to support the proposed elimination of these contract fees, yet there is evidence in the record that they are not only the same fees charged to other clients of Green Fairways, but also that this the norm for the area for large construction contracts. Based upon these facts, the Utility asserts that no adjustment is appropriate to these costs actually incurred by the Utility for oversight of construction projects undertaken by Green Fairways above and beyond the day-to-day administrative duties related to operation and maintenance and the costs must be recognized.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. Additionally, we have previously disallowed undocumented capitalized salaries.³ The Utility has failed to provide adequate documentation of the oversight provided by Green Fairways for the SSI Project. Therefore, plant shall be reduced by \$301,180. Accordingly, accumulated depreciation and depreciation expense shall be decreased by \$26,406.

² See Order No. PSC-07-0505-SC-WS, p. 15, issued June 13, 2007, in Docket No. 060253-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

³ See Order No. PSC-07-0505-SC-WS, p. 15, issued June 13, 2007, in Docket No. 060253-WS, In re: Application for increase in water and wastewater rates in Marion, Orange, Pasco, Pinellas, and Seminole Counties by Utilities, Inc. of Florida.

5. Smith, Hemmesch, and Burke Legal Fees

OPC witness Dismukes contended that Monroe County auditors found that KWRU could not provide any supporting documentation for the charge. As a result, Monroe County refused to reimburse KWRU, notwithstanding its contract to reimburse KWRU's reasonable expenditures from the SSI contracts. Even though Monroe County refused to pay this affiliated transaction because of lack of supporting documentation, KWRU is now asking this Commission to force its customers to pay it. Witness Dismukes believes that we should refuse to allow KWRU to charge its customers for a completely undocumented payment to its affiliate.

In its brief, the Utility stated that since the legal fees were part of a flat fee arrangement agreed to by Monroe County in writing, the contract itself is documentation of the charge. The Utility further argues that the fact Monroe County has failed to pay for these services does not affect the fact that KWRU incurred these legitimate cost in complying with the terms of the contract with Monroe County by negotiating agreements related to the SSI project, and that KWRU incurred an obligation to pay the \$25,000 legal bill originally agreed to by Monroe County.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. We find that the Utility has failed to provide adequate documentation for its legal fees. Therefore, plant shall be reduced by \$25,000 to remove unsupported legal fees. Accordingly, accumulated depreciation and depreciation expense shall be decreased by \$2,192.

6. Chris Johnson's Moving Expenses

KWRU capitalized in its SSI project costs \$8,602 of relocation costs for Chris Johnson and his family. Mr. Johnson is the son-in-law of KWRU's President. According to the Utility, KWRU would stand to benefit from Mr. Johnson's participation in the SSI project, and as a result, agreed to pay his moving expenses to Florida.

OPC witness Dismukes raised Mr. Johnson's moving expenses as an issue in her direct testimony. In her testimony, witness Dismukes asserted that it would be inappropriate to capitalize Mr. Johnson's moving expenses to the SSI plant.

Other than the information provided in its brief, KWRU did not provide sufficient evidence in the record to support the capitalization of Mr. Johnson's moving expenses. The record is clear that KWRU did pay \$8,602 to reimburse Mr. Johnson for his relocation expenses. However, the appropriateness of capitalizing the moving expenses was not addressed.

When a utility seeks to increase its rates and charges, it has the burden to prove its requested increase is appropriate. In this case, KWRU failed to prove that Mr. Johnson's moving expenses should be capitalized. Further, Mr. Johnson is the President and owns 100 percent of KEI. Mr. Johnson is not an employee of KWRU. Mr. Johnson's employment at KEI is not required for KWRU to provide utility service.

KWRU argues that Mr. Johnson's participation in the SSI project benefited KWRU, as Mr. Johnson had KWRU's best interest at heart. When a utility hires a firm to conduct work on

its behalf, the hired firm has a responsibility to provide the best possible service. There is no evidence in the record that indicates KEI was the only firm capable of providing the services necessary to oversee the SSI project. Further, the capitalization of engineering costs is not the issue being addressed. The issue is the capitalization of the relocation costs of the engineering firm's president.

We see no reason to allow KWRU to reimburse the relocation costs of an employee of another company, much less to capitalize those costs as part of the SSI project. The prudence of this expense is questionable considering the relocation costs are those of the son-in-law of KWRU's owner. Further, the moving expenses allowed Mr. Johnson to move to Florida to operate KEI, the company he owns.

Based on the above, we find that Mr. Johnson's capitalized moving costs shall be removed from the SSI project costs. An adjustment of \$8,602 shall be made to remove Mr. Johnson's capitalized moving costs from plant. Corresponding adjustments shall be made to reduce accumulated depreciation and depreciation expense of \$1,075 and \$269, respectively.

7. Johnson Constructors' Charges for JAS Corp.

This issue was raised by the OPC in witness Dismukes prefiled testimony. KWRU did not address the issue in its rebuttal testimony. In its brief, KWRU touched on the issue of the \$4,650 for Jim Johnson's management fee and travel costs. However, KWRU's only support for the costs is a statement that the costs were appropriate. To rebut witness Dismukes' assertion that the costs are duplicative, KWRU points out that witness Dismukes lacks experience in utility construction projects. The \$30,000 in unsupported fees was not addressed by KWRU in its testimony or brief.

OPC argues that both the \$30,000 in fees billed to Johnson Constructors and the \$4,560 for travel and management services for Jim Johnson should be removed. Witness Dismukes' Exhibit 13 shows an invoice from Johnson Constructors to KWRU for the AWT project. On Exhibit 13, a charge is shown for \$30,000, but there is no information presented as to the services provided. Without supporting documentation as to the purpose of the charge, OPC believes the amount should be removed from rate base. With respect to the \$4,650 for Jim Johnson's management fee and travel, witness Dismukes believes the charges to be duplicative. Witness Dismukes asserts that a management service fee was paid to Johnson Constructors and to JAS for services related to the same AWT project. Witness Dismukes believes that KWRU's ratepayers should not be forced to pay for two supervisors working on the same project.

As in all utility cases, the Utility has the burden of proof. KWRU is required to support all dollars for which it seeks recovery. Exhibit 13, attached to witness Dismukes testimony, shows a \$30,000 charge, assessed on December 4, 2006. Under the heading, "Description," the line is blank. Although cryptic, the other entries on this invoice do include a description. KWRU was fully aware of the issue raised by witness Dismukes in her prefiled testimony. As a result, KWRU needed to provide support for this amount. KWRU did not provide any documentation to support its case. As we do not know the nature of the \$30,000 assessment, we cannot allow recovery of this amount from KWRU's ratepayers.

KWRU enlisted the services of Johnson Constructors to complete its AWT upgrade project. Johnson Constructors, whose principal is Chris Johnson, enlisted the services of JAS Corporation. JAS Corporation is owned by Chris Johnson's father, Jim Johnson. In her direct testimony, witness Dismukes states that she does not believe the ratepayers should have to pay for two supervisors. KWRU did not supply testimony about the necessity of paying management fees to two companies, nor did it attempt to differentiate between the services provided by each company.

KWRU focused its efforts on discrediting witness Dismukes testimony that the fees paid to Johnson Constructors and JAS Corporation were duplicative. KWRU's support for these fees is based on its statement in its brief that the costs were appropriate. KWRU argues that witness Dismukes has no experience in utility construction projects. While witness Dismukes admitted that she has no experience in utility construction projects, such experience is not required to identify duplicative costs.

In witness Dismukes' testimony, a chart is included that shows \$4,650 in charges were assessed by JAS Corp. On the first line of the chart, a management fee of \$2,000 was assessed on October 2, 2006. However, KWRU has not provided any documentation to substantiate the appropriateness of the management fee. No documentation was provided to indicate what service was provided under the term "management service" fee.

As for Jim Johnson's travel, again no document has been provided that indicated the appropriateness of his travel. Without documentation to prove that Chris Johnson and Jim Johnson had different responsibilities related to the AWT project, we find it is not appropriate for KWRU to recoup management service fees and the associated travel for Mr. Jim Johnson. Based on the above, KWRU's test year rate base shall be reduced by \$34,650. Corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense both by \$1,925.

8. Mr. London's Consulting Fees

KWRU capitalized consulting fees paid to former Monroe County Commissioner, Jack London. KWRU asserted that while it did not issue separate invoices for the costs, that should not affect the fact that the services were provided. KWRU contended that Mr. London's services ultimately benefited all customers, as his services related to the SSI project. KWRU entered into an oral contractual agreement with Mr. London whereby Mr. London would serve as a liaison between KWRU and Monroe County.

OPC believes that the consultant fees paid by KWRU should be removed from rate base because: 1) KWRU has no written documentation indicating the services performed; 2) KWRU has not demonstrated that the customers benefited from Mr. London's services; and 3) KWRU has not demonstrated that it was appropriate to capitalize the consulting fees.

KWRU argued that the only basis for the adjustment proposed by OPC is that there are no invoices to be reviewed. We find that the lack of documentation alone warrants removal from rate base. A company the size of KWRU should be fully aware that documentation must be provided to justify the recovery of costs. Reliance on oral contracts alone subjects utilities to

potential disagreements regarding terms of the agreement. In this case, KWRU has no written contract with Mr. London and received no invoices detailing his services. Further, KWRU provided no documentation to support its claim that all ratepayers benefited from Mr. London's services.

Because KWRU has not provided documentation necessary to support inclusion of Mr. London's consulting fees in rate base, \$32,500 shall be removed from KWRU's test year rate base. Corresponding adjustments shall be made to accumulated depreciation and depreciation expense of \$6,145 and \$855, respectively.

9. White and Case Legal Charges Related to Monroe County Audit Report

OPC witness Dismukes testified that she does not believe that the legal fees associated with the response to the Monroe County audit by the law firm of White and Case should be capitalized and included in rate base. Witness Dismukes stated that the legal fees associated with the response to the Monroe County audit should be removed citing correspondence that the law firm attended a meeting with KWRU that was at the request of KWRU to discuss the funds that the County refused to reimburse the Utility. Dismukes stated that the appropriate reduction for the Case and White legal fees is \$27,230, the depreciation expense is \$907, and accumulated depreciation is \$1,814.

Utility witness DeChario testified that Monroe County commissioned this audit as part of its requirements for the use of municipal funds. As with any audit, witness DeChario stated the Utility being audited may be called upon to correct or clarify assumptions of the independent auditor and that occasionally a response is required. DeChario also stated that it was proper for the Utility to capitalize these expenditures in accordance with National Association of Regulatory Utility Commissioners (NARUC) Accounting Instruction 19:

Utility Plant-Components of Construction Costs (15) "Legal Expenditures" includes the general legal expenditures incurred in connection with construction and the court and legal costs directly related thereto . . .

NARUC USOA for Wastewater Utilities, 1996, Page 24.

We agree with witness Dismukes that the \$27,230 in legal expenses related to the KWRU response to the Monroe County Audit Report should not be included in the test year rate base. The burden of proof in ratemaking cases in which a utility seeks an increase in rates rests on the utility. See South Fla. Natural Gas Co. v. Florida Pub. Serv. Commission, 534 So. 2d 695 (Fla. 1988); Florida Power Corp. v. Cresse; Sunshine Utilities. v. Florida Pub. Serv. Commission, 577 So. 2d 663, 666 (Fla. 1st DCA 1991). We find the Utility has not met its burden of proof that these legal fees were directly related to the construction associated with the SSI construction project. As such, KWRU's test year rate base shall be reduced by \$27,230 to remove legal fees associated with the response to the Monroe County Audit Report. Corresponding adjustments shall also be made to decrease accumulated depreciation and depreciation expense by \$1,814 and \$907, respectively.

10. Key West Citizen Public Relations (PR) Advertisement

OPC witness Dismukes stated that prior to the test year KWRU spent \$422 for a newspaper advertisement. KWRU capitalized the cost and included it in rate base rather than expense the cost in the period in which it was incurred. OPC asserts that the balance should be removed from rate base.

KWRU stated that the advertisement was an action undertaken at the County's request to assist customers in understanding the required system expansion and required interconnection to the system on SSI, thereby benefiting all of the Utility's customers through a larger rate base. KWRU also stated that an adjustment of this nature actually discourages good customer relations and a utility's attempt to keep its customers informed.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. We agree with witness Dismukes that the \$422 associated with the newspaper advertising expense should be removed from the test year rate base. This expense should have been expensed in the period in which it was incurred. Accordingly, corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense by \$117 and \$23, respectively.

B. Pro Forma Plant Additions

In its filing, the Utility reflected \$1,139,707 in pro forma plant. In its brief, KWRU indicated the pro forma plant additions were related to the upgrade project undertaken by the Utility for the AWT conversion. In its brief, OPC asserted that two adjustments from the pro forma plant additions should be removed from rate base.

1. Administration Fees Paid to Green Fairways

According to Audit Finding No. 2, staff witness Welch stated that Mr. Smith manages many companies, and there are no time records to support the allocation of his time spent on the Utility. Mr. Smith also charges 10 percent of large construction projects to plant for the management of the construction project. Green Fairways charged the Utility \$107,198 in 2002 and \$194,377 in 2003 for lining the collection system with a fiberglass liner in order to keep from having to replace the crumbling clay system. In 2006, \$124,984 was charged for the work on the AWT plant expansion project. Through cross examination by the Utility, witness Welch acknowledged that she has not compared these figures to Key Haven, which is mentioned as the only utility that is similarly situated to KWRU.

Utility witness Smith emphasized that Green Fairways charged the Utility an oversight administrative fee related to construction projects. Witness Smith testified that a project manager must obtain financing for these projects, and generally has to personally guarantee these projects and sign the contracts in order to obtain the financing. He contended that this type of agreement is not unusual and typically a management fee for projects, property, and management is normal. Witness Smith asserted ". . . there isn't a manager who will do the management of a project which is completely different than . . . a capital intensive project." He stated that a management company manages those big projects but charges additional amounts, typically 10

percent of the overall cost of a project. Moreover, he stated there is a huge difference between acting as a project administrator versus acting as just a manager of the Utility Company. Witness Smith admitted that he does not keep track of his time that he spends on various projects, but he feels that one-third of his time is devoted to Utility matters. He asserted that as project administrator you have to plan, engage in construction oversight, conduct quality assurance, manage the payment of contractors, and arrange financing.

OPC witness Dismukes testified that, according to the agreement for construction of the AWT project, Green Fairways, Inc. and Johnson Constructors, LLC, together are the "Contractor" for this project. Both companies are affiliates of KWRU. Johnson Constructors and JAS Corp. are owned by Jim Johnson (Chris Johnson's father) and several of the charges relate to travel charges of Mr. Jim Johnson. In addition, according to the contract for this project, the engineering firm Weiler Engineering, is responsible for providing administration. Witness Dismukes testified that KWRU has neither demonstrated the need for the excessive oversight responsibility nor adequately documented the actual services provided by Green Fairways. She does not believe ratepayers should pay for two supervisors. Therefore, witness Dismukes recommends removing the \$111,374 for Green Fairways fees from rate base.

Utility witness DeChario emphasized it would be imprudent for the Utility, or anyone for that matter, to simply turn a project over to a contractor and wait for its completion. This chain of supervision is necessary whether building a home or expanding a wastewater treatment plant. Subcontractors supervise their employees, contractors supervise the subcontractors, engineers supervise the contractors, and ultimately the property owner, in this case Mr. Smith, through Green Fairways, has the right and responsibility of oversight and supervision of all parties working on the project.

It is the Utility's burden to show that its requested expenses are reasonable. See Florida Power Corporation v. Cresse. Because KWRU has not met its burden of proof, we agree with OPC witness Dismukes that the administrative fees paid to Green Fairways for the oversight of the construction projects should be removed from rate base. Specifically Mr. Smith acknowledged that he does not keep track of time spent on various projects. Therefore, \$111,374 shall be removed from KWRU's pro forma plant additions. Accordingly, corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense both by \$6,187.

2. Subcontractors US Filter Davco

OPC witness Dismukes testified that the added costs associated with the change orders from Davco were due to KWRU's failure to have the permits in place to start the job as scheduled. The change orders reflect additional housing costs associated with Davco and the delay of the project. Because Davco was to originally start the job on November 8, 2006, a house was rented for \$3,300 a month. However, KWRU was red tagged and Davco could not pour the slab until the permits were pulled. Utility witness DeChario testified that he has no rebuttal testimony regarding these change orders. Because witness Dismukes does not believe customers should have to pay for KWRU's failure to properly secure the permits for the project,

she recommends removing \$13,547 from the pro forma adjustment and making corresponding adjustments for accumulated depreciation and depreciation expense.

Utility witness Castle emphasized that the Capacity Reservation Agreement between Monroe County and KWRU specifically stated that the agreement constituted all required permits and that no further permits were required from the County. Mr. Castle testified that KWRU had assumed no building permit was needed based on the agreement. He further asserted, when the County red-tagged the AWT construction project, work was stopped until the permit could be obtained. Witness Castle contended that the delay was caused by the position taken from the Building Department that the permitting condition in the Agreement was not valid and that a building permit was required.

We agree with OPC witness Dismukes that the added costs of \$13,547 associated with the change-orders from Davco should be removed. The change orders were due to KWRU not having permits in place for the scheduled work and customers should not have to pay for KWRU's failure to properly secure permits for the project. Thus, pro forma plant shall be reduced by \$13,547. Accordingly, corresponding adjustments shall be made to decrease accumulated depreciation and depreciation expense both by \$753.

In conclusion, to remove administration fees paid to Green Fairways and to remove cost incurred for not obtaining the necessary permits in a timely manner, pro forma plant shall be reduced by \$124,921. Accordingly, corresponding adjustments shall also be made to decrease accumulated depreciation and depreciation expense both by \$6,940. In addition, a corresponding adjustment shall be made to decrease property taxes by \$1,027.

C. Used and Useful Percentages for the Wastewater Treatment Plant, Collection, and Reuse Systems

The Utility considers its treatment plant and wastewater collection system to be 100 percent used and useful because of its contractual obligations to Monroe County to provide wastewater treatment to a developed area for environmental reasons. However, in its MFRs, the Utility calculated a 61.35 percent used and useful for its wastewater treatment plant, although no growth was included in the calculation. The Utility expanded the capacity of its wastewater treatment plant in 1997 and subsequently upgraded the treatment plant to AWT standards, and expanded its collection system to accommodate an additional 1,500 EDUs pursuant to a contract between the Utility and Monroe County.

Although not all of the potential customers located within the environmentally sensitive area have connected, the Utility has included Monroe County's advance payments as a reduction to rate base for rate making purposes. This, according to the Utility, eliminates the need for a non-used and useful adjustment. In addition, to further bolster its claims that this facility should be 100 percent used and useful, the Utility maintains that the plant is designed and built to provide reuse and will be an AWT plant, as mandated by Monroe County.

OPC agrees that the Utility's collection system is 100 percent used and useful; however, OPC believes that the Utility's wastewater treatment plant is 72.14 percent used and useful, based on the annual average test year flow of 288,000 gallons per day (gpd), a growth allowance

of 72,000 gpd (capped at five percent per year for five years pursuant to Section 367.081(2)(a)2.b., F.S.), and the permitted capacity of the plant of 499,000 gpd. OPC witness Woodcock testified that his disagreement with the Utility's used and useful analysis lies in both the calculated used and useful and the rationale for 100 percent used and useful.

Witness Woodcock points out that the Utility's used and useful calculation incorrectly relies on the maximum three-month average daily flow rather than the lower annual average flow (consistent with the permitted capacity), pursuant to Rule 25-30.432, F.A.C. In reference to growth, witness Woodcock admitted that he did not take into account a mandatory connection ordinance, any particular agreement commitment the Utility made to Monroe County, or any other commitments or reservations of capacity. He explained that if he was looking at how he would prudently plan for growth, he would consider the mandatory connections, agreements, and commitments. However, for the purposes of used and useful, he did not see them as relevant issues.

When questioned as to why engineers would prudently design a plant without the constraints of the Commission's wastewater used and useful rule, witness Woodcock pointed out that used and useful is not an engineering principle. He agreed that a utility could design a plant that an engineer would think was prudently sized, yet not warrant inclusion in rate base at 100 percent used and useful. He indicated that KWRU's plant is appropriately sized and that the expansion and the installation of the AWT facilities represent environmental compliance costs. Witness Woodcock asserted that there is an opportunity for those costs not included in rate base to be collected as the Utility's service area grows and the used and useful approaches 100 percent.

Witness Woodcock explained that the collection system consists of two parts, the original gravity collection system and the newer vacuum system. His review showed that the gravity part of the collection system was essentially built out and therefore 100 percent used and useful. The newer vacuum system, although not yet at the design capacity of serving 1,500 EDUs, was funded by Monroe county and is considered a fully contributed system; therefore, the vacuum system should be excluded from the used and useful analysis.

Witness Woodcock points out that the MFRs seem to indicate that expansion of the wastewater treatment plant was required by Monroe County in 2001. However, the expansion was actually made in 1997, which was prior to the agreement with Monroe County for expansion of the system. His review of the Utility's Capacity Reservation Contract with Monroe County found that the Utility is allowed to keep \$600 of the \$2,700 capacity reservation fee for the purpose of upgrading the wastewater treatment plant to AWT standards. The agreement made no mention of expanded treatment capacity. Therefore, he testified that the traditional used and useful calculation should be applied.

In response to OPC's used and useful analysis, KWRU's witness Castle agrees with OPC that the permitted capacity is based on annual average daily flow rather than the three-month average daily flow reflected in the MFRs. He also agrees with witness Woodcock that the 1997 plant expansion was not required by agreement with Monroe County, but was required by DEP in

order to provide capacity for the Key West Golf Club (KWGC) Development housing. However, the conversion to AWT was required by the agreement with Monroe County.

Witness Castle points out that Rule 25-30.432, F.A.C., provides that the extent to which the area served is built out should be considered. He indicates that the rule implies that projected growth based on factors other than a strict percentage should be reasonably allowed. He stated that the Utility's service area is experiencing significant redevelopment of properties into higher density uses as indicated by capacity reservation agreements with KWRU. He believes that the known developments proposed to connect to the Utility should be considered in future capacity calculations as well as a standard percentage growth rate. All customers were supposed to be connected to the system within two years; however, he states that considerable balking by the customers and lax enforcement by Monroe County has delayed these connections.

Monroe County provided funding for the expansion by paying the capacity fees of all the Stock Island residents under a repayment agreement with the Utility. The Utility has included these advances as a reduction to rate base for ratemaking purposes, thus eliminating the need for a non-used and useful adjustment. In addition, the plant is designed and built to provide reuse and will be an AWT plant as mandated by Monroe County.

In its post hearing statement, the Utility states that the factors clearly exist which we should consider, pursuant to Rule 24-30.432 F.A.C., to find that the existing wastewater treatment plant and the expansion, refurbishment, and upgrade of KWRU's facilities are 100 percent used and useful. In this regard, the Utility states that we should consider the growth of the system, the mandate of the legislature and Monroe County which directly resulted in the upgrade and expansion; and the nature and reality of the service area and the mandatory connection ordinance and the reservations of capacity related to each, which essentially render the service area as built out. Rule 24-30.432, F.A.C., expressly provides that the enumerated factors are only some of the factors that we will consider in determining the used and useful amount, and is not by any means an exhaustive list. The rule also expressly provides that it does not apply to reuse projects, pursuant to Section 367.0817(3), F.S., nor investment for environmental compliance pursuant to Section 367.081(2)(a)2.c, F.S. The Utility's post-hearing statement goes on to refer to Chapter 99-395, in which the Legislature enacted certain sewage requirements for Monroe County which, in Section 6 of that law, required sewage facilities to go to AWT by July 1, 2010. In furtherance of that mandate, the Utility points out that Monroe County secured an agreement from the Utility to convert its wastewater treatment system to AWT by January 1, 2007, providing that the Utility is allowed to recapture the costs of its conversion to AWT and increased operating costs by a resolution of the County Commission.

We agree with the Utility that factors clearly exist, pursuant to Rule 24-30.432, F.A.C., to find that the Utility's wastewater treatment plant and collection and reuse systems are all 100 percent used and useful. The record shows that the remaining capacity of the treatment facility and lines have been committed and contributed towards the provision of service of the 1,500 EDUs that the Utility agreed to serve pursuant to a contract with Monroe County. Although not all of the potential customers located within the environmentally sensitive area have connected, it appears that Monroe County's advance payment for these customers clearly reserves that remaining capacity. In addition, the record shows that the facility is 100 percent used and useful

because the plant is designed and built to provide reuse and will be an AWT plant, as mandated by Monroe County. Given the above, we find KWRU's wastewater treatment plant, entire collection system, and reuse systems are all 100 percent used and useful in providing service to the customers of the Utility.

D. Accumulated Depreciation

In its filing, KWRU reflected \$2,803,410 of test year accumulated depreciation. Consistent with our plant adjustments made above, we calculate that the appropriate test year balance of accumulated depreciation is \$2,674,088.

E. Contributions In Aid of Construction (CIAC) and Accumulated Amortization of CIAC

In its filing, KWRU reflected historical test year balances of \$4,856,429, \$686,844, and \$2,777,630 for CIAC, advances for construction, and accumulated amortization of CIAC, respectively. Staff witness Welch testified that \$707,000 of advances for construction should be transferred to CIAC as a result of the KWRU's reimbursement of funds received by Monroe County through the collection of cash CIAC from customers.

OPC witness Dismukes agrees that \$707,000 should be transferred from advances for construction to CIAC. Utility witness DeChario also agrees with witness Welch. This adjustment does not affect rate base.

Based on the above, the appropriate test year balances of CIAC and accumulated amortization of CIAC are \$5,563,429 and \$726,153, respectively.

F. Working Capital Allowance

In its filing, the Utility reflected a Working Capital Allowance of \$496,846. At hearing, we approved a stipulation that temporary cash investments of \$168,265 shall be removed from working capital allowance, and working capital shall be increased by \$2,689 for prepaid expenses.

OPC witness Dismukes recommended a rate decrease, and testified that KWRU had no need to file for a rate increase for wastewater operations and that the associated rate case expense should be disallowed. Ms. Dismukes asserted that working capital allowance should be reduced by the unamortized balance of rate case expense.

KWRU Witness DeChario stated that a rate increase is fair and reasonable for the economic climate in which the Utility operates. Also, KWRU stated that \$133,341 of the actual rate case expenditures of this case are directly related to responding to the discovery propounded by OPC, as well as the preparation of rebuttal testimony in response to unreasonable adjustments and allegations put forth in OPC testimony. In its brief, KWRU stated that it believes that the working capital allowance originally outlined in the Utility's application, adjusted for the effect of the stipulations, is the appropriate balance.

The Utility included \$100,000 of average deferred rate case expense in its working capital allowance of \$496,846. It is our practice to include the average approved amount of rate case expense in the working capital calculation for Class A water and wastewater utilities.⁴ Consistent with this practice and our approval of rate case expense of \$466,615 later in this Order, we calculate the appropriate working capital to be \$464,578 (\$496,846 less \$168,265 plus \$2,689 plus $(\$466,615/2)$ less \$100,000). Accordingly, working capital shall be decreased by \$32,269.

G. Total Rate Base

Based on our adjustments above, the appropriate 13-month average rate base is \$127,795. Schedule No. 1-A depicts our rate base calculation. Our adjustments to rate base are depicted on Schedule No. 1-B.

V. COST OF CAPITAL

A. Return on Common Equity (ROE)

The ROE requested in the Utility's filing is 12.01 percent. This return is based on the application of our leverage formula approved in Order No. PSC-07-0472-PAA-WS and an equity ratio of 26.22 percent.⁵

On May 10, 2008, our staff filed its annual recommendation to update the water and wastewater leverage formula based on current financial data. On May 20, 2008, in Docket No. 080006-WS, we determined that the water and wastewater leverage formula should be set directly for hearing. A hearing was held on October 23, 2008. Based on the evidence in the record, we issued our approved water and wastewater leverage formula by Order No. PSC-08-0846-FOF-WS, on December 31, 2008.

The Utility's proposed ROE of 12.01 percent shall be updated to reflect the cost rate yielded by our leverage formula approved by Order No. PSC-08-0846-FOF-WS. Based on the approved methodology and an equity ratio of 27.34 percent, we find an ROE of 12.67 percent is appropriate. The allowed range of plus or minus 100 basis points shall be recognized for ratemaking purposes.

⁴ See Order Nos. PSC-08-0327-FOF-EI, issued May 19, 2008, in Docket No. 070304-EI, In re: Review of 2007 Electric Infrastructure Storm Hardening Plan filed pursuant to Rule 25-6.0342, F.A.C., submitted by Florida Public Utilities Company; PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.; and PSC-97-1225-FOF-WU, issued October 10, 1997, in Docket No. 970164-WU, In re: Application for increase in rates in Martin County by Hobe Sound Water Company.

⁵ See Order No. PSC-07-0472-PAA-WS, issued June 1, 2007, in Docket No. 070006-WS, In Re: Water and Wastewater Industry Annual Reestablishment of Authorized Range of Return on Common Equity for Water and Wastewater Utilities Pursuant to Section 367.081(4)(f), Florida Statutes.

B. Weighted Average Cost of Capital

As shown on MFR Schedule D-1, KWRU originally proposed an overall cost of capital of 8.39 for the test year ending December 31, 2006. KWRU acknowledges that its proposed weighted average cost of capital should be updated for the effects, if any, of the stipulations agreed to by the parties.

OPC has not recommended any specific adjustments to KWRU's proposed capital structure, but acknowledges that the weighted average cost of capital should be adjusted for the outcome of our decisions involving rate base.

Based on the resolution of the preceding issues, our approved capital structure yields an overall cost of capital of 8.62 percent. Schedule No. 2 contains our approved capital structure.

VI. TEST YEAR REVENUES

In its filing, KWRU reflected adjusted test year revenues of \$1,046,314. OPC believes there are three adjustments necessary to test year revenues that address: (1) annualized revenues, (2) rental income, and (3) revenue collected from Monroe County.

A. Annualized Revenues

Utility witness Smith testified that the Utility has always operated with a flat rate for sewer service because it was difficult to obtain water usage information from the FKAA. He further stated that because FKAA has been the provider of water service to all of KWRU's wastewater customers, obtaining that information was necessary in order to move to a base facility type charge, including a base charge and usage charge. He asserted that it is appropriate for the Utility to move to a base and gallonage charge because it is a better indicator of the cost of providing service to each customer and helps to promote conservation.

OPC witness Dismukes testified that the number of bills, according to the FKAA usage information, is different from the number of bills KWRU has reported. According to witness Dismukes, the Utility provided an explanation of this difference in its response to OPC Interrogatory 60:

The Utility has historically billed flat rates for all but commercial customers. With the FKAA information, certain customers which were flat rate billed, such as multifamily apartment units, have individually metered units as billed by FKAA. As a result, the number of residential customers, including individually metered apartment units, increased. Additionally, based on the FKAA data, meter sizes were updated to agree to what was being billed for commercial and multifamily bulk meters by FKAA. Also, some commercial establishments are being served by multiple meters which were being flat rate billed as a single meter.

Witness Dismukes further testified that in order to ensure consistency between test year revenue and the proposed rate design which contains different billing units, test year revenue should be adjusted, where possible, using the FKAA billing data provided by the Utility. As shown in

Exhibit 14, witness Dismukes asserted that test year revenue should be increased by \$158,151 to reflect the appropriate annualized revenue adjustment.

Utility witness DeChario testified that Ms. Dismukes' annualized revenue adjustment is a matching principal violation because the billing unit information from FKAA includes customers beyond the test year number of customers.

We agree with Utility witness DeChario that the inclusion of pro forma billing units to project revenues would be a matching principal violation if the expenses are not projected as well. However, when comparing the Utility's MFR Schedules E-2(a) and E-3, it appears that the Utility has failed to include six general service bills, and KWRU also used the incorrect rate for its 4-inch general service customers. We have calculated test year revenues of \$1,052,578. Based on the above, the appropriate annualized revenue adjustment is \$6,264.

B. Rental Income

According to Audit Finding No. 3, staff witness Welch testified that KEI has its office in a Utility-owned trailer. KEI pays KWRU \$24,000 annually for the use of this trailer; it also uses the Utility-owned trucks, but only pays for the gasoline and vehicle maintenance.

OPC witness Dismukes agreed with staff witness Welch. Even though KEI rents the Utility trailer that is located at the sewer site, no employees of either the Utility or KWGC occupy the trailer. In addition, Weiler Engineering Corporation and KEI paid \$37,400 in rent to KWRU. Witness Dismukes examined the billing summary the Company provided in response to Citizens' Interrogatory No. 4. The rent charged to KEI has always remained constant at \$2,000/month. In contrast, since 2002, the rent charged to Weiler Engineering Corporation changed four times in five years during the test year and the monthly rent went from \$1,750 to \$800 without an explanation for the change. Witness Dismukes recommends that we adjust test year revenues to reflect the monthly rent of \$1,750 paid by Weiler Engineering Corporation for the entire year. Accordingly, she recommends that the test year revenue be increased by \$14,600. In addition, we note that Johnson Constructors, another affiliate of KWRU, uses the same address as the Utility trailer, but there is no type of rent that has been paid by this entity.

The Utility did not file testimony on this issue. Utility witness DeChario testified that he did not address the issue specifically as part of the revenue requirement. He felt that the billing data and the MFRs stood on their own.

As noted by OPC witness Dismukes, during the test year, Weiler Engineering's rental fee went from \$1,750 to \$800 a month without explanation. Again, the Utility has the burden to show that its requested expenses are reasonable. See Florida Power Corporation v. Cresse. Therefore, we shall increase test year revenue by \$14,600 to reflect a \$1,750 monthly rental fee from Weiler Engineering.

C. Revenue Collected from Monroe County

According to Audit Finding No. 10, staff witness Piedra testified that the Utility recorded \$19,575 in general ledger account number 80271 - MCDC Income, for income received from the

MCDC. This relates to income for cleaning the County lift-stations. This was not included in the operating revenues in its MFRs. Witness Piedra recommends that the test year revenues be increased by \$19,575.

OPC witness Dismukes testified that because the Utility has no employees, this service is most likely provided by KEI. The person that performed this service on behalf of the County would appear to be the same person that maintains the Utility lift-stations. She has not seen documents which indicate that KEI keeps a record of the time spent on servicing Monroe County lift-stations versus the Utility lift-stations. Consequently, in the absence of showing that the cost of cleaning these lift-stations has been excluded from the costs charged to the Company, we agree that the associated revenue income should be recorded above the line for ratemaking purposes. Therefore, test year revenue shall be increased by \$19,575.

Utility witness DeChario testified that the full responses to the audit report are contained in Exhibit 33. He believes that the income is properly stated below the line. Witness DeChario asserted that it would be better if it were included in NARUC Account 415 - Revenues from Merchandise, Jobbing, and Contract Work, which states, in part: "These accounts shall include all revenues derived from . . . contract work." The nature of the agreement with Monroe County, who owns the lift-stations, falls into this category. The Utility acknowledges that a similar amount of expenses should also be reclassified below the line to NARUC Account 416 - Expenses of Merchandise, Jobbing, and Contract Work.

We agree with both OPC witness Dismukes and staff witness Piedra that this income relates to cleaning the County lift-stations. The income was not included in the operating revenues of the MFRs and should be recorded above the line for ratemaking purposes. Because the Utility has not provided any documentation showing the cost charged to KWRU for the cleaning of the lift-stations and has not provided any support showing that these costs have been excluded from the Utility's test year expenses, test year revenues shall be increased by \$19,575.

VII. OPERATING EXPENSES

A. Operations and Maintenance (O&M) Expenses

1. Sludge Removal Expense

In its filing, KWRU reflected test year sludge removal expense of \$38,196. Pursuant to our approval of the stipulations discussed previously in this Order, sludge removal expense shall be reduced by \$9,129, as shown in Stipulation No. 5.

2. Chemicals Expense

OPC asserts that the chemicals purchased for use by the Utility are supplied by KEI, a supplier owned by the son-in-law of the owner of KWRU, Mr. Smith. OPC also asserts that the relationship between KWRU and KEI has resulted in costs that are up to 30 percent higher than "in a more conventional situation," and that this results in higher costs for purchased chemicals. OPC witness Dismukes cites that along with sludge hauling, chemical expenses were abnormally

high. OPC witness Dismukes states that the expense should be reduced by \$16,480 to reflect a normalized level based on a three-year average.

KWRU stated that witness Dismukes admitted that customer growth had occurred in the past three-year period, but failed to account for inflation, customer growth, and an overall increase in costs. In its brief, the Utility stated that the three-year average is not reasonable, based on increased customers, higher treatment requirements, and increased costs. KWRU went on to state that witness Dismukes has done no analysis whatsoever to determine the reasonableness of these increases in costs. KWRU also cites that witness Dismukes had made no attempt to compare the costs with any similarly situated utilities at the time she had made her adjustments. Witness Smith stated that the Utility is going to an AWT treatment process as a result of county and state mandates, and as a result, the Utility will be required to purchase a lot more chemicals and haul a lot more sludge.

We agree with KWRU that chemicals would likely increase as a result of its transition to an advanced wastewater treatment facility. However, the Utility has failed to meet its burden to support any quantifiable amount. It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse.

We also agree with OPC, in part, that chemicals expense increased from \$27,490 in 2005 to \$50,763 in 2006. It appears that the increase in test year chemicals expense was substantially higher than in preceding years. Because witness Dismukes failed to consider increases in the cost of chemicals, chemical expense in the test year shall be reduced by \$16,117 to normalize the indexed chemical expense. This is consistent with our prior decisions to index O&M expenses.⁶ Recognizing the customer growth, we find that a three-year period, versus a four or five-year period, is reasonable in normalizing the increase in chemical expense.

3. Reduction of Test Year Expenses for Reduction of Infiltration and Inflow (I&I)

OPC witness Dismukes testified that chemicals and purchased power expenses should be decreased as a result of the Utility's re-sleeving line project. It is our practice to reduce chemicals and purchased power expenses when a Utility has excessive I&I.

Utility witness DeChario testified that we did not make an O&M expense reduction resulting from excessive I&I for KWRU's neighboring utility, Key Haven Utility Corporation. Specifically, witness DeChario pointed out that we found the following in our Order No. PSC-03-0351-PAA-SU:

Adjustments to plant used and useful percentage and operating expenses such as power and chemicals could be recommended because of the excessive infiltration determination. However, in this case consideration should be given to the age of the system, the severe conditions the facilities are exposed to with the saltwater and high ground water environment, and the recent improvements done to the collection system to help reduce the problem. Staff sees no benefit to penalizing

⁶ See Order No. PSC-05-0624-PAA-WS, p. 23, issued June 7, 2005, in Docket No. 040450-WS, In Re: Application for rate increase in Martin County by Indiantown Company, Inc.

the utility by further reducing used and useful or expenses based on excessive infiltration when the problem is being addressed satisfactorily.

As a result, witness DeChario asserted that no adjustments are necessary.

We agree with Utility witness DeChario. Further, we note that neither OPC witnesses Dismukes nor Woodcock testified that the Utility had any excessive I&I. We find it is unfair to reduce expenses for the Utility's re-sleeving line project, because we would not reduce expenses if a Utility had I&I flows of 10 percent or less. In accordance with our decision in the above-cited order, we find no adjustments are necessary.

B. Markup in Pro Forma Expenses

Staff witness Welch testified that KEI purchases supplies, chemicals, and sludge hauling, and then bills the Utility for these services. Witness Welch stated that related party charges to a Utility require additional review to determine whether the related party bills the Utility at actual cost and does not use the affiliate company to increase prices to the Utility. She attempted to determine if KEI increases the costs for these items and to compare a sample of the costs to prices on the internet.

OPC witness Dismukes testified that Chris Johnson, owner of KEI, stated in his deposition and in response to OPC discovery, that the Utility provided an invoice from KEI with notation that certain charges are marked up over cost. Witness Dismukes asserted that if KWRU purchased the chemicals and moved the sludge, the Commission would not permit it to expense more than the actual costs. Witness Dismukes stated that the removal of the 30 percent mark-ups would reduce chemicals, sludge hauling, and materials and supplies expense by \$7,913, \$2,690, and \$23,224, respectively.

Utility witnesses Smith and DeChario testified that Exhibit 25 justifies the 30 percent mark-up imposed upon the Utility by KEI, and stated that such a mark-up is in keeping with the standard practice for providing such services by third party contractors. Specifically, Exhibit 25 includes an operating cost proposal by U.S. Water Service Corporation, which was not accepted by KWRU. Among other things, this cost proposal states that "[t]he costs for chemicals and residuals management are to be billed to KWRU on a per occurrence basis with an appropriate allowance for overhead and margin." Further, witness DeChario asserted that, in GTE Florida, Inc. v. Deason, 642 So. 2nd 545 (Fla. 1994), the Court's standard to review affiliate transactions is whether the transaction exceeds the going market rate or is otherwise inherently unfair.

Staff witness Welch further testified that KEI did not appear to make a large profit based on its financial statements, but she did not know whether it was because KEI was making a lot of money in contractual labor. She still contended that KEI is marking up certain items. Witness Welch testified that, subsequent to the GTE case cited by witness DeChario, that it was her understanding that the Federal Communications Commission came out with a lower of cost or market in Rule 32.27C, Code of Federal Regulations, Title 47, Vol. 2. She asserted that the Commission has traditionally used the lower of cost or market to determine the cost of affiliate transactions.

It is the Utility's burden to show that its requested expenses are reasonable. See Florida Power Corporation v. Cresse. We agree with witnesses Welch and Dismukes that the 30 percent mark-ups of chemicals, sludge hauling, and materials and supplies should be disallowed. Regardless of whether we apply the going market rate or inherently unfair standard cited in the GTE case, or the lower of cost or market standard, we find that the Utility has not met its burden of proof that a 30 percent markup is reasonable. In so finding, we note that "it is the [Commission's] prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary." See Gulf Power Co. v. FPSC, 453 So. 2d 799, 805 (Fla. 1984). Therefore, chemicals, sludge hauling, and materials and supplies shall be reduced by \$7,913, \$2,690, and \$23,224, respectively.

C. Insurance – General Liability

KWRU included \$701 in finance charges related to payment of its insurance policies over time. According to the insurance documents, finance charges accrue if payment is not made in full. KWRU asserts that its insurance premiums are charged to a prepaid expense account and amortized over the term of the policy, which covers the twelve-month period beginning in August and ending in July. KWRU believes the payment of finance charges should not be deemed a "late" payment, but should be recognized as a prepaid insurance amount. KWRU further argues that the \$701 is a minor amount and should be treated as the cost of insurance.

OPC believes that interest accrued on late payments should be denied on the grounds that the interest charges are avoidable if paid timely. As such, OPC believes general liability insurance should be reduced by \$701.

We have reviewed the insurance financing documents and note that the premiums are in excess of \$20,000. While it has been our prior practice to deny the recovery of foregone property tax discounts because the utility had control of the timing of its payments, we view this situation differently. Although KWRU does have control over whether payment would be made as a lump sum or paid over time, the decision to spread the payments over a 12-month period appears to be reasonable based on the amount of the premiums and the associated finance charges. As a result, we shall make no adjustment to KWRU's general liability insurance.

D. Advertising Expenses

In its filing, KWRU reflected \$25,315 of test year contractual services – public relations in Schedule B-9. Staff witness Piedra stated that the Utility recorded \$25,000 in Account 760 – Advertising Expenses, for charges to William Barry for public relations.

OPC witness Dismukes recommended that we disallow all of the expenses charged to advertising expenses because, as the Utility admitted, they are related to public relations functions. Therefore, the adjustment for advertising expenses related to public relations would be \$26,653.

In its brief, the Utility stated that the items produced by Mr. Barry were not a public relations campaign, but instead were an attempt to educate and keep the customers of the Utility informed about the requirement that they connect to its system, and the costs and benefits of that

requirement. The Utility asserted that the cost is not for public relations but for customer service, and should be considered an appropriate function of the Utility.

A review of the sample items produced by Mr. Barry for KWRU shows that the items include newspaper articles regarding KWRU, letters written on behalf of KWRU, and public statements/press releases. The items produced by Mr. Barry appear to be for public relation purposes. Therefore, advertising expenses shall be reduced by \$26,653 to remove costs related to public relation functions.⁷

E. Mr. Smith's Management Fees Charged by Green Fairways

According to staff's audit report, Mr. Smith manages several other businesses through Green Fairways in addition to KWRU, including: KWGC; Venetian Partners - office building in San Francisco; 900 Commerce - offices in Oakbrook Illinois; Portland Court - office building in Addison; Rail Golf Course - in Springfield, Illinois; and Deer Creek Golf Course in University Park, Illinois.

The staff audit further stated that Mr. Smith performs the following duties for KWRU: review of all bids; hire of key employees, review and approve budgets, coordinate financing, provide advance funds, monitor contract employees, coordinate public relations, engage accountants and lawyers, coordinate with FCAA, engage engineers, coordinate county contract, negotiate customer contracts, supervise expansion, and coordinates rate cases.

The staff audit also stated that Mr. Smith indicated that one third of his time is spent on the Utility. According to a letter provided by his accountant, one third of his actual salary far exceeds the amount included in KWRU's expense. However, Mr. Smith manages many companies as indicated above, and there are no time records to support the allocation of his time spent on the Utility. Staff's audit also notes that most of Mr. Smith's salary is not provided in a W-2 since his businesses are limited partnerships. Less than 10 percent of Mr. Smith's salary comes from Green Fairways, because he is paid the excess of Green Fairways revenues less expenses. Because the actual hours spent on KWRU by Mr. Smith cannot be determined, it is difficult to determine the reasonableness of the charges in relation to Mr. Smith's other companies.

The staff audit report also included the following breakdown based on Mr. Smith's W-2 from Green Fairways, and the management fees and project administrative fees:

⁷ See Order Nos. PSC-93-0301-FOF-WS, issued February 25, 1993, in Docket No. 911188-WS, In Re: Application for a Rate Increase in Lee County by Lehigh Utilities, Inc.; PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.; and PSC-97-0618-FOF-WS, issued May 30, 1997, in Docket No. 960451-WS, In re: Application for rate increase in Duval, Nassau, and St. Johns Counties by United Water Florida Inc.

<u>Year</u>	<u>Mr. Smith's W-2 Green Fairways Salary</u>	<u>Management Fees to KWRU</u>	<u>Project Administrative fees in Plant</u>	<u>Total Charged to KWRU</u>
2001	\$55,000	\$60,000	\$0	\$60,000
2002	190,000	60,000	107,198	167,198
2003	70,000	100,000	194,377	294,377
2004	70,000	80,000	0	80,000
2005	35,000	81,667	0	81,667
2006	40,000	60,000	124,984	184,984

OPC witness Dismukes stated that the Utility failed to provide adequate documentation supporting the management fee paid to Green Fairways. Mr. Smith could not produce any timesheets in support of the amount of time that he spends managing the Utility versus the numerous other companies that he owns or operates through Green Fairways. Even assuming that Mr. Smith spends 50 percent of his time managing the Utility, his salary equates to an annualized salary of \$120,000, which appears excessive given the amount of time that Mr. Smith spends at the Utility's headquarters in Key West. Even while in Key West, Mr. Smith spends time managing the KWGC. While Mr. Smith undoubtedly spends time on the phone with Utility-related employees when he is not in town (which is approximately once a month), witness Dismukes finds it difficult to believe that he spends 50 percent of his time on Utility business given the fact that he is a managing partner of a law firm and owns numerous other businesses. Furthermore, Mr. Smith has most likely been spending more time recently on Utility matters due to the rate case and other issues that should subside now that most customers have hooked up to the system. If Mr. Smith maintained time records, it would be easier to determine how much time he typically spends on Utility business. In the absence of documentation supporting the on-going time spent by Mr. Smith on Utility matters, witness Dismukes recommended that the Commission remove 50 percent of Mr. Smith's management fee, or \$30,000, under the assumption that on a going forward basis, Mr. Smith will spend less time on Utility matters and there has been no demonstration that the \$60,000 is reasonable.

Utility witness DeChario stated that the amounts charged for Mr. Smith for a management fee are in lieu of a direct salary; because the Utility has no employees, these amounts are recorded as a management fee. The amount charged by Green Fairways for management fees are for Mr. Smith's day-to-day oversight of the Utility operations in-lieu of any direct salary. Because the Utility has no employees and does not report wages to the Internal Revenue Service, the amounts charged by Green Fairways for the benefit of Mr. Smith are in lieu of salaries and are recorded as management fees. Mr. Smith, as reported in the audit, devotes a substantial portion of his time dealing with the day-to-day operation and maintenance of Utility

matters and Utility oversight. The Utility argues that another clear example of the reasonableness of Mr. Smith's charge is the fact that this Commission recently completed a limited rate proceeding for Key Haven Utilities, the only other regulated sewer utility near Key West. In that proceeding for Key Haven Utilities, we allowed a management fee for the services of Mr. Luhan in lieu of salary which was approximately three times the amount per ERC that Green Fairways charges the Utility in lieu of a salary for Mr. Smith.

According to staff's audit report, Mr. Smith indicated that one third of his time is spent on the Utility. Based on Mr. Smith's representation, it appears that Mr. Smith's effective annualized salary from 2001 through 2006 would be as follows:

<u>Year</u>	<u>Annualized Salary</u>
2001	\$180,000
2002	501,594
2003	883,131
2004	240,000
2005	245,001
2006	554,953

Utility witness DeChario included the following comparison between KWRU and Key Haven Utilities in his rebuttal testimony:

<u>Utility</u>	<u>Class</u>	<u>Salary</u>	<u>Customers</u>	<u>Gallons</u>	<u>Meter Equivalents (Equiv.)</u>	<u>Salary/1,000 Gallons</u>	<u>Salary/ Meter Equiv.</u>
Key Haven	B	\$26,000	442	27,209,000	444	\$0.96	\$58.56
KWRU	B	\$60,000	1,503	95,991,000	1,708	\$0.63	\$35.13

We acknowledge the comparison of Key Haven and KWRU provided by the Utility. However, we find the total annualized compensation for Mr. Smith, including management fees as well as project administrative fees, should be taken into account. If the total annualized compensation for Mr. Smith in 2006 charged to KWRU were included in the above comparison chart, the following would result:

<u>Company</u>	<u>Class</u>	<u>Annualized Salary</u>	<u>Customers</u>	<u>Gallons</u>	<u>Meter Equiv.</u>	<u>Salary/1,000 Gallons</u>	<u>Salary/ Meter Equiv.</u>
KWRU	B	\$554,953	1,503	95,991,000	1,708	\$5.78	\$324.91

Based on Mr. Smith's total annualized compensation charged to KWRU in 2006, Mr. Smith's salary per 1,000 gallons sold and salary per meter equivalent is considerably higher than Key Haven Utilities. It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. The Utility has failed to provide any support documentation relating to the actual amount of time Mr. Smith spends managing KWRU; therefore, we cannot determine if the management fee of \$60,000 is a prudent amount. Based on all the above, we agree with OPC and find that the \$60,000 management fee shall be reduced by \$30,000.

F. Transactions between Keys Environmental (KEI) and KWRU

According to Audit Finding No. 3, KEI was started by Mr. Smith's son-in-law to service KWRU. KEI purchases supplies, chemicals, and sludge hauling, then bills KWRU for these services. KEI has its office in a trailer owned by KWRU and pays \$24,000 for its use. KEI also uses trucks owned by KWRU, but pays for its own gas and maintenance.

According to staff's audit, the contract with KEI requires two full time operators, and a manager to work a minimum of eight hours a day on weekdays and two hours a day on the weekends. The contract includes customer relations, periodic inspections, minor maintenance, daily pumping stations inspections, preventative maintenance programs, collection systems monitoring, reclaimed water lines monitoring, and monitoring of meters, pumps, and blowers. KEI reads the meters and maintains an answering service and dispatch. The contract also says that KEI will do the sampling, testing, and supervision and inspection of new customer tie-ins.

In 2006, KWRU recorded \$450,776 of invoices from KEI. This amount is broken down in the following chart:

<u>Expense Description</u>	<u>Amount</u>
Monthly operations fee at \$23,206 per month	\$278,472
Monthly fees for Air Vac service at \$3,333 per month	<u>40,000</u>
Total contractual fees	<u>\$318,472</u>
Fees received from developers for review and inspections were used to reduce the monthly operating fee amount	(81,233)

Net contractual fees	<u>\$237,239</u>
Hook-up fees that should be capitalized	\$15,000
Chemicals and supplies	43,203
Trailer repairs	982
Plant repairs	59,283
Vacuum repairs	24,004
Sludge hauling	19,472
Filter beds work	2,393
Generator work	6,652
Equipment and supplies	631
Lift-station cleaning	2,854
Lift-station repair	37,405
Pump repair	1,637
Sewer line cleaning	1,376
Sewer line repair	10,181
Vacuum collection system	24,895
Effluent repairs	14,536
Miscellaneous	1,530
Transferred to plant	<u>(52,497)</u>
Total	<u>\$450,776</u>

Included in the chemicals and supplies charges is \$1,313 for lab testing. Sampling and testing were supposed to be part of the contract. In its brief, the Utility stated that lab testing, while included as a function of KEI under the agreement to provide services, was not intended to be a function covered by the regular monthly payment, but instead was intended to be a function for which KEI would separately bill the Utility. We disagree with the Utility and find that sampling and testing is supposed to be covered in the contract between KWRU and KEI. Therefore, these charges shall be removed, and expenses shall be reduced by \$1,313.

The \$15,000 of hook-up fees charged to the operations account shall be transferred to plant account 363. In its response to staff's audit report and in its brief, the Utility agreed with this adjustment. Therefore, expenses shall be reduced by \$15,000 and plant in service shall be increased by \$15,000. Accordingly, accumulated depreciation and depreciation expense shall be increased by \$179.

At hearing, we approved a stipulation regarding the capitalization of \$51,663 of items that were expensed in the test year (See Stipulation No. 11). As such, expenses shall be reduced by \$51,663 and plant be increased by \$51,663. Accordingly, accumulated depreciation and depreciation expense shall be increased by \$2,907.

Staff's audit report also noted that included in the expense accounts was a bill for \$2,083 for damage to a pit vacuum that was caused by Waste Management and an invoice from the Oceanside Marina for \$995. The Utility asserted in its brief that it has not been reimbursed and these costs were incurred by the Utility in maintenance of its system. However, the Utility stated that, if in some future time period, it is able to recover some costs, those costs will be offset against any repairs in the years in which those receipts are obtained. We find that that these items shall be recovered from the cost causer and not from the ratepayers. Therefore, expenses shall be reduced by \$3,077 (\$2,083+\$995).

In summary, test year expenses shall be reduced by \$71,053 (\$1,313+\$15,000+\$51,663+\$3,077)⁸ for certain transactions between KEI and KWRU. Additionally, plant in service shall be increased by \$66,663 (\$15,000+\$51,663). Accordingly, accumulated depreciation and depreciation expense shall be increased by \$3,086.

G. Contractual Services – Other Expenses

In its filing, KWRU reflected Contractual Services - Other expense of \$1,302. We approved a stipulation to reduce Contractual Services - Other by \$1,302 to reflect the amortization of non-recurring amounts incurred during the test year (see Stipulation No. 8).

OPC witness Dismukes stated that KWRU pays KWGC, an affiliate, an \$8,000 monthly fee for KWGC to provide ongoing services. In the test year, KWGC paid its employees bonuses totaling \$12,038 and charged them to KWRU. The \$8,000 monthly fee should cover the services that KWRU receives, and any bonus that the golf course wants to give its own employees should not be paid by utility customers.

KWRU witness DeChario testified that these "bonuses" were in fact, not bonuses, but rather compensation for work that was performed "above and beyond normal recurring operation and maintenance and management of the Utility." Witness DeChario went on to state that the EDU bonuses paid were for additional administrative work performed to process customer requests for service, as a result of the large influx of new customers from the SSI project. Witness DeChario also stated that the bonuses paid to Mr. Carter "encourages him to achieve results and thereby put downward pressure on rates by increasing its customer base." Mr.

⁸ As recommended by OPC.

DeChario then asserted that not charging these expenses to the entity that incurred them would violate the Generally Accepted Accounting Principle of matching revenues and expenses.

It is the Utility's burden to prove that its costs are reasonable. See Florida Power Corp v. Cresse. After analyzing the charges made to Contractual Services – Other, we find that the bonuses paid to the employees of KWGC shall be removed from Contractual Services – Other. The “compensation” paid for work performed “above and beyond normal recurring operation and maintenance” should reasonably be assumed as part of the \$8,000 monthly fee for services. In particular, the compensation paid for processing EDUs is designed for acquiring additional new customers, and is primarily for the benefit of the Utility and its stockholders and shall not be borne by the ratepayers. Therefore, Contractual Services – Other shall be reduced by an additional \$12,038.

H. Miscellaneous Expenses

KWRU has included in the test year, miscellaneous expenses related to Mr. Smith's travel and lodging, moving expenses to transport a car from Illinois to Key West, delivery of hook-up notices by the Monroe County Sheriff's department, a donation, and floral costs.

With respect to Mr. Smith's travel and lodging expenses, KWRU argues that travel costs are part of Mr. Smith's compensation package. KWRU asserts that Mr. Smith spends one third of his time on the Utility's business regardless of whether he is in Illinois or in Key West. OPC argues that the highest ranking utility officers are expected to work full-time for the utility and live in proximity to the utility. As a result, no travel expenses would be necessary.

Although it is the owner's choice of where he wishes to reside, the customers shall not be required to pay the cost of travel because the owner chooses to live a considerable distance from KWRU. We believe this issue is related to a utility's choice to maintain its books and records outside the state of Florida. Rule 25-30.110(1)(c), F.A.C., requires a utility to reimburse the Commission for the reasonable travel expense incurred by each Commission representative during any review of the out-of-state records of the utility or its affiliates if it chooses to keep its records outside the state. Based on this rule, a utility is permitted to keep its records outside the state, but must reimburse the Commission for any travel that must be incurred to view the records. Similarly, we have denied Federal Express costs incurred by a utility to ship its records to Florida.⁹

Although Mr. Smith certainly has the choice as to where to live, that choice shall not impose additional costs to KWRU and its customers. As Mr. Smith's choice to live outside Florida also imposes additional lodging costs, those costs shall be removed from the test year expenses. Based on the above, the \$19,106 amount shall be removed from test year expenses.

Other costs included in miscellaneous expenses relate to transporting a vehicle purchased in Illinois to Key West. KWRU argues that it purchased the truck in Illinois because it was a

⁹ See Order No. PSC-07-0205-PAA-WS, p. 28, issued March 6, 2007, in Docket No. 060258-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp.

good price and matched the Utility's needs. Included in the transportation costs is lodging expenses for Chris Johnson.

OPC argues that there are automobile dealerships in the Keys and Miami, and that it was unnecessary for KWRU to purchase a vehicle in Illinois and transport it to Florida. OPC also argues that KWRU did not provide any evidence to support the costs.

There is no evidence in the record to indicate that KWRU paid less for the vehicle in Illinois than it would have had to pay in Florida, thus warranting the recovery of transportation costs. When a utility seeks to increase its rates, it must support its request and be prepared to provide documentation necessary to prove the costs incurred are reasonable. KWRU has not provided any documentation to allow us to determine whether purchasing the vehicle in Illinois and transporting it to Florida was less than or equal to the cost of purchasing the vehicle in Florida. As a result, the \$2,525 in transportation costs and lodging shall be removed from the test year expenses.

Another item included in miscellaneous expenses is the cost to deliver hook-up notices to the customers of SSI. Monroe County imposed a requirement that all KW customers be notified, by certified letter, of their obligation to connect to KWRU's new system. If the customer refused to sign the letter or failed to send it back to KWRU, the Utility would be required to hand-deliver notices to these customers. KWRU argued that it engaged Monroe County's Sheriff's Department to deliver the notification, rather than a private company, as it was the least-cost alternative.

OPC argues that the use of deputies to issue hook-up notices was intimidating to the customers. OPC also disputes KWRU's claim that the deputies were only used as a last resort.

Under the circumstances, we find that engaging deputies to hand-deliver notices to customers who refused the certified letter was appropriate. The cost of noticing these customers was \$420. Customer witness Wigington testified that she had signed the original registered letter but still was hand-delivered a notice by a deputy. KWRU argues that there may have been instances where customers signed the original registered letter and still received a hand-delivery from a deputy. In these cases, the customer may have only signed one letter yet owned two properties. As KWRU had to have a letter on file for each property, the Utility would have needed the deputy to hand deliver a notice for the property for which no letter had been received. The Utility was responsible for ensuring that it noticed each customer of the Utility and received confirmation that the customers had received the notice. As the record indicates that Ms. Wigington was served a notice by a deputy even though she had signed the original registered letter, the \$20 fee for that delivery shall be removed, resulting in a total allowed notification expenses of \$400.

Because the notification expenses are non-recurring expenses, in accordance with Rule 25-30.433(8), F.A.C., the \$400 of expense shall be amortized over five years, resulting in a yearly expense of \$80 (\$400/5). As \$420 was included in test year expenses, test year expenses shall be reduced by \$340.

OPC witness Dismukes testified that KWRU made a donation of \$100 to the Rotary Club of Key West and paid \$61 to Blossoms in Paradise. Utility witness DeChario testified that the Utility did not present any rebuttal testimony on these items. In its brief, KWRU stated it was in agreement with Ms. Dismukes' adjustment to reduce \$161 for the above items. As such, miscellaneous expenses shall be reduced by \$161 for these two items.

Based on these adjustments, miscellaneous expenses shall be reduced by \$22,132 (\$19,106+\$2,525+\$340+161).

I. Rate Case Expense

1. KWRU's Argument

KWRU initially submitted in their MFRs \$200,000 in rate case expense, for an annual amortization expense of \$50,000. After the hearing, KWRU updated their actual and estimated rate case expense and submitted it in Late-Filed Exhibits 41 through 43. In its update, KWRU requested a total rate case expense of \$609,778. This results in a increase of \$409,778 to the initial amount in the MFRs. Based on the Utility's requested rate case increase, the four-year amortization test year rate case expense would be \$152,444, which increased the MFRs amortization amount by \$102,444.

KWRU believes that the increase in rate case expense was primarily due to preparing responses to OPC's unprecedented and repetitious discovery. The Utility and its consultants contend they have spent considerable time and effort in attempting to respond to OPC's voluminous data requests and have demonstrated that the request for a rate increase is fair and reasonable for the economic climate in which it operates, and the extraordinary amount of rate case expense it has incurred as a direct result of OPC's involvement in this case. KWRU asserts that twenty-one of the PODs or interrogatories submitted requested information duplicating what our staff had requested.

In its brief, KWRU also states that it filed this rate proceeding as a result of governmental-imposed requirements that KWRU move to AWT and other costs it incurred to keep in environmental compliance.

2. OPC's Argument

OPC alleges that KWRU's request for additional rate case expense is not acceptable. OPC believes that after all adjustments are made to correct the errors in the filing, the revenue requirement shows that rates were adequate before the rate case was filed. OPC asserts that this case never should have been filed and customers should not be forced to pay for a Utility's imprudent decision to file for a rate increase when none is warranted. OPC argues that they had no impact in causing the rate case expense to increase.

Furthermore, OPC stated the number and the magnitude of the Utility's own errors and dealings have justified OPC's challenge of the rate filing. By conceding thirty-one separate errors, KWRU has effectively demonstrated the justification for OPC's involvement. Rather than fault OPC, the Utility should acknowledge its own actions caused the additional expense.

Moreover, because of KWRU's affiliate relationships, OPC had to examine more than one set of books and ask for the financial information concerning each of the affiliates that provides services to the Utility.

Finally, OPC contends that KWRU's failure to provide adequate and timely response to OPC's discovery forced OPC to file three motions to compel. These motions to compel resulted in the modifications to the procedural schedule in this proceeding, either requiring KWRU for the most part to properly respond to OPC's discovery, or to modify the procedural schedule to give OPC additional time to file testimony due to KWRU's failure to provide timely and responsive answers. In addition, because of KWRU's failure to provide adequate responses, OPC was forced to ask follow-up discovery questions to try and obtain the information originally requested. Any suggestion that OPC caused the excessive rate case expense in this proceeding should be rejected by the Commission. OPC recommends that we disallow all rate case expense as a rate decrease should be authorized, not an increase.

3. Commission Analysis

KWRU included in its MFRs an estimate of \$200,000 for current rate case expense. Our staff requested an update of the actual rate case expense incurred, with supporting documentation, as well as the estimated amount to complete the case. On October 13, 2008, the Utility submitted a revised estimated rate case expense through completion of Late-Filed Exhibits 41 through 43 in the amount of \$609,778. The Utility's components of the estimated rate case expense are as follows:

	<u>MFR Estimated</u>	<u>Actual</u>	<u>Additional Estimated</u>	<u>Revised Total</u>
Legal - Rose, Sundstrom & Bentley, LLP	\$100,000	\$131,143	83,340	\$314,483
Accounting - Carlstedt, Jackson, Nixon & Wilson CPA's	90,000	89,775	12,110	191,885
Engineering - Weller Engineering	0	12,960	0	12,960
Company Time	0	74,050	6,400	80,450
Company Expense - (filing fees, mailings, copying, notices, phone, Fed Ex, etc.)	<u>10,000</u>	<u>0</u>	<u>0</u>	<u>10,000</u>
Total Rate Case Expense	<u>\$200,000</u>	<u>\$307,928</u>	<u>\$101,850</u>	<u>\$609,778</u>

Pursuant to Section 367.081(7), F.S., this Commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. Also, it is the Utility's burden to justify its requested costs. See Florida Power Corp. v. Cresse. Further, we have broad discretion with respect to allowance of rate case expense; however, it would constitute an abuse of discretion to automatically award rate case expense without reference to the prudence of the costs incurred in the rate case proceedings. See Meadowbrook Util. Sys., Inc. v. FPSC, 518 So. 2d 326, 327 (Fla. 1st DCA 1987), aff'd. 529 So. 2d 694 (Fla. 1988). As such, we have examined the requested actual expenses, supporting documentation,

and estimated expenses as listed above for the current rate case. Based on our review, we find several adjustments are necessary to the revised rate case expense estimate.

First, Rose, Sundstrom & Bentley, LLP (RS&B), the law firm representing KWRU originally filed in their MFRs \$100,000 in rate case expense. On October 13, 2008, the Utility submitted an update of actual and estimated rate case expense of \$314,483 in Late-Filed Exhibits 41 through 43. Based on our review of invoices, several adjustments shall be made to RS&B's actual costs. RS&B spent 6.40 hours on the submission of the Utility's test year approval letter. We find that these hours are excessive, in light of the Utility's accounting consultant's time related to the test year request. As such, only three hours shall be allowed for the test year request, which would result in a \$935 reduction. In addition, our staff also identified 15.2 hours and \$298 of costs related to staff's revisions to the Utility's synopsis, the Commission's approval in part to OPC's motions to compel, the MFR deficiencies, and the time related to the Utility's approved abatement period. We find the ratepayers shall not have to bear these costs. Thus, legal costs shall be reduced by \$4,478.

Second, we believe that the Utility's estimated legal costs of \$83,340 are excessive. RS&B estimated 145 hours for reviewing hearing transcripts, filing late-filed hearing exhibits, and preparing the Utility's brief. We find 85 hours should be more than sufficient to accomplish those tasks, which results in a reduction of \$16,500. RS&B also included a request for \$1,250 of costs which had no detail breakdown or support documentation. Moreover, RS&B included \$23,200 for time related to a motion for reconsideration. Because it is not known whether the Utility will request reconsideration of our decision, we find that it would be premature to include this cost in rate case expense. It has been our practice not to include the allowance of cost estimates for reconsideration or appeals in rate case expense.¹⁰ Because reconsideration is considered a possibility, not a certainty, rate case expense shall be reduced by \$23,200. If a motion for reconsideration is filed, a determination will be made at a later time, upon request, as to the reasonableness of the amounts requested and whether inclusion of those amounts are appropriate.

Third, the Utility had originally filed in its MFRs \$90,000 for accounting fees for Carlstedt, Jackson, Nixon & Wilson CPA's (CJNW). In Late-Filed Exhibits 41 through 43, the Utility submitted an update of actual and estimated rate case expense of \$191,885. On review of invoices, it appears that 4.5 hours are related to our approval in part to OPC's motions to compel and the MFR deficiencies. The ratepayers shall not have to bear these costs, and costs shall be reduced by \$720 for these hours. Further, CJNW estimated 32 hours and 16 hours for Utility witness DeChario and CJNW's Senior Partner, respectively, related to reviewing the Utility's brief and our staff's recommendation, for accounting costs of \$12,110. We find that the 32 hours for DeChario is more than sufficient to accomplish those tasks. Thus, rate case expense shall be reduced by \$3,520.

Fourth, KWRU originally did not include an estimate of engineering fees in its MFRs. However, in the Utility's Late-Filed Exhibits 41 through 43, Weiler Engineering submitted

¹⁰ See Order No. PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.

\$12,960 in invoices. A review of these expenses shows that the full \$12,960 shall be included in rate case expense.

Fifth, KWRU did not file Company time in their MFRs. Then, in Late-Filed Exhibits 41 through 43, the Utility submitted an up-to-date actual and estimated rate case expense of \$80,450 - an actual amount of \$74,050 and an estimate for remaining costs of \$6,400. We find that the Utility has not met its burden of proof by failing to provide timesheets of hours worked. We have consistently relied on time records to support Utility time spent on rate case matters.¹¹ As such, the entire amount of \$80,450 shall be disallowed.

In summary, rate case expense shall be decreased by \$143,163 for MFR deficiencies, and for unsupported and unreasonable rate case expense. Based on this reduction, we calculate the appropriate total rate case expense to be \$466,615. Our breakdown of rate case expense is as follows:

	<u>MFR Estimated</u>	<u>Utility Revised Actual & Estimated</u>	<u>Commission Adjustment</u>	<u>Allowed Total</u>
Legal - Rose, Sundstrom & Bentley, LLP	\$100,000	\$314,483	(\$46,363)	\$268,120
Accounting - Carlstedt, Jackson, Nixon & Wilson CPA's	90,000	191,885	(16,350)	175,535
Engineering - Weiler Engineering	0	12,960	0	12,960
Company Time	0	80,450	(80,450)	0
Company Expense - (filing fees, mailings, copying, notices, phone, Fed Ex, etc.)	<u>10,000</u>	<u>10,000</u>	<u>0</u>	<u>10,000</u>
Total Rate Case Expense	<u>\$200,000</u>	<u>\$609,778</u>	<u>(\$143,163)</u>	<u>\$466,615</u>
Annual Amortization Amounts	<u>\$50,000</u>	<u>\$152,445</u>	<u>(\$35,791)</u>	<u>\$116,586</u>

Therefore, rate case expense shall be increased by \$66,654 over the MFR requested amount of \$50,000, for a total annual rate case expense of \$116,654.

¹¹ See Order Nos. PSC-07-0130-SC-SU, p. 31, issued February 15, 2007, in Docket No. 060256-SU, In re: Application for increase in wastewater rates in Seminole County by Alafaya Utilities, Inc.; and PSC-07-0205-PAA-WS, p. 27, issued March 6, 2007, in Docket No. 060258-WS, In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corp.

J. Net Depreciation Expense

In its filing, KWRU reflected net depreciation expense of \$205,903. Based on the approved stipulations and our previous plant adjustments, that depreciation expense shall be reduced by \$48,759.

K. Wastewater Operating Loss

Based on our adjustments above, we calculate that the test year operating income before any provision for increased revenues is a loss of \$132,988 for wastewater. The schedule for the wastewater operating loss is attached as Schedule No. 3-A and the adjustments are shown on Schedule No. 3-B.

VIII. REVENUE REQUIREMENT

Our computation of the revenue requirement is shown on Schedule No. 3-A and is \$1,328,524, which represents an increase of \$241,771 or 22.25 percent.

IX. RATE STRUCTURE

KWRU wastewater customers receive their water service from the FKAA. The Utility's current rate structure is a flat rate charged to all residential service customers. The rate structures for general service and multi-family classes consists of a base facility charge and gallonage charge. The Utility's current rate structure for wastewater service was approved by this Commission in the last rate case, primarily because water use information from the FKAA was not available at that time.

The Utility, pursuant to Rule 25-30.437(6), F.A.C., requested that it be allowed to implement a base facility/gallonage charge rate structure in this filing. The Utility has submitted a billing analysis using potable water data obtained from the FKAA, and has provided documentation stating that this data will be available from the FKAA on a going-forward basis.

In changing from a flat rate structure to measured consumption, we establish a residential wastewater gallonage cap. This cap recognizes that any water used by residential customers over the cap is for purposes such as lawn sprinkling and washing automobiles, and is not collected by the wastewater system. In determining the appropriate wastewater gallonage charge, we commonly recognize that only 80 percent of the residential water used is collected and treated by the wastewater system; the other 20 percent of the residential water is used for other purposes and is not returned to the wastewater system. There is no cap on usage for general service wastewater bills, and it is assumed that 100 percent of general service use will be returned to the collection system. Therefore, for the general service class, the gallonage charge shall be 20 percent greater than the residential gallonage charge.

Generally, the residential wastewater gallonage caps are set at 6,000, 8,000, or 10,000 gallons per month. Considering the above factors, we shall set the residential wastewater gallonage cap for KWRU at 10,000 gallons per month, which is the gallonage cap the Utility requested in its MFRs.

Based on the foregoing, the appropriate rate structure for the wastewater system is the base facility charge (BFC)/uniform gallonage charge rate structure with the residential monthly wastewater gallonage cap of 10,000 gallons (with the general service customers gallonage charge being 20 percent greater with no cap).

X. APPROPRIATE MONTHLY WASTEWATER RATES

The approved rates are designed to produce revenue of \$1,222,064 for wastewater, excluding miscellaneous service charge, reuse, and other revenues, and are as shown on Schedule No. 4. These rates were calculated using test-year number of bills and consumption, and using the rate structure approved above.

The Utility shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved wastewater rates. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved wastewater rates shall not be implemented until our staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than ten days after the date of the notice.

If the effective date of the new rates falls within a regular billing cycle, the initial bills at the new rate may be prorated. The old charge shall be prorated based on the number of days in the billing cycle before the effective date of the new rates. The new charge shall be prorated based on the number of days in the billing cycle on and after the effective date of the new rates. In no event shall the rates be effective for service rendered prior to the stamped approval date.

A comparison of the Utility's original rates and our approved wastewater rates is shown on Schedule No. 4, respectively.

XI. APPROPRIATE MONTHLY BULK AND REUSE SERVICE RATES

Given the Utility is basically limited as to any cost-effective effluent disposal alternatives, we find that the Utility's proposed reuse gallonage rate of \$0.69 per thousand gallons is appropriate. In its filing, KWRU proposed a continuation of a flat bulk rate for two marinas. By Order No. PSC-02-1165-PAA-SU,¹² we approved the methodology for calculating bulk wastewater rates which was set at 78.37 percent of the residential flat rate. This bulk rate was less than the residential rate because the bulk water customers own and maintain the lift-stations that connect to the Utility's collection system. Consistent with the methodology approved by Order No. PSC-02-1165-PAA-SU, we approve KWRU's proposed continuation of a flat bulk rate for the two marinas.

The Utility shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved rates for the wastewater system. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates shall not be implemented until our

¹² Issued August 26, 2002, in Docket No. 020520-SU, In re: Complaint by Safe Harbor Marina against K W Resort Utilities Corp. and request for new class of service for bulk wastewater rate in Monroe County.

staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than 10 days after the date of the notice.

A comparison of the Utility's original rates and our approved wastewater rates is shown on Schedule No. 4.

XII. REFUND OF PORTION OF INTERIM RATES

By Order No. PSC-07-0812-PCO-SU, issued October 10, 2007, we authorized the collection of interim wastewater rates, subject to refund, pursuant to Section 367.082, F.S. The approved interim revenue requirement was \$1,227,722, which represents an increase of \$204,008, or 19.93 percent.

According to Section 367.082, F.S., any refund shall be calculated to reduce the rate of return of the Utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in the rate case test period that do not relate to the period interim rates are in effect shall be removed. Rate case expense is an example of an adjustment which is recovered only after final rates are established.

In this proceeding, the test period for establishment of interim and final rates is the historical period ending December 31, 2006. KWRU's approved interim rates did not include any provisions for pro forma or projected operating expenses or plant. The interim increase was designed to allow recovery of actual interest costs and the floor of the last authorized range for equity earnings.

To establish the proper refund amount, we have calculated a revised interim revenue requirement utilizing the same data used to establish final rates. Rate case expense was excluded because this item is prospective in nature and did not occur during the interim collection period.

Using the principles discussed above, we calculate that the \$1,227,722 wastewater revenue requirement granted in Order No. PSC-07-0812-PCO-SU for the interim test year is greater than the revenue requirement for the interim collection period of \$1,206,373. This results in a 1.85 percent refund of interim rates. The Utility shall be required to refund 1.85 percent of wastewater revenues collected under interim rates. The refund shall be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility shall submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. Further, the corporate undertaking shall be released upon our staff's verification that the required refunds have been made.

XIII. STATUTORY FOUR-YEAR RATE REDUCTION

Section 367.0816, F.S., requires rates to be reduced immediately following the expiration of the four-year amortization period by the amount of the rate case expense previously included in the rates. The reduction will reflect the removal of revenues associated with the amortization of rate case expense and the gross-up for regulatory assessment fees which is \$122,151 for wastewater. The decreased revenue will result in the rate reduction shown on Schedule No. 4.

The Utility shall file revised tariff sheets and a proposed customer notice to reflect the approved reduction in rates no later than 30 days prior to the actual date of the required rate reduction. The approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. The rates shall not be implemented until staff has approved the proposed customer notice. KWRU shall provide proof of the date notice was given no less than 10 days after the date of the notice.

If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense.

XIV. ADJUSTMENT OF BOOKS FOR NARUC USOA PRIMARY ACCOUNTS

To ensure that the Utility adjusts its books in accordance with our decisions, KWRU shall provide proof within 90 days of this final order that the adjustments for all the applicable NARUC Uniform System of Accounts (USOA) primary accounts have been made.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the application of K W Resort Utilities Corp. for increased wastewater rates is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that each of the findings made in the body of this Order are hereby approved in every respect. It is further

ORDERED that all matters contained in the attachments and schedules appended hereto are incorporated herein by reference. It is further

ORDERED that K W Resort Utilities Corp. is authorized to charge the new rates and charges as set forth in the body of this Order and the attachments and schedules attached hereto. It is further

ORDERED that because the record is not clear concerning the status of all the 350 unconnected equivalent dwelling units (EDUs), K W Resort Utilities Corp. shall provide a monthly report to this Commission addressing the status of the remaining 350 EDUs with particular attention given to the four potential customers that do not have service available. It is further

ORDERED that the report shall include a description of Monroe County's enforcement activities towards those who refuse to connect to the Utility, status of what is remaining to be done to connect the four customers who do not have service available, and a complete accounting of paid connection charges for those who are not connected. It is further

ORDERED that these reports shall continue until such time as all of the 350 EDUs are connected and the conditions of the KWRU's 2002 contract with Monroe County have been fully satisfied. It is further

ORDERED that the Utility shall file revised wastewater tariff sheets and a proposed customer notice to reflect the approved wastewater rates. It is further

ORDERED that the approved rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-30.475(1), F.A.C. It is further

ORDERED that the approved wastewater rates shall not be implemented until our staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than ten days after the date of the notice. It is further

ORDERED that the Utility shall refund 1.85 percent of wastewater revenues collected under interim rates. It is further

ORDERED that the refunds shall be made with interest in accordance with Rule 25-30.360(4), F.A.C. It is further

ORDERED that the Utility shall submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility shall treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. It is further

ORDERED that the corporate undertaking shall be released upon our staff's verification that the required refunds have been made. It is further

ORDERED that the wastewater rates shall be reduced as shown on Schedule No. 4 to remove \$122,151 of wastewater rate case expense, grossed up for regulatory assessment fees. It is further

ORDERED that the decrease in rates shall become effective immediately following the expiration of the four-year rate case expense recovery period. It is further

ORDERED that the Utility shall file revised tariff sheets and a proposed customer notice setting forth the lower rates and the reason for the reduction to reflect the approved reduction in rates no later than 30 days prior to the actual date of the required rate reduction. It is further

ORDERED that the approved reduction in rates shall be effective for service rendered on or after the stamped approval date of the revised tariff sheets pursuant to Rule 25-40.475(1), F.A.C. It is further

ORDERED that the rates shall not be implemented until staff has approved the proposed customer notice. The Utility shall provide proof of the date notice was given no less than 10 days after the date of the notice. It is further

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DOCKET NO. 070293-SU

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ORDERED that if the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data shall be filed for the price index and/or pass-through increase or decrease, and for the reduction in the rates due to the amortized rate case expense. It is further

ORDERED that this docket shall be closed upon staff's approval of the tariffs, verification of the required refunds, and the expiration of the time for filing an appeal. It is further

ORDERED that the Utility shall provide proof within 90 days of this final order that the adjustments for all the applicable NARUC USOA primary accounts have been made.

By ORDER of the Florida Public Service Commission this 27th day of January, 2009.



ANN COLE
Commission Clerk

(S E A L)

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or
- 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

K W Resort Utilities Corp. Schedule of Wastewater Rate Base Test Year Ended 12/31/06			Schedule No. 1-A Docket No. 070293-SU		
Description	Test Year Per Utility	Utility Adjust- ments	Adjusted Test Year Per Utility	Commission Adjust- ments	Commission Adjusted Test Year
1 Plant in Service	\$9,371,002	\$1,139,707	\$10,510,709	(\$933,498)	\$9,577,211
2 Land and Land Rights	222,745	152,255	375,000	0	375,000
3 Non-used and Useful Components	0	0	0	0	0
4 Accumulated Depreciation	(2,740,042)	(63,368)	(2,803,410)	129,322	(2,674,088)
5 CIAC	(4,856,429)	(707,000)	(5,563,429)	0	(5,563,429)
6 Amortization of CIAC	686,844	39,309	726,153	0	726,153
7 CWIP	265,413	(265,413)	0	0	0
8 Advances for Construction	(2,777,630)	0	(2,777,630)	0	(2,777,630)
9 Working Capital Allowance	0	496,846	496,846	(32,269)	464,578
10 Other	0	0	0	0	0
11 Rate Base	<u>\$171,903</u>	<u>\$792,336</u>	<u>\$964,239</u>	<u>(\$836,445)</u>	<u>\$127,795</u>

K W Resort Utilities Corp. Adjustments to Rate Base Test Year Ended 12/31/06		Schedule No. 1-B Docket No. 070293-SU
<u>Plant In Service</u>		
1	To correct a misclassification of purchased land (Stip. 1)	(\$152,255)
2	To correct for a misclassification. (Stip. 2)	577
3	To capitalized a beachcleaner which was expensed. (Stip. 3)	910
4	To remove duplication of contractual operation service fees. (I-2)	(252,690)
5	To remove non-utility investment. (I-3)	(10,000)
6	To remove management fee associated with Green Fairways. (I-4)	(32,198)
7	To remove SSI project management fee. (I-5)	(301,180)
8	To remove unsupported legal fees. (I-6)	(25,000)
9	To remove Mr. Johnsons moving expense. (I-7)	(8,602)
10	To remove Johnson's contractors costs. (I-8)	(34,650)
11	To remove Mr. London's consultant fees. (I-9)	(32,500)
12	To remove White & Case legal charges. (I-10)	(27,230)
13	To remove Key West Citizen PR Advertisement. (I-11)	(422)
14	To reflect the appropriate pro forma plant. (I-12)	(124,921)
15	To capitalized certain items expensed in the test year. (I-28)	<u>66,663</u>
	Total	<u>(\$933,498)</u>
<u>Accumulated Depreciation</u>		
1	To correct a misclassification of purchased land (Stip. 1)	\$71,274
2	To correct for a misclassification. (Stip. 2)	(52)
3	To capitalized a beachcleaner which was expensed. (Stip. 3)	(493)
4	Depr. Exp.associated w/ removal of operation service fees. (I-2)	10,983
5	Depreciation associated with non utility investment. (I-3)	1,259
6	Depreciation associated with management fee. (I-4)	2,823
7	Depreciation associated with SSI management fee. (I-5)	26,406
8	Depreciation associated with legal fees. (I-6)	2,192
9	Depreciation associated with Johnson moving expense. (I-7)	1,075
10	Depreciation associated with Johnson contractors. (I-8)	1,925
11	Depreciation associated with London's consulting fees. (I-9)	6,145
12	Depreciation associated with White & Case legal charges. (I-10)	1,814
13	Depreciation associated with Key West Citizen PR Advertisement. (I-11)	117
14	To reflect the appropriate pro forma depreciation expense. (I-12)	6,940
15	To capitalized certain items expensed in the test year. (I-28)	<u>(3,086)</u>
	Total	<u>\$129,322</u>
<u>Working Capital</u>		
1	To remove temporary cash investments. (Stip. 4)(I-16)	(\$168,265)
2	To reflect prepaid expenses. (Stip. 9)(I-16)	2,689
3	To reflect the appropriate deferred rate case expense. (I-16)	<u>133,308</u>
	Total	<u>(\$32,269)</u>

K W Resort Utilities Corp.					Schedule No. 2					
Capital Structure-Simple Average					Docket No. 070293-SU					
Test Year Ended 12/31/06										
Per Utility										
1	Long-term Debt	\$1,475,869	\$0	\$1,475,869	(\$804,132)	\$671,737	69.66%	7.17%	4.99%	
2	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%	
3	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%	
4	Common Equity	555,435	0	555,435	(302,679)	252,756	26.21%	12.01%	3.15%	
5	Customer Deposits	39,746	0	39,746	0	39,746	4.12%	6.00%	0.25%	
6	Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%	
7	Total Capital	<u>\$2,071,050</u>	<u>\$0</u>	<u>\$2,071,050</u>	<u>(\$1,106,811)</u>	<u>\$964,239</u>	<u>100.00%</u>		<u>8.39%</u>	
Per Commission										
8	Long-term Debt	\$1,475,869	\$0	\$1,475,869	(\$1,384,800)	\$91,069	71.26%	7.17%	5.11%	
9	Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%	
10	Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%	
11	Common Equity	555,435	0	555,435	(521,162)	34,273	26.82%	12.67%	3.40%	
12	Customer Deposits	39,746	0	39,746	(37,293)	2,453	1.92%	6.00%	0.12%	
13	Deferred Income Taxes	0	0	0	0	0	0.00%	0.00%	0.00%	
14	Total Capital	<u>\$2,071,050</u>	<u>\$0</u>	<u>\$2,071,050</u>	<u>(\$1,943,256)</u>	<u>\$127,795</u>	<u>100.00%</u>		<u>8.62%</u>	
							<u>LOW</u>	<u>HIGH</u>		
RETURN ON EQUITY							<u>11.67%</u>	<u>13.67%</u>		
OVERALL RATE OF RETURN							<u>8.35%</u>	<u>8.89%</u>		

K W Resort Utilities Corp. Statement of Wastewater Operations Test Year Ended 12/31/06						Schedule No. 3-A Docket No. 070293-SU		
1	Operating Revenues:	<u>\$1,012,695</u>	<u>\$635,303</u>	<u>\$1,647,998</u>	<u>(\$561,245)</u>	<u>\$1,086,753</u>	<u>\$241,771</u> 22.25%	<u>\$1,328,524</u>
	Operating Expenses							
2	Operation & Maintenance	\$1,017,156	\$222,154	\$1,239,310	(\$180,099)	\$1,059,211		\$1,059,211
3	Depreciation	181,844	24,059	205,903	(48,759)	157,144		157,144
4	Amortization	5,297	(968)	4,329	0	4,329		4,329
5	Taxes Other Than Income	79,594	37,962	117,556	(34,233)	83,323	10,880	94,202
6	Income Taxes	0	0	0	(84,265)	(84,265)	86,884	2,619
7	Total Operating Expense	<u>1,283,891</u>	<u>283,207</u>	<u>1,567,098</u>	<u>(347,357)</u>	<u>1,219,741</u>	<u>97,764</u>	<u>1,317,505</u>
8	Operating Income	<u>(\$271,196)</u>	<u>\$352,096</u>	<u>\$80,900</u>	<u>(\$213,888)</u>	<u>(\$132,988)</u>	<u>\$144,007</u>	<u>\$11,018</u>
9	Rate Base	<u>\$171,903</u>		<u>\$964,239</u>		<u>\$127,795</u>		<u>\$127,795</u>
10	Rate of Return	<u>-157.76%</u>		<u>8.39%</u>		<u>-104.06%</u>		<u>8.62%</u>

K W Resort Utilities Corp. :		Schedule 3-B
Adjustment to Operating Income		Docket No. 070293-SU
Test Year Ended 12/31/06		
Operating Revenues		
1	Remove Utilities requested final revenue increase.	(\$601,684)
2	To reflect the appropriate annualized test year revenues. (I-20)	6,264
3	To reflect the appropriate test rental fee. (I-20)	14,600
4	To include income related to County lift-stations. (I-20)	19,575
	Total	<u>(\$561,245)</u>
Operation and Maintenance Expense		
1	To capitalized a beachcleaner which was expensed. (Stip. 3)	(\$11,825)
2	To reflect the appropriate sludge removal expense. (Stip. 5) (I-21)	(9,129)
3	To remove on-utility telephone expenses. (Stip. 6)	(7,508)
4	To remove political contributions. (Stip. 7)	(1,203)
5	To reflect the amortization of non-recurring amounts (Stip. 8)	(1,032)
6	To remove out-of-period expenses. (Stip. 9)	(2,689)
7	To reduce golf cart related expenses. (Stip. 10)	(1,548)
8	To reflect the appropriate chemicals expense. (I-22)	(16,117)
9	To remove mark-up of pro forma expenses. (I-24)	(33,826)
10	To reduce advertising expense for public relation functions. (I-26)	(26,653)
11	To reflect the appropriate management fees. (I-27)	(30,000)
12	To remove mark-up and reclassify historical test year expenses. (I-28)	(71,053)
13	To reflect the appropriate contractual services- other expenses. (I-29)	(12,038)
14	To reflect the appropriate miscellaneous expenses. (I-30)	(22,132)
15	To reflect the appropriate rate case expense. (I-31)	66,654
	Total	<u>(\$180,099)</u>
Depreciation Expense - Net		
1	To correct a misclassification of purchased land (Stip. 1)	(\$6,766)
2	To correct for a misclassification. (Stip. 2)	104
3	To capitalized a beachcleaner which was expensed. (Stip. 3)	493
4	Depr. Exp. associated w/ removal of operation service fees. (I-2)	(3,021)
3	Depreciation expense associated with non utility investment. (I-3)	(315)
4	Depreciation expense associated with management fee. (I-4)	(2,823)
5	Depreciation expense associated with SSI management fee. (I-5)	(26,406)
6	Depreciation expense associated with legal fees. (I-6)	(2,192)
7	Depreciation expense associated with Johnson moving. (I-7)	(269)
8	Depreciation expense associated with Johnson constructors. (I-8)	(1,925)
9	Depreciation expense with London's consulting fees. (I-9)	(855)
10	Depreciation expense with White & Case legal charges. (I-10)	(907)
11	Depreciation expense with Key West Citizen PR Advertisement. (I-11)	(23)
12	To reflect the appropriate pro forma depreciation expense. (I-12)	(6,940)
13	To capitalize certain items expensed in the test year. (I-28)	3,086
	Total (Aggregate Adjustment in Issue 32)	<u>(\$48,759)</u>
Taxes Other Than Income		
1	Remove RAFs on above revenue adjustments.	(\$25,256)
2	To correct for a misclassification. (Stip. 2)	(7,950)
3	To reflect the appropriate pro forma property taxes. (I-12)	(1,027)
	Total	<u>(\$34,233)</u>

K W Resort Utilities Corp.					Schedule No. 4
Wastewater Monthly Service Rates					Page 1 of 2
Test Year Ended 12/31/06					
	Rates Prior to Filing	Commission Approved Interim	Utility Requested Final	Commission Approved Final	Four Year Rate Reduction
<u>Residential</u>					
Flat Rates	\$40.39	\$47.61			
Base Facility Charge All Meter Sizes:			\$35.08	\$18.39	\$1.69
Gallonge Charge - Per 1,000 gallons (10,000 gallon cap)			\$4.49	\$3.99	\$0.37
<u>General Service</u>					
Base Facility Charge by Meter Size:					
5/8" x 3/4"	\$30.73	\$36.21	\$35.08	\$18.39	\$1.69
1"	\$74.72	\$88.06	\$87.70	\$45.98	\$4.23
1-1/2"			\$175.40	\$91.95	\$8.45
2"	\$229.52	\$270.50	\$280.64	\$147.12	\$13.53
3"	\$454.63	\$535.80	\$526.20	\$294.24	\$27.05
4"	\$707.94	\$834.35	\$877.00	\$459.75	\$42.27
6"			\$1,754.00	\$919.50	\$84.54
8"			\$2,806.40	\$1,655.10	\$152.18
8" Turbo			\$3,157.20	\$2,114.85	\$194.45
Gallonge Charge, per 1,000 Gallons	\$3.40	\$4.01	\$5.27	\$4.79	\$0.44
<u>Multi-Residential and Commercial</u>					
Flat Rate	\$40.39	\$47.61			
Base Facility Charge by Meter Size:					
5/8" x 3/4"			\$35.08	\$18.39	\$1.69
1"			\$87.70	\$45.98	\$4.23
1-1/2"			\$175.40	\$91.95	\$8.45
2"			\$280.64	\$147.12	\$13.53
3"			\$526.20	\$294.24	\$27.05
4"			\$877.00	\$459.75	\$42.27
Gallonge Charge, per 1,000 Gallons			\$5.27	\$4.79	\$0.44
<u>Reclaimed Water</u>					
Gallonge Charge, per 1,000 Gallons	\$0.45	\$0.53	\$0.69	\$0.69	\$0.06

K W Resort Utilities Corp.					Schedule No. 4
Wastewater Monthly Service Rates					Page 2 of 2
Test Year Ended 12/31/06					
	Rates Prior to Filing	Commission Approved Interim	Utility Requested Final	Commission Approved Final	Four Year Rate Reduction
Private Lift-Station Owners					
5/8" x 3/4"	\$32.55	\$38.32	\$35.08	\$18.39	\$1.69
1"	\$74.72	\$88.06	\$87.70	\$45.98	\$4.23
2"	\$229.52	\$270.50	\$280.64	\$147.12	\$13.53
Gallonge Charge, per 1,000 Gallons	\$2.74	\$3.23	\$5.27	\$4.79	\$0.44
Bulk Wastewater Rates					
Safe Harbor Marina					
13 Residential Units @ 1 ERC each	\$525.11	\$618.87	\$456.04	\$354.86	\$32.63
18 Live Aboard Boats @ .6 ERC each	\$436.20	\$514.09	\$378.86	\$295.72	\$27.19
27 Non-Live Aboard Boats @ .2 ERC each	\$218.10	\$257.04	\$189.43	\$147.86	\$13.59
6 Vacant Slips @ .2 ERC each	\$48.46	\$57.11	\$42.10	\$31.85	\$2.93
2 Bathhouses @ 1 ERC each	\$80.79	\$95.21	\$70.16	\$54.59	\$5.02
2 Commercial Businesses @ .5 ERC each	\$40.39	\$47.61	\$35.08	\$27.30	\$2.51
1 Commercial Bar	\$51.53	\$60.73	\$44.90	\$34.83	\$3.20
Total	<u>\$1,400.58</u>	<u>\$1,650.67</u>	<u>\$1,216.57</u>	<u>\$947.00</u>	<u>\$87.07</u>
South Stock Island Marinas (Peninsular Marina)					
13 Residential Units @ 1 ERC each	\$525.11	\$618.87	\$456.04	\$354.86	\$32.63
16 Live Aboard Boats @ .6 ERC each	\$387.73	\$456.96	\$336.77	\$261.60	\$24.05
26 Non-Live Aboard Boats @ .2 ERC each	\$210.04	\$247.55	\$182.42	\$141.03	\$12.97
Bathhouse @ 1 ERC	\$40.39	\$47.61	\$35.08	\$27.30	\$2.51
3 Commercial Businesses @ .5 ERC each	\$60.59	\$71.41	\$52.62	\$40.95	\$3.76
Total	<u>\$1,223.86</u>	<u>\$1,442.39</u>	<u>\$1,062.93</u>	<u>\$825.73</u>	<u>\$75.92</u>
General Service Multiple Agreement					
Large Swimming Pool (4 ERCs)	\$161.57	\$190.42	\$140.32	\$109.19	\$10.04
Small Swimming Pool (1.18 ERCs)	\$47.67	\$56.18	\$41.39	\$32.31	\$2.96
Temporary Service Agreement					
Sweetwater Environmental, Inc.					
Minimum Charge on 127,100 gallons	\$728.28	\$858.21	\$669.82	\$608.73	\$55.97
Gallonge Charge, per 1,000 Gallons	\$5.73	\$6.75	\$5.27	\$4.79	\$0.44
Typical Residential Bills 5/8" x 3/4" Meter					
3,000 Gallons	\$40.39	\$47.61	\$48.55	\$30.36	
5,000 Gallons	\$40.39	\$47.61	\$57.53	\$38.34	
10,000 Gallons	\$40.39	\$47.61	\$79.98	\$58.29	
(Wastewater Gallonge Cap - 10,000 Gallons)					