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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150071-SU

APPLICATION FOR INCREASE IN
WASTEWATER RATES IN MONROE COUNTY
BY K W RESORT UTILITIES CORP.

_____ /

VOLUME 4

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER ART GRAHAM
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, November 8, 2016

TIME: Commenced at 9:30 a.m.
Concluded at 12:37 p.m.

PLACE: Harvey Government Center
Board of County Commissioner
Meeting Room
1200 Truman Avenue
Key West, Florida 33040

REPORTED BY: DEBRA KRICK
Court Reporter

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

3

(Transcript follows in sequence from Volume

4 3.)

5

CHAIRMAN BROWN: Good morning, everyone. I

6

hope you had a well-rested evening last night. And

7

it's election day, so in the spirit of election

8

day, I hope you all are excited to be done by 4:30

9

tonight. We do have to be out of the facility by

10

4:30.

11

So just a reminder to all the parties here to

12

please avoid duplicative, repetitive cross. We

13

have four rebuttal witnesses and one direct left.

14

Where we recessed yesterday, I believe Mr. Deason

15

was going to take the stand; is that correct, Mr.

16

Wright?

17

MR. WRIGHT: Yes, Madam Chairman, that's

18

correct.

19

CHAIRMAN BROWN: All right. Mr. Deason,

20

welcome.

21

THE WITNESS: Thank you.

22

CHAIRMAN BROWN: Nice to see you down here in

23

the Keys.

24

THE WITNESS: It's nice to be here.

25

CHAIRMAN BROWN: Great. Were you sworn in

1 yesterday?

2 THE WITNESS: I was.

3 CHAIRMAN BROWN: Thank you.

4 Whereupon,

5 J. TERRY DEASON

6 was called as a witness, having been previously duly
7 sworn to speak the truth, the whole truth, and nothing
8 but the truth, was examined and testified as follows:

9 CHAIRMAN BROWN: Mr. Wright, we will be
10 reconvening the hearing at this time. You have the
11 floor.

12 MR. WRIGHT: Thank you, Madam Chairman.

13 EXAMINATION

14 BY MR. WRIGHT:

15 Q Good morning, Mr. Deason.

16 A Good morning.

17 Q Please state your name and business address
18 for the record?

19 A Yes, my name is Terry Deason. My business
20 address is 301 South Bronough Street, Suite 200,
21 Tallahassee, Florida, 32301.

22 Q And are you the same Terry Deason who prepared
23 and caused to be filed in this proceeding direct
24 testimony consisting of 18 pages?

25 A Yes.

1 Q Do you have any changes or corrections to make
2 to your direct testimony?

3 A No.

4 Q If I were to ask you the questions contained
5 therein today, would your answers be the same?

6 A Yes.

7 Q And do you adopt this as your sworn testimony
8 to the Florida Public Service Commission today?

9 A I do.

10 MR. WRIGHT: Madam Chairman, I ask that Mr.
11 Deason's prefiled direct testimony be entered into
12 the record as though read.

13 CHAIRMAN BROWN: We will go ahead and inserted
14 Mr. Deason's prefiled direct testimony into the
15 record as though read.

16 (Prefiled testimony inserted into the record
17 as though read.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
DOCKET NO. 150071-SU,
KW RESORT UTILITIES CORPORATION RATE CASE
DIRECT TESTIMONY OF J. TERRY DEASON
September 14, 2016

1 **Q. Please state your name and business address.**

2 A. My name is Terry Deason. My business address is 301 S. Bronough
3 Street, Suite 200, Tallahassee, FL 32301.

4
5 **Q. By whom are you employed and what position do you hold?**

6 A. I am a Special Consultant for the Radey Law Firm, specializing in the
7 fields of energy, telecommunications, water and wastewater, and public
8 utilities generally.

9
10 **Q. Please describe your educational background and professional**
11 **experience.**

12 A. I have thirty-nine years of experience in the field of public utility
13 regulation spanning a wide range of responsibilities and roles. I served
14 as a consumer advocate in the Florida Office of Public Counsel ("OPC")
15 on two separate occasions, for a total of seven years. In that role, I
16 testified as an expert witness in numerous rate proceedings before the
17 Florida Public Service Commission ("Commission" or "PSC"). My tenure

1 of service at OPC was interrupted by six years as Chief Advisor to
2 Florida Public Service Commissioner Gerald L. Gunter. I left OPC as its
3 Chief Regulatory Analyst when I was first appointed to the Commission
4 in 1991. I served as Commissioner on the Commission for sixteen
5 years, serving as its chairman on two separate occasions. Since retiring
6 from the Commission at the end of 2006, I have been providing
7 consulting services and expert testimony on behalf of various clients,
8 including public service commission advocacy staff and regulated utility
9 companies. I have also testified before various legislative committees
10 on regulatory policy matters. I hold a Bachelor of Science Degree in
11 Accounting, summa cum laude, and a Master of Accounting, both from
12 Florida State University.

13

14 **Q. For whom are you appearing as a witness?**

15 A. I am appearing as a witness for Monroe County.

16

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

18 A. The purpose of my testimony is to discuss Florida's regulatory policy of
19 establishing rates on appropriate test years and the need for the correct
20 matching of investment, expenses, and revenues in those test years. I
21 refer to this principle as the "matching principle." Recognizing that a
22 utility's revenues are simply its sales (e.g., kilowatt-hours of electricity, or
23 gallons of water or wastewater service provided to customers) times its

1 rates, it is clear that the “matching principle” requires that rates be
2 determined using the utility’s allowed revenues (referred to as its
3 “revenue requirements” in regulatory terminology) and its sales units
4 from the same time period in which the rates will be in effect.

5

6 **Q. Are you sponsoring any exhibits?**

7 A. Yes. I am sponsoring Exhibit JTD-1, which is my curriculum vita.

8

9 **Q. How is your testimony organized?**

10 A. My testimony is organized into three parts. First, I provide a brief
11 overview of the regulatory compact that provides the foundation for the
12 setting of rates for a regulated utility. Second, I discuss the need for test
13 years when setting rates. Third, I discuss the need for appropriate
14 adjustments to comply with the matching principle.

15

16

I. Regulatory Compact

17 **Q. What is the regulatory compact?**

18 A. The regulatory compact is an implied contract that exists between a
19 regulated public utility, its regulators, and its customers. It lays the
20 foundation for regulation and balances the interests (and risks) of all
21 stakeholders. It has been employed to characterize the set of mutual
22 rights, obligations, and benefits that exist between the utility and its
23 customers. These rights, benefits, and obligations are supervised and

1 enforced by regulatory utility authorities such as the Florida PSC.

2

3 **Q. How does the regulatory compact balance the interests of the utility**
4 **and its customers?**

5 A. Under the regulatory compact, the interests of the utility and its
6 customers are balanced by the following considerations:

7 • A regulated utility has the obligation to provide reliable and cost-
8 effective service to its customers. To fulfill this obligation to serve,
9 the utility must deploy needed capital and obtain the labor,
10 materials, and supplies necessary to operate and maintain its
11 system to serve its customers. Inherent in this obligation is a
12 responsibility to manage costs and mitigate risks where
13 reasonably possible.

14 • Correspondingly, the utility is granted a monopoly in its service
15 area, and its rates are set by the utility commission (the PSC in
16 Florida) to recover all of the utility's reasonable and prudent
17 operating and maintenance costs and to provide fair
18 compensation for its capital investments.

19 • All utility investments are subject to a determination of prudence,
20 based on the reasonably anticipated costs, risks, and benefits of
21 said investment that are known or reasonably known at the time
22 that the investment is made. Concomitant with this principle is
23 that future changed circumstances that can be known and applied

1 only in hindsight are not a valid basis to reverse a previous
2 determination of prudence.

- 3 • All prudently incurred investments that are used and useful in
4 providing service are to be afforded rate recovery treatment, both
5 in the form of a reasonable return on the investment and a
6 reasonable return of the investment, generally over the useful life
7 of said investment. The return on investment refers to the
8 interest expense and the return on the equity investment made by
9 the utility's owners or shareholders. The return of investment
10 refers to the allowance for depreciation of the capital assets over
11 time, where such allowance is also built into the utility's rates. It is
12 useful to think of the depreciation allowance as the principal
13 component of a mortgage payment, and the interest expense and
14 return on equity as being comparable to the interest component of
15 a mortgage payment, made to fairly compensate the lender for
16 the use of its money.
- 17 • The reasonable rate of return is a necessary cost to provide
18 service and should be set at a level to adequately compensate
19 investors for the risk of their investment and to be fair to
20 customers on whose behalf the capital is deployed. Inherent in
21 this principle is the expectation that customer and investor
22 interests are balanced in a fair and symmetrical manner.
- 23 • While the reasonable return on investment is not guaranteed,

1 there is an expectation that rates will be set to afford a utility a
2 reasonable opportunity to actually earn its authorized rate of
3 return.

- 4 • The reasonable rate of return is set and monitored to fall within an
5 established band, so that the return is neither excessive nor
6 deficient.

7 These considerations are part of the regulatory compact that has been
8 the foundation of fair and effective utility regulation in this country for
9 decades.

10

11 **Q. What is the role of the PSC in setting the utility's rates under the**
12 **regulatory compact?**

13 A. From the utility's perspective, the PSC (in Florida or anywhere else) is
14 responsible to set rates that allow the utility to recover its reasonable
15 operating and maintenance costs and the opportunity to recover its
16 interest costs and earn a reasonable return on the owners' or
17 shareholders' investment in capital assets. From the customers'
18 perspective, the PSC is responsible to set rates based on the
19 reasonable and prudent costs of providing service. In Florida and
20 elsewhere, this standard is frequently articulated as requiring rates to be
21 fair, just, and reasonable.

22

23

1 effect. For water and wastewater utilities, the Commission has adopted
2 Rule 25-30.430(1), Florida Administrative Code ("F.A.C."), which
3 requires that:

4 (1) Prior to the filing of an application for a general rate
5 increase, a utility shall submit to the Commission a written
6 request for approval of a test year, supported by a statement
7 of reasons and justifications **showing that the requested**
8 **test year is representative of utility operations.** The
9 Commission Chairman will then approve or disapprove the
10 request within 30 days from the receipt of the request. In
11 disapproving the requested test year, the Chairman may
12 suggest another test year. Within 30 days of the Chairman's
13 approval or disapproval of a test year, upon request of any
14 interested person the full Commission may review the
15 Chairman's test year decision.

16 I added the emphasis in the cited provision to demonstrate the
17 Commission's recognition of the importance of having a test year that is
18 representative of the utility's operations during the time period in which
19 rates will be in effect,

20 Similarly, for electric utilities, the Commission has adopted Rule
21 25-6.140 (1)(a), in which a requesting utility must provide:

22 An explanation for requesting the particular test period. If

23 an historical test year is selected, there shall be an

1 explanation of why the historical period is more
2 representative of the company's operations than a
3 projected period. If a projected test year is selected, there
4 shall be an explanation of why the projected is more
5 representative than an historical period

6

7 **Q. Has the Commission defined the appropriate use of a test year for a**
8 **water and sewer utility company?**

9 A. Yes. In its Order No. 15725, addressing a petition for an increase in
10 water and sewer rates by Martin Downs Utilities, Inc., the Commission
11 stated:

12 The test year is an analytical device used in ratemaking
13 proceedings to compute current levels of investment and
14 income in order to determine the amount of revenue that
15 will be required to assure a company a fair return on its
16 investment. Test year data must be adjusted to properly
17 reflect conditions in the future period for which rates are
18 being fixed. Based upon historical data we anticipate
19 Martin Downs will continue to experience a rapid growth of
20 demand for its services. Therefore, we believe a projected
21 test year is appropriate in this case.

22

23

1 **Q. In your opinion, is this appropriate utility regulatory policy? Why**
2 **or why not?**

3 A. Yes, this is the essence of sound and appropriate regulatory
4 ratemaking policy, because it ensures that the rates charged by
5 the utility will produce the revenues needed to cover the utility's
6 costs of providing service and a reasonable return on and of its
7 investment. This is the essence of determining rates that are fair,
8 just, and reasonable. If rates were set using non-representative
9 cost, investment, or sales data, they would likely be unfair, unjust,
10 or unreasonable, or all of the above, to either the utility or its
11 customers.

12
13 **Q. Does the Commission have a preference for projected versus**
14 **historic test years?**

15 A. For electric utilities, the Commission has primarily relied on projected
16 test years, especially after the Florida Supreme Court addressed their
17 use back in 1983. Nevertheless, the Commission still relies on test
18 years, either historic or projected, that are most representative of future
19 utility operations and has placed the burden on requesting utilities to so
20 demonstrate.

21
22 **Q. What did the Florida Supreme Court say on the subject?**

23 A. In an appeal of a Commission order taken by the Southern Bell

1 Telephone and Telegraph Company in 1983, 443 So.2d 92, the Court
2 stated:

3 Nothing in the decisions of this Court or any legislative act
4 prohibits the use of a projected test year by the
5 Commission in setting a utility's rates. We agree with the
6 Commission that it may allow the use of a projected test
7 year as an accounting mechanism to minimize regulatory
8 lag. The projected test period established by the
9 Commission is a ratemaking tool which allows the
10 Commission to determine, as accurately as possible, rates
11 which would be just and reasonable to the customer and
12 properly compensatory to the utility.

13 Thus, the Court has recognized that the Commission may utilize
14 ratemaking tools that minimize regulatory lag and determine, as accurately
15 as possible, rates that are just and reasonable during the time period that
16 the rates will be in effect.

17

18 **Q. The Court mentioned regulatory lag. What is it?**

19 A. Regulatory lag is the difference in time between when rates should be
20 changed and when new rates can be implemented.

21

22 **Q. Does regulatory lag always mean that rates are lower than they**
23 **should be for longer than is necessary?**

1 A. No. Regulatory lag will exist either when rates are lower than they should
2 be, exposing the utility to not recovering its costs and earning an adequate
3 return, or when rates are higher than they should be, exposing customers
4 to paying rates that are higher than justified by the utility's costs. In other
5 words, regulatory lag cuts both ways. If rates are not based upon the
6 most appropriate test year information, the utility could quickly experience
7 either underearnings or overearnings soon after the new rates are
8 implemented. That is why it is important that rates be set as close as
9 possible to what a representative test year shows is the relationship
10 between investment, expenses, and revenues during the time that rates
11 will be in effect. This minimizes regulatory lag in both directions.

12

13 **Q. Has the Commission previously addressed the need to adjust the**
14 **test year to prevent possible overearnings?**

15 A. Yes. In a staff-assisted rate case for Burkim Enterprises, Inc., Docket No.
16 010396-WS, the Commission opted to use a projected test year, citing the
17 potential for overearnings if rates were set only on historical information.
18 In its Order No. PSC-01-2511-PAA-WS, the Commission stated:

19 For audit purposes, we selected a historical test year
20 ending May 31, 2001. Because the utility is growing at an
21 exceptionally high rate (29 connections per year), rates
22 based on historical data alone will be significantly different
23 than rates based on current or even future conditions, and

1 the potential for overearning exists if a projected test year is
2 not used. We find that a projected test year ending May 31,
3 2003 is appropriate in this case and will better match
4 increasing revenues with the high level of DEP required pro
5 forma additions that are being approved.

6

7 **Q. What is the test year proposed by KW Resort Utilities Corporation in**
8 **its request for increased rates in this case?**

9 A. The requested test year is the historic year ended December 31, 2014,
10 with significant adjustments for pro forma plant additions and increased
11 pro forma expenses in the future. As this case has developed, the PSC
12 has issued a proposed order that will have customers pay one set of rates,
13 called "Phase I rates," for the period beginning in April 2016, and another
14 set of rates, called "Phase II rates," for the period beginning sometime in
15 2017 when KWRU's new wastewater treatment plant comes into service.
16 My understanding is that the utility has also asked that its new rates
17 include the costs of a new air vacuum tank that is expected to come into
18 service in roughly the same time frame as the new treatment plant, but the
19 utility did not include the costs of the new tank in its original filing for a rate
20 increase.

21

22 **Q. Does Monroe County object to this test year?**

23 A. Monroe County does not object to the selected test year per se. Monroe

1 County does object to pro forma adjustments (or a lack of certain pro
2 forma adjustments) which results in a test year that is not representative of
3 future operations and that violates the matching principle by not properly
4 matching KWRU's costs with its sales during the time periods in which the
5 utility's rates will be in effect.

7 III. The Matching Principle

8 Q. What is the matching principle?

9 A. From an accounting standpoint, the matching principle requires a
10 company to match expenses with related revenues in order to accurately
11 report a company's net income for any given time interval of financial
12 reporting. This same principle also applies to the amount of investment,
13 expenses, and revenues reported in a regulated utility's test year used to
14 prospectively set rates.

15 From a regulatory ratemaking standpoint, the matching principle
16 requires that the utility's rates be set using the utility's costs, investments,
17 revenues, and sales units from the same time period, and that they be
18 representative of the time period in which the new rates will be in effect.

20 Q. If the matching principle is not followed, can distortions result?

21 A. Yes. For example, if a hypothetical company attempted to inappropriately
22 report current year revenues as being applicable to a future year in an
23 attempt to reduce a current tax liability, a distortion would result which

1 would not be viewed favorably by the Internal Revenue Service.

2 Likewise, if a hypothetical company attempted to inappropriately
3 include revenues properly attributable to a future period in its current
4 year's results in an attempt to inflate its earnings, a distortion would result
5 that would likely get the attention of its auditors and perhaps the Securities
6 and Exchange Commission.

7 And in the world of utility ratemaking, if a utility or its public utility
8 regulatory authority did not properly match its revenues and sales with the
9 amount of anticipated investment and expenses, a distorted test year that
10 is not properly representative would be the result. If not corrected, this
11 would almost certainly result in rates that are not fair, just and reasonable.

12

13 **Q. Is the amount of investment, expenses, and revenues included in a**
14 **test year important to the matching principle?**

15 A. Yes. Utilities generally are capital intensive and have an obligation to
16 serve customers within their authorized territories. To meet this
17 obligation, utilities often have to make substantial investments that can
18 be driven by the need for modernization, the need to meet environmental
19 requirements, and the need to meet the demands of new customers
20 and/or increased demand from existing customers. In the situation
21 where additional investment is being made, or additional expenses are
22 being incurred, or both, to serve a growing customer base or growing
23 customer demands for service, or both, it is imperative that rates be set

1 taking into consideration the additional revenues that will be produced.
2 In the simplest terms, revenues are equal to units sold times rates; for
3 any given level of revenues authorized by the PSC, the lower the
4 amount of sales units used to calculate rates, the higher the utility's rates
5 will be. This was the conclusion reached by the Commission in the
6 Burkim case I earlier referenced.

7

8 **Q. Is it appropriate for the Commission to recognize the additional**
9 **revenues that will be produced by KW Resort's additional**
10 **investments?**

11 A. Yes. This will result in a better matching and would be consistent with
12 good ratemaking policy and previous decisions of the Commission and the
13 Florida Supreme Court.

14

15 **Q. How should this be accomplished?**

16 A. The amount of test year revenue should be increased to properly account
17 for the amount of revenue that will be generated at existing rates due to
18 increased customer usage. This will better indicate the amount of any
19 revenue deficiency that may exist at existing rates. Once the correct test
20 year revenue requirements are determined, the utility's new rates should
21 be set using the new, current-billing-period billing determinants to
22 generate the amount of revenues needed to afford a reasonable
23 opportunity for KW Resort to recover its reasonable and prudent operating

1 costs and to earn its authorized rate of return on its prudent investments.

2

3 **Q. If there is credible evidence that the gallonage of wastewater treated**
4 **and billed by KWRU is likely to be greater in 2017 than in 2016,**
5 **should the Commission take that evidence into account when setting**
6 **KWRU's rates in this case?**

7 A. Yes. This is particularly important in this instance because the new Phase
8 II rates will likely not be implemented until March or April of 2017, which
9 should be contemporaneous with KWRU's new WWTP coming on line to
10 serve customers. Accordingly, greater usage in 2017, when the new plant
11 that is driving the need for new rates is actually on line and providing
12 service, strongly indicates that rates should be based on such greater
13 usage. Otherwise, in my opinion, KWRU's rates would likely not be fair,
14 just, and reasonable.

15

16 **Q. Have you quantified these adjustments to account for increased**
17 **customer usage?**

18 A. No. The purpose of my testimony is to address the policy reasons for
19 making the needed adjustments. The quantifications are supported in the
20 testimony of Witness Patricia Merchant, who is testifying on behalf of the
21 Citizens of the State of Florida, represented by their Public Counsel.

22

23

1 **Q. Please state the main conclusions of your testimony.**

2 A. The Florida Public Service Commission has a longstanding regulatory
3 policy of establishing rates on appropriate test years, and this policy
4 recognizes the need to match the utility's investment, expenses, and
5 revenues in those test years in order to ensure that the rates approved by
6 the PSC recover the costs incurred during the period or periods in which
7 those rates will be in effect. I refer to this principle as the "matching
8 principle." Where a utility is experiencing significant growth in investment
9 and expenses to serve growth in customers' demands for service, as is
10 the case with KWRU in this proceeding, it is critical that this matching
11 principle be followed in order to ensure, to the maximum extent possible,
12 that the utility's rates are fair, just, and reasonable.

13 In conclusion, I strongly recommend that the Commission apply the
14 matching principle in this case to ensure that KW Resort's rates are fair,
15 just, and reasonable.

16

17 **Q. Does this conclude your testimony?**

18 A. Yes, it does.

19

1 BY MR. WRIGHT:

2 Q And, Mr. Deason, did you also prepare and
3 cause to be prefiled to your testimony one exhibit?

4 A I did.

5 MR. WRIGHT: Thank you, Madam Chairman.

6 CHAIRMAN BROWN: Thank you.

7 MR. WRIGHT: It's been marked. My exhibit
8 list is buried under here, but I will move it in at
9 the appropriate time.

10 CHAIRMAN BROWN: Thank you.

11 Staff, do you have questions for Mr. Deason?

12 MS. MAPP: No, we do not.

13 CHAIRMAN BROWN: Okay. Mr. Wright, opening.

14 MR. WRIGHT: Thank you.

15 BY MR. WRIGHT:

16 Q Mr. Deason, please summarize your testimony to
17 the Commissioners in no more than five minutes.

18 A I get it, brief.

19 Commissioners, good morning, all regulated
20 utilities in Florida, including KWRU, are regulated
21 pursuant to the regulatory compact. The regulatory
22 compact is an implied contract that exists between the
23 public utility, its regulators and its customers.

24 Under the regulatory compact, the interest of
25 the utilities and its customers are balanced, and an

1 essential element of this balancing is to set rates
2 which are just, fair and reasonable. Fair, just and
3 reasonable rates should allow the utility to recover all
4 prudent and necessary costs, and to provide a reasonable
5 opportunity to earn a fair return.

6 In order to set rates which are fair, just and
7 reasonable, Florida has a policy of using appropriate
8 test years. An appropriate test year can either be
9 historic or projected. Regardless of whether the test
10 year is historic or projected, it must be representative
11 of the period in which the rates will be in effect.

12 This would include all the key variables in a test year,
13 namely the level of investment, expenses and revenues.

14 These variables should be representative of
15 the period, and be matched with each other. This would
16 be consistent with the matching principle that I discuss
17 in my prefiled testimony. If any of these variables are
18 not matched and not representative of the period in
19 which rates will be in effect, serious distortions can
20 result. These distortions would likely result in rates
21 that are not fair, just and reasonable.

22 If these distortions are significantly enough,
23 the rates would cause the utility to earn either above
24 or below this authorized return soon after the new rates
25 are implemented. This would be inconsistent with the

1 goals of regulation, and would likely necessitate
2 additional rate be used the company regulatory lack.

3 The Commission was confronted with this
4 situation in a staff-assisted rate case involving Burkim
5 Utilities. In that case, the test year level of
6 revenues was not matched with the level of usage that
7 was believed to be achieved during the time that the
8 rates would be in effect. The Commission decided to use
9 projected data to correct this mismatch. I reference
10 this and other supporting cases in my prefiled
11 testimony.

12 In today's case, Monroe County and the Office
13 Public Counsel are providing testimony that KWRU will be
14 providing service to a growing customer base, and that
15 this growth will yield revenues greater than what exist
16 in KWRU's historic test year. If not corrected, this
17 would violate the matching principle, and would likely
18 result in rates that are not fair, just and reasonable.

19 To correct this mismatch, the amount of test
20 year revenues should be increased to properly account
21 for the amount of revenue that will be generated from
22 the increased customers. This amount of revenue should
23 be used to determine any revenue deficiency that may
24 exist, and these current billing determinants should be
25 used to establish the rates on a going forward basis.

1 These rates would be fair, just and reasonable, and
2 should be sufficient to enable KWRU to earn a fair
3 return.

4 This concludes my summary.

5 MR. WRIGHT: Thank you, Mr. Deason.

6 Thank you, Madam Chairman. Mr. Deason is
7 available for cross-examination.

8 CHAIRMAN BROWN: Okay. Thank you, Mr. Wright.

9 And as a reminder to the parties, the order of
10 cross will be Office of Public Counsel, Harbor
11 Shores, followed by the utility and then staff.
12 And another reminder is that there is no friendly
13 cross.

14 So with that, Public Counsel.

15 MR. SAYLER: Good morning, Madam Chair, Erik
16 Sayler with the Office of Public Counsel. I would
17 love the opportunity to cross you, but we are
18 aligned this time, so no further questions.

19 CHAIRMAN BROWN: Thank you.

20 Harbor Shores.

21 MS. AKTABOWSKI: No questions. Thank you.

22 CHAIRMAN BROWN: Thank you.

23 Utility.

24 MR. FRIEDMAN: Thank you very much. I do have
25 a few questions for Mr. Deason.

1 EXAMINATION

2 BY MR. FRIEDMAN:

3 Q Mr. Deason, have you ever testified in a water
4 sewer case?

5 A I hesitate because I may have testified in a
6 water/sewer case when I was employed with the Office of
7 Public Counsel, but that's been so many years ago that I
8 can't really specify what case it might have been.

9 Q Okay. That is your background, is it not,
10 with the consumer advocate?

11 A Well, I have background with the Public
12 Counsel's office and at the Florida Public Service
13 Commission both as an aid to a commissioner and as a
14 commissioner.

15 Q Have you provided consultation services to
16 water and sewer utilities since you left the Commission?

17 A No, I have not.

18 Q Is this the first case --

19 A No, let me back up on that. Yes, I did
20 provide some consulting services, not testimony, but
21 consulting services.

22 Q Okay. And who was that for?

23 A WMSI.

24 Q All right. And in WMSI, do you recall whether
25 that case involved a historical projected test year?

1 A I do not recall with 100 percent accuracy. I
2 believe it was most likely historic test year.

3 Q Okay. And the WMSI case, there was a
4 substantial -- the utility had requested a substantial
5 pro forma addition, had they not?

6 A I recall that pro forma additions were an
7 issue in the case.

8 Q Okay. And in fact, the utility was requesting
9 a substantial pro forma addition for --

10 A Yes, as I recall, there was a storage tank,
11 there may have been some other provisions. I think
12 there was some retrofits necessary for the line that
13 carried the water across the bridge to the island.

14 Q Okay. And it involved the water plant
15 expansion as well?

16 A You know, it may very well could have.

17 Q And in submitting that application to the PSC,
18 did the utility submit that with a projected test year?

19 A No. As I indicated earlier, I believe it was
20 based upon a historic test year.

21 Q So at least when your firm filed that
22 application on behalf of WMSI, you did not attempt, did
23 you, to implement this so-called matching theory?

24 A No, I disagree. The information provided was
25 a match. The -- because it was based upon historic test

1 year. And the facilities that were being pro formad
2 into that historic test year, were not designed to
3 provide service to additional customers, but to maintain
4 the quality of service to customers that already
5 existed, so there was not the mismatch that existed in
6 that case as is the case here presently.

7 **Q So your understanding is that case didn't**
8 **involve any additional plant capacity?**

9 A It would -- it's my understanding that it
10 probably did, because if there is going to be additional
11 plant, it needs to be sized in an efficient manner. But
12 I do know that it was not being done for the servicing
13 additional customer growth on the island.

14 **Q It wasn't -- so are you saying it wasn't done**
15 **for that purpose but it was going to result in that?**

16 A It could have a margin of reserve built into
17 the engineering of it such that if there were additional
18 customers to come to the island, that the plant would be
19 of sufficient size to serve those customers.

20 **Q Isn't it true that the Public Service**
21 **Commission, at least in water and sewer cases, has**
22 **routinely used projected test years -- I mean, used**
23 **historic test years with pro forma capital projects in**
24 **the expenses?**

25 A Yes. I think that has been the case. And

1 where necessary, the Commission has also used projected
2 data, or made pro forma adjustments to account for the
3 revenue growth that were, in cases where it was
4 justified.

5 **Q Okay. And if you set aside for the moment,**
6 **the Burkim case, which was a staff-assisted case, the**
7 **only other case that you pointed out is the Martin Downs**
8 **case, is that correct?**

9 A That's the only other water or wastewater case
10 that I cite in my testimony.

11 **Q And most of your experience, is it not, it's**
12 **in the industries other than water and sewer?**

13 A I have more experience in other industries,
14 but you have got to recall, or to be reminded of the
15 fact that principles of regulation are the same
16 regardless of whether or what industry it is. When you
17 are establishing fair, just and reasonable rates, these
18 principles cross industry lines, and the principle are
19 just that, they are principles, and they need to be
20 adhered to regardless of the industry.

21 **Q Okay. And so the regulation of all industries**
22 **are the same? The regulation under Chapter 366 is the**
23 **same as under 367, is that what you are telling me?**

24 A No, you are trying to put words in my mouth.
25 No, I'm in not saying that at all. Each industry has

1 industry specific statutes, and the Commission adheres
2 to those statutes, but there are principles of
3 regulation which go beyond just industry boundaries.

4 **Q All right. And doesn't 367.081 provide -- or**
5 **allow a utility to include in its historic test year**
6 **projects that are going to be placed in service up to 24**
7 **months after the end of the test year?**

8 A Yes, I think that's correct.

9 **Q All right. And are you aware that that same**
10 **type statute applies in the electric industry, or the**
11 **gas industry, where you are also --**

12 A You know, I don't think that specific language
13 is in the electric statute, but the electric industry
14 usually relies upon projected test years. And incumbent
15 on the use of projected test years, is that you project
16 into the future all aspects of the utility's operations,
17 not only the increased capital investment, but the
18 increases in customers, and the revenues that those
19 increased customers will generate, and those are matched
20 in that projected test period.

21 **Q Okay. And that's true in the electric and gas**
22 **industry almost all the time?**

23 A No, I would say that under current regulation,
24 at least the major investor-owned electric utilities, I
25 think without exception, utilize projected test years.

1 Q Okay. And you would contrast with the water
2 and sewer industry, where a majority of the -- not a
3 majority of, significant majority of the water and sewer
4 utility applications are filed with projected test years
5 plus pro forma?

6 A I am sorry, I am going to ask you to repeat
7 the question.

8 Q Yeah. I was contrasting what you were just
9 testified to about the fact that virtually all of the
10 electric and gas use projected test years. I was
11 contrasting that with your understanding that in the
12 water and sewer industry, the substantial majority of
13 cases are filed with an historic test year and pro
14 forma?

15 MR. WRIGHT: Madam Chairman, I object. There
16 was no question there. It was testimony by Mr.
17 Friedman.

18 CHAIRMAN BROWN: Mr. Friedman, can you
19 rephrase the statement and make it a question?

20 MR. FRIEDMAN: All right.

21 BY MR. FRIEDMAN:

22 Q Isn't it true that in the electric and gas
23 industry, virtually all of the rate cases are filed
24 using a projected test year?

25 A That is true, and --

1 Q All right. Isn't it -- go ahead. I don't
2 want to interrupt you.

3 A Okay. That's true, and as I indicate in my
4 testimony, it is also a principle of regulation that
5 regardless of whether it's going to be a historic test
6 year or a projected test year, the principle in the
7 standard is to make sure that the test year is
8 representative of operations during the time period when
9 rates will be in effect.

10 Q Okay. And my next question is, isn't it also
11 true that in the water and sewer industry, substantially
12 all of the rate cases are filed as a historic test year
13 using pro formas?

14 A I think that's true. It doesn't mean that
15 there is an excuse there to not have the matching
16 principle in place, but I do agree that historic test
17 years are traditionally used by utility -- water and
18 wastewater utilities.

19 MR. FRIEDMAN: Okay. No further questions.

20 CHAIRMAN BROWN: Thank you.

21 Staff.

22 MS. CRAWFORD: Staff has no questions.

23 CHAIRMAN BROWN: Commissioners?

24 Redirect?

25 MR. WRIGHT: Thank you, Madam Chairman. I do

1 have brief redirect.

2 FURTHER EXAMINATION

3 BY MR. WRIGHT:

4 Q You were asked some questions by Mr. Friedman
5 regarding projected test years and pro forma
6 adjustments. Is the same result achieved if one were --
7 if the Commission were to use a pro forma adjustment of
8 sales in the test year as would be used in the projected
9 test year?

10 A I am sorry, I have to ask you to repeat the
11 question.

12 Q You support the matching principle, and you
13 established that in your testimony to Mr. Friedman.

14 A Yes.

15 Q Is the matching principle satisfied by using
16 pro forma sales projections for a test year without
17 necessarily using a fully projected test year?

18 A Yes, it is a tool that can be done to adhere
19 to the matching principle, and it can be done either but
20 projected test years or making the proper pro forma
21 adjustments in the historic test year.

22 Q Mr. Friedman asked you some questions
23 regarding your experience in -- with water and
24 wastewater cases. I think his questions focused on your
25 consulting experience since you left the bench, is that

1 what you -- how you understood his questions?

2 A Yes.

3 Q How many water and wastewater cases did you
4 decide when you were sitting on the Commission for 16
5 years?

6 A Too many to count, most likely. It was many.

7 Q Mr. Friedman also asked some questions about
8 your clientele, and whether you worked for a utility --
9 for regulated utilities. Is it fair to say that most of
10 your testimony, since you left the bench before the
11 Florida Public Service Commission, has been on behalf of
12 regulated electric companies?

13 A That's been the majority, not exclusively, but
14 that's been the majority of my work.

15 Q And again, the regulatory principles that you
16 advocate, do they apply equally in electric, gas,
17 telecommunications, water and wastewater?

18 A Yes, they do.

19 MR. WRIGHT: Thank you, Madam Chairman.

20 That's all the redirect I have.

21 CHAIRMAN BROWN: Thank you.

22 And we have one exhibit here associated with
23 this witness, Exhibit 47, would you like that
24 moved?

25 MR. WRIGHT: Yes, ma'am, I would. Thank you.

1 CHAIRMAN BROWN: Seeing no objection, we will
2 go ahead and move Exhibit 47 into the record.

3 (Whereupon, Exhibit No. 47 was received into
4 evidence.)

5 CHAIRMAN BROWN: And, Mr. Deason, you are
6 excused.

7 THE WITNESS: Thank you.

8 CHAIRMAN BROWN: Thank you.

9 (Witness excused.)

10 CHAIRMAN BROWN: Okay. Staff, we are on
11 Ileana Piedra, who has been stipulated and excused.
12 Would you like to address her testimony and
13 exhibits at this time?

14 MS. CRAWFORD: Yes, Madam Chairman. Thank
15 you.

16 As you mentioned, the witness has been
17 excluded from this proceeding, so I would request
18 at this time that her prefiled testimony be entered
19 into the record as though read.

20 CHAIRMAN BROWN: We will go ahead and enter
21 Ms. Piedra's testimony into the record as though
22 read.

23 (Prefiled testimony inserted into the record
24 as though read.)

25

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **COMMISSION STAFF**

3 **DIRECT TESTIMONY OF ILIANA H. PIEDRA**

4 **DOCKET NO. 150071-SU**

5 **September 23, 2016**

6 **Q. Please state your name and business address.**

7 **A. My name is Iliana H. Piedra. My business address is 3625 N.W. 82nd Ave., Suite**
8 400, Miami, Florida, 33166.

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

10 **A. I am employed by the Florida Public Service Commission (FPSC or Commission)**
11 **as a Professional Accountant Specialist in the Office of Auditing and Performance**
12 **Analysis.**

13 **Q. Briefly review your educational and professional background.**

14 **A. I received a Bachelor of Business Administration degree with a major in**
15 **accounting from Florida International University in 1983. I am also a Certified Public**
16 **Accountant licensed in the State of Florida. I have been employed by the FPSC since**
17 **January 1985.**

18 **Q. Please describe your current responsibilities.**

19 **A. My responsibilities consist of planning and conducting utility audits of manual**
20 **and automated accounting systems for historical and forecasted data.**

21 **Q. Have you presented testimony before this Commission or any other**
22 **regulatory agency?**

23 **A. Yes. I filed testimony in City Gas Company of Florida's rate case, Docket No.**
24 **940276-GU, the General Development Utilities, Inc. rate cases for the Silver Springs**
25 **Shores Division in Marion County and the Port Labelle Division in Glades and Hendry**

1 Counties in Docket Nos. 920733-WS and 920734-WS, the Florida Power & Light
2 Company's storm cost recovery case in Docket No. 041291-EI, the Embarq's storm cost
3 recovery case in Docket No. 060644-TL, the K W Resort Utilities Corp. rate case in
4 Docket No. 070293-SU, the Fuel and Purchased Power Cost Recovery Clause in Docket
5 Nos. 120001-EI, 130001-EI and 140001-EI, the Nuclear Cost Recovery Clause in Docket
6 Nos. 130009-EI, 150009-EI and 160009-EI, and Florida Power & Light Company's rate
7 case in Docket No. 160021-EI.

8 **Q. What is the purpose of your testimony today?**

9 **A.** The purpose of my testimony is to sponsor the staff audit report of K W Resort
10 Utilities Corporation (Utility) which addresses the Utility's application for a rate increase.
11 This audit report is filed with my testimony and is identified as Exhibit IHP-1.

12 **Q. Was this audit prepared by you or under your direction?**

13 **A.** Yes, it was prepared under my direction.

14 **Q. What audit period did you use in this audit?**

15 **A.** We audited the historical twelve months ended December 31, 2014. We did not
16 audit any subsequent year.

17 **Q. Please describe the work you performed in this audit?**

18 **A.** The procedures that we performed in this audit are listed in the Objectives and
19 Procedures section of the attached Exhibit IHP-1, pages 4 through 8.

20 **Q. Please review the audit findings in this audit report.**

21 **A.** There were 17 audit findings reported in this audit and are found in the attached
22 Exhibit IHP-1, pages 9 through 42. They are summarized below.

23 **Finding 1: Utility Plant In Service**

24 Average UPIS should be reduced by \$978,063, for the test year ended December 31,
25 2014. We audited the UPIS transactions from 2006-2014. We made adjustments to correct

1 for Commission Ordered Adjustments, to remove non-utility costs, to remove transactions
2 that should have been expensed, to remove transactions that we believe should be
3 recorded in a deferred asset account and amortized, to record retirements, and to remove
4 transactions already included in the UPIS balance in the prior rate proceeding. Details of
5 these specific adjustments can be found in the attached Exhibit.

6 The Utility's proforma adjustments to UPIS in the filing are discussed in Finding 2.

7 **Finding 2: Construction Work In Progress-Pro Forma Plant**

8 The following finding was provided for staff's consideration.

9 The Utility is booking the costs for the expansion of its wastewater treatment to UPIS
10 accounts instead of Construction Work in Progress. Audit staff reviewed invoices
11 totaling \$303,382. Invoices totaling \$158,151 were booked from February 2013 to
12 December 2014. Additional invoices totaling \$144,984 were booked from January 1,
13 2015 to July 15, 2015, which is outside the test year.

14 **Finding 3: Land and Land Rights**

15 The Utility reflected an addition of \$6,000 to Account 353 - Land and Land Rights in
16 November 2014. The Utility states that this amount is for surveying costs to identify and
17 locate sewer mains that cross private property in its service territory. NARUC, Class B,
18 Wastewater Utility Plant Accounts, Account 353 - Land and Land Rights Sub-Item No.
19 11 states that surveys in connection with topographical survey and maps where such costs
20 are attributable to structures or plant equipment erected or to be erected or installed on
21 such land are not includable in this account. Therefore, audit staff believes that it is a
22 nonrecurring cost that should be reclassified to deferred asset account for survey fees and
23 amortized over five years to Operation and Maintenance Expense (O&M) Account 736 -
24 Contractual Services Other, per Rule 25-30.433(8), Rate Case Proceedings, and Florida
25

1 Administrative Code (F.A.C.). Average rate base should be decreased by \$185 and O&M
2 should be increased by \$1,200 ($\$6,000/5$), for the test year ended December 31, 2014.

3 **Finding 4: Contributions-In-Aid-of-Construction (CIAC), Accumulated**
4 **Amortization of CIAC and Amortization of CIAC**

5 The net adjustment of \$1,762,792 included in the filing includes an adjustment that
6 increases CIAC by \$2,724,171 in year 2004. We reviewed the details for the adjustment
7 and determined that it contained the following two errors. The adjustment includes a
8 \$293,058 addition for the Meridian West Apartments that was already included in the
9 prior order approved balance of \$5,752,701. The adjustment schedule contains calculation
10 errors that overstate the needed adjustment by \$14,062. Finding 1 of our auditor's report
11 reclassifies \$10,000 from PIS Account 3612 – Collection Sewers Gravity to CIAC
12 Account 2711 to properly record a refund of capacity fees paid to a utility customer.
13 Therefore, the Utility's CIAC balance should be reduced by \$297,120
14 ($\$293,058 + \$14,062 - \$10,000$), as of December 31, 2014. We recreated the Utility's
15 amortization schedule to correct the CIAC amortization accrual calculation errors and
16 other small issues within the schedule. We included our adjustment that reduced CIAC
17 by \$297,120. Based on our adjustments and recalculations, the Utility's balance for
18 Accumulated Amortization of CIAC and CIAC Amortization Expense should be
19 decreased by \$116,016 and \$14,003, respectively, for the test year ended December 31,
20 2014.

21 **Finding 5: Accumulated Depreciation**

22 The Utility calculates depreciation accruals on each specific asset listed within the asset
23 class rather than group depreciation as required by Rule 25-30.140 F.A.C. Applying the
24 Rule to the Audit UPIS balances reduces the Utility's accumulated depreciation balance
25 of \$6,055,721 by \$83,006 to \$5,972,716, as of December 31, 2014. Our calculations also

1 reduced the Utility's Depreciation Expense of \$647,382 by \$5,489 to \$641,892, for the
2 test year ended December 31, 2014. Average accumulated depreciation and Depreciation
3 Expense should be reduced by \$45,131 and \$5,489, respectively, for the test year ended
4 December 31, 2014.

5 The Utility's proforma adjustments to accumulated depreciation for the wastewater plant
6 expansion are included in Finding 2.

7 **Finding 6: Miscellaneous Deferred Debits**

8 The following finding was provided for staff's consideration.

9 Utility adjustments on Schedule B-3 in the filing reduced the Deferred Rate Case Expense
10 balance by \$14,764 to reclassify accounting, legal and engineering fees, related to the
11 restatement of the 2007 - 2012 Annual Reports, to test year O&M.

12 The Utility's filing includes proforma average adjustments of \$467,625 and \$62,000 on
13 Schedule A-17 as Miscellaneous Deferred Debits for the estimated costs to modify its
14 wastewater permit in conjunction with the wastewater plant expansion and one-half of the
15 estimated amortization of rate case expense. The year end estimates were \$519,593 and
16 \$156,000, respectively.

17 In Finding 1, we reduced UPIS by \$30,090 for engineering cost related to the wastewater
18 permit modification and reclassified them to a deferred asset account for permit fees.

19 This balance was included in our analysis of deferred permit fees discussed in Finding 16.

20 In Finding 3, we reduced Land by \$6,000 for survey fees to locate utility infrastructure
21 and reclassified them to a deferred asset account for survey fees which increases the test
22 year O&M by \$1,200 (\$6,000/5 years).

23 In Finding 11, we reclassified \$4,668 (\$1,863+\$2,805) from test year O&M Expense to a
24 deferred asset account for accounting fees for the costs incurred to restate the 2007-2012

25

1 Annual Reports which increases the test year O&M by \$933 (\$4,668/5 years). In Finding
2 16, we reduced the deferred asset account for permit fees by \$42,157 to record the actual
3 permit cost incurred based on our review of supporting documentation which reduces the
4 test year O&M by \$8,431 (\$42,157/5 years).

5 The Utility's adjustment to O&M expense for the Amortization of Miscellaneous
6 Deferred Debits should be reduced by \$6,297 (\$8,432-\$1,200-\$933), for the test year
7 ended December 31, 2014.

8 The Utility's adjustment to Working Capital for Miscellaneous Deferred Debits should be
9 increased by \$24,217 (\$554,242-\$467,625-\$62,400), for the test year ended December 31,
10 2014.

11 **Finding 7: Working Capital**

12 We reviewed the general ledger accounts contained within each of the Working Capital
13 component balances and recommend the following adjustments for this proceeding.

14 Accounts Receivable – Other

15 The balance of \$24,029 represents the sum of a cash clearing account used to record
16 customer receivables other than metered services such as deposits and service availability
17 fees until paid. Finding 16 reclassifies a February 2014 credit entry of \$43,415 from this
18 account to Account 433 – Extraordinary Income. The balance of the account will
19 increase by \$43,214. Therefore, average working capital should be increased by \$40,067.

20 Miscellaneous Current & Accrued Assets

21 The component balance of \$13,125 is comprised of two general ledger accounts, Account
22 1740200 – Deposits Electric for \$12,975 and Account 1740333 – Deposits Water for
23 \$150. The Utility stated that these are deposits remitted to its electric and water service
24 providers that earn interest at a rate determined by the respective Utility boards.
25 Typically interest bearing accounts, such as these, are excluded from working capital

1 unless the associated interest income is also included above the line in Revenues. The
2 utility did not include any interest income in revenues for this proceeding. Therefore,
3 average working capital should be decreased by \$13,422.

4 One-half Rate Case Expense

5 The rate case expense adjustment of \$62,400 is calculated as one-half year of an
6 estimated total rate case expense of \$124,800 for the instant proceeding. Finding 11
7 discusses the Utility's balances for Other Miscellaneous Deferred Debits, Deferred Rate
8 Case Expense and includes balances for adjustments to a Miscellaneous Deferred Asset
9 account. Our total average adjustment increases Working Capital by \$24,217.

10 The sum of our three adjustments increases the average working capital adjustment by
11 \$50,842 ($\$40,067 - \$13,422 + \$24,217$) for the test year ended December 31, 2014.

12 **Finding 8: Capital Structure**

13 The following finding was provided for staff's consideration.

14 The Utility has included in Schedule D-5 of the filing a Note Payable to WS Utility Inc.,
15 for \$852,903 at a six percent interest rate. There is no executed debt instrument for this
16 loan. The Utility explained that WS Utility Inc. was acting as a private lender at times
17 when financing was difficult and that no origination fees, points or closing costs were
18 charged. The Utility believes that a six percent per annum interest rate is reasonable due
19 to the risk associated with a loan of this nature.

20 The Utility has included a proforma adjustment for \$3.5 million to Common Equity on
21 Schedule D-2 of the filing in anticipation of self-funding the wastewater plant expansion
22 entirely with equity.

23 A proforma adjustment to rate base of \$3,378,186 was included on Schedule A-1 of the
24 filing. (\$3,574,468 for UPIS & \$196,282 for accumulated depreciation) Additional
25 information provided in the filing estimates that the wastewater plant expansion will cost

1 approximately \$3.5 million. The estimate was increased to \$3.7 million in subsequent
2 information provided during our audit. The Utility has already spent approximately
3 \$303,382, as of July 15, 2015. Additional information on the proforma adjustment is
4 provided in Finding 2.

5 **Finding 9: Operating Revenues**

6 Revenues should be increased by \$34,677, for the test year ended December 31, 2014.

7 The adjustment is itemized as follows;

- 8 • Decrease Accounts 52210, 52211 and 52212 - Residential and Commercial
9 Sewers by \$15,804 based on our analysis of the Utility's billing registers.
- 10 • Increase Account 54120 - Effluent Sales by \$2,602 based on our recalculation.
- 11 • Increase Account 42110 - Monroe County Detention Center (MCDC) Income by
12 \$19,550 for income related to cleaning the MCDC lift station which was included
13 above the line as Operating Revenues in the last rate case by Order No. PSC-09-
14 0057-PAA-SU.
- 15 • Increase Account 42120 - Water Testing Income by \$19,500 which represents
16 additional reclaimed water testing on a pro-rata basis according to use. The Utility
17 has two customers that purchase reclaimed water and directly reimburse the
18 Utility for the cost of the additional testing. Utility records indicate that the costs
19 for the extra tests are included in O&M expense. Therefore, this income should be
20 included above the line for the test year to match the revenues received with the
21 expense incurred.
- 22 • Increase Account 42600 - Miscellaneous Income by \$22,849 which represents the
23 income generated by the Utility for subcontractor work and income related to
24 reclassifying cash receipts such as non-sufficient funds, emergency services,
25 inspection fees and premise visits. Since these revenues are associated with work

1 performed by Utility employees, whose salaries and benefits are charged above
2 the line, we believe that the entire amount of \$22,849 should be included in
3 revenues.

4 **Finding 10: Operations and Maintenance Expense**

5 O&M Expenses should be reduced by \$4,512, for the test year ended, December 31,
6 2014. The adjustment is itemized as follows;

- 7 • Account 72000 – Materials and Supplies: On May 7, 2014, the Utility booked a
8 duplicate expense totaling \$293 for the balance owed on an invoice for purchased
9 lift station and vehicle logo signs. The expense was allocated to this account for
10 \$217 and to Account 7500 for \$76. The Utility paid the invoice on May 8, 2014,
11 by check and subsequently voided the duplicated check. However, it did not
12 reverse the accrual entry for \$217. This account should be reduced by \$217 to
13 remove the accrual.
- 14 • Account 7330 – Contractual Services – Legal: This represents two invoices
15 totaling \$829 for legal fees incurred for a dispute with the Monroe County
16 Detention Center. These costs were recovered when a settlement was reach
17 during the test year. See Finding 15 for more information. This account should
18 be reduced by \$829 to remove the recovered legal fees.
- 19 • Account 7360 – Contractual Services – Other: On July 8, 2014, the Utility
20 remitted to the Florida Department of Revenue \$296 for sales tax owed on several
21 Blaylock Oil Co. invoices. The invoices in question are not recorded in the test
22 year. Therefore, the sales tax paid should not be included in the test year because
23 it is considered out of period. This account should be reduced by \$296.
- 24 • Account 7500 – Transportation Expense: The Utility recorded a Chevron Gas
25 invoice totaling \$1,005 to two separate vendor accounts within this expense

1 account. The Utility confirmed that one of the entries was an error and stated that
2 the entry was corrected in 2015. This account should be reduced by \$1,081
3 (\$1,005+\$76) for the duplicate entries discussed here and in Account 7200 above.

- 4 • Account 7600 - Advertising Expense: On August 11, 2014, the Utility contributed
5 \$250 for Team Sponsorship. Charitable contributions such as this are considered
6 non-utility expenses per Rule 25-30.433 (6), Rate Case Proceedings, F.A.C. This
7 account should be reduced by \$250.
- 8 • Account 7750 – Miscellaneous Expenses: The Utility included thirteen invoices
9 each, for the Waste Management disposal fees and Sprint telephone services. The
10 extra invoices were bills for December 2013 that were paid in January 2014. The
11 invoices were for \$147 Waste Management and \$401 for Sprint, respectively. The
12 Utility included Rotary Club of Key West membership dues of \$1,291 for the
13 Utility's president. Order No. PSC-97-0847-FOF-WS, issued December 15, 1997,
14 determined that social club dues, such as these, are non-utility in nature and not
15 recoverable.

16 **Finding 11: Test Year Adjustments to O&M Expense**

17 The Utility test year adjustment to O&M Expense should be reduced by \$6,276
18 (\$2,805+\$1,862+\$1,609), for the test year ended December 31, 2014. The Utility has
19 included the following adjustments in Schedule B-3 of the filing.

- 20 • Contractual Services Engineer - \$2,805. The invoice was for costs incurred in
21 2014 to compile and restate the Utility's books and Annual Reports for the period
22 2007 through 2012. Therefore, we have removed \$2,805 in accounting fees.
- 23 • Contractual Services Accounting - \$1,862. The invoice was for costs incurred in
24 2014 to compile and restate the Utility's books and Annual Reports for the period
25 2007 through 2012. Therefore, we have removed \$1,862 in accounting fees.

- 1 • Contractual Services Legal - \$1,609. The Utility could not provide any
2 documentation to support the legal fees of \$1,609. Therefore they should be
3 removed.
- 4 • Outside Services – Other - \$8,488. The invoice was for costs incurred to prepare
5 the Utility’s Annual Report. We concur that it should be included in test year
6 O&M expense.
- 7 • Adjustment to Amortize Other Deferred Expenses - \$11,678. The adjustment
8 includes costs the Utility incurred in 2014 to compile and restate the Utility’s
9 books and Annual Reports for the period 2007 through 2012.

10 **Finding 12: Proforma Adjustments to O&M Expense**

11 The following finding was provided for staff’s consideration.

12 The Utility has included proforma adjustments in Schedule B-3 of the filing. The Utility
13 explained that these estimates are based on reviews conducted in previous years. We
14 received some documentation for the estimates for the Salary and Wages, Sludge
15 Disposal, Purchased Power and Chemicals. No documentation was received for the
16 remaining items. We believe the Commission Staff Engineer should review the proforma
17 adjustments.

18 **Finding 13: Contractual Service-Management Fee**

19 The following finding was provided for staff’s consideration.

20 The Utility has included \$60,000 in Account 73400 – Contractual Services Management
21 Fee. This represents a management fee from Green Fairways, Inc. The Utility explained
22 that Mr. William L. Smith, President of Green Fairways, Inc. does not keep time records
23 and that he spends approximately twenty-five percent of his time on Utility matters. His
24 duties include supervision of company officers, financial planning, reviewing the
25 treatment of customers, employees and vendors. Also included in his responsibilities are

1 reviewing the overall wastewater operations, planning for the expansion and dealing with
2 PSC rate and complaint matters.

3 The same fee was requested in the last rate case proceeding and was reduced by \$30,000
4 by Order No. PSC-09-0057-PAA-SU. The Utility explained that the increased cost from
5 the \$30,000 is significantly below the benchmark when compared to the increase in
6 number of customers and inflation.

7 **Finding 14: Taxes Other Than Income**

8 Taxes Other Than Income Expense should be reduced \$115, for the test year ended
9 December 31, 2014. Based on our calculations, the Utility owes an additional Regulatory
10 Assessment Fee (RAF) amount to the Commission of \$518, which represents the
11 difference between reported revenues on its RAF filing and the actual revenues
12 determined in Finding 9. $((\$1,528,004 - \$1,516,486) \times 4.50\%)$

13 **Finding 15: Monroe county-proceeds Received from Settlement of Dispute**

14 On April 17, 2013 the Utility filed a complaint against Monroe County, Florida, with the
15 Commission over the collection of excess capacity reservation fees as provided in the
16 Parties' Utility Agreement executed on August 16, 2001. Docket No. 130086-SU was
17 opened on April 18, 2013 to adjudicate the matter.

18 On December 13, 2013, an executed settlement agreement to resolve all of the
19 outstanding issues was executed by the Parties. The agreement was entered into the
20 docket file on February 17, 2014, with the Utility's voluntary withdrawal of its initial
21 complaint. Order No. PSC-14-0150-FOF-SU, issued April 3, 2014, acknowledged the
22 voluntary dismissal of the Utility's complaint with prejudice and closed the docket.

23 The Utility received \$500,000 in compensation and in exchange the Parties agreed that all
24 outstanding issues pertaining to the complaint were resolved. The Utility posted the
25 \$500,000 of funds received to the following accounts.

1 Account 14200 - Account Receivable Other

2 The Accounts Receivable Other amount was described by the Utility as an offset to
3 recognize prior unbilled wastewater service provided to the Monroe County Detention
4 Center (MCDC). The Utility contacted the Florida Keys Aqueduct Authority (FFAA), the
5 potable water provider for the Utility's customers, in April 2009 concerning questionable
6 water consumption history for MCDC. The Utility believed that FCAA was providing
7 inaccurate readings and that the MCDC was using more water than what was being
8 reported. The Utility continued to periodically contact FCAA concerning the water
9 readings and was told that they were correct. In November 2011 FCAA concurred that
10 there was an issue with the water consumption readings due to an employee's incorrect
11 interpretation of the consumption readings. This resulted in under billings for the period
12 April 2009 through April 2011. The issue was considered resolved as of June 14, 2011.
13 The estimated unpaid sewer usage totaled \$43,415. We do not believe that this is
14 appropriate accounting treatment for the compensation received in an unrelated incident.
15 The perceived income that the Utility would have received was for prior periods.
16 Additionally, the income was never recorded as receivable in the general ledger.
17 Therefore, there is no balance in a receivable account to offset when recorded.

18 NARUC USOA, Income Accounts, Account 433 – Extraordinary Income, states, upon
19 approval of the regulatory authority this account shall be credited with non-typical, non-
20 customary, infrequently recurring gains, which would significantly distort the current
21 years income computed before extraordinary items. We believe that the \$43,415 should
22 be considered as extraordinary revenue and reclassified from Account 1420 to Account
23 4330 per our discussions above. Additionally, the \$43,415 should also be considered as a
24 regulatory revenue recovery and be subject to RAFs. The effect of reclassifying of
25

1 \$43,415 from Account 1420 is also discussed in Finding 7. The amount of RAF owed the
2 Commission would be \$1,954 ($\$43,415 \times 4.50\%$).

3 Account 27110 - CIAC

4 The CIAC amount of \$367,740 was derived by multiplying the estimated outstanding
5 Equivalent Dwelling Units (EDU) of 136.2, times the authorized capacity reservation
6 tariff of \$2,700.

7 We traced this amount to the CIAC account in this proceeding with no exception noted.

8 Account 41900 – Non-Utility Income

9 The Utility explained that the \$88,845 posted to Account 4190 represents \$76,463 of legal
10 fees incurred for the dispute and \$12,382 of monies withheld from the South Stock Island
11 Capacity Reservation and Infrastructure Contract (CRI), an ancillary issue within the
12 dispute. The Utility believes that \$88,845 should be used to offset the costs that it
13 incurred to pursue this matter. We agree that the legal fees incurred for the dispute should
14 be offset by the compensation.

15 The Utility provided two schedules of legal expenses totaling \$76,463. We obtained and
16 reconciled each invoice on the schedule to the respective years' general ledger. The first
17 invoice was recorded in January 2004 and the last invoice was recorded in March 2014.

18 We found that \$829 of the legal expenses is recorded in the test year 2014. Finding 10
19 removes these legal fees from test year O&M expense since they are being offset by
20 proceeds received in the settlement.

21 The Utility's initial complaint over the CRI Contract as part of the overall dispute exceeds
22 the \$12,382 included as non-utility income. The amount recorded represents the
23 remaining portion of the \$500,000 settlement after accounting for the known CIAC,
24 unpaid sewer usage and the legal expense invoices. Therefore, there was no
25 documentation to support this amount.

1 **Finding 16: Wastewater Treatment Plant Permit Modification Fees**

2 On April 1, 2014 the Utility filed an application with the Florida Department of
3 Environmental Protection (FDEP) for authorization to substantially modify the operation
4 of its wastewater treatment plant by increasing wastewater flows from 0.499 million
5 gallons per day (MPG) to 0.849 MGP. The existing permit was issued on February 20,
6 2012, with an expiration date of February 19, 2017. The modification is a necessary
7 component of Utility's project to expand the wastewater treatment plant to comply with
8 the requirements for advanced wastewater treatment (AWT) mandated by FDEP for the
9 Florida Keys.

10 The FDEP issued the "Notice of Intent" to issue the modified permit on June 23, 2014.
11 FDEP's action was appealed by third-party respondents on August 5, 2014. Litigation
12 between the Utility, FDEP and the respondents ensued. The case went before an
13 Administrative Law Judge in the summer of 2015 and the parties are awaiting the final
14 ruling.

15 The Utility's filing includes a proforma average adjustment of \$467,625 on Schedule A-
16 17 as Miscellaneous Deferred Debits for the estimated costs to modify its wastewater
17 permit in conjunction with the wastewater plant expansion with a year end estimate of
18 \$519,593.

19 The Utility provided a schedule with supporting documents for \$477,436 of legal and
20 FDEP permit fees associated with the permit modification.

21 Finding 1 reclassified \$30,090 of permit fees that were recorded to UPIS in 2014. We
22 determined that these costs are included in the \$477,436 above.

23 Based on the information provided, we recommend reducing the balance for the permit
24 fees by \$42,157 (\$519,593-\$477,436) to the supported actual cost of \$477,436.

25

1 The Utility's filing includes an adjustment of \$103,887 to Operating & Maintenance
2 Expense that amortizes the \$519,593 over five years which is consistent with Rule 25-
3 30.433 (8), F.A.C.

4 We recommend that the existing five year period be maintained and that the deferred asset
5 account be reduced for permit fees by \$42,157 to actual costs incurred to date.

6 **Finding 17: Advance Waste Treatment Project**

7 The following finding was provided for staff's consideration.

8 The AWT was a project that upgraded and renovated the Utility's wastewater plant to
9 advanced treatment standards as required by the FDEP. The AWT project commenced in
10 2006 and it was completed in 2007. The Utility included \$606,580 in rate base and
11 \$1,139,707 of proforma cost as a rate base addition in the last rate case proceeding, in
12 Docket No. 070293-SU. Order No. PSC-09-0057-FOF-SU reduced the proforma amount
13 by \$124,921. The total AWT cost included in setting rates was \$1,621,366 for the test
14 year ended December 31, 2006.

15 We reviewed the Utility's 2006 and 2007 general ledgers and determined that the final
16 cost of the AWT project that was recorded to UPIS was \$2,591,652, based on two journal
17 entries that closed out the Construction Work in Progress account to various plant
18 accounts on March 28, 2007 and March 6, 2009.

19 In Finding 1, we disclosed that the Utility initiated a detailed review of its rate base
20 accounts for years 2005 through 2009. The Utility prepared schedules that analyzed and
21 restated its UPIS balances in a restatement schedule (RSS) for years 2006 through 2009
22 based on that review. The UPIS activity presented in the RSS for years 2007 through
23 2009 reflect the Utility's restated balances which differ from the Utility's historical
24 general ledgers.

25 We performed an analysis of the AWT project transactions between the information

1 recorded in the historical general ledger and the transactions included in the RSS. Our
2 analysis indicates that the RSS captures \$2,466,982 of the historical general ledger
3 balance or approximately 95 percent of the AWT cost originally recorded.

4 Adjustments in Finding 1 remove two unsupported amounts of \$80,000 in 2007 and
5 \$362,114 in 2008 that total \$442,114. They are for engineering fees paid to Weiler
6 Engineering. As of the date of this report the Utility has been unable to provide any
7 documentation to support either amount. We assume the engineering fees are for the
8 AWT project. However, the historical general ledger transaction analysis only reflects
9 \$11,868 of fees paid to Weiler Engineering.

10 Finding 6 of auditor's report, filed October 29, 2007, in Docket No. 070293-SU, provided
11 information concerning plant retirements when the AWT project is completed. As part of
12 the project a new expansion chamber and clarifying unit was installed, this required the
13 demolition or removal of the drying beds and sludge thickening unit. The information
14 states that the Utility planned to include a retirement adjustment when the AWT project
15 was completed. Our review of the RSS schedule through 2009 and the 2010 through
16 2014 general ledgers indicates that no retirement was ever recorded.

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

18 **A. Yes.**

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1 MS. CRAWFORD: And Ms. Piedra also had an
2 exhibit IHP-1, which has been marked on the
3 comprehensive exhibit as Exhibit 48.

4 CHAIRMAN BROWN: Thank you.

5 MS. CLARK: And I request that her exhibit be
6 admitted at this time.

7 CHAIRMAN BROWN: Okay. Seeing no objection,
8 we will go ahead and enter 48 into the record.

9 (Whereupon, Exhibit No. 48 was received into
10 evidence.)

11 CHAIRMAN BROWN: Thank you.

12 All right. Circling back to the rebuttal. We
13 will taking up Mr. Castle at this time.

14 Would you like to take a brief break in
15 between?

16 MR. SMITH: Do you have a copy of your
17 testimony?

18 THE WITNESS: No, I don't.

19 Whereupon,

20 EDWARD R. CASTLE

21 was recalled as a witness, having been previously duly
22 sworn to speak the truth, the whole truth, and nothing
23 but the truth, was examined and testified as follows:

24 EXAMINATION

25 BY MR. SMITH:

1 Q Good morning.

2 A Good morning.

3 Q You were sworn in before, correct?

4 A Yes.

5 Q All right. Did you prefile rebuttal testimony
6 in this matter?

7 A Yes, I did.

8 Q If I asked you the questions as in your
9 prefiled testimony, would you have any changes?

10 A No.

11 MR. SMITH: I would request to move
12 Mr. Castle's prefiled rebuttal testimony into the
13 record as though read.

14 CHAIRMAN BROWN: We will go ahead and move
15 Mr. Castle's prefiled rebuttal testimony into the
16 record as though read.

17 (Prefiled testimony inserted into the record
18 as though read.)

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1 **Q. Please state your name, profession and address.**

2 A. My name is Edward R. Castle. I am Vice President of Weiler Engineering Corporation, and
3 Director of its wastewater division. My business address is 6805 Overseas Highway,
4 Marathon, Florida 33050.

5 **Q. Have you presented direct testimony in this case?**

6 A. Yes I have.

7 **Q. Are you sponsoring any exhibits?**

8 A. Yes, I am sponsoring the following exhibits: Exhibits ERC-5 and ERC-6, estimates for
9 completion.

10 **Q. Were these Exhibits prepared by you and your staff?**

11 A. Yes they were, using information provided by KWRU staff or consultants.

12 **Q. What is the purpose of your rebuttal testimony?**

13 A. The purpose of my rebuttal testimony is to respond to Office of Public Counsel witness
14 Andrew T. Woodcock determination of the Used & Useful percentage for the Wastewater
15 Treatment Plant because there is no consideration that the plant has been designed to meet
16 environmental compliance. I am also providing testimony regarding Office of Public
17 Counsel's proposed methodology to determine expenses by annualizing January through
18 February 2016 which would create a deficiency in the amount of expenses because these are
19 KWRU's four driest months and would have the least amount of expenses and using a per
20 gallon treated expense calculation, both of which will greatly underestimate costs of
21 operating AWT before and after the new plant is on-line. Additionally, I am providing
22 testimony as to the permit modifications relationship to the existing plants and wells. Finally,
23 I am providing testimony as to engineering supervision costs associated with the wastewater
24 treatment plant project that are not included in the \$4.3 million Wharton Smith associated
25 with the new wastewater treatment plant.

26 **Q. Why do you disagree with these conclusions?**

1 A. In reaching their conclusions they relied on the basic formula set out in Rule 25-30.431
2 F.A.C. but failed to look beyond the formula to consider the several factors set out in
3 Sections 367.081(2)(a)2 and (3) F.S. and Rule 25-30.432 F.A.C. When these factors are
4 considered, regardless of the mathematical results, the WWTP should be considered 100%
5 Used & Useful. As provided in Florida Statute §367.081(2)(a)2c., “the commission shall
6 approve rates for service which allow a utility to recover from customers the full amount
7 of environmental compliance costs.” A plant with a .849 MGD capacity is necessary in
8 order to ensure KWRU has the capacity to treat future flows for the 10-year period
9 prescribed by FDEP rule required for environmental compliance. Otherwise, reasonable
10 assurance is not provided and KWRU would not be issued a permit to expand by FDEP.
11 Because providing capacity for the anticipated flows over a 10-year period is required by
12 FDEP to provide reasonable assurance that the discharge from the plant will not harm the
13 environment, the necessity to design and build is an environmental control and it is clear
14 to me that the DEP rule is controlling.

15 In fact, Rule 24-30.432, F.A.C., expressly provides that the enumerated factors are only
16 some of the factors that the PSC will consider in determining the used and useful amount,
17 and is not by any means an exhaustive list. Fla. Admin. Code. 25-30.432 states that the
18 extent to which the area served is built out should be considered, implying that projected
19 growth based on factors other than a strict percentage should reasonably be allowed.

20 To ensure that wastewater treatment facilities have adequate capacity to treat current and
21 future flows, Fla. Admin. Code 62-620.405 requires evaluation of current and future
22 flows and requires planning for expansion of wastewater treatment facilities, requiring
23 data including: “*flow projections based on local population growth rates and water*
24 *usage rates for at least the next 10 years; an estimate of the time required for the three-*
25 *month average daily flow to reach the permitted capacity; recommendations for*

1 *expansions; and a detailed schedule showing dates for planning, design, permit*
2 *application submittal, start of construction, and placing new or expanded facilities into*
3 *operation.”* KWRU performed the required evaluations and planning. The data indicated
4 that an expansion of the facility to a total treatment volume of 0.849 MGD was required
5 in order to accommodate local population growth rates and water usage rates *for the next*
6 *ten years.*

7 A plant with a .849 MGD capacity is necessary in order to ensure KWRU has the
8 capacity to treat future flows for the period prescribed by FDEP. As provided in Florida
9 Statute §367.081(2)(a)2c., “the commission shall approve rates for service which allow a
10 utility to recover from customers the full amount of environmental compliance costs.”

11 Expansion to .849 MGD was determined to be the minimum necessary to effectuate the
12 statutory and administrative provisions set forth above. Because the construction of the
13 expanded plant is a direct result of these environmental mandates, particularly
14 accommodating flows for the next ten (10) years, construction of the additional capacity
15 is an environmental compliance cost. Mr. Woodcock overlooked this fact.

16 **Q: Could KWRU have expanded to a design capacity based on the 5% annual flow**
17 **increase for five years “cap” set forth in 25-30.432, F.A.C.?**

18 A: Not while complying with FDEP regulations requiring facilities planning for twenty (20)
19 years. Anything else would not allow for the issuance of the DEP permit to build the
20 plant expansion. In fact, FDEP’s .350 MGD plant expansion permit was appealed by
21 Last Stand. Last Stand alleged that KWRU’s proposed design capacity *was not sufficient*
22 *to meet DEP’s regulatory and environmental requirements* for a plant sufficient to meet
23 the needs of the Florida Keys based on the requirements contained within Florida law.
24 One point of Last Stand’s contentions was that KWRU failed to provide reasonable
25 assurances that the plant expansion to .849 MGD would provide KWRU with the needed

1 capacity to address future connection needs while meeting the strict environmental
2 standards in the Florida Keys.

3 Essentially, Last Stand's contention as to facilities planning was that a .849 MGD plant
4 was not sufficient to handle future projected growth, and that the plant needed a design
5 capacity over 1 million gallons in order to comply with projected demand and meet the
6 engineering and environmental regulations applicable to KWRU and the Florida Keys. In
7 that action, KWRU was required to present evidence as to why the .849 MGD capacity
8 was *large enough to comply with FDEP regulations*. Projected build-out of the service
9 area based on applicable data indicates that KWRU will be able to handle flows *for the*
10 *next ten (10) years*, as required by law. A projection of 5% annual growth for only five
11 years in facilities planning would have resulted in a finding that the projected expansion
12 was not of sufficient size to comply with FDEP regulation in the Last Stand permit
13 appeal.

14 If KWRU would have used 5% annual increases for five years to determine capacity,
15 yielding a design capacity of approximately .650 MGD, the permit issuance would have
16 been subject to challenge under FDEP regulations. Undoubtedly, if FDEP compelled
17 KWRU to expand to .849 MGD, rather than a lower capacity, in order to comply with
18 FDEP regulations, the full plant expansion cost would be considered an environmental
19 compliance cost. It is incongruous to fail to classify the expansion, where KWRU utilized
20 actual flow projections in compliance with FDEP regulations, as environmental
21 compliance costs.

22 **Q: Why did KWRU develop a design capacity of .849, rather than some other, lower,**
23 **capacity?**

24 A. I generated preliminary documents regarding a .150 MGD expansion, which would bring
25 total capacity to .649 MGD. This approach was rejected based upon historic flow data

1 and review of upcoming development and connection; KWRU will require a .849 MGD
2 capacity in order to accommodate flows over the FDEP required planning horizon.

3 I projected build-out of the service area to occur between 2018 and 2020. By anticipating
4 build out within ten years, it ensured the plant would be sized appropriately to comply
5 with its FDEP permits. From an operational standpoint, that means that the entirety of the
6 Plant's capacity (with a built-in safety factor) is projected to be utilized by that date.
7 While Last Stand contended that this did not comprise the necessary planning horizon
8 under FDEP regulation (which require submission of a flows report looking ahead 20
9 years), the FDEP recognized that "the proposed design capacity of .849 MGD AADF for
10 the Expanded Wastewater Facility is appropriate under [applicable rules] in chapter 62-
11 600 and conforms to sound engineering principles applicable to the Expanded
12 Wastewater Facility" and that "the proposed permitted capacity of .849 MGD AADF for
13 the Expanded Wastewater Facility is [applicable rules] in chapter 62-600 and conforms to
14 sound engineering principles appropriate applicable to the Expanded Wastewater Facility.
15 The intent of wastewater treatment regulations in Florida is clearly expressed in Chapter
16 62-604.100(1) FAC, which states, in part: "*no wastes are to be discharged to any waters
17 of the state without first being given the degree of the treatment necessary to protect the
18 beneficial uses of such water.*"

19 It has been demonstrated that discharges to groundwater in the Florida Keys from septic
20 tanks and shallow injection wells affect both the groundwater and the nearshore surface
21 waters. It has also been demonstrated that septic systems, onsite aerobic treatment
22 systems and small conventional activated sludge wastewater treatment do not provide the
23 level of treatment needed to protect the waters of the state.

24 With the passage of Fla. Stat. §380.0552, the Florida Legislature also designated the
25 Florida Keys an Area of Critical State Concern. § 380.0552, Fla. Stat. A stated purpose of

1 this designation is to protect and improve the Florida Keys nearshore water quality
2 through construction and operation of wastewater facilities that meet the requirements of
3 section 403.086(10).

4 Chapter 2010-205 Laws of Florida attempts to protect the waters of the state by
5 eliminating, to the extent practical, discharges from septic systems, onsite aerobic
6 treatment systems and package plants. Properties served by these types of wastewater
7 disposal systems are required to connect to publicly- or investor-owned central
8 wastewater treatment systems in areas where central systems are planned. Permits for
9 on-site systems will only be issued for properties where no central wastewater treatment
10 system is available (Page 59).

11 KWRU is an investor-owned central wastewater treatment system, and has been
12 identified as an integral component for wastewater treatment in the Monroe County
13 Sanitary Wastewater Master Plan, issued in June, 2000. KWRU is the designated
14 wastewater treatment provider for Stock Island. As such, KWRU has an obligation to
15 provide adequate treatment volume to accept all current and future discharges from
16 properties located within the area to be served.

17 **Q. In your professional opinion was the design and permitting of the plant at .849**
18 **MGD due to environmental compliance?**

19 A. It is for the reasons stated above.

20 **Q. You mentioned that a point of the Last Stand litigation was the contention that the**
21 **design capacity of the new plant was not sufficient, was there any other issue raised**
22 **regarding the plant modification that did not deal with the capacity of the plant?**

23 A. Yes, a more significant focus of the Last Stand litigation was whether the permit, if
24 issued, provided reasonable assurance that the wastewater treatment facility would not

1 degrade water quality per F.S. 403.086(10). Beyond the design capacity, which took up a
2 small portion of the case, most of the focus was on water quality.

3 **Q. Why is this significant?**

4 A. In terms of environmental compliance, 403.086(10) requires all treatment plants in the
5 Florida Keys treat to AWT and if they exceed 1 MGD, that a deep injection well be
6 installed. Notwithstanding these requirements, in no circumstance can a wastewater
7 treatment plant degrade water quality. Because of this, the Last Stand Petitioners spent a
8 significant portion of the case arguing that the plant as designed did not provide
9 reasonable assurance that injecting effluent down a shallow well would not degrade water
10 quality. In other words, a large portion of the case focused on the use of shallow wells,
11 which are utilized by the existing plant as well as the new plant. Because of this, the
12 permit challenge was not singularly related to the plant expansion, but rather dealt with
13 the environmental compliance issue of water quality and shallow injection wells.
14 Ultimately, the design as proposed by KWRU was found to comply with Florida Statutes
15 and provided reasonable assurance that it would not degrade water quality. Therefore,
16 the permit was issued, and it is my professional opinion that the permit modification and
17 plant expansion was for environmental compliance.

18 **Q. Ms. Merchant claims that the new plant is for future customers.**

19 A. This is incorrect. DEP environmental regulations, until recently, required expansion at
20 90%. This rule has been amended to eliminate the requirement to be expanding at 90%,
21 but it is still the general rule followed on when to expand a wastewater treatment plant to
22 ensure compliance with the wastewater treatment facilities' FDEP permit. If KWRU did
23 not expand, in my professional opinion, KWRU would in the next five (5) years violate
24 its permit. Therefore, it is regulatory requirement related existing customers. Although it

1 certainly will be utilized by new customers, the expansion to .849 is requirement to
2 maintain environmental compliance with FDEP

3 **Q. Ms. Merchant states that January-April expenses can be annualized to indicate the**
4 **total expenses for AWT. Do you agree?**

5 A. No. These are the four driest months and 2016 was an atypically very dry year as
6 compared to prior years. There is typically a 15% increase in flows between the driest
7 and wettest months, i.e. – January – March and September – November. The 15%
8 increase results in a minimum 15% increase in expenses. This is because outside of the
9 driest months flows increase between 0 and 15% which means all months' expenses are
10 more than the 4 months Ms. Merchant annualized.

11 **Q. Ms. Merchant makes adjustments to purchased power, chemicals and material of**
12 **7.75% based on Woodcock's estimate that flows will be 507,370 gpd, not 550,000**
13 **gpd. Is this adjustment correct?**

14 A. No. Once the plant is operating, whether it is 507 or 550, the difference in cost is
15 nominal because you must now use chemicals, purchase power, materials and remove
16 sludge from 3 treatment plants, not 2, so the cost does not change proportionately based
17 on flows.

18 **Q. As to the permit modification, can you please explain what the permit modification**
19 **provided for?**

20 A. First, it was a substantial modification and expansion. The key is there are two parts of
21 the construction project, (1) modification of the existing plant which will provide
22 assurance that AWT is continually met, and (2) expansion of the wastewater treatment
23 plant from a permitted capacity of .499 MGD to .849 MGD. The modification of the
24 plant was undertaken based on trial test runs at AWT and known problems with the
25 current AWT design. Although the plant currently operates at AWT, it could have issues

1 maintaining AWT without these modifications. Therefore, the plant was modified to
2 include expanded sand filters and a chemical storage and dosing system as well as the
3 addition of a dual influent screen and two new injection wells. These modifications
4 encompass approximately \$1,253,675 dollars of the total cost.

5 **Q. Has this portion of the project been completed?**

6 A. It has not.

7 **Q. When is the new dual influent screen on the existing plant and new injection wells**
8 **expected to be placed into service?**

9 A. November 2016

10 **Q. The other portion of the project is the plant expansion; can you explain what this**
11 **entails?**

12 A. Yes, this includes the 0.350 MGD treatment train and associated equipment, including
13 the new blowers.

14 **Q. Based on the current status of the project, when is the new treatment tank**
15 **anticipated to be placed into serve?**

16 A. March, 2017

17 **Q. When is the new vacuum tank expected to be placed into service?**

18 A. December 2016

19 **Q. As to the current wastewater treatment plant projects, do you have a continuing roll**
20 **as the engineer of record?**

21 A. I do. As the engineer of record, it is my company's job to inspect the on-going work to
22 ensure that when completed the AWT modifications, new plant, and vacuum tank all
23 operate as intended. This entails almost daily inspections and reports, along with
24 construction administration, shop drawing reviews, testing, processing of requests for
25 information, processing contractor's applications for payment and other duties associated

1 with the construction projects. I have provided engineering cost estimates for completion
2 attached as Exhibits ERC-5 and ERC-6.

3 **Q. Does this conclude your rebuttal testimony?**

4 A. It does.

5

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1 CHAIRMAN BROWN: And there are two exhibits
2 associated with this witness.

3 MR. SMITH: That's correct.

4 CHAIRMAN BROWN: Staff, questions?

5 MS. MAPP: We have no questions for
6 Mr. Castle.

7 BY MR. SMITH:

8 Q Mr. Castle, could you give a brief, under
9 five-minute summary of your testimony?

10 A Yes. My summary -- my testimony for rebuttal
11 focused on used and useful, and on the costs associated
12 with operation of the plant.

13 That's essentially it.

14 CHAIRMAN BROWN: That was pretty brief.

15 THE WITNESS: Yeah.

16 MR. SMITH: We know we have a 4:30 deadline.

17 CHAIRMAN BROWN: And we appreciate that.

18 Thank you for your cooperation.

19 All right. And I am just going to go over the
20 order of cross on rebuttal here. It will start
21 with Office of Public Counsel, followed by Monroe
22 County, Harbor Shores and staff, and then the
23 commissioners and redirect.

24 So with that, Mr. Sayler, you have the floor.

25 MR. SAYLER: Thank you, Madam Chairman.

1 I have provided staff with an exhibit to pass
2 out.

3 CHAIRMAN BROWN: Thank you. We will be
4 starting at 104.

5 MR. SAYLER: All right. Thank you.

6 CHAIRMAN BROWN: Would you like it marked at
7 this time?

8 MR. SAYLER: Yes, ma'am.

9 CHAIRMAN BROWN: Okay. We will go ahead and
10 mark this exhibit, which is -- actually it's DEP
11 rule, which we have already taken official
12 recognition, so --

13 MR. SAYLER: Yes, it's just a
14 cross-examination exhibit.

15 CHAIRMAN BROWN: There is no need to mark it.
16 We won't mark it, then.

17 MR. SAYLER: Okay. Then just -- all right.

18 EXAMINATION

19 BY MR. SAYLER:

20 Q Good morning, Mr. Castle.

21 A Good morning.

22 Q How are you doing today?

23 A Good.

24 Q All right. On page four, lines 16 through 20
25 of your direct testimony, you state that you have been a

1 professional engineer with Weiler Engineering for about
2 12 years, is that correct?

3 A Since 2002 -- late 2002.

4 Q All right. And approximately how many
5 wastewater treatment plants have you been involved with
6 while at Weiler?

7 A At Weiler, approximately 20.

8 Q About 20. And prior to your work for Weiler?

9 A Prior to working with Weiler, I worked for
10 Synagro, which was a wastewater operations company for a
11 number of years. They were -- they purchased an
12 operating company that I began working with in 1989 --
13 or 1998. And prior to that, I worked for Operations
14 Management International as an Operations Specialist.

15 Q All right. And yesterday I believe you
16 testified that when determining the right capacity size
17 for a plant expansion project, like the one you did for
18 KW, you would seek guidance from the DEP statutes and
19 rules for that design project, is that correct?

20 A I don't specifically recall saying that
21 yesterday's, but it is correct.

22 Q Okay. And when you design a wastewater
23 treatment plant capacity you are sizing, do you ever
24 look to the Florida Public Service Commission rules for
25 that?

1 A No, I haven't.

2 Q And to your knowledge, does the Public Service
3 Commission set any standards or guidelines for designing
4 wastewater treatment facilities?

5 A I am not aware of any.

6 Q And you would agree, as a professional
7 engineer, you would not use the Commission's used and
8 useful statute or rule when determining the plant
9 capacity, correct?

10 A Yes. That's correct.

11 Q And you have reviewed the testimony of the
12 intervenors. Did any of the intervenors challenge the
13 sizing of the KW plant expansion?

14 A I don't recall.

15 Q You would agree that Mr. Woodcock was
16 providing testimony regarding used and useful, correct?

17 A Yes.

18 Q But he did not testify that you should have
19 built a smaller plant?

20 A Not that I recall.

21 Q You would agree that the used and useful
22 statute in the rules, as it applies to a wastewater
23 treatment plant, that applies to the percentage of the
24 investment that can be recovered from current and future
25 customers in rates; is that correct?

1 A As I said, I haven't really looked at the used
2 and useful other than in relation to this particular
3 case.

4 Q All right. And you would agree that you did
5 not address the used and useful statute or rule in your
6 direct testimony, correct?

7 A Not that I recall.

8 Q However, on pages three and four, you -- you
9 do describe the used and useful statute in the rule,
10 correct?

11 A Are you referring to rebuttal testimony or
12 direct testimony?

13 Q Your rebuttal testimony.

14 A Okay. Do you have lines that I could refer
15 to?

16 Q Give me a moment. Basically, starting on line
17 one, all the way through the entire page, line three
18 cited Section 367.081(2)(a)2 and 3.

19 A I was in the wrong section. Pardon me.
20 So page three, starting at line one, you said?

21 Q Yes.

22 A All right.

23 Q And it is your testimony that regardless of
24 the mathematical results of applying the used and useful
25 statute and the rule, it's your opinion this plant

1 should be considered 100 percent used and useful,
2 correct?

3 A Yes.

4 Q But you did not perform a used and useful
5 calculation, correct?

6 A Not as such, no.

7 Q That was left to Mr. Seidman, correct?

8 A Yes.

9 Q Now, you believe that there is an exception in
10 the used and useful statute for, quote, "environmental
11 compliance costs," end quote; is that correct?

12 A Yes.

13 Q And then later on, on page seven, lines 17
14 through 19, you testify, "in your professional opinion,
15 you believe the design and permitting for the plant was
16 due to environmental compliance?"

17 A Yes.

18 Q Would you believe that there is agree there is
19 a difference between environmental compliance and
20 environmental compliance costs?

21 A Could you rephrase the question?

22 Q You would agree that the Department of
23 Environmental Protection rules are designed to protect
24 the environment, right?

25 A Yes.

1 Q So under a broad interpretation of their
2 rules, everything that -- any permit -- permit to
3 construct anything or expand anything, could be
4 considered done for the environmental compliance,
5 correct?

6 A I don't know that I could agree with that in
7 every case, that it's environmental -- there is
8 regulatory compliance issues as well as environmental
9 issues.

10 Q All right. But if something is being done for
11 environmental -- I mean, if a project is being done and
12 doesn't comply with the DEP rules -- let me strike that
13 question.

14 Under your interpretation of the used and
15 useful statute, you believe that the plant expansion was
16 done for environmental compliance, correct?

17 A The project as a whole is done for
18 environmental compliance, yes.

19 Q And what was the environmental compliance
20 component that you are talking about?

21 A To ensure that the facility would continue to
22 meet AWT standards, and protect the waters of the state.

23 Q You would agree that the Legislature amended
24 the statute to require that every plant in the Keys be
25 AWT compliant, period?

1 A No. Smaller plants don't need to meet AWT.
2 They need to be BAT standards.

3 Q **Even today?**

4 A Even today.

5 Q **Okay. Let me ask you a question, had the
6 utility not expanded this plant, and then the DEP
7 adopted a new rule -- here, let's talk about the
8 hypothetical. Your deep well injection -- or your
9 injection wells.**

10 Currently the threshold that's required for
11 deep well is one million gallons per day, is that
12 correct?

13 A Yes.

14 Q **But right now, your deep well injection is
15 below that threshold, correct?**

16 A The flow is below that threshold, yes.

17 Q **And if, all of a sudden, a few years down the
18 road, the DEP changes that and lowers it from one
19 million to say, half a million gallons per day,
20 correct --**

21 A Understood.

22 Q **-- if they did that, that would be -- and the
23 utility is required to convert to a deep well injection,
24 you would agree that's for environmental compliance,
25 correct?**

1 A I guess it would depend on why the rule was
2 changed.

3 Q So you would agree that there are some
4 projects that are done because regulations have changed
5 and you have to comply with those, correct?

6 A Yes.

7 Q But there is a difference between building a
8 plant, or an expansion project, that complies with DEP
9 rules, correct?

10 A I am not sure I follow the question.

11 Q All right. Would you please turn to that
12 exhibit that I passed out that is DEP Rule 62-600.405?
13 Are you familiar with this rule?

14 A Yes.

15 Q Would you please -- would you please read the
16 top line? What's the name of this rule?

17 A It's Planning for Wastewater Facilities
18 Expansion.

19 Q All right. And would you please read the
20 highlighted section of subsection (6)?

21 A It begins with, "the initial capacity analysis
22 report or an update of the capacity analysis report
23 shall evaluate;" and then it skips to "flow projections
24 based on local population growth rates and water usage
25 rates for at least the next 10 years, an estimate of the

1 time required for the three-month average daily flow to
2 reach the permitted capacity, recommendations for
3 expansions, and a detailed schedule showing dates for
4 planning, design, permit application, submittal, start
5 of construction and placing new or expanded facilities
6 into operation."

7 Q All right. And you would agree that that
8 second part, the flow projections based on local
9 population, that was the section you cited in your
10 testimony, correct?

11 A Yes, in part.

12 Q All right. And you would agree that this rule
13 is related to reporting requirements at the DEP?

14 A It's related to planning requirements, not
15 report requirements.

16 Q And if they meet certain thresholds, you do a
17 report at five-year intervals, but if you are at other
18 thresholds, you have to do more frequent reporting; is
19 that correct?

20 A Yes, depending on how soon you project that
21 you are going to exceed your capacity, it changes the
22 frequency.

23 Q And yesterday, I asked you a few questions --
24 excuse me. Would you please look at this rule, anywhere
25 in the rule, and please point to the part of the rule

1 that requires wastewater treatment plants to be designed
2 to accommodate for the next 10 years?

3 A Would you like me to read through the whole
4 thing and look for that or --

5 Q You would agree that this rule does not
6 require that plants expansions be designed to
7 accommodate for the next 10 years?

8 A In my interpretation, it's implicit in rule.
9 There would be no reason to plan and produce a
10 construction schedule if you weren't planning on
11 accommodating those flows.

12 Q You would agree that the DEP requires a lot of
13 reporting requirements from entities that it regulates?

14 A Yes.

15 Q And a lot of those reporting requirements are
16 just information that the DEP requires those -- from
17 those whom it regulates, correct?

18 A I am familiar mostly with wastewater, as far
19 as DEP is concerned, and they have compliance reporting
20 requirements as well as informational.

21 Q Right. And a lot of these reporting
22 requirements for the DEP are informational, including
23 this rule, correct?

24 A No, that's not my understanding. My
25 understanding is it's for compliance.

1 Q And we asked you a lot of questions about the
2 Last Stand final order yesterday, do you recall those?

3 A Yes.

4 Q And you agree that the Last Stand final order
5 speaks for itself, and anyone can interpret that the way
6 they need to as it relates to environmental compliance?

7 MR. SMITH: I would object to the
8 characterization, the way they need to.

9 CHAIRMAN BROWN: You want to strike that
10 question?

11 MR. SAYLER: Yeah, let me rephrase.

12 BY MR. SAYLER:

13 Q You would agree that the rules speak -- or the
14 order speaks for itself, correct?

15 A Could you explain to me what speaks for itself
16 means exactly?

17 Q Gosh, I have used that a million times. All
18 us attorneys understand.

19 MS. AKTABOWSKI: Even I understand it.

20 THE WITNESS: I am an engineer, sorry.

21 BY MR. SAYLER:

22 Q You would agree that even an engineer can read
23 and understand the DEP order, correct?

24 A Most of it, yes.

25 Q All right. Thank you.

1 MR. SAYLER: No further questions.

2 CHAIRMAN BROWN: All right.

3 County.

4 MR. WRIGHT: Thank you, Mr. Chairman. Very
5 briefly.

6 EXAMINATION

7 BY MR. WRIGHT:

8 Q Good morning, Mr. Castle.

9 A Good morning.

10 Q In response to a question by Mr. Sayler, you
11 made a statement that the project, as a whole, was for
12 environmental compliance; do you recall making that
13 statement?

14 A Yes.

15 Q Let me ask you this question: If there were
16 no projected additional flows, i.e., if the plant were
17 never projected to have to serve -- to process more than
18 499,000 gallons a day, would the company have wanted to
19 build an additional 350,000 gallons of capacity for
20 environmental compliance?

21 A If I understand your question correctly, the
22 answer is no. If we didn't see a need to accommodate
23 additional flow, the additional 350,000 gallons wouldn't
24 be needed, but other improvements were needed to
25 continue to meeting AWT.

1 MR. WRIGHT: Thank you. That's it.

2 CHAIRMAN BROWN: Thank you.

3 Harbor Shores.

4 MS. AKTABOWSKI: No questions for Mr. Castle.

5 CHAIRMAN BROWN: Thank you.

6 Staff.

7 MS. CRAWFORD: Just a few very quick
8 questions.

9 EXAMINATION

10 BY MS. CRAWFORD:

11 Q Good morning, Mr. Castle. If I could please
12 refer you to your rebuttal testimony on page nine. And
13 there, you are addressing some questions by Witness
14 Merchant regarding January, April expenses, and whether
15 they could be annualized in total expenses for AWT. And
16 then you are addressing a comment by her about making
17 adjustments to purchase power chemicals and material
18 based on Witness Woodcock's estimate that flows would be
19 essentially 507,000 gallons per day, not 550.

20 And you respond there on-line 14, that once
21 the plant is operating, whether it's 507 or 550, the
22 difference in cost is nominal, because now you must use
23 chemicals, purchase power and materials and remove
24 sludge from three treatment plants, not two, so the cost
25 does not change proportionately based on flows. I am

1 just kind of ask you a few questions on that.

2 Why is that the case? Why does the difference
3 between 507,000 and 550,000 not make a material
4 difference?

5 A That's a small incremental increase in flow.
6 The additional costs for chemicals, purchase power,
7 materials and removal of sludge isn't 100 percent
8 correlated to just flow. There is other factors
9 involved.

10 **Q What are some of those other factors?**

11 A Well, during periods of low flow, for example,
12 in the nighttime, the area is still run, so whether
13 it's -- the flow is higher or lower doesn't matter that
14 much, you still use the same amount of power. You may
15 also use more glycerin, which is a carbon source, if you
16 had lower flows in order to drive the DO down for the
17 denitrification process. And typically, you will feed a
18 rate of alum for sludge for phosphorus removal that uses
19 chemicals and then generates extra sludge, that's a
20 fairly concentrate and you may overdose some at low flow
21 periods.

22 **Q Are there any expenses, no matter how minor,**
23 **which would change proportionately based on flows? And**
24 **I guess I could rephrase it another way. Are there some**
25 **expenses that you believe would change proportionately**

1 depending on which estimate is correct, the 550 or the
2 507?

3 A I think that, to an extent, there are a number
4 of factors that are influenced by flow. Obviously,
5 pumping power is. Aeration is to a certain extent, but
6 not completely. That's also very dependent on the
7 loading that's coming in in the wastewater. Chemical
8 feed rates are to a certain extent, but not exactly.

9 Does that answer your question?

10 Q It does. Thank you.

11 MS. CRAWFORD: That's all I have.

12 CHAIRMAN BROWN: Thank you.

13 Commissioners?

14 Okay. Redirect?

15 FURTHER EXAMINATION

16 BY MR. SMITH:

17 Q Mr. Castle, you were asked about 62 -- Florida
18 Administrative Code 62-600.405. If you could turn back
19 to that demonstrative aid. And if you look down at the
20 second highlighted section. It identifies an estimate
21 of the time required for the three-month average daily
22 flow to reach the permitted capacity; do you see that?

23 A Yes, I do.

24 Q Are you aware of whether the plant has
25 exceeded the three-month permitted capacity?

1 A The plant is actually permitted on the annual
2 average daily flow basis, but we do examine three-month
3 capacity. I believe it did at one point, yes.

4 **Q Is it your understanding that, under DEP rule,**
5 **the utility was required to expand and maintain the**
6 **environmental compliance?**

7 A Yes.

8 **Q Could you have designed a smaller plant and**
9 **maintained environmental compliance?**

10 A Given the planning period and the continued
11 flow, I don't believe so. No.

12 **Q Okay. You talk about planning period, and of**
13 **course we talked about 62-600.405. Where is the**
14 **planning period incorporated into the DEP rule?**

15 MR. SAYLER: Objection, outside the scope of
16 my cross.

17 CHAIRMAN BROWN: Mr. Smith.

18 MR. SMITH: He brought up the 10-year period
19 maintained in 62-600.3 -- 405, and stated, is this
20 a requirement for the planning period. And so I am
21 now trying to draw out where the planning period is
22 identified in DEP rule.

23 CHAIRMAN BROWN: Objection overruled.

24 BY MR. SMITH:

25 **Q And if you want, I have the DEP rules.**

1 A Okay. I think I can answer fairly well. In
2 the DEP rules, there are a list of reference materials,
3 reference standards to meet.

4 **Q Under what rule is that under?**

5 A I believe it's under 300.

6 **Q Okay. And can you identify the subsection**
7 **that identifies the rule that the technical document**
8 **that requires a planning period?**

9 A Okay. I am sure I can find it in a minute.

10 **Q Okay. Under 62-600.300(1) -- excuse me, (2)**
11 **-- sorry, one more time, under (4) --**

12 CHAIRMAN BROWN: Can you repeat the full
13 section again, for the record?

14 THE WITNESS: 62-600.300(4)(b).

15 BY MR. SMITH:

16 **Q And what is that?**

17 A That's recommended standards for wastewater
18 facilities.

19 **Q Now, what do those recommended standards**
20 **prescribe?**

21 A For the planning period?

22 **Q Correct.**

23 A Yeah, they require a 20-year planning period.

24 **Q You were asked a question by Mr. Wright**
25 **regarding if no new flows went to the plant, whether you**

1 would have to build a new plant. If no new customers
2 connected to this plant, is it your opinion it would
3 have exceeded its capacity?

4 A Yes.

5 Q Thank you.

6 MR. SMITH: I have no further questions.

7 CHAIRMAN BROWN: Okay. Thank you.

8 This witness has two exhibits, 73 and 74.

9 MR. SMITH: We move them into the record.

10 CHAIRMAN BROWN: Okay. Seeing no objection,
11 we will go ahead and move in 73 and 74 into the
12 record.

13 (Whereupon Exhibit Nos. 73 & 74 were received
14 into evidence.)

15 CHAIRMAN BROWN: Mr. Castle, you are now
16 officially excused.

17 THE WITNESS: Thank you.

18 CHAIRMAN BROWN: Have a great day.

19 (Witness excused.)

20 MS. HELTON: Mr. Chairman, just a little bit
21 of a wrinkle. The rule that Mr. Sayler had passed
22 around was not a PSC rule, it was a DEP rule, and
23 so are you officially recognizing the DEP rules as
24 well since we did not mark that as an exhibit?

25 CHAIRMAN BROWN: Pursuant to, I believe, the

1 motion that the citizens requested official
2 recognition as a preliminary matter, remember that?

3 MS. HELTON: Oh, I am sorry, I did not realize
4 that about the DEP rules. I am sorry. I just
5 wanted to make sure that the record was clear.

6 CHAIRMAN BROWN: I am correct on that, right,
7 Mr. Saylor?

8 MR. SAYLER: Yes. I asked for two sections of
9 the DEP rules, and the utility requested that the
10 Commission take recognition of all the DEP rules.

11 CHAIRMAN BROWN: Thank you.

12 MS. HELTON: I apologize about that.

13 CHAIRMAN BROWN: Okay. Thank you.

14 All right. No wrinkles.

15 We are on to Mr. Johnson, rebuttal. Are you
16 prepared to call the witness at this time?

17 MR. SMITH: Yes, ma'am.

18 CHAIRMAN BROWN: Thank you.

19 Whereupon,

20 CHRISTOPHER A. JOHNSON

21 was recalled as a witness, having been previously duly
22 sworn to speak the truth, the whole truth, and nothing
23 but the truth, was examined and testified as follows:

24 CHAIRMAN BROWN: Welcome back, Mr. Johnson.

25 THE WITNESS: Thank you.

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EXAMINATION

BY MR. SMITH:

Q Mr. Johnson, just to confirm, you were sworn in?

A Yes, I was.

Q Did you prefile rebuttal testimony in this matter?

A Yes, I did.

Q If I asked you the questions contained in your rebuttal testimony, would your answers be the same today?

A Yes.

MR. SMITH: I would request that Mr. Johnson's rebuttals testimony be read into the record as if though read.

CHAIRMAN BROWN: We will enter Mr. Johnson's prefiled rebuttal testimony into the record as though read.

(Prefiled testimony inserted into the record as though read.)

1 **Q. Please state your, name profession and address.**

2 A. My name is Christopher A. Johnson. I am President of K W Resort Utilities Corp. My
3 business address is 6630 Front Street, Key West, Florida 33040.

4 **Q. Have you presented direct testimony in this case.**

5 A. Yes I have.

6 **Q. What is the purpose of your rebuttal testimony?**

7 A. The purpose of my rebuttal testimony is to present information to refute some of arguments
8 presented by Intervenor witnesses.

9 **Q. Are you sponsoring any exhibits?**

10 A. Yes, I am sponsoring the following exhibits: Exhibit CAJ-8, is the change order for
11 replacement of the vacuum tank, Composite Exhibit CAJ-9, represents the total costs for
12 completion of the plant expansion and vacuum tank expansion, Exhibit CAJ-10, a spreadsheet
13 identifying CIAC collected since 2012, including CIAC that per the CRI contract with
14 Monroe County may be refunded to customers when they elect to be placed on the non-ad
15 valorem tax assessment, and Exhibit CAJ-11, an email from Bob Stone, Monroe County
16 facilities director dated November 11, 2009 from Monroe County requesting to reduce their
17 reuse to 32,000 gpd.

18 **Q. Were these Exhibits prepared by you and your staff?**

19 A. Yes they were, except the FKAA billing determinants which were obtained from the FKAA.

20 **Q. Please explain the status of the vacuum tank replacement?**

21 A. The Utility has a Contract in place for the vacuum tank replacement which is Exhibit CAJ-8,
22 which is a change order to the original contract with Wharton Smith. Because the contractor
23 selected was same contractor performing the .350 MGD treatment plant expansion, the Utility
24 was able to save on mobilization, insurance, housing, and bonding costs which is a primary
25 reason the actual cost is much less than the original estimate. The Utility would have just

1 negotiated with the treatment plant contractor for the vacuum tank replacement but we
2 understood that it was Commission policy to obtain three competitive bids on projects of this
3 magnitude. It was imperative for the Utility to include the qualified contractor performing
4 the .350 MGD expansion project in the bid process knowing how significant mobilization
5 and the other costs can be. The outcome (awarding the vacuum tank replacement project to
6 the contractor already mobilized and working on site) turned out to be a terrific value for the
7 Utility and its rate payers.

8 **Q. Ms. Merchant states that the vacuum tank should not be considered if not within 24**
9 **months, what is the estimated date the new vacuum tank will be placed into service?**

10 A. I have confirmed with the Division Manager of the contractor, Wharton Smith, that the
11 vacuum tank will be installed and treating sewerage prior to December 25, 2016. Wharton
12 Smith is already mobilized on site and is fully operational (tool trailers, office trailer, back
13 hoe, track hoe, crane, welders, and various tradesman put up in housing nearby) at the location
14 of the vacuum tank. The contractor is intimately familiar with site conditions as they have
15 drilled 67 auger cast pilings 70 feet into the earth on the site. In addition to this Wharton
16 Smith has completed 3 concrete foundations on the site (blower deck, chemical tank
17 foundation, and .350MGD WWTP foundation) since June 2016. Each of these foundations
18 were completed on schedule and to specification. The site specific knowledge of the field
19 conditions that has been gained is very useful for planning the existing vacuum tank
20 excavation/removal and the installation of the new vacuum tank. Wharton Smith knows what
21 to expect underground and therefore can anticipate and plan for the local field conditions at
22 the location of the vacuum vessel.

23 I confirmed with the manufacturer's representative of the vacuum tank (AIRVAC) that the
24 anticipated delivery date will not delay the project with regard to the December 25, 2016
25 completion date. The Utility will be working very closely with the contractor in planning

1 the work and the Utility has every reason to believe that the vacuum tank will be fully
2 operational by December 25, 2016.

3 **Q. What is the status of the treatment plant expansion?**

4 A. The 350,000 GPD wastewater treatment plant expansion project is more than 50% to
5 substantial completion (project is in day 185 of 365 day contract). The General Contractor
6 has been paid on Pay Applications 1, 2, 3, 4, and 5 as of this response. With Pay Application
7 #6 forthcoming. The Wharton Smith payment schedule indicates the project will require 12
8 Pay Applications. The Utility has paid the General Contractor \$1,266,093.01 to date which
9 is 30% paid, and more than 30% of the work has been completed as pay applications are paid
10 in arrears.

11 What follows is a brief outline of the work that was been completed as of the date of this
12 response. For the .350 MGD tank foundation: site work, survey and layout was completed,
13 67 auger cast piles were drilled 70 feet into the earth, reinforcing steel was placed and tied,
14 base rings were set and welded per specification, then finally 317 yards (32 concrete trucks)
15 of concrete was poured and finished in a single pour. A rectangular 60 ft. by 15 ft. concrete
16 blower deck was constructed and was also set on auger cast pilings, 4 blowers were set, and
17 the electric conduit was embedded in the concrete. A concrete foundation for 4 chemical
18 tanks has also been completed including the embedded conduit. The fabrication of a steel
19 structure that will hold a dual static screen for the existing East wastewater plant and West
20 treatment plant has been welded into place 17 feet in the air and is being worked on as of the
21 writing of this response. The Power company has run a new service including setting a new
22 power pole to provide the necessary electric to power to the .350MGD plant. Two Class V
23 10" diameter disposal wells were drilled to 110 feet (cased 60 feet) were installed by a
24 certified well driller. The manufacturer of the treatment plant will mobilize onto the project
25 on October 10, 2016 and should have 12 weeks to complete the tank fabrication. The project

1 has proceeded according to plan and all parties (owner, engineer, contractor, subcontractors)
2 are performing high quality work that is meeting the demands of the construction schedule.
3 General Contractor's Division Manager estimates that the project will be done in the first part
4 of March 2017.

5 **Q. Do you have updated estimated costs for completion?**

6 A. Yes, they are attached as Exhibit CAJ-9. This includes the cost of the wastewater treatment
7 plant, and includes a vacuum tank replacement (Change Order 3), and also, amongst other
8 expenditures, engineering inspections which have occurred to date and estimations of
9 engineering expenses that will be incurred through completion of the project. Total estimated
10 costs for the .350MGD Expansion \$ 5,164,748 and the total estimated costs for the Vacuum
11 Tank Replacement is \$407,771.

12 **Q. Witness Merchant claims that the new plant is designed primarily for future growth
13 and growth from the expansion will begin when it is put into service. Do you agree with
14 those statements?**

15 A. No, the growth began long before the expansion. The expansion is not even in service, yet
16 the demand is already here. Second, Ms. Merchant's argument is that existing customers
17 would continue to be served by the existing .249 MGD and .250 MGD plant components
18 somehow divided up based on when customers came on line, and new customers from the
19 .350 MGD expansion. This is very misleading and is absolutely not the way it works in
20 reality. The plant, .849 MGD in total, will be used to serve all customers. The wastewater
21 treatment plant is an integrated plant and the existing plant is an integral part of the total plant.
22 It is not a group of tanks where each tank is assigned to a particular group of customers. One
23 major reason Ms. Merchant's reasoning doesn't work is the DEP requirement that treatment
24 unit processes must have redundancy to allow maintenance personnel to take plants off line
25 for hours, days, or months depending on the nature of the maintenance. Plant Operators must

1 redirect flows from basin to basin, process to process, all the time to accommodate
2 maintenance activities and the notation of dedicated treatment plants is not reflective of how
3 plants function or of how plants are operated. In this case, the demand imposed by existing
4 customers has exceeded the three-month average maximum capacity and the AADF hit 97%
5 in September 2015. Although the plant is to service existing customers, it also has been
6 appropriately sized under DEP rules for customers anticipated to connect within five years.

7 **Q. Ms. Merchant has provided testimony that the annualized expenses from January**
8 **through April 2016 will provide an accurate depiction of the AWT expenses for the year,**
9 **is this correct?**

10 A. No, January through April are typically not the Utility's historical high flow months and
11 therefore by utilizing these months to quantify expense for the entire year would lead to
12 understating expense. The Test Year and the three years proceeding show the first third of
13 the year does not represent a third of the annual flow, it represents less in each case. By
14 annualizing January through April, flow would be underestimated which in turn
15 underestimates the costs of chemicals and power to treat the extra flows. This would also
16 underestimate the amount of sludge generated which, in turn underestimates sludge hauling.
17 The Utility, was required to treat the water using a new process in order to meet the AWT
18 standard effective January 1, 2016. Prior to this the Utility was not required to meet nutrient
19 removal (AWT) and therefore three new chemicals and the dosage rates were being "tuned
20 in" by the plant operations staff during the January to April period. To illustrate, the metal
21 compound used to remove phosphorous was switched during the 4 month period from Alum
22 to Ferric (Iron) as Alum was not efficiently removing phosphorus to meet the new AWT
23 Permit limit of 1.0 mg/L. Ferric costs 15.5% more than Alum and the amount of gallons fed
24 to the process is the same for both chemicals. This chemical expense is understated by the
25 chemical expense difference in cost (15.5%) plus an extra component to account for the fact

1 the Alum solution was underfed at various times during the period. This can be verified by
2 the independent lab results that show on 2 occasions in the period the composite effluent
3 tested at levels higher than 1.0 mg/L for Phosphorus. Another chemical that is important to
4 the AWT process would also be unaccounted for if Ms. Merchant's method were used.
5 Sodium Hydroxide was not fed to the process until June 15, 2016 and this expense would
6 therefore not be captured at all using the January to April annualized. Sodium Hydroxide is
7 currently being fed to the process as of this writing and will continue to be fed going forward
8 to elevate the pH into the 7.0 to 7.4 range which is ideal for the process.

9 The AWT treatment process is biological and biological processes take time to change and
10 because of this operators do not make very large scale changes very quickly. Small single
11 variable adjustments are typically made to change/move the process and then the operator
12 waits (taking lots of measurements along the way) to see how the adjustment affects the
13 process. The AWT treatment process was in its infancy January to April 2016 as the plant
14 had just started running in stable AWT mode in November 2015 and the chemical feed rates
15 (January to April) were clearly not firmly established and they are definitely not
16 representative of what will be fed the remainder of this year or any other year for that matter.
17 Mr. Merchant's methodology characterizes chemical expense much lower than reality due to
18 the fact that one chemical was not fed during the period and another chemicals was changed
19 out; both cases result in expense being understated. If one were to use January to April an
20 Annualize the flows would be 10% to 15% less than if actual flows, based on historical flows.
21 Using 4 of the driest historical months of the year to come up with an annualized amount
22 results in understated the expense.

23 The estimates for O&M expenses contained within the revised MFRs by Ms. Swain
24 accurately depict the O&M costs associated with operating the utility after the new plant is
25 on-line. The plant expansion to .849 mgd will necessitate additional costs no matter what the

1 flows are, or who causes them, regardless whether it is .050 MGD or .250 MGD to operate
2 the plant. Simply calculating a cost per gallon as Ms. Merchant has done does not take into
3 account the fixed cost associated with operating a third plant, including minimum chemicals
4 and power to keep the plant operating no matter what gallonage is treated.

5 **Q. With regard to the pro-forma projects, the costs of which are requested to be recovered**
6 **in this proceeding, do any of them directly relate to the existing portions of the facilities?**

7 A. Yes. The Utility is constructing a chemical farm that will have the 4 chemicals (chlorine -
8 high level disinfection, base solution - pH adjust, metal solution - Phosphorous removal) that
9 are required to treat wastewater to the Advanced Wastewater Treatment (AWT) Standard that
10 will serve the existing capacity as well as the new expansion. The chemical farm consists
11 of a foundation, 4 large HDPE chemical storage tanks with containment, 9 peristaltic pumps,
12 pump skids with purges/isolation valves/calibration tube, online instruments to be installed
13 in existing plant basins (East and West) to measure parameters that are significant for the
14 Nitrification – Denitrification process (ORP and dissolved Oxygen probes), actuated valves
15 are to be cut and welded into existing air header piping to allow for air control in the existing
16 plants, Programmable Logic Controller (PLC) is to be added, proprietary programming and
17 logic development for the PLC based on feedback signals from probes which in turn will
18 dictate how the actuated valves are set in the existing East and West plants.

19 The Utility is also installing stainless steel screening at the headworks of the existing East
20 and West plants. This consists of fabricating a steel structure to hold up a large platform 18
21 feet in the air, the platform will support the static screen (empty weight = 3800 lbs) plus the
22 weight of the contributory piping and the wastewater weight. This platform is designed on
23 top of the 2 existing plants, to allow operator access from the existing catwalk, and the dual
24 stainless steel static screen will be mounted to this platform. The static screen is necessary
25 to remove rags/plastics/debris from the influent waste stream. The mixers, which are

1 resident in the Anoxic Basin in both plants, are very susceptible to rags as they wind around
2 the propeller and the propeller shaft causing the mixers to trip an overload breaker. The
3 mixers were added for AWT in the Anoxic Basin and are AWT specific equipment, the anoxic
4 basin is the signature of a biological nutrient removal treatment plant. If the rags are not
5 removed from the influent waste stream they will eventually cause a mixer failure which in
6 turn could cause an upset in the plant which could lead to regulatory or compliance problems
7 if the plant cannot meet its permit requirements.

8 The Utility is also installing a SCADA system that will have alarms from the existing East
9 and West plants tied into it as well as alarms from the AIRVAC vacuum system that serves
10 1500 EDU's. The Alarms will assist the plant operators in identifying problems when the
11 operators are not physically on top of the plant. Many of the alarms are mission critical and
12 the alarms will be sent to on call personnel via cell phone/email/text, in real time, identifying
13 the plant and basin for the alarm condition.

14 Since this is an integrated system, the components of the plant do not distinguish which flows
15 originate from which customer. Therefore, all of these projects serve to benefit all customers,
16 exiting and new.

17 **Q. Ms. Merchant claims there was a collection of \$310,187 CIAC in 2015 and \$179,281 in**
18 **2016. Is this accurate?**

19 A. No. The contract with Monroe County for South Stock Island Vacuum Sewer Expansion,
20 provided that 1500 EDUs must be repaid to Monroe County. There is approximately
21 \$556,628.40 that may be subject to refund to customers when Monroe County reopens its tax
22 rolls allowing customers to amortize their payment to Monroe County. Of this amount,
23 \$213,912.90 of CIAC collected in 2015 and 2016 may be refunded to customers. In the
24 interim, the utility has identified it as CIAC on its books, but acknowledges that it may be
25 subject to refund. This is identified in Exhibit CAJ-10.

1 **Q. Ms. Merchant claims that Green Fairways does not provide independent management.**
2 **Do you agree with this statement?**

3 A. No, this is a rather bald and vague statement. This was found to not be the case when KEI
4 operated the plant in the previous rate case. As previously testified to Green Fairways
5 oversees capital investments including check signing for large capital projects, directly
6 oversees me in all of my activities as President of the Utility, assists in obtaining loans for
7 the company, including providing the personal guarantee of William L. Smith, Jr. to obtain
8 reasonable lending rates, provides reviews for outside legal bills, provides budget and
9 financial oversight, participates in capital planning, and approves compensation for
10 employees.

11 Ms. Merchant has indicated that because I am related to William L. Smith by marriage that
12 this is not independent management, but provides no evidence that our dealings are not arm's
13 length. I can very adamantly state that William L. Smith, Jr. treats me and the utility
14 operations as a business that must operate with the lowest expenditures possible, benefiting
15 the ratepayers.

16 **Q. Can you comment on the proposed reuse rates as compared to other reuse rates in**
17 **Monroe County?**

18 A. There really are no comparators. Although Monroe County provides a reuse rate, to my
19 knowledge it has no customers due to a lack of demand based on the rate charged and issues
20 associated with reuse. The reuse rates proposed by the utility are fair and I believe will
21 continue to allow the utility receive income from reuse. If reuse rates are raised too high,
22 existing customers will not utilize reuse because it is now treated to AWT which means it no
23 longer contains any nitrogen or phosphorous, which means it does not provide any benefit
24 over potable water and it may contain higher levels of salt from I&I which is not conducive
25 for reuse. Monroe County has already limited its reuse to 32,000 gpd from averaging over

1 60,000 gpd, historically in the past, because of its concerns of using reuse. If rates are
2 increased too high, it may lower the amount of reuse sold. Any reduction in reuse sold then
3 means the reuse is being injected into the groundwater providing no value to the Utility.
4 Because of this, the reuse rate proposed by the utility is reasonable and will continue to
5 provide an income stream other utilities do not have.

6 **Q. Mr. Kevin Wilson of Monroe County claims that the County will increase its purchase**
7 **of reuse water at the Monroe County Jail when more is available after the new plant is**
8 **on-line, can you please comment on this.**

9 A. This is the first this has ever been stated, since November 11, 2009, Monroe County has
10 notified KWRU that it only will accept 32,000 gpd of reuse for the Monroe County jail, which
11 is the minimum Monroe County can accept under its contract with KWRU. KWRU has had
12 excess reuse which Monroe County refuses to accept. Prior to November 2009, it was
13 sending up to 60,000 gpd. It has never notified the utility it will accept more reuse than the
14 minimum amount. Attached to my testimony is Exhibit CAJ-11 an email from Monroe
15 County evidencing their position on this. To date, other than testimony in this case, Monroe
16 County has not agreed to purchase any more reuse for the Monroe County Jail, so Mr. Wilson
17 stating that the amount will increase is news to KWRU and Monroe County has never
18 requested KWRU to provide more reuse which it has been available at any time. KWRU can
19 currently provide more reuse than the demand. Interestingly, Wilson states that sales will be
20 9 – 10 million gallons per year for the jail either this year or next year and another 4 – 5
21 million gallons once Bernstein Park is on-line on page 8 of his testimony but then contradicts
22 himself when he admits the County have only received 3.221 million gallons of reuse in the
23 first seven months of the year on page 37 of his testimony.

24 **Q. Mr. Wilson also claims that once Bernstein Park is redeveloped it will receive an**
25 **additional 4 – 5 million gallons per year, what does this equal to in income at \$.98 per**

1 **thousand.**

2 A. At \$.98 for 5 million gallons per year, it would equal income of \$4,900.00 annually, prior to
3 the expenses in providing reuse.

4 **Q. Mr. Wilson claims that there are approximately 300 existing residential EDUs not**
5 **connected based on FKAA records that will come on-line within the first half of 2017,**
6 **do you agree with this statement?**

7 A. No. Outside of less than 50 residential connections that are identified by contingency work
8 under the South Stock Island Vacuum Extension Project no residential customer has notified
9 the utility that it is not connected and desires to connect.

10 **Q. What do you attribute the discrepancy in FKAA residential customers and KWRU**
11 **residential customers?**

12 A. There are many FKAA residential meters that we do not bill, because there is no residential
13 structure that is contributing wastewater to KWRU. Because we do not service a customer,
14 we do not bill.

15 **Q. Mr. Wilson claims that there is a backup of customers that cannot connect due to**
16 **KWRU's current capacity, is this correct?**

17 A. No, this is not correct. There is currently only one dry line permit issued by the FDEP, which
18 is for the Maloney Avenue line extension which is part of the contingency work I explained
19 above. It equals 28.37 EDUs or 7,092 gpd.

20 **Q. Mr. Wilson also claims that based on a comparison of FKAA and KWRU records there**
21 **are 24 existing general service customers not connected, is this correct?**

22 A. No, again FKAA general service customers are not always connected to central sewer. For
23 example several fish houses have FKAA accounts that do not have wastewater facilities.
24 Another example that I have told Mr. Wilson about is a property owned by a refrigeration
25 company, Subzero. It has an FKAA account for a hose bib, but no drains and no wastewater

1 account.

2 **Q. Mr. Wilson claims there are 24 properties representing 200 EDUs that are unable to**
3 **connect because the utility is at capacity, are you aware of this?**

4 A. First, we are not at capacity. We are close to capacity, not at capacity. Second, there are not
5 24 properties consisting of 200 EDUs that cannot connect. There is currently only one dry
6 line as stated above which represents 28.37 EDUs, far short of 200 EDUs identified by Mr.
7 Wilson.

8 **Q. Mr. Wilson states that there are four projects on North Stock Island he believes will**
9 **connect in mid-2017, the College's additional 200 bed dormitory, Sunset Marina's 60**
10 **residential units, SPCA, and City of Key West property, which he claims will be on-line**
11 **in mid-2017, are you aware of these projects?**

12 A. Yes. Only Sunset Marina has a letter of coordination, a pre-requisite of construction.
13 According to its management, its expected on-line date is 2018, contrary to Mr. Wilson's
14 statement.

15 As to the College, according to College's representatives, the project has not received funding
16 and is still in the design stage. It will be at least 2 years before this is on-line. The last dorm
17 took one year to construct and they haven't even submitted a design.

18 As to SPCA, it has not broken ground as of today's date, and typical construction of a 20,000
19 square foot building will take approximately one year.

20 **Q. Mr. Wilson claims the Bernstein Property will be on-line representing 30,000 gpd of**
21 **flows, is this correct?**

22 A. No, they received a development agreement but do not have their conditional use approval
23 necessary to apply for a building permit. My understanding is they also don't have the
24 development rights, i.e. ROGOs and NROGOs to build. This project will not be on-line
25 before 2019.

1 **Q. Do you have any other concerns regarding the billing rates being based on FKAA**
2 **meters?**

3 A. Yes, Murray Marina, a relatively small marina, last 4 months' bills based on their FKAA
4 meter was \$376.90, \$315.16, \$363.04, \$317.05. This averages to \$343.03. Murrays just
5 installed a dedicated FKAA meter for boat washing and their new usage is 1600 gallons used
6 and the base charge is a 5/8". Their new bill is \$10.08 in usage and base charge is \$31.66,
7 totaling \$41.74. The Difference between average above and this month's is \$301.29 or on an
8 annual basis this amounts to \$3,615.48. This is a relatively small marina, but it shows how
9 dramatic effect this kind of reduction can be. Their new bill is 12% of the former bill. So if
10 this were to happen with several of the larger marinas the affect would be much more
11 dramatic. Therefore, I am concerned whether the usage amounts utilized by the PSC to create
12 the cost for usage will provide the gross revenue granted by the PSC. I am doubtful that the
13 revenues approved will sufficiently provide for the gross revenue granted based on this issue.

14 **Q. Does that conclude your rebuttal testimony?**

15 A. Yes, it does.

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1 CHAIRMAN BROWN: Staff.

2 MS. MAPP: Staff has no questions at this
3 time.

4 CHAIRMAN BROWN: Thank you.

5 BY MR. SMITH:

6 Q Mr. Johnson, if you can give a brief summary
7 of your rebuttal testimony.

8 A Thank you.

9 Christopher Johnson, President KW Resort
10 Utilities. Good morning.

11 My rebuttal testimony seeks to add resolution
12 and accuracy to the estimates for large capital expenses
13 being contemplated in this rate case. Specifically the
14 expansion and AWT related improvement project, as well
15 as the vacuum replacement project. My testimony also
16 addresses monies presently held by the utility that may
17 be subject to refund.

18 The utility operates a vacuum collection
19 system that serves a large portion of the island. This
20 system was originally placed into service in the summer
21 of '03. The system requires a vacuum station that is
22 the engine that pulls all of the wastewater to a common
23 tank or vacuum vessel located at the treatment plant.
24 After the rate case began, the vacuum tank was inspected
25 by qualified experts, and it was found to be in need of

1 replacement.

2 In a short amount of time, the utility
3 prepared technical specification packages, plans and
4 requested proposals. Three bidders were deemed
5 qualified and responsive by our engineer, and the vacuum
6 replacement tank work was awarded to the low bidder,
7 which happened to be the same contractor that is working
8 on the expansion project, Wharton-Smith.

9 To minimize administrative, legal and other
10 fees, the replacement work was added as a change order
11 number three to the Wharton-Smith contract on
12 March 28th, 2016. The total vacuum tank replacement
13 cost projects have been updated and provided by me using
14 purchase orders for equipment, executed quotations and
15 contract amounts whenever possible. And whenever not
16 possible, we utilized engineering estimates and
17 unexecuted proposals. The idea behind this is to
18 provide the Commission account most accurate and current
19 information as possible. The total cost of the vacuum
20 replacement project is approximately \$407,000.

21 Additionally, the expansion in AWT improvement
22 project has been updated in a similar fashion. The
23 total cost of the expansion in AWT related improvements
24 is 5.16 million.

25 The utility has also identified \$556,628.40 of

1 CIAC collected per the CRI contract with Monroe County
2 that may be subject to refund pursuant to the County
3 opening the tax roll to these customers.

4 Thank you.

5 CHAIRMAN BROWN: Thank you.

6 Would you like to tender the witness?

7 MR. SMITH: We would tender the witness.

8 CHAIRMAN BROWN: All right. We will move to
9 Office of Public Counsel.

10 EXAMINATION

11 BY MR. SAYLER:

12 Q Good morning, Mr. Johnson. How are you?

13 A Good morning. Very good. Thank you.

14 Q All right. We are going to try a line of
15 questions that I started asking you yesterday related to
16 a letter that you helped prepare and submit to the
17 Commission on March 21st.

18 A Okay.

19 MR. SMITH: And we would object since this is
20 outside the scope of rebuttal.

21 MR. SAYLER: Thank you.

22 CHAIRMAN BROWN: Was this exhibit --

23 MR. SAYLER: 84.

24 CHAIRMAN BROWN: 84, okay. I am going to
25 overrule it for right now and see where it goes.

1 Staff and Commissioners, this was Exhibit 84,
2 which was an excerpt to utility's response to
3 Sheriff's letter.

4 MR. SAYLER: Do you need a copy, Mr. Johnson?

5 THE WITNESS: Yes, please, if you would.

6 MR. FRIEDMAN: Did you check that stack?

7 MR. SMITH: Just a clarification. I do
8 believe we did admit to have it as a full exhibit
9 once we requested that.

10 CHAIRMAN BROWN: We did not admit 84.

11 MR. SMITH: No, but I wanted him to have the
12 full exhibit.

13 CHAIRMAN BROWN: Okay. Mr. Sayler, did you
14 give him a complete exhibit?

15 MR. SAYLER: I gave him one yesterday. I
16 don't know where it is today.

17 THE WITNESS: I got two copies.

18 MR. SAYLER: I only plan to ask him questions
19 about the excerpts.

20 CHAIRMAN BROWN: Okay. Mr. Johnson, do you
21 have it?

22 THE WITNESS: Yes, I do.

23 CHAIRMAN BROWN: Great.

24 THE WITNESS: Thank you.

25 BY MR. SAYLER:

1 Q All right. Mr. Johnson, would you please turn
2 to CAJ-4, page eight of 269 from your direct testimony?

3 CHAIRMAN BROWN: Mr. Sayler, you said direct?

4 MR. SAYLER: Yes, ma'am.

5 CHAIRMAN BROWN: Okay.

6 MR. SAYLER: Yesterday, I mentioned that I was
7 able to tie it to direct, but at the pleasure of
8 the chair, you said to go ahead and ask it in
9 rebuttal, so thank you for --

10 CHAIRMAN BROWN: Potentially ask it on
11 rebuttal.

12 MR. SAYLER: Okay.

13 MR. SMITH: And this is the issue, is that
14 because we are through the direct, we did not bring
15 the exhibits from his original testimony, unless
16 you have them.

17 MS. HELTON: Mr. Sayler, what page did you say
18 on Exhibit 4?

19 MR. SAYLER: CAJ-4, page eight of 269 of his
20 direct testimony.

21 CHAIRMAN BROWN: Thank you.

22 Mr. Johnson, would you like to take a brief
23 moment to find it?

24 THE WITNESS: Yes. I am trying to locate it.
25 Thank you.

1 CHAIRMAN BROWN: Okay.

2 MR. SAYLER: The County has graciously loaned
3 their copy for his use if he needs it.

4 CHAIRMAN BROWN: Mr. Smith, is that okay?

5 MR. SMITH: That's fine.

6 CHAIRMAN BROWN: Okay.

7 BY MR. SAYLER:

8 Q Are you ready, Mr. Johnson?

9 A Yes, I am.

10 Q Okay. You would agree that, in the PAA
11 portion of this case, staff asked the utility a number
12 of data requests?

13 MR. SMITH: We would object again. This is
14 all going to the direct.

15 CHAIRMAN BROWN: I am going to allow it and
16 see where it goes.

17 MR. SMITH: Okay. Thank you.

18 BY MR. SAYLER:

19 Q All right. This goes to issue 42 in this
20 case. And number 19, the Commission asked the utility
21 to -- about the flat rate for Safe Harbor Marina. And
22 the -- and this was your response: This only relates --
23 this is question number 19 on page CAJ-4, page eight of
24 269. The Commission asked you about Safe Harbor Marina.
25 And in this response, the utility says, this only

1 relates to Safe Harbor Marina, goes on to say -- you
2 stated that on February 27th, 2009, the utility
3 contacted Safe Harbor to alert them of the fact that
4 major redevelopment had occurred, and then the utility
5 goes on to say -- make your way down -- the utility
6 entered into an agreement with Safe Harbor Marina
7 whereby the utility would continue to charge \$1,650.67,
8 not the lower 947, as stipulated in the February 2009
9 letter. And it goes on to discuss the 2009 rate case.
10 Do you see that in your response?

11 A Yes, I do.

12 Q All right. Now, turn to the letter, dated
13 March 21st, and this is the utility's response regarding
14 billing practices, a letter from Commission staff, dated
15 February 18, 2016. And that little bullet point is a
16 quote from that letter, do you see that?

17 CHAIRMAN BROWN: And I am sorry, Mr. Sayler,
18 are you on the Exhibit 84?

19 MR. SAYLER: Yes, ma'am, Exhibit 84.

20 CHAIRMAN BROWN: You said April, it says
21 March 21st at the top of the letter.

22 MR. SAYLER: I apologize. I meant March 21st.

23 CHAIRMAN BROWN: Oh, okay.

24 MR. FRIEDMAN: Where is that?

25 MR. SAYLER: Exhibit 84.

1 MR. SMITH: And where?

2 MR. SAYLER: Page one.

3 MR. SMITH: Okay.

4 THE WITNESS: The March 21st letter I am
5 looking at now.

6 BY MR. SAYLER:

7 Q All right. And there was a question by staff
8 related to Safe Harbor Marina being currently billed a
9 negotiated rate rather than the approved flat rate, do
10 you see that?

11 A Yes, I do.

12 Q And in the utility's discussion, it explains
13 that instead of charging them the \$900 flat rate, they
14 started charging them the \$1,650 rate as -- and it was
15 something that was negotiated between the utility and
16 Safe Harbor Marina, correct?

17 A Am the 1,650.67 --

18 Q Yes.

19 A -- was the rate they were formerly paying, so
20 they continued to pay that rate.

21 Q Even though the Commission ordered a reduction
22 in the rate, correct?

23 A Correct.

24 Q All right. And that change occurred sometime
25 in April of 2009, where they were being charged the

1 \$1,600 rate instead of the \$900 rate?

2 A Correct.

3 Q And if you turn to the last page of -- excuse
4 me, in the excerpt exhibit, there is a letter there,
5 dated April 20th, from Mr. William Smith; do you see
6 that? It's Exhibit A.

7 A Yes, I do.

8 Q And this is where KW notified the Commission
9 of its intent to charge a nontariff rate, correct?

10 A Yes. This is where they notified that there
11 had been an arrangement with the customer and the
12 utility.

13 Q Okay. Are you aware that it takes full
14 commission -- or Commission approval to change a tariff?

15 A Yes, I am.

16 Q All right. If you would turn to page two of
17 the letter, and also turn to page CAJ-4, page 200 of
18 269, page two of the Exhibit 84 letter, where it
19 discusses Sunset Marina. And if you look at CAJ-4, page
20 200 of 269, the utility's response to the staff data
21 request No. 24. And let me know when you see where it
22 discusses Sunset Marina, do you see that?

23 A Yes, I do.

24 Q All right. And based upon your reading of
25 your response to 24, and the bulleted response on page

1 two of the March 21st letter, discussing Sunset Marina,
2 you would agree staff asked the utility some questions
3 about it, and this is the utility's response down below;
4 correct?

5 A Correct.

6 Q Who currently owns Sunset Marina?

7 A The official name is Sunset Marina Holdings, I
8 think -- or I am not sure of the corporate name.

9 Q All right. And who owned it back in 2012?

10 A I am not sure who owned it. I can tell you
11 who the general manager was, who I dealt with.

12 Q And you would agree back in 2012, or in this
13 timeframe, they had two meters, is that correct --
14 excuse me, two master meters, an eight-inch and a
15 two-inch?

16 A I am not certain during the timeframe. The
17 meters have changed over the years. They did have one
18 meter for the entire facility, it might have been an
19 eight and a two, or it could have been a six and a two.
20 I am not exactly sure of the size.

21 Q Okay. And you would agree that Sunset Marina
22 is a general service customer of this utility, correct?

23 A Correct.

24 Q And back in 2012, were they a general service
25 customer or a residential customer?

1 A In 2012?

2 **Q Yes, sir.**

3 A The billing was done on a mixed-use basis, I
4 am sorry. This is, again, an unusual property. This
5 came up yesterday. It has elements of a marina and
6 commercial businesses on one part, and on the other
7 part, it has residences, private residences. As a
8 result of that, the general manager of Sunset Marina at
9 the time, Joann Alexander, contacted the utility about
10 this issue. The utility worked with Ms. Alexander,
11 referred her to the Public Service Commission, and the
12 Public Service Commission intervened in three-way
13 conversations between the utility, the customer and the
14 Public Service Commission.

15 In the course of these conversations, various
16 unusual circumstances were described to the Commission,
17 and we worked through the problem. And I think in the
18 exhibit, there was some evidence that the issue worked
19 itself out to resolution with all parties being
20 satisfied.

21 This is a complicated issue. There is a lot
22 of different things going on. There as lot of different
23 uses on the property. We took the time to analyze each
24 one, and go over in detail how the property was set up.
25 The unusual fact that there is two different legal

1 entities sharing a water meter almost never happens, I
2 said that yesterday. I can't think of another example
3 where this is the case, so this example here is just a
4 very tricky, difficult technical customer to assign
5 billing to. And for that reason, we had these
6 discussions and worked through it with the Commission
7 and the customer.

8 **Q All right. You would agree that currently**
9 **they are charged two general service base facility**
10 **charges on their eight-inch and two-inch meter, is that**
11 **correct?**

12 A I am not sure their exact meter configuration,
13 but they are a general service customer. They are
14 billed off their meters per the general service tariff,
15 exactly off that tariff.

16 **Q And you would agree that they are charged the**
17 **general service gallonage rate for wastewater flows,**
18 **correct?**

19 A That's correct.

20 **Q And previously -- or excuse me, this is -- you**
21 **mentioned this is an unusual configuration, so it has**
22 **FKA master meters, and then it has sub, smaller**
23 **residential meters, correct?**

24 A There were at one time functioning submeters
25 that were not FKAA, but rather maintained and by the

1 condominium association and their staff.

2 Q And back when those meters were being
3 maintained, did the utility charge individual
4 residential base facility charges for those to the condo
5 association?

6 A Yes, back then they did.

7 Q And when did that practice change? Was that
8 after the issuance of this PAA order in this case?

9 A Yes.

10 Q Now, would you please turn to page four of
11 Exhibit 84? And if you are still looking at page 200
12 and 201, the Commission staff asked you a number of
13 questions about, please provide a list about meter size
14 of all general service customers, and the method in
15 which they are billed. Do you see that on No. 22 on
16 page 200?

17 A Yes, I do.

18 Q All right. And it says, see attachment 3-22?

19 A Yes.

20 Q All right. And in that question -- or excuse
21 me, and then look on page four. At the top, it says,
22 general service customer with a six-inch meter is being
23 billed for BFC facility base charges for five-eight by
24 three-quarter-inch meters for each if its 103 units, and
25 then another general service customer is being billed

1 for another 49 units; do you see that?

2 A Yes, I do.

3 Q You would agree, that information was provided
4 to staff through these -- through the utility's
5 responses to this data request on page 200 and 201 of
6 your direct testimony, correct?

7 A I would assume so.

8 Q Okay. And you would agree that Meridian West
9 Sunset Marina and Flagler Village are currently general
10 service customers, correct?

11 A Yes. That's correct.

12 Q And they are being currently billed a general
13 service rate for the gallonage, correct?

14 A That's correct.

15 Q But previously, they were considered a general
16 service customer for gallonage rate, correct?

17 A I believe that was the case.

18 Q And previously, they were being charged
19 individual base facility charges for each of the units
20 that were behind the master meter?

21 A Yes. That's correct.

22 Q And for these three properties, Sunset Marina,
23 Meridian West and Flagler Village, who owns that master
24 meter? That master water meter, excuse me.

25 A Sunset Marina's is paid for by Sunset Marina.

1 Meridian West is paid by their management company. And
2 Flagler Village is paid by the management company as
3 well.

4 **Q All right. Now -- but the owner of that**
5 **actual meter would be the Florida Keys Aqueduct**
6 **Authority, correct?**

7 A Correct. Those are Aqueduct meters.

8 **Q And you would agree that there are submeter or**
9 **deduct meters behind of master meter, but those meters**
10 **aren't owned Hines the FKAA, is that correct?**

11 A That is correct. Those are internal meters
12 that they own, control and operate, not FKAA.

13 **Q And what is the difference between a master**
14 **meter and a deduct meter?**

15 A Typically, a master meter is defined as a
16 meter that all the water to a property would flow
17 through. A deduct meter is traditionally something
18 that's subtracting out.

19 So an example would be, on a property that has
20 a dedicated fire line, or dedicated irrigation line,
21 they may put a deduct meter behind the master meter to
22 measure those flows that are going to irrigation, thus
23 not returning to the sewer, or fire, again, and not
24 returning to the sewer. So those are ways to measure
25 sort of sidestream flows to separate them off the

1 plaster flow.

2 Q And ultimately, whoever is responsible for the
3 master meter is responsible for that difference between
4 the submeters, correct, in paying for the water to FCAA?

5 A That would be logical, but that's -- again,
6 that would be FCAA policy.

7 Q Okay. Again, returning to page four of the
8 Exhibit 84. Midway down through the last paragraph,
9 where it says, "these accounts were erroneously
10 reclassified."

11 A Erroneously, yeah. Yeah.

12 Q Would you read that -- read those sentences to
13 the end of the paragraph, please.

14 A Sure. These accounts were erroneously
15 misclassified in the utility's new billing system as
16 general service, rather than residential. Because of
17 the misclassification, they were billed at the general
18 services gallonage rate of four-sixty-four per thousand
19 gallons rather than the correct three-eighty-seven per
20 thousand gallons residential gallonage rate. As a
21 result of this error in 2015, Meridian West was
22 overbilled \$3, and I think it's 30 cents. The copy is a
23 little blurry here -- per unit per month. In the same
24 manner, Flagler Village was overbilled four-sixty-two
25 per unit per month. For calculations and backup

1 information please see exhibit --

2 Q F?

3 A -- F. The utility regrets these errors and
4 will be making a refund with interest and overpayments.
5 In that regard -- I am sorry, with interest for any
6 overpayments. In that regard, please have someone
7 provide me with the monthly interest amounts since 2009.

8 Q **And that request was for staff to calculate**
9 **the interest payments, is that correct?**

10 A I think the intention was that the utility
11 would calculate it, but I don't think the utility would
12 have a problem with the staff doing the calculation.

13 Q **All right. Now, you say that these two**
14 **properties are currently general service customers on a**
15 **gallage rate, correct?**

16 A That is correct.

17 Q **But your proposed refund is to refund the**
18 **difference between the gallage rate and the**
19 **residential rate, correct?**

20 A The intention in the refund is to give the
21 full refunds to the customer.

22 Q **All right. Now, wouldn't these two customers**
23 **be owed refunds for the erroneously charged residential**
24 **customer base facility charges?**

25 A Yes, they would.

1 Q Are you familiar with Florida Public Service
2 Commission Rule 25-307.350? It's entitled underbillings
3 and overbillings for water and wastewater service.

4 A In the past, I have read that rule, but I can
5 be refreshed, if that would help.

6 Q All right. Let me read you subsection (2), it
7 says, quote, "in the event that an overbilling, the
8 utility shall refund the overcharge to the customer
9 based upon available records. If the commencement date
10 of overbilling cannot be determined, then an estimate of
11 the overbilling shall be made based upon the customer's
12 past consumption."

13 A Yes, sir.

14 Q In your opinion, are the two marinas we
15 discussed, Safe Harbor Marina and Sunset Marina, as well
16 as the two homeowners' associations, Meridian West and
17 Flagler Village, are they owed -- excuse me, are they
18 owed refunds for improper billing, or excuse me,
19 overbilling?

20 A Yes and no. Let me qualify.

21 Q Certainly.

22 A I would agree that Meridian West and Flagler
23 Village are entitled to their full refunds with
24 interest, as stated in the letter. As to Sunset Marina,
25 I don't believe they are subject to a refund. I believe

1 that the Commission, the customer and the utility
2 entered into discussions and worked through the
3 situation to everyone's satisfaction. So I don't
4 believe it would be fair to require the utility to
5 refund monies in that case.

6 Now, Sunset Marina, the situation is similar.
7 Again, Sunset Marina and the utility came to an
8 agreement that, because of extensive redevelopment, the
9 situation in the complex in the property had changed,
10 and had come to a settlement on that. Since that time,
11 the utility has also resolved with Sunset -- I am sorry
12 with Safe Harbor Marina, their capacity issues and other
13 issues surrounding the property. We signed a settlement
14 agreement this past year. That very issue of the
15 billing situation was part of the original complaint
16 that was filed with the Public Service Commission, and
17 at the resolution of our assessment, Mr. O'Connell, the
18 owner of property, and his attorney, seemed satisfied
19 and no other refunds were necessary.

20 **Q Now, you would agree that the utility often**
21 **enters into assessments and agreements with some of its**
22 **customers regarding billing disputes and issues; is that**
23 **correct?**

24 **A** We have entered into them in the past,
25 however, it's not common practice.

1 Q All right. You would agree that, for
2 instance, in 2009, there was some sort of agreement
3 between -- or alleged agreement between the utility and
4 Sunset Marina, correct -- excuse me, Safe Harbor Marina,
5 related to the change in the billing rate from the 900
6 to 1,600?

7 A Yes, there was an agreement that was in
8 writing.

9 Q Now, why didn't to the utility bring that
10 agreement to the Commission for formal review and
11 approval?

12 A I can't answer that question.

13 Q All right.

14 A I don't know.

15 Q All right. With regard to the current
16 settlement that you discussed with the same customer,
17 have you brought that to the Commission for review and
18 approval?

19 A No, we have not.

20 Q Okay. Were you here last night during the
21 customer service hearing?

22 A Yes, I was.

23 Q Do you recall a discussion with -- from two
24 representatives in Boyd's Campground about a special
25 contract between the utility and Boyd's Campground?

1 A There were three, the brothers and Bob Jones
2 that came last night, yes, I remember.

3 Q **And that agreement was signed many years ago**
4 **before your involvement with the utility, correct?**

5 A Yes, sir.

6 Q **To your knowledge, was that agreement ever**
7 **brought forward to the Commission for review and**
8 **approval as a special tariff?**

9 A I don't believe as a special tariff. I do
10 believe, as a matter of practice, the utility does send
11 developer agreements to the Commission.

12 Q **All right. Now, do you know if the Commission**
13 **has, as part of this hearing record, the Boyd's**
14 **Campground special contract for its review?**

15 A Attorney Barton Smith indicated that he would
16 make that available, and that he had thought it was
17 already part of the record.

18 Q **Can you direct me where that might be in the**
19 **record? I went through the discovery last night and I**
20 **didn't find it.**

21 CHAIRMAN BROWN: Yeah, Mr. Smith, I think -- I
22 forget which party here suggested that it was in
23 the record already.

24 MR. SMITH: It is. It absolutely is. There
25 is discovery request asking every contract for

1 services with the utility since 2003. It was
2 specifically provided as one of the contracts for
3 service. It is the same contract for service that
4 has been utilized for every customer, and so you
5 are not going to see anything in the contract
6 excepted to fill in name, fill in date, but has
7 already been made a part of discovery, so asking
8 this witness where it's located in the over hundred
9 gigabits worth of discovery that --

10 CHAIRMAN BROWN: Okay.

11 MR. SMITH: -- was provided is laughable.

12 CHAIRMAN BROWN: Okay. Mr. Sayler.

13 MR. SAYLER: My understanding is that Harbor
14 Shores asked for that in discovery, and none of
15 Harbor Shores' discovery is part of this record
16 because staff didn't ask for it to be included in
17 the hearing exhibit. So if it's possible to carve
18 out that one at the request of the customer so it
19 can be part of this record, so the Commission staff
20 has the ability to review it and make whatever
21 recommendation they feel is proper for the
22 Commission, I think it would be good to have.

23 CHAIRMAN BROWN: Okay.

24 MR. SMITH: We would object to that on several
25 grounds.

1 First, the customer did not provide it at the
2 meeting last night.

3 Second, that agreement, as all our agreements,
4 state specifically is notwithstanding anything
5 contained in here to the contrary. The utility's
6 tariff controls, and so the PAA order went into
7 effect with the new tariff rates and the
8 requirement to bill off of FKAA meters, that
9 subject of that agreement to change.

10 So the idea of going back and reviewing an
11 agreement that specifically has a provision, as all
12 our agreements do, then notwithstanding anything
13 contained in the agreement to the contrary, the
14 tariff controls if of no use or affect considering
15 that unless the Commission is going to start
16 carving out tariffs for every customer, there is no
17 reason to provide an agreement that is subject to
18 this Commission's control.

19 CHAIRMAN BROWN: Thank you, Mr. Smith. Just a
20 second.

21 Staff, listening to the discussion that is
22 occurring right now, what is your recommendation?
23 Do we have something in the record with regard to
24 the contract that was discussed at the service
25 hearing last night?

1 MS. MAPP: There is currently nothing in the
2 record as discovery has not yet been entered into
3 the record. However, to the extent that Harbor
4 Shores asked document request for utility developer
5 agreements, that production contained documents
6 dating as far back as 1993, and was quite
7 voluminous, so --

8 CHAIRMAN BROWN: Is that identified or marked
9 as a prefiled exhibit in one of the staff's --

10 MS. MAPP: No, it is not.

11 CHAIRMAN BROWN: But it was produced during
12 discovery?

13 MS. MAPP: I can check right now to make sure,
14 but, as I said, quite a lot of developer agreements
15 from 1993 have been, and so I can check if I can be
16 given a minute.

17 MS. CRAWFORD: Just a minute or two trying to
18 confirm whether we have access to those documents.

19 CHAIRMAN BROWN: All right. Let's take a
20 five-minute break. We will reconvene at 10:17.

21 (Brief recess.)

22 CHAIRMAN BROWN: Okay. We are reconvening the
23 hearing now and back on the record.

24 MR. SAYLER: Madam Chairman.

25 CHAIRMAN BROWN: Yes.

1 MR. SAYLER: After consulting with the
2 utility, he has e-mailed to all the parties,
3 including staff, the developer agreement, the
4 subsequent letter to Boyd's regarding the -- hold
5 on.

6 MR. SMITH: Clarify, it's a letter from Boyd's
7 on stating their understanding of how their
8 wastewater flows would be billed by the utility.

9 MR. SAYLER: And it's two documents, and they
10 are okay with stipulating that into the record.
11 And the staff can review it, look at it and make
12 whatever decision or recommendation staff would
13 like to to the Commission regarding this
14 campground.

15 CHAIRMAN BROWN: Okay. First we need
16 confirmation that staff -- that staff has this in
17 its possession.

18 MS. MAPP: Yes, staff has the letter that was
19 just e-mailed. We are reviewing it now. And we
20 also have the utility agreement that was also just
21 e-mailed.

22 CHAIRMAN BROWN: Do we need to mark that as an
23 exhibit?

24 MS. MAPP: Yes, if OPC wants to enter it into
25 the record, it would need to be marked.

1 CHAIRMAN BROWN: Okay. So, Public Counsel,
2 obviously the commissioners don't have a copy. It
3 was something I was interested in last night, too,
4 so I was going to raise it as a question. Can we
5 get a copy of it?

6 MR. SAYLER: Certainly. I don't know about
7 printing facilities, but we can certainly ask
8 someone -- yes, we can get that.

9 CHAIRMAN BROWN: Or even e-mail to the
10 commissioners so that we can access it on --

11 MR. SAYLER: Certainly, Ms. Mapp, would you be
12 able to forward it to the commissioners?

13 MS. MAPP: Yes.

14 CHAIRMAN BROWN: Okay. Great.

15 So, Mr. Sayler, we are going to mark that as
16 Exhibit 104.

17 MR. SAYLER: Okay.

18 CHAIRMAN BROWN: And could you give me a
19 title, please?

20 MR. SAYLER: Sure, Boyd's letter and --

21 MR. SMITH: I would do it as two.

22 MR. SAYLER: You want two different exhibits?
23 That's fine.

24 MR. SMITH: Yes, because it would probably be
25 easier for me to explain it.

1 So the first I would identify as Boyd's
2 Campground's Developer's Agreement.

3 CHAIRMAN BROWN: Okay. We are going to mark
4 that as 104.

5 (Whereupon, Exhibit No. 104 was marked for
6 identification.)

7 MR. SMITH: And then the second is a letter
8 from Mr. Daniel Hamilton, dated July 16, 2004, to
9 KWRU. And if you need hard copies, I can forward
10 this to my office and they can print it off.

11 CHAIRMAN BROWN: That's okay. We can have
12 access by e-mail right now. So 104 is being
13 proffered by Public Counsel, or utility, or this
14 witness?

15 MR. SAYLER: We will put it into the record.

16 CHAIRMAN BROWN: All right. And that's going
17 to be Boyd's Campground's Developer Agreement.

18 105 is letter from D. Hamilton dated --

19 MR. SMITH: July 16th, 2004.

20 CHAIRMAN BROWN: 2004, all right.

21 (Whereupon, Exhibit No. 105 was marked for
22 identification.)

23 MR. SMITH: Just for reference, the tariff
24 language I cited is paragraph 6A.

25 CHAIRMAN BROWN: Okay.

1 MR. SAYLER: And with regard to -- Public
2 Counsel doesn't take any position on what the
3 Commission should do with regards to this, other
4 than just it was brought up as a customer concern
5 last night, and we thought it would be good for the
6 Commission to have.

7 CHAIRMAN BROWN: Thank you.

8 Okay, you can proceed now.

9 BY MR. SAYLER:

10 Q All right. Mr. Johnson, hang on to your
11 direct testimony, because I have a few questions on your
12 rebuttal testimony that will tie back to your direct
13 testimony, okay?

14 A Okay.

15 Q All right. And you were the witness that
16 provided the supporting documentation for the increasing
17 costs of the wastewater plant expansion project,
18 correct?

19 A Correct.

20 Q And you would agree that in July of 2015, the
21 expansion project was estimated to cost 3.7 million?

22 A Correct.

23 Q And then about a year later, the costs have
24 increased to 4.3 million according to the signed
25 contract with Wharton-Smith, is that correct?

1 A That's correct. We moved from the engineering
2 estimate to a signed contract.

3 **Q And then you also included another 610,000 for**
4 **the vacuum tank project, correct?**

5 A Correct.

6 **Q And when will the utility start breaking**
7 **ground on the vacuum tank project?**

8 A Probably in December, or the very latest,
9 right after the new year.

10 **Q And earlier, when I deposed you on this**
11 **matter, the vacuum tank was supposed to be completed by**
12 **December, is that correct?**

13 A The initial plan was to have it installed and
14 in the ground by December 25th of this year. Because of
15 Hurricane Matthew, some delays, the fact that the
16 temporary tank that we will need to use is currently in
17 service in Key Largo, puts a little uncertainty as to
18 whether we will be able to get it in the ground
19 December 25th.

20 **Q So schedule slips and other locations are**
21 **affecting you?**

22 A That's correct. We are depending on that
23 temporary tank. We will be using that tank to collect
24 sewage while we do our project.

25 **Q Okay. Now, as a result of Hurricane Matthew,**

1 have there been any delays in the wastewater treatment
2 plant expansion?

3 A No, there have not. In fact, the most recent
4 progress meeting, the general contractor reports ahead
5 of schedule.

6 Q And when do you expect it to be completed?

7 A So if he is saying ahead of schedule, we were
8 early March, and he is saying he is ahead of schedule.
9 Early March 2017.

10 Q So you expect to be -- it to be in service in
11 early March of 2017?

12 A I do.

13 Q And in your rebuttal on March 10th, you would
14 agree that both the wastewater expansion project and the
15 vacuum tank replacement project costs have changed,
16 correct?

17 A Yes.

18 Q The expansion project has increased to 5.1
19 million, and the vacuum tank project has decreased to
20 \$407,000, correct?

21 A Correct.

22 Q Now, let me ask you this question: Is the
23 \$5.1 million, does that include the vacuum tank project,
24 or is the vacuum tank project in addition to the 5.1
25 million?

1 A It is in addition to the 5.1.

2 **Q And you would agree that the final costs of**
3 **the two projects are estimated, but they are not -- you**
4 **don't know the actual dollar amount for those two**
5 **projects?**

6 A That's correct. As much resolution was put
7 into those numbers as possible, but every single
8 component of the project is not paid for at this point,
9 or contracted at an exact dollar amount.

10 I think I did the calculation, and I think
11 about 92 percent of the costs are known costs. So we
12 are really getting to the point where the costs are
13 being nailed down.

14 **Q All right. And that is typical in most large**
15 **engineering projects, that the closer you get to**
16 **closing, the more accurate your final numbers are,**
17 **correct?**

18 A Yeah. In general, that's true.

19 **Q And to your knowledge, are there any surprises**
20 **that are out there, any issues that could potentially**
21 **increase or decrease the project?**

22 A There is certainly a possibility that
23 something could arise. I think, at this point in the
24 project, the probability of that is getting less and
25 less.

1 **Q Well, that's good to hear. Thank you.**

2 All right. On page nine, starting line 17 of
3 your rebuttal, you discuss Ms. Merchant's claims that
4 there is a collection of 310,000 CIAC in 2015, and
5 179,000 in 2016; do you see that?

6 A Yes, I do.

7 **Q You would agree that the utility did, in fact,**
8 **collect these two amounts of CIAC in 2015 and 2016,**
9 **correct?**

10 A Yes, we did.

11 **Q And you would agree that you are saying some**
12 **of these dollars, about 213,000, might be refunded to**
13 **customers; is that correct?**

14 A I use the word "might".

15 **Q Okay.**

16 A Only really because the process where the tax
17 roll gets opened is not really something the utility has
18 control over. So should that happen, I think the word
19 "might" becomes "will".

20 **Q Now, you would agree that none of the refunds**
21 **have occurred, correct?**

22 A Correct.

23 **Q Now, the 213 refunds, is that refunding of**
24 **money that was collected in '15 and '16, or include**
25 **monies that were collected earlier?**

1 A The 213 specifically is collected in 2015 and
2 '16.

3 **Q All right. And you would agree that the**
4 **utility cannot force a customer to go on to the County's**
5 **tax roll, is that correct?**

6 A I don't believe the utility can, but the
7 County may have that authority.

8 **Q And yesterday, there was some testimony**
9 **about -- strike that question.**

10 On page five of your rebuttal testimony, you
11 were asked a question about the total estimated cost for
12 the expansion, and previously you testified it's about
13 \$5.1 million, correct?

14 A Correct.

15 **Q And those -- that estimated cost is listed on**
16 **CAJ-9 of your direct testimony -- rebuttal testimony?**

17 A Correct.

18 **Q Let's turn to CAJ-9, page one of one.**

19 CHAIRMAN BROWN: Page one of seven?

20 MR. SAYLER: Yes, ma'am. I went to CVS
21 pharmacy last night for my cold and I am afraid
22 it's showing.

23 No, it's CAJ-9, one of seven. I will share
24 mine, can I have my sheet back? If it's not your
25 exhibit, then you don't want the cost, right?

1 CHAIRMAN BROWN: Okay, Mr. Johnson, you got a
2 copy?

3 THE WITNESS: Yes, I do. Thank you.

4 CHAIRMAN BROWN: Please proceed.

5 BY MR. SAYLER:

6 Q You would agree, at the very top of the page,
7 you see a dollar amount, \$4.3 million. That's the
8 original Wharton-Smith contract price, correct?

9 A Correct.

10 Q And then you go on down the page, and below
11 the line, where it says, current amount remaining on
12 contract, all of those costs that are below that line
13 are all additional costs that have been added to the
14 project since the contract was signed with
15 Wharton-Smith, is that correct?

16 A No, not all those are. In the first line,
17 there is \$554,182.97 line item. Those were actual paid
18 to date as of 9/27/2016, excluding any Wharton-Smith
19 items.

20 Q Okay. And below that amount, the 29,000 that
21 you gave out 10,000 for legal, 113 for engineering,
22 those are all additional costs to that 4.3; is that
23 correct?

24 A For the most part, yes.

25 Q All right. Would you look at page of your

1 CAJ-3, 12 of 127 from your direct testimony. Did you
2 give your direct testimony back to the County, the one
3 that you borrowed earlier?

4 CHAIRMAN BROWN: You said CAJ-3, what number?

5 MR. SAYLER: Page 12 of 127. At the top of
6 the page, it says, negotiated bid form.

7 CHAIRMAN BROWN: If you have an extra copy for
8 him, just to speed things along.

9 THE WITNESS: I have it. I have it.

10 CHAIRMAN BROWN: Great. Thanks.

11 BY MR. SAYLER:

12 Q Looking at the negotiated bid form, you will
13 see a description of the number of projects, do you see
14 that?

15 A Yes, I do.

16 Q And looking at the bottom half, the skid
17 project, and below on CAJ-9, you agree that a lot of
18 these items are also the same items on the negotiated
19 bid form, correct?

20 A Some are and some aren't.

21 Q Okay. You would agree that the engineering is
22 not on the negotiated bid form, correct?

23 A Correct.

24 Q But the other hard items, some of them like
25 chemical skids, tanks, stainless steel cables, anchors,

1 **those are part of the negotiated bid form, correct?**

2 A Mostly. There was one item in particular,
3 there was a SCADA screen the utility purchased, we had
4 it for about a year, and for permitting complications,
5 we haven't been able to install it. So that would be
6 one item that's really not mart part of the
7 Wharton-Smith, we have that. But the second
8 Wharton-Smith screen -- I am sorry the second SWECO
9 screen would be.

10 Q Okay. So you would agree that the second
11 SWECO screen was previously included in the 4.3 million,
12 correct?

13 A Correct.

14 Q And so the dollar amount down below should be
15 a deduction to that 4.3 million, correct?

16 A Correct, that would be deducted out.

17 Q And did you deduct that out on your page one
18 of seven of CAJ-9?

19 A I did not.

20 Q Thank you.

21 Now, regarding CAJ-9, this exhibit is a
22 summary of updated costs for the completion of the
23 wastewater treatment plant project, as well as the air
24 vac tank -- or excuse me, the vacuum tank replacement
25 project, correct?

1 A No, on CAJ-9, page one of that 5.1 total is
2 just for the expansion and AWT improvements. The vacuum
3 is contained on another page, that's page six of seven,
4 the \$407,771.48.

5 **Q Plus another 24,000 for engineering on page**
6 **seven of seven?**

7 A The future engineering is actually included.
8 It's captured in the fourth line item on page six of
9 seven.

10 **Q Thank you for that clarification.**

11 Now, would you please look at pages two, three
12 and four of your exhibit CAJ-9? Do you see those?

13 A Yes, I do.

14 **Q And are these excerpts from your general**
15 **ledger that were included in this exhibit?**

16 A Yes, they are.

17 **Q All right. And you would agree that, on the**
18 **top of page two, the first date is 12/1/2012, correct?**

19 A Correct.

20 **Q And on the top of page three, the first date**
21 **is 7/30/2015, correct?**

22 A Correct.

23 **Q And the top of page four is dated 6/28/16,**
24 **correct?**

25 A Correct.

1 Q Do you recall when your direct testimony was
2 prepared?

3 A I don't know the exact date.

4 Q Was it sometime in the June timeframe for the
5 filing of July 1st?

6 A Yes.

7 Q You would agree that many of these expenses
8 that you update the costs for in your rebuttal testimony
9 were actually incurred up to four years before your
10 direct testimony was filed?

11 A Yes, there were costs that were incurred
12 several years before I filed.

13 Q But you did not include those in your direct
14 testimony? Yes or no?

15 A No.

16 Q Thank you.

17 And earlier you testified that of SCADA was
18 not part of the Wharton-Smith contract?

19 A SCADA was included in, if you look at it from
20 the point of view that the PLCs themselves are included
21 in the Wharton-Smith contract. Some of the other
22 equipment -- I am sorry, programmable logic controllers.

23 Q And what is SCADA? Can you explain what SCADA
24 is?

25 A SCADA is the monitoring system that controls

1 all the basins, sets off alarms if there is a high level
2 in a basin. It's really what protects the plant from
3 having some sort of environmental hazard. It's tied
4 into a call system, which would go out to the operator
5 who's on duty, either text message, send an e-mail or
6 call if any of these alarm conditions occur.

7 SCADA also has to do with the control. SCADA
8 is an integrated system that uses computers, if you
9 will, PLCs, to monitor certain levels in certain basins
10 to make sure that the basins stay within the set points
11 as prescribed by the operations manual, or the engineer,
12 or the operator.

13 **Q Thank you.**

14 And on page one of seven, you do include
15 across for SCADA, correct?

16 A I do.

17 **Q And then you also have another line item on
18 that page called legal to end-of-project for \$10,000?**

19 A Correct.

20 **Q And that is related to dealing with vacuum
21 tank portion of the project, fence issue and close-out
22 issue, is that correct?**

23 A Yes. This line item actually is the one line
24 item that sort of violates my rule of keeping the vacuum
25 tank separate in my presentation.

1 **Q Okay.**

2 A There is -- there is a land issue, easement
3 use issue. When we put this vacuum station in -- I am
4 sorry, vacuum tank in, we are going to have to take out
5 a tank, put a temporary tank in and then construct a new
6 pump -- the new tank. All of this happens in the front
7 gate to our facility. We are going to have to take our
8 gate out of service where we currently drive our
9 vehicles in; and not only we drive our vehicles in, the
10 contractors that are currently building our expansion
11 project need to get in and out with supplies, equipment
12 et cetera.

13 In the interim, we have an easement. To
14 utilize our easement, we have had to hire tree
15 contractors to take down trees to clear the easement,
16 move fences and set up a new gate so that we can enter
17 and exit the property while the vacuum tank replacement
18 project is under way.

19 **Q And was that \$10,000 originally included in**
20 **your vacuum tank project?**

21 A No, it wasn't.

22 **Q And then the \$113,000 for edge nearing, that**
23 **was not included in your direct testimony, correct?**

24 A I believe that's correct.

25 **Q And the chemical skids on page one, where you**

1 see the Hawkins quote, dated 7/16/2016?

2 A Yes, sir.

3 Q Were chemical skids, that's cost included in
4 your direct testimony?

5 A No, they were not.

6 Q But you would agree that chemical skids were
7 included in the 4.3 million Wharton-Smith contract,
8 correct?

9 A No. We removed those because the utility
10 could buy them much cheaper and save the utility money
11 in the end.

12 Q Is it your testimony that the chemical skids
13 are not on the negotiated bid form in your direct
14 testimony?

15 A They should not have been.

16 Q But you see them listed there, correct?

17 A Yes, I do see them there.

18 Q All right. Thank you very much.

19 MR. SAYLER: No further questions?

20 CHAIRMAN BROWN: Thank you, Mr. Sayler.
21 Monroe County.

22 MR. SAYLER: Oh, and I have been notified that
23 we do have the exhibit for the appropriate time.

24 CHAIRMAN BROWN: Okay. Thank you.

25 Could we have staff pass those out to the

1 Commissioners and to the court reporter?

2 MR. SAYLER: And again, I would like to thank
3 the utility for being able to find those and
4 provide them to everyone, so thank you, Mr. Smith.

5 CHAIRMAN BROWN: Thank you.

6 MR. SAYLER: And the County for copying it at
7 taxpayer expense.

8 CHAIRMAN BROWN: And we are happy to have
9 them. Thank you.

10 MS. CRAWFORD: Commissioners, for clarity,
11 what's being handed out, there are actually two
12 sets of exhibits. The first are the 104 and 105
13 associated with cross. Also, since Monroe County
14 is about to begin it's cross-examination, we are
15 also passing out Monroe County exhibits.

16 CHAIRMAN BROWN: Thank you, Ms. Crawford, for
17 require clarification, so the utility agreement is
18 104 and the letter is 105.

19 Okay. So, Mr. Wright, we will begin with
20 marking this as 106.

21 MR. WRIGHT: Thank you, Madam Chairman.

22 If we could, I would actually, if they are
23 lucky, they handed them out in the order which I
24 intend to introduce them. KWRU's response to staff
25 interrogatory No. 24, I would like to be marked as

1 106. That's the first one I will take up.

2 CHAIRMAN BROWN: That's the only one that I
3 have actually. Commissioners, do you have another?

4 MR. WRIGHT: There should be two more on their
5 way to you, Madam Chairman.

6 CHAIRMAN BROWN: Okay. Let's hold off for a
7 sec.

8 MR. SAYLER: Mr. Wright, were you handing out
9 three exhibits for this witness?

10 CHAIRMAN BROWN: Three.

11 MR. WRIGHT: Yes. There are three, and I
12 think the staff actually packaged them together as
13 packets of three.

14 CHAIRMAN BROWN: Okay.

15 MR. WRIGHT: That may be what happened here.
16 So you should have -- everyone should have three
17 documents, one described as KWRU's response to
18 staff interrogatory No. 24.

19 CHAIRMAN BROWN: We are going to mark that as
20 106.

21 MR. WRIGHT: Thank you.

22 (Whereupon, Exhibit No. 106 was marked for
23 identification.)

24 CHAIRMAN BROWN: Okay.

25 MR. WRIGHT: The next one I would like marked

1 as 107 is e-mails re potential Key Haven flows.

2 CHAIRMAN BROWN: Okay. Mark that as 107.

3 (Whereupon, Exhibit No. 107 was marked for
4 identification.)

5 MR. WRIGHT: And then 108, the other exhibit,
6 is e-mails between Christopher Johnson and Kevin
7 Wilson re additional connections I would like
8 marked as 108.

9 CHAIRMAN BROWN: Okay. We will do that as
10 well.

11 (Whereupon, Exhibit No. 108 was marked for
12 identification.)

13 CHAIRMAN BROWN: Okay. I believe you have the
14 floor, Mr. Wright.

15 MR. WRIGHT: Thank you, Madam Chairman, if I
16 could have a few seconds.

17 CHAIRMAN BROWN: Sure.

18 MR. WRIGHT: I am catching up with --

19 CHAIRMAN BROWN: Paper.

20 MR. WRIGHT: Okay. Thank you very much for
21 that indulgence.

22 EXAMINATION

23 BY MR. WRIGHT:

24 Q Good morning, Mr. Johnson.

25 A Good morning.

1 Q One thing we can agree on, go Cubs.

2 A Absolutely.

3 MS. AKTABOWSKI: And the elections are today.

4 MR. SMITH: Yeah, as a White Sox fan --

5 CHAIRMAN BROWN: You object?

6 MR. SMITH: No, I am a Chicago fan.

7 CHAIRMAN BROWN: Good. So am I.

8 BY MR. WRIGHT:

9 Q Okay, Mr. Johnson, at page five of your
10 rebuttal testimony, you talk about future growth and
11 growth expansion. I just wanted to confirm something
12 using what's now been marked as Exhibit 106 regarding
13 the company's expectations of growth. You have seen
14 this document before?

15 A Yes, I have.

16 Q You actually sponsored it in the company's
17 interrogatory responses. Will you agree that this is
18 the company's best estimate of projected growth on its
19 system?

20 A Yes.

21 Q Thank you.

22 I would like to ask you to please look at
23 what's now been marked as Exhibit 107, this is -- this
24 is extension of issues related to potential growth.

25 A Yes.

1 Q Mr. Johnson, isn't it true that Key Haven is a
2 community located on an island known as Raccoon Key,
3 immediately adjacent to the east, or northeast of Stock
4 Island?

5 A Yes.

6 Q And that -- that community is presently served
7 by the Florida Keys Aqueduct Authority waterways water
8 service?

9 A Yes.

10 Q And everybody down here calls it either the
11 aqueduct or FKAA, right?

12 A Correct.

13 Q Okay. Are you aware that FKAA has expressed
14 some interest in finding another entity to service the
15 wastewater flows from the Key Haven community?

16 A Yes, I am.

17 Q Are you aware that -- is it true that your
18 company's president, or CEO, whatever he is, Mr. Bill
19 Smith, approached FKAA with a proposition that KWRU
20 would take over the flows once your new plant is up and
21 running?

22 A Yes.

23 Q You agree that presently there are
24 approximately 400 ERCs or EDUs of residential service in
25 Key Haven?

1 A Yes.

2 Q If you would, look at Exhibit 107. If you
3 look at page one of three. The first item there is an
4 e-mail from Tom Walker to Mr. Wilson. Who is Tom
5 Walker?

6 A He is the Deputy Executive Director of the
7 Aqueduct Utility Operations.

8 Q Thank you.

9 And so his -- this e-mail purports to estimate
10 current flows and projected flows when the authority
11 replaces the collection system, correct?

12 A Correct.

13 Q So that when the collection system is
14 replaced, that will reduce infiltration and stuff like
15 that; is that right?

16 A Correct.

17 Q That's why the volumes drop down from 80 to
18 120 to 60 to 85,000 gallons per day?

19 A Correct.

20 Q Thank you.

21 Do these numbers sound about right to you,
22 based on what you know about Key Haven?

23 A Yeah. They are in the ballpark, as he states
24 in his e-mail.

25 Q Thanks.

1 And are you aware that there is another
2 community plan for development on Key Haven that would
3 have approximately 43 single family homes? And if you
4 would, look at page two of three, which is, we figured
5 out in your deposition, is a newspaper article by Tim
6 O'Hara?

7 A Yeah. I have seen this. I am aware of it.

8 **Q And you are aware of potential development --**

9 A Yes.

10 **Q -- for an additional 43? Thank you.**

11 If KWRU were to come to serve this load, would
12 you expect to collect the service availability charges
13 or plant capacity charges, as they are called in your
14 tariff, for these customers?

15 A At this point, I think the answer is no, but
16 depending on how the council rule -- Commission, I am
17 sorry, rules, I can't say what the future holds.

18 **Q What aspect of the Commission -- the Public**
19 **Service Commission, is that the Commission to which you**
20 **referred?**

21 A Correct.

22 **Q What aspect of the Commission's ruling would**
23 **affect your answer?**

24 A I am not sure about that. I haven't really
25 asked Bill Smith the particulars of his proposal, why he

1 structured it the way he did. But we all know that that
2 proposal, if it's adopted, would have to be approved by
3 the Commission.

4 **Q That's a good answer.**

5 You described proposal, do you know exactly
6 what the proposal was that Mr. Bill Smith made to the
7 nice folks at the authority?

8 A I did receive an e-mail of the proposal, I am
9 going to say October 2nd or 3rd. It was one of those
10 two dates. And I have looked at it, not in great
11 detail. It's not a very thorough proposal. It's more
12 of sort of a draft proposal that would lead to a more
13 formal proposal, or something a little more elaborate,
14 so it's pretty basic, but I did skim through it.

15 **Q Okay, it's what we might call an indicative**
16 **proposal?**

17 A I will go with that.

18 **Q What were the economic guts of that indicative**
19 **proposal?**

20 A The proposal was essentially laid out in
21 installing, constructing reuse lines -- I am sorry,
22 reuse main and force main to collect the wastewater from
23 the current master station and transmit it to the KWRU
24 treatment plant, was that other component. They put a
25 Public Service Commission gallonage rate at general

1 service, and they put a six-inch, I believe, again off
2 of the general service tariff for the water meter.

3 **Q Was there any proposal for any plant capacity**
4 **charge or similar capacity charge in that offer?**

5 A I don't believe there was.

6 MR. WRIGHT: I'll bet that I somehow or other
7 in an e-mail have received that, but I have not
8 seen this document. Madam Chairman, could I ask
9 Mr. Smith, Mr. Bart Smith, if that is in any of it
10 the stuff that we have, and if not, I would ask
11 that it be furnished in its basic format as a
12 late-filed, and I would like that numbered as 109?

13 CHAIRMAN BROWN: Mr. Smith.

14 MR. SMITH: The answer is, no. It was not
15 even done during the discovery period, and so we
16 are -- we state that that is not subject to the
17 discovery in this matter, and we are not agreeing
18 to produce it outside the discovery.

19 CHAIRMAN BROWN: And the discovery period
20 has -- has run.

21 Staff, I tend to agree with the utility on
22 this. Any suggestion or comment?

23 MS. CRAWFORD: Late-filed exhibits are frowned
24 upon for a number of reasons, not the least of
25 which is they tend to be submitted after the record

1 has actually closed. If it's a document that can
2 be provided in the course of this hearing, perhaps
3 if -- if Monroe County can demonstrate its
4 relevance to the proceeding -- I am a little
5 concerned that it is past the discovery period,
6 however.

7 CHAIRMAN BROWN: Okay. Mr. Wright.

8 MR. WRIGHT: The substance goes to potential
9 usage and revenues and sales by KWRU in,
10 potentially, 2017. When I spoke to Mr. Johnson
11 about this at his deposition, his answers were much
12 less clear as to what the status of the offer was.
13 He did not even refer to the e-mail that he saw
14 dated, plus or minus October 2nd, so I wasn't even
15 aware of it until now.

16 Clearly, I think that the company's usage,
17 although, they don't agree with our position. Our
18 position is that their sales in 2017 are entirely
19 relevant to this case. I think the document would
20 be probative, for what it's worth. And if -- if
21 the company does not want to furnish it, if the can
22 furnish it during the hearing, then we can have
23 somebody authenticate it, or not. And if not, I
24 can live with the specific answer that -- the
25 answers that Mr. Johnson just gave. I thought it

1 might be more helpful to have the actual document
2 in the record, but I am okay either way.

3 CHAIRMAN BROWN: Okay. And I am comfortable
4 with the line of questioning that you are going. I
5 think it is very relevant to the testimony.
6 However, if you are comfortable with the testimony
7 that the witness provided, then let's just move on.

8 MR. WRIGHT: Great. I am happy to do that.

9 BY MR. WRIGHT:

10 **Q Will you agree that if -- so back up.**

11 In response to a previous question, you stated
12 that there would be a reuse main and a forced main
13 installed. Would those be installed at the expense of
14 KWRU?

15 A No. They would be installed at the expense of
16 the aqueduct authority.

17 **Q Thank you.**

18 So would you agree that if this transaction
19 were to be consummated, that there would be little, if
20 any, fixed cost by KWRU to provide service?

21 A I can generally go along with that -- that
22 principle.

23 **Q Thanks .**

24 So the only real cost would be the variable
25 operating and maintenance cost of providing the

1 treatment service and the reuse water back to Key Haven?

2 A Correct.

3 Q Your rates do include, even your gallonage
4 rates and your BFCs do include contributions to fixed
5 costs, correct?

6 A I am not sure that they do.

7 Q They -- your rates include revenue
8 requirements associated with your rate base, do they
9 not?

10 A Oh, yes, they do.

11 Q Okay. What's the company's proposed gallonage
12 charge for general service in this case? About \$7 a
13 thousand, isn't it?

14 A Can I look that up?

15 Q Thank you.

16 A You are asking what the utility requested rate
17 is?

18 Q Yes, sir, as your case now stands with
19 everything that's in there.

20 A \$9.14.

21 CHAIRMAN BROWN: Are you doing math over
22 there, Mr. Wright?

23 MR. WRIGHT: Yes, ma'am. I am trying do an
24 estimate of what the gallonage charge revenues
25 would be.

1 BY MR. WRIGHT:

2 Q So if I wanted to estimate the gallonage
3 charge revenues -- and I am just going to use \$9 as a
4 rounded number, and use the low end of the estimate
5 provided by Mr. Walker at 60,000 gallons per day. So I
6 take 60 K gals times nine times 365, I get about
7 \$197,000, does that sound good?

8 A Subject to check.

9 Q You are welcome to verify the calculation.

10 MR. SMITH: And I am going to object. I don't
11 see where this line of questioning is going.
12 Mr. Johnson didn't go to the revenue requirements,
13 or revenue that will be made by the utility, so
14 going down a line of questioning of what the
15 utility could potentially make from customers that
16 may or may not connect in the future, I think is
17 well outside the scope of his rebuttal.

18 CHAIRMAN BROWN: Well, that may be true, but
19 the line of questioning that has just occurred on
20 this exhibit, and based on Mr. Johnson's responses,
21 I think it is probative and relevant, so I will
22 allow the question.

23 MR. SMITH: I am only going to the
24 mathematical calculations.

25 CHAIRMAN BROWN: He said, subject to check.

1 MR. SMITH: Okay.

2 CHAIRMAN BROWN: You can proceed.

3 BY MR. WRIGHT:

4 Q Would you like to do a check calculation,
5 Mr. Johnson?

6 A In the interest of saving time, let's move on.

7 Q Okay.

8 A Subject to check, I agree.

9 Q And you have had the opportunity to check,
10 correct?

11 A Correct.

12 MR. WRIGHT: Okay. If I have got it wrong, I
13 will cheerfully stipulate that Mr. Smith can
14 present correct arithmetic in his brief, how's
15 that?

16 CHAIRMAN BROWN: Fair enough.

17 MR. WRIGHT: Don't get your hopes up, but that
18 does conclude my line of questioning about the act
19 duct authority and growth for Mr. Johnson.

20 BY MR. WRIGHT:

21 Q Mr. Johnson, I have a few questions for you,
22 at least I hope it turns out to be just a few questions
23 for you regarding CIAC. You testified about CIAC at
24 page nine in your testimony in rebutting Ms. Merchant's
25 testimony?

1 A Yes.

2 Q Your testimony -- and this is slightly
3 repetitive, but it's a necessary predicate to the next
4 question I will ask. You testified in response to a
5 question by Mr. Sayler on this subject, your testimony
6 is that the -- some of the CIAC, and particularly what
7 is shown in your CAJ-10, I think, right --

8 A Yes.

9 Q -- is subject -- may be subject to refund?

10 A Correct.

11 Q Has the company refunded any of the CIAC
12 amounts?

13 A At this point, we have not.

14 Q Has the company made any commitment or promise
15 to its customers to refund any such amounts?

16 A We haven't made any promises at this point.
17 We have made them aware of what we are doing, but no
18 promises.

19 Q Will you agree that any such refunds would be
20 contingent on the County agreeing to receive those
21 customers on what we call the tax assessment roll?

22 A That is correct.

23 Q I have a few questions for you regarding
24 potential additional connections in your rebuttal
25 testimony to Mr. Wilson on page 12 of your testimony.

1 A Okay.

2 Q At lines four through nine, you discuss
3 Mr. Wilson's testimony that there are approximately 300
4 existing residential EDUs not connected. And you rebut
5 that by saying, outside of less than 50 residential
6 connections that are identified by contingency work
7 under the South Stock Island extension project. My
8 first question is, I think somewhere else you have an
9 exact number, it's like 28, or 28 and a fraction of
10 EDUs; is that right?

11 A What that is is -- that 28 infraction has do
12 with the connections that are related to the Maloney
13 Avenue line extension, which is a piece of vacuum sewer
14 that the County and the utility would do in partnership
15 as a, quote, unquote, "contingency item from the
16 original contract."

17 Q Okay. Then help me out. When you say, less
18 than 50, do you have a more precise number?

19 A The number of 50 was just a capture. The 28
20 and fraction, plus some other folks who would need a
21 vacuum pit installed and are not part of the line
22 extension proper but would be other contingency work.

23 Q I would like to ask you about your question
24 and answer between lines 15 -- beginning on line 15 and
25 concluding on page 19. You make the statement that

1 Mr. Wilson is not correct in asserting that there is a
2 backup of customers who cannot connect due to KWRU's
3 current capacity. Is that an accurate characterization
4 of your testimony?

5 A Yes. I say there is not a backup.

6 Q I would like to ask you to look at what's been
7 marked as Exhibit 108, please. This is a series of
8 e-mails between you and Mr. Wilson. The top line is a
9 transmit to my colleague, Ms. Hall, but the substantive
10 messages are below on the numbered pages one and two of
11 the e-mail. Do you recall these e-mails, Mr. Johnson?

12 A Yes, I do.

13 Q Okay. Taking them in chronological order, you
14 should look at page two of the e-mail from Mr. Wilson to
15 you dated September 21st.

16 A Okay.

17 Q Okay. And I read this to say, by Mr. Wilson,
18 hey, Chris, I want to get moving on getting these
19 properties connected, connected, is that pretty
20 accurate?

21 A He is essentially talking about the
22 contingency work that I just mentioned, in getting going
23 on that work. Yes.

24 Q Okay. Now, is that -- is that just the
25 Maloney Avenue, or does that include Maloney Avenue plus

1 **other contingency type work?**

2 A The contingency work consists of the Maloney
3 Avenue line extension, and then additional work on top
4 of that.

5 Q **If it's possible, could you briefly summarize**
6 **what that additional work is?**

7 A Okay. The Maloney Avenue line extension is
8 essentially an area of the island that did not receive a
9 vacuum main. So the line extension is to bring the main
10 to these properties, so that's a 28-EDU grouping of
11 properties. Then, throughout the island, there is an
12 occasional property that was left unserved as a result
13 of the 2002-2003 project. Those isolated properties
14 here and there comprise the remaining 22 EDUs of the 50
15 that was mentioned previously.

16 Q **Thank you.**

17 And looking at page one of the e-mail chain,
18 this is an e-mail back from you to Kevin, basically you
19 are just saying, I hear ya. We are sorry. We are
20 really busy with the rate case and other stuff. We will
21 get to it as soon as we can; is that about right?

22 A Rate case, construction, vacuum, yes, we are
23 taxed right now, stressed.

24 Q **So your testimony is that it's not a lack of**
25 **capacity that's causing the backup, but rather a lack of**

1 **resources to complete the work; is that accurate?**

2 A I am not saying there is a backup at all.
3 Every single customer who's come to the utility and
4 asked to connect to the utility has been allowed to
5 connect to the utility. So there is no customers that
6 are waiting in line for something to happen. They have
7 all been allowed to connect. So I am not saying there
8 is anybody backed up.

9 **Q What about these 50, they are not connected?**

10 A They are not connected simply the
11 infrastructure is not placed in the ground yet to allow
12 their connection to happen. We don't have the necessary
13 infrastructure to handle their flows. We need to put
14 vacuum pits in and vacuum mains in that would facilitate
15 the conveyance of their sewage to the wastewater plant,
16 and that just hasn't happened yet.

17 **Q You will agree that these customers want to be**
18 **connected, will you not?**

19 A For the most part they want to connect, yes.

20 **Q What about Reesi Pizza (sic), if that's the**
21 **right pronunciation. Roostica, sorry.**

22 A Those are current customers.

23 **Q Isn't there -- isn't there another pizza**
24 **establishment that is waiting to connect owned by the**
25 **same party that owns Roostica?**

1 A I have not received notification from another
2 pizza place. I am sorry.

3 **Q My information on that subject may not be**
4 **accurate.**

5 CHAIRMAN BROWN: Pizza sounds good right now.

6 MR. FRIEDMAN: It is good.

7 BY MR. WRIGHT:

8 **Q Are you aware of any customers who have sought**
9 **service who only have dry line permits because they are**
10 **not -- put a question mark by permits. Are you aware of**
11 **any customers who have requested service who have only**
12 **got dry line permits at this time?**

13 A Yes. The dry line permit, there is one, and
14 it's out by the utility for the Maloney Avenue line
15 extension. That is the only dry line permit currently
16 in existence.

17 **Q Is that permit only issued in dry line status**
18 **because the plant expansion is not completed?**

19 A The -- as I understand it, the way DEP looks
20 at the situation is when they get the permit
21 application, they match the application to the capacity
22 of the plant. And if their estimation is that the
23 project to be completed is going to be at or near
24 capacity, what they will then do is they will issue a
25 dry line permit as opposed to a wet permit, so to speak.

1 And what that does is that does not guarantee the owner
2 of the permit, the permittee, the ability to hook up
3 automatically.

4 In a dry line permit situation, when your
5 project is nearing completion and you submit your
6 certification of completion to them, that's when they
7 review where is the utility's capacity right now, and
8 what kind of flow is this new project going to send to
9 the utility. And if, in their estimation, they deem
10 that the utility's capacity is sufficient, they will
11 take that dry line permit and clear it for use. And
12 they have done this in two situations already, so we
13 have had this happen.

14 **Q Thank you for the explanation.**

15 If you could, give me a yes or no on the
16 question with the explanation. Was the permit issued as
17 a dry line permit because DEP is concerned that your
18 plant is at capacity?

19 A Yes.

20 **Q Thank you.**

21 MR. WRIGHT: Madam Chairman. I do have a few
22 more questions for Mr. Johnson concerning reuse
23 service.

24 BY MR. WRIGHT:

25 **Q And, Mr. Johnson, you testified about reuse**

1 service between pages 10 and 12 of your rebuttal
2 testimony.

3 A Yes, sir.

4 Q Will you agree that whatever the Commission
5 approves as reuse rate revenues in this proceeding will
6 offset revenues that would otherwise have to be
7 collected through service rates to other customers?

8 A Yes.

9 Q Do you know what the incremental cost per
10 thousand gallons to produce and to deliver reuse water
11 to a customer who already has the facilities available
12 to receive reuse water is?

13 A No.

14 Q Relative to -- so I understand the company is
15 currently supporting a proposed charge of 93 cents per
16 thousand, is that accurate?

17 A That's the Commission approved rate, correct.

18 Q Commission approved in the PAA?

19 A Correct. Sorry, yes, to qualify.

20 Q Yeah. So at this point in the proceedings,
21 are you supporting the 93 cents, or do you want a higher
22 rate?

23 A We are supporting the 93 cents.

24 Q Do you have an opinion -- and you are a Class
25 A wastewater operator. Do you have an opinion as to

1 how -- what the magnitude of the variable costs of
2 producing and delivering reuse water is as compared to
3 the 93 cents?

4 A I would have to spend some time really
5 thinking about that. Off the top of my head, I couldn't
6 give you an answer to that.

7 Q Do you think it's less than half?

8 A It could be.

9 Q Does the company, that is KWRU, require reuse
10 customers to install piping to receive the reuse at
11 their expense?

12 A Yes.

13 Q Has your company declined or refused to
14 provide service to any customer who has requested reuse
15 service?

16 A Not that I can think of off the top of my
17 head.

18 Q As a general proposition, if a customer had
19 installed the line that was capable of receiving reuse
20 service, first question, that line would come out to a
21 point on the street, or the right-of-way, where you
22 could connect to it, right?

23 A Correct. It's only practical for larger
24 customers that are near the reuse main to hook up to
25 reuse.

1 **Q** Okay. If there were such a customer who had
2 the line built out to a reasonably convenient point of
3 connection, that customer should be able to make the
4 request of the company and get service?

5 A Yes. They would make a request. The utility
6 would review the request and, in general, the utility
7 wants to satisfy the reuse demand.

8 **Q** As a general proposition, do you agree that
9 reuse service is usually, or generally priced based on
10 market considerations?

11 A I don't know how to answer that. I know there
12 is some considerations beyond market considerations. I
13 do know, in the state of Florida, that different
14 regulators in different areas, people are inclined to
15 try to encourage reuse. So maybe in those cases, market
16 conditions are overlooked, or bent, or reevaluated
17 depending on motivation of the agency.

18 **Q** How many reuse customers does KWRU have at
19 present?

20 A We are currently sending water to two;
21 however, we have on our permit, several others listed.

22 **Q** Thank you.

23 And the two are the Monroe County Jail and the
24 golf club, correct?

25 A Correct.

1 **Q Please tell us what the others listed on your**
2 **permit are.**

3 A We have listed on our permit, I believe, off
4 the top of my head, Bernstein Park, the Florida Keys
5 Community College, the Gerald Adams Elementary School,
6 and I believe the Lower Keys Medical Center.

7 **Q Thank you.**

8 And other than -- other than the jail, are the
9 other -- well, is the golf club -- does the golf club
10 use its reuse service for irrigation?

11 A They do.

12 **Q And the other four who are not yet customers,**
13 **would their usage be either primarily or exclusively for**
14 **irrigation?**

15 A Again, the uses are specifically listed in the
16 permit, so they are all going to be -- in the jail's
17 case, toilet flushing, irrigation, fire expression,
18 cooling towers. And in the other cases, golf course
19 would be irrigation strictly. And the other cases, the
20 uses are listed as per the facility.

21 **Q Okay. So it's possible that some of the**
22 **institutional facilities, like the medical center and**
23 **the school or the college, might use some for fire**
24 **suppression and some for irrigation?**

25 A That's correct. It's specific on the permit,

1 which I don't have.

2 **Q That's fine. Thank you.**

3 These customers presently have needs for water
4 for these purposes, whether it's toilet flushing, fire
5 expression or irrigation, do they not?

6 A They may have the need for it. In all cases,
7 the customer doesn't have the on-site system built and
8 ready to receive these reuse waters.

9 **Q Yeah. I was really trying to ask the more**
10 **generic question. They have need for some form of water**
11 **for the purposes articulated, weather it's fire**
12 **suppression, toilet flushing or irrigation; correct?**

13 A Correct.

14 **Q And so their current options are really to buy**
15 **potable from the authority -- from the Aqueduct, right?**

16 A Yes.

17 **Q Nobody on this list has their own consumptive**
18 **use permit or their own well, correct?**

19 A No, they don't.

20 **Q What are the rates for potable water from the**
21 **aqueduct?**

22 A It's a tiered rate structure. As you use more
23 water, you pay more. Off the top of my head, I think we
24 discussed this in the deposition, 5.87 was a guess, five
25 and change it starts at, and then it tiers up from there

1 as you use more water.

2 **Q You are right, we did. And we agreed that the**
3 **highest price block is somewhere north \$11?**

4 A Right. Yeah.

5 **Q Thank you.**

6 So a customer -- would you agree it would be
7 economically rational for a customer to be willing to
8 pay a lot more than 93 cents in order to save \$5.87 for
9 potable water to serve its water needs?

10 A I am sorry, could you rephrase? It was a
11 little confusing.

12 **Q I apologize. Yes.**

13 Wouldn't you agree that it would be
14 economically rational for a customer to pay -- let's
15 just pick a number -- \$2.50 a thousand to use for
16 irrigation or toilet flushing instead of paying \$5.87 or
17 \$11 to the authority?

18 A Yes, absolutely.

19 **Q I asked you this question at your deposition,**
20 **you didn't know, but I will ask again. Is potable -- is**
21 **the Aqueduct Authority's potable water even cleaner than**
22 **your reuse water?**

23 A I will go on record as saying it's cleaner.
24 It's certainly -- you can consume it, and you cannot
25 consume reuse water. So in that regard, it's definitely

1 cleaner.

2 **Q In terms of its nitrogen and phosphorus**
3 **content, are they comparable, or do you know?**

4 A I have some lab results that show a little
5 higher nitrogen, phosphorus is lower. I have seen some.

6 **Q And in reuse or in potable?**

7 A Okay, so --

8 **Q You said your lab results showed a little**
9 **higher nitrogen and a little lower phosphorus.**

10 A So I tested the potable supply, and found
11 nitrogen levels above three milligrams per liter, which
12 would be higher than AWT for reuse, but I found the
13 phosphorus less than our reuse water.

14 **Q Do you know what the Aqueduct Authority's**
15 **reuse water rate is?**

16 A I believe the rate is half of the consumptive.

17 **Q Half of the potable?**

18 A Yes.

19 **Q Oh, thank you.**

20 Does the Aqueduct Authority provide reuse
21 service on Key Haven?

22 A No, they don't.

23 **Q Okay. They sure don't provide it in Stock**
24 **Island, do they?**

25 A No, they don't.

1 Q You say about half. That's roughly
2 two-and-a-half, 2.75, something in that range?

3 A Yes.

4 Q Does KWRU have any objection to pricing reuse
5 water at a higher price, say, comparable to the
6 authority's price, in order to suppress the rate impacts
7 on other customers?

8 A I don't think KW Resort Utilities is taking a
9 position today on any single class of customer.
10 Certainly, the utility is going to follow whatever
11 Public Service Commission provides to us in a tariff.
12 That's for certain.

13 Q My question was, does the company have an
14 objection to pricing higher? Your response was, you
15 do -- basically you will do what the Commission says,
16 correct?

17 MR. SMITH: I am going to object. Asked and
18 answered.

19 CHAIRMAN BROWN: Yes.

20 MR. SMITH: He has taken no position.

21 CHAIRMAN BROWN: Yes, I agree. Please move
22 along.

23 MR. WRIGHT: I just wanted to confirm that no
24 position is equal to no objection, Madam Chairman.

25 CHAIRMAN BROWN: Well, then ask that question.

1 BY MR. WRIGHT:

2 Q May I take your previous answer of the company
3 has taken no position to mean that the company does not
4 have any objection to pricing higher?

5 A That's correct.

6 Q Thank you. Thank you. I have no more
7 questions for Mr. Johnson. Thank you for your time,
8 Mr. Johnson.

9 CHAIRMAN BROWN: Thank you, Mr. Wright.

10 Ms. Aktabowski.

11 MS. AKTABOWSKI: I hope I have some questions.

12 Good morning.

13 CHAIRMAN BROWN: Microphone, please. Right
14 there. Remember, the closer the better.

15 MS. AKTABOWSKI: Okay.

16 EXAMINATION

17 BY MS. ATABOWSKI:

18 Q Good morning, I hope I have some questions.
19 We will see.

20 A Good morning.

21 Q Yesterday, staff asked you if you had
22 agreements with individual members of Harbor Shores
23 Homeowners' Association. And your answer was a little
24 bit clouded. Could you answer that for me again?

25 MR. SMITH: Objection. This is outside the

1 scope of his rebuttal testimony.

2 CHAIRMAN BROWN: As I have been generous on
3 this issue with Public Counsel, I will also allow
4 some latitude with regard to Ms. Aktabowski. And
5 she may be allowed to ask this question.

6 MR. SMITH: If I may, Harbor Shores filed no
7 direct testimony, so --

8 CHAIRMAN BROWN: I am aware, sir.

9 MR. SMITH: My apologies.

10 CHAIRMAN BROWN: Ms. Aktabowski, you can ask
11 that question.

12 MS. AKTABOWSKI: Okay. I will try it again.

13 BY MS. AKTABOWSKI:

14 **Q Okay. Yesterday, staff asked you if you had**
15 **agreements with individual owners, or individual members**
16 **of the Harbor Shores unit association, could you answer**
17 **that for me again this morning, please?**

18 A The answer I gave was, we have a developer's
19 agreement, and that is with the association. But we do
20 have wastewater service agreements, and those
21 individuals have submitted those, the individual owners.

22 **Q Okay. To understand, you are saying you have**
23 **individual agreements with individual unit owners within**
24 **Harbor Shores, is that what you are telling me?**

25 A They would be wastewater service agreements.

1 Those were the documents that we were sending when you
2 filed your protest. And in deference to your protest,
3 the utility did not continue updating those documents.

4 **Q So as of this moment, you have no agreements**
5 **with unit owners, is that correct?**

6 A We do have some, however, they are not
7 updated.

8 **Q You have some that you received when?**

9 A We were in the process of updating those when
10 you put it your complaint in. You received -- you
11 received the documentation.

12 **Q Okay. When you say you were in the process of**
13 **updating, were there some already on file that needed**
14 **updating? Do you actually have agreements with**
15 **individual unit owners within Harbor Shores?**

16 A Yes.

17 **Q You do? Do you know which ones?**

18 A I do not.

19 **Q Let me put it on a more personal level. Until**
20 **about three weeks ago, you owned a unit within Harbor**
21 **Shores, is that correct?**

22 A That is correct.

23 **Q Did you have an agreement with KWRU for**
24 **wastewater services with your unit?**

25 A I believe so, yes.

1 **Q You did?**

2 CHAIRMAN BROWN: Ms. Aktabowski, you are
3 getting a little beyond the -- taking a little bit
4 of advantage of the generosity I am giving you on
5 the questions. If you could --

6 MS. ATABOWSKI: I'm really confused, that's
7 why.

8 CHAIRMAN BROWN: I understand. I understand.
9 If you could focus, though, on the testimony and
10 the discussion that is occurring, we will allow
11 some of these questions, but not on the track that
12 you are going down right now.

13 BY MS. ATABOWSKI:

14 **Q So you are saying you do have agreements with**
15 **individual owners, in answer to staff's question**
16 **yesterday, you do have agreements?**

17 MR. SMITH: Objection.

18 CHAIRMAN BROWN: Asked and answered.

19 MS. AKTABOWSKI: Okay. Thank you. Okay, just
20 to clarify.

21 BY MS. ATABOWSKI:

22 **Q And what are those agreements?**

23 MR. SMITH: Objection, asked and answered.

24 CHAIRMAN BROWN: Yes.

25 MR. SMITH: He said they have service

1 agreements.

2 CHAIRMAN BROWN: Ms. Aktabowski, it was asked
3 and answered.

4 MS. AKTABOWSKI: Service agreements, all
5 right.

6 BY MS. ATABOWSKI:

7 Q Do you have an agreement with Harbor Shores,
8 the association?

9 A Yes, we do. It's a developer's agreement.

10 Q Are you familiar with that agreement?

11 A I have seen it, yes.

12 Q I would look like to ask you some questions on
13 that agreement.

14 MR. SMITH: And again, we would raise an
15 objection that this is well beyond any direct that
16 he has given, anything that's been in any
17 testimony, and now we are dealing with the specific
18 agreement that we are going to be --

19 MS. CRAWFORD: Chair --

20 CHAIRMAN BROWN: Yes.

21 MS. CRAWFORD: -- may I offer?

22 CHAIRMAN BROWN: Yes.

23 MS. CRAWFORD: If I remember correctly, and
24 please correct me I am wrong. We had a number of
25 customers testify at the service hearing last

1 night, and I believe one of the documents that was
2 identified and admitted without objection was the
3 Harbor Shores Service Agreement, the condo
4 association, is that not correct?

5 CHAIRMAN BROWN: Okay, that was -- we had a
6 petition from Harbor Shores, we had a utility
7 agreement -- yeah, we had a utility agreement.

8 MR. SMITH: We were never provided a copy of
9 that.

10 CHAIRMAN BROWN: Mr.Malone.

11 COMMISSIONER PATRONIS: Mr.Malone.

12 MS. HELTON: Entered as 103.

13 CHAIRMAN BROWN: 103.

14 MS. CRAWFORD: Just to be clear, staff also
15 has some questions that stem from what we heard at
16 the service hearing last night, so if there are
17 going to be objections to that, I would certainly
18 like to know in advance.

19 CHAIRMAN BROWN: And the bench does have some
20 questions from the service hearing as well.

21 MS. MAPP: And I would note the utility
22 mentioned they did not have a copy of this. This
23 was handed out yesterday as Exhibit No. 87. It
24 wasn't entered into the record, however, it was
25 also handed out yesterday?

1 MR. SMITH: Let me be clear, what was provided
2 to the Commission last night, we do not have a copy
3 of.

4 CHAIRMAN BROWN: Okay. Just a moment. Okay,
5 87 was a copy of the utility agreement with Harbor
6 Shores. It was not entered into the record last
7 night. 103 is a copy of the utility agreement, are
8 those two -- are those agreements the same?

9 MR. SMITH: I have not seen 103 --

10 CHAIRMAN BROWN: You have not seen --

11 MR. SMITH: -- I cannot state what 103 is. It
12 was provided to the desk and --

13 CHAIRMAN BROWN: You did not get a copy of it?

14 MR. SMITH: We never received a copy of it.

15 CHAIRMAN BROWN: Let's take a five-minute
16 break.

17 (Brief recess.)

18 CHAIRMAN BROWN: Okay. We are back on the
19 record. And I believe we have located -- and you
20 have a copy of 103?

21 MR. SMITH: Yes. And in an effort for
22 efficiency, and I appreciate the efficiency. Our
23 goal is to be done today.

24 CHAIRMAN BROWN: Yes.

25 MR. SMITH: So recognizing that this is an

1 exhibit provided by the customers, certainly if the
2 Commission wants to ask questions about it, they
3 are free do so, but we just would like it on the
4 record that this is the same exhibit that was not
5 allowed because it wasn't part of prefiled
6 testimony. And with that statement, let's proceed
7 and move along as quickly as possible.

8 CHAIRMAN BROWN: Well, no, actually, let me go
9 back to what you just stated.

10 MR. SMITH: Yes.

11 CHAIRMAN BROWN: It wasn't allowed at the time
12 on direct. It was held -- I did say that we would
13 take this potentially up on rebuttal. So that is
14 the reason why it was not allowed on direct, not
15 specifically because it wasn't within the scope of
16 the prefiled direct. I said I would give some
17 latitude on rebuttal, and I am doing that.

18 MR. SMITH: No, and I understand. And for
19 efficiency, I just -- we can proceed.

20 CHAIRMAN BROWN: Okay. Ms. Aktabowski.

21 MS. AKTABOWSKI: Yes. I have a headache. No,
22 I am kidding.

23 CHAIRMAN BROWN: There is some candy, if you
24 would like some.

25 MS. AKTABOWSKI: No. Am I on the record? Are

1 we back on to ask the questions?

2 CHAIRMAN BROWN: Please proceed.

3 BY MS. ATABOWSKI:

4 Q So with a copy of the utility agreement, do
5 you have that, Mr. Johnson? And again, I am only going
6 to ask a couple of questions on this if we need to --

7 A Okay.

8 Q -- in the interest of time. Do you have it?

9 A Yes, I do.

10 Q Yes. Okay, would you turn to page four,
11 please?

12 A Yes.

13 Q At the top of page four, in item number four,
14 the title is Property Rights, do you see that?

15 A Yes, I do.

16 Q Would you read what it says?

17 A This section is intentionally omitted, N/A.

18 Q So for the record, you would say -- you would
19 agree that there are no property rights or easement
20 rights or such in this agreement; is that correct?

21 A No, I could agree that the section of legal
22 language in the contract has been omitted.

23 Q Are you familiar with enough with this
24 contract to find it somewhere else in this contract, or
25 would you say there are no property rights in this

1 **contract?**

2 A There is no property rights language under
3 section four. However, this developer's agreement
4 points to our tariff, and within our tariff, there are
5 property rights granted.

6 CHAIRMAN BROWN: Just a smidgen away, thank
7 you.

8 MS. AKTABOWSKI: Okay.

9 CHAIRMAN BROWN: Thank you.

10 BY MS. ATABOWSKI:

11 Q **Can you tell me, in your tariff, where that is**
12 **granted?**

13 MR. SMITH: Objection. This has been asked
14 and answered. He went through this. He read the
15 section off the tariff previously.

16 MS. AKTABOWSKI: I don't remember that. I am
17 sorry.

18 CHAIRMAN BROWN: I am actually -- I don't
19 recall it either.

20 MR. FRIEDMAN: He did.

21 CHAIRMAN BROWN: And if the witness could go
22 ahead and do it for clarity.

23 THE WITNESS: Access to premises, original
24 sheet 9.0, Section 12, in accordance with Rule
25 25-30.320(2)(f), Florida Administrative Code,

1 customers shall provide the duly authorized agents
2 of the company access at all reasonable hours to
3 the property. If reasonable access is not
4 provided, the service may be discontinued pursuant
5 to the above rule.

6 BY MS. ATABOWSKI:

7 Q I am sorry, you said that was (2)(f), is that
8 correct?

9 A (2)(f), correct.

10 Q On 25-30.320?

11 A Correct.

12 Q Perhaps I have an update. I am looking at
13 25-30.320, I have it here, and (2) -- and I am sorry, I
14 am having difficulty reading this, but (2)(f) says, for
15 neglect or refusal to provide reasonable access to the
16 utility for purposes of reading meters or inspection and
17 maintenance of equipment owned by the utility. Do I
18 have the wrong document here? What you are saying
19 doesn't seem to match what I just read. Would you like
20 to distribute a copy of this --

21 MR. SMITH: I'm going to object. Was there a
22 question there?

23 MS. AKTABOWSKI: Yes, I am asking --

24 CHAIRMAN BROWN: I don't know what you are
25 looking at, Ms. Aktabowski.

1 MS. ATABOWSKI: I'm looking at 25-30.320,
2 refusal or discontinuance of service rules. I have
3 enough copies if you would like to see that.

4 CHAIRMAN BROWN: Would you like assistance
5 from our staff?

6 MS. AKTABOWSKI: Yes, please.

7 CHAIRMAN BROWN: Staff, could you please?

8 MS. AKTABOWSKI: Yes, please. I have some
9 more here, if you need them.

10 CHAIRMAN BROWN: Thank you. This is a PSC
11 rule. It does not need to be marked.

12 Okay. The witness has a copy of it. You may
13 proceed and direct our attention to what you are
14 looking at.

15 MS. AKTABOWSKI: I am looking at what
16 Mr. Johnson, I believe, just quoted as (2)(f).

17 MR. SMITH: Objection, misstates his
18 testimony.

19 CHAIRMAN BROWN: I am sorry?

20 MR. SMITH: She's stated Mr. Johnson quoted
21 (2)(f). No, Mr. Johnson quoted the language from
22 the tariff.

23 CHAIRMAN BROWN: That's what my understanding
24 was, too. I didn't think he was reading the rule.
25 He was reading the tariff, the utility's tariff.

1 MS. AKTABOWSKI: Oh, I am sorry.

2 CHAIRMAN BROWN: Could you move along with
3 your questions, please?

4 MS. AKTABOWSKI: All right.

5 BY MS. ATABOWSKI:

6 Q So again, even though the contractor says that
7 there are no property rights, you say there are based on
8 Florida rules?

9 MR. SMITH: Objection, argumentative.

10 CHAIRMAN BROWN: If you can answer it, I will
11 allow it.

12 THE WITNESS: Could you restate the question,
13 please?

14 CHAIRMAN BROWN: Ms. Aktabowski.

15 BY MS. ATABOWSKI:

16 Q You believe you have access, even though the
17 agreement we have with KWRU has no property rights,
18 based on the Florida regulations?

19 MR. SMITH: Objection, this is calling for a
20 legal conclusion.

21 CHAIRMAN BROWN: I will allow it. If he can
22 answer it, then he can answer it.

23 THE WITNESS: I am going to try to help you
24 out. I believe the utility has access to the
25 premises as provided by the tariff considering --

1 even considering that the language was removed from
2 the developer's agreement number four, under the
3 section entitled Property Rights.

4 BY MS. ATABOWSKI:

5 **Q All right. Moving on. In the same agreement**
6 **on page number four, where it says, number five, rates,**
7 **fees and charges, A, would you read that, please?**

8 A Rates, fees and charges, A, the association
9 will pay the applicable fees, rates and charges as set
10 forth in the tariff for the monthly sewer service after
11 the sewer system is operational. The service company
12 shall bill the association for all regular charges for
13 all condominium unit owners.

14 **Q Now, yesterday, again, questioning by staff,**
15 **you said that all 69 bills were sent to the HOA, and**
16 **that that is what the HOA wants, I believe was your**
17 **terminology. Were you part of the negotiation on this**
18 **contract?**

19 A No, I was not.

20 **Q So do you know anywhere in this contract where**
21 **it says the association wants those bills? Are you**
22 **aware of that?**

23 A I would assume that's what they want if they
24 inserted the language in Section (5)(a), that they want
25 the bills for -- all regular charges shall be billed to

1 the association.

2 **Q It says the association will pay. It does not**
3 **say they want the bills.**

4 MR. SMITH: Objection, misstates the document.

5 CHAIRMAN BROWN: I think the document speaks
6 for itself.

7 MR. SMITH: There we go.

8 MS. AKTABOWSKI: Shall we explain what speaks
9 for itself means?

10 BY MS. ATABOWSKI:

11 **Q So again, are you -- you are just assuming**
12 **that the association wants the bills, is that correct?**

13 A No. It clearly states the company shall bill
14 the association for all regular charges for all
15 condominium unit owners.

16 **Q But we don't necessarily want do that, we just**
17 **have an agreement that says we would --**

18 CHAIRMAN BROWN: Ms. Aktabowski --

19 BY MS. ATABOWSKI:

20 **Q May I ask, what would happen if the**
21 **association decided not to pay a particular unit bill,**
22 **how would you deal with that?**

23 A We have a procedure when bills aren't paid to
24 notify the party.

25 **Q And if we continue not to pay?**

1 A Then the utility would have the authority to
2 disconnect.

3 **Q Disconnect what? Who?**

4 A The individual not paying the bill.

5 **Q So that would be Harbor Shores, since we are**
6 **paying the bills; is that correct?**

7 A Correct.

8 **Q How would you dis -- what would you disconnect**
9 **with Harbor Shores? There is no -- we are not an**
10 **account, how would you disconnect us?**

11 A If we wish to disconnect Harbor Shores from
12 the sewer service, we could -- we could disconnect that
13 property if we wish to.

14 **Q So if we did not pay the bill for one unit,**
15 **you would disconnect the entire park, is that correct?**

16 A We could -- I believe we have the authority to
17 do that. Practice -- as a practical matter, we would
18 not wish to do that.

19 **Q But you are saying you would -- you could?**

20 CHAIRMAN BROWN: Asked and answered.

21 MS. AKTABOWSKI: Okay.

22 BY MS. ATABOWSKI:

23 **Q Shut down the whole park?**

24 MR. SMITH: Objection, asked and answered.

25 CHAIRMAN BROWN: Please proceed with further

1 questions.

2 MS. AKTABOWSKI: All right.

3 BY MS. ATABOWSKI:

4 Q Now, yesterday, again, based on some questions
5 from staff, you were asked how would you shut down an
6 individual unit. And you answered that there were some
7 clean-out pipes, or valves, or connections. Would you
8 explain that to me again, please?

9 A Yes. Each unit of the 69 units that comprise
10 Harbor Shores has an individual clean-out that serves
11 that individual residence. The utility can install a
12 test ball, or there is other methods that could be used
13 to disconnect that individual unit without affecting any
14 of the other 68 units within the property.

15 Q And you would do that, again, if one unit did
16 not pay the bill?

17 MR. SMITH: Objection, asked and answered.

18 CHAIRMAN BROWN: Yes. It was asked and
19 answered. Please move along.

20 MS. AKTABOWSKI: Sorry.

21 BY MS. ATABOWSKI:

22 Q Do you consider Harbor Shores the guarantor of
23 the bills that are being sent for all 69 units?

24 A Yes. They are being sent the bill. They are
25 responsible. And under Section A, they take

1 responsibility for all regular charges for all
2 condominium owners.

3 Q Now, on that same rule that we were talking
4 about earlier, 25-30.320, refusal or discontinuance of
5 service, if you would look at 5D. Okay, five is, the
6 following shall not constitute sufficient cause for
7 refusal or the discontinuance of service to an applicant
8 or customer. 5D, would you read what that says, please?

9 CHAIRMAN BROWN: Does he have a copy of it?

10 THE WITNESS: No, I don't.

11 MS. AKTABOWSKI: Oh, I am sorry. I thought
12 they had handed you a copy.

13 CHAIRMAN BROWN: Staff, could you please?

14 THE WITNESS: I am sorry, they did. I am
15 sorry.

16 CHAIRMAN BROWN: Thank you.

17 THE WITNESS: 5D, failure to pay the bill of
18 another customer as a guarantor thereof.

19 BY MS. ATABOWSKI:

20 Q So you are saying that Harbor Shores is a
21 guarantor, you agreed with that. So if we did not pay,
22 you could not shut off those units, would you agree with
23 that?

24 A If the association did not pay, we could shut
25 off the entire association.

1 Q But not individual units?

2 A No.

3 Q So once again -- sorry, asked and answered.

4 CHAIRMAN BROWN: Thank you.

5 MS. AKTABOWSKI: Never mind.

6 CHAIRMAN BROWN: She's learning.

7 MS. AKTABOWSKI: I am just trying to get these
8 things into my head. You know, it's my only
9 opportunity to actually ask some questions.

10 CHAIRMAN BROWN: Ms. Aktabowski, and that did
11 definitely part of the reason why I am giving some
12 latitude here, but I do know staff has a lot of
13 questions, similar questions down the path you are
14 going.

15 MS. AKTABOWSKI: All right.

16 CHAIRMAN BROWN: Okay.

17 MS. AKTABOWSKI: What was that?

18 CHAIRMAN BROWN: Was that a live one?

19 MR. WRIGHT: That's a chicken.

20 MS. AKTABOWSKI: That's that duck I was
21 talking about yesterday.

22 CHAIRMAN BROWN: I saw some live ones
23 yesterday. Okay, Ms. Aktabowski.

24 MS. AKTABOWSKI: Sorry.

25 BY MS. ATABOWSKI:

1 Q Just one other question, and this is based on
2 some information again on Sunset Marina. You were asked
3 if they have -- FCAA read meters, and I believe you said
4 they do not; is that correct?

5 A No, they do. Sunset Marina has FCAA meters.

6 Q They do?

7 A They do.

8 Q Oh, I am sorry. I thought for sure you said
9 no. And those are read?

10 A Those meters are property of the Aqueduct
11 Authority, and they are read by the aqueduct authority.

12 Q I am obviously, again, confused. My
13 apologies. I thought you had said they did not have
14 those meters.

15 CHAIRMAN BROWN: Okay, asked and answered.

16 MS. AKTABOWSKI: Thank you. Okay. I don't
17 think I have any further questions. Thank you.

18 CHAIRMAN BROWN: Thank you.

19 Staff.

20 MS. CRAWFORD: Thank you. We will try to be
21 as streamlined and efficient as possible.

22 Actually, I need to revisit Exhibit 103, but I have
23 just real quick questions on that one.

24 CHAIRMAN BROWN: You got a copy of that in
25 front of you?

1 MR. FRIEDMAN: It's the last one I gave you.

2 MR. SMITH: There you go.

3 CHAIRMAN BROWN: The utility agreement.

4 MR. FRIEDMAN: It stays 87 on it probably.

5 EXAMINATION

6 BY MS. CRAWFORD:

7 Q I have taken the liberty of pulling of the
8 utility's tariff on the commuter, unfortunately I don't
9 have anything printed out. You can take it subject to
10 check. If you want to take a moment to actually look at
11 the tariff, you are welcome to do that. But for -- in
12 the interest of expediency, I am just going to read from
13 your tariff what the definition of customer is, and if
14 you could just confirm for me, to the best of your
15 knowledge, whether that is consistent with your
16 understanding of what your tariff contains regarding the
17 definition of customer. And I am going to try to read
18 it loudly. I am a little short-sided so I need to lean
19 over to read it.

20 "A customer is any person, firm or corporation
21 who has entered into an agreement to receive water
22 service from the company, and who is liable for the
23 payment of that water service."

24 Everybody hear that okay?

25 A Okay.

1 Q And, Mr. Johnson, is that, to the best of your
2 knowledge, consistent with your understanding of what's
3 contained in your tariff according to definition of a
4 customer?

5 A Yes, it is.

6 Q Okay. So looking at the Exhibit 103, on the
7 first page -- you know, actually, I am sorry, let me
8 actually refer you to the back. Who's entered this
9 agreement that we are looking at? Who is it signed by?

10 A This agreement is signed by the condominium --
11 Harbor Shores Condominium Unit Association president.

12 Q On behalf of Harbor Shores Condominium Unit
13 Association, correct?

14 A Correct.

15 Q And it's also signed by KWRU Corp?

16 A Correct.

17 Q Okay. And the rule that was cited by
18 Ms. Aktabowski, 25-30.320, when it talks about being
19 able to terminate service for nonpayment, that's to the
20 customer of record, correct, the customer with whom the
21 utility has the agreement; is that not correct?

22 A That's correct.

23 Q Are you currently billing and receiving
24 payment from individual residential unit owners from
25 Harbor Shores?

1 A No, we are not.

2 **Q Thank you. That's all the questions I have on**
3 **that exhibit.**

4 CHAIRMAN BROWN: Thank you.

5 Commissioners.

6 MS. CRAWFORD: I do have more questions,
7 however.

8 MR. FRIEDMAN: Wishful thinking.

9 MS. CRAWFORD: I am so sorry to raise your
10 hopes like that.

11 Staff, have you distributed -- you are in the
12 process of distributing an exhibit. There are two
13 exhibits, one is going to be follow-up from
14 yesterday, and I appreciate the council for the
15 utility allowing us to kind of closing the loop on
16 that today.

17 There are some questions I asked about quality
18 of service, and the company, as of yesterday
19 evening, did supplement its discovery response
20 regarding outstanding DEP and utility accessed
21 customer complaint information, so that's what we
22 are passing out. If we could have that marked,
23 please.

24 CHAIRMAN BROWN: Sure. Okay. So we have got
25 two, looks like two exhibits, the response to staff

1 assessed second set of rogs No. 64, and then the
2 supplemental response would be marked as 109, and
3 then the other one would be marked as 110.

4 MS. CRAWFORD: Okay. Thank you.

5 (Whereupon, Exhibit Nos. 109 and 110 were
6 marked for identification.)

7 BY MS. CRAWFORD:

8 **Q And just real quick, Mr. Johnson, have you**
9 **seen the utility's supplemental response? Are you**
10 **familiar with it?**

11 A I am flipping there right now. Yes, I see
12 this.

13 **Q Okay. And it appears that there has been an**
14 **updated response regarding the complaint as to**
15 **wastewater odor, are you familiar with that?**

16 A Yes, I am.

17 **Q And is that complaint still an ongoing**
18 **complaint, or has it been closed?**

19 A That complaint was a result of a petition by
20 Safe Harbor Marina, it was tendered to -- I believe the
21 Commission has a copy of it because they addressed it.
22 But the DEP came on March 10th to conduct their annual
23 inspection, and at that time, they also followed up on
24 the odor complaint. And in the inspection report we
25 were given by DEP, we were found to be in compliance.

1 And I am trying to think of the exact wording, no odors
2 were emanating outside of the utility boundaries, I
3 think is what Mr. Hardy, the inspector who came on-site
4 wrote in his inspection report.

5 **Q All right. Thank you. That's fine for that**
6 **line of questions.**

7 Do you have in front of you Exhibit 105?

8 CHAIRMAN BROWN: And 105 is the letter from D.
9 Hamilton, dated July --

10 MS. CRAWFORD: That's correct, actually 104
11 and 105, please, sir.

12 CHAIRMAN BROWN: And if your counsel feels if
13 he can help you out there.

14 MS. CRAWFORD: And just for purposes of the
15 record, these are the exhibits that were produced
16 today in relation to the comments we heard at last
17 night's service hearing regarding Boyd's KW
18 campground.

19 THE WITNESS: Yes, I have the documents.

20 BY MS. CRAWFORD:

21 **Q And are you familiar with these documents?**
22 **Have you seen them before?**

23 A I have seen them recently, yes.

24 **Q Okay. If I could refer you to the utility**
25 **agreement, please, specifically -- oh, alas it does not**

1 seeming to be numbered. Let's go to section six. It's
2 about three, four, five pages in, rates, fees and
3 charges, please.

4 A Yep.

5 Q And you will see there at subsection (a), it
6 says, all customers will pay applicable fees, rates and
7 charges as set forth in the tariff. Nothing contained
8 in this agreement shall serve to prohibit service
9 company -- and KW is the service company, correct?

10 A Correct.

11 Q Serves company's right to bill or collect its
12 rates and charges from customers. The customer in this
13 case is Boyd's KW Campground?

14 A Boyd's Campground, yes.

15 Q Boyd's Campground, thank you -- nor to require
16 compliance with any provision of this tariff.

17 And then if I could refer you next to Exhibit
18 105. It's a letter from Daniel Hamilton. I believe he
19 is the gentleman we heard speak last night.

20 A Correct.

21 Q And you were present for that service hearing,
22 sir?

23 A Yes, I was.

24 Q Okay. And it appears to be a letter to a Doug
25 Carter with KW resort. Who is Doug Carter?

1 A Doug Carter at the time was the general
2 manager of the utility.

3 Q Okay. And so this is a letter from Mr.
4 Hamilton wanting to confirm his understanding of the
5 tariff to be charged for -- that Boyd's would be
6 charged. It's going to be base facility charge of
7 \$151.75 per month. To your knowledge, was that the
8 correct tariff base facility charge at the time?

9 A I am just not sure. I don't have that tariff
10 in front of me.

11 Q Okay. That's all right. We will move on.

12 The next paragraph, the gallonage charge will
13 be \$3.09 per 1,000 gallons of effluent, correct?

14 A Correct.

15 Q That was he is asking, and we did hear Mr.
16 Hamilton testify that he had an effluent meter. To your
17 knowledge, is this the rate that is being charged to the
18 campground?

19 A Back in 2004?

20 Q Back in 2004, and then do you know what is
21 being charged today? He is asking to confirm that
22 that's the amount. I don't have confirmation in hand
23 from back from the utility confirming that, so I am just
24 trying to establish.

25 A Certainly, for 2004, I am not exactly sure how

1 he was being billed. Today, he is being billed off the
2 general service tariff sheet based on the meter sizes
3 that he has for this property. This is a large
4 property, he has several meters, and the gallonage is
5 being charged at the general service rate per thousand
6 gallons per the tariff.

7 **Q He is using an effluent meter, is that**
8 **correct?**

9 A Presently?

10 **Q Yes.**

11 A No, he is not.

12 **Q So the situation has been changed, from what**
13 **was described to us yesterday, that he is no longer**
14 **using an effluent meter, he is no longer being billed an**
15 **effluents rate?**

16 A Correct. He is no longer being billed off an
17 effluent meter.

18 MS. CRAWFORD: May I have a moment, Chair?

19 CHAIRMAN BROWN: Absolutely.

20 BY MS. CRAWFORD:

21 **Q Just for confirmation, do you know about when**
22 **that change took place?**

23 A I think the change took place when the PAA
24 order went into effect in April of this year.

25 **Q Thank you.**

1 No more questions in that regard. Just a few
2 more, though.

3 If I may refer you to your rebuttal testimony,
4 on page 10. And there, you are addressing Witness
5 Merchant's claims that Green Fairways does not provide
6 independent management.

7 A Correct.

8 Q Okay. And if you don't mind, I will just
9 read. You say, starting at lines 11 through 15, and I
10 will just paraphrase a little, Ms. Merchant hasn't
11 provided any evidence that your deals are not
12 arm's-length. And then I will quote, I can very
13 adamantly state that William L. Smith, Junior, treats me
14 and the utility operations as a business that must
15 operate with the best -- excuse me, with the lowest
16 expenditures possible benefiting the ratepayers.

17 What's your understanding of the phrase
18 "arm's-length" in that context?

19 A I guess my understanding would be my point
20 that I am making in my testimony, is that the services
21 and skills that are being provided are beneficial to the
22 utility, and in no way are a compromise of the quality
23 that those services should be. In other words, the
24 \$60,000 worth of management fees that we are paying
25 Green Fairways, we are getting \$60,000 worth of value

1 there in experience and in the services that are
2 provided.

3 Q Mr. Johnson, if I were to use the term
4 "related party", could you give me your understanding of
5 what that term means?

6 A I know there is several definitions of that.
7 I think one of the definitions might have been an IRS
8 definition read to me by Mr. Sayler in the deposition,
9 so I have some idea in hearing it. Obviously, related
10 party is someone who has an interest in the other
11 organization.

12 Q And is that necessarily a business interest,
13 or could it also be personal in nature?

14 A It could be either.

15 Q Okay. And you reference Mr. William L. Smith
16 there in your testimony. Mr. Smith, does he own the
17 controlling interest in Green Fairways?

18 A He does.

19 Q Is WS Utility the parent company of KW Resort
20 Utilities?

21 A It is.

22 Q Does Mr. Smith own the controlling interest in
23 WS Utilities?

24 A Yes, he does.

25 Q And in your Exhibit CAJ-4, feel free to flip

1 to it if you would like, but you state there that
2 Ms. Leslie Johnson provides monthly reports on the
3 financial condition of the utility, is that correct?

4 A Correct.

5 Q Are those reports provided to Green Fairways
6 or to the utility? I am not clear on that.

7 A They are provided by Green Fairways.

8 Q Okay. And very respectfully, sir, is Leslie
9 Johnson a related party to both you and Mr. Smith?

10 A Yes, she is.

11 Q Okay. So, again, you are stating that Witness
12 Merchant has incorrectly stated that there is no
13 evidence the utility's dealings with Green Fairways
14 aren't arm's-length. So could you help me understand
15 what processes or procedures that are in place to ensure
16 that the transactions between the utility and Green
17 Fairways are arm's-length?

18 A Specifically, I would just tell you, I am the
19 person that interfaces with Green Fairways the most in
20 the company. I see what Green Fairways does. There has
21 been some testimony about loans and other financial
22 instruments that have been necessary to run the utility
23 during the shortfall while the interim rate -- I am
24 sorry, while the PAA rates are in effect, and we are
25 treating the AWT, there is a deficiency in income. To

1 overcome this, we had to get financial loan instruments
2 to fund the utility. And for all these eventualities,
3 Green Fairways is the one who comes up with the
4 solution, negotiates with the banks. Mr. Smith sits on
5 a bank as Board of Director, so he understands what
6 interest rates are from the bank point of view. He
7 knows how to negotiate these. He has over 40 years
8 experience in negotiating these deals.

9 He sat at the table when we negotiated the
10 \$4.3 million contract with Wharton-Smith. He approves
11 all the legal invoices. He deals with -- any legal
12 issue for this utility, he is involved with from a
13 management point of view. So he does provide an awful
14 lot of valuable services to the utility.

15 **Q Understood. Thank you.**

16 Would you agree, one of the characteristics of
17 determining whether a transaction, especially among
18 related parties, is truly arm's-length is to do a
19 comparison between that transaction and those that might
20 occur, for lack of a better term, in the market?

21 A Yes, I would agree with that.

22 **Q So has the utility done any benchmarking or**
23 **market comparisons to compare the services and the rates**
24 **regarding Green Fairways to other similarly situated**
25 **providers?**

1 A We haven't bid out the management contract to
2 other -- to other companies, no.

3 **Q All right. Just a last few questions. I**
4 **appreciate your indulgence.**

5 Exhibit, what are we calling it, 109?

6 CHAIRMAN BROWN: Is it to rog 64?

7 MS. CLARK: Yes, ma'am.

8 CHAIRMAN BROWN: That's 110.

9 MS. CRAWFORD: I am sorry.

10 CHAIRMAN BROWN: Response to staff's second
11 set of rogs No. 64.

12 MS. CRAWFORD: It is indeed. My apologies.

13 BY MS. CRAWFORD:

14 **Q And, Mr. Johnson, this response asks for a**
15 **schedule showing total gallons of reclaimed water sold**
16 **each month by customer from January 2016 through**
17 **September 2016. Are you familiar with it? Did you**
18 **create it or have it cause to be created?**

19 A Yes, I did.

20 **Q Okay. And the information in it, to the best**
21 **of your knowledge, is true and correct today?**

22 A Yes, it is.

23 **Q Okay. And the two customers who are reflected**
24 **there, Monroe County and Key West Golf Club, now, we**
25 **actually -- you had some questions from Mr. Wright about**

1 those customers, if I remember correctly.

2 A I am sorry, I had questions for --

3 Q Mr. Wright was asking you questions about
4 the --

5 A Yes, he was.

6 Q Okay, that's fine. I am looking at the months
7 January 2016 to September 2016, and then I am comparing
8 the gallons sold to the golf club. And it appears that
9 there is substantially lower number in September 2016 as
10 compared to the other months. Can you explain to me why
11 the months sold in September are so much lower than
12 those sold in the prior months reflected there?

13 A Yes. The golf course uses reuse water
14 exclusively for irrigation. So September is one of the
15 wettest months in the Florida Keys. So if you are
16 asking me which month would you expect low reuse to be
17 supplied to the Key West Golf Club, I would point you to
18 the wettest months of the year. They are getting
19 natural rainfall and, thus, they don't need to
20 supplement their irrigation system with reclaimed water.

21 Q And so you are confident that the number
22 reflected there is correct for September?

23 A I am pretty sure it is, yes.

24 Q And to the best of your knowledge, that would
25 be consistent -- if we were to look at prior years

1 usage, it would be something similar in terms of the
2 disparity between the wetter September months and the
3 other months?

4 A Yes. You are going to see -- if you look at a
5 profile of reclaimed water used by the golf course, you
6 are going to see a profile where there will be months
7 that have less use, and those months are more than often
8 going to occur in the wet season.

9 Q What about October through December? It's not
10 reflected here, but just for completeness of
11 understanding.

12 A These would be the months that we would expect
13 to see low numbers.

14 Q All right. Thank you, Mr. Johnson. I have no
15 more questions.

16 A You are welcome.

17 CHAIRMAN BROWN: All right, Commissioners, any
18 questions?

19 I have just two, I appreciate staff with their
20 line of questions, kind of streamlined mine.

21 Last night, we heard from a woman named
22 Elizabeth Owl. She owns a vacant lot, and
23 continues to be connected to the system. And she
24 said that her bill was going to basically double.
25 We heard from a lot of customers about their bills

1 doubling with this proposed rate increase. Has the
2 company met with someone like Ms. Owl, who owns a
3 vacant lot and is not using that lot for a purpose,
4 have you met with her and discussed her situation
5 and tried to provide a disconnection, or something
6 to remedy her concerns?

7 THE WITNESS: I did. I actually physically
8 visited the property with Mrs. Owl and her
9 daughter. We discussed, among other things, the
10 physical layout of the property, what was currently
11 on the property. She doesn't have a trailer on
12 there. She has a lateral that is made out of cast
13 iron, was installed in the 1960s, so it's shot.

14 I explained to her, if you are ever going to
15 put a trailer on this property, you are going to
16 need to run some new PVC, it's not that much of a
17 run, it would be a \$3,000 plumbing job or less to
18 do the whole job, just because it's not very much
19 pipe. But I told her, I said, if you are not going
20 to build here, why do you have your water meter on?

21 CHAIRMAN BROWN: Okay.

22 THE WITNESS: And she wasn't -- you know, she
23 was noncommittal about when she might rebuild.

24 CHAIRMAN BROWN: Okay. Thank you.

25 And I am just trying to get an

1 understanding -- again, we have heard from these
2 customers about the potential rate increase and
3 it's effect on folks like the campground,
4 236 percent increase in rates. Does the -- does
5 the utility have any type of programs to assist
6 with -- customers with payment, like budget
7 billing, or any type of programs that you offer to
8 your customers?

9 THE WITNESS: We have. Historically, if there
10 is what has been a reason why a customer find
11 themselves with a very large bill, and they come to
12 the utility with hardship and say, hey, we would
13 love to pay this bill, however, we didn't budget
14 for this at this time, the utility has, time and
15 time again, met with these customers, talked to the
16 customers, worked out a payment plan. During the
17 testimony, we've shown some of these payment plans,
18 and the CIAC collections and such have come out in
19 testimony.

20 We do this as a regular course of business.
21 If someone has a reasonable reason for not being
22 able to pay an amount of money at a given point in
23 time, we are not going to forgive it necessarily,
24 but we do try to work payment plans and other
25 arrangements so that eventually a person can catch

1 up with a payment and continue the service.

2 CHAIRMAN BROWN: Thank you.

3 Commissioners, any other -- redirect?

4 MS. CRAWFORD: Madam Chairman, I am so sorry,
5 I did have a few questions regarding Mrs. Owl, and
6 I did neglect to bring those up. With your
7 indulgence, and with the company's, I would like to
8 ask a few questions.

9 MR. SMITH: Certainly.

10 MS. CRAWFORD: I really do apologize for
11 failing to do that timely. Thank you.

12 BY MS. CRAWFORD:

13 Q Okay, so Ms. Vivian Owl, we did hear her
14 testimony yesterday regarding her situation. How much
15 would it cost for Ms. Owl to disconnect from the KW
16 system?

17 A Whatever the tariff rate is.

18 Q I actually do happen to have the tariff in
19 front of me, and I am happy to provide a copy if you
20 would like. It's actually Exhibit DDS-1, page 51 of 70
21 of Ms. Swain's testimony. And I see an initial
22 connection fee, a normal reconnection fee, a violation
23 reconnection fee, premises visit in lieu of
24 disconnection, bad check charge -- excuse me, stop
25 there, premises visit for your current approved tariffs.

1 **There is no charge for a disconnection?**

2 A I don't have that in front of me.

3 CHAIRMAN BROWN: If -- Mr. Smith, can you.

4 MR. SMITH: I can actually clarify this,
5 because I think the actual question, because this
6 is about the FKA meters, what is the cost to
7 disconnect an FKA meter and reconnect an FKA meter?
8 I have actually represented many customers in that,
9 and that's actually the thing that prevents them --

10 CHAIRMAN BROWN: Unfortunately you are not a
11 witness.

12 MR. SMITH: But I think that's more of the
13 probative questions that maybe should be asked of
14 Mr. Johnson, because when he meets with these
15 people, those are the things they are considering.

16 BY MS. CRAWFORD:

17 **Q Let me ask this: Is it necessary to**
18 **disconnect the water meter in order to disconnect from**
19 **wastewater service?**

20 CHAIRMAN BROWN: Mr. Johnson?

21 THE WITNESS: No. No. It's not necessary.

22 BY MS. CRAWFORD:

23 **Q So if Ms. Owl were to come to the utility and**
24 **say please disconnect me, how would you determine the**
25 **charge that would be applied in order to perform that**

1 **service?**

2 A We would disconnect her according to our
3 tariff, and charge her according to our tariff. The
4 water meter is independent of what we do. We don't
5 touch the water meter. It's not our property. So if
6 Ms. Owl decided to remove the water meter, she would pay
7 \$500 to \$700 to remove it. The problem is, if you ever
8 want to put it back in, it's \$1,000 or so.

9 So if you are uncertain if you are going to
10 need that water meter or not, taking it out is a gamble,
11 because to put it back in, it's very costly. And I
12 asked them that question, if they contemplated removing
13 the water service.

14 **Q And in order to terminate water service, it's**
15 **necessary to remove the meter?**

16 A Yes.

17 **Q I am sorry, if I could have just a moment.**

18 All right, just for clarity again, it is not
19 necessary to remove the wastewater -- the water meter to
20 disconnect wastewater service, correct?

21 A Correct. The wastewater service is
22 independent of the water service.

23 **Q So what is involved to disconnect wastewater**
24 **service to terminate wastewater service for a customer?**

25 A It depends what they are asking for. In a lot

1 of cases, a customer will ask to be terminated because
2 they are putting a new trailer in.

3 Again, you heard some testimony from
4 customers, we have had hurricanes, lots of units were
5 substantially damaged, lots of new units went in.
6 During this process, what the utility will do is the
7 utility will go out and physically dig down on the line,
8 cap it, put a stake in, spray paints the stake green to
9 indicate to any demo contractor that that's where the
10 sewer service is, and not to damage it. And that is how
11 you would disconnect a service on a more permanent
12 basis.

13 Not many people call asking the utility to
14 disconnect for a week or two. That's more of an unusual
15 circumstance, because we then tell them, well, you do
16 know you still will continue pay the base rate
17 regardless. And some people are from different places
18 of the country, and they think if they -- they can
19 disconnect for a period of time when they are not using
20 the house, and they think they won't have to pay the
21 base rate. This gets to the vacation rate issue.

22 **Q If I recall Ms. Owl's testimony correctly,**
23 **she's saying there is currently no home on her property,**
24 **is that your understanding as well?**

25 A Right. At this time, there is no home.

1 Q Why is she continuing to pay a base rate to
2 the utility?

3 A Because she has a water meter on the property
4 that's active.

5 Q I am not trying to be difficult, I am still
6 struggling to understand why, even if she has a water
7 meter on the property, wastewater can't be terminated.
8 What would be required to terminate her service?

9 A She would just need to remove her Aqueduct
10 meter, the water meter.

11 Q So you are saying it's necessary to remove the
12 water meter in order to terminate wastewater services?

13 A Yes, and then she would no longer receive a
14 bill for the base rate.

15 MS. CRAWFORD: Thank you. No more questions.

16 CHAIRMAN BROWN: Thank you.

17 Redirect?

18 FURTHER EXAMINATION

19 BY MR. SMITH:

20 Q Going back to OPC's testimony, they discuss
21 the original -- in your direct testimony, the original
22 estimate of 3.7 million for the cost of expansion; do
23 you recall that testimony?

24 A Yes, I do.

25 Q When did the utility first derive the original

1 estimate of 3.7 million?

2 A That was several years ago.

3 Q Okay. Was the utility ever made aware by its
4 engineers that that price may increase due to the
5 passage of time?

6 A Yes.

7 Q And what was that based on?

8 A Based on other wastewater projects that were
9 being built in the Keys. Prices were going up as the
10 economy started to pick up, 2011, '12, contract prices
11 started to go up. I talked to other folks in other
12 industries, and this isn't unique to wastewater.

13 Q And so was that the basis of the updates to
14 the amounts for the cost of the plant?

15 A Yes. As we got better and more accurate bids
16 in, proposals in, we would update those numbers as we
17 moved forward.

18 Q OPC brought forth that the Wharton-Smith
19 contract breakdown on the price is the total contract
20 prices at that time, is that the correct contract price
21 at this time?

22 A There is 4.3 in the original contract, and
23 then there are three change orders that subsequently
24 happened.

25 Q Okay. The third change order is the vacuum

1 tank?

2 A Correct.

3 Q Okay. And so that's been excluded from the
4 cost of the plant, correct?

5 A Correct.

6 Q The other two change orders, did that change
7 the price of the plant?

8 A It did, as indicated.

9 Q And is that incorporated into your rebuttal
10 testimony?

11 A Yes, it is.

12 Q Can you briefly describe what those changes
13 orders were?

14 A One of the change orders was for the
15 foundation, which is underneath the 350,000 gallon a day
16 plant, which is actually a volume of more like 883,000.
17 The other change order was a very minor one, which is
18 actually an adjustment that was to the benefit of the
19 utility.

20 Q Can you turn -- do you still have Exhibit 106
21 with you, which is the annual growth rate?

22 CHAIRMAN BROWN: It's actually titled KWRU's
23 response to rog 24.

24 MR. SMITH: I just had one question.

25 BY MR. SMITH:

1 Q Was this estimated growth rate based on
2 historic growth?

3 A Yes, it was.

4 Q Going to Monroe County's questions about Key
5 Haven. How long has KWRU discussed with Monroe County
6 potentially taking the flows from Key Haven?

7 A I think the initial conversations began fairly
8 shortly thereafter the Aqueduct acquired Key Haven, and
9 off and on over the years they have continued.

10 Q Approximately how long ago was that?

11 A I believe since around 2007 -- I mean, 2009,
12 2010, that timeframe.

13 Q So the utility has discussed taking on the
14 flows of Key Haven since 2009, '10?

15 A Yeah, it was right after they acquired it.

16 Q Has the utility ever reached any agreement
17 with the Aqueduct to take over Key Haven?

18 A No, it has not.

19 Q Has there been anything more than discussions
20 with the Aqueduct about taking over Key Haven?

21 A Taking over Key Haven?

22 Q Correct.

23 A The only thing we have is the bulk service
24 that I mentioned earlier.

25 Q Are you aware if there has been prior

1 **proposals made by KWRU?**

2 A There have been discussions for sure. I can't
3 specifically remember a proposal. I don't think they
4 ever came out with the RFP, you know, that we were
5 waiting for back then. But it's -- there has been so
6 many discussions over the years, it's a little hazy.

7 **Q Are you aware of whether FKA is investigating**
8 **the flows to their plant on --**

9 A Yes, Mr. Wright asked me if I knew during my
10 deposition October 19th or 20th about the aqueduct
11 having an agreement -- I am sorry, a proposal in hand
12 from the City of Key West. And it was at that time that
13 I reported to the utility board that this had happened,
14 or I had information that it happened. So the utility
15 did contact the City to inquire if there was a proposal.
16 And they responded that, no, indeed, there was not. And
17 then the utility approached the executive director of
18 the Aqueduct, asked him if there was a proposal. Again,
19 the answer was, no, there is not a proposal in hand from
20 the City. In fact, we are contemplating right now
21 sending these flows to our Rockland Key plant, and it
22 was at that point that the utility then had a discussion
23 about providing a proposal for an alternative --

24 CHAIRMAN BROWN: Mr. Johnson, can you keep
25 your answers pretty succinct?

1 THE WITNESS: Okay. And it was at that time
2 that the proposal was discussed.

3 BY MR. SMITH:

4 Q Turning to the reuse, there is discussions
5 about beyond the County and Key West Golf Club, a couple
6 of other customers that had been approved for reuse.
7 Can these customers utilize reuse at this time?

8 A They can't because they don't have their
9 private system set up. However, the utility is prepared
10 to send them reuse water.

11 Q Explain to me, there was a discussion that if
12 you -- about tapping into the reuse line, the ability to
13 use reuse; is that possible?

14 A Yes, it is possible.

15 Q Do you have to have infrastructure on-site?

16 A You do have to have infrastructure on-site,
17 for storage of the water, for a pumping system to
18 distribute that water. Our reuse main is very high
19 pressure. You probably need to put it into a storage
20 tank and then into a more low pressure distribution that
21 would serve your property.

22 Q Are these on-site costs beyond the connection
23 to the reuse line?

24 A Yes, these on-site costs are borne by the
25 individual property owners.

1 **Q** **Are those costs imputed into the reuse charge**
2 **to the customer?**

3 **A** No, they are not.

4 **Q** **So to be clear, the hospital cannot utilize**
5 **reuse at this time?**

6 **A** They don't have the facilities at this time to
7 utilize it, correct.

8 **Q** **All right. Do you recall any discussion with**
9 **the hospital, whether they desire reuse at this time?**

10 **A** No. They haven't requested service at this
11 time.

12 **Q** **What about Gerald Adams?**

13 **A** No.

14 **Q** **The college?**

15 **A** No.

16 **Q** **Moving on to Harbor Shores, there was a**
17 **question about the billing. Are the bills made out to**
18 **individual customers?**

19 **A** Yes. The bills are made out to the individual
20 owner, sent care of the association.

21 **Q** **So how many bills are sent to the association?**

22 **A** 69 bills.

23 **Q** **All right. Who are on those bills?**

24 **A** The individual property owner's name is listed
25 on the bill.

1 Q When those bills are paid, who are those
2 payments credited to?

3 A The accounts, which are 69 individually
4 entered accounts in our billing system.

5 Q Do each one of these Harbor Shores residents
6 have an FKA residential meter?

7 A Yes.

8 Q Green Fairways, do you recall within the last
9 rate proceeding the Public Service Commission approved a
10 management fee for Green Fairways?

11 A Yes, they did approve.

12 Q There was some discussion about Mr. Smith and
13 some of his duties to the company. Could the utility
14 borrow money without Mr. Smith's guarantee?

15 A No.

16 CHAIRMAN BROWN: Wrapping it up?

17 BY MR. SMITH:

18 Q As to Boyd's Campground, the effluent meter
19 that was read prior to the PAA order, is that an FKA
20 meter?

21 A No.

22 Q After the PAA order, what meters do you bill
23 Boyd's Campground at?

24 A Solely off of the FKAA meters.

25 Q Why is that?

1 A That is what our tariff tells us to do under
2 the general service condition.

3 MR. SMITH: Thank you. No further questions.

4 CHAIRMAN BROWN: Thank you.

5 Okay. Exhibits, Mr. Johnson, you have got to
6 be tired, you have been sitting there for a while.

7 All right. This witness has 75 through 78
8 attached to his prefiled rebuttal. Would you like
9 those moved into the record?

10 MR. SMITH: Yes.

11 CHAIRMAN BROWN: Okay. Seeing no objection,
12 we will go ahead and move in 75 through 78 into the
13 record.

14 (Whereupon, Exhibit Nos. 75-78 were received
15 into evidence.)

16 CHAIRMAN BROWN: All right. Public Counsel,
17 you have 84 -- 94 -- I am sorry, 84, 104 and 105
18 associated with this witness.

19 MR. SAYLER: Yes, ma'am. We would move the
20 84, not the excerpt but the full copy into the
21 record.

22 CHAIRMAN BROWN: Okay. Seeing no objection we
23 will go ahead and move 84, the full copy, into the
24 record.

25 (Whereupon, Exhibit No. 84 was received into

1 evidence.)

2 MR. SAYLER: As well as 104 and 105.

3 CHAIRMAN BROWN: Seeing no objection, we will
4 go ahead and move 104 and 105 into the record.

5 (Whereupon, Exhibit Nos. 104 & 105 were
6 received into evidence.)

7 CHAIRMAN BROWN: County, you have 106 through
8 108.

9 MR. WRIGHT: Move them into the record,
10 please, Madam Chairman.

11 CHAIRMAN BROWN: Seeing no objection, we are
12 going ahead and moving 106 through 108 into the
13 record.

14 (Whereupon, Exhibit Nos. 106-108 were received
15 into evidence.)

16 CHAIRMAN BROWN: Staff --

17 MS. CRAWFORD: We move that 109 and 110 also
18 be admitted.

19 CHAIRMAN BROWN: We will go ahead and move 109
20 and 110 into the record.

21 (Whereupon, Exhibit Nos. 109 - 110 were
22 received into evidence.)

23 CHAIRMAN BROWN: Now seems like a very nice
24 time to take a break. We will excuse the witness
25 and give about -- let's reconvene at 1:15.

1 (Lunch recess.)

2 (Transcript continues in sequence in Volume

3 5.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

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

DATED this 18th day of November, 2016.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020