BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates in Monroe County by KW Resort Utilities Corp. / Docket No. 150071-SU

K W RESORT UTILITIES CORP.'S
POST-HEARING STATEMENT OF ISSUES AND POSITIONS

K W RESORT UTILITIES CORP. ("KWRU"), by and through its undersigned attorneys, and pursuant to Order No. PSC-16-0509-PHO-SU files this Post-Hearing Statement of Issues and Positions.

APPEARANCES:

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ISSUES AND POSITIONS:

Test Year

ISSUE 1: Is a two-phased revenue requirement calculation appropriate in this docket?

Position: **The wastewater treatment plant expansion will be completed by the time the rates approved in this docket will be effective and thus there should be a single revenue requirement implemented without phasing.**

Argument: The utilization of a two-phased revenue requirement would be of no benefit to the utility or ratepayers in this action, as CWIP as of December 31, 2016 will be significantly higher as to negate any refund. *See* Testimony of Deborah Swain, Transcript Vol. 3, p. 263; *see also* Ex. 8, p. 5 of 127, and Ex. 76 (showing amounts expended as of September 27, 2016). The Proposed Agency Action Order was issued March 23, 2016, eleven months before the plant was expected to be in service, which justified a two-phased rate increase. *See* 16-0123-PAA-SU. Now, due to the protest, and date of the final order, this justification does not exist.

As Witness Swain testified, the CWIP will be high enough at the time the Commission makes its final decision that the possibility of any refund would be eliminated. *Id.* Ex. 8, Section 6.02(b), evidences that by substantial completion of the wastewater treatment expansion, KWRU will have paid 100% of the contract value, less certain small amounts. Ex. 76 further evidences that as of September 27, 2016, KWRU had paid $1,266,093.01 on the plant expansion contract, with $3,089,343.55 remaining to be paid through completion. The vacuum tank expansion, at a cost of approximately $407,000.00, is projected to be on-line by December 25, 2016. *See* Testimony of Christopher Johnson, Transcript Vol. 4, pp. 601 – 02. Engineering costs attendant to the project are expected to be fully paid in March, 2017. *See* Ex. 73. The schedule at Ex. 76 shows that with engineering costs, by completion of the vacuum tank replacement and treatment plant expansion all but a small portion of the projected $5,164,748.94 in expenditures will be paid by the rate implementation, eliminating any need for a refund.

Moreover, the wastewater treatment plant improvements are scheduled to be substantially complete by early March, 2017. *See* Testimony of Christopher Johnson, Transcript Vol. 4, pp. 602 – 603. Since the Commission is not scheduled to make a final decision until February 8, 2017, with the order not issued until March 1, 2017, it is a more efficient procedure to include the revenue requirement from the pro forma projects in a single rate increase. *See* Testimony of Deborah Swain, Transcript Vol. 2, p. 203. To impose a Phase 1 rate, which will never be implemented because Phase 2 will be implemented prior to the rate case order being final, is unnecessary and inefficient.

OPC and Monroe County incorrectly assert the position that the pro forma plant for the wastewater treatment expansion is not proper for consideration in a single phase pursuant to §367.081(2)(a)(2), because it will not be placed into service until more than 24 months after the historic test year used to set final rates. However, the Statute requires the Commission "to consider utility property, including land acquired or facilities constructed or to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission." (emphasis added). The parameters set forth in considering whether such additions are used and useful in the public service include (a) property needed to serve current customers, and (b) property needed to serve customers five years after the end of the test year.

If not for litigation to defend its plant expansion and operational permit, the plant additions would have been completed within 24 months from the end of the 2014 test year. *See* Testimony of Deborah Swain, Transcript Vol. 5, pp. 765 – 66. As such, approval of a longer period is proper under the circumstances.

Additionally, the unrefuted testimony evidences that the plant additions are needed to serve current customers, as vacant land in KWRU's tariff area is extremely limited and significant redevelopment of currently-connected properties is occurring and expected. *See* Testimony of Edward Castle, Transcript Vol. 1, p. 50; *See also* Testimony of Patricia Merchant, Transcript Vol. 3, p. 307 ("…some small component of the new plant is designed primarily for future growth."), *See also generally* Testimony of Kevin Wilson and Ada Mayte Santamaria. While OPC Witness Merchant testified that only a "small component" of the improvement is needed to serve existing customers, this confirms that the property is needed to serve existing customers, as provided in §367.081(2)(a)(2)(a). Witness Merchant overlooks the fact that the expanded treatment plant is an integrated plant, rather than a group of tanks assigned to particular groups of customers, and that redundancy in unit processes must be achieved in order to allow for maintenance of portions of the plant. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 604. Over $1 Million of the construction is for AWT improvements to the existing plant

to insure AWT compliance which all is directly attributable to existing customers. *See* Testimony of Christopher Johnson, Transcript Vol. 1, p. 80.

At this juncture, there are no significant vacant properties that still need to connect to KWRU's system. *See* Testimony of Edward Castle, Transcript Vol. 1, p. 50. The unrefuted testimony further supports that KWRU's tariff area will be built out within the next five years, largely based on changes in use from existing customers. *Id.*, at p. 49. As such, KWRU meets both parameters (a) and (b) of §367.081(2)(a)(2), Florida Statutes and the wastewater treatment plant completed less than 3 months after the 24 month threshold should be included in singular phase rates.

ISSUE 2: What is the appropriate test year for establishing rates for KWRU?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **The appropriate test year is December 31, 2014 adjusted for known and measurable changes.**

Argument: As set forth in PSC Rule 25-30.430(1), F.A.C., test year approval must be challenged within 30 days of approval of the test year ("Within 30 days of the Chairman's approval or disapproval of a test year, upon request of any interested person the full Commission may review the Chairman's test year decision.") The Commission approved KWRU's request for a historic 2014 test year on March 13, 2015. *See* Ex. 113, Letter from Art Graham to Martin S. Friedman dated March 13, 2015, ¶ 2 ("Pursuant to Rule 25-30.430, Florida Administrative Code (F.A.C.), KW Resort's test year request as outlined above is hereby approved for purposes of filing its Minimum Filing Requirements (MFRs).")

Thus, any challenge related to the test year was required by rule to be submitted on or before April 12, 2015. Intervenors did not do so and first raised the issue of test year appropriateness, suggesting a test year of 2016, in direct testimony, after KWRU had filed its MFRs and its direct testimony in this matter, and far outside the 30-day challenge period, as provided by Rule 25-30.430(1), F.A.C.

Rule 25-30.430 F.A.C. provides, at subsection (1), that an interested person may request a review of the Chairman's test year by the full commission. The intervenors are certainly interested persons in this docket, however none requested that the full commission review the appropriateness of the Chairman's decision. The Commission is thus without authority to review the Chairman's test year decision under the Rule at this juncture.

The clear purpose of the rule is to afford due process to the applicant utility, and minimize costs of rate cases, which require certainty in test year so that a utility can properly create its MFRs on the basis thereof. To expend significant funds on MFRs after the test year is approved and no challenge has been made – where the test year is subject to later challenge without notice – would foist substantial and undue costs and burdens upon the applicant utility. Because of this, to untimely challenge the PSC approved test year would constitute a violation of Rule 25-30.430, F.A.C., and a violation of KWRU's due process rights. *See Peoples Bank of Indian River Cnty. V. State, Dep't of Banking & Fin.,* 395 So. 2d 521, 524 ("[t]he legislature may determine by what process and procedure legal rights may be asserted and determined provided that the procedure adopted affords reasonable notice and a fair opportunity to be heard before rights are decided."). To revisit the approved test year would constitute a dereliction of Rule 25-30.430(1), as the procedural process will not have been followed and KWRU would not have been granted the certainty allowed by law. Due process cannot be compromised "on the footing of convenience or expediency." *United Tel. Co. of Fla. V. Beard,* 611 So. 2d 1240, 1243 (Fla. 1993) (quoting *Fla. Gas Co. v. Hawkins,* 372 So. 2d 1118, 1121 (Fla. 1979).

KWRU had created MFRs, and filed direct testimony before it was then confronted with testimony by OPC's witnesses that a 2016 projected test year was a more appropriate test year. Rule 2-30.430, F.A.C. does not provide a mechanism for anyone other than the applicant to request a projected test year. 2015 has not been audited, nor has KWRU provided to the Commission any justification as to why a projected test year "is more representative of the utility's operations than a historical period". This explanation is necessary if an applicant requests a projected period pursuant to Rule 25-30.430, F.A.C. In fact, KWRU has adamantly stated that the projected test year is not correct.

Furthermore, and notwithstanding the requirements of Rule 25-30.430, F.A.C., Intervenor's position that a 2016 pro forma test year should be utilized is predicated on the assertion that projected growth is "exceptionally high" or "significant." First, OPC Witness Woodcock does not state that growth is exceptionally high when calculating used and useful at 5% per year for a projected test year, yet the Intervenors base their theory on Woodcock and extraordinary growth. In KWRU's previous rate case, Docket No. 070293-SU, KWRU presented a growth calculation that exceeded the growth calculation presented in this docket. In Docket No. 070293-SU, both OPC and the Commission accepted KWRU's use of a historic test year. If a historic test year was appropriate in 2006 where growth was over 10%, a historic test year is appropriate where growth is at just over 7%. There is no justification for use of a projected test year in this instance due to "exceptionally high" projected growth where the prior rate case did not find a projected test year necessary.

Intervenor OPC Witness Merchant cites Burkim Enterprises, Inc. ("Burkim"), Order No. PSC-01-2511-PAA-WS, and Martin Downs, Docket No. 84-315-WS, for the proposition that a projected test year is appropriate and the commission has the authority to change the test year. Both cases are wholly inapplicable to the circumstances of this case.

Burkim was a staff-assisted rate case. As an overarching matter, staff-assisted rate case precedent is inapplicable in the context of a Class A Wastewater Facility, such as KWRU, as Class A facilities do not qualify for staff assistance and the rules particular to staff assisted rate cases do not apply to Class A facilities. Any parallel to Burkim should be rejected on this basis alone. Furthermore, in a staff-assisted rate case, there is no procedure for the subject utility to request a test year, where under Rule 25-30.430, F.A.C, the utility is required to request a test year and provide a basis for it. *See* Rule 25-30.455, F.A.C. As such, the due process protection inherent in the 30-day test-year approval timeline is not present in staff assisted rate cases. Paramount in the Burkim decision was the potential for overearning. In this instance, the Commission has a mechanism in place to monitor and address overearnings, while there is no mechanism for KWRU to address potential underearning other than a rate increase application, which will never recover amounts lost prior to the rate case being filed. *See* Testimony of Deborah Swain, Vol. 5, P. 761 – 62.

In Martin Downs, a 1986 case, the Commission approved a projected test year for a utility which had been in operation only since 1981. The Commission based its use of a projected test year on the fact that the utility was anticipated to "continue to experience a rapid growth of demand for its services." The amount of projected growth was not enumerated in Martin Downs. However, as set forth above, a growth rate over 10% was not found to warrant the use of a projected test year in KWRU's previous rate case, Docket No. 070293-SU. The Martin Downs precedent is exceptionally stale, given its age and the fact that in much more recent proceedings involving this very utility, a higher growth rate than projected in this docket was not found to warrant the use of a projected test year. Further, in Martin Downs, the Commission stated that it believed that "the revenues requested by the Company would produce less than a fair rate of return with regard to its water system rate base", but that the Commission had no authority to deny the rates requested when they are less than compensatory.

Intervenors also attempted to support its position for a projected test year by alleging that the Commission requires the appropriateness of any test year and a preference for a projected test year. *See* Testimony of Terry Deason, Transcript Vol. 4, pp. 525, 527. Witness Deason's position is based on the PSC's treatment of electric utilities and not water and wastewater utilities with regard to preference of historic or projected. *Id.* Witness Deason completely disregards the Commission Water and Wastewater Rule 25-30.430(2)(d), F.A.C., which requires the utility to

explain why a projected test year is more representative, indicating the preference for historic test years. The rule does not provide that intervenors can provide the explanation why a projected testy year is more representative after the test year is approved, a prerequisite for projected test year approval.

Intervenor attempts to interject the so-called "matching principle" (T.305, T.531) to support a projected test year as if it had been adopted by the Commission and must be adhered to. *See* Testimony of Patricia Merchant, Transcript Vol. 3, p. 305; Testimony of Terry Deason, Transcript Vol. 4, p. 531. Despite Intervenor's urgings, no statute or rule governing the actions of the Commission contains reference to a "matching principle". Witness Deason relied solely on electric utility rate cases to support this theory and admitted that historically the Commission policy is to use historical test years for water and wastewater cases. *See* Testimony of Terry Deason, Transcript Vol. 4, p. 542.

In the last rate case, where growth was even higher, the Commission found a historic test year was appropriate. As held in *Palm Coast Utility Corporation,* if the Commission were to suddenly change from that policy in the middle of this case and approve a projected test year based not on projections made at time of filing but testimony brought forth in the middle of the case, it would be in violation of the Florida Administrative Code, and the Administrative Procedure Act, Ch. 120, Florida Statutes. *See Palm Coast Utility Corporation v. State of Florida, Florida Public Service Commission,* Case 97-1720 (Fla. 1st DCA1999) ("The Commission acknowledges that the lot count methodology represented a departure from the methodology previously employed"…"[W]e reverse and remand with directions that the Commission provide an explanation, with record support, for the change in methodology in determining the used and useful portion…").

Quality of Service

ISSUE 3: Is the quality of service provided by KWRU satisfactory?

Position: **Yes.**

Argument: The Service Hearing in this proceeding revealed no complaints about quality of service, only about paying more for services received, which now improve the quality of effluent even further. During the rate case, the DEP received only one complaint, regarding odors, which the DEP confirmed was without basis. *See* Testimony of Christopher Johnson, Transcript Vol. 5, pp. 706 – 07; Ex. 109. KWRU has not received any other DEP complaints or violations during the applicable period, even while coordinating a significant plant expansion and moving to AWT treatment. Further, and as set forth in the PAA Order, KWRU has

promptly and properly responded to the very few compliance (sampling and sample chain-of-command) issues and single operation issue (off-site line break) which have occurred in the recent past. There is thus no indication that KWRU's quality of service is substandard or unsatisfactory in any way.

Intervenors contend that service is unsatisfactory because KWRU only began treating effluent standards to Advanced Wastewater Treatment (AWT) Standards in 2015, and this should have occurred years earlier. There is no DEP or regulation or State Statute which required KWRU to treat to AWT standards until January 1, 2016. At the time of the previous rate case, the Florida legislature had determined that AWT treatment would be required as of 2010. *See* Testimony of Edward R. Castle, Transcript Vol. 1, p. 45. The legislature subsequently determined to push this requirement back to January 1, 2016. While KWRU's plant was operable at AWT standards in 2009, KWRU operated the plant at AWT only for a short time as a result of a process guarantee of limited duration, and not for environmental or regulatory compliance. *See* Testimony of Christopher Johnson, Transcript Vol. 1, p. 116. After that test period, the plant did not operate at AWT until legally required to, at least in part, save ratepayers the cost of treatment not required by law. *Id.*, at pp. 123 – 125.

Commission Order No. PSC-09-0057, issued in KWRU's last rate case, reflects that KWRU was not awarded the requisite costs to operate at AWT. Chemical expenses attendant to AWT operation were not granted in the Order. KWRU made no request for additional employee expenses or power, and sludge-hauling expenses were reduced to historical levels. *See* Order No. PSC-09-0057. The only chemicals, sludge hauling, testing, and employment awarded was related to non-AWT current operations. OPC and Monroe County's arguments are patently false and ignore the clear findings in each individual issue in this rate case. Moreover, any argument that the utility "pocketed money" has no support in the record as Chris Johnson has stated that KWRU has not had an operating profit to date, meaning it underearned and most likely should have requested a rate case sooner.

Monroe County seems to confuse the word "convert" with "operate". KWRU converted its plant to AWT, but incurred no obligation to treat to or "operate" at AWT to Monroe County, nor would it as it would have been exceeding DEP regulations which may not be recoverable in a rate case proceeding until required to treat under DEP rule or State statute. *See* Order No. PSC-09-0057. The obligation to convert to AWT was during the last rate case which was accomplished. Monroe County's attempt to raise this issue now is a disingenuous attempt to manipulate rates based on unfounded arguments that the utility violated an agreement entered into with Monroe County nine years ago. If Monroe County had a real issue, it would have and should have raised the alleged breach in a timely fashion, such as during the complaint filed by KWRU against Monroe County for failure to pay funds associated with the AWT conversion. *See* Docket No. 13-00086-SU.

KWRU has complied with all regulations as promulgated by the legislature and the DEP, has provided satisfactory service, and has done so all while bidding and coordinating a massive expansion of its wastewater treatment plant in a unique environment and on an undersized parcel of land.

Rate Base

ISSUE 4: What adjustments, if any, should be made to account for the audit adjustments to rate base in each of Staff's Audit Findings 1 through 7?

Position: **Stipulation as to all but Audit Finding 6. Agree with Audit Finding 6 adjustments as contained in PAA Order.**

Argument: The adjustments as set forth in the PAA Order are appropriate. KWRU's annual reports were re-stated, but not filed, to wait incorporate the necessary corrections after this rate case has been finalized. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 772. The costs, which were properly incurred to determine proper accounting treatment of large capital projects, some of which were pro forma adjustments in the previous rate case, and will benefit the utility for a period beyond the test year. *Id.* These costs were amortized over a 5 year period to decrease the burden to the rate base, as is customary treatment of such expenses. *Id.*

ISSUE 5: What is the appropriate amount of plant in service to be used in setting rates?
A. For Phase I, if applicable
B. For Phase II, if applicable

Position: **$16,592,505**

Argument: The parties reached a partial stipulation as to 2014 Plant In Service. Adjustments were made as expansion and AWT costs were fully realized, as set forth in Exs. 75 and 76. Furthermore, no party has testified that the expenditures are either unreasonable or do not qualify for treatment as Plant In Service. *See* Ex. 79, p. 1 of 11.

ISSUE 6: What is the appropriate amount of accumulated depreciation to be used in setting rates?

A. For Phase I, if applicable
B. For Phase II, if applicable

Position: **$5,738,008**

Argument: As stated in KWRU's response to Issue 1, above, KWRU does not believe a two-phased revenue calculation is appropriate. Notwithstanding, the proper amount of accumulated depreciation is $5,738,008. All book adjustments were made by KWRU as ordered in the previous rate case and in the time period required. *See* Testimony of Deborah Swain, Transcript Vol. 5, P. 768; Ex. 79, p. 1 of 11.

ISSUE 7: What is the appropriate amount of CIAC to be used in determining the rate base that is used for setting rates?

A. For Phase I, if applicable
B. For Phase II, if applicable

Position: **$9,649,877**

Argument: As set forth in KWRU's argument for Issue 2, above, a historic test year is appropriate and the test year previously approved by the Commission is not properly at issue in this proceeding. As such, CIAC should be reflected as a year average balance, and additional CIAC for future periods should not be included. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 769. Pursuant to §367.081(2)(a)(1), the Commission shall not impute prospective future CIAC against the utility's investment in property used and useful in the public service. It is not appropriate to adjust CIAC to another period or to utilize CIAC which has been or may be collected after the test year. *See* Ex. 79, p. 1 of 11.

ISSUE 8: What is the appropriate amount of accumulated amortization of CIAC to be used for setting rates?

A. For Phase I, if applicable
B. For Phase II, if applicable

Position: **$3,014,941**

Argument: Accumulated amortization of CIAC is properly calculated based on the CIAC balance set forth above, in KWRU's position with regard to Issue 8. *See* Testimony of Deborah Swain, Transcript Vo. 5, p. 777; Ex. 79, p. 1 of 11.

ISSUE 9: What is the appropriate amount of construction work in progress (CWIP) to be used for setting rates?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **$0 since the plant expansion will be on-line when the rates go into effect. If there is not a single increase then the amount is subject to a Stipulation.**

Argument: As set forth in KWRU's argument on Issue 2, above, a 2014 historic test year is appropriate, and as set forth in KWRU's response to Issue 1, above, there is no justification for a two-phased calculation, due to the substantial amount which will have been expended for capital projects by rate implementation, negating any refund. It is expected that there will be minor, if any, construction work in progress as of the implementation of the new rates. The plant improvements are expected to be substantially complete by early March, 2017. *See* Testimony of Christopher Johnson, Transcript Vol. 4, pp. 602 – 603.

If a two-phased rate is approved, the first phase should include the CWIP on KWRU's books over the period the Phase 1 rates are in effect. Although this amount was $303,135 as of December 31, 2014 at the time of the Commission audit in July, 2015, by December 31, 2016 when the rates became effective, CWIP was $620,619. *See* Ex. 28, p. 50 of 65. CWIP is projected to be over $5 million by the time the rates will go into effect. *See* Argument as to Issue 1, above.

ISSUE 10: What is the used and useful (U&U) percentage of the Utility's wastewater treatment plant after the treatment plant expansion is placed into service?

Position: **The wastewater treatment plant is 100% used and useful after the treatment plant expansion is placed in service.**

Argument: The uncontroverted testimony shows that the plant expansion was for environmental compliance purposes, and that the improvements include appurtenances to the existing plant to ensure treatment at AWT levels. *See* Testimony of Christopher Johnson, Transcript Vol. 1, p. 87; Testimony of Edward Castle, Transcript Vol. 4, p. 585.

As set forth in Section 367.081(2)(a)2c., "the commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs." The .849 MGD capacity is necessary in order to ensure KWRU has the capacity to treat future flows for the 10-year period prescribed by DEP rule for environmental compliance, and AWT improvements

are necessary to ensure the plant as a whole can reliably meet the AWT standards prescribed by DEP. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 595.

Rule 62-600.405(1), F.A.C., sets forth the criteria for ensuring environmental compliance not just for the present condition, but for future conditions. Subsection (1) of the Rule states, in pertinent part, that "[t]he permittee shall provide for the timely planning, design, and construction of wastewater facilities necessary to provide the proper treatment…". The pro forma plant expansion was planned and designed, and is currently being constructed, to ensure proper treatment is provided for KWRU's flow conditions. The requirement in Rule 62-600.405(6) provides that "flow projections based on local population growth rates and water usage rates for at least the next ten years" be presented, indicating that the planning period must be ten years *or longer*. Further, Recommended Standards for Wastewater Facilities, incorporated by reference in Rule 62-600.300, F.A.C., requires a minimum planning period of 20 years, stating in Chapter 10, Section 11.23, that "[p]resent and future predicted population shall be based on a 20 year planning period." *See* Ex. 63, No.42. Even if no new customers connected to the plant, the un-expanded plant would have exceeded its capacity. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 597. Therefore, the plant expansion was necessary to maintain environmental compliance and the appropriate sizing was determined based on DEP rule for environmental compliance.

In order to accommodate flows for the period prescribed by DEP – in light of a build-out date predicted between 2018 and 2020 – the expansion to .849 MGD capacity was necessary. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 570. In fact, whether the size of the expansion was *adequate* was a central issue in Last Stand's challenge to KWRU's permit. *Id.*, at 571. The Final Order in DEP Case No. 14-5302, the Last Stand permit challenge, provides at ¶ 125 that "it is determined that KWRU demonstrated, by credible, persuasive evidence, that it accurately estimated future wastewater flows from projected development on Stock Island to determine an appropriate design capacity of .849 MGD AADF for the expanded wastewater facility." *See also* Final Order, ¶ 136 ("…[Last Stand Expert Engineer] Lynch opined that the proposed design capacity was undersized for the flows he projected for the Expanded Wastewater Facility. However, the persuasive evidence shows that KWRU's proposed design capacity of .849 MGD AADF is appropriate, conforms to sound engineering principles, *and meets applicable statutory and rule requirements.*" (*emphasis* added).

Moreover, it is appropriate for the Commission to consider factors other than the simple mathematical calculation as set forth in Rule 25-30.431, F.A.C., and required to be included in KWRU's MFR filing, including the factors of Section 367.081, Fla. Stat., and PSC Rule 25-30.432, as detailed in KWRU's filing Ex. DDS-1 and MFR Schedule F-4. The treatment plant, as expanded, is an integrated plant. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 604. To ensure

treatment to AWT levels as mandated, unit processes must have redundancy to ensure that during maintenance the plant can adequately process sewerage to the standards prescribed by the DEP. *Id.* To treat to AWT with assurance, the third plant of similar size is necessary not only to service the population predicted within the planning year, but provide redundancy to ensure AWT standards are met under any conditions.

Rule 25-30.432 expressly provides that the enumerated factors are only some of the factors the Commission will consider in determining used and useful, and the factors are by no means an exhaustive list. Rule 25-30.432 states that the extent to which the area served is built-out should be considered, implying that projected growth based on factors other than a strict percentage should reasonably be allowed.

Section 381.00655, Florida Statutes, and Monroe County Code Section 20-51 provide that the owner of an on-site sewage treatment and disposal system must connect the system to a publicly owned or investor-owned sewerage system within 30 days of written notification that the system is available for connection. Vacant, unconnected land within KWRU's tariff area is projected to be fully built-out between 2018 and 2020. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 570. Considering the environmental mandate codified in Section 381.00655, Florida Statutes and Monroe County Code Section 20-51, and the direction in Rule 25-30.432 that "the extent to which the area served by the plant is built out" must be considered, the expansion – which will service unconnected properties – is for the purpose of environmental compliance.

The conversion to AWT was necessitated by environmental regulation, as was the addition of the injection wells to dispose of the effluent safely and effectively. When all of these factors are considered, despite any simple mathematical calculation, the wastewater treatment plant should be considered 100% used and useful. *Id.*

This approach was recognized by the Commission in KWRU's prior rate case, wherein the Commission stated that "the record shows that the facility is 100 percent used and useful because the plant is designed and built to provide reuse and will be an AWT plant, as mandated by Monroe County." *See* PSC Order No. 09-0057-FOF-SU, Docket No. 070293-SU, p. 18. Any change in methodology for determining used and useful must be supported by a record justification for such change. *See Palm Coast Utility Corp. v. State of Florida, Florida Public Service Commission*, Case 97-1720 (Fla. 1st DCA1999) ("The Commission acknowledges that the lot count methodology represented a departure from the methodology previously employed"…"[W]e reverse and remand with directions that the Commission provide an explanation, with record support, for the change in methodology in determining the used and useful portion…").

These factors have not changed, and the plant should be considered 100% used and useful as a result. *See* Testimony of Frank Seidman, Transcript Vol. 5, p. 743. If KWRU would have utilized 5% annual increases for five years to determine capacity, KWRU's permit would have been susceptible to a successful challenge to its DEP permit issuance, and would have been insufficient to handle the influent volume expected at build-out, which is projected to occur in the next 2 – 4 years. *See* Testimony of Edward Castle, Transcript Vol. 1, p. 35.

Finally, Witness Woodcock admitted at hearing that he did not consider environmental compliance costs for his used and useful calculation. *See* Transcript, Volume 3, p. 292. In light of the regulatory constraints on KWRU and the purpose of the capital improvements, this error is fatal to Witness Woodcock's overly simplistic calculation. Witness Woodcock based his used and useful calculation on "updating…to a 2016 pro forma test year." *See* Testimony of Andrew Woodcock, Transcript Vol. 3, p. 289. As set forth in KWRU's argument on Issue No. 3, a 2016 test year is not appropriate. As Witness Woodcock's reliance on a projected test year is inappropriate under Rule 25-30.430, F.A.C., the only competent, substantial evidence in the record regarding the used and useful percentage is the testimony of Witnesses Seidman and Castle, who agree the wastewater treatment plant is 100% used and useful. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 570; Testimony of Frank Seidman, Transcript Vol. 5, pp. 741 – 43.

If a 100% Used and Useful Percentage is not accepted, it should be noted that the Commission's calculation of Used and Useful as set forth in the PAA Order is incorrect. Average growth through a 5 year period should properly be 7.06%, yielding a Used and Useful Percentage of 76.42%, rather than the 71.96% as set forth in the PAA Order. *See* Ex. 15, p. 1.

ISSUE 11: What is the appropriate working capital allowance?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **$1,458,270 based upon pro-forma test year balance sheet plus cost associated with permit litigation .**

Argument: Working Capital in the amount of $1,458,270 adequately and properly accounts for AWT operational expenses, and the test year after pro forma adjustments aligns with the test year working capital. *See* Testimony of Deborah Swain, Transcript Vol. 2, p. 203. *See* Ex. 79, p. 1 of 11.

First, KWRU's operating capital was and has been depleted below a reasonable working level due to the cost of successfully defending the Last Stand permit challenge,

participating in the rate proceedings, and AWT compliance. *Id.*, at pp. 204-205. Given the regulatory environment in the Florida Keys (AWT) and the recent depletions of capital, the Working Capital allowance determined by Witness Swain is reasonable. The increase in cash that KWRU experienced during the test year was a direct result of CIAC payments. The cash from CIAC was utilized as equity invested in the company for defense of the Last Stand permit challenge and for the cost of design and implementation of the plant expansion.

Intervenor OPC Witness Merchant proposes to exclude cash from certain sources. As to counts entitled "Escrow", which Witness Merchant contends should be excluded, the title of the accounts is only utilized for management purposes, and the use of those accounts is not restricted. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 771.

The cash from CIAC is available to KWRU for any purpose, as is cash from any other unrestricted source. The cash from CIAC in this case was used in large part to fund the substantial construction projects which KWRU has had to undertake, and to fund operating expenditures. *Id.* at p. 773. The cash was used in large part to finance the substantial construction projects which it has been necessary for KWRU to undertake, and to cover operating expenses during this rate case, which are increased due to the requirement to treat to AWT. To the extent the CIAC received is an offset to rate base, the cash left in KWRU's accounts for operations should be included as an addition to rate base. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 771. CIAC, upon receipt by the utility, could be distributed to the investors. If CIAC is reinvested for operations, its inclusion in working capital is appropriate, whether it is first distributed or left in the account for use in operations and capital improvements. Otherwise, a utility would have to distribute the funds and then make a capital call.

Additionally, it is inappropriate to exclude cash from customer deposits from working capital. Whether held in a separate or singular account, these funds must be available for use by KWRU as the customer base routinely changes. These deposits are cash on hand necessary for operations and are properly included as working capital. Further, to exclude cash from customer deposits because the resulting liability is in the cost of capital is nonsensical, just as it is to exclude plant from rate base because it is funded by debt.

Moreover, as discussed below, litigation fees incurred in the Last Stand challenge to KWRU's proposed expansion and operating permit are not proper for capitalization to plant in service. The appeal challenged portions of KWRU's operation which would have impacted operation of the utility. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 771. As such, amortization of these expenses is appropriate and they should not be included in working capital.

Witness Swain's Schedule of Wastewater Net Operating Income shows annual adjusted revenue required in the amount of $2,982,868.00. Ex. 79, p. 5 of 11. This equates to

monthly revenue needs of $248,572.33. Witness Merchant's calculation provides for a working capital allowance (Phase II) in the amount of $328,974.00. *See* Ex. 25, p. 1. Witness Merchant's calculation would leave KWRU with slightly more than one month's operating expenses on hand, which is woefully inadequate in the event of an emergency such as a hurricane or other natural disaster.

ISSUE 12: What is the appropriate rate base? (Fall-out)

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **This is a fall-out calculation.**

Argument: As to portion (a), a two phased approach is not appropriate, as set forth in KWRU's Argument as to Issue 1. However, if a phased approach is approved, the first phase should include the portion of pro forma plant spent by KWRU over the period the first phase rates are in effect. CWIP is estimated to be over $5 million when the rates would go into effect. *See* Argument as to Issue 1, above.

As to portion (b), this is a fall-out calculation based on issues 5 – 13.

Cost of Capital and Capital Structure

ISSUE 13: What is the appropriate capital structure to be used in setting rates?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: ** For the single phase, the pro forma plant will be 100% equity financed, and the BB&T Debt has increased to 4.25%
Long Term Debt - $1,063,865, 18.74% ratio, 4.25% cost rate
Common Equity - $4,450,994, 78.369% ratio, 9.18% cost rate
Customer Deposits - $162,972, 2.87% ratio, 2% cost rate **

Argument: This is a fall-out calculation, based on 100% equity financing of pro forma plant additions. *See* Ex. 79, p. 10 of 11 for the appropriate calculation, and Ex. 81 for schedules supporting equity financing.

KWRU has proven that it has used equity in financing the expansion. Regular payments of interest on affiliate debt ceased in June, 2016, when the relevant loan was reclassified as equity. *See* Ex. 81. Moreover, as of the final hearing, approximately $3.4 million in equity had been invested to date. *See* Testimony of

Deborah Swain, Transcript Vol. 5, p. 851. Additional debt taken after the filing of the rate case simply replaces the affiliate debt references above, and should not be considered for the purpose of setting rates. Further, funds available from new lines of credit should not be included as there has been no use of those funds, and KWRU has indicated its intention to finance the plant with equity. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 819. OPC and Monroe County assert that debt should be utilized, but this simply defies current lending practices as no lending institution would finance 100% debt and any debt financed would require a personal guarantee, which Intervenors feels that William L. Smith, Jr. should freely give without compensation or assurance the utility can repay the loans and become liable for such debts should the utility default. This is simply illogical and no person or company would undertake such obligations without compensation.

ISSUE 14: What is the appropriate return on equity?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **The appropriate return on equity is 9.18% based upon the capital structure (see Issue 14) as determined pursuant to PSC Order No. PSC-16-0254-PAA-WS (leverage formula).**

Argument: Based on the capital structure, the appropriate return is calculated based on the leverage formula, as set forth in Order No. PSC-16-0254-PAA-WS. *See* Ex. 79, p. 10 of 11.

ISSUE 15: What is the appropriate cost of long-term debt?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **4.25%**

Argument: The 4.25% cost is appropriate based on current loan rates provided by BB&T. The current prime rate is 3.5%, and the BB&T debt interest rate is .75% over prime. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 775. Thus, a 4.25% rate reflects the actual cost of capital acquired through debt financing.

ISSUE 16: What is the appropriate weighted average cost of capital based on the proper components, amounts, and cost rates associated with the capital structure for the test year period? (Fall-out)

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **8.06%**

Argument: This is a fall-out calculation based on 100% equity financing of pro forma plant additions, and capital structure as set forth in Issue 13. *See* Ex. 79, p. 10 of 11.

Net Operating Income

ISSUE 17: Should the members of Harbor Shores Condominium Unit Owners Association, Inc. (Harbor Shores) be classified as Residential customers or a General Service customer?

Position: **Based on each residential unit having an FKAA residential water meter, Harbor Shores residential units should be classified as residential customers.**

Argument: KWRU is directed to bill based on Florida Keys Aqueduct Authority meters, pursuant to its tariff sheets. *See* Testimony of Christopher Johnson, Transcript Vol. 1, p. 153. Each individual residence within Harbor Shores has an FKAA meter, and residential billing is appropriate pursuant to KWRU's tariff sheets *Id.*, at p. 167. KWRU has the legal authority to discontinue service to any individual unit based on the Florida Administrative Code. *See* Rule 25-30.320(f) and its Commission-approved tariff, Rule 12.0 (Sheet 9). KWRU physically has the ability to discontinue service by utilizing test balls in the clean-outs for individual units. *See* Testimony of Christopher Johnson, Transcript Vol. 4, p. 699.

No evidence was presented that Harbor Shores Condominium Unit Owners Association, Inc. is properly classified as a general service customer. If Harbor Shores is recalculated as a general service customer, appropriate adjustments must be made to customer bills and gallonage for final rates determination.

ISSUE 18: What are the appropriate bills and gallons to use to establish test year revenues and rates?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **As stated in the PAA Order.**

Argument: The appropriate bills and gallons are stated in the PAA order. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 778.

ISSUE 19: What is the appropriate amount of miscellaneous revenues to be included in test year revenues and rates?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **As stated in the PAA Order, increased for the increase in miscellaneous rates.**

Argument: The appropriate miscellaneous revenues are as set forth in Ex. 95. Benefits and insurance are properly included within miscellaneous costs to the extent they are as a result of direct labor. *See* Testimony of Deborah Swain, Transcript, Vol. 3, p. 253. This ensures that the proportion of benefits and insurance attributable to directly-billable labor are not subsidized by customers who do not receive the services. *Id.*, at 254.

ISSUE 20: What is the appropriate amount of test year revenues for KWRU's wastewater system? (Fall-out)

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: **Stipulation.**

Argument: A stipulation has been reached as to this Issue.

ISSUE 21: What adjustments, if any, should be made to account for the audit adjustments in each of Staff's Audit Findings 3, 4, 5, 10, and 11 to operating expenses?

Position: **Stipulation.**

Argument: A stipulation has been reached as to this Issue.

ISSUE 22: What are the appropriate annual levels of O&M expenses for implementing advanced wastewater treatment (AWT)?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: ****** For a single phase, $2,220,932, plus amortization of additional actual rate case expense.**

Argument: The estimates for O&M expenses contained within the revised MFRs accurately depict the O&M costs associated with operating the utility once the expanded plant is in service. The expanded plant will necessitate additional costs regardless of flow levels and regardless of the causes of those flow levels. Simply calculating a cost per gallon, as OPC Witness Merchant advocates, does not take into account the fixed costs associated with operating the expanded plant, including minimum chemical inputs and power. *See* Testimony of Christopher Johnson, Transcript Vol. 4, pp. 605 – 606.

OPC Witness Woodcock projects a flow of 507,000 gallons per day (pro forma 2016 test year), rather than KWRU's 550,000 gallons per day projection. *See* Testimony of Andrew Woodcock, Transcript Vol. 3, p. 285; Ex. 20. On this basis, OPC Witness Merchant opines that purchased power, chemicals, and materials should be proportionately decreased. However, the undisputed testimony shows that once the expanded wastewater treatment plant is in operation, costs for these categories do not decrease proportionately with flows, and the decrease in cost is nominal for the decreased flows projected by Witness Woodcock. *See* Testimony of Edward Castle, Transcript Vol. 4, p. 576. Sludge hauling must be undertaken for three plants, rather than two, regardless of flow levels. *Id.* Regardless of flow, the operation of the plant requires the same amount of power other than pumping power, and aeration and chemical feed rates do not decrease proportionately with flows. *Id.* at 593 – 94.

Adjustments made by staff and set forth in the PAA to salaries and wages are inappropriate. Actual salaries paid to the two new employees are $46,000.00 (including estimated overtime), and pro forma amounts set forth by KWRU were $40,000.00 and $50,000.00, respectively. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 776. The original amount for salaries and wages as set forth by KWRU is appropriate. KWRU's request for payroll expenses are proper based on the salary and wage level requested by KWRU.

With respect to accounting services, Staff's adjustment to such services is inappropriate. The PSC Audit requested a large number of documents and justifications for transactions stretching back nearly a decade. Accounting attributable to such services is reasonable, in light of the limitations of KWRU's

current employees and the cost of bringing accounting services in-house. *See* Ex. 9, pp. 4 – 5, 96 – 97. While KWRU has an "accounting and administrative specialist" in-house, the employee does not have the skills and experience necessary to provide the functions of a CPA. Mr. Jeff Allen has a full understanding of Generally Accepted Accounting Principles, familiarity with NARUC, and is qualified in tax accounting. Mr. Allen's professional services are necessary to ensure KWRU's books and records are accurate and compliant with all regulatory and accounting standards. *See* Ex. 51, No. 36.

Accounting services performed by Mr. Allen include review of KWRU's transaction processing systems, confirmation that recordkeeping meets applicable regulatory requirements, oversight and processing of financial information for investors, company officers, and regulatory agencies, making adjustments as ordered by the PSC from time-to-time, and ensuring tax returns and NARUC accounting align. *See* Ex. 51, No. 35.

With respect to management expenses, please see KWRU's argument as to Issue 24. The services provided by Green Fairways are necessary in order to finance KWRU's operations, and are reasonable and just in light of market standards. Green Fairways assists KWRU in generating detailed analysis and financial statements of a caliber acceptable to investors, financial institutions, and banking officials. Green Fairways provides sophisticated analysis from an investment standpoint, and engages equity and debt providers face-to-face. Given KWRU's financial situation, KWRU must demonstrate its financial capability by explaining the complex operational environment in which it exists, analyzing and simplifying regulatory parameters with which debt/equity providers of a national scale are not familiar. Mr. William Smith of Green Fairways has 40 years' experience dealing with lenders on behalf of various investment groups and, as an attorney, a detailed knowledge of the regulatory and tax spheres in which KWRU operates. Mr. Smith serves on a financial institution board and understands the desires of such institutions and competitive loan pricing in the market. *Id.* Green Fairways provides review of outside legal bills, oversees large capital investments and activities of KWRU's president, and approves compensation for employees. *See* Testimony of Christopher Johnson, Transcript Vol. 4, p. 608.

ISSUE 23: What adjustments, if any, should be made to pro forma contractual services accounting and engineering fees?

Position: **None.**

Argument: No adjustment is appropriate for contractual accounting and engineering fees. With respect to accounting services, Staff's adjustment to such services is inappropriate.

The PSC Audit requested a large number of documents and justifications for transactions stretching back nearly a decade. Accounting attributable to such services is reasonable, in light of the limitations of KWRU's current employees and the cost of bringing accounting services in-house. *See* Ex. 9, pp. 4 – 5, 96 – 97. While KWRU has an "accounting and administrative specialist" in-house, the employee does not have the skills and experience necessary to provide the functions of a CPA. Mr. Jeff Allen has a full understanding of Generally Accepted Accounting Principles, familiarity with NARUC, and is qualified in tax accounting. Mr. Allen's professional services are necessary to ensure KWRU's books and records are accurate and compliant with all regulatory and accounting standards. *See* Ex. 51, No. 36.

Accounting services performed by Mr. Allen include review of KWRU's transaction processing systems, confirmation that recordkeeping meets applicable regulatory requirements, oversight and processing of financial information for investors, company officers, and regulatory agencies, making adjustments as ordered by the PSC from time-to-time, and ensuring tax returns and NARUC accounting align. *See* Ex. 51, No. 35.

ISSUE 24: What adjustment, if any, should be made to KWRU's test year expenses for management fees charged by Green Fairways?

Position: ******None.**

Argument: No adjustment should be made to Green Fairways management fees, as the management fees are customary and proper in relation to typical financial institution management fees. Mr. William Smith, an officer and shareholder of Green Fairways, takes no salary from that company but from time-to-time personally guaranties loans to KWRU from FDIC insured financial institutions due to KWRU's lack of income and credit. KWRU would not be able to obtain these loans without the personal guaranty. Financial institutions usually utilize a management fee around 3% in lending for commercial enterprises. *See* Ex. 49, No. 20. The uncontroverted evidence is that BB&T, a third party, FDIC insured financial institution, imputed a $60,000 management fee in its loan underwriting. *See* Testimony of Christopher Johnson, Transcript Vol. 2, p. 93. KWRU is requesting rates over $3,300,000.00, which would equate to a customary financial institution management fee of approximately $100,000.00. The $60,000.00 management fee is therefore well below market rates and is an appropriate expense for KWRU. *See* Testimony of Christopher Johnson, Transcript Vol. 1,p. 76; Ex. 49, No. 20.

Green Fairways President, William L. Smith has also been obligated to personally guarantee such loans. *See* Ex. 83. As stated in Issue 13, it is illogical for an individual to assume personal liability of this nature without compensation. If KWRU's management is not compensated for personally guaranteeing loans which reduce revenue requirements, the logical course of action is for KWRU to pay off its loans to eliminate liability to third parties, which will increase revenue requirements and the cost to customers. OPC and Monroe County desire KWRU to utilize debt, which is a liability, but do not comprehend or simply ignore the fact that debt obligations require guarantees of financially solvent third parties, which are reluctant to provide such guarantees without fair compensation for such risk where equity can be utilized to reduce risk and increase revenues.

Green Fairways additionally oversees outside legal services, oversees management of KWRU, provides budget and financial oversight, participates in capital planning, and approves compensation for employees. *See* Testimony of Christopher Johnson, Transcript Vol. 4, p. 608.

ISSUE 25: What is the appropriate amount of rate case expense?

Position: **Actual rate case expense excluding the cost to respond to deficiencies through completion of the case. The amount expended through October 24, 2016 was $396,993.84 with additional rate case expense of $86,782.31 for a total rate case expense of $483,776.15.**

Argument: As set forth in Ex. 51, Response No.47, actual rate case expense as of October 24, 2016, was $396,993.84. These expenses are supported by the invoices included within Ex. 52, Response No. 31. In Ex. 52, Response No. 31, Friedman & Friedman, P.A. projected an estimate to completion of $29,520.00 (document "RFP 31-1"), and Management & Regulatory Consultants, Inc. projected an estimate to completion of $26,500.00 (document "RFP 31-2"). As of June 24, 2016 Milian, Swain & Associates, Inc. had expenses of $97,646.42, and projected an estimate to completion of $46,000.00, for a total of $143,646.42. As of October 24, 2016, Milian, Swain & Associates had actual expenses of $135,533.92, leaving projected expenses of $8,112.50 to completion.[1] *See* Ex. 52, No. 31 (document "RFP 31-3"). Based on the most recent actual and projected rate case expense submitted as evidence, the total rate case expense evidenced at trial would be $461,126.34.

Due to an oversight, Smith Oropeza Hawks, Milian Swain & Associates, Inc., and Weiler Engineering Corp. did not provide updated projected rate case expense for the final hearing and post hearing response in its response within Ex. 52. Smith

[1] Projected Rate Case expense total on June 24, 2016 of $143,646.42 minus actual rate case expense of $135,533.92 equals $8,112.50.

Oropeza Hawks' actual and estimated rate case expense has totaled $221,404.99 to date, of which $164,372.43 is supported by the invoices included within Ex. 52, No. 31, which leaves a total not included in SOH invoices as of today's date of $53,682.56 and projected rate case expense of $3,325.00 for a total rate case expense since October 24, 2016 of $57,007.56.

Milian, Swain & Associates, Inc.'s actual and estimated rate case expense has totaled $147,674.72 to date, of which $135,533.92 is supported by the invoices included within Ex. 52, No. 31, which leaves a total not included in Milian Swain invoices as of today's date of $12,140.80.

Friedman and Friedman, P.A.'s actual and estimated rate case expense has totaled to date, $72,820.00 of which $59,602.27 is supported by the invoices included within Ex. 52, No. 31, which leaves a total not included in Milian Swain invoices as of today's date of $13,217.73.

Management & Regulatory Consultants, Inc.'s actual rate case expense has totaled to date, $18,410.19 of which $5,006.25 is supported by the invoices included within Ex. 52, No. 31, which leaves a total not included in Seidman invoices as of today's date of $13,403.94.

Weiler Engineering Corp.'s actual rate case expense has totaled to date, $10,516.25 of which $5,803.75 is supported by the invoices included within Ex. 52, No. 31, which leaves a total not included in Seidman invoices as of today's date of $4,712.50.

Jeffrey E. Allen, P.A.'s actual rate case expense has totaled to date $12,975.00 of which $10,275.00 is supported by the invoices included within Ex. 52, No. 31, which leaves a total not included in Jeff Allen invoices as of today's date of $2,700.00.

If all additional expenditures since the post-trial are included and final estimates accepted, the total rate case expense is $483,776.15, which is $22,649.81 over total estimated costs, less than 5% off estimated costs as of October 24, 2016.

KWRU has filed a Motion requesting the opportunity to file a late-filed exhibit which contains actual invoices to date for all professionals identified above.

Intervenors contend that certain legal expenses of Friedman & Friedman, P.A. and Smith Oropeza Hawks, P.L. are duplicative and not reasonable. However, the two firms have had a distinct separation of duties, and took measures to minimize legal expenses. In this docket, Smith Oropeza Hawks served as primary litigation counsel, with Friedman & Friedman providing input and advisement related to unique Commission regulations and procedures. As such, the two firms have not

overlapped on work performed, other than brief communications to divide work between the two firms. Mr. Smith and Mr. Friedman have attended Commission conference calls and participated in the conferences to ensure that no miscommunications exist and that work is not duplicated. This has been occurring since the PAA case was filed. Smith Oropeza Hawks has handled the significant discovery load attendant to this docket, and primarily tasked its lowest cost attorney to coordinate efforts of witnesses and draft discovery documents. Mr. Smith's firm responded to Staff's 44 Requests for Production and 82 Interrogatories, including all subparts, OPC's 39 Requests for Production and 58 Interrogatories, including all subparts, Monroe County's 31 Requests for Production and 44 Interrogatories, including all subparts, and finally, Harbor Shores' 7 Requests for Production, which totaled 119 Requests for Production and 184 Interrogatories propounded by all parties. This effort alone took most of the time expended by Mr. Smith's firm. Mr. Smith's firm drafted the Motion to Compel filed in this action, which was granted excepting a small part, prepared testimony with witnesses, and has assisted with all KWRU matters related to the plant expansion and vacuum tank. Mr. Smith has also participated in conference calls to ensure that all division of work between the two firms is accomplished efficiently. Mr. Smith and Mr. Friedman limit conversations to brief discussions involving subdivision of work.

ISSUE 26: What is the appropriate amount and accounting treatment of accounting fees incurred by the utility to restate its 2007 to 2012 Annual Reports?

Position: ******$63,055.00, deferred and amortized over 5 years per Audit Finding 6.**

Argument: The 2014 accounting expenditures were for the purpose of determining proper accounting treatment of several large construction projects which occurred after KWRU's previous rate case, some of which were pro forma adjustments in the last rate case. The fees as presented by KWRU are reasonable and necessary in light of the work performed and the long-term implications of improperly stated records. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 772.

The correct recording of capital projects on KWRU's books is an appropriate expenditure, which benefits KWRU and its rate payers far beyond the test year in which it was performed. As such, a 5 year amortization schedule is appropriate. *Id.* KWRU accountants extracted and compiled the support for every single transaction for which it sought capitalization, and was able to transmit a CD containing 100% of capitalizable transactions since the previous rate proceeding, allowing the auditors to review the transactions rather than undertaking an independent audit. *Id.* at p. 768. Because of this, not only was this work necessary, it has allowed PSC

and the customer to have accurate records of KWRU for this rate case and moving forward.

ISSUE 27: What is the appropriate amount and accounting treatment of fees associated with the legal challenge of KWRU's FDEP Permit Numbers FLA014951-012-DWIP, 18490-020, and 18490-021 for rate-setting purposes?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: ******$487,564.07 deferred and amortized over 5 years, per PAA.**

Argument: OPC contends that legal fees incurred defending Last Stand's challenge of KWRU's operating permit should be capitalized, and not amortized over the five year life of the permit. This position overlooks the fact that these fees are operational in nature, as the permit challenge was not only directed to the expansion of the plant, but to the operation of the plant. The Intent to Issue Permit issued by DEP, and challenged by Last Stand, was both an expansion and an operation permit, providing not only for the construction of new infrastructure but for operation of the existing plant. It provided that "[t]he existing WWTP and the proposed 0.350 MGD treatment train has and will be modified to meet the advanced wastewater treatment (AWT) standards of §403.085(10), F.S." It is appropriate to amortize legal expenditures related to the referenced legal challenge because the challenge was not only to the expansion of the wastewater treatment plant, but significantly focused on the current operations of the plant. *See* Testimony of Deborah Swain, Transcript Vol. 2, p. 227; Testimony of Edward Castle, Transcript Vol. 4, pp. 576 - 77. As a result, these expenditures are properly amortized over a five-year period.

In the Last Stand challenge, the use of shallow wells for disposal was at the crux of the challenge – a variable that did not change whether the plant expanded or, hypothetically, continued to operate without expansion. Rule 62-528.630, F.A.C., provides that "[a]ll class V Group 3 wells designed to inject domestic wastewater in Monroe County shall be required as part of the operation application to provide reasonable assurance that operation of the well will not cause or contribute to a violation of surface water standards…" (emphasis added). The challenge was to operation of the injection wells as a whole, not just to new installations. *See* Recommended Order, ¶ 220 ("In support, Petitioners cite the results of surface water sampling…showing high levels of nitrogen, phosphorous, and chlorophyll-a. Petitioners contend that these high nutrient levels evidence that the existing injection wells already are causing or contributing to surface water quality violations in the waters surrounding Stock Island, and that the increased effluent discharge from the proposed new injection wells will exacerbate this situation,

further causing or contributing to violations of surface water standards"); ¶ 249 ("Petitioners contend that…KWRU failed to provide reasonable assurance that the injection of effluent will not violate the anti-degradation requirement…") (emphasis added). *See* Recommended Order, ¶ 93 ("Petitioners further contend that KWRU's failure to include an application for deep wells in its applications thus mandates denial of the Permit at Issue").

The proposed agency action was also challenged by Last Stand on the basis that reuse sent to the Key West Golf Club was not being reused for a beneficial purpose, and that the reuse sold by KWRU was, in essence, a secondary disposal scheme. This is despite the fact that no changes to the reuse system were proposed. *See* Recommended Order, ¶ 144 ("Although the permitted capacity of the reuse system is being expanded from .499 MGD AADF to .849 MGD AADF, the actual amount of reclaimed water sent to the golf course by KWRU is not anticipated to change, because, as discussed above, the amount being used for irrigation is not being changed. Since the amount of reclaimed water being used for irrigation is not increasing, the reuse system is not being expanded.")

The Recommended Order in that docket found, at ¶ 142, that "the applications for the Permit at Issue do not propose any changes to the quantity of the reclaimed water being reused…These parameters are not being changed." This illustrates the fact that the challenge was both to the expanded works and disposal mechanisms, as proposed, and to the existing reuse system. As such, the legal fees incurred in defending the challenge are properly amortized over a 5 year period.

KWRU was obligated to prove that injection into shallow wells did not violate DEP rule at current levels, did not degrade near shore and surface waters, and that its existing reuse system did not violate DEP rules. KWRU's operations and not degrading water quality at any level were at the crux of the case, the permit application was an avenue to challenge the utilization of shallow injections wells and reuse for disposal.

ISSUE 28: What is the appropriate amount of depreciation expense to be used in setting rates?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: ******$473,323**

Argument: The proper level of depreciation expense includes adjustments to Test Year deprecation that include additional depreciation expense on proforma plant net of proforma retirements, reductions for audit adjustments (Audit Finding 4 and Audit

Finding 5), and additional cost to annualize depreciation expense. *See* Ex. 79, pp. 5, 7-9. This procedure has been accepted by the Commission in other cases, such as the Application to Increase Wastewater Rates by Labrador Utilities, Inc., Docket No. 140135-WS, and the Application to Increase Water and Wastewater Rates by Sanlando Utilities, Inc., Docket No. 140060-WS, both of which were cases in which OPC participated. *See* Testimony of Deborah Swain, Transcript Vol. 5, p. 769.

ISSUE 29: What is the appropriate amount of taxes other than income to be used in setting rates?

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: ******$288,613**

Argument: The amount of taxes other than income should properly be $288,613. This figure represents an accurate calculation of taxes based on the correct levels of payroll taxes, property taxes on test year and pro forma plant, and for regulatory assessment fees on final revenues. *See* Ex. 79, pp. 5, 7 – 9.

Revenue Requirement

ISSUE 30: What is the appropriate revenue requirement? (Fall-out)

A. For Phase I, if applicable

B. For Phase II, if applicable

Position: ******$3,440,501.00**

Argument: As this is a fall-out calculation. If the calculations and justifications underlying KWRU's positions on Issues 5, 6, 7, 8, 10, 11, 13, 14, 15, 16, 22, 25, 28, and 29 are acceptable, the total revenue requirement, for a single phase, is $3,440,501.00.

Intervenors contend that it is inappropriate to increase the revenue requirement after the initial request. However, Intervenors cite no statute, rule, or other legal authority for the proposition that a revenue request cannot properly be elevated above the amount of the original request. The procedure for noticing ratepayers of a revenue request does not require that the amount requested be enumerated. The ratepayers and all parties have been duly and legally noticed of the request for rate increase, in conformance with due process. *See Department of Law Enforcement v. Real Property*, 588 So. 2d. 957 (Fla. 1991) (holding that due process requires a fair notice and a real opportunity to be heard.) As explained by the United States

Supreme Court, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the requires information, and it must afford a reasonable time for those interested to make their appearance." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Revision to the requested revenue, where the proceeding and a requested rate increase has been properly noticed, does not violate any ratepayer due process protections and is appropriate in this docket.

Rates and Rate Structure

ISSUE 31: What are the appropriate rate structures and rates for KWRU's wastewater system?

Position: Rate structure: per PAA Order. Rates: fall-out using staff formula (used in PAA Order).**

Argument: The appropriate rate structures and rates are as set forth in the PAA Order. The appropriate rates are a fall-out calculation using the billing determinants used in the PAA Order.

ISSUE 32: What is the appropriate rate for KWRU's reuse service?

Position: ******$.93 per PAA Order**

Argument: The appropriate reuse rate is $0.93 per thousand gallons. This is a fair reuse rate, especially given the decreased concentrations of phosphorous in AWT treated water (which for irrigation purposes decreases the desirability of reuse over potable water), and the elevated potential for salt content over potable water (which mitigates for utilizing potable water for irrigation purposes). *See* Testimony of Christopher Johnson, Transcript Vol. 4, p. 608. The rate strikes a balance which will create demand for the reuse but still allows an additional revenue stream for KWRU.

The unrefuted testimony shows that Florida Keys Aqueduct Authority, the only comparator provider of reuse, has no customers for its reuse due to a lack of demand based on the rate charged and issues associated with providing reuse. *Id.*

ISSUE 33: What are the appropriate miscellaneous service charges to be charged by KWRU?

Position:

**	During Bus Hrs.	After Hrs.
Initial connection	$75	$125
Normal connection	$75	$125
Disconnect/Reconnect Non-Payment	$150	$225
Violation Connection	Actual Cost	Actual cost
Premise Visit	$65	$125

**

Argument: The miscellaneous charges are as set forth in Staff's Ex. 95. Miscellaneous service charges are designed to place the cost burden on the individual who caused the cost to be incurred. This costs to be incorporated include the direct labor for recording/processing, field supervision, as well as an allowance for benefits and insurance, transportation, supplies, postage, etc. *See* Testimony of Deborah Swain, Transcript Vol. 3, p. 253. The allowance for benefits and insurance should be included in the miscellaneous charge, or they would otherwise be included in the utility's expenses and recovered from the general rate payer. *Id.* at p. 254.

ISSUE 34: Should KWRU be authorized to collect Non-Sufficient Funds (NSF) charges?

Position: **Stipulation No.11**.

ISSUE 35: Should KWRU request to implement a late payment charge be approved?

Position: **Yes, $9.50.**

Argument: The $9.50 late payment charge requested is reasonable, based on the amounts set forth in Ex. 9, p. 10 of 269. Further, the late payment charge should defray all of the costs of processing late payments, including labor, overhead for benefits, insurance, postage, and supplies. *See* Testimony of Deborah Swain, Transcript Vol. 3, p. 259.

ISSUE 36: Should KWRU's be authorized to collect a Lift Station Cleaning charge?

Position: **Stipulation No. 12**.

ISSUE 37: If the Commission approves a rate increase for KWRU, when and under what circumstances should it be implemented?

Position: **Immediately upon issuance of Final Order.**

Argument: Given the use of a historic test year with pro forma adjustments, it is not necessary to wait for the entirety of KWRU's capital improvements to be in service before implementing the rate case. *See* Testimony of D. Swain, Transcript Vol. 3., p. 247. KWRU has expended significant sums – especially in light of the rate base of the utility – in order to bring its plant into compliance with applicable regulations and in order to be able to accommodate the changing use patterns of its service area. *Id.*, at pp. 246 – 247. For obvious reasons, these expenditures have occurred and will have occurred prior to all improvements being in service. The PAA in this matter did not include any recovery for the pro forma plant, instead only addressing the small portion of CWIP which was booked at of the close of 2014. Since then, KWRU has expended significant equity and will not recover until the rate case is final, not ever truly allowing a return on investment during the pendency of the rate case. It is appropriate for KWRU to begin recovering these expenses as soon as the Commission has approved the rates. *Id.*, at p. 248. Moreover, KWRU began operating at AWT as of January 1, 2016, and the interim rates did not go into effect until April, 2016, which means that KWRU will never recover for the first four months of operations at AWT.

ISSUE 38: Should any portion of the implemented PAA rates be refunded? If so, how should the refund be calculated, and what is the amount of the refund?

Position: **No portion of the PAA Order rates should be refunded.**

Argument: This is a fall-out issue, and based upon arguments set forth in all previous issues, the revenue requirement and rates determined in the final order will be in excess of the rates set forth in the PAA Order. Please see KWRU's argument for Issue 1, above. Improvements will be substantially completed by the time the rates approved in this docket will become effective, and no refunds will be necessary.

ISSUE 39: Should the Utility's approved service availability policy and charges be revised?

Position: **Stipulation No.14**.

ISSUE 40: Did KWRU bill and collect revenues in accordance with its approved tariffs? If not, what is the appropriate remedy?

Position: ******All bills and collections were in accordance with the intent of the approved tariffs.**

Argument: KWRU billed customers and collected revenues in accordance with its tariffs. With respect to Safe Harbor Marina, KWRU and Safe Harbor Marina came to a mutually-agreeable solution in recognition that the property use changed substantially since the initial tariff issuance. Upon such agreement, KWRU contacted the commission to notify them of the settlement, stating that "tariff shee5 bulk wastewater with Safe Harbor Marina, the property owner has…agreed to continue to pay the amount of $1,650.67 until such time as actual water usage can be quantified." *See* Letter from M. Friedman, Ex. 84. In its letter to the Commission, KWRU requested that the Commission "address any questions or problems regarding the application" to KWRU. Utility records show no further communication from the Commission.

Safe Harbor requested 120 days to hire a professional engineer to conduct a water usage study. *Id.* All indications are that the customer is satisfied at present to maintain the current arrangement. The Commission encourages settlements of the type reached in this instance.

As to the October 2012 challenge by Joanne Alexander, Sunset Marina's General Manager, of KWRU's billing, all issues other than pool size were resolved after the October 8, 2012 teleconference with the Commission. While criteria are sparse in determining whether a pool qualifies as "large" or "small", after discussions between KWRU and the State of Florida Health Department and the Commission, KWRU determined the previously categorized large pool on-site was more appropriately termed a small pool. KWRU admitted the error, apologized to the customer, and corrected the bill, including prior bills where the large pool was billed. *Id.*

With regard to Meridian West and Flagler Village, these multifamily residential properties have separate, privately-installed (non-FKAA) meters. Prior to 2009, all residential properties were billed a flat rate for each residential unit. In 2009, the Commission ordered a base rate and a usage charge per 1000 gallons for all residential units, rather than the flat rate. *Id.*

Upon receipt of the Commission's 2009 Order, KWRU set up all relevant unit accounts from the FKAA water meter data file and from customer-provided

information. Meridian West's property manager and an off-site company engaged by Meridian West verified that the units were individually metered, read on a daily basis, and that tenants were billed monthly for water consumption. Flagler Village was connected in the same manner. *Id.*

KWRU billed Meridian West for 103 units at a residential base rate of $17.81 per month, and Flagler Village for 49 units at $17.81 per month, per Tariff Sheet #13.0. However, KWRU's new billing system erroneously classified these accounts as General Service, and not Residential.

With regard to Key West Harbor Yacht Club (formerly Yacht Clubs of America) and Stock Island Marina Village, each property has a 2" meter and 6 residential units, and each is billed from Tariff Sheet #15.6.

In 2009, Key West Harbor Yacht Club was a modest marina with boats on jacks for maintenance, a bathhouse with a single shower, one toilet, and one sink each for the men's and women's facilities. Less than a dozen liveaboard boats existed on the property, and two houses, one mobile home, and approximately ten houseboats existed. Additionally, there was a small store which sold boat repair supplies and a small sail shop.

By 2011, when the indexing Tariff was approved, the property had been substantially redeveloped.

The property originally was 30.3 ERC (from Tariff Ninth Revised Sheet #15.6), or 7.575 gallons per day. The redevelopment is 5.8 times greater than the original property, in terms of sewerage capacity. The Tenth Revised Sheet #15.6 reflects the changes in development on the property. The 6 residential units are assessed a residential base rate, the 2" meter for the entirety of the property is billed at a 2" base facilities charge, and the gallonage is billed at the general service rate.

The 2011 Tariff Index Sheet more accurately reflects the amount of use by the redeveloped property. As a result of the development, the original Tariff Sheet failed to reflect the appropriate customer base. Upon approval of the Tariff Sheets by the Commission, KWRU began using those rates.

Stock Island Marina Village is billed a 2" base facilities charge and gallonage per Tariff Sheet #15.6. The billing began in September, 2013, with completion of Phase I of the property redevelopment.

As an overarching matter, the apparent discrepancies in billing are due to the unique characteristics of a number of properties which arose out of the 2009 rate case. For additional information and justification of KWRU's billing practices with regard to these properties, please see Ex. 84.

ISSUE 41: **What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?**

Position: ******This is a fallout issue depending upon the allowed rate case expense.**

Argument: Pursuant to Section 367.0816, Fla. Stat., the rates should be reduced after four years to remove the allowed amortization of the rate case expense.

ISSUE 42: **Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?**

Position: **Stipulation No. 16**

ISSUE 43: **Should this Docket be closed?**

Position: ******Yes, upon verification of post Final Order requirements.**

Argument: There is no justification for this Docket remaining open after verification of post Final Order requirements.

Respectfully submitted this 9th day of December, 2016, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-Mail to the following parties this 9th day of December, 2016:

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