

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 2017141-SU

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

\_\_\_\_\_ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONERS  
PARTICIPATING: COMMISSIONER POLMANN  
PREHEARING OFFICER

DATE: Tuesday, May 1, 2018

TIME: Commenced: 9:30 a.m.  
Concluded: 11:28 a.m.

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter and  
Notary Public in and for  
the State of Florida at Large

PREMIER REPORTING  
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TALLAHASSEE, FLORIDA  
(850) 894-0828

1 APPEARANCES:

2 J.R. KELLY, PUBLIC COUNSEL; ERIK L. SAYLER,  
3 ESQUIRE, Office of Public Counsel, c/o the Florida  
4 Legislature, 111 W. Madison Street, Room 812,  
5 Tallahassee, Florida 32399-1400, appearing on behalf of  
6 the Citizens of the State of Florida.

7 MARTIN S. FRIEDMAN, ESQUIRE, Friedman &  
8 Friedman, P.A., 600 Rinehart Road, Suite 2100, Lake  
9 Mary, Florida 32746, appearing on behalf of KW Resort  
10 Utility Corp.

11 BARTON W. SMITH, ESQUIRE, SMITH HAWKS, PL, 138  
12 Simonton, Street, Key West, Florida, 33040, appearing on  
13 behalf of K W Resort Utilities Corp.

14 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA,  
15 III, ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,  
16 Tallahassee, Florida 32308, appearing on behalf of  
17 Monroe County.

18 JENNIFER CRAWFORD, and KYESHA MAPP, ESQUIRES,  
19 FPSC General Counsel's Office, 2540 Shumard Oak  
20 Boulevard, Tallahassee, Florida 32399-0850, appearing on  
21 behalf of the Florida Public Service Commission Staff.

22 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE  
23 HELTON, DEPUTY GENERAL COUNSEL, Florida Public Service  
24 Commission, 2540 Shumard Oak Boulevard, Tallahassee,  
25 Florida 32399-0850, Advisor to the Commission.

1 P R O C E E D I N G S

2 COMMISSIONER POLMANN: Okay. Today is  
3 May 1st, 2018. It is 9:32. And I will now call  
4 the prehearing conference to order.

5 This is KW Resort Utilities Corporation, Inc.

6 MS. HELTON: Dr. Polmann, I think there is  
7 something wrong with the mic, because we can't hear  
8 you very well.

9 COMMISSIONER POLMANN: Okay. That's why I  
10 asked if the mic was on. My green light is on.  
11 The mic is -- there we go. Now I can hear myself,  
12 and you can hear me. I can hear myself up there,  
13 too.

14 Okay. KW Resort Utilities Corporation, Inc.,  
15 prehearing. May 1st, 2018. It is now 9:33. Good  
16 morning, everyone. May 1st -- I think I just said  
17 that.

18 I will now call this prehearing conference to  
19 order, and I will ask staff please read the notice.

20 MS. MAPP: Good morning. By notice issued  
21 April 2nd, 2018, this time and place was set for a  
22 prehearing in Docket No. 20170141-SU. The purpose  
23 of this prehearing is set out in the notice.

24 COMMISSIONER POLMANN: Thank you, Ms. Mapp.

25 I will now take appearances, and we will start

1 with the utility.

2 MR. FRIEDMAN: Good morning, Commissioner  
3 Polmann. Marty Friedman of Friedman & Friedman, On  
4 behalf of KW Resort Utility Corp.

5 COMMISSIONER POLMANN: Thank you.  
6 Office of Public Counsel.

7 MR. SAYLER: Good morning, Commissioner  
8 Polmann. Erik Sayler with the Office of Public  
9 Counsel, and I would like to enter a notice for  
10 J.R. Kelly, the Public Counsel.

11 COMMISSIONER POLMANN: Thank you.  
12 Monroe County.

13 MR. WRIGHT: Robert Scheffel Wright of the  
14 Gardner Law Firm on he behalf of Monroe County. I  
15 would also like to enter an appearance for my law  
16 partner, John T. Lavia, III. Thank you.

17 COMMISSIONER POLMANN: Mr. Friedman, do you  
18 have another appearance you would like to note?

19 MR. FRIEDMAN: Well, on behalf of KW Resort  
20 Utility, Mr. Bart Smith and Nick Batty are also  
21 attorneys for the company, but obviously are not  
22 here today.

23 Thank you.

24 COMMISSIONER POLMANN: Thank you, sir.  
25 Commission staff.

1 MS. MAPP: Kyesah Mapp for Commission staff.  
2 I would also inter an appearance for Jennifer  
3 Crawford.

4 COMMISSIONER POLMANN: Thank you.

5 MS. HELTON: Mary Anne Helton here as your  
6 advisor. I would also like to enter an appearance  
7 for your General Counsel, Keith Hetrick.

8 COMMISSIONER POLMANN: Thank you.

9 Preliminary matters. Staff, are there  
10 preliminary matters we need to address before we  
11 get to the draft prehearing order?

12 MS. MAPP: Yes, Commissioner, there are a few  
13 items to address.

14 First, staff will speak about the hearing  
15 exhibits. Staff recommends that all parties bring  
16 at least 25 copies of all exhibits they wish to  
17 include in the record at hearing. The appropriate  
18 cover sheet will be placed on an exhibit will be  
19 distributed by staff following this prehearing.

20 Additionally, there are two contested issues  
21 in this docket. Staff would recommend taking up  
22 discussion on those issues when we reach that  
23 section of the draft prehearing order.

24 COMMISSIONER POLMANN: Thank you.

25 MS. MAPP: And we also have motions filed, two

1 joint motions by the Office Public Counsel and  
2 Monroe County filed on May 23rd -- I am sorry,  
3 April 23rd to strike portions of KWRU's witnesses  
4 Swain and Johnson's rebuttal testimonies and  
5 attached exhibits; as well as on April 25th, 2018,  
6 a motion was filed to compel KWRU to correct its  
7 minimum filing requirements and to continue the  
8 hearing.

9 Oral arguments were requested on both motions,  
10 and on Thursday, April 26th, the request for oral  
11 arguments were granted and allows each party five  
12 minutes total to argue their positions on both  
13 motions.

14 COMMISSIONER POLMANN: Thank you, Ms. Mapp.  
15 Parties, at this time, I would like to hear  
16 from each of you on the motions. We will begin  
17 with the Office of Public Counsel.

18 Now, there is a lot of material to cover here.  
19 We've got several things that have been filed, and  
20 we need to keep your comments focused. We will be  
21 using the light system. It's up here on the  
22 diocese. The folks over to your left have control  
23 of this, so nothing that I can do. It's kind of  
24 magical, so -- and we kind of discussed this before  
25 the hearing started.

1           And you are aware of the colors, green,  
2           yellow, red. So when you start, it's fairly  
3           obvious what happens.

4           Mr. Wright.

5           MR. WRIGHT: Commissioner, with your  
6           permission, Mr. Sayler and I have agreed that I  
7           would go first, if that's okay.

8           COMMISSIONER POLMANN: Of course.

9           MR. WRIGHT: Thank you.

10          COMMISSIONER POLMANN: So at --

11          MR. FRIEDMAN: Commissioner Polmann, may I ask  
12          a point of clarification?

13          COMMISSIONER POLMANN: Yes, sir.

14          MR. FRIEDMAN: You said five minutes per side.  
15          Does that mean each of them gets five minutes even  
16          though they filed a joint motion, or they share the  
17          five minutes and then I get five minutes?

18          COMMISSIONER POLMANN: I will look over to my  
19          advisor.

20          MS. MAPP: I believe it was five minutes per  
21          party.

22          COMMISSIONER POLMANN: That's what I had  
23          anticipated, but you want to comment, Mr. Friedman?

24          MR. FRIEDMAN: Well, my thought was, since  
25          it's a joint motion, that one of two things occurs;

1           either they share five minutes, or they each get  
2           five minutes and I would get 10 minutes. Not that  
3           I would need 10 minutes, but just for a point of  
4           fairness.

5           COMMISSIONER POLMANN: I understand your  
6           position. I had anticipated calling on the three  
7           of you, and there would be five minutes for each  
8           person -- each party. And I recognize it was a  
9           joint motion in each case.

10           Now, Ms. Helton, what -- I mean, that's --  
11           that's the understanding that I had, and I think I  
12           understood from our internal discussion that that  
13           was the expectation.

14           MS. HELTON: I wasn't here when you sent  
15           the -- when Ms. Mapp sent the email, so I am afraid  
16           I didn't read it very closely, but I do think that  
17           Mr. Friedman has a point.

18           They had filed a joint motion, so I think the  
19           time should be split between the sides, is my  
20           recommendation. And if they each want five  
21           minutes, then I think Mr. Friedman should be given  
22           up to 10 minutes; although, it sounds like he is  
23           not going to use all of that time.

24           COMMISSIONER POLMANN: That seems imminently  
25           reasonable to me, so I am going to go -- go ahead



1 and grant Mr. Friedman more than five minutes, and  
2 we will adjust accordingly. Because it was my  
3 intention that the two intervenors would each have  
4 five minutes. I don't want to cut you short on  
5 that, if that was your expectation.

6 MR. SAYLER: Yes.

7 MR. WRIGHT: It was, Commissioner. Thank you.

8 COMMISSIONER POLMANN: I have the distinct  
9 impression you have each prepared five minutes. I  
10 don't want you, at this point, to have to cut that  
11 in half. That would -- that would seem awkward.

12 So we will adjust the clock accordingly. When  
13 the start -- when the red light starts blinking,  
14 you need to wrap up.

15 MR. WRIGHT: Yes, sir.

16 COMMISSIONER POLMANN: I am sorry, when --  
17 when it turns red, you need to wrap up. When it's  
18 blinking, I will ask you to stop.

19 So, Mr. Wright.

20 MR. WRIGHT: Thank you, Commissioner.

21 Good morning. Schef Wright on behalf of  
22 Monroe County. Thank you again for the opportunity  
23 present argument on our motions.

24 I will make argument on the overall legal  
25 issues inherent in our motions and reserve the

1 balance of my time for rebuttal. Mr. Sayler will  
2 follow my argument with a more detailed discussion  
3 of the specific issues addressed by our motions.

4 The overarching goal of our motions is to have  
5 a fair hearing process that affords all parties a  
6 fair opportunity to present their cases in keeping  
7 with due process requirements and the Florida APA.  
8 The underlying facts are these:

9 KWRU filed its case in November, 2017.  
10 Through discovery, KWRU apparently discovered some  
11 errors, at least some of which were identified in  
12 discovery responses.

13 The intervenors, that is the citizens and  
14 Monroe County, filed our testimony and exhibits on  
15 March 14 of this year.

16 KWRU filed rebuttal testimony on April 10. In  
17 its rebuttal testimony, KWRU made numerous changes  
18 to its original case, including changes to 10 MFR  
19 schedules, adding information that was known to  
20 KWRU in some cases when it filed in November, and  
21 adding new information that KWRU alleges came to  
22 light later in the process.

23 Much of this information on its face does not  
24 rebut any it many of the intervenor witnesses;  
25 rather, it constitutes new information that KWRU

1 has now proffered through 10 revised MFR schedules  
2 and associated testimony to bolster its case.

3 KWRU's witnesses in depositions last week  
4 recognized that still more MFRs would have to be  
5 changed to reflect the changes that they've now  
6 identified, but they apparently don't intend to  
7 submit any revised MFRs.

8 Due process generally, and the Florida APA  
9 specifically, requires in relevant part that --  
10 this is quoting from the APA -- "all parties shall  
11 have an opportunity to respond to present evidence  
12 and argument on all issues involved, to conduct  
13 cross-examination and submit rebuttal evidence."

14 With the present schedule, we, Monroe County  
15 and OPC, do not have a meaningful opportunity to  
16 address the new information. We don't have an  
17 opportunity to conduct discovery on it, to present  
18 our own evidence on it, and to rebut it. It's new  
19 information.

20 The cleanest way to address this situation is  
21 simply to grant our motion to strike and, thus, let  
22 the hearing go forward as scheduled. However, if  
23 the Commission wishes to receive the new  
24 information, then Monroe County and the citizens  
25 are entitled to a meaningful opportunity to test

1 the newly proffered evidence, including a  
2 meaningful opportunity to conduct discovery and to  
3 present our own evidence on the affected issues.

4           Allowing KWRU to change 10 MFR schedules on  
5 April 10th, and then to announce at a deposition on  
6 April 24th that still more MFR schedules are  
7 implicated and would be affected by the changes  
8 without granting our request to continuance an  
9 opportunity for adequate discovery and surrebuttal  
10 testimony deprives us, the citizens and Monroe  
11 County, of our general due process rights and our  
12 specific rights under the APA.

13           The opportunity to be heard on the issues has  
14 to be a meaningful opportunity. Accordingly, we  
15 respectfully ask you to either grant our motion to  
16 strike, or to grant our motion for a continuance  
17 long enough to enable us to conduct meaningful  
18 discovery and to prepare surrebuttal testimony  
19 regarding the new evidence.

20           Thank you very much. I would like to reserve  
21 the balance of my time.

22           COMMISSIONER POLMANN: Thank you, Mr. Wright.

23           MR. SAYLER: Commissioner Polmann, I do have a  
24 one-page summary of both motions I would like to  
25 pass out.

1 COMMISSIONER POLMANN: Thank you. Thank you.

2 Mr. Sayler, go ahead.

3 MR. SAYLER: Yes, sir. Would you like me to  
4 proceed?

5 COMMISSIONER POLMANN: When you are ready,  
6 sir, please proceed.

7 MR. SAYLER: All right.

8 Good morning, Commissioner Polmann. Thank you  
9 for granting us oral argument. I will attempt to  
10 use less than my five minutes and reserve the  
11 remainder for rebuttal. I have provided a one-page  
12 summary of both motions.

13 As you know, we are now here on the eve of the  
14 hearing for KWRU's rate case, which began -- which  
15 is about to begin in two weeks from today. We are  
16 objecting to KWRU's changing of the rules of the  
17 game in attempting to ask for more money in rates  
18 after the intervenors filed their testimony. That  
19 is unfair, and we submit that their late changes  
20 will violate our due process unless you take  
21 action.

22 Referring to the one-page summary. This is a  
23 formal rate case governed by an order establishing  
24 procedures which you issued, and it is not a  
25 proposed agency action rate case, where it is

1 common for utilities to update things all the way  
2 up to the eve of staff's recommendation. That  
3 distinction is very important as it relates to  
4 protecting due process.

5 Chairman Brown's test year approval letter was  
6 explicit, and it instructed the utility to provide  
7 all the information it wanted considered with its  
8 original filing. To support its burden of proof KW  
9 is required to file all the necessary information  
10 that they wanted for their rate increase in MFRs  
11 supported by testimony and exhibits.

12 Now, KWRU both concedes in a deposition that  
13 took place last week, as well as their -- in their  
14 responses to our motion to strike that it knowingly  
15 added new cost information in rebuttal that it now  
16 wants the Commission to consider in this full rate  
17 case with an evidentiary hearing after we filed our  
18 testimony.

19 If you look at the footnote in KWRU's basic  
20 position, KWRU asserts that it is entitled to the  
21 full amount of the rate case even though they  
22 changed it in rebuttal.

23 Now, intervenors filed testimony on March 14th  
24 based upon the original filing, and based upon the  
25 discovery responses that we had received at that

1 time.

2 In this case, KWRU made no request to file  
3 supplemental rebuttal testimony or supplemental new  
4 information on this cost -- new costs. They did  
5 not file a motion to amend their MFRs like they did  
6 earlier back in February, which you approved when  
7 you approved the first order of revising procedure,  
8 and -- and I hate to belabor the point, but this is  
9 new information provided for the first time in  
10 rebuttal.

11 Now, your order establishing procedure does  
12 not permit intervenors to file surrebuttal  
13 testimony to new cost information provided in  
14 rebuttal without your expressed permission.  
15 Therefore, the intervenors had to two options --  
16 actually three.

17 The first option is file a motion to strike  
18 these new cost information, or request a  
19 continuance of the hearing in order to file  
20 surrebuttal testimony. And that is what we have  
21 requested here.

22 The third option would be to acquiesce to the  
23 violation of our due process, which we cannot do.

24 KWRU alleges that new cost information should  
25 be considered in setting future rates. Gulf Power

1 V Bevis, cited in our motion, requires the  
2 Commission to consider existing facts that affect  
3 future rates; but we would argue that this case  
4 applies only if those facts are truly undisputed  
5 facts and not mere allegations.

6 At this point, all the new facts in KWRU's  
7 rebuttal are mere allegations and in dispute. It  
8 is unfair to allow KWRU to continually change and  
9 update their case after we filed our testimony.  
10 They are the ones that attempted to change the  
11 rules of the game. Not us. We followed the  
12 Commission's rules and your procedures in the OEP,  
13 hence these two motions.

14 In changing the rules at this juncture, in --  
15 in rebuttal -- excuse me, changing these rules and  
16 procedures at this time without an opportunity to  
17 respond is not only unfair, but a violation of our  
18 due process.

19 So we are asking you to provide us a  
20 meaningful opportunity to address this new  
21 information through discovery and surrebuttal;  
22 otherwise, to strike this information, which, as  
23 Mr. Wright said, is the cleanest, easier -- easiest  
24 way to proceed.

25 Now, a couple of comments regarding KWRU's



1 responses to our motion.

2 On page four, paragraph nine of its response  
3 to our motion to strike, KWRU erroneously asserts  
4 that it provided the intervenors this new cost  
5 information in discovery before our testimony.  
6 Commissioner, that is simply not true. Not only  
7 that, KWRU's own response rebuts that naked  
8 allegation.

9 Secondly, contrary to KWRU's allegation in  
10 paragraph 32 of its response, KWRU unilaterally  
11 withdrew any offer to allow us to file surrebuttal  
12 testimony. And I have copies of the email --

13 COMMISSIONER POLMANN: 30 seconds, Mr. Sayler.

14 MR. SAYLER: Yes, sir, and I am wrapping it  
15 up.

16 And lastly, what prompted our motion to compel  
17 was the fact that Ms. Swain, last week during her  
18 deposition, stated that the MFRs have changed.  
19 That is why we sought that.

20 Thank you very much for this opportunity.

21 COMMISSIONER POLMANN: Thank you, Mr. Sayler.

22 Mr. Friedman, you may proceed when you are  
23 ready with something more than a minute, something  
24 less than 10.

25 MR. FRIEDMAN: I will certainly. Thank you,

1 Commissioner.

2 Marty Friedman on behalf of KW Resort  
3 Utilities, Corp.

4 I am going to deal with things -- it seems  
5 like when they dealt with these motions they kind  
6 of blurred them both together. They are different,  
7 and there are substantial differences in them, and  
8 I will start out addressing the deja vu motion, and  
9 that's the motion to strike testimony.

10 We went through this -- this is the same  
11 argument that OPC made in the UIF rate case, if you  
12 recall, Commissioner Polmann. Same due process  
13 arguments, and it's the same process as the case  
14 goes on, you know, data changes, more information  
15 is available and it's provided through -- mostly  
16 through discovery as it is available.

17 As was the case incidents UIF case, despite  
18 that the increase in these costs would result in an  
19 increase over the revenue requirement requested in  
20 the original MFRs, the utility is not seeking  
21 anything -- any revenues in excess of what they  
22 sought in their initial application.

23 I would point you to page three, paragraph  
24 four of the joint motion, where the OPC and County  
25 put together their purpose for filing this motion,

1           and it says: This motion addresses portions of the  
2           rebuttal testimony, exhibits of Mr. Johnson and  
3           Ms. Swain that increase the rate increase beyond  
4           that KWRU requested in its MFRs.

5           Now, since KWRU is not requesting any  
6           additional revenues in excess of its MFRs, isn't  
7           the motion, by its own terms, moot?

8           I don't know the email that Mr. Sayler is  
9           referring to that KWRU revoked its offer to allow  
10          surrebuttal testimony. I am unaware of that. In  
11          my conversations with co-counsel, we have always  
12          afforded -- agreed to afford them that opportunity.

13          What we didn't do, and what the -- what the  
14          email will show is that when Mr. Sayler originally  
15          asked did we consent, or did we agree to the  
16          motion, he left out one of the remedies that OPC  
17          was seeking, and that is a continuance. And so  
18          when he filed the motion, it didn't -- it -- when  
19          the reflection of what KR -- KWRU said in response  
20          to the motion was that -- that we didn't agree with  
21          the strike -- motion -- portion of it to strike.  
22          We did agree with surrebuttal, and how could we  
23          have addressed the continuance because you didn't  
24          tell us that was going to be one of your remedies.

25          And so I think that was where Mr. Sayler's

1           misunderstanding KR -- KWRU's withdrawal of its  
2           rebuttal because it has not withdrawn its rebuttal,  
3           allowing them to file surrebuttal.

4           And most of the additional costs included are  
5           in the -- are in -- most of it is in discovery, as  
6           it was in the UIF case. I don't see any difference  
7           in the due process arguments that they raise here,  
8           and I could go through all the cases that we cited  
9           in -- in -- in our motion here where the Commission  
10          has allowed the same type of updating on  
11          information, and the UIF case being the most recent  
12          and the most comprehensive.

13          The second motion they filed was to strike a  
14          portion of Ms. Swain's testimony. And that's where  
15          we get into what are -- you know, what are the  
16          MFRs? What are they really intended to do?

17          Public Counsel is complaining on one hand that  
18          we should -- that -- that we shouldn't be able to  
19          amend the MFRs, and on the other hand saying, well,  
20          we didn't amend them enough.

21          The point is, is the MFRs are what we file in  
22          the original of a case, and it sets forth the  
23          original revenue requirement. Other than that,  
24          things change in the MFRs. We don't -- I don't  
25          think there is any obligation for the utility to

1 file revisions as the testimony comes out.

2 The changes in the MFRs are in the testimony  
3 of the witnesses. The MFRs are merely a way to  
4 show the implications, or results of what that  
5 change in testimony. Otherwise, we would be  
6 changing MFRs constantly, because you get the staff  
7 audit. If we came out and said we agree with the  
8 staff audit, let's change it. Do we change a whole  
9 set of MFRs because of that?

10 And then let's say we come later in the  
11 testimony and we hear something in the rebuttal --  
12 in the testimony of the intervenors that we say,  
13 you know, they are right. Does that mean we got to  
14 come back in our rebuttal and file a whole new set  
15 of MFRs?

16 I think that's where the confusion is. Is  
17 it -- the MFRs -- the initial MFRs are what they  
18 are. And any changes in the MFRs don't -- don't --  
19 changes in the facts don't necessarily require that  
20 you file changes in MFRs. And so I don't think  
21 there is any basis for which -- for which Public  
22 Counsel to say, we want you to file MFRs to show  
23 what that change is you testified to. I don't  
24 think there is any requirement to do that.

25 And of course, what happens when we do that,

1           you know what arguments you hear from Public  
2           Counsel and the County, oh, now they filed MFRs.  
3           We got to have a continuance. The case would never  
4           end if you did -- treated the MFRs in the manner in  
5           which Public Counsel and the County believe that  
6           they should be -- be utilized.

7           So in summary, the due process argument is the  
8           exact same argument that's been argued in the UIF  
9           case. Commissioner Brown initially ruled on it  
10          denying it. The full commission subsequently  
11          denied it. And it's on appeal, and we will let the  
12          appellate court decide.

13          But as we sit here today, the precedence for  
14          dealing with this type of thing has been  
15          established, and it is that the motion to strike  
16          should be denied. The motion to compel should be  
17          denied.

18          Thank you, Commissioner.

19          COMMISSIONER POLMANN: Ms. Helton, I am not  
20          exactly sure procedurally how to deal with Mr.  
21          Wright's request to reserve a portion of his time.  
22          Mr. Saylor does not have any time remaining. On  
23          the clock, Mr. Wright has something like a minute.

24          MS. HELTON: I am not troubled by Mr. Wright's  
25          request. This is not like an opening statement.

1 This is --

2 COMMISSIONER POLMANN: Yes.

3 MS. HELTON: -- this is an argument, and it's  
4 typical, for instance, in a court to be able to  
5 reserve time to address another party's argument.  
6 So I am not troubled by it.

7 COMMISSIONER POLMANN: Do you have an  
8 additional comment? I don't have a clock here  
9 that's going to give us a minute, so I am going to  
10 ask my staff advisor to wave at me when your minute  
11 is up, but we will try to keep that.

12 MR. WRIGHT: Yes, Commissioner, I do have  
13 brief additional comments. I appreciate the  
14 minute. I am perfectly comfortable with Mr. Boone  
15 giving you -- giving you, and then you giving the  
16 high sign when it's time to stand down.

17 COMMISSIONER POLMANN: Yeah, excepted that  
18 would be Ms. Ortega.

19 MR. WRIGHT: I'm sorry, Anna. Sorry.

20 COMMISSIONER POLMANN: Thank you.

21 MR. WRIGHT: They are sitting together and I  
22 got confused. I apologize.

23 COMMISSIONER POLMANN: That's perfectly fine.

24 Ready, go.

25 MR. WRIGHT: Thank you, sir.

1           In the first instance, KWRU caused this  
2           situation by submitting a whole bunch of new  
3           information in its rebuttal testimony. Changing  
4           MFRs is kind of one thing.

5           Changes occur. Errors occur. Sometimes  
6           witnesses change -- change their testimony on the  
7           stand. However, the suggestion that this would be  
8           a never-ending process is just wrong. The problem  
9           here is that this is new information submitted  
10          after we filed our rebuttal testimony. We are  
11          entitled to an opportunity to -- to rebut it.

12          Mr. Friedman's suggestion that the company's  
13          agreement to limit its request to its original  
14          \$3.682 million is illusory. They have asked for an  
15          extra \$80,000, and if you let them have that, that  
16          would offset any adjustments that you would make --  
17          that the Commission would make in keeping with  
18          adjustments recommended by our witnesses.

19          They are never going to get 3.682 million.  
20          It's never happened. They are never going to get  
21          their full request. If you let them have the extra  
22          80,000, it would offset our requested adjustments,  
23          and we are entitled to address that change.

24                 Thank you, sir.

25                 COMMISSIONER POLMANN: Thank you, Mr. Wright.



1           Mr. Friedman, I take it you are done?

2           MR. FRIEDMAN: I am done. I would just say  
3 that we certainly do not oppose the County and  
4 Public Counsel filing surrebuttal testimony. If  
5 there is any question about whether or not KWRU  
6 objects to that, we do not object to it, and would  
7 certainly welcome them -- allowing them to do that.

8           Thank you.

9           COMMISSIONER POLMANN: Okay. Thank you to all  
10 the parties for their oral arguments. Where we  
11 stand right now, it is my intention to rule on  
12 these motions -- these particular motions here  
13 today. And that, I believe, is in the interest of  
14 everyone so that we have this disposed of, and  
15 everybody knows where we stand on these particular  
16 motions.

17           So in order to accomplish that, I would like  
18 to confer with my legal advisor. And with that  
19 being the case, I -- I am going to take a break.  
20 Where we stand right now is we are going to take a  
21 brief recess here for about 10 minutes, and we will  
22 come back after that break.

23           I do expect to provide my ruling on these  
24 particular motions. So thank you for your oral  
25 argument, and we will come back at about 10 after

1 10:00, plus or minus a minute.

2 Thank you.

3 MR. WRIGHT: Thank you.

4 (Brief recess.)

5 COMMISSIONER POLMANN: Okay. We are back on  
6 the record. It took a few more minutes than I had  
7 expected, so. Let me find my place here. Just a  
8 minute.

9 Okay. We are dealing with OPC's and Monroe  
10 County's joint motion to strike and joint motion to  
11 compel. And I have reviewed the material that was  
12 submitted and considered the oral arguments  
13 presented here today.

14 Having read through all of the motions and  
15 hearing from the parties this morning, as well as  
16 consulting with my legal advisor, I do believe at  
17 this time that I have enough information to make a  
18 ruling.

19 After reading the responses from the utility,  
20 I believe the company has provided updated costs as  
21 they've become available, and that the intervenors  
22 have been provided time to review that information  
23 and to ask questions through discovery, including  
24 depositions. Opportunity has also been provided --  
25 will be provided through the upcoming

1 cross-examination at the technical hearing.  
2 Additionally, matters of prudence of the proforma  
3 projects remain facts to be determined at the  
4 hearing.

5 In that light my ruling is to deny, in part,  
6 both joint motions from OPC and Monroe County as I  
7 do not find compelling arguments to strike the  
8 testimony or to compel the company to update the  
9 MFRs. However, considering KWRU's agreement, I  
10 will allow surrebuttal testimony to be filed by the  
11 intervenors, and that is to occur by the close of  
12 business on Friday, this week, May 4th.

13 And to staff, please reflect these rulings in  
14 the prehearing order.

15 Ms. Mapp, are there any other preliminary  
16 matters to address at this time? I think there may  
17 be.

18 MS. MAPP: Yes, there is.

19 On Friday, April 27th, 2018, KWRU filed a  
20 motion to strike portions of OPC's Witness  
21 Schultz's prefiled testimony.

22 COMMISSIONER POLMANN: Thank you.

23 Okay. We have that motion to deal with, and I  
24 would like to take that up at this time.

25 I have read KW's motion to strike. And, Mr.

1 Friedman, what it appears to be is it appears to be  
2 challenging the qualifications of OPC's Witness  
3 Schultz. And in our reading, I believe the best  
4 path to address this motion would be to raise the  
5 matter at the technical hearing as voir dire of the  
6 witness.

7 And, to the parties, would you care to comment  
8 on that? And we will start with --

9 MR. FRIEDMAN: That would be acceptable  
10 procedure if you would like to do it that way.

11 COMMISSIONER POLMANN: Mr. Friedman, so you  
12 think at the hearing voir dire would be --

13 MR. FRIEDMAN: That would be an acceptable way  
14 to do it.

15 COMMISSIONER POLMANN: Okay.

16 MR. FRIEDMAN: Due to the limited time that we  
17 have to -- and since counsel has not filed a  
18 response yet as a response is not due to the  
19 motion, so that might be the best way to do it.

20 COMMISSIONER POLMANN: Okay. Mr. Sayler,  
21 would -- would dealing with this at the technical  
22 hearing through voir dire be acceptable to OPC?

23 MR. SAYLER: Commissioner Polmann, I was in  
24 the midst of drafting a response to KW's motion to  
25 strike. I had not contemplated the possibility of

1           voir dire. What I will do is I can include that in  
2           my motion to strike -- or excuse me, my response to  
3           their motion to strike and --

4           COMMISSIONER POLMANN: Okay.

5           MR. SAYLER: -- take it under advisement.

6           COMMISSIONER POLMANN: Okay. Mr. Wright,  
7           anything to add to that?

8           MR. WRIGHT: No, sir. It's not our issue.  
9           Thank you.

10          COMMISSIONER POLMANN: All right. So  
11          recognizing that the motion was filed, I believe,  
12          last Friday, the 27th, and that OPC has not filed  
13          their response to date, if OPC and/or the County  
14          plan to do so, as Mr. Sayler, I recognize you do, I  
15          would request that that filing response to be  
16          timely, that that be done by the end of this week  
17          if -- before close of business on -- on Friday,  
18          May 4th.

19          MR. SAYLER: Yes, sir. And we will certainly  
20          file that on or before this Friday. And honestly,  
21          I think once you get a response, I believe you can  
22          issue a clean order, either granting or denying  
23          their motion, and then avoid taking up time at the  
24          hearing for voir dire.

25          COMMISSIONER POLMANN: Okay. Well, we will --

1 we will review that when we receive it and act  
2 accordingly. We -- we will review it when we  
3 receive it.

4 MR. SAYLER: Yes, sir.

5 COMMISSIONER POLMANN: So thank you for -- for  
6 those comments. We will take the pending KWRU  
7 motion to strike under advisement, and we will  
8 issue a ruling as soon as we can.

9 MR. FRIEDMAN: Yeah, that's fine. We didn't  
10 ask for oral argument on that, we did not, sir.

11 COMMISSIONER POLMANN: Correct. And I wasn't  
12 going to give it to you anyway, given that we had  
13 not received a response from the intervenors.

14 Okay. So that one remains to be addressed.  
15 At this point, we would like to go through the  
16 draft prehearing order. Does everybody have a copy  
17 of that?

18 MR. WRIGHT: Yes, sir.

19 COMMISSIONER POLMANN: All right. We are  
20 going to go through section by section, and what we  
21 are looking for are corrections or changes. I  
22 don't think we need to have a lot of discussion on  
23 many of these sections. We would like to move  
24 fairly quickly, and, in some cases, we will just  
25 come to the item and we will look to the parties,

1 not necessarily calling out everyone, and ask that  
2 you simply speak up at the -- at the appropriate  
3 moment.

4 Staff, do you have any preliminary comments?  
5 Otherwise, I am just going to jump in here.

6 MS. MAPP: No comments from staff.

7 COMMISSIONER POLMANN: All right. Thank you,  
8 Ms. Mapp.

9 Let's see, the first page, I don't think we  
10 have anything.

11 MR. FRIEDMAN: We do.

12 COMMISSIONER POLMANN: We do? All right. We  
13 are off to a really good start. We have comments  
14 on the first page.

15 MR. FRIEDMAN: Exactly.

16 COMMISSIONER POLMANN: Thank you, Mr Friedman.  
17 Go right ahead.

18 MR. FRIEDMAN: Thank you. Mr. Smith's law  
19 firm name is just Smith Hawks.

20 COMMISSIONER POLMANN: I'm sorry, I didn't  
21 catch that.

22 MR. FRIEDMAN: The law firm name is just Smith  
23 Hawks. Mr. Orpenza is no longer with the firm. So  
24 we just need to scratch out the name on there, on  
25 the appearances section on the front page.

1 COMMISSIONER POLMANN: Yes. Did we catch  
2 that?

3 MR. FRIEDMAN: Did you get it?

4 COMMISSIONER POLMANN: All right. Very good.

5 MR. FRIEDMAN: Thank you.

6 COMMISSIONER POLMANN: Yes, sir.

7 Moving on to page two. All right. Case  
8 background, anything?

9 Conduct of proceedings, anyone?

10 Jurisdiction.

11 Procedure for handling confidential  
12 information.

13 Prefiled testimony and exhibits and the  
14 witnesses.

15 Mr. Wright.

16 MR. WRIGHT: Thank you, Commissioner.

17 In the order of witnesses, it is our intention  
18 that Mr. Deason would --

19 COMMISSIONER POLMANN: We are not there yet.

20 MR. WRIGHT: Oh, I am sorry. I heard  
21 witnesses, and I thought you had.

22 COMMISSIONER POLMANN: I'm sorry --

23 MR. WRIGHT: -- got -- I thought you had --

24 COMMISSIONER POLMANN: -- we are on section --

25 MR. WRIGHT: I'm sorry.



1           COMMISSIONER POLMANN: We are going to get to  
2           that in a second. We do have something to address  
3           there.

4           So Section V on page three, anything on that?

5           Okay. Section -- okay, wait a minute. I am  
6           sorry, Ms. Mapp --

7           MS. MAPP: Yes.

8           COMMISSIONER POLMANN: -- on Section V.

9           MS. MAPP: Staff would recommend that witness  
10          summaries be limited to no more than five minutes  
11          per witness. If a witness has filed both direct  
12          and rebuttal testimonies, staff would recommend  
13          that a witness receive five minutes for direct and  
14          five minutes for rebuttal. If both direct and  
15          rebuttal testimonies are taken together, staff  
16          would recommend the witness be given 10 minutes  
17          total.

18          COMMISSIONER POLMANN: Thank you, Ms. Mapp.

19          Okay, so for each of the direct and the  
20          rebuttal, five minutes for the summary, okay?  
21          Everybody good with that?

22          All right. Now, Section VI order of  
23          witnesses, Ms. Mapp.

24          MS. MAPP: KWRU witness Frank Seidman has been  
25          stipulated and excused from the hearing.

1           COMMISSIONER POLMANN: All right. Everybody  
2           is clear on that one? I think we -- we dealt with  
3           that a week or so ago.

4           As to other witnesses, are the parties willing  
5           to stipulate to any other witnesses at this time,  
6           or before we finalize this prehearing order? We  
7           are hoping for some.

8           MR. SAYLER: We -- we are reviewing the staff  
9           accounting witness, whether she can be excused, and  
10          we will let the Commission staff know as soon as  
11          possible about that, from OPC's perspective. I  
12          haven't talked with the County yet.

13          MR. WRIGHT: Commissioner, Monroe County would  
14          stipulate to Ms. Glover's testimony and exhibits.

15          COMMISSIONER POLMANN: Okay. Staff, we are  
16          taking a note on that. Do we have a timeframe, or  
17          does that not really matter?

18          MS. MAPP: As the -- we would ask if the  
19          parties could get back to us as soon as possible,  
20          but there is no strict timeframe for that.

21          COMMISSIONER POLMANN: Okay. Mr. Friedman,  
22          are we clear on the witness that we are discussing?

23          MR. FRIEDMAN: Yes, we are. And I will also  
24          consult with co-counsel --

25          COMMISSIONER POLMANN: All right.

1 MR. FRIEDMAN: -- and see if we can agree  
2 with --

3 COMMISSIONER POLMANN: Very good. Thank you.  
4 Any others that are candidates for  
5 stipulation?

6 Okay. Now, to the utility, what is the plan  
7 of action here on direct and rebuttal testimony?  
8 To be taken up separately?

9 MR. FRIEDMAN: Taken up separately, yes,  
10 Commissioner.

11 COMMISSIONER POLMANN: All right. On the  
12 order -- Ms. Mapp, can we address that, please,  
13 order of witnesses?

14 MS. MAPP: All witnesses must appear according  
15 to the order stated within the prehearing order.

16 COMMISSIONER POLMANN: All right. So Section  
17 VI lays those out.

18 Any -- anything to address there, Mr. Wright?

19 MR. WRIGHT: Thank you. Commissioner Deason,  
20 former -- former Chairman, Mr. Deason, our witness,  
21 should be listed in order after Mr. Small. So the  
22 order of the County's witnesses should be Kevin  
23 Wilson, Jeffery Small and J. Terry Deason.

24 COMMISSIONER POLMANN: Okay. So one -- one  
25 change there?

1 MR. WRIGHT: Yes, sir.

2 Commissioner, if I might just make an  
3 observation about normal practice here, is if  
4 something happens with respect to a witness, we  
5 don't usually anticipate it, but if somebody has a  
6 some -- some unmanageable conflict, or anything  
7 else, normally counsel get together and work out an  
8 agreement that a witness can appear out of order if  
9 that is essential. And we stand ready to  
10 participate in that process, as we always do.

11 Thank you.

12 COMMISSIONER POLMANN: Thank you for the  
13 comment.

14 I assume that that is understood and  
15 acceptable to the parties, and staff. We don't  
16 have an issue with that. Very good. Thank you.

17 Okay. Anything else under Section VI?

18 Okay. Moving forward to Section VII, basic  
19 positions. Hopefully those are well established,  
20 we are not changing basic position.

21 Okay, staff, we are looking at Section VIII,  
22 issues and positions. You want to introduce that,  
23 please?

24 MS. MAPP: Staff would note that the order  
25 establishing procedure requires that a party take a

1 position at the prehearing conference unless good  
2 cause is shown as to why that party cannot take a  
3 position at that time.

4 Accordingly, if a party's position in the  
5 draft prehearing order is currently no position at  
6 this time, no position on the amount of the charge  
7 accompanied with a statement that the approved  
8 amount should be taken into account to reduce  
9 revenues, a statement stating that there is no  
10 testimony occupancy on the issue, or a statement  
11 simply specifying that a party bears a burden of  
12 proof, or any such similar statement, the party  
13 must change its position or show a good cause why  
14 it cannot take a position.

15 Staff would suggest that the parties who have  
16 heretofore not taken a position, or wish to change  
17 their position, be allowed to submit their position  
18 in writing no later than the close of business  
19 tomorrow, May 2nd. If a party fails to take a  
20 position by that time, the party shall have waived  
21 the entire issue, and the prehearing order will  
22 reflect no position on that party for such issues.

23 Additionally, to the extent that the position  
24 of one party is to agree with the position of  
25 another party, and that position is no position,

1           that party's position will also be changed to no  
2           position.

3           COMMISSIONER POLMANN: Thank you, Ms. Mapp.

4           Okay, we are now going to move on to the  
5           issues. And we have a couple of contested issues,  
6           we are going to hold those until we go through all  
7           the others. Is that how we are doing this?

8           MS. MAPP: Yes.

9           COMMISSIONER POLMANN: Okay. We have, what,  
10          40 something -- 47. We are going to move through  
11          the issues. Please let me know if you have any  
12          changes to your positions, and then we will come  
13          back to contested Issues A and B after we've gone  
14          through all the others.

15          So I am on page 10, Issue 1. And I am not  
16          going to read all the issues verbatim. We are just  
17          going to go through 1, 2, 3.

18          Issue 1, any change in positions? No, okay.

19          Turning the page, Issue 2, anything?

20          Issue 3, changes? No comments.

21          Issue 4.

22          Issue 5.

23          I could have grouped these, but I didn't.

24          Issue 6.

25          7.

1                   8.

2                   Issue 9.

3                   MR. FRIEDMAN: I am sorry. I was not quick  
4 enough, was I?

5                   COMMISSIONER POLMANN: I am sorry, I was  
6 turning pages, sorry.

7                   MR. FRIEDMAN: Issue 8 is the used and useful.

8                   COMMISSIONER POLMANN: Yes, Issue 8.

9                   MR. FRIEDMAN: And I believe that -- that the  
10 parties have stipulated, along with allowing  
11 Mr. Seidman's testimony to be introduced into the  
12 record, stipulated to his used and useful  
13 percentages.

14                  MR. WRIGHT: Commissioner.

15                  COMMISSIONER POLMANN: Mr. Wright.

16                  MR. WRIGHT: That's not accurate. We are  
17 taking no position. OPC takes no position. We  
18 take no position.

19                  We do not stipulate or agree to Mr. Seidman's  
20 used and useful percentages. We are going to take  
21 no position not challenging them, thereby paving  
22 the way for a Type 2 stipulation between the staff  
23 and the utility.

24                  COMMISSIONER POLMANN: Thank you for that  
25 distinction.

1           The only witness on Issue 8, staff, is that  
2           Mr. Seidman is the only witness on Issue 8?

3           MS. MAPP: Yes, that is staff's understanding.

4           COMMISSIONER POLMANN: Okay. So to Mr.  
5           Friedman's comment, how do we address that?

6           MS. MAPP: This would be a Type 2 stipulation  
7           with the only party taking a position being the  
8           utility. And this can be taken up in the  
9           preliminary matter. At the hearing the  
10          Commissioners may vote on it, if that's your  
11          preference; and at that time, the issue would be  
12          stipulated. However, if the Commissioners choose  
13          not to vote, or choose to deny the used and useful,  
14          that can be briefed.

15          COMMISSIONER POLMANN: Ms. Crawford.

16          MS. CRAWFORD: And if you would prefer, what  
17          we can do when we are redrafting the draft  
18          prehearing order, we can reflect this as a proposed  
19          Type 2 stipulation.

20          COMMISSIONER POLMANN: I like that answer. In  
21          which case, we follow what Ms. Mapp just said?

22          MS. CRAWFORD: Correct.

23          COMMISSIONER POLMANN: Please do that.

24          Issue 9.

25          10, which is a fallout issue.



1 11, capital structure.

2 12 is return on equity.

3 13, long-term debt.

4 14, cost of capital. No comments.

5 15.

6 Issue 16. Mr. Wright.

7 MR. WRIGHT: Thank you, Commissioner, there is  
8 a typo in our position statement. We will correct  
9 that and communicate it to the staff. The word  
10 "and" should be removed. The second word in the  
11 position statement.

12 COMMISSIONER POLMANN: Okay. Can we take that  
13 correction today here?

14 MS. MAPP: Yes, we have it.

15 COMMISSIONER POLMANN: So no further  
16 communication is necessary?

17 MS. MAPP: No.

18 COMMISSIONER POLMANN: All right.

19 MR. WRIGHT: Thank you.

20 COMMISSIONER POLMANN: Issue 17.

21 MR. FRIEDMAN: Let me -- let me -- can I  
22 interject something? I got to a question.

23 COMMISSIONER POLMANN: Yes, sir.

24 MR. FRIEDMAN: Is pending evidence developed  
25 at hearing a position?

1 COMMISSIONER POLMANN: No, it means --

2 MR. FRIEDMAN: I mean, isn't that true of  
3 everything? That's kind of almost like a no  
4 position.

5 COMMISSIONER POLMANN: Well --

6 MR. FRIEDMAN: We will decide when the --  
7 after the evidence, we will decide what our  
8 position is going to be. I mean, I think this is  
9 asking for positions as we sit here today.

10 COMMISSIONER POLMANN: Thank you, Mr.  
11 Friedman.

12 Mr. Wright, other than the difference in the  
13 dollar amount, your position, in simple reading,  
14 appears to be similar to OPC's position.

15 MR. WRIGHT: Yes, sir. Our position is the --

16 COMMISSIONER POLMANN: The words are  
17 different, and the number is different.

18 MR. WRIGHT: Yeah.

19 COMMISSIONER POLMANN: But is the meaning the  
20 same?

21 MR. WRIGHT: Yes, sir.

22 COMMISSIONER POLMANN: Is that your intention?

23 MR. WRIGHT: Yes, sir.

24 COMMISSIONER POLMANN: Mr. Friedman, the  
25 notion of pending evidence adduced or -- or

1           determined, or so forth, whatever word you choose  
2           to use, evidence that arises from hearing is -- is  
3           commonly found in these positions. Do you want to  
4           comment further on that?

5           MR. FRIEDMAN: I don't think I have ever seen  
6           that phrase at the beginning of any issue. It's  
7           not at the beginning of any other issues.

8           MS. CRAWFORD: Dr. Polmann, may I offer?

9           COMMISSIONER POLMANN: Yes, please.

10          MS. CRAWFORD: The phrase pending evidence  
11          developed at hearing, or adduced at hearing, is a  
12          common staff position, and I think that's perhaps  
13          where Mr. Friedman's consternation is arising from.

14          Typically, reservations are allowed only for  
15          staff, unless a party has good cause for why it  
16          can't take a further position at the time. Of  
17          course, any party's position post-hearing may  
18          refine and develop depending on what record  
19          evidence is adduced at hearing. That's understood.

20          But perhaps, for clarity, if Mr. Wright would  
21          be willing to amend his position to take out  
22          pending evidence developed at hearing, that would  
23          relieve Mr. Friedman of his concern that he is  
24          trying to reserve his position in a way different  
25          than parties are always entitled to, and align it

1 more with staff, who has the specific ability to do  
2 that per the OEP.

3 MR. FRIEDMAN: I wish I could have said that  
4 as eloquently as Ms. Crawford did.

5 COMMISSIONER POLMANN: Mr. Wright.

6 MR. WRIGHT: Thank you, Commissioner.

7 With the clear understanding that it is  
8 understood that we can change our position after  
9 the hearing, we are certainly happy to remove those  
10 several words.

11 We do have -- this is not a no position at  
12 this time pending evidence adduced at hearing.  
13 This is something could happen at hearing -- at  
14 hearing that would change our position, but our  
15 position is that the test year revenues is \$2.5  
16 million. But we are happy to take out those words.  
17 And elsewhere where they occur, which will probably  
18 make for a smoother remainder of this conference.

19 COMMISSIONER POLMANN: I appreciate that, but  
20 not to belabor the point -- okay, I will just leave  
21 it there.

22 Anything else on 16? Thank you.

23 Issue 17.

24 18, any changes?

25 Issue 19.

1 20.

2 21.

3 Issue 22.

4 23.

5 24.

6 25.

7 26.

8 27.

9 28.

10 29.

11 MS. CRAWFORD: Dr. Polmann, I am sorry to  
12 interrupt the flow. It's going so well. I note,  
13 as I am marking off issues, OPC has also pending  
14 further evidence adduced at the hearing in a number  
15 of its positions. Perhaps Mr. Saylor could clarify  
16 whether he also finds it agreeable, with the  
17 understanding that that's always reserved to all  
18 parties, that we could delete that for clarity  
19 sake.

20 MR. SAYLER: Certainly.

21 MS. CRAWFORD: Thank you.

22 COMMISSIONER POLMANN: Issue 30.

23 31.

24 32.

25 33.

1 Issue 34.

2 35, six and seven are -- I am sorry, 35 and 36  
3 are under rate structure.

4 MS. MAPP: Commissioner Polmann.

5 COMMISSIONER POLMANN: Yes.

6 MS. MAPP: I point out Issue 36, OPC's current  
7 position is not an appropriate position, and they  
8 would need to amend that position by the deadline  
9 given of tomorrow by close of business or it will  
10 be changed to reflect no position.

11 MR. SAYLER: Which issue are you talking  
12 about?

13 MS. MAPP: 36.

14 MR. SAYLER: Change it to the Commission  
15 should apply the matching principle, please.

16 MR. FRIEDMAN: I'm sorry, I hate to go back to  
17 34 --

18 COMMISSIONER POLMANN: I'm sorry, there is no  
19 backing up.

20 MR. FRIEDMAN: It's -- it needs --

21 COMMISSIONER POLMANN: Mr. Fr -- yes, Mr.  
22 Friedman, you wanted to back up to what?

23 MR. FRIEDMAN: No. 34, that -- the appropriate  
24 revenue requirement needs to be consistent with  
25 what we put in our basic position, which is

1           3,682,216.

2           COMMISSIONER POLMANN: Say that number again.

3           MR. FRIEDMAN: Three million 200 -- I mean,  
4           \$3,682,216.

5           COMMISSIONER POLMANN: Okay. That was issue  
6           34. And then we had 35, 36, there was one change  
7           on 36. Anything else on 36?

8           37.

9           MS. MAPP: Staff would note that this is  
10          another position in which OPC would need to amend  
11          its position or be changed to no position.

12          MR. SAYLER: Can staff explain why the  
13          remainder of our position can't be our position?

14          MS. MAPP: So it's your -- to take out the  
15          first part and just have the approved amount  
16          beginning there.

17          COMMISSIONER POLMANN: Would the words "after  
18          however" be an appropriate position?

19          MR. SAYLER: I think so. Well --

20          COMMISSIONER POLMANN: Is your position the  
21          approved amount should be taken into account, et  
22          cetera?

23          MR. SAYLER: Yes, sir.

24          COMMISSIONER POLMANN: Thank you.

25          MS. MAPP: Staff would note, then, that this

1 is the same position taken on other issues, would  
2 the same amendment be appropriate for those as  
3 well?

4 MR. SAYLER: Which issues?

5 MS. MAPP: Issue 38, Issue 39, Issue 40 and  
6 Issue -- yeah, Issue 40, uh-huh.

7 MR. SAYLER: Yes.

8 COMMISSIONER POLMANN: Okay. For  
9 confirmation, Ms. Mapp, that's 37, 38, 39 and 40,  
10 you are changing OPC position to "the approved  
11 amount should be taken into account to reduce the  
12 revenues to be recovered through residential and  
13 general service rates?"

14 MS. MAPP: That's correct.

15 And staff would also note --

16 COMMISSIONER POLMANN: Just one second.

17 Mr. Sayler, we got all those numbers -- issue  
18 numbers?

19 MR. SAYLER: I have 37, 38, 39 and 40.

20 COMMISSIONER POLMANN: Thank you.

21 Ms. Mapp.

22 MS. MAPP: Yes, I was just going to point out  
23 that on Issue 39, Monroe County has no position at  
24 this time. That would need to be amended, or it  
25 will be changed to no position.



1           COMMISSIONER POLMANN: So just a reminder  
2           there, in general, any -- any position that's no  
3           position at this time will be -- will be changed to  
4           no position as -- if there is no statement as of  
5           close of business tomorrow, is that correct?

6           MS. MAPP: Yes.

7           COMMISSIONER POLMANN: Yeah.

8           MR. SAYLER: Commissioner Polmann.

9           COMMISSIONER POLMANN: Yes, sir.

10          MR. SAYLER: As a point of clarification, the  
11          reason staff takes no position pending evidence is  
12          because they are the neutral party -- neutral  
13          non-party to this proceeding?

14          MS. CRAWFORD: That's correct.

15          COMMISSIONER POLMANN: I need some  
16          clarification. I am sorry.

17          MS. CRAWFORD: I would be happy to -- I think  
18          what Mr. Saylor is asking is the reason staff has a  
19          unique ability to take no position pending evidence  
20          adduced at hearing it is because staff's advisory  
21          role to the Commission.

22          Historically, staff has sometimes taken  
23          positions on issues prior to the hearing, or at the  
24          prehearing, however, it is not required to do so.  
25          And that's correct, this is consistent with staff's

1           role as advisor to the Commission, that it is not  
2           taking specific positions on these issues. I am  
3           sorry.

4           COMMISSIONER POLMANN: Is that helpful?

5           MR. SAYLER: Yes, sir. Thank you.

6           COMMISSIONER POLMANN: Ms. Mapp, do you have  
7           any idea what number we are on?

8           MS. MAPP: I believe --

9           COMMISSIONER POLMANN: And if you do, could  
10          you please tell me?

11          MS. MAPP: We are currently -- we just  
12          completed 40, so we would move on to 41.

13          COMMISSIONER POLMANN: Okay. We completed 40  
14          with regards to OPC.

15          MS. MAPP: Yes.

16          COMMISSIONER POLMANN: Does anybody have any  
17          comments up to and through 40? Some, like,  
18          starting at 36 or 37 or -- Mr. Wright.

19          MR. WRIGHT: I have noticed a typo in our  
20          position on Issue 38. It should say Monroe County  
21          not Monroe Count.

22          COMMISSIONER POLMANN: You would like that  
23          changed?

24          MR. WRIGHT: I would, please, sir.

25          COMMISSIONER POLMANN: We can do that.

1 MR. WRIGHT: Thank you.

2 COMMISSIONER POLMANN: Any other party -- any  
3 other comments, including typos, up through and  
4 including No. 40?

5 All right. Let's go to No. 41.

6 MS. MAPP: Staff would note that the positions  
7 of OPC and Monroe County would need to be amended  
8 or changed to no position.

9 MR. SAYLER: And why is that, since there is  
10 no testimony on customer deposits?

11 MR. WRIGHT: Commissioner.

12 COMMISSIONER POLMANN: Yes, Mr. Wright.

13 MR. WRIGHT: Thank you. This issue may be  
14 unique in this regard in that it may be  
15 addressed -- I don't have any knowledge or  
16 intelligence to the effect that it will be, but it  
17 may be addressed by customers at the customer  
18 service hearing.

19 Accordingly, we would like to reserve our  
20 opportunity to submit briefing on the issue if it  
21 is thus addressed. That's why our position  
22 statement is what it is.

23 And this -- this one is unique in that the  
24 only evidence that is likely to come in, if any,  
25 would be from customers at the customer service

1 hearing.

2 COMMISSIONER POLMANN: Your position as  
3 stated, it was unclear to me -- when you say  
4 evidence developed at hearing, I just -- I took  
5 that to mean the technical hearing, and the  
6 evidence provided at customer service hearings  
7 would not be under -- did not have that same  
8 meaning. So just as a comment, that was -- that  
9 was unclear.

10 In terms of the issue position and the timing  
11 deadline, I am looking to project attorneys or the  
12 legal advisor. Where do we -- there is a deadline  
13 here for taking a position on the issue, so how  
14 does this relate to the customer service hearing,  
15 which is evidence that goes into the docket?

16 MS. MAPP: It's always been the case that  
17 testimony, either at the technical hearing or the  
18 customer hearing, may impact a party's position,  
19 and it's well known that these positions are  
20 preliminary and may change in post-hearing filings.  
21 However, that does not negate the requirement that  
22 a party take a position, because all positions,  
23 technically speaking, may change based off of  
24 testimony at a customer hearing or a technical  
25 hearing.

1           MR. FRIEDMAN: Commissioner Polmann, this is  
2 really -- to me, I view this as a fallout number.  
3 The PSC has a rule that says, your customer deposit  
4 is average -- two months average. And that's all  
5 we are saying, is whatever the rate turns out to  
6 be, you apply the rule to it and we change our  
7 deposit accordingly. So to me it's really a  
8 fallout number.

9           COMMISSIONER POLMANN: Okay. Thank you.

10          Mr. Wright, do you have a response to the --  
11 to the fallout issue, or the notion of it being  
12 Commission practice or rule?

13          MR. WRIGHT: I have a response -- I  
14 specific -- yes, I do.

15          COMMISSIONER POLMANN: Okay. Let me rephrase.  
16 Would you like to comment on -- on any or all of  
17 this?

18          MR. WRIGHT: Thank you, Commissioner. I will  
19 make this very easy.

20          We will take a position by close of business  
21 tomorrow that will not -- not be this --

22          COMMISSIONER POLMANN: Thank you.

23          MR. WRIGHT: -- somewhat vague position. We  
24 will take a position. It may be -- it may be to  
25 agree with the company, or it may be the deposits

1           ought to be what they are today, or something else,  
2           but we will take an affirmative position by the  
3           close of business tomorrow --

4           COMMISSIONER POLMANN: Thank you.

5           MR. WRIGHT: -- so that we do reserve our  
6           right to address it in brief.

7           Thank you.

8           COMMISSIONER POLMANN: Thank you, sir.

9           MR. WRIGHT: Thank you.

10          COMMISSIONER POLMANN: Anything else on 41?

11          MS. CRAWFORD: We would need similar statement  
12          from OPC regarding its position.

13          MR. SAYLER: Yes, Commissioner Polmann, we  
14          will --

15          COMMISSIONER POLMANN: Thank you.

16          MR. SAYLER: -- revise by COB tomorrow.

17          COMMISSIONER POLMANN: Thank you.

18          42.

19          43.

20          Issue 44.

21          Issue 45.

22          Issue 46.

23          47.

24          Okay. That covers all of the issues unless  
25          anybody missed anything, except Mr. Friedman. All

1 right.

2 MS. CRAWFORD: Dr. Polmann, if I may.

3 COMMISSIONER POLMANN: Yeah, I was just  
4 reading the notes here. We are going back to the  
5 contested issues, yes?

6 MS. CRAWFORD: Yes, sir. That's correct.

7 MR. WRIGHT: Commissioner, are we going to  
8 then come back to the rest of the order?

9 COMMISSIONER POLMANN: Yes.

10 MR. WRIGHT: Okay. Thank you.

11 COMMISSIONER POLMANN: We are going to take  
12 care of the contested issues, and then we are going  
13 to move on to the exhibit list.

14 MR. WRIGHT: Thank you.

15 COMMISSIONER POLMANN: I was just trying to  
16 catch myself up here. I am sorry, Ms. Crawford, go  
17 ahead.

18 MS. CRAWFORD: No, sir, you have already made  
19 the statement.

20 COMMISSIONER POLMANN: All right.

21 MS. CRAWFORD: I was just making sure we are  
22 going back to the contested issues.

23 Thank you.

24 COMMISSIONER POLMANN: Thank you.

25 Okay. On the contested issues, what we would

1           like to do is hear -- hear some comments on these.  
2           And I would like to hear first from the  
3           intervenors, perhaps OPC and then Monroe County  
4           on -- they proposed the issues, so we will start  
5           there, and then we will hear from Mr. Friedman on  
6           behalf of the utility.

7                       Now, if you would, please, just provide some  
8           comments. We don't -- there is no oral argument.  
9           We are not going to --

10                      MR. SAYLER: Certainly, I will be very brief  
11           and pass the baton to Mr. Wright.

12                      As we know that Hurricane Irma damaged -- or  
13           the utility sustained Hurricane Irma damage, some  
14           of that is being recovered through rates going  
15           forward, so it seems naturally -- natural that the  
16           utility have the proper amount of insurance to  
17           defray any of those costs that the customers are  
18           going to have to pay going -- in going-forward  
19           rates. And we believe it is a question that this  
20           commission is, you know, did they have a prudent  
21           amount of hurricane damage insurance or -- and  
22           that's why we are teeing it up, and that's why the  
23           issue is stated mutually as it is.

24                      COMMISSIONER POLMANN: Mr. Wright.

25                      MR. WRIGHT: Thank you, Commissioner.



1           Simply these are completely relevant issues,  
2           whether the company had adequate insurance coverage  
3           to address potential losses due to a, certainly a  
4           reasonable foreseeable event in the Florida Keys is  
5           a fair issue in any kind of case like this, and  
6           whether the company prudently pursued recovery  
7           under any policies is a completely appropriate  
8           issue.

9           While there is no testimony addressing this by  
10          our side, the company is seeking recovery, and we  
11          have addressed it in discovery, and will address it  
12          further in cross.

13          Thank you.

14          COMMISSIONER POLMANN: Okay. What I am trying  
15          to do here is we have two contested issues, so -- A  
16          and B, and I am thinking of them separately and  
17          distinctly. So I am going to hear from Mr.  
18          Friedman, and then -- I don't know if you are  
19          addressing them individually or collectively, but  
20          if you could, please give me your comments on them,  
21          and be clear on if it's A or B.

22          MR. FRIEDMAN: Thank you, Commissioner. I  
23          think they are interrelated, at least from the  
24          appropriateness of them being in this case. I  
25          would agree that these would be issues if they had

1           been raised by Public Counsel and/or the County at  
2           the appropriate time, and they would have presented  
3           testimony on those issues.

4           There is no testimony on any of these issues.  
5           And when a lawyer says I am going to prove my case  
6           on cross-examination, how do you do that? Because  
7           you can't go in cross-examination beyond the scope  
8           of direct examination. So how do you prove  
9           something on direct examination if there is no  
10          testimony -- I mean, on cross-examination, if there  
11          is no testimony on direct examination?

12          They presented no evidence on this. They  
13          could have easily had one of their witnesses talk  
14          about it, or hired -- more appropriately hired an  
15          insurance professional to render an opinion on  
16          this.

17          I don't think you can just throw it up as an  
18          issue at the hearing without having any testimony  
19          on it. They had plenty of time to do discovery and  
20          present a witness on it, but they chose not to.  
21          They chose to wait until the last minute and throw  
22          it up as an issue when we don't have an opportunity  
23          to respond.

24          COMMISSIONER POLMANN: Okay. Anything further  
25          on that?

1 MR. FRIEDMAN: No.

2 COMMISSIONER POLMANN: All right. Back to the  
3 intervenors. Do you have a clear distinction  
4 between A and B, or essentially your comments are  
5 addressing both?

6 MR. WRIGHT: My comments address both.

7 COMMISSIONER POLMANN: All right.

8 MR. WRIGHT: I believe they are both  
9 appropriate issues, and they both go directly to  
10 the company's request to recover insurance -- to  
11 recovery costs associated with damages sustained  
12 through Hurricane Irma.

13 We did raise the issues at the appropriate  
14 time. The appropriate time is before today. We  
15 raised them weeks ago.

16 COMMISSIONER POLMANN: All right.

17 Okay, staff, what -- what do you have to add  
18 here?

19 MS. MAPP: As for Contested Issue A, staff  
20 would recommend that this issue be dropped. No  
21 witness has provided any testimony as to the  
22 adequacy of the insurance coverage procured by the  
23 utility.

24 Further, no testimony was provided detailing  
25 the amount of insurance the utility carried, nor

1           which of the utility's assets did or did not have  
2           coverage.

3           Additionally, if -- even if a case by the  
4           intervenors could be made on cross-examination, the  
5           utility is prevented from rebutting any conclusions  
6           that could be made because it is not -- they are  
7           limited to what is in their direct testimony, and  
8           there is no testimony on that issue there. So  
9           staff would recommend the issue be dropped.

10           COMMISSIONER POLMANN: Okay. That's on Issue  
11           A.

12           MS. MAPP: Yes.

13           COMMISSIONER POLMANN: Thank you.

14           So let me -- let me address Issue A.

15           Having read through the testimony in the case,  
16           I -- I would agree, essentially reflecting the  
17           staff comments, that there is no testimony on -- on  
18           the topic of insurance that's relevant to the  
19           Contested Issue A. And simply stated, without  
20           having presented evidence in the prefiled  
21           testimony, I need to find here and rule that  
22           Contested Issue A should be dropped.

23           So what I am going do with that is, rather  
24           than rule definitively here today on this, I am  
25           going to take the Issue A under advisement, and we

1 will issue a ruling on A as soon as possible.

2 I am going to look to staff for comments on  
3 Issue B.

4 Ms. Mapp.

5 MS. MAPP: Staff would also recommend that  
6 Issue B be dropped. While there is limited  
7 testimony on the topic of insurance generally, and  
8 KWRU Witness Johnson does discuss the amount  
9 remitted by the insurance company for damages,  
10 there is no testimony from either the utility or  
11 the intervenors on how the utility pursued its  
12 claim to the insurance company.

13 Additionally, Johnson's testimony only  
14 discusses insurance related to the damaged office  
15 building, but none of the utility's other assets  
16 damaged during the storm.

17 Additionally, any arguments that could be made  
18 under this issue, may also be made under either  
19 Issues 4 or Issues 26, because any adjustment to be  
20 made as a result of lack of insurance coverage  
21 would be made in those issues.

22 COMMISSIONER POLMANN: So as to contested  
23 Issue B, I am inclined to the staff recommendation.  
24 And in my reading, there are, in fact, other --  
25 other issues in this case where the subject matter

1 of insurance claims, and how the utility has  
2 pursued that, there are other issues in the case  
3 where these -- this matter can be litigated at the  
4 technical hearing.

5 So I believe that Contested Issue B can also  
6 be dropped. And again, rather than a definitive  
7 ruling here today, I am going to take all the  
8 information on this under advisement, and we will  
9 issue a ruling as soon as possible.

10 So on both A and B, you should anticipate a  
11 definitive ruling on this in the near future, but  
12 that -- that's my inclination on both A and B.

13 Mr. Saylor.

14 MR. SAYLER: A point of clarification. For  
15 Issue -- Contested Issue B, is it essentially staff  
16 is asserting that it is subsumed under Issues 4 and  
17 26, and that those arguments for Contested Issue B  
18 can be made there? I am trying to understand.

19 COMMISSIONER POLMANN: No, we are -- we are  
20 not taking a position that the issue is subsumed.  
21 The position is that Issue B is not accepted as a  
22 new issue, that the issues can be addressed at  
23 hearing, during the course of the hearing; and  
24 that -- that the subject matter that's been raised  
25 can be addressed elsewhere, not necessarily

1 subsumed under particular issues.

2 Now, I will look to staff for any  
3 clarification if I have misstated, used the wrong  
4 words.

5 MS. MAPP: Your clarification is correct.

6 COMMISSIONER POLMANN: But again, I am not  
7 ruling here today. We will find the precise legal  
8 terms to describe that in writing.

9 Any other comments or questions? I would be  
10 happy to hear them.

11 MR. SAYLER: I don't. I believe Mr. Wright  
12 has a question -- well, my -- my comment is this:  
13 In other dockets in other proceedings, where you  
14 have utility witnesses -- and I am thinking the  
15 clause dockets, where oftentimes intervenors don't  
16 file testimony in those particular proceedings, but  
17 yet there is extensive cross-examination by the  
18 intervenors of the utility fact witnesses on  
19 various issues that are contained within the  
20 substance and essence of their testimony, or even  
21 ancillary to their testimony, and that has been the  
22 Commission's common practice even if there is --  
23 it's -- you are allowed to ask cross on cost and  
24 adjustments and things that are affected by the  
25 witness' testimony.

1           And that's in a situation that we believe, or  
2           at least I believe is analogous here, that  
3           Mr. Johnson is the president of the company. He  
4           made decisions about the amount of insurance  
5           coverage to have or not have. That was elicited in  
6           his deposition last week. And when it comes to the  
7           cross-examination, he is the fact witness as it  
8           relates to that. And we believe that we could make  
9           that case through cross-examination even if he did  
10          not prefile testimony on that issue.

11           But that is why we are concerned that if we  
12          get an adverse ruling here, that it can affect  
13          other dockets involving bigger utilities and much  
14          larger dollar amounts. And that is why --

15           He is the fact witness. This is a factual  
16          situation. Did they have enough? And then the  
17          question is, in the Commission's mind, was that  
18          enough insurance, a prudent amount of insurance.  
19          And that's why we teed up these two different  
20          issues.

21           COMMISSIONER POLMANN: Thank you for your  
22          comments. We will consider that as we take this  
23          under advisement and -- everything will be  
24          considered. That's really the best response I can  
25          give you sitting here today.



1           Without providing oral argument, do you have  
2           another comment?

3           MR. WRIGHT: Perhaps a -- perhaps just a  
4           question, Commissioner.

5           You had made reference to litigating these  
6           issues elsewhere, and I am just -- but you have  
7           also said that they are not subsumed. That's kind  
8           of a magic word that we use here. But I am trying  
9           to understand what's what.

10          The company has asked for additional rate base  
11          of \$288,000 to replace a building that was  
12          destroyed in the storm. They have asked for  
13          \$273,000 in -- in other storm restoration costs,  
14          and that's Issue 26.

15          Is it your intention that we would be allowed  
16          to litigate the issues of -- raise and address the  
17          issues whether they had sufficient insurance  
18          coverage and whether they pursued recovery under  
19          that with respect to those issues?

20          If not, I will simply make the request that  
21          these issues -- the contested issues remain as  
22          proffered issues subject to some further  
23          definition.

24          COMMISSIONER POLMANN: There are two different  
25          questions here.

1 MR. WRIGHT: Pardon?

2 COMMISSIONER POLMANN: There are two different  
3 issues.

4 MR. WRIGHT: Yes, sir.

5 COMMISSIONER POLMANN: A specifically is a  
6 reasonable and prudent amount of insurance.

7 MR. WRIGHT: Yes, sir.

8 COMMISSIONER POLMANN: And as -- as the staff  
9 recommendation and -- is that there is no testimony  
10 on that. And we will address that, it's a specific  
11 issue.

12 Issue B is reasonably and prudent pursuit of  
13 the claims against insurance that is in place --

14 MR. WRIGHT: Yes, sir.

15 COMMISSIONER POLMANN: -- whatever amount that  
16 may be on whatever damage that that insurance  
17 applies to, and whether that matter is addressed  
18 within issues currently on -- within the hearing  
19 process.

20 So we will rule on those separately; although,  
21 I understand the comments that we've heard kind of  
22 run those two things together. They are very  
23 clearly distinct in my mind and in the staff  
24 recommendations.

25 So we will take all the comments into account,

1 but these are very clearly distinct in my mind, and  
2 I think that's all we need to -- need to hear and  
3 say on it right now. But we will -- we will  
4 address it as soon as we can in writing, but  
5 thank -- thank you --

6 MR. WRIGHT: Thank you.

7 COMMISSIONER POLMANN: -- to all the parties  
8 for your input.

9 Okay. Let's see, exhibit list, staff.

10 MS. MAPP: Staff has prepared a comprehensive  
11 exhibit list, which includes all prefiled exhibits  
12 and the exhibits that staff wishes to include in  
13 the record. Staff will check with the parties  
14 prior to the hearing to determine if there are any  
15 objections to the comprehensive exhibit list, and  
16 we are currently awaiting word from the parties as  
17 to stipulations to the exhibits that staff would  
18 like to enter into the record.

19 COMMISSIONER POLMANN: Okay. Any -- any  
20 thoughts, comments, on the exhibit list? We can  
21 move forward to the next item.

22 Mr. Wright.

23 MR. WRIGHT: As was the case with respect to  
24 the order of our witnesses, I need to ask that, on  
25 page 32, Mr. Deason's exhibit be moved to follow

1 the exhibits of Mr. Small.

2 COMMISSIONER POLMANN: Thank you.

3 MR. WRIGHT: Thank you.

4 COMMISSIONER POLMANN: Anything else on  
5 Section IX in the draft order? No?

6 All right. Section X, we have approved and  
7 proposed stipulations.

8 MS. MAPP: Staff will amend this section to  
9 reflect that there is a proposed Type 2 stipulation  
10 on Issue No. 8.

11 COMMISSIONER POLMANN: Okay. Anything else?  
12 Very good.

13 Section XI, pending motions. Staff.

14 MS. MAPP: Yes. Staff will amend this section  
15 to remove the two joint motions by OPC and Monroe  
16 County as Commissioner has made a ruling on those  
17 two motions. However, we will keep the KWRU's  
18 motion to strike, as that is pending further  
19 deliberations upon the submission of responses from  
20 intervenors.

21 COMMISSIONER POLMANN: Okay. Thank you.

22 Let's move on to Section XIII, post-hearing  
23 procedures, Ms. Mapp.

24 MS. MAPP: Staff would suggest that  
25 post-hearing positions be limited to 50 words

1           offset with an asterisk, and that post-hearing  
2           briefs be limited to 40 pages.

3           COMMISSIONER POLMANN: Let me ask the parties  
4           if you are agreeable here to 50 words on the  
5           post-hearing position, and the brief limited to 40  
6           pages? Any comments? Agreement? Nod yes.

7           MR. SAYLER: Commissioner Polmann, with your  
8           indulgence, we would like 75 words for the position  
9           and 50 pages for the brief. We don't intend to use  
10          all, but I would rather have more and not need it  
11          than to have less.

12          COMMISSIONER POLMANN: Of course you would.  
13          Hold on a second.

14          Mr. Friedman.

15          MR. FRIEDMAN: I think the staff's position is  
16          imminently fair. I would like to clarify, or ask  
17          that you clarify that when we put the number of  
18          pages in here, that that also includes any  
19          appendices; because what happened in the UIF rate  
20          case is we had 100-page limit, OPC filed 100-page  
21          argument and then another 20 or 30 pages in an  
22          appendix.

23          COMMISSIONER POLMANN: Okay.

24          MR. FRIEDMAN: And I think -- I think pages  
25          mean pages, including appendix, and I would like

1           that made clear.

2           COMMISSIONER POLMANN:   Okay.  Mr. Wright, do  
3           you have anything to add?

4           MR. WRIGHT:  I would support the Public  
5           Counsel's request for 50 pages.  In a case like  
6           this, I can live with 50 words, but we got 40 odd  
7           issues that will have to be briefed to some extent,  
8           and I think 50 pages would be helpful to -- to us.

9           Thank you.

10          COMMISSIONER POLMANN:  I was liking 40 pages.

11          MR. WRIGHT:  Commissioner, you are the boss,  
12          and we will govern ourselves in accordance with  
13          your order.

14          COMMISSIONER POLMANN:  Well of course you  
15          will.

16          MR. WRIGHT:  That's right.

17          COMMISSIONER POLMANN:  Mr. Sayler, would you  
18          like to try to convince me for 50 pages, and I am  
19          inclined to Mr. Friedman's argument, because if I'm  
20          going to give you 50 pages, it's 50 pages.  
21          Anything past that 50th piece of paper, we are  
22          going to ignore.

23          MR. SAYLER:  The Utilities, Inc. case was very  
24          unique.

25          COMMISSIONER POLMANN:  Well, we are not

1 talking about Utilities, Inc., I am sorry.

2 MR. SAYLER: I understand that. But he made  
3 the comment -- he brought it into this matter  
4 because he referenced this appendix.

5 COMMISSIONER POLMANN: I didn't hear that  
6 part.

7 MR. SAYLER: Oh, you didn't hear the part  
8 about the appendix?

9 No, we can keep it to 50 pages, and, yes --  
10 yes, sir, we won't need more than 50, and actually  
11 we will aim for less than 50, if you are inclined  
12 to grant 50, or 45, but we would prefer 50.

13 COMMISSIONER POLMANN: Is there a big  
14 difference between 50 and 75? Because let me just  
15 share --

16 MR. SAYLER: Oh, 75 -- excuse me, 75 words for  
17 the hearing position.

18 COMMISSIONER POLMANN: I understand that.

19 MR. SAYLER: Okay. That's -- sorry, I  
20 apologize if I confused that.

21 COMMISSIONER POLMANN: No, I was clear.

22 I had a great experience with a family member  
23 applying to college, where the essays was limited  
24 to 500 words, and I was the editor, and it started  
25 out as 1,500 words. And it was like, here, Dad,

1 can you -- can you shorten this for me. So I don't  
2 know if y'all have a similar editing process  
3 in-house, but that was an aside.

4 Staff, should I go for 45 pages total limit,  
5 nothing beyond that, or is 50 going -- can we live  
6 with? Really, don't be shy. It's okay.

7 MS. CRAWFORD: From -- from the staff  
8 perspective, sometimes less is more.

9 COMMISSIONER POLMANN: Yeah, I know.

10 MS. CRAWFORD: We --

11 COMMISSIONER POLMANN: He offered --

12 MS. CRAWFORD: -- we would really object to  
13 45 --

14 COMMISSIONER POLMANN: I think he offered 45.

15 MS. CRAWFORD: Yeah.

16 COMMISSIONER POLMANN: I heard that.

17 MR. SAYLER: I shouldn't bargain against  
18 myself.

19 COMMISSIONER POLMANN: Yeah, exactly.

20 How about -- how about the 75 words and 45?  
21 Yeah, okay.

22 I think on post-hearing procedures, 75 words  
23 is probably a good number, but 45 pages. Thank  
24 you.

25 MR. SAYLER: Thank you, sir.



1 MR. WRIGHT: Thank you.

2 COMMISSIONER POLMANN: Of course. My  
3 pleasure.

4 Section XIV on rulings. Ms. Mapp.

5 MS. MAPP: Staff would suggest that opening  
6 statements be limited to no more than five minutes  
7 per party, and staff would recommend that the  
8 parties not share their allowed time.

9 COMMISSIONER POLMANN: Okay. So each party,  
10 five minutes. So that's five plus five plus five,  
11 is that -- is that okay, Mr Friedman? Five, five  
12 and five.

13 MR. FRIEDMAN: That's my understanding. I was  
14 just trying to think who I could share my five  
15 minutes with, but --

16 COMMISSIONER POLMANN: Well, as long as it's  
17 five plus five plus five, there is no confusion  
18 about the guys at this end get 10 minutes total,  
19 but it's five plus five. That doesn't mean you get  
20 10.

21 MR. FRIEDMAN: I understand, that  
22 Commissioner.

23 COMMISSIONER POLMANN: All right. I just  
24 wanted to make sure.

25 And then the -- I think we addressed this

1 earlier, but the witnesses are five minutes on  
2 direct and five minutes on rebuttal, all right.

3 Anything else under rulings?

4 MS. MAPP: Staff would just like to recap the  
5 rulings you have made so far in this proceeding so  
6 all parties are on the same page.

7 You made a ruling to deny in part the joint  
8 motions filed by OPC and Monroe County, and to  
9 allow the intervenors the opportunity to file  
10 additional testimony that must be in by close of  
11 business Friday, May 4th.

12 COMMISSIONER POLMANN: And that's referred to  
13 as surrebuttal.

14 MS. MAPP: Yes, surrebuttal.

15 You have made the ruling to take under  
16 advisement KWRU's motion for -- to strike, to be  
17 taken up later with the response from OPC pending  
18 to be filed by close of business Friday, May 4th.

19 And I believe you have made a decision to have  
20 witness summaries be limited to five minutes for  
21 direct and rebuttal each. And that's all the  
22 rulings that were made.

23 And opening statements are limited to five  
24 minutes per party, not to be shared.

25 COMMISSIONER POLMANN: We adjusted the

1 post-hearing briefs.

2 MS. MAPP: Yes, post-hearing briefs are  
3 limited to 45 pages, with position statements  
4 limited to 75 words offset with an asterisk.

5 COMMISSIONER POLMANN: Did you mention  
6 Contested Issue A and B? I am sorry.

7 MS. MAPP: Yes, no ruling was made on  
8 Contested Issues A and B, but they are taken under  
9 advisement for a ruling later.

10 COMMISSIONER POLMANN: Okay. Thank you.

11 All right. I am looking at other matters, is  
12 that where we are?

13 MS. MAPP: Yes, staff would remind all parties  
14 that to the extent that their positions are -- have  
15 changed, or have been amended due to discussion  
16 here today, that they provide any such changes to  
17 staff by close of business tomorrow, May 2nd, with  
18 no exceptions or extensions. This is necessary so  
19 that the prehearing order can be completed prior to  
20 the hearing.

21 And staff would just like to remind all  
22 parties that the technical hearing will take place  
23 in Key West beginning May 15th, and continue  
24 through May 17th, 2018. And the technical hearing  
25 will commence at 9:30 a.m. on that Tuesday,

1           May 15th. And the customer service hearing will  
2           commence at 6:00 p.m. on Tuesday, May 15th, and a  
3           additional customer hearing will also take place  
4           May 16th at 9:30 a.m.

5           COMMISSIONER POLMANN: So the -- thank you,  
6           Ms. Mapp.

7           The effort there for customer service hearings  
8           is we will have an evening on the first day of the  
9           hearing, and then we will also have a morning  
10          session on the second day. So that we are trying  
11          to cover for everyone -- all the customers have an  
12          opportunity for either an evening or a morning. We  
13          would hope that they don't come to both to speak.

14          MR. SAYLER: Yes. And on behalf of the  
15          customers, thank you for both opportunities,  
16          because it gives the retirees an option to come in  
17          the morning, and those who work a full day to come  
18          in the evening. Thank you very much.

19          COMMISSIONER POLMANN: Yeah, we've heard that  
20          at other customer service hearings, whichever one  
21          we choose, a morning or evening, we always have  
22          comments that the other folks didn't get a chance,  
23          so we are -- we are trying to address that.

24          Okay. Any other matters that we would like to  
25          address today? Anyone?

1 MR. FRIEDMAN: Nothing further.

2 COMMISSIONER POLMANN: Mr. Sayler? Mr.

3 Wright? Staff?

4 MS. MAPP: No.

5 COMMISSIONER POLMANN: Anybody in the

6 audience?

7 How was the temperature today? Cold.

8 Somebody liked it. Okay, something back there

9 liked it.

10 Okay, seeing no additional matters, I think

11 we've concluded our business and this prehearing is

12 adjourned.

13 Thank you.

14 MR. SAYLER: Thank you.

15 MR. WRIGHT: Thank you.

16 (Whereupon, the proceedings concluded at 11:28

17 a.m.)

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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 7th day of May, 2018.




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DEBRA R. KRICK  
NOTARY PUBLIC  
COMMISSION #GG015952  
EXPIRES JULY 27, 2020

## ONE PAGE SUMMARY OF MOTION TO STRIKE AND MOTION TO CONTINUE THE HEARING

- ❖ This is a formal rate case governed by an Order Establishing Procedures and not proposed agency action rate case. That distinction is very important as it relates to protecting “due process.”
- ❖ Chairman Brown’s test year approval letter instructed KWRU to file “all the information it wishes the Commission to consider when arriving at a decision on its rate case application with its original filing.”
  - To support its burden of proof, KWRU was required to provide all the necessary information in its direct case through its testimony and exhibits.
  - KWRU concedes that it added new cost information in rebuttal that it now wants the Commission to consider including in its rate case.
- ❖ OPC and Monroe County witnesses filed Intervenor Testimony on March 14, 2018, based upon KWRU’s “original filing” and discovery responses received prior to that date.
  - KWRU made no request to file supplemental testimony with the new cost information.
  - KWRU’s new increased costs were provided for the first time in rebuttal.
- ❖ The Order Establishing Procedure does not permit Intervenor to file surrebuttal to new cost information in utility’s rebuttal.
  - The Intervenor has two options – (1) file a motion to strike the new cost information, or (2) request a continuance in order to file surrebuttal to this new cost information.
- ❖ KWRU alleges the new cost information should be considered in setting rates.
  - *Gulf Power v Bevis*, cited in the Motion to Strike, requires the Commission to consider existing facts that affect future rates, but only if those facts are truly undisputed facts and not mere allegations. At this point, KWRU’s alleged facts are untested and in dispute.
- ❖ It is unfair to allow KWRU to continually add new costs to its request for rate relief after the Intervenor filed their testimony without a meaningful opportunity to respond.
  - KWRU attempted to change the rules of the game, providing new cost information in rebuttal.
  - The Intervenor followed the rules and procedures outlined in the Order Establishing Procedure, and that is why we filed these two Motions.
  - Changing the rules and procedures to allow new cost information in rebuttal, without an opportunity to respond, is not only unfair, but a violation of due process.
- ❖ Due process and fundamental fairness require that either KWRU’s supplemental allegations be stricken or that the Citizens and the County have a meaningful opportunity to address the new information through discovery and surrebuttal testimony.
- ❖ Contrary to KWRU’s allegation, KWRU unilaterally withdrew any offer for Intervenor to file surrebuttal testimony.

DPC  
Parties/Staff      Handout  
event date 5/1/18  
Docket No. 20170141