

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates
in Monroe County by K W Resort Utilities Corp. DOCKET NO. 20170141-SU
FILED: June 6, 2018

**CITIZENS' POST-HEARING STATEMENT OF POSITIONS
AND POST-HEARING BRIEF**

Pursuant to Order Nos. PSC-2018-0039-PCO-SU, issued January 12, 2018 and PSC-2018-0242-PHO-SU, issued May 10, 2018, the Citizens of the State of Florida, by and through the Office of Public Counsel, hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief combined into a single document.

PRELIMINARY STATEMENT

Within this Brief, the Office of Public Counsel will be referred to as “Citizens” or “OPC.” OPC will refer to K W Resorts Utilities Corp. as “KWRU” or “Utility” or “Company.” Citations to the hearing transcript will use “TR _”; to the customer service hearing transcript will use “CSH Vol __, TR _”; and hearing exhibits will use “HE _”. Each OPC position statement will be set off with asterisks. The issues on which Citizens take no positions or which were stipulated have not been reflected in the Brief.

EXECUTIVE SUMMARY OF ARGUMENT

It is axiomatic that KWRU has the burden of proof to support its requested rate increase. *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1190 (1982). It is neither the Intervenors’ nor staff’s burden to place evidence in the record to support KWRU’s requested rate increase. Order No. PSC-07-0129-SC-WS at 8.¹ The parties of record have the duty to establish the hearing record in this case and the Commission’s decision must be based upon that hearing record.

It is undisputed that KWRU increased its revenue requirement in rebuttal. TR 827-28; HE 54 (DDS-2, revised MFR Schedule B-2; KWRU’s position on Issue 34 in Prehearing Order). KWRU Witness Swain’s rebuttal exhibit DDS-2 (HE 54) contained revised MFR schedules which increased

¹ Order No. PSC-07-0129-SC-WS at 8, issued February 14, 2007, in Docket No. 060262-WS, In re: Application for increase in water and wastewater rates in Pasco County by Labrador Utilities, Inc.

KWRU's revenue requirement as evidenced by revisions to Schedules B-2 and E-1. However, as a result of testimony presented by Ms. Swain and assertions made by KWRU's counsel during the hearing, the Commission should rely solely upon the evidence KWRU provided in its direct case and not the revisions made in its rebuttal which increased its proposed revenue requirement and the resulting rates and charges.

Customer Rate Impact

Consistent with the Commission's decision in 2017 in KWRU's last rate case and to accommodate known and measurable growth, the Commission should apply the matching principle to the rates and charges in the first year new rates will be in effect. TR 403-09; Order No. PSC-17-0091-FOF-SU at 21, 23, 25, 43, 63, 66-67.² As the Commission noted in that decision, increasing the Utility's costs and expenses without increasing known and measurable revenues from anticipated growth, or failing to adjust the billing determinants for that anticipated growth, is a violation of the matching principle. *Id.*

The final rates approved in this case will have long-term, continuing effects on both the customers and the Utility. There was unrebutted testimony by two customers that the residents are low income and the rate increase will significantly affect them. CSH Vol.1, TR 54, 65. Another customer testified that, if KWRU raises rates, the increase will be borne by "the little persons", the workers, and the poor. CSH Vol.1, TR 69. Unrebutted testimony by County Witness Kevin Wilson demonstrates 17.2% of South Stock Island residents live at or below the poverty level; the median housing value is \$236,700; and the median household income is \$41,799. TR 466; HE 42, 43. In addition, the impact of Hurricane Irma has increased the cost of housing in the area. TR 889, 963. Because this is the second rate increase requested by KWRU less than a year since the Commission approved a 58% rate increase in 2017, this Commission should exercise its discretion when setting final rates to protect KWRU customers who can ill afford another 57% increase. The Commission should incorporate into its determination the increased revenues associated with the new parcels to be provided service (HE 118-119) resulting from the agreement between Monroe County and KWRU, as well as the increased billing determinants supported by Monroe County Witnesses Wilson and Small. Increased revenues

² Order No. PSC-17-0091-FOF-SU at 21, 23, 25, 43, 63, 66-67, issued March 31, 2017, in Docket No. 20150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

are based on competent substantial evidence of known and measurable growth and will afford the Utility the ability to provide service at a reasonable rate, with a lessened impact on the customers.

Conclusion

The evidence demonstrates the Commission should apply the matching principle to establish the revenue requirement and final rates. Doing so will fairly balance the interests of KWRU and its customers, allowing KWRU sufficient revenues to maintain a healthy utility and provide safe, adequate and reliable wastewater service without unjustly and unreasonably burdening KWRU's ratepayers.

ISSUES AND POSITIONS

TEST YEAR

ISSUE 1: Is the quality of service provided by K W Resort satisfactory?

POSITION: * No. The Commission should find KWRU provides marginal quality of service for lapses in wastewater operations, refusal to provide service upon request, its billing complaints, and treatment of customers. *

ARGUMENT:

Maintenance of wastewater treatment system

Witness Woodcock testified KWRU should begin applying asset management principles to its operations and planning activities. TR 354-59. If properly implemented, this would result in reduced costs and improved levels of service, benefiting the customers and Utility alike. TR 359. As an experienced utility operator, KWRU should have already implemented such principles to protect its assets and its customers.

Problems in wastewater operations

There was customer testimony about unattended lift station alarms. CSH Vol.1, TR 56. There was customer testimony about utility personnel sleeping on the job in a utility truck, presumably on company time. CSH Vol. 2, TR 30. KWRU had two recent wastewater spills reported to the Florida Department of Environmental Protection ("FDEP"); one was a reuse line break which occurred on April 2, 2018, and the other was a lift station overflow on May 6, 2018. HE 138, 139.

Failure to provide requested sewer service

The evidence shows KWRU failed to provide sewer service to persons requesting service within its service territory pursuant to Section 367.111, F.S., and Rules 25-30.310 and 25-30.320, F.A.C. Two individuals each testified they requested service which to date KWRU has refused to provide. CSH Vol.1, TR 40-47; HE 125; CSH Vol.1, TR 67, 69. Monroe County also provided evidence of other properties for which KWRU has not timely provided service. HE 119, 120.

Billing complaints and customer service

Two customers complained of billing issues and the difficulties getting resolution for their problems. Ms. Beruldsen testified about the difficulty in resolving a billing issue with KWRU; she also complained that KWRU does not allow for credit card payments and how the post-card sized monthly bill does not provide sufficient information. CSH Vol.1, TR 53-55, 56, 61-63; HE 126. Correspondence shows she made payment by check; however, her checks were not cashed or recorded and she was subsequently charged a late penalty. HE 126, March 23, 2018 email. Based upon the correspondence back and forth between this customer and KWRU, there is clearly a disconnect with the Utility concerning its billing practices.

Another customer, Ms. Boarders, also testified about issues with KWRU's billing practices. She attempted to discuss her bill in person at the Utility's office and was treated in a disrespectful manner by Judi Irizarry³, the Utility billing manager, who stated "How dare you come in here." CSH Vol., TR 26, 28.

Based upon the customer testimony, it is clear KWRU needs to improve its billing processes, provide better customer service, connect new customers quickly upon request, and address other problems identified by the customers at the hearing. For the reasons stated above, the Commission should find that KWRU's customer service is marginal.

³ Ms. Irizarry's name was in a letter from Mr. Johnson to Ms. Beruldsen in HE 126.

RATE BASE

ISSUE 2: Was the Utility’s use of single source bidding reasonable and prudent for certain pro forma plant additions, and if not, what action should the Commission take regarding these pro forma projects?

POSITION: * No. A prudent utility would obtain multiple bids in order to obtain an apples to apples comparison of bids. Since most of the “single source bidding” pro forma plant items have not been placed into service, the Commission should reduce the plant in service amount by 11.7% for this imprudent practice. In a subsequent proceeding, if the plant is placed into service, the Commission can verify the cost and prudence of the expenditures.*

ARGUMENT:

A prudent utility would solicit multiple bids for its projects, thereby allowing an apples to apples comparison of bid responses. TR 335-38. Since most of the pro forma plant items for which KWRU only obtained a single source bid have not been placed into service, consistent with Mr. Woodcock’s testimony, the Commission should reduce the plant in service amount by 11.7% for this imprudent practice. TR 345. In a subsequent proceeding after the plant is placed into service, the Commission can verify the cost and prudence of the expenditures for these projects and adjust rate base accordingly at that time.

When asked whether a single bid was sufficient where only one contractor bid on a contract, OPC Witness Woodcock testified that a company should re-bid the project in order to obtain responses from qualified contractors whose competing bids would provide the Utility and the customers the best possible options for obtaining the lowest cost possible. TR 378. Obtaining more than one competitive bid also helps protect KWRU and its customers from overpaying for any projects. TR 337. Moreover, obtaining more than one bid for a project is consistent with past Commission practice. *See* Order No. PSC-11-0010-SC-WU at 14-15.⁴

The evidence clearly demonstrates KWRU did not proactively solicit or receive competitive bids for the L2A lift station replacement, the WWTP rehabilitation project, or the modular office replacement. TR 144, 167, 195, 337-38, 340, 346. Mr. Woodcock testified he has requested competitive bids through a service company, such as DemandStar, which is used by many contractors.

⁴ Order No. PSC-11-0010-SC-WU at 14-15, issued January 3, 2011, in Docket No. 100104-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.

TR 364, 366. Mr. Johnson testified he was aware of DemandStar; however, he had never used a service company to solicit a bid. TR 991-93. Without competitive bids, there is no way to verify whether KWRU received the lowest or best price for its sole source projects. Moreover, KWRU could have used DemandStar or a similar service to request competitive bids. Because of its imprudent actions, the Utility cannot meet its burden to prove the costs of its sole sourced projects are reasonable. Therefore, the Commission should reduce the amount of these projects for inclusion in rate base as recommended by OPC Witnesses Schultz and Woodcock.

ISSUE 3: What adjustments, if any, should be made to account for the audit findings related to rate base?

POSITION: *No audit adjustments are necessary to rate base.*

ARGUMENT:

Audit Finding #1

Staff Witness Glover testified that plant should be decreased by \$8,128 and accumulated depreciation should be increased by \$8,128. TR 660. Utility Witness Swain disagreed and testified no adjustments are necessary. TR 763. Exhibit DDS-4 (HE 56) attached to Ms. Swain's rebuttal testimony provides the detail behind the year-end and average plant adjustments from the staff audit prepared in KWRU's prior rate case. This schedule is referenced in Exhibit DDS-3 (HE 55) which shows the Utility's adjustments to book the prior audit adjustments. As identified by Ms. Swain, in Order No PSC-16-0123-PAA-SU, the Commission agreed with the Utility's objections to a portion of the prior audit adjustments. That order states in "response to Audit Finding No. 1, the Utility disagreed with the removal of \$160,823 from plant and provided explanations and support for the inclusion of multiple transactions that occurred during 2007, 2008, and 2009. We agree with the Utility's explanations and the appropriate corresponding adjustments to increase plant and accumulated depreciation by \$160,823 and \$45,676 respectively shall be made." KWRU's 2016 General Ledger reflects the adjustments shown on DDS-3. HE 93, OPC 1st POD No. 4. Therefore, based on the testimony provided, no adjustments are necessary to plant or accumulated depreciation.

ISSUE 4: What is the appropriate amount of plant in service to be included in rate base?

POSITION: *The appropriate amount of Utility Plant in Service to be used in setting rates is \$18,715,436.*

ARGUMENT:

The Utility requested Utility Plant in Service in the amount of \$19,887,796. HE 2, Exhibit DDS-1 page 4 of 85. Based on the following adjustments, Utility Plant in Service should be reduced by \$1,172,360 (\$667,972 reductions to pro forma plant, \$1,070,522 for related retirements, plus \$566,134 for new plant to serve customers) for a balance of \$18,715,436.

Pro Forma Plant Recommended Adjustments

WWTP Rehab Project

There is unrebutted testimony that KWRU awarded the WWTP rehabilitation project to one contractor and invited only that one contractor to submit a bid. TR 144, 265, 344-46.

It is simply imprudent under the circumstances here for KWRU to solicit only one bid from Evoqua for this project and not seek competitive bids. KWRU attempts to cover up its imprudence after-the-fact by claiming that Evoqua was the only qualified bidder who could have performed the rehabilitation project for as low of a cost as Evoqua claims it will provide. However, there is no evidence to support this claim. The evidence shows another contractor, Wharton Smith, was mobilized on site for the chlorine contact chamber project; yet, KWRU did not request a bid from them for the WWTP rehabilitation project. TR 970. Because KWRU failed to solicit or secure competitive bids, the Commission will never know if Evoqua presented the best deal for the Utility and its customers. Thus, KWRU failed to meet its burden for this project. Consistent with Mr. Woodcock's recommendation, the approved cost for this project should be reduced by 11.7%. TR 344-46.

Lift Station L2A Project

KWRU erroneously claimed that Lift Station L2A was knocked over and structurally damaged during Hurricane Irma. TR 145. To the contrary, upon his inspection Mr. Woodcock found the lift station functioning and also that no structural damage had been caused by Hurricane Irma. TR 347. Notwithstanding its inaccurate portrayal of damages to this facility, KWRU also admitted it initially solicited only one bid for the L2A lift station replacement project. TR 167-68. The Utility attempted to explain its actions by stating it "assumed" Wharton-Smith was not likely to bid on the project because it had lost out to another contractor for a similar lift station replacement project. TR 167-68.

After OPC filed its testimony, KWRU invited Wharton-Smith, after the fact, to explain why the contractor refused to bid on the project. TR 167, 968; HE 62.

More telling, KWRU Witness Johnson testified he did not seek out any other local contractors to solicit bids for this project. TR 970. Furthermore, despite protestations to the contrary, B&L Beneway, the contractor which was awarded the contract, appears to be in material breach because it did not complete the project by March 31, 2018 as per the explicit terms of the agreement. HE 13, TR 166-67. Since KWRU's legal department did not include any damages or enforcement provisions in this contract, KWRU cannot enforce its contractual rights to require B&L Beneway to complete the project. In addition to imprudently sole-sourcing this project without competitive bids, KWRU was imprudent for its failure to include any damages provision in the contract, to the detriment of the customers. KWRU has failed to meet its burden for this project; therefore, consistent with Mr. Woodcock's recommendation, the cost for this project should be reduced by 11.7%

Modular Office Replacement

There is un rebutted testimony that KWRU initially gave the modular office replacement contract to a non-existent company (TR 198). This reflects seemingly little due diligence on the part of KWRU (TR 192-93, 198-99) and again demonstrates its imprudence in failing to solicit competitive bids (TR 195). Moreover, the Utility failed to disclose that the contractor, Mr. Pabian, had also developed a business partnership with members of KWRU's ownership – Mr. Barton Smith and Ms. Leslie Johnson – in the Sunset Parcels Condominium Association, Inc. HE 145. Both Mr. Smith and Ms. Johnson are owners of KWRU and also directors in this other entity registered with the state of Florida. TR 1012-15; HE 145. Clearly, this business relationship between ownership and Mr. Pabian casts doubt on whether this was a true arm's length transaction and these circumstances surrounding this transaction call into question whether the "not to exceed \$250,000" contract is in the customers' best interest. The only corroborating evidence presented in support of the cost of this contract came from the testimonies of Mr. Pabian, who will directly profit from the contract, and Mr. Johnson, who should have done better due diligence. While this contract states that it is not-to-exceed \$250,000, Mr. Johnson wants the full \$250,000 placed in rate base now. TR 1054. As someone who will directly profit from this venture, Mr. Pabian has no incentive to ensure the final cost of the modular replacement will be anything less than \$250,000.

In addition, there are other issues with the modular replacement contract which require the total cost of the modular building be excluded from rate base. First, Mr. Johnson testified he did not solicit bids for this project from any other local contractors, builders, or modular suppliers. Instead, he claimed there were only two local modular building suppliers in the Key West/Stock Island area who could provide a replacement office. TR 192-95. Notwithstanding, KWRU never attempted to obtain a quote from the other potential contractor. TR 195. Thus, there is no way to know that this contract is the best and least possible cost to be borne by the customers. OPC Witness Schulz further testified these costs are speculative at best, and that there is no way to know when the modular will be constructed or placed in service. TR 591.

Second, the facts demonstrate that KWRU performed no due diligence regarding this contract because the contract was negligently awarded to a non-existent company called “PP Keys June 2016 LLC.” TR 198-99. While Mr. Pabian and Mr. Johnson purportedly executed the revised contract several weeks before KWRU filed its direct case on November 21, 2017 (TR 732-33), KWRU failed to provide the revised Pabian Outdoor-Southeast, Inc. contract until it filed Mr. Pabian’s rebuttal testimony. TR 947-49, 954; HE 70, 80.⁵ The circumstances surrounding this contract reflect either KWRU is completely incompetent with respect to this contract, KWRU’s law firm was unaware that the contract had been amended, or KWRU’s Witnesses (Mr. Johnson and Mr. Pabian) have not been fully candid with the Commission about the timing of the contract revision. TR 947-51.

Third, according to the terms of the agreement, Pabian Outdoor-Southeast, Inc. is now in material breach because it failed to deliver the project by March 31, 2018; however, there are no penalty or enforcement provisions in the original or revised contract to protect KWRU and, ultimately, its customers. HE 70, 80. This demonstrates imprudent action by KWRU’s legal department. Moreover, because Mr. Pabian is a partner with members of KWRU’s ownership, it is unlikely that KWRU will take legal action to enforce its contractual rights. Thus, any rate case expense associated with the modular contract should be disallowed.

⁵ Even after the contract had been allegedly revised to reflect the name of Pabian Outdoor-Southeast, Inc., KWRU continued to refer to the non-existent PP Keys June 2016 LLC in every subsequent discovery response and never acknowledged in any discovery responses that the original entity was non-existent. TR 950

Finally, the not-to-exceed contract price of \$250,000 is not supported by any competent factual evidence. Best practices dictate that signed contracts should be supported by competitive bids. TR 334-36. However, in this case the details of the signed contract provide no cost support for the reasonableness of the not-to-exceed price. Only the self-serving testimonies of Mr. Pabian and Mr. Johnson were provided without any independent cost analyses, bids, or other supporting documentation. KWRU cannot avoid the fact that it failed to provide competent evidentiary support for the reasonableness of the total estimated project cost. For the reasons stated in OPC Witness Schultz's direct and surrebuttal testimonies (TR 588-91; 1071-74), the Commission should find that KWRU failed to meet its burden of proof as to the reasonableness of the cost and disallow including this project in rate base at this time. If and when this project is ever completed and if KWRU demonstrates it utilized a prudent process to obtain the best and least cost contract, it can seek to have those reasonable costs included in rate base in a subsequent proceeding. TR 1074.

Telephone System

KWRU Witness Johnson requested \$15,000 for a new telephone system. TR 147. The supporting documentation included only an unsigned and undated AT&T Equipment Resale and Related Services Pricing Schedule with an equipment price of \$4,025.34 and an IP Office Solution presentation with Purchase Leasing Option of \$4,663.20. HE 17, pages 7 and 35 of 39. Mr. Johnson also provided proposals for installation of telephone equipment in the amounts of \$7,020.35 and \$5,526.37. HE 74. However, he admitted that these proposals have all expired. TR 928. Therefore, there is no competent evidence upon which to base the cost for a new telephone system and the Commission should deny this request at this time. Moreover, since (1) OPC is recommending that the pro forma office project be disallowed as unsupported, (2) the cost for a new telephone system is dependent on the nature of the office building, and (3) there is no definite timeline for construction of the new office, these telephone costs should also be disallowed at this time. Therefore, KWRU has failed to meet its burden for this project and the \$15,000 cost should be disallowed.

New Plant to Serve County Customers

KWRU has entered into an agreement with Monroe County to add plant to serve an additional 80 equivalent dwelling units ("EDUs"). HE 119. The cost of the work is \$566,134.29 and Monroe

County has agreed to pay the same amount to KWRU. Therefore, this amount should be included as utility plant in service as well as Contributions in Aid of Construction (“CIAC”).

Pro Forma Plant Retirements

KWRU requested pro forma plant additions for a lift station replacement, a chlorine contact chamber replacement, and a generator replacement. TR 145-46. OPC Witness Schultz testified that once the replacements are in use, the current plant assets will no longer be necessary. Therefore, it is inappropriate to include the costs for replacement plant in rate base without also reflecting the retirements of the original plant. TR 595. Utility Witness Swain agreed that the retirements should be reflected, but disagreed with the calculation of the amounts, the accounts that are affected, and the impact on depreciation expense. TR 770-73. Ms. Swain recommended the lift station retirement should be applied to account 371.3 in the amount of \$109,795, the chlorine contact chamber retirement should be applied to account 380.4 in the amount of \$832,470, and the generator retirement should be applied to account 355.4 in the amount of \$128,257. OPC agrees with these recommendations; therefore, these three retirements totaling \$1,070,522 should be reflected in the Utility plant in service balance.

ISSUE 5: What is the appropriate amount of accumulated depreciation to be included in rate base?

POSITION: *The appropriate amount of Accumulated Depreciation to be used in setting rates is \$5,193,207.*

ARGUMENT:

The Utility requested accumulated depreciation in the amount of \$6,277,693. HE 2, Exhibit DDS-1 page 4 of 85. Based on the adjustments included in Issue 4, accumulated depreciation should be reduced by \$17,587 related to the reductions to pro forma plant and \$1,070,522 related to retirements.

In addition, OPC Witness Schultz reviewed the Plant Additions worksheet supporting the annualization adjustment for accumulated depreciation and depreciation expense. His analysis found the adjustments were based on an assumed depreciation expense that did not match the actual expense recorded in the general ledger. TR 593-94. From July to December 2016, the monthly depreciation expense was \$32,835 (for a total of \$197,010 for this six-month period). Annualized, this results in an expense of \$394,020. The total test year depreciation expense was \$501,932. HE 2, DDS-1 page 37

of 85. The difference of \$107,912 could only be attributed to plant additions in 2017. HE 36, HWS-1 page 7 of 30. KWRU calculated an annualized depreciation expense of \$250,146 for the 2017 additions (HE 94, OPC 2nd POD #17 “Plant Additions”) which is only \$142,234 more than the \$107,912 recorded. However, the Utility increased depreciation expense by \$185,311, which is \$43,077 more than was needed. Using the half year convention, accumulated depreciation should be reduced by \$21,539.

Issue 4 also discussed the addition of \$566,134 for plant additions to serve additional customers. The related accumulated depreciation for this adjustment, based on a 45-year life utilized in the MFRs, results in an increase to accumulated depreciation of \$25,162.

Based upon these adjustments, accumulated depreciation should be reduced by \$1,084,486 for an adjusted balance of \$5,193,207 ($\$6,277,693 - \$17,587 - \$1,070,522 - \$21,539 + \$25,162$).

ISSUE 6: What is the appropriate amount of CIAC to be included in rate base?

POSITION: *The appropriate amount of CIAC to be used in setting rates should be increased by \$566,134, for a total CIAC balance of \$10,972,452. The evidence shows that KWRU will receive \$566,134 from Monroe County to allow KWRU to provide service to all customers in its service territory notwithstanding KWRU’s failure to previously interconnect these customers.*

ARGUMENT:

The Utility requested CIAC in the amount of \$10,406,318. HE 2, Exhibit DDS-1 page 4 of 85. KWRU has entered into an agreement to add plant to serve an additional 80 EDUs. HE 119. The cost of this work is \$566,134.29 and Monroe County has agreed to pay that same amount to KWRU to allow KWRU to provide service to all customers in its service territory notwithstanding its failure to previously interconnect these customers. Therefore, an additional \$566,134 should be included in CIAC for an adjusted balance of \$10,972,452.

ISSUE 7: What is the appropriate amount of accumulated amortization of CIAC to be included in rate base?

POSITION: *The appropriate amount of accumulated amortization of CIAC to be used in setting rates is \$3,923,226.*

ARGUMENT:

KWRU requested Accumulated Amortization of CIAC in the amount of \$3,898,064. HE 2, Exhibit DDS-1 page 4 of 85. Based on the previous issue to increase CIAC by \$566,134, a related adjustment should be made to reflect a half-year of amortization. This results in an increase of \$25,162 for an adjusted balance of accumulated amortization of \$3,923,226.

ISSUE 9: What is the appropriate working capital allowance to be included in rate base?

POSITION: *The appropriate working capital allowance is \$935,853*

ARGUMENT:

KWRU requested a test year working capital allowance of \$2,133,620. HE 2, Exhibit DDS-1 page 22 of 85. The Utility further increased the test year amount by \$85,512 to reflect adjustments for the unamortized rate case expense for the prior rate case, amortization of the “Last Stand” permit litigation costs, and the pro forma amortization of hurricane costs. HE 2, Exhibit DDS-1 page 6 of 85. The final requested working capital allowance is \$2,219,132. In rebuttal testimony, utility Witness Swain requested an additional increase to the working capital allowance of \$49,958. As a result, the difference between KWRU’s original request is \$189,063 for the amortization of hurricane costs and \$239,021 that is reflected in the rebuttal testimony. HE 2, Exhibit DDS-2 page 4 of 13. The requested working capital allowance of \$2,269,090, as reflected in the rebuttal testimony is excessive and should be reduced to reflect the following adjustments.

Cash

Working capital is the calculation that shows the net amount of capital employed in the firm which is not invested in long-term assets. KWRU included an average Cash balance of \$911,826 in its working capital allowance. HE 2, Exhibit DDS-1 page 22 of 85. This balance includes five accounts: Operating, Payroll, Customer Escrow, Reserve Acct/Capacity, and Capital Tab BS_Trial Balance. The operating account has an average balance of \$101,933, the customer escrow account has an average balance of \$175,541, and the capital account has an average balance of \$627,253. OPC Witness Schultz testified the cash balance of \$911,826 is 25% of KWRU’s annual requested revenue requirement and represents a significant and excessive increase of \$593,848 over the amount approved by the Commission less than a year ago in the Company’s most recent rate case. If KWRU has

accumulated a significant amount of cash that is not readily needed for it to operate on a daily basis, it should find alternative uses for that cash by investing in an interest-bearing account, paying off debt, or using that money for other prudent business purposes. Based upon his more than 40 years of utility accounting experience, Mr. Schultz testified a prudently operated utility would not include almost a million dollars in a non-interest bearing cash account. TR 561, 583-84.

Utility Witness Swain disagreed with OPC's position and stated KWRU was unable to meet its financial obligations on two occasions during the months of July and August 2016. TR 764. While the general ledgers do indicate multiple loan draws and capital contributions into the capital cash account for \$2,500,000 received from an expansion loan and \$2,630,000 from shareholder capital investment (HE 93, OPC 1st POD #4, 2016 and 2017 General Ledgers), these funds appear to have been paid out for the capital expansion project and other capital projects, and not utilized for normal operations. The Commission has previously held that long-lived plant assets should not be funded by working capital, and that working capital is a measurement of cash required to fund day-to-day operations. Order No. PSC-1997-0847-FOF-WS.⁶ Ms. Swain agreed that working capital is to be used for this purpose. TR 799; HE 132. Thus, KWRU's purported basis for increasing its working capital is not justified under these circumstances.

Further, in KWRU's last rate case decided just one year ago, the Commission reduced the cash balance to reflect the Utility's ongoing operations. Order No. PSC-2017-0091-FOF-WS.⁷ That order relied upon the same tenet that building a major plant expansion did not support the need for such a large balance of cash. KWRU's 2017 general ledger indicates the WWTP expansion was completed and booked to plant in March 2017 in the amount of \$4,221,684. HE 93, OPC 1st POD #4. Therefore, based on the fact that the capital account is not for on-going operations and that it is not indicative of

⁶ See Order No. PSC-1997-0847-FOF-WS, issued July 15, 1997, in Docket No. 19960234-WS, In re: Investigation of rates of Gulf Utility Company in Lee County for possible overearnings, and Docket No. 19960329-WS, In re: Application for increase in rates and service availability charges in Lee County by Gulf Utility Company.

⁷ See Order No. PSC-2017-0091-FOF-WS, issued March 13, 2017, in Docket No. 20150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

cash needs in the future, the working capital should be established as \$284,573.06, which is a reduction of \$627,252.94 from the Company's request..⁸Interest Bearing Cash Deposits

It is a long-standing practice of the Commission to exclude temporary cash investments from working capital. Order No. 23536 at 39; Order No. 17933 at 8.⁹ If the temporary cash investments earn less than the approved rate of return, the ratepayers make up the difference; conversely, if KWRU's return on temporary cash investment exceeds its approved rate of return, the ratepayers benefit. To prevent subsidization by either the Company or the ratepayers, temporary cash investments should be excluded from working capital. Order No. 11498.¹⁰ OPC Witness Schultz testified that \$281,123 identified as special deposits (FPSC Escrow Accounts) should be excluded from working capital in this case because these are ratepayer funds in escrow and are earning interest. TR 585. A review of the general ledgers indicates an additional escrow account titled "1321000 BB&T Customer Escrow Account – 0761". This account has an average balance of \$175,541. HE 93, OPC 1st POD #4, 2016 and 2017 General Ledgers. Because the escrow accounts earn interest and the Commission has previously excluded interest bearing accounts from working capital, these two accounts totaling \$456,664 should be removed from the working capital allowance.

Rate Case Expense

KWRU included an average balance of \$438,000 for unamortized rate case expense from its prior rate case. HE 2, Exhibit DDS-1 page 23 of 85. OPC Witness Schultz testified the Company has overstated the average balance for deferred rate case expense for last year's case in that KWRU included a higher level of expense than was approved by this Commission in 2017. TR 585-86. In the last rate case, the Commission allowed rate case expense in the amount of \$430,828. Order No. PSC-2017-0091-FOF-SU at 32. However, the 13-month average for rate case expense as shown on Exhibit

⁸ OPC's updated working capital cash amount is based on the evidence adduced at hearing. While Mr. Schultz initially recommended \$317,978, the evidence supports a lower amount of working capital cash.

⁹ Order No. 23536 at 39, issued September 27, 1990, in Docket No. 19890324-EI, In Re: Petition of Gulf Power Company for approval of "Tax Savings" refund for 1988; Order No. 17933 at 8, issued August 4, 1987, in Docket No. 19860341-GU, In re: Petition of South Florida Natural Gas Company for a Rate Increase.

¹⁰ See Order No. 11498, issued January 11, 1983, in Docket No. 19820150-EU, In re: Petition of Gulf Power Company for an increase in its rates and charges.

DDS-1, page 23 of 85, includes amounts that exceed \$430,828. The 13-month average should not include any amounts not previously approved by the Commission.

Utility Witness Swain agrees an adjustment is appropriate but disagrees with the amount. She appears to agree with the portion of the adjustment to cap the accrual at the amount previously approved; however, she disagrees with how much amortization should be included in the average balance. TR 765. Because it appears the adjustments compare numbers that might not match exactly, OPC analyzed the average historic balance and determined the average balance per KWRU is \$438,000, and the average balance capped at the Commission approved amount is \$411,003. The difference between these amounts is \$26,998. In her direct testimony, Ms. Swain proposed six months of amortization which represents an average half-year of the expense. This \$53,854 is based on a 48-month amortization approved by the Commission. However, the prior Commission order stated it is the Commission's practice to include one-half of the approved amount of rate case expense in working capital under the balance sheet method. Therefore, the average balance should be reduced by 50% ($\$430,828 * 50\% = \$215,414$) less the \$53,854 already included by KWRU. As result, the unamortized rate case expense included in the working capital allowance should be reduced by \$161,560 ($\$215,414 - \$53,854$).

Section 367.081(9), F.S., states a "utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance of rate case expense shall be excluded in calculating the Utility's rate base." Based on this statutory directive, the total utility adjusted balance of \$385,087 for unamortized rate case expense ($\$438,000 + \$941 - \$53,854$) should be removed from the working capital allowance.

Unamortized Debt Discount & Expense

KWRU included an average balance of \$43,206 for Unamortized Debt Discount & Expense. HE 2, Exhibit DDS-1 page 22 of 85. However, the Utility further stated that the unamortized debt cost is included on Schedule D-6 of its MFRs. HE 99, OPC 2nd ROG #16. It is inappropriate to include this amount in two places as that would allow KWRU double recovery, through the cost of debt as well as through inclusion in rate base. Therefore, working capital should be reduced by \$43,206.

Hurricane Irma Expense

KWRU included \$189,063 for the unamortized portion of hurricane expense. This is calculated from the \$216,074 in hurricane expense requested in Utility Witness Johnson's testimony (HE 18-24, CAJ-16 through CAJ-22) less ½ year amortization (HE 2, Exhibit DDS-1 page 6 of 85), based on a four-year amortization period. TR 777. Rule 25-30.433(8), F.A.C., states that non-recurring expenses shall be amortized over a five-year period unless a shorter or longer period of time can be justified. TR 609. Utility Witness Swain disagreed with this rule and referred to Mr. Johnson's testimony that hurricane costs should be amortized over four years, not five. TR 777. However, KWRU presented no evidence to justify applying an exception to Rule 25-30.433(8) to use four years, other than unsupported statements from a witness who says the anticipated average occurrence of impact from a hurricane is four years. TR 777. Therefore, the hurricane expense should be amortized pursuant to Commission rule over five years. This results in a decrease of \$22,586 to working capital.

Conclusion

The OPC adjustments reduce the original requested working capital allowance of \$2,219,132 to \$684,336. This reflects an average monthly amount that is still almost 3 times the average monthly O&M expense of \$234,071 requested by KWRU (Schedule B-2 total O&M \$2,520,929 plus TOTI \$287,918, divided by 12), and is consistent with the amount approved just one year ago by the Commission in KWRU's last rate case.

ISSUE 10: What is the appropriate rate base? (fall out)

POSITION: * This is a fall-out issue. Based on the amounts included in the prior issues, the appropriate amount of rate base to be used in setting rates should be \$4,880,082.*

ARGUMENT: See position.

COST OF CAPITAL

ISSUE 13: What is the appropriate cost of long-term debt?

POSITION: *The appropriate cost of long-term debt is 4.88%.*

ARGUMENT:

In its originally filed MFR's, KWRU indicated its cost of Long Term Debt is 4.88%. HE 2, Exhibit DDS-1 page 40 of 85. However, in rebuttal testimony, Witness Swain testified the Fed prime

rate increased to 4.75% on March 22, 2018 and requested a higher revenue requirement to reflect a revised overall rate of return of 7.7%. TR 792-93. The only evidence provided with her testimony is a screen shot from the Wall Street Journal webpage showing a 4.75% prime rate which is insufficient to prove that KWRU's originally requested rate should be increased. HE 58. At the hearing, KWRU questioned OPC Witness Schultz about the terms of the Utility's loan agreements and provided exhibits HE 151 and HE 152 which purport to be the complete loan agreement. However, these exhibits are incomplete loan agreements as there are *no bank signatures* indicating they were ever executed. In addition, KWRU did not provide any evidence of monthly bank notices or documentation or communications from its lenders that demonstrate the interest and principal amounts due for each loan or that KWRU's loan payments had increased. Thus, the Company has failed to meet its burden to show its actual interest expense has increased; therefore, the cost of capital should continue to reflect the 4.88% long term debt cost rate.¹¹

ISSUE 14: What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure?

POSITION: * This is a fall-out issue based on the previous issues and the reconciliation of capital structure to rate base. The appropriate weighted average cost of capital is 7.37%.*

ARGUMENT: See position.

ISSUE 15: What are the appropriate billing determinants (factored ERCs and gallons) to use to establish test year revenues?

POSITION: *The appropriate test year billing determinants (factored ERCs and gallons) to use to establish test year revenues are those included on Schedule E-2 of the MFRs which should be updated consistent with the matching principle for the 12-month period when rates are in effect.*

ARGUMENT:

KWRU prepared a schedule of test year bills and consumption. HE 2, Schedule E-2, page 48 of 85. There is no other testimony or evidence to reflect any changes to the test year billing determinants. Therefore, the appropriate billing determinants to use to establish test year revenues are

¹¹ It should be noted that, while Ms. Swain has requested an increase in the debt rate, she did not calculate any updated amounts for the cost of debt to reflect the continued payoff of the principal and the amortization of issuing expense as shown on Schedule D-6.

those included on Schedule E-2 of the MFRs which, as shown in Issue 35, should be updated consistent with the matching principle for the 12-month period when rates are in effect.

ISSUE 16: What are the appropriate test year revenues?

POSITION: * This is a fall-out issue. Based on the amounts included in other issues, test year revenues should be \$2,513,596. *

ARGUMENT: See position.

ISSUE 17: What adjustments, if any, should be made to account for the audit findings related to net operating income?

POSITION: *Test year revenues should be increased by \$10,807, Sludge Removal Expense should be increased by \$23,523, Purchased Power should be decreased by \$11,521, Materials and Supplies should be decreased by \$11,780, Miscellaneous Expense should be reduced by \$2,100, and Hurricane Irma expense should be reduced by \$305.*

ARGUMENT:

Audit Finding #3

Staff Witness Glover testified test year revenues should be increased by \$20,789 and test year regulatory assessment fees should be increased by \$935. TR 661-62. Utility Witness Swain disagreed with these amounts and testified no adjustment is necessary. TR 763-64. Witness Glover included a chart in her exhibit (HE 52, Exhibit MG-1 page 11 of 17) that indicates the adjustment is split between measured service rates (\$10,807) and miscellaneous service revenues (\$9,982). Witness Swain argues the \$9,982 amount is due to a difference between the miscellaneous revenues in the MFRs and the amount reported on the Utility's RAF report. She further states that \$9,623 is "MCDC revenues" that were incurred in the prior period (June 2016) and on the Company's books in June 2016; however, it was inadvertently omitted from the RAF report as of June 30, 2016. She further states this amount was included in the December 31, 2016 return. A review of the 2016 general ledger (HE 93 OPC's 1st POD No. 4) indicates the monthly "MCDC revenues" and the 12 monthly amounts in the general ledger reconcile to the amount reflected in the MFRs Schedule E-5. HE 2, DDS-1 Page 51 of 85.

Witness Swain further testified she does not agree with the adjustment of \$10,807 for measured residential (522.1) and commercial revenues (522.2) as it appears that no adjustments and/or credits to customer bills were considered. However, no documentation was provided by KWRU or Ms. Swain

to support this argument. Therefore, based on the evidence provided, test year revenues should be increased by \$10,807. Taxes Other than Income should also be increased by \$486 for the related increase in Regulatory Assessment Fees.

Audit Finding #4

Staff Witness Glover testified O&M expense should be decreased by \$1,878. (TR 662) This is the total of the following account adjustments:

Account 711 - Sludge Removal Expense should be increased by \$23,523

Account 715 - Purchased Power should be decreased by \$11,521

Account 720 - Materials and Supplies should be decreased by \$11,780

Account 775 - Miscellaneous Expense should be decreased by \$2,100

Ms. Swain agreed with this adjustment. TR 761. Therefore, while there are additional issues for these accounts, the audit adjustments of \$1,878 should be made.

Audit Finding #5

Staff Witness Glover testified Audit Finding 5 provides information regarding expenses related to Hurricane Irma for staff's consideration. TR 662-63. She testified the audit staff reviewed all of the submitted documentation and removed two invoices with a combined total of \$305 for purchases which included alcoholic drinks. Utility Witness Swain agreed with this adjustment. TR 761. Therefore, while there are additional issues with the Hurricane Irma expenses, the audit adjustments in the amount of \$305 should be made.

NET OPERATING INCOME

ISSUE 18: What is the appropriate amount of salaries and wage expense?

POSITION: *The appropriate amount of salaries and wage expense for employees and officers is \$839,613.*

ARGUMENT:

KWRU requested adjusted test year salaries for employees in the amount of \$752,549 and for officers in the amount of \$261,581, for a total salary expense of \$1,014,130. This is based on the

annualization of salaries for both employees and officers in the amount of \$1,003,525 (HE 25) plus an increase of \$10,605 for an “OT extraordinary event.” HE 2, Exhibit DDS-1 page 28 of 85. The requested salary increase should be reduced to adjust the annualization of salaries, to adjust the 4% salary increase included, and to remove the “OT extraordinary event” as discussed below.

Annualization

OPC Witness Schultz testified it is common for utilities to request an increase for additional employees without taking into account current vacancies and/or employee attrition. TR 599-600. Vacancies are a reality for any organization and must be factored into the budgeted salaries expense. In the case of KWRU, vacancies have been a major issue over time. Witness Johnson confirmed this in his testimony (TR 152) and stated:

- KWRU has had employee retention issues and has frequent turn over on a year over year basis;
- The Utility lost 50% of its operations staff in the first two Quarters of 2011; and
- In 2014, the Operations Group was comprised of 67% new staff.

More recently, KWRU has continued to experience turnover as reflected by the fact that it had the following vacancies during 2015-2017: 11 in 2015, 10 in 2016, and 16 in 2017 (HE 37, OPC’s 3rd ROG No. 42), for a three year average of 12 vacancies.

There is no testimony disputing the reasonableness of the number of employees requested by KWRU. Notwithstanding, any company should expect a certain number of unfilled positions or vacancies at any given time; thus, the issue is how to appropriately quantify the actual salary expense that will be paid. KWRU’s listing of employees hired and terminated during the 2015–2017 period included start and termination dates. A review of this evidence reveals positions were vacant for an average of 60 days. Therefore, applying the 60 days to the three year average number of 12 vacancies times the average test year salary for employees as shown in CAJ-23 results in a vacancy adjustment of \$117,273 ($\$59,451 * 12 / 365 * 60$) to reduce salary expense.

Four Percent Salary Increase

KWRU requested an increase in salary expense for a “Jan 1 apply 4% raise.” HE 25. The amount attributable to the 4% raise is \$10,061 for officers and \$28,536 for employees (for a total

increase of \$38,597). However, the Utility stated that “the purpose of CAJ-23 was to provide a theoretical projection of salaries and wages based on the November 2017 wage and staffing levels and that the 4% was not based on actual raises given, nor annual raises anticipated to be given.” KWRU did not provide 4% across-the-board raises in the past (HE 83, 98) and it did not submit any testimony or evidence for specific raises that would be given to its employees in the future. Based upon the Utility’s responses to discovery, it appears KWRU gave 9 raises in 2017, three of which were for 16.7%, 20%, and 16.3% increases. HE 83, Staff 2nd POD No. 24. The Utility made several other significant salary increases in 2015 and 2017. Nine of the fourteen employees listed on CAJ-23 received a total of 12 raises during the 2016-2018 time frame. Based upon the information provided, KWRU has consistently increased its salary levels, and there was no evidence provided that demonstrated significant increases were needed across the board. There was no substantive evidence provided to support the \$38,597 amount nor any evidence that this full amount is necessary; thus, only half of that amount is reasonable to be included. Therefore, salary expense should be reduced by \$19,299.

Overtime

The requested salary expense includes two separate calculations for overtime (“OT”). The first calculation includes \$29,425.50 for “scheduled OT on call pay” and \$18,862.50 for “unscheduled OT work” for a total of \$48,288. HE 25. The second calculation is to include “OT extraordinary event” for a total of \$10,605. HE 2, Exhibit DDS-1 page 28 of 85.

CAJ-23 – Employee Salaries

The requested overtime expense of \$48,288 is significantly higher than the average overtime that KWRU has experienced over the previous four years. The Utility indicated its average overtime pay was \$20,947 for the years 2013-2017. HE 36, Exhibit HWS-1 page 16 of 30 and HE 37, HWS-2 pages 15-18 of 280. When asked to provide support for the 50 hours of unscheduled overtime included in CAJ-23, the Utility submitted 10 paychecks. These paychecks included two issued July 16, 2016, three issued December 31, 2016, four issued June 30, 2017, and one issued July 31, 2017. HE 83, Staff 2nd POD #24a. KWRU did not specify or explain how these paychecks support the 50 hours of alleged overtime. The paychecks for 2016 include three employees who worked a total of 197.3 overtime hours for the year for a total amount of \$6,964.96. The paychecks for 2017 include four employees

who worked 206.76 hours for the six-month period ended June 30, 2017 for a total of \$7,539.10. The 2016 paychecks total less than the five-year average. If you annualize the 2017 paychecks, they also total less than the five-year average. Based on this information, KWRU has failed to meet its burden to support its request for \$48,288 in overtime; therefore, this amount should be reduced to the five year average of \$20,947, for a reduction of \$27,341.

Overtime extraordinary event

The requested overtime of \$10,605 for an extraordinary event is the five-year amortization portion of \$53,024.58. HE 88, Responses to Staff 3rd ROG #44 (KWRU 018184 - PSC 3rd ROGS - 44 - Projected OT extraordinary event.xlsx). KWRU's calculation included nine employees, and assumed four employees worked four hours of overtime every day for 42 days and five employees worked three hours of overtime for each of the 42 days, for a total of \$53,025. In KWRU's Amended and Restated Response to OPC's Interrogatory #42 (HE 116), KWRU admitted that Steve Jouzapaitis, listed as "Steve J" on the Projected OT extraordinary event spreadsheet, resigned from the position before beginning work. HE 115, Response to OPC's 2d ROG #21 (Bates Staff Hearing Exhibits 00226). Thus, Steve J's time should not have been included in the OT calculation. In response to OPC Interrogatory No. 88 (HE 37), KWRU provided one time sheet for each employee listed on the Projected OT extraordinary event spreadsheet and these time sheets reflected only the overtime worked from September 11-25, 2017, following Hurricane Irma; therefore, this response did not support the projected OT. HE 37 (HWS-2 page 55-66 of 280).

Utility Witness Johnson testified that KWRU analyzed the potential additional impact of an extraordinary event, and determined that "we could have reasonably needed staff to work 3 hours per day overtime for a period of six weeks." TR 904. He described this as the time that would have been incurred preparing for a direct hit and the restoration work after the impact. In other testimony, he described the extraordinary event as "Category 4 Hurricane Irma, the eye of which hit the Florida Keys 16 miles from KWRU's wastewater treatment plant on September 10, 2017." HE 115 OPC 2nd ROG #21. Subsequently, in his rebuttal testimony, Mr. Johnson apparently changes his mind and states the "hurricane costs represent the actual cost (adjusted estimated costs) of Hurricane Irma, amortized over four years which represents the anticipated time until another similar event. The extraordinary event cost represents an additional cost in the event of a direct hit, specifically for overtime." TR 905. Notwithstanding, it appears KWRU is requesting the amortization of actual overtime incurred related

to Hurricane Irma in 2017 in the amount of \$7,440.27. In addition, it is requesting \$53,024.58 in overtime for a future storm. Prudent ratemaking does not include the amortization of costs for both past and future events. Once past events are fully amortized, a utility continues to collect that amortization expense in its rates, until new rates are subsequently set by the Commission. From that perspective, KWRU would be collecting money in advance for future storms. This is inappropriate and the \$10,605 should be removed from Salaries & Wages.

In conclusion, the total salary expense of \$1,014,130 should be reduced to \$839,613, to reflect the vacancy adjustment of \$117,273, to reduce the “4% raise” by \$19,299, to reduce the overtime by \$27,341, and to remove the “extraordinary event” in the amount of \$10,605.

ISSUE 19: What is the appropriate amount of employee pensions and benefits expense?

POSITION: * The appropriate amount of employee pensions and benefits expense is \$167,056.*

ARGUMENT:

KWRU requested adjusted test year Pensions and Benefits of \$217,557. HE 2, Exhibit DDS-1 page 31 of 85. This includes a test year expense of \$162,596 (\$148,356 Employee Health/Benefits, \$3,857 Employee Relations, and 10,383 Employee Training) (HE 94, Filename: KWRU MFRs Vol 1 TY 6-30-17_with Workpapers.xlsx) plus a requested pro forma adjustment of \$54,961 (\$44,820 for 20.67% benefits times pro forma salaries + \$10,141 for an additional 1% cost of traditional pension times total salaries). HE 2, page 28 of 85. However, in rebuttal, KWRU attempted to revise its pro forma adjustment to \$73,944 (\$38,176 for 20.67% benefits times pro forma salaries + \$35,768 for the incremental cost of implementing a traditional pension plan). HE 54, page 6 of 13. The original pension and benefits expense should be reduced to adjust the pension expense (\$10,141), to reflect a reduction to benefit expense based on changes in the salaries and wages (\$36,073), and to reduce employee training expense (\$4,287), to reflect an adjusted pension and benefits expense of \$167,056.

Pension Plan

OPC Witness Schultz testified that KWRU did not justify the additional expense for what KWRU claims is a “traditional pension plan.” TR 566-68, 604-05. He argued that companies are replacing traditional pension plans with 401K arrangements and it is not appropriate for a public utility to offer gold-plated benefits to its employees that are so much higher than those received by the average

ratepayer. TR 604-05. He also points out KWRU did not provide sufficient evidence to support its claim that its high turnover rate is due to its benefit package or that a pension plan will solve its employee retention problems. TR 605. When asked to support this allegation, the Utility provided only email exchanges with a project manager at CH2M and employees at FKAA discussing salary ranges, health and vacation benefits and standby time. TR 604-05. This information, in and of itself, is insufficient to substantiate the claim that benefits are causing the Company's turnover issues. Moreover, KWRU overlooks the fact that other companies are able to hire and retain employees without a traditional pension plan. If that were not the case, businesses would not be turning away from utilizing traditional pension plans. TR 605.

Utility Witness Johnson claims KWRU's competitors for reliable personnel offer traditional pension plans, and exit interviews have shown that KWRU's prior pension plan was a significant factor in employee retention issues. TR 903. However, the Utility also claims its retention issue is due to overtime. HE 37, page 16 of 280.

KWRU also did not provide sufficient evidence regarding the actual cost of the proposed pension plan. KWRU's president was not very clear on the details of the plan or why it was selected. TR 211-211. The document purporting to be the "traditional pension plan" includes language that is incomplete and does not address all employees. The KW Resort Utilities Corp. Profit Sharing Plan & Trust ("Profit Sharing Plan") was provided in response to OPC's 3rd Set of Interrogatories No. 47 and this response was stipulated into the record in Staff Hearing Exhibit 100. The Profit Sharing Plan appears to indicate that "non-highly compensated employees" may be paid 5% or 1/3 of the highest allocation rate for any "highly compensated employee". HE 100, Profit Sharing Plan, Bates page KWRU 015168. A "highly compensated employee" is defined as a "five percent owner" or an employee with compensation in excess of \$80,000. HE 100, Profit Sharing Plan Bates page KWRU 015159.¹² Yet, there is no provision indicating what the payment would be for the four officers and employees earning over \$80,000. In addition, Witness Johnson admits the plan includes a non-elective contribution that is discretionary (TR 215 and HE 100, Bates page KWRU 015167) and a gateway contribution that the Utility may make, but is not required to make. TR 215 and HE 100, HE 117, Bates page KWRU 015167. KWRU did not provide any actual payments made to the pension or sufficient information to determine the actual cost that will be incurred in the future. Therefore,

¹² Accordingly, every member of ownership is eligible to participate in KWRU's new "Profit Sharing Plan."

KWRU has not met its burden on this issue and the \$10,141 included in the original MFRs should be removed and no additional expense should be allowed.

Benefit Expense

Utility Witness Swain indicated the benefit expense is calculated as 20.67% times the salary expense. HE 28 pf 85. While OPC is not disputing this percentage, if an adjustment is made to salaries and wages, then it is appropriate that a corresponding adjustment should be made for the related employee benefits. Therefore, employee benefits should be reduced by \$36,073 (20.67% times \$174,518 salary adjustment). TR 620.

Employee Training

OPC Witness Schultz testified the \$10,383 for employee training expense is excessive. TR 619. The past history shows this expense has fluctuated from \$50 in 2014 to \$12,348 in 2016. HE 93 General Ledger OPC 1st POD #4 and HE 37, page 20 of 280. Not only does this expense fluctuate over time, but also the test year is considerably higher than the actual amount in any of the previous four years other than 2016. The test year includes \$3,061 for two people to travel for Airvac training and \$5,512 for three people to travel to New Orleans for a WEFTEC Conference. HE 93 General Ledger OPC 1st POD #4. These two trips appear excessive in the same year. Witness Schultz made an adjustment based on a four-year average and reduced the training expense by \$4,171. This amount is close to the average of the two training events (\$4,287); therefore, it is a reasonable adjustment to include.

ISSUE 20: What is the appropriate amount of sludge hauling, chemicals, and purchased power expenses?

POSITION: *The appropriate amounts of sludge hauling, chemicals, and purchased power expenses are as follows: sludge hauling expense: \$188,372; chemical expense: \$231,742; and purchased power expense: \$186,185.*

ARGUMENT:

Purchased Power

KWRU's original MFRs included \$218,766 for purchased power expense. HE 2, DDS-2 page 31 of 85. In rebuttal testimony, the Utility revised its request to \$240,106. HE 54, DDS-2 page 8 of 13. Utility Witness Johnson testified that electricity for 2018 is projected to cost \$20,008 per month

due to Keys Energy Services raising their rates in 2018. He testified he used the 2017 Average kW hours and applied the new 2018 rates to arrive at an annual Power Expense of \$240,096. TR 912. However, the schedule attached to his testimony (HE 76) does not support his calculation. The schedule does not show the math that he applied. In addition, it appears that he used the 14-month period from January 2017 through February 2018 to calculate average usage. It is not appropriate to include two winter months twice in the calculation of average usage. Moreover, it appears the calculation is based solely on the Customer Charges, Energy Charges, and Billing Demand Charges. Mr. Johnson does not appear to include the Power Cost Adjustment which is a negative .0189 for the month of March 2018. HE 76, Pages 196-206. Therefore, if the most recent rates are applied to the most recent twelve months of billing usage, the annual purchased power expense should be \$186,185, which results in a reduction of \$32,581 to the original MFR amount. Taking into account the \$11,521 adjustment already made in Issue 17 by the staff auditor, the adjustment should be 21,060.

Chemicals

KWRU's original MFRs included \$231,742 for chemical expense. HE 2, DDS-2 page 31 of 85. In rebuttal testimony, the Utility did not revise its total request (the test year amount changed which resulted in a new pro forma adjustment amount). HE 54, DDS-2 page 8 of 13. There is no other testimony addressing chemical expense; therefore, the annual adjusted test year chemical expense should be \$231,742.

Sludge Hauling

KWRU's original MFRs included \$164,849 for sludge removal expense. HE 2, DDS-2 page 31 of 85. In rebuttal testimony, the Utility did not revise its total request (the test year amount changed which resulted in a new pro forma adjustment amount). HE 54, DDS-2 page 8 of 13. After applying an adjustment of \$23,523 made by the staff auditor in Issue 17, the annual adjusted test year sludge hauling expense should be \$188,372.

Monroe County's recommended purchase power, chemicals, and sludge hauling expenses included a 4.26 % adjustment which OPC did not include. OPC's recommended purchase power, chemicals, and sludge hauling expenses, while calculated differently, should be sufficient to accommodate the growth anticipated in the 12-month period following the establishment of rates.

ISSUE 21: What is the appropriate amount of materials and supplies expense?

POSITION: *The appropriate amount of materials and supplies expense is \$76,173.*

ARGUMENT:

KWRU requested test year Materials and Supplies expense of \$97,538. HE 2, Exhibit DDS-1 page 31 of 85. OPC Witness Schultz testified the materials and supplies expense in this case is significantly higher than in last year's case and should be reduced to a five year average of \$37,566. TR 613-14. In rebuttal testimony, Utility Witness Swain testified that, while reviewing the amounts recorded in materials and supplies based upon the testimony of Witness Schultz, she discovered the accounts included in in the MFRs are not consistent with the accounts used in the Annual Reports or the prior MFRs; therefore, she made an adjustment to categorize the detailed accounts correctly. TR 779-81. Her adjustment is to transfer \$43,290 from Materials and Supplies to Contractual Services – Other, which previously had a zero balance. She also pointed out that the Contractual Services – Other account had a balance of \$45,054 in the last rate case. However, she does not address the fact that the \$97,538 amount is still 28% higher than the \$31,119 and \$45,054 amounts approved by the Commission in last year's rate case for these two accounts.

KWRU included a statement in its MFRs that this expense is directly related to the number of plant and maintenance personnel, and that when the Utility carries less staff, it often cannot do small capital projects in-house so those projects are awarded to outside contractors. HE 2, page 32 of 85. This presents another example of how KWRU is requesting additional pro forma expense (salaries & wages and pensions & benefits) but refuses to quantify the savings and efficiencies in other accounts. Notwithstanding the Utility's statement, Mr. Schultz's argument remains valid that the five-year average is more than reasonable as KWRU can expect the test year expense to decrease as it increases its salaries and benefits to retain its employees and perform more maintenance in-house. Therefore, the total of Materials and Supplies and Contractual Services – Other should be decreased to the level approved by the Commission in last year's rate case, or \$76,173. This results in a reduction of \$21,365 (or \$9,585 after the adjustment previously made based on the staff audit).

ISSUE 22: What is the appropriate amount of contractual services – engineering expense?

POSITION: *The appropriate amount of contractual services – engineering expense is \$11,438.*

ARGUMENT:

KWRU requested contractual services – engineering expense of \$20,765. HE 2, DDS-1, Page 31 of 85. This expense includes three charges totaling \$11,658.75 that reference permit renewal. HE 37, HWS-2, Pages 139-140 of 280. The invoices supporting these charges further detail the work performed for permit renewal. HE 95, OPC 3rd POD #46. KWRU stated its FDEP operating permit is required to be renewed every five (5) years and was renewed within the test year. HE 102, OPC 5th ROG #132. Therefore, the \$11,658.75 is not a recurring cost and should be amortized over the five year period for the permit. This results in a reduction of \$9,327 to this expense.

ISSUE 23: What is the appropriate amount of rental of equipment expense?

POSITION: *The appropriate amount of rental of equipment expense is zero.*

ARGUMENT:

KWRU requested rental of equipment expense of \$1,723. HE 2, DDS-1, Page 31 of 85. OPC Witness Schultz testified this expense has fluctuated over the previous five years and in some years the Company did not incur any expense for equipment rental. TR 618. The Utility admitted these expenses are anticipated to occur less frequently in the future, as “KWRU has obviated the need for crane truck rental by purchasing a crane truck. The specific number of anticipated equipment rentals on a forward-looking basis cannot be determined at this time.” HE 37, page 25 of 280. The Utility cannot have it both ways. If it wants to include a pro forma adjustment that will result in cost savings, it must also include those cost savings. Even without the new vehicle, the Utility did not incur this expense in some years. Therefore, this expense should be disallowed as KWRU failed to meet its burden and did not support a specific expense level that will be needed after it has purchased the new vehicle.

ISSUE 24: What is the appropriate amount of insurance – workers’ comp expense?

POSITION: *The appropriate amount of insurance – worker’s comp expense is \$29,386.*

ARGUMENT:

KWRU requested insurance – workers comp expense of \$36,073. HE 2, DDS-1, Page 31 of 85. OPC Witness Schultz testified that, since the expense is based on employees and their compensation, the test year expense should not increase since he maintains the number of employees should stay the same. TR 617. Utility Witness Swain testified the cost for workers' compensation is

4.4% (TR 782), and KWRU responded in discovery that the 4.4% is what was approved in the previous rate case, Docket No. 150071-SU. HE 37, page 27 of 280. However, workers' compensation is not an expense that is established by the Commission; it is established by the insurance company as a percentage of salaries. Therefore, the historic percentage as shown in the test year should be the basis for this expense on a going forward basis. The test year indicates \$27,234 for workers compensation and \$786,689 for salaries. HE 2, page 31 of 85. This results in a 3.5% rate. Therefore, the adjusted test year expense should be 3.5% times the salaries established in Issue 18 of \$839,613, or \$29,386, which is a reduction of \$6,687.

ISSUE 25: What is the appropriate amount of bad debt expense?

POSITION: *The appropriate amount of bad debt expense is zero.*

ARGUMENT:

OPC Witness Schultz identified a non-recurring cost in February 2017. KWRU loaned a new employee \$1,675 that was to be fully forgiven if the employee remained employed until July 2, 2017. The loan of \$1,675 was to be repaid in equal installments over a one year period. However, the employee did not remain employed until July 2, 2017 and the Company decided not to pursue the unpaid amounts based on the cost of collection outweighing the potential recovery. TR 605-06 and HE 37, OPC 3rd ROG No. 64. Because KWRU did not make any effort to collect the unpaid loan, that amount should be excluded from rates. Ratepayers should not be burdened with a cost the Company chose not to act on. In addition, this debt should not be considered as recurring since the employee is no longer employed with KWRU.

Utility Witnesses Swain and Johnson argue that Witness Schultz should have considered the cost of pursuing collection through a law firm and collection company as an offset to the potential payment. TR 776, 904. Witness Swain further argues that there is no indication this is non-recurring or that some similar cost will not be incurred in the Company's continuous effort to attract and maintain its employees. TR 776. However, no utility witnesses provided any evidence to support the claim that this is a recurring expense, nor did any witness provide evidence of any effort made by KWRU to collect the debt, such as a letter, inquiry with a collection agency, or some method that would not require full litigation. Most companies will pursue bad debts at least to the extent of contacting the debtor to demand payment. Therefore, as the Utility has made no effort to collect the amount, it should

be removed from expenses.

This adjustment is shown on Exhibit HWS-1, Schedule C-5. KWRU wrote off \$2,442.73 in bad debt expense. While this expense has been termed bad debt as well as employee costs, the Utility appears to have included this in Miscellaneous Expense in the MFRs. HE 94, Filename: KWRU MFRs Vol 1, TY 6-30-17_with Workpapers.xlsx. Therefore, as the MFRs included zero (\$0) for bad debt expense, the \$2,443 should be removed from Miscellaneous Expense.

ISSUE 26: What is the appropriate amount to be recovered by the Utility for storm restoration expenses due to Hurricane Irma, and over what period should such expenses be recovered?

POSITION: *The appropriate amount for storm restoration expenses due to Hurricane Irma to be recovered by the Utility is \$177,536. These expenses should be recovered over 5 years.*

ARGUMENT:

In its MFRs, KWRU requested \$54,018 for the amortization of costs incurred to recover from Hurricane Irma. HE 18-22, 24.

Temporary Office Space	18,444.37	CAJ-16
Information Technology Services	7,396.28	CAJ-17
Backup Rental Generator	83,632.00	CAJ-18
Backup Portable Generator	11,642.46	CAJ-19
Hurricane Irma Expenditures	75,279.15	CAJ-20
Estimated Outstanding Hurricane Irma Invoices	15,000.00	None
Repair Roof of Maintenance Building	4,680.00	CAJ-22
Total Other Costs	216,074.26	
Amortize over 4 years	54,018.57	

OPC Witness Schultz testified the \$90,279 expenditures for Hurricane Irma Expenditures and Estimated Outstanding Hurricane Irma Invoices (\$75,279.15 + \$15,000) are overstated by \$19,144. TR 606 and HE 36, Page 19 of 30. Utility Witness Swain agreed the charges on Lines 13-16 of that exhibit are duplicative charges. TR 776. While she agrees that the first three should be removed, she argues the \$1,940 for a generator rental should remain and that the expense should be increased by another \$57,095 as KWRU will continue to incur rental expense for a total of 11 months (TR 776), compared to the original estimate of 6 months. TR 150. Utility Witness Johnson testified the generator rentals would be for a minimum of 20 weeks, but more than likely 24 weeks. TR 150. Ms. Swain offers

no explanation or evidentiary support as to why it is reasonable to extend the six months to 11 months, or why the ratepayers should be burdened with these additional costs. Therefore, the duplicative rental expense should also be removed. In addition, Ms. Swain is silent on the \$5,000 reduction recommended by Witness Schultz to reduce the estimated outstanding expenses; thus, it should also be deleted. Removing the \$5,000 results in a total reduction of \$11,705.

Witness Schultz testified the \$7,440 in overtime should be removed as it is duplicative of the overtime included in salaries and wages. TR 607. Based upon OPC's discussion of Overtime Expenses in Issue 18, this expense should remain in the amortization of hurricane expense as the duplicated expense in salaries was removed in Issue 18.

Witness Schultz also testified the insurance proceeds of \$19,393 that the Utility has received for hurricane damage should be used to offset the hurricane costs. TR 608-09. Witness Swain agreed with this adjustment. TR 777. Therefore, the hurricane expense should be reduced by \$19,393.

KWRU amortized the hurricane costs over four years. HE 2, DDS-1 page 28 of 85. Witness Schultz testified the hurricane expense should be amortized over a five-year period based on Rule 25-30.433(8), F.A.C., which states that non-recurring expenses shall be amortized over a five-year period unless a shorter or longer period of time can be justified. TR 609. The Utility did not provide evidence that it has experienced hurricane expenses in the amount requested here during the last four-year period. Instead, the Utility simply argued that four years is consistent with Order No. PSC-2006-0170A-PAA-WS which amortized hurricane costs over four years. HE 121-22. However, that order was specific that the four years was based on the fact that the Utility would be recovering the costs until rates were changed in the next rate case. Therefore, the amortization period should be matched to the expected time before the next filing. As discussed in Issue 29, it is not apparent that KWRU will file another rate case within the next four years. Without any evidence the Utility will experience the same level of hurricane damage within the next four years and the fact that it does not have a history of filing a rate case every four years, the hurricane expense should be amortized over five years as that is consistent with Rule 25-30.433(8), F.A.C., and the fact KWRU has not presented any evidence that an exception to the Rule is necessary.

Therefore, hurricane expense should be reduced by \$31,098 (\$11,705 + \$19,393) and amortized over five years, resulting in an annual expense of \$36,995. This reduces the requested

expense by \$17,023 (\$54,018 - \$36,995).

ISSUE 27: What is the appropriate amount of miscellaneous expense?

POSITION: *The appropriate amount of miscellaneous expense is \$184,334.*

ARGUMENT:

KWRU requested miscellaneous expense of \$214,869. HE 2, DDS-1, Page 31 of 85. Subsequently, the Utility revised its request to \$227,089. HE 54, Page 8 of 13. This includes a test year expense of \$46,617 for miscellaneous expense, \$2,443 for bad debt, \$99,395 for last stand expense amortization, \$405 to reclassify an expense that was capitalized, \$12,647 for additional cost of fiber for telephone expense, and \$54,018 for hurricane expenses amortized over 4 years. The bad debt amount was addressed in Issue 25 and \$2,443 should be removed from miscellaneous expense. The hurricane expense was addressed in Issue 26 and \$17,023 should be removed from miscellaneous expense. In addition, Issue 17 included a reduction to miscellaneous expense of \$2,405 based on the staff audit. Further adjustments totaling \$8,664 should be made for the following issues that are addressed below: Telecom services, Dues, and Non-utility expenses. This results in an adjusted Miscellaneous Expense of \$184,334.

Telecom Services

KWRU requested a pro forma increase of \$12,647 for a new telephone system. HE 2, page 28 of 85. Utility Witness Johnson argued that after Hurricane Irma the Utility's voice and data communications provided by Comcast were knocked out completely and the service still does not operate. TR 147. KWRU has elected to switch to AT&T as its primary service provider because Mr. Johnson claims AT&T has proven more reliable after Hurricane Irma and Hurricane Wilma, and Comcast is not currently providing service. TR 147. However, the Utility did not remove the cost of the old phone system that was included in its test year expense. OPC Witness Schultz takes issue with the fact that the Utility has included the cost of the new system as well as the embedded costs of the old system in its request. TR 596. He provides support to show the test year expense includes \$4,742.48 for Comcast system. TR 597. Utility Witnesses Swain and Johnson argue the Utility needs redundancy and customers should pay for two phone systems. TR 773 and 901. However, Witness Johnson admits that Comcast has been unreliable both before and after the storm (TR 922-923) and Witness Swain admits that a redundant phone system is not required by the FDEP. TR 841-842.

Moreover, KWRU provided no evidence that its domestic wastewater facility operating permit or applicable FDEP rules required such redundancy. HE 137. Thus, there is no rational basis for the ratepayers to pay for two telephone systems and KWRU has not provided sufficient evidence to support its request for maintaining its old admittedly unreliable system. Therefore, the test year expense of \$4,742.48 should be removed.

Dues

OPC Witness Schultz testified KWRU included \$2,163 in the miscellaneous expense for dues to the Rotary Club of Key West and the Florida Rural Water Association. TR 610. He argues that memberships or donations to such clubs tend to be an image-building expense and that the Company's shareholders, not ratepayers, are the beneficiaries of improvements to the Company's image. Therefore, these expenses in the amount of \$2,163 should be removed from miscellaneous expense.

Non-Utility Expenses

OPC Witness Schultz testified KWRU included non-utility expenses in miscellaneous expense. He discovered the Company included \$709.16 for a retirement party and \$1,050 for a Christmas party. TR 617. The retirement party included \$295.61 for food and \$413.55 for tent and chair rental. HE 37, page 40 of 280. The Christmas party was an amount billed by the Key West Golf Club for a Christmas party (HE 37, page 148 of 280) and included food, an open bar, and gifts. Utility Witness Johnson disagrees that these are non-utility. He testifies the retirement party was actually the cost of a ceremony dedicating the new Wastewater Treatment Plant to long-time employee Mark Burkemper to recognize him for his valuable contribution to wastewater treatment in the Keys.. TR 909. He further testifies the Christmas party was actually for \$50 Christmas bonuses given to the employees. TR 909. However, simple math reveals that, if \$50 Christmas bonuses were given to all employees, that would equate to bonuses for 21 employees which exceeds KWRU's full complement of staff. Instead, the evidence shows the Christmas party was billed by a related party and labeled "Christmas party". As Mr. Schultz testified, these amounts should be disallowed as they only benefit the Company's employees and not ratepayers. This adjustment results in a reduction of \$1,759.

ISSUE 28: What are the appropriate amounts of the Utility's pro forma expenses?

POSITION: * The previous adjustments addressed all adjustments to pro forma expenses. *

ARGUMENT: See position.

ISSUE 29: What is the appropriate amount of rate case expense, and over what period should such expense be recovered?

POSITION: * It is in the public interest to amortize rate case expense over five years. The Utility's revised expense of \$443,855 should be reduced by \$185,611, for a total rate case expense of \$258,244. This results in a net reduction to the original request of \$26,156.*

ARGUMENT:

Rate Case Expense

KWRU's MFRs included rate case expense for the current case in the total amount of \$284,400. HE 2, DDS-2 page 34 of 85. This total was increased to \$443,855 (HE 91, RCE Updated 4-26-18.xlsx), which is more than the \$430,828 approved by the Commission in last year's rate case.¹³ The Utility's requested rate case expense should be reasonable, fully supported, and not duplicative. Adjustments should be made to remove all duplicative and excessive legal fees and the costs incurred to submit and address deficiencies in the MFRs which were caused by the Utility. Since KWRU stated its rate case should be limited to its direct case revenue requirement and rates and charges (TR 830-32), the Commission should disallow all rate case expense associated with the preparation of revised MFRs in Ms. Swain's DDS-2 which increased the revenue requirement. HE 54.

Attorney rate case expense

The hourly rate for KWRU's lead attorney – Mr. Bart Smith – should be reduced to the rate of his associate, Mr. Nick Batty. First, Mr. Smith charges an hourly rate of \$420 per hour (HE 91, Invoice 11902) which is excessively high when compared to his outside counsel's already high rate of \$360 per hour (HE 91 F&F Legal Rate Case Expense). Mr. Batty's rate is \$275 per hour. Second, as a 10% owner of KWRU (TR 186), Mr. Smith directly profits from incurring rate case expense for the Utility he owns, directs, and represents. He and his law firm have no incentive to be frugal with the hours billed to the Utility since he receives dollar for dollar recovery for his firm's legal representation. Limiting the \$420 per hour to \$275 is reasonable and results in a reduction of \$15,093. Applying this

¹³ Order No. PSC-2017-0091-FOF-SU, issued March 13, 2017, in Docket No. 20150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp., page 58.

same adjustment to the estimated rate case expense results in an additional reduction of \$5,220.

KWRU also incurred excessive rate case expense through its unreasonable use of three attorneys to litigate this case. It is not appropriate for the Utility to seek reimbursement from its ratepayers to have two or more attorneys reviewing the same work product and attending the same meetings and hearings. Further, it is the Utility's burden to show that the legal fees incurred are not duplicative. Customers should not pay double the rate case expense to have two experienced attorneys review discovery responses, attend conference calls with staff, or attend the Key West hearing.

Using one attorney for all these functions is reasonable. For example, a much larger utility, Utilities, Inc. of Florida (“UIF”) utilized only one attorney for its entire rate case.¹⁴ While KWRU had \$3.7 million in requested revenues and \$3.2 million in requested pro forma in this rate case, UIF is a statewide water and wastewater provider with over \$34.5 million in combined revenues and had requested over \$31 million in pro forma projects. UIF was able to litigate its case with one attorney, whereas KWRU is seeking reimbursement for three. Given KWRU’s relative size to UIF, KWRU’s customers should only pay the reasonable rate case expense for one attorney. Additional legal expenses should be borne by the Utility’s owners. After reviewing the legal expense detail and marking each line item on the Smith Hawks bill that references either communication with Mr. Friedman or attendance at meetings and depositions attended by Mr. Friedman, rate case expense should be reduced by \$10,685 to remove the duplication of legal expenses.

Specific adjustments

KWRU estimated 20 hours at an average rate of \$347.50 to “Draft Motion(s) to Strike Testimony; Respond to Motion to Strike Testimony.” HE 91, SH RCE w Estimate 4-26-2018. After much time, expense, and effort, KWRU succeeded in striking only one small portion of OPC Witness Schultz’s testimony. TR 576. Therefore, consistent with Commission practice of disallowing unsuccessful rate case expense, half of the expense associated with KWRU’s motion to strike should be disallowed. Order No. PSC-94-0738-FOF-WU at 17.¹⁵ This results in a reduction of \$2,750 (based

¹⁴ Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida, pages 41 and 238.

¹⁵ Order No. PSC-94-0738-FOF-WU at 17, issued June 15, 1994, in Docket No. 19900386-WU.

on the reduced expense at \$275 per hour as discussed above).

Additionally, any rate case expense or legal fees associated with the modular building and lift station L2A contracts should be disallowed because (1) KWRU's legal department failed to include enforcement or damages provisions in those contracts; and (2) the contractors have breached those contracts

KWRU argued it spent \$146,300 for accounting fees in this docket. HE 91, MSA Rate Case Exp. However, numerous invoices were not provided to support this expense (October 2017, January–April 2018), and only one invoice was included in the record at the hearing for \$4,337.50. HE 85. The invoices excluded from the record are necessary to support KWRU's request and also to determine if the expense is reasonable, related to this case, is not duplicative, does not include the correction of deficiencies, and does not include the revision of MFR pages that do not support the original requested revenue requirement. Therefore, since KWRU failed to provide the required evidence to support the reasonableness of these accounting fees, rate case expense should be reduced by \$141,963.

Engineering rate case expense

KWRU included \$9,900 for estimated rate case expense for Mr. Seidman to complete the case. HE 91, RCE Updated 4-26-18. However, this appears to be based on an outdated estimate which includes attendance at the hearing. HE 91, KWRU RCE update. As Mr. Seidman's testimony was stipulated and he did not travel to or prepare for the hearing, the entire estimated expense of \$9,900 should be removed.

Conclusion

The MFRs included \$284,400 for rate case expense. The Utility's revised request for \$443,855 should be reduced by \$185,611, for a total allowed rate case expense of \$258,244. This results in a net reduction to the original request of \$26,156.

Reduction to legal rate for Smith Hawks	\$15,093
Reduction to estimated legal expense	\$5,220
Reduction for duplication of legal work	\$10,685
Reduce for Portion of Motion to Strike	\$2,750

Reduce unsupported Accounting Fees	\$141,963
Remove estimated engineering expense	\$9,900
Total Adjustments	\$185,611

Amortization Period

Section 367.081(8), F.S., states the “amount of rate case expense that the commission determines a public utility may recover through its rates . . . shall be apportioned for recovery over 4 years *unless a longer period can be justified and is in the public interest.*” (Emphasis added). The Utility does not have a history of filing frequent rate cases. While the last rate case was completed only one year ago, the only prior case was completed in 2009.¹⁶ Considering the burden on the customers in this case due to the fact that the Utility is requesting amortization of rate case expense for two rate cases, amortization of the Last Stand Legal Fees, plus the fact that the Utility does not have a history of filing frequent rate cases, the rate case expense should be amortized over five years instead of four. Therefore, \$689,072 (\$430,828 allowed in the prior rate case plus \$258,244 in this case) should be amortized over five years resulting in an annual expense of \$137,814, for a reduction to the MFRs of \$40,993.

ISSUE 30: What, if any, further adjustments should be made to the Utility’s O&M expense?

POSITION: * Advertising expense should be reduced by \$4,437.*

ARGUMENT:

KWRU requested \$5,803 for Advertising Expense. HE 2, page 31 of 85. This is an increase of \$4,728 or 400% from the prior test year (December 31, 2014) of \$1,075. TR 611. The Utility indicates this increase is related to attracting new employees through online sources, in local newspapers, Craigslist, and publications such as Florida Water Resource Journal, Florida Water and Pollution Control Operator Association, and Florida Rural Water Association. HE 37, OPC 3rd ROG #63. However, Witness Schultz points out the inflated amount should not be used for the adjusted test year since KWRU is not planning on extreme turnover in future years. If the Utility is arguing for higher

¹⁶ Order No. PSC-2009-0057-FOF-SU, issued January 27, 2009, in in Docket No. 20070293-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp. and Order No. PSC-2017-0091-FOF-SU, issued March 13, 2017, 20150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

salaries to improve employee retention, then it should re-evaluate the cost for advertising. Without any honest effort made by the Utility to identify what is a reasonable estimate of future advertising, Mr. Schultz's adjustment is reasonable. Therefore, advertising expense should be reduced by \$4,437.

ISSUE 31: What is the appropriate amount of O&M expense? (fall out)

POSITION: * The appropriate amount of O&M expense is \$2,092,581.

ARGUMENT: See position.

ISSUE 32: What is the appropriate amount of depreciation expense?

POSITION: *The appropriate amount of depreciation expense is \$251,816.*

ARGUMENT:

Based on the adjustments included in Issues 4 and 5, depreciation expense should be reduced by \$84,666. This reflects a reduction of \$35,175 for reductions to pro forma plant items, \$43,078 to correct the Utility's adjustment to annualize depreciation expense, and \$6,413 to reflect the retirement of the generator. These adjustments result in an adjusted depreciation expense of \$251,816.

ISSUE 33: What is the appropriate amount of Taxes Other Than Income?

POSITION: * This is a fall-out issue. Based on the amounts included in the prior issues, taxes other than income expense should be \$221,979.*

ARGUMENT: See position.

ISSUE 34: What is the appropriate revenue requirement?

POSITION: *The appropriate revenue requirement should be based on adjustments to the Utility's originally filed direct case, and not the increases requested in rebuttal. KWRU increased its requested revenue requirement from \$3.6 million to \$3.7 million in rebuttal. Based on the MFRs and testimony that KWRU filed in direct and adjustments made in other issues, the appropriate revenue requirement is \$3,028,482.*

ARGUMENT:

As evidenced by KWRU's Basic Position and Positions for Issues 34 and 36 in the Prehearing Order and based on the changes it made through its rebuttal, KWRU claimed it was entitled to an increased revenue requirement and resulting increased rates and charges. However, in an about-face from its positions in the Prehearing Order, KWRU's counsel claimed the Utility should be limited to

its direct case revenue requirement and not its revised rebuttal revenue requirement: “we’re not seeking any difference in revenue or rates than were in the original MFRs.” TR 830. Counsel also stated, “we’ve already stipulated that the company is going to limit its revenues to those that it sought in its original MFRs, which means the E schedule rates would be the same as those in the MFR.” TR 828-29. As such, KWRU’s counsel has essentially agreed KWRU should be limited to its request made in its direct filing. TR 828-31. Moreover, KWRU Witness Swain admitted KWRU knew its changes in rebuttal increased its overall revenue requirement (TR 827), and also agreed that rates should be based upon her direct testimony. TR 832. Based upon these statements of KWRU’s counsel and its accounting witness, this rate case should be based on KWRU’s direct case, and not the increases identified or made in rebuttal.

In addition to KWRU’s direct case, the Commission can also rely upon the Intervenor parties’ testimonies and exhibits, the stipulated staff hearing exhibits, and any evidence tested by the parties and staff through cross-examination of the witnesses. However, the Commission should not rely upon staff’s non-stipulated hearing exhibits containing discovery responses that were not tested through cross examination by staff. It is not the burden of the objecting parties to cross examine utility witnesses with discovery that staff seeks to move into the record over their objection. Therefore, it would be improper for the Commission to rely on evidence *introduced by its staff* that meets the Utility’s burden of proof when the validity, credibility, or competence of that evidence was not properly tested through cross-examination of the witnesses. *See S. Fla. Nat. Gas Co. v. Pub. Serv. Comm’n*, 534 So. 2d 695, 698 (Fla. 1988). Simply asking the witnesses whether his or her discovery responses would change if asked the same question during the hearing does not test the validity, credibility, or competence of that evidence. TR 38-41; 156-157. Staff merely assumes the truth of those responses without any verification of the accuracy of the information contained therein. OPC and Monroe County timely objected to staff moving KWRU’s superfluous discovery responses into the record. TR 41-43. The Advisor to the Commission claimed that this was both an administrative hearing and legislative process in support of staff’s practice of admitting its hearing exhibits over the objection of parties into the record. TR 43-44.

Based on the amounts included in the prior issues, the revenue requirement should be \$3,028,482.

RATE STRUCTURE AND RATES

ISSUE 35: What are the appropriate adjustments, if any, to test year billing determinants for setting final rates and charges?

POSITION: *The test year billing determinants should be increased by 1,386 ERC's and 9.26 million gallons consistent with the matching principle. *

ARGUMENT:

Monroe County Witness Wilson testified there will be additional customers connecting to the wastewater system by the time the rates in this case will be implemented and he detailed the specific customers expected. TR 474. Monroe County Witness Small prepared a schedule converting these customers to ERCs and consumption. TR 531 and HE 49, revised. Based on his testimony and revised HE 49, the test year billing determinants should be increased by 1,398 ERCs and 9.26 million gallons.

ISSUE 36: What are the appropriate rate structure and rates for wastewater service?

POSITION: *No position except the Commission should apply the matching principle.*

ARGUMENT: See position.

OTHER ISSUES

ISSUE 37: What is the appropriate rate for KWRU's reuse service?

POSITION: *The appropriate reuse rate should be cost based. Estimated reuse revenues should be taken into account to reduce the service revenues to be recovered through residential and general service rates.*

ARGUMENT: See position.

ISSUE 38: What are the appropriate miscellaneous service charges?

POSITION: * No increase should be granted as the Utility has not provided cost justification as required by Section 367.091(6), F.S., which states that an "application to establish, increase, or change a rate or charge other than the monthly rates for service pursuant to s. 367.081 or service availability charges pursuant to s. 367.101 must be accompanied by a cost justification."*

ARGUMENT:

KWRU's Response to Staff's request for production of documents No. 45 is not based on actual costs. See position.

ISSUE 39: What is the appropriate late payment charge?

POSITION: * No increase should be granted as the Utility has not provided cost justification as required by Section 367.091(6), F.S., which states that an “application to establish, increase, or change a rate or charge other than the monthly rates for service pursuant to s. 367.081 or service availability charges pursuant to s. 367.101 must be accompanied by a cost justification.”*

ARGUMENT:

KWRU’s Response to Staff’s request for production of documents No. 46 is not based on actual costs. See position.

ISSUE 40: What is the appropriate Lift Station cleaning charge?

POSITION: *No increase should be granted as the Utility has not provided cost justification as required by Section 367.091(6), F.S., which states that an “application to establish, increase, or change a rate or charge other than the monthly rates for service pursuant to s. 367.081 or service availability charges pursuant to s. 367.101 must be accompanied by a cost justification.”*

ARGUMENT: There is no testimony on this charge, only the schedule. See position.

ISSUE 41: What are the appropriate initial customer deposits?

POSITION: *Agree with County.*

ARGUMENT: See position.

ISSUE 42: What are the appropriate Allowance for Funds Prudently Invested (AFPI) charges?

POSITION: *The appropriate AFPI charges are those included on Schedule E-10 of the MFRs.*

ARGUMENT: See position.

ISSUE 43: What is the appropriate amount by which rates should be reduced to reflect the removal of the amortized rate case expense?

POSITION: *The amount should be a fall out depending on how much rate case expense, if any, the Commission approves to be collected in customer rates.*

ARGUMENT: See position.

ISSUE 44: In determining whether any portion of the interim wastewater revenue increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

POSITION: * This is a fall-out issue and should be based on the outcome of other issues. The interim rate refund, if any, should be calculated according to Commission policy and rule. This amount should be a fallout.*

ARGUMENT: See position.

ISSUE 45: Should the Utility maintain an asset management and preventative maintenance plan? If so, what action, if any, should be taken?

POSITION: *Yes. KWRU should focus on establishing a robust asset management and preventative maintenance planning process. Doing so will improve service, reduce costs, extend intervals between maintenance outages, and extend the life of valuable assets*

ARGUMENT:

In order to improve service, reduce costs, extend intervals between maintenance outages, and extend the life of valuable assets, KWRU should implement a robust asset management and preventative maintenance planning process. Witness Woodcock testified KWRU should begin applying asset management principles to its operations and planning activities. TR 354-59. He testified implementing these principles would not require additional labor and costs; the core principles could be implemented by experienced wastewater managers and operators. TR 358. Thus, these principles can be implemented by the level of employees recommended by Mr. Schultz. If properly implemented, the asset management and preventive maintenance plan should result in reduced costs and improved levels of service, benefiting the customer and utility alike. Witness Woodcock pointed to some asset management resources available online from the U.S. Environmental Protection Agency. TR 358. The Commission should put KWRU on notice that it expects KWRU to take advantage of these resources between the conclusion of this rate case and its next rate case.

ISSUE 46: Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission-approved adjustments?

POSITION: *Yes, the Utility should be required to notify the Commission, in writing, that it has adjusted its books, and if the Utility fails to do so, the Commission should order Utility to show cause for its failure to comply with Commission ordered adjustments.*

ARGUMENT:

Yes, the Utility should be required to notify the Commission, in writing, that it has adjusted its books, and if the Company fails to do so, the Commission should order the Utility to show cause for its failure to comply with Commission ordered adjustments.

Respectfully submitted,

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CERTIFICATE OF SERVICE
DOCKET NO. 20170141-SU

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Citizens' Post-Hearing Statement of Positions and Post-Hearing Brief has been furnished by electronic mail on this 6th day of June, 2017, to the following:

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