

1 BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

3 In the Matter of:

4 DOCKET NO. 20200139-WS

5 APPLICATION FOR INCREASE IN
WATER AND WASTEWATER RATES IN
6 CHARLOTTE, HIGHLANDS, LAKE, LEE,
MARION, ORANGE, PASCO, PINELLAS,
7 POLK, AND SEMINOLE COUNTIES, BY
UTILITIES, INC. OF FLORIDA.

8 //

9 VOLUME 4
PAGES 576 - 816

PROCEEDINGS: HEARING

12 COMMISSIONERS
12 PARTICIPATING: CHAIRMAN GARY F. CLARK
13 COMMISSIONER ART GRAHAM
13 COMMISSIONER JULIE I. BROWN
14 COMMISSIONER ANDREW GILES FAY
14 COMMISSIONER MIKE LA ROSA

15 DATE: Wednesday, February 3, 2021

16 TIME: Commenced: 9:00 a.m.
Concluded: 2:40 p.m.

20 REPORTED BY: DEBRA R. KRICK
Court Reporter

APPEARANCES: (As heretofore noted.)

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I N D E X

2

WITNESSES

3

NAME :

PAGE

4

JARED DEASON

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Examination by Mr. Wharton

581

Prefiled Rebuttal Testimony inserted

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Examination by Mr. Rehwinkel

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Examination by Ms. Lherisson

721

7

Further Examination by Mr. Wharton

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FRANK SEIDMAN

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Examination by Mr. Wharton

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Prefiled Rebuttal Testimony inserted

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Examinatin by Ms. Pirrello

759

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PATRICK C. FLYNN

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Examination by Mr. Friedman

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Prefiled Rebuttal Testimony inserted

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Examination by Ms. Pirrello

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Further Examination by Mr. Friedman

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DEBORAH D. SWAIN

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Examination by Mr. Friedman

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Prefiled Rebuttal Testimony inserted

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Examination by Ms. Morse

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1		EXHIBITS		
2	NUMBER:		ID	ADMITTED
3	191	OPC Cross Exhibit 1 - UIF's Response to OPC's Interrogatory No. 15	600	747
5	192	OPC Cross Exhibit 2 - UIF's Response to OPC's Interrogatory No. 17	600	747
7	193	OPC Cross Exhibit 3C - UIF's Response to OPC's Interrogatory No. 18 Confidential	600	747
9	194	OPC Cross Exhibit 4 - UIF's Response to OPC's Interrogatory No. 19	600	747
11	195	OPC Cross Exhibit 5 - UIF's Response to OPC's Interrogatory No. 183	600	747
13	196	OPC Cross Exhibit 6 - UIF's Response to OPC's Interrogatory No. 198	600	747
15	197	OPC Cross Exhibit 7 - UIF's Response to OPC's Interrogatory No. 199	600	747
17	198	OPC Cross Exhibit 8 - UIF's Response to OPC's Interrogatory No. 200	600	
19	199	OPC Cross Exhibit 9 - UIF's Response to OPC's Interrogatory No. 201	600	
21	200	OPC Cross Exhibit 10 - UIF's Response to OPC's Interrogatory No. 202	600	747
23	201	OPC Cross Exhibit 37 - Order No. PSC-2012-0476	649	
25				

1 EXHIBITS CONTINUED

2 NUMBER: ID ADMITTED

3 202 OPC Cross Exhibit 23 - 658 747
4 Docket No. 110320 -
Agenda 08.14.20125 203 OPC Cross Exhibit 24 - 658 747
6 Docket No. 120036 -
Agenda 08.14.20127 204 OPC Cross Exhibit 18 - 699
8 Order No. PSC-2010-01539 205 OPC Cross Exhibit 19 - 705
Order No. PSC-2013-002310 206 OPC Cross Exhibit 20 - 710
11 Order No. PSC-2016-056012 207 OPC Cross Exhibit 21 - 710
13 Order No. PSC-2017-045114 208 OPC Cross Exhibit 22 - 710
Order No. PSC-2017-045615 209 OPC Cross Exhibit 33 - 760 763
16 UIF's Response to OPC's
Interrogatory No. 179

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1 PROCEEDINGS

2 (Transcript follows in sequence from
3 Volume 3.)

4 CHAIRMAN CLARK: All right. We are going to
5 go ahead and reconvene in hearing this morning.

6 Are there any matters that we need to be addressed
7 before we begin with our witnesses this morning?

8 All right. Seeing none --

9 MR. TRIERWEILER: There are none.

10 CHARIMAN CLARK: All right, seeing none, we
11 will move to our next witness. That's going to be
12 Mr. Jared Deason.

13 MR. WHARTON: Yes, we would call Mr. Deason --

14 CHAIRMAN CLARK: Mr. Deason, I will remind you
15 that you were sworn in yesterday and you are still
16 under oath.

17 THE WITNESS: Yes, sir.

18 CHARIMAN CLARK: Your witness, Mr. Wharton.

19 Whereupon,

20 JARED DEASON

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

24 EXAMINATION

25 BY MR. WHARTON:

1 Q State your named and business address again.

2 A My name is Jared Deason. My business address
3 is 200 Weathersfield, Altamonte Springs, Florida.

4 Q And have you prefiled rebuttal testimony in
5 this case?

6 A Yes, I have.

7 Q And if I asked you the questions in that
8 prefiled rebuttal testimony, would your answers be the
9 same?

10 A Yes, they would.

11 Q Do you have any corrections or changes to your
12 testimony at this time?

13 A No.

14 Q Did you sponsor any exhibits as part of your
15 prefiled rebuttal testimony?

16 A No, I don't think I did.

17 Q All right. Would you please give a brief
18 summary of your prefiled rebuttal testimony?

19 CHAIRMAN CLARK: Mr. Deason -- Mr. Deason,
20 before you begin, we are having a little bit of
21 trouble understanding you, Mr. Deason. Let's get
22 you a little bit closer.

23 MR. FRIEDMAN: And speak up a little bit.

24 THE WITNESS: Can you hear me now, Mr.

25 Chairman?

1 CHAIRMAN CLARK: That's much better.

2 THE WITNESS: Better?

3 CHARIMAN CLARK: Yes.

4 THE WITNESS: Okay. Very good.

5 Yes, my rebuttal testimony covered my opinion
6 regarding the adjustments that OPC is recommending
7 regarding severance expense. The amortization
8 period for excessive deferred income taxes, the
9 unprotected portion, that is. Our employee
10 compensation regarding nonqualified retirement and
11 incentive compensation. The state -- proposed
12 state tax rate change at the end of this year. And
13 as well as I also talked about the SWIM program
14 that we are proposing.

15 BY MR. WHARTON:

16 Q **Does that conclude your summary?**

17 A Yes, it does.

18 MR. WHARTON: Mr. Chairman, we would move the
19 prefilled rebuttal testimony into the record as
20 though read.

21 CHARIMAN CLARK: So ordered.

22 (Whereupon, prefilled rebuttal testimony of
23 Jared Deason was inserted.)

24

25

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for an increase in water and
wastewater rates in Charlotte, Highlands, Lake,
Lee, Marion, Orange, Pasco, Pinellas, Polk,
and Seminole Counties by Utilities, Inc. of Florida

Docket No. 20200139-WS

/

REBUTTAL TESTIMONY

OF

JARED DEASON

on behalf of

Utilities, Inc. of Florida

- 1 **Q. Please state your, name profession and address.**
- 2 A. My name is Jared Deason. I am the Regulatory Manager for Utilities, Inc. of Florida. My
3 business address is 200 Weathersfield Ave., Altamonte Springs, FL 32714.
- 4 **Q. Did you profile direct testimony in this proceeding?**
- 5 A. Yes.
- 6 **Q. What is the purpose of your rebuttal testimony?**
- 7 A. The purpose of my rebuttal testimony is to rebut the prefilled testimony of OPC witnesses
8 Radigan and Crane regarding UIF's proposal for cost recovery for its proposed Sewer and
9 Water Improvement Mechanism (SWIM) as well as OPC witness Crane's proposed
10 adjustments to Severance Expense, Incentive Compensation Award Expense, Non-Qualified
11 Retirement Benefits Expense, Excess Deferred Income Tax Amortization Expense, and State
12 Income Tax Expense.
- 13 **Q. Do you agree with OPC witness Radigan's statement that SWIM is unfair, unreasonable
14 and unnecessary?**
- 15 A. No, I do not. Based on Mr. Radigan's testimony, it appears that he is unfamiliar with the fact
16 that mechanism's similar to the SWIM are not new in Florida. There is precedent for such
17 mechanisms that have already been approved and successfully implemented by the Florida
18 Public Service Commission (FPSC).
- 19 **Q. Could you elaborate more on the precedent in Florida for Base Rate recovery
20 mechanisms such as the proposed SWIM mechanism?**
- 21 A. Yes, the FPSC has broad ratemaking authority under 367.011(2) & (3), 367.081 and
22 367.121(1)(a) Florida Statutes (F.S.) provides the necessary legal authority. In addition,
23 367.121(1)(d) F.S. specifically grants the FPSC the authority to require repairs and
24 improvements if reasonably necessary to provide adequate and proper service (similar to
25 366.05(1)(a) F.S.). The crisis in this State (and the Nation) of aging water and wastewater

1 infrastructure is without question. Fortunately, UIF has not experienced the infrastructure
2 failures that have garnered so much publicity such as that in Fort Lauderdale, which earlier
3 this year had approximately 211 million gallons of raw sewage spill into the city' waterways
4 and streets. UIF seeks through the SWIM Program to be proactive with respect to the timely
5 replacement of existing assets that have neared the end of their service life. Since water is the
6 only utility service ingested by customers, if UIF waited until infrastructure failures occur to
7 make repairs, it would undoubtably be heavily criticized by its customers, the media, OPC
8 and the FPSC. More importantly, it will effectively lower the level of service to its customers.
9 The FPSC previously had addressed the need to replace aging gas distribution infrastructure
10 in a proactive manner through approval of the Gas Reliability Infrastructure Programs (GRIP)
11 in 2012, after which the SWIM Program is patterned. The following determination by the
12 FPSC regarding the GRIP Program is equally applicable to the need for the SWIM Program:
13
14 “Replacement of bare steel pipelines is in the public interest to improve the safety of Florida’s
15 natural gas infrastructure, thereby reducing the risk to life and property. Given the length of
16 time these pipelines have been installed and the leak history due to corrosion, we find that it
17 is appropriate to approve the proposed replacement program. Without the GRIP surcharge,
18 it is reasonable to expect that Chesapeake will have to file for more frequent base rate
19 proceedings to recover the expenses of an accelerated replacement program. The annual
20 filings will provide us with the oversight to ensure that projected expenses are trued-up and
21 only actual costs are recovered. Chesapeake’s GRIP and its associated surcharges will
22 terminate when all replacements have been made and the revenue requirement has been rolled
23 into rate base.” Order No. PSC-2012-0490-TRF-GU, page 19.

24

25 In addition, The FPSC had jurisdiction to approve GRIP Programs based upon the broad

1 ratemaking powers in 366.04, 366.05 and 366.06 F.S.:
2

3 “It is clear to us that we have the authority under the broad ratemaking powers found in
4 Sections 366.04, 366.05, and 366.06, F.S., to establish this type of surcharge to recover a
5 discreet set of costs incurred in response to unusual, urgent circumstances. For example, in
6 Action Group v. Deason, 615 So. 2d 683 (Fla. 1993), the Florida Supreme Court upheld our
7 approval of a 15-year rate rider charged to customers in a specific service area to retire the
8 existing debt of a bankrupt system that Florida Power Corporation (now Progress Energy
9 Florida, Inc.) had purchased. The Court stated that we had the authority under Section
10 366.04(1), F.S., to fix “just, reasonable, and compensatory rates, charges, fares, tolls, or
11 rentals”, and the authority under Section 366.05(1), F.S., to prescribe “fair and reasonable
12 rates and charges [and] classifications,” which authority, the Court stated, was to be construed
13 liberally. See also Section 366.041(2), F.S., which provides that the “power and authority
14 herein conferred upon the commission shall... be construed liberally to further the legislative
15 intent that adequate service be rendered by public utilities.” In Docket No. 041291-EI, In re:
16 Petition for authority to recover prudently incurred storm restoration costs related to 2004
17 storm season that exceed storm reserve balance, by Florida Power & Light Co., we approved
18 a surcharge to cover FPL’s unanticipated storm restoration costs for a period of three
19 years. Likewise, in Docket No. 041272-EI, In re: Petition for approval of storm cost recovery
20 clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances,
21 Jeanne, and Ivan, by Progress Energy Florida, Inc., we approved a two-year temporary
22 surcharge to recover Progress’s storm costs. Here, we are approving a similar surcharge, for
23 a discreet period, in response to unusual circumstances.” Id. Pages 18-19.

24

25 Those same broad ratemaking powers are afforded the FPSC with regard to water and

1 wastewater systems under 367.011(2) & (3), 367.081 and 367.121(1)(a), and more
2 specifically in Section 367.121(1)(d) F.S.

3

4 The SWIM Program is a more efficient and less costly process (for both UIF and its
5 customers) than filing annual limited proceedings or full rate cases, and suffering the
6 regulatory lag.

7 **Q. Are there other mechanisms similar to the GRIP that have been approved by the FPSC?**

8 A. Yes, two other mechanisms have been approved by the FPSC in the electric industry. These
9 mechanisms are the Generation Base Rate Adjustment (GBRA) and the Solar Base Rate
10 Adjustment (SoBRA). Both of these mechanisms allow for electric utilities to increase base
11 rates to recover capital costs associated with new generation facilities as they enter
12 commercial service.

13 **Q. Are there any cost savings for UIF customers if the SWIM program is approved?**

14 A. Yes, UIF's customers stand to receive significant cost savings in the form of reduced rate
15 case expense. Further, it provides for a more judicious use of FPSC staff time. The SWIM
16 program is designed to reduce the regulatory lag associated with rate proceedings by allowing
17 for the inclusion of FPSC-approved capital expenditures in rates on an annual basis. Thus,
18 the need for UIF to petition the FPSC for recovery of its capital investments will be greatly
19 reduced and occur less frequently due to the timeliness of those capital investments being
20 added to rate base. It is well known that rate proceedings are a costly endeavor. In UIF's
21 last rate proceeding, Docket No. 20160101-WS, the FPSC approved total rate case expense
22 of \$1,040,038 and in the current rate proceeding, rate case expense is on pace to be
23 approximately \$700,000. These expenses are born entirely by UIF's customers over a
24 four-year timeframe.

25 **Q. Are there other benefits the UIF customers will receive if the SWIM is approved?**

1 A. Yes, the current method of incorporating capital investments into rates requires a formal rate
2 proceeding in the form of a fully litigated rate case, a file and suspend rate case, or limited
3 proceeding. These proceedings are not only very expensive, as stated above, but are also a
4 very time-consuming process. Because of the regulatory lag that is created, it can take several
5 years before some capital investments are reflected in rates. Due to UIF's need to replace a
6 significant amount of its aging infrastructure in a timely manner, it has spent and will continue
7 to spend millions of dollars a year on these replacements. When these several years of
8 investments get reflected in rates at the end of a rate proceeding a significant amount of rate
9 shock occurs. By approving the SWIM, large increases every four to five years will be
10 replaced with nominal increases on an annual basis. This allows for a more efficient method
11 of including capital investments in rates while gradually phasing in the new rates associated
12 with the capital investments.

13 Additionally, by replacing assets in a programmatic manner, UIF will achieve better unit
14 pricing through its bidding process that will accrue to the benefit of the customers. There will
15 be fewer unplanned interruptions of service by virtue of replacing assets prior to their failure.
16 By proactively scheduling pipe replacements, for instance, UIF will be able to utilize a wider
17 variety of construction methods and technologies, such as horizontal directional drilling, that
18 reduce restoration costs and the impact of construction on the community.

19 **Q. Will the PSC have an opportunity to review and approve the projects associated with
20 the SWIM?**

21 A. Yes, all infrastructure replacements associated with the SWIM will be subject to FPSC review
22 and approval to ensure their prudence and cost-effectiveness. For each SWIM project, UIF
23 will demonstrate not only that each project is necessary, but that the costs for components,
24 engineering and construction are reasonable by conducting competitive bids to ensure that it
25 is obtaining the most favorable terms with its qualified contractors. If any of the SWIM

1 projects are not shown to be prudent and cost-effective, the FPSC has the authority to deny
2 or defer the inclusion of SWIM projects in rate base. Additionally, UIF has identified that
3 the majority of the SWIM related projects will be associated with the replacement of
4 horizontal assets. UIF would be willing to limit SWIM related projects to those that are solely
5 related to the replacement of its linear infrastructure if the FPSC believes that this constraint
6 will optimize the value to the customer.

7 **Q. Do you agree with OPC witness Radigan's assertion that, "a full rate case must be
8 filed...if a change in rates is required"?**

9 A. No, as stated above, there are several capital investment recovery mechanisms already
10 approved by the FPSC that are analogous to SWIM. None of these other mechanisms require
11 a full rate case to be filed each time the capital investments are completed.

12 **Q. Do you agree with OPC witness Radigan's assertion that together with the annual index,
13 the SWIM mechanism would result in a 5%-8% per year increase?**

14 A. No, it is not anticipated that the SWIM together with the annual index would result in a 5-8%
15 increase per year.

16 First, Mr. Radigan states, "increases attributable to the annual index filing... has been
17 increasing at a rate of between 1% - 3% per year". This statement is misleading. The annual
18 FPSC approved index percentage has been variable over the last ten years. And only twice
19 over the last 10 years has it exceeded 2% with the other years being less than 2%. The total
20 average index percentage over the last ten years has been only 1.69 percent. Additionally,
21 the index for 2021 is expected to be only 1.17 percent and with the decreased economic
22 activity associated with the COVIC-19 virus, the index is more than likely to remain low for
23 the next few years. Thus, given these factors, the index will probably be approximately 1.5%
24 for the next few years.

25 Also, OPC witness Radigan does not completely understand how the index percentage is

1 reflected as a percentage increase in rates. The index applies to only certain Operating and
2 Maintenance expenses and not to a Utility's total revenue requirement on which rates are
3 based. In the case of UIF, the percentage increase in rates is almost always less than the index
4 percentage that is applied to Operating and Maintenance expenses. For the past four years,
5 since UIF has had consolidated rates, the average percentage increase for its index increase,
6 including pass-through items, has only been 0.94%.

7 If you combine the 0.94% increases from indexes and pass-throughs, with another 4% for
8 capital investments associated with SWIM, the increase would be a maximum of 4.94% and
9 not a maximum 8% as Mr. Radigan has suggested.

10 **Q. Is UIF willing to agree to a cap in the amount of annual increase in rates associated with
11 SWIM projects on an annual basis?**

12 A. Yes, UIF is sensitive to how rate increases affects its customers and does not want any
13 increase to be overly burdensome. Therefore, UIF is amenable to a cap on the annual increase
14 in rates associated with SWIM projects if the capped rate is reasonable.

15 **Q. Is UIF willing to agree to a stay out provision for a rate proceeding if SWIM is
16 approved?**

17 A. Yes, because the SWIM program will result in less rate cases needed, UIF would agree to a
18 stay out provision if the timeframe is reasonable.

19 **Q. Do you agree with OPC witness Crane's removal of Severance Expense?**

20 A. No, I do not. OPC witness Crane states that severance costs should be removed because UIF
21 provided no detail regarding these costs and she believes these costs occurred in only one
22 year. OPC witness Crane is incorrect on both accounts. The detail for the Test Year was of
23 the \$748,552 in severance costs incurred by UIF's parent company, approximately \$57,000
24 was allocated to UIF. This information was previously provided to OPC in response to their
25 Interrogatory #15. Also, the amount of severance expense varies from year to year. It can

1 be as low as \$0 in some years and very high in others. For example, the total amount of
2 severance expense has been \$5,164,352 for the past three years (\$0 in 2017, \$4,415,800 in
3 2018, and \$748,552 in 2019). For variable expenses such as severance costs, it is common
4 regulatory practice to take a three-year average for rate setting purposes. However, UIF was
5 conservative and only requested the test year amount in this rate proceeding. Requesting only
6 the test year amount is more than reasonable considering taking a three-year average would
7 yield a much higher amount for severance expense.

8 **Q. Do you agree with OPC witness Crane's adjustment to Incentive Compensation Award
9 Expense?**

10 A. No, I do not. OPC witness Crane's recommendation to remove costs associated with
11 Incentive Compensation Award Expense are not consistent with prudent regulatory policy or
12 the principles of regulatory ratemaking.

13 OPC witness Crane is recommending a disallowance of 50% of Incentive Compensation
14 Award Expense because it is tied to what she considers financial goals or metrics. If accepted
15 by the FPSC, the effect of her recommendation would be to deny cost recovery of these
16 costs on a going forward basis.

17 **Q. How is OPC witness Crane's recommendation inconsistent with prudent regulatory
18 policy and the principles of regulatory ratemaking?**

19 A. A fundamental theory of sound regulatory policy is to provide recovery of all reasonable
20 and necessary costs incurred to provide service to customers. A basic principle of
21 ratemaking is to include all such costs as test year expenses in calculating a regulated
22 utility's net operating income. Only if the FPSC finds that the expenses in question are
23 unreasonable or unnecessary should they be disallowed in calculating the company's
24 revenue requirement.

25 Another fundamental theory of prudent regulatory policy is to encourage regulated utilities

1 to be efficient and provide high quality service to their customers over the long run.
2 Sacrificing efficiency or quality of service in the long run to achieve temporary rate
3 reductions is not in the customers' best interest. All regulatory decisions have
4 consequences and good regulatory policy results when these consequences are adequately
5 considered. OPC witness Crane's recommendation violates both theories of prudent
6 regulatory policy mentioned above.

7 **Q. Please explain how OPC witness Crane's recommendation violates the theory of
8 recovery of reasonable and necessary costs.**

9 A. OPC witness Crane has made no allegations or presented any evidence that the total
10 compensation paid to UIF's employees, or its parent company CORIX's employees, is
11 unnecessary or unreasonable. This includes performance-based variable compensation. Also,
12 OPC witness Crane has not presented any analysis of the employment market to determine
13 what amount of compensation is reasonable and necessary to attract the employees needed to
14 efficiently and effectively run a water and wastewater utility.

15 Additionally, OPC witness Crane's recommendation makes no analysis of the reasonableness
16 of the net amount of compensation that remains after 50% of the incentive compensation is
17 eliminated. She has not provided any evidence that shows the level of compensation that
18 remains will ensure that UIF or CORIX is competitive in the market in terms of its ability to
19 attract and retain qualified employees.

20 Therefore, OPC witness Crane's testimony is lacking any consideration of reasonableness
21 regarding either the overall amount of compensation or of the net amount she has
22 recommended. Also, OPC witness Crane has not presented any evidence that the salaries
23 for any employee are excessive. Instead she recommends a portion be disallowed based on
24 merely how it is paid. She believes that because it is performance-based variable pay, rather
25 than base salary, it is subject to disallowance notwithstanding whether the total amount of

1 compensation may be reasonable. The focus of any disallowance should be how much is
2 paid, not how it is paid.

3 **Q. Has the FPSC addressed Incentive Compensation Award Expense for other
4 utilities?**

5 Yes, there are multiple instances where the FPSC has approved costs associated with
6 Incentive Compensation Award Expense. These cases are detailed below:

- 7
- 8 • Order No. PSC-92-13 1197-FOF-EI, issued October 22, 1992, in Docket No. 910890-EI, the
9 FPSC found that: “Incentive plans that are tied to achievement of corporate goals are
10 appropriate and provide an incentive to control costs.”
- 11 • Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No. 080317-EI, the
12 FPSC found that TECO’s total compensation package, including the component
13 contingent on achieving incentive goals, was set near the median level of benchmarked
14 compensation and allowed recovery of incentive compensation that was directly tied to
15 results of TECO:

16 “TECO’s Success Sharing Plan has been in place since 1990 and its
17 appropriateness was approved in the Company’s last rate case in 1992. Lowering
18 or eliminating the incentive compensation would mean TECO employees would
19 be compensated below the employees at other Companies, which would adversely
20 affect the Company’s ability to compete in attracting and retaining a high quality
21 and skilled workforce. We therefore decline to do so.”

- 22 • Order No. PSC-09-0283-FOF-EI, issued April 30, 2009, in Docket No. 080317-EI, The
23 FPSC has also approved incentive compensation in three prior rate cases for Gulf Power
24 Company (“Gulf Power”), the most recent of which resulted in Order No. PSC-12-0179-
25 FOF-EI, issued April 3, 2012, in Docket No. 110138-EI, In re: Petition for increase in

1 rates by Gulf Power Company. The Commission's finding in the 2001 Gulf rate case
2 contains language similar to the TECO case:

3 "To only receive a base salary would mean Gulf employees would be
4 compensated at a lower level than employees at other companies. Therefore, an
5 incentive pay plan is necessary for Gulf salaries to be competitive in the market.
6 Another benefit of the plan is that 25% of an individual employee's salary must
7 be re-earned each year. Therefore, each employee must excel to achieve a higher
8 salary. When employees excel, we believe that the customers benefit from a
9 higher quality of service."'''

10 **Q. Are there any Court decisions in Florida related to the issue of disallowing Incentive
11 Compensation Award Expense?**

12 A. Yes, I am aware of a Court decision that dealt with the FPSC's disallowance of
13 executive compensation.

14

15 In *Florida Bridge Company v. Bevis*, the Florida Supreme Court reversed a decision of
16 the FPSC disallowing a portion of the Company President's salary. The Court
17 observed:

18 "Indeed, the Commission has made no attempt to determine whether the
19 president's compensation is excessive in view of the services he provides. The
20 arbitrary ratio by which the Commission reduced the salary and expense
21 account[,] the ratio of days physically absent from the home office to the total
22 number of workdays in the test year[,] has no support in logic, precedent, or
23 policy."

24 363 So. 2d 799, 800-01 (Fla. 1978)

1 The Court found the Commission’s action “was arbitrary and constitutes a substantial
2 departure from the essential requirements of law.” Id.

3

4 The Court reversed the FPSC Order because it was not shown that the executive
5 compensation was unreasonable when compared to the market. OPC witness Crane
6 provides no such comparison to the market to justify its disallowance.

7 **Q. Has UIF provided any cost comparisons to justify its costs associated with executive
8 compensation to the market?**

9 A. Yes, in the pre-filed direct testimony of Shawn Elicegui, the costs associated with
10 management were reduced to an hourly rate and then compared to a market benchmark.
11 Overall, the management costs per hour for CORIX were \$137 per hour while those for
12 service organizations servicing utilities were \$293, a \$156 difference. This confirms that
13 CORIX’s executive compensation is lower than market and thus reasonable.

14 **Q. Are there any benefits that customers derive from Incentive Compensation Award
15 Expense?**

16 A. Yes, I believe there are two main benefits customers derive from Incentive Compensation
17 Award Expense. First, as noted in previous FPSC decisions, when a portion of an employee’s
18 compensation is based on performance, the employee has to perform at a high level whether
19 the employee’s responsibility is operational, financial, or customer service related. Thus, the
20 utility is more likely to achieve its mandate of providing safe and reliable service to its
21 customers. Second, with respect to financial metrics, customers benefit greatly when
22 financial metric goals are achieved. Almost all large utilities, including UIF, have capital
23 structures which contain both debt and equity. In the case of UIF, approximately half of its
24 capital structure is debt. When financial metrics are not met, a utility’s risk profile is directly
25 affected. If the utility is deemed to be a higher risk due to financial metrics not being met, the

1 cost of debt increases as no financial institution will be willing to loan money without being
2 compensated for taking on more risk. If the cost of debt goes up then so will the utility's
3 weighted average cost of capital and resulting authorized rate of return in a subsequent rate
4 proceeding. In the end, the increase in debt costs gets passed along to customers in the form
5 of higher rates. Thus, it is in the customers' best interest that financial metrics are met by
6 those employees who are responsible for them.

7 **Q. Do you agree with OPC witness Crane's removal of Non-Qualified Retirement Benefits
8 Expense?**

9 A. No, I do not. OPC witness Crane's reasoning behind the disallowance of Non-Qualified
10 Retirement Benefits Expense is essentially the same as those behind her proposed
11 adjustments to Incentive Compensation Award Expense. Just as with her adjustments to
12 Incentive Compensation Award Expense it is inconsistent with prudent regulatory policy
13 and the principles of regulatory ratemaking. It focuses entirely on how certain employees
14 are compensated, not on how much they are compensated. OPC witness Crane provides no
15 analysis that the total amount of compensation received by these employees is excessive to
16 the marketplace for these employees. UIF and CORIX, just like any other company in a
17 competitive job market, has to compete for well qualified and effective employees. UIF and
18 CORIX have designed their compensation packages in order to be competitive in attracting
19 its employees. If UIF and CORIX are unable to attract and retain well qualified and effective
20 employees, it will not be able to achieve its mandate of providing safe and reliable service.

21 **Q. Do you agree with OPC witness Crane's adjustment to the Amortization Period for
22 Unprotected Excess Deferred Income Taxes?**

23 A. No, I do not. For the excess ADITs, there is diversity among state regulators on how to treat
24 these "unprotected" amounts. Some regulators followed a treatment akin to ARAM for the
25 unprotected differences. Other regulators required regulated entities to pass unprotected

1 excess ADIT to customers over a term shorter than the remaining book life of the assets, thus
2 passing the impact on to customers sooner than the ARAM. For UIF, the bulk of unprotected
3 ADITs are related to deferred charges/maintenance being amortized. The average
4 amortization period for deferred charges/maintenance being amortized is approximately 10
5 years, so the 10 years makes sense for regulatory purposes since the amortization period is
6 consistent with previous FPSC decisions related to unprotected ADITs. As for OPC witness
7 Crane's assertion that amortization of the ADITs should be less than ten years because it is a
8 liability instead of an asset is not consistent with the FPSC's mandate to set rates that are fair,
9 just, and reasonable. In other words, is not fair to UIF or any other Utility to deviate from
10 prior FPSC precedent simply because one side stands to benefit more than the other.

11 **Q. Has the FPSC addressed the amortization of unprotected ADITs in Florida cases?**

12 A. Yes, I was able to find several orders where the FPSC determined the appropriate
13 amortization period for unprotected ADITs, as well as whether the amortization should be
14 kept by the utility. Most importantly, in all the cases I was able to find, the FPSC established
15 a 10-year amortization period for unprotected deferred taxes. As a matter of fact, in the cases
16 I reviewed, OPC agreed that the amortization period should be 10 years.

17 **Q. Do you have some examples?**

18 A. Yes, in Order No. PSC-2019-0076-FOF-GU, the commission stated "...the unprotected
19 deferred tax amount of \$3,072,874 should be amortized over 10 years and netted against
20 the protected excess deferred taxes of \$21,955,922."

21 The discussion in staff recommendation for Docket No. 20180053-GU (Issue 20) that OPC
22 was in agreement with a 10-year amortization. "However, if the Commission decides to allow
23 Fort Meade to retain the unprotected deferred tax benefit, OPC agreed the benefit should be
24 amortized over 10 years." In the final order, Order No. PSC-2019-0079-FOF-GU, the 10-
25 year amortization period was approved. OPC also agreed to the 10-year amortization in

1 Docket No. 20180054-GU, Docket No. 20180051-GU, Docket No. 20180052-GU.

2 **Q. Do you agree with OPC witness Crane's adjustment to the Tax Rate associated with the**
3 **State Income Tax expense?**

4 A. No, the state income tax to be used in determining revenue requirement should be 5.5%. As
5 stated in OPC Witness Crane's testimony, "On September 12, 2019, the Florida Department
6 of Revenue announced a reduction in the state corporate income tax from 5.5% to 4.458%
7 for the tax years beginning 2019, 2020, and 2021." Based on this temporary change, OPC
8 witness Crane believes that the 4.458% tax rate should be used in setting prospective rates
9 because of a mere possibility that the 4.458% tax rate could be extended. It is not reasonable
10 or prudent regulatory policy to make prospective adjustments on what amounts to "wishful
11 thinking". Additionally, due to the significant budget shortfall that the state of Florida is
12 currently facing due to the decreased economic activity from the COVID-19 pandemic, it is
13 highly unlikely that OPC witness Crane's wishful thinking will come to fruition.

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

15 A. Yes

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1 MR. WHARTON: And we tender the witness for
2 cross.

3 CHARIMAN CLARK: Thank you very much.

4 Mr. Rehwinkel.

5 MR. REHWINKEL: Thank you, Mr. Chairman.

6 Before -- good morning, Mr. Deason.

7 THE WITNESS: Good morning, Charles.

8 MR. REHWINKEL: Before we get started, Mr.
9 Chairman, at the end of the day yesterday, I
10 indicated that I was going to indicate a number of
11 exhibits from our cross-examination list to
12 disseminate early, and I asked the parties to
13 gather exhibits -- OPC cross Exhibits 1 through 10,
14 and I was going to ask if it would just be easiest
15 right now to give those all 10 hearing numbers?

16 CHARIMAN CLARK: Yes, sir, that will be fine
17 with me. Not a problem. I believe we left off at
18 190.

19 MS. CIBULA: Yeah, 191.

20 CHARIMAN CLARK: The first one is 191?

21 MS. CIBULA: No, the first one would be 191.

22 CHAIRMAN CLARK: Right.

23 MS. CIBULA: The next one would be --

24 CHAIRMAN CLARK: Right. The last one was 190.

25 MS. CIBULA: Yeah.

1 CHARIMAN CLARK: All right. Beginning with
2 191, we will go through, I believe that takes us
3 through 201. And we're putting them in that order
4 you would like them?

5 MR. REHWINKEL: 200 --

6 CHARIMAN CLARK: 200, yeah, I am sorry. You
7 would like them in that order number --

8 MR. REHWINKEL: Yes, sir.

9 CHARIMAN CLARK: -- your No. 1 will be No.
10 191.

11 MR. REHWINKEL: Right.

12 CHARIMAN CLARK: Are we clear on that?

13 (Whereupon, Exhibit Nos. 191-200 were marked
14 for identification.)

15 MR. REHWINKEL: And also, Mr. Chairman, I can
16 give -- I know I provided the Chair, and I think
17 General Counsel's Office, a list of the titles of
18 the exhibits. We can -- they can be filled in or
19 we can read them out at your pleasure.

20 CHAIRMAN CLARK: We can just fill them in, I
21 believe that will be fine. If they correspond to
22 your numbers 1 through 10, we are just going to
23 transpose those over.

24 Samantha, is that good?

25 MS. CIBULA: That's good.

1 MR. REHWINKEL: Okay. And we will, of course,
2 identify them as we talk.

3 I also asked for everyone to preposition a
4 confidential document that's associated with OPC
5 3C. It is a document entitled Employee Annual
6 Deferred Incentive Plan, and it is an attachment to
7 the 157 in the CEL to Interrogatory -- OPC
8 Interrogatory 18.

9 And so that is associated -- that document is
10 going to be associated with the OPC exhibit, cross
11 Exhibit 3, which will be hearing Exhibit 193. I am
12 not going to ask that to be given an exhibit number
13 because it's already assigned an exhibit number in
14 the CEL.

15 And also associated with OPC exhibit -- cross
16 Exhibit 5, which is hearing Exhibit 195, is a -- an
17 Excel spreadsheet that is attached to staff CEL
18 Exhibit 15 -- I mean 169. And it is a spreadsheet
19 that is attached to OPC Interrogatory 183. And I
20 have -- I have provided that by email to staff and
21 counsel for the utility.

22 So I think everything is out there. I am
23 taking a couple of minutes here so we don't have
24 confusion when we get into the cross.

25 CHAIRMAN CLARK: Great. I think that's a

1 great idea, Mr. Rehwinkel. Let me check with my
2 staff here and make sure they are good. I am
3 getting head nods from both of them. They have all
4 of the documents in order.

5 Mr. Deason, you have -- Mr. Wharton, do y'all
6 have the documents?

7 MR. WHARTON: I believe we do.

8 THE WITNESS: Yes, I think we do.

9 CHAIRMAN CLARK: Mr. Wharton, if I call you
10 Mr. Swain for some reason, I apologize. The words
11 Debbie Swain is underneath your screen, and I am
12 going to look at that for some reason and call you
13 Mr. Swain probably, so I apologize in advance.

14 MR. WHARTON: No one would blame you.

15 CHAIRMAN CLARK: All right. Mr. Rehwinkel,
16 the floor is yours.

17 MR. REHWINKEL: Thank you, Mr. Chairman.

18 EXAMINATION

19 BY MR. REHWINKEL:

20 Q I want to start, Mr. Deason, with the
21 severance expense that you mentioned in your -- in your
22 summary and that -- that is addressed in your rebuttal
23 testimony.

24 Would you agree that, in this case, UIF is
25 seeking to recover its share of approximately \$748,552

1 **in severance costs incurred by Corix?**

2 A Yes, that is correct.

3 Q **And if I could get you to turn to what's now**
4 **hearing Exhibit 191, which contains OPC Interrogatory 15**
5 **and your response.**

6 A I am turning there now.

7 Q **Do you have that with you?**

8 A Yes, I do.

9 Q **Okay. In this response, you were -- in this**
10 **interrogatory, you were asked to provide information on**
11 **severance costs, quote, incurred, charged to or**
12 **allocated to UIF in each of the last three years, and as**
13 **reflected in the test year plan; is that correct?**

14 A That is correct.

15 Q **And in the response, you indicated here that**
16 **that the amount is \$748,552.12, right?**

17 A Yes, I believe that's correct. I actually
18 have that spreadsheet. Do you mind if I bring that up
19 real quick so I can reference that? I have it on my
20 computer.

21 Q **Please do.**

22 A All right. Thank you.

23 I am sorry, my file is not going to work
24 properly. Okay, I just brought it up. Okay, I am
25 looking at it right now.

1 Q Okay. Now, in your rebuttal testimony, on
2 page nine --

3 A Okay.

4 Q -- you indicate that, for the first time, I
5 believe, that there was also \$4,415,800 of severance
6 incurred in 2018; is that right?

7 A That is correct.

8 Q So can you tell me why the \$4,415,800 in that
9 response was not included in OPC 15 response even though
10 it was known or knowable when you provided the response
11 to Interrogatory 15 on or about August 10th?

12 A I don't know.

13 Q You provided a breakdown of severance cost by
14 employee in response to OPC Interrogatory 183, is that
15 right?

16 A That's correct.

17 Q Okay. And I am going to skip ahead a little
18 bit to OPC Cross 5, which is hearing Exhibit 195, and it
19 has the question from 183. Do you also have the Excel
20 spreadsheet that goes with that?

21 A I believe I am looking at it right now.

22 Q Okay. Would you agree with me that according
23 to the response to 183, that in 2018, there were two
24 employees who received severance payments exceeding \$1
25 million?

1 A Yes, I would.

2 Q Okay. And would you further agree with me
3 that in 2018, two other employees received payments of
4 553,000 and \$657,000 in severance?

5 A Yes, I would.

6 Q And you would agree with me that in the test
7 year, severance payments ranged from \$11,672 to
8 \$350,000, is that right?

9 A That is correct.

10 Q Okay. And isn't it also true that there were
11 two payments in 2020 of \$125,704 for the VP of
12 Engineering and Asset Management, and one of \$841,000
13 for the CFO?

14 A That is correct.

15 Q Okay. Can you tell the Commission whether
16 there is a general policy regarding the amount of
17 severance costs that are paid by Corix, or a policy
18 about when severance is paid?

19 A All of this happened at Corix at the parent
20 company level, which I work strictly for Florida, so I
21 am not privy to the confidential negotiated compensation
22 packages that are done in Chicago and up the ladder so
23 to speak, so I can only give you my opinion of what
24 would trigger that.

25 In my opinion, those are negotiated amounts

1 when somebody comes on board to work for Corix. And
2 certain things, such as whether somebody retires or
3 leaves on their -- on their own accord to pursue other
4 opportunities, or if there is a position eliminated
5 through corporate restructuring, any number of things
6 would trigger the severance payment, and it's going
7 being to be variable from -- from year to year.

8 **Q And do you know what triggered any of these
9 individual costs that we just discussed?**

10 **A I can't specifically say what triggered the
11 severance for each individual person. That's --
12 that's -- I am not privy to that information in my
13 position.**

14 **Q Okay. Let's go and talk about incentive
15 costs, and hearing Exhibit 192, which is OPC Exhibit 2,
16 and Interrogatory 17, do you have that with you?**

17 **A I am turning there right now.**

18 **Q All right. In response to Interrogatory 17,
19 the company was asked about incentive compensation plans
20 for employees other than officers. And in this
21 response, the company stated that the test -- in the
22 test year, there were 15 non-officers in UIF and 25
23 non-officers in shared services that participated in
24 deferred compensation incentives; is that right?**

25 **A Which number is that? I am trying to find**

1 that exact --

2 **Q 17.**

3 A 17. Okay, that's toward the end where you are
4 reading, that last sentence, correct, in 2015 --

5 **Q Yes, sir.**

6 A -- there were -- okay, I just wanted to make
7 sure we are on the same page, okay.

8 **Q You would agree that those are the employee
9 counts?**

10 A Yes, during the test year.

11 **Q Yes, and for the respective units, business
12 units.**

13 A Yes.

14 **Q All right. You did not provide, or attach a
15 copy of a specific deferred comp plan in the response to
16 that interrogatory, did you?**

17 A Not to that one. What generally happens with
18 some of the non-officers, it's just -- their supervisor
19 is just given a general broad budgeting of around three,
20 maybe four percent for each person as he sees fit at his
21 discretion, his or her discretion.

22 **Q So you are saying there is not a formalized
23 employee compensation -- deferred comp plan document?**

24 A Well, for officers, there is, but not
25 necessarily for non-officers or even peak operational

1 staff, like plant operation, field techs and things like
2 that, no.

3 Q Okay. On this same document, which is 192,
4 which has Interrogatory 17, we also see -- I am just
5 going to stay with this one, because I noticed that it
6 has the answer to -- the question and answer for 18. Do
7 you see Interrogatory 18 there?

8 A Yes, I do.

9 Q Okay. Now, I just want to make sure, the
10 answer -- this narrative here for 18 is not
11 confidential, is that right?

12 A The narrative is not. The one that you are
13 seeing here is not.

14 Q Okay.

15 MR. REHWINKEL: Mr. Chairman, just for the
16 record, Interrogatory 18 was subject to a claim of
17 confidentiality, and we submitted hearing Exhibit
18 3C under the rules -- or the procedures required
19 under the OEP. As we were going forward, it turned
20 out that this narrative wasn't confidential but the
21 attachment, which I discussed before in cross, is.

22 So I just want to make sure that we've got it
23 on the record that we are not disclosing
24 confidential information here by talking about the
25 narrative that's in 18.

1 BY MR. REHWINKEL:

2 Q Is that correct, Mr. Deason?

3 A Yes.

4 Q It's -- the attached employee incentive plan,
5 or EIP, that's referenced here, that is what is subject
6 to a confidentiality claim; is that right?

7 A Yes, I believe that is correct.

8 Q Okay. Now, this response to 18 -- well, we
9 had asked a similar question with regard to executives
10 and officers that was asked for in 17; and in the
11 response, the company provided the EIP, or employee
12 annual deferred incentive plan; is that right?

13 A Yes. Basically non-officers and officers are
14 treated differently as far as their compensation plan or
15 deferred incentive plans.

16 Q Okay. The difference between 17 and 18 is one
17 is non-officers -- 17 is non-officers and 18 is
18 officers?

19 A Yeah, that's the way I answered those.

20 Q Okay. Now, the answer here also indicates
21 that there is a long-term incentive plan for the
22 executive management team and select senior leaders at
23 the Corix level, is that right?

24 A Yes.

25 Q And it also indicates that the LTIP, or

1 long-term incentive plan, is a three-year cash settled
2 plan payment based on overall company performance, is
3 that right?

4 A Yes.

5 Q All right. And can you tell the Commission
6 how the overall performance is measured under the LTIP?

7 A I don't think that was part of the document
8 that I provided as far as the attachments. That was
9 separate. That was information provided me from the
10 parent company, but no attachment was provided for that.

11 Q Do you know -- I am sorry.

12 A Because that only applies to a very few
13 people.

14 Q Okay. Do you know how the overall company
15 performance is measured for purposes of the LTIP?

16 A No, I do not. That's all done at the parent
17 level.

18 Q Isn't it true that executives at shared
19 services, as well as the UIF president previously also
20 participated in the LTIP, but that the LTIP was phased
21 out for shared services and the UIF president, and is
22 now just limited to the Corix officers?

23 A Yes. I believe really they are phasing that
24 out, so basically they are just going for the EIP that
25 we provided in the -- as an attachment.

1 Q Okay. If we could turn to Exhibit 4 -- cross
2 Exhibit 4, which is hearing Exhibit 194, which is the
3 answer to No. 19, Interrogatory No. 19?

4 A Okay.

5 Q Do you have that?

6 A Yes, I do.

7 Q Can you tell the Commission the total amount
8 of the LTIP awards that were made in 2019?

9 A Based -- I can't tell any dollar amount, but
10 as far as what was told to me, that program has been
11 phased out as far as long-term. Everybody is you
12 subject to the EIP.

13 Q Was there long-term incentive plan costs
14 allocated to UIF for 2019?

15 A Not that I know of. Everything is -- flows
16 from the annual compensation -- or the annual incentive
17 compensation.

18 Q Okay. Let's go back and talk a little bit
19 about the EIP --

20 A Okay.

21 Q -- in general terms. And if you have
22 Interrogatory 18 in front of you, which I think this
23 document --

24 A I think so.

25 Q I am asking you to go to -- I think we need to

1 go to 193, Exhibit 193, which is OPC 3, or 3C. This one
2 has the complete answer on Bates three and four within
3 that exhibit; do you see that?

4 A Which number are you looking at?

5 Q 18 -- Interrogatory 18?

6 A All right, I am looking at 18 right now.

7 Q Okay.

8 MR. REHWINKEL: And, Commissioners, I
9 apologize for the confusion. I was talking about
10 the response to 18, but it was only the first part
11 of it. The second part of it lists a number of
12 positions on a different page. So that is all
13 contained in Exhibit 193 on the second page. I
14 just want to make sure everybody is on the same
15 page so to speak, literally and figuratively.

16 CHARI MAN CLARK: It looks like everyone is
17 good.

18 MR. REHWINKEL: Okay.

19 BY MR. REHWINKEL:

20 Q So, Mr. Deason, you would agree with me that
21 the entire answer to 18 identifies at least six
22 positions at shared services and UIF that participate in
23 the EIP?

24 A Yes.

25 Q Okay.

1 A Well, six particular areas. There may be
2 several people within those respected areas.

3 Q Okay. So at least -- there is at least six
4 people, but there could be more?

5 A Yeah, there is at least six, I would say.

6 Q All right. Let's, if you will, I wanted to
7 get everybody to turn to the EIP, the confidential
8 document that is included in staff's CEL Exhibit 157.
9 And this is a document that, on the first page, is
10 entitled Employee Annual Deferred Incentive Plan, Corix
11 Group of Companies. Is that the right document, Mr.
12 Deason? Is that what you mean by the EIP?

13 A Yeah, employee annual deferred incentive plan.

14 Q Okay.

15 A Yes.

16 Q Are you familiar with this plan?

17 A Yes. I mean, I have read through it several
18 times; although, I am not subject to it, but yes.

19 Q You say you are not subject to it. You don't
20 participate in it?

21 A No, I do not.

22 Q Okay.

23 A Nobody in the Florida -- UIF in the Florida
24 level participates in this particular plan. This is
25 corporate executives up the ladder, their -- their plan.

1 It doesn't necessarily flow to Florida.

2 Q Okay. Now, when we -- when we talked about
3 the answer to 18, this -- the six individuals here were
4 participants in the LTIP or the EIP for the six --

5 A This is the -- it's not long-term. This is
6 the short-term plan that we are talking about.

7 Q Okay. When I asked you earlier about the
8 answer to 18 -- and on 18, there is a -- there is a list
9 of people it says EDP support services and EDP and COO
10 regulated utilities, vice-president and principal
11 accounting officer, EDP risk management and president of
12 UIF?

13 A Yeah.

14 Q Are those individuals subject to the EIP?

15 A Yes, at WSC, yes. And I think the only person
16 in Florida would be our president, Gary Rudkin, but
17 nobody else in Florida would.

18 Q Okay. Is he -- when you answered me that no
19 one at UIF participates in the EIP, is he not considered
20 an employee of UIF?

21 A Yeah. All of his salary is allocated here in
22 Florida, yes. He would be the only one. I will say, my
23 response in general, it does not apply to Florida. He
24 would be one of -- the only one of -- I would have to --
25 I would have to refer to my vice-president of

1 operations, but we have lots of employees in Florida,
2 but he would be the only one that would be subject to
3 that. I, myself, am not subject to that. Anybody below
4 him is not subject to that.

5 Q Okay. I understand, and thank you for the
6 clarification.

7 All right. So let's turn to the EIP.

8 A Okay.

9 Q And I know you are aware this is confidential,
10 but everyone, I just think we should -- this is really
11 the only document that we are working with that you
12 claim is confidential. So when I ask you a question, I
13 am going to try to avoid enunciating confidential
14 information in my question, and I would ask you to
15 please be careful not to respond with confidential
16 information.

17 A Okay.

18 Q I don't want to inadvertently elicit it.

19 MR. REHWINKEL: And then that would also go,
20 Mr. Chairman, for if there are any questions from
21 the bench about this later on, we just need to be
22 sensitive about this document.

23 BY MR. REHWINKEL:

24 Q So if I could get you to turn to page three?

25 A Okay.

1 Q And under the section that says scope --

2 A Yes.

3 Q -- and down under B, eligible positions --

4 A Okay.

5 Q -- can you read to yourself first romanette
6 ii, this starts with the words generally, and tell me
7 did that sentence is confidential?

8 A I would probably have to refer to one of my
9 attorneys to get their opinion on it, but in my opinion,
10 I think I can talk about it --

11 Q Okay.

12 A -- and, you know, the idea behind it.

13 Q Okay. And do you know if we can just read it
14 aloud?

15 A Okay. I will go ahead and read it aloud.

16 Q Okay.

17 A And stop me if this is the only one, please.

18 Generally, positions that fall within a
19 regulated business unit, except certain executive
20 positions, will not be eligible for the EIP program.

21 Q All right. The romanette above that, that
22 starts this plan, could you tell me if that is
23 confidential and if your attorney will allow you to read
24 that aloud?

25 MR. WHARTON: Well, if we have maintained it

1 as confidential, we need you to continue to
2 maintain it as confidential until --

3 MR. REHWINKEL: I saw Marty leave the room.
4 We had talked about this off-line earlier, and I
5 don't want to -- I don't want to speak for him, but
6 I think he thought that this was not either, but I
7 don't -- you know, Mr. Wharton, I would --

8 MR. WHARTON: If you and Marty had a
9 discussion about it, then let's go ahead and read
10 it in.

11 THE WITNESS: Okay. I will go ahead and read
12 it.

13 This plan applies to all positions with
14 incumbent employees that fall within a nonregulated
15 business operation who are active, regular
16 full-time or regular part-time employees.

17 BY MR. REHWINKEL:

18 Q Okay. That's all I want to ask you about that
19 that section there.

20 Let's turn to page five, if you will. And I
21 know this page has numbers in the table, so I don't -- I
22 don't want to -- I want to -- I think we need to be more
23 careful here, but I wanted to ask you first if you could
24 look at Section 3.3, which is headed gatepost?

25 A Yes, I see that.

1 Q **Read -- read item number one on there to**
2 **yourself?**

3 A Okay.

4 Q **And do you know whether that is confidential**
5 **or not? I did not specifically discuss this language**
6 **with Mr. Friedman.**

7 A I think it would be okay to read, in my
8 opinion, if Marty is okay with that. I will defer to
9 him since he is back.

10 MR. FRIEDMAN: It's -- I don't think it's
11 confidential.

12 THE WITNESS: Okay. I will go ahead and read
13 it, then. I will make that determination, is that
14 okay? Are you okay were that, Charles?

15 BY MR. REHWINKEL:

16 Q **Yes.**

17 A No. 1, company financial gatepost shall be
18 based upon a level required to return an investment to
19 the company's shareholder determined annually.

20 Q **Okay. And you would agree that that criteria**
21 **and the one below, it No. 2, must be met prior to any**
22 **payout?**

23 A Yes, those -- those are the metrics used to
24 determine if -- how much or if any is to be paid out.
25 That's my understanding about it.

1 Q And can you tell the Commissioners what
2 criteria is used for this company financial gatepost?
3 For example, is it return on equity, earnings per share,
4 or something else?

5 A Now once again, that's done at the corporate
6 level, which I am not a part of, so I am just going to
7 give you my what's going on there in general, okay?

8 It's my understanding that the board sets
9 those on an annual basis for those executives, and so it
10 could vary from year to year. And so whether it's
11 return on equity, I think, or EBITDA, things such as
12 that, I really don't know which specific metric is
13 used -- I know there is a financial metric used, but
14 which specific one that they are being judged by, I
15 don't know.

16 Q Okay. You mentioned EBITDA, that's earnings
17 before taxes and amortization, something like that?

18 A It's earnings before interest taxes
19 depreciation and amortization.

20 Q Okay. And are you aware that that has, at
21 times, been a factor, or do you know?

22 A I am just saying that could be a factor, but I
23 don't know specifically. I was just throwing out
24 financial metrics that I track, and my company tracks,
25 and -- but which specific one, I am not -- I don't know

1 which one is specifically used as the criteria. It
2 could be one. It could be a collection of one, but I am
3 not privy to that specific information.

4 Q Okay. Now, when we go down to 3.4, there is a
5 column on the left-hand side that has -- the title says
6 strategic drivers. There is a heading in the middle --
7 in the middle column that says performance measures, and
8 then a heading in the third column on the right that
9 says weighting; do you see that?

10 A Yes, I do.

11 Q Okay. Would -- do you know whether -- if you
12 go to the bottom row, there is a -- there is a strategic
13 driver described there. There is a performance measure
14 description for that strategic driver. And then there
15 is a weighting factor. Would you agree with that?

16 A I would agree with that.

17 Q Okay. Do you know whether that weighting
18 factor is confidential or not?

19 A I would -- I would hesitate to give that --

20 Q Okay.

21 A -- the weighting portion. I think I feel
22 comfortable with the strategic driver and the
23 performance, but I don't feel comfortable giving a
24 specific number behind the weighting.

25 Q Okay. Well, I think -- we could agree --

1 could we say that the largest weighting is to the bottom
2 financial performance row?

3 A Yes, I would agree with that.

4 Q Okay. And if I could get you now to turn to
5 page nine, and this is Appendix A; do you see that?

6 A Yes, I do.

7 Q All right. Now, this has a bunch of numbers
8 on it, so I think I am going to work on the assumption
9 that this is -- this is more of the heart of the
10 confidential nature of this document, you would agree
11 with that?

12 A I would agree, given all the numbers that are
13 there, yes.

14 Q Okay. So I am not going to ask you to
15 vocalize any numbers, but what I want to do is ask you
16 if you would agree that -- well, let's talk about the
17 bottom table there, and is it okay if I just read aloud
18 the headings of these five columns?

19 A Yes. The headings at the very top, the top
20 row?

21 Q Yes.

22 A I think that would be okay.

23 Q All right. So there is a -- on the left-hand,
24 it says, component weighting for each organization level
25 as a percentage of target. And there is a company

1 **factor, a business unit factor, an individual**
2 **performance factor, and then there is a total, and all**
3 **of those sum up to a unity, right?**

4 A Yes, that is correct.

5 Q All right. So under component weightings for
6 each organizational level there are business segments,
7 if you were underneath that; is that right?

8 A Yes.

9 Q Okay. And those are associated with
10 executives and then -- and then management levels, would
11 you agree with that?

12 A These are executive levels.

13 Q Okay. These are all executive levels?

14 A Appear to be all executive levels.

15 Q Okay. Is it fair to say that the -- that the
16 is factor varies by executive levels that are listed
17 under that far left column heading?

18 A The company factor varies depending on which
19 particular unit you fall in.

20 Q Okay. And would you agree that the higher the
21 level of the officer, the more the awards are weighted
22 to the company factor?

23 A Yes.

24 Q And the closer -- if I look at the -- if I
25 look at the first executive level description under

1 **that -- that -- that heading, component weighting for**
2 **each organization level as a percentage of target, if I**
3 **look at the first one and I read down, is it fair to say**
4 **that these are -- correspond to the hierarchy of the**
5 **executive organization of the company?**

6 A I think it more corresponds to how much
7 influence you have, or how much you work within a
8 specific business unit as opposed to hierarchy, you
9 know, so, like -- like support services, for example,
10 the director, they support all business units. There is
11 no one specific one they do. So their business unit, I
12 will just say, is very, very low. However, ones that
13 have more influence over a specific business unit, it
14 goes up even more.

15 So I think it's more weighted towards the way
16 in which you work in specific business units, is -- is
17 the way that he is broken up. That's my understanding.

18 Q Okay. All right. We can put this
19 confidential document away. I am done asking about it.
20 Thank you.

21 A Okay.

22 Q All right. On pages 11 and 12 of your
23 rebuttal testimony, if I could get you to turn there.

24 A Okay, I am grabbing that now. Just one
25 second. Okay, I am there.

1 Q All right. You discuss here various cases
2 where the Commission approved costs associated with
3 incentive compensation award expense, is that right?

4 A Yes, I do.

5 Q Isn't it true that you did not conduct a study
6 to determine how the company's incentive compensation
7 plans compared with the plans at the other companies
8 that are discussed here?

9 A No, and I don't think that would be even
10 possible. Just like I said, the EIP we went through,
11 that's a confidential document. I am sure that the
12 ones -- and some of these go back a long-time, those
13 would be confidential as well. So I seriously doubt if
14 I put forth any effort to try to get confidential
15 information, there are some that are almost 30 years
16 old, it would be a fruitless task.

17 What I wanted to show with this is that, in
18 general, a Commission precedent has been set that
19 incentive compensation packages have been approved in
20 Florida for recovery in regulatory rate proceedings.

21 Q If we could just look at what I have
22 identified as Exhibit 200, which is OPC cross Exhibit
23 10, and also contains Interrogatory No. 202 and the
24 response.

25 A One second, please. I am trying to get there,

1 Charles, if you will bear with me for a second.

2 Q I think we are in good shape for today. We
3 are going to finish, I am sure.

4 A Okay. You said it was 202, Charles?

5 Q Yes, sir.

6 A I got the package this morning, it's at the
7 very back, is that correct?

8 Q Yes.

9 A Okay. Okay, I think we are there.

10 Q Okay. So we -- we asked you, has Mr. Deason
11 or UIF examined the incentive compensation programs of
12 these other companies -- let me just read it -- read it
13 verbatim.

14 Regarding the PSC cases discussed on pages 11
15 to 12 of Mr. Deason's rebuttal testimony, has Mr. Deason
16 or UIF examined the incentive compensation programs of
17 these other companies, and in particular, the underlying
18 benchmarks or metrics used to award incentive
19 compensation to determine if these programs and
20 benchmarks are similar to those at UIF or its
21 affiliates?

22 And the response says: No. Benchmarks and
23 metrics will vary from organization to organization.
24 Also, benchmarks and metrics may change within an
25 organization from year to year. That should be a given.

1 The purpose in addressing those costs was to show that
2 the FPSC has shown precedent in several rate proceedings
3 in allowing the recovery of incentive compensation
4 expenses.

5 Did I read that correctly?

6 A Yes, I would agree with that.

7 Q Okay. So just to be clear, neither you nor
8 anyone at UIF did such a study, right?

9 A No, I don't think it would be possible to go
10 dig into that level of detail of confidential nature of
11 incentive compensation plan.

12 Q Okay. Now, in that answer, it said that the
13 purpose was to show precedent related to the
14 Commission's practice with respect to incentive comp, is
15 that a fair paraphrase?

16 A I would agree with that.

17 Q Okay. Now, when you did your research to look
18 at other cases, did you look at the 2010 Progress Energy
19 case?

20 A I don't know if I looked at the Progress
21 Energy case, if that was one of the ones that I listed.

22 Q Okay. Have you seen language in a Commission
23 order that says: We believe that incentive compensation
24 provides no benefit to the ratepayers, and constitutes
25 nothing more than added compensation to employees.

1 **Especially in light of today's economic climate, we**
2 **believe that PEF should pay the entire costs of**
3 **incentive compensation as its customers do not receive a**
4 **significant benefit from it. Accordingly, we find that**
5 **the 2010 allowance for incentive compensation should be**
6 **reduced by 32,854,378 jurisdictional 37,465,650 system.**

7 **Did you come across language that looked like that?**

8 A I did not come across language that looked
9 like that in that particular place. I am aware, I used
10 to be an employee at the Commission at the time, there
11 were several. The way that the Commission, at that
12 time, and the Commissioners that were there at that
13 time, which I know some of the Commissioners listening
14 now were -- know some of those Commissioners, there were
15 decisions made that are or were conflicting with prior
16 Commission decisions regarding this.

17 One specific one, some of the language I did
18 come across, if you will indulge me, was an order PSC
19 120179 in Docket No. 110138, it's about the same time.
20 The Commission found, and I will quote: Oh, we
21 recognize that the financial incentives that Gulf
22 employees, as part of its incentive compensation plans,
23 may benefit ratepayers if they result in Gulf having a
24 healthy financial position that allows the company to
25 raise funds at a lower cost than they otherwise would.

1 And one of the biggest oppositions that OPC
2 witness Crane had was, in her recommendation trying to
3 suggest arbitrary adjustments to our incentive
4 compensation plans that were tied to financial metrics.
5 The Commission has shown specific precedent relating to
6 showing that it is found that customers do benefit from
7 those financial metrics being met, and as such, those
8 are recoverable.

9 **Q You would agree, would you not, that there**
10 **were similar adjustments made in a Florida Power & Light**
11 **rate case in this same timeframe, right?**

12 A Which -- which docket number was that?

13 **Q That would have been in Docket 20080677.**

14 A One second. I think the only one I have in my
15 notes is the TECO case from a year or two before that.
16 So I don't have that one in front of me.

17 **Q All right. You would accept, subject to**
18 **check, that that -- there was an adjustment made that**
19 **related to incentive compensation in that case?**

20 A Subject to check, I would literally want to
21 check with the circumstances behind that adjustment. I
22 know that there is Commission precedent in some of the
23 cases I reviewed in separating, kind of like what we
24 were talking about before, long-term incentive
25 compensation versus short-term. I believe it was, it

1 may have been the Gulf case, the Commission actually
2 made adjustments for the long-term incentive
3 compensation, but allowed all of that for short-term
4 incentive compensation. And the EIP which we went over
5 earlier, is consistent with the short-term incentive
6 compensation that was allowed by Florida Public Service
7 Commission as recoverable.

8 **Q Okay. But I guess my point being is that the**
9 **Commission precedent is not uniform in how incentive**
10 **compensation, either long- or short-term, has been**
11 **treated. You pointed out some situations where it's**
12 **favorable to the UIF position, and there are precedent**
13 **that go the other way; would you agree with that?**

14 A Depending on the circumstance, I would agree
15 with you. But yes, it's not a general blanket policy,
16 so to speak. In my -- as I review these cases, I look
17 at it as is the customer receiving a benefit from that.
18 And if you can draw that the customers do meet -- get a
19 benefit from the metric being met, then it would be
20 recoverable in a regulatory rate proceeding, but I will
21 leave that up to the Commission to decide --

22 **Q I am sorry, you probably need to start over**
23 **again because there was -- your answer was kind of**
24 **muffled there.**

25 A What's the last thing you heard me say,

1 Charles?

2 **Q Whatever you just said, it -- you probably --**
3 **I don't know, your voice, you just need to probably**
4 **direct it into the mic a little bit better.**

5 A Okay. I have the mic right here in front of
6 me, so --

7 **Q Okay.**

8 A -- I am sorry. I don't know why it would skip
9 out. I will try it again, okay.

10 I was just saying that from case to case,
11 there is various nuances, and the Commission precedent
12 that I think has been followed in all of these cases is
13 you have to draw a connection between whether the
14 customers receive a benefit from that metric, and if
15 it's being met. If there is a customer benefit from
16 that metric being met, it has been allowed by the
17 Florida Public Service Commission on multiple occasions
18 to be recoverable in a regulatory rate proceeding; but
19 of course that's -- but in this case, of course, that's
20 up to the Commission to decide whether that benefit is
21 met or not.

22 **Q You would agree that the Commission has, in**
23 **the past, made decisions that have apportioned benefits,**
24 **have you not, between shareholders and customers?**

25 A I think some of it was between long-term and

1 short-term, and they tried to differentiate how much of
2 the shareholders benefiting versus the customers
3 benefiting, and I think there has been some adjustments
4 there some.

5 Q Okay.

6 A But it's got to be kind of a measurable
7 amount, and not just an arbitrary number thrown out to
8 make a cut, as OPC witness Crane is suggesting.

9 Q All right. Let's go to page 14 of your
10 rebuttal, and I want to talk to you a little bit about
11 nonqualified retirement benefit expense.

12 A Okay.

13 Q Can you explain to the Commission why these
14 plans are called nonqualified?

15 A I think it's for tax purposes, and the way
16 they are figured for tax purposes. That's my
17 understanding, but I am not a tax expert either --

18 Q Okay. Would it be --

19 A -- and some are nonqualified. And up to a
20 certain dollar amount, everything up to a certain dollar
21 amount is considered qualified, and I think above of
22 that amount would be considered nonqualified. That's my
23 understanding.

24 Q So to -- to -- is it fair to say, based on
25 what you just said, that the IRS limits the amount of

1 compensation that can be considered as a deductible
2 expense when determining pension benefits based on the
3 income of the beneficiary?

4 A Yeah, for tax purposes, I would agree with
5 that. That's the way to look at it for tax purposes,
6 the federal tax code, yes.

7 Q Okay. So would you agree with me, subject to
8 check, that the limit on eligible employee income was
9 \$280,000 in 2019, 285 in 2020, and it will be 290 for --
10 290,000 for 2021?

11 A Subject to check, I don't know off the top of
12 my head.

13 MR. WHARTON: Hang on. Hang on.

14 Commissioner -- I object, Mr. Chairman. And
15 I -- I know the Commission commonly uses the phrase
16 "subject to check," but it should not be a
17 substitute for something that the witness does not
18 know, and I don't think it's fair to ask him
19 subject to check to agree to something, rather than
20 do you know whether this is a fact.

21 MR. REHWINKEL: Mr. Chairman, let me ask it
22 this way.

23 BY MR. REHWINKEL:

24 Q Have you ever seen -- do you have a general
25 idea of the level of compensation that triggers the

1 **ineligibility for the tax deduction?**

2 A No. As I said before, I am not a tax expert,
3 so I am not familiar with the federal tax code.

4 Q **You don't have any idea if it's in the high
5 \$200,000 range?**

6 A I really don't know. I know -- maybe if I was
7 up in that level of income I would, but I am not there,
8 so no.

9 Q **You would agree with me that the nonqualified
10 plans that we are talking about here only apply to
11 highly compensated individuals?**

12 A I think it -- I would agree, it would be
13 high -- very few highly compensated employees would
14 probably be subject to that within the company. It
15 wouldn't be a lot of employees, I wouldn't think. But
16 then again, I am not privy to everybody's salary either,
17 so...

18 Q **But for there to be a nonqualified plan, it
19 would have to apply to a highly compensated individual,
20 right?**

21 A That's my assumption. As before, I don't know
22 the numbers behind the -- the tax code either.

23 Q **Can you tell the Commission how many employees
24 whose costs are allocated to UIF participate in the
25 nonqualified retirement plans?**

1 A I don't know the specific individuals. I
2 am -- I -- the actual compensation packages for each
3 individual, you know, varies. They are negotiated when
4 they -- they come occupancy board at that level, so --
5 and I am not privy to that -- that confidential
6 information. I don't think it's a lot of employees.

7 Q **I wasn't wondering who they are, just if you
8 know a number.**

9 A I don't know the exact number. Only --

10 Q **Do you know an approximate number?**

11 A No, I don't. Alls I know is I don't think
12 it's very many. That's about as much as I can say at
13 this point.

14 Q **All right. Let's talk about excess
15 accumulated deferred income taxes. They have been
16 referred to as excess deferred income taxes. I used
17 accumulated, but it's the same thing, right?**

18 A Yeah -- well, I think it's excessively
19 accumulated. I think you could say, EAIDIT, but, yeah,
20 I mean, they are substitutes for one another. I think
21 we are on the same page.

22 Q **Okay. So on page 14 of your testimony --**

23 A Okay.

24 Q **All right. And we agree that EADIT can be
25 classified as either protected or unprotected, right?**

1 A I agree with that.

2 Q And the protected EADIT are required to be
3 flowed back -- if there is a surplus, they are required
4 to be flowed back no sooner than the average remaining
5 life of the underlying assets, generally speaking,
6 right?

7 A Yes, that's correct.

8 Q And for unprotected, which means they are not
9 subject to the normalization provisions of the IRS code
10 or regulations, they -- the IRS doesn't care what period
11 they are flowed back; is that generally correct?

12 A Yeah, they are treated differently. I agree.

13 Q All right. And you would agree that the
14 Commission has discretion over what period those
15 unprotected EADIT are flowed back, right?

16 A Yes, I would agree with that.

17 Q Okay. And you would agree that an EADIT can
18 be either a liability, in which case the company owes,
19 if you will, the excess deferred taxes to the customer,
20 or an asset, in which case the ratepayers owe to the
21 company?

22 A Yes.

23 Q Okay. And in this case, the EADIT is a
24 liability, it's a surplus amount, and it's owed to the
25 customers, right?

1 A Yes.

2 Q **Your voice is fading. Did you say yes?**

3 A I'm sorry. Yes. Are you there?

4 Q Okay. And you are -- in this case, the
5 **company proposes to amortize or slow that back the**
6 **unprotected fees over 10 years, right?**

7 A That is correct.

8 Q Would you agree with me that the longer it
9 **takes to return these amounts, these excess accumulated**
10 **deferred income taxes to the ratepayers, the greater the**
11 **likelihood that the customers receiving the benefit will**
12 **not be the customers who paid the costs that created the**
13 **tax timing difference initially, right?**

14 A I guess if you say that they are no longer a
15 customer of UIF and somebody takes their place, is that
16 what you are referring to?

17 Q **Yes, sir. Intergenerational transition, or**
18 **whatever you want to call it?**

19 A Yes, I agree that that is a possibility.

20 Q Okay. On page 15 of your rebuttal, you stated
21 that all -- in all the cases you could find in Florida,
22 the Commission established a 10-year amortization period
23 **for unprotected EADIT, is that right?**

24 A Yeah, the ones that I found, they were 10
25 years, is what the Commission had said.

1 Q Okay. And isn't it true that all the cases
2 you cited involved regulatory assets instead of
3 regulatory liability, like in this case here?

4 A All I can say is I know at least one was
5 definitely a regulatory asset --

6 Q Okay.

7 A -- and that was 10 years, I know it's at least
8 and one of those 10 years, and it was an asset.

9 Q Okay. Should the Commission consider the
10 annual impact on ratepayers when determining an
11 appropriate amortization period for flowing back EADIT?

12 A I think that's one in the same that they can
13 consider, yes.

14 Q Would you agree the Commission should also
15 consider economic factors such as the impact of a
16 pandemic when evaluating the appropriate amortization
17 period?

18 A I think they can consider any factor they want
19 to, so that could be one of them.

20 Q All right. In your research, did you uncover
21 an instance after the passage of the TCJA? Do you know
22 what that is, Tax Cuts and Jobs Act?

23 A Yeah, Tax Cuts and Jobs Act.

24 Q Okay. After the passage of the TCJA, where at
25 least one utility flowed back the unprotected excess

1 **deferred -- accumulated deferred income tax liability**
2 **faster than 10 years, and the OPC agreed with that**
3 **faster flow back?**

4 A Yeah, in other words, you are asking was there
5 a -- a utility on their own accord decided to do lower
6 than 10 years and OPC agreed to it?

7 Q **Yes.**

8 A I am not aware of that. I am not saying it's
9 untrue, but I am not aware of that.

10 Q **Okay. You didn't look at order 218 --**
11 **2018-0548, did you? That's the Gulf Power order.**

12 A I am trying to see if I mentioned that in my
13 rebuttal. I looked at several cases. I am not sure if
14 that's one of the ones I looked at or not.

15 Of course, if that is what occurred, they
16 flowed back faster, I don't know the underlying
17 circumstances behind that justification either. So I
18 can't say our position is the same as their position, as
19 Gulf Power's, to justify a deviation from the 10 years
20 that the Commission has already set.

21 Q **Well, just to be clear, so we understand the**
22 **basis for my question, you note in a gas case that the**
23 **Public Counsel agreed to a 10-year period, correct? Is**
24 **that a yes?**

25 A Yes.

1 Q Okay. And you would agree with me, subject to
2 check, that in this Gulf order that's dated November
3 19th, 2018, that Gulf Power flowed back \$69 million of
4 excess deferred -- accumulated deferred income taxes
5 unprotected in one year?

6 A I that would be subject to check. But once
7 again, I don't -- I am not familiar with the
8 circumstances behind that decision either.

9 Q Okay. All right. Let's talk about the state
10 tax rate.

11 The company reflected a corporate state income
12 tax rate of 5.5 percent in your filing, right?

13 A That is correct.

14 Q And you would agree that at least through
15 2021, the rate will be 4.458 percent, right?

16 A I will acknowledge that by the time the rates
17 go into effect at the end of this rating proceeding,
18 there will be a short period of time that it will be the
19 lower rate.

20 Q Okay. And the soonest the rate would be
21 increase would be January 1, 2022, right?

22 A That's my understanding.

23 Q Okay. And you would agree that that's two
24 full years after the test year in this case, right?

25 A It is past the test year, but you need to --

1 in my opinion, the rates need to reflect what it's going
2 to be when the final rates go into effect. And the
3 final rates are going to go into effect close to the
4 time when it reverts back to the 5.5 percent tax rate.

5 **Q Okay.**

6 A So respective rates determined by this
7 Commission need to reflect what they are going to be,
8 not just in the last few months of this year, they need
9 to reflect what they are going to be in 2022, 2023,
10 2024, and so on. And in those outlying years, it's
11 going to be 5.5 percent.

12 MR. REHWINKEL: Mr. Chairman, I am about to
13 change to a major topic of the SWIM, so I don't
14 know if this is a good time to take a break. I am
15 more than happy to keep going, but I am going to
16 change gears here.

17 CHARIMAN CLARK: I have no objection to us
18 taking a quick five-minute comfort break, so let's
19 do that. Take five minutes, and we will return at
20 10:15.

21 (Brief recess.)

22 CHAIRMAN CLARK: All right. I think I have
23 got everybody, I am missing, Mr. Rehwinkel.

24 MR. REHWINKEL: I am here.

25 CHARIMAN CLARK: There we go.

1 All right. Mr. Rehwinkel, still your witness.

2 MR. REHWINKEL: Thank you, Mr. Chairman.

3 BY MR. REHWINKEL:

4 Q All right. I want to switch gears, as I said,
5 to talk about SWIM, Mr. Deason, and ask you that on page
6 two, lines 13 through 18 of your testimony -- of your
7 rebuttal testimony -- you seek to criticize the
8 customers' witness Mr. Radigan for being unfamiliar
9 that, quote, mechanisms similar to, unquote, the SWIM
10 concept as -- as being, quote, something that is not new
11 in Florida; is that right?

12 A Yes.

13 Q Is that a yes?

14 A Yes. The mechanism -- I made the statement
15 mechanisms similar to the SWIM proposal have already
16 been approved by the Florida Public Service Commission.

17 Q Okay. And you are saying he didn't know that,
18 or he is unfamiliar?

19 A That's my assumption based on his testimony,
20 because he didn't mention anything about that.

21 Q Okay. And is it's a fair implication by your
22 criticism of him is that you are familiar with these
23 mechanisms, is that fair?

24 A I would have to review those -- in developing
25 the SWIM, I looked at what has successfully been

1 implemented in Florida, although things aren't exactly
2 the same as SWIM, the general concepts are.

3 Q So you are saying there are three existing
4 mechanisms which you claim are similar to your SWIM
5 idea, two from the electric industry and one from the
6 gas industry; is that right?

7 A Yes.

8 Q Okay. Would it be fair to say you only became
9 aware of these mechanisms after you filed your direct
10 testimony on June 30th?

11 A No. I have known about those mechanisms for a
12 while.

13 Q You say you knew about them, but you didn't
14 include anything in your -- in your direct about them?

15 A I -- I -- I was familiar with them. They
16 weren't in my direct, but I was aware of those programs.

17 Q But being aware of them didn't mean you were
18 going to base your SWIM idea on them, is that right?

19 A I was going to use the general concepts
20 underlying those programs.

21 Q But you didn't think it was worth telling the
22 Commission about on your direct?

23 A No, I did not include it in my direct.

24 Q So in your rebuttal testimony, you compare the
25 SWIM idea with the Gas Reliability Infrastructure

1 **Program, or GRIP, that has been authorized by this**
2 **commission for just two gas companies, right?**

3 A Yes.

4 Q Okay. Isn't it true that the GRIP program was
5 prompted in large part by a change in federal law that
6 required pipeline operators to develop and implement
7 distribution integrity management programs, or DIMP?

8 A Yes, I would agree with that.

9 Q Would it be fair to say you did not look
10 behind the GRIP order to understand the facts and
11 circumstances leading up to the Commission's approval of
12 it?

13 A It's my understanding the circumstances behind
14 that and the need to replace that failing infrastructure
15 is very similar to what the water and wastewater
16 industry and the fact that we have aging infrastructure
17 that is failing and needs to be replaced as well.

18 Although, the -- you know, we are two
19 different companies, our services differ, gas and
20 wastewater and water, failing infrastructure is
21 something that we have in common and it needs to be
22 addressed, and it needs to be addressed on a proactive
23 basis.

24 Q I guess my question was -- let me repeat the
25 question and see if I get this right, because I was

1 looking for a yes or no answer.

2 You did not look behind the GRIP order to
3 understand the facts and circumstances leading up to the
4 Commission's approval of it, did you?

5 A No.

6 Q Would it be fair to say that you did not
7 investigate or understand that the Public Counsel had
8 intervened and reached an understanding with the two gas
9 companies who pioneered the highly gas industry specific
10 and unique safety related rider mechanism that was
11 designed to avoid catastrophic failure and severe injury
12 and death?

13 A It is my understanding that that case was
14 settled, and OPC was in agreement with the GRIP program.

15 Q The Commission's approval of GRIP on August
16 14, 2012, was related to and immediately following the
17 actual first approval of such a program proposed by
18 Peoples Gas System, or PGS, right?

19 A I believe so.

20 Q And isn't it true that at that same Agenda
21 Conference, on August 14, 2012, the Commission approved
22 the PGS cast iron and bare steel replacement rider
23 immediately before approving the GRIP?

24 A I would assume so. I wasn't at that Agenda
25 Conference, but I am not going to disagree with that.

1 Q That's something you really didn't know until
2 just now?

3 A Until now.

4 Q You were not aware that the Public Counsel
5 spoke on both rider issues that day, were you?

6 A I was not at that Agenda Conference.

7 Q Okay. You did not know that the Commission
8 approved the tariffs filed by PGS and FPUC and
9 Chesapeake on a basis that was consistent with the
10 limitations that the Public Counsel asked to be imposed
11 in order to avoid a hearing on concerns about the
12 expansive nature of the approvals of those gas
13 companies' departure of rate case approvals of capital
14 additions, did you?

15 MR. WHARTON: Mr. -- I object, Mr. Chair. All
16 the testimony is in the question. These questions
17 need to elicit whether or not the witness knows
18 anything about this, and he has uniformly said he
19 doesn't.

20 MR. REHWINKEL: May I respond?

21 CHAIRMAN CLARK: Mr. Rehwinkel.

22 MR. REHWINKEL: When I went to law school, Mr.
23 Chairman, I was taught that cross-examination
24 questions contained the testimony and you elicit a
25 yes or no. So I -- I am not sure that the

1 objection that was voiced is well founded, but I do
2 have some documents that we are going to go
3 through, and I can establish all of these facts
4 that are in my testimony, if you will bear with me.

5 CHAIRMAN CLARK: I am going to -- I am going
6 to allow kind of a little bit wider path here. You
7 know, Mr. Wharton you guys are -- are asking for
8 funds for a program that you have based on the
9 concept that these programs have existed before in
10 other forms and fashions. I am going to give some
11 wide latitude.

12 Mr. Rehwinkel, just kind of narrow down the
13 questions, if you would. I am hearing a lot of
14 testimony in your questions, so try to get them a
15 little bit more focused for me, please.

16 MR. REHWINKEL: Well, it -- is -- is the
17 objection sustained on that question I just asked?

18 CHAIRMAN CLARK: Sustained.

19 MR. REHWINKEL: All right. We will come back
20 to that one and we will go through it with
21 documents.

22 BY MR. REHWINKEL:

23 Q **Mr. Deason, you don't have a basis to**
24 **represent to the Commission in 2021 that the FPUC GRIP**
25 **program of 2012 is a valid comparison or precedent for**

1 **your SWIM idea, do you?**

2 A Could you repeat the question, please?

3 Q **You do not have a basis to represent to**
4 **this Commission in 2012 that the FPUC GRIP program of --**
5 **this Commission of 2021, that the FPUC GRIP program of**
6 **2012 is a valid comparison or precedent for your SWIM**
7 **program, do you?**

8 A I think that is a valid precedent. I think
9 the underlying principles of replacing aging
10 infrastructure is already set through the GRIP program
11 can be applied to the water and wastewater industry.

12 Q **Were you aware that the Commission's approval**
13 **of the PGS and FPUC rider plans were done against the**
14 **backdrop of recent pipeline accidents resulted in the**
15 **loss of life in San Bruno, California, Allentown,**
16 **Pennsylvania and even Perry, Florida?**

17 A Yes, I am aware that those -- those
18 occurrences did, and that that prompted, which
19 ultimately led to the GRIP program. I would also like
20 to reiterate that the problems with aging water and
21 wastewater can be just as devastating not only to health
22 issues, but also to environmental issues, which we are
23 already suffering from here in Florida in other
24 utilities, and our company must be proactive in
25 preventing those kind of things.

1 I think if there is one glaring difference
2 between what led to the GRIP and what my company
3 experience is, is it's -- for some of those companies,
4 it may have been a reactive measure based on bad events
5 that occurred across the country. My company is trying
6 to be proactive in preventing some of these events that
7 could occur if we don't address them in an efficient
8 manner.

9 Q Isn't it true that the PSC and the PGS GRIP
10 and FPUC Chesapeake GRIP approvals were for a very
11 specific type of gas distribution plant that was known
12 to be vulnerable to leaks and explosions?

13 A Yes.

14 Q Isn't it true that the Commission's approval
15 of those riders to facilitate the replacement of those
16 assets known to be subject to failure, and required by
17 federal law, was given with the expressed knowledge by
18 the Commission that the rider would expire upon the
19 replacement of the very specific assets that were
20 identified?

21 A I believe that's true. Yes, I believe that's
22 correct.

23 Q Okay. I would like you to open up OPC Exhibit
24 37.

25 A Give me a second and let me see if I can find

1 that, Charles, okay?

2 **Q Yes.**

3 MR. REHWINKEL: Mr. Chairman, this -- I
4 would -- I would like to identify it. It's an
5 order, and I would like to identify it for -- give
6 it a hearing number for identification purposes at
7 least.

8 CHAIRMAN CLARK: All right. I believe we are
9 at 2 -- are we at 200 or 201?

10 MS. CIBULA: 201.

11 MR. REHWINKEL: 201.

12 CHAIRMAN CLARK: 201.

13 (Whereupon, Exhibit No. 201 was marked for
14 identification.)

15 THE WITNESS: Charles, is this a GRIP order?

16 Is that what you are referring to?

17 BY MR. REHWINKEL:

18 **Q Actually, this is the -- the PGS bare steel**
19 **order.**

20 A Okay.

21 **Q This is Order No. PSC-2012-0476.**

22 MR. FRIEDMAN: (Inaudible).

23 THE WITNESS: I couldn't get logged in. It
24 wouldn't accept my log-in.

25 MR. FRIEDMAN: (Inaudible).

1 THE WITNESS: Bear with me for a second,
2 Marty -- Charles, I am having a little technical
3 difficulty, is that okay?

4 MR. FRIEDMAN: I can't do it. It won't open.

5 THE WITNESS: For some reason it's not opening
6 up for us, so please be patient.

7 MR. REHWINKEL: Okay.

8 THE WITNESS: Exhibit 37, Exhibit 37, and I
9 believe it's in nonconfidential.

10 We have that up now, Charles, okay?

11 BY MR. REHWINKEL:

12 **Q You have it, okay.**

13 **Can I get you to turn to Bates 1048, or order**
14 **page number nine?**

15 A Let me see if I can find it. Give me a
16 minute. Okay, I am looking at page nine.

17 **Q Okay. You see the first paragraph that --**
18 **that -- above the one, the first full one that says:**
19 **While PHMSA, P-H-M-S-A, but above that?**

20 A I see above that.

21 **Q Okay.**

22 A It's not a complete paragraph, though.

23 **Q Do you see the sentence that says: Here, we**
24 **are approving a similar surcharge for a discreet period**
25 **in response to unusual circumstances?**

1 A Yes, I see that.

2 Q Okay. And if you could turn back to the front
3 of that order. This is the -- it says: In re:
4 Petition for approval of Cast Iron/Bare Steel Pipe
5 Replacement Rider (Rider CI/BSR), by Peoples Gas System,
6 right?

7 A I see that.

8 Q And it was dated September 18, 2012, right?

9 A Yes.

10 Q Okay. Now, that language we just read, that
11 language is in your testimony, is it not? It's on page
12 four, lines 22 and 23 of your testimony, your rebuttal,
13 right?

14 A I am sorry, I am trying to get back there.

15 Tell me the page again, Marty -- I mean, Charles. I am
16 sorry.

17 Q We both have the same color hair, he just has
18 more of it.

19 A Yeah. I am going to catch up to you. Don't
20 worry.

21 Q Page --

22 A What page again?

23 Q Page four, line 22.

24 A Yes, I see that.

25 Q So that order -- that language was in the GRIP

1 **order, and it was in the PGS order, right.**

2 A Yes.

3 Q Okay. You quoted this language in your
4 **testimony, but you did not address its impact as a --**
5 **on -- as a precedent, right?**

6 A I didn't say it as particularly point that
7 out. Although, I am not going to disagree with SWIM
8 having the same limitations either.

9 Q The Commission said that these gas orders were
10 **based on unusual circumstances, and he noted in both**
11 **cases that the period of time for recovery was discreet,**
12 **right?**

13 A Yes.

14 Q I -- do you have to the GRIP order? I sent
15 this out to everybody last night or this morning. This
16 is -- this is order -- you cited the order in your
17 testimony, and this is order PSC-2012-0490 --

18 A Yes, I have that up.

19 Q -- September 24, 2012?

20 A Yes, I believe I have that up right now,
21 actually.

22 Q Okay. Now, this GRIP order was not only the
23 advent of the GRIP mechanism, but it also involved the
24 Commission setting rates for the GRIP program, right?

25 A Yes, I believe they set tariffs for those.

1 Q Okay. And if you have this order on page one,
2 in the second full paragraph, you would agree that
3 it's -- it reads: Recent changes to Natural Gas
4 Pipeline Safety Act require the Secretary of the
5 Department of Transportation, DOT, to review the DIMDS
6 to evaluate the continuing priority to enhance
7 protections for public safety and to reduce risk in high
8 consequence areas, right?

9 A Yes. I would agree with that.

10 Q And would you would agree, if you turn to page
11 three, at the top of the page, it says: The proposed
12 GRIP is based on an accelerated replacement period of 10
13 years and approved at approved depreciation rates,
14 right?

15 A I am headed there right now. At the very top
16 of the page, yes, I see that.

17 Q Okay. So this -- this part of the order notes
18 that it was approved for a very specific period of time,
19 right?

20 A Yes.

21 Q Okay. And on page six of the order. Tell me
22 when you are there?

23 A I'm getting -- okay, I am at page six.

24 Q In the middle paragraph in the middle of that
25 paragraph, over on the right-hand side, there is a

1 **sentence that starts: While at FPUC, do you see that?**

2 A Yes.

3 Q **It says: While FPUC speculates that there may**
4 **be a cost -- that there may -- it looks like a word is**
5 **missing -- a cost advantage of adjacent replacements**
6 **versus isolated replacements, we are not convinced that**
7 **such conditions to the extent present would yield a**
8 **27-percent decrease in cost; do you see that?**

9 A I see that.

10 Q **So would it be fair to say that in the GRIP**
11 **order, the Commission rejected speculation about cost**
12 **savings?**

13 A I would say that. I think that they just --
14 cost savings, when you are replacing capital such as
15 that, usually you need a period of time to judge it by
16 after the -- the capital improvement is made, so you can
17 look at it after it's made in a few years in the future,
18 you can see what the exact amount of cost savings are,
19 they are usually addressed in the next rate proceeding.

20 Q **So on page eight, if you could turn there.**

21 A Okay. One second. I am going to page down,
22 just one second. Okay, I am at page eight.

23 Q **Do you see there is a subheading, or a**
24 **heading, GRIP Rate Impact the bottom half of the page?**

25 A Yes, I am there.

1 Q And in the last three lines of that first
2 paragraph under GRIP Rate Impact, it says: FPUC's GRIP
3 will have an initial monthly bill impact of four cents
4 per bill for a typical residential customer using 20
5 therms increasing to an estimated monthly bill impact of
6 \$1.49 by July 1, 2020; do you see that?

7 A Yes.

8 Q And then right underneath that, it says: In
9 response to data requests, FPUC provided GRIP rate
10 impacts based on its average 2009 through 2011
11 replacement costs which we believe reflects a more
12 reasonable estimate of program costs compared to 2008
13 rate case replacement costs, did I read that right?

14 A I believe so.

15 Q All right. So the Commission determined a
16 rate impact and looked to replacement cost estimates
17 that were actually provided by the company, right?

18 A Yes. I believe in my, as part of the
19 discovery process, I was asked, I think on more than one
20 occasion, what the overall revenue impact would be, and
21 I think I threw out an example for every million dollars
22 of capital expenditure, it would result in approximately
23 \$135,000 revenue requirement interest.

24 Q Those were just relationships from capital
25 cost to revenue requirement, right?

1 A And that revenue requirement associated with
2 that capital would be what would be used to increase the
3 annualized revenues for the company.

4 Q **You didn't identify any actual investments,**
5 **capital additions that will be included like this**
6 **company did, right?**

7 A Nothing specific at this point.

8 Q **Right.**

9 A Mostly I identified the majority of what we
10 have to do is basically collects and distribution mains,
11 and pipes, and things such as that.

12 Q **That's in your testimony, though, right?**

13 A Huh? I believe I did --

14 Q **You have that in your direct and rebuttal,**
15 **right?**

16 A Either that, or during the discovery process,
17 I believe I did identify -- it may have been in response
18 to an interrogatory response that I identified that most
19 of it would be linear assets. I would have to go back
20 and find exactly where I said that, though.

21 Q **So on page nine of this order, you would agree**
22 **that, at the top of the page, the Commission discusses**
23 **the tariff that they considered, right?**

24 A Yes.

25 Q **And you would agree that in this order, that**

1 **the Commission approved a tariff with specificity of**
2 **rates, right?**

3 A Yes.

4 Q **Okay.**

5 A Also I just want to reiterate that the way I
6 proposed the SWIM mechanism in conjunction with the
7 index and pass-through filing, it wouldn't be a separate
8 surcharge as the GRIP mechanism is in, it would have to
9 be embedded in rates also along with the existing
10 pass-through, so that's one of the nuance differences
11 between GRIP and SWIM as I am proposing it. Although, I
12 am not opposed to handling it as a separate tariff
13 filing separately from the index and pass-through, I was
14 doing that merely for efficiency reasons.

15 Q **You are not proposing that somehow GRIP --**
16 **your SWIM costs would be hidden? They would be**
17 **discreet, right?**

18 A They -- the way I proposed it in my --
19 including the calculation along with the index and
20 pass-through, they would be embedded in rates. That's
21 why I was using the example as far as how much revenue
22 is associated with each million dollars of capital
23 experience, to show how that would have an effect on the
24 overall revenue requirements. It's going to vary from
25 year to year as far as the percentage based on what are

1 the annualized revenues are at, and based on how much
2 capital expenditures is approved by the Florida Public
3 Service Commission.

4 **Q That's all theoretical. You didn't have**
5 **specific projects or specific costs that are before the**
6 **Commission for them to consider, like we just saw the**
7 **Commission did when they considered and voted on the**
8 **GRIP program, right?**

9 **A No. No. I am sorry. Can you hear me?**

10 **Q Okay. Yeah. Okay. Yes.**

11 MR. REHWINKEL: All right. So Mr. Chairman, I
12 would like to next ask that the witness open up and
13 we identify OPC cross Exhibits 23 and 24, and that
14 they be given a number for identification.

15 CHARIMAN CLARK: They will become numbers 202
16 and 203.

17 MS. CIBULA: Yes.

18 (Whereupon, Exhibit Nos. 202 & 203 were marked
19 for identification.)

20 CHAIRMAN CLARK: Thank you.

21 THE WITNESS: Hang with me for a second there,
22 Charles, please.

23 MR. REHWINKEL: Okay.

24 MR. WHARTON: I have got --

25 MR. FRIEDMAN: You have 23, okay.

1 THE WITNESS: Thank you.

2 I have got Exhibit 23 up, Charles.

3 MR. REHWINKEL: Okay. Mr. Chairman, Exhibit
4 23 is the transcript from the August 8th, 2000 --
5 August 14th, 2012, Agenda Conference in Docket
6 20110320, which is the PGS rider.

7 BY MR. REHWINKEL:

8 Q Okay. So Exhibit 202, you have been around
9 the Commission long enough to understand what an agenda
10 transcript is, right?

11 A Yes. I have seen those before.

12 Q Okay. And if we look at the back of this at
13 Bates 922, or page 14 of this transcript.

14 A Let me get down there to it, okay?

15 Q Okay.

16 A Yeah, I am there on page 14.

17 Q And you say this is the reporter certificate
18 from Jane Faurot?

19 A On page 14, I don't see that on page 14.

20 Q Of Exhibit 23, the transcript? Do you have
21 a -- do you have a transcript?

22 CHARIMAN CLARK: The transcript shows --

23 THE WITNESS: I am looking at it on a computer
24 right now.

25 CHARIMAN CLARK: The transcript shows it's

1 page 14 --

2 MR. REHWINKEL: It's on the last page.

3 CHARIMAN CLARK: -- your program shows 15.

4 THE WITNESS: I was one page ahead of you,
5 Marty -- I mean, Charles. Man. I am not with it
6 this morning.

7 MR. REHWINKEL: I am not offended, I have
8 known Mr. Friedman for many, many years. I admire
9 him. He may be offended.

10 MR. FRIEDMAN: I wish I was as young as you,
11 Charles.

12 THE WITNESS: I am just used to speaking to
13 Marty more than you, Charles. That's basically all
14 it comes down to.

15 Okay. I am down there.

16 BY MR. REHWINKEL:

17 Q **You see this as an official transcript, it can**
18 **be relied on by the Commission as -- as to the veracity**
19 **of the words that are presented on it, right?**

20 A I believe so.

21 Q **And you would agree that the PGS rider was**
22 **approved 5 to 0 with both Commissioners Graham and Brown**
23 **from the current Commission in that vote, right?**

24 A I am looking for the vote sheet. I am not
25 seeing it.

1 Q **Well, if you look at the first page.**

2 A Okay, I got to go all the way up to the very
3 top, sorry.

4 Q **Okay.**

5 A So let me get there.

6 MR. WHARTON: Well, while you are looking. I
7 object, Mr. Chairman. This document may be
8 admissible, and it may be material, but it seems
9 like having the witness read the court reporter
10 exhibit and that this is what it said isn't a
11 proper way to try to put it into evidence. All
12 this witness is going to be able to say upon
13 reading this is that's what it says. I am not sure
14 what we are doing here, and we object.

15 CHAIRMAN CLARK: Mr. Rehwinkel.

16 MR. REHWINKEL: Is -- is there an objection?
17 I don't -- I mean, I am done -- I am done with that
18 kind of stuff. I want to ask him about what he
19 said here. He criticized my witness for not
20 understanding how the Commission did these
21 mechanisms, and we are going to look at how the
22 Commission looked at the mechanisms because it's
23 important.

24 MR. WHARTON: I will withdraw the -- I will
25 withdraw the objection until there is a more

1 specific question.

2 CHAIRMAN CLARK: All right. Objection
3 withdrawn.

4 BY MR. REHWINKEL:

5 Q If I can ask you to go and open up 24, which
6 is Exhibit 203, but I am going to ask if you could
7 accept that counsel for Chesapeake FPUC acknowledged
8 that -- told the Commission, as you are well aware, the
9 programs have been found -- that have been put forward
10 by FPUC and Chesapeake share some distinct similarities
11 with the program you just took up, meaning the Peoples
12 Gas item that was just voted on before the GRIP was
13 approved.

14 A Is this in Exhibit 23 or 24?

15 Q It's in 24. We would have to go through and
16 open up and scroll that down, so I am asking if you
17 accept that?

18 A I have to look at it first.

19 Q It's on page --

20 A I have to look at it.

21 Q What's that?

22 A I said for me to accept it, I need to look at
23 it and read it first.

24 Q Well, okay. Well, then let's open it up. If
25 you will go to the transcript for the GRIP approval.

1 **COMMISSIONER FAY:** Mr. Rehwinkel, what OPC
2 **exhibit is that?**

3 MR. REHWINKEL: This is -- this is OPC 24, and
4 it is hearing Exhibit 202 -- 203.

5 COMMISSIONER FAY: Okay. Thank you.

6 THE WITNESS: Is there a particular page you
7 want me to go to, Charles?

8 BY MR. REHWINKEL:

9 Q **Yes, page four.**

10 A Okay.

11 Q **And line 15 -- 15 through 19.**

12 A Yes, I see that.

13 Q **You see it says: As you are well aware, the**
14 **programs have been put forward by FPUC and Chesapeake**
15 **share some distinct similarities with the program that**
16 **you just took up. And as such, I suppose there are some**
17 **benefits to us coming second in line today.**

18 And now on line 22, it says: Your staff has
19 conducted a very thorough analysis and put forward a
20 thoughtful recommendation, and we are in full support of
21 that.

22 **Do you see that?**

23 A Yes.

24 Q **Okay. And if we look on the next page, five,**
25 **do you see on lines nine through 15, the Public Counsel**

1 said, on line 11: I have nothing different to say about
2 FPUC's working with our office, as well as our comments
3 on authority for the rider, if you will, as well as the
4 modifications that we would offer to resolve our
5 technical issues with the program?

6 A Yes.

7 Q Okay. So I think we can put FPUC aside. I
8 want to talk about PGS, because you would agree that
9 these two transcripts show that PGS and GRIP riders
10 were -- were considered by the Commission essentially
11 together, would you accept that?

12 A At the same time, yes.

13 Q So let's go back to the PGS transcript.

14 A This is a different one you are referring to?

15 Q Yes, 23, which is Exhibit 202. And if you
16 could turn to page four of this transcript?

17 A Okay. I am there.

18 Q It's Bates 912 of this exhibit.

19 A At what line numbers, Charles?

20 Q I am going to ask you to take a look at the
21 lines two through eight first.

22 You would agree that it says: In Peoples'
23 last case, rate case, the 2008 case, the Public
24 Counsel's office took the position that the creation of
25 these mechanisms was more properly in the realm of the

1 **Legislature. We take a cautious approach to whether the**
2 **Commission should be creating clauses for trackers or**
3 **riders of this sort, so we stated our objection to that.**

4 And then the important part, on line nine: I
5 will say to you, though, to the extent that language in
6 your order addressing this issue, the PAA order,
7 sufficiently walls off this type of program and keeps it
8 from many becoming a precedent that grows without
9 control, you would minimize or diminish our reasons for
10 asking for a hearing on this item.

11 Did I read that right?

12 MR. WHARTON: Well, Mr. Chairman, I will
13 object and then just let you rule and be quiet.

14 I -- I object to this line of questioning. I
15 move to strike these references. I don't think
16 that anything that someone said at an agenda eight
17 years ago has any relevance. The Commission speaks
18 through its orders. That's the statement of the
19 agency, and I object on the basis, and move to
20 strike, of these statements that were made at the
21 agenda on the basis that it's not -- it's not
22 relevant, and no finding of fact can be based upon
23 it.

24 CHARIMAN CLARK: Mr. Rehwinkel.

25 MR. REHWINKEL: Mr. Chairman, if I may be

1 heard.

2 CHAIRMAN CLARK: Go ahead.

3 MR. REHWINKEL: All right. Mr. Deason, at a
4 question a long time ago, said that he understood
5 that there was a settlement between the Public
6 Counsel and FPUC on the GRIP case. And he is right
7 about that.

8 What -- what -- and I know the quote their
9 says PAA order, but PAAs and tariffs are done very
10 similarly, is that a party who has an objection
11 asks for a hearing, either a protest of a PAA or a
12 hearing on a tariff.

13 And what's crucial here is that the Public
14 Counsel did not ask for a hearing on either GRIP or
15 the PGS order. So there was essentially an
16 agreement by the Public Counsel to let this happen.

17 And what ties it all together is the language
18 that we read in both the PGS order as well as the
19 GRIP order that's in Mr. Deason's testimony that
20 says that -- well, that he cites in his -- in his
21 testimony, on page four, lines 22 to 23: Here, we
22 are approving a similar surcharge for a discreet
23 period in response to unusual circumstances. And
24 that's the language we asked for at that agenda
25 that made it important that we abstained from

1 asking for a hearing.

2 So that's the basis here for -- for this, is
3 that it establishes the nature of this order, which
4 is it was not contested by the Public Counsel.

5 CHAIRMAN CLARK: All right. Give me -- let's
6 standby one second. Let me consult with -- let's
7 take about a two-minute break, I would like to
8 consult with staff for just a second.

9 (Brief recess.)

10 CHAIRMAN CLARK: All right. Gather back real
11 quick.

12 I am going to overrule the objection. I think
13 the Commission can give this the weight it
14 deserves.

15 There is a lot of overlap in Mr. Deason's
16 testimony in relation to the orders that are quoted
17 here. I think we can all discern the difference
18 between an order and a transcript as well.

19 So, you know, I said I am going to allow some
20 wide latitude. It's a very, very broad issue, but
21 I would try -- like for us to try to move through
22 this with, I guess, a little more efficiency in
23 that regard, Mr. Rehwinkel, as well, if we could.

24 Thank you.

25 MR. REHWINKEL: And thank you for the ruling.

1 Mr. Chairman, I would like to note for the
2 record, and this is one reason why we went through
3 extended cross-examination on 17 lines of
4 testimony, is they filed their direct case, we
5 filed testimony and then they filed rebuttal, and
6 we don't have the opportunity to rebut that. So
7 this is where we deal with that. And I
8 appreciate -- I appreciate that. We are about to
9 move past that, because that was the last question
10 I had on those exhibits.

11 BY MR. REHWINKEL:

12 **Q I would just like to finish with this**
13 **question: You are not aware, Mr. Deason, that the OPC**
14 **asked for a hearing on either the PGS or the GRIP**
15 **program, right?**

16 A I don't believe they asked for a hearing on
17 the matter.

18 **Q In your testimony, you mention the Ft.**
19 **Lauderdale infrastructure failures on page three of your**
20 **rebuttal, right?**

21 A I do.

22 **Q Okay. Now, you cannot testify that any of**
23 **those failures resulted any loss of life or serious**
24 **injury, can you?**

25 A I cannot say that it ended a life issue, but

1 whenever you have a wastewater spill, there is risk
2 associated with the health and safety of the public in
3 that area that go along with it -- with that.

4 Q But my question was you can't testify there
5 was any injury, can you?

6 A I am not aware of any injury.

7 Q The City of Ft. Lauderdale utility doesn't
8 have to file rate cases to raise or adjust its
9 rates, do they?

10 A No, they do not.

11 Q They have the political authority to raise
12 rates whenever they need to, don't they?

13 A They do.

14 Q They do, okay.

15 A Yes, they do.

16 Q You cannot testify that the sewage that
17 spilled in Ft. Lauderdale was caused by the same
18 regulatory concerns that you claim support the SWIM
19 idea, can you?

20 A I believe that happens to failing
21 infrastructure, pipeline breaks, which we are hoping to
22 address through the SWIM mechanism, to prevent, to be
23 proactive and prevent these things from happening in our
24 service territories.

25 Q Okay. Well, listen to my question again. You

1 cannot testify that the sewage that spilled in Ft.
2 Lauderdale was caused by the same regulatory concerns
3 that you claim support your SWIM idea, right?

4 A Okay. Yeah, the regulatory for Ft. Lauderdale
5 and UIF is different.

6 Q That spill in Ft. Lauderdale happened in
7 February of 2020?

8 A I believe so.

9 Q Okay. That was filed a month before you filed
10 your direct testimony, right?

11 A Yes, it was.

12 Q And you only dedicated in your rebuttal 38
13 words or so to describe that incident, right?

14 A Yes, I did.

15 Q Isn't it true that nowhere in your testimony
16 have you demonstrated that the circumstances that
17 occurred in Ft. Lauderdale would have been avoided if
18 that utility had access to a SWIM mechanism?

19 A There is not -- as I said before, they are a
20 different regulatory framework, so you can't draw a
21 comparison necessarily with SWIM as far as getting money
22 to use to pay for accident replacement. I am just
23 saying what -- I am just using that as an example to
24 show what would happen if we didn't address our aging
25 infrastructure, that these type of events would occur,

1 and we don't want them to occur.

2 Q You didn't provide any evidence as to the
3 cause of the spill in Ft. Lauderdale, did you?

4 A Not in my testimony, no, but I believe it was
5 a main break that caused that.

6 Q You -- there -- you didn't provide any
7 evidence as to the cause for the main break, did you?

8 A No.

9 Q Isn't it true that nowhere in your testimony
10 have you demonstrated that there has been any water or
11 sewer spill accidents that resulted in a loss of life or
12 serious injury among any ratepayers in Florida?

13 A No, I did not.

14 Q And if I asked you the same question with
15 respect to your ratepayers, the answer would be the
16 same, right?

17 A Yes.

18 Q And your testimony did not include an analysis
19 of the age of the Ft. Lauderdale utility, did it?

20 A No, it did not.

21 Q And your testimony, in fact, doesn't include
22 an analysis of the age of the UIF infrastructure, does
23 it?

24 A No, it does not.

25 Q So your testimony would, by definition, not

1 have a comparison of the age of Ft. Lauderdale's
2 infrastructure and your infrastructure, right?

3 A No, it would not.

4 Q And isn't it true that nowhere in your
5 testimony on the SWIM idea have you identified a
6 specific type of pipe that needs to be replaced, or a
7 federal regulation that identifies a type of pipe
8 subject to failure in a manner that would cause loss of
9 life or serious injury?

10 A No.

11 Q Isn't it true that nowhere in your testimony
12 have you shown that there have been any federal safety
13 regulations issued mandating that each water or
14 wastewater utility develop specific water and sewer
15 distribution integrity management programs?

16 A No.

17 Q Isn't it true that nowhere in your testimony
18 have you demonstrated that any of your UIF systems in
19 Florida experience the type of infrastructure failures
20 that occurred in Ft. Lauderdale?

21 A No.

22 Q Isn't it true that nowhere in your testimony
23 have you demonstrated that any of your UIF systems in
24 Florida are subject to experiencing the type of
25 infrastructure failures that occurred in Ft. Lauderdale?

1 A Not at this time, no.

2 Q On page six of your rebuttal you state that
3 there are benefits to replacing assets in a programmatic
4 manner, is that right?

5 A Yes.

6 Q Isn't it true that nowhere in your testimony
7 do you define what is meant by a programmatic manner?

8 A I don't go into detail, but just to elaborate,
9 it's just doing things in a planned manner from one year
10 to the next, staggering your progress -- your projects
11 in a manner with the most necessary first and moving on
12 down the line as you complete those projects.

13 Q Okay. Isn't it true that nowhere in your
14 testimony have you demonstrated that UIF is unable to
15 replace assets in a programmatic manner without a
16 special cost recovery mechanism such as SWIM?

17 A Right.

18 Q Now you also state in your testimony that the
19 SWIM would be cheaper for customers -- and that's on
20 line four of page five -- than a full rate case, right?

21 A Yes.

22 Q Is that a yes?

23 A Yes.

24 Q Okay. I think I am hearing the yeses and nos.
25 I want to make sure the court reporter can because I'm

¹ not sure she is. She's just come on the screen.

2 (Discussion off the record.)

3 BY MR. REHWINKEL:

4 Q Isn't it true that nowhere in your testimony
5 have you performed or presented a study or analysis that
6 would meet your burden of proof to demonstrate that a
7 cost savings would occur?

8 A No study or analysis, but if rate cases are
9 not occurring as frequently as they have been, then
10 those -- the cost savings for rate case expense would
11 not be experienced nearly as much to customers and you
12 would achieve the cost savings. I don't think it's
13 necessary having a study or analysis regarding the study
14 of rate case expense is necessary.

15 Q Do you think it's just an intuitive thing?

16 A Yes.

17 Q In your direct testimony, the company didn't
18 propose a rate case stay-out if the SWIM idea was
19 approved, did it?

20 A I did not address any kind of stay-out period
21 in my direct, however, I did address that during the
22 discovery process.

23 0 Okay. And what was that proposal?

24 A I believe we said initially that it would have
25 to be a reasonable timeframe of -- to do that. There

1 is -- there is certain reservations about doing a
2 stay-out period.

3 First of all, we don't know the outcome of
4 this rate case at this point, so that's still kind of a
5 question mark. There is other things that may happen in
6 the future that you would want to have the flexibility
7 to address. And I am just going to throw some
8 hypotheticals out there, like, for example, President
9 Biden has said on numerous occasions that he wants to
10 raise corporate income taxes. If he were successful in
11 that, and personally I hope he is not, but if he is, I
12 would want some kind of flexibility to be table to file
13 a limited proceeding to address that issue instead of
14 being handcuffed by a stay-out period unless certain
15 allotments for those kind of special circumstances are
16 made.

17 I am not completely disagreeing with the
18 concept of a stay-out period at all. I think that's
19 something that, you know, all parties need to be
20 agreeable to in its length and flexibility.

21 **Q Okay. So if you could turn to exhibit -- OPC**
22 **cross Exhibit 7, which is also 197 on the hearing**
23 **exhibits. And when you get there, I am going to direct**
24 **you to the Q&A on INT, or interrogatory 199.**

25 A Okay. Which number is that again, Charles?

1 Q 199.

2 A Yes, I see that.

3 Q Okay. So this is asking: Regarding page
4 eight of Mr. Deason's rebuttal testimony, please
5 quantify the length of the stay-out the company will be
6 willing to accept if the SWIM is adopted.

7 In the response, it says: It is difficult to
8 agree to a stay-out period without knowing the outcome
9 of the rate case, but UIF believes a two-year stay-out
10 period for a file and suspend rate case, i.e., using a
11 test year no earlier than a 2021 calendar test year, is
12 a reasonable amount of time to agree to. However, UIF
13 is open to negotiation if SWIM can be stipulated prior
14 to the final hearing.

15 Do you see that?

16 A I see that.

17 Q So obviously there was no stipulation reached
18 on Issue 41 and a SWIM, right?

19 A No, not at this point there has been none.

20 Q Okay. Okay. So that -- that means that this
21 two-year stay-out is kind of poof, it's evaporated,
22 right?

23 A I would have to defer to my attorney on that.

24 Q Okay. I guess that was a rhetorical question.
25 I will withdraw that.

1 A I think that overall the overlying concept in
2 that response, it's a life sentence. I think it's
3 something that needs to be negotiated and talked about
4 by all parties involved to come -- to come up with an
5 agreeable reasonable amount of time, and any kind of
6 flexibility that may -- (inaudible) -- the circumstances
7 during that timeframe.

8 Q **Okay. Is it true that UIF's last rate case
9 was filed in 2016?**

10 A Yes, it was filed in 2016 using a year-end
11 2015 test year.

12 Q **All right. It has been four years since that
13 case and the current case, right?**

14 A Four years from test year to test year.

15 Q **Okay. And in the prior case -- I know you
16 weren't consolidated, but the last major UIF rate case
17 was in 2012, right?**

18 A I know we had some rate cases, but as far as
19 major, it would depend on the particular system that was
20 involved in that, because some of our systems are much
21 bigger than others, and that was before my time, in
22 between the time I left the Commission and the time I
23 started with UIF. So it was in my -- when I was working
24 somewhere else, so you would have to remind me which
25 system that was -- that was involved. Was it Sanlando,

1 the five UIF counties or some other system?

2 Q Let's go with the five counties. I think the
3 last five county case was 2012, would you agree with
4 that?

5 A Subject to check, yeah, I agree it probably
6 was around that time.

7 Q Okay. So I know the comparison isn't perfect,
8 I am just trying to get an idea for the Commission's
9 consideration, is there have generally been four years
10 between the core of the companies that make up the 27
11 system consolidated, there have been four years between
12 three cases?

13 A I think the best -- the best comparison would
14 probably just be since we have been consolidated, would
15 really be the best, and it's been four years since that.

16 Q Okay. So given that it's been four years,
17 what good would a two-year stay-out do? I mean, what --

18 A Like I said before, it's -- this is still up
19 to negotiation, and I guess some of those extenuating
20 circumstances I was just looking at for some of those,
21 that we wouldn't be handcuffed for those particulars
22 things that may arise beyond our control.

23 Q Okay. In your rebuttal on page eight in lines
24 13 and 14, you say that the company would be amenable to
25 a cap on annual increases under SWIM; is that right?

1 A That is correct.

2 MR. REHWINKEL: Okay. And in response to OPC
3 198, which is cross-examination Exhibit 7 and
4 hearing Exhibit 206, Mr. Chairman?

5 MS. CIBULA: The next number is 204.

6 MR. REHWINKEL: Oh, we already gave it a
7 number. I apologize.

8 CHAIRMAN CLARK: I am sorry. I thought you
9 said 206, Mr. Rehwinkel.

10 MR. REHWINKEL: I did. I apologize. It's
11 196.

12 CHAIRMAN CLARK: Okay. What exhibit number
13 are you calling right now?

14 MR. REHWINKEL: OPC 6 or 196.

15 CHAIRMAN CLARK: All right. Thank you.

16 MR. REHWINKEL: You want to call Mr. Wharton
17 Ms. Swain, and I want to call it 206 and he wants
18 to call me Marty. We are -- we are a mess today.

19 CHAIRMAN CLARK: We are definitely confused
20 today.

21 BY MR. REHWINKEL:

22 Q So 198, the question there says: Regarding
23 page eight in Mr. Deason's rebuttal testimony, please
24 quantify the cap on annual rate increases that the
25 company would be willing to accept if the SWIM is

1 adopted.

2 And the response reads: UIF believes a cap of
3 10,000 -- \$10 million is a reasonable amount to agree
4 to. However, UIF is open to negotiation.

5 Did I read that correctly?

6 A Yes.

7 Q Okay. And can you just clarify for me, I am
8 trying -- we asked the question a cap on annual rate
9 increases, and you said \$10 million?

10 A When we said cap, the meaning is 10 -- \$10
11 million in capital expenditures on SWIM eligible
12 projects.

13 Q Okay. So -- all right. So you answered a
14 rate increase question with a capital addition question?

15 A With a capital addition, meaning I should have
16 provided more justification there.

17 Q All right. Now, what would the revenue --
18 would the revenue requirement for that be about, what --
19 well, do you know what the revenue associated with \$10
20 million would be?

21 A It's -- it's going to be variable based on
22 what kind of assets that are including in there. But if
23 you were to take, say, just linear assets, pipes, given
24 their depreciation rates for every million dollars, it
25 would be approximately, by my calculation, \$135,000. So

1 if the cap was \$10 million, then it would be \$1.35
2 million approximately, assuming it was just linear
3 assets.

4 Q All right. So when you looked at the GRIP
5 program, did you assume that there was a regulatory cost
6 to FPUC Chesapeake, and I will throw PGS in there even
7 though you may not have looked at them specifically, did
8 you assume that those companies would file petitions
9 annually for their asset replacements?

10 A I knew that they were filing petitions on an
11 annual basis for those. I am assuming there is some
12 kind of regulatory costs to do so, and that's one of the
13 reasons I suggested doing it with the index and
14 pass-through filing, because there is no regulatory
15 costs that are passed long to customers in that kind of
16 proceeding.

17 So it combined there, there would be nothing
18 to additional pass along to customers in the form of
19 regulatory costs if done that way. Although, I am not
20 saying they have to actually to be done that way. I am
21 agreeable to doing as a tariff filing same as a GRIP if
22 the Commission feels that that's a better way to do it,
23 but I would also try to do it in the most efficient
24 manner to reduce regulatory costs so we don't have to
25 pass those on to customers.

1 Q Okay. So maybe I didn't appreciate this
2 nuance here, because -- bear with me on this question
3 and accept this from me is that when Peoples or FPUC
4 filed the petition, the Public Counsel intervenes, we
5 sometimes do discovery. There is interaction. There is
6 a petition filed by a lawyer. All those things generate
7 costs and participation by the Public Counsel.

8 So with that background, if you can accept
9 that that occurs, are you saying that that would not be
10 allowed or done in a SWIM program because nobody ever
11 intervenes and gets involved in index and pass-through
12 filings, those are handled rather routinely by the
13 staff?

14 A Well, they are handled administratively by the
15 staff, is the way they are done. So, you know, we do
16 work with the staff -- the biggest cost we incur is
17 noticing, and we never ask for recovery for noticing,
18 and staff is it good at working with us so that we can
19 include those with our bills after they are approved so
20 we don't suffer that cost.

21 Right now, every time we have to do a notice,
22 a separate notice to all of our customers, that's
23 \$25,000 to \$30,000 just for one notice, depending on how
24 many pages, okay. So I am trying to keep the costs --
25 and I do know noticing doesn't get included with the

1 GRIP. I am trying to eliminate those costs so there's
2 no extra costs being passed down to customers. That's
3 why I suggested to do it administratively. It's an
4 efficiency recommendation is basically what it comes
5 down to.

6 Q Okay. So you would be saying that -- that if
7 the Commission adopted SWIM, the Public Counsel, or
8 customers wouldn't really be allowed to participate in
9 that because that wouldn't be contemplated in
10 administrative processing consideration of these type of
11 plant additions, is that fair?

12 A I assume that participation would be different
13 because you are not doing a tariff filing, and it's not
14 as formalized as one of those petitions. But like I
15 said, there is certain allowances to agree to your
16 participation in the administrative process of it. So
17 if we could keep the costs low so we don't pass those on
18 to customers, I would be agreeable to that. I am just
19 trying to keep the costs from being passed down to
20 customers if I can avoid it.

21 Q So if a GRIP program was authorized along the
22 lines -- I mean, if a SWIM program was authorized along
23 the lines of GRIP that allowed there to be staff data
24 requests, interrogatories, discovery if there was
25 application controversy about the nature of the asset or

1 **the cost that generated rate case type expense and**
2 **regulatory costs, you would say -- is he that something**
3 **that would then change the assumptions behind what you**
4 **are proposing and your willingness to do it?**

5 A It depends on how much it has, how much rate
6 case is done. You know, I can only speak to some of my
7 personal experiences in limited proceedings with the
8 Commission. And to be frankly honest, the last one we
9 did lasted a lot longer than a full litigated rate case,
10 and we incurred a lot more rate case expense than I was
11 hoping for, and I am trying to reduce that.

12 I am not -- I am definitely agreeable to OPC
13 and customers participating in this the best way
14 together by all parties, but once again, I am trying to
15 keep things low, and I am just asking it to be done in a
16 manner that's very efficient and timely and
17 cost-effective.

18 Q **So would you agree that, in this case, you are**
19 **asking for \$29.4 million, give or take, of plant**
20 **addition -- of proforma additions?**

21 A That's what's included in the proforma that we
22 are asking for.

23 Q **And between -- well, let's see, since the last**
24 **rate case, which you set out which you said had a 2015**
25 **test year, You added some \$86 million -- including 2015,**

¹ you added \$86.7 million of plant additions?

2 A Between what timeframe are you looking for?

3 Q I am sorry. I said '15. '16, '17, '18 and
4 '19, for water and sewer together.

5 A What we expended approximately during that
6 timeframe, we had approximately \$11 million in 2016, \$24
7 million in 2017, about 18-and-a-half in 2018, and \$10
8 million in 2019.

9 Q Okay. And then on top of that, you are asking
10 for 29 and change of proforma, right?

11 A I believe that's correct. To be more accurate
12 as far as total capital expenditures in 2020, we are
13 looking at 17 -- over \$17 million in 25 and 2021, but
14 not all of that is proforma projects. There is some
15 that aren't included. That includes everything proforma
16 and stuff we are spending above proforma.

17 O Okay. So what I am trying to understand --

18 (Multiple speakers.)

19 Q Go ahead.

20 A I was just saying in the parts that we are
21 spending above proforma in the proforma period will just
22 be addressed in a future rate case. I am just giving
23 you some idea of what we are spending on an annual
24 bases.

25 Q That's what I am trying to understand.

1 **So if you had, let's say, a two-year stay-out,**
2 **and in the interim period, you did two SWIM filings**
3 **under your approach, no more than \$10 million in plant**
4 **additions that would be a maximum of \$20 million for**
5 **water and wastewater together --**

6 A Yes.

7 Q -- and if you had a situation like you had
8 **four years like the last four years, you would be taking**
9 **maybe 20 million of 80 out of the next rate case just --**

10 (Multiple speakers.)

11 A Yeah, just depending on when we did the rate
12 case. We wouldn't be asking for everything that we
13 spend in capital, because we are spending a lot more
14 than what's even in your proforma period.

15 Q Okay. So my -- will you accept, sort of in
16 **roof terms, that you might take 20 percent of plant**
17 **additions over the next four years out if you did the**
18 **SWIM approach?**

19 A I will tell you what the estimates are for two
20 years beyond the proforma period, okay. Right now
21 estimating in 2022 roughly 26-and-a-half million, and
22 roughly 14 million in 2023.

23 Q **So that's 40 million?**

24 A That would take about -- you get about half
25 that to SWIM based on those proposed.

1 Q My question to you is if you take that out for
2 SWIM, what analysis has been done to say that the
3 residue, or the non-SWIM rate base additions wouldn't
4 still generate discovery questions, you know, you could
5 have 14 projects that add up to \$20 million that each
6 one of them requires discovery and understanding on, did
7 you do an unless that shows that deducting the SWIM out
8 of the next rate case would actually change rate case
9 expense?

10 A Well, I just want to back up a little bit and
11 just talked about the way I envisioned it.

12 Whenever we file for a SWIM, we are only
13 looking at SWIM eligible projects. So anything that we
14 spend that we don't want recovery of, we are just not
15 going to submit documentation. That will get addressed
16 at some point in a future rate case, especially during
17 the audit process, during the rate -- during the
18 beginning of the rate case.

19 So there is really no point in providing
20 documentation on something we are not seeking recovery
21 of. So we would look at projects that would be SWIM --
22 we believe are SWIM eligible. We would provide all the
23 invoices and documentation to show what we expended.
24 The PSC, if we come to terms on how OPC can participate,
25 would have few audio -- would be able to review those

1 and audit those and ask discovery on it for those
2 projects. Then that's what would ultimately get
3 included, and the PSC would have the authority to, you
4 know, accept, reject or modify what that net filing
5 says, just like they would in a rate case.

6 **Q So my question to you is that if you are**
7 **taking out no more than \$10 million for each SWIM**
8 **filing, the residual of projects of new capital**
9 **additions that would have to be evaluated and looked at**
10 **in the next rate case --**

11 A Yes.

12 **Q -- would not -- would not be materially**
13 **reduced such that it would change the volume of**
14 **discovery and the need to incur rate case expense, and**
15 **can you refute that?**

16 A I am trying to understand the -- your -- your
17 question there. Are you still saying you need to look
18 at the amount we are spending above SWIM eligible
19 projects during the time they are evaluating just the
20 SWIM projects --

21 **Q No.**

22 A What's that?

23 **Q In the next rate case.**

24 A In the next rate case, that usually gets
25 reviewed in the audit process. All historical rate

1 base, all of that information is provided to PSC
2 auditors, and that is it's audited by them at the
3 beginning of the rate case.

4 Q Okay. Well, in this case, you know, we -- we
5 are here because we had a lot of projects that were on
6 direct that have softness in their numbers and their end
7 service date, so we had discovery rebuttal that updated
8 them. That generated a lot of rate case expense,
9 wouldn't you agree?

10 A Yes. That's in the capital expenditures.
11 That's not historical. That's all during the proforma
12 period, which is two years beyond the test year period.
13 Everything that is test year period and before is done
14 through the audit process at the beginning of the rate
15 case.

16 Q Right, but --

17 A But rate case expense are very little, because
18 I am the interface with the PSC staff, so we are not
19 having to generate with attorneys or anything any rate
20 case expense for those historical amounts. It's only
21 the proforma amounts.

22 Q I understand your point.

23 Now, have we agreed in your -- in your
24 testimony that you have not provided any specifics of
25 the type or amounts of plant that would be included in

1 **the SWIM idea other than a cap of \$10 million?**

2 A It would be projects that we believe are
3 mostly linear assets that are either at or beyond their
4 useful service life that we need to be proactive in
5 replacing before they fail on us.

6 **Q Is there a definition of linear infrastructure**
7 **that's in the case?**

8 A When I say linear, basically it's pipes.
9 Flushing the distribution mains, things like that.

10 **Q So wastewater facilities in the ground, they**
11 **wouldn't be considered linear infrastructure?**

12 A Things that are below ground, mainly pipes.
13 If it goes above ground, it's considered vertical. If
14 it's below ground, it's linear. So it's pipes, stuff
15 you can't see when walking by it.

16 **Q Okay. In your testimony, it's true that you**
17 **have not provided an analysis -- quantitative analysis**
18 **that demonstrates that the SWIM idea would be more**
19 **efficient?**

20 A More efficient than what? What are you
21 comparing it to?

22 **Q Well, I am looking at your testimony on page**
23 **five, line three.**

24 A Are you comparing it -- okay, let me go there
25 real quick.

1 Can you repeat that, Charles?

2 Q Yes. Isn't it true that in your company, you
3 do not provide any quantitative analysis to demonstrate
4 that the SWIM idea would be, quote, more efficient?

5 A I was asking you to repeat the page in which I
6 stated that.

7 Q Oh, I apologize. It's page five, line four.
8 I think I may have said three, line 4.

9 A I just want to make sure I understand the
10 context that I said that.

11 Yeah, I was comparing it to like a fully
12 litigated rate case that we are doing right now. So I
13 expect very little, hopefully no rate case expense
14 associated with the annual SWIM filing that we are
15 having to deal with right now.

16 Q And the same question, you haven't done a
17 quantitative analysis that it would be less costly as
18 shown there --

19 A Well, no I can -- I did provide the numbers
20 that we are looking at in the last rate case and this
21 rate case. I mean, the Commission approved over \$1
22 million in rate case expense four years ago. And right
23 now, based on the last documentation that I provided to
24 PSC staff in discovery, we were looking at, you know,
25 actual estimated rate case expense this time around in

1 excess of \$700,000. We did achieve some economies
2 associated with consolidation that we achieved this
3 time, which is good. But on a going-forward basis, this
4 would be a good measure to determine what you would
5 expect to see in the future as far as fully litigated
6 rate cases.

7 So, you know, if you spent, you know,
8 \$700,000, divide that by four, that's what our
9 ratepayers are paying on an annual basis. And for SWIM,
10 you wouldn't -- you hopefully would not have that at
11 all. That's what I would mean by, you know, rough
12 costly.

13 **Q But you haven't done an analysis that shows
14 how much that, let's say \$740,000 rounded, how much that
15 would be reduced in the next case if you implemented
16 SWIM?**

17 **A Well, every rate case is going to be
18 different. I think a fully litigated rate case is still
19 going to be a substantial amount of money. But where
20 you really see the cost savings the fact that you don't
21 have to have them as frequently. You know, if you can
22 extend out the period of time in which you can have
23 these, then you are not having that rate case expense
24 embedded in rates nearly as often as what they are right
25 now, so you would achieve the cost savings that way.**

1 Q But there is no quantitative analysis provided
2 to the Commission that shows how much, if at all, you
3 could stay out or extend the period between rate cases
4 if they granted SWIM, right?

5 A It's not exactly known at this time. You can
6 estimate based on other programs that operate in a
7 similar manner. You can look at, you know, the gas
8 cases and how long they have been able to stay out.

9 I am aware of another one actually in
10 Tennessee -- I actually had an experience about a
11 year-and-a-half ago, I was testifying for a sister
12 company in Nashville, and they were doing similar to
13 what we did yesterday, where we started with the monthly
14 agenda conference and then went to technical hearing.

15 They do things a little bit differently. They
16 started with the technical hearing, took a break for the
17 agenda conference, and went back to the technical
18 hearing. During the break for their agenda conference,
19 they had a natural gas utility up there, and they hadn't
20 had a general rate proceeding like we are having now in
21 over eight years, and they had -- and they were talking
22 about their similar -- another mechanism similar to GRIP
23 that they are operating up there, and they have been
24 able to successfully implement it, and it's been able to
25 extend that period of time to, at that point in time,

1 over eight years before needing another general rate --
2 actually, at the time I was doing it, it had been
3 eight-and-a-half years, and they hadn't even
4 scheduled -- aren't planning to schedule one in the file
5 base it because it was working so efficiently for them.

6 So I can just say that it's been successfully
7 implemented in Florida and other states in a similar
8 fashion, and I would expect if it works properly, to
9 extend that -- our need for a general rate base increase
10 would be extended hopefully in a similar manner.

11 **Q You have not presented any evidence that the**
12 **GRIP program or the Peoples bare steel program allowed**
13 **them to stay out, have you?**

14 **A I did not provide any information regarding**
15 **any stay-out provision that they may or may not have.**

16 **Q Okay. Are you familiar with the storm**
17 **protection program that the Legislature just**
18 **authorized --**

19 **A I have --**

20 **Q -- for the electric utilities?**

21 **A I haven't really looked into that particular**
22 **program at this point. I mean, they just did it, and I**
23 **am totally focused on this rate case do look at anything**
24 **else, to be honest with you.**

25 **Q Okay. But you would agree with me that they**

1 **approved it, and then a year later, both -- all the --**
2 **well, FPL, Gulf and Tampa Electric are all filing rate**
3 **cases, right?**

4 A I know that they are planning to come in for
5 rate cases. I think, FPL has already filed their test
6 year letter, if I remember correctly.

7 Q **Tampa Electric also on Monday, right?**

8 A I was just aware of FPL's. I was not aware of
9 Tampa. I knew they were coming in at some point this
10 year, but I didn't know when.

11 Q **All right. Isn't it true that nowhere in your**
12 **testimony do you provide any quantitative analysis or**
13 **facts that demonstrate that the SWIM idea would cause**
14 **UIF to petition for recovery of capital investments less**
15 **frequently?**

16 A There is no quantitative analysis other than
17 it is believed that they will require less frequent
18 fully litigated rate cases.

19 Q **Isn't it true that nowhere in your testimony**
20 **do you provide quantification for the phrases "greatly**
21 **reduced" or "less frequent"?**

22 A There were no numbers attached to those.

23 Q **Okay. And isn't it true that nowhere in your**
24 **testimony do you provide any quantitative analysis or**
25 **facts identifying what a significant amount of aging**

1 **infrastructure is for UIF?**

2 A There is no specific number behind that.

3 Although, I can just say it's in the tens of millions of
4 dollars based on our capital plan over the next few
5 years.

6 Q Okay. You haven't defined aging, though,
7 either, have you?

8 A Aging meaning that it is either close to, at
9 or beyond its useful service life, and therefore, at
10 risk of failure.

11 MR. REHWINKEL: Mr. Chairman, I am just
12 eliminating questions based on some information
13 that he has given me.

14 CHAIRMAN CLARK: We will give you plenty of
15 time to do that, Mr. Rehwinkel.

16 BY MR. REHWINKEL:

17 Q If a -- and listen to my whole question
18 because I think I am going to get an objection from Mr.
19 Wharton on this, and alert Mr. Wharton to listen too. I
20 know he has been.

21 Based on the complete absence of any
22 quantification about the benefits of a SWIM program in
23 your testimony, wouldn't you agree that a review in
24 court would have no way of knowing if the Commission had
25 a sound basis to explain its reasons for departing from

1 **its established policy of using rate cases as the**
2 **existing method of establishing base rate recovery for**
3 **the 131 water and sewer customer companies it regulates?**

4 A Kind of long-winded. When you start in the
5 court, it almost sounds like a legal question, and I am
6 not an attorney. I can give you my professional opinion
7 on that.

8 You know, I think that looking at, you know,
9 the authority over there, I think the way that the
10 statutes are in 366 and 367, and the similarities and
11 the broad powers that are granted there to the
12 Commission, I think that they do have the authority to
13 approve a SWIM program. I don't think there is anything
14 in Florida Statutes that requires a specific dollar
15 estimate to go along with the approval of the program.

16 I hope I answered your question, Charles,
17 because that's kind of a long question, sir.

18 **Q I appreciate your -- your opinion on that.**

19 **I want to turn away from the GRIP, now I want**
20 **to talk about GBRAs and SoBRAs.**

21 MR. REHWINKEL: Mr. Chairman, I have my last
22 section of questions on GRIP -- on SWIM are going
23 to explore the SoBRA and GBRAs that he references,
24 and this will take some time.

25 CHAIRMAN CLARK: My plan right now is to break

1 for lunch somewhere between 12:15, 12:30, kind of
2 like we did yesterday, so we will just proceed
3 along and we will find a convenient spot somewhere
4 in that window.

5 MR. REHWINKEL: Okay. Absolutely.

6 BY MR. REHWINKEL:

7 **Q Tell me what a GBRA is. What does GBRA stand**
8 **for, G-B-R-A?**

9 A Generation Base Rate Adjustment.

10 **Q What is a SoBRA? What does SoBRA stand for?**

11 A Solar Base Rate Adjustment.

12 **Q Okay. Isn't it true that the GBRA, or**
13 **Generation Base Rate Adjustment, was a mechanism that**
14 **was made available to Florida Power & Light in the 2005**
15 **stipulation?**

16 A Yeah, that's my understanding, yes.

17 **Q And wouldn't you agree that in 2010, FPL's**
18 **efforts to continue it in a litigated case were denied**
19 **by the Commission?**

20 A I am not going to disagree. To be perfectly
21 honest, the reason I threw those in there, I just wanted
22 to show that there is precedent by the Commission in
23 approving capital riders, or capital recovery mechanisms
24 such as the SWIM in other industries. So I am much more
25 familiar with the GRIP than I am the GBRA or SoBRA. I

1 just did that for -- just to show that that precedent is
2 out there in multiple industries.

3 Q Okay. Well, I want to look at it since you
4 through it out there. So I am going to ask you if you
5 could turn to -- open up OPC 18.

6 MR. REHWINKEL: Of course, Mr. Chairman, this
7 will need a new number, 204?

8 MS. CIBULA: 204.

9 CHARIMAN CLARK: 204.

10 MR. REHWINKEL: Okay. And this is the FPL
11 2009 rate case order.

12 (Whereupon, Exhibit No. 204 was marked for
13 identification.)

14 THE WITNESS: I don't have that. Can you
15 repeat that, Charles?

16 BY MR. REHWINKEL:

17 Q Yeah, it's our cross Exhibit No. 18.

18 A I have someone pulling that for me right now,
19 okay?

20 Q Did you say you have it?

21 A I am having somebody pull that up.

22 Q Okay. It's a big document unfortunately. I
23 should have probably loaded a smaller version of it.

24 A We're working on it.

25 MR. WHARTON: Yeah, here you go.

1 THE WITNESS: Okay. I think we have it right
2 now, Charles.

3 BY MR. REHWINKEL:

4 Q All right. When you get there, I am going to
5 ask you to turn to what's Bates 243, or page 16 of the
6 order.

7 A Let me see if I can find it. Let me see if I
8 can get there. Page 16 of the order?

9 Q Yes.

10 A Okay.

11 Q Before I ask you about this, let's just
12 look -- do you have your testimony also, or do you have
13 to get that and go to your testimony?

14 A I have that in hard copy form.

15 Q Okay. So in your testimony on page five, the
16 question says: Are there other mechanisms similar to
17 the GRIP that have been approved by the FPSC?

18 And the answer is: Yes, two other mechanisms
19 have been approved by the FPSC in the electric industry.
20 These mechanisms are the Generation Base Rate
21 Adjustment, GBRA, and the Solar Base Rate Adjustment,
22 SoBRA. Both of these mechanisms allow for electric
23 utilities to increase base rates to recover capital
24 costs associated with new generation facilities as they
25 enter commercial service.

1 Did I say that right?

2 A Yes.

3 Q Okay. And you present GBRA and SoBRA as
4 similar to GRIP in your testimony, right?

5 A Yeah, similar that they are capital recovery
6 mechanisms.

7 Q Okay. So if I could get you to look on, in
8 Exhibit 204, Bates 243, order 16. You see there, there
9 is a heading that says jurisdictional separation?

10 A Okay.

11 Q Above that, there is a paragraph that I am
12 going to read and ask you if you -- about this.

13 It says: We deny FPL's request to continue
14 the GBRA mechanism. It is not possible for us to
15 exercise as adequate a level of economic oversight
16 within the concept of a GBRA mechanism as we can
17 exercise within the context of a traditional rate case
18 proceeding. Furthermore, a policy change of this
19 magnitude, which would ultimately affect other
20 utilities, deserves a more thorough review through a
21 separate generic proceeding.

22 Were you aware of that language?

23 A I see that.

24 Q Did you look at that language before you
25 suggested the Commission take a look at GRIP for

1 **supporting this --**

2 A Yes, I was aware of that.

3 Q **Okay. So do you -- don't you agree that a**
4 **generic proceeding would be a better place to look at**
5 **SWIM?**

6 A A generic proceeding as far as having a
7 separate proceeding just to address SWIM?

8 Q **Yeah, for utilities other than UIF as well.**

9 A I see no reason why we can't address it as
10 part of the rate case. That's why I filed -- for
11 efficiency reasons, that's why I filed it there.
12 However, if that's the way the Commission would appeal
13 if they want us to come back in for a limited
14 proceeding, I guess there is nothing I can do to stop
15 that from occurring. Although, it would incur
16 additional rate case expense that ultimately customers
17 may end up bearing.

18 Q **Well, when we started off yesterday, I think**
19 **your counsel said that this -- this doesn't affect the**
20 **revenue requirements, SWIM proposal has no bearing on**
21 **your revenue requirements in this case, right?**

22 A That's right. It would be in the future, a
23 couple years in the future it wold be addressed.

24 Q **But you are incurring rate case expense to**
25 **litigate the SWIM issue on an issue that doesn't affect**

1 **revenue requirements, and imposing rate case expense on**
2 **customers for the next period of time to achieve this**
3 **SWIM idea, right?**

4 A We are not just talking about the SWIM idea in
5 this. We are talking this is just one aspect of the
6 overall rate case, okay. So you kind of have to -- I
7 don't think there is any way to determine, you know,
8 other as far as what particular small part of our
9 overall rate case expense is associated with just
10 talking about SWIM, other than you can probably look at
11 yesterday and today, and look at the number of hours,
12 and all that, and of course I have to have attorneys
13 here, you could probably come up with some kind of
14 estimate. It's an overall smaller part of that.

15 The biggest cost in this rate case really came
16 down to the consultants we used for addressing, you
17 know, having to prepare our MFRs and, of course, dealing
18 with the issue of return on equity, so...

19 Q I understand all that, but Mr. Friedman's time
20 and the time to answer interrogatories and that had to
21 go in and get -- tease out what those 17 lines meant,
22 that had a cost. That wasn't free, right?

23 A It was not free. No, it was not.

24 Q Okay. So there was rate case expense incurred
25 to explore this idea just for yourself, right?

1 A No. No. No. Not for myself. I am an
2 employee --

3 Q I mean UIF, not you. UIF.

4 A Okay. All right. So, yeah, there was some
5 portion of this rate case, a small portion that you can
6 attribute to the SWIM.

7 Q So if the Commission opened up a generic
8 proceeding and invited, you know, Peoples over in
9 Pensacola and, I don't know, some other large companies,
10 or any of the companies to come in and participate in a
11 rule-making or generic proceeding to decide whether this
12 was a good idea or not, that wouldn't have rate case
13 expense associated with it, would it?

14 A I guess a lot of it depends on how much the
15 attorneys are involved in it, because that's probably
16 the biggest driver for us in a case like you are talking
17 about.

18 Q You are making the decision to come and ask
19 for this. This isn't something you are required to do,
20 right?

21 A To get it approved, I have to request
22 permission from the Commission, yes. I can't just do it
23 on my own.

24 Q They don't have to do it, right?

25 A That's at the Commission's discretion, yes.

1 Q So you would agree that -- that the GBRA was
2 denied in 2009, in the litigated case, and then in 2012,
3 it was reestablished for FPL and settled -- in a
4 settlement, right?

5 A Subject to check, I would agree with that.

6 Q Well, let's -- let's look at order --

7 MR. REHWINKEL: OPC's No. 19, Mr. Chairman, is
8 a -- I will call it FPL 2012 settlement.

9 THE WITNESS: Where is that at, Debbie?

10 MR. REHWINKEL: This is --

11 THE WITNESS: Can you repeat that, Marty -- I
12 did it again. Can you repeat that, Charles?

13 MR. REHWINKEL: It's OPC 19.

14 MS. CIBULA: Is he asking for a new number or?

15 CHAIRMAN CLARK: I am sorry, I turned my mic
16 off. We need a number.

17 MR. REHWINKEL: I think 205.

18 MS. CIBULA: 205 is the next number.

19 CHAIRMAN CLARK: 205. Thank you.

20 (Whereupon, Exhibit No. 205 was marked for
21 identification.)

22 BY MR. REHWINKEL:

23 Q And tell me when you have got this document
24 opened.

25 A It's open. Can you let me know what the page

1 number is?

2 Q Yeah. I want you to go to Bates 479, which is
3 order page 16 -- it seems to be a popular page for GBRAs
4 in these orders -- and ask you if you could look at
5 paragraph eight.

6 A Okay, I have it.

7 Q First of all, would you agree this order is an
8 order approving a stipulation between FPL and certain
9 consumer parties?

10 A That's what it says at the top, order
11 approving stipulation.

12 Q Okay.

13 A I saw it when I pulled it up. I was going
14 down.

15 Q Okay. So back on page 16, paragraph eight,
16 which runs on through 8(f), 8(a) through 8(f) on page
17 18. Would you agree with me that that's where the
18 authority for a GBRA is for FPL in 2012?

19 A I would have to be able to read all of it
20 first, I think, before answering all of that. I am just
21 kind of scrolling through it. After a very quick
22 cursory review, that just outlines how that program is
23 to operate.

24 Q Okay. Do we need to go back and look and make
25 sure this is a settlement order? Do you accept that's

1 what this is, or we can go back and look at the first
2 page.

3 A I agree this is a stipulated.

4 Q Okay. And you would agree, if you can look on
5 page 16 of the order in this first four lines of this
6 paragraph 8(a). Would you agree that this GBRA for FPL
7 in 2012 was for three specific power plant projects?

8 A Yes.

9 Q And would you agree that these three specific
10 power plant projects had already received a
11 determination and need ordered by the Public Service
12 Commission?

13 A Okay. I see that at the bottom that a
14 determination was granted by the Commission.

15 Q Okay. And would you also agree that those
16 determination of needs established the cost, the revenue
17 requirement for each of those three plans already?

18 A I would have to look over the determination of
19 need to see that in there. I am not saying that's not
20 there, but I would have to look.

21 Q Well, if you look -- look halfway down 8(a).
22 It says: For the Canaveral Modernization Project, the
23 annualized base revenue requirement shall be as
24 reflected in the 2012 rate petition and the accompanying
25 MFRs. For Riviera and Port Everglades Modernization

1 Projects, the annualized base rate -- base revenue
2 requirement shall be -- shall reflect the cost upon
3 which the cumulative present value of revenue
4 requirements was predicated, and pursuant to which a
5 need determination was granted by the Commission?

6 A Okay.

7 Q So before this GBRA program was going to be
8 implemented GBRA, the costs would already be -- have
9 been determined by the Commission, would you agree with
10 that?

11 A I would agree with that.

12 Q You would agree that the GBRA program that was
13 stipulated to and approved by the Commission pursuant to
14 this stipulation was not open-ended, but it was closed
15 in terms of the types of assets and the cost of assets
16 that the customers would bear, right? Yes? Debbie is
17 going to get on to you and me, because I am not sure if
18 she can hear your answers because I can't.

19 A Yes, I am sorry. I had to move my mic. Did
20 you hear that time Charles. Let me try holding it
21 again.

22 Q Okay. So you mentioned the SoBRA also, right?

23 A Yes, I did.

24 Q All right. So I want to ask you about the
25 SoBRA mechanism.

1 Would you agree -- well, first of all, would
2 you agree that Tampa Electric got a GBRA in their 2013
3 settlement?

4 A I would have to look -- look back at that -- I
5 am I am sorry. I would have to look back at that to
6 verify.

7 Q Okay. And I would direct you to Order
8 2013-0443 for the Tampa Electric settlement. And would
9 you also agree that in 2017, Duke received a GBRA for a
10 plant in their 2017 settlement agreement for the Citrus
11 County combined cycle unit?

12 A I would have to look back at that to verify.
13 I don't have it in front of me.

14 Q All right. For SoBRA, would you agree that
15 FPL, Duke and Tampa Electric received SoBRA
16 authorizations by settlement agreements that were
17 approved by the Commission?

18 A I believe so.

19 Q You said you believe so?

20 A I believe so.

21 Q Were you checking on something?

22 A I was just moving my computer around so I have
23 the microphone here so you could hear me.

24 MR. REHWINKEL: All right. Mr. Chairman, OPC
25 20, 21 and 22, I would ask they be given numbers

1 for identification, and that would be 206, 7 and 8.

2 CHAIRMAN CLARK: 206, 207 and 208

3 respectively.

4 MR. REHWINKEL: Thank you.

5 (Whereupon, Exhibit Nos. 206-208 were marked
6 for identification.)

7 MR. REHWINKEL: So FPL 2016 stipulation will
8 be 206. DEF 2017 stipulation will be 207, and
9 Tampa Electric 2017 stipulation will be 208.

10 BY MR. REHWINKEL:

11 **Q So can I ask you to open up the FPL SoBRA
12 order, or the -- what we identified as Exhibit 206,
13 which is cross Exhibit No. 20?**

14 A We are getting it out now.

15 **Q All right.**

16 A We are still working on it, Charles. Be
17 patient.

18 **Q All right.**

19 MR. FRIEDMAN: (Inaudible).

20 MR. REHWINKEL: It is. You say you can't get
21 it downloaded?

22 MR. FRIEDMAN: It just takes a while.

23 THE WITNESS: It's just taking a long time,
24 Charles.

25 MR. REHWINKEL: All right. Mr. Chairman, I

1 know that you wanted to get to 12:15. We've got
2 these three large documents to download. I would
3 suggest for your consideration that we might see if
4 we can get them downloaded while we are at lunch
5 and come back, and once we get that done, it will
6 be pretty quick to finish this.

7 CHAIRMAN CLARK: All right. I think we can
8 probably make that work. Anybody have any
9 objections, any problems getting --

10 THE WITNESS: Chairman, I am getting 20 up.

11 CHARI MAN CLARK: -- blurry folks everywhere on
12 our -- are we seeing some issues?

13 MR. REHWINKEL: I think he said he has
14 retrieved it.

15 CHARI MAN CLARK: Okay.

16 THE WITNESS: I did get 20. So I do have one
17 of the three up in front of me right now if you
18 want to -- it takes about a minute or two to get
19 the last two downloaded each, but I think we can
20 still meet the --

21 CHAIRMAN CLARK: We are going to go ahead --
22 we are going to go ahead and call it a break point
23 right now, so we will let you download those, get
24 everything ready to go and we will kickback off.

25 It is, according to my watch, seven minutes

1 after 12:00. We are going to try to reconvene
2 right up at one o'clock. That will give us about
3 252 minutes.

4 Commissioners, are you guys good with this? I
5 think I am seeing everybody having some strange
6 things. We are going to reboot our system over
7 lunch too and try to get everybody cleared back in,
8 so we will see you all at one o'clock.

9 (Lunch recess.)

10 CHAIRMAN CLARK: All right. It looks like the
11 necessary parties are all here, so let's roll.

12 BY MR. REHWINKEL:

13 Q Okay. Mr. Deason, did -- were you able to get
14 20, 21 and 22, or hearing Exhibits 206, 207 and 208?

15 A I have 20, 21 and 22 files downloaded.

16 Q All right. So I am going to try something to
17 ask about all three orders in one set of questions to
18 cut two-thirds of my remaining cross out.

19 A Okay.

20 Q But before I do that, I want to ask you, would
21 you agree with me with respect to GBRA's, would you
22 agree with me that currently there is no GBRA in effect
23 in Florida since all of the plants that the TECO, Duke
24 and FPL GBRA's applied to have been completed and are in
25 base rates?

1 A Yeah, I would agree with that.

2 Q Okay. All right. Would you agree with me
3 that the FPL, Duke and Tampa Electric SoBRAs are all the
4 product of settlement agreements approved by the
5 Commission and are reflected in 206, 207 and 208?

6 A 20, 21 and 22 as far as exhibits?

7 Q Yes. Yes, sir.

8 A I just want to verify that real quick. I am
9 just looking. I downloaded them. Yes, I would say that
10 those are all subject to being settlement agreements.

11 Q Okay. Did you review these orders before you
12 filed your direct testimony?

13 A These specific ones, no.

14 Q What about your rebuttal?

15 A No.

16 Q Okay. Would you agree with me that each of
17 the SoBRA orders has a specific amount of megawatts that
18 can be built and recovered through the SoBRA mechanism?

19 A Like I said before, I didn't review them, so I
20 would have to read those orders.

21 Q Okay. All right. Let's go and look at 20,
22 which is the FPL order, and I am going to ask you to
23 what's Bates 562 in the exhibits or page 18 of the
24 order. Are you there?

25 A I am working my way down.

1 Q Okay.

2 A I am there.

3 Q If you look at page -- page 18 paragraph
4 10(a).

5 A Okay.

6 Q It says on the second line that FPL can
7 construct 300 megawatts per calendar year of solar
8 generation?

9 A I see that.

10 Q Okay. And if you can flip back to page two of
11 the order, or Bates 546?

12 A Okay. I am on page two.

13 Q You see the bottom -- the last bullet point on
14 that page reads: FPL has the ability to construct up to
15 1,200 megawatts of solar photovoltaic generation prior
16 to December 31, 2021?

17 A Yes, I see that.

18 Q Okay. Would you agree with me that the FPL
19 settlement agreement has a 1,750 per kilowatt
20 alternating current cap on the allowable recoverable
21 costs for these 1,200 megawatts? And I cold refer you
22 to the bottom of paragraph 10(a) on order page 18.

23 A Let me turn back to page 18 if you don't mind.

24 Q Okay. Sure.

25 A Yes, I would agree with that.

1 Q Okay. Would you agree with me that there is a
2 similar SoBRA provision in 21, which is the Duke SoBRA,
3 that allows Duke to build 700 megawatts of SoBRA for the
4 four-year period covered by this 2017 agreement?

5 A Once again, I would have to read the order.

6 Q Okay. Would you accept it subject to check?

7 A I would accept it subject to check.

8 Q Okay. And would you agree that the Duke order
9 has a cap of \$1,650 per kilowatt AC cost cap?

10 A Once again, subject to check.

11 Q Okay. And would you agree with me that in 22,
12 which is the Tampa Electric order, that it has a cost --
13 a megawatt cap, subject to check, of 600 megawatts?

14 A Subject to check.

15 Q Okay. And that has a cost cap of 1,500 kWac?

16 A Once again, subject to check.

17 Q Okay. Would you agree with me, subject to
18 check, that each of these three orders that we just went
19 through has a four-year term for implementing and
20 recovering SoBRA investments?

21 A Once again, subject to check.

22 Q Okay. All right. Let me ask you to turn
23 to -- this is the last question I think I am going to
24 have on SoBRAs, or the next to the last question.

25 If you could turn to, in 21, which is the DEF

1 SoBRA order, or settlement, and I want you to turn to
2 Bates 826, or page 33 of the order. Tell me when you
3 are there.

4 A I made it to 24.

5 Q 33 -- turn to 33.

6 A I am sorry. Okay, I am on page 33.

7 Q Okay. Do you see that, at the top of the
8 page, it's -- the first full sentence says: DEF agrees
9 that, do you see that sentence?

10 A Yes, I do.

11 Q Okay. Do you agree it says: DEF agrees that
12 for projects constructed or acquired by DEF, the
13 following cost categories will be included in the 1,650
14 kWac cost cap, but that the cost cap is not limited to
15 these categories of costs, and includes any and all
16 construction costs attributable to the solar projects:
17 Engineering, Procurement and Construction (EPC) costs
18 development costs including third-party development
19 fees, if any, permitting, land acquisition, taxes and
20 utility costs to support or complete development,
21 transmission, interconnection costs, installation, labor
22 and equipment, electrical balance of system, structural
23 balance of system, inverters and modules; does it say
24 that?

25 A Yes, it does.

1 Q Okay. Would you agree, subject to check, that
2 in the TECO, or the Tampa Electric order that is OPC 22,
3 that it has similar itemization of the types of assets
4 that are subject to recovery?

5 A Subject to check.

6 Q Okay. All right. I want to ask you --

7 MR. REHWINKEL: Mr. Chairman, I need to ask a
8 follow-up series of questions about some questions
9 I asked Mr. Deason related to the Ft. Lauderdale
10 spill, and let me just -- let me just set the
11 stage, if you will, and I want to -- I think I
12 heard the answer that Mr. Deason intended, which is
13 the answer I thought he would give, but I asked a
14 series of questions that were isn't it true that
15 you did not provide an analysis, or isn't it true
16 that you did not include an analysis of the age of
17 the Ft. Lauderdale infrastructure, of the UIF
18 infrastructure, and you didn't compare them. And
19 the answers I got I believe the record will reflect
20 were, no, but he was saying he didn't do an
21 analysis, and I was asking sort of the opposite
22 question, which is my fault, isn't it true that you
23 didn't do it, and he said no, meaning he didn't do
24 the study, but do you understand --

25 BY MR. REHWINKEL:

1 **Q Mr. Deason, do you understand what I am**
2 **conveying?**

3 A I think I understand what you are conveying.
4 I think you were -- I think we are on the same page as
5 far as what my answers were, I should have answered in
6 the opposite way to confirm your answer, even though we
7 were understanding one another. Does that make sense?

8 **Q That's correct.**

9 MR. REHWINKEL: And, counsel for UIF and
10 Commission, I don't want to replow this ground. I
11 think when you read the naked record, it looks the
12 opposite of what was being sought, but I think we
13 had a meeting of the minds, and I just want to let
14 folks know we will brief it the way we saw it, and
15 I believe the way it was intended, but it's
16 probably going to look a little funny.

17 CHARIMAN CLARK: I think we are all in
18 agreement.

19 MR. WHARTON: Charles, we noticed it at the
20 time, and we agree that he was agreeing with your
21 question, so the record will be clear.

22 MR. REHWINKEL: Okay. Good.

23 BY MR. REHWINKEL:

24 **Q I have a follow-up question on the LTIP. Can**
25 **you confirm for me whether the LTIP is in effect for UIF**

1 **employees?**

2 A Okay. When you say LTIP, you are referring to
3 the long-term incentive compensation plan, is that what
4 you are referring to, Charles?

5 Q **Yes.**

6 A Okay. It is my understanding that that has
7 been phased out.

8 Q **Okay. And it applies at the Corix level but
9 not at the UIF level?**

10 A That is correct.

11 Q **Okay. All right. And then finally my last
12 question.**

13 **You said you were concerned about the
14 possibility of the Biden Administration raising taxes
15 with both houses of Congress being in the same party.
16 Would that affect UIF given that UIF -- the consolidated
17 UIF doesn't pay, or hasn't paid federal income taxes for
18 several years?**

19 A Well, what that is is that -- this is my
20 understanding in discussing with my tax manager, okay.
21 All of those obligations flow up to our parent company,
22 and the parent company there is housed net operating
23 losses or net loss -- so the obligation is still there.
24 It just gets pushed off to a future period based on --
25 that's my understanding. As I said before, I am not a

1 tax expert. I am just relaying to you basined on
2 discussions I have had with my tax manager in Chicago.

3 Q Okay. I appreciate that answer and that
4 qualifications.

5 Mr. Chairman -- go ahead.

6 A I am sorry, Charles, I cut you off when you
7 started talking. We were stepping on one another. Can
8 you please repeat your question so I can answer it
9 again?

10 Q About the taxes?

11 A Yes.

12 Q I -- my -- my question to you, which I thought
13 you had answered, was whether, given the fact that
14 UIF -- the consolidated company doesn't pay, or hasn't
15 paid federal income taxes for a few years now, whether a
16 rate increase in the tax rate under the Biden
17 Administration would affect the income tax expense of
18 UIF?

19 A Okay. As I said, I am not a tax expert, so I
20 would have to consult with my tax manager to see what
21 the fallout would be from that.

22 Q Okay.

23 MR. REHWINKEL: Mr. Chairman, those are all
24 the questions I have for Mr. Deason. And, Jared, I
25 appreciate your answers and your being patient with

1 this extended cross-examination. Thank you.

2 THE WITNESS: Thank you.

CHARIMAN CLARK: Thank you. Thank you, both.

4 All right. Let's move to staff.

5 MS. LHERISSON: Good afternoon, Mr. Chairman
6 and Commissioners, Bianca Lherisson on behalf of
7 Commission staff.

8 EXAMINATION

9 BY MS. LHERISSON:

10 Q Good afternoon, Mr. Deason.

11 A Good afternoon.

12 Q Mr. Deason, if you could pull up your rebuttal
13 testimony and staff Exhibit No. 186?

14 A If you could find 186, staff Exhibit 186. I
15 have got my rebuttal. I am having somebody pull up 186
16 for me now, okay?

17 Q Okay. Thank you, and --

18 A What page? I'm sorry.

19 Q Regarding staff Exhibit 186, we are just going
20 to -- it's just one page.

21 MS. LHERISSON: Mr. Chairman, before I begin,
22 I would like to address Commissioner Brown's
23 comments from yesterday.

24 Commissioner Brown had requested that staff
25 ask this witness questions about the SWIM program

1 Staff did have questions ready to go, but Mr.
2 Rehwinkel for OPC has asked all of staff's
3 questions, so staff's remaining questions are
4 regarding the state tax rates.

5 CHAIRMAN CLARK: Okay. Commissioner Brown, is
6 that good with you? Did you get most of those
7 answers?

8 COMMISSIONER BROWN: Charles asked a lot.
9 Yes. Thank you.

10 CHAIRMAN CLARK: Thank you.

11 Okay, Ms. Lherisson, you are recognized.

12 MS. LHERISSON: Thank you, Mr. Chairman.

13 BY MS. LHERISSON:

14 Q **Mr. Deason, if you can please turn to your**
15 **rebuttal testimony at page 14?**

16 A Yes, I am there.

17 Q **Okay. On page 14, line 23, and continuing on**
18 **to page 15, you are recommending an amortization of**
19 **unprotected deferred income taxes over 10 years, is that**
20 **correct?**

21 A That is correct.

22 Q **Can you please explain why -- why that is your**
23 **recommendation?**

24 A I think a lot of it comes down to -- well,
25 first, there is two main reasons. First is Commission

1 precedent that has been set in other cases, and I will
2 talk a little bit about that, but I also want to talk
3 about the matching principle.

4 Generally, very similar to what's done with
5 the protected portion is the matching principle that
6 matches it with the assets and remaining life of
7 allocations over 20 years, and that's what it's being
8 amortized over.

9 In discussions with my folks in Chicago,
10 portions of unprotected, most of those are due to
11 deferred maintenance projects, which the amortization of
12 those is very close to 10 years. It's lot closer to 10
13 years than five. If you want to match them up with
14 what's actually in there, 10 years makes more sense than
15 the five years.

16 As far as Commission precedent, I think the
17 Commission in deciding over 10 years, you know,
18 following fair, just and reasonable, they wanted to
19 treat both the utility and customers with an
20 amortization period that is fair to both. And in
21 multiple occasions, the Commission decided that 10 years
22 is both fair to the utility and both fair to the
23 customers.

24 I think that -- and I will throw a
25 hypothetical out here. If hypothetically I suggested

1 that because it's a liability for us, it should be five
2 years and assets be 10 -- basically opposite of what OPC
3 is recommending. I would agree that happens, although
4 it's not fair, just and reasonable, and it's not
5 consistent with Commission precedent, and it should not
6 be used.

7 Well, if you think about it, that is the same
8 exact logic that is behind OPC's recommendation. They
9 are saying one side of the equation should be treated
10 different than the other. I don't see it that way. I
11 think the Commission's precedent is fair, just and
12 reasonable. They said 10 years is fair, just and
13 reasonable. Both parties should be treated equally and
14 fairly, and 10 years has been set as that amortization
15 period.

16 **Q On page 15 of your rebuttal, you discuss the
17 amortization of unprotected deferred income taxes over
18 five years as opposed to 10 years. In your opinion,
19 will using a five-year amortization as opposed to a
20 10-year amortization for unprotected deferred income
21 taxes create a cash flow problem for UIF?**

22 **A I think, you know -- first of all, I don't
23 know right offhand what the difference is in our cash
24 flow will be five and 10 years. You know, cash flow is
25 probably a subjective term. When it comes to looking at**

1 cash flow, I kind of take a big picture view of cash
2 flow and what we are able to generate.

3 You know, UIF, as well as other water and
4 wastewater utilities, we already have what I wold call
5 an inferior tax flow position if you were to compare us
6 to, say, electric utilities, who are able to generate a
7 lot more cash flow, and a lot of that has to do with the
8 fact that their depreciation rates are so higher than
9 ours, sometimes as much as 60 percent. So their cash
10 flow is always much better than a water and wastewater
11 utility, so in looking at it, I had actually deviated
12 from Commission precedent and going with a different
13 amortization, the only effect, in my opinion, is making
14 what is already a relatively inferior cash flow position
15 more inferior.

16 Q Mr. Deason, are you able to provide, or can
17 you provide a copy of any analysis that indicates a
18 five-year amortization will cause a cash flow problem
19 for UIF?

20 A As I said before, I don't have a specific
21 dollar difference between the two amortization periods,
22 what the dollar difference would be in that as far as in
23 cash flow. I was being consistent with Commission
24 precedent.

25 Q Okay. Are you generally familiar with the

1 **Department of Revenue website, where they publish the**
2 **Florida Tax Information Publication including the**
3 **Florida corporate income tax?**

4 A I know about it. I haven't went there lately,
5 but I have been on there.

6 Q **Okay.**

7 MS. LHERISSON: Mr. Chairman, at this time, I
8 would like to refer to staff Exhibit No. 186.

9 BY MS. LHERISSON:

10 Q **Mr. Deason, do you have 186 in front of you?**

11 A Yes, I do.

12 Q **Okay. I am going to refer to this document as**
13 **the Department of Revenue Florida's Tax Information**
14 **Publication. So this document, the Department of**
15 **Florida -- excuse me, the Department of Revenue Florida**
16 **Tax Information Publication includes the a Florida**
17 **corporate income tax; do you see that?**

18 A Yes, I do. I see the first page, and then,
19 yes, there is a second page with it too. Yes.

20 Q **Is this information something that you rely**
21 **on?**

22 A Yeah, I mean, this is -- contained therein,
23 yes, I relied on that in making my recommendation. I
24 was aware that the tax rate had changed temporarily over
25 a three-year period, but is going to revert to a higher

1 rate starting at the beginning of next year.

2 Q Right. The document states that the Florida
3 corporate income, slash, franchise tax rate will remain
4 4.458 percent for taxable years beginning on or after
5 January 1st, 2020, but before January 1st, 2022; is that
6 correct?

7 A That is correct.

8 Q So if you could please turn to your rebuttal
9 testimony on page 16?

10 A Yes, I am there.

11 Q On page 16, line four, you address the
12 expected change to the state corporate income tax rate
13 to 5.5 percent on January 1st, 2022, is that correct?

14 A Yes.

15 Q I am sorry, I didn't hear your response, was
16 that a yes?

17 A Yes, that is correct.

18 Q Thank you.

19 Would a composite state corporate income tax
20 rate developed using a four-year period that
21 incorporates a 4.458 percent rate for the months rates
22 are expected to be in effect in 2021 and incorporates in
23 rates of 5.5 percent for the remainder of the four-year
24 period, would that allow the company the opportunity to
25 earn the expected amount of state corporate income tax

1 **expense over the four-year period?**

2 A Over the four years, it -- I would say it
3 would, but I also want to preface it, I don't know when
4 we are going to come in for our next rate case. You
5 know, there is things out there, we are just talking
6 with this one, like SWIM, that would impact it if it's
7 approved or not. So if, you know, absolutely we are
8 coming in the next four years, it would be reflected,
9 but if we are going to come out beyond four years, I
10 would say no. And at this point, that's a question
11 mark.

12 I think you have to go with what is the known
13 change -- the known and measurable change that's very
14 close to the period of time when the rates go into
15 effect. I know there is a short gap in time that the
16 lower rate will be in effect. I think it's a relatively
17 small amount. It's not going to come anywhere near or
18 above our authorized rate of return, our range of
19 authorized rate of return.

20 And what is generally accepted in a regulatory
21 rate proceeding in setting prospective rates, if you
22 have a prospective change in taxes, you use that
23 prospective change. In this case, it would be 5.5
24 percent.

25 Q **Isn't it true that all other things being**

1 **equal, using a composite rate and a four-year period, if**
2 **UIF came in for a rate case in less than four years,**
3 **they would earn more than 5.5 percent, and if they came**
4 **in more than four years from now, they would earn less**
5 **than 5.5 percent?**

6 A I think the con -- I think I agree with your
7 concept, that's me not, you know, sitting down doing the
8 math associated with it. I think in general, I
9 understand the concept that you are saying, and I think
10 I would agree with that statement.

11 Q **Okay. If a composite rate is not used, must**
12 **the Commission decide between the current rate of 4.458**
13 **percent and 5.5 percent, the rate that's expected on**
14 **January 1st, 2022?**

15 A Yes, if a composite rate is not used, then it
16 would have to be the 5.5, because that's the one that's
17 going to -- that's the prospective rate, tax rate
18 change, that's the one that would need to be used.

19 Q **Is it true assuming rates go into effect on**
20 **June 1st, 2021, that if the Commission uses the 5.5**
21 **percent rate you recommend, customers will be**
22 **overcharged for income tax expense for seven months of**
23 **the year 2021?**

24 A Customers are only charged if a utility earns
25 above its authorized rate of return, and I don't think

1 that would have that affect, so I would say no.

2 MS. LHERISSON: Mr. Chairman, if I may have a
3 second to review my notes to see if I have any
4 further questions?

5 CHAIRMAN CLARK: Of course.

6 MS. LHERISSON: Staff has nothing further.

7 CHARI MAN CLARK: All right. Thank you very
8 much.

9 Commissioners, do you have any questions?

10 Commissioner Fay.

11 COMMISSIONER FAY: Thank you, Mr. Chairman.

12 And I think I will be pretty quick.

13 Mr. Deason, you answered some questions about
14 the testimony on page seven related to the SWIM
15 program, and more specifically, you talked a little
16 bit about the lines four through six that speaks to
17 the replacement of linear infrastructure. So I
18 just want to ask you just to make sure I have an
19 understanding.

20 If the Commission -- outside the fact that
21 maybe there is some -- there is some questions
22 about the implementation of the program, or the
23 authority, if something were to be approved by the
24 Commission, I would presume there is a definition
25 of linear infrastructure that would be recommended

1 to show kind of what would or wouldn't be included
2 and I, unlike our Chairman, I don't know a ton
3 about the utility process and what would fall into
4 that definition, but do you have anything in the
5 record that would give us something that could
6 substantiate that analysis?

7 THE WITNESS: Basically, when I am referring
8 to linear assets, I am basically talking about
9 piece. Pipes in the ground. Stuff you don't see.
10 It's basically vertical assets that we keep above
11 ground, like wastewater or water treatment plants,
12 basically the difference is above ground assets
13 versus below ground assets, but below ground is
14 basically consisting of pipes, water distribution,
15 mains, collection mains for sewers, things such as
16 that.

17 COMMISSIONER FAY: Okay. So it's a fairly
18 industry standard definition that's applied to
19 that?

20 THE WITNESS: Yes. I mean, we could also
21 clear that up through this process too. I don't
22 have any problem with that.

23 COMMISSIONER FAY: Yeah, I just think we have
24 to have a -- if the Commission were to go forward
25 with it, we would have basis as to what that --

1 because it looks -- the way this is presented in
2 your testimony, it's sort of a concession that it
3 could be limited to certain structure if moved
4 forward, and I just want to make sure we understand
5 at the Commission what that structure would look
6 like.

7 THE WITNESS: Okay.

8 COMMISSIONER FAY: Great. Thank you.

9 Thank you, Mr. Chairman. That's all I had.

10 CHARI MAN CLARK: Commissioner Brown.

11 COMMISSIONER BROWN: Kind of along those same
12 lines, and I do have to give credit to Mr.
13 Rehwinkel's extensive cross, because I think he did
14 all of the really thorough record for all of us to
15 consider in evaluating some of the aspects that you
16 discussed today.

17 But along those same lines, the definition of
18 aging infrastructure, I think he asked you a
19 question about what -- if there is a definition for
20 that under the SWIM program, and would there be a
21 definition for that? Because that could be a very
22 broad and ambiguous term, you know, anything over
23 one, one year is considered aging perhaps.

24 THE WITNESS: I agree with that, Commissioner
25 Brown. And I will just throw my opinion out there

1 on what it is. To me, you know, it's assets that
2 are close to, at or beyond their useful service
3 life.

4 COMMISSIONER BROWN: Could you give me an
5 example?

6 THE WITNESS: I am -- can you repeat that,
7 Commissioner?

8 COMMISSIONER BROWN: Could you give us an
9 example so that we could get your definition, your
10 thoughts about what is at or near their useful life
11 of aging infrastructure?

12 THE WITNESS: For example, talking about
13 pipes. Pipes generally have a service life, if
14 it's PVC, for example, of 45 years, and that's what
15 we depreciate them over. So if we have pipes that
16 have been in place for 40 to 45 years, and we
17 determine that they are in danger or high risk of
18 failure, those would be the qualifying assets we
19 would want to replace, as an example.

20 COMMISSIONER BROWN: And really, you know,
21 again because you are comparing it to the cast iron
22 and bare steel replacement program. That has a
23 very, very clear definition, right, of what needs
24 to be replaced. Aging infrastructure just seems a
25 little bit broader.

1 Is there -- is there an opportunity to hone
2 that a little bit more in the briefs, or to give us
3 more clarity, because other -- it's not really
4 clear in the record.

5 THE WITNESS: Yes, and I agree with that, and
6 inch no problem with sitting down with staff and
7 hammering out that detail for sure.

8 COMMISSIONER BROWN: Okay. Thank you.

9 CHARIMAN CLARK: Thank you, Commissioner
10 Brown.

11 Other Commissioners have questions?

12 All right, then I believe we are under
13 redirect.

14 MR. WHARTON: Just adjust the mic if you
15 would.

16 FURTHER EXAMINATION

17 BY MR. WHARTON:

18 Q Mr. Deason, just so the record is clear, while
19 we all appreciate your willingness to cooperate, if any
20 time today that you have agreed to something subject to
21 check, doesn't that mean that, as we sit here today, I
22 don't know the answer?

A That's correct. I do not know the answer.

24 Q Okay. Let's -- let's talk about this Ft.

25 Lauderdale instance that was talked about so much.

1 **To your knowledge, is that some singular event**
2 **in the history of utilities in Florida?**

3 A No. These kind of events happen all the time
4 all over the state. I was just wanting to give a
5 specific example of what happens when infrastructure
6 fails, and what the resulting potential environmental
7 damage could be, as well as the health risk to the
8 public when that occurs.

9 Q **Like a lot of people in this proceeding, you**
10 **and I live in the least populated part of the state, up**
11 **in Tallahassee, in North Florida, the City of**
12 **Tallahassee had a major spill in the last two or three**
13 **years, didn't it?**

14 A Yes, they have.

15 Q **And there have been spills around the state of**
16 **Florida that have closed beaches, isn't that a fact?**

17 A Yes, there has.

18 Q **And are you aware that some of the wastewater**
19 **spills that have occurred in the state of Florida have**
20 **actually been millions of gallons?**

21 A Yes.

22 Q **And do you believe that -- well, obviously,**
23 **you don't know the cause of all of those spills, that it**
24 **may have significantly contributed to their prevention**
25 **if those utilities had been more proactive?**

1 A I would --

2 MR. REHWINKEL: Mr. Chairman --

3 CHARI MAN CLARK: Mr. Rehwinkel.

4 MR. REHWINKEL: -- I feel I need to object. I
5 cross-examined Mr. Deason on what he knew about Ft.
6 Lauderdale, and Ft. Lauderdale is the only evidence
7 that he offered for comparability in his testimony.
8 What Mr. Wharton is doing, through some leading
9 questions by the way, which are inappropriate on
10 redirect, is to elicit new testimony that was not
11 put in the prefilled testimony, and I believe that's
12 inappropriate. It's outside the scope of cross,
13 which is the definition of what redirect is allowed
14 to explore.

15 CHAIRMAN CLARK: Let me look back.

16 MR. WHARTON: If I may respond, Mr. Chairman?

17 CHARI MAN CLARK: One second, Mr. Wharton.

18 Is there anything in the testimony regarding
19 anything --

20 MS. CIBULA: I don't believe so.

21 CHAIRMAN CLARK: Mr. Wharton.

22 MR. WHARTON: Yes, Mr. Deason said in response
23 to several questions that Mr. Rehwinkel asked that
24 he felt like this was an ongoing problem with
25 utilities, and that should be more proactive would

1 be what he thought responsive to the problem.

2 CHARIMAN CLARK: Just -- I think we can narrow
3 this question down. Most of the testimony does
4 regard Ft. Lauderdale, and Mr. Rehwinkel's cross
5 did kind of stay in that same general, bringing in
6 new evidence is contrary to what we are trying to
7 do here, so let' just keep it tightened up.

8 MR. WHARTON: I will not -- I will not ask any
9 more questions on that subject.

10 CHAIRMAN CLARK: Thank you.

11 BY MR. WHARTON:

12 Q All right. Let's do a little bit of
13 housekeeping.

14 You were asked a lot of questions today, and
15 sometimes it's probably hard for you to remember all the
16 subject matters, but let me skip around a little bit and
17 ask you a few questions.

18 Do you feel that UIF's incentive compensation
19 is more similar to precedence that the PSC has allowed
20 incentive compensation?

21 A Yes, I do.

22 Q You used the phrase highly compensated
23 earlier. Were you answering using the definition of
24 highly compensated, or were you just using the
25 vernacular to mean someone who makes a relatively high

1 salary?

2 A I think just relatively. I am not all that
3 familiar with tax codes, as I said before, so it's just
4 somebody that, in general, is highly compensated.

5 Q You had a discussion with Mr. Rehwinkel about
6 taking into account the current pandemic. Let me ask
7 you this question: Are you familiar with any example
8 where the PSC has considered the customer's ability to
9 pay when determining the revenue requirement?

10 A Not that I am aware of. I am unaware of any
11 of those instances.

12 Q If taxes -- if tax rates -- regarding the
13 EDIT, if tax rates increased, do you know if the EDIT
14 amounts would change?

15 A I would have to consult with my tax manager on
16 those specifics.

17 Q Sure. You were asked some questions about
18 rate case expense. Rate case expense in a case like
19 this only includes consultants and attorneys and some
20 direct expenses, right?

21 A Yes.

22 Q The in-house costs are not passed on?

23 A The in-house costs are very minimal. Like I
24 said, there is none of my salary that's specific to rate
25 case. It just goes in the overall revenue

1 requirement --

2 Q And do you think that any of those consultants
3 or attorney's fees would be necessary in a SWIM
4 proceeding?

5 A Not to the extent it is in a fully litigated
6 rate case. That's what's happening right now, your
7 representation would be required.

8 Q Now, you were asked a lot of questions that
9 appeared to be worded to point out dissimilarities
10 between the GRIP order and the proposed SWIM
11 methodology, is that a fair characterization?

12 A I would agree that's fair.

13 Q And you are familiar with the GRIP order,
14 right?

15 A Yes, I am.

16 Q Let's talk about some of the similarities, if
17 you think that there are similarities.

18 In the GRIP order --

19 A John, I just need to pull it up on my
20 computer. Can you give me just one second? Okay, I
21 have got that document up right now.

22 Q All right. On the first page of the GRIP
23 order, the order notes that the proposed GRIP would
24 recover the cost of accelerated replacement of
25 qualifying distribution mains and services, including a

1 **return on investment. Is that similar to what -- or**
2 **analogous to what SWIM would propose?**

3 A Yes, it would. It wouldn't be a separate
4 surcharge, I was suggesting that it be embedded in
5 rates, but the amount that's recovered would be
6 analogous to that.

7 Q Now this order notes that the company's
8 primary goal is to proactively respond to public concern
9 regarding aging infrastructure reliably and safely --
10 safety, rather. Do you feel that that's analogous to
11 the proposed SWIM program?

12 A Yes, I do. You know, there are dangers for
13 natural gas and say, for example, wastewater spills,
14 maybe the environmental impacts may be a little bit
15 different, but they both can be very severe, and I think
16 it's important to be proactive in water and wastewater
17 industry just as much as they were proactive in the gas
18 industry.

19 Q Now, this order notes that there are federal
20 regulations, as Mr. Rehwinkel asked you about, that
21 require the identity of the characteristics of the
22 pipeline's design and operations and environmental
23 factors that are necessary to assess the risk. Is that
24 what you are describing when you say that you would be
25 looking into the useful life of the facilities, and

1 **whether or not they would be replaced, is it an**
2 **analogous concept?**

3 A It's an analogous concept, and that's
4 something actually the company has been doing for the
5 last several years.

6 I remember some discussion in the last rate
7 case that talked about an asset management plan that we
8 successfully implemented here, and we've also been
9 working with Kimley-Horn to help us identify and rate
10 our assets as far as the way they need to be -- the
11 order in which they need to be replaced. And that is
12 something on going with the company, and going on for
13 time.

14 Q **The GRIP order says that the company has**
15 **asserted that an appropriate evaluation and response to**
16 **this requirement reveals that due to age, leak history,**
17 **soil conditions and other pertinent criteria, and the**
18 **materials the pipes were made of that the investigation**
19 **was in the public interest. Is that similar to what the**
20 **Utilities, Inc. of Florida proposes to do?**

21 A We are will already doing that. As far as the
22 investigation, we are already doing that. That is
23 ongoing now. The question is is this a sufficient way
24 of recovering when those replacements when they occur?

25 Q **The GRIP order notes that other states have**

1 **implemented similar programs. To your knowledge, have**
2 **other states implemented similar programs to what's**
3 **being proposed in SWIM?**

4 A Other states have and this is very similar to
5 the program I know in Pennsylvania and other states, I
6 know has what they call a PRISM Plan, it's for water and
7 wastewater, a way that they can recover those capital
8 costs. And as the company, what they call a similar
9 GRIP type mechanism that's worked successfully in
10 Tennessee. Yes, there are multiple instance of these
11 programs being used in other states, similar programs.

12 Q **Is the GRIP order notes that the companies**
13 **that were proposing that program felt like there was a**
14 **safety concerns that would be met by the implementation**
15 **of the program, and do you think that's true in this**
16 **case also?**

17 A Yes. Yes, especially in the case of
18 wastewater spills. There is definitely a huge health
19 risk associated with wastewater spills.

20 Q **The companies in the GRIP program asserted**
21 **that the charge would obviate the need for a full rate**
22 **case, which they describe as the much more costly**
23 **mechanism for customers. Do you feel like that's**
24 **analogous to the proposed SWIM program?**

25 A Yes, I do. I do feel that the need -- a fully

1 litigated rate cases, the need, they would not have to
2 occur nearly as often as they are occurring right now.

3 **Q One of the companies in the proposed GRIP**
4 **program of the order notes, stated that the GRIP program**
5 **would be an economic development in the service**
6 **territory because you are spending money to have those**
7 **pipes put in on a continuous basis collectively. Do you**
8 **think that's analogous to the proposed SWIM program?**

9 A Yes, it would, especially the service
10 territories where our customers reside, because we are
11 using all local contractors here in the state. So by
12 spending and keeping that money here in Florida, that's
13 a great advantage not just to our customer but to the
14 state as a whole, especially when we are going to be
15 trying to recover from the economic fallout from the
16 pandemic.

17 **Q The companies who proposed the GRIP program,**
18 **the order notes, also felt like that the program would**
19 **help rates be raised in a more even way to avoid rate**
20 **shock. Do you feel like that's analogous to the SWIM**
21 **program?**

22 A Yes, and there was some discussion in my
23 testimony about what would be the expected decreases on
24 an annual basis as far as the maximum, which we would be
25 agreeable to negotiating caps on that as well. You

1 know, looking at our customer base, you know, we do have
2 a lot of retirees that are on, you know, fixed incomes
3 that do -- that do adjust for inflation and things like
4 that, and the Social Security and the pension and, you
5 know, a small annual increase is a lot easier to budget
6 for than the rate shock you get with a fully litigated
7 rate case.

8 **Q The companies who were proposing GRIP, as the**
9 **order notes, gave details about how they would assess**
10 **the facilities and decide ones would be replaced. Is**
11 **that analogous to what Utilities, Inc. is doing now, and**
12 **proposes to continue to do under SWIM?**

13 **A Yes. And it's actually very analogous to what**
14 **we provide, you know, for a similar project in this rate**
15 **case, each individual project, we lay out the need for**
16 **that project, what was done to determine the need for**
17 **that releasement, we show the prudence, and then we show**
18 **the actual expenditures exactly how much that we spent**
19 **to show that that was -- the cost was accurate, and the**
20 **prudence of it and the necessity of it. And the**
21 **Commission would be able to make that determination for**
22 **each individual project that we submit under the SWIM**
23 **program.**

24 **Q The Commission noted in the GRIP order that we**
25 **will have the opportunity to thoroughly review the**

1 replacement expenditures during the annual approval
2 process, and that our staff will conduct the financial
3 analysis of the actual revenues and expenses; is that
4 similar to what it being proposed in the SWIM program?

5 A Yes. As I said before, you know, we have to
6 provide all the documentation necessary to show what the
7 final cost is. Actually, I think in one of the programs
8 here, we are not using estimated costs. We are
9 proposing that you actually see the actual invoices and
10 the actual expenditures that were made so you have the
11 exact accurate number. Any potential true-up would be
12 limited to other invoices that my have came in late or
13 unexpected. I expect any true-up to be very minimal, at
14 most, and the customers would only be paying for that
15 infrastructure that has been expended on their behalf.

16 Q My final question: You had an exchange with
17 Mr. Rehwinkel where I believe you agreed that the
18 Commission, in the GRIP order, rejected the cost savings
19 but, in fact, what the Commission rejected was that the
20 cost savings would be 27 percent; is that consistent
21 with your recollection of what the order says?

22 A I believe so.

23 MR. REHWINKEL: I would like to object. I --
24 the question was that the Commission rejected
25 speculation.

1 CHARIMAN CLARK: Mr. Wharton, would you
2 repeat -- I am having a very difficult
3 understanding you, can you repeat what you said,
4 please?

5 MR. WHARTON: I am sorry, Mr. Chairman, will
6 you repeat what you said, sir?

7 CHAIRMAN CLARK: I was asking you to repeat
8 what you had said.

9 MR. WHARTON: All right. I am trying to -- it
10 appeared to me that Mr. Deason, in his testimony,
11 agreed that the Commission rejected that there
12 would be a cost savings when, in fact, I think the
13 original discussion was that there was a --
14 suggested that there would be a 27-percent cost
15 savings, and that the Commission -- the order says
16 we are not convinced of that. The order speaks for
17 itself, and so do the many documents we've had read
18 from today.

19 That concludes my questioning, if Mr.
20 Rehwinkel wants to file a motion to strike.

21 MR. REHWINKEL: I withdraw it, John.

22 MR. WHARTON: Okay.

23 CHARIMAN CLARK: Thank you, gentlemen.

24 MR. WHARTON: That's all, Mr. Chairman.

25 CHARIMAN CLARK: All right. I believe that

concludes everything for Mr. Deason.

2 Let's talk exhibits.

3 MR. REHWINKEL: Yeah, the Public Counsel would
4 move 191 through 197, 200 and 202 and 203.

5 CHAIRMAN CLARK: All right. Without
6 objection, so ordered.

9 CHAIRMAN CLARK: Anybody else?

10 All right. Would you like your witness
11 excused, Mr. Wharton?

12 THE WITNESS: Do you want me excused?

13 MR. WHARTON: Yes, we would like to excuse the
14 witness and to call the next witness.

15 CHAIRMAN CLARK: All right. Thank you, Mr.
16 Deason. You are excused.

17 (Witness excused.)

18 CHAIRMAN CLARK: Call your next witness.

19 MR. WHARTON: We will call Mr. Frank Seidman.

20 CHAIRMAN CLARK: Mr. Seidman, he is still
21 under oath.

22 THE WITNESS: Yes, I know that.

23 MR. WHARTON: Thank you, sir.

24 Whereupon,

FRANK SETDMAN

1 was recalled as a witness, having been previously duly
2 sworn to speak the truth, the whole truth, and nothing
3 but the truth, was examined and testified as follows:

4 EXAMINATION

5 BY MR. WHARTON:

6 Q Mr. Seidman, state your name and address for
7 the record.

8 A Frank Seidman, with Management Regulatory
9 Consultants in North Palm Beach County, Florida.

10 Q And did you cause prefiled rebuttal testimony
11 to be filed in this case?

12 A Yes, I did.

13 Q If I asked you those same questions today
14 would your answers be the same?

15 A Yes, they would.

16 Q Do you any corrections or changes to your
17 testimony or exhibits?

18 A Yes, I have some corrections that don't affect
19 the testimony itself, but if you turn to page seven of
20 the prefiled testimony, at line 12, there is a number
21 that says page 193, which should read page 64; and line
22 14, it says page 193, it should be read page 60. On
23 line 16, it says page 193. It should be 60. And on
24 page eight, line five, it says page 188, it should be
25 55.

1 This is just the result of the fact that the
2 page numbers I changed in this testimony to agree with
3 the page numbering in the -- my exhibit as it is
4 officially filed with the Commission.

5 **Q Does that conclude your changes?**

6 **A Yes.**

7 **Q Did you sponsor any exhibits to your rebuttal**
8 **testimony?**

9 **A Yes, I believe it's been identified as Exhibit**
10 **93.**

11 **Q Okay. That exhibit is in the record.**

12 **Would you give a summary of your rebuttal?**

13 **A Yes.**

14 My rebuttal testimony responds to direct
15 testimony of OPC witness Frank Radigan. Mr. Radigan
16 took issue with my findings of used and useful of four
17 wastewater systems, which would be the Mid-County,
18 Labrador, Lake Placid and LUCI - Lake Groves systems.
19 In my rebuttal, I explained why I disagreed with him and
20 support my positions.

21 With regard to the LUCI - Lake Groves
22 wastewater system, Mr. Radigan pointed out that my
23 calculation of used and useful did not take into account
24 the five-year five-percent statutory growth limit. I
25 therefore sponsored this identified as 93, which

1 recalculates used and useful with that limitation.

2 There was also one other system that was
3 addressed in his testimony that was the Marion Golden
4 Hills/Crownwood system, and he and I, from my
5 understanding, agree with my analysis on that.

6 That concluded it.

7 MR. WHARTON: Mr. Chairman, we would offer Mr.
8 Seidman's prefiled rebuttal testimony into the
9 record as though read, and thereafter would tender
10 the witness.

11 CHAIRMAN CLARK: Thank you, so ordered.

12 (Whereupon, prefiled rebuttal testimony of
13 Frank Seidman was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.)
Docket No. 20200139-WS

**REBUTTAL TESTIMONY
OF
FRANK SEIDMAN
on behalf of
Utilities, Inc. of Florida**

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

2 A. My name is Frank Seidman, dba Management and Regulatory Consultants, consultants in
3 the utility regulatory field. My address is 36 Yacht Club Dr., North Palm Beach, FL 33408.

4 **Q. Did you profile direct testimony in this proceeding?**

5 A. Yes.

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

7 A. The purpose of my rebuttal testimony is to rebut portions of the prefilled testimony of
8 Office of Public Counsel (OPC) witness Frank W. Radigan with regard to his determination
9 of Used & Useful (U&U) for the Mid-County, Labrador, Lake Placid, and LUSI – Lake
10 Groves wastewater plants.

11 **Q. Are you sponsoring any additional exhibits?**

12 A. Yes, I am sponsoring Exhibit FS-4, Recalculation of U&U for LUSI - Lake Groves
13 Wastewater Plant.

14 **MID-COUNTY**

15 **Q. Mr. Radigan has proposed that the used and useful for the Mid-County be set at the
16 93.67% level approved in the last rate case. Do you agree?**

17 A. No. In this case, the used and useful was determined to be greater than 100% using the
18 formulae for calculating used and useful in Commission rules. On its face, the system is
19 100% used and useful.

20 **Q. Then why is Mr. Radigan arguing against this conclusion?**

21 A. The 2019 TY was a wet year in which some monthly average daily flows (MADF)
22 exceeded plant capacity, skewing the resulting average annual daily flows (AADF). He
23 apparently believes this is an anomaly and we should look to averages of past years or
24 perhaps disregard the high monthly flows.

25

1 **Q. Is it unusual for the MADF at Mid-County to exceed plant capacity?**

2 A. No, it is quite common. I looked at the past seven years using the same information cited
3 by Mr. Radigan, UIF's response to OPC's Interrog. 125, (which he refers to as Interrog.
4 122 in his testimony). The MADF exceeded plant capacity once in 2013 and 2017, twice
5 in 2016 and 2018, and three times in 2015 and the 2019 TY. Commission Rule 25-30.432,
6 F.A.C., requires that used and useful be calculated on the same period basis as the
7 permitted capacity. The Mid-County plant is permitted on an annual average daily flow
8 basis and that is what has been done in this filing. In the past, the Commission has not
9 adjusted the AADF for high monthly flows; there is no reason to do so here simply because
10 the result generates a percentage used and useful value that is greater than OPC would
11 prefer.

12 **Q. Mr. Radigan also thinks the Commission should consider the impact of Inflow &
13 Infiltration (I&I). Doesn't the Commission already do that?**

14 A. Yes, for many years, such an evaluation has been a component of the rate filing. In this
15 filing it is found at page 80 of my prefilled testimony and exhibits. The analysis shows that,
16 on an annual basis, I&I is not excessive. Regardless of Mr. Radigan's inference that I&I
17 may have been excessive in high months, the Commission is evaluating I&I and U&U on
18 a full test year basis. Mr. Radigan has reviewed my calculations and agrees with them. See
19 page 22 of his prefilled testimony. The Mid-County wastewater plant is clearly fully utilized
20 and should be considered 100% U&U.

21 **LABRADOR**

22 **Q. As with Mid-County, Mr. Radigan has proposed that the used and useful percentage
23 for the Labrador wastewater plant be left at 79.94% as determined in the last rate
24 case. Do you agree?**

25 A. No. In previous cases, the utility has argued that the Labrador wastewater plant be

1 considered 100% U&U because the system is built out. In Docket No. 20140135-WS the
2 Commission concluded that the system is not built out because a remaining 11.6-acre
3 parcel had potential for development. That conclusion was echoed in the last case, Docket
4 No. 20160101-WS. However, in this test year, that parcel is being developed to its full
5 potential. The developer has signed an agreement with the utility to provide service and
6 the developer has indicated that all units in the development will be completed within five
7 years. The concern preventing the Commission from recognizing that the plant be
8 considered 100% U&U is moot because the service area is now built out.

9 **Q. Then why is Mr. Radigan taking issue with that conclusion?**

10 A. Primarily because the calculated U&U does not reach 100% and because, there is allegedly
11 developable land outside the Utility service area into which it could expand.

12 **Q. Please address the issue of calculated U&U.**

13 A. The utility's position of considering the Labrador plant's U&U to be 100% has never been
14 based on calculated U&U. The utility and the commission are both aware that the
15 calculated U&U falls well below 100%, and in fact, keeps dropping as customers conserve.
16 The position has always been that the system, which serves a closed mobile home
17 community, is built out and the Commission's wastewater Rule 25-30.432, F.A.C.,
18 includes among the factors the Commission will consider, "the extent to which the area
19 served by the plant is built out." Additionally, the plant is properly sized to serve this
20 community, even though the actual use by customers falls well below good design
21 requirements.

22 **Q. Please address the issue of serving outside the service area?**

23 A. There is no authority in the rules for the Commission to consider whether there is potential
24 for the utility to look outside its service area as it regards wastewater service. Nevertheless,
25 the utility is aware that there is undeveloped land outside its service area and has explored

1 the possibility of expansion. The area to the east is protected and not developable. The
2 adjacent areas to the north, west and south fall within the authority of the City of
3 Zephyrhills to serve, should they choose to do. The City has already built a force main and
4 lift station to bring service within a few hundred feet of the Labrador service area. If there
5 were any reasonable expectation that Labrador could serve this area, it would have already
6 pursued it. The fact is the Labrador service area is built out and the plant should be
7 considered 100% used and useful.

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9 **LAKE PLACID**

10 **Q. Mr. Radigan proposes that the used and useful for the Lake Placid wastewater plant
11 remain at the percentage allowed by the Commission in the last rate case. Do you
12 agree?**

13 A. No. For reasons similar to those applicable to Labrador, the system is built out. The Lake
14 Placid wastewater plant was built in 1974 to serve Sun 'N Lake Estates of Lake Placid, a
15 subdivision in Highlands County with 2 single family lots, 2 condominiums, a motel and a
16 golf and country club. The existing treatment plant was designed to serve the motel, country
17 club and additional future sections of homes to be developed and built in phases. This did
18 not, and will not, occur because the portion of the service area planned for future
19 development in the 1970's subsequently was designated as a protected scrub jay habitat that
20 permanently eliminated the customer growth that would have otherwise occurred in that
21 area. Thus, the developer installed mains to serve only 148 lots, of which 136 are occupied,
22 the 2 condominium buildings, the motel and country club, then stopped. In fact, shortly after
23 the area was designated a protected area, the developer transferred its assets, and the
24 development went into bankruptcy. The Commission recognized the effects of the
25 environmental limitations as far back as 1996 in Docket No. 951027-WS. Order No. PSC-

1 96-0910-FOF-WS, which states: "The area is completely built out. Further growth will most
2 likely be limited due to environmental concerns. An endangered bird and an endangered
3 plant have been discovered on the land and in the area. Therefore, the area has been, for the
4 most part, set aside or abandoned for construction purpose." The bird species referenced in
5 this Order is the Florida scrub-jay, the only bird whose habitat is limited to low-growing
6 scrub oaks and scrubby flatwoods in sandy soils in Florida. It is, therefore, extremely
7 unlikely that the Lake Placid system will ever reach the level of growth anticipated when
8 the plant was first built in 1974. The original plant is long past its depreciable life, but the
9 ability of the utility to earn on the improvements necessary to keep it operating are severely
10 hampered by the application of a calculated non-used and useful adjustment that fails to
11 recognize that the service area is built out. In accordance with the considerations available
12 in the wastewater rule, the Lake Placid wastewater plant should be considered 100% used
13 and useful.

14 **LUSI – LAKE GROVES**

15 **Q. Mr. Radigan believes the utility's determination of the used and useful of the LUSI**
16 **Lake Grove wastewater plant is overstated because of the inclusion of lots for which**
17 **CIAC has been prepaid. In addition, he infers that this is effectively double counting,**
18 **which he states has been addressed in a recent court decision he references concerning**
19 **the last rate case, Docket No. 20160101-WS. Do you agree?**

20 . A. No. Mr. Radigan is correct that the issue of including flows from prepaid connections and
21 double counting have been addressed. But I do not agree that the manner in which the flows
22 associated with prepaid connections in this case is contrary to that court opinion.

23 **Q. What does the court say about prepaid connections and double counting?**

24 A. In Docket No. 20160101-WS, the Commission and the utility agreed that prepaid
25 connections represented committed capacity and should be considered in addition to the

1 growth allowance. The court disagreed and said that prepaid connections should be
2 considered as just another factor in determining the growth allowance using what it
3 referred to as the “statutory limits of the Five Year/Five Percent Law.” The court also
4 indicated that it was not in a position to evaluate whether giving recognition to the prepaid
5 connections resulted in double counting.

6 **Q Did the utility consider prepaid connections in the manner described by the court?**

7 A. Yes.

8 **Q Did the utility take precautions to prevent double counting?**

9 A. Yes.

10 **Q Would you please describe how you went about using prepaid connections in**
11 **determining growth allowance?**

12 A. On page 193 of my prefilled testimony and exhibits, I calculated the five-year growth based
13 on a linear regression of historical data for the test year and four previous years, in
14 accordance with Commission rules. I then transferred that to page 193 of my prefilled
15 testimony and exhibits where the calculation is made of the number of gallons per day
16 (gpd) to be considered in the growth allowance. Also, on page 193, I discuss the prepaid
17 connections from a new area that had not been served during the test year but are
18 anticipated to be connected in the next five years. Since they are to be served in a new area,
19 they are not reflected in determination of historical growth and are additive and not double
20 counted.

21 **Q Mr. Radigan states that by adding the two results together it will exceed the 967**
22 **undeveloped lots on the system. Is that correct?**

23 A. No. The 967 lots referred to is the number of remaining unserved prepaid connections in
24 the new area, not the remaining unserved lots in the system.

25

1 **Q. Mr. Radigan states that the allowance for growth used by the utility will exceed the
2 5% per year limit. Is that correct.**

3 A. Yes. In that conclusion he is correct. I calculated the anticipated five-year growth but failed
4 to test that against the 5% per year limit. When adjusted to limit the growth allowance to
5 5% per year, the calculated U&U is reduced from the 72% shown on page 188 of my
6 prefiled testimony and exhibits to 70%. The calculations are shown Exhibit FS-4.

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

8 A. Yes.

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1 CHAIRMAN CLARK: All right. Ms. Pirrello, I
2 assume you are going to be doing the questioning
3 this time.

4 Before you begin, one thing, Mr. Seidman, if
5 you would, we are going to need you to get a little
6 closer to the mic. When I see my court reporter
7 pop up in the screen, I know there is something
8 going on, so I believe she's probably having a
9 little difficulty understanding you, so try to stay
10 focused as close to the microphone as you can,
11 please.

12 THE WITNESS: I will try that, yes.

13 CHARI MAN CLARK: Thank you.

14 Ms. Pirrello.

15 MS. PIRRELLO: Thank you, Mr. Chairman.

16 EXAMINATION

17 BY MS. PIRRELLO:

18 Q Mr. Seidman, yesterday we were talking about
19 the Labrador system, and the previous U&U ruling in that
20 case from the 2016 docket, and you explained that the
21 Commission had rejected to give this system a 100
22 percent U&U rate because of an existing parcel of land
23 that was undeveloped; is that correct?

24 A That's correct.

25 Q So in your rebuttal testimony, on page four,

1 line six, you state that the 11.6 acre parcel in
2 Labrador is now being developed, and the developer has
3 indicated that all the units will be complete within
4 five years, is that correct?

5 A That's correct. Yes.

6 MS. PIRRELLO: So, Mr. Chairman, I would like
7 to turn to OPC cross Exhibit 33, and request that
8 it be given exhibit hearing number 209.

9 CHAIRMAN CLARK: Samantha, is that correct,
10 209?

11 MS. CIBULA: Yes, 209 is next.

12 CHAIRMAN CLARK: 209 it is.

13 (Whereupon, Exhibit No. 209 was marked for
14 identification.)

15 MS. PIRRELLO: This is OPC's -- I am sorry?

16 MR. WHARTON: 209, staff Exhibit 209?

17 MR. FRIEDMAN: I don't have it.

18 MS. PIRRELLO: No, cross exhibit -- cross
19 Exhibit 33.

20 CHAIRMAN CLARK: OPC cross Exhibit No. 33 is
21 being given CEL No. 209.

22 Do you have that document, Mr. Seidman?

23 THE WITNESS: No, I don't. I don't know what
24 you are referring to.

25 MR. WHARTON: Hang on. I am not having to

1 talk to you, Mr. Chairman. We are trying to pull
2 it up here quickly.

3 CHARIMAN CLARK: All right. We will give him
4 just a second.

5 MR. FRIEDMAN: Are you referring to an OPC
6 cross-examination exhibit?

7 MS. PIRRELLO: Yes, sir.

8 MR. FRIEDMAN: Oh, okay. 33?

9 MS. PIRRELLO: Yes.

10 MR. FRIEDMAN: Why is this not -- I don't know
11 every time I try to do this it fails to load.

12 MR. WHARTON: All right, we have Exhibit 33,
13 cross-examination exhibit, take that, sir.

14 THE WITNESS: Okay. Okay, I am looking at it.

15 BY MS. PIRRELLO:

16 Q So this is UIF's response to OPC's
17 Interrogatory 179. In support of the claim that the
18 development will be completed within five years, UIF
19 provided an email from the VP of Construction Services
20 from the contractor, which states that it's a fair
21 assumption the project will be done within five years,
22 correct?

23 A Correct.

24 Q And UIF provided no other documentation to the
25 Commission staff or OPC for the assertion that this

1 **development will be finished in five years, correct?**

2 A There was, I believe, a copy of an email
3 between Mr. Flynn and the developer in which they were
4 confirming that they would be building the 35 within the
5 five-year period.

6 **Q Yes, that email is on the second page of that
7 exhibit.**

8 A I am looking at the exhibit, there is response
9 to interrogatories and not --

10 MR. FRIEDMAN: Go to the next page.

11 THE WITNESS: Oh, I am sorry. Oh, okay. Yes,
12 I see it. All right. Yes. That's -- yeah, the
13 information we have that we based it on.

14 MS. PIRRELLO: Okay. That's all I have for
15 this witness.

16 CHAIRMAN CLARK: Staff, any questions? All
17 right. Staff has no questions.

18 Commissioners, any questions? No questions
19 from Commissioners.

20 Redirect?

21 MR. WHARTON: None.

22 CHAIRMAN CLARK: All right. Any exhibits?

23 MS. PIRRELLO: I would like to move Exhibit
24 209 into the record.

25 CHAIRMAN CLARK: All right. So ordered 209 is

1 entered into the record.

2 (Whereupon, Exhibit No. 209 was received into
3 evidence.)

4 CHAIRMAN CLARK: Anything else from anyone?

5 All right. Would you like your witness
6 excused, Mr. Wharton?

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 CHAIRMAN CLARK: And you may call your next
10 witness.

11 MR. FRIEDMAN: Thank you. Our next witness
12 would be Patrick Flynn.

13 CHAIRMAN CLARK: Mr. Flynn, I will remind you,
14 you were sworn in yesterday, you are still under
15 oath.

16 THE WITNESS: Yes, sir.

17 MR. FRIEDMAN: Thank you.

18 Whereupon,

19 PATRICK C. FLYNN

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

23 EXAMINATION

24 BY MR. FRIEDMAN:

25 Q **Would you state your name, please?**

1 A Patrick Flynn.

2 Q **And, Mr. Flynn, would you -- what's your**
3 **business address?**

4 A 200 Weathersfield Avenue, Altamonte Springs,
5 Florida.

6 Q **And did you cause to be filed prefiled**
7 **rebuttal testimony in this case?**

8 A I did.

9 Q **And if I were to ask you the questions in your**
10 **prefiled testimony, would your responses be the same?**

11 A Yes.

12 Q **So you have no changes or corrections to your**
13 **testimony?**

14 A Not in rebuttal, I have one correction from
15 yesterday's testimony with respect to direct.

16 Q **Would you please explain that?**

17 A Yeah, I was asked a question about the PCF-14
18 exhibit, with respect to whether the Mid-County
19 wastewater plant project was driven by a preliminary
20 engineering report, and I incorrectly said no. The
21 answer is yes, it was -- it was, in fact, a function of
22 the information generated by the report.

23 Q **Is that the only correction you have?**

24 A Yes, sir.

25 MR. FRIEDMAN: I would like to, Mr. Chairman,

1 ask that Mr. Flynn's prefiled rebuttal testimony be
2 admitted as though read.

3 CHAIRMAN CLARK: So ordered.

4 (Whereupon, prefiled rebuttal testimony of
5 Patrick C. Flynn was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for an increase in water and
wastewater rates in Charlotte, Highlands, Lake,
Lee, Marion, Orange, Pasco, Pinellas, Polk,
and Seminole Counties by Utilities, Inc. of Florida

Docket No. 20200139-WS

/

REBUTTAL TESTIMONY

OF

PATRICK C. FLYNN

on behalf of

Utilities, Inc. of Florida

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

2 A. My name is Patrick C. Flynn. I am Vice-President of Utilities, Inc. of
3 Florida. My business address is 200 Weathersfield Ave., Altamonte Springs, Florida,
4 32714.

5 **Q.** **Have you previously prefilled direct testimony in this proceeding?**

6 A. Yes.

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

8 A. The purpose of my rebuttal testimony is to address the prefilled testimony of OPC
9 witness Frank Radigan.

10 **Q.** **Do you agree with OPC witness Radigan's testimony regarding UIF not being able
11 to certify that all proforma projects will be in service before December 31, 2021, the
12 end of the 24-month period following the end of the test year?**

13 A. No, I am sponsoring Exhibits PCF-1 through PCF-45 that provide documentation in
14 support of each proforma project's scope, timing, and justification.

15 **Q.** **For each project, can you identify its current status and when each one is projected to
16 be placed in service?**

17 A. Yes.

18 PCF-1, the Cypress Lakes I&I Investigation, was completed in August 2020 in the amount
19 of \$42,500. The project scope included the comprehensive cleaning and video inspection
20 of two sections of the collection system. The project came in under budget by \$7,500.

21 PCF-2, Eagle Ridge Lift Stations 3 & 8 Remediation, was completed in September 2020.
22 The project scope included the removal and replacement of all piping, valves, and fittings
23 at two lift stations due to severe corrosion after 36 and 30 years of service respectively.
24 Construction costs came in slightly under budget at \$77,890.36. With the addition of
25 Interest During Construction (IDC) of \$49 and cap time of \$2,220, the total project cost

1 was \$80,139.36.

2 PCF-3, Eagle Ridge Lift Station RTU Installation, was completed in August 2020. The
3 scope included the installation of remote telemetry units at 13 lift stations in the Eagle
4 Ridge and Cross Creek collection systems and the integration of the equipment into our
5 existing SCADA system. Construction costs came in under budget at \$210,602. The total
6 project cost, including IDC and cap time, was \$229,159.

7 PCF-4, Engineering Eagle Ridge WWTP Site Improvements, was completed in August
8 2020. The project provided engineering services in support of Eagle Ridge Plant site
9 improvements referenced in PCF-5. The original budget was increased to \$151,118 due to
10 the additional services required to complete Task 6, obtaining a Lee County variance to the
11 county's development code, site plan approval, permitting, construction oversite, and
12 coordination between the county staff, administrative hearing offer, the Eagle Ridge HOA
13 board, and FDEP. Total project cost was \$163,483 including IDC and cap time of \$10,485
14 and \$1,880 respectively.

15 PCF-5, Eagle Ridge WWTP Site Improvements, was completed in July 2020. The project
16 scope included the removal of the plant site's perimeter fence, installation of decorative
17 fencing on the north, east and south sides in conformance with Lee County's code variance
18 requirements, installation of a replacement main entrance gate and auxiliary entrance
19 gate matching the decorative fencing motif, removal of all invasive tree species from the
20 site, installation of native shrub and tree species to provide visual buffer, construction
21 of fully sodded shallow stormwater retention basins, and installation of an irrigation
22 system using reclaimed water to establish the sod and landscaping. Multiple vendors,
23 contractors, and suppliers were utilized to complete the complex project. The total
24 construction cost was \$658,624, approximately \$21,400 above the original budget, which
25 reflected the cost to plant additional trees at Lee County staff direction. With IDC and cap

1 time of \$34,563 and \$10,611 respectively, the total project cost was \$703,798.
2 PCF-6, Labrador WWTP Master Plan, is scheduled to be completed by the end of January
3 2021. The project scope includes a comprehensive technical evaluation of the Labrador
4 WWTP's tanks, structures, piping, and equipment by a licensed professional engineer to
5 determine the expected remaining service life of the plant facilities. A report containing
6 conclusions and recommendations will be provided in January, which will then be used by
7 UIF staff to develop a plan that addresses the timing, extent, and costs associated with the
8 replacement of plant assets to avoid the negative financial, environmental and regulatory
9 consequences of failure of treatment plant components. The total project cost to date is
10 \$44,736. No additional costs are expected to be incurred. This project is a planning
11 activity.

12 PCF-7, Longwood Lift Station RTU Installation, was completed in January 2020. The
13 project scope included the installation of remote telemetry units at 13 lift stations in the
14 Longwood Shadow Hills collection system and then integrating the new equipment into
15 UIF's existing SCADA system. Construction costs totaled \$122,024, slightly under the
16 project budget. With IDC and cap time totals of \$3,488 and \$136 respectively, the total
17 project cost was \$125,647.

18 PCF-8, Engineering of the Crescent Bay Raw Water Main, is an open project. The project
19 is scheduled to be completed by April 2021 with the engineering design,
20 surveying, permitting, and bidding processes already completed. Construction inspection
21 services will continue until the completion of construction in April. To date, expenditures
22 have totaled \$65,000 out of the \$70,000 budgeted for engineering services. The remaining
23 \$5,000 will be spent during construction. IDC and cap time of \$3,204 and \$452 respectively
24 have been incurred to date. Additional IDC and projected cap time costs of \$538 and \$1,048
25 respectively, in addition to the remaining \$5,000 in engineering services, will result in a

1 projected total project cost of \$75,242.

2 PCF-9, Crescent Bay Raw Water Main, is a project that will begin construction in January
3 2021 and be completed in April 2021 reflecting the contractor's work schedule and
4 availability of his crews. No project costs have been incurred to date. The project entails
5 construction of a subaqueous 8" water main under Lake Crescent and an additional 3,000
6 LF of 8" water main through two neighborhoods that will connect the existing Crescent
7 Bay water supply well with the CR 561 WTP. This will allow efficient and enhanced use
8 of the Crescent Bay well to meet increasing peak water demand due to customer growth in
9 the area. The contract has been awarded to the lowest bidder, Tri-Sure Corporation, in the
10 amount of \$481,514. The project budget also includes \$5,000 to fund the acquisition of
11 two utility easements from the Lake Crescent Hills and Crescent Bay HOA's at \$2,500
12 each. IDC of \$9,331 and cap time of \$7,186 will bring the total project cost to \$503,031.

13 PCF-10, Lake Groves Sulfuric Acid Tank Replacement, was completed in April 2020. The
14 original tank, containing 93% pure sulfuric acid used in the water treatment process, had
15 begun to exhibit signs of failure. Although the storage tank has a secondary containment
16 vessel integral to it, UIF determined it was prudent to replace the poly tank before the tank
17 failed. The construction cost was \$54,303, IDC was \$415 and cap time was \$787 for a total
18 project cost of \$55,504.

19 PCF-11, Lake Groves Hydrochloric Acid Storage Tank, was a project completed in March
20 2020. The project entailed relocating an existing tank to an outdoor location to avoid
21 corrosion on metal surfaces inside the Lake Groves chemical storage building. The project
22 cost totaled \$29,992 and was completed by Odyssey Manufacturing. There was no IDC or
23 cap time associated with this project.

24 PCF-12, Lake Groves RAS Pumps, includes the replacement of two existing pumps that
25 are integral to the wastewater treatment process but do not provide reliable or

1 efficient performance, are expensive to repair, and parts are not readily available for this
2 brand and model. The two replacement pumps have been ordered by UIF and will be
3 installed in January 2021 at a cost of \$42,558, inclusive of all parts and labor, by Danus
4 Utilities, Inc.

5 PCF-13, Barrington WWTP Improvements, is an open project that is on schedule to be
6 completed in May 2021. The generator and lift station control panel have been ordered and
7 are scheduled for delivery in January. Thereafter, Danus Utilities will mobilize on site and
8 begin construction of the lift station as well as installation of the control panel and transfer
9 switch, followed by the installation of the generator. The engineering services provided in
10 this project include lift station design, permitting, bidding, and construction inspection. The
11 engineering and construction costs total \$380,000. IDC and cap time are projected to total
12 \$9,122 and \$3,824 respectively resulting in a total project cost of \$392,946.

13 PCF-14, Mid-County Master Lift Station, is an open project with construction under way
14 at the Mid-County WWTP site. The project is on schedule to be completed by the end
15 of June 2021. The scope of work includes: engineering design, permitting, bidding and
16 construction inspection services; construction of a new master lift station, gravity sewer
17 main, manholes, force main, pumps, and control panel; demolition of the original lift
18 station; and integration of the new equipment with the plant's SCADA system. The
19 project's engineering and construction budget totals \$2,103,578. The projected IDC
20 amount is \$73,696 and projected cap time is \$38,866. To date, \$282,018 has been spent
21 with approximately 15% of the work completed. The wet well, four manholes, and most of
22 the 18" gravity main has been installed already, the two submersible pumps have been
23 delivered, and the control panel is being fabricated. The relocation of underground utilities
24 from the future headworks pad will be completed in February in advance of the start of
25 construction of the headworks facilities in March.

1 PCF-15, Mid-County LS 4 and LS 7 Generators, is an open project that will close
2 in December 2020 after the successful startup of the new generator at LS 7 on December
3 11. The generator at LS 4 was placed into service in November. This project was approved
4 by FDEP as an in-kind project under the terms of the open Consent Order included in the
5 MFR's. The Consent Order will now be closed by FDEP. This project's scope included the
6 installation of emergency generators with subbase fuel tanks and automatic transfer
7 switches at two key lift stations. Dedicated generators will provide immediate restoration
8 of the two stations' pumping capacity when normal power is lost, and thus drastically
9 reduce the risk of a sanitary sewer overflow. The cost of construction and engineering
10 services to date totals \$119,699. IDC and cap time to date total \$568.95 and \$4,436
11 respectively. The total engineering and construction costs will end up at \$130,159
12 reflecting an additional \$13,629 for Pinellas County permitting fees, landscaping at LS 4,
13 effort required to respond to Pinellas County plan review process. The project's total cost
14 will be \$136,163.

15 PCF-16, Mid-County Curlew Creek I&I Remediation, is an open project that will be
16 completed by January 31, 2021. Construction and engineering services expenditures total
17 \$\$230,671 to date. Including IDC and cap time, the total spent to date is \$234,906. The
18 project scope entails engineering design; permitting and coordination with Pinellas
19 County, FDEP, and FDOT; bidding; construction inspection services; cleaning and video
20 inspection of 6,500 of gravity sewer main; lining 6,500 LF of pipe; refurbishing three brick
21 manholes and 36 standard manholes; installing sheeting around MH 2 to protect it from
22 erosion on the creek bank. The total project cost will be \$719,049 inclusive of IDC and cap
23 time. As of early December, three of the four manholes have been completed, most of the
24 lining installation has been done, and the project workflow is on schedule.

25 PCF-17, Mid-County Headworks, is an open project that will be completed by November

1 2021. The project's scope includes the installation of drum screens; grit
2 removal equipment; relocation of odor control equipment; pipe work; washdown pumps,
3 and demolition of the current headworks. The engineering design, permitting, bidding and
4 bid award steps have been completed. The prime contractor, TLC Diversified,
5 will soon order the screening and grit removal equipment following approval of applicable
6 shop drawings currently under review by our engineer. The Pinellas County site plan
7 approval, habitat permit, and building permit processes are well under way. FDEP has
8 issued its construction permit. Once the master lift station contractor completes the
9 relocation of underground facilities in February, TLC will mobilize on site and commence
10 work. To date, expenditures have been limited to engineering services totaling \$169,994,
11 IDC of \$3,296 and cap time of \$2,279 for a total of \$174,568.58. The project's total budget
12 is \$2,424,782.

13 PCF-18, Mid-County Lift Station 10 FM Relocation, is an open project that will be
14 completed by the end of December 2021 in coordination with FDOT's road improvement
15 project in the US 19 North road corridor in Clearwater. Portions of a 4" force main that
16 crosses US 19 at Curlew Road must be relocated away from FDOT's planned flyover. The
17 project scope is to design the relocation of segments of the pipe, coordinate with FDOT to
18 avoid conflicts with their plans, then obtain a FDEP construction permit, solicit bids, and
19 provide construction inspection services. UIF must adjust its facilities before FDOT's
20 contractor mobilizes late next year to avoid any delays on our part to FDOT's schedule. To
21 date, engineering expenditures have totaled \$31,640 out of a total budgeted amount of
22 \$55,750. The project's total cost is budgeted at \$57,451.

23 PCF-19, Pennbrooke Diffuser Replacement, was completed in April 2020. The project's
24 scope included the removal and replacement of 16 drop pipes and 32 air diffusers in the
25 aeration basins of the Pennbrooke WWTP. The project cost was \$33,419, slightly under

1 the budgeted amount of \$34,000. There was no IDC or cap time booked to this project.
2 PCF-20, Sandalhaven Lift Station RTU Installation, is an open project with a
3 planned completion date of March 2021. The contractor, Barney's Pumps, formerly
4 Sanders Company, Inc., was authorized to proceed with the work in mid-November. Once
5 the equipment is in hand in January, the contractor will begin installing the units. The
6 project scope includes the installation of 13 remote telemetry units at each Sandalhaven lift
7 station, solar arrays to recharge battery packs so that the RTU's provide real time
8 information during extended loss of power at stations that have no dedicated emergency
9 generator on site, and integration with UIF's existing SCADA system. The contractor
10 identified that he would need a couple of months to obtain the equipment followed by
11 installation of the RTU's at a rate of two per week. No expenditures have been made yet.
12 The project budget is \$135,406.

13 PCF-21, Sandalhaven I&I Investigation, is an open project that will get under way in
14 January 2021. The contractor, Specialized Plumbing Technologies (SPT), has been
15 awarded the work and will commence the cleaning and video inspection of 8,000 LF of 8"
16 gravity sewer main beginning in January. No expenditures have been made yet. The project
17 budget amount is \$56,500.

18 PCF-22, Wekiva WWTP Improvements, is a complex capital project that is substantially
19 complete with all newly installed equipment placed into service in October and November.
20 The project is scheduled to be completed by the end of December 2020. The project scope
21 includes a noise and odor study; engineering services including design, permitting,
22 bidding, site plan approval and construction inspection services; placement of new turbo
23 compressors in a blower building; stainless steel air header; replacement of sand filters
24 with membrane filters; new chemical feed and storage facilities; replacement of a storage
25 barn; relocation of a belt press; milling and resurfacing of roadways; and demolish

1 abandoned facilities. The project budget is \$278,820 for engineering services
2 and \$6,200,242 for construction for a total of \$6,479,062. IDC is projected to total
3 \$306,435 and cap time to be \$60,875. A DEP Consent Order, OGC-18-0103, filed with the
4 MFR's, will be closed shortly.

5 PCF-23, Wekiva WWTP Headworks, is an open project that will be completed in
6 November 2021. The project scope includes engineering services including design,
7 permitting, site plan approval, bidding, and construction services. Additionally, UIF will
8 construct an expanded plant headworks structure; install twin center flow screens; install a
9 fourth surge pump; install a 30" DIP connection between the new headworks and the surge
10 tank; install instrumentation and connect it to the existing SCADA system; and build a
11 bypass channel to the surge tank in the event both screens fail. The project will take nine
12 months to complete and the contractor is already mobilized on the site as he is currently
13 completing the Wekiva Plant improvements project. Shop drawing reviews have been
14 underway for weeks. The engineering services budget amount is \$186,715 and the
15 construction component is \$2,580,912. Projected IDC of \$124,913 and projected cap time
16 of \$16,126 generates a total capital budget amount of \$2,908,666.

17 PCF-24, Sanlando Well Panel Replacement, is an open proforma project that is now
18 wrapped up and scheduled to close in December 2020. The project scope includes the
19 replacement of five control panels at Sanlando supply wells 1, 1A, 4, 5 and 8 due to their
20 age and condition. The project cost was \$74,500 plus \$1,725 in IDC and \$2,313 in cap time
21 for a total of \$78,537.

22 PCF-25, Sanlando FM and WM Replacement, is an open project that is scheduled to close
23 in May 2021. The project scope includes the replacement of a 14" water transmission main
24 and a 14" force main with 16" size pipe, valves and appurtenances using both open cut and
25 directional drilling construction methods. An analysis of the pipe's condition and

frequency of failures indicated that both the FM and WM were at risk of failure. Additionally, the velocity through the pipe exceeded standard design characteristics. The contractor, Tri-Sure Corporation, is on schedule to complete the project as planned in May. The project cost is \$3,691,400 with the water main costing \$1,791,990 and the force main costing \$1,899,410. After adding the projected IDC and cap time, the total project cost will be \$3,860,720.

PCF-26, Sanlando F5/C1/L2 Force Main Replacement Engineering, is an open project that is scheduled to close in December 2021. The project consists of engineering services including design, permitting, and contract bidding of three force mains that are to be replaced beginning in 2021. These are the force mains carrying flow from Lift Stations F5, C1 and L2, all of which are at the end of their service life, are at risk of failure based on recent repair history, and have a high consequence of failure as well. The project budget is \$185,000 for the engineering services. With IDC and cap time added, the total budget amount is \$202,966. To date, total expenditures are \$139,083.

PCF-27, Sanlando I&I Remediation, Ph.4, is an open project that is scheduled to wrap up in March 2021. The scope of the project is to install liners in 24,319 LF of 8" vitreous clay pipe, install 62 LF of sectional liners, restore 5 manholes, raise 17 manhole rings and covers, remove roots from 5,652 LF of sewer mains, and excavate, replace and restore gravity mains in nine locations. The project is on schedule. The project cost to date is \$1,331,381 inclusive of IDC and cap time. The total project budget is \$2,328,0234 inclusive of IDC and cap time.

PCF-28, E. E. Williamson Utility Relocates, is an open project that is scheduled to be completed by December 2021. The start of the project is dependent on Seminole County's road improvement schedule, which currently identifies the county's intent to let their contractor proceed in the fourth quarter of 2021. UIF must adjust the location of segments

1 of water main and force main within the E. E. Williamson road right-of-way in advance
2 of and in coordination with the county's contractor. The plans have been drawn up,
3 permits are in hand, bids were opened weeks ago, and the contract awarded to the low
4 bidder. The project's budget is \$462,535 including IDC and cap time. The project cost is
5 allocated 25% water and 75% wastewater cost.

6 PCF-29, Sanlando Lift Station Mechanical Rehabilitations, is an open project. It is
7 scheduled to be completed in December 2020. The project includes replacing control
8 panels at 12 lift stations, removing and replacing piping in the wet wells of seven lift
9 stations; replacing check valves, gate valves, plug valves, vault lids, and fittings at various
10 other lift stations in the Sanlando and Shadow Hills collection systems. The project budget
11 is \$543,277 inclusive of IDC and cap time. The contractor is on schedule.

12 PCF-30, Sanlando FM and WM Modeling and Analysis, was completed in June 2020.
13 The project scope included modeling most of the Sanlando FM's as well as the larger
14 water transmission mains to identify bottlenecks in the piping networks, evaluate the
15 remaining estimated service life, and prioritize the replacement of those pipe segments that
16 offer the highest risk and consequence of failure. The project cost was \$94,161 inclusive
17 of IDC and cap time.

18 PCF-31, Sanlando GST Rehabilitations, is an open project. The contractor began work in
19 April 2020 but had to postpone the work until late autumn or winter at the Utility's
20 direction. This will facilitate the removal from service of each of the tanks in
21 sequence without unduly reducing storage capacity or negatively impact the delivery of
22 service. The project cost will be at least \$194,003. As each tank is emptied and inspected,
23 the scope of work may change if the interiors of the tanks require additional remediation
24 effort.

25 PCF-32, Tierra Verde I&I Inspection, is an open project that will wrap up in December

1 2020. The project scope included the use of multiple autonomous video units that allowed
2 all of the Tierra Verde collection system to be evaluated at one time. In addition, the
3 contractor, Red Zone, inspected each manhole. Subsequently, the project scope
4 was expanded to include remediation of two sections of 18" DIP on Pinellas Bayway that
5 had become tuberculated with mineral deposits. Also, a segment of 6" clay gravity main
6 was lined to avoid pipe failure caused by FDOT's road construction project at Madonna
7 Blvd. The project cost is \$219,560 inclusive of IDC and cap time.

8 PCF-33, Tierra Verde FM and GSM Relocations, is nearly complete. One manhole ring
9 and cover requires adjustment in coordination with FDOT's contractor constructing a
10 roundabout at Pinellas Bayway and Madonna Blvd. This project included the replacement
11 of Lift Station 4's entire length of FM reflecting an increase in pipe failures caused by
12 severe corrosion after 40 years of service. The project's budget is \$593,368 inclusive of
13 IDC and cap time with only \$5,500 worth of work yet to be completed, which is scheduled
14 to occur in the first quarter of 2021.

15 PCF-34, Tierra Verde Lift Station 4 Replacement, is an open project. The selected
16 contractor, TLC Diversified, will construct a new lift station on Madonna Blvd. and then
17 convert the wet well of the existing lift station to a flow through manhole. The work will
18 begin in April once FDOT's contractor has restored Madonna Blvd.'s right-of-way
19 following the construction of a roundabout at Pinellas Bayway. The station will take six
20 months to build. Therefore, the projected completion date is September 2021. The project's
21 construction cost is \$828,922. With the addition of IDC and cap time, the total project cost
22 will be \$871,501.

23 PCF-35, Buena Vista Well 2 and Well 3 Improvements, is an open project that will be
24 completed this month, December 2020. The project scope included removal and
25 replacement of the submersible pump assembly at Well 2 that had worn out after many

1 years of service. At Well 3, the hydropneumatics tank was replaced, repairs were made to
2 the wellhouse and the check valve was replaced. Total cost of the project is \$80,233
3 inclusive of IDC and cap time.

4 PCF-36, Orangewood Well 1 Tank and Generator, was completed in September 2020. The
5 project scope included replacing the hydro tank, bypass piping and valves; replacement of
6 the emergency generator with a 50 Kw diesel generator and subbase fuel tank; removal and
7 replacement of the well pump assembly with a submersible pump; and running a borehole
8 log of the well. The project cost was \$184,672 inclusive of IDC and cap time.

9 PCF-37, Seminole County Lift Station RTU Installation, is a completed project with the
10 work finished in January 2020. Ten remote telemetry units were installed at lift stations in
11 the Weathersfield and Ravenna Park collection systems, then integrated into UIF's
12 SCADA system. The project cost was \$96,664 inclusive of IDC and cap time.

13 PCF-38, Summertree Chlorine Dioxide Pilot Study, is an open project that will be
14 completed in March or April 2021, dependent on obtaining sufficient data to determine the
15 efficacy of using chlorine dioxide as a means to reduce the accumulation of nitrogen
16 compounds and minerals in the piping network and thus significantly reduce the volume
17 of water used for flushing. Bulk water supplied by Pasco County Utilities contains
18 chloramine compounds that become problematic when there is a long detention time in the
19 system. To minimize the buildup of ammonia, nitrite and nitrate, standard practice is to
20 flush frequently at key locations to reduce water age and thus avoid a drop in chlorine
21 residual caused by nitrogen compounds. The project scope included the purchase by UIF
22 of chemical feed pumps, storage tanks, controls and monitoring equipment sized
23 adequately to serve as a permanent installation once the pilot study shows chlorine dioxide
24 successfully meets the objectives. In addition to the \$52,000 in engineering support
25 provided by Kimley-Horn and Associates, UIF purchased the equipment for \$40,000.

1 PCF-39, Summertree I&I Investigation and Remediation, is an open project that is
2 scheduled to end in March 2021. The project included a video inspection of 9,400 LF
3 of vitreous clay gravity sewer mains in the Pointe West section of Summertree.
4 The information gleaned from the inspection identified the need to remove roots from
5 1,400 LF of pipe, removal of 33 protruding hammer taps, sealing 15 manhole interiors,
6 lining approximately 3,500 LF of pipe and installing 70 top hats in service laterals. The
7 scope of the project was expanded from the original \$28,620 for the initial cleaning and
8 video inspection to include \$335,859 in system improvements. The project's total cost is
9 now \$378,227.

10 PCF-40, Golden Hills Galvanized Water Main Replacement, was completed in December
11 2020. The project scope encompassed the replacement of nearly 2,000 LF of 2" galvanized
12 iron water main in three cul-de-sacs, installation of 2" blowoffs in each dead end, and
13 removal and replacement of two 3-way fire hydrants that were not operable or repairable
14 due to their age and lack of available parts. The project cost was \$80,004 inclusive of IDC
15 and cap time.

16 PCF-41, Golden Hills Water Main Relocation, is a completed project. Marion
17 County government initiated a stormwater improvement project on NW 78th Avenue that
18 required UIF to relocate 1,350 LF of 6" water main and one fire hydrant to the opposite
19 side of the road prior to the County's contractor beginning its work and with very little
20 advance notice. The project was completed at a cost of \$170,810 including IDC and cap
21 time.

22 PCF-42, Little Wekiva Generator, is a completed project that consisted of installing a 40
23 Kw emergency generator and automatic transfer switch at the Little Wekiva WTP. This
24 will reduce the frequency and duration of water outages caused by a temporary loss of
25 normal power in a community of 61 homes. The project was completed in June 2020 at a

1 cost of \$100,618 inclusive of IDC and cap time.

2 PCF-43, Park Ridge Generator, is a project completed in June 2020 that included the
3 installation of a 60 Kw emergency generator and automatic transfer switch to maintain
4 service to 105 customers when normal power is lost. The project cost was
5 \$103,489 inclusive of IDC and cap time.

6 PCF-44, Ravenna Park I&I Remediation, is an open project that is going to close in
7 December 2020. The project included a video inspection of the whole collection system to
8 identify all pipe deficiencies followed by installation of 6,440 LF of pipe liner, as well as
9 root removal, manhole repairs, and excavation of collapsed pipe in multiple locations that
10 were replaced. The project budget was expanded to \$853,310 reflecting the necessity to
11 dig up and replace additional failed pipe. The total project cost inclusive of IDC and cap
12 time is \$876,921.

13 PFC-45, Northwestern Bridge Water Main Relocation, is an open project that will be under
14 way in January 2021. Seminole County government, after years of delay, informed UIF in
15 November that the Northwestern Ave. bridge over the Little Wekiva River would be
16 demolished on January 23, 2021. UIF will construct a temporary aerial river crossing that
17 will allow UIF to maintain water service to the hundreds of customers on the south side of
18 the bridge with water supplied from our WTP. This will avoid UIF having to construct an
19 interconnect with the City of Altamonte Springs water system and the purchase of water
20 from the City on a continuous basis while the bridge is under construction, a period of
21 approximately 9-10 months. DEP has already issued a construction permit for the
22 temporary bypass and our contractor will mobilize the week of January 4 to construct the
23 bypass. Once the new bridge is finished, our contractor will install an 8" main attached
24 to the bridge and then remove the temporary bypass. The construction and engineering cost
25 is \$140,201. With IDC and cap time included, the total project cost will be \$147,054.

1 **Q. Witness Radigan testified that he was concerned that not all of the proforma projects**
2 **will be completed within 24 months of the end of the test year. Do you disagree with**
3 **that statement?**

4 A. Yes, I have provided an updated roster of all 45 proforma projects in Exhibit PCF-47. It
5 includes the projected place in service date for those projects not yet completed. In all
6 cases, the projects are on schedule to be completed before December 31, 2021.

7 **Q. Can you briefly describe why you are confident to make that statement?**

8 A. Over the last 35 years I have managed hundreds of water and wastewater capital projects
9 that varied from the simple to complex, from small investments to multi-million-
10 dollar projects that took years to develop and complete. Although some of the proforma
11 will be completed late in 2021, that is for the most part by design. By spreading the projects
12 out over time, my staff and I will be better able to keep tabs on each one and thus maximize
13 value for the benefit of the customers and UIF.

14 **Q. Witness Radigan indicated he is doubtful that the Mid-County Headworks project**
15 **can be completed in sufficient time to be included in this proceeding. Please respond**
16 **to this.**

17 A. Witness Radigan is incorrect in stating that the Mid-County Lift Station project must be
18 completed prior to the start of the headworks project. In fact, my staff and our engineering
19 consultant have worked diligently with each of the two contractors to sequence the
20 workflow on the site. For instance, in January and February 2021, the lift station contractor
21 will relocate underground facilities from what will be the headworks equipment footprint.
22 This will facilitate and accelerate the headworks contractor's work when that
23 crew mobilizes in early March 2021 and commences work. At that time, the lift station
24 contractor will shift to work elsewhere on the site. This coordinated approach will
25 accelerate the completion date for both projects, which are sorely needed, and thus improve

1 the performance and reliability of the wastewater treatment process for the benefit of the
2 community, the environment, and the ratepayer. Also, by having the two projects in
3 process on the same site at the same time, the engineer of record can keep better tab on the
4 progress of construction.

5 **Q. Can you speak to witness Radigan's comments regarding the six projects listed on**
6 **FWR-3 that he characterizes as CWIP, not plant in service?**

7 A. PCF-6 is a planning document describing in detail the condition and life expectancy of the
8 Labrador WWTP's tanks, equipment, treatment process and ancillary components. As
9 such, it will provide guidance to UIF staff regarding the timing and extent of capital
10 improvements to the facilities that must be made to ensure compliance with its operating
11 permit. In other words, the information contained in the master sewer plan will be applied
12 to the plant's operating strategy as well as guide capital investment decisions.

13 PCF-21 comprises a video inspection of an older portion of the Sandalhaven collection
14 system, primarily where the gravity sewer mains are made of clay pipe. As an alternative
15 to including this expenditure in rate base, it could be deferred and amortized over a
16 reasonable timeframe, say five years. Although UIF has as a goal to video inspect 10% of
17 the gravity mains each year on average, essentially a 10-year inspection cycle, it is prudent
18 to inspect Sandalhaven's clay pipe more frequently. This reflects the historical reality in
19 Sandalhaven that clay pipe is more prone to failure compared to PVC pipe and without
20 warning.

21 PCF-26, the design, permitting and solicitation of bids to replace three critical force mains
22 in Sanlando in their entirety reflects UIF's analysis that they are at the end of their useful
23 life. Optimally, UIF would have included construction of the three force mains as proforma
24 in this docket, but that would have unduly delayed the filing of our petition. Nevertheless,
25 the engineering services covered in this project are a prerequisite to the construction of the

1 replacement force mains and the force main failure history indicates clearly that replacing
2 the force mains is an immediate need. Therefore, UIF must move forward with the
3 construction activity in 2021 for all three future projects.

4 PCF-30, the computer modeling of Sanlando's force main network, has been
5 used extensively since then to identify, for example, bottlenecks in the piping network. UIF
6 staff have used this information to modify how wastewater is routed through the system
7 during both normal and peak demand conditions. Consequently, the Utility has
8 substantially reduced the risk of sanitary sewer overflows during and after rain events,
9 which benefits the customers, the environment, and the Utility. Similarly, UIF has
10 incorporated the information provided by the analysis into an asset management plan that
11 is the basis for planning capital investments, to identify and optimize the timing and extent
12 of capital spending in a proactive manner. In other words, UIF is applying the work product
13 of this project on an ongoing basis to support capital investment decisions. In that context,
14 this proforma project is in use and should be included in rate base.

15 PCF-39's scope was originally limited to a video inspection of the Pointe West collection
16 system in Summertree. However, it was readily apparent that the system contained some
17 severe pipe deficiencies that needed to be address. Therefore, this project's budget has been
18 substantially increased to allow for the Utility to fix those deficiencies rapidly. Therefore,
19 this investment ought to be fully recovered.

20 PCF-45, the replacement of a water main crossing the Northwestern Ave. bridge over the
21 Little Wekiva River, is no longer limited to engineering activity. Due to the
22 accelerated construction timeframe dictated by Seminole County, the construction of a
23 temporary bypass initially followed by a permanent connection once the bridge is replaced
24 makes this project well qualified for recovery in full in this docket.

25 Q. **Does that conclude your direct testimony?**

1 A. Yes, it does.

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1 MR. FRIEDMAN: And he is available for
2 cross-examination, Mr. Chairman.

3 CHARIMAN CLARK: All right. OPC?

4 MS. PIRRELLO: Thank you, Mr. Chairman.

5 EXAMINATION

6 BY MS. PIRRELLO:

7 Q Good afternoon, Mr. Flynn. Could you please
8 find your updated exhibit PCF-6, it's also CEL 100?

9 A Yeah, the Labrador master plan.

10 Q Yes.

11 A Go ahead.

12 Q So this project is described as the
13 engineering services associated with the analysis of the
14 Labrador wastewater treatment plant and the generation
15 of a report that identifies facility improvements that
16 are necessary to operate and maintain the plant in
17 conformance with DEP operating permits, is that correct?

18 A Yes.

19 Q And these engineering services are for
20 \$41,000, correct?

21 A Yes.

22 Q And isn't it true that your testimony doesn't
23 demonstrate that you evaluated this report for inclusion
24 in plant in service pursuant to the USOA?

25 A Could you repeat that? There is a little bit

1 of static.

2 Q Isn't it true that your testimony does not
3 demonstrate that you evaluated this report for inclusion
4 as plant in service pursuant to the Uniform System of
5 Accounts?

6 A Well, no. The project's design is to identify
7 to analysis what the plant's condition is with the
8 expectation that there would be a follow-up construction
9 project to identify those plant modifications or
10 improvements necessary to maintain service.

11 Q So it's true that you didn't evaluate the
12 report for inclusion as construction work in progress,
13 is that correct?

14 A Yes.

15 Q So am I correct that the engineering report is
16 intended to identify future potential work at this site?

17 A Yes.

18 Q And you would agree that PCF-6 is not included
19 in any current construction project, but is just a
20 preliminary investigation?

21 A Yes, it's analysis -- the preliminary planning
22 document necessary to identify the current condition of
23 the facilities.

24 Q If you can turn to PCF-6 updated, it's CEL
25 120.

1 A Yes, the force main engineering project.

2 Q **Yes. So this project is described as being**
3 **related to the design, permitting, bid preparation and**
4 **CEI services for the replacement and rerouting of three**
5 **force main segments, is that correct?**

6 A Yes.

7 Q **And those engineering services are for**
8 **\$194,500, is that correct?**

9 A Correct.

10 Q **And isn't it true that your testimony does not**
11 **demonstrate that you evaluated this service for**
12 **inclusion as plant in service pursuant to the USOA?**

13 A Yeah, the project is designed to support the
14 construction projects that will follow in 2021, but
15 those projects' cost information is not -- was not in
16 hand sufficiently in time for this rate docket. The
17 three projects will be following up in the next -- next
18 12 months or so.

19 Q **So you would agree that PCF-26 is not included**
20 **in any current construction project?**

21 A Correct.

22 Q **And could you find your updated Exhibit**
23 **PCF-21, it's also CEL 115?**

24 A Yes. Sandalhaven I&I.

25 Q **Yes, sir. So on the first page of the exhibit**

1 in the description box, it says: The project's scope
2 includes the following: Phase I, clean, video inspect
3 and smoke test 8,000 LF of eight foot gravity main
4 located in the Sandalhaven collection system. And two,
5 generate a report that identifies pipe or manhole
6 deficiencies that will require repairs. Use the report
7 to solicit bid correct those deficiencies, is that
8 correct?

9 A Yes.

10 Q And isn't it true that the next sentence
11 states that after the two phases listed above, the
12 company will, quote, solicit bids from qualified
13 contractors to correct the deficiencies found, end
14 quote?

15 A That's correct.

16 Q Isn't it true that your testimony does not
17 demonstrate that you evaluated this service for
18 inclusion as plant in service pursuant to the USOA?

19 A Right. The project's design is to identify
20 deficiencies, and then a follow-up component of that
21 same project is to correct those deficiencies. So as of
22 today, we don't have that information as to what those
23 costs would be, and those deficiencies. That's a
24 function of the report being generated for that
25 investigation.

1 Q And that's because this project is not
2 included in any current construction project, correct?

3 A Correct.

4 MS. PIRRELLO: That's all I have for this
5 witness, Mr. Chairman.

6 CHAIRMAN CLARK: Thank you very much.

7 Staff?

8 MR. TRIERWEILER: Staff has no questions.

9 CHARIMAN CLARK: Commissioners?

10 No questions from Commissioners.

11 All right. Exhibits, any exhibits?

12 MR. FRIEDMAN: I think his exhibits are
13 already admitted, his updated exhibits, they are in
14 the -- they are in the CEL.

15 CHARIMAN CLARK: Thank you. I am sorry, Mr.
16 Friedman, I couldn't understand you.

17 All right. Any redirect?

18 MR. FRIEDMAN: Thank you, Mr. Chairman.

19 CHARIMAN CLARK: We've already done that.

20 FURTHER EXAMINATION

21 BY MR. FRIEDMAN:

22 Q Mr. Flynn -- I'm sorry. Mr. Flynn, do you
23 recall whether, in the last rate case, the Commission
24 approved proforma projects without having actual
25 construction projects attached to it?

1 A Yes, that's my recollection.

2 Q And let's assume that the project, as the
3 Public Counsel asserts should be included, would that
4 project otherwise be included in working capital?

5 A Yes.

6 Q Did some preliminary studies get included as
7 preliminary survey costs account 183 in the rate case --
8 (inaudible) --

9 A Yes.

10 MR. FRIEDMAN: That's all we have. Thank you,
11 Mr. Chairman.

12 CHAIRMAN CLARK: All right. Would you like
13 your witness excused?

14 MR. FRIEDMAN: Yes, please.

15 CHARIMAN CLARK: All right. This witness is
16 excused, and you can call your next witness.

17 (Witness excused.)

18 CHAIRMAN CLARK: You can call your next
19 witness.

20 MR. FRIEDMAN: UIF calls Deborah Swain. She
21 will be our final witness, Mr. Chairman.

22 CHAIRMAN CLARK: Remind Ms. Swain that you
23 were sworn in yesterday and you are still under
24 oath.

25 THE WITNESS: Okay.

1 Whereupon,

2 DEBORAH D. SWAIN

3 was recalled as a witness, having been previously duly
4 sworn to speak the truth, the whole truth, and nothing
5 but the truth, was examined and testified as follows:

6 EXAMINATION

7 BY MR. FRIEDMAN:

8 Q **Would you please state your name and business**
9 **address please?**

10 A Yes. My name is Deborah Swain. My business
11 address is 2025 SW 32nd Avenue in Miami, Florida, 33145.

12 Q **And, Ms. Swain, did you profile rebuttal**
13 **testimony in this case?**

14 A Yes, I did.

15 Q **And if I asked you the questions in your**
16 **rebuttal testimony, would your responses be the same?**

17 A Yes, they would.

18 Q **So you have no changes or corrections?**

19 A Correct.

20 Q **Do you have any exhibits in connection with**
21 **your rebuttal?**

22 A No, I don't.

23 MR. FRIEDMAN: Mr. Chairman, I would ask that
24 Ms. Swain's rebuttal testimony be admitted in the
25 record as though read.

1 CHAIRMAN CLARK: So ordered.

2 (Whereupon, prefiled rebuttal testimony of

3 Deborah D. Swain was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for an increase in water and
wastewater rates in Charlotte, Highlands, Lake,
Lee, Marion, Orange, Pasco, Pinellas, Polk,
and Seminole Counties by Utilities, Inc. of Florida

Docket No. 20200139-WS

/

REBUTTAL TESTIMONY

OF

DEBORAH D. SWAIN

on behalf of

Utilities, Inc. of Florida

- 1 **Q.** **Please state your, name profession and address.**
- 2 A. My name is Deborah D. Swain. I am Vice President of Milian, Swain & Associates, Inc. and
3 head up the firm's finance, accounting and management team. My business address is 2025
4 SW 32nd Ave., Suite 110, Miami, Florida 33145.
- 5 **Q.** **Have you previously prefiled direct testimony in this proceeding?**
- 6 A. Yes.
- 7 **Q.** **What is the purpose of your rebuttal testimony?**
- 8 A. The purpose of my rebuttal testimony is to present information to refute some of the issues
9 and arguments presented by Office of Public Counsel witnesses Andrea Crane.
- 10 **Q.** **What issues will you be addressing in your testimony?**
- 11 A. I address the following issues:
- 12 • Working Capital Adjustments
- 13 • Labor escalator adjustment
- 14 • Excess Deferred Income Tax Amortization
- 15 • AFUDC
- 16 **Q.** **Do you agree with OPC Witness Crane's adjustment to cash in the calculation of
17 Working Capital included in Rate Base?**
- 18 A. No, I do not agree that the intercompany cash balances should be eliminated from the working
19 capital calculation. As I explained in my direct testimony, UIF does not maintain its own
20 unique bank accounts, and instead records cash transactions through intercompany accounts,
21 resulting in intercompany receivable and payable accounts on the utility balance sheet. Under
22 the definition of the balance sheet method of working capital, intercompany receivable and
23 payable accounts should be included in working capital as they are not interest bearing, and not
24 included otherwise in rate base nor capital structure. However, rather than include the entire
25 net balance of intercompany receivable and payable amounts in the working capital

1 calculation, I instead proposed an approach to estimate a reasonable cash balance to serve as
2 a surrogate. The use of KW Resorts Utilities Corp., Order No. PSC-17-0091-FOF-SU and
3 Order No. PSC-2018-0446-FOF-SUI was not a random selection. I chose that utility
4 because the appropriate level of cash to be included in working capital was an issue in that
5 case, that issue was testified to in an FPSC hearing, and the FPSC made a ruling based on
6 testimony from all parties as to the appropriate cash balance. The calculation I performed
7 considered the relationship between cash balances and gross plant.

8 Witness Crane goes on to point out that the working capital without a cash balance is
9 comparable to the working capital in the utility's last case. This is easily explained in that the
10 utility did not include a cash balance in working capital in its last case. Nor did it include the
11 intercompany accounts.

12 An alternate is to include the entire net balance of the intercompany receivables and payables
13 in working capital. Barring that, the Utility's adjustment to increase the cash balance by
14 2% of requested gross plant, is an appropriate adjustment to working capital.

15 **Q. Why did the utility not include a cash balance in its last case?**

16 A. I was the one that filed that last case, and it wasn't until my involvement in the KW case
17 that I realized that it was an error in the UIF case to completely exclude cash, or a cash
18 estimate. In the KW case, the Commission determined not to use the actual cash balance,
19 and instead adopted OPC's estimate of a cash balance.

20 I also relied on my past experience for guidance. Before I started my consulting practice,
21 I was Vice President and Controller of all the utility subsidiaries of the Deltona
22 Corporation. We had a similar situation at Deltona with multiple systems, without
23 individual bank accounts.

24 Finally, until its last case, UIF filed its rate requests on individual system, company or
25 county basis. Most of those filings were Class B or C, and the formula approach was used

1 to determine working capital. In those cases, on their own, this issue would have been
2 irrelevant.

3 **Q. Do you agree with Witness Crane's assessment that the Chlorine Dioxide Pilot**
4 **Study included in sewer working capital relates to water instead of sewer?**

5 A. Yes. This study should be included in working capital calculation for water not sewer.

6 **Q. Do you agree with OPC Witness Crane's adjustment related to the labor escalator?**
7 A. No. Test year salaries expense included a wage increase of 3% in April 2019 for
8 WSC/UIF employees and 3% in January 2019 for CII employees. The budgeted wage
9 increase for 2020/2021 is 3%. Witness Crane states that she recommends including the
10 3% increase pertaining to 2020, but that any more than that would reflect costs in 2021.
11 However, because the WSC/UIF salary increase was implemented in April 2019, it was
12 not in effect for the first quarter of the 2019 test year. One-fourth of 3% is .75%.
13 Therefore, the labor escalator should be 3.75%, the sum of the 3% increase for 2020 and
14 annualization of the 3% for 2019. This was described on B-3, page 2 in the MFRs, "To
15 annualize 2019 Salary & Benefits and reflect 2020 increase."

16 **Q. Do you agree with Witness Crane's recommendation to treatment of the**
17 **amortization of Excess Accumulated Deferred Income Taxes?**

18 A. Witness Crane's recommendation to use the amortization of Excess Accumulated
19 Deferred Income Taxes (Excess ADITs) as an adjustment to operating income at
20 present rates appears to have the same effect as UIF's methodology to include it as a
21 component in the calculation of income taxes for the proposed revenue increase, and as
22 such we are in agreement as to the treatment of the Excess ADITs. However, we
23 disagree as to the amount and term of the amortization, as UIF Witness Deason explains
24 in his rebuttal testimony.

1 **Q. Witness Crane is recommending a prospective adjustment to AFUDC. Do you**
2 **agree?**

3 A. No, UIF is in compliance with Commission Order PSC-04-0262-PAA-WS establishing
4 an AFUDC rate of 9.03% based on the utility's petition for the establishment of an
5 AFUDC rate. In order to change the AFUDC rate, under 25-30.116 Florida
6 Administrative Code, the utility must file another petition, or "The Commission may,
7 on its own motion, initiate a proceeding to revise a utility's AFUDC rate." At this time,
8 the utility is not filing a petition to request a new AFUDC rate.

9 **Q. Does that conclude your direct testimony?**

10 A. Yes, it does.

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1 MR. FRIEDMAN: She is thereafter tendered for
2 examination.

3 CHAIRMAN CLARK: OPC, you are up.

4 MS. MORSE: Thank you, Mr. Chairman.

5 THE WITNESS: My summary?

6 MR. FRIEDMAN: Oh, I am sorry. She's ready
7 for her summary. I am ready to go home and she's
8 ready for her summary. I apologize, Mr. Chairman.

9 CHAIRMAN CLARK: All right. We will let you
10 do that. Go ahead.

11 THE WITNESS: Thank you. Thank you.

12 It took so long for Mr. Deason to get done, I
13 guess I am chomping at the bit.

14 The purpose of my rebuttal testimony is to
15 primarily respond to OPC witness Crane's
16 conclusions regarding working capital, the salary
17 increase adjustment, excess deferred income tax
18 amortization and AFUDC.

19 For working capital, I explained that UIF has
20 not historically included the intercompany accounts
21 as working capital, although they qualify in my
22 opinion. Rather than include the entire
23 intercompany balances in working capital because
24 this would result in a significant increase in rate
25 base, I opted to calculate a more conservative

1 balance to include.

2 Since UIF does not have its own bank account,
3 the only cash on its books is petty cash. Based on
4 my experience with the only other two cases that I
5 could find where the Commission specifically looked
6 at an inappropriate cash balance, I looked to those
7 cases for guidance.

8 It should be noted in those cases that OPC
9 argued, and the Commission agreed that the
10 allowable cash balance was an amount significantly
11 less than what was on the books, and that's the --
12 that is the percentage of gross plant that I used.

13 Although witness Crane does not think that
14 cash should be a component of working capital, the
15 Commission rules direct us to use the balance sheet
16 approach to calculate working capital. This
17 direction results in cash becoming a component of
18 working capital and, therefore, rate base, and thus
19 correlated to cash for rate base.

20 I also explained that witness Crane is
21 misunderstanding my adjustment for salary
22 increases, which is made up of two components. The
23 first is to annualize the increase in early -- that
24 took place in early 2019, which would be a .75
25 annualized increase, and the second is a proforma

1 adjustment of the three-percent increase in 2020.

2 For AFUDC, UIF is in compliance with the
3 Commission order and is not filing a petition to
4 request a new AFUDC rate at this time; although, we
5 recognize that the rate can be changed by action of
6 the Commission.

7 And finally, I also explain that my -- that
8 amortizing excess deferred income tax over 10 years
9 is consistent with Commission practice.

10 And that concludes my summary.

11 MR. FRIEDMAN: And she's available for
12 cross-examination, Mr. Chairman.

13 CHAIRMAN CLARK: Thank you. Ms. Morse.

14 MS. MORSE: Thank you, Mr. Chairman.

15 EXAMINATION

16 BY MS. MORSE:

17 Q **Ms. Swain, you state in your rebuttal**
18 **testimony that you are addressing four issues, those**
19 **being working capital, labor escalator, EDIT and AFUDC,**
20 **correct?**

21 A Correct.

22 Q **And regarding the labor escalator, isn't it**
23 **true that your adjustment essentially annualizes the**
24 **rate increase that occurred in April 2020?**

25 A Yes.

1 Q **So --**

2 A There is -- go ahead.

3 Q **So my question is: So it essentially reflects**
4 **12 months at the April 2020 rates then, correct?**

5 A It annual -- right, if it took place in April,
6 that's actually -- the three percent, it's actually
7 annualizing also the three percent that took place in
8 2020. So we are annualizing the 2019 and then
9 annualizing the proforma 2020.

10 Q **Okay. And those rates will be in effect from**
11 **April 1, 2020, through March 31, 2021, correct?**

12 A No. It's annualizing retroactively the
13 January -- just like with 2019, I am -- I am annualizing
14 2019, the rate -- the salary increase took place in
15 April 2019. So to annualize it, I am adding that piece
16 from early 2019. And similarly for 2020, it took place
17 in April of 2020, so I am annualizing it by going back
18 to January 2020.

19 So it's .75 percent for annualizing 2019, and
20 then the three percent is the -- is the increase that
21 took place in April, the proportion before April, and
22 then the remaining nine months. It's consistent with
23 what we did was accepted in a prior rate case.

24 Q **Turning to the allowance for funds used during**
25 **construction, or AFUDC, for reference, do you have to a**

1 copy of the rule and OPC cross No. 16?

2 MR. FRIEDMAN: This rule right there.

3 THE WITNESS: I am sorry. We are going to
4 look and see -- (inaudible) -- okay.

5 All right. What's the rule number? I am not
6 looking at the rule 25-30.116.

7 MS. BROWN: Ms. Swain, if you could speak
8 directly into the microphone, I am having a hard
9 time hearing you.

10 THE WITNESS: Okay, I am at the rule.

11 BY MS. MORSE:

12 Q Okay. So my first question, so you are
13 familiar with Rule 25-30.116, Florida Administrative
14 Code, correct?

15 A Yes.

16 Q And isn't it true that section 2 of rule
17 25-30.116 discusses how AFUDC should be determined?

18 A Why, it does.

19 Q Similarly Section 2(a) of the rule states that
20 the AFUDC rates should include both the most recent
21 12-month average embedded cost of capital except as
22 noted using all -- all sources of capital adjusted using
23 adjustments consistent with those used by the Commission
24 in the company's last rate case, correct?

25 A -- you are -- you may be talking about when

1 the utility requests a change in its authenticity rates.

2 Q I'm just reading from the rule, so I only
3 asked but Section 2(a) of the rule.

4 A So in Section 2 of the rule, point me to --

5 Q 2(a) -- I am sorry, 2(a). That's the only
6 thing that was in my question. It was -- essentially
7 the question was --

8 (Multiple speakers.)

9 A The section -- I am sorry, the section called
10 construction work in progress that's not included in
11 rate base, and then it has eligible projects.

12 Q I am sorry. Now maybe we are -- you have the
13 2020 version of the rule in front of you?

14 MR. FRIEDMAN: She's going off the internet.

15 THE WITNESS: No, this is the 2021 rule.

16 Where is the 2087?

17 (Multiple speakers.)

18 MR. FRIEDMAN: I am sorry.

19 THE WITNESS: What I was looking at was a --

20 (Multiple speakers.)

21 THE WITNESS: -- a future rule.

22 BY MS. MORSE:

23 Q Yeah, so that's why we dropped 2020 into our
24 cross exhibits for reference because that's the
25 operative one.

1 A Okay. Okay. What is -- what's --

2 MR. FRIEDMAN: Which exhibit -- which OPC
3 exhibit is it?

4 MS. MORSE: It was OPC cross No. 16.

5 THE WITNESS: I am there.

6 MR. FRIEDMAN: You got it?

7 THE WITNESS: Okay. Two, okay. Yes, this is
8 how it shall be determined, and this is -- my
9 understanding is this is an event that the
10 utility --

11 BY MS. MORSE:

12 Q I haven't asked a question yet.

13 A Okay. Go ahead.

14 Q All right. So just going backward, I was just
15 asking you if I read 2(a) correctly, and it says: The
16 most recent 12-month average embedded cost of capital
17 using all sources of capital and adjusted -- using
18 adjustments consistent with those used by the Commission
19 in the company's last rate case, is that how it reads?

20 A Yes, it does. And so what I -- what I was
21 clarifying is this would be in the event the utility
22 requests a change in its AFUDC rate.

23 Q Thank you.

24 So is it true the rule further requires that
25 the cost rates be based on the last allowed return on

1 **equity and on the most recent 12-month average cost of**
2 **short-term debt and customer deposits with a zero cost**
3 **rate for deferred taxes and investment tax credits?**

4 A This rule -- this section of the rule pertains
5 to an application by the utility, or a determination of
6 what the AFU -- of how the AFUDC rates should be
7 established where one is not established. So, yes,
8 that's the way that it's calculated when the utility --
9 when the utility requests a change.

10 Q Okay. And again, staying in Section 2, and
11 understanding your explanation, isn't it true that the
12 rule requires the long-term debt and preferred stock to
13 be based on end-of-period cost?

14 A Yes, that's what it says.

15 Q So isn't the AFUDC calculation outlined in
16 Rule 25-30.116 very similar to the cost of capital
17 calculation?

18 A Yes, it is.

19 Q To your knowledge, has the company been
20 updating its AFUDC rate consistent with Rule 25-30.116?

21 A The utility is not required to update its
22 AFUDC rate by this rule. The utility is using the AFUDC
23 rate that was established under this rule at the time
24 that it was last requested and last authorized. So it
25 is in compliance, it just has not requested a change in

1 its AFUDC rate.

2 Q So there is nothing in Rule 25-30.116 that
3 prohibits the Commission from changing the AFUDC rate in
4 a base rate case, is there?

5 A No, I make that very clear in my rebuttal
6 testimony, that we understand the Commission can take
7 action on its own, however, we haven't requested a rate.
8 I also found that over the years that this rate has been
9 in effect, and sometimes our cost of capital has been
10 higher than the rate that was approved, and other times
11 it's lowered, but we have not found it necessary to
12 change it. We have been satisfied with keeping it the
13 same, whether it went up or down.

14 Q So going to Section 5 of the rule, it states
15 that the change in the AFUDC rate may not be applied
16 retroactively unless authorized by the Commission,
17 correct?

18 A That's right. So at the time a new rate may
19 be established, from that point forward, the new rate is
20 put into effect.

21 Q So doesn't that section, or that provision of
22 the rule suggest that the Commission can authorize a
23 retroactive adjustment?

24 A Yes, it -- it -- without prior Commission
25 approval, it also implies to me -- excuse me, I am

1 reading the wrong thing. What paragraph is that again?

2 Q I was looking at Section 5?

3 A Five.

4 Q Five.

5 A Okay, yes, unless authorized by the Commission
6 it says. So, yes, it could be authorized by the
7 Commission. The way I read this is that -- and I don't
8 know how this has been applied to the Commission in the
9 past because I haven't been involved with an AFUDC case
10 in years, but if the utility requests it in their
11 change, and they wish to establish that it be applied
12 retroactively, they can't do that unless it's authorized
13 by the Commission. And you could imagine that this
14 would be important to a utility, or requested by a
15 utility where its AFUDC rate under the new calculation
16 was escalated, and they would want to apply it
17 retroactively for that reason.

18 Q Okay. So AFUDC is accrued during construction
19 and then added to the cost of a project when it goes
20 into rate base, correct?

21 A Yes, that's right.

22 Q Isn't it true that the AFUDC is amortized over
23 the life of the investment, similar to depreciation of
24 direct project costs?

25 A No, it is not amortized. It becomes part of

1 the utility plant in service, and it's part of the
2 depreciation of the plant account. It's not -- it's
3 like any other -- any other component of the utility
4 plant construction that takes place, it becomes a part
5 of that cost.

6 **Q Okay. Do you know how much AFUDC has been**
7 **added to rate base since 2004?**

8 A In total for the company? No, I don't. I
9 know how it was calculated on the proforma projects for
10 this case because I looked at it, but, no, I don't know
11 how much has been recorded by Utilities, Inc.

12 **Q Well, do you know how much AFUDC would have**
13 **been added to rate base if the company had updated its**
14 **AFUDC in each case to match the overall rate of return**
15 **authorized by the Commission?**

16 A No, I don't. Like I said, I looked at some of
17 the prior rate cases, and I found that those rate cases,
18 they are some where the capital is -- the cost of
19 capital is higher and some where it's lower, as it is
20 right now. No, I haven't gone back and calculated what
21 the impact would have been.

22 **Q Okay. Thank you.**

23 **So as Vice-President of a significant**
24 **accounting firm, do you follow general economic trends?**

25 A General economic trends? Generally.

1 Q Okay. That's fair.

2 And again, as a general matter, do you believe
3 that the financing costs have decreased since 2004?

4 A As of today? Yes, they did increase.

5 Q No, my question was decreased.

6 A Right, okay. Between -- if you ignore all the
7 years in between, between 2004 and currently, it's
8 probably a decrease, but in between, there were years of
9 increase.

10 Q Okay. All right. Well, thank you, Ms. Swain.

11 MS. MORSE: Mr. Chairman, those are all my
12 questions.

13 CHAIRMAN CLARK: All right. Thank you very
14 much.

15 Staff?

16 MR. TRIERWEILER: Chairman, I am happy to say
17 that all of staff's questions have been adequately
18 addressed by OPC and their utility witness.

19 CHAIRMAN CLARK: Very good. Very good.

20 Commissioners, do you have questions for Ms.
21 Swain?

22 No questions for Ms. Swain.

23 All right. Redirect, Mr. Friedman?

24 MR. FRIEDMAN: I have none.

25 CHARI MAN CLARK: None.

1 MR. FRIEDMAN: She has no exhibits attached to
2 her rebuttal testimony.

3 CHARIMAN CLARK: All right.

4 MR. FRIEDMAN: And that concludes UIF's
5 rebuttal.

6 CHARIMAN CLARK: All right. I believe, to the
7 best of my knowledge, that gets everyone. Am I
8 missing anything that anybody sees?

9 All right. Well, let me thank all of the
10 parties for an outstanding job. I appreciate
11 everybody bouncing back from yesterday's little
12 technical glitches that we experienced. You guys
13 did a great job pulling things off.

14 We still have a little ways to go in terms of
15 making certain that our communication is 100
16 percent up to snuff. I am -- we are going to be
17 working on that. You have my commitment to make
18 sure we resolve some issues, if we have to get some
19 additional information out to all of the parties.
20 There was a little bit of difficulty understanding,
21 mostly it's probably some connection issues. Mr.
22 Friedman, you guys were -- it was very hard to
23 understand you guys. Those are just some things
24 that we are going to have to work out over the next
25 couple of months if we continue to operate in this

1 manner.

2 In concluding matters regarding this docket,
3 post-hearing briefs are going to be due on February
4 18th of 2021. Briefs are to be no longer than 40
5 pages, and position summaries should be no more
6 than 50 words offset with asterisks. I believe
7 that pretty much covers it.

8 Does anybody have anything to come before the
9 Commission before we adjourn?

10 MR. FRIEDMAN: Mr. Chairman, my I ask when we
11 expect to get the transcripts done?

12 CHAIRMAN CLARK: Great question.

13 Ms. Debbie, are you on the line still?

14 Mr. Trierweiler, can you give me any insight
15 into that? Ms. Debbie may not have heard me.
16 There she is.

17 MR. FRIEDMAN: We can't hear you.

18 CHARI MAN CLARK: Welcome to my world, Mr.
19 Friedman.

20 MR. FRIEDMAN: Whoa, touche.

21 CHARI MAN CLARK: Debbie, any idea when we can
22 get the transcripts?

23 COURT REPORTER: Our normal timeline is no
24 later than 10 business days.

25 MS. CIBULA: That's the deadline, 10 business

1 days. There was no expedited transcript requested
2 in this case, so it's 10 business days.

3 CHAIRMAN CLARK: Okay. There has been no
4 expedited. Do we need to -- how are we on the
5 post-hearing briefs regarding that timeline?

6 MR. TRIERWEILER: I think that's the standard
7 timeline.

8 CHAIRMAN CLARK: Okay. Standard timeline.

9 MR. FRIEDMAN: So we are going to get the
10 transcripts seven days in advance of the briefs
11 being due?

12 CHAIRMAN CLARK: Today is the 2nd. 10 days
13 will be the 12th, seven days, yes, sir, that sounds
14 correct.

15 MR. REHWINKEL: We would support Mr -- reading
16 Mr. Friedman's mind, we would support just a few
17 more days to work with the transcript.

18 MR. FRIEDMAN: We need to get the transcript.

19 MR. TRIERWEILER: Charles, what would y'all
20 like? What would you recommend? Another five
21 days, business days?

22 MR. REHWINKEL: That would be --

23 MR. FRIEDMAN: What day of the week is the
24 18th?

25 CHARIMAN CLARK: I am sorry, say again, Mr.

1 Friedman.

2 MR. FRIEDMAN: Yes, if we could push it five
3 days would give us a weekend.

4 CHAIRMAN CLARK: Five days onto the 18th, we
5 are looking at the 23rd.

6 MR. REHWINKEL: That would be a great birthday
7 present for me personally, because that's my
8 birthday.

9 MR. WHARTON: So Thursday the 25th?

10 MR. FRIEDMAN: Did we say the 23rd or the
11 25th? I'm sorry.

12 CHAIRMAN CLARK: We are looking right now.
13 Just one second. Just hang tight, guys. What is
14 the 23rd, Mr. Trierweiler, is that a working day?

15 MR. TRIERWEILER: Staff, 23rd, please.

16 CHAIRMAN CLARK: Okay. We are going to push
17 it back to the 23rd. Are all the parties in
18 agreement? I got head nods. That's close enough.
19 All right. Post-hearing briefs are going to be due
20 on February 23rd.

21 Anything else to come before the Commission?

22 All right.

23 MR. FRIEDMAN: That's all. Thank you very
24 much.

25 CHAIRMAN CLARK: Thank you all very much.

1 Great job. Appreciate it. Thanks. We are
2 adjourned.

3 (Proceedings concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)

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5 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.13 I FURTHER CERTIFY that I am not a relative,
14 employee, attorney or counsel of any of the parties, nor
15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.18 DATED this 17th day of February, 2021.
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DEBRA R. KRICK
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