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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20200139-WS

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.

\_\_\_\_\_ /

VOLUME 3  
PAGES 434 - 575

PROCEEDINGS: HEARING

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

DATE: Tuesday, February 2, 2021

TIME: Commenced: 10:45 a.m.  
Concluded: 4:58 p.m.

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

REPORTED BY: DEBRA R. KRICK  
Court Reporter

APPEARANCES: (As heretofore noted.)

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

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## I N D E X

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

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

4 CHAIRMAN CLARK: All right. I think that  
5 means we have everybody.

6 This will be our last witness today, the last  
7 witness we have scheduled on direct testimony is  
8 Mr. Radigan.

9 OPC, are you ready?

10 Mr. Radigan, would you raise your right hand?  
11 Whereupon,

12 FRANK W. RADIGAN

13 was called as a witness, having been first duly sworn to  
14 speak the truth, the whole truth, and nothing but the  
15 truth, was examined and testified as follows:

16 THE WITNESS: I do.

17 CHAIRMAN CLARK: Thank you.

18 EXAMINATION

19 BY MS. PIRRELLO:

20 Q Mr. Radigan, would you please state your name  
21 for the record?

22 A Frank Radigan.

23 Q Can you tell me on whose behalf you are  
24 testifying today?

25 A Florida Office of Public Counsel.

1           Q     And they are representing the customers of  
2 Utilities, Inc. of Florida?

3           A     Correct.

4           Q     Mr. Radigan, did you cause to be prepared  
5 direct testimony on November 13th, 2020, consisting of  
6 24 pages?

7           A     I did.

8           Q     Do you have any changes or corrections to make  
9 to that testimony?

10          A     I do not.

11          Q     Mr. Radigan, if I were to ask you the same  
12 questions today as contained in your November 13th,  
13 2020, direct testimony, would your answers be the same  
14 as they were in that prefiled testimony?

15          A     They would.

16                   MS. PIRRELLO: Mr. Chairman, I move Mr.

17 Radigan's November 13th testimony into the record.

18                   CHARIMAN CLARK: So ordered.

19                   (Whereupon, prefiled direct testimony of Frank  
20 W. Radigan was inserted.)

21

22

23

24

25

**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

**DIRECT TESTIMONY****Of****FRANK W. RADIGAN****ON BEHALF OF THE CITIZENS OF THE STATE OF FLORIDA**

J. R. Kelly  
Public Counsel

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Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
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Attorneys for the Citizens  
of the State of Florida

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## **LIST OF EXHIBITS**

Exhibit FWR-1	Curriculum Vitae
Exhibit FWR-2	Utilities Inc. of Florida List of Pro-Forma Projects that Lack Sufficient Support Information
Exhibit FWR-3	Utilities Inc. of Florida List of Pro-Forma Projects that are CWIP and Not Plant in Service
Exhibit FWR-4	Labrador Service Area
Exhibit FWR-5	ISO New England Inc. Open Access Transmission Tariff (OATT) Pool Transmission Owners Annual Transmission Revenue Requirement

1 **I. INTRODUCTION/BACKGROUND/SUMMARY**

2 **Q. PLEASE STATE YOUR FULL NAME, ADDRESS, AND OCCUPATION.**

3 A. My name is Frank W. Radigan. I am a principal in the Hudson River Energy Group, a  
4 consulting firm providing services in electric, gas, steam, and water utility industry matters,  
5 and specializing in the fields of rates, planning, depreciation, and utility economics. My  
6 office address is 235 Lark Street, Albany, New York 12210.

7  
8 **Q. PLEASE DESCRIBE THE HUDSON RIVER ENERGY GROUP.**

9 A. The Hudson River Energy Group (“HREG”) is an engineering consulting firm specializing  
10 in the fields of rates, planning, economics, and utility operations for the electric, natural gas,  
11 steam, and water utility industries. HREG was founded in 1998 and has served a wide  
12 variety of clients including municipal utilities, government agencies, state commissions,  
13 consumer advocates, law firms, industrial companies, power companies, and environmental  
14 organizations. HREG conducts rate design and cost of service studies, and designs  
15 performance-based rate plans. HREG also assists clients in handling the complexities of  
16 deregulation and restructuring, including Open Access Transmission Tariff pricing,  
17 unbundling of rates, depreciation, resource adequacy, transmission planning policies and  
18 power supply. During HREG’s existence, we have proffered our expertise before the  
19 Federal Energy Regulatory Commission (“FERC”) and a large number of state utility  
20 regulatory commissions across the country.

21  
22 **Q. PLEASE SUMMARIZE YOUR EDUCATION AND BUSINESS EXPERIENCE.**

1 A. I received a Bachelor of Science degree in Chemical Engineering from Clarkson College of  
2 Technology in Potsdam, New York (now known as “Clarkson University”) in 1981. I  
3 received a Certificate in Regulatory Economics from the State University of New York at  
4 Albany in 1990. From 1981 through February 1997, I served on the Staff of the New York  
5 State Department of Public Service (the “Department”) in the Rates and System Planning  
6 Sections of the Power Division, as well as service in the Rates Section of the Gas and Water  
7 Division. My responsibilities included resource planning and the analysis of rates,  
8 depreciation rates, and tariffs of electric, gas, water, and steam utilities in the State. I also  
9 received specialized training in depreciation from Depreciation Programs, Inc. through a  
10 series of week-long intensive training programs and which predated the current depreciation  
11 society, Society of Depreciation Professionals. These duties also encompassed rate design,  
12 embedded and marginal cost of service studies, and depreciation studies. Before leaving  
13 the Department, I was responsible for directing all engineering staff during major  
14 proceedings, including those relating to rates, integrated resource planning (“IRP”), and  
15 environmental impact studies. In February 1997, I left the Department and joined the firm  
16 of Louis Berger & Associates as a Senior Energy Consultant. In December 1998, I formed  
17 my own consulting firm.

18 In my 39 years of experience, I have testified as an expert witness in utility rate  
19 proceedings on more than one hundred and forty occasions before various utility regulatory  
20 bodies, including: the Arizona Corporation Commission, the Connecticut Department of  
21 Public Utility Control (now the Connecticut Public Utilities Regulatory Authority), the  
22 Delaware Public Service Commission, the Kentucky Public Service Commission, the  
23 Illinois Commerce Commission, the Maryland Public Service Commission, the

1 Massachusetts Department of Telecommunications and Energy, the Michigan Public  
2 Service Commission, the Mississippi Public Service Commission, the New York State  
3 Public Service Commission, the New York State Department of Taxation and Finance, the  
4 Nevada Public Utilities Commission, the North Carolina Utilities Commission, the  
5 Pennsylvania Public Utility Commission, the Public Service Commission of the District of  
6 Columbia, the Public Utilities Commission of Ohio, the Rhode Island Public Utilities  
7 Commission, the Vermont Public Service Board, and FERC. Currently, I advise a variety  
8 of regulatory commissions, consumer advocates, municipal utilities, and industrial  
9 customers concerning rate matters, including wholesale electricity rates and electric  
10 transmission rates. A summary of my professional qualifications and experience, including  
11 a listing of cases in which I have proffered testimony, is attached (See Exhibit FWR-1).

12  
13 **Q. FOR WHOM ARE YOU APPEARING?**

14 A. I am testifying on behalf of the Florida Office of Public Counsel (“OPC” or “Citizens”).

15  
16 **Q. WAS THIS TESTIMONY PREPARED BY YOU OR UNDER YOUR DIRECT**  
17 **SUPERVISION AND CONTROL?**

18 A. Yes.

19  
20 **Q. WHAT IS THE SCOPE OF YOUR TESTIMONY IN THIS PROCEEDING?**

21 A. I have been asked to review several of the engineering issues of the rate application of  
22 Utilities Inc. of Florida (“UIF” or the “Company”). My testimony will address the  
23 proposed post-test year pro forma adjustments to rate base, the used and useful percentages

1 for the systems, and the Company's proposed Sewer and Water Improvement Mechanism  
2 ("SWIM") for its water and sewer systems. I will also address the excessive inflow and  
3 infiltration, and excessive unaccounted for water.

4  
5 **Q. WHAT INFORMATION DID YOU REVIEW IN CONDUCTING YOUR**  
6 **ANALYSIS?**

7 A. I reviewed the Application and direct testimony and exhibits of UIF, responses to data  
8 requests, the Florida Statutes applicable to UIF's rate request, and public information. I also  
9 toured several construction projects in the Company's Sanlando and Mid-County systems.

10  
11 **Q. PLEASE SUMMARIZE OPC'S RECOMMENDATIONS.**

12 A. With respect to the post test year plant additions, the Company proposes 45 separate  
13 projects over the 24-month period after the end of the test year (twelve months ending  
14 December 31, 2019). Approximately half of these projects are complete at the time of  
15 filing this testimony. The remaining half of the projects are either under construction or  
16 awaiting construction. I propose several adjustments to the second group of projects  
17 because the project documentation submitted to date is insufficient to allow me to verify  
18 that the projects will be in-service by the end of the 24-month period pursuant to Section  
19 367.081(2)(a)2, F.S. I also propose a second adjustment to the post test year plant for six  
20 projects which are studies not related to a construction project and were erroneously  
21 included as plant in service.

22 The Company has changed several of the Used and Useful ("U&U") percentages for  
23 several systems which were adjudicated and set by the Commission in the Company's last

1 rate case. The Company presents no testimony or evidence to justify these proposed  
2 changes. In some cases, there are notes included in the F Schedules supplied with  
3 Minimum Filing Requirements (“MFRs”); however, a review of the MFR data shows it is  
4 insufficient to change what the Commission has already determined to be the proper U&U  
5 percentage.

6 The proposed SWIM is expected to result in rate increases at a rate above  
7 inflation for the foreseeable future. The Company proposes to include the SWIM with its  
8 annual index filings but that filing process has no provision for customer meetings or  
9 hearings. Thus, the proposed mechanism has practical problems associated with its  
10 implementation; namely, a lack of an adequate review process. Also, given that the rate  
11 case process already allows for 24 months of post-test year plant additions to be reflected  
12 in rates and that there has been no showing of the need for a special mechanism to fund  
13 capital projects, the necessity of the SWIM has not been established. For these reasons, I  
14 recommend that the SWIM not be adopted.

15 OPC has no recommended changes to the Company’s proposed excessive inflow  
16 and infiltration and excessive unaccounted for water calculations.

## 17 **II. PRO FORMA ADDITIONS TO RATE BASE**

### 18 **Q. PLEASE DISCUSS THE COMPANY’S PRESENTATION WITH RESPECT TO** 19 **THE PRO FORMA ADDITIONS TO RATE BASE.**

- 20 A. UIF proposes 45 separate projects over the 24-month period after the end of the test year  
21 (twelve months ending December 31, 2019). UIF does not perform any construction work  
22 itself but contracts for the construction of these projects, usually through the competitive

1 bid process.<sup>1</sup> The utility has submitted project price documentation and associated bid  
2 documentation for all projects (See UIF's response to Staff's Req. for Produc. 1).  
3 Approximately half of the pro-forma plant addition projects have been completed at the time  
4 of filing this testimony. For these projects, the Utility's cost estimating process was close,  
5 as it forecast the costs to be \$3.1 million, and the actual costs came in at \$3.5 million, with  
6 almost all of the cost variance related to one project where the construction contract was not  
7 bid or awarded until after the testimony was filed in this case (See UIF's responses to OPC's  
8 Interrogatories 63-120). I believe this is attributable to the Company's practice of seeking  
9 fixed price bids for their construction projects.

10 For the remaining half of the projects which are either under construction or awaiting  
11 construction, verification of construction timing and final price is much more difficult to  
12 verify due to the fact that the Company has not provided final construction contracts, a  
13 complete set of invoices, or project schedules. This is essential documentation that should  
14 have been previously provided, given that UIF has the burden of proof in seeking cost  
15 recovery for these projects. To allow UIF to submit this information at a later point in time  
16 in this docket is unfair and unreasonable to its captive customers who will bear the costs.  
17 For some projects where contracts have been awarded and construction time is short, we  
18 can assume that the projects will be completed before the end of the 24-month period  
19 pursuant to Section 367.081(2)(a)2, F.S. An example that fits into this category is the PCF  
20 - 27 - Sanlando I&I Corrections project which is intended to identify and correct sewer pipe  
21 deficiencies. The project has a four-month schedule to complete from the contract award  
22 in July 2020 (See UIF's response to OPC's Interrog. 101); thus, even if there is some delay

<sup>1</sup> UIF appears to bid out the construction work when a project is expected to exceed \$75,000, and UIF's policy requires the solicitation of competitive bids (See UIF's response to OPC's Interrog. 2-10).

1 in fixing the identified deficiencies, there should be no problem in getting this project done  
2 on time and in time to meet the statutory requirement.

3 For other projects I need more information, however, and cannot just recommend  
4 they be included in rate base at this time. For example, for PCF-13, the LUSI Barrington  
5 WWTP Improvements project is scheduled to be completed by March 31, 2021 and has an  
6 estimated cost of \$380,000, including \$47,000 of engineering costs and \$333,000 of  
7 construction costs. This project calls for the installation of a plant lift station, emergency  
8 generator, automatic transfer switch, pumps and controls, a field office, and process control  
9 lab. The project components address items not included in the original plant design that are  
10 reportedly needed to meet operating permit requirements (See Ex. PCF-13). While UIF has  
11 provided the bid material for engineering and construction work, there is no project  
12 schedule, a project start date, or a signed construction contract (See UIF's response to Staff's  
13 Request for Production 1 re: Ex. PCF-13). For this project, and other similar projects, I  
14 have asked for the projects' scheduling documentation and the signed contracts with the  
15 contractors. Until the documentation is received and reviewed, there is no evidentiary basis  
16 upon which to approve these projects, and I cannot endorse the inclusion of these costs into  
17 the post test year plant.

18 Another example of the need for documentation relates to PCF-17, which is the Mid-  
19 County Headworks project. This project has a cost estimate of \$2,424,782 and when UIF  
20 filed its petition, it had an expected completion date of March 31, 2021. This project,  
21 however, cannot be started until after the completion of PCF-14 which is the Mid-County  
22 Master Lift Station project that is designed to replace the master lift station after the  
23 decommissioning and demolition of the original lift station. This project was originally

1 expected to be completed by December 31, 2020 but has now slipped until March 31, 2021  
2 (See UIFs response to OPC's Interrog. 82). Since one project is dependent upon the  
3 completion of another and the first project has slipped, there is a need for the project  
4 scheduling information to determine if the project can meet the 24-month post test year  
5 limitation for inclusion in UIF's rate base.

6 The projects for which I am still awaiting further documentation are PCF-13, PCF-  
7 14, PCF-16, PCF-17, PCF-18, PCF-20, PCF-23, PCF-28, PCf-29, PCF-31, and PCF-33.  
8 These projects total \$ \$9.875,036 in costs and are not reflected in the revenue requirement  
9 schedules presented by OPC witness Andrea Crane. Exhibit FWR-2 lists the projects, their  
10 costs, and a short description of why inclusion of them is not warranted without further  
11 information. Again, UIF has the burden of proof in this case to present its supporting  
12 documentation and evidence, which it has failed to do. To allow UIF to submit this  
13 documentation and information in an untimely manner is both unfair and unreasonable to  
14 UIF's ratepayers who must bear the costs of these projects.

15  
16 **Q. PLEASE CONTINUE.**

17 **A.** Based on my review of the project documentation presented, I also propose a second  
18 adjustment to the post test year plant for six projects which the Company included as post  
19 test year plant additions but do not have actual plant addition associated with them. For  
20 example, PCF-26 is the Sanlando Engineering F5/C1/L2 FM Replacements project and is  
21 for the engineering, permitting, bidding and Construction, Engineering and Inspection  
22 ("CEI") services associated with the replacement of three critical force mains that have  
23 reached the end of their service life and have a high consequence of failure (See Ex. PCF-

1 26). However, there is no construction project associated with this project and UIF has  
2 indicated through the documentation it provided that the new force main will be constructed  
3 under a separate project (*Id.*). The six projects are construction work in progress and not  
4 plant in service. When the associated construction projects are complete, the expenditures  
5 to date will be added to the construction costs and the project could then be eligible for  
6 inclusion in the calculation of revenue requirement at some future time. The six projects in  
7 question are listed on Ex. FWR-3 and total \$432,673. These projects are not reflected in  
8 the post test year plant addition in the revenue requirement schedules presented by OPC  
9 witness Andrea Crane.

### 10 III USED AND USEFUL

11 **Q. DESCRIBE YOUR APPROACH TO USED AND USEFUL FOR THE UIF**  
12 **SYSTEMS IN THE RATE CASE.**

13 **A.** My approach to determining U&U for wastewater treatment systems follows the provisions  
14 set forth in Rules 25-30.431 and 25-30.432, F.A.C., (U&U Rules) and Section 367.081(2)  
15 F.S. (“U&U Statute”). Under these provisions, U&U starts with the test year wastewater  
16 flow which is then adjusted to reflect growth for a five-year period beyond the test year  
17 and the removal of any excessive inflow and infiltration. This adjusted test year flow is  
18 divided by the capacity of the treatment facilities to determine the U&U percentage of the  
19 treatment facilities.

20 According to UIF, before the adjudication of Docket No. 20160101-WS, all but  
21 seven of the UIF wastewater systems had been found to be 100% U&U.<sup>2</sup> During the 2016

<sup>2</sup> Docket 20160101-WS, Testimony of Frank Seidman, Ex. FS-2.

1 Docket, UIF proposed that all but one of the remaining seven, the LUSI wastewater  
 2 systems,<sup>3</sup> be determined to be 100% U&U. In that same Docket, OPC performed a U&U  
 3 analysis for seven systems and the Commission found that five wastewater systems were  
 4 less than 100% U&U. In this case, Company witness Seidman is proposing that only three  
 5 wastewater systems have a U&U percentage less than 100%. My analytical approach to  
 6 U&U was to concentrate on UIF's proposed changes to the findings made by the  
 7 Commission in Docket No. 20160101-WS. Table 1 below summarizes the existing U&U  
 8 designations for the five wastewater systems which were found to be less than 100% in  
 9 Docket 20160101-WS and UIF's proposed UIF percentages to be applied in this case. My  
 10 analysis for each system then follows.

11 **Table FWR-1**

12 **Present and Proposed U&U Percentages for WW Plant that are currently not 100%**

13 **U&U**

<b>WW System</b>	<b>Current U&amp;U</b>	<b>UIF Proposed</b>
Labrador	79.94%	100%
Lake Placid	29.79%	100%
LUSI	58.78%	72.00%
Golden Hills/Crownwood	93.67%	78.44%
Mid-County	68.65%	100%

<sup>3</sup> For LUSI, UIF proposed the U&U to be 69% due to the excess capacity at the wastewater treatment plant compared to test year flows (Docket 20160101-WS, Ex. FS-2).

1 **Q. PLEASE DISCUSS YOUR FINDINGS WITH RESPECT TO THE MID-COUNTY**  
2 **SYSTEM.**

3 **A.** The Company proposes the Mid-County U&U be set at 100% (See Ex. FS-2), compared to  
4 the current U&U of 93.67%. The permitted capacity at the plant is 900,000 gallons per day  
5 (“GPD”). This value compares to the actual test year flow of a daily average flow rate of  
6 902,030 GPD and an allowance for future growth of 46,770 GPD, which results in an  
7 expected flow rate of 948,800 GPD and a U&U of 105%.

8 In its last rate case, UIF took the position that the U&U for these systems was 100%  
9 arguing that the systems were built out and there was no growth potential left. The  
10 Commission found otherwise and determined there was room for growth, and calculated the  
11 U&U according to the applicable rules, Section 367.081(2), F.S. In this case, UIF properly  
12 accounts for growth and the linear regression indicates a growth rate of 0.97% per year.

13 The Mid-County System is in Dunedin, Florida and the plant is less than three miles  
14 from the Gulf of Mexico. UIF states that the Mid-County WWTP average day flows can  
15 range from as low as 700,000 GPD in dry weather to more than 1,000,000 GPD in extended  
16 wet weather (See Ex. PCF-17, Revised). The test year flow data confirms this. In July  
17 2019, the rainfall at the St. Petersburg Clearwater Airport was over 18 inches, compared to  
18 the normal 9 inches, and the flow at the WWTP was 1.26 million GPD, which is 40% above  
19 permitted capacity. For the year, the Tampa area received 60.8 inches of rain compared to  
20 the normal 45.4 inches, which is 34% higher than normal. A review of historic flows at the  
21 plant indicate that flows average 785,000 per year and the 2019 flows were the highest in  
22 the 2013-2020 time period (See UIF’s response to OPC’s Interrog. 122). If this flow rate  
23 were used, the U&U would calculate to be 91.74%.

1 For this system, infiltration and inflow due to storm events is an obvious factor in  
2 daily flows at the wastewater treatment plant. In fact, one of the pro-forma plant addition  
3 projects is aimed at directly addressing this problem: PCF-16 - the Mid-County Curlew  
4 Creek I&I Remediation project. Rule 25-30.432, F.A.C., is the rule for wastewater  
5 treatment plant used and useful calculations, and allows the Commission to consider the  
6 impacts of I&I. I believe this rule should be applied specifically to this system where I&I  
7 has such a large and obvious impact. In dry years, simple application of the formula will  
8 unreasonably penalize the Utility with a low U&U, and in wet years will reward it. For  
9 example, if the 700,000 GPD were substituted into the Schedule F, the U&U would drop to  
10 81.8% and if the 1,260,000 per day were used, it would be 147%. Thus, for this system a  
11 proper U&U analysis cannot be done by merely following the applicable regulatory  
12 provisions, rule's but requires more analysis which includes adjusting for the effects of I&I.  
13 Until such analysis is presented, it is prudent to retain the existing U&U of 93.67% which  
14 does not unduly penalize nor reward the Company for abnormal water flow. UIF has the  
15 burden of proof in this case and, if it believes this level of U&U is unreasonable, it must  
16 present a more sophisticated analysis for the Commission's consideration.

17  
18 **Q. PLEASE DISCUSS YOUR FINDINGS WITH RESPECT TO THE LABRADOR**  
19 **SYSTEM.**

20 A. The Company proposes the Labrador U&U be set at 100% (See Ex. FS-2) compared to the  
21 current U&U of 79.94%. The permitted capacity at the plant is 216,000 GPD and the test  
22 year three-month maximum average daily flow was 84.447 Million Gallons Per Day  
23 ("MGD"). This results in a low U&U of 38.91% (See MFR Schedule F-6 for Labrador).

1 This system serves customers consisting of an 894-lot mobile home park and a 274-lot  
2 Recreational Vehicle Park, of which there are currently 891 Single Family Residential  
3 customers (“SFR customers”) (*Id.*). In a previous case, Docket 140135-WS, the  
4 Commission rejected the use of 100% U&U for this system because an 11.6-acre parcel  
5 within the service area owned by the developer had remained vacant. Now, UIF states that  
6 the developer has indicated it has plans to finally develop the parcel for 36 manufactured  
7 homes (*Id.*).

8 However, there are several problems with UIF’s analysis. First, even though UIF  
9 has produced evidence that the developer agreed when asked by the utility that a seven year  
10 build out of the vacant area would be a reasonable assumption, it is still an assumption and  
11 has not actually occurred yet. Second, even if the 36 additional homes were added to the  
12 ERC growth analysis, the U&U percentage would only increase from 39.91% to 40.19%.  
13 Third, in the last UIF rate case it was shown that there was an extensive amount of empty  
14 land adjacent to the service territory so the service area could expand and serve new  
15 customers. A review of satellite imagery of the service territory continues to show this to  
16 be true (Ex. FWR-4). For all three of these reasons, I believe that UIF has not met its burden  
17 to provide sufficient proof to overturn the Commission’s finding of a 79.94% U&U, and the  
18 Company’s proposed change should be rejected.

19  
20 **Q. PLEASE DISCUSS YOUR FINDINGS WITH RESPECT TO THE LAKE PLACID**  
21 **SYSTEM.**

22 **A.** The Company proposes the Lake Placid U&U be set at 100% (See Ex. FS-2) compared to  
23 the current U&U of 29.79%. The permitted capacity at the plant is 90,000 GPD and the test

1 year three-month maximum average daily flow was 14,250 GPD. This results in a low  
2 U&U of 15.783% (See MFR Schedule F-6 for Lake Placid). In Docket 2016010-WS, the  
3 Commission rejected applying 100% U&U because (a) it recognized that there was some  
4 potential for growth, and (b) UIF did not present evidence that further growth was restricted  
5 (Order PSC-2017-0361-FOF-WS at 97).

6 UIF now argues that there has been negative growth, as shown in the ERC regression  
7 analysis (See MFR Schedule F-10 for Lake Placid), but gives no firm evidence that the  
8 system is actually built out to use the design capacity of the plant. In fact, in its responses  
9 to discovery, UIF indicates this system is currently serving 136 lots and there are still 63  
10 vacant lots (See UIF's response to Staff's Interrog. 30). A review of the growth in the  
11 service territory shows that ERCs have risen and fallen over the past five years. Because of  
12 this, there is insufficient evidentiary basis to just blindly use the U&U calculations which  
13 would result in increasing the U&U determined in the last case. I propose retaining the  
14 existing U&U and revisiting the issue in the next UF rate case if UIF can present a sufficient  
15 evidentiary basis to do so.

16  
17 **Q. PLEASE DISCUSS YOUR FINDINGS WITH RESPECT TO THE LUSI SYSTEM.**

18 A. The Company proposes the LUSI U&U be set at 72% (See Ex. FS-2) compared to the  
19 current U&U of 58.78%. The permitted capacity at the plant is 999,000 GPD and the  
20 Annual Average Daily Flow for the test year was 547,022 GPD. This alone results in a  
21 U&U of 55.00% (See MFR Schedule F-6 for Lake Placid). The statute provides for an  
22 allowance for the U&U of existing plant by allowing for growth in the number of customers,  
23 but no more than 5% per year. The system has benefited from very high growth in the past

1 five years with a 4.82% annual growth rate. Adding this to the historic test year flows brings  
2 the U&U to 65%. However, UIF goes one step further and proposes adding the usage for  
3 pre-paid connections that are still in development, resulting in an additional 561 lots to raise  
4 the U&U further to 72%.

5 In support of its analysis, UIF states that for this system at the end of 2019, there  
6 were 967 lots still to be developed (See MFR Schedule F-8 for LUSI). UIF also states that  
7 LUSI averaged 30 new taps per month in 2020, which is consistent with the growth of new  
8 ERCs in 2019 in the amount of 351 new taps (See MFR Schedule F-8 for LUSI).

9 UIF's analysis for this system is overly aggressive because it adds both historic  
10 growth and growth for pre-paid connections to lots that are still under development. At  
11 historic growth rates over the next five years, this system can expect to add 756 new ERCs  
12 (See MFR Schedule F-10 for LUSI). To add another 561 ERCs on top of this would not  
13 only exceed the number of undeveloped lots on the system (967), but it would also result in  
14 an annual growth rate of 5.7% which exceeds the statutory limit of 5% per year. For all  
15 these reasons, the Company's addition of prepaid connections on top of the historic growth  
16 rate is a double count of growth<sup>4</sup> and results on an overly optimistic U&U level for this  
17 system. Accordingly, I recommend that the pre-paid connections not be used and the U&U  
18 be calculated per the statute to be set at 65%.

19  
20 **Q. PLEASE DISCUSS YOUR FINDINGS WITH RESPECT TO THE MARION-**  
21 **GOLDEN HILLS/CROWNWOOD SYSTEM.**

<sup>4</sup> It is my understanding a Florida court has addressed this issue and asserted there is a requirement to prevent double-counting of growth. See *Citizens of Fla. v. Fla. Pub. Serv. Comm'n*, 294 So. 3d 961, 967 (Fla. 1st DCA 2019).

1 A. The Company proposes the Golden Hills/Crownwood U&U be set at 78.44% (See Ex. FS-  
2 2) compared to the current U&U of 68.65%. The permitted capacity at the plant is 40,000  
3 GPD. This value compares to the actual Three Month Average Daily Flow of 26,434 with  
4 an allowance for future growth of 4,942 GPD which results in an expected flow rate of  
5 31,376 GPD and a Golden Hills/Crownwood U&U of 78.44%.

6 In its last rate case, UIF took the position that the U&U for these systems was 100%;  
7 the Company argued that the systems were built out and there was no growth potential left.  
8 The Commission found otherwise and determined there was room for growth and calculated  
9 the U&U according to the applicable regulatory provisions. In this case, UIF properly  
10 accounted for growth and the linear regression indicates a growth rate of 3.74% per year to  
11 develop the proposed 78.44% which is slightly higher than what was found in the last case.  
12 I have reviewed UIFs calculation and agree with their analysis.

#### 13 **IV. SEWER AND WATER IMPROVEMENT MECHANISM**

14 **Q. PLEASE DISCUSS THE COMPANY'S PROPOSED SEWER AND WATER**  
15 **IMPROVEMENT MECHANISM (SWIM).**

16 A. UIF seeks approval of a scheme they have named a "SWIM" and claims that it is designed  
17 to allow the Company to recover its revenue requirement on the actual investment amounts  
18 (Application at 3). Company witness Jared Deason testifies that the revenue requirements  
19 for the SWIM would be filed yearly with the annual index filings (Deason at 3). The  
20 revenue requirements for the SWIM and index mechanism would be included together to  
21 calculate the annual percentage increase in rates (*Id.*). As explained by Mr. Deason, the  
22 filing would detail the investments made, the revenue requirement associated with the

1 investments, and a projection of the next two years of scheduled investments with estimated  
2 revenue requirements (*Id.*). Mr. Deason takes the position that the annual filings would  
3 provide the opportunity for the Commission to review and audit the program, as well as  
4 conduct continuous oversight of the effectiveness and rate impacts to customers (*Id.*).  
5

6 **Q. PLEASE COMMENT ON THE CONCEPT OF THE PROPOSED SWIM.**

7 **A.** Under the current regulatory process, water and wastewater utilities in Florida have been  
8 allowed to file annual index filings to adjust rates using a “Price Index” which reflects  
9 changes in operating costs. The Price Index is addressed in Section 367.081(4)(a), F.S.  
10 This statutory process allows water and wastewater utilities to adjust rates based on current  
11 specific expenses without applying for a rate increase. The Index is calculated by  
12 comparing the Gross Domestic Product Implicit Price Deflator Index of the current and  
13 previous fiscal years. The goal of annual index filing is that a utility can recover rising costs  
14 and lessen rate shock in subsequent rate cases. The annual index filing does not include  
15 reflection of capital investments, nor does it include increases in revenues, or savings that  
16 may be realized by a utility. To recover the carrying costs on capital investments, a full rate  
17 case must be filed and the Commission, intervenors and the public have an opportunity to  
18 review and match revenues, expenses and investments to determine if a change in rates is  
19 required.

20 In its responses to discovery, UIF estimates that its expected capital investment over  
21 the next five years will average \$8 to \$10 million per year (See UIF’s response to Staff’s  
22 Interrog. 5(b)). At this level of investment and at the Company’s requested 7.889% rate of  
23 return, after taking into account taxes and depreciation, ratepayers can expect an automatic

1 4% increase in rates per year, plus the rate increase attributable to the annual index filing,  
2 which has been increasing at a rate of between 1%-3% per year.

3 As presented in its testimony, the Company is seeking to replace the current  
4 regulatory process with a formula ratemaking mechanism that would allow it to recover the  
5 carrying costs on any capital investments made. This, together with the annual index filing,  
6 would allow UIF to recover all of its expenses and profit from its investments. At the same  
7 time, the Company would still be allowed to retain all of the revenue growth from increased  
8 sales and increases in the number of customers. In other words, UIF presents a win-win  
9 situation for itself. Of course, ratepayers would pay for this win-win situation with rate  
10 increases in the range of 5%-8% per year, with no ability to receive the benefits of increased  
11 revenues from increased sales. This is simply unfair and unreasonable to UIF's ratepayers.

12 Moreover, there are practical problems with the proposed SWIM as well. First is  
13 the fact that the Company simply states what and how much its investments will be without  
14 regard to rate impacts. Thus, if the Company seeks more profits from its operations and  
15 wants to grow rate base, it can simply invest more, regardless of the true need to invest. In  
16 New England, where wholesale electric transmission rates are set via a formula rate adjusted  
17 on an annual basis, rates between 2003-2020 investment in plant increased by a factor of 7  
18 and rates have increased on average 14.1% per year (See Ex. FWR-5). Based on these  
19 results, there is little solace in the fact that UIF claims that the Commission will have the  
20 right to review and audit the resultant rate increases. Once the money has been spent, there  
21 is little chance of the costs not being allowed for recovery from ratepayers.

22 The second problem with the Company's proposal is the process itself. The annual  
23 index filing under Florida Statutes is automatically implemented 60 days after the utility

1 provides its notice of intention to the Commission. Customer meetings and hearings are not  
2 used in this process. Thus, by combining the SWIM with the annual index filing, contrary  
3 to the Company's claim, there is little if any ability to audit and review the need for the  
4 investments and the applicable costs. In its responses to discovery on the review process  
5 for the SWIM, UIF proposes that documentation for the SWIM would be provided on  
6 February 1st of each year and this would allow for an extra two months for the Commission  
7 and its Staff to review and approve the SWIM documentation (See UIF's response to Staff's  
8 Interrog.1-7). While this appears commendable, in reality there is no allowance for  
9 meetings and hearings under the current annual index filings; thus, "offering" more time for  
10 review does nothing on a practical basis. Instead, it would force the Commission to  
11 commence a proceeding for the sole purpose of reviewing, verifying, and receiving  
12 customer comments on the pro-forma plant additions. Thus, rather than less work, the  
13 Company's proposal could result in more work for Commission Staff, intervenors and the  
14 Commission.

15 Third, there has been no showing of a need for the mechanism. UIF merely states it  
16 wants a SWIM. It has not shown that its investments or operations have been hindered by  
17 the lack of one. Indeed, between 2015 and 2019, the Company's plant in service grew by  
18 over \$100 million based on the rates set in Docket No. 20160101. The ability to fund these  
19 investments is due in large part to UIF's right, by statute, to ask for 24 months of pro-forma  
20 plant additions in a rate case. This is quite generous for a utility where the Commission  
21 uses a historic test year to set rates and the statute works as intended: it gives the utility the  
22 ability to receive carrying charges on plant placed in service for a reasonable period after  
23 the end of the test year, thereby allowing the utility to make additional investments in plant.

1           Given the expected increased rates resulting from the SWIM, the practical problems  
2           associated with its implementation, and the lack of any showing of need, the SWIM should  
3           not be adopted.

4           **V. EXCESSIVE INFLOW AND INFILTRATION AND UNACCOUNTED WATER**

5           **Q. PLEASE DISCUSS THE COMPANY’S PRESENTATION FOR EXCESSIVE**  
6           **INFLOW AND INFILTRATION AND EXCESSIVE UNACCOUNTED FOR**  
7           **WATER FOR ITS WASTEWATER AND WATER SYSTEMS.**

8           **A.** Company witness Frank Seidman presents the Company’s calculations for Excessive Inflow  
9           and Infiltration (“I&I”) and Excessive Unaccounted Water which he summarizes in Ex. FS-  
10          3.

11           Inflow and Infiltration result from separate causes. Inflow is storm water that enters  
12           into sanitary sewer systems at points of direct connection to the systems. Various sources  
13           contribute to the inflow, including footing/foundation drains, roof drains, downspouts,  
14           driveways, etc. These sources are typically improperly or illegally connected to sanitary  
15           sewer systems. Infiltration is groundwater that enters sanitary sewer systems through cracks  
16           and/or leaks in the sanitary sewer pipes. Cracks or leaks in sanitary sewer pipes or manholes  
17           may be caused by age related deterioration, loose joints, poor design installation or  
18           maintenance errors, damage or root infiltration. Groundwater can enter these cracks or leaks  
19           wherever sanitary sewer systems lie beneath water tables or the soil above the sewer systems  
20           becomes saturated. Excessive I&I is generally defined as an I&I level of above 10%. I&I  
21           should always be minimized because excessive I&I means more wastewater has to be  
22           treated, which results in more wastewater treatment costs (e.g., more water to be pumped in

1 lift stations resulting in more chemical costs and purchased power expense). According to  
2 UIF's calculations, only two systems, Orangewood and Ravenna Park, have excessive I&I.  
3 I have reviewed their Schedule F calculations for all systems, and agree with them and  
4 propose no change.

5 Water into the distribution system comes from surface water (e.g. rivers, reservoirs,  
6 etc.), groundwater, or water purchased from outside sources. Utilities measure all gallons  
7 purchased or pumped and how much water is sold. The difference between the amount  
8 going into the system and the amount sold is then identified and, if the utility is able, the  
9 amount of water for other uses (line breaks, flushing and water quality testing, etc.) can be  
10 isolated and identified. Any remaining difference is termed unaccounted for water. Due to  
11 errors in water metering or unidentified line breaks, there is always some unaccounted-for  
12 water. In Florida, excessive unaccounted for water is the level above 10%. Excessive  
13 unaccounted for water results in higher operating costs such as purchased water expense  
14 and/or chemical treatment expense and should be minimized. UIF has identified five  
15 systems with excessive unaccounted for water: Lake Placid, LUSI, Golden  
16 Hills/Crownwood, Sanlando and Little Wekiva. I have reviewed their Schedule F  
17 calculations for all systems, agree with them and propose no change.

## 18 **VI. SUMMARY**

19 **Q. PLEASE SUMMARIZE YOUR RECOMMENDATIONS.**

20 **A.** I recommend several pro-forma projects be disallowed from rate base because the project  
21 documentation submitted to date is insufficient to allow verification that the projects will  
22 be in-service by the end of the 24-month period pursuant to Florida Statutes. I also

1 recommend a second adjustment to the post test year plant for six projects which are in fact  
2 simply studies that are not related to a construction project, and as such, were erroneously  
3 included in the revenue requirement calculations. These studies improperly labeled  
4 “projects” cannot be included in revenue requirement calculations until there is actual plant  
5 in service associated with them and customers can obtain benefits from their use.

6 The Company has changed several of the Used and Useful (“U&U”) percentages for  
7 several systems which were adjudicated and set by the Commission in the Company’s last  
8 rate case. Several of these changes are unreasonable because the Company presented no  
9 testimony or evidence to justify these proposed changes, and a review of the Company’s  
10 Application data shows it is insufficient to change what the Commission has already  
11 determined to be the proper U&U percentages.

12 The proposed SWIM is expected to result in rate increases at a rate above inflation  
13 for the foreseeable future. The Company proposes to include the SWIM with its annual  
14 index filings; however, that filing process has no provision for customer meetings or  
15 hearings or other Commission review of the proposed changes. Thus, the proposed  
16 mechanism has practical problems associated with its implementation; namely, a lack of an  
17 adequate review process. Also, given that the rate case process already allows for 24 months  
18 of post-test year plant additions to be reflected in rates and that there has been no showing  
19 of the need for a special mechanism to fund capital projects, the necessity of the SWIM has  
20 not been established.

## 21 VII. CONCLUSION

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

1 A. Yes, it does.

1 BY MS. PIRRELLO:

2 Q Mr. Radigan, did you also cause to be prepared  
3 Exhibits FWR-1 through FWR-15?

4 A I did.

5 Q And do you have any corrections or changes to  
6 those exhibits?

7 A I do not.

8 MS. PIRRELLO: Mr. Chairman, please note that  
9 those exhibits are identified in the CEL as  
10 Exhibits 61 through 65.

11 CHAIRMAN CLARK: So noted.

12 BY MS. PIRRELLO:

13 Q Mr. Radigan, did you prepare a summary of your  
14 prefiled testimony?

15 A I did.

16 Q Would you give that summary at this time?

17 A Sure.

18 My name is Frank Radigan, as I said. I am an  
19 engineer with almost 40 years of experience in the  
20 utility industry. I started my career at the staff in  
21 the Public Service Commission in New York, and for the  
22 past 23 years, I have been -- I've owned my own  
23 consulting firm serving clients in the water,  
24 wastewater, gas, electric and steam utility businesses.  
25 I was assigned to review some of the engineering aspects

1 of the rate application.

2 I made a series of adjustments in my  
3 testimony. First was with respect to proforma plant  
4 additions. The company proposes 45 separate projects  
5 over the 24-month post test year period. Approximately  
6 half of these projects were completed at the filing of  
7 my direct testimony, and the remaining half were either  
8 under construction or awaiting construction.

9 During the course of the proceeding, I  
10 reviewed the company's bidding and contracting process,  
11 and became familiar with its internal process for taking  
12 a project from a concept to being in service. I also  
13 traveled to Florida and toured several of the projects  
14 so I could see for myself how the projects were  
15 progressing.

16 Based on my review and observation, I proposed  
17 numerous projects be disallowed because the project  
18 documentation presented was insufficient to allow me to  
19 verify that the projects would be in service by the end  
20 of the 24-month post test year period.

21 I also prepared a second adjustment to post  
22 test year plant for six projects that were actually  
23 studies and not related to construction projects  
24 actually under construction at this time. As such,  
25 under the Uniform System of Accounts, these costs cannot

1 be placed into service until an associated plant project  
2 is completed. Rather, these studies are going to rate  
3 base after the construction of the project, but that  
4 won't happen until after the end of the 24-month post  
5 test year period.

6           So the revenue requirement associated with  
7 these future construction projects will be part of some  
8 future rate case, when the construction projects are  
9 identified. Thus, the engineering and study costs were  
10 erroneously included in plant in service in this rate  
11 case. The value of these disallowances was \$432,000  
12 from rate base.

13           The company -- I also addressed the company's  
14 proposed changes to used and useful of several of the  
15 wastewater systems, which were adjudicated by the  
16 Commission in the company's last rate case. The company  
17 presented no testimony or evidence to justify these  
18 proposed changes. In some cases, there are notes  
19 included in the F schedules, however, review of that  
20 data showed it was insufficient in scope and explanation  
21 to change what the Commission has already determined to  
22 be the proper used and useful percentages.

23           The final area of my testimony is in response  
24 to UIF's proposed SWIM mechanism. The revenue  
25 requirement for the SWIM and the index mechanism would

1 be included together to calculate annual percentage  
2 increases in the rates. The filing would detail  
3 proposed projects, the revenue requirement associated  
4 with those projects, the projection of the next three  
5 years of scheduled expenditures and associated revenue  
6 requirements.

7 As presented in its testimony, OPC believes  
8 the company is seeking to replace the current regulatory  
9 process with the formula rate-making process, that would  
10 allow it to recover carrying costs on any comparable  
11 projects that are undertaken. This, together with the  
12 annual index filing, would allow the utility to recover  
13 all of its expenses and profit from its capital  
14 spending. At the same time, the company would still be  
15 allowed to retain all of its revenue growth from  
16 increased sales and increased number of customers.

17 In other words, OPC believes that Utilities,  
18 Inc. presents a win-win situation for itself, but  
19 ratepayers would pay for this. Based on estimated  
20 increases in capital spending provided by the utility,  
21 OP -- OPC estimates the annual increases would be in the  
22 five to eight percent range if the SWIM was adopted. We  
23 believe this is simply unfair and unreasonable to UIF's  
24 ratepayers.

25 OPC also believes that there is practical

1 problems with the proposed SWIM. First is the fact that  
2 the company simply states what and how much its projects  
3 will be without regard to rate impacts. Thus, if the  
4 company seeks more profits on its operations, it can  
5 simply spend more regardless of the true need. The  
6 company also proposes to include its SWIM with the  
7 annual index filing but that --

8 MR. WHARTON: Mr. Chairman -- Mr. Chairman --

9 CHARIMAN CLARK: Yes.

10 MR. WHARTON: We are clearly exceeding three  
11 minutes here, Mr. Chairman.

12 CHARIMAN CLARK: You -- you --

13 THE WITNESS: I have said enough.

14 CHAIRMAN CLARK: -- I am sorry, who is this?  
15 Mr. Wharton?

16 MR. WHARTON: Yeah -- yes. We are well  
17 exceeding three minutes in the summary.

18 CHARIMAN CLARK: Repeat what you said, Mr.  
19 Wharton. I can't understand you.

20 MR. WHARTON: We -- we -- we are -- this  
21 summary well exceeds the three-minute limit.

22 CHARIMAN CLARK: Yes, sir, I am well aware of  
23 that. We were -- we were fixing to come to that.

24 Can you wrap this up, Mr. Radigan?

25 THE WITNESS: I think I have said enough, Mr.

1 Chairman.

2 CHARIMAN CLARK: Thank you, sir.

3 Ms. Morse.

4 BY MS. PIRRELLO:

5 Q Mr. Radigan, do you have anything else you  
6 would like to add based on late filed testimony or  
7 discovery?

8 A Yes. In my direct testimony, I proposed 11 of  
9 the 45 projects being proposed by the company be  
10 disallowed because the company did not provide  
11 sufficient evidence for me to verify that the projects  
12 would be in service by the end of the 24-month post test  
13 year time period.

14 In rebuttal testimony, company witness Flynn  
15 provided --

16 MR. WHARTON: I object --

17 THE WITNESS: -- to the construction projects  
18 being proposed by the company.

19 CHAIRMAN CLARK: Mr. Radigan, hold on, sir, we  
20 have -- Mr. Radigan, hold on one second, we have an  
21 objection. Hold on a second.

22 Mr. Wharton.

23 MR. WHARTON: I will -- I will withdraw the  
24 objection.

25 CHARIMAN CLARK: Proceed, Mr. Radigan.

1 THE WITNESS: Okay. Based on the updated  
2 information, I was able to verify that two more  
3 projects now have sufficient information in total  
4 to be allowed into rate base, and one project had  
5 enough information for -- because there was several  
6 subcontractors with the project, they provided  
7 enough information to -- for me to partially  
8 justify some of that information. So originally I  
9 had proposed a 9.8.7 million disallowance because  
10 of insufficient evidence for the 11 projects, but  
11 now I have reduced that number to 8.97 million  
12 based on the updated information provided in the  
13 rebuttal.

14 MS. PIRRELLO: Thank you, Mr. Radigan.  
15 With that, Mr. Chairman, Mr. Radigan is  
16 available for process examination.

17 CHAIRMAN CLARK: Thank you is he much.  
18 Mr. Wharton, your witness.

19 EXAMINATION

20 BY MR. WHARTON:

21 Q Can you hear me, Mr. Radigan?

22 A I can.

23 Q All right, good. So just -- just a few  
24 questions.

25 You are sole university degree is in chemical

1     **engineering, right?**

2           A     That's correct.

3           Q     So two of the issues that you have gotten into  
4     in your testimony, adjustments to test year plant in  
5     service and adjustments to proforma plant additions, are  
6     something that Ms. Crane also testified about, right?

7           A     Well, she -- she adopted my testimonies to the  
8     plant in service.

9           Q     All right.  And -- and on the -- on the  
10    engineering issues in which you were to testify, there  
11    is a stipulation, so you -- you agreed with -- you do  
12    not disagree with Utilities, Inc.'s excessive  
13    unaccounted for water calculations, do you?

14          A     I do not disagree, correct.

15          Q     And you take no position against Utilities,  
16    Inc.'s calculation of whether there is any excessive  
17    I&I?

18          A     That's correct.

19          Q     And you take no position against the used and  
20    useful on the waterside that Utilities, Inc. has  
21    proposed?

22          A     That's correct.

23          Q     And on the wastewater side, everything has  
24    been stipulated except for four systems, is that  
25    correct?

1 A That's correct.

2 MS. PIRRELLO: Objection. We've stipulated to  
3 these issues.

4 CHARIMAN CLARK: Mr. Wharton?

5 MR. WHARTON: I'm sorry, what was that?

6 CHAIRMAN CLARK: She said that they had  
7 stipulated to those issues.

8 MR. WHARTON: I am not sure, what's the  
9 objection?

10 MS. PIRRELLO: To the extent that the issue  
11 has been stipulated, then Mr. Radigan should not be  
12 questioned about it. It's not a live issue.

13 CHAIRMAN CLARK: Do you have a question or are  
14 you making a statement, Mr. Wharton?

15 MR. WHARTON: No. I don't have any further  
16 questions on the issue.

17 CHAIRMAN CLARK: Okay. Thanks.

18 BY MR. WHARTON:

19 Q Okay. Now, of the four systems on used an  
20 useful wastewater, let me ask you about one of those.  
21 You are familiar with the wastewater facilities, the  
22 system referred to as Labrador?

23 A Yes.

24 Q And do I correctly characterize that in the  
25 2016 rate case, Labrador was suggested by Utilities,

1 Inc. to be 100 percent used and useful, but the  
2 Commission determined it was not 100 percent used and  
3 useful because there was a plot of undeveloped land in  
4 the service area?

5 A Yes. The Commission adopted a lower number.

6 Q Okay. And now it is Utilities, Inc.'s  
7 position that that system is 100 percent used and useful  
8 because that undeveloped land is to be developed,  
9 correct?

10 A That's their position, but the wastewater  
11 treatment facility there is sized for customers using an  
12 average of 280 gallons per day, but customers are only  
13 using 75 gallons per day. And so the facility is  
14 oversized, but development is fully built out, and so  
15 that's the developer's idea to build a facility that  
16 size. Ratepayers shouldn't be saddled with the full  
17 cost.

18 Now, I didn't reduce it down as far as the  
19 mathematical numbers indicate down to the 40 percent  
20 range that we were talking about with Mr. Seidman  
21 earlier today, but rather, I just said there has to be  
22 more examination for this facility of why it's so  
23 oversized and, you know, the mathematical calculation  
24 shows that it's such a much, much lower number, so what  
25 I proposed is that the number adopted by the Commission

1 in the last case be retained.

2 Q But my question, sir, was whether I correctly  
3 characterized Utilities, Inc.'s position, that it is 100  
4 percent used and useful because that lot is now set to be  
5 developed?

6 A That's correct.

7 Q Okay. Now, you actually suggested in your  
8 prefiled testimony that one of the reasons that you  
9 don't believe the Labrador system is 100 percent used  
10 and useful is because there are potential customers in  
11 land that is adjacent to the territory but not within  
12 the territory, is that correct?

13 A Yes. And that's a carryover issue from the  
14 last rate case as well, that a review of satellite image  
15 data shows that the area all around the Labrador system  
16 is empty, and it could be used in the future for more  
17 development. And that might be the reason why they  
18 built such a large wastewater treatment plant in the  
19 first place. The developer might have thought that that  
20 was going to occur in the last -- you know, in the  
21 future.

22 Q Now, you don't have any testimonial experience  
23 in Florida, do you?

24 A I do not.

25 Q And you don't have any used and useful

1 experience before this case in Florida, do you?

2 A No.

3 Q Are you aware of any case, rule, statute,  
4 Commission order where territory outside of a utility's  
5 certificated territory should be taken into account when  
6 calculating whether facilities are used and useful?

7 A Well, it's their current service territory.  
8 They could expand their services territory by a simple  
9 petition to the Commission.

10 Q But if would you answer my question, sir. Are  
11 you aware of any rule, case, order that supports your  
12 opinion in that regard?

13 A No.

14 Q Do you know what DEP requires for permitting  
15 purposes in terms of how many gallons per day when  
16 building a wastewater plant --

17 A No.

18 Q -- the Florida DEP? All right.

19 So you testified that you had looked at about  
20 45 separate projects, and you divided them into two  
21 categories, those for which you believed there was  
22 sufficient documentation and those for which you felt  
23 there was not sufficient documentation; is that a fair  
24 statement?

25 A No. I divided them into three categories. I

1 divided them into projects that were completed at the  
2 time I was doing my review and preparing my testimony,  
3 projects that were under construction while was  
4 preparing my testimony, and projects that were going to  
5 be completed out into the future.

6 And so then I went down to Florida to do a due  
7 diligence to look at the projects firsthand. I toured  
8 some of the projects that were under construction, some  
9 of the projects that were recently completed, and some  
10 of the projects that had not been completed whatsoever.

11 And then in preparing my testimony, I reviewed  
12 the company's project documentation. Initially, the  
13 company's project documentation consisted mainly of its  
14 business case and bid documents from contractors. And  
15 then as the case went on, the -- that filled out to show  
16 the whole process the company has for getting a project  
17 from concept to in service, and that has several steps.  
18 It's the biggest business case form where the company  
19 proposes the project to itself, gets an estimated cost  
20 of the project and justifies its project, and then it  
21 goes out to bid to contractors.

22 It has a very good bid process, where it  
23 studies each of the bids, evaluates the contracts to  
24 just make sure that they are competent to do the work,  
25 and then selects the lowest qualified bidder to do the

1 work.

2 From there, then the company serves what's  
3 called an award form, notifying the contractor that  
4 the -- they have won the bidding process and the utility  
5 accepted their contract. And that award form is signed  
6 by the utility, and then the utility asks the contractor  
7 to execute it and send it back to the utility. So now  
8 the contractor and the utility understand that the  
9 contractor is going to do the work at a certain price.

10 The next step is a contract that has -- and we  
11 went -- we went through the --

12 (Multiple speakers.)

13 MR. WHARTON: Mr. Chair?

14 THE WITNESS: Can I --

15 MR. WHARTON: Mr. Chair?

16 CHAIRMAN CLARK: Yes, sir.

17 MR. WHARTON: If I may. This is literally an  
18 answer to a question as to whether he divided the  
19 projects into categories of insufficient  
20 documentation and documentation. It's not  
21 responsive, and I would ask that Mr. -- I would ask  
22 that Mr. Radigan be instructed to try to answer the  
23 question.

24 CHARIMAN CLARK: Mr. Radigan, our -- kind of  
25 our process is to answer the question with a yes or

1 no, and then if an explanation is necessary, that's  
2 certainly appropriate to give. So if you could  
3 directly answer the question and then provide an  
4 explanation.

5 Go ahead, repeat the question, Mr. Wharton.

6 THE WITNESS: I am sorry, Mr. Chairman, I  
7 thought I did, because he asked me what did I do.

8 MR. WHARTON: No, I --

9 CHARIMAN CLARK: Repeat the question, Mr.  
10 Wharton.

11 BY MR. WHARTON:

12 Q With regard to those projects for which you  
13 determined there was insufficient documentation, you  
14 formed no within with regard to the merits of those  
15 projects, right? The only opinion you have is that  
16 there was insufficient documentation?

17 A Yes, and as I was explaining, under their  
18 process, then they have a contract, and then they tell  
19 the contractor there is a notice to proceed, which is,  
20 again, executed by the utility and by the contractor  
21 that the project will be done by -- that you will start  
22 the project within a certain period of time, and it will  
23 be done by a certain period of time. And that's --  
24 that's how I know that the project -- that's how I am  
25 able to verify if the project is going to be done in the

1 24-month proforma test period -- post test year period.  
2 That is the company's contract process, and that is  
3 the -- those are the documents that I needed to look at  
4 to verify the due diligence that the project will be in  
5 service.

6 **Q But for those projects for which you were not**  
7 **able to get sufficient documentation, in your opinion,**  
8 **that is the limit of your opinion with regard to those**  
9 **projects, correct?**

10 A Well, I -- those -- those documents tell you  
11 how much the project is going to cost and when it's  
12 going to be in service. If you -- if you don't have  
13 some kind of due diligence process, you know, someone  
14 could write down any number and tell you any -- you  
15 know, write down any time period that it's going to be  
16 in service.

17 **Q So you would agree with my statement then,**  
18 **it's correct? I am just trying to get an answer from**  
19 **you.**

20 A Yes.

21 MS. PIRRELLO: Objection, asked and answered.  
22 He said yes.

23 MR. WHARTON: I could ask for it to be read  
24 back, he did not. I will move on.

25 CHARIMAN CLARK: Thank you.

1 BY MR. WHARTON:

2 Q So do you contest the prudence of any of the  
3 projects on any basis other than that some had  
4 insufficient documentation in your opinion?

5 A Well, I went and toured the facilities. For  
6 instance, the Mid-County project, where they are going  
7 to build a new lift station and a new headworks  
8 facilities, I stood there on October 19th and nothing  
9 was done. There was no work being performed whatsoever.  
10 So after that -- after that physical tour, I  
11 came back, issued more discovery asking the utility for  
12 more documentation to show that the project was going to  
13 be completed on time.

14 Q It appears to me that, from your testimony,  
15 that in every case in which you believed you had  
16 sufficient documentation, you agreed with Utilities,  
17 Inc.?

18 A Yes.

19 Q You didn't question their conclusions, is that  
20 correct?

21 A Could you repeat the question?

22 Q Yes.

23 It appears from your testimony that in every  
24 case in which you determined there was sufficient  
25 documentation, you agreed with the position of

1 **Utilities, Inc.?**

2 A Yes.

3 MR. WHARTON: Hold on a second. I am looking  
4 at my notes real quick, Mr. Chairman.

5 BY MR. WHARTON:

6 Q You -- you talked about the project involving  
7 the lift station a few minutes ago, is that correct?

8 A Yes.

9 Q Did -- did you make any determination that  
10 that project was not a prudent project for Utilities,  
11 Inc. to undertake?

12 A No. I believe they are going to do it  
13 eventually, but the question is when.

14 Q So you do believe it was a prudent project for  
15 Utilities, Inc. to undertake?

16 A Yes, it will be done at some point in time.

17 MR. WHARTON: That's all I have, Mr. Chairman.

18 CHARIMAN CLARK: Thank you very much.

19 Staff?

20 MR. TRIERWEILER: Staff has no questions for  
21 this witness.

22 CHAIRMAN CLARK: Commissioners?

23 No questions from Commissioners.

24 All right. Ms. Morse?

25 MS. PIRRELLO: We have no further questions,

1 Mr. Chairman.

2 I would move Mr. Radigan's exhibits identified  
3 as CEL 61 through 65 into the record.

4 CHARIMAN CLARK: All right. Mr. Radigan's  
5 exhibits are moved into the record.

6 All right, Mr. Radigan, thank you very much  
7 for your testimony today. I think we have you back  
8 up again tomorrow.

9 All right. That concludes all of our direct  
10 testimony. I am inclined to at least get into a  
11 little bit of the next -- of the rebuttal testimony  
12 this afternoon. Let's move a little bit further  
13 along.

14 I would just like to get kind of some idea for  
15 witness Snow, let's begin with that one. UIF, I  
16 believe that is your witness, correct? OPC, can  
17 you give me any idea on how long you are going to  
18 have for Mr. Snow?

19 MS. MORSE: Maybe a half hour or so with Mr.  
20 Snow.

21 CHARIMAN CLARK: Okay. I am not holding you  
22 to anything. I promise. I just want to try to get  
23 a little bit of a ballpark idea to know how far we  
24 are going to be proceeding along. Well, that's  
25 great, if you have got about a half hour, then

1           maybe we can get this witness out. We will  
2           conclude there today and pick up with the rest  
3           tomorrow morning.

4                        So is everyone ready to proceed?

5           MR. REHWINKEL: Mr. Chairman?

6           CHAIRMAN CLARK: Mr. Rehwinkel.

7           MR. REHWINKEL: Just for the record, I think  
8           you may have indicated that we would see Mr.  
9           Radigan again tomorrow, but he -- he was only on  
10          direct, and I think he should be excused --

11          CHARIMAN CLARK: Yes.

12          MR. REHWINKEL: -- if I am not mistaken.

13          CHAIRMAN CLARK: Yes, without objection, Mr.  
14          Radigan is excused. Thank you very much, Mr.  
15          Rehwinkel.

16                       (Witness excused.)

17                       (Whereupon, prefiled direct testimony of Sarah  
18          Lewis was inserted.)

19

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## SECOND ERRATA SHEET

WITNESS: Sarah Lewis

The following table contains the corrected errata in her direct testimony.

<u>Page</u>	<u>Line</u>	<u>Original</u>	<u>Revision</u>
4-5	23-2	I created a summary of the list, which includes five categories of water and wastewater issues. My summary is attached to my testimony as SML-2. These five categories pertain to six of UIF's systems, some of which have more than one quality of service issue. All six systems listed are subject to consent orders between the Utility and DEP related to violations by the Utility. Most notable is the raw sewage spill that occurred at facility ID #WU413,	I created a summary of the six consent orders related to water and wastewater issues. My summary is attached to my testimony as SL-2. These consent orders pertain to three of UIF's systems, some of which have more than one quality of service issue. All three systems listed are subject to consent orders between the Utility and DEP related to violations by the Utility. Most notable is the raw sewage spill that occurred at PSC facility ID #WU413 (Wekiva Hunt Club),
5	21-22	Q. DID YOU REVIEW THE CUSTOMER COMPLAINTS FILED AS PART OF THE UTILITY'S MFRs?	Q. DID YOU REVIEW THE CUSTOMER COMPLAINTS FILED AS PART OF THE INSTANT DOCKET AND IN THE PSC'S COMPLAINT ACTIVITY TRACKING SYSTEM?
5	26	Duplicative complaints were submitted to OPC	Duplicative complaints were provided to OPC by the PSC
6	5	Generally, my review	Generally, in my opinion based on my review, it
6	11	The majority of complaints relate to billing	There are numerous complaints related to billing
8	9	201 complaints.	197 complaints.
8	10-11	But more importantly, most of these customers never received a response from the Utility until they reached out to the PSC and	But more importantly, some of these customers never received a resolution from the Utility until they reached out to the PSC and
8	22	The majority of the	There are numerous

9	19	Utility multiple times to get a response from the Utility.	Utility multiple times to get a response or resolution from the Utility.
9-10	25-3	<ul style="list-style-type: none"> <li>○ Lake Utility</li> <li>○ Wekiva Hunt Club</li> <li>○ Sanlando Utilities</li> <li>○ Mid-County</li> <li>○ Pinellas-County owned by Utilities Inc.</li> </ul>	<ul style="list-style-type: none"> <li>○ Lake Utility Services, Inc. (LUSI)</li> <li>○ Wekiva Hunt Club/Sanlando Utilities</li> <li>○ Mid-County Services, Inc.</li> </ul>
10	18-19	for the following systems: Lake Utility, Wekiva Hunt Club, Sanlando Utilities, Mid-County, and Pinellas-County owned by Utilities Inc.	for the following systems: LUSI, Wekiva Hunt Club/Sanlando Utilities, and Mid-County Services, Inc.

## ERRATA SHEET

WITNESS: Sarah Lewis

The following table contains the corrected errata in her direct testimony.

<u>Page</u>	<u>Line</u>	<u>Original</u>	<u>Revision</u>
Passim			Throughout the testimony, references to exhibits “SML-x” should be referred to as “SL-x” instead.
Exhibit SL-3		Title: PSC’s Complaint Activity Tracking System	Title: PSC’s Complaint Activity Tracking System Data

1 **DIRECT TESTIMONY**

2 **Of**

3 **Sarah Lewis**

4 On Behalf of the Office of Public Counsel

5 Before the

6 Florida Public Service Commission

7 Docket No. 20200139-WS

8

9

**I. INTRODUCTION**

10 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

11 A. My name is Sarah Lewis. My business address is 111 West Madison Street, Room  
12 812, Tallahassee, FL 32399-1400.

13

14 **Q. BY WHOM ARE YOU EMPLOYED AND WHAT IS YOUR POSITION?**

15 A. I am an accountant and employed as a Legislative Analyst with the Office of Public  
16 Counsel (OPC). I began my employment with OPC in July 2018.

17

18 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**  
19 **PROFESSIONAL EXPERIENCE.**

20 A. I received a Bachelor of Arts degree from Flagler College in accounting as well as a  
21 Bachelor of Arts degree from Flagler College in business administration in 2005. Prior  
22 to my work at OPC, I worked at the Florida Department of Education in the Office of  
23 Funding and Financial Reporting as a Policy Analyst from 2016-2018 compiling fiscal  
24 analyses for Florida House and Senate bills as well as compliance with Generally  
25 Accepted Accounting Principles (“GAAP”), bond accounting, and various other  
26 accounting-related analysis and reporting projects. This also included auditing of

1 district and school financial information. I worked at the Novey Law Firm as a Legal  
2 Administrator from 2012-2016; my duties included accounting functions as well as  
3 business management. Additionally, from 2011-2012, I performed various accounting  
4 functions as a Staff Accountant with Goodwill Big Bend, where my duties included  
5 budget modifications, grant procurement and other non-profit accounting functions,  
6 including compiling and submitting sales tax calculations for 25 retail locations. From  
7 2006 to 2011, I was an accountant for Applied Fiber Manufacturing, LLC where my  
8 duties included, but were not limited to, in-house auditing of financial data for  
9 budgeting and reporting purposes, as well as audits of contracts and data compilation  
10 for break-even statistics and return on equity.

11  
12 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA**  
13 **PUBLIC SERVICE COMMISSION?**

14 A. No.

15  
16 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

17 A. My testimony provides a summary of the various letters, exhibits, and other  
18 documentation contained in the instant docket file and in other files of the Public  
19 Service Commission (“PSC” or “Commission”) as relates to the quality of  
20 service provided by Utilities, Inc. of Florida (“UIF” or “the Utility”) during or  
21 after the test year. Sections 367.081(2)(a)1 and 367.0812, Florida Statutes (F.S.),  
22 provide the Commission shall consider the quality of the service when setting  
23 rates. Commission Rule 25-30.433(1), Florida Administrative Code (F.A.C.),  
24 further details the Commission’s requirements as follows:

25  
26 The Commission in every rate case shall make a determination  
27 of the quality of service provided by the utility by evaluating the

1 quality of utility's product (water) and the utility's attempt to  
 2 address customer satisfaction (water and wastewater). In making  
 3 this determination, the Commission shall consider:

4 (a) The most recent chemical analyses for each water system as  
 5 described in rule 25-30.440(3), F.A.C.;

6 (b) Any Department of Environmental Protection (DEP) and  
 7 county health department citations, violations and provisions of  
 8 consent orders that relate to quality of service;

9 (c) Any DEP and county health department officials' testimony  
 10 concerning quality of service;

11 (d) Any testimony, complaints and comments of the utility's  
 12 customers and others with knowledge of the utility's quality of  
 13 service; and

14 (e) Any utility testimony and responses to the information  
 15 provided in paragraphs (1)(a)-(d), above.

16  
 17 For my testimony, I have reviewed the testimony and exhibits of the  
 18 Utility's witnesses for quality of service issues. I have gathered data from the  
 19 Florida Department of Environmental Protection ("DEP") filed with the  
 20 Commission in response to Commission Staffs' requests, consent orders  
 21 obtained from DEP's OCULUS database, and UIF's Minimum Filing  
 22 Requirements (MFRs) addressing quality issues. I have also assembled letters  
 23 filed by UIF's customers in the PSC's docket. My testimony provides all of this  
 24 information in a summary format for the Commission to consider in its  
 25 determination of UIF's quality of service.

26  
 27 **Q. WHY DID YOU INCLUDE QUALITY OF SERVICE ISSUES THAT**  
 28 **OCCURRED AFTER THE TEST YEAR?**

29 **A.** The Commission should make its determination of quality of service based upon  
 30 the most up-to-date information available. Quality of service issues, such as

1 water quality, affect the customers' quality of life and their pocketbooks. If a  
2 situation that arose after the test year affects the quality of service determination,  
3 then it could be an indication of an issue which the Commission should consider  
4 when making its determination.

5

## 6 **II. DEP QUALITY OF SERVICE ISSUES**

7 **Q. WHAT DID YOU REVIEW REGARDING QUALITY OF SERVICE**  
8 **ISSUES IDENTIFIED BY DEP?**

9 A. DEP's information about UIF's quality of service issues was obtained from a  
10 number of sources. I reviewed the documentation submitted by the Utility with  
11 its MFRs as well as its responses to the deficiency letters issued by the DEP. I  
12 also reviewed the documentation available to the public on DEP's Oculus  
13 database. While Oculus contains information related to UIF's systems going  
14 back many years, I have only included items from 2015 (from UIF's last base  
15 rate case) through January 2020. While these dates range outside of the test year  
16 in the current docket, it is important to review the more recent violations to show  
17 ongoing issues with the different facilities owned by the Utility. This Consent  
18 Order data is attached to my testimony as SML-2, and the Consent Orders issued  
19 by DEP to UIF are attached to my testimony as SML-4.

20

21 **Q. CAN YOU SUMMARIZE THE HIGHLIGHTS OF THE LIST OF DEP**  
22 **QUALITY OF SERVICE ISSUES?**

23 A. Yes, I can. I created a summary of the list, which includes five categories of  
24 water and wastewater issues. My summary is attached to my testimony as SML-  
25 2. These five categories pertain to six of UIF's systems, some of which have  
26 more than one quality of service issue. All six systems listed are subject to

1 consent orders between the Utility and DEP related to violations by the Utility.  
2 Most notable is the raw sewage spill that occurred at facility ID #WU413, which  
3 was also the subject of customer correspondence to the PSC, and is listed in my  
4 customer complaint summary attached to my testimony as SML-1.

5

6 **Q. DO YOU HAVE ANY COMMENTS REGARDING YOUR FINDINGS**  
7 **REGARDING THE QUALITY OF SERVICE ISSUES IDENTIFIED BY**  
8 **DEP?**

9 A. Yes, I do. These issues should be included for consideration by the Commission  
10 in this rate proceeding and should be evaluated as a part of the overall quality of  
11 service issues in this docket. The Commission's evaluation should include  
12 consideration of these issues, even if the Utility has since corrected any  
13 deficiencies. The customers who have experienced these quality of service  
14 issues have continuously paid rates even when UIF was not in compliance with  
15 primary or secondary water standards. No utility, including UIF, should be  
16 allowed to operate in non-compliance during its test year, later resolve its  
17 deficiencies for its rate case, and then expect to receive a clean bill of health from  
18 the Commission with respect to setting new rates.

19

### 20 **III. CUSTOMER COMPLAINTS TO THE UTILITY**

21 **Q. DID YOU REVIEW THE CUSTOMER COMPLAINTS FILED AS PART**  
22 **OF THE UTILITY'S MFRs?**

23 A. Yes, I reviewed these customer complaints and tabulated all the quality of service  
24 complaints. This tabulation is included with my testimony as SML-1 and the  
25 complaints received through the PSC's Complaint Activity Tracking System are  
26 attached as exhibit SML-3. Duplicative complaints were submitted to OPC and

1 I attempted to exclude these duplicates. The years 2017-2020 were requested  
2 from the Commission for all complaints.

3 **Q. WHAT HIGHLIGHTS DID YOU FIND WHEN YOU REVIEWED THE**  
4 **BILLING COMPLAINTS?**

5 A. Generally, my review shows that most of the billing complaints occurred after a  
6 customer received a high bill and UIF conducted a follow-up investigation to  
7 determine whether there was either a leak that was the responsibility of the  
8 Utility, or a meter malfunction, as determined by a meter test and re-reading of  
9 the meter for accuracy. I would also note that several of the billing complaints  
10 also included complaints relating to the quality of service provided by the Utility.

11 The majority of complaints relate to billing - either due to the 2016 rate  
12 increase, subsequent pass-through increases, and interim rate increases - or to  
13 protesting upcoming rate increases.

14 Several complaints relate to quality of customer service,  
15 water/wastewater quality and problems with receiving refunds from the Utility.  
16 These issues appear to have been resolved only after the customers subsequently  
17 made formal complaints to the PSC, which was after the customers first  
18 attempted to resolve their disputes with UIF.

19 A number of miscellaneous complaints that did not identify the specific  
20 UIF system are included in the customer complaints list.

21 I also spoke personally to three customers from different UIF systems  
22 about the quality of the water and issues related with the quality.

23 Dana Elliott, who resides at 625 Grand Vista Tri, Leesburg FL 34748,  
24 had to purchase a water softener filtration system that cost approximately \$5,000.  
25 She also stated she spends approximately \$20 a month for bottled water for  
26 drinking, as the water that comes directly from the facility is undrinkable. Ms.

1 Elliot stated that the unfiltered water emits a black substance as well as a rust  
2 color substance that stain the streets and sidewalks. Her toilets are stained orange  
3 from the water.

4 Gail Russakov, who resides at 306 Cambridge Dr., Longwood FL 32779,  
5 stated that she has lived in her house for 30 years. She did not have water quality  
6 issues until UIF took over her utility. She stated that one of the more notable  
7 issues was that a strong chemical smell has emitted from the unfiltered water.  
8 This occurred sporadically for a while although she has not noticed it during the  
9 past year. She also has to filter her water for drinking. She was told that the  
10 reason for past rate increases is that UIF needed to replace the pipes on her street;  
11 however, she has not witnessed activity on this project.

12 Barry Saylor, who resides at 33125 Meadow Green Ct., Leesburg FL  
13 34748, stated that he has had to purchase two water filtration systems so that the  
14 water can be usable and drinkable. The first system was a water softener system  
15 that cost approximately \$4,000. The second system cost approximately \$1,600  
16 and was a three filtered treatment system utilizing a paper filter, a charcoal filter  
17 and a Nuvo filter. Mr. Saylor stated that he has had to replace his toilets due to  
18 staining and etching from a black substance that builds up as well as a rust  
19 colored stain. He also stated the sprinkler systems stain the houses, sidewalks  
20 and driveways. He further stated his yearly water bill is nearly what he is paying  
21 for his property taxes on his home and is as much as his yearly homeowners'  
22 association fees, and that this seemed exorbitant.

23 Numerous customers have submitted letter complaints against the Utility  
24 for poor quality of water, poor customer service, and the high rates they are  
25 forced to pay for water and wastewater. Notably I read numerous complaints  
26 that stated the cost of the water and wastewater from UIF exceeded the

1 customers' electricity bills. This was a widespread complaint.

2

3 **Q. DO YOU HAVE ANY CONCERNS REGARDING THE COMPLAINTS**  
4 **THAT YOU REVIEWED?**

5 A. Yes, I do. It appears that customers in many cases never received responses to  
6 their complaints until and unless they contacted the Commission, which was after  
7 first contacting UIF. This is further borne out by the customer complaints that  
8 were also obtained from the PSC, which included approximately 1,000 pages of  
9 documentation related to 201 complaints. Some of these complaints involved  
10 multiple issues per incident. But more importantly, most of these customers  
11 never received a response from the Utility until they reached out to the PSC and  
12 filed a formal complaint.

13

14 **IV. CUSTOMER LETTERS**

15 **Q. DID YOU REVIEW THE CUSTOMER LETTERS FILED IN THIS**  
16 **DOCKET?**

17 A. Yes, I did. I reviewed and logged each of the customer letters and customer  
18 comments filed at the Commission in this docket. I have included these  
19 complaints in my customer complaint compilation, Exhibit SML-1.

20

21 **Q. WHAT ELSE DO YOU INCLUDE IN EXHIBIT SML-1?**

22 A. Each letter and comment is categorized in the exhibit. The majority of the  
23 customer letters and comments express concerns relating to the Utility's request  
24 for another rate increase. Many of these systems have seen repeated increases  
25 requested by UIF every 3 years or so. These increases are in many cases  
26 substantial and are in addition to the annual price index and pass-through

1 increases obtained by the Utility. In addition, there are numerous customers who  
2 have commented that the quality of the water is so bad, it is insulting to continue  
3 to pay more for it.

4

5 **Q. ARE THERE ANY TYPES OF LETTERS THAT ARE NOT INCLUDED**  
6 **IN YOUR SCHEDULE?**

7 A. No. I am not in possession or aware of any other types of customer letters.

8

9 **V. CONCLUSION**

10

11 **Q. PLEASE SUMMARIZE THE MAJOR CONCERNS YOU IDENTIFIED**  
12 **DURING YOUR REVIEW OF THE COMPLAINT-RELATED**  
13 **DOCUMENTATION IN THIS CASE.**

14 A. The utility has entered into several Consent Orders with DEP due to deficiencies  
15 and problems with its operations. Additionally, the documents indicate the  
16 Utility does not respond to customer complaints until and unless the customers  
17 subsequently contact the PSC, and the PSC forces the Utility's hand. Even with  
18 the complaints filed at the PSC, customers sometimes have to reach out to the  
19 Utility multiple times to get a response from the Utility. This is particularly  
20 concerning when it relates to a necessary repair, refund request, or water quality  
21 or safety complaints.

22 The following UIF systems are either currently subject to active Consent  
23 Orders or have been subject to Consent Orders during a time period relevant to  
24 this case:

- 25 ○ Lake Utility  
26 ○ Wekiva Hunt Club

- 1           o Sanlando Utilities
- 2           o Mid-County
- 3           o Pinellas-County owned by Utilities Inc.

4

5   **Q.   DO YOU HAVE ANY RECOMMENDATIONS REGARDING QUALITY**  
6   **OF SERVICE?**

7   A.   Yes, I do. I recommend that the Commission consider the large number and  
8       severity of the quality of service issues experienced by UIF’s customers, the  
9       length of time those issues have existed, whether UIF has attempted to resolve  
10      those known issues, and the existence of DEP violations or consent orders during  
11      or after the test year. My recommendation is based upon the available quality of  
12      service information provided by UIF, received through discovery, obtained from  
13      DEP’s Oculus database, and contained in the Commission’s files, much of which  
14      I have attempted to summarize in my testimony. Based upon the quality of  
15      service information currently known from the test year and thereafter relating to  
16      specific UIF systems, and summarized in my testimony, I recommend the  
17      Commission consider a finding of marginal or unsatisfactory quality of service  
18      for the following systems: Lake Utility, Wekiva Hunt Club, Sanlando Utilities,  
19      Mid-County, and Pinellas-County owned by Utilities Inc.

20                If the Commission makes a finding of unsatisfactory quality of service,  
21       for all or some of the systems, I recommend the Commission reduce the return  
22       on equity for the Utility by at least 50 basis points. If a specific system or systems  
23       have a history of repeated or unresolved issues, the return on equity should be  
24       reduced by 100 basis points. “History of issues” includes past Commission  
25       decisions, as well as the history of past customer complaints against a particular

1 system. In addition, the quality of service determination should include systems  
2 where the quality of service may have been found satisfactory in the past, yet  
3 there are strong indications that the customers are dissatisfied with the secondary  
4 standards, pressure, or other water/wastewater issues, and the Utility has failed  
5 or refused to address those issues when it received customer complaints. If UIF  
6 ignored evidence presented in prior rate case proceedings that its customers are  
7 dissatisfied with the quality of service, and no action was taken to address or  
8 improve that service, then that supports a reduction in the return on equity. A  
9 well-run utility should not wait until the Commission imposes a penalty before  
10 it decides to (a) respond to its customers, and (b) provide the satisfactory quality  
11 of service that its customers are paying for and deserve.

12  
13 **Q. WHAT ABOUT THE QUALITY OF SERVICE FINDINGS FOR THE**  
14 **REMAINING UIF SYSTEMS?**

15 A. Although I do not have any specific recommendation at this time for the systems  
16 not listed in my testimony, this does not mean the remainder should be  
17 considered satisfactory by default. Customers are still sending complaints to the  
18 PSC's docket file in this case, and the customer service hearings have not yet  
19 been held. Additionally, the discovery period in this case has not closed.  
20 Therefore, it is possible additional information will be provided by customers  
21 and others before the hearing in this matter. I based my recommendations above  
22 on available public information about the systems I discussed, as well as  
23 information received from discovery to date.

24 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

25 A. Yes, it does.

1                   (Whereupon, prefiled direct testimony of Debra  
2   Dobiac was inserted.)

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1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **COMMISSION STAFF**

3                                   **DIRECT TESTIMONY OF DEBRA DOBIAC**

4                                   **DOCKET NO. 20200139-WS**

5                                   **NOVEMBER 20, 2020**

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

8   A.     My name is Debra M. Dobiac. My business address is 2540 Shumard Oak Boulevard,  
9   Tallahassee, Florida, 32399.

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

11 A.     I am employed by the Florida Public Service Commission (FPSC or Commission) as a  
12 Public Utility Analyst in the Office of Auditing and Performance Analysis. I have been  
13 employed by the Commission since January 2008.

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

15 A.     I graduated with honors from Lakeland College in 1993 and have a Bachelor of Arts  
16 degree in accounting. Prior to my work at the Commission, I worked for six years in internal  
17 auditing at the Kohler Company and First American Title Insurance Company. I also have  
18 approximately 12 years of experience as an accounting manager and controller.

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

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

22 **Q.     Have you previously presented testimony before this Commission?**

23 A.     Yes. I testified in the Aqua Utilities Florida, Inc. Rate Case, Docket No. 20080121-  
24 WS, the Water Management Services, Inc. Rate Case, Docket No. 20110200-WU, and the  
25 Utilities, Inc. of Florida Rate Case, Docket No. 20160101-WS. I also prefiled testimony for

1 the Water Management Services, Inc. Rate Case, Docket No. 20100104-WU, the Gulf Power  
2 Company Rate Cases, Docket Nos. 20110138-EI and 20130140-EI, the Fuel and Purchased  
3 Power Recovery Clause (Hedging Activities) for Gulf Power Company, Docket Nos.  
4 20130001-EI, 20140001-EI, 20190001-EI, and 20200001-EI, the Fuel and Purchased Power  
5 Recovery Clause (Hedging Activities) for Florida Power & Light Company, Docket No.  
6 20180001-EI, Florida Public Utilities Company's Limited Proceeding to recover incremental  
7 Storm Restoration Costs, Docket No. 20180061-EI, the Gulf Power Company Limited  
8 Proceeding to recover incremental Storm Restoration Costs, Docket No. 20190038-EI, and the  
9 Florida Public Utilities Company's Petition for a Limited Proceeding to recover incremental  
10 Storm Restoration Costs, Capital Costs, Revenue Reduction for Permanently Lost Customers,  
11 and Regulatory Assets Related to Hurricane Michael in Docket No. 20190156-EI.

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

13 A. The purpose of my testimony is to sponsor the staff auditor's report of Utilities, Inc. of  
14 Florida (UIF or Utility) which addresses the Utility's filing in Docket No. 20200139-WS. We  
15 issued an auditor's report in this docket on October 26, 2020. This report is filed with my  
16 testimony and is identified as Exhibit DMD-1.

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

18 A. Yes, it was prepared under my direction.

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

20 A. The procedures that we performed in this audit are listed in the Objectives and  
21 Procedures section of the attached Exhibit DMD-1, pages 4 through 9.

22 **Q. Were there any audit findings in the auditor's report, Exhibit DMD-1, which  
23 address the historical 2019 amounts in the schedules prepared by the Utility in support  
24 of its filing in the current docket?**

25 A. Yes. There was one audit finding reported in this audit and is found in the

1 attached Exhibit DMD-1, page10. This is summarized below:

2 **Finding 1 – Revenue**

3 Revenues for the test year and the annualized revenues should be increased by \$14,585  
4 and \$14,923, respectively. Taxes other than income taxes (TOTI) should be increased by  
5 \$656. In the MFR Schedule E-2, the number of water residential customer bills are 373,481.  
6 Audit staff traced the number of bills to the Utility’s supporting schedules and determined that  
7 the water residential customer bills should be 374,804. The variance of 1,323 bills result in  
8 test year revenues to be understated by \$14,585 and annualized revenues to be understated by  
9 \$14,923. Based on the adjustment to revenues, we calculated an increase of \$656 to TOTI for  
10 the regulatory assessment fees.

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

12 A. Yes.

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1 (Whereupon, prefiled direct testimony of  
2 Rhonda L. Hicks was inserted.)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 20200139-WS - 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.

WITNESS: Direct Testimony of RHONDA L. HICKS appearing on behalf of the Staff of the Florida Public Service Commission

DATE FILED: November 20, 2020

## 1 DIRECT TESTIMONY OF RHONDA L. HICKS

2 Q. Please state your name and address.

3 A. My name is Rhonda L. Hicks. My address is 2540 Shumard Oak Boulevard;  
4 Tallahassee, Florida; 32399-0850.

5 Q. By whom are you employed and in what capacity?

6 A. I am employed by the Florida Public Service Commission (FPSC or Commission) as  
7 Chief of the Bureau of Consumer Assistance in the Office of Consumer Assistance &  
8 Outreach.9 Q. Please give a brief description of your educational background and professional  
10 experience.11 A. I graduated from Florida A&M University in 1986 with a Bachelor of Science degree  
12 in Accounting. I have worked for the Commission for more than 34 years, and I have  
13 varied experience in the electric, gas, telephone, and water and wastewater industries.  
14 My work experience includes rate cases, cost recovery clauses, depreciation studies,  
15 tax, audit, consumer outreach, and consumer complaints. During the course of my  
16 career at the Commission, I have testified in numerous dockets involving varied  
17 industries regulated by the Commission. I currently work in the Bureau of Consumer  
18 Assistance within the Office of Consumer Assistance & Outreach where I manage  
19 consumer complaints and inquiries.

20 Q. What is the function of the Bureau of Consumer Assistance?

21 A. The Bureau's function is to resolve disputes between regulated companies and their  
22 customers as quickly, effectively, and inexpensively as possible.23 Q. Do all consumers that have a dispute with their regulated company contact the  
24 Bureau of Consumer Assistance?

25 A. No. Consumers may initially file their complaint with the regulated company and

1 reach a resolution without the Bureau's intervention. In fact, consumers are encouraged  
2 to allow the regulated company the opportunity to resolve the dispute prior to any  
3 Commission involvement.

4 Q. What is the purpose of your testimony?

5 A. The purpose of my testimony is to outline the number of consumer complaints logged  
6 with the Commission against Utilities, Inc. of Florida (UIF) under Rule 25-22.032,  
7 Florida Administrative Code, Consumer Complaints, from October 5, 2015, through  
8 October 5, 2020. My testimony will also provide information on the type of  
9 complaints logged and those complaints that appear to be rule violations.

10 Q. What do your records indicate concerning the number of complaints logged against  
11 UIF?

12 A. From October 5, 2015, through October 5, 2020, the Commission logged 194  
13 complaints against UIF.

14 Q. What have been the most common types of complaints logged against UIF during the  
15 period October 5, 2015, through October 5, 2020?

16 A. During the specified time period, approximately sixty-nine (69%) percent of the  
17 complaints logged with the Commission concerned billing issues, while approximately  
18 thirty-one (31%) percent of the complaints involved quality of service issues.

19 Q. Do you have any exhibits attached to your testimony?

20 A. Yes. I am sponsoring Exhibits RLH-1 and RLH-2

21 Q. Can you summarize Exhibit RLH-1?

22 A. Yes. Exhibit RLH-1 is a listing of customer complaints logged with the Commission  
23 against UIF under Rule 25-22.032, Florida Administrative Code. The complaints listed  
24 were received between October 5, 2015, through October 5, 2020, and were captured  
25 in the Commission's Consumer Activity Tracking System (CATS). The complaints are

1 sorted and grouped by county.

2 Q. What counties received the most complaints during October 5, 2015, through October  
3 5, 2020?

4 A. Exhibit RLH-1 indicates that UIF in Seminole County, followed by UIF in Lake  
5 County, received the most complaints during the specified time period. UIF in  
6 Seminole County received 133 complaints while UIF in Lake County received 31  
7 complaints. Included within their total complaints, both counties each received 6  
8 complaints regarding water quality/pressure. Consequently, the twelve complaints  
9 received by Seminole and Lake Counties constituted the great majority of the fifteen  
10 water quality/pressure complaints that the Commission sent to Florida's Department of  
11 Environmental Protection (DEP).

12 Q. Why are water quality/pressure complaints sent to DEP?

13 A. The DEP establishes secondary water quality standards, and consumer complaints  
14 about water quality issues may assist DEP in determining whether or not a utility has  
15 met its secondary water quality standards.

16 Q. Can you summarize Exhibit RLH-2?

17 A. Yes. Exhibit RLH-2 is the same information contained in the listing of customer  
18 complaints presented as Exhibit RLH-1. However, the information is sorted and  
19 grouped by Close-Out Code.

20 Q. What is a Close-Out Code?

21 A. A Close-Out Code is an internal categorization code. It is assigned to each complaint  
22 once staff completes its investigation, and a proposed resolution is provided to the  
23 consumer. If a complaint is not assigned a Close-Out Code, the complaint remains  
24 under investigation.

25 Q. How were most UIF complaints received during October 5, 2015, through October 5,

1 2020, resolved or closed?

2 A. A review of Exhibit RLH-2 indicates that Commission staff closed the majority of  
3 UIF's complaints as GI-25/Improper Billing.

4 Q. Does a Close-Out Code of GI-25/Improper Billing indicate that UIF improperly billed  
5 a customer?

6 A. No. The Close-Out Code of GI-25/Improper Billing, is a general code that  
7 encompasses all billing issues that don't involve a High Bill concern. It would involve  
8 issues such as, late fees, disconnect charges, meter reading charges, or any other  
9 billing concern except High Bills. Complaints that may be potential violations of  
10 Commission rules have Close-Out Codes that begin with WS- or WB-.

11 Q. How many of the complaints summarized on your exhibit has staff determined  
12 may be a violation of Commission rules?

13 A. Of the 194 complaints logged against UIF during the period October 5, 2015, through  
14 October 5, 2020, staff determined that 15 of the complaints may be violations of  
15 Commission rules.

16 Q. Can you summarize the potential rule violations?

17 A. Yes. The majority of the potential rule violations involve inaccurate meters and meter  
18 readings. Other potential rule violations involve customer billing, the refund of  
19 deposits, and responding to customers and/or the Commission in a timely manner.

20 Q. Does this conclude your testimony?

21 A. Yes, it does.

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1                   (Whereupon, prefiled rebuttal testimony of  
2 Dylan W. D'Ascendis 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

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Docket No. 20200139-WS

REBUTTAL TESTIMONY

OF

DYLAN W. D'ASCENDIS, CRRA, CVA

on behalf of

Utilities, Inc. of Florida

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19		

1     **I.     INTRODUCTION**

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

3     A.     My name is Dylan W. D’Ascendis. I am a Director at ScottMadden, Inc. My business address  
4           is 3000 Atrium Way, Suite 241, Mount Laurel, NJ 08054.

5     **Q.     On whose behalf are you presenting this testimony?**

6     A.     I am presenting this testimony and appearing on behalf of Utilities, Inc. of Florida. (“UIF” or  
7           the “Company”), the applicant for rate increase in the present docket.

8     **Q.     Did you submit Direct Testimony in this proceeding?**

9     A.     Yes, I did.

10    **II.    PURPOSE AND OVERVIEW OF TESTIMONY**

11    **Q.     What is the purpose of your Rebuttal Testimony in this proceeding?**

12    A.     The purpose of my Rebuttal Testimony is to respond to and address serious shortcomings in  
13           the direct testimony of witness David J. Garrett, testifying on behalf of the Florida Office of  
14           Public Counsel (“OPC”), regarding the Company’s Cost of Common Equity (“ROE”) and  
15           capital structure.

16    **Q.     Please summarize your conclusions.**

17    A.     UIF’s proposed ROE of 11.75% should not be reduced as Mr. Garrett recommends. In my  
18           response to Mr. Garrett’s estimate of the Company’s ROE (*see*, Section IV below), I explain  
19           the shortcomings of Mr. Garrett’s analyses and conclusions, including, but not limited to:

- 20           • His reliance on a hypothetical capital structure for ratemaking purposes;
- 21           • How far disconnected his recommended ROE is from his own analytical results  
22           and observable and relevant data;
- 23           • His misinterpretation of the relationships between various returns;
- 24           • His misunderstanding of the nature of utility regulation;
- 25           • His misapplication of the Discounted Cash Flow (“DCF”) model;

- 1 • His misapplication of the Capital Asset Pricing Model (“CAPM”); and
- 2 • His refusal to consider a small size premium in his ROE recommendation.

3 In addition, I also respond to Mr. Garrett’s unfounded critiques of my Direct  
4 Testimony.

5 **Q. Please summarize your interpretation of current capital markets.**

6 A. As explained in Section III below, the turmoil in capital markets attributable to the COVID-19  
7 pandemic has increased risk for the entire economy, generally, and utilities, specifically. Key  
8 takeaways include:

- 9 • The full impact and duration of the COVID-19 pandemic are unknown, and  
10 outcomes are still highly uncertain; and
- 11 • The same increased market volatility that caused investors’ “flight to safety” also  
12 created a situation where utilities traded in tandem with market indices. The  
13 correlated returns of utility stocks and market indices, in combination with  
14 increased volatility, increases beta coefficients (“beta”) (a measure of market risk),  
15 and by extension, investor-required returns.

16 **Q. Have you prepared an exhibit supporting your Rebuttal Testimony?**

17 A. Yes, I have. My analyses and conclusions are supported by the data presented in Exhibit DWD-  
18 3, which contains Schedules 1 through 6, which have been prepared by me or under my  
19 direction and supervision.

20 **III. CAPITAL MARKET CONDITIONS**

21 **Q. Have capital market conditions changed significantly since you filed your Direct  
22 Testimony?**

23 A. No, they have not. Since the filing of my Direct Testimony, capital markets have continued to  
24 be characterized by high levels of volatility and market instability, and utility returns have  
25 continued to be highly correlated with the overall market.

1 **Q. Please briefly summarize Mr. Garrett’s observations of utility stocks in relation to the**  
2 **capital market and the conclusions he reached.**

3 A. While Mr. Garrett provides no discussion of the capital market environment, in general, and  
4 the effects of the recent capital market dislocation on the utility sector, in particular, he argues  
5 that the Company’s “true” Cost of Equity is low because “utilities are defensive firms that  
6 experience little market risk and are relatively insulated from market conditions.”<sup>1</sup>

7 **Q. Do you agree with Mr. Garrett’s statements that utilities are “low risk” investments and**  
8 **“relatively insulated from market conditions” in the current capital market?**

9 A. No, I do not. While Mr. Garrett considers utility stocks as “low-risk” investments, in this  
10 period of extreme market volatility, they are not.

11 **Q. Have you conducted an analysis to determine whether water utility stocks are “low-risk”**  
12 **investments in the current market?**

13 A. Yes, I have. Specifically, I analyzed the relative performance and annualized volatilities<sup>2</sup> of  
14 my proxy group, the Dow Jones Utility Average (“DJU”), the Utilities Select SPDR (“XLU”),  
15 the Dow Jones Industrial Average (“DJI”), and the S&P 500 to gauge whether utilities  
16 weathered the COVID-19 pandemic better than the overall market. As shown on Exhibit  
17 DWD-3, Schedule 1 and Table 1, below, from January 31, 2020<sup>3</sup> to November 13, 2020,  
18 utilities were generally more volatile (*i.e.*, risky) than the market indices, and had returns that  
19 underperformed the DJI and the S&P 500.

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<sup>1</sup> Direct Testimony of David J. Garrett, at 31.

<sup>2</sup> The annualized volatility of a stock is measured by taking the standard deviation of the price changes within the sample and multiplying by the square root of 252 (the assumed number of trading days in a year).

<sup>3</sup> I chose January 31, 2020 because on June 8, 2020, the National Bureau of Economic Research determined that a peak in monthly economic activity occurred in the U.S. economy in February 2020. The peak marks the end of the expansion that began in June 2009 and the beginning of a recession.  
<https://www.nber.org/cycles/june2020.html>.

**Table 1: Annualized Volatility and Returns of Utility Groups and Market Indices  
February 2020 – mid-November 2020**

	Proxy Group	Dow Jones Utility Average (DJU)	Utilities Select SPDR (XLU)	Dow Jones Industrial Average	S&P 500
<b>Price Change</b>	-1.72%	-2.95%	-4.19%	4.33%	11.15%
<b>Annualized Volatility</b>	55.64%	42.83%	42.97%	40.84%	38.35%

In addition to the analysis in Table 1, I also calculated the correlation coefficients of the price changes of the utility groups relative to the S&P 500 and the DJI from February 1, 2020 to November 13, 2020. Specifically, I calculated correlation coefficients for the following relationships:

- The price changes of the S&P 500 relative to the price changes of my proxy group;
- The price changes of the S&P 500 relative to the price changes of the DJU;
- The price changes of the S&P 500 relative to the price changes of the XLU;
- The price changes of the DJIA relative to the price changes of my proxy group;
- The price changes of the DJIA relative to the price changes of the DJU; and
- The price changes of the DJIA relative to the price changes of the XLU.

Table 2 provides the results of the calculations:

**Table 2: Calculation of Correlation Coefficients for Utility Groups Relative to Market Indices from February 2020 through mid-November 2020<sup>4</sup>**

Group	S&P 500	DJIA
Water Proxy Group	76.86%	74.94%
DJU	82.92%	82.66%
XLU	83.13%	82.56%

As shown in Table 2, the correlations between utility stocks and the market indices are

<sup>4</sup> Source: S&P Global Market Intelligence.

1 similar, indicating that utility stocks have been trading in tandem with market indices during  
 2 the current market dislocation, which is consistent with the risk and return data shown in Table  
 3 1. The behavior of utility stocks to move in tandem with the market during market distress is  
 4 not limited to the current period. During the Great Recession (December 2007 to June 2009),  
 5 correlations between these same groups were also similar, as also shown in Table 3.

6 **Table 3: Calculation of Correlation Coefficients for Utility Groups Relative to Market**  
 7 **Indices from December 2007 through June 2009<sup>5</sup>**

Group	S&P 500	DJIA
Water Proxy Group	72.69%	73.36%
DJU	81.57%	82.13%
XLU	78.36%	78.59%

8  
 9 Thus, in view of the above, Mr. Garrett's statements regarding the "low-risk" nature of  
 10 utility stocks should be dismissed, especially in this volatile capital market.

11 **Q. What conclusions did you draw from your review of the current capital market and its**  
 12 **implications on the Company's Cost of Equity?**

13 A. In view of the above, current capital markets are indicating higher investor-required returns for  
 14 utility companies due to the COVID-19 pandemic. Because of this, Mr. Garrett's "true" Cost  
 15 of Equity of 6.00% and his recommended ROE of 9.50% are woefully inadequate, and my  
 16 recommended point estimate of 11.75% for the Company is appropriate, if not conservative.

17 **IV. RESPONSE TO OPC WITNESS GARRETT**

18 **Q. Please provide a summary of Mr. Garrett's analyses and recommendations regarding the**  
 19 **Company's Cost of Capital.**

20 A. Although Mr. Garrett believes the Company's "true" Cost of Equity is 6.00%, he recommends

<sup>5</sup> Source: S&P Global Market Intelligence.

1 an ROE of 9.50%.<sup>6</sup> Mr. Garrett estimates the Cost of Equity using the Quarterly DCF model  
2 (6.00%) and the CAPM (6.10%).<sup>7</sup>

3 Regarding his recommended capital structure, Mr. Garrett finds that utilities can  
4 generally afford to have “relatively higher debt ratios” given their stable business profile.<sup>8</sup> And  
5 while Mr. Garrett reviews the capital structure ratios for the Utility Proxy Group, he finds those  
6 levels “lower than what would be observed in a pure competitive environment.”<sup>9</sup> He ultimately  
7 concludes that the appropriate capital structure for UIF consists of 50.00% long-term debt,  
8 5.00% short-term debt, and 45.00% common equity, based on his review of debt ratios in place  
9 at competitive industries as well as the Utility Proxy Group.<sup>10</sup>

10 **Q. In what key areas are Mr. Garrett’s analyses and recommendations incorrect or**  
11 **unsupported?**

12 A. There are several areas in which Mr. Garrett’s analyses and conclusions are incorrect or  
13 unsupported, including: (1) his choice to select a hypothetical capital structure for UIF; (2) his  
14 recommended ROE has seemingly no empirical basis, (3) his incorrect assessment of the  
15 relationships between returns and their applicability to the Company’s ROE; (4) his incorrect  
16 observation that authorized ROEs have exceeded the investor-required return on the market for  
17 30 years; (5) his misapplication of the DCF model; (6) his misapplication of the CAPM; and  
18 (7) his refusal to consider a small size premium in his ROE recommendation. Those points are  
19 discussed in turn, below.

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<sup>6</sup> Direct Testimony of David J. Garrett, at 6; and Exhibit DJG-12. Mr. Garrett specifically argues the models he applies estimate the “true cost of equity”; the average of his model results is 6.00%.

<sup>7</sup> Exhibits DJG-6 and DJG-11, respectively.

<sup>8</sup> Direct Testimony of David J. Garrett, at 76.

<sup>9</sup> *Ibid.*, at 76.

<sup>10</sup> *Ibid.*, at 78.

1       **A.     Capital Structure**

2       **Q.     What factors should typically be considered when determining whether to use an actual**  
 3       **or hypothetical capital structure for ratemaking purposes?**

4       A.     The factors typically considered relative to the use of a regulated subsidiary’s actual capital  
 5       structure, its Parent’s, or a hypothetical capital structure, are provided by David C. Parcell in  
 6       The Cost of Capital – A Practitioner’s Guide (“CRRA Guide”), prepared for the Society of  
 7       Utility and Regulatory Financial Analysts (“SURFA”), and provided as the study guide to  
 8       candidates for SURFA’s Certified Rate of Return Certification Examination. The CRRA Guide  
 9       discusses the considerations that help determine whether the utility versus parent capital  
 10      structure are appropriate:

- 11           1) Whether the subsidiary utility contains all its capital from the parent, or issues its own  
 12           debt and preferred stock;
- 13           2) Whether the parent guarantees any of the securities issued by the subsidiary;
- 14           3) Whether the subsidiary’s capital structure is independent of its parent (*i.e.*, existence  
 15           of double leverage, absence of proper relationship between risk and leverage of utility  
 16           and non-utility businesses); and
- 17           4) Whether the parent (or consolidated enterprise) is diversified into non-utility  
 18           operations.<sup>11</sup>

19           The CRRA Guide then notes the circumstances where a hypothetical capital structure  
 20      is used in favor of an actual capital structure. They are:

- 21           1) The utility’s capital structure is deemed to be substantially different from the typical or  
 22           “proper” capital structure; or
- 23           2) The utility’s capital structure is funded as part of a diversified organization whose

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<sup>11</sup> See, David C. Parcell, The Cost of Capital – A Practitioner’s Guide, Prepared for the Society of Utility and Regulatory Financial Analysts, 2010 Edition, at 46.

1 overall capital structure reflects its diversified nature rather than its utility operations  
2 only.<sup>12</sup>

3 Phillips echoes the CRRA Guide when he states:

4 Debt ratios began to rise in the late 1960s and early 1970s, and the financial  
5 condition of the public utility sector began to deteriorate. It became the  
6 common practice to use actual or expected capitalizations; actual where a  
7 historic test year is used, expected when a projected or future test year is used.<sup>83</sup>  
8 (footnote omitted)

9  
10 The objective, in short, shifted from minimization of the short-term cost of  
11 capital to protection of a utility's ability "to raise capital at all times." This  
12 objective requires that a public utility make every effort to keep indebtedness  
13 at a prudent and conservative level."<sup>84</sup> (footnote omitted)

14  
15 *A hypothetical capital structure is used only where a utility's actual*  
16 *capitalization is clearly out of line with those of other utilities in its industry or*  
17 *where a utility is diversified.*<sup>85</sup> (footnote omitted) (italics added)<sup>13</sup>

18 **Q. How did you consider these factors when determining the appropriateness of UIF's actual**  
19 **capital structure?**

20 A. As noted below, UIF's parent capital structure is in line with the capital structures in place at  
21 the Utility Proxy Group. Further, UIF's parent, Corix Regulated Utilities, Inc., solely operates  
22 regulated water utilities. Therefore, the use of UIF's parent company capital structure reflects  
23 the risk of the Utility Proxy Group.

24 Based on the criteria set forth in the CRRA Guide, authored by Parcell and reinforced  
25 by Phillips' reasoning, imposing a hypothetical capital structure would be inappropriate. UIF's  
26 proposed capital structure is reasonable and should be approved by the Commission.

27 **Q. How does the Company's actual common equity ratio of 49.39% compare with the**  
28 **common equity ratios maintained by the Utility Proxy Group?**

29 A. As noted in my Direct Testimony, the range of equity ratios maintained by the Utility Proxy

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<sup>12</sup> See, *Ibid.*, p. 47.

<sup>13</sup> Charles F. Phillips, Jr., The Regulation of Public Utilities – Theory and Practice, 1993, Public Utility Reports, Inc., Arlington, VA, at 391.

1 Group is between 38.48% and 57.05%, with an average of 49.34%.<sup>14</sup> The Company's actual  
2 capital structure demonstrates both the reasonableness of using it to set rates and the  
3 Company's relative financial health. Setting the weighted average cost of capital ("WACC")  
4 as requested by the Company will continue to support the long-term financial health of the  
5 Company for the benefit of its stakeholders, including its customers.

6 I also considered *Value Line's* projected capital structures for the Utility Proxy Group  
7 for 2023-2025. That analysis shows a range of projected common equity ratios between  
8 41.00% and 64.00%.

9 **Q. Does Mr. Garrett review the Value Line capital structure data for the proxy group?**

10 A. Yes. Mr. Garrett finds the average debt ratio of the proxy group to be 50.00%, which would  
11 indicate an equity ratio of 50.00%,<sup>15</sup> which is in line with the Company's requested common  
12 equity ratio.

13 **Q. Is Mr. Garrett's review of non-utility industries reasonable in assessing the Company's  
14 capital structure?**

15 A. No. As noted in Section IV, the industries which Mr. Garrett uses in his assessment of the  
16 Company's capital structure are not comparable to UIF, and his use of non-utility industry  
17 capital structures should be dismissed.

18 **Q. What is your conclusion regarding the Company's capital structure?**

19 A. Notwithstanding the issues with Mr. Garrett's analyses discussed above, I maintain that the  
20 Company's proposed capital structure to be reasonable compared with the range of equity  
21 ratios maintained by the Utility Proxy Group from which I derive my recommended common  
22 equity cost rate.

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14 Direct Testimony of Dylan W. D'Ascendis, at 19.

15 Direct Testimony of David J. Garrett, at 80.

1 **B. Lack of Empirical Basis for ROE Recommendation**

2 **Q. Please provide a brief summary of Mr. Garrett’s analyses and recommendations**  
3 **regarding the Company’s Cost of Equity.**

4 A. Although Mr. Garrett believes the Company’s “true” Cost of Equity is 6.00%, he recommends  
5 an ROE of 9.50%.<sup>16</sup> Mr. Garrett estimates the Cost of Equity using the Quarterly DCF model  
6 (6.00%) and the CAPM (6.10%).<sup>17</sup>

7 **Q. Are Mr. Garrett’s analytical results and recommendation reasonable measures of the**  
8 **Company’s Cost of Equity?**

9 A. No, they are not. Mr. Garrett’s recommended ROE of 9.50% is fundamentally disconnected  
10 from his own analyses and conclusions; his analytical model results of 6.10% and lower are  
11 far removed from observable and relevant data, including the 2019 aggregated average  
12 authorized ROEs provided in his testimony of 9.64%.<sup>18</sup> Throughout his testimony, Mr. Garrett  
13 believes his analytical results indicate that the “true” Cost of Equity for the Company is 6.00%.  
14 He views the decisions of utility commissions to have been significantly and consistently  
15 wrong, but suggests moving all the way to the “true” Cost of Equity would be “a significant,  
16 sudden change in the awarded ROE anticipated by regulatory stakeholders” that “could have  
17 the undesirable effect of notably increasing the Company’s risk profile and would arguably be  
18 at odds with the *Hope* Court’s ‘end result’ doctrine.”<sup>19</sup> On those points, we agree. However,  
19 while I appreciate the need for judgment in developing ROE recommendations, I believe there  
20 should be some empirical basis for them. Since Mr. Garrett’s 9.50% recommendation is so far  
21 removed from his analytical model results, we cannot assess the basis of his ultimate

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<sup>16</sup> Direct Testimony of David J. Garrett, at 6; and Exhibit DJG-12. Mr. Garrett specifically argues the models he applies estimate the “true cost of equity”; the average of his model results is 6.00%.

<sup>17</sup> Exhibits DJG-6 and DJG-11, respectively.

<sup>18</sup> Exhibit DJG-14. Mr. Garrett also points to a 9.40% average authorized ROE in 2017 for water utilities. The average authorized ROE for water utilities is 9.63% for 2019. Source: Regulatory Research Associates

<sup>19</sup> Direct Testimony of David J. Garrett, at 7.

1 recommendation, empirical or otherwise. To justify his recommendation for an ROE which  
2 has no connection to his analytical results, Mr. Garrett argues that the Commission should  
3 apply the ratemaking concept of “gradualism” to move the Company’s ROE to his “true” Cost  
4 of Equity.<sup>20</sup>

5 **Q. Has Mr. Garrett similarly disregarded the results of his analytical models in other**  
6 **proceedings?**

7 A. Yes. In Case No. 9651 before the Public Service Commission of Maryland, Mr. Garrett notes  
8 that his analysis indicates the “true” Cost of Equity for Washington Gas Light Company to be  
9 7.20%, yet he recommends a 9.00% ROE.<sup>21</sup> Given that Mr. Garrett’s analyses in this case point  
10 to a lower return of 6.00%, but he recommends a 9.50% return, it is unclear to the extent that  
11 Mr. Garrett finds the analyses he presents to be reliable, as they clearly have no correlation  
12 with his recommendations.

13 **Q. Do you agree with Mr. Garrett’s recommendation to the Commission regarding the use**  
14 **of “gradualism” in determining the appropriate ROE for the Company?**

15 A. No, I do not. The role of ROE witnesses is to testify regarding the return required by equity  
16 investors, *i.e.*, the Cost of Equity, as will be discussed in detail below. It is the Commission’s  
17 difficult task in fixing just and reasonable rates to balance that cost with all other elements of  
18 the revenue requirement. As Mr. Garrett himself stated, “gradualism” is “usually applied from  
19 the customer’s standpoint to minimize rate shock,”<sup>22</sup> and therefore would not be applicable to  
20 the ROE recommendation. In view of the above, Mr. Garrett’s recommendation is without  
21 merit or empirical support, and should be given no weight by the Commission.

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<sup>20</sup> *Ibid.*

<sup>21</sup> *See, In the Matter of the Application of Washington Gas Light Company for Authority to Increase its Existing Rates and Charges and to Revise its Terms and Conditions for Gas Service*, Case No. 9651, Public Service Commission of Maryland, Direct Testimony of David J. Garrett (November 20, 2020), at 6 – 7.

<sup>22</sup> Direct Testimony of David J. Garrett, at 7.

1           **C.     Incorrect Assessment of Relationships Between Various Returns and**  
 2                           **Applicability to the Company’s ROE**

3   **Q.     Please summarize Mr. Garrett’s views on the relationship between the Cost of Equity,**  
 4           **the investor-required ROE, earned ROE, and awarded ROE for regulated utilities.**

5   A.     Mr. Garrett believes the above specified returns are all interrelated, but technically different.<sup>23</sup>  
 6           He summarizes his view on the relationship between the returns on pages 4-5 of his testimony  
 7           in the following sentence: “If the awarded ROE reflects a utility’s cost of equity, then it should  
 8           allow the utility to achieve an earned ROE that is sufficient to satisfy the required return of its  
 9           investors.”<sup>24</sup> Mr. Garrett also discusses another type of return, the “expected” return, which in  
 10          his words, “has nothing to do with what the investor ‘expects’ the ROE awarded by a regulatory  
 11          commission to be.”<sup>25</sup>

12   **Q.     Does Mr. Garrett’s views regarding the relationship between allowed and investor-**  
 13           **required ROEs for utilities change throughout the course of his testimony?**

14   A.     Yes. On page 14 of his testimony, Mr. Garrett contradicts his earlier assertion, stating that  
 15           awarded ROEs and Cost of Equity (*i.e.*, investor-required returns) are very different concepts  
 16           because of the regulatory process and may be influenced by a number of factors other than  
 17           objective market drivers.<sup>26</sup> However, one page earlier, on page 13 of his testimony, Mr. Garrett  
 18           states:

19                   The *Hope* Court makes it clear that the allowed return should be based on the  
 20                   actual cost of capital. Under the rate base rate of return model, a utility should  
 21                   be allowed to recover all its reasonable expenses, its capital investments  
 22                   through depreciation, and a return on its capital investments sufficient to satisfy  
 23                   the required return of its investors. The “required return” from the investors’  
 24                   perspective is synonymous with the “cost of capital” from the utility’s  
 25                   perspective. Scholars agree that the allowed rate of return should be based on

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23           *Ibid.*, at 4.

24           *Ibid.*, at 4 – 5.

25           *Ibid.*

26           *Ibid.*, at 14.

1 the actual cost of capital:

2 Since by definition the cost of capital of a regulated firm  
 3 represents precisely the expected return that investors could  
 4 anticipate from other investments while bearing no more or less  
 5 risk, and since investors will not provide capital unless the  
 6 investment is expected to yield its opportunity cost of capital,  
 7 the correspondence of the definition of the cost of capital with  
 8 the court's definition of legally required earnings appears  
 9 clear.<sup>27,28</sup>

10 Mr. Garrett continues to change his position regarding the equivalency, or non-  
 11 equivalency, of the allowed and required ROE, sometimes in consecutive sentences. For  
 12 example, on page 14 of his testimony, Mr. Garrett states that “The two concepts [allowed and  
 13 required ROEs] are related in that the legal and technical standards encompassing this issue  
 14 require that the awarded return reflect the true cost of capital. On the other hand, the two  
 15 concepts are different in that the legal standard do not mandate that awarded returns exactly  
 16 match the cost of capital.”<sup>29</sup>

17 **Q. What is your reaction to Mr. Garrett's views on the relationship between allowed and**  
 18 **required ROEs for utility companies?**

19 A. Mr. Garrett is unnecessarily complicating a simple relationship. For regulated utilities, the  
 20 ROE equals the investor-required ROE which equals the allowed ROE, as reflected in the *Hope*  
 21 and *Bluefield* Supreme Court decisions cited in both my Direct Testimony<sup>30</sup> and Mr. Garrett's  
 22 testimony.<sup>31</sup> This relationship holds because utility regulation by regulatory commissions acts  
 23 as a substitute for competition as Mr. Garrett clearly understands and accepts.<sup>32</sup>

24 **Q. Is the concept of utility regulation as a substitute for market competition widely accepted**

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<sup>27</sup> A. Lawrence Kolbe, George A. Read, Jr, George Hall, *The Cost of Capital: Estimating the Rate of Return for Public Utilities*, The MIT Press, 1984, at 21.

<sup>28</sup> Direct Testimony of David J. Garrett, at 13.

<sup>29</sup> *Ibid.*, at 14. [Clarification and emphasis added.]

<sup>30</sup> Direct Testimony of Dylan W. D'Ascendis, at 6.

<sup>31</sup> Direct Testimony of David J. Garrett, at 12 – 13.

<sup>32</sup> *Ibid.*, at 75.

1 **as a fact and reflected as such in academic literature?**

2 A. Yes, it is. The *Cost of Capital Manual*, which is the training manual for SURFA, of which Mr.  
3 Garrett and I are members, states:

4 In a sense, the “visible hand of public regulation was (created) to replace the  
5 invisible hand of Adam Smith in order to protect consumers against exorbitant  
6 charges, restriction of output, deterioration of service, and unfair  
7 discrimination.”<sup>[footnote omitted]</sup>

8 \*\*\*

9 As indicated above, regulation of public utilities reflects a belief that the  
10 competitive mechanism alone cannot be relied upon to protect the public  
11 interest. Essentially, it is theorized that a truly competitive market involving  
12 utilities cannot survive and, thereby, will fail to promote the general economic  
13 welfare. But this does not mean that regulation should alter the norm of  
14 competitive behavior for utilities. On the contrary, the primary objective of  
15 regulation is to produce market results (*i.e.*, price and quantity supplied) in the  
16 utility sectors of the economy closely approximating those conditions which  
17 would be obtained if utility rates and services were determined competitively.<sup>33</sup>

18 Additionally, in *Principles of Public Utility Rates*, Dr. Bonbright states:

19 Lest the reader of this chapter gain the impression that it is intended to deny  
20 the relevance of any tests of reasonable rates derived from the theory or the  
21 behavior of competitive prices, let me state my conviction that no such  
22 conclusion would be warranted. On the contrary, a study of price behavior  
23 both under assumed conditions of pure competition and under actual conditions  
24 of mixed competition is essential to the development of sound principles of  
25 utility rate control. Not only that: any good program of public utility rate  
26 making must go a certain distance in accepting competitive-price principles as  
27 guides to monopoly pricing. For rate regulation must necessarily try to  
28 accomplish the major objectives that unregulated competition is designed to  
29 accomplish; and the similarity of purpose calls for a considerable degree of  
30 similarity of price behavior.

31 Regulation, then, as I conceive it, is indeed a substitute for competition; and it  
32 is even a partly imitative substitute. But so is a Diesel locomotive a partly  
33 imitative substitute for a steam locomotive, and so is a telephone message a  
34 partly imitative substitute for a telegraph message. What I am trying to  
35 emphasize by these crude analogies is that the very nature of a monopolistic  
36 public utility is such as to preclude an attempt to make the emulation of  
37 competition very close. The fact, for example, that theories of pure competition  
38 leave no room for rate discrimination, while suggesting a reason for viewing  
39 the practice with skepticism, does not prove that discrimination should be

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<sup>33</sup> David C. Parcell, *Cost of Capital Manual*, Society of Utility and Regulatory Financial Analysts, 2010 Edition, at 3-4.

1           outlawed. And a similar statement would apply alike to the use of an original-  
2           cost or a fair value rate base, neither of which is defensible under the theory or  
3           practice of competitive pricing.<sup>34</sup>

4           Finally, Dr. Phillips states in *The Regulation of Public Utilities*:

5           Public utilities are no longer, if they were ever were, isolated from the rest of  
6           the economy. It is possible that the expanding utility sector has been taking  
7           too large a share of the nation's resources, especially of investment.<sup>[footnote omitted]</sup>  
8           At a minimum, regulation must be viewed in the context of the entire economy  
9           – and evaluated in a similar context. Public utilities have always operated  
10          within the framework of a competitive system. They must obtain capital, labor  
11          and materials in competition with unregulated industries. Adequate profits are  
12          not guaranteed to them. Regulation then, should provide incentives to adopt  
13          new methods, improve quality, increase efficiency, cut costs, develop new  
14          markets and expand output in line with customer demand. In short, regulation  
15          is a substitute for competition and should attempt to put the utility sector under  
16          the same restraints competition places on the industrial sector.<sup>35</sup>

17          In view of the legal standard cited by me and Mr. Garrett, and treatises on regulation likening  
18          regulation of utilities and the competitive market, it is plain to see that allowed returns and  
19          investor-required returns are also equal.

20          **Q.    What is the relationship between the earned ROE and the required/allowed ROE for**  
21          **utility companies?**

22          A.    The earned ROE is the return realized by the utility. The regulatory commission allows the  
23          utility an opportunity to earn its required return, but what the utility earns is generally subject  
24          to several factors, which may include regulatory lag and management efficiency.

25          **Q.    What is the relationship between expected returns and required/allowed ROE?**

26          A.    In this instance, I agree with Mr. Garrett that the expected return has nothing to do with what  
27          the investor expects the required/allowed return should be. Expected returns from investment  
28          houses or pension funds are expectations of what earned returns will be, not what investors  
29          require, which means that expected returns have no bearing on ROE determinations.

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<sup>34</sup> James C. Bonbright, *Principles of Public Utility Rates*, Columbia University Press, 1961, at 106-107.

<sup>35</sup> Charles F. Phillips, *The Regulation of Public Utilities*, Public Utility Reports, Inc., 1993, at 173.

1           **D.     Incorrect Observations that Allowed ROEs for Utilities Exceed the Investor-**  
2                           **Required Return on the Market**

3   **Q.     Please summarize Mr. Garrett’s claim that allowed returns for utility companies exceed**  
4           **the required return on the market.**

5   A.     Mr. Garrett estimates the investor-required return on the market by adding the annual average  
6           10-year Treasury bond yield to a market risk premium (“MRP”) calculated by the New York  
7           University School of Business for the period 1990–2019. He then compares that return to the  
8           average annual authorized returns for electric and gas utilities over that same period<sup>36</sup> to  
9           support his argument that “awarded ROEs have been consistently *above* the market cost of  
10          equity for many years.”<sup>37</sup> Mr. Garrett also presents the authorized returns for water utilities as  
11          compared to electric and gas utilities, arguing that because the three are similar, authorized  
12          ROEs for water utilities have also exceeded the market cost of equity.<sup>38</sup> Mr. Garrett further  
13          argues that the excess returns awarded to utilities result in a transfer of wealth from customers  
14          to shareholders.<sup>39</sup>

15                 Mr. Garrett also refers to an article published in *Public Utilities Fortnightly*,<sup>40</sup>  
16                 suggesting that utility stocks have outperformed the broader market and will continue to do so  
17                 in the future.

18   **Q.     What is your response to Mr. Garrett’s observations, and the conclusions he draws from**  
19           **them?**

20   A.     Mr. Garrett’s observations and resulting conclusions are misplaced. As a preliminary matter,  
21           Mr. Garrett’s conclusion that allowed returns for utility companies exceed the required return

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<sup>36</sup> Direct Testimony of David J. Garrett, Figure 1; and Exhibit DJG-14.

<sup>37</sup> Direct Testimony of David J. Garrett, at 17.

<sup>38</sup> *Ibid.*, at 18.

<sup>39</sup> *Ibid.*, at 17.

<sup>40</sup> *Ibid.*, at 19 – 20.

1 on the market is his opinion and driven by the inputs he has chosen to estimate the required  
2 return on the market. As discussed below, applying more reasonable models and inputs  
3 demonstrate allowed ROEs average about 70.00% of the required return on the market,  
4 consistent with utility betas over the period from 1990-2019.

5 Regarding the *Public Utilities Fortnightly* article, it was published in August 2016,  
6 shortly after the 30-year Treasury yield fell to its prior cyclical low of 2.11% on July 8, 2016.  
7 Between July and December 2016, the utility sector, as represented by the proxy group, lost  
8 8.55% of its value as the broader market (measured by the S&P 500) increased by 5.11%. That  
9 is, despite the article's conviction that utilities would continue to outperform the market,  
10 shortly after its publication, utility stocks meaningfully underperformed the broad market.  
11 From August 2016 through mid-November 2020, the utility sector (measured by the XLU and  
12 the Dow Jones Utility Average) significantly underperformed the S&P 500.<sup>41</sup>

13 Finally, regarding Mr. Garrett's required return on the market, I disagree with his  
14 calculation of the implied MRP because reasonable changes in his assumptions have  
15 considerable effects on the calculation (as will be discussed in detail in my critique of Mr.  
16 Garrett's CAPM analysis).

17 **Q. Have you calculated the investor-required return on the market for the period from**  
18 **1990–2019?**

19 A. Yes, I have. Using the Predictive Risk Premium Model ("PRPM"),<sup>42</sup> I calculated the investor-  
20 required MRP for every month in the period from 1990–2019. I then averaged the monthly  
21 MRPs for each year and added the average 30-year Treasury bond yield to those averages to  
22 arrive at investor-required returns on the market for each year.

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<sup>41</sup> The XLU and DJU gained 26.73% and 28.16%, respectively, while the S&P 500 gained 65.15%. Source: S&P Capital IQ.

<sup>42</sup> See, Direct Testimony of Dylan W. D'Ascendis, at 23 – 24.

1 **Q. How did you derive the investor-required return on the market using the PRPM??**

2 A. As explained in my Direct Testimony, the inputs to the PRPM are the historical returns on  
3 large capitalization stocks minus the historical monthly yield on long-term U.S. Treasury  
4 securities for the period from January 1990 through December 2019.<sup>43</sup> Using a generalized  
5 form of ARCH, known as GARCH, each projected MRP was determined using Eviews<sup>®</sup>  
6 statistical software. When the GARCH model is applied to the historical returns data, it  
7 produces a predicted GARCH variance series and a GARCH coefficient. I then averaged the  
8 monthly investor-required return for each year to determine an annual investor-required return.  
9 I then added the annual average long-term government bond yield for each year<sup>44</sup> to arrive at  
10 annual investor-required returns on the market for the period from 1990-2019.

11 Next, I compared the investor-required return on the market to the average allowed  
12 ROEs for gas, electric, and water utilities for each year. As shown on Chart 1, the investor-  
13 required return on the market is consistently, and significantly, higher than the allowed returns  
14 for utility companies. These results make intuitive sense, as the ratio of allowed ROE versus  
15 required market return averages about 0.70, which is consistent with utility betas over the  
16 period. Given the above, Mr. Garrett's claim that allowed ROEs for utilities exceed investor-  
17 required market returns is misplaced. In addition, Mr. Garrett's claim that the excess returns  
18 awarded to utilities result in a transfer of wealth from customers to shareholders<sup>45</sup> is misplaced  
19 as well, since Chart 1, below, shows that utilities have not been earning excess returns.

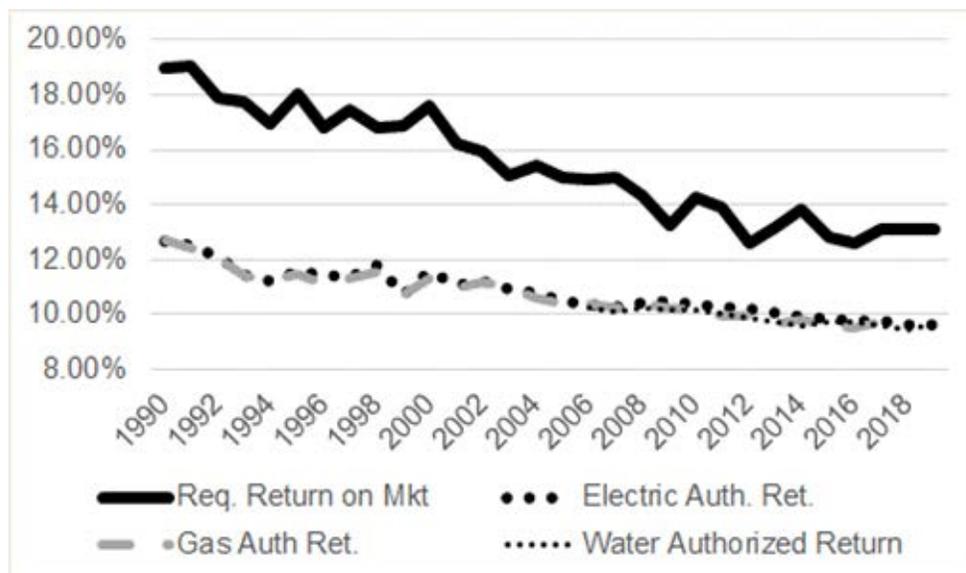
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<sup>43</sup> Source: 2020 SBBI<sup>®</sup> Yearbook, Stocks, Bonds, Bills, and Inflation<sup>®</sup>, Appendix A-1.

<sup>44</sup> Source: 2020 SBBI<sup>®</sup> Yearbook, Stocks, Bonds, Bills, and Inflation<sup>®</sup>, Appendix A-7.

<sup>45</sup> Direct Testimony of David J. Garrett, at 7.

1 **Chart 1:**  
 2 **Relationship Between Investor-Required Returns on the Market and**  
 3 **Authorized Returns for Gas, Electric, and Water Utilities 1990 - 2019**<sup>46</sup>



4  
 5 **E. Misapplication of the DCF Model**

6 **Q. Please briefly describe Mr. Garrett's Constant Growth DCF analyses and results.**

7 A. Mr. Garrett applies a quarterly form of the Constant Growth DCF Model, which produces an  
 8 ROE estimate of 6.00%. For the dividend yield component, Mr. Garrett relies on announced  
 9 quarterly dividend payments and 30-day average stock prices as of October 28, 2020.<sup>47</sup> To  
 10 estimate expected growth, Mr. Garrett looks to four measures, including: (1) nominal GDP, (2)  
 11 real GDP, (3) inflation, and (4) the current Risk-Free rate.<sup>48</sup> Of those four measures, he chooses  
 12 the highest estimate, 3.90%.<sup>49</sup>

13 **Q. What are your general concerns with the growth rates on which Mr. Garrett's DCF**  
 14 **analyses rely?**

<sup>46</sup> Source: 2020 SBBI® Yearbook, Stocks, Bonds, Bills, and Inflation®, Appendix A-1, A-7; Exhibit DJG-14; S&P Global Market Intelligence. Please note, data on authorized returns for water utilities is only readily available starting with 2006.

<sup>47</sup> Exhibits DJG-3 and DJG-4.

<sup>48</sup> Exhibit DJG-5.

<sup>49</sup> Direct Testimony of David J. Garrett, at 49.

1 A. First, Mr. Garrett assumes a single, perpetual growth rate of 3.90% for all his proxy  
2 companies.<sup>50</sup> By reference to the Congressional Budget Office's ("CBO") expected inflation  
3 rate of 2.00%, Mr. Garrett's method assumes his proxy companies all will grow at real rates of  
4 approximately 1.90%, in perpetuity.<sup>51</sup> It is unlikely an investor would be willing to assume the  
5 risks of equity ownership in exchange for expected growth only modestly greater than expected  
6 inflation. The risk simply is not worth the expected return.<sup>52</sup>

7 As to Mr. Garrett's remaining growth rate estimates (presented in his Exhibit DJG-5),  
8 none are appropriate measures of growth for his DCF analysis. As a practical matter, because  
9 they are generic in nature, his estimates fail to account for the risks and prospects faced by the  
10 proxy companies.

11 **Q. Do you agree with the 3.90% growth rate assumed for all companies in Mr. Garrett's**  
12 **DCF analysis?**

13 A. No, I do not. Mr. Garrett's 3.90% growth rate is not based on any measure of company-specific  
14 growth, or growth in the utility industry in general. Rather, his proxy group serves the sole  
15 purpose of calculating the dividend yield. Under the DCF model's strict assumptions,  
16 however, expected growth and dividend yields are inextricably related. Mr. Garrett's  
17 assumption that one growth rate applies to all companies, even though dividend yields vary  
18 across those companies, has no basis in theory or practice.

19 **Q. Mr. Garrett also offers his thoughts regarding the need for qualitative analyses in**  
20 **developing expected growth rates.<sup>53</sup> What is your response to Mr. Garrett's**  
21 **observations?**

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<sup>50</sup> Exhibit DJG-6.

<sup>51</sup> Exhibit DJG-5.

<sup>52</sup> In the risk/return space, debt securities, with a higher yield and considerably less risk of capital loss (if held to maturity) may be the preferred alternative.

<sup>53</sup> Direct Testimony of David J. Garrett, at 43-48.

1 A. Mr. Garrett suggests that although equity analysts may consider such quantitative factors as  
2 historical growth in revenues or earnings, they also should consider “qualitative” factors, such  
3 as how a given company may meet some level of “sustainable” growth.<sup>54</sup> He further observes  
4 unregulated companies have options not available to utilities, and suggests it would be more  
5 appropriate to consider factors such as load growth in measuring growth rate expectations.<sup>55</sup>

6 There is no question analysts consider qualitative factors. To that point, I reviewed  
7 American States Water Company’s (one of the companies in Mr. Garrett’s proxy group) second  
8 quarter 2020 conference call held on August 4, 2020. Analysts from several firms attended the  
9 call, including Wells Fargo and Seaport Global. During the call, analysts asked, and were  
10 given answers to a number of issues bearing directly on the factors relating to the Return on  
11 Common Equity, including regulatory mechanisms; long-term growth and sales guidance;  
12 capital expenditures; and regulatory guidance.<sup>56</sup>

13 In American States Water Company’s third quarter 2020 conference call (which took  
14 place on November 3, 2020), analysts were provided with updated and additional information.  
15 During the course of the call, the company’s management discussed earnings guidance and the  
16 regulatory environment. After the company’s presentation, the analysts asked questions along  
17 several lines, all of which are relevant to Mr. Garrett’s construct, including the effect of  
18 regulatory outcomes and schedules, and the impact of COVID-19.<sup>57</sup> These inquiries reflect the  
19 type of considerations analysts typically consider for utility companies.

20 In the case of just one of his proxy companies, therefore, the level of fundamental  
21 research performed by analysts on issues directly related to long-term growth reflected a  
22 variety of factors, both quantitative and qualitative. They certainly go beyond “mere increases

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<sup>54</sup> *Ibid.*, at 43.

<sup>55</sup> *Ibid.*, at 44 – 45.

<sup>56</sup> *See*, American States Water Company, Q2 2020 Earnings Call Transcript, August 4, 2020.

<sup>57</sup> *See*, American States Water Company, Q3 2020 Earnings Call Transcript, November 3, 2020.

1 to rate base or earnings.”<sup>58</sup> The analysts’ research also far exceeded Mr. Garrett’s limited  
 2 perspective that load growth forecasts, together with other “qualitative factors” support his  
 3 3.90% expected growth rate.

4 **Q. It is Mr. Garrett’s opinion that growth in a DCF model is limited by the long-term growth**  
 5 **in GDP.<sup>59</sup> Why is long-term growth in GDP not an upper limit for terminal growth as**  
 6 **Mr. Garrett contends?**

7 A. First, GDP is not a market measure – rather, it is a measure of the value of the total output of  
 8 goods and services, excluding inflation, in an economy. While I understand that earnings per  
 9 share (“EPS”) growth is also not a market measure, it is well established in financial literature  
 10 that projected growth in EPS is the superior measure of dividend growth in a DCF model.<sup>60</sup>  
 11 Furthermore, GDP is simply the sum of all private industry and government output in the  
 12 United States, and its growth rate is simply an average of the value of those industries. To  
 13 illustrate, Exhibit DWD-3, Schedule 2 presents the compound annual growth rate of the  
 14 industries that comprise GDP from 1947 to 2019. Of the 15 industries represented, seven  
 15 industries, including utilities, grew faster than the overall GDP, and eight industries grew  
 16 slower than the overall GDP.<sup>61</sup>

17 **Q. Please respond to Mr. Garrett’s comment regarding “steady-state” growth rates.**

18 A. On page 39 of his Direct Testimony, Mr. Garrett states, “...it is not necessary to use multi-  
 19 stage DCF Models to analyze the cost of equity of regulated utility companies. This is because  
 20 regulated utilities are already in their ‘terminal,’ low growth stage.” While I agree with Mr.

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<sup>58</sup> Direct Testimony of David J. Garrett, at 45.

<sup>59</sup> *Ibid.*, at 40 – 41.

<sup>60</sup> See, for example, Robert Harris, *Using Analysts’ Growth Forecasts to Estimate Shareholder Required Rate of Return*, Financial Management, Spring 1986; Christofi, Christofi, Lori and Moliver, *Evaluating Common Stocks Using Value Line’s Projected Cash Flows and Implied Growth Rate*, Journal of Investing, Spring 1999; Robert Harris and Felicia Marston, *Estimating Shareholder Risk Premia Using Analysts’ Growth Forecasts*, Financial Management, Summer 1992; and Vander Weide and Carleton, *Investor Growth Expectations: Analysts vs. History*, The Journal of Portfolio Management, Spring 1988.

<sup>61</sup> Exhibit DWD-3, Schedule 2.

1 Garrett's statement regarding regulated utilities being in the "mature" stage in the  
 2 company/industry life cycle, I disagree with his conclusion regarding the long-term growth  
 3 rates of regulated utilities.

4 As Mr. Garrett describes, the multi-stage DCF and its growth rates reflect the  
 5 company/industry life cycle, which is typically described in three stages: (1) the growth stage,  
 6 which is characterized by rapidly expanding sales, profits, and earnings. In the growth stage,  
 7 dividend payout ratios are low in order to grow the firm; (2) the transition stage, which is  
 8 characterized by slower growth in sales, profits, and earnings. In the transition stage, dividend  
 9 payout ratios increase as their need for exponential growth diminishes; and (3) the maturity  
 10 (steady-state) stage, which is characterized by limited, slightly attractive investment  
 11 opportunities, and steady earnings growth, dividend payout ratios, and returns on equity.

12 Since the utility industry is in the mature phase of the company life cycle, it is the  
 13 company-specific projected EPS growth rate, not the projected GDP growth rate, that is the  
 14 appropriate measure of growth in a Constant Growth DCF model.

15 **Q. Are there examples in basic finance texts that support your position?**

16 A. Yes. For example, in *Investments*, life cycles and multi-stage growth models are discussed:

17 As useful as the constant-growth DDM (dividend discount model) formula is,  
 18 you need to remember that it is based on a simplifying assumption, namely,  
 19 that the dividend growth rate will be constant forever. In fact, firms typically  
 20 pass through life cycles with very different dividend profiles in different  
 21 phases. In early years, there are ample opportunities for profitable  
 22 reinvestment in the company. Payout ratios are low, and growth is  
 23 correspondingly rapid. In later years, the firm matures, production capacity is  
 24 sufficient to meet market demand, competitors enter the market, and attractive  
 25 opportunities for reinvestment may become harder to find. In this mature  
 26 phase, the firm may choose to increase the dividend payout ratio, rather than  
 27 retain earnings. The dividend level increases, but thereafter it grows at a slower  
 28 pace because the company has fewer growth opportunities.

29 Table 18.2 illustrates this pattern. It gives Value Line's forecasts of return on  
 30 assets, dividend payout ratio, and 3-year growth in earnings per share for a  
 31 sample of the firms in the computer software industry versus those of east coast  
 32 electric utilities...

1 By in large, the software firms have attractive investment opportunities. The  
 2 median return on assets of these firms is forecast to be 19.5%, and the firms  
 3 have responded with high plowback ratios. Most of these firms pay no  
 4 dividends at all. The high return on assets and high plowback result in rapid  
 5 growth. The median growth rate of earnings per share in this group is projected  
 6 at 17.6%.

7 In contrast, the electric utilities are *more representative of mature firms*. Their  
 8 median return on assets is lower, 6.5%; dividend payout is higher, 68%; and  
 9 median growth is lower, 4.6%.

10 \*\*\*

11 To value companies with temporarily high growth, analysts use a multistage  
 12 version of the dividend discount model. Dividends in the early high-growth  
 13 period are forecast and their combined present value is calculated. Then, once  
 14 the firm is projected to settle down to *a steady-growth phase, the constant-*  
 15 *growth DDM is applied to value the remaining stream of dividends.*<sup>62</sup>  
 16 (Clarification and emphasis added)

17 The economics of the public utility business indicate that the industry is in the steady-  
 18 state, or constant-growth stage of a multi-stage DCF, which would mean that the three- to five-  
 19 year projected growth rates for each company would be the “steady-state” or terminal growth  
 20 rate appropriate for the DCF model for utility companies, not the GDP growth rate, which is  
 21 not a company-specific growth rate, nor is it an upward bound for growth, as discussed  
 22 previously.

23 **Q. Mr. Garrett expressed a concern about using analysts’ projected EPS growth rates**  
 24 **because he asserts that analysts consider rate base growth in their projected growth rates**  
 25 **and that utilities’ natural financial incentive is to increase rate base regardless of**  
 26 **customer needs.<sup>63</sup> Please respond.**

27 A. The overall premise of Mr. Garrett’s concern is without merit and should be dismissed. First,  
 28 regulated utilities are only allowed to earn returns on and of assets that are considered used and  
 29 useful in serving the needs of its customers. As the U.S. Supreme Court decision in *Duquesne*

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<sup>62</sup> Bodie, Z., Kane, A., and Marcus, A. J., *Investments*, 7<sup>th</sup> Edition, McGraw-Hill Irwin, 2008, at 616-617.

<sup>63</sup> Direct Testimony of David J. Garrett, at 43 – 44.

1 *Light Co. v. Barasch* states:

2 To the extent utilities' investments turn out to be bad ones (such as plants that  
3 are cancelled and so never used and useful to the public), the utilities suffer  
4 because the investments have no fair value and so justify no return.<sup>64</sup>

5 Additionally, capital projects undertaken by utility companies are often subject to  
6 prudence reviews from regulatory commissions, which would allow commissions to review  
7 and deny any capital project not deemed in the public interest. These two facts would eliminate  
8 any type of investment by the utility that is not needed to expressly provide safe, reliable  
9 service to their customers. Because of this, equity analysts correctly consider growth in rate  
10 base in determining their recommended growth rates for utilities.

11 Finally, as a depreciation expert, Mr. Garrett should recognize two things: (1) utility  
12 assets degrade over time and eventually need to be replaced; and (2) the assets replacing the  
13 degraded assets are usually significantly more expensive than the degraded assets. Because of  
14 this, rate base will grow consistently *ad infinitum*, which supports both the utility industry's  
15 mature position on the company/industry life cycle regarding steady and predictable growth,  
16 and the use of company-specific projected analysts' EPS growth rates for use in the Constant  
17 Growth DCF model.

18 **Q. Mr. Garrett claims undue reliance on projected EPS growth rates in the DCF model will**  
19 **lead to upward spiraling ROEs for utility companies due to a feedback loop.<sup>65</sup> Please**  
20 **respond.**

21 A. As Mr. Garrett shows in his Figure 1 concerning annual authorized returns, an upward spiraling  
22 ROE simply does not exist. The independence of authorized ROEs and market data is  
23 consistent with conclusions reached by Dr. Bonbright, who states:

24 In the first place, commissions cannot forecast, except within wide limits, the  
25 effect their rate orders will have on the market prices of the stocks of the

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<sup>64</sup> U.S. Supreme Court, *Duquesne Light Co. v. Barasch*, No. 87-1160 (1989).

<sup>65</sup> Direct Testimony of David J. Garrett, at 46 – 47.

1 companies they regulate. In the second place, *whatever the initial market*  
 2 *prices may be, they are sure to change not only with the changing prospects*  
 3 *for earnings, but with the changing outlook of an inherently volatile stock*  
 4 *market.* In short, market prices are beyond the control, though not beyond the  
 5 influence of rate regulation. Moreover, even if a commission did possess the  
 6 power of control, any attempt to exercise it ... would result in harmful,  
 7 uneconomic shifts in public utility rate levels.<sup>66</sup> (Emphasis added)

8 Given this, Mr. Garrett's concerns should be dismissed.

9 **F. Misapplication of the Capital Asset Pricing Model**

10 **Q. Please summarize Mr. Garrett's CAPM analysis and results?**

11 A. Mr. Garrett's CAPM estimate relies on a risk-free rate of 1.51%, an average Market Risk  
 12 Premium of 6.00%, and beta coefficients as reported by *Value Line*. Those assumptions  
 13 combine to produce an average CAPM estimate of 6.10%.<sup>67</sup>

14 **Q. Do you agree with Mr. Garrett's CAPM analysis?**

15 A. No, I disagree with Mr. Garrett's sole reliance on historical Treasury yields to estimate the  
 16 risk-free rate and the various methods he uses to estimate the Market Risk Premium. Just as  
 17 important as our methodological differences, however, is our difference regarding the  
 18 reasonableness and reliability of an analysis that produces ROE estimates of 6.10%.

19 **Q. Do you agree with Mr. Garrett's use of the average 30-year Treasury yield?**

20 A. No. Mr. Garrett's risk-free rate ignores the fact that the cost of capital and ratemaking are both  
 21 prospective. Mr. Garrett notes as such on page 56 of his Direct Testimony, "[w]hat matters in  
 22 the CAPM model, however, is not the actual risk premium from the past, but rather the current  
 23 and forward-looking risk premium."

24 **Q. How did Mr. Garrett derive his MRP estimate?**

25 A. Mr. Garrett estimates his MRP by reviewing: (1) surveys of expected returns from IESE

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<sup>66</sup> James C. Bonbright, Albert L. Danielsen and David R. Kamerschen, *Principles of Public Utility Rates*,  
 Public Utilities Reports, Inc., 1988, at 334.

<sup>67</sup> Exhibit DJG-11.

1 Business School and Graham and Harvey (5.6% and 4.4%, respectively); (2) an expected return  
 2 reported by Duff & Phelps (6.0%); (3) an implied MRP from Dr. Damodaran (5.8%); (4) a  
 3 COVID-adjusted implied MRP from Dr. Damodaran (5.0%); and (5) an “Implied Equity Risk  
 4 Premium” calculation (6.0%).<sup>68</sup> Based on those results, Mr. Garrett concludes that 6.00%, the  
 5 high end of his range, is appropriate.

6 **Q. Do you have any concerns regarding Mr. Garrett’s use of an expected MRP as his selected**  
 7 **MRP in his CAPM analysis?**

8 A. Yes, I do. The Duff & Phelps MRP selected by Mr. Garrett is an expected return, which has  
 9 no relevance to the investor-required return. As discussed previously, both Mr. Garrett and I  
 10 agree that expected returns “has nothing to do with what the investor ‘expects’ the ROE  
 11 awarded by a regulatory commission to be.”<sup>69</sup>

12 Widely used finance texts recommend the use of multiple models in estimating the  
 13 Cost of Equity, in particular the DCF, CAPM, and Risk Premium approaches. I reviewed  
 14 articles published in financial journals, as well as additional texts that speak to the methods  
 15 used by analysts to estimate the Cost of Equity. An article published in Financial Analysts  
 16 Journal surveyed financial analysts to determine the analytical techniques that are used in  
 17 practice.<sup>70</sup> Regarding stock price valuation and cost of capital estimation, the author asked  
 18 respondents to comment only on the DCF, CAPM, and Economic Value-Added models.  
 19 Nowhere in that article did the author consider asking whether surveys of expected returns are  
 20 relevant to the determination of the Cost of Capital.

21 Given Mr. Garrett’s correct view that expected returns have nothing to do with the  
 22 investor-required return, and the lack of use by practitioners, his recommendation to use

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<sup>68</sup> Direct Testimony of David J. Garrett, at 61 and Exhibit DJG-10.

<sup>69</sup> Direct Testimony of David J. Garrett, at 5.

<sup>70</sup> See, Stanley B. Block, *A Study of Financial Analysts: Practice and Theory*, Financial Analysts Journal, July/August 1999.

1 expected MRPs should be dismissed by the Commission.

2 **Q. Do the surveys referenced by Mr. Garrett provide reasonable MRP estimates for the**  
3 **purpose of estimating the Company's Cost of Equity?**

4 A. No, they do not. For example, the Graham and Harvey survey suggests an expected return on  
5 the overall market of 6.79%, based on a risk-free rate of 2.37% and an MRP of 4.42%.<sup>71</sup>  
6 Combining those estimates with Mr. Garrett's average beta coefficient estimate of 0.76  
7 produces a Cost of Equity estimate of 5.73%, approximately 27 basis points below Mr.  
8 Garrett's estimate of the "true" Cost of Equity. Because utility stocks tend to be somewhat  
9 less risky than the broad market,<sup>72</sup> if the Graham and Harvey survey results are meaningful,  
10 Mr. Garrett's ROE recommendation would be no more than 6.79%. In fact, his  
11 recommendation exceeds the Graham and Harvey estimate by 271 basis points.

12 As shown in Table 4, below, in the past the Graham and Harvey survey respondents  
13 have provided forecasts that significantly underestimated actual market returns. As Table 4  
14 demonstrates, from 2012 through 2019 the average market return was 15.55%, over 3.0 times  
15 greater than the Graham and Harvey survey average expected return of 5.30%.

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<sup>71</sup> See, Graham and Harvey, *The Equity Risk Premium in 2018*, at 7 for Q4 2017.

<sup>72</sup> As noted above, during times of market volatility this may not hold true.

1 **Table 4:**  
 2 **S&P 500 Market Return vs. Graham-Harvey Survey Expected Return**<sup>73</sup>

	<b>Actual</b>	<b>Survey Estimate</b>
2019	31.49%	4.59%
2018	-4.38%	6.57%
2017	21.83%	5.00%
2016	11.96%	4.32%
2015	1.38%	6.07%
2014	13.69%	5.00%
2013	32.39%	3.40%
2012	16.00%	4.00%
Average	15.55%	4.63%

3  
 4 Graham and Harvey also have noted a distinction between the expected market return  
 5 on one hand, and the “hurdle rate” on the other. In the Third Quarter 2017 survey, the authors  
 6 reported an average hurdle rate, which is the return required for capital investments, of 13.50%.  
 7 The authors further reported the average WACC, which includes the cost of debt, was 9.20%  
 8 even though the expected market return was 6.50%.<sup>74</sup> As a result, I do not believe the Graham  
 9 and Harvey surveys are a reasonable reflection of the expected MRP going forward.

10 **Q. Do any of the surveys cited by Mr. Garrett provide support for your approach to**  
 11 **estimating the current MRP?**

12 A. Yes. As discussed in my Direct Testimony,<sup>75</sup> I calculated the *ex-ante* MRP in a similar manner  
 13 to a study by Pablo Fernandez, *et al* (cited by Mr. Garrett), using the market capitalization  
 14 weighted Constant Growth DCF calculation on the individual companies in the S&P 500

<sup>73</sup> Source: Morningstar, Inc., 2020 SBBI Yearbook, Appendix A-1; <http://www.cfosurvey.org> (one-year return estimates as of fourth quarter of the previous year). Note, Graham and Harvey publish the Duke CFO survey.

<sup>74</sup> See, Duke/CFO Magazine Global Business Outlook survey – U.S., Third Quarter 2017.

<sup>75</sup> Direct Testimony of Dylan W. D’Ascendis, at 29, 31.

1 Index.<sup>76</sup>

2 **Q. Is there academic literature that supports the conclusion that MRPs using surveys are**  
 3 **not widely used by practitioners?**

4 A. Yes. Dr. Damodaran, who was cited several times by Mr. Garrett throughout his testimony,  
 5 states the following about the applicability of survey MRPs:

6 While survey premiums have become more accessible, very few practitioners  
 7 seem to be inclined to use the numbers from these surveys in computations and  
 8 there are several reasons for this reluctance:

- 9 1. Survey risk premiums are responsive to recent stock prices movements,  
 10 with survey numbers generally increasing after bullish periods and  
 11 decreasing after market decline. Thus, the peaks in the SIA survey  
 12 premium of individual investors occurred in the bull market of 1999,  
 13 and the more moderate premiums of 2003 and 2004 occurred after the  
 14 market collapse in 2000 and 2001.
- 15 2. Survey premiums are sensitive not only to whom the question is  
 16 directed at but how the question is asked. For instance, individual  
 17 investors seem to have higher (and more volatile) expected returns on  
 18 equity than institutional investors and the survey numbers vary  
 19 depending upon the framing of the question.<sup>[footnote omitted]</sup>
- 20 3. In keeping with other surveys that show differences across sub-groups,  
 21 the premium seems to vary depending on who gets surveyed. Kaustia,  
 22 Lehtoranta and Puttonen (2011) surveyed 1,465 Finnish investment  
 23 advisors and note that not only are male advisors more likely to provide  
 24 an estimate but that their estimated premiums are roughly 2% lower  
 25 than those obtained from female advisors, after controlling for  
 26 experience, education and other factors.<sup>[footnote omitted]</sup>
- 27 4. Studies that have looked at the efficacy of survey premiums indicate  
 28 that if they have any predictive power, it is in the wrong direction.  
 29 Fisher and Statman (2000) document the negative relationship between  
 30 investor sentiment (individual and institutional) and stock  
 31 returns.<sup>[footnote omitted]</sup> In other words, investors becoming more  
 32 optimistic (and demanding a larger premium) is more likely to be a

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<sup>76</sup> See, Pablo Fernandez, Alberto Ortiz, and Isabel Fernandez Acín, *Market Risk Premium used in 71 countries in 2016: a survey with 6,932 answers*, IESE Business School, May 9, 2016, at 10. Specifically, the study states:

[t]he [implied equity premium] is the implicit [required equity premium] used in the valuation of a stock (or market index) that matches the current market price. The most widely used model to calculate the [implied equity premium] is the dividend discount model: the current price ( $P_0$ ) is the present value of expected dividends discounted at the required rate of return ( $K_e$ ). If  $d_1$  is the dividend per share expected to be received in year 1, and  $g$  the expected long-term growth rate in dividends per share:

$$P_0 = d_1 / (K_e - g), \text{ which implies:}$$

$$[\text{implied equity premium}] = d_1 / P_0 + g - R_f$$

1 precursor to poor (rather than good) market returns.

2 As technology aids the process, the number and sophistication of surveys of  
3 both individual and institutional investors will also increase. However, it is also  
4 likely that these survey premiums will be more reflections of the recent past  
5 rather than good forecasts of the future.<sup>77</sup>

6 **Q. Please now describe the method by which Mr. Garrett calculated his third estimate, the**  
7 **implied MRP.**

8 A. As Mr. Garrett points out, his method develops the Internal Rate of Return that sets equal the  
9 current value of the market index to the projected value of cash flows associated with owning  
10 the market index.<sup>78</sup> Mr. Garrett observes that Dr. Damodaran “promotes the implied ERP  
11 method.”<sup>79</sup> Although there are some differences, Mr. Garrett’s approach is similar to the model  
12 Dr. Damodaran provides on his website.<sup>80</sup>

13 Mr. Garrett’s method, which is a two-stage form of the DCF model, calculates the  
14 present value of cash flows over the five-year initial period, together with the terminal price  
15 (based on the Gordon Model<sup>81</sup>), to be received in the last (*i.e.*, fifth) year. The model’s  
16 principal inputs include the following assumptions:

- 17 • Over the coming five years, the S&P 500 Index (the “Index”) will appreciate at a  
18 rate equal to the compound growth rate in “Operating Earnings” from 2014 through  
19 2019;
- 20 • Cash flows associated with owning the Index will be equal to the historical average  
21 Earnings, Dividends, and Buyback yields, applied to the projected Index value each  
22 year; and

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<sup>77</sup> Aswath Damodaran, Stern School of Business, *Equity Risk Determinants, Estimation and Implications – The 2020 Edition*, Updated March 2020, at 26-27.

<sup>78</sup> Direct Testimony of David J. Garrett, at 58 – 60.

<sup>79</sup> *Ibid.*, at 60.

<sup>80</sup> See, <http://pages.stern.nyu.edu/~adamodar>.

<sup>81</sup> Exhibit DJG-9.

- 1           • Beginning in the terminal year, the Index will appreciate, in perpetuity, at a rate  
2           equal to the 30-day average yield on 30-year Treasury securities, as of October 28,  
3           2020.<sup>82</sup>

4           As discussed below, reasonable changes to those assumptions have a considerable effect on  
5           Mr. Garrett's calculated expected market return.

6   **Q. Do you have any observations regarding Mr. Garrett's assumed first-stage growth rate?**

7   A. Yes. Mr. Garrett's 5.37% growth rate relates to growth in operating earnings, and does not  
8       reflect capital appreciation, growth in dividends, or buy-backs.<sup>83</sup> In addition, if Mr. Garrett's  
9       position is that historical growth rates are meant to reflect expected future growth, they should  
10      reflect year-to-year variation (that is, uncertainty). That is best accomplished using the  
11      arithmetic mean. I therefore calculated the average growth (arithmetic mean) for the four  
12      metrics included in Mr. Garrett's exhibit. The average growth rate, 7.35%, produces an  
13      estimated market return of about 7.98%,<sup>84</sup> which is still well below historical experience.

14 **Q. Why did the market return increase by only 51 basis points (from 7.47% to 7.98%) when**  
15 **the first-stage growth rate increased by 198 basis points (from 5.37% to 7.35%)?**

16 A. Because Mr. Garrett's model assumes the first stage lasts for five years (and the terminal stage  
17       is perpetual), the results are sensitive to changes in the assumed terminal growth rate. To put  
18       that effect in perspective, the terminal value (which is directly related to the terminal growth  
19       rate) represents approximately 76.59% of the "Intrinsic Value" in Mr. Garrett's analysis.<sup>85</sup>

20 **Q. How did Mr. Garrett develop his assumed terminal growth rate?**

21 A. The terminal growth rate represents investors' expectations of the rate at which the broad stock

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<sup>82</sup> Exhibits DJG-7 and DJG-9. The model also assumes that all payments are received at year-end, rather than during the year. That assumption also tends to under-state the Implied Market Risk Premium.

<sup>83</sup> Exhibit DJG-9. Whereas the compound average growth rate in operating earnings was 5.37%, dividends and buybacks grew by 6.74% and 5.66%, respectively.

<sup>84</sup> Exhibit DWD-3, Schedule 3, page 2.

<sup>85</sup> Exhibit DWD-3, Schedule 3. Please note that regardless of the assumed first and terminal-stage growth rates, the terminal stage consistently represents approximately 76.00% of the Intrinsic Value.

1 market will grow, in perpetuity, beginning in the terminal year. Mr. Garrett assumes terminal  
 2 growth is best measured by the average yield on 30-year Treasury securities over the 30 days  
 3 ended October 28, 2020. That is, Mr. Garrett assumes the average 30-year Treasury yield  
 4 between September 2020 and October 2020 is the best measure of expected earnings growth  
 5 beginning five years from now and extending indefinitely into the future.

6 **Q. Do you agree with Mr. Garrett’s assumption?**

7 A. No, I do not. I recognize Mr. Garrett followed the approach described in Dr. Damodaran’s  
 8 method, which Dr. Damodaran refers to as a “default” assumption.<sup>86</sup> In terms of historical  
 9 experience, over the long-term the broad economy has grown at a long-term compound average  
 10 growth rate of approximately 6.09%.<sup>87</sup> Considered from another perspective, Duff & Phelps  
 11 reports the long-term rate of capital appreciation on Large Company stocks to be 7.90%.<sup>88</sup> Mr.  
 12 Garrett’s model assumes, however, that the market index will grow by less than one-half that  
 13 amount, 2.37%, over the coming four years.<sup>89</sup>

14 Mr. Garrett has not explained why growth beginning five years in the future, and  
 15 extending in perpetuity, will be less than one-half of long-term historical growth. From a  
 16 somewhat different perspective, assuming long-term inflation will be approximately 2.00%<sup>90</sup>  
 17 implies perpetual real growth will be approximately -0.48%.<sup>91</sup> Again, Mr. Garrett assumes in  
 18 the long run, real growth will in fact be negative in perpetuity. Nowhere in his testimony has  
 19 Mr. Garrett explained the fundamental, systemic changes that would so dramatically reduce  
 20 long-term economic growth, or why they are best measured by the long-term Treasury yield

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<sup>86</sup> See, <http://pages.stern.nyu.edu/~adamodar>.

<sup>87</sup> Source: Bureau of Economic Analysis for the years 1929 to 2019. <https://www.bea.gov/data/gdp/gross-domestic-product>

<sup>88</sup> Duff & Phelps, 2020 SBBI® Yearbook, 6-17.

<sup>89</sup> Exhibit DJG-9.  $(3724/3391)^{(1/4)} - 1 = 2.37\%$ .

<sup>90</sup> For example, in line with the Federal Reserve’s target average rate of inflation. See also, Exhibit DJG-5.

<sup>91</sup>  $-0.48\% = [(1.0151/1.02) - 1]$ . Please note that the long-term historical average rate of inflation, measured by the difference between real and nominal GDP growth, has been approximately 2.79%, which would also imply perpetual negative real growth.

1 over 30 days between September 2020 to October 2020.

2 Further, research by the Federal Reserve Bank of San Francisco calls into question the  
3 relationship between interest rates and macroeconomic growth. As the authors noted, “[o]ver  
4 the past three decades, it appears that private forecasters have incorporated essentially no link  
5 between potential growth and the natural rate of interest: The two data series have a zero  
6 correlation.”<sup>92</sup>

7 **Q. Please briefly summarize your response to Mr. Garrett’s Implied Equity Risk Premium**  
8 **calculation.**

9 A. Mr. Garrett’s calculation is based on a series of questionable assumptions, to which a small set  
10 of very reasonable adjustments produces a market return estimate more consistent with (yet  
11 still below) the historical experience he considers relevant. Although the revised results still  
12 produce ROE estimates far below any reasonable measure, they do point out the sensitive  
13 nature of Mr. Garrett’s analyses, and the tenuous nature of the conclusions he draws from them.

14 **Q. Please summarize Mr. Garrett’s concerns with the application of a historical average**  
15 **Equity Risk Premium.**

16 A. Mr. Garrett notes that although a historical ERP is “convenient and easy to calculate,” there is  
17 evidence that a “forward-looking ERP is *actually* lower than the historical ERP.”<sup>93</sup>

18 **Q. Are there studies that show that the long-term arithmetic mean is a good predictor of the**  
19 **next value in a random string of data (e.g. market returns)?**

20 A. Yes. John Y. Campbell of Harvard University states: “When returns are serially uncorrelated,  
21 the arithmetic average represents the best forecast of future return in any randomly selected  
22 future year.”<sup>94</sup>. As shown on pages 6-14 and 6-15 of SBBI – 2020, returns on large stocks and

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<sup>92</sup> FRBSF Economic Letter, *Does Slower Growth Imply Lower Interest Rates?*, November 10, 2014, at 3.

<sup>93</sup> Direct Testimony of David J. Garrett, at 56.

<sup>94</sup> Campbell, John Y., *Forecasting US Equity Returns in the 21<sup>st</sup> Century*, July 2001.

1 equity risk premiums have serial correlations of 0.00 and 0.01, respectively, showing serial  
2 uncorrelation.

3 Additionally, in SBBI – 2020, regarding the use of the arithmetic mean, Duff & Phelps  
4 state:

5 The equity risk premium data presented in this book are arithmetic average risk  
6 premiums as opposed to geometric average risk premiums. The arithmetic  
7 average equity risk premium can be demonstrated to be the most appropriate  
8 when discounting cash flows. For use as he expected equity risk premium in  
9 either the CAPM or the building-block approach, the arithmetic mean or the  
10 simple difference of the arithmetic means of stock market returns and riskless  
11 rates is the relevant number. This is because both the CAPM and the building-  
12 block approach are additive models, in which the cost of capital is the sum of  
13 its parts.<sup>95</sup>

14 Therefore, the long-term historical arithmetic average MRP is useful, when calculated  
15 correctly, in the application of the CAPM.

16 **Q. Does Mr. Garrett employ an Empirical CAPM in his CAPM analysis?**

17 A. No, he does not. Mr. Garrett fails to consider the ECAPM, despite the fact that numerous tests  
18 of the CAPM have confirmed that the empirical Security Market Line (“SML”) described by  
19 the traditional CAPM is not as steeply sloped as the predicted SML, as described in my Direct  
20 Testimony.<sup>96</sup> Because of the empirical findings presented in my Direct Testimony, Mr. Garrett  
21 should have considered the ECAPM in his CAPM analysis.

22 **Q. Please summarize your concerns with Mr. Garrett’s CAPM analysis.**

23 A. Mr. Garrett’s CAPM analysis is flawed because he uses a historical risk-free rate and MRPs  
24 based on expected returns. Using flawed inputs, in combination with not employing the  
25 ECAPM, produces unrealistic results. Given Mr. Garrett’s seeming dismissal of the results of  
26 his CAPM, the Commission should likewise dismiss Mr. Garrett’s CAPM analysis.

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<sup>95</sup> SBBI – 2020, at 10-22, 10-23.

<sup>96</sup> Direct Testimony of Dylan W. D’Ascendis, at 32.

1 **G. Refusal to Consider a Small Size Premium in his ROE Recommendation**

2 **Q. Did Mr. Garrett address the issue of a size premium in his testimony?**

3 A. Yes. Mr. Garrett lists several reasons why he has not included a size premium in his  
4 recommendation, including: (1) numerous studies show that “small cap stocks do not  
5 consistently outperform large-cap stocks,”<sup>97</sup> and (2) that the “discovery of the size effect  
6 phenomenon likely caused its own demise.”<sup>98</sup>

7 **Q. Is Mr. Garrett’s review of the size premium correct?**

8 A. No, it is not. First, Mr. Garrett notes that after 1983, U.S. small-cap stocks underperformed  
9 large-cap stocks.<sup>99</sup> The issue with Mr. Garrett’s position is that the size premium measures the  
10 increased risk associated with a company’s smaller size; Mr. Garrett is only focused on returns.  
11 As I discussed in my Direct Testimony, smaller companies face increased business risk as they  
12 are less equipped to cope with significant events that affect sales, revenues, and earnings, as  
13 the loss of a few larger customers will have a greater effect on a small company than a larger  
14 company.<sup>100</sup>

15 This is further evident when we consider that increasing capital costs (*i.e.* risk) for one  
16 set of securities will put downward pressure on those securities as investors transition to  
17 securities with lower risk. Under this premise, the underperformance is directly tied to the  
18 increase in risk. As such, Mr. Garrett’s premise that smaller companies’ underperformance  
19 indicates a reduction of risk is in fact the opposite – underperformance indicates an increasing  
20 level of risk.

21 **Q. Have you performed a study comparing the size of UIF with the average proxy company**  
22 **in Mr. Garrett’s proxy group?**

---

97 Direct Testimony of David J. Garrett, at 68.

98 *Ibid.*, at 69.

99 *Ibid.*, at 68.

100 Direct Testimony of Dylan W. D’Ascendis, at 38 – 39.

1 A. Yes. Duff & Phelps' ("D&P") 2017 Valuation Handbook – U.S. Guide to Cost of Capital:  
 2 Cost of Capital Navigator ("D&P 2017") presents a Size Study based on the relationship of  
 3 various measures of size and return. Relative to the relationship between average annual return  
 4 and the various measures of size, D&P state:

5 **The size of a company is one of the most important risk elements to**  
 6 **consider when developing cost of equity estimates for use in valuing** a firm.  
 7 Traditionally, researchers have used market value of equity (*i.e.*, "market  
 8 capitalization" or simply "market cap") as a measure of size in conducting  
 9 historical rate of return research. For example, the Center for Research in  
 10 Security Prices (CRSP) "deciles" are developed by sorting U.S. companies by  
 11 market capitalization. Another example is the Fama-French "Small minus Big"  
 12 (SMB) series, which is the difference in return of "small" stocks minus "big"  
 13 (*i.e.*, large) stocks, as defined by market capitalization. (emphasis added)<sup>101</sup>

14 Exhibit DWD-3, Schedule 4 contains indicated small size risk premiums using various  
 15 measures of size as described by D&P 2017.<sup>102</sup> The measures are listed below:

- 16 • Book Value of Common Equity;
- 17 • Five-Year Average Net Income;
- 18 • Total Assets;
- 19 • Five Year Average EBITDA;
- 20 • Total Sales; and
- 21 • Number of Employees.

22 As shown on Exhibit DWD-3, Schedule 4, in all measures, UIF is determined to be  
 23 smaller than the average water company in Mr. Garrett's proxy group with associated size  
 24 premiums ranging from 1.13% to 3.43%. In view of these indicated size premiums, an upward  
 25 size adjustment of 1.00% to the indicated cost of common equity is extremely conservative.

26 **Q. Have you performed an additional study for utility companies that links size and risk?**

27 A. Yes, I have. I performed a study on whether the size effect is applicable to utilities. The study

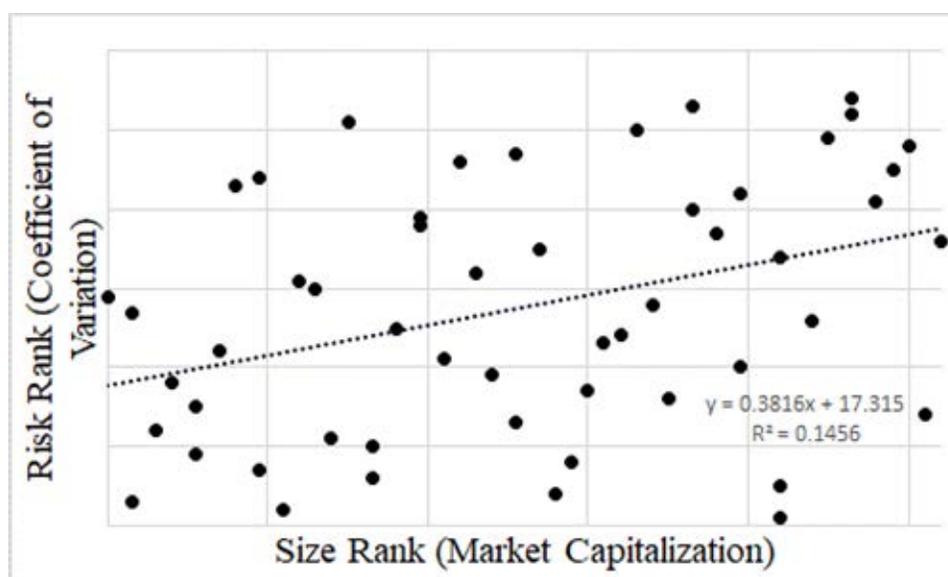
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<sup>101</sup> D&P-2017, at p. 10-2.

<sup>102</sup> *Ibid.*

1 included the universe of electric, gas, and water companies included in *Value Line Standard*  
 2 *Edition*. From each of the utilities' *Value Line Ratings & Reports*, I calculated the ten-year  
 3 coefficients of variation ("CoV")<sup>103</sup> of net profit (a measure of risk) and current market  
 4 capitalization (a measure of size) for each company. After ranking the companies by size  
 5 (largest to smallest) and risk (least risky to most risky), I made a scatter plot of the data, as  
 6 shown on Chart 2, below:

7 **Chart 2:**  
 8 **Relationship Between Size and Risk for the Value Line Universe of Utility Companies**



9  
 10 As shown in Chart 2 above, as company size decreases (increasing size rank), the CoV  
 11 increases, linking size and risk for utilities, which is significant at 95.0% confidence level.

12 **Q. Are you aware of academic articles supporting the applicability of a size premium?**

13 A. Yes. An article by Michael A. Paschall, ASA, CFA, and George B. Hawkins ASA, CFA, *Do*  
 14 *Smaller Companies Warrant a Higher Discount Rate for Risk?* also supports the applicability  
 15 of a size premium. As the article makes clear, all else equal, size is a risk factor which must be  
 16 taken into account when setting the cost of capital or capitalization (discount) rate. Paschall

<sup>103</sup> The coefficient of variation is used by investors and economists to determine volatility.

1 and Hawkins state in their conclusion as follows:

2 The current challenge to traditional thinking about a small stock premium is a  
3 very real and potentially troublesome issue. The challenge comes from bright  
4 and articulate people and has already been incorporated into some court cases,  
5 providing further ammunition for the IRS. Failing to consider the additional  
6 risk associated with most smaller companies, however, is to fail to  
7 acknowledge reality. Measured properly, small company stocks have proven  
8 to be more risky over a long period of time than have larger company stocks.  
9 This makes sense due to the various advantages that larger companies have  
10 over smaller companies. Investors looking to purchase a riskier company will  
11 require a greater return on investment to compensate for that risk. There are  
12 numerous other risks affecting a particular company, yet the use of a size  
13 premium is one way to quantify the risk associated with smaller companies.<sup>104</sup>

14 Hence, Paschall and Hawkins corroborate the need for a small size adjustment, all else  
15 equal. Consistent with the financial principle of risk and return discussed previously, upward  
16 adjustment must be applied to the indicated cost of common equity derived from the cost of  
17 equity models of the proxy groups used in this proceeding.

18 **Q. Mr. Garrett points to a passage published in 2015 by Ibbotson that states that the size  
19 premium no longer exists. What is your response?**

20 A. Despite their findings, Duff & Phelps (which now owns Ibbotson) continues to publish data on  
21 their findings on the presence of a size premium in the market and has provided additional  
22 measures of the size premium, as noted above. If Duff & Phelps found that no size premium  
23 ceased to exist, it would not continue to update and publish this information.

24 **Q. Finally, does the Commission's ROE Formula allow for adjustments for increased risk  
25 of small utilities?**

26 A. Yes, it does. As stated at page 42 of my Direct Testimony, the Commission's ROE Formula  
27 allows a 50-basis point premium for private placement and a size premium of 50 basis points  
28 stating "smaller companies are considered by investors to be more risky than larger

---

<sup>104</sup> Michael A. Paschall, ASA, CFA and George B. Hawkins ASA, CFA, *Do Smaller Companies Warrant a Higher Discount Rate for Risk?*, CCH Business Valuation Alert, Vol. 1, Issue No. 2, December 1999.

1 companies.”<sup>105</sup> In view of all of the above, my 1.00% size premium applicable to UIF is  
2 reasonable and conservative.

3 **H. Response to Mr. Garrett’s Critiques of Company Testimony**

4 **Q. Does Mr. Garrett have any critiques of your analyses presented in your Direct**  
5 **Testimony?**

6 A. Yes, he does. Mr. Garrett’s critiques of my Direct Testimony are: (1) my requested ROE is in  
7 excess of the investor-required return on the market; (2) my growth rates used in the DCF  
8 model exceed GDP growth; (3) my MRP is unreasonable because it is not in line with his MRP  
9 estimates; (4) my risk-free rate used in my CAPM is overestimated; (5) my use of a non-  
10 regulated proxy group; and (6) my inclusion of a small size premium is unnecessary. I have  
11 already addressed critiques (1), (2), (4), and (6) previously and will not address them here. I  
12 will discuss Mr. Garrett’s remaining critiques in turn.

13 **Q. Mr. Garrett states that your MRP is unreasonable in view of his measures of MRP as**  
14 **presented in his CAPM analysis.<sup>106</sup> Please respond.**

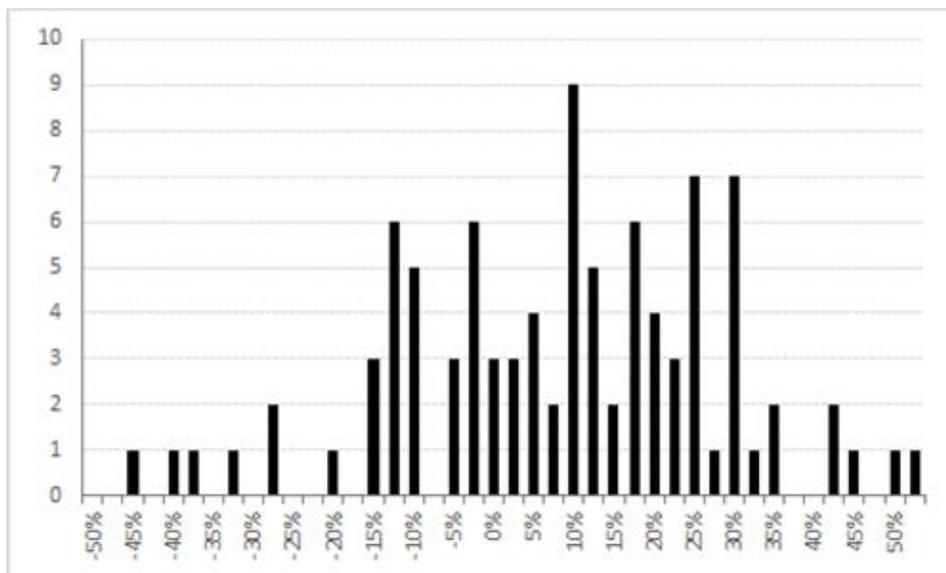
15 A. I have discussed the inapplicability of Mr. Garrett’s MRP estimates for cost of capital purposes  
16 previously in this Rebuttal Testimony and will not repeat that discussion here. Since Mr.  
17 Garrett’s MRP measures are not valid MRPs, they cannot be comparable to my MRP estimates.  
18 Even though Mr. Garrett has presented no reliable evidence upon which to gauge the  
19 reasonableness of the MRP estimate, I will note that my estimate of 11.94% is consistent with  
20 actual realized ERPs. As shown in Chart 3, below, my estimate falls within the 58<sup>th</sup> percentile  
21 of historical MRPs.

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<sup>105</sup> Order No. PSC-2019-0267-PAA-WS.

<sup>106</sup> Direct Testimony of David J. Garrett, at 63 – 64.

1 **Chart 3:**  
 2 **Frequency Distribution of Observed Market Risk Premia, 1926 - 2019<sup>107</sup>**



3  
 4 Given all the above, my calculation of the MRPs in my CAPM and ECAPM analyses  
 5 is reasonable in view of historical returns and is supported by financial literature. Thus, Mr.  
 6 Garrett's concern should be dismissed.

7 **Q. Please summarize Mr. Garrett's argument against using a non-price regulated proxy**  
 8 **group similar in total risk to a utility proxy group to determine an indicated ROE for**  
 9 **UIF in this proceeding.**

10 A. Mr. Garrett finds there is no marginal benefit of running a CAPM or DCF model on a group of  
 11 non-regulated, non-utility companies. Additionally, Mr. Garrett believes that competitive  
 12 firms typically have higher levels of risk than utilities<sup>108</sup> and that, "a group of non-regulated,  
 13 non-utility companies will not indicate a required return on investments that is *commensurate*  
 14 with returns on investments of *corresponding* risk."<sup>109</sup>

15 **Q. Do you agree with Mr. Garrett's reasoning?**

<sup>107</sup> Exhibit DWD-3, Schedule 5.

<sup>108</sup> Direct Testimony of David J. Garrett, at 66.

<sup>109</sup> *Ibid.*, at 67. (emphasis in original)

1 A. No. Regarding Mr. Garrett’s claim that there is no marginal benefit to running my non-price  
2 regulated analysis, this directly contradicts his own claim that “[i]t is preferable to use multiple  
3 models because the results of any one model may contain a degree of imprecision.”<sup>110</sup> Because  
4 regulation is a substitute for competition, the application of cost of common equity models to  
5 comparable risk, non-regulated companies produces a marginal benefit that cannot be  
6 replicated using utility companies.

7 **Q. Does Mr. Garrett discuss risk and relevance of risk for cost of capital purposes in his**  
8 **testimony?**

9 A. Yes. In Section V of his direct testimony, Mr. Garrett discusses risk and return concepts in  
10 general. On page 29 of his direct testimony, Mr. Garrett states: “Market risk is the only type  
11 of risk that is rewarded by the market and is thus the primary type of risk the Commission  
12 should consider when determining the allowed return in this case.”

13 **Q. How does your selection criteria for your Non-Price Regulated Proxy Group fit into the**  
14 **above discussion?**

15 A. Following Mr. Garrett’s logic, given that unadjusted beta coefficients are measures of market  
16 risk (the primary measure of risk according to Mr. Garrett), and one of my screening criteria  
17 was to generate companies with similar unadjusted beta coefficients as the Utility Proxy Group,  
18 my Non-Price Regulated Proxy Group, by definition, would be comparable to the Utility Proxy  
19 Group.

20 **Q. In addition to screening your Non-Price Regulated Proxy Group companies using**  
21 **unadjusted beta coefficients and standard errors of the regression, did you conduct**

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<sup>110</sup> Ibid., at 23.

1 **another study to show that the Utility Proxy Group and the Non-Price Regulated Group**  
2 **are similar in total risk?**

3 A. Yes, I did. To further show similarity between the Utility and Non-Price Regulated Proxy  
4 Groups, I have analyzed the CoV of net profit for each group (as reported by *Value Line*) and  
5 the results of that study are shown on Exhibit DWD-3, Schedule 6. As shown, the mean and  
6 median CoV of net profit for the Non-Price Regulated Proxy Group are within the range of  
7 CoVs of net profit set by the Utility Proxy Group companies, which suggests that the volatility  
8 in net profit is similar between the Utility Proxy Group and the Non-Price Regulated Proxy  
9 Group.

10 **Q. Does Mr. Garrett look to non-price regulated companies in any of his analyses?**

11 A. Yes. In assessing the Company's capital structure, Mr. Garrett reviews the debt ratios of  
12 competitive industries.<sup>111</sup> The major mistake in Mr. Garrett's analysis is the same mistake he  
13 falsely accuses me of. In his comparisons of the capital structures of non-regulated industries  
14 to UIF, he does not evaluate the industries' market risk in comparison to UIF. If Mr. Garrett  
15 evaluated the market risk (*i.e.*, unadjusted beta coefficients) of those industries, he would have  
16 found that those industries are not comparable to utility companies like UIF. Using Mr.  
17 Garrett's own source, Dr. Damodaran, the average unadjusted beta coefficient of the industries  
18 that have debt ratios over 55% is 1.18, whereas the Utility (Water) unadjusted beta coefficient  
19 is 0.68.

20 **Q. Please summarize your discussion regarding the use of non-price regulated proxy groups**  
21 **in cost of capital analyses for regulated utilities.**

22 A. The use of non-price regulated proxy groups in cost of capital analyses for regulated utility  
23 companies should be considered by regulatory commissions as another tool in the tool kit to

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<sup>111</sup> Direct Testimony of David J. Garrett, at 78.

1 determine the ROE for a utility, provided the non-price regulated proxy group is shown to be  
2 of comparable risk. The Non-Price Regulated Proxy Group used in my analyses was screened  
3 using measures of systematic and unsystematic risk, to show similar total risk. Mr. Garrett's  
4 non-price regulated industry study was not screened for any risk aside from financial risk,  
5 which, as stated previously, is not a proxy for total risk.

6 For these reasons, my Non-Price Regulated Proxy Group analyses should be  
7 considered by the Commission while Mr. Garrett's non-price regulated industry analyses  
8 should be rejected by the Commission.

9 **V. SUMMARY AND CONCLUSIONS**

10 **Q. Should any or all the arguments made by Mr. Garrett persuade the Commission to lower  
11 the ROE it approves for UIF below your recommendation?**

12 A. No, they should not. Based on the analyses discussed throughout my Rebuttal Testimony, and  
13 given the current capital market conditions, I continue to believe that an ROE of 11.75%  
14 continues to be a reasonable, although conservative, estimate of the Company's Cost of Equity.  
15 It will provide UIF with sufficient earnings to enable it to attract necessary new capital  
16 efficiently and at a reasonable cost.

17 **Q. Does this conclude your Rebuttal Testimony?**

18 A. Yes.

19  
20  
21  
22  
23  
24  
25



1           Q     And, Mr. Snow, did you prefile rebuttal  
2 testimony in this case?

3           A     Yes, sir.

4           Q     And if I asked you the questions in your  
5 prefiled rebuttal testimony, would your answers be the  
6 same?

7           A     Yes, they would.

8           Q     So you have no changes or connections in your  
9 testimony?

10          A     No, I do not.

11          Q     Did you have any exhibits to your testimony?

12          A     No.

13                MR. FRIEDMAN: Mr. Chairman, I would like to  
14 ask that Mr. Snow's prefiled rebuttal testimony be  
15 admitted into the record as though read.

16                CHAIRMAN CLARK: So ordered.

17                (Whereupon, prefiled rebuttal testimony of  
18 Chris Snow was inserted.)

19

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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

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Docket No. 20200139-WS

REBUTTAL TESTIMONY

OF

CHRIS SNOW

on behalf of

Utilities, Inc. of Florida

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

2 A. My name is Chris Snow. I am Director of External Affairs for Utilities, Inc. of Florida. My  
3 business address is 200 Weathersfield Ave., Altamonte Springs, Florida, 32714.

4 **Q. Please briefly state your educational background and experience.**

5 A. I received a Bachelor of Arts degree from Florida State University in social science in  
6 2004. Prior to my work at Utilities, Inc. of Florida (UIF) I worked 10 years for the quasi-  
7 government agency Space Florida both as the Director of Government Affairs but also as  
8 a Director of Business Development, managing community affairs. Before then I worked  
9 in Washington, D.C. on Capitol Hill and at a trade association analyzing and as an advocate  
10 for legislative policy.

11 **Q. Have you previously pre-filed direct testimony in this proceeding?**

12 A. No.

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

14 A. The purpose of my rebuttal testimony is to primarily address the pre-filed testimony of  
15 OPC witnesses Lewis and Crane.

16 **Q. Do you agree with OPC witness Lewis' findings when it comes to billing complaints?**

17 A. No, I do not. The procedure of UIF for a high-bill complaint involves checking with the  
18 customer to see if there could be a leak. If there is a leak, we have instituted a leak  
19 adjustment policy to reduce the customer's bill to help them through that challenge. If it is  
20 not a leak, we work with them to determine whether there is a meter malfunction by means  
21 of re-reading the meter and/or a meter test to determine its accuracy. We work with each  
22 customer individually to address each of their concerns.

23 **Q. Do you agree with OPC witness Lewis in regard to customer Dana Elliot's comments?**

24 A. No, UIF has not received a complaint from Ms. Elliot about her water quality in the more

1 than 14 years she has been a customer. As with all customers, we are more than happy to  
2 investigate individual customers concerns first to try to address them but second to assure  
3 there isn't a larger systemic issue involved.

4 We are aware of iron levels in the water at our Pennbrooke system. This is a function of the  
5 source groundwater containing a significant concentration of iron. UIF adds an iron  
6 sequestrant as part of the water treatment process to keep the iron in solution. We previously  
7 investigated treatment alternatives with the Pennbrooke Homeowners Association after they  
8 expressed interest in UIF making specific additional investments to remove iron from the  
9 water. The Pennbrooke Homeowners Associations declined to support the treatment upgrade  
10 due to the prospective impact on their water bill.

11 **Q. Do you agree with OPC witness Lewis in regard to customer Russakov's comments?**

12 A. No, UIF has not received a complaint about water quality from Ms. Russakov in the  
13 approximately 20 years she has been a customer. We are happy to investigate the customer's  
14 concerns but are happy to hear she hasn't had any in more than a year.

15 **Q. Do you agree with OPC witness Lewis in regard to customer Saylor's comments?**

16 A. No, UIF has not received a complaint about water quality in the time Mr. Saylor has been a  
17 customer. Again, as a customer of Pennbrooke the source water is high in iron content, as  
18 previously mentioned, which correlates with Mr. Saylor's concerns. The water quality in  
19 Pennbrooke routinely meets all DEP standards and requirements. We are happy to work with  
20 Mr. Saylor to resolve his individual concerns.

21 In regard to his billing concerns, we offer irrigation audits for our customers and are happy  
22 to provide information on how he can save money by reducing his water usage. For instance,  
23 over the last two years Mr. Saylor has averaged 16,000 gallons of water per month. We  
24 typically find that irrigation is the primary driver of high water usage. We offer free irrigation

1 audits as well as information on our website on how to conserve water as provided by the St.  
2 Johns River Water Management District including guidelines for watering. The District's  
3 guidance may help Mr. Saylor and others conserve water and reduce their bills.

4 **Q. Do you agree with OPC witness Lewis that Utilities, Inc. of Florida did not respond to**  
5 **complaints until after the customer reached out to the Public Service Commission?**

6 A. No, when customers contact us, we respond via phone, email, or social media messages. We  
7 are happy to respond to each customer concern brought to us. Sometimes customers choose  
8 to contact the Public Service Commission before reaching out to us, but that is their choice  
9 as a consumer. If there are specific instances that Ms. Lewis is referring to, we would be  
10 happy to address them individually.

11 **Q. Do you agree with OPC witness Crane's testimony about lobbying costs in your revenue**  
12 **requirement claim?**

13 A: No, I do not. In response to OPC Interrogatory 34 we were asked to identify any organization  
14 that is involved in lobbying activity. We did so. However, in Interrogatory 140 we were asked  
15 to show the total payments to these entities that related to lobbying activities which is simply  
16 \$45,827.13 to the Gunster law firm. The lobbying activity was related to the passage of Fair  
17 Market Value legislation which not only benefits UIF but also the customer. First, the  
18 acquisition of underfunded systems would benefit the customers of those systems by virtue  
19 of UIF offering robust financial and operational resources. Additionally, the legislation, if  
20 enacted, would help our current customers by allowing us to spread individual system costs  
21 over a larger customer base thus achieving economies of scale for the systems acquired. This  
22 would reduce the cost to each individual customer similar to the economies of scale realized  
23 by the electric and gas industries in Florida.

1 UIF is a member of other organizations that offer training, certification, technology  
2 information and strategic planning resources, all of which are beneficial to the customers by  
3 assisting in UIF's mandate to provide safe and reliable service.

4 **Q. Do you agree with OPC witness Hicks that Utilities, Inc. of Florida that the potential**  
5 **rule violations for lack of responding to customers in a timely manner is a current**  
6 **problem?**

7 **A:** No, I do not. In reviewing the PSC complaints pointed out by OPC witness Hicks I found  
8 that these four potential rule violations were from 2015, 2017, and 2018. There are none from  
9 2019 or 2020. We work diligently to assure we are responding to the customer, and PSC, in  
10 a thorough and expedient manner. We have a team that handles PSC complaints that come  
11 in and we have reorganized our Customer Experience department to prioritize the customer.  
12 Additionally, we strive to provide information to the customer in their preferred method. To  
13 that end, UIF now provides customer information and feedback on Facebook, Twitter,  
14 Google and through our app/webportal MyUtilityConnect.

15 **Q. Do you agree with the assessment made by your customer, Mr. David Joswick, during**  
16 **the December 4<sup>th</sup> Service Hearing?**

17 **A:** No, I do not. Mr. David Joswick raised concerns in regard to UIF's customer service. Mr.  
18 Joswick is correct in that he received an incorrect meter read in February of 2020. What he  
19 did not mention in his testimony is that UIF apologized, reread the meter and corrected his  
20 bill. The second item mentioned by Mr. Joswick is from November 30 of 2017 when he  
21 called requesting UIF loosen the valve to allow him to turn off his water for repairs. UIF  
22 visited his residence the next day and loosened the valve for the customer.

23 **Q. Does that conclude your direct testimony?**

24 **A.** Yes, it does.

1 BY MR. FRIEDMAN:

2 Q Mr. Snow, do you have a brief, no more than  
3 three-minute summary of your testimony?

4 A Yes, I do.

5 Q Would you go ahead, please?

6 A Thank you for having me here today.

7 I was brought on in June of 2018 after, in the  
8 last rate case this position was created by Public  
9 Service Commission for Utilities, Inc. of Florida to  
10 improve our customer service, our communications and our  
11 stakeholder relations. Those are my responsibilities  
12 here at the company, and I have -- in the process of  
13 this rate case, I have overseen the customer service  
14 complaints. I have reviewed them. I have overseen the  
15 PSC complaints throughout the -- the last year and a  
16 little bit, along with my colleague Jared Deason, and I  
17 would be happy to answer any questions here today,  
18 specifically a couple of questions that were raised  
19 earlier that I would be happy to address the adoption  
20 for MyUtilityConnect, and I would be happy to talk about  
21 our collaboration with working with our sister company  
22 with Water Services Corporation.

23 Thank you, Mr. Chairman.

24 CHARIMAN CLARK: Thank you.

25 Mr. Friedman.



1 option.

2 Q Okay. But isn't it true that under that  
3 legislation that was proposed, the Florida Public  
4 Service Commission would not have been able to required  
5 that the rates be set based on original cost approach?

6 A It would allow for original costs to be  
7 utilized, but it would also allow for the fair market  
8 value to be used.

9 Q Okay. But the question was, it would not  
10 have -- the Commission would not have been able to  
11 require the original cost approach, correct?

12 A That's correct. Yes.

13 Q So -- that proposed fair market value  
14 legislation did not pass the Legislature, did it?

15 A No, it did not.

16 Q Now is the Gunster Law Firm currently  
17 assisting the company with any lobbying activities?

18 A I am sorry, can you repeat that question?

19 Q Sure, is the Gunster Law Firm currently  
20 assisting the lobbying activities?

21 A Yes.

22 Q Okay. And what are those?

23 A Specifically monitoring any legislation  
24 related to regulatory changes that would take place as a  
25 result of the Legislature, and consideration of fair

1 market value in the future, though there are no pending  
2 bills.

3 Q Okay. Thank you.

4 Are you familiar with the agreement between  
5 the Gunster firm and UIF?

6 A I am, yes.

7 Q Okay. I want to reference that agreement  
8 along with -- with the email renewal that was provided  
9 in response to OPC's Request for Production No. 77, and  
10 that is at CEL No. 172 for reference, that's correct  
11 OPC's cross Exhibit No. 11, but it's on the CEL as 172.

12 A Bear with me, I just want to make sure I have  
13 it in front of me.

14 Q Okay.

15 A Are you referencing the email or the document  
16 itself? Go ahead, I am -- I am prepared to answer  
17 either way.

18 Q Okay. So at CEL 172, so that is -- is the  
19 agreement between Gunster and UIF, is that correct?

20 A Yes.

21 Q Okay. At this point, this exhibit is the  
22 letter agreement dated October 26th, 2017, along with  
23 e-mails between you and the Gunster firm, dated October  
24 22nd, 2020; correct?

25 A That's correct.

1 Q And the agreement, it's basically a flat rate  
2 agreement for \$5,000 per month, or \$60,000 annually,  
3 for, quote, PSC and government -- government affairs  
4 consulting, end quote; correct?

5 A Yes, that's correct.

6 Q So in addition to the four -- \$45,827 related  
7 to lobbying the Legislature on the fair market value  
8 legislation, what, if any, other services did Gunster  
9 provide in the test year for the additional amounts  
10 included in the total of \$60,000 referenced?

11 A Gunster provides regulatory services to us. I  
12 am new to the rule-making process. My background is  
13 legislative and communications, and so in addition to my  
14 colleague Jared Deason, they provide regulatory services  
15 to us -- limited, I would call them.

16 Q Okay. Now, back to your testimony on page  
17 four, you further testified that the fair market value  
18 legislation, quote, "not only benefits UIF, but also the  
19 customer," end quote, correct?

20 A Yes.

21 Q So do you apportion any part of that 45,827  
22 lobbying costs for the fair market value legislation to  
23 the company to pay in addition to the shareholders  
24 paying it?

25 A I am sorry, can you repeat that question one

1 more time?

2 Q My question was: Did you apportion any part  
3 of that \$45,827 in lobbying costs for the fair market  
4 value legislation to the company?

5 A I don't know the answer to your question.

6 Q Okay.

7 A Can you be a little more specific?

8 Q Well, my question is: Do you intend for the  
9 customers to pay that entire amount?

10 A That -- I don't know the answer to your  
11 question. I apologize.

12 Q Okay. I understand. So --

13 A I mean, you said -- I am sorry, just let me  
14 ask one quick question. Did you say should they?

15 Q No. I was asking did -- did the company  
16 apportion any part of it to the company, or did you  
17 intend for the customers to pay all of it?

18 A I don't know the answer to your question, as I  
19 said.

20 Q Okay. Well, that's fine.

21 And finally, isn't it true that the  
22 Commission's practice for a number of years, if not  
23 decades, has been disallow costs for lobbying  
24 activities?

25 A I am familiar with that practice, yes.

1           **Q     Okay. Thank you.**

2           MS. MORSE: I have no further questions for  
3 this witness, Mr. Chairman.

4           CHARIMAN CLARK: Thank you very much.  
5 Staff?

6           MR. TRIERWEILER: Staff has no questions for  
7 this witness. Thank you.

8           CHAIRMAN CLARK: Commissioners? No  
9 Commissioner questions -- Commissioner Fay.

10          COMMISSIONER FAY: Thank you. Thank you, Mr.  
11 Chairman, I didn't want to cheat witness Snow out  
12 of his comments about the my connect utility since  
13 I had asked his -- his colleague about it.

14          My question was just trying to hit on, you  
15 know, the expertise that the testimony stated  
16 basically that there was a 50-percent acceptance  
17 rate in the first year, and I think these sort of  
18 things are very good for the customers, and of  
19 course, we take into account the customer  
20 experience and service based on the customer  
21 hearings that we've had, and so I was trying to get  
22 an idea if that's been beneficial, if you expect it  
23 to grow, and overall, if that 50 percent was a good  
24 acceptance rate? It sounds like it wasn't really  
25 compared to other utilities, but maybe you could

1 give me a sort of a quick answer on that.

2 THE WITNESS: So the company that we worked  
3 with to designed that -- that app and that portal  
4 is called Smart Energy Water. Their benchmarks had  
5 the first few years at between 30 and 35 percent.  
6 We are up around -- just to give you an accurate  
7 number, I just looked at the data a little while  
8 ago, we are at 43 percent.

9 The number that Mr. Flynn pointed out was old  
10 data that we had that did not remove people --  
11 customers who are no longer in our service  
12 territory anymore. So the most accurate data I  
13 have is at 43 percent, which is still excellent for  
14 a two-year number.

15 We have seen significant engagement in  
16 MyUtilityConnect that we are pleased with. It has  
17 also been a great tool during COVID to be able to  
18 point customers to be able to give them an easy way  
19 to sign up for payment arrangements and things like  
20 that when they are having hard times with their,  
21 you know, different financial situations.

22 COMMISSIONER FAY: Yeah, great. Thank you. I  
23 appreciate that.

24 I know the last rate case was a very different  
25 situation, but we have seen improvement with the

1 customer service communication on our end, so thank  
2 you for that answer.

3 Mr. Chairman, that's all I had.

4 CHAIRMAN CLARK: Thank you, Commissioner Fay.

5 Any other Commissioners have a question?

6 All right. Redirect?

7 MR. FRIEDMAN: None. Thank you.

8 CHARIMAN CLARK: All right. That concludes  
9 that witness.

10 Would you like to excuse your witness, Mr.  
11 Friedman?

12 MR. FRIEDMAN: Yes. Yes, I would like to ask  
13 that he be excused.

14 CHAIRMAN CLARK: All right. The witness is  
15 excused.

16 (Witness excused.)

17 CHAIRMAN CLARK: All right. We are pushing up  
18 on the five o'clock our hour. I am going to ask  
19 that dreaded question, Ms. Morse. I am going to  
20 puts you on the spot.

21 We have four witnesses left. Can you ballpark  
22 how long you are thinking would take to go through  
23 all four of them?

24 MS. MORSE: Let me see.

25 MR. REHWINKEL: Mr. Chairman?

1           CHAIRMAN CLARK: Yes, Mr. Rehwinkel.

2           MR. REHWINKEL: I probably am the longest pole  
3           in that tent, and I -- I can say that I have  
4           extensive cross-examination on rebuttal for Mr.  
5           Deason.

6           CHARIMAN CLARK: Okay.

7           MR. REHWINKEL: So it's -- I think it will  
8           take a good portion of the morning.

9           CHAIRMAN CLARK: Okay. No -- no problem at  
10          all. I wanted to make sure we couldn't knock at  
11          least that one out this afternoon. If that one is  
12          going to be a long one, we will start fresh  
13          tomorrow morning. I think that is certainly the  
14          best way to handle it. I appreciate -- I  
15          appreciate that.

16          I think -- does anyone see any reason -- just  
17          to help everybody do a little scheduling, anybody  
18          see any reason we should not finish this tomorrow?  
19          Nobody sees any reason, okay. Good. I am going to  
20          take your word for it. So those of you that have  
21          your schedule blocked out on Thursday can feel free  
22          to start filling that back up with something else.

23          All right. Is there anything before we  
24          conclude this afternoon?

25          MR. REHWINKEL: Yeah.

1 CHAIRMAN CLARK: Mr. Rehwinkel.

2 MR. REHWINKEL: Mr. Chairman --

3 CHAIRMAN CLARK: Yes, sir.

4 MR. REHWINKEL: -- just some administrative  
5 stuff, if I could.

6 CHAIRMAN CLARK: Yes, sir.

7 MR. REHWINKEL: What I am going to do -- you  
8 know, and I want to tell you I appreciate the  
9 prehearing officer and your staff working with the  
10 Public Counsel on the ground rules around the  
11 cross-examination exhibits, and I want to commend  
12 opposing counsel for the -- for the way they have  
13 been good to work with and honored the commitments.

14 What I am going to do, since I am going go  
15 working with a lot of exhibits tomorrow, I am going  
16 to email out -- if I don't get it tonight, it will  
17 be early in the morning -- a list of the exhibits  
18 that I am going go ask the company to preposition,  
19 or that they -- they can know that I am going to  
20 ask about, as well as the Commissioners and others,  
21 so we -- we maybe can get into a rhythm and go  
22 through them quickly. And so I will do that for a  
23 good number of the exhibits that I am going to be  
24 working with.

25 And I also would like to ask, we've had some

1 discussion about the GRIP order this morning,  
2 Commissioner questions. Mr. Deason quotes from it  
3 in his testimony. I have some cross-examination  
4 about that order that I don't really need to have  
5 the order in front of me, but if others would like  
6 it, I can email that order out to staff and  
7 opposing counsel, and people can have did if they  
8 want it. We don't actually have to put the orders  
9 in as exhibits, but if it helps the flow and people  
10 following, it will be available. I am not trying  
11 to reintroduce new evidence, but just to try to  
12 facilitate the flow tomorrow.

13 CHAIRMAN CLARK: Understood. I think that's  
14 common practice for us in regards to previous  
15 orders that have been issued, so, yeah, if you guys  
16 would like a copy of that, Mr. Rehwinkel will get  
17 one to you.

18 I appreciate that cooperation, and I  
19 appreciate any help we can get in -- in figuring  
20 out a better way to handle our exhibits. I kind of  
21 challenged staff during our break to let's work on  
22 the process. I realize that we are trying to get  
23 stuff in late -- or we are getting stuff in late,  
24 and it's just not enough time to renumber so that  
25 everybody is on the same page, but you have my

1           commitment we are going to do a better job going  
2           forward of trying to organize these exhibits.  
3           We've done really, really good so far. This is  
4           kind of our first little hiccup, and I think we  
5           probably have more exhibits here than we've had in  
6           other hearings, but you do have our commitment that  
7           we are going to work on -- on streamlining that  
8           process a little bit better.

9                     Thank you, Mr. Rehwinkel.

10                    Mr. Friedman, are you good with Mr.  
11           Rehwinkel's proposal?

12                    MR. FRIEDMAN: Yeah, that's fine. That's  
13           fine. My only question was asking what time are we  
14           starting in the morning?

15                    CHAIRMAN CLARK: I believe we are scheduled  
16           for 9:00 a.m. 9:00 a.m. Eastern time. That's  
17           tough on us Central time guys.

18                    MR. FRIEDMAN: Thank you, Mr. Chairman.

19                    CHAIRMAN CLARK: Anybody else have any  
20           comments before we break for the day?

21                    All right seeing none, thank you so much for  
22           your hard work today. See you at nine o'clock in  
23           the morning.

24                    We are adjourned.

25                    (Transcript continues in sequence in Volume

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## CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON     )

I, DEBRA KRICK, Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 16th day of February, 2021.



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DEBRA R. KRICK  
NOTARY PUBLIC  
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EXPIRES AUGUST 13, 2024