

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 20240108-SU

Application for increase in
wastewater rates in Monroe County
by K W Resort Utilities Corp.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 9

COMMISSIONERS
PARTICIPATING: CHAIRMAN MIKE LA ROSA
COMMISSIONER ART GRAHAM
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY
COMMISSIONER GABRIELLA PASSIDOMO SMITH

DATE: Tuesday, July 1, 2025

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

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

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

2 CHAIRMAN LA ROSA: Let's move to Item No. 9.

3 Item No. 9. I will let folks take their place.

4 I think we have got handouts coming. Sure. I
5 am assuming the parties also have a copy of this.

6 MS. CHRISTENSEN: OPC also has a handout to
7 walk through some of our comments.

8 CHAIRMAN LA ROSA: Thank you. Do that now, or
9 do that later, whichever you --

10 MS. CHRISTENSEN: Ms. Louisa is handing it out
11 now so that we will just avoid disrupting later.

12 CHAIRMAN LA ROSA: Awesome. Okay. Great.

13 All right. Let's go ahead and just get us
14 officially open. Mr. Sibley, you can give us an
15 overview once you guys are ready.

16 MR. SIBLEY: Good afternoon, Commissioners. I
17 am Matthew Sibley with Commission staff.

18 Item No. 9 is staff's recommendation regarding
19 KW Resort Utilities Corporation's application for
20 an increase in wastewater rates. KW is a Class A
21 wastewater utility providing service to
22 approximately 1,844 wastewater customers in Monroe
23 County.

24 KW requested a revenue requirement of 23.31
25 percent. Staff held a virtual customer meeting on

1 April 16th, 2025. Two customers spoke at that
2 meeting, one on rates issues and one inquiring
3 about the possibility of selling the utility.

4 Staff recommends no adjustments to the
5 requested proforma plant additions. However, staff
6 does recommend a net salvage adjustment as
7 discussed in Issue 5.

8 Additionally, staff is recommending a revenue
9 requirement increase of 9.18 percent. Furthermore,
10 staff recommends revising its miscellaneous service
11 charges to conform to the rule.

12 Representatives from the utility and the
13 Office of Public Counsel would like to address the
14 Commission. Staff is available for any questions
15 you may have.

16 Thank you.

17 CHAIRMAN LA ROSA: Thank you.

18 Commissioners? Well, let's -- let me go to
19 the parties. Start with Mr. Friedman.

20 MR. FRIEDMAN: Thank you, Chairman,
21 Commissioners. I am Marty Friedman on behalf of
22 the utility. Also with me is Bart Smith,
23 co-counsel, Mr. Chris Johnson, President of the
24 utility, and you probably know Frank Seidman back
25 here, who has probably done more used and useful

1 analysis than anybody in the state.

2 While we have some disagreement on other
3 issues, the major issue that we would like to focus
4 on is Issue 8, which is the used and useful of the
5 wastewater treatment plant. In the MFRs, the
6 utility filed it as 100 percent used and useful of
7 the wastewater treatment plant, and the staff sent
8 out seven sets of data requests, and none of those
9 data requests questioned or asked for additional
10 documentation questioning the 100 percent used and
11 useful determination. So you can imagine the
12 surprise when we see the staff recommendation that
13 used a simplistic approach of just a simple
14 mathematical computation without any analysis of
15 reality. And we handed out a map of the service
16 area so that you can see the position taken by the
17 utility that it's 100 percent used and useful, and
18 Mr. Smith is going to address the reality in more
19 detail.

20 Thank you.

21 CHAIRMAN LA ROSA: Go ahead, you are
22 recognized.

23 MR. SMITH: Thank you. Bart Smith on behalf
24 of KW Resort Utilities Corp. I am local counsel.
25 I probably spend about 90 percent of my time

1 actually dealing with developers and redevelopment,
2 so KW Resort on Stock Island, that's the island
3 right to the east of Key West, half of it actually
4 is in the City of Key West. If you want to know
5 why that occurred, nobody really knows, but half of
6 it is in the City of Key West.

7 So in 1999, the state Legislature passed
8 amendments to state law, it was 99-395. That
9 required all properties in the Florida Keys to
10 connect to central sewer that served advanced
11 wastewater treatment, or AWT, by the year 2010.

12 In response to this, can. KWRU modified its
13 plant to treat AWT, and through a partnership with
14 Monroe County, expanded its clutching system to
15 connect all properties on Stock Island. This
16 entire project was completed around 2007, and the
17 majority of connections occurred through 2010,
18 2011.

19 That was development itself, and use, itself,
20 has remained pretty much unchanged since 1999.
21 Except for redevelopment there has not been much
22 new development on Stock Island. It has been built
23 out with all development being redevelopment.

24 In a 2007 case before this commission, the
25 Commission first addressed used and useful for the

1 plant, when it was rated to 499,000 gallons before
2 plant expansion occurred in 2014. Although, the
3 utility's calculate the used and useful using the
4 simplistic formula with only 61.35 percent, the
5 Commission concluded that it should be 100 percent
6 for several reasons. The most important was that
7 it was designed and built to provide reuse and will
8 be an advanced wastewater treatment plant that was
9 mandated by the state of Florida in Monroe County
10 because of the environmental sensitivity of the
11 utility's service area.

12 Because of the mandated connections, the
13 utility plant flows grew, and by 2012, we were at
14 the point where we were required under DEP rules to
15 start the planning for expansion, and in 2014, we
16 obtained our permits to proceed with expansion.

17 The engineers determined that the appropriate
18 sizing for the plant expansion would be 849,000
19 gallons. This was the minimum plant expansion
20 necessary for build-out of the island with a safety
21 factor of 15 percent. Let me state that again.
22 849,000 gallons was for build-out with a safety
23 factor required by the DEP and the Ten States
24 Standards incorporating the DEP rule.

25 The DEP issued those permits, and

1 environmental groups appealed those permits. There
2 was a 14-day hearing before DOAH. I represented
3 the utility in those hearings. The environmental
4 groups wanted us to expand the plant to a million
5 gallons per day. And the idea was that at a
6 million gallons per day, there is another rule that
7 requires you to put in a deep well. Well, a deep
8 well, as opposed to shallow wells, goes from a cost
9 of about 100,000 a well to about \$14 million to
10 construct a new well. That one over double the
11 rates for the customers on the island.

12 We fought the appellants in that case, and had
13 to prove that the appropriate sizing for build-out
14 and the appropriate sizing of the plant was 849,000
15 gallons per day.

16 Ultimately, we prevailed. In that case, the
17 Court specifically cited to our engineers in
18 identifying that the plant had sufficient capacity
19 for build-out of the island with the safety factor
20 that would allow it, even at flows with the
21 seasonal tides, with the potentials for hurricanes,
22 would be the correct sizing for build-out.

23 The engineer actually identified that 650,000
24 gallons was what he estimated build-out would be,
25 and then it had a contingency factor just in case

1 there some redevelopment he couldn't identify in
2 some parts of the island.

3 After that occurred, we had another rate case.
4 And that next rate case, the plant was at 849,000
5 gallons, and we had designed it to those factors.
6 And in that case, the used and useful was
7 determined to be 71.5 percent. Now, at the time,
8 we were only treating 462,000 gallons per day. We
9 are now treating 660,000 gallons per day, 660,000
10 annual average daily flows. That is the build-out
11 number.

12 Instead of being found to be 100 percent used
13 and useful, we are now being provided a used and
14 useful of 77.6 percent. Six percent higher than
15 the two -- than the amount when we were 200,000
16 gallons left on an 850,000-gallon plant. That's
17 24 percent increase in flows, yet the actual used
18 and useful is only going up six percent.

19 We are at the place that there is probably
20 very limited to no new development that will have
21 an impact. We have identified one project, Bartlum
22 Yards, that has been approved. I was actually the
23 developer's attorney on it on Stock Island. It's,
24 like, some -- a lot of things stalled out because
25 of the financial markets we have. It may go. It

1 may not. If that does not occur. Then there is
2 realistically not much in the rate of growth.

3 In fact, in the last case, we were given
4 allowance for prudently invested funds. That was
5 supposed to be recovered over the last five to six
6 years. We are now seven years in, we have only
7 recovered 50 percent of it because the maximum that
8 realistically we can get to is this number. Based
9 on the allowance for prudently invested funds and
10 their estimate of our growth, the plant will have
11 exceed its useful life before we actually recover
12 on the plant that we invested in.

13 Our plant cannot operate at 100 percent. No
14 plant can. That would violate DEP rule. In fact,
15 if we got to 90 percent and we are growing at a
16 reasonable rate, we would have to be under
17 construction of a new plant that would exceedingly
18 increase costs for the ratepayers.

19 You have to allow for a safety factor. That
20 safety factor is 15- to 20-percent. We are there.
21 Our three-month average daily flow, which is to
22 look your peak flows, is about 100 percent.

23 We have never violated a DEP rule after a
24 hurricane due to overflows. We have not had
25 violations of our system, because it was designed

1 appropriately for build-out. That appropriate
2 build-out number is what we are at.

3 Based on staff's recommendation, any further
4 investment in the plant, that is, for new wells,
5 for new systems, we just invested in new blowers to
6 operate. Those blowers were 40 years old, well
7 past their useful life. The recovery on a
8 reasonable investment will always be 77 percent.
9 So you invest a dollar, your rate of return is on
10 77 cents. The utility expectation is a reasonable
11 expectation in their investment. This is not
12 reasonable to comply with FDEP rules.

13 There are many things that are going to occur
14 in the future. We are certainly looking at
15 potential where we are going to have to treat for
16 forever chemicals, which we will be required to do.
17 Those investment costs based on this used around
18 use full would only recover at 77 cents on the
19 dollar.

20 We were never asked regarding why we deemed it
21 at build-out and asked for 100 percent as part of
22 the staff's request. There are seven of them.
23 None of them were requested to identify what our
24 build-out is.

25 You can simply look at the map. There are no

1 single family platted lots. There is no places
2 really conceivable for development. I have
3 represented a lot of the development that's
4 occurred on this island over the last 20 years, and
5 I am happy to answer any questions.

6 We are a one-square-mile island in the Florida
7 Keys. We are part of an area of critical state
8 concern. Every part of growth is regulated by the
9 State. ROGO, PFAS went past its end. The state
10 just passed a bill SB 1730, that allocated about
11 800 units, 25 to Key West, which none of them we're
12 going to be capable of using. 506 to the county,
13 but only for vacant single family lots, which there
14 is not one vacant single family lot left on Stock
15 Island.

16 There is no ability for growth unless it's
17 redevelopment. We are at build-out. We believe
18 that justifies 100 percent used and useful, and we
19 request that you reject staff's recommendation and
20 go with the utility's request in 100 percent
21 build-out.

22 Thank you.

23 Oh, you know what, I forgot to mention,
24 though. There was also another case in 2020, you
25 did this. That case was Labrador Systems, where

1 the Commission found that because it had gone into
2 build-out, that it was 100 percent used and useful.
3 That was in 2020. I believe Mr. Friedman, Mr.
4 Seidman were on that case, and we believe this is
5 exemplary of that determination. We would hope
6 that you determine 100 percent used an useful.

7 Thank you.

8 CHAIRMAN LA ROSA: Great. Thank you.

9 I am going to be to OPC, but I got a feeling
10 you are not here for the same issue.

11 MS. CHRISTENSEN: No, we are not. I don't
12 know if you want to hear from your staff on that
13 issue first or raise my issues.

14 CHAIRMAN LA ROSA: I think -- I don't want
15 to -- let's not make this any more convoluted than
16 it needs to be, so let's handle this issue first
17 and then we will discuss.

18 MS. CHRISTENSEN: That's fine.

19 CHAIRMAN LA ROSA: Staff, thoughts?

20 MR. WOOTON: Orlando Wooten here.

21 So regarding the used and useful, according to
22 the utility's application and petition, the 100
23 percent, based off what they have placed in their
24 schedules, is based on the calculated flows are the
25 calculated growth and the usual way that that

1 growth and used and useful is calculated, but the
2 addition of those Bartlum Yard Resort and Bartlum
3 Boat Yard is what adds on an extra 109 GPD, 109,000
4 GPD on top of that 650 -- 650,000 GPD that they
5 mentioned earlier. That gets them to a, on their
6 calculations, that 90.5 percent used and useful,
7 which they then are asking for 100 percent built
8 out.

9 Staff did not feel like there was enough
10 justification in the record of those flows, similar
11 to what the utility stated, of the financial
12 conditions that could affect the yard resort and
13 the boatyard actually coming into service. With
14 that, we felt it was better -- it was more apt to
15 be conservative and stick to solely the calculation
16 as per the rule for calculating everything that
17 gets us to staff's recommended 77 percent growth.

18 CHAIRMAN LA ROSA: Understood.

19 Mr. Friedman.

20 MR. FRIEDMAN: If I might just respond to
21 that. It seems like what they are saying is that
22 you said there may be redevelopment of 109,000
23 gallons per day, but we don't know when that's
24 going to occur, so we didn't include it, and we
25 went with the strict mathematical calculation based

1 upon what your actually usage is. Now -- because
2 they didn't know when this redevelopment was going
3 to occur. It may never occur. And that's what
4 they are doing. They are taking the position that
5 we are not going to give you additional gallons for
6 growth, but we are not going to admit that any
7 development can take place, which means they are
8 built out.

9 And so you have got to do one or the other.
10 Either give us the -- saying, yep, that's going to
11 happen, or look at this map and tell there is
12 nothing -- there is no place to put anything.

13 And as far as redevelopment in real life,
14 anything can be redeveloped. Where you see this
15 happen most of the time, where used and useful is
16 100 percent even though it may not be calculatable
17 like the Labrador case that was mentioned, and it
18 happens a lot of times in mobile home communities.
19 DEP says you got to build a certain amount of
20 capacity for your development, you do it, and the
21 customers don't use that much water and you
22 don't -- or wastewater, and you don't have the
23 capacity -- you got excess capacity.

24 But even in that situation, you said, well,
25 they could redevelop it. They could tear down the

1 whole mobile home park and redevelop it into
2 condos, then you would have used all your capacity,
3 and that makes no sense at all.

4 There is no -- you can't guarantee that
5 anything is going to be redeveloped. It's built
6 out, and that's the fact. And the staff has
7 basically admitted that by saying, we don't agree
8 that you can get this additional capacity for a
9 redevelopment because we don't think the
10 development -- redevelopment is ever going to take
11 place. You can't have it both ways.

12 Thank you.

13 CHAIRMAN LA ROSA: Understood.

14 Staff, Mr. Ellis.

15 MR. ELLIS: Yes, with regards to the used and
16 useful calculation, the component here we are
17 discussing primarily is the growth amount, and that
18 is what -- the anticipated growth within five
19 years. And as we have heard today, there is a
20 certain uncertainty associated with whether or not
21 this growth will it be occurring on the system. It
22 may or may not be. And without that certainty to
23 charge other ratepayers for that amount, I think is
24 our concern here, where we did not include that
25 because the utility had not provided a certainty

1 that those flows will be occurring within the
2 five-year period required.

3 CHAIRMAN LA ROSA: What is the option of the
4 company if there was redevelopment? It sounds
5 like, from your example, that there could be a
6 higher density if something was redeveloped --
7 there could not be. Go ahead.

8 MR. FRIEDMAN: That's true anywhere.

9 MR. SMITH: If I can address that.

10 CHAIRMAN LA ROSA: Yeah.

11 MR. SMITH: So you have to go into the
12 regulatory framework of ROGO and building permit
13 allocations, rate of growth ordinance, that's
14 actually incorrect.

15 We identify the projects that are identified
16 to believed to be built in the next five years,
17 which Bartlum Yard is actually a development
18 agreement. That development agreement expires
19 within the next five years. It's actually got two
20 years left on it. So that's why it was identified
21 on the records as believed to be subject to
22 redevelopment.

23 We stated separately the system is at
24 build-out. That's a separate statement. There is
25 no question as to why these things were made. The

1 reason it was made was going back to the DEP, the
2 14-day trial I sat through, where the idea was that
3 this 10 -- you cannot build to 100 percent.

4 The staff says we are going to build -- have
5 10 ERCs a year annually as our growth, 10 ERCs at
6 160 gallons -- 167 gallons an ERC. That's 1,600
7 gallons a year, all right. So 1,600 gallons in a
8 year from 650,000 to 850,000, we are talking almost
9 100 years to get there, over 100 years to get
10 there. That is illogical. If that's what you are
11 stating, that's called build-out, and that's what
12 we were providing in the documents.

13 There is a question as to how much -- what do
14 you identify in the next five years? We identified
15 that. We also stated specifically we are at
16 build-out. We never requested any additional
17 justification.

18 I spent 14 days in a trial on this, went to a
19 DEP permitting on it. We just got questioned again
20 as part of our well renewal permits. This is an
21 ongoing thing with the Florida Keys, is build-out.
22 We -- the last ROGO cycle, which was 3,500 units,
23 ended in 2023. They just allocated 700 -- 850 for
24 10 years, but their utilization is limited to
25 single family lots for the county at 560. The City

1 of Key West got 25 for multi-family affordable
2 housing, 25 total to use over 10 years. It's de
3 minimis. So there really isn't actually
4 redevelopment.

5 And you can't move ROGOs from one area to
6 another. They are actually not transferable in any
7 really major respect. What you -- like, Stock
8 Island, could you move it from one place to
9 another? Yes. But you are not going to be able to
10 move it from Marathon, because it's a separate
11 jurisdiction. You are not going to be able to move
12 it from Key Largo. You can't move it from Key West
13 to Stock Island if it's outside the City of Key
14 West.

15 So the reality is, is none of these things
16 legally can happen. These things are not
17 transferable freely. And so the idea of -- in
18 saying, hey, listen, there is redevelopment. Yeah,
19 could you change something from a barbershop to a
20 brewery, or something small, but you can't predict
21 that.

22 And so at this juncture, the system was
23 designed to be at build-out at 650,000 gallons, and
24 that is in the record from the DEP. In fact, in
25 the 2015 rate case, when we were going through,

1 that was -- as part of that DOAH hearing, it would
2 -- all of that is in the records from those rate
3 cases. And so we sit here with not having been
4 asked one single question as to where all of this
5 information come from. I could readily have
6 provided it, but there was not a question asked.

7 CHAIRMAN LA ROSA: So after those projects
8 were identified that was requested, was there any
9 additional follow-up after that?

10 MR. SMITH: No. None.

11 CHAIRMAN LA ROSA: Okay. Staff, any comments
12 or follow-up from that? Is that accurate, that no
13 information was requested? And what would that
14 typical process look like?

15 MR. ELLIS: I don't believe there were any
16 questions associated with the used and useful on
17 that aspect, but the utility did not provide any
18 firm certainty of that.

19 With the earlier question, regarding the
20 possible, you know, things the utility could do,
21 once these do become more certain in the future, or
22 they become historic actual flows, they would be
23 able to come in and, at that time, file, and the
24 number would be revised at that time.

25 CHAIRMAN LA ROSA: Commissioner Clark.

1 COMMISSIONER CLARK: Just, I guess, a more
2 procedural question. This was a PAA, and I
3 understood there was just one little thing that we
4 were going to be looking at this morning. This has
5 blown into a hearing, and apparently we are fixing
6 to get testimony, and I don't know that everybody
7 is even prepared. I don't know exactly where we
8 stand in this process.

9 Am I wrong? Do we need -- is this the right
10 forum to be handling this? Is staff prepared to
11 deal with these issues this morning?

12 MS. CRAWFORD: Yes. The statute has a certain
13 timeframe in which the vote should be taking place
14 under the five-month clock.

15 Proposed Agency Action is freeform. What you
16 are hearing today is freeform. Staff's
17 investigation is a freeform activity. They do an
18 investigation, they do the data requests. It's not
19 a formal proceeding like a hearing, and parties are
20 allowed to participate and present whatever
21 information they believe may be relevant to the
22 vote.

23 Ultimately, the Commission needs to make the
24 best decision it can based on the information it
25 has before it. And as with any Proposed Agency

1 Action order, if a party believes the Commission
2 didn't quite have it right, they can request a
3 hearing on whatever issue or issues they believe
4 are germane.

5 COMMISSIONER CLARK: Can request a hearing
6 based on issue by issue, or do we have to take the
7 whole case?

8 MS. CRAWFORD: It's appropriate to vote on all
9 issues. They can protest whatever issue or issues
10 they believe are relevant.

11 COMMISSIONER CLARK: And, Mr. Friedman, have
12 you guys worked with staff on this issue, or is
13 this the first they are hearing of this too?

14 MR. FRIEDMAN: No, I mentioned it to Ms.
15 Brownless, you know, after the staff recommendation
16 came out. I asked her if the staff had any desire
17 to engage in any discussion about it because we
18 thought it was 100 percent used and useful. And,
19 you know, that's kind of where we left it.

20 I -- we, you know, we put the olive branch out
21 there, and, you know, they are just looking at a
22 mathematical number, and they just ignored what we
23 filed in the MFRs, that Mr. Seidman filed, just
24 ignored it. They ignored the obvious. I mean, it
25 doesn't take a rocket scientist to look at this map

1 and tell there is no place to build, so it's 100
2 percent used and useful. And if something is
3 redeveloped, then it may get redeveloped. But
4 staff has said, no, no, no, you thought it was
5 something that may be redeveloped, we don't agree
6 with it. It may not be developed in five years.
7 It may not ever be developed. That's the point.

8 The point is it's built out. We tried to show
9 the staff, here's something that may happen. And
10 they said, okay, thank you, but it ain't going to
11 happen in five years, and that may or may not be
12 true, so we are going to ignore it. So they went
13 with the pure mathematical calculation instead of
14 trying to look at what really is happening in the
15 world out there.

16 You know, all they got to do is look at it.
17 In the old days, you know, the engineers used to
18 actually go out in the service area and drive
19 around. I don't know if any of y'all were around
20 back in those days, but, you know, nowadays they
21 don't do that, and you got to rely on things like a
22 map like this.

23 And it's a clear. There is no dispute. There
24 is no facts. There is no evidence, Commissioner
25 Clark, that we are presenting any evidence. The

1 facts are there, and we are just asking you to look
2 at the real facts instead of some mathematical
3 calculation.

4 CHAIRMAN LA ROSA: At the end of the day, I
5 want to make the most informed decision as well.

6 Are there any more questions or comments
7 specific to this issue in front of us, which is
8 Issue 8? Because I do want to hear OPC's issue,
9 and then maybe we can come back and talk about this
10 thing as a whole.

11 Commissioner Fay.

12 COMMISSIONER FAY: Thank you, Mr. Chairman. I
13 just want to follow up with our staff real quick.

14 So to what's been discussed from a PAA
15 perspective, and what Commissioner Clark has sort
16 of pointed out, I mean, when we have a docket like
17 this, especially that has a lot of issues, you go
18 through what's in the record, if something is not
19 substantiated by the evidence put forward, which
20 the burden lies on the utility, what's your process
21 for that?

22 I mean, we are sort of hearing this criticism
23 of, like, well, this was never pointed out. I am
24 not sure it's your obligation to point it out, but
25 how do you sort of navigate that if you see an

1 issue in a PAA process to then, you know, put that
2 in a recommendation? Sure, Ms. Brownless.

3 MS. BROWNLESS: If I may respond to that,
4 please.

5 The PAA process is one that is an informal
6 process, which means that the staff asks questions,
7 the utility responds, right. It appears here that
8 there is a fundamental difference between, based
9 upon the evidence the staff has gathered, at this
10 time they disagree with the treatment for the used
11 and useful calculation. So that's a pretty
12 fundamental disagreement.

13 I think the staff did ask discovery. I would
14 acknowledge that Mr. Friedman did tell me that the
15 used and useful was going to be an issue, that he
16 discussed with you today.

17 You are free at this time to disapprove
18 staff's recommendation with regard to Issue No. 8
19 and go ahead and allow the company to have
20 100 percent used and useful. That's something that
21 you are entitled to do right now, and then that is
22 what will be reflected in the Proposed Agency
23 Action order that is issued.

24 The Proposed Agency Action order issued, as
25 Ms. Crawford has indicated, is capable of being

1 protested by any substantially affected person to
2 the extent that they have an issue with a specified
3 issue in the order.

4 So where we are right now is you have the
5 option of agreeing with Mr. Friedman, and saying,
6 for Issue No. 8, we disapprove the staff's rec and
7 think it ought to be 100 percent; or you could
8 agree with the staff, but you are basically going
9 to vote issue by issue, or at least in combinations
10 of issues, and so that's the options that you have
11 before you now.

12 CHAIRMAN LA ROSA: Statutorily, we have a time
13 limit on this decision, because it's a PAA, right?
14 Am I understanding?

15 MS. CRAWFORD: Correct.

16 MS. BROWNLESS: Right.

17 CHAIRMAN LA ROSA: What is does the protest
18 process look like? I am not trying to jump in, but
19 what does the protest process look like if --

20 MS. BROWNLESS: Well, the protest process is
21 pretty straightforward --

22 CHAIRMAN LA ROSA: The timeline.

23 MS. BROWNLESS: -- the order gets issued
24 within 20 days, and then there is 21 days
25 subsequent to that for any substantially affected

1 party to ask for a hearing on the issue. And, of
2 course, the company would be substantially affected
3 party, as with the Office of Public Counsel.

4 CHAIRMAN LA ROSA: Okay. Commissioner Fay.

5 COMMISSIONER FAY: Follow-up, Mr. Chairman,
6 and I agree with Ms. Brownless' analysis. I mean,
7 any substantially affected person can essentially
8 be part of that process, and that makes sense, and
9 I appreciate your response.

10 I am not sure I got an answer to my question,
11 so I am trying to make a determination of when, in
12 that process, staff can communicate to the party
13 that something is not met? And what I am getting
14 at is it's not -- for a lot of these things, it
15 doesn't seem like there is a yes or no. It seems
16 like there is a calculation. There is a number
17 base. We are now arguing essentially that it's at
18 100 percent. I am having, like, flashback
19 nightmares for ROGOs as a Cabinet aide, because,
20 like, I never thought I would see these things
21 again, and here they are.

22 I mean, it's -- the build-out is tough there,
23 and it's still an area of critical concern. There
24 is a pretty clear, like, limitation on that. So I
25 just -- I think it sort of sounds like, from both

1 perspectives, both perspectives are very valid,
2 it's just it's a matter of, well, how much do we
3 have that discussion up here as that information
4 comes to us live? And I think we just all want to
5 make sure we get it right. And I think what you
6 are saying is, like we could go either way --

7 MS. BROWNLESS: Yes, sir.

8 COMMISSIONER FAY: -- and that's perfectly
9 fine to do so. And then to your point, it's -- the
10 burden isn't on the Commission at that point, it's
11 on any individual -- I guess they are not parties
12 -- any individual who says, I don't like what that
13 decision included, and so, therefore, I want to
14 litigate, and they make a determination as to if
15 they want to go through the hearing process for
16 that.

17 So I think all things can be true. I just --
18 I agree with Commissioner Clark, in that it is
19 tough to make some of these calls as they come in
20 live through this process that we want to make sure
21 we get right based on the calculations.

22 And I think this is an example of one that's
23 very difficult, but I don't get the sense that
24 staff looked at this and said, there is absolutely
25 no way this could be 100 percent. I think if you

1 looked at it and made the determination this is
2 what we believed we would expect, as you have
3 talked about through the rule, and at that time
4 period, this may or may not happen, and that's
5 basically how you came to is that percentage. I
6 mean, is that an accurate -- I don't want to put
7 words in your mouth. Is that an accurate kind of
8 process that you came to the number you came to?
9 Because that could have been any variation of that
10 number depending on what you included or didn't
11 include.

12 MR. ELLIS: Correct. The primary factor here
13 is the certainty of that growth factor.

14 COMMISSIONER FAY: Okay. Great.

15 Mr. Chairman, that's all. Thank you.

16 CHAIRMAN LA ROSA: Okay. Commissioner Clark,
17 yeah, sure.

18 COMMISSIONER CLARK: So, Mr. Ellis, did you
19 guys ask them specific questions related to used and
20 usefulness? You didn't follow back up on that?

21 MR. WOOTON: No. No, no questions were asked
22 about used and useful.

23 COMMISSIONER CLARK: And I will just
24 reiterate -- thank you, Commissioner Fay, for
25 putting that more articulate than I could. I want

1 to get it right. I realize we have two options
2 here, but it's going to take -- I mean, this isn't
3 something that's going to happen in five minutes
4 for me to be able to deduce and determine what is
5 the correct, you know, used and useful percentage
6 here. I think that that's going to -- certainly,
7 something we need some more time with. So I don't
8 know how we want to handle that, but I kind of feel
9 like we are in a quandary here.

10 CHAIRMAN LA ROSA: Sure, Commissioner Graham.

11 COMMISSIONER GRAHAM: Maybe we are all saying
12 the same thing and going around the same circle.
13 What I think it comes down to is, with this new
14 information, or the new perspective, would staff
15 change its recommendation on Issue 8?

16 MR. ELLIS: Staff is aware of with regards to
17 the collection system and the map of the facility.
18 We had previously reviewed that. We are still
19 recommending 100 percent for the collection system.
20 It's only the plant itself and the associated
21 flows.

22 The utility suggested there is approximately
23 12 to 13 percent additional flows that could come
24 on-line possibly within three to four years. When
25 those do some on-line, I think we will be much

1 closer to 100 percent of that, but it's that
2 uncertainly of whether or not that would be. And
3 our concern would possibly be overturned over
4 uncertainty of it necessarily being within that
5 five-year timeframe, you know, of a guaranteed
6 amount.

7 CHAIRMAN LA ROSA: I feel like Mr. Friedman
8 doesn't agree with that.

9 MR. FRIEDMAN: No, I mean, if what he is
10 saying is that redevelopment may never occur, and
11 that's what we are saying. He is right. It may
12 never occur.

13 They built a plant that DEP said this is how
14 big it's got to be. We built that. It's at
15 capacity for that build-out, and so if he's -- he
16 can't say, you are not going to get this in five
17 years, but then turn around and say, oh, but, you
18 know, you are not 100 percent used and useful
19 because it may come at some point in the future.
20 It may fall out of the sky and somebody wants to
21 redevelop something, and that is illogical.

22 You need -- and, you know, the staff sent
23 seven sets of interrogatories. I mean, they asked
24 a ton of questions, but not one -- they questioned
25 a whole bunch of expenses. I mean, they questioned

1 everything except one thing. They didn't question
2 our application saying the plant was 100 percent
3 used and useful. That's the only thing they didn't
4 question. They questioned every other number and
5 everything else in the application. So that's why
6 I am surprised.

7 And you are right, do they have the obligation
8 to ask a question? No. But in this process,
9 that's what it's about. You get information, and
10 if they thought -- they saw something and said,
11 well, we don't agree with this 109,000 gallons, you
12 know, they didn't agree with an expense account.
13 They asked the company, explain the expense. Why
14 didn't they ask, explain this 109,000? They
15 didn't. They just ignored it and went with some
16 easy fix, which is a mathematical calculation.

17 And mathematical calculations are, you know,
18 they are good for some things, but that's why the
19 used and useful rule has an exception. You don't
20 just use the mathematical calculation. You have to
21 look at a big picture, and one of the elements of a
22 big picture is, is the system built out? And there
23 is no way anybody can look at this map and say it's
24 not built out. There is no place to build
25 anything, and that's why it's clear that it's 100

1 percent used and useful, and it's easy to reach
2 that determination.

3 MR. SEIDMAN: I would like to say something.
4 Commissioners, my name is Frank Seidman, I am a
5 consultant for the utility.

6 I just want to add, that in a sense, it
7 doesn't matter whether they calculate or we
8 calculate 70 percent or 90 percent for the utility
9 to be determined to be 100 percent used and useful,
10 because what determines is, is the utility area
11 built out?

12 If you look back at the Labrador case that
13 you -- this commission looked at just a few years
14 ago, the used and useful calculation for that case
15 was approximately 39 percent used and useful, and
16 the Commission determined it was 100 percent used
17 and useful because it was built out.

18 This utility's service area is built out. All
19 that's going on is redevelopment, which means that
20 flows will change from year to year if structures
21 are changed, if things are taken down and replaced,
22 but the service area itself has no place to go.
23 It's built out, just like Labrador is built out.
24 So you don't need to concentrate on the percentages
25 as much as you do on the fact of what the service

1 area looks like, and that's a precedent that you
2 have set.

3 Thank you.

4 CHAIRMAN LA ROSA: Great. Thank you.

5 MS. BROWNLESS: And, Commissioner --

6 CHAIRMAN LA ROSA: Yes.

7 MS. BROWNLESS: -- if I may.

8 CHAIRMAN LA ROSA: Please.

9 MS. BROWNLESS: Where you are on this issue is
10 you have heard staff's opinion based on their
11 analysis of the rule and what's required; you have
12 heard the company's opinion, right. I don't think
13 it's contingent upon the staff asked, the staff
14 didn't ask. I think it's pretty straightforward.
15 You can agree with the staff. You can agree with
16 the company. It's pretty easy. And we are going
17 to be voting on these issues as a block, and I
18 assume this issue separately, since there has been
19 a lot of conversation about it.

20 We also need to hear from OPC with regard to
21 what their issues are, because I believe those are
22 different than used and useful.

23 CHAIRMAN LA ROSA: Yeah.

24 MS. BROWNLESS: But you can go ahead and vote
25 on how you want to proceed on this issue at this

1 time.

2 CHAIRMAN LA ROSA: Okay. Let's -- thank you.
3 That's helpful.

4 I want to hear from OPC first. I want to hear
5 their issue. I want to make sure that there is not
6 anything that overlaps or somehow gets tangled in
7 between, and then we are going to take -- after we
8 hear OPC and flesh out whatever needs to, we will
9 take a five-minute break. I will consult with
10 legal, and then we will take the next steps from
11 there.

12 OPC, you are recognized.

13 MS. CHRISTENSEN: Yeah, certainly. And good
14 afternoon, Commissioners. Patty Christensen with
15 the Office of Public Counsel.

16 First, I wanted to acknowledge the work staff
17 has done. OPC supports many of the adjustments
18 proposed by staff in this recommendation. One of
19 the adjustments we did not take issue with was used
20 and useful. And truthfully, we don't know what OPC
21 would do if the Commission were to vote as 100
22 percent used and useful. That would be something
23 we would have to look at with the PAA as a whole as
24 it gets voted out.

25 However, we all -- and I also wanted to

1 mention specifically that OPC supports staff
2 recommendation not to grant the waiver on Issue 1
3 related to net salvage since KRW -- or KWR has not
4 met the statutory criteria that the application of
5 the rule to the utility creates a substantial
6 hardship, or violates principles of fairness, or
7 that the utility has met the underlying purpose of
8 the statute by other means. However, specifically
9 today we have disagreement with the treatment that
10 staff is recommending on several issues, and those
11 are Issue 4 and Issue 9.

12 In Issue 9, on page 16 of the recommendation,
13 KWR reflected an adjustment to increase accumulated
14 depreciation by \$10,059 to recognize the
15 annualization of depreciation expense of plant
16 added during the test year.

17 Annualization is equivalent to using the
18 year-end test balance. This is an error. First,
19 Rule 25-30.433, rate case proceedings, subsection
20 (5), says that the averaging method used by the
21 Commission to calculate rate base and the cost of
22 capital shall be 13-month average for Class A
23 utilities.

24 If you flip the recommendation to look at page
25 three, the first line of the recommendation says

1 that KWR is a Class A wastewater utility. So the
2 Commission must use a 13-month average for setting
3 rate base and cost of capital, which includes the
4 accumulated depreciation.

5 Second, as Issue 1 demonstrates, the utility
6 could have requested a waiver from using the
7 13-month average and requested to use the end of
8 the year balance if they could have shown they met
9 the criteria, but in this instance, the company
10 chose not to ask if a waiver of the provision of
11 the rule that clearly is applicable to them.

12 As the staff recognized in its recommendation
13 on page 16, the annualization of accumulated
14 depreciation creates a mismatch with used -- with
15 the use of the 13-month average in the test year.
16 However, the staff's proposal to undo the affect
17 created by the mismatch compounds this error by
18 annualizing the plant in service by \$224,208, as
19 seen on page nine of the recommendation in Issue 4.

20 The rationale that staff relies on to make
21 these adjustments are that proforma plant added
22 after the test year is annualized and is a
23 convention of ratemaking, therefore, accumulated
24 depreciation in plant in service in the test year
25 should also be annualized, because it more clearly,

1 or more accurately, as asserted by the staff,
2 represents rate base in the test year.

3 This argument is more appropriate rationale
4 for looking at a change to the rule going forward
5 not a backdoor attempt to rewrite a rule on the fly
6 without the appropriate process. However, this is
7 insufficient to ignore the Commission's own rule
8 requiring the use of the 13-month average.

9 Section 120.542 addresses waivers and
10 variances of applicable rule requirements, Section
11 (1) says that a public employee is not a person
12 subject to the regulation under this section for
13 the purpose of petitioning for a variance or a
14 waiver to the rule that affects the public employee
15 in his or her capacity as a public employee.

16 So the Commission staff cannot waive the
17 application of the requirements of this rule, which
18 is clearly applicable even if you assume that this
19 was a de facto request for a rule -- a waiver of
20 the rule. And we know KRW did not petition for a
21 waiver from, or a variance from the MFR rule.
22 Therefore, there is no legal ground for the
23 Commission to deviate from the application of its
24 rule as plainly written.

25 As such, the Commission should reject these

1 erroneous adjustments. The revenue requirement
2 impact of the annualization of accumulated
3 depreciation adjustment is \$18,758, and with the
4 plant in-service, it is \$11,407.

5 OPC also has an issue with two areas where the
6 Commission staff is deviating from past Commission
7 practice without an explanation in the
8 recommendation. I have already provided you a
9 handout as an exhibit to walk through.

10 First, looking at page 55 of the
11 recommendation, which I believe is your schedule
12 for the capital structure --

13 COMMISSIONER FAY: Mr. Chairman, I am just --
14 I am lost here, so --

15 CHAIRMAN LA ROSA: Yeah, so page a 55 of the
16 recommendation schedule, and this is number two?

17 MS. CHRISTENSEN: Schedule 2, which is the
18 capital structure simple average. If you look at
19 line 12 --

20 CHAIRMAN LA ROSA: Okay. Hold on a second.
21 Let's make sure we get there.

22 MS. CHRISTENSEN: Certainly.

23 CHAIRMAN LA ROSA: It's in -- it's towards the
24 very end --

25 MS. CHRISTENSEN: Correct.

1 CHAIRMAN LA ROSA: -- Issue 34, the numbers
2 get small on whatever it is on this page.

3 MS. CHRISTENSEN: Right. And if you can find
4 line 12 on that schedule, and you look at the pro
5 rata adjustment column, you will see that there is
6 a pro rata adjustment being made for customer
7 deposits.

8 Customer deposits are a cost-free non-investor
9 source of capital that is being prorated down to
10 the rate base here. However, this proration
11 dilutes the impact of the customer funded source of
12 capital.

13 If you look at the first page of the handout
14 that I provided to you, this was a Table 14 from
15 the prior rate case. As you can see, for customer
16 deposits under pro rata adjustments, there were no
17 pro rata adjustments made in the last rate case.

18 The second deviation from past Commission
19 practice without any explanation is regarding
20 applying the four-percent discount for early
21 payment of property taxes. And this is discussed
22 in Issue 22 in Schedule No. 3-A, I believe -- let
23 me make sure -- where you -- line five talks about
24 taxes other than income.

25 If you look at the second page of the handout

1 that I was provided, this was an adjustment made by
2 this commission recently in Sunshine, where the
3 same accounting firm, Ms. Swain, applied a
4 four-percent discount for early payment of taxes,
5 and that's shown on line 32 of that handout, and
6 it's page six of seven.

7 Then if you go to the next page, page three of
8 the handout that I provided to you, if you look
9 line 44, at the millage rate, and under adjustments
10 to property taxes, you can see that there was no
11 four-percent early payment discount provided in
12 this current rate case. However, if you go to the
13 last handout, this is a copy of the --

14 CHAIRMAN LA ROSA: You mean the last page of
15 the handout?

16 MS. CHRISTENSEN: The last page of the
17 handout. If you flip it over to the back of that
18 page, number three, it clearly shows that there
19 are -- there is a four-percent early payment
20 discount available for taxes.

21 CHAIRMAN LA ROSA: This is the page that says
22 number 25 at the bottom?

23 MS. CHRISTENSEN: It's the tax bill itself.

24 CHAIRMAN LA ROSA: Oh, gotcha. Okay.

25 MS. CHRISTENSEN: Yeah. And if you look at

1 the backside of the tax bill, line item No. 3, you
2 will see discounts for early payment, and then
3 there is a four-percent discount for payments made
4 in November. So there is a four-percent discount
5 available.

6 Since the rates are being set on a going
7 forward basis, this discount should be applied for
8 the benefit of customers as it has been applied in
9 past -- in other Commission application and
10 practice. The revenue requirement impact for not
11 prorating customer deposits is \$1,550. And the
12 revenue requirement impact of applying the
13 four-percent early payment discount for the
14 property taxes would be \$714.20.

15 And that concludes my comments. Thank you.

16 CHAIRMAN LA ROSA: Thank you.

17 I don't know if I go to Mr. Cicchetti or Ms.
18 Norris.

19 MR. CICCHETTI: Ms. Norris is going to address
20 the annualization issue and the property tax issue,
21 and I will address the cost of capital issue.

22 CHAIRMAN LA ROSA: Perfect.

23 MS. NORRIS: I will start off first, which is
24 going from the top with the annualization
25 adjustment. And so staff stands by its analysis of

1 this adjustment being made to the historic test
2 year, which is calculated on a 13-month average
3 pursuant to the rule, and so this is recognizing
4 plant investment and known and measurable change in
5 the test year.

6 Due to the timing of it, the full amount would
7 not have been recognized. The utility requested
8 the adjustment to recognize two of the components
9 to annualize the depreciation expense, so a
10 corresponding adjustment was also made to
11 accumulated depreciation.

12 This has been approved by the Commission in
13 prior cases. And a recent dockets, the Sunshine
14 case brought to lit light a little bit more of an
15 issue to mismatch, and there is witness testimony,
16 and considered that the corresponding plant isn't
17 at the full amount, even though the adjustment to
18 reflect all the depreciation expense for the asset.
19 And so in that proceeding, that was where the
20 additional adjustment to recognize the plant as
21 well was made.

22 And so that's really kind of the genesis as
23 far as making the additional adjustment, but as it
24 pertains to the historic test year and the 13-month
25 average, what's verified by the audit staff, that's

1 in compliance. Those balances still line up with
2 that.

3 And the rule, I guess, was really rate case
4 proceeding, so again, my understanding is what we
5 verify in MFR filings have a utility adjusted
6 amount. There is also -- there is a couple of
7 different types of adjustment. There can be
8 proforma, things that are not all recognized in the
9 actual historic test year, as well as test year
10 adjustments to the actual per books amount, and so
11 that's how staff viewed this, is really recognizing
12 again for prospective ratemaking purposes the
13 additional depreciation expense, again, but for
14 those assets that are verified in service. And so
15 that's the background as far as that adjustment.

16 For property taxes, that just appears to be a
17 misunderstanding in what the percentage was
18 referenced in the filing, because sometimes it's
19 adjusted with a discount. So acknowledging that
20 that -- I think it's about \$700 of an impact on the
21 revenue requirement, but, yes, that is Commission
22 practice as far as recognizing and eliminating the
23 recovery just to that amount, so that's property
24 tax expense.

25 MR. CICCETTI: Good afternoon, Mr. Chairman,

1 Commissioners.

2 Just something quick with regard to
3 annualization. That plant is in-service, and it's
4 a known and measurable change, and it has been
5 Commission practice to recognize known and
6 measurable changes. Otherwise, after this docket,
7 the Commission -- or the company would not be able
8 to earn its allowed return on its investment that
9 it made.

10 With regard to the cost of capital, funds are
11 fungible. And what that means is equity dollars go
12 into the cash register, debt dollars go into the
13 cash register, customer deposit dollars go into the
14 cash register. And when you take a dollar out of
15 the cash register, are you holding an equity
16 dollar, debt dollar, customer deposit dollar, you
17 don't know, and it doesn't matter. What the cost
18 of all those funds represent is the overall cost of
19 capital to the utility.

20 What OPC is asking you to do in this instance
21 is to, for the adjustment that was made to rate
22 base, and that adjustment has to do with the
23 non-used and useful. They are asking you to
24 allocate the cost of customer deposits, which is
25 lower, to what's included in rate base.

1 So they are asking you to say the company has
2 an overall cost of capital, we want to allocate a
3 lower cost of capital to the non-used and useful --
4 or a higher cost of capital to the non-used and
5 useful, and allocate a lower cost of capital to the
6 items that are used and useful. And that just
7 violates financial theory, and that's not fair to
8 the company. It's a policy that would not allow
9 the company to earn the allowed return that you
10 have set.

11 This issue goes back from the day I started
12 here many, many years ago, some staff members tend
13 to believe that you should make that allocation.
14 It's been done both ways, but the vast majority of
15 ways is that you prorate in a historical test year
16 over all sources of capital so that you can set
17 fair, just and reasonable rates.

18 And the last thing I would point out is there
19 is a difference between when you are working with a
20 historical test year and when you are working with
21 a projected test year. With a historical test
22 year, you are looking at cost -- money that's been
23 spent and costs that have been incurred, so there
24 is -- you should apply the overall cost of capital.
25 With a projected test year, you are building the

1 balance sheet, so you want to get the balance sheet
2 right on a projected basis. How many customers are
3 you adding? How many customer deposits are you
4 charging for, and how much debt are you going to
5 add? How much equity?

6 So if the company had a major project and they
7 said, we are going to finance that with debt and
8 equity, and then they said, oh, we have decided we
9 are not going to do that project. Well, if you
10 would remove that debt and equity from the balance
11 sheet in order to get the overall, projected
12 overall cost of capital correct.

13 But generally speaking, the overall cost of
14 capital should be what's applied to the items in a
15 rate base, whether you are removing it for used and
16 useful purposes or calculating the return required.

17 MS. CHRISTENSEN: Can I briefly respond to
18 those?

19 CHAIRMAN LA ROSA: Yes, please.

20 MS. CHRISTENSEN: Okay. Regarding the
21 customer deposit issue, and the reason that I said
22 if you prorate this down to rate base, you dilute
23 the benefit of the customer dollars. You add the
24 customer deposit dollars into the cost of capital
25 as a zero free cost loan to the company because

1 cash is fungible and they can use that to support
2 growth, but if you prorated down to rate base for
3 adjustments that the staff makes to rate base, you
4 are, in effect, diluting the impact of that zero
5 cost free money to the company.

6 The cost of the weighted cost of capital is to
7 ensure that the company is earning a return on the
8 money they invest in plant and other items on which
9 they get to earn a return. And if you include the
10 customer deposits and you dilute the impact of
11 that, you are allowing essentially a little bit --
12 and I will admit it's an incremental amount -- them
13 to earn a little bit more money on investment money
14 that they didn't put into invest in the plant in
15 rate base. That would be my response to why that's
16 not a good policy.

17 And as Mr. Cicchetti has discussed, the
18 Commission has clearly done it both ways. This is
19 not really a used and useful adjustment from our
20 perspective. It's to recognize that this is cash
21 that becomes available for the company to use for
22 investments that's being provided by the customers.
23 It's not a source of cash that's coming from
24 investors and, therefore, the investors don't
25 deserve to earn a return on that money. That's the

1 basic argument.

2 The other arguments raised about accumulated
3 depreciation in the plant in-service, as the rule
4 is clear that you provide -- you use a 13-month
5 average, and you can make per book adjustments, but
6 per book adjustments are not the same as
7 annualizing whatever plant is added during the test
8 year. Annualization and a per book adjustment are
9 not the same thing.

10 In past cases, if that plant were to cause the
11 company, or if the company believed that those
12 plant additions were sufficient that it would cause
13 them to earn outside whatever hundred basis point
14 range the Commission ultimately approves for them,
15 what they could do is seek an approved -- and
16 request that the Commission approve some sort of
17 subsequent year adjustment. But you don't preempt
18 them by making a annualization adjustment because
19 costs, as the Commission is well aware, are going
20 to change the minute that the Commission approves
21 the rates going forward. There will be additional
22 cost and expenses, and there will be costs that are
23 reduced, but, you know, that's why you use the
24 13-month average. That's what the Commission rule
25 says, and it doesn't authorize annualization of

1 plant or accumulated depreciation, and that's why
2 the company would have had to request a waiver to
3 use a year-end average.

4 And as I said before, I don't believe that as
5 the rule is written now, it allows for these
6 annualization type adjustments that the Commission
7 staff is proposing here, and these were issues that
8 were raised I know in the prior Sunshine case that
9 is currently now under appeal to the First DCA, so
10 that may get resolved by the Court, but I did want
11 to make the Commission aware of that.

12 MR. CICCHETTI: Mr. Chairman, if I could
13 respond?

14 CHAIRMAN LA ROSA: Please.

15 MR. CICCHETTI: The term pro rata means in
16 proportion. So if you are doing two in proportion,
17 you are not diluting anything. To the contrary.
18 If you make an adjustment over all the other
19 sources of funds but not customer deposits, you are
20 making customer deposits a larger percentage of the
21 funds in a capital structure than actually exist.
22 You are overemphasizing that.

23 With regard to the annualization adjustment,
24 if you are going to make a known and measurable
25 change, you are not going to equal what's on the

1 13-month average on the balance sheet, so the known
2 and measurable change takes you away from equaling
3 what's on the 13-month average on the actual
4 balance sheet.

5 CHAIRMAN LA ROSA: Excellent. All right.
6 Thank you.

7 MR. FRIEDMAN: Mr. Chairman, may I make one
8 small comment?

9 CHAIRMAN LA ROSA: I thought you weren't in on
10 this issue.

11 MR. FRIEDMAN: It's taking money out of my
12 pocket, I am in on the issue.

13 CHAIRMAN LA ROSA: Yeah. Excellent. Go
14 ahead.

15 MR. FRIEDMAN: I think fundamentally on the
16 accumulated depreciation, the issue is really
17 interpretation of that statute, and we dealt with
18 that ad nauseam in the Sunshine case, and it was
19 actually in the one before that and the one before
20 that. So we've dealt with that ad nauseam.

21 Now, on the early payment for real estate
22 taxes, if, in fact -- and we are going to get a
23 four-percent deduction. If, in fact, that's not
24 included in here, that four-percent deduction, then
25 we will, you know, we concede that it should be,

1 because we are going to pay our taxes early. We
2 are going to get that four percent. The customers
3 shouldn't pay that extra \$723.

4 So if, in fact, it's not in there, and I
5 didn't know one way or the other because I didn't
6 look at that issue, but if the revenue requirement
7 does not consider that the utility is going to get
8 a four-percent reduction for its real estate taxes,
9 then it should, and you should make that adjustment
10 if the staff says it wasn't made.

11 CHAIRMAN LA ROSA: Can we get verification if
12 that's the number, four percent of -- yeah,
13 that's -- right --

14 MS. NORRIS: The documentation they provided
15 helped to clarify that number that was previously
16 thought to include the discount, but that was just
17 an oversight in looking at that, but, yeah, so the
18 documentation at the back on -- if you flip over to
19 the back, I think they have -- it's in pencil, but
20 it does show that, and then you can verify. So
21 based on that, I do agree, as far as that, and
22 again, it's about \$700 for that to reflect.

23 CHAIRMAN LA ROSA: Is that accurate? I
24 don't -- I don't -- I am not -- I am not --

25 MR. FRIEDMAN: It is what it is.

1 CHAIRMAN LA ROSA: -- four percent of \$3,160,
2 am I adding that --

3 MS. NORRIS: So I think I just recalculated,
4 yes, it's about \$700. And then there is a
5 non-used -- there was already an non-used and
6 useful adjustment removing some of that property
7 tax anyway, so again, it's a little over or under
8 700, but I am not -- and again, I don't know that
9 that would, as far as rates, given the amount, but
10 we do agree that that's not included in the millage
11 rate.

12 CHAIRMAN LA ROSA: Okay. Commissioner Fay.

13 COMMISSIONER FAY: Yeah, Mr. Chairman, I think
14 I am with you, so I have four percent discount of
15 3,100 is \$124, so what -- I guess I am not getting
16 that calculation, I am obviously missing something.

17 MS. CHRISTENSEN: Our calculation was \$714 and
18 I believe 20 cents.

19 MS. NORRIS: I think I got 707.

20 COMMISSIONER FAY: And can you show us where
21 that calculation is on what you provided --

22 CHAIRMAN LA ROSA: Yeah, walk us through that,
23 because that's not --

24 MS. NORRIS: Yes, so you would apply the
25 four-percent to the millage rate to get the

1 discounted amount rate. So if you go to the
2 Sunshine, is a good example, right. I think it's
3 the second page. I don't have -- oh, here. So
4 essentially you would apply that four-percent
5 discounted rate to the millage rate, and that's the
6 rate you would apply to the proforma plant
7 additions. This is isolated to that, what was
8 applied to the proforma plant additions, and so you
9 calculate a difference based on the discount
10 rate --

11 COMMISSIONER FAY: I got it. It's a
12 four-percent adjustment to the millage rate, and
13 then the millage rate is applied to that
14 difference --

15 MS. NORRIS: Right.

16 COMMISSIONER FAY: -- instead of -- gotcha.
17 Okay.

18 COMMISSIONER CLARK: But we are not looking at
19 Sunshine's. We actually have KW's here in front
20 us.

21 MS. NORRIS: Correct.

22 COMMISSIONER CLARK: The bill is \$3,160, so
23 you are saying you can't take four-percent discount
24 off of that and get \$126, which is the number I
25 keep coming up with?

1 MS. NORRIS: So I believe that was just --
2 that was just, I guess, provided to demonstrate the
3 millage rate. That's the rate that was applied to
4 the proforma plant additions the utility was
5 proposing, so that would not be part of when this
6 would have been billed in the historic test year,
7 and so that's -- that was used to calculate the
8 proforma on property tax adjustment. So that's why
9 it's a little bit of a different set of numbers.
10 They are using it, I believe, to demonstrate the
11 rate and what it should be applied to, if that
12 makes sense.

13 MS. CHRISTENSEN: Yeah, that was for
14 demonstrative, just to show that there was a
15 four-percent discount rate available. And
16 certainly, we are happy to accept what staff
17 calculates the discount should be.

18 CHAIRMAN LA ROSA: Okay. All right. All
19 right. Let's -- Commissioners, are there any
20 questions? Then I am going to take a break before
21 we, obviously, conclude.

22 COMMISSIONER FAY: Okay. Great, thank you,
23 Mr. Chairman.

24 Yeah, so it sounds like that issue, to a large
25 degree, is resolved, other than just maybe at that

1 break we will get clarity as to what that number
2 is. I am sure there is some fallout built into
3 that that staff can work through if that's the
4 change.

5 I want to get -- we got the -- from Mr.
6 Cicchetti, we got sort of the technical response to
7 the 13-month calculation, but I want to get the
8 legal one, I mean, I guess.

9 So we wouldn't typically see a waiver for how
10 this calculation is done historically that I know
11 of. I am trying to figure out, is it -- yeah, is
12 it a deviation that would require a waiver? I
13 mean, it almost seems like a technical calculation,
14 but I want to make sure I understand. Ms.
15 Christensen is basically saying the rule says there
16 is a 13-month calculation requirement, and,
17 therefore, if you are not using that, it's
18 annualized, then you get a different number.

19 MS. BROWNLESS: Well, I think that if you look
20 at the first issue here that had to do with
21 depreciation accounting, and at that -- for that
22 issue, we did --

23 COMMISSIONER FAY: What issue are you on, Ms.
24 Brownless?

25 MS. BROWNLESS: It's Issue No. 1.

1 COMMISSIONER FAY: Okay.

2 MS. BROWNLESS: Staff rec, page four.

3 COMMISSIONER FAY: Okay.

4 MS. BROWNLESS: If you look at that, the
5 position we took with regard to adjusted for net
6 salvage depreciable property adjusted for net
7 salvage, we said that the company didn't want to
8 adjust it, and did not adjust it for net salvage
9 but should have because it was a deviation from the
10 rule. And since the company didn't mention that, I
11 assume that they are okay with both that
12 interpretation of the law and the fact -- and our
13 conclusion, which was that they did not
14 substantiate a reason to waiver from that rule
15 provision.

16 COMMISSIONER FAY: Okay. So then based on
17 that, Ms. Christensen, what's the difference that
18 you have?

19 MS. CHRISTENSEN: The difference that we have
20 is that under the rate case filing rule, the rule
21 that I cited, 25 -- I will give it to you in just a
22 second, let me get there. One moment.

23 COMMISSIONER FAY: 30.433?

24 MS. CHRISTENSEN: Yeah, I believe that is
25 correct, but I just wanted to double check. Yeah.

1 25-30.433, the rate case proceedings rule. It says
2 that the averaging method to be used by the
3 Commission to calculate rate base and the cost of
4 capital shall be a 13-month average for a Class A
5 utility.

6 If you look at, like I said page, three of the
7 recommendation, it is clear that KWR is a Class A
8 wastewater utility, so the Commission must use a
9 13-month average for setting rate base and the cost
10 of capital, which includes the accumulated
11 depreciation and the plant in-service. And that if
12 there was a deviation to request --

13 And essentially my argument is, if you
14 annualize the plant or the accumulated
15 depreciation, you are essentially using a year-end
16 balance, because you are annualizing it, you are
17 using essentially the balance of what that account
18 would be on the last day of the test year, rather
19 than the average of the 13-month balances for those
20 accounts over the test year, and so if a plant
21 can --

22 COMMISSIONER FAY: I don't mean to interrupt
23 you. I get your argument. I am trying to figure
24 out where the calculation is.

25 MS. CHRISTENSEN: The calculation is, you know

1 what, is the balance during -- for the 13-month
2 average, or what is the balance of those accounts
3 at the end of the year? That's the argument.
4 There is no calculation. This is just what is the
5 balance of those accounts based on whether or not
6 you use a 13-month average or whether you use
7 essentially an annualized number, which is the same
8 thing as the end of the test year balance.

9 COMMISSIONER FAY: So we have it run as a
10 13-month average also?

11 MS. CHRISTENSEN: Well, they filed it
12 correctly as a 13-month average. We have no
13 objection to the way they filed the MFRs. What we
14 have an objection to is the essentially staff
15 ignoring the 13-month average, which is what's
16 correctly filed, and saying, okay, we are going to
17 go ahead and annualize those numbers and use
18 essentially a year-end balance. And even if those
19 are known and measurable changes, those are known
20 and measurable changes that come into service
21 during the test year.

22 There is nothing that I am aware of in the
23 rule that says if a plant comes into service during
24 the test year that you annualize it. If the
25 Commission staff wants to have that discussion,

1 then we need to have a rulemaking process on
2 whether or not --

3 COMMISSIONER FAY: I understand. Yeah, and I
4 don't think that's what's being argued. I am just
5 -- honestly, I am just trying to find out what that
6 calculation -- I just want to understand what that
7 difference was. Depending on the significance or
8 the materiality of that difference in the numbers
9 is not something, like, I have available to me,
10 so...

11 MS. CHRISTENSEN: Okay. I am sorry. The
12 difference would be, at least according to our
13 calculation for those two adjustments, the revenue
14 requirement impact for the accumulated
15 depreciation, the different between using the
16 13-month average and essentially annualizing that
17 is \$18,758.

18 COMMISSIONER FAY: And then you have a
19 difference at a 11 -- or go ahead. Yeah.

20 MS. CHRISTENSEN: Yeah, and the difference
21 between using the 13-month average, the revenue
22 requirement impact, the difference between using
23 the 13-month average and using a annualized end of
24 the year balance is \$11,407.

25 COMMISSIONER FAY: Okay. And just to be

1 clear, is that something you provided within what
2 you gave to us?

3 MS. CHRISTENSEN: These were in the comments.
4 Are the handouts were purely illustrative --

5 COMMISSIONER FAY: Okay. I just --

6 MS. CHRISTENSEN: -- for the other minor
7 adjustments that we discussed earlier.

8 COMMISSIONER FAY: I didn't see it on there.
9 I just want to make sure if the Commission is
10 entertaining making that adjustment, that we have
11 an idea of what that number actually is. So
12 that's -- and maybe I could ask it a different way,
13 but that's what I was looking for.

14 MS. CHRISTENSEN: Okay. You just wanted to
15 the revenue impacts on the adjustments?

16 COMMISSIONER FAY: Correct. Yeah. Yeah.

17 MS. CHRISTENSEN: Okay.

18 COMMISSIONER FAY: Okay. Mr. Chairman, I
19 leave back to you. I know you wanted to take a
20 break, but I --

21 CHAIRMAN LA ROSA: Yeah. No. No. I do want
22 to flesh this out.

23 Any other further questions, Commissioners?

24 Okay. Let's take a -- I also want to be
25 sensitive to the court reporter. Let's take a

1 10-minute break. When we reconvene, let's take up,
2 really, the issue at hand, really all that were
3 discussed, and then I guess we will start,
4 Commissioners, with any further questions from us
5 of staff after reviewing and hearing what we just
6 heard, and then we can decide on how we proceed
7 from there.

8 Let's go ahead and reconvene at, say at 3:57.
9 (Brief recess.)

10 CHAIRMAN LA ROSA: All right. Let's go ahead
11 and take our seats and we will get back into
12 posture.

13 All right. Let's go ahead and pick up on
14 Issue 8 on Item No. 9, Mr. Ellis.

15 MR. ELLIS: With regards to Issue 8, the rule
16 25-30.432, does grant the Commission a great deal
17 of latitude. You may consider multiple factors,
18 including to the extent to which the area is built
19 out, as well as the allowance for growth concerns.

20 While staff supports our recommendation, if
21 the Commission is convinced by the utility, you may
22 rely upon that within the scope of the rule. So
23 staff's approach here was to take values, and
24 specifically associated with the allowance for
25 growth, but to the extent the Commission is

1 convinced they are built out, that is an option.

2 CHAIRMAN LA ROSA: Okay. Great. Thank you
3 for that clarification.

4 Commissioners, let's tackle No. 8. Are
5 there -- is there any thoughts, discussions on No.
6 8 based on what we just heard and, obviously, the
7 back and forth we had previous?

8 Commissioner Fay.

9 COMMISSIONER FAY: Sure, Mr. Chairman, I will
10 take a shot at it.

11 I mean, it does seem like there is some
12 precedent to this based on what we've hear. It
13 seems like, as Ms. Brownless pointed out, we kind
14 of go either way with.

15 The visual is helpful to me. I mean, I --
16 yeah, I do think to a certain degree, you know,
17 setting it at 100 percent makes sense to me, but,
18 you know, I recognize that these engineers are paid
19 a lot. We have an expert here who literally is an
20 expert on used and useful, to get down to that
21 number, and I think to a certain extent, what we
22 have before us, we just need to make a decision on
23 where that lies, and so I think that's appropriate,
24 but I also completely understand where the staff's
25 calculation came from.

1 And I said this before, but I want to be very
2 clear about it. I don't think, in this process,
3 there is an obligation for staff to raise every
4 issue. We get a lot of numbers from these cases,
5 and if we are direct, we are now sending this
6 direction that every time there is a deviation from
7 what's filed, they need to have an interrogatory to
8 ask about that, we are going to have a lot of
9 interrogatories. I do not think that's the
10 direction we want to send.

11 So I appreciate where KW's counsel is coming
12 from, and where they want to go, but I don't think
13 that's a valid basis for us to negate what staff
14 put forward. I just do fundamentally find them --
15 I find the utility to be more persuasive here on
16 where that number lands based on what they
17 presented today, and recognize it's a PAA, so...

18 CHAIRMAN LA ROSA: Understood.

19 COMMISSIONER FAY: And so I guess that would
20 just be on Issue 8 that I would be putting my
21 motion for, Mr. Chairman, if that makes sense.

22 CHAIRMAN LA ROSA: Okay. So your motion is?

23 COMMISSIONER FAY: My motion would be to
24 approve the used and useful at 100 percent.

25 CHAIRMAN LA ROSA: Is there a second?

1 COMMISSIONER CLARK: Second.

2 CHAIRMAN LA ROSA: Okay. On Issue No. 8 of
3 Item No. 9, there is a motion on the table. There
4 is a second.

5 All those in favor signify by saying yay.

6 (Chorus of yays.)

7 CHAIRMAN LA ROSA: Yay.

8 Opposed no?

9 (No response.)

10 CHAIRMAN LA ROSA: All right. Show that Issue
11 No. 8 is approved as adjusted.

12 Okay. With that issue out of the way, now
13 let's move to the issues brought forward by OPC.

14 Commissioners, any questions or further
15 discussion on those issues?

16 I feel comfortable with what staff has
17 provided. I understand, of course, the position
18 that OPC has brought up, but I do not plan to
19 deviate from what staff's recommendations are, so I
20 am opening the floor for a motion.

21 COMMISSIONER PASSIDOMO SMITH: Can I make the
22 motion?

23 CHAIRMAN LA ROSA: Go ahead.

24 COMMISSIONER PASSIDOMO SMITH: All right.

25 Well, then with that, I would move to approve

1 staff's recommendations on all issues except as
2 modified Issue 8 that was --

3 MR. FUTRELL: Mr. Chairman, if I could --
4 sorry to interrupt. I know you were getting close,
5 but just to recognize, I think there was some
6 agreement by Ms. Norris regarding the tax
7 adjustment --

8 MS. NORRIS: Issue 22.

9 MR. FUTRELL: -- and make sure that gets
10 properly incorporated, if that's what you would
11 like to do.

12 CHAIRMAN LA ROSA: Sure, and that's the
13 four-percent discount.

14 MS. NORRIS: Right.

15 CHAIRMAN LA ROSA: So I go back to --

16 MS. NORRIS: Issue 22.

17 CHAIRMAN LA ROSA: Commissioner Passidomo
18 Smith.

19 COMMISSIONER PASSIDOMO SMITH: Okay. So move
20 to -- so with that, yeah, I move to approve staff's
21 recommendation on all issues but modify Issue 8 as
22 proposed by Commissioner Fay, and Issue 22 -- what
23 should I say here? Yeah, including that
24 four-percent discount.

25 MS. BROWNLESS: Issue 22 would be to agree

1 with the company with regard to that issue --

2 COMMISSIONER PASSIDOMO SMITH: Okay. Thank
3 you.

4 MS. BROWNLESS: -- OPC.

5 COMMISSIONER PASSIDOMO SMITH: OPC with
6 that -- with regard to that. And I suppose maybe
7 included in that -- I am sorry for this -- sorry to
8 dictate all of this, but giving staff the
9 administrative authority to make the adjustments as
10 needed --

11 MS. BROWNLESS: Yes.

12 COMMISSIONER PASSIDOMO SMITH: -- with the
13 fallout.

14 CHAIRMAN LA ROSA: Perfect. Yeah. Thank you.

15 All right. Hearing a motion, well said, is
16 there a second?

17 COMMISSIONER CLARK: Second.

18 CHAIRMAN LA ROSA: Hearing a motion and
19 hearing a second.

20 All those in favor signify by saying yay.

21 (Chorus of yays.)

22 CHAIRMAN LA ROSA: Yay.

23 Opposed no?

24 (No response.)

25 CHAIRMAN LA ROSA: All right. Show that item

1 No. 9 is closed out with that vote.

2 All right. I'm going to double check and make
3 sure we have nothing else. Okay, we have nothing
4 else for this Agenda.

5 Of course, we do have a rate case hearing
6 following this Agenda. Let's go ahead, and I know
7 most of those folks are here in the room, let's go
8 ahead and get that started in five minutes. We
9 will go ahead and hear that in five minutes, but
10 for all intents and purposes, this meeting is
11 adjourned.

12 Thank you.

13 (Agenda item concluded.)

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1 CERTIFICATE OF REPORTER

2 STATE OF FLORIDA)
3 COUNTY OF LEON)
4

5 I, DEBRA KRICK, Court Reporter, do hereby
6 certify that the foregoing proceeding was heard at the
7 time and place herein stated.

8 IT IS FURTHER CERTIFIED that I
9 stenographically reported the said proceedings; that the
10 same has been transcribed under my direct supervision;
11 and that this transcript constitutes a true
12 transcription of my notes of said proceedings.

13 I FURTHER CERTIFY that I am not a relative,
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15 am I a relative or employee of any of the parties'
16 attorney or counsel connected with the action, nor am I
17 financially interested in the action.

18 DATED this 21st day of July, 2025.
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24 COMMISSION #HH575054
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