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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070293-SU

In the Matter of:

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



VOLUME 1

Pages 1 through 194

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PROCEEDINGS: KEY WEST TECHNICAL HEARING
BEFORE: CHAIRMAN MATTHEW M. CARTER, II
COMMISSIONER NANCY ARGENZIANO
COMMISSIONER NATHAN A. SKOP
DATE: Wednesday, October 1, 2008
TIME: Commenced at 2:30 p.m.
Adjourned at 7:45 p.m.
PLACE: Old City Hall
City Commission Chambers
510 Greene Street
Key West, Florida
REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

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APPEARANCES:

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P R O C E E D I N G S

1
2 **CHAIRMAN CARTER:** Call this technical hearing to
3 order. First of all, I know we're gunning for the public
4 hearing, but let's start from the beginning.

5 Staff, would you please read the notice.

6 **MR. JAEGER:** Yes, Chairman Carter.

7 Pursuant to notice, this time and place was set for a
8 hearing in Docket Number 070293-SU, application for an increase
9 in wastewater rates in Monroe County by K W Resort Utilities
10 Corp.

11 **CHAIRMAN CARTER:** Okay. Let's take appearances of
12 the parties.

13 **MR. WHARTON:** John Wharton and Marty Deterding, Rose,
14 Sundstrom & Bentley, Tallahassee, representing K W Utilities.

15 **MR. BURGESS:** I'm Steve Burgess here on behalf of the
16 Office of Public Counsel, and with me is J.R. Kelly, the Public
17 Counsel. We are here representing the Citizens of the State of
18 Florida.

19 **MR. JAEGER:** Ralph Jaeger on behalf of the Commission
20 Staff.

21 **MS. HELTON:** Mary Anne Helton, advisor to the
22 Commission.

23 **CHAIRMAN CARTER:** Okay. Let's do this. Just from
24 kind of a housekeeping matter, we'll be doing -- obviously both
25 parties have ten minutes of opening statements. Just from a

1 housekeeping matter, Mr. Burgess, you asked for and it will be
2 fine for you to use this podium here. Mr. Wharton, if you want
3 to use the table where you are or go to the other one, that's
4 fine, no problem with that. And what we will do is after we
5 have completed the opening statements, I will go to preliminary
6 matters, and then we will go ahead on and swear the witnesses
7 in as a group.

8 **MR. WHARTON:** We'll do preliminaries after opening?

9 **CHAIRMAN CARTER:** Yes. We will do the preliminaries
10 after the opening.

11 **MR. WHARTON:** I have some official recognition.

12 **MR. JAEGER:** That's part of the preliminary matters,
13 official recognition.

14 **MR. WHARTON:** That's fine.

15 **CHAIRMAN CARTER:** Okay. Let's do that, then.

16 Housekeeping is taken care of. Mr. Burgess. Wait a minute. I
17 guess, Mr. Wharton, you're recognized.

18 **MR. WHARTON:** Thank you, Mr. Chairman.

19 And as we warned Commissioner Argenziano that we
20 might, Marty and I would like to split the prehearing
21 statement. We will still try not to go over the total ten
22 minutes.

23 Commissioners, K W is a utility in need of rate
24 relief as a result of growth of its system, the construction
25 and improvement of its facilities, and as a result of the cost

1 increases that all of the water and wastewater utilities in
2 Florida have experienced. With regard to the investment K W
3 has made, your statute encourages by the recognition of cost
4 the construction of facilities whose purpose is environmental
5 compliance. In this case, you have facility renovations made
6 necessary not only by practical engineering real world
7 consideration, but also mandated by DEP. You have an upgrade
8 of the facilities to advanced wastewater treatment, which was
9 both mandated by special act and by Monroe County in
10 furtherance of that special act. That advanced wastewater
11 treatment plant will replace package plants and individual
12 septic systems which are inherently less protective of the
13 environment, and that was exactly the reason that the
14 legislature acted as they did and Monroe County acted as it
15 did.

16 You will hear OPC give the opinion that with regard
17 to the collection system, the gravity system is 100 percent
18 used and useful and the vacuum system is contributing. But
19 with regard to the other facilities, should you determine that
20 they should not be 100 percent allowed in rate base as an
21 environmental compliance cost, there are several unique reasons
22 that you should still find that the facilities are 100 percent
23 used and useful in this case. One is that growth in the
24 utility, as you will hear, has been double the presumption in
25 your statute, at less 10 percent a year. Another is that there

1 are many people in the service area who have been mandated to
2 connect by local law. Again, the point of that law being to
3 implement a special act to protect the environment who have yet
4 to connect. That capacity has to be there or that law cannot
5 possibly be effectuated. That capacity has to be waiting for
6 those people.

7 The county had such a vested interest in protecting
8 the local environment that they not only executed an ordinance
9 requiring mandatory connection, as you have heard from some of
10 the customers, these mandatory connection ordinances can be
11 quite controversial, but this county has gone ahead based on
12 the local environment and done that. They also entered into a
13 contract that the record will reflect with K W to facilitate
14 that connection and that that capacity would be there when
15 necessary. You have also got a lot of flows already allocated
16 and a lot of capacity reserved by the county for those people
17 who fall under the mandatory connection ordinance. And, once
18 again, that plant has to be there or that ordinance can't
19 possibly come to fruition.

20 You will hear OPC's witness indicate that even though
21 the plant is not overbuilt, it was not oversized, that he is
22 compelled by the statute to find that part of it should be
23 determined not to be used and useful. We agree with his
24 conclusion that it is not oversized, but we do not agree with
25 his conclusion under the statute. That's probably something we

1 are going to have to address in the briefs.

2 This transition to advanced wastewater treatment was
3 mandated by state law and Monroe County. This implementation
4 of mandatory connection also flowed out of the special act
5 passed by the legislature and implemented by the county. Any
6 private utility that was in the place of K W would be facing
7 these same mandatory connection issues, the same cost in terms
8 of going to advanced wastewater treatment.

9 **MR. DETERDING:** Commissioners, I want to address
10 briefly one of the issues that flows throughout this case and
11 that is the related-party transactions. That is an issue that
12 is inherent in many of the underlying issues in the prehearing
13 order. This utility company is a Class A utility company in
14 revenues. There's no question about that. One of the eight or
15 then that you probably regulate in the water and wastewater
16 industry. However, in number of customers, it is relatively
17 small. The revenues are high because we are in the Keys and
18 costs are high.

19 Some of the related-party transactions you will hear
20 about are the operations and services provided by Keys
21 Environmental, Inc., the operations company owned by the
22 son-in-law of the owner of the utility. The vacuum system
23 operation is also provided by Keys Environmental to the
24 utility. The construction oversight services provided by Green
25 Fairways, a management company owned by Bill Smith, the owner

1 of the utility, and the management services provided by the
2 golf course, an entity owned by the family, as well.

3 OPC has taken the position that such related-party
4 transactions are inherently bad or suspect at least, and
5 subject to disallowance. Certainly, the Commission has an
6 obligation to provide heightened scrutiny to related-party
7 transactions to ensure they are reasonable. However, the case
8 law is clear that the issue is not the cost of those services
9 to the related party, but whether or not those services are
10 being provided at or below market value.

11 And we believe that the charges to the utility have
12 been demonstrated through or will be demonstrated through our
13 testimony to be reasonable, to be at or below market value and,
14 in fact, less than those that we were able to get from
15 unrelated parties. And we believe that in rate setting you
16 must recognize those costs under those circumstances.

17 The benefit flowing from those related-party
18 transactions is to the customers. It is by getting services --
19 part-time services in the form of management services. People
20 that are part-time, allocated expenses. Getting operation
21 services from related parties that's cheaper than what they
22 were able to obtain or got quotes for from nonrelated parties.
23 So, in the end, we believe the evidence will show that these
24 related-party transactions are to the benefit of the utility
25 and they should be judged based upon whether or not they are at

1 or below market value in accordance with the case law.

2 Thank you.

3 **CHAIRMAN CARTER:** Thank you. Mr. Burgess.

4 **MR. BURGESS:** Thank you, Mr. Chairman.

5 As you have heard, there are some characteristics
6 about this utility that set it apart from the conventional case
7 that you look at, and, of course, the first is that the utility
8 has no employees. Naturally, the utility has to perform
9 certain functions in order to provide service to its customers,
10 but they have no employees. There are employees that provide
11 the services, that do the tasks, but they're employed by
12 companies other than the utility. They are employed by
13 companies that are owned by the owner of the utility himself or
14 family members of the owner of the utility.

15 The owner of the utility is Mr. William Smith, and
16 you have been introduced to him. Mr. Smith has an impressive
17 resume. Mr. Smith is currently managing partner of a
18 successful Illinois law firm. Mr. Smith also owns and operates
19 a number of other successful businesses. And Mr. Smith and his
20 family, as you have heard, have established and operate a
21 series of companies that between them supply all the tasks that
22 need to be done to provide the service.

23 Now, contrary to what is being implied, we don't have
24 a problem with family businesses. Family businesses are a good
25 thing. They are admirable enterprises. But when the business

1 is a monopoly that is protected from competition and customers
2 must by law take this particular service from this particular
3 provider, then these transactions become more relevant. So I
4 wanted to point out a couple, some of which have already been
5 discussed that are in the prehearing order, a couple of issues
6 that demonstrate some of the concerns that we have and that
7 have arisen here.

8 Issue Number 24, the mark-up. The utility has no
9 employees. The utility is a shell company. The actual
10 operations of the utility, the physical operations, the field
11 work for the utility is being done by Keys Environmental, Inc.,
12 KEI, which you will hear a lot about. KEI is owned by Mr.
13 Smith's son-in-law. When KEI goes to buy materials and
14 supplies, let's say they go out and buy chemicals, they go out
15 and they purchase the chemicals that are necessary to run the
16 operations. And they pay the bill and then they take the bill,
17 mark it up as much as 30 percent, and give to the utility to be
18 paid back.

19 In a normal situation, in a more conventional
20 situation, the utility would be operating its own processes.
21 And the utility would go to the same vendor from which the
22 chemicals were purchased and would pay the costs that that
23 vendor is charging rather than the costs that vendor is
24 charging plus 30 percent. And so you wouldn't have the money
25 for the chemicals coming from the pockets of the customers and

1 going into the profits of the affiliated company.

2 Another issue, Issue 2 in the prehearing order.

3 Again, it involves KEI, Keys Environmental. And this stems
4 from, again, recognizing that KEI performs all the utility
5 functions, all the field work for the company, and it does so
6 under a written contract. And the written contract says that
7 in exchange for a specified monthly fee, a specified ongoing
8 management fee, that KEI will provide management, oversight,
9 and operations of the company. But the contract also allows
10 that if there is some special task, some task beyond those that
11 are required to operate and manage and run the company, that
12 that can be negotiated for an additional price.

13 So we have a situation then where KEI says -- now
14 part of what we have found out that one of the things that we
15 have to do is we have to inspect the tie-ins that the customers
16 pay their contractors for to tie into our line, into our main
17 lines. And they say that, the inspecting to see whether it
18 meets the requirements of tying into our lines, is additional,
19 it is over and above the contract under which we have agreed to
20 supply to operate and run and manage the company.

21 Now, we will be looking closely at that contract, and
22 so you will be making your decision based on that. But what I
23 want you to consider, an analogous situation, if you, as a home
24 owner, hire a gardener and you have a contract that says
25 Mr. Gardener will provide all of my lawn care and landscaping

1 needs in exchange for this set amount per month. And after a
2 period of time the gardener comes and says it turns out that I
3 had to edge your driveway, and here's the bill because that's
4 beyond the agreed contract. You would say, no, that's not. I
5 have already paid you for that. That is included in the
6 generalized language. And the reason you would say that is
7 because it's coming out of your hide. It's coming out of your
8 wallet.

9 In this case, if you look at the company's rebuttal
10 in response to that, it is that both the utility and the
11 service company have agreed in their interpretation of the
12 contract, both signatories to the contract have agreed that the
13 contract should be interpreted such that inspecting tie-ins is
14 not included in the overall obligations of the servicing
15 company, that that is an extra amount. Well, as I say, you
16 will be looking at that. But the difference between the
17 circumstance wherein you are dealing with your gardener and it
18 is coming out of your wallet is in this case by conceding the
19 point the utility is saying, oh, more money has to come from
20 the customers to go to the son-in-law's service company. In
21 other words, by conceding the point, in fact, Mr. Smith has
22 enriched his family.

23 Now I'm not saying that's what he is doing. I'm not
24 saying that's his motivation, but it is important to notice
25 that the point of this is, the point of this exercise is you

1 don't have the normal tensions and dynamics in a negotiation
2 situation where one party's interests goes one way and the
3 other party's interest goes the other so you can be assured
4 that when a contract is entered into and two parties agree to
5 its interpretation, then both parties have argued their
6 interests. In this case, you don't have that circumstance.
7 The interest of the utility is not on behalf of its customers.

8 And I would just like to bring up one more point and
9 close with this. I was not involved in this case from the very
10 beginning. It was handed off to me. And as I looked at all
11 the issues that first your staff audit picked up, 19 specific
12 issues with many subparts, there are a number of issues -- by
13 the way, a very thorough job -- and then looked at the issues
14 that we were developing. And as you will see as you look
15 through some of these prehearing issues, as I looked at them
16 sometimes I would find myself the first or second time through
17 going, well, wait a minute, wait a minute, what's going on with
18 this? I'm not sure I'm following this. This service is
19 provided by this for this cost, but this person owns this and
20 this person owns this. And, quite frankly, the first few times
21 through I would get confused and tripped up on issues.

22 I say that because if you are anything like me and
23 you look at some of these issues, you might be confused about
24 this. And the one thing that I ask you to keep in mind if
25 that's so, is that this is a set up that was determined by the

1 utility. They chose this arrangement. They weren't forced to.
2 They chose the arrangement. And what I ask and what I urge is
3 that if there is any confusion that we not make the customers
4 pay for the confusion created by the operation set up by the
5 utility. Thank you.

6 **CHAIRMAN CARTER:** Thank you, Mr. Burgess.

7 Before going further, Staff, let's deal with our
8 preliminary matters.

9 **MR. JAEGER:** Yes, Chairman Carter.

10 Actually there are three preliminary matters that we
11 should address. The first are the 11 stipulations set forth in
12 the prehearing order starting on Page 24. The parties have
13 agreed to these 11 stipulations and staff is recommending that
14 you approve all 11.

15 **CHAIRMAN CARTER:** Mr. Burgess, any problem with that?

16 **MR. BURGESS:** None. Thank you.

17 **CHAIRMAN CARTER:** Mr. Wharton.

18 **MR. WHARTON:** No.

19 **CHAIRMAN CARTER:** Staff, Commissioners, any
20 objections to that?

21 Without objection, show it done.

22 **MR. JAEGER:** Okay. The second preliminary matter is
23 staff's DEP witness need not be present on the first day of the
24 hearing if it appears that the hearing will go two days. Since
25 that time, I was talking to Mr. Johnson, the DEP witness, and

1 he says he will show up at 3:00 p.m. today and then determine
2 whether he has to stay around or if he is going to testify
3 today or come back tomorrow. He will be here at 3:00, but
4 right now he is not in the room, and so all we are doing is
5 waiting to make a decision on whether you want him to stay
6 around this afternoon and he will stay around if that's what
7 you decide.

8 **CHAIRMAN CARTER:** Let's cool our jets on that for a
9 minute.

10 **MR. WHARTON:** I think we are unlikely to get to him
11 today.

12 **CHAIRMAN CARTER:** You don't think so? Mr. Burgess.

13 **MR. BURGESS:** I would be surprised.

14 **CHAIRMAN CARTER:** Okay. Well, then, let's don't have
15 him cooling his jets just waiting for something that is
16 probably not going to happen.

17 **MR. JAEGER:** Okay. And then on the afternoon of
18 September 26th, K W Resort requested that the Commission take
19 judicial notice of -- there's five items, Chapter 99-395, House
20 Bill Number 1993, and there was Chapter 2004-455, House Bill
21 Number 1545, Chapter 2001-337, House Bill Number 1125, and then
22 there was Ordinance Number 04-2000, the Monroe County
23 ordinance, and then Ordinance Number 07-2002, another Monroe
24 County ordinance which revised that first ordinance, and then
25 there is also a Resolution Number 312-2002, which authorized

1 the mayor to execute on behalf of the county the contract with
2 K W Resort Utilities for the South Stock Island project. So
3 there's six items, actually, and I don't believe OPC or staff
4 has any problems with taking judicial notice of those six
5 items.

6 **CHAIRMAN CARTER:** Mr. Burgess.

7 **MR. BURGESS:** No problems. Thank you.

8 **CHAIRMAN CARTER:** Ms. Helton.

9 **MS. HELTON:** No problems, sir, that I can see.

10 **CHAIRMAN CARTER:** Commissioners, it has been asked
11 that we take judicial notice of the legislatively approved
12 matters as well as our county ordinance and resolution by
13 the -- is it the county commission, is that correct?

14 **MR. JAEGER:** That's correct.

15 **CHAIRMAN CARTER:** Any objection? Without objection,
16 show it done.

17 **MR. JAEGER:** And the last thing we have is the
18 parties have all agreed that instead of taking Mr. Smith first,
19 we will take Kathy Welch and then Iliana Piedra, the staff
20 auditors out of turn, and so we recommend that we take Kathy
21 Welch at this time.

22 **CHAIRMAN CARTER:** Let's do this. We will just
23 remember that order after we swear in all the witnesses. Do we
24 have all the witnesses in today, the witnesses that we think we
25 will get to?

1 **MR. JAEGER:** When I said DEP Johnson was not here, I
2 haven't met him, so I'm not sure if he is here or not. He said
3 he would be here about 3:00. He is the only one that I know of
4 that is missing.

5 **CHAIRMAN CARTER:** Okay. Just so that we'll know,
6 Commissioners, we are going to have the witnesses come up to
7 this table right here in front of us so the court reporter will
8 be able -- sometimes there has been kind of an echo, so she can
9 kind, in addition to hearing, also read the lips and all that.

10 And just kind of stand up for one second -- I know
11 you're on crutches and all, but let me just have all of the
12 witnesses that are going to be testifying this afternoon, would
13 you please stand and raise your right hand.

14 (Witnesses sworn collectively.)

15 **CHAIRMAN CARTER:** Please be seated. Mr. Wharton, you
16 can call your first witness. Who's on first?

17 **MR. JAEGER:** I'm sorry. Kathy Welch, staff auditor,
18 will be taken out of turn. Staff calls Ms. Welch, and she is
19 at the stand now.

20 KATHY WELCH
21 was called as a witness on behalf of the Florida Public Service
22 Commission Staff, and having been duly sworn, testified as
23 follows:

24 DIRECT EXAMINATION

25

1 BY MR. JAEGER:

2 Q Ms. Welch, could you please state your name and
3 business address for the record.

4 A My name is Kathy Welch. My business address is 3625
5 Northwest 36th Street -- I'm sorry, Northeast 82nd Avenue,
6 Suite 400, Miami 33166.

7 Q By whom are you employed and in what capacity?

8 A I'm employed by the Florida Public Service
9 Commission, and I'm the District Office Supervisor of the Miami
10 District Office.

11 Q And have you prefiled direct testimony in this case
12 consisting of twelve pages?

13 A I have.

14 Q And I think you have indicated to me that you do not
15 wish to make an oral summary, is that correct?

16 A That's correct.

17 Q Do you have any changes or corrections to your
18 testimony?

19 A No, I don't.

20 MR. JAEGER: Mr. Chairman, I request that we have Ms.
21 Welch's testimony inserted into the record as though read.

22 CHAIRMAN CARTER: The prefiled testimony will be
23 entered into the record as though read.

24

25

1 DIRECT TESTIMONY OF KATHY L. WELCH

2 Q. Please state your name and business address.

3 A. My name is Kathy L. Welch and my business address is 3625 N.W. 82nd Ave.,
4 Suite 400, Miami, Florida, 33166.5
6 Q. By whom are you presently employed and in what capacity?7 A. I am employed by the Florida Public Service Commission as a Public Utilities
8 Supervisor in the Division of Regulatory Compliance and Consumer Assistance.9
10 Q. How long have you been employed by the Commission?

11 A. I have been employed by the Florida Public Service Commission since June 1979.

12
13 Q. Briefly review your educational and professional background.14 A. I have a Bachelor of Business Administration degree with a major in accounting
15 from Florida Atlantic University and a Masters of Adult Education and Human Resource
16 Development from Florida International University. I have a Certified Public Manager
17 certificate from Florida State University. I am also a Certified Public Accountant licensed
18 in the State of Florida, and I am a member of the American and Florida Institutes of
19 Certified Public Accountants. I was hired as a Public Utilities Analyst I by the Florida
20 Public Service Commission in June of 1979. I was promoted to Public Utilities
21 Supervisor on June 1, 2001.22
23 Q. Please describe your current responsibilities.24 A. Currently, I am a Public Utilities Supervisor with the responsibilities of
25 administering the District Office and reviewing work load and allocating resources to

1 complete field work and issue audit reports when due. I also supervise, plan, and conduct
2 utility audits of manual and automated accounting systems for historical and forecasted
3 financial statements and exhibits.

4

5 Q. Have you presented testimony before this Commission or any other regulatory
6 agency?

7 A. Yes. I have testified in several cases before the Florida Public Service
8 Commission. Exhibit KLW-1 lists these cases.

9

10 Q. What is the purpose of your testimony today?

11 A. The purpose of my testimony is to sponsor specific audit findings in the staff audit
12 report of K W Resort Utilities Corp. (utility) which addresses the utility's application for
13 increase in wastewater rates in Monroe County, Audit Control Number 07-233-4-1. This
14 audit report is filed with the testimony of Iliana Piedra and is identified as Exhibit IHP-1.
15 Specifically, my testimony addresses Findings 1 -9.

16

17 Q. Were these audit findings prepared by you?

18 A. Yes, I was responsible for these findings.

19

20 Q. Please describe the work you performed in this audit.

21 A. We sampled plant additions for the period January 1, 1998 through December 31,
22 2006 for compliance with the audit objectives. We were unable to audit 1984 to 1997
23 because after the stock transfer in 1998, the current owners did not obtain the records of
24 the previous owner. For the years 1998 - 2006, we verified that the utility properly
25 recorded retirements to plant when a capital item was removed or replaced. We toured

1 the utility plant sites to observe whether asset additions were completed and to ascertain if
2 asset retirements were properly recorded and sampled construction project additions and
3 the corresponding source documentation. We also verified that there have been no
4 changes to utility land since the last rate proceeding by searching the county's public
5 records. We sampled additions to CIAC and Advances for Construction for the period
6 January 1, 1998 through December 31, 2006 for compliance with the audit objectives and
7 scanned the utility's cash receipts records for unrecorded cash and property. We
8 reviewed developer agreements for unrecorded CIAC and traced utility CIAC schedules
9 to the general ledger and the utility's authorized tariff rates. We reviewed the agreement
10 with Monroe County to determine if it was properly reflected in the utility books and
11 reconciled plant in the tax return to plant in the ledger to determine if any contributed
12 property was not recorded. We traced the accumulated depreciation schedules to the
13 corresponding plant schedules from 1990 to 2006. We verified that the utility used
14 Commission authorized rates to depreciate its plant accounts by calculating a sample of
15 accumulated depreciation account balances to test for calculation errors and verified that
16 the utility properly recorded retirements to accumulated depreciation when the
17 corresponding plant was removed or replaced. We traced the accumulated amortization
18 of CIAC schedules to the corresponding CIAC schedules and verified that the utility used
19 Commission authorized rates to amortize its CIAC accounts by calculating a sample of
20 accumulated amortization account balances to test for calculation errors. We recalculated
21 a sample of accumulated amortization of CIAC account balances as of December 31,
22 2006. We recalculated the utility's working capital balance as of December 31, 2006.

23

24 Q. Please review the audit findings in the audit report for which you are testifying.

25 A. **Audit Finding No. 1**

1 Audit Finding No. 1 discusses the absence of records from 1984 through 1997.
2 The last rate case order used a test year of December 31, 1983. In Order No. 14010,
3 issued January 18, 1985, in Docket No. 850009-SU, the Commission approved a transfer
4 of the utility to Citicorp Real Estate, Inc. (Citicorp), which had acquired the utility assets
5 through foreclosure on the mortgage. In 1998, the current owners took over the utility
6 through a stock purchase. The new owners did not obtain the books and records from
7 Citicorp. We were not able to obtain supporting documentation for plant or CIAC
8 additions from 1984 to 1997. However, we were able to obtain depreciation and
9 amortization schedules back to 1990. We identified \$2,137,961.86 of unsubstantiated
10 plant additions for 1984 to 1997. Accumulated depreciation on these additions is
11 \$330,066.33. There were also \$867,668 of unsubstantiated additions to CIAC from 1984
12 to 1997. In addition, without the records we were unable to determine if there was any
13 unrecorded CIAC. The related additions to accumulated amortization are \$32,219.

14 **Audit Finding No. 2**

15 Audit Finding No. 2 discusses services provided by Green Fairways. Mr. William
16 L. Smith, president of KW Resort Utilities Corp., has a law practice and owns several
17 other businesses. The following businesses are managed through Green Fairways.

- 18 ◆ Key West Golf Course
- 19 ◆ Venetian Partners-office Building in San Francisco
- 20 ◆ KW Resort Utilities, Corp.
- 21 ◆ 900 Commerce-offices in Oakbrook, Illinois
- 22 ◆ Portland Court-office building in Addison
- 23 ◆ Rail Golf Course in Springfield, Illinois
- 24 ◆ Deer Creek Golf Course in University Park, Illinois

25 Three employees are paid by Green Fairways. Mike Misheck runs the golf

1 | courses and Key West Golf Club. Bill Ski runs the office buildings. Mr. Smith oversees
2 | all the businesses and runs KW Resort.

3 | Mr. Smith performs multiple tasks for the utility and indicates that 1/3 of his time
4 | is spent on the utility. Mr. Smith manages many companies and there are no time records
5 | to support the allocation of his time spent on the utility.

6 | In 2006, Green Fairways charged the utility \$60,000 as a management fee. It also
7 | charges 10% of large construction projects for the management of the projects. Our
8 | review found the following project management fees:

- 9 | ♦ 2002 \$107,198.07 fiberglass liner for collection system
- 10 | ♦ 2003 \$194,376.80 fiberglass liner for collection system
- 11 | ♦ 2006 \$124,983.76 advanced wastewater treatment plant expansion project

12 | In our audit report, we prepared an analysis of the management fee compared to
13 | Mr. Smith's salary.

14 | **Audit Finding No. 3**

15 | Audit Finding No. 3 discusses Key's Environmental Service. This company was
16 | started by Mr. Smith's son-in-law to service KW Resort Utilities. Key's Environmental
17 | also has contracts to service some of the privately owned lift stations. Key's
18 | Environmental has its offices in the utility-owned trailer. It pays the utility \$24,000 for
19 | the use of this trailer. It also uses the utility-owned trucks but pays for its own gasoline
20 | and vehicle maintenance.

21 | Key's Environmental purchases supplies, chemicals, and sludge hauling and then
22 | bills the utility for these services. Related party charges to a utility require additional
23 | review to determine whether the related party bills the utility at actual cost and does not
24 | use the affiliate company to increase prices to the utility. We attempted to determine if
25 | Key's Environmental increases the costs for these items. We compared a sample of the

1 costs to prices on the internet and included information in the audit work papers for
2 further review.

3 Some of the Key's Environmental invoices were capitalized and some expensed.
4 For the period 2003 – 2006, the utility capitalized \$252,690.08 for hookup coordination
5 services. These duties included five field visits and a hydrostatic test of the PVC lateral
6 from the building to the point of connection. Other costs included site preparation work
7 for the new clarifier, power poles, effluent lines, relocation of the chlorine tank, pumps,
8 surge tank, and a blower.

9 The utility has a contract with Key's Environmental that requires two full time
10 operators and an operations manager (who is to work a minimum of eight hours a day and
11 two hours a day on the weekends.) The contract includes customer relations, periodic
12 inspections, minor maintenance, daily pumping stations inspections, preventative
13 maintenance programs, and monitoring programs for collection systems, reclaimed water
14 lines, meters, pumps, and blowers. Key's Environmental reads the meters and maintains
15 an answering service and dispatch. The contract also includes sampling, testing,
16 supervision, and inspection of new customer tie in's.

17 In 2006, the utility expensed \$450,774.11 for invoices from Key's Environmental.
18 Included in the chemicals and supplies charges of \$43,202.75 is an amount of \$1,313.65
19 for lab testing. Sampling and testing was supposed to be part of the contract. These
20 charges should be removed. There is also \$15,000 of hookup fees charged that should be
21 transferred to plant.

22 However, the operations contract states that supervising and inspecting new tie ins
23 is part of the contract. The description of what Key's Environmental is doing for the
24 connection fee appears to be more extensive. The Commission should consider if the
25 work being done exceeds what is in the contract. If the additional charges should be

1 considered as part of the basic contract, the \$252,690.08 plus the misclassified \$15,000 or
2 \$276,690.08 should all be removed from plant.

3 In addition, we requested additional information on \$51,662.97 of items that
4 appeared to be capital items. We did not receive any information before we wrote the
5 audit report.

6 Also included in the expense accounts was a bill for \$2,082.31 for damage to a pit
7 vacuum that was caused by Waste Management. This is expected to be recovered from
8 Waste Management and should be removed from expenses. There was also an invoice for
9 the Oceanside Marina of \$995.30 that is supposed to be reimbursed by the County.

10 To determine the reasonableness of the monthly maintenance fee, we reviewed an
11 estimate the utility received from US Water for a monthly operations fee of \$33,171.34.
12 The contract appeared to include similar terms but had 1.5 licensed operators and Key's
13 Environmental has two. The Key's Environmental contract contains provisions for a lead
14 mechanic and a field tech that are not separately shown on the Key's Environmental
15 contract. However, Key's Environmental has more employees than just the two licensed
16 operators.

17 The utility also provided a contract from 2002 with AirVac Inc. for the same
18 services performed by Key's Environmental. The 2002 contract was for \$5,500 a month
19 for operation of the air vac system and \$60 an hour for emergency service. The utility
20 usually pays Key's Environmental \$3,333 a month for operation of the air vac system and
21 \$90 an hour for emergency service

22 A summary of the adjustments follows:

| | |
|--|-------------|
| 23 Remove hookup fees | (15,000.00) |
| 24 Remove testing fees | (1,313.65) |
| 25 Remove amount due from Waste Management | (2,082.31) |

1 Remove amount due from County (995.30)

2 (19,391.26)

3 Exhibit K LW-2 includes copies of specific audit work papers that include the
4 contract with Keys Environmental, Inc. The exhibit also includes the estimate the utility
5 received from US Water.

6 **Audit Finding No. 4**

7 Audit Finding No. 4 discusses franchise fees. In 1999, the utility recorded
8 \$125,364.06 as franchise fees. These charges were to support proposed laws to require
9 people to hook up to the utility system. Included in this amount is \$81,444.62 for
10 engineering fees. These fees do not appear to relate to franchises but instead to design of
11 the new treatment plant. If the \$81,444.62 of engineering fees were transferred to
12 treatment and disposal plant, it would be depreciated at 5.56% instead of 2.5%. I
13 recommend that depreciation expense should be increased by \$2,492.21 a year. In
14 addition, I recommend that the accumulated depreciation should be increased for 7.5
15 years of adjustments to the depreciation expense, or \$18,691.54, and that average
16 accumulated depreciation should be increased by \$17,445.44.

17 **Audit Finding No. 5**

18 Audit Finding No. 5 discusses land. Schedule A-4 of the Minimum Filing
19 Requirements (MFRs), a summary of plant by year, shows a reduction to land in 1989 for
20 \$152,255. The filing correctly increased land for the same amount in the pro forma
21 adjustments. This brings the land account back to the ordered balance and the amount
22 that matches the documentary stamps for the land purchase. However, no adjustment was
23 made for the other side of the entry that reduced land. The debit to the original entry was
24 a debit to three plant accounts. Since land was increased to its original value, structures
25 should be reduced by \$38,063.56, collection sewers by \$38,064.11, and plant sewers by

1 \$76,126.96. In 1998, plant sewers were incorporated into account 380, treatment and
2 disposal equipment. Collection sewers were incorporated into account 360, force mains.

3 I recommend that average plant should be reduced by \$152,255, average
4 accumulated depreciation should be reduced by \$71,274.36, and depreciation expense
5 should be reduced by \$6,765.59.

6 **Audit Finding No. 6**

7 Audit Finding No. 6 discusses retirements. Schedule A-3 of the MFRs, a schedule
8 of adjustments to rate base, increases plant for the contract with Siemens for the work
9 done on the Advanced Wastewater Treatment (AWT) plant expansion. As part of the
10 expansion, a clarifying unit was installed. To make room for this unit, two drying beds
11 and a sludge thickening unit were removed. The adjustment to increase plant does not
12 take into account the removal and retirement of these items. We could not determine the
13 original cost of these items from the records we have in order to determine the entry
14 needed to the ledger. Since retirements decrease plant and increase accumulated
15 depreciation, there is no effect on rate base. The utility plans to adjust for the retirement
16 when the plant is completed. There may be a small effect on accumulated depreciation
17 and depreciation expense if these items are still being depreciated.

18 **Audit Finding No. 7**

19 Audit Finding No. 7 discusses accumulated depreciation. Commission Rule 25-
20 30.140, F.A.C. (Depreciation) was not in effect when the utility had its last rate case. The
21 rule allows a utility to implement guideline depreciation rates at any time. However, if
22 guideline rates are implemented for any account, they must be implemented for all
23 accounts. Further, when guideline depreciation rates have been implemented, the rates
24 shall not be changed unless approved by the Commission.

25 The utility did not follow Rule 25-30.140, F.A.C. until the year 2000. However, in

1 implementing the rule, some of the rates used were different than the rule rates. In
2 addition, we found an error in the 2006 formula for the Tools account. The rule also
3 requires that CIAC be segregated by type of addition and that these additions be
4 separately amortized based on type. Since we have not located any contributed property,
5 it appears reasonable that the utility left all the CIAC in one account for capacity fees.
6 However, according to the rule, cash should be amortized using a composite rate. In
7 2000, 2001, and 2002, the utility mistakenly left out certain accounts in calculating its
8 composite rate. Because of these errors, we have recomputed depreciation using the
9 proper rule rates. Because the revised depreciation rates also changes the composite rate
10 for amortization of CIAC, we recalculated the amortization. The audit report includes
11 schedules showing these calculations of accumulated depreciation, depreciation expense,
12 accumulated amortization, and amortization expense.

13 Based on our adjustments for these depreciation and amortization rates, I
14 recommend that average Accumulated Depreciation should be increased by \$251,681.06,
15 average Accumulated Amortization should be increased by \$99,481.92, and depreciation
16 expense should be increased by the net of \$16,021.42.

17 **Audit Finding No. 8**

18 Audit Finding No. 8 discusses CIAC. The utility included both CIAC and
19 Customer Advances for Construction in rate base. The advance account was created
20 because the utility entered into an agreement with the County that provided for the
21 County to pay the utility for the new plant additions. The utility received \$3,886,674.23
22 in twelve payments from the County for the addition. These payments were recorded in
23 Advances for Construction. As part of the agreement, when the utility received payments
24 from the individuals hooking to the new vacuum system, the utility would collect and
25 record the \$2,700 per Equivalent Residential Connection (ERC) in the CIAC account and

1 then return to the county \$2,100 per ERC. The \$600 per ERC or \$900,000 would be kept
2 by the utility also and should be recorded in CIAC. The tariff allows for \$2,700 per ERC
3 as a capacity charge.

4 At the end of 2005 the utility had received \$1,009,477.04 in payments from
5 customers for the CIAC. The utility had paid the County \$586,818.36. The utility then
6 gave the County an advance of \$242,000.

7 In 2005, \$4,100 was still owed to the County for the additions and offset the
8 advance of \$242,000. In 2006, the utility then received \$261,052 from additional
9 customers of which \$225,568.45 offset the \$242,000 advance. A balance of \$12,331.55
10 remained as an advance at the end of 2006. In 2007, the County began a program where
11 the customers can pay the connection fee through their tax bills.

12 In addition to the \$3,886,674.23 received from the County, the County paid
13 \$146,500 for design and drawings. This amount was recorded in CIAC. The County also
14 paid \$707,000 toward the \$600 per customer of additional CIAC that the utility is keeping
15 over and above the tariffed amount and recorded this in CIAC even though all the
16 customers have not yet hooked up.

17 The utility should make a journal entry to transfer the \$707,000 to the advance
18 account. The ledger also needs to be adjusted for the portion of the \$600 already received
19 that has not been recorded in CIAC and the excess received from the County in addition
20 to the advance amount.

21 Before the County started collecting the CIAC itself, the utility collected
22 \$908,101.04 in CIAC from the customers and only paid the county back \$715,110.81.
23 The additional \$192,990.23 that did not have to be repaid to the county should have been
24 removed from the advance and transferred to CIAC. The County then paid the remainder
25 of the \$900,000 by giving the utility a check for \$707,000 in advance of the customers

1 signing up. The utility booked the \$707,000 in CIAC instead of the advance account.
2 There is a 9.77 difference that remains. Since the County took over and until the end of
3 2006, 37.55 ERC's were paid for. At \$600 each, \$22,530 of the \$707,000 advance should
4 have been removed from advances and transferred to CIAC.

5 Finally, the utility received and booked more in the advance account than it
6 actually owes to the County and this amount needs to be adjusted. This amounts to
7 \$92,999.11. There is no effect on the filing because both accounts are included in their
8 entirety.

9 **Audit Finding No. 9**

10 Audit Finding No. 9 discusses temporary cash investments. Cash balances
11 included in the working capital allowance for the period ended December, 2006 include
12 several sub-accounts. Our review of these accounts from the general ledger revealed that
13 several of them earned interest. Generally, interest-bearing funds are excluded from
14 working capital to prevent subsidization of the company by the ratepayers. (See Order
15 No. 11498, issued January 11, 1983, in Docket No. 820150-EI, In re: Petition of Gulf
16 Power Company for an increase in its rates and charges, and Order No. PSC-97-1225-
17 FOF-WU, issued October 10, 1997, in Docket No. 970164-WU, In re: Application for
18 increase in rates in Martin County by Hobe Sound Water Company.) I recommend the
19 temporary cash investments be removed from working capital, which would reduce the
20 13-month average Working Capital in rate base by \$168,264.53.

21

22 Q. Does that conclude your testimony?

23 A. Yes.

24

25

1 BY MR. JAEGER:

2 Q Ms. Welch, did you also file Exhibit Numbers K LW-1,
3 which is your history of testimony, and K LW-2, your audit
4 finding and work papers?

5 A I did.

6 Q Do you have any changes or corrections to either of
7 those exhibits?

8 A No, I don't.

9 MR. JAEGER: Chairman, pursuant to the Comprehensive
10 Exhibit List, these two exhibits are identified as Exhibits 24
11 and 25 respectively, and this witness is tendered for cross.

12 CHAIRMAN CARTER: Just one moment, please.

13 Commissioner Skop, you are recognized.

14 COMMISSIONER SKOP: Thank you, Mr. Chairman.

15 Just a quick question of Ms. Welch. And I'm looking
16 at the testimony. In terms of the direct testimony and the
17 audit that was conducted, is it my understanding that they
18 looked at the agreements between the related parties in
19 conjunction with that audit?

20 THE WITNESS: Yes, we did.

21 COMMISSIONER SKOP: And was there any indication in
22 your part, and I don't know whether the audit team looked at
23 this, but was there any indication that any of those agreements
24 between affiliated parties had ever been competitively bid?

25 THE WITNESS: Yes, there was. Give me one second.

1 **CHAIRMAN CARTER:** If that is in your testimony, it
2 will be helpful to us. Did you say that's in your testimony?

3 **THE WITNESS:** No, it's not in the testimony.

4 **CHAIRMAN CARTER:** You may proceed.

5 **THE WITNESS:** But we did look to see if there were --
6 it wasn't actually competitively bid, but they did get some
7 bids in the beginning for different treatments that they did.

8 **COMMISSIONER SKOP:** But in terms of management
9 services or some of the other things that Mr. Burgess and some
10 of the customers have stated?

11 **THE WITNESS:** I'm sorry, I'm having a hard time
12 finding the report. (Pause). If the question is where it is
13 in here, I'm sorry, I don't have it right now.

14 **COMMISSIONER SKOP:** Actually, to clarify my question,
15 again, on Page 7 of your prefiled testimony, I think you
16 discussed this, some of the contracts that were presented by
17 the utility in terms of those reviewed by staff in relation to
18 the existing contracts that K W Utilities actually entered
19 into. And, again, there seemed to be numerous contracts both
20 for management services and other things, and I'm just trying
21 to relate that in relation to the issues, the outstanding
22 issues, and to better understand some of the arguments being
23 raised by OPC and staff as to what is redundant and what may be
24 excessive.

25 **THE WITNESS:** Yes, Commissioner. They did receive

1 some bids. I would have to go through the work papers and
2 actually find the bids that we did get. We did get them and
3 they are in the work papers. There were different services
4 that were being provided, so there were many different services
5 that Keys Environmental is providing. Keys Environmental isn't
6 typical of the type of affiliate relationship we usually see,
7 because the utility, itself, pretty much had all affiliate --
8 their affiliates doing all different types of services, and
9 usually we'll just see an outsourcing of a particular part of
10 something. And sometimes if you have an affiliate transaction
11 it is going to be something that the utility couldn't do
12 itself. Like, for instance, have some kind of factory where
13 they are actually building something or doing something that
14 the utility couldn't do itself.

15 In this situation, the utility had owned the trailer,
16 owned the trucks, had the people -- well, actually the people
17 that worked for it worked for the golf course, but they were
18 doing the accounting for both the utility and Keys
19 Environmental service. So all of it was intertwined. It
20 wasn't a separate and distinct part that couldn't be done by
21 the utility itself if it had its own employees.

22 **COMMISSIONER SKOP:** So I think, if I understand you
23 correctly, you are saying that they outsourced most of their
24 operational functions to various affiliates that may be engaged
25 in other businesses.

1 **THE WITNESS:** That is correct. And the primary
2 customer for those businesses was the utility.

3 **COMMISSIONER SKOP:** Thank you.

4 **MR. BURGESS:** I have no questions of this witness.

5 **CHAIRMAN CARTER:** Mr. Burgess, no questions?

6 **MR. BURGESS:** No.

7 **CHAIRMAN CARTER:** Commissioner Argenziano.

8 **COMMISSIONER ARGENZIANO:** I have a question. If you
9 had looked at other bidding for the company and that they have
10 affiliates that can do the job, I guess that's fine, but was it
11 within reason of the other bids?

12 **THE WITNESS:** It wasn't comparable, I wouldn't say,
13 to the type of services that they ended up doing.

14 **COMMISSIONER ARGENZIANO:** I'm sorry, I didn't mean to
15 cut you off, but if the bids were for something totally
16 different --

17 **THE WITNESS:** No, they were pieces maybe of the total
18 pie. And from what Mr. Smith had told me was they couldn't
19 find another business that would do the type of things that
20 they wanted. So there were -- he wasn't happy with any of the
21 different companies that had promoted their services to them.

22 **COMMISSIONER ARGENZIANO:** Mr. Chair.

23 **CHAIRMAN CARTER:** You're recognized.

24 **COMMISSIONER ARGENZIANO:** How would one come to any
25 kind of conclusion as to whether it would be the most prudent

1 decision or how the costs to the consumer they would be looked
2 it? Would it be -- how do we know that it was a reasonable
3 cost to the consumer if we don't have anything comparable?

4 **THE WITNESS:** We tried to look at that. We tried to
5 look at what the financial statement of Keys Environmental was
6 to see if they were making a profit. We tried to look at the
7 individual part bills that were being charged to see if they
8 were inflating the prices on those items.

9 We weren't totally successful in that, and that is
10 why it ended up being in our finding. It was very difficult
11 for the auditor. I wasn't the person doing it, but the auditor
12 had a difficult time translating the description on the
13 invoices for the parts and calling different companies that had
14 provided the parts to find out what a comparable price would
15 have been to see how much they were marking it up. And she
16 wasn't successful in that, so that is why we reported it in the
17 audit.

18 **CHAIRMAN CARTER:** You're recognized.

19 **COMMISSIONER ARGENZIANO:** Would staff have an answer
20 to how could we look at other companies and see if the costs of
21 other companies are similar to this one to find out how the
22 costs compare?

23 **CHAIRMAN CARTER:** In your normal course.

24 **THE WITNESS:** In the normal course, normally we look
25 at the lower of cost to market, and we try to get the books of

1 the affiliate and determine what their actual costs are. In
2 this case we did get the financial statement, which is in a
3 confidential document that shows what their total costs were
4 for the affiliate. However, the affiliate did do some work on
5 lift stations and lines at communities that hooked into the K W
6 Resort system, but had their own private lines and lift
7 stations that were owned by them. So they did do some work for
8 them, and we couldn't determine how much of the costs and
9 expenses on those financial statements specifically related to
10 those companies.

11 But overall, looking at the financial statement, it
12 did not appear that Keys Environmental was making a large
13 profit. Individually, on different things, I still believe
14 they were marking up parts; but overall I can tell you their
15 financial statement did not show a large profit. Now, is that
16 because they are making a lot of money in salaries, I don't
17 know.

18 **COMMISSIONER ARGENZIANO:** Well, with the missing
19 components I'm not sure you can come to a conclusion one way or
20 the other.

21 **THE WITNESS:** That's why we reported it in the
22 report, we weren't able to come to a conclusion.

23 **COMMISSIONER ARGENZIANO:** Mr. Chair, is there any way
24 of finding from another utility what the type of charge would
25 be to the consumer for -- I know you said you looked at it, I

1 guess, but I'm looking at it as if the consumer was charged
2 this amount of dollars for this particular work, some other
3 company has to have done that somewhere else, whether they went
4 through an affiliate or by themselves. Isn't there a way to
5 compare those costs? I know there are some differences in
6 companies in sizes and so on, and I am taking that into
7 consideration. I don't know how you come to a conclusion if
8 you can't get these answers.

9 **CHAIRMAN CARTER:** With staff doing the audit, those
10 were, hopefully, some of the kind of things that you would have
11 normally discovered in your audit, so that you could have done
12 a cost comparison, and I think that in the context of a company
13 that has -- this is my term -- farmed everything out, or
14 contracted out all of those functions, I still believe that
15 there should be some reasonable and rational, based upon
16 accounting principles and procedures, to be able to do that and
17 to be able to conduct the audit such that you can report to us
18 here at the Commission in terms of whether or not is it
19 efficient, is it economical, and those kinds of things.

20 **COMMISSIONER ARGENZIANO:** Mr. Chair.

21 **CHAIRMAN CARTER:** You're recognized.

22 **COMMISSIONER ARGENZIANO:** I guess I'm not getting it.
23 If Company A has affiliates and farms out everything,
24 outsources everything, and has, let's say, a particular job,
25 they are making a hook-up at a lift station and it costs such

1 and such dollars. Company B here who does it by himself or
2 outsources, there should be a way of finding out if they are
3 kind of similar, give and take, you know. You know what I
4 mean? I don't see it as that difficult. I don't understand
5 what the problem really is. And maybe it is not sinking in.

6 **CHAIRMAN CARTER:** In your analysis, did you
7 compare -- did you do it like, you know, let's say you buy a
8 house and you got an appraisal done. You have to find
9 comparables. In your analysis, were you able to, and based
10 upon Commissioner Argenziano's question, were you able to find
11 comparables such that you could make an economic analysis as to
12 whether or not these were reasonable?

13 **THE WITNESS:** No, we didn't do that. The only other
14 utility down here is Key Haven that is similar. The problem is
15 with the Keys, everything is more expensive here and everything
16 to get here is more expensive. It is very difficult to compare
17 to something in Miami or West Palm.

18 The only other company we did have down here is Key
19 Haven, and they outsource their -- they have a contract for
20 their service where the contractor comes in and provides the
21 staff to service the company.

22 **CHAIRMAN CARTER:** Were you able to look at --

23 **THE WITNESS:** We did not do that. You know, we tried
24 to do the things where we actually got the financial statements
25 to determine if they were making a profit. We tried to call

1 all the vendors. I had someone spend a quite a bit of time on
2 it trying to determine if they were inflating the prices. Like
3 I said, unfortunately we weren't successful. We reported it.
4 We basically passed it to the analyst is what we did.

5 **COMMISSIONER ARGENZIANO:** I guess, Mr. Chairman, that
6 we don't have a clue whether there was inflated prices or not.

7 **CHAIRMAN CARTER:** Before I go to Commissioner Skop,
8 let me see -- I think Mr. Willis wants to be heard. Is that
9 correct, Mr. Willis?

10 **MR. WILLIS:** Commissioner, the way I look at this
11 issue is the auditors have examined the issue. They have given
12 us a report that they have been unable to actually come up with
13 an actual factual representation at this point. This becomes a
14 burden of proof issue. The burden of proof is upon the company
15 at this point to let the Commission know that what they value
16 their services at, what you are billing us, is it an
17 appropriate market-based rate at this point. Does that help,
18 Commissioner?

19 **COMMISSIONER ARGENZIANO:** No. No, because if I were
20 the company, and I'm not saying the company is going to do
21 this, I understand they can come and say this is what it costs
22 and this is all we have to tell you. I would need something
23 separate from the company. The words of the company is
24 important to me, and the analysis of what they had to go
25 through in order to charge -- I mean, I want to hear what they

1 have to say, but I also need to know a side that is independent
2 from the company to tell me if that is accurate or I'm hearing
3 if they are telling me something that is legitimate or not how
4 will I know, I'm not in this that business. That is where I'm
5 getting at. How would I know without comparisons?

6 I guess then maybe OPC would come in there and maybe
7 have a different viewpoint from the company and they would have
8 to make their case.

9 **CHAIRMAN CARTER:** A different witness probably.

10 **COMMISSIONER ARGENZIANO:** But it sounds like it's --
11 I guess in my mind I try to think of things logically, and
12 maybe my mind works differently than others, but it's great to
13 have the company tell me that, I need to hear how it works for
14 them. I need to understand why it costs what it did. I'm
15 sitting here, and with all due respect to this company, and I'm
16 not saying they aren't telling the truth, how do I know who is
17 telling me the truth? So I guess somewhere in the continued
18 conversations back and forth between OPC, the company, and
19 ourselves, and if any other information you can gather from
20 that, because I understand the difficulty that the auditors
21 have, but that doesn't get me any closer to determining whether
22 there is inflated costs or not. I mean, you could have
23 legitimate costs, and I guess it's going to go back and forth,
24 and I'm afraid at the end of this it's going to be because we
25 don't have real comparisons or close comparisons that we have a

1 determination of -- we would have to guess, and I'm worried
2 about that.

3 **CHAIRMAN CARTER:** Commissioner Skop.

4 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. Just a
5 couple of quick questions. First to Mr. Burgess.

6 Has OPC filed expert testimony in this to rebut some
7 of those costs?

8 **MR. BURGESS:** Yes, we have. There are a number of
9 issues that are explicit to the very questions that you and
10 Commissioner Argenziano have been asking.

11 **COMMISSIONER SKOP:** And I agree with Commissioner
12 Argenziano. I think that, you know, as someone has mentioned,
13 it's a unique situation in the Keys to the extent that there is
14 no ready comparison to the mainland. And in a lot of
15 circumstances you have to look that in isolation. But I just
16 want to get back to Ms. Welch's points.

17 First and foremost, with respect to the financials
18 from Keys Environmental, Incorporated. You mentioned that you
19 weren't able to determine, or they had not shown a significant
20 profit, although you had questioned some of the markups and
21 some of the expenses. Is the reason that they did not show a
22 significant problem due to excessive salaries in relation to
23 industry standards or practices? I don't want to get into
24 confidential issues, but I'm just trying to --

25 **THE WITNESS:** I do remember that we looked at that at

1 the time. And just give me one second to look at the
2 statement. Again, I don't have it by individual employees
3 here.

4 **COMMISSIONER SKOP:** Just one second. I guess what
5 I'm saying is that you could be otherwise profitable but for
6 excessive salaries, and that would be an easy way to make the
7 company look less profitable than it was if it had high
8 overhead expenses, so that's what I'm trying to ask.

9 **THE WITNESS:** And it might be higher than some
10 places, but I wouldn't say it was extraordinary.

11 **COMMISSIONER SKOP:** Okay. And, again, the issues
12 that I'm trying to center on, at least I think that seem
13 raised, and I think that it goes to Page 6 of your prefiled
14 testimony, tends to center around Issue 24 and Issue 2. And I
15 think on Page 6, the second to the last paragraph, I think you
16 speak to some of the markups that were included there. And I
17 just wanted to get a little bit -- again, you have had the
18 opportunity, audit staff, to look at the contracts and look at
19 some of the markups, and I guess there is some allocations that
20 the mark-up is 30 percent in some instances for chemicals and
21 services and such under the contract. I guess is that
22 reasonable in relation to your review, your audit review?

23 **THE WITNESS:** We could not determine how much the
24 mark-up was, and that was our problem. By calling the vendors
25 and the parts numbers, we couldn't figure out an actual

1 mark-up. But I would say that from what I heard at the company
2 that that probably is accurate.

3 **COMMISSIONER SKOP:** And then in relation to the new
4 tie-in inspections, I think at the bottom of Page 6 you discuss
5 that under the contracts, operations contracts states that
6 supervising and inspecting the new tie-ins is part of the
7 contract, and then it's more of a judgment call as to what may
8 be going over and above what is normally called for.

9 **THE WITNESS:** I'm not a lawyer, so reading the
10 contract even -- I mean, as I read the contract, it appeared to
11 me that that was included, and that's why we reported that,
12 that it should not be a separate fee.

13 **COMMISSIONER SKOP:** Thank you. I will need that to
14 be fleshed out by the rest of the witness testimony.

15 **CHAIRMAN CARTER:** Thank you. Mr. Wharton.
16 Mr. Deterding.

17 **MS. HELTON:** Can I read something for Commissioner
18 Argenziano that may or may not help kind of get to where I
19 think Mr. Willis was coming from.

20 **COMMISSIONER ARGENZIANO:** And before you do that, let
21 me try to maybe articulate a little better. I have to come to
22 a determination in my mind looking at this case from what I
23 know and what I am reading and what I am going to extrapolate
24 from everybody's testimony is that were costs prudent or were
25 they marked up and is it prudent for this company to outsource

1 everything? Is that fair to do? So in order for me to do
2 that, I have to figure out -- I have to know if there were
3 mark-ups that would have been a lot higher and without
4 comparables, I guess. That's where I'm having a hard time.

5 **MS. HELTON:** And I appreciate that. I want to read
6 you to some language from Chapter 367 that the Legislature has
7 directed towards affiliate transactions, or not affiliate
8 transactions, but dealings with affiliated companies.

9 **COMMISSIONER ARGENZIANO:** And it's 367 --

10 **MS. HELTON:** .156. The first subsection there. "The
11 Commission shall continue to have reasonable access to all
12 utility records and records of affiliated companies, including
13 the parent company, regarding transactions or cost allocations
14 among the utility and such affiliated companies, and such
15 records necessary to ensure the utility's ratepayers do not
16 subsidize nonutility activities." So I believe, and I think
17 what Mr. Willis was going to was that -- it's the company's
18 burden to show us what the affiliate's invoices are, the
19 affiliate's costs are such that reasoned analysis can be done
20 to see whether the costs that the affiliate incurred and
21 charged to the regulated utility are reasonable costs for the
22 customers to incur.

23 **COMMISSIONER ARGENZIANO:** Okay. I get that part as
24 far as the reasonable costs. But what you just read me, I will
25 have to read it again. It sounded like it was -- if the

1 related to the plant documentation from 1984 to 1997?

2 **A** Yes.

3 **Q** And I believe you ultimately referred to that in the
4 audit as unsubstantiated, is that correct?

5 **A** We haven't been able to audit it.

6 **Q** Okay. Are you aware that the utility has submitted
7 in response to one of the data requests from the Commission an
8 original cost study of those items?

9 **A** Yes.

10 **Q** Have you had an opportunity to review that?

11 **A** No, I haven't.

12 **Q** So you don't know whether that would have
13 substantiated those costs?

14 **A** We had asked them to do an original cost study, the
15 analysts had agreed that that would be the solution to the
16 problem. We had spoken to the analyst and he had agreed that
17 that would be a solution to the problem. And once we told him
18 that there was none and we submitted our report, the rest went
19 to him, and I assume that he looked at it and decided whether
20 or not he agreed with it or not.

21 **Q** You made an adjustment related to the unsubstantiated
22 plan because you didn't have that information at the time for
23 accumulated depreciation, did you not?

24 **A** Yes.

25 **Q** Would you agree that your adjustment for accumulated

1 depreciation only removed accumulated depreciation accrued up
2 through 1997?

3 **A** Yes.

4 **Q** And if that plant were to be removed, that it should
5 remove depreciation as long as it was accruing up through the
6 testing?

7 **A** Yes, that's correct.

8 **Q** You speak in your Audit Finding Number 2 of charges
9 by Green Fairways on behalf of Mr. Smith. Have you done an
10 analysis to compare the market costs of a person acting as
11 president for a similar-sized utility to determine whether Mr.
12 Smith's charges are in keeping with market value for those
13 services?

14 **A** I haven't done a study. I have done most of the
15 water and sewer companies in southern Florida. I would say it
16 is a little on the high side.

17 **Q** Have you looked at --

18 **CHAIRMAN CARTER:** Hang on. I'm going to need for you
19 to move your chair closer to the mike.

20 **THE WITNESS:** Okay. Is that good?

21 BY MR. DETERDING:

22 **Q** You were talking about the charges from Green
23 Fairways on behalf of Mr. Smith. You indicated you thought his
24 figures looked a little on the high side. Did you compare this
25 to Key Haven which you mentioned is the only utility --

1 **A** No, we did not.

2 **Q** And you would agree, would you not, that Key Haven is
3 really the only utility that is similarly situated to K W?

4 **A** Yes.

5 **Q** Would you believe that an analysis of K W would yield
6 some useful information in comparing these and other costs of
7 K W?

8 **A** Of Key Haven, you mean?

9 **Q** I'm sorry, Key Haven.

10 **A** Yes. We didn't have time, honestly.

11 **Q** Have you done any analysis to determine whether the
12 oversight construction projects imposed by -- charges for that
13 oversight imposed by Green Fairways are reasonable as far as
14 what third parties would charge for such construction
15 oversight?

16 **A** No, we haven't.

17 **Q** You indicate in your -- in the audit finding itself
18 it is indicated that, and I quote, "Related-party charges to a
19 utility require additional review to determine whether the
20 related party bills the utility at actual costs and does the
21 utility use the affiliated company to increase prices to the
22 utility." Is it your position that utility contracts with
23 related parties, it should only be charged at actual cost?

24 **A** I think it should be. Now, it depends on what kind
25 of an affiliate you are talking about. I do think that there

1 are some affiliates that do work that is totally unrelated to
2 the utility at all, like a manufacturing plant or something
3 that the utility couldn't do itself, that then I could
4 understand using market rates. But I still believe in the
5 lower of cost or market.

6 **Q** And on what basis do you make such a finding?

7 **A** Well, we have a rule for electric companies. We also
8 have in telephone after -- I know that your testimony of one of
9 your witnesses talks about a GTE case. But after that GTE
10 case, it was my understanding that the Federal Communications
11 Commission came out with a lower of cost or market rule in
12 Number 32.27C. This Commission has traditionally used the
13 lower of cost or market to determine the cost of affiliate
14 transactions.

15 **Q** Well, is there a Supreme Court case that authorizes
16 this Commission to review costs from affiliates based upon
17 costs rather than on market value?

18 **A** Not to my knowledge.

19 **Q** You note that the contract between Keys Environmental
20 and K W Resorts refers to inspecting new tie-ins as part of the
21 contract services to be provided by Keys Environmental,
22 correct?

23 **A** Correct.

24 **Q** In that contract, which I believe you have attached
25 to your testimony --

1 **A** Yes.

2 **Q** -- where is this language that you referred to?

3 **A** Oh, boy. I will need a second.

4

5 0:55:26

6 **Q** If I may, is's on Page 13 under the heading of
7 additional operating activities, 2.18, additional operating
8 activities, and then Subparagraph R on the bottom of Page 13?

9 **A** Yes.

10 **Q** So, this is under a category called additional
11 operating activities, and it states, does it not, that the
12 agent, which I assume is Keys Environmental, is it not?

13 **A** Yes.

14 **Q** That the agent shall whenever possible perform the
15 following additional operational activities, correct?

16 **A** That is correct.

17 **Q** And this is one of the enumerated additional
18 operating activities?

19 **A** Yes.

20 **Q** And the wording under Subparagraph R is to supervise
21 and inspect new customer tie-ins?

22 **A** That is correct.

23 **Q** Where in this contract does it refer to the numerous
24 inspections that are required for connection of a customer into
25 the vacuum system?

1 **A** I don't that it specifically says that.

2 **Q** And this utility does operate and has operated for
3 years a nonvacuum system, has it not?

4 **A** Yes.

5 **Q** Which is covered by this contract?

6 **A** Yes.

7 **Q** In the audit finding -- give me just a second. It
8 says the following on Page 11, "The description of what Keys
9 Environmental is doing for the connection fee appears to be
10 more extensive than what is covered by the operations
11 contract," does it not?

12 **A** Yes.

13 **Q** So you have determined that the staff believes that
14 what is required of Keys Environmental is more extensive than
15 what is covered by the contract?

16 **A** We thought it looked like they were doing more work
17 than just supervising, yes.

18 **Q** You refer on Page 7, Lines 17 through 18 to the Air
19 Vac, Inc. contract, correct?

20 **A** Yes.

21 **CHAIRMAN CARTER:** Do you need to have this marked,
22 Mr. Deterding?

23 **MR. DETERDING:** I do.

24 **CHAIRMAN CARTER:** Staff, a number?

25 **MR. JAEGER:** Number 37 is the vacuum sewage

1 collection system.

2 **CHAIRMAN CARTER:** Show it done. You may proceed.

3 (Exhibit Number 37 marked for identification.)

4 BY MR. DETERDING:

5 **Q** This is the contract you were referring to in your
6 testimony?

7 **A** Yes, it was.

8 **Q** And this is for services presently related to
9 operation of the vacuum sewage collection system?

10 **A** Yes.

11 **Q** This is the company who previously provided --

12 **A** Previously provided the service, yes.

13 **Q** And if you will refer to the back page of that, I
14 believe that is where you determined the charge that was
15 assessed to the utility at that time.

16 **A** Yes.

17 **Q** And what is that figure?

18 **A** \$5,500 a month.

19 **Q** And what is Keys Environmental currently charging for
20 that service?

21 **A** \$3,333.

22 **Q** So for what you believe to be similar services, Keys
23 Environmental is saving the utility substantial money?

24 **A** It depends on what it actually costs them whether it
25 is saving them or not. If the utility could do it itself at a

1 lower cost they are not saving money.

2 Q Well, it is cheaper than what they could get it from
3 a third party.

4 A From a third party, yes.

5 Q You have attached to your testimony a copy of a
6 proposal from U.S. Water beginning on Page 34 of K LW-2, is that
7 correct?

8 A Yes.

9 Q And this is a proposal for operations services?

10 A Yes.

11 Q That are currently provided by Keys Environmental?

12 A Yes.

13 Q And what is the amount that was proposed to be
14 charged for those services by U.S. Water?

15 A The total proposed cost a month was 33,171.34.

16 **CHAIRMAN CARTER:** I'm sorry, I am having trouble
17 following you guys here. Where are we?

18 **MR. DETERDING:** Commissioner, we are referring to the
19 contract, the proposal from U.S. Water that is on Ms. Welch's
20 Exhibit K LW-2 beginning on Page 34 of 42. It is the last
21 document attached to that exhibit.

22 **CHAIRMAN CARTER:** Okay. You may proceed.

23 BY MR. DETERDING:

24 Q And what was the fee proposed by U.S. Water for those
25 services?

1 **A** \$33,171.34.

2 **Q** And what is the amount being charged by Keys
3 Environmental for those services?

4 **A** 23,206.

5 **Q** So substantially less than what is being proposed by
6 U.S. Water?

7 **A** Yes. However, Mr. Smith did tell me he didn't think
8 they were comparable.

9 **Q** Mr. Smith told you that?

10 **A** Yes.

11 **Q** Do you have anything from your review of those
12 contracts to indicate that they are not comparable?

13 **A** No, I don't.

14 **Q** If you will refer to Page 41 of 42 of the U.S. Water
15 proposal.

16 **A** I don't know where you are seeing the pages.

17 **Q** I'm sorry. I am looking at the Exhibit Page 41 of
18 42.

19 **A** Okay. Yes.

20 **Q** It begins with price proposal at the top.

21 **A** Yes.

22 **Q** If you will look down under project scope. Would you
23 read the second paragraph under there that begins, "The cost
24 for chemicals and residuals management"?

25 **A** "The cost for chemicals and residual management are

1 to be billed to KWRU on a per occurrence basis with an
2 approximate allowance overhead and margin." Do you want me to
3 keep going?

4 **Q** No.

5 **MR. JAEGER:** She said approximate. I think it says
6 appropriate.

7 **THE WITNESS:** Oh, I'm sorry.

8 BY THE WITNESS:

9 **Q** Appropriate allowance?

10 **A** Yes, appropriate.

11 **Q** Overhead and margin. So --

12 **CHAIRMAN CARTER:** It is very small print. I agree
13 with you, it is very small.

14 BY MR. DETERDING:

15 **Q** Is residuals management sludge disposal or hauling,
16 is that what that is?

17 **A** I really don't know.

18 **Q** Would you agree that this contract calls for an
19 allowance for overhead and margin?

20 **A** Yes, it does.

21 **Q** Would you agree that that is amenable to something
22 along the lines of a mark-up?

23 **A** Yes.

24 **Q** Just a second. (Pause).

25 **CHAIRMAN CARTER:** While you are getting yourself

1 together, let me take a moment. Commission Skop, you're
2 recognized.

3 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And I
4 appreciate some of the (inaudible) Mr. Deterding has attempted
5 to flesh out, and while he is looking for his other ones, I
6 will move forward. I guess based on the document that was
7 provided for the Air Vac contract, am I correct to understand
8 that this Air Vac itself had a proposal to manage it, but
9 (inaudible) managed it at one point?

10 **THE WITNESS:** They did manage it at one point.

11 **COMMISSIONER SKOP:** But no longer manages it due to
12 the fact that KEI has taken over, is that correct?

13 **THE WITNESS:** Correct.

14 **COMMISSIONER SKOP:** And then on the last page of that
15 agreement they mention that the system operation was
16 approximately \$5,500 per month. And I guess under the KEI
17 agreement it is about 3,300 or something like that?

18 **THE WITNESS:** Yes, that is correct.

19 **COMMISSIONER SKOP:** And I guess so I've got that
20 point reconciled. The point that I am still a little bit
21 troubled with and am trying to flesh out is on Page 13 of
22 KLW-2, which was the Provision R of the supervise and inspect
23 new customer tie-ins. It would seem to me that a tie-in to a
24 sewer system is a tie-in to a sewer system irrespective of
25 whether it be nonvacuum or vacuum. I'm not exactly

1 appreciating the subtlety, but it seems to me that supervise
2 and inspecting tie-ins is a broad generic term indifferent of
3 whether it be a vacuum assisted sewer or --

4 **THE WITNESS:** I am not an engineer, but --

5 **COMMISSIONER SKOP:** I just wanted to see, because you
6 mentioned that -- I'm trying to flesh out -- I think the price
7 point has been fleshed out, I'm trying to flesh out through you
8 that you had made some handwritten notes on the audit, and I
9 apologize for not being able to properly hear what page that
10 was that you thought at least from an auditor's perspective,
11 not technical staff's perspective, that you thought that there
12 may be a little more effort involved in inspecting a tie-in.
13 And I know that is a critical issue here, so that's why I'm
14 trying to get a little bit more appreciation of why you felt
15 that.

16 **THE WITNESS:** I didn't actually do the work. A lot
17 of this was done by other auditors in the office, so I need to
18 look at the work papers when it was done.

19 **COMMISSIONER SKOP:** Again, the only reason I'm asking
20 the question is so that everyone understands that when you do
21 have an affiliated transaction there is a heightened level of
22 scrutiny, and I think that we have convinced ourselves that the
23 price point has been explained by not only our staff, but also
24 by the utility, so I am working myself through that issue. But
25 I am still trying to understand if under the new agreement that

1 they accepted the responsibility for to supervise and inspect
2 new connection tie-ins and why there would be a need for
3 additional effort over and above -- and additional charges that
4 are at issue, too, over and above what is already in the
5 contract.

6 **THE WITNESS:** We did request why there were
7 additional charges for this, and we did obtain something from
8 the utility that described the additional work that they were
9 doing because of the new system. And I just need to find that
10 document.

11 **COMMISSIONER SKOP:** Mr. Deterding, do you remember
12 what page reference that was where you said that there were the
13 notes, the auditor's notes that said that may be over and
14 above, just so we can help Ms. Welch?

15 **MR. DETERDING:** The page on which she refers to
16 the --

17 **COMMISSIONER SKOP:** That there may be additional
18 effort or something.

19 **MR. DETERDING:** I believe that was in the audit
20 report itself.

21 **THE WITNESS:** No. Unfortunately, the work paper
22 itself.

23 **COMMISSIONER SKOP:** I think it is on Page 6 perhaps
24 of the prefilled testimony.

25 **MR. DETERDING:** I believe that reference is in the

1 audit report itself, which is in the other auditor witnesses
2 Exhibit IHP-1, Page 13 of 42, which is Page 11 of the audit
3 report.

4 **MR. JAEGER:** The full audit report is in Iliana
5 Piedra's Exhibit IHP-1. That is the full audit report.

6 **COMMISSIONER ARGENZIANO:** Commissioner Skop, she is
7 still looking for this.

8 **COMMISSIONER SKOP:** And I apologize. I don't have
9 the full audit report before me. I guess the staff is trying
10 to direct us to a different exhibit where it would be, but --

11 **COMMISSIONER ARGENZIANO:** Would you repeat that?

12 **MR. JAEGER:** Iliana's IHP-1, and I think it is Page
13 13 or 42 that Mr. Deterding is referring to.

14 **THE WITNESS:** Yes. I was trying to find the actual
15 workpaper that was in a response from the utility of what they
16 actually did, and I'm not being really successful in finding
17 where it is here. I could provide it at a later date.

18 **COMMISSIONER SKOP:** That's fine. Let's just move on.
19 I'm trying to flesh out compare I am hear some objects by the
20 utility in terms of what audit staff noted and I am just trying
21 to work that out in my mind.

22 **THE WITNESS:** We do have documentation in these work
23 papers that shows exactly what they did in addition, the
24 additional work that they did for that.

25 **COMMISSIONER SKOP:** But to me I would like to see it

1 because the crux of whether that expense would be further
2 considered would be very important and hinged upon that from
3 what I am seeing in the contract right now, I would need to see
4 additional scope to justify that. So, I mean, to me that would
5 be the audit team's analysis, but also in light of the
6 preliminary recommendation by our staff, staff has also noted
7 that they seem to have a problem with this on the fairness to
8 the utility and fairness to OPC and fairness to the parties and
9 fairness to customers. I'm just trying to get a handle on
10 where the rub is in terms of what is acceptable or may be
11 additional scope outside of what the contract provisions.

12 **THE WITNESS:** I understand.

13 **COMMISSIONER ARGENZIANO:** If we could continue. I
14 guess we need a minute.

15 (Pause.)

16 BY MR. DETERDING:

17 **Q** Commissioner, I believe what Ms. Welch is referring
18 to is in the utility's response to the audit report. Is that
19 accurate, is that what you are looking for?

20 **THE WITNESS:** I will tell you in a minute.

21 **MR. DETERDING:** Which is referenced by Mr. DeChario
22 in part of his rebuttal exhibits that we intend to put on,
23 PED-8, Page 4 of 10. It is the utility's response to the audit
24 report.

25 **THE WITNESS:** But we did get something during the

1 audit. This came after. We did get something during, but this
2 does address what you are asking about it. It does list the
3 different things that they are doing for those new hook-ups.

4 **MR. DETERDING:** Is it back to me?

5 **CHAIRMAN CARTER:** Absolutely.

6 BY MR. DETERDING:

7 **Q** Ms. Welch, if I am understanding correctly the
8 limitations of your testimony and of Ms. Piedra, you are
9 addressing Audit Findings 1 through 9 and she is addressing the
10 remainder?

11 **A** That is correct.

12 **MR. DETERDING:** With that understanding, I don't
13 believe I have anything further of Ms. Welch.

14 **THE WITNESS:** Thank you.

15 **CHAIRMAN CARTER:** One second. Commissioners,
16 anything further of this witness? Thank you, Kathy. We will
17 give you an opportunity to get your stuff.

18 **THE WITNESS:** Get myself out of here. Thank you.

19 **MR. JAEGER:** Chairman Carter, I had just one question
20 for her.

21 **CHAIRMAN CARTER:** Too late. You're recognized.

22 REDIRECT EXAMINATION

23 BY MR. JAEGER:

24 **Q** Ms. Welch, are you familiar with the Sunshine
25 Utilities case where the Commission made an adjustment on

1 salaries and the comparison of salaries of other utilities?

2 **A** No, I'm not.

3 **MR. JAEGER:** Okay. Thank you.

4 **CHAIRMAN CARTER:** Ms. Welch, for the one millionth
5 time you have told us all that you are not a lawyer, right?

6 **THE WITNESS:** No, I'm not a lawyer.

7 **CHAIRMAN CARTER:** Thank you kindly. We'll have some
8 further questions later on, but I think obviously this is an
9 area that -- we thank you for that and give you an opportunity.
10 Are you going to leave that for --

11 **THE WITNESS:** For Iliana.

12 **CHAIRMAN CARTER:** And give you a minute to get your
13 crutches.

14 **MR. JAEGER:** Chairman Carter, staff will move her two
15 exhibits, 24 and 25.

16 **CHAIRMAN CARTER:** Are there any objections?

17 **MR. DETERDING:** No. And I would move Exhibit 37.

18 **CHAIRMAN CARTER:** Mr. Burgess, any objection?

19 **MR. BURGESS:** No.

20 **CHAIRMAN CARTER:** Commissioners? Without objection,
21 show it done. Thank you.

22 (Exhibits 24, 25, and 37 admitted into the record.)

23 **MR. JAEGER:** Staff would next call Iliana Piedra.
24 Chairman Carter, these two witnesses here, did you want to
25 excuse them until tomorrow, and when would you like them to

1 testimony?

2 **A** I do not.

3 **Q** And if you were asked the same questions would your
4 testimony be the same today?

5 **A** Yes.

6 **MR. JAEGER:** Chairman, may we have Ms. Piedra's
7 testimony inserted?

8 **CHAIRMAN CARTER:** Your prefiled testimony will be
9 entered into the record as though read.

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DIRECT TESTIMONY OF ILIANA H. PIEDRA

1
2 Q. Please state your name and business address.

3 A. My name is Iliana H. Piedra and my business address is 3625 N.W. 82nd Ave.,
4 Suite 400, Miami, Florida, 33166.

5

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

7 A. I am employed by the Florida Public Service Commission as a Professional
8 Accountant Specialist in the Division of Regulatory Compliance and Consumer
9 Assistance.

10

11 Q. How long have you been employed by the Commission?

12 A. I have been employed by the Florida Public Service Commission since January
13 1985.

14

15 Q. Briefly review your educational and professional background.

16 A. In 1983, I received a Bachelor of Business Administration from Florida
17 International University with a major in accounting. I am also a Certified Public
18 Accountant licensed in the State of Florida.

19

20 Q. Please describe your current responsibilities.

21 A. Currently, I am a Professional Accountant Specialist with the responsibilities of
22 planning and directing audits of regulated companies, and assisting in audits of affiliated
23 transactions. I am also responsible for creating audit work programs to meet a specific
24 audit purpose.

25

1 Q. Have you presented testimony before this Commission or any other regulatory
2 agency?

3 A. Yes. I testified in the City Gas Company of Florida rate case, Docket No. 940276-
4 GU, the General Development Utilities, Inc. rate cases for the Silver Springs Shores
5 Division in Marion County and the Port LaBelle Division in Glades and Hendry Counties
6 in Docket Nos. 920733-WS and 920734-WS, respectively, the Florida Power and Light
7 storm cost recovery case in Docket No. 041291-EI, and the Embarq storm cost recovery
8 case in Docket No. 060644-TL.

9

10 Q. What is the purpose of your testimony today?

11 A. The purpose of my testimony is to sponsor the staff audit report of K W Resort
12 Utilities Corp. (utility) which addresses the utility's application for an increase in
13 wastewater rates in Monroe County, Audit Control Number 07-233-4-1. This audit report
14 is filed with my testimony and is identified as Exhibit IHP-1. Specifically, my testimony
15 addresses Findings 10-19.

16

17 Q. Did you prepare or cause to be prepared under your supervision, direction, and
18 control this audit report?

19 A. Yes, I was the audit manager in charge of the audit.

20

21 Q. Please describe the work you performed in this audit.

22 A. We traced revenues to the general ledger and utility billing registers and selected
23 a sample of customer bills from each commercial customer rate class on a random basis.
24 We recalculated the bills using the Commission approved tariff rates. We tested the
25 billing analysis in the filing and the annualizing adjustments and traced to supporting

1 | documentation. We sampled O&M expense items from the general ledger and
2 | examined invoices and supporting documentation for the proper utility system,
3 | classification, National Association of Regulatory Utility Commissioners (NARUC)
4 | Uniform System of Accounts (USOA) account, amount, period and recurring nature.
5 | We recalculated the regulatory assessment fee amounts and reconciled them to the
6 | general ledger and obtained the property tax bills for review and to determine if the
7 | amount booked reflects the discount amount. We reconciled the individual components
8 | of capital structure to the utility's general ledger as of December 31, 2006. We traced
9 | long-term debt balances to the original documents and verified the terms and interest
10 | rate of each note payable. We recalculated a sample of deferred tax balances for the
11 | period using Commission authorized rates and federal tax rates. We traced a sample of
12 | customer deposit balances to supporting documentation and verified that customer
13 | deposits were refunded and credited with interest payments in compliance with
14 | Commission rules.

15 |

16 | Q. Please review the audit findings in the audit report for which you are testifying.

17 | A. **Audit Finding No. 10**

18 | Audit Finding No. 10 discusses the Monroe County Detention Center income.
19 | The utility recorded \$19,575 in the general ledger for income received from the Monroe
20 | County Detention Center. This relates to the cleaning of their lift stations. This was not
21 | included in the Operating Revenues in Schedule B-2 and B-4 of the Minimum Filing
22 | Requirements (MFRs), Net Operating Income and Test Year Revenues. I recommend that
23 | test year revenues be increased by \$19,575.

24 | **Audit Finding No. 11**

25 | Audit Finding No. 11 discusses travel expenses. The utility recorded in

1 miscellaneous expenses various travel expenses for Mr. William L. Smith, president of
2 KW Resort Utilities Corp. A total of \$6,000 was recorded for lodging expenses paid to
3 Green Fairways. These were recorded at \$1,000 per month for the months of January,
4 March, May, July, September and November of 2006.

5 Also recorded are four invoices, totaling \$10,775.52, for Mr. Smith's rental car
6 and air plane fuel. In addition to these invoices, the utility recorded invoices payable to
7 Island City Flying Service for \$2,330.08.

8 These invoices for Mr. Smith's travel expenses total \$19,105.60. The utility
9 explained that Mr. Smith's cost of travel is allocated on alternating months between the
10 utility and Key West Golf Club (KWGC). Mr. Smith has a house on Stock Island.

11 **Audit Finding No. 12**

12 Audit Finding No. 12 discusses office expense. The utility recorded a copier fee in
13 Materials and Supplies expense for a total of \$5,378.40. This was paid to Weiler
14 Engineering in July 2006. This payment represents a monthly fee of \$224.10 for 24
15 months for a copier in the plant trailer. The copier charges represent one half of the actual
16 charges because Keys Environmental, Inc. pays the other half of the copying fee. I
17 recommend that the operating expenses should be reduced by \$2,689.20 for out-of-period
18 charges.

19 **Audit Finding No. 13**

20 Audit Finding No. 13 discusses several items that may be non-recurring charges.
21 First, the utility recorded an expense to haul sludge for \$11,411.82. This amount is for a
22 total of 66.62 tons. The other four charges in this account were for lower amounts. The
23 utility explained that due to blower and diffusers problems at the plant and also to a high
24 solids inventory, the utility had to haul an inordinate amount of solids to continue to
25 operate within the DEP requirements. This charge is probably not recurring and may need

1 to be amortized over five years. The yearly amortization would be \$2,282.36. The
2 deferred amount would be \$9,129.46. The contract with Keys Environmental Inc.
3 explains that the additional charge to pump the sewage is 11 cents per gallon and the
4 additional charge for pumping, hauling, and discharging of any raw sewage is 5 cents per
5 gallon.

6 Second, the utility recorded \$25,000 in advertising expenses, for charges to
7 William Barry for public relations. The utility explained that these charges arose from
8 concerns raised by Stock Island property owners at a Monroe County Commission
9 meeting. The county stated that the utility should provide information to the future users
10 of the wastewater system and educate them about the process. The utility hired William
11 Barry to handle public relations, create public awareness and answer any media and
12 county questions. This charge is probably not recurring and may need to be amortized
13 over five years. The yearly amortization would be \$5,000. The deferred amount would
14 be \$20,000.

15 Third, the utility recorded in contractual services - other, an expense to strip and
16 wax the linoleum floor at the office trailer. The amount recorded was \$1,290 paid to The
17 Carpet Lady. This charge may also not be recurring and may need to be amortized over
18 five years. The yearly amortization would be \$258. The deferred amount would be
19 \$1,032.

20 **Audit Finding No. 14**

21 Audit Finding No. 14 discusses telephone charges. The utility included
22 \$13,813.52 in miscellaneous expense for telephone charges. The account includes
23 \$6,305.80 of charges payable to BellSouth for two lines in the accounting office of Key
24 West Golf Club, designated for sewer customer service calls, and in the plant trailer. We
25 tested a few of the other charges and it appears that most are for telephone purchases and

1 cellular charges for Doug Carter, Bart Smith, and Alexander Smith. Doug Carter's salary
2 is allocated to the utility through the management fee, therefore, his phone charges should
3 not be totally charged to the utility. Approximately 30% of his salary was allocated to the
4 utility. Based on our sample we could not determine the total amount of the cellular
5 charges for Doug Carter. The other individuals do not work for the utility. The \$7,507.72
6 of telephone expenses that are not directly related to the utility business should not be
7 allowed by the Commission.

8 **Audit Finding No. 15**

9 Audit Finding No. 15 discusses finance charges included in insurance expense.
10 The utility paid \$601.35 to Imperial Premium Finance Inc. and \$800.11 to First Insurance
11 Funding Corp. The utility prorated the payments and established a prepaid insurance
12 account in order to determine the finance charges expensed for 2006. The total finance
13 charges included in expenses for 2006 total \$700.73

14 Commission policy has been to reduce operating expenses for interest incurred
15 due to late payments, on the grounds that the expense is avoidable and that the
16 Commission should not condone the incurrence of unnecessary expenses. The
17 Commission has further stated that it is inappropriate to require customers to pay for an
18 avoidable cost which should be borne by the utility owners. (See Order No. 21137, issued
19 April 27, 1989, in Docket No. 871262-WS, Application of Ortega Utility Company for
20 rate increase in Duval County.) I recommend that operating expenses be reduced by
21 \$700.73.

22 **Audit Finding No. 16**

23 Audit Finding No. 16 discusses political expenses. The utility recorded \$117.82
24 related to a political fundraiser. These were recorded in materials and supplies and
25 miscellaneous expenses. The utility also recorded in advertising expense \$1,085 for other

1 political donations. Commission Rule 25-30.115(1), Florida Administrative Code,
2 requires water and wastewater utilities to maintain accounts and records in conformity
3 with the 1996 NARUC USOA. The USOA prescribes that "expenditures for the purpose
4 of influencing public opinion with respect to the election or appointment of public
5 officials ..." should be charged to Account 426, Miscellaneous Non-Utility Expense, a
6 below-the-line account. I recommend that operating expenses should be reduced by
7 \$1,202.82.

8 **Audit Finding No. 17**

9 Audit Finding No. 17 discusses contractual services. The utility recorded in
10 contractual services - other, a monthly \$200 charge allocated from Key West Golf Club
11 for use of a golf cart for utilities operations. The invoiced amount of the golf cart, paid by
12 Key West Golf Club to Yamaha, for the month of March 2006 is \$6,034.33 for 85 golf
13 carts. The invoiced amount for one golf cart for this month is \$71, or \$852, annually.
14 This is \$1,548 less than the total \$2,400 that is allocated to contractual services - other. I
15 recommend that operating expenses be reduced by \$1,548.

16 **Audit Finding No. 18**

17 Audit Finding No. 18 discusses permit fees. The utility recorded \$9,000 payable
18 to the Florida Department of Environmental Protection in Licenses and Permits. This
19 amount includes \$3,750 for preliminary design review required for the modification to the
20 Advanced Wastewater Treatment (AWT) plant, \$2,250 for the renewal of the class V
21 injection wells, and \$3,000 for the renewal application review.

22 The utility explained that the AWT review fees are a one time charge and that the
23 permit renewals are valid for 5 years. The Commission should determine whether the
24 \$3,750 design review should be capitalized as a cost of the plant. I recommend that the
25 permit renewals of \$2,250 and \$3,000 should be amortized over 5 years and the account

1 | should be reduced by \$1,800 and \$2,400, respectively.

2 | **Audit Finding No. 19**

3 | Audit Finding No. 19 discusses the rental of a beachcleaner. The utility included
4 | in rental of equipment expense, charges for the rental of a Cherrington Model 3000
5 | beachcleaner. This equipment is used to clean the sludge beds. The total charges paid
6 | were \$11,825 to Cherrington Enterprises, Inc. The agreement with the vendor shows that
7 | 100% of the payment was to be applied to the purchase price of \$33,900, which had to
8 | occur by December 31, 2006. The utility purchased the equipment on December 29,
9 | 2006, for an additional \$24,617.50 and was recorded in Plant in Service. These payments
10 | (\$11,825 + \$24,617.50) total \$36,442.50. This equates to the purchase price of \$33,900
11 | plus tax of 7.5% or \$36,442.50

12 | The depreciation rate for transportation equipment is 6 years or 16.67%. The
13 | depreciation expense for 2006 is calculated using the ½ year convention. I recommend
14 | that average Plant in Service be increased by \$909.62, average Accumulated Depreciation
15 | be increased by \$492.78, depreciation expense be increased by \$985.61, and operating
16 | expenses be decreased by \$11,825.

17 |

18 | Q. Does this conclude your testimony?

19 | A. Yes, it does.

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1 BY MR. JAEGER:

2 Q And, Ms. Piedra, did you also sponsor Exhibit
3 IHP-1 now designated Exhibit 23, the staff audit report?

4 A Yes.

5 Q Do you have any changes or corrections to that
6 exhibit?

7 A No.

8 MR. JAEGER: Chairman, pursuant to the confidential
9 exhibit list, the staff audit report is identified as Exhibit
10 23, and this witness is tendered for cross.

11 CHAIRMAN CARTER: Okay, then. Let's do this. Hang
12 on before we go there. On this Exhibit 37, Mr. Deterding, did
13 you provide -- Mr. Burgess, did you get a copy?

14 MR. BURGESS: Yes, I did.

15 CHAIRMAN CARTER: Thank you. Staff, did you get a
16 copy?

17 MR. JAEGER: Yes.

18 CHAIRMAN CARTER: I was making sure all the parties
19 got you. The witness is tendered. Mr. Wharton and Mr.
20 Deterding. Mr. Deterding, you're recognized, sir, for cross.

21 MR. DETERDING: I guess just to make sure I
22 understand this. This witness is addressing Audit Findings
23 10 and above?

24 MR. JAEGER: That is correct.

25 MR. DETERDING: Even though she sponsored the entire

1 audit?

2 **MR. JAEGER:** That is correct.

3 **MR. DETERDING:** Okay. It will be short and sweet.

4 CROSS EXAMINATION

5 BY MR. DETERDING:

6 **Q** Ms. Piedra, you addressed in Audit Finding Number
7 10 that the utility has recorded \$19,575 in charges for, I
8 believe, services in serving the detention center below the
9 line, is that correct?

10 **A** Yes.

11 **Q** And you have taken the position that those should be
12 classified above the line?

13 **A** Yes.

14 **Q** Have you made allowance for the related operating
15 costs to be moved above the line, as well?

16 **A** No, we did not have time to. We ran into the issue,
17 but it was at the end of the audit and that is why we reported
18 the revenue.

19 **Q** So would you agree that it is appropriate that the
20 related expense be above the line if the revenue is going to be
21 moved above the line?

22 **A** Yes.

23 **Q** And you have made no attempt to determine the amount
24 of those operating expenses that are related to that?

25 **A** We did not. We did not request that from the

1 company.

2 **MR. DETERDING:** That's all I have. Thank you.

3 **CHAIRMAN CARTER:** Thank you. Ms. Piedra, you were
4 the primary auditor on this case?

5 **THE WITNESS:** Yes, I was. I'm sorry, it has been a
6 long time.

7 **CHAIRMAN CARTER:** That's all right. Commissioners,
8 let me ask one question. In the process of conducting an
9 audit, I noticed that there was communication. Did you have
10 any problem with getting cooperation or receiving information
11 from the company during the process of conducting the audit?

12 **THE WITNESS:** I don't believe so. I think maybe some
13 of the requests might have taken more than the regular three or
14 four days that we give the company usually. I'm trying to
15 remember. This was done over, I believe, a year ago. My
16 particular request, I don't think I had a big issue with not
17 getting answers.

18 **CHAIRMAN CARTER:** So you got everything that you
19 needed to conduct the audit?

20 **THE WITNESS:** Yes.

21 **CHAIRMAN CARTER:** And you were the primary auditor on
22 this case?

23 **THE WITNESS:** Yes.

24 **CHAIRMAN CARTER:** Commissioners? Mr. Burgess.

25 **MR. BURGESS:** I have no questions. Thank you.

1 **CHAIRMAN CARTER:** Thank you. Staff.

2 **MR. JAEGER:** No questions, no redirect.

3 **CHAIRMAN CARTER:** Thank you very kindly. Have
4 yourself a great day. That was less painful, wasn't it?

5 **THE WITNESS:** Yes.

6 **MR. JAEGER:** Staff would move Exhibit 23.

7 **CHAIRMAN CARTER:** Any objection?

8 **MR. DETERDING:** No objection.

9 **MR. BURGESS:** No objection.

10 **CHAIRMAN CARTER:** Without objection, show it done.
11 (Exhibit 23 admitted into the record.)

12 **CHAIRMAN CARTER:** Now, those are the only two
13 witnesses that were taken out of order?

14 **MR. JAEGER:** That's correct.

15 **CHAIRMAN CARTER:** Then let's revert back. Let's give
16 her an opportunity to --

17 **THE WITNESS:** I will need a few minutes.

18 (Off the record.)

19 **MR. JAEGER:** Chairman Carter, I hadn't arranged this
20 before, but Mr. Deterding asked if we wanted to take the DEP
21 guy now since he is here and he has come from Marathon, which
22 is over an hour away.

23 **CHAIRMAN CARTER:** Okay. Mr. Burgess, let's do him.

24 **MR. JAEGER:** Mr. Johnson has not been sworn.

25 **CHAIRMAN CARTER:** This what happens when you take

1 witnesses out of order. That's okay. That's alright.

2 **MR. JAEGER:** Mr. Johnson, Steve Johnson will be the
3 staff DEP witness.

4 **CHAIRMAN CARTER:** Mr. Johnson, would you please stand
5 and raise your right hand.

6 (Witness sworn.)

7 **CHAIRMAN CARTER:** Please be seated. Staff, you're
8 recognized.

9 STEVEN JOHNSON

10 was called as a witness on behalf of the Public Service
11 Commission, and having been duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. JAEGER:

14 **Q** Mr. Johnson, did you bring your testimony today?

15 **A** To be honest with you, I brought testimony, but it
16 was from a different case. I brought the wrong one.

17 **Q** Mr. Rieger will hand you a copy.

18 **A** I thought I had it, but this was from a different
19 case. Thank you.

20 **Q** Please state your name and business address for the
21 record.

22 **A** Steve Johnson, 2796 Overseas Highway, Marathon.

23 **Q** And by whom are you employed and in what capacity?

24 **A** Florida Department of Environmental Protection. I am
25 an environmental manager.

1 **CHAIRMAN CARTER:** Hold the phone. Bring your mike
2 close to you. She is trying to transcribe, so --

3 **THE WITNESS:** I'm sorry.

4 **CHAIRMAN CARTER:** Let's take it from the top again.

5 BY MR. JAEGER:

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

8 **A** Steven Johnson, 2796 Oversees Highway, Suite 221,
9 Marathon, Florida 33050.

10 **Q** And by whom are you employed and in what capacity?

11 **A** Florida Department of Environmental Protection.
12 Environmental manager.

13 **Q** And have you prefiled direct testimony in this docket
14 consisting of three pages?

15 **A** Yes, sir, I have.

16 **Q** And you have indicated to me that you do not wish to
17 make an oral summary, is that correct?

18 **A** No, sir, not particularly.

19 **Q** Do you have any changes or corrections to your
20 testimony?

21 **A** No, sir. I will look over it. I gave these some
22 time back, so let me give this a quick look. No, sir, these
23 are correct.

24 **Q** So your answer is there are no changes or
25 corrections?

1 **A** No, sir.

2 **Q** If asked the same questions, would your testimony
3 remain the same?

4 **A** Yes, sir.

5 **MR. JAEGER:** Chairman, may we have Mr. Johnson's
6 testimony inserted into the record as though read?

7 **CHAIRMAN CARTER:** The prefiled testimony will be
8 entered into the record as though read.

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1 DIRECT TESTIMONY OF STEVEN JOHNSON

- 2 Q. Please state your name and business address.
- 3 A. Steven Johnson, Florida Department of Environmental Protection, 2796 Overseas
4 Highway, Suite 221, Marathon, Florida 33050.
- 5 Q. Please state a brief description of your educational background and experience.
- 6 A. Bachelor of Science in Biology/Physical Science—Almost 17 years combined
7 experience in Environmental Regulation.
- 8 Q. By whom are you presently employed?
- 9 A. Florida Department of Environmental Protection.
- 10 Q. How long have you been employed with the FDEP and in what capacity?
- 11 A. Five years—Environmental Specialist II/ Environmental Supervisor II/Environmental
12 Manager.
- 13 Q. What are your general responsibilities at the FDEP?
- 14 A. I am manager of the Water Resource Management Section for the Marathon Branch
15 Office.
- 16 Q. Are you familiar with K W Resort Utilities, Corp.'s (utility) wastewater system in
17 Monroe County?
- 18 A. Yes.
- 19 Q. Does the utility have appropriate current permits from the FDEP?
- 20 A. Yes.
- 21 Q. Does the system have a valid operating permit?
- 22 A. Yes.
- 23 Q. Please state the issuance date and the expiration date of any construction permits.
- 24 A. **Issuance Date:** April 11, 2007 **Expiration Date:** April 10, 2012
- 25 Q. Is the utility in compliance with its permits?

- 1 A. No, not at the present time.
- 2 Q. Why not?
- 3 A. The utility did not report a wastewater spill that occurred after hours in September.
- 4 Since that time, the utility has taken action to correct the problem that caused the spill
- 5 and prevent future spills.
- 6 Q. Are the wastewater collection, treatment and disposal facilities adequate to serve
- 7 present customers based on permitted capacity?
- 8 A. Yes, according to an independent engineering study by URS.
- 9 Q. Has FDEP required the utility to take any action so as to minimize possible adverse
- 10 effects resulting from odors, noise, aerosol drift or lighting?
- 11 A. No. Nothing other than standard permit requirements.
- 12 Q. Do pump stations and lift stations meet FDEP requirements with respect to location,
- 13 reliability and safety?
- 14 A. I am not certain at this time. As a result of recent spills partially attributed to inflow
- 15 and infiltration, the FDEP will request that the collection system be re-evaluated by a
- 16 professional engineer licensed by the State of Florida.
- 17 Q. Does the utility have certified operators as required by Chapter 62-602, Florida
- 18 Administrative Code?
- 19 A. Yes.
- 20 Q. Is the overall maintenance of the treatment, collection, and disposal facilities
- 21 satisfactory?
- 22 A. No, the facility is currently undergoing repairs and upgrades to address this issue.
- 23 Q. Does the utility meet all applicable technology based effluent limitations (TBELS) and
- 24 water quality based effluent limitations (WQBELS)?
- 25 A. No. Total Suspended Solids (TSS) effluent violations were noted in the most recent

1 inspection.

2 Q. Does the facility meet the effluent disposal requirements of Rules 62-611 and 62-
3 600.530, Florida Administrative Code?

4 A. Yes, Rule 62-611 is not applicable.

5 Q. Are the collection, treatment and disposal facilities in compliance with all other
6 provisions of Chapter 62, Florida Administrative Code, not previously mentioned?

7 A. Yes, other than those outlined in the November 26, 2007 warning letter.

8 Q. Has the utility been the subject of any FDEP enforcement action within the past two
9 years?

10 A. Yes, as a result of our last inspection, the facility has been issued a warning letter. A
11 copy of the warning letter is attached as Exhibit SJ-1.

12 Q. What is a warning letter and what was it for?

13 A. A warning letter is a precursor to the filing of a Consent Order. The warning letter in
14 this case was in conjunction with the spill that occurred after hours in September.
15 Although the utility is being cooperative and has taken actions to correct the problem,
16 a Consent Order may still have to be issued.

17 Q. Do you have anything further to add?

18 A. This facility is currently under construction for maintenance related repairs and is
19 upgrading in order to meet AWT standards.
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1 BY MR. JAEGER:

2 Q And, Mr. Johnson, did you also file Exhibit Number
3 SJ-1?

4 A SJ-1.

5 Q It should be at the back of your testimony.

6 CHAIRMAN CARTER: Mr. Johnson, it consists of a
7 letter on DEP letterhead dated November 26, 2007.

8 THE WITNESS: Yes, sir. SJ-1, yes, sir.

9 BY MR. JAEGER:

10 Q And do you have any changes or corrections to that
11 exhibit?

12 A No, sir.

13 MR. JAEGER: And I think that has previously been
14 identified as Exhibit 26 in the comprehensive exhibit list, and
15 that is all staff has, Chairman. We tender this witness for
16 cross.

17 CHAIRMAN CARTER: Mr. Wharton.

18 MR. WHARTON: Yes.

19 CHAIRMAN CARTER: You're recognized.

20 CROSS EXAMINATION

21 BY MR. WHARTON:

22 Q Good afternoon, Mr. Johnson.

23 A Good afternoon.

24 Q Now, sir, you have attached --

25 CHAIRMAN CARTER: Hang on. Push your chair over a

1 little closer there. (Pause.)

2 You are on your own with that chair.

3 **THE WITNESS:** Yes, sir. Thank you.

4 BY MR. WHARTON:

5 **Q** You have attached a warning with your testimony that
6 you just talked about, is that right?

7 **A** Yes, sir.

8 **Q** And in your testimony says that warning letter is a
9 precursor to the filing of the consent order and that it is in
10 conjunction with a spill that occurred at the facility after
11 hours in September, is that right?

12 **A** That is correct.

13 **Q** Now, that was something that happened out there while
14 part of the construction was going on, right?

15 **A** Yes, sir, that is correct.

16 **Q** Would you agree that the utility has addressed those
17 issues in a timely manner?

18 **A** They have been very responsive. We do have one
19 outstanding issue that is being corrected now with the
20 injection wells.

21 **Q** Okay. So that is something that they have been
22 addressing with the DEP, also?

23 **A** That is correct.

24 **Q** And you have recently been in contact with the
25 utility for the inspection, is that right?

1 **A** That is correct.

2 **Q** Is it your expectation that that matter is going to
3 be completely addressed pretty soon?

4 **A** Yes, sir. We did have a contractor issue and we had
5 to make a modification to one of our permits which took some
6 time, but the permit has been issued as of this week, and it is
7 my understanding the contractor has agreed to come and finish
8 the job.

9 **Q** And they have been attentive and cooperative and
10 forthcoming with regard to this particular matter?

11 **A** Yes, sir. I have been dealing with Mr. Chris Johnson
12 and he has been very good to work with us.

13 **MR. WHARTON:** Okay. That's all we have.

14 **CHAIRMAN CARTER:** Commissioners. Staff.

15 **MR. JAEGER:** No redirect.

16 **CHAIRMAN CARTER:** Okay. Let's take it from the top.
17 Mr. Johnson, let me ask the parties, any objection to Exhibit
18 Number 26?

19 **MR. WHARTON:** No objection.

20 **MR. BURGESS:** None.

21 **CHAIRMAN CARTER:** Without objection, show it done.

22 (Exhibit Number 26 admitted into the record.)

23 **CHAIRMAN CARTER:** Call your next witness. Thank you,
24 Mr. Johnson. Drive safely.

25 **MR. JAEGER:** Chairman, the staff appreciate you

1 taking the witnesses out of order, and I guess we are back on
2 schedule with the utility calling Mr. Smith.

3 (Off the record.)

4 **CHAIRMAN CARTER:** We are back on the record. Mr.
5 Wharton, call your witness.

6 **MR. DETERDING:** Commissioner.

7 **CHAIRMAN CARTER:** Mr. Deterding, you're recognized.

8 **MR. DETERDING:** We would like to call William L.
9 Smith, Jr. to the stand.

10 WILLIAM L. SMITH, JR.

11 was called as a witness on behalf of K W Resort Utilities
12 Corp., and having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DETERDING:

15 **Q** Mr. Smith, would you please state your name and
16 employment address?

17 **A** My name is William L. Smith, Jr., and my address in
18 Key West is 6450 Junior College Road, Key West, Florida.
19 294-5232 is the telephone number.

20 **Q** And by whom are you employed with relation to the
21 applicant in this proceeding?

22 **A** I am employed by Green Fairways, a management company
23 that has a management contract with KWRU. Excuse me, K W
24 Resort Utilities.

25 **Q** And you are the president of K W Resort Utilities?

1 **A** Yes, I am.

2 **Q** Did you prepare testimony in conjunction with my
3 office consisting of seven pages entitled direct testimony of
4 Williams L. Smith, Jr.?

5 **A** Yes, I did.

6 **Q** If I asked you those questions today, would your
7 answers be the same?

8 **A** Yes, except for one change.

9 **Q** What is that?

10 **A** Well, I'm not sure exactly what paragraph it is, but
11 we recite that we need \$283,000, or \$288,000 in additional
12 revenue in order to go AWT. That document was prepared in June
13 or July of 2007, and most of the increases in expense are for
14 chemicals and sludge hauling, and chemicals and hauling has all
15 gone up at least 25 percent. My estimate today is that number
16 would be about \$360,000 to go AWT because of the increase in
17 hauling and the increase in chemical charges as a result of the
18 increase in the cost of oil.

19 **CHAIRMAN CARTER:** Mr. Deterding, can you direct us
20 here?

21 **MR. DETERDING:** I'm sorry. It is the figure he has
22 shown at the top of Page 6, I believe. Page 6, Line 3, is that
23 correct?

24 **THE WITNESS:** You prepared it.

25 **CHAIRMAN CARTER:** Page 6, Line 3 of his direct?

1 **THE WITNESS:** Of my direct, yes.

2 **CHAIRMAN CARTER:** And that number should be --

3 **THE WITNESS:** It should be 360,000. We have had
4 25 percent increases in hauling charges and chemical charges
5 over the last 15 months.

6 **CHAIRMAN CARTER:** 360,000 even?

7 **THE WITNESS:** Yes.

8 **CHAIRMAN CARTER:** Commissioners, on Line 3 where it
9 shows 288,625, that number should be 360,000. Okay. Mr.
10 Deterding.

11 BY MR. DETERDING:

12 **Q** Do you have any other changes to make to your
13 testimony?

14 **A** No.

15 **CHAIRMAN CARTER:** One second. You're recognized,
16 sir.

17 **MR. DETERDING:** Thank you.

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1 BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
2 KW RESORT UTILITIES CORPORATION
3 DOCKET NO. 070293-SU
4 APPLICATION FOR WATER RATE INCREASE OF
5 KW RESORT UTILITIES CORPORATION IN MONROE COUNTY
6 DIRECT TESTIMONY OF WILLIAM L. SMITH, JR.

7 Q. Please state your name and employment address.

8 A. William L. Smith, Jr., KW Resort Utilities Corporation,
9 P.O. Box 2125, Key West, Florida 33045.

10 Q. In what capacity are you employed by KW Resort Utilities?

11 A. I am the Utility's President.

12 Q. What is the purpose of your direct testimony?

13 A. The purpose of my testimony is to provide information
14 concerning the nature of the changes in costs which form
15 the basis for this rate increase request. These are: (1)
16 the recent re-sleeving of the Utility's collection
17 system; (2) refurbishment of the existing wastewater
18 treatment plant facilities; (3) the conversion of the
19 existing wastewater treatment plant to advanced waste
20 treatment; (4) increased operating costs related to
21 advanced waste treatment; and (5) change from flat to
22 usage based rates.

23 I believe each of these issues requires separate direct
24 testimony because an explanation is needed for why each
25 of these costs must be incurred and why full recognition

1 of all of these costs must be included as proforma
2 adjustments to the historic test period and recovered
3 through the establishment of final rates. I am also the
4 custodian of all the records of KW Resort Utilities
5 Corporation and therefore am attesting to the accuracy of
6 the information provided within the schedules prepared by
7 Carlstedt, Jackson, Nixon & Wilson CPAs, to the extent
8 they rely upon the books and records of the company as a
9 basis for their calculations and the schedules prepared
10 by them and the engineers.

11 Q. Please address the first of the issues you have outlined?

12 A. The Utility's collection system is located in an area
13 that is subject to tidal influences and is relatively
14 old. As such, not only has the particular location of
15 the facilities caused its degradation, but the types of
16 "soils" themselves and the age of the system, have
17 resulted in substantial infiltration for years within the
18 Utility's system. It has now reached a point where it is
19 not only substantially impacting the ability to properly
20 treat effluent, but also to utilize the treated effluent
21 for reuse purposes. In addition, because the
22 infiltration is generally high in salt content, we were
23 told by our engineer that we could not proceed to AWT
24 without first fixing these infiltration problems, or the
25 AWT system would not work. Therefore, in 2006 the

1 Utility began a project for re-sleeving a substantial
2 portion of the existing collection system lines. This
3 work was completed at the beginning of 2007 at a cost of
4 approximately \$600,000. All of these costs were normal
5 and prudent expenditures on the part of the Utility and
6 must be fully recognized in rate setting through the
7 recognition of a proforma adjustment to the calendar year
8 for the capital expenditure and the related depreciation.

9 Q. Your second point was concerning a refurbishment of the
10 existing wastewater treatment facilities. Please provide
11 us with an explanation of that project.

12 A. Yes. The same factors outlined above that caused
13 deterioration and a need for substantial maintenance to
14 the collection system, also generally have impacted the
15 wastewater treatment plant. In addition to those
16 factors, the salt in the air and in the influent, and the
17 general environment of the Keys is one of the harshest to
18 steel equipment, such as these treatment facilities. The
19 steel wastewater treatment plant was badly deteriorated
20 and rusted out. Therefore, the Utility was required to
21 undertake substantial refurbishment of the existing
22 wastewater treatment facilities in order to continue to
23 utilize the system for the long run. Construction on
24 this project began during calendar year 2006.
25 Refurbishment is ongoing and is nearing completion and is

1 estimated to be completed by October 1, 2007. The total
2 estimated cost is \$426,650.

3 Q. The third category that you mentioned was the change to
4 advance waste treatment, otherwise known as AWT. Can you
5 please explain that?

6 A. Yes. Briefly, all wastewater utilities within the Keys
7 are required to go to AWT by 2010. Monroe County has
8 specifically come to us and asked KW Resort Utilities
9 Corporation to go to AWT as quickly as possible, in
10 advance of that 2010 deadline. We were required to
11 undertake a change to AWT no later than three years down
12 the road, and the change over would involve some
13 significant duplication of the effort we were already
14 undertaking for the refurbishment of the wastewater plant
15 if we undertook these projects separately. In addition,
16 both projects might conflict, to some extent, as far as
17 the facilities needed to be put in place to achieve each
18 goal separately. Therefore, because of the request of
19 Monroe County, and in order to make this refurbishment
20 and change to AWT as efficient and as cost effective as
21 possible, we have decided to move forward with AWT at the
22 same time as the refurbishment. That change to AWT has
23 been underway since 2006, and we expect it to go online
24 along with the refurbished facilities, on October 1,
25 2007. Monroe County has also given the company a grant

1 of approximately \$700,000 for this conversion to AWT,
2 which is all the more reason we want to follow their
3 recommendation to move forward with it as quickly as
4 possible. The estimated cost for improvements related to
5 AWT are \$792,350. As we noted when we filed this rate
6 case, not only is this change good for the environment,
7 but it will also allow the Utility to more efficiently
8 and effectively utilize the reuse that our system
9 produces. With the present level of treatment and the
10 infiltration levels that existed prior to our re-
11 sleeving, the effluent generated by the plant was
12 sometimes unsuitable to allow its utilization as reuse
13 water. Therefore, only during hours where operation
14 staff was onsite were we sending reuse to the Monroe
15 County Jail and Golf Course. With the move to AWT,
16 higher quality effluent which will result, combined with
17 the Utility's required use of 6 hour a day, seven days a
18 week onsite staff, we will be producing a higher quality
19 of effluent, which will allow us to send all of our
20 effluent into the reuse system.

21 Q. You mentioned something about the change in operating
22 expenses resulting from these changes.

23 A. Yes, the change to AWT will have significant changes in
24 operational costs, including a significant change in
25 staffing of the facility. The Utility's initial

1 estimates of the increased operating costs, which are
2 outlined in detail in the schedules we filed, is
3 approximately ~~\$288,625~~ ^{\$360,000} per year in increased costs.

4 Q. Your final point was about the change in rate structure,
5 could you please explain this?

6 A. Yes. The Utility has always operated with primarily flat
7 rates for sewer service. This was due in large part to
8 the fact that the information from the Aqueduct Authority
9 concerning water usage was difficult, if not impossible
10 to obtain, until recently. Since the Aqueduct Authority
11 is the provider of water service to all of our wastewater
12 customers, obtaining that information was necessary in
13 order to move to a base facility type charge, including
14 a base charge and usage charge. Recently, we have
15 determined that we are now able to obtain this
16 information from the Aqueduct Authority and as such, we
17 believe it is appropriate for us to move to a base and
18 gallonage charge. Not only is this a better indicator of
19 the cost of providing service to each customer, but it
20 helps to promote conservation, and to ensure equity in
21 Utility charges. In a few instances, because of
22 circumstances, we are required to retain flat rate
23 charges. Those circumstances are outlined in our Volume
24 II of the schedules prepared by our accountants and filed
25 as part of our original Application (**Exhibit "A"**).

1 Q. Do you have any other testimony to provide at this time?

2 A. No, I do not.

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1 BY MR. DETERDING:

2 Q You didn't have any exhibits with your direct
3 testimony, did you, Mr. Smith?

4 A No.

5 Q Would you please provide the Commission with a brief
6 summary of your direct testimony.

7 A You know, I certainly will. Although there has been
8 so many things that I would like to respond to, my head is
9 spinning at this point in time, but, you know, I will make a
10 short summary here and then if anybody would like to ask me any
11 questions, I would be happy to go into some of these issues
12 that have been raised.

13 Basically, K W Resort Utilities needs a rate increase
14 for a number of reasons. You know, first, we are going to
15 provide an increased level of service by virtue of going AWT.
16 We have been treating our wastewater to secondary standards and
17 now the county and the state of Florida mandated that we go to
18 advanced wastewater treatment, and as a result of that we are
19 going to have to bring down a lot more chemicals and we are
20 going to have to haul a lot more sludge in order to achieve
21 this standard.

22 The cost, as I just mentioned in our correction, is
23 an additional \$360,000 in increased cost of chemicals and
24 sludge hauling and power. Those are the things that are going
25 through the roof for us right now, and these are the reasons we

1 are going to have to have a rate increase if I am going to be
2 required to provide that service.

3 In addition, you know, we have spent a lot of money
4 on increased capital expenses in order to rehab the facility.
5 We did this conversion of the existing plant to AWT, and during
6 the course of that conversion there were a lot of things that
7 we noticed that needed to be changed to the plant because of
8 the corrosive nature of the environment we live in in Monroe
9 County. The salt water -- and this utility company, by the
10 way, is located about 30 yards from the harbor, and so we get
11 salt spray all the time, and when that salt spray coats those
12 steel metals it just corrodes them right apart. In fact, one
13 of the plants that we took down was only ten years old and we
14 had to replace a substantial amount of the steel on that tank
15 because it had corroded to the point where it was too thin.

16 In addition, we spent -- so we spent 426,000 on
17 rehabbing the plant. We converted the existing plant to AWT,
18 and that cost us 792,000. And, in addition in order to treat
19 the water to AWT standards we had to reduce the chloride
20 infiltration that we had. It was perfectly fine for secondary
21 treatment standards, but when you go AWT if you have chloride,
22 salt water intrusion of any nature it will prevent your product
23 from being treated to AWT standards. So we spent \$600,000
24 rehabbing our lines to prevent salt water intrusion.

25 So, as a result of those expenses, we need to recover

1 the capital that we have expended on that, and as a result we
2 borrowed approximately \$1,800,000 to do this project, and that
3 is basically a summary of why we need this rate increase.

4 **CHAIRMAN CARTER:** Thank you. Mr. Deterding, do you
5 want to do the prefiled testimony?

6 **MR. DETERDING:** Yes. I ask that it be inserted in
7 the record as though read.

8 **CHAIRMAN CARTER:** The prefiled testimony of the
9 witness will be entered into the record as though read.

10 **MR. JAEGER:** Chairman, I had one problem with that
11 change from 288. When did he know of this change?

12 **THE WITNESS:** I just started working on this as we
13 started preparing for this hearing, and I started asking my
14 engineers and managers just in the last three or four days,
15 hey, by the way, what is it going to cost us to buy the alum we
16 are going need, and they said \$400 a day for the alum. I said
17 what it is going to cost us for the carbon that we are going to
18 have to provide? And they said \$200 a day. How about sludge
19 hauling? And they said, well, it is now going to cost you an
20 extra \$6,000 per month to haul sludge. And so that is when I
21 got an inkling that the numbers that I gave you folks back in
22 July of 2007 were not valid numbers. And it is pretty
23 understandable. I mean, we are all getting rate increases for
24 electric. I mean, it seems like they are going up every 90
25 days here in Monroe County.

1 **CHAIRMAN CARTER:** Mr. Jaeger.

2 **MR. JAEGER:** I'm just trying to get it straight in my
3 mind. We have this change at the last minute and the violation
4 of the test year and the testimony that is presented, and I am
5 just sitting here trying to -- I believe we can do stuff for
6 cross-examine maybe we can go ahead, but I am sort of upset
7 that it changed that significantly.

8 **CHAIRMAN CARTER:** Hang on a second. Mr. Willis, this
9 change, how does that impact the calculations for staff in that
10 process in terms of the test year for this case?

11 **MR. WILLIS:** Commissioners, our only problem is this
12 is the first time we have heard of it. We just found that out
13 today when he changed his testimony on the stand. That
14 presents a problem to us. We can do it through a late-filed
15 exhibit. It is pretty hard to cross-examine a late-filed
16 exhibit to find out why this all happened. We are kind of at a
17 loss. I don't know about Public Counsel, but we are here with
18 a number. We don't have anything in front of us to find out
19 how that determination was made. We don't know where these
20 numbers come from. We are kind of at a loss at this point.

21 **CHAIRMAN CARTER:** Hang on one second. Mr. Burgess.

22 **MR. BURGESS:** If I could address that as a party. I
23 would echo what Mr. Jaeger and Mr. Willis' concerns are. We
24 have this, and apparently it is from several different sources,
25 from other people who are not -- I don't know if they are

1 planning on having testimony. Certainly we haven't had the
2 opportunity to have discovery, so certainly we haven't had the
3 opportunity to present testimony in response. So, you know,
4 the considerations that Mr. Smith raises, you know, we are
5 aware that the price of oil has gone up, but the rest of these
6 are just to the extent that they don't allow us -- to the
7 extent that this timing does not allow us to go through any of
8 the exercises that we go through to assure that both parties
9 get due process. We would have to object to it being brought
10 in at this late hour.

11 **CHAIRMAN CARTER:** Ms. Helton.

12 **MS. HELTON:** First, I think it would help me to have
13 an understanding of the magnitude of the change.

14 **THE WITNESS:** It is 25 percent.

15 **MS. HELTON:** That seems pretty significant. I mean,
16 there is definitely a notice issue, I think, and it seems to me
17 that if the utility has known this for several days, and maybe
18 should have known this sooner, or further back in history than
19 several days, that the parties should have been notified so
20 they can plan their case appropriately. We have been working
21 under the assumption that they were what they were in the
22 testimony. It seems to me it goes beyond -- his change to his
23 testimony goes beyond just a clerical clarification or
24 correction.

25 **CHAIRMAN CARTER:** Your recommendation.

1 **MS. HELTON:** Can I talk to Mr. Lewis for a minute?
2 Can we take five?

3 **CHAIRMAN CARTER:** Let's do that, because we have an
4 objection from OPC and we have an objection from staff, and I
5 would like to be able to rule on that before we go further.
6 Because if this was a scrivener's error, that is one thing, but
7 if it is technical to the tune of 25 percent, that's fairly
8 substantial. We will take a break.

9 (Off the record.)

10 **CHAIRMAN CARTER:** Okay. We are back on the record.

11 **MS. HELTON:** I appreciate your indulgence, Mr.
12 Chairman, but this is, I think, an important issue and I wanted
13 to make that we had thought through it and I had thought
14 through it and that I was comfortable with what I would say
15 here on the record. And I also wanted to make sure I have a
16 better feel for the numbers, because I think that is important.

17 It is my understanding that the company had asked for
18 a revenue requirement increase of \$601,000 approximately, and
19 that the changes to Mr. Smith's testimony today would bring
20 that revenue requirement up to \$676,000 approximately. And I
21 think that is a pretty significant increase, and I think what
22 we are talking about today are some serious due process
23 concerns for the staff, yes, but also particularly for the
24 Office of Public Counsel who is here today representing the
25 customers.

1 We have a process here at the Commission. At the
2 beginning of a rate case the utility chooses what type of test
3 year it is going to follow in filing its case with the
4 Commission. The company files MFRs, we prefile testimony, we
5 conduct discovery based on the information that is filed with
6 the Commission and with the parties, and it seems to me that it
7 was incumbent upon the utility to notify the parties to the
8 case when it became aware that costs had increased so
9 significantly. And no notification took place. No one has had
10 a chance to prepare for this significant increase to the
11 revenue requirement, and I believe that I would recommend that
12 his testimony not be changed.

13 **CHAIRMAN CARTER:** Okay. We have an objection on the
14 record from OPC.

15 **MR. BURGESS:** Yes. I would just reiterate, and also
16 what Ms. Helton said earlier is basically that this is not a
17 change that just came upon us just like that. It is not like
18 it was zero all the way up until yesterday or three days ago
19 and all of a sudden it was 25 percent. It has been coming for
20 a long time and we had this case in abeyance for a long time.
21 So there was a lot of opportunity for the company to reexamine.
22 Perhaps when the case reopened to reexamine these issues if
23 they were going to need a change and give everybody the
24 opportunity that is required by due process.

25 **CHAIRMAN CARTER:** Okay. Anything further, Mr.

1 Deterding?

2 **MR. DETERDING:** Yes, Mr. Chairman. The witness was
3 about to swear to the accuracy of the testimony he was
4 providing. He has become aware of increases in costs. Whether
5 or not you want to give that weight in the determination of the
6 underlying revenue requirement is up to you. But he can't
7 testify to the accuracy of that number unless he corrects it
8 for things that he knows have occurred that have caused it to
9 change. Now, if you don't want a late-filed exhibit, we would
10 be glad to provide you one if you did. If you do not, that is
11 fine. But I believe the witness should be allowed to recognize
12 in his testimony what he knows to be the accurate number now
13 for that specific item. It is approximately 5.8 percent of the
14 revenue requirement. I would agree that is significant, but it
15 is a fact that he believes is an accurate number.

16 **COMMISSIONER ARGENZIANO:** Mr. Chairman.

17 **CHAIRMAN CARTER:** Mr. Burgess.

18 **MR. BURGESS:** You know, I understand what Mr.
19 Deterding is saying that the witness shouldn't be required to
20 perjure himself, so I agree he can withdraw the number that he
21 has got in there and say that is not accurate. But what I
22 disagree with is him being allowed to plug in a new number that
23 nobody has had a chance to look at, or examine, or have due
24 process rights to deal with.

25 **CHAIRMAN CARTER:** Commissioners, I am going to have

1 to rule on a motion. Do you want to be heard?

2 **COMMISSIONER ARGENZIANO:** I was going to make that
3 same suggestion to indicate that that number that is in there
4 is not accurate today. It was accurate then.

5 **CHAIRMAN CARTER:** Well, I am going to sustain the
6 objection under the basis provided by staff. And as Mr.
7 Burgess said during the testimony portion if he wants to say
8 that number is not accurate, then that is something totally
9 different. But when you have got the case that has proceeded
10 down this far, and issue with the delay and refiling times and
11 all of that, I am inclined to sustain the objection based upon
12 the basis provided by staff. You may proceed.

13 **MR. DETERDING:** May we ask that the testimony be
14 inserted in the record as though read?

15 **CHAIRMAN CARTER:** The testimony will be inserted in
16 the record as though read.

17 **MR. DETERDING:** And I take it the Commission does not
18 wish to have Mr. Smith address some of the issues that were
19 raised earlier at this time? That is your pleasure.

20 **CHAIRMAN CARTER:** We are getting ready to proceed.
21 Are you presenting him ready for cross-examination?

22 **MR. DETERDING:** I am, if you don't want to have him
23 address that.

24 **CHAIRMAN CARTER:** Commissioner Argenziano, you're
25 recognized.

1 **COMMISSIONER ARGENZIANO:** I would like to give him
2 the opportunity to address some of the questions that I asked
3 before.

4 **CHAIRMAN CARTER:** You're recognized.

5 **COMMISSIONER ARGENZIANO:** If you remember those
6 questions?

7 **THE WITNESS:** Well, I wrote a bunch of them down.
8 There were certainly quite a few. And I didn't take down
9 whether they were yours, or some other Commissioner's, or just
10 something that stuck to me particularly.

11 When we purchased this utility in 1999, the utility
12 company had no employees. It employed a management company,
13 Davis Water, to run the utility business. And we employed
14 Davis Water until they were purchased by Synagro, which was
15 another management company, and we employed them for three or
16 four years. And then when my son-in-law expressed an interest
17 in it and started his management company, we have employed them
18 since. And, you know, so having no employees is not something
19 that we just started in order to, you know, make things more
20 difficult for the Commission. It is something that was
21 existing long before my son-in-law started running it.

22 The first issue is cell phones. The two "children"
23 are 31 and 29. They are both directors of the company. They
24 are both 10 percent shareholders of the company. They receive
25 no compensation for the stock that they purchased in the

1 company. They are on the board of directors, and I talk to
2 them frequently about the utility business and they are not
3 close to me. So I need to use the telephone to talk to them
4 and that is the reason that they have cell phones.

5 Markups. You know, there is an issue about markups,
6 and, you know, one of the things that I want to say about
7 markups is, one, everybody provides for a mark-up, but at the
8 end of the day the true testimony, you know, whether there is
9 an excessive mark-up is whether or not there was an excessive
10 profit that anybody took out of this particular utility
11 company. And we provided, you know, Chris Johnson, my
12 son-in-law's 1040 to the Commission for review, and it shows
13 that he made \$104,000 in the test year, 2006.

14 In addition, he worked 12 weekends in a row. Not in
15 a row, 12 weekends, Saturdays and Sundays, and two out of the
16 six holidays, including July 4th and Memorial Day that year.
17 So when you get to whether or not it was excessive compensation
18 or not, he worked on average, you know, 60 hours per week for
19 the utility company. And when you work weekend work like that,
20 you are basically working 12 days in a row, because you work
21 the five days of a week, you work the two days of the weekend,
22 and then you work the five days after the week.

23 Secondly, his company, Keys Environmental's total
24 profit for the year was 9,000. So it wasn't like there was any
25 monstrous profit that was being taken out of this utility

1 company for the benefit of Keys Environmental. Green Fairways
2 during the same year, my salary or my commission for Green
3 Fairways was \$60,000. That is what the utility was charged for
4 my management fee. And believe me, we spent a lot of time and
5 effort on utility business in order to achieve that fee.

6 Let's see. The grand jury report. There has been
7 talk about the grand jury. They failed to even call any of the
8 people that were involved from the utility side to testify and
9 to discuss what happened with the South Stock Island job. They
10 didn't call the engineers, they didn't call any of the utility
11 company owners, and they issued reports and findings. For
12 instance, one of the findings was that we could only hook up
13 860 customers with this utility system that we put in. Well,
14 to date we have hooked up over 1,000. So it is hard for me to
15 imagine, you know, how inaccurate that report was.

16 Let's see. I am just going through things and if you
17 have any questions don't hesitate to interrupt me. I did hear
18 something today that I thought was very interesting, and that
19 is regarding transparency and open board members. And so what
20 I have resolved is that from now on I will have an annual board
21 meeting in Key West and open it to the public. I think that is
22 probably a good idea where we can discuss our capital budgets
23 and what we are doing.

24 Harbor Shores. Most of the people that came in to
25 testify, most of the customers today were from Harbor Shores,

1 and for the most part they were upset with the connection
2 system and the connection to the vacuum system. There really
3 wasn't a lot of concern about how we were treating the
4 wastewater, were there were backups on their system, it was
5 basically a frustration with the way, you know, they were
6 treated in connecting to the system. I don't know how we got
7 off on the wrong foot, but we certainly got off on the wrong
8 foot with them. I mean, that is just a fact of the matter.
9 But, be that as it may, at a county board meeting in 2004, I
10 believe it was, I offered to connect Harbor Shores for \$1,700
11 per customer to the utility. It was going to be -- you know,
12 most people have to pay to have somebody connect their water
13 closet to the wastewater lines. And for the most part that
14 runs 4 to \$5,000 per customer to connect. I offered to do it
15 for \$1,700 per trailer in that facility. And eventually it did
16 get done, and I don't think it has been a big problem since
17 that time.

18 Kathy Welch. One of her comments was the U.S. Water
19 quote was not comparable to the Keys Environmental business.
20 One of the reasons was U.S. Water didn't provide a supervisor
21 except for on a part-time basis to run the utility company, and
22 that is why I said it wasn't a comparable thing. They were
23 going to have the supervisor work out of West Palm Beach and
24 commute down to Key West to run our facility. Well, you can
25 imagine what kind of service we would have got out of that

1 contract. We would have been, you know, like a lot of other
2 people, upset with the level of service that our customers were
3 getting. That's why I told Kathy I didn't think it was a
4 particularly comparable contract to the contract that we had.

5 Commissioner, I'm trying to going over all the items.
6 Let's see. If there is any questions, I would be happy to
7 answer them.

8 **COMMISSIONER ARGENZIANO:** I probably have a couple.
9 How do you know that when you are contracting to the affiliates
10 or the affiliates are contracting with the utility that you are
11 getting the best deal you can get?

12 **THE WITNESS:** We bid it out. We look for other
13 folks to do the job. And, secondly, if we can't find other
14 folks to do the job, we try to do it at cost. I mean, you
15 know, when I say that Keys Environmental's total return was
16 \$9,000, one of the things that we frankly have tried to do is
17 keep his return low so that it wouldn't, you know, be
18 excessive. And so we figure we have got them salaried where he
19 is at, which is a reasonable salary for living in Key West, and
20 we have got his company profit at this level. If we keep it
21 close to his cost we are not out of line.

22 **COMMISSIONER ARGENZIANO:** That would depend on what
23 he is asked to do. If he is asked to do one thing that could
24 3,000 and you gave him 9,000 maybe it is not a bargain. I
25 guess what I'm trying to figure out is if you bid it out are

1 you telling me that only the family comes in with the best
2 bids?

3 **THE WITNESS:** Oh, no. If we get somebody that will
4 give us a better bid, we would certainly take them.

5 **COMMISSIONER ARGENZIANO:** Are you having a hard time
6 getting other --

7 **THE WITNESS:** We cannot find people to work here. We
8 cannot find wastewater operators to work in Monroe County. One
9 of the biggest crises that you, as the Public Service
10 Commissioners, are going to find is that the salaries that are
11 going to have to be paid to wastewater operators are going to
12 go right through the ceiling because all the operators are
13 getting up in age, like I am, and they are going to be retiring
14 and we are not going to be able to replace them. I have gone
15 to the junior college and said to them, I said, you know, we
16 ought to have a program here to train wastewater operators,
17 because not only do I need them, but since they have got this
18 mandate for sewer in Monroe County everybody is going to need
19 them.

20 **COMMISSIONER ARGENZIANO:** Let's see. Cell phones.
21 Somebody else.

22 **CHAIRMAN CARTER:** Commissioner Skop.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. Good
24 afternoon, Mr. Smith.

25 **THE WITNESS:** Good afternoon.

1 **COMMISSIONER SKOP:** Two quick questions. And, again,
2 I appreciate the discussion here because, again, I'm trying to
3 take the time to thoroughly look behind the veil and understand
4 whether there is one side that says this may be inappropriate,
5 there is the other side that may offer a reasonable
6 explanation, so I'm trying to be impartial and fair.

7 With respect to the additional work scope with
8 respect to necessarily inspect the tie-ins, what additional
9 work scope in your mind is required to supervise and inspect
10 those new customer tie-ins over and above the commitment made
11 to the existing contract?

12 **THE WITNESS:** Well, I think there was -- we have that
13 in that page, and there is a list, a litany of things that
14 have -- you have to have initial customer contact. You have to
15 have like five field inspections. When we first put together
16 the original contract and we were talking about doing a
17 connection to a gravity system, it is not nearly as labor
18 intensive as a connection to a vacuum system. It is much more
19 difficult to connect to a gravity system. You are trying to
20 make sure that you don't have any infiltration of stones into
21 the system, because if you have a stone that goes into the
22 vacuum system, it is moving at 20 feet per second when it goes
23 in the vacuum system and knocks all sorts of holes into the
24 vacuum pipes. In fact, that was one of the big problems they
25 had up in Marathon when they put that system in. There wasn't

1 adequate supervision and testing.

2 **COMMISSIONER SKOP:** And those pipes that are up
3 there, are those pipes concrete or are they steel?

4 **THE WITNESS:** No, they are plastic pipes, PVC pipes.
5 And so when they were running around at 20 feet per second,
6 they go right through at corners of the pipes.

7 **COMMISSIONER SKOP:** I guess what I'm saying is -- and
8 I can appreciate that. I guess I am struggling with the fact
9 that that is written in the contract. And, again, it is the
10 amount in controversy that is important because that has a
11 significant impact on a small utility, \$252,000 in terms of
12 being an allowed expense or a disallowed expense. And to me
13 the tie-in appears to be pretty broad (inaudible). And I'm
14 trying to understand.

15 **THE WITNESS:** I will try and get by this by saying if
16 you just took Keys Environmental statement and folded that
17 right into K W Resort Utilities' statement you would see that
18 all the expenses that are incurred by Keys Environmental can be
19 related to K W Resort Utilities, and there is no extraordinary
20 expenses there in doing this project.

21 **COMMISSIONER SKOP:** And with all due respect, and,
22 again, I am just looking at trying to understand the
23 particulars. I think part of the issue here is for whatever
24 the right or wrong reasons --

25 **THE WITNESS:** If I had paid --

1 **COMMISSIONER SKOP:** One second.

2 **THE WITNESS:** I'm sorry.

3 **COMMISSIONER SKOP:** And I appreciate that. I am
4 being very openminded, very reasonable trying to be impartial.
5 I think part of the issue here that seems to be perhaps for me,
6 as Chairman Carter has mentioned, in terms of the shell
7 company, it is farmed out, or at least in Chairman Carter's
8 words farmed out, or outsourced all the essential functions to
9 subcontractors which in this case most of which are related
10 parties. And I think the crux of the matter, and this goes
11 right to that tie-in, whether there is a substantial
12 duplication of effort to the extent that you are overpaying for
13 things one or more times. And I'm not saying that in a bad
14 way, I'm saying that is a rebuttable presumption that we need
15 to overcome, and that is what I need to understand. The reason
16 I am picking on the tie-in is because as I am reading the
17 contract at face it doesn't distinguish between vacuum or
18 gravity type sewer. It is very broad and very generic, but
19 then I hear this whole host of additional work scope on top of
20 that, so it is easy to start padding, if you will, for lack of
21 a better term. And I don't mean that to be offensive. But I'm
22 trying to just work through those issues because you do see
23 that is the debate and the discussion between the related
24 parties and how, you know, is one person really getting paid to
25 do a lot work but that only requires an hour or two or a couple

1 of hours.

2 **THE WITNESS:** I will get that for you and go over it
3 in-depth. But let me look at it this way. If we hadn't paid
4 Keys Environmental \$256,000 for inspections, okay, based upon
5 their operating structure, I would have had to increase their
6 contract 250,000 because they wouldn't have been able to afford
7 all they people that they had.

8 **COMMISSIONER SKOP:** Well, maybe not. I mean, I'm an
9 attorney in the state of Florida, and I would respectfully
10 argue that that increase would not be justified without a
11 showing that there was a substantiated additional scope in work
12 that was outside that original contract. The position I would
13 take is, no, no, no, guys, it was in the original contract.
14 And I think that is the tension between the related parties
15 because if the parties weren't so related I would certainly
16 make that argument in good faith in a court of law.

17 **THE WITNESS:** Well, all I can tell you is that if we
18 would have had U.S. Water doing this it certainly wasn't
19 covered in the scope of their proposal.

20 **COMMISSIONER SKOP:** But, again, the U.S. Water
21 contract is not the contract before us today.

22 **THE WITNESS:** Let me get this and I'll go over this.

23 **COMMISSIONER SKOP:** I mean, at the end of the day, as
24 I said recently, the ratepayers shouldn't bear the burden of
25 poor contracting (inaudible).

1 **THE WITNESS:** Well, here is what has to be done in
2 connection with these hook-ups. You have an initial contract
3 by our hook-up coordinator. They have got to then review plans
4 that are submitted, as-built site plans from the customer.
5 Then they have field visit number one to locate the connection
6 with a plumber present. The point of connection is located and
7 it is discussed. Vacuum specific questions are addressed and
8 materials are submitted.

9 **COMMISSIONER SKOP:** Let me stop you there. For each
10 of these respective -- you know, just because you have a list
11 of functions doesn't necessarily translate into the fact that
12 each of those functions may or may not be performed. Is there
13 a written check off for each of these visits?

14 **THE WITNESS:** Yes.

15 **COMMISSIONER SKOP:** Is that part of the record or
16 could it be part of the record?

17 **THE WITNESS:** It certainly can be part of the record.

18 **COMMISSIONER SKOP:** You can continue.

19 **THE WITNESS:** And then we have field visit two at the
20 start of the job where Keys Environmental staff will come out
21 and look at the work and make sure the contractors are doing
22 the job correctly. We make sure they call in. A lot of times
23 the contractors don't call in, so we have to actually just
24 discover them doing the work. And a lot of times we have a lot
25 of Saturday work that is being done trying to connect to the

1 utility. And then we have field visit number three to inspect
2 the pipes prior to backfilling, inspect the blue joints,
3 inspect the backfill, photo document, we photo document all the
4 work, and the connection drawings will be done. We have
5 drawings that are done. Then we do a test. We do test number
6 one, which is a hydrostatic test of the PVC lines. We actually
7 test the lines, and we are very concerned about these
8 hydrostatic tests. There have been some comments about how
9 strict we are on the testings. One of the big failures in my
10 experience in the utility business is, you know, when the
11 public does the job and the guy leaves at 4:30 because he is
12 just a public worker, and there is a lot of work done. The
13 tests don't get done and when they don't get done that system
14 leaks, and when that system leaks it is a problem for the
15 utility.

16 Anyway, so we are very concerned about the tests.
17 And then we do another test. We do a low pressure hydrostatic
18 test under the building to make sure that the laterals are
19 good. In other words, we actually get people to crawl up under
20 the buildings and make sure that their laterals are good. And
21 if they are not good, you know, then that is a problem because
22 they have to fix them. And then we do field visit number five,
23 okay. And we bring a camera back and we actually inspect the
24 lines that have been put in and make sure that they are tight
25 and make sure there is no rock in it. And that is the last of

1 the field visits. That is field visit five. And then there is
2 report that is sent up to KWRU as to what has all been done and
3 how things are being finalized, and then you make sure they are
4 hooked up.

5 **COMMISSIONER SKOP:** Let me just stop you here. I
6 think Commissioner Argenziano may have a question. You know,
7 it sounds good in theory it seems. I have had some engineering
8 experience. One question I wanted to get to. Again, it sounds
9 like a lot of effort being devoted, and I understand that
10 (inaudible.) You don't want leaks, you don't want stone
11 impingement, or pebble impingement. On face it sounds to be
12 somewhat redundant in some places, but who is actually
13 conducting these inspections? Because I think I heard a
14 customer this morning who stated that perhaps it is a related
15 party, or a relative that alleges to be a an engineer, but he
16 only has an EIT and he is an electrical engineer. So, again,
17 to me, you know, a plumbing connection or an interconnect is
18 pretty simple. I don't know if our technical staff if we come
19 out six times to inspect something, but, again, I am hoping,
20 and I'm being impartial, but I'm trying to -- you know,
21 sometimes I am having to question things to get --

22 **THE WITNESS:** Well, we had a hook-up coordinator that
23 did most of these testings, and he was specifically trained to
24 do these tests. His name was Danny Wojeleski (phonetic), and,
25 you know, now that we have got 990 people hooked up, Danny is

1 no longer in the testing business. But that is who the person
2 was in 2006 doing the testing.

3 **COMMISSIONER SKOP:** Well, typically, I mean, my
4 understanding is -- and I have done a little bit of this in my
5 life, not much, but if you glue in a piece and you are
6 interconnecting with PVC or the related (inaudible), you put
7 the primer and sealant on there, you put the piece in, and you
8 pretty much are good to go with a leak free fit most of the
9 time if you do it right. It is not exactly I would not think
10 rocket science. But, again, I am openminded. I am listening,
11 but I am equally somewhat skeptical. It seems a lot of work
12 effort to go check it, and I am wondering how much of that is
13 actual -- you know, if they are going out there and doing it
14 and doing it and it has a value, then it is hard to question
15 that.

16 **THE WITNESS:** Believe me, Commissioner, this has a
17 value to the utility company because we don't have the INI that
18 a lot of utilities have. One of the utilities that is
19 immediately in our adjacent has a terrific amount of INI, and
20 it is nightmare for them. In fact, a couple of days ago I was
21 walking by and there was raw sewage coming out of the manhole.

22 **COMMISSIONER SKOP:** I understand. I'm just saying it
23 seems like a huge list.

24 **THE WITNESS:** It is a big project to connect people.
25 We make it very detailed. We are frankly very anal about it

1 because it is something that is important to the utility
2 company to be done right.

3 **COMMISSIONER SKOP:** And that is why I am taking
4 extraordinary effort to understand --

5 (Simultaneous conversation.)

6 **THE WITNESS:** Friday we had the highest tide we have
7 ever seen here in Monroe County. I mean, it literally was the
8 highest tide anybody has ever seen. So one of the problems we
9 have is all of our utility assets are covered by salt water and
10 we can't -- if we are going to treat our utility, our
11 wastewater to AWT standards we are going to have to make sure
12 that there is no chloride that comes into the system. Because
13 if there is chloride that is coming into the system it is going
14 prevent the treatment standards from being achieved. We can't
15 treat it to AWT without, you know, without making sure that
16 there are no leaks, and so we are -- you know, somebody has
17 already testified that we already very technical with respect
18 to our connections.

19 **COMMISSIONER SKOP:** I mean, that is good from an
20 environmental perspective. Again, my point in discussing this
21 at length is to resolve any concerns I have to be fair, to be
22 impartial, and to make sure that the consumers are getting
23 value for services that are being claimed that are wanting to
24 be put into the rate base and subsequently recovered from base
25 rates. So, I appreciate the explanation. Thank you.

1 **CHAIRMAN CARTER:** Thank you, Commissioner. I will
2 come back to you. Let me go to Commissioner Argenziano.
3 Commissioner Argenziano, you're recognized for a series of
4 questions.

5 **COMMISSIONER ARGENZIANO:** Thank you. I will try to
6 make them very quick, because I went back through my notes.
7 Some of the them I wanted to ask you and give you the
8 opportunity, of course, to respond to other questions from
9 before. In regards to -- let me ask you this question first.
10 How many more residents are there remaining to hook up?

11 **THE WITNESS:** There is probably about 350 EDUs to
12 come on.

13 **COMMISSIONER ARGENZIANO:** And some of those that we
14 have heard earlier today the connection and actual hook-up is
15 very far away from the home.

16 **THE WITNESS:** Well, the Monroe County statute as it
17 is today requires somebody to hook up if you are within
18 250 feet of a force main gravity or vacuum line. So it is
19 quite broad. It used to be 100, but the Commissioners in their
20 wisdom amended that to provide that if you are within 250 feet
21 of a force main vacuum or gravity line that you are serviced.

22 And this is an issue that, you know, I have thought
23 long and hard about. If the Commission is willing to allow me
24 to recover my costs of going in and making it easier for
25 customers to hook-up, I am happy to exceed the standards.

1 **COMMISSIONER ARGENZIANO:** Well, I guess -- to heck
2 with the county ordinance for a minute for staff and let's say
3 we have a new community and a utility comes in. Where do they
4 usually -- where do the lines usually go, and then how -- the
5 difficulty for a consumer, and I'm not sure it is the wisdom of
6 the county commission here to impose that upon the constituents
7 to be honest with you, because you can recover -- I guess you
8 could have -- let me ask it this way. The second part of that
9 question. How does a resident if the hook-up is 250 feet away,
10 if they can't afford it or though have to go over other
11 properties to do that, how do they resolve that? And, staff,
12 if you can answer for me first what would normally happen?
13 Where would a utility wind up? Isn't there usually closer
14 than --

15 **MR. JAEGER:** I was going to ask the same question to
16 him. How do they go across the 250 feet if they don't own it?

17 **THE WITNESS:** Typically along the right-of-way. In
18 the right-of-way, the public right-of-way.

19 **MR. JAEGER:** The county right-of-way?

20 **THE WITNESS:** Yes.

21 **MR. JAEGER:** And so it would be the county between
22 them and (inaudible).

23 **THE WITNESS:** Yes. Normally, our lines are right in
24 the right-of-way. And, you know, typically they are available
25 for a connection immediately adjacent to the properties.

1 **COMMISSIONER ARGENZIANO:** So it used to be 100 feet
2 and what prompted -- if you know, what prompted the county --

3 **THE WITNESS:** I just heard this at lunch actually, so
4 I didn't really even know that they changed the ordinance, but
5 that is what the current ordinance is.

6 **COMMISSIONER ARGENZIANO:** Okay. And maybe staff
7 could get to me later with what the cost would be to go from
8 100 to 250 feet. I mean, are we making it so prohibitive for
9 people to be able to hood up, and that is something I would
10 like to report to the Legislature if that is happening. And,
11 staff, you can get that to me. I don't know if you have that
12 now, but I'm not putting you on the spot for that now.

13 Let me ask you another question. And I heard
14 testimony today about people maybe saying that the story had
15 changed, or things have changed in regards to upfront thinking
16 that the utility was going to bear a lot of costs. And, of
17 course, the consumer or customer knew that there would be some
18 costs, but it seemed that that changed where more of the costs
19 were shifted to the consumer. Can you tell me what happened?

20 **THE WITNESS:** I sure can. Initially, we started
21 doing a design build project here for this South Stock Island
22 project, and, you know, as we are designing things the county
23 at that point in time was trying to sewer Monroe County off the
24 corner of the administrator's desk. That is how I characterize
25 it. And so they call us up one day and say, hey, Bill, we know

1 you are working on this project. Can we have a copy of the
2 plans that you are working on to date? And we said fine. So
3 we sent them one of the copies of the plans that we had been
4 working on. And it wasn't the final plan, it wasn't stamped
5 final, it was just what we are doing and trying it design the
6 system. When you design systems you go through five or six
7 different concept designs before you get to the final design.
8 And so the county grabbed this plan and thought that this was
9 the plan. We told them no, we are just -- they went how are
10 you coming on your work? Well, to show you that we are
11 working, we will give you the design number three as we are
12 going to, you know, the final design.

13 **COMMISSIONER ARGENZIANO:** In the designs that the
14 public has a certain amount, I mean, whatever was in front of
15 the public did it look like the --

16 **THE WITNESS:** There were more buffer tanks in the
17 plan than eventually were in the final plan, because as it
18 turned out in doing a vacuum system you can only have a limited
19 number of buffer tanks. And that is why the plan that
20 initially was reviewed didn't have as many buffer tanks -- or
21 had more buffer tanks than ultimately were in the final plan.

22 **COMMISSIONER ARGENZIANO:** Should you have known that
23 there shouldn't have been --

24 **THE WITNESS:** Well, that is why they were going
25 through the design, and when we ran the design by Air Vac they

1 said --

2 **COMMISSIONER ARGENZIANO:** Okay. With all due
3 respect, how will the consumer know what they really are to
4 expect? You know, they are not the engineers.

5 **THE WITNESS:** Well, we didn't put this out to the
6 public. We gave this to the county administrator.

7 **COMMISSIONER ARGENZIANO:** It sounds like the county
8 has got a real problem here. The county commission really has
9 a real problem here.

10 **THE WITNESS:** We gave it to the county administrator,
11 and at the end of the day we said, okay, fine, here is the
12 final plan. Are you guys ready to sign off on it. And they
13 said yeah, absolutely. They signed it based upon the plans we
14 gave them and, you know, the plans that we gave them and that
15 they signed off on were the plans that we built. And believe
16 me there were three different investigations into, you know,
17 whether or not we built what we said we were going to build,
18 and everybody concluded that we did and that it was adequate
19 for 20 years for South Stock Island. That was the URS report,
20 and that it was, in fact, the lowest cost plan to the consumer
21 that we built.

22 **COMMISSIONER ARGENZIANO:** Do you know -- and I'm not
23 putting you on the spot, do you know what the average cost to
24 the consumer would be to hook-up, I guess, for the 250 feet?

25 **THE WITNESS:** Do I know? You know, if you used \$40 a

1 foot to run pipe in Monroe County, that would be a good number.
2 If you use \$60 a foot to run pipe that is what would --

3 **COMMISSIONER ARGENZIANO:** Do I have 75?

4 **THE WITNESS:** It would be \$70 a foot apparently per
5 Mr. Burgess.

6 **COMMISSIONER ARGENZIANO:** And just for my curiosity,
7 do you know if there is any contingency, if you have some low
8 income residents or somebody and they can't afford to hook up,
9 is there any help or provisions other than a person losing
10 their home because they can't afford it?

11 **THE WITNESS:** There are low income programs here in
12 Monroe County to help people connect.

13 **COMMISSIONER ARGENZIANO:** That will pay the entire
14 connection or a substantial portion?

15 **THE WITNESS:** They help with the connections.

16 **COMMISSIONER ARGENZIANO:** I would love to find out
17 more information about that for my own --

18 **THE WITNESS:** In fact, I think some of the folks from
19 Harbor Shores were able to avail themselves of that.

20 **MR. JAEGER:** I think in testimony this morning
21 Mr. Neugent, a county commissioner, said they have helped some
22 people who -- they were more than ordinary, but I don't know if
23 the staff is aware.

24 **COMMISSIONER ARGENZIANO:** But out of 350 people
25 remaining maybe most of those couldn't hook-up. I don't know

1 how many funds are available, and am just wondering if that is
2 something that needs to be taken into consideration when we act
3 on the state level and a county level.

4 **THE WITNESS:** Most of the connections to come are
5 commercial connections.

6 **COMMISSIONER ARGENZIANO:** Oh, mostly commercial.
7 Okay. I don't know what they are saying here. Oh, two other
8 things. Do you have in place some type of mechanism where a
9 resident, a customer can get in touch and let the board know or
10 ask information from the board?

11 **THE WITNESS:** Yes. We have a phone number. I keep a
12 customer complaint booklet. I have a customer contact booklet
13 that is done on a monthly basis. Every customer contact that
14 we have is logged, and that log is reviewed. And, frankly, we
15 don't have customer complaints. We have customers that call
16 and say, you know, my sewer is backing up, and then we will
17 send somebody out, and 95 percent of the time it is backing up
18 because their lateral is blocked, or their toilet is blocked,
19 or something like that.

20 **COMMISSIONER ARGENZIANO:** If there is a problem they
21 don't have to go through the county commission to get to
22 information.

23 **THE WITNESS:** No. We have a telephone number and our
24 office is open 365 days of the year from 7:00 o'clock to
25 7:00 o'clock.

1 **COMMISSIONER ARGENZIANO:** And my last question. And
2 I mean this probably more with all due respect to try to get an
3 answer. I guess it was your son-in-law that went to the
4 homeowners association meeting.

5 **THE WITNESS:** No, it was my son.

6 **COMMISSIONER ARGENZIANO:** Your son.

7 **THE WITNESS:** And he was representing a homeowner.

8 **COMMISSIONER ARGENZIANO:** He was representing a
9 homeowner.

10 **THE WITNESS:** Yes, who was there.

11 **COMMISSIONER ARGENZIANO:** Okay. That probably wasn't
12 very wise in my opinion. Thank you.

13 **CHAIRMAN CARTER:** Commissioner Skop.

14 **COMMISSIONER SKOP:** Thank you. Just one follow-up
15 question I would point to Mr. Smith. In terms of, I guess,
16 your son you mentioned was representing a homeowner.

17 **THE WITNESS:** Right.

18 **COMMISSIONER SKOP:** Again, just going by what I have
19 heard this morning, which I'm trying to sort through the
20 details, if he is representing a homeowner, I would assume he
21 is licensed to practice law in the state of Florida.

22 **THE WITNESS:** That is correct. As a matter of fact,
23 it was the subject of an ethics violation complaint which was
24 dismissed out of hand.

25 **COMMISSIONER SKOP:** Thank you.

1 **CHAIRMAN CARTER:** Okay. Let's do this. I want to
2 make sure that OPC has ample opportunity. We have kind of
3 dominated from the bench, but I want you to have ample
4 opportunity to cross-examine this witness. Also, too, I see
5 staff has been checking about outside to see who is on first.
6 Is it who is on first, and what is on second, and I don't know
7 is on third? Anyway. What is on second, and I don't know is
8 third.

9 Let's do this, Commissioners. Let's take a quick
10 recess so I can check with staff. Mr. Burgess can get -- I'm
11 going to give you ample opportunity, and if you don't finish
12 today then we will do that. But I want you to have ample
13 opportunity to organize your thoughts for your cross
14 examination and also, too, I really want to get with staff to
15 see how we are looking. I wanted to kind of truck on through,
16 but if that is not possible we will have to pick up in a
17 minute. So I am looking at -- every time I look at the clock
18 on the wall I get disappointed, so I'm going to look at my
19 wristwatch. And I have about nine after on my watch and we
20 will come back at 20 after on my watch.

21 (Recess.)

22 **CHAIRMAN CARTER:** Oh, by the way, I keep hearing
23 these sounds. Those of you with cell phones and pagers and all
24 like that, I am from south Georgia, so my grandmama told me
25 about manners and things like that. It would be very helpful

1 to us if you would put them on vibrate or turn them off. That
2 would be real, real nice. Just do it for my grandma, okay?

3 We would really, really appreciate that. What
4 happens is she is doing two things here, and she is trying to
5 listen, and I think we had a bunch of Harleys go by a minute
6 ago, and a lot of that. We are pretty close to the street, so
7 a lot of things that we hear have impact on her ability to
8 hear. And she is transcribing it to make sure that this gets
9 into the record, and we want to make sure that every person
10 gets an opportunity as we go through. Every person, I mean
11 that the parties get a right to be heard, and sometimes I get
12 real country and I want to say every jot and tittle accounted
13 for. Let's do this. Commissioner, did you have a comment?

14 **COMMISSIONER ARGENZIANO:** Just a question.

15 **CHAIRMAN CARTER:** You're recognized.

16 **COMMISSIONER ARGENZIANO:** And I hate to bring back an
17 issue that we think we resolved, but --

18 **CHAIRMAN CARTER:** You're recognized.

19 **COMMISSIONER ARGENZIANO:** -- I have continued
20 questions. The numbers that you corrected at the very
21 beginning of all of this that you have been testifying, what I
22 am concerned -- Mr. Chairman.

23 **CHAIRMAN CARTER:** You're recognized.

24 **COMMISSIONER ARGENZIANO:** -- is that if we go forward
25 with a rate case on numbers that you have indicated are not

1 correct, I'm not sure how that works. How do I do that when
2 the numbers are not correct? And will you be filing for a
3 second rate case to make up the difference? And I would like
4 and I think it is something we seriously need to look at and
5 I've got some concerns.

6 **THE WITNESS:** Well, Commissioner, I am certainly not
7 a rate case expert, and I hired my attorneys to represent me in
8 this manner, and they gave me this document this morning. You
9 know, Frankly, I hadn't looked at in some time and asked me
10 what I thought, and I said, well, things have changed in the
11 last 15 months. But, you know what, on the other hand we spent
12 an awful lot of money to get to this point, so we need to
13 charge forward as far as I am concerned.

14 **COMMISSIONER ARGENZIANO:** Mr. Chair, to staff. What
15 would stop a second filing for a rate case after we do all of
16 this, and how do I have statutory authority to go in and now
17 proceed with a rate case on numbers that are not correct? And
18 I want to keep due process, but I am concerned with a second
19 filing.

20 **MS. HELTON:** Let me take a stab at it, and if someone
21 thinks I have misspoken, and especially the utility thinks I
22 have misspoken, or staff, or Mr. Burgess, please correct me.
23 My concern and my recommendation to the Chairman was the due
24 process that in my mind is a \$74,000 increase when we are
25 talking about originally a \$601,000 revenue --

1 **COMMISSIONER ARGENZIANO:** And I agree with you.

2 **MS. HELTON:** So that is the context in which I was
3 coming from. I don't think I heard him say that the \$601,000
4 number when it was originally in the testimony was wrong, it
5 was just the advance of time that has made a difference. So, I
6 think that the \$601,000 number could be made better for lack of
7 a different way to conceptualize it. The \$601,000 number at
8 the time of the filing --

9 **THE WITNESS:** It certainly was correct in August of
10 2007. That was correct.

11 **MS. HELTON:** He is saying he testified today or wants
12 to change his today to say there has been an increase.

13 **MR. WHARTON:** My concern, Commissioner Argenziano, I
14 want to make sure that I'm not misunderstanding you, is
15 personally I believe the record should be allowed to have been
16 changed to put it on the record and then you all could decide
17 to put in the rates or not. But be that as it may --

18 **COMMISSIONER ARGENZIANO:** But you understand due
19 process.

20 **MR. WHARTON:** You have ruled, I do understand. I
21 understand. Now, I just want to make sure, though, that the
22 Commissioner is not suggesting, well, now I can no longer rely
23 on the lower figures. Because utilities are dead in the water
24 if someone proves that costs have gone (inaudible). That is
25 almost always true by the time you make it through a rate case.

1 **COMMISSIONER ARGENZIANO:** No, what I am concerned
2 about is that I am being told that is not the right number to
3 move forward with. How do I move forward?

4 **MR. WHARTON:** That is another mechanism.

5 **MS. HELTON:** My point is if we lived in a perfect
6 world, that \$674,000 number sounds like it would have been the
7 best number. There are a couple of fixes. If you are not
8 comfortable with the way where we are sitting right now there
9 are a couple of fixes. One is to go back and revisit the
10 ruling and allow the company, as Mr. Wharton has suggested, to
11 file a late-filed exhibit, give Mr. Burgess and the staff time
12 to look at that late-filed exhibit and see whether they have
13 problems with the veracity of it, was it information that is
14 provided, whether they think it is accurate or not. Or the
15 company could file at the conclusion of this case a limited
16 proceeding.

17 We have the Commission within the last several years,
18 and I can't remember exactly, but it was within the last
19 several years adopted a rule concerning water and wastewater
20 utilities limited proceedings to make it much more streamlined
21 that it has been in the past to allow for quick fixes so they
22 don't have to come in and file a full-blown rate case.

23 **COMMISSIONER ARGENZIANO:** Let me ask this question.
24 Everything we do in the proceeding with the rate case, however,
25 for lack of coming up with a word, can it ultimately be just

1 tossed out because of the fact that we are proceeding on a
2 number that we know is not correct?

3 **MS. HELTON:** I don't think the number is not correct,
4 it is just that it could be more correct.

5 **MR. WHARTON:** I am just concerned, Commissioner, that
6 as a practical matter if that is what you determine, OPC can
7 lay everybody off and have one kid lawyer, because all he is
8 going to have to prove is he filed this thing a month ago,
9 inflation is one percent. Boom, your out. Because there is
10 something not accurate about every -- I think the testimony
11 perhaps maybe should be read as is it is at least 280. You got
12 280 on the books, that is what you are going to trial on, that
13 is what you ruled. But to take it to say that invalidates the
14 number I just think is a slippery slope on a lot of numbers in
15 a lot of rate cases.

16 **MS. HELTON:** And one more ratemaking concept that I
17 think might be helpful to keep in mind is that when the company
18 files its MFRs on a given day, the next day those MFRs, the
19 numbers that went into those MFRs may not be the same if they
20 would have done it the next day or the next week. Power costs
21 change, chemical costs change.

22 **MR. JAEGER:** Interconnection, we have seen 1,000 more
23 connections.

24 **MS. HELTON:** It is a snapshot in time. It is the
25 best gauge. It is a regulatory tool that the Commission uses

1 to help figure out what that snapshot in time is for the
2 utility expenses.

3 **COMMISSIONER ARGENZIANO:** I understand that. I'm not
4 an attorney, so I am relying on staff and counsel. I just
5 don't want to come back and say I told you so.

6 **CHAIRMAN CARTER:** Commissioner Skop.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And I
8 don't want to put words in Commissioner Argenziano's mouth, but
9 I think what she may be struggling with, and correct me if I'm
10 wrong, is do you take the case as you find it as it was filed,
11 or noting that the utility is now stating that the number is
12 higher, do you just kind of wait and make them adjudicate the
13 whole thing at the higher number, or do you just take it as it
14 is now. I think that might -- I mean, there are economies in
15 taking it as we find it now versus having them refile the
16 number and then doing this one time instead of two.

17 **COMMISSIONER ARGENZIANO:** Right. Well, if you don't
18 think that the costs to the company have increased and they are
19 just going to eat that --

20 **MS. HELTON:** No. I mean, I know that my grocery bill
21 increases it seems like every week that I go to the grocery
22 store, so I don't doubt that there are costs that have
23 increased for the utility. My only point was that it seems to
24 me that it was incumbent upon the utility to notify OPC and the
25 staff prior to him sitting on the stand and telling us that.

1 **COMMISSIONER ARGENZIANO:** I agree with you 100
2 percent there, I absolutely do. But still you told me before
3 knowing that the number is wrong just seems wrong to me. So
4 how do you go forward?

5 **MR. WHARTON:** I don't think it was wrong at the time
6 that the Commission's ruling implicitly states is the relative
7 time for the purpose of this rate case. That's the way I look
8 at it. It may be wrong if you are doing things as of today.
9 You guys just said so, that is the way I look at it.

10 **CHAIRMAN CARTER:** I think that the process is --
11 staff, how long is this? I will get back to you in a minute,
12 Mr. Burgess. How long is this process of this particular
13 company for this particular case been going on?

14 **MR. JAEGER:** Let me look at the prehearing order.
15 They filled on August 3rd, 2007. So it has been a year and one
16 month, or a year and two months almost.

17 **CHAIRMAN CARTER:** Okay. In the process, why or what
18 has caused there to be this time frame?

19 **MR. JAEGER:** I'm sorry, I didn't hear you.

20 **COMMISSIONER ARGENZIANO:** Mr. Chair.

21 **MR. WHARTON:** There was a single continuance based
22 on -- there was a continuance.

23 **MR. JAEGER:** In January they thought they might sell
24 it and we continued it for approximately five months, and then
25 they decided the sale was not going to go through, and we fired

1 things back up. So there was like a five month delay, and I
2 think the test year was the 2006 test year.

3 **CHAIRMAN CARTER:** One second. Commissioner
4 Argenziano.

5 **COMMISSIONER ARGENZIANO:** I think from what I am
6 hearing and what the company is saying and put on record, I
7 feel a little better. So, if everybody is happy, then I will
8 be happy and we will leave it at that. I think by what you
9 said -- forgive me, but you can't come back -- well, you can
10 come back and appeal, I guess.

11 **CHAIRMAN CARTER:** I was thinking that if there had
12 been the normal course of events we would have taken it from
13 there and ruled on it, but because there was a continuance and
14 there was a refileing, I think you said it was a pending sale?

15 **MR. JAEGER:** Well, they were negotiating for sale and
16 that fell through basically.

17 **CHAIRMAN CARTER:** And also, Mr. Wharton, I appreciate
18 your comments, because what you are saying is that -- and I
19 hope that everyone understands we are not saying the number is
20 wrong.

21 **MR. WHARTON:** Right. I mean, I interpret your ruling
22 to say that number may be recoverable, but not today.

23 **CHAIRMAN CARTER:** Exactly. And that is a whole
24 nother thing. Mr. Burgess, any comments on that?

25 **MR. BURGESS:** No. And I was just going to get to the

1 point which you were asking staff about is in the normal course
2 of any rate case, of course the number that is filed if someone
3 were to put a sharp pencil on every number that is filed in a
4 rate case the day of the hearing it would be different than the
5 day it was filed. And in this case that is exacerbated by the
6 fact that there was a five-month continuance during which the
7 differential became greater.

8 From our standpoint, though, a lot of things change
9 and they go additional directions. You have additional
10 revenues and that sort of thing, so that is why we disagree so
11 strenuously with a piecemeal inclusion of a single item that is
12 focused on for an increase without examining the totality of
13 all the circumstances.

14 **MR. WHARTON:** I guess I would just note for the
15 record, Chairman Carter, that as someone has represented
16 (inaudible).

17 **CHAIRMAN CARTER:** That's not nice. Just kidding.
18 Just kidding. Commissioners, I believe that in view of that,
19 unless you think otherwise, my ruling will stand based on that.
20 Mr. Wharton, are you comfortable with that, and, Mr. Burgess,
21 are you comfortable with that?

22 **MR. WHARTON:** Yes.

23 **CHAIRMAN CARTER:** Staff?

24 **MR. JAEGER:** Yes.

25 **CHAIRMAN CARTER:** Okay. Let's do this,

1 Commissioners, if we can kind of -- obviously at any point in
2 time if you have a question you can do that. Let me recognize
3 Mr. Burgess for his cross and we will see how far we get with
4 that.

5 Mr. Burgess, you're recognized, sir.

6 **MR. BURGESS:** Thank you, Mr. Chairman.

7 CROSS EXAMINATION

8 BY MR. BURGESS:

9 **Q** Mr. Smith, first, I would like to follow up on a
10 question that Commissioner Argenziano asked you about the
11 numbers of customers yet to be hooked up. And I believe you
12 gave the number 350 EDUs to be hooked up. I am trying to get
13 an understanding of a specific characterization of those. Are
14 those existing residents that are on septic that have to be
15 hooked up? I mean, what all did you include in that
16 350 number?

17 **A** We included commercial properties that are on package
18 plants, some residences that are on septic assessments.

19 **Q** When you say commercial, do you mean -- does that
20 include like multi-family residence type of commercial
21 enterprises?

22 **A** Commercial properties.

23 **Q** But that doesn't just mean the 7-11s, and the
24 clothing stores, and that sort of thing.

25 **A** No, that is correct.

1 **Q** I wanted to ask you to go back to some of the early
2 subjects that have been discussed, and I wanted to start off by
3 trying to get a clear idea, Mr. Smith, of all of your
4 professional activities and involvements. And what I would
5 like to do, Commissioner, is distribute Audit Finding 2, which
6 is already in the record, but I am distributing it because it
7 will just give you a single document, as well as Mr. Smith to
8 look at instead of thumbing through.

9 **MR. DETERDING:** Steve, I assume that we are not going
10 to mark this separately, then.

11 **MR. BURGESS:** Precisely, yes. There is no reason to.
12 This is in the record. This is just for expedience.

13 **CHAIRMAN CARTER:** You made proceed.

14 BY MR. BURGESS:

15 **Q** Mr. Smith, are you familiar with this document?

16 **A** No, I am reading it now.

17 **Q** You have not seen this before?

18 **A** I may have seen it. It looks --

19 **Q** This is in the record as an attachment to both staff
20 auditors' testimony, and it is, in fact, Staff Audit Finding
21 Number 2.

22 **A** Okay.

23 **Q** And you will see on the first page that it describes
24 your involvements, for want of a better word, and I wanted to
25 go over that and get a clear understanding of that. Can you

1 tell me -- first of all, you are the managing partner of an
2 Illinois law firm, is that correct?

3 **A** Well, I am the senior partner of the law firm, yes.

4 **Q** The senior partner of the law firm. And the name of
5 that firming is listed here. Perhaps it is not. The name of
6 that firm, please?

7 **A** Smith, Hemmesch, Burke, Brannigan, and Guerin.

8 **Q** All right. And on an approximate basis, how much
9 time do you spend in Illinois?

10 **A** Fifty percent of my time. That is a guesstimate. I
11 don't keep track of my time.

12 **Q** And do you spend about one week of each month in Key
13 West?

14 **A** Yes.

15 **Q** And when you are in Key West you are working for
16 Green Fairways, is that correct?

17 **A** Yes, sir.

18 **Q** And who owns Green Fairways?

19 **A** I do.

20 **Q** When I look at this Audit Finding Number 2, and you
21 see the list of items in which you are identified --

22 **A** You know, I should clarify that. When I am in Key
23 West, I am working for all the businesses, because I take phone
24 calls for the law firm, I take phone calls from my law firm, I
25 take phone calls for other businesses. So, I mean, when I am

1 in Chicago, I take phone calls for the utility company. I
2 mean, you know, place of physical presence isn't as important
3 as it used to be.

4 **Q** Right. And if you look at this listing of the
5 various enterprises in which you are involved, is this an
6 accurate rendition of the enterprises that you are involved
7 with?

8 **A** Yes, except that there are misspellings.

9 **Q** Well, I won't worry about those. And can you tell me
10 the activities that Green Fairways -- let me back up. You said
11 that when you are in Key West you are working for Green
12 Fairways, that is the company that you are --

13 **A** Well, I work for Green Fairways and I work for the
14 law firm. Those are the chief organizations that I work for.

15 **Q** And Green Fairways does -- how many people work for
16 Green Fairways?

17 **A** Two now.

18 **Q** How many worked for Green Fairways during the test
19 year?

20 **A** Three.

21 **Q** And what sort of activities is Green Fairways
22 involved in? Or, in case there is -- this is relevant
23 throughout, what I am more interested in is during the test
24 year.

25 **A** Strike that. There are three that work for Green

1 Fairways currently.

2 Q And three that worked for Green Fairways during the
3 test year?

4 A That is correct.

5 Q And is one of the employees -- well, I just look at
6 this and it indicates that you have one, Mike Mishek
7 (phonetic), who runs the golf course, is that accurate?

8 A That is correct.

9 Q And it indicates that Bill Ski (phonetic) runs the
10 office building.

11 A Office building, yes. There are three office
12 buildings.

13 Q Three office buildings. And you oversee everything?

14 A Correct.

15 Q And then you run K W Resort.

16 A Correct.

17 Q Can you tell me what K W Resort is?

18 A Pardon?

19 Q K W Resort.

20 A K W Resort Utilities Corp is the company that we are
21 here altogether with.

22 Q And that is what is indicated here, K W Resort
23 Utilities.

24 A Correct.

25 Q Now, you will see on this that it says it is

1 represented at the bottom paragraph that Mr. Smith indicates
2 that one-third of his time is spent on the utility.

3 **A** That is correct.

4 **Q** Now, when you say one-third of your time, I want to
5 understand with certainty what the numerator and the
6 denominator is. One-third of your time means one-third of all
7 the time you spend on all of your business aggregately.

8 **A** Unfortunately, that is correct.

9 **Q** And the one-third is the amount that you devote --
10 did you give them this number one-third?

11 **A** Yes, I did.

12 **Q** And the one-third is the amount of time that you
13 devote to anything when you are working on something involving
14 K W Resort Utilities, is that correct?

15 **A** I'm not sure of that question. You said the
16 one-third -- I devote one-third of my time to KWRU. When I am
17 working on KWRU, I don't devote one-third of my time. I think
18 that was your question.

19 **Q** No, the question is of all the time that you devote
20 to all of the activities that are listed here that are involved
21 in your professional business --

22 **A** Uh-huh.

23 **Q** -- one-third of the time is devoted to K W Resort
24 Utilities?

25 **A** That is correct.

1 **Q** And I think you indicated in your testimony a moment
2 ago that you have no time sheets.

3 **A** I do not keep time, correct.

4 **Q** Do you keep time for your law office purposes?

5 **A** No, I do not.

6 **Q** Let me distribute another exhibit. And what this
7 exhibit is is an exhibit that is attached to Ms. Dismukes'
8 testimony, and it is the second page of the exhibit in which it
9 depicts ownership in the various enterprises that are involved
10 in providing utility service to the customers of K W Resort.

11 **CHAIRMAN CARTER:** Mr. Burgess, would you yield one
12 moment for Commissioner Skop?

13 **MR. BURGESS:** Yes, I would be happy to.

14 **CHAIRMAN CARTER:** Commissioner Skop.

15 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And
16 thank you, Mr. Burgess. I was just looking at Page 9 of that
17 exhibit that you just handed out, and looking at the Fairway
18 salaries in relation to the management fees that was paid to
19 K W Resorts. And those two set of numbers, although they
20 differ by year, are almost the same with the difference of
21 \$20,000. I'm just wondering is there is any significance to
22 that.

23 **THE WITNESS:** I'm sorry, I didn't hear that question.

24 **COMMISSIONER SKOP:** On Page 9 of the exhibit that was
25 just sent out, it says Bill Smith, Green Fairways salaries, and

1 that is \$460,000 total in that column if my Blackberry math is
2 correct. Looking at the management fee to K W Resorts, that
3 number is \$441,000 over that same period of time. So while
4 they differ and are not in direct correlation, they are almost
5 of the same magnitude and I'm wondering if is there any
6 significance to that?

7 **THE WITNESS:** No, there is nothing significant with
8 that.

9 **COMMISSIONER SKOP:** Thank you.

10 **CHAIRMAN CARTER:** Mr. Burgess.

11 BY MR. BURGESS:

12 **Q** What I would like to do, Mr. Smith, if I could turn
13 your attention to the exhibit that we just handed out, and ask
14 you is it correct that you own WS Utility?

15 **A** Yes.

16 **Q** And WS Utility is not, in fact, the utility that we
17 are all here for, that is a different company.

18 **A** That is correct. I have three partners in WS
19 Utilities.

20 **Q** So there are three people that own WS Utilities?

21 **A** There are four.

22 **Q** There are four people that -- yes, there would be.
23 There are four people that own WS Utilities and WS Utilities
24 owns K W Resort Utilities.

25 **A** That is correct.

1 **Q** And who are the three partners with whom you own WS
2 Utilities?

3 **A** Leslie Johnson, my daughter; Alex Smith, my son; and
4 Barton Smith, my son.

5 **Q** And WS Utilities owns 100 percent of 900 Commerce, is
6 that right?

7 **A** No.

8 **Q** What is the ratio of ownership of 900 Commerce?

9 **A** Zero.

10 **Q** I'm sorry?

11 **A** Zero.

12 **Q** I don't --

13 **A** WS Utilities doesn't own anything except K W Resort
14 Utilities.

15 **Q** Okay. Who owns 900 Commerce?

16 **A** 900 Commerce is owned by myself and two other
17 gentlemen.

18 **Q** And can you tell me who the other two gentlemen are?

19 **A** My dad and my son.

20 **Q** And is it correct that 900 Commerce owns a number of
21 enterprises?

22 **A** No.

23 **Q** Who owns Green Fairways? Do you own it directly?

24 **A** I own Green Fairways by myself, 100 percent.

25 **Q** And is it correct that Key West Golf Club is owned, I

1 believe, 83 percent by Gwen Smith?

2 **A** 78 percent.

3 **Q** 78 percent. And who owns the other portion?

4 **A** Ken Fuller, 22 percent.

5 **Q** And is it correct that Chris Johnson owns Keys
6 Environmental?

7 **A** Yes.

8 **Q** And am I correct that the employees these make K W
9 Resort Utilities operate, that make it run are employed by
10 either Key West Golf Club, Keys Environmental, or Green
11 Fairways?

12 **A** Yes.

13 **Q** Thank you, Mr. Smith. Now, I would like to turn to
14 the second page that Commissioner Skop had you looking at with
15 regard to the compensation. And if I look at the test year,
16 2006, am I correct in understanding that for your time spent
17 for K W Resort, that you received -- you or your company
18 received just under \$185,000 in total compensation for the
19 services that were provided through Green Fairways?

20 **A** That is correct.

21 **Q** And that is for one-third of your time?

22 **A** That is correct.

23 **Q** And can you tell me how you determine when you are
24 working for the \$60,000 versus when you are working for the
25 \$125,000?

1 **A** How I determine when -- no, I can't determine that.

2 **MR. BURGESS:** Okay. I would like to distribute, if I
3 could, the management agreement between Green Fairways and K W
4 Resort. I apologize, this is --

5 **CHAIRMAN CARTER:** It's already in, it is one of the
6 exhibits? Okay. You may proceed.

7 **MR. BURGESS:** It is not in yet, but it is one of the
8 exhibits only. So I just want this for purposes of ease of
9 examination.

10 **CHAIRMAN CARTER:** Thank you.

11 BY MR. BURGESS:

12 **Q** Is this that has been distributed the agreement,
13 management agreement between K W Resort and Green Fairways?

14 **A** Well, it is two pages of the agreement.

15 **Q** Yes, right. And in what we have attached as Page 15,
16 it describes the management fee that gives rise to the \$60,000
17 and it also gives rise -- the second paragraph below 4.01 also
18 specifies the agreement that gives rise to the \$125,000 project
19 administration fee that was earned in the test year?

20 **A** Correct.

21 **Q** And if I go to the signature page, I do see that this
22 was signed as on behalf of K W Resort by William Smith and
23 signed on behalf of Green Fairways by William Smith.

24 **A** Yes.

25 **Q** I guess I have to ask you how you work through the

1 negotiations in that sort of situation. How you put on the hat
2 of one versus the other?

3 **A** There is no answer to that question.

4 **Q** And then the question I have going back to the
5 question of what you receive \$60,000 as your salary for
6 president versus what you receive 125,000 as project
7 administrator, I believe you said there is no -- you don't
8 really have a way of changing from one to the other, from one
9 task to the other?

10 **A** No, but there are different functions that you
11 perform when you do those different functions. I mean, this
12 kind of agreement is not an unusual agreement between
13 management companies. I have been in business for 37 years and
14 have negotiated management contracts on behalf of some of the
15 biggest property owners in the United States and, you know,
16 this is a typical management fee that you have for projects,
17 property, management. You know, there isn't a manager that
18 will do the management of a project which is completely
19 different than, you know, a capital intensive project. And
20 when management companies do those big projects, they charge
21 additional amounts that typically are 10 percent of the overall
22 cost of a project.

23 **Q** Well, I would like to ask you a question and here --

24 **CHAIRMAN CARTER:** Mr. Burgess, just momentarily.
25 Commissioners. On your response, is that really your answer

1 that there is no answer to that question?

2 **THE WITNESS:** Well, his question was how do I
3 negotiate. Would you rephrase that, repeat that question? It
4 was a question that --

5 **CHAIRMAN CARTER:** Would you read back that question
6 Mr. Burgess asked about in terms of (inaudible) receive
7 contracts.

8 **THE WITNESS:** It was about two or three questions
9 ago.

10 **CHAIRMAN CARTER:** The response was there is no answer
11 to that question.

12 (Requested portion read back.)

13 **THE WITNESS:** There was a different question that
14 sort of was, you know, like when did you quit beating your wife
15 question is the way I looked at it.

16 **CHAIRMAN CARTER:** He said there is no answer to that
17 question.

18 **COMMISSIONER ARGENZIANO:** I think it was something
19 about how do you differentiate --

20 **THE WITNESS:** Yes. I mean, how do you physically
21 step out of your body and say I'm sitting over here as the
22 owner of the utility company and then how do I physically
23 separate myself and sit over here as the owner of Green
24 Fairways. It is very -- you know, I don't know how you answer
25 that question.

1 **CHAIRMAN CARTER:** The way I read that as a lawyer,
2 you are a lawyer, you have been a lawyer for quite sometime was
3 the capacity. How do you represent one versus the other, and I
4 think the answer to that is that, well, of course, there is a
5 way to answer. You said there is no answer to that question,
6 and I beg to differ with you.

7 **THE WITNESS:** Okay. Well, I agree with you.

8 **MR. WHARTON:** I'm sorry to interject myself, but
9 maybe we should all -- because it impossible for the court
10 reporter to both look and record, maybe we should -- I thought
11 the question was a little smart-alecky, and I interpreted it
12 like Mr. Smith did. I think you should read it back. It was
13 how do you negotiate with yourself was the way I heard it.

14 **THE WITNESS:** Just let me read the question back. I
15 mean, that was --

16 **MR. WHARTON:** We all have to stop for Jane to do
17 that.

18 **CHAIRMAN CARTER:** Okay. One second. Mr. Kelly,
19 let's take one quick second.

20 (Off the record.)

21 **CHAIRMAN CARTER:** Commissioner Skop, and then we will
22 come back.

23 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And
24 food for thought. Looking at the terms and conditions of a
25 contract that were negotiated by the same person apparently at

1 arms-length. In terms of Section 4.01, management fee, it says
2 \$60,000 of 12-monthly installments. I'm not seeing a
3 correlation to the data that was presented on an annual basis
4 on Page 9 unless I'm looking at the wrong numbers, because this
5 number is going 60,000, 60,000, 60,000 per year. And the
6 management fee is 10 percent on top of whatever capital
7 projects there are. So, again, I am interested in seeing what
8 the 60,000 is consisting of. I see some of that in the second
9 column, but I'm not so sure what I am looking at, so I would
10 like an explanation of that.

11 **THE WITNESS:** In 2003 and 2004, we increased the
12 management fee to \$90,000, and unfortunately what they did was
13 they paid 13 monthly payments in 2003, and it looks like they
14 paid 11 in 2004.

15 **COMMISSIONER SKOP:** And I will accept that answer,
16 but from the subject of prudence, again, we are dealing with
17 these related entity transactions. Apparently on the fly it
18 just negotiates new terms of a contract, and we are looking at
19 one term and trying to correlate it, but I think that is the
20 trouble you run into when you are so closely affiliated. You
21 know, there may be rational explanations for why things are the
22 way they are, but, you know, the skeptical factor is equally
23 there. And I will just leave it at that.

24 **CHAIRMAN CARTER:** Mr. Wharton. Mr. Wharton, by the
25 way it was not a smart-alecky question. It is a typical -- I

1 mean, lawyers represent multiple parties all the time. I
2 thought it was a legitimate question.

3 **MR. WHARTON:** I just thought the specific question
4 that Mr. Smith said there was no answer to that was coming out
5 of the negotiations were --

6 **CHAIRMAN CARTER:** Oh, I didn't look at it as
7 negotiations. I just said that --

8 **MR. WHARTON:** No, I didn't mean what you said. I'm
9 talking about -- I need to make sure that is clear, it's not
10 what you said, it's what he said.

11 **MR. BURGESS:** I thought you had said let's go back
12 and read the question. We never quite got --

13 **CHAIRMAN CARTER:** Okay. Let's do this. Hold the
14 phone. Let's do this. Mr. Burgess, Mr. Wharton, staff, the
15 parties, what we are going to do is we are going to do like a
16 brief recess here, and give ourselves, Jane, about ten minutes,
17 and then we will go back into our public testimony. And
18 depending on how that goes, we may pick up again. That is my
19 plan to pick up again this evening.

20 Commissioners, let's take ten minutes. A stretch
21 break and get ready for the public testimony.

22 **COMMISSIONER ARGENZIANO:** Ten minutes.

23 (Off the record.)

24 * * * * *

25 3:28:39

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CHAIRMAN CARTER: Let's reconvene. And while we are waiting for -- let's do this. Jane, do you remember when we broke from the technical portion we wanted to read back that question. Do you have it?

(Read back by reporter.)

CHAIRMAN CARTER: That's where our sentiment is.

MR. WHARTON: It was a compound question.

THE WITNESS: I'm sorry, I was flipping through my remarks there, but, you know, when I do put on the utility hat, I try to be fair to the utility and I try to be fair to Green Fairways. When we bend over backwards, we bend over backwards to be fair to KWRU because we know it is a publicly regulated utility company, and that is why we are overly fair with the utility company.

CHAIRMAN CARTER: Okay.

Commissioners, we want to give Mr. Burgess an opportunity to continue his cross.

(Off the record.)

CHAIRMAN CARTER: We will give Mr. Burgess a minute.

For the record, I just wanted to clarify that, and I appreciate, Mr. Wharton, your response to that. And, Mr. Smith, thank you for your answer.

Mr. Burgess, I'm sorry about that. I kind of caught

1 you off guard with that. We were in the process of -- we just
2 had the court reporter read back the question and if you would
3 like to hear it again I'll have her do it.

4 You're recognized.

5 **MR. BURGESS:** Now, Mr. Chairman, as I understood it
6 when we broke, you had begun to ask a follow-up to that
7 question, and then we started searching for the question
8 itself. I didn't know if you had further questions on it or
9 whether I should continue.

10 **CHAIRMAN CARTER:** Please continue. I'm sorry to
11 break in on you like that, but, you know, when you have those
12 moments you better go for it or otherwise you lose it.

13 You're recognized, Mr. Burgess.

14 **MR. BURGESS:** Thank you.

15 BY MR. BURGESS:

16 **Q** Mr. Smith, what I wanted when we were -- when we
17 broke we were talking about the \$60,000 fee that you received
18 as president of the company, and the \$125,000 fee that you
19 received in the test year as administrator of contracts. And
20 what I was trying to find out, and I assure you this is not
21 intended to be disrespectful, but what I'm trying to find out
22 is as president -- as president of the company, are you to
23 oversee all of the business operations?

24 **A** Of which company?

25 **Q** Of KWRU.

1 **A** Yes.

2 **Q** And so when you are looking over K W Resort
3 Utilities' information and looking out for their interests and
4 you are devoting yourself to the overall needs as president of
5 the company, doesn't that include looking at contracts that
6 will effect K W Resort Utilities?

7 **A** Yes, it does.

8 **Q** And so I really -- I am trying to find out how you
9 determine when you are not earning your \$60,000 fee as
10 president, and instead earning the \$125,000 fee as project
11 manager?

12 **A** Well, the first thing that, you know, we do as
13 project manager is we must obtain financing, you know, for
14 these projects, and generally I have to personally guarantee
15 these projects. I have to personally sign the contracts. I
16 have to personally obtain the financing. Because, as you know,
17 you can't go out and use a company like KWRU to sign a contract
18 without a personal guarantee. So as a result, generally when I
19 borrow the money or when I advance the money to do these
20 projects, I have to personally guarantee those projects. So
21 that is one huge difference between acting as a project
22 administrator and acting as just a manager of the utility
23 company.

24 **Q** So when you say that you personally guarantee them,
25 all the contracts for which you are administrator, you have

1 personally signed on that you will guarantee the funds
2 associated with them.

3 **A** Not so much the contracts themselves, but the loans
4 that we obtain from banks, or when I personally advance the
5 funds. In other words, when KWRU signs a note to BB&T for one
6 million dollars, they won't take KWRU's signature. They'll
7 take the signature of KWRU and William L. Smith, Jr. personally
8 guaranteeing it.

9 **Q** So all of the loans associated with these projects,
10 these construction projects that we see you have received the
11 project management fees for, you have personally signed on as
12 guarantor of the notes?

13 **A** Correct.

14 **Q** And when we look at this, then, and we look at the
15 \$60,000, as I understood your answer when you were telling me
16 that you spend one-third of your time on all KWRU aggregately,
17 I take it to be then that the amount -- if we subtract away the
18 amount of time that you spend as project administrator, that
19 the one-third becomes a lower portion of your total time.

20 **A** I think that's correct, yes.

21 **Q** And so the \$60,000 that you receive as president, for
22 being president of K W Resort Utilities is for an amount of
23 time that is significantly less?

24 **A** I wouldn't say so. It doesn't take very long to
25 personally sign a note.

1 **Q** So that's all that is involved as project
2 administrator is signing a note?

3 **A** No, there are other things that you do. You have to
4 plan, you have to do construction oversight, you have to do
5 quality assurance, you have to make sure that all the
6 contractors get paid, you have to arrange for the financing for
7 that, those are things that you do.

8 **Q** So that takes a little bit of time.

9 **A** It does take time, no question.

10 **Q** And the \$60,000 is for some portion less than
11 one-third of your time?

12 **A** That's correct.

13 **Q** I would like to move on to another area. And in
14 addition to the \$185,000 that you received, is it correct that
15 you also receive a certain amount of repayment for your travel
16 expenses from K W Resort Utilities?

17 **A** Yes.

18 **Q** Okay. I'm going to hand out Audit Finding Number 11.
19 But, again, I want to be on record again for purposes of our
20 being able to look at this with some relative ease.

21 Now, have you seen this before?

22 **A** Yes.

23 **Q** And this is Staff Audit Finding Number 11?

24 **A** I've got to be refreshed. Seven o'clock at night,
25 sometimes it takes awhile.

1 **Q** Absolutely. Take your time, please.

2 **A** I have.

3 **Q** Okay. Now, as I understand it, as we look at these
4 and try to break these down, let's start with the \$6,000 that
5 is in the first line. And as I understand it, that's lodging
6 expenses that were more a matter of an historical fee that has
7 been charged in earlier years.

8 **A** That is correct. I used to come down and spend the
9 time in hotel rooms.

10 **Q** But subsequent to that time, your wife has purchased
11 a house in Key West.

12 **A** That is correct.

13 **Q** And, nevertheless, there were a number of these
14 charges -- well, actually six charges for the \$1,000 a month
15 that took place in the test year when your wife owned a house
16 in the Keys, is that correct?

17 **A** That is correct.

18 **Q** And even though you did not -- even though you lodged
19 at the house owned by your wife, you nevertheless have sought
20 to have the \$6,000 remain as an expense in the test year.

21 **A** Correct.

22 **Q** In addition, you see these other charges that are
23 noticed in here for rental cars and airplane fuel. Can you
24 tell me what those are related to?

25 **A** I rent a car when I'm here in Key West. We don't own

1 a car in Key West, so we rent a car when we come, and that's
2 what the charges are for.

3 Q And the airplane fuel?

4 A It's the fuel to fly back and forth between Chicago
5 and Key West.

6 Q And can you tell me of the various enterprises that
7 you are involved in, is there a distribution of this cost among
8 them or is it all borne by K W Resort?

9 A No, when I come to Key West, we generally alternate
10 it between the golf course and the utility company, with the
11 golf course paying half and the utility company paying half.

12 Q Okay. So you divide up these fees. Does the law
13 firm pay for the travel expenses?

14 A No.

15 Q Mr. Smith, I'm going to pass out a response to an
16 interrogatory that was -- I'm sorry, a production of documents
17 that was propounded by the Citizens to K W Resort, and I'm
18 going to ask you to take your time and look at it, specifically
19 the response to Production of Document, Request Number 28.

20 A Yes.

21 Q Do you agree that this is what was -- that this
22 information that is supplied is what was supplied by K W Resort
23 in response to a Public Counsel production of document request?

24 A I haven't gone through it completely, but it looks
25 correct.

1 **Q** And I would like to just look at a few of them. If
2 we start looking at the documents that are attached in response
3 to the production request, you first see some checks. And when
4 we go four pages back, there is a document that looks like it
5 is on lined paper to Gilliam (phonetic).

6 **A** Yes.

7 **Q** Can you tell me what that is, please?

8 **A** That is an expense reimbursement request.

9 **Q** Okay. And this is one of the fuel -- the airplane
10 fuel expense reimbursement requests that is spoken of in Audit
11 Finding 11?

12 **A** Yes, sir.

13 **Q** And here it looks like it is \$1,600 for this trip
14 that we have in this first example?

15 **A** Correct.

16 **Q** And if we go back two pages further we see an \$1,800
17 fuel?

18 **A** Yes, sir.

19 **Q** And just to take a look at a couple more, we see
20 another \$1,600 fuel, and if we look at all of them we would see
21 fuel, 1,600, \$2,000, somewhere in that range?

22 **A** Yes, sir.

23 **Q** Is this to reflect the amount of fuel that was put
24 into the airplane here at Key West airport?

25 **A** Yes, sir, or at Chicago Midway.

1 **Q** Now, I have to ask you why do we not have some
2 receipt or billing from the enterprise from which you bought
3 the airplane fuel?

4 **A** I'm sorry? We flat rated it. In other words, it was
5 just an allowance for fuel.

6 **Q** And under what authority or agreement is that
7 accepted by K W Resort?

8 **A** The allowance for fuel generally was actually
9 detrimental to me because it costs a lot more to fly the plane
10 than these allowances, but that's what I thought was
11 reasonable, and that's what I bill KWRU.

12 **Q** When we travel for the state, I bring back receipts
13 from whatever outfit that I bore -- that incurred the expense.
14 And what I'm getting to is, I guess, more the bookkeeping
15 technique or documentation that you, as president, require for
16 expenses to be reimbursed.

17 **A** It's an allowance. It's not an actual number. It's
18 an allowance for fuel for the airplane.

19 **Q** And is there some agreement under which that
20 allowance was determined?

21 **A** Yes, I agreed to do it.

22 **Q** Is there some agreement in writing?

23 **A** There is no written agreement, sir.

24 **Q** So this is something that you, as president, believe
25 is reasonable, correct?

1 **CHAIRMAN CARTER:** Mr. Burgess, do you mind taking a
2 break while Commissioner Skop asks a question?

3 **MR. BURGESS:** I don't mind at all.

4 **CHAIRMAN CARTER:** Commissioner Skop, you're
5 recognized.

6 **COMMISSIONER SKOP:** Thank you. Thank you, Mr.
7 Burgess, for yielding. Thank you, Mr. Chair.

8 Mr. Smith, some just quick questions that I think are
9 related, so I'm going to take a stab at it. With respect to
10 the plane in question, do you or any of your affiliates own
11 that plane?

12 **THE WITNESS:** Yes. Green Fairways owns it.

13 **COMMISSIONER SKOP:** And with respect to the aviation
14 fuel that you are taking an allowance for, I believe, that was
15 paid to Island City Flying Service, do you or any of your
16 affiliates own any equity interest in Island City?

17 **THE WITNESS:** No, we do not.

18 **COMMISSIONER SKOP:** But do I understand you correctly
19 that there is not a receipt and it doesn't represent the actual
20 cost of fuel or flight time allocated to the aircraft that you
21 own?

22 **THE WITNESS:** That is correct. It is an allowance,
23 but if I calculated it I would find, I'm reasonably sure, that
24 the fuel allowance was an inadequate reimbursement.

25

1 **COMMISSIONER SKOP:** And what type of aircraft is it?

2 **THE WITNESS:** It is a Turbo-commander 698.

3 **COMMISSIONER SKOP:** Just one more quick question and
4 then I will let Mr. Burgess take it up. With respect to the
5 document that was just handed out, the multi-page document,
6 there is an identifier that it was faxed from your law office,
7 and it is (inaudible) Smith trip to Key West from 3/19 to 3/26,
8 and I don't know exactly what year that was, but at the bottom
9 of that it also says William Smith, reimbursement for Hot Tin
10 Roof (phonetic). Was that the same trip that the expense was
11 calculated for?

12 **THE WITNESS:** Yes.

13 **COMMISSIONER SKOP:** So your wife travels with you on
14 the plane?

15 **THE WITNESS:** That's correct.

16 **COMMISSIONER SKOP:** But there is no general
17 reimbursement for her travel in relation to -- is she a
18 director of the company or anything?

19 **THE WITNESS:** No, but she owns the golf course and
20 that's why, normally, we split the expenses.

21 **COMMISSIONER SKOP:** I guess to elaborate further on
22 Mr. Burgess's question, when you fly down for business, how
23 much is attributable, since you own the house on Stock Island,
24 and I think this would be analogous to the tax question, how
25 much is related to business and how much is related to

1 pleasure?

2 **THE WITNESS:** When I come down here?

3 **COMMISSIONER SKOP:** Is there any provision taken for
4 distinguishing between the two?

5 **THE WITNESS:** No, because we only fly down here for
6 business.

7 **COMMISSIONER SKOP:** Thank you.

8 **CHAIRMAN CARTER:** Commissioner Argenziano.

9 **COMMISSIONER ARGENZIANO:** Just to elaborate a little
10 bit. I don't know how many trips this actually reflects in one
11 year. And would it be -- I understand what you are saying, the
12 expense to maintain the plane, would it have been more prudent
13 to take a commercial flight? Because I don't know how many
14 flights we are talking about.

15 **THE WITNESS:** Well, six flights probably in that
16 year. I haven't calculated it, but typically it would be six
17 flights. But, you know, the round trip air travel for six
18 flights from Chicago, Illinois, to Key West, Florida.

19 **COMMISSIONER ARGENZIANO:** Let me ask staff, for a
20 second, the \$19,105.60, that is just -- that is lodging
21 included, right, or is that just the fuel?

22 **MR. JAEGER:** I'm told it's includes lodging and fuel.

23 **COMMISSIONER ARGENZIANO:** Okay. So that is all
24 inclusive of the lodging and the car rental and the fuel?

25 **MR. JAEGER:** I think that would be right.

1 **COMMISSIONER ARGENZIANO:** Can we somehow figure out,
2 I would like to know what each flight would cost to come in.
3 We are looking at prudence. I need to look at prudence, and I
4 need to figure out if it was more prudent for them to be flying
5 a commercial flight in.

6 And one other question, and I don't mean with this
7 disrespect, but I have to figure out why you can get paid for
8 lodging if you have a house here. Does your wife charge you
9 for living in her home?

10 **THE WITNESS:** No, she does not.

11 **CHAIRMAN CARTER:** Commissioner Skop.

12 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

13 To Commissioner Argenziano's point, I guess, you
14 know, I'm a little surprised by Mr. Jaeger's response to that,
15 at least in terms of what I see for the request for
16 reimbursement. I just a line item entry for fuel. I don't see
17 lodging, you know, so I'm taking the document on its face.
18 Maybe there is an explanation. I hate to be super-critical,
19 but I think this is very, again, analogous to what happens when
20 you have these closely related -- you know, it's problematic.

21 **COMMISSIONER ARGENZIANO:** And I don't want to belabor
22 that, but that is true. You have all these entities that are
23 so closely -- you have got to know that these questions are
24 going to come up.

25 **THE WITNESS:** One more point to your question about

1 whether you could have taken commercial air, and would it have
2 been more prudent to do so. I do see a Continental ticket in
3 here.

4 **CHAIRMAN CARTER:** It is the third from the last.

5 **COMMISSIONER SKOP:** Yes, third from the last, and I
6 can't really -- I see to Key West, Florida; from Miami to Key
7 West and Miami to Key West, so maybe there is some business up
8 in Miami that is related to the Hot Tin Roof dinner. But it
9 seems to me that if the cost for fuel is \$1,600, that certainly
10 \$1,600 probably is likely, in most cases, would pay for first
11 class travel on a ticket from Chicago to Key West. I could be
12 wrong, but I just basing that on just a rough estimate. But it
13 is concerning to me.

14 **CHAIRMAN CARTER:** Thank you.

15 Mr. Burgess.

16 BY MR. BURGESS:

17 **Q** Just one more question on the area, Mr. Smith, and
18 sort of a follow-up to the Commissioner's questions about less
19 expensive to fly commercial. I mean, it would be less
20 expensive altogether if you were a full-time resident down in
21 the area in which the utility that you are president of was
22 domiciled?

23 **A** No question about that. But, on the other hand, you
24 have to recruit talent where you can find it, right?

25 **Q** Now, I want to get to -- move on to the area in which

1 we have had a lot of discussion --

2 **MR. JAEGER:** Steve, before we move on, could I ask a
3 couple of questions since we are on the topic?

4 **MR. BURGESS:** Absolutely.

5 BY MR. JAEGER:

6 **Q** This one Continental thing that we're looking at, why
7 was that -- that's an August?

8 **A** I have no idea why that's in there.

9 **Q** I think you were going every other month.

10 **A** This is probably not for me.

11 **COMMISSIONER SKOP:** It's Douglas and Karen Carter. I
12 don't know who they were, but if there is some clarification.

13 **THE WITNESS:** Oh, yes. That is not for William
14 Smith.

15 BY MR. JAEGER:

16 **Q** Also, one last question. I'm sorry to interrupt,
17 Steve, but about seven pages from the back you have a Gillian,
18 (phonetic) 5/16. It is expenses on that page.

19 **A** Yes.

20 **Q** And you have, I guess, travel from 4/14 to 4/24 and
21 then travel from 4/27 to 4/30, is that correct?

22 **A** That is correct.

23 **Q** And you have fuel, 2,000, and then you have airfare,
24 662 and 335. Did you fly your plane one time and fly private
25 one time?

1 **A** I have no idea what that airfare, 662 and 335, from
2 this document, but I can get that information.

3 **Q** I would just -- I think we need to know why you have
4 both airfare in that. So if we could have a late-filed exhibit
5 on that, just for the airfare, and why you had fuel and airfare
6 on the same --

7 **A** Right. It could be for other personnel, too.

8 **CHAIRMAN CARTER:** One second. Commissioner Skop,
9 you're recognized.

10 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. And,
11 again, we went through an evidentiary hearing, and I appreciate
12 that. And, again, being impartial, I'm trying to ask the
13 questions, but I think it is well settled case law that the
14 Commission will not deem something prudent or any expense
15 prudent until they have all the facts before us. At least from
16 my perspective as a Commissioner, just a hand-written receipt
17 without the backup that would support the amounts being
18 claimed, I don't feel like I have all the information before me
19 to render a prudence determination on the claimed expenses. I
20 would hope that they would be able to provide that type of data
21 to substantiate what is being claimed, or else we could have
22 trouble with that.

23 **CHAIRMAN CARTER:** Mr. Smith, do you think you
24 could --

25 **THE WITNESS:** Yes, we will provide the data.

1 **CHAIRMAN CARTER:** Thank you.

2 Commissioners, I'm going back to Mr. Burgess unless
3 you have something further.

4 Mr. Jaeger, did you have anything further?

5 **MR. JAEGER:** We are going to do an expanded Exhibit
6 38, then. And it will be a late-filed exhibit providing more
7 documentation for this POD.

8 **CHAIRMAN CARTER:** Mr. Wharton, is that okay with you?
9 Mr. Deterding, I'm sorry.

10 **MR. DETERDING:** Yes.

11 **CHAIRMAN CARTER:** Okay. And, Mr. Smith.

12 **THE WITNESS:** Yes. If I can clarify, the reason for
13 using the airplane to get down here is if you have to fly with
14 today's air travel system on a regular basis, it's a nightmare.
15 And, frankly, being able to fly nonstop from Chicago in four
16 hours, get down here, conduct business immediately, and then
17 typically what happens is you have got an airfare that is out
18 of here on Thursday, and somebody says, well, gee, now that you
19 are here, Bill, we need to talk about this thing on Friday. Or
20 we need to talk about this on Monday. It just is so
21 frustrating to work with today's air system, that it's just
22 much easier from a mental standpoint to fly myself.

23 **CHAIRMAN CARTER:** Commissioner Argenziano.

24 **COMMISSIONER ARGENZIANO:** To that point, I can
25 certainly understand that. But knowing that prudence is

1 important, and respecting the fact that consumers have to pay
2 the bill --

3 **THE WITNESS:** I understand.

4 **COMMISSIONER ARGENZIANO:** -- I think I would want
5 more information on the breakdown of what those flights
6 actually cost the consumer. Even though I understand what you
7 are saying, I'd love to be able to fly first class because I
8 like the elbowroom. Actually, I don't even like to fly. But
9 what I want to know, I guess, for prudence, is if we can break
10 down the number, and I guess maybe we are working on it right
11 now, what it actually costs. We don't know what the dollar
12 number is for how many flights, segregating that from lodging
13 and so on. And I guess at some point I would like to know.

14 **THE WITNESS:** We will get you that information.

15 **CHAIRMAN CARTER:** And I think that will be a
16 late-filed exhibit. We will probably just give it another
17 number. Mr. Wharton and Mr. Deterding, we will give it another
18 number. Staff, where are we? One second, I will be right with
19 you.

20 **MR. JAEGER:** Okay. I'm confused, but Late-filed
21 Exhibit 38 was just we were trying to get more documentation,
22 and I would think that more documentation for this whole thing
23 in one exhibit would be --

24 **CHAIRMAN CARTER:** Mr. Burgess, would that be better
25 for you?

1 **MR. BURGESS:** That's fine.

2 **CHAIRMAN CARTER:** Okay. That will be 38A, or B, or
3 something along those lines, so we will know where it applies.
4 And we appreciate, Mr. Smith, working to gather that
5 information.

6 Commissioner Skop, you're recognized, sir.

7 **COMMISSIONER SKOP:** Thank you, Mr. Chairman. Just a
8 quick question, Mr. Smith.

9 Would it be correct to understand or clarification
10 that 1,600 is fuel and lodging or just fuel related --

11 **THE WITNESS:** That's just fuel related.

12 **COMMISSIONER SKOP:** Okay. And if my memory serves me
13 correctly, and correct me if I'm wrong, because you are the
14 pilot and I'm not, a Comanche would be a twin-engine airplane?

15 **THE WITNESS:** No, it is a Twin Commander. It's a
16 twin engine, yes.

17 **COMMISSIONER SKOP:** A twin engine, okay. And what
18 speeds -- I mean, you said it takes about four hours to fly to
19 Key West from Chicago?

20 **THE WITNESS:** Yes.

21 **COMMISSIONER SKOP:** And what is the specific fuel
22 consumption of that plane per hour?

23 **THE WITNESS:** About 75 gallons per hour.

24 **COMMISSIONER SKOP:** Thank you.

25 **CHAIRMAN CARTER:** Mr. Jaeger, anything further from

1 you?

2 **MR. JAEGER:** Not at this juncture. I have other
3 questions. While we were right in that area --

4 **CHAIRMAN CARTER:** While he was on that subject.
5 Good.

6 Commissioners, anything further on this particular
7 point?

8 Mr. Burgess, you're recognized, sir.

9 **MR. BURGESS:** Thank you. Commissioners, I want to
10 move on.

11 BY MR. BURGESS:

12 **Q** Mr. Smith, I would like to move on to an area that I
13 believe you will look forward to addressing. I would like to
14 pass out copies of the management agreement. And, again, this
15 is in the record, and I'm just passing it out for convenience
16 so that we can look at it as we are talking about it.

17 **CHAIRMAN CARTER:** You may proceed.

18 **MR. BURGESS:** Thank you, Mr. Chairman.

19 BY MR. BURGESS:

20 **Q** Mr. Smith, do you recognize this as the management
21 agreement between K W Resort Utilities and Keys Environmental?

22 **A** I am looking at it now. Yes, it looks that way.

23 **Q** Take your time.

24 **A** Yes, it is.

25 **Q** Thank you. And what I am going to try to do is go

1 through it in a fashion that I hope will allow the Commission
2 to see its construction and reach its determination on a
3 question that has been bandied about a pretty good bit today,
4 and that is whether the inspection of the tie-in fees is
5 subsumed within the general obligations of this agreement. So
6 I'm going to move to particular parts of it. And we have
7 identified this as being an agreement and the two parties, and
8 if you turn back to Page 27, if you would go back to Page 27
9 with me. The signatories, that is yourself and Mr. Johnson?

10 **A** Yes, sir.

11 **Q** And in the construction of it, if you will turn back,
12 if you will move forward in the agreement to Page 20 and look
13 at 4.01. And I don't want to rush you through it. I have
14 these marked, so stop me at any time that I seem to be pushing
15 too quickly.

16 **A** Yes, sir.

17 **Q** Okay. And this is -- correct me if I'm wrong, this
18 is where basically the amount of the management fee is
19 specified that will be paid by K W Resort to Keys
20 Environmental?

21 **A** Yes.

22 **Q** Tell me, in this that I have, and it's a signed copy,
23 why is that blank?

24 **A** I can't answer that question at this time.

25 **Q** Would you turn back one more page to Page 19. And

1 look at paragraph -- well, Section 2.30.

2 **A** Yes, sir.

3 **Q** And this is basically the section that says if there
4 is something beyond the scope of the obligations contained in
5 this contract, that K W Resort and Keys Environmental can
6 negotiate for that service for a particular fee that's listed
7 here?

8 **A** That's correct.

9 **Q** And it lists \$65 hour as the amount?

10 **A** Yes, sir.

11 **Q** And if you would, then -- so, basically the
12 construction of it at this point, as we have talked about, is
13 that we have a general agreement, and we have a section that
14 identifies that if there is anything beyond this general
15 agreement, it's carved out, and there will be some negotiation
16 for the exchange of the service for a fee on that. And what I
17 would like to do now, Mr. Deterding looked at some of the
18 requirements, and there are a couple, though, that I wanted to
19 look at, as well, to see if they capture the responsibilities
20 and the obligations that Keys Environmental is required to
21 provide to K W Resort Utilities as part of this contract. And
22 the first I'm looking at is on Page 2, Section 2.01, it talks
23 about responsibilities.

24 **A** Yes.

25 **Q** And so I'm correct that one of the responsibilities

1 that you would expect under the contract for the fee that is
2 paid is to operate, manage, and maintain the property in
3 accordance with all and compliance with all applicable laws and
4 regulations.

5 **A** That is what it says, yes.

6 **Q** And then there is a sentence following that, without
7 limiting the generality of the foregoing, the authorities, et
8 cetera, the clause without limiting the generality of the
9 foregoing, does that mean that anything else that is dealt with
10 from here on is not intended to be interpreted such that it
11 would limit the general breadth of that which is in the
12 previous sentence?

13 **A** It says what it says, yes.

14 **Q** And then, if you would, would you look with me on
15 Page 6 of the agreement. And if we look at -- well, let's look
16 at 2.08 first, and this requires agent -- an agent is specified
17 to be Keys Environmental, correct?

18 **A** Yes.

19 **Q** Okay. So agent is to secure the compliance of all
20 customers with all the rules and regulations affecting the
21 system. So that is one of the requirements of this under the
22 contract.

23 **A** Yes.

24 **Q** And 2.09, the second sentence, says -- well,
25 actually, I'm sorry, the first sentence says the agent shall

1 cause the property to maintain in a condition in accordance
2 with the approved tariffs. So these are some -- am I correct?

3 **A** Yes, that is what it says.

4 **Q** Thank you. And these are some of the general
5 statements as to obligations under this. And then if we look
6 on that same page, and we go down 2.10, it actually specifies
7 some of the activities that are beyond the general obligations
8 under the contract, is that correct?

9 **A** Yes, I believe so. I am reading it as you are. You
10 are going pretty fast here. You are going very fast.

11 **Q** I apologize. Take your time. Would you mind looking
12 at -- well, if you want to stop and go back to any of the
13 earlier --

14 **A** No, I'm fine.

15 **Q** Okay. If you will look at 2.10.

16 **A** 2.10?

17 **Q** Yes, 2.10 on Page 6.

18 **A** Yes. On Page 2. 2.09, is that what you are on?

19 **Q** No, I'm on Page 6 of the contract.

20 **A** Yes.

21 **Q** And I am at 2.10.

22 **A** Oh, 2.10, jet riding.

23 **Q** Yes.

24 **A** Okay.

25 **Q** And this is an explicit recognition of an activity

1 that is beyond the general obligation of the contract and,
2 therefore, would take specific additional costs for services,
3 is that right?

4 **A** Yes, that is correct.

5 **Q** And if I look at B under the same section, turn the
6 page over to 7.

7 **A** Yes, I have B.

8 **Q** We see that there is some activity involving the Cujo
9 Key transfer station that also falls under that category of an
10 explicit departure or addition to the requirements under the
11 contract?

12 **A** Yes, it does.

13 **Q** And obviously the inspection of the tie-ins is not
14 included in those specifically recognized, so the question is
15 is it included in the general statement of obligations. That
16 is what the Commission needs to look at, is that correct?

17 **A** That is the decision they need to reach.

18 **Q** Now, if I go back to one of the general statements
19 that we looked at in requiring -- on Page 6, and we're talking
20 about requiring the customers to be in compliance with all
21 rules, or securing the customer compliance with all rules. And
22 2.09 that talks about keeping it in compliance with the
23 approved tariffs. Isn't it correct that the tariff that you
24 have on file with the Public Service Commission calls for
25 inspection of a customer's tie-in before they are allowed to

1 hook into the system?

2 **A** I don't have that in front of me, but I'm sure you
3 have a copy you can provide us.

4 **Q** Well, I have a copy, and I will be happy for you to
5 take a look at it. I was just asking you whether as
6 president -- I know you can't know everything, but I'm just
7 asking do you know whether one of the requirements in the
8 tariff is that the utility will inspect the tie-in before it is
9 fully authorized to come on-line?

10 **A** I do not readily remember that provision.

11 **Q** Now, I have a related area, related also to the
12 tie-ins, but apart from whether they are actually included in
13 the contract, apart from the legal question of whether the
14 contract anticipates that the responsibility of Keys
15 Environmental is -- one of their obligations is to do this
16 inspection of the tie-ins. Apart from that of whether the
17 contract allows it, doesn't the law also require that before
18 K W Resort can charge the customers for a particular amount,
19 that that amount has to be approved by the Public Service
20 Commission?

21 **MR. WHARTON:** I just want to interpose an objection.
22 I think we just went through, with all due respect to Mr.
23 Burgess, a long line of questioning that this document says
24 what it says. This witness has already given his opinion that
25 those charges weren't contemplated by this document as part of

1 the set fee, and that is an argument that since the document is
2 in evidence that can be made in the brief. Now he is literally
3 saying doesn't the law require this. I just really think that
4 is an argument to be made in the briefs.

5 **MR. BURGESS:** Commissioner, may I?

6 **CHAIRMAN CARTER:** You're recognized.

7 **MR. BURGESS:** Not at all. I asked a long line of
8 questions which have been answered about the contract, and I
9 did it in an effort to try to present to the Commission in an
10 organized fashion as to what the contract says and what should
11 be looked for in it. And I believe Mr. Smith agreed with me on
12 that. Now, as I have said, setting the contract aside, setting
13 the interpretation of the contract, setting the contract aside
14 altogether, my question to Mr. Smith is am I not correct that
15 any charge that the utility imposes on the customer must first
16 be approved by the Public Service Commission?

17 **THE WITNESS:** The answer to that is correct.

18 **MR. BURGESS:** Thank you.

19 BY MR. BURGESS:

20 **Q** And can you tell me does the tariff that is on file
21 for K W Resort approve or authorize the collection of the
22 inspection fee from the customers by K W Resort?

23 **A** My understanding was there was a general rule that
24 allowed utilities such as ours to collect an inspection fee
25 from customers.

1 **Q** Okay. Well, I don't want to put words in your mouth,
2 but as I understand your answer is you understood that there is
3 a general PSC rule that allows it, but you are not aware of
4 anything in the company's tariff --

5 **A** That is correct.

6 **Q** -- where the Commission approved it?

7 **A** That is correct.

8 **MR. BURGESS:** Thank you, Mr. Smith.

9 And, Commissioners, that's all I have. Thank you,
10 Mr. Smith. Thank you very much.

11 **CHAIRMAN CARTER:** Thank you, Mr. Burgess.

12 Staff, do you have questions?

13 **MR. JAEGER:** Yes, we do.

14 **CHAIRMAN CARTER:** You're recognized.

15 CROSS EXAMINATION

16 BY MR. JAEGER:

17 **Q** Mr. Smith, I have just a couple of areas that I want
18 to go over with you. The first involves the use of the
19 deputies for the serving of the letters and the notices.

20 **A** Yes.

21 **Q** And you listened to Ms. Wigington's testimony this
22 morning?

23 **A** Yes, I did.

24 **Q** Now, it is my understanding that you first sent out
25 certified mail, and then when you got those returns there were

1 some customers that would not sign or you didn't get it back?

2 **A** That is correct.

3 **Q** And that is why you hired the deputies to then go
4 take that letter and hand serve it on the customers?

5 **A** That's right. The private service was \$40 per
6 service. The deputies were \$20 per service, so it was more
7 reasonable for the utility to use the deputies.

8 **Q** But did you hear Ms. Wigington say at least three
9 people actually signed the certified letters and sent them back
10 and then they still got served by the deputies?

11 **A** I did hear that. And I haven't had a chance to look
12 at the information that she has provided. You know, we got
13 these -- our firm would get certified letters back and, you
14 know, we could account for them. And we had to go to the
15 county to the code enforcement, and they told us that unless we
16 had every single trailer served that they wouldn't take action.
17 And so that's why we employed the services of the sheriff to
18 serve the notices. Believe me, we didn't want to have to spend
19 the extra \$20 to hire service if we had a returned card that we
20 could prove that we got the service.

21 Now, some people may have signed for a card for one
22 of their trailers, but they may not have signed for a card for
23 the second trailer. We didn't have all 70 trailer cards in our
24 possession. That's when we may have had to serve somebody the
25 second time.

1 **Q** Okay. You paid \$420, that was the total charge for
2 the deputy service?

3 **A** Yes, sir.

4 **Q** So that's 21 letters? That's subject to check.

5 **A** Yes.

6 **Q** The next area was about this ability for the customer
7 to connect or the ability for the utility to connect the
8 customers?

9 **A** Yes.

10 **Q** And I believe you said there was 350 customers left
11 to be connected, is that right?

12 **A** Well, there are 350 customers in the area that are
13 left to be connected, that's correct.

14 **Q** Had those customers paid the \$2,700 fee?

15 **A** There may be three or -- one customer that has paid
16 the fee that has not connected.

17 **Q** You are saying only one?

18 **A** I believe one or two.

19 **Q** Are you familiar with an Elmar Trailer Park
20 (phonetic)?

21 **A** Elmar would be the one.

22 **Q** How many units are in that?

23 **A** I think there are eight EDUs in that, eight trailers
24 in that. And what we have there is we put a vacuum force main
25 right in front of their property. And, additionally, we

1 thought that they were, you know, a full trailer, and full
2 trailers are, you know, calculated to have 250 EDUs. And when
3 you have 250 gallons of usage, you exceed the old requirement,
4 which is if you have more than a thousand gallons, in order to
5 service a park that has more than a thousand gallons of
6 wastewater coming out it, you need to just put a vacuum line
7 right in front of the property, which is what we did. And the
8 gentleman came in to us and said, wait a second, I don't want
9 to pay for eight EDUs at 2,700. I really have an RV park here.
10 And so we took him at his word that he only had an RV park. RV
11 parks only have 75 gallons of flowage per each unit. So all
12 ever a sudden he dropped down below a thousand gallons per day,
13 and then you are in a position under the old ordinance that you
14 had to provide a gravity service to them, which frankly we
15 didn't have.

16 Now, that's the reason that Elmar is in the situation
17 they are in. Under the new county ordinance, even a small
18 trailer park like that is serviced when you have a vacuum main
19 that goes right by that property. Now, I think we missed one,
20 maybe two, out of the 1,500 customers that we tried to serve
21 when we put this project together. One or two out of 1,500,
22 okay? And we had a contingency fund where we would be
23 compensated, or we would be able to get our money back for
24 putting these additions to this system in from the county if
25 we, you know, did this extra work. When you do a general

1 contracting job there are things that happen during the job
2 that cost more money or that you didn't cover when you first
3 put the project together. This would have been one of those
4 instances.

5 The buffer tank at Harbor Shores was one of those
6 instances. We put the buffer tank in. The county had not paid
7 us fully on the balance of our contract. And so we said to the
8 county, we will put this buffer tank in at a cost of whatever
9 it was, \$30,000 or something like that, but I need a purchase
10 order from the county so that I'm assured that I will be paid
11 for putting this buffer tank in.

12 Well, sure enough, we put the buffer tank in for
13 Harbor Shores. They connected, everything is fine. We go in
14 with our billing to the county for the \$30,000, and they won't
15 pay us. They gave us a purchase order to do this. You know,
16 we are sort of a little at loggerheads with our, quote, partner
17 in the county in finishing off this project. That is the
18 problem.

19 **Q** I'm trying to figure out --

20 **A** That was a long-winded answer to your question, but I
21 covered a lot of that.

22 **Q** For Elmar you have a -- how close is the vacuum line
23 to Elmar?

24 **A** Within four or five feet.

25 **Q** And what's keeping Elmar from connecting?

1 **A** Well, he doesn't have a gravity connection to his
2 property. He has a force main connection to his property is
3 what he has. He is unwilling to install the lift station that
4 he needs to put in there to connect to the utility company.

5 **MR. JAEGER:** That's all we had.

6 **CHAIRMAN CARTER:** Thank you.

7 Commissioners, anything further? Commissioner Skop.

8 **COMMISSIONER SKOP:** Thank you, Mr. Chairman.

9 Mr. Smith, with respect to the questions that I asked
10 with regard to the use of the airplane, I do appreciate your
11 testimony on that regard. I'm not necessarily saying that I
12 agree with it, but I think that the answers you gave were
13 factual, and I appreciate that.

14 **THE WITNESS:** You're welcome.

15 **CHAIRMAN CARTER:** Thank you.

16 Mr. Deterding.

17 **MR. DETERDING:** Thank you.

18 REDIRECT EXAMINATION

19 BY MR. DETERDING:

20 **Q** Mr. Smith, some questions came up about the distance
21 to service customers with this vacuum system, and I believe I
22 heard a number of 250 feet thrown out as an example in one
23 instance. What is the normal distance that customers are
24 required to run from their property line in order to
25 interconnect with the utility with that vacuum system?

1 **A** I have got to say this, and I might have misspoke, or
2 not misspoke, but I might not have been as clear as I could
3 have been. Our vacuum mains run in front of every property.
4 They run immediately adjacent to every property. It's just
5 that some people need to connect to a buffer tank or to another
6 tank, and those tanks may be separated by 40 or 50 feet. Let's
7 say they have to run, you know, 40 or 50 feet further. For the
8 most part our vacuum mains run in front of all properties on
9 Stock Island that are theoretically served by me.

10 **Q** So substantially less than anything approaching
11 250 feet?

12 **A** Yes.

13 **Q** This is just for clarification. In answer to one of
14 the questions Commissioner Argenziano asked you early on, I
15 believe you said gravity is more expensive than vacuum, or
16 something along those lines. Was that what you intended to say
17 as far as the cost of the --

18 **A** Oh, gravity systems are much more expensive than
19 vacuum systems because you have much deeper runs that you have
20 to dig, and it is very difficult here in Monroe County to do
21 that.

22 **Q** I wasn't talking about the system itself, I was
23 talking about the interconnection.

24 **MR. BURGESS:** Excuse me, are you trying to impeach
25 his earlier testimony?

1 **MR. DETERDING:** I'm just trying to get clarification
2 on whether he intended to say that the gravity -- cost of
3 interconnecting to the utility system on gravity is cheaper
4 than interconnecting the utility system on vacuum.

5 **MR. BURGESS:** And I object that that is a leading
6 question. If you are asking him did he intend to say the right
7 thing, he said what he said, and I assume he intended to say
8 it.

9 **CHAIRMAN CARTER:** Ms. Helton.

10 **MS. HELTON:** I think the hour is late, and if Mr.
11 Smith needs a chance to correct what he said earlier that we
12 should give him that chance. But perhaps Mr. Deterding can
13 rephrase his question so it is not a leading question.

14 BY MR. DETERDING:

15 **Q** Which is cheaper from the utility's cost of
16 interconnecting a customer, gravity or vacuum?

17 **A** Which is cheaper?

18 **Q** As far as the work that is required of the utility in
19 order to allow that interconnect.

20 **A** You know, that's a complicated question, because, you
21 know, both -- actually about the same to connect. I mean, if
22 you have a buffer tank or a valve pit, you are basically
23 connecting everybody by gravity in any event. So to connect is
24 about the same amount.

25 **Q** In response to another question by Commissioner

1 Argenziano, you said that there were six flights a year. This
2 was related to the travel costs. Is that total flights?

3 **A** No, I come down once a month, so I fly down about 12
4 times a year.

5 **Q** So that's the amount charged to the utility?

6 **A** No, six were charged. I split the cost six to the
7 utility and six to the golf course.

8 **Q** Who originally provided the operation and maintenance
9 and the inspections related to the vacuum system?

10 **A** Who originally provided that?

11 **Q** When you first began the vacuum system?

12 **A** Weiler Engineering.

13 **Q** Was that the contractor on overseeing that system?

14 **A** He was our engineering company, yes.

15 **Q** Well, as far as the contract to operate and maintain
16 it, would Weiler or Air Vac or who?

17 **A** Weiler and Air Vac were both supervising the
18 construction of the vacuum system by McKinsey Contractors
19 (phonetic).

20 **Q** What period of time were those entities overseeing
21 the operation and maintenance and connection to that system?

22 **A** Well, Weiler -- we started it in the middle of 2002
23 and finished it in July of 2003, and Weiler would have been
24 doing it then. And then we had Air Vac who commenced with the
25 project, and then we had a two-year contract with them after

1 the completion of the project, so they would have done it
2 through 2005, I believe.

3 **Q** And this agreement between KWRU and KEI is dated
4 what, what is the date of that agreement?

5 **A** 2004.

6 **Q** The end of 2004?

7 **A** Yes.

8 **Q** So at that time someone else was maintaining the
9 vacuum system?

10 **A** Yes.

11 **MR. DETERDING:** That's all I have.

12 **CHAIRMAN CARTER:** Anything further from the bench?
13 From the parties? Okay. Let's wrap up for this witness in
14 terms of -- well, there were no exhibits.

15 **MR. DETERDING:** No exhibits.

16 **CHAIRMAN CARTER:** And the information that Mr.
17 Burgess talked about was already in the --

18 **MR. JAEGER:** Chairman Carter, we asked for a
19 late-filed. We usually get a timeline of when we can expect
20 that.

21 **CHAIRMAN CARTER:** Mr. Wharton, the lawyers can work
22 that out. That's what we pay ya'll for. Anything further for
23 this witness from any of the parties?

24 Thank you very much for your time, Mr. Smith.

25 **THE WITNESS:** Thank you for your time, gentlemen. We

1 appreciate your consideration of our case.

2 **CHAIRMAN CARTER:** Thank you.

3 Commissioners, I'm prepared to go on, but I think
4 staff deserves a meal. I would like to commend our staff for
5 their hard work. And, Jane, you have been a loyal trooper. I
6 know Linda has got the best end of this deal.

7 Let's do this. Commissioners, we have completed our
8 public testimony portion of the hearing. We have gotten into
9 our technical portion. And what I would like to do is tomorrow
10 morning I would like to begin around 9:30, as we continue our
11 technical portion of the hearing. So, for all the parties,
12 make sure you have your witnesses here on time, in place,
13 ready, willing, and able so we can proceed.

14 Is there anything further? With that we are recessed
15 until 9:30 tomorrow morning.

16 (The hearing adjourned at 7:45 p.m.)

17 (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON)

4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter Services
6 Section, FPSC Division of Commission Clerk, do hereby certify
7 that the foregoing proceeding was heard at the time and place
8 herein stated.

9

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

15

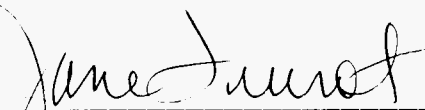
16 I FURTHER CERTIFY that I am not a relative, employee,
17 attorney or counsel of any of the parties, nor am I a relative
18 or employee of any of the parties' attorney or counsel
19 connected with the action, nor am I financially interested in
20 the action.

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DATED THIS 13th day of October, 2008.

22

23



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