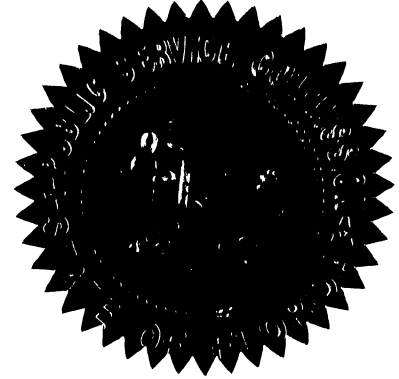


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070293-SU

In the Matter of:

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



VOLUME 3

Pages 379 through 515

ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN MATTHEW M. CARTER, II  
COMMISSIONER NANCY ARGENZIANO  
COMMISSIONER NATHAN A. SKOP

DATE: Thursday, October 2, 2008

TIME: Commenced at 9:30 a.m.  
Concluded at 1:18 p.m.

PLACE: Old City Hall  
City Commission Chambers  
510 Greene Street  
Key West, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

APPEARANCES: (As heretofore noticed.)

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION

09662 OCT 13 08

FPSC-COMMISSION CLERK

I N D E X

WITNESS:

PAGE NO.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

ANDREW WOODCOCK

Direct Examination by Mr. Burgess	382
Prefiled Direct Testimony Inserted	387
Cross Examination by Mr. Wharton	396
Redirect Examination by Mr. Burgess	407

WILLIAM L. SMITH, JR.

Direct Examination by Mr. Deterding	412
Prefiled Rebuttal Testimony Inserted	414
Cross Examination by Mr. Burgess	416

EDWARD R. CASTLE

Direct Examination by Mr. Wharton	418
Prefiled Rebuttal Testimony Inserted	420
Cross Examination by Mr. Burgess	431

PAUL E. DECHARIO

Direct Examination by Mr. Deterding	434
Prefiled Rebuttal Testimony Inserted	439
Cross Examination by Mr. Burgess	475
Cross Examination by Mr. Jaeger	502

CERTIFICATE OF REPORTER

515

## EXHIBITS

	NUMBER:	ID.	ADMTD.
1			
2			
3			
4	21 through 22		410
5	27 through 34		511
6	35		513
7	40 (Late-Filed) 2006 Annual Reports, Schedule E-6 and S-10(a) - KWRU	508	
8	and Key Haven		
9	41 (Late-Filed) Rose, Sundstrom, Bentley Invoices	509	
10	42 (Late-Filed) Ed Castle Invoices	510	
11	43 (Late-Filed) Carlstedt, Jackson, Nixon & Wilson, CPA, Invoices	510	
12			
13	44 (Late-Filed) Response to Customer Testimony	511	
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

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

(Transcript continues in sequence from Volume 2.)

CHAIRMAN CARTER: Call your next witness,  
Mr. Burgess.

MR. BURGESS: I would ask that Mr. Woodcock be called  
to the stand.

CHAIRMAN CARTER: Andrew Woodcock.

MR. BURGESS: Mr. Woodcock, have you been sworn?

THE WITNESS: Yes, I have.

MR. BURGESS: Mr. Chairman, may I proceed?

CHAIRMAN CARTER: You may proceed.

MR. BURGESS: Thank you.

Whereupon,

ANDREW WOODCOCK

was called as a witness on behalf of the Office of Public  
Counsel and, having been duly sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. BURGESS:

Q Mr. Woodcock, would you state your name and business  
address for the record, please?

A Andrew Woodcock, 201 East Pine Street, Suite 1000,  
Orlando, Florida 32801.

Q And, Mr. Woodcock, have you prefiled written  
testimony on December 17th in Docket 070293?

A Yes, I have.



1 Q Do you have any changes that you would like to make  
2 to the testimony as prefiled?

3 A Yes, I do. I have three changes to my testimony in  
4 response to the rebuttal testimony of Mr. DeChario.

5 The first, the first change is on --

6 MR. BURGESS: Excuse me one second. Mr. Chairman,  
7 may he proceed on the change?

8 CHAIRMAN CARTER: You may proceed.

9 MR. BURGESS: Thank you.

10 THE WITNESS: The changes are all on Page 5. The  
11 first is on Line 6 where it reads, "First of all, the MFRs  
12 state," I would like to cross out the word "state" and replace  
13 it with "seem to indicate."

14 CHAIRMAN CARTER: Say again.

15 THE WITNESS: Replace the word "state" with the words  
16 "seem to indicate."

17 CHAIRMAN CARTER: Seem to indicate on Page 5, Line 6.  
18 You may proceed.

19 THE WITNESS: Also on Page 5 I would like to strike  
20 Lines 21 and 22.

21 CHAIRMAN CARTER: Lines 21 through 22.

22 THE WITNESS: And the final change is to add a  
23 capital T to "therefore" in Line 22. I'm sorry. The changes  
24 to my testimony are to strike Lines 20 and 21. I apologize for  
25 misspeaking there.

1 CHAIRMAN CARTER: And then on Line 22, a big T for  
2 "therefore."

3 THE WITNESS: A capital T for "therefore," yes.

4 CHAIRMAN CARTER: Mr. Wharton or Mr. Deterding.

5 MR. WHARTON: I -- it's me.

6 CHAIRMAN CARTER: You're recognized.

7 MR. WHARTON: I, I do object to the change on  
8 Page 6 at Line 20.

9 CHAIRMAN CARTER: At Line 20?

10 MR. WHARTON: Because he did subsequently review that  
11 study and the opinion is favorable to the utility and I  
12 intended to ask him about it. We talked about it in his  
13 deposition.

14 CHAIRMAN CARTER: Mr. Burgess.

15 MR. BURGESS: Now you're saying you object to his  
16 removing this testimony, removing this portion of his  
17 testimony?

18 MR. WHARTON: Well, I, I object to him -- Steve, that  
19 sentence was what made those questions within the scope of  
20 direct. I mean, I'm just being frank for the record and for  
21 the Commissioners. And I'm just telling, proffering to them  
22 what happened in the deposition. I think I should be able to  
23 ask that single question.

24 MR. BURGESS: Commissioner, here's where we are. I  
25 think we are, we are within our rights to withdraw any part of

1 our testimony at any time during the case. But, quite frankly,  
2 and I know the area that Mr. Wharton is speaking of, it doesn't  
3 bother me if he, if he asks that question, I mean, if he gets  
4 into that area.

5 MR. WHARTON: Okay. Then given that, I withdraw my  
6 objection.

7 CHAIRMAN CARTER: We'll leave it -- okay. You're  
8 withdrawing your objection. That's fine.

9 Okay. Mr. Burgess.

10 BY MR. BURGESS:

11 Q With those changes, Mr. Woodcock, if you were asked  
12 the same questions that are posed in your prefiled testimony  
13 today, would your answers be the same?

14 A Yes.

15 MR. BURGESS: Mr. Chairman, I would ask that his  
16 prefiled testimony be entered into the record as though read.

17 CHAIRMAN CARTER: The prefiled testimony of the  
18 witness will be entered into the record as though read.

19 BY MR. BURGESS:

20 Q Thank you. Mr. Woodcock, did you also have attached  
21 to your prefiled written testimony two exhibits, ATW-1 and  
22 ATW-2, which are your resume and your calculations?

23 A Correct.

24 MR. BURGESS: Mr. Chairman, those are identified,  
25 have been identified for the purposes of the hearing as

1 Exhibits 21 and 22, and at the appropriate time I was going to  
2 ask that they be entered into the record.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 **PREFILED TESTIMONY OF**

2 **ANDREW T. WOODCOCK PE, MBA**

3

4 **Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?**

5 A. My name is Andrew Woodcock. My business address is 201 East Pine St. Suite 1000,  
6 Orlando, Florida.

7

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

9 A. I am employed by Tetra Tech as a Professional Engineer and Senior Project Manager.

10

11 **Q.WHAT IS YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE?**

12 A. I graduated from the University of Central Florida in 1988 with a B.S. degree in  
13 Environmental Engineering and in 1989 with an M.S. degree in Environmental  
14 Engineering. In 2001, I graduated from Rollins College with an MBA degree. In 1990, I  
15 was hired at Dyer, Riddle, Mills and Precourt as an engineer. In May of 1991, was hired  
16 at Hartman and Associates Inc., which has since become Tetra Tech. My experience has  
17 been in the planning and design of water and wastewater systems with specific emphasis  
18 on utility valuation, capital planning, utility financing, utility mergers and acquisitions  
19 and cost of service rate studies. I have also served as utility rate regulatory staff for St.  
20 Johns and Collier Counties in engineering matters. Exhibit ATW-1 provides additional  
21 details of my work experience.

1 **Q. WHAT ARE YOUR PROFESSIONAL AFFILIATIONS?**

2 A. I am a member of the American Water Works Association, Water Environment  
3 Federation and the Florida Stormwater Association.

4

5 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE A RATE REGULATORY**  
6 **BODY AS AN ENGINEERING WITNESS?**

7 A. Yes, I testified in 2002 for the St. Johns County Regulatory Authority at a special  
8 hearing in an earnings case against Intercoastal Utilities. I have also testified, although  
9 not on engineering matters, before the Kentucky Public Service Commission. I provided  
10 prefiled direct testimony in the FPSC Docket No. 060368-WS with regard to Aqua  
11 Utilities Florida's application for a rate increase for systems located in 15 Florida  
12 Counties. This case was withdrawn before it went to hearing.

13

14 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

15 A. The purpose of my testimony is to offer used and useful testimony on the wastewater  
16 system of KW Resort Utilities Corp. (the Utility). I also provide testimony regarding the  
17 original cost study prepared by The Weiler Engineering Corporation (WEC) on October  
18 17, 2007.

1 **Q. WHAT DOCUMENTS HAVE YOU REVIEWED AND WHAT**  
2 **INVESTIGATIONS AND ANALYSES HAVE YOU MADE IN PREPARATION**  
3 **FOR YOUR TESTIMONY?**

4 A. I have studied the filings of the Utility, including the Minimum Filing Requirements  
5 (MHRs) and the direct testimony of William L. Smith Jr, and Paul E. Chario. I have also  
6 reviewed certain items provided during discovery. I also reviewed documents obtained  
7 from the Florida Department of Environmental Protection (FDEP) in Ft Meyers.

8

9 I made an inspection trip to the Utility system to inspect the wastewater treatment plant  
10 and service area and conduct interviews with the Utility staff.

11

12 **Q. WHAT IS YOUR OPINION OF THE WASTEWATER TREATMENT PLANT**  
13 **USED AND USEFUL ANALYSIS PROVIDED BY THE UTILITY?**

14 A. I disagree with the 100% used and useful percentage used by the Utility. The used and  
15 useful calculations provided by the Utility in Schedule F-6 of the MFRs provide a  
16 calculation of U&U at 61.35%. Further in the schedule the Utility states that the WWTP  
17 should be considered 100% because the expansion was a requirement of a contract with  
18 Monroe County to provide wastewater treatment to Stock Island for environmental  
19 reasons. According to Schedule F-6 Monroe County provided funding for the expansion  
20 by paying upfront for the capacity and this funding has been deducted from rate base for  
21 rate making purposes. Therefore no adjustment to used and useful is required.  
22 My disagreement with the U&U analysis lies in both the calculated U&U and the  
23 rationale for 100% U&U.

1 **Q. WHAT ISSUES DO YOU HAVE WITH THE CALCULATED U&U IN THE**  
2 **MFRS?**

3 The MFRs incorrectly state the permitted capacity of the WWTP to be 0.499 MGD on a  
4 three month average daily flow. In fact, the permit states that the capacity is based on an  
5 annual average flow basis. The subsequent U&U calculation incorrectly relies upon the  
6 maximum three month average daily flow of the WWTP rather than the lower annual  
7 average flow.

8

9 **Q. HOW DID YOU CALCULATE THE USED AND USEFUL PERCENTAGE**  
10 **FOR THE WWTP?**

11 A. The scope of my engineering analysis extends to the capacity issues of the WWTP  
12 and as such my analysis focuses on applying the rules of U&U as stated in Chapter 25-  
13 30.432, F.A.C., which states that the used and usefulness shall be based on the same  
14 period or basis as the period or basis stated in the current operating permit issued by the  
15 FDEP. The current FDEP permitted capacity of the WWTP is 0.499 MGD on an annual  
16 average basis. The annual average test year flow for the WWTP as stated in the  
17 Discharge Monitoring Reports is 0.288 MGD. I then adjusted the test year flow for five  
18 years of customer growth in the system. The system has historically seen significant  
19 customer growth as customers have connected pursuant to the requirements of Monroe  
20 County. For the past five years the customer base has grown by an average of  
21 approximately 10%. As such the growth allowance for used and useful calculations is  
22 limited to 5% per year pursuant to Chapter 25-30.431 F.A.C. Therefore for the five year  
23 period the growth adjustment is 25%.



1 The adjusted test year flow is then 0.360 MGD which generates a used and useful  
2 percentage of 72.14%. A summary of my calculations are provided in Exhibit ATW-2.

3

4 **Q. EXPLAIN WHY YOU DO NOT AGREE WITH THE UTILITY'S**

5 **JUSTIFICATION FOR 100% USED AND USEFUL.**

6 A. First of all the MFRs ~~state~~ <sup>seem to indicate</sup> that the expansion of the WWTP to 0.499 MGD was  
7 required by Monroe County in 2001. However, the Original Cost Study prepared by  
8 WEC shows that the WWTP expansion was actually constructed in 1997 prior to any  
9 agreements with Monroe County for expansion of the system.

10 The MFRs go further to say that Monroe County funded the expansion of the system  
11 through a prepayment of capacity fees and that the Utility has deducted this amount from  
12 rate base.

13 Based on my review of the Capacity Reservation Contract (POD 55 pg 14) a total of  
14 \$4,606,000 was to be paid by the County specifically for the installation of the collection  
15 system expansion, not treatment capacity. This amount is to be repaid to the County when  
16 new customers pay the \$2,700 capacity reservation fee. Further in the contract the Utility  
17 is allowed to keep \$600 of the \$2700 capacity reservation fee for purposes of upgrading  
18 the WWTP to advanced waste treatment (AWT) standards. Again there is no mention of  
19 a contribution for expanded treatment capacity.

20 ~~While there have been several contributions to the Utility that should be deducted from~~  
21 ~~rate base none of these contributions have funded the expansion capacity of the WWTP,~~

22 **T**herefore the traditional U&U calculations should be applied.

1 **Q. WHAT IS YOUR OPINION OF THE U&U PERCENTAGE FOR THE**  
2 **COLLECTION AND TRANSMISSION SYSTEM?**

3 A. The MFRs state that the collection and transmission system is 100% percent used and  
4 useful, with a rationale similar to that for the WWTP. The collection and transmission  
5 system consists of two parts, the original gravity collection system and the newer vacuum  
6 system. Given the nature of the construction of the systems, I considered these separately.  
7 My review of the system maps provided and inspections of the service area show the  
8 gravity collection and transmission system is essentially 100% percent built out and  
9 therefore 100% used and useful.

10 The vacuum system has several connections but has yet to fully reach the design capacity  
11 of serving 1,500 EDUs. However, the construction of the system was funded by Monroe  
12 County and is considered a fully contributed system. Therefore it is my opinion that the  
13 U&U of the vacuum system be excluded from the analysis, provided the cost to fund the  
14 system is deducted from rate base.

15

16 **Q. WHAT OPINION DO YOU HAVE REGARDING THE ORIGINAL COST**  
17 **STUDY PREPARED FOR THE UTILITY BY WEC?**

18 A. It is my understanding through depositions taken in this proceeding that a revised  
19 original cost study was prepared and will be submitted as a late filed deposition exhibit.  
20 Once I have had an opportunity to review the revised study I will provide my opinion in  
21 supplemental testimony.

1 **Q. DOES THAT CONCLUDE YOUR TESTIMONY AT THIS TIME?**

2 A. Yes it does.

1           MR. BURGESS: And at this time, Mr. Chairman, if you  
2 will, I would ask that Mr. Woodcock be allowed to give a  
3 summary of his testimony.

4           CHAIRMAN CARTER: You're recognized, Mr. Woodcock.

5           THE WITNESS: Thank you. Good morning. My testimony  
6 is with respect to the used and useful on the K W Resort  
7 wastewater system, and also with respect to the engineering  
8 original cost study that was performed by Weiler Engineering  
9 Corp.

10           From my analysis of the used and useful, first, the  
11 focus on the wastewater treatment plant, I determined that the  
12 permitted capacity of the wastewater treatment plant was 0.499  
13 MGD. The annual average test year flow as reported on the  
14 discharge monitoring reports for the wastewater treatment plant  
15 for the test year was 0.288 MGD.

16           I then looked at making an allowance for growth  
17 pursuant to the Florida Administrative Code. Historically the  
18 utility has seen growth rates that average approximately  
19 10 percent. Pursuant to the Florida Administrative Code, I  
20 applied a growth allowance at the cap of 5 percent for five  
21 years. With the, with that, the adjusted test year flow is  
22 then .360 MGD, which generates a used and useful percentage for  
23 the wastewater treatment plant of the 72.14 MGD.

24           THE COURT REPORTER: Of what?

25           THE WITNESS: 72.14 percent. I'm sorry. Percent,

1 not MGD.

2 I also reviewed the capacity reservation contract  
3 between Monroe County and K W Resort Utilities. The MFRs would  
4 seem to indicate that there was an expansion to the wastewater  
5 treatment plant as a result of this contract. In my review of  
6 the data I found that the wastewater treatment plant was  
7 actually expanded in 1997 to its current capacity of 0.499 MGD,  
8 and that the contract with Monroe County was with respect to an  
9 expansion of the collection system and also mentioned an  
10 upgrade of the wastewater treatment plant.

11 Now turning to the collection and transmission system  
12 of the wastewater plant, for used and useful I treated it two  
13 ways. First of all, we have the gravity system, the older part  
14 of the utility system. Based on my analysis of the service  
15 area, I determined that to be 100 percent used and useful.  
16 With respect to the vacuum system that was installed pursuant  
17 to the contract with Monroe County, I found that the entire  
18 cost of that vacuum system is contributed and was contributed  
19 by the county, therefore removed from rate base. And as a  
20 result, I did not conduct a used and useful analysis on that  
21 portion of the collection system.

22 With respect to the original cost study that was  
23 prepared by WEC, there was a late-filed deposition exhibit that  
24 came in after my submission of this testimony. And in my  
25 testimony I, I withheld any opinions until I had time to review

1 that. That is the end of my testimony, and everything was held  
2 in abeyance before I had that late-filed exhibit.

3 MR. BURGESS: Thank you. Mr. Chairman, we would  
4 tender the witness for cross-examination.

5 CHAIRMAN CARTER: Mr. Wharton.

6 MR. WHARTON: Thank you, Mr. Chairman.

7 CROSS EXAMINATION

8 BY MR. WHARTON:

9 Q Good morning, Mr. Woodcock.

10 A Good morning.

11 Q You've put about 120 hours into this case, haven't  
12 you, or at least you had at the time of your deposition?

13 A That was my estimate.

14 Q How about since then?

15 A I haven't had an opportunity to check the numbers.

16 Q Okay. Now you don't have any familiarity --

17 CHAIRMAN CARTER: Hang on one second. Mr. Woodcock,  
18 would you pull your microphone just a wee bit closer to you?  
19 Because when you turn head -- she's trying to hear you.

20 BY MR. WHARTON:

21 Q You don't have any familiarity with other wastewater  
22 systems in the Keys other than what you've learned in this  
23 particular case, do you?

24 A That's correct.

25 Q And you don't have any direct experience working with

1 utilities in the Keys.

2 A I do not.

3 Q Isn't it true that you've never offered your services  
4 or rendered testimony as an expert on behalf of the private  
5 utility?

6 A That is correct.

7 Q And you haven't had any discussions with anyone  
8 affiliated with Monroe County in this case, have you?

9 A I have not.

10 Q All right. Let's, let's divide what we're going to  
11 talk about into some categories. Let's talk about used and  
12 useful to begin with.

13 Now what you did in this case and what is embodied in  
14 the exhibit that you have attached is that you essentially came  
15 up with a formula to calculate used and useful; correct?

16 A That is correct.

17 Q And let's go ahead and, and make sure the record is  
18 clear, and I appreciate that, I think you did indicate this in  
19 your summary, on the collection side you've determined the  
20 gravity system is 100 percent used and useful.

21 A Yes.

22 Q And you have determined that the vacuum system is all  
23 contributed.

24 A That is correct.

25 Q Okay. So of the remainder what you basically did was

1 you felt that the Commission's rules and practices provided a  
2 formula that you should apply to determine used and useful.

3 A There is a formula that is applied and I did apply  
4 that formula. There are also many other nuances that are  
5 involved in used and useful.

6 Q Right. And we're going, we're going to talk about  
7 some of those.

8 First of all, you and I had a discussion at your  
9 deposition that the way that you interpret the Commission's  
10 administrative code rule to require you to calculate used and  
11 useful isn't conversant with the way engineers would prudently  
12 design a plant without the constraints of that administrative  
13 code rule, aren't you?

14 A It is, it is, it should be made very clear that  
15 engineering criteria or engineering criteria, ratemaking  
16 criteria may rely on some engineering concepts, but used and  
17 useful is not an engineering principle.

18 Q In other words, you would agree that a utility can  
19 design a plant that an engineer would think was a prudently  
20 sized plant and yet, under the way you interpret the  
21 Commission's formula, say 25 percent of that plant would,  
22 should not be considered used and useful.

23 A Absolutely. I do believe that there can be a prudent  
24 investment made by the utility in expansion of a treatment  
25 plant. That does not mean that it is used and useful.



1 Q And you understand that if something doesn't meet  
2 that used and useful criteria, it's disallowed in terms of  
3 recovery in a case like this.

4 A It is not included in rate base.

5 Q And that perhaps seems like a bit of incongruity. I  
6 don't know if you and I could settle that issue right now.

7 Well, let me ask you some questions about that.

8 Setting aside the formula that you applied in your reading of  
9 the rules, it is your opinion that this particular plant is  
10 appropriately sized given what you know about the service area  
11 and the customer base; correct?

12 A Yes. The plant was last expanded in 1997. We can  
13 sit here in 2008 and as an engineer I feel like the plant is  
14 appropriately sized.

15 Q Okay. You and I also talked about some of the other  
16 ways that facilities might be deemed used and useful under the  
17 Commission's rules, and one that I had talked to you about was  
18 whether the cost expended on them was considered by the  
19 Commission to be an environmental compliance cost. Do you  
20 recall that?

21 A Yes.

22 Q But that was not something that you looked at and  
23 attempted to form an opinion about; right?

24 A In our deposition we were talking about the  
25 wastewater treatment plant expansion.

1 Q Correct.

2 A And there is DEP requirements that require for the  
3 timely expansion of a wastewater treatment plant.

4 CHAIRMAN CARTER: Mr. Wharton, hold on just a second.  
5 Could you pull your microphone --

6 THE WITNESS: I'm sorry.

7 THE COURT REPORTER: For the what expansion?

8 THE WITNESS: The timely expansion of a wastewater  
9 treatment plant.

10 CHAIRMAN CARTER: Just pull it a little closer to  
11 you. You've got to pull it a little closer.

12 MR. WHARTON: It might be better if you position  
13 yourself where you're looking over the top of it.

14 CHAIRMAN CARTER: Where you look over it.

15 THE WITNESS: There we go.

16 CHAIRMAN CARTER: There we go. Thank you.

17 Did you get that last --

18 THE COURT REPORTER: Yes.

19 CHAIRMAN CARTER: Mr. Wharton, you may proceed.

20 BY MR. WHARTON:

21 Q Okay. That was an answer that we went around a  
22 little bit about at the deposition, and I understand and  
23 appreciate what you're saying. But I am asking -- what I  
24 pretty well remember you saying in your deposition, we can  
25 revisit that if you want to, is that you did not attempt to

1 form an opinion whether the cost of either the AWT or the  
2 expansion were environmental compliance costs as the Commission  
3 considers those costs; is that correct?

4 A No. I believe that I said in my deposition that an  
5 environmental -- the very presence of a wastewater treatment  
6 plant is to achieve environmental compliance.

7 Q I understand that.

8 A And so to that extent anything that a wastewater  
9 plant does is in relation to environmental compliance.

10 Q So is it my understanding then that it is your  
11 testimony that the expansion of the plant was an environmental  
12 compliance cost?

13 A Absolutely.

14 Q Is it my understanding of your testimony that it is  
15 your opinion that the installation of the advanced wastewater  
16 treatment facilities was an environmental compliance cost?

17 A Yes.

18 Q Let's talk about, let's talk about the, the elusive  
19 original cost study that you said that you looked at after the  
20 fact.

21 Isn't it true that the opinion you formed after  
22 reviewing the original cost study that was done in November  
23 of '07 by Weiler Construction was that you had no concerns or  
24 problems with that original cost study and the costs that were  
25 in it?

1           A     I believe in my deposition that I said that I found  
2 the methodology of the original cost study to be reasonable and  
3 the level of costs that were determined to be reasonable.

4           Q     I usually do a pretty decent job in these  
5 questions of sticking to what you said in your deposition, so  
6 let me ask you do you recall that I took your deposition on  
7 September 18th, 2008?

8           A     Yes.

9           Q     All right. On Page 42, Line 4, question, "As we sit  
10 here today in that regard, you do not have any objections or  
11 concerns as far as the original costs as K W has put those  
12 forth; is that right?"

13                    Answer, "I have no concerns or problems with this  
14 original cost study and the costs that are in it."

15                    Do you stand by that testimony?

16           A     I will stand by that testimony.

17           Q     Okay.

18                    CHAIRMAN CARTER: Mr. Wharton, would you yield for a  
19 moment, please?

20                    MR. WHARTON: Yes.

21                    CHAIRMAN CARTER: Commissioner Skop.

22                    COMMISSIONER SKOP: Thank you. If the witness could  
23 perhaps bend his mike around, we might be able, when you're  
24 facing that way, we might be able to hear better.

25                    THE WITNESS: Oh, are we still having problems?

1 CHAIRMAN CARTER: Thank you.

2 MR. WHARTON: The utilization of these mikes is an  
3 art.

4 THE WITNESS: I'll face you when I talk to him.

5 BY MR. WHARTON:

6 Q Now you, you have acknowledged that in your summary  
7 that growth of the utility has been 10 percent; is that  
8 correct?

9 A The average over the past few years has been  
10 10 percent.

11 Q Okay. But, again, you construed the Commission's  
12 administrative code rule such that you have only applied a  
13 5 percent growth rate.

14 A That is correct.

15 Q So in that regard your construction of the rule in  
16 your opinion compels you to utilize a growth rate that is only  
17 half of reality; is that right?

18 A For purposes of used and useful there is a cap in the  
19 administrative code of 5 percent.

20 Q Okay. Now you also didn't attempt in coming up with  
21 used and useful, say, to project future flows, did you?

22 A To the extent that I applied 5 percent to the, or a  
23 5 percent per year to the historic test flow or test year flow  
24 to achieve a growth allowance for purposes of used and useful I  
25 did.

1 Q All right. But you didn't take into account, for  
2 instance, the fact that there are some persons in the service  
3 area who are being served by onsite systems or by package  
4 plants in your formula; correct?

5 A Well, those are -- I have made a growth allowance in  
6 the used and useful calculation, which assumes that there will  
7 be some growth connecting to the system at some point. The  
8 calculation itself does not speak to whether those are new  
9 customers or existing customers in the service area with septic  
10 tanks.

11 Q So basically all you considered in applying the  
12 5 percent was that the data you had indicated that growth was  
13 5 percent or more and therefore the rule required you to apply  
14 5 percent; correct?

15 A That is correct.

16 Q So you didn't really take into account any of the  
17 particular vagaries such as the fact that there's a mandatory  
18 connection ordinance in here and some people that have not  
19 complied with the ordinance; correct?

20 A Yes, that is correct.

21 Q You didn't take into account any particular  
22 commitment that the utility made to Monroe County in the  
23 agreement that has been talked about in this proceeding; is  
24 that correct?

25 A That is correct.

1 Q And you didn't take into account in particular any,  
2 say, other commitments or reservations of capacity by any other  
3 persons or entities; is that correct?

4 A That is correct. And let me, let me explain my last  
5 few comments, if I may.

6 Q Sure.

7 A The questions that you are asking if I was just an  
8 engineer or if I were looking at how would we prudently plan  
9 for growth for this system would be questions that I would look  
10 into. For purposes of used and useful I do not see that those  
11 are relevant issues.

12 Q I understand.

13 CHAIRMAN CARTER: One more time, Mr. Woodcock.

14 THE WITNESS: I'm sorry.

15 CHAIRMAN CARTER: Just pull it to you. Just pull it  
16 to you.

17 MR. WHARTON: Maybe I should go stand over there.

18 CHAIRMAN CARTER: There you go. It's kind of like,  
19 do you remember when they had rabbit ears for televisions and  
20 they had to stand a certain way with some aluminum foil?

21 THE WITNESS: You'd think after watching this for a  
22 day and a half --

23 COMMISSIONER SKOP: It's kind of like flying. You  
24 have to --

25 CHAIRMAN CARTER: Sorry, Mr. Wharton. We're just

1 trying to be able to hear at the bench.

2 MR. WHARTON: I see the court reporter signaling that  
3 she's not hearing some of this.

4 BY MR. WHARTON:

5 Q Let's just talk about one last subject. Let's talk  
6 about I&I. I&I is something you looked into; correct?

7 A Yes.

8 Q And you determined that I&I measured on total plant  
9 flow in your opinion was not excessive.

10 A That is correct.

11 Q Isn't it true that when a utility goes to advanced  
12 wastewater treatment, they need to watch the chloride levels  
13 and the toxicity in the process so that the plant will work  
14 correctly?

15 A I have not conducted any specific studies with  
16 respect to advanced wastewater treatment to, say, a secondary  
17 form of wastewater treatment. But I will tell you that  
18 chlorides can provide a toxic environment that can inhibit  
19 treatment processes in wastewater plants.

20 Q And that is, that is an excellent object lesson to me  
21 that I should stick to exactly what you said in your  
22 deposition.

23 So let me ask you again a question. You agree that  
24 it's possible to have excessive saltwater intrusion in advanced  
25 wastewater treatment without having overall excessive I&I;



1 correct?

2 A Yes.

3 Q Okay. So you might have to get in there and do a  
4 little I&I work if you've got advanced wastewater treatment  
5 even if you're not over the 10 percent, depending on the  
6 vagaries of the chloride levels and the plant you've got and et  
7 cetera; right?

8 A That is correct.

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

10 CHAIRMAN CARTER: Staff?

11 MR. JAEGER: No questions.

12 CHAIRMAN CARTER: Any questions from the bench?

13 Mr. Burgess.

14 MR. BURGESS: Thank you, Mr. Chairman.

15 REDIRECT EXAMINATION

16 BY MR. BURGESS:

17 Q You were asked about the original cost study that you  
18 subsequently reviewed, Mr. Woodcock, and you indicated that you  
19 had no problems with the methodology or level of costs. Does  
20 that mean that if you were to perform the original cost study,  
21 that that's the same results that you would have come up with  
22 as a bottom line level of cost?

23 A Absolutely not.

24 Q Well, how does that -- I mean, how, how might it  
25 differ then?

1           A     Well, I would say that you could give two engineers  
2 the same set of data and tell them to do an original cost study  
3 and get two different answers. There is a lot of work,  
4 guesswork, a lot of professional estimation that goes into  
5 preparing an original cost study, and the level of that  
6 guesswork and estimation depends upon how much information  
7 there is available for which to actually perform your study.  
8 How much do you know about the original facilities that are  
9 there? What kind of documentation is available? So depending  
10 from engineer to engineer there can be a variety of reasonable  
11 assumptions that can be made that can provide different levels  
12 of original cost.

13           Q     So does that mean that, that in your examination of  
14 the original cost study that you didn't go into the detail to  
15 arrive at your own specific conclusions with regard to those?

16           A     I did not.

17           Q     You were asked about used and useful and an amount  
18 being disallowed. You were also asked about whether you  
19 believed a, that this particular plant was appropriately sized.  
20 Now I'm trying to understand if, if a, if a plant is  
21 appropriately sized and yet a used and useful adjustment is  
22 made, does that mean you think the company should have to lose  
23 the costs and not collect the costs associated with the amount  
24 of an appropriately sized plant?

25           A     I'm sorry. I'm having trouble with your question.

1 Q Are you -- do you think that the company, when a  
2 company has invested in an appropriately sized plant that a  
3 used and useful adjustment is made to -- do you think the  
4 company has an opportunity to collect the costs that it has  
5 incurred over some period of time?

6 MR. WHARTON: I would, I would object, Chairman  
7 Carter. I don't think it's outside the scope really, I just  
8 think it invades the province of the Commission. That's a  
9 decision that y'all are going to make.

10 MR. BURGESS: Okay. And we have been -- you have  
11 heard two days worth of testimony now that are within the  
12 province of decisions that you're going to make and that's  
13 precisely the kind of information that you get in testimony.  
14 So I don't see how that is an objection that has much, that has  
15 validity.

16 CHAIRMAN CARTER: Mr. Wharton?

17 MR. WHARTON: I'll withdraw the objection.

18 CHAIRMAN CARTER: Thank you. You may proceed.

19 THE WITNESS: Can you repeat the question one more  
20 time? And I apologize. I'm having more trouble with my own  
21 counsel.

22 BY MR. BURGESS:

23 Q We're speaking of a situation where a plant is  
24 appropriately sized but some adjustment may be made for  
25 ratemaking purposes based on used and useful. Are you saying

1 then that the costs associated with that will never, never be  
2 collected by the utility?

3 A No. There is an opportunity to be collected. As the  
4 utility grows, as the service area grows, the used and useful  
5 will start approaching 100 percent.

6 MR. BURGESS: Thank you. That's all I have. Thank  
7 you very much.

8 CHAIRMAN CARTER: Staff?

9 MR. JAEGER: No questions.

10 CHAIRMAN CARTER: From the bench? Mr. Burgess?  
11 Mr. Wharton? Hang on a second, Mr. Burgess.

12 MR. WHARTON: No. Do I get another shot?

13 CHAIRMAN CARTER: No. No. I'm just being courteous.  
14 Mr. Burgess.

15 MR. BURGESS: I just wanted to see if you'd go for  
16 that.

17 I'm sorry, Mr. Chairman. Yeah. I would ask that  
18 Exhibits 21 and 22 be entered into the record.

19 CHAIRMAN CARTER: Any objection?

20 MR. WHARTON: No.

21 CHAIRMAN CARTER: Without objection, show it done.

22 MR. JAEGER: None.

23 CHAIRMAN CARTER: Show it done.

24 MR. BURGESS: Thank you, Mr. Chairman.

25 (Exhibits 21 and 22 admitted into the record.)

1 CHAIRMAN CARTER: Call your next witness,  
2 Mr. Burgess.

3 MR. BURGESS: Those are the, unless I missed  
4 something, those are the witnesses we have.

5 CHAIRMAN CARTER: Thank you, Mr. Woodcock. You may  
6 be excused.

7 THE WITNESS: Thank you.

8 CHAIRMAN CARTER: We'll go back to Mr. Wharton.

9 MR. WHARTON: We've heard from staff's witnesses.

10 MR. JAEGER: That's correct, Chairman. We've done  
11 all the staff witnesses.

12 CHAIRMAN CARTER: We got the staff witnesses  
13 yesterday.

14 MR. WHARTON: I'd call William L. Smith, Jr., please.  
15 (Recess taken.)

16 CHAIRMAN CARTER: We are back on the record.  
17 Mr. Wharton, you're recognized. Oh, Mr. Deterding.

18 MR. WHARTON: It's hard to keep up. I know.

19 CHAIRMAN CARTER: Mr. Deterding, you're recognized.

20 MR. DETERDING: Thank you, Mr. Chairman. I'd call  
21 William L. Smith, Jr.

22 CHAIRMAN CARTER: Move your seat to my right. There  
23 you go.

24 THE WITNESS: Yes, sir. How is this, Mr. Carter?

25 CHAIRMAN CARTER: Perfecto.

1                   THE WITNESS: I practiced this yesterday. Last night  
2 I went home and practiced again.

3                   WILLIAM L. SMITH, JR.  
4 was called as a rebuttal witness on behalf of K W Resort  
5 Utilities Corp., and, having been duly sworn, testified as  
6 follows:

7                   DIRECT EXAMINATION

8 BY MR. DETERDING:

9           Q     Mr. Smith, please state your name and employment  
10 address.

11           A     William L. Smith, Jr., 6450 Junior College Road, Key  
12 West, Florida.

13           Q     And you're the president of K W Resort Utilities  
14 Corporation?

15           A     Yes, sir.

16           Q     And you previously provided direct testimony in this  
17 proceeding.

18           A     Yes, sir.

19           Q     And you previously have been sworn?

20           A     Yes, sir.

21           Q     Did you, did you prepare rebuttal testimony in  
22 conjunction with my office consisting of two pages?

23           A     Yes, sir.

24           Q     And that testimony is entitled Rebuttal Testimony of  
25 William L. Smith, Jr.?

1 A Yes, sir.

2 Q If I asked you those same questions today, would your  
3 answers be the same?

4 A Yes.

5 Q Do you have any corrections to make to that  
6 testimony?

7 A No, I do not.

8 Q And you did not prepare any exhibits that are  
9 attached to your testimony; correct?

10 A No, I did not.

11 MR. DETERDING: I'd request that Mr. Smith's prefiled  
12 rebuttal testimony be inserted in the record as though read.

13 CHAIRMAN CARTER: The prefiled rebuttal testimony of  
14 the witness will be entered into the record as though read.

15

16

17

18

19

20

21

22

23

24

25

1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2                               KW RESORT UTILITIES CORPORATION

3                                       DOCKET NO. 070293-SU

4                   REBUTTAL TESTIMONY OF WILLIAM L. SMITH, JR.

5   Q.   Please state your name and employment address.

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

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

9   A.   I am the Utility's President.

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

11   A.   The purpose of this rebuttal testimony is simply to  
12        address rate case expenses. I, and persons working under  
13        my direction and control, prepared a schedule of actual  
14        costs incurred by the Utility's contract staff above and  
15        beyond their normal Utility duties, for which the Utility  
16        was billed through normal operating expenses, so as to  
17        reflect those additional duties that they undertook and  
18        will undertake related solely to this rate case. These  
19        schedules have been prepared to show the actual costs  
20        incurred up through the end of July 2008 directly related  
21        to this rate case, and to estimate the additional time  
22        and expenses for Mr. Carter, myself, Ms. Irizarry, and  
23        Ms. Seifert for tasks related to this rate case. Those  
24        actual and estimated rate case cost figures were utilized  
25        by Mr. DeChario and incorporated into his exhibits and



1 total rate case costs.

2 Q. Do those actual and estimated rate case expense numbers  
3 accurately reflect the additional time devoted by these  
4 individuals to this rate case and the costs for them  
5 based upon the hourly costs charged to the Utility for  
6 these individuals?

7 A. Yes they do.

8 Q. Do you have any further testimony to provide in this  
9 regard?

10 A. No, I do not.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. DETERDING:

2 Q Mr. Smith, do you have a summary of that testimony or  
3 not?

4 A No, I don't at this time.

5 MR. DETERDING: Thank you. I'd tender the witness  
6 for cross.

7 CHAIRMAN CARTER: Mr. Burgess.

8 MR. BURGESS: Yes.

9 CROSS EXAMINATION

10 BY MR. BURGESS:

11 Q Mr. Smith, I see in the Prehearing Order that you are  
12 being tendered do respond and rebut as to Issue 31 and  
13 Issue 31 only, is that correct, the rate case expense issue?

14 A Yes.

15 MR. DETERDING: I'm sorry. I didn't hear you.

16 MR. BURGESS: I just was confirming that Mr. Smith is  
17 rebutting for the purpose of one issue, and that's Issue 31,  
18 and that there's no other issue for which this testimony is  
19 being offered.

20 MR. DETERDING: The rate case expense only. Correct.

21 MR. BURGESS: I have no, I have no questions. Thank  
22 you.

23 CHAIRMAN CARTER: Staff?

24 MR. JAEGER: Staff has no questions.

25 CHAIRMAN CARTER: From the bench?

1 Mr. Deterding?

2 MR. DETERDING: Thank you.

3 CHAIRMAN CARTER: Move the --

4 MR. DETERDING: No exhibits.

5 CHAIRMAN CARTER: No exhibits.

6 THE WITNESS: Thank you.

7 CHAIRMAN CARTER: Have a great day.

8 THE WITNESS: I will.

9 CHAIRMAN CARTER: Mr. Deterding, you're recognized,  
10 sir.

11 MR. DETERDING: Mr. Wharton.

12 MR. WHARTON: Back to me.

13 CHAIRMAN CARTER: Oh, Mr. Wharton.

14 MR. WHARTON: We're really just deciding who to call  
15 by the opposite.

16 CHAIRMAN CARTER: Whoever I call, whoever I call,  
17 it's the opposite. Thanks.

18 MR. WHARTON: We would call Mr. Ed Castle.

19 CHAIRMAN CARTER: Mr. Castle, have you been sworn?

20 THE WITNESS: No, I haven't.

21 CHAIRMAN CARTER: Oh, great.

22 (Witness sworn.)

23 Please be seated.

24 EDWARD R. CASTLE

25 was called as a rebuttal witness on behalf of K W Resort

1 Utilities Corp., and, having been duly sworn, testified as  
2 follows:

3 DIRECT EXAMINATION

4 BY MR. WHARTON:

5 Q Would you please state your name and employment  
6 address for the record?

7 A My name is Edward R. Castle. My employment, my  
8 employment address is 5800 Overseas Highway, Suite 36,  
9 Marathon, Florida.

10 Q By whom are you employed?

11 A Weiler Engineering.

12 Q Have you been retained by K W Resort Utilities  
13 Corporation to provide testimony in this proceeding consisting  
14 of ten pages, rebuttal testimony?

15 A Yes.

16 Q All right. If I asked you those same questions here  
17 today, would your answers be the same?

18 A Yes, they would.

19 Q Do you have any corrections to make to that testimony  
20 at this time?

21 A No, I don't.

22 MR. WHARTON: Mr. Chairman, I would ask that  
23 Mr. Castle's rebuttal testimony be inserted in the record as  
24 though read.

25 CHAIRMAN CARTER: The witness's prefiled rebuttal

1 testimony will be entered into the record as though read.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

2                                   KW RESORT UTILITIES CORP.

3   DOCKET NO. 070293-SU

4                   APPLICATION FOR INCREASE IN WASTEWATER RATES

5   IN MONROE COUNTY

6                                   REBUTTAL TESTIMONY OF ED R. CASTLE

7       Q.   Please state your name and professional address for the  
8            record.

9       A.   Edward R. Castle, Weiler Engineering Corporation, 5800  
10           Overseas Highway, Marathon, Florida 33050.

11      Q.   By whom are you employed and what is your position?

12      A.   Employed by the Weiler Engineering Corporation as Vice  
13            President and Director of the wastewater division.

14      Q.   Please state your educational background post high school.

15      A.   I was graduated from the University of Kentucky with a  
16            Bachelor of Science in Chemical Engineering, emphasis in  
17            water pollution control.

18      Q.   Please synopsise your professional experience.

19      A.   I have been employed in wastewater related professions since  
20            1987. I was Laboratory Director for Seminole County  
21            Environmental Services for 2 years, followed by 9 years with  
22            Operations Management International as a wastewater  
23            operations specialist, then 4 years as Director of  
24            Operations for Davis Water Analysis/Synagro Technologies.  
25            The past 5 years have been as a Professional Engineer for

1 the Weiler Engineering Corporation.

2 Q. Do you have any professional affiliations?

3 A. I am a licensed Professional Engineer in Florida and hold a  
4 Class A wastewater treatment plant operator's license, also  
5 in Florida.

6 Q. What is the purpose of your rebuttal testimony?

7 A. To provide response or clarification to testimony given by  
8 Andrew T. Woodcock and by Kimberly H. Dismukes.

9 Q. Please describe your familiarity with KW Resort's wastewater  
10 system.

11 A. I first became familiar with KW Resort's wastewater system  
12 in 1990, working as an independent Consultant to the company  
13 operating the system at that time. In 1998, I was employed  
14 full-time by the operating company and continued to assist  
15 with KW Resort issues along with their other wastewater  
16 systems. Since I began my employment with Weiler  
17 Engineering in 2003, I have been assigned as the Consulting  
18 Engineer for the KW Resort system.

19 Q. What have you done in preparation for the rendering of your  
20 testimony and opinions?

21 A. I have reviewed copies of Mr. Woodcock's and Ms. Dismukes'  
22 testimony.

23 Q. Mr. Woodcock commented on the used and useful analysis  
24 provided by the utility. What is your opinion with regard  
25 to Mr. Woodcock's used and useful analysis?

- 1 A. I agree that the permitted capacity is based on annual  
2 average daily flow rather than 3-month average daily flow.  
3 Mr. Woodcock states in line 22 of page 4 of his testimony  
4 that the growth allowance is limited to 5% per year and  
5 therefore adjusts growth by 25% for the 5 year period.  
6 However, 25-30.432 FAC states that the extent to which the  
7 area served is built out should be considered, implying that  
8 projected growth based on factors other than a strict  
9 percentage should be reasonably allowed. The known  
10 developments proposed to connect to the KWRU plant should be  
11 considered in future capacity calculations as well as a  
12 standard percentage growth rate. Stock Island is  
13 experiencing significant redevelopment of properties into  
14 higher density uses as indicated by capacity reservation  
15 agreements with KWRU. The redevelopment of certain  
16 properties is also addressed in the wastewater report  
17 generated by URS Engineering for the Monroe County BOCC.  
18 I agree with Mr. Woodcock's statement on page 5 of his  
19 testimony that the expansion to 0.499 MGD was not required  
20 by the agreement with Monroe County. The expansion in 1997  
21 was required by FDEP in order to provide capacity for the  
22 Key West Golf Club Development housing. However, the  
23 conversion to AWT was required by the agreement with Monroe  
24 County.
- 25 Q. Have you reviewed Mr. Woodcock's testimony regarding the



1 original cost study prepared for the utility by your  
2 company?

3 A. Yes.

4 Q. What is your opinion regarding Mr. Woodcock's analysis and  
5 conclusions?

6 A. Mr. Woodcock deferred providing an analysis until such time  
7 as he had reviewed the final version of the cost study. I  
8 therefore have no opinion at this time.

9 Q. Ms. Dismukes commented on the AWT conversion project and on  
10 change orders to the US Filter contract as a result of  
11 delays with permitting. What is your opinion of Ms.  
12 Dismukes' testimony regarding permitting delays?

13 A. The Capacity Reservation Agreement between Monroe County and  
14 KW Resort Utility Corp. specifically stated that the  
15 agreement constituted all required permits and that no  
16 further permits were required from the County. Based on the  
17 agreement, KWRU assumed that no building permit was needed.  
18 When the County red-tagged the AWT construction project,  
19 work was stopped until a permit could be obtained. The  
20 delay was caused by the position taken by the Building  
21 Department that the permitting condition in the Agreement  
22 was not valid and that a building permit was required. This  
23 was beyond the control of KWRU.

24 Q. What is your opinion of Ms. Dismukes' testimony regarding  
25 the resleeving project?

1 A. Ms. Dismukes contends that the sewer lining project was  
2 performed in order to deal with excessive infiltration and  
3 inflow. However, there was not excessive infiltration and  
4 inflow in the system at the time this project was  
5 undertaken, based upon the standard of 500 gallons per day  
6 per inch of pipe diameter per mile of pipe. The lining  
7 project was necessary to prevent fluctuations in salinity  
8 and inflow due to inflow and infiltration that would  
9 adversely affect the AWT treatment process. Changes in  
10 salinity and in hydraulic retention time can adversely  
11 affect the biological nitrogen removal process, causing the  
12 AWT process to fail to meet the stringent nitrogen  
13 standards. Ms. Dismukes further contends that the lining  
14 project will reduce power and chemical costs. The increase  
15 in chemical cost for the AWT process is due to the alum feed  
16 needed to precipitate phosphorus. Since rainwater and  
17 groundwater do not contain significant levels of phosphorus,  
18 the impact on chemical cost is negligible. Similarly, the  
19 largest cost for power is due to aeration requirements that  
20 are directly related to the biochemical oxygen demand  
21 created by the pollutant load in the wastewater. Once  
22 again, rainwater and groundwater have a very low biochemical  
23 oxygen demand, so reduction in rainwater and groundwater  
24 flow to the treatment plant would result in a negligible  
25 savings in aeration power. There will be a small savings in

1 the electrical costs at the wastewater pump stations,  
2 directly related to the reduction in volume of flow due to  
3 reduced inflow and infiltration.

4 Q. Have you reviewed Ms. Dismukes' testimony questioning the  
5 need for the utility's recent resleeving and ongoing I&I  
6 work?

7 A. Yes.

8 Q. What is your reaction to her allegation that either of these  
9 undertakings were not "required"?

10 A. I believe my remarks above cover my reaction. Both are  
11 definitely required. As I stated previously, the salinity  
12 and fluctuations of flow are very detrimental to the  
13 biological nutrient removal process necessary to meet the  
14 stringent nitrogen limits required by the AWT standards.  
15 The resleeving program was necessary to reduce those  
16 fluctuations and salinity, and ongoing I&I programs to  
17 maintain very low levels of I&I are absolutely necessary for  
18 AWT because it doesn't take much to upset the biological  
19 process. There is always going to need to be continuous  
20 ongoing I&I correction because of the high salinity of  
21 groundwater here. That's what causes the impact on the  
22 biological nutrient process as opposed to some place with  
23 fresh water groundwater where you are only dealing with  
24 hydraulic loading rather than both hydraulic loading and  
25 salinity changes.

1 Q. In your experience, what level of I&I is considered  
2 acceptable?

3 A. That varies, based upon the characteristics of the I&I and  
4 the treatment requirements of the facility. It is my  
5 understanding that the PSC uses the WPCF standard of 500  
6 gallons per day per inch of pipe diameter per mile of pipe.  
7 This would equate to an allowable I&I flow of about 80,000  
8 gallons per day for the KW Resort collection system. In my  
9 opinion, that standard is insufficiently stringent due to  
10 the characteristics of I&I in the Florida Keys combined with  
11 the low nitrogen limits for AWT treatment. The porous coral  
12 rock and the low surface elevation of the islands means that  
13 the groundwater is typically sea water with a salinity of 35  
14 parts per thousand. And the groundwater table elevation  
15 rises and falls with the tides. The rising and falling of  
16 the saline groundwater elevation means that the I&I can  
17 increase and decrease with the tides. The salinity of the  
18 wastewater must be kept consistent in order to allow for  
19 adequate biological nutrient removal. In the case of KW  
20 Resort, the average daily flow is approximately 320,000  
21 gallons per day with a salinity of about 1 part per  
22 thousand. To avoid detrimental impacts to the biological  
23 process, the salinity should not be allowed to rise above 3  
24 parts per thousand. This means that we can't allow more  
25 than about 45,000 gallons per day of saline groundwater to

1 enter the system.

2 Q. Are there unique challenges to a system in Key West?

3 A. I would say that there are two things that make it  
4 challenging and different than the average mainland system.  
5 One is the salinity again; you need to keep the I&I down  
6 because of the impact of the salinity fluctuations on the  
7 biological process. Also with the vacuum collection system  
8 water-logging the system can be a major problem and a vacuum  
9 system is the most cost-effective type of system currently  
10 available down here because the groundwater table is so  
11 high. The vacuum system must be kept water-tight to reduce  
12 the potential for water-logging. The dual challenge down  
13 here is to prevent the vacuum system from water-logging and  
14 to keep the salinity of the wastewater from fluctuating with  
15 the tidal elevation of the groundwater.

16 Q. Do you have any understanding whether the PSC has a general  
17 policy regarding an acceptable level of I&I?

18 A. I have learned from discussion with the utility's attorneys  
19 that the Public Service Commission generally utilizes the  
20 policy drawn from the published "Manual of Practice No. 9 of  
21 the Water and Pollution Control Federal (WPCP)" that states  
22 that infiltration of 500 gpd per inch of pipe diameter per  
23 mile is an acceptable level.

24 Q. Do you believe the ongoing I&I work at KW is both necessary  
25 and reasonable?

1 A. Yes, I do.

2 Q. Do you believe there are any unnecessary or excessive costs  
3 associated with the resleeving of lines or other I&I at KW,  
4 both as to your experience in the past and on a going  
5 forward basis?

6 A. Based upon my experience, the resleeving was the most  
7 economical approach that the utility could have taken on the  
8 gravity system to control the I&I. I have seen other  
9 projects down here in the Keys, and in the City of Key West  
10 in particular, where I&I was addressed by a total pipe  
11 replacement project and, in my opinion, this resleeving with  
12 follow up point repairs as needed is a much more economical  
13 approach. Trenchless technology such as pipe lining and  
14 grouting is typically a fraction of the cost of pipe repair,  
15 particularly in areas such as the Keys where the high  
16 groundwater table combined porosity of the coral rock makes  
17 dewatering of trenches very difficult, increasing the cost  
18 of open trench construction dramatically. In my opinion, a  
19 program of on-going sleeving and grouting as needed is the  
20 most economical means of reducing I&I in existing sewer  
21 collection systems.

22 Q. Did you assist in the preparation of exhibits that are  
23 sponsored by Mr. DeChario concerning engineering related  
24 services provided by your firm in this rate proceeding?

1 A. Yes, I did. I prepared both a schedule of actual  
2 engineering services provided by my firm and billed to the  
3 utility which are directly related to this rate proceeding  
4 up through the end of July and an estimate to complete this  
5 rate case based upon information of future events of which I  
6 was aware through discussions with the utility's counsel  
7 about what would be required of me. I believe these  
8 accurately represent the actual and estimated cost for  
9 engineering services to complete work related to this rate  
10 case.

11 Q. Does this conclude your Rebuttal Testimony?

12 A. Yes, at this time.  
13  
14  
15  
16  
17

1 MR. WHARTON: Mr. Chairman, with your permission,  
2 Mr. Castle has prepared a summary of his testimony.

3 CHAIRMAN CARTER: You're recognized.

4 THE WITNESS: My testimony was in relation to  
5 Mr. Woodcock's testimony and to Ms. Dismukes'.

6 In regard to Mr. Woodcock's used and useful  
7 calculation, he stated that there is a 5 percent maximum growth  
8 allowance. I disagree with the interpretation of that in that  
9 the rule says that the extent to which the service area has  
10 been developed should be considered, and I think that that can  
11 go both ways to either reduce or increase that 5 percent.

12 In this case there's existing properties and no  
13 properties, no developments that I've reviewed plans for that  
14 are hooking up and I wouldn't consider that growth. That's  
15 actually customers ready to hook up. So I think there should  
16 be growth allowed on top of that in my interpretation.

17 And on the wastewater, the utility's expansion, I  
18 agreed with Mr. Woodcock that it was not in the capacity  
19 reservation agreement to expand the facility. That was instead  
20 required back in 1996 and '97 by DEP for the golf course  
21 housing development that was going in. And that had to be  
22 planned and developed and we had to use the 250 gallons per day  
23 per unit to size the treatment plant at that time.

24 In relation to Ms. Dismukes' testimony regarding the  
25 resleeving project, I read that she contended that there was



1 excessive I&I. And based on the standard of 500 gallons per  
2 day per inch of pipe diameter per mile of pipe it was not  
3 excessive I&I. Instead it was a recommendation on my part to  
4 reduce fluctuations in salinity that would adversely affect the  
5 AWT treatment process.

6 And in regards to the contention there may be power  
7 savings, I did say that there would be insignificant power  
8 savings. The reason being that the bulk of the power costs at  
9 the treatment plant are related to the aeration requirements.  
10 The pumping requirements are minor and the small reduction in  
11 flow that was accomplished by the resleeving project would be  
12 very minimal pumping cost reductions. The same is pretty true  
13 of the chemicals. The chemicals are mainly used for phosphorus  
14 precipitation. And there's very little phosphorus or no  
15 phosphorus in the groundwater that would come in, so there  
16 would be no change in, no reduction to the phosphorus sloping  
17 (phonetic) to the treatment plant; therefore, negligible, if  
18 any, chemical savings. And that's my summary.

19 MR. WHARTON: We would tender the witness.

20 CHAIRMAN CARTER: Thank you very kindly.

21 Mr. Burgess.

22 MR. BURGESS: Yes.

23 CROSS EXAMINATION

24 BY MR. BURGESS:

25 Q Mr. Castle, you said that you read Ms. Dismukes'

1 testimony to say that she concluded that there was excessive  
2 I&I. Have you heard her testimony and her deposition, read her  
3 deposition?

4 A Yes, I did. And it could be that what she had  
5 written in there, that what she understood from the utility  
6 that it was excessive I&I. But in any case, at the time I read  
7 her testimony, I read it as her contention there was excessive  
8 I&I, but I did hear her testimony now otherwise.

9 CHAIRMAN CARTER: Could you hear, Linda?

10 THE COURT REPORTER: Yes, sir.

11 CHAIRMAN CARTER: Commissioners, can you hear?

12 COMMISSIONER ARGENZIANO: Yes.

13 BY MR. BURGESS:

14 Q Have you heard Mr. Smith's testimony on this? What  
15 is the -- isn't the utility concluding that there's  
16 substantial, there was substantial I&I?

17 A That was not my conclusion. The I&I that we had to  
18 reduce was salt water. The fluctuations in salinity are what  
19 we're looking at. The groundwater down here is essentially 35  
20 parts per 1,000 salinity. And to prevent inhibition of the  
21 biological activity, you need to maintain a constant salinity.  
22 More so than just the toxicity effects of chlorides, it's the  
23 changes up and down that can really change the biology and  
24 inhibit the nitrification process. So the, the reason for my  
25 recommendation to reduce it for the AWT project was not

1 excessive or substantial I&I but to reduce the salinity.

2 Q But did you not hear Mr. Smith characterize it as  
3 substantial I&I?

4 A Was that testimony this morning earlier or --

5 Q No. That testimony would have been yesterday.

6 A I don't recall it.

7 Q Okay. And you're saying as of now you understand  
8 Ms. Dismukes to not be saying that there's excessive I&I?

9 A That's what I heard her say this morning. Yes.

10 MR. BURGESS: Thank you. That's all I have.

11 CHAIRMAN CARTER: Thank you.

12 Staff?

13 MR. JAEGER: No questions.

14 CHAIRMAN CARTER: From the bench?

15 MR. WHARTON: No redirect.

16 CHAIRMAN CARTER: No redirect.

17 Thank you so kindly.

18 THE WITNESS: Thank you.

19 CHAIRMAN CARTER: Call your next witness,

20 Mr. Deterding. I was waiting this time to see who went for the  
21 mike.

22 MR. DETERDING: I'll call Paul DeChario.

23 PAUL E. DECHARIO

24 was called as a rebuttal witness on behalf of K W Resort

25 Utilities Corp., and, having been duly sworn, testified as

1 follows:

2 DIRECT EXAMINATION

3 BY MR. DETERDING:

4 Q Mr. DeChario, please state your name and employment  
5 address.

6 A Paul E. DeChario, 2560 Delta Bay Boulevard, Suite  
7 200, Clearwater, Florida 33765.

8 Q And, Mr. DeChario, you previously provided direct  
9 testimony in this proceeding?

10 A I did.

11 Q And you previously have been sworn?

12 A I have.

13 Q Did you prepare prefiled rebuttal testimony entitled  
14 Prefiled Rebuttal Testimony of -- let me get it exactly right.  
15 Prefiled -- I'm sorry. Rebuttal Testimony of Paul E. DeChario,  
16 CPA?

17 A I did.

18 Q Consisting of 33 pages; correct?

19 A Yes.

20 Q If I asked you those questions today, would your  
21 answers be the same?

22 A There were some changes to Ms. Dismukes' testimony  
23 which was prepared after I prepared my rebuttal testimony that  
24 I first heard of today, so there may have been some changes of  
25 varying significance or maybe insignificant. I don't know

1 without actually going through both of those documents.

2 Q Okay. But other than the effect that Ms. Dismukes'  
3 changes had on your testimony, do you have any changes?

4 A I do. I have a couple.

5 Well, due to changes in the amounts that were  
6 presented in KHD-1 revised, some of the amounts on Pages 2,  
7 3 and 4 of my testimony, of course, will change. I'm not  
8 terribly concerned about those changes because it doesn't  
9 change the effect of the conclusions that I reached based on  
10 the numbers. It just makes the numbers a little smaller.

11 On Page 24, Line 21 -- I'm sorry. I -- my notes  
12 don't seem to agree with -- Page 24, Line 21, there's a strike  
13 out that wasn't removed. I typed most of this and I'm not a  
14 terrible great, terribly great typist when it comes to striking  
15 all that.

16 CHAIRMAN CARTER: Are you referring to the line?

17 THE WITNESS: Yes. Where it starts, "PED-6 which  
18 shows that underscore," and then "37 percent."

19 CHAIRMAN CARTER: Okay.

20 MR. DETERDING: Just the strike out --

21 THE WITNESS: Just the strike out should be removed.

22 BY MR. DETERDING:

23 Q The five?

24 A Yes. I guess that's a five. Yes.

25

1 Q Okay.

2 A On Page 9 at Line 9, this cite should be "GTE Florida  
3 v. Deason 642," not "643." And then that same error is  
4 repeated on Page 30 at Line 1.

5 Q Anything else?

6 A Just exhibit changes.

7 Q Okay. Nothing else to your testimony?

8 A Nothing in my testimony.

9 Q Mr. DeChario, did you prepare exhibits in conjunction  
10 with that rebuttal testimony?

11 A I did.

12 Q And those were prefiled as PED-2 through PED-8?

13 A That is correct.

14 Q Do you have any changes or corrections to make to  
15 those exhibits?

16 A Yes. Exhibit 2 and 3 at the same place are the same  
17 correction.

18 CHAIRMAN CARTER: When you say the same place, the  
19 same corrections, we're going to need to get it on the record  
20 here, so.

21 THE WITNESS: Okay. Yeah, I'll get it. I just  
22 wanted to get to the actual page. I'm sorry.

23 CHAIRMAN CARTER: Thank you.

24 THE WITNESS: Specifically on Exhibit 2, and I'm  
25 sorry I didn't put line numbers in, but under the heading which

1 is the second heading, "Analysis Based on 1,000 Gallons  
2 Treated," and then under the subheading "K W Resort" it says  
3 "costs per meter equivalent," and that should read "cost  
4 per 1,000 gallons treated." And that same change is on  
5 Exhibit 3 in approximately the same location.

6 CHAIRMAN CARTER: Okay.

7 THE WITNESS: And that's all I have.

8 CHAIRMAN CARTER: Thank you.

9 MR. DETERDING: Commissioner, Mr. Chairman, I'd  
10 request that Mr. DeChario's testimony, rebuttal testimony be  
11 inserted into the record as though read.

12 CHAIRMAN CARTER: The prefiled, the rebuttal, the  
13 prefiled rebuttal testimony of the witness will be inserted  
14 into the record as though read.

15 And just, staff, for identification purposes, the  
16 exhibits listed as 2 through -- what is it?

17 MR. JAEGER: Yes. One clarification. I think  
18 Mr. Deterding only referred to PED-2 through 8, and there's a  
19 9, which is actual estimated rate case expense.

20 CHAIRMAN CARTER: That's on our --

21 MR. JAEGER: And that's on the Comprehensive Exhibit  
22 List. And Exhibits 27 through 34 are the ones that you're  
23 identifying.

24 CHAIRMAN CARTER: 27 through 34 for identification  
25 purposes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. DETERDING: I apologize.

CHAIRMAN CARTER: Mr. Deterding, no problem.

MR. DETERDING: So those are marked as 27 through 34?

MR. JAEGER: That's correct.



KW RESORT UTILITIES CORPORATION

DOCKET NO. 070293-SU

REBUTTAL TESTIMONY OF PAUL E. DeCHARIO, C.P.A.

**Q. Please state your name and professional address.**

A. Paul E. DeChario, C.P.A., a partner in the accounting firm of Carlstedt, Jackson, Nixon & Wilson, P.A., 2560 Gulf-To-Bay Boulevard, Suite 200, Clearwater, Florida 33765.

**Q. Have you been retained by KW Resort Utilities Corp. to provide documentary information and testimony in that company's application for increased rates?**

A. Yes.

**Q. Have you previously provided direct testimony in this case?**

A. Yes.

**Q. What is the purpose of this testimony?**

A. To respond to the various issues raised in the direct testimony of witnesses for the Office of Public Counsel (OPC) and the Commission Staff.

**Q. How is your rebuttal testimony organized?**

A. I will indicate each witness's name and then address the issues raised by the respective witnesses in their testimony.

Kimberly H. Dismukes

**Q. Have you read the testimony of Ms. Dismukes?**

A. I have.

**Q. What is your impression of her testimony?**

A. It is full of innuendo, and opinions not supported by any credible evidence. Case law is cited, based upon her own previous testimony, yet she does not build a substantive trail from these citations to her "opinions" and adjustments. Further, she implies that there is

1 something sinister in the relationships with related parties, yet the only analysis she  
2 provides is a simplistic analysis of cost increases which does not take into consideration  
3 any of the economic factors of operating any business, particularly a utility, in the  
4 Florida Keys.

5 **Q. What is the impact of Ms. Dismukes proposed adjustments?**

6 A. She is proposing a reduction in Utility adjusted test year revenues of \$827,000 and a  
7 reduction in Utility adjusted test year rate base of \$3,737,930.

8 **Q. What is your opinion of these adjustments?**

9 A. They are so unreasonable as to be not credible.

10 **Q. How so?**

11 A. First, adjusted test year rate base is \$964,239. Ms. Dismukes proposed adjustment  
12 results in negative rate base \$(2,773,691). This negative rate base contributes to  
13 approximately \$(243,185) of the total reduction in the revenue requirement, using Ms.  
14 Dismukes calculation.

15 Second, Ms. Dismukes proposed reduction to operating revenues results in a net revenue  
16 requirement for this 1,600 customer utility of \$219,252. At the same time she is  
17 proposing adjusted operations and maintenance expenses of \$792,632, thereby  
18 suggesting that the utility should operate at a deficit of at least \$(573,000) before  
19 considering depreciation and taxes other than income, which would increase the  
20 operating deficit by an additional \$(415,000) to approximately \$(988,000).

21 It appears that Ms. Dismukes failed to use due care in the preparation of her proposed  
22 adjustment, instead choosing to prepare adjustments without regard to their accuracy or  
23 propriety. As a result, Ms Dismukes proposed adjustments are contrary to the  
24 requirements imposed on the utility by regulations and must be rejected.

25

1 **Q. How are Ms. Dismukes adjustments inaccurate or improper?**

2 A. There are several examples of this lack of due care which leads to inaccurate or  
3 improper adjustments throughout her Testimony and exhibits. Allow me to enumerate  
4 some of them:

5 Ms. Dismukes proposes adjustments to the rate base which result in negative rate base.  
6 In PSC-92-1362-FOF-SU Gumbo Limbo Enterprises and PSC-92-0286-FOF-WS Indian  
7 River Utilities, the Commission found that “It is our practice to increase rate base to  
8 zero.” Even if one accepts the premise that her adjustments are reasonable on an  
9 individual issue basis, with which I disagree, had she exercised due care, she would have  
10 proposed increasing rate base to zero in her proposed adjustments.

11 Ms. Dismukes incorrectly calculated the revenue impact of her adjustments by using a  
12 simple 4.5% factor to account for the impact of regulatory assessment fees rather than  
13 dividing by the expansion factor, which takes into account the tax on tax factor inherent  
14 in the development of the revenue requirement in the State of Florida. This lack of due  
15 care results in an inaccurate calculation and a \$2,899 understatement of the revenue  
16 requirement impact of her proposed adjustments (See Dismukes Exhibit No. KHD-1).

17 Ms. Dismukes calculations are grossed up to include a reduction in regulatory  
18 assessment fees. Although incorrect, she fails to adjust taxes other than income for the  
19 reduction in regulatory assessment fees of \$61,524 by her calculation. This lack of due  
20 care results in an understatement of the revenue requirement by overstating the revenue  
21 reduction based on her calculations.

22 The adjustment to the regulatory assessment fees proposed by Ms. Dismukes is simply  
23 using the adjustment to regulatory assessment fees proposed by PSC Staff (Audit  
24 Finding No. 18) grossed up by 4.5%. This lack of due care in the development of  
25 regulatory assessment fees in the revenue requirement which are normally developed

1 after all other income and expense items are established shows either a casual attitude or  
2 a complete lack of understanding of the rate development process in the State of Florida.

3 Ms. Dismukes also proposes to reduce depreciation expense by \$406,606. There is no  
4 schedule summarizing how this amount is developed other than “corresponding  
5 adjustments to accumulated depreciation and depreciation expense” without stating a  
6 specific amount. (See Dismukes Testimony Page 55)

7 Ms. Dismukes does make reference to a specific Interrogatory (See Footnote 94:  
8 Response to Citizens’ Interrogatory #73), however, Interrogatory 73 speaks of cash  
9 balances, not of proforma adjustments. While I cannot comment specifically as to what  
10 elements make up this adjustment, since no detail supporting this amount was provided,  
11 I can make some general comments on the lack of due care and propriety of this  
12 adjustment.

13 **Q. What comments are those?**

14 A. Ms. Dismukes proposes an adjustment to depreciation expense of \$406,606, yet the  
15 adjustment to accumulated depreciation is only \$124,116. Application of basic  
16 accounting would lead one to believe that the change in accumulated depreciation would  
17 be greater than or equal to depreciation expense.

18 Also, the Utilities MFR’s show adjusted test year depreciation expense to be \$205,903,  
19 yet the proposed depreciation expense adjustment creates negative depreciation expense  
20 of \$(200,703), effectively making depreciation expense a source of revenue.

21 Ms. Dismukes adjustments are unreasonable and if allowed as proposed would create a  
22 financial burden to the utility and its ability to continue as a going concern and must be  
23 rejected.

24 **Q. Based on this discussion, have you reached any conclusions relative to these**  
25 **adjustments and Ms. Dismukes testimony?**

1 A. Yes, I have. The lack of due care, the lack of accuracy, and the lack of propriety of these  
2 adjustments leads me to question the credibility of this witness.

3 **Q. Why is that? Certainly in a case of this magnitude some small errors are bound to**  
4 **creep in.**

5 A. That is probably true; however, I would expect that someone with Ms. Dismukes  
6 reported credentials and experience would have a higher standard of care and accuracy.

7 **Q. Do you have any comments regarding Ms. Dismukes proposed adjustment to**  
8 **revenues?**

9 A. Yes, I do.

10 First, the billing analysis which she used includes the additional proforma customers to  
11 be connected in 2007. To not have excluded these customers violates the matching  
12 principal by over-stating the test year revenue related to test year expenses.

13 Second, an adjustment of this nature would only affect the amount of the increase, not  
14 the ending revenue requirement because it should only shift the revenue from final  
15 revenue to adjusted historic revenue.

16 For example, using a simple model, assuming that a company filed using adjusted  
17 historic revenue of \$100 and final revenue of \$175, the amount of the increase would be  
18 \$75.

19 Now assume an analysis is performed which shows that \$25 of the revenue should be  
20 included in historic revenue, the result would be \$125 of historic revenue, final revenue  
21 would remain at \$175. Only the amount of the increase would change from \$75 to \$50.

22 Instead, Ms. Dismukes proposed adjustment would remove \$201,032 from the final  
23 revenue requirement, effectively creating a phantom (non-existent) revenue source in the  
24 historic test year. Ms Dismukes proposed adjustment is contrary to the requirements by  
25 regulation in the development of the final revenue requirement and must be rejected

1 **Q. Ms. Dismukes states that “Because of the affiliation between KWRU and the**  
2 **affiliates that contribute to most of the expenses included on the books of KWRU,**  
3 **the arms-length bargaining of a normal competitive environment is not present in**  
4 **their transactions. Is this true? (See Dismukes, Page 6)**

5 A. No. This is just innuendo that is not supported by facts.

6 **Q. What is meant by the terms “arms-length” bargaining?**

7 A. This is the negotiation between a willing selling not under a compulsion to sell and a  
8 willing buyer not under a compulsion to buy. This negotiation is synonymous with and  
9 results in fair market value.

10 **Q. How is fair market value defined?**

11 A. This has been defined by the American Institute of Certified Public Accountants as

12 “Fair market value is the price which a willing buyer and a willing  
13 seller, both well informed about the relevant facts but neither under  
14 any compulsion to act, will arrive at an arms length sale of the  
15 business interest. Such a price is always determined as of a specific  
16 date and is based upon all pertinent facts and conditions that are  
17 either known or might have been reasonably anticipated on that  
18 date.” Valuation of a Closely Held Business, AICPA 1987

19  
20 The Internal Revenue Service has also judicially defined Fair Market Value  
21 as:

22 “the price which property will bring when it is offered for sale by  
23 one who is willing but is not obligated to sell it, and is bought by  
24 one who is willing or desires to purchase but is not compelled to do  
25 so” H.H. Marshman, CA6, 60-2 USTC ¶279F2d 27; A.E.  
26 Wallbridge, CA-2, 4 USTC ¶70 F2d 683; Metropolitan Street  
27 Railroad CO., 197 Mo. 392, 97 SW 860

28  
29 Finally, though not jurisdictional, the Massachusetts Supreme Judicial Court  
30 provides a succinct definition of Fair Market Value as:

31 “Fair Market Value, which is the price an owner is willing but not  
32 under compulsion to sell ought to receive from one willing but not  
33 under compulsion to buy. It means the highest price that a normal  
34

1 purchaser not under peculiar compulsion will pay at the time, and  
2 cannot exceed the sum that the owner after reasonable effort could  
3 obtain for his property.” Boston Gas v. Assessors of Boston, 334  
4 Mass. 549, 566 (1956)  
5

6 **Q. To summarize, Ms. Dismukes is stating that the affiliated parties do not provide**  
7 **services at fair market value?**

8 A. Yes, that appears to be the case.

9 **Q. Does Ms. Dismukes present any evidence to support her opinion?**

10 A. No, she does not.

11 **Q. Was any evidence available? If so, what evidence was available?**

12 A. Yes. In its response to Audit Request No. 13, submitted August 3, 2007, KWRU  
13 provided a quote from US Water dated January 17, 2007 which includes similar work for  
14 a flat monthly charge of \$33,171.34 per month, or \$398,056.08 annually, excluding after  
15 hours work, to be billed at appropriate labor rates, and “the costs for chemicals and  
16 residuals management are billed to KWRU on a per occurrence basis with an appropriate  
17 allowance overhead and margin.”

18 The proposal also provides for annual escalation on April 1<sup>st</sup> of each year by the CPI or  
19 by 5%, which ever is greater.

20 **Q. Did Ms. Dismukes consider this evidence?**

21 A. There is no mention of it in her testimony.

22 **Q. Is there any other evidence that KEI’s charges are at fair market value?**

23 A. Yes there is, in the form of comparative data.

24 **Q. Please explain.**

25 A. Key Haven Utility is a small wastewater utility neighboring KWRU, being separated by  
26 US1.

27 Due to its proximity to KWRU, Key Haven shares the same customer demographic, the

1 same corrosive operating environment, and similar operating characteristics.

2 **Q. Please describe the operating characteristics which are similar.**

3 A. Key Haven has no operations employees, relying on an unrelated contractor for all  
4 aspects of operations and maintenance, including plant operations and reporting,  
5 chemical and material purchases and normal and after hour's repairs. Key Haven also  
6 has a single compensated officer. Key Haven has also recently completed resleeving of  
7 its collections system to correct I & I, which was the subject of a recently completed  
8 limited proceeding, in Order No. PSC-07-0658-PAA-SU. Both KWRU and Key Haven,  
9 as with all of the Florida Keys, are geographically isolated and most commodities are  
10 transported by truck, increasing economic costs of both goods and services.

11 **Q. Are there any ways in which Key Haven is dissimilar to KWRU?**

12 A. KWRU operates a vacuum collection system, Key Haven does not. KWRU's plant is  
13 .499 mgd, compared to Key Haven's .200 mgd plant. KWRU produces reuse, Key  
14 Haven does not. Key Haven provided service to 442 customers at the end of 2006,  
15 including one non-residential customer resulting in 444 total meter equivalents. KWRU  
16 provided service to 1,507 customers, including 443 non-residential customers, resulting  
17 in 1,585 meter equivalents at the end of 2006. Key Haven's contract operations are  
18 provided by an unrelated party, Synagro. Prior to 2003, Synagro also provided contract  
19 operations to KWRU. From 2003 through the present, contract operations have been  
20 provided by KEI, an affiliated company.

21 **Q. Why is this comparative data important?**

22 A. The Supreme Court of Florida established the standard for related party costs and prices.

23 "We do find, however that the PSC abused its discretion in its  
24 decision to reduce in whole or in part certain costs arising from  
25 transactions between GTE and its affiliates, GTE Data Services and  
26 GTE Supply. The evidence indicates that GTE's costs were no  
27 greater than they would have been had GTE purchased services and



1 supplies elsewhere. The mere fact that a utility is doing business with  
 2 an affiliate does not mean that unfair or excess profits are being  
 3 generated without more. Charles F. Phillips, Jr., The Regulation of  
 4 Public Utilities 254-255 (1988). We believe the standard must be  
 5 whether the transactions exceed the going market rate or are  
 6 otherwise inherently unfair. See id. If the answer is “no,” then the  
 7 PSC may not reject the utility’s position. The PSC obviously applied  
 8 a different standard, and we thus must reverse the PSC’s  
 9 determination of this question.” GTE Florida, Inc. v. Deason, 643 So.  
 10 2<sup>nd</sup> 545 (Fla. 1994)

11 Since Key Haven’s operating characteristics are so similar, and the services are provided  
 12 by an unrelated party, an analysis and comparison of the charges by each provides an  
 13 excellent platform to determine whether the services provided by KEI are at the going  
 14 market rate or fair market value. These analyses were further enhanced by the fact that  
 15 the same independent provider of such services, Synagro, provided these services during  
 16 the same 2 year period, 2001 and 2002.

18 **Q. Did you prepare such an analysis?**

19 A. I did. It is at Exhibit PED \_\_\_ 2.

20 **Q. How was this analysis prepared?**

21 A. I recorded all of the activity charged by Synagro and KEI to the respective entities for  
 22 each of the years 2001 through 2006. I reduced these charges to a cost per unit based on  
 23 meter equivalents, equivalent residential connections, and per 1,000 gallons treated to  
 24 make these costs comparable. I then compared these costs per unit between each utility.  
 25 A factor of 1 indicates that the cost per unit is equal. A factor greater than 1 indicates  
 26 that KWRU costs per unit are higher than Key Haven.

27 **Q. Did you have any expectations prior to completing this analysis?**

28 A. KWRU is larger, both in size of its treatment plant and the number of customers served.  
 29 My working hypothesis was that KWRU’s costs could be slightly higher, but roughly  
 30 equivalent on a per unit basis and since Synagro provided service for both utilities at the

1 same time, this would establish the range of this difference. This could then be  
2 extrapolated to the following three years (2003-2006) to determine whether KEI's  
3 charges are at fair market value. This comparative analysis would remove subjective  
4 opinion. The analysis would objectively show the economic impact of utility operation  
5 in the Florida Keys.

6 **Q. What does the analysis show for 2001 and 2002 regarding the comparative charges**  
7 **from Synagro?**

8 A. The analysis shows that the costs charged by Synagro were variable on a per unit basis  
9 between 2001 and 2002. Synagro charges to Key Haven decreased dramatically in 2002  
10 and increased in 2003, while Synagro's charges to KWRU increased. As a result,  
11 Synagro's charges to KWRU were 81% and 107% (respectively) of its charges to Key  
12 Haven based on equivalent residential connections. Similar results are achieved  
13 comparing costs of both meter equivalents and on a 1,000 gallons treated basis.

14 **Q. What does this analysis show about the test year under review in the instant case?**

15 A. During the period that Synagro operated both companies, the costs of service on a per  
16 unit basis were approximately equal. The analysis shows that the costs of all services  
17 provided by KEI, excluding services not provided by Synagro such as vacuum operation,  
18 are less than the services provided by Synagro on a cost per unit basis.

19 **Q. How does this compare with the GTE Florida case?**

20 A. As with the GTE Florida case, this shows that the transactions with KWRU's affiliate do  
21 not exceed the market rate and are otherwise not inherently unfair.

22 **Q. Ms. Dismukes addresses chemicals cost increasing by 145% since 2003. Is this a**  
23 **fair assessment?**

24 A. Inasmuch as it shows that the cost of chemicals has increased over the years, that is true.  
25 Considering that the number of customers and plant flows has increased, and that there

1 are inflationary increases and the cost to transport materials to the Keys have increased,  
2 an increase in chemicals, as well as other costs, is to be expected. The 145% increase is  
3 reasonable for this five year time period when these factors are considered in total.

4 **Q. Ms. Dismukes, at KHD\_\_\_1, Schedule II, has an analysis stating it is based on**  
5 **ERC's. Is this accurate and meaningful?**

6 A. No. This analysis is not based on ERC's (Equivalent Residential Connections) which  
7 considers actual flows. KHD\_\_\_1, Schedule II is based on Meter Equivalents, which  
8 does not consider actual flows. Using the Meter Equivalent ERC's in her analysis is  
9 misleading since it does not portray the operating characteristics of this Utility. Meter  
10 Equivalents uses the AWWA standard to estimate the impact of various meters in a  
11 utility's operations by factoring larger meters to a comparative common size, such that a  
12 1" meter is equivalent to 2 ½ common residential meters (5/8"), and so forth. Equivalent  
13 residential connections based on the flows of a particular utility's customer base more  
14 accurately reflects the costs of a particular system. In any case, all the schedule shows is  
15 that costs have increased.

16 **Q. Ms. Dismukes proposes to reduce chemicals by \$16,480 based on normalization. Is**  
17 **this a fair adjustment?**

18 A. No. She performs a set of analysis which compares the utilities costs to itself and  
19 somehow determines that this requires adjustment without performing any further  
20 substantive tests.

21 **Q. Could further substantive testing be performed?**

22 A. Yes. Key Haven Utility, as discussed earlier, neighbors KWRU. As a PSC regulated  
23 utility, its annual reports are readily available from the Commissions web site. This is an  
24 excellent source of comparative data.

25 **Q. Why is a comparison with Key Haven important?**

1 A. As discussed earlier, comparison with Key Haven removes subjectiveness from the  
2 analysis. Comparison with Key Haven also considers the economic environment in  
3 which both Utilities operate.

4 **Q. What does a comparative analysis show?**

5 A. Ms. Dismukes states that KWRU chemical costs increased by 85% in 2006. As shown  
6 on Exhibit PED\_\_3, Key Haven experienced a similar increase of 96% in the same  
7 period. Additionally, Ms. Dismukes also states that chemical expenses increased by  
8 145% since 2003. Key Haven's chemical costs increased by 179% over this same period,  
9 using Ms. Dismukes' calculation.

10 Ms. Dismukes failed to consider the economic impact of operating an expanding  
11 wastewater utility in the Florida Keys, and uses the buzz-phrase "normalization" to  
12 justify an unreasonable adjustment and must be rejected.

13 **Q. What does this say about the increases in chemical costs for KWRU?**

14 A. It shows that the cost increases experienced by KWRU are normal in the economic  
15 environment of the Florida Keys.

16 **Q. Ms. Dismukes claims that the costs in connection with the response to the Monroe  
17 County audit report should be paid by the stockholders. Do you agree?**

18 A. No. Monroe County commissioned this audit as part of its requirements for the use of  
19 municipal funds. As with any audit, the company being audited may be called upon to  
20 correct or clarify assumptions of the independent auditor.

21 In a standard audit of financial statements, these clarifications occur concurrently with  
22 the audit, with additional communication during the audit exit conference. Occasionally,  
23 as with the audit in question, as well as most audits performed by PSC Staff, a response  
24 is required.

25 This audit was a requirement of Monroe County, solely for the SSI expansion project.

1 Since this was not a general financial statement, but an audit of the funds used for the SSI  
 2 expansion project, it was proper to capitalize these expenditures in accordance with  
 3 NARUC Accounting Instruction 19:

4 Utility Plant-Components of Construction Cost (15) “Legal  
 5 Expenditures” includes the general legal expenditures incurred in  
 6 connection with construction and the court and legal costs directly  
 7 related thereto.... NARUC USOA for Wastewater Utilities, 1996,  
 8 Page 24  
 9

10 **Q. Ms. Dismukes proposes to remove \$420 in charges to the Monroe County Sheriff’s**  
 11 **Office and \$225 for process service for hand delivery of hook-up notices. Is this a**  
 12 **correct adjustment?**

13 A. No. These notices were required to be sent in a manner which provided proof of  
 14 delivery. 1,000 notices were mailed requesting a return receipt, 30 of which were not  
 15 retrieved by the customer from the post office. The Company contacted the County  
 16 Attorney’s Office to inquire how to deliver the remaining notices with the required proof  
 17 of delivery and was advised to use a process server or the Sheriff’s Office. Since the  
 18 Sheriff’s Office charged only \$20 for each such delivery and the process server charged  
 19 \$25 for each such delivery, the Utility elected to use the lower cost alternative. Ms.  
 20 Dismukes’ innuendo that there was a sinister motivation is misleading and must be  
 21 rejected

22 These costs should be allowed.

23 **Q. Ms. Dismukes states that the EDU bonus paid to Doug Carter are “clearly”**  
 24 **designed to enhance revenue. Is this true?**

25 A. All that is clear is that another customer is added to the wastewater system. Whether  
 26 revenue is ultimately enhanced or not is dependant on several variables, such as the  
 27 contribution to total consumption and reductions to revenue due to disconnects. Further,  
 28 additional customers do not directly influence the revenue requirement dollar for dollar,

1           though additional customers tend to reduce rates by spreading the revenue requirement  
2           over a larger customer base.

3           In fact, the bonus paid to Mr. Carter is to compensate him for the additional  
4           administrative work necessary to process customer requests for service. This  
5           compensation is paid to Mr. Carter at \$50 per EDU, paid annually, and was begun in  
6           response to the large influx of customers as a result of the South Stock Island project. It  
7           not only compensates Mr. Carter for his time on this project, but also does so in a way  
8           that encourages him to achieve results and thereby put downward pressure on rates by  
9           increasing the customer base.

10   **Q.    Ms. Dismukes states that she does not “believe” it is appropriate to pass the bonuses  
11           on to the customers. Does she provide any support of her belief?**

12   A.       No explanation or factual evidence is provided in support of her belief. These are  
13           “bonuses” in name only. In addition, the evidence provided in response to Staff Audit  
14           Request No. 7 is ignored by Ms. Dismukes. As discussed in that response, Koby  
15           Minshall was paid a “bonus” of \$1,000 for assisting with emergency repairs for which he  
16           had not been previously compensated. Judy Izzary was paid a “bonus” at year end based  
17           on the performance of her duties related to the utility. There is nothing unusual about  
18           this bonus. It would violate the generally accepted accounting principle of matching of  
19           revenues and expenses to not charge these events to the entity incurring the charge and  
20           Ms Dismukes proposed adjustment must be rejected.

21   **Q.    Does KEI perform any construction related to the connection (Hook-up) of  
22           customers?**

23   A.       No. These activities are performed by developers or plumbers hired by the individual  
24           property owners.

25   **Q.    So what does KEI do regarding customer hook-up?**

1 A. KEI performs inspections at various times to ensure that a good, leak and debris free  
2 connection is made to the vacuum collection system, which includes visual inspection  
3 and pressure testing of the entire connection from the building to the service stub. This  
4 inspection at several points during the connection is especially critical for insuring a  
5 properly operating vacuum system. This activity has been discussed in great detail in the  
6 Utility's Response to OPC Interrogatory 110.

7 **Q. Ms. Dismukes position (Dismukes Testimony, Page 26) is that "inspecting and**  
8 **hooking up customers is part of the contract for which Keys Environmental is paid**  
9 **a management fee". Does this make sense?**

10 A. No. Ms. Dismukes agrees with Staff that KEI is responsible for overseeing and  
11 inspecting new connections, but performs no direct construction. She states that the  
12 "contract specifically provides for added compensation for other functions performed by  
13 KEI" and in the next breath she "recommends" that the function of connecting and  
14 hooking up are part of the contract. Her recommendation is contrary to the very facts she  
15 presents. By agreement of the parties, the intent was to not cover this additional service  
16 under the general contract.

17 **Q. Ms. Dismukes recommends that the Utility Officer Salary, recorded as a**  
18 **management fee be reduced by 50% "under the assumption that on a going**  
19 **forward basis, Mr. Smith will spend less time on utility matters". Does this**  
20 **assumption have any merit?**

21 A. Absolutely not. In fact, Mr. Smith has been paid \$5,000 per month (\$60,000 per year)  
22 or more since 1998. There is absolutely no basis to assume that somehow Mr. Smith  
23 would do something less than he has for the past 9 years. Ms. Dismukes proposed  
24 adjustment is based on a unsubstantiated assumption which is clearly not supported by  
25 the historical facts and must be rejected.

1 **Q. Ms Dismukes feels that Mr. Smith's salary is too high. Is any basis for her "feeling"**  
2 **provided?**

3 A. No. The opinions and recommendations presented are not supported by any  
4 substantive argument or fact. While it is true that Mr. Smith does not maintain a  
5 timesheet, most Corporate officers do not. However, PED\_\_4 demonstrates that Mr.  
6 Smith's salary is the 3<sup>rd</sup> lowest of the 11 comparable sewer only systems regulated by the  
7 Commission reporting an officer's salary expense, based on salary per 1,000 gallons  
8 treated, salary per meter equivalent, and salary per equivalent residential connection. In  
9 fact, Mr. Smith's salary is less than 1/3<sup>rd</sup> the average comparable officers salary for Class  
10 A/B utilities on a comparative basis. (Source: 2006 Annual Reports on file with the  
11 Commission accessed via the Commission Web Site).

12 **Q. Ms. Dismukes implies impropriety by the Utility by restating the findings of the**  
13 **2004 Fall Term Grand Jury. Does this report have any bearing on the instant case?**

14 A. No. The Grand Jury was investigating the Monroe County Board of County  
15 Commissioners, not the Utility. Further, the Response to the Officers and Members of  
16 the 2004 Fall Term Grand Jury by the Monroe County Board of County Commissioners  
17 dated April 30, 2005 presented by Thomas J. Willi, County Administrator, in response to  
18 Grand Jury Recommendation No. 1 is ignored. This Response is attached as Exhibit  
19 PED\_\_5 and demonstrates that the grand jury findings were, in several cases, based on  
20 incomplete or inaccurate knowledge of the activities they were investigating.

21 **Q. Ms. Dismukes also implies impropriety by the Utility by restating the findings of the**  
22 **County's internal Audit of the Board of the County Commission in its**  
23 **administration of the South Stock Island Project. Is this proper?**

24 A. No, in my opinion, it is not. This was an internal audit of the Board of County  
25 Commissioners, not an Audit of the Utility using Generally Accepted Auditing



1 Standards. The Audit was limited in scope for compliance by the Board of County  
2 Commissioners in its role of contract administration and management oversight of the  
3 South Stock Island Project.

4 **Q. Ms. Dismukes alleges (Dismukes Testimony, Page 55) that the Utility's supervision**  
5 **of its subcontractors is improper. Do you agree?**

6 A. No. It would be imprudent for the Utility, or anyone for that matter, to simply turn a  
7 project over to a contractor and wait for its completion. The chain of supervision is  
8 necessary whether building a home or expanding a wastewater treatment plant.  
9 Subcontractors supervise their employees, contractors supervise the subcontractors,  
10 engineers supervise the contractors, and ultimately the property owner, in this case Mr.  
11 Smith, through Green Fairways, has the right and responsibility of oversight and  
12 supervision of all parties working on the project.

13 **Q. An adjustment is proposed to reclassify \$19,624 of below the line income to above**  
14 **the line. Is this proper?**

15 A. No. This is another example of lack of attention to detail. The amount cited as below the  
16 line income of \$19,624 is the 2005 comparative amount in the 2006 Annual Report, Page  
17 F-3(c). To include this amount in 2006 activity in any form is without any accounting  
18 foundation. As discussed in Staff Audit Finding 10, the amount charged to below the  
19 line income in 2006 of \$19,575 is properly included in below the line income under the  
20 NARUC Account 415, Revenues from Merchandise, Jobbing, and Contract Work, as  
21 discussed in the Response to Staff Audit Finding 10, and absent documentation of the  
22 actual expense incurred, an equal amount of expense should be reclassified from  
23 operations expenses to NARUC Account 416, Costs and Expenses of Merchandise,  
24 Jobbing, and Contract Work. Ms. Dismukes presents a proposed adjustment based on an  
25 amount not incurred in the test year, not in accordance with regulatory accounting rules,

1 and is contrary to the requirements imposed on the utility by regulations and must be  
2 rejected.

3 **Q. She next makes an adjustment for “removal of \$2,739 for the double charge on the**  
4 **copier lease, as I [Ms. Dismukes] question how the copier is shared”. Can you**  
5 **explain how the copier is shared?**

6 A. Absolutely. I am surprised that Ms. Dismukes even questions how it is shared. She  
7 has already discussed that employees of the KWGC provide services to the Utility, so her  
8 claim that “the Utility has no employees” makes no sense. Also, as a business  
9 professional, I am fairly certain that copies made on behalf of clients of hers are  
10 identified and charged to those clients, even though that client has no employees at her  
11 location. This type of allocation among multi divisional companies, client service  
12 companies, and commercial copy providers is not uncommon. As it is clearly stated in  
13 Audit Finding No. 12, the copier in question is located in the plant trailer, and is used by  
14 Weiler Engineering and KEI. One-half of the cost of the copier lease is charged to the  
15 Utility and the other half is charged to KEI, and is used for the benefit of the utility in  
16 making copies of the various reports required by various agencies, such as DEP.

17 **Q. Is this amount in question truly a duplicate charge in the amount of \$2,739?**

18 A. No. As stated in Audit Finding No. 12, Staff found that \$2,689.20 of the portion of  
19 the copier lease paid by the Utility was out of period since the total payment charged to  
20 Account 720 of \$5,378.40 was for a 24 month period. Characterizing this as a duplicate  
21 charge is misleading and the amount is clearly wrong and must be rejected.

22 **Q. Ms Dismukes next states that “there was no requirement that the collection system**  
23 **be resleeved” (Dismukes Testimony, Page 87). Is this true?**

24 A. No, It is not. Pursuant to the Monroe County Municipal Code Section 15.5-36, the  
25 sewer collection system is to be free of I&I, as follows:

1                    *Infiltration and inflow (I&I) is the introduction of storm water*  
 2                    *run-off, groundwater or other sources of uncontaminated water into a*  
 3                    *sanitary sewer system. The introduction of I&I is prohibited by*  
 4                    *Chapter 62 of the Florida Administrative Code. All sewer collection*  
 5                    *systems shall be demonstrated to be free of I&I using one (1) of the test*  
 6                    *methods cited under the definition of industry and utility standard or by*  
 7                    *an alternative test method approved by the utility's engineer.*

8                    Additionally, the Utility's engineer affirms that reduction of salt water intrusion is an  
 9                    absolutely necessary part of and prerequisite to the upgrades necessary for AWT  
 10                    operation. Therefore, the I&I experienced by the Utility had to be reduced to reduce the  
 11                    introduction of salt water and was not "excessive" by definition.

12                    **Q. Has the Commission "Consistently reduce[d] chemical and purchased power**  
 13                    **expenses when a utility has excessive infiltration and inflow" (Dismukes Testimony**  
 14                    **Page 87).**

15                    A. No, it has not. In PSC-07-0568-PAA-SU, Key Haven Utilities sought to recover the  
 16                    cost of its I&I program. No reduction for operations expenses was discussed.  
 17                    Additionally, in the Staff Recommendation for Order No. PSC-03-0351-PAA-SU, Key  
 18                    Haven Utilities 2002 Rate Case, Staff specifically stated:

19                    *Adjustments to plant used and useful percentage and*  
 20                    *operating expenses such as power and chemicals could be*  
 21                    *recommended because of the excessive infiltration determination.*  
 22                    *However, in this case consideration should be given to the age of the*  
 23                    *system, the severe conditions the facilities are exposed to with the*  
 24                    *saltwater and high ground water environment, and the recent*  
 25                    *improvements done to the collection system to help reduce the problem.*  
 26                    *Staff sees no benefit to penalizing the utility by further reducing used*  
 27                    *and useful or expenses based on excessive infiltration when the*  
 28                    *problem is being addressed satisfactorily.*

29                    Key Haven and KW Resort collection systems are of a similar age, the Utility's  
 30                    having been organized in 1971 and 1972, respectively. The systems also operate in the  
 31                    same corrosive environment.

32                    **Q. Ms. Dismukes believes that there is a "mismatch between the test year proforma**

1 **level of expenses and the test year level of revenue”.** (Dismukes Testimony, Page 91)

2 **Is there a mismatch between these two amounts?**

3 A. Of course, to some extent. Test year revenue is historic. The only expense it can be  
4 matched to is also historic. Proforma expenses are prospective in nature, relating to a  
5 point in the future. In the instant case, the point at which the AWT project is complete,  
6 and for the benefit of existing customers.

7 A general rate case is not limited to a single issue. In the instant case, several events  
8 are occurring concurrently:

- 9 1) Completion of the conversion to AWT  
10 2) Connection of customers who have committed to connect during 2007  
11 3) Conversion from a flat rate billing structure to a base/consumption rate  
12 structure.

13 To ignore the impact of these known events for the subsequent period would not be  
14 reflective of known operations to be experienced during the period of time rates will be  
15 in effect. This is required by statute. The expenses included in the proforma adjustments  
16 are offset by the proforma increase in the number of customers and proforma  
17 consumption of those customers, therefore matching of revenue and expense is  
18 maintained. While it is true that reducing the expenses related to the proforma customers  
19 would reduce the revenue requirement, removal of the proforma customers in the rate  
20 development calculation would also be necessary to maintain the matching between  
21 revenue and expense. This would result in higher rates to existing customers than has  
22 been calculated using proforma expenses and proforma customers and consumption.

23 Interestingly, Ms. Dismukes proposes in her testimony (Dismukes Testimony, Page 57)  
24 to increase revenue in the test year, incorrectly reducing the final revenue requirement  
25 *using proforma customers and gallons*. Now she proposes to reduce the final revenue

1 requirement by reducing expenses by related to proforma customers and gallons. The  
2 rationale for Ms. Dismukes proposed adjustments are contrary to each other and must be  
3 rejected.

4 **Q. Ms Dismukes claims that this case is complex. Do you agree?**

5 A. At the time of filing, no. But the unprecedented volume of document requests and  
6 interrogatories for this 1,500 customer utility, the piling on of those requests, and the  
7 duplication of requests and interrogatories by OPC have made the case complex and  
8 expensive beyond anything that could have been envisioned when the case was filed.

9 **Q. Were there not “significant and questionable affiliate relationships” of the**  
10 **Company?**

11 A. No. While Mr. Smith has affiliation with several company’s, only two of those  
12 company’s have a continuing relationship with the utility, Green Fairways and Key West  
13 Golf Club, and those have been disclosed in the Utility’s Annual Reports. Three other  
14 entities, WS Utility, the holding company for this Q-Sub Utility and 900 Commerce  
15 Associates and Mr. Smith’s Law Firm (SHB) have had minimal activity, all of which had  
16 previously been disclosed in the Company’s Annual Reports, MFR’s and/or to Staff in  
17 response to Audit Requests. These transactions were not complex, generally have not  
18 changed in character or amount since 1998 or were one-time events. Mr. Smith’s son in  
19 law owns the company providing operations support (KEI) to the Utility as well as other  
20 unrelated parties to a small extent in this limited geographic area. These transactions  
21 were no more complex than any third party vendor providing the same services.  
22 Certainly, as has been pointed out, these amounts can, and should, be questioned, as with  
23 any vendor providing services to the Utility, but there is nothing complex in these  
24 transactions. This is just the use of buzz phrases and innuendo to support otherwise  
25 weak and unfounded positions.

1 **Q. Was the Grand Jury convened to investigate the Utility and its affiliates?**

2 A. No. In fact, the Grand Jury was convened to examine the Monroe County  
3 Commission' administration of the South Stock Island Project, of which the Utility is a  
4 party. All findings and conclusions were directed at the County Commission. Contrary  
5 to Ms. Dismukes testimony, the Grand Jury did not mention anything about money  
6 transfers between the Utility Company or its Affiliates. The report only states that a  
7 relationship exists. This reason for "complexity" is completely false and misleading.

8 **Q. Does the fact that rates have not been established since 1985 make this a complex**  
9 **case?**

10 A. Generally, no. For the consultants and for the Commission staff, as well as the Utility  
11 staff, it does take more time to prepare and audit the MFR's for a 20 year time frame as  
12 opposed to, say, a five year time frame. This is not unusual for a utility of this age, and  
13 both the consultants and the Commission Staff have dealt with this in the past. In the  
14 instant case, no historic records are available prior to 1998, and the Utility submitted an  
15 Original Cost Study from its engineers, so from an audit perspective, there is only an 8  
16 year period to examine, and then the Original Cost Study being reviewed by engineers.  
17 Since Staff has performed the Audit work, OPC merely has to look at transactions it  
18 determines are significant. For OPC to do otherwise would be a duplication of work  
19 already performed and unfair to the taxpayers of the State of Florida. Therefore, there is  
20 nothing that rises to a level of significance in this case to make it more complex than any  
21 other utility rate case for a company of its size and age.

22 **Q. Can you explain what you mean by OPC "piled on" its interrogatories and**  
23 **document requests?**

24 A. Yes. The Company filed its MFR's on August 3, 2007. Commission Staff began  
25 their Audit on or about August 20, 2007, and the MFR's were considered officially filed

1 September 19, 2007. The first six Commission Staff Audit Requests (consisting of 42  
2 subparts) were submitted between August 20, 2007 and September 18, 2007, with due  
3 dates between 7 and 10 days past the date of the request. On September 17, OPC  
4 submitted its First Interrogatories (Numbered 1 – 82) and First Document Requests  
5 (Numbered 1 – 70). While the Utility began assembling these, they were revised, and  
6 Revised First Interrogatories Numbered 1 – 75 (consisting of 165 Interrogatories and  
7 Subparts) and First Revised Document Requests Numbered 1-62 were submitted  
8 September 27, 2007. These were followed up a week later by OPC's Second Document  
9 Request 63 – 75 and OPC's Second Interrogatories 76 – 80 (consisting of 17  
10 Interrogatories and Subparts). All of these having a due date 30 days after service,  
11 thereby being due on October 27, 2007 and November 5, 2007, respectively. At this  
12 same time, Commission Staff submitted its Audit Requests Numbered 7 through 37,  
13 consisting of 61 subparts, with due dates between October 2, 2007 and October 23, 2007,  
14 resulting in an incredible amount of information to be produced in a very short period of  
15 time. These extreme obligations were further complicated by the fact that there were  
16 many duplications of requests for information previously provided. Twenty one of the  
17 PODs or interrogatories submitted requested information duplicating what Staff had  
18 requested either wholly or in part. Several duplications were made just between the first,  
19 second and third sets of requests. Even these duplications must be addressed, researched  
20 and responded to, resulting in increased time of the Utility Staff and consultants. This all  
21 while trying to keep current with utility operations and customer service. Approximately  
22 a month later, OPC served its Third Set of Discovery (Requests for Production No. 77-  
23 93) and Interrogatories No. 81-97 (47 Interrogatories and Subparts). A month after that,  
24 OPC served its Fourth Set of Discovery (Requests for Production No. 94-116) and  
25 Interrogatories No. 98-108 (17 Interrogatories and Subparts). And fifteen days later,

1 OPC served its Fifth Set of Discovery (Requests for Production No. 117-126) and  
2 Interrogatories No. 109-115 (41 Interrogatories and Subparts).

3 **Q. Citizens are recommending a rate decrease, based on the work of Ms. Dismukes,**  
4 **citing this as a rationale for disallowance of rate case expense. Is this assessment**  
5 **reasonable?**

6 A. No. OPC has used the carte blanche of its position to present a case where it has  
7 asked the Utility for a mountain of information, which it has used to develop a flawed  
8 revenue requirement based primarily on innuendo, lack of application of case law and  
9 flawed application of general accounting and regulatory rate making guidance to develop  
10 a reduction of rates. Citizens revenue requirement is based on phantom sources of  
11 revenue from the misapplication of depreciation and a return on negative rate base, as  
12 well as the miscalculation of the regulatory assessment fees associated with the revenue  
13 requirement which Citizens have calculated. As a result, the Utility will be collecting  
14 less in regulatory assessment fees than it will have to remit to the Commission under Ms.  
15 Dismukes proposal.

16 The Utility and its consultants have spent considerable time and effort in attempting to  
17 respond to OPC voluminous data requests and have demonstrated that the request for a  
18 rate increase is fair and reasonable for the economic climate in which it operates, and the  
19 extraordinary amount of rate case expense it has incurred is a direct result of OPC's  
20 involvement in this case. This is demonstrated by the analysis of actual rate case  
21 expenditures by classification at Exhibit PED\_\_6, which shows that ~~53~~37% of the cost  
22 (\$133,341) of this rate case is directly related to responding to the discovery propounded  
23 by OPC. Additionally, the cost of preparing this rebuttal testimony has been greatly  
24 increased due to the necessity of responding to the unreasonable adjustments and  
25 allegations put forth by Ms. Dismukes in her testimony. Under the circumstances, the



1 rate case expenses incurred by the utility are a necessary cost of this proceeding and Ms.

2 Dismukes proposed adjustment must be rejected.

3 **Q. Are adjustments to the requested revenue requirement necessary based upon Staffs**  
4 **Final Audit Report?**

5 A. Yes. On December 28, 2007, the Utility filed its responses to Staffs Audit Report,  
6 consisting of 19 findings. The Utility's Response to the Staff Audit Report is attached as  
7 Exhibit PED\_\_\_7. In summary, the Utility agrees that two of those findings, AF-6  
8 Retirements of Proforma Plant, and AF-8 CIAC have no impact on the filing. The Utility  
9 also agrees with 9 of those findings; AF-4 Franchise Fees, AF-5 Offset to Land Entry,  
10 AF-9 Temporary Cash Investments, AF-12 Office Expense, AF-13 Non Recurring  
11 Expenses, AF-14 Telephone Charges, AF-16 Political Expenses, AF-17 Allocation from  
12 Key West Golf Club, and AF-18 Permit Fees. The Utility also agrees in part with AF-19  
13 Rental of Beachcleaner, but disagrees as to the NARUC account properly charged, and  
14 therefore the depreciation rate used.

15 **Q. Therefore, the utility disagrees with a few of Staffs Audit Findings. Can you discuss**  
16 **each of these in greater detail?**

17 A. Yes. Detailed discussion of the basis for the Utility's disagreement is contained in  
18 Exhibit PED\_\_\_8. I will summarize the some of the Utility's reasons here:

19 AF-1 Cost Study: The Utility disagrees for two reasons. First, the calculation of  
20 the reduction of rate base is flawed because the Auditor did not take into account  
21 certain reductions in the balances of CIAC with occurred between 1984 and 1997  
22 and the auditor did not calculate the going forward effect of removing plant and  
23 CIAC from rate base in the calculation of the impact of Accumulated  
24 Depreciation and CIAC Amortization between 1999 and 2006, which causes an  
25 overstatement of the reduction to rate base. Second, the utility has performed an

1 Original Cost Study, attached as Exhibit PED\_\_\_7. Rule 25-30.140(1)(r)  
2 Original Cost allows the use of an original cost study in the event the historic cost  
3 of an asset that is already in utility service cannot be determined. Further,  
4 Generally Accepted Auditing Standard of Existence/Occurrence, that the  
5 property, plant, and equipment reflected in the account exists and is physically on  
6 hand and property, plant, and equipment transactions occurred and pertain to the  
7 entity. It is obvious from physical inspection that the plant in question exists and  
8 is in service; therefore, only the value is at issue. The engineers cost study  
9 addresses that issue.

10 AF-7 Accumulated Depreciation: Staff proposes to adjust depreciation  
11 retroactively, violating the rule against retroactive rate-making. Also, CIAC  
12 amortization was mistakenly recalculated by staff on the presumption that the  
13 utility left out certain accounts in the development of the composite rate in error.  
14 In fact, the Utility correctly calculated the composite rate by excluding general  
15 plant in its calculation as prescribed by Rule 25-30.140(9)(b). Therefore, in  
16 accordance with the Rule and the facts, this adjustment is inappropriate.

17 Andrew T. Woodcock

18 Q. **Have you read the testimony of Andrew T. Woodcock?**

19 A. I have.

20 Q. **On Page 5 of his testimony, Mr. Woodcock states that "...the MFR's state the**  
21 **expansion of the WWTP to 0.499 mgd was required by Monroe County in 2001"**  
22 **Is this true?**

23 A. No. There is no such statement in the MFR's or anywhere else in the filing for that  
24 matter. What the Utility said (MFR Page F-6, Lines 11, 12, and 13) is "Monroe  
25 County contracted with KW Resort Utilities in 2001 to provide wastewater treatment

1 for Stock Island for environmental reasons. KW expanded its wastewater treatment  
2 and collection system *for vacuum operation*” (emphasis added). Nowhere does that  
3 statement say that the expansion to 0.499 mgd was required in 2001. In fact, part of  
4 the vacuum collection system are appurtenances and control structures at the  
5 wastewater treatment plant. As such, its wastewater treatment facilities were  
6 expanded for vacuum operations. This is a complete misrepresentation of the facts.

7 **Q. Mr. Woodcock states that “none of these contributions have funded the**  
8 **expansion capacity of the WWTP...” Is this true?**

9 A. No, far from it. Mr. Woodcock apparently does not understand the purpose and  
10 basis for the development of the Utility’s service availability charges. Further, Mr.  
11 Woodcock ignores Order 13862 where \$618,663 of CIAC was imputed on used and  
12 useful plant based on “...a service availability charge that is calculated to recover  
13 *75% of the net plant in service* over an approximate four-year development and sales  
14 period...” and “...Consequently, we find that imputation of 75% of the plant to the  
15 [CIAC] account...” (Emphasis added)

16 **Q. What is the purpose of Service Availability Charges, or in this case the Capacity**  
17 **Reservation Fee?**

18 A. This Utility has a single Service Availability Charge, actually called a Plant  
19 Capacity Charge in the Company’s Tariff (Sheet No. 18). Service availability charges  
20 are collected to reimburse the utility for the cost of existing plant and/or estimated  
21 plant required to provide service and which will result in a contribution rate of  
22 approximately 75% contributed/25% invested at build-out. Generally, when a Utility  
23 has only a single charge, the “capacity” referred to includes both the collection system  
24 and the treatment system, essentially, the system as a whole. More recently, separate  
25 charges for lines and treatment capacity have been calculated for utilities applying for

1 changes in their service availability policy.

2 **Q. How are service availability charges determined?**

3 A. Initial service availability charges are developed based on the estimated cost and/or  
4 existing cost of the system and cost of expansion. This is then compared to the  
5 estimated growth rate to determine the number of years to buildout. The service  
6 availability charge is then determined by calculating what the rate should be after  
7 including the effects of depreciation of plant in service and amortization of the CIAC  
8 being collected based on the absorption rate of the customers being added to achieve a  
9 75% contribution level at build-out. Since the utility has no customers at the time the  
10 cost rates are developed, and cannot have any customers until the initial investment is  
11 made, by their nature, service availability charges are collected for existing or  
12 expected investment to serve customers.

13 **Q. Is there anything in the Utility's tariff that would indicate that the \$2,700 per**  
14 **ERC is not intended to relate to the WWTP?**

15 A. No, there is not.

16 Kathy L. Welch

17 **Q. Have you read the testimony of Kathy L. Welch?**

18 A. Yes, I have.

19 **Q. In her discussion of Audit Finding No. 1, Ms. Welch discusses that the "new**  
20 **owners did not obtain the books and records from Citicorp". Is this true?**

21 A. In essence, it is true. The Utilities present owner did attempt to get Citicorp to  
22 provide the required information on several occasions. Citicorp, as receiver, stated  
23 that the records were not available.

24 **Q. In her discussion of Audit Finding No. 1, Ms. Welch states that "accumulated**  
25 **depreciation on the [unsubstantiated] additions is \$330,066.33". Is this true?**

1 A. As discussed in the Utility's response to Audit Finding No. 1, and using the  
2 auditor's calculation through 1997, this is the amount of depreciation on  
3 unsubstantiated additions through 1997. However, the adjustment to rate base in the  
4 instant case should also have included the depreciation on those additions through the  
5 test year ended 2006, therefore, the total reduction to accumulated depreciation  
6 related to unsubstantiated additions should be \$1,022,614, a difference of \$692,548,  
7 resulting in an understated rate base by the auditors.

8 **Q. Does this error extend to CIAC Amortization as well?**

9 A. Yes, it does. The auditor calculated the increase to rate base for amortization of  
10 unsubstantiated CAIC additions through 1997 of \$32,219. Additional CIAC  
11 amortization related to unsubstantiated CIAC additions for 1998 through 2006 is  
12 \$25,707, for a total amount of CIAC amortization for unsubstantiated additions of  
13 \$57,296 through the end of the test year.

14 **Q. In her discussion of Audit Finding No. 3, Ms. Welch states that "Related party  
15 charges to a utility require additional review to determine whether the related  
16 party bills the utility at actual cost..." Do you agree?**

17 A. No. The standard to be used is whether the related party costs and prices are at fair  
18 market value, as established by the Supreme Court of Florida:

19 "We do find, however that the PSC abused its discretion in its  
20 decision to reduce in whole or in part certain costs arising from  
21 transactions between GTE and its affiliates, GTE Data Services and  
22 GTE Supply. The evidence indicates that GTE's costs were no  
23 greater than they would have been had GTE purchased services and  
24 supplies elsewhere. The mere fact that a utility is doing business with  
25 an affiliate does not mean that unfair or excess profits are being  
26 generated without more. Charles F. Phillips, Jr., The Regulation of  
27 Public Utilities 254-255 (1988). We believe the standard must be  
28 whether the transactions exceed the going market rate or are  
29 otherwise inherently unfair. See id. If the answer is "no," then the  
30 PSC may not reject the utility's position. The PSC obviously applied  
31 a different standard, and we thus must reverse the PSC's

determination of this question.” <sup>642</sup> GTE Florida, Inc. v. Deason, 643 So.  
2<sup>nd</sup> 545 (Fla. 1994).

Exhibit PED\_\_2 demonstrates that the costs charged by the affiliate are less than the same costs charged by a unrelated operations company, Synagro, to an unrelated neighboring utility, Key Haven, and therefore do not exceed the “going market rate” in this economic climate.

**Q. In the recalculation of depreciation and CIAC amortization to comply with the present Guideline rates, the auditor recalculates depreciation for prior years. Is this appropriate?**

A. No. Looking back and recalculating depreciation violates the prohibition against retroactive ratemaking, as discussed in Docket No. 980245-WS:

“Pursuant to Rule 25-30.110(5)(d), Florida Administrative Code, the utility certified that its annual reports from 1980 to 1991 fairly presented the financial condition and results of operations for each of those years. Staff believes that it is inappropriate to capitalize these amounts several years after the fact. The Commission has relied on these reports for the purposes of monitoring the utility’s earnings level and is precluded by the prohibition against retroactive ratemaking from going back and looking at those prior years to determine if overearnings existed. In the same manner, the utility should be precluded from taking previously expensed items from prior years and changing its accounting treatment.”

In the instant case, the auditor is revisiting prior years and modifying the earnings for those years. While the utility disagrees that guideline rates were implemented incorrectly, it agrees on a prospective basis depreciation rates can be changed if the Commission so Orders.

**Q. Why do you disagree with the auditor’s assessment that guideline rates were implemented incorrectly?**

A. I agree that Rule 25-30.140(3)(b) states that “Guideline rates, if implemented for any account, must be implemented for all accounts”. However, 25-30.140(3)(a) states

1 “A utility shall also implement the applicable guideline rates for any new plant placed  
 2 in service”. This seems at odds with 25-30.140(3)(b), since the addition of any new  
 3 property would automatically require the utility to implement guideline rates for all  
 4 accounts. I don’t believe that this is the intent of the Rule. New plant is depreciated  
 5 at the appropriate guideline rate in effect at the time the plant is placed into service;  
 6 preexisting plant continues to be depreciated at the historic rate previously Ordered or  
 7 approved by the Commission. To do otherwise would deny the utility cost recovery  
 8 of depreciation in its rates.

9 **Q. Do you agree that the composite rate for the amortization of CIAC should be**  
 10 **recalculated using total plant?**

11 A. No. Rule 25-30.140(9)(b) states “Where CIAC records are not kept by sub-  
 12 account, a composite depreciation rate for total plant, excluding general plant, shall be  
 13 applied to the entire CIAC amount.” Additionally, CIAC is amortized over the life of  
 14 the related assets. In the instant case, the Utility collects a plant capacity charge, the  
 15 calculation of which generally excludes general plant. Therefore, the composite rate  
 16 calculation excludes general plant in the development of the rate to maintain the  
 17 matching to the lives of the related assets.

18 **Q. Do you have anything further to add?**

19 A. Yes. The utilities full responses to the audit report are contained at Exhibit PED\_\_\_8.

20 **Q. Can you clear up the confusion regarding the so called “hook up” fee of \$350**  
 21 **and \$450?**

22 A. While this has been discussed at length in response to Audit request 18, OPC  
 23 Document Request No. 50, OPC Interrogatory No. 72, and OPC Interrogatory No.  
 24 100, I will take the time to discuss it again.

25 As noted previously KEI inspects and tests the connection of new customers

1 plumbing to the vacuum system. This is a multi-step process described in response to  
2 Audit Request No. 18, OPC Document Request No. 50, and OPC Interrogatory 110  
3 and referred to earlier in my testimony. Upon completion of the Stock Island Vacuum  
4 System, the Company believed it would connect all Stock Island customers  
5 (approximately 1,500 new customers) within a year, all of which would require  
6 detailed inspection and testing prior to actual hook-up.

7 As discussed in Audit Request No. 18, KEI had to gear up for this volume of  
8 new work, and was paid \$360,000 over 3 years (2004 through 2006) to develop,  
9 implement and monitor the process of connecting new customers. This amount was  
10 recorded as a deferred asset and amortized as each new connection was inspected and  
11 added to the system. KEI's billings for this work were added to this account, to arrive  
12 at an estimated charge of \$350 per connection for the inspection and connection  
13 process. In 2006, the amortization rate was increased to \$450 to match the current  
14 charge from KEI to provide these inspection services to each new customer.

15 The sloppy interchange of the terms "hook-up" and "connection fees" was  
16 used to describe these amounts and apparently led to the confusion. The Utility has a  
17 tariffed service availability charge of \$2,700, also sometimes called a "hook up" fee  
18 which is charged for each ERC being connected. This is the only amount which is  
19 collected from the customer.

20 Rate Case Expense

21 **Q. Is there anything else you need to address in your rebuttal testimony at this**  
22 **time?**

23 A. Yes. I need to address the issue of actual and estimated rate case expense.  
24 Total actual and estimated rate case expense through hearing was filed is \$570,516. I  
25 have prepared Exhibit PED \_\_\_9, which shows the actual and estimated expense at



1 this time. Rate case expense is approximately 50% higher than the estimate shown in  
2 the MFR, due principally to OPC's significant involvement in this case. Final  
3 expense may be substantially higher depending on the extent to which the Company  
4 must provide answers to discovery over and above the already significant discovery  
5 propounded in this case. In accordance with general Commission practice and  
6 procedures, we will furnish an updated exhibit of actual and estimated rate case  
7 expense as a late filed exhibit after hearing.

8 **Q. Does this conclude your testimony at this time?**

9 A. Yes it does.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 BY MR. DETERDING:

2 Q Okay. Mr. DeChario, would you please provide a  
3 summary of your rebuttal testimony?

4 A Yes, sir. My rebuttal testimony is in response to  
5 OPC and staff's testimony which proposes adjustments contrary  
6 to regulatory accounting, ratemaking and legal precedent.  
7 These could be categorized into four major areas.

8 First, the staff and OPC's position that the services  
9 provided by a related party should be provided at actual cost.  
10 This -- correction. I'm sorry. This position is contrary to  
11 case law in GTE v. Deason, which states that the standard to be  
12 used is whether the goods and services are provided at the fair  
13 market value.

14 I examined the costs incurred by Key Haven Utility, a  
15 smaller neighboring wastewater only utility operating in the  
16 same economic environment for services provided by its  
17 unrelated third party operator Synagro. Key Haven also has no  
18 employees.

19 Synagro also provided these services for K W Resort  
20 Utilities during 2001 and 2002, further enhancing this  
21 analysis. As shown on Exhibits 2 and 3, the overall cost of  
22 operations and the cost of chemicals are less than the cost  
23 experienced by Key Haven on an equivalent basis, that being on  
24 a cost per 1,000 gallons treated, a cost per meter equivalent  
25 and a cost per equivalent residential connection.

1 I further examined officer salaries to determine the  
2 fair market value of the services provided by Green Fairways,  
3 whose management fee serves as the surrogate for officer  
4 salaries. While there are a few wastewater only utilities that  
5 report an officer's salary, Mr. Smith's salary is approximately  
6 two-thirds of reporting Class A and B utilities on an average  
7 basis and significantly less than all reporting utilities on an  
8 average basis. In fact, only two wastewater only utilities  
9 that report an officer's salary is less than K W's on an  
10 equivalent basis.

11 Finally, KDI's charges are less than the bids  
12 submitted by U.S. Water for the same, and actually somewhat  
13 less than the services that are provided by KDI and by Air Vac  
14 for operation of the Air Vac sewer system. As a result, the  
15 services provided by KDI are at or below fair market value and  
16 should be allowed.

17 Next are the charges by KDI in performing the hookup  
18 inspections required for connection to the vacuum system in  
19 order to maintain the integrity of the vacuum system.  
20 Contractually KDI has the responsibility to supervise these  
21 connections for which it bills KWRU separately. From the  
22 period 2003 to 2005 it was \$350 per connection and from 2006  
23 forward it was \$450 per connection. KWRU properly capitalizes  
24 these costs of inspection, inspecting these service  
25 connections, which is proper regulatory accounting. There is

1 nothing in the contract that specifies that the cost of  
2 inspection is included in the cost of operation, and the  
3 contract specifies this is one of the many responsibilities of  
4 KDI.

5           Third, regarding the used and useful calculation and  
6 the reservation of capacity from the collection of CIAC through  
7 its collection of the plant capacity charge, which is to  
8 provide the utility with its rule mandated 75 percent  
9 contribution level for utility plant in service. The majority  
10 of these customers already exist and are required to connect by  
11 ordinance, though at the end of 2006 they did not. These same  
12 customers also had their capacity charges paid in advance by  
13 Monroe County. And they're supposed to go through Monroe  
14 County in order to get the actual recognition that they  
15 themselves are paying those, and there's a whole communication  
16 issue with that.

17           Finally, at issue is the issue of rate case expense,  
18 over 36 percent of which is related to responding to the  
19 overwhelming and sometimes duplicative discovery propounded by  
20 OPC, which OPC has used to develop the revenue requirement  
21 which does not cover basic operations expense, never mind  
22 property and regulatory taxes. The utility incurred costs of  
23 filing requests for a reasonable revenue to continue operating  
24 as a going concern while complying with mandated environmental  
25 compliance costs. The rate case expenses were incurred in

1 attempting to provide timely response to staff and OPC's  
2 requests for additional information and discovery and should be  
3 allowed.

4 There are several other issues addressed in my  
5 testimony, but due to the time limitations I really didn't  
6 prepare to discuss those in my summary.

7 MR. DETERDING: I'd tender the witness for cross.

8 CHAIRMAN CARTER: Thank you.

9 Mr. Burgess.

10 MR. BURGESS: Thank you.

11 CROSS EXAMINATION

12 BY MR. BURGESS:

13 Q Mr. DeChario, first I'm looking at the Prehearing  
14 Order and I see that you're being offered in cross, in rebuttal  
15 testimony to respond on Issues 2 through 40. And when I look  
16 at your testimony, I see that there are a number of those  
17 issues that are inclusive there that your prefiled testimony  
18 does not address. And so I want to get straight because I  
19 don't want to ask any questions beyond the scope of your  
20 testimony that's filed. So I want to first make sure that I am  
21 accurate when I, when I, when I, in my understanding of what  
22 issues you did not address, so I'm going to ask you some  
23 specific questions.

24 Issue 3, the decommissioning of jail facilities, I  
25 don't see anything in your rebuttal testimony that addresses

1 this. Am I correct?

2 A I get a little confused because of all the responses  
3 to the various document requests and what not.

4 Q Right. And that's sort of where I am too. And I  
5 don't want out of that confusion to start going into issues  
6 that are beyond the scope of your testimony.

7 A One moment. It does not appear to be directly in my  
8 direct rebuttal testimony nor in the rebuttal testimony I  
9 proffered in response to staff's testimony wherein Ms. Piedra  
10 provided the audit report. And in response to her testimony I  
11 provided our audit responses.

12 Q Okay. So neither in the rebuttal testimony that you  
13 filed nor the responses, KWRU's responses to the audit findings  
14 which are attached to your rebuttal testimony, in neither of  
15 those is there any specific response on this issue?

16 A That is correct.

17 Q Am I correct also that Issue 7, the, Mr. Chris  
18 Johnson's moving expenses, which is also a -- well, is also not  
19 addressed in your rebuttal testimony?

20 A That is correct.

21 Q Am I correct also that Issue 11, the \$422 for the Key  
22 West Citizens ad, that there is not anything in your prefiled  
23 rebuttal testimony?

24 A That's correct.

25 Q Am I correct that in Issue 12, which there are -- if

1 you look at Issue 12 in the Prehearing Order, that you see it's  
2 got multiple parts. And if -- take your time. I did this, I'm  
3 afraid, last night with Mr. Smith, and I don't intend to do it  
4 with you, that is rush you through it. So take your time.

5 Okay. Have you looked at Issue 12? And that's  
6 basically two parts and that you do -- am I correct that you do  
7 have rebuttal testimony explicitly on the first part, but that  
8 with regard to the change orders, that is the second part of  
9 OPC's position, you do not have rebuttal testimony?

10 A That is correct.

11 Q Would you -- and I appreciate, Mr. Deterding, you  
12 supplying him a copy of the Prehearing Order.

13 Would you look at Issue 20, please? Again, we have  
14 multiple parts starting with the first part of our position  
15 about the historical billing and the use of the Keys Aqueduct  
16 Authority billing information. Am I correct that your rebuttal  
17 testimony does not address that issue?

18 A I suppose to be very specific I addressed the billing  
19 data in response to something that Ms. Dismukes did, and I  
20 guess I did not address that specifically as part of the  
21 revenue requirement, feeling that the MFRs stood on their own.

22 Q Okay. And is it correct also that number two there,  
23 the trailer that's owned by KWRU and the rental associated with  
24 it, is not something that you addressed on your rebuttal  
25 testimony?

1 A I don't see it, so I guess I did not.

2 Q Okay. And thank you. And there is a third part to  
3 that that I believe you did specifically rebut.

4 If I could ask you to turn your attention to Issue  
5 26. And it's my understanding that you have, you do not have  
6 anything in the body of your rebuttal testimony on this but  
7 that you have a response to this in response to Staff Audit  
8 Finding 13 which addresses this question.

9 A You're saying 13?

10 Q Yes. I believe that -- well --

11 A The utility agrees?

12 Q Beg your pardon?

13 A The utility agrees?

14 Q Yeah.

15 A Yeah. Okay.

16 Q But that's an agreement with the staff audit finding.  
17 Did not the staff audit finding defer \$20,000 of that amount  
18 and remove that from the test year expenses?

19 A Can you direct me -- oh, here it is. Here are the  
20 amortization, Stock Island. This charge is probably not  
21 recurring and may need to be amortized over five years. The  
22 yearly amortization would be \$5,000 and the deferred amount  
23 would be 20. Yes.

24 Q And that's what, you agree that's what the company  
25 agreed to in that audit finding?



1 A Yes.

2 Q And there's nothing in the rebuttal testimony that  
3 addressed it that's inconsistent with that.

4 A That's correct.

5 Q I would ask you to look at Exhibit, at Issue 28,  
6 please, and this is another multiple part exhibit. And I'm  
7 going to -- this issue, I'm going to represent to you that this  
8 issue involves findings that the staff audit team found and put  
9 into their report, Staff Audit 13, and I'm going to ask you to  
10 take a look at that. And, Commissioners, this again is an  
11 exhibit that already is in evidence. I just, I'd like to  
12 distribute it just so you'll have just that sheet of paper and  
13 not have a big bundle.

14 And if I could get you to look at what is the fourth  
15 sheet back, and it's Page 13 of the staff audit finding. Page  
16 13 is at the bottom. It's the fourth sheet back of what we  
17 distributed. These are the issues that are, that specify  
18 what's at stake in the multiple part issue on Issue 28, are  
19 they not?

20 A I'm sorry. Would you repeat that?

21 Q Yes. Are the issues that are identified, that are  
22 being considered, that are going to be, have to be considered  
23 by the Commission in Issue 28, are they not the same issues  
24 that are brought up that are initiated from Staff's Audit  
25 Finding 13 as demonstrated, Staff's Audit Finding 3? I'm

1 sorry. Staff's Audit Finding 3 that was distributed that's on  
2 Page 13.

3 A Yes.

4 Q Okay. I'd like to go through them in the order in  
5 which they appear in OPC's position in Issue 28, and, again,  
6 with understanding what you have in your testimony in response  
7 to these.

8 The first one is the 13, \$1,313 for lab testing.

9 A Yes.

10 Q I couldn't find anything in your rebuttal testimony  
11 that rebutted that.

12 A There is nothing.

13 Q Okay. In response to number two, the \$15,000  
14 expensed in sewer hookup fees, I couldn't find anything in the  
15 rebuttal testimony that rebutted that.

16 A No. We agreed with the capitalization.

17 Q Okay. Thank you.

18 With regard to number three, \$51,663, that is subject  
19 to one of the stipulations that we've all agreed to, is it not?

20 A Yeah. That's, I believe, on the previous page, Page  
21 12.

22 Q Okay. And number four was not, number four, the  
23 items totaling \$3,077 that were going to be recovered by third  
24 parties, I couldn't find anything in your rebuttal testimony.  
25 Do you have anything in your rebuttal testimony that addresses

1 that?

2 A No, I do not.

3 Q Is there anything in the company's response to the  
4 staff audit that addresses any of those items specifically?

5 You have a significant response to Staff Audit Finding Number  
6 3, but I could find nothing that addressed these particular  
7 items.

8 A That's correct.

9 Q Okay. If I could direct your attention to Issue 30  
10 then, you've got rebuttal testimony on Page 13 that deals with  
11 some of this. And, again, if you'll allow me to direct you to  
12 the OPC position, the Issue 1, and trying to separate this out,  
13 Issue 1 you explicitly rebutted in your testimony; correct?

14 A Yes.

15 Q But Issue 2, for Issue 2 you did rebut (I), the  
16 moving expense -- you did not -- let me back up.

17 You did not rebut the issue that was raised about the  
18 expenses for driving a car from Illinois to Key West, did you?  
19 Is that an issue that you addressed in your rebuttal?

20 A No. Well, and I guess I'd like to say at this point  
21 that when I was preparing my rebuttal testimony, I didn't have  
22 an issues list.

23 Q Oh, I understand.

24 A I was, I was trying to pick my way through  
25 Ms. Dismukes' testimony and Mr. Woodcock's testimony and the

1 staff auditor's testimony and trying to pull out pieces. So by  
2 the time the issues came out -- I didn't know they were issues  
3 at the time I was preparing testimony.

4 Q I appreciate that. I appreciate the explanation.

5 But, nevertheless, this is beyond the scope of your  
6 number two here. The charges for the moving expenses for  
7 moving the car from Illinois to Key West --

8 A That's correct.

9 Q -- is not something you rebutted, and the donation to  
10 the Rotary Club and the Blossoms in Paradise also is not  
11 rebutted.

12 A That is correct.

13 Q Okay. All right. Thank you. I appreciate that.  
14 And now that gives me a better opportunity to stay within the  
15 scope of your rebuttal testimony. These issues are not  
16 rebutted and so I can proceed from there.

17 Now I asked you in direct whether there were any  
18 changes to the MFRs that you had to make. And I'm trying to  
19 understand, did you not make, did you not agree with a number  
20 of staff audit findings that adjust the company's revenue  
21 increase need?

22 A Yes.

23 Q And your -- but that does not affect any of the MFRs?

24 A Well, I have to explain this is the first time I've  
25 sat in this seat.

1 Q Okay. Okay. Well, then --

2 A And so when you asked the question, I was looking at  
3 in 2006 at the end of the test year, which was the period for  
4 which those items were, the MFRs were prepared, and not knowing  
5 what I know today --

6 Q Uh-huh.

7 A -- I didn't think I could change the MFRs. So on  
8 that basis I would not change the MFRs.

9 Obviously, you know, we have some stipulations  
10 between you and staff and us that we've agreed to and, you  
11 know, those would change the revenue requirement.

12 Q Okay.

13 A So in that regard, yes, there would be changes made.  
14 But on the, on the basic MFRs as they were presented initially  
15 outside of OPC or staff's document request number four there  
16 were no changes to those basic numbers.

17 Q Right. But if you were to actually file today MFRs  
18 which used that same source data and your understanding of some  
19 of the changes that needed to be made --

20 A With the benefit of hindsight, yes.

21 Q You would? So today your answers would be different  
22 with regard to those MFRs?

23 A Well, yeah. We have different numbers for customer  
24 growth, we have different numbers for, you know, the increase  
25 in chemicals cost. We have a whole different picture today.

1 Q I'm sorry. I miscommunicated. I'm speaking  
2 specifically of the staff audit findings and the adjustments  
3 that you agreed need to be made to the filing.

4 A Okay. Based on, based on if I were to take the MFRs  
5 of 2006 and apply the stipulated adjustments, yes, I would, you  
6 know, I would incorporate those.

7 Q And that would include, and correct me if I'm, if I'm  
8 wrong, and perhaps -- do you have a copy of the staff audit  
9 report?

10 A I do.

11 Q I'm going to ask you then about the audit findings  
12 that would change the revenue requirement need or the need for  
13 increase.

14 A Okay.

15 Q Is it correct that audit finding number four is  
16 something that you would agree needs to be, would change your  
17 finding?

18 A I'm trying to find it. Yes.

19 Q Okay. Audit finding four, you agree with the staff  
20 audit finding and it would change your, your filing, the  
21 revenue requirement?

22 A Isn't that one of our stipulated? I don't have a  
23 list of the items that we stipulated to.

24 Q Well, I was looking at your rebuttal testimony. I  
25 think your rebuttal testimony actually deals with the audit

1 findings that you agreed to, and you've got a section in there  
2 where you've got the audit findings that you agreed to and the  
3 audit findings that you disagree with.

4 MR. DETERDING: Can you direct him to the page so  
5 that he can --

6 MR. BURGESS: In his rebuttal testimony?

7 MR. DETERDING: Yes.

8 BY MR. BURGESS:

9 Q Do you have a copy of your rebuttal testimony?

10 CHAIRMAN CARTER: You can take a minute.

11 MR. WHARTON: Yes. We ought to get everything in  
12 front of him that we need.

13 MR. BURGESS: I've got it here. I'm not trying to be  
14 mysterious about it. I'm just --

15 CHAIRMAN CARTER: Hang on a second.

16 THE WITNESS: I'm sorry. Like I said, I'm new at  
17 this, so I'm not --

18 CHAIRMAN CARTER: Mr. Burgess, you may proceed.

19 BY MR. BURGESS:

20 Q Okay. So now do you have your testimony, do you have  
21 the section in your testimony where you addressed the audit  
22 findings and the audit findings with which the company has  
23 agreed and/or has stipulated for issues, for adjustments to  
24 the, to the original filing?

25 A I believe if you're referring to the response to the

1 audit report, which is my Exhibit PDE, I'm sorry, PED-8, yes.

2 Q Uh-huh. And you have testimony in the body of your  
3 testimony that has verbiage that discusses that, do you not?

4 A I believe so.

5 Q If you'd look at Page 25 of your prefiled rebuttal  
6 testimony.

7 A Yes.

8 Q Okay. Would you agree that staff audit findings  
9 four, five, nine, 12, 13, 14, 16, 17, 18 and at least in part  
10 19 should be implemented and they adjust, they change the  
11 amount of revenue requirement and revenue increase that KWRU is  
12 entitled to?

13 A Yes.

14 Q Thank you. Thank you. I appreciate that. I  
15 appreciate your patience there.

16 A I appreciate yours.

17 Q Now I want to go now to some specific areas in your  
18 testimony, and I'm hoping I can tie the reference in your  
19 testimony to the issue number as is listed in the Prehearing  
20 Order. In Issue 30, as I understand it, you addressed that in  
21 your testimony on Page 13, Line 13.

22 A I'm assuming that is the \$420 paid to the Monroe  
23 County Sheriff.

24 THE COURT REPORTER: \$420?

25 THE WITNESS: \$420. I'm sorry.



1 BY MR. BURGESS:

2 Q That's what I understand from looking at Issue 20.  
3 And as I understand it from your rebuttal testimony that these  
4 were required to be sent, and as I understand from what's been,  
5 from what you're saying that it's because these were people,  
6 all people that had not retrieved the notice from the post  
7 office.

8 A That is my understanding.

9 Q Have you been here throughout the testimony that's  
10 been presented by the customers?

11 A I have.

12 Q Have you heard customers say that they had the  
13 sheriff at their residence?

14 A I have.

15 Q But they signed and they have provided copies of  
16 documentation demonstrating that they signed for the receipt of  
17 the notice.

18 A Well, I haven't examined the documentation that was  
19 presented. I can surmise several different scenarios where  
20 that could happen.

21 One scenario would be that, you know, obviously in my  
22 experience or knowledge you don't just go to the sheriff's  
23 office and say deliver this and they run out and deliver it.  
24 They deliver it when they can. And usually they'll give it to  
25 the officer, and if the officer is in the neighborhood, whether

1 it be at 7:00 in the morning or 7:00 at night, they're going to  
2 ring their doorbell.

3           The second is if that time period between the time  
4 that the utility found out that they needed to secure this, as  
5 I understand the process, was that they went to the county,  
6 said here's everybody that signed. There were a number of  
7 those that had not yet picked up their letters based on their  
8 service address. And they were told, well, we can't do  
9 anything about, you know, enforcement until we get notification  
10 that they've been delivered, thereby requiring some form of  
11 formal evidence that, that the notice was received by the  
12 customer. And so in that time lag between the time you get  
13 there and the time you go to the sheriff, theoretically  
14 somebody could have gone in to the post office and finally  
15 picked up their certified letter, unless it was, you know,  
16 returned to the, to the utility prior to that. It's  
17 conceivable that some people may have had more than one address  
18 where they received service and maybe they picked up the one  
19 for the one address but not for the other address. I, you  
20 know, I mean, that's all pure speculation on my part, but I can  
21 see where that could happen.

22           Q     Uh-huh. And, and this is something that from the way  
23 that you're, the terms that you're using, I'm taking it that  
24 you have not tracked any of that down to where you could make a  
25 statement one way or another on any of that.

1           A     I haven't, I haven't seen any of the evidence that  
2 was presented yesterday or any of the, not evidence, the  
3 documents that were presented.

4           Q     And have you spoken to any of the customers that  
5 presented that testimony to ask them about, about this?

6           A     I didn't know that I was allowed.

7           Q     Okay. Very good.

8                     Now with regard to Mr. Barry's expenses that we  
9 talked about as the subject of Issue 26 --

10                    (Interruption.)

11                    With regard to Issue 26 and Mr. Barry's expenses,  
12 that is the amount of money that we already talked about that  
13 you had agreed in response to the staff audit finding that  
14 \$20,000 of it should be deferred?

15           A     Yes.

16           Q     Now as I understand it, these are, this is an amount  
17 paid either by fee or some arrangement to a Mr. Barry, a  
18 Mr. Bill Barry?

19           A     That's my understanding.

20           Q     And did you hear testimony about distribution of  
21 information about Public Counsel spending \$750,000 of taxpayer  
22 money?

23           A     Only when he brought it up.

24           Q     Well, I have a, an exhibit that I would like to  
25 distribute. And whether it needs to be identified or not, I'm

1 not sure yet.

2 Mr. DeChario, are you aware that Mr. Barry was  
3 deposited by the Office of Public Counsel?

4 A I'm sorry?

5 Q Are you aware that Mr. Berry was deposited by the  
6 Office of Public Counsel?

7 A I was not.

8 Q You've not read his deposition?

9 MR. DETERDING: Commissioner, I want to object. I  
10 don't know what this has to do with Mr. DeChario's testimony.  
11 Did Mr. DeChario discuss --

12 MR. BURGESS: Yes. And what this has to do with  
13 Mr. DeChario's testimony is in Issue 26, the, which we  
14 discussed, and that's why I went over each one of these and  
15 tried to be careful that we stayed within the, within the scope  
16 of the testimony, Mr. DeChario has indicated that he has agreed  
17 to a staff audit finding that basically talked about a deferral  
18 of this amount, and so that that's what supports the company's  
19 position that this, that any amount of this expense should be  
20 allowed, should be required to be paid for by the customers.  
21 If you would like to change the position of the company and  
22 agree that Mr. Barry's expenses are not appropriate, then, then  
23 this is unnecessary.

24 MR. DETERDING: Well, I'm not sure what this  
25 newspaper article about, with a quote from Mr. Barry has to do

1 with Mr. DeChario's testimony.

2 MR. BURGESS: With Mr. Barry's expenses?

3 MR. DETERDING: No. With Mr. DeChario's testimony on  
4 this subject. Where has Mr. DeChario discussed that issue of  
5 a, what's in a newspaper article? I don't understand.

6 MR. BURGESS: Well, that's what the questions will  
7 get to.

8 BY MR. BURGESS:

9 Q Is Mr. Barry -- as I understand it, what you are  
10 saying as far as justification for Mr. Barry's expenses be  
11 borne by the customers, that Mr. Barry is acting as a public  
12 relations officer for the company?

13 A My understanding is that Mr. Barry was hired at the  
14 behest of Monroe County in its process of establishing the  
15 vacuum sewer system and the upgrade to AWT by 2007 to provide  
16 public relations support, to hold open houses and to try to  
17 educate the citizens of Stock Island as to what was going on.

18 Q Okay.

19 A So for at least the test year ended 2006 wherein  
20 these costs were incurred, yeah, I think that was necessary.  
21 This newspaper article is dated November 28th, 2007, which is  
22 11 months outside of the test year.

23 Q Uh-huh.

24 A So I don't know what bearing that has on the 20,000  
25 historic.

1 Q Well, what I'd like to look at is some of the  
2 education that is being provided to the public by Mr. Barry  
3 with regard to the rate case.

4 A Okay.

5 MR. DETERDING: So you're going to cross-examine  
6 Mr. DeChario on statements made by Mr. Barry?

7 MR. BURGESS: I am going to find out based on  
8 statements by Mr. Barry what Mr. DeChario would say justifies  
9 the customers having to pay a public information officer who  
10 distributes this sort of information.

11 THE WITNESS: I'm not qualified to do that.

12 MR. DETERDING: Okay. Well, I believe this is  
13 outside the scope of his direct testimony and I'm going to  
14 object on that ground.

15 CHAIRMAN CARTER: Ms. Helton.

16 MS. HELTON: Perhaps Mr. Burgess could point us to  
17 where in Mr. DeChario's testimony he is directing his  
18 cross-examination. That might help.

19 MR. BURGESS: Well, this is why when I asked about  
20 Issue 26 I wanted to be clear that Mr. DeChario does not rebut,  
21 in the body of his testimony does not rebut the removal of all  
22 26,653.

23 MS. HELTON: I'm sorry. 26,000 of what?

24 MR. BURGESS: If we look at Issue 26 --

25 MS. HELTON: Okay.

1 MR. BURGESS: -- it speaks of \$26,653 in advertising  
2 expenses.

3 MS. HELTON: Okay.

4 MR. BURGESS: That are based on the payments made to  
5 Mr. Barry.

6 MS. HELTON: Okay.

7 MR. BURGESS: This was the subject of a staff audit  
8 finding, this was the subject of a staff audit finding that  
9 deferred \$20,000 of the expense that Mr. DeChario said is the  
10 company's position that they agreed to. So we have \$5,000 that  
11 the company is saying of Mr. Barry's expense that is in the  
12 test year for the function that he performed.

13 The concern we have is that this is a public  
14 relations function and it is, there is misinformation that's  
15 distributed through this process, and we don't think customers  
16 should have to pay for it. And Mr., Mr. DeChario is here as  
17 the only evidence that's offered in any fashion to underpin the  
18 company's position on 26. Now if they want to change the  
19 position on 26 to concede the issue, I don't need to go into  
20 this. But if they don't, I think the Commission needs to find  
21 out the type of activities that Mr. Barry has been involved in  
22 that gives rise to this cost.

23 MR. DETERDING: We're talking about an expense during  
24 the test year and you're proposing newspaper articles with  
25 alleged quotes from Mr. Barry that are hearsay. We, we --

1 there's no way we can substantiate these things. And then you  
2 want to ask him about, questions about what Mr. Barry allegedly  
3 said in the newspaper article to substantiate or not  
4 substantiate a charge during a test year that occurred  
5 11 months before this? I don't understand how that could  
6 possibly be relevant much less related to his testimony even if  
7 he agreed with that.

8 CHAIRMAN CARTER: Ms. Helton.

9 MS. HELTON: I appreciate the desire and the, to want  
10 to get to what sounds to me the \$5,000 that you still believe  
11 is at issue. But I'm also struggling, as Mr. Deterding, I  
12 think, how Mr. DeChario is the correct witness to do that. It  
13 seems to me that we -- I'm struggling with why is this not a  
14 burden of proof issue and whether the company has met its  
15 burden of proof to get to the \$5,000?

16 MR. BURGESS: I'm, I'm fine with that. If  
17 Mr. DeChario cannot speak to this issue, then I can move on.

18 THE WITNESS: If I may. I agreed with staff. Staff  
19 is the one that made the finding for the deferral.

20 MR. BURGESS: Okay. Then may I, may I ask a question  
21 in response to that since that's testimony on the record?

22 CHAIRMAN CARTER: Well, tread lightly.

23 BY MR. BURGESS:

24 Q Okay. Would you look at Issue 26, please?

25 A Okay.



1 Q Would you look at staff's position?

2 A That wasn't the position I agreed to in the audit  
3 report.

4 Q But this is what you agreed to.

5 A I agreed to the position in the audit report.

6 Q So you don't agree with staff.

7 A In this, in this position paper I do not. But,  
8 again, I did not have a position when I did my testimony.

9 Q Mr. DeChario, you provided what I believe is,  
10 attached to your rebuttal testimony is a comparison of officer  
11 salaries.

12 A Yes.

13 Q And I believe that's Exhibit PED-4.

14 A Exhibit 3 or 4. Yes.

15 Q Now do you -- what was the source data for this  
16 comparison?

17 A The annual reports on file and available online from  
18 the Public Service Commission.

19 Q Do you have that source data with you?

20 A Possibly.

21 (Pause.)

22 I'm sorry. Apparently I did not bring that with me.

23 Q Okay. If I could get you to look at that, I do have  
24 a couple of questions.

25 A Certainly.

1 Q And if you fall into the area where it calls for  
2 examination of the source documents, then, then we'll, we'll  
3 end it before we try to get too far.

4 In the, in the salaries that you have incorporated  
5 for, for the comparisons --

6 A Yes, sir.

7 Q -- now is that not, was that not drawn from the  
8 annual report's officers' salaries so that in some cases there  
9 was more than one?

10 A Yes.

11 Q And in the case of K W Resort what you've got is  
12 Mr. Smith's salary.

13 A Yes.

14 Q Now is there not a CFO for the golf course that also  
15 serves as CFO for K W Resort?

16 A I'm sorry. Say that again.

17 Q Is there not a Chief Financial Officer for the golf  
18 course which also, who also serves as Chief Financial Officer  
19 for and is designated as Chief Financial Officer for K W  
20 Resort?

21 A I don't recall that off the top of my head.

22 Q Okay.

23 A If you could throw me a name, I could probably verify  
24 it.

25 Q Well, that would show up in the MFRs. I mean, I'm

1 not looking to go back to that. But we'd find that in the MFRs  
2 if it were so, the officers of the company.

3 A I -- yes.

4 Q Okay. And if that is so, that needs to be added into  
5 to make an apples to apples comparison if the rest of these  
6 are, in fact, multiple officers.

7 A You mean as far as these other utilities go?

8 Q Yes.

9 A I'm not quite sure I understand where you're going,  
10 what you're trying to find out, what you're asking me.

11 Q You -- did you not agree that the salary that you  
12 have listed that you drew from the annual report in some cases,  
13 in a number of cases includes more than one officer, more than  
14 just the president's salary?

15 A Yes. These, I would imagine, without going and  
16 looking at corporate, the state corporate records, that, you  
17 know, if they're -- I would imagine they are all listed as  
18 officers of the corporation on those documents. That's why  
19 they would become, be listed as officers in the annual report.

20 Q Yes. And if, in fact, these numbers that you have  
21 under salary are aggregates of more than one person, then in  
22 order to bring this column into where it's reasonably  
23 comparable to what you used for K W Resort, you need to  
24 subtract out just, and come up with just the president's  
25 salary; isn't that right?

1           A     I don't know if that would be wholly correct since we  
2 are looking at officer salaries as a whole.

3           Q     Well, then wouldn't you need to look at K W Resort's  
4 officer salaries as a whole and include the Chief Financial  
5 Officer?

6           A     I suppose I could go either way.

7           Q     Thank you.

8           COMMISSIONER ARGENZIANO: Can I ask a question?

9           CHAIRMAN CARTER: Would you yield, Mr. Burgess?

10          MR. BURGESS: Oh, absolutely.

11          CHAIRMAN CARTER: Commissioner Argenziano, you're  
12 recognized, Commissioner.

13          COMMISSIONER ARGENZIANO: Actually, Mr. Burgess, if I  
14 could, are you, are you indicating that the comparison before  
15 us is including the aggregate salaries of all the officers and  
16 not just one?

17          MR. BURGESS: Yes, ma'am.

18          THE WITNESS: Not in every case. I'm sorry.

19          COMMISSIONER ARGENZIANO: So then it's not a  
20 comparison of one salary.

21          MR. BURGESS: Not in every case.

22          COMMISSIONER ARGENZIANO: But it could be in some.

23          MR. BURGESS: In a number of cases.

24          COMMISSIONER ARGENZIANO: That would be nice to know.

25          MR. BURGESS: But, yes, this is something that, you

1 know, I, I suppose that we have on record the, the annual  
2 reports of these. So we'll deal with that.

3 COMMISSIONER ARGENZIANO: Thank you.

4 CHAIRMAN CARTER: You made proceed, Mr. Burgess.

5 MR. BURGESS: Thank you.

6 BY MR. BURGESS:

7 Q May I direct your attention, please, to your rebuttal  
8 testimony, Page 18, Lines 3 through 21.

9 MR. JAEGER: Steve, I'm sorry. I couldn't hear you.  
10 Where are you?

11 MR. BURGESS: I'm sorry. Yes. Mr. DeChario's  
12 rebuttal testimony, Page 18, Lines 3 through 21.

13 BY MR. BURGESS:

14 Q Are you -- have you had a chance to look that back  
15 over, look that over?

16 A Yes.

17 Q Thank you. Now this is something that is a subject  
18 of Staff Audit Finding 12, is it not?

19 A Yes.

20 Q And KWRU and you agree with Staff Audit Finding 12.

21 A Right. That this was an out of period amount.

22 Q And you further agreed -- it is further a  
23 stipulation, it is one of the stipulations in the case, is it  
24 not?

25 A If I recall correctly.

1 Q Okay. So you agree with the adjustment that the  
2 staff is recommending?

3 A Right. That this is an out of period expense and  
4 should be deferred and expensed in the following year.

5 Q And, in fact, the amount that should have been,  
6 looking at the staff audit finding, that should have been  
7 included is \$2,689.20; correct?

8 A Yes.

9 Q And the amount that was included was \$5,378.40, which  
10 is exactly double the amount that should have been included.

11 A Right. They recorded a two-year invoice in one  
12 period, creating the deferral.

13 Q Right. And you object on this issue that we all  
14 agree on, that we have a stipulation on, to Ms. Dismukes  
15 recommending that the same amount should be removed as a double  
16 charge, that a double charge of \$2,689.20 should be removed.

17 A I disagree with it in accounting terms as referring  
18 to it as a duplicate charge. It was a charge for a two-year  
19 period that was charged in the month that the bill was paid.  
20 Clearly that was incorrect. But as to it being a double  
21 charge, no, because you're getting the same service. It's  
22 just -- you're not paying the same invoice twice. You're  
23 paying for the same service, it just is for longer than a  
24 12-month period.

25 Q So it was a double charge that needed to be removed.

1 You just disagree with her use of the term "duplicate."

2 A That's correct.

3 Q Okay. Double charge would have been all right.

4 A Well, yeah. There was a component that should have  
5 been deferred.

6 Q Okay. Can you point into her testimony where she  
7 called it a duplicate charge?

8 A If you'll give me a moment.

9 Q I think she addresses it on Page 71. I'm sorry. If  
10 you'll look on Page 70 of her testimony, Line 25 and 26, I  
11 think you'll see it.

12 A Page 70?

13 Q Yeah. Page 70 of Ms. Dismukes' testimony, Line 25  
14 and 26.

15 A Yes. The double charge.

16 Q Okay. So she called it a double charge and you were  
17 troubled because you thought she called it a duplicate charge.

18 A Yeah.

19 Q Okay. And if I look on your testimony on Page 18,  
20 Line 20 and 21, you say, "Characterizing this as a duplicate  
21 charge is misleading and the amount is clearly wrong and must  
22 be rejected." But now you've, now that you've looked at her  
23 testimony again and seen it's a double charge, would you agree  
24 she's not misleading the Commission?

25 A Okay. I will agree to that.

1 MR. BURGESS: Thank you. That's all we have. And  
2 thank you very much, Mr. DeChario. I appreciate your,  
3 appreciate your patience.

4 THE WITNESS: Oh, is that it?

5 CHAIRMAN CARTER: Thank you, Mr. Burgess.  
6 Staff?

7 MR. JAEGER: Let me get organized here. We've been  
8 moving all around. We do have some questions.

9 CROSS EXAMINATION

10 BY MR. JAEGER:

11 Q Mr. DeChario, go to your Exhibit PED-4. I think  
12 Mr. Burgess was asking you some questions on that before.

13 A Okay. I'm there.

14 Q I think, I think in your Footnote 3 you say the data  
15 was extracted from annual reports filed and available at the  
16 PSC website.

17 A Yes.

18 Q And then you looked and you found that you didn't  
19 have that source data with you; is that correct?

20 A I know I printed out the pages respective to these,  
21 but I apparently did not throw them in my boxes.

22 Q What staff would like is, would you please provide us  
23 a late-filed hearing exhibit, a copy of the 2006 Annual Report  
24 Schedules E-6 and S-10(a), and that's for the K W Resort  
25 Utilities Corp? And staff believes that we really just want



1 the Key Haven Utility pages, the corresponding pages for Key  
2 Haven Utility also.

3 A Just K W and Key Haven?

4 Q Right. And that's E-6 and S-10(a). That would be  
5 Late-Filed Exhibit 40.

6 CHAIRMAN CARTER: One second. Mr. Wharton or  
7 Mr. Deterding.

8 MR. WHARTON: Mr. Deterding.

9 CHAIRMAN CARTER: Mr. Deterding.

10 MR. DETERDING: Commissioner, I'm not sure --  
11 you're -- what are these pages that you're seeking as a  
12 late-filed exhibit?

13 CHAIRMAN CARTER: Mr. Jaeger.

14 MR. JAEGER: They're the salaries showing, that's in  
15 the annual report and showing --

16 CHAIRMAN CARTER: I think, without testifying,  
17 Mr. Deterding, I think it's the source documents for the  
18 salaries as Mr. --

19 MR. JAEGER: Compensation of officers is E-6.

20 CHAIRMAN CARTER: Is that right, Mr. DeChario? You  
21 said those, those would be the source documents.

22 MR. DETERDING: Are those the only source documents,  
23 I guess is the question?

24 THE WITNESS: Yes.

25 MR. JAEGER: And S-10(a) is the O&M expenses.

1 THE WITNESS: Yeah. S-10 is the O&M expense --

2 THE COURT REPORTER: I can't hear you.

3 THE WITNESS: I'm sorry. Yes. S-10(a) is the basing  
4 page of the O&M expense section and E-6 is the officer salary  
5 page.

6 CHAIRMAN CARTER: Mr. Deterding, are you okay with  
7 that?

8 MR. DETERDING: I don't have a problem with that.

9 CHAIRMAN CARTER: Okay.

10 MR. BURGESS: Commissioner, may I, may I ask about  
11 that? I -- here's our problem. We were, we had a number of  
12 areas that we were going to ask on that. We believe we, there  
13 were a number of errors that were picked up and we were stymied  
14 in trying to develop that because the source documents don't  
15 exist. I think what Ralph, I think what Mr. Jaeger is asking,  
16 I think that's good. I think there's a little bit more that we  
17 want to do because there are other areas in the matrix that,  
18 that we thought that there were transpositions and errors in  
19 the numbers that were picked up.

20 CHAIRMAN CARTER: For an example?

21 MR. BURGESS: We, in the listing of the number of  
22 customers -- and these might be, if these are in those very  
23 same documents, then we're fine.

24 MR. JAEGER: I do not believe they are the same.

25 MR. BURGESS: Okay. In the number of customers we

1 saw errors, in the number of gallonage and in the meter  
2 equivalents.

3 CHAIRMAN CARTER: Well, I think that if this is --  
4 wait. Wait. Hang on just a second. If this is available  
5 through the PSC website, I think that it can be downloaded and  
6 provided available to --

7 MR. WHARTON: I know that you guys have issued orders  
8 in the past saying that you have the right to take notice of  
9 what's in your own file in these cases. But it just seems like  
10 we're getting a little skewed here. OPC has gone, now staff is  
11 going. The reason we're having to ask for and dig through  
12 source documents is that for some reason Mr. DeChario's  
13 deposition was never taken.

14 CHAIRMAN CARTER: Hang on. Hang on. Hang on. Let's  
15 everybody kind of freeze in place for a minute, just kind of  
16 run in place for a minute.

17 Let's do this. Mr. Jaeger, the documents, you're  
18 saying this would be a late-filed which would include the  
19 source document, which, according to this note here, says it's  
20 a PSC, available on the PSC website; is that correct?

21 MR. JAEGER: That's correct. I believe that  
22 Mr. Wharton's suggestion that if we'll just take judicial  
23 notice of the annual reports of the Commission, then that would  
24 probably be good enough.

25 CHAIRMAN CARTER: With the -- I see you, Mr. Burgess.

1 I see you with my peripheral vision. I think that with that  
2 being the case, does that provide you the additional  
3 information that you would need, Mr. Burgess?

4 MR. BURGESS: I have to apologize. I was trying to  
5 find something out about this. I didn't hear you.

6 CHAIRMAN CARTER: I understand. The annual report  
7 for that year, would that provide you with the additional --

8 MR. BURGESS: Oh, absolutely.

9 CHAIRMAN CARTER: Okay. Well, let's, let's show  
10 that, show that done. That would be just a late-filed exhibit,  
11 and we'll just put in the entire annual report for that year.  
12 Ms. Helton, does that make sense?

13 MS. HELTON: It does to me, sir.

14 CHAIRMAN CARTER: Okay. Well, if it makes sense to  
15 you, then --

16 MR. DETERDING: This is for all of the companies  
17 listed on his --

18 CHAIRMAN CARTER: I think he only wanted the two, he  
19 wanted the one -- Mr. Jaeger, you only mentioned two companies?

20 MR. JAEGER: I was originally only asking for KWRU  
21 and Key Haven.

22 MR. DETERDING: Okay.

23 CHAIRMAN CARTER: Mr. Burgess, did you get that?

24 MR. BURGESS: You're talking about just Key Haven and  
25 KWRU?

1 MR. JAEGER: Yes.

2 CHAIRMAN CARTER: Is that fine with you?

3 MS. HELTON: And I guess just for clarification  
4 purposes y'all were talking about 2006; correct?

5 CHAIRMAN CARTER: 2006. That's correct. I mean,  
6 this means yes, this means no. 2006. Okay. Thank you.

7 Mr. Jaeger, you may proceed.

8 BY MR. JAEGER:

9 Q Next I'd like to go to PED-9. Now is that correct  
10 that this exhibit -- I'm sorry. Is it correct that this  
11 exhibit represents the utility's updated support documentation  
12 for its actual and estimated rate case expense?

13 A Yes. Yes.

14 Q And staff does not see any invoices for the Rose,  
15 Sundstrom & Bentley law firm from September 2007 to date. Is  
16 that -- did you not submit any invoices for that?

17 MR. DETERDING: I do know that they were intended to  
18 be.

19 MR. JAEGER: I'm sorry. You say they were or they --

20 MR. DETERDING: Were intended to be. Up through the  
21 date of filing his rebuttal testimony they were intended to be.

22 (Simultaneous conversation.)

23 CHAIRMAN CARTER: Hang on. Hang on. Hold on.

24 MR. DETERDING: Up through the date of filing his  
25 rebuttal they were intended to be.

1 MR. JAEGER: I think what staff would like to do, we  
2 do not see any invoices from September 2007. I'm trying to  
3 remember when his rebuttal testimony was filed. With the delay  
4 it's been a problem. But what we would like to do is get a  
5 late-filed exhibit showing the invoices from Rose, Sundstrom &  
6 Bentley.

7 CHAIRMAN CARTER: Oh, by the way, hang on a second.  
8 Hang on a second. Just kind of -- I had one of my --

9 COMMISSIONER SKOP: Over 50 moments.

10 CHAIRMAN CARTER: -- over 50 moments. That last, the  
11 annual report, that should be marked as exhibit number --  
12 Mr. Jaeger, what number are we up to? That would be Exhibit  
13 Number 40?

14 MR. JAEGER: The annual reports were Exhibit 40.

15 CHAIRMAN CARTER: Exhibit 40, without objection, show  
16 it done.

17 (Late-Filed Exhibit 40 identified for the record.)

18 Now this is where we are now. This will be --  
19 Mr. Burgess, are you with us?

20 MR. BURGESS: Yes, I think I am.

21 CHAIRMAN CARTER: Okay. So where we are now, this,  
22 you're asking for this. I'm sure that both Mr. Deterding and  
23 Mr. Wharton will be glad to provide this information you're  
24 requesting now. This would be Exhibit 41.

25 MR. JAEGER: That's right. That's correct. And what

1 we're wanting is the invoices from Rose, Sundstrom from  
2 September 2007 to date, today's date. And also what we'd like  
3 is in that same exhibit a revised estimate to complete the  
4 case. So we're trying to get actual through today plus the  
5 revised estimate.

6 MR. DETERDING: Okay.

7 CHAIRMAN CARTER: Without objection, show it done.

8 (Late-Filed Exhibit 41 identified for the record.)

9 Mr. Jaeger, you may proceed.

10 BY MR. JAEGER:

11 Q In that same regard, I believe you have expenses for  
12 Ed Castle of Weiler Engineering. And I think in -- refer to  
13 Pages 62 and 68 in your Exhibit PED-9. And what we would again  
14 like is a late-filed hearing exhibit, a copy of all invoices  
15 for contractual engineering services provided by Ed Castle,  
16 P.E., of Weiler Engineering from October 5th, 2000, to date and  
17 a revised estimate to complete the case.

18 CHAIRMAN CARTER: Mr. Deterding?

19 MR. DETERDING: No objection.

20 CHAIRMAN CARTER: No objection. Mr. Burgess?

21 MR. BURGESS: No objection.

22 CHAIRMAN CARTER: That will be Exhibit Number 41; is  
23 that right?

24 MR. JAEGER: 41 is Rose, Sundstrom.

25 MR. BURGESS: It would be 42.

1 MR. JAEGER: 42 would be the --

2 CHAIRMAN CARTER: Without objection, show it done.

3 (Late-Filed Exhibit 42 identified for the record.)

4 MR. JAEGER: And then the last question has to do  
5 with the Carlstedt, Jackson, Nixon & Wilson, CPAs, and a copy  
6 of the invoices for contractual services provided by that firm  
7 from August 2008 to date and a revised estimate to complete the  
8 case.

9 CHAIRMAN CARTER: Mr. Deterding?

10 MR. DETERDING: No objection.

11 CHAIRMAN CARTER: Mr. Burgess?

12 MR. BURGESS: No objection.

13 CHAIRMAN CARTER: That will be Exhibit 43.

14 (Late-Filed Exhibit 43 identified for the record.)

15 MR. JAEGER: And that's all that staff has.

16 CHAIRMAN CARTER: Okay. Thank you so kindly.

17 Anything from the bench?

18 Mr. Deterding, you're recognized, sir.

19 MR. DETERDING: I have no redirect.

20 CHAIRMAN CARTER: All right. I love it when a plan  
21 comes together. Thank you all so kindly.

22 Staff, are there any concluding matters?

23 MR. DETERDING: I need to move these exhibits.

24 CHAIRMAN CARTER: Oh, that's right. Let's back up.

25 On the premarked -- on staff's composite exhibit,



1 Mr. Jaeger, what were those numbers?

2 MR. JAEGER: Okay. The PED-2 through 9 is 27 through  
3 34 on the Comprehensive Exhibit List.

4 CHAIRMAN CARTER: Any objections? Without objection,  
5 show it done.

6 (Exhibits 27 through 34 admitted into the record.)

7 MR. JAEGER: And then --

8 CHAIRMAN CARTER: The late-fileds, they've already  
9 been without objection.

10 Anything further?

11 MR. JAEGER: I've talked -- I wanted to get this on  
12 the record, Chairman Carter. The late-filed, we were looking  
13 at -- oh, there was something else we have not identified, the  
14 response to the customers, we never did identify that. It is  
15 generally the --

16 CHAIRMAN CARTER: What do you mean, the response?

17 MR. JAEGER: During the customer service hearings the  
18 utility has, we give them the chance in a late-filed exhibit to  
19 respond to the customer testimony, and I don't think we've  
20 identified that exhibit.

21 CHAIRMAN CARTER: The, that would be Exhibit 44.

22 MR. JAEGER: That's correct. And that's the response  
23 to the customer --

24 (Late-Filed Exhibit 44 identified for the record.)

25 CHAIRMAN CARTER: Show it done without objection.

1 MR. DETERDING: As far as timing --

2 CHAIRMAN CARTER: That would be the next question,  
3 wouldn't it?

4 MR. DETERDING: Can we get the transcript for the  
5 customer portion in advance of the remainder so that we can get  
6 started on that?

7 CHAIRMAN CARTER: One second. Hang on a second. Do  
8 we have an idea about --

9 THE COURT REPORTER: The due date we have is the  
10 13th.

11 MR. DETERDING: I'm just trying to get it in as  
12 quickly as I can, that late-filed exhibit in advance of getting  
13 the entire transcript, get started on it, and we have to have  
14 what everyone said in order to get to work on it.

15 MR. WHARTON: Maybe the easiest thing to do is to say  
16 that we'll do it within ten days of the receipt of that  
17 portion. If we get it all together, we'll do it in ten days.  
18 If you can get us the customer portion first, we'll do it in  
19 ten days.

20 CHAIRMAN CARTER: We'll do that. Linda, you've done  
21 a fantastic job, by the way. I appreciate it. She said by the  
22 13th and I think that's a yeoman's effort, a Herculean effort  
23 to get it done.

24 Anything further for concluding matters, Mr. Jaeger?

25 MR. JAEGER: Two more things. The 41, 42 and 43, how

1 soon can we get that? You don't need the transcripts for that,  
2 do you?

3 MR. WHARTON: Ten days.

4 MR. JAEGER: Ten days from today.

5 MR. DETERDING: Today.

6 CHAIRMAN CARTER: Without objection, show it done.

7 MR. JAEGER: And then a garbage truck went by just as  
8 we were discussing Exhibit 35.

9 CHAIRMAN CARTER: We can't admit the garbage truck.

10 MR. JAEGER: I can't, I couldn't tell if we moved  
11 Exhibit 35. That was the composite personal notice, proof of  
12 publication and newspaper article submitted by K W Resort, and  
13 I didn't know if that --

14 CHAIRMAN CARTER: Show it done without objection.

15 (Exhibit 35 admitted into the record.)

16 MR. JAEGER: Okay. And so ten days for the customers  
17 or from the transcripts, and then ten days for the other three.

18 CHAIRMAN CARTER: That's correct.

19 MR. WHARTON: Ralph, we indicated in our conversation  
20 that we would move Mr. Smith's late-filed, that we would get it  
21 to you within 14 days.

22 CHAIRMAN CARTER: Without objection, show it done.

23 MR. JAEGER: And then I think the conclusion to all  
24 of that, we usually read the dates for the hearing transcript.

25 CHAIRMAN CARTER: You're recognized.

1           MR. JAEGER: Which will be October 13th. Posthearing  
2           briefs will be due October 27th, and we're set to go to agenda  
3           December 16th, with a final order being issued December 31st,  
4           which is basically the 90-day requirement.

5           CHAIRMAN CARTER: And staff will work with all of the  
6           parties as much as possible to try to get the information that  
7           you need in a timely manner.

8           Mr. Jaeger, anything further?

9           MR. JAEGER: That's all I have.

10          CHAIRMAN CARTER: Ms. Helton, anything further? Any  
11          concluding matters?

12          MS. HELTON: No, sir.

13          CHAIRMAN CARTER: Commissioners, I think that we've  
14          concluded all of our matters for both the public sector as well  
15          as the technical portion of the hearing, and with that we are  
16          adjourned.

17          (Hearing adjourned at 1:18 p.m.)

18

19

20

21

22

23

24

25

1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

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

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

DATED THIS 13<sup>th</sup> day of October,

2008.

Linda Boles  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734