

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 110200-WU

In the Matter of:

APPLICATION FOR INCREASE IN  
WATER RATES IN FRANKLIN COUNTY  
BY WATER MANAGEMENT SERVICES, INC.

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VOLUME 2

Pages 166 through 317

PROCEEDINGS: HEARING

COMMISSIONERS PARTICIPATING: COMMISSIONER LISA POLAK EDGAR  
COMMISSIONER EDUARDO E. BALBIS  
COMMISSIONER JULIE I. BROWN

PLACE: St. George Island Volunteer Fire  
Department  
324 East Pine Avenue  
St. George Island, Florida

TIME: Commenced at 2:10 p.m.  
Concluded at 5:03 p.m.

DATE: Wednesday, January 17, 2013

REPORTED BY: JANE FAUROT, RPR  
Official FPSC Reporter  
(850) 413-6732

APPEARANCES: (As heretofore noted.)

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

1  
2           **COMMISSIONER EDGAR:** Okay. We are back on the  
3 record.

4           Before we go into further witness testimony, I  
5 said that we would try to take up the pending motions  
6 and pending objections on a few of the exhibits. So to  
7 start us off with that discussion, my notes are that we  
8 are discussing exhibits marked as 64, 72, 75 and 76.

9           Ms. Helton?

10          **MS. HELTON:** Thank you, Madam Chairman.

11          I did obtain a copy of the Exhibit 64 which  
12 staff had wanted to have admitted as a stipulated  
13 exhibit. And it is my understanding that OPC objected,  
14 and the company and staff have withdrawn their request.  
15 If I could ask Mr. Friedman what exhibit -- I mean, what  
16 issue number Exhibit 64 is addressed to.

17          **MR. FRIEDMAN:** And I will admit that Exhibit  
18 64 consists of four parts.

19          **MS. HELTON:** Okay.

20          **MR. FRIEDMAN:** I will give you credit or give  
21 you the benefit that section one and two deals with  
22 OPC's comments and remarks to the customers and OPC's  
23 remarks to the City of Carrabelle to try to kill that  
24 deal. The third part includes the correspondence that  
25 Mr. Sayler had to kill the Fidelity loan. And I think

1 that directly goes to management, because they are  
2 saying we don't have the ability to go out and borrow  
3 money, and yet, you know, I think this is relevant to  
4 show that they are the people that killed the deal.

5 And also, similarly, the last deal deals  
6 with -- the last set of e-mails deals with Mr. Sayler's  
7 correspondence to DEP after DEP had made a commitment to  
8 Water Management Services that the technical default  
9 would just kind of stay on the low. After Mr. Sayler  
10 corresponded and talked to them, all of a sudden DEP  
11 felt compelled to write something on it. And that goes,  
12 again, to managerial, because they have stressed, oh,  
13 there is a technical default on the DEP loan. They  
14 caused it. And I think that's what makes it relevant.

15 So the last two parts, I think, are relevant.  
16 The first two parts, I acknowledge, probably are not  
17 relevant to any issue.

18 **MS. HELTON:** Just to have a clear record here,  
19 so I'm gathering that you are withdrawing your request  
20 with respect to the first two parts, and you are just  
21 pursuing now the third and fourth part, is that right?

22 **MR. FRIEDMAN:** Yes, Ms. Helton, that is  
23 correct. Thank you.

24 **MS. HELTON:** Madam Chairman, in keeping with  
25 our practice of admitting information or exhibits and

1 giving it the weight it's due, I think that Mr. Friedman  
2 has made a valid point that the management of the  
3 company is at issue here in the proceeding. My  
4 recommendation to you would be to admit parts three and  
5 four, if we can get a clear delineation of where that  
6 starts, just so we'll have a clear record.

7 **COMMISSIONER EDGAR:** Mr. Saylor.

8 **MR. SAYLER:** I would disagree with that,  
9 because the issues of these e-mails that Mr. Friedman  
10 talked about started -- if you look at the exhibit  
11 there, mid-July, this summer. Issues of this utility's  
12 managerial imprudence go from 2004 to 2011. That is the  
13 time frame. We are not talking about any managerial  
14 imprudence this summer, we're talking about the  
15 managerial imprudence that this utility has --  
16 imprudence or prudence for the last -- up until, you  
17 know, 2011.

18 Moreover, this is unsupported hearsay. There  
19 is absolutely no witness in this case who could  
20 corroborate these e-mails. It's hearsay within hearsay,  
21 or double hearsay. There's not even an exception to the  
22 hearsay rule that will get this in. And to say that it  
23 can come in and give it the weight that it's due, it's  
24 still not relevant to any of the issues, because this is  
25 not a specific issue that OPC protested, and it's not a

1 specific issue that WMSI protested.

2 Yes, Mr. Brown included some information in  
3 his testimony and a couple of exhibits that are an  
4 excerpt from this larger exhibit. Our office thought  
5 about protesting that or, actually, seeking to have that  
6 struck by the Prehearing Officer, but we thought, you  
7 know, this is just more of the attack-and-distract  
8 litigation strategy that this utility has done with  
9 regard to our office related to issues that aren't  
10 relevant to anything that this Commission is going to be  
11 deciding in this case. So not only is this hearsay, but  
12 it's inadmissible. It's not even an issue in this case.  
13 It is hearsay within hearsay. There is not an exception  
14 to it, and we would object to it coming in at all.

15 Now, we did not object to Mr. Brown's Hearing  
16 Exhibit 84 and 85 which are excerpts from the e-mails,  
17 which you can give it the weight that it's due. And,  
18 you know, we don't have any problem with you looking at  
19 this exhibit, because there's nothing within these  
20 e-mails that shows any issue of misconduct on our  
21 office's part as it relates to this case. However, it  
22 should not be evidence in an evidentiary record, and the  
23 evidentiary record should not be polluted with  
24 extraneous, unnecessary information.

25 **MR. FRIEDMAN:** Boy, I love that rhetoric. The

1 fact is is that Mr. Brown discusses the finances of  
2 Fidelity Bank in his testimony. It's not hearsay. He  
3 discusses that in his testimony, and this is  
4 corroborative to that issue. And I think that at least  
5 as to the parts that are titled "OPC E-mails Regarding  
6 the USDA Loan" and the last part about the -- regarding  
7 the DEP loan are relevant, because they do go to  
8 managerial imprudence that they are claiming the company  
9 had.

10 And if they are trying to say, no, we're not  
11 saying he's going to be imprudent in the past, we're  
12 just saying he was imprudent during these years, then  
13 that's a little disingenuous. Because what they are  
14 trying to say is because of what they perceive as  
15 post-managerial imprudence, they want you to micromanage  
16 this company in the future.

17 So obviously how he operates in the future is  
18 what is relevant, because that's the part in time we're  
19 talking about. We're not talking about history, we're  
20 talking about the future. And that's exactly what these  
21 things have done is they have shown that OPC, and  
22 particularly Mr. Sayler, have attempted to thwart Gene  
23 Brown and Water Management Services' attempts to run his  
24 company.

25 **COMMISSIONER EDGAR:** Thank you, gentlemen,



1 both of you. I do believe that I understand the  
2 positions that you are putting forth.

3 Ms. Helton.

4 **MS. HELTON:** Just so the record is clear, I  
5 want to make a statement about hearsay evidence. I  
6 agree that hearsay evidence in and of -- by itself may  
7 not be used by you in making your decision. However,  
8 hearsay evidence may be used for the purpose of  
9 supplementing or explaining other evidence, but it shall  
10 not be sufficient in itself to support a finding unless  
11 it would be admissible over objection in civil actions.

12 Here we have not had the rest of the  
13 proceedings, so we don't know whether this hearsay  
14 evidence will supplement other evidence or not. But it  
15 has been Commission practice to admit hearsay evidence,  
16 and then at the end of the day, if it supplements it, it  
17 may be used by you in making a decision. If it doesn't,  
18 then it's not a relevant portion of the record that you  
19 may use in making your final decision here.

20 My recommendation to you would be to -- once  
21 we have a clear delineation of what parts three and four  
22 of Exhibit 64 are -- would be to admit it and give it  
23 the weight that it's due.

24 **COMMISSIONER EDGAR:** Let me ask you, if I may,  
25 procedurally, realizing that parts one, two, three, and

1 four were initially put forth by Staff but were then  
2 withdrawn, procedurally where are we as far as three and  
3 four?

4 **MS. HELTON:** We are in a little bit of a  
5 unique posture in that staff, when they put together its  
6 exhibits to have admitted into the record by stipulation  
7 of all the parties, staff does that as a timesaving  
8 measure, and in recognition of staff's role of putting  
9 together as complete of a record as they can for you to  
10 make a decision. We are in a little bit of an awkward  
11 position here because there is no witness that has  
12 sponsored this exhibit.

13 Mr. Friedman, is there a witness here that you  
14 can use to --

15 **MR. FRIEDMAN:** I'm sure Mr. Brown could  
16 testify about this.

17 **MS. HELTON:** I see what you're saying. I  
18 think, Madam Chairman, that maybe the better practice  
19 would be to wait until Mr. Brown takes the stand to see  
20 whether he can address the exhibit.

21 **COMMISSIONER EDGAR:** Okay. And I'm  
22 comfortable with that.

23 Mr. Saylor, very briefly.

24 **MR. SAYLER:** I will make my objection at the  
25 time. However, these exhibits aren't attached to his

1 testimony. The utility in filing its rebuttal could  
2 have hired a -- or gotten a DEP witness or an affidavit  
3 or a witness from the bank or someone like that. They  
4 didn't do that. They didn't attach these e-mails to his  
5 testimony. Therefore, I don't think he's really  
6 competent to testify other than the fact that he secured  
7 this through a public records request. It is what it  
8 is. However, beyond that, it's still hearsay, and I  
9 think it should be excluded from the hearing record.

10 **COMMISSIONER EDGAR:** Okay. Then the way we  
11 are going to address that, or address Exhibit 64 in its  
12 entirety, it will not be admitted at this time.  
13 However, Mr. Friedman, when Mr. Brown is testifying as a  
14 witness, if you would like to take the opportunity to  
15 offer it, and depending on how it is offered, then if  
16 you would like to make an objection at that time, or,  
17 depending on how it is offered, perhaps you'll not.  
18 Either way, we will handle it at that point in time.

19 **MR. SAYLER:** Certainly. And I do want to  
20 note, according to the prehearing order and also the  
21 OEP, that the time for prefiled testimony and exhibits  
22 has passed.

23 **COMMISSIONER EDGAR:** Duly noted. As Ms.  
24 Helton said, I think we are in a little bit of an  
25 unusual circumstance, and I do believe I have the

1 discretion to take it up at that time, and we will work  
2 through that. Okay.

3 That brings us to 72.

4 **MS. HELTON:** And maybe under the same vein, it  
5 might be more appropriate to address Exhibit 72 when  
6 Ms. Dobiac takes the stand. She is the staff witness.  
7 I think that this exhibit, as I understand it and as I  
8 have read it, relates directly to Ms. Dobiac's  
9 testimony. So that if someone would like to use this  
10 exhibit for cross-examination purposes for Ms. Dobiac,  
11 that will build a better record with which to address  
12 it.

13 **COMMISSIONER EDGAR:** Ms. Barrera?

14 **MS. BARRERA:** As long as we can, staff can  
15 introduce the exhibit, I think it's relevant because it  
16 refers to Ms. Dobiac's records, and I think we may be  
17 able to introduce it as part of our redirect.

18 **COMMISSIONER EDGAR:** Mr. Sayler, I do believe  
19 that you were the one that made an initial objection to  
20 a portion of 72. I guess I'm asking is if that  
21 objection still stands? And, if so, Ms. Helton has  
22 suggested that we hold off on that exhibit until the  
23 staff witness. That makes sense to me, but it's your  
24 objection so --

25 **MR. SAYLER:** Yes. Our objection -- we still

1 maintain our objection to Bates-stamped Page 4 through  
2 9, 4-4-0. We can stipulate to the remainder of the  
3 exhibit, and if that one page, the letter from Ms.  
4 Withers wants to be introduced as an exhibit through  
5 cross or something along that line, we will make an  
6 appropriate objections at that time. But as far as the  
7 remainder of this exhibit, I think we can all agree that  
8 it can be stipulated into the record.

9 **COMMISSIONER EDGAR:** Ms. Barrera?

10 **MS. BARRERA:** Yes, we will try to introduce it  
11 during the redirect of Ms. Dobiac, and that would be the  
12 way that we're suggesting that it proceed.

13 **COMMISSIONER EDGAR:** Okay. Then are you  
14 asking to have the other portions of Exhibit 72 entered  
15 at this time?

16 **MS. BARRERA:** Yes.

17 **COMMISSIONER EDGAR:** Okay. Can you, so that I  
18 have it, very clearly articulate what that is comprised  
19 of?

20 **MS. BARRERA:** Yes. We would like at this time  
21 to have Exhibit 72 introduced into the record. It is --

22 **COMMISSIONER EDGAR:** But for --

23 **MS. BARRERA:** But for -- sorry -- but for Page  
24 439, Bates-stamped Page 439 and 440, which the name of  
25 the exhibit is the response, Account 123, Letter from

1 Barbara S. Withers.

2           **COMMISSIONER EDGAR:** Okay. Then at this time,  
3 thank you very much, we will enter into the record all  
4 of what has been marked as Exhibit 72 except for the  
5 pages numbered 439 and 440, which will be removed. And,  
6 Ms. Barrera, then at the appropriate time, if you want  
7 to offer that, we will mark those two. We will identify  
8 those two pages with whatever is the appropriate number  
9 that we come to consecutively at the time.

10           **MS. BARRERA:** Yes. I appreciate it. Thank  
11 you.

12           (Exhibit Number 72, except for pages numbered  
13 439 and 440, admitted into the record.)

14           **COMMISSIONER EDGAR:** Okay. That brings us to  
15 75 and 76, which Mr. Friedman had objected to.

16           Ms. Helton.

17           **MS. HELTON:** I believe because these are --  
18 this is a deposition, and the exhibits attached to a  
19 deposition fall in a little bit different category.  
20 Because if these are not admitted now, then the parties  
21 to the case and staff will have to, perhaps, address  
22 their questioning of the witness a little bit  
23 differently than if the deposition is admitted.

24           So I believe that staff had asked for this to  
25 be admitted, and perhaps it would be appropriate for

1 staff to address this now.

2 **MR. LAWSON:** Yes. Admitting of depositions is  
3 fairly common. And, in fact, it has been addressed very  
4 recently by this Commission in two recent documents; the  
5 Gulf Power rate docket, 110138, and the very recent FPL  
6 rate docket, 120015, in which the depositions were  
7 admitted. And I'll rely on those arguments to explain  
8 why they should be admitted now.

9 Under Chapter 120.569(2)(g) it states that all  
10 other evidence of a type commonly relied upon by  
11 reasonably prudent persons in the conduct of their  
12 affairs shall be admissible whether or not such evidence  
13 would be admissible in the courts of Florida. Any part  
14 of this evidence may be in written form.

15 Furthermore, it goes on to state that the  
16 presiding officer before whom a case is pending may  
17 issue any orders necessary to effectuate discovery, to  
18 prevent delay, and to promote the just and speedy  
19 inexpensive determination of all aspects of the case.

20 So under administrative law we have a  
21 situation where depositions and other forms of evidence  
22 that are commonly relied on are admitted. And in this  
23 case, it would be an expensive and unnecessary delay of  
24 the proceedings if the depo is not admitted, because  
25 staff will have to ask essentially the same questions

1 that occurred in a two-and-a-half hour deposition all  
2 over again to get essentially the same answers that  
3 Mr. Brown provided not more than a week ago, or just  
4 over a week ago.

5           Furthermore, Mr. Friedman referred earlier to  
6 the Rules of Civil Procedure. I would note that unlike  
7 the case that he mentioned, Rule 1.330, Subpart 2,  
8 states, "The deposition of a party or of anyone who at  
9 the time of taking their deposition was an officer,  
10 director, or managing agent, or a person designated  
11 under Rule 1.310(b)(6) or 1.320(a) to testify on behalf  
12 of a public or private corporation, partnership, or  
13 association, that party may be used by an adverse party  
14 for any purpose.

15           So we do have an exemption already stating  
16 that when we have someone who is representing a  
17 business, and Mr. Brown is the principal of WMSI, there  
18 is an exemption to allow those depositions in. There  
19 are two cases that address this. First is the Castaneda  
20 versus Redlands Christian Migrant Association, which  
21 states, "A deposition may be used by any party for any  
22 purpose, and such deposition may be used notwithstanding  
23 that the individual is available to testify at trial."  
24 And Kelley v. Lorrell H. Webb states that the adverse  
25 party of a deposition of a party, an officer, director,



1 or managing agent of a public/private corporation is not  
2 conditioned upon the availability of the deponent.

3           So we have two exceptions -- one in 120, one  
4 in the Florida Rules of Civil Procedure -- which  
5 basically allow the deposition of a corporate officer to  
6 come in under any circumstances, regardless of whether  
7 he is sitting right there. And, furthermore, just to  
8 state that this would be a waste of time. Having to  
9 redo this would essentially require us to spend hours  
10 asking questions that have already been answered and can  
11 already be part of the record.

12           And as a final note, I would say that nothing  
13 in what I have said would preclude Mr. Brown -- I'm  
14 sorry, Mr. Friedman from putting Mr. Brown on the stand  
15 and asking any question that would try to rehabilitate  
16 or bring up any additional information that was dealt  
17 with in that deposition. So he has ample time in front  
18 of this Commission to address anything answered in it.  
19 And furthermore, all three Commissioners, of course,  
20 have the exact same right to ask Mr. Brown any questions  
21 when he's on the stand, as well.

22           **COMMISSIONER EDGAR:** Ms. Helton.

23           **MS. HELTON:** I agree that the provisions in  
24 Chapter 120 and in the Uniform Rules of Procedure, in  
25 Rule 1.330 of the Florida Rules of Civil Procedure,

1 provide for a process where you can accept the testimony  
2 by Mr. Brown by way of deposition into the record and  
3 move that deposition into the record. I believe that  
4 that is in keeping with past Commission practice. And  
5 not only is it an efficiency measure, but it's a  
6 practice that is also recognized by the Florida Rules of  
7 Civil Procedure.

8 **COMMISSIONER EDGAR:** Thank you.

9 Okay. Mr. Friedman, your objections to 75 and  
10 76 are on the record, are noted as is your argument  
11 therefor. However, I'm going to, at this time, allow  
12 them to be admitted. So 75 and 76 come into the record  
13 now.

14 (Exhibit 75 and 76 admitted into the record.)

15 **MR. SAYLER:** Pardon me.

16 **COMMISSIONER EDGAR:** Mr. Sayler.

17 **MR. SAYLER:** The Office of Public Counsel did  
18 have an objection to one of the exhibits in the  
19 deposition transcript. It's at Page 567 and 568.

20 **COMMISSIONER EDGAR:** Thank you for reminding  
21 me. I apologize for missing that.

22 **MR. SAYLER:** Certainly.

23 **COMMISSIONER EDGAR:** But if you could remind  
24 me what your objection was.

25 **MR. SAYLER:** If you have the exhibit handy, it

1 is a letter from Mr. Frank Seidman -- or Frank Seidman  
2 to Mr. Friedman dated January 2nd. It was used at the  
3 deposition that staff had of Mr. Brown. It was a letter  
4 that was introduced by the utility and made a part of  
5 the exhibit.

6 **MR. FRIEDMAN:** It was not introduced by the  
7 utility. It was a question -- it was produced in  
8 response to a question by the staff. I don't think  
9 that's a letter that we put in there at that deposition.  
10 In response to a staff question, Mr. Brown presented  
11 that letter.

12 **MR. SAYLER:** Yes. Thank you for that  
13 clarification.

14 **COMMISSIONER EDGAR:** Okay.

15 **MR. SAYLER:** That is correct. There was a  
16 reference to this letter existing, and I think staff  
17 requested that they have a copy of it, and they attached  
18 it to the exhibit. However, if you look at the letter,  
19 it's not signed by Mr. Seidman, it's not addressed to  
20 WMSI, it's uncorroborated. It's hearsay, but it can  
21 potentially get in through one of the exceptions, but I  
22 think that it would be better to have this brought in  
23 through cross or some other manner than just having it  
24 stipulated in. But if it is put in over our objection,  
25 then we'll just go on from there.

1                   **COMMISSIONER EDGAR:** And tell me the page  
2 number again of the letter from Mr. Seidman.

3                   **MR. SAYLER:** 567 and 568.

4                   **COMMISSIONER EDGAR:** Thank you.

5                   Staff?

6                   **MR. LAWSON:** A couple of points.

7                   Mr. Friedman was correct in how this document  
8 came in. Because this document is something that was  
9 relied on at a point in the deposition by Mr. Brown,  
10 it's therefore admissible, because hearsay is admissible  
11 as an exception when it's relied on by a party to  
12 corroborate what they are saying to you in testimony.

13                   Secondly, we point out the rule of  
14 completeness would indicate that when given an  
15 opportunity, the entirety of a given document, this  
16 deposition and its exhibits should be entered for their  
17 full purpose so that the Commission can give it adequate  
18 weight.

19                   Then my final point is, yes, this document is  
20 not perfect, it is not signed, as Mr. Sayler pointed  
21 out, but it was relied upon, and the Commission  
22 certainly has enough judgment to look at it and give it  
23 the weight that it's due.

24                   **COMMISSIONER EDGAR:** Mr. Sayler, very briefly.

25                   **MR. SAYLER:** We may disagree, but I will

1 withdraw my objection to this exhibit.

2 **COMMISSIONER EDGAR:** Thank you. Then as I  
3 stated earlier, Exhibit 76 is entered in its entirety.

4 Okay. We are ready to move along unless there  
5 are any other matters before we move to  
6 cross-examination of Witness Schultz.

7 No other matters?

8 **MS. BARRERA:** There are no matters that we are  
9 aware of.

10 **COMMISSIONER EDGAR:** Thank you.

11 Mr. Friedman.

12 **MR. FRIEDMAN:** Thank you.

13 In keeping with Ms. Helton's admonition about  
14 the exhibits, one of the exhibits -- I know you have  
15 already ruled upon the deposition of Mr. Brown, which is  
16 Exhibit --

17 **COMMISSIONER EDGAR:** 75.

18 **MR. FRIEDMAN:** Well, it's also Exhibit Number  
19 15 that this witness sponsors, although this witness --  
20 the exhibits are not included with the deposition. Also  
21 included in this exhibit is the deposition of Mr. Miller  
22 (sic), without any determination that it is otherwise  
23 admissible and not hearsay.

24 **COMMISSIONER EDGAR:** I'm so sorry, Mr.  
25 Friedman, I did not catch your last comment. I caught

1 what you are saying about the exhibit that had been  
2 marked as 15 and --

3 **MR. FRIEDMAN:** Exhibit 24 is the deposition of  
4 Mr. Mitchell that was taken by the Office of Public  
5 Counsel. And my argument there is similar to the  
6 argument made regarding Mr. Brown's, except that there  
7 has been no showing that Mr. Mitchell fits within any of  
8 the exceptions that Mr. Lawson mentioned.

9 **COMMISSIONER EDGAR:** Mr. Saylor.

10 **MR. SAYLER:** Okay. Mr. Friedman, if I  
11 understand, you're lodging an objection to Hearing  
12 Exhibit 15, which is OPC's deposition of Mr. Brown as  
13 well as our --

14 **MR. FRIEDMAN:** No, no, they have already ruled  
15 on that, so I'm not re-raising --

16 **COMMISSIONER EDGAR:** We are moving on.

17 **MR. FRIEDMAN:** We're moving on.

18 **MR. SAYLER:** Okay.

19 **COMMISSIONER EDGAR:** He has raised some  
20 concerns, I don't know if we're at the objection point,  
21 but --

22 **MR. FRIEDMAN:** Well, Ms. Helton told me last  
23 time I shouldn't wait until the end, so I'm trying to  
24 learn.

25 **COMMISSIONER EDGAR:** I understand. So I'm

1 going to say concerns, and you can correct me, but  
2 concerns about what has been marked as Exhibit 15 and  
3 Exhibit 24 that is attached to Mr. Schultz' prefiled  
4 testimony.

5 **MR. FRIEDMAN:** And 15 is the same argument I  
6 made before. You've already ruled on it, so --

7 **COMMISSIONER EDGAR:** So noted. Thank you.

8 **MR. SAYLER:** Just a point of clarification for  
9 the tribunal. The deposition that's attached to  
10 Mr. Schultz' testimony is not the same deposition that  
11 staff took. I don't want the tribunal to think that's  
12 the same deposition.

13 **MR. FRIEDMAN:** I'm sure the same principles  
14 apply; thank you.

15 **MR. SAYLER:** I would like to point out, to the  
16 Order Establishing Procedure issued in this case on  
17 October 3rd, 2012, Page 6, under Subsection D, motions  
18 to strike prefiled testimony and exhibits, motions to  
19 strike any portion of the prefiled testimony and related  
20 portion of exhibits of any witness shall be made in  
21 writing no later than the prehearing conference.

22 Motions to strike any portion of prefiled testimony and  
23 related portions of exhibits at the hearing shall be  
24 considered untimely, absent good cause shown.

25 **MR. FRIEDMAN:** I'm not moving to strike them;

1 I'm moving to say they are inadmissible. That's  
2 different. The standards for moving to strike something  
3 are set forth in the Rules of Civil Procedure, and they  
4 are different than whether something is admissible or  
5 not. If not, why are we even talking about any of these  
6 exhibits, and why at the end of it do we even ask  
7 anything? You just ought to say move the testimony and  
8 exhibits; you didn't move to strike them, so they must  
9 be relevant. It makes no sense. We're not moving to  
10 strike that deposition, we're saying it is inadmissible  
11 as hearsay.

12 **COMMISSIONER EDGAR:** Okay. Are you ready to  
13 proceed with the questions?

14 **MR. FRIEDMAN:** Yes.

15 **COMMISSIONER EDGAR:** Great.

16 **CROSS EXAMINATION**

17 **BY MR. FRIEDMAN:**

18 **Q.** Mr. Schultz, can you explain to us how the  
19 Public Service Commission establishes rates for a  
20 start-up utility?

21 **A.** For a start-up utility?

22 **Q.** Yes.

23 **MR. SAYLER:** Objection. This is not to any  
24 portion of his testimony.

25 **MR. FRIEDMAN:** I'm trying to build some



1 predicate. He talks about mismanagement, and he's  
2 talking about the debt of the utility, and I think we  
3 have got to -- and I hate to give away my hand where I'm  
4 going with stuff before I do it, but what I'm doing is  
5 trying to build a predicate to that particular issue.  
6 Where they say, oh, they've got all this debt. Well, I  
7 think it's clear and it ought to be understood how  
8 companies get debt, and they get the debt because of the  
9 way the PSC sets rates. When you set rates -- I don't  
10 want to testify.

11 **COMMISSIONER EDGAR:** Thank you.

12 Please either state or restate your question.

13 **MR. FRIEDMAN:** Okay.

14 **BY MR. FRIEDMAN:**

15 **Q.** Can you explain how the Public Service  
16 Commission sets rates for start-up utilities?

17 **COMMISSIONER EDGAR:** I'm going to allow.

18 **A.** Rates are set for a utility based upon what a  
19 company has as established rate base capital structure.  
20 And in the case of a utility that may not have started,  
21 they have to have all the projected costs for operating.  
22 So that's how you -- that's what you would factor in.  
23 There may be some intricate differences that vary  
24 somewhat from a regular utility that has been  
25 established, but essentially, you know, you would have

1 to follow the same procedures.

2 Q. Do you then understand that when rates are set  
3 for a start-up utility that the initial rates are  
4 presumed that the facility is operating at 80 percent  
5 capacity, is that your understanding?

6 A. I can't say what capacity the percentage was  
7 for sure. I don't know the percentage that they would  
8 presume it to be, I'll say that.

9 Q. Would you agree that on day one when you first  
10 pump your first gallon of water that the expenses that  
11 the utility incurs are substantially greater than you're  
12 allowed to charge to your first customer?

13 A. I'm not sure I'm following your question.

14 Q. When you have your first customer to your  
15 utility, does that customer have to pay every bit of,  
16 100 percent of the then current operating expenses of  
17 the utility?

18 A. The rates will probably be set before that  
19 customer receives it, so it's going to be based upon  
20 some projected level of expenses. It's going to be  
21 based upon the capital structure and the rate base that  
22 was accepted in the filing that was presented to the  
23 Commission.

24 Q. Have you ever represented a start-up utility?

25 A. I have not represented a utility, no.

1 Q. Any utility, not just a start-up?

2 A. It wasn't in a rate case. It would have  
3 been in -- there was -- I did some work in a litigated  
4 proceeding, but I don't recall in a rate case.

5 Q. You testified earlier that you didn't believe  
6 that the value of Brown Management Group was at least  
7 1.2 million, is that correct?

8 A. I testified that I do not believe it's worth  
9 1.2 million. I haven't seen any documentation that  
10 would support that claim.

11 Q. Did you look, try to find any independent  
12 documentation?

13 A. It's not my obligation to establish support  
14 for the company's position. The company was asked to  
15 provide support. They didn't provide it when I asked  
16 for it; they provided some information to the staff  
17 which I looked at. That material that was provided by  
18 the company was dated. It was from -- there was an  
19 appraisal from 2009. There was an estimate from 2005, I  
20 believe it was, and there was just not -- nothing that I  
21 would have considered sufficient documentation to  
22 support what the company has presented as the value of  
23 Brown Management Group.

24 Q. So they presented the information, you just  
25 don't think it's sufficient; that's what you're saying?

1           **A.**    Yes, sir.

2           **Q.**    When a utility borrows money for capital  
3 improvements, can you explain in the ratemaking process  
4 how the utility obtains the money to repay that loan?

5           **A.**    Well, when the utility borrows money, they are  
6 going to go to the bank, and that money is then  
7 reflected as debt and it's incorporated into their  
8 capital structure.

9           **Q.**    And how do the rates, how are rates set to  
10 allow the utility to recover, to repay that loan?

11          **A.**    It's based upon the interest rate that's  
12 reflected in the capital structure. That will cover the  
13 interest portion of it. And the principal portion is  
14 basically to be covered as part of the depreciation of  
15 the plant that was constructed and developed. That's  
16 how you're recovering the principal.

17          **Q.**    So what happens if the loan is amortized over  
18 a shorter period of time than the asset is depreciated,  
19 where does the utility get that difference?

20          **A.**    A utility will have that occur, and that  
21 generally will come from the fact that the utility, when  
22 it established itself, it invested money to start up the  
23 company. It has an equity investment. And the company  
24 operates with either the flow of ratepayer funds or an  
25 equity investment.

1 Q. What if I need to put in a --

2 MR. SAYLER: Madam Chair, objection. I'm not  
3 sure where he's going with this. I don't know if he's  
4 asking a hypothetical. It appears that he's asking him  
5 questions about a developer utility, and WMSI is not a  
6 developer. It has been around for many, many years,  
7 so --

8 MR. FRIEDMAN: It started out as a developer  
9 utility.

10 COMMISSIONER EDGAR: One at a time.

11 MR. SAYLER: I don't mind the questioning  
12 going on, I just want to be cognizant of the tribunal's  
13 time. And I'm just not quite sure where this is going,  
14 Madam Chair. Just with your indulgence, just to note  
15 that we do have an objection, but we are not opposed to  
16 the questioning continuing.

17 COMMISSIONER EDGAR: Okay. My turn for a  
18 moment.

19 Mr. Dean, I know this goes way beyond your job  
20 description, but Commissioner Brown and I are freezing.  
21 Could you check if it's possible to adjust the air back  
22 there?

23 (Off the record briefly.)

24 COMMISSIONER EDGAR: Thank you, Mr. Durbin.  
25 Thank you, Mr. Dean. Whatever works, but I don't want

1 to keep sneezing through this whole proceeding.

2 **COMMISSIONER BROWN:** Thank you.

3 **COMMISSIONER EDGAR:** Thank you very much.

4 Mr. Friedman.

5 **MR. FRIEDMAN:** I had two points for that. One  
6 is that that question --

7 **COMMISSIONER EDGAR:** You may proceed.

8 **MR. FRIEDMAN:** Thank you.

9 **COMMISSIONER EDGAR:** You're welcome.

10 **BY MR. FRIEDMAN:**

11 **Q.** All right. So your answer dealt with a  
12 start-up utility. What about a utility that is an  
13 ongoing utility and says, look, I need to buy this new  
14 asset. Let's say a five-mile line across a bridge to  
15 get to an island. I've got to go borrow \$5 million to  
16 do that. How does that utility obtain the return to pay  
17 back that loan?

18 **A.** The utility would receive its return  
19 basically, again, through the loan that they obtained,  
20 and the fact that they should have invested in the  
21 company itself to be able to provide the funds that  
22 would be required to take -- cover the regulatory lag.  
23 That's the term that is usually applied to what we're  
24 talking about. It's regulatory lag. And it's not  
25 uncommon for any industry, whether it be an electric

1 company, gas company, or whatever.

2           You have that regulatory lag, and then what  
3 you do is you have -- in the capital structure you're  
4 going to have a component there for that investment of  
5 equity by the utility. Now the fact that we have here,  
6 the problem has been because there was no real equity.  
7 I mean, it's basically all debt. Everything --

8           **MR. FRIEDMAN:** He's not answering the  
9 question.

10 **BY MR. FRIEDMAN:**

11           **Q.** Did you hear the question?

12           **COMMISSIONER EDGAR:** Mr. Friedman, why don't  
13 you restate the question.

14 **BY MR. FRIEDMAN:**

15           **Q.** When a company has to borrow money -- not a  
16 start-up company. When an ongoing concern has to borrow  
17 money to build a -- or make a capital improvement, how  
18 does it obtain the return to do that?

19           **A.** I think I did answer it. They obtain the  
20 return by getting in the capital structure the interest  
21 rate on that loan. And to the extent to cover any  
22 regulatory lag, that would be covered by the investment  
23 made by the shareholder of the company to -- and that  
24 would be incorporated in the capital structure and give  
25 them a return. I mean, that's what's done for most

1 companies.

2 Q. All right. What happens if you borrow the  
3 money and the bank says I'll lend you the money for ten  
4 years to build an asset that has got a 40-year  
5 depreciation life?

6 A. And, again, that's exactly what I was talking  
7 about. You have the fact that that 40 years is a  
8 regulatory lag. That's part of utility ratemaking. And  
9 in every case that I've ever been in, the utility has an  
10 equity investment. The owners of the company have made  
11 an investment in the company, and that's what the return  
12 is paid on.

13 Q. All right. How does that have any impact on  
14 how your -- I'm not talking about the equity portion.  
15 I'm talking about the loan that you get from the bank.  
16 On that loan portion you're saying, are you not, that  
17 you get the interest as part of your rate of return, and  
18 you get the principal amount paid through depreciation?

19 A. That's correct.

20 Q. And so if the asset is depreciated over 40  
21 years, but your loan is 20 years, then at the end of 20  
22 years somebody -- that first 20 years, somebody has got  
23 to make up that shortfall. What you're saying is that's  
24 the equity the owner puts in?

25 A. That's where it comes in.



1           **Q.**    Don't you think that if an owner or borrower  
2 can get the lender to match the amortization period on  
3 the loan with the depreciation schedule or the  
4 depreciation rate on the asset, that that would be what  
5 you would be -- the goal that you would be looking for?

6           **A.**    That's kind of a long question.  Run it by me  
7 again.

8           **Q.**    Don't you think the goal in borrowing money --

9                   **MR. SAYLER:**  Madam Chair, objection.

10                   **COMMISSIONER EDGAR:**  Mr. Sayler, on what basis  
11 and to what?

12                   **MR. SAYLER:**  He has not yet pointed to one  
13 part of Mr. Schultz's testimony as it relates to this.  
14 We are way far afield as it relates to his testimony as  
15 it relates to the issues at issue in this case.

16                   **COMMISSIONER EDGAR:**  Mr. Friedman, I did give  
17 some latitude, but could you address the objection?

18                   **MR. FRIEDMAN:**  Yes.  I think Mr. Sayler's  
19 problem is he wants me to say Mr. Schultz, on Page 2,  
20 Line 7, you said blah, and then ask him a question.  I'm  
21 asking him questions that all go to his arguments about  
22 whether or not this company is financially feasible and  
23 how it got into the financial situation it's in, and  
24 whether having a 35-year amortization on a DEP note is  
25 bad practice.

1 I mean, he has challenged the DEP note saying  
2 that, oh, by changing the amortization period of the  
3 loan so that it matches the depreciation schedule, that  
4 that is bad management. And that's what I'm asking him  
5 about, but I'm trying not to ask him so bluntly so that  
6 he, you know, comes up with some concocted answer.

7 **COMMISSIONER EDGAR:** That's not entirely  
8 helpful. I have given you a little latitude earlier,  
9 and I'm going to continue to do so. So I'm going to  
10 allow you to continue. Please take into account our  
11 limited time. And, Mr. Sayler, you will be granted  
12 similar -- not wide, but similar latitude when you have  
13 the opportunity to cross Mr. Friedman's witness later in  
14 the proceeding.

15 **MR. SAYLER:** Thank you.

16 **BY MR. FRIEDMAN:**

17 **Q.** So in conclusion, Mr. Schultz, wouldn't it be  
18 correct to say that the goal in financing for capital  
19 improvements would be to have a loan amortization period  
20 equal to the depreciation period?

21 **A.** I would have to disagree with that, because  
22 that's just totally inconsistent with any ratemaking  
23 process that I have ever seen. The loans never last the  
24 life of the asset when it comes to any major item. It  
25 might apply, let's say, if you bought a truck. The

1 truck depreciation period might be five years, the loan  
2 might be for five years, then you have got the matching  
3 that you're talking about. But if you're building a  
4 plant, and you build this plant that's supposed to last  
5 fifty years, and you can only get the financing for  
6 twenty years, and even if you could expand it to thirty  
7 years you're not going to have that perfect match that  
8 you're looking for. And that's all part of the  
9 principles of ratemaking.

10 That's why when you have -- again, I'm going  
11 back to the equity investment. The equity investment  
12 represents what the shareholders have put in, what they  
13 are entitled to earn a return on to cover the cost of  
14 prefinancing those assets.

15 **Q.** So what you're saying, then, is that your  
16 understanding of ratemaking requires that the utility  
17 shareholders come up with the shortfall created by the  
18 fact that you're having to pay back the principal at a  
19 faster rate than you're getting the rates through  
20 depreciation?

21 **A.** That's essentially how it has worked in the  
22 35-years-plus I have been doing this, yes.

23 **Q.** If a company has two loans, one is at a higher  
24 interest rate than the other loan, isn't it good  
25 business practice to pay off the higher interest rate

1 loan first?

2       **A.** Keeping it strictly to your hypothetical  
3 example, it could be, yes. It depends on how much your  
4 loans are accumulating to. You can keep accumulating  
5 loans and accumulating loans until at some point you are  
6 going to have too much debt, and then you won't have a  
7 way to pay it.

8       **Q.** If I've got two loans, I've got a loan over  
9 here for a million dollars, a loan over here for a  
10 million bucks, and this one is at 7 percent and this one  
11 is at 3 percent, and I've got money to pay down, which  
12 one would you pay?

13       **A.** You would pay down the 7 percent loan.

14       **Q.** Isn't it true that interest expense, that the  
15 interest that you pay, that a company pays on its debt  
16 is not recovered as an operating expense in ratemaking?

17       **A.** That's correct.

18       **Q.** And so how is it recovered?

19       **A.** There is a return figure in the capital  
20 structure that's applied to the rate base, and that's  
21 where you get your recovery.

22       **Q.** So in establishing that, the important  
23 parameter really is the interest rate on the loan, is it  
24 not?

25       **A.** It is an important factor. Not the only

1 factor but it is an important factor, yes.

2 Q. All right. So in your testimony you said that  
3 the interest expense on the DEP loan increased as a  
4 result of extending the repayment term, is that correct?

5 A. Can you cite me?

6 Q. If you don't remember, say so.

7 A. I remember something to that effect, and I  
8 just want to make sure that the question is exactly as I  
9 was -- presented in my testimony.

10 Q. Let me take out the first part of that. Do  
11 you believe that the interest expense on the DEP loan  
12 increased as a result of extending the payment?

13 A. Yes, I do.

14 Q. And could you explain how that increase  
15 impacts the rates?

16 A. The impact of that would be that, one, we have  
17 extended the debt that's going to be recovered from,  
18 let's say, 20 years to 30 years. So in Year 21, we  
19 still have that debt factored into the capital  
20 structure; whereas if it was paid off after 20 years, it  
21 wouldn't be in the capital structure.

22 Q. Wouldn't it be in the capital structure as  
23 equity instead of debt?

24 A. It could be.

25 Q. And equity has got a higher rate than the

1 3 percent debt, does it not?

2 A. Yes, it does, usually.

3 Q. And isn't it also true that the interest on  
4 the debt instruments included in rates is also limited  
5 by the amount of the rate base of a utility?

6 A. That's correct.

7 Q. So to the extent a utility has debt greater  
8 than rate base, then the rates really don't recover all  
9 the interest, then, do they?

10 A. That is a fair statement.

11 Q. Isn't it true that most lenders to small  
12 businesses require the personal guarantees of the  
13 principal?

14 A. I'm not going to agree with that.

15 Q. Have you ever run a business?

16 A. Pardon?

17 Q. Have you ever run a business?

18 A. Have I ever run a business?

19 Q. Correct.

20 A. Kind of.

21 Q. Did you ever have to borrow money?

22 A. Nope.

23 Q. What about the business, the company you work  
24 for now, are you a principal in that company?

25 A. More in name than anything.

1           **Q.**    So you wouldn't have personally guaranteed any  
2 of the debt of your company?

3           **A.**    Nope.

4           **Q.**    What about life insurance; it's not unusual  
5 for a lender to require life insurance of a principal,  
6 is it?

7           **A.**    Generally, the times that I see where that's  
8 required is when the bank is uncomfortable with the  
9 financial position of the company, and they are  
10 concerned about the level of assets that would be  
11 collateral for the company.

12          **Q.**    And isn't the age of the principal also a  
13 factor in that?

14          **A.**    I'm not sure. I have never asked the bank if  
15 the age played into it. It was basically more of, as I  
16 indicated, we're concerned you don't have enough  
17 collateral, so we want some insurance.

18          **Q.**    So you have never had to take out life  
19 insurance on any loans that you have ever had?

20          **A.**    No. I mean, you can. It's an option, if you  
21 want to do it, but I haven't been required to do it.

22          **Q.**    Does the ratemaking process -- in the  
23 ratemaking process, is the principal of the company  
24 compensated for having to give a personal guarantee?

25          **A.**    I consider it as part of the compensation that

1 the individual is receiving. I mean, they're paid based  
2 upon their responsibilities and their obligations to  
3 operate the system and manage the system. And just to  
4 throw you a for example, there's a lot of things that  
5 companies may have that's extra cost. Directors and  
6 officers liability insurance in some companies are there  
7 to protect the shareholders because of -- and it's  
8 considered part, in part of compensation to the officers  
9 because it's there to protect -- as protection for them,  
10 also.

11 Q. All right. So that's an expense that is not  
12 built into ratemaking, in your opinion, the D&O?

13 A. It depends on where you're at.

14 Q. What about Florida?

15 A. In Florida it has been allowed -- in the last  
16 couple of cases that I was in, it was split 50/50, and  
17 that was based upon a recommendation I made.

18 Q. If a lender requires life insurance as a  
19 requirement of making a loan, how is that built into the  
20 ratemaking process?

21 A. I suppose you could include it in operating  
22 expenses, and then have to deal with it as an issue,  
23 maybe, in a case.

24 Q. Do you think that's more appropriate than  
25 building it into the APR of the loan?



1           **A.**    I would think it would be more appropriate,  
2    yes, to include it in O&M, if you are going to include  
3    it at all.  Any part of it, whether it be 100 percent,  
4    50 percent, 25 percent.  And if it can be established  
5    that it was something that was really a necessity for  
6    the operation of the company, but wasn't required  
7    because of other situations at the company.

8           **Q.**    So it should be in debt rather than being  
9    built into the APR?

10          **A.**    I would think so, yes, if it is considered a  
11    reasonable expense.

12          **Q.**    Do you know any instance where this Commission  
13    has micromanaged a water utility to the extent that you  
14    are suggesting in this case?

15          **A.**    Well, I think I've cited different things in  
16    my testimony.  There were -- I looked at some orders in  
17    the past where the Commission says you've got to hire a  
18    co-manager, you've got to have this escrow account,  
19    you've got to do this.  You know, there were some  
20    instances in the past where they were questioning the  
21    practices and, therefore, they essentially, as you call  
22    it, micromanaged.

23          **Q.**    Okay.  And isn't it true that what you have  
24    articulated as the precarious financial position has, in  
25    fact, been unchanged since Water Management Services had

1 to build that line across the bridge?

2           **A.** I wouldn't say it's unchanged. That's the  
3 problem, is that this debt is continuing to increase.  
4 And as debt increases the way it has, banks are going to  
5 be less comfortable with it, and you can only borrow to  
6 a point. At some point there just isn't going to be the  
7 money there, and that's what I'm trying to emphasize in  
8 my testimony is that that bubble could burst. And if  
9 that bubble bursts and you can't borrow any more money,  
10 what's going to happen to the ratepayers, what's going  
11 to happen to WMSI, what's going to happen to Mr. Brown?

12 I mean --

13           **Q.** Woulda-coulda-shoulda. Mr. Brown has done a  
14 very good job over the last 38 years of doing that  
15 balancing act, has he not?

16           **A.** I would say he has done some pretty good moves  
17 of kind of stretching it, as trying to get as much money  
18 as he can to operate things and get things done. But I  
19 would note that in his deposition that the staff had,  
20 that he indicated that, you know, I've been able to do  
21 this because I had good relationships with these banks,  
22 bankers; and they're no longer in business, they went  
23 broke.

24                   And so, you know, when you start losing that  
25 buddy/buddy system, that can hurt you. As he indicated,

1 there is a new bank that took over. They raised his  
2 interest rate. That's going to happen. And that's the  
3 beginning of that bubble bursting.

4 Q. What about the rate -- what about the  
5 responses that Mr. Brown filed to the discovery that  
6 discussed his relationship with the bank in Perry, his  
7 current lender?

8 A. I'm not sure which one you're -- the bank in  
9 Perry?

10 Q. You're not familiar with the testimony in Mr.  
11 Brown's deposition that the staff took about him getting  
12 new financing, checking on financing for these  
13 improvements?

14 A. Well, he indicated that he is making an effort  
15 to obtain additional financing, and he is in the process  
16 of doing that. And we're going to be -- you know, I  
17 don't know if he is going to get the financing, if he  
18 gets it for sure. A lot of that just is -- it's a  
19 possibility. But what happens then in -- I believe one  
20 of notes is due in 2014. What happens when that one  
21 come due? What are we going to do?

22 I mean, is there any guarantees that he's  
23 going to be able to go out and get that refinancing?  
24 Usually when you have debts like this, you're going to  
25 have those little bubbles that have got to be paid.

1 And, you know, you don't know what's going to happen  
2 then. And you have got to be concerned that the way  
3 that the debt has built up over the years with this  
4 company without any capital investment by the owner,  
5 that at some point the lenders are going to say I'm  
6 done. I can't give you any more money. And then what  
7 are you going to do to pay your bills?

8 I mean, that's even one of the problems is he  
9 has always had to borrow here, borrow here, and he has  
10 had troubles making the payments. I don't think there  
11 is any dispute about that. His accounts payable has  
12 delinquencies in them that are over 90 days old. I  
13 mean, at some point usually, you know, something happens  
14 that says, okay, it's all over. I can't give you any  
15 more loans. And then what are you going to do?

16 If you don't have some protections built in  
17 for the ratepayers and for the company and Mr. Brown, I  
18 can only envision that this is where we're headed.  
19 We're headed for a wake-up call one morning where there  
20 is no more money, I'm sorry.

21 Q. However, in the past Mr. Brown has always been  
22 able to do those refinancing, hasn't he?

23 A. As I indicated, yes, he has. And as I  
24 indicated, his good connection at the one bank went  
25 broke. And he has -- that was his words.

1 Q. And he has got some new connections, doesn't  
2 he?

3 A. He's working with a bank. I'm not sure that  
4 he has actually got a firm commitment that he will get  
5 that money and that he will be able to continue.

6 Q. There are not many guarantees in life, are  
7 there?

8 A. No, there's not. And that's why I'm so  
9 concerned when I put my testimony together that --

10 Q. Isn't it true that Water Management Services  
11 has continued to provide a good quality of service to  
12 its customers, notwithstanding what you term is a  
13 precarious financial situation?

14 MR. SAYLER: Objection, he doesn't testify to  
15 quality of service. But if he knows the answer, he can  
16 answer.

17 MR. FRIEDMAN: He is testifying about  
18 managerial imprudence, and I think being able to manage  
19 a company and provide good service, you know, even in  
20 what he calls --

21 COMMISSIONER EDGAR: You may pose your  
22 question to the witness.

23 BY MR. FRIEDMAN:

24 Q. Isn't it true that Water Management Services  
25 has provided a good quality of service to its

1 ratepayers, notwithstanding what you term as a  
2 precarious financial situation?

3       **A.** That is my understanding, that he has been  
4 able to have good service provided to his customers. I  
5 guess there were a few here that didn't like the taste  
6 of his water, but that's always a possibility; you're  
7 going to have some there. But, I mean, from the  
8 standpoint of the actual service where they are there to  
9 come and do, fix this, or fix that, yes, that's my  
10 understanding that he has had good service.

11               But, again, you can't keep counting on the  
12 fact that he's going to be able to go out and borrow money  
13 on just a whim. I mean, I can go out and get my money,  
14 and I've got no problems. I mean, if that was the case,  
15 then there would be no need for him to even have a rate  
16 increase, because he could just continue to borrow money  
17 and say I'm paying for it this way. I'm a nice guy; I'm  
18 going to do this.

19       **Q.** Isn't having to borrow money sometimes as a  
20 result of not getting a rate increase, that you have to  
21 borrow money to cover your losses because your rates  
22 aren't sufficient to cover the cost of operating the  
23 company?

24       **A.** That's an interesting question, and I would  
25 agree that is a very good possibility. And the

1 possibility that that occurs is you may not have gotten  
2 your rates, because when you put your rate case together  
3 you didn't do a good enough job to convince the  
4 Commission that that rate increase was needed. I mean,  
5 I have seen that before, too.

6 Q. Do you know when the last general rate  
7 increase was for this company?

8 A. There was -- I don't know, I guess 2010.

9 Q. If you don't know, it's okay to say --

10 A. No, I don't know the specific dates. I know  
11 that there was a rate case, a PPA (sic) and all,  
12 provisions for increases, so --

13 Q. If you don't know, it's okay to say you don't  
14 know.

15 A. I don't know the exact date.

16 Q. At Page 54, Line 1, you state, do you not,  
17 that the PSC put Water Management Services on notice of  
18 what documentation was required in order to be  
19 compensated for transportation costs?

20 A. I'm sorry, what page?

21 Q. I wrote Page 54. Hold on a second.

22 A. Oh, I see it now. As the order states, the  
23 company was effectively put on notice as to what was  
24 required to be compensated for the costs in question and  
25 they failed to meet their obligation. Yes, sir.

1           Q.    So that is your understanding is that they  
2 were put on notice?

3           A.    The order that I looked at said that there was  
4 supposed to be a log for the payment of those costs.

5           Q.    Do you think that log also applied to the  
6 administrative staff when that order was entered?

7           A.    Actually, yes.  I mean, in fact, first of all,  
8 the purpose of having a mileage log or a reimbursement  
9 of that type is going be required for IRS purposes.  And  
10 to the extent that that wasn't included, then they  
11 didn't have that, any kind of documentation to support  
12 it for a rate case, they have failed two ways; one, to  
13 have it for the rate case, and, two, to have it for IRS  
14 purposes, which puts the company in another precarious  
15 position if they were to be audited.

16                    The point is is that when you want money in a  
17 rate case that you have to have documentation to support  
18 those costs.  And that's what my argument was earlier is  
19 when you provided me that question about the -- well,  
20 what if you don't get what you ask for in a rate case,  
21 there's an example of why you don't get things, because  
22 you didn't have the documentation that you should have.

23           Q.    And you would agree, would you not -- let me  
24 back up a second.  You would agree that the  
25 documentation that the Commission requires may be less



1 or greater than the requirements of the IRS?

2 A. That's true.

3 Q. Just because the IRS requires something,  
4 doesn't mean the PSC, and vice versa?

5 A. That's true.

6 Q. And we are here today because of the PSC  
7 requirement, are we not?

8 A. That's true. And I will note that --

9 Q. So do you agree that if the documentation for  
10 transportation expense for the administrative personnel  
11 meets the PSC requirements, that they should be entitled  
12 to the requested transportation expense?

13 A. If it meets the requirements in the test year  
14 that was used for that request. And in the case that we  
15 are talking about, the test year was 2010. They didn't  
16 meet those requirements in there. They used as a  
17 surrogate some other information that was from a  
18 subsequent year. But, again, I want to clarify this,  
19 this is information that is basically required under  
20 IRS --

21 Q. We're not talking about IRS.

22 A. But we are.

23 Q. Stick to the ratemaking process at the PSC.  
24 That's what --

25 A. I beg to differ, I really beg to differ.

1 Because the company is supposed to be operating under  
2 the rules and regulations that apply to them by law, and  
3 the IRS has a requirement for adequate documentation for  
4 costs. And to the extent that you don't have that  
5 support, then those costs will not be allowed for income  
6 tax purposes. So to assume that just because the IRS  
7 has a rule, and in your opinion maybe the Commission  
8 doesn't, that you don't have to have support for those  
9 costs, that's something unheard of. Because in every  
10 case I'm in, the Commissions that rule on what is  
11 allowed in rates is based upon the -- some kind of  
12 documentation that can support that there is some  
13 reasonableness to this request.

14 Q. All right. And if the documentation that the  
15 Commission requires in this case was met, then they  
16 should be entitled to the transportation expense, should  
17 they not?

18 A. But it wasn't; that's the point.

19 Q. I'm not asking that. That's not the question,  
20 was it?

21 The question was if they met that -- you and I  
22 could disagree all day long about what documentation  
23 is required.

24 MR. SAYLER: What was the question again?

25

1 BY MR. FRIEDMAN:

2 Q. The question is whether or not if the  
3 documentation required by the Commission is required,  
4 then the utility is entitled to its transportation  
5 expense, would it not?

6 A. If the documentation supplied was in support  
7 of the costs that were requested, then they should be  
8 entitled to those costs.

9 Q. Can you explain this Commission's policy on  
10 when a gain on sale is amortized to benefit customers?

11 A. Well, the Commission will make a ruling that  
12 says the gain on the sale will be amortized over a  
13 certain period of time.

14 Q. Do you know what the criteria of the sale are  
15 that would dictate that that gain on sale goes to the  
16 customers versus the shareholders?

17 A. The criteria is whether it is utility  
18 property.

19 Q. Does that mean in rate base, or just that the  
20 utility owned it?

21 A. It means it's property that was charged to a  
22 utility-related account.

23 Q. All right. So if the utility bought a piece  
24 of property, if this utility bought a piece of property  
25 in Tallahassee that was never used for utility purposes,

1 then do you think that follows under your guidelines  
2 that the amortization should go to customers?

3       **A.** It may. First of all, let's say they bought  
4 it and it was put into plant held for future use, and it  
5 didn't get used, but it was there and it was included in  
6 rate base, then it's utility property that they're  
7 entitled to the return.

8       **Q.** All right. I think you're confusing rate base  
9 with plant in service. Now, you earn your return on  
10 rate base, do you not?

11       **A.** That's correct.

12       **Q.** So if this Commission has not determined that  
13 an asset was in rate base, then the customers have not  
14 paid anything for it, have they?

15       **A.** Well, again, we're running into the regulatory  
16 lag issue.

17       **Q.** I'm not asking about regulatory lag. I'm  
18 asking a very simple question.

19       **A.** Then ask it again, because I'm not following  
20 how you're --

21       **Q.** You understand what rate base is?

22       **A.** Yes, I know what rate base is.

23       **Q.** You know what plant in service is?

24       **A.** Yes, sir, I do.

25       **Q.** Those are not the same, are they?

1           **A.** No, they're not. Plant in service is part of  
2 rate base.

3           **Q.** And so when this Commission sets rates, it  
4 sets them based upon whatever the utility's rate base  
5 is, does it not?

6           **A.** That's correct.

7           **Q.** All right. And so once they set rates and  
8 they determine rate base, the rate base identifies a  
9 group of assets that make up that rate base, does it  
10 not?

11          **A.** That's correct.

12          **Q.** And the customers pay a return on that group  
13 of assets, does it not?

14          **A.** That's correct.

15          **Q.** Okay. So if an asset that is held by a  
16 utility is never in this group of assets in rate base,  
17 then customers have never paid anything for it, have  
18 they?

19          **A.** I don't agree with that.

20          **Q.** All right. Explain to me how a customer would  
21 pay for something that has never been in rate base?

22          **A.** In ratemaking, under the theory of ratemaking,  
23 let's say in year one we put plant into service, and you  
24 have \$5,000 worth of plant, and let's exclude the rest  
25 of the rate base. And you apply a rate of return to

1 that, and so they are getting a return based upon the  
2 \$5,000.

3 Now, year two goes by, that has been  
4 depreciated, and they have collected that depreciation  
5 in rates. So now you have \$4,500 in rate base, and they  
6 are getting a return on \$5,000. So they have already --  
7 the way ratemaking works, you're taking into  
8 consideration changes that may be occurring. For  
9 instance, in year two they might have added another \$500  
10 to bring rate base up to 5,000. So, in effect, you are  
11 accounting for the additions to plant. That's the way  
12 that --

13 Q. Even though it has never been in rate base,  
14 never been something that this Commission has said is  
15 part of this bundle of assets that customers are paying  
16 for?

17 A. It may not have been in a hearing, it never  
18 was, but, in essence, the fact that once it's in the  
19 utility accounts, plant accounts, it's there.

20 Q. And do you think that -- can you point to the  
21 Commission's -- an order or some ruling of this  
22 Commission that says that's the way this Commission  
23 treats gain on sale? Have you looked at any of the  
24 Commission's --

25 (Simultaneous conversation.)

1           **Q.** Let me jump back to a simpler question. Have  
2 you looked at any of this Commission's decisions on gain  
3 on sale?

4           **A.** I just looked at the -- I have seen them in  
5 various other cases, and I have seen the one in  
6 particular that we're talking about, and they said that  
7 the gain would be amortized over five years.

8           **Q.** Okay. And you have read that order, didn't  
9 you?

10          **A.** Yes.

11          **Q.** Was there anywhere in that order that said  
12 that that vote -- that that asset was ever in rate base?

13          **A.** I don't recall that.

14          **Q.** It doesn't, does it?

15          **A.** I don't recall that.

16          **Q.** Are you familiar with the Lake Utility  
17 Services rate case that this Commission decided last  
18 year?

19          **A.** No, I'm not.

20           **MR. FRIEDMAN:** I have no further questions.

21           **COMMISSIONER EDGAR:** Thank you.

22           Are there questions from staff for this  
23 witness?

24           **MS. BARRERA:** No, Commissioner.

25           **COMMISSIONER EDGAR:** Commissioners, any

1 questions?

2 **COMMISSIONER BALBIS:** I have one.

3 **COMMISSIONER EDGAR:** Commissioner Balbis.

4 **COMMISSIONER BALBIS:** Thank you.

5 I have a few questions just to clarify, and  
6 you don't have to turn to it. But on Page 44 and also  
7 on Page 46 you have two different numbers for the amount  
8 of additional interest associated with the DEP loan  
9 modifications. One is 1.2 million and one is 1.123.  
10 What was the total additional interest for the DEP loan  
11 caused by Amendments 1 through 6?

12 **THE WITNESS:** Page 46?

13 **COMMISSIONER BALBIS:** At Page 44, Line 21, you  
14 say ultimately it added over 1.2 million in interest on  
15 the loan over its extended term.

16 **THE WITNESS:** Right. And if you look on --

17 **COMMISSIONER BALBIS:** And then at 46, Line 8.

18 **THE WITNESS:** Yes, I was rounding up because  
19 of the fact that that was as of Amendment 5 you had  
20 1.123 million, and Amendment 6 added extra to it, so  
21 it's going to get it over 1.2 million.

22 **COMMISSIONER BALBIS:** So do you have a more  
23 accurate number or just over 1.2 million?

24 **THE WITNESS:** No, that was an estimate because  
25 of the fact that I don't know the total extra interest



1 that was as a result of Amendment 6.

2 **COMMISSIONER BALBIS:** Okay. And then on Page  
3 38, Line 5 -- 4 and then 5, you say the company's  
4 inability to make those payments, and I assume those  
5 would be the DEP payments, may be in part due to the  
6 advances made to WMSI and its president and affiliates  
7 as recorded in Account 123.

8 What other actions that may have been taken,  
9 or what could be some other causes for them to not be  
10 able to make those payments?

11 **THE WITNESS:** Well, in looking at the  
12 finances, you know, that would be a primary cause. I  
13 mean, if you are taking your money and instead of paying  
14 your debt you are putting it out to an officer or an  
15 affiliate, it's just not there to make the debt payment.  
16 I didn't go to see if there were other causes beyond  
17 that. I was looking at Account 123 and what transpired  
18 there. There could be other contributing factors, I  
19 mean.

20 **COMMISSIONER BALBIS:** Okay. And you made  
21 several recommendations in your testimony, and I want to  
22 focus on the DEP loan amendments and the additional  
23 \$1.2 million in interest. Which one of your  
24 recommendations would address that specific issue?

25 **THE WITNESS:** Well, one of the recommendations

1 was no more advances. I mean, if you allow them to  
2 continue to advance money in and out like they did --  
3 theoretically, we were done as of 2010, but then in 2011  
4 they just continued to make these advances, and they  
5 just run it through a different account. So, one, you  
6 have to say, hey, you need to focus on your finances.  
7 Don't make any more advances to your officer or your  
8 affiliates. That's one way to address making those.

9 I think the Commission has looked at the fact  
10 that, you know, we have got to escrow these by, you  
11 know, apply that 38 percent of their increase to put  
12 that into escrow funds so you can make sure that those  
13 payments get made. That's a brilliant move as far as  
14 I'm concerned, because there you're requiring that money  
15 to be set aside to, you know, make those payments. I  
16 mean, that's something that's necessary, because the  
17 payments haven't been made. And to the fact that the  
18 key to that one is make sure it stays in place until we  
19 get this debt crisis taken care of.

20 **COMMISSIONER BALBIS:** Okay. And then my last  
21 question, you testified both in your prefiled testimony  
22 and here today about the company's precarious position,  
23 that the financial position which could threaten its  
24 ability to provide safe and reliable service, and you  
25 talked about relationships, et cetera. But one of your

1 recommendations is that this Commission find -- have a  
2 finding of managerial imprudence. Wouldn't that  
3 negatively affect the company's ability to continue to  
4 get financing?

5 **THE WITNESS:** That very well could do that. I  
6 mean, the problem is the Commission has to decide  
7 whether they should pat the company on the back and say  
8 you've done great, and continue as you are, or we have  
9 trouble with the way you are running and financing this  
10 company, so we're going to put some restrictions and  
11 some requirements in as to how this company is going to  
12 be run until you can get it on a straight and narrow  
13 path.

14 **COMMISSIONER BALBIS:** But this Commission  
15 could put those restrictions on without having a finding  
16 of managerial imprudence, correct?

17 **THE WITNESS:** Yes. I would say that's in  
18 their, you know, their discretion as to how do they do  
19 it, yes.

20 **COMMISSIONER BALBIS:** Thank you. That's all I  
21 have.

22 **COMMISSIONER EDGAR:** Questions on redirect?

23 **MR. SAYLER:** Yes, ma'am; very briefly.

24 **REDIRECT EXAMINATION**

25

1 BY MR. SAYLER:

2 Q. Mr. Schultz, do you remember when you were  
3 asked by counsel for WMSI about were there appraisals  
4 for Brown Management Group?

5 A. I remember the question about the market value  
6 of Brown Management Group assets, yes.

7 Q. Do you recall that OPC sought those appraisals  
8 in Request for Production of Documents Number 12B?

9 A. I think I indicated that we had asked for the  
10 information and it wasn't provided until it was provided  
11 in a staff request.

12 Q. Okay. Do you remember being asked about  
13 paying two different loans, that you would pay the  
14 higher interest rate loan down first, do you remember  
15 that?

16 A. Yes, sir.

17 Q. And then you said yes, in most instances.  
18 What do you mean by in most instances you would pay it  
19 first? What are instances where you wouldn't pay it  
20 down first?

21 A. Well, I would have to look to see what the  
22 loan was that I was getting or how I was going to pay  
23 it. I mean, that was the missing factor from the  
24 example is you have got two items out here. That  
25 7 percent loan -- that 7 percent loan could have been

1 for a period of two years remaining. The three percent  
2 loan might have been for 10, 15 years. So you would  
3 have to make some calculations and determine which is  
4 better financially.

5 Q. What if the loan in question at the higher  
6 interest rate was an interest-only loan with very little  
7 principal going to payment?

8 A. You mean payment going to principal?

9 Q. Yes, sorry.

10 A. I think I'd want to -- I would want to pay off  
11 the 7 percent loan, because if you're only paying the  
12 interest on that, that's going continue to grow year  
13 after year after year.

14 Q. All right. Do you remember your testimony  
15 earlier where you said life insurance payments might be  
16 something that could be included in O&M on a loan?

17 A. Yes, sir.

18 Q. What if the bank required a life insurance  
19 payment due to the financial condition of the utility?

20 A. That's why I indicated might. You have to  
21 take into consideration the reasons, or why this cost is  
22 incurred. I mean, if it's because of the way the bank  
23 has viewed the financial stability of the company and  
24 the financial stability was impacted by how the company  
25 was run, then you might question whether it should be

1 included in rates or not.

2 If they require the insurance and this company  
3 was financially strong, then, you know, there may not be  
4 that same question. But then you would have to wonder  
5 why the bank required it in the first place, because  
6 generally I haven't seen where the bank will require  
7 that insurance if they are comfortable with the rest of  
8 the collateral that's available.

9 **MR. SAYLER:** Thank you very much. Thank you  
10 very much for testifying on behalf of the customers.

11 We do have some exhibits we'd like to move  
12 into the record. Office of Public Counsel would move  
13 Exhibits 11, 12, 13 -- well, Exhibits 11 through 46  
14 attached to the testimony of Mr. Schultz.

15 **COMMISSIONER EDGAR:** Any objection?

16 **MR. FRIEDMAN:** Other than the ones I have  
17 previously made. I do not have any new objections.

18 **COMMISSIONER EDGAR:** And that was an objection  
19 to Exhibit 24?

20 **MR. FRIEDMAN:** Yes, the deposition of  
21 Mr. Mitchell.

22 **COMMISSIONER EDGAR:** All right.

23 Ms. Helton?

24 **MS. HELTON:** As Mr. Sayler pointed out,  
25 motions to strike exhibits or testimony should be made

1 at the time of the prehearing conference. The utility  
2 did not object to what has been marked as Exhibit Number  
3 24 for our purposes at the time of the prehearing  
4 conference. I really -- I know that Mr. Friedman made a  
5 distinction between admitting it into the record and  
6 striking an exhibit, but in my mind it is essentially  
7 the same thing. Because the objection was not timely  
8 made, my recommendation is that it be admitted.

9 **COMMISSIONER EDGAR:** Thank you very much. We  
10 will at this time admit Exhibits 11 through 46.

11 (Exhibit 11 through 46 admitted into the  
12 record.)

13 **MR. SAYLER:** Thank you. May our witness be  
14 excused?

15 **COMMISSIONER EDGAR:** Mr. Schultz, thank you  
16 for your testimony. You are excused.

17 **THE WITNESS:** Thank you.

18 **COMMISSIONER EDGAR:** Mr. Sayler.

19 **MR. SAYLER:** May I take a two-minute comfort  
20 break?

21 **COMMISSIONER EDGAR:** I actually was going to  
22 suggest we'll make a -- let's go ahead and take a  
23 five-minute recess. Let us all stretch our legs for a  
24 moment.

25 (Recess.)

1                   **COMMISSIONER EDGAR:** Okay. Thank you all. We  
2 are gathered back; we are back on the record.

3                   And, Mr. Sayler, your witness.

4                   **MR. SAYLER:** Commissioners, I would like to  
5 call Ms. Vandiver of the Office of Public Counsel to the  
6 witness stand, please.

7                   I believe you have been previous sworn,  
8 correct?

9                   **THE WITNESS:** Correct.

10   **DENISE N. VANDIVER**

11 was called as a witness on behalf of the Citizens of State  
12 of Florida, and having been duly sworn, testified as  
13 follows:

14   **DIRECT EXAMINATION**

15 BY MR. SAYLER:

16                   **Q.** Would you please state your name and business  
17 address for the record.

18                   **COMMISSIONER EDGAR:** Ms. Vandiver, please pull  
19 the mike closer to you so we can all hear.

20                   **Q.** (Continuing) Ms. Vandiver, please state your  
21 full name and business address for the record.

22                   **A.** Yes, my name is Denise Vandiver, and my  
23 address is 111 West Madison Street, Tallahassee,  
24 Florida.

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



1           **A.**    I'm employed by the Office of Public Counsel  
2 as a Legislative Analyst.

3           **Q.**    On whose behalf -- excuse me.  On behalf of  
4 OPC, did you prepare and file Direct Testimony in this  
5 proceeding?

6           **A.**    Yes, I did.

7           **Q.**    And do you have that before you?

8           **A.**    Yes, I do.

9           **Q.**    And do you have any corrections or revisions  
10 to make to your Prefiled Direct Testimony?

11          **A.**    No, I do not.

12          **Q.**    Do you adopt the Prefiled Testimony as your  
13 testimony today?

14          **A.**    Yes.

15                **MR. SAYLER:**  Madam Chair, I would ask that Ms.  
16 Vandiver's Prefiled Testimony be inserted into the  
17 record as though read.

18                **COMMISSIONER EDGAR:**  The Prefiled Testimony of  
19 Witness Vandiver will be inserted into the record as  
20 though read.

21

22

23

24

25

1 **DIRECT TESTIMONY**

2 **Of**

3 **DENISE N. VANDIVER, CPA**

4 On Behalf of the Office of Public Counsel

5 Before the

6 Florida Public Service Commission

7 Docket No. 110200-WU

8

9 **INTRODUCTION**

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

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

13

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

15 A. I am a Certified Public Accountant licensed in the State of Florida and employed as a  
16 Legislative Analyst with the Office of Public Counsel (OPC). I began my  
17 employment with OPC in May 2009.

18

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

21 A. I received a Bachelor of Science degree from Jacksonville University in 1978 with a  
22 major in accounting. I received a Master of Accountancy degree from the University  
23 of North Florida in 1982. Previous to my work at OPC, I worked at the Florida  
24 Public Service Commission (FPSC) from March 1983 until May 2009. I worked six  
25 and a half years in the Division of Water and Wastewater as a Regulatory Analyst

1 performing accounting analyses of water and wastewater utilities. I then spent three  
 2 years in the Economic Regulatory Standards Control Section and the Division of  
 3 Research and Regulatory Review as an Economic Analyst and supervisor performing  
 4 various reviews in all industries regulated by the FPSC. I was appointed as Bureau  
 5 Chief of Auditing Services in January 1993, with the responsibility of managing all  
 6 the financial audits performed by the Commission's four district offices. Prior to my  
 7 work at the Commission, I worked at the City of Jacksonville Beach and Memorial  
 8 Medical Center in Savannah, Georgia.

9

10 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE FLORIDA PUBLIC**  
 11 **SERVICE COMMISSION (FPSC)?**

12 A. Yes. On behalf of the FPSC, I have testified in two rate cases: the Spring Hill  
 13 Utilities, a division of Deltona Utilities, Inc., rate case, Docket No. 830059-WS and  
 14 the Martin Downs Utilities, Inc. rate case, Docket No. 840315-WS. I have also  
 15 testified before the Division of Administrative Hearings in Case No: 97-002485RU;  
 16 Aloha Utilities, Inc., and Florida Waterworks Association, Inc., Petitioners, vs.  
 17 Florida Public Service Commission, Respondent, and Citizens of the State of Florida,  
 18 Office of Public Counsel, Intervenors. On behalf of the Office of Public Counsel, I  
 19 have testified in the Aqua Utilities Florida, Inc. rate case, Docket No. 100330-WS. A  
 20 summary of my experience is attached as DNV-1.

21

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

23 A. The purpose of my testimony is to discuss three issues. First, I discuss whether the  
 24 Commission should continue to allow Water Management Services, Inc. (WMSI or  
 25 Utility) to recover rate case expense approved in the last rate case. Second, I discuss

1 the appropriate amount of post-PAA protest rate case expense for recovery in the  
2 current rate case. And lastly, I discuss the service availability charges that were  
3 approved by the Commission’s Proposed Agency Action Order No. PSC-12-0435-  
4 PAA-WU, issued August 22, 2012 (hereinafter, PAA Order).

5

6 **Q. PLEASE PROVIDE A SUMMARY OF YOUR TESTIMONY.**

7 A. First, the Commission should continue to allow the Utility to recover only a portion  
8 of the rate case expense approved in the last rate case. The Utility has already  
9 demonstrated a willingness to cease making payments to its attorneys from its prior  
10 rate case and there are no assurances the Utility will make full payment once this  
11 PAA protest proceeding concludes. Second, the Commission should disallow all rate  
12 case expense incurred that is not reasonably necessary in the pursuit of the post-PAA  
13 protest hearing process. Third, I recommend that the increase in service availability  
14 charges should be subject to the same escrow requirements and true-up provisions for  
15 pro forma plant items that were required by the Commission’s PAA Order.

16

17 **PRIOR RATE CASE EXPENSE**

18 **Q. HOW MUCH RATE CASE EXPENSE IS CURRENTLY INCLUDED IN**  
19 **RATES FROM THE PRIOR RATE CASE?**

20 A. The Commission authorized \$229,180 in rate case expense by Order No. PSC-11-  
21 0010-SC-WU, issued January 3, 2011. The order included \$114,590 of deferred rate  
22 case expense in the working capital allowance as well as \$57,295 for the amortization  
23 of this expense in the determination of customers' rates. The last order approved rate  
24 case expense in the following amounts:

1	Radey, Thomas, Yon & Clark, PA (Radey)	\$150,423
2	M & R Consultants, Inc.	\$ 65,428
3	Post, Buckley, Schuh, & Jernigan, Inc.	\$ 2,879
4	Barbara Withers	\$ 2,700
5	Other	<u>\$ 7,750</u>
6	Total	<u>\$229,180</u>

7

8 **Q. WHY DO YOU DISPUTE WHETHER THIS EXPENSE SHOULD CONTINUE**  
9 **TO BE RECOVERED?**

10 A. Given the Utility's history of withholding payments to its attorneys from its prior rate  
11 case and the lack of full payment to other rate case consultants, my primary concern  
12 is whether the previously approved rate case expense being collected from customers  
13 will actually be paid.

14

15 **Q. IS THE UTILITY CURRENT IN MAKING PAYMENTS ON RATE CASE**  
16 **EXPENSE PREVIOUSLY AUTHORIZED?**

17 A. No, it appears that the Utility is significantly behind on paying the Radey firm, and  
18 somewhat behind on making payments to two other consultants. Attached to my  
19 testimony is Exhibit DNV-2, which is the Utility's response to OPC's First Set of  
20 Interrogatories. As you can see in Exhibit A attached to the response to Interrogatory  
21 No. 13, the Utility has only paid \$30,000 to the Radey law firm (or 20% of the  
22 amount approved by the Commission) since the order was issued on January 3, 2011.  
23 In addition, the Utility has only paid \$30,507.05 to M & R Consultants (or 47% of the  
24 amount approved in the order) and \$1,500 to Post Buckley (or 52% of the amount  
25 approved in the order.). Exhibit A reflects that the Utility has paid out approximately

1 32% of its previously approved rate case expense. By the time of this hearing, it will  
2 be a full two years after the order was issued in the last rate case. Nearly half of the  
3 previously approved rate case expense will have been collected from customers, yet  
4 more than half the rate case expense remains to be paid out. Over 75% of the unpaid  
5 rate case expense is due and payable to the Radey firm.

6

7 **Q. HOW DID YOU DETERMINE THE UTILITY HAD STOPPED MAKING**  
8 **PAYMENTS TO THE RADEY LAW FIRM?**

9 A. On March 14, 2012, OPC served discovery, requesting that the Utility provide copies  
10 of receipts, canceled checks, bank transfers, or other proof of payment for the rate  
11 case expense approved in the last rate case. I have attached to my testimony as  
12 Exhibit DNV-3, a summary schedule I created of the invoices from the Radey firm  
13 that were provided in the Utility's response to OPC's March 14, 2012 Request for  
14 Production of Documents No. 40. This exhibit also includes a copy of the invoices  
15 provided. The last page of this exhibit is an invoice from the Radey firm showing a  
16 balance of \$146,399.78 due as of March 7, 2012. Attached to my testimony as  
17 Exhibit DNV-4 is the first page of the Utility's response to OPC's October 5, 2012  
18 First Request for Production of Documents No. 30 that shows the Utility's payment  
19 history from January 2010 through October 2012. According to this response, the  
20 Utility stopped making payments to its law firm after its last payment dated  
21 November 30, 2010 during the pendency of the last rate case. The Utility appears to  
22 have only resumed making payments to the Radey law firm on April 16, 2012, just  
23 one month after OPC requested that the Utility provide documentary proof it was  
24 making its required rate case expense payments.

1 **Q. BESIDES THIS RESPONSE TO OPC DISCOVERY, DO YOU HAVE ANY**  
2 **OTHER EVIDENCE THAT THE UTILITY HAD STOPPED MAKING**  
3 **PAYMENTS TO THE RADEY FIRM?**

4 A. Yes. In response to OPC’s First Request for Production of Documents No. 31, which  
5 was provided after an order by the Prehearing officer compelling the Utility’s  
6 response, the Utility provided some but not all invoices from the Radey firm, a letter  
7 from the Radey firm dated March 19, 2012 and WMSI’s response to the Radey letter  
8 dated March 30, 2012. I have attached to my testimony as Exhibit DNV-5 a copy of  
9 the Utility’s response to Request No. 31. These documents clearly indicate that the  
10 Utility had stopped making payments to the Radey firm during the pendency of the  
11 last rate case and that there was a billing dispute.

12 According to the March 19, 2012 letter, the Radey firm had sent WMSI  
13 periodic reminders about the amount due and held at least one in-person meeting to  
14 discuss the WMSI outstanding balance owed the firm. The letter also discussed  
15 establishing a payment plan, but if an amicable payment arrangement could not  
16 reached, it discussed having to consider alternatives as outlined in the firm’s  
17 representation letter and agreement with WMSI. This representation letter and  
18 agreement was provided in response to OPC’s First Request for Production of  
19 Documents No. 32 and is attached to my testimony as Exhibit DNV-6.

20 WMSI’s March 30, 2012 response to the Radey firm indicated that it intended  
21 to “negotiate a reasonable settlement of your bill” once the current rate case was  
22 concluded. It went on to state:

23  
24 The new case is basically a replay of the case your firm handled,  
25 except that we now have an adverse final order to overcome. In  
26 working with our new lawyers on the appeal, I have come to recognize  
27 that several costly mistakes were made by RTCY [Radey firm] in the

1 handling of our case. Those mistakes and the horrible result that we  
2 suffered will have to be taken into account when we talk about a  
3 settlement of your bill. . . . Having said all that, I really do want to  
4 work all this out to our mutual benefit so that WMSI can survive and  
5 your firm can be paid a reasonable fee under these adverse  
6 circumstances.

7 A review of WMSI's response in no way indicates that WMSI intended to  
8 repay the Radey firm the full balance for services due. WMSI plainly sought a  
9 negotiated reduction in the outstanding balance. Moreover, this letter from WMSI to  
10 the Radey firm contradicts statements made by the Utility's Response to Staff's Sixth  
11 Data Request, dated May 31, 2012.

12 Staff's Sixth Data Request, dated May 16, 2012, sought information on  
13 whether the Utility disputed some or all of the approximately \$146,400 due to the  
14 Radey firm for services billed during the last rate case. Attached to my testimony as  
15 DNV-7 is the Utility's response to Staff's Sixth data request, filed in the docket file  
16 on May 31, 2012. Staff's first question asked: "Does WMSI dispute this amount or  
17 any part of it? If so, what portion does it dispute and on what basis?" To which the  
18 Utility simply responded, "No." This is only two months after WMSI sent the letter  
19 to the Radey firm referencing a settlement of their bill.

20  
21 **Q. DOES THE UTILITY HAVE A WRITTEN AGREEMENT TO PAY THE**  
22 **AMOUNT OWED?**

23 A. No, it does not. In response to Question 3 of Staff's Sixth data request, the Utility  
24 stated that it had "entered into an agreement with Radey, Thomas, Yon and Clark to  
25 pay the bill in full with installment payments." OPC's First Request for Production of  
26 Documents No. 33 requested a copy of this agreement to repay the Radey firm in full.  
27 The Utility's response to No. 33, stated: "There is no written agreement except as



1 noted under No. 32 above.” (I have attached to my testimony as Exhibit DNV-8, a  
2 copy of the Response to No. 33.) The response to No. 32 referenced a copy of the six  
3 page representation letter and agreement between WMSI and the Radey firm which I  
4 referenced earlier in my testimony as Exhibit DNV-6. Paragraph 3 of the  
5 representation letter and agreement states as follows:

6  
7 The agreement contemplates the various types of professional  
8 fee arrangements. In this instance, we understand that our firm will be  
9 paid on an hourly basis at the rates indicated above. Our  
10 representation will require the payment of a \$4,000 deposit to be  
11 applied to the first invoice and a minimum payment of \$2,000 per  
12 month for services rendered. Hourly fees in excess of the monthly  
13 payments will accumulate and be payable no later than 10 days  
14 following the grant of any rate increase by the Florida Public Service  
15 Commission (interim or permanent) or the obtaining of an additional  
16 loan by Water Management Services, Inc., whichever occurs first. Mr.  
17 Gene D. Brown, President of Water Management Services, Inc. further  
18 agrees to be personally liable for any fees remaining unpaid by Water  
19 Management Services. Fees and costs are due regardless of the  
20 outcome of the rate case and regardless of whether the commission  
21 allows recovery of such fees and costs in rates.

22 Section 5 of the agreement addresses payment of invoices and collection activities  
23 such as legal proceedings and arbitration.

24

25 **Q. DO YOU HAVE ANY COMMENTS CONCERNING THE CURRENT**  
26 **PAYMENT ARRANGEMENTS BETWEEN WMSI AND THE RADEY FIRM?**

27 A. Yes. As noted in the Utility’s response to OPC’s Production Request No. 30, the  
28 Utility resumed making \$1,000 monthly payments to the law firm in April 2012, and  
29 recently increased the amount to \$2,000 per month starting on September 17, 2012.  
30 See Exhibit DNV-4. Assuming that the Utility continues making the \$2,000 per  
31 month payment, it will take the Utility approximately five years to repay the Radey  
32 law firm the remaining balance due, which is well after the amortization period for

1 prior rate case expense concludes and rates are automatically reduced. Once this  
2 contested proceeding concludes, my concern is whether the Utility will continue  
3 making its payments.

4

5 **Q. SHOULD THE UTILITY HAVE DISCRETION HOW IT SPENDS THE**  
6 **EXPENSE INCLUDED IN THE ORDER AS RATE CASE EXPENSE?**

7 A. No, I believe that rate case expense is different from other Operating Expenses, in  
8 that Florida law specifically addresses how it shall be recovered. Section 367.0816,  
9 Florida Statutes, states that the “. . . amount of rate case expense determined by the  
10 commission pursuant to the provisions of this chapter to be recovered through a  
11 public utilities rate shall be apportioned for recovery over a period of 4 years. At the  
12 conclusion of the recovery period, the rate of the public utility shall be reduced  
13 immediately by the amount of rate case expense previously included in rates.” I am  
14 concerned that previously authorized rate case expense currently being collected from  
15 WMSI’s customers is not being used for its authorized and statutorily intended  
16 purpose. The action by the Utility to stop and start making rate case expense  
17 payments at its discretion is contrary to the statutory intent of Sections 367.081(7)  
18 and 367.0816, Florida Statutes. I believe that if a utility knowingly chooses not to  
19 make rate case expense payments, and fails to provide some evidence to the  
20 Commission supporting that full payment will be made, then the remaining  
21 unamortized amount of the authorized rate case expense should not remain in rates.

22

23 **Q. WHAT DO YOU RECOMMEND THE COMMISSION SHOULD ADJUST**  
24 **FOR THE PRIOR RATE CASE EXPENSE?**

25 A. I have two recommendations. First, I believe that the Utility has not provided

1 sufficient evidence that it will continue to make payment in full for the rate case  
2 expense incurred in the prior case. At a minimum, I recommend that the rate case  
3 expense embedded in current rates be removed and no longer collected from  
4 ratepayers to reflect the amount of nonpayment and/or slow payment by the Utility.

5 My second recommendation may be a moot point, as the PAA Order<sup>1</sup> did not  
6 allow any working capital allowance. However, if the Commission determines that a  
7 working capital allowance should be included in rate base, I recommend that there be  
8 no allowance made for the rate case expense from the prior case. Deferred rate case  
9 expense is normally included in working capital to allow for the fact that a Utility has  
10 paid the expense and is recovering it over the next four years. In this case, the Utility  
11 has not paid the expense; therefore, there should be no deferred asset to include in  
12 working capital.

13  
14 **Q. ARE YOU AWARE OF ANY COMMISSION PRECEDENT TO DISALLOW**  
15 **PREVIOUSLY APPROVED RATE CASE EXPENSE?**

16 A. No. I believe this is the first time the Commission has been required to address this  
17 issue. In my nearly thirty years of working for the Commission and now Office of  
18 Public Counsel, I do not think there has been a similar case where a utility filed back-  
19 to-back rate cases, hired new consultants and attorneys for the second case, and  
20 during the pendency of the second rate case it was discovered that the utility had  
21 stopped making payments to its first attorneys, all the while collecting rate case  
22 expense in rates from its customers. Rates which continue to recover expenses which  
23 may never be expended would not meet the statutory directive under Section 367.081  
24 to set reasonable and compensatory rates. In my opinion, there is more than enough

---

<sup>1</sup> PSC-12-0435-PAA-WU, issued August 22, 2012, pg. 16.

1 competent substantial evidence to support such an adjustment should the Commission  
2 exercise its statutory discretion to do so.

3

4 **CURRENT RATE CASE EXPENSE**

5 **Q. WHAT COMMENTS DO YOU HAVE ON POST-PAA PROTEST RATE**  
6 **CASE EXPENSE?**

7 A. Neither OPC nor the Utility protested the amount of the rate case expense included in  
8 the PAA Order. However, the Utility requested “additional rate case expense  
9 necessitated by OPC’s Protest.”<sup>2</sup> It is still very early in the hearing process and there  
10 has been minimal discovery provided to document any rate case expense incurred  
11 after the PAA Order. I have a few issues that I believe should be considered as the  
12 Commission determines the reasonable and prudent rate case expense to complete  
13 this docket.

14

15 **Q. DO YOU HAVE ANY INITIAL COMMENTS REGARDING POST-PAA**  
16 **PROTEST RATE CASE EXPENSE?**

17 A. Yes. The Commission typically reviews rate case expense for costs that are  
18 adequately documented as to the tasks performed, the amount of time spent on the  
19 task, and the hourly rate charged. The Commission has consistently held that it is the  
20 Utility’s burden to support its case.<sup>3</sup> The Commission has stated that “in those cases  
21 where rate case expense has not been supported by detailed documentation, our  
22 practice has been to disallow some portion or remove all unsupported amounts.”<sup>4</sup> I

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<sup>2</sup> Docket No. 110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Services, Inc., Cross-petition for a formal administrative hearing, pg. 3.

<sup>3</sup> See Florida Power Corp. v. Cresse 413 So. 2d 1187, 1191 (Fla. 1982).

<sup>4</sup> Docket No. 090392-WS, In re: Application for increase in water and wastewater rates in Lake County by Utilities Inc. of Pennbrooke, Order No. PSC-10-0400-PAA-WS, issued June 18, 2010, p. 22.

1 recommend that the Commission continue its detailed review and disallow any post-  
2 PAA protest costs that the Utility fails to document consistent with past Commission  
3 precedent.

4 Because of the issue regarding unpaid rate case expense from the prior rate  
5 case, I recommend that the Commission should not only review the invoices  
6 supporting the work performed in this rate case, but also the cancelled checks to  
7 prove that the Utility is current for services rendered for the PAA portion of the rate  
8 case through the start of the hearing in January 2013.

9

10 **Q. DO YOU HAVE ANY CONCERNS ABOUT THE AMOUNT OF POST-PAA**  
11 **PROTEST RATE CASE EXPENSE?**

12 A. Yes. I am concerned that the amount of post-PAA protest rate case expense in this  
13 case will be unusually high due to the litigation strategy which the Utility has  
14 apparently undertaken to thwart OPC's participation in the post-PAA protest  
15 proceeding. The Utility has filed numerous objections to legitimate requests for  
16 discovery served by OPC which in turn necessitated OPC's filing two motions to  
17 compel, as well as the Utility's motion to dismiss OPC's petition protesting portions  
18 of the PAA order.

19 My first concern is with the objections and motions that have been filed in this  
20 case as a result of the Utility's refusal to respond to discovery. The OPC served its  
21 First Set of Discovery on October 5, 2012, and on October 15, 2012, the utility filed  
22 its Objections to this discovery. The OPC served its Second Set of Discovery on  
23 October 12, 2012 and the utility filed its Objections to this discovery on October 22,  
24 2012. In my view the objections raised by the utility were made simply to avoid  
25 providing responses to legitimate discovery. Many of the discovery questions that

1 were objected to were designed to determine the reasonableness of the Utility’s  
 2 advancing approximately \$1.2 million to Mr. Brown and Associated Companies  
 3 through Account 123. While the Utility continues to argue that the \$1.2 million  
 4 amount of the Account is not at issue, I disagree. The numerous transactions and  
 5 specific amounts of those transactions which resulted in \$1.2 million advanced is a  
 6 critical and important issue in this case as well as whether the decisions to advance  
 7 this money was a prudent utility management decision. The discovery questions were  
 8 designed to determine among other things:

- 9 • how did the payments to the various entities relate to the value of BMG
- 10 • what was the value of BMG at the time of the stock transfer; and
- 11 • how were the payments used to benefit the Utility.

12 In addition to objecting to discovery regarding the \$1.2 million advanced to  
 13 the WMSI president and associated companies, the Utility further added to the  
 14 litigious nature of this case, and quite likely to the Utility’s post-PAA protest rate  
 15 case expense, by objecting to discovery that was drafted to discern the nature of the  
 16 issues that were included in the Utility’s cross petition, such as salary expense,  
 17 accounting expense, miscellaneous expenses, and transportation expenses.

18

19 **Q. WHAT DO YOU RECOMMEND FOR THE RATE CASE EXPENSE**  
 20 **INCURRED FOR WMSI’S OBJECTIONS TO OPC’S DISCOVERY?**

21 A. By Order No. PSC-12-0624-PCO-WU, issued November 20, 2012, the Commission  
 22 granted in part OPC’s motions to compel responses to its first two sets of discovery.  
 23 Because the Utility succeeded in part in opposing OPC’s motions to compel, I  
 24 recommend that the Utility should only be allowed to recover a pro rata amount of the  
 25 rate case expense incurred for its objections. An adjustment should be made to

1 remove expenses for filing objections to legitimate discovery as well as a pro rata  
2 amount for its responses to OPC's motions to compel discovery. I recommend that a  
3 pro rata adjustment be made to the extent that the Utility successfully opposed OPC's  
4 request to compel specific responses.

5 The Commission has previously disallowed similar costs saying that the  
6 ratepayers should not have to bear these costs<sup>5</sup> and has removed legal costs related to  
7 a utility motion that was denied.<sup>6</sup> Thus, the Commission should follow its own  
8 precedent and disallow costs related to Utility motions that were denied. By my  
9 count, OPC succeeded in compelling 34 of 60 discovery responses to which the  
10 Utility objected. That is a 57% success rate. Therefore, the Utility should only be  
11 allowed 43% of its rate case expense associated with objecting to OPC discovery and  
12 opposing OPC's motions to compel.

13

14 **Q. WHAT DO YOU RECOMMEND FOR THE RATE CASE EXPENSE**  
15 **RELATED TO THE UTILITY'S MOTION TO DISMISS OPC'S PROTEST**  
16 **OF PORTIONS OF THE PAA ORDER?**

17 A. I recommend that no rate case expense related to this motion be allowed. After filing  
18 its objections to OPC's first two sets of discovery, on October 30, 2012, the Utility  
19 filed a motion to dismiss OPC's petition protesting portions of the PAA Order. This  
20 motion was filed after the parties agreed to have depositions for two Utility fact  
21 witnesses, Mr. Brown and Mr. Mitchell, WMSI's controller, on November 6 and 7,

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<sup>5</sup> Docket No. 070293-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp., Order No. PSC-09-0057-FOF-SU, issued January 27, 2009, p. 39.

<sup>6</sup> Docket No. 100330-WS, In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc., Order No. PSC-12-0102-FOF-WS, issued March 5, 2012, p. 129.

1 2012.

2 Because the Commission flatly denied the Utility's motion to dismiss, all rate  
3 case expense associated with the Utility's motion to dismiss should be disallowed.  
4 Because the Utility's motion to dismiss was without merit, this serves as further  
5 grounds for disallowing any rate case expense associated with this motion.

6

7 **Q. ARE YOU RECOMMENDING ANY DISALLOWANCE OF RATE CASE**  
8 **EXPENSE RELATED TO THE COMPANY'S MOTION TO WITHDRAW**  
9 **FUNDS FROM ESCROW SINCE NEITHER THE COMPANY NOR OPC**  
10 **PROTESTED THIS?**

11 A. Yes. On September 21, 2012, the Utility filed a motion to allow withdrawals from  
12 the interim escrow account or in the alternative from the PAA ordered escrow  
13 account. On October 11, 2012, the Utility withdrew the portion of its original petition  
14 that pertains to the interim escrow account. This Commission has previously  
15 disallowed "legal costs associated with withdrawing a motion that was initially  
16 presented by the Utility."<sup>7</sup> Therefore, the Commission should continue to disallow all  
17 costs associated with this and any similar withdrawals.

18 Because neither the Utility or OPC protested the PAA Order escrow account  
19 requirements, the Commission should disallow any costs that the Utility may seek to  
20 recover as post-PAA protest rate case expense associated with filing its September  
21 21, 2012 motion, as well as any travel expenses related to attending the November 27,  
22 2012 Commission Conference where the Utility addressed the Commission  
23 concerning the escrow account. At this time, it is unknown whether the Utility will  
24 attempt to seek any rate case expense associated with the PAA Order escrow account.

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<sup>7</sup> *ibid.* p. 128.



1           However, any costs associated with non-protested portions of the PAA Order should  
2           not be attributed to the PAA-protest or recovered from customers.

3

4   **Q.    ARE YOU RECOMMENDING ANY DISALLOWANCE OF POST-PAA**  
5   **PROTEST RATE CASE EXPENSE RELATED TO WITHDRAWN**  
6   **TESTIMONY?**

7   A.    Yes. In a related issue, the Utility filed its MFRs and testimony of three individuals  
8           (Gene Brown, Jeanne Allen, and Les Thomas) on November 7, 2011. On June 14,  
9           2012, the Utility filed a Notice of withdrawal of testimony and exhibits of Gene D.  
10          Brown. After the OPC protested the PAA Order, on September 13, 2012, the Utility  
11          filed a Notice of withdrawal of testimony and exhibits of Jeanne Allen and Les  
12          Thomas. On October 15, 2012, the Utility filed testimony in this case for Jeanne  
13          Allen and John Guastella. I do not think that the Utility should be allowed to recover  
14          the cost of filing testimony two separate times. If the Utility chooses to withdraw its  
15          originally filed testimony and substitute a revised testimony, the ratepayers should not  
16          have to pay twice for testimony on the same issues.

17

18   **Q.    ARE YOU RECOMMENDING ANY DISALLOWANCE OF POST-PAA**  
19   **PROTEST RATE CASE EXPENSE RELATED TO POTENTIALLY**  
20   **DUPLICATIVE TESTIMONY?**

21   A.    Yes. I am also concerned with the Utility's decision to file testimony for the two  
22          witnesses on the same two issues: Jeanne Allen and John Guastella. OPC asked in its  
23          Third Set of Interrogatories No. 27, why the utility deemed it necessary for the  
24          Company to have both witnesses address the payroll adjustment and the working  
25          capital adjustment. The Utility's response to this is attached to my testimony as

1 Exhibit DNV-9. In this response, the Utility stated the following:

2  
3 Commission staff and the Commission did not accept the expert  
4 accounting testimony of Jeanne Allen with regard to the protested  
5 items, and the utility has no reason to believe that her testimony will  
6 be any more persuasive at the final hearing than it was prior to the  
7 PAA Order. Accordingly, the utility decided that it was prudent to  
8 obtain the services of John Guastella, who has more expertise and  
9 unquestioned credibility regarding the protested items, and other rate  
10 setting questions.

11 I am concerned why the Utility filed testimony from a witness that it does not  
12 appear to believe is competent to provide expert testimony. I do not believe that the  
13 ratepayers should be required to pay rate case expense for both witnesses.

14

15 **Q. ARE YOU RECOMMENDING THAT ANY OTHER PORTION OF POST-**  
16 **PAA RATE CASE EXPENSE BE DISALLOWED?**

17 A. Yes, in addition to the overall amount of rate case expense, I am concerned with the  
18 rate case expense associated with the Utility’s protest of issues. OPC protested four  
19 discrete issues and WMSI cross protested eight issues of its own. The Utility in its  
20 cross petition raised eight issues, six of which total approximately \$50,000 (or less  
21 than three percent of the Revenue Requirement included in the PAA Order). The  
22 remaining two issues are for an unstated amount of post-PAA protest rate case  
23 expense to pursue this case through the hearing process and the increased level of  
24 service availability charges. In my opinion, WMSI should only be awarded rate case  
25 expense associated with the four issues protested by OPC and rate case expense  
26 associated with Utility protested issues where it succeeds in securing an adjustment  
27 which is better than what was approved in the PAA order.

1 **Q. WHY DO YOU RECOMMEND RATE CASE EXPENSE FOR ISSUES THAT**  
 2 **THE UTILITY PROTESTED AND WINS AS WELL AS THOSE THAT OPC**  
 3 **PROTESTED?**

4 A. A utility cannot help but defend its substantial interests if it is drawn into a protest by  
 5 another party. It would be unfair to disallow reasonable rate case expense for  
 6 defending issues and positions which the utility did not protest. However, there is no  
 7 requirement that a utility cross protest additional issues simply because another party  
 8 initiates a protest. If the utility succeeds on the issues it cross protested, then  
 9 reasonable rate case expense should be allowed. However, if a utility fails on one or  
 10 more of its cross protested issues, then a pro rata portion of rate case expense related  
 11 to those failed cross protested issues should be disallowed as unreasonable.

12 As a ratemaking policy matter, a utility should have some incentive to  
 13 minimize costs as it relates to issues it cross protests. To automatically allow rate  
 14 case expense for any and all utility cross protested issues whether or not those issues  
 15 have any merit would serve to encourage a utility to unreasonably incur additional  
 16 rate case expense for less than meritorious issues.

17

18 **Q. WHAT IS YOUR BASIS FOR RECOMMENDING THAT THE UTILITY NOT**  
 19 **BE AWARDED RATE CASE EXPENSE FOR ITS ISSUES IT FAILS TO**  
 20 **SUCCEED?**

21 A. I would like to reference Order No. PSC-94-0738-FOF-WU, issued June 15, 1994.<sup>8</sup>  
 22 In this case, the Commission addressed the utility's entitlement to rate case expense  
 23 associated with the cost of a partially successful appeal of a Commission decision.

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<sup>8</sup> Order No. PSC-94-0738-FOF-WU, issued June 15, 1994, in Docket No. 900386-WU, In re: Application for a rate increase in Marion County by Sunshine Utilities of Central Florida, Inc.

1 The utility raised five issues on appeal and succeeded on three. Id. In determining  
 2 what amount of rate case expense to award the utility, the Commission addressed this  
 3 question, “. . . is [a utility] entitled to recover all expenses related to any such  
 4 appeal?” Id. The Commission answered, stating “we do not believe that a utility has  
 5 a right to recover all rate case expenses associated with every appeal.” Id. The  
 6 Commission further stated:

7  
 8 . . . all such expenses are not inherently reasonable. Some appeals are  
 9 a prudent cost of doing business and some are not. In addition, and  
 10 perhaps most importantly, if the Commission took the position that  
 11 any appeal taken by a utility is inherently reasonable, then utilities  
 12 would be encouraged to appeal all orders as a matter of course to the  
 13 ultimate detriment of the ratepayers who would be paying the bill for  
 14 their lack of discrimination as to issues that truly should be appealed.<sup>9</sup>

15 After much discussion on determining how to calculate the amount of  
 16 reasonable rate case expense for the partially successful appeal, the Commission  
 17 concluded “. . . since Sunshine appealed five issues and was successful on at least  
 18 three of those issues, or sixty percent of its appeal, the appropriate reduction using the  
 19 loadstar method is forty percent.” Id. at 16.

20 While a cross petition may be different than an appeal of a Commission order,  
 21 I believe that the Commission’s reasoning, ratemaking policy decision, and  
 22 calculation of reasonable rate case expense is applicable to this case. Consistent with  
 23 the Commission’s decision in that case, a utility should not expect to recover rate case  
 24 expense on any and all issues that it protested, but only those issues in which it is  
 25 successful.

26 Therefore, based upon the precedent established by Order No. PSC-94-0738-  
 27 FOF-WU, the Commission should apportion rate case expense among the issues,

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<sup>9</sup> Id. at 8.

1 allow reasonable rate case expense for defending issues protested by another party,  
 2 and disallow the portion of rate case associated with all issues the utility unsuccessful  
 3 protested. In this case, between OPC and the Utility, 12 separate issues were raised.  
 4 After unreasonable rate case expense is deducted, the remaining rate case expense  
 5 should be divided among the 12 issues. The Utility should be allowed reasonable rate  
 6 case expense for defending the four issues protested by OPC as well as any Utility  
 7 issues where it succeeds. For example, if the Utility fails on 7 out of its 8 issues it  
 8 protested, then 7/12 of all remaining rate case expense should be disallowed.

9

10 **SERVICE AVAILABILITY CHARGES**

11 **Q. YOU ARE ALSO TESTIFYING ON SERVICE AVAILABILITY CHARGES.**  
 12 **WHAT ARE YOU ADDRESSING IN THIS AREA?**

13 A. I am testifying that the amount of the increase in service availability charges  
 14 established by the PAA Order was calculated consistent with the Commission’s  
 15 methodology for calculating such charges. I am also testifying that the increase in the  
 16 charges should be placed in escrow and the final amounts should be subject to the  
 17 same escrow requirements and true-up provisions required by the PAA Order for pro  
 18 forma plant items.

19

20 **Q. WHAT ASPECT OF THE INCREASE SERVICE AVAILABILITY CHARGES**  
 21 **DID OPC PROTEST?**

22 A. OPC protested the service availability charges approved by the PAA Order in part  
 23 because the increased charges were based on future plant yet to be constructed and  
 24 placed in service. While I do not dispute the methodology used to calculate the  
 25 increase in the amount of the service availability charges, my concerns center on the

1 lack of any true-up mechanism, and the absence of any requirement to escrow the  
 2 increase in service availability charges.

3  
 4 **Q. WOULD YOU PLEASE EXPAND ON YOUR CONCERNS?**

5 A. First, since the PAA Order is requiring a true-up of the pro forma plant once it is  
 6 placed in service, I believe that the Commission should require that the service  
 7 availability charges be revised during the true-up phase to reflect the actual amount of  
 8 pro forma plant placed in service. Second, I am concerned that the service  
 9 availability charges were not made subject to the same escrow provisions as the  
 10 monthly service rates to ensure that the increase be retained within the Utility for  
 11 utility operations and not advanced for non-utility purposes. Because the service  
 12 availability charges were based in part on the requested pro forma plant, I recommend  
 13 that the increase in these charges be placed in escrow until the pro form plant is  
 14 completed.

15  
 16 **Q. WHAT ARE THE SERVICE AVAILABILITY CHARGES THAT WERE  
 17 APPROVED BY THE PAA ORDER?**

18 A. The Commission PAA Order<sup>10</sup> approved a Plant Capacity Charge of \$3,387, a Main  
 19 Extension Charge of \$1,523, and a Meter Installation Charge of \$400 for a total  
 20 Service Availability Charge of \$5,310. The Utility requested increased service  
 21 availability charges based primarily on the proposed pro forma plant additions and  
 22 proposed that the charges be increased to \$10,004.47, a 517.56 percent increase over  
 23 the current charges. In my opinion, the methodology used by the Commission was  
 24 reasonable and calculated reasonable service availability charges that were included

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<sup>10</sup> PSC-12-0435-PAA-WU, issued August 22, 2012, pgs. 34-36.

1 in the PAA Order. The Commission’s PAA Order concluded that Rule 25-30.580,  
2 F.A.C., which sets out guidelines for setting service availability charges, is a  
3 "guideline," and there is no mandatory requirement to set the level at 75 percent.  
4

5 **Q. HAVE YOU REVIEWED THE UTILITY’S PROTEST REQUESTING TO**  
6 **FURTHER INCREASE THE SERVICE AVAILABILITY CHARGE?**

7 A. Yes, I have reviewed the Utility’s request and I do not believe the Utility’s  
8 methodology to calculate service availability charges is reasonable. As applied to this  
9 Utility, the Commission calculated the average cost per ERC for both the treatment  
10 plant and the transmission and distribution plant, and used the average costs per ERC  
11 to determine reasonable charges. This calculation resulted in total service availability  
12 charges per ERC of \$5,310, for a \$3,690 increase. I believe that the plant capacity,  
13 main extension, and meter installation charges established by the PAA Order are  
14 reasonable because they are based on a reasonable calculation of average costs per  
15 ERC. I agree with the Commission’s finding that the Utility’s “level of an increase  
16 per equivalent residential connection (ERC) is excessive and highly speculative, with  
17 the potential to stunt future growth.”<sup>11</sup> Thus, the Commission should reject the  
18 Utility’s request to increase the charges further.  
19

20 **Q. WHAT IS YOUR OTHER ISSUE WITH THE SERVICE AVAILABILITY**  
21 **CHARGES?**

22 A. The PAA Order stated, “WMSI’s requested Service Availability Charges are based in  
23 large part on pro forma plant additions that may, or may not, come to fruition...”<sup>12</sup>

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<sup>11</sup> PSC-12-0435-PAA-WU, issued August 22, 2012, pg. 35.

<sup>12</sup> PSC-12-0435-PAA-WU, issued August 22, 2012, pg. 34.

1 The PAA Order authorized increase in service availability charges from \$1,620 to  
2 \$5,310 was based on plant levels that included the requested pro forma plant that has  
3 yet to be built and placed into service.

4 In the PAA Order, the Commission required that in order to “protect the  
5 customers, to ensure that the pro forma projects are completed, and the DEP loan and  
6 the financing are paid, WMSI shall set up an interest bearing escrow account.”<sup>13</sup> The  
7 order further required that the pro forma projects be completed within 18 months and  
8 any refund would be based on a subsequent true-up of the actual costs. However, the  
9 Commission did not include a similar escrow and true-up provision for the increase in  
10 service availability charges despite the fact that these charges are also based, in part,  
11 on the pro forma projects. I am concerned that if the pro forma plant is not fully  
12 completed or is completed at a significantly lower cost, the increased service  
13 availability charges will be overstated and may cause future ratepayers to pay more  
14 than their reasonable share of utility plant in service costs through inflated service  
15 availability charges.

16

17 **Q. WHAT DO YOU RECOMMEND?**

18 A. I recommend that the amount of the service ability charges should be true-up and  
19 based on actual pro forma plant placed in service during the true-up process  
20 established by the PAA Order. I further recommend placing the increase in service  
21 availability charges into escrow subject to the same escrow requirements established  
22 by the PAA Order. Because the service availability charges are also based in part on  
23 pro forma plant, they should be subject to the same escrow and true up provisions as  
24 the monthly rates.

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<sup>13</sup> PSC-12-0435-PAA-WU, issued August 22, 2012, pg. 13.



1 **Q. IS THERE ANY PRECEDENT FOR REQUIRING ALL OR A PORTION OF**  
2 **THE SERVICE AVAILABILITY CHARGE TO BE ESCROWED?**

3 A. Yes. By Order No. PSC-94-1383-FOF-WU, issued November 14, 1994, in Docket  
4 No. 940109-WU, the Commission approved a rate increase for this Utility, revised its  
5 service availability charges, and required the Utility to escrow its service availability  
6 charges, so that those monies would be available for future capital improvements. Id.  
7 at 65-66. To ensure that the increased service availability charges approved by the  
8 PAA Order are available for future capital improvements, the Commission should  
9 consider requiring all or the increased portion of the revised service availability  
10 charges to be escrowed. This will not only benefit the Utility, but the customers as  
11 well, by ensuring there are available funds necessary for future capital improvements.

12

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

14 A. Yes, it does.

1 **BY MR. SAYLER:**

2 Q. Did you also prepare exhibits to your Direct  
3 Testimony?

4 A. Yes, I did.

5 **MR. SAYLER:** And those exhibits attached to  
6 your testimony are identified as DNV-1 through DNV-9. I  
7 will note for the record that they are also identified  
8 as hearing exhibits on the Comprehensive Exhibit List as  
9 Exhibits 47 through 55.

10 **COMMISSIONER EDGAR:** Thank you.

11 **BY MR. SAYLER:**

12 Q. Ms. Vandiver, have you prepared a summary of  
13 your testimony?

14 A. Yes, I have.

15 Q. Will you please give that at this time.

16 A. Thank you.

17 Good morning, Commissioners. My testimony  
18 addresses three issues in this case. The first one is  
19 to address the prior rate case expense that was approved  
20 by this Commission in the last case. The last order  
21 approved that the utility be allowed to recover through  
22 rates approximately \$229,000 in rate case expense over  
23 four years. We are now two full years past the last  
24 order, so it should be approximately 50 percent  
25 amortized. However, through discovery we found that the

1 utility has made only about 20 percent of the payments  
2 due to its law firm from the last rate case.

3           The ratemaking formula generally allows the  
4 utility a level of expenses to recover through rates.  
5 However, I believe that rate case expense is different  
6 in that it is addressed by a specific statute and after  
7 four years it's removed. So I believe that the  
8 Commission has during that time the opportunity to  
9 reevaluate it, and if the Commission is concerned that  
10 it is not reasonable to allow that rate case expense to  
11 continue in rates it can be adjusted.

12           My second issue is to address the current rate  
13 case expense that is requested in this case also.  
14 Ratepayers are required to pay rates that include the  
15 utility's expenses that are incurred to raise their own  
16 rates. Because of this, I believe that the Commission  
17 should carefully examine all expenses that are requested  
18 through rate case expense and make sure that the purpose  
19 of each of these is reasonable to include in rate case  
20 expense.

21           My last issue addresses the service  
22 availability charges. The utility requested service  
23 availability charges that would increase CIAC to  
24 75 percent of the net plant balance. I am aware that  
25 Commission rules established the 75 percent goal for the

1 utilities when it establishes the original service  
2 availability charges sometimes. However, as the other  
3 attorney has stated today, Water Management Services has  
4 been in existence for over 38 years. It is not a new  
5 utility anymore.

6           The utility is now asking that the remaining  
7 balance of plant be spread among the few 400 customers  
8 that have yet to be connected to the system, which  
9 results in extraordinarily high service availability  
10 charges for those future customers. I believe that the  
11 PAA order chose a reasonable method of determining the  
12 service availability charges by coming up with a net  
13 plant balance per customer at capacity, spreading the  
14 amount over all customers and just choosing an amount  
15 based on net calculations to set the service  
16 availability charges, and that that method should be  
17 continued in the final order. Generally, my testimony  
18 is that customers should not be paying for anything  
19 unreasonable and that the service availability charges  
20 should be reasonable and should not put a burden on any  
21 new customers that will be connected.

22           Thank you.

23           **MR. SAYLER:** Madam Chair, OPC will tender the  
24 witness for cross.

25           **COMMISSIONER EDGAR:** Thank you.

1 Mr. Friedman.

2 **MR. FRIEDMAN:** Thank you.

3 **CROSS EXAMINATION**

4 **BY MR. FRIEDMAN:**

5 **Q.** How is rate case expense recovered in rates?

6 **A.** It's recovered over a four-year period.

7 **Q.** Now, isn't it true that there is no  
8 requirement that the utility actually pay those rates,  
9 pay the rate consultants within that four-year time  
10 period, though?

11 **A.** There is no specific requirement, even though  
12 I believe that that would be assumed by the Commission  
13 that it would be paid in a timely manner.

14 **Q.** So you would agree, would you not, that it  
15 certainly would be acceptable for the utility to repay  
16 rate case expense over four years; you've got no beef  
17 with that, do you?

18 **A.** I have some concern with it. I don't know  
19 that I would agree with that completely. It seems like  
20 four years is a long time to pay somebody for services  
21 rendered over a four-year period.

22 **Q.** But if the person you're paying doesn't mind,  
23 why should the Commission mind, since the company  
24 doesn't get that except one-fourth every year?

25 **A.** I suppose I'm concerned that I have never seen

1 it done that way before. It's something that I guess it  
2 is in the Commission's discretion whether they want to  
3 allow a company to pay over four years.

4 Q. And as we sit here today, the Commission has  
5 got no policy one way or the other, do they?

6 A. No, they do not.

7 Q. But do you personally see a problem with  
8 allowing a company to repay the rate case expense over  
9 the same period of time that it's amortized?

10 A. I see problems with it, but it's something  
11 that would not be -- I just -- it concerns me.

12 Q. Since these rates have been in effect for  
13 approximately two years, then I guess normally you would  
14 expect that half of the rate case expense would have  
15 been paid?

16 A. That's what I'm said, yes.

17 Q. And except for paying the Radey Law Firm,  
18 haven't the other consultants been repaid at least half  
19 of their expense?

20 A. Yes.

21 Q. So really all we're talking about is the Radey  
22 Law Firm?

23 A. I believe so.

24 Q. Are you familiar with the engagement letter  
25 that the Radey law firm entered into with Water

1 Management Services?

2 A. Yes, I am.

3 Q. And did not that engagement letter -- let me  
4 ask you this first. Isn't it true that they asked Mr.  
5 Brown to personally guarantee the rate case expense to  
6 the Radey Law Firm?

7 A. Yes, that's in the letter.

8 Q. So it's not just the utility that has to repay  
9 that rate case expense, it's Mr. Brown personally,  
10 correct?

11 A. Right. But it's in the ratepayers' rates,  
12 also.

13 Q. But if it's not paid, the Radey Firm is going  
14 to look to Mr. Brown to pay it, are they not?

15 A. I imagine so.

16 Q. Now, isn't it true that that engagement letter  
17 requires WMSI to make \$2,000-a-month payments?

18 A. I believe that was \$2,000 a month until the  
19 end of the case, and after the case was over it required  
20 full payment.

21 Q. Has anyone at the Radey Law Firm contacted you  
22 or somebody else at OPC to express any concern that they  
23 would not be paid for their services in the last rate  
24 case?

25 A. No one has contacted me, and I don't know

1 about the other people in the office.

2 Q. So you haven't heard any complaints from the  
3 Radey Law Firm about not getting paid?

4 A. No.

5 Q. Now, you state at Page 4, Line 10, that Water  
6 Management Services has a history of withholding  
7 payments from its attorneys. Do you remember that  
8 statement?

9 A. Yes.

10 MR. SAYLER: Excuse me, what is the reference?  
11 I'm sorry.

12 THE WITNESS: Page 4, Line 10.

13 BY MR. FRIEDMAN:

14 Q. How do you define the term history?

15 A. I mean the history in this case. I meant  
16 because of the history of payments to the Radey Law  
17 Firm.

18 Q. Oh, just in this case?

19 A. Yes. That's all I meant by that statement.

20 Q. And on Page 6, Line 10, you state, do you not,  
21 that there was a billing dispute between the Radey Law  
22 Firm and Water Management Services?

23 A. Yes.

24 Q. And don't you understand that billing dispute  
25 to be Mr. Brown's disagreement with having to pay more



1 than the amount set forth in the retainer letter?

2       **A.** No. I believe there was a letter from the  
3 Radey Law Firm that stated that he needed to pay, and  
4 Mr. Brown also responded to that letter that said he had  
5 some concerns with the work that they did, and if they  
6 needed to take other actions that they should do so, or  
7 something -- I'm paraphrasing it very generally.

8       **Q.** And isn't it true that the Radey Law Firm was  
9 demanding \$5,000 a month instead of \$2,000 a month?

10       **A.** It could be.

11       **Q.** Now, isn't it true that the Radey Law Firm has  
12 agreed to no reduction in their bill?

13       **A.** I don't know about that.

14       **Q.** Do you know that there has been a reduction in  
15 the bill?

16       **A.** No. I don't believe we have seen any  
17 documents to that effect.

18       **Q.** Now, you stated on Page 7, Line 23, that WMSI  
19 does not have an agreement to pay the Radey Law Firm the  
20 amount owed, is that correct?

21       **A.** Could you say that again?

22       **Q.** At Page 7, Line 23, do you state there that  
23 Water Management Services does not have an agreement to  
24 pay the Radey Law Firm the amount owed?

25       **MR. SAYLER:** Excuse me. You said Page 7, Line

1 23?

2 **THE WITNESS:** Oh, what I said here is that we  
3 requested a copy of --

4 **MR. SAYLER:** What line? I apologize.

5 **THE WITNESS:** 23 through 27.

6 **A.** (Continuing) We've requested a copy of the  
7 agreement to pay, and the company responded that there  
8 was no written agreement.

9 **Q.** That doesn't mean there is no agreement?

10 **A.** No. I believe Mr. Brown said there was an  
11 oral agreement.

12 **Q.** On Page 19, Line 16, I believe that you  
13 interpret Section 367.0816 as requiring a utility to  
14 repay the rate case expense immediately, is that  
15 correct?

16 **A.** I believe that when it says that the  
17 Commission should allow reasonable rates, that  
18 reasonable would include that, yes.

19 **Q.** All right. But you've got no basis for where  
20 anybody else has ever construed the statute similarly?

21 **A.** I do not.

22 **Q.** In all modesty, wouldn't you agree that there  
23 are no attorneys practicing before the Commission doing  
24 water and sewer work that have more experience than the  
25 ones Mr. Brown hired?

1 (Laughter.)

2 **MR. SAYLER:** With the exception of counsel for  
3 WMSI? Sorry.

4 **MR. FRIEDMAN:** I'm talking about in this case.  
5 I'm not talking about the other case; I'm talking about  
6 this case.

7 **THE WITNESS:** Could you --

8 **BY MR. FRIEDMAN:**

9 **Q.** Do you know any lawyers that have more  
10 experience in handling rate cases than myself?

11 **A.** Probably not at the current time, no.

12 **Q.** So wouldn't you agree that the hourly rate  
13 that WMSI is paying its law firm in this case is about  
14 40 or \$50 hour less than this Commission has previously  
15 approved for other lawyers that you have just decided  
16 had no more experience than myself?

17 **A.** I don't believe I'm taking issue with the rate  
18 that is being charged for legal expenses.

19 **Q.** Would you look over at the PSC staff table.

20 **A.** They are probably making a lot less than you.

21 (Laughter.)

22 **MR. FRIEDMAN:** They probably aren't.

23 **BY MR. FRIEDMAN:**

24 **Q.** How many lawyers do you see over there?

25 **A.** Two.

1 Q. And you've got Mr. Sayler and Mr. Kelly  
2 representing OPC here?

3 A. Two. And there is two at your table, too.

4 Q. Is Mr. Brown a lawyer representing this case?  
5 He's not getting legal rate case expense, is he?

6 A. You named him in the appearances, I believe.

7 Q. As a principal of the company, correct?

8 A. Yes.

9 Q. He's not getting legal rate case expense in  
10 this case, is he?

11 A. No.

12 Q. So Water Management Services has little old  
13 me, Public Counsel has got two, and the PSC staff has  
14 got two. And I guess the Commission, of course, they  
15 have only got one, is that right?

16 (Laughter.)

17 A. (Indicating affirmatively.)

18 Q. So wouldn't you agree that if Mr. Brown saw  
19 fit, he could have another lawyer here as well, and it  
20 would be reasonable?

21 A. It would depend on the circumstances.

22 Q. What would be the criteria you would use in  
23 deciding whether he was entitled to two lawyers, if the  
24 other parties were?

25 A. I would have to see what the invoices said

1 that the other person was doing.

2 Q. Wouldn't you agree that Water Management  
3 Services would not have incurred any rate case expense  
4 in this proceeding, but for OPC's protest?

5 A. Could you repeat the question, please?

6 Q. Wouldn't you agree that Water Management  
7 Services would not have incurred any rate case expense  
8 post-PAA, but for OPC's protest?

9 A. True.

10 Q. At Page 12, Line 4, you expressed concern, did  
11 you not, as to whether I'm going to get paid?

12 A. I expressed concern about general rate case  
13 expense, and that would you include your invoices also,  
14 yes. That would include any consultants, I believe.

15 Q. And you don't know what my specific agreement  
16 with Mr. Brown is on being reimbursed?

17 A. No. We asked for an engagement letter and we  
18 didn't get any.

19 Q. We don't have one, that's why you didn't get  
20 one.

21 **MR. SAYLER:** Excuse me, I didn't hear that.

22 **MR. FRIEDMAN:** I said we don't have one, which  
23 is why we didn't give you one.

24 **BY MR. FRIEDMAN:**

25 Q. On Page 12, Line 12, you appear to complain

1 about WMSI's litigation strategy, is that correct?

2 A. That's correct.

3 Q. And so first you complain about the objections  
4 that WMSI filed to OPC's discovery request, correct?

5 A. Correct.

6 Q. And you are at least implicitly saying that  
7 WMSI shouldn't be reimbursed for those?

8 A. Yes.

9 Q. Isn't it true that in the response to those  
10 objections OPC withdrew four of the first  
11 interrogatories and six of its requests for production?

12 A. I think it's fair -- working with the staff we  
13 did, yes.

14 Q. So obviously you had to agree then as a result  
15 that the responses to that discovery wasn't necessary  
16 for you to prepare your case?

17 A. I think we agreed to give some to get some.

18 Q. On Page 12, Line 24, you suggest that you  
19 think that WMSI's objections to OPC's discovery were to  
20 avoid providing responses to what you termed as  
21 legitimate discovery, do you not?

22 A. Yes.

23 Q. What do you define as legitimate discovery?

24 A. Discovery that would help us with information  
25 regarding the issues in the case.

1 Q. And don't you think that the determination of  
2 whether the discovery was, in fact, legitimate was  
3 addressed by the Prehearing Officer in orders that she  
4 entered?

5 A. Yes. I may not agree with them, but it was  
6 addressed.

7 Q. And isn't it true that OPC's motion to compel  
8 addressed 22 interrogatories and production of  
9 documents?

10 A. I'm sorry, could you say that again?

11 Q. OPC filed a motion to compel discovery  
12 responses, did it not?

13 A. Yes.

14 Q. And that that motion to compel addressed 22  
15 discovery requests, did it not?

16 A. Yes.

17 Q. And isn't it true that the Prehearing Officer  
18 denied all or part of 12 of those requests and  
19 interrogatories and modified another five?

20 A. That sounds about right.

21 Q. So in summary, isn't it true that the  
22 Prehearing Officer found that 17 of OPC's 22 discovery  
23 requests were not legitimate discovery as written?

24 A. That sounds about right.

25 Q. So then wouldn't you agree that OPC's motion

1 to compel, at least as to those 17 discovery requests,  
2 was substantially without merit?

3 A. I'm not sure about the use of that term, so  
4 I'm not going to agree with that.

5 Q. The term without merit?

6 A. Substantially without merit, is that a legal  
7 term or not.

8 Q. Well, then look the Page 14, Line 14, where  
9 you complain about rate case expense for filing a motion  
10 to dismiss. Do you see that?

11 A. Yes.

12 Q. All right. And that motion to dismiss was  
13 denied, was it not?

14 A. Yes.

15 Q. And don't you in your testimony say that  
16 therefore since the motion was dismissed, it was without  
17 merit?

18 A. Yes.

19 Q. Isn't that what you say? So if the Commission  
20 denies my motion, you think it's without merit; but if  
21 the PSC denies OPC's motion, you don't make a similar  
22 conclusion?

23 A. Well, I wasn't sure if you were using -- what  
24 I was trying to say earlier is I didn't know if you were  
25 using a legal term when you said merit or if it was a



1 general term.

2 Q. I was using your term.

3 A. Okay. Then I would agree with you on the  
4 other one.

5 Q. So you would agree that if my motion was  
6 denied and was without merit, then OPC's motion was  
7 without merit if it was denied?

8 A. Okay.

9 Q. All right. On Page 17, Line 17, do you see  
10 that?

11 A. Yes.

12 Q. Am I correct that you're complaining because  
13 WMSI raised eight cross-petition issues, is that  
14 correct?

15 A. I stated that. I don't know if I was  
16 complaining about it, but I was commenting on it, yes.

17 Q. So it seems like to me what you are saying is  
18 OPC can start this fight by raising a petition, but you  
19 want to limit the ability of the utility to fight that  
20 petition. Wouldn't that be a correct summary of your  
21 position?

22 A. No. I'm saying that the utility is allowed to  
23 fight the petition.

24 Q. Well, I thought that what you were saying was  
25 that you didn't like us raising all those issues, and

1 therefore we shouldn't get rate case expenses?

2       **A.** I'm talking about the issues that you raised.

3       **Q.** That's right.

4       **A.** Yes. You were talking about the original  
5 petition, I thought.

6       **Q.** No, ma'am. I'm talking about the  
7 cross-petition we filed in the protest.

8       **A.** Oh, okay. Whether it's --

9       **Q.** Let me rephrase it so that we know what we're  
10 talking about.

11               The way I interpret it is what you are saying  
12 is that OPC can file a protest and set forth what issues  
13 it wants to raise, but that if the utility then comes  
14 and files a response to that protest and tries to defend  
15 itself, that it shouldn't be entitled to rate case  
16 expense for that defense.

17       **A.** Right. I'm suggesting that the Commission  
18 needs some tools to look at what's reasonable for the  
19 ratepayers to have to pay. Some states allow a 50/50  
20 split of rate case expense. I'm not recommending  
21 anything like that at this time. I'm just saying that  
22 these are some things the Commission may want to look  
23 at. That it may be reasonable to have some sharing of  
24 the costs. These issues that were raised in your  
25 cross-petition were beneficial to the utility, and so

1 maybe the utility should share some of those costs.

2 Q. But the Commission doesn't do rate case  
3 expense that way in Florida, does it?

4 A. Sharing costs?

5 Q. Right. They just make a determination, do  
6 they not, as to what is reasonable, and whatever is  
7 reasonable is included?

8 A. I think that is a sharing of the costs. If  
9 it's unreasonable, then the utility is picking up that  
10 part of the cost.

11 Q. So instead of the sharing argument, what you  
12 are saying is that it is unreasonable for Water  
13 Management Services to raise those five issues on  
14 cross-appeal, and therefore they shouldn't get rate case  
15 expense for five issues?

16 A. It is either unreasonable or should be the  
17 shareholders' responsibility.

18 Q. So OPC can start a fight and then dictate what  
19 tools that the opposing party brings to the fight?

20 MR. SAYLER: Objection; argumentative. But if  
21 you could rephrase the question, I would appreciate it.  
22 The terminology picking a fight is what I'm objecting  
23 to.

24 MR. FRIEDMAN: I mean, I think it's a fight.  
25 I mean, I don't know what else you would call it. I

1 didn't call them a bully, which was my original  
2 question.

3 (Laughter.)

4 **MR. FRIEDMAN:** I thought I was being nice.  
5 I'll withdraw that question. I think we all know where  
6 it's going.

7 **BY MR. FRIEDMAN:**

8 **Q.** On Page 18, Line 21, am I correct that what  
9 you're suggesting is that there be an allocation of rate  
10 case expense depending upon who prevails?

11 **A.** Yes. I was just referencing in this other  
12 order where the Commission has done that, but that might  
13 be a reasonable approach in this case.

14 **Q.** Isn't it true that in the case you cite,  
15 though, the utility was the protesting party?

16 **A.** Yes.

17 **Q.** Don't you think that's a difference between  
18 that case and this case where the utility is a  
19 protagonist as opposed to just a defending party?

20 **A.** Well, I don't think that's the issue, no.

21 **Q.** You don't think it makes any difference?

22 **A.** No.

23 **Q.** Now, even if the Commission were to accept  
24 your proration theory, don't you agree that the time  
25 expended on each of the issues -- I think there's twelve

1 issues altogether -- on each of the issues in this case  
2 is not equal?

3       **A.** That's probably true.

4       **Q.** So then wouldn't you agree that just  
5 arbitrarily allocating a proration, depending upon who  
6 is successful on the issues, isn't really a reasonable  
7 allocation of reasonable rate case expense?

8       **A.** Based on a strict 1 out of 15 -- I forget how  
9 many issues we counted, that would probably not be  
10 reasonable. At the time when I wrote this I couldn't  
11 find it, and still haven't had time to look for it, but  
12 I believed I had read somewhere where they counted pages  
13 or something like that associated with issues. There  
14 could be some other methodology to use to prorate it.

15       **Q.** And you agree, don't you, that really that  
16 Account 123 is the issue that has subsumed most of the  
17 discovery, deposition time, in this case?

18       **A.** The vast majority.

19       **MR. FRIEDMAN:** I have no further questions.

20 Thanks, Ms. Vandiver.

21       **COMMISSIONER EDGAR:** Are there questions from  
22 Staff?

23       **MS. BARRERA:** Staff has no questions.

24       **COMMISSIONER EDGAR:** Commissioners?

25       **COMMISSIONER BALBIS:** I have one.

1           **COMMISSIONER EDGAR:** Commissioner Balbis.

2           **COMMISSIONER BALBIS:** Thank you.

3           On your DNV-5, Page 4 of 15 --

4           **THE WITNESS:** Yes.

5           **COMMISSIONER BALBIS:** -- there is a letter  
6 from Ms. Susan Clark listing that there is an  
7 outstanding balance of \$146,000 and change, and then on  
8 the next page there seems to be a response from Mr.  
9 Brown. In that first or second paragraph -- and I  
10 recognize, Mr. Friedman, this might be a question better  
11 suited for Mr. Brown, but since she reviewed all the  
12 rate case expense -- in this letter towards the bottom  
13 of that paragraph there's a statement, "I have come to  
14 recognize that several costly mistakes were made by RTYC  
15 in the handling of our case."

16           In your review of all of the rate case expense  
17 and documentation, were you able to determine what those  
18 costly mistakes -- how much they were and were they  
19 costly to WMSI, or the ratepayers, or did you find any  
20 clarification of that?

21           **THE WITNESS:** I did not find any evidence of  
22 the costly mistakes made by the Radey Law Firm, no. To  
23 be honest, I really didn't look for that, but I didn't  
24 see anything when I was reviewing. I did review  
25 invoices to some extent, and I did not see anything.

1           **COMMISSIONER BALBIS:** Okay. And my last  
2 question: Since according to the information in your  
3 exhibits, and Ms. Clark's letter that there was a period  
4 of time, I guess, since May of 2010 when payments  
5 stopped, had not been received to Radey Thomas, did you  
6 see any indications of additional administrative expense  
7 that was charged to WMSI from Radey Clark due to their  
8 lack of payment?

9           **THE WITNESS:** No. I believe on my Exhibit  
10 DNV-3, the first two pages are my schedule of the  
11 invoices, and I believe the last invoice was February  
12 2011.

13           **COMMISSIONER BALBIS:** Okay. So you didn't  
14 find any additional administrative expense due to the  
15 lack of payment?

16           **THE WITNESS:** No.

17           **COMMISSIONER BALBIS:** Okay. Thank you.  
18 That's all I have.

19           **COMMISSIONER EDGAR:** Thank you.

20 Redirect.

21           **MR. SAYLER:** Yes, ma'am.

22                           **REDIRECT EXAMINATION**

23 **BY MR. SAYLER:**

24           **Q.** Ms. Vandiver -- how do you pronounce it?

25           **A.** Vandiver.

1 Q. I've worked with you for almost two years --

2 (Laughter.)

3 My apologies. I'm not going to live this one  
4 down.

5 (Laughter.)

6 Do you recall being asked questions about  
7 would a rate case consultant accept payment on a longer  
8 basis than just immediately following a rate case?

9 A. Yes.

10 Q. And you reviewed the various engagement  
11 letters that were produced related to the Siedman and  
12 the Radey firm, I believe?

13 A. Yes.

14 Q. Did they negotiate that longer four-year  
15 payment in their engagement letter?

16 A. No.

17 Q. And in your review of the payments in your  
18 exhibit, I think DNV-3, it shows a period of time where  
19 no payment was made to the Radey Law Firm. How many  
20 months was that?

21 A. Are you talking about DNV-3? That's mostly  
22 the invoices. I believe DNV-2 shows -- it's an exhibit  
23 from the company that shows the payments that were made  
24 to the Radey Law Firm.

25 Q. That's correct. DNV-2, I'm sorry.



1           **A.**    Just a second.  There was a payment in October  
2 of -- or November of 2010, and then the next payment  
3 wasn't made until May of 2012.

4           **Q.**    And that was after OPC served discovery?

5           **A.**    Yes.

6           **Q.**    Do you recall being asked questions about  
7 current rate case expense?

8           **A.**    Yes.

9           **Q.**    Would you please refer to Page 20 of your  
10 testimony, and I believe Mr. Friedman asked you a  
11 question about allocation of rate case expense among  
12 issues?

13          **A.**    Yes.

14          **Q.**    And I believe it's your testimony that the  
15 utility should get reasonable rate case expense for  
16 issues it did not protest, correct?

17          **A.**    I'm sorry, could you repeat that?

18          **Q.**    Certainly.  For the four issues that our  
19 office protested, they should certainly get rate case  
20 expense associated with those issues, correct?

21          **A.**    Correct.

22          **Q.**    Okay.  And for any other issues they brought  
23 up and protested, any issues that they succeeded on,  
24 they should get reasonable rate case expense?

25          **A.**    Yes.

1 Q. If you will turn back to Page 19. This is an  
2 order you cite related to apportioning rate case expense  
3 among five issues, correct?

4 A. Yes.

5 Q. And in that case the utility was awarded rate  
6 case expense proportionate to the three issues it won,  
7 and that was using something called the Load Star  
8 Method?

9 A. Yes.

10 Q. Would you agree this is one methodology for  
11 calculating reasonable rate case expense?

12 A. Yes.

13 Q. And counsel, I believe, asked you about  
14 whether that was unreasonable if the majority of time  
15 was spent on one or more issues -- let me rephrase that.  
16 If the vast majority of time was spent on a couple of  
17 issues, then it would be unreasonable to apportion the  
18 rate case expense equally amongst all the issues?

19 A. Correct.

20 Q. And I believe you testified that's  
21 unreasonable?

22 A. I testified that it might be reasonable to use  
23 another method.

24 Q. Okay. Do you have any -- is there any record,  
25 any -- let me rephrase that. Do you know how much time

1 the utility has spent on any of the individual issues?

2 A. Not at this time.

3 Q. And did OPC serve discovery asking for a  
4 breakdown of how much they spent on the various issues  
5 like the motion to dismiss their case, the objections  
6 that they did not succeed on, and things of that nature?

7 A. I believe we did.

8 Q. And do you recall the response?

9 A. I think the response was that records aren't  
10 kept that way.

11 Q. With regard to the last rate case, the one  
12 where the utility is represented by the Radey Law Firm,  
13 do you remember a question by Commissioner Balbis about  
14 that?

15 A. Yes.

16 Q. About mistakes were made?

17 A. About whether mistakes -- well, I'm not sure  
18 what the question was. About whether I found any  
19 mistakes made?

20 Q. Correct.

21 A. Right, I remember the question.

22 Q. In your preparation of testimony, were you  
23 asked to review the decisions of the law firm in the  
24 last rate case?

25 A. The decisions of the law firm?

1           **Q.**   Were you asked to review whether the prior law  
2 firm made mistakes?

3           **A.**   No, I was not.

4           **Q.**   And although you were with OPC during the last  
5 rate case, you were not the OPC analyst on that case, is  
6 that correct?

7           **A.**   Correct.

8           **MR. SAYLER:**   Thank you very much.

9           I would like to move OPC Witness Vandiver's  
10 exhibits.

11          **MR. FRIEDMAN:**   What was that again, Vandiver?

12          (Laughter.)

13          **MR. SAYLER:**   Exhibits 47 through 55.

14          **COMMISSIONER EDGAR:**   Yes; thank you.

15          Mr. Friedman.

16          **MR. FRIEDMAN:**   Well, I think under the ruling  
17 by Mr. Helton, that if I didn't argue about it before  
18 now, it's too little, too late. I don't think it  
19 matters anyway. But, thank you; I have no objection.

20          **COMMISSIONER EDGAR:**   Are you telling me that I  
21 erred in asking you --

22          **MR. FRIEDMAN:**   No, ma'am. It was very polite  
23 of you to do so, and I appreciate it. Thank you. I was  
24 just saying I thought that Ms. Helton had ruled on that,  
25 which kinds of makes the rest of --

1           **COMMISSIONER EDGAR:** I actually don't think  
2 Ms. Helton rules.

3           **MR. FRIEDMAN:** I'm sorry, you're correct. I  
4 apologize.

5           **COMMISSIONER EDGAR:** Okay. Exhibits 47  
6 through 55 will be moved into the record.

7           (Exhibits 47 through 55 admitted into the  
8 record.)

9           **COMMISSIONER EDGAR:** Mr. Sayler.

10          **MR. SAYLER:** May Witness Vandiver be excused  
11 from this case?

12          **COMMISSIONER EDGAR:** You may be excused.

13          Okay. We will forge ahead.

14          Mr. Sayler. Excuse me, I apologize.

15          Staff, your witness.

16          **MR. LAWSON:** We would like to call Ms. Debra  
17 Dobiac to the stand, please.

18                           **DEBRA M. DOBIAC**

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

22                           **DIRECT EXAMINATION**

23 **BY MR. LAWSON:**

24           **Q.** Good afternoon. Have you been previously  
25 sworn in?

1           A.    Yes, I have.

2           Q.    Could you pull that mike a little closer to  
3 you?  There you go.

4                    And would you please state your name for the  
5 record.

6           A.    Debra M. Dobiac.

7           Q.    And by whom are you employed and in what  
8 capacity?

9           A.    I am a Public Utilities Analyst II at the  
10 Florida Public Service Commission.

11          Q.    And what is the address where you work?

12          A.    2540 Shumard Oak Boulevard, Tallahassee,  
13 Florida 32399.

14          Q.    And have you filed Prefiled Testimony in this  
15 matter?

16          A.    Yes, I have.

17          Q.    How many pages is that?

18          A.    Eight, I believe.  Yes, eight.

19          Q.    And if I were to ask you the questions  
20 contained in your Prefiled Testimony today, would your  
21 answers be the same?

22          A.    Yes.

23                   **MR. LAWSON:**  At this time we would ask that  
24 the Prefiled Testimony of Ms. Dobiac be inserted into  
25 the record as though read.

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**COMMISSIONER EDGAR:** The Prefiled Testimony of  
Witness Dobiac is entered into the record as though  
read.

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **COMMISSION STAFF**

3                                   **DIRECT TESTIMONY OF DEBRA M. DOBIAC**

4                                   **DOCKET NO. 110200-WU**

5                                   **DECEMBER 6, 2012**

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

7 **A.     My name is Debra M. Dobiac, and my business address is 2540 Shumard Oak**  
8 **Boulevard, Tallahassee, Florida, 32399.**

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

10 **A.     I am employed by the Florida Public Service Commission as a Public Utilities**  
11 **Analyst II in the Office of Auditing and Performance Analysis.**

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

13 **A.     I have been employed by the Commission since January 2008.**

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

15 **A.     I graduated with honors from Lakeland College in 1993 and have a Bachelor of**  
16 **Arts degree in accounting. Prior to my work at the Commission, I worked for 6 years in**  
17 **internal auditing at the Kohler Company and First American Title Insurance Company. I**  
18 **also have approximately 12 years of experience as an accounting manager and controller.**

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

20 **A.     Currently, I am a Public Utilities Analyst II with the responsibilities of managing**  
21 **regulated utility financial audits. I am also responsible for creating audit work programs**  
22 **to meet a specific audit purpose.**

23 **Q.     Have you presented testimony before this Commission?**

24 **A.     Yes. I testified in the Aqua Utilities Florida, Inc. Rate Case, Docket No. 080121-**  
25 **WS, the Water Management Services, Inc. Rate Case, Docket No. 100104-WU, and the**



1 Gulf Power Company Rate Case, Docket No. 110138-EI.

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

3 **A.** The purpose of my testimony is to sponsor the staff audit report of Water  
4 Management Services, Inc. (Utility), which addresses the Cash Flow Audit as  
5 required by the Commission in Order No. PSC-11-0010-SC-WU in Docket No.  
6 100104-WU. I will also address Finding 7, Cash Flow Analysis Update, in the  
7 Rate Case Audit Report filed in Docket No. 110200-WU. The Cash Flow Audit  
8 Report and the Rate Case Audit Report are filed with my testimony and are  
9 identified as Exhibit DMD-1 and Exhibit DMD-2, respectively.

10 **Q. Were these audits prepared by you?**

11 **A.** Yes.

12 **Q. Please describe the work you performed in the Cash Flow Audit, Exhibit**  
13 **DMD-1.**

14 **A.** We scheduled each of the Utility's 14 cash accounts by month from January 1,  
15 2004, through December 31, 2010, separating cash receipts from disbursements, and  
16 determined the disposition of any excess cash or the resolution of any cash shortages.

17 We scheduled the beginning and ending balance for each month from January 1,  
18 2004, through December 31, 2010, for Account 123 – Investment in Associated  
19 Companies (Account 123). We documented the transactions that represented cash flows  
20 into the Utility from associated companies and cash flows out of the Utility to associated  
21 companies.

22 We analyzed all invoices, receipts, and other documentation supporting the 1,368  
23 transactions in Account 123 and determined whether the amounts represented security  
24 investments or were duplicative of the Utility's expenses.

25 We scheduled the 17 current and long-term notes payable accounts recorded on

1 the Utility’s books, indicating the beginning and ending balance of debt for each month  
2 from January 1, 2004, through December 31, 2010. We obtained copies of the loan  
3 agreements or other documentation that verified the amount of debt incurred by the  
4 Utility’s President and associated companies used for the Utility’s operations.

5 We scheduled the Department of Environmental Protection (DEP) loan and its  
6 four amendments and noted the change in interest rate, the amount of the decrease in the  
7 annual debt service, and the incremental increase in interest paid over the term of the new  
8 DEP loan compared to the total amount of interest applicable to the original loan.

9 **Q. Please review the audit findings in the Cash Flow Audit, Exhibit DMD-1.**

10 **A.** Our report included five findings, which are explained on the following pages.

11 **Finding 1: Associated Companies - General**

12 This finding discusses that the Utility’s President has been an Officer, Director,  
13 Managing Partner, General Partner, and majority owner of the following entities:

- 14 • Brown Management Group, Inc.
- 15 • Leisure Development Services, Inc.
- 16 • St. George’s Plantation, Inc.
- 17 • Equity Management Systems, Inc.
- 18 • Real Estate Services of North Florida, Inc.
- 19 • Gene D. Brown, P.A.
- 20 • Real Estate Equities of Florida, LLC
- 21 • Leisure Properties, Ltd.
- 22 • St. George Island Utility Co., Ltd.

23 We had requested that the Utility provide any contracts, agreements, or other  
24 business arrangements between the Utility’s officers and directors for professional  
25 services for each firm, partnership, or organization with which the director or officer is

1 affiliated. The Utility stated that there are no written documents responsive to this  
2 request. The Utility's President owns, either personally or through various business  
3 entities, the controlling interest in the Utility and the aforementioned associated  
4 companies.

5 **Finding 2: Cash Receipts and Disbursements**

6 This finding discusses the comparison of the Utility's cash received to the cash  
7 spent on utility and non-utility related expenditures.

8 The utility activity cash receipts include utility loan proceeds, cash advances,  
9 interest income, proceeds from the sale of assets, proceeds from the Supply Main lawsuit,  
10 and cash received for regulated utility services. The utility activity cash disbursements  
11 include loan payments, credit card payments, lease payments, and utility-related  
12 investment in capitalized assets and operational expenses. Cash receipts for utility  
13 activities were greater than cash disbursements in five of the seven years. In two of the  
14 years, 2004 and 2010, cash disbursements were greater than cash receipts.

15 The non-utility activity cash receipts include funds from the Utility's President,  
16 associated companies, proceeds from a lease agreement, and cash received from non-  
17 utility services. The non-utility activity cash disbursements include funds to the Utility's  
18 President, associated companies, payroll tax penalties, bank and credit card fees, and  
19 other costs pertaining to non-utility services. In five of the seven years, cash  
20 disbursements for non-utility activities were greater than cash receipts. In two of the  
21 years, 2004 and 2010, cash receipts were greater than cash disbursements.

22 From January 1, 2004, through December 31, 2010, utility activity cash receipts  
23 exceeded cash disbursements by \$442,475; therefore, cash flow was positive. Non-utility  
24 activity cash disbursements exceeded cash receipts by \$883,264; therefore, cash flow was  
25 negative. Overall, cash disbursements for the Utility exceeded cash receipts by \$440,789

1 during the seven-year period; therefore, cash flow was negative.

2 In addition, we analyzed the Accounts Receivable (A/R) aging reports for the  
3 years 2005 through 2010. The Utility did not have a 2004 A/R aging report available.  
4 For the six years reviewed, the A/R average aging reports show that 77 percent of the  
5 accounts were current, 4 percent were 30-59 days past due, 1 percent were 60-89 days  
6 past due, and 18 percent were greater than 90 days past due.

7 Audit staff also analyzed the Accounts Payable (A/P) aging reports for the years  
8 2004 through 2010. For the seven years reviewed, the A/P average aging reports show  
9 that 22 percent of the accounts were current, 14 percent were 31-60 days past due, 6  
10 percent were 61-90 days past due, and 58 percent were greater than 91 days past due.

11 The analysis of the Utility’s A/R and A/P aging reports demonstrate that the  
12 Utility received its cash from the ratepayers in a timely manner, but did not pay its  
13 operational and financing expenses timely.

14 **Finding 3: Investments in Associated Companies**

15 This finding discusses our review of the supporting documentation for the 1,368  
16 transactions in Account 123 from January 1, 2004, through December 31, 2010. We  
17 determined that the transactions were either:

- 18 1. Utility cash being used for the benefit of the Utility’s President or associated  
19 companies, and vice versa, or
- 20 2. Utility-related expenses being recorded in a non-cash transaction, such as  
21 recording legal expense without actually paying the Utility’s President for his  
22 services or selling a vehicle to Brown Management Group by removing the asset  
23 and the corresponding debt without recording cash proceeds.

24 The amount of \$3,095,289 was identified as a receivable from the Utility’s  
25 President and associated companies. The amount of \$1,920,214 was identified as a

1 payable to the Utility’s President and associated companies. This results in a net  
2 receivable from the Utility’s President and associated companies of \$1,175,075, which is  
3 the same amount recorded on the Utility’s books, as of December 31, 2010.

4 The net receivable of \$1,175,075 from the Utility’s President and associated  
5 companies, as of December 31, 2010, represents funds that have been moved out of the  
6 Utility to the Utility’s President or one of his associated companies.

7 **Finding 4: Debt Incurred by the Utility’s President and Associated**  
8 **Companies**

9 This finding discusses the details of the terms and conditions of the debt and/or  
10 loans, which the Utility’s President claimed were incurred by him and Brown  
11 Management Group, Inc. on behalf of the Utility.

12 We received documentation for seven loans totaling \$935,301. The outstanding  
13 balance, as of December 31, 2010, was \$372,147.

14 **Finding 5: Department of Environmental Protection Loan Restructured**

15 This finding discusses the DEP loan agreement the Utility originally entered into  
16 on December 20, 2001. The Utility entered into four amendments to the loan from  
17 December 31, 2002, through February 18, 2011, which revised the terms of the loan.

18 Ultimately, the term of the DEP loan was increased an additional 10 years for an  
19 incremental increase in interest expense of \$928,071, while the Utility’s annual loan  
20 payments were lowered by \$112,507.

21 **Q. Please describe the work you performed in the Rate Case Audit Finding 7,**  
22 **Cash Flow Analysis Update, Exhibit DMD-2 Page 7 of 26.**

23 **A.** We scheduled each of the Utility’s cash accounts by month for the 12-months  
24 ended December 31, 2011, and separated cash receipts from disbursements. We also  
25 reviewed Account 123 – Investment in Associated Companies for any activity.

1 **Q. Please review Finding 7, Cash Flow Analysis Update, of the Rate Case Audit**  
2 **Report, Exhibit DMD-2 Page 19 of 26.**

3 **A. Finding 7: Cash Flow Analysis Update**

4 This finding discusses the updated statements of cash flows for 2011. Audit staff  
5 presented the Utility's cash flow using three different methods.

6 First, the direct method reflects the principal components of cash receipts and cash  
7 payments for operating, investing, and financing activities, excluding non-cash  
8 transactions.

9 Second, the indirect method reconciles net income to net cash flows from  
10 operating activities. The adjustments necessary to complete this reconciliation are made  
11 to net income to remove the effects of all non-cash deferrals, all non-cash accruals, and all  
12 items classified as investing or financing cash flows.

13 Third, we analyzed the data separating cash receipts and cash disbursements into  
14 utility and non-utility activity for regulatory purposes.

15 During the eight-year period reviewed, 2004 through 2011, the Utility had an  
16 overall decrease in cash of \$459,828 with an ending negative cash balance of \$18,585, as  
17 shown in all three statements. However, there was a \$470,725 increase of cash for utility  
18 activity. The cash decrease of \$930,552 represents non-utility activity, which includes  
19 cash to and from the Utility's affiliates. Account 123 – Investments in Associated  
20 Companies had an incremental increase of \$40,000 during 2011, as shown on Exhibit  
21 DMD-2 Page 2 of 5.

22 **Q. Please summarize your testimony.**

23 **A.** Our analysis of Account 123 – Investments in Associated Companies notes  
24 a balance of \$1,215,075 as of December 31, 2011. This demonstrates that over an  
25 eight-year period ending December 31, 2011, more cash flowed out of the Utility

1 | to the Utility's President or one of his associated companies than flowed in.

2 | **Q. Does that conclude your testimony?**

3 | **A. Yes.**

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1 **BY MR. LAWSON:**

2 Q. And I believe you had some exhibits prefiled,  
3 attached to your Prefiled Testimony?

4 A. Yes, I did.

5 Q. And are they identified as Exhibit DMD-1,  
6 titled Water Management Services, Inc., cash flow audit,  
7 and Exhibit DMD-2, entitled Water Management Services,  
8 Inc. rate case audit?

9 A. Yes.

10 **MR. LAWSON:** And just for the record, I would  
11 note that they have been previously identified on the  
12 Comprehensive Exhibit List as 56 and 57.

13 **COMMISSIONER EDGAR:** Thank you.

14 **BY MR. LAWSON:**

15 Q. Do you have any changes or corrections to  
16 either of those exhibits?

17 A. Yes, I do.

18 Q. Would you please explain those changes  
19 briefly?

20 A. On Page 12 of 19 in Exhibit DMD-1, there was a  
21 typo. On Table 2 where it's Account 145 A/R-Gene Brown  
22 it should read 2,124,074 versus 2,127,074.

23 **MR. SAYLER:** Would you please repeat that, I'm  
24 sorry.

25 **THE WITNESS:** I'm sorry, what?



1           **MR. LAWSON:** Please repeat that for  
2 Mr. Saylor.

3           **THE WITNESS:** Oh. It should be 2,124,074 as  
4 opposed to the 2,127,074.

5           **MR. SAYLER:** Thank you. Sorry.

6           **THE WITNESS:** No problem.

7 **BY MR. LAWSON:**

8           **Q.** Do you have any other corrections?

9           **A.** That is it.

10          **Q.** Have you prepared a summary for today's  
11 hearing?

12          **A.** Yes, I have.

13          **Q.** Would you be so kind as to present your  
14 summary at this time.

15          **A.** Commissioners, my name is Debra M. Dobiac. I  
16 was the audit manager for the cash flow audit and for  
17 the rate case audit of Water Management Services, Inc.  
18 I planned my audits in accordance with agreed-upon  
19 procedures from staff's audit service request. I was  
20 responsible for the audit work pertaining to the  
21 statements of cash flows and the determination of cash  
22 receipts and disbursements.

23                 I analyzed each transaction of Account 123,  
24 Investments in Associated Companies, and traced the  
25 amounts to source documents. I analyzed the utility's

1 debt, specifically the DEP loan. I also reviewed debt  
2 instruments incurred by the utility's president or  
3 associated companies for the benefit of the utility.  
4 The description of my audit findings is contained within  
5 my Prefiled Testimony and Exhibits.

6 **MR. LAWSON:** Thank you. We would tender the  
7 witness for cross-examination at this time.

8 **COMMISSIONER EDGAR:** Thank you.

9 Mr. Friedman.

10 **MR. FRIEDMAN:** Thank you.

11 **CROSS EXAMINATION**

12 **BY MR. FRIEDMAN:**

13 **Q.** Ms. Dobiac, can I direct your attention,  
14 please, to your Exhibit 1, Page 9 of 19?

15 **A.** Yes.

16 **Q.** In Table 1, there are several columns that are  
17 headed utility activity. Do you see that?

18 **A.** Yes.

19 **Q.** Now, who is it that made the determination of  
20 what monies should be included in that category of  
21 utility activity?

22 **A.** I did.

23 **Q.** Were you given any guidance in determining  
24 what revenues should be utility activity?

25 **A.** I based my decisions on the NARUC Uniform

1 Systems of Accounts and from the descriptions of what I  
2 read within the Cash Disbursement Journal, the utility's  
3 general ledger. And if I had -- if I had concerns over  
4 anything that I saw, I would ask for documentation about  
5 it.

6 Q. So am I correct that -- and I think this says  
7 that under the table, the utility activity, cash  
8 receipts include and then you put -- the first thing is  
9 utility loan proceeds, correct?

10 A. Yes.

11 Q. All right. So you include as utility activity  
12 monies that was borrowed by the utility or borrowed and  
13 loaned to the utility?

14 A. Borrowed by the utility for the purpose of  
15 utility plant, for utility vehicles, and as such -- and  
16 if the loan documents were in the utility's name and the  
17 asset was designated as utility.

18 Q. So that money didn't come from customers, did  
19 it?

20 A. No; it would be loan proceeds.

21 Q. From customer revenue?

22 A. Well, no, it's not customer revenue, no.

23 Q. Okay. And if you look over on Table 3, on  
24 Page 14 of 19, is that a list of some of the loans that  
25 you reference in your utility activity and schedules?

1           **A.**    No.  These loans were not recorded on the  
2 utility's books.  These are loans that were in the name  
3 of Gene Brown, P.A., or Gene Brown, or Brown Management  
4 Group, and any funds that were brought into the utility  
5 from these loans came in through Account 123.

6           **Q.**    Okay.  So this 935,301 came into the utility  
7 under this category of utility loan proceeds?

8           **A.**    I can't swear that all the 935,301 came in  
9 through Account 123.  These were just the gross amounts  
10 on the original loan documents that I reviewed.

11          **Q.**    And now direct your attention to Paren 3 on  
12 that schedule, that Table 3.  And I think you say that  
13 that is a line of credit that Mr. Brown took out on his  
14 personal home?

15          **A.**    Number 3, you said?

16          **Q.**    Yes.  Is that right, that he borrowed money on  
17 his home to --

18          **A.**    Yes.

19          **Q.**    Now you have also got in here as utility  
20 activity the sale of assets, do you see that?

21          **A.**    Yes.

22          **Q.**    Would one of the primary sales of assets be  
23 those lots in Tallahassee?

24          **A.**    Are you looking at Table 1 or are you looking  
25 at Exhibit 3?

1           **Q.** I'm on Table 1, but I'm just looking at how  
2 you define sale, and you define utility activity, and I  
3 wanted to make sure that everybody understands what that  
4 category does and does not include.

5           **A.** Okay. Table 1 is actually a summary of  
6 Exhibit 3, and that shows what's defined as utility  
7 activity versus nonutility activity in a more concise  
8 manner. And so I do have sale of assets, and you were  
9 asking me about, what? I'm sorry.

10          **Q.** What I'm trying to do is I wanted to make sure  
11 I could understand what types of revenue going into the  
12 company you classified as utility activity. And I know  
13 now you have already said that it's not just customer  
14 revenue.

15          **A.** Right.

16          **Q.** It includes loans that were made, including a  
17 loan on Mr. Brown's personal house. It includes --

18          **A.** No. I'm sorry. The loans that -- the loans  
19 that are documented in Item 4, I would have classified  
20 that -- actually, it would have been accounted for in  
21 Account 123, but when I was going through the cash  
22 disbursements journal to determine this, I mean, these  
23 loan proceeds that I'm documenting up here are loan  
24 proceeds that were in the utility's name. So anything  
25 that didn't have -- wasn't in the utility's name

1 wouldn't be up in this area. I would have included that  
2 down in nonutility activity.

3 Q. All right. And to go back to my question, so  
4 the utility activity category includes the sale of the  
5 lots in Tallahassee, does it not?

6 A. Yes, because they had been classified as  
7 utility land in Account 303. And the warranty deed was  
8 in the utility's name, and the loan documents were in  
9 the utility's name.

10 Q. Okay. So that is nothing the customers ever  
11 paid a penny for, is it?

12 A. That I wouldn't know.

13 Q. So it didn't make any difference to you when  
14 you put it in this category whether the customers paid  
15 anything for it or not?

16 A. I was just doing an analysis of the cash  
17 disbursements journal and tied it to the cash flow  
18 statements that I had created.

19 Q. You put in here also proceeds of the lawsuit  
20 settlement you put in there as a utility activity, too?

21 A. Yes, because it had to do with the coating on  
22 the supply main, which is a plant asset.

23 Q. And it also includes cash advances, does it  
24 not?

25 A. Yes. From credit cards with the

1 utility's name; they were corporate credit cards.

2 Q. Okay. So that's kind of like a loan; that's  
3 not money that came from the customers?

4 A. This is true.

5 Q. And then interest income, the same, it would  
6 be something that --

7 A. It was on the -- the CDs in the utility's  
8 name.

9 Q. So am I correct that if I look at Page 17 of  
10 this exhibit -- Page 19 of 19 of Exhibit 1, am I correct  
11 that the top right-hand number of \$10,327,240 is the  
12 amount of the utility activity that is actually revenue  
13 from customers?

14 A. Yes.

15 Q. And the other three and a half million dollars  
16 came from either loans or other sources that the  
17 customers did not pay?

18 A. Correct.

19 Q. So your cash flow report doesn't purport to be  
20 a schedule or an audit showing what the customers paid  
21 versus the expenses, correct?

22 A. Could you repeat the question?

23 Q. Yes. Your cash flow audit doesn't purport to  
24 be a comparison of what the customers themselves paid in  
25 revenue versus expenses or versus outflow?

1           **A.**    I just reported the facts as I found them  
2 based on the cash disbursement journal.

3           **Q.**    And the difference between what the customers  
4 actually paid and the disbursement is about three and a  
5 half million dollars, is it not?

6           **A.**    Yes.

7           **Q.**    And that money had to come from either loans,  
8 advances by Mr. Brown, or the lawsuit settlement, or  
9 selling lots in Tallahassee and such?

10          **A.**    It is as I reported it here.

11          **Q.**    The numbers are what the numbers are.

12          **A.**    They are what they are.

13          **Q.**    I just want to make sure everybody understands  
14 that the amount of this total here that you report, that  
15 really only \$10 million of it came from customer  
16 revenues, correct?

17          **A.**    Yes.

18                **MR. FRIEDMAN:**  I have no further questions.  
19 Thank you.

20                **COMMISSIONER EDGAR:**  Thank you.

21                Mr. Sayler.

22                **MR. SAYLER:**  Thank you, Madam Chair.

23                We are going to try to be as brief as  
24 possible, but I'm not an accountant; I'm an attorney, so  
25 I'm going to do my best with some questions here.



## CROSS EXAMINATION

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**BY MR. SAYLER:**

**Q.** Ms. Dobiac, how are you doing this evening?

**A.** I'm just fine.

**Q.** All right. What was the scope of the cash flow audit or the cash flow analysis report from this case? What were the things that you were looking at?

**A.** I was asked to review all the cash accounts of WMSI; I was asked to review the DEP note; I was asked to review the beginning and ending numbers for the Account 123 for the seven years of activity; and to look at loan documents that Mr. Brown had said he had taken out for the benefit of the utility.

**Q.** All right. And this cash flow analysis report, what is the best way to describe it? I have heard it described many ways -- cash flow audit, cash flow analysis. I'm just looking for an easy way to refer to it.

**A.** I'd call it a cash flow audit. That's the title on the report, yes.

**Q.** And this audit was ordered as a result of the final order in the last rate case, right?

**A.** Yes.

**Q.** As part of your audit, were you or audit staff also asked to make a recommendation to the Commission

1 following the completion of the audit?

2 A. No.

3 Q. And to your knowledge, what was going to be  
4 the process once that audit was completed as far as a  
5 recommendation to the Commission? Is that within your  
6 shop or --

7 A. That's outside of -- it's certainly not my  
8 job. I just report the facts based on the audit service  
9 request, so --

10 Q. Now, of Water Management Services, as part of  
11 this cash flow audit, were you asked to do a management  
12 review or a management audit of WMSI?

13 A. No, I was not.

14 Q. In your time working for the Public Service  
15 Commission, have you been asked to do a financial  
16 management audit review of the utility?

17 A. No, I have not.

18 Q. Are you familiar with what it takes to perform  
19 such a management audit for review?

20 A. Am I what?

21 Q. Familiar with how one of those management  
22 audits or reviews are performed?

23 A. Vaguely.

24 Q. In your capacity as an auditor for the  
25 Commission, would be you qualified to do a management

1 audit or review?

2 A. That's not part of my job description.

3 Q. Thank you. Would you please turn to Audit  
4 Finding 1 in your Exhibit DMD-1, Page 7 of 19 to 9 of  
5 19?

6 A. Okay.

7 Q. The conclusion of the audit is there, and I  
8 want to kind of focus on two things. One, Gene Brown  
9 owns, either personally or through other various  
10 business entities owns the controlling interest of the  
11 utility and associated companies referenced except for  
12 SMC Properties, Inc. Do you see that?

13 A. Yes.

14 Q. And is SMC Properties, Inc. -- it shows up on  
15 the table in Audit Finding Number 2, is that right;  
16 \$85,000 in and \$85,000 out?

17 A. In Table 2?

18 Q. Yes.

19 A. Yes.

20 Q. And to your knowledge, or in your opinion --  
21 let me rephrase that.

22 To your knowledge, did SMC Investments repay  
23 Brown Management Group the \$85,000 that was mentioned  
24 repaid to WMSI?

25 A. Could you ask the question again. I'm not

1 sure if I heard it all.

2 Q. Certainly. Do you recall that our office  
3 served some discovery on the Commission as it relates to  
4 SMC Investment Properties and an \$85,000 payment?

5 A. Yes.

6 Q. Do you recall discovery seeking to find  
7 confirmation of that payment? And it's my understanding  
8 it was lumped together in a deposit from Brown  
9 Management Group. Do you recall that?

10 A. Yes.

11 Q. And the initials on there says per, I believe,  
12 Gene Brown, do you recall that?

13 A. Yes.

14 Q. What documentation did the utility provide to  
15 support that?

16 A. When it came to Account 123, I had requested  
17 support for each transaction of the seven years. And to  
18 start with he sent me a list of all the transactions  
19 with the reported explanation of those transactions.  
20 And then -- and he said would this be sufficient, and I  
21 said it would be sufficient to start. If I had more  
22 questions, I would ask for more documentation, which I  
23 did on that particular one. But the description was  
24 included as funds from SMC Investments.

25 Q. And you are satisfied that there is no -- that

1 SMC Investments does not owe any money to WMSI?

2       **A.** The deposit was -- far exceeded the 85,000, so  
3 I had accepted it.

4       **Q.** Returning back to Audit Finding Number 1, the  
5 last sentence on Page 8 of 19 where it says, "Therefore,  
6 all transactions between the utility and associated  
7 companies other than SMC Investment Properties are under  
8 the absolute control of Gene Brown." Do you see that?

9       **A.** Yes.

10       **Q.** Please define absolute control. It seems like  
11 a strong term.

12       **A.** Well, the definition of control as per NARUC  
13 is listed earlier in the audit finding, and it means the  
14 possession directly or indirectly of the power to direct  
15 or cause the direction of the management and policies of  
16 the company. And since he is the main primary officer,  
17 director, majority owner of all these, he is the one  
18 with most control.

19       **Q.** So, in other words, he would be responsible  
20 for all those transactions?

21       **A.** Yes.

22       **Q.** If you will please turn to Audit Finding  
23 Number 2. On Page 9 of 19 you have definitions for  
24 utility activity cash receipts, utility activity cash  
25 disbursements, and then in the next paragraph you have a

1 definition for nonutility cash receipts and nonutility  
2 activity cash disbursements. Do you see that?

3 A. Yes.

4 Q. All right. And I was following along with Mr.  
5 Friedman's cross-examination, but I believe you  
6 testified that those are based upon the NARUC rules or  
7 NARUC accounting rules?

8 A. Yes.

9 Q. Okay. So if you were to perform this similar  
10 cash flow analysis for another utility, you would use  
11 these same definitions again?

12 A. If it's a water or wastewater utility, yes.

13 Q. Yes. Thank you. Thank you for that  
14 clarification.

15 With regard to utility activity cash receipts,  
16 I believe you testified that if the utility goes out and  
17 borrows money in the name of the utility, then it is  
18 utility activity cash receipts, correct?

19 A. Yes.

20 Q. And does it matter to this definition if in  
21 order to secure that loan in the name of the utility  
22 with the assets of the utility, that the owner or  
23 shareholders or anybody else would have to be personally  
24 liable or pledge personal assets?

25 A. Could you repeat the question?

1           **Q.**    Sure.  The same question as before, but if as  
2 part of the securing of the loan in the name of the  
3 utility the principal owner of the utility had to either  
4 give a personal guarantee or had to use personal assets  
5 or secure bank proceeds, would that change the  
6 definition of utility activity cash receipts?

7           **A.**    You're asking me to speculate, and I just  
8 reported the facts of what I looked at.  That's outside  
9 the scope of my audit.

10          **Q.**    So it's true then, it wouldn't change the  
11 definition, correct?

12                    Okay, I'll move on.

13                    Please refer to Audit Finding 3, Table 2, Page  
14 12 of 19.  If you scroll down to the bottom of the page  
15 to the first reference to Account 233, A/P-Gene Brown,  
16 \$567,000?

17           **A.**    Yes.

18           **Q.**    Excuse me, 576,460.  Do you see that?

19           **A.**    Yes.

20           **Q.**    And that is money that Mr. Brown has put into  
21 the utility, correct?

22           **A.**    Correct.

23           **Q.**    And if you go back to the top of the page, for  
24 Accounts Receivable Gene Brown, that is money that he  
25 has been advanced, is that correct?

1           **A.**    Yes.

2           **Q.**    And all these transactions were, for lack of a  
3 technical accounting term, jumbled together and recorded  
4 in Account 123, correct?

5           **A.**    Correct.

6           **Q.**    Would you please refer to Page 14 of 19, Audit  
7 Finding 4. Mr. Friedman asked you about Paren 3, the  
8 \$150,000 variable interest rate that he had. Do you see  
9 that?

10          **A.**    Yes.

11          **Q.**    Now, that money that he took out on his home,  
12 would that be accounted for under that Accounts Payable  
13 Gene Brown on Page 12 of 19?

14          **A.**    Probably.

15          **Q.**    If you go down to Paren 4, the detail  
16 discusses the purchase of two lots. Do you see that?

17          **A.**    Correct.

18          **Q.**    And these are the two lots that WMSI sold for  
19 a gain on sale, correct?

20          **A.**    Repeat the question, please.

21          **Q.**    Sure.

22                    On Paren 4 it discusses -- it says represents  
23 the mortgage of the purchase of two lots on  
24 November 1st, 2007, by Brown Management Group.

25          **A.**    Correct.



1           **Q.**   And they were originally purchased by the  
2 utility.  So the utility sold it to Brown Management  
3 Group and this Commission recorded the gain on sale,  
4 correct?

5           **A.**   Correct.

6           **Q.**   And then later on in October of 2010, the  
7 utility purchased those lots back from Brown Management  
8 Group; do you see that?

9           **A.**   Correct.

10          **Q.**   And I do apologize for jumping around.

11                   My last couple of questions.  Audit Finding 3,  
12 please.  At the conclusion of Audit Finding Number 3,  
13 Page 13 of 19, it cites to the order in the last rate  
14 case with respect to Account 123.  It states Witness  
15 Brown testified that all funds that flowed through this  
16 account were used to pay for debt service on loans  
17 incurred by BMG or himself personally to obtain  
18 financing to keep the utility in operation.

19          **A.**   Was there a question there?

20          **Q.**   Yes.  Why did the Audit Finding 3 include that  
21 quote from the last rate case?  Was that one of the  
22 things the audit was designed to confirm?

23          **A.**   Yes.

24          **Q.**   And did the audit confirm or refute this  
25 testimony, or was it outside the scope of the audit?

1 I apologize. That was a compound question;  
2 I'll rephrase. Did the audit confirm or refute this  
3 testimony?

4 A. I just noted what Account 123 was.

5 Q. I'll move on. With regard to the last  
6 sentence where it says net receivables of \$1,175,075  
7 from Gene Brown and Associated Companies, and in  
8 layperson's terms an account receivable in that amount  
9 is money that is owed to the utility by Mr. Brown and  
10 his companies, correct?

11 A. Yes.

12 Q. And of that \$1.2 million owed to WMSI, who or  
13 what entity owes the bulk of that money to WMSI?

14 A. Mr. Brown.

15 MR. SAYLER: Thank you. I appreciate it,  
16 navigating with me through audit questions for which --  
17 some of which I apologize. Thank you very much,  
18 Ms. Dobiac.

19 COMMISSIONER EDGAR: Commissioners, any  
20 questions for Ms. Dobiac?

21 COMMISSIONER BROWN: Yes.

22 Ms. Dobiac, I had no idea you worked at First  
23 American.

24 THE WITNESS: Oh, yes, I did.

25 COMMISSIONER BROWN: In Tallahassee?

1           **THE WITNESS:** No. In Portland, Oregon.

2           **COMMISSIONER BROWN:** I have a lot of respect  
3 for you right there. I have just a few questions  
4 regarding the documentation that you received with  
5 regard to WMSI's business relationships along with its  
6 associated companies. What type of documentation did  
7 you receive to reflect Mr. Brown's controlling interest?

8           **THE WITNESS:** I went out on the Department of  
9 State's Florida businesses, and I looked for all  
10 companies where Mr. Brown was a registered agent for,  
11 and then I looked at all the -- well, then I, you know,  
12 looked at the annual reports that were filed, and if  
13 there were any changes that occurred within that company  
14 to see how the relationships might have changed over  
15 time.

16           **COMMISSIONER BROWN:** I think you responded to  
17 a question regarding controlling interest. I think it  
18 was to Mr. Sayler.

19           **THE WITNESS:** Yes. I looked at whether or  
20 not -- who the officers were, because they are always  
21 listed on the annual reports. And he was either  
22 director, or officer, or like president or managing  
23 partner, because some of them were LLCs, as well.

24           **COMMISSIONER BROWN:** And some of this could be  
25 corroborated by Mr. Brown's testimony, but I just wanted

1 to see what types of written documentation, articles of  
2 organization, partnership agreements?

3 **THE WITNESS:** Yes, anything that's filed --  
4 that you have access to on the Department of State's  
5 website.

6 **COMMISSIONER BROWN:** Okay. Also with regard  
7 to the associated companies business purposes, did you  
8 receive from the utility any documentation or review  
9 from the utility, any documentation to reflect what  
10 their business purposes are?

11 **THE WITNESS:** I had requested any contracts or  
12 any kind of agreements with any associated companies,  
13 and he responded that there were no documents in  
14 response to that request.

15 **COMMISSIONER BROWN:** Okay. I think another  
16 question Mr. Sayler asked you and you responded to him  
17 was with regard to your using NARUC accounting analysis  
18 for audit purposes.

19 **THE WITNESS:** Yes.

20 **COMMISSIONER BROWN:** In your professional  
21 opinion or experience is the fact that an account does  
22 not utilize NARUC accounting principles indicate that  
23 there is any wrongdoing, per se, just by that very fact?

24 **THE WITNESS:** If a utility doesn't follow  
25 NARUC? I can't say whether or not it would be doing

1 anything wrong. I mean, I have seen other utilities not  
2 following NARUC. It makes our job more complicated, but  
3 other than that, you know, you could still review the  
4 documentation and just report -- we look at  
5 documentation to report the facts of what we find. And,  
6 you know, and to make sure we have the proper  
7 documentation to support the numbers, like minimum  
8 filing requirements, that sort of thing.

9 **COMMISSIONER BROWN:** Thank you. Thanks for  
10 coming.

11 **COMMISSIONER EDGAR:** Questions on redirect  
12 from our staff?

13 **MR. LAWSON:** No, we have no redirect. At this  
14 time we would ask to go ahead and move the exhibits, or  
15 the audit exhibits labeled 56 and 57 on the  
16 Comprehensive Exhibit List in the record.

17 **MR. FRIEDMAN:** No objection.

18 **COMMISSIONER EDGAR:** And hearing no objection,  
19 we will enter 56 and 57 into the record at this time.

20 (Exhibits 56 and 57 admitted into the record.)

21 **MR. LAWSON:** And I believe that's it. There  
22 was the issue of Document Number 58, but after  
23 discussing it with staff, we have no need to move that  
24 into the record. We simply won't address it, and at  
25 this time we would ask that Ms. Dobiac be excused.

1           **COMMISSIONER EDGAR:** Okay. So you are  
2 referencing the previously marked Pages 439 and 440. It  
3 was a part of Exhibit 72, but we pulled out of it.

4           **MR. LAWSON:** Yes, ma'am.

5           **COMMISSIONER EDGAR:** Okay. Just to make sure  
6 I understood. Thank you.

7           Thank you are excused.

8           **THE WITNESS:** Thank you.

9           **COMMISSIONER EDGAR:** Okay. I see by my watch  
10 that it's just a little after 5:00. We have one  
11 remaining witness. I had said that we would go till  
12 5:30 or a natural breaking point. This does look like,  
13 perhaps, a natural breaking point.

14           Mr. Friedman, it is your witness. Do you have  
15 a problem with taking a breaking and beginning in the  
16 morning?

17           **MR. FRIEDMAN:** No, I would probably prefer  
18 that because I think we could probably get him done by  
19 noontime, I would guess.

20           **COMMISSIONER EDGAR:** Okay. Then we will plan  
21 to be back here again to continue the evidentiary  
22 portion of this proceeding. We will begin with  
23 Mr. Brown as a witness. We will convene at 9:30 here  
24 tomorrow morning. We will be back here at 6:00 o'clock  
25 for the next noticed customer service portion of this

1 docket. And at this moment we are on recess.

2 (The hearing recessed at 5:03 p.m.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, JANE FAUROT, RPR, Chief, Hearing Reporter  
6 Services Section, FPSC Division of Commission Clerk, do  
7 hereby certify that the foregoing proceeding was heard at  
8 the time and place herein stated.

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

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

19 DATED THIS 28th day of January, 2013.

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JANE FAUROT, RPR  
FPSC Official Commission Reporter  
(850) 413-6732