

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.

VOLUME 3

Pages 318 through 464

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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 32328-2831

TIME: Commenced at 9:32 a.m.
Concluded at 12:30 p.m.

DATE: Thursday, January 17, 2013

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

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

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

4 **COMMISSIONER EDGAR:** Good morning, everyone.
5 Thank you for joining us timely this morning. We are
6 back on the record. And when we left yesterday, we had
7 one witness left.

8 **MR. FRIEDMAN:** Were you sworn?

9 **THE WITNESS:** I was sworn, yeah.

10 **COMMISSIONER EDGAR:** Yes, he was.

11 Before we call our next and last witness, are
12 there any other matters that we need to address this
13 morning?

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

15 **COMMISSIONER EDGAR:** Okay. Thank you. And
16 seeing no other, Mr. Friedman, your witness.

17 **MR. FRIEDMAN:** Okay. I would call Gene Brown.
18 Whereupon,

GENE BROWN

19
20 was called as a witness on behalf of Water Management
21 Services, Inc., and, having been duly sworn, testified
22 as follows:

DIRECT EXAMINATION

23
24 **BY MR. FRIEDMAN:**

25 **Q** Mr. Brown, would you state your name?

1 **A** Gene Brown.

2 **Q** And, Mr. Brown, did you prefile testimony in
3 this case?

4 **A** Yes, I did.

5 **Q** And did you also prefile 12 exhibits in this
6 case?

7 **A** Yes, I did.

8 **Q** And if I asked you the questions in your
9 prefiled testimony, would your answers be the same?

10 **A** They would.

11 **Q** Do you have any changes or corrections to any
12 of your testimony?

13 **A** No, I do not.

14 **MR. FRIEDMAN:** I'd like to move Mr. Brown's
15 testimony into the record as though read.

16 **COMMISSIONER EDGAR:** The prefiled testimony of
17 the witness will be entered into the record as though
18 read.

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

2 A. My name is Gene D. Brown. My Business address is 250 John Knox Road, No. 4,
3 Tallahassee, FL 32303.

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

5 A. I am employed by Water Management Services, Inc., as its President.

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

7 A. The purpose of my testimony is to refute parts of the testimony of staff witness, Debra
8 Dobiac, and OPC witnesses, Helmuth Schultz, III and Denise N. Vandiver.

9 **Q. What is your response to the testimony of Debra Dobiac?**

10 A. Basically, I believe she did a good job with the raw numbers. In fact, after an
11 extensive 7-month audit, she confirmed the balance in account 123 as shown by our
12 books and annual reports right down to the last dollar, \$1,175,075. That just confirms
13 the accuracy of the accounting numbers that WMSI has presented to the Commission
14 over the years.

15 **Q. Can you briefly explain account 123?**

16 A. That is an account from the NARUC chart of accounts that shows all equity
17 investments by WMSI in companies associated with the utility company.

18 **Q. Over what period of time were these investments made?**

19 A. This account is an accumulation of all the advances or investments by WMSI since the
20 company was started many years ago. The PSC audit only covered the seven-year
21 period from 2004 through 2010. However, the account started by bringing forward all
22 of the inter-company loan accounts that had accumulated over the years prior to 2004,
23 which totaled approximately \$240,000. Account 123 did not start at -0- and build up
24 to \$1.2 million in a 7-year period.

25 **Q. How did these old loan accounts get merged into account 123, an equity**

1 **investment account?**

2 A. In 2004, my accountant and I noticed that NARUC has a mandatory requirement that
3 all loan balances not paid within 12 months must be transferred into account 123, an
4 investment equity account. Based on that, we transferred all the inter-company loan
5 balances to account 123, and we started using that account for all net cash advances to
6 associated companies.

7 **Q. Was there ever any attempt to cover up this account?**

8 A. No. There is nothing surreptitious about any of this. The various balances in this
9 account have been accurately reported year after year by our general ledgers and
10 annual reports filed with the Commission.

11 **Q. Well, if the staff audit agrees with the numbers you reported, what issue do you
12 have with the audit?**

13 A. As I stated earlier, the raw numbers are correct. However, anyone reading the PSC
14 audit report should understand what it is, and what it is not.

15 **Q. What do you mean?**

16 A. The PSC audit is a detailed confirmation of the balance in account 123, as shown by
17 our annual reports. But it is not an accurate analysis of the cash that I have put into
18 WMSI as compared with the cash that I have taken out of WMSI.

19 **Q. Can you be more specific?**

20 A. Yes. For example, in Table-1, the audit separates the numbers into "utility activity"
21 and "non-utility activity," showing \$13,675,198 in cash receipts from utility activities
22 and \$2,560,617 in cash receipts from non-utility activities. Then, at pages 4 and 5 of
23 her testimony, Ms. Dobiac states that cash receipts from utility activities exceeded
24 utility activity cash disbursements by \$442,475, but that non-utility cash
25 disbursements exceeded cash receipts by \$883,264, resulting in an overall negative

1 cash flow of \$440,789. In the same section, Ms. Dobiac states that the utility received
2 its cash from the ratepayers in a timely manner, but that many of the utility's bills
3 were not paid on time. All of this could lead someone to believe that WMSI had
4 adequate revenue from its rates, but that the company had a \$440,789 cash flow
5 problem because I took a net of \$883,264 for "non-utility" purposes.

6 **Q. Is that true?**

7 A. No, that would be a misreading of the report. The report shows, in Table-1, that the
8 total cash receipts of Water Management Services during the 7-year audit period were
9 \$16,235,815 (\$13,675,198 + \$2,560,617). However, only \$10,255,048 of that money
10 came from rates or ratepayers, including CIAC, as shown by our annual reports for the
11 7-year audit period. (**Exhibit "GB-1"**). I had to go to our annual reports for these
12 revenue numbers because I could not find anything in the cash flow audit reports or
13 Ms. Dobiac's testimony that lays out the actual WMSI revenue from rates and
14 ratepayers. That leaves \$5,980,767 of cash that came from me, my affiliates or third
15 parties, including direct loans that were possible only because of my personal
16 guarantee and pledge of personal assets. Therefore, if we take out the \$883,264 for
17 "non-utility activity" which was ultimately invested in BMG, that still leaves over
18 \$5,000,000 ($\$5,980,767 - \$883,264 = \$5,097,503$) during the audit period that came
19 from me, my affiliates and third parties. That is consistent with the cash flow analysis
20 performed by WMSI as referenced on page 2 of the staff audit report dated July 29,
21 2011, attached to Ms. Dobiac's testimony.

22 **Q. Do you agree with Ms. Dobiac's separation of the cash receipts and**
23 **disbursements into utility and non-utility categories?**

24 A. No, not entirely. Aside from the fact that her "utility activity" includes \$3,420,150
25 that did not come from rates or ratepayers, it also includes transactions that had

1 nothing to do with actual utility business or operations.

2 **Q. Can you give me an example of something that was included in the staff audit as**
3 **revenue from “utility activity” which was not actually revenue that you would**
4 **consider “utility activity”?**

5 A. Yes, for example, in 2006, I bought two investment lots in Tallahassee in the name of
6 WMSI for \$236,000, but they had nothing to do with utility operations or utility rate
7 base. When WMSI needed cash, I then sold them in 2007 to my company, Brown
8 Management Group, for \$480,000, \$244,000 more than the original purchase price
9 approximately one year earlier. The net check to WMSI at closing was \$229,000,
10 which was all used to cover utility cash requirements.

11 **Q. Is all this included in account 123?**

12 A. No, none of this is in account 123, but this is an example of why account 123 is only a
13 small part of the overall financial relationship between WMSI and me.

14 **Q. Are these the same Tallahassee investment lots that are included in the gain on**
15 **sale issue in this case?**

16 A. Yes, to make bad matters worse from my point of view, well over \$200,000 was
17 charged to the WMSI shareholders in the last case as the result of this transaction,
18 despite the fact that the lots were never in rate base, and despite the fact that the lots
19 were sold to my company at a net profit of approximately \$210,000 to WMSI. The
20 Commission’s decision was erroneous and largely as a result of that error, the WMSI
21 customers have benefitted by \$48,000 per year, to the detriment of WMSI, which
22 could have used that money for improvements. These lots are shown in the audit
23 attached to Ms. Dobiac’s testimony as “sale of UPIS,” which I assume is utility plant
24 in service, but they were never UPIS or in rate base. Further, the sale of those lots
25 took place in 2007, so even if they had been in rate base, the amortization period has

1 expired. I could have sold them to BMG for WMSI's basis if I was not trying to raise
2 cash from BMG for the benefit of the utility, and there would have been no gain on
3 sale issue or charge to the WMSI shareholders.

4 **Q. Back to the \$440,789 number referenced on page 4 of Debra Dobiac's testimony,**
5 **do you agree with that as the amount that cash disbursements exceeded cash**
6 **receipts because of non-utility activity?**

7 A. I do not disagree with her calculation of the raw numbers, but it depends on what you
8 call "utility activity." If you are trying to compare the cash I put into the utility with
9 the cash I took out of the utility, I would define utility activity as all funds from rates
10 or ratepayers, not to include cash that came from me, my affiliates or third parties, or
11 loans to the utility that I had to personally guarantee. In my August 1 memo to the
12 Commission, I included a copy of my response to the staff audit regarding account
13 123, which pointed out that the actual funds advanced to associated companies was
14 \$461,100, and the net funds to associated companies was \$264,498 after deducting
15 personal interest paid on personal loans to secure cash that was advanced to WMSI.

16 **Exhibit "GB-2."**

17 **Q. Why do your numbers include interest on personal loans?**

18 A. As pointed out on page 12, Table-3 of the PSC audit, I have had to personally borrow
19 at least \$935,301 to secure funds to advance to WMSI, so I thought interest was
20 appropriate. But whether the bottom-line number is \$883,244, \$440,789, \$461,000, or
21 \$264,000, it is still a lot less than the value of the Brown Management stock that was
22 transferred to WMSI to settle these investments. And that still does not account for
23 the other millions of dollars that have been provided to WMSI by me, my affiliates
24 and third parties outside of account 123.

25 **Q. Has this 123 issue as discussed in the testimony of Debra Dobiac caused you to**

1 **conduct any further investigation into the cash flow relationship between you and**
2 **WMSI?**

3 A. Yes, after OPC basically accused me of stealing \$1,200,000 from my customers in the
4 last case, I asked my accountants to conduct a cash flow analysis to see how much of
5 the cash required to operate WMSI came from ratepayers and how much came from
6 me, my affiliates and third parties other than ratepayers.

7 **Q. Was that cash flow analysis conducted under your direct supervision and**
8 **control?**

9 A. Yes, I met with my CPA, Barbara Withers, who helped me establish a format for the
10 analysis. This was then explained to my controller, Bob Mitchell, who carried out the
11 analysis under my day-to-day supervision.

12 **Q. What does it show?**

13 A. As shown by the exhibit attached to my August 1, 2012, memo to the Commissioners,
14 this cash flow analysis shows that between January 1, 2000, and December 31, 2010, I
15 had to come up with \$16,237,529 in cash over and above the funds received from
16 ratepayers during that 11 year period. **Exhibit "GB-2."**

17 **Q. Where did all that money come from?**

18 A. It came from me, my affiliates, and third parties, including lenders who made loans to
19 WMSI only because of my personal guarantees and pledge of other personal assets.
20 All that money from lenders has to be repaid by me personally if the rates are not
21 adequate to cover the debt service, which they are not and never have been. The
22 ratepayers are not liable for any of this debt, and the rates do not even cover the
23 interest, let alone the principal, on this debt. Exhibit "B-2" to my August 1 memo
24 shows how this debt has grown over the years. **Exhibit "GB-2."**

25 **Q. Does your cash flow analysis include an accounting of account 123?**

1 A. Yes, but even if you net out the funds invested under account 123, the amount of extra
2 cash that I had to come up with is still in excess of \$15,000,000.

3 **Q. Has the WMSI cash flow analysis been updated?**

4 A. Yes, it has been brought up to date through September 30, 2012, the first three
5 quarters of this year.

6 **Q. What does that show?**

7 A. It shows that I had to come up with an additional \$112,233 in 2011 and an additional
8 \$95,824 through the first 3 quarters of this year just to keep WMSI in operation. I
9 recently borrowed \$100,000 for the utility using non-utility assets, and last year I had
10 to borrow \$30,000 from my 401k for the utility.

11 **Q. Does the update include activity in account 123?**

12 A. No, we stopped using that account as of December 31, 2010.

13 **Q. I notice a \$40,000 entry in account 123 in 2011. What is that about?**

14 A. I transferred \$40,000 in cash to WMSI in 2010, which was entered as a cash
15 investment under account 123. However, this should have been booked as a loan, so a
16 correcting entry was made to account 123 in 2011, but it related to activity which
17 occurred prior to December 31, 2010.

18 **Q. Has the cash flow analysis been updated to include 2011 and the first 3 quarters
19 of 2012?**

20 A. Yes, a copy of the updated cash flow analysis to include 2011 and the first 3 quarters
21 of 2012 is attached as **Exhibit "GB-3."**

22 **Q. What does all this show?**

23 A. It shows that I had to come up with an extra \$16,445,590 during that period of 12
24 years, 9 months, to keep WMSI in operation, including account 123. That was over
25 and above the funds that came from rates and ratepayers during that same period of

1 time.

2 **Q. In the summary of Debra Dobiac's testimony on pages 7 and 8, she confirms your**
3 **balance in account 123 of \$1,215,075. She then concludes by stating that this**
4 **"demonstrates that over an eight-year period ending December 31, 2011, more**
5 **cash flowed out of the utility to the utility's president or one of his associated**
6 **companies than flowed in." Do you agree with that conclusion?**

7 A. No. If you take Ms. Dobiac's numbers from Table 1, you have \$13,675,198 in cash
8 receipts from "utility activity" and \$2,560,617 from "non-utility activity." That is a
9 total of \$16,235,815 in cash receipts for the 7 year period, but only \$10,255,048 of
10 that came from rates or ratepayers, and the remainder of \$5,980,767 came from me,
11 my affiliates and third parties. So even if you back out the \$1,215,075 balance in
12 account 123 (even though it purchased a valuable asset, and even though a large part
13 of it came from funds advanced prior to 2004), you still have \$4,765,692 of the deficit
14 that had to be made up with funds from me, my affiliates and third parties, and this is
15 based on the numbers in the cash flow audit attached to Ms. Dobiac's testimony. It is
16 simply not accurate to conclude that I have taken more money out of the utility than I
17 have put in. The real, up-to-date numbers are shown in the comprehensive cash flow
18 analysis attached as **Exhibits "GB-2" and "GB-3"** to my testimony.

19 **Q. How did you come up with all that extra cash?**

20 A. Most of it came from loans to WMSI that were possible only because of my personal
21 guarantee and pledge of personal assets. However, through the end of 2010,
22 approximately \$1,670,000 of it came from my personal resources. **Exhibit "GB-4."**
23 This exhibit does not include the extra money I put into WMSI in 2011 and 2013 as I
24 mentioned earlier.

25 **Q. Does that conclude your rebuttal testimony in response to the testimony of Debra**

1 **Dobiac?**

2 A. Yes, it does.

3 **Q. Turning next to the testimony of Denise Vandiver, what is your response to her**
4 **testimony regarding the prior rate case expense?**

5 A. First, I would like to summarize WMSI's financial experience to date regarding this
6 overall rate case effort. In 2009, WMSI commenced a good faith effort to obtain
7 increased rates to help pay for some critically needed improvements to prevent a
8 catastrophic failure of the St. George Island water system. Starting in March, 2011,
9 we got a 1% rate increase which has produced a grand total of approximately \$21,000
10 in increased revenue. However, we have incurred approximately \$570,000 in
11 expenses directly related to this effort, \$243,000 of which has been paid and \$327,000
12 of which remains unpaid, as shown by **Exhibit "GB-5."**

13 In her testimony, Ms. Vandiver expresses great concern over the balance still due to
14 the Radey Thomas Law Firm. After the last case, I received a letter from Radey
15 Thomas pressing for payment and requesting \$5,000 per month. In negotiating for a
16 lower monthly payment, I sent a letter to Radey Thomas implying that there would be
17 a problem if the law firm filed suit for a judgment against WMSI and me personally.
18 To settle this matter, I then met personally with the primary partner handling this
19 matter and we agreed that WMSI would pay \$2,000 per month until the bill is paid, or
20 until the water system was sold, at which time the balance would be paid in full. This
21 \$2,000 per month is exactly the amount set in the representation agreement between
22 WMSI and Radey Thomas as quoted on page 8 of Ms. Vandiver's testimony. This
23 was acceptable to Radey Thomas and WMSI, and I do not understand why it is not
24 acceptable to OPC.

25 **Q. But Ms. Vandiver states in her testimony that you got \$229,000 in rate case**

1 **expense recovery in the order in the prior case, is that true?**

2 A. Only in the abstract. In fact, we received a total rate increase of approximately
3 \$13,000 per year which has amounted to a little over \$20,000 to date. But even if you
4 accept the \$229,000 as a real number, it is still spread over 4 years, or 48 months. If
5 there was a rule that all rate case expenses have to be paid within 48 months (which
6 there is not), that would require payment of \$4,771 per month ($\$229,000 \div 48$).
7 WMSI has agreed to pay \$2,000 per month to Radey Thomas, \$2,000 per month to
8 Frank Seidman and \$500 per month to Post Buckley, which is being paid as a credit
9 card deduction. That is \$4,500 per month, very close to the \$4,771, 48 month
10 amortization mentioned earlier. The other rate case expenses from the prior case have
11 been paid. This \$4,500 per month is reasonable and should not be disturbed.

12 **Q. What is your response to Ms. Vandiver's testimony regarding current rate case**
13 **expense?**

14 A. I think it is disingenuous at best. We would not be incurring this rate case expense
15 were it not for OPC's protest. Further, it has been almost 4 years since I started
16 working toward a rate increase in order to build improvements to prevent a
17 catastrophic failure of the water system on St. George Island. This should have been a
18 fairly routine rate case, but OPC responded by publicly accusing me of stealing \$1.2
19 million of my customers' money. OPC has continued this assault on my character
20 through this PAA protest, all without one iota of evidence that any of the \$1.2 million
21 belonged to any of my customers as asserted by OPC. In the course of this assault,
22 OPC has actively and intentionally killed the loan I was working on for the
23 improvements, and has continued to libel and slander me with my customers, my
24 lenders and the general public. To fight this, I have hired the best lawyers I could
25 find, and I relied on their advice regarding the experts to use. The OPC lawyers are

1 paid without fail, win or lose, and their experts are handsomely paid by the state with
2 no review by this Commission. WMSI's lawyers and experts deserve to be paid on
3 the same basis, especially because this protest proceeding was caused 100% by OPC,
4 even though they could not find even one actual client to join the protest.

5 **Q. What do you think of Ms. Vandiver's testimony that your attorney's fees and**
6 **other rate case expenses should be reduced on a percentage, pro-rata basis**
7 **depending on whether you win or lose certain motions?**

8 A. In my 46 years as a lawyer, I have never heard anything like that. Litigation is tough
9 and uncertain, especially against OPC who has full time lawyers, CPAs and other
10 state-paid experts to attack everything that is done. Based on simple math and
11 common sense, an hourly rate lawyer, including all those hired by WMSI, would only
12 be paid for one-half of their time on this basis. For every case and every motion, there
13 are an equal number of winners and losers. OPC is paid in full no matter what, even
14 without a client, and it is only fair and reasonable that WMSI's lawyers and experts be
15 paid in the same way.

16 **Q. What is your response to Ms. Vandiver's testimony that your lawyer should not**
17 **be paid for work on WMSI's motion to withdraw funds from escrow.**

18 A. I would remind everyone that WMSI filed this motion to make it possible to buy land
19 for \$190,000, rather than \$420,000, a savings to OPC's "clients" of \$230,000. Again,
20 it is somewhat disingenuous to now argue against a relatively small legal cost as part
21 of such a large savings to the ratepayers. Further, I did not see any written consent
22 that OPC agreed to such withdrawal, and WMSI's attorney needed to be available to
23 answer Commissioners' questions at the agenda, and to respond to OPC if necessary.

24 **Q. What is your response to the question of hiring both Jeanne Allen and John**
25 **Guastella?**

1 A. Jeanne Allen was hired to prepare and file the MFRs with supporting testimony. She
2 did a very good job at this, and WMSI was prepared to accept the PAA Order despite
3 certain misgivings about transportation expense, cost of debt, double counting of
4 insurance refunds and a few other items. However, when OPC filed a protest
5 involving account 123, service availability charges and other more complicated issues,
6 my attorney and I decided it was necessary to hire John Guastella, a well known
7 expert in water and wastewater rate making. If OPC can use Ms. Vandiver and Mr.
8 Schultz, why can't WMSI use Ms. Allen and Mr. Guastella? His efforts will not
9 duplicate or overlap those of Jeanne Allen.

10 **Q. What is your response to Ms. Vandiver's testimony regarding service availability**
11 **charges?**

12 A. My basic position is that WMSI should be allowed to recover 75% of the cost of its
13 plant at buildout from its customers who benefit from that plant. The \$10,004 CIAC
14 number in WMSI's MFRs is based upon the detailed formula set forth in the PSC
15 rules, and there is no question that the number is correct based upon WMSI's books
16 and records, including the pro-forma plant. I do not understand why a policy decision
17 should be made that WMSI, i.e. the shareholders, should have to fund a great deal
18 more than 25% of this cost. The State of Florida came in and destroyed WMSI's
19 supply main without our consent. WMSI had to spend \$7,009,000 in connection with
20 the new supply main, which was built to serve the existing customers as well as new
21 customers. Even if these service availability charges are increased to the 75% level as
22 we have requested, that still leaves over \$1,750,000 that will have to be funded by
23 WMSI, its shareholders and me. The only other PSC regulated utility in Franklin
24 County, a utility owned by St. Joe, is allowed to collect CIAC at the 75% level, and I
25 do not see why we should be treated differently. The St. Joe owned utility was built

1 strictly as a development amenity, and the St. Joe company can afford the excess plant
2 investment a lot better than our small company that has never made a profit in over 38
3 years. Also, I have seen PSC cases where utilities were ordered to increase their
4 CIAC closer to the 75% standard. I have subsidized this company since it started, and
5 I do not see why I should be forced to increase that subsidy by denial of the 75%
6 CIAC recovery which is allowed for most other PSC regulated utilities in Florida.

7 **Q. Does that complete your response to the testimony of Ms. Vandiver?**

8 A. Yes, it does.

9 **Q. Turning next to the testimony of Helmuth Schultz, III, I would like you to**
10 **respond to his testimony on page 45 that your salary should be reduced.**

11 A. I believe my salary of \$110,000 per year is fair and reasonable, especially since it has
12 already been reduced to \$96,250 by another non-protested adjustment in this case.

13 **Q. What was it prior to 2009, the test year in the last rate case?**

14 A. It was \$150,000, before I reduced it in 2009.

15 **Q. Why did you reduce it then?**

16 A. Because the company was experiencing cash flow problems due to the economy and a
17 tremendous increase in the installation of shallow wells.

18 **Q. Have you compared your salary to that of any other CEOs of PSC regulated**
19 **water utilities in Florida?**

20 A. I looked at Marion Utilities, which is approximately the same size as WMSI. Its
21 President is paid \$183,000 per year, and the President's his wife is also paid \$183,000
22 per year, for a total of \$366,000 per year. The salaries for Ms. Chase and myself are
23 less than one-half of that amount. Our salaries have already been reduced by an
24 additional 12.5% because of our involvement with BMG, so my salary before the 15%
25 reduction in the PAA Order was only \$96,250, not \$110,000.

1 **Q. Why do you believe you are worth \$96,250 per year to the utility?**

2 A. I have 38 years of experience as a utility company chief executive. I am also an "A-
3 V" rated Florida lawyer with 46 years of legal experience. This background of
4 training and experience has helped me develop a utility company that is very well
5 managed for the benefit of its customers on St. George Island.

6 **Q. How have your customers benefitted?**

7 A. We provide great, 24/7 service with virtually no complaints. We consistently receive
8 the top ratings from DEP, and we are in full compliance with the rules and regulations
9 of all our other regulatory agencies, such as the water management district, the federal
10 EPA and this Commission.

11 **Q. Can you be more specific as to how you have helped your customers?**

12 A. For example, in 2000, the State of Florida announced they were going to tear down
13 our water supply main on the St. George Island bridge, and I was given 60 days to
14 start moving our old line. This cost WMSI over \$7,000,000 which required WMSI to
15 file a limited proceeding. The initial filing was based on the market interest rate at
16 that time, and the requested rate increase was well over 100%. Later, after the case
17 was filed, I secured a loan from DEP at 2.99% which has saved the ratepayers
18 approximately \$500,000 per year for the past 10 years or so. A subsequent pleading in
19 the limited proceeding by my attorney, Rick Melson, put the savings at \$480,000 per
20 year, but I have calculated that it is actually around \$525,000 per year.

21 **Q. How were you able to get such a loan at below market rates?**

22 A. Among other things, I was able to do it by personally guaranteeing a loan of over
23 \$6,000,000 from DEP along with my wife and all my affiliates, including the
24 following: Land in Fla., St. George's Plantation, Leisure Development Services, Inc.,
25 Brown Family Trust, Leisure Properties, Ltd., St. George Island Utility Co., Ltd., and

1 Barbara S. Withers, Trustee. I have attached some of the personal guarantee
2 documents as **Exhibit "GB-6."**

3 **Q. Is that a normal part of the duties of an officer of a utility company, to personally**
4 **guarantee over \$6,000,000 of debt?**

5 A. I do not know what other companies do, but I think those personal guarantees should
6 be taken into account by anyone trying to determine my level of compensation,
7 especially when the guarantees resulted in such a huge savings to the customers. In
8 fact, I have had to personally guarantee every debt the utility has, including the
9 \$3,000,000 line of credit from Gulf State Bank, which is now Centennial Bank. The
10 personal guarantees and pledges of other personal assets were even more extensive for
11 the \$3,000,000 loan from Gulf State than the \$6,000,000 loan from DEP, and included
12 the pledge of other personal, non-utility assets as set forth in **Exhibit "GB-7."**

13 **Q. Do most company CEO's have to pledge their personal assets for utility company**
14 **loans?**

15 A. Again, I do not what other companies do, but I do not believe it would be possible to
16 find anyone with my background and expertise to work full time for \$96,000 a year to
17 run WMSI, while pledging their personal assets as part of over \$9,000,000 in loan
18 guarantees.

19 **Q. Are there any other ways you have saved money for the ratepayers?**

20 A. Yes, as pointed out on pages 7 and 8 of my August 1 memo to the Commission, my
21 negotiation of a 10 year extension on the DEP loan amortization saved the ratepayers a
22 great deal of money.

23 **Q. Anything else?**

24 A. As you know, I recently negotiated a deal to buy 24 lots on St. George Island for
25 \$190,000 as the site for the improvements, after the Commission had approved

1 spending \$420,000 for similar lots. This will save the ratepayers approximately
2 \$230,000.

3 **Q. Anything else?**

4 A. When I negotiated the \$3,000,000 line of credit with Gulf State Bank, prime was 8%
5 and I agreed to pay 1 over prime, with no floor which was not standard or normal for
6 commercial loans at that time. When prime dropped to 3.25%, that omission saved the
7 utility well over \$100,000 during the last part of the 5-year term of the loan. My legal
8 expertise allows me to do things like that which would otherwise require the company
9 to hire outside legal counsel. Also, I believe there is value to the customers in the
10 expert team of dedicated employees who assist me in providing such great water
11 service to St. George Island. The average tenure of my employees is well over 20
12 years, which is the primary reason we are able to provide such outstanding service in
13 full compliance with all the various rules and regulations that must be followed.

14 **Q. How do you respond to Mr. Schultz's testimony that WMSI may not even be a**
15 **"going concern"?**

16 A. OPC is doing everything in their power to cause WMSI and me to fail, so they can
17 convince this Commission that we are not a "going concern." Using confidential
18 information they obtained as counsel in this case, the OPC actively and intentionally
19 took action to kill the loan WMSI has to have to construct the critical improvements
20 needed to guarantee water service. **Exhibit "GB-8"**. Months ago, when I spoke at
21 the St. George Island Civic Club, I was publicly and directly accused by several of our
22 customers of taking \$1.2 million of those customers' money. This was based on what
23 OPC had told them. They apparently thought I had taken their money out of escrow or
24 something. After I told them the truth, a group of the customers came up and
25 apologized to me after the meeting. The next day, at least two others called my office

1 to apologize. This smear campaign to defame me with the public and my bankers has
2 also been carried out over the internet. **Exhibit "GB-9"** is a copy of an email from a
3 WMSI customer who does not even know me, asking OPC why I am not in jail for my
4 conduct in this matter. This is all based on what OPC in emails or other personal
5 communication told her. The best Mr. Schultz could do in support of OPC's "going
6 concern" narrative was to say on page 24 of his testimony that this "may" be an issue
7 unless WMSI gets "some significant increase in revenue." I agree: That is the whole
8 point of this case, to obtain an increase in revenue so we can continue providing great
9 water service to St. George Island.

10 **Q. Can you respond to Mr. Schultz's testimony that you have taken large sums of**
11 **money from the utility which must be repaid?**

12 A. As I said earlier, I have had to come up with over \$15,000,000 to operate WMSI since
13 the year 2000. These funds were over and above the funds WMSI collected from rates
14 and ratepayers. Without this money, which came from me, my affiliates and third
15 parties, including loans personally guaranteed by me, the utility could not have stayed
16 in business to provide water service to the island. These financial facts are
17 documented by the cash flow analysis attached as **Exhibits "GB-2" and "GB-3."** I
18 should not have to pay out any more money to Water Management Services to provide
19 water service on St. George Island. After 4 years of effort, it is time for a rate
20 increase so the ratepayers who benefit from their great water service can share part of
21 the financing burden of providing that service.

22 **Q. Can you respond to Mr. Schultz's testimony that your actions with regard to the**
23 **DEP loan may constitute managerial imprudence?**

24 A. First, with regard to the allegation that extending the amortization on the loan was
25 imprudent, that is simplistic and wrongheaded. As I explained in some detail in my

1 August 1 memo to the Commissioners, that extension saved the ratepayers a great deal
2 of money by preserving a 2.99% rate in lieu of a higher 6.5% interest rate or an equity
3 rate of over 9%, either of which would have been much more expensive to the
4 ratepayers. Next, with regard to the payment reserve, I recall having to personally
5 come up with a reserve deposit of about \$209,000. This came from my own resources
6 and was not included in the rates. It did not come from ratepayers and I do not see
7 how it is relevant to any issue in this case. Third, regarding the question of an annual
8 audit requirement in the DEP loan, I am attaching as "**Exhibit GB-10**" amendment
9 number one to the DEP loan agreement which waived this requirement, as I noted in
10 my deposition. I assume OPC and Mr. Schultz overlooked this in their review of the
11 loan documents which are so extensively discussed by Mr. Schultz in his testimony.
12 The bottom line is this: The DEP loan is current and in good standing. I have
13 preserved and extended this loan to the financial benefit of the ratepayers. It was
14 prudent, not imprudent, to extend the amortization to 30 years to more nearly match
15 the depreciable life of the supply main, which is 35 years. That extension saved
16 WMSI \$112,000 per year in cash flow, which may well make the critical difference in
17 WMSI's ability to finance the improvements which are subject of this case.

18 **Q. What is your response to Mr. Schultz's concern about the value of the Brown**
19 **Management Group stock?**

20 **A.** I have more knowledge and expertise regarding this valuation than anyone else
21 involved in this matter, including Mr. Schultz. I valued the stock at an amount that
22 was greater than the balance in account 123. **Exhibit "GB-11."** This value was
23 reasonable, if not conservative. I recently turned down a cash offer for one of BMG's
24 assets that was substantially greater than the value listed on my estimate of value in
25 the BMG financial statement. This account 123 stock transaction had no effect on

1 rates or ratepayers, and I saw no reason to pay for an expensive appraisal of the BMG
2 assets as now suggested by Mr. Schultz.

3 **Q. Mr. Schultz says you should have used all the settlement proceeds from the**
4 **pipeline litigation to pay down the DEP loan. Do you agree?**

5 A. No. I used over half of those proceeds to pay down the DEP loan (\$417,390), but it
6 would have been imprudent to use all the proceeds for DEP, which would have
7 ultimately resulted in higher costs for the ratepayers, as I explained in my August 1
8 memo. Whenever you are running a business, whether a utility or anything else, you
9 pay off your higher interest debt first and your low interest debt last, so long as there is
10 debt as in the case of WMSI. During the litigation period, we made all the debt
11 service payments required by DEP, and it would have been foolish to pay extra
12 principal on a 2.99%, federally subsidized loan. Also, I would like to point out that
13 WMSI reduced its plant by the full amount of the litigation settlement, which reduced
14 our rate base, so that the ratepayers are not being charged for any part of the settlement
15 proceeds. Mr. Schultz and OPC have not pointed out even one specific action or
16 inaction that would constitute managerial imprudence. They are just trying to put that
17 label of imprudence on me so that I will not be able to finance the critically needed
18 improvements in this case. They are trying to fulfill the narrative that OPC set up over
19 2 years ago, i.e., that I am a dishonest, incompetent manager who deserves no rate
20 relief. The facts show otherwise.

21 **Q. Mr. Schultz says that WMSI still owes BMG \$335,000 and that there are other**
22 **technical problems regarding the accounting between WMSI, BMG and the**
23 **other affiliates. Do you agree?**

24 A. No, all of this was netted out by, between and among WMSI, my affiliates and me. I
25 own or control all of these entities and an agreement was made to merge everything

1 into BMG, whose ownership was transferred to WMSI in settlement of all the
2 intercompany accounts, including account 123. The value of BMG was greater than
3 the balance in Account 123, and it was certainly greater than the \$882,000 bottom-line
4 number in the PSC staff audit. This was fair and reasonable. It had no effect on rates
5 or ratepayers. This agreement between and among all the parties to the transaction, as
6 confirmed by the tax returns and financial statements of those parties, should trump
7 the opinion of one accountant who has only briefly looked at partial financial records.
8 Accordingly, this transaction should not be disturbed by this Commission.

9 **Q. Mr. Schultz says that WMSI's cash investments in BMG have harmed the**
10 **operation of the utility? Do you agree?**

11 A. No, quite to the contrary. I do not believe the utility company could have survived the
12 past several years without the investments made in BMG. Several years ago my local
13 bank announced that it could not lend to WMSI, or for any projects on St. George
14 Island, which was outside their market area. That bank and others had recently had
15 bad experiences on the island with other projects by other borrowers. Also, all of
16 WMSI's assets were tied up with the DEP and Centennial loans. However, my bank
17 gave me any and all money I asked for in my personal name or in the name of Brown
18 Management Group. That allowed WMSI to continue operations with BMG assets
19 that were sold, or with BMG assets that were used for collateral. For example, in
20 2010, BMG sold two assets for \$421,000, and gave a large part of that cash to WMSI.
21 Just this year, BMG borrowed \$100,000 from its local bank and used almost all of that
22 money to fund the ongoing WMSI cash deficit. A little over a year ago, BMG
23 borrowed \$150,000 against two of its assets to help fund the WMSI cash deficit.
24 Several years ago, BMG borrowed \$360,000 secured by two of its assets, resulting in
25 an immediate cash infusion of almost \$230,000 into WMSI. Before that, BMG sold

1 one asset and immediately gave the \$175,000 of cash proceeds to WMSI. There have
2 been numerous smaller transactions, which are detailed in GB-4 through the end of
3 2010. In addition, BMG and I have borrowed substantial sums in 2011 and 2012 to
4 produce cash for the utility, including another loan from my 401k. The utility
5 company could not have survived without these and other cash infusions by BMG, and
6 BMG would not have made those cash infusions without investments in BMG as
7 reflected in account 123.

8 **Q. Have you seen anything in the testimony of Mr. Schultz or any other OPC**
9 **witness that supports OPC's allegation that the \$1.2 million shown in account 123**
10 **was actually money that belonged to your customers?**

11 A. No, I have not. In fact, on page 15, Mr. Schultz acknowledges that he was not asked
12 to determine the source of those funds. They were not ratepayer's funds, and here we
13 are, over 2 years after this bald-faced lie by OPC was told to my customers, my
14 bankers, members of the general public and this Commission. The source of those
15 funds is detailed in the cash flow analysis attached as **Exhibits "GB-2" and "GB-3"**
16 to my testimony. That analysis stands unrefuted, now almost a year and a half after it
17 was first presented to the PSC staff and others on May 20, 2011. The PSC audit staff
18 simply called this a "subsequent event," but neither Ms. Dobiac nor the audit ever says
19 the numbers are wrong or inaccurate. Like Mr. Schultz, staff witness Dobiac never
20 got into the question of where all the extra millions of dollars came from. By simple
21 math and common sense, it is clear that the money did not come from customers. It
22 came from me, my affiliates and third parties, including loans secured with my
23 personal guarantee and the pledge of any personal assets.

24 **Q. What is your response to Mr. Schultz's concern that the \$85,000 advance to SMC**
25 **Investment Properties has not been repaid?**

1 A. As I noted in my deposition, this \$85,000 was repaid in full well over 3 years ago.
2 Attached as **Exhibit "GB-12"** is a series of documents which show that SMC paid
3 BMG \$144,500 on June 19, 2009, and that full amount was simultaneously paid over
4 to WMSI by check number 1730 dated June 19, 2009. This not only paid back the
5 \$85,000 advance to SMC, it also gave WMSI an extra \$59,500 of cash to help cover
6 its operating deficits in 2009 when the utility was working on its request for a rate
7 increase.

8 **Q. What is your response to Mr. Schultz's suggestion that you should have to**
9 **liquidate all of BMG's assets and impute that revenue to reduce customer rates?**

10 A. Again, I repeat that the account 123 investment in BMG had no impact whatsoever on
11 rates or ratepayers. In fact, it helped the utility survive through tough times, and the
12 assets are still available for collateral or sale purposes at the discretion of
13 management, which has both the responsibility and the liability for all such matters.
14 Even if this Commission had the power to order the liquidation of a non-regulated
15 subsidiary such as BMG, which it does not, this would be an imprudent and unfair
16 decision. As this Commission decided at pages 55 and 56 of the January 3, 2011
17 Order regarding account 123 in the last case: (1) there has been no misappropriation of
18 funds; (2) the amounts in question have been adjusted out of rate base and expenses;
19 (3) those amounts were not considered in the determination of rates; (4) that the
20 quality of service was good; and (5) that the Commission should not micromanage the
21 business decisions of regulated companies (not to mention non-regulated companies
22 such as BMG), but should focus on the "end-product goal." Nothing has changed to
23 justify a deviation from this order entered on the same facts and figures just last year.
24 The only difference is that WMSI has now established that the funds shown by
25 account 123 did not come from any customers, and that WMSI continues to provide

1 outstanding service to all its customers, none of whom have been impacted in any way
2 by anything having to do with account 123. This Commission should refocus on the
3 “end-product goal” as referenced in the last rate case order, and should help this utility
4 move forward to construct the critical improvements needed for the water system on
5 St. George Island. To go back now and second guess the utility on such things as
6 possible violations of loan covenants 7 or 8 years ago as advocated by Mr. Schultz
7 would be the height of micromanagement, all with no purpose or benefit to the
8 ratepayers or the utility.

9 **Q. Mr. Schultz supports the PAA order which disallows all transportation expense**
10 **reimbursement for both your and WMSI’s Vice President, Sandra Chase. Do**
11 **you agree with that?**

12 A. No, I do not believe there is any legal or rational basis for requiring Mrs. Chase and
13 me to personally pay for all our travel expense for utility company business. This is
14 wrong and inconsistent with the prior orders of this Commission on this same issue for
15 this same company. In the last case, I drove a company vehicle during the test year of
16 2009. WMSI requested that 50% of the expenses related to that vehicle be included in
17 rates. I did not keep mileage records, partially because I had never been ordered to do
18 so. Despite the lack of mileage records, this Commission allowed recovery for my
19 requested 2009 transportation expense based on reasonable, after-the-fact estimates of
20 my travel. However, in the same case, this Commission issued an order to show cause
21 why WMSI should not be fined \$1,000 for failure to keep travel expense records for
22 administrative employees, such as Mrs. Chase and myself. The Commission
23 acknowledged that adequate records had been maintained for field employees. I
24 responded by pointing out that the prior 1994 order referenced in the show cause
25 proceeding only applied to field employees, and not to administrative employees such

1 as Ms. Chase and me. In Order No. 11-0250-FOF-WU, dated June 13, 2011, this
2 Commission agreed and the show cause proceeding was dismissed with no hearing
3 and no fine. However, that order made it clear that travel documentation would be
4 required for all WMSI employees in the future, i.e., after the date of the order which
5 was June 13, 2011. Based on all of this and the order in the last case dated January 3,
6 2011, both Mrs. Chase and I started keeping detailed mileage reimbursement records
7 for the WMSI use of our personal vehicles as of January 1, 2011, and we keep those
8 records on a daily basis throughout all of 2011. Those detailed records were kept on
9 the same forms we had always used for field employees as approved by the
10 Commission. Those records supported our total annual reimbursement of \$9,322.51,
11 but we are requesting only \$8,916 in this case because that is the amount in the MFR's
12 prepared before the end of 2011. Under these circumstances, January 1, 2011 is the
13 earliest date Mrs. Chase and I could reasonably have been expected to keep detailed
14 mileage reimbursement records on our personal vehicles. Before that, WMSI was
15 claiming expenses for our use of company vehicles. The expense of my company
16 vehicle in 2009 was approved based on general, after-the-fact estimates. I do not
17 understand why the expense related to WMSI's use of my vehicle and Mrs. Chase's
18 vehicle cannot now be approved on the basis of detailed, day-by-day, and mile-by-
19 mile reimbursement forms that have been presented to the Commission and its staff.

20 **Q. What is your response to Mr. Schultz's testimony regarding the gain on sale**
21 **issue?**

22 **A.** As I discussed earlier, this issue relates to two investment lots in Tallahassee that my
23 company bought from WMSI for a great deal more than WMSI paid for the lots.
24 Those lots were never in rate base, and the ratepayers never had any investment or
25 involvement in the lots. They should never have been included in the gain on sale

1 calculation in the last case, which has already cost WMSI approximately \$100,000.
2 This Commission should not compound that mistake by charging WMSI with another
3 \$153,292 as advocated by Mr. Schultz.

4 **Q. Can you respond to Mr. Schultz's testimony regarding accounting expenses?**

5 A. Yes, WMSI is asking for recovery based on a 5 year average of actual, documented
6 accounting expense as allowed in the last case. The accounting expense for the test
7 year of 2010 was \$18,550, primarily for extensive work on plant depreciation
8 schedules and other complicated accounting issues to comply with NARUC. The bill
9 for this work was detailed, and it has been paid in full, including the \$4,500 referenced
10 by Mr. Schultz. Mr. Schultz correctly points out that the accounting expense was
11 higher in 2010 than the other years. That is why WMSI is using an average, to even
12 out the high years with the low years. That was done in the last case, and it should be
13 done in this case. This average is still just a little over \$5,000 per year, which is very
14 reasonable for a highly regulated utility such as WMSI.

15 **Q. How do you respond to Mr. Schultz's testimony regarding working capital?**

16 A. It makes no sense to me that WMSI should not be allowed any working capital just
17 because we changed from being a class "B" utility to a class "A" utility. If anything,
18 the need for working capital has increased. This case is a good example. I started
19 working on this matter in 2009. Here we are four years later, having spent or incurred
20 almost about \$600,000 while collecting about \$20,000 in new rates. Mr. Schultz states
21 that WMSI is not entitled to any working capital because it has not issued sufficient
22 equity or debt. All I can say is that my other shareholders and I have invested millions
23 of dollars in this company over the past 38 years as shown by Exhibits "GB-2 and
24 GB-3." WMSI is entitled to have a working capital allowance included in rate base.

25 **Q. Mr. Schultz testified that WMSI should not be allowed to include any recovery**

1 **for life insurance premiums as part of the weighted cost of capital. Do you**
2 **agree?**

3 A. No. The original Gulf State Bank \$3,000,000 line of credit loan required the pledge of
4 life insurance on my life in the amount of \$1,000,000. When that loan came due and
5 had to be renegotiated with Centennial Bank, that new bank required an increased total
6 of \$3,000,000 of life insurance, with premiums of over \$39,000 per year. Centennial
7 required a pledge of life insurance because they are relying on my personal guarantee
8 that the money will be repaid. If I die, they want immediate payment. They do not
9 want to be tied up with litigation involving my heirs and other lenders such as DEP,
10 which does not have a pledge of life insurance. If it were not for this Centennial Bank
11 loan requirement, I would not maintain \$3,000,000 of life insurance, and I would not
12 have to pay over \$39,000 per year in premiums. Actually, all of these premiums
13 should have been included as a WMSI expense, but they were not. WMSI is simply
14 requesting that this mandated cost be reflected as a component of the cost of debt, just
15 like any other cost required by the loan covenants. This will result in the ratepayers
16 being charged for only part of the actual premiums. That is reasonable and
17 appropriate because the ratepayers are benefitting from the water service that could
18 not have been provided without the \$3,000,000 loan, and that loan could not have been
19 secured without my personal guarantee and the pledge of insurance on my life.

20 **Q. Do you have any final response to the testimony of Mr. Schultz?**

21 A. My general impression is that it is very academic and indefinite. It does not deal with
22 the real-world issues involved in running this water company, which is focused on
23 getting the critically needed improvements started and finished for the benefit of our
24 customers. I would like this Commission to “focus on the end-product goal,” which is
25 a phrase I pulled from page 56 of the order in our last rate case. If this Commission

1 accepts all the deductions and recommendations of Mr. Schultz, WMSI will not have
2 sufficient funds to operate, let alone to finance all the necessary improvements to the
3 St. George Island water system. Our bank will require proof of adequate cash flow to
4 operate, plus a reserve of at least 15%, before getting to the questions of adequate cash
5 flow to service the new debt. That loan and the new improvements should be the
6 focus of both the utility and this Commission. The fact that WMSI was willing to
7 accept the PAA Order does not mean that WMSI does not need, or is not entitled to,
8 the benefit of the items included in WMSI's cross protest. This cash flow could well
9 be the critical difference in WMSI's ability to finance the critically needed
10 improvements in this case. WMSI's last rate case based on a 2009 test year resulted in
11 cash outlay of well over \$230,000 in rate case expenses, while the rates were increased
12 only by an insignificant amount, \$13,000 per year. The limited proceeding before
13 that, around 2003, did not have any general rate relief, and did not even provide
14 sufficient cash flow to pay the debt service on the DEP loan, as I detailed in my
15 August 1, 2012 memo to the Commission. **GB-2**. So the only significant rate relief
16 for this utility from this Commission was almost 20 years ago in the 1994 case based
17 on a 1992 test year. I believe WMSI is now entitled to rate relief in this case,
18 including the items in our cross-protest.

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

20 **A.** Yes, it does.

21

22

1 BY MR. FRIEDMAN:

2 Q Mr. Brown, would you like to give a brief
3 summary of your testimony?

4 A I would. Thank you very much. Good morning,
5 Commissioners.

6 About four years ago we discovered that our
7 ground storage tank was literally crumbling and was
8 subject to catastrophic failure at any time. At that
9 point we hired Post Buckley to do a comprehensive
10 engineering analysis of the entire system, including the
11 ground storage tank.

12 And after they did their analysis and cost
13 estimates and all, I hired the Radey Thomas law firm to
14 try to start these proceedings to get some rates to pay
15 for those improvements because they're a couple of
16 million dollars or more. And the case proceeded and we
17 came to a hearing. And, in fact, it was right here in
18 this room, and some of you were here, Commissioner Edgar
19 was here, Marshall Willis and the staff, J. R. Kelly was
20 here. And the proceedings started with Mr. Kelly
21 standing up here, to my great shock, and pointed at me
22 like a Perry Mason moment like I was a criminal
23 defendant, pointed at me and said, That man took a
24 million two of your money. If he hadn't taken that
25 money, we probably wouldn't even be here, and he needs

1 to give it back. He didn't use the word stole, but
2 that's what the press and my bankers and the radio
3 reported and all. So I've been dealing with that every
4 since and we're still dealing with it.

5 But apparently that tactic or that strategy
6 had some impact because when that case came to Agenda
7 Conference, even though we hadn't had a, any general
8 rate relief in almost 20 years and even though we had
9 lost about 320 something thousand during the test year,
10 and even though Public Counsel, even their witness said
11 we're entitled to \$132,000, this Commission voted to
12 keep our rates exactly the same to the penny, while
13 requiring us to pay all our rate case expenses. So
14 there was really no gain. In fact, I ended up 200
15 something thousand short because no rate relief, but I
16 had to pay all these expenses that they're now
17 complaining about I'm not paying timely.

18 And the Commission also directed me to refile
19 and do some detailed engineering and get bids. I've
20 done all that and we're here again. And at this point
21 we have spent about \$650,000 in this process, as shown
22 by my chart here. It turned out that we actually did
23 get a 1% rate increase, which has come to a grand total
24 of about \$21,000 through August, and that was only
25 because administratively, after Bart and everybody

1 figured out the numbers, it fell 1.03 instead of just
2 under 1%. So the Commission voted no rate increase. We
3 got a grand total of \$21,000. But between the rate case
4 expenses and all the other consultants and engineers
5 we've spent about \$650,000, which incidentally or
6 coincidentally is about the cost of the new tank. We
7 got a bid and it's 600 and something thousand.

8 So I don't want to seem -- I'm not
9 complaining, I understand the process, but I'd like you
10 to look at it from my perspective trying to run a water
11 company and fix these improvements. It just --
12 something is wrong with this picture, and I'd just like
13 to ask you to try to get beyond this 123 issue.

14 When Mr. Kelly made that allegation, I didn't
15 have any numbers, but I knew, I've lived with it for 38
16 years, and my testimony then was that I've never taken a
17 dime of ratepayer money. We've always subsidized this
18 company for 38 years. The only difference between this
19 case and the last case is that we've now had our
20 accountants do a complete analysis of the cash flow,
21 just raw cash in, raw cash out. Not theoretical, not
22 rate structure, not all this stuff we hear about, and
23 it's represented here.

24 The fact is in that 11-year period in raw
25 numbers, they're consistent, by the way, with Debra

1 Dobiac's numbers, I have had to put in 16 point -- or I
2 had to come up, I've had to come up with \$16.2 million
3 over and above the rate case expenses, including CIAC,
4 service charges, everything. That's \$15 million over
5 and above 123.

6 123 is a red herring, it's a distraction, it
7 is only a small part of a big picture. The big picture
8 is I've subsidized this company for 38 years, I'm still
9 subsidizing it. After this case is over I'll continue
10 to subsidize it. I have no choice. But I need some
11 reasonable rate relief and we need to get past 123 and
12 let's get this tank built.

13 Q Mr. Brown, in response to the staff's fifth
14 data request did you provide documentation to the staff?

15 A I did.

16 Q And is that --

17 MR. SAYLER: Objection. What's the relevance
18 of this?

19 MR. FRIEDMAN: This is Exhibit 64 that we --

20 COMMISSIONER EDGAR: I figured it probably
21 was. Thank you.

22 Ms. Helton, can you help me sort of process a
23 sticky point? A little unusual after the witness
24 summary for counsel to pose questions; however, we did
25 yesterday say that with this exhibit we would give

1 Mr. Friedman the opportunity.

2 So, again, my question is from a process
3 standpoint, realizing the discussion that we all had
4 together yesterday, what would be your suggestion?

5 **MS. HELTON:** I thought what we had talked
6 about was that if it was relevant on redirect, that
7 Mr. Friedman would bring up the exhibit on redirect.
8 I'm not sure that it's appropriate here on the beginning
9 of his testimony, and that that was not part of his
10 prefiled testimony under our process and the way it
11 works.

12 **MR. FRIEDMAN:** That's fine. I'll handle it
13 that way. Thank you.

14 **COMMISSIONER EDGAR:** All right. Thank you,
15 Mr. Friedman. Thank you.

16 Then the witness is available --

17 **MR. FRIEDMAN:** We tender the witness for
18 cross-examination.

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

20 Mr. Saylor.

21 **MR. SAYLER:** Thank you, Madam Chair.

22 **EXAMINATION**

23 **BY MR. SAYLER:**

24 **Q** Mr. Brown, good morning. How are you?

25 **A** Good morning. How are you?

1 Q In response to staff discovery, you submitted
2 some appraisals and things of that nature, and one of
3 them included an operating agreement for SGI Isthmus,
4 LLC, a limited liability company.

5 A Okay.

6 Q Is that an asset of Brown Management Group?

7 A Could you repeat that?

8 Q Is that an asset of Brown Management Group?

9 **MR. FRIEDMAN:** What do you mean by "that"?

10 **BY MR. SAYLER:**

11 Q Is S.G.I. Isthmus, LLC, an asset --

12 A St. George Island Utility Company Limited?

13 Q No. St. George Island Isthmus, LLC.

14 A St. George Island Isthmus?

15 Q Yes, sir.

16 A I consider it an asset, yes. It's on the list
17 that's -- I think we listed that at \$50,000 on the
18 appraisal I did or the analysis I did.

19 Q Okay. And what is this company? Is it a land
20 holding company?

21 A It's an LLC between me and another individual.
22 We own a 3-acre island just off this island. If you
23 come across the bridge and look to your left, there's a
24 tract of land about 3.5 acres that we had a dispute over
25 the ownership, so we decided to settle it and split it.

1 I think the tax appraisal is \$103,000, and we agreed to
2 own it 50/50. So I put it on Brown Management at
3 \$50,000, my half interest.

4 Q Okay. And that's on the general ledger of
5 Brown Management Group?

6 A I don't know that we have a general ledger.

7 Q Okay. But it's listed on the balance sheet?

8 A It is on the balance sheet as land -- I'm not
9 sure how it's on there, but I remember it's on there at
10 50,000.

11 Q All right. Thank you. Do you remember
12 yesterday when I was asking Ms. Allen about, questions
13 about transportation expense?

14 A I do.

15 Q With regard to that, isn't it true that the
16 IRS has rules and regulations as it relates to the use
17 of vehicles in a business?

18 A I'm sure they do.

19 Q All right. In the years of operating WMSI
20 have you ever maintained a mileage log or transportation
21 records for the IRS?

22 A I do not maintain one for the IRS.

23 **MR. SAYLER:** Okay. Commissioners, yesterday
24 we were attempting to get an exhibit into the record as
25 far as it relates to transportation expense. We're not

1 going to try to move that exhibit in now, but we would
2 ask the Commission to take judicial notice pursuant to
3 Section 90.202(3) where this Commission can take
4 judicial notice of the contents of a Federal Register.
5 And it's my understanding that federal statutes and IRS
6 regulations are within the Federal Register, similarly
7 federal statutes as well. So just to take judicial
8 notice that there are IRS rules that pertain to vehicle
9 expenses and just for this Commission to take judicial
10 notice.

11 **MR. FRIEDMAN:** I don't think he -- the
12 document that he wants you to take judicial notice of is
13 a 2012 document, and the issues that we're talking about
14 today are, are an earlier test year. There's no
15 relevance to it.

16 Why would you take judicial notice of
17 something that's not relevant? That ruling or that IRS
18 regulation may or may not have changed since 2010 or
19 2011. So it's got no probative value because it doesn't
20 have anything to do with the revenues that we're talking
21 about or the obligations during the test year that we're
22 talking about.

23 **COMMISSIONER EDGAR:** Mr. Sayler, I am not
24 completely clear as to what your request is, so if --

25 **MR. SAYLER:** Okay. I'll, I'll show my hand a

1 little bit.

2 It's our understanding that the IRS requires
3 all companies, when you're self-employed, if you're
4 going to be traveling for business in your own personal
5 vehicle, you have to maintain a mileage log. So if the
6 IRS comes in and audits your tax returns and you don't
7 have a mileage log, you're in trouble with the IRS.

8 And my understanding is that has been the
9 rules of the IRS forever and ever. And if it's a
10 business vehicle that is used for business purposes,
11 some sort of log needs to be maintained. And similarly,
12 if a business vehicle is being used personally for
13 personal use, then there needs to be some sort of log
14 maintained. And that is contained within the federal,
15 the federal statutes as it relates to the code for the
16 IRS, similar for the Federal Register. Those are
17 printed every year. And I believe that prior years an
18 accountant can always go back and look those back up
19 through those Federal Registers, and we're just asking
20 this Commission to take judicial notice of that.

21 **COMMISSIONER EDGAR:** Of what? I'm sorry.

22 **MR. SAYLER:** Of the IRS regulations as it
23 relates to mileage logs. Because what this utility is
24 attempting to do is -- sorry.

25 **COMMISSIONER EDGAR:** So, again, your request

1 is for this proceeding --

2 **MR. SAYLER:** To take judicial notice of the
3 IRS rules and regulations as it relates to mileage logs.

4 **COMMISSIONER EDGAR:** Mr. Friedman, did you
5 have additional comment?

6 **MR. FRIEDMAN:** No. I mean, what Mr. Sayler's
7 belief is is not evidence. And the fact that the
8 document that he wishes you to take judicial notice of,
9 it has no material value to this proceeding since it
10 doesn't relate to the, to the years we're talking about.

11 **COMMISSIONER EDGAR:** Ms. Helton?

12 **MS. HELTON:** First, my recollection is that
13 our Order Establishing Procedure requires parties to
14 identify and notify the other parties that they're going
15 to be seeking official recognition of a document -- I
16 think it's about two days before the hearing, but my
17 memory could be wrong.

18 Also, I believe that Chapter 120 requires that
19 the actual document be produced that, for which official
20 recognition is sought. And I think Mr. Friedman has a
21 valid point, if we're dealing with a 2010 or 2011 test
22 year and the regulation is a 2012 regulation that
23 Mr. Sayler is attempting to --

24 **MR. SAYLER:** I would like to broaden that
25 request for the last ten years of the IRS regulations

1 related to that, which should cover it.

2 **MS. HELTON:** I think we have a timeliness
3 problem, Madam Chairman.

4 **MR. SAYLER:** All right. I'll move on.

5 **COMMISSIONER EDGAR:** Thank you.

6 **BY MR. SAYLER:**

7 **Q** Mr. Brown, you just testified that you do not
8 keep mileage logs for IRS purposes; is that correct?

9 **A** Well, I keep mileage logs. I guess this
10 process will help me if I'm audited because now I keep
11 detailed mileage records for the PSC.

12 **Q** But you did not keep a mileage log during the
13 test year period; correct?

14 **A** No. During the test year --

15 **Q** Thank you.

16 **A** -- we reported that -- if I could explain.

17 **COMMISSIONER EDGAR:** You may.

18 **MR. FRIEDMAN:** Of course you can.

19 **THE WITNESS:** If I could explain. During the
20 test year, as you know, I owned -- I did not own the
21 vehicle I drove. It was owned by the water management
22 company. And in the proceeding last time, as
23 Commissioner Edgar may recall, I asked for 50% of that.
24 I had no mileage logs, but the Commission granted my
25 request for 50% without mileage logs I think based upon

1 an estimate that that was reasonable.

2 After the Commission ruled January 3rd of
3 '11 that we should keep mileage logs, Ms. Chase and I
4 started keeping detailed mileage logs day by day, mile
5 by mile purposes. We kept them on exactly the same
6 forms we've always kept them for field employees.

7 In that same case, the Commission issued a
8 show cause order. I responded by pointing out that the
9 show -- that the original '94 case only applied to field
10 employees. Then in May of that year this Commission
11 entered an order dismissing it and --

12 **MR. SAYLER:** Madam Chair, Mr. Brown is getting
13 way beyond my question.

14 **THE COURT REPORTER:** I'm sorry. I didn't hear
15 what you said.

16 **MR. SAYLER:** Madam Chair, Mr. Brown is getting
17 way beyond my original question.

18 **THE WITNESS:** I'm just trying to explain.

19 **MR. FRIEDMAN:** I disagree. He's explaining
20 his answer to the question. He just doesn't like the
21 answer.

22 **COMMISSIONER EDGAR:** May I?

23 **MR. FRIEDMAN:** You're the boss.

24 **COMMISSIONER EDGAR:** Mr. Brown, as is our
25 general process, if you can, answer the question with a

1 yes or no. And then if you think that you should
2 explain it, you have the right and latitude to do so,
3 which you have done. Could you wrap it up, please?

4 **THE WITNESS:** Well, I was just trying to point
5 out or explain what happened in this situation. There
6 was some, there was some confusion to the show cause
7 order and the Commission must have accepted my response,
8 which was that it only applied to field employees. So
9 they said we're going to clarify it. That was in a May
10 order, May of '11 of this Commission.

11 Well, since January 1, '11, we had already
12 been keeping detailed mileage logs just like field
13 employees. And as of January 1, '11, Ms. Chase and I
14 both started driving our personal vehicles for business
15 use. And since that time we have kept detailed mileage
16 logs hour by hour, day by day, mile by mile, just like
17 we've always done for field employees.

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

19 **BY MR. SAYLER:**

20 **Q** Mr. Brown, are you and Ms. Chase based out of
21 the Tallahassee office?

22 **A** Yes.

23 **Q** And how often do you or Ms. Chase need to come
24 to St. George Island?

25 **A** It varies. It's all on the mileage logs. We

1 haven't been coming as much lately. We've been
2 responding to this case.

3 Q And for what purpose does Ms. Chase as the
4 vice president need to come to St. George Island?

5 A To manage the operations down here along with
6 myself. I concentrate more on the mechanical and she on
7 the administrative, billing, and such.

8 Q All right. Please refer to page 2 of your
9 testimony.

10 A Okay.

11 Q It is true that you do not dispute the staff's
12 July 2011 cash flow audit findings as to the actual
13 dollar amount; is that correct?

14 A No. It's absolutely consistent with our cash
15 flow analysis. In fact, they confirmed our figure to
16 the dollar.

17 Q And they -- and you would agree that they
18 accurately traced all those transactions according to
19 Account 123; correct?

20 A Yes. If you dig into it, it's accurate.

21 Q Thank you, sir. Isn't it true that Account
22 123 recorded receivables and payables to and among
23 yourself personally?

24 A Up until -- that's true up until 19 -- until
25 2004 when we read NARUC more closely and saw that it

1 mandatorily requires that any advance that is not paid
2 within 12 months or which has no due date shall, and
3 it's not may, it says it shall be recorded as an equity
4 investment under 123. So as of that time we transferred
5 the quarter of a million dollars that was in Accounts
6 145 and 146 over to 123 and --

7 Q Yes. Thank you, Mr. Brown.

8 MR. FRIEDMAN: Don't --

9 COMMISSIONER EDGAR: Mr. Friedman.

10 MR. FRIEDMAN: I disagree with Mr. Sayler
11 cutting off the witness making an explanation of his
12 answer. I think the witness, he answers succinctly at
13 the beginning and he's allowed an opportunity to
14 explain.

15 COMMISSIONER EDGAR: Is that an objection?

16 MR. FRIEDMAN: I'm objecting to him
17 interrupting my witness answering his question.

18 COMMISSIONER EDGAR: Mr. Sayler, I have said I
19 will allow him to, Witness Brown to explain his answer.

20 MR. SAYLER: Certainly.

21 THE WITNESS: Account 123 is an investment
22 account, an equity account. It is entitled Investments
23 in Associated Company.

24 NARUC, which this Commission demands that we
25 follow, specifically says and requires that all advances

1 that are not paid within 12 months or which don't have a
2 due date applied here shall, not may, but shall be
3 transferred to and recorded in Account 123 as an
4 investment in associated companies, and we've done that
5 consistently.

6 They've said it was a million two since '04.
7 Actually the million two is an accumulation of 38 years
8 of back and forth. But if -- I came up with
9 16.5 million. If we hadn't used 123 to invest in this
10 other company, it would -- I still had to come up with
11 15 million. So I don't know what the big deal is.

12 **COMMISSIONER EDGAR:** Thank you. Thank you.

13 Mr. Saylor.

14 **MR. SAYLER:** Thank you, Madam Chair.

15 **BY MR. SAYLER:**

16 **Q** And isn't it true that these advances to
17 yourself personally, to Brown Management Group, Gene
18 Brown, PA, and all of your other various business
19 entities; is that correct?

20 **A** Yes.

21 **Q** All right. And these are advances to
22 non-utility -- these are advances outside of the utility
23 to non-utility or non-regulated entities; correct?

24 **A** Well, it was outside the utility until
25 January 1st of '11 when we transferred all the stock in

1 Brown Management Group to Water Management Services. So
2 now it's not an affiliate. It is a subsidiary. So I
3 think now it's, would be considered part of Water
4 Management.

5 Q Referring to pages 3 and 4 of your testimony,
6 isn't it true that you dispute the audit staff's -- or
7 audit conclusions on the revenue or cash from utility
8 activity versus non-utility activity?

9 A I think dispute is --

10 MR. FRIEDMAN: Answer yes or no first, then
11 explain.

12 THE WITNESS: No, I would not agree with that.

13 I said over and over again that I agree with
14 the numbers. I said the only problem I had, I have is
15 the characterization between utility activities and
16 non-utility activities. I said the numbers are
17 accurate. And they confirmed our numbers, they used our
18 numbers. They confirmed them to the dollar and they've
19 got the raw numbers right. But I have a problem when
20 they say utility activities and they take things like
21 some investment lots in Tallahassee that I bought from
22 myself at a quarter-million-dollar profit just to get
23 money into Water Management and they call that utility
24 activities to imply somehow that that quarter of a
25 million dollars and the other 6 million difference

1 between her gross numbers and the money that came from
2 ratepayers, I just have a problem with the implication
3 that that is somehow utility revenue in the sense of
4 coming from utility ratepayer, CIAC, or anything. It's
5 money that I had to personally borrow with other assets
6 or sell assets of Brown Management.

7 And the difference is, and this is consistent
8 with our cash flow, the difference in her four-year
9 period is \$6 million between the operation's receipts of
10 about 16 million and the 10 million that came from
11 ratepayers.

12 **COMMISSIONER EDGAR:** Thank you.

13 **MR. SAYLER:** Madam Chair -- thank you.

14 **BY MR. SAYLER:**

15 **Q** So it is your testimony then that you disagree
16 with the audit's definition of utility activity versus
17 non-utility activity; correct?

18 **A** My testimony was, and I --

19 **Q** Yes or no, Mr. Brown?

20 **A** I disagree with the characterization.

21 **Q** Okay.

22 **A** I think it just needs to be explained. I
23 don't necessarily disagree. It's just semantics. But
24 you have to understand what it is and what it is not.

25 **COMMISSIONER EDGAR:** Thank you.

1 **BY MR. SAYLER:**

2 Q And your testimony would be that if it's
3 utility activity, it would be cash coming solely from
4 utility rates and ratepayers; correct? As evidenced by
5 the green bar on your chart over there; correct?

6 A No, that's not correct, Mr. Sayler. I've
7 explained this in my testimony. I said that if, if
8 there's an intent to imply that we had a surplus from
9 rates and ratepayers, that is a misrepresentation.

10 Q That was not my question.

11 **COMMISSIONER EDGAR:** Will you rephrase the
12 question?

13 **MR. SAYLER:** Certainly.

14 **BY MR. SAYLER:**

15 Q The green bar on your chart over there, those
16 are revenues from ratepayers; correct?

17 A That's correct.

18 Q And would you consider that a utility
19 activity, revenues from ratepayers?

20 A I think there's no question that's a utility
21 activity.

22 Q Okay. Now the red bar on your chart includes
23 loans that you had to go out and borrow in the name of
24 WMSI and secure with WMSI assets; correct?

25 A That's one of many things that's included in

1 the red, as well as sale of assets.

2 Q Would included in that red also be the
3 proceeds from the pipeline settlement?

4 A Yes. That is in the red.

5 Q Okay. But if it is a loan secured in the name
6 of WMSI with, with WMSI assets as collateral, but the
7 bank also requires you to be a personal guarantee --
8 guarantor, you believe that should be considered
9 non-utility activity?

10 A A loan can be considered a utility activity.
11 This is a raw cash flow chart.

12 Q But if you secure a loan for the utility
13 with -- the utility goes out and borrows money in the
14 name of the utility and it is secured with utility
15 assets that are in rate base, and then as part of that
16 the bank or lender requires additional guarantees, isn't
17 that still a loan secured with utility assets and is a
18 utility loan?

19 A It's a loan to the utility secured by utility
20 assets. Yes, sir.

21 Q With those red lines on the chart as proceeds
22 coming from Gene Brown affiliates and third parties,
23 would the DEP loan also fall into that category as a
24 non-utility activity?

25 A I think your question is a mischaracterization

1 of the chart.

2 Q Let me rephrase. I apologize.

3 A I can't answer that question.

4 Q The DEP loan that you, that you needed to
5 secure for the pipeline for the new water main, would
6 that fall into the category of red on your chart?

7 A That is red. Yes, sir.

8 Q Thank you. Now you referenced earlier the
9 gain on sale of two investment lots; is that correct?

10 A I did.

11 Q And you don't think that -- you would consider
12 that not to be utility activity; correct?

13 A No, that's not utility activity.

14 Q Okay. Thank you.

15 Mr. Brown, does Water Management Services,
16 Inc., file a separate tax return?

17 A Yes.

18 Q Brown Management Group?

19 A Yes.

20 Q What about Gene Brown, PA?

21 A We used to before it was dissolved.

22 Q All right. And what year was that dissolved?

23 A I don't recall. Several years ago.

24 Q All right. Please refer to page 20 of your
25 testimony. I'd like you to focus on lines 24 to 25.

1 Are you there?

2 **A** Yes.

3 **Q** The question in your testimony: Mr. Schultz
4 says that WMSI owes Brown Management Group \$335,000 and
5 that there are other technical problems regarding the
6 accounting between WMSI, BMG and other affiliates. And
7 the question was: Do you agree?

8 Your answer was: No, all of this was netted
9 out by, between, and among WMSI, my affiliates, and me.

10 In discovery, Mr. Brown, do you recall the
11 Office of Public Counsel asking you some specific
12 questions related to that testimony?

13 **A** Generally I do. Yes, sir.

14 **MR. SAYLER:** All right. And at this time I
15 would like to pass out two exhibits just for, just for
16 the purposes of focusing in on this. And we would like
17 this marked and identified for the record because this
18 is not part of staff's composite exhibit.

19 **COMMISSIONER EDGAR:** Thank you. Okay.

20 Mr. Sayler, we have --

21 **MR. SAYLER:** The first exhibit that, that
22 we're going to discuss first would be, description,
23 WMSI's response to OPC Fifth POD.

24 **COMMISSIONER EDGAR:** And you'd like both of
25 these to be marked?

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

2 **COMMISSIONER EDGAR:** Then we'll go ahead and
3 do that. So the first one as you've just described will
4 be 97. Description, WMSI's Response to OPC 5th POD.

5 (Exhibit 97 marked for identification.)

6 **MR. SAYLER:** And the other one, Minutes of
7 WMSI/Brown Management Group Joint Meeting.

8 **COMMISSIONER EDGAR:** Thank you. Which will be
9 98.

10 (Exhibit 98 marked for identification.)

11 **BY MR. SAYLER:**

12 **Q** Mr. Brown, take a moment or two to review both
13 exhibits so that you're familiar with them, please.

14 **A** Okay.

15 **Q** Isn't it true that in response to -- or OPC
16 POD Number 61 requested, please refer to those pages of
17 your testimony, provide all corporate minutes for the
18 respective companies involved that show that each entity
19 agreed to the netting of those accounts referenced in
20 your testimony?

21 **A** Right.

22 **Q** And your response is? Please read that.

23 **A** There are no documents responsive to this
24 request except for the minutes of the joint meeting
25 between BMG and WMSI which have already been provided.

1 Q If you will please look at the next document,
2 WMSI's Response to OPC First POD 12D.

3 A Which one?

4 Q The next document. That's -- the description
5 is Minutes of WMSI/Brown Management Group. That's the
6 description.

7 A Okay.

8 Q If you will look at OPC POD 12D, it requested
9 copies of any documents including minutes of meetings
10 where the transfer of Brown Management Group to WMSI is
11 approved. Correct?

12 A Right.

13 Q All right. If you'll look at the response, it
14 shows a document attached.

15 A Yes.

16 Q And that's the joint meeting of the board of
17 directors that you referenced in the other production of
18 document request; correct?

19 A Yes, sir.

20 Q Would you please look through that and point
21 to me where it says that the, the assets -- excuse me --
22 that each entity agreed to the netting of accounts?

23 A It doesn't say that specifically.

24 Q So there are no documents that support your
25 testimony that say that all of this was netted out by

1 and between and among my affiliates and me?

2 A That was my testimony that there are no
3 documents.

4 Q Thank you. Please refer to page 21 of your
5 testimony.

6 A Okay.

7 Q Lines 5 through 8. Your testimony is, on line
8 5, This agreement between and among all the parties to
9 the transaction, as confirmed by the tax returns and
10 financial statements of those parties, should trump the
11 opinion of one accountant who has only briefly looked at
12 partial financial records. That is your testimony; is
13 that correct?

14 A That is what I said.

15 Q All right. And the opinion of one accountant,
16 is that Mr. Schultz?

17 A I guess he's an accountant.

18 Q Were you referring to Mr. Schultz in your
19 testimony at that time or were you referring --

20 A Generally. Generally.

21 Q Thank you. If you will please refer back to
22 the exhibit marked 97, WMSI Response to OPC POD-5.

23 A POD-97?

24 Q Hold on.

25 A I don't remember that one.

1 Q Yes. Yes. Sorry. My apologies,
2 Commissioners. Lots of documents here.

3 The Office of Public Counsel served on WMSI
4 POD Number 62, which says, Please refer to page 21,
5 lines 5 through 8 of the rebuttal testimony of
6 Mr. Brown. Please provide a copy of all the tax returns
7 and financial statements of the companies and
8 individuals involved in the netting specifically
9 highlighting where the respective entity reported the
10 forgiveness of debt as income and reported the write-off
11 of the respective receivable. Do you see that?

12 A I do.

13 Q And what was this utility's response?

14 A There are no documents responsive to this
15 request.

16 Q Isn't it true you testified that there were
17 tax returns and financial statements that should trump
18 the opinion of one accountant?

19 A I did testify to that.

20 Q But there are no documents to this, no
21 responsive documents; correct?

22 A There are no documents which highlight the
23 netting out of these or refer to any forgiveness of
24 debt. That is my response.

25 Q Isn't it true -- okay. Thank you, Mr. Brown.

1 If there were no documents provided to trump
2 Mr. Schultz's opinion, isn't it true that the Commission
3 cannot verify the veracity of your testimony on this
4 matter?

5 **A** I guess they can believe me or not. What I'm
6 saying is that we do not have any tax returns that
7 specifically highlight the forgiveness of income because
8 this was not forgiveness of income. This was an
9 investment. When you go out and invest in securities,
10 that is not a debt transaction and there's no income to
11 forgive.

12 **Q** All right.

13 **A** Until, until we sell that security.

14 **Q** All right. Thank you for your testimony on
15 that matter.

16 Mr. Brown, just kind of some general
17 background questions about WMSI from the period 2004 to
18 present.

19 During the period of 2004 to 2010, this is the
20 period in which all the transactions were recorded in
21 Account 123; correct?

22 **A** In 2004 we transferred all the debt accounts
23 in 145 and 146 to 123, an investment account. Yes, sir.

24 **Q** Okay. And isn't it true that during the same
25 time period, 2004 to 2010, WMSI was having difficulty

1 paying its bills?

2 A Yes.

3 Q And this included debt service payments to
4 various lenders; correct?

5 A Well, one in particular.

6 Q Okay. Isn't it true that from the 2010 rate
7 case until the PAA order was issued, the utility,
8 utility similarly struggled financially?

9 A We have been struggling financially since
10 about 2001 when the state came in and tore the water
11 line down out -- down, and I had to come up with
12 \$7 million quick.

13 Q So the answer would be yes?

14 A We've been struggling since 2000, 2001, yes,
15 sir.

16 Q All right. So between the last rate case and
17 the issuance of the PAA order in August of 2012, the
18 utility ended up missing the May 2012 DEP loan payment;
19 correct?

20 A We did not make a payment in May of 2012. DEP
21 agreed that we could capitalize the interest on that.
22 But after you interfered, they wrote me a technical
23 letter and said we'd work it out after this case.

24 Q Mr. Brown, that was not my question.

25 A I know.

1 **Q** So isn't it true that after missing that
2 payment, DEP wrote you a letter saying that you were in
3 default? Yes or no?

4 **A** Yes. That was --

5 **Q** And --

6 **A** I'd like to explain that that was after
7 eight or ten e-mails and calls from you saying you were
8 highly -- on May 15th, the day it was due, you called
9 them up and said you were very concerned. You started
10 putting heat on DEP. And so they wrote me a technical
11 default contrary to what they had agreed. In an hour
12 meeting when Mr. Seidman and I met with them they said,
13 we'll capitalize it one more time, Gene, but you've got
14 to pay, in November you've got to pay at least the
15 interest. And that's what I was expecting, but then I
16 get this technical default.

17 **MR. SAYLER:** Thank you, Mr. Brown.

18 Madam Chair, that was beyond the scope of my
19 question, and I would ask that that be struck from the
20 transcript.

21 **COMMISSIONER EDGAR:** I agree that it was
22 beyond the scope of the question.

23 **MR. FRIEDMAN:** Do I get to make --

24 **COMMISSIONER EDGAR:** No, actually you don't in
25 this instance.

1 I agree that it was beyond the scope. I also
2 believe that, strongly that the Commission is able to
3 examine the full record and decipher what is applicable
4 to the issues before us. We will proceed.

5 **MR. SAYLER:** Certainly. I will withdraw my
6 request.

7 **COMMISSIONER EDGAR:** Thank you. We will
8 proceed. And, Mr. Brown, I will ask you to keep your
9 answers within the scope of the questions that are posed
10 to you. And your counsel, Mr. Friedman, will have the
11 opportunity on redirect.

12 **MR. SAYLER:** Just for the record,
13 Commissioners, I did not ask him a question about any --

14 **COMMISSIONER EDGAR:** Mr. Sayler, pose your
15 question.

16 **MR. SAYLER:** Certainly.

17 **BY MR. SAYLER:**

18 **Q** And isn't it true that as a result of the
19 default on the DEP loan, pursuant to the terms of an
20 intercreditor agreement between DEP and Centennial Bank,
21 that also placed you in technical default with
22 Centennial Bank?

23 **A** I'm not sure. I never signed that
24 intercreditor agreement, never even knew about it until
25 years later. I haven't examined it on that point. I

1 don't think I'm bound by that intercreditor agreement.

2 Q All right. Thank you.

3 Isn't it true that during -- or excuse me --
4 throughout the year 2011 the utility continued to
5 advance money net to you in associated companies?

6 A No. I've -- I didn't -- I've got a chart here
7 that goes on. But since my testimony stopped in '10, in
8 2011 I had to come up with another \$122,000, and so far
9 through the first three quarters of '12 I had to come up
10 with another 92,000. So if that extended to '11 and
11 '12, you would see more red in '11 and more red in '12.
12 This goes --

13 MR. SAYLER: Madam Chair, I would like to pass
14 out two exhibits for the witness to look at and review.

15 COMMISSIONER EDGAR: Okay.

16 MR. SAYLER: I will note that one of these
17 exhibits is already in the record because it's an
18 excerpt from staff's deposition. So that one does not
19 need to be identified for the record, unless you wish to
20 have it identified. That is the, the description is
21 Staff Deposition of Gene Brown, Pages 11 and 47.

22 COMMISSIONER EDGAR: Okay. Give us just a
23 moment to make sure that everybody has the same thing.

24 MR. SAYLER: Certainly. Actually I take that
25 back. Neither of them will be identified for the record

1 because staff rate case audit finding number 7 is
2 already in the record both as an exhibit to
3 Mr. Schultz's testimony and also as an exhibit to the
4 auditor's testimony as well.

5 **COMMISSIONER EDGAR:** Okay.

6 **MR. SAYLER:** So these, these two documents are
7 purely for cross-examination purposes.

8 **COMMISSIONER EDGAR:** Okay. I understand. Now
9 we all have both, so you may proceed. Thank you.

10 **MR. SAYLER:** All right. Thank you.

11 **BY MR. SAYLER:**

12 **Q** Mr. Brown, please review the document entitled
13 Staff Rate Case Audit Finding Number 7 and let me know
14 if you're familiar with it.

15 **A** I have seen this.

16 **Q** Okay. If you will turn to the, to the page,
17 last page of that exhibit -- or excuse me -- second to
18 the last page, at the bottom it says page 20 but at the
19 top it would say page 22 of 26. It is titled Table 3 -
20 Comparative Regulated and Non-Regulated Cash Receipts
21 and Disbursements.

22 **A** Okay.

23 **Q** I would like to direct your attention to the
24 top column where -- and go over to the right where it
25 says 12/31/2011. Not the faraway column but that next

1 to the faraway column.

2 A Okay.

3 Q And if you will scroll down that column to the
4 line under non-utility activities called subtotal. You
5 would agree with me that it says negative 159,422;
6 correct?

7 A It says what it says. I see 38,000, 73,000, I
8 see \$112,000.

9 Q Let me make it easier. Go up a little bit to
10 where it says Non-Utility Activity, Cash Receipts on the
11 far left.

12 A Okay.

13 Q Scroll down to the bottom where it says
14 Subtotal and over to that column where it says 112,134.

15 A Right.

16 Q According to the staff auditors, that's the
17 cash receipts that WMSI put into the utility; correct?

18 A Well, it says -- it seems to me to say that
19 Brown Management put 38,534 into the utility and that I
20 put in personally 73,600, for a total of 112,000, which
21 is the same number I referred to earlier, I think.

22 Q All right. And if you go down to cash
23 disbursements under Gene Brown, it shows that you were
24 disbursed \$110,212 from the utility; correct?

25 A That's what it says.

1 Q All right. And the line below that, Gene
2 Brown, PA, which you testified earlier has been
3 dissolved, also received a payment of \$36,200 from the
4 utility; correct?

5 A That's what it says.

6 Q And the total cash disbursements of 159,422
7 exceed that of the cash receipts from you and your
8 various entities; correct?

9 A In those particular accounts, correct.

10 Q Thank you.

11 A That's not the entire picture, but --

12 Q Mr. Brown, after the PAA order was issued in
13 this case providing a rate increase, isn't it true that
14 the utility is still struggling financially but not
15 nearly as badly as it was for the years prior to the
16 issuance of that order; is that correct?

17 A I think it may be getting worse.

18 Q Okay. Isn't it true that even with the PAA
19 ordered rate increase over the next several years things
20 will still be very tight financially for the utility?

21 A Yes.

22 Q And nevertheless isn't it true that you still
23 have no plans to stop advancing money to and from
24 yourself, back and forth and between yourself and your
25 associated companies from WMSI?

1 **A** That is true. If I could explain.

2 **MR. SAYLER:** Madam Chair, I think that would
3 be a great question for redirect, but I will -- at your
4 pleasure.

5 **MR. FRIEDMAN:** I don't think --

6 **COMMISSIONER EDGAR:** Briefly, Mr. Brown.

7 **THE WITNESS:** I have advanced money back and
8 forth between these companies for 38 years, and without
9 doing that, this Water Management corporation cannot
10 operate because we have to have the collateral and the
11 credit and the ability to operate through these
12 subsidiaries, because when DEP came in and put a
13 wraparound mortgage on all of our assets right after
14 they tore down the bridge, it made it impossible. And
15 that's when this intercreditor agreement came up between
16 Centennial Bank, which had a \$3 million line of credit.
17 But between those two lenders, because of the bridge
18 teardown, everything we've got, all revenue, everything
19 is wrapped up.

20 **COMMISSIONER EDGAR:** Thank you.

21 **THE WITNESS:** And therefore we have to, we
22 have to continue with that.

23 **COMMISSIONER EDGAR:** Thank you, Mr. Brown.

24 Mr. Sayler.

25 **MR. SAYLER:** Thank you, Madam Chair.

1 **BY MR. SAYLER:**

2 Q And if you will look at the next exhibit,
3 which is an excerpt from the staff deposition, page 47.

4 A Okay.

5 Q And this is -- if you look at lines 3 to 7 and
6 then again down to 19 through 22, this is in answering
7 staff's question that you will continue in one form or
8 the other to do these advancements of funds. This is
9 where you agree with staff on that; correct?

10 A My testimony is still the same as it was in
11 the staff deposition, which was that I will continue
12 putting money in and taking money out back and forth
13 between these companies because that's the only way we
14 can survive. And that's where I came up with an extra
15 16 million over the last so many years.

16 **COMMISSIONER EDGAR:** Thank you.

17 **MR. SAYLER:** Thank you, Mr. Brown.

18 We have some more exhibits to pass out. This
19 is a, kind of a large block of exhibits. So if
20 you'll -- and I believe these are already grouped
21 together.

22 And, Madam Chair, at your pleasure, these -- I
23 would like all of these entered into the record. It
24 could be done as one composite exhibit or four different
25 exhibits in case the utility would like to object on one

1 individually.

2 **COMMISSIONER EDGAR:** Okay. Let's take just a
3 moment and make sure everybody has it or has the package
4 that is being distributed and we'll take a look at it.

5 **MR. SAYLER:** As you are looking at that, I
6 will note that the first -- the top one entitled Staff
7 Deposition of Gene Brown, Exhibit 1 is already in the
8 record, so it doesn't necessarily need to be separately
9 identified. It's just at your pleasure.

10 **COMMISSIONER EDGAR:** Thank you. Give me just
11 a moment. Thank you. Okay. I think for, hopefully for
12 purposes of clarity we will identify separately and
13 we'll do that here in just a moment. However, I will
14 exclude the top stapled document because, as you've
15 noted, it is in the record. So I'm going to set that
16 aside and we'll, of course, address that as you need.

17 The next three that have been distributed that
18 are stapled, let's go ahead and identify in order. So
19 I'm going to mark as 99 the document that is described
20 Compilation of WMSI General Ledgers. And that's 99.

21 (Exhibit 99 marked for identification.)

22 Then as number 100, the document labeled
23 Public Documents Related to Sale of Commonwealth Lots.

24 (Exhibit 100 marked for identification.)

25 And 101, the document labeled Commonwealth

1 Lots.

2 (Exhibit 101 marked for identification.)

3 And, Mr. Friedman, if you do have any
4 objections to any of these, go ahead and let me know
5 that as we're proceeding.

6 **MR. FRIEDMAN:** Yes, because I don't know
7 how -- because I don't know what purpose they intend to
8 be used for.

9 **COMMISSIONER EDGAR:** I understand. I
10 understand. But -- nor do I.

11 Okay. Mr. Saylor, we are ready when you are.

12 **BY MR. SAYLER:**

13 **Q** Mr. Brown, if you'll look at Exhibit
14 101 that's entitled Commonwealth Lots, you would agree
15 that that is a --

16 **A** Well, it says Exhibit 1. Is that what you're
17 talking about?

18 **Q** Exhibit, the exhibit that was identified for
19 the record as Exhibit 101, Commonwealth Lots. Do you
20 have that one?

21 **A** I'll look. The first thing I --

22 **MR. FRIEDMAN:** It's the last one. It's the
23 bottom one.

24 **THE WITNESS:** The last one?

25 **MR. FRIEDMAN:** The last one in those.

1 **THE WITNESS:** I see something called
2 Commonwealth Lots. It doesn't have an exhibit number on
3 it.

4 **COMMISSIONER EDGAR:** We just, we just put that
5 number on it.

6 **THE WITNESS:** Put one on it?

7 **COMMISSIONER EDGAR:** Okay. But you do have it
8 in front of you now?

9 **THE WITNESS:** I do.

10 **COMMISSIONER EDGAR:** Okay.

11 **BY MR. SAYLER:**

12 **Q** Mr. Brown, I'm a big believer in a picture is
13 worth a thousand words. And would you agree that this
14 is lot number 6 and 7 on the second page -- or excuse
15 me -- 5 and 6 are the two commonwealth lots?

16 **A** Yes. Yes, sir, I would agree with that.

17 **Q** And I would note for the record we added Lot
18 6 and Lot 5 with the asterisk just because it wasn't
19 there.

20 And the next page you would agree is an aerial
21 photograph of those two lots?

22 **A** Yes, sir.

23 **Q** All right. Do those two lots substantially
24 look like that today? Are there still lots of trees on
25 them?

1 **A** The last time I checked they had trees on
2 them.

3 **Q** Thank you. If you will turn back to page 5 of
4 your testimony where you discuss those commonwealth
5 lots.

6 **A** All right. Okay.

7 **Q** And isn't it true that you bought those two
8 investment lots for approximately 260 -- \$236,000?

9 **A** I bought them for 220. And by the time you
10 had all the closing costs and realtor fees, the basis
11 was up at about 236.

12 **Q** All right. The next exhibit says Public
13 Documents Related to the Sale of Commonwealth Lots. Do
14 you have that?

15 **A** I have lots of stuff here. Which one? The
16 public documents related to -- yeah. I've got that.

17 **Q** Okay. If you will turn to the page OPC Bate
18 stamped as 0002.

19 **A** Okay.

20 **Q** Take a look at page 1 and 2. You would agree
21 that is from the Leon County Property Appraiser's
22 website; correct?

23 **A** Appears to be. Yes, sir.

24 **Q** And at the top of that second page it shows
25 the various times that this lot has been sold; correct?

1 A Yes.

2 Q And that \$236,000 amount in your testimony is
3 confirmed by the property appraiser's website; correct?

4 A Seems to be.

5 Q Isn't it true that according to your
6 testimony, in your prefiled rebuttal testimony and also
7 your deposition with Commission staff, that these two
8 lots were never utility plant-in-service and never in
9 rate base; is that correct?

10 A My testimony was that they were never in rate
11 base.

12 Q Okay. So they were never in rate base. Were
13 they in utility plant-in-service?

14 A One year they were mistakenly included as part
15 of plant and that was -- they were taken out the next
16 year. That was '06, '07, along in there.

17 Q Please refer to the exhibit with the
18 description Staff Deposition of Gene Brown, Exhibit 1.
19 This is one that was not identified for the record, for
20 the exhibit list.

21 **MR. FRIEDMAN:** I think it's the one on top. I
22 think it's the top one.

23 **THE WITNESS:** Okay.

24 **BY MR. SAYLER:**

25 Q If you will look -- please familiarize

1 yourself with that document.

2 **A** This is pages 11 and 47?

3 **Q** No, sir.

4 **COMMISSIONER EDGAR:** No. Is that correct?

5 **MR. SAYLER:** No. It's the Staff Deposition of
6 Gene Brown, Exhibit 1.

7 **MR. FRIEDMAN:** It's this one, Gene. It was in
8 that last stack.

9 **BY MR. SAYLER:**

10 **Q** It's the Annual Report that Water Management
11 Services files with the Public Service Commission.

12 **A** Okay.

13 **Q** Okay. You would agree that this is Water
14 Management Services' Annual Report or an excerpt from
15 it?

16 **A** Yes. I identified that on my deposition.

17 **Q** All right. For years 2006, and then there's
18 another excerpt for 2007; correct?

19 **A** Yes, sir.

20 **Q** Under the excerpt for 2006, look at the next
21 page that says page W-4(a).

22 **A** Okay.

23 **Q** If you will look on the left-hand side and go
24 down to 303, Land and Land Rights.

25 **A** Okay.

1 Q Do you see that?

2 A Yes, sir.

3 Q And it shows an addition of \$236,000; correct?

4 A Yes, sir.

5 Q And that's related to those two lots; correct?

6 A Yes, sir. Yes.

7 Q Okay. Sorry. My -- something distracted me.

8 And so isn't it true that at least to the
9 Commission in 2006 you reported that those lots were
10 plant-in-service under Water Utility Plant Accounts;
11 correct?

12 MR. FRIEDMAN: Asked and answered.

13 THE WITNESS: Yes. We mistakenly included
14 those for that year.

15 BY MR. SAYLER:

16 Q And when you look at the next page -- or the
17 2007, W-4(a), where it shows previous years, Account
18 303, Land and Land Rights, it shows that total as being
19 \$326,994?

20 A The one I just turned to shows zero in 303.

21 Q Under previous year. Sorry.

22 A Oh, previous year. Yes, sir. 326,994.

23 Q Okay. And my next question is you show no
24 additions in 2007; correct?

25 A Correct.

1 Q Mr. Brown, would you look at the next exhibit
2 that was in that line of four exhibits. It was
3 identified as Exhibit Number 99. The description was
4 Compilation of WMSI General Ledgers Showing the Gain on
5 Sale.

6 A Okay.

7 Q If you'll look at the first page, 0001 Bate
8 stamp, I will represent to you that this is a
9 compilation of general ledger entries for the years
10 2006, 2007, and 2008 that our office -- excuse me,
11 excuse me -- 2006, 2007, and 2010 from the utility's
12 general ledgers.

13 A Okay.

14 Q It's an illustrative exhibit that pulls
15 together all the detail for the remaining pages in this
16 exhibit, which are approximately 19 pages.

17 A Okay.

18 Q On that first page, Bate stamp page 00 --
19 0001. My apologies, Commissioners.

20 **COMMISSIONER EDGAR:** Take a moment.

21 (Pause.)

22 **MR. SAYLER:** Thank you. I pulled it together.

23 **BY MR. SAYLER:**

24 Q All right. If you will look at the exhibit
25 page, Bate stamp page 0002.

1 **A** Okay.

2 **Q** Would you agree that this is, appears to be
3 your general ledger from January 1 through
4 December 31st, 2006?

5 **A** Right.

6 **Q** If you will look down on the left-hand side,
7 Account 105, to the two yellow highlighted lines, those
8 are yellow highlighting that our office added.

9 **A** Okay.

10 **Q** You would agree that it shows that WMSI spent
11 in this account \$3,774 in engineering and then another
12 \$1,200 to Joe Wynn-D-payment?

13 **A** Right.

14 **Q** And then, and then you also -- was that money
15 that you spent, you know, developing those two lots, do
16 you recall, doing engineering surveys or work?

17 **A** That was preliminary planning on those two
18 lots. Right.

19 **Q** And did you spend more money on those two lots
20 than just that roughly \$5,000?

21 **A** I don't recall spending any more than that,
22 but I may have. It wasn't much more than that.

23 **Q** All right. And you would agree that you sold
24 those lots in 2007 to Brown Management Group for
25 \$480,000; is that correct?

1 A Yes, sir.

2 Q And isn't it correct that the utility booked a
3 gain on sale of \$192,751?

4 A I'm sure we booked a gain on sale, whatever
5 the difference between the basis and the sales price
6 was.

7 Q All right. If you would look at Bate stamp
8 page number 14. And you would agree that that is where
9 the gain on sale was booked?

10 A Yes. In Account 414. Yes, sir.

11 Q All right. Thank you. And do you recall that
12 when the two lots were purchased by WMSI, were they
13 purchased with a loan from Tallahassee -- or the Bank of
14 Tallahassee?

15 A I believe so. Yes, sir.

16 Q And do you recall if that Bank of Tallahassee
17 loan has been paid off?

18 A Yes. That's paid off.

19 Q All right. And isn't it true that the same
20 day that you sold the two lots from WMSI to Brown
21 Management Group, that you secured a new mortgage on the
22 property in the amount of \$360,000?

23 A I think that's the amount.

24 Q And if you'll look at --

25 A You say "you." I think Brown Management

1 obtained a mortgage for about 360.

2 Q All right. Thank you. And on the other
3 exhibit, related -- Public Documents Related to the Sale
4 of the Commonwealth Lots.

5 A Okay.

6 Q Bate stamp page number 004, 3 and 4.

7 A Okay.

8 Q You would agree that that's the mortgage and
9 security agreement for that \$360,000 mortgage on those
10 two lots?

11 A I would.

12 Q Isn't it true, Mr. Brown, that on
13 October 15th, 2010, you sold these two lots back to WMSI
14 for \$325,000?

15 A Yes. I believe that's the date and the
16 amount.

17 Q All right. And you sold it back to WMSI
18 subject to the mortgage with Farmers & Merchants Bank?

19 A Right.

20 Q And that's confirmed by Bate stamp page 10 of
21 that exhibit; correct?

22 **MR. FRIEDMAN:** Which exhibit?

23 **MR. SAYLER:** The public documents.

24 **THE WITNESS:** Yes, that's true.

25

1 **BY MR. SAYLER:**

2 Q Where it's a warranty deed from Brown
3 Management Group, Water Management Services. Scroll
4 down to where it says subject to. There's two subject
5 to lines. The second one is that mortgage from Farmers
6 & Merchants Bank.

7 A Right.

8 Q Isn't it true that WMSI is now responsible for
9 the mortgage on those two lots?

10 A Water Management and I, yeah, are responsible.

11 Q Thank you. I'm going to move to my next set
12 of questions. For this set of questions I've got two
13 exhibits to pass out. I would pass out four, but with
14 all the confusion passing out four the last time, I'll
15 just do two.

16 **COMMISSIONER EDGAR:** That's fine.

17 **MR. SAYLER:** And as a housekeeping matter,
18 these two documents or exhibits to my knowledge are not
19 part of the record, so I would like those identified for
20 the record.

21 **COMMISSIONER EDGAR:** Okay. We will mark as
22 102 the document labeled WMSI -- excuse me -- WMSI's
23 Response to Staff's 3rd Set of Interrogatories. And
24 103, WMSI's Response to OPC 5th Request for POD.

25 (Exhibits 102 and 103 marked for

1 identification.)

2 **BY MR. SAYLER:**

3 Q Mr. Brown, if you will look at both of those
4 documents and familiarize yourself with those, please.

5 A I see them here.

6 Q You would agree that the first document is a
7 response to, is your answer to staff as it relates to
8 the valuation of certain Brown Management Group assets,
9 the balance sheet?

10 A It deals generally with the Brown Management
11 assets, yes.

12 Q And then the next document is related to your
13 response to OPC's 5th Rog, and that relates to the sale
14 of two assets for four hundred and -- \$421,000; correct?

15 A I see one that has a journal entry, a series
16 of journal entries relating to the \$421,000. Right.

17 Q Okay. Thank you. I just wanted to take that
18 time to -- so we can kind of speed through the next
19 series of questions.

20 A Okay.

21 Q Would you please refer to your Exhibit
22 GB-11, page 3, attached to your direct [sic] testimony.

23 A GB which?

24 Q 11. And --

25 A 11. I don't have it yet, but I should have it

1 in a minute.

2 Q Page 3 of 8 of GB-11.

3 A Okay. Page 2 of GB-11?

4 Q Three, page 3.

5 A Three. Okay.

6 Q Under the assets of Brown Management Group,
7 the last one says Leasehold Interest in Tower. Do you
8 see that?

9 A I see a memo from me that refers to tower
10 lease rights in GB-11.

11 Q GB-11, page 3 of 8, sir.

12 A Mine are not numbered, but what year are you
13 talking about?

14 Q 2007.

15 MR. FRIEDMAN: If I could.

16 COMMISSIONER EDGAR: You may.

17 THE WITNESS: Two thousand what?

18 MR. SAYLER: Seven.

19 THE WITNESS: Okay.

20 BY MR. SAYLER:

21 Q Under the assets of Brown Management Group
22 there's an asset listed, Leasehold Interest in Tower.

23 A Okay.

24 Q Are those the cellular tower leases related to
25 the leasing of antenna space on the water tower?

1 **A** They do.

2 **Q** Okay. And when I'm driving in on the island
3 coming over the bridge and I see the new water tower,
4 there are some antenna attached to that. Is that the
5 cellular antenna we're talking about here is this asset?

6 **A** That's correct.

7 **Q** Okay. How many companies lease space on the
8 WMSI water tower?

9 **A** Three currently, and I'm negotiating with a
10 fourth.

11 **Q** Okay. Who owns the water tower?

12 **A** Water Management Services.

13 **Q** All right. Who owns the cellular leases?

14 **A** Brown Management.

15 **Q** When did Brown Management Group start leasing
16 space on the WMSI water tower for cellular antenna?

17 **A** Oh, years ago. I'm not sure which year.

18 **Q** In the '90s or something like that, '80s?

19 **A** Late '90s, early 2000. It might have been in
20 the two thousands.

21 **Q** Okay. And you would agree that the blue
22 elevated water storage tank and water tower is in rate
23 base as a utility asset; correct?

24 **A** Yes.

25 **Q** Returning back to your Exhibit GB-11, page 3

1 of 8, the balance sheet for 2007. The leasehold
2 interest in the tower is \$360,000; isn't that correct?

3 A On which exhibit?

4 Q The one we were just discussing, the Brown
5 Management Group balance sheet December 31st, 2007.

6 A I see 360, yes.

7 Q So that's the, that's the fair market value as
8 you ascribe to it for leasehold interest in that tower,
9 \$360,000?

10 A That was our estimate of fair market value as
11 of December 31, '07.

12 Q Okay. If you'll turn to the next page in your
13 exhibit.

14 A Okay.

15 Q That leasehold interest went from 360 to
16 \$650,000; correct?

17 A Right.

18 Q And if you turn to the next page, it remained
19 at \$650,000; correct?

20 A Right.

21 Q And if you skip two pages to the balance sheet
22 for 2010, those lease rates decreased to \$250,000;
23 correct?

24 A That's correct.

25 Q And the exhibit that was passed out as,

1 identified as WMSI's Response to Staff's 3rd Set of
2 Interrogatories Number 14, Exhibit B, or otherwise the
3 2012 fair market value of lease rights, would you refer
4 to that exhibit and tell me what the tower lease rates
5 are?

6 **A** You'd have to --

7 **MR. FRIEDMAN:** Yeah, I'm lost.

8 **THE WITNESS:** Somebody would have to show me
9 what you're referring to.

10 **COMMISSIONER EDGAR:** Take a moment and we'll
11 make sure we're all on the same page.

12 **MR. FRIEDMAN:** What exhibit number?

13 **MR. SAYLER:** It's the one identified as 102.

14 **MR. FRIEDMAN:** It's one of the last ones.
15 That's 102.

16 **THE WITNESS:** Okay.

17 **BY MR. SAYLER:**

18 **Q** You would agree that the tower lease rights
19 have increased back to \$650,000?

20 **A** That sounds right.

21 **Q** So isn't it true that your asset valuation for
22 the cell tower leases varies from year to year?

23 **A** Yes, it does.

24 **Q** If you would turn to page 21 of your direct
25 [sic] testimony, Mr. Brown. Please keep your finger

1 back on GB-11 because we'll refer back to that in a
2 little bit.

3 A Page 21?

4 Q Yes, sir.

5 A Okay.

6 Q On page lines -- on page 21, lines 19 and 20,
7 in response to a question, you say, you testified, For
8 example, in 2010, BMG sold two assets for \$421,000, and
9 gave a large part of that cash to WMSI; is that correct?

10 A That's correct.

11 Q If you will look at the next exhibit that was
12 handed out.

13 A What is the next exhibit handed out?

14 Q Excuse me. The one identified 103.

15 A I don't see a number.

16 MR. FRIEDMAN: Can I help him on this one as
17 well?

18 COMMISSIONER EDGAR: Yes, you may.

19 THE WITNESS: What's it called?

20 BY MR. SAYLER:

21 Q Sale of Two Assets for \$421,000.

22 A Okay. All right. Okay.

23 Q If you'll take a moment to review that
24 exhibit.

25 A I've looked at it. Okay.

1 Q All right. If you will look at OPC 5th
2 Request for POD Number 63, it references those two items
3 of your testimony; correct?

4 A Yes, sir.

5 Q And our office asked, Please provide a copy of
6 the corresponding journal entries to Brown Management
7 Group, BMG, and WMSI which show that BMG sold two assets
8 for 421,000 and gave a, quote, large part of that cash
9 to WMSI, end quote.

10 A Okay.

11 Q If you'll turn to the next page, next two
12 pages, is that WMSI's response for --

13 A It appears to be. Yes, sir.

14 Q Is it your testimony that it responds to
15 corresponding journal entries?

16 A That appears to be the journal entries for
17 that transaction.

18 Q All right. I don't see any account numbers.
19 That's why I was asking.

20 A I don't see any either.

21 Q And this is related to the two assets that
22 were sold in 2010; correct?

23 A Yes. The \$421,000 sale of two assets in '10.
24 But Brown Management -- if they have account numbers,
25 I'm not familiar with them.

1 Q My question for you is if I look at these, the
2 various dates on your response, it shows a transfer date
3 in March 2009 and February 2008.

4 A On what?

5 Q On your response to POD 63, which is supposed
6 to be journal entries -- which, excuse me, are the
7 journal entries you provided.

8 A This journal entry seems to relate to 2010.
9 Maybe it's --

10 Q Okay. So the journal entry --

11 **THE COURT REPORTER:** Excuse me. I didn't hear
12 you.

13 **MR. SAYLER:** Excuse me. Pardon me.

14 **BY MR. SAYLER:**

15 Q So, so the journal entry for March 2009 and
16 February 2008 do not relate to the sale of the --

17 A They do. I suppose that's journal entries
18 that shows the original acquisition date and some other
19 dates, when the line of credit was paid off.

20 Q But then for the proceeds retained by Brown
21 Management Group, those lines, you show two \$40,000
22 transfers to WMSI?

23 A That was 80 in August of 2010. Right.

24 Q Now we can go back to your GB-11, or if you
25 recall, the change from \$650,000 to \$250,000 and back up

1 to \$650,000 on the cellular lease --

2 A Okay.

3 Q -- is that change due to that sale for
4 \$421,000?

5 A The reduction was due to that sale. The
6 increase was due to a new lease I just entered into with
7 AT&T that I was offered 320 for it and I would take 400.
8 And then I'm negotiating with another company for a disk
9 and some other antenna, and I valued that at -- because
10 I think they need it. In fact, I just got an e-mail
11 this morning. They're pressing me. And I think that's
12 worth 250, so I took 400 plus 250 and considered that
13 it's worth 650.

14 Q Okay. Just, just so -- I'm trying to
15 understand the transaction detail. In 2009 or 2010 it
16 was sold for 410,000 -- or \$421,000. But then that sale
17 was not purchased back. You just have another lease
18 that increased it back to 650; correct?

19 A We're talking about four lease agreements, and
20 the first two were sold at a fire sale in '10 when we
21 were in the middle of this rate case when we had to have
22 cash. I sold two of those leases for \$421,000 cash and
23 gave 80,000 to Water Management.

24 Since then I entered into a lease with AT&T,
25 which I believe is worth 400,000 because it pays \$2,500

1 a month for 30 years. And I'm negotiating to sell
2 another lease in two different spaces on the tower
3 for -- I think I'll get about \$2,500 a month. I think
4 that's worth 250 if I sold it on the open market.

5 So there are four different leases or assets,
6 so to speak, and I've sold two of them and Brown
7 Management still owns the other two.

8 Q And you would agree that the cellular leases
9 is a valuable asset of Brown Management Group; correct?

10 A I would.

11 MR. SAYLER: Madam Chair, I've got another
12 line of questions, but we've been going for an hour and
13 a half. Do you want to take a quick pause or --

14 COMMISSIONER EDGAR: I was going to ask that
15 question in ten to 15 minutes. But if this is an
16 appropriate time to, to take a break as far as the line
17 of questioning you're on, then we can certainly do that.

18 THE WITNESS: Thank you.

19 COMMISSIONER EDGAR: You're welcome. So we
20 will -- I have almost 11:00. Let's come back or
21 reconvene at 11:10, and we are in recess.

22 (Recess taken.)

23 Okay. We will go back on the record from a
24 short break, and Mr. Sayler.

25 MR. SAYLER: Thank you, Commissioners.

1 **BY MR. SAYLER:**

2 **Q** One last question or two about the water tower
3 and cell lease. It was your testimony -- and I hope not
4 to get an asked and answered, I just want to get
5 clarification -- the water tower is a utility asset
6 that's in rate base, but the cellular tower or the
7 leasehold rights are owned by Brown Management Group;
8 correct?

9 **A** Right. Which is now owned by Water
10 Management. So it's all, all owned by the same party
11 now.

12 **Q** Okay. Prior to that transfer of Brown
13 Management assets to, excuse me, Brown Management Group
14 to Water Management Services, did Brown Management Group
15 pay Water Management Services any kind of rental or, you
16 know, rent or lease the space that it in turn leased to
17 those --

18 **A** No. They were purchased years ago.

19 **Q** What was purchased years ago?

20 **A** The tower lease rights, the cell phone lease
21 rights on the tank.

22 **Q** Were purchased by Brown Management Group?

23 **A** No. They were purchased by a contractor from
24 Tampa that -- we had a hurricane in the state park and
25 had big damages, and we paid what cash we had and

1 transferred those as part of the cost of making those
2 repairs, which was a couple of hundred thousand dollars.

3 Q I thought you just testified that Brown
4 Management Group --

5 A Brown Management subsequently bought those
6 from that contractor.

7 Q Just so I can get it clear, the utility owned
8 the leasehold rights.

9 A The utility owned the tower.

10 Q Owned the tower. They transferred it to this
11 contractor.

12 A Not the tower.

13 Q Not the tower but the cell phone --

14 A Real estate is a bundle of rights and --

15 Q The air above the tower was transferred.

16 A Well, the, the lease rights, the right to
17 lease antenna on the top of the tower was sold to a
18 contractor who made emergency repairs after a hurricane
19 to the state park.

20 Q And then that contractor sold it back to the
21 utility or Brown Management Group?

22 A The contractor later sold it to me, or Brown
23 Management Group.

24 Q Okay. And who holds title, direct title to
25 those lease, cellular lease rights today?

1 **A** Brown Management Group.

2 **Q** All right. And WMSI holds title to Brown
3 Management Group; correct?

4 **A** Yes.

5 **Q** All right. During the time when WMSI owned
6 those rates -- or those cellular leases were --

7 **A** Now Water Management never owned any, any
8 leasehold rights.

9 **Q** Oh.

10 **A** There were, there were no leases.

11 **Q** Okay. Mr. Brown, since now WMSI owns all the
12 stock of Brown Management Group, would you have any
13 objection if the Commission ordered that the lease
14 rights of, the cellular lease rights be put in the name
15 of the utility?

16 **A** Yes, I would have an objection to that.

17 **Q** All right. What about if the, the proceeds
18 from those leases were either used towards, you know,
19 your monthly, I guess, income from those leases, if
20 those were used to be imputed against the capital
21 improvement projects that you were going to be doing,
22 would you object to that?

23 **A** I would object to that in every way possible.
24 I need to manage this water company.

25 **Q** And you would have the same objection if the

1 rental rights for the cellular leases on the tower were
2 imputed against customer rates; correct?

3 **A** I certainly would. That would be improper
4 accounting, improper rate structure.

5 **Q** Okay.

6 **A** It's already been run through rates through a
7 capital plant payment and retirement.

8 **MR. FRIEDMAN:** And I would also interpose an
9 objection that that's not an issue in this case.

10 **THE WITNESS:** That was done years and years
11 ago after a hurricane.

12 **MR. SAYLER:** All right. All right. During
13 the break, Commissioners, we passed out three documents.
14 Two are paper clipped together. Let's address the two,
15 the first two documents that should have been paper
16 clipped together my way. Okay. We're going to -- oops,
17 sorry. There were four documents.

18 **COMMISSIONER EDGAR:** I have three.

19 **MR. FRIEDMAN:** I've only got three.

20 **COMMISSIONER EDGAR:** I have three and no paper
21 clip, not that that matters.

22 **THE WITNESS:** I have three without numbers.

23 **COMMISSIONER EDGAR:** Mr. Sayler, how would you
24 like to address this?

25 **MR. SAYLER:** We will try this again.

1 All right. The first exhibit description,
2 Borrowing \$150,000 Against Two Assets.

3 **THE WITNESS:** I see that.

4 **MR. SAYLER:** Okay. I would like, with your
5 permission, to have that identified for the record, I
6 believe, as Exhibit 104.

7 **COMMISSIONER EDGAR:** Yes, it will be 104.

8 (Exhibit 104 marked for identification.)

9 **MR. SAYLER:** The next exhibit would be Excerpt
10 2010 General Ledgers, Account 146.

11 **COMMISSIONER EDGAR:** Okay. 105.

12 (Exhibit 105 marked for identification.)

13 **MR. SAYLER:** And then the next exhibit,
14 Comparison Between WMSI and Marion Utilities.

15 **COMMISSIONER EDGAR:** So that will be 106.

16 **MR. SAYLER:** Thank you. Thank you.

17 (Exhibit 106 marked for identification.)

18 **BY MR. SAYLER:**

19 **Q** Mr. Brown, would you refer to page 21 of your
20 testimony.

21 **A** Okay.

22 **Q** Isn't it -- on line 21 through 23 you testify,
23 Just this year, meaning 2012; correct?

24 **A** Well, that was last year, but pretty much --
25 pretty close.

1 Q Okay. Sorry. Yes. I forgot it's the new
2 year.

3 Just this year, in 2012, BMG borrowed \$100,000
4 from its local bank and used almost all of that money to
5 fund the ongoing WMSI deficit, period. A little over a
6 year ago, BMG borrowed \$150,000 against two of its
7 assets to help fund the WMSI cash deficit.

8 And then I would like to direct your attention
9 to the description, the document that is described as
10 Borrowing \$150,000 Against Two Assets.

11 A Okay.

12 Q Isn't it true that Public Counsel served
13 discovery on that testimony related to those two assets
14 that were borrowed against for \$150,000?

15 A If you say so. I guess so.

16 Q I would like to direct your attention to POD
17 Number 65, Bate stamp page 0002. OPC requested, related
18 to Account 123, please refer to page 21, line 23 of your
19 rebuttal testimony. Please provide a copy of the
20 corresponding journal entries for BMG and WMSI that show
21 that, quote, BMG borrowed \$150,000 against two of its
22 assets to help fund the WMSI cash deficit. Do you see
23 that?

24 A I do.

25 Q And then later on the response asks for

1 information about that \$100,000 that you borrowed from a
2 local bank; correct?

3 A Right.

4 Q All right. This is a long exhibit, but I just
5 want to let you and the others know I'm not going to ask
6 any questions about the BMG borrowing \$100,000. I'm
7 going to focus on the 150,000.

8 A Okay.

9 Q If you would look at your response to OPC at
10 number 65, you would agree that the first two pages,
11 Bate stamp page 4 and 5, are composite tickets; correct?

12 A Yes.

13 Q And pages 6 through 10 relate to the property
14 against which you borrowed \$150,000?

15 A Right.

16 Q Okay. And the two assets to which you're
17 referring in your testimony are the two condos that are
18 above the WMSI office building here on the island?

19 A That is correct.

20 Q And you testified that a significant portion
21 of those proceeds were transferred to WMSI?

22 A Yes.

23 Q And you would agree, referring back to those
24 two deposit slips on page, Bate stamp page 4 and 5, that
25 relates to the money that was deposited from Brown

1 Management Group to Water Management Services?

2 A It appears to. I didn't personally do that.
3 I see some handwriting on mine, 34,000, 41,000, 25,000,
4 \$95,000.

5 Q Yes. I would represent to you this is how
6 this exhibit came to us with those handwritten numbers
7 on the side, along with the handwritten number for 5,000
8 on page 5.

9 A Okay.

10 Q Doing simple lawyer math between those two
11 pages, that equates to roughly \$100,000; is that
12 correct?

13 A I haven't done the simple lawyer math, but
14 I'll take your word for it.

15 Q Okay. Thank you. So of that \$150,000
16 borrowed against those two assets, you placed \$100,000
17 into the utility; correct?

18 A Well, that's what it appears to say. I didn't
19 personally produce these documents, but somebody in
20 Water Management did.

21 Q Okay. You would agree, Mr. Brown, if WMSI
22 received a deposit of money in its bank account, then
23 the WMSI general ledger should have a corresponding
24 entry to show that deposit?

25 A I assume so.

1 Q And one of the NARUC system of accounts would
2 need to be, would need to show a corresponding credit
3 for that amount deposited?

4 A Yes.

5 Q Okay. Was this money, \$100,000, credited
6 towards Account 123?

7 A No, I wouldn't think that it would have been.

8 Q All right. Would you please look at the next
9 exhibit that we --

10 A Well, wait a minute. What year was this?
11 2010? Yeah, it probably was. We still used it in 2010.

12 Q Mr. Brown, if you will look at the next
13 document that says Excerpt From 2010 General Ledger,
14 Account 146. I will represent to you that we added the
15 highlighting.

16 A What page is that or what number?

17 Q It's a two -- there's a cover page and then an
18 excerpt from the WMSI general ledger.

19 A Is that this same exhibit?

20 Q No. Next exhibit. Sorry, Mr. Brown.

21 A Exhibit which?

22 Q The exhibit description is Excerpt From 2010
23 General Ledger, Account 146.

24 A Okay. I've got that.

25 Q You would agree that this is a copy of WMSI's

1 general ledger?

2 A It appears to be.

3 Q All right. And the title for Account 146 is
4 Notes Receivable-Associated Companies?

5 A Right.

6 Q And the detail or transaction description for
7 those four highlighted transactions are Brown Management
8 Group/deposit/BMG/note payment?

9 A That's what it says.

10 Q And would you agree that the four deposits
11 correspond to the four deposits on your deposit sheet
12 from the prior exhibit?

13 A They appear to.

14 Q And the general ledger reflects these as
15 credits; correct?

16 A Yes.

17 Q Wouldn't you agree that if Brown Management
18 Group had borrowed money -- excuse me. Let me rephrase.

19 Excuse me. Wouldn't you agree, Mr. Brown,
20 that Brown Management had borrowed money from a bank --
21 let me rephrase that again. I'm sorry.

22 Wouldn't you agree that Brown Management had
23 borrowed the money from the bank to repay money that
24 WMSI had advanced to Brown Management Group or one of
25 the associated companies?

1 **A** We borrowed that money because we needed cash.

2 **Q** All right. So the answer is yes or no,
3 wouldn't you agree that they had borrowed money, that
4 Brown Management Group had borrowed money from a bank to
5 repay money that WMSI had advanced through one of Brown
6 Management -- one of your other companies, it may have
7 been Brown Management Group, it may have been another,
8 according to the general ledger?

9 **A** I agree that we borrowed money on Brown
10 Management assets because we needed cash.

11 **Q** All right. Mr. Brown, if you will turn to
12 Exhibit GB-4 of your testimony, please, specifically
13 page 2 of 8.

14 **A** Okay.

15 **Q** If you would review that page, go down to
16 about the bottom third, you see four transactions, WMSI
17 Note Receivable-BMG.

18 **A** Okay.

19 **Q** In the amounts of 34,000, 41,000, 20,000,
20 5,000.

21 **A** Okay.

22 **Q** You would agree that those correspond to those
23 transactions we were just discussing previously?

24 **A** They appear to, yes, sir.

25 **Q** All right. Thank you very much, Mr. Brown.

1 All right. We can dispense with those two
2 exhibits and go on to the next two. No, excuse me. The
3 next exhibit identified as Comparison Between WMSI and
4 Marion Utilities.

5 A Okay.

6 Q Mr. Brown, this exhibit contains two things, a
7 PSC comparative rate statistics document published by
8 the PSC as of December 31st, 2011, and the highlighting
9 on those pages are something that our office added. And
10 then following those three or four pages you'll see a
11 copy of Marion Utilities' Annual Report. Do you see
12 that?

13 A I do.

14 Q Would you please refer to page 14 of your
15 direct [sic] testimony.

16 A Okay. All right.

17 Q In response -- are you there?

18 A Yes.

19 Q In response to a question, Have you compared
20 your salary to that of any other CEOs of PSC regulated
21 water utilities in Florida, your answer was, I looked at
22 Marion Utilities, which is approximately the same size
23 as WMSI. And then you go on and discuss the salaries of
24 the president and the president's wife and things of
25 that nature. Do you see that?

1 **A** Right. I do.

2 **Q** In what ways are Marion Utilities similar?

3 **A** I glanced at the annual report and I thought
4 the revenue was in the same ball park.

5 **Q** Okay. You would agree that the revenues are
6 the same. What about operations? Is -- doesn't Marion
7 Utilities provide water and wastewater services?

8 **A** They have very limited wastewater. I think
9 one little plant. I talked to my lawyer, who knows the
10 man, and, you know, that gave me some comfort that they
11 were similar.

12 **Q** Okay. If you would look at the very last page
13 of this exhibit, W-13, entitled Calculation of the Water
14 System Meter Equivalent. Are you there?

15 **A** Calculation of what?

16 **Q** Water system meter equivalent.

17 **A** Okay.

18 **Q** On the bottom of that box it says total water
19 system meter equivalents is 6,095.

20 **A** Okay.

21 **Q** You would agree that that represents the
22 number of customers served by Marion Utilities; correct?

23 **A** That may be ERCs, which may be different from
24 total customers served. But I see it's divided, so it's
25 probably an ERC calculation. I don't know how many

1 actual service locations they have.

2 Q All right. Scroll up to the top of that
3 document where it says, All Residential/Five-eighths/
4 Displacement. It shows 5,976 meters.

5 A Okay.

6 Q So that's approximately the number of
7 residential customers on that --

8 A Okay. All right.

9 Q So you would agree that Marion Utilities has
10 about 6,000 customers and WMSI has about 1,800; correct?

11 A We have, we have over 2,000.

12 Q Okay.

13 A 2,030 or 40, something like that, service
14 connections or service locations.

15 Q If you will turn back to the front of that
16 document, Comparative Rate Statistics produced by the
17 Florida Public Service Commission.

18 A Okay.

19 Q On page C5, yellow highlighted, it shows
20 WMSI's rates prior to the PAA ordered increase; correct?

21 A Right.

22 Q If you turn to the next page, C-9, for Marion
23 Utilities, you would agree that it shows its rates;
24 correct?

25 A Yes.

1 **Q** And if you compare the bill comparisons for
2 10,000 M, WMSI, prior to the rate increase is \$62.43;
3 whereas, Marion Utilities was \$26.01; correct?

4 **A** Yes.

5 **Q** All right. Thank you. You would agree that
6 it's not an apples-to-apples comparison between Marion
7 Utilities and WMSI; correct?

8 **A** I would agree. I think ours may be more
9 complicated.

10 **MR. SAYLER:** Commissioners, my next exhibit
11 I'm going to pass out actually contains two dockets --
12 documents.

13 **COMMISSIONER EDGAR:** Mr. Sayler, it looks like
14 you have two, two documents, one lengthy, one not.

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

16 **COMMISSIONER EDGAR:** The first one you have
17 described as Prior Rate Case Expense.

18 **MR. SAYLER:** Yes. And I would like that one
19 identified for the record.

20 **COMMISSIONER EDGAR:** Okay. So that will be
21 107.

22 (Exhibit 107 marked for identification.)

23 **MR. SAYLER:** The other document, the
24 description says OPC Deposition. That's an error.
25 That's actually an excerpt from the staff deposition

1 which is in the record, so it does not need to be
2 identified.

3 **COMMISSIONER EDGAR:** Okay. All right. Thank
4 you.

5 **BY MR. SAYLER:**

6 **Q** Mr. Brown, I will represent to you that the
7 first page of the prior rate case expense exhibit is a
8 timeline that our office developed, and it's based on
9 the entirety of the rest of that document.

10 **A** Okay.

11 **Q** And really what I want to do is to confirm
12 the timeline with you that's on page, Bate stamp page
13 number 1. And once that's confirmed, I just have a few
14 series of short questions related to some of the other
15 documents, and then we can move on to another topic.

16 If you'll -- I can walk you through the
17 events, the dates and the events. Or if you want to,
18 between you and your counsel, look at it and if you
19 agree that this is correct, then we can just dispense
20 with a whole long line of questions confirming each and
21 every date.

22 **MR. FRIEDMAN:** Is he asking that he go through

23 --

24 **COMMISSIONER EDGAR:** Mr. Friedman, will you
25 pull the mike to you? Thank you.

1 **MR. FRIEDMAN:** Is he asking that the witness
2 go through everything and confirm that their summary is
3 accurate? Is that what he's asking to do?

4 **COMMISSIONER EDGAR:** Mr. Sayler?

5 **MR. SAYLER:** Essentially what I'm asking is is
6 the date correct and is the event correct and the source
7 correct? I can -- it might be just --

8 **MR. FRIEDMAN:** Well, you may want to take a
9 break then and let him do it while we're -- if he's
10 going to have to look through all these documents that
11 are attached and make sure that it's consistent.

12 **MR. SAYLER:** Or we could -- or if it's easier,
13 we don't necessarily have to confirm the date because
14 the date is what the date is according to the discovery
15 responses. And what I'm really more concerned about is
16 just confirming the event based upon the document.

17 **THE WITNESS:** I can take the time and compare
18 them. Sure.

19 **MR. FRIEDMAN:** Just look at the event and see
20 if the event is accurate.

21 **THE WITNESS:** Those events seem generally
22 correct. I disagree with part of the characterization,
23 but generally they're right.

24 **BY MR. SAYLER:**

25 **Q** All right. Would you refer to Bate stamp page

1 number 18 through 23.

2 A Okay.

3 Q You would agree that that is a copy of the
4 representation agreement between yourself and the Radey
5 firm as it relates to the last rate case?

6 A I would.

7 Q And this was a subsequent representation
8 agreement that you had entered into because you had one
9 previously with, with Marty Deterding or Marshall
10 Deterding from the Rose, Sundstrom, Bentley firm for the
11 rate case?

12 A I think that was on the same case, yeah.

13 Q Okay.

14 A I had three cases over here in four years, so.

15 Q And if you look at that last paragraph --

16 A And Marsha Rule had one of them.

17 Q Okay. If you would look at the last -- on
18 page, Bate stamp page 18 in the last paragraph.

19 A Okay.

20 Q And you see where it requires a \$4,000 a month
21 deposit or retainer plus a minimum payment of \$2,000 per
22 month for services rendered?

23 A I do.

24 Q And that, and that's the provision in this
25 agreement that is your basis for saying that you have an

1 agreement to repay the Radey firm \$2,000 a month until
2 the bill is paid in full?

3 **A** No, that's not correct at all.

4 **Q** Okay. You would agree that it also says
5 hourly fees will accumulate and will be payable no more
6 than ten days following the grant of the last rate
7 case -- or grant of any -- let me rephrase that. Hourly
8 fees in excess of the monthly payments will accumulate
9 and will be payable no later than ten days following the
10 grant of any rate increase by the Public --

11 **A** Increase. Yeah. Rate increase, it said, not
12 decrease.

13 **Q** And it says, parentheses, interim or
14 permanent?

15 **A** Yes.

16 **Q** In the last rate increase you were granted an
17 interim rate increase; correct?

18 **A** That's correct, which I had to give back.

19 **Q** And in the last rate increase you did receive
20 about a, just a little over a 1% rate increase; correct?

21 **A** Well, they voted to not give me any rate
22 increase. Administratively it came to 1.03, so I got a
23 1% increase but had to pay about a quarter of a million
24 dollars myself. So I consider that a decrease because I
25 live in a cash world.

1 Q Okay. Would you please turn to page, Bate
2 stamp page 37, 38.

3 A Okay.

4 Q You would agree this is a letter that you sent
5 on March 30th, 2012, to the Radey law firm?

6 A That is a letter that I sent.

7 Q And Commissioner Balbis asked Witness Vandiver
8 a few questions about it, and perhaps maybe you might be
9 the one who is better able to answer the question.

10 Do you see where you wrote, I have come to
11 recognize several costly mistakes were made by RTYC in
12 the handling of our case. Those mistakes and the
13 horrible result that we suffered will have to be taken
14 into account when we talk settlement of the bill, of
15 your bill?

16 A I see that language.

17 Q What were those mistakes made by the Radey
18 firm?

19 A I think that's attorney-client privileged and
20 I refuse to answer. I have an agreement with that firm
21 that they did a great job and I don't dispute their
22 bill, and I'm paying their bill in full, and that's our
23 agreement at 2,000 a month.

24 Q And that's, and that's an oral agreement;
25 correct?

1 **A** That's an oral agreement.

2 **Q** All right. Then if you will turn to the next
3 exhibit, which is, should be -- it's the deposition of
4 Gene Brown pages 11 through 14.

5 **A** Is that in this same batch?

6 **COMMISSIONER EDGAR:** It's separate.

7 **MR. FRIEDMAN:** That's the next one.

8 **THE WITNESS:** What number is that?

9 **COMMISSIONER EDGAR:** We did not number it.

10 **THE WITNESS:** Well, do I have it?

11 **MR. FRIEDMAN:** Yeah. It was handed out.

12 **THE WITNESS:** Oh, is it in here? Oh, it's
13 right here. Deposition of Gene Brown. All right.
14 Okay.

15 **BY MR. SAYLER:**

16 **Q** If you'll look at the last page -- excuse
17 me -- page number 12 of the deposition.

18 **A** Okay.

19 **Q** Lines 18 through 25.

20 **A** Okay.

21 **Q** Staff asked you, With regard to the Radey
22 Thomas, you mentioned that you were paying 2,000 a
23 month. Have they -- has there been any settlement or
24 reduction in the amount of funds that were owed from the
25 time of that final bill, question?

1 Your answer is, No. We have agreed that bill
2 would be paid in full, but on the same terms that were
3 referenced in the original representation agreement,
4 which was \$2,000 a month.

5 Do you see that?

6 **A** I do.

7 **Q** And has anything changed from your testimony,
8 your rebuttal testimony or your testimony in the
9 deposition, regarding that payment of fees?

10 **A** Yeah. We were sitting there yesterday and
11 Mr. Friedman pointed out the language that said it's to
12 be paid within so many, so long after a rate increase.
13 And I didn't notice that language before, but I don't
14 think I got a rate increase and I explained that to
15 Ms. Clark.

16 **Q** Okay.

17 **A** So we agreed to \$2,000 a month, which was
18 referenced in the agreement.

19 **Q** Okay. Since, Mr. Brown, since you've
20 testified that the Radey firm will be paid in full,
21 would you object to the Commission ordering you to pay
22 at least \$2,000 a month until the bill is paid in full?

23 **A** Yes, I would.

24 **Q** Would you object to making quarterly reports
25 to the Commission showing that the payments were being

1 made?

2 **A** Yes, I would.

3 **Q** With regard to Mr. Frank Seidman, it's also
4 your testimony that he will be paid in full as well?

5 **A** Yes, he will be paid in full, as he always has
6 been.

7 **Q** Would you object to the Commission ordering
8 you to make payments to him and quarterly reports
9 showing those payments were made?

10 **A** Yes, I would.

11 **Q** Same question for the engineering firm?

12 **A** That's correct. I'm already paying them a
13 credit card deduction. They're almost paid off.

14 **Q** Thank you.

15 **MR. SAYLER:** We have another exhibit to pass
16 out, Commissioners. Actually it's three documents. Two
17 of the three documents I would like identified for the
18 record. One of the documents is already in as part of
19 staff's exhibit. The document description Current Rate
20 Case Expense, Response to OPC Discovery.

21 **THE WITNESS:** Okay.

22 **MR. SAYLER:** I would like that identified as

23 --

24 **COMMISSIONER EDGAR:** Then it will be 108.

25 (Exhibit 108 marked for identification.)

1 **MR. SAYLER:** The next document is Current Rate
2 Case Expense, PAA and Post-PAA Engagement Letters.

3 **COMMISSIONER EDGAR:** Okay. 109.

4 (Exhibit 109 marked for identification.)

5 **BY MR. SAYLER:**

6 **Q** Mr. Brown, would you please take a look at
7 that first exhibit, WMSI responses to OPC discovery. To
8 the best of your knowledge, are these full responses to
9 OPC's discovery regarding rate case expense?

10 **A** These appear to be the responses that we
11 provided.

12 **Q** All right. If you turn page 6, Bate stamp
13 page 6, you would agree that, and following, that this
14 is rate case expense and shows all the invoices since
15 the, since -- for the post-PAA protest; is that correct?

16 **A** I will agree it says what it says.

17 **Q** And on page, Bate Stamp page 19 in response to
18 OPC 52, that's an exhibit containing canceled checks
19 where you made payments to the Law, Redd, Crona
20 accounting firm, two checks, and one check to
21 Mr. Guastella?

22 **A** I see that.

23 **Q** Okay. Would you please refer to Bate stamp
24 page number 4.

25 **A** Okay.

1 Q You would agree that this is an invoice from
2 Sundstrom, Friedman & Fumero, LLP?

3 A It appears to be.

4 Q And this was for the PAA rate case; correct?

5 A Yes. That's, that's all that he's represented
6 me on.

7 Q Okay. That third exhibit, Updated Current
8 Rate Case Expense.

9 A Okay.

10 Q The pages aren't numbered, but the first page
11 after the affidavit shows a balance due to Sundstrom,
12 Friedman & Fumero for \$93,922.88. Do you see that?

13 A I see that.

14 **MR. FRIEDMAN:** I'm sorry. What, what was the
15 question? That this schedule shows what?

16 **MR. SAYLER:** The balance as of -- a balance
17 due of \$93,922.88.

18 **THE WITNESS:** Marty is waking up now.

19 (Laughter.)

20 That's the sacred part of the transaction.

21 **MR. FRIEDMAN:** Well, I think the exhibit is
22 what is the total rate case expense, not how much is
23 owed. The question -- the document was not how much is
24 owed. It says, provide updated rate case expense, and
25 that's what it is. It's updated rate case expense.

1 It's not how much is owed, it's how much the rate case
2 expense is. So you've mischaracterized what the
3 document says it is intended to be. It's not accounts
4 payable.

5 **COMMISSIONER EDGAR:** Mr. Sayler?

6 **MR. SAYLER:** There was no intention of
7 mischaracterizing anything. It's just my reading of the
8 response.

9 **BY MR. SAYLER:**

10 **Q** If you look at the very last page where it
11 says Actual Billed and Unbilled, the actual billed and
12 the unbilled amount is \$46,221.94; correct?

13 **A** Where are you looking?

14 **Q** The very last page of that response.

15 **A** That's Number 110?

16 **MR. FRIEDMAN:** No, it doesn't have a number.

17 **BY MR. SAYLER:**

18 **Q** No. It's the same -- it's the exhibit
19 identified as Updated Rate Case Expense.

20 **A** Okay. And you want me to look on the last
21 page?

22 **Q** Yes, sir.

23 **A** Okay.

24 **Q** And it states actual and unbilled, \$46,221.94,
25 attorneys' fees from September 12th through January 7th,

1 (invoices and report of unbilled fees attached.) Do you
2 see that?

3 A I see that.

4 Q So as of January 7th -- from September 12th to
5 January 7th, WMSI had incurred a little over \$46,000 of
6 attorneys' fees for post-PAA rate case expense, post-PAA
7 rate case expense; is that correct?

8 A That appears to be correct.

9 Q All right. To your knowledge, has WMSI made
10 any payments to Mr. Friedman's firm as it relates to
11 either the PAA rate case expense or the post-PAA rate
12 case expense?

13 A Yes.

14 Q Can you tell me how much and when those
15 payments were made?

16 A No.

17 Q Mr. Brown, to your knowledge, did OPC request
18 a copy of all checks showing payment for all rate case
19 expense in this rate case?

20 A If you say so.

21 Q All right. If you will look at, going back to
22 the original rate case or original exhibit that we
23 looked at, the thicker one, Bate stamp page 19.

24 A Okay.

25 Q WMSI's Response to OPC 4th Request for POD,

1 I'll represent to you that we asked for all the
2 cancelled checks or proof of payment for the current
3 rate case or for the, in this docket.

4 **MR. FRIEDMAN:** Well, I think we need to look
5 and see what it says because I don't think that's what
6 the response was intended to be. It's a question about
7 whether we're talking about pre-PAA or post-PAA.

8 **MR. SAYLER:** A pause -- if you don't mind
9 taking a moment.

10 **COMMISSIONER EDGAR:** Take a moment.

11 **MR. SAYLER:** Because we need to get the actual
12 --

13 **MR. FRIEDMAN:** Because the answer says
14 rendered -- the answer here says canceled checks
15 rendered since 9/12/12, which is -- which would be
16 post-PAA.

17 **MR. SAYLER:** Okay. My apologies.

18 **BY MR. SAYLER:**

19 **Q** With that clarification, Mr. Brown, prior to
20 September 12th, 2012, did you make any payments to
21 WMSI -- excuse me -- to Mr. Friedman's firm as it
22 related to the PAA rate case?

23 **A** I believe I did.

24 **Q** All right. But since September 9th, 2012, you
25 haven't made any payments to them?

1 **A** I don't believe I have.

2 **Q** All right. Isn't it true that on the record
3 your counsel stated that there is no engagement letter
4 between you and he for representation in this case?

5 **A** That is true.

6 **Q** The question that I have, and, and if the
7 Commission has it too, if not, then I'll withdraw the
8 question, is what is the basis for repayment of legal
9 expenses for all attorneys' fees incurred in this
10 docket?

11 **A** I'll pay them just as soon as I can.

12 **Q** Will that be cash, check, charge, other forms
13 of payment?

14 **A** Probably be a check.

15 **Q** All right. Moving on to another line of
16 questions. Oh, before we move on, that other exhibit,
17 Current Rate Case Expense, PAA and Post-PAA Engagement
18 Letters, do you see that?

19 **A** Yes.

20 **Q** And you would agree that those are the
21 engagement letters between yourself, or between WMSI and
22 Ms. Jeanne Allen's CPA firm and between you and
23 Mr. Guastella?

24 **A** With Mr. Guastella, I talked to him on the
25 phone, I wrote him a letter. That's what I consider --

1 that's the only documentation I have. With Jeanne Allen
2 we did have a formal engagement letter.

3 Q Would you look at the engagement letter with
4 Ms. Allen's CPA firm.

5 A Okay. I'm looking at it.

6 Q Okay. You would agree on page 2 it states,
7 Invoices will be presently -- presented monthly and are
8 due in accordance with the following payment schedule?

9 A It says what it says.

10 Q All right. And would you agree it says
11 remaining monthly payments are due over an estimated 12
12 months?

13 A Yes, I would agree with that.

14 Q Did Ms. Allen's firm agree to a longer, or an
15 extended period of payment for rate case expense in this
16 docket?

17 A They've agreed with the payment schedule we've
18 been on, and I think they've billed around \$75,000.
19 We've paid around \$38,000, I believe, ball park.

20 Q Okay.

21 A They have no concern over their bill, as she
22 testified yesterday.

23 Q But to your knowledge WMSI will be able to
24 repay all the rate case expense owed to Mr., Mr. Seidman
25 and Ms. Allen's firm?

1 **A** We will, one way or another.

2 **Q** Will it be within four years or a shorter
3 period?

4 **A** I think it'll be within four years, probably
5 shorter.

6 **MR. SAYLER:** All right. All right. I have
7 one last exhibit to pass out, and this will bring us in
8 for a landing, Commissioners. I would like this one
9 identified for the record. It is a composite of
10 Selected Commission Orders, Excerpts. But we have
11 highlighted them for ease of reading, and as such, we
12 would like those placed in the record.

13 **COMMISSIONER EDGAR:** Okay. We will mark as
14 110 Selected Commission Orders, Excerpts.

15 (Exhibit 110 marked for identification.)

16 **BY MR. SAYLER:**

17 **Q** Mr. Brown, if you will take a moment to look
18 at Bate stamp page number 1 through 3.

19 **A** Okay.

20 **Q** You would agree that this is a Commission
21 order related to this utility; correct?

22 **A** It's a different, different utility, different
23 legal entity.

24 **Q** It says St. George Island Utility Company
25 Limited; correct?

1 **A** Right. Which is a different utility company.

2 **Q** And Water Management Services is the successor
3 in interest to St. George Island Utility; correct?

4 **A** Successor in the, in the certificate, yes.
5 There was a name change and, on the certificate.

6 **Q** Isn't it true that you were the owner and
7 majority shareholder of SGI?

8 **A** I was the principal of both; still am.

9 **Q** Okay. So, in other words, it's essentially
10 the same utility with the same water certificate dating
11 back to this, the date of this order, which is 1990;
12 correct?

13 **A** Yeah. 22 years ago.

14 **Q** In the order title, doesn't it say Order
15 Setting Show Cause Matters for Hearing on Expedited
16 Basis and Requiring --

17 **MR. FRIEDMAN:** I would object unless he shows
18 some relevance to what this order has got to any of the
19 issues that we're talking about today. It's the same
20 thing they argued at the agenda. And I don't know why
21 he's arguing about cases that are -- they are what they
22 are.

23 **COMMISSIONER EDGAR:** Your objection is to the
24 --

25 **MR. FRIEDMAN:** Is relevance.

1 **COMMISSIONER EDGAR:** Of the question?

2 **MR. FRIEDMAN:** It's relevance. I don't see
3 the relevance of this particular, I don't know about the
4 rest of them, but this particular document about what
5 happened in 1990, what relevance that has to any of the
6 issues in an existing rate -- in the current rate case.

7 **COMMISSIONER EDGAR:** Mr. Sayler.

8 **MR. SAYLER:** It goes to the relevance of what
9 this Commission can or cannot do with regards to
10 regulating this utility as far as the Commission's
11 history of regulating this utility, and it directly
12 supports testimony that Mr. Schultz put into the docket.

13 **COMMISSIONER EDGAR:** I'll allow it.

14 **MR. SAYLER:** And I just have -- thank you.

15 **BY MR. SAYLER:**

16 **Q** I have really about four quick questions for
17 you, Mr. Brown.

18 **A** Okay.

19 **Q** You would agree by this order the Commission
20 ordered WMSI or the utility to obtain the title to the
21 elevated storage tank and tank site; correct?

22 **A** I haven't read this order in 22 years. It
23 says what it says.

24 **Q** Okay. And prior to the Commission ordering
25 the utility to acquire a title, it was owned by Armada

1 Bay Company; is that correct?

2 A If that's what it says.

3 Q If you look at page 2, the highlighted
4 section.

5 A Page 2?

6 Q Bate stamp page 2.

7 A Okay.

8 Q The highlighted section. With regard to
9 Armada Bay Company, that was the predecessor in interest
10 of Brown Management Group?

11 A That was one of many, yes.

12 Q And you were the owner and controller of that
13 entity?

14 A Armada Bay, yes, sir.

15 Q All right. So the Commission ordered you
16 essentially to sell the utility from yourself to
17 yourself or to your utility; correct?

18 A I haven't read this order lately. If it says
19 that, it says it.

20 Q All right. If you'll turn to the next order,
21 Bate stamp page 004.

22 A Okay.

23 Q Mr. Brown, isn't it true in 1992 the PSC
24 opened a docket to revoke St. George Island's water
25 certificate for, quote, utility history of noncompliance

1 with orders, rules, and statutory requirements?

2 A That is true. If I could explain.

3 MR. FRIEDMAN: Please do.

4 THE WITNESS: They did that. They also went
5 to circuit court and tried to do that, and Judge Davey
6 spent about ten minutes looking at the law and said you
7 have no power to do that and threw the PSC out of court.

8 BY MR. SAYLER:

9 Q Mr. Brown, if you will turn to Bate stamp page
10 007.

11 A Okay.

12 Q You would agree that this is an order in
13 Docket Number 940109-WU?

14 A Yes.

15 Q And I don't recall -- I believe it was in
16 testimony earlier today you stated that it's been a long
17 time since you've had a general rate increase. Would
18 that 1994 docket be the last time you had a significant
19 rate increase, like a full rate case?

20 A The last time we had a significant rate
21 increase was 1994 based on a 1992 test year, about 20
22 years ago. Right.

23 Q Okay. If you'll turn to page 8, Bate stamp
24 page 8. You would agree that this Commission ordered
25 the utility to escrow funds in order to ensure that

1 monies were available for capital improvements?

2 **A** That's correct.

3 **MR. SAYLER:** Commissioners, I'm not going to
4 ask questions on the next order. I'm just going to
5 leave it at that. I would note that the record that --
6 the highlighting in that order was done by OPC, along
7 with any emphasis added in that. And that is Order
8 Number 23174.

9 And with that, Commissioners, the Office of
10 Public Counsel concludes our cross-examination of the
11 witness. Thank you.

12 **THE WITNESS:** If I could explain one thing
13 about the last, my last answer. I would like to point
14 out that you, the Commission is --

15 **COMMISSIONER EDGAR:** Hold on. Is it a
16 clarification of a statement that you've already made?

17 **THE WITNESS:** I would just like to clarify
18 that we are escrowing these funds at my suggestion. I
19 voluntarily wrote a letter to the Commission some time
20 ago suggesting that these funds, this rate increase be
21 escrowed.

22 **COMMISSIONER EDGAR:** Okay. Thank you.

23 **THE WITNESS:** That's being done at my
24 suggestion.

25 **COMMISSIONER EDGAR:** Thank you.

1 **THE WITNESS:** Voluntarily.

2 **COMMISSIONER EDGAR:** Period?

3 **THE WITNESS:** Well --

4 **COMMISSIONER EDGAR:** No.

5 (Laughter.)

6 **THE WITNESS:** I just don't see what 22
7 years -- this is a different company than 22 years ago.

8 **COMMISSIONER EDGAR:** Mr. Brown, Mr. Brown,
9 thank you very, very much.

10 Are there questions from staff for this
11 witness?

12 **MS. BARRERA:** No, there are no questions,
13 Commissioner.

14 **COMMISSIONER EDGAR:** Commissioners?
15 Commissioner Brown.

16 **COMMISSIONER BROWN:** I do have a question, a
17 couple actually, but I'm going to try and be brief
18 because I'm not feeling well.

19 **THE WITNESS:** Okay.

20 **COMMISSIONER BROWN:** And I know we have a lot
21 of information in the record. But your sole job is,
22 currently right now is president of WMSI?

23 **THE WITNESS:** That's my sole job.

24 **COMMISSIONER BROWN:** So all of the other
25 affiliated companies, how do you dedicate your time to

1 those?

2 **THE WITNESS:** They're mainly passive assets.
3 And in the last case we had this controversy. I said it
4 was about 5%. The Commission in the last case said, no,
5 we think it's closer to 12.5%. So they entered an order
6 that reduced my salary, Ms. Chase's salary, and Bob
7 Mitchell's salary, and the, and the rent and everything
8 else by 12.5%. And that 12.5% reduction is reflected in
9 our MFRs in this case. So we have some passive assets
10 and we take checks in and out, and there's not a lot of,
11 not a lot of work to be done.

12 **COMMISSIONER BROWN:** I'm a little confused
13 about the tower.

14 **THE WITNESS:** About what?

15 **COMMISSIONER BROWN:** The tower.

16 **THE WITNESS:** The tower.

17 **COMMISSIONER BROWN:** With the, with the lease
18 rights.

19 **THE WITNESS:** Okay.

20 **COMMISSIONER BROWN:** I know that you got into
21 a discussion with Mr. Sayler about WMSI owning the tank
22 and then -- I mean, pardon me -- tower, but then the
23 lease rights were owned by BMG.

24 **THE WITNESS:** They are now.

25 **COMMISSIONER BROWN:** I'm just confused by how

1 WMSI then doesn't own the lease rights. How does BMG
2 own the lease rights to something that is legally in,
3 legally owned by WMSI?

4 **THE WITNESS:** We had a hurricane years ago,
5 and in an emergency we had to have extensive repairs
6 done on the island, primarily in the state park. We had
7 a contractor from Tampa who came in and did that work.
8 We paid him about \$60,000 in cash, which is all the cash
9 we had, and I negotiated to give him the lease rights in
10 that tower as, in lieu of cash. And that was booked as
11 a plant investment.

12 **COMMISSIONER BROWN:** So the air rights above.

13 **THE WITNESS:** The air rights, the air rights,
14 the rights. And at that time there were no leases, were
15 no antenna at all, but that had value. And later Brown
16 Management bought that back and now owns it. And now
17 Brown Management is owned 100% by Water Management, so
18 in effect they still own everything.

19 **COMMISSIONER BROWN:** Water Management.

20 **THE WITNESS:** Water Management owns it all
21 now.

22 **COMMISSIONER BROWN:** Okay. The lease
23 agreements that are with the cell phone companies, are
24 they in BMG or WMSI's name?

25 **THE WITNESS:** BMG.

1 **COMMISSIONER BROWN:** Okay. That's much
2 clearer. Thank you.

3 **THE WITNESS:** Thank you.

4 **COMMISSIONER EDGAR:** Commissioner Balbis.

5 **COMMISSIONER BALBIS:** Thank you. I have a few
6 questions for Mr. Brown. I guess just to focus on the
7 questions that I had for the other witness on the letter
8 to the Radey Law Firm with Susan Clark, and I'm focusing
9 on the term "costly errors." And I understand you have
10 attorney/client privilege.

11 So what I want to focus on is were there
12 additional rate case expense, expenses incurred due to
13 those errors?

14 **THE WITNESS:** No. No. They handled the case
15 through the final order and then they withdrew about a
16 week later. They billed through the, through the
17 January 3rd final order in that prior docket, but I
18 don't think it added anything to rate case expense. It
19 was just a question of when they were going to be paid
20 for the rate case expenses that had been incurred.

21 **COMMISSIONER BALBIS:** Did you attempt to
22 negotiate a lower rate case expense due to those errors?

23 **THE WITNESS:** I wrote a letter, which I would
24 construe as a negotiation letter in response to a letter
25 that demanded \$5,000 a month, in which I stated or

1 implied that if they sued me personally for that
2 \$150,000, there might be a problem. And then I met with
3 Susan Clark and we never discussed the costly errors.
4 We agreed to shake hands. And I answered the
5 interrogatories, I've got no problem, I have no
6 disputes, and she agreed and I agreed. And so I guess
7 in a nutshell, rather than having a problem, we agreed
8 to not have a problem and be friends and we are, and I'm
9 paying her 2,000 a month pursuant to our agreement.

10 And like I said in my testimony, the, the rate
11 case expenses, if you take 47 -- or 48 months, it would
12 come out to about \$4,700 a month. Well, I'm now paying
13 4,500 a month to these three vendors, and I've paid all
14 the other rate case expenses. So that's the long and
15 the short of it.

16 But it hadn't, it hadn't reduced or increased
17 rate case expenses and they will be paid. And I'm in
18 the stage of selling Water Management Services, if I
19 can, and -- if we can agree. And my agreement with
20 Susan Clark is that as soon as it's sold, she and
21 everybody else will be paid in full. Otherwise, she'll
22 be paid over the period of time at 2,000 a month, which
23 is the same amount stated in our original letter. And
24 she and Terry Deason, everybody understood that we had
25 cash flow problems and they got worse after the case was

1 over.

2 **COMMISSIONER BALBIS:** No. I understand. And
3 I understand the payment arrangement that you
4 negotiated.

5 I'm just confused as to if you had a vendor
6 that is making costly mistakes, that you didn't try to
7 either question some of the costs to reduce the expense
8 or negotiate a lower amount.

9 **THE WITNESS:** Well, you understand that's one
10 man's opinion. She would not agree there were any
11 costly mistakes. And I'm sure the Commission and
12 everybody in this room but me, and especially the staff
13 and Commissioner Edgar who participated, probably thinks
14 that everything was fine and no mistakes were made. And
15 I just had a problem with the order, and I wanted Susan
16 Clark and the rest of them to know that if they wanted
17 to try to get a judgment against me personally
18 immediately, that we might have an issue, probably would
19 have an issue. But that lasted for a few weeks and we
20 settled and shook hands. And I think OPC has done a
21 good job as collection agent for them maybe. But I
22 answered the questions, I have no problems with it, I
23 have no dispute. They'll be paid in full and it will
24 be.

25 **COMMISSIONER BALBIS:** Okay. Let me -- just

1 two more questions. There's been a lot of discussion
2 about the water tank both in this proceeding and what
3 we've done recently. What is the status of the water
4 tank replacement?

5 **THE WITNESS:** We got a low bid back a year,
6 year and a half ago. Hank Garrett, who is my General
7 Manager, worked as the manager for East Point, and he
8 got me together with Crum Tank. And because they were
9 building one over there and we negotiated a very low,
10 good price based upon building two tanks at once,
11 because I thought we could get going, I thought we were
12 going to be able to after the last case, so there would
13 not be double mobilization, which is a big part of a
14 contractor's startup costs and all.

15 And at this point they have built the one at
16 East Point, which is about the same size, same style and
17 all, but they're gone. And so we may have to, as part
18 of this true-up I'm going to try to hold them to the
19 same price. But our bid on that tank was 500 something
20 thousand -- no, yes -- about 600 and something thousand,
21 which the reason I point on my chart, that's about what
22 we've spent so far on soft costs trying to get started.

23 But I've got to go now after this case, after
24 the dust settles, and see what the revenue is, I've got
25 to sit down with my bank and try to get a USDA loan in

1 place. And we intend to do that and we intend to start
2 construction on all the improvements, part of which is
3 the ground storage tank.

4 **COMMISSIONER BALBIS:** But I thought the rates
5 that you were currently collecting included revenue for
6 the construction of that tank and placed into escrow.

7 **THE WITNESS:** The -- that's true. But --

8 **COMMISSIONER BALBIS:** You would still need
9 additional -- I'm confused. You're provided the revenue
10 for that tank.

11 **THE WITNESS:** What everybody needs to
12 understand is in the utility business, in any utility
13 business, to get a loan you've got to first convince the
14 bank that you have your operations covered, and then
15 they want a reserve over that. And Citizens Bank, who
16 I'm dealing with, has agreed that reserve would be 15%.
17 So I've got to show them that I can operate the company
18 with a 15% reserve before we get to debt service.

19 So you can't -- I mean, I hear people
20 constantly say, oh, we want the improvements but we've
21 got problems with all these other things. But it's not
22 two separate things. That's why -- I mean, we live in a
23 cash flow world. And unless you can meet all of your
24 normal operating cash flow requirements and then have
25 enough left over for debt service, then there's a big

1 problem.

2 So you can't separate these. That's why we're
3 asking for, now that we're in this PAA process, I think,
4 for example, I'm entitled to some transportation
5 expense. And there's some other errors made in the PAA
6 order which we were willing to overlook, but I want to
7 make it clear that now we're here and we've spent all
8 this money, we think we're entitled to those other four
9 or five items that Mr. Friedman will be briefing
10 everybody on. There hasn't been a lot of talk about
11 them, but I think it's not fair for me and Ms. Chase to
12 have to use our personal vehicles for nothing.

13 **COMMISSIONER BALBIS:** Wait a minute. I want
14 to focus on the tank. When do you anticipate breaking
15 ground on the ground storage tank?

16 **THE WITNESS:** About 120 days after we have a
17 consummating order, depending on petitions for
18 rehearings, appeals, and all those things.

19 I mean, this is a, a meat grinder of a process
20 from my standpoint. And I know you have your processes,
21 but Mr. Friedman tells me it's going to be April, May,
22 something like that. So you would add, I'd say, 90 to
23 120 days to go through the USDA approval process with
24 Citizens Bank.

25 We, we had a, we had a loan, a USDA loan for

1 improvements with Citizens Bank before, which worked
2 fine and we paid it off. So we're trying to get another
3 one. We had a loan we thought with Fidelity, but that
4 was killed.

5 **COMMISSIONER BALBIS:** But you're currently
6 collecting the revenues that we approved in August. An
7 order, I believe, came out in August or September, which
8 included the revenue for the construction of the
9 groundwater storage tank, did it not?

10 **THE WITNESS:** That's correct. And we --

11 **COMMISSIONER BALBIS:** So why would you have to
12 wait until this process ends if you're already receiving
13 the revenue for that? Because everyone understands it
14 needs to be done, and I just want to understand.

15 **THE WITNESS:** Well, I mean, I appreciate that.
16 And don't take this personally, but from my stand --
17 from this side of the table, that seems a little
18 disingenuous, frankly. Because I came in here four
19 years ago and said this was a dire emergency, and I know
20 you weren't here, you weren't part of that, but here it
21 is four years later and 600 and something thousand
22 dollars later and I still don't have an order from the
23 Commission that I can go to the bank with.

24 You can't go over there and say, well, we got
25 a PAA order and we think it's going to be okay. I can't

1 truthfully say we think OPC is going to roll over and
2 not file a petition of rehearing, and I can't say that
3 we have a final order until there is a consummating
4 order.

5 **COMMISSIONER BALBIS:** Okay.

6 **THE WITNESS:** I mean, that's the reality from
7 a banker's point of view.

8 **COMMISSIONER BALBIS:** My next, or my last
9 question is concerning the DEP loan, and that's been the
10 subject of discussion both here and before. When is the
11 next payment due?

12 **THE WITNESS:** May 15th.

13 **COMMISSIONER BALBIS:** And are you anticipating
14 meeting the May 15th?

15 **THE WITNESS:** Yes, definitely.

16 **COMMISSIONER BALBIS:** Okay.

17 **THE WITNESS:** We had a payment due, \$40,000.
18 We paid that.

19 Just to clarify, the DEP loan is in good
20 standing and I'm meeting the agreement I made with them.
21 I said, I'm going to have to put you at the bottom of
22 the priority list, but as soon as we get through this
23 case, you'll be on top. And now I'm escrowing -- we're
24 escrowing their money.

25 **COMMISSIONER BALBIS:** Okay. Thank you. All

1 the other questions that I have, I think there's enough
2 evidence in the record from a financial standpoint to
3 address my concerns. So thank you.

4 **COMMISSIONER EDGAR:** Thank you.

5 Commissioner Brown.

6 **COMMISSIONER BROWN:** Sorry. One last question
7 about accounting professionals that WMSI retains other
8 than Ms. Allen. Do you regularly retain other
9 accounting -- accountants?

10 **THE WITNESS:** Yes. My regular accountant is
11 Barbara Withers and Coleman Leonard, Leonard & Williams.

12 **COMMISSIONER BROWN:** Thank you. And for the
13 affiliated companies, associated companies, are they the
14 same accountant or separate accountants?

15 **THE WITNESS:** Could you repeat that?

16 **COMMISSIONER BROWN:** For your associated
17 companies, affiliated companies with WMSI, are they the
18 same accountants or different accountants?

19 **THE WITNESS:** They're different accountants
20 from Jeanne Allen, who is the accountant in this case.
21 Barbara Withers, who is not the accountant in this case
22 but who reviewed this, all this for me and wrote me a
23 letter, does the accounting for -- does the tax returns
24 for all my entities.

25 **COMMISSIONER BROWN:** And do you regularly

1 maintain her for all of your entities outside of this --

2 **THE WITNESS:** I do. I hired Jeanne Allen, who
3 used to work here, and I just wanted her to do the MFRs.
4 She has more experience with them.

5 **COMMISSIONER BROWN:** Why don't -- why didn't
6 you retain a general ledger for BMG for the years I
7 think -- up until 2012?

8 **THE WITNESS:** It's just an additional expense.
9 And my accountant, I have a full-time accountant, and he
10 gets with Ms. Withers at the end of the year and gives
11 her the checks and they do the tax returns. But I
12 didn't -- I have not had a need to have a formal general
13 ledger for Brown Management.

14 **COMMISSIONER BROWN:** In your general duties,
15 sorry, and responsibilities as president of WMSI, do
16 you, do you do any of the personal accounting?

17 **THE WITNESS:** Do I what?

18 **COMMISSIONER BROWN:** Do you do any of the
19 personal accounting for WMSI?

20 **THE WITNESS:** I'm the Chief Financial Officer.
21 I supervise it. Mr. Mitchell does it. He's a full-time
22 accountant.

23 **COMMISSIONER BROWN:** Okay. Thanks.

24 **COMMISSIONER EDGAR:** Thank you.

25 Mr. Friedman.

1 order granting that, that until the total revenues of
2 the company are determined, not just the revenues
3 associated with the storage tank, but until the total
4 revenues of the utility are determined, that the bank
5 is, no bank is going to consider your loan?

6 **A** No bank will touch that, and we had that
7 discussion before. But Mr. Sayler and everybody made it
8 clear that those revenues are subject to refund, those
9 escrowed amounts, and all you've got to do is read the
10 order. And the interim rates can't be touched. All
11 these rates, the PAA rates can be touched only with a
12 written order from the Commission. But when this case
13 is over, the legal possibility remains that we might
14 have to refund all that.

15 Mr. Sayler wanted more because he thought
16 there would be a greater, might have to refund
17 40 something percent instead of 38%. I mean, no bank is
18 going to touch this improvement project until this case
19 is over. And over means a final order that's not
20 appealed.

21 **Q** And do you recall when -- they didn't number
22 this exhibit because it was an exhibit to the staff's
23 deposition where it had the 2006 and 2006 annual -- 2006
24 and 2007 annual reports, do you?

25 **A** I remember that.

1 Q And Mr. Sayler walked you through the fact
2 that there was an addition to plant in 2006. Do you
3 recall that?

4 A Right.

5 Q And then in 2007, he pointed out that there
6 were no additions to the, to the plant in 2007. Do you
7 recall that?

8 A Right.

9 Q What he didn't point out, and let me ask you
10 this, is it shows on this 2007 annual report that there
11 was a retirement of \$236,000. Do you recall that?

12 A Right.

13 Q Is that your reversal of the error in putting
14 it in in the first place? Is that how it's reflected?

15 **MR. SAYLER:** Objection, leading. But --

16 **THE WITNESS:** Well, we sold it, I think we
17 sold it to Brown Management in 2007 and there was a gain
18 on sale. But I would like to clarify there's a gain on
19 sale which we recorded, which is always true from a tax
20 point of view. You have a gain on sale. That's not the
21 real issue. The issue is whether that gain goes to the
22 shareholders, me and a few other people, or whether that
23 goes to the benefit of the ratepayers. There's still a
24 gain on sale for tax purposes.

25 **MR. FRIEDMAN:** That's all the questions I

1 have. I'd like to move Mr. Brown's exhibits.

2 **COMMISSIONER EDGAR:** All right. Okay. I have
3 those as 77 through 88. Hearing no objection, those are
4 entered into the record at this time.

5 (Exhibits 77 through 88 admitted into the
6 record.)

7 **MR. SAYLER:** And Office of Public Counsel
8 would move Exhibits 97 through 110 in the record.

9 **COMMISSIONER EDGAR:** Mr. Friedman.

10 **MR. FRIEDMAN:** I had previously expressed a
11 relevance objection, but I'm sure that y'all can
12 determine on your own whether you think it's relevant or
13 not.

14 **COMMISSIONER EDGAR:** Thank you. Okay. All
15 right. Thank you, Mr. Friedman. With that, we will, we
16 will enter 97 through 110.

17 (Exhibits 97 through 110 admitted into the
18 record.)

19 Staff, any other matters at this moment?

20 **MS. BARRERA:** Staff will state that the
21 transcript of the technical and customer service hearing
22 is due on January 28th, 2013. Briefs will be due
23 February 11th, 2013. The staff recommendation will be
24 due April 12th, 2013, for an April 25th, 2013, Agenda
25 Conference. Outside of that, staff has no other

1 matters.

2 **COMMISSIONER EDGAR:** Okay. Thank you.

3 Anything from the parties?

4 **MR. SAYLER:** Madam Chair, just one question.

5 Regarding the brief date, since there's such a long
6 respite between the brief filing date and the Agenda
7 Conference where it will be determined, would it be
8 possible to get an extra five days or a week to file a
9 brief, especially since the transcript is due about ten
10 days before that?

11 **COMMISSIONER EDGAR:** The 28th. So you're
12 asking about the February 11th date that I presume was
13 set in the Prehearing Order?

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

15 **COMMISSIONER EDGAR:** Let me look to staff
16 quickly.

17 **MS. BARRERA:** Let me ask.

18 Staff really scheduled these dates and argued
19 for these dates because they felt that they needed time
20 to write their recommendation in view of all the
21 documents and such.

22 **COMMISSIONER EDGAR:** Mr. Sayler, that's a no.

23 **MR. SAYLER:** That's okay. Thank you.

24 **COMMISSIONER EDGAR:** Sorry. Anything else?

25 Okay. Then on behalf of my colleagues, let me say thank

1 you to all the parties, to the witnesses. Thank you to
2 our staff. Everybody drive save, and we are adjourned.

3 (Proceeding adjourned at 12:30 p.m.)
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1 STATE OF FLORIDA)
2 : CERTIFICATE OF REPORTER
3 COUNTY OF LEON)

4 I, LINDA BOLES, RPR, CRR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED THIS 29th day of January,
19 2013.

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25


LINDA BOLES, RPR, CRR
FPSC Official Commission Reporter
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