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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150071-SU

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

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 5

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER RONALD A. BRISÉ
COMMISSIONER JIMMY PATRONIS

DATE: Tuesday, March 1, 2016

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

REPORTED BY: DEBRA KRICK
Court Reporter
(850) 894-0828

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

2 CHAIRMAN BROWN: Moving along, we have a water
3 matter here with K W, and we also have two
4 customers that would like to participate
5 telephonically. So while the parties kind of
6 scatter about, I will just -- recognize, to our
7 technological folks that are working behind the
8 scenes to get those folks on board, we have two
9 customers that would like to address the Commission
10 at the proper time.

11 Welcome. All right, guys, so we have two
12 customers on the phone right now, but before we get
13 to that, I would like our staff to give us kind of
14 a brief overview before we go into the actual issue
15 by issue. So with that --

16 MS. NORRIS: Amber Norris with Commission
17 staff.

18 Item 5 is K W Resort Utilities' request to
19 increase wastewater rates. K W Resort is a Class A
20 utility providing wastewater only service to
21 approximately 2,000 customers in Monroe County. K
22 W Resort has requested both pro forma plant and pro
23 forma expenses in this document.

24 The requested pro forma plant is based on the
25 utility's need to expand its existing wastewater

1 treatment facility. The requested pro forma
2 expenses include the recovery of legal fees
3 associated with a challenge to its modified DEP
4 operating permit, as well as additional expenses
5 associated with an upgrade in operations to meet
6 advanced wastewater treatment standards.

7 Staff is recommending a two-phase with a rate
8 increase of approximately 44 percent in Phase I,
9 and approximate 11 percent increase over the Phase
10 I revenue requirement in Phase II.

11 Staff held a customer meeting in the service
12 territory on December 10th, 2015. Approximately 40
13 customers attended, and 12 spoke. To date, the
14 Commission has received six letters from customers
15 addressing the proposed rate increase.

16 Mr. Martin Friedman, the utility's president,
17 and Mr. Christopher Johnson are here on behalf of
18 the utility. Mr. Erik Sayler and Ms. Tricia
19 Merchant are here on behalf of OPC. Mr. Schef
20 Wright is also here on behalf of Monroe County, the
21 utility's largest customer. And as you referred
22 previously, we also have two customers who wish to
23 participate telephonically.

24 CHAIRMAN BROWN: Thank you, Ms. Norris,
25 appreciate that.

1 Right now, we have Ann Aktabowski, is that
2 correct? And we have Mr. Joe O'Connell who are on
3 the phone. And I have indicated to them that they
4 will be allowed three minutes to address the
5 Commission, and if Commissioners have any
6 questions, then they may do so after each speaker.

7 We will start with Ms. Ann Aktabowski, are you
8 there?

9 MS. AKTABOWSKI: I am here.

10 CHAIRMAN BROWN: Welcome.

11 MS. AKTABOWSKI: Thank you. Thank you for
12 giving us the opportunity to speak.

13 I am speaking on behalf of the unit owners of
14 Harbor Shores Mobile Home Homeowners' Association
15 in Stock Island.

16 The young lady that just spoke indicated that
17 the increase is 44 percent in Phase I, and
18 11 percent in Phase II. Let me assure you that is
19 the not the case for the homeowners in Harbor
20 Shores. In actual fact, our increase will be, on
21 average per month, 80 to 90 percent.

22 If you look at the chart, 17-1, which the
23 staff produced, you will see that the base rate is
24 going from \$17.81 to \$39.57. That is a whopping
25 122 percent increase over the base rate. That

1 effectively says, if you use no water whatsoever,
2 you will pay an additional 122 percent.

3 (INAUDIBLE) -- rate, that also increased, but
4 as I said, based on just the last few months and
5 the current month of January, you will be paying on
6 average of 82 percent. This seems to be totally,
7 totally outlandish.

8 So what is effectively a private sewer system
9 is requesting a rate -- a rate increase. And
10 again, we have said at the previous meeting in
11 December, we are not against a rate increase as
12 long as it is reasonable, but this private sewer
13 company is looking for a huge increase, and
14 primarily they need this increase to accommodate --
15 (INAUDIBLE) -- of a new building, new marina and a
16 restaurant and new condominium, multi-million
17 dollar condominiums, which, by the way, happens to
18 be being built by the same people, some of the same
19 people who own the private --

20 CHAIRMAN BROWN: Ann, can I interrupt you?
21 Could you just speak up and just speak a little
22 slower and more clearly for us? We are having
23 some -- a difficult time hearing you. Go ahead.
24 Ms. Aktabowski, are you there?

25 MS. AKTABOWSKI: Is there a problem?

1 CHAIRMAN BROWN: Yeah, we can't hear you that
2 clearly. Could you just speak up? Ann Aktabowski,
3 are you there?

4 Mr. O'Connell, are you there?

5 MR. O'CONNELL: Yes, I am.

6 CHAIRMAN BROWN: Okay. We -- for some reason,
7 we may have lost her. Would you like to -- are you
8 ready to go if we don't have any -- we can't really
9 ask her any questions, so you have got the floor.

10 MR. O'CONNELL: Yes. I own a marina right
11 next door to the sewer plant. We have been
12 neighbors for years. And, you know, I have read
13 the staff's recommendation, and I have also looked
14 into, you know, the time that they spent on doing
15 these recommendations.

16 We have to pay for, you know, the necessary
17 way to dispose of our sewage, and, as a marina
18 here, I don't have any problem with the increase in
19 the rates. What I have a problem with is the
20 quality of service, in that I don't mind paying
21 more for a sewer company that's in the middle of a
22 residential neighborhood to be able to control, and
23 spend money on some of the odor control which they
24 now have no control over.

25 It makes it hard for me to pay an additional

1 \$147,000 worth of impact fees they have requested,
2 plus a huge rate increase, which I don't have any
3 problem with the day-to-day service, you know, and,
4 at the same time, have my business affected and
5 reduced by the smell of the sewer company. That's
6 one problem I have.

7 The other problem I have is that I understand
8 that the staff made a recommendation after months
9 and months of work. And then I understand that the
10 sewer company now added an additional million
11 dollars worth of capital in order to change some of
12 the formulations that the staff has recommended.
13 It seems to me that, you know, if they want to
14 start all over at zero again on their
15 capitalization, and the way that they receive their
16 impact fees, then they need to go back to staff and
17 spend another time doing a audit again, because
18 somehow, a million dollars was missed in the audit
19 and that's -- and that's a figure that I am using
20 that I have heard, and I don't really quite
21 understand it.

22 My recommendation is, personally, that the
23 Commission, you know, rely upon the staff, which
24 has worked on this for a long time, and follow the
25 staff's recommendations.

1 CHAIRMAN BROWN: Thank you, Mr. O'Connell.

2 Commissioners, do you have any questions for
3 Mr. O'Connell? Seeing none, thank you for your
4 participation.

5 Is Ms. Aktabowski back on the phone?

6 MS. AKTABOWSKI: Yes, I am. Can you hear me?

7 CHAIRMAN BROWN: Yes, it's clearer. Would you
8 like to finish?

9 MS. AKTABOWSKI: Yes, I would definitely. My
10 a apologies. I don't know what went wrong there.

11 Okay. What I was saying was -- I don't know
12 how much you heard of my first part, but what I was
13 effectively saying was if the 100, or the -- what
14 is basically an average of 80 to 90 percent
15 increase for our people in our mobile home park is
16 the raise that's needed by the utility company in
17 order for expansion. That expansion is primarily
18 because the same private utility company is
19 building the condos, marinas and restaurants that
20 require most of the expansion expense. We find
21 this to be absolutely appalling. We don't
22 understand how it can even be allowed to happen.

23 Having said all of that, as I said, we -- we
24 anticipated an increase based on our December
25 meeting. We anticipated a reasonable increase of

1 25 to 30 percent, and included that in our 2016 --

2 (Lost communication with the speaker.)

3 CHAIRMAN BROWN: Right in the middle of the
4 sentence. Well, thank you, Ms. Aktabowski.

5 K W, we are going to go to you first, and we
6 would like you to highlight the issues of concern
7 and say, when you are highlighting those issues, if
8 you could state the actual issue number for us,
9 that would be helpful. And then, when we get to
10 the questions in the issues, we will open it up to
11 the Commissioners to ask you specific questions
12 issue by issue. But please just give an overview
13 of the specific issues that you have concern with.
14 Starting with Mr. Friedman.

15 MR. FRIEDMAN: All right. Thank you. Marty
16 Friedman with Friedman & Friedman on behalf of K W
17 Resort Utility. Also with me, as mentioned
18 earlier, is Mr. Chris Johnson, who is the president
19 of K W Resort Utility, and also a licensed
20 professional engineer.

21 Did you want me to just mention the issues, or
22 do you want me to make our full-fledged argument on
23 what those issues are?

24 CHAIRMAN BROWN: You can succinctly make your
25 full-fledged argument on what the issues are, but

1 please highlight the issues for us.

2 MR. FRIEDMAN: Do you want me to address any
3 comments that the customers made?

4 CHAIRMAN BROWN: Sure.

5 MR. FRIEDMAN: I will start out just with
6 what -- I am not sure I understood, frankly, a lot
7 of what Ms. -- I had a really hard time
8 understanding that as well. But as far as the
9 gentleman from Safe Harbor, a couple issues.

10 One is that, as he pointed out, the sewer
11 plant has been there for a long time, you know, he
12 built his restaurant next to the sewer plant. The
13 sewer plant didn't build it next to the restaurant.
14 But that being said, there really aren't any odor
15 issues out at the sewer plant.

16 And if you look at the staff recommendation,
17 Table 1-1 points out that in the test year in the
18 four previous years dealing with odor, one
19 complaint to the PSC in five years. The utility
20 had no complaints in that five years, and DEP had
21 no complaints about odor in that five years. So I
22 find it perplexing that, if this gentleman had --
23 and then, of course, they, you know, with our case
24 we filed we have odor complaints. And I find it
25 perplexing that he didn't -- he never complained to

1 anybody else until his rates were going to go up,
2 and then he complained, so there really --

3 And this was raised, and the staff has vetted
4 it, and there really is no -- any -- there is no
5 odor issue with the -- at the wastewater treatment
6 plant.

7 Do you have anything to add to, Chris?

8 MR. JOHNSON: Yes. Good morning, Madam Chair,
9 Commissioners. Chris Johnson K W Resort Utilities,
10 Corp.

11 Addressing Mr. O'Connell, he brought up in his
12 conversation a one million dollar difference. I
13 just wanted to clarify, the utility began its
14 design of the wastewater in 2013. We have had
15 legal challenges. It's been a protracted process,
16 it's been a difficult process.

17 The difference that he is pointing to, first
18 of all, it is not a million dollars. We don't have
19 a contract at present. As soon as I get back to
20 Key West, we have a conference call. We are
21 negotiating with a contractor. We are close, but
22 we do not have a contract.

23 The differences between engineering estimates
24 and actual bids, no engineering estimate is always
25 going to be perfectly right on the number. That's

1 why you bid jobs out. We bid this job out to four
2 qualified contractors. We had four respondents who
3 are qualified to do wastewater work in the Keys.

4 Thank you.

5 CHAIRMAN BROWN: Thank you.

6 Mr. Sayler.

7 MR. SAYLER: I am not sure if Mr. Freed
8 finished making his points, but regarding --

9 CHAIRMAN BROWN: Hold on, Mr. Sayler. I mean,
10 Mr. Friedman, did you finish?

11 MR. FRIEDMAN: I did on my comments to the
12 customers. I have -- we have three other issues --

13 CHAIRMAN BROWN: Okay. Go ahead.

14 MR. FRIEDMAN: -- that we have substantial
15 comments about.

16 CHAIRMAN BROWN: Thank you. Go ahead.

17 MR. FRIEDMAN: All right. Thank you.

18 The first is Issue No. 3, and this deals with
19 the staff's recommendation that the pro forma plant
20 be considered as a Phase II project. In other
21 words, at the end of the construction period is
22 when we would begin collecting the revenues to
23 implement the pro forma plant.

24 I would request that what the Commission do is
25 to follow what it did in water management services

1 case, which I think is a similar type of case,
2 although, it was a water only case; and that you go
3 forward with approving the full amount of the pro
4 forma increase in a Phase I -- along with Phase I
5 as a single phase rate increase, and a true-up at
6 the end. And that way, there is no -- there is no
7 injury to any customer.

8 And I would point out that, as Mr. Johnson
9 pointed out, is that the project is coming in
10 substantially higher than what the pro forma
11 estimate was, so there is no likelihood that the
12 amount being collected during this period will be
13 greater than what the utility is ultimately
14 entitled to.

15 And further, the utility is -- I'm going to
16 ask Mr. Johnson to address this as well. The
17 utility is already spending money on this project.
18 It's not like they are waiting for this contract to
19 be signed this week in order to do anything. They
20 have done a lot of work that I am going to have
21 Mr. Johnson explain to you what's been done, and
22 spending a lot of money that we believe is
23 appropriate to start recovering for that pro forma
24 project that will be done in 12 months.

25 Mr. Johnson.

1 MR. JOHNSON: Thank you.

2 The utility began the process of planning the
3 design for the plant expansion back in 2013.
4 Utility staff coordinated with three different
5 engineering firms to do the design of the
6 wastewater plant.

7 We had a geotech contractor come to our site
8 and conduct geotech testing at the location where
9 the pilings and the foundation will be for the new
10 plant. We had survey work done. We put together
11 the DEP permit, which the intent to issue DEP
12 permit was published in our local paper on
13 July 3rd, 2014, at which time an environmental
14 group challenged our DEP permit and held us up
15 until just recently. We have been told that the
16 DEP is now finally processing our permit.

17 We have put bid packages together along with
18 our engineers. These were comprehensive bid
19 packages that were put out to multiple contractors.

20 We facilitated the bid openings, field visits
21 and the negotiation of the bid.

22 We have also done direct purchase where at all
23 possible. In fact, right now, we are considering
24 adding a few more items to direct purchase to save
25 the utility even more money so that savings can be

1 passed along to the ratepayers, which includes --
2 we have also done negotiations with our suppliers.
3 We have an Evoqua plant that's over one million
4 dollars to purchase the plant, prefabricated and
5 delivered to site. We have negotiated that
6 contract as well.

7 All of this has been very expensive. The
8 legal expenses in the challenge, which would have
9 thrust another \$6 to \$8 million worth of deep well
10 on to our ratepayer, that lawsuit has cost us over
11 \$500,000 alone. So we have incurred significant
12 costs.

13 Thank you.

14 CHAIRMAN BROWN: Thank you.

15 Mr. Friedman, other issues?

16 MR. FRIEDMAN: Yes. Issue No. 4 --

17 CHAIRMAN BROWN: I am keeping you on track
18 today.

19 MR. FRIEDMAN: You really are. I am old, I
20 don't go quite that fast anymore.

21 My next issue is -- we only have two more
22 issues. The next issue is Issue 4, which deals
23 with the used and usefulness of the wastewater
24 treatment plant. And this would apply whether you
25 agreed to include this plant into Phase I or treat

1 it as a separate phase, the same argument applies,
2 and that is that we take exception with the staff's
3 recommendation that the plant is not 100 percent
4 used and useful. They say it's 72 percent used and
5 useful using a simple mathematical calculation.

6 In doing so, what the staff looked at was that
7 the total flows after the five years is going to be
8 610,970. It's going to be an 849,000-gallon-per-
9 day plant, simple mathematical calculation comes
10 out to 72 percent.

11 As you know, or should know by now, is that
12 the permit the DEP issued was challenged, and they
13 had a lengthy administrative proceeding. The
14 protesting party, in fact, argued that an
15 849,000-gallon-per-day plant would not be
16 sufficient, and that the utility, in fact, should
17 be building a plant at 895,000 gallons per day, not
18 to mention the deep well that Mr. Johnson
19 mentioned, but I am just speaking of the plant
20 itself.

21 So the protesting parties thought that the
22 plant needed to be better, needed to be higher,
23 more expensive. And after weeks of testimony --
24 and this was a long -- and the proposed recommended
25 order in this case is 100 something pages -- 170

1 pages long. So after all of that testimony, what
2 the Administrative Law Judge concluded was that the
3 system did need 849,000 gallons per day to handle
4 the growth through 2020, which is four years from
5 now. And while I know the Commission isn't bound
6 by this determination by -- and DEP, in fact,
7 adopted this proposed recommended -- or this
8 recommended order in total, at least as it relates
9 to this issue.

10 So, although you are not bound by a
11 determination by DEP about what the necessary size
12 of that plant is going to be in 2020, I would ask
13 that you at least give it deference, because they
14 spent a lot of time listening to witnesses on both
15 sides of the issue, and made a determination.

16 Here, so far, we are just -- you know, we
17 are -- this is a PAA process, and we are just doing
18 it through, more or less, discussion, as opposed to
19 an adversarial proceeding. And I would just
20 suggest that you at least give some serious
21 consideration to the hearing officer and the DEP's
22 determination that, in 2020, we are going to need a
23 plant that's 100 percent used and useful.

24 CHAIRMAN BROWN: Thank you.

25 Next issue.

1 MR. FRIEDMAN: Second -- no. The second point
2 on that issue -- gee.

3 CHAIRMAN BROWN: I am trying to keep you on
4 track.

5 MR. FRIEDMAN: You are a tough chairperson,
6 aren't you?

7 The second issue on -- the second point on
8 that issue is that the determination in this case
9 is contrary to what the Commission did when they
10 heard this case back in, I think, 2007.

11 In that case, the Commission did not just
12 consider the simple mathematical calculation in
13 your rule. And the rule, you know, starts with a
14 mathematical calculation, and, as you recall, it's
15 got a lot of opportunities to take into
16 consideration the uniqueness of a particular
17 situation.

18 And certainly, this wastewater plant in the
19 Keys is -- certainly comes within that category of
20 being unique, as the Commission did in the last
21 case, when they basically said, the plant, at that
22 time, was 68 percent used and useful, but they took
23 into consideration the same type of growth factors
24 we have still going on, and made a determination
25 that, in five years, it was going to be 100 percent

1 used and useful.

2 In the instant case, the Commission has
3 found -- or staff is recommending a 72 percent used
4 and useful. We still have the same growth factors
5 that we had prevalent back then, plus the -- in
6 that order, the Commission said, the record shows
7 that the facility is 100 percent used and useful
8 because the plant is designed and built to provide
9 reuse, and will be an AWT plant, as mandated by
10 Monroe County.

11 Monroe County still mandates to have it
12 changed, and we would suggest to you that the
13 staff's recommendation on used and useful is being
14 over-restrictive by merely looking at the
15 mathematical calculation, and that we would request
16 that you take into consideration the uniqueness of
17 a waste water treatment plant, and this -- and also
18 the service area that we have, and the relationship
19 with Monroe County and -- you got something you
20 want to add to that issue at all?

21 MR. JOHNSON: No.

22 MR. FRIEDMAN: Okay. So we would ask that the
23 Commission find that the wastewater treatment
24 plant, when it's expanded, will be 100 percent used
25 and useful.

1 The next issue is working capital. That's
2 Issue No. 5. The Commission reduced working
3 capital by 645, almost \$646,000. Of that
4 reduction, 400,000 was deleted from the capital
5 account because the staff stated it was not used in
6 2014, but they do admit that that -- those funds
7 were being held for projects to be constructed in
8 the future. Their issue was that there were no
9 projects done in 2014, and, therefore, we didn't
10 need that money sitting around.

11 And as Mr. Johnson pointed out, that's where
12 the timeframe that the permit with DEP had been
13 granted, being contested next year, and so the
14 utility has to keep those funds available because
15 they need to be able to continue doing the things
16 that Mr. Johnson said they are doing, and then to
17 also begin -- and be able to begin construction of
18 the plant when it was finally permitted.

19 And I think now, the staff is sitting here
20 with -- wouldn't we all like 2020 hindsight, they
21 are looking and saying, well, you didn't need all
22 that money because now that we see it, you know,
23 everything wasn't concluded in 2014, and you didn't
24 need to spend it. But the company didn't know that
25 in 2014. They didn't know when that case was going

1 to be over and when they were going to need to
2 spend that money.

3 So I would suggest to you that arbitrarily
4 taking out \$400,000 is just that, arbitrary, and
5 should be rejected and added back into the
6 calculation of working capital.

7 Regarding the -- there were two other elements
8 of the capital -- of the working capital that the
9 staff had taken out, and one dealt with \$500,000
10 that Monroe County -- was being held in escrow on
11 Monroe County, I am going to have Mr. Johnson refer
12 to that issue. It is somewhat complex.

13 The third was that, apparently, the utility
14 keeps customer deposits in cash and don't -- you
15 know, they keep it as a cash escrow, so to speak.
16 And the staff thought that you shouldn't have
17 escrow monies being held in cash, and also include
18 the customer deposits in the capital structure
19 calculation. And it defies my logic as to why you
20 can't.

21 If you go out and borrowed money from the
22 bank, and put that money in your bank account and
23 used that money, it would be -- I think everybody
24 would agree, that money would be used in
25 calculating your working capital requirement, and

1 it would also be in your capital structure, because
2 it would be money that you borrowed. And I don't
3 see any justification for treating the customer
4 deposits any differently, just because this is a
5 unique situation, and I don't know any other
6 utilities that actually keep the customer deposits
7 in cash as opposed to just spending the money and
8 treating it as an obligation.

9 I am going to let Mr. Johnson go into the
10 explanation of what went on in Monroe County from
11 2002 that precipitated this half a million dollars.

12 CHAIRMAN BROWN: Okay.

13 MR. JOHNSON: Thank you.

14 Relating to the Monroe County escrow account,
15 this account was opened as a result of some
16 litigation between the utility and the county
17 looking to settle a number of issues within that
18 litigation. One issue was, at that point in time,
19 Monroe County owed the utility a significant amount
20 of capacity for its jail complex, the Monroe County
21 Sheriff's main headquarters, Juvenile Justice,
22 several other buildings on the campus. It's a very
23 large producer of wastewater. Because of that, and
24 the significant amount of money involved, the
25 utility felt that creating a separate holding

1 account to segregate these monies from other
2 capacities would be wise, and that is the reason
3 why that account was created.

4 CHAIRMAN BROWN: Okay. Thank you.

5 MR. FRIEDMAN: And the last issue that I have
6 to address is Issue No. 23. The staff is
7 recommending the elimination of the service
8 avail -- plant capacity charge; and not only the
9 elimination of it, they are requiring that the
10 utility refund service availability charges to the
11 extent somebody has paid them and they haven't
12 connected yet, which, I think, is unprecedented. I
13 don't recall any situation where any utility has
14 ever been able to refund, or required to refund
15 capacity fees just because they -- it turns out
16 that their capacity they reserved was more than
17 they needed.

18 The staff has made this calculation because it
19 thinks that the plant is going to be 100 percent,
20 or they think, with the pro forma plant, it will
21 end up with a 74-percent contribution rate. And as
22 we know, that 75 percent statute is a guideline.
23 It's not a hard and fast rule. It's not a black
24 and white rule. It's just a guideline we look at,
25 which means that, you know, being a guideline, we

1 need to take into consideration situations that may
2 be a little out of the ordinary. And I would
3 suggest to you that that's exactly what we have
4 with K W Resort Utility.

5 Further, this 74-percent calculation was based
6 upon the original estimate that, as Mr. Johnson
7 said, was three-and-a-half million dollars, and now
8 it's -- it's going to be clear that it's going to
9 be likely to be at least \$4.25 million.

10 And so what we would suggest is that we
11 continue doing what we are doing, collecting the
12 currently approved capacity fees, and then, at the
13 end of the -- end of the plant construction, when
14 we know what the plant actually costs, we can do a
15 true-up. Just like we are -- just like the true-up
16 needs to be done on the plant itself, we should
17 deal with the CIAC, and this is not unlike what we
18 did in the management services case, we did the --
19 we -- not we. The Commission did the same thing
20 with water management services, where they allowed
21 them to continue to keep the charges, and then at
22 the end of the process, you are going to sit down
23 and true that up.

24 And so I would suggest to you that, as a
25 result of that, the company is not going to be

1 over-contributed, and I think it's only fair that
2 everybody pays their fair share, and that somebody
3 that connects tomorrow doesn't get a free ride.

4 Thank you.

5 CHAIRMAN BROWN: Okay. I think we are clear
6 on all your issues, and I guess that wraps those up
7 for right now.

8 MR. FRIEDMAN: Yes, I am sorry. Those wrap up
9 our comments at this time. I would like an
10 opportunity, obviously, to --

11 CHAIRMAN BROWN: Yes.

12 MR. FRIEDMAN: -- make comments should --

13 CHAIRMAN BROWN: Questions arise.

14 MR. FRIEDMAN: Thank you.

15 CHAIRMAN BROWN: Thank you.

16 Good morning, Mr. Saylor.

17 MR. SAYLER: Good morning, Chairman Brown,
18 Commissioners, I wanted to say, today -- my name is
19 Erik Saylor, with the Office of Public Counsel. I
20 have Tricia Merchant with me with our office.
21 She's done a tremendous amount of work analyzing
22 the rate case, as well as staff's recommendation.

23 And I also want to thank you for arranging for
24 the two customers to call in. I understand that
25 there were some technical difficulties with

1 Ms. Aktabowski's -- what she wanted to raise. And
2 her concerns were with the rate design and the
3 potentially uneven effect on residential customers.
4 Rate design is something we don't get into, and I
5 told her that. And I said, you need to contact
6 Commission staff and ask for permission.

7 So thank you for allowing her to speak, and
8 sorry that the technical difficulties didn't allow
9 her to share her points and concerns with the rate
10 design.

11 CHAIRMAN BROWN: And thank you for bringing
12 that up, because she did file some comments in the
13 docket file, so we do have those, so I appreciate
14 you raising that.

15 MR. SAYLER: Thank you.

16 As you may be aware, yesterday, the Office of
17 Public Counsel filed a letter. We tried to get it
18 in sooner, but it was about three o'clock
19 yesterday. And it succinctly outlines all our
20 concerns that we have with the Phase I and Phase II
21 recommendation that staff has made.

22 But before I do that, I just wanted to say
23 that we do agree with staff's recommendation on
24 Issue 5, which is working capital. That's a
25 significant issue, and Ms. Merchant had pointed

1 that out previously in some of her letters of
2 concerns to the Commission, so we want to agree
3 there.

4 Also, in our letter, there is another point of
5 agreement that we have with the utility, and that
6 is on Issue 23, the service availability and plant
7 capacity charges. We believe it is premature at
8 this time to discontinue those given uncertainties
9 about costs and future revenues and future CIAC and
10 the future final cost of the plant.

11 CHAIRMAN BROWN: Okay.

12 MR. SAYLER: So that was Issue 23 under Phase
13 I. Another issue under Phase I would be Issue 11,
14 which relates to the last stand legal fees.

15 The last stand legal fees were a litigation
16 expense, and it was directly related to the Phase
17 II plant capacity expansion. And according to the
18 NARUC Uniform System of Accounts, a litigation
19 expense or legal fees incurred like this should be
20 capitalized to the utility plant, and should not be
21 amortized over the five-year period as being
22 recommended.

23 Also, with regard to Phase II, this utility is
24 not a staff-assisted rate case. It is a Class A
25 wastewater utility. It is different than water

1 management services, since it has, from what I
2 understand, very good credit, very well run, they
3 should have the ability to borrow money, so I don't
4 know if you need to go ahead and give them a pro
5 forma increase and rates today for Phase II today,
6 as being recommended by the utility. Instead, we
7 believe you should follow the traditional
8 rate-making formula.

9 But as it relates to Phase II rates, our
10 letter pretty much sets forth our main concerns
11 with the recommended Phase II rates, and what
12 options that we think the Commission should
13 consider as it relates to Phase II rates.

14 And that is really the extent of my comments.
15 I believe our letter pretty much speaks for itself,
16 and I hope you had an opportunity to read it, and
17 we have -- if we have any -- if you have any
18 questions, we are here.

19 Thank you.

20 CHAIRMAN BROWN: I will need note that it's
21 better to receive it the day before rather than the
22 day of the Commission Agenda Conference, so we
23 appreciate you giving this to us. I think our
24 staff has had time to review it briefly and can
25 respond.

1 MR. SAYLER: All right. Thank you.

2 CHAIRMAN BROWN: Thank you.

3 And, Mr. Wright.

4 MR. WRIGHT: Thank you, Madam Chair and
5 Commissioners. Good morning.

6 Again, Schef Wright with the Gardner law
7 firm -- I will give you the full name of the firm,
8 Gardner, Bist, Bowden, Bush, Dee -- Bowden spelled
9 like Bowden -- Bush, Dee LaVia & Wright. Also with
10 me is my law partner, John T. LaVia, III. He goes
11 by Jay. We have the privilege of representing
12 Monroe County on this matter.

13 The County and we have been monitoring the
14 progress of this docket. We have not yet
15 petitioned to intervene. At this point, we do have
16 several specific concerns to address with you
17 today. This is not necessarily an exhaustive list.
18 The County will carefully evaluate all issues and
19 all provisions of the Commission's anticipated
20 proposed agency action order before we decide how
21 to proceed.

22 I will aver to you that we have been in pretty
23 good communication with the utility, both at the
24 County Attorney's office level and, as to some
25 degree, with the utility and also with the Public

1 Counsel's office. And are, as always, amenable to
2 working out issues amicably in some stipulated way.

3 Specifically, I will make some comments on
4 behalf of the County today on Issues 5, 16, 17 and
5 23.

6 Issue 5 relates to working capital. And our
7 particular concern with respect to the working
8 capital addresses a statement made by the staff at
9 page 14 of the recommendation. It's a two-sentence
10 statement. I will read it to you.

11 In its response to audit request No. 17 --

12 CHAIRMAN BROWN: Wait, can you direct us to
13 the line, or the paragraph? Pardon me.

14 MR. WRIGHT: Oh, certainly.

15 MS. NORRIS: Forth --

16 MR. WRIGHT: Oh, thank you, Ms. Norris.

17 MS. NORRIS: It's the fourth line under the
18 cash subheading.

19 CHAIRMAN BROWN: Okay. Thank you.

20 MS. NORRIS: In response.

21 CHAIRMAN BROWN: Okay. Please proceed.

22 MR. WRIGHT: Great. Thank you very much.

23 In its response to Audit Request No. 17, the
24 utility clarified that the agreement with Monroe
25 County was to end after 1,500 equivalent

1 residential units had been collected and paid to
2 Monroe County. As such, the account was closed on
3 March 15th, 2015, once the quota was met.

4 This statement is not correct. Capacity
5 reservation fees have not been collected from all
6 1,500 EDUs. The utility and we have agreed to read
7 the following statement into the record today.

8 It's a good paragraph long, and I apologize, but --

9 CHAIRMAN BROWN: Do you have a copy of it for
10 our court reporter and our clerk?

11 MR. WRIGHT: We do for the court -- we have
12 one copy that we will be happy to give to the court
13 reporter.

14 CHAIRMAN BROWN: Thank you.

15 MR. WRIGHT: Certainly.

16 CHAIRMAN BROWN: Please go ahead.

17 MR. WRIGHT: The statement reads, "KWRU and
18 Monroe County would like to clarify the following:
19 In 2002, Monroe County and the utility entered into
20 an agreement whereby the County purchased 1,500
21 equivalent dwelling units (EDUs) from the utility
22 in exchange for installing collection systems for a
23 cost not to exceed \$4.6 million. In return, the
24 utility agreed to repay a portion of the funds by
25 collecting capacity reservation fees and remitting

1 the fees to the County. Not all of the 1,500 EDUs
2 have been collected and paid to Monroe County. Out
3 of the 1,500 EDUs, approximately 840 have been
4 collected or are on tax rolls. The capacity
5 reservation fees for the remaining EDUs
6 (approximately 660) still need to be collected.
7 The County's intention is to place all of these
8 remaining EDUs on the tax role in 2016. Not all of
9 the 1,500 EDUs have connected. KWRU will not
10 receive any additional assessments from the
11 remaining EDUs, but will receive revenue from the
12 unconnected customers once connected for monthly
13 service."

14 That concludes the statement. I do want to
15 clarify one thing. Customers may either pay the
16 \$2,700 fee, capacity reservation charge, service
17 availability charges, capacity charge, whatever it
18 is exactly, or they may put it on their tax
19 rolls -- on their taxes as a special assessment
20 charge. Either way, the customer pays. In the
21 latter case, we will finance it, but that's the
22 reference to the tax rolls.

23 CHAIRMAN BROWN: So I am assuming you want
24 that included in the final order, PAA order?

25 MR. WRIGHT: Yes, ma'am.

1 CHAIRMAN BROWN: Okay. And I just want to
2 confirm, Mr. Friedman, is that your understanding,
3 that you are in agreement with that language?

4 MR. FRIEDMAN: That's my understanding as
5 well, yes.

6 CHAIRMAN BROWN: Okay. Mr. Wright, please
7 proceed.

8 MR. WRIGHT: Thank you.

9 I do have a couple of comments with respect to
10 Issue 16, at page 39, beginning at the end of the
11 second line of the third paragraph within the
12 recommendation, the paragraph begins, "further,
13 staff recommends that". The sentence that I want
14 to address reads, "in addition, the utility" -- no,
15 sorry.

16 I am sorry. It's in the second paragraph,
17 beginning in the second line of the second
18 paragraph. "The utility should be allowed to
19 implement the rates recommended on schedule No. 8
20 once all pro forma items have been completed, and
21 the DEP has issued its approval for the expansion
22 project to go into service."

23 Monroe County's concern is this, we wonder --
24 the County wonders whether it would be possible to
25 tie the implementation of the Phase II rates to the

1 dates on which the expansion is actually in
2 service, and thus, used and useful in providing
3 service to customers, rather than tying it to the
4 date on which DEP has given approval for the
5 expansion project to go into service.

6 Perhaps this is somewhat nuanced, but we don't
7 know how long a period of time could elapse from
8 the date on which DEP issues its approval. I don't
9 know how this works at the DEP, honestly. They
10 could issue the approval before the plant is
11 completed. They could say, you have approval to
12 hook it up and start treating wastewater once it's
13 done, but there could be a period of months. If
14 you allowed rates to go into effect at that time,
15 you would have customers paying for a plant that's
16 not used and useful. That is the County's concern
17 as to that issue.

18 I am going to loop back to 16 and 17 together
19 at the conclusion of my remarks, but my next
20 comments address Issue 23.

21 CHAIRMAN BROWN: Okay.

22 MR. WRIGHT: The particular concern addresses
23 the second sentence within the recommendation.
24 However, the utility should no longer be authorized
25 to collect a plant capacity charge consistent with

1 the guidelines set forth in 25 -- Rule 25-30.580
2 Florida Administrative Code.

3 CHAIRMAN BROWN: That's in the recommended
4 section -- recommendation section?

5 MR. WRIGHT: Yes, ma'am, in the recommendation
6 itself.

7 Monroe County's concern that this
8 recommendation, if followed, may lead to an
9 inequitable situation in which prior customers are
10 funding the costs of infrastructure expansion for
11 future customers after the existing customers have
12 also paid for all -- effectively all of KWRU's
13 existing capacity.

14 We believe we agree with the Office of Public
15 Counsel, and we understand that the utility, KWRU,
16 also objects to the proposal to discontinue
17 collecting the service availability charges, plant
18 capacity charges.

19 CHAIRMAN BROWN: Okay. So just to clarify,
20 you are in agreement with OPC and the utility on
21 Issue 23?

22 MR. WRIGHT: Yes, ma'am, as to continuing to
23 collect the service availability charges.

24 CHAIRMAN BROWN: Okay. Thank you.

25 You want to circle back to 16 and 17 now?

1 MR. WRIGHT: I do want to say this, Madam
2 Chairman, we agree that you should continue
3 collecting the service availability charges and
4 plant capacity charges. I am not -- this should
5 not be construed as indicating that we agree with
6 the utility's proposal to conduct some sort of
7 true-up at the end. That proposal has not been
8 made to us in any detail, and we would have to vet
9 that before we could either agree or take a
10 position on it.

11 CHAIRMAN BROWN: Okay. Clear.

12 MR. WRIGHT: Okay. I do have one other thing
13 in regard to Issue 53, also on page 58.

14 MS. NORRIS: 23.

15 CHAIRMAN BROWN: 23.

16 MR. WRIGHT: Thanks. This is in the paragraph
17 next to the bottom, and the statement that I want
18 to address is the second sentence that reads, "any
19 customer that has prepaid the plant capacity charge
20 but not connected to the wastewater system as of
21 the effective date of the revised tariff should be
22 refunded the prepaid plant capacity charge."

23 Monroe County is concerned that this
24 recommendation would reward customers who have not
25 yet connected to the wastewater system, and

1 penalize those who have acted responsibly. A
2 customer who connected on December 31st, 2015,
3 would receive no refund. A customer who, by
4 hypothesis, would delay connection, despite the
5 negative effects of failing to connect on the
6 environment, would be rewarded, and that they would
7 then receive a refund of the plant capacity charge.
8 We are concerned about this and would address it at
9 the appropriate time.

10 Finally, I would like to loop back to Issues
11 16 and 17, which are the rates issues. They are
12 the Phase I rates and Phase II rates, and these are
13 addressed specifically and numerically in the
14 Schedules 4 and 8 at the end of the staff's
15 recommendation.

16 Monroe County, as the elected representatives
17 of the citizens of Monroe County, is concerned
18 about the increase in residential rates falling
19 disproportionately on the residential users on Stock
20 Island, many of whom are the County's very lowest
21 wage earners.

22 The recommended rates for the smallest
23 residential users, 4,000 gallons a day, would
24 result in Phase I increases in excess of
25 55 percent, and Phase II increases in excess of

1 75 percent as compared to current rates. The
2 United States Census Bureau reports that 17.2
3 percent of the population on South Stock Island
4 lives below the poverty level, which is
5 significantly greater than the poverty level for
6 the United States as a whole, which is 14.5 percent
7 in 2015.

8 Thank you very much for hearing from the
9 County on these issues, Madam Chairman. We look
10 forward to continuing to participate.

11 CHAIRMAN BROWN: Thank you so much.

12 I am going to turn to staff now and have them
13 be given the opportunity to respond to some of the
14 issues that were raised by the parties, notably
15 Issue 3, 4, 5, 11, 16, 17 and 23, in that order.

16 MS. NORRIS: Issue 3 primarily deals with
17 what's specifically addressed in Issue 16, as far
18 as a justification for recommending a two-phased
19 approach, so we could certainly take that up with
20 16, as it's pretty much going over the same ground,
21 and start with Issue 4.

22 MR. HILL: Good morning, Commissioners, Adam
23 Hill with Commission staff.

24 For used and useful, staff understands that
25 the argument that the used an useful calculation in

1 the recommendation is simple math, but what goes
2 into the calculation was carefully considered.
3 There are several factors that the utility
4 presented as ways to account for its 100 percent
5 used an useful number. Staff analyzed each of
6 those, and staff recommended one of the three major
7 increases in the growth factor.

8 The -- when looking at the evidence that the
9 utility presented for why 100 percent was
10 appropriate, staff looked at all of the known
11 projects that will be put into service shortly
12 after the plant expansion is put into service, and
13 those that are planned but not yet on any sort of
14 timetable, that will be at some point in the
15 future.

16 When going through those numbers, staff found
17 that the total -- the total growth that the utility
18 presented was significantly lower than the growth
19 rate that the staff has presented. Staff has
20 presented an ERC growth of a little over 1,300, and
21 the utility showed somewhere around 600 ERCs. Let
22 me get that exact number.

23 CHAIRMAN BROWN: Okay.

24 MR. HILL: The utility presented 472 ERCs
25 worth of known growth, and staff's recommendation

1 has 1,310 ERCs. So the difference there is that
2 the utility will not be able to project accurately
3 residential growth, or, in some cases, some
4 redevelopment, and so staff believes that the 1,310
5 ERCs will cover the known 472 ERCs, and also any
6 unknown, and so going above and beyond the 1,310
7 did not seem appropriate.

8 CHAIRMAN BROWN: Okay. Thank you.

9 Issue 5.

10 MS. NORRIS: Issue 5, working capital, and I
11 will go through several of the points that the
12 utility as well as Mr. Wright, made on behalf of
13 the Monroe County.

14 To start with, on the agreement, we certainly,
15 I don't think, oppose possibly -- you know,
16 recognizing the actual situation. Staff ultimately
17 went with the utility's response to the audit
18 regarding that specific account, and the definitive
19 statement made that the account was closed shortly
20 after the test year ended.

21 So, although, we are certainly not opposed to
22 changing that language, I don't believe, to rectify
23 the situation to make sure that it's presented
24 appropriately, we still stand by not including that
25 account, as Mr. Wright, I believe, recognized that

1 the additional 660 would come from tax rolls, was
2 that -- I believe how those additional funds would
3 be --

4 CHAIRMAN BROWN: Mr. Wright.

5 MR. WRIGHT: Thank you, Madam Chairman.

6 It would either be from the tax rolls, or it
7 would be paid by the customers. The customer does
8 have the choice, but we want to make it clear --
9 the County wanted to make it clear --

10 MS. NORRIS: Right.

11 MR. WRIGHT: -- that we are authorized to --
12 that nothing in action by the Commission would
13 preclude our ability to go ahead and put it on the
14 tax rolls to recover the costs in that way.

15 Thank you.

16 MS. NORRIS: So, just once again, going over,
17 we stand by if the account was, in fact, closed
18 after the test year, that that should be removed as
19 an anomaly within the working -- cash working
20 capital in the test year.

21 In addition, regarding the customer deposits,
22 that's just Commission practice in recognizing
23 them, they are recognized in capital structure,
24 therefore, they are removed as a component of cash
25 working capital.

1 CHAIRMAN BROWN: Okay.

2 MS. NORRIS: In regards to the capital
3 operating account Mr. Friedman was referring to;
4 staff didn't necessarily recognize that that's what
5 the account was for. We looked at the given
6 statement, or the purpose of the account, and
7 throughout the 12 months or, I guess it's actually
8 eight to nine months it was open, it was never
9 drawn down on.

10 However, as we have identified in, I believe
11 Issue 3, we did -- there was work done with regards
12 to the capital project done within the test year,
13 so that was also an apparent way that it had not
14 been used for, even though the stated purpose was
15 for the capital operating expenditures.

16 One thing we did notice is that within the
17 test year work that was done on the pro forma plant
18 expansion was not drawn out of that account,
19 therefore, it really sat there through the test
20 year unused. So that's another reason that we felt
21 it was appropriate to remove it from the test year.

22 CHAIRMAN BROWN: And you still stand by that?

23

24 MS. NORRIS: We do.

25 CHAIRMAN BROWN: Okay.

1 MS. NORRIS: And I am not sure as far as
2 500,000 from Monroe County. The only thing I can
3 under-- believe that that's coming from is from
4 the -- essentially the way we looked at the capital
5 operating account is that it had been funded
6 through the cash -- the -- another operating
7 account within cash working capital that was due a
8 500,000 deposit at the beginning of the year. We
9 do not specify who that was from. We identified
10 that amount is an unused portion that was creating,
11 much like a temporary cash investment within the
12 test year, based on the fact that it was never
13 drawn down for its stated purpose.

14 CHAIRMAN BROWN: Okay.

15 MS. NORRIS: I believe that's addressing --

16 CHAIRMAN BROWN: Yes, Issue 11.

17 MS. NORRIS: Issue 11, staff still stands by
18 the amortization of the legal fees. We would like
19 to clarify that, in reading the documentation from
20 the proceeding, it was specifically a challenge to
21 its modified operating permit from DEP. So
22 separate those two issues as far as the actual
23 construction and the modified operating permit. So
24 they are correct as far as the fact -- OPC is
25 correct in that it wasn't a challenge to the

1 existing operating permit; however, it was a
2 challenge to the modified operating permit, whereby
3 the addition construction was basically a vehicle
4 to getting to the expansion, however, the challenge
5 was directly to the permit, and we feel that,
6 consistent with Commission practice of amortizing
7 fees associated with the renewal of a permit, these
8 legal fees were, in fact, actually going to the
9 modification of that operating permit. We feel
10 that it's suit suitable to amortize the fees.

11 CHAIRMAN BROWN: Okay. Thank you.

12 And Issue 16, notably, Monroe County's
13 argument about the implementation of Phase II rates
14 being dated to the actual in-service rather than
15 DEP's approval, can you respond to some of those
16 issues that were raised under Issue 16?

17 MS. NORRIS: Certainly. Adam may be able to
18 speak -- or would you like to spike to the DEP
19 certification?

20 MR. HILL: Yes. The language, as written,
21 is -- it sort of has that in mind, that that will
22 be the point that all of the construction is
23 complete as it's written, and so it may not --
24 there will be a short time period that the utility
25 must get the plant up to working capacity, and that

1 may be a short period of time to get the bugs
2 working, essentially. However, that would be a
3 short amount of time after DEP issues its permit,
4 and that is staff's understanding. If anybody
5 would like to --

6 MS. NORRIS: I think -- as Adam is saying,
7 really, correlation between the DEP certification
8 was really for them to sign off for it to be placed
9 in service. We certainly recognize that, you know,
10 in considering -- tying that directly to the
11 actual -- when it's actually placed in service, and
12 that was our goal with Phase II is, ultimately, so
13 that we recognized when it's in use for the
14 ratepayers.

15 So I think we would be open to making certain
16 specific modifications to specify that we would tie
17 Phase II implementation to the in-service date of
18 the plant, or the facility. So that's staff's
19 opinion on that.

20 CHAIRMAN BROWN: Okay. And we will get to
21 that when it comes to the bench.

22 17 and 23.

23 MS. DANIEL: Hi. Good morning. Give me just
24 a moment.

25 All right. Commissioners, on Issue 17, the

1 concern has to deal with the impact on residential
2 customers. If I could start by saying, on
3 February 22 nd, Mr. Friedman filed a revised
4 billing analysis schedule for staff, and so that
5 has had an impact on the staff's calculation of its
6 recommended rates, not that we made an oral
7 modification to it, it just was some confusion on
8 staff's part about the total number of residential
9 gallons to be included in the billing analysis, and
10 we do believe that the company did point out an
11 error for staff.

12 In terms of the customers' concerns, and the
13 utility's and Public Counsel's concerns about the
14 impact on residential customers, staff's
15 recommended rates are based on an allocation to the
16 base facility charge of 50 percent of the revenue
17 requirement. And that's typical for what we do
18 with wastewater systems because of the capital
19 intensive nature of those systems.

20 I can tell you that this is not a particularly
21 seasonal group of customers, so one mitigating way
22 to resolve that would be to put less of the revenue
23 requirement in the base facility charge, perhaps as
24 low as even 40 percent. And I did -- staff worked
25 with me and ran a calculation.

1 Right now, for example, a customer using 4,000
2 gallons of water -- and, of course, we are looking
3 at wastewater rates, but a customer using 4,000
4 gallons of water today pays \$33.29. And based on
5 staff's recommendation -- and I am looking at page
6 44, I'm sorry, page 48 of the staff
7 recommendation -- a customer would pay \$56.49.

8 If I take into consideration the new billing
9 analysis that Mr. Friedman pointed out to staff,
10 and also allocate 40 percent of the revenue
11 requirement to the base facility charge, a customer
12 using 4,000 gallons of water would pay \$52.66.
13 That's a 58-percent increase over the current
14 rates, as opposed to based on the staff
15 recommendation.

16 CHAIRMAN BROWN: What was that number, \$52 and
17 what? And a 40-percent BFC, what is that?

18 MS. DANIEL: Let me get my eyes on the right
19 page. There we go, \$52.66.

20 CHAIRMAN BROWN: Okay. Thank you.

21 MS. DANIEL: All right. So that would
22 mitigate that, to some degree.

23 CHAIRMAN BROWN: Okay. And then finally,
24 Issue 23, the CIAC.

25 MS. DANIEL: Right. For Issue 23, if I could

1 ask you to follow along with me on page 68 for just
2 a minute. And I am going to see if I can make this
3 just as simple as I possibly can so that you can
4 understand where staff is coming from.

5 This is the Phase II rate base for the
6 company. And let me, before I get into the numbers
7 here, tell you if you look at the similar schedule
8 for Phase I of rate base, the company is in excess
9 of 100 percent contributed today, okay, which is
10 upside down. In our rules in the Florida
11 Administrative Code in 25-30 there are some
12 guidelines. They are guidelines to tell us what
13 contribution levels should look like.

14 At a minimum, we want customers to pay for the
15 cost of the lines, and that makes sense. On the
16 maximum guideline, we want the utility to maintain
17 a 25-percent investment in the utility. And the
18 reason being, in Florida, we have so many
19 developer-owned utilities, we want to keep their
20 attention to the tune of 25 percent to keep them
21 invested in the utility.

22 That really isn't the case with K W. They are
23 a large company. They have a significant
24 investment, so that 75 percent guideline is a
25 guideline, but they are certainly well in excess of

1 it today based on their contribution level.

2 Let me look with you on page 68, then. And I
3 am going to use some round numbers, because, as you
4 have heard this morning, on the plant side, there
5 are additional, perhaps, costs that may be incurred
6 in the investment side. We know that the company
7 has collected additional contributions in aid of
8 construction since the test year. We know that
9 they have billed some customers who are currently
10 connected. They are already connected, but there
11 has been redevelopment, is how they have described
12 it, and so there are, perhaps, as much as a million
13 dollars outstanding in contributions in aid of
14 construction for customers who have connected.

15 And again, before I get into the numbers, let
16 me tell you that one of the things I rely on, and I
17 will turn to my legal counsel down here, is a court
18 case H. Miller & Son. And the thing you need to
19 know about that is, according to H. Miller & Son,
20 the date of connection is the date that you
21 determine the appropriate service availability
22 charges, okay? The date of connection is the date
23 that you determine to the appropriate service
24 availability charges. So with that, let me get
25 into the numbers just a little bit.

1 As I said, today, the company is in excess of
2 100 percent contributed. As I look at these
3 numbers on page 68 of the staff recommendation, I
4 am going to use some round numbers for you to look
5 at contribution levels. What I look at is a very
6 simple formula. I look at contributions in aid of
7 construction, net of amortization, and in Phase II,
8 that's about six-and-a-half million dollars,
9 divided by net plant, the total plant in service,
10 plus land, minus accumulated depreciation. And on
11 page 68, that's about \$9 million. So
12 six-and-a-half million dollars divided by \$9
13 million is 74 percent.

14 As the company begins to add that additional
15 million dollars of investment, and continues to
16 collect some additional CIAC, just based on that
17 information alone, it pushes them towards
18 80 percent contribution level; which is in excess
19 of 75 percent, but we have already talked about the
20 notion that 75 percent is a guideline, and this is
21 a large company. They are -- the 80 percent is not
22 particularly troublesome at that particular point.

23 What happens if they continue to collect CIAC?
24 Now, at \$10 million, that's as much investment as I
25 have heard about so far -- or net plant, I should

1 say, plant minus accumulated depreciation.

2 What if they continue to collect CIAC? We
3 have got customers who are currently connected, and
4 there has been redevelopment, and they have sent
5 bills to them. We have got some customers who are
6 prepaid but not connected. Now, if you are
7 prepared but not connected, I am looking at the
8 court case H. Miller & Son, and if you all change
9 their service availability charges, whether up or
10 down, the date of connection would be the
11 appropriate day to determine what the applicable
12 service availability charges were.

13 So to those customers who have prepaid but
14 have not connected -- and life is what it is -- the
15 date of connection would be the date we would
16 determine what they would be entitled to, thus the
17 statement in the recommendation, if they have
18 prepaid and have not connected --

19 CHAIRMAN BROWN: Thank you.

20 MS. DANIEL: -- then we would expect them to
21 make a refund.

22 CHAIRMAN BROWN: Okay. Appreciate it. That
23 was very thorough.

24 All right. Commissioners, bringing it back up
25 here. It is all of your pleasure, I think we can

1 go through this swiftly, just go by issue by issue
2 and vote them out.

3 We have heard the arguments from all of the
4 parties and staff's follow-ups, and I will remind
5 you when we get to the issue of those concerns, but
6 let's start with Issue 1, which is the quality of
7 service.

8 Any comments, questions or a motion?

9 Commissioner Edgar.

10 COMMISSIONER EDGAR: I move approval of the
11 staff recommendation for Issue 1.

12 CHAIRMAN BROWN: Is there a second?

13 COMMISSIONER PATRONIS: Second.

14 CHAIRMAN BROWN: All those in favor -- any
15 opposed?

16 All those in favor, say aye.

17 (Vote taken.)

18 CHAIRMAN BROWN: Okay. The motion passes.

19 Issue 2, which is the audit rate base
20 adjustments, can I get a motion please?

21 COMMISSIONER BRISÉ: So moved.

22 COMMISSIONER EDGAR: Second.

23 CHAIRMAN BROWN: All those in favor, say aye.

24 (Vote taken.)

25 CHAIRMAN BROWN: Okay. The motion passes.

1 Issue 3, which is the pro forma plant, which
2 was also mentioned by the utility in his earlier
3 comments, and -- are there any questions, comments
4 or a motion? This is also addressed later.

5 Commissioner Edgar.

6 COMMISSIONER EDGAR: Thank you, Madam Chair.
7 Could I -- and I know we have gone through it, but
8 since we have had a number of issues that we have
9 discussed in more detail, and a number of
10 calculations, could I ask the staff to comment on
11 this briefly in light of the recommendation before
12 us, and the comments that we have heard from the
13 participants?

14 CHAIRMAN BROWN: And I may add, this is also
15 tied into Issue 16, so you may want to kind of
16 address both of those.

17 MS. NORRIS: Right. Certainly, this being the
18 first -- essentially, staff maintains its position
19 in light of the additional comments provided by the
20 utility and OPC. As you can -- as you have heard
21 today, there is an moving parts in this whole
22 situation. To address the comments made by the
23 utility, as far as eliminating of Phase II, we
24 still believe that, especially based on the fact
25 that there is not currently a bid in place, that

1 this is the appropriate treatment of this pro forma
2 plant expansion. It is of a very large magnitude,
3 and we feel it's best placed into service -- when
4 it's placed into service is the best time for it to
5 be placed into rates as well in balancing the needs
6 of the customers.

7 However, in regards to OPC's concerns as far
8 as Phase II, we feel like that's the best balance
9 to also recognize the investment made by the
10 utility as well, in recognizing there are
11 mechanisms in place to true up the actual
12 construction costs, to look at the additional CIAC
13 issues, and we feel like this is the best
14 compromise at this point, and the optimal solution.

15 Additionally, OPC's concerns regarding the
16 historic test year being used in Phase II, they
17 bring up several components that could additionally
18 change and not be reflective when Phase II goes
19 into -- or is implemented, including the billing
20 determinants and additional flows. However, there
21 would also be a reconsideration possibly of the
22 actual non-used and used adjustment that would
23 offset some of that non-used and useful adjustment,
24 as well as additional expenses that are not totally
25 recognized as well.

1 So it's very much a give-and-take in some
2 aspects, and we feel like we have utilized the best
3 possible adjustments to a historic test year to
4 essentially put together Phase II.

5 CHAIRMAN BROWN: Thank you.

6 And, Commissioners, we are going to be taking
7 up Issues 3 and 16 together at this time. So if
8 there are any other questions, I think we are ripe
9 for a motion.

10 Commissioner Graham.

11 COMMISSIONER GRAHAM: I move approval of staff
12 recommendation on Issues 3 and 16, with the change
13 in 16 with the Phase II implementation to come when
14 it's up and running.

15 CHAIRMAN BROWN: Is there a second?

16 COMMISSIONER EDGAR: Second.

17 CHAIRMAN BROWN: All those in favor, say aye.

18 (Vote taken.)

19 CHAIRMAN BROWN: Opposed?

20 The motion passes for Issues 3 and 16.

21 Going to Issue 4, which is used and useful.

22 Commissioners, any questions or further comment?

23 The utility was the only one that raised the
24 issue. I think staff provided a very sufficient
25 response to address its recommendation.

1 Commissioners, we are ripe for a motion.

2 COMMISSIONER EDGAR: Madam Chair, I think the
3 staff recommendation on 4 is consistent with the
4 vote that we just took, and I would move approval.

5 CHAIRMAN BROWN: Is there a second?

6 COMMISSIONER GRAHAM: Second.

7 CHAIRMAN BROWN: Any discussion?

8 All those in favor, say aye.

9 (Vote taken.)

10 CHAIRMAN BROWN: Opposed?

11 Motion passes.

12 We are now on to Issue 5, which is the working
13 capital. And Monroe County, the utility and Office
14 of Public Counsel addressed that issue, and staff
15 provided follow-up to that.

16 Maybe you want to provide a quick, succinct
17 overview in support of your recommendation at this
18 time.

19 MS. NORRIS: Certainly. I -- we touched on
20 many -- or a few of the adjustments to cash working
21 capital, however, staff looked in totality of the
22 actual working capital that it's recommended, which
23 is 721,268 in comparison to the last rate case,
24 which was about \$400,000. We took into light the
25 utility's concerns about the litigious environment,

1 the additional needs that, perhaps, were there.
2 Staff calculated an average O&M, monthly O&M
3 expense, even including some of these additional
4 legal fees, and really feel like that's an
5 appropriate, well-rounded balance for the working
6 capital.

7 CHAIRMAN BROWN: Okay. Commissioners, any
8 follow-up questions?

9 Commissioner Graham.

10 COMMISSIONER GRAHAM: Madame Chairwoman, I
11 don't have a problem with staff recommendation on
12 Issue 5. Actually, I don't have any problem with
13 their recommendation on all the issues through 15,
14 if you would like a motion on those.

15 CHAIRMAN BROWN: Okay. Thank you for that.
16 Hold one moment.

17 Commissioners, we are considering Issues 5, 6,
18 7, 8, 9, 10, 11, 12, 13, 14 and 15. I will note
19 that Issue 11, which is the pro forma expenses,
20 Office of Public Counsel did raise an issue on the
21 last stand legal fees. Staff did provide further
22 explanation of why, and they stand by the
23 amortization of the legal fees, but I think, if
24 there are no questions or comments on those, we can
25 accept the motion.

1 COMMISSIONER PATRONIS: Second.

2 CHAIRMAN BROWN: All right.

3 MS. NORRIS: Madam Chairman, I wanted to make
4 one exception. Within Issue 5, there was -- there
5 were the comments provided by Monroe County
6 regarding recharacterizing the transaction between
7 it and the utility that staff was agreeable to
8 including.

9 CHAIRMAN BROWN: Ms. Norris, can you please
10 clarify?

11 MS. NORRIS: This is regarding the -- it is
12 the cash escrow account with Monroe County, the
13 additional EDUs, that Mr. Wright provided a
14 statement clarifying that it had not actually --
15 they had not completed their requirement. He had
16 the additional language that he and the utility
17 agreed upon.

18 COMMISSIONER EDGAR: Have copies been made of
19 that so we could look at it?

20 CHAIRMAN BROWN: We have been waiting for
21 them.

22 COMMISSIONER EDGAR: No copies have been made
23 by our staff or the parties? Then, Madam Chair, I
24 would like to take five minutes.

25 CHAIRMAN BROWN: Excellent. We will reconvene

1 in five minutes, which is 11:45.

2 Thank you, Commissioner Edgar.

3 (Brief recess.)

4 CHAIRMAN BROWN: All right. I appreciate
5 Commissioner Edgar stopping us and getting us a
6 copy. And I thought it was known when I said, we
7 don't have a copy that staff would assist you with
8 making copies, so on behalf of Commission, I
9 apologize that we were not available to assist. So
10 thank you, Commissioner Edgar, for facilitating the
11 discussion of getting these copies.

12 So, Commissioner Edgar, you still have the
13 floor, if you would like it, and we were just
14 talking about, I believe, the Issue 5.

15 COMMISSIONER EDGAR: Madam Chair, is there a
16 motion pending?

17 CHAIRMAN BROWN: There is a motion without --

18 COMMISSIONER EDGAR: There is? And that's 5
19 through --

20 CHAIRMAN BROWN: 5 through 15.

21 COMMISSIONER EDGAR: Okay. Thank you very
22 much.

23 I would like to ask staff to speak again on
24 Issue 5 to the issue that was raised by the utility
25 regarding the \$400,000 in the capital budget

1 category that is described on page 14.

2 MS. NORRIS: Yes. Essentially, staff looked
3 at that account through the year, and we, as well,
4 identified where the 400,000 came from, from an
5 additional operating account. The utility stated
6 that the purpose of that account was for capital
7 expenditures essentially associated with a pro
8 forma plant expansion.

9 We also asked the utility, you know, the
10 need -- was there a need for a capital operating
11 account even after the plant expansion was
12 completed? We got a response from the utility,
13 however, our -- essentially, our issue with keeping
14 that \$400,000 in there was the fact that it had
15 never been drawn down on for its stated purpose,
16 therefore, we felt like it would create an
17 artificial, almost like a temporary cash investment
18 in cash working capital for that reason. They did
19 incur expenses associated with the pro forma plant
20 expansion in 2014, as we have capitalized those
21 construction works in progress.

22 So we did not see that that account was
23 necessary necessarily for the purpose that they had
24 stated, and that was our basis for our adjustment
25 for that 400,000.

1 COMMISSIONER EDGAR: If I may, Mr. Friedman,
2 would you like to comment briefly?

3 MR. FRIEDMAN: No. I was just going to say
4 that they noted that we were spending money, it's
5 just that we -- the 303,000 we spent, we didn't
6 have to take out of account at that time because it
7 was money that we had some settlement money we had
8 gotten from Monroe County in connection with some
9 litigation, so we happened to have money that we
10 got in that we could use for that purpose, but we
11 still had to have the money there in case we were
12 ready to start on that plant site. So I think it's
13 being overly restrictive to take that out off
14 capital working capital.

15 Thank you.

16 COMMISSIONER EDGAR: OPC.

17 MR. SAYLER: I am just a simple attorney. I
18 need to turn it over to my CPA.

19 MS. MERCHANT: Yes, Commissioners, we were
20 concerned early on in the case about the high level
21 of cash in the whole case, and we agree with staff
22 on that. If they have that level of cash, they
23 should have invested it in something and not leave
24 it in working capital, and so we agree with staff's
25 recommendation on that.

1 COMMISSIONER EDGAR: Okay. All right. Thank
2 you very much.

3 Thank you, Madam Chair.

4 CHAIRMAN BROWN: Thank you.

5 And I know we are addressing Issues 5 through
6 15, and, Commissioner Graham, I believe we have
7 a -- all of us have this presented modification
8 that staff is comfortable with in front of us.
9 Would you be willing to entertain a friendly
10 amendment?

11 COMMISSIONER GRAHAM: Yes. I would add the
12 addition of this paragraph -- or this sheet that
13 was passed out to us to be included into the
14 motion, which is moving staff recommendations on
15 Issue 5 through 15.

16 CHAIRMAN BROWN: Commissioner Patronis, you
17 second it?

18 COMMISSIONER PATRONIS: Second.

19 CHAIRMAN BROWN: Okay. And I do have just a
20 comment before we take a vote with regard to Issue
21 14, which is the rate case expense. And I do want
22 to point out, although the recommended amount, the
23 revised amount that staff got to, to me, appears
24 reasonable based on the work that was conducted.

25 I will point out that this utility has used

1 multiples attorneys to conduct this rate case.
2 They have also used multiple accountants, and they
3 have also used multiple engineers. And it's just
4 something -- it's a practice that I don't think is
5 in the best interest of the customers or the
6 utility. I think I would advise them to be
7 cautious and prudent moving forward when they
8 pursue future rate cases. It's something we don't
9 traditionally see up here multiple times for water
10 utilities, so that's just one comment.

11 So we have a motion and a second with an
12 amendment. Any other discussion?

13 Commissioner Graham? No.

14 All those in favor, say aye.

15 (Vote taken.)

16 CHAIRMAN BROWN: Any opposed?

17 The motion passes on Items 5 through 15.

18 We are on Issue 17, which I would like to take
19 separate with regard to rate structure. Monroe
20 County addressed that.

21 Staff, can you provide another -- a succinct
22 overview of your recommendation concerning the
23 residential rates? You did mention a 40-percent
24 BFC on that. Are you proposing that at this time?

25 MS. DANIEL: I believe that would be a good

1 mitigating factor for the residential customers, to
2 make that adjustment.

3 CHAIRMAN BROWN: So then your recommendation
4 would be, at 4,000 gallons, \$52.66, with a
5 40-percent BFC?

6 MS. DANIEL: Assuming all of the other revenue
7 requirement issues that staff recommended stand,
8 and then, of course, acknowledging the utility's --

9 CHAIRMAN BROWN: New balance.

10 MS. DANIEL: -- submittal.

11 CHAIRMAN BROWN: Okay. But you would like to
12 include the utility's new billing analysis?

13 MS. DANIEL: Correct.

14 CHAIRMAN BROWN: All right. Commissioners,
15 any other questions or comments?

16 I think we are ripe for a motion with the new
17 billing analysis that has been conceded and
18 addressed with staff.

19 COMMISSIONER EDGAR: Move approval.

20 COMMISSIONER GRAHAM: Second.

21 CHAIRMAN BROWN: All those in favor, say aye.

22 (Vote taken.)

23 CHAIRMAN BROWN: Any opposed?

24 Okay. Recommendation passes with that change.

25 All right. Moving on to -- I guess we have

1 Items 18 through 22 were not addressed by either of
2 the parties -- any of the parties here. Are there
3 any questions or comments on 18 through 22?

4 COMMISSIONER BRISÉ: Move approval.

5 COMMISSIONER EDGAR: Second.

6 CHAIRMAN BROWN: All those in favor, say aye.

7 (Vote taken.)

8 CHAIRMAN BROWN: Any opposed?

9 All right. Issue 23 is the service
10 availability policy and changes. Public Counsel,
11 utility are in agreement. Monroe County agrees
12 without -- that they are premature, but they don't
13 agree with, necessarily, with the true-up at this
14 time.

15 I think that's a kind of a succinct assessment
16 of all of the parties' positions. And, staff, you
17 went into a thorough analysis supporting your
18 recommendation.

19 Commissioners, do you have any follow-up with
20 staff on it, or any questions or comments?

21 Do you have -- Commissioner Edgar.

22 COMMISSIONER EDGAR: Thank you.

23 Question to staff. Are you comfortable that,
24 at the appropriate time, that you would have all of
25 the information that is necessary, or is there some

1 additional filing or true-up mechanism that would
2 be helpful as those Phase II rates, the timing is
3 approached?

4 MS. DANIEL: As the Phase II rates or -- the
5 service availability charges?

6 COMMISSIONER EDGAR: Yes.

7 MS. DANIEL: I am comfortable that the utility
8 has a very high contribution level today, and that
9 the continued collection of plant capacity charges
10 is going to further exacerbate that situation. I
11 looked at whether even allowing them to continue to
12 collect maybe \$500 per equivalent residential
13 connection, knowing that, you know, the utility,
14 Public Counsel and everyone was concerned about
15 this.

16 If the company, for example, continued -- or
17 had a reduced plant capacity charge following the
18 final commission order of, say -- and I picked a
19 number -- \$500, there are in excess of 3,000
20 additional connections, so that's another
21 million-and-a-half dollars of CIAC. It's going to
22 put them over 90 percent contributed. But if
23 that's -- you know, that helps hold on you rates.
24 If they have a high contribution level, that helps
25 mitigate rates, so there is an advantage to that.

1 The \$2,700 just does not seem feasible to me.

2 CHAIRMAN BROWN: Okay. Any other

3 Commissioners questions?

4 Is there a motion on the staff recommendation,
5 or on what the parties proposed?

6 Commissioner Graham.

7 COMMISSIONER GRAHAM: I would move staff
8 recommendation on this issue.

9 CHAIRMAN BROWN: Is there a second?

10 COMMISSIONER PATRONIS: Second.

11 CHAIRMAN BROWN: All those in favor, say aye.

12 (Vote taken.)

13 CHAIRMAN BROWN: Any opposed?

14 The motion passes.

15 All right. We have 24 through 26. Again,
16 it's a four-year rate reduction, Commission order
17 adjustments, and then close the docket. Can I get
18 a motion on those items?

19 COMMISSIONER BRISÉ: So moved.

20 CHAIRMAN BROWN: All those in favor, say aye.

21 (Vote taken.)

22 CHAIRMAN BROWN: Any opposed?

23 Motion passes.

24 We are done with this docket.

25 Thank you, parties. Thank you for coming up,

1 and thank you for your participation.

2 MR. JOHNSON: Thank you, Madam Chair.

3 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED this 10th day of March, 2016.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #EE212307
EXPIRES JULY 13, 2016

KWRU Rate Application

1. Issue 5, p. 14 ("Appropriate working capital allowance"): The Staff Recommendation includes the following statement:

"In its response to Audit Request No. 17, the Utility clarified that the agreement with Monroe County was to end after 1,500 equivalent residential units had been collected and paid to Monroe County. As such, the account was closed on March 15, 2015, once the quota was met."

This statement is not correct. Capacity reservation fees have *not* been collected from all 1,500 EDUs.

The Utility and the County have therefore agreed that the Utility will ask the PSC to receive the following corrected information:

Issue 5: KWRU would like to clarify the following. In 2002, Monroe County and the Utility entered into an agreement whereby the County purchased 1500 equivalent dwelling units (EDUs) from the Utility in exchange for installing collection systems for a cost not to exceed \$4.6 million dollars. In return, the Utility agreed to repay a portion of the funds by collecting capacity reservation fees and remitting the fees to the County. Not all of the 1500 EDUs have been collected and paid to Monroe County. Out of the 1500 EDUs, approximately 840 have been collected or are on tax rolls. The capacity reservation fees for the remaining EDUs (approximately 660) still need to be collected. The County's intention is to place all of these remaining EDUs on the tax roll in 2016. Not all of the 1500 EDUs have connected. KWRU will not receive any additional assessments from the remaining EDUs, but will receive revenue from the unconnected customers once connected for monthly service.

2. Issue 16, p. 39 ("Phase II increase"): The Staff Recommendation includes the following statement:

"The Utility should be allowed to implement the rates recommended on Schedule No. 8 once all pro forma items have been completed