

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.

VOLUME 1

(Pages 1 through 127)

PROCEEDINGS: HEARING

COMMISSIONERS
PARTICIPATING: CHAIRMAN JULIE I. BROWN
COMMISSIONER ART GRAHAM
COMMISSIONER JIMMY PATRONIS

DATE: Monday, November 7, 2016

TIME: Commenced at 9:31 a.m.
Concluded at 12:18 p.m.

PLACE: Harvey Government Center
Board of County Commissioners
Meeting Room
1200 Truman Avenue
Key West, Florida 33040

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

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4 Lake Mary, Florida 32746, and BARTON W. SMITH, ESQUIRE,
5 Smith, Oropeza, Hawks, P.A., 138-142 Simonton Street,
6 Key West, Florida 33040, appearing on behalf of KW
7 Resort Utilities Corp.

8 ROBERT SCHEFFEL WRIGHT and JOHN T. LaVIA, III,
9 ESQUIRES, Gardner Law Firm, 1300 Thomaswood Drive,
10 Tallahassee, Florida 32308, and CYNTHIA HALL, Assistant
11 County Attorney, Monroe County Attorney's Office, 1111
12 12th Street, Suite 408, Key West, Florida 33040,
13 appearing on behalf of Monroe County, Florida.

14 J.R. KELLY, PUBLIC COUNSEL, and ERIK L.
15 SAYLER, ESQUIRES, Office of Public Counsel, c/o the
16 Florida Legislature, 111 W. Madison Street, Room 812,
17 Tallahassee, Florida 32399-1400, appearing on behalf of
18 the Citizens of the State of Florida.

19 ANN AKTABOWSKI, 6800 Maloney Avenue, Unit 100,
20 Key West, Florida 33040, appearing on behalf of Harbor
21 Shores Condominium Unit Owners Association.

22 KYESHA MAPP and JENNIFER CRAWFORD, ESQUIRES,
23 FPSC General Counsel's Office, 2540 Shumard Oak
24 Boulevard, Tallahassee, Florida 32399-0850, appearing on
25 behalf of the Florida Public Service Commission Staff.

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APPEARANCES (Continued):

KEITH HETRICK, General Counsel, and MARY ANNE
HELTON, Deputy General Counsel, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee,
Florida 32399-0850, appearing as advisors to the
Commission.

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1
2 **CHAIRMAN BROWN:** All right. I'd like to
3 convene this hearing to order. Today is November the
4 7th. The time is roughly 9:31. And, staff, will you
5 please read the notice.

6 **MS. MAPP:** Good morning. By notice issued
7 October 5th, 2016, this time and place was set for a
8 hearing in Docket No. 150071-SU. The purpose of the
9 hearing was set out in the notice.

10 **CHAIRMAN BROWN:** Thank you. And before we
11 take appearances, I do want to apologize for the
12 temperature in here. Please feel free to take,
13 gentlemen and ladies, take your jackets off and try to
14 get as comfortable as you can. We've got -- as you can
15 see, the Commissioners as well have taken their jackets
16 off, so we will not prejudge you on it by any means.

17 So with that, we'll begin with taking
18 appearances, starting with KW Resort.

19 **MR. FRIEDMAN:** Martin Friedman on behalf of KW
20 Resort Utility.

21 **MR. SMITH:** Bart Smith on behalf of KW Resort
22 Utilities.

23 **CHAIRMAN BROWN:** Thank you.
24 Public Counsel.

25 **MR. SAYLER:** Erik Sayler with the Office of

1 Public Counsel. I'd like to make an appearance for
2 J.R. Kelly, the Public Counsel.

3 **CHAIRMAN BROWN:** Thank you.

4 Monroe.

5 **MR. WRIGHT:** Robert Scheffel Wright and John
6 T. Lavia, III, Gardner law firm, Tallahassee, appearing
7 on behalf of Monroe County.

8 **MS. HALL:** And Cynthia Hall, Assistant County
9 Attorney for Monroe County Attorney's Office, on behalf
10 of Monroe County.

11 **CHAIRMAN BROWN:** Thank you, and thank you for
12 having us here at this facility.

13 Harbor Shores.

14 **MS. AKTABOWSKI:** Ann Aktabowski representing
15 Harbor Shores Condominium Unit Owners Association.

16 **CHAIRMAN BROWN:** Thank you.

17 Commission staff.

18 **MS. MAPP:** Kyesha Mapp on behalf of staff.
19 Also enter an appearance for Jennifer Crawford.

20 **MS. HELTON:** And Mary Anne Helton. I'm here
21 as your advisor. And I'd also like to make an
22 appearance for your General Counsel, Keith Hetrick.

23 **CHAIRMAN BROWN:** Thank you.

24 And at this time I'd like to ask everyone to
25 silence their electronic devices so that we can have a

1 very nice, smooth proceeding today. It is being
2 transcribed, and our court reporter here would
3 appreciate that.

4 All right. Staff, are there any preliminary
5 matters to address?

6 **MS. MAPP:** Yes. Staff witness Iliana Piedra
7 and Monroe County's witness Ada Mayte Santamaria have
8 been stipulated and excused from this hearing. Their
9 testimony and exhibits will be entered later in the
10 hearing at the appropriate time.

11 **CHAIRMAN BROWN:** Thank you.

12 **MS. MAPP:** Additionally, the Office of Public
13 Counsel has filed a request for official recognition.

14 **CHAIRMAN BROWN:** Okay. Office of Public
15 Counsel, can you state your request?

16 **MR. SAYLER:** Yes, Madam Chair. Some of the
17 witnesses for the utility have cited to some DEP rules.
18 And pursuant to the Order Establishing Procedure, if we
19 want official recognition of that, we need to make a
20 request of that. And we did that timely, and I don't
21 believe anyone has objected to taking official
22 recognition of the DEP rules.

23 **CHAIRMAN BROWN:** Thank you. I have a copy of
24 the motion. Are there any objections? Seeing none, we
25 will go ahead and grant the official recognition of

1 those rules.

2 **MR. SAYLER:** Thank you.

3 **CHAIRMAN BROWN:** All right. Staff, are there
4 any stipulations?

5 **MS. MAPP:** Yes. There were several
6 stipulations, proposed stipulations entered in this
7 docket. They are reflected within Section X of the
8 Prehearing Order.

9 **CHAIRMAN BROWN:** Okay. Do you -- would you
10 like to read over those stipulations for the record?

11 **MS. MAPP:** I will do so, yes.

12 **CHAIRMAN BROWN:** Thank you.

13 **MS. MAPP:** Number one, plant in service should
14 be reduced by \$817,240 based on staff audit finding
15 No. 1.

16 Number two, construction work in progress
17 should be increased by \$303,099 for the December 31,
18 2014, Phase I test year based on the staff audit finding
19 No. 2.

20 Number 3, land should be decreased by the
21 \$923, and O&M expenses (contractual services/other)
22 should be increased by \$1,200 for survey fees, and
23 working capital should be increased by \$738 based on
24 staff audit finding No. 3.

25 Number four, CIAC should be decreased by

1 \$297,120, accumulated amortization of CIAC should be
2 decreased by \$81,153, and test year amortization of CIAC
3 should be decreased by \$14,003 based on staff audit
4 finding No. 4.

5 Number five, accumulated depreciation should
6 be increased by \$2,040, and depreciation expense should
7 be decreased by \$5,489 based on staff audit finding
8 No. 5.

9 Number six, the wastewater collection system
10 should be considered 100 percent used and useful.

11 Number seven, the existing wastewater
12 treatment plant should be considered 100 percent used
13 and useful before the wastewater treatment plant
14 expansion is placed into service.

15 Number eight, accounts receivable-other should
16 be increased by \$40,067, and miscellaneous current and
17 accrued assets should be decreased by \$13,422 based on
18 staff audit finding No. 7.

19 Number nine, test year revenues for 2014,
20 Phase I, if applicable, are as follows: Residential and
21 general service, \$1,411,781; reuse revenues, \$50,400;
22 miscellaneous revenues, \$72,619, for a total of
23 \$1,534,799.

24 Number ten, O&M expenses should be decreased
25 by \$4,512 based on staff audit finding No. 10 and

1 \$6,276 based on staff audit finding No. 11.

2 Number 11, as currently set forth in Section
3 68.065(2), *Florida Statutes*, the following NSF charges
4 may be assessed: A, \$25 if above face value does not
5 exceed \$50; B, \$30 if the face value exceeds \$50 but
6 does not exceed \$300; C, \$40 if the face value exceeds
7 \$300; D, or 5 percent of the face amount of the check,
8 whichever is greater.

9 Number 12, KWRU should be authorized to
10 collect a monthly lift station cleaning charge of
11 \$1,462 from the Monroe County Detention Center.

12 Number 13, in calculating the rates to be
13 collected from service rates, the amount of revenues
14 from reuse rates should be calculated using the final
15 approved reuse rate.

16 Number 14, the appropriate plant capacity
17 charge should remain unchanged at \$2,700 per ERC.

18 Number 15, the appropriate leverage formula to
19 use is the leverage formula in effect when the
20 Commission makes its final decision.

21 Number 16, KWRU shall notify the Commission
22 within 90 days of the order finalizing this docket that
23 it has adjusted its books for all applicable National
24 Association of Regulatory Utility Commissioners Uniform
25 System of Accounts associated with the

1 Commission-approved adjustments.

2 **CHAIRMAN BROWN:** Thank you, Ms. Mapp.

3 Parties, I just want to confirm that that is
4 the stipulation as Ms. Mapp laid out and being proposed.
5 Okay. If I could get confirmation.

6 **MR. SMITH:** Yes.

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

8 **MS. AKTABOWSKI:** Yes.

9 **MR. WRIGHT:** Chairman, yes, we agree with and
10 support the stipulations. Thank you.

11 **CHAIRMAN BROWN:** Thank you.

12 And, Ms. Aktabowski, you said yes?

13 **MS. AKTABOWSKI:** I'm sorry. Yes.

14 **CHAIRMAN BROWN:** Thank you. All right.

15 Commissioners, any questions regarding the
16 stipulations? And if not, can I get a motion as laid
17 out by Ms. Mapp and in the Prehearing Order?

18 **COMMISSIONER PATRONIS:** So moved.

19 **COMMISSIONER GRAHAM:** Second.

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

21 (Vote taken.)

22 Thank you. The stipulation is passed.

23 Now on to exhibits.

24 **MS. MAPP:** Staff has prepared a Comprehensive
25 Exhibit List which includes the prefiled exhibits

1 attached to witnesses' testimony as well as staff's
2 exhibits. The list itself is marked as Exhibit No. 1
3 and has been provided to the parties, Commissioners, and
4 the court reporter. The Comprehensive Exhibit List
5 itself is marked as Exhibit No. 1.

6 **CHAIRMAN BROWN:** Okay.

7 (Exhibit 1 marked for identification.)

8 **MS. MAPP:** At this time staff would request
9 that Exhibit No. 1 be entered into the record and all
10 other exhibits marked as identified therein.

11 **CHAIRMAN BROWN:** Seeing no objection, we'll go
12 ahead and enter into the record Exhibit 1 and mark the
13 other exhibits as Ms. Mapp laid out. Thank you.

14 (Exhibit 1 admitted into the record.)

15 (Exhibits 2 through 81 marked for
16 identification.)

17 Moving on to opening statements. Before we
18 get into that, I want to give you all an overview of how
19 I see the next few days going. We started today around
20 9:30, and the court reporter needs about -- a break,
21 five-minute break every two to three hours, so we'll
22 probably stop every 2.5 hours. I envision us stopping
23 at lunchtime, pushing through today and going to
24 lunchtime around 12.

25 We have to recess at 5:30 tonight for the

1 service hearing that begins at 6:00. So in preparation
2 for that, I just want to give you a heads up on that.
3 And if you'd like to eat or get menus or things like
4 that, please feel free to make arrangements.

5 And then after the service hearing, depending
6 on where we are in the schedule, we'd like to reconvene
7 the hearing and see how many witnesses we can take up
8 before we adjourn for the evening. We have limited time
9 at this facility. Tomorrow we have to be out of here by
10 4:30. So, again, I'd like to start this day and try to
11 get as many witnesses in today. We will be taking
12 breaks every two to three hours. And I'll -- at the end
13 of the day today, I'll tell you what time we will be
14 reconvening tomorrow morning. We'll probably start a
15 little bit earlier than 9:30. And so I just wanted to
16 go over that.

17 On to opening statements. As laid out in the
18 Prehearing Order, each party shall have five minutes to
19 make an opening statement. Commissioner Graham is going
20 to be the timekeeper and will notify you when you have
21 one minute left. Any questions before we get into
22 opening statements?

23 Okay. We'll start with KW.

24 **MR. FRIEDMAN:** Thank you. Madam Chairman,
25 Commissioners, Marty Friedman on behalf of KW Resort

1 Utilities. We're here on the Office of Public Counsel
2 and Monroe County's protest of the PAA order, and the
3 HOA and KW Resort Utility's cross protest.

4 As you recall, the utility, in its test year
5 letter, requested a historic test year of 2014, and
6 pointed out in that test year request letter, as it was
7 required to do so, that there were certain pro forma
8 items. One was a pro forma water -- wastewater
9 treatment plant construction and the other was
10 operations to AWT standards. The Commission chairman at
11 the time approved the 2014 historical test year, and
12 there have been no challenges to that test year filed
13 immediately after the chairman -- the chairman at the
14 time approved the test year.

15 The original cost -- the pro forma project is
16 construction of a wastewater treatment plant, and the
17 original cost was estimated at \$4.3 million, and that
18 was the amount that was addressed in the PAA order. As
19 a result of the Public Counsel and County's protest, the
20 utility was able to more firmly solidify the amount of
21 that construction project and actually enter into a
22 construction contract, and the construction is ongoing.
23 The actual cost ended up being -- or will be
24 \$5.1 million.

25 The other item that occurred is that the

1 vacuum tank at the wastewater treatment plant became
2 nonfunctional, something that did not occur until after
3 the PAA order was entered. The utility has entered into
4 a contract to complete the replacement of that vacuum
5 tank. That vacuum tank will be replaced in -- by the
6 end of this year. That's also a pro forma capital
7 improvement.

8 The water -- the wastewater treatment plant
9 will be completed by March of next year, which is prior
10 to the time that the utility is going to actually
11 implement any rates that this Commission may grant when
12 you have your final agenda conference.

13 The -- that construction is, in fact, ahead of
14 schedule, so we certainly expect it to be done by March.
15 We think that -- we believe that when you hear the
16 testimony and you read the prefiled testimony, that you
17 will agree that the preponderance of the evidence is
18 going to be that the utility has met its burden of
19 showing the expenses that it has requested, the pro
20 forma wastewater treatment plant cost of \$5.1 million,
21 the replacement of the vacuum tank, and other O&M items,
22 and that you will agree ultimately to the revenue
23 requirement requested by the utility. Thank you.

24 **CHAIRMAN BROWN:** Thank you, Mr. Friedman.
25 Public Counsel, Mr. Sayler.

1 **MR. SAYLER:** Good morning, Madam Chairman,
2 Commissioners. Thank you. I'm Erik Sayler with the
3 Office of Public Counsel on behalf of the customers. It
4 is axiomatic that the utility has the burden of proof to
5 demonstrate that it is entitled to its requested rate
6 increase. In this case, KWRU has not met its burden for
7 its request. Many of its wants are simply not supported
8 by the evidence in the proceeding. For example, the
9 cost of the wastewater treatment plant expansion project
10 has increased again and again and again beyond what KW
11 originally asked for in the PAA process. Now the
12 utility wants even more revenue requirement than
13 originally requested. This should not be permitted.

14 The evidence offered by OPC and Monroe County
15 clearly demonstrates that KWRU is entitled to no more
16 than about \$1.8 million for Phase I revenue requirement
17 based upon a 2014 historic test year and no more than
18 approximately 2.6 million for Phase II revenue
19 requirement based upon an updated 2016 pro forma test
20 year that matches not only the increased O&M expenses,
21 but also the expected increased revenues that this
22 utility will be receiving.

23 We believe that a two-phase revenue
24 requirement is appropriate in this case. To properly
25 decide it, we believe the Commission should revise and

1 update Phase I and Phase II requirements established by
2 the PAA order issued in March of this year. Separating
3 this case into two different cases was the most
4 practical and efficient way -- efficient step to take,
5 given the posture of KW's case at the time it was
6 presented, along with the limited amount of one-sided
7 information the utility presented to the Commission
8 during the PAA portion of this docket.

9 As a result of the protest by OPC and Monroe
10 County and Harbor Shores, the Commission will have the
11 necessary record evidence to establish a 2014 historic
12 test year for Phase I revenue requirement as well as
13 updating the test year for Phase II in order to fix
14 rates that are just, reasonable, compensatory, and not
15 unduly discriminatory.

16 KWRU takes the unsupported position that this
17 Commission does not need to revisit the Phase I revenue
18 requirement established by the PAA order. However, when
19 requesting its Phase I revenues and rates, KW presented
20 overstated pro forma operations and maintenance
21 expenses, or O&M expenses, to the Commission. Thus, the
22 Commission made a reasonable decision, however, based on
23 limited information.

24 Because KWRU knows that the PAA ordered rates
25 were based upon factually inadequate and overstated O&M

1 expenses, the utility is now attempting to confuse the
2 issues and conceal the fact that it may owe customer
3 refunds for the Phase I rate increase approved by the
4 PAA order that was implemented in April of this year.

5 KWRU wants the Commission to establish final
6 rates using an outdated and stale 2014 test year in
7 order to avoid a critical examination of the PAA-ordered
8 Phase I revenues and thus avoid paying any potential
9 refunds it may owe. At a minimum, before establishing
10 final rates, the Commission should determine what
11 Phase I revenues should have been in order to calculate
12 whether KW's customers are owed any refund.

13 With regard to Phase II, the final rates, KWRU
14 is asking this Commission to establish prospective rates
15 based on an outdated test year going forward in 2017.
16 Its test year only contains pro forma expenses projected
17 for future years without considering the corresponding
18 revenues and billing determinants for those same future
19 years for 2015 and 2016. We believe this is a clear
20 violation of the matching principle as testified to by
21 County witness former Commissioner Terry Deason.
22 There's no dispute that Phase I revenues and rates are
23 driven by future growth, which will come online once the
24 utility's proposed 350000-gallon-per-day wastewater
25 treatment plant expansion is completed. The facts and

1 evidence will demonstrate that this utility will
2 experience significant growth once the new plant is
3 placed into service. Thus, establishing 2017
4 prospective rates based upon outdated 2014 billing
5 determinants will result in unreasonable rates and
6 potentially overearnings by the utility. Therefore, we
7 believe -- and we've put on testimony to support an
8 update to the test year.

9 **COMMISSIONER GRAHAM:** One minute left.

10 **MR. SAYLER:** Thank you. And that test year
11 should be based using known and measurable facts and
12 evidence provided by the witnesses for OPC and Monroe
13 County.

14 In conclusion, the evidence will demonstrate
15 that the Commission should reject KW's request for final
16 rates and that they should use -- that this Commission
17 should use the matching principle going forward for
18 establishing going-forward rates. Thank you.

19 **CHAIRMAN BROWN:** Thank you, Mr. Sayler.

20 On to Monroe County, Mr. Wright.

21 **MR. WRIGHT:** Good morning, Commissioners,
22 Madam Chairman. Thank you very much. I'm Robert
23 Scheffel Wright, and I have the privilege of
24 representing Monroe County, KWRU's largest customer, in
25 this case. Although the County does not represent our

1 citizens' interests directly, as Mr. Kelly and
2 Mr. Sayler do, we obviously have our citizens' interests
3 and general public interest strongly and clearly at the
4 forefront of our efforts in this case. Further, the
5 County greatly appreciates and strongly supports the
6 efforts and work of the Public Counsel's office in this
7 case for the benefit of our citizens.

8 The issues in this case are pretty simple.
9 This is a rate case. You're called upon to set fair,
10 just, and reasonable rates for the utility. We ask you
11 to keep several fairly straightforward principles in
12 mind as you do this.

13 One, utilities should provide safe and
14 reliable service -- and efficient, in the water
15 statute -- safe and reliable service at the lowest
16 possible cost.

17 Two, get the revenue requirements right.

18 Three, get the rates right.

19 Four, ensure that customers get what we pay
20 for.

21 And, five, where we don't, send a message to
22 the utility that we're supposed to.

23 Continuing, get the revenue requirements
24 right. These are decisions you make every day in rate
25 cases. On the revenue requirements issues, we agree

1 with the analyses and positions presented by OPC's
2 witness and PSC alumna Patricia Merchant.

3 Two, get the rates right. Getting the rates
4 right is usually fairly easy. You divide the
5 Commission-approved revenue requirement by the sales
6 that the utility will make during the test year, i.e.
7 the year that the rates will be in effect. In this
8 case, however, KWRU is attempting to frustrate this
9 obvious principle of utility regulation. Even though
10 its own witness, Deborah Swain, acknowledges that the
11 purpose of using a test year in setting rates is to
12 provide evidence of the utility's anticipated financial
13 condition during the time the rates will be in effect,
14 she, probably at the instruction of the company,
15 calculated the company's proposed rates that will be in
16 effect in 2017 when the new plant comes online using
17 2014 sales units.

18 Our powerful evidence on this point includes
19 the directly on point testimony of former Commission
20 chairman Terry Deason, who describes the matching
21 principle and the importance of following it in this
22 case.

23 The Commission should, and arguably must,
24 match the authorized revenues with the reasonably
25 projected by the sales -- reasonably projected sales of

1 the utility in order to ensure that the resulting rates
2 are fair, just, and reasonable.

3 The problem here is that the utility wants to
4 pick and choose all of the increased cost items to be
5 included in setting its new rates for 2017, new plant,
6 new vacuum tank, extra O&M expenses, and then they want
7 to divide these increased costs, these substantially
8 increased costs for 2017 by low, stale sales units from
9 2014.

10 The County's other witnesses, Kevin Wilson and
11 Mayte Santamaria, assistant director for public works
12 and planning director, show that there will be
13 significant growth for KWRU's usage and sales by 2016
14 and 2017. Moreover, the company's own evidence will be
15 introduced into evidence shortly today, shows that the
16 company itself is expecting and projecting more than
17 7 percent per year in growth, 329 additional ERCs per
18 year from 2014 forward, but they still want to set rates
19 using 2014 sales. In rough terms, by the time you get
20 to 2017, when the rates are going to be in effect, this
21 would overstate rates by more than 20 percent.

22 Conversely, if you set the rates using 2014
23 sales units and the growth occurs as projected by the
24 utility, by the time you got to 2017, the revenues would
25 be 20 percent too high. In short, using KW's proposed

1 rate calculations would result in unfair, unjust, and
2 unreasonable rates.

3 Finally, Commissioners, I said at the outset
4 that part of a utility's duty is to ensure that
5 customers get what we pay for. The evidence in this
6 case, backstopped by your order, the Commission's order
7 in the 2007 rate case, will show that where the
8 Commission granted KW rate increases in 2009 coming out
9 of the 2007 docket, based on its representations that
10 justified your decision that it would achieve advanced
11 wastewater treatment standards by 2007 and where KW took
12 \$900,000 from Monroe County to support getting there.
13 The company finally got there in 2009, but then, after a
14 few months, they decided not to continue providing AWT
15 treatment service in order to save money, to keep the
16 money for the company's bottom line and for the pockets
17 of its owners. They only actually achieved AWT in
18 November or December of 2015.

19 The company's argument --

20 **COMMISSIONER GRAHAM:** You've got 30 seconds.

21 **MR. WRIGHT:** Thank you, sir -- that they
22 didn't have to do this in order to meet their DEP permit
23 is specious and irrelevant. The Commission authorized
24 rates for them to provide AWT treatment service. The
25 County paid them nearly a million dollars to do so.

1 Our customers, the County and all the other
2 customers are entitled to this quality service that we
3 paid for but the company failed to deliver. This
4 egregious behavior calls into serious question the
5 company's respect for your orders and its respect for
6 your customers, as well as the voracity of its claims in
7 this case. We urge you to use all means at your
8 disposal to rectify this failure to deliver the quality
9 of service that we pay for and send a signal to the
10 company's management and owners that you will not
11 tolerate such behavior. Thank you very much.

12 **CHAIRMAN BROWN:** Thank you, Mr. Wright.

13 Ms. Aktabowski with Harbor Shores.

14 **MS. AKTABOWSKI:** Very well said. Thank you.

15 My name is -- good morning, Commissioners. My name is
16 Ann Aktabowski, and I am representing the 69 unit owners
17 of Harbor Shores Condominium Unit Owners Association in
18 Stock Island.

19 In the words of the late Yogi Berra, "It's
20 déjà vu all over again." In December of last year, many
21 residents of Stock Island, including myself and several
22 members of the Harbor Shores HOA, spoke to the
23 Commissioners regarding the effects of the KWRU's
24 request for, at the time, a 92 percent raise in
25 wastewater rates in Stock Island in order to expand

1 their plant capacity to accommodate the new marinas,
2 townhomes, multimillion dollar condos, et cetera, being
3 built in Stock Island. We tried to convey the message
4 that the residents of Stock Island were, for the most
5 part, working class people with a high minority and
6 Hispanic population, and, in fact, 17 percent of those
7 were living below the poverty line.

8 The end result of that hearing and the
9 Commissioners -- the Commission's review of the request
10 was an order issued by the PSC on March 23rd, 2016,
11 which raised the rates for the members of Harbor Shores
12 HOA by approximately 63 percent and a further increase
13 of 11 percent once the plant is completed early next
14 year, bringing the increase to an overall over
15 80 percent.

16 To put this increase in perspective, the
17 monthly bill for all 69 units, which is delivered to and
18 paid for by the HOA, went from an average of 2,000 a
19 month to 3,200 a month now and will increase by another
20 \$350 a month within the next few months. That equates
21 to about \$22 a month increase per unit in Harbor Shores.
22 And while that may not seem like a lot to some folks, I
23 can assure you it will have a major impact on those
24 elderly and low income residents, many of whom are on
25 social security, of both Harbor Shores and many others

1 in the Stock Island community.

2 Now during the course of our involvement in
3 the rate case, it came to our attention that there were
4 different categories of customers and various fees and
5 charges based on these categories. Harbor Shores'
6 members are designated residential customers, and it is
7 our position that we meet the criteria of general
8 service customer due to the fact that: One, the
9 association has been paying the monthly charges for all
10 69 units since the last rate case in 2009 per our
11 utility agreement with KWRU; two, we have two master
12 meters with the Florida Keys Aqueduct Authority, which
13 they read and send us two bills with a deduct for the
14 bills already sent to each unit; three, we have been
15 told repeatedly by KWRU that we must pay for all
16 69 units because if the members were charged
17 individually and one was delinquent, then half the park
18 would be shut down for nonpayment, although recently
19 Mr. Johnson, the KWRU president, has claimed that his
20 staff has been wrong about this for the last nine years.

21 We own all of the equipment inside the park,
22 and we do the backflow testing every year on our
23 equipment, and we pay for any and all repairs to the
24 system inside the park. Per our contract with KWRU,
25 they have no property rights or easement rights of any

1 kind.

2 To put things in perspective, had we been
3 designated general service in 2015, we would have paid
4 \$15,303 compared to \$23,243, a difference of almost
5 \$8,000 a year for the last seven years. And going
6 forward, the difference between residential and general
7 service will be over 11,000 a year for wastewater
8 services.

9 **COMMISSIONER GRAHAM:** You have a minute left.

10 **MS. AKTABOWSKI:** Sorry?

11 **COMMISSIONER GRAHAM:** A minute left.

12 **MS. AKTABOWSKI:** Thank you. There are several
13 associations with condos and modular and/or manufactured
14 mobile homes in Stock Island that are already classified
15 as general service with the HOA or management company
16 paying the bill, so the precedent has been set. We
17 believe that Harbor Shores is entitled to the lower
18 rates and service charges.

19 If you decide that the members of Harbor
20 Shores are individual residential customers, then I
21 would ask the Commissioners to review the issue of
22 KWRU's access to private homes inside a private park to
23 shuttle service to delinquent customers. And also
24 please review the issue of requiring deposits from
25 residents who supposedly have been residential customers

1 for almost ten years.

2 Commissioners, if it looks like a duck, swims
3 like a duck, and quacks like a duck, then we should be
4 looking for a duck. And you can find that duck at
5 Harbor Shores disguised as 69 residential unit customers
6 when it's actually one big, large general service
7 customer. Thank you.

8 **CHAIRMAN BROWN:** Thank you, Ms. Aktabowski.

9 And thank you to all the parties for your
10 brief opening statements.

11 Moving on to witnesses -- and I think you all
12 probably figured out by now that the microphones are
13 live and they do not turn off. You have to push to
14 mute it. Actually you -- except for you folks, I think
15 yours are different, but the folks over there, they are
16 live. So, again, please be courteous to others when
17 your mike is on.

18 And I'm going to get -- move on to some brief
19 comments regarding the witnesses. We will be calling
20 the witnesses in the order that is laid out in the
21 Prehearing Order. The witnesses who are here today are
22 reminded, and for tomorrow, are reminded to, when you
23 take the stand and you have questions on cross, please
24 start with a yes or no answer, if possible, followed by
25 a brief explanation.

1 A few other additional comments. We want to
2 give every party an opportunity to present its case in
3 full and to do the job that they're here for, but we
4 would ask for your cooperation. So to that end, I would
5 like to remind the parties that friendly cross will not
6 be allowed, as was provided in the Prehearing Order. In
7 addition, we will not allow duplicative or repetitive
8 questions. We have much ground to cover. And as I
9 noted earlier, we really want to do an efficient and
10 professional process, and so we appreciate your
11 cooperation in that regard. Please be mindful and
12 respectful to all.

13 I do want to remind everyone that we -- this
14 is a full evidentiary hearing and it is being
15 transcribed, so please be courteous to the witnesses
16 when they take the stand.

17 We'll be swearing in all the witnesses who are
18 here together at once. And I don't think I have any
19 other procedural issues to cover, so I think at this
20 time it would be appropriate to swear in all the
21 witnesses who are here today.

22 Please stand with me and raise your right
23 hand. Do you swear or affirm to provide the truth in
24 this proceeding.

25 (Chorus of affirmative responses.)

1 (Witnesses collectively sworn.)

2 Thank you. Please be seated.

3 And just a few other comments on cross for the
4 direct case. We'll be going in this order: Office of
5 Public Counsel first, Monroe County, followed by Harbor
6 Shores, then staff, and then the Commissioners, and then
7 redirect, just to put you on notice. And witnesses have
8 up to five minutes to summarize their testimony, but
9 please do not feel the need to use all of the five
10 minutes. So with that, are there any questions before I
11 begin? Or, Ms. Mapp, have I covered everything?

12 **MS. MAPP:** Yes, with the exception of we would
13 ask that all parties that intend to use exhibits for
14 cross-examination, to hand them to staff so that we can
15 hand them out prior to you beginning questioning to make
16 this more efficient.

17 **CHAIRMAN BROWN:** Thank you. And, Ms. Mapp,
18 who is the designated staff member that will be
19 assisting?

20 **MS. MAPP:** It'll be Robert Graves.

21 **CHAIRMAN BROWN:** Robert is in the back with
22 the red tie. The only one wearing a jacket left.
23 Robert, you can take your jacket off, if you'd like.

24 All right. With that, KW, you may call your
25 first witness.

1 **MR. SMITH:** Yes. KWRU calls Mr. Ed Castle to
2 the stand.

3 **CHAIRMAN BROWN:** Okay. Thank you.

4 Mr. Castle. Good morning, Mr. Castle.

5 **THE WITNESS:** Good morning.

6 Whereupon,

7 **EDWARD R. CASTLE**

8 was called as a witness on behalf of KWRU and, having
9 first been duly sworn, testified as follows:

10 **BY MR. SMITH:**

11 **Q** Good morning, Mr. Castle.

12 **A** Good morning.

13 **Q** Were you sworn in just a minute ago?

14 **A** Yes, I was.

15 **Q** You've prefiled testimony in this matter?

16 **A** Yes.

17 **Q** And if I ask you the questions asked in your
18 prefiled testimony, would you have any changes to make
19 to that prefiled testimony?

20 **A** No, I wouldn't.

21 **MR. SMITH:** I would request to move into the
22 record Mr. Castle's prefiled testimony as it is -- as if
23 it is read.

24 **CHAIRMAN BROWN:** We will go ahead and move
25 into the record Mr. Castle's prefiled testimony as

1 though it's read.

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1 **Q. Please state your, name profession and address.**

2 A. My name is Edward R. Castle. I am Vice President of Weiler Engineering Corporation, and
3 Director of its wastewater division. My business address is 6805 Overseas Highway,
4 Marathon, Florida 33050.

5 **Q. State briefly your educational background and experience.**

6 A. I hold the degree of Bachelor of Science from the University of Kentucky in Chemical
7 Engineering, with an emphasis on water pollution control, I have been employed in the
8 wastewater industry since 1987. I was Laboratory Director for Seminole County
9 Environmental Services for two years, followed by nine years with Operations Management
10 International as a wastewater operations specialist, then four years as Director of Operations
11 for Davis Water Analysis/Synagro Technologies. The past twelve years I have been a
12 Professional Engineer for Weiler Engineering Corporation.

13 **Q. Do you have any professional affiliations?**

14 A. Yes, I am a licensed Professional Engineer in Florida and hold a Florida Class A wastewater
15 treatment plant operator's license.

16 **Q. Have you previously appeared and presented testimony before any regulatory bodies?**

17 I have prepared and presented expert engineering testimony before the Florida Public Service
18 Commission in K W Resort Utilities Corp.'s last rate case in 2008. I also testified as an expert
19 witness before the Division of Administrative Hearings in the Last Stand protest of the DEP's
20 intent to issue a modification of KWRU's wastewater permit to allow the construction of the
21 plant expansion.

22 **Q. On whose behalf are you presenting this testimony?**

23 A. I am presenting this testimony and appearing on behalf of K W Resort Utilities Corp.
24 (KWRU), the applicant for rate increase in the present docket.

25 **Q. Please describe your familiarity with K W Resort Utilities Corp.'s wastewater system?**

1 A. I first became familiar with KWRU's wastewater system in 1990 when I was working as an
2 independent consultant to the company that was operating the system at the time. In 1998, I
3 was employed full-time by the operating company and continued to assist with KWRU's
4 issues. Since I began my employment with Weiler Engineering in 2003, I have been the
5 Consulting Engineer for the KWRU wastewater system.

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

7 A. The purpose of my direct testimony is to present information supporting the design capacity
8 of the plant expansion, the necessity to replace the vacuum tank and the costs associated with
9 such replacement, as well as the reason that the manufacture of the replacement vacuum tank
10 and rental of the temporary vacuum tank was not bid out.

11 **Q. Are you sponsoring any exhibits?**

12 A. Yes, I am sponsoring four exhibits. Exhibit ERC-1 is a schedule showing the expected
13 increases in wastewater flow that determine the design capacity of the plant expansion.
14 Exhibit ERC-2 is my letter to Christopher Johnson explaining the basis for not bidding the
15 air vacuum tank replacement. Exhibit ERC-3 is engineering estimate of the air vacuum tank
16 replacement. Finally, Exhibit ERC-4 is a schedule of my firm's costs in connection with the
17 air vacuum tank replacement.

18 **Q. Was your opinion of the needed design capacity of the plant expansion accepted by
19 DEP?**

20 A. Yes. The FDEP permitting division accepted the proposed design capacity based on the
21 predicted flows, and included the proposed expansion in the draft permit that was
22 challenged by Last Stand. The administrative law judge accepted my opinion that a new
23 .350 MGD treatment train and other facilities related thereto added to the existing .499
24 MGD treatment plant was the appropriate size to meet demand at buildout which is
25 projected to occur between 2018 and 2020. Exhibit ERC-1 sets forth that analysis. DEP

1 adopted the administrative law judge's recommendation on this issue. The engineer for
2 the parties protesting the permit modification opined that the design capacity at build out
3 was in excess of 1 MGD which would have substantially increased the cost of the plant
4 expansion including the requirement to install a deep well injection.

5 **Q. Please explain the necessity for replacement of the air vacuum tank.**

6 A. For unknown reasons, the interior coating of the vacuum tank failed, exposing the carbon
7 steel tank shell to hydrogen sulfide gas in the presence of water. This combination of
8 compounds converts to sulfuric acid, which corroded the steel. When the corrosion was
9 discovered, I suggested that KWRU hire a qualified firm to perform ultrasonic thickness
10 testing of the steel to determine if patching and re-coating was an acceptable option. On
11 testing, it was found that the corrosion was extensive and had, in fact, completely
12 dissolved the steel to the outer protective coating around nearly the entire horizontal
13 perimeter of the tank. The structural integrity of the tank has been compromised. With
14 this degree of damage, patching and re-coating is not an acceptable option.

15 **Q. Did you recommend that KWRU use Airvac as the manufacturer of the air vacuum**
16 **tank, and if so, why.?**

17 A. In Exhibit ERC-2 I set forth a detailed explanation of the reasons why KWRU should go
18 with Airvac as the manufacturer of the replacement air vacuum tank.

19 **Q. Have you prepared an estimate of the cost to replace the air vacuum tank?**

20 A. Yes, my estimate for the air vacuum tank replacement is set forth in Exhibits ERC-3 and
21 ERC-4

22 **Q. Does that conclude your direct testimony?**

23 A. Yes, it does.

1 **BY MR. SMITH:**

2 **Q** Mr. Castle, if you could provide a summary of
3 your testimony.

4 **A** Certainly. My name is Ed --

5 **CHAIRMAN BROWN:** I don't think your microphone
6 is on. Can you make sure it's on before you begin?
7 Okay. Maybe bring it to your mouth. Thank you.

8 **THE WITNESS:** Better?

9 **CHAIRMAN BROWN:** A little bit.

10 **THE WITNESS:** Okay. How about now?

11 **CHAIRMAN BROWN:** Yeah. Thanks.

12 **THE WITNESS:** My name is Ed Castle. I'm a
13 licensed professional engineer in the state of Florida.
14 I hold a Class A wastewater treatment plant operator's
15 license as well, and I've been working in wastewater
16 down here since 1989. I designed the upgrades to the
17 KWRU plant and submitted the application to DEP in April
18 of 2014.

19 The issuance of the permit -- the intent to
20 issue the permit was issued by DEP in July of that year
21 and it was protested by *Last Stand*. One of the
22 contentions was that the proposed 0.850 MGD capacity for
23 the plant was not adequate to handle the future flows.
24 DEP -- or *Last Stand* also protested the continued use of
25 the existing disposal well system and the reclaimed

1 water system, claiming that it would cause harm to the
2 waters of the state of Florida.

3 DEP and KWRU both defended DEP's actions in
4 intending to issue the permit. It was convincingly
5 demonstrated that the proposed AWT process would provide
6 adequate, reasonable assurance that the waters of the
7 state would not be degraded, and it also showed that
8 discharges to the wells and continued use of the
9 reclaimed water system would not degrade the waters of
10 the state, and it also found that the capacity of 850
11 conformed to DEP's planning requirements.

12 The proposed modification to the KWRU permit
13 was driven by two primary factors: Chapter 2010-205,
14 Laws of Florida, required that KW Resort advance --

15 **MR. SAYLER:** Madam Chair, I hate to object,
16 but this is not anywhere in his direct testimony. It's
17 a fine summary of the process, but I believe that
18 witness summaries are supposed to be limited to the
19 direct testimony. This is a lot of background that's
20 outside of his testimony.

21 **CHAIRMAN BROWN:** Mr. Friedman or, pardon me,
22 Mr. Smith.

23 **MR. SMITH:** I do believe he discusses the
24 permit challenge, and the final order of the DEP has
25 been officially recognized in this case. And so it is a

1 background of the permit that was issued and it was
2 discussed in his testimony.

3 **CHAIRMAN BROWN:** Can you direct me to where in
4 his testimony, please? It's a limited four pages.

5 **MR. SMITH:** Mainly what he's describing is
6 actually attached as the exhibit, which is the permit
7 that was applied for which is the design of the plant.
8 And then the second part is a vacuum tank as well. And
9 then the third exhibit is actually some of the costs.
10 If you would -- the permit itself, the permit challenge
11 has been officially recognized, so I don't think he
12 needs to get into any more detail of the permit
13 challenge. I think the time he spent on it has caused
14 him to always relate back to it, but if you want to just
15 proceed forward past the permit challenge, I would agree
16 that it is not discussed in detail.

17 **CHAIRMAN BROWN:** Okay. Mr. Castle, you may
18 continue with your summary, but move along.

19 **THE WITNESS:** Okay. I will do that.

20 As I was saying, Chapter 2010-205, Laws of
21 Florida, required the upgrade to AWT process to protect
22 the environment and protect -- to reduce pollution to
23 nearshore waters and groundwaters of the state of
24 Florida. In addition to the environmental legislation,
25 DEP rules require planning for the future growth and

1 expansion of the plant to handle additional flows that
2 may come.

3 The analysis that we put forth demonstrated
4 that the flows from existing customers through changes
5 in use would increase, and the capacity of
6 850,000 gallons a day was the appropriate capacity to
7 design for.

8 **MR. SAYLER:** Madam Chair, this is more related
9 to the summary of his rebuttal testimony as opposed to
10 his direct testimony. And I hate to interrupt, but --

11 **MR. SMITH:** Actually it's on page -- it's in
12 Exhibit 1. That's actually the flow data charts that
13 show the analysis that was done as part of the permit
14 application.

15 **CHAIRMAN BROWN:** Okay. I see it.

16 **MR. SMITH:** So he did actually --

17 **MR. SAYLER:** I withdraw my objection. Sorry.

18 **CHAIRMAN BROWN:** No more interruption from the
19 direct -- the summary. He's almost done.

20 **THE WITNESS:** Yes, I'm almost done. Very
21 close.

22 As the DEP rules require, we designed the
23 plant to predict the growth over the next 20 years'
24 planning period and show that the service area was going
25 to be built out in -- within about 2019 based on the

1 predicted developments. This is all required by DEP
2 planning requirements in their rules.

3 **CHAIRMAN BROWN:** That concludes your summary?

4 **THE WITNESS:** Yes.

5 **CHAIRMAN BROWN:** Thank you, Mr. Castle.

6 Mr. Smith.

7 **MR. SMITH:** And just for the -- I think I
8 mentioned that, for the record, the DEP permit challenge
9 and the final order that allowed the issuance of the
10 permit has been officially recognized, and so that is
11 part of the record.

12 **CHAIRMAN BROWN:** Thank you. At this time, I
13 believe staff has questions for the witness.

14 **MS. MAPP:** Yes.

15 **EXAMINATION**

16 **BY MS. MAPP:**

17 **Q** Good morning, Mr. Castle.

18 **A** Good morning.

19 **Q** Can you please turn to the large white binder
20 in front of you?

21 **A** I have to put on my reading glasses, if you
22 don't mind. Okay.

23 **Q** In the front pocket there should be a
24 Comprehensive Exhibit List. Okay. And if you could
25 turn to page 6 and 7. Your name is designated as a

1 witness who prepared partial responses to the
2 interrogatory responses labeled here.

3 **A** Yes.

4 **Q** Were these -- did you prepare these responses
5 or were they prepared under your direction or control?

6 **A** Yes, I prepared them.

7 **Q** And are they true and accurate to the best of
8 your knowledge and belief?

9 **A** Yes.

10 **MS. MAPP:** Thank you.

11 **CHAIRMAN BROWN:** Thank you. Back to you,
12 Mr. Smith.

13 **MR. SMITH:** At this time I'd tender him for
14 cross-examination.

15 **CHAIRMAN BROWN:** Okay. Public Counsel.

16 **MR. SAYLER:** We have some exhibits.

17 **CHAIRMAN BROWN:** Here we go.

18 **MR. SAYLER:** May I approach the bench?

19 **CHAIRMAN BROWN:** Yes.

20 **MR. SAYLER:** This exhibit, to save paper, was
21 reproduced in small print, and I have a large print
22 edition for the witness.

23 **CHAIRMAN BROWN:** Okay. Sure.

24 I'm going to tell you we are going to be at --
25 starting at Exhibit No. 82, Mr. Sayler. We'll be

1 starting at Exhibit 82.

2 **MR. SAYLER:** Thank you, ma'am.

3 **CHAIRMAN BROWN:** So we're going to mark -- go
4 ahead and mark this, Mr. Sayler, at this time as
5 Exhibit 82, and it is an excerpt from the DOAH case
6 final order and recommended order.

7 **MR. SAYLER:** Yes. It's an excerpt from the
8 *Last Stand* final order and recommended order, and there
9 is a typo in the description page.

10 **CHAIRMAN BROWN:** Ah, thank you.

11 (Exhibit 82 marked for identification.)

12 You may proceed when you're ready.

13 **MR. SAYLER:** All right.

14 **BY MR. SAYLER:**

15 **Q** Mr. Castle, would you turn to page 3 of your
16 prefiled direct testimony and refer to lines 20 to 22?

17 **A** Excuse me. Where can I find the prefiled
18 direct testimony? Is that -- okay. Can you repeat
19 which lines?

20 **Q** Page 3, lines 20 through 22.

21 **A** Okay.

22 **Q** You would agree that the current wastewater
23 treatment plant is operating or has a design capacity of
24 499,000 gallons per day; is that correct?

25 **A** That's the permitted capacity, yes.

1 **Q** All right. And that the plan is to expand
2 that capacity by 350,000 gallons per day; correct?

3 **A** Yes.

4 **Q** So approximately a 70 percent increase in
5 capacity?

6 **A** Approximately.

7 **Q** All right. And you determined the amount of
8 capacity that was necessary for the plant capacity
9 expansion project; correct?

10 **A** Yes.

11 **Q** All right. And isn't it true that you
12 testified that the DEP permitting decision accepted the
13 proposed design capacity based upon predicted flows?

14 **A** Yes.

15 **Q** All right. And you would agree that the DEP
16 permitting division did not require KWRU to add that
17 specific amount of capacity.

18 **A** No. I -- my interpretation of the rules
19 require that we plan for the flows to the best of our
20 ability, which I did. So that -- in my opinion, that is
21 a requirement.

22 **Q** Okay. And you've been working in the Keys for
23 a number of years and working with KWRU in particular;
24 is that correct?

25 **A** Yes, among others.

1 **Q** All right. And you're very familiar with the
2 requirements for wastewater facilities in the Keys to
3 convert to advanced wastewater treatment, or AWT,
4 standards; is that correct?

5 **A** Yes.

6 **Q** All right. And did you work with KW in the
7 2006 through 2009 time frame when KW was converting to
8 AWT?

9 **A** Yes.

10 **Q** All right. And did you design the conversion
11 to AWT for KW?

12 **A** Yes.

13 **Q** And what was the original deadline for
14 conversion to AWT in the Keys?

15 **A** As I recall, Chapter 99 -- I forget the rest
16 of the numbers.

17 **Q** Right.

18 **A** Anyway, it was July 1st of 2010, I believe.

19 **Q** All right. And you would agree that those --
20 that mandatory deadline was extended to 12/31/15;
21 correct?

22 **A** Yes.

23 **Q** And was KW able to achieve AWT standards in
24 2009 to meet the original deadline?

25 **A** Yes.

1 **Q** And after that deadline was moved to the end
2 of 2015, were you aware that KW discontinued treating at
3 AWT?

4 **A** Not directly aware, no.

5 **Q** But you knew that they were able to run at AWT
6 standards prior to the deadline?

7 **A** Yes, with some temporary chemical feed
8 systems, et cetera. We did not have the permit system
9 in place at that time.

10 **Q** Okay. And do you know why they stopped
11 operating at AWT in 2009?

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

13 **Q** Okay. All right. Would you please turn to
14 that exhibit, the excerpt from the DOAH final order,
15 recommended order that this Commission has taken
16 official recognition?

17 **A** Yes, sir.

18 **Q** I gave you a large print edition. I hope you
19 don't mind.

20 **A** I appreciate it.

21 **CHAIRMAN BROWN:** And this is what has been
22 marked as 82, for our reference.

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

24 **CHAIRMAN BROWN:** Okay.

25 **BY MR. SAYLER:**

1 **Q** All right. And in your -- I believe in your
2 summary you testified that you were the engineer of
3 record for this expansion project.

4 **A** Yes.

5 **Q** What does engineer of record mean?

6 **A** It means that I'm the licensed professional
7 engineer in responsible charge of the facility's
8 planning and construction.

9 **Q** And as a professional engineer, you would then
10 put your seal upon the project and all the design
11 documents and things?

12 **A** Yes.

13 **Q** And do you help KW apply for the permit with
14 DEP to expand the capacity?

15 **A** Yes.

16 **Q** And you would agree that KW has been issued a
17 permit by DEP to expand; correct?

18 **A** Yes.

19 **Q** And that expansion project involved not only
20 the expanded capacity but two additional injection
21 wells?

22 **A** Yes.

23 **Q** And are you familiar with the recommended
24 order that was issued in this case?

25 **A** I've read through it, but I'm not very

1 familiar with it.

2 Q Okay. All right. If you will please turn in
3 that recommended order to page 2 at the very bottom.
4 It's a couple of pages in. I will represent to you,
5 Mr. Castle, that this is an excerpt from the full order
6 and that all the yellow highlighting is highlighting
7 that the Office of Public Counsel added to the
8 recommended order.

9 On page --

10 CHAIRMAN BROWN: Mr. Castle, do you have it in
11 front of you? You've got it?

12 THE WITNESS: Yes, I do.

13 CHAIRMAN BROWN: Okay.

14 BY MR. SAYLER:

15 Q Under the heading "Statement of the Issue,"
16 would you read that highlighted portion?

17 A "The permit at issue would authorize the
18 expansion of KWRU's existing domestic wastewater
19 facility and the installation of two additional
20 underground injection wells."

21 Q All right. And would you turn a couple of
22 pages to page No. 14, and there's the highlighted
23 paragraphs 35 and 36.

24 A Yes, I see them.

25 Q All right. Would you please read paragraph

1 35?

2 **A** Thirty-five, "The existing permit and the
3 activities authorized thereunder are not at issue in
4 this proceeding."

5 **Q** And would you please read the highlighted
6 portion of 36?

7 **A** Thirty-six, "The permit at issue proposes to
8 authorize construction of a new .350 MGD treatment
9 train, which will increase the design capacity and
10 permitted capacity of the plant from .499 MGD to
11 .849 MGD AADF.

12 **Q** Would you explain what those two acronyms, MGD
13 and AADF, are?

14 **A** MGD is million gallons per day, and AADF is
15 annual average daily flow.

16 **Q** And it is your testimony in this case that
17 build out -- you believe build out is going to occur
18 sometime in the next five years; is that correct?

19 **A** Yes.

20 **Q** All right. So, in other words, KW can expect
21 quite a bit of customer growth in the near future?

22 **A** KWRU can expect changes in use from existing
23 customers.

24 **Q** Okay. Please explain what you mean by changes
25 in use from existing customers.

1 **A** We've seen a historical trend in the Keys of
2 redevelopment of properties, and it changes the water
3 consumption at those properties, particularly in
4 waterfront properties.

5 **Q** Okay. So, in other words, those waterfront
6 properties like Oceanside Marina as a customer currently
7 have one certain flow characteristic, but they're
8 redeveloping and are going to add a substantial amount
9 of new flows?

10 **A** The flows are going to increase to the
11 wastewater plant, yes.

12 **Q** All right. And you would agree that in
13 addition to those redevelopments, there are new
14 customers that are potentially waiting in the wings to
15 hook into the system; is that correct?

16 **A** I can't think of any significant vacant
17 properties that would -- that are connected at this
18 point that would connect, so I guess the answer is no.

19 **Q** Okay. But you would agree that certain
20 current existing customers, if they redevelop their
21 properties, they can -- they would need additional
22 treatment capacity from the plant.

23 **A** Yes.

24 **Q** And that is why this utility expanded the
25 plant capacity from approximately 500,000 gallons per

1 day to 849.

2 **A** In part. I believe also there will be changes
3 in use that won't -- or changes in water consumption
4 that may not be related to new development.

5 **Q** But still those are additional flows, and the
6 company will receive additional revenues for those
7 increased flows; correct?

8 **A** I can say, yes, there are additional flows. I
9 can't speak to the revenue.

10 **Q** All right. Would you please turn to page 40
11 on the excerpt. There are several highlighted
12 paragraphs. Please direct your attention to paragraphs
13 117 through 119.

14 **A** Okay.

15 **Q** All right. And when you were calculating the
16 flows that were needed for these existing customers who
17 were increasing their wastewater treatment needs, you
18 had a projected wastewater flow of .74 MGD for the
19 wastewater project; is that correct?

20 **A** I don't recall exactly the number, but that
21 sounds about correct.

22 **Q** All right. Please look at paragraph 118. Do
23 you see that number of .74 MGD?

24 **A** Yes, I do.

25 **Q** All right. And then in paragraph 19,

1 according to this finding of fact, it says, "Mr. Castle
2 added a safety factor of 15 percent."

3 **A** Yes.

4 **Q** And you would agree that's where you ended up
5 at the .849 MGD plant capacity amount?

6 **A** Essentially, yes.

7 **Q** All right. Would you flip back to page 27,
8 paragraph 72 and 73. Are you there?

9 **A** Yes, I am.

10 **Q** All right. You would agree that as a
11 permittee you come in with -- pursuant to the rules, the
12 DEP rules and the statutes, you come in, you make your
13 analysis, and you must provide a design that fits within
14 the criteria set forth in the DEP rules; is that
15 correct?

16 **A** Yes.

17 **Q** And part of that, you look at different
18 aspects of the rules, and from there you eventually
19 calculated the need for 800 -- or .849 MGD plant
20 capacity expansion; correct?

21 **A** Yes.

22 **Q** And that was according to your sound
23 engineering -- according to sound engineering
24 principles; correct?

25 **A** Yes.

1 **Q** All right. And you would agree that DEP does
2 not tell you a number when it comes to approving or
3 reviewing your permit application; is that correct?

4 **A** Yes, I would agree the rules don't specify any
5 particular number.

6 **Q** All right. And in your experience, they check
7 your math, so to speak. And if it's too high, would
8 they say you cannot build it?

9 **A** I'm not sure what they would do in that case.

10 **Q** Okay.

11 **A** I have not projected too high.

12 **Q** All right. But if for some reason
13 hypothetically you would come in and say you only needed
14 100,000 gallons per day additional capacity, DEP would
15 have looked at it and probably said, "That's a little
16 low, Mr. Castle." Is that correct?

17 **A** In general, DEP looks at the flow projections
18 provided by the engineer --

19 **Q** Uh-huh.

20 **A** -- and, based on those flow projections, will
21 accept or not accept the recommended increase in
22 capacity.

23 **Q** Okay. And in this case, the DEP did accept
24 what you recommended, and the final order called it
25 sound -- according to good, sound engineering

1 principles; correct?

2 **A** Yes.

3 **Q** And please look at paragraph 73. Would you
4 read that paragraph into the record for me, sir?

5 **A** Seventy-three, "DEP's review does not entail
6 redesigning or reengineering the project or questioning
7 the design engineer's reasonable exercise of judgment on
8 design matters as long as the project is accurately
9 designed based on sound engineering principles and will
10 operate in accordance with the applicable permitting
11 requirements and standards. Thus, as a matter of
12 practice, DEP relies, to a large extent, on the design
13 engineer's certification that the system is accurately
14 designed according to sound engineering principles, as
15 is appropriate and authorized pursuant to the
16 certification provisions of the application form, Rule
17 624.050(3), and Chapter 471, and Florida Board of
18 Engineering Rules."

19 **Q** Mr. Castle, about how many projects have you
20 submitted to DEP for review and approval?

21 **A** Can you clarify if you mean expansion
22 projects, re-permitting?

23 **Q** Wastewater treatment projects, either new or
24 expansion projects.

25 **A** I'd say in the neighborhood of 20.

1 **Q** All right. Thank you. If you'd do me a favor
2 and just leave the large print edition there at the
3 witness stand. I'll have some questions for other
4 witnesses related to other portions. Thank you.

5 **A** Sure.

6 **Q** Would you please refer to your attached
7 Exhibit ERC-3 and ERC-4 attached to your direct
8 testimony.

9 **A** Can you point out where that -- those
10 identified numbers are on this?

11 **Q** The top right-hand corner, you'll see
12 something saying, "Docket No. 150071." Two lines down
13 it'll say, "Exhibit ERC," which are your initials, dash
14 --

15 **CHAIRMAN BROWN:** Have you got it, Mr. Castle?

16 **THE WITNESS:** Yes, I see it.

17 **CHAIRMAN BROWN:** Okay.

18 **THE WITNESS:** And which ones was it you wanted
19 me to look at?

20 **BY MR. SAYLER:**

21 **Q** ERC-3, 1 of 2, and ERC-4, page 1 of 1. If
22 you'll take a moment to review both exhibits.

23 **CHAIRMAN BROWN:** Are you good?

24 **THE WITNESS:** Okay.

25 **BY MR. SAYLER:**

1 **Q** All right. You would agree that at the top of
2 both exhibits they say, "KWRU vacuum tank replacement"?

3 **A** Yes, they do.

4 **Q** All right. And the description says, "Study
5 and Report"; is that correct?

6 **A** Yes.

7 **Q** What does "Study and Report" mean?

8 **A** That's a generic heading that we use on our
9 cost estimating forms to indicate portions of the
10 project that are on the design side of things as opposed
11 to the construction side.

12 **Q** Okay. Design side?

13 **A** Yes.

14 **Q** Okay. And you would agree that both of these
15 exhibits are essentially the same exhibit twice;
16 correct?

17 **A** Yes.

18 **Q** All right. And if you would look at ERC-3,
19 page 2 of 2, that was the vacuum tank replacement cost
20 estimate. Are you there?

21 **A** Yes.

22 **Q** All right. The first line in that exhibit
23 says, "Engineering, including design specs, bidding
24 assistance, and limited CEI." Do you see that?

25 **A** Yes, I see that.

1 **Q** What is CEI?

2 **A** CEI is an acronym for construction engineering
3 inspections.

4 **Q** Okay. And you would agree that \$25,145 is the
5 same amount as your -- the cost for your study and
6 report; correct?

7 **A** Yes.

8 **Q** All right. And you would agree that that is
9 embedded in that total of \$610,000 for the replacement
10 project; correct?

11 **A** Yes.

12 **Q** And that's approximately -- 610,000 was the
13 original cost estimate. You would agree that the
14 current cost estimate is now lower; is that correct?

15 **A** Yes, it is.

16 **Q** All right. And when it comes to -- you said
17 engineering, supervision, and review. What does that
18 entail?

19 **A** Engineering, supervision, and review includes
20 responding to the request for additional information
21 from the contractors to reviewing of shop drawings
22 submitted by the contractors, reviewing proposals from
23 suppliers such as Airvac, or making recommendations on
24 bids received for the project.

25 **Q** All right. And if you'd turn back to page 3

1 of your testimony. At lines 16 and 17, there's ERC --
2 it references, "Finally, Exhibit ERC-4 is the schedule
3 of my firm's cost in connection with the air vac
4 replacement project." Do you see that?

5 **A** Yes.

6 **Q** All right. Is there anywhere in your direct
7 testimony where you included similar costs related to
8 the wastewater treatment plant expansion project in your
9 direct testimony, sir?

10 **A** I don't recall.

11 **MR. SAYLER:** All right. Thank you. No
12 further questions.

13 **CHAIRMAN BROWN:** Thank you, Mr. Sayler.

14 On to Monroe County, Mr. Wright.

15 **MR. WRIGHT:** Thank you, Madam Chairman. Is my
16 mike on?

17 **CHAIRMAN BROWN:** Yes.

18 **MR. WRIGHT:** Okay, good. I was messing with
19 the mute button and I wasn't sure where I got it left.
20 Okay.

21 **EXAMINATION**

22 **BY MR. WRIGHT:**

23 **Q** Good morning, Mr. Castle.

24 **A** Good morning.

25 **Q** My name is Schef Wright. I represent the

1 County in this proceeding. I just have a few questions
2 following along with the questions that Mr. Sayler asked
3 you.

4 You testified in response to Mr. Sayler's
5 questions that you're aware that the company did achieve
6 advanced wastewater treatment standards in 2009;
7 correct?

8 **A** Yes, as a demonstration that the process would
9 achieve AWT.

10 **Q** Okay. And you said they achieved it with
11 temporary systems; correct?

12 **A** Yes.

13 **Q** Why only temporary systems?

14 **MR. SMITH:** Objection.

15 **CHAIRMAN BROWN:** Excuse me?

16 **MR. SMITH:** This is all outside the scope of
17 his direct. There's nothing about the 2009 rate case or
18 AWT or anything about the operation of AWT back in 2009.

19 **CHAIRMAN BROWN:** Mr. Wright.

20 **MR. WRIGHT:** Madam Chairman, he didn't object
21 when Mr. Sayler elicited the prior testimony. The door
22 is open.

23 **CHAIRMAN BROWN:** Objection overruled. You may
24 answer the question, Mr. Castle.

25 **BY MR. WRIGHT:**

1 Q The question was why did the company only do
2 so with temporary systems?

3 A My recollection is that we were looking at the
4 expansion of the facility for future flows to that point
5 as well. So it wouldn't make sense to, in my opinion,
6 economic sense to build permanent structures that are
7 designed for the full expected flow of the plant.

8 Q You are aware, I think you testified, that the
9 company, KWRU, agreed to achieve AWT by January 1st,
10 2007; correct?

11 A No. I had no part in that, as I recall.

12 Q You didn't answer the question I asked. Are
13 you aware of that fact?

14 A I've heard it stated here, yes.

15 Q How long have you been the engineer for the
16 company?

17 A I believe since 1998.

18 Q Did you testify in the 2007 rate case?

19 A Yes.

20 Q Are you aware that that subject matter was
21 addressed in the 2007 rate case?

22 **MR. SMITH:** Objection. Assumes facts not in
23 evidence.

24 **CHAIRMAN BROWN:** Mr. Wright, can you rephrase
25 it?

1 **MR. WRIGHT:** Well, it was -- it's a yes or no
2 question as to what he was aware of, Madam Chair.

3 **CHAIRMAN BROWN:** Can you state the -- restate
4 the question to me? I --

5 **MR. WRIGHT:** Yes. My question to Mr. Castle
6 was, "Are you aware that the subject of the company's
7 obligation to reach AWT service by January 1st,
8 2007, was addressed in the 2007 rate case," in which he
9 --

10 **CHAIRMAN BROWN:** Testified.

11 **MR. WRIGHT:** -- for you, in which he
12 testified.

13 **CHAIRMAN BROWN:** I'll allow it. Mr. Castle.

14 **THE WITNESS:** No, I don't recall that.

15 **BY MR. WRIGHT:**

16 **Q** Were you involved in designing the temporary
17 systems, as you described them, that reached -- that
18 were used to reach AWT in 2009?

19 **A** I was involved in the permitting and the
20 design of the treatment process, yes.

21 **Q** The treatment process to achieve AWT.

22 **A** Yes.

23 **Q** So my question for you is, again, why did the
24 company only implement temporary systems when they were
25 obligated to achieve AWT by 2007?

1 **MR. SMITH:** Objection, assuming facts into
2 evidence. He's now stating that they were required to
3 meet AWT by 2007. I believe the witness's testimony was
4 he wasn't aware of that fact.

5 **CHAIRMAN BROWN:** I agree.

6 Mr. Wright, can you rephrase your question?

7 You don't have to restate your objection, sir.
8 I got it.

9 **MR. WRIGHT:** I'd like to read a brief passage
10 from order -- Commission Order PSC-09-0057, the rate
11 case in which Mr. Castle was a witness.

12 **CHAIRMAN BROWN:** I assume you're going to ask
13 a question.

14 **MR. WRIGHT:** Yes, ma'am.

15 **CHAIRMAN BROWN:** Okay.

16 **MR. WRIGHT:** The discussion, at pages 20 and
17 21 of that order, addresses -- and, of course, we'll be
18 asking you to take official recognition of this order --
19 addresses the used and useful calculation.

20 The Commission states, "We agree with the
21 utility that factors clearly exist," I'll skip a few
22 words, "to find that the utility's wastewater treatment
23 plant and collection and reuse systems are all
24 100 percent used and useful. The record shows that the
25 remaining capacity of the treatment facility and lines

1 have been committed and contributed toward the provision
2 of service of the 1,500 EDUs that the utility agreed to
3 serve pursuant to a contract with Monroe County.

4 Although not all of the potential customers located
5 within the environmentally sensitive area have
6 connected, it appears that Monroe County's advanced
7 payment for these customers clearly reserves that
8 remaining capacity.

9 "In addition, the record shows that the
10 facility is 100 percent used and useful because the
11 plant is designed and built to provide reuse and will be
12 an AWT plant as mandated by Monroe County."

13 **BY MR. WRIGHT:**

14 **Q** So my question to Mr. Castle is does that
15 passage from this order in which the Commission
16 clearly -- I'll stop -- I won't characterize it -- does
17 that passage refresh your recollection as to the
18 representations made by the company in 2000 -- in its
19 2007 case?

20 **A** No, it does not. I'm the engineer for the
21 utility. I was aware that there was a requirement from
22 Chapter 99-395, Laws of Florida, to achieve AWT
23 treatment by July 1st of 2010. That is what I was aware
24 of.

25 **Q** Okay. And did you design the systems to

1 make -- to achieve that level of service?

2 **A** I designed the wastewater treatment process to
3 reach that level of service.

4 **Q** Did you design it with the intent that it
5 would only be temporary, given your understanding that
6 you were supposed to meet that standard by 2010?

7 **A** The design of the process is not temporary.
8 Some ancillary components were installed such as
9 chemical feed systems that were temporary, and we did
10 not install automated control of chemical feeds,
11 aeration, et cetera, at that time.

12 **Q** I'm sorry. You didn't install what? I didn't
13 follow that.

14 **A** We did not design permanent chemical storage
15 and pumping facilities. We did not design an automated
16 dissolved oxygen control system at that time.

17 **Q** Why not?

18 **A** In my opinion, the process would achieve AWT
19 with -- at that point, at those flows with the existing
20 process without automated control until we did a major
21 expansion. And as I stated earlier, building permanent
22 chemical storage facilities for a smaller capacity than
23 I anticipated we would need in the future didn't make
24 sense.

25 **Q** Could the company have continued providing AWT

1 treatment service with the facilities that you designed
2 and that were in place in May of 2009?

3 **A** In my opinion, yes.

4 **Q** Thank you. I have just a few other questions
5 regarding the issues of increased growth.

6 In your experience, do you know whether
7 redeveloped properties generally use more wastewater
8 service or deliver more wastewater flows to the company
9 than the customer points that are out there on Stock
10 Island now?

11 **A** I would say that depends on what the
12 redevelopment is.

13 **Q** Well, if it's a condominium building going in
14 where there are a bunch of mobile homes, does that
15 typically result in additional flows?

16 **A** I would say that typically higher end use like
17 vacation rentals and condos, hotels would use more
18 wastewater than a typical single family residential.

19 **Q** Do you know whether the utility increases --
20 collects additional capacity reservation fees for
21 additional flows that are anticipated from such
22 redeveloped properties?

23 **A** I know that I've provided flow analysis to the
24 utility. I'm not a party to their billing procedures.

25 **Q** Are you familiar with the company's evidence

1 regarding growth in this case, Mr. Castle?

2 **A** Could you clarify what you mean about that?

3 **Q** Yes. In response to staff's interrogatory
4 No. 24, which we'll be introducing as an exhibit
5 later -- I think it's already marked in the big stack of
6 exhibits here -- the company's sworn response is that
7 the company will be -- expects -- projects to be
8 experiencing growth of 329 ERCs per year starting in
9 2014. Are you familiar with that?

10 **A** I'm familiar with the flow projections that I
11 prepared, yes.

12 **Q** Did you have anything to do with translating
13 that into the company's projection of 329 ERCs per year
14 of growth?

15 **A** I don't recall specifically, but I am aware
16 that 250 gallons per day is the defined volume for an
17 ERC.

18 **Q** And is that the value you use in your flow
19 projections?

20 **A** Not directly, no. I did not use -- I did not
21 take an ERC count and develop a flow from that. I
22 used -- generally for new development or new properties
23 coming in, I use Table 1 of 64 E6. That's the
24 Department of Health documents that project flows for
25 different uses such as per laundry machine in a

1 laundromat, per motel room based on size, et cetera.

2 Q And per residential facility, residential
3 unit, I should say?

4 A Yes. Yeah.

5 MR. WRIGHT: Okay. Thank you. That's all the
6 questions I have for Mr. Castle, Madam Chair.

7 CHAIRMAN BROWN: Thank you.

8 On to Harbor Shores. Ms. Aktabowski.

9 MS. AKTABOWSKI: I have no questions for
10 Mr. Castle at this time.

11 CHAIRMAN BROWN: Thank you.

12 Commission staff.

13 MS. CRAWFORD: Staff has no questions for this
14 witness at this time.

15 EXAMINATION

16 BY MS. MAPP:

17 Q We just wanted to -- one moment -- just go
18 back to the Comprehensive Exhibit List that we directed
19 you to earlier in the white binder.

20 A This?

21 Q Yes, yes. And I just wanted to confirm that
22 the responses you provided are listed as Nos. 56 -- 56,
23 58, 60, 62, 65, and 67. Are these the responses to
24 which you were partially responsible for providing?

25 A I see my name on those, so I assume it's

1 correct, yes.

2 **MS. MAPP:** Thank you.

3 **CHAIRMAN BROWN:** And, Ms. Mapp, you will be
4 moving those -- requesting to move those exhibits in at
5 the end of the hearing?

6 **MS. MAPP:** Yes.

7 **CHAIRMAN BROWN:** Okay. Thank you.

8 Commissioners, any questions?

9 Seeing none, redirect.

10 **MR. SMITH:** No redirect, but we would move
11 into evidence the exhibits attached to his direct
12 testimony.

13 **CHAIRMAN BROWN:** Okay. Those are Exhibits
14 2 through 5. Any objection? Seeing none, we'll go
15 ahead and move into evidence 2 through 5.

16 (Exhibits 2 through 5 admitted into the
17 record.)

18 Office of Public Counsel, you have 82, which
19 we do not need to move in.

20 **MR. SAYLER:** Madam Chair --

21 **CHAIRMAN BROWN:** Yes, sir.

22 **MR. SAYLER:** -- it's been taken official
23 recognition of. We understand that. However, we did
24 some highlighting to this one, so if it's all right to
25 just move this one into the record.

1 **CHAIRMAN BROWN:** I don't have a problem with
2 that. Parties, do you have a problem with that?

3 **MR. SMITH:** I somewhat have an issue with that
4 because the order speaks for itself, and I can certainly
5 highlight many sections and bring them to the
6 Commission's attention in the close -- the post-hearing
7 arguments, and they are certainly capable of doing the
8 same thing.

9 So to have something that just is highlighted
10 sections, I think it's more appropriate to just bring
11 those sections to the Commission's attention in a
12 post-hearing brief.

13 **MR. SAYLER:** If they're -- Madam Chair, if
14 they're objecting to it, then don't worry about it.

15 **CHAIRMAN BROWN:** Okay. We will not move in
16 82.

17 All right. Would you like this witness
18 excused for now?

19 **MR. SMITH:** Yes, for the time being. He does
20 have rebuttal.

21 **CHAIRMAN BROWN:** Yes. See you later,
22 Mr. Castle.

23 **THE WITNESS:** Thank you.

24 **CHAIRMAN BROWN:** All right. Your next witness
25 would be Mr. Christopher Johnson.

1 **MR. SAYLER:** Madam Chair, with regard to the
2 various exhibits that Mr. Castle said he did partial
3 support for, we're unsure from staff's Comprehensive
4 Exhibit List which of those actual responses Mr. Castle
5 is for -- responsible for. It's an omnibus type
6 exhibit, so we don't know if he -- for instance, under
7 Exhibit 65, we don't know which of the documents he is
8 actually supporting.

9 **CHAIRMAN BROWN:** Okay. Staff.

10 **MS. MAPP:** Yes. Staff prepared USB drives for
11 all parties, and the USB drive contains the exact
12 exhibits listed within our list. Mr. Castle, as stated
13 within his direct testimony, is responsible for all
14 exhibits relating to the AWT, the plant expansion, and
15 the air vacuum tank replacement.

16 **CHAIRMAN BROWN:** And I'll confirm the
17 Commissioners do have all of those exhibits on the
18 computers in front of us.

19 Mr. Sayler.

20 **MR. SAYLER:** We're not intending to slow the
21 process down. It's just from a due process standpoint,
22 we don't know exactly which documents -- there are a lot
23 of documents in this case, and maybe for the next
24 hearing, if there's some way to just -- on the staff's
25 Comprehensive Exhibit List just say Witness Jones is

1 responsible for all these documents and not have these
2 omnibus combined exhibits. Because -- it's really hard
3 to go through because when it comes to the
4 interrogatories, there's an affidavit that specifies
5 who's responsible for what interrogatory, but on the
6 production of documents request, there's not an
7 affidavit. And I know staff worked very, very hard
8 to -- with all the parties to find out who's responsible
9 for what. But just it's a concern that we have, and
10 maybe that's something we can address going forward in
11 future proceedings without slowing the process down now.
12 But we just want to sensitize the Commission to our
13 concerns.

14 **CHAIRMAN BROWN:** Thank you. Appreciate those
15 comments. And I know staff has worked very hard to
16 address those concerns that you raised in a prior
17 hearing and tried to accommodate those requests here.
18 And so we're going to continue the format that we laid
19 out, and we'll -- staff will discuss it further with you
20 after the hearing is concluded.

21 **MR. SAYLER:** Thank you.

22 **CHAIRMAN BROWN:** Please raise any additional
23 questions, though, or concerns that you have throughout
24 the hearing. Feel free to do that.

25 All right. Mr. Friedman or Mr. Smith.

1 **MR. SMITH:** Mr. Smith.

2 Good morning.

3 Whereupon,

4 **CHRISTOPHER A. JOHNSON**

5 was called as a witness on behalf of KWRU and, having
6 first been duly sworn, testified as follows:

7 **EXAMINATION**

8 **BY MR. SMITH:**

9 Q Mr. Johnson, have you been sworn in?

10 A I have.

11 Q Did you file prefiled testimony in this
12 matter?

13 A Yes, I did.

14 Q If I asked you the questions asked in your
15 prefiled testimony, would you have any changes at this
16 time?

17 A No, I would not.

18 **MR. SMITH:** I would request to move
19 Mr. Johnson's prefiled testimony into the record as if
20 read.

21 **CHAIRMAN BROWN:** We'll go ahead and enter into
22 the record Mr. Johnson's prefiled testimony as though
23 read.

1 **Q. Please state your, name profession and address.**

2 A. My name is Christopher A. Johnson. I am President of K W Resort Utilities Corp. My
3 business address is 6630 Front Street, Key West, Florida 33040.

4 **Q. State briefly your educational background and experience.**

5 A. See resume attached as Exhibit CAJ-1.

6 **Q. Have you previously appeared and presented testimony before any regulatory bodies?**

7 A. I have prepared and presented testimony before the Florida Public Service Commission in K
8 W Resort Utilities Corp.'s last rate case in 2008. I also testified before the Division of
9 Administrative Hearings in the Last Stand protest of the DEP's intent to issue a modification
10 of KWRU's wastewater permit to allow the construction of the plant expansion

11 **Q. On whose behalf are you presenting this testimony?**

12 A. I am presenting this testimony and appearing on behalf of K W Resort Utilities Corp.
13 (KWRU), the applicant for rate increase in the present docket.

14 **Q. What is the purpose of your direct testimony?**

15 A. The purpose of my direct testimony is to present information supporting the financial and
16 engineering basis for KWRU's request to increase its rates and charges as originally presented
17 in the MFRs in the PAA filing, to provide supporting documentation and testimony to show
18 the basis for the requested rates and charges and to provide information supporting the
19 utility's cross petition filed in response to the protests filed by OPC and Monroe County.

20 **Q. Are you sponsoring any exhibits?**

21 A. Yes, I am sponsoring 7 exhibits. Exhibit CAJ-1 lists my education and experience. CAJ-2
22 contains MFR Volume III – Additional Engineering Information as originally filed in the
23 PAA case. Exhibit CAJ-3 contains the construction contract for the wastewater treatment
24 plant expansion. Exhibit CAJ-4 are responses to various staff data requests. Exhibit CAJ-5
25 is the most recent Wastewater Compliance Inspection Report by DEP. Exhibit CAJ-6 is

1 Glenn Miller employee housing agreement. Exhibit CAJ-7 is Ted Yarboro housing
2 Agreement. Finally, Exhibit CAJ-8 is communications from a Customer intending on
3 installing a deduct meter.

4 **Q. Were these Exhibits prepared by you and your staff?**

5 A. Yes they were.

6 **Q. Did KWRU modify its revenue request in response to various staff data requests?**

7 A. Yes, Exhibit CAJ-4 are the responses to various staff data requests which were prepared under
8 my direction and control.

9 **Q. Is it your opinion that the cost of the pro forma plant should be recovered in a second
10 phase rate increase?**

11 A. No. A contract for the pro forma plant improvements has been executed and is contained in
12 Exhibit CAJ-3. Pursuant to the contract, the wastewater treatment plant improvements are to
13 be substantially completed by April 8, 2017. Since the Commission is not scheduled to make
14 a final decision until February 7, 2017 it would be a more efficient procedure to include the
15 revenue requirement from the pro-forma projects in a single rate increase. Further, as a result
16 of the delay in implementing final rates due to the OPC and County protests, KWRU should
17 also be able to include the cost to replace an air vacuum tank currently estimated at
18 \$610,177.04. Mr. Castle is sponsoring the documentation regarding cost of the replacement
19 of this tank.

20 **Q. What is the necessary additional staffing and pro forma increase to salaries and wages
21 as a result of the additional requirements to meet AWT standards?**

22 A. KWRU needs three additional field positions and an administrative assistant, for a total
23 expense of \$194,000 plus corresponding payroll taxes. The PAA Order's reduction of this
24 amount by \$14,640 ignores the challenges of hiring low salaries personnel in a high cost of
25 living environment like Key West. Employee housing is an issue not only with KWRU but it

1 a major issue with businesses throughout the County. In the KWRU's Supplemental
2 Response to Data Request 3, Dated January 18, 2016, filed with the PSC, the Utility provided
3 exhibits that shows wastewater competitors particularly our competitor (OMI) operating in
4 Key West providing a housing stipend. The company, Operations Management Inc. (OMI)
5 that operates the City of Key West's Wastewater Treatment Plant provides a \$500 monthly
6 housing bonus to its employees. This equates to \$6,000 annually or as their General Manager
7 states in his email about \$3.00 per hour. KWRU recently hired a Class B Operator who
8 will move to Key West and begin working on July 2, 2016. To hire a qualified
9 Operator it was necessary to provide a \$1,675 signing bonus equal to one month's rent. See
10 Exhibit CAJ-6 Additionally the Utility has agreed to make a loan of \$1,675 which will be
11 forgiven if the employee remains employed. This housing is not luxurious or expensive. This
12 unit is a one bedroom of 540 square feet and the rent is \$1,675 per month and the landlord
13 requires first month, last month, and security deposit (total to move in \$5,025). Assuming
14 the employee completes an entire year of service the housing expense to KWRU would be a
15 one-time expense of \$3,350. This would not be a year over year reoccurring expense like it
16 is for OMI of \$6,000 per year, so if the KWRU Operator is retained this gives KWRU a nice
17 year over year cost savings. Similarly, in October 2013, KWRU provided Mr. Ted Yarboro
18 (Class B Wastewater) with a one-time housing bonus of \$1,100 (Exhibit CAJ-7) to rent a one
19 bedroom, 600 square foot, downstairs enclosure of a stilt home up the island chain in
20 Summerland Key. KW Resort Utilities pays a wage that is similar or less than competitors as
21 was provided in the response to Data Request #3. KWRU has inferior benefits as our
22 competitors are large municipal or State agencies with larger workforces which allow them
23 to give better benefits. For example KWRU's competitors give more days off, they also pay
24 a lot more for on call duty, and they require their employees to be on call less often. For
25 this reason KWRU has lost numerous employees in the past few years to the FCAA

1 (Eddie Roberts, Blaine Grassi, John Welsh, Sexton Curry), Keys Energy Services (Paul
2 Sanchez), and City of Marathon Wastewater (Robert Bellino).

3 **Q. Does Green Fairways, Inc. provide valuable services to KWRU justifying the \$60,000**
4 **annual expense?**

5 A. Yes. As explained in responses to Staff's Second Data Request, Green Fairways charges a
6 flat monthly management fee. Mr. William Smith is an officer and shareholder of Green
7 Fairways, but does not receive a salary from that company. Mr. Smith has personally
8 guaranteed loans to KWRU from FDIC insured financial institutions due to KWRU not
9 having income or credit sufficient to obtain loans from FDIC lenders without Mr. Smith's
10 personal guarantee. As such, KWRU's ability to properly operate is dependent on a third
11 party guarantee, specifically, that of Mr. Smith. BB&T and most financial institutions impute
12 a 3-5% management fee as an expenditure when lending, which therefore means Green
13 Fairway's management fee is not only reasonable but is very low for the requested rates.
14 Green Fairways is responsible for financing all debt obligations insuring the shareholder
15 investment is secured and ensuring that any guarantees are paid in full by the Utility. As
16 can be readily ascertained from KWRU's Annual Reports, going back into the 1990's,
17 KWRU has had only one year where its income was sufficient to pay its expenses. Again,
18 justifying the rate increase to provide actuarial soundness. In addition, Green Fairways, Inc.
19 reviews and approves all outside legal invoices on behalf of the Utility. Green Fairways
20 reviews all legal contracts for outside professional legal services and also reviews all tax
21 preparation contracts and legal contracts that relate to real estate tax issues. Green Fairways
22 assists Utility management with matters involving easements or other Utility easement or
23 property related issues. Green Fairways also receives proposed pay increases from Utility
24 management; for the purpose of review, comment, and approval. Green Fairways, Inc. also
25 participates in large project negotiations either directly or indirectly. Green Fairways is the

1 sole signatory for all Utility Escrow checks and Green Fairways also cosigns all other Utility
2 checks. Green Fairways executes transfers of monies between Utility's various bank
3 accounts. This level of financial oversight results in Green Fairways having a very good deal
4 of knowledge with regard all expense that the Utility incurs. If Green Fairways sees any
5 expenses that are unusual, they question or advise Utility management of such
6 expenses/transactions. Green Fairways also provides insight into employment issues because
7 they manage other personnel in Key West. Green Fairway's provides Utility managers with
8 specific knowledge including but not limited to; current market trends, employment statistics,
9 cost of living, housing issues, hiring, recruiting, and employee training. Green Fairways is
10 also involved in larger long term planning and strategic planning such as rate cases, plant
11 expansions, etc.

12 **Q. Was the adjustment in the PAA Order reducing contractual services-accounting**
13 **expenses by \$12,350 annually appropriate?**

14 A. No. In response to Staff's First and Seconds Data Requests I explained need for additional
15 accounting services from Mr. Allen.

16 **Q. When was the last DEP Wastewater Compliance Inspection conducted, and what was**
17 **the outcome?**

18 A. DEP did a compliance inspection of the wastewater facility on March 10, 2016 and the facility
19 was found in compliance in all areas. Exhibit CAJ-5 is a copy of the Wastewater Compliance
20 Inspection Report.

21 **Q. Have you seen any evidence of Customers taking measures to reduce the amount of**
22 **water that the Utility may bill monthly as a result of the PAA rates that went into effect**
23 **April 20, 2016?**

24 A. Yes there are 2 large customers, Key West Harbour Yacht Club (KWHYC) and Murray
25 Marine, that have communicated that they will be installing Florida Keys Aqueduct Authority

1 (FKAA) deduct meters to measure boat wash water that doesn't return to the wastewater plant
2 in an effort to reduce their monthly wastewater bills. Mr. Richard Horn, General Manager
3 KWHYC, copied the Utility on an email (May 24, 2016 2:21PM), Exhibit CAJ-8, where his
4 contactor has met with the Executive Director of the FKAA with regard to the FKAA
5 installing deduct meters. Mr. Bill Murray, Owner Murray Marine, called the Utility on June
6 22, 2016 and informed the Utility that he is beginning the process of FKAA deduct meter
7 installation. The revenue the Utility generates is based off of the rate determinants that were
8 calculated based on the total amount of water being fed to these marinas at the time of the
9 analysis. If customers reduce the amount of water the utility may charge usage on, the
10 revenue generated will be reduced in proportion to the reduction in billable gallonage. There
11 are 11 marinas served by the Utility and if the other marinas follow suit this problem could
12 be very detrimental to the Utility. Should this occur the Utility will fall way short of its
13 revenue requirement.

14 **Q. Does that conclude your direct testimony?**

15 **A.** Yes, it does.
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1 **MR. SMITH:** I would tender the witness. Oh,
2 sorry. I apologize. First, can you summarize your
3 testimony?

4 **CHAIRMAN BROWN:** Sir, real quickly, are there
5 exhibits attached to this testimony?

6 **MR. SMITH:** There are. There are
7 approximately -- if I can read from here --
8 eight exhibits that encompass two large binders.

9 **CHAIRMAN BROWN:** Okay. You may go. You've
10 got a five-minute summary.

11 **THE WITNESS:** Good morning, Madam Chair,
12 Commissioners, staff. Christopher Johnson, president,
13 KW Resort Utilities. I have an educational background
14 in engineering. I've worked in the wastewater field for
15 15 years. I hold a Class A wastewater license in the
16 state of Florida.

17 As president of the utility, I manage all
18 aspects of the day-to-day operations of the corporation.
19 This includes administration, which encompasses billing,
20 customer service, and clerical functions. I also
21 supervise plant operations. I manage those state of
22 Florida licensed operators who operate the plant 365
23 days a year. I also manage the maintenance personnel
24 who keep the plant operating efficiently and maintained,
25 and also those workers that keep all of the lift

1 stations, pumps, electrical panels, manholes, service
2 connections, et cetera, throughout the island working
3 correctly.

4 I'm here today for two main reasons. Number
5 one, because the utility seeks rate relief to recover
6 those costs associated with the expansion of the
7 wastewater treatment plant, which will serve the
8 utility's current customers as well as future customers.
9 The utility is currently constructing a
10 350,000-gallon-per-day plant. The utility awarded a
11 \$4.3 million contract to construct the plant itself and
12 to complete other AWT-related work.

13 It should be noted that over 1 million of the
14 4.3 million general contractor contract is for the
15 AWT-related improvements to the existing plant to assure
16 compliance with the utility's environmental regulatory
17 authority, which is the DEP.

18 Number two, I'm here because of the AWT
19 standard that went in effect January 1 of this year,
20 2016. This AWT standard requires us to treat the water
21 to a very high standard with the big takeaway being
22 nutrient removal. The nutrients targeted are phosphorus
23 and nitrogen. Biological nutrient removal is a much
24 more difficult process to achieve than the former
25 process and requires feeding three new chemicals that

1 were not previously used to assist in this treatment
2 process.

3 The nutrient removal process also creates more
4 biosolids and requires more power to run additional
5 equipment. AWT also requires operators to control
6 multiple stage processes where previously single stage
7 processes were in place, and these multi-stage processes
8 exist in multiple treatment trains. To achieve this
9 requires frequent and extensive testing performed by
10 qualified personnel.

11 Simply put, the AWT process required by
12 Florida law costs more than the former process of
13 extended aeration. The utility seeks rate relief to
14 recover these costs associated with the state mandated
15 treatment requirements of AWT that went into effect over
16 11 months ago, and it's for these reasons the utility
17 has asked the Commission for the consideration of rate
18 relief, and it is for this reason that I appear before
19 you today. Thank you.

20 **CHAIRMAN BROWN:** Thank you. Staff has a few
21 questions.

22 **EXAMINATION**

23 **BY MS. MAPP:**

24 **Q** Good morning, Mr. Johnson.

25 **A** Good morning.

1 **Q** Could you please reach into the large white
2 binder in front of you and pull out the Comprehensive
3 Exhibit List, and please turn to page 5.

4 Beginning here and continuing on to page 8,
5 Exhibit Nos. identified as 49 through 67, you are the
6 witness identified as providing the responses in whole
7 or in part for interrogatory responses and production of
8 document requests. Did you prepare these interrogatory
9 responses and the production of document requests
10 identified next to your name?

11 **A** As far as I can tell, yes, my staff and I did
12 prepare these.

13 **Q** So they were either prepared by you or under
14 your direction or control?

15 **A** Yes, ma'am.

16 **Q** And are they true and accurate to the best of
17 your knowledge and belief?

18 **A** Yes, ma'am.

19 **MS. MAPP:** Thank you.

20 **CHAIRMAN BROWN:** Thank you.

21 Mr. Smith.

22 **MR. SMITH:** At this time we tender the
23 witness.

24 **CHAIRMAN BROWN:** Thank you.

25 Welcome, Mr. Johnson.

1 **THE WITNESS:** Thank you.

2 **MR. SAYLER:** Madam Chair, Public Counsel has
3 two exhibits that we've given to staff to pass out.

4 **CHAIRMAN BROWN:** Thank you. Mr. Graves and
5 Patti.

6 **MR. SAYLER:** I was working on this late last
7 night, so I didn't have an opportunity to collate it.
8 Also, just as a matter of courtesy, when we pass out
9 numerous exhibits to expedite the process, if the
10 witnesses wouldn't look at them until we actually get to
11 them. And at the time when we get to them, that's when
12 I will identify and pre-mark them.

13 **CHAIRMAN BROWN:** Okay.

14 **MR. SAYLER:** I do know that for another
15 witness I have some exhibits to be passed out that I may
16 or may not get to --

17 **CHAIRMAN BROWN:** Okay.

18 **MR. SAYLER:** -- and they may not necessarily
19 be identified too. Just --

20 **CHAIRMAN BROWN:** We will accommodate those
21 wishes.

22 Mr. Johnson, are you clear on that, on the
23 exhibits that will be -- that are in front of you?

24 **THE WITNESS:** Yeah.

25 **CHAIRMAN BROWN:** Okay. Mr. Sayler, would you

1 like to label these, mark these for identification at
2 this time?

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

4 **CHAIRMAN BROWN:** Okay. We're starting at 83.

5 **MR. SAYLER:** All right. The exhibit, the BB&T
6 loans, we'll make that one 83.

7 **CHAIRMAN BROWN:** Hold on one second. Okay.
8 Got it. And that -- got it. That's 83.

9 (Exhibit 83 marked for identification.)

10 **MR. SAYLER:** And then for the KWRU's
11 March 2016 letter, I will note that that is an excerpt.
12 If the utility would like the entire letter into the
13 record, I have a few copies of the entire record -- or
14 letter, but I just have an excerpt for purposes of
15 cross-examination.

16 **CHAIRMAN BROWN:** Okay.

17 **MR. SAYLER:** And that one would be 84.

18 **CHAIRMAN BROWN:** Mr. Smith, do you want a
19 complete copy of the letter or are you --

20 **MR. SMITH:** We would request a complete copy
21 for the record.

22 **CHAIRMAN BROWN:** Okay. Definitely. And we'll
23 provide that also. Mr. Sayler, you'll provide that to
24 him?

25 **MR. SAYLER:** Sure. I can do that right now.

1 Give me a moment.

2 **CHAIRMAN BROWN:** Of course. And if you plan
3 on entering this into evidence too, you'll have to
4 provide that -- a complete copy to the court reporter as
5 well.

6 **MR. SAYLER:** May I approach the witness?

7 **CHAIRMAN BROWN:** Yes.

8 **MR. SAYLER:** Madam Chair, then for the sake of
9 the record, why don't we mark -- even though I will be
10 asking questions using the excerpt, we can just mark the
11 full letter as 84.

12 **CHAIRMAN BROWN:** Eighty-four. Sounds good.
13 And you may proceed whenever you're ready.

14 (Exhibit 84 marked for identification.)

15 **MR. SAYLER:** Yes, ma'am. I just need a
16 moment.

17 **EXAMINATION**

18 **BY MR. SAYLER:**

19 **Q** Good morning, Mr. Johnson. How are you today?

20 **A** Good morning. Very good, thank you.

21 **Q** Excellent. It feels funny to be wearing a tie
22 in Key West, so.

23 Mr. Johnson, in your witness summary, you
24 testified that the plant expansion is designed to serve
25 current and future customers; is that correct?

1 **A** That's correct.

2 **Q** All right. And those future customers are
3 those customers that will be served by the new expanded
4 capacity; is that correct?

5 **A** I'm not sure. Can you rephrase, please?

6 **Q** You would agree that you can't add any new
7 customers without expanding the plant; correct?

8 **A** Not necessarily.

9 **Q** Okay. But you could not add a substantial
10 amount of new customers without expanding the plant
11 capacity; correct?

12 **A** I would agree that the plant expansion took
13 into account future customers, if that's what you're
14 asking.

15 **Q** Yes. Thank you.

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

17 **Q** Would you please turn to page 3 of your direct
18 testimony. And --

19 **CHAIRMAN BROWN:** Just a second. I think he's
20 trying to get there.

21 **MR. SAYLER:** Okay. Thank you.

22 **THE WITNESS:** Okay.

23 **CHAIRMAN BROWN:** Okay.

24 **BY MR. SAYLER:**

25 **Q** Page 3, lines 11 and 12. And you would agree

1 that there you're testifying that there's a contract for
2 the pro forma plant and that's been executed, and that's
3 in Exhibit CAJ-3; correct?

4 **A** Correct.

5 **Q** All right. And that relates to the plant
6 capacity expansion, the 350000-gallons-per-day
7 expanded -- expansion project; correct?

8 **A** The expansion project, as you call it, I refer
9 to as an expansion with AWT improvements as well that
10 are part and parcel to the existing plant. So it's a
11 contract that covers more than just the
12 350000-gallon-per-day tank, but also there's other
13 appurtenances on the existing plant such as headwork
14 screening and the chemical tank farm that will serve
15 also the existing plants.

16 **CHAIRMAN BROWN:** And, Mr. Johnson, if I could
17 ask you to just move the mike a little bit closer so
18 folks can hear it. Thanks.

19 **THE WITNESS:** Yes, ma'am. Sorry.

20 **CHAIRMAN BROWN:** The closer the better. Thank
21 you.

22 **BY MR. SAYLER:**

23 **Q** You would agree that the existing plant
24 already is treating at AWT, correct, AWT standards?

25 **A** We are meeting AWT currently. Correct.

1 **Q** And when you expand the plant capacity, you
2 will be treating at AWT standards; correct?

3 **A** Correct, we will.

4 **Q** All right. And Mr. Castle earlier testified
5 that -- or I understood his testimony to be that once
6 the capacity is increased to 849,000 gallons, there
7 might need to be some oxygen sensors or some automatic
8 controls to maintain AWT because of the size and
9 capacity; is that correct?

10 **A** I believe you're confused. You were asking
11 Mr. Castle about things that happened back in -- I
12 believe you were saying 2007.

13 **Q** No, sir. When he was responding to some of
14 Mr. Wright's questions, he was talking about --
15 Mr. Wright was questioning him why were they using
16 temporary facilities in 2009, 2010 to treat to AWT, and
17 Mr. Castle -- his testimony stands for itself, but
18 that's where my question flowed from because he said
19 that with the plant capacity expansion, you're adding
20 some additional fine-tuning to your AWT process. Is
21 that correct?

22 **A** That's correct. The design calls for certain
23 controls that allow the plant to operate with set points
24 and such, which is all required to operate a modern day
25 AWT plant. And that is in the design for the

1 350,000-gallon-per-day expansion as well as the AWT
2 upgrades.

3 Q All right. And you would agree that the pro
4 forma expansion project for the plant capacity
5 expansion, that cost was 4.3 million, correct, in the
6 contract?

7 A The Wharton-Smith contract was indeed for
8 4.3 million. Correct.

9 Q All right. And the Wharton-Smith contract
10 specifies what would be the various components that will
11 be part of that plant expansion project; correct?

12 A It does.

13 Q All right. And that would also include the
14 costs of what you were just testifying about regarding
15 the screens and the upgrades to the AWT process;
16 correct?

17 A To an extent, yes, but also no. There were
18 some cases where the utility could save money by direct
19 purchasing. In particular, as an example, the headwork
20 static screens, we could direct purchase those, the
21 utility, from SWECO, the manufacturer, and not encounter
22 any upcharge by the contractor. So in those cases, we
23 did that.

24 Q All right. And how much would one of those
25 direct purchases be? A ballpark figure is fine.

1 **A** I think, off the top of my head, the first one
2 was about 63. We bought a second one along with chutes,
3 which was, I think, a little more expensive.

4 **Q** All right. So then you would net that against
5 the \$4.3 million contract?

6 **A** Yes. You would -- the things that
7 Wharton-Smith was responsible for would be taken out.

8 **Q** You would also agree that your direct
9 testimony provides support for the air vac replacement
10 project; is that correct?

11 **A** I'm sorry. I'm just seeing if I talked about
12 it in rebuttal or direct.

13 **Q** All right. Page 3 of your direct testimony,
14 lines 16 through 19, you discuss that the cost of the
15 air vacuum tank is estimated to be about 610,000; is
16 that correct?

17 **A** That's correct.

18 **Q** And are you aware that Ms. Swain, your
19 accounting witness, uses the 4.3 million and the
20 \$610,000 in her direct testimony as -- are you aware of
21 that?

22 **A** Erik, I would have to see that.

23 **Q** Subject to check, you would agree that these
24 are the numbers that she uses for the improvements or
25 additions to rate base for plant in service; is that

1 correct?

2 **A** Subject to check, yes.

3 **Q** Okay. Thank you. I'm going to try this.

4 Would you take a look at the exhibit entitled "BB&T
5 Loans"? That's Exhibit 83.

6 All right. Mr. Johnson, this exhibit contains
7 two different BB&T loans, loans seven and nine, that
8 were recently executed by the utility. Recently meaning
9 since July.

10 **COMMISSIONER GRAHAM:** Hold on a second,
11 Mr. Sayler.

12 Mr. Johnson, that's the forms that were handed
13 out in the beginning.

14 **THE WITNESS:** Oh, these.

15 **COMMISSIONER GRAHAM:** Yes.

16 **THE WITNESS:** I was told not to look ahead,
17 so.

18 **COMMISSIONER GRAHAM:** That's right. It's the
19 one labeled "BB&T 2016 Loans No. 7."

20 **THE WITNESS:** I have the exhibit. Thank you.

21 **COMMISSIONER GRAHAM:** All right. Mr. Sayler,
22 you can continue.

23 **MR. SMITH:** I'm going to object to any -- this
24 line of questioning. I don't believe in his testimony
25 he discusses loans at any point.

1 **COMMISSIONER GRAHAM:** Mr. Sayler.

2 **MR. SAYLER:** Yes, sir. His direct
3 testimony -- he doesn't provide any direct testimony as
4 it relates to the BB&T loans. But as the president of
5 the organization, he -- one of his responsibilities --
6 and actually one of these loans he actually signed. I
7 can save these questions for rebuttal or we can do them
8 now. It's just related to the capital structure of the
9 plant, the financing, how they do debt, equity, things
10 of that nature.

11 **COMMISSIONER GRAHAM:** Let's hold it for
12 rebuttal.

13 **MR. SAYLER:** One moment.

14 **COMMISSIONER GRAHAM:** Sure.

15 (Pause.)

16 **BY MR. SAYLER:**

17 **Q** Mr. Johnson, if you'll turn to page 5 of your
18 direct testimony.

19 **MR. HETRICK:** Excuse me, Commissioner Graham.

20 **COMMISSIONER GRAHAM:** Sure.

21 **CHAIRMAN BROWN:** Where did that come from?

22 **MR. HETRICK:** Over here. I think you might
23 have the same problem on the rebuttal, raising this on
24 rebuttal since it's outside the scope of his direct. So
25 to put it off to rebuttal might not cure the problem.

1 **COMMISSIONER GRAHAM:** I just was going to let
2 him justify it when we came to rebuttal. That wasn't
3 giving him permission to do it during the rebuttal.

4 **MR. HETRICK:** Okay. Gotcha. Thank you.

5 **MR. SAYLER:** Well, and let me justify it on
6 direct.

7 **COMMISSIONER GRAHAM:** Okay, continue.

8 **BY MR. SAYLER:**

9 **Q** On page 5, lines 3 through the end of the
10 page, you discuss support for the Green Fairways,
11 Incorporated, justifying a \$60,000 annual expense to the
12 utility. Do you see that?

13 **A** Yes, I do.

14 **Q** All right. If you go down to line 11 and 12,
15 you testify, "BB&T and most financial institutions
16 impute a 3 to 5 percent management fee as an expenditure
17 in lending." Correct?

18 **A** Correct.

19 **Q** And the purpose of these documents, I will
20 preview it for you, it -- as it relates to whether
21 there's any management fee in these loan documents.

22 **COMMISSIONER GRAHAM:** I'll overrule the
23 objection.

24 **MR. SMITH:** As to that limited subject, I
25 would agree that's within his testimony.

1 **MR. SAYLER:** I will represent to you,
2 Mr. Smith, that loan seven and nine came to us as -- one
3 is part of OPC document request 31, and I believe
4 another one was emailed to us from the utility directly.

5 **BY MR. SAYLER:**

6 **Q** Have you seen these documents before?

7 **A** Yes, I have.

8 **Q** And you would agree that both are promissory
9 notes signed by the utility?

10 **A** Yes, I would.

11 **Q** And on page 2 of the loan entitled "007," you
12 would agree that there's some interest rate amounts
13 there?

14 **A** Yes, I would.

15 **Q** All right. And this is a million dollar loan;
16 correct?

17 **A** That is correct.

18 **Q** All right. And in looking at the few pages of
19 this document, do you see anywhere where there's a
20 requirement that there be a 3 to 5 percent imputation?

21 **A** On this document, no, I do not.

22 **Q** Okay. If you'll turn to the next loan, which
23 is 009 -- actually, before we get to that, do you know
24 why there's no 008?

25 **A** No, I do not. Sorry.

1 **Q** Okay. And you would agree that this is a
2 \$2.5 million loan; is that correct?

3 **A** Yes, this is a \$2.5 million line of credit.

4 **Q** All right. And you would agree that the
5 interest rates on this loan are the same as the other
6 loan; is that correct?

7 **A** I believe the exception is this one is
8 interest only for the first year, if I recall correctly.

9 **Q** All right. And on these -- on loan nine, do
10 you see anywhere where it shows that there's a 2 to
11 5 percent management fee?

12 **A** I do not.

13 **Q** All right. And the cumulative amount of these
14 two loans or lines of credits is about 3.5 million; is
15 that correct?

16 **A** Those would be the loan amounts added
17 together. Correct.

18 **MR. SAYLER:** All right. Madam Chairman, while
19 I've been going through this exhibit, I must call a foul
20 on Public Counsel. I see that the account number on
21 page 2 of the exhibit -- or page 3 is actually shown
22 there, and that should be redacted because that's
23 confidential information per the state. That missed my
24 review when I was having this prepared. So what I would
25 like to do, if it's the pleasure of the Chair, during

1 the break, we will manually redact these -- I've got a
2 black Sharpie -- for the purposes of the hearing record.

3 **CHAIRMAN BROWN:** Okay.

4 **MR. SAYLER:** Or if we want to take a
5 five-minute break, we can do that right now.

6 **CHAIRMAN BROWN:** I would prefer to take a
7 five-minute break and do it now. Collect them -- if you
8 could collect the documents. This is sensitive
9 information.

10 **MR. SAYLER:** Yes, ma'am, and I do apologize.

11 **CHAIRMAN BROWN:** We'll have -- it's okay.
12 That's Exhibit 83. If you could please return them to
13 Mr. Graves, who's collecting them right now. And we are
14 going to take a five-minute break.

15 (Recess taken.)

16 **CHAIRMAN BROWN:** All right. Mr. Sayler, thank
17 you for identifying that and making the adjustments.

18 **MR. SAYLER:** Yes, Madam Chair. And I --
19 again, we do apologize for not catching that sooner.
20 And I believe it was also brought to our attention that
21 there might be some issues with the Comprehensive
22 Exhibit List, but I can't really speak to that, so.

23 **CHAIRMAN BROWN:** Okay. Well, I hope -- did
24 you raise those to staff at the break? Ms. Crawford.

25 **MS. CRAWFORD:** Yes. It does appear that on

1 the staff Comprehensive Exhibit List, including the
2 little flash drives that have been provided, there are
3 similar issues. We will try to work with the parties to
4 remedy that and to hand redact the hard copies. With
5 the flash drives, I can only suggest they be returned to
6 us or kept by the parties, and then we will provide
7 redacted versions. We'll have to talk that out and sort
8 that out.

9 **CHAIRMAN BROWN:** Maybe sort that out at the
10 lunch break.

11 **MS. CRAWFORD:** Yes, ma'am.

12 **CHAIRMAN BROWN:** Okay. Mr. Sayler, thanks
13 again. Please proceed.

14 **BY MR. SAYLER:**

15 **Q** All right. Mr. Johnson, one last question
16 about these two loans.

17 To your knowledge, in these loan documents, to
18 the extent that you're aware of them, have you seen a
19 2 to 3 -- 2 to 5 percent management fee?

20 **A** No, I have not.

21 **Q** All right. Thank you.

22 All right. Mr. Johnson, would you look at the
23 other exhibit that has been identified as Exhibit 84.
24 We have two versions of it. One is the full letter
25 response from the utility, and the other one is the

1 excerpt. It really doesn't matter which version you
2 look at.

3 **CHAIRMAN BROWN:** Do you have a copy of it?

4 **THE WITNESS:** Yes, I do.

5 **CHAIRMAN BROWN:** Okay.

6 **BY MR. SAYLER:**

7 **Q** Are you familiar with this letter?

8 **A** Yes.

9 **Q** And did you help prepare this letter, KW's
10 response to staff?

11 **A** I did much of the research.

12 **Q** And -- give me a moment.

13 Would you please turn to page 1 of that
14 letter.

15 **A** Yes.

16 **Q** And this is the utility's response as it
17 relates to Safe Harbor Marina.

18 **A** That is correct.

19 **Q** And you would agree that Safe Harbor Marina
20 was one of the customers that was not charged according
21 to the tariff rate established following the 2009 KW
22 rate case; is that correct?

23 **A** Are you quoting from this?

24 **Q** I'm summarizing it. But to your knowledge,
25 was Safe Harbor Marina charged according to the

1 Commission-approved tariff rate?

2 **A** They were up to a point in time, at which
3 point they were not.

4 **Q** And at what point in time were they not
5 charged according to the tariff rate?

6 **A** I believe it was in April of 2009 a new tariff
7 was issued, which in effect lowered their flat rate
8 charge. And as a result of large redevelopment on the
9 property --

10 **MR. SMITH:** Objection. This is not within --
11 outside the scope of his direct. I don't believe
12 there's any testimony in his direct as to the billing of
13 customers and issues with billing.

14 **CHAIRMAN BROWN:** I think the witness has
15 answered in bulk already. Are you moving to strike his
16 answer?

17 **MR. SMITH:** Yes, moving to strike the answer
18 as well.

19 **CHAIRMAN BROWN:** Okay. Mr. Sayler, would you
20 like to address the objection?

21 **MR. SAYLER:** Yes, ma'am. If you will turn to
22 Issue 42 on the Prehearing Order, it states, "Did KWRU
23 bill and collect revenues in accordance with its
24 approved tariffs? If not, what is the appropriate
25 remedy?" And Mr. Johnson, as the president, is the only

1 fact witness that I'm aware of that can establish the
2 basis of this. And, therefore, even though it's not in
3 his direct testimony, it is a live issue that this
4 Commission is going to decide.

5 **MR. SMITH:** And that very well may be the case
6 that it's an issue, but the fact is that there's no
7 evidence that he testified to. So that certainly
8 doesn't give him the right to cross-examine him on the
9 issue.

10 **CHAIRMAN BROWN:** Mr. Sayler, I tend to agree
11 with KW.

12 Staff, Ms. Helton or Ms. Crawford, either one.

13 **MS. CRAWFORD:** If I may, one of the
14 difficulties we have with respect to Mr. Johnson's
15 direct testimony is the testimony itself is very brief,
16 the exhibits are very large, and Mr. Johnson does cover
17 a very broad scope of the factors for which the utility
18 is seeking recovery.

19 There are a number of questions staff has that
20 aren't directly spoken of in the direct testimony;
21 nevertheless, we do believe they are valid and relevant
22 questions to this proceeding. And if the utility's
23 preference would be that the witness handle them in
24 rebuttal, we could certainly do that. The same with
25 Mr. Sayler's questions. If there is another witness who

1 is better suited to answer the questions, perhaps the
2 utility could address that. But, again,
3 Mr. Johnson's -- the scope of his testimony is very
4 broad even if the literal pages are very brief.

5 **CHAIRMAN BROWN:** Based on the attached
6 exhibits.

7 **MS. CRAWFORD:** That's correct, and the stated
8 scope and purpose of his testimony.

9 **CHAIRMAN BROWN:** Just one second, please.

10 Ms. Helton, would you like to add anything?

11 **MS. HELTON:** I'm sorry. I had muted it and
12 couldn't un-mute.

13 It is kind of a difficult place that we find
14 ourselves because his testimony is very limited but he
15 does have -- he's sponsoring, as I understand it, quite
16 a few of the MFRs for this case. So if you can tie it
17 back to the MFRs especially, I would suggest that that
18 might be something you want to hear about. Or if
19 Ms. Crawford said that he does testify to this on
20 rebuttal, we could wait until rebuttal. I'm not sure if
21 that would be more appropriate.

22 **MS. MAPP:** If I may.

23 **CHAIRMAN BROWN:** Yes, Ms. Mapp.

24 **MS. MAPP:** I will state that CAJ-4 attached to
25 Mr. Johnson's testimony, direct testimony contains a lot

1 of responses to staff's data requests that were issued
2 during the PAA. And looking at it, I can identify a
3 couple of responses discussing meter sizes, billing for
4 residential general service customers, and specifically
5 billing for Safe Harbor Marina. I can't specifically
6 find Meridian West or Flagler Village, but they do
7 discuss billings for several customers.

8 **CHAIRMAN BROWN:** And before I get back to KW,
9 I think there's a few other objections possibly.

10 Mr. Wright.

11 **MR. WRIGHT:** Thank you, Madam Chairman.

12 Very briefly, and I don't really want to make
13 an objection, I just want to make a couple of points.
14 Mr. Johnson's direct testimony says that his -- the
15 purpose of his testimony is to present information
16 supporting the financial and engineering basis for
17 KWRU's request for increased rates. But probably more
18 specifically, the company has not identified an issue --
19 sorry -- has not identified a witness to address
20 Issue 42, yet they take a position on it. I think it's
21 really incumbent on them to put up a witness, and I
22 think the president of the company is the likely guy.
23 Thank you.

24 **CHAIRMAN BROWN:** Thank you. All right.

25 KW.

1 **MR. SMITH:** First, we objected to this being
2 an issue in this rate case as it is not relevant to the
3 issues and germane to this rate case. The issue was --
4 remained in the case, and this is an issue that we have
5 no obligation other than to assert that we have -- that
6 we are availed (phonetic) within accordance with our
7 tariff. They have the obligation to prove otherwise.

8 There has been no testimony by Mr. Johnson as
9 to how we bill. They have the burden of proof to show
10 by the preponderance of evidence whether or not this has
11 occurred. And so if there's no testimony, then there
12 can't -- then they cannot prevail on this issue that
13 there is some -- there was billing outside the issue. I
14 can state unequivocally Mr. Johnson doesn't address
15 these billings that are -- that are identified in this
16 letter in his testimony.

17 **CHAIRMAN BROWN:** Okay. And I appreciate what
18 you're saying. And taking the advice of our counsel, if
19 there's a more suitable witness that you could direct us
20 to to address this issue -- the president of the company
21 would, in the alternative, be the best witness.

22 **MR. FRIEDMAN:** Sure. The question of who
23 would be the best witness has nothing to do with the
24 procedural manner in which you elicit that testimony.
25 If the testimony -- we object to this being an issue in

1 the first place. There were no witnesses on the issue,
2 and that's why we objected to it. The -- none of the
3 examination by the utility addresses that issue. That
4 doesn't mean -- just because he may be the best person
5 to address an issue doesn't mean you can go outside of
6 the scope of his direct testimony or his rebuttal
7 testimony and bring in that issue. It's incumbent upon
8 whoever is asserting the proof of that issue to bring
9 forth evidence on that issue, and they -- nobody did.
10 The Public Counsel didn't bring a witness on this, the
11 staff didn't present a witness on this, and the County
12 didn't present a witness on this, and Ms. Aktabowski
13 didn't bring a witness on this. So I don't think that
14 just because he's a good witness means that you can go
15 beyond the scope of the testimony and have him ask him
16 anything that you want to ask him.

17 **CHAIRMAN BROWN:** So your position is that this
18 witness does not address in his testimony this issue.

19 **MR. FRIEDMAN:** That's correct.

20 **CHAIRMAN BROWN:** Okay. Mr. Sayler.

21 **MR. SAYLER:** Madam Chair, I know the company
22 does -- disagreed at the prehearing conference whether
23 this should be in or out. They objected. The
24 Prehearing Officer ruled that it is in. They have not
25 properly sought reconsideration of the Prehearing

1 Officer's ruling, so I think the ship has passed as far
2 as whether this is or isn't a live issue.

3 Now Ms. Merchant does address this in her
4 direct testimony. However -- and I admit that this is
5 an unusual circumstance. Normally we don't do an -- any
6 discovery. We did an extensive amount of discovery in
7 his deposition that was taken in this case, and my
8 questions are designed to elicit the facts for this
9 Commission to make a determination whether or not there
10 is any improper billing.

11 Now the utility has said numerous times that
12 they believe that this shouldn't be part of the rate
13 case; it should be part of a show cause proceeding.
14 However, that would be yet another proceeding with
15 additional rate case expense and additional time. So I
16 think for a matter of judicial efficiency, it's good to
17 have the Commission decide it now as quasi-judicial
18 efficiency. Let me rephrase that.

19 **CHAIRMAN BROWN:** Okay. Thank you. And I
20 appreciate all of the arguments and the rationale. And,
21 Ms. Helton, I'd like a final guidance on the objection
22 and the comments made and raised here today.

23 **MS. HELTON:** This is one of those times when
24 it's a difficult matter. It is an issue in the
25 Prehearing Order. It is -- I agree with the company

1 that it is not an issue that you have to decide in order
2 to set rates on a going-forward basis. It is incumbent
3 upon, then, the intervenors to ensure that there's
4 sufficient testimony in the record so that you will have
5 evidence to base a decision on. If he has not raised
6 this in his direct testimony, it sounds like
7 Ms. Merchant has raised it in intervenor testimony. Has
8 it been -- did he address it in his rebuttal testimony?

9 **CHAIRMAN BROWN:** No.

10 **MS. HELTON:** No?

11 **MR. FRIEDMAN:** No.

12 **MS. HELTON:** Then it becomes a matter, maybe
13 after you hear Ms. Merchant, whether you would like to
14 have additional testimony taken, and we could ask the
15 questions of him on rebuttal if you believe that the
16 record needs to be --

17 **CHAIRMAN BROWN:** Developed.

18 **MS. HELTON:** -- made more complete and
19 developed more.

20 **CHAIRMAN BROWN:** Okay. So would your
21 suggestion be to prohibit this line of questioning on
22 direct at this time?

23 **MS. HELTON:** Yes, ma'am.

24 **CHAIRMAN BROWN:** Okay. I'm going to rule --
25 I'm going to sustain the objection.

1 Mr. Sayler, can you please continue with any
2 other questions that you have relating to his prefiled
3 testimony? And we'll take these questions up
4 potentially on rebuttal.

5 **MR. SAYLER:** Actually, no, ma'am. I just had
6 probably about 20 to 25 questions related to this
7 exhibit and I was going to conclude my direct
8 examination of this witness. I don't have any further
9 questions. However, this is still a live issue, and I
10 will save my questions for rebuttal.

11 **CHAIRMAN BROWN:** Okay. All right.

12 Moving on to Mr. Wright.

13 **MR. WRIGHT:** Thank you, Madam Chairman. It's
14 about ten minutes to 12:00. You just tell me when you
15 want to break.

16 **CHAIRMAN BROWN:** Okay. Thanks. I think we're
17 going to go a little past that since we took an extended
18 break.

19 **MR. WRIGHT:** You're the Chair. I do have more
20 than 10 to 20 minutes.

21 **CHAIRMAN BROWN:** That's okay. Go ahead.

22 **EXAMINATION**

23 **BY MR. WRIGHT:**

24 **Q** Good morning, Mr. Johnson.

25 **A** Good morning.

1 **Q** I have a few questions relating to your direct
2 testimony regarding Green Fairways.

3 **CHAIRMAN BROWN:** Mr. Wright, I know it's hard
4 to move the mike close with all the paper we have here.
5 If you could, that'd be great.

6 **MR. WRIGHT:** Yes, ma'am. Give me one moment
7 here.

8 (Pause.)

9 **BY MR. WRIGHT:**

10 **Q** Okay. Good morning again.

11 **A** Good morning.

12 **Q** I have a few questions for you regarding Green
13 Fairways about which you testify starting at line --
14 starting at page 5 of your testimony.

15 Who is William Smith?

16 **A** He's a majority shareholder of Green Fairways.

17 **Q** Thank you. Is he also the majority
18 shareholder of the company that owns KW Resort Utility?

19 **A** Yes, he is.

20 **Q** That company is WS Utilities, Inc.; correct?

21 **A** Correct.

22 **Q** WS, isn't that -- the name stands for William
23 Smith?

24 **A** Yes, I believe so.

25 **Q** Thank you. Do you know where he resides?

1 **A** He resides in Riverside, Illinois.

2 **Q** That's a suburb of Chicago? Yes?

3 **A** Yes.

4 **Q** Thank you. Are you familiar with the
5 management agreement between KWRU and Green Fairways,
6 Incorporated?

7 **A** Yes, I've seen it.

8 **Q** Do you have responsibility for administering
9 KWRU's duties and covenants under that contract as
10 president of the company?

11 **A** Yes, I do.

12 **Q** Would it be fair to say you've more than seen
13 it, that you're familiar with it and that you know what
14 it does?

15 **A** Yeah, I've seen it. I just don't have it
16 memorized.

17 **Q** Fair enough. When was it entered into?

18 **A** It's a renewable contract, I believe. Do you
19 have a copy with you?

20 **Q** I don't. My information is that it was
21 entered into originally in 1999. Is that consistent
22 with your belief?

23 **A** Yes, and it's renewable annually.

24 **Q** Thank you. What does Mr. Smith do through
25 Green Fairways that you don't already do as president of

1 the company?

2 **A** He's involved in many aspects of the business
3 that I'm not. Some examples are loans. He negotiates
4 loans on behalf of the utility. He also is involved in
5 negotiations for larger capital projects. The
6 Wharton-Smith \$4.3 million contract, he was at the
7 negotiating table for that. He also attends progress
8 meetings periodically; if not in person, he'll phone in.

9 In addition to this, he is very involved in
10 the financial planning of the utility. Forward looking,
11 making sure we have the capital and equity in place to
12 cover the obligations of the utility going forward,
13 which in this environment we're in today has been a
14 difficult one. He also brings in his legal abilities.
15 He reviews all legal contracts. He reviews real estate
16 tax matters. He approves all expenses to attorneys. So
17 if we get an invoice for a legal bill, it's reviewed by
18 him. He provides all these services.

19 **Q** Thank you. You just referenced legal bills.
20 Do you review the legal bills also?

21 **A** I also look at them, yes.

22 **Q** Thank you. Actually the next line of my
23 questions relates to rate case expense. Are you
24 familiar with the engagement and retainer agreement
25 between KWRU and Smith, Oropeza, Hawks?

1 **A** Yes, I am.

2 **Q** What hourly rate does KWRU pay Mr. Bart Smith?

3 **A** I believe, if I'm not mistaken, it's \$400.

4 Would you have a copy of that agreement?

5 **Q** No, but I'm happy to accept your answer.

6 That's my information as well, so I accept your answer.

7 Thank you.

8 You consider Mr. Bart Smith to be an expert

9 PSC practitioner; correct?

10 **A** Yes, I do.

11 **Q** Do you know what hourly rate KWRU pays Martin
12 Friedman for his work on this case?

13 **A** I believe his hourly rate is \$360 per hour.

14 **Q** Thank you. Given that you consider Mr. Smith
15 an expert PSC practitioner, don't you consider that
16 having Mr. Friedman on this case results in additional,
17 duplicative rate case expense?

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

19 **Q** Do you agree that Monroe County is KWRU's
20 largest customer for wastewater service?

21 **A** I'm not entirely sure about that. One of the
22 biggest, for sure. The very biggest, not sure.

23 **Q** When I asked you that question at your
24 deposition a couple of weeks ago, I said, "Is it the
25 largest? Do you know?" And your answer was, "I believe

1 it is, yes."

2 Have you done further investigation that
3 caused you to qualify your answer just now?

4 **A** No, I haven't, but I could believe that it is
5 the biggest. I still can hold that -- to that
6 statement.

7 **Q** Okay.

8 **A** I'm just not 100 percent. I'm 99 percent.

9 **Q** If it's not, what's the next biggest?

10 **A** One of the other big ones could be the Key
11 West Golf Club.

12 **Q** Okay. I have some questions for you that
13 relate to advanced wastewater treatment, which you
14 testify about beginning on page 3 of your testimony.
15 The AWT stands for advanced wastewater treatment;
16 correct?

17 **A** Correct.

18 **Q** You sponsored KWRU's --

19 **MR. WRIGHT:** Madam Chairman, I apologize. I
20 have just realized that I do have some exhibits.

21 **CHAIRMAN BROWN:** No problem.

22 **MR. WRIGHT:** And that with everything that was
23 going on with redactions, I neglected to give them to
24 the staff.

25 **CHAIRMAN BROWN:** Are they redacted? Are they

1 any confidential information?

2 **MR. WRIGHT:** No, ma'am, they're not.

3 **CHAIRMAN BROWN:** Okay.

4 **MR. WRIGHT:** It's just I --

5 **CHAIRMAN BROWN:** Thank you. Ms. Daniel is
6 right behind you to help you out.

7 **MR. WRIGHT:** Thanks.

8 **CHAIRMAN BROWN:** I'm thinking we'll break in
9 about 15, 20 minutes.

10 (Pause.)

11 Mr. Wright, we will be at Exhibit No. 85, if
12 you'd like them marked now, or --

13 **MR. WRIGHT:** Thank you, Madam Chair. I would.
14 I'd like the first exhibit, which is the company's
15 response to Monroe County's interrogatory No. 11 marked
16 as 85.

17 **CHAIRMAN BROWN:** Okay. We will go ahead and
18 mark as 85 KWRU's response to Monroe County's
19 interrogatory No. 11.

20 (Exhibit 85 marked for identification.)

21 **MR. WRIGHT:** Thank you. And the next one --
22 you'll find this odd, but I can explain why -- is the
23 brief rebuttal testimony of Frank Seidman. I would like
24 that marked as an exhibit.

25 **CHAIRMAN BROWN:** We'll go ahead and mark that

1 as Exhibit 86.

2 **MR. WRIGHT:** Thank you.

3 (Exhibit 86 marked for identification.)

4 **CHAIRMAN BROWN:** I want to make sure the
5 witness has both of those copies.

6 **MR. WRIGHT:** Certainly.

7 **CHAIRMAN BROWN:** Yes. Okay.

8 **MR. WRIGHT:** Thank you.

9 **CHAIRMAN BROWN:** You may proceed whenever
10 you're ready.

11 **MR. WRIGHT:** Thank you, Madam Chairman.

12 **BY MR. WRIGHT:**

13 **Q** Mr. Johnson, you did sponsor the company's
14 response to interrogatory No. 11; correct?

15 **A** Yes, I did.

16 **Q** Thank you. The -- your company, KWRU,
17 achieved AWT operations in 2009; correct?

18 **A** Yes, I believe that's correct.

19 **Q** Thank you. Do you recall -- do you recall the
20 capacity reservation and infrastructure contract between
21 KWRU and Monroe County?

22 **A** I've seen it.

23 **Q** Thank you. Will you agree that that agreement
24 provides for certain payments by Monroe County under
25 certain conditions in return for which KWRU was to

1 achieve AWT by January 1st, 2007?

2 **A** What I read in that contract, and, again, I
3 wasn't working for KW Resort Utilities when that
4 contract was signed, but looking back at it, I see the
5 word "converted" to AWT everywhere in that contract,
6 converted, converted, converted. So if you're asking me
7 was the plant converted -- can you use the specific
8 language of the contract? I'm not an attorney.

9 **Q** My question was do you understand that the
10 contract committed KWRU to convert the plant to operate
11 at AWT by January 1st, 2007?

12 **A** No, I don't have that understanding.

13 **Q** Do you have a different understanding?

14 **A** My understanding is the contract did provide
15 that the utility convert the plant to AWT, absolutely.
16 The date in question, I would have to see that in a
17 contract document to say yes or no. I don't know as to
18 the date.

19 **Q** Why did you reach AWT in 2009?

20 **A** Why did we reach it?

21 **Q** Why did you come to be operating the plant at
22 AWT in May of 2009?

23 **A** The reason the plant was run at AWT was
24 immediately following the construction of the plant,
25 which retrofitted it to an AWT process plant, there was

1 a process guarantee given to the utility that had a
2 limited time frame on it. For that reason, the utility
3 had to prove out the process to make sure that the plant
4 that the engineers and designers said would operate at
5 the AWT would indeed do that. And for that reason, the
6 utility went ahead and fed chemicals and operated at
7 AWT.

8 Q I'd like to ask you to look, please, at the
9 order that I had the -- that the nice -- Ms. Daniel, I
10 believe, gave you. It's a prior order, prior rate case
11 order, Commission Order 09-0057. If you would, please,
12 turn to page 20. Toward the bottom there's a larger
13 paragraph that starts around the middle of page 20 that
14 begins, "Post-hearing statement. The utility states,"
15 and goes on.

16 And then at the bottom there's a sentence that
17 begins, a couple of sentences beginning, "The utility's
18 post-hearing statement." Do you see that? Post-hearing
19 -- "The utility's post-hearing statement goes on to
20 refer to Chapter 99.395." Do you see that sentence?

21 A Are we on page 20?

22 Q Page 20, Yes, Sir.

23 A Okay. I'm with you.

24 Q Thank you. I'd like you to read that passage
25 that begins, "The utility's post-hearing statement,"

1 through the end of that paragraph.

2 **A** I'm just confused. Have I testified on this
3 matter?

4 **Q** You testified about AWT at page 3 of your
5 testimony.

6 **A** Okay. Because I wasn't working for the
7 utility when this was generated, but I'll definitely
8 read it. I can read it.

9 **CHAIRMAN BROWN:** Could you get closer to the
10 mike, please?

11 **THE WITNESS:** Where would you like me to begin
12 reading?

13 **BY MR. WRIGHT:**

14 **Q** The sentence that begins -- it's about
15 seven lines from the bottom of the largest paragraph on
16 page 20 that begins, "The utility's post-hearing
17 statement goes on." If you could read that passage to
18 the end of the paragraph, please.

19 **A** "The utility's post-hearing statement goes on
20 to refer to Chapter 99.395 in which the legislature
21 enacted certain sewage requirements for Monroe County,
22 which, in Section 7 of that law, required sewage
23 facilities to go to AWT by July 1st, 2010.

24 "In furtherance of that mandate, the utility
25 points out that Monroe County secured an agreement from

1 the utility to convert its wastewater treatment to AWT
2 by January 1st, 2007, providing that the utility is
3 allowed to recapture costs of its conversion to AWT and
4 the increased operating costs by a resolution of the
5 Monroe County Commission."

6 Q Do you agree that the Commission enacted an
7 ordinance, No. 595-2002, that made that authorization
8 for the company to recover its costs?

9 A I believe there was such a resolution.

10 Q Do you agree that Monroe County, pursuant to
11 that commitment, paid KWRU \$900,000, being 600 times
12 1,500 EDUs?

13 A I believe we saw that at deposition, yes.

14 Q Does the fact that this order states that the
15 County secured an agreement from the utility to convert
16 its wastewater treatment system to AWT by January 1st,
17 2007, refresh your memory as to that being the relevant
18 date per my previous questions?

19 A Again, sticking with the word "convert" to
20 AWT, yes, by January 1st, 2007.

21 Q I'd like you to go to the bottom line of page
22 20, the sentence that begins, "In addition," and read
23 from the beginning of that sentence to the conclusion of
24 the paragraph at the top of page 21.

25 A "In addition, the record shows that the

1 facility is 100 percent used and useful, percent of the
2 overall cost of a project. Moreover, he stated there is
3 a huge difference between acting as a project
4 administrator versus" --

5 Q I'm sorry. This particular format, I think
6 that you got to a different page. Page 21.

7 A Sorry about that. Excuse me for that.

8 "Because the plant is designed and built to
9 provide reuse and will be an AWT plant as mandated by
10 Monroe County. Given the above, we find KWRU's
11 wastewater treatment plant, entire collection system,
12 and reuse systems are all 100 percent used and useful in
13 providing service to the customers of the utility."

14 Q Thank you. I'd like you now to look at
15 Exhibit No. 86, as it has been marked for
16 identification.

17 **CHAIRMAN BROWN:** And that's the Seidman
18 rebuttal testimony.

19 **MR. WRIGHT:** Yes, it's Mr. Seidman's rebuttal
20 testimony.

21 **MR. SMITH:** We're going to object.

22 **CHAIRMAN BROWN:** He hasn't asked a question
23 yet.

24 **MR. SMITH:** Well, he's going to ask him to
25 refer to Mr. Seidman's rebuttal exhibit, which hasn't

1 been brought into evidence yet.

2 **CHAIRMAN BROWN:** This hasn't been brought into
3 evidence either.

4 **MR. SMITH:** The PSC order?

5 **CHAIRMAN BROWN:** No. It's the Seidman
6 rebuttal testimony.

7 **MR. SMITH:** And that's what we're objecting
8 to, is questioning on the rebuttal that isn't into
9 evidence.

10 **CHAIRMAN BROWN:** Are you objecting to any
11 questioning on the rebuttal testimony?

12 **MR. SMITH:** At this time, yes. It's
13 premature. It's putting the cart before the horse, and
14 rebuttal hasn't been entered yet.

15 **CHAIRMAN BROWN:** Okay. Mr. Wright.

16 **MR. WRIGHT:** Thank you, Madam Chairman. I'd
17 mark this as an exhibit to cross-examine Mr. Johnson
18 with as to his direct testimony relative to AWT. The
19 proffer is very simple. There are two points.

20 One, I want him to read -- not into the
21 record, he can look at it, hopefully he's already
22 familiar with it -- and confirm that Mr. Seidman's
23 rebuttal testimony relies on the Commission's order that
24 he just read from into the record for the point -- for
25 the purpose of justifying AWT being -- for the purpose

1 of the fact that the company committed to use AWT to
2 justify its rates being set based on a 100 percent used
3 and useful percentage.

4 **CHAIRMAN BROWN:** Okay.

5 **MR. WRIGHT:** That's all I want him to do. And
6 I'm going to go ahead and tell you, I think this is -- I
7 anticipate --

8 **CHAIRMAN BROWN:** Mr. Wright, hold on a second.

9 **MR. WRIGHT:** I'm done. I'll stop. Thank you.

10 **CHAIRMAN BROWN:** Do you think it would be more
11 appropriate to ask these questions -- this line of
12 questioning, though, on rebuttal of this witness?

13 **MR. WRIGHT:** I would be happy to do that. But
14 his rebuttal testimony does not directly refer to AWT,
15 so I didn't want to miss that boat.

16 **CHAIRMAN BROWN:** Got it. Got it. Okay.

17 **MR. SMITH:** He -- and here's the other issue.

18 **CHAIRMAN BROWN:** Just one second, sir.

19 **MR. SMITH:** I apologize.

20 **CHAIRMAN BROWN:** Thank you. Mary Anne, do you
21 have a copy of it in front of you?

22 **MS. HELTON:** Yes, ma'am. Based on
23 Mr. Wright's description, it seems to me that this is an
24 appropriate line of testimony. The president of the
25 company has testified to AWT. There is a witness that

1 they have hired that has testified to AWT. And I think
2 it's appropriate for the Commission to determine if
3 there -- the testimony is consistent.

4 **CHAIRMAN BROWN:** Okay. Objection overruled.
5 You may proceed. You may proceed.

6 **MR. WRIGHT:** Thank you, Madam Chairman.

7 **BY MR. WRIGHT:**

8 **Q** Mr. Johnson, have you previously read
9 Mr. Seidman's rebuttal testimony?

10 **A** I've read a lot of stuff. I've read it, but I
11 could refresh.

12 **Q** Well, if you'd like to take a minute -- this
13 isn't hard or a trick question. If you'd like to just
14 take a minute and read the question and answer that
15 begins at page 2, line 21, of Mr. Seidman's rebuttal
16 testimony and continues over on to page 4, line 12, and
17 then he's got some extra commentary of his own. I want
18 to simply ask you, do you agree that that basically
19 quotes what you just read from the order, question mark?
20 I'll avoid a compound question.

21 **A** It does mirror the order.

22 **Q** Thank you. And if you'll read further down
23 between lines 13 through 19, would you agree that
24 Mr. Seidman testifies that one of the factors justifying
25 the high 100 percent used and useful percentage to be

1 used is that the existing plant was converted to AWT by
2 mandate; correct?

3 **A** Correct.

4 **Q** Thank you. Will you agree that the company
5 stopped treating to AWT standards in 2009 in order to
6 save money?

7 **A** The utility definitely stop treating AWT
8 during that time frame. The reason behind it I'm not
9 100 percent clear on, but saving the customers money
10 would be one reason to do so, to not require a higher
11 level of treatment than the law requires on your
12 ratepayer. That would certainly be a consideration that
13 the utility would take.

14 **Q** I think we previously established that the
15 rates that were set in your 2009 rate case order coming
16 out of your 2007 case included costs to cover AWT.
17 Isn't that correct?

18 **MR. SMITH:** Objection. That testimony isn't
19 into the record.

20 **CHAIRMAN BROWN:** Mr. Wright.

21 **MR. WRIGHT:** It's in the order. It was a part
22 of the specific finding by this Commission in using a
23 100 percent used and useful percentage in setting the
24 company's rates coming out of the rate case.

25 **MR. SMITH:** We would disagree wholeheartedly

1 with that statement. I would point to page 26 of this
2 order where it states, "We agree with KWRU that
3 chemicals would likely increase as a result of its
4 transition to advanced wastewater treatment facility.
5 However, the utility has failed to meet its burden to
6 support any quantifiable amount. It is the utility's
7 burden to prove that its costs are reasonable."

8 The fact of the matter is the rate case did
9 not approve the expenditures for operating at AWT. And
10 so we disagree that that testimony is in the record.
11 It's -- or whether that order provided for it.

12 **CHAIRMAN BROWN:** Okay. Your objection is
13 noted. Your objection is noted.

14 Mr. Wright, can you restate your question,
15 please?

16 **MR. WRIGHT:** Well, my question was, does he
17 agree that the company stopped treating to AWT standards
18 in order to save money? And I can -- there are a number
19 of statements in his deposition that we can go over to
20 that effect. But if you'll simply agree to that
21 statement, that's fine. He didn't quite do that.
22 That's my question. Do you agree that the company
23 stopped treating to AWT standards in order to save
24 money?

25 **CHAIRMAN BROWN:** Okay. I'll allow that

1 question.

2 **THE WITNESS:** Again, I agree definitely that
3 we stopped treating to AWT standards. And if you're
4 saying to save money for the ratepayer, that would
5 definitely be true.

6 **BY MR. WRIGHT:**

7 **Q** During the time that those rates were in
8 effect, who was paying the money? KWRU; right?

9 **A** For the chemicals? Yes. KWRU was, yes,
10 correct.

11 **Q** Thank you. So in order to attempt to charge
12 the customers for those costs, you would have had to
13 have a new rate case, wouldn't you?

14 **A** Yes. If the previous rate case didn't capture
15 the cost of actually operating at AWT, there would have
16 had to have been another rate case to capture those
17 costs.

18 **Q** So the money that you saved went to the
19 company's bottom line, didn't it?

20 **A** The money that wasn't spent on chemicals would
21 remain with the utility. Correct.

22 **Q** Do you agree that advanced wastewater
23 treatment is a higher quality of wastewater treatment
24 than whatever -- whatever lesser, non-advanced treatment
25 is?

1 **A** I will say when we converted to AWT, it was a
2 higher treatment than extended aeration, which we had
3 previously been at.

4 **MR. WRIGHT:** Madam Chairman, I have a whole
5 lot of questions for this witness. Some are direct,
6 some are rebuttal. They're kind of interlineated, which
7 is why it's taking me a little bit of time to --

8 **CHAIRMAN BROWN:** That's okay. Now is a good
9 time to take a lunch break. It's about 12:18. We will
10 recess until 1:05. Thank you.

11 (Recess taken.)

12 (Transcript continues in sequence in Volume
13 2.)

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1 STATE OF FLORIDA)
 2 : CERTIFICATE OF REPORTER
 3 COUNTY OF LEON)

4 I, LINDA BOLES, CRR, RPR, 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,
 15 nor am I a relative or employee of any of the parties'
 16 attorney or counsel connected with the action, nor am I
 17 financially interested in the action.

18 DATED THIS 18th day of November, 2016.

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 LINDA BOLES

LINDA BOLES, CRR, RPR
 Official FPSC Hearings Reporter
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