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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150071-SU

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

_____ /

VOLUME 2

PROCEEDINGS: HEARING

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

DATE: Monday, November 7, 2016

TIME: Commenced at 1:14 p.m.
Concluded at 5:37 p.m.

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

REPORTED BY: DEBRA KRICK
Court Reporter

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 APPEARANCES: (As heretofore noted.)

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1 I N D E X

2 WITNESSES

3	NAME:	PAGE NO.
4	Christopher A. Johnson	134
	Examination by Mr. Wright	135
	Examination by Ms. Aktabowski	160
5	Examination by Ms. Crawford	174
	Further Examination by Mr. Smith	
6	FRANK SEIDMAN	
7	Examination by Mr. Friedman	185
	Prefiled testimony inserted	187
8	Examination by Ms. Mapp	193
	Further Examination by Mr. Sayler	194
9	Examination by Ms. Mapp	199
10	Deborah D. Swain	
	Examination by Mr. Friedman	201
11	Prefiled testimony inserted	202
	Examination by Ms. Mapp	207
12	Examination by Mr. Sayler	209

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EXHIBITS

NUMBER:		ID	ADMTD.
87	Utility Agreement between Harbor Shores and KWRU	136	
88	Report Criteria, pages one through five, spreadsheet	137	
89	FKAA statements for master meters	138	
90	Excerpts from deposition of Mr. Johnson	138	
91	E-mail from FKA regarding master meters	151	
92	Utility response to staff interrogatory number 68	161	
93	Utility's response to staff interrogatory number 69	161	
6-13	Previously identified		180
83	Previously identified		181
85 & 86	Previously identified		181
89	Previously identified		182
92 & 93	Previously identified		184
14 & 15	Previously identified		200
94	Pro Forma Expenses Document Response to Staff Interrogatory 16	237	

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

2 (Transcript follows in sequence from Volume
3 1.)

4 CHAIRMAN BROWN: Moving on to Item 2. Good
5 morning.

6 MS. PAGE: Good morning, Commissioner, Pamela
7 Page with the Office of General Counsel.

8 In Item 2, staff is recommending amendments to
9 the depreciation rules for electric and gas
10 utilities. The amendments update and clarify the
11 rules, and provide for greater consistency between
12 the electric and gas rules.

13 Staff is available for any questions.

14 CHAIRMAN BROWN: Thank you, Ms. Page.
15 Commissioners, any questions?

16 Seeing none, can I a --

17 COMMISSIONER PATRONIS: Second.

18 CHAIRMAN BROWN: All those in favor, say aye.
19 (Vote taken.)

20 CHAIRMAN BROWN: Item 2 passes. Thank you.
21 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED this 10th day of March, 2016.

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

1 CHAIR BROWN: Okay. Good afternoon. We are
2 on the Key West time, certainly a little bit later
3 than anticipated. And we are at Mr. Johnson and
4 we -- Monroe County has the floor on cross.

5 MR. WRIGHT: Thank you, Madam Chairman. And
6 thank you again for taking that break. I think you
7 will be happy with the result.

8 Whereupon,

9 CHRISTOPHER A. JOHNSON
10 was recalled as a witness, having been previously duly
11 sworn to speak the truth, the whole truth, and nothing
12 but the truth, was examined and testified as follows:

13 EXAMINATION

14 BY MR. WRIGHT:

15 Q Good afternoon, Mr. Johnson.

16 A Good afternoon.

17 Q I would like to ask you to look at the order
18 that you have, the order 09-0057 at page 26. If you
19 look right about the middle of the page, there is a
20 paragraph that begins, "we also agree with OPC." I
21 would like to direct you to the third sentence of that
22 paragraph. Will you agree that that says that because
23 Witness Dismukes failed to consider increases in the
24 cost of chemicals, the chemical expense in the test year
25 was reduced by \$16,117, correct?

1 A Correct.

2 Q Do you know how much chemicals expense the
3 company requested in its MFRs in the 2007 rate case?

4 A No, I do not.

5 Q So would you agree that whatever they asked
6 for was reduced by \$16,000 -- \$16,117, and that would be
7 that, correct?

8 A That's correct. She's indicating that.

9 Q Thank you.

10 MR. WRIGHT: I told you you would be happy,
11 that's all I have got.

12 CHAIRMAN BROWN: Thank you, I am happy.

13 All right. Harbor Shores.

14 EXAMINATION

15 BY MS. AKTABOWSKI:

16 Q Good afternoon, Mr. Johnson, how are you?

17 A Good afternoon. I am fine.

18 CHAIRMAN BROWN: Could I ask you to bring the
19 mic closer to your -- I know we have a lot of paper
20 in front of us.

21 MS. AKTABOWSKI: I have some exhibits.

22 CHAIRMAN BROWN: Okay. We will have staff
23 come, Mr. Graves and Ms. Daniels, can you assist
24 her?

25 MS. AKTABOWSKI: And based on our discussion

1 on No. 42 earlier --

2 CHAIRMAN BROWN: I am so sorry, Ms.
3 Aktabowski, you are going to have to really speak
4 into the microphone.

5 MS. AKTABOWSKI: Sorry. How's that? Is that
6 better?

7 CHAIRMAN BROWN: Yes. Thank you.

8 MS. AKTABOWSKI: Please, all of these. I
9 killed a lot of trees.

10 CHAIRMAN BROWN: So we will be starting at
11 Exhibit 87. Would you like these marked at this
12 time?

13 MS. AKTABOWSKI: Yes, please.

14 CHAIRMAN BROWN: Okay. Which one would you
15 like as 87?

16 MS. AKTABOWSKI: The copy of the Utility
17 Agreement between Harbor Shores and KWRU.

18 MR. FRIEDMAN: I don't have that one.

19 CHAIRMAN BROWN: Say that again.

20 MS. AKTABOWSKI: Sorry, copy of Utility
21 Agreement between Harbor Shores and KWRU.

22 CHAIRMAN BROWN: Okay. It's coming out. We
23 will go ahead and mark that as 87.

24 (Whereupon, Exhibit No. 87 was marked for
25 identification.)

1 CHAIRMAN BROWN: Go ahead, 88.

2 MS. AKTABOWSKI: 88 will be report criteria,
3 pages one through five, spreadsheet.

4 CHAIRMAN BROWN: I don't have that.

5 MS. AKTABOWSKI: There is still some to be
6 given out here as far as that.

7 CHAIRMAN BROWN: Let's just take a moment and
8 have them all distributed. Okay. So we have four
9 exhibits total, correct?

10 MS. AKTABOWSKI: Correct.

11 CHAIRMAN BROWN: Okay. So 87 will be marked
12 as KWRU spreadsheet.

13 MS. AKTABOWSKI: Yes -- no, sorry, 87 is copy
14 of utility agreement.

15 CHAIRMAN BROWN: Okay. 88 will be marked as
16 KWRU's spreadsheet?

17 MS. AKTABOWSKI: Report criteria, pages one
18 through five, spreadsheet, yes.

19 CHAIRMAN BROWN: Okay. We will mark that as
20 88.

21 (Whereupon, Exhibit No. 88 was marked for
22 identification.)

23 CHAIRMAN BROWN: Okay, and 89?

24 MS. AKTABOWSKI: 89 will be the FKA
25 statements for master meters.

1 CHAIRMAN BROWN: Okay. Let's -- we will go
2 ahead and do that.

3 (Whereupon, Exhibit No. 89 was marked for
4 identification.)

5 MS. AKTABOWSKI: And 90 --

6 CHAIRMAN BROWN: Is the excerpts from
7 deposition of Mr. Johnson.

8 MS. AKTABOWSKI: Correct.

9 CHAIRMAN BROWN: All right.

10 (Whereupon, Exhibit No. 90 was marked for
11 identification.)

12 CHAIRMAN BROWN: All right. Everybody have
13 the copies in front of them? All right.

14 Okay. So you have the proper labels, and I
15 want to make sure that Mr. Johnson has all of those
16 in front of him.

17 THE WITNESS: Yes, I do.

18 CHAIRMAN BROWN: Okay. Great.

19 Ms. Aktabowski, you have the floor.

20 MS. AKTABOWSKI: Thank you.

21 BY MS. AKTABOWSKI:

22 Q Again, hi, how are you?

23 A Hi. Great.

24 Q You have the copy of the utility agreement in
25 front of you between KWRU and Harbor Shores?

1 A I do.

2 Q Are you familiar with it?

3 A Yes.

4 Q Would you turn to page five, please?

5 MR. SMITH: We are going to object to
6 questions about the utility agreement. This is
7 outside his direct. He doesn't discuss Harbor
8 Shores anywhere in his direct.

9 CHAIRMAN BROWN: Okay. Ms. Aktabowski, any
10 response to the objection?

11 MS. AKTABOWSKI: Well, obviously, I don't
12 agree, but --

13 CHAIRMAN BROWN: Can you point me to his
14 testimony where he discusses Harbor Shores?

15 MS. AKTABOWSKI: Not in his direct testimony,
16 no.

17 CHAIRMAN BROWN: Would this be more
18 appropriate for rebuttal?

19 MS. AKTABOWSKI: Possibly.

20 CHAIRMAN BROWN: Ms. Mapp or Ms. Crawford,
21 there is an objection on the floor from the
22 utilities saying that this, Exhibit 87, is outside
23 the scope of his direct testimony.

24 MR. SAYLER: Madam Chair, Eric Sayler for
25 Office of Public Counsel.

1 This is a similar posture -- this is Issue 18
2 and it's similar to Issue 42 in the sense that
3 these are live issues of the case to be
4 adjudicated, and Mr. Johnson is the witness, the
5 fact witness that understands and has all the
6 information as it relates to these.

7 CHAIRMAN BROWN: Okay. Ms. Crawford.

8 MS. CRAWFORD: Again, where I struggle is
9 Mr. Johnson does support very broad testimony. He
10 has held himself out to be very knowledgeable, and
11 demonstrably so, of the utility operations. That
12 being said, I have been unable to locate in his
13 direct testimony, or exhibits, references to Harbor
14 Shores or its classification.

15 CHAIRMAN BROWN: Thank you. So would it be
16 your recommendation to --

17 MS. CRAWFORD: Barring a more persuasive
18 argument than what I have heard so far, what I have
19 been able to find myself, I would suggest it would
20 not be appropriate for direct.

21 CHAIRMAN BROWN: Would it be more appropriate
22 for rebuttal?

23 MS. CRAWFORD: Again, we would want to be able
24 to tie it to something within the scope of
25 Mr. Johnson's rebuttal.

1 MR. SAYLER: Madam Chairman.

2 CHAIRMAN BROWN: Yes.

3 MR. SAYLER: This is a quasi-judicial
4 proceeding. It's an administrative law proceeding.
5 It's not held to the same formality as a court of
6 law. And I have been practicing before this
7 commission for over eight years, and I have heard
8 it said many, many times to allow the parties some
9 latitude to argue for issues, even if there is not
10 any direct testimony on it, through
11 cross-examination, through exhibits, especially to
12 if it's a live issue in the case, and also if any
13 documents are admitted into the record, then the
14 Commission can give them the weight that it is due
15 as it relates to those issues.

16 CHAIRMAN BROWN: Thank you. I am very well
17 aware of the posture that we are in and the
18 proceeding that we are in, and I appreciate your
19 comments.

20 Mary Anne, you knew I was going to call on
21 you.

22 MS. HELTON: I believe I have even said all
23 the things that Mr. Sayler just said. The question
24 is whether it's appropriate now.

25 As I understand the issue that Ms. -- and I

1 apologize if I am not saying your name right.

2 MS. AKTABOWSKI: Akta, A-K-T-A, Aktabowski.

3 MS. HELTON: Aktabowski.

4 CHAIRMAN BROWN: We spent about 10 minutes
5 practicing that earlier.

6 MS. AKTABOWSKI: I have spent about 47 years
7 practicing it, and still mess it up once in a
8 while.

9 MS. HELTON: As I understand the issue that
10 Ms. Aktabowski is attempting to go forward with,
11 this is an issue that is not part of the normal
12 issues that you hear in a rate case. This is an
13 issue that she has brought to the table. And I
14 believe that when an intervenor brings an issue to
15 the table, then the intervenor has that initial
16 burden of going forward, and so Ms. Aktabowski
17 should have presented testimony to you, or should
18 be presenting testimony to you when it's time for
19 the intervenors to take the case, and then the
20 company would have the opportunity to rebut that on
21 rebuttal.

22 CHAIRMAN BROWN: Okay. Thank you.

23 Ms. Aktabowski, with regard to this agreement,
24 we have marked it, but your question, since hearing
25 the advice of our counsel regarding the scope of

1 Mr. Johnson's testimony, I don't feel it's
2 appropriate to go down the line of questions as it
3 relates to Harbor Shores under this utility
4 agreement, but you can -- you can proceed ahead
5 with other questions related to his direct.

6 MS. AKTABOWSKI: There is nothing to proceed
7 ahead if I am -- if you are disallowing any mention
8 of Harbor Shores.

9 CHAIRMAN BROWN: Ms. Helton?

10 MS. HELTON: If she could relate her questions
11 to something broader than Harbor Shores that
12 Mr. Johnson did testify to, or that Mr. Johnson did
13 bring -- submit exhibits for, that might be a way
14 to go about it. But if -- beyond that, I think it
15 would be time to move on.

16 CHAIRMAN BROWN: And, Ms. Aktabowski, I would
17 like to allow as much leniency as this body can,
18 but under the guidance that our legal adviser has
19 given, it has to be tied back to the prefiled
20 direct testimony. If you can do that, then those
21 questions will be permissible.

22 MS. AKTABOWSKI: Well, I will try, and we can
23 always say, I guess, objection and move on to the
24 next time, okay -- or the next one, right? Can we
25 to do that?

1 CHAIRMAN BROWN: Sure.

2 MS. AKTABOWSKI: Okay.

3 BY MS. AKTABOWSKI:

4 Q All right. Let's look at -- where were we? I
5 don't he remember at this point. Let's see, we were up
6 to 87, is that right? We've said no to 87, correct?

7 CHAIRMAN BROWN: Unless you can --

8 MS. AKTABOWSKI: Sorry, I know I am not using
9 all the legal terms I am supposed to. I am not a
10 lawyer by any stretch.

11 CHAIRMAN BROWN: Again, I would like to give
12 you as much latitude to develop your case as well,
13 but if you can tie this exhibit to Mr. Johnson's
14 prefiled direct testimony, I will allow some
15 latitude to the questions. It's the way you must
16 frame the question as it relates to his direct.

17 MS. AKTABOWSKI: Okay. Let me look at
18 something here for a moment, and I think I may be
19 able to do that.

20 MR. SAYLER: Madam Chair, at the risk of
21 disrupting, just while she's looking. I know that,
22 often, the intervenors in many of the other
23 proceedings that are before of this board, the
24 clause dockets and things of that nature, they put
25 on their case through cross-examination at the

1 hearing without necessarily putting on any direct
2 testimony in evidence. And when it comes to
3 certain issues that are elicited through those
4 clause dockets, sometimes we don't -- like a few
5 years ago, when it came to --

6 CHAIRMAN BROWN: Ms. Aktabowski, are you
7 almost ready?

8 MR. SAYLER: But I am just saying that I don't
9 think it's been the posture of this commission to
10 limit everything to just those issues, so --

11 CHAIRMAN BROWN: Okay. I have made my ruling
12 already, Mr. Sayler. I appreciate you providing
13 some additional commentary, but we are --
14 Ms. Aktabowski has the floor.

15 MS. AKTABOWSKI: Okay. Thank you, Eric. I
16 appreciate your assistance.

17 BY MS. AKTABOWSKI:

18 Q Okay. Could you please look at Exhibit No.
19 89, just for the record, so that we can get something
20 here. And if we could look at -- Mr. Johnson, if you
21 could look at CAJ-4, page -- I am sorry. Okay, one
22 moment I am told I am too cold, and I am too hot.

23 MR. SAYLER: You are too close.

24 BY MS. AKTABOWSKI:

25 Q If you could look at page 200 of 269 on CAJ-4

1 of your testimony.

2 CHAIRMAN BROWN: Are you there?

3 THE WITNESS: What page, please?

4 BY MS. AKTABOWSKI:

5 Q I am sorry?

6 A Can you give me the page number again, please?

7 Q It's page 200 of 269 -- 200 and 201.

8 CHAIRMAN BROWN: It's at the top corner of
9 your exhibit, the page number.

10 THE WITNESS: Some of them are written over --
11 stamped over.

12 CHAIRMAN BROWN: On the left-hand, it says,
13 page 11. On the right side, it says, page 200
14 of --

15 THE WITNESS: Got it.

16 CHAIRMAN BROWN: Okay.

17 BY MS. AKTABOWSKI:

18 Q Look at number 22, the size of the meters for
19 old general service customers, and the method in which
20 they are billed; do you see that?

21 A Yes, I do.

22 Q Okay. So in Exhibit 89 that we have
23 distributed, I show a bill from FKAA -- or two bills,
24 actually, for two master meters at Harbor Shores. You
25 will see on those bills, on page one, you have the total

1 consumption of 87,000 gallons; do you see that? I am
2 sorry, we are looking at statement number 5072131.

3 A Yes, I do.

4 Q Okay. And below that, it says, less -- less
5 deduct 73,000, with a net consumption of 13,100; do you
6 see that?

7 A Yes, I do.

8 Q Okay. And then on the second statement,
9 similar type of docket or statement, exhibit, it's
10 meter -- or statement number 5071814. And again, it's
11 showing the total consumption 111,600 gallons, with the
12 less deduct of 97,700, for a net consumption of
13 13,900 gallons.

14 What does all of that mean from the KWRU
15 billing? So what does that mean to you? The total
16 consumption and the deduct, is this a normal bill that
17 you would receive from FKAA for one of your general
18 service customers?

19 MR. SMITH: I'm going to object. I was trying
20 to give some latitude because she identified this
21 general service list of customers that are billed
22 by general service. This is an FKA bill, so I
23 believe this is outside the scope of the direct.

24 CHAIRMAN BROWN: I am going to allow the
25 question.

1 MR. SMITH: Okay.

2 CHAIRMAN BROWN: Go ahead.

3 BY MS. AKTABOWSKI:

4 Q I am trying -- do you -- is this the type of
5 bill you would get from a general service customer, from
6 FCAA, where it shows the total consumption for a
7 particular group of condos and mobile homes, or
8 apartments, et cetera?

9 A Yeah, we don't get the bills from the aqueduct
10 authority. What we receive is a data file --

11 Q Okay.

12 A -- with -- it's called a meter file.

13 Q All right.

14 A The meter wirelessly sends a signal to a
15 receiver. They capture the data. They create a data
16 file. They send a data file to the utility. So what I
17 would receive at the utility is a data file with the
18 consumptive use for a given meter.

19 Q For a master meter, or for any meter?

20 A For any meter.

21 Q For any meter. So you would actually get a
22 copy of -- or a data file from FCAA for these two
23 particular meters, these two master meters that I am
24 showing you here?

25 A Yes, that is correct.

1 Q And then you get a similar type of file from
2 any other -- from FCAA for general service customers, is
3 that correct?

4 A No. We get one file for the entire island.

5 Q I am sorry. Let me rephrase that.

6 You get information on that master file that
7 you get from FCAA for each of your general service
8 customers showing the total consumption in a particular
9 group of customers, or residents, or mobile homes, or
10 apartment buildings, or any type of general service
11 customer, you will get a similar data file -- or similar
12 information about total consumption?

13 MR. SMITH: And I understand she's not an
14 attorney, and I am trying to give her some leeway
15 with the questions asked, but the --

16 CHAIRMAN BROWN: As am I.

17 MR. SMITH: -- the compound parts of that
18 question, I would object, and just ask if you try
19 break it down into smaller questions.

20 MS. AKTABOWSKI: Okay. I will. Got you.

21 CHAIRMAN BROWN: Ms. Aktabowski, and, again,
22 we are definitely trying to give you latitude on
23 these questions, and you are tying them into his
24 direct. So if you could make -- kind of streamline
25 the questions a little bit for him.

1 MS. AKTABOWSKI: Okay. I can -- I appreciate
2 the latitude. Thank you, Mr. Smith.

3 BY MS. AKTABOWSKI:

4 Q Again, let's refer back to the actual
5 statements that we have in our hands here for Exhibit
6 No. 89, okay.

7 So a general service customer, any of your
8 general service customers, would have on file with FCAA,
9 a master meter showing the total consumption for that
10 general service customer, is that correct, which would
11 then be sent to you?

12 A Okay, I am getting a bit confused here. We
13 get a file with every single meter on Stock Island.
14 They don't know what a general service customer is for
15 KW Resort Utility, nor do they care. They don't make
16 that distinction.

17 Q Well, okay, let's -- all right, let's look
18 at -- let me get my exhibits sorted out here. Did I
19 give you -- I am sorry, did I hand out the exhibit that
20 I am looking for? I beg your pardon.

21 CHAIRMAN BROWN: We have four exhibits.

22 MS. AKTABOWSKI: Right. I am looking for
23 the -- I got one, two, three -- well, I think I
24 missed one.

25 CHAIRMAN BROWN: Do you need our assistance?

1 MS. AKTABOWSKI: I think I missed an exhibit.
2 Hold on just a moment.

3 CHAIRMAN BROWN: Okay.

4 MS. AKTABOWSKI: Sorry.

5 CHAIRMAN BROWN: We have staff standing by.

6 MS. AKTABOWSKI: My apologies. I am sorry, I
7 forgot. I thought I had given them all out.

8 CHAIRMAN BROWN: This will be 91.

9 (Whereupon, Exhibit No. 91 was marked for
10 identification.)

11 CHAIRMAN BROWN: And we will title it, e-mail
12 from FKA regarding master meters.

13 MS. AKTABOWSKI: Correct.

14 CHAIRMAN BROWN: Okay. Okay, Ms. Aktabowski,
15 you have the floor.

16 BY MS. AKTABOWSKI:

17 Q Okay. Mr. Johnson, you just said that FCAA
18 really doesn't know and doesn't care what the meters
19 are, or what they are -- whether they are master,
20 general service or anything else, is that correct?

21 A Not entirely. They don't define their meters
22 in terms of KW Resort Utilities Public Service
23 Commission tariff and what our Public Service Commission
24 defines for us as a general service meter. They may
25 have their own terminology that they call general

1 service meter, but they -- they are not looking to match
2 their terminology with ours, is what I am saying.

3 Q Okay. But they are aware of the fact that you
4 have general service customers and residential
5 customers, is that correct? I mean, let's look at this
6 e-mail. Let's look at the excerpt here. These are --
7 this is an e-mail from the billing manager, Mrs.
8 Santana, at FCAA, and she has pointed out, as you can
9 see --

10 MR. SMITH: I'm going to object. This is
11 calling testimony into hearsay, it's calling
12 testimony into evidence that hasn't been placed
13 into evidence, and so I don't think she's laid a
14 proper predicate to even bring this up.

15 CHAIRMAN BROWN: I agree.

16 Ms. Aktabowski, if you could -- while this
17 commission is not limited to hearsay, can you lay
18 the foundation for this e-mail before you ask the
19 question -- whether he is familiar with it,
20 something to that effect? Lay a foundation. And
21 if you can lay a foundation, then we will allow the
22 question.

23 BY MS. AKTABOWSKI:

24 Q Mr. Johnson, you have general service
25 customers and you have residential customers, is that

1 correct?

2 A That is correct.

3 Q What dictates the assignment of that category?
4 Is it a master meter? Is it an individual meter? What
5 is it that KWRU uses to determine whether the customer
6 is general service or residential?

7 A What dictates the classification of a customer
8 is our tariff sheet. I think I read it to you at the
9 deposition. We have a one tariff sheet that describes
10 the residential classification, the applicability, et
11 cetera. We have a second sheet that defines general
12 service, as well as the applicability and the various
13 charges as they relate.

14 Q Can you show that to me -- or do you have
15 that?

16 A It's in my tariff.

17 CHAIRMAN BROWN: Is it in one of your exhibit
18 attached to your testimony?

19 THE WITNESS: No, I don't think so.

20 CHAIRMAN BROWN: Counsel?

21 MR. SMITH: No, it's not.

22 CHAIRMAN BROWN: How do you wish to proceed,
23 counsel?

24 MR. SMITH: Well, she's asking questions that
25 are supposed to be getting at this e-mail, and I

1 just don't, you know, and again, our objection is I
2 don't see how she gets to asking about an e-mail
3 between her and FKA, unless she can first ask, do
4 you recognize this e-mail. And not to assist, but
5 I think the answer is going to be no. And so I
6 think that would end any discussion of this e-mail.

7 So if Ms. Aktabowski wants to ask that
8 question, maybe we can move on from this.

9 CHAIRMAN BROWN: Okay. Ms. Aktabowski.

10 BY MS. AKTABOWSKI:

11 **Q Chris, do you recognize the contents of this**
12 **e-mail? Sorry, Mr. Johnson.**

13 A No. I have never seen this e-mail before.

14 MS. AKTABOWSKI: Maybe I should say and -- it
15 would be a whole lot better of the dismantling of
16 my name that's going on around here.

17 BY MS. AKTABOWSKI:

18 **Q You have never seen this e-mail?**

19 A No, I have not.

20 MS. AKTABOWSKI: Is that the only way I can
21 tie this e-mail to anything is if he has seen it?

22 CHAIRMAN BROWN: I believe that the witness
23 has said that he is not familiar with it, or
24 understands the contents, so I think you should
25 move on with your questions.

1 MS. AKTABOWSKI: Okay.

2 BY MS. AKTABOWSKI:

3 Q So, again, you have just said that what
4 dictates a general service customer versus a residential
5 customer is in your tariff. I looked at the tariff and
6 I honestly don't see that. I am trying to find that.
7 Can you show it to me? Can you tell me where to find
8 it?

9 A We have a tariff sheet that's dedicated to
10 residential customer, and we have a second tariff sheet
11 that's titled General Service Customer.

12 Q And is that published? Is that somewhere --
13 is it published somewhere?

14 A Yes, it's a PSC document. It's an official
15 document.

16 CHAIRMAN BROWN: Mr. Johnson, could you be
17 more specific to direct her? Is it in any of the
18 depositions, or any of the pre-identified exhibits?

19 THE WITNESS: I don't know if it is or not, or
20 where I would find it.

21 CHAIRMAN BROWN: Staff.

22 MS. MAPP: I am not quite sure where it would
23 be. If it is in any place, it would most likely be
24 within the, I believe, MFR filings. That's the
25 most specific --

1 CHAIRMAN BROWN: Okay, Ms. Aktabowski.

2 MS. AKTABOWSKI: I have attempted, I have done
3 a lot of research trying to find definitions, and I
4 cannot find the definitions, and therefore, I am
5 trying to establish what is it that constitutes a
6 general service? Because when I look at some of
7 the customers that are classified as either general
8 service or residential, there doesn't seem to be a
9 pattern of, you know, this one is that or this one
10 is the other. I am trying to determine, is there
11 an official document, and I have literally
12 searched --

13 CHAIRMAN BROWN: Okay.

14 MS. AKTABOWSKI: -- and cannot find it.

15 CHAIRMAN BROWN: Mr. Wright.

16 MR. WRIGHT: Madam Chair, just to try to help
17 the process, I believe the company's tariff sheets
18 are included as Section E of the minimum filing
19 requirements.

20 CHAIRMAN BROWN: Okay. So even though you
21 didn't speak into the microphone, thank you for
22 helping out with that. Section E of the MFRs,
23 Ms. Aktabowski.

24 MR. SMITH: And for reference, that would be a
25 filing that was filed by Ms. Swain.

1 CHAIRMAN BROWN: Okay, which is a witness
2 coming up soon.

3 Is there a question, Ms. Aktabowski, on the
4 floor?

5 MS. AKTABOWSKI: Not if I can't find the -- if
6 we can't get an actual definition, or a written
7 definition, or tell me where to find that.

8 CHAIRMAN BROWN: Mr. Johnson, that's the
9 question to you.

10 THE WITNESS: I am looking for the sheet.

11 CHAIRMAN BROWN: Okay. And, Mr. Johnson, if
12 you can't find it, then just say you can't find it.

13 BY MS. AKTABOWSKI:

14 Q Mr. Wright just gave me a document here, which
15 is -- this is the KW Resort Utilities Corporation
16 Wastewater Tariff, General Service Rate Schedule, GS,
17 applicability for wastewater service to all customers
18 for which no other schedule applies, that's the general
19 service definition?

20 A Yes, that sounds correct.

21 Q What does that mean? I don't understand what
22 that means.

23 A There are other tariff sheets that specify
24 applicability, and they are saying, on the general
25 service one, if none of the other sheets apply, this

1 sheet applies.

2 **Q Wow. I like those kinds of statements.**

3 Okay, so we would have to find the other
4 tariff sheets to determine that, indeed, to be -- the
5 customers that are being assigned a general service
6 category do not apply to any of the other categories; is
7 that right? We would have to determine to find all of
8 the tariff sheets?

9 A Yes, that would be one way to determine that.

10 MS. AKTABOWSKI: I do appreciate all of the
11 assistance I am getting from both left and right
12 here, by the way. Thank you.

13 CHAIRMAN BROWN: Good work, intervenors.

14 MS. AKTABOWSKI: All right.

15 CHAIRMAN BROWN: Thank you for helping her
16 out.

17 BY MS. AKTABOWSKI:

18 **Q I am looking at reuse of reclaimed water**
19 **tariff sheet for Key West Golf Club, Monroe Detention**
20 **Center, Florida Keys Community College, Joe Adams**
21 **Elementary --**

22 CHAIRMAN BROWN: Ms. Aktabowski, is that a
23 question?

24 MS. AKTABOWSKI: No, I am sorry, I am trying
25 to read what Mr. Wright just handed me. These

1 apparently are other tariff sheets, possibly.

2 THE WITNESS: Yes, they are.

3 MR. SMITH: We would object, she hasn't
4 provided these sheets even for him to review.
5 Presumably they may be, but --

6 CHAIRMAN BROWN: I agree.

7 Ms. Aktabowski, can you move along with your
8 questions, please?

9 MS. AKTABOWSKI: Okay.

10 BY MS. AKTABOWSKI:

11 **Q May I just simply ask you, Mr. Johnson, since**
12 **you are familiar, and very familiar with this, what is**
13 **your interpretation of a general service customer? What**
14 **dictates your assignment of a general service customer**
15 **when you get a new customer?**

16 A What is on that piece of paper is what I
17 assess a general service customer as.

18 **Q So it has nothing do with meters, master**
19 **meters, or anything of that nature?**

20 A It can have to do with meters, that is how the
21 billing is determined, through a meter; but what the
22 tariff sheet says is what the tariff sheet says, as far
23 as for classification.

24 MS. AKTABOWSKI: So we have already been told
25 the utility agreement with Harbor Shores is of no

1 consequence, or not in evidence here, so -- you
2 know what, rather than tie everybody up, why don't
3 we just move on, and we will see if I can come up
4 with some questions when it gets back to rebuttal,
5 or whatever, okay? Thank you.

6 CHAIRMAN BROWN: Thank you, Ms. Aktabowski.
7 Staff.

8 MS. CRAWFORD: Staff does have some questions.

9 EXAMINATION

10 BY MS. CRAWFORD:

11 Q Mr. Johnson, I am sorry not to make eye
12 contact with you, but if you have any questions, just
13 send up a flare.

14 A Okay.

15 Q Could I refer you first, please, to your
16 exhibits --

17 MS. CRAWFORD: And actually, if staff will
18 hand out two exhibits first?

19 CHAIRMAN BROWN: Okay. And we will be at 92.
20 Thank you.

21 Ms. Crawford, would you like to label them
22 now?

23 MS. CRAWFORD: Yes. I'm trying to find my
24 copies. My apologies, if I could have just a
25 moment.

1 Well, I can tell you off the top of my head,
2 the first one is the utility response to staff
3 interrogatory number 68.

4 CHAIRMAN BROWN: Okay. So we will go ahead
5 and label that as 92. We will mark that.

6 (Whereupon, Exhibit No. 92 was marked for
7 identification.)

8 MS. CRAWFORD: And a second one is the
9 utility's response to staff interrogatory number
10 69.

11 CHAIRMAN BROWN: Okay. We are going to label
12 that as Exhibit 93.

13 (Whereupon, Exhibit No. 93 was marked for
14 identification.)

15 CHAIRMAN BROWN: Mr. Johnson, you have copies
16 of both?

17 THE WITNESS: Yes, I do.

18 CHAIRMAN BROWN: Okay. Ms. Crawford, please
19 proceed when you are ready.

20 MS. CRAWFORD: Thank you.

21 BY MS. CRAWFORD:

22 **Q And actually, my first series of questions**
23 **don't have to do with the exhibits.**

24 If I can refer you, please, Mr. Johnson, to
25 your CAJ-4 of your direct testimony, specifically page

1 200 to 269.

2 A Okay.

3 Q And am I correct in summarizing, this is a
4 utility response to a staff data request for the PAA
5 phase of this case that you are sponsoring?

6 A Yes, it looks like it is.

7 Q Okay. And so, to the best of your knowledge,
8 the information that's reflected in here is still true
9 and correct today?

10 A Yes, it is.

11 Q Okay. If I could refer you, please, to your
12 response at number 24, asking you to explain why there
13 are no billable gallons for the 5/8 inches residential
14 service customers on page two of Schedule E-2. Your
15 response, you talk about Sunset Marina Residences and
16 Sunset Marina; these are two customers of the utility,
17 correct?

18 A No. Sunset Marina is the customer. The
19 Sunset Marina Residences are not.

20 Q Okay. I just -- I think I need a little
21 clarification, if I could. When readings through your
22 response, it's unclear to me how the customer Sunset
23 Marina is billed. Could you lay out that for me in
24 layman lawyer speak? I am not an engineer. I am not
25 terribly technical.

1 A Sunset Marina is a property where you have two
2 -- well, I am sorry, Sunset Marina is a marina property.
3 It's owned by one group of people, and the residences is
4 a completely different company -- property owned by a
5 completely different set of people. They share -- or I
6 should say, Sunset Marina owns the water meter that all
7 the water passes through for that property, currently,
8 so Sunset Marina is billed. The residences and the
9 condos are not billed.

10 Q **Is it correct that, in order to properly bill,**
11 **that you are reading the water consumption by the 64**
12 **residential units?**

13 A We presently do not measure the water at the
14 64 individual units today.

15 Q **Do you have any intention to do so in the**
16 **future?**

17 A No, we don't. No. Long ago, we did.

18 Q **Okay. And so the water provided to -- that is**
19 **ultimately provided to the residences is actually**
20 **measured at the customer Sunset Marina's master meter,**
21 **is that correct?**

22 A Yes, that is correct.

23 Q **Okay. And is Sunset Marina a general service**
24 **customer?**

25 A Yes, they are.

1 Q Okay. So do you have access to any of the
2 properties, the residential properties behind that
3 master meter?

4 A We have access rights as it's afforded to us
5 through our tariff.

6 Q Could you describe that more fully for me,
7 please?

8 A There are certain provisions within our tariff
9 where we can access a property. In those cases, we
10 would access the property. Outside of those conditions,
11 we don't go on this property.

12 Q Well, maybe I wasn't clear. What I am
13 speaking of specifically isn't the Sunset Marina
14 property itself. I mean the lines that go into the
15 residents -- residential area for Sunset Marina that
16 serves the individual customers, do you have rights of
17 access to those lines?

18 A I think we do from our developer's agreement
19 with the customer, and as well as our tariff.

20 Q Is the utility responsible for maintaining
21 those lines if they are damaged or need repair?

22 A No, the utility is not.

23 Q Okay. To your knowledge, can you say who does
24 own those lines, or is responsible for maintaining or
25 repairing them if they are damaged?

1 A The lines that serve the property's collection
2 system would be under a DEP permit, I would presume,
3 when it was built, and there would be a permittee who
4 would then be required to operate and maintain that
5 system, which is a domestic wastewater collection system
6 under DEP rules.

7 **Q And is the utility the permittee for those**
8 **lines?**

9 A No, I don't believe the utility is.

10 MS. CRAWFORD: May have I just a moment, Madam
11 Chairman?

12 CHAIRMAN BROWN: Absolutely.

13 BY MS. CRAWFORD:

14 **Q Is it correct to say you just stated that you**
15 **believe the utility has some right of access to the**
16 **residential lines?**

17 A Yes. That's correct.

18 **Q What is that based on? You said a developer**
19 **agreement, is it in your tariff?**

20 A Yes. In our tariff, there is a provision for
21 property rights and rights of access. The tariff also
22 points to Florida Administrative Code, I believe Chapter
23 25, but all this is stated directly on our tariff sheet.

24 **Q Can you cite to me where in the tariff sheet?**

25 A Page nine, original sheet nine section --

1 **Q** You have that sheet in front of you, could you
2 read for me the provision that entitles you access, or
3 rights to those residential lines?

4 **A** Section 12, access to premises: "In
5 accordance with rule 25-30.320(2)(f), Florida
6 Administrative Code, the customer shall provide the duly
7 authorized agents the company access at all reasonable
8 hours to its property. If reasonable access is not
9 provided, service may be discontinued pursuant to the
10 above rule."

11 **Q** For clarification, you stated that it's the
12 marina who's the customer, correct?

13 **A** Correct.

14 **Q** So would that provision actually apply to the
15 individual residences that are behind the master meter?

16 **A** That would be a question for our legal
17 counsel.

18 **Q** Would similarly situated properties, where you
19 have a general service customer with a master meter that
20 is the customer of record for the utility, and service
21 is provided by the utility to that general service
22 customer, and then that general service customer, the
23 water flows from that master matter to individual
24 residences, do you have other properties similarly
25 situated like the Sunset Marina Residences, Sunset

1 **Marina situation we have just been discussing?**

2 A Sunset Marina and Sunset Marina Residences is
3 a very unique situation. I cannot think of any other
4 circumstance where you have two completely different
5 parties sharing a water meter.

6 Also, beyond sharing a water meter, I am
7 pretty certain that this was built as a single
8 development, and it was all permitted as one DEP
9 project; therefore, there is one permittee for the
10 entire system. This is a unique situation, clearly.

11 **Q Is it your testimony today that this situation**
12 **is different than the situation at issue in Issue 18**
13 **regarding Harbor Shores?**

14 A Yes, it's very different than Harbor Shores.

15 **Q Could you please explain to me why?**

16 A The Harbor Shores situation is we bill single
17 family residences, 69 of them. Each of those residences
18 has their own FKAA water meter, and we only bill the 69
19 units that have single family residents living in them
20 as their primary residence.

21 **Q So the bill from KWRU goes to each individual**
22 **residence?**

23 A The bill goes to -- is in the name of the
24 individual residence, care of the homeowner's
25 association, and this was at the request of the

1 association.

2 **Q So the utility doesn't bill the residences**
3 **directly?**

4 A The utility sends the bills to care of the
5 condominium association, but the bill is in the name of
6 the owner of the unit.

7 **Q If the individual residence doesn't pay its**
8 **bill, who has recourse to that customer for nonpayment?**

9 A Harbor Shores pays the bill for the 69
10 residences.

11 **Q Okay. If Harbor Shores Condominium**
12 **Association does not pay its bill to the utility, the**
13 **utility has the ability to terminate service to Harbor**
14 **Shores Condominium Association, correct?**

15 A Correct.

16 **Q With notice, of course?**

17 A Correct.

18 **Q Would KWRU be able to disconnect individual**
19 **customers should they fail to pay their wastewater bill?**

20 A Yes.

21 **Q Does KWRU have rights of access to the**
22 **individual residential lines in the association?**

23 A Yes. Each residence has a cleanout that is
24 accessible.

25 **Q And what is this right of access, where is it**

1 **granted?**

2 A Again, it's in our tariff, and it's in the
3 developer's agreement, and it also points to Florida
4 Statute -- I am sorry, Florida Administrative Code.

5 Q And -- so would it be correct to say that the
6 utility has individual service agreements with each of
7 these residents?

8 A Yes, I believe we do.

9 Q Okay. I am just struggling here, because
10 that's not my understanding. My understanding is the
11 contract for service is between the utility and Harbor
12 Shores Condominium Association, is that not correct?

13 A Yes, that is correct.

14 Q Okay. So you do not have individual
15 agreements, separate agreements between the utility and
16 the individual customers who reside at Harbor Shores
17 Condominium Association, is that not correct?

18 A We do not have developer agreements with the
19 individual homeowners in Harbor Shores, that is correct.

20 MS. CRAWFORD: Madam Chair, may have I just a
21 moment?

22 CHAIRMAN BROWN: Absolutely.

23 BY MS. CRAWFORD:

24 Q And finally, Mr. Johnson, I have a few
25 questions about quality of service. And I would like to

1 refer you, please, to KWRU's responses to staff
2 interrogatories numbers 68 and 69. Those have been
3 identified as Hearing Exhibits 92 and 93.

4 Now, did you author -- let's start with the
5 68, but with regard to both of these responses, did you
6 author them, or have oversight over their creation?

7 A Yes, I did.

8 Q So you are familiar with them. And to the
9 best of your knowledge, are they still true and correct?

10 A Yes, they are.

11 Q Okay. For the response to interrogatory
12 number 68, is it correct to state that this shows
13 customer complaints filed with the Commission from
14 October 2010 through October 2016?

15 A That's correct.

16 Q To your knowledge, have the complaints
17 reflected in this interrogatory all been resolved?

18 A Yes, they have been.

19 Q Okay. And to your knowledge, have there been
20 any additional complaints filed with the Commission
21 after October 1st, 2016? To your knowledge.

22 A There was a petition from Safe Harbor, which
23 would be the only other one that I can think of that
24 went through the hearings, and was mentioned in the PAA.

25 Q Do you know whether that's an active complaint

1 with the Commission?

2 A No, it's not an active complaint.

3 Q Okay. So to your knowledge, there are
4 currently no active open complaints at the Commission?

5 A That's correct.

6 Q Very good. Thank you.

7 And if I could refer you next to hearing
8 Exhibit No. 93, which is the utility's response to staff
9 interrogatory question 69.

10 And is it correct to state that this
11 interrogatory requests a listing of all the complaints
12 the utility knows to have received directly from
13 customers or through DEP for December 2010 until
14 October 1st, 2016?

15 A We late-filed this. We were waiting for the
16 response from the DEP, I believe.

17 Q Okay. And when was that filed?

18 A I am not sure. Very recently.

19 Q Can you confirm what date or time this was
20 filed? To my knowledge, we don't have this in our
21 possession, but I will happily stand corrected.

22 CHAIRMAN BROWN: Counsel, you --

23 MR. SMITH: Yeah, it's -- I believe we filed
24 it either Tuesday or Wednesday of last week. I can
25 forward on that filing to you. I know it did come

1 in late. Mr. Johnson, after receiving the
2 information, asked him -- the question contained in
3 there, I am sure he can answer it to supplement the
4 record.

5 CHAIRMAN BROWN: Ms. Crawford.

6 MS. CRAWFORD: Of course, having not seen it,
7 I will be happy to look at the update. I will ask,
8 if it's all right, just a few questions regarding
9 the nature of this question and the information it
10 seeks to elicit, just very generally.

11 CHAIRMAN BROWN: Would you like do that, or
12 would you like to take a five-minute break?

13 MS. CRAWFORD: Actually, I don't need the
14 information particularly in front of me to ask a
15 few questions. I would like, perhaps, to have
16 permission to, if I have additional follow-up, to
17 perhaps ask in rebuttal so I'm not holding up the
18 proceeding, if that's agreeable to counsel.

19 CHAIRMAN BROWN: Counsel?

20 MR. SMITH: Yeah, we have, obviously, no
21 objection, and I am going to get this to her
22 immediately.

23 CHAIRMAN BROWN: Thank you.

24 Okay, Ms. Crawford.

25 BY MS. CRAWFORD:

1 **Q Just a few quick questions, then. I won't**
2 **belabor.**

3 You responded initially in this response that
4 you say you have since updated that you would update it,
5 and that you were having difficulty obtaining a log of
6 complaints from DEP, is that correct?

7 A We were being asked to represent how many
8 complaints were received by the DEP. So we contacted
9 the DEP, and we asked them the question point blank, how
10 many complaints did you get during the period? The
11 problem is the DEP has a brand new complaint checker.
12 It's been in service for about a year. So they can tell
13 you the most recent complaint. But to go back into the
14 records and to get the complaints all the way back to
15 December 2010, that was very difficult for them.

16 We put a request in. We spoke to the head of
17 the south district office. We got put to an
18 administrative person, and eventually we got the
19 information e-mailed to us. I can testify to what that
20 information is, but we did receive that, and that's the
21 reason for the late filing.

22 **Q Okay. And let me ask you again, relating to**
23 **this interrogatory response, the response also asked for**
24 **a listing of complaints the utility received directly**
25 **from customers from December 2010 until October 2016.**

1 **Has the utility provided a list of such complaints in**
2 **this proceeding?**

3 A Yes, our late-filed had those in as well.

4 MS. CRAWFORD: All right. I think that's all
5 I have for now. Thank you.

6 CHAIRMAN BROWN: Thank you, Ms. Crawford.

7 Commissioners?

8 Redirect?

9 What, Mr. Sayler?

10 MR. SAYLER: Regarding my Exhibit 84 earlier,
11 which we were going to defer to rebuttal, the
12 questions regarding the utility's response, I was
13 able to find in that CAJ-4 the instances that
14 correspond to this letter. At your pleasure, do
15 you want me to ask him now, or wait until rebuttal?
16 I whether defer to your wisdom and judgment.

17 CHAIRMAN BROWN: Now is definitely not proper,
18 so we will have to wait on rebuttal.

19 So we are on redirect.

20 MR. SMITH: Thank you.

21 FURTHER EXAMINATION

22 BY MR. SMITH:

23 Q **And, Mr. Johnson, I am going to take this**
24 **probably in reverse chronological order, the questions**
25 **you were asked.**

1 As to Sunset Marina and Sunset Marina
2 Residences, do the individual residences have FKA
3 meters?

4 A No, they do not.

5 Q Do the individual residences at Harbor Shores
6 have FKA meters?

7 A Yes, they do.

8 Q Mr. Wright brought up testimony about the
9 utility's bottom line from 2009 moving forward. If you
10 recall, did the utility make a profit in 2009?

11 A No, I don't believe they did.

12 Q What about 2010?

13 A No, I don't believe they did.

14 Q 2011?

15 A No.

16 Q 2012?

17 A No.

18 Q 2013?

19 A No.

20 Q And what about 2014, the rate -- the test
21 year?

22 A That was the only year.

23 Q There were some questions that were asked by
24 Mr. Sayler about BB&T imputing a management fee into a
25 loan. I would like to turn you to staff's Exhibit 49,

1 **which is staff's first set of interrogatories to KWRU.**
2 **And specifically, you are going to go to staff's**
3 **interrogatory number 20.**

4 CHAIRMAN BROWN: Can you repeat what exhibit
5 that was?

6 MR. SMITH: It is staff's Exhibit 49.

7 CHAIRMAN BROWN: Okay. Thank you.

8 MR. SMITH: And the interrogatory specifically
9 is interrogatory number 20.

10 CHAIRMAN BROWN: We've got it.

11 MR. SMITH: It's the interrogatory, it's the
12 actual question.

13 BY MR. SMITH:

14 **Q If you can just turn to that interrogatory.**

15 A What number is that?

16 **Q Number 20.**

17 A Got it.

18 **Q Okay. Can you read that interrogatory?**

19 A Please refer to page five, lines five through
20 25, and page six, lines one through 11, supporting the
21 inclusion of the \$60,000 annual expense for management
22 services provided by Green Fairways, Inc. Please list
23 the ownership interest of all shareholders whom are also
24 shareholders in WS Utilities, and/or receive
25 compensation from KWRU as a director, officer or

1 employee. Please list the compensation received by any
2 directors, officers or employees of Green Fairways who
3 are also shareholders in WS Utilities, or receive
4 compensation from KWRU as a director, officer or
5 employee, along with the estimate of the average of time
6 spent working for Green Fairways each week.

7 **Q Are you reading the correct one? That's not**
8 **the --**

9 CHAIRMAN BROWN: That's not what I got, but
10 that was very interesting information. Thank you.

11 THE WITNESS: 49?

12 BY MR. SMITH:

13 **Q 20 -- number 20. In Exhibit 49, number 20.**
14 **Exhibit 20 -- interrogatory number 20.**

15 MR. SMITH: If I may approach just to help him
16 get the right page.

17 CHAIRMAN BROWN: Please. Mr. Smith, are you
18 getting there?

19 MR. SMITH: Yes. And this is actually the
20 last question.

21 MR. SAYLER: Madam Chair, I believe he is
22 asking redirect on our question, which was, is
23 there anything in the loan documents as it relates
24 to a three- to five-percent management fee.

25 CHAIRMAN BROWN: That's right.

1 MR. SMITH: Correct. Let me withdraw that
2 question and ask a more generic question.

3 BY MR. SMITH:

4 **Q Mr. Johnson, did you provide in response to**
5 **the interrogatories documentation of a management fee**
6 **imputed by BB&T in loans?**

7 A I have it in front of me. Yes, I did.

8 **Q Okay. And can you read off the portion of**
9 **that BB&T document regarding management fees?**

10 A It's a letter of August 26th, 2016, regarding
11 WS Utility, Inc. And it says: "This letter also
12 represents confirmation that BB&T included a management
13 expense of 60,000 in the underwriting of the most recent
14 \$1 million loan to the utility." It's signed by J.
15 Hall, BB&T.

16 MR. SAYLER: And we would object for hearsay,
17 lack of foundation. It's -- it's a hearsay
18 document.

19 CHAIRMAN BROWN: Mary Anne.

20 MR. SMITH: If we may, the business exception
21 rule would apply.

22 CHAIRMAN BROWN: Mary Anne.

23 MR. SMITH: Business records, I apologize.

24 MR. SAYLER: It's not a business record of the
25 utility.

1 CHAIRMAN BROWN: Okay -- for a moment, please.

2 MS. HELTON: I apologize, Madam Chairman, I am
3 trying to get acclimated here to the exhibits.

4 I am assuming that are objecting to, Mr.
5 Sayler, the BB&T document that's addressed to whom
6 it may concern?

7 MR. SAYLER: Yes, ma'am.

8 CHAIRMAN BROWN: It's Exhibit 49, rog 20.

9 MR. SAYLER: And we would also object to the
10 characterization in the interrogatory response
11 subpart (d) to that question as well.

12 CHAIRMAN BROWN: Okay. There is an objection
13 on the floor as hearsay.

14 MS. HELTON: Madam Chairman, if the objection
15 is hearsay, my recommendation would be to allow the
16 exhibit in, see if it's collaborated with -- by
17 other non-hearsay evidence in the record, unless we
18 could show that there is an exception to the
19 hearsay rule that applies and then give it the
20 weight that it's due.

21 CHAIRMAN BROWN: Thank you. I knew you were
22 going to say that.

23 All right. Objection overruled at this time.

24 MR. SAYLER: Thank you.

25 MR. SMITH: Thank you. I have no further

1 questions.

2 CHAIRMAN BROWN: Okay. Thank you.

3 Now moving on to exhibits. The utility, you
4 have Exhibits 6 through 13 for this witness.

5 MR. SMITH: Yes.

6 CHAIRMAN BROWN: Move them in?

7 MR. SMITH: I would move those into evidence.

8 CHAIRMAN BROWN: Any objection to moving in
9 six through 13?

10 Seeing none, we will go ahead and move six
11 through 13 into the record.

12 (Whereupon, Exhibit Nos. 6-13 were received
13 into evidence.)

14 CHAIRMAN BROWN: Public Counsel, you have
15 got --

16 MR. SAYLER: I would like to move Exhibit 83,
17 the redacted version. And then when it comes to
18 rebuttal testimony, I will see if I can lay the
19 foundation for 84 by corresponding it to his direct
20 testimony. And I appreciate the latitude.

21 CHAIRMAN BROWN: Fair enough. And I have got
22 a note on that.

23 Any objection to the redacted BB&T loans
24 coming into the record, Exhibit 83?

25 MR. SMITH: May have I one moment?

1 CHAIRMAN BROWN: Yes.

2 MR. SMITH: We certainly don't have an
3 objection, but we do believe that's collaboration
4 necessary for that letter.

5 CHAIRMAN BROWN: All right. Well, as to 83,
6 we will go ahead and move that into the record as
7 long as it's the redacted version.

8 (Whereupon, Exhibit 83 was received into
9 evidence.)

10 CHAIRMAN BROWN: And going on to -- and we
11 will hold off on 84.

12 County, you have got 85 and 86. Would you
13 like to move those in?

14 MR. WRIGHT: Yes, ma'am.

15 CHAIRMAN BROWN: Okay. Seeing no objection,
16 we will move 85 and 86 in.

17 (Whereupon, Exhibit Nos. 85 & 86 were received
18 into evidence.)

19 CHAIRMAN BROWN: All right. Ms. Aktabowski,
20 really 89 was the only exhibit that you used.
21 Would you like to move that into the record?

22 MS. AKTABOWSKI: Sure. Yes.

23 CHAIRMAN BROWN: Okay. Any objection to
24 moving 89 in?

25 MR. SMITH: Yes, we have an objection.

1 Mr. Johnson stated that he does not recognize the
2 document, and that he would not receive that
3 document. He very clearly stated that what he
4 receives is a billing file of all the billings in
5 the master file. He was not aware of this
6 document, or had any knowledge of the document.

7 CHAIRMAN BROWN: But Ms. Aktabowski went
8 through a whole line of questioning on it
9 thereafter, and he was able to identify and explain
10 some of the questions that she had on there. So
11 for those reasons, I will allow it into the record.
12 We will go ahead and move that inform.

13 (Whereupon, Exhibit No. 89 was received into
14 evidence.)

15 CHAIRMAN BROWN: Staff, you have got Exhibit
16 92 and 93.

17 MS. CRAWFORD: Yes, ma'am. And we would like
18 those admitted. I would note, just for
19 completeness of the record, that those are actually
20 captured elsewhere in the staff Composite Exhibit
21 No. 53, but since that has not yet been moved into
22 the record, perhaps just to be in abundance of
23 caution --

24 CHAIRMAN BROWN: Yes.

25 MS. CRAWFORD: -- let's go ahead and move in

1 92 and 93, please.

2 CHAIRMAN BROWN: Thank you. And that will be
3 my preference moving forward, too.

4 Any objection?

5 MR. SMITH: And we have no objection, but we
6 will make sure that she has that supplement
7 information that was provided that she didn't have,
8 because that will fully form that one
9 interrogatory.

10 CHAIRMAN BROWN: Yes, Ms. Helton.

11 MS. HELTON: So when are we going to have that
12 supplemental information?

13 MR. SMITH: I e-mailed my office right now
14 just to show when did they file this? I thought it
15 was filed, like, Tuesday or Wednesday of last week.

16 MS. CRAWFORD: I've -- just to let you know,
17 we have conferred with Ms. Mapp, who has been kind
18 of the primary recipient on our discovery, and also
19 with staff. I don't believe they have that
20 document available, so I certainly look forward to
21 getting a copy, if it's available.

22 MR. SMITH: Okay. And certainly, that would
23 be an oversight if that was the case.

24 MS. HELTON: And hopefully it will be by the
25 time that Mr. Johnson takes the stand again for

1 rebuttal; otherwise, I think we have some problems
2 getting that into the record.

3 CHAIRMAN BROWN: And I don't see anything in
4 the docket file right now, so --

5 MR. SMITH: Yeah, and that would be an
6 oversight if that didn't occur. We were waiting on
7 that information, obviously, to file it.

8 CHAIRMAN BROWN: Okay. We are going to go
9 ahead right now and move in Exhibits 92 and 93 into
10 the record.

11 (Whereupon, Exhibit Nos. 92 & 93 were received
12 into evidence.)

13 CHAIRMAN BROWN: All right. Would you like
14 this witness momentarily excused?

15 MR. SMITH: Yes, please.

16 CHAIRMAN BROWN: Okay. We will see you
17 hopefully tomorrow morning.

18 (Witness excused.)

19 CHAIRMAN BROWN: Okay. Thank you.

20 Your next witness is Mr. Frank Seidman. Oh,
21 I'm so -- yes, that's right.

22 THE WITNESS: I believe Mr. Seidman was
23 earlier sworn in, too.

24 MR. SAYLER: Madam Chair, which one from
25 Harbor Shores was moved in?

1 CHAIRMAN BROWN: Exhibit 89.

2 MR. SAYLER: All right. Thank you.

3 MS. HELTON: And, Madam Chairman, just to make
4 sure the record is clear on Exhibits 92 and 93, I
5 don't think those should be shown as supplemented
6 until we actually have the supplements.

7 CHAIRMAN BROWN: No. We are not. We are just
8 going ahead and moving them in right now as is.
9 And when we get the supplement, we can append it,
10 or add a new exhibit number.

11 All right. Mr. Smith, you have the floor.

12 MR. FRIEDMAN: My turn.

13 CHAIRMAN BROWN: Now it's Mr. Friedman.

14 MR. FRIEDMAN: My turn.

15 Whereupon,

16 FRANK SEIDMAN

17 was called as a witness, having been previously duly
18 sworn to speak the truth, the whole truth, and nothing
19 but the truth, was examined and testified as follows:

20 EXAMINATION

21 BY MR. FRIEDMAN:

22 Q Mr. Seidman, did you prefile testimony in this
23 docket?

24 A Yes, I did.

25 Q And if I asked you the questions in your

1 **prefiled testimony, would your answers remain the same?**

2 A My answer would be the same in prefiled
3 testimony. I did have a change to my exhibit.

4 Q **All right. Would you point out where that**
5 **change is?**

6 A I don't know the numbering on this. It was --
7 it was FS-2 when I filed it. It's a one-page exhibit.

8 Q **That would be Exhibit 15.**

9 A It says Schedule F-10 on it. And at the
10 bottom of it, there is a boxed area that says
11 comparative calculations of U and U. On the side of
12 that box, it says, growth for PAA 5.86 percent. It
13 should say 5.78.

14 CHAIRMAN BROWN: You need some water, sir? We
15 have water.

16 THE WITNESS: I am okay.

17 CHAIRMAN BROWN: Okay.

18 THE WITNESS: Could you understand what I
19 said?

20 CHAIRMAN BROWN: No.

21 THE WITNESS: The exhibit in the boxed area
22 says 5.86 percent. It should say 5.78.

23 CHAIRMAN BROWN: Thank you.

24 BY MR. FRIEDMAN:

25 Q **Mr. Seidman, would you like to --**

1 MR. FRIEDMAN: Let me move his prefiled
2 testimony into evidence.

3 CHAIRMAN BROWN: Seeing no objection, we will
4 go ahead and move Mr. Seidman's prefiled direct
5 testimony into the record as though read.

6 MR. FRIEDMAN: Thank you.

7 (Prefiled testimony inserted into the record
8 as though read.)

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

2 A. My name is Frank Seidman. I am President of Management and Regulatory Consultants,
3 Inc., consultants in the utility regulatory field. My address is 36 Yacht Club Dr., North Palm
4 Beach, FL 33408.

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

6 A. I hold the degree of Bachelor of Science in Electrical Engineering from the University of
7 Miami. I have also completed several graduate level courses in economics at Florida State
8 University, including public utility economics. I am a Professional Engineer, registered to
9 practice in the state of Florida. I have over 40 years of experience in utility regulation,
10 management and consulting. This experience includes nine years as a staff member of the
11 Florida Public Service Commission (FPSC), two years as a planning engineer for a Florida
12 telephone company, four years as Manager of Rates and Research for a water and sewer
13 holding company with operations in six states, and three years as Director of Technical
14 Affairs for a national association of industrial users of electricity. I have been providing rate
15 and regulatory consulting services in Florida for over 30 years. Specifically, with regard to
16 the water and wastewater industry, I have participated in the preparation and presentation of
17 numerous rate cases, most of which were considered by the Florida Public Service
18 Commission. I have also prepared cases before the Sarasota County Commission. Many of
19 the cases before the FPSC were made final through the Proposed Agency Action procedures;
20 others went to public hearing in which I presented direct and/or rebuttal testimony. I have
21 prepared or participated in the preparation of all phases of water and wastewater financial,
22 rate and engineering sections of the Minimum Filing Requirements (MFRs), including used
23 and useful. I have also participated in most of the water and wastewater rulemaking
24 procedures before the FPSC. I have also prepared several original cost studies accepted by
25 this Commission in setting rates.

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

2 I have prepared and presented expert testimony in the areas of regulatory accounting, rate
3 regulation and used and useful, regulatory agencies, including the Florida Public Service
4 Commission, Charlotte, Collier, Hillsborough, and Sarasota Counties.

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

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

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

9 A. The purpose of my direct testimony is to present information supporting the used and useful
10 analysis and schedules of the MFRs for the existing and proforma plant.

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

12 A. Yes, I am sponsoring three exhibits. The used and useful schedules in MFR Volume I –
13 Financial, Rate and Engineering as originally filed in the PAA case, with certain schedules
14 revised in response to data requests, which is Exhibit DDS-1. Exhibit FS-1 contains a
15 summary of my experience and expertise in utility rates and regulation in Florida. Exhibit
16 FS-2 is Schedule F-10 with a comparison of the correct calculation of the 5 year growth
17 projection compared to that in the PAA Order.

18 **Q. In developing your used and useful analysis for existing and pro forma plant, did
19 you follow recognized guidelines?**

20 A. Yes. As applicable, I followed the guidelines of Florida Public Commission Rule 25-
21 30.432. In addition, I relied on concepts and considerations of the Florida Public Service
22 Commission that were developed over the approximately 40 years that I have been
23 analyzing used and useful for utilities in Florida.

24 **Q. In the course of preparing your used and useful analysis, did you receive input from
25 any utility personnel?**

1 A. Yes. I requested and received input from Mr. Barton Smith and Mr. Christopher Johnson,
2 Director and President of KWRU, respectively, as well as other staff of the utility. I also
3 consulted with Mr. Ed Castle of Weiler Engineering, the primary engineer for the
4 expansion and upgrading of the KWRU plant facilities.

5 **Q. Did you visit the physical facilities of KWRU?**

6 A. Yes. In March, 2015, I made a personal inspection of the all of the existing facilities of
7 KWRU, discussed the expansion and modifications to be made to the treatment and
8 disposal facilities, and toured the whole service area, including those locations where new
9 or expanded service had been applied for or was planned to be applied for, pending the
10 expansion of the treatment and disposal facilities.

11 **Q. Did you find any additional support for your opinion that the pro forma plant will be**
12 **100% used and useful?**

13 A. Yes. In the Last Stand litigation one of the principal issues was the needed capacity of the
14 plant expansion. Based upon testimony presented, the DEP accepted the Hearing Officer's
15 findings of fact that the KWRU system will be built out between 2018 and 2020, and that
16 .849 MGD AADF was the appropriate design capacity. The persons protesting the DEP
17 permit argued that the capacity needed exceeded 1 MGD. This substantiated the findings of
18 and projections formulated by the design engineer on which the construction permit was
19 based.

20 **Q. Do you find any inconsistencies in methodology used the Commission in the PAA Order**
21 **as compared to the methodology the Commission used in KWRU's last rate case?**

22 A. Yes. In the last case, the Commission did not only utilize the simple mathematical calculation
23 required in the MFR filing, but also considered the other factors contemplated in Section
24 367.081, Florida Statutes and PSC Rule 25-30.431. The Commission recognized the
25 uniqueness of the location of the WWTP. In the prior rate case, KWRU was at 68% capacity

1 utilizing the simple mathematical formula. However, the Commission recognized that
2 KWRU had committed 1,500 ERCs to Monroe County, of which over 1,000 had connected,
3 meaning less than 500 ERCs were committed that had not been connected. The reuse and
4 County mandate to connect were taken into account in the prior rate case in the consideration
5 that the WWTP be considered 100% used and useful. Those facts have not changed and
6 should also be considered in the current rate case. In this rate case, following that precedence,
7 KWRU provided evidence that several hundred ERCs were contracted for but not yet
8 connected. With so many similarities between the capacity analysis in the last case, a similar
9 determination should be made in the current case which results in a 100% used and useful. It
10 would be a bad regulatory practice to for the Commission to ignore in this case, the same
11 factors it found so relevant in the prior case.

12 **Q. Do you agree with the manner by which the PAA Order addressed the allowance for**
13 **5 year growth?**

14 A. No. Even if the Commission does not accept my opinion that the pro forma plant is 100%
15 used and useful, the Commission should correct the miscalculation of the 5 year growth
16 allowance. In Exhibit FS-2 I have set forth the correct calculation, comparing it to the
17 miscalculation. Thus, even if the Commission follows the methodology in the PAA Order
18 for calculation the used and useful for the pro forma plant the used and useful amount should
19 be 76.42%

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

21 A. Yes, it does.

22

23

1 BY MR. FRIEDMAN:

2 Q Mr. Seidman, do you have a short summary of
3 your testimony?

4 A Yes, very short, since the testimony was
5 pretty short.

6 My name is Frank Seidman. I am with
7 Management and Regulatory Consultants, and I am here on
8 behalf of the applicant.

9 The purpose of my direct testimony is to
10 present information supporting the use and useful
11 analysis and to sponsor the engineering, or the F
12 schedules portion of the MFR. These schedules were
13 prepared by me based on information provided by the
14 utility. And the conclusion of the schedules is that
15 all plant and service is 100 percent used and useful.

16 I also address what I see is an inconsistency
17 in the PAA order that -- regarding the Commission's
18 calculation of used and useful. In the PAA order the
19 Commission found that a full 7.06 percent growth rate
20 should be allowed, and that treatment facility should be
21 72 percent used and useful.

22 In reviewing the calculations I determined
23 that only a 5.78 growth rate, rather than the full 7.06
24 percent was used; and that had the 7.06 percent growth
25 rate been used, the used and useful factor using the

1 staff's method would be 76.4 percent.

2 That concludes it.

3 CHAIRMAN BROWN: Thank you.

4 Staff.

5 EXAMINATION

6 BY MS. MAPP:

7 Q Good afternoon, Mr. Seidman.

8 A Good afternoon.

9 Q Could you please reach into the large white
10 binder and pull out the comprehensive exhibit list that
11 should be in the pocket or front side? Yes.

12 Can you please turn with me to exhibit line
13 No. 56?

14 A Yes.

15 Q And turn to No. 58, and review the title of
16 58.

17 A 68?

18 Q 50 -- five, eight. That's on page seven.

19 A Yes, I see those.

20 Q And No. 60, and No. 62. Turn the page for No.
21 65 and No. 67.

22 A Okay.

23 Q These documents were indicated that you
24 prepared part of the responses, or that they were
25 prepared under your direction or control. Is this

1 **accurate?**

2 A It's accurate that I prepared part of the
3 responses, yes.

4 **Q And are the responses true and accurate to the**
5 **best of your knowledge and belief?**

6 A Yes.

7 MS. MAPP: Thank you.

8 CHAIRMAN BROWN: Thank you.

9 Mr. Friedman, tender the witness?

10 MR. FRIEDMAN: Absolutely.

11 CHAIRMAN BROWN: Okay. Cross, beginning with
12 Public Counsel, Mr. Sayler.

13 MR. SAYLER: Good afternoon, Madam Chairman,
14 Commissioners.

15 FURTHER EXAMINATION

16 BY MR. SAYLER:

17 **Q Mr. Seidman, how are you doing today?**

18 A I am good.

19 **Q I have a few questions related to your**
20 **experience. You have been doing this a long time, sir.**
21 **How many years, approximately?**

22 A Do have I to say it? 50 years.

23 **Q And you are also designated a Professional**
24 **Engineer in the State of Florida, is that correct?**

25 A I am. That's correct.

1 Q And in your years, have you designed water and
2 wastewater treatment plants or systems?

3 A No, my specialty in engineering is electrical.

4 Q Electrical engineering. And so if it's -- if
5 your specialty is in electrical engineering, how
6 familiar are you with the DEP rules as it relates to
7 water and wastewater?

8 A Not very.

9 Q And approximately when did you start
10 testifying in PSC matters? You said in the last 50
11 years? Let me -- let me strike that question.

12 Now fam -- you are familiar with the PSC rules
13 and statutes as it relates to the used and useful
14 category, correct?

15 A Yes.

16 Q And you have testified or provided regulatory
17 support for many investor-owned utilities as it relates
18 to their used and useful calculations, correct?

19 A Yes. That's correct.

20 Q And we can see that on your first exhibit that
21 contains all the cases that you have participated in,
22 correct?

23 A Yes. That's right.

24 Q And in all those years that you have been
25 doing this, have you seen any instances where the

1 Commission made a determination on environmental
2 compliance costs?

3 A Yes.

4 Q In your direct testimony, are you testifying
5 related to environmental compliance costs?

6 A Maybe I am misunderstanding. I am familiar
7 where the Commission has taken into consideration
8 environmental matters in what they have done. The
9 costs, I am not testifying to that.

10 Q You would agree, if DEP requires a utility to
11 construct a plant a certain way, then it's all related
12 to protecting the environment; is that correct?

13 A The Department of Environmental Protection's
14 job is to protect the environment, so, you know, in the
15 broad sense, yes.

16 Q All right. Please turn to page -- bottom of
17 page four, top of page five of your direct testimony.

18 A Okay.

19 Q And there, you testify regarding the
20 Commission's determination in the last rate case that
21 the existing wastewater treatment was 100 percent used
22 and useful; is that correct?

23 A Correct. Yes.

24 Q And on page -- or excuse me, line five and
25 six, you say that those facts have not changed, and

1 should be considered in the current case?

2 A That's correct.

3 Q And when you mean the current case, you are
4 talking about the current existing wastewater treatment
5 plant, correct?

6 A I am talking about this docket.

7 Q Are you talking about the expanded capacity,
8 or are you talking about the current capacity of 500,000
9 gallons per day?

10 A I am talking about the whole package.

11 Q And the whole package consist of?

12 A 850,000.

13 Q All right. And on lines one, two and three,
14 one of the bases that the Commission found that it
15 should be 100 percent used and useful was that Monroe
16 County had prepaid for about 150 -- or excuse me, 1,500
17 ERCs; is that correct?

18 A That's correct.

19 Q And at that time, in that case, about a
20 thousand had been connected to the system, correct?

21 A At the time of the last case?

22 Q Yes.

23 A I believe so. I would have to look back and
24 check it.

25 Q All right. To your knowledge, in the last

1 seven or eight years, since the last rate case, have all
2 the remaining 500 ERCs connect, to your knowledge?

3 A I am not sure.

4 Q To your knowledge, would any of those 500 ERCs
5 that were not currently connected, if they tried to
6 connect, would they be able to?

7 A To my knowledge, yes.

8 Q So your testimony is, to your knowledge, you
9 think the utility can still connect some customers to
10 its existing wastewater system?

11 A Yes.

12 Q If, for some reason, those ERCs, those
13 customers could not connect, they would be able to
14 connect once the new wastewater treatment plant went
15 into service, correct?

16 A I would assume so.

17 Q Okay. Thank you very much.

18 MR. SAYLER: No further questions.

19 CHAIRMAN BROWN: Thank you, Mr. Sayler.

20 Mr. Wright.

21 MR. WRIGHT: I don't have any questions for
22 Mr. Seidman. Thank you.

23 CHAIRMAN BROWN: Thank you.

24 Ms. Aktabowski.

25 MS. AKTABOWSKI: I don't have any of questions

1 for Mr. Seidman. Thank you.

2 CHAIRMAN BROWN: Thank you.

3 Staff.

4 MS. MAPP: Yes, I just have one clarification.

5 EXAMINATION

6 BY MS. MAPP:

7 Q Can you please turn to the exhibit attached to
8 your direct testimony, FS-2, page one of one?

9 A Yes.

10 Q This is the exhibit that you earlier made a
11 modification to. I was unable to detect exactly where
12 on the page, or the numbers that you were speaking of.
13 Can you please go through that again for me?

14 A Where the change is?

15 Q Yes.

16 A At the bottom of the page, there is a boxed
17 area, and on the left of it, there is a statement that
18 says, growth per PAA, and in parentheses, it says 5.86.
19 It should say 5.78. It's just a minor change.

20 Q Okay. Thank you.

21 MS. MAPP: No further questions.

22 CHAIRMAN BROWN: Thank you.

23 Redirect?

24 MR. FRIEDMAN: No redirect, and we would move
25 his exhibits into evidence.

1 sworn to speak the truth, the whole truth, and nothing
2 but the truth, was examined and testified as follows:

3 EXAMINATION

4 BY MR. FRIEDMAN:

5 Q Ms. Swain, did you prefile testimony in this
6 case?

7 A Yes, I did.

8 Q If I asked you the questions in your prefiled
9 testimony, would your answers remain the same?

10 A Yes, they would.

11 Q You have no corrections or changes at all?

12 A Not to my direct testimony.

13 MR. FRIEDMAN: I would like to ask that her
14 testimony be inserted into the record as though
15 read.

16 CHAIRMAN BROWN: We will go ahead and insert
17 into the record as though read Ms. Swain's prefiled
18 direct testimony.

19 MR. FRIEDMAN: Thank you.

20 (Prefiled testimony inserted into the record
21 as though read.)

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

2 A. My name is Deborah D. Swain. I am Vice President of Milian, Swain & Associates, Inc. and
3 head up the firm's finance, accounting and management team. My business address is 2015
4 SW 32nd Ave., Suite 110, Miami, Florida 33145.

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

6 A. I have a Bachelor of Science degree in Accounting from Florida State University. I have over
7 35 years of experience in utility management, accounting, finance, rate regulation, rate design
8 and system development. I have prepared and supervised cost of service studies for over 200
9 water and wastewater systems, calculated revenue deficiencies and revenue requirements,
10 and designed rates.

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

12 I have prepared and presented expert testimony in the areas of regulatory accounting, rate
13 regulation and utilities in general, before various federal, state, county, courts and regulatory
14 agencies, including the Florida Public Service Commission, Collier, Hillsborough, St. Johns
15 and Washington Counties, the Circuit Court in Palm Beach County, the Town of Jupiter, the
16 City of Miami, and the US Bankruptcy Court.

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

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

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

21 A. The purpose of my direct testimony is to present information supporting the financial basis
22 for KWRU's request to increase its rates and charges as originally presented in the MFRs in
23 the PAA filing, to provide supporting schedules to show the basis for the requested rates and
24 charges and to provide information supporting the utility's cross petition filed in response to
25 the protests filed by OPC and Monroe County.

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

2 A. Yes, I am sponsoring three exhibits. Exhibit DDS-1 contains MFR Volume I – Financial,
3 Rate and Engineering (except the F schedules that were prepared by Mr. Seidman) as
4 originally filed in the PAA case, with certain schedules revised in response to data requests.
5 Exhibit DDS-2 contains schedules reflecting updated cost of pro forma projects, rate case
6 expense and other adjustments as a result of my testimony and those of other witnesses on
7 behalf of KWRU. Exhibit DDS-3 is a schedule and documentation supporting the appropriate
8 amount of rate case expense updated to include the actual and estimated rate case expense for
9 the Formal Administrative Proceeding.

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

11 A. Yes they were. As is customary, they were prepared from financial information provided to
12 me and my staff by KWRU.

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

15 A. No. Since OPC and Monroe County have protested the PAA Order, and the Commission is
16 not scheduled to make a final decision until February 7, 2017. Since the pro forma project is
17 scheduled to be substantially complete April 8, 2017, it is a more appropriate regulatory
18 practice to include the revenue requirement from the pro-forma projects in a single rate
19 increase. A contract for the pro forma plant has been signed and the cost is substantially
20 higher than originally estimated. Further, due to the delay in implementing final rates due to
21 the protests, KWRU has also had to replace an air vacuum tank at substantial cost. Exhibit
22 DDS-2 are the schedules reflecting the changes due to these pro forma projects.

23 **Q. Is it your opinion that working capital should be reduced as set forth in the PAA Order?**

24 A. No. KWRU's working capital is necessary based on the AWT operational expenses. The test
25 year after pro forma adjustments is aligned with the test year working capital. Furthermore,

1 the costs of defending the challenge by Last Stand, the rate proceedings, and operating AWT
 2 prior to the rate increase has depleted KWRU's operating capital well below a reasonable
 3 working capital level required for a utility of KWRU's size. KWRU believes the working
 4 capital is reasonable in light of the regulatory environment existing in the Florida Keys Area
 5 of Critical Concern.

6 There is no reason to expect that working capital using a 13 month average would be similar
 7 to 1/8 of O&M. Nor would one expect working capital to be an amount similar to a filing 8
 8 years prior to the current test period. However, if a comparison were made, much like the
 9 benchmark test to O&M expenses in the MFRS, schedule B-8 (revised), Exhibit DDS-1, the
 10 requested working capital is reasonable.

11	2008 working capital	\$464,578
12	Benchmark per B-8 (revised) (154.84%+17.43%)	172.27%
13	Additional per Benchmark	<u>\$800,329</u>
14	Expected 2014 working capital	\$1,264,907
15	Plus litigation defense	<u>\$467,625</u>
16	Total benchmark threshold	<u>\$1,732,532</u>
17	Per 2014 MFRs	<u>\$1,367,232</u>

18 **Q. Is it your opinion that the weighted cost of capital should include the pro forma plant
 19 and the equity infusion to pay for such plant?**

20 A. Yes. As stated previously, since pro forma plant will be substantially complete by April 2017,
 21 the pro forma plant in its entirety should be included in the current rate increase, including
 22 the capital needed to finance that pro forma plant.

23 **Q. What is the total amount of legal fees KWRU incurred in the Last Stand litigation which
 24 should be amortized?**

25 A. The Last Stand litigation is complete and KWRU incurred legal fees of \$496,793 which

1 should be amortized over five years. Exhibit DDS-2 reflects this updated amount.

2 **Q. What other adjustments to the MFRs have you made?**

3 A. The MFRs should be adjusted for updated proforma O&M expenses as presented by Chris
4 Johnson. In addition, the additional proforma cost of the wastewater treatment plant, and the
5 new vacuum tank as indicated in Mr. Johnson's testimony, along with the associated
6 accumulated depreciation and depreciation expense should be included. These increased
7 plant costs require a larger infusion of equity financing, resulting in a revision to the cost of
8 capital. These are also reflected in DDS-2.

9 **Q. Have you adjusted the MFRs to reflect the additional costs associated with this hearing?**

10 A. Yes, Exhibit DDS-3 includes the actual to-date cost of this rate filing, including the estimated
11 cost to complete as a result of the hearing. The four-year amortization of this updated rate
12 case expense should be added to O&M expenses, and 1/2 half of the additional cost should
13 be included in working capital. These adjustment are also included in DDS-2.

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

15 A. Yes, it does.

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1 BY MR. FRIEDMAN:

2 Q Ms. Swain, do you have a short summary of your
3 testimony?

4 A Yes, I do. Almost as short as Mr. Seidman's.

5 My name is Deborah Swain with Milian, Swain &
6 Associates. I have been providing regulatory accounting
7 services to the water and sewer industry since 1977.
8 You do the math.

9 The purpose of my direct testimony is to
10 present information supporting the original minimum
11 filing requirements, volume one, which is the financial
12 component, which contains also the F schedules, which
13 were not prepared by me. They were prepared by
14 Mr. Seidman, so that part is his. I also prepared
15 subsequent revisions to some of those schedules, and
16 also provided additional exhibits to reflect updated pro
17 forma information. These schedules were prepared by me
18 based on information, of course, provided by the
19 utility.

20 I also address that, since the anticipated
21 construction completion date is virtually right around
22 the corner, that the final rates will be implemented
23 probably after those facilities are completed, so
24 therefore, the rates should be implemented in a single
25 phase.

1 I also address the calculation of working
2 capital in the PAA, which did not include all the
3 components of the working capital on the company's books
4 and records, and I provided the updated cost of the Last
5 Stand litigation. That's it.

6 Q Thank you.

7 MR. FRIEDMAN: Tender Ms. Swain for
8 cross-examination.

9 CHAIRMAN BROWN: Just a moment. First we will
10 have staff.

11 MS. MAPP: Thank you. Yes.

12 EXAMINATION

13 BY MS. MAPP:

14 Q Can you please turn to review Exhibit No. 56,
15 No. 58, No. 60, 62, 65 and 67?

16 A Yes.

17 Q And have you had an opportunity to review
18 those?

19 A Yes.

20 Q Were these -- did you provide responses to
21 these interrogatory numbers, or were they produced under
22 your direction or control?

23 A They were prepared, in part, directly by me.

24 Q And are they true and accurate to the best of
25 your knowledge and belief?

1 BY MR. SAYLER:

2 Q Ms. Swain, would you turn to page three of
3 your direct testimony?

4 A Okay.

5 Q And you state that your Exhibit DDS-2 contains
6 schedules reflecting updated costs for pro forma
7 projects, rate case expense, and other adjustments as a
8 result of your testimony and those of the other
9 witnesses in this case; is that correct?

10 A That's correct.

11 Q All right. And that's as it relates to the
12 post protest portion of this case?

13 A Yes. That's correct.

14 Q And your DDS-1 contains your schedules as it
15 relates to the PAA portion of the case?

16 A Correct.

17 Q And in your summary, you shared that you --
18 it's your opinion that the plant expansion will go into
19 service sometime in the first quarter of 2017?

20 A That's what the utility has indicated to me.

21 Q And you would agree that the vacuum tank is
22 scheduled to be placed in service, assuming no hiccups,
23 in December of this year?

24 A I have been told December, or shortly
25 thereafter -- very shortly thereafter.

1 Q All right. And in your direct testimony on
2 that page, it is your opinion that the Commission should
3 only consider a one-phase rate increase because the
4 final rates will be placed into service around the same
5 time the plant goes into service; is that correct?

6 A That's correct.

7 Q You would agree that the Commission -- excuse
8 me, you would agree that the company has already
9 implemented the Phase I rates that was approved in the
10 PAA order which was protested, correct?

11 A Yes. That's right.

12 Q And was that in April of this year?

13 A That's correct. That's my understanding.

14 Q Do you have the exact date, do you know that,
15 or would that be a question for Mr. Johnson?

16 A You would have to ask Mr. Johnson. I don't
17 have the exact date.

18 Q And you would agree that the PAA order that
19 was protested included pro forma adjustments for
20 expenses that were to reflect the level of treatment
21 when the plant expansion is placed into service; is that
22 correct?

23 A Correct.

24 Q And you would agree that the PAA Phase I rates
25 implemented are held subject to refund?

1 A That's right.

2 Q And if the PAA ordered Phase I revenue
3 requirement was higher than any post protest Phase I
4 revenue requirement determined by this commission, then
5 the utility's customers would be owed a refund; is that
6 correct?

7 A I am sorry, I didn't understand your question.

8 Q Okay. If the revenue requirement established
9 by the PAA order for Phase I rates is different from
10 any -- assuming the Commission establishes a Phase I
11 revenue requirement for the post protest portion,
12 assuming that the PAA order revenue requirement is
13 higher than any Phase I revenue requirement the
14 Commission establishes as a result of this protest, you
15 would agree that the utility's customers would be owed a
16 refund; is that right?

17 A Yes. That's my understanding.

18 Q So, in effect, the PAA implemented rates are
19 similar to interim rates being held subject to refund;
20 is that correct?

21 A In that regard, they are similar, yes.

22 Q I have a few questions about the test year.
23 You would agree that in setting rates, the
24 test year should be representative -- should be a
25 representative match of the investment, expenses,

1 revenues and customer billing determinants for the time
2 period in which the rates will be in effect?

3 A Yes, the test year needs to be representative
4 as a basis for the rates at the time they go into
5 effect.

6 Q In other words, the investments and the
7 expenses should be offset potentially by any revenues or
8 billing determinants, correct?

9 A I don't think it's an offset. Maybe you could
10 ask me that differently.

11 Q Okay. There should be some sort of matching
12 between the two, is that correct, as you understand the
13 matching principle?

14 A The matching principle is not a principle I
15 have seen employed in PSC cases. It's a -- there's an
16 accounting principle of matching, but not necessarily in
17 utility rate-making.

18 Q And as it relates to the appropriate test year
19 in this docket, your testimony supports a December 31st
20 test year -- or excuse me, December 21st, 2014 test
21 year?

22 A That's right.

23 Q And you have made pro forma adjustments for
24 plant in-service and O&M expenses, correct?

25 A Correct.

1 **Q But you did not make any corresponding pro**
2 **forma adjustments as it relates to revenues and customer**
3 **billing determinants; is that correct?**

4 A That's correct. The -- a historical test year
5 plus pro forma adjustments relates to investment in
6 utility plant and expenses.

7 **Q And it is your opinion that the Commission**
8 **should make adjustments for things that are known and**
9 **measurable, is that correct?**

10 A We have the advantage of the delay in that we
11 have more and more information that's actual
12 information, and so as we have gone along, we have tried
13 to update as we can. So many of the numbers even in my
14 direct testimony you will see are changed in my rebuttal
15 testimony as more and different information becomes
16 available. So, in that regard, yes, you know, as things
17 become known and measurable, we tried to incorporate
18 those.

19 **Q And did you make any adjustments for known and**
20 **measurable increases to revenues?**

21 A To certain elements of revenues, for example,
22 we agreed in the stipulation, I believe, to reflect the
23 allowed revenues from -- allowed rates from reuse to be
24 an adjustment to the total revenues, but not to billing
25 elements.

1 **Q** Okay. So if there were new revenues captured
2 in 2015, those would not be updated in your -- in your
3 testimony or exhibits, correct?

4 A That's correct. And that's consistent with
5 the historical test year with pro forma adjustments.

6 **Q** Same question as it relates to any known and
7 measurable collected CIAC, correct?

8 A That's correct. And my understanding is that
9 that is not permitted by Florida Statute.

10 **Q** In your rebuttal testimony, I will have some
11 questions about that statute to explore that a little
12 bit more further.

13 So what does the statement in your testimony
14 "adjusted for known and measurable" mean?

15 A That's intended to recognize that there were
16 things that we were -- we had more information about
17 with regard to costs that I could incorporate into these
18 schedules. So I made adjustments to the pro forma both
19 in plant and also in the O&M expenses to reflect the new
20 information that we had.

21 **Q** All right. Would you agree that the utility
22 included pro forma plant adjustment of 3.6 million in
23 its MFRs?

24 A That sounds about right.

25 **Q** That would be DDS-1. And in your DDS-2, you

1 have reflected an increase to 4.9 million, is that
2 correct?

3 A That sounds right.

4 Q And that would be -- that would include the
5 4.3 million for the wastewater treatment plant costs
6 pursuant to the Wharton-Smith contract, correct?

7 A Yes. The original amount that we included in
8 the MFRs, plus the amount that we first estimated for
9 the vac tank -- by we, I mean the utility provided to
10 me.

11 Q Correct. So 4.3 million plus 600,000 is about
12 4.9?

13 A Correct.

14 Q All right. And you would agree that that
15 change reflects about a 40 percent increase in the
16 historical balance of plant pro forma adjustments?

17 A Without a calculator and a plus-60-year-old
18 brain, I will accept that.

19 Q Thank you. And those plant adjustments were
20 based upon revised projections or estimates, not on
21 actual amounts; is that correct?

22 A They were still estimates, but they were based
23 upon actual information that the utility gained as it
24 was attempting to negotiate contracts, et cetera.

25 Q All right. And in your DDS-1, you would agree

1 that in the MFRs, the utility made O&M pro forma
2 adjustments of approximately 840,000?

3 A Yes.

4 Q So the 2014 level of O&M expenses of 1.2
5 million was increased by approximately 70 percent in the
6 MFRs, is that correct?

7 A Yes, that's right.

8 CHAIRMAN BROWN: Again, yeah, it's going in
9 and out.

10 THE WITNESS: Yeah, I can tell that.

11 CHAIRMAN BROWN: I know. I hope the folks
12 here could help us out with the -- because it's
13 happened throughout, if anybody is here from the
14 County.

15 MR. SAYLER: The batteries potentially are
16 dying after being on all day.

17 CHAIRMAN BROWN: We may have to change them
18 out at the next break, so.

19 MR. SAYLER: Right.

20 BY MR. SAYLER:

21 Q And in your DDS-2, you have included another
22 240 -- excuse me, approximately \$224,000 of additional
23 O&M expenses, is that correct?

24 A Give or take, yes.

25 Q All right. So in total, for the 2014 test

1 year -- at least for your direct testimony. We are not
2 talking about you have rebuttal testimony where those
3 numbers have changed. For your direct testimony filed
4 on July 1st of this year, the company added about one --
5 a little over \$1 million of pro forma adjustment to O&M
6 expenses, correct?

7 A That's correct.

8 Q And mathematically, subject to the same
9 caveat, that's about an 80-percent increase in over the
10 actual 2014 expenditures, correct?

11 A That sounds right.

12 Q And you would agree that the utility has
13 collected in 2015 and 2016, over \$500,000 in CIAC since
14 the end of the 2014 test year.

15 A I don't recall the total. I know, in my
16 rebuttal testimony, I address some of -- some of the
17 additions that need to be taken out.

18 Q All right, but subject to check, would that be
19 over 500,000?

20 A Yes.

21 Q Okay.

22 A Yes.

23 Q And you would agree that collection of CIAC is
24 a known and measurable change since the last test year,
25 correct?

1 A Yes, it can be. And let me just clarify. We
2 still learned more later, even after we collected, that
3 some of it had to be refunded because of contracts, et
4 cetera. So even the known and measurable has a change.

5 Q Yes. And I understand a lot of refund is
6 discussed in the rebuttal testimony of witnesses --

7 A Yes.

8 Q -- so I will save my refunds questions for
9 that.

10 So if CIAC is known and measurable, why would
11 those amounts not be considered appropriate adjustments
12 to the test year?

13 A Well, they are collected outside of the test
14 year; and, as I mention in my rebuttal, I think it's
15 excluded by Florida Statute.

16 Q Now, is it known and measurable that the
17 company will have collected an additional two years of
18 depreciation expense, almost two years since between
19 December 31, 2014, and the time the plant goes into
20 service?

21 A I wouldn't call it collected, but it would
22 incur it.

23 Q They would incur it. And that would be a
24 reduction to rate base, correct?

25 A Yes, as -- correct, as the plant is

1 depreciated it will reduce its rate base.

2 **Q And why would those amounts not be considered**
3 **appropriate adjustments if they are known and**
4 **measurable?**

5 A The --

6 CHAIRMAN BROWN: It's on, I think. You just
7 have to --

8 THE WITNESS: Can you hear me?

9 Okay. The concept and the practice regarding
10 the test year that we used is that we used a
11 historical test year plus pro forma adjustments.
12 There was specifically increases in pro forma plant
13 and the related operating and maintenance expenses.

14 BY MR. SAYLER:

15 **Q All right. So it is your position for the**
16 **company that only the pro forma adjustments that the**
17 **company has requested in your two-year test year, those**
18 **are the only ones that should be used for rate-making**
19 **purposes in this rate case?**

20 A Yes, and that's because that is widely
21 accepted practice, and Commission practice.

22 **Q And those adjustments that you are**
23 **recommending serve to increase the revenue requirement,**
24 **correct?**

25 A Yes, they do. As the utility's expenses and

1 costs increase, it has a dramatic impact, therefore, on
2 the revenue request of the utility.

3 Q And if the company added additional CIAC or
4 depreciation expense, would that reduce the revenue
5 requirement?

6 A It would reduce the rate base, and therefore,
7 the revenue requirement, it is not appropriate to do
8 that.

9 Q And if you were to update the billing
10 determinants, that would not affect the revenue
11 requirement, correct?

12 A Correct. It would effect the rates,
13 potentially. I don't know what the difference in
14 billing determinants are between then and now.

15 Q Hypothetically speaking, if billing
16 determinants increased, number of customers, number --
17 the amount of revenues, gallons sold, that would serve
18 to reduce the rates, correct?

19 A If the billing determinants increased, then
20 the -- which is a denominator, then the rates would
21 reduce if the numerator stayed the same.

22 Q All right. And if there were additional
23 gallons sold in 2015, for example, in your interim
24 report, if those were included and updated to your pro
25 forma test year -- or excuse me, to the pro forma

1 **expenses, that would serve to reduce rates, correct?**

2 A The utility bill is based upon water
3 consumption. I don't know what the water consumption
4 difference is, so I can't answer that. But if -- if the
5 water consumption increased, it would lower the rate,
6 and vice-versa.

7 Q **Thank you. You anticipated where I was going.**
8 **Thanks.**

9 So another way to explain it, the utility --
10 let me strike that.

11 In your practice as a -- not just for KW, but
12 utilities in general, you believe that any type of
13 adjustment that raises revenue requirements and rates,
14 those type of pro forma adjustments are appropriate; is
15 that correct?

16 A No, not at all. Only to the extent that there
17 is identifiable pro forma plant that's requested in the
18 test year approval letter and the associated O&M
19 expenses, to that extent, those items should be included
20 in the revenue requirement.

21 Q **Now, was the air vac tank part of the test**
22 **year letter?**

23 A No.

24 Q **All right. So your testimony is, if it's**
25 **known and measurable, and it was discussed in the test**

1 year letter, then it's appropriate to include it in the
2 rates in revenue requirement?

3 A That's correct. And the vac tank was a --
4 from what I understand it, it was almost as a result of
5 the expansion that it was identified that it was not
6 adequate, so it became part of that whole plan. We
7 didn't start including other lines and other activities.
8 It was all related to the expansion.

9 Q All right. So would it be correct that if the
10 company did not ask for it in the test year letter, then
11 the Commission cannot consider it, even if it's known
12 and measurable?

13 A No, I think it's incumbent on the utility to
14 disclose what it knows in the test year letter, but
15 things -- things do come up, certainly. So I think that
16 there is some exception, and there has been exceptions
17 in other cases that I have filed.

18 Q But if it's a known and measurable adjustment
19 that would offset or reduce revenue requirement or
20 rates, it is your opinion it's not appropriate to update
21 the test year?

22 MR. FRIEDMAN: I object, asked and answered.

23 CHAIRMAN BROWN: I am not sure it was, and I
24 will allow it just because I didn't hear it before.

25 You may answer.

1 THE WITNESS: No, I -- no, not at all. I
2 know, for example, sometimes through a pro forma
3 adjustment that is to abandon the wastewater
4 treatment plant and now connect to a bulk customer,
5 or a bulk provider, and we will make pro forma
6 adjustments for that. It's a significant change in
7 the operation of the utility, whether it -- some of
8 those things will increase and some of those things
9 will decrease. But we identify what they are, and
10 try to present something that captures what the
11 changes -- or pro forma changes are going to be.

12 BY MR. SAYLER:

13 **Q All right. Referring to the Last Stand**
14 **litigation costs, how were those litigation costs**
15 **recorded in the utility's books and records?**

16 A At the time they were being incurred, some of
17 the costs were incorrectly going to -- directly to
18 utility plant and service, and some of the costs were
19 going to the rate case expense, and some of the costs
20 were going to legal expenses. So we had to do a search
21 on the general ledger to identify and separate all those
22 costs.

23 **Q And where did those costs -- where were those**
24 **costs moved to?**

25 A I -- you know, I don't -- I don't know where

1 they are right now.

2 Q Would you agree that those costs are still
3 included in structures and improvements recorded in
4 plant in service?

5 A Some part of them could be. I am not sure. I
6 am not sure. I know I have looked at the general ledger
7 earlier in the year, but I haven't looked at that
8 account in some months.

9 Q And you would agree that the component -- you
10 would agree that utilities are subject to the NARUC
11 Uniform System of Accounts?

12 A Yes.

13 Q And you would agree that the components cost
14 outlined in the Uniform System of Accounts, or USOA, for
15 wastewater utilities include -- and I'm going to give
16 you a list -- include but is not limited to the
17 following: Contract work, labor, materials and
18 supplies?

19 A Correct.

20 Q Privileges and permits?

21 A Yes.

22 Q Rents, engineering, supervision?

23 A Correct.

24 Q General administration engineering services?

25 A Correct.

1 Q Insurance, legal expenditures?

2 A Yes.

3 Q Taxes, AFUDC?

4 A Yes.

5 Q All right.

6 A And all of those, only to the extent they
7 relate directly to the construction.

8 Q All right. And regarding legal expenditures,
9 you would agree that the USOA states that legal
10 expenditures include general legal expenditures incurred
11 in connection with construction and the court and legal
12 costs directly related thereto, correct?

13 A That's correct.

14 Q And you would agree that the Last Stand group
15 challenged KWRU's permit to expand plant capacity from
16 490,000 gallons to 849 gallons, correct -- 849,000
17 gallons per day?

18 A I don't believe that's in my testimony.

19 Q But it is in your testimony that the company
20 should defer and amortize those fees over five years --

21 A Yes.

22 Q -- rather than to capitalize them, correct?

23 A That's correct.

24 Q All right. And you would agree that
25 amortizing the legal fees instead of capitalizing them,

1 as required by the USOA, that provides a higher revenue
2 requirement?

3 MR. FRIEDMAN: I object to the form of this
4 question. He made it a conclusion that, as he
5 made -- in his question, he said -- he asked the
6 question, and he said, as required by USOA and --

7 CHAIRMAN BROWN: Sustained. Sustained.
8 Rephrase the question, please.

9 MR. SAYLER: Certainly.

10 BY MR. SAYLER:

11 Q Hypothetically speaking, amortizing legal
12 fees, instead of capitalizing them, provides a higher
13 revenue requirement, as opposed to capitalizing and
14 depreciating the expense over the life of the asset?

15 A Certainly it depends on the amortization
16 period, but deferring and amortizing over five years is
17 going to result in a higher cost for recovery than
18 putting in an asset of 18 years and depreciating it.

19 Q Thank you.

20 And in this case, amortization of -- we are
21 talking about approximately \$500,000 in Last Stand
22 litigation fee cost?

23 A It's close to that, yes.

24 Q And if that's amortized over five years, that
25 would be about, ballpark, \$100,000 per year of

1 **amortization expense?**

2 A That's right.

3 Q And once the company amortizes those legal
4 **fees, according to the way the company has requested it,**
5 **will KWRU automatically reduce the revenue requirement**
6 **by \$100,000?**

7 A We are not proposing to do that. I don't -- I
8 have not seen practice of doing that, but it will
9 probably be addressed in the next rate case.

10 Q And if the company does not come in for
11 **another rate case for six or seven years, then that**
12 **\$100,000 remains in the revenue requirement until the**
13 **next rate case, correct?**

14 A Yes, that's correct.

15 Q And it is your opinion that the Last Stand
16 **litigation was related to your challenging the current**
17 **plant operations, and not a construction of a new plant;**
18 **is that correct?**

19 A That's the basis of my recommendation, yes.

20 Q And did you base your opinion on reviewing the
21 **permit application, some documents from the DOAH Last**
22 **Stand case or the operating permit?**

23 A Yes.

24 Q There is, in front of you, a document that is
25 **an exhibit. It says, large print version over there a**

1 **little bit to the right, highlighted.**

2 A Large print. This?

3 **Q Yes, ma'am.**

4 A It says large print, but it's not really large
5 print.

6 **Q Relatively speaking.**

7 A Okay.

8 CHAIRMAN BROWN: What exhibit number is that
9 again?

10 MR. SAYLER: Yes, ma'am. That was Exhibit No.
11 82, excerpt from the Last Stand final order.

12 CHAIRMAN BROWN: Thank you.

13 THE WITNESS: I have not ever seen this
14 document.

15 BY MR. SAYLER:

16 **Q You testified a moment ago that you had seen
17 some of the documents related to the DOAH Last Stand
18 case?**

19 A Yes, I did. I saw the permit itself --

20 **Q Okay.**

21 A -- and responses to interrogatories, written
22 responses from the utility, but I haven't read the final
23 order.

24 **Q Or the recommended order?**

25 A No, I have -- that's correct, I have not.

1 Q Okay. Well, I will represent to you that this
2 is an excerpt from the final order that granted the
3 permit. And I will represent to you that attached to
4 that final order, and incorporated therein, is the
5 recommended order.

6 And since you have not seen this before, I
7 would direct you to page two, the middle paragraph under
8 the title, Statement of the Issue. And would you take a
9 moment and just read that paragraph? And I will also
10 represent to you that the yellow highlighting was not in
11 the original.

12 A Okay.

13 Q And you would agree that this recommended
14 order, it states -- it speaks for itself as it relates
15 to what was at issue with the permit challenge, is that
16 correct?

17 A No, I can't say that because I haven't ever
18 read it. I don't know if it -- if the order provides
19 all the information that the utility has available to it
20 about this.

21 Q All right, fair enough. But you would agree
22 that the order -- or recommended order for the statement
23 of issue says, the permitted issue would authorize the
24 expansion of existing domestic wastewater facility, as
25 well as the installation of two additional underground

1 injection wells?

2 A Yes, it says that. Sure.

3 Q And turn a couple of pages to page 14,
4 paragraph 36. Are you there?

5 A Yes, I am.

6 Q And you would agree that it says, the permit
7 at issue proposes to authorize the construction of a new
8 treatment train, as well as increasing design capacity
9 and permitting capacity?

10 CHAIRMAN BROWN: Mr. Sayler, I haven't heard
11 an objection from Mr. Friedman yet, but --

12 MR. FRIEDMAN: I was trying -- I figured there
13 was a question coming up in here somewhere, and
14 that was just the predicate for the question, so
15 that's why I didn't object.

16 MR. SAYLER: Well, I am laying the foundation,
17 and I am going to ask my question.

18 CHAIRMAN BROWN: Okay.

19 BY MR. SAYLER:

20 Q You would agree where it says, the permitted
21 issue is related to construction of a new treatment
22 train?

23 A Yes, I see that.

24 Q And you would agree, we discussed earlier,
25 that under the USOA, if plant costs or litigation costs

1 **relate to construction, then it shouldn't capitalize the**
2 **plant, correct?**

3 A Well, that's correct. If it's directly
4 related to the construction of the plant and serves no
5 other purpose, then absolutely. And this is a very
6 complex case, which other witnesses are testifying to.
7 But the -- simply because the utility obtained a
8 construction permit does not address that the litigation
9 was also against the operation -- the current operation
10 of the utility. And that's what I was told, that's what
11 my review indicated, and that was the basis for me
12 deferring and amortizing over a period of time.

13 Q Okay. So your testimony is how this was
14 represented to you is why you said it should be deferred
15 and amortized, as opposed to being capitalize the plant,
16 correct?

17 A Yes. And again, I also reviewed the operating
18 permit and read the testimony of our witnesses, and --
19 but during the MFR process, I had a lot of conversations
20 with the utility to have some confidence in the proper
21 treatment of the costs, and that it should be deferred
22 and amortized, because the operating permit was at
23 jeopardy.

24 Q And having read some excerpts -- and I
25 represent to you these are excerpts -- do these excerpts

1 have any bearing, would they change your opinion on how
2 these costs should be treated for rate-making purposes?

3 A No, because I am looking at something very,
4 very limited, and yet I know that there is a hole big
5 story. And so, no, I know the whole big story, so no,
6 this -- these very, very narrow statements don't change
7 my opinion.

8 Q Thank you. And this is an issue for the
9 Commission to decide. And we all agree that the order
10 speaks for itself. Thank you.

11 I would like to direct you to DDS-1, page 41,
12 it's MFR Schedule D-2.

13 CHAIRMAN BROWN: You said page 41 of 70?

14 MR. SAYLER: Yes.

15 THE WITNESS: Okay. I am there.

16 BY MR. SAYLER:

17 Q And you would agree that the utility made pro
18 forma adjustments to increase equity by about 3.5
19 million?

20 A Yes. That's right.

21 Q And this amount was calculated based upon the
22 amount of pro forma plant anticipated in the MFRs to be
23 added to plant?

24 A That's right.

25 Q And it was anticipated that the plant

1 expansion would be fully financed by equity, correct?

2 A Correct.

3 Q Now, let's look at your same schedule in your
4 DDS-2 on page 11 of 11.

5 A Okay, I am there.

6 Q All right. You would agree that this is the
7 same schedule that you had in DDS-1, but it's been
8 updated?

9 A Correct.

10 Q All right. Would you turn back a couple of
11 pages to page eight of 11? And this is Schedule B-3.
12 And at the top of it, it says, Schedule of Adjustments
13 to Operating Income Phase I. Are you there?

14 A B-3, which page? Page eight, you said?

15 Q DDS-2, page eight of 11.

16 A Okay, I am there.

17 Q And you have a column there that is KWRU
18 adjustment to staff adjustment, do you see that?

19 A Yes, I do.

20 Q And the adjustment you are making an
21 adjustment to is what was approved by the PAA order as
22 adjusted by staff?

23 A Correct.

24 Q All right. Is it correct that you did not
25 calculate these updated pro forma adjustments to O&M

1 expenses, you just -- it is correct that you just
2 plugged in those numbers into your spreadsheet for these
3 purposes?

4 A It's actually a mixture. Most of it is
5 information provided by the utility. Some of it is my
6 review of the PAA, and some of the items that I felt
7 were not either understood or perhaps documented that I
8 included.

9 Q All right. Going line-by-line. Line 17,
10 salaries and wages, your adjustment increases salary and
11 wages by about \$14,600?

12 A Yes. That's right.

13 Q Same question for employee pension benefits,
14 an increase of about 18 point -- 18,400?

15 A Right.

16 Q All of these adjustments are increases that
17 you made in your DDS-2 to O&M expenses, correct?

18 A Yes. They are all increases.

19 Q Now, were these increases calculated, or do
20 you know -- excuse me, let me rephrase the question.

21 Do you know how any of these increases were
22 calculated?

23 A Yes. For example, in salaries and wages, I
24 spent some time with our witness, Mr. Johnson, to take a
25 look at what salaries had already been incurred during

1 the year, and they were calculated based upon the new
2 employees that had been hired. And also, you know, some
3 of the calculations of employee pensions and benefits
4 was related to those specific employees.

5 Others, purchase power, chemicals, materials
6 and supplies, I didn't calculate. I received that
7 information from -- partially from the utility, and
8 based upon pro forma -- or excuse me, based upon the
9 general ledger at the time.

10 Insurance, general liability, I corrected it
11 in my rebuttal testimony. That was a mistake on the
12 records of the utility.

13 So it was kind of a mixed bag.

14 **Q All right. With regard to the chemicals,**
15 **purchase power, those nature -- those expenses, those**
16 **relate to the operation of the plant, correct?**

17 A Yes, they do.

18 **Q All right. And these are the expenses that**
19 **the utility believes it needs to have once the plant**
20 **is -- the plant expansion has been placed into service,**
21 **correct?**

22 A That's correct.

23 **Q All right. And you would agree that these**
24 **are, for large part, projections, since the new plant**
25 **has been placed into service, correct?**

1 A They are -- yes, they are projections. Some
2 are based upon actual information and some are estimates
3 based upon estimates.

4 **Q All right. And you would agree that if you**
5 **had known and measurable actual information as it**
6 **relates to the operation of the plant today, that would**
7 **inform whether or not these costs are -- these projected**
8 **costs are accurate; is that correct?**

9 A Some of them. Some of them. Like, for
10 example, on -- you know, salaries is one that's been a
11 struggle for the utility. Getting employees engaged and
12 on-the-job without losing another employee. So there
13 has been difficulty in getting all those people in
14 place.

15 And so if you look at what they have incurred
16 so far, you can't necessarily project what it should be.
17 But others, you can -- you can look at what the actual
18 are and do some projections based on those actuals.

19 **Q All right. And to take those actuals, there**
20 **is a term called annualizing -- annualizes, is that the**
21 **right term? Annualization?**

22 A Annualization.

23 **Q Annualization, and that's where you would take**
24 **actuals for a certain period of the year and then**
25 **annualize it for a 12-month period, correct?**

1 A Yes, that's what that is.

2 Q There is one exhibit -- we handed out two
3 exhibits. The one exhibit that's labeled Pro Forma
4 Expenses Document Response to Staff Interrogatory 16.

5 CHAIRMAN BROWN: Okay, now is a good time to
6 mark that as Exhibit 94.

7 MR. SAYLER: Yes, ma'am.

8 CHAIRMAN BROWN: So that is pro forma
9 expenses.

10 MR. SAYLER: Yes.

11 (Whereupon, Exhibit No. 94 was marked for
12 identification.)

13 MR. SAYLER: I am wrapping up my questions.

14 CHAIRMAN BROWN: Okay.

15 BY MR. SAYLER:

16 Q Would you take a moment to review this
17 response?

18 A Okay.

19 Q Now, was this a response you helped
20 participate preparing, or was this done by the utility?

21 A I provided some information. They provided
22 the rest.

23 Q All right. And you would agree that this
24 interrogatory response addresses the amounts of the pro
25 forma expenses that you included in your Exhibit DDS-2,

1 **correct?**

2 A Yes, that's correct.

3 **Q All right. Thank you very much, Ms. Swain.**

4 MR. SAYLER: No further questions.

5 CHAIRMAN BROWN: Thank you.

6 We are going to take a five-minute break so
7 that our court reporter can rest her fingers, and
8 we will be right back at three -- let's make it
9 3:20.

10 (Brief recess.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

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

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

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

DATED this 18th day of November, 2016.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020