

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** January 26, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Norris, Frank, Sowards)  
Division of Economics (Friedrich, Hudson, Johnson)  
Division of Engineering (Graves, Hill)  
Office of the General Counsel (Mapp, Crawford)

*Handwritten signatures and initials:* D.F.A., C.R.P., ALM, C.A.J. P.D., P.G., M.A.S.

**RE:** Docket No. 150071-SU – Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

**AGENDA:** 02/07/17 – Regular Agenda – Post Hearing Decision – Participation is limited to Commissioners and staff

**COMMISSIONERS ASSIGNED:** Brown, Graham, Patronis

**PREHEARING OFFICER:** Patronis

**CRITICAL DATES:** 8-Month Effective Date Waived Through 02/07/17

**SPECIAL INSTRUCTIONS:** None

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## Case Background

K W Resort Utilities Corporation (KWRU or Utility) is a Class A Utility providing wastewater service to approximately 2,061 customers in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority (FKAA). Rates were last established for this Utility in its 2007 rate case.<sup>1</sup> According to the Utility's 2014 Annual Report, KWRU had operating revenues of \$1,479,307 and operating expenses of \$1,199,672. On July 1, 2015, the Utility filed its application for the rate increase at issue. KWRU requested that the application be processed using the Proposed Agency Action (PAA) procedure. The test year established for final rates was the 13-month average period ended December 31, 2014.

On February 24, 2016, the Office of Public Counsel (OPC) filed a Notice of Intervention in this docket, and Order No. PSC-16-0114-FOF-SU acknowledging intervention was issued on March 18, 2016. Subsequently, by Order No. PSC-16-0123-PAA-SU (PAA Order), issued March 23, 2016, the Commission approved a two-phased rate designed to recover a wastewater revenue requirement of \$2,238,046 in Phase I and \$2,485,904 in Phase II. On April 13, 2016, OPC and Monroe County (County) timely filed protests of the PAA Order. By letter dated April 18, 2016, KWRU gave notice that it elected to put the Phase I rates approved in the PAA Order into effect during the pendency of the administrative hearing pursuant to Section 367.081(8), Florida Statutes (F.S.).<sup>2</sup>

On April 18, 2016, Harbor Shores Condominium Unit Owners Association, Inc. (Harbor Shores) timely filed a cross-petition. On April 21, 2016, KWRU timely filed a cross-protest. On April 26, 2016, the Harbor Shores' representative was granted qualified representative status.<sup>3</sup>

A formal evidentiary hearing and service hearing were held November 7-8, 2016, in Key West. The parties filed briefs on December 9, 2016.

This recommendation addresses the Utility's final requested rates. The Commission has jurisdiction pursuant to Sections 367.081, F.S.

## Approved Stipulations

The Commission previously approved stipulated adjustments and partially stipulated issues. The stipulated issues approved by the Commission at the Technical Hearing held on November 7-8, 2016 are identified later in the recommendation as "Stipulated" in sequential order of the approved numbering of the issues, as reflected in the Prehearing Order No. PSC-16-0509-PHO-SU. Also, a consolidated list of all stipulations is attached in the Appendix.

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<sup>1</sup> Order No. PSC-09-0057-FOF-SU, issued January 27, 2009 in Docket No. 070293-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

<sup>2</sup> Document No. 02205-16

<sup>3</sup> Order No. PSC-16-0168-FOF-OT, issued April 26, 2016, in Docket No. 160008-OT, *In re: Applications for qualified representative status.*

## Discussion of Issues

***Issue 1:*** DROPPED.

**Issue 2:** Is a two-phased revenue requirement calculation appropriate in this docket?

**Recommendation:** No, a two-phased revenue requirement is not appropriate. (Norris, Graves)

**Position of the Parties**

**KWRU:** The wastewater treatment plant expansion will be completed by the time the rates approved in this docket will be effective and thus there should be a single revenue requirement implemented without phasing.

**OPC:** Yes. A two-phased approach recognizes proper matching of revenues and expenses before and after the plant expansion is in-service. Phase I is appropriate for calculating a refund of PAA Phase I rates and Phase II is appropriate for establishing final rates. Including the requested growth-related increases, without the related corresponding growth-related offsets, will overstate the revenues and earnings received by the Utility, violate the test year matching principle, and result in unfair and unjust rates.

**County:** Yes. To ensure that customers pay fair, just, and reasonable rates, the Commission must determine revenue requirements for the period of time during which the PAA Rates will be in effect before the new permanent rates become effective, and also determine the revenue requirements for the period starting when the new permanent Phase II Rates become effective.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, KWRU asserted that the wastewater treatment plant improvements are scheduled to be substantially complete by early March 2017, and that the vacuum tank was projected to be on-line by the end of 2016. (KWRU BR 2-3) The Utility stated that the timing of the PAA Order, issued March 23, 2016, justified a two-phased rate increase because it was 11 months before the plant was expected to be in service. (KWRU BR 2) Due to the protest and timing of the final order, KWRU concluded that this justification no longer exists. (KWRU BR 2) KWRU witness Swain testified that by the time the Commission makes its decision, the level of construction work in progress (CWIP) will be high enough to eliminate the possibility of a refund. (KWRU BR 3)

**OPC**

OPC argued that a two-phased rate increase is appropriate for this rate case as the Commission recognized in its PAA Order. (OPC BR 4-5) OPC asserted that the Commission should establish a final Phase I rate increase to recognize the revenue requirement from the date the PAA Phase I rates were implemented until the plant expansion is placed into service. (OPC BR 4-5) OPC stated that, if the post-PAA protest revenue requirement is lower than the PAA Phase I revenue requirement, then refunds with interest to the customers can be determined. (OPC BR 5)

OPC also argued that a Phase II revenue requirement should be determined to set rates on a prospective basis after the new plant expansion is in service. (OPC BR 4-5) OPC elaborated that a two-phased approach correctly recognizes a proper matching of revenues and expenses for the time periods rates will be in place. (OPC BR 4-5) OPC contended that, if only one (single-phase) revenue requirement were to be implemented, the inclusion of pro forma plant and higher projected expenses would not match the historical timeframe before the plant becomes operational and used and useful to KWRU's customers. (OPC BR 4)

### **County**

The County expressed that KWRU has been collecting rates (Phase I Rates or the PAA Rates) since approximately April 15, 2016 and argued that the new permanent rates should become effective when new assets are actually serving customers, which is expected to be in March or April 2017. (County BR 8-9) The County contended that it is critical to setting fair, just, and reasonable rates and that the Utility's authorized revenue requirement recover only the costs incurred to provide service when that service is provided. (County BR 8-9)

The County further argued that, because the PAA Rates will be in effect for approximately one year before the new permanent rates become effective and the new wastewater treatment plant (WWTP) will not be providing service to customers before March or April 2017, it is necessary to have a two-phased revenue requirement for KWRU in this docket. (County BR 8-9) The County elaborated that the revenue requirement for the period before the new WWTP comes into service and the revenue requirement for the period starting when the new WWTP is actually serving customers, should be determined separately. (County BR 8-9) Otherwise, the County argued, the rates collected for the current Phase I period, will not be fair, just, and reasonable, and customers will likely wind up paying more than the cost to actually serve them. (County BR 8-9) The County further asserted that the new permanent Phase II Rates must also accurately reflect the costs incurred to serve customers after the new assets are serving customers. (County BR 8-9)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC. (Harbor Shores BR 2)

## **ANALYSIS**

In the PAA Order<sup>4</sup>, the Commission approved a two-phased revenue requirement based on three reasons: 1) the majority of the pro forma plant expansion was not complete at the time and was projected to take another year; 2) the potential for additional proceedings related to the Florida Department of Environmental Protection's (DEP) Final Order regarding KWRU's permit challenge; and 3) the concern regarding the Utility's contribution level, as it related to additional documentation of contribution in aid of construction (CIAC) collected subsequent to the test year.

OPC witness Merchant testified that OPC's revenue requirement used the same two-phase methodology the Commission approved in the PAA order, because the methodology recognized

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<sup>4</sup> Order No. PSC-16-0123-PAA-SU p. 2, issued March 23, 2016, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

the uniqueness of the case and the need to establish two separate revenue requirement calculations due to the length of time between the historical test year and the projected date that the pro forma plant would be placed in service. (TR 390) Witness Merchant's testimony did not directly address why she followed the PAA methodology or why two phases are appropriate. The only arguments tenuously related to the appropriateness of a test year are OPC witness Merchant's assertions that 2014 is appropriate to measure the reasonableness of the implemented, Phase I rates, and to determine potential refunds. (TR 384; TR 390) In response to OPC's recommendation of a two-phased revenue requirement, KWRU witness Swain testified that it was not appropriate to apply the final rates in a phased approach due to the near completion of the Utility's pro forma plant projects. (TR 765-766)

Just as OPC witness Merchant recognized the need to establish two separate revenue requirements in the PAA Order, it is important to reevaluate the concerns, as previously outlined, from the PAA Order to determine the appropriateness of a two-phased revenue requirement. As discussed in subsequent issues, the concerns are no longer outstanding and have been resolved due to the additional time frame of the hearing process. As KWRU witness Johnson explained, the pro forma plant expansion is scheduled to be done by the first part of March 2017. (TR 603) This estimated completion date coincides with the time frame that rates go into effect. The Final Order, *Last Stand v. KW Resort Utilities, Corp. et al.*, State of Florida Div, of Admin. Hearings, DOAH Case No. 14-5302, was issued February 24, 2015, and no further legal expenditures were associated with an appeal. (EXH 51, BSP 81; EXH 52, BSP 116; EXH 56, BSP 1563-1564) Additionally, the collection of CIAC since the test year was further examined for the purpose of matching the investment associated with the pro forma WWTP expansion.

Additionally, staff believes that the methodology discussed in Issue 39 adequately addresses the refund calculation, as it necessitates calculating a revised revenue requirement that removes adjustments that do not relate to the period that PAA rates were in effect. As such, staff recommends that a two-phased revenue requirement for final rates is not required.

### **CONCLUSION**

Based on the above, a two-phased revenue requirement for final rates is not necessary.



**Issue 3:** What is the appropriate test year for establishing rates for KWRU?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** Staff recommends that adjusting the Utility’s 2014 test year based on known and measurable information is reasonable and appropriate to determine a revenue requirement and rates that are representative of KWRU’s current operations.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris, Graves)

***Position of the Parties***

**KWRU:** The appropriate test year is December 31, 2014 adjusted for known and measurable changes.

***A. For Phase I, if applicable***

**OPC:** The appropriate test year for Phase I rates is the historical year ending December 31, 2014, with appropriate adjustments to recognize the level of expenses needed to implement advanced wastewater treatment (AWT).

**County:** The most appropriate test year for establishing the Phase I revenue requirements is the 12-month period beginning on the date on which the PAA Rates became effective, which is on or about April 15, 2016.

**Harbor Shores:** Agrees with OPC.

***B. For Phase II, if applicable***

**OPC:** Consistent with prior practice, a pro forma test year ending December 31, 2016, with proper adjustments is appropriate and is much more representative than using an historic 2014 test year with “cherry picking” adjustments that only increase the expense items and rates. A projected 2017 test year is the most representative for setting Phase II rates.

**County:** The appropriate test year for establishing Phase II Rates for KWRU is the 12-month period beginning on the date that the Utility’s new WWTP achieves commercial operation and begins providing service to KWRU’s customers.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

The Commission approved KWRU's request for a historic 2014 test year on March 13, 2015. As set forth in Rule 25-30.430(1), Florida Administrative Code (F.A.C.), test year approval must be challenged within 30 days of approval of the test year. (KWRU BR 4) As such, KWRU argued that any challenge related to the test year was required by rule to be submitted on or before April 12, 2015. (KWRU BR 4) The Utility added that the intervenors first raised the issue of test year appropriateness in testimony, after KWRU had filed its minimum filing requirements (MFRs) and its direct testimony in this matter, and outside the 30-day challenge period. (KWRU BR 4) The Utility cited Rule 25-30.430(1), F.A.C., which provides that an interested person may request a review of the Chairman's test year by the full Commission. KWRU noted that none of the intervenors or interested persons in this docket requested that the full Commission review the appropriateness of the Chairman's decision. (KWRU BR 4) To this point, the Utility concluded that the Commission is therefore without authority to review the Chairman's test year decision under the Rule at this juncture. (KWRU BR 4) KWRU asserted that an untimely challenge of the Commission-approved test year would constitute a violation of Rule 25-30.430, F.A.C., and a violation of the Utility's due process rights, imposing undue costs and burdens upon the applicant utility. (KWRU BR 5)

KWRU also stressed that Rule 25-30.430, F.A.C., does not provide a mechanism for anyone other than the applicant to request a projected test year. (KWRU BR 5) The Utility continued that 2015 has not been audited, nor has KWRU provided to the Commission any justification as to why a projected test year "is more representative of the utility's operations than a historical period." The Utility followed that this explanation is necessary if an applicant requests a projected period pursuant to Rule 25-30.430(2)(d), F.A.C. (KWRU BR 5) KWRU asserted that it followed the language of the rule that indicates the preference for historic test years. (KWRU BR 7) The Utility continued that the rule does not provide that any other party can provide the explanation as to why a projected test year is more representative after the test year is approved, a prerequisite for projected test year approval. (KWRU BR 7)

KWRU also refuted the intervenor's arguments regarding the "matching principle." KWRU argued that no statute or rule governing the actions of the Commission contains reference to a "matching principle." (KWRU BR 7) KWRU also noted that witness Deason admitted that historically the Commission's policy is to use historical test years for water and wastewater cases. (KWRU BR 7)

Lastly, the Utility again noted that in its last rate case, where growth was even higher, the Commission found a historic test year was appropriate. (KWRU BR 7) KWRU concluded that if the Commission were to suddenly change from that policy in the middle of this case and approve a projected test year based not on projections made at time of filing but testimony brought forth in the middle of the case, it would be in violation of the Florida Administrative Code, and the Administrative Procedure Act, Ch. 120, Florida Statutes. To this point, the Utility cited *Palm Coast Utility Corporation v. State of Florida, Florida Public Service Commission*, 743 So. 2d 482 (Fla. 1st DCA 1999). Specifically, KWRU cited the following:

The Commission acknowledges that the lot count methodology represented a departure from the methodology previously employed...[W]e reverse and remand with directions that the Commission provide an explanation, with record support, for the change in methodology in determining the used and useful portion...

(KWRU BR 7)

### **OPC**

OPC argued that the appropriate test year for Phase I rates is the historical year ended December 31, 2014, with appropriate adjustments to recognize the level of expenses needed to implement advanced wastewater treatment (AWT). (OPC BR 6) For Phase II rates, OPC contended that a pro forma test year ended December 31, 2016, with proper adjustments, should be utilized because it is more representative than applying a historic 2014 test year that only makes adjustments to items that increase the revenue requirement and rates. (OPC BR 6)

OPC asserted that a projected 2017 test year may be the best representation of the first year after KWRU's pro forma plant expansion goes into service. (OPC BR 6) However, OPC expressed that the Utility chose not to provide the Commission or intervenors, in discovery, the level of detail necessary to create a 2017 projected test year. (OPC BR 6) OPC argued that the Commission in other cases, similar to this case, required a historical test year to be updated and projected forward when the utility was growing at an exceptionally high rate per year. (OPC BR 6)

OPC argued that the historical year ended December 31, 2014, is not the appropriate test year for setting post-protest Phase II or final rates in this proceeding. (OPC BR 6) OPC conveyed that consistent with Section 367.081, F. S., and as testified to by County witness Deason, the appropriate test year should provide a reasonable match between a utility's investment in used and useful plant in service, capital costs, operating revenues, operating expenses, and customer billing determinants so that the rates established are fair, just, compensatory, and not unduly discriminatory when the new rates are placed into service. (OPC BR 6) OPC noted that KWRU's 2014 test year with adjustments failed to include any offsetting entries that would correspond to and match its projected increases. (OPC BR 6-7) OPC concluded that an adjusted 2016 test year should be applied by the Commission in setting Phase II rates in this proceeding. (OPC BR 7)

### **County**

The County argued that the most appropriate test year for establishing the Phase I revenue requirement is the 12-month period beginning on the date on which the PAA rates became effective, which is on or about April 15, 2016. (County BR 10) The County asserted that it is not necessary to set rates for the Phase I period, as long as the refund is properly calculated and made based on the excess of revenues collected over what the Commission determines the correct revenue requirement should have been for that period. (County BR 10)

As described by the County, Phase II rates for KWRU are the permanent rates that will be in effect from their effective date until new rates are approved in a future rate case. (County BR 10) The County continued that these Phase II rates will enable KWRU to recover the costs of its new WWTP, operation and maintenance (O&M) costs associated with the new WWTP, and the new air vacuum tank. (County BR 10)

The County contended that because the new WWTP will not be serving KWRU's customers until at least March 2017, the appropriate test year is the twelve-month period beginning when that plant goes into commercial operation and begins serving customers. (County BR 11) The County additionally opined that it would be reasonable to use calendar year 2017 as a representative test year, although that would likely understate sales considering KWRU's continuing growth. (County BR 11)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC's position. (Harbor Shores BR 2)

## **ANALYSIS**

KWRU witness Swain presented testimony and exhibits supporting a revenue requirement based on a 2014 test year with pro forma adjustments for plant in-service and O&M expenses. Witness Swain testified that the Utility updated pro forma plant and O&M expenses as information became known and measurable. (TR 214) KWRU did not make adjustments to the 2014 test year as it relates to CIAC, revenues, and customer billing determinants.

OPC argued that the historical year ended December 31, 2014 is not the appropriate test year for setting post-protest Phase II or final rates in this proceeding. (OPC BR 6) OPC conveyed that consistent with Section 367.081, F.S., and as testified to by County witness Deason, the appropriate test year should provide a reasonable match between a utility's investment in used and useful plant in service, capital costs, operating revenues, operating expenses, and customer billing determinants so that the rates established are fair, just, compensatory and not unduly discriminatory when the new rates are placed into service. (OPC BR 6; TR 531) Witness Merchant testified that including growth-related plant and expense pro forma adjustments without including corresponding adjustments for CIAC, additional customer bills, and wastewater treatment consumption, will overstate the revenues and earnings received by the Utility when the new rates are implemented. (TR 305) County witness Deason additionally asserted that if rates are not based upon the most appropriate test year information, a utility could quickly experience either underearnings or overearnings soon after the new rates are implemented. (TR 529)

OPC witness Merchant stated that the best representative test year would have been a 2017 projected test year, after the pro forma plant expansion goes into service. (TR 308) However, she testified that the Utility had not provided the necessary information to properly establish a 2017 test year. (TR 308-309) Witness Merchant testified that the Commission, in cases similar to this case, required a historical test year to be updated and projected forward when the utility had significant growth. (OPC TR 310) OPC cited the rate cases for Martin Downs Utilities, Inc.<sup>5</sup> (Martin Downs) and Burkim Enterprises, Inc.<sup>6</sup> (Burkim) to support its argument. (OPC TR 309-311) In the Burkim rate case, the Commission found that it was appropriate to use a projected test year when the Utility was growing at an exceptionally high rate per year. (TR 309) The

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<sup>5</sup> Order No. 15725, issued March 23, 1987, in Docket No. 84315-WS, *In re: Application of Martin Downs Utilities, Inc. for a rate increase in Martin County.*

<sup>6</sup> Order No. PSC-01-2511-PAA-WS, issued December 24, 2001, in Docket No. 010396, *In re: Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.*

Commission also found that it was appropriate to use a projected test year in the Martin Downs rate case based on the rapid growth that Martin Downs was experiencing. (TR 310) OPC concluded that an adjusted 2016 test year should be applied by the Commission in setting Phase II rates in this proceeding. (TR 311) As such, witness Merchant testified that an alternative 2016 projected balance with proper adjustments can be utilized. (TR 309)

KWRU witness Swain used OPC's premise to alternatively conclude that if the expected growth is not found to be "exceptionally high" or "significant," then the conclusion must be that a historical test year is correct. (TR 761) To this point, witness Swain testified that in its last rate case, KWRU presented a growth calculation that exceeded the growth calculation presented in this docket. (KWRU TR 762) Witness Swain additionally asserted that the test year used by the Utility in that case was the historic test year and the Commission and OPC accepted the historic test year without comment. (TR 762) Witness Swain concluded that there is no basis for the use of a projected test year in this instance seeing that the growth rate in this case is less than the previous case. (KWRU BR 5)

Witness Swain testified that the Burkim and Martin Downs rate cases cited by OPC witness Merchant are inapplicable to the circumstances of this case. (TR 761-762) Witness Swain asserted that the Burkim rate case was a staff-assisted rate case, and is not subject to the rigor of a contested rate case. (TR 761) KWRU witness Swain conveyed that the Commission has a mechanism in place to address overearnings, the concern in the Burkim rate case, while there is no mechanism for KWRU to address potential underearning other than a rate increase application. (TR 761-762)

As explained by witness Swain, the Commission based its use of a projected test year on the fact that the utility was anticipated to "continue to experience a rapid growth of demand for its services." (TR 762) KWRU asserted that a growth rate over 10 percent, which is higher than what is projected in this case, was not found to warrant the use of a projected test year in KWRU's last rate case. (TR 762) Regarding the Martin Downs Case, the Utility concluded that the precedence of that case is stale given its age and the fact that there has been a more recent proceeding involving KWRU in which a growth rate higher than projected in this docket was not found to warrant the use of a projected test year. (TR 762)

Rule 25-30.430(1), F.A.C. states in part "a utility shall submit to the Commission a written request for approval of a test year . . . [w]ithin 30 days of the Chairman's approval or disapproval of a test year, upon request of any interested person the full Commission may review the Chairman's test year decision." KWRU noted that none of the intervenors or interested persons in this docket requested that the full Commission review the appropriateness of the Chairman's decision within the 30 days immediately following the Chairman's approval. (KWRU BR 4) KWRU argued that Rule 25-30.430, F.A.C. does not allow anyone other than the Utility to propose a projected test year. (KWRU BR 4) KWRU further argued that because a challenge to the Chairman's decision was not made within 30 days, OPC's introduction of a projected test year within its testimony was untimely and that "[t]he Commission is thus without authority to review the Chairman's test year decision under the [r]ule at this juncture." (KWRU BR 4) Staff disagrees with KWRU's interpretation of the rule and the authority of the Commission to review the appropriateness of the test year approved by the Chairman.

It has been established in previous Commission orders that the Chairman's approval of a utility's test year is an interim decision only, subject to the Commission's final decision approving or disapproving the use of a particular test year during the ratemaking proceeding.<sup>7</sup> The Commission stated in Order No. PSC-92-0197-FOF-WS,<sup>8</sup> that any party to a proceeding has "the opportunity to explore its allegations and the appropriateness of the test years through discovery, testimony, and cross-examination during the hearing process." Parties also have the ability to propose alternative test years to the one initially approved by the Chairman. The Commission has stated that a party to a proceeding, being afforded all rights under Commission rules, has the ability to raise all relevant issues and present all relevant information through the hearing process; "[t]his includes the right to raise the issue of what test year is appropriate."<sup>9</sup> "We find that parties whose substantial interests may be affected by the selection of a particular test year will have ample opportunity to challenge the appropriateness of the test year at the rate case hearing before that final decision is made . . ."<sup>10</sup>

The Utility's 2014 test year in this case would have ended more than two years prior to the conclusion of the case. Witness Swain testified that such a delay can be an advantage as updates can be made as actual information is obtained. (TR 213) On January 1, 2016, the Utility implemented changes in operations to meet AWT standards, which is the basis of its pro forma O&M expense request. (TR 308) The record evidence includes actual data for the 2014 test year, 2015, and for the first 8 months of 2016. Using the actual data for 2015 and 2016, staff believes reasonable adjustments to the 2014 test year can be made to establish an updated test year that is representative of the Utility's current operations. Staff also believes that adjustments beyond those made by KWRU are necessary to be consistent in the use of known information. As an example, to make O&M adjustments based on actual data without giving consideration to the actual amount of wastewater treated during that same time period would be inconsistent.

In summary, both KWRU and OPC support making adjustments to the 2014 test year. The point of deviation lies in what information should be updated. Staff concludes that making consistent adjustments to the 2014 test year, based on known and measurable information, is the most appropriate approach to determining just and fair rates. Staff's recommended approach is similar, though not identical, to the approach taken by OPC. The specific adjustments made by OPC and KWRU, as well as staff's recommended adjustments, are discussed in the relevant issues that follow.

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<sup>7</sup> Order No. PSC-92-0205-FOF-WS, issued April 14, 1992, in Docket No. 911030-WS, *In re: Application for Rate Increase in Brevard County by General Development Utilities, Inc.(Port Malabar Division)*; Order No. 25484, issued December 17, 1991, in Docket No. 910980-TL, *In re: Application for a Rate Increase by United Telephone Company of Florida*; Order No. 25292, issued November 4, 1991, in Docket No. 910890-EI, *In re: Petition for a Rate Increase by Florida Power Corporation*.

<sup>8</sup> Order No. PSC-92-0197-FOF-WS, issued April 13, 1992, in Docket No. 911067-WS, *In re: Application for a Rate Increase by General Development Utilities, Inc. in Charlotte, DeSoto and Sarasota Counties*.

<sup>9</sup> *Id.*

<sup>10</sup> Order No. 25292

A test year is used by ratemaking bodies to measure the adequacy and reasonableness of a utility's rates.<sup>11</sup> The primary ratemaking goal is to establish fair and reasonable rates for the ratepayer that provide the utility with an opportunity to earn a fair rate of return.<sup>12</sup> Ratemaking is prospective in nature, and it is the Commission's practice to recognize known and measurable changes.<sup>13</sup> Thus, if necessary, adjustments are made for known and measurable changes to test year amounts. Therefore, staff recommends that adjusting the Utility's 2014 test year based on known and measurable information is a reasonable approach to establish a revenue requirement and rates that are representative of KWRU's current operations.

As noted above, both KWRU and OPC support making adjustments to the 2014 test year. The point of deviation lies in what information should be updated. Staff agrees with County witness Deason, if rates are not based upon the most appropriate test year information, a utility could quickly experience either underearnings or overearnings soon after the new rates are implemented. (TR 529) Although underearnings or overearnings may occur after final rates are set, staff believes that making consistent adjustments, based on known and measurable information, to the 2014 test year is the most appropriate approach to determining just and fair rates. Staff's recommended approach is similar, though not identical, to the approach recommended by OPC. The specific adjustments made by OPC and KWRU, as well as additional adjustments supported by the record, are discussed in the relevant issues that follow.

### CONCLUSION

Based on the above, staff believes that adjusting the Utility's 2014 test year based on known and measurable information is reasonable and appropriate to determine a revenue requirement and rates that are representative of KWRU's current operations.

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<sup>11</sup> *Gulf Power Co. v. Bevis*, 289 So. 2d 401 (Fla. 1974).

<sup>12</sup> *United Telephone Company of Florida v. Mann*, 403 So. 2d 962, 966 (Fla. 1981).

<sup>13</sup> Order Nos. PSC-13-0197-FOF-WU, p. 8, issued May 16, 2013, in Docket No. 110200-WU, *In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.*; PSC-12-0179-FOF-EI, pp. 11-12, issued April 3, 2012, in Docket No. 110138-EI, *In re: Petition for increase in rates by Gulf Power Company*; PSC-11-0199-PAA-WU, p. 9, issued April 22, 2011, in Docket No. 100149-WU, *In re: Application for increase in water rates in Lee County by Ni Florida, LLC*.

**Issue 4:** Is the quality of service provided by KWRU satisfactory?

**Recommendation:** Yes. Staff recommends that the quality of KWRU's product and the condition of the wastewater treatment facilities is satisfactory. It appears that the Utility has attempted to address customers' concerns. Therefore, staff recommends that the overall quality of service for the KWRU wastewater system in Monroe County is satisfactory. (Hill)

**Position of the Parties**

**KWRU:** Yes.

**OPC:** No. The Commission should find the quality of service to be marginal if not unsatisfactory since KWRU ceased treating its wastewater to AWT standards, from 2010 to 2015. As such, KWRU pocketed the AWT money and the customers did not get what they paid for.

**County:** No. KWRU's quality of service is not satisfactory because KWRU failed to treat wastewater to AWT standards for approximately five years (from 2010-15) even though KWRU asked for and received pro forma plant and O&M expenses to treat to AWT standards in its 2007 rate case and even though KWRU was contractually obligated to the County to do so.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU raised five arguments to support that its quality of service should be satisfactory: 1) that no quality of service complaints were presented during the service hearing in the instant case, 2) that the odor complaint was without basis per the results of a DEP inspection, 3) that it has been prompt and proper in responding to DEP compliance issues, 4) that KWRU was relieved of the requirement to continue treating to AWT standards after the previous rate case, and 5) that it did not collect undue amounts of revenue designated for AWT treatment to the detriment of customers. Thus, KWRU recommended the Commission find the quality of service it provides to be satisfactory.

KWRU presented arguments (1) and (3) as uncontested. KWRU supported arguments (2) and (5) with the testimony of witness Johnson. (KWRU BR 7)

KWRU supported argument (4) by stating that "[t]here is no DEP or regulation [sic] or State Statute which required KWRU to treat to AWT standards until January 1, 2016." (KWRU BR 8) KWRU states that its agreement with Monroe County did not require KWRU to operate at AWT, only to "convert" its plant to AWT. In addition, they argued that "[i]f Monroe County had a real issue, it would have and should have raised the alleged breach in a timely fashion, such as during the complaint filed by KWRU against Monroe County for failure to pay funds associated with the AWT conversion. (KWRU BR 8)



KWRU supported argument (5) with testimony of witness Johnson that KWRU “did not operate at AWT... to, at least in part, save ratepayers the cost of treatment not required by law.” (KWRU BR 8) KWRU argued that its rates since 2010 did not include “the requisite costs to operate at AWT,” stating in part that “[c]hemical expenses... additional employee expenses or power, and sludge-hauling expenses were reduced to historical levels” and that “[t]he only chemicals, sludge hauling, testing, and employment awarded was related to non-AWT current operations.” (KWRU BR 8) KWRU further stated that “any argument that the utility “pocketed money” has no support in the record” and that “KWRU has not had an operating profit to date, meaning it underearned and most likely should have requested a rate case sooner.” (KWRU BR 8)

### **OPC**

OPC raised three arguments that the quality of service should be marginal if not unsatisfactory: (1) its belief that customers have been paying for AWT treatment since 2009 yet not benefitting from such payment since 2010, (2) that KWRU ceased treatment to AWT standards in order to enhance its bottom line, and (3) that KWRU is in violation of an agreement with Monroe County to treat to AWT standards. (OPC BR 7)

OPC supported argument (1) by citing the order in the previous rate case and OPC’s cross examination of witness Johnson, during which time the witness answered to the affirmative the question “Do you agree that the Commission enacted an ordinance, No. 595-2002, that made that authorization for the company to recover its costs?” (TR 118)

OPC supported argument (2) by citing witness Johnson’s testimony that “The money that wasn’t spent on chemicals would remain within the utility.” (TR 125) OPC also stated that “[i]t is irrelevant that... KWRU [was] given an extension to January 1, 2016 to treat to AWT when the Commission expressly authorized the necessary plant and O&M expenses in rates for KWRU to treat to AWT.” (OPC BR 7)

OPC supported argument (3) by citing OPC’s cross examination of witness Johnson, during which time the witness was asked to read from the prior rate case order, which states “... Monroe County secured an agreement from the utility to convert its wastewater treatment to AWT by January 1, 2007, providing that the utility is allowed to recapture costs of its conversion to AWT and the increased operating costs by a resolution of the Monroe County Commission.” (TR 117) OPC also supported this argument by citing the prior rate case order, stating that it “expressly authorized the necessary plant and O&M expenses in rates for KWRU to treat to AWT.” (OPC BR 7)

OPC also presented a summary of customer testimony presented at the service hearing. OPC presented comments made by Monroe County Commissioner Danny Kolhage, County Mayor Heather Carruthers, Judge Richard Payne, and seven customers that the rate increase would be unaffordable for Stock Island residents. Three additional customer comments described two billing method concerns and one concern that “the proposed reuse rate was so low especially since the Key West Golf Course (an affiliate) is one of the largest reuse customers. (OPC BR 9)

### **County**

Monroe County raised two arguments that the quality of service should be marginal if not unsatisfactory: (1) that KWRU’s failure to treat wastewater to AWT standards adversely

impacted the quality of the product and the satisfaction of the customers, and (2) that not treating to AWT standards was in violation of the 2002 CRI contract with Monroe County.

Monroe County supported argument (1) by stating that “KWRU failed to treat wastewater to AWT standards for approximately five years. This failure to meet AWT standards adversely impacted both the quality of KWRU’s product and the satisfaction of its customers with that product.” (County BR 13)

Monroe County supported argument (2) by citing witness Wilson’s direct testimony, which states “... the 2002 CRI Contract also provides that KWRU agreed to convert its system to AWT standards by January 1, 2007 if requested, and if it did so, the cost of conversion would be paid by allowing KWRU to keep \$600 out of each CRF that it collected.” (County BR 13)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC. (Harbor Shores BR 2)

## **ANALYSIS**

Pursuant to Rule 25-30.433(1), F.A.C., in wastewater rate cases, the Commission shall determine the overall quality of service provided by a utility. This is derived from an evaluation of three separate components of the utility operations. These components are the quality of the utility’s product, the operational conditions of the utility’s plant and facilities, and the utility’s attempt to address customer satisfaction. In the instant case, KWRU has argued that customer comments in the record of this proceeding suggest that the Utility’s attempts to address customer satisfaction are satisfactory. OPC and Monroe County have argued that the quality of KWRU’s product has been marginal or unsatisfactory because KWRU has not treated to AWT standards. No parties presented arguments that the operational conditions of the Utility’s plant and facilities were less than satisfactory.

### **Quality of Utility’s Product**

In a previous decision the Commission has recognized that the primary concern of a wastewater utility is the quality of the effluent discharged from the plant.<sup>14</sup> Staff reviewed DEP inspection reports and KWRU’s effluent disposal was rated in compliance with DEP standards. (EXH 7; EXH 10) Additionally, the DEP determined that residuals were being disposed of in accordance with the facility’s permit. (EXH 7, EXH 10)

Staff also requested complaints filed with the Utility and DEP during the four year period prior to the test year, as well as the test year. One complaint, filed with DEP and the Utility, regarding the quality of KWRU’s product was identified. (EXH 109) Witness Johnson testified that the complaint was a result of a petition by Safe Harbor Marina. Witness Johnson asserted that the DEP determined that no odors were emanating outside of the Utility boundaries. (TR 706-707)

In reviewing the quality of KWRU’s product, staff also considered KWRU’s obligations under the 2002 CRI contract with Monroe County as well as DEP regulations. The 2002 CRI contract

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<sup>14</sup> Order No. PSC-99-0665-FOF-SU, issued April 6, 1999, in Docket No. 980912-SU, *In re: Application for staff-assisted rate case in Pasco County by Sky Acres Enterprises d/b/a Terrace Park Ventures.*

states that "... the 2002 CRI Contract also provides that KWRU agreed to convert its system to AWT standards by January 1, 2007." (TR 452) No evidence in the record suggests that the Utility failed to convert its system to AWT operation by January 1, 2007. Witness Johnson testified that the Utility stopped treating to AWT standards during the 2009 timeframe to save money. (TR 123-124) Witness Johnson additionally testified that he did not believe that the Utility made a profit during the 2009 through 2013 timeframe. (TR 175) If the Utility continued operation to AWT standards, KWRU may have sought a rate increase prior to the current rate case. As such, staff believes that the Utility's decision to stop treating to AWT standards was reasonable. Based on the discussion above, staff believes that the quality of KWRU's product is satisfactory.

### **Condition of Facilities**

KWRU's service area is located in Monroe County. The wastewater treatment plant (WWTP) uses extended aeration to treat wastewater. Effluent is passed through a sand filter and disinfection is provided by chlorine gas. Effluent is disposed of through reuse service or shallow injection wells when reuse demand is not sufficient for reuse. (EXH 7)

KWRU provided DEP inspection reports dated September 2014 and March 2016. KWRU's WWTP facility was determined to be in compliance with DEP rules and regulations in both reports. (EXH 7; EXH 10) Additionally, based on Utility responses to staff discovery (dated October 2016) the Utility has no outstanding citations, violations, or consent orders on file with the DEP or the Monroe County Health Department. (EXH 51) Therefore, the condition of KWRU's facilities should be considered satisfactory.

### **The Utility's Attempt to Address Customer Satisfaction**

A service hearing was held in Key West, Florida, on November 7, 2016. Fourteen customers provided testimony at the service hearing. The subject of the testimony provided by customers included disconnection costs, changes to contract terms, and opposition to the rate increase. Customer testimony in the record of this proceeding does not indicate a failure to address customer satisfaction. (S-TR 14-55)

In addition to receiving customer testimony at the service hearing, staff requested complaints filed with the Utility as well as complaints filed with DEP for the period January 1, 2010 through October 1, 2016. (EXH 109) One complaint, regarding odor, is discussed under the Quality of Utility's Product section. Based on the limited number of complaints in the record staff believes that the Utility's attempts to address customer satisfaction should be considered satisfactory.

## **CONCLUSION**

Staff recommends that the quality of KWRU's product and the condition of the wastewater treatment facilities is satisfactory. It appears that the Utility has attempted to address customers' concerns. Therefore, staff recommends that the overall quality of service for the KWRU wastewater system in Monroe County is satisfactory.

**Issue 5:** What adjustments, if any, should be made to account for the audit adjustments to rate base in each of Staff's Audit Findings 1 through 7? (Partially stipulated)

**Recommendation:** The Utility's updated filing reflects the audit adjustments to rate base included in staff's Audit Findings 1 through 7. Therefore, no further adjustments are necessary. (Norris)

**Position of the Parties**

**KWRU:** Stipulation as to all but Audit Finding 6. Agree with Audit Finding 6 adjustments as contained in PAA Order.

**OPC:** No allowance should be made for deferred accounting fees as these costs should be disallowed. Also, any component of the deferred litigation fees should be added to CWIP in Phase I rates and should be capitalized to plant in service for Phase II.

**County:** Agree with OPC and with the adjustments addressed in the stipulations on rate base items agreed to by the Parties.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, KWRU cited the stipulation of Audit Findings 1-5 and 7. (KWRU BR 9) KWRU also stated that the adjustments, including Audit Finding 6, from the PAA order were appropriate. (KWRU BR 9) KWRU maintained that the deferred accounting expense associated with restating its 2007-2012 Annual Reports was properly incurred. (KWRU BR 9) KWRU witness Swain testified that the restated annual reports were not filed because the Utility was waiting the pending outcome of the current rate case in order to include any potential corrections that resulted. (TR 772) Witness Swain also testified that the appropriate accounting treatment of the litigation fees associated with the legal challenge to the Utility's permits is to amortize the expense, not capitalize it. (TR 771)

**OPC**

In its brief, OPC cited the stipulation of Audit Findings 1-5 and 7. (OPC BR 10) Audit Finding 6 was addressed by OPC witness Merchant's testimony which reflected adjustments to disallow all deferred accounting expense associated with restating the Utility's 2007-2012 Annual Reports and to capitalize deferred litigation fees associated with the legal challenge to KWRU's DEP permits. (TR 340-342; TR 338-339) Witness Merchant also testified that working capital should not include a corresponding allowance for either deferred accounting expense. (TR 340-342; TR 338-339)

**County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC. (County BR 14; Harbor Shores BR 2).

**ANALYSIS**

Approved Stipulations 1, 2, 3, 4, 5, and 8 incorporate staff Audit Findings 1, 2, 3, 4, 5, and 7. These stipulated adjustments to rate base are set forth in the following table.

**Table 5-1  
 Stipulated Adjustments to Rate Base**

Stip.	Plant	Land	Accum. Depr.	CIAC	Accum. Amort. of CIAC	CWIP	Working Capital	Total
1	(\$817,240)	\$0	\$0	\$0	\$0	\$0	\$0	(\$817,240)
2	0	0	0	0	0	303,099	0	303,099
3	0	(923)	0	0	0	0	738	(185)
4	0	0	0	297,120	(81,153)	0	0	215,967
5	0	0	(2,040)	0	0	0	0	(2,040)
8	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>26,645</u>	<u>26,645</u>
<b>Total</b>	<u>(\$817,240)</u>	<u>(\$923)</u>	<u>(\$2,040)</u>	<u>\$297,120</u>	<u>(\$81,153)</u>	<u>\$303,099</u>	<u>\$27,383</u>	<u>(\$273,754)</u>

KWRU witness Swain’s testimony reflected these stipulations as adjustments made to the Utility’s updated filing, along with an adjustment to reflect staff Audit Finding 6. (EXH 17, P 3) As testified by staff witness Piedra, Audit Finding 6 was a corresponding adjustment to miscellaneous deferred debits that reflected adjustments to the total costs associated with the restatement of KWRU’s 2007-2012 Annual Reports and the Last Stand permit challenge.<sup>15</sup> (TR 554-555) The reasonableness of both expenses is discussed in Issues 27 and 28, respectively, and any corresponding adjustments to miscellaneous deferred debits are addressed in Issue 12. Therefore, staff recommends no further rate base adjustments to account for staff Audit Findings 1 through 7.

**CONCLUSION**

The Utility’s updated filing reflects the audit adjustments to rate base included in staff Audit Findings 1 through 7. Therefore, no further adjustments are necessary.

<sup>15</sup> KWRU submitted an application to DEP for authorization to substantially modify its wastewater treatment plant by increasing wastewater flows. (TR 564) DEP issued a “Notice of Intent” to issue the modified permit on June 23, 2014 (TR 564); however, this action was appealed by third-party respondents on August 5, 2014. (TR 564) The case went before an Administrative Law Judge in the summer of 2015, and the Final Order, *Last Stand v. KW Resort Utilities, Corp. et al.*, State of Florida Div. of Admin. Hearings, DOAH Case No. 14-5302, was issued February 24, 2015. (EXH 51, BSP 81; EXH 52, BSP 116)

**Issue 6:** What is the appropriate amount of plant in service to be used in setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate test year balance of plant in service is \$16,011,903. Accordingly, plant in service should be decreased by \$381,738.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Graves, Norris)

**Position of the Parties**

**KWRU:** \$16,592,505.

**A. For Phase I, if applicable**

**OPC:** Phase I Plant should be \$11,108,464. This includes adjustments to reflect stipulated reductions of \$817,240 and to remove pro forma plant of \$3,574,468, for a total decrease of \$4,391,708. Neither pro forma growth-related plant expansion nor the vacuum tank replacement are not (sic) appropriate for Phase I, since both additions will provide service to future customers more than two years beyond the 2014 historical test year.

**County:** Agree with OPC that Phase I plant in service should be \$11,108,464.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Phase II plant should be \$15,182,830. In addition to stipulated adjustments, 2014 plant should be increased by \$88,027 to reflect the year-end balances, the treatment plant expansion should be increased by \$1,202,968 to reflect the \$4.3 million contracted cost, \$477,436 should be added to capitalize the construction permit litigation fees, and the vacuum tank addition of \$474,552 (less retirement of \$355,914) should be added.

**County:** Agree with OPC that Phase II plant in service should be \$15,182,830.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU argued that it made adjustments to plant in service as expansion and AWT costs were fully realized. (KWRU BR 9) The Utility further asserted that no party testified that its expenditures are either unreasonable or do not qualify for treatment as plant in service. (KWRU BR 9)

### **OPC**

OPC argued that plant for Phase I rates should be \$11,108,464, which was the amount approved in the PAA Order, and includes adjustments made by the Commission to reflect agreed-upon audit reductions of \$817,240 from Audit Finding 1 and removes the Utility's requested pro forma plant of \$3,574,468, for a total decrease to plant of \$4,391,708. (OPC BR 11) OPC asserted that it is inappropriate to include any pro forma plant in Phase I rates that will provide service to future customers more than two years beyond the historical test year. (OPC BR 11)

OPC argued that the appropriate amount of plant in service for Phase II rates is \$15,182,830. (OPC BR 11) OPC included adjustments to reflect the stipulated reductions of \$817,240 from Audit Finding 1. (OPC BR 11) OPC asserted that the average balance of adjusted 2014 plant included in rate base should be increased by \$88,027 to reflect the year-end balance approved by the Commission in its PAA Order to bring forward the plant to a pro forma 2016 test year. (OPC BR 11) OPC witness Woodcock testified that the cost of the wastewater treatment plant expansion should reflect the contracted cost of \$4.3 million, which is an increase of \$1,202,968 to pro forma plant. (OPC BR 11)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC for Phase I and II. (County BR 14; Harbor Shores BR 2)

## **ANALYSIS**

In the PAA Order, the Commission approved a Phase I plant in service amount of \$11,108,456. The Commission-approved plant in service included the agreed upon audit adjustments for plant and land which are discussed in Issue 5. The Commission-approved plant in service amount did not include pro forma plant.

Based on staff's review of OPC witness Merchant's testimony and exhibits, the record indicates an error was made in the calculation of OPC's recommended Phase II plant in service amount. Witness Merchant's recommended adjustments to Phase II rate base, were based on the Utility's original PAA request. However, in her calculation of rate base, the adjustments to plant and land were applied to the Phase II balances approved by the Commission in the PAA Order. (EXH 25, P 2) Therefore, the agreed upon audit adjustments to plant and land were counted twice and the pro forma plant expansion was understated. Correcting these errors increases OPC's recommended plant in service amount by \$909,735 and land by \$923, with a net increase of \$910,658 to OPC's Phase II rate base.

As a point of reference, Table 6-1 below summarizes the plant in service recommended by the Utility, OPC, and staff. Staff notes that the recommended amount for OPC reflects the amount with the identified errors corrected.

**Table 6-1  
 Summary of Recommended Plant in Service**

<b>Description</b>	<b>KWRU</b>	<b>OPC</b>	<b>Staff</b>
PAA Order Phase I	\$11,108,464	\$11,108,464	\$11,108,464
Pro Forma Plant Adjustment	5,067,525	4,300,000	4,413,680
Vacuum Tank Replacement	431,801	474,552	407,771
Vacuum Tank Retirement	(390,285)	(355,914)	(390,285)
Increase Year End Balance	0	88,027	0
Legal Fees	0	477,436	0
Known and Measurable Changes	<u>0</u>	<u>0</u>	<u>97,273</u>
Total Plant in Service (less Land)	\$16,217,505	\$16,092,565	\$15,636,903
Land	<u>375,000</u>	<u>375,000</u>	<u>375,000</u>
Total Plant In Service	<u>\$16,592,505</u>	<u>\$16,467,565</u>	<u>\$16,011,903</u>

Sources (EXH 79, P 3; EXH 25, P 2)

As illustrated in Table 6-1 above, both KWRU and OPC are in agreement with the amount of land that should be included in plant in service amount. (TR 318; EXH 24, P 1; EXH 25, P 1) The land and land rights amount of \$375,000 was included in the PAA Order and was not contested or refuted by any party in this proceeding. Staff recommends that \$375,000 for land and land rights should be included in plant in service.

Both KWRU and OPC made adjustments for an expansion of the Utility’s wastewater treatment plant as well as an adjustment for a new vacuum tank. (EXH 17, P 4; EXH 25, P 2) The prudence of pursuing these projects was protested but not contested in this proceeding. Therefore, staff’s analysis addresses the costs for each project which are at contention in this proceeding.

With respect to the pro forma plant expansion, KWRU witness Swain included \$4.3 million for the expansion project. (EXH 17, P 4) The Utility’s estimate of \$4.3 million was supported by a signed construction contract with Wharton Smith. (EXH 8) OPC witness Woodcock testified that the cost of \$4.3 million does not appear to be unreasonable given the location (Florida Keys) of the project and the crowded conditions at the WWTP site. (TR 280-281) Witness Woodcock further testified that it appears that KWRU was prudent in receiving three bids for the project prior to its award. (TR 281)

KWRU witness Johnson, in his rebuttal testimony, testified that the total estimated cost for the expansion project increased from \$4.3 million to approximately \$5.2 million. (TR 603) Information provided by KWRU witness Johnson supporting the increase only contained costs with minimal explanation of why the additional expenditures were necessary. (TR 648) Furthermore, KWRU witness Johnson acknowledged, during cross examination, that some of the additional costs presented in his rebuttal testimony were also included in the Wharton Smith contract. (TR 648) Witness Johnson additionally acknowledged that costs associated with the vacuum tank replacement, were included in the additional costs. (TR 641) Given the lack of supporting evidence as well as the uncertainties highlighted during the hearing, it is staff’s position that the updated costs should not be included in plant in service. (TR 648)



Staff does believe an exception for additional engineering costs should be made. Unlike the other additional costs presented by witness Johnson, the estimates for additional engineering costs were supported by KWRU witness Castle who is the engineer of record for the pro forma plant expansion. (TR 577) Witness Castle provided estimates for hours and tasks that would be performed for the time period October 2016 through March 2017. (EXH 73) Therefore, staff recommends that the \$113,680 for additional engineering be included in plant in service.

Regarding the vacuum tank, the Utility provided direct testimony that supported an estimated cost of \$610,177 for the vacuum tank replacement project. (EXH 4, P 3) OPC witness Merchant recommended \$474,552 for the vacuum tank, based on the testimony of OPC witness Woodcock. (TR 316-317) In his rebuttal testimony, KWRU witness Johnson provided an updated estimate for the total cost of vacuum tank replacement project. The updated cost of \$407,771 was supported by a signed contract with Wharton Smith who is also performing the pro forma plant expansion. (TR 603; EXH 75) However, the updated revenue requirement calculated by KWRU witness Swain reflects \$431,801, as she double counted an invoice for additional engineering services. Based on the testimony of KWRU and OPC, as well as the supporting documentation provided by the Utility, staff believes that a pro forma adjustment of \$202,406 should be made to decrease plant in service to reflect the updated cost of the vacuum tank. (\$610,177 - \$407,771)

Related to the vacuum tank replacement project, OPC witness Merchant testified that a retirement adjustment is necessary as the existing vacuum tank is being retired and replaced and will not remain in service. Witness Merchant based her retirement entry on 75 percent (\$355,914) of the plant addition cost which is a common method of determining the amount to retire for water and wastewater utilities in Florida. (TR 316) The direct testimony and exhibits of KWRU did not include a retirement amount associated with the vacuum tank replacement. In her rebuttal testimony, KWRU witness Swain testified that she agreed with witness Merchant regarding the need to make an adjustment for the retirement of the original vacuum tank. (TR 766) Witness Swain's adjustment for the retirement of the original vacuum tank was based on the original cost (\$390,285) of the vacuum tank. (TR 767) Staff agrees with the parties that a retirement adjustment for the vacuum tank should be made. Staff recommends that the amount should be based on the original cost of the vacuum tank. Thus, pro forma plant should be reduced by \$390,285 to reflect the retirement of the vacuum tank.

OPC's recommended Phase II plant in service amount included two additional adjustments not made by KWRU. The first was the inclusion of \$477,436, for legal fees. As discussed in Issue 28, staff believes that legal fees should not be included in plant in service. The second additional adjustment was an increase of \$88,027. Witness Merchant testified that the average balance of adjusted 2014 plant included in rate base should be brought forward to the year-end balance approved by the Commission in its PAA order. (TR 315)

As discussed in Issue 3, staff believes that the 2014 test year should be updated for known and measurable changes. Therefore, to remain consistent with this methodology, the test year plant should reflect an average balance with an adjustment to include routine plant additions as pro forma plant. Staff reviewed plant additions for 2015 and 2016 (through September) that were provided by the Utility in response to staff discovery. The Utility also provided its general ledger for the same time period. (EXH 4) Based on the information provided by KWRU, staff believes

that plant in service should be increased by \$97,273 to reflect known plant additions in 2015 and 2016. (EXH 4)

### **CONCLUSION**

Based on the discussion above, the appropriate test year balance of plant in service is \$15,636,903, not including land. Accordingly, plant should be decreased by \$381,738. ( $\$113,680 - \$202,406 - \$390,285 + \$97,273$ )

**Issue 7:** What is the appropriate amount of accumulated depreciation to be used in setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate balance of accumulated depreciation to be used in setting rates is \$6,620,259. Accordingly, accumulated depreciation should be increased by \$548,574.

- A. As addressed in Issue 2, Phase I, is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

***Position of the Parties***

**KWRU:** \$5,738,008

***A. For Phase I, if applicable***

**OPC:** Phase I accumulated depreciation (AD) should be \$5,830,802. In addition to stipulated adjustments, the Utility’s plant expansion accumulated depreciation adjustment of \$196,281 should be removed. The vacuum tank replacement shouldn’t be allowed in Phase I as it is not in service. Further, the Utility’s \$4,384 adjustment to annualize 2014 depreciation violates the test year matching concept and the statutory requirement of not including depreciation expense on contributed plant; thus, these should be disallowed.

**County:** Agree with OPC that accumulated depreciation (“AD”) for Phase I should be \$5,830,802.

**Harbor Shores:** Agrees with OPC.

***B. For Phase II, if applicable***

**OPC:** Phase II accumulated depreciation (“AD”) should be \$6,876,849. In addition to stipulated adjustments, AD should be updated to 2016 levels, a more representative and closer period when the plant expansion will be in-service. Thus, a 2014 year-end adjustment of \$183,207, and increases for the 2015 and 2016 additions of \$924,677 to AD are appropriate. Lastly, AD should be increased by \$67,026 and \$26,385, respectively, for the plant expansion and vacuum tank addition (including the retirement).

**County:** Agree with OPC that Phase II AD should be \$6,876,849.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

Based on a single phase revenue requirement, KWRU's position on Issue 2, the proper amount of accumulated depreciation is \$5,738,008. (KWRU BR 10) This amount is reflective of the updated cost of the pro forma plant expansion. (EXH 79, P 1; KWRU BR 10) The Utility also noted in its brief that all book adjustments were made as ordered in the previous rate case<sup>16</sup> and in the time period required. (TR 768; KWRU BR 10)

**OPC**

In its brief, OPC asserted that for Phase I, accumulated depreciation should be \$5,830,802 reflecting a decrease of \$198,625. (TR 321, 318-319; EXH 24; OPC BR 13) OPC stated that in addition to stipulated adjustments, and as testified to by witness Merchant, the Utility's \$196,281 pro forma adjustment to accumulated depreciation for the plant expansion should be removed and the vacuum tank replacement should not be allowed in Phase I. (TR 318-319; TR 314-315; OPC BR 14) OPC stated that the Utility's \$4,384 adjustment to annualize 2014 depreciation expense should be disallowed because allowing the Utility to make a one-sided adjustment to accumulated depreciation and depreciation expense ignores the impact of the annualization of amortization of CIAC. (OPC BR 14) OPC witness Merchant also testified that this adjustment effectively converted the average balance into a year end balance, while CIAC, amortization of CIAC, and billing determinants are averaged. (TR 320)

For Phase II, OPC indicated that accumulated depreciation should be \$6,876,849. (EXH 25; OPC BR 14) OPC stated that in addition to stipulated adjustments, witness Merchant asserted that accumulated depreciation should be increased to be consistent with a 2016 test year. (TR 321-323; OPC BR 14) OPC indicated that a 2016 test year is a more representative period for the Commission to consider in setting final rates, and is consistent with and closer to the timeframe of when the treatment plant expansion will be placed into service. (OPC BR 14) OPC specified that the "average to year-end" adjustment to accumulated depreciation should be increased by \$183,207, which is net of the Company's adjustment to reflect year-end accumulated depreciation for the 2014 test year plant additions. (OPC BR 14) OPC stated that using the 2014 year-end depreciation expense of \$462,339 as a starting point and to be consistent with a 2016 test year, accumulated depreciation should be increased by \$924,677 to reflect the 2015 and 2016 additions. (TR 322-323; OPC BR 14) OPC asserted that accumulated depreciation should also be increased by \$67,026 and \$26,385, respectively, related to the pro forma cost of the wastewater treatment plant expansion costs and the vacuum tank addition, along with the corresponding retirements. (OPC BR 14) OPC stated that the total adjustments to accumulated depreciation for Phase II rates should be an increase of \$847,422. (EXH 25; OPC BR 14)

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<sup>16</sup> Docket No. 070293-SU

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II accumulated depreciation. (County BR 15; Harbor Shores BR 2)

### **ANALYSIS**

In KWRU's updated filing, the Utility reflected test year accumulated depreciation of \$5,828,761 along with adjustments to increase accumulated depreciation by \$4,383 for annualizing depreciation expense in the test year and by \$236,500 as a corresponding adjustment to its updated pro forma plant request. (EXH 17, P 2-3) As discussed in Issue 5, KWRU also included Stipulation 5 to decrease accumulated depreciation by \$2,040. (EXH 17, P 3)

In regard to the Utility's test year adjustment to annualize depreciation expense, OPC witness Merchant testified that this adjustment effectively converted the average balance into a year end balance, while CIAC, amortization of CIAC, and billing determinants are averaged. (TR 320) As addressed in Issue 29, staff believes KWRU's adjustment to annualize depreciation expense is appropriate as it matches the full year of CIAC amortization expense KWRU included in its filing. However, in regard to OPC's position that the adjustment to annualize depreciation expense converted the average balance of accumulated depreciation into year-end, adding the \$4,383 adjustment to the average balance of test year accumulated depreciation, \$5,828,761, results in \$5,833,144, which is less than the year-end balance of \$6,055,721. (EXH 16, P 12; EXH 17, P 2) Therefore, the adjustment to annualize depreciation does not reverse the averaging adjustment.

Additionally, the appropriate corresponding adjustments to accumulated depreciation for the pro forma plant discussed in Issue 6 is a decrease of \$383,138 to reflect the pro forma plant projects, along with an associated retirement and an increase of \$9,525 to reflect the 2015 and 2016 routine plant additions.

Based on staff's recommendation in Issue 3 to include known and measurable changes to the 2014 test year, staff believes it is also appropriate for the accumulated depreciation balance to reflect two additional years of depreciation. Consistent with staff's pro forma treatment of 2015 and 2016 routine plant, staff believes it is appropriate to reflect this additional accumulated depreciation as a year-end amount. Based on staff's recommended test year plant balances, which do not include any pro forma plant, the indicated increase is \$922,187.

### **CONCLUSION**

Based on staff's recommended adjustments, the appropriate balance of accumulated depreciation to be used in setting rates should be \$6,620,259, which reflects an increase of \$548,574 (-\$383,138 + \$9,525 + \$922,187).

**Issue 8:** What is the appropriate amount of CIAC to be used in determining the rate base that is used for setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of contributions-in-aid-of-construction (CIAC) to be used in setting rates is \$10,021,909. Accordingly, CIAC should be increased by \$372,032.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$9,649,877.

**A. For Phase I, if applicable**

**OPC:** CIAC for Phase I should be \$9,649,877, which includes the stipulated adjustments of \$297,120 recommended by Audit Finding 4. No further updates to CIAC to reflect the amount of CIAC collected after December 31, 2014, should be made for Phase I.

**County:** Agree with OPC and with the adjustments addressed in the stipulations agreed to by the Parties.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Phase II CIAC should be \$10,717,289. In addition to stipulations, before future expansion plant is allowed, CIAC should be updated to 2016 levels, a more representative period when the expansion will be in-service. A 2014 year-end increase of \$136,012 and actual increases for 2015-May 2016 additions of \$489,469 are appropriate. Additional 2016 CIAC projections of \$441,931 should be added for collections expected in the first year after the plant expansion is completed and in-service.

**County:** The appropriate amount of CIAC for Phase II is approximately \$11,264,125, although the amount could be significantly greater. Accordingly, the Commission should require KWRU to report to the Commission regarding any significant additions to CIAC, such as may occur if the contemplated acquisition of the FKAA wastewater accounts in Key Haven is consummated.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, the Utility asserted that CIAC should reflect the historical test year and that additional CIAC from future periods should not be included. (KWRU BR 10) KWRU witness Swain testified that pursuant to Section 367.081(2)(a)1, F.S., the Commission shall not impute prospective future CIAC against the utility's investment in property used and useful in the public service, and that the statute clearly states that the Commission should not impute future CIAC, as proposed by OPC witness Merchant. (TR 770)

**OPC**

In its brief, OPC asserted that CIAC for Phase I should be \$9,649,877, including the stipulated decrease of \$297,120 to CIAC from Audit Finding 4. (EXH 24; OPC BR 15) OPC witness Merchant testified that no further updates to CIAC to reflect the amount of CIAC collected after December 31, 2014, should be made for the Phase I revenue requirement. (TR 324-325)

OPC witness Merchant testified that the appropriate amount of CIAC for Phase II rates is \$10,717,289. (EXH 25) OPC stated that after making the stipulated audit adjustment, it is appropriate to update the test year CIAC to 2016 levels, which is more representative of the time period that the treatment plant will be placed in-service. (TR 329; OPC BR 15) Witness Merchant testified that, consistent with its adjustments to plant and accumulated depreciation, the 2014 average balance of CIAC from the PAA Order should be increased by \$136,012 to reflect the year-end balance. (TR 327) OPC asserted that before any future plant expansion or pro forma plant is allowed, it is critical and correct to include the \$489,469 in CIAC actually collected by KWRU through May 2016. (TR 327; EXH 26; EXH 28; OPC BR 15) OPC stated that KWRU also collected additional CIAC in August 2016. (TR 327; OPC BR 15) OPC asserted that if the Commission sets new rates without taking into account the CIAC collected in 2015 and 2016, as well as the expected customer growth for 2016 as calculated by witness Woodcock for his used and useful analysis, then the rates established will immediately provide excess earnings to the Utility at a substantial cost to the existing and future customers, and it will violate the matching principle. (TR 329; OPC BR 15)

OPC acknowledged that KWRU witness Johnson testified that CIAC may be subject to refund when Monroe County reopens its tax rolls and allows customers who have already prepaid CIAC to receive refunds and to finance CIAC payments over time on their property taxes. (TR 607; OPC BR 17) However, OPC pointed out that KWRU witnesses Johnson and Swain both acknowledged that no refund had actually occurred. (OPC BR 15)

**County**

In its brief, the County agreed with OPC on Phase I. (County BR 16) In regards to Phase II CIAC, the County asserted that the plant investment, which includes pro forma plant projects going into service in 2017, should be reduced by additional CIAC collected in 2016 and 2017 from customers in order for the Utility's Phase II rates to reflect the Utility's costs to serve during the time rates are in effect. (County BR 16-17) The County stated that OPC witness Merchant's adjustment to include CIAC for 2016 does not capture all necessary adjustments to

include additional CIAC. (County BR 17) Instead, the County proposed an adjustment to increase CIAC by escalating witness Merchant's 2016 CIAC value by 7.06 percent, the Utility's own best estimate of its growth. (County BR 17-18) This would produce a result of \$11,473,930 for Phase II CIAC. (County BR 21) The County noted that this was particularly important based on KWRU's own growth estimate of 7.06 percent per year in additional gallons. (TR 657; EXH 106; County BR 17)

Additionally, the County discussed KWRU witness Johnson's admission that the Utility has made an offer to the Florida Keys Aqueduct Authority ("FKAA") to acquire approximately 400 existing wastewater customers that FKAA presently serves in Key Haven and requested that the Commission require KWRU to report on the status of any discussions or acquisitions involving Key Haven customers in order to adjust rates as necessary. (TR 658; County BR 20-21)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC on Phase I and II. (Harbor Shores BR 2)

## **ANALYSIS**

In KWRU's updated filing, the Utility reflected test year CIAC of \$9,946,997. (EXH 17, P 1) As discussed in Issue 5, KWRU also included Stipulation 4 to decrease CIAC by \$297,120. (EXH 17, P 3) KWRU, OPC, and the County all testified to two points of contention regarding adjustments to CIAC that were both prospective, 1) potential refunds of CIAC payments and 2) potential new CIAC collections.

KWRU witness Johnson argued that \$556,628 of CIAC may be subject to refund when Monroe County reopens its tax rolls and allows customers who have already prepaid CIAC to receive refunds and to finance CIAC payments over time on their property taxes. (TR 607) However, witness Johnson later testified that no actual refunds have been made to date and that KWRU cannot force a customer to be placed on the County's tax roll. (TR 645) In addition, witness Johnson testified on cross-examination that the Utility did in fact collect these amounts, and that no refunds have been made to date. (TR 645) KWRU witness Swain testified that because the test year is historical, it is inappropriate to adjust CIAC to another period. However, she later testified that if any future CIAC is added, CIAC payments that have been refunded should reduce any addition. (TR 769-770) In addition, witness Swain acknowledged that no CIAC had been refunded to date. (TR 753-754, 786-787, 800, 814, 826-827, 841-842)

County witness Wilson testified that if a customer has already paid their system development fee to the Utility, the agreement between the County and KWRU provides that the Utility would pay that money to the County and if a customer has already paid their system development fee to the County, no additional CIAC is required from the customer. (TR 483-484) Additionally, OPC witness Merchant argued that additional CIAC, beyond the amounts actually collected in 2015 and 2016, should be included in rate base in order to provide a proper matching of plant investment and customer contribution. (TR 330-331) County witnesses Santamaria and Wilson identified an estimated 351 new connections which result in the additional collection of CIAC by the middle of 2017 to support the inclusion of prospective CIAC. (TR 66, 463, 470, 497, 502-506)



Staff believes that both of these prospective adjustments to CIAC should not be included in rate base for the same reason. The conflicting testimony provided by the parties is too speculative to support adjustments because it is based on potential events that may or may not occur. In so recommending, staff notes that "it is the [Commission's] prerogative to evaluate the testimony of competing experts and accord whatever weight to the conflicting opinions it deems necessary."<sup>17</sup>

KWRU witness Swain testified that OPC witness Merchant's adjustment to impute future CIAC violates Section 367.081(2)(a)1, F.S., which states that, "...nor shall the commission impute prospective future contributions-in-aid-of-construction against the utility's investment in property used and useful in the public service." (TR 770) Staff believes that the inclusion of collected, non-prepaid CIAC does not violate Section 367.091(2)(a)1., F.S. Documented CIAC collected by customers actively receiving service in a future period beyond the test year is clearly demonstrated and not prospective. However, staff agrees that potential CIAC should not be imputed.

Based on staff's position on Issue 3 to include known and measurable changes to the 2014 test year, staff believes it is appropriate to include actual collections of CIAC from 2015 and 2016. Staff reviewed the information about CIAC collected in 2015 and 2016 (through August) that was provided by the Utility in response to staff discovery, along with the general ledger for the same time period. (EXH 49, BSP 33; EXH 51, BSP 65; EXH 55, BSP 188; EXH 62, BSP 1615) Consistent with staff's pro forma treatment of 2015 and 2016 routine plant additions, staff believes it is appropriate to reflect this additional CIAC as a year-end amount. Accordingly, based on the information provided by KWRU, staff recommends that CIAC be increased by \$372,032 to reflect CIAC collected in 2015 and 2016.

### **CONCLUSION**

The appropriate amount of CIAC to be used in setting rates is \$10,021,909. Accordingly, CIAC should be increased by \$372,032.

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<sup>17</sup> Gulf Power Co. v. FPSC, 453 So. 2d 799, 805 (Fla. 1984).

**Issue 9:** What is the appropriate amount of accumulated amortization of CIAC to be used for setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of accumulated amortization of CIAC to be used in setting rates is \$3,748,595. Accordingly, accumulated amortization of CIAC should be increased by \$733,654.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$3,014,941

**A. For Phase I, if applicable**

**OPC:** Phase I Accumulated Amortization of CIAC (AA-CIAC) should be \$3,014,941, with a stipulated decrease of \$81,153. Since it is not appropriate to update CIAC for collections after December 31, 2014, no additional adjustments to Accumulated Amortization of CIAC are appropriate for Phase I rates.

**County:** Agree with OPC that Phase I Accumulated Amortization of CIAC (“AA-CIAC”) should be \$3,014,941.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Phase II AA-CIAC should be \$3,945,225. After making the stipulated adjustments, AA-CIAC should be increased by: 1) \$204,033 to reflect the 2014 year-end balance; 2) \$682,928 to add 2 years of amortization for 2015-2016; 3) \$27,903 for amortization of actual CIAC additions for 2015-May 2016; and 4) \$15,421 for amortization on projected 2016 CIAC additions. For each adjustment, a 3.49% amortization rate is used per the PAA Order.

**County:** Agree with OPC that Phase II AA-CIAC should be \$3,945,225.

**Harbor Shores:** Agrees with OPC

**Staff Analysis:**

**PARTIES’ ARGUMENTS**

**KWRU**

KWRU stated that the accumulated amortization of CIAC is properly calculated based on the CIAC balance set forth in its position to Issue 8. (KWRU BR 10)

### **OPC**

OPC witness Merchant testified that Phase I accumulated amortization of CIAC should be \$3,014,941 after including stipulated adjustments resulting in a decrease of \$81,153 related to Audit Finding 4. (TR 325; EXH 24; OPC BR 17) OPC explained that since it is not appropriate to update CIAC for collections after December 31, 2014, no additional adjustments to accumulated amortization of CIAC are appropriate for Phase I. (TR 325-326)

In its brief, OPC asserted that Phase II accumulated amortization of CIAC should be \$3,945,225 based on its additional adjustments using an amortization rate of 3.49 percent, pursuant to the PAA Order in this docket. (EXH 25; OPC BR 18) OPC also explained that after making the stipulated adjustments, consistent with updating the 2016 pro forma test year, accumulated amortization of CIAC should be increased by \$204,033 to reflect the 2014 year-end balance, two years of CIAC amortization expense of \$682,928 for 2015 and 2016 should be added, and amortization of \$15,421 on projected additions to 2016 CIAC for the pro forma test year should be added. (TR 331-332; OPC BR 18)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 22; Harbor Shores BR 2)

## **ANALYSIS**

In KWRU's updated filing, the Utility reflected test year accumulated amortization of CIAC in the amount of \$3,096,094. (EXH 17, P 1) As discussed in Issue 5, KWRU's updated filing recognized Stipulation 4 which resulted in a decrease to accumulated amortization of CIAC of \$297,120. (EXH 17, P 3)

To remain consistent with staff's recommended pro forma adjustments in other issues to reflect known and measurable changes to the 2014 test year, it is appropriate for the balance of accumulated amortization of CIAC to reflect an adjustment to include two additional years of CIAC amortization expense. Consistent with staff's pro forma treatment of 2015 and 2016 CIAC collections, it is appropriate to reflect this additional accumulated amortization of CIAC as a year-end amount. Based on staff's recommended test year CIAC balances, an increase of \$703,061 to reflect pro forma 2015 and 2016 accumulated amortization of CIAC is appropriate. Additionally, a corresponding adjustment is necessary to increase accumulated amortization of CIAC by \$30,593 to reflect the pro forma 2015 and 2016 CIAC recommended in Issue 8. In total, staff's recommended pro forma adjustment to CIAC is an increase of \$733,654 (\$703,061 + \$30,593).

## **CONCLUSION**

Based on the above, the appropriate amount of accumulated amortization of CIAC to be used in setting rates is \$3,748,595. Accordingly, accumulated amortization of CIAC should be increased by \$733,654.

**Issue 10:** What is the appropriate amount of construction work in progress (CWIP) to be used for setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** Consistent with previously recommended plant adjustments, the appropriate amount of CWIP to be used for setting rates is \$0, as the plant improvements are included in staff's recommended plant in service total.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$0 since the plant expansion will be on-line when the rates go into effect. If there is not a single increase then the amount is subject to a Stipulation.

**A. For Phase I, if applicable**

**OPC:** Phase I CWIP should be \$780,571. Stipulation 2 increases CWIP related to construction costs for the wastewater plant expansion project of \$158,151 in 2014, and \$144,984 in 2015, for a total of \$303,135. Also, the 2015 balance of the Last Stand Legal Fees should be recorded in CWIP until the new wastewater treatment plant is placed into service. CWIP should be increased by \$477,436, until the WWTP expansion is placed into service.

**County:** Agree with OPC that CWIP for Phase I should be \$780,571.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** The appropriate amount of Phase II CWIP should be zero to reflect that the construction costs should be capitalized to plant.

**County:** Agree with OPC that CWIP for Phase II should be 0 because the construction costs should be capitalized to plant.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, the Utility asserted that there is no justification for a two-phased calculation due to the substantial amount which will have been expended for capital projects by the time rates become effective. (KWRU BR 11) KWRU witness Johnson testified that the plant improvements

are expected to be substantially complete by early March 2017. (TR 602-603) This is reflected in KWRU witness Swain's testimony that CWIP should be removed in the Utility's calculation of a single revenue requirement. (EXH 17, P 3) However, KWRU also stated in its brief that if a two-phased rate is approved, the first phase should include the CWIP on the Utility's books as of December 31, 2016, the period the Phase 1 rates are in effect, in the amount of \$620,619. (EXH 28, P 50; KWRU BR 11)

### **OPC**

OPC witness Merchant testified that Phase I CWIP should be \$780,571. (TR 332; EXH 24; OPC BR 18) In addition to the stipulated adjustments from Audit Finding 2, OPC witness Merchant testified that the 2015 balance of the Last Stand Legal Fees of \$477,436 should be recorded in CWIP until the new wastewater treatment plant is placed into service based on its recommended accounting treatment of the fees. (TR 332; EXH 24, P 2)

In its brief, OPC stated that the appropriate amount of CWIP for Phase II rates should be zero to reflect that the construction costs have been capitalized into plant. (TR 332; EXH 25, P 1; OPC BR 19)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 22; Harbor Shores BR 2)

## **ANALYSIS**

As addressed in Issue 2, a two-phased rate increase is not necessary in this instance. As such, consistent with staff's previously recommended plant adjustments, the appropriate amount of CWIP to be used for setting rates is \$0, as the plant improvements are included in staff's recommended plant in service total.

**Issue 11:** What is the used and useful (U&U) percentage of the Utility’s wastewater treatment plant after the treatment plant expansion is placed into service?

**Recommendation:** The wastewater treatment plant should be considered 71.5 percent used and useful based upon a projected demand of 0.606 million gallons per day (MGD) in 2021. To reflect the appropriate U&U percentage, staff recommends that the appropriate non-used and useful reduction to rate base is \$1,440,804. Corresponding adjustments should be made to decrease net depreciation expense and property taxes by \$117,138 and \$10,526, respectively. (Hill, Norris)

**Position of the Parties**

**KWRU:** The wastewater treatment plant is 100% used and useful after the treatment plant expansion is placed in service.

**OPC:** After projecting the increased gallons for 2016 consumption, the appropriate non-used and useful percentage is 25%. This should be applied to the recommended balance of plant, accumulated depreciation, depreciation expense and property tax expense as shown on Exhibit PWM-3, Schedule 1-D. The appropriate reduction to rate base is \$1,632,646 (plant in service of \$2,429,995 less accumulated depreciation of \$797,349). Reductions to depreciation expense (\$130,954) and property taxes of (\$16,177) are appropriate.

**County:** Agree with OPC that the appropriate non-used and useful percentage should be 25%.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES’ ARGUMENTS**

**KWRU**

KWRU raised three arguments to support its position that its wastewater treatment plant is 100 percent used and useful: (1) the expansion is for environmental compliance purposes and that DEP rules require a planning period of at least 10 years, (2) that the additional plant will be necessary in maintaining AWT treatment levels during maintenance which takes portions of the existing plant offline, and (3) that growth beyond the strict percentage calculated should be considered. (KWRU BR 11)

KWRU supported argument (1) by citing Section 367.081(2)(a)2.c., F.S., which states that “the commission shall approve rates for service which allow a utility to recover from customers the full amount of environmental compliance costs.” (KWRU BR 11) It then argued that Rule 62-600.405(1), F.A.C. requires sizing any permitted work for a planning period of “ten years or longer.” (BR 12) KWRU further argues that the Recommended Standards for Wastewater Facilities referenced by Rule 62-600.300, F.A.C. requires such plans “shall be based on a 20 year planning period.” (TR 596) KWRU witness Seidman also stated that, in the Last Stand litigation, DEP accepted the hearing officer’s findings of fact that the KWRU system would be built out between 2018 and 2020. (KWRU BR 12)

KWRU supported argument (2) with witness Castle's direct testimony that "treatment unit processes must have redundancy to allow maintenance personnel to take plants off line [for maintenance]." (TR 603)

KWRU supported argument (3) by stating that Rule 25-30.432, F.A.C., "states that the extent to which the area served is built-out should be considered, implying that projected growth based on factors other than a strict percentage should reasonably be allowed," and further stating that "[v]acant, unconnected land within KWRU's tariff area is projected to be fully built-out between 2018 and 2020." (KWRU BR 13)

KWRU stated that, should a 100 percent U&U not be approved, then the average growth should properly be 7.06 percent, which would yield a U&U percentage of 76.42 percent (KWRU BR 14).

### **OPC**

OPC provided a U&U calculation sponsored by witness Woodcock which relied on four arguments: (1) that growth should be measured based upon 2014 and the previous 4 years, (2) that actual flows from 2015 and 2016 are not typical given the suppression in growth during that time and thus should not be used, (3) that flows should be projected to 2016, which should be used as the start of the growth period, and (4) a 5-year growth allowance from 2016 to 2021 is appropriate. (OPC BR 19)

OPC supported argument (3) by stating that it is consistent with the methodology utilized by the Commission in the 2001 Burkim Enterprises PAA Order. (OPC BR 19) OPC witness Woodcock stated that "adjustments I have made in my analysis ... mitigate the unique conditions associated ... at this time. Therefore, projecting a growth rate above the 5 percent not to exceed provision of Rule 25-30.431, F.A.C. is not warranted." (TR 279)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC's position on Phase I and II of this issue. (County BR 23; Harbor Shores BR 2)

## **ANALYSIS**

KWRU witness Seidman provided testimony and exhibits supporting a U&U of 100 percent. (TR 192) Witness Seidman supported his argument by testifying that in the last Stand litigation one of the principal issues was the needed capacity of the plant expansion. Witness Seidman elaborated that based upon testimony presented (in the last Stand litigation), the DEP accepted the hearing Officer's findings of fact that the KWRU system will be built out between 2018 and 2020. (TR 190)

OPC witness Woodcock testified that KWRU's WWTP expansion should be 75 percent U&U. (TR 278) Witness Woodcock testified that he evaluated the U&U of the WWTP post expansion based on a pro forma test year of 2016, when the expansion was initially expected to be constructed and placed into service. (TR 277) Secondly, witness Woodcock limited the growth for KWRU's system to 5 percent as provided for in Rule 25-30.431(2)(a) F.A.C. (TR 277) Witness Woodcock testified that his U&U approach is consistent with the U&U methodology

used by the Commission in the 2001 Burkim Enterprises PAA Order which involved a utility experiencing rapid growth. (TR 277) Witness Woodcock further testified that certain adjustments should be made to mitigate the unique conditions KWRU faces due to the suppressed growth. Witness Woodcock stated that “[u]sing actual 2015 and 2016 flows overlooks the fact that due to limitations in the WWTP capacity there has been essentially no growth in the system.” (TR 278)

KWRU witness Castle testified that witness Woodcock’s U&U calculation failed to consider DEP rules. Specifically witness Castle cited Rule 62-600.405(1), F.A.C., which requires evaluation of current and future flows and requires flow projections based on local growth and usage rates for at least 10 years. Witness Castle concluded that the expanded plant is a direct result of these environmental mandates and is therefore an environmental compliance cost. (TR 570)

Staff does not agree with witness Castle that Rule 62-600.405, F.A.C., requires sizing any permitted work for a planning period of 10 years or longer. Rule 62-600.405(6), F.A.C., states, in part,

The initial capacity analysis report or an update of the capacity analysis report shall evaluate the capacity of the treatment plant and reuse or disposal systems and contain data showing the permitted and design capacities; monthly average daily flows, three-month average daily flows, and annual average daily flows for the past 10 years or for the length of time the facility has been in operation, whichever is less; seasonal variations in flow; flow projections based on local population growth rates and water usage rates for at least the next 10 years

The Rule referenced by witness Castle is silent on whether this requires any system to be designed to serve flows within 10 years. The following Rule 62-600.405(8) F.A.C., states, in part (emphasis added):

- (8) Documentation of timely planning, design, and construction of needed expansions shall be submitted according to the following schedule:
  - (a) If the initial capacity analysis report or an update of the capacity analysis report documents that the permitted capacity will be equaled or exceeded within the next five years, **within the next five years,**

Witness Castle additionally testified that the Recommended Standards for Wastewater Facilities referenced by Rule 62-600.300, F.A.C. requires such plans “shall be based on a 20 year planning period.” (EX 63, TR 597) Staff believes that this Rule and the referenced standards do not require utilities to design all expansions to serve projected demand based on this 20 year planning period. Rule 62-600.300, F.A.C. referenced by witness Castle states, in Section 3 that:

- (3) In cases where standards and criteria contained in the publications listed in subsection 62-600.300(4), F.A.C., conflict with other rules of the Department, the other rules shall apply.

KWRU cited Chapter 10, Section 11.23 of the Recommended Standards for Wastewater Facilities reference. (EXH 63) Staff notes that this section also includes the parameter that



“[p]hased construction of wastewater facilities should be considered in rapid growth areas,” and so this reference does not require that any construction must be designed for the full 20 year planning period.

Staff recommends that U&U be calculated as required by Rule 25-30.431, F.A.C., by using a linear regression model and projecting flows out five years. Staff additionally recommends the following: (1) growth should be measured based upon the test year, the previous 4 years, and known and measurable changes through 2015, (2) flows for 2016 should be projected because 2016 flows do not appear to be typical and (3) a 5-year growth allowance from 2016 to 2021 is appropriate. The timeframe over which staff is projecting is the same as the timeframe used by witness Woodcock. (EXH 20) Like KWRU and OPC, staff does not believe an adjustment for inflow and infiltration (I&I) is necessary in this case. (TR 278)

The linear regression analysis performed by staff results in an addition of 364.9 equivalent residential connections (ERCs) from the test year to 2016 and an addition of 916.6 ERCs for the growth period of 2016 to 2021. The Utility had an average of 4,039 ERCs for the test year, resulting in 114 gpd/ERC (461,323 gpd / 4,039 ERCs). Thus a growth allowance of 146,091 gpd is also considered  $((364.9 + 916.6) \times 114 \text{ gpd per ERC})$ . Based on the annual average daily flow during the test year of 461,323 gpd, the DEP permitted plant capacity of 849,000 gpd, the growth allowance of 146,091 gpd, the excessive I&I of 0 gpd, staff recommends that the WWTP be considered 71.5 percent U&U  $[(461,323 \text{ gpd} - 0 \text{ gpd} + 146,091 \text{ gpd}) / 849,000 \text{ gpd}]$ .

## **CONCLUSION**

The wastewater treatment plant should be considered 71.5 percent used and useful based upon a projected demand of 0.606 MGD in 2021. To reflect the appropriate U&U percentage, staff recommends that the appropriate reduction to rate base is \$1,440,804. Corresponding adjustments should be made to decrease net depreciation expense and property taxes by \$117,138 and \$10,526, respectively.

**Issue 12:** What is the appropriate working capital allowance?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate working capital allowance is \$923,671. Accordingly, working capital should be decreased by \$534,599.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$1,458,270 based upon pro-forma test year balance sheet plus cost associated with permit litigation.

**A. For Phase I, if applicable**

**OPC:** Phase I working capital should be \$328,976. Adjustments, in addition to stipulations, are necessary to reduce cash by \$615,687 for unused and inappropriate balances; remove deferred debits for accounting fees incurred by KWRU to correct its books; remove deferred debits related to construction permit litigation fees for the plant expansion, as these are in CWIP for Phase I and capitalized into plant for Phase II; and include 1/2 of the allowed rate case expense.

**County:** Agree with OPC that the working capital allowance for Phase I should be \$328,976.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** The appropriate amount of working capital for Phase II rates should be \$328,976.

**County:** Agree with OPC that the working capital allowance for Phase II should be \$328,976.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

The Utility stated that working capital should be in the amount of \$1,458,270, which properly accounts for all expenses and pro forma adjustments (TR 203; KWRU BR 14) KWRU contended that the working capital has been depleted below levels needed due to the Last Stand challenge, the rate proceeding, and AWT compliance. (TR 204; KWRU BR 14) The Utility attributed the increase in cash during the test year directly to collection of CIAC, and claimed the funds were utilized for defense in the Last Stand challenge. (KWRU BR 15) KWRU also contended that

CIAC collected is available for any need, and was used to finance projects and to cover operating expenses during this rate case. (TR 771; KWRU BR 15)

### **OPC**

OPC's position is Phase I Working Capital should be \$328,976. (OPC BR 20) OPC witness Merchant testified that \$615,687 in cash should be removed. (TR 334; OPC BR 20) This amount is associated with four adjustments: 1) removal of \$126,930 associated with an escrow account for the vacuum expansion project closed in March 2015; 2) removal of \$141,828 for an escrow account related to customer deposits; 3) removal of an unused capital operating account with a balance of \$375,840; and 4) removal of the 13-month average balance of \$115,643 in a cash capital operating account related to an account funded by a single transfer in May 2014. (TR 333; OPC BR 20) Witness Merchant also testified that deferred debits associated with accounting fees and legal fees related to the Last Stand litigation should be removed. (TR 336,339; OPC BR 20) OPC stated that \$76,011 of the unamortized rate case expense should be allowed. (TR 342; OPC BR 21) OPC contends KWRU's assertions that the high working capital balance is necessary for AWT operational expenses, the Last Stand litigation, and other regulatory environment existing in the Florida Keys Area of Critical Concern are without merit and should be disregarded as costs required to operate AWT are included as part of O&M and not working capital. (TR 344; OPC BR 21) In regards to Phase II, OPC's position is the working capital balance should remain at \$328,976. (OPC BR 21)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 23-24; Harbor Shores BR 2)

## **ANALYSIS**

Rule 25-30.433(2), F.A.C., requires that Class A utilities use the balance sheet method to calculate the working capital allowance. In its updated filing, the Utility reflected a working capital allowance of \$1,458,270. (EXH 17, P 1) As discussed in Issue 5, KWRU's filing recognized Stipulation 8 to increase accounts receivable-other by \$40,067 and to decrease miscellaneous current and accrued assets by \$13,422. (EXH 17, P 3) The Utility also recognized staff Audit Finding 6 and increased miscellaneous deferred debits by \$24,217. (EXH 17, P 3)

### **Cash**

In its filing, KWRU's working capital allowance included cash of \$877,289. OPC witness Merchant testified that the requested test year cash balance was excessive and represented an anomaly for the Utility. (TR 335) She specifically cited comparisons to the cash balance approved in KWRU's last rate case, which was \$666,869 lower, and the cash balance reflected in its 2015 Annual Report, which was \$515,752 lower. (TR 335) Witness Merchant asserted that building a major plant expansion did not support the need for such a large balance of cash. (TR 335) The 13-month average cash balance based on available data from 2016 during the time frame of activity on the pro forma plant expansion is \$317,978. (EXH 52, BSP 103; EXH 55, BSP 166, 189-190; EXH 56, BSP 1563; EXH 62, BSP 1615) Staff believes this balance is more reflective of ongoing Utility operations and recommends that cash be decreased by \$559,311.

### **Deferred Rate Case Expense**

In its revised MFRs, KWRU reflected deferred rate case expense of \$197,325 in its working capital calculation. As discussed in Issue 26, staff has recommended total rate case expense of \$430,828. It is Commission practice to include one-half of the approved amount of rate case expense in the instant docket in working capital under the balance sheet method. Consistent with Commission practice, the amount of deferred rate case expense to include in working capital is \$215,414. As such, staff recommends that working capital be increased by \$18,089.

### **Miscellaneous Deferred Debits**

In its updated filing, the Utility included a working capital adjustment from the PAA Order that reflected the fees associated with Last Stand litigation as a deferred debit in the amount of \$397,093. (EXH 17, P 3) However, the balance incorrectly reflected an additional year of amortization, as it was figured into the Utility's initial adjustment. As discussed in Issue 28, staff has recommended further adjustments to the annual amortization of the deferred legal fees. The total effect of both adjustments is an increase of \$63,373 to miscellaneous deferred debits. As discussed in Issue 27, staff has also recommended the removal of accounting fees associated with restating previous annual reports. Therefore, miscellaneous deferred debits should be decreased by \$56,750. The net effect is an increase to miscellaneous deferred debits of \$6,623 (\$63,373 - \$56,750).

## **CONCLUSION**

Based on the above, the appropriate working capital allowance is \$923,671. Accordingly, working capital should be decreased by \$534,599 ( $-\$559,311 + \$18,089 + \$6,623$ ).

**Issue 13:** What is the appropriate rate base? (Fall-out)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** Consistent with other recommended adjustments, the appropriate rate base is \$2,601,197.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** This is a fall-out calculation.

**A. For Phase I, if applicable**

**OPC:** The appropriate rate base for Phase I should be \$127,273.

**County:** Agree with OPC that the appropriate Phase I rate base is \$127,273.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** The appropriate Phase II rate base should be \$604,323.

**County:** Phase II rate base should be approximately \$57,487, which is OPC's recommended rate base value of \$604,323 for 2016 less additional CIAC for 2017 of \$546,836. See Issue 8.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:** Based on staff's recommended adjustments, the appropriate rate base to be used in setting rates is \$2,601,197. The schedule for rate base is attached as Schedule No. 1-A, and the adjustments are shown on Schedule No. 1-B.

**Issue 14:** What is the appropriate capital structure to be used in setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amounts of long-term debt, equity, and customer deposits to include in the capital structure are \$3,500,000, \$1,765,366, and \$162,972, respectively.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** For the single phase, the pro forma plant will be 100% equity financed, and the BB&T Debt has increased to 4.25%  
Long Term Debt - \$1,063,865, 18.74% ratio, 4.25% cost rate  
Common Equity - \$4,450,994, 78.369% ratio, 9.18% cost rate  
Customer Deposits - \$162,972, 2.87% ratio, 2% cost rate

**A. For Phase I, if applicable**

**OPC:** The 2014 capital structure consisted of \$395,434 of 4% debt to BB&T; \$852,903 of 6% affiliate debt; \$162,972 in 2% customer deposits; negative equity of \$276,537, with a \$3.5 million pro forma increase to equity to fund the WWTP expansion. For Phase I, the debt for the affiliate debt should be equal to the arms-length BB&T debt, the negative equity balance should be zero, and the pro forma equity adjustment should be disallowed.

**County:** Agree with OPC that the capital structure for Phase I should consist of \$395,434 of debt to BB&T at 4%.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** For Phase II, the capital structure should be updated to reflect the most current level of financing for 2016. The \$2,041,903 in equity infusions in 2016 should offset the August 2016 negative equity balance (\$1,051,663) for a net equity balance of \$989,240. Pro forma debt should be \$3,000,000 for BB&T loans at 4%, and customer deposits of \$162,972 at 2% are appropriate.

**County:** Agree with OPC that for Phase II, the capital structure should be updated to reflect the most current level of financing for 2016: an equity balance of \$989,240, pro forma debt of \$3,000,000 for BB&T loans at 4% and customer deposits of \$162,972 at 2%.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, KWRU stated that this issue is a fall-out calculation based on its proposed 100 percent equity financing of pro forma plant additions. (EXH 79, P 10; KWRU BR 16) The Utility asserted that it has proven that it has used equity to finance the pro forma plant expansion through equity infusions and the reclassification of affiliate debt to equity. (EXH 81)

**OPC**

OPC witness Merchant testified that KWRU's actual 2014 capital structure consisted of \$395,434 of debt to BB&T at 4 percent (variable rate of prime plus 0.75 percent); \$852,903 debt at 6 percent (fixed) to WS Utilities, an affiliate of the Utility; \$162,972 in customer deposits at 2 percent; a negative equity balance of \$276,537 with a \$3.5 million pro forma increase to equity to fund the WWTP expansion. (TR 346; OPC BR 22) OPC asserted that for Phase I, the affiliate debt cost should be equal to the arms-length debt cost with BB&T, the negative equity balance should be zero, and the pro forma equity adjustment should be disallowed to correspond with the removal of pro forma plant. (TR 348; EXH 24; OPC BR 22)

For the Phase II capital structure, OPC witness Merchant testified that, in addition to the Phase I adjustments, the Utility's pro forma adjustment to equity should be considered debt until the Utility can demonstrate that all of the pro forma adjustments will be infused as equity. (TR 348-349; OPC BR 23) OPC asserted that the Utility's equity infusions made in May, June, and August, 2016, should be allowed only to the extent that those infusions offset the actual negative equity balance on KWRU's books. (OPC BR 23) OPC explained that as of August 2016, the Utility's negative equity balance was \$1,051,663 and its reported equity infusions (shareholder contributions) totaled \$2,041,903. (TR 349; EXH 62, P 1615; OPC BR 23-24)

**County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 24-25; Harbor Shores BR 2)

**ANALYSIS**

In its updated filing, the Utility reflected long-term debt of \$1,248,337, negative equity of \$276,537, and customer deposits of \$162,972 in the 2014 test year. (EXH 17, P 11) The Utility also included a pro forma adjustment to increase equity by \$4,910,177 to reflect an equity infusion that would pay for the pro forma plant expansion. (EXH 17, P 11) Pursuant to Rule 25-30.311, F.A.C., KWRU included a cost rate of 2.00 percent for customer deposits. (EXH 17, P 11) Consistent with staff's position in Issue 3, several adjustments are appropriate in order to reflect known and measurable changes in the composition of the Utility's capital structure.

As testified by OPC witness Merchant, KWRU's long-term debt in the test-year consisted of \$395,434 of debt to BB&T at an interest rate of prime plus 0.75 percent, which equated to 4.00 percent in the test year, and affiliate debt from W.S. Utilities of \$852,903 with an interest rate of 6.00 percent. (EXH 346) However, in June 2016, the Utility stopped making regular payments of

interest on the WS Utilities debt and reclassified it as equity. (EXH 81) KWRU also refinanced the BB&T debt in July 2016 which paid off the balance of the original note with a new note in the amount of \$1,000,000. (EXH 83) Accordingly, long-term debt should be adjusted to reflect these two documented changes in capital structure. A corresponding adjustment should be made to increase long-term debt to reflect the refinanced \$1,000,000 BB&T note. Using the Utility's general ledger as of August 30, 2016, staff verified that the proceeds of the refinanced note were made available and used by KWRU in the capital operating account that is used for pro forma plant expansion expenditures. (EXH 62, P 1615) This treatment is contrary to KWRU witness Swain's understanding of the note as a line of credit. (TR 819)

In September 2016, KWRU obtained another note through BB&T in the amount of \$2,500,000. (EXH 83) This note was also characterized by witness Swain as a line of credit that the Utility did not necessarily plan to use and that funds available from new lines of credit should not be included as there has been no use of those funds. (TR 819) However, the loan documents provided by KWRU indicate an initial loan disbursement of \$741,000 with \$686,424 being wired directly to the Borrower. (EXH 83) Given the timing of this new debt issuance, staff was not able to verify any further details with the most recent general ledger as the record closed before any additional general ledgers were made available. The Loan Agreement included in the Utility's documentation of the additional note specifies that the purpose of the term loan is for the expansion of wastewater treatment plant and reflects a repayment schedule of five years for the loan payment. (EXH 83) KWRU witness Swain agreed that a debt-to-equity conversion is considered a known and measurable change and admitted that the two new promissory notes were lines of credit fully available for the Utility to use at any time it deemed necessary. (TR 817) Staff believes the loan documentation provided by KWRU supports the inclusion of the entire amount of the additional note, especially in light of the conflicting Utility testimony regarding the use of additional debt. As such, staff recommends that long-term debt should also be increased by \$2,500,000 for a total \$3,500,000 of long-term debt.

Due to the conversion of affiliate debt to equity, equity should also be increased by \$852,903. Documentation of additional equity infusions of \$659,000 in May 2016 and \$530,000 in August 2016 should also be included as pro forma adjustments to equity. (EXH 81) KWRU witness Swain testified that the Utility made another capital contribution of equity of \$1,100,000 in October 2016. (TR 851) Beyond witness Swain's assertion, there is no other documentation to support making this further adjustment to equity. Witness Swain testified that she did not think that the Commission has discretion to do something different than what the management is indicating their intention is in regard to financing plant. (TR 820) However, the intentions of KWRU's management are contradicted by support documentation provided by the Utility which makes it somewhat problematic to identify known and measurable changes. Based on documented transactions, staff recommends a net increase to equity of \$2,041,903 which results in \$1,765,366 of equity for rate setting.

## **CONCLUSION**

Based on staff's adjustments to capital structure, the appropriate amounts of long-term debt, equity, and customer deposits to include in the capital structure are \$3,500,000, \$1,765,366, and \$162,972, respectively.



**Issue 15:** What is the appropriate return on equity? (Partially stipulated)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** Based on the Commission leverage formula currently in effect and an equity ratio of 33.53 percent, the appropriate return on equity (ROE) is 11.16 percent. Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** The appropriate return on equity is 9.18% based upon the capital structure (see Issue 14) as determined pursuant to PSC Order No. PSC-16-0254-PAA-WS (leverage formula).

**A. For Phase I, if applicable**

**OPC:** Because the negative balance of equity has been set to zero, the ROE for Phase I rates should be 11.16%, with an allowed range of plus or minus 100 basis points.

**County:** Agree with OPC that the appropriate return on equity for Phase I sales should be 11.16% with an allowable range of plus or minus 100 basis points.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Using the equity ratio after the pro forma adjustment to infuse equity and recognize the new debt issuances, the resulting equity ratio is 20%. Accordingly, the ROE for Phase II should be 11.16%, with an allowed range of plus or minus 100 basis points. If the Commission approves an equity ratio higher than 40%, the leverage formula will generate a corresponding lower cost of equity.

**County:** Agree with OPC that the appropriate return on equity for Phase II sales should be 11.16% with an allowable range of plus or minus 100 basis points.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

Based on the capital structure, the appropriate return on equity is calculated according to the leverage formula, as set forth in Order No. PSC-16-0254-PAA-WS. (KWRU BR 17)

### **OPC**

OPC stated that the ROE for Phase I and II rates should be 11.16 percent, with an allowed range of plus or minus 100 basis points, based on its position on capital structure adjustments in Issue 14 and consistent with Stipulation 15. (OPC BR 24)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 25; Harbor Shores BR 2)

## **ANALYSIS**

The ROE requested in the Utility's updated rate increase request is 9.17 percent. (EXH 17, P 10) This return was based on the application of the Commission's leverage formula approved in Order No. PSC-16-0254-PAA-WS<sup>18</sup> and an equity ratio of 76.28 percent. (EXH 17, P 10)

Staff believes the Utility's proposed return on equity of 9.17 percent should be updated to reflect the leverage formula in effect when the Commission makes its final decision, as approved in Stipulation 15. Including adjustments discussed in Issue 13, the recommended amount of debt and equity yield an equity ratio of 33.53 percent. Based on the approved methodology and an equity ratio of 33.53 percent, staff recommends an ROE of 11.16 percent. Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes.

## **CONCLUSION**

Based on the Commission leverage formula currently in effect and an equity ratio of 33.53 percent, the appropriate ROE is 11.16 percent. Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes.

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<sup>18</sup> Order No. PSC-16-0254-PAA-WS, issued June 29, 2016, in Docket No. 160006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

**Issue 16:** What is the appropriate cost of long-term debt?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate cost rate for long-term debt is 4.00 percent.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** 4.25%.

**A. For Phase I, if applicable**

**OPC:** The appropriate cost of debt for Phase I should be 4% for both the BB&T and the WS Utilities debt. No pro forma adjustments are appropriate for Phase I.

**County:** Agree with OPC that the appropriate cost of long-term debt for Phase I is 4%.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** The appropriate cost of debt for Phase II should be 4% for both BB&T promissory notes. The WS Utilities debt has been converted to equity and should be removed from the capital structure.

**County:** Agree with OPC that the appropriate cost of long-term debt for Phase II is 4%.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, KWRU stated that a 4.25 percent cost is appropriate based on current loan rates provided by BB&T that reflect an interest rate of 0.75 percent over prime. (TR 775; KWRU BR 17)

**OPC**

OPC witness Merchant testified that the 2014 test year debt cost for the BB&T loan was prime plus 0.75 percent. (TR 299, 346) In its brief, OPC stated that, because the prime rate was 3.25 percent in 2014, a 4.00 percent cost rate is appropriate to use for both the BB&T and the WS Utilities debt for Phase I. (OPC BR 25)

Witness Merchant used a 4.25 percent cost rate for Phase II which at that time was the BB&T debt from the historical test year. (TR 299, 348-349; OPC BR 25) OPC contended that, subsequent to witness Merchant's testimony, KWRU obtained \$3.5 million in new debt issuances that were not included in the Utility's rebuttal testimony. (TR 396-397; OPC BR 25) OPC stated that the appropriate cost of debt for Phase II should be 4.00 percent (prime rate plus 0.50 percent) for the two new BB&T promissory notes for \$1,000,000 and \$2,500,000 issued in July and September 2016, respectively. (EXH 83; OPC BR 25) OPC asserted that the Utility refinanced and retired the BB&T note for \$302,053 when it obtained a new BB&T note in July. (EXH 83; OPC BR 25) OPC stated that the affiliate debt from WS Utilities should be removed from the capital structure. (EXH 29; OPC BR 25) OPC asserted that these are known and measurable events by KWRU that occurred in 2016 that will be used to fund the plant expansion costs and that the current prime rate of interest is 3.50 percent. (EXH 29; OPC BR 25)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 25; Harbor Shores BR 2)

## **ANALYSIS**

Based on staff's adjustments to capital structure in Issue 14, long-term debt is comprised of the two new BB&T promissory notes issued in July and September 2016. As such, staff believes the corresponding cost of long-term debt should reflect the cost rates associated with the two notes, which is prime rate plus 0.50 percent. (EXH 83) KWRU witness Swain testified that current loan rates provided by BB&T reflect an interest rate of 0.75 percent over prime. (TR 775) However, witness Swain's testimony did not reflect the additional debt issuances. Thus, her testimony does not reflect "current" loan rates. Using the prime rate of interest of 3.50 percent, as supported in OPC's testimony and testified by KWRU witness Swain, staff recommends that the cost rate of long-term debt should be 4.00 percent. (TR 775; EXH 29)

## **CONCLUSION**

Based on the above, the appropriate cost rate for long-term debt is 4.00 percent.

**Issue 17:** What is the appropriate weighted average cost of capital based on the proper components, amounts, and cost rates associated with the capital structure for the test year period? (Fall-out)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** Based on the resolution of the previous issues, the appropriate weighted average cost of capital, including the proper components, amounts, and cost rates associated with the capital structure, is 6.12 percent.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** 8.06%.

**A. For Phase I, if applicable**

**OPC:** The appropriate overall rate of return for Phase I rates should be 3.39%.

**County:** Agree with OPC that the appropriate overall rate of return for Phase I rates should be 3.39%.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** The appropriate overall rate of return for Phase II rates should be 3.53%.

**County:** Agree with OPC that the appropriate overall rate of return for Phase II rates should be [3.53%].

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:** This is a fall-out issue. In its updated filing, KWRU originally proposed an overall cost of capital of 8.06 percent for the test year. (EXH 79, P 10) The Utility acknowledged that its proposed weighted average cost of capital is a fall-out calculation of its proposed pro forma adjustment that reflects 100 percent equity financing of pro forma plant additions, as well as the capital structure set forth in preceding issues. (KWRU BR 18) Based on the resolution of the preceding issues, the recommended capital structure yields an overall cost of capital of 6.12 percent. Schedule No. 2 contains staff's recommended capital structure.

**Issue 18:** Should the members of Harbor Shores Condominium Unit Owners Association, Inc. (Harbor Shores) be classified as Residential customers or a General Service customer?

**Recommendation:** Staff recommends that Harbor Shores be classified as a general service customer, but should continue to be billed a base facility charge (BFC) based on 69 equivalent residential connections (ERCs) and a gallonage charge with a 10,000 gallon cap per ERC.. (Johnson)

**Position of the Parties**

**KWRU:** Based on each residential unit having an FKAA residential water meter, Harbor Shores residential units should be classified as residential customers.

**OPC:** The Commission must decide whether a homeowners' association (HOA) like Harbor Shores, which is contractually required to pay the wastewater bills on behalf of all HOA members, should be classified as a general service customer. Harbor Shores has master meters and sub-meters. The wastewater bills have been paid by Harbor Shores, and not by the individual customers. Further, KWRU does not have any utility easement to enter private HOA property to shut-off customers for non-payment.

**County:** No position.

**Harbor Shores:** Harbor Shores is a General Service Customer because the HOA has been responsible for paying charges for all 69 units since 2007 per our Agreement with KWRU. The President of KWRU, Chris Johnson, stated during the Hearing on 11/8/16 that the whole Park will be shut down if the HOA does not pay for one single Unit, and that solidifies our position that we are "One General Service Customer" since the Rate Case in 2009.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU asserted that the Harbor Shores residents should be considered residential customers because each individual home has a separate FKAA water meter. In addition, the Utility argued that, per the developer agreement, the Harbor Shores Association is billed all regular residential charges of the unit owners. KWRU claimed that the Utility has the authority to discontinue service to an individual resident of Harbor Shores pursuant to the Rule 25-30.320(2)(f), F.A.C. and the Utility's tariff. KWRU stressed these factors as evidence that Harbor Shores' residents should be considered residential customers of the Utility. However, KWRU concluded that the appropriate adjustments should be made to the billing determinants for the determination of final rates if Harbor Shores is classified as a general service customer. (KWRU BR 18)

**OPC**

OPC argued that Harbor Shores is responsible for payment of all wastewater bills on the behalf of Harbor Shores' residents. OPC asserted that KWRU has no easements within Harbor Shores and states that the property rights for KWRU were intentionally omitted from the agreement

between Harbor Shores and the Utility. OPC added that other customers within KWRU's service area that are in similar situations, such as Sunset Marina, Meridian West, and Flagler Village, are classified as general service customers. OPC concluded that if Harbor Shores is classified as a general service customer, the Commission should consider the impact reclassification would have on billing determinants and rate design. (OPC BR 26)

### **County**

No position.

### **Harbor Shores**

Harbor Shores contended that instead of being considered 69 residential customers, Harbor Shores should be designated one general service customer and lists several reasons defending their position. First, Harbor Shores has been paying the monthly charges for all 69 units since 2009. (EXH 103, BSP 4) Harbor Shores has two master meters from which FKAA reads and deducts the 69 individual sub-meter readings. (EXH 89) Harbor Shores argued that KWRU only has the right to shut off the master meter and does not have rights to shut off individual residents from wastewater service. (TR 697-701) Harbor Shores submitted that the HOA meets the definition of a customer as set forth in the Utility's tariff and Rule 25-30.210, F.A.C. Harbor Shores also added that precedent has been set by similar associations with condominiums, modular, manufactured, or mobile homes on Stock Island that have been classified general service customers. (TR 625-626) Harbor Shores concluded that all the aforementioned factors make it abundantly clear that Harbor Shores should be one general service customer instead of 69 residential customers. (Harbor Shores BR 2-5)

## **ANALYSIS**

As outlined above in the Parties' arguments, KWRU believes that Harbor Shores should be billed based on individual residential meters. Harbor Shores believes the HOA is the customer and should be billed based on its two FKAA master meters rather than 69 individual residents living within the Harbor Shores community. Pursuant to Rule 25-30.210(1), F.A.C., a customer shall mean any person, firm, association, corporation, governmental agency, or similar organization who has an agreement to receive service from the utility. KWRU's tariff defines a customer as "any person, firm or corporation who has entered into an agreement to receive service from the company and who is liable for the payment of the service." (TR 703-704)

The agreement between KWRU and Harbor Shores provides that Harbor Shores will pay the applicable fees, rates, and charges as set forth in the Utility's tariff for the monthly service. (EXH 103) In addition, KWRU holds Harbor Shores as the guarantor for payment of the bills instead of the 69 individual residents of Harbor Shores. (TR 699-700) Staff believes that Harbor Shores is the customer of record because Harbor Shores holds the agreement for service and is held liable for the payment of that service. Staff does not agree with KWRU that Rule 25-30.320(2)(f), F.A.C. and the Utility's tariff give KWRU the right to discontinue service to the individual customers. Both the rule and the tariff refer to the "customer," and in this instance Harbor Shores is the customer, not the individual residents of Harbor Shores.

Harbor Shores has two FKAA master meters that measure all water flows to the Harbor Shores community and its residents. (EXH 89) Harbor Shores believes the HOA should be billed a

lower rate based on the meter equivalents for its two FKAA master meters, which is 16 ERCs, much less than the 69 ERCs for the total individual units. (EXH 89) In the past, the Commission has analyzed the demand behind a master meter to determine if it is equitable, based on demand and demographics, to be billed based on the meter size for communities such as Harbor Shores.<sup>19</sup> As testified to by witness Johnson, Harbor Shores is a unique situation unlike Sunset Marina, Meridian West, and Flagler Village, because the residences within Harbor Shores are individually metered by the FKAA. (TR 166-167; TR 626-627)

KWRU's agreement with Harbor Shores specifies that each unit owner was responsible for paying the Utility's approved tariff charge of \$2,700 per ERC for a total of 69 ERCs of capacity reservation. (EXH 103) Staff believes that Harbor Shores should be billed as a general service customer based on 69 ERCs to reflect the capacity Harbor Shores reserved when the system capacity charges were paid. Staff believes that if billing is allowed based on the size of the two FKAA meters, then the Utility would not be adequately compensated for the demand Harbor Shores' residents are placing on the system. Therefore, Staff recommends that Harbor Shores' rate structure should consist of a BFC based on 69 ERCs and a gallonage charge with a 10,000 gallon cap per ERC as shown on Schedule No. 4.<sup>20</sup> Billing Harbor Shores a rate based on 69 ERCs should ultimately result in no overall change to Harbor Shores' bill.

### **CONCLUSION**

Based on the above, staff recommends that Harbor Shores should be classified as a general service customer, but should continue to be billed a BFC based on 69 ERCs and a gallonage charge with a 10,000 gallon cap per ERC.

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<sup>19</sup> See Order Nos. PSC-16-0525-PAA-WS, in Docket No. 160030-WS, issued November 21, 2016 *In re: Application for increase in water rates in Lee County and wastewater rates in Pasco County by Ni Florida, LLC.*; PSC-15-0142-PAA-SU, in Docket No. 130178-SU, issued March 26, 2015 *In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company.*

<sup>20</sup> Id.



**Issue 19:** What are the appropriate bills and gallons to use to establish test year revenues and rates? (Partially stipulated)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate bills and gallons to use to establish test year revenue and rates are reflected in Stipulation 9, which addresses test year revenues.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Friedrich)

**Position of the Parties**

**KWRU:** As stated in the PAA Order.

**A. For Phase I, if applicable**

**OPC:** For Phase I, it is appropriate to use the billing determinants approved in the PAA Order. Although it is evident that the 2015 and 2016 revenues and billing determinants were higher than those in the 2014 test year, OPC's revenue requirement calculations based on the PAA Order billing determinants are reasonable for setting Phase I rates.

**County:** Agree with OPC that the number of bills and gallons used to set Phase I rates in the PAA Order are reasonable, although understated because they do not accurately reflect growth in bills and gallons consistent with KWRU's projected growth rate of 7.06 percent per year.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Consistent with OPC's adjustments to Phase II revenues and to comply with the matching principle, 2016 billing determinants should be increased to reflect projected customers and consumption that will be online for the first year of operation of the WWTP expansion. The actual increase in 2015 revenues should be used to estimate bills and gallons by customer class and the 2015 levels should be escalated by 5%, consistent with OPC's used and useful projection.

**County:** The appropriate numbers of bills and gallons to be used in establishing Phase II revenue requirements and setting KWRU's new permanent Phase II Rates are, consistent with the principle that rates must be based on costs and sales during the time when rates are to be in effect, as follows:

Bills: 22,523  
Gallons: 246,405,390 (246,405 kgal)

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU stated that the appropriate bills and gallons to use to establish test year revenue and rates are stated in the PAA Order and reflected in Stipulation 9. (TR 778)

**OPC**

In its brief, OPC contended that the appropriate bills and gallons to use to establish test year revenue and rates for Phase I are the billing determinants that were approved in the PAA Order. (OPC BR 27) OPC noted that the revenues and billing determinants of 2015 and 2016 are higher than in the 2014 test year. (TR 353) OPC argued that for Phase II, the test year revenue adjustments are consistent with the matching principle and the bills and gallons used to calculate Phase II rates should be increased to accurately depict the projected level of customers that will be connected during the initial operation year of the wastewater treatment expansion. (TR 380) OPC recognized that the Utility's 2015 Annual Report depicted an increase in revenues since 2014 of 12 percent. (EXH 65; EXH 28) OPC argued that the increase in 2015 revenues should be used to estimate the number of bills and gallons by customer class. This will reestablish the number of 2015 bills and gallons to maintain consistency with the method used by the Commission in the PAA Order. (TR 380) To determine the appropriate 2016 billing determinants, OPC stated the 2015 levels should be increased by five percent, consistent with OPC witness Woodcock's used and useful projection. (TR 380; EXH 20) Exhibit PWM-3, Schedule 4-B illustrates OPC's calculations for 2016 bills and gallons. (TR 351-354; EXH 25; EXH 28) OPC asserted the escalated 2016 bills and gallons are appropriate for setting Phase II rates for the Utility.

**County**

The County agreed with OPC on the number of bills and gallons used to set Phase I rates consistent with Stipulation 9. (County BR 26) In addition, the County asserted 22,523 bills and 246,405,000 gallons are appropriate in setting Phase II rates as stated in OPC witness Merchant's testimony. (EXH 25; EXH 28) Additional gallonage values were identified by County witness Santamaria of 87,810 gpd and Utility witness Castle of 82,250 gpd which equates to 30,000,000 to 32,000,000 per year. (TR 467) If these additional gallons were added to witness Merchant's test year gallons of 213,338,000 on PMW-2 page 9 of 9, the total would be close to the annual projected gallonage value for 2017 of 246,405,390. (County BR 28) The County alternatively advised for the growth estimate of 7.06 percent provided by KWRU witness Johnson to be utilized instead of the five percent witness Merchant used to project the bills and gallons for setting Phase II rates. (County BR 28-29)

**Harbor Shores**

In their brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

**ANALYSIS**

The appropriate bills and gallons to use in establishing test year revenue and rates are reflected in Stipulation 9, which addresses Phase I test year revenues. As discussed in Issue 2, staff does not believe it is necessary for the Commission to approve Phase II test year bills and gallons as advocated by OPC and the County.

**Issue 20:** What is the appropriate amount of miscellaneous revenues to be included in test year revenues and rates? (Partially stipulated)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of miscellaneous revenues to be included in test year revenue and rates is \$72,619, as reflected in Stipulation 9 which addresses test year revenues.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Friedrich)

***Position of the Parties***

**KWRU:** As stated in the PAA Order, increased for the increase in miscellaneous rates.

***A. For Phase I, if applicable***

**OPC:** See Stipulation 9.

**County:** Agree with OPC and with the adjustments addressed in the stipulations agreed to by the Parties.

**Harbor Shores:** Agrees with OPC.

***B. For Phase II, if applicable***

**OPC:** Phase II projected 2016 miscellaneous revenues should be \$86,421. Starting with the actual 2015 miscellaneous revenues of \$104,651, removing the \$19,500 received for reuse testing from MCDC, reducing the MCDC Lift Station cleaning income by \$2,081 to match the PAA tariff rate, then escalating the remaining miscellaneous revenue by 5%, an increase of \$3,276, results in an increase to adjusted miscellaneous revenues of \$13,802. Additionally, 2016 reuse revenues, at a minimum, should be \$61,098.

**County:** The appropriate amount of miscellaneous revenues for Phase II is at least \$86,421, as supported by OPC Witness Merchant. A better estimate is Witness Merchant's value escalated by 7.06 percent, KWRU's best estimate of growth, which value is \$92,522.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU stated the appropriate miscellaneous revenues to be included in test year revenues and rates are in the PAA Order, but should be increased to reflect the incremental increase in its proposed miscellaneous service charges. The proposed miscellaneous service charges include a portion of benefits and insurance in each charge applicable to the appropriate employee. (EXH 95; TR 252-53) The Utility argued this methodology ensures that the proportion of benefits and insurance attributable to directly-billable labor is not subsidized by customers who do not receive the services. (TR 254)

**OPC**

In their brief, OPC explained the appropriate amount of miscellaneous revenues to be included in test year revenues and Phase I rates are reflected in stipulation 9. (OPC BR 28) OPC asserted that adjustments should be made to the Utility's 2015 general ledger miscellaneous revenues of \$104,651. (OPC BR 28) In determining the appropriate miscellaneous revenues for Phase II rates, OPC witness Merchant adjusted aspects of the Utility's miscellaneous revenue such as Monroe County Detention Center (MCDC) Income, water testing, and reuse revenue. In addition, to calculate the remaining components, miscellaneous revenues were increased for Phase II rates by a growth factor of five percent. (TR 357-359; EXH 25) Witness Merchant utilized this same growth factor in OPC's pro forma 2016 Phase II rate projections. (TR 358; EXH 25) Therefore, OPC contended the appropriate miscellaneous revenues to be included in test year revenues is \$86,421. (EXH 25; OPC BR 28)

**County**

In their brief, the County agreed with OPC's position on this issue. (County BR 29-30) In addition, the County conceded the appropriate amount of miscellaneous revenues to be included for test year revenues for Phase II rates is at least \$86,421 as also supported by witness Merchant. (TR 357-358)

According to the County, it is more appropriate to use KWRU's estimation growth of 7.06 percent per year along with witness Merchant's projected miscellaneous revenues of \$86,421 which results in \$92,522 of miscellaneous revenues to be included in test year revenues for Phase II. (EXH 25)

**Harbor Shores**

In their brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

## **ANALYSIS**

The appropriate amount of miscellaneous revenues to be included in Phase I test year revenue and rates is \$72,619, as reflected in Stipulation 9 which addresses test year revenues. As discussed in Issue II, staff does not believe it is necessary for the Commission to approve Phase II miscellaneous revenues as advocated by OPC and the County. However, in Issue 32, staff recommends the appropriate miscellaneous revenues to remove prior to designing service rates.

**Issue 21:** What is the appropriate amount of test year revenues for KWRU's wastewater system? (Fall-out) (Partially stipulated)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of test year revenues are \$1,534,799, as reflected in Stipulation 9. Accordingly, KWRU's reflected test year revenues of \$1,554,861 should be reduced by \$20,062.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Friedrich)

**Position of the Parties**

**KWRU:** Stipulation.

**A. For Phase I, if applicable**

**OPC:** The test year revenues for Phase I before any revenue increase should be \$1,534,799.

**County:** Agree with OPC that the appropriate Phase I test year revenues should be \$1,534,799.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Phase II test year revenues for before any revenue increase should be \$1,701,630.

**County:** The appropriate Phase II test year revenues should be at least \$1,786,711, which is 5 percent greater than the amount recommended by OPC based on a 2016 test year, in order to reflect the fact that KWRU's sales are likely to be 5 to 7 percent greater in 2017, when the new rates will be in effect, than in 2016.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU agreed with Stipulation 9, which stated test year revenues are \$1,534,799 (KWRU BR 19)

**OPC**

OPC stated the appropriate amount of test year revenues for Phase I rates for KWRU's wastewater system are \$1,534,799, as set forth in Stipulation 9. (OPC BR 29) The appropriate amount of test year revenues for Phase 2 rates are \$1,701,630. (EXH 68; OPC BR 29)

### **County**

The County believes the appropriate Phase I test year revenues should be \$1,534,799. (County BR 30) However, the County argued the appropriate amount of test year revenues for KWRU's wastewater system for Phase II should be at least \$1,786,711, which is five percent greater than the recommended amount by OPC based on a 2016 test year. The County argued that KWRU's sales are anticipated to be five to seven percent greater in 2017 when the new rates will be going into effect. The County believed that Phase II rates should not go into effect until the new key assets are serving customers. (County BR 31)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

## **ANALYSIS**

In its updated filing, KWRU reflected test year revenues of \$1,554,861. The appropriate amount of Phase I test year revenues are \$1,534,799, as reflected in Stipulation 9. Accordingly, staff recommends that test year revenues be reduced by \$20,062. As discussed in Issue 2, staff does not believe it is necessary for the Commission to approve Phase II miscellaneous revenues as advocated by OPC and the County.



**Issue 22:** What adjustments, if any, should be made to account for the audit adjustments in each of Staff’s Audit Findings 3, 4, 5, 10, and 11 to operating expenses? (Stipulations 3, 4, 5, and 10) (Norris)

**Approved Stipulations:** O&M expenses (contractual services-other) should be increased by \$1,200 for survey fees based on the Staff Audit Finding 3. Test year amortization of CIAC should be decreased by \$14,003 based on Staff Audit Finding 4. Depreciation expense should be decreased by \$5,489, based on Staff Audit Finding 5. O&M expenses should be decreased by \$4,512, based on Staff Audit Finding 10 and \$6,276, based on Staff Audit Finding 11. The stipulated adjustments to operating expenses are set forth in Table 22 below.

**Table 22-1  
 Stipulated Adjustments to Operating Expense**

Stip.	Audit Finding	O&M Expense	Depreciation Expense	CIAC Amortization Expense	Total
3	3	\$1,200	\$0	\$0	\$1,200
4	4	0	0	14,003	14,003
5	5	0	(5,489)	0	(5,489)
10	10	(4,512)	0	0	(4,512)
10	11	<u>(6,276)</u>	<u>0</u>	<u>0</u>	<u>(6,276)</u>
	Total	<u>(\$9,588)</u>	<u>(\$5,489)</u>	<u>\$14,003</u>	<u>(\$1,074)</u>

**Issue 23:** What are the appropriate annual levels of O&M expenses for implementing advanced wastewater treatment (AWT)?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate level of O&M expenses to reflect the implementation of AWT operations is \$1,647,853. Accordingly, pro forma O&M expense should be decreased by \$341,471.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Hill, Graves, Norris)

***Position of the Parties***

**KWRU:** For a single phase, \$2,220,932, plus amortization of additional actual rate case expense.

***A. For Phase I, if applicable***

**OPC:** Since KWRU did not implement AWT until January 2016, Phase I O&M should be no greater than the actual/annualized expense levels for 2016. January-April 2016 expense accounts should be annualized for a full year, and treatment-related expenses should be multiplied by 3.25 to recognize increased year-end flows. Adjustments should reduce O&M by \$89,371 (e.g., stipulations, affiliate management fees, accounting/engineering fees, insurance, and rate case expense). Total Phase I O&M should be decreased by \$301,461.

**County:** Agree with OPC that total Phase I O&M should be decreased by \$301,461.

**Harbor Shores:** Agrees with OPC.

***B. For Phase II, if applicable***

**OPC:** Phase II O&M expenses should be \$1,809,082. Adjustments are appropriate for Stipulations 3 & 10, and Issues 24-28. Further reductions of \$10,028 and \$29,223 made in the PAA Order to reduce expenses to reflect OPC-adjusted consumption levels for the year the plant expansion is placed in-service are appropriate. Lastly, KWRU's pro forma expense increases of \$245,501 added in witness Swain's direct testimony should be disallowed as excessive and unsupported.

**County:** Agree with OPC that Phase II O&M expenses are \$1,809,082.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU argued that the estimates for O&M expenses contained within the revised MFRs accurately depict the O&M costs associated with operating the Utility once the expanded plant is in service. (KWRU BR 20) KWRU asserted that the expanded plant will necessitate additional costs regardless of flow levels and regardless of the causes of those flow levels. (KWRU BR 20) KWRU contended that simply calculating a cost per gallon, does not take into account the fixed costs associated with operating the expanded plant, including minimum chemical inputs and power. (TR 605-606; KWRU BR 20) KWRU witness Castle testified that once the expanded wastewater treatment plant is in operation, costs for these categories do not decrease proportionately with flows. (TR 576, 593; KWRU BR 20) KWRU elaborated that sludge hauling must be undertaken for three plants, rather than two, regardless of flow levels. (TR 576; KWRU BR 20) KWRU further argued that the operation of the plant requires the same amount of power, other than pumping power, and aeration and chemical feed rates do not decrease proportionately with flows. (TR 576; KWRU BR 20)

**OPC**

OPC argued that the PAA Phase I revenue requirement not only allowed a full level of pro forma O&M expenses to implement AWT for the existing plant, but also an increment for an additional amount of expenses to be incurred after the new plant expansion is placed into service. (TR 363-365; OPC BR 30) OPC asserted that because KWRU did not implement AWT on its existing plant until January 1, 2016, the historical test year does not include sufficient actual levels of costs to implement AWT on the existing plant. (OPC BR 30) OPC contended that Phase I O&M expenses for AWT implementation should be no more than the actual annualized levels incurred for 2016. (TR 363-365; OPC BR 30)

Lastly, OPC argued that Phase II O&M expenses should be \$1,809,082. (OPC BR 31) OPC asserted that Phase II O&M expense adjustments should reflect Stipulations 3 and 10, counting/engineering fees (Issue 24), management fees (Issue 25), rate case expense (Issue 26), amortization of accounting fees to correct the Utility's books and records for 2007-2011 (Issue 27), and the amortization of legal fees for the permit litigation fees incurred which should properly be capitalized (Issue 28; OPC BR 32).

**County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC on Phase I and II. (County BR 32; Harbor Shores BR 2)

**ANALYSIS**

KWRU requested pro forma expenses associated with upgrading its operations to meet AWT Standards required by Section 403.087(10), F.S., with a deadline of January 1, 2016. (TR 80-81) Section 367.081 (2)(a)2.c., F.S., provides that the Commission shall approve rates for service which allow a utility to recover the full amount of environmental compliance costs. Recognizing that the requested expenses are needed for compliance with the Utility's DEP Permit, staff

believes that KWRU should be permitted recovery of reasonable and prudent expenses associated with the AWT upgrade.

In its updated filing, the Utility requested a total of \$840,950 of pro forma O&M expense for estimated increases in the following expenses: salaries and wages, employee pension and benefits, general liability insurance, workmen's compensation insurance, sludge disposal, purchased power, chemicals, materials and supplies, contractual services-engineer, contractual services-testing, contractual services-other, and miscellaneous. (EXH 17, P 8) However, the Utility subsequently decreased its request by \$43,323 in its rebuttal testimony to correct an error in estimating the increase in general liability insurance (TR 777; EXH 79, P 6) Staff's recommended adjustments are discussed below.

### **Annualized AWT O&M Expense**

As affirmed by KWRU witness Swain, the Utility's test year letter clarified that the AWT O&M expenses in its request were not growth related. (TR 806) KWRU operations were required to meet AWT Standards on January 1, 2016. (TR 80) Actual expense data for January 2016 through September 2016 was provided in response to discovery. (EXH 52, BSP 103; EXH 56, BSP 1563; EXH 62, BSP 1615) Therefore, the actual data through September 2016 can reasonably and adequately gauge O&M expenses associated with AWT operation.

OPC witness Merchant testified that it is appropriate to make pro forma adjustments for the implementation of AWT operation on the existing plant. (TR 365) Witness Merchant provided an estimate based on the actual data from January to April 2016. (TR 365) Witness Merchant multiplied the majority of the expense accounts by 3 to reflect a full year of expenses. (TR 365) For chemicals, purchased power and sludge hauling expenses, witness Merchant multiplied the first four months by 3.25 instead of 3 to recognize that the flows generally increase in the last quarter of the year. (TR 365)

In response to OPC's Phase I O&M expense adjustments, KWRU witness Swain testified that given the nature of pro forma expenses being estimated, the passage of time makes additional data available to rely on for evaluating original projections. (TR 775) Witness Swain further stated that it is appropriate to consider this new information in projections, as OPC witness Merchant did in her Phase I O&M adjustments. (TR 775) However, witness Swain ultimately asserted that the revised pro forma AWT O&M expenses in her rebuttal testimony were the appropriate level. (TR 775-777)

For Phase II O&M expenses, witness Merchant adjusted pro forma expenses provided by the Utility using another method. (TR 369) However, staff believes that witness Merchant's methodology for determining Phase I O&M expenses, which relies on known information for 2016, is adequate to evaluate the Utility's pro forma O&M expense request, as characterized in its test year letter. Similar to OPC, staff annualized the actual costs in order to determine a full year of costs. However, staff had the benefit of additional 2016 data.

Additionally, witness Merchant applied her Phase I methodology to all O&M expense accounts. (TR 365-366) Staff believes it is reasonable to evaluate the level of all O&M expenses in order to best reflect the total effect of upgraded AWT operations. Therefore, in addition to the expenses included in KWRU's pro forma request, staff also annualized expenses for contractual

services-accounting, contractual services-legal, and transportation in its analysis.<sup>21</sup> However, for reasons addressed subsequently, staff does not believe this methodology is appropriate to evaluate the Utility's pro forma expense request for salaries and wages, pensions and benefits, and workman's compensation insurance.

For general liability insurance, contractual services-engineer, contractual services-accounting, contractual services-legal, contractual services-testing, contractual services-other, transportation, and miscellaneous expenses, staff performed a straight line annualized calculation. In other words, staff made no adjustments to these costs based on flows. This is consistent with the approach taken by witness Merchant and is supported by record evidence which identified costs that can be correlated to flows. (EXH 63, BSP 1642-1643)

For sludge disposal, purchased power, chemicals, materials and supplies, the annualized calculation was based on historic consumption patterns in order reasonably capture months of higher flows. Based on this review, flows for 2016 do not appear representative of a typical year. Therefore, staff increased costs to reflect flows based on historic growth rates. As with the previously discussed O&M accounts, staff's approach is consistent with the approach taken by witness Merchant and is supported by record evidence which identifies costs that can be correlated to flows. (EXH 63, BSP 1642-1643)

For the specific expenses discussed, the Utility's updated filing reflected a total pro forma increase of \$591,188 for AWT operations. (EXH 17, P 8) Staff believes the appropriate level of additional O&M expenses necessary to reflect AWT operations is the incremental difference between the annualized 2016 data and the 2014 adjusted test year amount for each expense. Staff compared this calculation to the Utility's pro forma request and recommends that pro forma O&M expenses should be decreased by \$337,708.

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<sup>21</sup> As of September 2016, the Utility had not incurred any building/property rental expense in 2016. (EXH 52, BSP 103; EXH 56, BSP 1563; EXH 62, BSP 1615) As such, staff did not adjust the test year amount due to the lack of data available at the time.

**Table 23-1  
 Adjustments to Annualized Pro Forma O&M Expenses**

<b>Expense Description</b>	<b>Annualized 2016 Total</b>	<b>Change over Adjusted Test Year</b>	<b>Utility Requested</b>	<b>Recommended Adjustment</b>
Sludge Disposal	\$77,177	\$37,783	\$109,334	(\$71,551)
Purchased Power	173,548	26,837	81,164	(54,327)
Chemicals	184,229	151,899	257,071	(105,172)
Materials & Supplies	31,119	(12,549)	31,562	(44,111)
Contractual Services-Engr.	18,650	12,033	4,730	7,303
Contractual Services-Acct.	30,967	7,739	\$0	7,739
Contractual Services-Legal	6,018	4,519	\$0	4,519
Contractual Services-Testing	18,243	1,268	20,673	(19,405)
Contractual Services-Other	45,054	7,252	28,557	(21,305)
Transportation	24,092	1,064	\$0	1,064
Insurance-General Liability	41,444	5,496	50,023	(44,527)
Advertising Expense*	1,075	(1,439)	(1,564)	125
Miscellaneous Expense	44,684	11,577	9,638	1,939
<b>Total</b>	<b>\$697,400</b>	<b>\$253,480</b>	<b>\$591,188</b>	<b>(\$337,708)</b>

\*The Utility's pro forma request reflects an adjustment to correct an error in the test year.

Source: EXH 52, BSP 103; EXH 56, BSP 1563; EXH 62, BSP 1615

### **Pro Forma Salaries**

The Utility requested a pro forma increase of \$194,000 to salaries and wages expense for four additional field positions — an administrative assistant, a licensed operator, a system technician/mechanic, and a helper to assist with sludge removal. (EXH 9, P 97-98; EXH 17, P 8; EXH 49, BSP 15) Staff believes the inclusion of the new field positions are reasonable based on the additional labor requirements necessary to meet AWT standards. (EXH 9) The new administrative position is also reasonable given the additional administrative needs that will arise as a direct result of increased operations. (EXH 9)

As testified by KWRU witness Johnson, the Utility has lost numerous employees in the past few years to competitors. (TR 75) The Utility also provided a status update of the AWT positions, which included all other positions for the past two years that reflected employee turnover in 2016. (EXH 49, BSP 25) The Utility requested the additional AWT-related full-time positions based on the employment level in the 2014 test year. OPC annualized this expense, along with all others, in its Phase I revenue requirement calculation based on the premise that total Phase I O&M expense should not exceed the levels incurred in 2016 because it represented the increase in O&M expenses for the existing plant associated with operating at AWT standards. However, in its Phase II revenue requirement calculation, which reflects the inclusion of the pro forma plant expansion, OPC included salaries and wages expense associated with all four positions. As addressed in Issue 2, staff does not believe that two-phased rates are necessary in light of the estimated completion date of the pro forma plant expansion. Although useful to evaluate and adjust other AWT-related expenses, an annualized calculation of 2016 salaries and wages expense does not accurately reflect the expense associated with the total employment level

requested by KWRU and agreed upon by OPC in its Phase II revenue requirement. Therefore, staff believes it is not appropriate to adjust the Utility's pro forma request based on annualized 2016 salaries and wages expense.

Instead, staff evaluated the individual salaries that comprised KWRU's total pro forma salaries and wages expense. The Utility provided salary and wage comparisons to support the salaries for the positions it requested due to the needs of upgraded AWT operations. (EXH 49, BSP 23-24) The comparisons are adequate to support the requested salaries and are from local sources. KWRU witness Swain testified that the administrative assistant and the helper to assist with sludge removal had both been hired at \$46,000, which the Utility provided documentation to support. (TR 775-776; EXH 49, BSP 97; EXH 62, P 1615) Staff recommends an adjustment of \$4,000 to decrease the recommended salary of the administrative assistant to reflect the actual salary for the position. In addition, the salary of the sludge removal helper should be increased by \$2,000 to reflect the maximum of the range provided by the Utility. This results in a total decrease of \$2,000 to salaries and wages expense.

The Utility also included pro forma increases of \$47,135 to employee pension and benefits and \$8,627 to workman's compensation insurance. (EXH 17, P 8) KWRU explained that both adjustments directly corresponded to the additional salaries requested in its pro forma O&M expense. (EXH 27, P 1) As such, it is also inappropriate to use the annualized 2016 level of each expense to adjust the Utility's pro forma request because both expenses are directly dependent on staffing levels. The Utility's requested pro forma pensions and benefits expense is 24.0 percent of its requested salaries and wages expense and pro forma workman's compensation insurance is 4.4 percent, as compared to the historic test year percentages of 15.7 percent and 3.5 percent, respectively. Using 2016 levels of each expense results in a ratio of 20.4 percent and 3.4 percent for pension and benefits and workman's comp insurance, respectively. (EXH 52, BSP 103) Based on this comparative analysis, staff believes the percentage of the Utility's requested workman's compensation insurance expense is reasonable.

Additionally, KWRU witness Johnson justified the need for increased pensions and benefits, specifically in light of the turnover due to competitors. (TR 74-76) As such, staff believes that the ratios reflected in the Utility's pro forma request should be used to make corresponding adjustments to the decrease in salaries. Based on staff's recommended pro forma salaries and wages expense, the corresponding adjustment to employee pensions and benefits and workman's comp insurance expenses should be a decrease of \$1,055 and \$708, respectively.

## **CONCLUSION**

Based on staff's recommended adjustments to pro forma AWT O&M expenses, the appropriate level of O&M expenses to reflect the implementation of AWT operations should be \$1,647,853. This total does not reflect the additional O&M expenses addressed in Issues 25-28. Accordingly, pro forma O&M expense should be decreased by \$341,471 (-\$337,708 - \$2,000 - \$1,055 - \$708).

**Issue 24:** What adjustments, if any, should be made to pro forma contractual services accounting and engineering fees?

**Recommendation:** Contractual services-accounting expense should be decreased by \$12,350. No adjustment is necessary for contractual services-engineering expense. (Hill, Sowards, Norris)

**Position of the Parties**

**KWRU:** None.

**OPC:** The \$12,350 pro forma increase for accounting services should be disallowed. The additional work performed in the test year did not warrant an increase on a going-forward basis and the Utility indicated that the increase in wastewater treated would not increase the prospective amount of accounting transactions relative to the amount of flows received. Engineering expense should also be decreased by \$653 to correct expenses for an invoice that was capitalized.

**County:** Agree with OPC that KWRU's proposed \$12,350 pro forma increase for accounting services should be disallowed and an additional disallowance of \$653 should be made to correct expenses for a capitalized invoice.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

The Utility stated that no adjustment should be made for contractual accounting and engineering fees. (KWRU BR 20) In its brief, KWRU cited the large number of documents requested during staffs audit as well as KWRU's limited staff available for in-house accounting services as justifiable reasons for the increase in contractual services accounting. (EXH 9, P 4, 96; KWRU BR 22) The Utility also stated that the in-house staff does not possess the skills and experience necessary to provide the functions of a Certified Public Accountant (CPA). As a result, the increased cost in contractual services accounting are necessary. (EXH 51, BSP 60; KWRU BR 22)

**OPC**

OPC argued that the additional accounting services should be disallowed. (BR 32) The additional work performed did not warrant an adjustment to accounting fees on a going-forward basis. (OPC BR 32) Additionally, KWRU indicated that the amount of accounting transactions would not increase with the amount of wastewater treated. (TR 360)

**County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC's position (County BR 32; Harbor Shores BR 2)



## **ANALYSIS**

Staff addressed KWRU's pro forma request for contractual services-engineering expense in Issue 23, as it was related to upgrading operations to meet AWT Standards. Therefore, no further adjustments are necessary.

In its MFRs, KWRU reflected an expense of \$25,762 for contractual services-accounting in the test year. (EXH 17, P 6) This amount included a test year adjustment to increase the expense by \$12,350 for additional accounting services. (EXH 17, P 6) In response to a staff data request, the Utility stated that the \$12,350 increase was based on an additional hour of bookkeeping for 49.5 weeks at an hourly rate of \$250 an hour. (EXH 9, P 2) Therefore, staff treated this as a pro forma request.

As discussed in Issue 23, the expense for contractual services-accounting was included in staff adjustments to reflect the total effect of AWT operations on O&M expenses. Staff believes that the pro forma adjustment made in Issue 23 adequately reflects the need for additional contractual accounting services on an ongoing basis. As such, the additional pro forma request is not necessary and contractual services-accounting expense should be decreased by \$12,350.

## **CONCLUSION**

No adjustment is necessary for contractual services-engineering expense. Based on the above, contractual services-accounting expense should be decreased by \$12,350.

**Issue 25:** What adjustment, if any, should be made to KWRU's test year expenses for management fees charged by Green Fairways?

**Recommendation:** Contractual services-management expense should be reduced by \$60,000, as it is duplicative in nature. (Sewards, Norris)

**Position of the Parties**

**KWRU:** None.

**OPC:** Management fees should be decreased by \$60,000 for an affiliate transaction that is not necessary for the provision of regulated utility service. The majority of the management duties provided by Green Fairways is duplicative of the in-house officers and management KWRU has hired since its last rate case. The services provided by the affiliate primarily benefit the Utility's shareholder and the affiliate does not provide true, independent third party oversight over the Utility.

**County:** Agree with OPC that KWRU's proposed management fees should be decreased by \$60,000.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU argued that no adjustments should be made to the management fees charged by Green Fairways. (KWRU BR 22) The Utility contended that Mr. William Smith, an officer and shareholder of Green Fairways, gives his personal guarantee to secure loans for KWRU and without his guarantee, the Utility would not be able to obtain these loans. KWRU also contended that the \$60,000 management fee is well below the market rate of 3 percent for management fees. (EXH 49, BSP 26-30; KWRU BR 22) The Utility stated that without proper compensation for providing this guarantee, there is no incentive to utilize debt, thus, incentivizing the Utility to instead eliminate liability and ultimately raising revenue requirements and costs for customers. (KWRU BR 23) Green Fairways also oversees legal services and manages the Utility's President. (TR 608)

**OPC**

OPC testified that management fees should be decreased by \$60,000. (OPC BR 33) OPC believes that the Commission properly found that these services primarily benefit Mr. Smith as a shareholder in the PAA proceeding. (TR 362; OPC BR 33) OPC stated that the majority of management duties are duplicative of the in-house management duties. (TR 362; OPC BR 33) OPC also believes that since Mr. Smith owns both companies, they are related parties and the costs are unreasonable. (EXH 9, P 102; OPC BR 34)

## County and Harbor Shores

In their briefs, the County and Harbor Shores agreed with OPC's position. (County BR 32; Harbor Shores BR 2)

### ANALYSIS

The Utility included contractual services-management expense of \$60,000 in the test year for management services provided by Green Fairways, Inc. (EXH 17, P 6) Mr. William Smith owns the controlling interest in Green Fairways. (TR 712) Mr. William Smith also owns the controlling interest in WS Utilities, the parent company of KWRU. (TR 712)

Staff believes that related party transactions require close scrutiny. However, the fact that the transaction is between related parties does not mean the transaction is per se unreasonable. It is the utility's burden to prove that its costs are reasonable.<sup>22</sup> The burden is even greater when the transaction is between related parties. The standard to use in evaluating affiliate transactions is whether those transactions exceed the going market rate or are otherwise inherently unfair.<sup>23</sup>

The Utility confirmed that the day-to-day operations were switched to full-time employees as opposed to solely contractual services. (EXH 9, P 6) A breakdown of each position was also provided. (EXH 9, P 86) In the listing of Mr. Johnson's responsibilities provided, it cited responsibilities including budgeting, capital planning, financial planning and reporting, review of bid packages, and financing. (EXH 9, P 89) Mr. Johnson also provides operational and personnel management. (EXH 9, P 89) KWRU stated that the president, Mr. Johnson, spends an "average 45 hours a week" handling day-to-day operations. (EXH 9, P 100) Further, the Utility asserted that Mr. Johnson performs other matters for KWRU outside of regular business hours, such as PSC hearings, wastewater workshops, Board of County Commissioners Meetings, and required continuing education training (WWTP Operator License). (EXH 9, P 100)

KWRU also provided responsibilities of Green Fairways in response to a data request. (EXH 9, P 102) In addition to Mr. Smith providing personal guarantee for loans, the Utility stated that Green Fairways supervises Mr. Johnson, provides property and financial management, conducts financial reports, and provides accounting services related to financing and equity for KWRU. (EXH 9, P 102)

Staff believes that the majority of responsibilities attributed to Green Fairways are duplicative of in-house management duties. As such, contractual services-management expense should be reduced by \$60,000.

### CONCLUSION

Based on the above, staff recommends that contractual services-management expense should be reduced by \$60,000 as it is duplicative in nature.

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<sup>22</sup> Florida Power Corp. v. Cresce, 413 So. 2d 1187, 1191 (Fla. 1982).

<sup>23</sup> GTE Florida Inc. v. Deason, 642 So. 2d 545 (Fla. 1994)

**Issue 26:** What is the appropriate amount of rate case expense?

**Recommendation:** The appropriate amount of rate case expense is \$430,828. This expense should be amortized over four years for an annual expense of \$107,707. Based on the Utility's updated filing, the annual amortization of rate case expense should be increased by \$9,045. (Frank, Norris)

**Position of the Parties**

**KWRU:** Actual rate case expense excluding the cost to respond to deficiencies through completion of the case. The amount expended through October 24, 2016 was \$396,994 with additional rate case expense of \$86,782 for a total rate case expense of \$483,776.

**OPC:** The final amount of rate case expense should be fully supported and reasonable. Duplicative and excessive costs should be removed for correcting MFR deficiencies. Duplicative, unsupported, and other costs not related to rate case expense should be removed. Only reasonable costs for customer notices, printing and shipping, and rate case travel expenses should be allowed.

**County:** Agrees with OPC.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, the Utility stated that actual rate case expense as of October 24, 2016, supported with documentation, was \$396,994. (EXH 52, BSP 14; KWRU BR 23) Based on the most recent actual and projected rate case expense submitted as evidence, the total rate case expense evidenced at trial would be \$461,126. (EXH 52, BSP 14; KWRU BR 23)

KWRU stated that although intervenors contend that certain legal expenses of Friedman & Friedman, P.A. and Smith Oropeza Hawks, P.L. are duplicative and not reasonable, the two firms have had a distinct separation of duties, and took measures to minimize legal expenses. (KWRU BR 24) The Utility detailed that Smith Oropeza Hawks served as primary litigation counsel, with Friedman & Friedman providing input and advisement; as such, the two firms have not overlapped on work performed, other than brief communications to divide work between the two firms. (KWRU BR 24) The Utility also stated Mr. Smith and Mr. Friedman attended Commission conference calls and participated in the conferences to ensure that no miscommunications existed and that work is not duplicated. (KWRU BR 25) Smith Oropeza Hawks has handled the discovery load using its lowest cost attorney to coordinate efforts of witnesses and draft discovery documents. (KWRU BR 25)

**OPC**

In its calculation of Phase I and II rates, OPC included \$38,005 to reflect the amortization of the Commission approved rate case expense in the PAA Order. (TR 369; OPC BR 34) OPC witness

Merchant testified that the final amount of rate case expense should be fully supported and reasonable, and should not be duplicative. (TR 367; OPC BR 34) OPC explained that adjustments should be made to remove duplicative and excessive legal fees, filing fees, and costs incurred to submit and address deficiencies in the MFRs, and to allow a reasonable estimate to complete the case. (TR 367; OPC BR 34)

OPC stated that it is not appropriate for KWRU to seek reimbursement from its ratepayers to have two attorneys reviewing the same work product and attending the same meetings. (TR 367, OPC BR 35) OPC asserted that it is the Utility's burden to demonstrate that the legal fees incurred are not duplicative and customers should not pay double (or any additional) rate case expense to have two attorneys review a data request, a discovery response, attend a conference call with staff, attend the prehearing conference, or pay for hours associated with "researching" different Commission functions such as the PAA process. (TR 367; OPC BR 35) OPC explained that at the November 7-8 hearing, OPC and Monroe County each had one attorney actively litigating their clients' case; whereas, KWRU had two. (OPC BR 35) OPC stated that when making adjustments to KWRU's "estimate to complete," the Commission should allow rate case expense for the participation of only one attorney, and disallow costs for the second as being unnecessary and unreasonable. (OPC BR 35)

Witness Merchant testified that accounting fees should be reduced to remove duplicate filing costs to correct MFR deficiencies, to remove duplicative, unsupported, and other accounting invoices not related to rate case expense, and to reflect a reasonable level of estimated hours to complete the case. (TR 367; OPC BR 35) OPC asserted that the Commission should scrutinize the accounting rate case expense invoices to determine whether the Utility's inadequate record keeping has increased the amount of accounting work performed to prepare the MFRs, address audit findings and respond to discovery, and whether any claimed rate case expense related to bringing the Utility's books into compliance included in rate case expense should be disallowed. (OPC BR 35) Witness Merchant also testified that adjustments are appropriate to reflect a reasonable cost for customer notices, printing and shipping, and rate case travel expenses. (TR 367; OPC BR 35)

### **County**

The County stated the final amount of rate case expense should be fully supported by record evidence, not duplicative, and reasonable. (TR 364-369; County BR 33) The County contended it is unreasonable for two attorneys to duplicate work. (TR 367; County BR 33)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC's position. (Harbor Shores BR 2)

## **ANALYSIS**

In its updated filing, the Utility requested \$394,648 for current rate case expense. (EXH 17, P 8) Staff made two requests for an update of the actual rate case expense incurred, with supporting documentation, as well as estimated amount to completion. On October 27, 2016, the Utility submitted its last revised update of actual and estimate rate case expense, through completion of

the hearing process, which totaled \$532,146. (EXH 18; EXH 52, BSP 112) A breakdown of the Utility's requested rate case expense is as follows:

**Table 26-1**  
**KWRU's Revised Rate Case Expense Request**

	<b>Actual</b>	<b>Additional Estimated</b>	<b>Revised Total</b>
Friedman & Friedman, PA	\$55,678	\$37,401	\$93,079
Smith, Oropeza, & Hawks, PL	169,508	44,100	213,608
Milian, Swain, & Associates	134,521	21,350	155,871
Jeffery Allen,	10,275	3,000	13,275
M&R Consultants	12,833	26,500	39,333
Weiler Engineering Corp.	5,804	0	5,804
Filing Fee	0	0	0
Customer Notices, Printing, and Shipping	4,707	293	5,000
Travel	2,465	2,804	5,269
BB&T Escrow Fee	<u>1,200</u>	<u>0</u>	<u>1,200</u>
<b>Total</b>	<b><u>\$396,991</u></b>	<b><u>\$135,448</u></b>	<b><u>\$532,439</u></b>

Source: EXH 18; EXH 52, BSP 112

Pursuant to Section 367.081(7), F.S., the Commission shall determine the reasonableness of rate case expense and shall disallow all rate case expense determined to be unreasonable. Staff has examined the requested actual expenses, supporting documentation, and estimated expenses as listed above for the current rate case.

**Smith, Oropeza, Hawks PL (SOH)**

KWRU witness Johnson provided documentation detailing rate case expense for the law firm Smith, Oropeza, Hawks, P.L. (SOH) totaling \$169,508. (EXH 52, BSP 112) During the PAA process, the firm of Friedman and Friedman (F&F) was retained as the primary counsel for KWRU before the Commission. (EXH 9, P 7) However, the Utility also retained the services of SOH to assist with the rate case during this time. Staff reviewed SOH's invoices and believes SOH's hours associated with data requests related to the Last Stand Litigation are reasonable since the firm has represented the Utility for over five years and has in-depth familiarity with the on-going operations and legal issues pertaining to the Last Stand litigation. In addition, staff believes given the location of the Utility, it would have been more costly for F&F to coordinate with the County to address its concerns with the rate increase. As such, staff believes SOH's hours related to discussions and meetings with the County regarding the rate case are reasonable.

Once the PAA Order had been protested by OPC and the County, SOH assumed the role of primary counsel, with F&F assisting only on items related to unique PSC regulatory matters. (EXH 51, BSP 75) OPC witness Merchant testified it is the Utility's burden to show that legal

fees incurred are not duplicative, however, she also testified that the Utility deserves equal representation as OPC and the County. (TR 367, 405) Given the complexity of the hearing process compared to the PAA process, and KWRU's effort to retain adequate representation, staff believes it was reasonable for KWRU to retain two legal counsels.

Staff reviewed itemized invoices from both law firms in an effort to remove any duplicative legal fees. As such, staff made adjustments for specific work performed by SOH that appear duplicative to F&F. Upon reviewing invoices between the two firms, staff believes that \$14,473 in fees and \$570 in costs for SOH are duplicative of F&F and should be removed.

SOH's last estimate to complete the rate case was dated as of August 31, 2016. (EXH 49, BSP 4) The estimate included fees for 126 hours at \$350/hr. totaling \$44,100. (EXH 49, BSP 4) Subsequent to the last updated estimate, KWRU provided invoices detailing actual SOH legal fees incurred. (EXH 52, BSP 112) Therefore, staff reduced the estimate to complete by the amount of actual expense provided subsequent to the last updated estimate. This results in a reduction of \$35,000 (100 hrs. x \$350)

In summary, staff recommends reducing SOH rate case expense by \$50,043 (\$14,473+ \$570 + \$35,000).

#### **Friedman & Friedman, P.A. (F&F)**

KWRU witness Johnson provided documentation detailing rate case expense for the law firm Friedman & Friedman, P.A. (F&F). (EXH 52, BSP 112) As mentioned above, F&F was retained as the primary counsel for KWRU before the Commission during the PAA process. (EXH 9, P 7) However, during the hearing process, SOH assumed the role of primary counsel, with F&F assisting only on items related to unique PSC regulatory matters. (EXH 51, BSP 75) Detailed invoices were provided through October 3, 2016. The actual fees and costs totaled \$47,988 with an estimated \$52,848 to complete the rate case, totaling \$100,836 (\$47,988 + \$52,848). (EXH 52, BSP 112)

F&F's actual expenses included the \$4,500 filing fee. (EXH 52, BSP 112) KWRU is responsible for the payment of the filing fee; therefore, staff removed the \$4,500 from legal costs and included it under a filing fee line item.

According to invoices, the law firm of F&F identified and billed the Utility \$1,188 related to the correction of MFR deficiencies. (EXH 52, BSP 112) The Commission has previously disallowed rate case expense associated with correcting MFR deficiencies because of duplicate filing costs.<sup>24</sup> Consequently, staff recommends an adjustment to reduce F&F's actual legal fees by \$1,188.

F&F's last estimate to complete the rate case was submitted as of October 22, 2016. The estimate included fees for 82 hours at \$360/hr. and additional costs for photocopies and attending the

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<sup>24</sup> Order Nos. PSC-05-0624-PAA-WS, issued June 7, 2005, in Docket No. 040450-WS, *In re: Application for rate increase in Martin County by Indiantown Company, Inc.*; and PSC-01-0326-FOF-SU, issued February 6, 2001, in Docket No. 991643-SU, *In re: Application for increase in wastewater rates in Seven Springs System in Pasco County by Aloha Utilities, Inc.*

Agenda Conference, totaling \$3,957. (EXH 49, BSP 4) Based on previously provided estimates for travel time to Tallahassee and Key West, staff reduced hours for travel resulting in a reduction of \$9,900 (\$360 x 27.5 hrs.). Further, staff decreased estimated travel costs \$2,134 for to remove hotel reservations paid for by KWRU and to reflect previously documented travel costs for similar trips. (EXH 52, BSP 112) Accordingly, staff recommends that F&F legal fees should be reduced by \$17,722 (\$4,500 + \$1,188 + \$9,900 + \$2,134).

### **Milian, Swain & Associates (MS&A)**

The Utility provided documentation detailing rate case expense for accounting services performed by Milian, Swain, & Associates (MS&A). The actual fees and costs totaled \$134,521 with an estimated \$46,000 to complete the rate case, totaling \$180,521 (\$134,521 + \$46,000). (EXH 18, P 75; EXH 52, BSP 112)

In regard to MS&A's actual expenses, staff reviewed the supporting documentation and identified 49.25 hours related to correcting deficiencies. (EXH 18, P 75) As stated previously, the Commission has previously disallowed rate case expense associated with correcting MFR deficiencies because of duplicate filing costs. As such, staff recommends that \$8,813 be removed from MS&A's accounting consultant fees.

MS&A's last estimate to complete the rate case was submitted as of September 30, 2016. (EXH 52, BSP 112) The estimate included fees related to discovery and preparation for the hearing totaling \$20,850 and travel costs totaling \$500. (EXH 18, P 75) Staff believes MS&A's estimate to complete is reasonable and therefore recommends no adjustment.

In summary, staff recommends reducing MS&A rate case expense by \$8,813.

### **Jeffery Allen, PA**

KWRU witness Johnson provided documentation detailing rate case expense for accounting services performed by Jeffery Allen, P.A. The actual fees and costs for Mr. Allen's services totaled \$10,275 with an additional \$3,000 estimated to complete the rate case. (EXH 52, BSP 112)

Descriptions of work performed on his invoices were vague in relation to the rate case, and staff requested further clarification. (EXH 9, P 7) According to the Utility's response to staff's third data request, Mr. Allen's work performed in the months of February, March, and July was associated with the restatement of prior year's annual reports. (EXH 9, P 7) As such, staff believes that 15 hours at \$250 an hour, for a total of \$3,750 should be removed as expense unrelated to the rate case.

Jeffery Allen's last estimate to complete the rate case was submitted as of July 1, 2016. (EXH 18, P 67) The estimate included \$3,000 to complete the rate case through the hearing. (EXH 18, P 67) Subsequent to the last updated estimate, KWRU provided invoices detailing actual accounting fees for Jeffery Allen incurred. Therefore, staff reduced the estimate to complete by the amount of actual expense provided subsequent to the last updated estimate. This results in a reduction of \$3,000 for estimate to complete.



In total, staff recommends reducing Jeffery Allen's' rate case expense by \$6,750 (\$3,750 + \$3,000).

### **M&R Consultants**

KWRU witness Johnson provided documentation detailing rate case expense for M&R Consultants through October 21, 2016. (EXH 52, BSP 112) The invoices included consulting services for engineering-related schedules, responses to staff's data requests, review staff recommendations, responses to discovery, and prepare and assist testimony. The actual fees and costs totaled \$12,175. Staff reduced this expense by \$188 to remove fees associated with deficiencies. (EXH 52, BSP 112)

M&R's last estimate to complete the rate case was submitted as of September 1, 2016. (EXH 18, P 94) The estimate included fees for 166 hours at \$150/hr. (EXH 18, P 94) Based on previously provided estimates for hearing preparation and travel time to Key West, staff reduced hours for travel and preparation for the hearing by \$19,688. In total, staff recommends reducing M&R rate case expense by \$19,875 (\$188 + \$19,688).

### **Weiler Engineering Corp.**

KWRU witness Johnson provided documentation detailing rate case expense for Weiler Engineering Corp. The actual fees and costs totaled \$5,096 for work associated with MFRs and the first data request. (EXH 52, BSP 112) Staff reviewed the invoices provided and believes this expense is reasonable. There was no estimate to complete provided in the record. Therefore, staff made no adjustments.

### **Filing Fee**

The Utility included \$4,500 in its MFR Schedule B-10 for the filing fee. (EXH 16, P 34) As mentioned above, the filing fee was also included in F&F's legal costs. Staff removed the filing fee from F&F's legal costs and included the \$4,500 as part of filing fee expense.

### **Customer Notices, Printing, and Shipping**

KWRU witness Johnson provided documentation detailing rate case expense for printing, shipping and customer notices, totaling \$4,707. (EXH 52, BSP 112) Staff reviewed invoices from FedEx, Office Max, U.S. Postmaster, and pay pal and believes these costs are reasonable. However, staff removed \$877 for a FedEx expense that was unsupported. Staff also increased this expense by \$20 to reflect incorrectly recorded invoice. (EXH 52, BSP 112) In total, actual rate case expense was decreased by \$857 (-\$877 + \$20)

Based on KWRU'S original filing, the remaining estimate to complete would be \$293 for final notices, based on the actual documentation provided. (EXH 16) However, the Utility provided the support documentation needed to verify the actual costs associated with two notices. (EXH 52, BSP 112) According to the invoices, costs for the initial notice and customer meeting notice totaled \$1,476. Based on the total cost for the first two notices, staff believes a reasonable estimate for the final notice is \$738 (\$1,476 / 2). Therefore the Utility's estimate for final notices should be increased by \$446. In total, staff recommends, reducing customer notice, printing, and shipping expense by \$411 (-\$857 + \$446).

**Travel**

KWRU provided documentation detailing rate case expense for travel totaling \$2,465. (EXH 52, BSP 112) The expenses supported were related to KWRU witness Johnson’s attendance at the PAA Agenda Conference. In addition, KWRU provided estimated hotel costs for three consultants to attend the hearing totaling \$2,804. (EXH 52, BSP 112) The documentation provided for the hotel reservations reflected an additional night for each consultant, two day prior to the technical hearing. Staff believes that this additional expense falls outside the timeframe of the technical hearing and should be removed from rate case expense. As such, travel expense should be decreased by \$1,297.

**BB&T Escrow Fee**

KWRU provided documentation for a BB&T escrow fee, in the amount of \$1,200, that was incurred when the Utility chose to implement the rates set forth in the PAA Order, subject to refund. (EXH 52, BSP 112) Pursuant to Rule 25-30.360, F.A.C., in no instance should maintenance and administrative costs associated with any refund be borne by the customers. The costs are the responsibility of, and should be borne by the Utility. As such, staff recommends removing the \$1,200 escrow fee.

**CONCLUSION**

Based upon the adjustments discussed above, staff recommends that KWRU’s revised rate case expense of \$532,146 be decreased by \$101,318 to reflect staff’s adjustments, for a total of \$430,828. A breakdown of staff’s recommended rate case expense is as follows:

**Table 26-2  
 Staff Recommended Rate Case Expense**

<b>Description</b>	<b>Utility Revised Act. &amp; Est.</b>	<b>Staff Adjustment</b>	<b>Recom. Total</b>
Legal Fees	\$306,687	(\$67,765)	\$238,922
Accounting Consultant Fees	169,146	(15,563)	153,583
Engineering Consultant Fees	45,137	(19,875)	25,262
Filing Fee	0	4,500	4,500
Customer Notices, Printing, and Shipping	5,000	(411)	4,589
Travel	5,269	(1,297)	3,972
BB&T Escrow Fee	1,200	(1,200)	0
<b>Total</b>	<b>\$532,439</b>	<b>(\$101,610)</b>	<b>\$430,828</b>

Source: (EXH 9, P 7; EXH 51, BSP 75; EXH 52, BSP 112)

The recommended total rate case expense of \$430,828 should be amortized over four years, pursuant to Section 367.0816, F.S.<sup>25</sup> This represents an annual expense of \$107,707. As stated

<sup>25</sup> Section 367.0816, F.S., was repealed pursuant to Ch. 2016-226, Laws of Florida, effective July 1, 2016. However, the statute was in effect when KWRU’s application was filed, and therefore shall remain applicable in this case.

previously, in its updated filing, the Utility requested \$394,648 for current rate case expense, with an annual amortization amount of \$98,662. (EXH 17, P 8) Based on the Utility's updated filing, the annual amortization of rate case expense should be increased by \$9,045 (\$107,707 - \$98,662).

**Issue 27:** What is the appropriate amount and accounting treatment of accounting fees incurred by the utility to restate its 2007 to 2012 Annual Reports?

**Recommendation:** The Utility's requested 5-year amortization of \$63,055 for restatement of the 2007 to 2012 Annual Reports should be disallowed. Staff's adjustments to reflect annualized 2016 levels in Issue 23 effectively negated all test year adjustments; therefore, no further adjustment is necessary. (Sewards)

**Position of the Parties**

**KWRU:** \$63,055.00 deferred and amortized over 5 years, per Audit Finding 6.

**OPC:** Amortization of \$11,678 for accounting costs to restate KWRU's books after the last rate case decision is unreasonable and should be disallowed. No restatement occurred, nor did the Utility make Commission-ordered adjustments from the last rate case. The ratepayers should not be required to pay *in future rates* for historical costs which should have been incurred annually to repair KWRU's records since the last rate case.

**County:** Agree with OPC that KWRU's proposed amortization of \$11,678 for accounting costs should be disallowed.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU stated that the expenditures for restatement of the 2007 to 2012 Annual Reports were necessary and have long-term benefits for the Utility and its rate payers. (TR 772; KWRU BR 25) The Utility asserted that amortization of the costs over a 5-year period are appropriate considering the amount of work that was put into preparing the books for staff auditors and to have proper recording of all records. (TR 772; KWRU BR 25)

**OPC**

OPC contended that KWRU failed to explain how this restatement provided any future benefit to ratepayers. (TR 341; OPC BR 36) OPC also stated the Utility failed to make Commission-ordered adjustments from the last rate case. (OPC BR 36) OPC asserted that ratepayers should not have to pay for the Utility failure to correctly maintain its books. (TR 341; OPC BR 36)

**County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC's position. (County BR 33; Harbor Shores BR 2)

**ANALYSIS**

In its MFRs, the Utility proposed a test year adjustment of \$11,678 to other deferred expenses to recognize an amortization of \$58,390 over a 5-year period for restatement of the annual reports

from 2007 to 2012. (EXH 17, P 6) KWRU stated that “Milian, Swain & Associates, Inc., (MSA) was engaged to review the Utility’s Annual Reports filed subsequent to the prior case. . . After review, MSA recommended adjustments to the Utility’s General Ledger, and prepared revised Annual Reports to reflect the adjustments.” (EXH 9, P 2) The Utility expanded on this explanation further by specifically citing plant improvements subsequent to the last rate case that were not properly capitalized. (EXH 51, BSP 58) KWRU witness Swain testified that correcting the books is an appropriate cost of the Utility. (TR 772)

Staff auditors reclassified \$4,668 from O&M Expense to the unamortized balance of deferred accounting fees, as accounting fees for the cost incurred to restate the 2007-2012 Annual Reports bringing the total amount deferred to \$63,055. (EXH 48, P 24)

Staff believes that it was appropriate for the Utility to correct its books. However, staff also believes that ratepayers should not have to pay for the correction of Utility’s books that were not properly kept from 2007 to 2012. Thus, staff recommends that the Utility’s requested 5-year amortization of \$63,055 for restatement of the 2007 to 2012 Annual Reports should be disallowed.

### **CONCLUSION**

Based on the above, the Utility’s requested 5-year amortization of \$63,055 for restatement of the 2007 to 2012 Annual Reports should be disallowed. Staff’s adjustments to reflect annualized 2016 levels in Issue 23 effectively negated all test year adjustments; therefore no further adjustment is necessary.

**Issue 28:** What is the appropriate amount and accounting treatment of fees associated with the legal challenge of KWRU's FDEP Permit Numbers FLA014951-012-DWIP, 18490-020, and 18490-021 for rate-setting purposes?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of fees associated with the legal challenge of KWRU's DEP permits is \$496,973, and it should be amortized over five years. The five-year amortization results in test year expense of \$99,395, which increases the requested amortization amount by \$3,908.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$487,564.07 deferred and amortized over 5 years, per PAA.

**A. For Phase I, if applicable**

**OPC:** The litigation fees of \$477,436 were incurred to obtain a permit for its plant expansion and new injection wells. Per the USOA, legal fees associated with construction should be capitalized with the plant construction costs and recovered over the life of the plant. These costs are not non-recurring expenses for renewing an operating permit. The adjusted balance should be recorded in CWIP, removed from working capital and O&M Expenses.

**County:** Agrees with OPC.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Phase II plant should be increased by \$477,436 to capitalize the legal fees incurred to litigate the construction permit for the treatment plant expansion and the two new injection wells. The Utility's requested deferred debit balance of \$467,625 for the litigation fees should be removed from Working Capital and test year O&M Expenses should be reduced by \$103,917 in amortization.

**County:** Agrees with OPC.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU argued that the Last Stand permit challenge was not only directed to the expansion of the plant, but to the operation of the plant. (KWRU BR 26) KWRU further asserted that Intent to Issue Permit issued by Department of Environmental Protection (DEP), and challenged by Last Stand, was both an expansion and an operation permit, providing not only for the construction of new infrastructure but for operation of the existing plant. (KWRU BR 26) KWRU elaborated that the Intent to Issue Permit provided that “[t]he existing WWTP and the proposed 0.350 MGD treatment train has and will be modified to meet the advanced wastewater treatment (AWT) standards of Section 403.085(10), F.S.” (KWRU BR 26) KWRU further cited Rule 62-528.630, F.A.C., which provides that “[a]ll class V Group 3 wells designed to inject domestic wastewater in Monroe County shall be required as part of the operation application to provide reasonable assurance that operation of the well will not cause or contribute to a violation of surface water standards...” (KWRU BR 26) KWRU furthered its argument stating that the challenge was to the operation of the injection wells as a whole, not just to new installations. (KWRU BR 26)

KWRU argued that it is appropriate to amortize legal expenditures related to the referenced legal challenge because the challenge was not only to the expansion of the wastewater treatment plant, but significantly focused on the current operations of the plant. (TR 227; TR 576; KWRU BR 26) KWRU contended that these expenditures are properly amortized over a 5-year period. (KWRU BR 26-27)

**OPC**

OPC argued that the balance of the total litigation fees should be \$477,436. (OPC BR 37) OPC additionally asserted that these costs were incurred directly by KWRU to obtain permission from DEP to build KWRU's treatment plant expansion. (OPC BR 37) OPC explained that while the title of the permit was labeled as an operating and construction permit, the permit for the existing plant had two more years before it expired. (OPC BR 37)

OPC elaborated that this permit, along with the two permits to build two additional shallow injection wells, were necessary only for the fact that KWRU wanted and needed to expand its capacity. (OPC BR 37) Therefore, OPC concluded that these legal fees to defend the plant expansion permit should be included with the capital costs associated with the plant expansion and should be recovered over the life of the plant, as required by the NARUC Uniform System of Accounts (USOA). (OPC BR 37)

**County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC. (County BR 33; Harbor Shores BR 2)

## ANALYSIS

### Last Stand Permit Challenge

On April 15, 2014, KWRU filed an application with DEP for authorization to substantially modify the operation of its wastewater treatment plant by increasing wastewater flows from 0.499 million gallons per day (MGP) to 0.849 MGP. (TR 564) The existing permit was issued on February 20, 2012, with an expiration date of February 19, 2017. (TR 564) DEP issued the “Notice of Intent” to issue the modified permit on June 23, 2014. (TR 564) DEP’s action was appealed by third-party respondents on August 5, 2014 and litigation ensued. (TR 564) The case went before an Administrative Law Judge in the summer of 2015, and the Final Order, *Last Stand v. KW Resort Utilities, Corp. et al.*, State of Florida Div, of Admin. Hearings, DOAH Case No. 14-5302, was issued February 24, 2015. (EXH 51, BSP 81; EXH 52, BSP 116) No further legal expenditures were associated with an appeal. (EXH 56, BSP 1563-1564)

KWRU asserted that if the Last Stand was successful in its challenge to the issuance of the proposed permit, the Utility would have incurred significant additional expenditures. (EXH 49, BSP 5) KWRU witness Castle estimated that the total cost for design, permitting, and construction of the deep well would be in excess of \$10,000,000, based on current costs for deep well installation in the Florida Keys and the acquisition cost of land adjacent to KWRU’s property. (EXH 49, BSP 5) Staff believes that the legal fees incurred by the Utility were justified given the potential rate impact of constructing a deep injection well. Staff does not believe that there was negligence on behalf of the Utility that precipitated the ensuing administrative hearing. Therefore, KWRU should be allowed recovery of all fees associated with defending the permit challenge.

### Accounting Treatment

The Utility requested to defer and amortize \$477,433 of litigation fees over the 5-year life of the permit and included the associated amortization of \$95,487 ( $\$477,433/5$ ) in miscellaneous expense. Staff witness Piedra testified to the verification of support documentation for this amount. (TR 564) The Utility has provided appropriate documentation for an additional \$19,540, along with a description of all services provided. (EXH 55, P 168-169; EXH 56, P 1564) As such, staff recommends an increase to the total litigation fees in the amount of \$19,540.

OPC witness Merchant argued that because the Last Stand litigation directly related to the litigation regarding the construction permit, and not existing operations, the fees should be capitalized to the plant expansion project and recovered over the life of the plant. (TR 338) In support of her position, witness Merchant cited the National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts’ (USOA) accounting instructions for the components of construction costs. (TR 338) Witness Merchant specifically cited:

#### Accounting Instruction 19. Utility Plant – Components of Construction Cost

The cost of construction properly includible in the utility plant accounts shall include, where applicable, the direct and overhead costs as listed and defined hereunder:

(15) “Legal Expenditures” includes the general legal expenditures incurred in connection with construction and the court and legal costs directly relate



thereto, other than legal expenses included in protection, item 7, and in injuries and damages, item 8. (TR 338-339)

During OPC's cross-examination, KWRU witness Swain agreed that in addition to standard costs such as labor and materials, the component costs outlined in the USOA included, but were not limited to, privileges, permits, and legal expenditures. (TR 224-225) However, she qualified her response with the caveat that she agreed to those items, only to the extent they relate directly to the construction and serve no other purpose. (TR 225, 231) Witness Swain testified that given the complexity of the litigation, the decision to capitalize the costs should not be solely based on the fact that the Utility obtained a construction permit in the process, as such treatment would ignore that the litigation was also against the operation of the Utility. (TR 231)

Staff believes the complexity of the litigation, as evidenced by the Recommended Order, indicates that the costs expended to defend the permit modification challenge were not simply "general legal expenditures incurred with construction", as referenced in NARUC Accounting Instructions 19. (EXH 69, BSP 1766) The Utility's description of the various fees, which range from legal to engineering, showcase the detailed work involved to defend the construction of the shallow injection wells. (EXH 55, BSP 169) As such, staff recommends the amortization of the litigation fees pursuant to Rule 25-30.433(8), F.A.C., which states that non-recurring expenses shall be amortized over a 5-year period. Based on staff's adjustment to the total litigation fees, the associated amortization should be \$99,395.

### **CONCLUSION**

The appropriate amount of fees associated with the legal challenge of KWRU's DEP permits is \$496,973, and this amount should be amortized over five years. The 5-year amortization results in test year expense of \$99,395, which increases the requested amortization amount by \$3,908.

**Issue 29:** What is the appropriate amount of depreciation expense to be used in setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of depreciation expense should be \$222,726. Accordingly, depreciation expense should be decreased by \$156,229.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$473,323.

**A. For Phase I, if applicable**

**OPC:** Net depreciation expense (DE) should be \$104,511 for Phase I. Adjustments are appropriate to increase CIAC amortization by \$14,003 (Stipulation 4) and decrease depreciation expense by \$5,489 (Stipulation 5). Pro forma DE for the treatment plant expansion should be reduced by \$196,281 and the adjustment to annualize DE should be removed, a reduction of \$4,384.

**County:** Agrees with OPC.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Phase II net DE is \$224,316 (decrease of \$72,346). Adjustments without stipulations: increase 2014 DE \$13,718 to year-end balance; increase DE \$67,026 for expansion projected costs with capitalized litigation fees; increase DE \$6,956 for vacuum tank and retirement; non-used and useful DE reduction \$130,954; increase CIAC amortization \$4,746 for 2014 year-end balance, \$17,079 for the 2015-2016 actual CIAC additions, and \$15,421 for projected 2016 CIAC additions to be collected when WWTP expansion begins operations.

**County:** Agrees with OPC.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, KWRU stated that the proper level of depreciation expense includes adjustments to Test Year depreciation that include additional depreciation expense on proforma plant net of proforma retirements, reductions for audit adjustments (Audit Finding 4 and Audit Finding 5), and additional costs to annualize depreciation expense. (KWRU BR 27-28; EXH 79, BSP 79)

Additionally, the Utility testified that this treatment has been accepted by the Commission in other cases that KWRU witness Swain specifically cited. (TR 769; KWRU BR 28)

### **OPC**

OPC stated in its brief that net depreciation expense should be \$104,511 for Phase I rates. OPC explained that adjustments are appropriate to increase amortization of CIAC by \$14,003 (Audit Finding 4) and to decrease depreciation expense by \$5,489 (Audit Finding 5). (OPC BR 39) OPC specifically indicated that the pro forma depreciation expense for the wastewater treatment plant expansion should be reduced by \$196,281 and the Utility's adjustment to reflect the year-end annualization of depreciation expense should be removed, a reduction of \$4,384. (OPC BR 39)

OPC asserted that OPC witness Merchant testified that Phase II net depreciation expense is \$224,316, a net decrease of \$72,346. OPC detailed that in addition to Stipulations 4 and 5, several adjustments are appropriate to be consistent with Ms. Merchant's adjustments to plant, accumulated depreciation and CIAC. (OPC BR 39) First, 2014 depreciation expense should be increased by \$13,718 to reflect the year-end balance. (OPC BR 39) Second, depreciation expense should be increased by \$67,026 to reflect the additional WWTP expansion projected costs including the capitalized permit litigation fees. Third, the vacuum tank addition and related retirement should increase depreciation expense by \$26,385 and decrease depreciation expense by \$19,789, respectively. (OPC BR 39) Depreciation expense should be reduced by \$130,954 based on OPC witness Woodcock's 25 percent non-used and useful percentage. OPC asserted that witness Merchant testified that consistent with OPC's adjustments to CIAC, test year amortization of CIAC should be increased by \$4,746 to reflect a year-end balance, by \$17,079 for the 2015 and 2016 actual CIAC additions, and by \$15,421 for the additional 2016 CIAC projected to be collected during the first year of operation of the WWTP expansion. (TR 372-373; OPC BR 39-40)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC. (County BR 34; Harbor Shores BR 2)

## **ANALYSIS**

In KWRU's updated MFRs, the Utility reflected test year depreciation expense of \$1,861,540 along with adjustments to increase accumulated depreciation by \$4,384 for annualizing depreciation expense in the test year and by \$270,061 as a corresponding adjustment to its requested pro forma plant expansion. (EXH 17) As discussed in Issue 5, KWRU also included Stipulation 4 to decrease CIAC amortization expense by \$14,003 and Stipulation 5 to decrease depreciation expense by \$5,489. (EXH 17, P 3-4)

In regard to the Utility's test year adjustment to annualize depreciation expense, OPC witness Merchant testified that this type of adjustment recognizes certain increases without recognizing corresponding decreases and that blending year-end items with average items is an "obvious" violation of the matching principal. (TR 320) She further testified that including this adjustment violates the statutory requirement that CIAC, accumulated amortization of CIAC, and test year amortization of CIAC are properly included in the revenue requirement pursuant to 367.081(2)(a)1., F.S. (TR 320) Based on staff's analysis of the test year, KWRU included a full

year of CIAC amortization expense associated with 2014 collections of CIAC. As such, there is no violation of 367.081(2)(a)1., F.S. Witness Merchant's position, specifically as it pertains to accumulated depreciation, is further addressed in Issue 7.

To reflect rate base adjustments previously recommended, the appropriate corresponding adjustments to depreciation expense for the pro forma plant discussed in Issue 6 is a net decrease of \$26,414 to reflect the pro forma plant expansion and the vacuum tank, and an increase of \$8,008 to reflect the 2015 and 2016 routine plant additions. Further, a corresponding decrease of \$20,685 should be made to reflect amortization expense for 2015 and 2016 CIAC collections included in rate base. The total adjustment is a net decrease to depreciation expense of \$156,229.

### **CONCLUSION**

Based on staff's previous recommended adjustments, the appropriate amount of net depreciation expense is \$222,726. Accordingly, net depreciation expense should be decreased by \$156,229.

**Issue 30:** What is the appropriate amount of taxes other than income to be used in setting rates?

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The appropriate amount of taxes other than income (TOTI) should be \$199,457. Accordingly, TOTI should be decreased by \$50,884.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$288,613

**A. For Phase I, if applicable**

**OPC:** Phase I adjusted 2014 taxes other than income should be \$153,029, a decrease of \$92,878. Payroll taxes should be increased \$5,682 to reflect the annualization of payroll taxes consistent with the Phase I salaries for AWT and property taxes should be reduced \$35,696 related to pro forma plant.

**County:** Agree with OPC that taxes other than income (“TOTI”) should be \$153,029.

**Harbor Shores:** Agrees with OPC

**B. For Phase II, if applicable**

**OPC:** Phase II 2016 pro forma test year taxes other than income should be \$189,605, a decrease of \$56,302. Payroll taxes should be reduced \$1,875, to reflect the PAA Order salaries level and property taxes increased by \$13,355 to reflect the adjusted pro forma plant. Property taxes should be reduced \$16,177 related to non-used and useful plant.

**County:** Agree with OPC that Phase II 2016 pro forma test year TOTI should be \$189,605.

**Harbor Shores:** Agrees with OPC

**Staff Analysis:**

**PARTIES’ ARGUMENTS**

**KWRU**

KWRU stated that TOTI should be \$288,613. (KWRU BR 28) This amount represents the Utility’s calculation of payroll taxes, property taxes on test year and pro forma plant, as well as regulatory assessment fees (RAFs) on final revenues. (KWRU BR 28)

### **OPC**

OPC witness Merchant testified that OPC's Phase I adjustments to TOTI included decreasing RAFs by \$62,863 based on OPC's calculated test year revenue adjustment, decreasing payroll taxes by \$5,682 to reflect OPC's adjustment to Phase I salaries for AWT, and lastly, decreasing property taxes by \$35,696 to reflect OPC's removal of KWRU's pro forma plant in Phase I. (TR 374) In its brief, OPC stated that TOTI should be \$153,029, resulting in a net decrease of \$92,878 to the Utility's requested balance. (TR 374; OPC BR 40)

For Phase II, OPC stated in its brief that TOTI should be \$189,605, reflecting a decrease of \$56,302. (TR 374-375; OPC BR 40) OPC witness Merchant testified that OPC's Phase II adjustments to TOTI included decreasing payroll taxes by \$1,875 to reflect OPC's adjustment to Phase II salaries for AWT, increasing property taxes by \$13,355 to reflect the Phase II pro forma plant, and decreasing property taxes related to non-used and useful plant by \$16,177. (TR 374-375)

### **County and Harbor Shores**

In their briefs, the County and Harbor Shores agreed with OPC. (County BR 34; Harbor Shores BR 2)

### **ANALYSIS**

This is a fallout issue. Based on staff's adjustments to test year revenues and to remove the Utility's requested increase, RAFs should be reduced by \$81,475. To reflect staff's recommended adjustments to pro forma plant, property taxes should be increased by \$754. To reflect staff's recommended adjustment to pro forma salaries, payroll taxes should be decreased by \$210. To reflect staff's recommended non-used and useful adjustment, property taxes should be decreased by \$10,526. Lastly, to reflect staff's recommended revenue increase, RAFs should be increased by \$40,573. In total, TOTI should be decreased by \$50,844 ( $-\$81,475 + \$754 - \$210 - \$10,526 + \$40,573$ ) for an adjusted total of \$199,457.

### **CONCLUSION**

Based on staff's recommended adjustments, TOTI should be decreased by \$50,884. The appropriate amount of taxes other than income (TOTI) is \$199,457.

**Issue 31:** What is the appropriate revenue requirement? (Fall-out)

- A. For Phase I, if applicable
- B. For Phase II, if applicable

**Recommendation:** The revenue requirement should be \$2,436,418.

- A. As addressed in Issue 2, Phase I is not applicable.
- B. As addressed in Issue 2, Phase II is not applicable. (Norris)

**Position of the Parties**

**KWRU:** \$3,440,501

**A. For Phase I, if applicable**

**OPC:** Based on OPC's adjustments to the rate base, cost of capital and operating expenses, the Phase I revenue requirement should be \$1,821,639. This represents an increase of \$286,840, or 18.69%, to adjusted 2014 test year revenues.

**County:** The appropriate Phase I revenue requirement is \$1,821,639.

**Harbor Shores:** Agrees with OPC.

**B. For Phase II, if applicable**

**OPC:** Based on OPC's adjustments to the rate base, cost of capital and operating expenses, the Phase II revenue requirement should be \$2,269,893, representing an increase of \$568,263, or 33.40%, to adjusted 2016 pro forma test year revenues. Consistent with long-standing Commission practice, KWRU's revenue increase should be limited to the amount requested in its initial MFRs.

**County:** The Phase II revenue requirement recommended by OPC of \$2,269,893 is reasonable.

**Harbor Shores:** Agrees with OPC.

**ANALYSIS**

This is a fall-out issue. In its filing, KWRU requested a revenue requirement to generate annual revenue of \$3,345,357, representing a revenue increase of \$1,866,050, or approximately 126 percent. Consistent with staff's recommendations concerning rate base, cost of capital, and operating income issues, the appropriate revenue requirement is \$2,436,418. Staff's recommended revenue requirement is \$901,618 greater than the stipulated test year revenues of \$1,534,799, or an increase of 58.75 percent. Staff's recommended revenue requirement will allow the Utility the opportunity to recover its expenses and earn a 6.12 percent return on its

investment in rate base. The schedule reflecting net operating income is attached as Schedule No. 3-A, and the adjustments are shown on Schedule No. 3-B.

**Issue 32:** What are the appropriate rate structures and rates for KWRU's wastewater system?

**Recommendation:** The recommended rate structures and monthly wastewater rates are shown on Schedule No. 4. (Johnson)

### **Position of the Parties**

**KWRU:** Rate structure: per PAA Order. Rates: fall-out using staff formula (used in PAA Order).

**OPC:** The PAA BFC/gallorage allocation of 40/60 and the corrected billing determinants for 2014 Phase I are reasonable. Phase II billing determinants should be escalated to project expected revenues from new customers added since 2014 and expected after the plant expansion is in-service. An investigation is appropriate to determine whether KWRU has correctly implemented changes made to bill customers by appropriate class and meter size and refunds for customers who were improperly billed.

**County:** The appropriate rate structures are a Base Facilities Charge and Gallorage Charges developed using the 40/60 split adopted in the PAA Order, and the appropriate rates are those calculated using billing determinants for 2017, because that is the time period in which the Phase II Rates will be in effect.

**Harbor Shores:** Agrees with OPC.

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **KWRU**

KWRU asserted that the December 31, 2014 billing determinants as set forth in the PAA Order should be used to determine rates. (KWRU BR 19) KWRU witness Swain acknowledged an accounting principle of matching but testified that she had not seen the matching principle employed in a PSC rate case. (TR 212) However, she further testified that if the billing determinants increased it would result in lower rates. (TR 220-221) KWRU agreed with the rate structure set forth in the PAA Order and added that final rates should be a fall out calculation of the billing determinants used in the PAA Order. (KWRU BR 29)

### **OPC**

OPC testified that the 40/60 base facility charge to gallorage charge allocation is reasonable in designing Phase I rates. (OPC BR 42) OPC also argued that the bills and gallons used to calculate Phase II rates should be increased to reflect the projected level of customers that will be online for the first year of operation of the wastewater treatment expansion. OPC claimed that not adjusting for customer growth while making pro forma adjustments to revenues would be violating the matching principle. OPC submitted that the appropriate 2016 billing determinants



for Phase II rates can be determined by applying a five percent increase to the 2014 test year billing determinants and the subsequent 2015 billing determinants. (TR 380) OPC added that KWRU's Annual Report states that its 2015 revenues increased over its 2014 revenues by 12 percent and that it achieved a 16.19 percent rate of return. OPC further asserted that the actual increase in KWRU's 2015 revenues should be used to estimate the number of bills and gallons by customer class. OPC emphasized that the five percent projected growth rate per year is supported by OPC witness Woodcock's used and useful projection. (OPC BR 27; EXH 20)

OPC contended that a full investigation should be made to determine if KWRU has correctly billed its customers by customer class and meter size and whether any refunds are warranted based on improper bills. OPC concluded in support of OPC witness Merchant's calculated rates reflected on schedules 4-A in exhibits PWM-2 and PWM-3. (EXH 24; EXH 25; OPC BR 42)

### **County**

The County submitted that the bills and gallons used in establishing Phase II rates should be those that are reasonably projected to be billed by KWRU in the 12 month period after the new wastewater treatment plant comes online. The County asserted that it is necessary to match the Utility's costs with its sales to ensure that the rates paid by KWRU's customers will properly recover the costs incurred to serve them in that time period. (TR 531) The County believes following the matching principle in this way is necessary to ensure that the rates charged by KWRU are fair, just, and reasonable.(County BR 27)

The County recognized witness Merchant's recommendation for 2016 billing determinants but adds that witness Merchant's billing determinants should be further escalated to include growth in 2017. (County BR 27) The County subsequently used OPC's projected growth rate of five percent with OPC's projected 2016 bills and gallons to establish 2017 billing determinants. (County BR 28) The County concluded in agreement with the 40/60 rate structure set forth in the PAA order and adds that specific rates should be a fall-out of the County's projected billing determinants. (County BR 35)

### **Harbor Shores**

Harbor Shores agrees with OPC's position on this issue. (Harbor Shores BR 2)

## **ANALYSIS**

KWRU believes 2014 billing determinants are representative of the test year and should be used to calculate rates. (TR 213) County witness Deason testified on the matching principle, which he defined as a requirement "that the utility's rates be set using the utility's costs, investments, revenues, and sales units from the same time period, and that they be representative of the time period in which the new rates will be in effect." (TR 531) However, witness Deason agreed that the Commission has traditionally relied on historical test years for ratemaking purposes in the water and wastewater utility industry. (TR 546) OPC and the County both emphasized the importance of the matching principle in their briefs, while witness Merchant acknowledged "there's an accounting principle of matching, but not necessarily in utility rate-making." (OPC BR 27; County BR 27; TR 212)

Staff believes that the principle of matching costs and expenses with sales is at the center of the argument for establishing correct billing determinants. Staff recognizes the need to match identifiable customer growth and sales with known and measurable growth in the utility's investment and expenses. Considering the impacts that any growth or decline in sales would have on revenues, staff believes that the matching principle is an important concept to observe in the rate-making process.

In response to interrogatories, KWRU projected approximately 220 ERCs of growth through 2018. (EXH 49, BSP 33) Although unquantified, witness Merchant also testified to implied customer and sales growth for KWRU based on 2014 and 2015 annual reports. (TR 353; EXH 28, P 22)

Staff analyzed a schedule provided by the Utility showing revenues by month, customer class, and meter size from January 2016 through September 2016; however, staff was unable to calculate actual billing determinants due to KWRU's change in rate structure during 2016 when the PAA rates were implemented. (EXH 51, BSP 96)

OPC proposed an across the board increase to the PAA 2014 billing determinants for Phase II rates using OPC witness Woodcock's used and useful projection. (OPC BR 27; TR 380; EXH 20) Therefore, staff recommends that the 2014 billing determinants should be increased to reflect known and measurable growth, consistent with OPC's methodology. However, staff recommends using staff's used and useful growth projection for 2015 and 2016 as discussed in Issue 11. The resulting billing determinants include 29,159 factored ERCs and 232,666,423 gallons.

All parties agreed with a 40 percent revenue allocation to the BFC. (KWRU BR 29; OPC BR 42; County BR 35) Subsequently, the rates are a result of the chosen billing determinants and revenue requirement. Staff annualized the Utility's 2016 miscellaneous revenues from Monroe County Detention Center income, miscellaneous income, and rental income. (EXH 52, Attachment 22) To calculate revenues from miscellaneous service charges, staff calculated the number of annualized occurrences for each charge in 2016 and multiplied it by the recommended charge as described in Issues 34 and 36. (EXH 51, BSP 94) Staff calculated the appropriate reuse revenue by annualizing the 2016 reclaimed gallons sold and multiplying it by the proposed reuse rate in Issue 33. (EXH 51, BSP 93) Below are the annualized miscellaneous revenues to be subtracted from the revenue requirement. Staff notes that any changes to the recommended charges in Issues 33, 34, and 36 will affect the total miscellaneous revenues included in the revenue requirement.

**Table 32-1**  
**Miscellaneous Revenues**

<b>Description</b>	<b>Staff Recommended</b>
MCDC Income	\$18,679
Miscellaneous Income	\$15,491
Rents	\$1,200
Miscellaneous Service Charges	\$25,296

Reuse Revenue	\$60,583
Total Miscellaneous Revenues	\$121,249

Source: Staff Analysis (EXH 25, P 7)

Further, staff recommends that all residential customers should be billed a BFC regardless of meter size and a gallonage charge based on water demand with a 10,000 gallon cap. All general service customers should be billed based on meter size with a gallonage charge based on water demand. The general service gallonage charge should be 20 percent higher than the residential gallonage charge to reflect that not all residential water demand is returned to the wastewater system. In addition, the tariff for private lift station owners should be revised to reflect a BFC based on meter size that is 20 percent less than the applicable general service BFC consistent with the discount previously approved for KWRU customers with customer-owned and maintained lift stations.<sup>26</sup> If a customer has multiple water meters, the Utility should charge the approved BFC for each meter. In addition, as discussed in Issue 18, Harbor Shores should be billed a BFC based on 69 ERCs and a gallonage charge with a 10,000 gallon cap per ERC.

### CONCLUSION

The recommended rate structures and monthly wastewater rates are shown on Schedule No. 4.

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<sup>26</sup> See Order No. 14620, in Docket No. 830388-S, issued November 19, 1984, *In re: Petition of STOCK ISLAND UTILITY COMPANY, INC. for increased sewer rates in Monroe County.*

**Issue 33:** What is the appropriate rate for KWRU's reuse service?

**Recommendation:** The appropriate rate for KWRU's reuse service is \$1.34 per 1,000 gallons. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Friedrich)

**Position of the Parties**

**KWRU:** \$.93 per PAA Order.

**OPC:** The \$1.34 reuse rate is market-based, provides incentives for reuse, and is more reasonable than the \$0.93 PAA Order rate. The potable-water rate in KWRU's territory ranges from \$5.84-\$11.70/kgal. The only other provider in Monroe County lowest-level reuse rate is \$2.92/kgal. Compared to the other provider's reuse rate and the potable water rate, \$1.34 is reasonable. No additional charge for testing should be allowed.

**County:** The appropriate rate for KWRU's reuse service is at least \$1.34 per thousand gallons, and the Commission should consider setting the rate significantly higher in order to provide better price signals for this market-based service and to thereby reduce the rate impacts on KWRU's regular service customers.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU believed the appropriate reuse rate is \$0.93 per 1,000 gallons. (TR 675; TR 778-79) The Utility originally proposed a rate of \$1.35 per 1,000 gallons in its MFRs. (EXH 16, BSP 44) In response to an interrogatory, the Utility indicated that the proposed rate was a proportionate increase based on the overall requested revenue increase. (EXH 49; TR 778-79) However, in rebuttal testimony, Utility witnesses Johnson and Swain testified that KWRU supports a reuse rate of \$0.93 per 1,000 gallons. (TR 675; TR 778-79)

KWRU Witness Swain testified that the reuse rate should not be increased disproportionately more than the overall revenue increase; reuse rates are generally market-based. (TR 778-79) FKAA's charges for reuse are based on 50 percent of each potable water rate block, the lowest of which is \$5.84 per 1,000 gallons. (TR 381-382; EXH 30) KWRU argued that a reuse rate of \$0.93 will strike a balance to create demand for reuse while still maintaining an additional revenue stream. (KWRU BR 29)

### **OPC**

OPC's witness Merchant believes the appropriate reuse rate is \$1.34 per 1,000 gallons based on the \$1.35 per 1,000 gallons originally proposed by the Utility. (TR 381-82) OPC witness Merchant also testified that no additional charge for testing should be implemented. (TR 357-58; TR 382; EXH 25) OPC argued that the reuse rate of \$1.34 per 1,000 gallons reduces the burden on the residential and general service customers to achieve the approved revenue requirement, compared to a lower reuse rate which has the opposite effect. (TR 382)

### **County**

The County argued the appropriate rate for KWRU's reuse service is \$1.34 per 1,000 gallons and the Commission should consider setting the rate significantly higher in order to provide better price signals and to reduce the rate impacts on KWRU's regular service customers. The County agreed that reuse service is a market-based service product and should be priced closer to the cost of market alternatives such as FCAA. (County BR 36-37)

### **Harbor Shores**

In their brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

## **ANALYSIS**

When assessing the appropriate reuse rate, it is Commission practice to base the reuse rate on the market rather than cost, which provides an incentive for customers to use reuse.<sup>27</sup> The only other provider of reuse in the area, charges \$2.92 to \$5.85 per 1,000 gallons depending on the relative rate block for potable water usage. (EXH 30) Since revenues from reuse rates are used to help reduce the cost of wastewater service, a higher reuse rate would alleviate the impact of the rate increase to wastewater customers for KWRU.

KWRU's primary method of disposal of treated wastewater is through reuse, but reuse that is not sold is disposed through Class V injection wells. (EXH 53) The Utility currently provides reuse service to two customers, Monroe County which receives a contracted amount of reuse water, and the affiliated Key West Golf Club. (EXH 51; TR 608-609) KWRU's test year reuse rate for these customers was \$0.68 per 1,000 gallons. In addition, the Utility also charged for reuse testing consistent with operating revenues in Audit Finding 9. (EXH 48; TR 357; EXH 25)

Witness Johnson is concerned that there will be a reduction in reuse demand if the reuse rate is priced too high since the advanced treatment of wastewater decreases the nutrients in the reuse water. He argues there is no benefit to purchasing the Utility's reuse water over potable water. (TR 608-09) However, staff does not agree with witness Johnson's concern since the Utility's two reuse customers consist of the County, which receives a contracted amount of reuse water per day, and a golf course which is affiliated with KWRU. (TR 608-09; TR 381-82)

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<sup>27</sup>Order No. PSC-15-0233-PAA-WS, in Docket No. 149960-WS, dated June 3, 2015, *In re: Application for increase in water and wastewater rates in Seminole County by Sanlando Utilities Corporation*; Order No. PSC-09-0393-TRF-SU, in Docket No. 080712-SU, dated June 2, 2009, *In re: Application for approval of new class of service for reuse water service in Martin County by Indiantown Company, Inc.*

The Utility charged for reuse testing in addition to the reuse rate of \$0.68 per 1,000 gallons during the test year, a reuse rate of \$1.34 would encompass all costs and would negate the need for an additional charge for testing therefore, staff agrees with OPC that no additional charge for testing is necessary. (TR 357; TR 382; EXH 25) Staff believes \$1.34 is an appropriate market-based reuse rate that will mitigate the rate impact to the general body of rate payers.

### **CONCLUSION**

Based on the above, staff recommends that the appropriate rate for reuse service is \$1.34 per 1,000 gallons. The Utility should be required to file revised tariff sheets and a proposed customer notice to reflect the approved rates. The approved rates shall be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates shall not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

**Issue 34:** What are the appropriate miscellaneous service charges to be charged by KWRU?

**Recommendation:** Staff recommends the miscellaneous service charges shown below in Table 34-7 should be approved for KWRU. The Utility should be required to file a proposed customer notice and tariff to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. KWRU should provide proof of the date notice was given no less than 10 days after the date of the notice. (Friedrich)

**Position of the Parties**

**KWRU:** No position.

**OPC:** The initial connection charge and normal reconnection charge should remain at \$15 and the premises visit charge should be \$20 for normal hours and \$45 for after hours, as approved by the Commission in its PAA Order. Should the Commission approve higher levels of miscellaneous service charges, higher miscellaneous revenues should be used when calculating the amount of revenues to be collected from service rates.

**County:** No position.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

The Utility's existing and proposed miscellaneous service charges are shown below in Table 34-6. (EXH 50; EXH 95) Utility witness Swain stated that the original miscellaneous service charges filed by the Utility in its MFRs were incorrect and the accurate request for the Utility's miscellaneous service charges is contained in a response to a production of documents. (EXH 50; TR 256-57)

In addition to labor, transportation, and supplies, the Utility included postage in the cost justification for all miscellaneous service charges except the violation reconnection charge. (EXH 95) Witness Swain testified that the cost of postage in the Utility's cost justification is only incorporated into the charges that require direct postage. Witness Swain stated that miscellaneous service charges are designed to place the cost burden on the individual who caused the cost to be incurred. (TR 252; KWRU BR 30)

**OPC**

OPC Witness Merchant testified that \$15 is the appropriate amount for the initial and normal reconnection charges and the Utility’s premises visit charge should be \$20 for normal hours and \$45 for after hours, consistent with the PAA Order. (TR 383) Witness Merchant identified the possibility of the Commission approving higher miscellaneous service charges. As a result, witness Merchant believes, if higher charges are indeed approved, the incremental increase should be taken into consideration by Commission staff when calculating the amount of revenues to be collected from service rates. (TR 401-02; TR 433-34)

**County**

The County takes no position on this issue. (County BR 37)

**Harbor Shores**

In their brief, Harbor Shores agreed with OPC’s position on this issue. (Harbor Shores BR 2)

**ANALYSIS**

Miscellaneous service charges are defined as initial connection, normal reconnection, violation reconnection, and premises visit charges according to Rule 25-30.460, F.A.C. The Commission is authorized to establish, increase, or change a rate or charge other than monthly rates or service availability charges pursuant to Section 367.091, F.S. Witness Swain defended the incorporation of overhead, such as benefits and insurance, in miscellaneous service charges; otherwise, the overhead would be included in the Utility’s expenses and recovered from the general body of rate payers. (TR 253-54) Staff agrees with witness Swain that miscellaneous service charges are designed to place the cost on the cost causer. (TR 252) KWRU provided the cost justification required by Section 367.091, F.S. and is reflected below in Tables 34-1, 34-2, and 34-3.

**Table 34-1  
 Initial Connection and Normal Reconnection Cost Justification**

<b>Activity</b>	<b>Normal Hours Cost</b>	<b>Activity</b>	<b>After Hours Cost</b>
Labor (Administrative) (\$22.50/hr x 1hr)	\$22.50	Labor (Administrative) (\$22.50/hr x 1hr)	\$22.50
Labor (Field) (\$22.50/hr x 3/4hr)	\$16.88	Labor (Field) (\$33.75/hr x 2hr)	\$67.50
Labor (Supervision) (\$68.00/hr x 1/4hr)	\$17.00	Labor (Supervision) (\$68.00/hr x 1/4hr)	\$17.00
Benefits & Insurance (23%)	\$12.97	Benefits & Insurance (23%)	\$24.61
Transportation (\$.56/mile x 3 miles)	\$1.68	Transportation (\$.56/mile x 6 miles)	\$3.36
Supplies	\$0.80	Supplies	\$0.80
Postage	\$0.49	Postage	\$0.49
<b>Total</b>	<b>\$72.32</b>	<b>Total</b>	<b>\$136.26</b>

Source: Exhibit 50



**Table 34-2  
 Violation Reconnection Cost Justification**

<b>Activity</b>	<b>Normal Hours Cost</b>	<b>Activity</b>	<b>After Hours Cost</b>
Labor (Administrative) (\$22.50/hr x 1hr)	\$22.50	Labor (Administrative) (\$22.50/hr x 1hr)	\$22.50
Labor (Field) (\$22.50/hr x 5/2hr)	\$56.25	Labor (\$33.75/hr x 4hr)	\$135.00
Labor (Supervision) (\$68.00/hr x 1/2hr)	\$34.00	Labor (Supervision) (\$68.00/hr x 1/2hr)	\$34.00
Benefits & Insurance (23%)	\$25.93	Benefits & Insurance (23%)	\$44.05
Transportation (\$.56/mile x 6 miles)	\$3.36	Transportation (\$.56/mile x 6 miles)	\$3.36
Supplies	<u>\$0.30</u>	Supplies	<u>\$0.80</u>
Total	<u>\$142.34</u>	Total	<u>\$239.71</u>

Source: Exhibit 50

**Table 34-3  
 Premises Visit Cost Justification**

<b>Activity</b>	<b>Normal Hours Cost</b>	<b>Activity</b>	<b>After Hours Cost</b>
Labor (Administrative) (\$22.50/hr x 1/2hr)	\$11.25	Labor (Administrative) (\$22.50/hr x 1/2hr)	\$11.25
Labor (Field) (\$22.50/hr x 1hr)	\$22.50	Labor (Field) (\$33.75/hr x 2hr)	\$67.50
Labor (Supervision) (\$68.00/hr x 1/4hr)	\$17.00	Labor (Supervision) (\$68.00/hr x 1/4hr)	\$17.00
Benefits & Insurance (23%)	\$11.67	Benefits & Insurance (23%)	\$22.02
Transportation (\$.56/mile x 3 miles)	\$1.68	Transportation (\$.56/mile x 6 miles)	\$3.36
Supplies	\$0.30	Supplies	\$0.80
Postage	<u>\$0.49</u>	Postage	<u>\$0.49</u>
Total	<u>\$64.89</u>	Total	<u>\$122.42</u>

Source: Exhibit 50

Staff analyzed the Utility's cost justification for its requested miscellaneous service charges. (EXH 50) KWRU stated that the field labor involved in normal connections and disconnections, if necessary, consists of completing a work order administered by the Operations Manager. (EXH 49) Staff believes that one-third of an hour is a more appropriate time allotment to calculate field labor compared to the Utility's request of one hour. As indicated by the Utility, field labor is only administered as necessary, which indicates that field labor time is not always required. (EXH 49) Therefore, staff believes one-third of an hour is more appropriate to use to calculate field labor in the Utility's miscellaneous service charges because it will balance

occurrences of visits that do not necessitate any field labor at all and the occurrences that may require additional time.

In addition, staff does not believe it is appropriate to recover postage costs because these activities do not warrant a need for direct postage or noticing. The Utility witness agreed that the cost of postage is only needed for activities that require direct postage.

The Utility requested a violation reconnection charge of \$150 for normal hours and \$225 for after hours. (EXH 50) However, staff believes this charge should be the Utility's actual cost to administer and process the charge pursuant to Rule 25-30.460(1)(c), F.A.C. Calculations for staff's recommended miscellaneous service charges are shown below in Tables 34-4, 34-5, and 34-6. Staff rounded its calculated miscellaneous service charges up to the nearest tenth.

**Table 34-4  
 Initial Connection Charge Calculation**

<b>Activity</b>	<b>Normal Hours Cost</b>	<b>Activity</b>	<b>After Hours Cost</b>
Labor (Administrative) (\$22.50/hr x 1 hr)	\$22.50	Labor (Administrative) (\$22.50/hr x 1 hr)	\$22.50
Labor (Field) (\$22.50/hr x 1/3 hr)	\$7.50	Labor (Field) (\$33.75/hr x 1/3hr)	\$11.25
Labor (Supervisor) (\$68.00/hr x 1/4 hr)	\$17.00	Labor (Supervisor) (\$68.00/hr x 1/4 hr)	\$17.00
Benefits & Insurance (23%)	\$10.81	Benefits & Insurance (23%)	\$11.67
Transportation (\$.56/mile x 3 miles-to/from)	\$3.36	Transportation (\$.56/mile x 6 miles-to/from)	\$6.72
<b>Total</b>	<b>\$61.17</b>	<b>Total</b>	<b>\$69.14</b>

Source: Exhibit 50

**Table 34-5  
 Normal Reconnection Charge Calculation**

<b>Activity</b>	<b>Normal Hours Cost</b>	<b>Activity</b>	<b>After Hours Cost</b>
Labor (Administrative) (\$22.50/hr x 1 hr)	\$22.50	Labor (Administrative) (\$22.50/hr x 1 hr)	\$22.50
Labor (Field) (\$22.50/hr x (1/4 hr x 2))	\$11.25	Labor (Field) (\$33.75/hr x (1/4 hr x 2))	\$16.88
Labor (Supervisor) (\$68.00/hr x 1/4 hr)	\$17.00	Labor (Supervisor) (\$68.00/hr x 1/4 hr)	\$17.00
Benefits & Insurance (23%)	\$11.67	Benefits & Insurance (23%)	\$12.97
Transportation (\$.56/mile x 3 miles-to/from) x 2	\$3.36	Transportation (\$.56/mile x 6 miles-to/from) x 2	\$6.72
<b>Total</b>	<b>\$65.78</b>	<b>Total</b>	<b>\$76.07</b>

Source: Exhibit 50

**Table 34-6  
 Premises Visit Charge Calculation**

Activity	Normal Hours Cost	Activity	After Hours Cost
Labor (Administrative) (\$22.50/hr x 1/2 hr)	\$11.25	Labor (Administrative) (\$22.50/hr x 1/2 hr)	\$11.25
Labor (Field) (\$22.50/hr x 1/3 hr)	\$7.50	Labor (Field) (\$33.75/hr x 1/3hr)	\$11.25
Labor (Supervisor) (\$68.00/hr x 1/4hr)	\$17.00	Labor (Supervisor) (\$68.00/hr x 1/4 hr)	\$17.00
Benefits & Insurance (23%)	\$8.22	Benefits & Insurance (23%)	\$9.09
Transportation (\$.56/mile x 3 miles-to/from)	\$3.36	Transportation (\$.56/mile x 6 miles-to/from)	\$6.72
<b>Total</b>	<b>\$47.33</b>	<b>Total</b>	<b>\$ 55.31</b>

**CONCLUSION**

Based on the above, staff recommends the miscellaneous service charges shown below in Table 34-7 should be approved for KWRU. The Utility should be required to file a proposed customer notice and tariff to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice. KWRU should provide proof of the date notice was given no less than 10 days after the date of the notice.

**Table 34-7  
 Miscellaneous Service Charges**

Charge	Utility's Existing Charges		Utility's Proposed Charges		Staff's Recommended Charges	
	Normal Hours	After Hours	Normal Hours	After Hours	Normal Hours	After Hours
Initial Connection	\$15.00	N/A	\$75.00	\$125.00	\$61.20	\$69.20
Normal Reconnection	\$15.00	N/A	\$75.00	\$125.00	\$65.80	\$76.10
Violation Reconnection	Actual Cost	N/A	\$150.00	\$225.00	Actual Cost	
Premises Visit	\$20.00	\$45.00	\$65.00	\$125.00	\$47.40	\$55.40

**Issue 35:** Should KWRU be authorized to collect Non-Sufficient Funds (NSF) charges? (Stipulation 11) (Friedrich)

**Approved Stipulation:** As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

- a. \$25, if the face value does not exceed \$50,
- b. \$30, if the face value exceeds \$50 but does not exceed \$300,
- c. \$40, if the face value exceeds \$300,
- d. Or five percent of the face amount of the check, whichever is greater.

**Issue 36:** Should KWRU request to implement a late payment charge be approved?

**Recommendation:** The Utility's request to implement a late payment charge of \$9.50 should be approved. The Utility should be required to file a proposed customer notice and tariff to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Friedrich)

**Position of the Parties**

**KWRU:** Yes, \$9.50.

**OPC:** No position was provided in the post-hearing brief.

**County:** Yes. Monroe County agrees with the Parties' Stipulation on this issue.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In rebuttal testimony, the Utility requested a late payment charge of \$9.50, although in its MFRs, the Utility requested a late payment charge of \$5.00. (TR 256-257; EXH 50; EXH 16) Utility witness Swain testified that schedule E-4 of the Utility's MFRs is inaccurate. (TR 256-257; EXH 16) In response to an interrogatory, the Utility provided the necessary cost justification pursuant to Section 367.091(6), F.S., for the Utility's request to increase its late payment charge to \$9.50. (EXH 50)

The Utility's cost justification contained a cost break-down of labor, printing, and postage for a late payment charge. (EXH 9; EXH 50) KWRU also explained it spends eight hours per month processing notices for 30 accounts or 16 minutes per account. (EXH 9; EXH 49) The Utility included the hourly salary of \$33.75 for the employee who processes late payments, including overhead. (EXH 9; EXH 50) Utility witness Swain testified the overhead percentage includes Utility incurred expenses such as paid holidays or insurance of the employee processing the late payment and should be used to develop a late payment charge. (TR 259) The Utility also provided an hourly salary of \$22.76 for the employee processing late payment charges, excluding overhead. (EXH 49)

**OPC**

OPC witness Merchant testified that the late payment charge of \$6.50 approved in the PAA order is more reasonable than the Utility's request for a late payment charge of \$9.50. (TR 421) Witness Merchant did not provide any additional information in her testimony with the exception

that she agrees with the PAA Order's justification of the recommended late payment charge of \$6.50. (TR 383; TR 421)

### **County**

In its brief, the County agreed with the parties' stipulation on this issue. However, this issue was not stipulated by all parties. (County BR 38)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

## **ANALYSIS**

In response to an interrogatory, the Utility revised its requested late payment charge from \$5.00 to \$9.50 and provided cost justification in support of its request required by Section 367.091, F.S. (EXH 16; EXH 9; EXH 50; TR 256-257) The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers. KWRU's requested late payment charge includes labor, printing, and postage costs. (EXH 9; EXH 50)

KRWU's labor component of \$9.00 was calculated by using an hourly salary of \$33.75 which includes overhead for holidays and insurance. (EXH 50) Witness Merchant testified that the PAA Order late payment charge of \$6.50, which included a labor component of \$6.00, was more reasonable. (TR 383) In addition to the labor component, the Utility included the cost for printing of \$0.02 and postage of \$0.49. (EXH 50)

**Table 36-1  
Late Payment Charge Cost Justification**

<b>Activity</b>	<b>Utility Proposed</b>
Labor	\$9.00
Printing	\$0.02
Postage	<u>\$0.49</u>
Total	<u>\$9.51</u>

Source: Exhibit 50

Staff agrees with Utility witness Swain that overhead should be included in the labor calculations for this charge in order to allow the Utility to recover all expenses associated with the employee processing the late payment charges. (TR 259) Staff agrees with KWRU's cost justification for its requested late payment charge. (EXH 50)

## **CONCLUSION**

Based on the above, the Utility's request to implement a late payment charge of \$9.50 should be approved. The Utility should be required to file a proposed customer notice and tariff to reflect

the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

**Issue 37:** Should KWRU's be authorized to collect a Lift Station Cleaning charge? (Stipulation 12) (Friedrich)

**Approved Stipulation:** KWRU should be authorized to collect a monthly lift station cleaning charge of \$1,462 from the Monroe County Detention Center.



**Issue 38:** If the Commission approves a rate increase for KWRU, when and under what circumstances should it be implemented?

**Recommendation:** The utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice (Johnson, Norris)

### **Position of the Parties**

**KWRU:** Immediately upon issuance of Final Order.

**OPC:** It depends upon how much time there is between the issuance of the Final Order in this case and the in-service date for the 0.350 MGD plant expansion. If not in-service, the Commission should determine the difference between post-protest Phase I and Phase II rates, and institute a credit against Phase II rates for the difference until KWRU demonstrates the project is in-service. If in-service, post-protest Phase II rates are appropriate.

**County:** Any permanent or Phase II rate increase should be implemented on the first day of the first month (or the first day of the first billing period) following commercial operation of the new WWTP, but not less than 30 days from the date of the Commission's vote.

**Harbor Shores:** Agrees with OPC.

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **KWRU**

KWRU asserted that it is not necessary to wait for the entirety of the Utility's capital improvements to be in service before implementing the approved rates. KWRU contended that significant sums have already been expended in order to bring its plant into compliance and to be able to accommodate the changing service area. KWRU added that the PAA Order in this case did not include any recovery for pro forma plant and subsequently did not truly allow a return on investment during the rate case. KWRU stressed that the Utility began operating at AWT as of January 1, 2016 but the interim rates did not go in effect until April 2016, which means that KWRU will never recover the first four months of AWT operations. KWRU stated that it is appropriate for KWRU to begin recovering these expenses as soon as the Commission has approved the rates. (KWRU BR 31)

### **OPC**

In its brief, OPC explained that no further Phase I rate implementation is necessary and the Phase I revenue requirement should be used to determine whether any refunds are owed to customers. (OPC BR 44) OPC stated that Phase II rates should be implemented no sooner than 30 days after

the new plant is approved by DEP, placed into service and becomes used and useful. (OPC BR 44) OPC explained that once verified by Commission staff, the Phase II rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. (OPC BR 44) OPC also indicated that if the Utility encounters any unforeseen events that will impede the completion of the Phase II plant items, then KWRU should immediately notify the Commission and all parties to this proceeding in advance of the deadline to allow ample time to review whether an extension is appropriate. (OPC BR 44)

### **County**

The County explained that no further Phase I rate implementation is necessary and the Phase I revenue requirement should be used to determine whether any refunds are owed to KWRU's customers. The County stressed that rates should be implemented on the first day of the first billing period following the date on which the new WWTP begins serving the Utility's customers. The County added that rates should go into effect no earlier than 30 days following the date of the Commission's vote. The County submitted that the Commission staff should verify that the new WWTP is actually serving customers and that the rates charged in the tariff are the approved rates. The County concluded that safeguards should be put into place to allow the parties an avenue to participate further in the rate implementation process if there are any delays in completing the Phase II plant items by KWRU. (County BR 38-39)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC. (Harbor Shores BR 2)

## **ANALYSIS**

As addressed in Issue 2, staff believes a two-phased revenue requirement is not appropriate. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

**Issue 39:** Should any portion of the implemented PAA rates be refunded? If so, how should the refund be calculated, and what is the amount of the refund?

**Recommendation:** Yes. The proper refund amount should be calculated by using the same data used to establish final rates, excluding adjustments that do not relate to the period that PAA rates are in effect. The revised revenue requirement for this collection period should be compared to the amount of PAA revenue requirement implemented. This results in a PAA refund of 7.43 percent. The refund should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. (Norris)

**Position of the Parties**

**KWRU:** No portion of the PAA Order rates should be refunded.

**OPC:** Yes, the Commission-approved Phase I PAA rates that were implemented by the Utility were excessive based on OPC's Phase I revenue requirement calculation. The refund should be applied consistent with the Commission's refund rule and should be credited to customer bills over the same amount of time that the increased rates were collected to offset the initial impact of the Phase II rate increase.

**County:** Yes. The amount to be refunded should be the difference between (a) the amounts collected by KWRU from the effective date of the PAA Rates (on or about April 15, 2016) until the effective date of the new, permanent Phase II Rates minus (b) the revenue requirements as determined by the Commission that should have been collected during the same time period. Any refund should be calculated and made pursuant to Commission Rule 25-30.360, F.A.C.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

In its brief, KWRU stated that this is a fall-out issue based upon arguments in previous issues, and that, as such, revenue requirement determined in the final order would be in excess of rates set forth in the PAA Order. (KWRU BR 31) KWRU witness Swain testified that it would be correct to compare the final rates, including the pro forma plant expansion, and the PAA rates to determine if a refund was necessary. (TR 793-794) Witness Swain further testified that she agreed that the Commission has the discretion to calculate a Phase I revenue requirement for purposes of a refund, although she did not believe that was a correct method (TR 794)

**OPC**

Based on the testimony of OPC witness Merchant, the Commission-approved Phase I PAA rates that were implemented by the Utility were excessive based on OPC's Phase I revenue requirement calculation. (OPC BR 44) OPC stated that a refund is appropriate in this case and

should be applied consistent with the Commission's refund rule and should be credited to customer bills over the same amount of time that the increased rates were collected to offset the initial impact of the Phase II rate increase. (TR 385; OPC BR 44)

### **County**

In its brief, the County stated that the Utility should be required to refund to customers the difference between the amounts collected pursuant to the Phase I Rates (PAA Rates) and the Commission-determined appropriate revenue requirement for the time that the Phase I Rates continue in effect. (County BR 40) Further, the County elaborated that any required refund should actually be refunded to customers, in lieu of a credit to future bills, given the socioeconomic conditions of Stock Island, which is the lowest income area of Monroe County. (TR 449-450; County BR 40-41) Additionally, the County asserted that any refund should be calculated and made pursuant to Rule 25-30.360, F.A.C. (County BR 41)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC. (Harbor Shores BR 2)

## **ANALYSIS**

By Order No. PSC-16-0123-PAA-WU, issued March 23, 2016, the Commission approved the implementation of PAA wastewater rates subject to refund, pursuant to Section 367.081(8), F.S. Consistent with Section 367.082(4), F.S., any refund must be calculated to reduce the rate of return of the Utility during the pendency of the proceeding to the same level within the range of the newly authorized rate of return. Adjustments made in this period to do not relate to the period that PAA rates are in effect should be removed. These adjustments include removing incremental rate expense not embedded in PAA rates, pro forma plant, and thus, the non-used and useful adjustment to rate base. To establish the proper refund amount, staff calculated a revised revenue requirement for this period using the same data used to establish final rates. Using the principles discussed above, the \$2,238,046 Phase I revenue requirement granted in the PAA Order for the test year is greater than the revised revenue requirement for the PAA rate collection period of \$2,071,790. This results in a PAA refund of 7.43 percent.

The prescriptive methodology of calculating a potential refund of the PAA rates implemented during the pendency of this proceeding make a separate Phase I revenue requirement unnecessary. As described above, the method isolates a comparison of circumstances that are applicable in the period the PAA rates are in effect. Staff would note that this methodology is consistent with the methodology approved in the 2011 rate case for Water Management Services, Inc. to determine whether a refund was appropriate for the implemented PAA rates in that case.<sup>28</sup>

Moreover, contrary to the County's position that any refunds should be in the form of an actual refund and not a bill credit, staff recommends that refunds should be distributed in the form of a credit to the customers' bills and a refund check should be issued only in the event that the customer is no longer on the system in accordance with Rule 25-30.360(5), F.A.C.

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<sup>28</sup> Order No. PSC-13-0197-FOF-WU, p. 39, issued May 16, 2013, in Docket No. 110200, *In re: Application for increase in water rates in Franklin County by Water Management Services, Inc.*

## **CONCLUSION**

The proper refund amount should be calculated by using the same data used to establish final rates, excluding adjustments that do not relate to the period that PAA rates are in effect. The revised revenue requirement for this collection period should be compared to the amount of PAA revenue requirement implemented. This results in a PAA refund of 7.43 percent. The refund should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C.

**Issue 40:** Should the Utility's approved service availability policy and charges be revised? (Stipulation 14) (Johnson)

**Approved Stipulation:** The appropriate plant capacity charge should remain unchanged at \$2,700 per ERC.

Docket No. 150071-SU  
Date: January 26, 2017

Issue 41

***Issue 41:*** DROPPED.

**Issue 42:** Did KWRU bill and collect revenues in accordance with its approved tariffs? If not, what is the appropriate remedy?

**Recommendation:** Staff recommends that a new docket be opened, and a full audit and investigation be conducted in regards to KWRU's billing practices in order to determine if any orders, rules, or statutes were violated by the Utility. Further, the Utility should be put on notice that failure to comply with Commission orders, rules, or statutes will subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues or revocation of its certificate as set forth in Section 367.161, F.S. (Friedrich)

### **Position of the Parties**

**KWRU:** All bills and collections were in accordance with the intent of the approved tariffs.

**OPC:** No. The PAA Order stated KWRU's billing practices for several general service customers is inconsistent with its approved tariff, and that Staff would address whether the Utility should be ordered to 'show cause' for charging rates that are inconsistent with its tariff. KWRU's response to Commission Staff's letter and the issues are very complex. The Commission should initiate a full audit/investigation to determine the Utility's compliance with its tariffs and what actions should be taken.

**County:** No. The Commission should initiate a full investigation to determine the extent to which the Utility has not billed and collected in accordance with its applicable tariffs and take appropriate action based on the results of that investigation.

**Harbor Shores:** Agrees with OPC.

### **Staff Analysis:**

## **PARTIES' ARGUMENTS**

### **KWRU**

KWRU stated that it billed and collected revenues in accordance with the intent of its approved tariff. (KWRU BR 32) The Utility argued that its billing practices are due to the mixed-usage of certain properties, property redevelopment, and the mischaracterization of customer class when all residential accounts were established using the FKAA water meter data and customer information. (KWRU BR 32-33; EXH 84; TR 620-21; TR 623-24; TR 628-29) The Utility addressed several billing practices identified by staff with regard to KWRU billing inconsistent with its tariff in a letter dated March 21, 2016. Safe Harbor Marina was billed a negotiated rate instead of the tariff-approved bulk flat rate, Sunset Marina was billed a base facility charge (BFC) for an 8" and 2" meter and additional BFCs for each of the 64 units behind the meters, and Meridian West and Flagler Village, were billed based on individual, non-FKAA meters, instead of the FKAA master meters. (EXH 84; KWRU BR 32-33) In addition, at the service hearing, a customer of KWRU testified that the Utility billed based on an effluent meter instead of the FKAA meter. (SH TR 24-29; SH TR 43-44) Utility witness Johnson testified that several



master-metered customers were misclassified and overbilled. He further testified that these customers should receive refunds with interest. (EXH 84; TR 628-29)

### **OPC**

OPC witness Merchant argued that KWRU incorrectly billed customers in her direct testimony by referencing the PAA Order. (OPC BR 45; TR 355-57) In addition, witness Merchant contended all customers billed in error are deserving of applicable refunds. (OPC BR 45-6; EXH 84)

OPC disputed the complexity of KWRU's billing practices. Witness Merchant testified that the most efficient way to rectify this situation is for the Commission to initiate a full audit and investigation in order to accurately determine if and how much of KWRU's revenues were based on unapproved and improper billing practices. (OPC BR 47; TR 357; TR 379) In addition, witness Merchant also argued that a full audit and investigation to show cause would potentially reveal other improperly billed customers who may be owed refunds as well. (OPC BR 47; TR 357)

### **County**

The County agreed with OPC that KWRU did not bill in accordance with its approved tariff. (County BR 41) In addition, the County agreed with KWRU, that Meridian West and Flagler Village are owed refunds, but also believe that there are additional customers who may be owed refunds as well. (County BR 41)

The County agreed with OPC that this situation should be addressed with a full investigation and audit by the Commission to determine whether and to what degree KWRU billed and collected revenues inconsistent with its tariff. (County BR 42) After an investigation has commenced, the County argued the Commission should determine if any additional refunds are necessary and if any additional actions are necessary to prevent inconsistent billing in the future. (County BR 42)

### **Harbor Shores**

In its brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

## **ANALYSIS**

KWRU's current rate structure and rates have been developed as a result of a prior complaint docket,<sup>29</sup> several requests for a new class of service,<sup>30</sup> and as established in its last rate case.<sup>31</sup>

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<sup>29</sup>Order No. PSC-02-1165-PAA-SU, issued August 26, 2002, in Docket No. 020520-SU, *In re: Complaint by Safe Harbor Marina against K W Resort Utilities Corp. and request for new class of service for bulk wastewater rate in Monroe County.*

<sup>30</sup>Order Nos. PSC-95-0335-FOF-SU, issued March 10, 1995, in Docket No. 941323-SU, *In re: Request for approval of a new class of service in Monroe County by K W Resort Utilities Corporation*; PSC-99-0489-FOF-SU, issued March 8, 1999, in Docket No. 970229-SU, *In re: Application for limited proceeding increase in reuse water rates in Monroe County by K W Resort Utilities Corp.*; PSC-02-1711-TRF-SU, issued December 9, 2002, in Docket No. 021008-SU, *In re: Request for approval of two new classes of bulk wastewater rates in Monroe County by K W Resort Utilities Corp.*; and PSC-05-0955-TRF-SU, issued October 7, 2005, in Docket No. 050474-SU, *In re: Request for approval of new class of bulk wastewater rates in Monroe County by K W Resort Utilities Corp.*

Staff has analyzed each circumstance brought forth by all parties and all customers who participated in the service hearing, as well as the Utility's responses.

The Commission has previously addressed incorrect billing practices of the Utility. Order No. PSC-02-1165-PAA-SU, issued August 26, 2002, determined that KWRU was billing discriminatory rates to Safe Harbor Marina. The Commission determined that it did not approve the monthly flat rate KWRU was billing to this general service customer. Subsequently, in the Utility's last rate case a new flat rate was approved. KWRU admitted on March 21, 2015, it billed a negotiated flat rate of \$1,650.67 per month, instead of the approved bulk rate of \$947, to Safe Harbor Marina, despite being recognized by the Commission for incorrect billing practices.<sup>32</sup> (EXH 84; TR 620-21) Witness Johnson argued that the Utility notified the Commission of the Utility's agreement with Safe Harbor Marina but received no further response from the Commission. However, witness Johnson testified that he is aware that it requires Commission approval to change a tariff. (KWRU BR 32; TR 621) The Commission also recognized that it became aware that KWRU utilized wastewater charges in its revenue calculations that were not approved by the Commission during the review of a price index application in Order No. PSC-02-1711-TRF-SU, issued December 9, 2002. The Commission found that the Utility thoroughly understood the requirements of Sections 367.091(4) and 367.091(5), F.S., and would not initiate a new class of service without notifying the Commission in a timely matter.

During the current rate case, staff identified additional billing practices that appear to be inconsistent with the Utility's approved tariff. Based on documentation provided in prior Commission Orders, the Utility's admission of a negotiated rate, and the Utility's admission that refunds with interest are due to at least two customers, staff believes a full audit and investigation is the most effective solution. This will allow the Commission to determine if any of KWRU's revenues were based on unapproved and improper billing practices. A full audit and investigation will also determine if there are any additional customers who may be owed refunds as well. (EXH 84)

## CONCLUSION

Staff recommends that a new docket be opened, and a full audit and investigation be conducted in regard to KWRU's billing practices in order to determine if any orders, rules, or statutes were violated by the Utility. Further, the Utility should be put on notice that failure to comply with Commission orders, rules, or statutes will subject the Utility to show cause proceedings and fines of up to \$5,000 per day per violation for each day the violation continues or revocation of its certificate as set forth in Section 367.161, F.S.

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<sup>31</sup>Order No. PSC-09-0057-FOF-SU, issued January 27, 2009, in Docket No. 070293-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

<sup>32</sup> Order No. PSC-02-1165-Paa-SU, issued August 26, 2002, in Docket No. 020520-SU, *In re: Complaint by Safe Harbor Marina against K W Resort Utilities, Corp. and request for new class of service for bulk wastewater rate in Monroe County.*

**Issue 43:** What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

**Recommendation:** KWRU's wastewater rates should be reduced as shown on Schedule No. 4 to remove \$112,782 of wastewater rate case expense, grossed-up for RAFs, which is being amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period pursuant to Section 367.0816, F.S. KWRU should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If KWRU files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Friedrich, Frank)

**Position of the Parties**

**KWRU:** This is a fallout issue depending upon the allowed rate case expense.

**OPC:** No position was stated in the post-hearing brief.

**County:** Agree with OPC that this is a fallout issue.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU contends that this is a fallout issue depending upon allowed rate case expense. (KWRU BR 34)

**OPC**

No position was stated in the post-hearing brief.

**County**

The County agrees with OPC that this is a fallout issue. (County BR 42)

**Harbor Shores**

In its brief, Harbor Shores agreed with OPC's position on this issue. (Harbor Shores BR 2)

**ANALYSIS**

Section 367.0816, F.S., was repealed pursuant to Ch. 2016-226, Laws of Florida, effective July 1, 2016. However, the statute was in effect when KWRU's application was filed, and therefore shall remain applicable in this case.

Section 367.0816, F.S., was repealed pursuant to Ch. 2016-226, Laws of Florida, effective July 1, 2016. However, the statute was in effect when KWRU's application was filed, and therefore shall remain applicable in this case.

Section 367.0816, F.S., requires that rates be reduced immediately following the expiration of the four-year amortization period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of \$112,782 of revenue associated with the amortization of rate case expense, the associated return on deferred rate case expense included in working capital, and the gross up for RAFs. Using KWRU's current revenues, expenses, capital structure and customer base, the reduction in revenues will result in the rate decreases as shown on Schedule No. 4.

KWRU should be required to file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The Utility should also be required to file a proposed customer notice setting forth the lower rates and the reason for the reduction. If KWRU files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease, and the reduction in the rates due to the amortized rate case expense.

**Issue 44:** Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments? (Stipulation 16) (Norris)

**Approved Stipulation:** KWRU shall notify the Commission, within 90 days of the order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners Uniform System of Accounts associated with the Commission-approved adjustments.

**Issue 45:** Should this docket be closed?

**Recommendation:** No. This docket should remain open for staff's verification that the Utility has completed the recommended refunds, the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and that KWRU has notified the Commission in writing that the adjustments for all applicable NARUC USOA primary accounts have been made. Once these actions are complete, this docket should be closed administratively. (Mapp)

**Position of the Parties**

**KWRU:** Yes, upon verification of post Final Order requirements.

**OPC:** No. This docket should be kept open until the Commission fully resolves Issue 42 and any other issues.

**County:** No. The County agrees with OPC that the docket should remain open until the Commission resolves all issues.

**Harbor Shores:** Agrees with OPC.

**Staff Analysis:**

**PARTIES' ARGUMENTS**

**KWRU**

KWRU argued that there is no justification for this docket remaining open after verification of post Final Order requirements.

**OPC**

OPC argued that this docket should remain open until the Commission fully resolves Issue 42 and any other issues.

**County**

County agreed with OPC that this docket should remain open pending Commission resolution of all issues.

**Harbor Shores**

Harbor Shores agreed with OPC.

**ANALYSIS**

This docket should remain open for staff's verification that the Utility has completed the recommended refunds, the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and that KWRU has notified the Commission in writing that the adjustments for all applicable NARUC USOA primary accounts have been made. Once these actions are complete, this docket should be closed administratively.

<b>KWRU Schedule of Wastewater Rate Base Test Year Ended 12/31/14</b>				<b>Schedule No. 1-A Docket No. 150071-SU</b>	
<b>Description</b>	<b>Test Year Per Utility</b>	<b>Utility Adjust- ments</b>	<b>Adjusted Test Year Per Utility</b>	<b>Staff Adjust- ments</b>	<b>Staff Adjusted Test Year</b>
1 Plant in Service	\$11,925,704	\$4,092,937	\$16,018,641	(\$381,738)	\$15,636,903
2 Land and Land Rights	375,923	(923)	375,000	0	375,000
3 Non-used and Useful Components	0	0	0	(1,440,804)	(1,440,804)
4 Accumulated Depreciation	(5,828,761)	(242,924)	(6,071,685)	(548,574)	(6,620,259)
5 CIAC	(9,946,997)	297,120	(9,649,877)	(372,032)	(10,021,909)
6 Amortization of CIAC	3,096,094	(81,153)	3,014,941	733,654	3,748,595
7 CWIP	0	0	0	0	0
9 Working Capital Allowance	<u>0</u>	<u>1,458,270</u>	<u>1,458,270</u>	<u>(534,599)</u>	<u>923,671</u>
11 <b>Rate Base</b>	<u>(\$378,037)</u>	<u>\$5,523,327</u>	<u>\$5,145,290</u>	<u>(\$2,544,093)</u>	<u>\$2,601,197</u>

<b>KWRU</b>		<b>Schedule No. 1-B</b>
<b>Adjustments to Rate Base</b>		<b>Docket No. 150071-SU</b>
<b>Test Year Ended 12/31/14</b>		
<b>Explanation</b>		<b>Wastewater</b>
<u>Plant In Service</u>		
1	To reflect pro forma WWTP expansion & vacuum tank. (I-6)	(\$479,011)
2	To reflect 2015 and 2016 routine plant additions. (I-6)	<u>97,273</u>
	Total	<u>(\$381,738)</u>
<u>Non-used and Useful</u>		
	To reflect net non-used and useful adjustment (I-11)	<u>(\$1,440,804)</u>
<u>Accumulated Depreciation</u>		
1	To reflect pro forma plant adjustment. (I-7)	\$383,138
2	To reflect 2015 and 2016 routine plant additions. (I-7)	(9,525)
3	To reflect two additional years of accumulated depreciation. (I-7)	<u>(922,187)</u>
	Total	<u>(\$548,574)</u>
<u>CIAC</u>		
	To reflect CIAC collected in 2015 and 2016. (I-8)	<u>(\$372,032)</u>
<u>Accumulated Amortization of CIAC</u>		
1	To reflect CIAC collected in 2015 and 2016. (I-9)	\$30,594
2	To reflect two additional years of CIAC amortization. (I-9)	<u>703,061</u>
	Total	<u>\$733,654</u>
<u>Working Capital</u>		
1	To reflect appropriate cash balance to include in working capital. (I-12)	(\$559,311)
2	To reflect appropriate deferred rate case expense. (I-12)	18,089
3	To reflect appropriate miscellaneous deferred debits. (I-28)	<u>6,623</u>
	Total	<u>(\$534,599)</u>



<b>KWRU Capital Structure-13-Month Average Test Year Ended 12/31/14</b>						<b>Schedule No. 2 Docket No. 150071-SU</b>		
Description	Total Capital	Specific Adjustments	Subtotal Adjusted Capital	Prorata Adjustments	Capital Reconciled to Rate Base	Ratio	Cost Rate	Weighted Cost
<b>Per Utility</b>								
1 Long-term Debt	\$1,248,337	\$0	\$1,248,337	(\$184,472)	\$1,063,865	18.74%	4.25%	0.80%
2 Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
3 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
4 Common Equity	(276,537)	5,499,326	5,222,789	(771,795)	4,450,994	78.39%	9.18%	7.20%
5 Customer Deposits	162,972	0	162,972	0	162,972	2.87%	2.00%	0.06%
6 Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>
7 <b>Total Capital</b>	<u>\$1,134,772</u>	<u>\$5,499,326</u>	<u>\$6,634,098</u>	<u>(\$956,267)</u>	<u>\$5,677,831</u>	<u>100.00%</u>		<u>8.05%</u>
<b>Per Staff</b>								
8 Long-term Debt	\$1,248,337	\$2,251,663	\$3,500,000	(\$1,879,260)	\$1,620,740	62.31%	4.00%	2.49%
9 Short-term Debt	0	0	0	0	0	0.00%	0.00%	0.00%
10 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
11 Common Equity	(276,537)	2,041,903	1,765,366	(947,880)	817,486	31.43%	11.16%	3.51%
12 Customer Deposits	162,972	0	162,972	0	162,972	6.27%	2.00%	0.13%
13 Deferred Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0.00%</u>	0.00%	<u>0.00%</u>
14 <b>Total Capital</b>	<u>\$1,134,772</u>	<u>\$4,293,566</u>	<u>\$5,428,338</u>	<u>(\$2,827,140)</u>	<u>\$2,601,198</u>	<u>100.00%</u>		<u>6.12%</u>
						<b>LOW</b>	<b>HIGH</b>	
RETURN ON EQUITY						<u>10.16%</u>	<u>12.16%</u>	
OVERALL RATE OF RETURN						<u>5.81%</u>	<u>6.44%</u>	

<b>KWRU</b>						<b>Schedule No. 3-A</b>	
<b>Statement of Wastewater Operations</b>						<b>Docket No. 150071-SU</b>	
<b>Test Year Ended 12/31/14</b>							
<b>Description</b>	<b>Test Year Per Utility</b>	<b>Utility Adjustments</b>	<b>Adjusted Test Year Per Utility</b>	<b>Staff Adjustments</b>	<b>Staff Adjusted Test Year</b>	<b>Revenue Increase</b>	<b>Revenue Requirement</b>
1 <b>Operating Revenues:</b>	<u>\$1,479,307</u>	<u>\$1,866,050</u>	<u>\$3,345,357</u>	<u>(\$1,810,558)</u>	<u>\$1,534,799</u>	<u>\$901,618</u> 58.75%	<u>\$2,436,418</u>
<b>Operating Expenses</b>							
2 Operation & Maintenance	\$1,199,672	\$1,056,152	\$2,255,824	(\$400,868)	\$1,854,956		\$1,854,956
3 Depreciation	95,996	282,959	378,955	(156,229)	222,726		222,726
4 Amortization	0	0	0	0	0		0
5 Taxes Other Than Income	132,607	117,733	250,340	(91,457)	158,884	40,573	199,457
6 Income Taxes	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
7 <b>Total Operating Expense</b>	<u>1,428,275</u>	<u>1,456,844</u>	<u>2,885,119</u>	<u>(648,554)</u>	<u>2,236,565</u>	<u>40,573</u>	<u>2,277,138</u>
8 <b>Operating Income</b>	<u>\$51,032</u>	<u>\$409,206</u>	<u>\$460,238</u>	<u>(\$1,162,004)</u>	<u>(\$701,766)</u>	<u>\$861,045</u>	<u>\$159,280</u>
9 <b>Rate Base</b>	<u>(\$378,037)</u>		<u>\$5,145,290</u>		<u>\$2,601,197</u>		<u>\$2,601,197</u>
10 <b>Rate of Return</b>	<u>(13.50%)</u>		<u>8.94%</u>		<u>(26.98%)</u>		<u>6.12%</u>

<b>KWRU</b>		<b>Schedule No. 3-B</b>
<b>Adjustment to Operating Income</b>		<b>Docket No. 150071-SU</b>
<b>Test Year Ended 12/31/14</b>		
<b>Explanation</b>	<b>Wastewater</b>	
<u>Operating Revenues</u>		
1 To remove requested final revenue increase.	(\$1,790,496)	
2 To reflect test-year revenues. (I-19)	<u>(20,062)</u>	
Total	<u>(\$1,810,558)</u>	
<u>Operation and Maintenance Expense</u>		
1 To reflect the appropriate pro forma O&M expense for AWT. (I-23)	(\$341,471)	
2 To remove additional pro forma expense for contractual services. (I-24)	(12,350)	
3 To reflect the removal of management fees. (I-25)	(60,000)	
4 To reflect the appropriate amortization of Last Stand litigation fees. (I-28)	3,908	
5 To reflect appropriate rate case expense amortization. (I-26)	<u>9,045</u>	
Total	<u>(\$400,868)</u>	
<u>Depreciation Expense - Net</u>		
1 To reflect depreciation expense on pro forma plant adjustment. (I-29)	(\$26,414)	
2 To reflect depreciation expense on 2015 and 2016 pro forma plant. (I-29)	8,008	
3 To reflect amortization expense on CIAC adjustment. (I-29)	(20,685)	
4 To remove net depreciation on non-U&U adjustment above. (I-29)	<u>(117,138)</u>	
Total	<u>(\$156,229)</u>	
<u>Taxes Other Than Income</u>		
1 To remove RAFs on revenue adjustments above. (I-30)	(\$81,475)	
2 To reflect appropriate property taxes related to pro forma plant. (I-30)	754	
3 To reflect appropriate payroll taxes on pro forma salaries. (I-30)	(210)	
4 To remove property tax on non-U&U adjustment. (I-30)	<u>(10,526)</u>	
Total	<u>(\$91,457)</u>	

<b>KWRU</b>		<b>SCHEDULE NO. 4</b>		
<b>TEST YEAR ENDED DECEMBER 31, 2014</b>		<b>DOCKET NO. 150071-SU</b>		
<b>MONTHLY WASTEWATER RATES</b>				
	<b>UTILITY CURRENT RATES</b>	<b>UTILITY REQUESTED RATES</b>	<b>STAFF RECOMMENDED RATES</b>	<b>4 YEAR RATE REDUCTION</b>
-				
-				
<b><u>Residential Service</u></b>				
All Meter Sizes	\$31.66	\$35.26	\$31.80	\$1.55
Charge per 1,000 gallons - Residential 10,000 gallon cap	\$5.25	\$7.66	\$5.27	\$0.26
<b><u>General Service</u></b>				
Base Facility Charge by Meter Size				
5/8" x 3/4"	\$31.66	\$35.26	\$31.80	\$1.55
1"	\$79.15	\$88.17	\$79.50	\$3.87
1-1/2"	\$158.30	\$176.32	\$159.00	\$7.75
2"	\$253.28	\$282.09	\$254.40	\$12.39
3"	\$506.56	\$564.20	\$508.80	\$24.79
4"	\$791.50	\$881.58	\$795.00	\$38.73
6"	\$1,583.00	\$1,763.17	\$1,590.00	\$77.46
8"	\$2,532.80	\$3,173.66	\$2,544.00	\$123.93
8" Turbo	\$2,849.40	\$4,055.24	\$2,862.00	\$139.42
Charge per 1,000 gallons - General Service	\$6.30	\$9.19	\$6.32	\$0.31
<b><u>Harbor Shores</u></b>				
Base Facility Charge			\$2,194.20	\$106.89
Charge per 1,000 gallons 690,000 gallon cap			\$5.27	\$0.26
<b><u>Private Lift Station Owners</u></b>				
5/8" x 3/4"	\$25.33	\$35.26	\$25.44	\$1.24
1"	\$63.32	\$88.17	\$63.60	\$3.10
1-1/2"	\$126.64	N/A	\$127.20	\$6.20
2"	\$202.62	\$282.09	\$203.52	\$9.91
3"	\$405.25	N/A	\$407.04	\$19.83
4"	\$633.20	N/A	\$636.00	\$30.98
6"	\$1,266.40	N/A	\$1,272.00	\$61.96
8"	\$2,026.24	N/A	\$2,035.20	\$99.14
Charge per 1,000 gallons - General Service	\$6.30	\$9.19	\$6.32	\$0.31
<b><u>Reuse Service</u></b>				
Per 1,000 gallons	\$0.93	\$1.35	\$1.34	\$0.07
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>				
4,000 Gallons	\$52.66	\$65.90	\$52.88	
6,000 Gallons	\$63.16	\$81.22	\$63.42	
10,000 Gallons	\$84.16	\$111.86	\$84.50	

## APPENDIX

1. Plant in service should be reduced by \$817,240 based on the Staff Audit Finding 1.
2. Construction work in progress should be increased by \$303,099 for the December 31, 2014 Phase I test year based on the Staff Audit Finding 2.
3. Land should be decreased by \$923 and O&M expenses (contractual services-other) should be increased by \$1,200 for survey fees, and working capital should be increased by \$738 based on the Staff Audit Finding 3.
4. CIAC should be decreased by \$297,120, accumulated amortization of CIAC should be decreased by \$81,153, and test year amortization of CIAC should be decreased by \$14,003 based on Staff Audit Finding 4.
5. Accumulated depreciation should be increased by \$2,040 and depreciation expense should be decreased by \$5,489, based on Staff Audit Finding 5.
6. The wastewater collection system should be considered 100% used and useful.
7. The existing wastewater treatment plant should be considered 100% used and useful before the wastewater treatment plant expansion is placed into service.
8. Accounts receivable-other should be increased by \$40,067 and miscellaneous current and accrued assets should be decreased by \$13,422, based on Staff Audit Finding 7.
9. Test year revenues for 2014, for Phase I, if applicable, are as follows:

Residential and General Service	\$1,411,781
Reuse Revenues	\$50,400
Miscellaneous Revenues	\$72,619
Total	\$1,534,799
10. O&M expenses should be decreased by \$4,512, based on Staff Audit Finding 10 and \$6,276, based on Staff Audit Finding 11.
11. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:
  - a. \$25, if the face value does not exceed \$50,
  - b. \$30, if the face value exceeds \$50 but does not exceed \$300,
  - c. \$40, if the face value exceeds \$300,
  - d. Or five percent of the face amount of the check, whichever is greater.
12. KWRU should be authorized to collect a monthly lift station cleaning charge of \$1,462 from the Monroe County Detention Center.

13. In calculating the rates to be collected from service rates, the amount of revenues from reuse rates should be calculated using the final approved reuse rate.
14. The appropriate plant capacity charge should remain unchanged at \$2,700 per ERC.
15. The appropriate leverage formula to use is the leverage formula in effect when the Commission makes its final decision.
16. KWRU shall notify the Commission, within 90 days of the order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners Uniform System of Accounts associated with the Commission-approved adjustments.