



## 1 I N D E X

## 2 WITNESSES

3 NAME: PAGE

4 HELMUTH W. SCHULTZ, III  
Examination by Mr. Sayler 1066  
5 Prefiled surrebuttal testimony inserted 1068  
Examination by Mr. Smith 1084  
6 Further Examination by Mr. Sayler 1100

7 ANDREW T. WOODCOCK  
Examination by Mr. Sayler 1106  
8 Prefiled surrebuttal testimony inserted 1108  
Examination by Mr. Friedman 1118  
9 Further Examination by Mr. Sayler 1121

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBITS			
NUMBER :		ID	ADMITTED
149	2016 Keys Energy Tariff	1093	
150	2018 Keys Energy Tariff	1094	
151	BB&T note 007	1096	
152	BB&T note 109	1097	
38	As identified in the comprehensive exhibit list		1106
136	Previously identified		1126
137-141	Previously identified		1127
142	Previously identified		1127
143-145	Previously identified		1129
146-148	Previously identified		1130
149-150	Previously identified		1131
151-152	Previously identified		1132

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 (Transcript follows in sequence from  
3 Volume 7.)

4 MR. SAYLER: Thank you. Office of Public  
5 Counsel would call Mr. William Helmuth Schultz to  
6 the stand.

7 Whereupon,

8 HELMUTH W. SCHULTZ, III

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

12 EXAMINATION

13 BY MR. SAYLER:

14 Q Good afternoon, Mr. Schultz. How are you  
15 today?

16 A Good afternoon.

17 Q Are you the same Mr. Schultz who testified the  
18 other day?

19 A I am.

20 Q And you are still sworn, is that correct?

21 A Yes, sir.

22 Q All right. And did you prepare and cause to  
23 be prefiled surrebuttal testimony on May 4th, 2018?

24 A I did.

25 Q And do you have any corrections to that

1     **surrebuttal?**

2           A     No, sir.

3           Q     All right.  And if I were to ask you the same  
4     **questions again today, would your answers be the same?**

5           A     Yes, sir.

6           Q     And you adopt those as your testimony today?

7           A     Yes, sir.

8                   MR. SAYLER:  Commissioner Polmann, I would ask  
9     that his testimony be entered into the record as  
10    though read.

11                   COMMISSIONER POLMANN:  We will enter at this  
12    time the prefiled surrebuttal testimony of  
13    Mr. Schultz.

14                   (Whereupon, prefiled testimony was inserted.)

15

16

17

18

19

20

21

22

23

24

25

**DIRECT TESTIMONY****OF****Helmuth W. Schultz, III**

On Behalf of the Office of Public Counsel

Before the

Florida Public Service Commission

Docket No. 20170141-SU

1  
2  
3  
4  
5  
6  
7  
8  
9 **Q. PLEASE STATE YOUR NAME, OCCUPATION, AND BUSINESS ADDRESS.**

10 A. My name is Helmuth W. Schultz, III. I am a Certified Public Accountant licensed in the  
11 State of Michigan and a senior regulatory consultant at the firm Larkin & Associates,  
12 PLLC, (“Larkin”) Certified Public Accountants, with offices at 15728 Farmington Road,  
13 Livonia, Michigan, 48154.

14  
15 **Q. ARE YOU THE SAME HELMUTH W. SCHULTZ III THAT FILED DIRECT**  
16 **TESTIMONY IN THIS PROCEEDING ON MARCH 14, 2018?**

17 A. Yes, I am.

18  
19 **Q. WHAT IS THE PURPOSE FOR YOUR FILING OF EXPEDITED SURREBUTTAL**  
20 **TESTIMONY IN THIS PROCEEDING?**

21 A. I am providing expedited surrebuttal for the Office of Public Counsel (OPC) in response  
22 to new cost information and revised minimum filing requirements (MFRs) provided by  
23 KWRU in rebuttal that has the effect of increasing its revenue requirement. I am  
24 responding to the KWRU’s attempt to update its filing with new information, increasing  
25 costs and attempting to update its request with added documentation because KWRU failed

1 to properly support its position in its initial filing and in response to discovery. In addition,  
2 I am addressing the Company's failure to understand ratemaking in general.

3

4 **Q. HAVE YOU REVIEWED THE JOINT MOTION TO STRIKE AND THE**  
5 **PORTIONS OF TESTIMONY AND EXHIBITS SUBJECT TO THE MOTION TO**  
6 **STRIKE?**

7 A. Yes.

8

9 **Q. DO KWRU WITNESSES SWAIN AND JOHNSON INCLUDE NEW COST**  
10 **INFORMATION IN REBUTTAL?**

11 A. Yes, they do. The numerous adjustments identified in the rebuttal testimonies of Ms. Swain  
12 and Mr. Johnson reflect that belief they can revise the Company's cost information at will,  
13 and in my opinion shifts the burden of proof to the ratepayers with little time to respond  
14 prior to the hearing.

15

16 **Q. WOULD YOU SUMMARIZE YOUR CONCERN WITH THE COMPANY'S**  
17 **REBUTTAL TESTIMONY?**

18 A. The Company's rebuttal is in effect a new rate filing. It acknowledges issues that were  
19 incomplete in KWRU's original filing and attempts to make changes to try and  
20 accommodate the admissions. The new filing comes by making changes to compensate  
21 for the admitted reductions through new costs projections and most notably a change in the  
22 rate of return.

23

24 **Q. WHAT ARE THE NEW COST INCREASES INCLUDED AS PART OF THE**  
25 **COMPANY'S REBUTTAL FILING?**

1 A. As shown on Exhibit HWS-3, KWRU's rebuttal testimony has changed numerous lines in  
2 the Company's MFR schedules between direct and rebuttal. While the Company's rebuttal  
3 attempts to address adjustments recommended by OPC and Staff testimony, KWRU added  
4 new costs. If KWRU simply agreed with some of the recommended adjustment, there  
5 would be a downward adjustment to rate base and the cost of service. KWRU  
6 acknowledges that there are some items decreasing; however, instead of simply accepting  
7 those changes, KWRU has elected to offset those decreases to rate base and the cost of  
8 service with new increases in rebuttal.

9

10 **Q. WHAT IS THE IMPLICATION OF MS. SWAIN'S REBUTTAL TESTIMONY ON**  
11 **PAGE 33, LINE 16 THROUGH PAGE 34, LINE 10 WHICH ARE PAGES**  
12 **SUBJECT TO THE MOTION TO STRIKE?**

13 A. KWRU apparently filed this rate case under the assumption that it can make changes to its  
14 filing at any time and that it is okay to do so. Ms. Swain states at page 33:18-20 of her  
15 rebuttal "I would revise any of the pro forma adjustments made in the case to reflect  
16 additional information that has come to light. This is commonly done, and appropriate."  
17 Apparently, she believes that if changes came to light after the filing of the rate case, those  
18 changes should be incorporated into the Company's MFRs. Yet, in her deposition on April  
19 24, 2018, she said she did not feel she needed to provide the Commission all the revised  
20 MFRs. (Swain Deposition, page 82, lines 6-page 83, line 1.) These two statements do not  
21 reconcile especially since here Exhibit DDS-2 contain \_\_\_pages of revised MFRs, and  
22 revised Schedule E-1, shows an increase in the rates and charges as a result of the changes  
23 made in rebuttal.



1 **Q. TO YOUR KNOWLEDGE, DO OTHER JURISDICTIONS ALLOW**  
2 **WHOLESALE CHANGES TO A UTILITY'S RATE CASE AFTER THE**  
3 **PETITION IS FILED?**

4 A. No, and I have been participating in and/or providing testimony as an expert in utility  
5 ratemaking since 1976.

6

7 **Q. WHAT NEW INFORMATION WAS ADDED TO THIS RATE CASE IN KWRU'S**  
8 **REBUTTAL?**

9 A. On page 15 of his rebuttal, KWRU's Witness Johnson provides testimony regarding the  
10 size of the proposed modular office. A major issue in this case relates to the approximately  
11 1,200 square foot modular office building requested by KWRU that was initially estimated  
12 to cost \$288,000. In my direct testimony, I opined that, based on my experience, the cost  
13 per square foot was high, the contract provided by KWRU was with a company that could  
14 not be located on the State of Florida Division of Corporations website (Sunbiz.org), the  
15 building was to be occupied by March 31, 2018, and KWRU had stated in response to  
16 discovery that a bidding process was not used to select a builder for this new office. When  
17 asked about the status of the project, KWRU responded by stating that there was not a date  
18 certain as to when the Company would receive its modular permanent office.<sup>1</sup>

19 The Company responded to my recommendation with KWRU witness Christopher  
20 Johnson stating in rebuttal that the 1,200 square foot office has increased by 31% to 1,577  
21 square feet. He also changed the completion date from March 31, 2018 to December 2018  
22 and included a new design in Exhibit CAJ-32 not previously provided in direct.

23

---

<sup>1</sup> March 14, 2018 Prefiled Direct Testimony of Helmuth W. Schultz III, pages 10-13.

1 **Q. WHAT IS YOUR OPINION OF EXHIBIT CAJ-32?**

2 A. It appears to be a document manufactured for use at this hearing, and purports to be a  
3 “Model Florida Utilities Office” design from Champion out of Troy, MI. It says 0 bedroom  
4 and 0 bath, yet there are clearly two half bathrooms pictured. The design is not final, as  
5 one can clearly see hand drawn modifications to the upper left restroom area. In addition,  
6 there is much detail that is omitted from the proposed floorplan, and there is no cost  
7 estimate indicated. It basically looks like a residential design that was modified to become  
8 an office. Further, CAJ-32 does not include any request for proposal bid documents, any  
9 indication when the project will go out for bid, or anything else that gives one confidence  
10 that this is the final design that will be built or that the estimated cost is reasonable.

11

12 **Q. WHY IS THE REBUTTAL TESTIMONY INAPPROPRIATE FOR**  
13 **CONSIDERATION?**

14 A. KWRU has the burden of the proof in this docket and should not be allowed to change the  
15 rules of the game at this juncture, giving it an unfair advantage over customers. The  
16 changes and new purported support are not appropriate. With respect to company witness  
17 Johnson’s testimony, he has changed the size of the building from approximately 1,200  
18 square feet to 1,577 square feet (an increase of 31%). He acknowledged that the occupation  
19 date has moved 9 months from March 2018 to December 2018, assuming that December  
20 2018 can be achieved.

21

22 **Q. DOES COMPANY WITNESS JOHNSON CHALLENGE YOUR ASSERTION**  
23 **THAT THE COST PER SQUARE FOOT IS APPROXIMATELY \$240 PER**  
24 **SQUARE FOOT.**

1 A. Yes, he does. Witness Johnson claims the cost of the building will be approximately  
2 \$182.63 per square foot ( $\$288,000 / 1,577$  sq ft). However, in his direct testimony, he  
3 claimed the building would be approximately 1,200 square foot, which would result in  
4 \$240 per square foot ( $\$288,000/1,200$  sq ft).

5

6 **Q. IS AN APPROXIMATE COST OF \$182.63 PER SQUARE FOOT REASONABLE?**

7 A. I cannot state based on the information supplied by KWRU whether the cost per square  
8 foot is or is not reasonable. The reasonableness of the price per square foot is not the  
9 primary issue. Instead, the primary issue is whether KWRU has met its burden of proof  
10 and provided the Commission enough reliable cost information to support the  
11 reasonableness of the cost of this modular building. The Company still claims the cost  
12 should not exceed \$288,000; however, the new information in rebuttal still does not satisfy  
13 that burden of proof for inclusion in rate base. There is also a concern that the Company  
14 did not investigate whether any alternative to a modular was a more prudent and feasible  
15 option.

16

17 **Q. DOES THE NEW INFORMATION PROVIDED IN REBUTTAL QUALIFY AS**  
18 **SUPPORT FOR ALLOWING THE MODULAR BUILDING?**

19 A. No, it does not. KWRU presents a questionable contract that still says the office will be  
20 occupied by March 31, 2018. It is now May and, according to Mr. Johnson's rebuttal  
21 testimony on page 15, KWRU can still only speculate that the building will be in place in  
22 December 2018. I note the original contract contained a specific date, and the date has  
23 now changed to December 2018. The contract includes a cost of \$250,000; KWRU is now  
24 requesting \$288,000 for the building. I am confident that the actual cost of this modular  
25 building will not be either of these figures when and if it is ever completed. The fact that

1 Exhibit CAJ-32 does not include competitive bids, or a request for competitive bids, means  
2 it is insufficient to support the total estimated cost of \$288,000. While the Company needs  
3 a replacement modular building, it failed to meet its burden to support the “not to exceed  
4 \$288,000” as a reasonable amount to be included in rate base at this time. It is still my  
5 opinion that there is insufficient support for the new modular office building and the  
6 recommendations from my direct testimony remains that it should be removed from rate  
7 base at this time. It can be considered in KWRU’s next rate case if and when the building  
8 is ever constructed.

9

10 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON’S REBUTTAL**  
11 **TESTIMONY RELATED TO SALARIES AND WAGES?**

12 A. On pages 21-22 of his rebuttal, Mr. Johnson states that KWRU made a change to payroll  
13 based on known staffing and known anticipated raises. The dollar amount of the \$33,315  
14 (\$200,879-167,564) reduction to salaries is reflected on Schedule B-3 attached to Ms.  
15 Swain’s testimony. However, there is no explanation, calculation, or support showing how  
16 this amount was derived. Even though there appears to be a net reduction, Ms. Swain states  
17 on page 26, lines 2-3, she does not support a reduction in salaries and wages. Without any  
18 further support or documentation provided in rebuttal, my recommendation to reduce  
19 salaries in the amount of \$166,119 remains.

20

21 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON’S REBUTTAL**  
22 **TESTIMONY RELATED TO HURRICANE EXPENSE?**

23 A. Mr. Johnson adds new costs to the hurricane expense on Page 22 of his rebuttal testimony.  
24 There are no supporting documents provided in his exhibits. I have not had time to fully  
25 review these additional costs; however, with no supporting documentation, my

1 recommendation regarding the correct level of hurricane expense remains the same as in  
2 my direct testimony at \$177,536.

3

4 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON'S AND MS.**  
5 **SWAIN'S REBUTTAL TESTIMONY RELATED TO TELEPHONE EXPENSE?**

6 A. Mr. Johnson adds new costs to the telephone expense on Pages 23 and 24 of his rebuttal  
7 testimony. While I have not had time to fully review these additional costs, I note that some  
8 of the items included are not recurring items (such as purchase of equipment), yet Mr.  
9 Johnson is attempting to include them as part of the annual expense. Mr. Johnson also states  
10 that AT&T has failed to provide full service as requested. In addition, Mr. Johnson states  
11 that the completion of these costs are based on the completion of the new modular office.  
12 I have previously addressed the new modular office and my concerns with the possible  
13 completion date. Based on these issues, I am not only concerned with the requested  
14 increase in telephone costs through rebuttal but I also believe the rebuttal testimony throws  
15 the original request into even more uncertainty. Without any further development of what  
16 Mr. Johnson means through his rebuttal or additional supporting documentation, my  
17 original recommendation of \$12,647 for the telephone expense stands.

18

19 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON'S REBUTTAL**  
20 **TESTIMONY RELATED TO PURCHASED POWER EXPENSE?**

21 A. Mr. Johnson adds new costs to the purchased power expense on Page 28 of his rebuttal  
22 testimony. I did not take issue with the purchased power expense in my direct testimony;  
23 therefore, I am unsure of what this testimony is rebutting. In any event, I did not have time  
24 to prepare an analysis to compare to CAJ-40. However, in my limited review, I note that  
25 Page 1 of CAJ-40 appears to include 14 months of bills, and at least one of the bills attached  
26 (page 51 of 207) includes an Initial Permanent Service Charge which is not a recurring

1 charge. I also looked briefly at a few bills and was unable to quickly trace them to the  
2 calculation schedule on Page 1 of the exhibit. The testimony does not provide a letter or  
3 copy of the tariff indicating the increase in rates or the effective date. It appears that the  
4 chart also works off of a calendar year instead of the test year. Ms. Swain's own rebuttal  
5 testimony criticizes the use of a calendar year for comparison purposes when the test year  
6 is June 30, 2017. Because the explanation and documentation provided in rebuttal are  
7 insufficient, I recommend that the originally requested purchased power expense of  
8 \$219,230 remain the same.

9

10 **Q. WHAT ABOUT THE CHANGES AND REVISIONS TO THE MFRS**  
11 **HIGHLIGHTED IN COMPANY WITNESS SWAIN'S REBUTTAL TESTIMONY**  
12 **AND EXHIBIT DDS-2?**

13 A. Exhibit DDS-2 contains the Revised MFR Schedules, which were revised after Intervenor  
14 testimony was filed. The alleged basis for the changes are discussed throughout Ms.  
15 Swain's rebuttal.

16

17 **Q. WHAT IS YOUR TESTIMONY REGARDING MS. SWAIN'S REBUTTAL**  
18 **TESTIMONY RELATED TO THE COST OF DEBT?**

19 A. Ms. Swain testifies on pages 33 and 34 of her rebuttal testimony that the cost of debt should  
20 be increased from 7.45% to 7.70%. The impact of this change is tremendous. Ms. Swain  
21 explains this adjustment is due to the Fed prime rate being raised to 4.75% as shown on  
22 Exhibit DDS-6. Exhibit DDS-6 is a screen shot from the Wall Street Journal webpage  
23 showing a 4.75% prime rate.

24

1 **Q. IF THE COMMISSION ALLOWS KWRU TO UPDATE THE COST OF DEBT IN**  
2 **REBUTTAL, WHAT EFFECT DOES THAT HAVE ON KWRU'S PROPOSED**  
3 **RATE INCREASE?**

4  
5 A. After factoring the reduction in expense describe in KWRU's rebuttal, the net increase in  
6 the Company's request from \$1,349,690 to \$1,429,184 is a result of changing the cost of  
7 debt.

8  
9 **Q. DID THE COMPANY PROVIDE SUFFICIENT JUSTIFICATION OR**  
10 **DOCUMENTATION TO SUPPORT CHANGING ITS COST OF DEBT?**

11 A. No. It did not. KWRU failed to provide adequate documentation to support the Revised  
12 MFR Schedule D-6 in Exhibit DDS-2. KWRU did not provided (1) a copy of its BB&T  
13 loan agreements; (2) any information from the bank regarding the increased interest rate  
14 on its loans; or (3) any documents from the bank that show that its debt costs have  
15 increased. Therefore, there is no basis upon which to justify changing KWRU's debt rate.

16  
17 **Q. ARE THERE OTHER COSTS THAT HAVE CHANGED OR OTHERS ISSUES**  
18 **RAISED IN REBUTTAL YOU WOULD LIKE TO ADDRESS?**

19 A. Yes, I will discuss some of the specific concerns with positions taken in the rebuttal and  
20 will generally address the numerous changes in costs.

21  
22 **Q. WHAT ARE SOME OF THE CHANGES IN THE REQUESTED COSTS THAT**  
23 **ARE NOT APPROPRIATE?**

24 A. According to Witnesses Swain and Johnson, equipment rental costs have increased. On  
25 page 10 of his rebuttal Mr. Johnson states the original filing included an estimate for six  
26 months for renting a generator and now he increases it to 11 months due to the lag time for

1 the new generator to arrive. It is not appropriate for ratepayers to pay costs over and above  
2 the original request because the Company failed to prudently assess the requirements for  
3 the rental generators and the time it would take to acquire the back-up and portable  
4 generators.

5

6 **Q. PLEASE DISCUSS SOME OF THE OTHER CHANGES AND REVISIONS TO**  
7 **THE MFRS HIGHLIGHTED IN COMPANY WITNESS SWAIN'S REBUTTAL**  
8 **TESTIMONY?**

9 **A.** At page 16 of her rebuttal Ms. Swain provides a calculation for the new requested pension  
10 amount which is reflected in Revised MFR Schedule B-6. No documentation has been  
11 provided by KWRU to support the 5% in the calculation she referenced. Based upon my  
12 reviewing of various traditional pension plans, the actual cost for a traditional plan, if truly  
13 a pension plan, should be based on an actuarial estimate and no such document has been  
14 provided by KWRU. The plan provided<sup>2</sup> indicates it is a profit sharing plan and  
15 contributions are discretionary, and not a traditional pension plan. This cost is another best  
16 guess estimate by the Company for a cost at this juncture.

17

18 This is a prime example how the Company's filing has become a moving target with all  
19 the changes in rebuttal. Schedule B-3 as revised in Exhibit DDS-2 was new information  
20 provided by KWRU in rebuttal. Ms. Swain addresses the reasons for changing it on pages  
21 17 and 18 of her rebuttal. The cost of service filing, Schedule B-3, that was included in the  
22 original MFR's contained 12 lines for pro forma cost adjustments to O&M expense. In  
23 rebuttal, Ms. Swain included a Revised Schedule B-3 reflecting 13 lines of adjustments.

---

<sup>2</sup> Company response to OPC Interrogatory 3-47.



1 Of the 13 lines, one adjustment was added and ten of the original adjustment amounts were  
2 changed.

3

4 **Q. ARE YOU REVISING YOUR RECOMMENDATIONS TO KWRU'S REQUESTED**  
5 **INCREASE OF \$1,349,690?**

6 A. No, I am not. The OPC is still recommending that KWRU's requested rate base of  
7 \$7,043,724 be reduced by \$1,548,403 to no more than \$5,495,321. The adjustments as  
8 shown on Exhibit\_(HWS-1), Schedule B include a reduction to plant of \$652,972, a  
9 reduction to accumulated depreciation, an increase to rate base of \$37,876 and a reduction  
10 to working capital of no more than \$933,307.

11 The recommended adjustments to operating expenses as shown on Exhibit\_(HWS-1),  
12 Schedule C-1 total \$488,804. The adjustments consist of various O&M adjustments  
13 totaling \$343,671, a reduction to depreciation expense of \$132,424 and a reduction taxes  
14 other of \$12,708.

15

16 **Q. PLEASE DESCRIBE THE EFFECT OF THE CHANGES CONTAINED IN**  
17 **KWRU'S REBUTTAL ON ITS REQUESTED RATE INCREASE.**

18 A. KWRU initially proposed a revenue increase of \$1,349,690 which is a 57.9% increase to  
19 its current revenues. (Company Schedule B-2). Revisions to the MFR's filed on December  
20 12, 2017 and December 13, 2017 continued to reflect an increase of \$1,349,690. On  
21 February 19, 2018, the Company submitted a third<sup>3</sup> revised Schedule B-8 that reflected a  
22 reduction to O&M expenses from \$2,533,058 to \$2,520,930. I am not aware of a  
23 subsequent filing to Schedule B-2 to reflect this change or to reflect the impact to the

---

<sup>3</sup> The page submitted in Document No. 01510-2018 indicated Second Revised; however, it is the third revision submitted by KWRU.

1 Company's requested revenue increase. The rebuttal testimony filed on April 10 and 11,  
2 2018 proposed a higher revenue increase of \$1,429,184. Rate base was initially  
3 \$7,043,724; in the rebuttal filing, it is \$7,173,187. While the overall change is not  
4 significant in either the revenue requirement or in rate base, there is significant concern as  
5 to how the Company developed its rebuttal results.

6

7 **Q. WHEN DID YOU LEARN YOU WOULD NEED TO PREPARE SURREBUTTAL**  
8 **BY FRIDAY, MAY 4, 2018?**

9 A. On May 1, 2018, I received an email from J.R. Kelly at 10:32 A.M. informing me about  
10 the need to develop expedited surrebuttal.

11

12 **Q. WHEN YOU AGREED TO PROVIDE YOUR SERVICES, WERE YOU**  
13 **ANTICIPATING THE NEED TO PROVIDE SURREBUTTAL TESTIMONY?**

14 A. No, I was not anticipating surrebuttal testimony and planned my other professional  
15 consulting obligations accordingly. I also did not anticipate that KWRU would be afforded  
16 the opportunity to amend its rate case in rebuttal and increase costs beyond its original  
17 petition and MFRs. In order to provide this expedited surrebuttal testimony, I have been  
18 forced to suspend the work I was preparing for my other clients in an attempt to  
19 appropriately assist the OPC in this docket and work extra time to meet deadlines.  
20 Fortunately, I was able to make the time in my busy consulting schedule to do so on such  
21 short notice.

22

23 **Q. DO YOU HAVE ANY CONCLUDING COMMENTS YOU WOULD LIKE TO**  
24 **MAKE?**

1 A. Yes, I do. I was not provided adequate time to thoroughly analyze and investigate the new  
2 information provided by KWRU in rebuttal testimony. By not allowing sufficient time, it  
3 shifts the burden of proof from the Company to ratepayers. The fact that KWRU is even  
4 allowed to include the changes, in my opinion, establishes bad precedent in favor of the  
5 applicant and to the detriment of ratepayers. This will inevitably give utilities in the future  
6 the ability to constantly update their initial petitions and MFR's throughout the process  
7 while leaving the statutory deadlines and the hearing schedule unchanged, thus,  
8 "squeezing" the ratepayers from a time standpoint and eliminating the possibility for them  
9 to receive rates that are truly justified and reasonable.

10

11 **Q. DID OPC CONDUCT DISCOVERY ON THE COMPANY'S REBUTTAL?**

12 A. No written discovery was propounded. It is my understanding that OPC and KWRU had  
13 an agreement that depositions would be conducted instead of sending interrogatories. The  
14 depositions were held on April 24 and 25, 2018. As to additional requests for production  
15 of documents, if KWRU did not provide adequate documentation in its rebuttal testimony  
16 to support all the new changes, it did not make sense to give them a second bite at the apple.

17

18 **Q. DOES THIS COMPLETE YOUR SURREBUTTAL TESTIMONY?**

19 A. Yes, it does.

1 BY MR. SAYLER:

2 Q And, Mr. Schultz, you have prepared a very  
3 brief summary of your surrebuttal?

4 A Yes, sir. It's even briefer.

5 COMMISSIONER POLMANN: Okay. As fast as you  
6 can go.

7 THE WITNESS: My surrebuttal testimony is in  
8 response to the new cost information and revised  
9 MFRs provided by KWR in its rebuttal. It is  
10 inappropriate for KWRU to update its filing with  
11 new increased cost information, and to update its  
12 rate request with added documentation because it  
13 failed to properly support its position in its  
14 initial filing and in response to discovery.

15 KWR has acknowledged changes to cost as a  
16 result of testimony filed; however, instead of  
17 simply accepting those changes, they have elected  
18 to offset any decreases with increases of costs  
19 elsewhere. This is not commonly done or  
20 appropriate in the rate-making process, and should  
21 not be done -- allowed here.

22 A major issue in this case relates to the  
23 modular office building requested by KWRU that was  
24 initially estimated to cost \$288,000. The building  
25 was to be occupied March 31st, 2018, and was not.

1 KWR has stated a bidding process was not used. The  
2 size of the building has increased from 1,200  
3 square feet to 1,577 square feet, and there is only  
4 a speculative date of December 2018 to be in  
5 service.

6 KWRU has a burden of proof in this docket and  
7 still not -- has not included any competitive bids  
8 or a request for competitive bids. Although, it is  
9 unfair for KWRU to attempt to change the rules of  
10 the game by filing new information during rebuttal  
11 giving it unfair advantage over customers, the fact  
12 remains that they have failed to provide sufficient  
13 evidence to support the estimated cost of 288,000.  
14 Clearly, this request is not known and measurable.

15 Mr. Johnson has also added costs to purchase  
16 power expense in his rebuttal, even though I did  
17 not take issue with the purchase power expense in  
18 my direct testimony, thus is there was nothing to  
19 rebut and this testimony should not be considered.

20 Ms. Swain testifies in her rebuttal of debt --  
21 the cost of debt should be increased from 7.45 to  
22 7.7 percent, which increases the company's request  
23 by almost 80,000. No change in the debt rate was  
24 proposed in my direct testimony, therefore, this is  
25 another example where there was nothing to rebut

1 and this testimony should not be considered.

2 Ms. Swain also further provided a calculation  
3 for a new requested pension without providing any  
4 documentation or evidence to support the  
5 five-percent calculation she referenced. There is  
6 no requirement to make a contribution, as this is a  
7 profit sharing plan that is discretionary. Without  
8 any support, this is nothing more than a best guess  
9 by KWRU and it should be rejected.

10 That concludes my summary.

11 BY MR. SAYLER:

12 Q All right. Thank you for that summary. And I  
13 note you have a flight at 2:50 today, is that correct?

14 A Yes, sir.

15 Q All right.

16 MR. SAYLER: Mr. Chair --

17 MR. SMITH: I will be fast, and you will make  
18 that flight because the airport is not far and you  
19 only have to be there 45 minutes before but --

20 COMMISSIONER POLMANN: Let's proceed.

21 THE WITNESS: Thank you.

22 EXAMINATION

23 BY MR. SMITH:

24 Q Mr. Schultz, you mentioned updating costs in  
25 the rebuttal. What FPSC policy did you review before

1 **filing this testimony?**

2 A I didn't review any policies. I am relying on  
3 my expertise over the years.

4 Q Okay. Are you aware it is Commission policy  
5 to include known and measurable changes and costs in  
6 rate cases?

7 A Known and measurable changes are costs that  
8 are to be made. Yes, I am aware of known and measurable  
9 changes being allowable, but those known and measurable  
10 changes are to be made to the test year as part of your  
11 proforma adjustments, not as the rate case proceeds.

12 Q Going to the individual testimony. I know you  
13 said you have reviewed this on expedited basis, is that  
14 a fair summary of your surrebuttal testimony?

15 A Yes, sir.

16 Q You are aware that Ms. Swain's testimony was  
17 filed on April 10th, 2018, correct?

18 A I believe that's the date.

19 Q And the same date for Mr. Johnson rebuttal  
20 testimony?

21 A Yes, sir.

22 Q You didn't review that testimony after it was  
23 filed?

24 A Of course I did. Yes, sir.

25 Q Did you review it immediately after it was

1 **filed?**

2 A I don't recall, but it might have been -- it  
3 was fairly soon right after, yes, sir.

4 Q Okay. Did you make notes when you reviewed  
5 Ms. Swain's testimony?

6 A I probably put tabbies on it and highlighted  
7 stuff, yes.

8 Q And same question for Mr. Johnson?

9 A Yes, sir.

10 Q Did you provide some of your notes and  
11 questions to the Office of Public Counsel for  
12 Ms. Swain's testimony?

13 A Not initially. The process was, you know, to  
14 look at this and see what you got, and then we aren't  
15 going to be able to ask discovery on it, so to the  
16 extent you can draft up some deposition questions, go  
17 ahead. That's what was done.

18 Q So you did provide questions for Ms. Swain's  
19 deposition?

20 A Yes, sir.

21 Q And same question for Mr. Johnson?

22 A Yes, sir.

23 Q You mentioned about discovery being  
24 propounded. Did you ask for additional discovery to be  
25 propounded?



1           A     I was under the understanding, because the  
2     company and the OPC already discussed this, that any  
3     discovery on this would be done through the deposition.

4           **Q     Were you aware that staff served discovery on**  
5     **these issues?**

6           A     Yes.

7           **Q     Did you receive copies of the staff's**  
8     **discovery?**

9           A     Yes, sir.

10          **Q     All right. Did you sit in and listen to**  
11     **Ms. Swain's deposition?**

12          A     No, sir.

13          **Q     Did you sit in on Mr. Johnson's deposition?**

14          A     No, sir.

15          **Q     In your testimony, you state you had no**  
16     **indication that you would be filing surrebuttal**  
17     **testimony until May 1st, 2018. Do you recall that**  
18     **testimony?**

19          A     Yes, sir.

20          **Q     Okay. Would another week have helped in**  
21     **preparing your surrebuttal testimony?**

22          A     Oh, it would have helped -- I would assume  
23     yeah, any time -- any time you extend the schedule, it  
24     helps everything.

25          **Q     Did OPC advise you that they requested**

1 **surrebuttal on April 23rd from KWRU?**

2 A I don't -- I don't recall.

3 Q Okay. Did OPC advise you that KWRU consented  
4 to surrebuttal on April 23rd?

5 A I don't know the dates. They did say that  
6 they asked about it, and it was, I guess, part of a  
7 prehearing, or some other, that there was acceptance on  
8 KWRU's part.

9 Q Did you consult with OPC in filing their  
10 motion to strike --

11 MR. SAYLER: Objection, calls for  
12 attorney-client privilege.

13 MR. SMITH: He is an expert. He does not  
14 provide -- have an attorney-client privilege with  
15 OPC.

16 MR. SAYLER: Your witness -- he is an expert,  
17 but he is asking for communications and information  
18 between me and my expert; therefore, it's covered  
19 by attorney-client privilege, and I would object to  
20 this line of questioning, the same type of  
21 questioning that Mr. Smith had for Mr. Johnson.

22 MR. SMITH: No, I specifically said if  
23 Ms. Swain was in the communication, it was no  
24 longer privileged, because once an expert is  
25 involved, it no longer contains a privilege.

1           MR. SAYLER:  Objection, work product  
2           privilege.

3           MR. SMITH:  It would not provide -- there is  
4           no work product privilege covering experts.

5           COMMISSIONER POLMANN:  Ms. Helton -- hold on,  
6           gentlemen.

7           MS. HELTON:  I do not know off the top of my  
8           head.  I would have to look this up.

9           MR. SMITH:  I will continue on, and if she  
10          just wants to look it up, I can come back to it.  I  
11          want to get Mr. Schultz on his flight, so why don't  
12          I continue on?

13          COMMISSIONER POLMANN:  Please proceed.

14          MR. SMITH:  I am just going to circle that.

15   BY MR. SMITH:

16           **Q     Do you have a copy of Mr. Johnson's -- you**  
17           **have Mr. Johnson's direct up there.  Do you have a copy**  
18           **of his rebuttal testimony?**

19          MR. FRIEDMAN:  It's right on the corner in the  
20          binder.

21          MR. SMITH:  Yeah, it's in there as well.  No.  
22          No.  That's just the direct.  We need the rebuttal.

23          THE WITNESS:  I have his rebuttal.

24          MR. FRIEDMAN:  Okay, he's got it.

25   BY MR. SMITH:

1 Q All right. One of the things you took issue  
2 with was the additional generator rental cost. Do you  
3 recall that testimony?

4 A Yes, sir.

5 Q Okay. And that's contained on Johnson  
6 rebuttal testimony, page 22, lines four through 14.

7 A Line 22 -- or line 14 of page 22, the cost?

8 Q Four to 14.

9 A Oh, four to 14. I see that. Yes.

10 Q You would agree that he is just increasing the  
11 rental generator cost from six months to 11 months,  
12 correct?

13 A That's what he's done. Yes.

14 Q All right. Can you go to his direct testimony  
15 Exhibit CAJ-18?

16 A CAJ what?

17 Q 18, they are marked with a tap for each one in  
18 that big book, the one I provided.

19 A Yes, I got it.

20 Q Do you see, under the generator cost, it has a  
21 cost of the first month?

22 A Yes.

23 Q And then it has a cost for each additional  
24 month, every subsequent month?

25 A I see the fact, yes.

1 Q Okay. You weren't able to do that calculation  
2 to figure out whether the number was correct for the  
3 total rental cost of 11 months?

4 A I am not going to dispute that the number  
5 might be right. The dispute is that you are updating  
6 your filing. You have changed the ballgame, and that's  
7 the issue that I have raised as being a problem.

8 Q And you state that he failed to -- one of the  
9 things you state is he failed to appropriately assess  
10 timing for the generator delivery. Do you recall that  
11 testimony?

12 A Yes.

13 Q Okay. Are you aware of any penalties that the  
14 PSC has a policy of imposing for failing to properly  
15 assess timing? Is there -- are you aware of a PSC  
16 policy that states that failing to properly assess the  
17 timing of a delivery somehow eliminates the cost?

18 A No, I am not aware of that.

19 Q Going to the purchase power, you stated that  
20 you did not testify to the reasonableness on direct,  
21 correct?

22 A That's correct.

23 Q Are you aware if Woodcock did?

24 A No, I -- he may have, I --

25 Q You understand Woodcock testified he found the

1 cost of -- the proforma cost of electric power  
2 reasonable?

3 A He -- yes, okay, I will accept that. Yes.

4 Q All right. And you understand all Mr. Johnson  
5 was doing with the rebuttal testimony is updating the  
6 cost for electric for the increased in Keys Energy power  
7 that was implemented as of January 2018?

8 A Understanding that, but that's a fact that --  
9 again, that's an update, and that's an issue that we are  
10 dealing with a moving target, and that is the issue as I  
11 see it.

12 Q Well, I just want to boil down. There was  
13 about 200 plus pages of exhibits of the electric bills  
14 from Keys Energy dating back through 2016, and all of  
15 the electric bills in 2018. You saw that in his  
16 rebuttal, correct?

17 A In --

18 Q Mr. Johnson's rebuttal.

19 A I didn't analyze all the pages.

20 Q Okay. Are you disputing that the Keys Energy  
21 increased its cost of kilowatt hour approximately eight  
22 percent?

23 A I am not disputing that. As I have tried to  
24 state, I mean, the issue may be right as far as the  
25 kilowatt hours. The issue is the company should have

1 known or had been aware of what -- the increase was  
2 coming, and the company should have put that in their  
3 original filing.

4 To the extent they've changed their original  
5 filing, they've updated and created a moving target,  
6 which is not accepted in a lot of places in the country.  
7 I mean, you can't keep change being the game.

8 It's like a basketball player trying to,  
9 playing on your court, and you have the ability to move  
10 that backboard, so I can't hit it anymore, so that's the  
11 issue.

12 **Q There is two exhibits in front of you.**

13 MR. SMITH: We need to label these. One is  
14 titled 2016 Keys Energy Tariff, is an excerpt, and  
15 then the other is the 2018 Keys Energy Tariff, and  
16 that's -- my assistant, when I told her to say  
17 excerpt, she spelled expert as the document.

18 MR. WRIGHT: I wondered about that.

19 COMMISSIONER POLMANN: So we have Exhibit 149.

20 MR. FRIEDMAN: She's listening.

21 COMMISSIONER POLMANN: 149 will be 2016 Keys  
22 Energy Tariff.

23 (Whereupon, Exhibit No. 149 was marked for  
24 identification.)

25 MR. SMITH: And I just want --

1           COMMISSIONER POLMANN:  And 150 is the 2018.  
2           (Whereupon, Exhibit No. 150 was marked for  
3           identification.)

4           BY MR. SMITH:

5           Q       And I just want you to first flip to the last  
6           page of the 2016 excerpt, and just look under the third  
7           line down for large commercial, the energy charge per  
8           kilowatt hour.  Do you see that?

9           A       Yes, sir.

10          Q       Can you read out what the charge is per  
11          kilowatt hour?

12          A       Per kilowatt hour is .1022.

13          Q       Okay.  And then I want you to turn to Exhibit  
14          150, which is the Keys Energy Tariff, and on the first  
15          page is just a heading.  If you flip to the second page,  
16          it's got the signature of Ms. Linda Adams, the General  
17          Manager, CEO.  It shows an effective date.  What is the  
18          effective date of the tariff on this one?

19          A       January 1, 2018.

20          Q       Okay.  And then if you are just going to flip  
21          to that last page, and then you see the monthly charges  
22          for energy consumption, can you look at those two  
23          kilowatt per hour charges?

24          A       Under the energy charge?

25          Q       Yep.  Yep.



1 A Yes, sir.

2 Q And can you read those two off?

3 A The first one is .1311 per kilowatt hour. The  
4 second one is .1077 per kilowatt hour.

5 Q Okay. You are aware Mr. Johnson filed his  
6 direct testimony back in November, correct?

7 A Correct.

8 Q Okay. How could he update his -- how could he  
9 put the correct energy rate for purchased power if it  
10 wasn't effective until January 1st, 2018?

11 A Well, first of all, if the company is aware  
12 that Keys filed a rate increase, they should have taken  
13 that into consideration and known that there was going  
14 to be a change, and he should have reflected that.  
15 It's -- I have seen that done in case after case after  
16 case. To just assume rates aren't going to go unchanged  
17 and then say, after-the-fact, oh, we got a change in  
18 rates, that's, you know, a change in the game.

19 Q All right. Moving on to the cost of debt --  
20 before we go off that, would a change in the billing  
21 determinants also be a change in the game?

22 A Are you talking about --

23 Q During the rate case.

24 A And you are talking about KW's billing  
25 determinants --

1 Q Yes.

2 A -- at the electric utility?

3 Q No. No. For the utility, for KWRU, would  
4 changing the billing determinant in the case be a change  
5 in the game?

6 A Yes.

7 Q Okay. On to the cost of debt. What you have  
8 been provided --

9 MR. SMITH: And we can mark these two as the  
10 next, 151 and 152. And I am going to -- I am going  
11 to apologize ahead of time, and I will blame myself  
12 for this, but when we put the docket information on  
13 the top, the Bates numbering that was when it was  
14 filed was removed, I would represent that these two  
15 Exhibit 151 and 152 --

16 COMMISSIONER POLMANN: We haven't numbered  
17 them yet.

18 MR. SMITH: Sorry.

19 COMMISSIONER POLMANN: They will be numbered,  
20 but I don't know which order.

21 MR. SMITH: We'll start with BB&T note 007.

22 COMMISSIONER POLMANN: 151.

23 (Whereupon, Exhibit No. 151 was marked for  
24 identification.)

25 MR. SMITH: Okay. And BB&T note 109.

1 COMMISSIONER POLMANN: 152.

2 (Whereupon, Exhibit No. 152 was marked for  
3 identification.)

4 BY MR. SMITH:

5 Q So these were produced in discovery in  
6 response to OPC's second request for production No. 17  
7 and 18. Are you aware of that?

8 A I might have at the time.

9 Q Okay. Those responses were served on  
10 January 24th, 2018. Are you aware of that?

11 A I will accept that, you know...

12 Q In your direct testimony, you testified that  
13 the cost of debt was reasonable at 4.75 percent. Do you  
14 recall that testimony?

15 A I believe that that's correct. Yes, sir.

16 Q Okay. Can you turn to Exhibit No. 151? And  
17 actually, I highlighted it.

18 A Yes, sir.

19 Q Just so you can see?

20 A It I have reviewed both documents.

21 Q Okay.

22 A And I am aware of the .5 percent, yes.

23 Q Okay. So you have no reason to disagree that  
24 the interest rate on both the notes for the utility is  
25 prime plus .5?

1           A     No, I have no reason to disagree that's the  
2 way it is.

3           **Q     Okay. And so your contention is, because in**  
4 **December and March, the prime rate went up, that should**  
5 **be excluded?**

6           A     That's the issue with this, that it's gone up.  
7 I mean, you have taken and you have adjusted various  
8 things, and it's created additional money from  
9 ratepayers, but you haven't acknowledged that and  
10 incorporated any changes in the revenue stream that's  
11 coming to the company. And although it's not common in  
12 recent years, but I agree fully with Mr. Deason on this  
13 position.

14          **Q     So that the interest rate should be the**  
15 **interest rate that's in effect when the rates are in**  
16 **effect?**

17          A     That's the interest rate you would use when  
18 you are taking a filing, as you have done in this case,  
19 and you are saying, I have a test year. These are my  
20 proforma adjustments. That's where the changes stop.  
21 That's the way it's normally done in jurisdictions, and  
22 you don't just say, at the last minute, we got to change  
23 this, or we got to change that, unless you are going to  
24 reflect other projections that should be incorporated,  
25 such as increased revenue flows from additional

1 customers. So it -- I mean, you can't -- you can't  
2 split the baby.

3 **Q You would agree that the policy is you utilize**  
4 **known and measurable numbers?**

5 A I agree that it's to be known and measurable,  
6 but I would have to dispute whether the company has  
7 followed that, unless it's something that's in their  
8 favor; and one particular being the fact that they keep  
9 this modular unit as part of their filing. It's not  
10 known and measurable of the cost or the date that that  
11 will actually be there.

12 **Q Actually, that modular is interesting. You**  
13 **brought up in your -- that this is the first time that**  
14 **you have seen that the modular is 1,577 square feet.**  
15 **You reviewed Mr. Johnson's direct testimony, correct?**

16 A His direct testimony where he referenced it at  
17 approximately 1,200 square feet.

18 **Q Okay. Did you review the contract attached to**  
19 **that testimony?**

20 A The contract, yes, sir. It says not to exceed  
21 1,500.

22 **Q Okay. And so you didn't believe at any point**  
23 **that it can be 1,500 square feet?**

24 A I tried to rely on his testimony and, frankly,  
25 you know, it's proven that you have, based on what's in

1 the testimony and what's in the MFRs, or schedules and  
2 exhibits, that are conflicting.

3 MR. SMITH: No further questions. Thank you.

4 THE WITNESS: Thank you.

5 COMMISSIONER POLMANN: Monroe County.

6 MR. WRIGHT: No questions.

7 COMMISSIONER POLMANN: Staff.

8 MS. CRAWFORD: No questions.

9 COMMISSIONER POLMANN: Commissioners.  
10 Redirect?

11 MR. SAYLER: I will be very brief.

12 FURTHER EXAMINATION

13 BY MR. SAYLER:

14 Q Regarding the kilowatt -- the rate change for  
15 Keys Energy, generally, when a utility changes its rate,  
16 there is some sort of public notice for that, in your  
17 opinion?

18 A Yes. I alluded to that in my discussion with  
19 Mr. Smith, that the company should have been well aware,  
20 because companies are required to notify customers that  
21 there is going to be a rate change.

22 Q And was that attached to his testimony, the  
23 notice?

24 A I do not recall seeing that, no.

25 Q All right. And you were asked when the

1 effective date was for that new tariff, and that was  
2 1/1/18, correct?

3 A That is correct.

4 Q And when did you file testimony?

5 A Which time?

6 Q Direct.

7 MR. WRIGHT: March 14th.

8 BY MR. SAYLER:

9 Q March 14th.

10 A March 14th, yes.

11 Q And nobody provided any changed information  
12 that you could have incorporated in your testimony at  
13 that time?

14 A I was not aware of any, no.

15 Q All right. These two exhibits, 149 and 150,  
16 related to the notice from Keys Energy. Had you seen  
17 those documents before today?

18 A No, sir.

19 Q And you were asked some questions about  
20 reviewing rebuttal testimony in this case, correct?

21 A Yes.

22 Q All right. Would you describe the level of  
23 review that you would do reviewing rebuttal testimony  
24 for depositions versus rebuttal testimony for providing  
25 new or surrebuttal testimony; is it the same or is it

1     **different?**

2           A     I am not following you.

3           **Q     How much time and effort does it take to**  
4     **review rebuttal testimony for coming up with cross**  
5     **questions versus new testimony?**

6           A     That depends upon the level of changes that  
7     occur.  I mean, if -- I have had rebuttal testimony that  
8     I reviewed that we accept this number based upon the  
9     testimony of whoever, and we accept this number but we  
10    dispute these numbers.  And that's generally the flow,  
11    but when you have changes that occur, we've changed this  
12    number, we've changed this number.  As my one exhibit  
13    shows, there was 13 lines on one column that presented  
14    in the rebuttal testimony of the company, 12 of those  
15    lines were in the original, so that meant one new line.  
16    And out of the 12, I believe there was 10 that changed.

17                    So you got significant changes.  They are  
18    just -- you know, if you -- like I said, that's the real  
19    issue here.  You have got a moving target.  It's hard to  
20    hit a moving target.

21                    MR. SAYLER:  All right.  Thank you.

22                    No further questions.

23                    THE WITNESS:  Thank you.

24                    MR. SAYLER:  And may my witness be excused, or  
25                    shall we wait until --



1 COMMISSIONER POLMANN: Do you have an exhibit?

2 MR. SAYLER: Oh, yes, ATW-3 on the hearing  
3 exhibit, which is --

4 MR. WRIGHT: Not ATW.

5 MR. FRIEDMAN: He is sitting out there.

6 MR. SAYLER: HWS-3, which is hearing Exhibit  
7 No. 38 attached to Mr. Schultz's surrebuttal  
8 testimony, we would like to move that into the  
9 record.

10 COMMISSIONER POLMANN: It's not labeled that  
11 on this sheet, but I will take it to be.

12 MS. CRAWFORD: Yes, it actually appears 38.  
13 Originally, we had listed the direct with  
14 rebuttal -- surrebuttal -- I am so sorry --  
15 together.

16 MR. SMITH: So the only thing I would bring  
17 up, and this is a procedural matter, and we already  
18 had testimony stricken as to construction costs,  
19 and the surrebuttal was filed after the time that  
20 we could file a motion to strike, and so the reason  
21 we filed a motion to strike a small portion of that  
22 testimony dealing with construction costs was due  
23 to the timing of when they were permitted to file  
24 the surrebuttal, which was like May 1st or 2nd.  
25 And so I am just looking for clarification if that

1 flows through to his ability to testify on  
2 surrebuttal as to the construction costs.

3 COMMISSIONER POLMANN: Okay. Point of order  
4 of procedure. Do we need the witness for this?

5 MS. HELTON: No.

6 MR. SMITH: No.

7 COMMISSIONER POLMANN: Okay.

8 Mr. Schultz, you are excused, and thank you  
9 for being here.

10 THE WITNESS: Thank you all --

11 COMMISSIONER POLMANN: Safe travels.

12 THE WITNESS: -- for accommodating me.

13 MR. SMITH: Have a safe flight.

14 (Witness excused.)

15 COMMISSIONER POLMANN: Okay. So let's back up  
16 a second.

17 No. 38 in the comprehensive exhibit list, is  
18 that correct, Ms. Crawford, that's what we are  
19 talking about?

20 MS. CRAWFORD: That's correct.

21 COMMISSIONER POLMANN: Okay. OPC has asked  
22 that that be entered.

23 Mr. Smith.

24 MR. SMITH: No objection with the exhibit.

25 COMMISSIONER POLMANN: You noted that you did

1 not have the time and the opportunity to provide a  
2 motion to strike some portion of that related to a  
3 particular subject?

4 MS. CRAWFORD: And, Mr. Smith, could I trouble  
5 you to tell us again what portion of an exhibit or  
6 testimony you are referring to so we are all on the  
7 same page?

8 MR. SAYLER: And I would like to note for the  
9 record that his testimony was read into the record  
10 as though read -- or without objection.

11 MR. SMITH: I don't think he actually  
12 addresses the costs, so...

13 MR. SAYLER: His testimony on page six is not  
14 about the cost, but just the lack of meeting the  
15 burden of proof. Not the actual cost per square  
16 footage, other than mathematical calculations.

17 MR. SMITH: Yes, and so I haven't looked at it  
18 again, because I was concerned about it, and I know  
19 it makes sense to move to strike it, he certainly  
20 doesn't give opinions as to construction costs in  
21 rebuttal, so I have no issue.

22 COMMISSIONER POLMANN: I would have accepted  
23 Mr. Saylor's point that it's already been read into  
24 the record as though read.

25 Anything else on this? Okay, we are going to

1           move Mr. Schultz's exhibit, which is numbered as 38  
2           in the comprehensive exhibit list, into the record  
3           at this time.

4                   (Whereupon, Exhibit No. 38 was received into  
5 evidence.)

6           COMMISSIONER POLMANN: Anything else, Mr.  
7 Sayler?

8           MR. SAYLER: No, sir, other than do you want  
9 to address any of those other hearing exhibits  
10 entered or marked here, or shall we take up Mr.  
11 Woodcock so he can be on his way as well?

12           COMMISSIONER POLMANN: Unless there is any  
13 issue from any of the parties, let's go to  
14 Mr. Woodcock.

15           MR. SAYLER: Thank you.

16 Whereupon,

17                   ANDREW T. WOODCOCK

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

21                   EXAMINATION

22 BY MR. SAYLER:

23           Q       **Good afternoon.**

24           A       Good afternoon.

25           Q       **You are the same Mr. Woodcock who previously**

1 testified on direct, is that correct?

2 A That's correct.

3 Q And you have before you your surrebuttal  
4 testimony dated May 4th, 2018, correct?

5 A Yes.

6 Q And are there any changes to your surrebuttal?

7 A No.

8 Q If I were to ask you the same questions again,  
9 your answers would be the same?

10 A Correct.

11 Q And you would adopt this as your sworn  
12 testimony in this case?

13 A Yes, I would.

14 MR. SAYLER: Then I would ask that his  
15 prefiled testimony be entered into the record as  
16 though read.

17 COMMISSIONER POLMANN: At this time, we will  
18 enter into the record the prefiled surrebuttal  
19 testimony of Mr. Woodcock as though read.

20 (Whereupon, prefiled testimony was inserted.)

21

22

23

24

25

**EXPEDITED SURREBUTTAL TESTIMONY****OF****ANDREW T. WOODCOCK P.E., MBA**

On Behalf of the Office of Public Counsel

Before the

Florida Public Service Commission

Docket No. 20170141

1 **I. INTRODUCTION/BACKGROUND/SUMMARY**2 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**3 **A.** My name is Andrew T. Woodcock. My business address is 201 East Pine St., Suite  
4 1000, Orlando, FL 32801.

5

6 **Q. HAVE YOU PRESENTED DIRECT TESTIMONY IN THIS PROCEEDING?**7 **A.** Yes.

8

9 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN**  
10 **THIS PROCEEDING?**11 **A.** My testimony will cover portions of the rebuttal testimony filed by Christopher  
12 Johnson.13 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON'S**  
14 **REBUTTAL TESTIMONY REGARDING LIFT STATION L2A (PAGE 4**  
15 **LINES 11 THROUGH 23?**

1 **A.** Mr. Johnson has failed to demonstrate that KWRU competitively bid the L2A  
2 project. He has provided no information, other than an after-the-fact email from  
3 Wharton Smith in CAJ-26, that any contractors in the region were invited to bid or  
4 provide bids for the project. Despite what Mr. Johnson claims, a bid from Wharton  
5 Smith on a different project in 2014 is NOT a bid for lift station L2A in 2017 and  
6 cannot be considered a competitive bid to B&L Beneway's on lift station L2A in  
7 2017 regardless of the relative costs. It is still my opinion that KWRU was imprudent  
8 in not bidding this project and the recommendations from my direct testimony  
9 remain.

10

11 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON'S**  
12 **REBUTTAL TESTIMONY RELATED TO THE CHLORINE CONTACT**  
13 **CHAMBER REPLACEMENT (PAGE 4, LINES 24 AND 25 AND PAGE 5,**  
14 **LINES 1 THROUGH 20)?**

15 **A.** Mr. Johnson states there are two additional expenses since the filing of his direct  
16 testimony. One concerns increased housing cost and one concerns additional testing  
17 on the coatings of the chlorine contact chamber. I have not had an opportunity to  
18 review any documentation that was submitted, if any, for the increase in housing  
19 costs and I note that Mr. Johnson does not provide any documentation in his rebuttal  
20 testimony. I have seen where KWRU has provided some discovery on this increase;  
21 however, I have not had the opportunity to sufficiently review what was provided.  
22 Therefore, at this time, this cost remains unsupported.

1 The additional cost related to the testing of the coatings is supposed to be supported  
2 by Work Directive 2018-2, noted in the rebuttal testimony as CAJ-28; however,  
3 CAJ-28 does not contain this information. Instead, CAJ-28 appears to be a copy of  
4 the WWTP Rehabilitation bid from Evoqua. Again, I find no support for this cost.

5 These additional costs raise a point about the difficulties in approving pro forma  
6 projects for inclusion in rate base. In my direct testimony, I state that actual invoices  
7 that document the full scope of the project and the final installed costs are the best  
8 documentation to support inclusion in rate base. Lacking that, it is acceptable to rely  
9 upon costs supported by competitive bids along with a signed contract to perform the  
10 work. When relying on competitive bids, there is always the possibility that during  
11 construction things can happen that can make the final project cost higher or lower  
12 and that is exactly what we are seeing with the chlorine contact chamber  
13 replacement. It's quite possible, and even likely, that there will be further issues  
14 during construction that will revise the final cost up or down. Rather than  
15 contemporaneously trying to adjust these changes on the fly in the middle of a rate  
16 case when there is little to no opportunity for discovery or review, I recommend the  
17 Commission defer these changes to the next rate case when a complete true up of the  
18 projects costs can be considered.

19  
20 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNON'S REBUTTAL**  
21 **TESTIMONY RELATED TO THE WWTP REHABILITATION (PAGE 5**  
22 **LINES 21 TO 25; PAGE 6, LINES 1 TO 25 AND; PAGE 7 LINE 1 TO 15)?**



1 **A.** Mr. Johnson lays out a number of additional costs to the WWTP rehabilitation  
2 project which I put into two categories. The first category includes additional costs  
3 that were identified after the contract with Evoqua was signed (and presumably after  
4 the rate case filed) and includes the replacement of the davits and the clarifier drive  
5 for a total of \$14,951.10. The second category includes costs that were known or  
6 should have been known prior to the rate case filing including the liquid hauling and  
7 debris and steel disposal totaling \$45,808 (\$43,128 and \$2,680).

8 The first category is similar to the changes in costs associated with the chlorine  
9 contact chamber discussed above. In this case, it was determined that the clarifier  
10 drive and some davits require replacement and, according to Mr. Johnson's rebuttal  
11 testimony, "...would have been included in the scope of work had they been  
12 identified prior to the Evoqua contract being signed." I also note that in Mr.  
13 Johnson's rebuttal testimony, no supporting documentation for this cost is provided.  
14 My recommendation for these costs is to defer their inclusion in rate base until the  
15 next rate case when the project is complete and documentation is available so that all  
16 changes can be considered.

17 The second category are costs that were or should have been known prior to filing  
18 the rate case and should have been included in the original filing. Evoqua's contract  
19 explicitly states that, among other things, excluded items are draining and cleaning  
20 of tanks and disposal of existing materials. Again, Mr. Johnson, in his rebuttal  
21 testimony provides no supporting information for these additional costs. By failing to  
22 include these known costs in the original filing and only adding them in rebuttal  
23 testimony, KWRU has prevented the necessary discovery, review and analysis for

1 inclusion in rate base. For this reason, I recommend these costs be removed from rate  
2 base.

3

4 **Q. WHAT IS YOUR TESTIMONY REGARDING MR. JOHNSON'S REBUTTAL**  
5 **TESTIMONY RELATED TO THE BACK UP GENERATOR (PAGE 7 LINES**  
6 **19 TO 25; PAGE 8, LINES 1 TO 25 AND; PAGE 9 LINES 1 TO 7)?**

7 **A.** At the time of the filing of the rate case, KWRU was unprepared to provide  
8 sufficient documentation to support the full cost of this project. There was no  
9 engineering work completed for the installation of the generator, there were no  
10 competitive bids from contractors and there was no signed agreement from a  
11 contractor to perform the work. The cost of the generator equipment was finally  
12 supported through discovery prior to my direct testimony, yet there was no support  
13 for the generator installation and additional equipment required. From Mr. Johnson's  
14 rebuttal testimony, now that the design is complete, the scope of the project has  
15 changed to include a new, larger foundation and additional electrical equipment. As  
16 a result, the \$66,000 estimate for installation and ancillary equipment in Mr.  
17 Johnson's direct testimony that was based on verbal discussions has now ballooned  
18 to a \$176,000 cost item that has been injected into the rate case at the last minute. I  
19 have not had an opportunity to review this design to analyze and understand what is  
20 involved with the installation of the new generator.

21 Based on the information provided in Mr. Johnson's testimony, it appears that  
22 KWRU has taken the prudent step to bid this project to other contractors prior to its  
23 decision to award the work to Wharton Smith as a change order to the on-going

1 chlorine contact chamber replacement. I did not find in the testimony a signed  
2 change order form or other instrument that commits Wharton Smith to completing  
3 the work for the price stated.

4 As of the writing of this testimony, I have not had the opportunity to fully review the  
5 discovery received on this issue, I have not had an opportunity to submit my own  
6 discovery and I have not had the time complete an analysis of these additional costs.  
7 My recommendation from my direct testimony, that \$214,144.89 be included for the  
8 generator, remains.

9

10 **Q. WHEN WERE YOU INFORMED BY COUNSEL THAT YOU WOULD**  
11 **HAVE TO PREPARE SURREBUTTAL TESTIMONY TO THE NEW**  
12 **INFORMATION CONTAINED IN MR. JOHNSON'S REBUTTAL**  
13 **TESTIMONY?**

14 **A.** I was told around noon on Tuesday May 1, 2018 less than four days before  
15 surrebuttal testimony is due. Due to prior work commitments on May 1<sup>st</sup> and 2<sup>nd</sup>, I  
16 have had less than 48 hours to develop my surrebuttal testimony.

17

18 **Q. IN YOUR OPINION, IS IT USUAL TO BE PROVIDED LESS THAN FOUR**  
19 **DAYS TO PREPARE SUBSTANTIVE TESTIMONY ON A UTILITY RATE**  
20 **CASE?**

21 **A.** It is quite unusual. In my experience, there are months or at least weeks to prepare  
22 testimony. Such times frames are crucial to allow for a complete review and analysis

1 of the data, to request and receive discovery and to prepare testimony. Testimony  
2 prepared in haste may miss important issues or contain errors.

3

4 **Q. HAVE YOU SEEN SUCH SHORT TIMEFRAMES IN OTHER**  
5 **JURISDICTIONS WHERE YOU HAVE FILED TESTIMONY OR EXPERT**  
6 **REPORTS?**

7 **A.** No.

8

9 **Q. WHEN YOU WERE ENGAGED TO PROVIDE CONSULTING SERVICES**  
10 **IN THIS CASE, WERE YOU EXPECTING TO PROVIDE SURREBUTTAL**  
11 **TESTIMONY ON SUCH SHORT NOTICE?**

12 **A.** No.

13

14 **Q. WHY IS THAT?**

15 **A.** There was no surrebuttal testimony scheduled for the rate case.

16

17 **Q. IN YOUR OPINION, IS LESS THAN FOUR DAYS ADEQUATE TO**  
18 **REVIEW ALL THE NEW INFORMATION IN THE REBUTTAL**  
19 **TESTIMONY AND DISCOVERY RESPONSES IN REBUTTAL?**

20 **A.** It is not adequate at all.

1 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

2 **A.** Yes

J.R. Kelly  
Public Counsel

/s/ Erik L. Sayler  
\_\_\_\_\_  
Erik L. Sayler  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

(850) 488-9330

Attorneys for the Citizens  
of the State of Florida

1 BY MR. SAYLER:

2 Q And, Mr. Woodcock, have you prepared a very  
3 brief summary of your surrebuttal?

4 A I have.

5 Q All right. Would you provide that please?

6 A Certainly.

7 Good afternoon. My surrebuttal testimony  
8 covers specific topics in Mr. Johnson's rebuttal  
9 testimony. For Lift Station 2A, I find that Mr. Johnson  
10 has failed to provide sufficient information to  
11 demonstrate that KW competitively bid the Lift Station  
12 L2A project. A bid from a different contractor for a  
13 different project almost four years prior is not a  
14 competitive bid regardless of the difference in cost.  
15 Therefore, my recommendation in my direct testimony  
16 stands.

17 For the chlorine contact chamber: The  
18 additional cost for the chlorine contact chamber project  
19 are changes that have occurred during construction.  
20 This is an example in the cost of a project -- in the  
21 changes in the cost of a project that can occur when  
22 only competitive bids and a signed agreement are used to  
23 support proforma costs. I mentioned this in my direct  
24 testimony.

25 It is quite likely that throughout the course

1 of the remainder of the construction of this project,  
2 other cost changes will occur, and rather than consider  
3 these costs with little time to review, I recommend the  
4 Commission defer them to a future proceeding when all  
5 the cost changes are known.

6 For the wastewater treatment plant  
7 rehabilitation: The additional cost to the wastewater  
8 treatment plant rehabilitation include costs that, like  
9 in the chlorine contact chamber project, have occurred  
10 since the bidding and signing of the contract with  
11 Evoqua, and as such, my recommendation is to defer their  
12 consideration to another hearing.

13 Some of the new costs for this project were  
14 costs that were known or should have been known by KW  
15 prior to filing the rate case and were not included. By  
16 adding these costs in rebuttal testimony, KW has  
17 prevented the necessary discovery, review and analysis  
18 for inclusion in rate base and, therefore, I recommend  
19 they not be included.

20 For the wastewater treatment plant backup  
21 generator: The additional cost for the backup generator  
22 project are an attempt to support the unsupported cost  
23 in Mr. Johnson's direct testimony. These new costs are  
24 now more than double the original filing and have not  
25 had the time or opportunity to review or receive

1 discovery on these costs. For this reason, I recommend  
2 they not be included in rate base.

3 MR. SAYLER: Thank you.

4 We would tender this witness for cross.

5 COMMISSIONER POLMANN: Thank you, Mr. Sayler.  
6 Mr. Friedman.

7 MR. FRIEDMAN: Thank you.

8 EXAMINATION

9 BY MR. FRIEDMAN:

10 Q Mr. Woodcock, do I understand you correctly  
11 that with regard to the chlorine contact chamber, that  
12 even though there is a signed contract, you are  
13 recommending that that project not be included because  
14 there is a possibility of change orders?

15 A No. I am recommending, and I recommended in  
16 my direct testimony, that the chlorine contact chamber  
17 project that has been signed and supported by a signed  
18 agreement should be included to rate base. My objection  
19 is to the additional costs that came in during the  
20 rebuttal testimony.

21 Q And is that objection because you haven't had  
22 an opportunity to review that documentation?

23 A Well, for the chlorine contact chamber, there  
24 was reference to an exhibit to support one of the costs  
25 that that exhibit did not actually include that.



1 I also noticed that, in that case, there -- at  
2 least I haven't seen any evidence of an executed change  
3 order that would actually enjoin the contractor to  
4 actually have to produce -- provide those additional  
5 services.

6 Q All right. So you are objecting to the  
7 additional costs, not the original contract price?

8 A Correct.

9 Q Did you review Mr. Johnson's rebuttal  
10 testimony when it was filed on April 11th?

11 A I have reviewed it, yes.

12 Q Did you review it shortly after it was filed?

13 A I imagine that I would have. I can't tell you  
14 the timeframe.

15 Q Okay. And when you read that, did you make  
16 mental impressions about whether you agreed or disagreed  
17 with what his testimony said?

18 A Yes.

19 Q In fact, you probably took notes, didn't you?

20 A I may have.

21 Q Did you suggest any discovery questions to OPC  
22 that they propound those on KWRU in connection with  
23 Mr. Johnson's rebuttal testimony?

24 A I had no questions for OPC on the rebuttal  
25 testimony through discovery. My understanding was the

1 discovery for us was closed at that point.

2 Q So you don't believe that, at that point, that  
3 the Public Counsel had an opportunity to serve discovery  
4 in connection with rebuttal testimony?

5 A That's correct.

6 Q And did you provide any comments on the  
7 rebuttal testimony in OPC's preparation for  
8 Mr. Johnson's deposition?

9 A Yes.

10 Q Did you listen in on Dr. -- I mean  
11 Mr. Johnson's deposition?

12 A No, I did not.

13 Q Now, if I understand your prefiled surrebuttal  
14 testimony, you didn't realize you were going to have to  
15 file it until May 1st; is that correct?

16 A That's correct. Yes.

17 Q So no time prior to May 1st did OPC give you  
18 any indication that it was going to ask for an  
19 opportunity to file surrebuttal testimony?

20 A I don't recall any. I certainly was not told  
21 to prepare for the eventuality that I might need to do  
22 it.

23 Q So if OPC had asked KWRU for an opportunity to  
24 file surrebuttal testimony on April 23, and they  
25 consented on April 23rd, that was never relayed to you?

1 A No.

2 MR. FRIEDMAN: That's all I have.

3 COMMISSIONER POLMANN: Thank you, Mr.

4 Friedman.

5 Monroe County.

6 MR. WRIGHT: No questions.

7 COMMISSIONER POLMANN: Thank you, Mr. Wright.

8 MR. WRIGHT: Thank you.

9 COMMISSIONER POLMANN: Ms. Crawford.

10 MS. CRAWFORD: No questions from staff.

11 COMMISSIONER POLMANN: I am sorry?

12 MS. CRAWFORD: No questions from staff.

13 COMMISSIONER POLMANN: Commissioners.

14 Redirect.

15 FURTHER EXAMINATION

16 BY MR. SAYLER:

17 Q One question regarding Mr. Friedman's question  
18 about consenting to allow surrebuttal.

19 If KWRU withdrew that offer for surrebuttal,  
20 do you know if that was conveyed to you?

21 A Can you refresh my memory a little bit more?

22 Q So the answer is no?

23 A I am trying to remember the specifics of Mr.  
24 Friedman's question.

25 MR. FRIEDMAN: I would object, because he said

1 he didn't know in the first place, so how could he  
2 have known that there was a withdrawal if he  
3 testified that he didn't know they had an  
4 opportunity to file surrebuttal?

5 MR. SAYLER: All right. No further questions.

6 COMMISSIONER POLMANN: Thank you, Mr. Sayler.

7 MR. SAYLER: And this witness does not have  
8 any exhibits to his testimony, therefore, I would  
9 ask that he be excused.

10 COMMISSIONER POLMANN: Yes, sir.

11 You are excused, Mr. Woodcock.

12 THE WITNESS: Thank you very much.

13 COMMISSIONER POLMANN: Thank you. Safe  
14 travels.

15 (Witness excused.)

16 COMMISSIONER POLMANN: Okay. How long is this  
17 going to take? Are we going to be here, like, half  
18 an hour or five minutes?

19 MR. SAYLER: I hope not.

20 COMMISSIONER POLMANN: All right.

21 MR. WRIGHT: I cannot predict the actions of  
22 others, Commissioner, but my part isn't going to  
23 take five minutes. I know what I need to say, and  
24 it's not going to take 90 seconds on all.

25 COMMISSIONER POLMANN: I hear you.

1           Staff counsel, I need some guidance here.

2           Where are we?

3           MS. HELTON: I believe we are on Exhibit 136,  
4           is the next exhibit that we need to address with  
5           respect to whether it shall be admitted into the  
6           record.

7           MR. SAYLER: Office of Public Counsel would  
8           move that into the record.

9           MS. MAPP: Staff -- while staff does not have  
10          an objection to the entrance of this exhibit, staff  
11          would like to note for the record that this exhibit  
12          is part of the discovery responses provided by KWRU  
13          to which both Monroe County and OPC have objected  
14          both yesterday, and continue to renew that  
15          objection.

16          MR. SAYLER: And that is an accurate  
17          assessment. When it comes to our objection, we  
18          still renew all those same objections for the  
19          reasons we stated before, but unlike the discovery  
20          responses that staff has put in their hearing  
21          exhibits, we have actually tested this discovery  
22          response with live cross-examination with this  
23          witness; therefore, that is why, for that one  
24          particular aspect, I am going to withdraw my  
25          objection to that discovery response because it was

1           actually used in cross-examination of a live  
2           witness, but the remainder of my objections I would  
3           like to renew for the record without going into the  
4           reason.

5           MS. MAPP: Staff would just like to clarify  
6           for the record that there were several exhibits to  
7           which we asked live cross questions to which both  
8           Monroe County and OPC continued to object, their  
9           argument being that the responses were provided out  
10          of time. That is the same situation in which we  
11          are with related to Exhibit 136. We just would  
12          like that noted for the record.

13          MR. SAYLER: And noted for the record I did  
14          not join Monroe County for some of those objections  
15          because they were used in my cross, but I still  
16          think Monroe County has a valid objection, I -- OPC  
17          did not object.

18          MR. WRIGHT: For consistency, I am going to  
19          reluctantly object to the admission of 136.

20          MR. SAYLER: Public Counsel will, I believe,  
21          withdraw its moving that into the record to move  
22          things along.

23          COMMISSIONER POLMANN: I didn't write that  
24          down, so --

25          MS. HELTON: That's a new one on me, Mr.

1 Chairman, to go through and cross-examine on an  
2 exhibit and then move for it to be admitted into  
3 the record and then to withdraw your request for it  
4 to be admitted into the record. And I would just  
5 like to note that, as has been evidenced here  
6 today, all the parties had the opportunity to  
7 cross-examine on any exhibit that was listed on the  
8 comprehensive exhibit list.

9 MR. SAYLER: And I withdraw my withdrawal and  
10 would like to have it moved into evidence.

11 COMMISSIONER POLMANN: Okay. At the risk of  
12 revealing my total and complete confusion, I am  
13 looking at Exhibit 136, let's restart the  
14 discussion.

15 Who owns the Exhibit 136?

16 MR. SAYLER: The Office of Public Counsel owns  
17 Exhibit 136.

18 COMMISSIONER POLMANN: What would you like to  
19 do with Exhibit 136?

20 MR. SAYLER: Would you please move it into the  
21 record, sir?

22 COMMISSIONER POLMANN: Is there any objection  
23 to moving 136 into the record?

24 MR. WRIGHT: Yes.

25 COMMISSIONER POLMANN: And you are.

1 MR. WRIGHT: Monroe County.

2 COMMISSIONER POLMANN: Monroe County objects  
3 to Exhibit 136 coming into the record.

4 Are there any other comments or objections?

5 MS. MAPP: Yes. Staff would like to note for  
6 the record that Exhibit 136 was provided by the  
7 utility in response to staff's interrogatories,  
8 fourth and fifth set, that Monroe County and OPC  
9 previously objected to being entered into the  
10 record yesterday, and to which Monroe County has  
11 renewed this morning, however, we do not object to  
12 entrance of this exhibit.

13 COMMISSIONER POLMANN: At this time, we will  
14 move 136 into the record noting the objection from  
15 Monroe County, the comments from staff counsel and  
16 that staff counsel does not object.

17 (Whereupon, Exhibit No. 136 was received into  
18 evidence.)

19 COMMISSIONER POLMANN: 137.

20 MR. WRIGHT: Thank you.

21 I think this will go quickly in this way. I  
22 would like to move the admission into evidence of  
23 137, 138, 139, the spill report, 140, and 141 the  
24 last hand excerpt at this time.

25 COMMISSIONER POLMANN: I have 137, 138, 139,



1 140 and 141 request to enter by Monroe County. Is  
2 there any objection?

3 MR. SMITH: No objection.

4 MS. CRAWFORD: No objection.

5 COMMISSIONER POLMANN: No objection by staff.  
6 Mr. Saylor, do you have any issues?

7 MR. SAYLER: No, sir.

8 COMMISSIONER POLMANN: Okay. We are moving  
9 137 through 141 into the record.

10 MR. WRIGHT: Thank you.

11 (Whereupon, Exhibit Nos. 137-141 were received  
12 into evidence.)

13 MR. WRIGHT: Next I would like to move  
14 admission of 142 by itself.

15 COMMISSIONER POLMANN: Any objection?

16 MS. MAPP: No objection.

17 MR. SMITH: No.

18 COMMISSIONER POLMANN: Any comments?

19 MR. SMITH: No.

20 COMMISSIONER POLMANN: Okay. We are moving  
21 142 by Monroe County into the record.

22 (Whereupon, Exhibit No. 142 was received into  
23 evidence.)

24 COMMISSIONER POLMANN: Thank you.

25 Mr. Wright, do you have anything you want to

1 do with 143, four, five?

2 MR. WRIGHT: Yes, I do. I move those into the  
3 record, and I think we can take those all at once.  
4 I anticipate there may be objections. I think they  
5 will all be the same as applied to those three.

6 COMMISSIONER POLMANN: Okay. 143, 144, 145,  
7 request to enter into the record by Monroe County.

8 MR. SMITH: Yes, and KWRU objects to these.  
9 The witness stated that he's never seen those  
10 before. He does not recognize them, and so there  
11 is no authentication by the witness.

12 COMMISSIONER POLMANN: Okay. All three of  
13 those objections by KWRU.

14 Other comments?

15 MS. HELTON: I do recognize -- I am sorry, I  
16 do recommend you that hear a response from Mr.  
17 Wright before ruling on that.

18 COMMISSIONER POLMANN: Mr. Sayler, do you have  
19 anything?

20 MR. SAYLER: I have no objection to those  
21 coming into the record.

22 COMMISSIONER POLMANN: All right. Mr. Wright.

23 MR. WRIGHT: Briefly, these are official  
24 records. One is from the Clerk of the Court of  
25 Monroe County, the other two are from the Florida

1 Secretary of State website. Mr. Johnson did  
2 testify that he is familiar with these reports.  
3 They are what they are. I think these are the kind  
4 of documents that ordinary people rely on in the  
5 ordinary course of conducting their business, and I  
6 think they are appropriately admissible in this  
7 case.

8 COMMISSIONER POLMANN: Given what they are, I  
9 think they are acceptable to move in, and they will  
10 be used appropriately and given the weight they are  
11 due in the context of how they were used with this  
12 witness. Whether he was able to identify them  
13 specifically or not, I think they are  
14 representations of government documents, so we will  
15 move them in, 143, 144, 145.

16 (Whereupon, Exhibit Nos. 143-145 were received  
17 into evidence.)

18 COMMISSIONER POLMANN: And we are at 146.  
19 Staff.

20 MS. MAPP: Staff would request the entrance of  
21 146, 147 and 148.

22 MR. WRIGHT: Monroe County continues to object  
23 to 146 and 147 for all the reasons previously  
24 discussed. Thank you for noting our objection.

25 COMMISSIONER POLMANN: Any other comments?

1 Staff, do you have anything you want to add?

2 MS. MAPP: No.

3 COMMISSIONER POLMANN: Okay. Noting Monroe  
4 County's objection and no other comments from the  
5 parties, we will move 146, 147 and 148 into the  
6 record at this time.

7 (Whereupon, Exhibit Nos. 146-148 were received  
8 into evidence.)

9 COMMISSIONER POLMANN: We have 149 and 150.

10 MR. SAYLER: And Public Counsel would object  
11 to the Keys Energy tariffs. Our witness testified  
12 he had never seen these before today.

13 MR. SMITH: Same argument -- sorry.

14 MR. SAYLER: And agree with Mr. Smith's  
15 argument that he used to objecting to the official  
16 documents that Monroe County adopt those  
17 objections.

18 MR. SMITH: I am adopting Mr. Wright's  
19 arguments.

20 COMMISSIONER POLMANN: Okay. We are going to  
21 deal with these two. These are utility documents,  
22 is that the way you are representing them?

23 MR. SMITH: These are the tariffs received  
24 from Keys Energy, the utility provider for  
25 electric.

1           COMMISSIONER POLMANN: And we have objections  
2           from OPC --

3           MR. SAYLER: Yes, sir.

4           COMMISSIONER POLMANN: -- and from Monroe  
5           County, or do you have any comment, Mr. Wright?

6           MR. WRIGHT: I don't have any comment on this  
7           one.

8           COMMISSIONER POLMANN: Okay.  
9           Staff, any issues here?

10          MS. MAPP: Staff has no comment.

11          MS. HELTON: I think, to be consistent, you  
12          have to let these two in --

13          COMMISSIONER POLMANN: Understood.

14          MS. HELTON: -- with your ruling that you just  
15          gave Mr. Wright with respect to his exhibits, Mr.  
16          Chairman.

17          COMMISSIONER POLMANN: Okay. We will -- on  
18          Exhibits 149 and 150, we are going to bring these  
19          into the record, noting the objection from Public  
20          Counsel, and accept these for what they are  
21          represented as tariffs from Keys Energy, and give  
22          them the weight that they are due in the context of  
23          how they were used with the witness, accepting his  
24          answers that he did or did not recognize them.

25                 (Whereupon, Exhibit Nos. 149 & 150 were

1 received into evidence.)

2 MR. SAYLER: And Public Counsel has no  
3 objection to 151 and 152. They are already in the  
4 record per our discovery earlier.

5 MR. WRIGHT: Likewise, we have no objection.

6 COMMISSIONER POLMANN: Okay. Mr. Friedman, do  
7 you want to add anything here? We are going to  
8 enter into No. 151 and 152.

9 MR. FRIEDMAN: No objection.

10 COMMISSIONER POLMANN: Okay.

11 MR. WRIGHT: Good thing.

12 COMMISSIONER POLMANN: Well, I wasn't  
13 looking -- I said, did you have anything else. I  
14 wasn't asking if you had an objection.

15 MR. SAYLER: But if they want to object, I  
16 will --

17 COMMISSIONER POLMANN: Oh, no. I didn't  
18 expect that.

19 Any other comments on 151 and 152? We are  
20 going to enter both of those into the record at  
21 this time.

22 (Whereupon, Exhibit Nos. 151 & 152 were  
23 received into evidence.)

24 COMMISSIONER POLMANN: Do we have any other  
25 exhibits that I am unaware of?

1           Do we have anything else we need to put in the  
2           record?

3           MS. CRAWFORD: Staff is not aware of any  
4           exhibits that haven't been addressed.

5           MS. HELTON: I think, Mr. Chairman, at this  
6           time, that we need to identify when briefs are to  
7           be due.

8           COMMISSIONER POLMANN: Yes. Let me go back to  
9           my list of to-do items.

10          I think we have taken care of all the  
11          exhibits. And, staff, are there any other matters  
12          that need to be addressed, or do we have anything  
13          further from the parties?

14          MR. SAYLER: I had a question, and do you know  
15          are these daily transcripts, or when we will have  
16          access to the transcripts?

17          COMMISSIONER POLMANN: I don't know, but  
18          somebody might. Who might know about the  
19          transcripts?

20          MS. MAPP: We have not requested expedited  
21          transcripts, so the current schedule is seven to 10  
22          business days -- I am sorry, seven to 10 days.

23          MR. WRIGHT: Commissioner, I am not sure I  
24          heard, are briefs due on June 6th?

25          COMMISSIONER POLMANN: We are getting to the

1           briefs.

2           MR. WRIGHT: Oh, sorry.

3           COMMISSIONER POLMANN: That was the  
4 transcript, right?

5           MS. MAPP: Correct.

6           COMMISSIONER POLMANN: Okay. Any other  
7 questions from the front row?

8           MR. SAYLER: No questions.

9           COMMISSIONER POLMANN: Ms. Mapp. Let's talk  
10 about briefs.

11          MS. MAPP: Post-hearing briefs are due on  
12 June 6th --

13          COMMISSIONER POLMANN: Turn that thing off.  
14 I am sorry, start over.

15          MS. MAPP: Post-hearing briefs are due on  
16 June 6th, 2018.

17          According to ruling at the prehearing  
18 conference briefs should be no longer than 45  
19 pages, and position summaries no more than 75 words  
20 offset with an asterisk.

21          MR. FRIEDMAN: And my understanding is 45  
22 words includes any appendices as well, is that  
23 correct?

24          COMMISSIONER POLMANN: If you can fit the  
25 whole thing in 45 words --



1 MR. FRIEDMAN: No, I am sorry.

2 COMMISSIONER POLMANN: -- that would be great.

3 The position summaries are 75 words. The  
4 briefs are 45 pages, single pages, total 45 words,  
5 including everything. And as I said at the  
6 prehearing, anything beyond 45 pages we will  
7 ignore.

8 MR. FRIEDMAN: Perfect.

9 MR. SAYLER: Certainly.

10 And I do note that it's seven to 10 business  
11 days for the transcripts --

12 MS. MAPP: I corrected --

13 MR. SAYLER: -- sorry, calendar days, it would  
14 mean we should start receiving Thursday the 24th  
15 and Monday the 28th, which is about 10 days before  
16 the briefs would be due, and which is June 6th; is  
17 that right?

18 COMMISSIONER POLMANN: What I do know is  
19 that --

20 MR. SAYLER: And there is a holiday in  
21 between.

22 COMMISSIONER POLMANN: Okay.

23 MR. SMITH: The holiday is before the  
24 transcript gets here.

25 COMMISSIONER POLMANN: What we know for sure

1 is our briefs are due June 6th, and we will get you  
2 the transcripts as soon as possible with the  
3 expectation that it's seven to 10 calendar days.  
4 We will do the best we can.

5 MR. SAYLER: And when is it supposed to be on  
6 agenda? What's the date? When is staff's  
7 recommendation?

8 MR. BURNETT: I believe it's currently  
9 scheduled for August 7th.

10 MS. CRAWFORD: Yes.

11 MR. SAYLER: Would it be appropriate to ask  
12 for the briefs to be due on June 11th.

13 COMMISSIONER POLMANN: I don't think we are  
14 moving anything. You can ask, but I think the  
15 answer might be no.

16 MR. SAYLER: Then I won't ask.

17 COMMISSIONER POLMANN: The August agenda  
18 meeting is on the 7th.

19 Any other matters, any other business?  
20 Anything else?

21 MR. SAYLER: The only thing from Public  
22 Counsel's office is we would renew all of our  
23 objections that we made throughout the hearing for  
24 purposes of the appellate record should we need  
25 that, and hopefully we don't.

1 COMMISSIONER POLMANN: So noted.

2 If there are no other matters, we conclude  
3 this hearing and we are adjourned.

4 It is 2:15 this date. Thank you.

5 MR. SAYLER: Thank you, sir.

6 MR. FRIEDMAN: Thank you.

7 MR. SMITH: Thank you.

8 MR. WRIGHT: Thank you.

9 (Whereupon, the proceedings concluded at 2:17  
10 p.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE OF REPORTER

STATE OF FLORIDA     )  
COUNTY OF LEON        )

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

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

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

DATED this 29th day of May, 2018.



---

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