

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150071-SU

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

_____ /

PROCEEDINGS: PREHEARING CONFERENCE

COMMISSIONER
PARTICIPATING: JIMMY PATRONIS
PREHEARING OFFICER

DATE: Friday, October 28, 2016

TIME: Commenced at 9:38 a.m.
Concluded at 11:24 a.m.

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

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

1 APPEARANCES:

2 MARTIN S. FRIEDMAN, ESQUIRE, Friedman,
3 Friedman & Long, P.A., 766 North Sun Drive, Suite 4030,
4 Lake Mary, Florida 32746, and BARTON W. SMITH, ESQUIRE,
5 Smith Law Firm, 138-142 Simonton Street, Key West,
6 Florida 33040, appearing on behalf of KW Resort
7 Utilities Corp.

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

14 ANN AKTABOWSKI, 6800 Maloney Avenue, Unit 100,
15 Key West, Florida 33040, appearing telephonically on
16 behalf of the Harbor Shores Condominium Unit Owners.

17 J.R. KELLY, PUBLIC COUNSEL; ERIK L. SAYLER,
18 and STEPHANIE MORSE, ESQUIRES, Office of Public Counsel,
19 c/o the Florida Legislature, 111 W. Madison Street, Room
20 812, Tallahassee, Florida 32399-1400, appearing on
21 behalf of the Citizens of the State of Florida.

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

1 APPEARANCES (Continued):

2 MARY ANNE HELTON, ESQUIRE, FPSC General
3 Counsel's Office, 2540 Shumard Oak Boulevard,
4 Tallahassee, Florida 32399-0850, appearing as advisor
5 to the Florida Public Service Commission.

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P R O C E E D I N G S

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2 **COMMISSIONER PATRONIS:** Good morning. I call
3 this hearing to order. Staff, will you please read the
4 notice.

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

9 **COMMISSIONER PATRONIS:** Okay. Thank you very
10 much.

11 We'll take appearances. We'll also -- staff,
12 you'll note about our phone representative.

13 **MS. MAPP:** Staff would note that Ann
14 Aktabowski, on behalf of Harbor Shores, is appearing
15 telephonically.

16 **MR. FRIEDMAN:** I object to that.

17 **COMMISSIONER PATRONIS:** Excuse me?

18 **MR. FRIEDMAN:** I object to her participating
19 telephonically. The Prehearing Order -- the order on
20 procedure says that "Unless excused by the Prehearing
21 Officer for good cause shown, each party or designated
22 representative shall personally appear at the prehearing
23 conference." She's not a consumer. She's appearing as
24 a Class B practitioner just like counsel and I are, and
25 I don't see why she should be able to participate by

1 phone and I couldn't participate by phone. And she
2 hasn't filed anything that I have seen with you or
3 certainly not in the Clerk's docket asking to be excused
4 from personal appearance. And obviously if she hasn't
5 filed anything, she hasn't shown good cause, and I don't
6 know if she can show good cause. But she just can't
7 call in without meeting what the order on procedure
8 says. And I object to it if she could do it -- if she
9 can do it, then I should be able to do it. If she can
10 be able to do it without showing any good cause other
11 than, "Gee, I just want to do it by telephone," I should
12 have been entitled to that same courtesy.

13 **COMMISSIONER PATRONIS:** Point made.

14 **MS. CRAWFORD:** Would you like staff to
15 respond?

16 **COMMISSIONER PATRONIS:** Please.

17 **MS. CRAWFORD:** Okay. While I appreciate
18 Mr. Friedman's position, Ms. Aktabowski did file in some
19 other pleadings the statements regarding her health.
20 While she didn't file an explicit request in the docket
21 to be excused, parties have in the past, because of
22 health reasons or the inability to travel, have
23 requested permission to participate telephonically at
24 prehearings, which the Prehearing Officer has the
25 discretion to grant or not. In this case, it was

1 granted. I haven't heard from Mr. Friedman how he is
2 materially disadvantaged in some way by her
3 participating telephonically, and I would just recommend
4 that we move forward.

5 **COMMISSIONER PATRONIS:** I'm going to move
6 forward. I'm going to let her participate.

7 **MR. SAYLER:** Are we doing appearances?

8 **COMMISSIONER PATRONIS:** Yes.

9 **MR. SAYLER:** My name is Erik Sayler with the
10 Office of Public Counsel appearing on behalf of the
11 customers of KW -- Key West Utilities Corp. And I would
12 like to make an appearance for an attorney, Stephanie
13 Morse, in our office as well as the Public Counsel,
14 J.R. Kelly. And while not making an appearance, I would
15 recognize that we do have a legal intern with us, and
16 her name is Jessica Rodriguez. She's been assisting
17 with this case.

18 **COMMISSIONER PATRONIS:** Okay. Thank you.

19 **MR. WRIGHT:** Good morning, Commissioner.
20 Robert Scheffel Wright and John T. LaVia, III, of the
21 law firm Gardner, Bist, Bowden, Bush, Dee, LaVia &
22 Wright, appearing on behalf of Monroe County. I'd also
23 like to enter an appearance for Cynthia Hall, Assistant
24 County Attorney, who will be appearing in this case.
25 Thank you.

1 **MR. FRIEDMAN:** Marty Friedman on behalf of Key
2 West Resort Utility. And Bart Smith will also be
3 participating in the trial.

4 **COMMISSIONER PATRONIS:** Okay. Thank you.

5 Yeah. And, Ms. Aktabowski, are you there?

6 **MS. AKTABOWSKI:** Yes, I am, sir.

7 **COMMISSIONER PATRONIS:** You can go ahead and
8 introduce yourself to the audience.

9 **MS. AKTABOWSKI:** My name is Ann Aktabowski,
10 and I am representing Harbor Shores Condominium Unit
11 Owners Association here in Key West.

12 **COMMISSIONER PATRONIS:** Okay. Thank you.

13 **MS. MAPP:** Kyesha Mapp on behalf of Commission
14 staff. And I'll also enter an appearance for Jennifer
15 Crawford.

16 **MS. HELTON:** And Mary Anne Helton. I'm here
17 as your advisor today.

18 **COMMISSIONER PATRONIS:** Okay. Thank you.

19 Preliminary matters. Let's go ahead and
20 address these prior to the draft Prehearing Order.

21 **MS. MAPP:** Yes. First, staff would note that
22 there are three contested issues in this docket, and
23 staff would recommend that if the Prehearing Officer
24 wishes to hear oral arguments on any particular issue,
25 said argument should be taken up during the issues and

1 positions section of this prehearing conference.

2 Staff also recommends that all parties bring
3 at least 25 copies of all exhibits that they wish to
4 introduce into evidence at the hearing. The appropriate
5 cover sheet to be placed on each exhibit will be
6 distributed by staff through email following this
7 prehearing.

8 **COMMISSIONER PATRONIS:** Very good. Official
9 recognition.

10 **MS. MAPP:** Yes.

11 **MR. FRIEDMAN:** Can I comment on that?

12 **COMMISSIONER PATRONIS:** Yes.

13 **MR. FRIEDMAN:** I just -- in this day and age
14 of electronic documentation, I just -- do we need 25
15 copies of everything? I mean, every exhibit is already
16 downloaded, everybody already has them all, they're all
17 on the Clerk's website, and yet we have to bring 25
18 copies of -- and I've got an exhibit that's probably
19 this thick, and you want -- and we have to bring 25
20 copies of every exhibit to the prefiled testimony. It
21 makes absolutely no sense to me, Commissioner.

22 **COMMISSIONER PATRONIS:** Thank you.

23 **MR. FRIEDMAN:** We're in a technology age here.

24 **MS. MAPP:** If I may respond, Commissioner.

25 **COMMISSIONER PATRONIS:** I understand. Ma'am.

1 **MS. MAPP:** Staff's 25 copies are not for the
2 exhibits attached to the prefiled testimony. They are
3 for any exhibits that any party would question the
4 witness on while they're on the stand so that all
5 parties can have a copy in front of them to review as
6 cross-examination is ongoing.

7 **COMMISSIONER PATRONIS:** Does that help?

8 **MR. FRIEDMAN:** It does. I mean, I still
9 question whether there's 25 people there that need to
10 get a copy, but at least I understand that we don't have
11 to make copies of what everybody already has. Thank
12 you.

13 **COMMISSIONER PATRONIS:** Right.

14 **MS. CRAWFORD:** If I may, for clarification.

15 **COMMISSIONER PATRONIS:** Sure.

16 **MS. CRAWFORD:** The prefiled testimony and
17 exhibits, everybody will have their own copies or they
18 should have their own copies. To the extent you're
19 seeking to introduce a discovery response or portions
20 from a deposition or whatever, that's what we -- okay.
21 I think we're on the same page. Thank you.

22 **COMMISSIONER PATRONIS:** Okay. Official
23 recognition.

24 **MS. MAPP:** Yes. The utility has filed a
25 request for official recognition of the final order of

1 the Department of Environmental Protection in *Last Stand*
2 *versus KW Resort Utilities Corp.* dated February 24th,
3 2016.

4 **COMMISSIONER PATRONIS:** Okay. Let's hear any
5 comments from the utility.

6 **MR. FRIEDMAN:** That's a standard under the
7 rules of evidence. If you -- if there's a document such
8 as an order of another agency, you're allowed to
9 introduce that before another agency if you make the
10 particular filing; in other words, showing that it's
11 available, readily available to everybody. It is
12 relevant. I don't know -- I thought we had filed it.
13 It's certainly been provided in this case because that
14 *Last Stand* litigation is what resulted in the utility
15 having to build the plant and how much it had to build
16 and that sort of thing. So certainly the issues are
17 relevant to the case, and we did the correct steps in
18 order to obtain official recognition.

19 **COMMISSIONER PATRONIS:** Mr. Sayler.

20 **MR. SAYLER:** Yes, Commissioner Patronis. Just
21 one clarification. That would also include the
22 recommended order that's attached to the final order
23 that you're seeking official recognition of?

24 **MR. FRIEDMAN:** Yeah. The final order
25 includes -- the recommended order is a part of the final

1 order.

2 **MR. SAYLER:** Certainly we have no objection to
3 that.

4 **COMMISSIONER PATRONIS:** Any other parties?

5 **MR. WRIGHT:** No objection. That's a document
6 of the State of Florida, Commissioner.

7 **COMMISSIONER PATRONIS:** Right.

8 Ms. Aktabowski, any comments? Okay.

9 **MS. AKTABOWSKI:** I have no objection.

10 **COMMISSIONER PATRONIS:** Okay. All right. All
11 right. Well, I'll allow -- we'll move forward and
12 approve for this request.

13 Notice of intent of use of deposition.

14 **MS. MAPP:** Yes. On October 27th, 2016, Harbor
15 Shores filed a notice of intent to use deposition of
16 Christopher Johnson. The Order Establishing Procedure
17 allows all parties three days to make any written
18 comments on the notice. However, staff would request
19 that Harbor Shores provide in writing the purpose and
20 specific line and page numbers of the deposition for
21 which they would like to enter the deposition so a
22 more -- so a response can be given.

23 **COMMISSIONER PATRONIS:** Are parties prepared
24 for oral arguments today?

25 **MR. FRIEDMAN:** I'm not because, as counsel

1 mention, we don't know exactly what parts she wants
2 introduced. And I wasn't at that deposition, Attorney
3 Smith was, but I understand that certain objections were
4 made based upon --

5 **COMMISSIONER PATRONIS:** Okay.

6 **MS. AKTABOWSKI:** May I speak?

7 **COMMISSIONER PATRONIS:** Go ahead.

8 **MS. AKTABOWSKI:** Unless I missed it, I did not
9 find the deposition. They're not on file yet.

10 **COMMISSIONER PATRONIS:** Ma'am, I'm not sure if
11 you're speaking on a speakerphone or phone. We got
12 about a third of what you said.

13 **MS. AKTABOWSKI:** I'm sorry. I'm saying --

14 **COMMISSIONER PATRONIS:** That's better.

15 **MS. AKTABOWSKI:** -- unless I'm mistaken, the
16 depositions have not been posted or are not available as
17 yet that I'm referring to. That's why I did not put the
18 line number or the item in my request.

19 **COMMISSIONER PATRONIS:** Mr. Sayler.

20 **MR. SAYLER:** Yes, sir, Commissioner. The
21 deposition -- I was emailed a copy by the court reporter
22 at around 5:30 or 5:00 last night, so I don't believe
23 Ms. Aktabowski has received a copy of that deposition,
24 the one that she is interested in -- that she filed the
25 notice for taking -- a notice of deposition for.

1 **COMMISSIONER PATRONIS:** Anybody else?

2 **MS. CRAWFORD:** Commissioner Patronis, if I
3 may.

4 **COMMISSIONER PATRONIS:** Yes, ma'am.

5 **MS. CRAWFORD:** It may be helpful, even though
6 we don't have anything in writing right now, I think it
7 would be helpful for me to understand better for what
8 purpose Ms. Aktabowski is seeking to enter the
9 deposition. Is she -- so, Ms. Aktabowski, if you could
10 speak to the purpose for which you're seeking to admit
11 the deposition. And to the extent you know, are you
12 seeking to admit the entire document or just parts of
13 it? If you could speak to that.

14 **MS. AKTABOWSKI:** Just very limited parts of
15 it. And my purpose is to clarify some statements that
16 Mr. Johnson made with regard to particular organizations
17 here in Key West or in Stock Island mobile home parks
18 where he said there are general service, and I would
19 like to clarify what that means. Why is it that some
20 mobile home parks are general service and ours is not?
21 So that really is my purpose. I need to clarify what he
22 said in Mr. Sayler's deposition.

23 And also, again, in my deposition of
24 Mr. Johnson, again asking -- wanting to clarify with
25 regards to shutoff valves or cleanout valves and access

1 to private property. Does that make any sense?

2 **MS. CRAWFORD:** Do the parties wish to perhaps

3 --

4 **MR. FRIEDMAN:** I mean, I guess if we follow
5 the procedure, then we would have -- once we know
6 exactly what questions and answers -- because, like I
7 say, I was not there, but I do understand that those
8 questions were objected to as beyond the scope of his
9 direct testimony. And obviously what Ms. Aktabowski is
10 trying to do is she didn't file any prefiled testimony
11 and she's trying to figure out a way to prove her case,
12 and those questions were objected to because they were
13 beyond the scope of the testimony. And so that's
14 something that we can deal with under this procedure in
15 filing a response in three days from when we get the
16 clarification on what she's -- what questions and
17 answers she's really trying to get admitted.

18 **COMMISSIONER PATRONIS:** I follow you.

19 **MS. AKTABOWSKI:** I did not -- I do not believe
20 that in Mr. Sayler's deposition of Mr. Johnson that his
21 questions were objected to. Mine may have been, but I'm
22 not sure that his were.

23 **COMMISSIONER PATRONIS:** Okay. Mr. Wright.

24 **MR. WRIGHT:** Just briefly, Commissioner. I
25 think Ms. Crawford has it right. I think we need to

1 know what -- for what purpose and in what way
2 Ms. Aktabowski intends to use the deposition. Does she
3 intend to introduce it as testimony, which is
4 permissible under defined conditions, or does she intend
5 to use it for cross-examination purposes, which is also
6 permissible? And we can figure that out and sort it out
7 at the commencement of the hearing in Key West.

8 **COMMISSIONER PATRONIS:** Mr. Sayler, did you --
9 I think you were trying to get my attention.

10 **MR. SAYLER:** Yes, Commissioner. I echo the
11 comments of the County. I think once she obtains a copy
12 of the deposition, she can clarify what portions, and
13 then that will allow the utility an opportunity to
14 respond in writing and this could be another preliminary
15 matter that could be handled at the start of the hearing
16 in Key West.

17 **COMMISSIONER PATRONIS:** Okay.

18 **MS. CRAWFORD:** Commissioner, if I may.

19 **COMMISSIONER PATRONIS:** Yes, ma'am, please.

20 **MS. CRAWFORD:** I have some real concerns about
21 trying to take this up as a preliminary matter at the
22 hearing. If absolutely we need to do that, then we
23 could. I believe there would be sufficient time for
24 Ms. Aktabowski to receive the transcript, hopefully
25 today, and maybe take the weekend, or if she can't do it

1 by the close of business today, then maybe noon Monday.

2 **COMMISSIONER PATRONIS:** Noon Monday.

3 **MS. CRAWFORD:** But I'm -- having a hearing off
4 campus, so to speak, has its own attendant issues, and
5 to the extent we can provide certainty and clarity to
6 some of these procedural matters now or before the
7 prehearing, I think that leads to a more efficient
8 process. And so that's what I would urge you to
9 approve.

10 To the extent that the deposition is going to
11 be used to impeach Mr. Johnson's testimony, that's
12 perfectly fine. There are some other purposes. To the
13 extent it's being used as a substitute for her direct
14 case, that would not be okay. That has a lot of
15 attendant issues, and I would urge that would not be an
16 appropriate purpose for that deposition. So I would
17 suggest that she be given until Monday at noon --

18 **COMMISSIONER PATRONIS:** Monday at noon.

19 **MS. CRAWFORD:** -- to provide written
20 clarification, provide it to all parties, the purpose
21 for which she's seeking to introduce the deposition and
22 whether she's seeking to introduce the entire deposition
23 or portions thereof and, if so, which portions. And
24 then perhaps give parties until noon Tuesday, close of
25 business Tuesday, I'll let the parties speak to that,

1 but we are on such a tight time frame, Tuesday, at any
2 rate, to respond to whatever Ms. Aktabowski files with
3 respect to that deposition.

4 **COMMISSIONER PATRONIS:** Ms. Aktabowski, did
5 you hear all that?

6 **MS. AKTABOWSKI:** I did.

7 **COMMISSIONER PATRONIS:** Okay. Other parties'
8 comments?

9 **MR. FRIEDMAN:** Well, fortunately, Tony Smith
10 is going to be the guy who drafts the written response,
11 so I'm kind of answering for him.

12 **COMMISSIONER PATRONIS:** Right.

13 **MR. FRIEDMAN:** But, I mean, I guess if the end
14 of Tuesday is when it needs to be done, we'll get it
15 done end of Tuesday.

16 **COMMISSIONER PATRONIS:** Okay.

17 **MS. AKTABOWSKI:** Let me just clarify, by noon
18 on Monday you want me to identify the portions of the
19 depositions and the page numbers, et cetera, and submit
20 those; correct?

21 **COMMISSIONER PATRONIS:** Correct.

22 **MS. AKTABOWSKI:** Okay.

23 **MS. CRAWFORD:** And as well as the purpose for
24 seeking to introduce those portions.

25 **MS. AKTABOWSKI:** And the purpose. Okay. All

1 right. The purpose and the -- identifying the actual
2 parts of the depositions. Okay.

3 **COMMISSIONER PATRONIS:** Okay. With any other
4 written arguments, why don't we make sure we have those
5 by Monday since there's no oral arguments today
6 because -- for circumstances that have come up and been
7 explained, Monday, by October 31st, close of business,
8 let's have any written arguments.

9 **MR. FRIEDMAN:** Tuesday.

10 **COMMISSIONER PATRONIS:** Tuesday. Tuesday. We
11 moved that. That's right.

12 **MR. SAYLER:** Commissioner Patronis,
13 Ms. Aktabowski is essentially acting as pro se. She's
14 not an attorney. And it might be helpful in her
15 response if staff can indicate some of the aspects of
16 the civil rules of procedure and things of that nature
17 that make it difficult for her if she wanted to
18 introduce it as a substitute for testimony so that she
19 would have an adequate opportunity to explain in her
20 response due Monday why she thinks it can be used.

21 **MR. FRIEDMAN:** I object to the staff giving
22 legal advice to a qualified representative.

23 **COMMISSIONER PATRONIS:** And I agree, yeah.

24 **MR. FRIEDMAN:** She -- when she got qualified,
25 she had to make certain representations that she

1 understood the process.

2 **COMMISSIONER PATRONIS:** Yeah. Our staff is
3 not her attorney.

4 Okay. OPC's motion to strike portions of KW's
5 rebuttal.

6 **MS. MAPP:** Yes. Early this morning OPC filed
7 a motion to strike portions of KWRU's rebuttal testimony
8 and exhibits. According to the Order Establishing
9 Procedure, this request is timely. And Rule 28-106.204
10 of the *Florida Administrative Code* allows parties the
11 opportunity to respond in writing when time allows;
12 however, staff would like to request that the Office of
13 Public Counsel provide specific line-by-line,
14 page-by-page justification of what specifically they
15 would like to be stricken by the close of business
16 today.

17 **MR. SAYLER:** We thought we provided that
18 adequately in our motion. We will review it. We did
19 indicate the line numbers and page numbers of the direct
20 testimony -- or the rebuttal testimony of Castle and
21 also of Mr. Johnson. Now when it comes to the testimony
22 of -- rebuttal of Ms. Swain, she is the accounting
23 witness, and all of these costs are embedded in and
24 throughout her testimony and exhibits. So it would be
25 quite impossible to do that by close of business today

1 for her testimony. But we did provide justifications
2 why CAJ-9 should be stricken in its entirety as well as
3 ERC-5 and -6, and -- but we can take a look at it again,
4 if that's the pleasure of staff, and we may file
5 something supplemental. But if not, then we believe
6 that we adequately pointed out to all the aspects of the
7 testimony, rebuttal testimony, and exhibits which we
8 feel ought to be stricken, if that's fair.

9 **COMMISSIONER PATRONIS:** Mr. Friedman.

10 **MR. FRIEDMAN:** Well, I'm just -- normally you
11 get seven days to respond to a motion under the
12 administrative rules, and it sounded to me like Ms. Mapp
13 wanted to change that time frame, or Ms. Brubaker, one
14 or the other, wanted to change this schedule. So I just
15 need to know what schedule we have to file a response to
16 the motion.

17 **MS. MAPP:** Yes. The rule allows for
18 seven days but only when time allows. And given that
19 the hearing is scheduled to begin on November 7th, staff
20 -- and the Prehearing Order is issued -- to be scheduled
21 to go out on November 3rd, staff does not believe that
22 there is enough time to allow for seven days. However,
23 staff does believe that Monday, October 31st, close of
24 business, should be sufficient time to respond to the
25 motion.

1 **MS. CRAWFORD:** And perhaps some clarification
2 is in order here. OPC has requested that its motion be
3 taken up as a preliminary matter at the hearing;
4 however, staff believes that the Prehearing Officer has
5 discretion to, and in this case should, again for
6 purposes of having a streamlined and efficient hearing
7 rather than struggling down in the location to figure
8 out which portions of testimony should be stricken. If
9 we could start with the correct testimony at the start
10 of the proceeding, I think that would be the most
11 efficient way to handle this matter.

12 **MR. SAYLER:** Commissioner Patronis or staff,
13 our motion is to request oral argument before the panel,
14 three Commissioners at the hearing, and so it -- we just
15 believe that it is more streamlined to just handle it as
16 a preliminary matter at that time. We request all
17 argument before the panel.

18 **COMMISSIONER PATRONIS:** It can be dealt with
19 here. It can be dealt with here. Whatever you'd like
20 to strike, let's just try to wrap it up and get it in.
21 Okay?

22 **MR. FRIEDMAN:** Will the end of Tuesday work
23 instead of the end of Monday? I mean, if we've got --
24 if we're using Tuesday as the deadline on
25 Ms. Aktabowski's response, why don't we use the same

1 date? At least that'll give us another day for Bart
2 to -- I mean, I'll be here at the agenda, so I couldn't
3 work on it anyway, but co-counsel --

4 **COMMISSIONER PATRONIS:** Are you fine that?

5 Okay. That'll work.

6 Okay. Let's go through the draft Prehearing
7 Order now section by section. And all parties, please
8 let me know if there's any corrections or changes to be
9 made, so we'll go quickly.

10 Case background. Conduct of proceedings.
11 Jurisdiction. Procedure for handling confidential
12 information. Prefiled testimony and exhibits,
13 witnesses.

14 **MS. MAPP:** Staff recommends that witness
15 summaries be limited to no more than five minutes per
16 witness. If a witness has filed both direct and
17 rebuttal testimonies, staff recommends that witnesses
18 receive five minutes for direct and five minutes for
19 rebuttal. If both direct and rebuttal testimonies are
20 taken together, staff recommends that each witness be
21 given ten minutes total.

22 **MR. FRIEDMAN:** No objection.

23 **COMMISSIONER PATRONIS:** Okay. Great.

24 Order of witnesses.

25 **MS. MAPP:** Staff witness Iliana Piedra has

1 been stipulated by the parties and excused by the
2 Commission.

3 **COMMISSIONER PATRONIS:** Are there any other
4 parties willing to stipulate other witnesses at this
5 point?

6 (No response.)

7 Okay. Will redirect and rebuttal testimony be
8 taken up separately or together?

9 **MR. FRIEDMAN:** Separately.

10 **COMMISSIONER PATRONIS:** Okay.

11 **MR. FRIEDMAN:** And this is not necessarily the
12 order we're going to present these witnesses in. It's
13 not necessarily the order in which they're put forth in
14 the order -- in the witness list here.

15 **MR. WRIGHT:** That's why we're here,
16 Mr. Chairman.

17 **COMMISSIONER PATRONIS:** Yeah.

18 **MR. WRIGHT:** We have the right to know what
19 the order of witnesses are going to be. That's the
20 purpose of this order. If it's different than this,
21 that's fine. I just would like Mr. Friedman -- KWRU to
22 tell us either now or, you know, by 5:00 Tuesday would
23 be fine with me, but sometime before the Prehearing
24 Order is issued because I want to rely on the Prehearing
25 Order to know what the order of witnesses are going to

1 be for our hearing preparation. Thank you.

2 **MR. FRIEDMAN:** That's no problem. Right now
3 it looks like we're going to put Mr. Castle first,
4 Mr. Johnson, Mr. Seidman third, and Ms. Swain fourth.

5 **COMMISSIONER PATRONIS:** Okay.

6 **MR. WRIGHT:** Mr. Chairman, I'd like to inquire
7 will that be the same for the direct presentation and
8 the same order for rebuttal?

9 **COMMISSIONER PATRONIS:** Okay. Is that fine?

10 **MR. FRIEDMAN:** Well, you know, I intend it to
11 be, but I don't want to be locked in on rebuttal because
12 rebuttal is rebuttal. You don't know what's necessarily
13 going to come up that is beyond what was presented in
14 the testimony. And so I would certainly say the same
15 order, but I would want to reserve the right to change
16 that order, if we need to.

17 **COMMISSIONER PATRONIS:** Okay.

18 **MR. WRIGHT:** Would you ask Mr. Friedman to
19 repeat the order, please? I was flipping --

20 **COMMISSIONER PATRONIS:** Yeah. The order of
21 names, please.

22 **MR. FRIEDMAN:** Sure. It's Mr. Castle,
23 Mr. Johnson, Mr. Seidman, and Ms. Swain.

24 **COMMISSIONER PATRONIS:** Thank you.

25 **MR. FRIEDMAN:** And if it's going to change,

1 I'll let everybody know by Monday.

2 **COMMISSIONER PATRONIS:** Okay. Mr. Sayler.

3 **MR. SAYLER:** For the order of OPC witnesses,
4 we would reverse them: have Mr. Woodcock go first,
5 followed by Ms. Merchant.

6 **COMMISSIONER PATRONIS:** Okay.

7 **MS. CRAWFORD:** If I could just make a quick
8 comment for the record.

9 **COMMISSIONER PATRONIS:** Please.

10 **MS. CRAWFORD:** The order you see reflected
11 here is the order they were presented in the prehearing
12 statements, and so perhaps it's not clear. But I would
13 urge the parties to understand that the order that is
14 given to us in the prehearing statements we assume to be
15 the order that the parties wish to present their
16 witnesses at hearing.

17 Certainly to the extent that that order
18 changes between the time you file your prehearing
19 statement and the time of the prehearing, that's fine.
20 But it's -- please do keep us in the loop because we
21 certainly want the order in the Prehearing Order to be
22 correct and reflective of what the parties' intentions
23 are. So I just appreciate the opportunity to make that
24 statement for clarity's sake.

25 **MS. MAPP:** And I'd just like to confirm that

1 the order of Castle, Johnson, Seidman, and Swain are
2 also the order of rebuttal as well as direct?

3 **MR. FRIEDMAN:** That's what we intend at this
4 point. But I reserve the right, depending upon what --
5 the testimony that's presented, to change that order.

6 **MS. HELTON:** I guess I'm a little bit confused
7 because the testimony has all been prefiled, and so I --

8 **MR. FRIEDMAN:** Yeah, but you don't know what
9 people are going to say. You know, we don't have any of
10 the customer testimony. I assume the customer testimony
11 is going to come in, and who knows what we may want to
12 have to respond to customer testimony. And while I
13 think that order of witnesses is still good, I don't
14 want to be locked into a particular order of witnesses
15 if something comes up that tells me I need to change
16 that order for strategy. And I don't know what
17 difference -- what prejudice it is to anybody if I
18 change the order of my witnesses in rebuttal because
19 there's nobody going to testify after them.

20 **MS. HELTON:** Well, I guess the issue is too,
21 you have attorneys who need to be preparing to ask
22 questions of the witnesses that are on the stand in
23 rebuttal. So I think it's only a professional courtesy
24 that we let people know what order to expect them, and I
25 think that's the way we've always operated as well. I

1 mean, sometimes there are circumstances that come up.
2 For instance, in the last hearing that I was in we had a
3 hurricane come up which necessitated switching up
4 witnesses, and everyone understood. But as I have
5 always understood the ordering of the witnesses in the
6 Prehearing Order, that is the order by which people --
7 the people use to prepare to conduct their
8 cross-examination. So if there is an instance where you
9 think that you're going to have to switch things up, I
10 think the sooner that you let people know, then the more
11 likely it is that the Chairman will allow the order to
12 be switched. But that's really her call.

13 **MR. FRIEDMAN:** Okay. I mean, as a trial
14 lawyer, I don't understand preparing for witnesses and
15 having to have them in a particular order, but that's --
16 I understand.

17 **COMMISSIONER PATRONIS:** Thank you.

18 **MR. WRIGHT:** Mr. Chairman, I would just like
19 to say it's more than professional courtesy. It's due
20 process. You have a process. You say what the order --
21 you say what the order of witnesses is going to be. We,
22 as practitioners, rely on that order. You know, if we
23 find out sometime later next week that KWRU wants to use
24 a different order, that's fine. But if I'm prepared to
25 cross-examine Mr. Castle on his rebuttal testimony

1 assuming that he's going to be the first witness and
2 then KWRU says, "Well, we want to put Ms. Swain first,"
3 well, she's fourth. I may not be fully prepared because
4 of the way we have to practice these paper-intensive
5 cases. So it's every bit as much a matter of due
6 process as it is professional courtesy.

7 **COMMISSIONER PATRONIS:** And you make an
8 excellent point, and I agree.

9 **MR. WRIGHT:** Thank you.

10 **COMMISSIONER PATRONIS:** I agree.

11 Basic positions.

12 **MR. SAYLER:** Commissioner Patronis --

13 **COMMISSIONER PATRONIS:** Yes.

14 **MR. SAYLER:** -- Public Counsel does have an
15 edit on page 7, the paragraph for OPC Witness Woodcock.
16 It's a slight change. Instead of being a negative, it
17 should be a positive. The last sentence under his
18 paragraph, "350 gallons per day expansion should be
19 considered 75 percent used and useful." And we also
20 have additional changes.

21 **MR. FRIEDMAN:** I'm sorry. Where are you?

22 **MR. SAYLER:** Page 7, under OPC Witness
23 Woodcock, the last sentence. We're just changing it to
24 a positive. It should be, "75 percent used and useful."
25 And I can certainly email these changes, as well as

1 there's some other changes we need to make, to staff by
2 close of business today.

3 **COMMISSIONER PATRONIS:** Is that okay?

4 **MS. MAPP:** Yes. Staff would appreciate if you
5 would email all changes in a type and strike version by
6 close of business today.

7 **MR. WRIGHT:** Thank you. And I just wanted to
8 make sure that everybody understood that that's normal
9 practice. We have a few changes to make too, a couple
10 of typos, capitalizations, also a few wording additions.
11 We will furnish those in type and strike to Ms. Mapp and
12 staff by the end of the day.

13 **COMMISSIONER PATRONIS:** Thank you.

14 **MR. WRIGHT:** Thank you.

15 **COMMISSIONER PATRONIS:** Okay. Issues and
16 positions. Staff.

17 **MS. MAPP:** Yes. Staff would note that the
18 parties are proposing stipulations on some issues, and
19 those are reflected in Section X of the draft Prehearing
20 Order. And staff would also note that the Order
21 Establishing Procedure requires that a party take a
22 position at the prehearing conference unless good cause
23 is shown as to why that party cannot take a position at
24 this time.

25 Accordingly, if a party's position in the

1 draft Prehearing Order is currently "No position at this
2 time" or a statement simply specifying that a party
3 bears the burden of proof or any such similar statement,
4 that party must change its position or show good cause
5 why it cannot take a position.

6 **MR. SAYLER:** I have a question for staff or
7 for you, Mr. Commissioner.

8 **COMMISSIONER PATRONIS:** All right.
9 Mr. Sayler.

10 **MR. SAYLER:** If a party takes the position
11 "It's a fallout," is that a position? Because we think
12 there's some positions where the utility took "It's a
13 fallout," such as on the revenue requirement, Issue 31.
14 We think they should put an affirmative number in there
15 because they do have an affirmative number in their
16 direct testimony. It's a different number on rebuttal.
17 They've been trying to supplement the record to increase
18 the revenue requirement, so we would like to know what
19 the number is for purposes of this case.

20 **COMMISSIONER PATRONIS:** Ms. Mapp.

21 **MS. MAPP:** I think stating a fallout is
22 acceptable in this case because the reason it is a
23 fallout is that the determination of the numbers and
24 other issues naturally will trickle down and affect the
25 number in the fallout issue. So staff is okay with

1 having a fallout as a position.

2 **MR. WRIGHT:** Mr. Chairman, if I might, at this
3 point in the case the company has taken positions on all
4 the other issues. The fallout total revenue requirement
5 number should be their number based on their positions
6 on each and every other issue. Fallout is appropriate
7 after you, the Commission, decide what the numbers are
8 in the other cases, in the other -- as to the other
9 issues. That's my position. Thank you.

10 **COMMISSIONER PATRONIS:** Mr. Sayler.

11 **MR. SAYLER:** And, again, it gets back to the
12 due process. This utility in the PAA position portion
13 of the case asked for one revenue requirement, and then
14 on July 1st, when they filed the direct testimony, they
15 asked for a different revenue requirement. And now
16 they -- on rebuttal they have increased that through
17 these increased costs and new issues and items that
18 they're putting in, which is what we're trying to strike
19 with our motion to strike from the rebuttal testimony.
20 So we don't know what it is because I believe it is the
21 Commission's practice that the utility can only get up
22 to what they have asked for. And the problem is by
23 saying a fallout, we don't know what the utility is
24 asking for. So whatever number they put in there, it
25 may be that -- we don't think, certainly, the Commission

1 could exceed that number. But when you say it's a
2 fallout, then we don't know how to brief that to counter
3 whatever their revenue requirement request is. And the
4 post-hearing briefs, we can brief what we think it is
5 for us, but we can't make any affirmative arguments
6 against what they're asking for, and that's why we think
7 it's important to have a number.

8 **MS. MAPP:** Commissioner, if I could respond.

9 **COMMISSIONER PATRONIS:** Yes, ma'am.

10 **MS. MAPP:** The comments of Mr. Wright has
11 swayed staff into believing that perhaps a number would
12 be more appropriate; however, I would disagree with
13 Mr. Saylor insofar as stating that the number listed in
14 the utility's position that would replace a fallout is
15 binding. Any party has the right to change their
16 position in their brief. The numbers requested by the
17 utility are reflected within their MFRs and with their
18 testimony. The position listed in the Prehearing Order
19 is not binding and does have the ability to change
20 within the briefs.

21 **MS. CRAWFORD:** And if I may make an additional
22 comment. When I think of a fallout, what I think is an
23 acceptable position of "It's a fallout," it's the later
24 issues -- for example, Issue 43, I think, is a fairly
25 classic one. The appropriate amount by which rates

1 should be reduced four years after the established
2 effective date and so forth, everybody agrees that's a
3 fallout. But some of the issues that are really more
4 just kind of the fundamental bones of the case like what
5 is the appropriate rate base, that's a pretty
6 fundamental issue, and I agree that's not really a
7 fallout issue in the sense that I understand fallout
8 issues. Same thing like cost of capital, capital
9 structure, there's some statements in there by KWRU that
10 is a fallout issue, and that's not my classic
11 understanding of what a fallout issue is meant to be.

12 **MS. MAPP:** And indeed, as Ms. Crawford stated,
13 the issue as to the rate of reduction after four years,
14 that is not a litigated issue that is prescribed by
15 statute. So in that case, I don't believe having
16 fallout would have any material impact on this
17 proceeding. But to the extent that there is a
18 substantial number that affects the proceeding, I
19 believe it is appropriate to have a number present.

20 **MR. FRIEDMAN:** Can we just deal with each of
21 those as we get to them and tell me which ones -- when
22 we get to one that we've taken a position "It's a
23 fallout," and if everybody thinks it's not, let's deal
24 with it individually instead of trying to deal
25 generically with -- so I'll know which ones there's a

1 problem with or that the staff believes there's a
2 problem with?

3 **MS. HELTON:** Mr. Chairman, I think that might
4 be the most efficient way to go through.

5 **COMMISSIONER PATRONIS:** Is that okay?

6 **MS. HELTON:** Because I think there might be a
7 difference of opinion on some but not on others. So
8 that might be the most efficient way to go forward.

9 **COMMISSIONER PATRONIS:** All right. Is that
10 okay?

11 **MR. SAYLER:** Yes, sir, Mr. Chairman. We agree
12 with staff that there are other items that were listed
13 as fallout.

14 **COMMISSIONER PATRONIS:** Right.

15 **MR. SAYLER:** But I did have one question of
16 clarification. When it comes to a utility's case, they
17 ask for X for revenue requirement, whatever that may be.
18 They provide testimony and evidence to that to support
19 it. And we -- and generally they ask for X. We -- the
20 intervenors argue for much lower than that, and then the
21 Commission settles somewhere between those ranges. The
22 issue we don't want to be in a position is that they've
23 argued for X and then they get something more than X,
24 and that's our concern because our understanding is that
25 the playing field is between their ask and our response.

1 And it sounded like, and maybe I misheard staff, that if
2 the utility is asking for X or that's their number in
3 their prehearing, that they could be given more than
4 that for revenue requirement. And maybe I misheard.

5 **COMMISSIONER PATRONIS:** Mr. Friedman.

6 **MR. FRIEDMAN:** Well, they -- I mean, if this
7 case would have ended the PAA, I would agree with
8 Mr. Sayler. But they filed a protest. And if they
9 filed a protest and all of the sudden after the protest
10 we figure out that, in fact, the plant cost is higher or
11 lower, the actual, what it really is, should be what
12 is -- what governs. We didn't start this protest
13 period; they did. And so they started it. We're
14 allowed an opportunity to present our best case. And if
15 in that time expenses have increased or capital costs
16 have increased, we should have an opportunity to present
17 that and let the Commission decide.

18 **COMMISSIONER PATRONIS:** Ms. Crawford.

19 **MS. CRAWFORD:** If I may.

20 **COMMISSIONER PATRONIS:** Yes, please.

21 **MS. CRAWFORD:** Perhaps what was suggested
22 earlier is the most efficient thing to do. Let's go
23 through the issues. I note that there's a number of
24 contested issues. That's Nos. 1, 41, and 42. And I'd
25 recommend we simply take those up at the end and let's

1 proceed through the other issues.

2 To the extent that there's an issue regarding
3 whether a number is a fallout, perhaps it would be
4 better for technical staff to weigh in on that
5 particular issue. I'm an attorney and clearly not the
6 technical expert, and apparently staff has some
7 differences on perhaps some of the comments I made
8 earlier. So it would be good to have their input on
9 what would constitute a fallout for the purposes of
10 taking a position on the issue and what wouldn't.

11 **COMMISSIONER PATRONIS:** So you want to go on
12 and move on to the contested issues?

13 **MS. CRAWFORD:** I would recommend we skip
14 over one for now and take it up towards the end as a
15 contested issue and start with Issue 2 and see if
16 there's any comments.

17 **COMMISSIONER PATRONIS:** Okay.

18 **MS. CRAWFORD:** If not, we can roll on to
19 Issue 3.

20 **COMMISSIONER PATRONIS:** Okay. Well, let's go
21 ahead and do that. We'll go ahead and take up Issue 2.

22 **MR. WRIGHT:** Commissioner, just -- we will
23 have some changes -- an additional sentence on
24 Issue 2 and, like I said, some typos. I hope it's okay
25 if we just move along, and I'll send those to staff

1 later today and I don't have to jump in every time and
2 say, "We're changing our position on this issue." Is
3 that okay with you?

4 **COMMISSIONER PATRONIS:** Okay. That's fine.

5 **MR. WRIGHT:** Thank you, sir.

6 **COMMISSIONER PATRONIS:** Thank you.

7 **MS. HELTON:** Mr. Chairman, I think that's okay
8 as long as there's no substantial change. If it's just
9 a matter of cleaning up your position, I think that's
10 perfectly fine. But if there's a substantive change
11 from what your position is, I think it would be good to
12 let everybody know.

13 **MR. WRIGHT:** Let me just go ahead and do it.
14 There are only a couple. On our position on Issue 2, at
15 the very end of the position we will add this sentence:
16 "Additionally, any O&M costs associated with the new
17 WWTP must be removed from the Phase 1 revenue
18 requirement, and the O&M costs associated with the new
19 WWTP should only be allowed in retail rates as of the
20 date on which the new WWTP begins providing service to
21 KWRU's customers."

22 It's a straightforward statement of how we
23 think ratemaking ought to work in this case, and I'll
24 furnish it in writing or I'll repeat it now, if you'd
25 like.

1 **MS. HELTON:** I think writing would be fine, if
2 that's okay with you, Mr. Chairman.

3 **COMMISSIONER PATRONIS:** Yeah, I'm fine with
4 that.

5 **MR. FRIEDMAN:** I can't write that fast.

6 **COMMISSIONER PATRONIS:** Yeah, I agree.

7 **MR. WRIGHT:** That's where I was headed.
8 Thanks.

9 **MR. SAYLER:** Mr. Chairman, Public Counsel does
10 have a change to their position. If you look at page
11 13, there's a typo in the second to the last sentence.
12 There's a "when before" combo. You need to strike the
13 "before." But in that last full sentence we're going to
14 be adding some additional language. The last full
15 sentence starts, "To include the requested
16 growth-related," we're going to insert "rate base and
17 O&M expense," then "increases, without the related
18 corresponding offsets," we're going to insert "for
19 additional CIAC collected and additional sales that will
20 occur after the new plant is operational," and no
21 further changes. But we will email that to all the
22 parties.

23 **COMMISSIONER PATRONIS:** Okay. Thank you.

24 All right. Any other comments?

25 (No response.)

1 Okay. So let's go ahead and move on to
2 Issue 3. Is that where we're taking -- yeah, that's
3 right. Okay. Move forward, please.

4 **MS. MAPP:** Are we still proceeding issue by
5 issue?

6 **COMMISSIONER PATRONIS:** Yes, please.

7 **MS. MAPP:** Okay. Issue 4.

8 **COMMISSIONER PATRONIS:** Okay.

9 **MS. MAPP:** Issue 5.

10 **COMMISSIONER PATRONIS:** Time out a second.
11 Let me get myself straight. I was crossing paths here.
12 I'm sorry.

13 Issue 5. Issue 6. Issue 7. Issue 8.

14 **MR. SAYLER:** Mr. Chairman?

15 **COMMISSIONER PATRONIS:** Yes.

16 **MR. SAYLER:** For OPC on page 20, we've added
17 an extra word, "future," in there. We're just going
18 to -- we'll circulate that edit, but it's about line --
19 one, two, three, four -- five down just after the
20 "(48.88 plus estimated 9.60)," there's a "future."
21 We're striking "future."

22 **COMMISSIONER PATRONIS:** Okay. Issue 9.
23 Issue 10. Issue 11. Issue 12. Issue 13.

24 **MR. SAYLER:** Mr. Chairman, this is one of the
25 issues that Commission staff pointed out that really

1 isn't a fallout.

2 **COMMISSIONER PATRONIS:** Okay. Issue 14.

3 **MR. FRIEDMAN:** Wait a minute. Are we going to
4 deal with 13?

5 **COMMISSIONER PATRONIS:** Oh, you said you had a
6 fallout on 13?

7 **MR. FRIEDMAN:** We have it as a fallout because
8 you -- whatever the Commission determines to be the
9 plant in service and used and useful and those
10 calculations are what determines what this number is
11 going to be.

12 **COMMISSIONER PATRONIS:** Got you. Got you.

13 **MS. MAPP:** Yes. Staff would agree that while
14 this is technically a fallout, the utility addresses all
15 components of the calculation and other issues, and
16 staff believes that fallout is the -- can be an
17 appropriate position because this is more -- it takes
18 its analysis from other issues, not specifically this
19 one, if that makes sense.

20 **MR. WRIGHT:** When it's appropriate, I'd like
21 to speak, Commissioner. But go ahead, Bart.

22 **MR. FLETCHER:** If I may, Bart Fletcher.
23 Really all the ones that are designated fallout, I do
24 agree that because the protested issues are going to be
25 litigated, it is truly a fallout for rate base and other

1 fallout issues. The only one that I would see that we
2 would be dealing with later, revenue requirement issue,
3 I would think that you would need a number for that
4 because the Commission's practice is that you limit it
5 to the revenue requirement that is requested. So I
6 would think, with the exception of that issue, all the
7 other fallouts, it would be permissible, as stated by
8 KWRU, that this is a fallout calculation issue, subject
9 to the resolution of other protested issues. With the
10 exception of the revenue requirement, I think that's an
11 appropriate position.

12 **COMMISSIONER PATRONIS:** Schef?

13 **MR. WRIGHT:** Thank you, Commissioner. Again,
14 it's a fallout issue when the Commission decides the
15 numeric values for the preceding issues from which the
16 subsequent issue falls out.

17 The company has positions on all of the
18 elements of its rate base. It should be required to say
19 what its rate base is in its position statement. OPC
20 has numbers right there on page 25. They have numbers
21 for what the rate base should be for both the
22 Phase 1 period and the Phase 2 period. I believe the
23 company should be required to do the same thing. It's a
24 fallout for you. It's not -- the company knows all the
25 inputs to what their numbers should be on this issue.

1 Thank you.

2 **COMMISSIONER PATRONIS:** Mr. Sayler.

3 **MR. SAYLER:** We would echo that because still
4 we need to know what exactly -- how much -- what exactly
5 their rate base is, and they provided all the inputs and
6 they should be able to have a calculation. However, as
7 Ms. Merchant has pointed out to me, their numbers have
8 kept changing. And that's, again, getting to the
9 analogy the goal posts keep moving in this case. It
10 keeps getting wider and wider.

11 **MR. FRIEDMAN:** And my position would be this
12 seems -- in my experience it's consistent with the way
13 we've done these type of issues in the past.

14 **MR. SAYLER:** Alternatively it almost seems
15 like by saying fallout, it's saying no position at this
16 time. So in their post-hearing brief they wouldn't be
17 able to take a position on it.

18 **COMMISSIONER PATRONIS:** Schef.

19 **MR. WRIGHT:** Thank you, Commissioner. You
20 know where you see me when I'm in this room. It's
21 usually in an electric case. I have practiced a few
22 water cases over the years. I'm not 100 percent sure
23 whether it's standard to take -- for a water utility or
24 the parties in a water and wastewater case to articulate
25 fallout issue, fallout issue when there are specific

1 numeric values. But I'll tell you, in an electric rate
2 case there's a lot more issues on rate base. Florida
3 Power & Light Company has a number as to what their rate
4 base is for the 2017 test year, 2018 test year, and the
5 2019 Okeechobee step adjustment. I think that's
6 standard practice in my experience. Thank you.

7 **COMMISSIONER PATRONIS:** Ms. Helton.

8 **MS. HELTON:** First, it's my understanding that
9 no party actually protested what the amount for -- the
10 appropriate rate base, and our professional staff are
11 suggesting that this is a number that is calculated at
12 the end of the case based on all the other adjustments
13 that you may or may not make through the course of the
14 evidentiary proceeding. And because it's our opinion of
15 the professional staff that it's really not necessary to
16 have a number here at this time, I'm leaning that way.

17 However, I would suggest that if Mr. Friedman
18 does have a number, that he provide that number so that
19 everyone does have a basis. Do you have a number,
20 Mr. Friedman?

21 **MR. FRIEDMAN:** Not with me.

22 **MS. HELTON:** But do you have one that you
23 could provide to staff at the --

24 **MR. FRIEDMAN:** I would have to look at the
25 testimony and see. I don't know. As we sit here today,

1 I don't know if I have that exact number.

2 **MS. HELTON:** I would ask Mr. Friedman,
3 Mr. Chairman, that if he does have a number, to provide
4 that to staff by -- I guess we're looking by close of
5 business on Monday. Is that when other things are
6 coming in? I can't remember what time period.

7 **MR. FRIEDMAN:** Tuesday.

8 **MS. HELTON:** Excuse me. Close of business
9 today.

10 **COMMISSIONER PATRONIS:** Tuesday -- or today,
11 you want those today.

12 **MS. MAPP:** Yes, today for changes in position.

13 **COMMISSIONER PATRONIS:** Okay.

14 **MR. WRIGHT:** Commissioner --

15 **MR. FRIEDMAN:** Well, that's not really a
16 change in position. So you want us to provide an exact
17 number on everything that we've said was a fallout?

18 **MS. HELTON:** Mr. Friedman, I thought we were
19 talking about Issue 13 right now.

20 **MR. FRIEDMAN:** Okay.

21 **MS. HELTON:** And you said that you may have a
22 number. And so if you do have a number, I think it
23 would be appreciated by all in the room if you provided
24 that by, Ms. Mapp is saying, close of business today.

25 **COMMISSIONER PATRONIS:** Schef.

1 **MR. WRIGHT:** Thank you, Commissioner. I just
2 want to clarify in response to a remark made by
3 Ms. Helton. We did, in fact, protest every aspect of
4 rate base. We specifically said we couldn't say what it
5 was back in April, but we said our protest of the
6 totality of the rates, rate base revenue requirements
7 necessarily at this point in the proceeding -- in our
8 protest position necessarily encompasses all elements of
9 rate base and because we can only know what those are
10 after we're allowed to conduct discovery, and, of
11 course, we weren't allowed to conduct discovery because
12 we weren't allowed to be a party until after the PAA
13 order was issued. I just wanted to clarify that for the
14 record. We did protest.

15 **MS. HELTON:** Okay. Understood.

16 **COMMISSIONER PATRONIS:** Okay. All right.

17 Ready to move forward?

18 Issue 14.

19 **MR. SAYLER:** The same issue on Issue 14 for
20 the utility's position. They say it's a fallout.

21 **MS. HELTON:** Mr. Chairman, I'm sorry. Can we
22 have a five-minute break?

23 **COMMISSIONER PATRONIS:** That's fine. That's
24 fine.

25 (Recess taken.)

1 **MR. SAYLER:** Thank you for the time of going
2 through these issue by issue. I know it's a little bit
3 of hard work now, but it'll save time later.

4 **COMMISSIONER PATRONIS:** You're welcome.

5 (Pause.)

6 Any day now.

7 Ms. Helton.

8 **MS. HELTON:** Mr. Chairman, thank you for
9 indulging us. Obviously it's been a little while since
10 we've had a litigated rate case for water and wastewater
11 utilities, and I think there was a little bit of a
12 disagreement actually amongst your professional staff
13 and obviously your lawyers with respect to how to
14 proceed for issues where the utility has stated there's
15 a fallout calculation.

16 **MR. FRIEDMAN:** Can I interject something?
17 We'll just put in numbers there. We'll just -- we'll
18 get rid of the -- so we don't argue about it, we'll put
19 in numbers.

20 **MS. HELTON:** That's perfect, Mr. Chairman.

21 **COMMISSIONER PATRONIS:** Thank you. That makes
22 it easier for everybody.

23 Okay. Let's go on and continue issue by
24 issue, so we'll just -- 14, we stopped there.

25 **MR. SAYLER:** Was -- Mr. Friedman is stating

1 they would put in numbers for all the fallout issues?

2 **MR. FRIEDMAN:** Yeah. We'll have -- as a
3 matter of fact, he may be sending them as we speak.

4 **COMMISSIONER PATRONIS:** Great.

5 **MR. SAYLER:** All right. Thank you.

6 **COMMISSIONER PATRONIS:** Fantastic. Issue 15.
7 Issue 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,
8 28, 29, 30.

9 **MR. FRIEDMAN:** Geez.

10 **COMMISSIONER PATRONIS:** 31, 32, 33, 34, 35,
11 36, 37, 38, 39, 40. 41 will be contested, so we'll come
12 back there. 42 is contested. 43, 44, 45. Okay. Can
13 we proceed to the contested issues now?

14 **MS. MAPP:** Yes. Before we proceed to that,
15 staff would note that if any party fails to take a
16 position on an issue by the time stipulated, that
17 position will be changed to "No position." And for
18 Issue 23, staff would like to note that this issue
19 encompasses all O&M expense categories as well as those
20 related to AWT.

21 **COMMISSIONER PATRONIS:** All parties in
22 agreement?

23 **MS. CRAWFORD:** For Issue 23, the way it's
24 phrased, it looks like it's exclusively AWT, but it
25 actually addresses, if you look at the positions,

1 everybody addresses O&M in its entirety. Just as long
2 as there's an understanding that is the issue in which
3 everyone is addressing O&M. It looks like it is because
4 --

5 **MR. SAYLER:** Which issue again? I'm sorry.

6 **MS. CRAWFORD:** That's Issue 23.

7 **COMMISSIONER PATRONIS:** 23.

8 **MS. CRAWFORD:** The issue is worded a little
9 more narrowly than everybody is actually utilizing it
10 for. And I just want to make sure -- just it's clear on
11 the record.

12 **MR. FRIEDMAN:** It's total O&M.

13 **MS. CRAWFORD:** Yeah.

14 **COMMISSIONER PATRONIS:** All parties in
15 agreement?

16 **MR. FRIEDMAN:** That was our understanding.

17 **MR. SAYLER:** So is the proposal to then strike
18 AWT out of the issue?

19 **MS. CRAWFORD:** Not at all. Just as long as we
20 can all be in agreement, leave the wording of the issue
21 as it is is fine, but that is the issue under which
22 parties should address all O&M expenses, not just the
23 AWT.

24 **MR. SAYLER:** All right. Hold on a moment. I
25 need to confer with my accounting witness.

1 **MS. CRAWFORD:** If the parties prefer to have a
2 breakout issue or a supplemental issue, we do that too.
3 But I just think for ease, as long as we all understand
4 that's the one we address the O&M, I think that's
5 simplest.

6 **MR. SAYLER:** Mr. Chairman, with indulgence,
7 instead of playing telephone, I will let Ms. Merchant
8 explain our issue with that.

9 **COMMISSIONER PATRONIS:** Ms. Merchant.

10 **MS. MERCHANT:** I wasn't expecting to talk
11 here. Issue 23 was specifically for the AWT, and it's
12 at the beginning of -- I mean, it's right after the
13 audit finding. There are several other O&M expenses
14 that follow up to 27, 28. So it's in the wrong order if
15 it's a fallout issue, which I -- you know, I -- we
16 didn't design it that way in the Issue ID, so --

17 **MS. NORRIS:** And I would agree that initially
18 in the Issue ID meeting it was designed and actually
19 kind of developed from the pro forma expense issue, and
20 so staff took a look at it. As far as -- the parties'
21 positions were by and large representative of a full O&M
22 expense total as it is KWRU's as well as with OPC's. I
23 know at least issue -- or I guess it would be Phase 2
24 was represented as what we interpreted that as being the
25 whole one. So we were trying to just provide clarity as

1 far as the way the positions came in to really encompass
2 all of them. But we do acknowledge that there's also
3 two other issues that address specific O&M expenses in
4 addition. So I would agree that if this was going to be
5 more of a collective addressing of everything, it would
6 probably be best to go after those two, which are 25 and
7 24. Is that what you're referring to, the management
8 and the contractual services?

9 **COMMISSIONER PATRONIS:** Ms. Merchant.

10 **MS. MERCHANT:** It goes to the very end. It is
11 a fallout and it's been pointed out that I used it as a
12 fallout. The total O&M expenses should be at the very
13 end. But we could still deal with it like that out of
14 order and not rearrange it, with the understanding that
15 it is kind of a summation of everything that's not.

16 **COMMISSIONER PATRONIS:** Ms. Crawford.

17 **MS. NORRIS:** Yes, and that was our intent,
18 just to make sure that was clear on all levels.

19 **COMMISSIONER PATRONIS:** Okay.

20 **MR. CRAWFORD:** Yes. Staff wasn't looking to
21 complicate anything. I just wanted to make sure
22 everybody knew that's kind of how we were looking at it,
23 and we wanted to make sure that nothing got
24 unintentionally left off the table with regard to O&M.

25 **COMMISSIONER PATRONIS:** Mr. Wright.

1 **MR. WRIGHT:** So am I correct to understand
2 that this issue said -- addresses what is the company's
3 total O&M expense including costs associated with
4 achieving AWT? Is that accurate?

5 **COMMISSIONER PATRONIS:** Correct.

6 **MR. WRIGHT:** Great. Thanks. And I'm good
7 with it. I just want to know what I'm doing. Thank
8 you.

9 **COMMISSIONER PATRONIS:** Any other concerns?
10 All in agreement?

11 **MR. SAYLER:** Yes, sir, on 23 we are. Just to
12 clean up, I note that Issue 21 and 22, it says
13 "Stipulation" for the utility's position, and we have an
14 affirmative position. But I'm assuming we're going to
15 address that when we get to the stipulation section.

16 All right. We're stating that we don't
17 believe that there's a stipulation on the Phase 2
18 revenues because they're different. Like, Issue
19 21 says, "What's the appropriate amount of test year
20 revenues for KWRU's system?" KWRU says, "Stipulation."
21 We say, "Phase 1, 1.5 million. Phase 2, 1.7 million."
22 And the County took an affirmative position. So --

23 **MS. CRAWFORD:** Commissioner, perhaps it would
24 be helpful if the utility could --

25 **MR. FRIEDMAN:** I mean, it says, "Test year

1 revenues." I thought we stipulated as to what those
2 test year revenues were. I mean, the test year was
3 whatever the test year -- '14, I guess it was, and I
4 thought we agreed as to what the revenues were in
5 2014. I thought we stipulated to that and we sent that
6 stipulation around. Does that stipulation not address
7 that question?

8 **COMMISSIONER PATRONIS:** Mr. Sayler.

9 **MR. SAYLER:** If you -- to help clarify things,
10 if you look -- put your -- keep your finger at page 30
11 and go to page 52, under page 52, No. 9, that's the test
12 year revenues, the 1.5 million. Yes, we agree with the
13 utility that it's stipulated. So for Phase 1, so for
14 OPC A, we can change that to "Stipulation." But Phase 2
15 is not something that we've stipulated to.

16 **COMMISSIONER PATRONIS:** Mr. Friedman.

17 **MR. FRIEDMAN:** I mean, I can't make him
18 stipulate to something. But we don't believe there's a
19 Phase 1 and Phase 2, so I think that's the dichotomy and
20 the terminology that may be confusing. We stipulate as
21 to Phase 1, what they call Phase 1, I guess is what
22 you're saying, which is the only one that we're using.
23 We don't have a Phase 2.

24 **COMMISSIONER PATRONIS:** Ms. Crawford.

25 **MS. CRAWFORD:** If I'm following correctly, it

1 sounds like the stipulation, No. 9, that's identified on
2 page 53 is still a good stipulation. Everybody is in
3 agreement with that.

4 **COMMISSIONER PATRONIS:** Right.

5 **MS. CRAWFORD:** It sounds like, however, with
6 regard to Issue 22, OPC is still making the distinction
7 there should be -- they're taking a position with regard
8 to Phase 2. And I suppose the company's position in
9 that case would be Phase 2 revenues are not appropriate.
10 Is that an accurate summary? Maybe we could just
11 simply -- instead of having "Stipulation" as your
12 position, you could revise.

13 **MR. FRIEDMAN:** What issue was that again?

14 **MS. CRAWFORD:** Issue 22. I'm sorry.

15 **COMMISSIONER PATRONIS:** Issue 21.

16 **MS. CRAWFORD:** I'm so sorry. Issue 21.

17 **MR. FRIEDMAN:** So what do you think we need to
18 say to clarify that we're not talking about Phase 2?

19 **MS. CRAWFORD:** Well, everybody seems to be in
20 agreement about Phase 1 pursuant to Stipulation No. 9.
21 Perhaps to clarify that Issue 21 is still a live issue
22 because of the Phase 2 question, and your position would
23 be, I presume, and, of course, I wouldn't want to speak
24 for you, Phase 2 test year revenues are not appropriate
25 or something to that effect.

1 **MR. FRIEDMAN:** I mean, that's our whole
2 position is that there's only one increase. There
3 shouldn't be a second phase since the plant is going to
4 be online by the time the rates go in effect.

5 **MS. CRAWFORD:** Understood.

6 **MR. FRIEDMAN:** So I don't --

7 **COMMISSIONER PATRONIS:** So what are we doing
8 with the Phase 2 numbers then?

9 **MR. FRIEDMAN:** Do you want me to just put
10 "Stipulation as to Phase 1, and KWRU believes Phase 2 is
11 appropriate"?

12 **MR. CRAWFORD:** If that's how you would like to
13 phrase your position, I think that would help clarify.

14 **COMMISSIONER PATRONIS:** Is that fine,
15 Mr. Saylor?

16 **MS. CRAWFORD:** So Issue 21 would remain a live
17 issue for the proceeding.

18 **COMMISSIONER PATRONIS:** Right.

19 **MS. CRAWFORD:** However, stipulation No. 9
20 remains a good stipulation for everybody.

21 **COMMISSIONER PATRONIS:** Sound good? Everybody
22 agrees? Okay. Now are all parties in agreement?

23 **MR. FRIEDMAN:** Did y'all get that language?
24 Because I won't be back in the office to send that to
25 anybody today if you want all this stuff by the end of

1 the day. Or do you want me to just get with you after
2 the -- get with you after this?

3 **MS. MAPP:** We're comfortable with allowing
4 parties the opportunity to alter their positions until
5 close of business on Tuesday.

6 **MR. FRIEDMAN:** Oh, okay. So I need to get you
7 some new language on this?

8 **MS. MAPP:** Yes, because we would prefer to
9 have it in writing so there are no errors.

10 **MR. FRIEDMAN:** Yeah. No problem.

11 **COMMISSIONER PATRONIS:** Okay. Well, we're
12 going to move forward on the issues. I just need to
13 know if there are going to be any changes to your
14 position. If there are no further changes to the
15 positions, we'll move on to the contested issues.

16 So start off with Issue No. 1.

17 **MS. MAPP:** Issue No. 1 is a contested legal
18 issue propounded by OPC.

19 **COMMISSIONER PATRONIS:** OPC.

20 **MR. SAYLER:** Yes, sir. The issue is, "Does
21 the Commission have authority to update the test year
22 requested by KWRU," and I won't read the rest of the
23 issue.

24 Looking at the utility's position, OPC and the
25 utility agree that it's, "Yes." I think the issue where

1 we disagree is is it, yes, can the Commission do it if
2 the utility objects to it? And the utility's position
3 is, "Yes, but only if agreed to by the utility." So it
4 sounds like the utility agrees that a projected test
5 year can be used but not over its objection. And so
6 that's -- that is something that we are asking this
7 Commission to make a decision on as it relates to its
8 authority because the Commission is the regulator. And
9 it sounds like the utility's position is that the
10 Commission is a regulator up and to the point where the
11 utility says, "No, we don't want you to do that."

12 **COMMISSIONER PATRONIS:** Mr. Friedman.

13 **MR. FRIEDMAN:** Well, if you read the statute
14 on projected test year, we're not just talking about
15 changing the test, we're talking about using a projected
16 test year. And I think staff -- I think OPC is saying
17 2017; is that right?

18 **MR. SAYLER:** Pro forma 2016 is what we put in
19 testimony. We would have done it for the projected 2017
20 test year, but we didn't get the information necessary
21 from the utility. They objected to providing it.

22 **MR. FRIEDMAN:** And obviously 2016 isn't
23 completed yet, so it's really -- it is a projected test
24 year. We've got some real numbers for 2016, but you
25 don't have a full number, so it's a projected test year.

1 And the statute provides that projected test year -- the
2 only place you'll see projected test year in the statute
3 is when it deals with an original certificate utility.
4 It says you can project the test year and that's -- you
5 use 80 percent of it and that's how you set it. There's
6 no other -- and there's no other place in the statutes
7 that gives the authority to do a projected test year
8 over the objection of the utility. There are a couple
9 of cases that I've been involved in where we used
10 projected test years, Sandalhaven and the Lucie cases,
11 both of which counsel -- I think that Ms. Merchant
12 mentioned in her testimony. But in both of those, it
13 was with the concurrence of the utility. And I haven't
14 seen any water and sewer case that forces a projected
15 test year on a utility.

16 **COMMISSIONER PATRONIS:** Mr. Wright.

17 **MR. WRIGHT:** Thank you, Commissioner. At this
18 juncture, Commissioner, I think the issue before you is
19 whether to allow this to be an issue in the case. I
20 think it is appropriate to allow this to be an issue in
21 the case, particularly reading the way it's worded.
22 "Does the Commission have the authority to update the
23 test year?"

24 There are -- we naturally enough believe that
25 the rates that are going to be collected by the utility

1 starting sometime in 2017 should match up to the cost
2 that the company is incurring to provide that service in
3 2017.

4 Now there are two ways you can get there.
5 One, you could use a fully projected test year as a
6 filing, you know, like the electricians do, or you could
7 update the test year data. You know, in the terminology
8 that we're using in this case, the company, KWRU, has
9 used pro forma adjustments to put future costs into
10 future rates, rate base, O&M costs associated with the
11 new wastewater treatment plant, the new air vacuum tank,
12 et cetera, the alternate way without going to a, quote,
13 fully projected test year, unquote, which I do think you
14 could do. But even if you didn't, you could update the
15 CIAC to be collected during the appropriate period, you
16 could update the sales units, the billing determinants,
17 the base facilities charges by number of charges and the
18 number of gallons sold and charged for.

19 In other words, you can update whether you
20 call it a pro forma adjustment or you call it a fully
21 projected test year. You get to the same result. I
22 think, again, at this juncture the issue is leave this
23 issue in or not. I think it's appropriate to leave it
24 in. That's your decision.

25 **COMMISSIONER PATRONIS:** Staff.

1 **MS. MAPP:** Yes, Commissioner. What I'm
2 hearing from all of the parties are arguments on whether
3 or not the Commission should update the test year or
4 whether it should not. That is not a reason or it
5 doesn't question the legality of the Commission's
6 authority. And, in fact, in the test year letter
7 approved by the Chairman, it specifically stated that
8 approval of the test year for filing purposes does not
9 mean that an issue regarding the appropriateness of the
10 test period could not be raised at any time during the
11 proceeding. I believe that the arguments propounded by
12 the parties can be adequately argued under either
13 Issue 2 or Issue 3 of this docket. Issue 2 being -- I'm
14 sorry, yes, "Is the two-year revenue requirement
15 calculation appropriate in this docket?" And
16 Issue 3 being, "What is the appropriate test year for
17 establishing rates for KWRU for Phase 1, if applicable,
18 for Phase 2, if applicable?" Staff believes that all
19 the arguments that we've heard today can be adequately
20 briefed under either of those issues, and Issue 1 is not
21 necessary for this proceeding.

22 **COMMISSIONER PATRONIS:** I'm going to rule for
23 exclusion of this issue.

24 Issue 41.

25 **MS. MAPP:** Issue 41 is an issue propounded by

1 Harbor Shores and the representative, Ann Aktabowski.

2 **COMMISSIONER PATRONIS:** Ms. Aktabowski, are
3 you there?

4 **MS. AKTABOWSKI:** My apologies. Yes, I am.
5 I'm here.

6 **COMMISSIONER PATRONIS:** Okay. Can you -- do
7 you want to speak to this issue?

8 **MS. AKTABOWSKI:** We believe, as I've outlined
9 in Issue 41, that having been billed for ten years as
10 one unit, one HOA, and none of our customers, none of
11 our individual customers ever having been billed by
12 KWRU, that essentially makes us a one-customer general
13 service customer. We can go on here forever, but that's
14 basically the position. However, the agreement with
15 KWRU states that the association will pay all of the
16 bills each month, and we've been doing that. That is
17 quite different than what I can see in other agreements
18 that were sent to me in discovery.

19 And so, again, our position, I believe, is
20 made here, that we are a general service customer. That
21 rate is lower, as you know, and that is what we're
22 looking for.

23 **COMMISSIONER PATRONIS:** Mr. Friedman.

24 **MR. FRIEDMAN:** She argued the merits of this,
25 and, you know, if we get to the merits, we can address

1 those later.

2 Our position for contesting this issue is the
3 fact that Ms. Aktabowski has presented no testimony on
4 the issue. The other party, KW Resort, has not
5 presented any testimony on this issue. And so there is
6 nothing in what has been filed thus far that would be
7 able to allow the parties to even address the merits of
8 this that Ms. Aktabowski has talked about. She keeps
9 saying, "Oh, well we can do it through
10 cross-examination." You can't. You can't do
11 cross-examination beyond the scope of the direct
12 testimony. If there's no direct testimony, either
13 direct testimony or direct in rebuttal, if there's no
14 testimony that addresses this issue, she doesn't have
15 the right to ask the witness a question about this
16 issue. And so there is nothing that she could raise in
17 this case appropriately that addresses this issue. And
18 if there's no testimony that she can present, why have
19 the issue? And I'd be interested to know if she thinks
20 she's got some way that she's going to be able to prove
21 her case without having presented anything.

22 **COMMISSIONER PATRONIS:** OPC.

23 **MR. SAYLER:** We think -- our position is the
24 Commission should investigate this issue to determine
25 whether Harbor Shores should have been a general service

1 customer or not or what remedy, if any, is appropriate.
2 And the reason behind that is you're in the middle of
3 making -- setting rates prospectively going forward.
4 And if Harbor Shores gets kicked out of the case, they
5 can file a complaint with this Commission, and they
6 already had, I think, had preliminary discussions of
7 that. But what happens is if you set prospective rates
8 as if they're a residential customer and then after that
9 this Commission makes its decision it turns out that
10 Harbor Shores really should be a general service
11 customer, then you have changed the revenue pot. So you
12 are actually at a better position now in this case to
13 make a determination, are they residential general
14 service? And if they are general service, then while
15 you're allocating rates and charges, then you can get
16 the right rates and charges allocated to the residential
17 customers and the general service customers.

18 It's just getting the pot right going forward
19 because the utility has said that if Harbor Shores
20 really is a general service customer, they relay that
21 parade of horribles, and this goes to the merits, that
22 many other customers could do that. And if that's the
23 case, then that can potentially have a cascading effect
24 affecting their ability to produce the revenues that
25 they need to have. And by addressing it here and now in

1 this position or at this time, that certainly is
2 something that will help this Commission when it's
3 establishing rates for all the customers.

4 But if the -- so that's why we support it
5 being in here because the Commission often says, "We
6 want all the facts and evidence. We want as large of a
7 record as possible to give the Commission as full a
8 record to make all of its decision, basically give the
9 Commission all the flexibility that it can have to make
10 a decision." And that is why we think it's important to
11 have this issue at least addressed. Now Harbor Shores
12 maybe decided against them, and I think Ms. Aktabowski
13 is okay with that, but essentially she wants her day in
14 court.

15 **COMMISSIONER PATRONIS:** Mr. Wright.

16 **MR. WRIGHT:** We don't have a position on this
17 issue, Mr. Chairman. Thank you.

18 **MR. FRIEDMAN:** You know, everything Mr. Sayler
19 said is well and good. I'm thinking of it from a
20 perspective of not, you know, should it be an issue. If
21 she would have presented some testimony on the issue,
22 then I agree it would be an issue. But I don't know how
23 she can prove her case if there is absolutely no
24 testimony on this issue. And she's going to try to do
25 it through cross-examination, which she can't do. I

1 don't know where there's going -- how she's going to put
2 any evidence in. Why have an issue that you're not
3 going to have any evidence on? I don't know how anybody
4 proves it one way or the other.

5 **COMMISSIONER PATRONIS:** Ms. Mapp.

6 **MS. MAPP:** Yes. Staff believes that both
7 Mr. Friedman and Mr. Sayler make excellent points.

8 First, for Mr. Friedman, that there is no
9 testimony in the record currently addressing this issue.
10 And for Mr. Sayler, that the record -- the Commission
11 needs a full record to make an appropriate decision.
12 And without any testimony, that information is not
13 within the record and there is no competent substantial
14 information for which the Commission can make a
15 recommendation -- or, I'm sorry, a decision on that
16 issue.

17 And just to be clear, this issue is not
18 whether Harbor Shores should be classified as either a
19 general service or residential customer. This issue is
20 if Harbor Shores should be classified as a general
21 service customer, should there be any money refunded?

22 Issue 18 addresses the classification of
23 Harbor Shores. This particular issue is addressing the
24 refund for which there is no testimony in the record,
25 and Staff -- and with that, staff believes that this

1 issue should be excluded.

2 **MR. SAYLER:** So Issue 18 is a live issue?

3 **COMMISSIONER PATRONIS:** Mr. Sayler.

4 **MR. SAYLER:** I apologize. So -- okay.

5 **MS. AKTABOWSKI:** If I understand what you just
6 said, Issue 18 is --

7 **MS. MAPP:** At our last Issue ID meeting all
8 parties agreed that Issue 18 was a consensus issue;
9 therefore, it's included in the issues moving forward
10 and all parties provided a position. The currently
11 contested issue was Issue No. 41 in relation to refunds.

12 **MR. FRIEDMAN:** We did raise in our response
13 that we don't think that Issue 18 -- while we agreed in
14 the conferences that it would be an issue, that was
15 before all the testimony was complete. And when all the
16 testimony was completed, we looked at the record and,
17 for the reasons I stated before, any issue about Harbor
18 Shores can't be proven one way or the other, whether
19 it's whether a refund is necessary or whether they --
20 how they should be billed. This is the same issue. If
21 there's no testimony, how is she going to prove her case
22 one way or the other?

23 **COMMISSIONER PATRONIS:** Mr. Sayler, did you
24 have something you needed to add?

25 **MR. SAYLER:** No, sir.

1 **COMMISSIONER PATRONIS:** Okay. I'm going to
2 rule to exclude this issue. Issue 42.

3 **MR. FRIEDMAN:** That also goes -- that same
4 argument goes back to Issue 18, Commissioner. We
5 have -- our response -- our position on Issue 18 was
6 that we believe that it -- based upon the prefiled
7 testimony, it's not an issue in this proceeding for the
8 same reasons that we just argued.

9 **COMMISSIONER PATRONIS:** Uh-huh.

10 **MS. MAPP:** I'm sorry, Mr. Commissioner. Could
11 we have one moment, please?

12 **COMMISSIONER PATRONIS:** Sure, you got it.

13 **MS. CRAWFORD:** My apologies. Hopefully I
14 haven't missed too much of the discussion. I was just
15 confirming something with staff.

16 **COMMISSIONER PATRONIS:** We can move on.

17 **MR. CRAWFORD:** It appears that we do have, I
18 think, some information in the record sufficient to
19 address Issue 18. Whether that's an up or down vote is
20 going to depend on what's further adduced at the
21 hearing. But I think there is sufficient information
22 that parties can make a recommendation to the Commission
23 about whether they think yes or no on 18.

24 When I look at Issue -- yeah -- 41, that's
25 talking about -- you know, Mr. Saylor himself said about

1 three or four times in his comments, "Prospective,
2 prospective, prospective." This issue is a very
3 retroactive-natured issue. It talks about whether
4 Harbor Shores should have been classified in the last
5 case in 2009. And if so, what should be done to refund
6 those payments? We have nothing that I know of in the
7 record to support that particular issue.

8 I'm so sorry. I did miss that. But if the
9 question is 18, yes, it does appear that there is
10 sufficient information. Okay. I apologize. I
11 completely missed the boat on that.

12 **COMMISSIONER PATRONIS:** Ms. Mapp, do you have
13 something to add?

14 You're good.

15 **MS. MAPP:** Yes, since we have moved back to
16 18, I would just like to comment that the positions put
17 forward by OPC and the County would need to be changed
18 to become a position. As the County has stated, they
19 have no position at this time, and OPC is just merely
20 stating the, I guess, legal analysis that needs to be
21 conducted. So both parties, with your other changes to
22 positions that you will be emailing in the coming days,
23 please also include a new position for Issue 18 or they
24 will be changed to "No position."

25 **MR. FRIEDMAN:** And I'll update ours to remove

1 that prefatory sentence, the objection part. So our
2 position would just start with "Based," "Based on each
3 residential unit," et cetera.

4 **COMMISSIONER PATRONIS:** Mr. Sayler.

5 **MR. SAYLER:** Yes, Chairman. Our position is
6 the Commission should investigate this issue to
7 determine whether Harbor Shores is a general service
8 customer or not and what remedy, if any remedy, is
9 appropriate. It's a position. It's not "No position."
10 We think that the Commission should investigate this.
11 But if you can help me understand why it's similar to a
12 "No position," I'd appreciate that.

13 **MR. FRIEDMAN:** Well, I could put that for
14 every position. I mean, that's a great sentence to put
15 with every position. The Commission should investigate
16 the level of rate base. The Commission should
17 investigate the level of revenue. The Commission should
18 investigate used and useful. I mean, that -- and I
19 understand the position they're in because this
20 particular customer's position is different. If they
21 win and you reallocate this revenue requirement, then
22 it's going to make the rates to Mr. Sayler's other
23 clients go up.

24 So I don't -- you know, he's trying to dance a
25 line, and I can sympathize with him because he's got one

1 group of ratepayers that want one thing that's
2 detrimental to all the other group of ratepayers. But
3 saying, "Investigate it," that's not a position. And if
4 he doesn't have a position, which is really what his
5 position should be, his position -- you know, this is a
6 rate structure issue. We shouldn't be involved in it
7 because it affects -- you know, taking a position one
8 way is going to adversely affect our other clients. So
9 really he should take a non-position and it makes sense
10 to do that. But he can't take a position to investigate
11 it. That's the same position everybody ought to take on
12 every issue.

13 **COMMISSIONER PATRONIS:** Mr. Wright.

14 **MR. WRIGHT:** Thank you. Thank you,
15 Commissioner. I just want to be clear I've got till
16 5:00 on Tuesday to come up with a position; is that
17 right?

18 **MS. MAPP:** Yes, that's correct.

19 **MR. WRIGHT:** Thank you.

20 **MR. SAYLER:** For revising the positions in the
21 Prehearing Order, we have until close of business today
22 for the Prehearing Order; correct?

23 **MS. MAPP:** No. Given the extensive nature of
24 all changes that need to be made, we've extended the
25 time to close of business on Tuesday. So 5:00 p.m.

1 Tuesday, November 1st.

2 **MR. SAYLER:** Okay. Thank you. We will take a
3 look at this and see if we can provide some different
4 language.

5 **COMMISSIONER PATRONIS:** Okay. Great.

6 **MS. MAPP:** Thank you.

7 All right. Issue No. 42, a contested issue, I
8 believe is an issue propounded by a mixture of the
9 County and OPC. Please correct me if I'm wrong.

10 **MR. SAYLER:** Yes. We ask that this be an
11 issue. As was noted in the PAA order, there were
12 certain customers that weren't billed properly. And the
13 Commission sent a letter to the utility. The utility
14 responded, but there's been no action to date on this
15 response that the utility has made.

16 The utility has argued that this is more
17 properly a show cause issue. And when it comes to
18 whether it's a show cause issue or handled in the rate
19 case, we are ambivalent. But since we're in the middle
20 of a rate case, it's helpful we have all the facts and
21 evidence and testimony and things of that nature. We
22 believe the Commission can make a determination. But if
23 it's the will of the Commission to strike this and then
24 open up a proceeding to show cause against the utility
25 or some other investigation to follow up on their

1 letter, that would be helpful. Because I do note that
2 in their March 21st or 22nd letter they say that they
3 believe they owed refunds to some customers, but to my
4 knowledge they haven't made any refunds to date. And
5 now the question is is the Commission satisfied with
6 that response, and we don't know. And that's why we
7 teed it up to be taken -- addressed in this hearing.

8 **COMMISSIONER PATRONIS:** Mr. Wright.

9 **MR. WRIGHT:** I don't have anything to add.

10 Thanks.

11 **COMMISSIONER PATRONIS:** Okay. Mr. Friedman.

12 **MR. FRIEDMAN:** Thank you, Commissioner.

13 Again, this is an issue that there's no testimony on. I
14 don't know how you could review the prefiled testimony
15 and make a determination on this issue. And if there is
16 testimony, I'd like somebody to point it out.

17 Otherwise, I think it should be addressed in some other
18 proceeding, as Mr. Sayler suggested it could be.

19 **MR. SAYLER:** Mr. Chairman, Public Counsel did
20 have a brief line of testimony to support this issue.

21 **COMMISSIONER PATRONIS:** Ms. Mapp.

22 **MS. MAPP:** Yes. Staff believes that this is
23 an issue of -- disputed issue of material fact, and
24 staff believes that Christopher Johnson did address this
25 in his direct testimony as he attached several exhibits

1 addressing this issue. And staff does not believe that
2 this issue can be adequately argued under any other
3 issue currently in this docket, so staff would recommend
4 approving this issue moving forward.

5 **COMMISSIONER PATRONIS:** I'm going to rule for
6 the inclusion of this issue.

7 Exhibit list.

8 **MS. MAPP:** Staff will note that it has
9 prepared a Comprehensive Exhibit List which includes all
10 prefiled exhibits as well as exhibits staff wishes to
11 include in the record.

12 Staff will check with the parties prior to the
13 hearing to determine if there are any objections to the
14 Comprehensive Exhibit List or any of staff's exhibits
15 being entered into the record. Staff will circulate
16 this -- will circulate an updated list to the parties
17 following this prehearing conference.

18 **MR. FRIEDMAN:** You go first.

19 **MR. SAYLER:** I haven't received a copy of it.
20 Have you?

21 **MR. FRIEDMAN:** No, that was -- I was going to
22 let you go first. That was my only comment as well, is
23 I haven't received anything other than the list that the
24 parties have listed. So we haven't had an opportunity
25 to review whatever other documents, and we typically do.

1 I mean, it's not unusual for the staff to put in some
2 discovery responses and things, but we need to see them
3 and make sure we agree with them and which ones we do
4 and which ones we don't.

5 **MS. MAPP:** Yes. It is staff's intent to
6 circulate this list following the prehearing conference.
7 So following today we will circulate a list.

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

9 **COMMISSIONER PATRONIS:** Go ahead.

10 **MR. SAYLER:** My apologies. When you circulate
11 the list, because there's been a significant amount of
12 discovery, is it possible to provide a CD with the exact
13 pieces of discovery that were -- that you would like to
14 have -- that staff would like to have on the list?
15 Because some of the items that were presented to us were
16 in drop boxes, in CDs, and electronic email, and it's --
17 and you have it all identified and hopefully in one
18 place. So if it's possible to get a CD, maybe not
19 today, but the list today but a CD shortly so we could
20 take a look at it, that would be helpful.

21 **MS. MAPP:** Staff routinely provides CDs;
22 however -- and that process has not changed and it will
23 not change in this docket as it has been for other
24 dockets. However, as Mr. Sayler stated, discovery has
25 come in as late as yesterday and possibly some will come

1 in today as well. So the timing of our release of that
2 CD is in question. However, staff's process for
3 handling exhibits will not change in this case and we
4 will handle that process, as has been done in previous
5 dockets.

6 **COMMISSIONER PATRONIS:** Are you good?

7 **MR. SAYLER:** Yes, sir.

8 **COMMISSIONER PATRONIS:** Okay. Thank you.

9 **MR. SAYLER:** If you're on the exhibit list in
10 the prehearing order, we did have one amendment, or I
11 can just email it to staff on Tuesday.

12 **MR. FRIEDMAN:** What?

13 **MR. SAYLER:** There's a title in one of our
14 exhibits that was a typo. No, we're not going to change
15 our exhibits, if that's what you're worried about.

16 **COMMISSIONER PATRONIS:** Section X.

17 **MR. SAYLER:** Yesterday we did circulate an
18 errata to Ms. Merchant's testimony that also included
19 three additional pages to PWM-5. Basically it's the
20 same as what was originally included in her PM-5. It's
21 just that some of the pages, due to copies of copies of
22 copies, were illegible. So we just added a couple of
23 extra pages just so you can clearly see the numbers.
24 Just making the parties aware.

25 **COMMISSIONER PATRONIS:** Section X, approve

1 proposed stipulations.

2 **MS. MAPP:** There are several proposed
3 stipulations by the parties at this time as reflected in
4 Section X, page 52, of the Prehearing Order.

5 **COMMISSIONER PATRONIS:** Okay. Pending
6 motions.

7 **MS. MAPP:** There are -- there is pending
8 motions in this docket that were discussed earlier in
9 the preliminary matters.

10 **COMMISSIONER PATRONIS:** Pending confidential
11 motions.

12 **MS. MAPP:** There are no pending
13 confidentiality motions.

14 **COMMISSIONER PATRONIS:** Post-hearing
15 positions.

16 **MS. MAPP:** Staff would suggest that
17 post-hearing position summaries be limited to five (sic)
18 words offset with asterisks.

19 **COMMISSIONER PATRONIS:** Fifty words.

20 **MS. MAPP:** I'm sorry. Yeah, sorry. Fifty
21 words. Yes, 50 words offset with asterisks, and that
22 post-hearing briefs be limited to 40 pages.

23 **COMMISSIONER PATRONIS:** Is that good with
24 everybody?

25 Sorry. Mr. Wright.

1 **MR. WRIGHT:** Could I ask, please, that we be
2 allowed to have some number of issues, maybe like
3 five, where we could have up to 150 words for our issue
4 statement or position statement, not unlike what we do
5 in the electric cases? Because you have a set number
6 and a higher limit of words, and that would be my
7 proposal. Five out of the 40-odd issues and 150 words
8 for the position statement on up to five issues.

9 **MR. FRIEDMAN:** God, this is just -- this is
10 the conclusion. I mean, you're saying -- first of all,
11 you're just, "Here's the issue, here's our basic
12 position," then you've got a whole bunch of argument.
13 If you can't state your position in --

14 **COMMISSIONER PATRONIS:** How about we
15 compromise and just make it -- limit it to 75 words?

16 **MR. WRIGHT:** On all issues?

17 **COMMISSIONER PATRONIS:** Yeah.

18 **MR. WRIGHT:** You're the boss. Thank you.

19 **COMMISSIONER PATRONIS:** Is that fine?

20 **MS. MAPP:** Yes, staff is comfortable with
21 75 words.

22 **MR. SAYLER:** All right. Public Counsel would
23 request an enlargement of the number of pages for the
24 post-hearing brief. Due to the Phase 1, Phase 2 nature
25 of it, it's just going to take some pages to be able to

1 clearly articulate that on paper, and so we don't
2 believe 40 pages is enough. The utility's position,
3 they don't believe there's a Phase 1/Phase 2 dichotomy,
4 so they probably don't have an issue with the 40 pages.
5 But we do because of just the complicated nature of all
6 the accounting issues that need to be clearly done now.
7 It just takes up pages. It's not going to be all words.
8 It'll be more of just charts and spreadsheets, but that
9 just takes a lot of paper.

10 **COMMISSIONER PATRONIS:** Ms. Mapp.

11 Ms. Crawford.

12 **MS. CRAWFORD:** That's certainly fine. Did
13 Mr. Sayler suggest how many pages additional?

14 **COMMISSIONER PATRONIS:** No, he didn't.

15 **MR. FRIEDMAN:** Oops.

16 **COMMISSIONER PATRONIS:** Five more?

17 **MR. SAYLER:** 80.

18 **COMMISSIONER PATRONIS:** 45.

19 **MR. SAYLER:** 75.

20 **COMMISSIONER PATRONIS:** How about 50?

21 **MS. CRAWFORD:** And if -- I'm sorry.

22 **MR. SAYLER:** No, go ahead.

23 **MS. CRAWFORD:** I was just going to make an
24 additional request. In some past hearing proceedings
25 I've noticed that certain parties, not casting any

1 fingers, have a tendency to address issues very broadly
2 but not really specify to which issues its particular
3 pages of arguments are designed to go to. It is very
4 difficult for staff, when we're preparing a post-hearing
5 recommendation, to interpolate which argument in a
6 party's brief in a brief like that is meant to go with
7 which issues. So I would really ask the parties to,
8 please, to every extent possible, make sure it's clear
9 when you're making your arguments in your brief which
10 issues those are meant to refer to.

11 **MR. SAYLER:** Certainly. And with the number
12 of issues in this case and the number of pages, in order
13 to have specific arguments in all the issues, having
14 more pages is better. Because there's 40 issues, 45
15 issues, and I think some issues may take more than a
16 couple of pages to address. Some may be three-quarters
17 of a page, so.

18 **COMMISSIONER PATRONIS:** We'll go with 50
19 pages.

20 **MR. FRIEDMAN:** Yeah, I don't have a position
21 one way or the other.

22 **COMMISSIONER PATRONIS:** Okay. Section XIV.

23 **MS. MAPP:** Staff would recommend that opening
24 statements, if any, should be limited to five minutes
25 for each party and that the parties not share time.

1 **COMMISSIONER PATRONIS:** Okay. All good? All
2 right.

3 **MR. FRIEDMAN:** I don't have anybody to share
4 time with anyway.

5 **COMMISSIONER PATRONIS:** No, you don't, do you?
6 Okay. Other matters.

7 **MS. MAPP:** Staff would like to -- oh, we're
8 going to go over all of the deadlines that have been
9 established here today.

10 So we'll begin first with Ms. Aktabowski's
11 notice of intent to use deposition. We have stated that
12 a written purpose and specific portions of the
13 deposition that Harbor Shores would like to use be
14 submitted to all parties by 12 noon, Monday,
15 October 31st, and that all responses to this notice be
16 received no later than 5:00 p.m. on Tuesday,
17 November 1st.

18 And as relates to Office of Public Counsel's
19 motion to strike testimony, we've agreed, I believe,
20 that by 5:00 p.m. on Monday, October 31st, to receive
21 specific line and page -- line-by-line, page-by-page
22 justification as to, if any, which portions of the
23 rebuttal testimony that they would like to be removed to
24 the extent that they have not already been provided. I
25 believe this pertains specifically to the rebuttal

1 testimony of Witness Swain. And that is Monday,
2 5:00 p.m., October 31st.

3 And we've given the utility or any other party
4 who wishes to respond to Office of Public Counsel's
5 motion until 5:00 p.m. on Tuesday, November 1st, to make
6 any written responses.

7 And additionally, as it relates to the
8 Prehearing Order, if any party has any changes to their
9 position, issue positions, basic positions, or any other
10 typos that they have discovered, that they email to all
11 parties and staff a type and strike word version of
12 their changes no later than 5:00 p.m. Tuesday,
13 November 1st.

14 Additionally, staff would remind all parties
15 that this hearing is set to take place at 9:30 a.m. on
16 November 7th, 2016, in Key West, Florida. The technical
17 hearing will begin at 9:30, and the service hearing will
18 commence at 6:00 p.m. on November 7th.

19 Opening statements have been limited to five
20 minutes per party and time shall not be shared. Witness
21 summaries shall be limited to five minutes for each
22 direct and rebuttal.

23 And I believe that concludes all matters
24 decided here today, as well as Issue 1 contested has
25 been excluded, Issue 41 contested has been excluded,

1 Issue 42 contested has been included. As a result of
2 these -- the exclusions -- inclusion of issues, the
3 Prehearing Order numbering of issues will change to
4 reflect the removal of those two issues. So the
5 numbers -- unless -- oh, okay.

6 **MR. FRIEDMAN:** Maybe leave them the same and
7 just put "omitted" or something next to it.

8 **MS. MAPP:** So, yes, so we'll just, I guess,
9 leave it there, but just be aware that it'll be noted
10 that those issues have been excluded. So the numbering
11 will remain the same.

12 **MR. FRIEDMAN:** That will make it easier.

13 **COMMISSIONER PATRONIS:** Any other matters?

14 Mr. Saylor.

15 **MR. SAYLER:** Yes, sir, Mr. Chairman. For the
16 purposes of the hearing, we're going to be traveling
17 down, myself and the Public Counsel, Ms. Merchant, and
18 our other witness. The others that have made notices of
19 appearance will not be participating in the hearing.
20 Similarly, with regard to our motion to strike and
21 request for oral argument, my understanding, should we
22 expect a decision before the hearing on Monday, a week
23 hence, or will that be a preliminary matter at the start
24 of the hearing? Or if you haven't made a decision -- I
25 was just curious. I can relay that to Mr. Kelly.

1 **COMMISSIONER PATRONIS:** It'll come out in the
2 final order.

3 Okay. Anything else?

4 **MS. MAPP:** No. There is one more matter, but
5 staff will email it to the parties. We've been looking
6 over the Prehearing Order and we believe that it's
7 possible that Issue -- excuse me -- Issue No. 44,
8 "Should the utility notify within 90 days for the USOA
9 accounting," whether we believe that issue might be ripe
10 for stipulation. So we'd just bring it to the parties'
11 attention, if you are in agreement with that. And staff
12 also believes that Issue 15 may be ripe for a partial
13 stipulation; however, we will email that information to
14 all parties because -- following this prehearing, and it
15 will be taken up at the hearing along with all other
16 stipulations.

17 **MR. SAYLER:** All right. So that was Issue
18 44 and Issue 15?

19 **COMMISSIONER PATRONIS:** Fifteen.

20 **MS. MAPP:** Yes.

21 **MR. SAYLER:** All right. For 44 I can tell you
22 we'll change our position to, "Yes," make that ripe for
23 a stipulation.

24 **MR. WRIGHT:** In case there's any doubt, we're
25 happy to stipulate 44. Our position is, "Yes."

1 **COMMISSIONER PATRONIS:** Okay.

2 **MR. SAYLER:** And we will look at No. 15, but
3 not sure at this time.

4 **MS. MAPP:** Yes.

5 **COMMISSIONER PATRONIS:** All right. Anything
6 else prior to this wrapping up?

7 **MS. MAPP:** Staff has no further matters.

8 **COMMISSIONER PATRONIS:** Okay.

9 **MR. FRIEDMAN:** The utility has nothing
10 further.

11 **COMMISSIONER PATRONIS:** Okay. OPC?

12 **MR. SAYLER:** No, sir, Public Counsel doesn't
13 have any other matters. And thank you again for this --
14 going through the issues by issues.

15 **COMMISSIONER PATRONIS:** Sure. Ms. Aktabowski,
16 do you have anything?

17 **MS. AKTABOWSKI:** We have no further matters,
18 and thank you for allowing me to attend via
19 telephonically. I appreciate it.

20 **COMMISSIONER PATRONIS:** Thank you very much.
21 Seeing nothing else, we are adjourned. Thank y'all.
22 Please have a good weekend.

23 (Prehearing Conference adjourned at 11:24
24 a.m.)

25

1 STATE OF FLORIDA)
2 COUNTY OF LEON) : CERTIFICATE OF REPORTER

3
4 I, LINDA BOLES, CRR, RPR, Official Commission
5 Reporter, do hereby certify that the foregoing
6 proceeding was heard at the time and place herein
7 stated.

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

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

18 DATED THIS 3rd day of November, 2016.

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25
Linda Boles

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