

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 150071-SU

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

_____ /

VOLUME 5

(Pages 736 through 856)

PROCEEDINGS: HEARING

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

DATE: Tuesday, November 8, 2016

TIME: Commenced at 1:19 p.m.
Concluded at 3:34 p.m.

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

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

APPEARANCES: (As heretofore noted.)

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P R O C E E D I N G S

(Transcript continues in sequence from
Volume 4.)

CHAIRMAN BROWN: All right. We're going back
on the record and reconvening, and I believe at this
time we are on to Mr. Frank Seidman.

Hi. Good afternoon.

THE WITNESS: Good afternoon.

THE WITNESS: All right. KW.

Whereupon,

FRANK SEIDMAN

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

EXAMINATION

BY MR. FRIEDMAN:

Q Mr. Seidman, did you prefile rebuttal
testimony in this case?

A Yes, I did.

Q Okay. And if I ask you the questions in your
rebuttal testimony, would your answers be the same?

A They would.

Q All right. So you have no corrections or
changes to your testimony?

A No changes, no corrections.

MR. FRIEDMAN: All right. I would like to

1 submit his testimony into the record as though read.

2 **CHAIRMAN BROWN:** We will go ahead and enter
3 Mr. Seidman's prefiled rebuttal testimony into the
4 record as though read.

5 **MR. FRIEDMAN:** Thank you.

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

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

5 **Q. Have you previously presented testimony in this case?**

6 A. Yes. I have previously presented direct testimony on behalf of the applicant, K W Resort
7 Utility Corp. (KWRU).

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

9 A. The purpose of my rebuttal testimony is to respond to the conclusion reached by Office of
10 Public Counsel witness Andrew T. Woodcock that the Used & Useful percentage for the
11 WWTP should only be 75%. And in that respect I also disagree with a similar conclusion
12 reached by PSC staff in Order No. PSC-16-0123-PAA-SU in this docket that the Used &
13 Useful percentage be only 72%.

14 **Q. Why do you disagree with these conclusions?**

15 A. In reaching their conclusions they relied on the basic formula set out in Rule 25-30.431
16 F.A.C. but failed to look beyond the formula to consider the several factors set out in
17 Sections 367.081(2)(a)2 and (3) F.S. and Rule 25-30.432 F.A.C. When these factors are
18 considered, regardless of the mathematical results, the WWTP should be considered 100%
19 Used & Useful. The factors of relevance were pointed out in KWRU's filing Exhibit DDS-1
20 at MFR Schedule F-4 as previously filed.

21 **Q. Is there precedent for such action?**

22 A. Yes. In KWRU's last case, Docket No. 070293-SU, the Commission was presented with an
23 almost identical situation. In that case, OPC Witness Woodcock calculated the Used &
24 Useful for the WWTP to be 72%. KWRU argued that the factors for consideration pursuant
25 to Rule 25-30.432 and Section 367.081(2)(aa)2.c.,F.S. exist to find the WWTP 100% Used
26 & Useful. In PSC Order PSC-09-0057-FOF-SU, the PSC stated:

1 “[in] its post hearing statement, the Utility states that the factors clearly
2 exist which we should consider, pursuant to Rule 2[4]-30.432 F.A.C., to
3 find that the existing wastewater treatment plant and the expansion,
4 refurbishment, and upgrade of KWRU's facilities are 100 percent used and
5 useful. In this regard, the Utility states that we should consider the growth
6 of the system, the mandate of the legislature and Monroe County which
7 directly resulted in the upgrade and expansion; and the nature and reality of
8 the service area and the mandatory connection ordinance and the
9 reservations of capacity related to each, which essentially render the service
10 area as built out. Rule 24-30.432, F.A.C., expressly provides that the
11 enumerated factors are only some of the factors that we will consider in
12 determining the used and useful amount, and is not by any means an
13 exhaustive list. The rule also expressly provides that it does not apply to
14 reuse projects, pursuant to Section 367.0817(3), F.S., nor investment for
15 environmental compliance pursuant to Section 367.081(2) (a) 2.c, F.S. The
16 Utility's post-hearing statement goes on to refer to Chapter 99-395, in which
17 the Legislature enacted certain sewage requirements for Monroe County
18 which, in Section 6 of that law, required sewage facilities to go to A WT by
19 July 1, 2010. In furtherance of that mandate, the Utility points out that
20 Monroe County secured an agreement from the Utility to convert its
21 wastewater treatment system to A WT by January 1, 2007, providing that
22 the Utility is allowed to recapture the costs of its conversion to AWT and
23 increased operating costs by a resolution of the County Commission. We
24 agree with the Utility that factors clearly exist, pursuant to Rule 24-30.432,
25 F.A.C., to find that the Utility's wastewater treatment plant and collection
26 and reuse systems are all 100 percent used and useful. The record shows

1 that the remaining capacity of the treatment facility and lines have been
 2 committed and contributed towards the provision of service of the 1,500
 3 EDUs that the Utility agreed to serve pursuant to a contract with Monroe
 4 County. Although not all of the potential customers located within the
 5 environmentally sensitive area have connected, it appears that Monroe
 6 County's advance payment for these customers clearly reserves that
 7 remaining capacity. In addition, the record shows that the facility is 100
 8 percent used and useful because the plant is designed and built to provide
 9 reuse and will be an AWT plant, as mandated by Monroe County. Given the
 10 above, we find KWRU's wastewater treatment plant, entire collection
 11 system, and reuse systems are all 100 percent used and useful in providing
 12 service to the customers of the Utility.”

13 All of these factors still exist. The capacity causing the expansion was primarily due to the
 14 need to meet Monroe County’s reservations and the demand expressed by several other
 15 projects. In addition, every property owner is still mandated to connect to KWRU within its
 16 tariff area pursuant to 99-395. The utility is still providing reuse. The existing plant was
 17 converted to AWT by mandate and all of the expansion must meet that requirement,
 18 including the addition of two injection wells to protect the Keys’ environmentally sensitive
 19 area.

20 Consistent with its reasoning in PSC Order PSC-09-0057-FOF-SU, the Commission should
 21 find the utility’s WWTP to be 100% used and useful.

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

23 A. Yes, it does.

1 **BY MR. FRIEDMAN:**

2 **Q** Mr. Seidman, do you have a brief summary of
3 your rebuttal?

4 **A** Very brief. The purpose of my rebuttal
5 testimony is to respond to the conclusions of OPC
6 Witness Woodcock that used and useful percentages should
7 be only 75 percent for the plant. And in support of
8 that, I also reference the Commission's handling of the
9 last docket, 070293, as a means of a way to publish it
10 and to stay consistent. That's it.

11 **MR. FRIEDMAN:** Tender Mr. Seidman for
12 cross-examination.

13 **CHAIRMAN BROWN:** Thank you. And, again, we're
14 going to be going in the same order beginning with
15 Public Counsel.

16 **EXAMINATION**

17 **BY MR. SAYLER:**

18 **Q** Good afternoon, Mr. Seidman.

19 **A** Good afternoon.

20 **Q** Erik Sayler with Public Counsel. We have a
21 few questions.

22 As you just summarized, you reviewed
23 Mr. Woodcock's used and useful adjustment and you
24 disagree with that; is that correct?

25 **A** Yes.

1 **Q** And you would agree that Mr. Woodcock
2 increased the test year flows by two years before adding
3 the five years of customer growth for determining his
4 used and useful percentage for the treatment plant
5 capacity; correct?

6 **A** Two years before -- I don't know what she had
7 to use as the basis.

8 **Q** All right. You would agree that Public
9 Counsel is supporting a pro forma 2016 test year for
10 Phase II rates; correct?

11 **A** Yes, I'm aware of that.

12 **Q** And as part of the calculation that he
13 performed that was relied upon by Ms. Merchant in her
14 revenue requirement, he -- for 2015 and 2016, he assumed
15 a 5 percent growth rate for 2015 and 2016; correct?

16 **A** He used as a base 2014 or 2016?

17 **Q** I'm saying that for his used and useful
18 calculation for 2015 and 2016, he assumed two years back
19 to back of 5 percent growth, and then for 2017 he
20 projected out five years at 5 percent growth.

21 **A** Okay. So he basically changed the base of the
22 test year for purposes of used and useful and moved it
23 forward --

24 **Q** Correct.

25 **A** -- and then added on five years for that?

1 Q At 5 percent.

2 A Okay.

3 Q And you would agree that's what he did;
4 correct?

5 A I agree that you told me that's what he's
6 doing.

7 Q So you did not review his calculation very
8 carefully then; is that right?

9 A I reviewed it, yes, but I don't -- I didn't
10 present his testimony. So the record will stand on its
11 own.

12 Q All right. And you're familiar with the
13 Commission's former practice of imputing CIAC on the
14 marginal reserve; correct?

15 A I have -- the Commission's -- say that again.

16 Q Previous -- you would agree that previously
17 the Commission used to impute CIAC on the margin
18 reserve.

19 A Before the law stopped that.

20 Q Correct.

21 A Yes.

22 Q Okay.

23 A It was a big argument in most cases prior to
24 the -- putting it into Chapter 367 as a change.

25 Q All right. And what year was that changed?

1 Do you recall?

2 **A** No, I don't know what year.

3 **Q** All right. You would agree it was around
4 1999?

5 **A** That sounds -- yeah, that sounds right. Yeah.
6 That happened after about almost ten years of going over
7 rule changes for water and sewer.

8 **Q** All right. But prior to that statutory
9 change, the Commission routinely imputed CIAC on the
10 margin reserve; correct?

11 **MR. FRIEDMAN:** Asked and answered.

12 **CHAIRMAN BROWN:** Yes.

13 **BY MR. SAYLER:**

14 **Q** Are you familiar with the environmental
15 compliance cost exception of the used and used
16 statute -- used and useful statute?

17 **A** Say that again.

18 **Q** Are you familiar with the section of the used
19 and useful statute that provides what I call an
20 exception for environmental compliance costs? Are you
21 familiar with that provision?

22 **A** Yes.

23 **Q** And you've participated in and testified in
24 PSC proceedings after that environmental compliance cost
25 exception was added to the used and useful statute;

1 correct?

2 **A** Yes, I have.

3 **Q** And have you used or relied upon the
4 environmental compliance cost exception for used and
5 useful in prior cases?

6 **A** Yes.

7 **Q** But in this case, you do not rely upon the
8 environmental compliance cost exception when you assert
9 that the wastewater treatment plant is 100 percent.

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

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

13 **CHAIRMAN BROWN:** Thank you, Mr. Sayler.
14 Moving on to Monroe County.

15 **MR. WRIGHT:** No questions for Mr. Seidman's
16 rebuttal. Thank you, Madam Chairman.

17 **CHAIRMAN BROWN:** Thank you.
18 Harbor Shores?

19 **MS. AKTABOWSKI:** No questions for Mr. Seidman.

20 **CHAIRMAN BROWN:** Thank you.
21 Staff.

22 **MS. MAPP:** Staff has no questions.

23 **CHAIRMAN BROWN:** Okay. Thank you.
24 Commissioners?

25 Redirect.

1 **MR. FRIEDMAN:** None.

2 **CHAIRMAN BROWN:** All right. This witness does
3 not have any exhibits associated with his rebuttal.

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

5 **CHAIRMAN BROWN:** So with that, Mr. Seidman,
6 you are excused.

7 **THE WITNESS:** I can finish lunch now.

8 **CHAIRMAN BROWN:** Yes.

9 **MR. FRIEDMAN:** I didn't get through.

10 **CHAIRMAN BROWN:** Thank you.

11 And our last witness of the case is
12 Deborah Swain.

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

14 **CHAIRMAN BROWN:** Okay. Good afternoon,
15 Ms. Swain.

16 **THE WITNESS:** Good afternoon.

17 Whereupon,

18 **DEBORAH D. SWAIN**

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

21 **BY MR. FRIEDMAN:**

22 **Q** Ms. Swain, did you prefile rebuttal testimony
23 in this case along with three exhibits?

24 **A** Yes, I did.

25 **Q** And if I asked you the questions as were

1 stated in the prefiled, would your answers be the same?

2 **A** I do have several corrections.

3 **Q** Okay. Would you please let us know what those
4 are at this time?

5 **A** The first one is page 1, lines --

6 **CHAIRMAN BROWN:** Hold on.

7 **THE WITNESS:** Line 10 -- lines 9 and
8 10 actually. After "Patricia M. Merchant" should be a
9 period and the rest of the sentence struck.

10 **CHAIRMAN BROWN:** Okay.

11 **THE WITNESS:** And the next one is page 15,
12 line 4, delete that entire line. It says, "WIP-TY
13 expenditure plus permit cost."

14 And then page 11, on line 19 I refer to an
15 amount of CIAC that is to be repaid, and the total
16 is \$319 -- \$319,630.50. My correction is that I
17 failed to incorporate that refund in my rebuttal
18 exhibits.

19 **MR. FRIEDMAN:** Is that all?

20 **MR. WRIGHT:** Madam Chairman --

21 **CHAIRMAN BROWN:** Yes.

22 **MR. WRIGHT:** -- I heard the words that
23 Ms. Swain spoke, but I don't know what they mean in
24 terms of changing her testimony or her exhibit.

25 **CHAIRMAN BROWN:** I appreciate you -- I was

1 going to get to that.

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

3 **CHAIRMAN BROWN:** I was a little confused as
4 well. So the 319,630 on page 11, line 19, and 50 cents
5 --

6 **THE WITNESS:** Yes, ma'am.

7 **CHAIRMAN BROWN:** -- is that the correct --
8 you're reading that as is?

9 **THE WITNESS:** The amount is correct. What
10 happens is that the exhibits themselves were not
11 corrected to reflect that.

12 **CHAIRMAN BROWN:** Please correct the exhibits.

13 **THE WITNESS:** Okay. I'll start with the
14 summary schedules rather than going to the detail
15 schedules. But the summary schedules, starting with
16 A-2, which is page 1 of 11 on DDS-4, the line 11 which
17 says, "Less CIAC," there's a column titled "KWRU
18 Adjustment" under what's titled "Phase I." That should
19 be an addition of \$250,951. And that is the 13-month
20 average of the number I gave previously.

21 **CHAIRMAN BROWN:** Okay.

22 **THE WITNESS:** Below that on that same column
23 should be a minus \$7,245. And when making those
24 corrections, the following column, "KWRU Adjusted Test
25 Year," the amount on the line "Less CIAC," line 11,

1 would then be 9,398 -- excuse me -- \$9,398,920. And
2 below that on line 13 in that same column, the
3 amortization of CIAC would be three thousand seven, six
4 hundred ninety-six dollars -- \$3,007,696. And that
5 would also necessitate a correction in the net
6 depreciation expense. So referring to Exhibit DDS-4,
7 page 5 of 11 --

8 **CHAIRMAN BROWN:** You don't happen to have an
9 errata.

10 **THE WITNESS:** No, and I only have two more
11 numbers to correct.

12 **CHAIRMAN BROWN:** Okay.

13 **MR. SAYLER:** What page again?

14 **THE WITNESS:** This is page 5 of 11. And the
15 same two columns I'm going to be referring to, "KWRU
16 Adjustment" and then the "KWRU Adjusted Revenue
17 Requirement" columns, the row I'm correcting is Row 5.
18 Excuse me. The "KWRU Adjustment" should read \$288,201,
19 and the following column, "KW --

20 **CHAIRMAN BROWN:** Please just slow down for a
21 sec.

22 **THE WITNESS:** Sure.

23 **CHAIRMAN BROWN:** Okay. That's under Phase I.

24 **THE WITNESS:** Yes, ma'am.

25 **CHAIRMAN BROWN:** Okay. And that is -- the

1 number that you're adjusting is 280,098, and you're
2 adjusting --

3 **THE WITNESS:** Correct.

4 **MR. SAYLER:** Which number are you changing?

5 **THE WITNESS:** I'm changing 280 -- excuse me --
6 280,098 should be 288,201.

7 **MR. SAYLER:** I'm still confused which column
8 you're in and where you're at.

9 **THE WITNESS:** "KWRU Adjustments" under Phase I
10 from the --

11 **MR. SAYLER:** Phase I?

12 **THE WITNESS:** Yes.

13 **MR. SAYLER:** Okay.

14 **CHAIRMAN BROWN:** Okay.

15 **MR. SAYLER:** So the \$280,000 number is
16 changing to what?

17 **THE WITNESS:** 288,201.

18 **CHAIRMAN BROWN:** Okay.

19 **THE WITNESS:** And then the "Adjusted Revenue
20 Requirement" will change -- on that same line will
21 change from 473,323 to 481,427.

22 **CHAIRMAN BROWN:** Okay.

23 **MR. SAYLER:** I have a question. Is this a
24 change to your testimony or errata? Because to our
25 knowledge, no one -- you have not refunded any CIAC to

1 any customers. This is all hypothetical if there's a
2 refund; correct?

3 **MR. FRIEDMAN:** I object to this --
4 articulating that as a hypothetical.

5 **CHAIRMAN BROWN:** I will allow you to clarify
6 what these corrections are.

7 **THE WITNESS:** Yes. My understanding had been
8 that these are monies to be refunded and that it was a
9 prospective CIAC that was collected. And what I've
10 learned is that it's CIAC that had been already
11 collected by the end of the test year, that it wasn't
12 subsequent to the test year, so that's why I made the
13 correction.

14 **CHAIRMAN BROWN:** Okay. And, Mr. Sayler,
15 you'll be given an opportunity to cross-examine her on
16 these numbers in just a moment. So let's get through
17 the rest of the adjustments.

18 **MR. SAYLER:** Certainly. And just for the
19 record, we would object to this as being a substantive
20 change to testimony after -- that is not an errata,
21 so -- but I will cross-examine her.

22 **MR. FRIEDMAN:** It's not a substantive change
23 in her testimony.

24 **CHAIRMAN BROWN:** All right. Objection noted.
25 Please, Ms. Swain, please proceed with the

1 additional changes.

2 **THE WITNESS:** And I want to alert that this
3 would also have an impact on the gross receipts tax and
4 revenue requirement, although minor, and I did not
5 make -- I did not flow through those corrections. I'm
6 trying to specifically identify the direct impact of the
7 CIAC repayment.

8 **CHAIRMAN BROWN:** Okay. Please continue. Any
9 other changes?

10 **THE WITNESS:** That's all. Thank you.

11 **CHAIRMAN BROWN:** Okay.

12 **MR. FRIEDMAN:** I'd like to move --

13 **MR. WRIGHT:** Madam?

14 **CHAIRMAN BROWN:** Yes.

15 **MR. WRIGHT:** I would like to ask that the
16 witness prepare and get it to staff to be copied and
17 distributed to the parties corrected copies of the
18 exhibits that she just changed.

19 **CHAIRMAN BROWN:** I think that is a fair
20 request.

21 **MR. WRIGHT:** Thank you.

22 **CHAIRMAN BROWN:** Mr. Friedman, can you have
23 your witness provide updated revisions to, as she
24 mentioned, to the Exhibit DDS-4 as a result of the
25 changes that she's making here today?

1 **MR. FRIEDMAN:** Well, she's got it handwritten.
2 I presume she's got those handwritten changes.

3 **MR. WRIGHT:** And, Madam Chair, that is what I
4 would actually like to see so that I can see what it was
5 and what it now is. I would like the handwritten
6 changed exhibits and copies made available for the
7 parties.

8 **CHAIRMAN BROWN:** Mr. Friedman, again, I'm just
9 -- I'm a little --

10 **MR. FRIEDMAN:** I don't mind doing that. I
11 just -- I don't understand why, when you're sitting
12 there changing a number, he can't see what the number
13 used to be and what it is now.

14 **CHAIRMAN BROWN:** Okay. Mr. Friedman, because
15 this -- there are several changes here, and I'm not
16 clear that I made them all. And if I'm not clear that I
17 made them all, I don't know if all the parties are clear
18 that they made them all. So I would request to get a
19 copy of the changes. We're going to need to take
20 another five-minute break and have staff -- have someone
21 assist Ms. Swain to make a copy of her changes so that
22 we are all clear on what it is that she's requesting be
23 amended.

24 **MR. FRIEDMAN:** If you want to go ahead with
25 her testimony and do that at the break, fine. She may

1 need --

2 **CHAIRMAN BROWN:** No. I would like -- I'd like
3 to see the changes before she goes ahead, right now.

4 **MR. FRIEDMAN:** Okay.

5 **CHAIRMAN BROWN:** So let's take a five-minute
6 break. Staff, can you --

7 **MR. FRIEDMAN:** Somebody can get copies?

8 **CHAIRMAN BROWN:** Yes. Staff, can you help?
9 Thank you. The County is going to help. Just make sure
10 there's enough copies for everyone here.

11 (Recess taken.)

12 **CHAIRMAN BROWN:** Thank you. And I want to
13 thank the County for helping us out on that front. This
14 is a lot clearer, so I appreciate you providing us with
15 this, with these adjustments.

16 Mr. Friedman, you have the floor.

17 **MR. FRIEDMAN:** Yes. Thank you. At this time
18 I would like to move Ms. Swain's prefiled rebuttal
19 testimony into evidence as though read.

20 **CHAIRMAN BROWN:** Okay. With the changes.

21 **MR. FRIEDMAN:** With the corrections she had
22 made.

23 **CHAIRMAN BROWN:** We're going to go ahead --
24 and not the exhibits, just her prefiled, we're going to
25 go ahead and move Ms. Swain's prefiled rebuttal

1 testimony with the changes made here today into the
2 record as though read.

3 **MR. FRIEDMAN:** Thank you.

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

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

5 **Q. Have you presented direct testimony in this case.**

6 A. Yes I have.

7 **Q. What is the purpose of your rebuttal testimony?**

8 A. The purpose of my rebuttal testimony is to present information to refute some of the issues
9 and arguments presented by Office of Public Counsel witness Patricia M. Merchant ~~and~~
10 ~~Florida Public Service Commission witness xx.~~ ^{RVN}

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

12 A. Yes, I am sponsoring the following exhibits: Exhibit DDS-4, select updated schedules from
13 MFR Volume I, Exhibit DDS-5, the company's response to Audit Finding 1 of the Audit
14 Report, and DDS-6, support for the current level of equity.

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

16 A. Yes they were, using information provided by KWRU staff or consultants.

17 **Q. What issues will you be addressing in your testimony?**

18 A. In response to OPC witness Merchant, I will be addressing the following issues:

- 19 • Appropriate Test Year
- 20 • Audit adjustments
- 21 • Proforma plant
- 22 • Proforma adjustment for vacuum tank
- 23 • Annualized depreciation expense for TY additions
- 24 • Non-used and useful
- 25 • Accounting expense for correction of company books

- 1 • Customer growth tied to new plant
- 2 • CIAC based on U&U growth projection
- 3 • Construction Work in Progress (CWIP)
- 4 • Working capital
- 5 • Cost of Capital
- 6 • Proforma Expenses
- 7 • Test Year Revenue Adjustments and Revenue projection
- 8 • Billing based on tariffs
- 9 • Rate case expense

10 **Q. Is the 2014 historical test year with pro forma adjustments appropriate for setting**
 11 **rates in this proceeding?**

12 A. Yes, the 2014 historical test year is an appropriate view of the utility's financial situation
 13 with the exception of the very specific and identifiable costs associated with the proforma
 14 plant additions and resulting impact on expenses.

15 **Q. Are you aware of any rule that provides guidance in the establishment of the Test**
 16 **Year?**

17 A. Yes, 25-30.430 Florida Administrative Code, "Test Year Approval" requires that a Utility
 18 submit a request for its test year prior to filing an application for a rate increase, and if the
 19 utility does request a projected test year, it must " provide an explanation as to why the
 20 projected period is more representative of the utility's operations than a historical period."
 21 In this case the utility requested, and was granted approval, for a historical test year of
 22 December 31, 2014. The inclusion of the 350,000gpd pro forma plant expansion was
 23 disclosed in the test year request letter, and approved by the Chairman.

24 I also looked at Chapter 367.081 of the Florida Statutes to see if there is a guideline or
 25 requirement with respect to "projected test year". The only reference to use of a projected

1 period is with respect to an application for initial rates. Chapter 367.081 (2) (B) states, "IN
2 ESTABLISHING INITIAL RATES FOR A UTILITY, THE COMMISSION MAY PROJECT THE
3 FINANCIAL AND OPERATIONAL DATA AS SET OUT IN PARAGRAPH (A) TO A POINT IN
4 TIME WHEN THE UTILITY IS EXPECTED TO BE OPERATING AT A REASONABLE LEVEL OF
5 CAPACITY."

6 **Q. Do you agree with Ms. Merchant's position that appropriate test year to consider the
7 expansion of the plant is a "Pro Forma Test Year Ended December 31, 2016"?**

8 A. No. Ms. Merchant is basing this on one very specific premise - that the utility had
9 "exceptionally high" or "significant expected" growth. Using her argument, if the expected
10 growth is not found to be "exceptionally high" or "significant", then the conclusion must be
11 that the historical test year is correct.

12 **Q. Are you aware of any rule that defines "significant expected" or "exceptionally high"
13 growth?**

14 A. No, I am not. Section 367.081, Florida Statutes, doesn't even address a projected test year
15 except that it allows a projection of financial and operational data when setting rates for a
16 new utility. Any other basis for the use of a projected test year is limited to Commission
17 rulings in a rate case. Ms. Merchant cited Burkim Enterprises, Inc. ("Burkim") Order No.
18 PSC-01-2511-PAA-WS, and Martin Downs Order No. 15725 as examples where those
19 terms were used to explain use of a projected test year. In my review of the Burkim case, I
20 found the statement, *"Because the utility is growing at an exceptionally high rate (29
21 connections per year), rates based on historical data alone will be significantly different
22 than rates based on current or even future conditions, and the potential for overearning
23 exists if a projected test year is not used."* Burkim was a staff-assisted (SARC) rate case
24 and is not subject to the rigor of a contested rate case. I would not rely on a SARC as a basis
25 for precedent. The concern about overearnings in that case is overstated since the
26 Commission has a mechanism in the rules to monitor and address any potential

1 overearnings. When the utility underearns, it has no similar protection, other than to file an
2 application for a rate increase. Further, that order quotes the statement in the Martin Downs
3 Order No. 15725, *"The test year is an analytical device used in rate making proceedings to*
4 *compute current levels of investment and income in order to determine the amount of*
5 *revenue that will be required to assure a company a fair return on its investment. Test year*
6 *data must be adjusted to properly reflect conditions in the future period for which rates are*
7 *being fixed. Based upon historical data we anticipate Martin Downs will continue to*
8 *experience rapid growth of demand for its services."* The Martin Downs case is 30 years
9 old. Reaching back that far for precedent without more recent corroboration in a water or
10 wastewater case doesn't make for a very strong case.

11 **Q. Is there a more recent case of which you are aware which corroborates your**
12 **conclusion that a projected test year is not warranted?**

13 A. We need look no further than the last KWRU rate case. In Docket No. 070293-SU, the
14 utility presented its calculation of growth as 10.043% simple average and 8.7130% average
15 increase as determined by linear regression.[see MFR Schedule F-10 in that docket]. The
16 test year used by the utility was the historic test year and the Commission and the Office of
17 Public Counsel witness accepted the historic test year without comment. Seeing that the
18 growth rate in this case is less than that in the previous case, there is no basis for a projected
19 test year in this case.

20 **Q. Do you believe that the growth rate for KWRU is cause for moving to a projected test**
21 **year?**

22 A. No. Section 367.081, Florida Statutes establishes protections, as it limits growth
23 considerations to 5% per year, subject to certain exceptions. So even if a growth rate is
24 higher, as in this case, its affects are limited. In my opinion, that eliminates higher growth
25 rates as a basis for a projected test year.

1 **Q. Witness Merchant proposed adjustments to expenses and revenues beyond the pro**
2 **forma changes reflected in this filing on the basis that they reflect customers in a**
3 **projected year. Do you agree with those proposals?**

4 A. No. All this does is create a new test year, based on further projections, when there is no
5 basis for it. Section 367.081, Florida Statutes supports just what KWRU has done in its
6 filing and gives not even a hint about the use of a projected test year.

7 **Q. To what portions of Section 367.081, Florida Statutes are you referring?**

8 A. The statute recognized that there would be circumstances such as those faced by KWRU
9 would be encountered. Section 367.081(2) (a) 2. therefore, requires the Commission “to
10 consider utility property, including land, acquired or facilities constructed or to be
11 constructed within a reasonable time in the future, not to exceed 24 months after the end of
12 the historic base year to set final rates unless a longer period is approved...” The statute
13 then goes on to set parameters for consideration for these additions to be used and useful in
14 the public service. The parameters considered are: a.) property needed to serve current
15 customers, b.) property needed to serve customers five years after the end of the test year
16 and c.) property needed to serve more than five years after the test year to the extent that the
17 utility presents clear and convincing evidence. The statute sets up these ways of considering
18 future additions with no reference to the use of a projected test year. However, the utility
19 meets both (a) and (b), as testified by witnesses Johnson, Castle and Seidman.

20 **Q. Is there anything else in the statute that is of relevance?**

21 A. Yes. Because of the environmental compliance nature of the expansion, the pro-forma
22 adjustments in the KWRU filing should be 100% used and useful as testified to by witness
23 Ed Castle, the utility's engineer of record.

24 **Q. How would you characterize the findings in Audit Adjustment #1.**

25 A. The adjustments found by the auditors fell into three primary categories: (1) duplication

1 where invoices were already included in rate base, (2) difference of opinion regarding
2 whether items should be capitalized, and (3) KWRU errors. Because we did not have the
3 audit workpapers from the prior rate case, there were items the auditors stated were already
4 included, and we did not argue. There were a number of transactions that the auditors
5 reviewed and found should not be capitalized, but on further explanation, they agreed. An
6 example is the use of certain chemicals only while the plant was being tested. In addition,
7 upon our further review, we concluded that their findings were correct, and we were in
8 error, or we did not have adequate support or backup documentation. As I mentioned
9 previously, none of the cost associated with the compilation of that documentation was
10 included in rate case expense. In my experience the audit adjustments were the usual type
11 made in other rate cases.

12 **Q. Were any of the audit adjustments due to the Utility's "failure to comply with PSC**
13 **ORDER NO. PSC-09-00S7-FOF-SU"?**

14 A. No, because the Utility properly booked the adjustments, and referenced those adjustments
15 clearly in its 2008 Annual Report.

16 **Q. Can you please provide more detail about the audit adjustments with which you**
17 **disagree?**

18 A. Yes. I have attached Exhibit DDS-5 which is the response to Audit Finding 1 in the
19 Commission Audit Report attached to PSC Witness Piedra's testimony. This response was
20 filed previously, and a revision to the audit adjustments was made by staff in the PAA as a
21 result. The details can be seen in the response, but they included the following:

- 22 • Costs to set up a generator
- 23 • Force main repairs as a part of a larger initiative to tighten the collection system
- 24 • Equipment repair cost to extend the life
- 25 • The cost of construction debris cleanup

- 1 • Engineering costs associated with capital projects
- 2 • Liquid sludge hauled while the WWTP was under construction
- 3 • Chemicals used exclusively for testing during construction
- 4 • Other miscellaneous construction costs

5 **Q. What is the correct adjustment to rate base resulting from Audit Finding 1?**

6 A. As agreed to by KWRU, and indicated in the PAA, the correct amount is \$817,240.

7 **Q. Do you agree with OPC witness Merchant that the utility should have already made**
8 **adjustments to its books in compliance with the PAA Order PSC-09-0057-PAA-SU?**

9 A. Yes, and as I stated, they were. The company recorded the adjustments and reflected them
10 in its December 31, 2008 Annual Report. The order was issued January 27, 2009, and the
11 Annual Report footnoting the appropriate schedules which included the adjustments, was
12 filed on March 27, 2009.

13 **Q. Was the work that your firm performed to review and recommend adjustments to the**
14 **utility's books related to the adjustments in the prior case?**

15 A. Only to the extent we confirmed they were recorded.

16 **Q. Do you agree with OPC witness Merchant that it is inappropriate to include pro**
17 **forma plant in Phase I rates?**

18 A. No, but I further do not believe it is appropriate to apply the rates in a phased approach. As
19 Ms. Merchant states, Section 367.081(2)(a)2., Florida Statutes, provides that for purposes
20 of establishing rates, the Commission shall consider utility property, including facilities
21 constructed or to be constructed, not to exceed 24 months after the end of the historic
22 test year used to set final rates, unless a longer period is approved by the Commission,
23 to be used and useful in the public service. The full completion of this enormous
24 construction project will be nearly complete within the 24 months. At the time of the
25 filing, the construction was expected to be completed within 24 months. The utility has

1 worked diligently to complete the project within 24 months. If not for the litigation
2 where the utility defended its renewal of their operating permit to avoid an
3 unreasonably costly disposal alternative, the construction could have been completed
4 within 24 months. Bear in mind that had the utility chosen to implement the more costly
5 disposal method, the impact on the consumers would have been millions of dollars more
6 than the expansion cost will now be. And finally, the statute gives discretion to the
7 Commission to approve a longer period. Considering the circumstances in the case, I
8 urge the Commission to allow a longer period, which is only three months past the
9 allowed 24 months.

10 **Q. Do you agree with OPC witness Merchant that it is inappropriate to include cost of the**
11 **vacuum tank replacement Phase I rates?**

12 A. Again, I do not believe it is appropriate to apply the rates in a phased approach. However,
13 since the vacuum tank will be fully operational within 24 months of the test year, if the rates
14 are phased, it should be included in the Phase I rates.

15 **Q. Are you recommending any adjustments to your prefiled testimony Exhibit DDS-2**
16 **regarding the cost to be included for the vacuum tank?**

17 A. Yes, as testified by KWRU witness Chris Johnson in his prefiled rebuttal testimony, the
18 vacuum tank final construction cost will be lower than the original estimate used. I have
19 adjusted rate base in Exhibit DDS-4 to reflect this reduction. I have also made the
20 corresponding adjustment to increase depreciation expense and accumulated depreciation,
21 reflecting a 30 year life.

22 **Q. Do you agree that the original vacuum tank should be retired?**

23 A. Yes, and I have adjusted rate base in Exhibit DDS-4 to reflect this retirement. This will
24 have no impact on rate base, but there will be an impact on depreciation expense because
25 the original vacuum tank is not fully depreciated. As indicated by KWRU witness Johnson,

1 it was installed in 2003, and the actual original installed cost was \$390,285.

2 Since I have been provided the actual installed cost, I have removed that amount from both
3 utility plant in service and accumulated depreciation. With a 30 year depreciable life , the
4 appropriate reduction to depreciation expense is \$13,009.

5 **Q. Do you agree with Ms. Merchant's observation about Audit Finding 4 (CIAC and**
6 **Amortization of CIAC) that the utility's outside accounting work was to comply with**
7 **the Commission's prior rate case order?**

8 A. No I do not. The analysis we did was to review the CIAC collected and recorded after the
9 last rate case test year. Furthermore, the "Restatement of CIAC" documents to which Ms.
10 Merchant refers was prepared by the utility. My firm reviewed the contracts and
11 spreadsheet to confirm the amounts and made corrections where needed.

12 **Q. Should an adjustment be made to rate case expense to remove any cost associated with**
13 **correcting the company's books?**

14 A. No, we separated the costs associated with correcting the company's books from the cost
15 associated with the rate case. KWRU became aware that its previous accounting firm had
16 not properly reflected the costs for a period of several years. At the time that KWRU
17 reviewed the need to file an application to increase its rates, it was realized that the books
18 needed to be corrected. KWRU staff performed an initial review of all of the transactions
19 over a several year period, and recommended revision. My firm, Milian, Swain &
20 Associates, Inc. ("MSA") was retained to review the transactions and to recommend final
21 adjustments. The intention at the time was to re-file the annual reports after 2006 to reflect
22 these adjustments. Because the extensive review was so closely tied to the eventual filing of
23 a rate case, KWRU staff did not always separate the costs correctly. However, in the filing
24 of the case we reviewed the rate case expense and made sure to segregate the costs
25 associated with correcting the company books. Furthermore the auditors reviewed the costs

1 to specifically separate the costs. I am under the impression this has been done correctly.
2 However, if it is found that an invoice for one effort was incorrectly included in the other, it
3 is understandable in light of the close correlation and should be corrected.

4 **Q. Do you agree with OPC witness Merchant that Construction Work in Progress should**
5 **include the Test Year expenditures plus the cost of defending the Permit litigation?**

6 A. I do agree that test year expenditures should be included in CWIP, but not the cost of
7 litigation associated with the permit. I will describe the reasons in more detail later.

8 **Q. What is your opinion regarding OPC witness Merchant's observation about the**
9 **number of adjustments included in staff's audit finding #5 regarding accumulated**
10 **depreciation?**

11 A.. Ms. Merchant stated that she noted the volume and amount of adjustments recommended
12 by the auditors and how the Utility's books have not been maintained in accordance with the
13 adjustments ordered in the last rate case. She brought this up on several occasions. However
14 I want to clarify that the utility made all of the adjustments in its prior rate case as ordered,
15 and in the time frame required. Admittedly, however, the voluminous transactions related to
16 subsequent construction projects were not all recorded properly, and as I previously
17 described, the utility recognized this and has worked to correct this. This should not be a
18 poor reflection on KWRU. On the contrary this was brought to the attention of the auditors.
19 Furthermore, because KWRU extracted and compiled the support for every single
20 transaction that it thought should be capitalized, KWRU was able to transmit a CD
21 containing 100% of the capitalizable transactions since the last rate case. Rather than
22 performing an audit of a sample of transactions, the auditors were easily able to review
23 100% of the transactions.

24 **Q. Do you agree with OPC witness Merchant that depreciation expense for test year**
25 **additions should not be annualized?**

1 A. No, the adjustment that I made was to annualize both the expense and the accumulated
2 depreciation. This is not "cherry picking" as Ms. Merchant called it. On the contrary, this
3 procedure has been accepted in other cases, such as the Application to Increase Water and
4 Wastewater Rates by Labrador Utilities, Inc. Docket No.: 140135-WS, and the Application
5 to Increase Water and Wastewater Rates by Sanlando Utilities, Inc. Docket No. 140060-
6 WS. OPC participated in both of those proceedings.

7 **Q. What non-used and useful adjustment is needed?**

8 A. The Used and useful plant in the original MFRS, Exhibit DDS-1, is consistent with
9 KWRU's position as explained by KWRU witness Frank Seidman. No adjustment is
10 necessary.

11 **Q. Do you agree with OPC witness Merchant's adjustments to CIAC?**

12 A. I agree with the audit adjustment as Ms. Merchant does, but do not agree with the others. I
13 will address them separately.

14 As I stated previously, the test year should be a historical December 31, 2014 test year, and
15 as such, it is not appropriate to adjust CIAC to another period. It should be reflected as a
16 year average balance, and additional CIAC for future periods should not be included. If,
17 however, an adjustment is made to include future CIAC, the repayment of CIAC Banyan
18 Grove, Florida Keys Linen Co LLC, 5713 First Avenue, CVS, El Mar RV Resort, and El
19 Mocho, in the amount of \$319,630.50 should reduce this addition. Furthermore, the
20 calculation of future CIACs by Ms. Merchant is incorrect and should not be considered as it
21 violates Section 367.081(2)(a)1 as I stated previously. Moreover, Oceanside Investors and
22 Oceanside Dockominium have been refunded the collected CIAC in the amount of
23 \$93,204.00 as they will be placed on Monroe County's assessment roll as part of the 1,500
24 EDUs reserved by Monroe County. Florida Keys Linen Co LLC will also be placed on
25 the assessment roll and the future payments will no longer be due and all prior amounts will

1 be refunded to Florida Keys Linen Co LLC. The total amount of prepaid CIAC is
2 \$129,672.00.

3 **Q. Do you agree with OPC Witness Merchant that her adjustment to increase CIAC is**
4 **consistent with how the Commission has interpreted Section 367.081(2)(A)1, Florida**
5 **Statutes?**

6 A. No, as Ms. Merchant quotes, the statute states, "...nor shall the commission impute
7 prospective future contributions-in-aid-of-construction against the utility's investment in
8 property used and useful in the public service..." This clearly states that the Commission
9 shall not impute future CIAC against used and useful plant. However, this is exactly what
10 witness Merchant is proposing.

11 **Q. Do you agree with OPC witness Merchant's adjustments to Amortization of CIAC?**

12 A. No, the PAA is correct as it is.

13 **Q. Do you agree with OPC witness Merchant's calculation of working capital?**

14 A. No, and I will address each component individually.

15 Cash - Witness Merchant agrees with the PAA, stating that cash is excessive, and that since
16 ratemaking is prospective, the balance should be normalized. This argument fails to
17 recognize the source and purpose of the cash. For example - cash increased between
18 December 2014 and January 2015 by \$427, 972 (MFRs Schedule A-18). CIAC increased
19 \$370, 440 in that same month (MFR Schedule A-18). By the end of the year, \$585,257 of
20 CIAC had been collected. The CIAC is a reduction to rate base, why would the
21 corresponding cash not be an increase? Further, Merchant describes the reason she agrees
22 with adjustments made by the Commission in the PAA. The first was to remove \$126,930
23 from an escrow account closed in March 2015 related to capacity fees. The second was to
24 remove a customer deposit escrow account balance of \$141,828. One similarity between
25 these accounts is that the utility books characterized them as escrow, however neither met

1 the legal definition of an escrow account. The terminology was for internal management
2 purposes, and has no bearing on their includability. KWRU is eliminating any reference to
3 escrow accounts to avoid future confusion. Furthermore, with respect to the capacity fee
4 account - the CIAC that generated that cash is included as a reduction to rate base. Of
5 course the cash that was collected should be included. To exclude one and not the other
6 does not meet the matching principal. With respect to the customer deposits, it is
7 nonsensical to state that the cash from customer deposits should not be included in working
8 capital, just as to say that the plant constructed by debt in the capital structure is not
9 included in rate base. The source of the funds stands on its own.

10 Finally, Ms. Merchant agrees with the Commission that the capital cash account should be
11 excluded as well. Again, purely for an internal management reason, a separate account was
12 set up to ensure that funds were available at the onset of the construction. The CIAC that
13 generated this cash is used to reduce rate base, and the cash should be included in rate base
14 as working capital. Alternatively, if a phased approach is implemented, this amount of cash
15 represents funds that were ultimately used to fund the plant expansion, and should be added
16 in Phase I as working capital available for the expansion, much as the CWIP balance is
17 included.

18 Construction Permit Litigation - Ms. Merchant has recommended that the costs included by
19 the Utility to defend its permit should be capitalized to Utility Plant in Service instead of
20 being deferred and amortized, with the unamortized balance included in working capital.
21 She states, "These costs were incurred directly by KW to obtain permission from the DEP
22 to build KW's treatment plant." Although the permit application was associated with
23 the construction, the appeal was filed against the approval of the shallow wells for disposal
24 that were allowed under the then-current operating permit. Since this would have impacted
25 the current operations, I continue to believe that it is appropriate to defer and amortize the

1 legal fees over the five year life of the permit, rather than to capitalize them.

2 Accounting Fees - Ms. Merchant recommends that the cost of reviewing and correcting the
3 company books in 2014 be excluded. The specific reasons she states are (1) that KW fails
4 to explain how restating Annual Reports provides any future benefit to customers, and (2)
5 because the utility failed to make Commission ordered adjustments from the previous rate
6 case, which necessitated the incurrence of the substantial expense. I will address the two
7 arguments in reverse. The work done in 2014 was unrelated to the Commission ordered
8 adjustments in the last rate case. Those Commission ordered adjustment were made to the
9 company books in 2008 as required. The work done in 2014 was to determine the proper
10 accounting treatment of several large construction projects that took place after the last rate
11 case, some of which were proforma adjustments in that case. Furthermore, KWRU's books
12 required restatement based on my company's review. The correct recording of capital
13 projects on the utility's books is an appropriate cost of the utility. We recognize that
14 although the work was done during the test year, the benefit is for more than the test year.
15 As is customary practice, we recommended amortizing it over a five-year period rather than
16 including the entire cost in the test year. Regarding the filing of the restated Annual
17 Reports, because of the impending audit of the adjusted books and records it is my
18 recommendation that the Reports not be filed until the audit adjustments are made.

19 Balance overall - Ms. Merchant states that the proforma working capital is a "completely
20 inappropriate balance", and does not represent the working capital needs of the Utility. She
21 further states that working capital should be supported by the Utility's actual and projected
22 balance sheet components, and compares to the 2015 balance as reported on the Annual
23 Report. I disagree with Ms. Merchant's characterization because it disregards the reason for
24 the balance during the test year and the change in the subsequent year. As I stated earlier,
25 the increase in cash and therefore working capital, was due to payments of CIAC. To the

1 extent that the CIAC is an offset to rate base, the cash should be included as an addition to
2 rate base. The cash was subsequently used, in large part, to fulfill its purpose -- to cover
3 operating costs as well as construction costs.

4 ~~WIP - TY expenditure + Permit cost~~ ^{R/N}

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

6 A. The MFRs should be adjusted for revised updated proforma O&M expenses as presented by
7 Chris Johnson. In addition, as the proforma capital projects are further along, we have
8 additional revisions to the includable proforma cost of the wastewater treatment plant, and
9 the new vacuum tank as described in Mr. Johnson's testimony, along with the associated
10 accumulated depreciation and depreciation expense should be included. These are also
11 reflected in DDS-4.

12 **Q. Do you agree with the adjustments made by the Commission staff in the PAA order to**
13 **rate case expense?**

14 A. No, not all of them. First, the Commission removed some of the fees with respect to Smith,
15 Oropeza, Hawks PL (Smith), claiming they are duplicative of the work done by Friedman &
16 Friedman. However, it is my understanding that the work is not duplicative, each has
17 specific responsibilities, and the only duplication has been with respect to participation on
18 conference calls. Smith has represented the Utility in litigation and has undertaken all
19 discovery work with no overlap by Friedman & Friedman. Smith is a local firm and is in a
20 better position to facilitate discovery and has lower cost attorneys assigned than Friedman &
21 Friedman. Any of the work is divided between the two firms. It should be noted that the
22 other parties in this case have multiple attorneys, yet there is not a presumption that their
23 work is duplicative. Furthermore, it is absolutely reasonable that the utility use two
24 attorneys to respond to the voluminous discovery requests in this case. It is common
25 practice for more than one attorney to work on a single case; it may simply not be as

1 apparent since they are usually within the same firm. The full amount of the cost from
2 Smith should be included.

3 Commission staff also removed a portion of the estimated cost for my firm to complete the
4 filing. As it turned out, the time spent through PAA was more than the time estimated.
5 However, that is moot, since we have now prepared a revised estimate of rate case expense
6 for my firm. A portion of the fees from Jeffrey Allen, P.A. were removed, in part as being
7 duplicative of MSA. However, there was no duplication. Mr. Allen provided financial
8 reports, detailed general ledgers and journal entries needed for data requests, audit, etc.
9 MSA does not maintain nor even have access to KWRU's financial records. Mr. Allen is the
10 one with that information. Finally, a portion of Weiler Engineering Corp. cost to complete
11 were disallowed, and again is moot since we have the actual costs, plus new estimates to
12 complete.

13 **Q. Do you agree with OPC witness Merchant's calculation of the Cost of Capital?**

14 A. No. First, with regard to the affiliate debt, this debt has been converted to equity. This entry
15 was made on KWRU's books on June 1, 2016. Additionally, the utility never made
16 payments on the affiliated debt, and as such should be considered paid in capital (equity).
17 Second, Ms. Merchant's statement " Until such time that the Utility can meet its burden and
18 produce documents demonstrating that it has infused any equity as opposed to debt into its
19 capital structure, I recommend that debt be used to support the cost of any pro forma plant".
20 Until the infusion of funds are needed, there is no documentation except the utility's
21 assertion, in writing, that is its intention. However, in fact the utility has converted the debt
22 to equity, and already provided funding of \$2,041,903 during 2016, as responded to in
23 Staff's Interrogatory #17. Exhibit DDS-6 provides documentation showing the entries to
24 record the additional equity. The appropriate ROE is the calculation based upon the
25 leverage formula, or 9.18%.

1 Additionally, Ms. Merchant used a long term debt cost rate of 4%. Since the current prime
2 rate is 3.5%, and the BB&T debt is .75% over prime, I have used the current cost of 4.25%
3 in Exhibit DDS-4.

4 **Q. Do you agree with OPC witness Merchant's projection of Phase II revenues?**

5 A. I disagree completely with the escalation of bills and gallonage to implement a projected
6 test year. This is very simply because it is a historic test year.

7 **Q. Please address OPC witness Merchant's proforma O&M expenses for Phase I?**

8 A. Obviously, proforma expenses included in the original MFRs are purely estimates. With the
9 passage of time, we have actual numbers upon which we may rely. It is appropriate to
10 consider this new information in projections, as Ms. Merchant does. As I describe
11 previously, phasing is not appropriate for this case. However, if the rates are phased, the
12 revised Proforma expenses as described in Exhibit DDS-4 are the appropriate level.

13 **Q. Do you agree with Ms. Merchant's comments on the inclusion of AWT costs in the last
14 rate case?**

15 A. No, I do not agree with Ms. Merchant's implied conclusion that in the last rate case the
16 utility prematurely recovered certain costs associated with the upcoming AWT. Only a
17 portion of the sludge hauling expense was allowed, and none of the estimated additional
18 chemical expenses. The rates were effective in early 2009, and still the utility incurred a net
19 operating loss for most of the subsequent years, including 2009.

20 **Q. Please address OPC witness Merchant's proforma O&M expenses for Phase II?**

21 A. I first object to the adjustments made by Commission staff in the PAA, with which Ms.
22 Merchant agrees. I will address each separately.

23 Salaries and Wages

24 The adjustment by staff was based upon an analysis of the pro-forma salaries proposed by
25 KWRU, and a finding that the salaries of two of the employees were excessive, selecting a

1 mid-point of a range of similar employees. However, the actual salaries paid to the two new
2 employees are \$46,000 (including estimated overtime), compared to the pro-forma amounts
3 requested of \$40,000 and \$50,000. This would fully support the original request by the
4 utility.

5 Payroll Taxes

6 To the extent that salaries and wages are supported, the associated payroll tax is supported.

7 Employee Pension & Benefits

8 As of April 2016, the total amount expended was \$46,274. When annualized this totals
9 \$138,822, without the cost of new employees hired after April 2016. This demonstrates that
10 KWRU's estimated total amount of \$135,587 after proforma adjustments is reasonable, and
11 the amount indicated would support the balance to the original amount requested.

12 Contractual Expenses-Accounting

13 KWRU estimated that it would incur an additional \$12,350 expense. Ms. Merchant has
14 criticized the utility's accounting, but seems unwilling to recognize that in order for the
15 utility to keep up and improve its accounting, additional cost will be incurred. Mr. Jeff
16 Allen performs all financial accounting service including preparation of tax returns. The
17 specific job duties were described consistently in response to various requests. The
18 Commission staff considered that if the additional expense were to be necessary because of
19 the plant expansion, then it would be considered. Since the utility responded that the cost
20 was unrelated to the plant expansion, it was not eligible to be included as a proforma
21 expense. This fails to recognize that the utility identified a need to improve its accounting
22 and to engage an outside accountant to perform more of the accounting. The amount
23 incurred in 2014 was \$11,550. In 2015, the expense was \$31,650, an increase of over
24 \$20,000 The utility indicated that the cost would be increasing, estimated a level, and
25 in fact incurred substantially more.

1 Management Fees - As Mr. Johnson testified, there is a tangible benefit provided by the
2 management company. As such, the expense of management by Green Fairways should be
3 included in test year revenues.

4 **Q. Do you have comments on the additional adjustments made by OPC witness**
5 **Merchant?**

6 A. Yes.

7 Sludge Removal, Purchased Power, Chemicals, and Material and Supplies Expenses

8 Ms. Merchant calculated a proportionate reduction in expense based upon Mr. Woodcock's
9 calculation of treatment level in 2016 vs the level estimated by the utility. However, as Mr.
10 Johnson and Mr. Castle testify, this variation has a nominal impact and the expenses should
11 be included.

12 General Liability Insurance

13 Based upon further review of updated numbers, I have adjusted the amount originally
14 included in DDS-2 for general liability insurance as we discovered that the monthly accrual
15 upon which we relied was incorrect. The correct amount is included in Exhibit DDS-4.

16 **Q. Do you agree with OPC witness Merchant's adjustments to Depreciation Expenses?**

17 A. I do agree to the adjustments for the audit findings. I do not agree to the adjustments due to
18 phasing, as discussed previously. I do not agree to the removal of the annualization of
19 depreciation expense for test year additions, as I explained earlier that this type of
20 adjustment has been approved in the past. With respect to the adjustment by Ms. Merchant
21 for Phase II, again I agree with the adjustment for the audit findings, annualizing the
22 expense for the test year, and expense associated with the proforma plant additions,
23 excluding the capitalization of legal fees. I have calculated the depreciation expense for the
24 new vacuum tank and the retirement differently, as our actual estimated cost of the tank is
25 different. With respect to the amortization of CIAC on projected CIAC, this is inappropriate

1 as it is not a projected test year. Finally, there should be no reduction of depreciation
2 expense due to non-used and useful, consistent with the utility witnesses, Mr. Seidman and
3 Mr. Castle.

4 **Q. Do you agree with OPC witness Merchant's calculation of Taxes Other Than Income?**

5 A. The correct amounts should be calculated based upon the correct levels of salaries for
6 payroll taxes, plant for property taxes, and revenues for regulatory assessment fees.

7 **Q. Do you agree with OPC witness Merchant's statement that the utility's filings in July
8 2016 substantially increased its original request for rate relief?**

9 A. No. Although DDS-2 and subsequently DDS-4 demonstrate that the Revenue Requirement
10 is now greater than the original request, I did not include, nor did KWRU request, higher
11 rates than originally requested. The Exhibits simply show that based upon information now
12 known or estimated, the revenues required by the utility to earn its requested rate of return
13 is higher than the request for which was applied.

14 **Q. Please comment on OPC witness Merchant's calculation of rates?**

15 A. In our application, we applied an across the board rate increase to all rates and classes of
16 customers. However, we have no objection to the Commission staff's calculation, including
17 the billing determinants and the allocation of revenue requirement between the base charge
18 and gallonage charge. This includes the reuse rates, which should at least proportionate with
19 the overall increase for all classes of customer, and not by a disproportionate increase.
20 Furthermore, as indicated in the PAA, reuse rates are generally market-based. In their
21 review, staff indicated that they had found only one other utility charging for reuse, but at a
22 much higher cost, as well as several utilities in Monroe County that provide it at no cost. I
23 understand from that FKAA, who has proposed much higher cost, has not in fact sold any
24 reuse. I agree with the staff's assessment of the market. As testified to by Mr. Johnson, and
25 as is the usual case, KWRU is dependent upon its reuse customers to provide the least

1 costly mechanism for disposal. Based on these factors, I agree that the charge of \$.93 is
2 appropriate.

3 **Q. Does that conclude your rebuttal testimony?**

4 A. Yes, it does.

1 **BY MR. FRIEDMAN:**

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

4 A Yes, I do.

5 Q Thank you.

6 A In my rebuttal I explain that the appropriate
7 test year is historical plus pro forma adjustments, as
8 was requested by the utility and approved by the
9 Commission. This is consistent with Chapter
10 25-30.430 of the *Florida Administrative Code* and Chapter
11 367.081(2)(b), *Florida Statutes*, and it is consistent
12 with Commission practice.

13 The next issue I address is the concept of
14 single phase versus a two-phased approach to
15 implementing rates to consider the pro forma plant
16 additions.

17 First, the primary plant expansion project
18 will be complete within the next several months, as will
19 the vac tank, and both before the final rates in the
20 case are implemented. So there is no longer a second
21 phase.

22 Next I explain that Ms. Merchant was incorrect
23 in her statement that the utility had not properly
24 recorded its prior rate case adjustments. It had
25 recorded them. I had also explained that the subsequent

1 work done to correct the books and records was not
2 included in rate case expense but rather separately
3 identified, and that I recommend that although the cost
4 was incurred during the test year, it should be
5 amortized over five years to recognize that it has a
6 longer term benefit than just that year.

7 Furthermore, doing the analysis of the capital
8 expenditures after the rate case meant that the utility
9 plant and CIAC additions were compiled in a way that
10 facilitated the rate case audit of those components. I
11 respond to Ms. Merchant's claim that depreciation on
12 test year plant should not be annualized by explaining
13 that this treatment is consistent with other FPSC
14 findings in other cases.

15 Ms. Merchant made several adjustments to CIAC
16 with which I disagree. First, she imputes future CIAC,
17 although this is inconsistent with my reading of Chapter
18 367.081(2)(a), Section 1, of the *Florida Statutes*, which
19 specifically prohibits it. Furthermore, she included
20 CIAC, which was in part prepaid and in part subsequently
21 refunded.

22 Next I explained that the reason why
23 Ms. Merchant's calculation of working capital is
24 incorrect is in large part because she ignores that much
25 of the increased cash was from CIAC, which is already a

1 reduction to rate base, and also excludes cash accounts
2 because of the account title rather than the fact that
3 it's cash. I then address Ms. Merchant's testimony
4 regarding the *Last Stand* litigation and the utility's
5 permit. And my position is because it pertained to the
6 utility's current operations, it should be deferred and
7 amortized rather than part of -- be part of
8 construction.

9 Regarding calculation of cost of capital, I
10 explain that the current debt cost is now 4.25 percent,
11 and also address Ms. Merchant's statement that if the
12 utility provides documentation, that that must be a
13 requirement in order to consider that the new plant is
14 financed with equity, and I provided the documentation
15 as one of my exhibits.

16 I also respond to Ms. Merchant's calculation
17 of the Phase I projected expenses. Although I disagree
18 there should be phased rates, I want to point out that
19 the utility's revised pro forma expenses should be used.
20 In response to Ms. Merchant's calculation of Phase II
21 expenses, I explain that the revised pro forma expenses
22 provided by the utility should be included.

23 I also respond to Ms. Merchant's apparent
24 implication that the cost of the advanced wastewater
25 treatment from the prior -- during the prior case, that

1 the expenses were approved, and that's not the case.
2 Most of the expenses were disallowed, and the utility
3 requested very few expenses related to AWT in that case.
4 And that's all I have for my summary.

5 **MR. FRIEDMAN:** Thank you. We --

6 **THE WITNESS:** Excuse me. I'm sorry. I did
7 have one more item. I read it out of order.

8 Finally, of course, I show that the
9 adjusted revenues would be based upon all these
10 changes in pro forma plant and expenses.

11 **MR. FRIEDMAN:** We'd tender Ms. Swain for
12 cross-examination.

13 **CHAIRMAN BROWN:** Thank you. We're going to go
14 ahead, though, and label this exhibit -- an exhibit
15 numbers, give it -- that was handed out to everyone.
16 We're going to label it 111, and it's going to be titled
17 "Amended Swain Exhibit DDS-4."

18 (Exhibit 111 marked for identification.)

19 Okay. And with that, Mr. Sayler, you may
20 begin your cross when you're ready.

21 **MR. SAYLER:** Ms. Swain -- by the way, we do
22 have several exhibits to pass out. I've provided them
23 to staff.

24 **CHAIRMAN BROWN:** Thank you.

25 **MR. SAYLER:** They can start passing those out

1 now because I've got another line of cross. It'll take
2 a while before that. So if it's not going to be too
3 confusing when they pass it out, I'll just start asking
4 my questions.

5 **CHAIRMAN BROWN:** I don't have a problem with
6 that, and we have limited time, so --

7 **MR. SAYLER:** All right.

8 **EXAMINATION**

9 **BY MR. SAYLER:**

10 **Q** Ms. Swain, you were deposed by Public Counsel
11 in this case; is that correct?

12 **A** Correct.

13 **Q** And I asked you specifically did you have any
14 changes to your testimony; correct?

15 **A** Yes, correct.

16 **Q** And isn't it true you did not provide this
17 substantive change to your rebuttal Exhibit DDS-4 in
18 your deposition; correct?

19 **A** That's correct.

20 **Q** And isn't it true that the period of discovery
21 has now ended; correct?

22 **A** Yes, it has.

23 **Q** And isn't it true now you're providing
24 supplemental direct testimony in a so-called errata;
25 correct? You are supplementing your testimony through

1 what you call an errata; correct?

2 **A** I believe --

3 **MR. FRIEDMAN:** I object to his articulation of
4 the -- of what she's actually doing. The testimony --

5 **BY MR. SAYLER:**

6 **Q** Is it an errata or a correction?

7 **CHAIRMAN BROWN:** I will allow that question.

8 **A** I believe it's a correction to my exhibit.

9 **Q** So you would agree that you are correcting
10 something after your deposition and after the discovery
11 period has ended; correct?

12 **A** Yes. I corrected it as soon as I became aware
13 of the error.

14 **Q** And you would agree this would be a
15 substantive change to this exhibit and the rate base for
16 this utility; correct?

17 **A** I think it's a -- the net effect is a very
18 minor change.

19 **Q** But you've increased rate base by nearly
20 \$300,000 with this change.

21 **A** Yes, correct.

22 **Q** And you would agree that this is new
23 information that cannot be verified or tested through
24 discovery; correct?

25 **A** The amounts are -- the exact amounts are in

1 Mr. Johnson's -- one of his exhibits. That's where I
2 was able to get the information. And the total amount
3 is already in my testimony. What wasn't done was
4 bringing it forward into my exhibits. And I think the
5 amount was -- you know, the gross amount was over
6 \$300,000, but on an average basis, it was quite a bit
7 less than that. The impact is less.

8 Q And where is that 300,000 in your testimony?

9 A That's the page 11, line 19, three hundred --

10 Q 319,000?

11 A Correct. And the detail of that is in
12 Mr. Johnson's testimony.

13 Q And isn't it true that no CIAC has been
14 refunded at this time?

15 A That's correct.

16 Q So if no CIAC has been refunded at this time,
17 then you should not be making this adjustment; correct?

18 A My understanding is the utility will have an
19 obligation to refund that money to either the customer
20 or the County. And if that's not the case, then the
21 correction should not be made. But my understanding is
22 that there's going to be a refund.

23 Q Were you here when County witness Wilson was
24 being cross-examined?

25 A Yes.

1 **Q** Did you hear him testify that the utility has
2 collected money for CIAC that the utility owes to the
3 County; correct?

4 **A** I understand that there was a dis -- I recall
5 that there was a discussion about who that money was
6 owed to, and it was that discussion that gave me the
7 impression that this is, in fact, going to be -- is
8 going to be refunded to somebody, either the customer or
9 to the County.

10 **Q** Would you agree that if the County owes money
11 to -- excuse me -- the utility owes money to the County,
12 it's not a refund because the County paid for this
13 already?

14 **A** The utility then will have double collected,
15 so they will owe a refund to somebody. If they were
16 paid -- it was determined it was already paid by the
17 County, they also received the money from the customer,
18 then somebody has got to get that money back, one or the
19 other. That's my understanding. There's a double
20 collection at this point on the books of the utility,
21 and that money has to be paid back. And, again, if I'm
22 incorrect, then the exhibit is incorrect. But that's my
23 understanding of what I've heard.

24 **Q** But you would agree that none of this has been
25 done at this time?

1 **A** Correct.

2 **MR. SAYLER:** All right. Madam Chair, this is
3 a sticky matter, so -- and we believe that this violates
4 our due process. And we'd like that these late-filed
5 changes to her testimony be struck or, in the
6 alternative, give Ms. Merchant an opportunity for
7 live -- essentially direct examination to rebut this
8 exhibit.

9 **CHAIRMAN BROWN:** Mr. Friedman.

10 **MR. SAYLER:** If they want to withdraw it, then
11 we can move on.

12 **MR. FRIEDMAN:** Well, we're not. As clearly
13 pointed out in her testimony, she deals with the issue.
14 The mistake or the correction that needs to be made is
15 that she did not flow through her analysis in her text
16 part of her testimony with those particular schedules.
17 And so the testimony is exactly right. What she's doing
18 is correcting it by flowing it through to the schedules.

19 **CHAIRMAN BROWN:** Okay.

20 **MR. FRIEDMAN:** So there's no substantive
21 change. There's nothing -- if they read her testimony,
22 they certainly didn't get any due process issues. They
23 should have known about it. If they read it, they read
24 it. If they didn't pay attention to it, that's their
25 fault, not ours.

1 **CHAIRMAN BROWN:** Mr. --

2 **MR. SAYLER:** On page 11 of her testimony,
3 starting on line 16, it says, "If, however, an
4 adjustment is made regarding these properties, then it
5 should reduce." It says, "If." And the utility --
6 Mr. Johnson earlier testified that they have not made
7 that refund, so it is improper to make this change at
8 this time.

9 **MR. FRIEDMAN:** Absolutely, that's got nothing
10 to do with it. Mr. Johnson testified that somebody is
11 going to have to get it back; whereas, Ms. Swain
12 testified it's been double collected. The money has got
13 to go to either the customer -- if they get put on the
14 assessment, then the customer should get its money back.
15 If they're not put on the assessment, then the County
16 gets the money back.

17 **MR. WRIGHT:** Madam Chairman, we will get this
18 straightened out, but I do not believe that Mr. Johnson
19 testified that somebody has to get the money back.

20 **CHAIRMAN BROWN:** Okay.

21 **MR. WRIGHT:** He testified that it's subject to
22 possibly being refunded if the customers go on the tax
23 assessment roll.

24 **CHAIRMAN BROWN:** Okay. And we can actually
25 read that, so that is not a problem. We have a court

1 reporter right here.

2 Mr. Sayler, you wanted to address?

3 **MR. SAYLER:** We would like this -- her
4 corrections to be struck from the record and her
5 original testimony to be the testimony that is used for
6 purposes of ratemaking in this case.

7 **CHAIRMAN BROWN:** And the specific request
8 would be to not enter in Exhibit 111 into the record
9 since we have that as a separate exhibit, and then leave
10 the corrections that we've already entered into the
11 record, which is just to her prefiled rebuttal
12 testimony, with those changes, not the exhibits, as is;
13 is that correct?

14 **MR. SAYLER:** Yes.

15 **CHAIRMAN BROWN:** Okay.

16 **MR. SAYLER:** Basically no changes to DDS-4.

17 **CHAIRMAN BROWN:** Right, which is a separate
18 exhibit. We've already noted that. So -- all right.
19 Staff.

20 **MS. HELTON:** May I have a couple of minutes to
21 confer with Mr. Maurey?

22 **CHAIRMAN BROWN:** Absolutely. Did you say
23 minutes or seconds?

24 **MS. HELTON:** I said two minutes.

25 **CHAIRMAN BROWN:** Okay. We're going to go --

1 take a two-minute break. And just stick around and
2 we'll get back on the record in a little bit. Thanks.

3 **MR. SAYLER:** Thank you.

4 (Recess taken.)

5 **CHAIRMAN BROWN:** Okay. We are going to go
6 back on the record, and at this point I'd like to ask
7 Ms. Helton for some guidance.

8 **MS. HELTON:** Madam Chairman, as I understand
9 it, Ms. Swain has testified that if you were to agree
10 with Ms. Merchant's testimony with respect to the
11 imputation of CIAC, the number that she listed there on
12 page 11 is the adjustment that you should make.

13 However, she is recommending that you not make the
14 adjustment. But the changes that she has made to her
15 exhibits today in DDS-4, I believe it is, effectuate --

16 **CHAIRMAN BROWN:** Which is Exhibit 111 now.

17 **MS. HELTON:** -- which is Exhibit 111, they
18 effectuate the recommendation by Ms. Merchant.

19 **MR. SAYLER:** We disagree with that. Sorry.

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

21 **MR. SAYLER:** I apologize.

22 **CHAIRMAN BROWN:** Please continue, Ms. Helton.

23 **MS. HELTON:** Effectuate the changes
24 recommended by Ms. Merchant that she did not adopt in
25 her testimony. So for that reason, staff is

1 recommending that you not -- and we're not at this point
2 yet, but that you not admit the exhibit when it comes
3 time to do so.

4 **CHAIRMAN BROWN:** Thank you.

5 **MR. SAYLER:** Madam Chair, I apologize. I
6 spoke out of turn and I interrupted. I interrupted you
7 and I do apologize.

8 **CHAIRMAN BROWN:** Thank you. I'm trying to get
9 guidance and interruptions really don't help. And I'm
10 going to go with our counsel's advice on this front, and
11 we are -- when it gets time, we will not be admitting
12 into evidence 111, which are the changes to the exhibit.
13 So if you could continue with your cross on other
14 matters.

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

16 **BY MR. SAYLER:**

17 **Q** Good afternoon, Ms. Swain.

18 **A** Good afternoon.

19 **Q** You would agree that Section 367.082 is the
20 section of the *Florida Statute* that applies to making
21 interim refunds for water and wastewater utilities?

22 **A** Correct, that's my recollection.

23 **Q** All right. And if the Commission wanted to
24 know the most accurate level of earnings that a utility
25 incurred during the time in which Phase I rates were

1 implemented, wouldn't it be appropriate to estimate the
2 best level of rate base and operating income for the
3 time that the rates were in place to see whether those
4 rates produced sufficient earnings for that period?

5 **A** I'm sorry. You're going to have to start over
6 with that.

7 **Q** Certainly. If the Commission wanted to know
8 the most accurate levels of earnings that the utility
9 incurred during the time that Phase I -- that the
10 Phase I rates were implemented, wouldn't it be
11 appropriate to estimate the best level of rate base and
12 operating income for the time that period -- for the
13 time period that those rates are in place to see whether
14 those rates produced sufficient earnings for that
15 period?

16 **A** I'm presuming you're asking specifically with
17 respect to the calculation of a potential refund or no
18 refund required under this proceeding and not some
19 subsequent overearnings.

20 **Q** That is correct.

21 **A** Okay. The Commission would look at the -- do
22 a comparison of the final rates and the PAA rates to
23 determine whether there should be a refund.

24 **Q** You mean the final rates that include the new
25 pro forma plant expansion or Phase I rates?

1 **A** Whatever that is in the final order.

2 **Q** Okay. And you would agree that this
3 Commission has the discretion to calculate a Phase I
4 revenue requirement, basically redo its PAA ordered
5 Phase I revenue requirement in this proceeding for the
6 purposes of a refund; correct?

7 **A** Yes, but I think that's an incorrect thing to
8 do. But, yes, I agree they have that discretion.

9 **MR. SAYLER:** We have an exhibit that we just
10 passed out. It's the general ledger.

11 **CHAIRMAN BROWN:** Okay. We're going to go
12 ahead and mark that at this time as -- what's the title
13 of it?

14 **MR. SAYLER:** We will say "September 2016
15 General Ledger."

16 **CHAIRMAN BROWN:** Let me make sure I have it.

17 **COMMISSIONER PATRONIS:** General letter or
18 general ledger?

19 **MR. SAYLER:** Ledger.

20 **COMMISSIONER PATRONIS:** Ledger.

21 **MR. SAYLER:** It's a pretty thick document.

22 **CHAIRMAN BROWN:** Oh, I see it. Thank you.
23 Okay. So we are going to mark that as 112 as 09/30 --
24 or "9/30 2016 General Ledger."

25 **MR. SAYLER:** Thank you.

1 (Exhibit 112 marked for identification.)

2 (Interruption.)

3 **CHAIRMAN BROWN:** All right. Mr. Sayler,
4 you've got the floor.

5 **BY MR. SAYLER:**

6 **Q** All right. Ms. Swain, would you take a moment
7 and peruse through this exhibit labeled "September 2016
8 General Ledger."

9 **A** Okay.

10 **Q** Are you familiar with this document?

11 **A** I'm familiar with the appearance of the
12 company's general ledger. I don't think I've looked at
13 this one -- this particular document in any detail.

14 **Q** Certainly. Would you look at page 1 of 19?
15 You would agree that it says, "KW Resort Utilities Corp.
16 General Ledger"; correct?

17 **A** Yes.

18 **Q** All right. And you would agree that this
19 contains basically the items that were recorded on the
20 general ledger, debits and credits, in September, along
21 with ending balances for each category that's listed
22 here?

23 **A** Yes, that's what it appears to be.

24 **Q** And you would agree that September is
25 three-quarters of the way through the year; correct?

1 **A** Yes.

2 **Q** And this would contain actual expenses that
3 the utility has incurred through the end of
4 September 2016; correct?

5 **A** This represents what was on the books of the
6 utility. I'm not certain that all the expenses are
7 reflected here because I'm not the one that prepared it.
8 And generally there's adjustments, et cetera. But other
9 than that, this represents what's on the books of the
10 utility for September.

11 **Q** All right. You would agree that it's a fairly
12 accurate representation of almost all of the expenses
13 that --

14 **MR. FRIEDMAN:** I object to his articulation of
15 that as being accurate. She doesn't keep the books of
16 the utility. I don't know how she would know whether
17 this is accurate or not.

18 **CHAIRMAN BROWN:** Mr. Sayler, can you rephrase
19 the question?

20 **BY MR. SAYLER:**

21 **Q** I will move on.

22 Please turn to page 14 of 19 under the account
23 7018000, salaries and wages. Do you see that?

24 **A** Yes, I do.

25 **Q** And you would agree that total salary and

1 wages of September 2016 is a little over \$550,000?

2 **A** That's the balance showing on the books at
3 that point in time, yes.

4 **Q** And if we wanted to do an annualization of
5 2016 salaries, you could take that amount and multiply
6 it by 1.25, by that number to get a full year?

7 **A** Yes. That would be the way you calculate an
8 annualization. But that is not necessarily the correct
9 way to do an estimate of what the total year expenses
10 are going to be. I don't know for what purpose you
11 would annualize that way.

12 **Q** Okay. Now subject to check, if you multiplied
13 \$550,000 by 1.25, you'd get approximately \$687,000;
14 correct?

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

16 **Q** All right. And would you agree that \$687,000
17 is lower than the amount Ms. Merchant used on her
18 Exhibit PWM-2 for Phase I O&M expenses for salaries?

19 **A** I don't have that with me. If you could tell
20 me what the amount is that she has, I can confirm it.

21 **Q** Subject to check, she has \$713,287.

22 **A** That's -- yes. So the books would show a
23 lower actual number than Ms. Merchant's testimony.

24 **Q** All right. So you would agree that in her
25 adjustment, her annualized adjustment actually gives

1 about \$26,000 more annualized than the utility's current
2 annualized, that calculation that we just did?

3 **A** Yes. But we're talking only about a
4 mathematical calculation, not a proper basis to
5 determine what the total expenses for salaries will be
6 for the year.

7 **Q** Fair enough. Would you please turn forward to
8 page 18 of 19, and there's a category total for
9 chemicals. That's account 7180500. Do you see that?

10 **A** Yes, I do.

11 **Q** And that balance is about \$91,000, \$91,522;
12 correct?

13 **A** Correct.

14 **Q** Same question -- well, you've heard testimony
15 that September is one of the peak months for this
16 utility?

17 **A** I heard -- I understood that it's the
18 beginning of the peak season.

19 **Q** All right. And if we were to annualize that
20 balance, you could multiply it by 1.25. But if you were
21 to accommodate the fact that September is the start of
22 the peak season, you could increase that from 1.25 to
23 1.3 for an annualization amount?

24 **A** Yes, that's the correct mathematical
25 calculation. But, again, as a basis for determining an

1 estimated amount for the year, I don't agree that that's
2 the right calculation.

3 Q Okay. Now if you were to multiply that
4 amount, the 91,000, by 1.3 instead of 1.25, you'd get
5 about \$118,000 -- almost \$119,000; correct?

6 A Subject to check, sure.

7 Q And you could certainly -- or you could
8 certainly do some annualization adjustments. Instead of
9 1.3, you could do 1.4, and that's to account for the
10 peak season; correct?

11 A Again, it's a mathematical calculation that
12 does not result in a sound basis for estimating what the
13 costs are going to be, particularly when so many of the
14 costs that the utility is going to incur on an annual
15 basis may not have been incurred in the first nine
16 months -- in the first nine months of the year.

17 Q All right. Last question on this topic. If
18 the Commission wanted to either update Ms. Merchant's
19 annualization or do their own as far as Phase I
20 expenses, they could certainly either multiply it by
21 1.3 -- or 1.25 or 1.3 or some other amount to come up
22 with their own annualization amount for a reasonable
23 amount of 2016 O&M; correct?

24 **MR. FRIEDMAN:** Objection. She's already
25 answered that question.

1 **CHAIRMAN BROWN:** I'm sorry. You lost me in
2 the question, Mr. Sayler. Could you restate it?

3 **MR. SAYLER:** Yes. My question is -- I was
4 asking her about updating. But if the Commission wanted
5 to do their own annualization amount, they could
6 multiply the expenses by 1.25 or 1.3 or whatever.

7 **CHAIRMAN BROWN:** That was asked and answered.
8 Please move along.

9 **BY MR. SAYLER:**

10 **Q** All right. Would you please take a look at
11 page 12 of this exhibit.

12 **CHAIRMAN BROWN:** 12 of 19?

13 **MR. SAYLER:** 12 of 19.

14 **BY MR. SAYLER:**

15 **Q** And you would agree that the CIAC amount
16 listed there is \$10,587,017 and change?

17 **A** Yes, that's what it says.

18 **Q** Do you see any refunds for that month?

19 **A** No.

20 **Q** Or additions?

21 **A** Correct.

22 **Q** Going back to page 2 of your rebuttal
23 testimony, line 24, you state that there's no guidance
24 or requirement in 367.081 with respect to a projected
25 test year; is that correct?

1 **A** That's correct.

2 **Q** And then you continue to reference a projected
3 test period with respect to the application for initial
4 rates; is that correct?

5 **A** Yes.

6 **Q** And when you mean initial rates, that's for a
7 utility getting a brand new certificate; correct?

8 **A** That's right. That's what I mean.

9 **Q** And is it your position that the Commission
10 does not have the authority in water and wastewater
11 cases to use a projected test year?

12 **A** No. The Commission certainly has the
13 authority -- authority to do that. The proper time
14 would be when the utility requests test year approval
15 and it's either granted or not granted.

16 **Q** You would agree that if facts and
17 circumstances arise after the filing of the utility's
18 test year request letter, that the Commission, on its
19 own motion or at the request of a party, could update
20 the test year to a projected test year?

21 **A** Not necessarily. My understanding is there's
22 a 30-day window to do that, and then that window is
23 closed.

24 **Q** And is that your opinion, or how did you form
25 that opinion?

1 **A** That's my reading of the *Florida*
2 *Administrative Code*.

3 **Q** And you're not an attorney.

4 **A** No, I'm not, but I've been working in utility
5 rate regulation for going on 40 years.

6 **Q** All right. There's a case that you
7 participated in several years back, a utility services
8 rate case in which it had a fully projected test year.
9 Do you remember that case?

10 **A** Yes, I sure do.

11 **Q** And you remember participating and helping to
12 prepare MFRs that showed a fully projected test year;
13 correct?

14 **A** Yes. And people under my responsibility
15 prepared most of the detail.

16 **Q** All right. And for that case, did the utility
17 request a fully projected test year?

18 **A** Yes, it did.

19 **Q** All right.

20 **A** And this is the only case I could find that
21 I've ever filed as projected under the Public Service
22 Commission jurisdiction.

23 **Q** All right. And you would agree, when I asked
24 you similar questions in your deposition, that you tend
25 to use historic plus pro forma expenses and plant;

1 correct?

2 **A** Correct. And now that I've had a chance to
3 research it and only find this one as projected, I
4 almost always do it that way.

5 **Q** And is one of the reasons you do it that way
6 because it costs less to the utility to do that?

7 **A** It is -- it's far simpler to use a historic
8 test year that the auditors can audit and then identify,
9 as is allowed in the statute, just pro forma plant
10 additions and associated expenses, than to look forward
11 and do a calculation and project every single component
12 and go with a fully projected test year. It's much,
13 much less expensive to do it historic.

14 **Q** Right. But keeping all the factors the same,
15 if you only update expenses and plant, that would lead
16 to a higher revenue requirement for the utility;
17 correct?

18 **A** If I only increased plant and expenses, it
19 would result in a higher revenue requirement for the
20 utility, all other factors remaining the same.

21 **Q** Now returning back to page 2, you further
22 state that the only basis for using a projected test
23 year is because of extraordinary customer growth; is
24 that correct?

25 **A** I'm sorry. Where are you directing me? Page

1 2 --

2 **CHAIRMAN BROWN:** Actually it's page 3,
3 Mr. Sayler.

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

5 **CHAIRMAN BROWN:** Line 9.

6 **MR. SAYLER:** Thank you.

7 **THE WITNESS:** Okay. I see what you're
8 referring me to.

9 **BY MR. SAYLER:**

10 **Q** Okay.

11 **A** What I'm trying to say there is that the basis
12 of the determination in Ms. Merchant's testimony, as I
13 read it, is that because there is significant or
14 exceptionally high growth in this case, and that's her
15 terminology, not what the utility contends, that this
16 qualifies for projected, and then brings up some cases
17 where the statement of exceptionally high growth was
18 used in the case, and that was the *Burkim* staff-assisted
19 rate case. And what I'm saying is that if it's found
20 that it's not exceptionally high, then that completely
21 negates that characterization and determination by
22 Ms. Merchant. Not that I think it's a substantially
23 high growth or high growth or exceptional growth or
24 anything else, that that necessitates a projected test
25 year.

1 **Q** And Mr. Seidman for the utility is projecting
2 a 7 percent per year growth rate for this utility?

3 **A** Right.

4 **Q** And in the *Burkim* case, if you do the math, it
5 was about an -- almost an 8 percent per year growth
6 rate?

7 **A** Okay.

8 **Q** And you would agree that if 8 percent is
9 considered exceptional, then 7 percent is close to being
10 exceptional?

11 **A** No, not at all. For example, a utility that
12 has a 20 percent growth rate historically and now has a
13 7 percent growth rate, that would be a very low growth
14 rate. So I don't know what the factors of the *Burkim*
15 case were in comparison, but I wouldn't characterize
16 7 percent as exceptionally high. It seems that it's
17 typical for this utility.

18 **Q** But the determination of what is or isn't
19 exceptional for the purposes of a projected test year is
20 something that is within the discretion of the
21 Commission to decide; correct?

22 **A** At the -- yes. But at the time that the
23 utility requests the projected test year and uses that
24 as evidence, then it should be granted the opportunity
25 to file a projected test year.

1 **Q** Okay. Ms. Swain, are you familiar with a
2 letter, the test year request letter that the utility
3 filed in this case?

4 **A** Yes, I am.

5 **Q** And were you aware that the utility states
6 that, quote, since the company's last rate proceeding,
7 the company has experienced increases in O&M expenses
8 such as salaries and wages, insurance, purchased power
9 and chemicals, that were not completely offset by a
10 reduction in other annual operating expenses or annual
11 index (phonetic) rates increases. And it goes on to
12 say, "The pro forma expenses are non-growth related."
13 You would agree that's what was in the company's --

14 **A** Yes.

15 **Q** Okay.

16 **A** Yes, that's what it says.

17 **Q** And you've heard testimony over the last two
18 days that part of the reason for the increased capacity
19 is for growth within the existing customer base and
20 growth from new customers that the utility expects to
21 put onto its the system once the new plant goes into
22 service; correct?

23 **A** Yes, I heard testimony that the new plant will
24 accomplish providing better service to current customers
25 and expanded service to be able to accommodate

1 anticipated increases in flows.

2 Q So at the time this utility put the Commission
3 on notice for which test year it would like to use, it
4 was telling the Commission that these pro forma expenses
5 are non-growth related.

6 MR. FRIEDMAN: I object. The letter speaks
7 for -- as much as I hate to say it, the letter speaks
8 for itself.

9 CHAIRMAN BROWN: Objection sustained.
10 Rephrase your question.

11 BY MR. SAYLER:

12 Q And you agree in the test year approval
13 letter, which approved a historic test year pro forma,
14 that was based upon the understanding that pro forma
15 expenses are non-growth related; correct?

16 MR. FRIEDMAN: I object to that articulation
17 of the letter. I don't think that anybody can say
18 exactly what the chairman at the time had in mind when
19 he approved this.

20 COMMISSIONER GRAHAM: I could tell you.

21 (Laughter.)

22 CHAIRMAN BROWN: Commissioner Graham can.
23 Mr. Sayler, I suggest you ask a more
24 open-ended question.

25 MR. SAYLER: Certainly. I'm moving along.

1 **BY MR. SAYLER:**

2 Q One of the exhibits we gave you was a copy of
3 the test year letter, approval letter. I would like to
4 have that marked as Exhibit 1 --

5 **CHAIRMAN BROWN:** 13.

6 **MR. SAYLER:** -- 113.

7 **CHAIRMAN BROWN:** Okay. I'm assuming this is
8 probably already in the record, but we'll go ahead and
9 mark that for purposes of ease here as 113.

10 (Exhibit 113 marked for identification.)

11 **MR. FRIEDMAN:** I'm sorry. That's the test
12 year letter.

13 **CHAIRMAN BROWN:** Test year approval letter.

14 Ms. Swain, do you have a copy of it?

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

16 **CHAIRMAN BROWN:** Okay. Please proceed,
17 Mr. Sayler.

18 **BY MR. SAYLER:**

19 Q And you're familiar with this test year
20 approval letter; correct?

21 **A** I've seen it. It's been quite a while.

22 Q All right. Would you please turn to page 2 of
23 that exhibit? And you would agree that the next to the
24 last sentence in the last paragraph says, "Approval of
25 the test year for filing purposes does not mean that an

1 issue regarding the appropriateness of the test period
2 could not be raised at any time during the proceeding";
3 is that correct?

4 **A** Yes, that's what it says.

5 **Q** You would agree that this letter left the door
6 open for the Commission or any other -- any party to
7 raise the appropriateness of the test year letter or
8 test year for filing; is that correct?

9 **MR. FRIEDMAN:** I object. The letter says what
10 the letter says.

11 **CHAIRMAN BROWN:** I agree, the letter does say
12 what the letter says, but I will allow the witness an
13 opportunity to opine, if she has one.

14 **THE WITNESS:** I agree the letter says what the
15 letter says.

16 **BY MR. SAYLER:**

17 **Q** And in this case, would you agree that if a
18 projected test year had been used, that that might have
19 a downward effect -- or would have reduced the revenue
20 requirement for final rates?

21 **A** No. It could have had a downward effect or an
22 upward effect. We haven't projected all the components,
23 so I can't estimate what the impact would be.

24 **Q** You would agree that when the PSC reviews a
25 utility's requested O&M expense, that the Commission has

1 quite a bit of discretion to the determine what it
2 believes reasonable O&M expenses are?

3 **MR. FRIEDMAN:** I object to the articulation
4 "quite a bit."

5 **CHAIRMAN BROWN:** Objection overruled. I'll
6 allow her to go ahead and answer the question.

7 **THE WITNESS:** Could you repeat it, please?

8 **CHAIRMAN BROWN:** Repeat it.

9 **BY MR. SAYLER:**

10 **Q** Certainly. You would agree that the
11 Commission has discretion to determine what it believes
12 is reasonable O&M; correct?

13 **A** Yes, I do.

14 **Q** And the Commission has the discretion to
15 modify or to set what it believes is the appropriate
16 O&M. Even if it disagreed with its own staff, it can
17 raise it -- increase it or decrease it.

18 **A** Yes, but it would have to be based upon the
19 facts presented in the case.

20 **Q** All right. If you would -- there was another
21 exhibit passed out, actually handed out. It's the
22 Commission's used and useful statute. It's just for
23 cross-examination purposes.

24 **CHAIRMAN BROWN:** It's just one page. We don't
25 have to mark it for identification purposes. Since we

1 already take official recognition of this statute, we
2 don't need to.

3 **BY MR. SAYLER:**

4 Q Please look at the highlighted portion or the
5 underlined portion in subsection (2)(a), paragraph one.

6 A Okay.

7 Q Let me know when you've read it.

8 A I'm there.

9 Q Okay. Would you agree that the Commission
10 has, in your years of experience, interpreted that that
11 statutory language in the first part of the sentence,
12 "The Commission shall not allow the inclusion of CIAC in
13 rate base for any utility during a base rate
14 proceeding," to mean that CIAC collected should be used
15 to offset plant in rate base?

16 A Actually most of the time, but there are times
17 when even CIAC collected is not used as a reduction
18 because it's an advance for construction that has -- is
19 associated with plant that hasn't been constructed yet
20 or it's prepaid, or many times in history it's non used
21 and useful. So usually, but there are exceptions.

22 Q Okay. And you disagree with Ms. Merchant's
23 updated CIAC for a projected test year; is that correct?

24 A Correct.

25 Q And you believe that is prohibited by the

1 statute that doesn't allow you to impute CIAC.

2 **A** Yes, because since it's not a projected test
3 year, what she's doing is, to me, contrary to my reading
4 of the statute, which does not allow that there be
5 imputation of CIAC against future connections associated
6 with the calculation of used and useful plant.

7 **Q** You would agree that her 2016 pro forma
8 projected test year is part actual, part projected;
9 correct?

10 **A** Yes.

11 **Q** All right. Now in that Lucie (phonetic) case
12 where you did a fully projected test year, did you
13 project CIAC in that case? Do you recall?

14 **A** I believe we projected all the components, the
15 CIAC, the amortization, the depreciation, the expenses,
16 the revenues, the billing components. So, yes, I think
17 so.

18 **Q** And you would agree that Ms. Merchant has
19 projected all the components for her Phase II rates,
20 revenues and rates; correct?

21 **A** No, I don't think so. I don't believe so.

22 **Q** Assuming for argument's sake that she has, and
23 I believe that she has, but assuming for argument's --
24 hypothetically if she has, then when you fully project
25 all the components including CIAC, that is not

1 prohibited by statute; correct?

2 **A** If you -- if you're using a projected test
3 year, then you need to do that. If you're using a
4 Phase I calculation and imputing CIAC beyond a historic
5 period, then I think that you're running into problems
6 with the statute.

7 **Q** Do you know whether Ms. Merchant imputed any
8 CIAC on Phase I? Because we're talking Phase II.

9 **A** Right. I don't recall if she did for Phase I.
10 And for Phase II, yes, she did. She imputed beyond the
11 test year. But I'm not sure about Phase I. I don't
12 recall. I'd have to look at it.

13 **Q** Certainly. But you would believe that the
14 Commission has the ability to review her Phase II
15 calculations, her projected test year, and come to its
16 own conclusions; correct?

17 **A** Yes. But, again, it's a test year that's not
18 approved in this case.

19 **Q** Returning back to page 11, the portion of your
20 testimony that caused the earlier dustup -- and, again,
21 Commissioners and Mary Anne, I do apologize for losing
22 my cool earlier.

23 **CHAIRMAN BROWN:** Thank you.

24 **BY MR. SAYLER:**

25 **Q** You would agree that based upon the testimony

1 of Mr. Johnson, that no CIAC has currently been refunded
2 to customers; correct?

3 **A** Yes. Well, I have in my testimony that there
4 have been some refunds. That's on my lines 21 to 23.
5 But of the \$319,000 that we're talking about, I believe
6 none of that, none of that has been refunded. That's
7 the testimony that Mr. Johnson made.

8 **Q** So page 11, line 23, you're saying it's money
9 that was refunded to Oceanside Dockominium?

10 **A** Yes.

11 **Q** But Mr. Johnson said that no CIAC has been
12 refunded; is that correct?

13 **A** I believe he was talking about the \$319,000
14 number.

15 **Q** And for lines 21 through 23, when was the
16 money refunded to Oceanside Investors and Dockominium?

17 **A** I'm not sure. I'm not sure.

18 **Q** And that would be -- that would be included in
19 the company's general lodger, correct, if there was a
20 refund made?

21 **A** Yes.

22 **Q** Do you know what year it was made, if it was
23 --

24 **A** From the context of my testimony and what I'm
25 discussing, it would be made after the test year.

1 Q So -- all right. Thank you.

2 Please refer to page 10, lines 24 and 25, and
3 then on to the next page. Here you disagree with the
4 depreciation expense calculation that Ms. Merchant made;
5 is that correct? And on the top of page 11 you describe
6 two different cases: a *Labrador* case and a *Sanlando*
7 case. Do you see those?

8 A Yes.

9 Q And do you agree that both of those -- the
10 decisions in those two cases were PAA decisions?

11 A Yes, they were. Yes, they were.

12 Q All right. And you would agree that neither
13 of these decisions were protested by any of the affected
14 parties; correct?

15 A Correct, because they ended at PAA.

16 Q So as a basis to refute Ms. Merchant's
17 testimony, you cite to two different orders that were
18 not protested; is that correct?

19 A Those were the -- those were the most recent
20 ones. I only went back to recent ones. But for a
21 number of years we filed all of our rate cases with --
22 although historic average rate base, we annualized the
23 depreciation and the accumulated depreciation.

24 Q You would agree that when the Commission makes
25 a decision in a PAA rate case, there may be many

1 adjustments that the parties and even the utility
2 disagree with; correct?

3 **A** Yes.

4 **Q** And even though they disagree with them, they
5 choose not to litigate those; correct?

6 **A** That's correct.

7 **Q** Because the cost of litigation might be --
8 outweigh the cost of any material adjustment you might
9 receive; correct?

10 **A** Correct. It could easily double or triple the
11 cost.

12 **Q** All right. Let's turn to page -- excuse me.
13 You would agree that Section 367.081 mandates that
14 depreciation expense and contributed assets shall not be
15 considered for a cost of providing utility service;
16 correct?

17 **A** Would you read that again to me? That doesn't
18 sound right.

19 **Q** Certainly. You would agree that this section,
20 Section 367.081 of the *Florida Statutes*, mandates that
21 depreciation expense on contributed assets shall not be
22 considered a cost of providing utility service.

23 **A** Yes, that's correct.

24 **Q** Let's turn to page 16, line 17, of your
25 rebuttal. In here you disagree with Ms. Merchant's

1 testimony about producing documents to show whether or
2 not something was debt or equity; is that correct?

3 **A** Yes, that's right.

4 **Q** And you state that until the infusion of funds
5 are needed -- excuse me. And you also state that until
6 the infusion of funds are needed, the utility has no
7 written documentation except its own assertions that it
8 will infuse equity to support pro forma plant. Is that
9 a correct summary of your testimony?

10 **A** Yes, that's correct.

11 **Q** Then later on in line 21 you testify that the
12 utility converted a little over \$2 million of affiliate
13 debt to equity in 2016; correct?

14 **A** Well, what I'm saying is that it converted
15 debt and provided funding of \$2 million. It's a
16 combination. And that's one of my exhibits is the exact
17 numbers.

18 **Q** Thank you for that clarification.

19 Now you would agree that a debt-to-equity
20 conversion would be considered a known and measurable
21 change as you define known and measurable; is that
22 correct?

23 **A** Yes, it is.

24 **Q** And in order to determine the appropriate
25 balance of equity that shareholders have invested as of

1 today, it would be appropriate accounting to net the
2 additional paid in capital with all the equity accounts,
3 including retained earnings; is that correct?

4 **A** Yes, that's right.

5 **Q** And you would agree that around July 15th of
6 this year KWRU paid off a loan and entered into a new
7 promissory note, No. 7, for about a million dollars;
8 isn't that correct?

9 **A** What I know is they entered into a new
10 promissory note or a line of credit for a million
11 dollars.

12 **Q** And there was also another line of credit that
13 they entered into, promissory note No. 9, for about
14 \$2.5 million. Do you recall?

15 **A** I heard that testimony.

16 **Q** Okay. So that would be a total of debt for
17 about 2.5 million of new debt; correct?

18 **A** No. That's a line of credit. The debt hasn't
19 been incurred yet.

20 **Q** So it's a line of credit for 2.5 -- or 3.5?

21 **A** That's my understanding from the testimony.

22 **Q** All right. And is it your understanding that
23 both loans have a prime rate plus .5 percent interest
24 rate, not to go below 4 percent forward?

25 **A** .75 percent, I believe. I think it's

1 .75 percent over prime.

2 **CHAIRMAN BROWN:** Mr. Sayler, that -- those
3 promissory notes are in the record already.

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

5 **CHAIRMAN BROWN:** Okay?

6 **BY MR. SAYLER:**

7 **Q** All right. So is it your testimony that those
8 two promissory notes are not debt, they're just a line
9 of credit?

10 **A** That's my understanding of the testimony, yes.

11 **Q** But that line of credit is fully available for
12 the utility to use at any time it needs; correct?

13 **A** Yes, that's correct.

14 **Q** And would you agree that this line of credit
15 is something that should be used for setting rates?

16 **A** No, I don't. I think that -- I think that
17 the -- to set the rates, the capital structure needs to
18 be set based upon what the current situation is with pro
19 forma adjustments to reflect the company's intention for
20 financing the additional pro forma plant. And the fact
21 that there's a line of credit was a responsible action
22 on the part of the utility and doesn't reflect that,
23 necessarily that it plans to use that debt. As a matter
24 of fact, I understand they'll only use it if there's an
25 emergency or a true need.

1 **Q** But the Commission, within its discretion,
2 could consider that debt for purposes of the capital
3 structure.

4 **A** I think that if the utility management is
5 stating that they're going to finance in a certain way
6 and that's a characterization and decision of
7 management, that I don't think necessarily that the
8 Commission has discretion to do something different than
9 what the management is indicating their intention is.

10 **Q** Okay. When it comes to utility management
11 discretion, when it receives CIAC as a cash
12 contribution, you would agree that the utility can use
13 it to fund its operation of plant costs?

14 **A** Right. There's no restriction on how that
15 CIAC is used. That's correct.

16 **CHAIRMAN BROWN:** Mr. Sayler, and I want to
17 alert all of the parties that we are at -- nearing the
18 two-hour countdown clock before we have to exit the
19 building. Two-hour countdown.

20 **MR. SAYLER:** I think of that song by Europe
21 whenever people say, "The final countdown," so.

22 **CHAIRMAN BROWN:** So do I.

23 **MR. SAYLER:** And you will be happy to know
24 that I'm in actually the last corner of the last lap of
25 my questions for Ms. Swain, so.

1 **CHAIRMAN BROWN:** Thank you.

2 **MR. SAYLER:** And hopefully I won't do anymore
3 spinouts.

4 **BY MR. SAYLER:**

5 **Q** All right. Have you --

6 **CHAIRMAN BROWN:** You feel poorly. I
7 understand.

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

9 **BY MR. SAYLER:**

10 **Q** Have you made a recommendation on what the
11 used and useful percentage -- excuse me. Have you ever
12 made a recommendation on what the used and useful
13 percentage for a wastewater plant should be?

14 **A** No.

15 **Q** And as the accountant or the person who
16 implements the used and useful adjustment, you basically
17 take that number that the engineer provides and plug
18 that into the ratemaking formula; correct?

19 **A** Yes, that's correct.

20 **Q** And as it relates to the used and useful, you
21 wouldn't be able to testify to the environmental cost
22 compliant nature of utility --

23 **A** Not as it -- no, not as it pertains to used
24 and useful.

25 **MR. SAYLER:** Thank you very much. I have no

1 further questions.

2 **CHAIRMAN BROWN:** Thank you.

3 Okay. Moving on to Monroe County.

4 **MR. WRIGHT:** Thank you, Madam Chairman. I
5 don't see any problem with getting done by 4:00 straight
6 up, probably earlier than that.

7 **CHAIRMAN BROWN:** Thank you.

8 **MR. WRIGHT:** You're welcome. My pleasure.

9 If I may ask, just for my housekeeping
10 purposes, the only exhibit that I wound up with
11 marked was 111 from Mr. -- from OPC.

12 **CHAIRMAN BROWN:** No.

13 **MR. WRIGHT:** Were there more?

14 **CHAIRMAN BROWN:** There were. There were two
15 more.

16 **MR. WRIGHT:** I'll get them later. Thank you.

17 **CHAIRMAN BROWN:** Okay. So we'll be at 114,
18 the next exhibit number.

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

20 **EXAMINATION**

21 **BY MR. WRIGHT:**

22 **Q** Okay. Good afternoon again, Ms. Swain.

23 **A** Good afternoon.

24 **Q** A few preliminary questions, and I asked you
25 these in your deposition. In your career, you have used

1 projected test years, have you not?

2 **A** Yes, I have.

3 **Q** You've also used historical test years. I
4 think we've established that. Correct?

5 **A** Yes. I've used about 300 historical and a
6 handful of projected.

7 **Q** Okay. You've never done an electric rate
8 case; correct?

9 **A** That's correct.

10 **Q** Nor a natural gas company rate case?

11 **A** That's correct.

12 **Q** Thank you. Have you ever used an historical
13 test year where the new rates would not be in effect
14 until the third year after that historical test year?

15 **A** I'm not sure if it's three years, but back in
16 the old days we went to hearing on every case, and it
17 could be quite a long period of time before the rates
18 went into effect.

19 **Q** I asked you that question in your deposition
20 and you said you didn't recall, that you didn't know.
21 Is that still a correct answer?

22 **A** That's my same answer. I don't recall the
23 exact time.

24 **Q** Do you recall specifically whether you ever
25 used an historical test year where the new rates would

1 not go in effect until the third year following that
2 historical test year?

3 **A** No. I don't recall that exact period of time,
4 the exact period of time.

5 **Q** Okay. Thank you. Will you agree that an
6 appropriate definition of fair, just, and reasonable
7 rates would be rates that properly reflect the cost of
8 providing service by the utility apportioned among the
9 utility's customers in a way that reflects the cost to
10 serve?

11 **A** Yes. Yes.

12 **Q** Before I get back into my own cross, I do have
13 a couple of follow-up questions on some questions that
14 Mr. Sayler asked you.

15 I think that in responding to some questions
16 by Mr. Sayler regarding CIAC, you made the statement
17 that there has been a double collection of CIAC at this
18 point. Do you recall making that statement and -- yeah,
19 question mark?

20 **A** Yes, I do.

21 **Q** What is the basis for your assertion that
22 there has been a double collection of CIAC for any
23 connection to KW's system?

24 **A** The reason -- well, the reason why I said that
25 is that unless a refund is made, there will -- there

1 will have been a double collection of CIAC because at
2 some point -- at some point the payment is going to be
3 made by the customer either to the County or to the
4 utility. At this point it's paid to the utility. If it
5 also pays to the County, then there will be a double
6 collection.

7 Q How do you know that both those things are
8 going to happen?

9 A That's my understanding of the testimony.

10 Q Whose testimony?

11 A Mr. Wilson's testimony.

12 Q Were you here for his cross-examination?

13 A Yes.

14 Q Did you not hear him say that it's the
15 County's position that customers who have already paid
16 CIAC to the County -- sorry -- to KWRU are not going to
17 be put on the tax roll?

18 A I'm not -- so my understanding is therefore
19 the County has paid and the customer has paid, and so
20 KWRU would have to pay the customer back.

21 Q Isn't it true that that would only happen if
22 it were for the same ERC or EDU?

23 A Yes. But we -- I used an exhibit in
24 Mr. Johnson's testimony that gave a list of who those
25 customers are.

1 Q Is that CAJ-10?

2 A Yes, CAJ-10, pages 1 and 2 of 4.

3 Q I want to come back to that because it fits
4 better in the logical flow of my cross. But for the
5 time being I want to ask you this question: If a
6 customer who has already paid CIAC to KWRU is not later
7 allowed to go onto the tax assessment roll, then won't
8 you agree that there would be no double collection for
9 that customer's CIAC?

10 A I guess I need to clarify, and maybe the
11 question would have been better asked of Mr. Johnson.
12 But my understanding is at this point the County has
13 paid and the customer has paid. The customer has only
14 paid once but the utility has collected twice, and that
15 money has to be refunded to somebody.

16 Q Can you identify any specific customer who's
17 not on the tax roll for whom the County's paid EDUs of
18 capacity applies?

19 A Well, my understanding is that the customers
20 that were identified that totaled my \$319,000 number are
21 those that are subject to refund and would therefore
22 represent customers who could go on the tax roll but
23 have not yet.

24 Q Do you understand Mr. Johnson's testimony to
25 be that they may be subject to refund?

1 **A** No. My understanding is they are -- those
2 monies are subject to refund. What's at question is who
3 that money goes to, either the customer or the County.
4 That's my understanding of Mr. Johnson's testimony and
5 Mr. Wilson's testimony.

6 **Q** I'm going to repeat the previous question that
7 is this: If a customer has paid the CIAC to KWRU and if
8 that customer is not allowed to go on the tax roll, then
9 isn't it true that there would be no double collection
10 for that customer's CIAC?

11 **A** I believe that money then would have to be
12 repaid to the County.

13 **Q** Couldn't the County use it for other potential
14 future customers?

15 **A** The County could certainly negotiate with the
16 utility and have that applied some other way. But those
17 specific payments have been earmarked for certain
18 customers, and at some point that's got to be remedied.

19 **Q** Can you identify any customer on CAJ-10 for
20 whom the County's payment of the \$4 million plus or
21 minus, the payment for the 1,500 EDUs, has been
22 specifically earmarked for that customer?

23 **A** What I have is a list of customers who have
24 paid that I understand are already included in the
25 payment from the County. I don't have the -- I don't

1 have a list from the County. I don't have the
2 correlation with the County. All I have are a list of
3 customers who have paid that are already potentially
4 going to be offered an opportunity to go on the tax
5 roll.

6 Q What is the basis for your statement that the
7 County has paid the CIAC for any of the customers listed
8 on CAJ-10?

9 A That's my understanding of the testimony.

10 Q Whose?

11 A That's my understanding of Mr. Johnson's
12 testimony and the cross-examination of Mr. Wilson and,
13 of course, prior communication with the utility.

14 Q Okay. Let's turn to a subject that you and I
15 both know a lot about, rates. You sponsored the rates
16 in this case; correct?

17 A The rates included in the minimum filing
18 requirements, I did.

19 Q And you calculated those rates; correct?

20 A Yes, I did.

21 Q You calculated those using the sales units
22 from 2014; correct?

23 A Yes, I did.

24 Q Whose decision was it to utilize those billing
25 determinants from 2014?

1 **A** That is, by definition, a historic test period
2 billing schedule.

3 **Q** Well, by "definition," what -- whose decision
4 was it to use those rates? Or was the decision simply
5 made to use an historic test year and that it follows
6 from the decision to use an historic test year that you
7 would use the billing determinants from that 2014 year?

8 **A** That's correct.

9 **Q** Did you ever discuss with the utility the
10 possibility of using adjusted sales units to calculate
11 the rates in this case?

12 **A** No. No. That's outside the historic test
13 year.

14 **Q** You testified at page 2 of your testimony
15 that -- I've got lots of paper -- thank you -- that
16 using a 2014 historical test year is appropriate for
17 setting rates in this proceeding; correct? It's a
18 combination of lines 10 through 12.

19 **A** Yes.

20 **Q** You would agree that the purpose of a test
21 year for setting rates is to provide a period that is
22 going to result in or serve as evidence of the
23 anticipated financial condition of the utility during
24 the time that the rates are in effect.

25 **A** That is part of it. It is the basis for

1 determining what reasonable costs are as well for the
2 calculation of the revenue requirement once it's
3 adjusted.

4 **Q** I will read to you the question and answer
5 that Mr. Sayler posed to you and the answer that you
6 gave in your deposition.

7 **Quote, Mr. Sayler:** Okay. Would you describe
8 the purpose of a test year for setting rates?

9 **Answer:** Yes. The test year is intended to
10 provide a period that is going to result in a -- or
11 serve as evidence of the anticipated financial condition
12 during the time that the rates are in effect.

13 Do you stand by that statement or not?

14 **A** Yes. I think what I said is partially, and I
15 added adjusted with adjustments to my deposition
16 testimony.

17 **Q** Well, you're talking now about the adjustments
18 to rate base and O&M expenses; correct?

19 **A** Yes. Whenever we file an historic test
20 period, you won't see in any of my cases a filing that
21 doesn't include adjustments, whether there's pro forma
22 or not. There's corrections, there's deferrals and
23 amortizations, there's a number of adjustments. So
24 adjusted, yes.

25 **Q** The question that I asked is what's the

1 purpose of a test year? Do you stand by your answer in
2 your deposition or not?

3 **MR. FRIEDMAN:** I object to the implication
4 that her deposition testimony is different than what
5 she's testifying to.

6 **CHAIRMAN BROWN:** Well, objection overruled.
7 I'll allow her to answer the question.

8 **THE WITNESS:** Yes, comma, partially with
9 adjustments.

10 **BY MR. WRIGHT:**

11 **Q** Would you agree that sales during the time
12 that rates will be in effect are an important factor in
13 determining the utility's financial condition during any
14 given time period?

15 **A** Yes. Depending on the purpose, but, yes.

16 **Q** Well, will you agree that if the utility's
17 total costs or, say, the technical term, revenue
18 requirement is \$3 million a year, will you agree that
19 its financial condition will be different if it sells
20 200,000 or 200 million gallons worth of service or
21 300 million gallons worth of service?

22 **A** To some extent. Remember that we're billing
23 based on water consumption, not on sewage flow. So
24 there's not a direct correlation with the revenue,
25 depending on the flows. But if the water consumption

1 changes, it will have an impact on the revenues at a
2 utility.

3 **MR. WRIGHT:** I'd like to ask the staff to hand
4 out two exhibits, please. They have them.

5 **CHAIRMAN BROWN:** Sure. Staff. And if you --
6 staff, if I could ask staff to walk fast. We're getting
7 to the hour mark. I was just advised that we actually
8 have to have all of our stuff out of here by 4:30, so.

9 We will be starting at 114. Would you
10 like them labeled at this time?

11 **MR. WRIGHT:** Yes, ma'am, I would, but I
12 misplaced the copies that I had for myself, and I need
13 to see them before we mark them.

14 **CHAIRMAN BROWN:** Okay. That's fine. Okay.

15 **MR. WRIGHT:** I'd like the one that is
16 described as example calculation showing impact of using
17 different sales units to calculate rates marked as 114.

18 **CHAIRMAN BROWN:** Okay. We will mark that as
19 114.

20 (Exhibit 114 marked for identification.)

21 **MR. WRIGHT:** And the other, which is example
22 calculation showing impact of using a fixed base year
23 rate and impact on total revenues with sales/gallongage
24 growth, as 115.

25 **CHAIRMAN BROWN:** Okay. We will mark that as

1 115.

2 (Exhibit 115 marked for identification.)

3 **MR. WRIGHT:** These are illustrative,
4 demonstrative exhibits and that's all they are.

5 **CHAIRMAN BROWN:** Okay.

6 **BY MR. WRIGHT:**

7 **Q** I'd like you to look at the one that's now
8 been marked as 114, Ms. Swain.

9 **A** Okay.

10 **Q** If you'd turn to the one page of the exhibit,
11 the little table there, it shows that the revenues to be
12 collected annually are \$3 million, and the wastewater
13 gallons treated and charged for in the base year,
14 200,000 kgals. That's 200 million gallons or 200,000
15 thousand gallon sales units. Are you with me so far?

16 **A** Yes.

17 **Q** The growth rate I assumed here is, in fact,
18 the growth rate -- in this example is, in fact, the
19 growth rate attested to by Mr. Seidman and Mr. Johnson,
20 7.06 percent per year. The base -- if you use the
21 gallonage in the base year, 200,000 kgals, the rate
22 would be \$15; correct? It's 3 million divided by
23 200,000.

24 **A** If you strike the words "gallons treated" and
25 just refer to gallons charged, that's correct.

1 **Q** I'm perfectly happy to modify the exhibit to
2 make that reflection. Okay? And then if there were
3 growth of 7.06 percent in the first year after the base
4 year, the gallons charged would be 215,200, and that
5 would result in an average cost per kgal of \$13.94;
6 correct?

7 **A** Not necessarily.

8 **Q** I'm sorry.

9 **A** Well, mathematically it comes out to that.
10 But because of the way the rates are charged -- for
11 example, residential customers are charged a maximum of
12 10,000 gallons per month, so that -- this may not equate
13 to billable gallons.

14 If you're talking about everything within that
15 cap, I'm not sure that mathematically you'd come up with
16 this.

17 **Q** Well, won't you agree that with the correction
18 you made to the header of that column, i.e. gallons
19 charged, that that is exactly the result? That's
20 gallons charged. That's not capped, uncapped, or
21 anything else. That's gallons charged, as you quite
22 reasonably suggested we change the column heading.

23 **A** Right. But what I'm saying is that then you
24 can't multiply it by 7.06 percent and presume that that
25 mathematically is going to come up to how many gallons

1 are chargeable because not everything is chargeable.

2 Q So it might be a little more than 7 percent or
3 a little less than 7 percent?

4 A If you multiply the actual gallons chargeable,
5 it will be less than the 215,000 if there's an increase
6 in gallonage of 7.06 percent because not all of it is
7 chargeable. And I don't have the information to do the
8 calculation, but --

9 Q If the number of customers increased by
10 7.06 percent and the relationship of chargeable to
11 unchargeable remained the same, then wouldn't the result
12 be as depicted here?

13 A I can't say that for certain.

14 Q Let's look at 115, please. Let's start by
15 taking the word "treated" out of the column heading
16 around the middle of the page. So it'll just be gallons
17 charged.

18 If we start with a base year rate total kgals
19 charged -- oh, let's change the assumption lines from WW
20 gallons treated to WW gallons charged also. And we'll
21 do that -- let's do that on 114 as well.

22 **CHAIRMAN BROWN:** Okay.

23 **BY MR. WRIGHT:**

24 Q So in the base year, if the revenue
25 requirement is \$3 million and the gallons charged is

1 200,000 kgal or 200 million gallons, the base year rate
2 would be \$15 per kgal; right?

3 **A** Correct.

4 **Q** And if there was growth in gallons sold and
5 you held the rate the same, that would grow by
6 7.06 percent in the example from 3 million in the base
7 year to 3.228 million in the base year plus one and so
8 on; correct?

9 **A** No, and for the same reason I disagree. The
10 -- not all of those gallons when grown are going to
11 equate to billable gallons. So the mathematics aren't
12 going to work.

13 **Q** Again with the specification that you
14 suggested that these are gallons charged, don't you
15 agree that that's right?

16 **A** No, I don't. The -- a substantial amount of
17 the company's revenues are coming from residential
18 customers whose gallons, billable gallons are capped at
19 10,000 gallons.

20 **Q** Again --

21 **A** So you can't -- 7 percent growth in 200,000 is
22 not going to result in necessarily 215,000 billable
23 gallons, so you can't make that presumption.

24 **Q** Aren't you trying to apply the 7 percent
25 growth in gallons to the gallons treated?

1 **A** No. No.

2 **CHAIRMAN BROWN:** Could you speak again so --

3 **THE WITNESS:** Yes, sorry. Mathematically --
4 the answer is no. And, again, that's -- mathematically
5 it doesn't work with the rates as they are.

6 **BY MR. WRIGHT:**

7 **Q** Again, if the relationship between gallons
8 billed and gallons treated stays the same and the growth
9 is in the number of customers, don't you agree that
10 these numbers are -- in relative terms and exemplary
11 terms depict the impact on the company's revenues?

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

13 **Q** If there were no cap on residential sales,
14 would you agree that the increases would be as depicted
15 on gallons charged per residential service?

16 **A** Yes, if the gallons were due entirely to an
17 equal growth in customers and so the base charge is also
18 increased by that same 7.06 percent as the gallonage,
19 then mathematically it would calculate to that.

20 **Q** Thank you.

21 Back to page 2. And in general, your
22 testimony is that in this case you believe the
23 Commission should use a 2014 historic test year with pro
24 forma plant additions and pro forma increases and
25 expenses; correct?

1 **A** Correct.

2 **Q** If the Commission, the Florida Public Service
3 Commission were to approve such pro forma increases in
4 rate bases -- rate base and expenses, would there be
5 anything wrong, as a matter of regulatory policy, with
6 the Commission making simple pro forma adjustments to
7 sales?

8 **A** Yes.

9 **Q** What's wrong with that?

10 **A** The guidelines for an historic test year
11 specifically state plus 24 -- up to 24 months of pro
12 forma plant unless it's proven to be longer. It doesn't
13 say anything about revenues or sales or CIAC or anything
14 else. Specific to the cost associated with new plant.

15 **Q** Help me out with the legal status as you
16 understand them for -- as you refer to the term
17 "guidelines." What guidelines are those?

18 **A** Well, I'm talking about the Florida statute.

19 **Q** Are you referring to the provision in
20 367.081 that says, "For purposes of such proceedings,
21 the Commission shall consider utility property,
22 including land acquired or facilities constructed or to
23 be constructed within a reasonable time in the future,
24 not to exceed 24 months after the end of the historic
25 base year"?

1 **A** Yes.

2 **Q** Does it say anything in there about not using
3 sales for the period in which rates will be in effect?

4 **A** No, and I think that's my point. It doesn't
5 state that.

6 **Q** It doesn't prohibit it, does it?

7 **A** I don't read anything that prohibits it, but I
8 don't read anything there that allows it. And
9 Commission practice has been to -- when using historic
10 test year plus pro forma adjustments, it looks at plant
11 and the associated costs of the plant.

12 **Q** Okay. I'm ready to move back to our
13 discussion on CIAC. At page 11 of your testimony, we'll
14 probably be here for a few minutes, at lines 17 through
15 19 you talk about repayment of CIAC to Banyan Grove,
16 Florida Keys Linen -- I don't know if 5713 First Avenue
17 is its own company, I guess it is -- CVS, El Mar, and El
18 Mocho in the amount of \$319,630.50.

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

20 **Q** Okay. Has any such repayment been made?

21 **A** No.

22 **Q** What basis, if you know, does KWRU have to
23 make any such repayment?

24 **A** As I understand from the testimony and my
25 conversations with the utility, if they kept this money,

1 it would represent a double payment.

2 Q That's only true, isn't it, if they also kept
3 money from the County for the same exact ERCs?

4 A Correct.

5 Q Is there anything in the company's tariff that
6 says it can simply repay money to a customer?

7 A I think the utility is required to repay money
8 to a customer that it is not owed.

9 Q Again, that's -- I think that's -- sorry. But
10 it would only be owed if there were this hypothetical
11 double collection; correct?

12 **MR. FRIEDMAN:** I object to the question. He's
13 asked the question a million times in different ways.
14 Let's move on.

15 **CHAIRMAN BROWN:** We are getting down a
16 repetitive line of questions. That was already asked by
17 Mr. Saylor.

18 **BY MR. WRIGHT:**

19 Q At lines 21 and 24 on page 11, you testify
20 that a couple of Oceanside entities, Oceanside Investors
21 and Oceanside Dockominium, have been refunded \$93,204;
22 correct?

23 A Yes, I see that.

24 Q I'd like to ask you to look at Exhibit CAJ-10,
25 which is already in the record. It's an exhibit to

1 Mr. Johnson's rebuttal, as I'm sure you know. I have --
2 I do have an extra copy I can have somebody hand to you.

3 **A** That's the one -- I have that one.

4 **Q** Good deal. Okay. Do you have the exhibit
5 now?

6 **A** I have that.

7 **Q** Okay. If you look on page 2 of 4 of Exhibit
8 CAJ-10, three lines from the bottom there's an entry for
9 Oceanside Investors. It indicates that they, on
10 March 27th, 2015, paid \$67,095. Do you see that?

11 **A** Yes, I do.

12 **Q** Okay. Flip over to page 3 of 4, also near the
13 bottom there's an entry for Oceanside Marina Condominium
14 Association showing that on January 25th, 2016, my
15 birthday, they paid \$25,920; correct?

16 **A** Yes.

17 **Q** I added those two numbers together and I got
18 \$93,015. Do you think that's pretty much the same as
19 your 93,204?

20 **A** Yes. Those are the two that I understand were
21 to -- related to my total.

22 **Q** Mr. Johnson testified that no refunds have
23 been made. Do you have any evidence that that
24 \$93,204 was, in fact, refunded to customers?

25 **MR. FRIEDMAN:** I object. I think we've gone

1 through all of this. This is the exact question that
2 you asked him. They've asked at least 20 times about
3 whether the money has been refunded to various
4 witnesses.

5 **MR. WRIGHT:** Mr. Chairman --

6 **COMMISSIONER GRAHAM:** I've heard them try to
7 ask the same question ten different ways.

8 **MR. WRIGHT:** Mr. Chairman, we have directly
9 contradictory testimony by Mr. Johnson and Ms. Swain.
10 I'm trying to get to the bottom of it. It's that
11 simple.

12 **MR. SMITH:** And it was asked by Mr. --

13 **COMMISSIONER GRAHAM:** I'll allow it to
14 continue, but let's just get to the point.

15 **BY MR. WRIGHT:**

16 **Q** Well, Mr. Johnson testified that no refunds
17 have been made. You say that \$93,000 has been refunded.
18 My question to you is what evidence do you have that any
19 such refund was made, if you have any?

20 **A** What I based my rebuttal testimony on was the
21 information that I received from the utility that
22 indicated to me that that payment had been made.

23 **Q** Did someone just tell you that?

24 **A** Repeatedly.

25 **Q** Did whomever told you that explain what legal

1 basis KWRU had for supposedly making such refund?

2 **A** No, they did not.

3 **Q** Did someone at KWRU tell you that customers
4 who have paid CIAC will be placed on Monroe County's tax
5 assessment roll?

6 **A** No, they did not.

7 **Q** Would you agree that that's a decision --
8 that's within the discretion of Monroe County?

9 **A** I don't know.

10 **Q** I have just a couple of questions for you
11 about reuse.

12 On page 20, line 20, of your rebuttal
13 testimony you testified that reuse rates are generally
14 market based.

15 **A** Okay.

16 **Q** That is a correct characterization of your
17 testimony, isn't it?

18 **A** Yes, it is. And could you tell me again where
19 you're looking?

20 **Q** Page 20, line 20.

21 **A** Okay. Thank you.

22 **Q** You bet. Is the reason that they're generally
23 marked based because there are generally competitive
24 options available to customers, either their own water
25 or buying potable water for their purposes?

1 **A** Yes. And also that generally there are very
2 few other markets for reuse rates or reuse being
3 provided.

4 **Q** I have a few questions for you about CIAC and,
5 for good or evil, we're going to be back on page 11.

6 A couple of predicate questions. I think
7 you've already testified -- and I'm going to be quick,
8 but these are appropriate predicate questions for my
9 next brief line.

10 You already testified that the new plant in
11 service, the new wastewater treatment plant and the air
12 vac tank will be in service sometime in early 2017;
13 correct?

14 **A** Correct.

15 **Q** And you're using an historic test year of
16 2014; correct?

17 **A** Correct.

18 **Q** So the plant is going to be in service the
19 third year after your historic test year; correct?

20 **A** Correct. Sorry. I have to add in my head.

21 **Q** I can relate.

22 You make the statement on page 11 of your
23 testimony that it's not appropriate to adjust CIAC in
24 this case; correct?

25 **A** Correct.

1 **Q** So your testimony is that it's okay to add
2 rate base of more than \$4 million, I guess more than
3 \$5 million, but not to add any CIAC that might be
4 collected in 2015, '16, or '17. Is that your testimony?

5 **A** Yes, it is, and that's consistent with Florida
6 statute.

7 **Q** What is the CIAC at the company's tariffed
8 rate per ERC?

9 **A** I believe it's \$2,700.

10 **Q** What is the product -- and I can tell you, but
11 you can do the calculation too -- what is the product of
12 329 ERCs times \$2,700?

13 **A** I'd appreciate it if you would do the math for
14 me.

15 **Q** \$888,300.

16 **A** Okay.

17 **Q** And that's -- and there's evidence in the
18 record to support the company's estimate of 329 ERCs per
19 year growth. So \$888,000 a year of additional CIAC, in
20 two years that'd be 1.77 million. In three years it'd
21 be around 2.5 million; correct?

22 **A** I'll accept that.

23 **Q** And you would just ignore that in setting the
24 utility's rates?

25 **A** Yes, absolutely. And I would ignore it

1 because it's not Commission practice, and it's
2 specifically not allowed by my reading of the Florida
3 statute that says, "Nor shall the Commission impute
4 prospective future CIAC against the utility's investment
5 in property used and useful in the public service."

6 **Q** So you would advise this Commission that where
7 a utility adds \$5 million in plant in service, it would
8 be proper ratemaking to ignore an extra 1.7 to 2.5 --

9 **MR. FRIEDMAN:** I object. That's just a
10 different way of asking the same question he just asked.

11 **COMMISSIONER GRAHAM:** That was asked and
12 answered.

13 **MR. WRIGHT:** I'm done. Thank you.

14 **COMMISSIONER GRAHAM:** Okay. Who's next?
15 Ma'am?

16 **MS. AKTABOWSKI:** I have no questions for
17 Ms. Swain.

18 **COMMISSIONER GRAHAM:** Okay. And staff.

19 **MS. MAPP:** Staff only has a couple of
20 questions.

21 **EXAMINATION**

22 **BY MS. MAPP:**

23 **Q** Good afternoon, Ms. Swain.

24 **A** Good afternoon.

25 **Q** Can you please turn to page 5 of your rebuttal

1 testimony.

2 **A** Okay. I'm there.

3 **Q** On lines 1 through 6 you disagreed with
4 Witness Merchant's projecting beyond KWRU's 2014 test
5 year.

6 **A** Okay.

7 **Q** Would you agree that nine of the 12 months of
8 2016 are known and measurable?

9 **A** Yes, they are.

10 **Q** And if the Commission were to consider
11 projections for the purpose of setting rates on a
12 prospective basis, would you agree that annualizing the
13 nine months of 2016 would be a more -- would be more
14 appropriate than Ms. Merchant's 5 percent per year
15 projections?

16 **A** I don't understand that question. Please ask
17 me again.

18 **Q** Instead of the recommendation that Witness
19 Merchant is making that you disagree with in your
20 testimony on page 5, would it be appropriate for the
21 Commission if they were to decide to annualize the nine
22 months that are currently known and measurable of 2016
23 for the purpose of setting rates?

24 **A** The -- I'm not necessarily agreeing with your
25 characterization of the projections, but I completely

1 disagree that annualizing 2016 is going to produce
2 evidence of -- or a calculation of estimated costs for
3 any purpose. It's not a good -- it's not a good period.
4 There are expenses that the utility is anticipating that
5 it's going to have to expend that have not been expended
6 yet. And if you're talking about pro forma, they
7 haven't even begun to expend the costs associated with
8 the pro forma plant.

9 **Q** Thank you. One moment.

10 Do you feel the same way about billing
11 determinants?

12 **A** That was the basis of my confusion since this
13 was related to revenue, and I thought the question you
14 were asking me was about expenses.

15 The -- certainly 2016 is going to be better
16 than a complete estimate, but, again, it completely
17 fails to recognize any variation in the last several
18 months of the year. So, for example, if it happens to
19 be the wettest period of time and the use of water goes
20 down, the utility's revenues will be dramatically
21 decreased at the end of the year compared to the first
22 nine months of the year. So I don't think it's a good
23 basis for any type of estimate or annualization. And
24 then the obvious that I don't think it should be done at
25 all. We're looking at a historic test period and we

1 shouldn't be annualizing or projecting revenues.

2 **MS. MAPP:** I have no further questions for
3 this witness.

4 **COMMISSIONER GRAHAM:** Okay.

5 Commissioners?

6 Redirect.

7 **MR. FRIEDMAN:** Thank you.

8 **EXAMINATION**

9 **BY MR. FRIEDMAN:**

10 **Q** Ms. Swain, would you first look at the
11 hypotheticals that the County -- 114 and 115.

12 **A** Okay.

13 **Q** This schedule, do you see any recognition in
14 this schedule for any increase in expenses that the
15 utility would incur at the same time that this increased
16 revenue would run?

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

18 **Q** And that would be -- let me ask you the same
19 question with regard to Exhibit 115. When it shows the
20 revenues of the utility, does this schedule purport to
21 show the increased expenses that the utility may have
22 incurred?

23 **A** No, it doesn't.

24 **Q** Do you think this -- these schedules have any
25 probative value in analyzing the rate increase?

1 **A** No, not at all.

2 **Q** It's purely theoretical, is that what you're
3 saying? These schedules are just --

4 **A** It's not only theoretical but mathematically
5 incorrect.

6 **Q** Let me ask you to look at the GL that --
7 Exhibit 112.

8 **COMMISSIONER GRAHAM:** Which exhibit?

9 **MR. FRIEDMAN:** 112.

10 **COMMISSIONER GRAHAM:** Okay.

11 **BY MR. FRIEDMAN:**

12 **Q** If you would go to page 12 of 19. Do you
13 remember the questions Mr. -- I believe it was
14 Mr. Sayler asked you about the debt instruments and
15 whether the total amount of the potential that the
16 utility could draw should be used?

17 **A** Yes, I remember.

18 **Q** Would you look at page 12, and do you see the
19 amounts of debt that the utility had at this point,
20 particular point in time? Can you see those?

21 **A** Yeah. At that point -- at this point in
22 time -- or the point in time that the general ledger was
23 run, the balance of notes payable account 2244000, which
24 is the first one on page 12, is -- it looks like
25 \$991,666. And below that is account 2245000, BB&T loan,

1 741,000.

2 Q So I assume if you add those two numbers
3 together, that's the debt that they have based on those
4 debt instruments?

5 A Correct.

6 Q And does this GL also reflect the capital
7 investment?

8 A And by capital investment, you're talking
9 about the equity contributions?

10 Q That's correct, from the shareholders. It's
11 on the same page.

12 A Yes, I see it. Yeah.

13 Q What's that amount?

14 A Well, you've got a combination of things, but
15 the one called "Capital Investment" is \$2,300,205.

16 Q Okay. Are you aware of whether the utility
17 has made additional capital investment since then?

18 A Yes. In October it made another
19 \$1.1 million contribution, capital contribution in
20 equity.

21 Q Do you remember way back at the beginning we
22 had questions from Mr. Sayler about the question of
23 extraordinary growth?

24 A Yes.

25 Q All right. Are you familiar with the growth

1 of this utility in the 2007 rate case, whether it was
2 greater or less?

3 **A** Yes. I believe it was about more like
4 10 percent at that time.

5 **Q** Okay. So does that support your response to
6 Mr. Sayler that extraordinary is a relative term?

7 **A** Yes, absolutely. And I do have reference to
8 that in my rebuttal testimony, the growth rate.

9 **MR. FRIEDMAN:** No further questions. Thank
10 you.

11 **CHAIRMAN BROWN:** Okay. On to exhibits. Thank
12 you, Commissioner Graham, for helping out.

13 This witness has a few exhibits attached,
14 and --

15 **MR. FRIEDMAN:** She does.

16 **CHAIRMAN BROWN:** And please note that 111 is
17 not being entered into the record. So we will be --
18 with your request, we will be, and seeing no objection,
19 we will move 79 through 81 into the record as is.
20 Seeing none, we're going ahead and doing that.

21 (Exhibits 79 through 81 admitted into the
22 record.)

23 Okay. And then we have -- Office of
24 Public Counsel, you have a few exhibits.

25 **MR. SAYLER:** Yes, ma'am. We would like to

1 move Exhibit 112 and 113 into the record.

2 **CHAIRMAN BROWN:** See no objections, we're
3 going to go ahead and move 112 and 113 into the record.

4 (Exhibits 112 and 113 admitted into the
5 record.)

6 County, you have 114 and 115, which were
7 demonstrative, but you used them.

8 **MR. WRIGHT:** We'd ask to move them into the
9 record, please.

10 **MR. FRIEDMAN:** I object to them because it's
11 -- the witness testified they have no probative value
12 because they only address one-half of the issue, which
13 is revenues. It completely ignores any increases in
14 expenses and, therefore, it's got no probative value
15 whether it's demonstrative or otherwise.

16 **MR. WRIGHT:** They're offered to show the
17 impact of growth on rates in subsequent years and also
18 to show the impact on revenues only. They are what they
19 are. She even acknowledged during my cross-examination
20 that if you remove the residential gallonage cap, they
21 would accurately depict the impacts. I think you can --
22 at a minimum, you can let them in and give them the
23 weight they deserve.

24 **CHAIRMAN BROWN:** I was actually going to just
25 use that line. I was going to say that we will go ahead

1 and move them into the record and give them the weight
2 that it's due, given the amount of time of cross spent
3 on those two exhibits.

4 (Exhibits 114 and 115 admitted into the
5 record.)

6 Okay. Staff -- at this point, would you
7 like this witness excused?

8 **MR. FRIEDMAN:** I think we're done.

9 **CHAIRMAN BROWN:** We are.

10 **MR. FRIEDMAN:** Stick me with a fork.

11 **CHAIRMAN BROWN:** We've got a few exhibits that
12 we have to address with regard to staff's exhibits,
13 starting with Exhibit 49.

14 **MS. MAPP:** Yes. Staff would ask that that
15 exhibit be entered into the record.

16 **CHAIRMAN BROWN:** You can do a bunch.

17 **MS. MAPP:** Yes. We would ask that Exhibits 49
18 through 72 be entered into the record, as all exhibits
19 were authenticated by witnesses on the stand.

20 **CHAIRMAN BROWN:** They sure were. Seeing no
21 objections, we're going to go ahead and enter into the
22 record Exhibits 49 through 72.

23 (Exhibits 49 through 72 admitted into the
24 record.)

25 All right. Staff, are there any other

1 matters that we need to address at this time?

2 **MS. MAPP:** Yes. Staff would just like to
3 remind all parties that briefs are due on December 2nd
4 and that they are limited to 50 pages for the brief and
5 75 words for position summaries.

6 **CHAIRMAN BROWN:** Okay. Do any of the parties
7 have any questions before we adjourn the hearing?

8 **MR. SAYLER:** No, ma'am. But thank you very
9 much.

10 **CHAIRMAN BROWN:** Any questions? Any comments?

11 I want to take this opportunity to thank
12 our staff, first and foremost; my colleagues here,
13 the Commissioners; Commissioner Patronis, thank you
14 for handling the service hearing; Commissioner
15 Graham, thank you for always stepping up when
16 needed; and thank the parties here for being very
17 professional in this proceeding. And wish you all a
18 very well evening and enjoy the election. Good luck
19 and travel safe. This meeting is adjourned.

20 (Hearing adjourned at 3:34 p.m.)
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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 18th day of November, 2016.

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25
LINDA BOLES

LINDA BOLES, CRR, RPR
Official FPSC Hearings Reporter
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