

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates
in Monroe County by K W Resort Utilities Corp.

DOCKET NO. 150071-SU

FILED: December 9, 2016

**CITIZENS' POST-HEARING STATEMENT OF POSITIONS
AND POST-HEARING BRIEF**

Pursuant to Order Nos. PSC-16-0194-PCO-SU, PSC-16-0372-PCO-SU, PSC-16-0509-PHO-SU, and PSC-16-0536-PCO-SU, the Citizens of the State of Florida, by and through the Office of Public Counsel, hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief combined into a single document.

PRELIMINARY STATEMENT

Within this Brief, the Office of Public Counsel will be referred to as "Citizens" or "OPC." OPC will refer to K W Resorts Utilities Corp. as "KWRU" or "Utility" or "Company." Citations to the hearing transcript will use (TR _); to the service hearing transcript will use (SVTR _); and hearing exhibits will use (HE _). Each OPC position statement will be set off with asterisks. The issues on which Citizens take no positions or which were stipulated have not been reflected in the Brief. _).

EXECUTIVE SUMMARY OF ARGUMENT

It is axiomatic that a utility has the burden of proof to demonstrate it is entitled to any requested rate increase. In this case, KWRU has failed to meet its burden of proof. Many of its "wants" are simply not supported by the competent substantial evidence in this proceeding. The evidence offered by OPC and Monroe County clearly demonstrates that KWRU is entitled to no more than \$1,821,639 in an annual revenue requirement for a Phase I rate increase, based on a 2014 historic test year, and no more than \$2,269,892 in an annual revenue requirement for a Phase II rate increase, based on a test year updated to 2016 (2016 pro forma test year).

Customer Rate Impact

The Phase II final rates will have long-term, continuing effects on both the customers and the Utility. Unrebutted testimony in the service hearing demonstrates that 76% of the customers

of KWRU are living at or below the basic cost of living for Monroe County. (HE 99) Monroe County elected officials and KWRU customers who testified at the Service Hearing urged this Commission to exercise its discretion when setting final rates in order to protect KWRU customers who can ill afford an approximate doubling of their wastewater rates. The Commission should adopt the Phase I and Phase II revenue requirements and rates recommended by OPC which are based on competent substantial evidence and afford the Utility the ability to provide service at a reasonable and at a lessened impact on the customers.

Two-phased revenue requirement calculation

Separating the PAA rate case into two Phases is the most practical and efficient step to take given the posture of KWRU's case and the limited amount of information made available to the Commission during the PAA portion of this docket. When setting final rates, the Commission should update the Phase I and Phase II revenue requirements established by the Commission's PAA Order issued March 23, 2016 after considering all the evidence presented by all parties.

As a result of the protest by OPC and Monroe County, the Commission has the necessary record evidence to establish a 2014 historic test year for a Phase I revenue requirement and rates, and to update the test year for Phase II in order to fix rates which are just, reasonable, compensatory, and not unfairly discriminatory.

Phase I revenues and rates

KWRU takes the unsupported position that this Commission does not need to revisit or update the Phase I revenues and rates established by PAA Order. However, when requesting its Phase I revenues and rates, KWRU presented overstated pro forma operations and maintenance (O&M) expenses to the Commission; thus, the Commission made its decision based on limited information and without the benefit of additional evidence submitted by the Intervenors.

Because KWRU knows the PAA Order Phase I rates were based upon overstated O&M expenses for pre-expansion treatment levels, the Utility is ignoring the fact it may owe customer refunds for the Phase I rate increase approved in the PAA Order. Further, KWRU wants the Commission to establish final rates using an outdated and stale 2014 test year in order to avoid a critical examination of the PAA Order Phase I revenues and rates, and thus avoid paying the refunds it may owe.

Instead, the Commission should establish the Phase I revenue requirement based on the correct information adduced at hearing and compare it to the revenues authorized and collected as a result of the PAA Order and order a refund to the extent final revenue requirements are lower.

Phase II revenues and rates

KWRU is asking this Commission to establish prospective Phase II revenues and rates to go into effect in 2017 based on an outdated and unrepresentative 2014 test year. The Utility’s proposed test year for Phase II purposes contains only pro forma plant and expenses projected for future years which increase the Utility’s revenue requirement without considering the corresponding revenues and billing determinants for those same future years. This is a clear violation of the “matching principle” as testified to by County Witness Terry Deason.

There is no dispute that Phase II revenues and rates are impacted by future customer growth which will come online once KWRU’s proposed 350,000 gallon per day plant expansion is completed. The evidence adduced at hearing demonstrated that KWRU will experience significant future growth once the new plant is placed in service. Thus, establishing 2017 prospective rates based on 2014 billing determinants will result in unjust and unreasonable rates. Accordingly, the Commission should update the test year using the known and measurable facts and evidence provided by the witnesses for OPC and Monroe County.

Conclusion

The evidence demonstrates that the Commission should establish a post-protest Phase I revenue requirement of \$1,821,639 for the purposes of determining refunds as well as post-protest Phase II revenue requirement of \$2,269,892 and resulting final rates, applying the “matching principle.” Furthermore, an updated test year will fairly balance the interests of KWRU and its customers, allowing KWRU sufficient revenues to maintain a healthy utility without unjustly and unreasonably burdening KWRU’s ratepayers.

ISSUES AND POSITIONS

TEST YEAR

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

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

ARGUMENT:

A two-phased rate increase is appropriate for this rate case as the Commission recognized in its PAA Order. First, it should be done in order to determine whether any refunds are owed to customers in this docket. The Commission should establish a final Phase I rate increase to recognize the revenue requirement for the time period from the date the PAA Phase I rates were implemented until the plant expansion is placed into service. Second, a Phase II revenue requirement should be determined to set rates on a prospective basis after the new plant expansion is in service. This two-phased approach correctly recognizes a proper matching of revenues and expenses for the time periods rates will be in place. If only one (single-phase) revenue requirement were to be implemented, the inclusion of pro forma plant and higher projected expenses would not match the historical timeframe before the plant becomes operational and used and useful to KWRU's customers. Moreover, including only the requested growth-related increases in estimated costs, without considering the related corresponding offsets to rate base and revenues, will immediately cause recovery above the required revenues by the Utility when the new rates are implemented, result in excessive earnings and violate the test year matching principle, and will result in unfair and unjust rates in violation of Section 367.081, Florida Statutes.

A two-phased post-PAA protest revenue requirement calculation is appropriate for two reasons. The PAA Order appropriately established a two-phased revenue requirement and rates for KWRU based upon the posture and timing of the PAA rate case as well as the limited information provided to the Commission without an evidentiary hearing; a two-phased revenue requirement is also appropriate in the post-PAA posture of the rate case. The PAA Phase I revenue requirement was based on increased O&M expenses the Company alleged it needed *before* the plant expansion and PAA Phase II was based on increased pro forma O&M expenses as well as increased pro forma plant associated with a 70% increase in treatment capacity resulting from its 0.350 MGD plant expansion. See Order No. PSC-16-0123-PAA-SU (PAA Order). The appropriate post-protest Phase I revenue requirement that should be established for final rates is set forth in Exhibit PWM-2, attached to OPC witness Merchant's testimony. (HE 24)

In its post-PAA protest decision, the Commission should establish a Phase I revenue requirement for comparison purposes with the PAA Phase I revenue requirement. This will have two benefits: (1) It will allow the Commission to isolate the appropriate revenue requirement for the time frame between the time that PAA Phase I rates were implemented until the plant expansion is placed into service (which may or may not coincide with the Commission's decision in this case); and (2) If, if the post-PAA protest revenue requirement is lower than the PAA Phase I revenue requirement, then refunds with interest to the customers can be determined. (TR 792-794)

Based upon the facts and evidence adduced at the evidentiary hearing, the Commission should establish a post-protest Phase II revenue requirement, using an updated pro forma test year, to set rates on a prospective basis *after* the new plant expansion is placed in commercial operation. The appropriate post-protest Phase II revenue requirement that should be established for final rates is set forth in Exhibit PWM-3, attached to OPC witness Merchant's testimony. (HE 25)

This two-phased approach correctly recognizes the proper matching of revenues associated with expected growth and the pro forma plant expansion for the time when post-protest Phase II rates will be in place. (TR 304-309) If only one revenue requirement were to be implemented, as suggested by KWRU, this will result in a potential windfall to the Utility for the difference between PAA Order Phase I revenue requirement and post-protest Phase I revenue requirement. Moreover, the inclusion of higher plant and higher projected expenses in final rates, as requested by KWRU, would not match the historical timeframe before the plant becomes operational and serving customers. In other words, the Utility is seeking higher revenues and rates for its 350,000 gallon per day (GPD) expansion *before* the plant expansion is placed in-service. This is unfair and unreasonable to KWRU's customers and violates Section 367.081, Florida Statutes.

Finally, KWRU's proposal to include only the requested growth-related O&M increases, without the related corresponding offsets violates the matching principle as testified by OPC witness Merchant (TR 305, 308-310, 320-321, 328-329, 380-383) and County witness Deason. (TR 531-535) Further, it will cause recovery above the required revenues by the Utility when the new rates are implemented, result in excessive earnings and unfair and unjust rates in violation of Section 367.081, Florida Statutes.

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

A. For Phase I, if applicable

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

ARGUMENT:

The appropriate test year for Phase I rates is the historical year ending December 31, 2014, with appropriate adjustments to recognize the level of expenses needed to implement AWT. (TR 304-305)

B. For Phase II, if applicable

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

ARGUMENT:

A pro forma test year ending December 31, 2016, with proper adjustments, should be utilized for setting Phase II final rates. It is more representative than applying an historic 2014 test year that “cherry picks” adjustments to only include items that increase the revenue requirement and rates. (TR 306) A projected 2017 test year is the most representative for the first year after KWRU’s pro forma plant expansion goes into service; however, the Utility chose to not provide the Commission or intervenors in discovery the level of detail necessary to create a 2017 projected test year. (TR 308-309) The Commission in several cases similar to this case, has required an historical test year to be updated and projected forward when the utility was growing at an exceptionally high rate per year. *See, e.g.,* Order No. 15725, issued February 21, 1986 (Martin Downs), and Order No. PSC-01-2511-PAA-WS, issued December 24, 2001 (Burkim Enterprises).

The historical year ending December 31, 2014 is not the appropriate test year for setting post-protest Phase II or final rates in this proceeding. (TR 308-311) Consistent with Section 367.081, Florida Statutes, and as testified to by County Witness Deason, the appropriate test year should provide a reasonable match between a utility’s investment in used and useful plant in service, capital costs, operating revenues, operating expenses, and customer billing determinants so that the rates established are fair, just, compensatory and not unduly discriminatory when the new rates are placed into service. (TR 306, 531-535) The Utility maintains that an historical test year with pro forma adjustments for projected growth related plant and expenses is representative; however, KWRU failed to include any

offsetting entries that would correspond to and match its projected increases. (TR 305) Thus, an adjusted 2016 test year should be applied by the Commission in setting Phase II rates in this proceeding.

QUALITY OF SERVICE

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

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

ARGUMENT:

One of the components of quality of service is the utility's attempt to address customer satisfaction. Rule 25-30.433(1), F.A.C. This rule also states that the testimony of the utility's customers shall be considered when determining the quality of service. The Commission should find the overall quality of service to be marginal at best since customers have been paying since 2009 for AWT in their rates; however, KWRU did not deliver Advanced Wastewater Treatment "AWT" from 2010 to 2015. In KWRU's last rate case, the Commission approved pro forma plant and O&M expenses in rates to enable the Utility to treat effluent to AWT standards. (TR 565; TR 117; Final Order No. PSC-09-0057-FOF-SU, in Docket No. 070293-SU) However, the evidence clearly demonstrates that KWRU ceased treating to AWT in 2010 in order to save money and enhance its bottom line. (TR 124-125) Moreover, KWRU's refusal to treat to AWT violated an agreement between KWRU and Monroe County to treat to AWT standards. (TR 117-118)

In this case, customers and Monroe County paid higher rates for AWT since 2009; however, KWRU delivered a substandard (or one that did not meet the standard for which the Commission provided rate relief) product. It is irrelevant that all Florida Keys utilities, including KWRU, were given an extension to January 1, 2016 to treat to AWT when the Commission expressly authorized the necessary plant and O&M expenses in rates for KWRU to treat to AWT. *See* Order No. PSC-09-0057-FOF-SU. For the years 2010 through 2015, KWRU admits it pocketed the AWT money that was intended to protect the environment. (TR 125) Since the Company intentionally failed to deliver what it promised to the customers and Monroe County – wastewater treatment to AWT standards – the quality of service should be deemed marginal at best.

Customer Service Hearing

Elected officials describe the socio-economic conditions of Stock Island Residents

At the November 7, 2016 customer service hearing, 12 customers and two elected officials testified in opposition to the rate increase. Monroe County Commissioner Mayor Heather Carruthers provided copies of the Monroe County Asset Limited, Income Constrained, Employed Report or "ALICE" Report to the Commission for its consideration. (HE 99) The ALICE Report describes households that are struggling because they "earn more than the U.S. poverty level, but less than the basic cost of living for [Monroe] county." (HE 99) Mayor Carruthers testified that Stock Island is where the working class and working poor of the Keys live, that Stock Island is primarily populated by affordable housing, and that Monroe County has an affordable housing crisis. (SVTR 14) She further testified that the Stock Island median household income is \$41,789, which is lower than the statewide median household income of \$45,040, and that the cost of living in the Keys is extremely high. (SVTR 15) In Monroe County, the household survival budget for a family of four is \$62,000 and the Stock Island median household income is \$21,000 below that survival budget. (SVTR 16) According to the ALICE Report, 76% of the Stock Island residents (or three out of four) either earn less than the basic cost of living for Monroe County or are below the U.S. poverty level. In addition, Mayor Carruthers testified that Stock Island residents and customers of KWRU are the ones least able to afford any significant increase in their household costs, let alone nearly doubling of their utility costs. (SVTR 17), and urged the Commission to consider the Office of Public Counsel's proposal when setting rates. (SVTR 17)

Commissioner Danny Kolhage reiterated in a letter read by Judge Richard Payne many of the points raised by Mayor Carruthers concerning the socio-economic conditions of the Stock Island residents, noting that many of the low income and moderate income customers will not be able to afford KWRU's proposed rate increase. (SVTR 17-19; HE 100) Commissioner Kolhage also urged the Commission to adopt the rates recommended by OPC. (SVTR 19) Judge Payne testified that 80% of the children attending the Stock Island elementary school qualify for free school lunches, meaning they are poor. (SVTR 19-20)

Customer testimony

Vivian Owl testified KWRU currently charges her a monthly base facility charge (BFC) for a vacant lot since Hurricane Wilma destroyed her residence in 2005. (SVTR 23-25, 28) As a result of the PAA rate case, her BFC increased from \$17.81 to \$31.66 for a vacant lot. If the Commission

approves KWRU's requested rates, it will go even higher. Ms. Owl also pays a monthly charge to the Florida Keys Aqueduct Authority (FKAA) for no water service. (SVTR 27) Moreover, KWRU stated there is no sewer lateral on her lot connecting her to KWRU's system, yet they are charging her a BFC. (SVTR 24-25, 28-29) The Commission should consider the equities and impact of this situation in its determination.

Diana Flenard testified the 2008 KWRU rate case was designed to bring the wastewater plant to advance wastewater treatment (AWT) standards, yet the utility did not do so until 2016. She asked what KWRU did with the money for AWT that it received in the last rate case? (SVTR 30). She further questioned why new developments would not pay a hook-up or plant capacity reservation fee and why the proposed reuse rate was so low especially since the Key West Golf Course (an affiliate) is one of the largest reuse customers. (SVTR 30)

Reba Brenneman testified as to the impact the rate increase would have on the customers; an increase of \$30 to \$40 per month may be the difference between filling a prescription or feeding one's children. (SVTR 32) Micheline Wolfe submitted a petition from her fellow residents at Harbor Shores, opposing the rate increase; she testified they cannot afford the proposed rate increase and that KWRU has not honored the original contract with Harbor Shores. (SVTR 33-35; HE 101)

Sharon Stoetzer testified she was upset about the nearly doubling of her rates, and that her rates are supposed to increase a second time. (SVTR 36-37) Paulette Barrett testified she worked two jobs, and the requested rate increase is excessive. (SVTR 38) Brent Montgomery testified on behalf of Key West Health and Rehab senior care services and stated it is not fair that a private business has to cut costs, but a utility does not; he asked that the Commission consider OPC's proposed rates. (SVTR 39-40)

Henry Hamilton, a co-owner of Boyd's Key West Campground on Stock Island, testified his rates went up on average 236% since June 2016. (SVTR 41) The campground currently has a meter measuring sewer flows back to KWRU; however, the PAA Order mandated that customers be charged based on water demand, and not actual flows back to KWRU. (SVTR 41-44) Mr. Hamilton had an agreement to use an effluent meter that dates back to 2003. (SVTR 47) Daniel Hamilton, co-owner of Boyd's Key West Campground, testified the family business was forced to dismantle their privately owned wastewater treatment plant and interconnect with KWRU. In order to interconnect with KWRU, they installed a force main system, a pump, an effluent meter, and over 800 feet of force main on county right-of-way for a cost of approximately \$250,000. Part of the agreement to turn over this

plant to KWRU was that they would be billed using an effluent meter. (SVTR 45-46) Boyd's requested a special tariff to address its current situation because being billed on water consumption would be extremely burdensome. (SVTR 46-47) He further testified that Mr. Johnson with KWRU was not opposed to using an effluent meter, but KWRU did not want to be caught between the Commission and the customer. (SVTR 50) Robert Jones, also with Boyd's campground, testified they expended significant money to make sure saltwater did not intrude into the wastewater collection system because Boyd's was being billed on actual gallons through the effluent meter. (SVTR 51-52) Under the old billing system, Boyd's had a monetary incentive to prevent saltwater intrusion into the lines because that is bad for the wastewater treatment system. (SVTR 51-52)

David Villone, with Harbor Shores, submitted the Harbor Shores KWRU utility agreement into the record as Hearing Exhibit 103. (SVTR 53) He testified how property values have decreased since Hurricane Wilma, and no one bailed him out. (SVTR 54)

Therefore, for the reasons described above, this Commission should find the quality of service to be marginal, if not unsatisfactory at best.

RATE BASE

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

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

ARGUMENT:

Adjustments consistent with Audit Findings 1-5 and 7 were stipulated by all parties. OPC witness Merchant testified that no allowance should be made for deferred accounting fees as these costs should be disallowed. (TR 340-341) Also, any component of the deferred litigation fees should be added to CWIP in Phase I rates and should be capitalized to plant in service for Phase II. (TR 332)

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

A. For Phase I, if applicable

POSITION: *Phase I Plant should be \$11,108,464. This includes adjustments to reflect stipulated reductions of \$817,240 and to remove pro forma plant of \$3,574,468, for a total decrease of \$4,391,708. Neither pro forma growth-related plant expansion nor the vacuum tank replacement are not appropriate for Phase I, since both additions will

provide service to future customers more than two years beyond the 2014 historical test year.*

ARGUMENT:

Plant for Phase I rates should be \$11,108,464, which was the amount approved in the PAA Order. (TR 315, HE 24) This includes the adjustments made by the Commission to reflect the agreed-upon audit reductions of \$817,240 from Audit Finding 1 and to remove the Utility's requested pro forma plant of \$3,574,468, for a total decrease to plant of \$4,391,708. OPC witness Merchant testified that it is inappropriate to include any pro forma plant for growth-related plant or the vacuum tank replacement in Phase I rates that will provide service to future customers more than two years beyond the historical test year. (TR 313-315)

B. For Phase II, if applicable

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

ARGUMENT:

The appropriate amount of plant in service for Phase II rates is \$15,182,830. (HE 25) First, adjustments are appropriate to reflect the stipulated reductions of \$817,240 from Audit Finding 1. Second, OPC witness Merchant testified that the average balance of adjusted 2014 plant included in rate base should be increased by \$88,027 to reflect the year-end balance approved by the Commission in its PAA Order to bring forward the plant for a pro forma 2016 test year. (TR 315) Third, OPC witness Woodcock testified that the cost of the wastewater treatment plant expansion should reflect the contracted cost of \$4.3 million, which is higher than he would expect for most places in Florida but the cost was not unreasonable given the location in the Florida Keys (TR 274, 280-281), which is an increase of \$1,202,968 to pro forma plant. (TR 274, 280-281) OPC also believes it is completely inappropriate to allow the Utility's last minute attempt to escalate the pro forma plant beyond the amount included in its direct testimony; those costs should be disallowed.

Subsequent to filing its direct testimony, KWRU is now requesting (through discovery and rebuttal testimony) additional costs for its plant expansion. The Utility argues the expansion project has increased from \$4.3 million to over \$5.1 million. (TR 640-643). However, these additional costs

should be disallowed in that it is inappropriate to allow KWRU's last minute attempt to escalate its pro forma plant beyond the amount that was included in its direct testimony.

Many of the increased amounts described in KWRU's rebuttal testimony (1) were items that were incurred prior to the date that its direct testimony was filed (TR 649-650); (2) were items already included in the Wharton-Smith \$4.3 million contract (TR 647; HE 8, p. 12 of 127); (3) were not specifically related to the plant expansion or vacuum tank; (4) were not addressed by any intervenor witness; and (5) certainly were beyond the scope and amounts originally requested by the utility in its MFRs. Therefore, the increased estimates included in the rebuttal testimonies of witnesses Johnson and Swain are inappropriate supplemental direct testimony. Thus, this attempt to increase expenses and rate base through rebuttal in order to increase the revenue requirement, coupled with KWRU's refusal to recognize any amounts that would reduce the revenue requirement, is inappropriate, unreasonable, and unfair.

Regarding the use of test years, KWRU witness Swain agreed that a test year should be representative of the investment, expenses, revenues and customer billing determinants for the time period in which the rates will be in effect. (TR 211-212) However, the Utility does not want the Commission to update its 2014 test year to include the known and measurable increases in customers, gallons sold, or revenues expected when the plant expansion is placed into service. This is a clear violation of the matching principle.

In addition, Ms. Merchant testified that Phase II plant should be increased by \$477,436 to capitalize the legal fees incurred to litigate KWRU's construction permit for the wastewater treatment plant (WWTP) expansion. (TR 316) This issue is discussed in detail under Issue 28.

Finally, as testified to by OPC witness Woodcock, the pro forma vacuum tank replacement cost should be \$474,552, not the \$610,177 cost included in Utility witness Castles' direct testimony. (TR 281, 316; HE 21) In rebuttal, KWRU witness Johnson stated the current estimate of the vacuum tank replacement was \$407,771 (TR 603; 648-649; HE 76, CAJ-9, p. 6). In addition, OPC witness Merchant testified that the plant addition for the vacuum tank should be reduced by the retirement of the old tank. (TR 316-317) Utility witness Swain included a pro forma adjustment of \$431,801 for the estimate of the new vacuum tank based on the rebuttal testimony of Utility witness Johnson; she also testified that the appropriate retirement entry for the old vacuum station of \$390,285 should be included in Phase II rates. (TR 766-767; HE 79, DDS-4, p. 3) It should be noted that Ms. Swain's revised cost for the vacuum tank replacement is \$24,030 higher than the amount included by Mr.

Johnson in Hearing Exhibit 76, CAJ-9, p. 6. The details of the \$24,030 for future engineering costs are shown on Hearing Exhibit 76, CAJ-9, p. 7. Witness Johnson further testified the \$24,030 is included in the \$407,771 estimated cost of the vacuum tank. (TR 649) Thus, it is inappropriate to double count the engineering costs from Hearing Exhibit 76, CAJ-9, p. 7, which are reflected in the same amount in Hearing Exhibit 76, CAJ-9, p. 6. Corresponding adjustments should also be made to correct the amount of accumulated depreciation and depreciation expense in later issues.

In conclusion, KWRU's revenue requirement, including rate base, should be capped at what it requested and included in its MFRs. Witness Johnson agreed that the estimate for the expansion project has increased from \$4.3 million to over \$5.1 million, which amount does not include the cost of the vacuum tank which decreased from approximately \$610,000 to \$407,000. (TR 640-643; 603) When asked about the increase in the plant expansion estimate, witness Johnson testified that some of the increased costs he referenced on p. 1 of CAJ-9 (HE 76) were items already included in the Wharton-Smith contract. (TR 647; HE 8, p. 12 of 127) In rebuttal, he nevertheless attempted to improperly add those amounts to the \$4.3 million. He also testified that many of the expenses on CAJ-9, p. 2-4, while incurred prior to the filing of his direct testimony, were not included in the cost of the project in his direct testimony. (TR 649-650) While the utility has the burden of proof to support its costs, it cannot enlarge those costs *after* intervenors have testified, by providing inappropriate supplemental direct testimony to include costs it failed to include in its direct case. To allow a utility to do so is a violation of the customers' due process.

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

A. For Phase I, if applicable

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

ARGUMENT:

Phase I accumulated depreciation should be \$5,830,802 -- a decrease of \$198,625. (TR 321, 318-319; HE 24) In addition to stipulated adjustments and as testified to by witness Merchant, the

Utility's \$196,281 pro forma adjustment to accumulated depreciation for the plant expansion should be removed (TR 318-319) and the vacuum tank replacement should not be allowed in Phase I. (TR 314-315) Lastly, the Utility's \$4,384 adjustment to annualize 2014 depreciation expense should be disallowed. Allowing the Utility to make a one-sided adjustment to accumulated depreciation and depreciation expense ignores the impact of the annualization of amortization of CIAC. The Commission should disallow this violation of the test year matching concept, coupled with the Utility's proposal to include depreciation expense on contributed plant in violation of Section 367.081(2)(a)1., Florida Statutes. (TR 319-321)

B. For Phase II, if applicable

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

ARGUMENT:

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

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

A. For Phase I, if applicable

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

ARGUMENT:

CIAC for Phase I rates should be \$9,649,877. (HE 24) This includes the stipulated \$297,120 decrease to CIAC from Audit Finding 4. Witness Merchant testified that no further updates to CIAC to reflect the amount of CIAC collected after December 31, 2014, should be made for the Phase I revenue requirement. (TR 324-325)

B. For Phase II, if applicable

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

ARGUMENT:

OPC witness Merchant testified that the appropriate amount of CIAC for Phase II rates should be \$10,717,289. (HE 25) After making the stipulated adjustment, it is then appropriate to update the test year CIAC to 2016 levels, which is more representative of the time period that the treatment plant will be placed in-service. Consistent with OPC's adjustments to plant and accumulated depreciation, the 2014 average balance of CIAC from the PAA Order should be increased by \$136,012 to reflect the year-end balance. (TR 327) Next, before any future plant expansion or pro forma plant is allowed, it is critical and correct to include the \$489,469 in CIAC actually collected by KWRU in 2015 and in January through May 2016. (TR 327; HE 26, 28) KWRU also collected additional CIAC in August 2016. (TR 327) If the Commission sets new rates without taking into account the CIAC collected in 2015 and 2016, as well as the expected customer growth for 2016 (as calculated by witness Woodcock for his used and useful analysis), then the rates established will immediately provide excess earnings

to the Utility at a substantial cost to the existing and future customers. Moreover, it will also violate the matching principle. (TR 329)

In addition, Ms. Merchant also testified that it is appropriate to project additional 2016 CIAC as a proxy for those amounts that will be collected in the first year after the plant expansion is placed into service. (TR 330-331) Based on OPC witness Woodcock's recommended growth allowance of 5% per year and his annual growth in the number of ERCs of 222, the Utility would collect CIAC from an additional 163.68 ERCs added in the first year of the plant expansion. This is based on the actual number of future ERCs of CIAC pre-collected by KWRU in 2016, or 58.48. Multiplying the additional 163.68 ERCs by the \$2,700 plant capacity charge per ERC equals the \$441,931 in CIAC, which witness Merchant projected for the first year after the plant expansion is placed in service. (TR 329-330) If the Commission allows the projected plant and expenses associated with growth in setting rates, but does not include the projected CIAC, the new rates will allow a return on contributed plant and will potentially violate the requirements of Section 367.081(2), Florida Statutes, which prohibits rates to be set which include a return on contributed assets. (TR 330-331)

Finally, Ms. Merchant's projection of CIAC for 2016 reflects a matching of the CIAC collected and to be collected on plant that will be placed in service. This is not an imputation of CIAC on growth allowance included in the used and useful adjustment because, in OPC witness Woodcock's used and useful adjustment, he updated the 2014 test year consumption for two additional years to 2016 to match the updated rate base to 2016 and added 5 years of additional growth for 2017 to 2021. (TR 277-280) Because of this consumption update, no imputation of CIAC on future growth included in the used and useful equation was made. As Utility witness Seidman testified, this former practice of the Commission was discontinued in 1999 when the statute was changed to prohibit the imputation. (TR 746-747) If the Commission sets new rates without the consideration of the CIAC collected in 2015 and 2016 as well as the expected customer growth for 2016 (as calculated by witness Woodcock for his used and useful analysis), then the rates established will immediately provide excess earnings to the Utility at a substantial cost to the existing and future customers; moreover, it will also violate the matching principle. (TR 329)

Utility witness Johnson claimed in rebuttal that Ms. Merchant was incorrect in her testimony with respect to the CIAC actually collected by the Utility in 2015 and 2016. His basis was that \$556,628 *may* be subject to refund when Monroe County reopens its tax rolls and allows customers who have already prepaid CIAC to receive refunds and to finance CIAC payments over time on their property

taxes. (TR 607) On cross examination, however, Mr. Johnson admitted that the utility did in fact collect these amounts and that no refunds have been made to date, and that KWRU cannot force a customer to be placed on the County's tax roll. (TR 645) In her rebuttal, Utility witness Swain stated that because the test year is historical, it is inappropriate to adjust CIAC to another period. However, she later testified that if any future CIAC is added, the repayment of \$449,302 (\$319,630 plus \$129,672) for 8 customers whose CIAC payments have been refunded should reduce any addition. (TR 769-770) In the summary of her testimony, Ms. Swain again disagreed with Ms. Merchant including CIAC, which was in part prepaid and in part subsequently refunded. (TR 781) However, on cross examination, Ms. Swain later admitted that no CIAC has been refunded to date. (TR 753-754, 786-787, 800, 814, 826-827, 841-842)

Furthermore, County witness Wilson testified that if a customer has already paid their system development fee (CIAC) to the utility, the agreement between the County and KWRU provides that the utility would pay that money to the County. If a customer has already paid their system development fee to the County, then the customer has already paid it. (TR 483-484) The County envisions customers that have not paid the fee to either the County or the Utility would be put on the tax roll. (TR 444, 483-484)

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

A. For Phase I, if applicable

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

ARGUMENT:

OPC witness Merchant testified that Phase I AA-CIAC should be \$3,014,941 after including stipulated decreased adjustments of \$81,153 related to Audit Finding 4. Since it is not appropriate to update CIAC for collections after December 31, 2014, no additional adjustments to AA- CIAC are appropriate for Phase I. (TR 325-326; HE 24)

B. For Phase II, if applicable

POSITION: * Phase II AA-CIAC should be \$3,945,225. After making the stipulated adjustments, AA-CIAC should be increased by: 1) \$204,033 to reflect the 2014 year-end balance;

2) \$682,928 to add 2 years of amortization for 2015-2016; 3) \$27,903 for amortization of actual CIAC additions for 2015- May 2016; and 4) \$15,421 for amortization on projected 2016 CIAC additions. For each adjustment, a 3.49% amortization rate is used per the PAA Order.*

ARGUMENT:

OPC witness Merchant testified that Phase II AA-CIAC should be \$3,945,225. (HE 25) Using an amortization rate of 3.49% (per the PAA Order), additional adjustments are necessary to be consistent with the adjustments made to CIAC. After making the stipulated adjustments, consistent with updating the 2016 pro forma test year, AA-CIAC should be increased by \$204,033 to reflect the 2014 year-end balance. In addition, two years of 2014 year-end CIAC amortization expense of \$682,928 for 2015 and 2016 should be added, which reflects the increased amortization of \$27,903 related to actual CIAC collections from 2015 through May 2016. Finally, amortization of \$15,421 on projected additions to 2016 CIAC for pro forma test year should be added. (TR 331-332)

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

A. For Phase I, if applicable

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

ARGUMENT:

OPC witness Merchant testified that Phase I CWIP should be \$780,571. After making the stipulated adjustments from Audit Finding 2, Ms. Merchant opined that the 2015 balance of the Last Stand Legal Fees of \$477,436 should be recorded in CWIP until the new wastewater treatment plant is placed into service. (TR 332; HE 24) It is inappropriate to amortize the Last Stand Legal Fees over five years as requested by KWRU. (The issue of the Last Stand Legal Fees is discussed in detail under Issue 28.)

B. For Phase II, if applicable

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

ARGUMENT:

The appropriate amount of CWIP for Phase II rates should be zero to reflect that the construction costs have been capitalized into plant. (TR 332; HE 25)

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

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

ARGUMENT:

Pursuant to the testimony of OPC witness Woodcock, the correct used and useful (U&U) calculations on Schedule F-10 of the MFRs support an average five year historical ERC growth rate of 7.06%, the regression analysis supports an annual growth rate of 5.86%, and no excessive inflow and infiltration adjustment is required. (TR 276) However, witness Woodcock disagreed with KWRU's assertion that an 100% U&U percentage for the expanded WWTP is appropriate in this case. (TR 276) Mr. Woodcock evaluated the U&U of the WWTP post expansion based on a pro forma test year of 2016, when the expansion was initially expected to be constructed and placed into service. He limited the growth for the system to 5% per year as provided for in Rule 25-30.431(2)(a) F.A.C., for determining the growth allowance for KWRU. This approach is consistent with the U&U methodology utilized by the Commission in the 2001 Burkim Enterprises PAA Order¹. After projecting the increased amount of consumption to reflect 2016 consumption, the appropriate non-used and useful percentage is 25%. (TR 277-278; HE 20) This should be applied to the recommended balance of plant, accumulated depreciation, depreciation expense and property tax expense as shown

¹ See Order No. PSC-01-2511-PAA-WS, issued December 24, 2001, in Docket No. 010396-WS, In Re. Application for staff-assisted rate case in Brevard County by Burkim Enterprises, Inc.

on Exhibit PWM-3, Schedule 1-C. (HE 25) As a result, OPC witness Merchant testified that the appropriate reduction to rate base is \$1,632,646 (plant in service of \$2,429,995 less accumulated depreciation of \$797,349). Corresponding reductions to depreciation expense of \$130,954 and to property taxes of \$16,177 are appropriate. (TR 324)

ISSUE 12: What is the appropriate working capital allowance?

A. For Phase I, if applicable

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

ARGUMENT:

According to the testimony of OPC witness Merchant, Phase I working capital should be \$328,976. In addition to the stipulations, adjustments to the following working capital accounts are necessary:

Cash: Ms. Merchant testified that the level of cash included in the PAA Order is reasonable for this Utility, the Commission PAA Order adjustments should be made. In addition, the following adjustments to cash should be made: 1) remove \$126,930 associated with an escrow account from capacity fees collected for the vacuum expansion project closed in March 2015; 2) remove \$141,828 for a "Customer Escrow Account," related to customer deposits; 3) remove an unused capital operating account equivalent to temporary cash investment with a balance of \$375,840; and 4) remove the 13-month average balance of \$115,643 in a cash capital operating account related to an account funded by a single transfer in May 2014. This decrease of \$615,687 results in a cash balance of \$261,602. Ms. Merchant testified that the Utility's inflated requested balance of \$877,289 is clearly excessive and should not be approved. (TR 333-335)

Deferred Debits-Other: Ms. Merchant testified that no amount of deferred debits should be included related to accounting fees that the Utility incurred to restate its annual reports. (See Issue 27; TR 339-342) In addition, deferred legal fees related to the litigation of the construction permit for the plant expansion should be removed from working capital and included in CWIP for Phase I and capitalized into plant for Phase II. (See Issue 28; TR 336-339)

Deferred Debits-Rate Case Expense: One-half of the amount of rate case expense approved by the Commission should be allowed as a deferred debit. For purposes of OPC's testimony, \$76,011 was included as unamortized rate case expense in the PAA Order. This amount should be adjusted based on the Commission's final decision. (TR 342)

In conclusion and based upon the evidence in this case, KWRU's requested pro forma working capital is a completely inappropriate balance for setting rates and is not representative of the actual working capital needs. It includes the unamortized balance of the Last Stand Legal Fees, which should be capitalized, and the Utility has not met its burden to demonstrate that it actually maintains working capital anywhere near the level it has requested in its pro forma request. Furthermore, Ms. Merchant testified that Ms. Swain's working capital benchmark comparison is completely irrelevant to show what the Utility's working capital needs actually are or should be. This is a perversion of the reason the Commission's benchmark tool was developed, which was to evaluate whether certain O&M costs had increased greater than the compounded cost of inflation and requiring additional explanation for exceedances. It was never intended to apply to rate base accounts. The balance sheet calculation of working capital should be based on the facts supported by KWRU's actual and projected balance sheet components, with consistent adjustments made based on the Commission's past practice. Lastly, KWRU's 2015 Annual Report reflects a much lower working capital balance than the MFRs (HE 28) which is the year the Utility incurred the majority of its legal fees associated with the construction permit litigation. KWRU's assertions that an inflated working capital balance is necessary for AWT operational expenses, the Last Stand litigation, and the regulatory environment existing in the Florida Keys Area of Critical Concern are without merit and should be disregarded. AWT is included as part of O&M and not working capital. (TR 344-345, HE 28)

B. For Phase II, if applicable

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

ARGUMENT:

Phase II working capital should be \$328,976. Witness Merchant performed an analysis of the 2014 Phase I working capital to the working capital in the Utility's 2015 Annual report, making similar adjustments. Since the average and year-end 2015 balances are so close to the 2014 recommended level of working capital, the Commission use the adjusted 2014 balance of working capital for both Phase I and Phase II rates. (TR 343; HE 24 [page 3 of 9], and 28)

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

A. For Phase I, if applicable

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

ARGUMENT:

Based on the testimony and exhibits of OPC witness Merchant, the appropriate Phase I rate base should be \$127,273. (TR 345; HE 24)

B. For Phase II, if applicable

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

ARGUMENT:

Based on the testimony of OPC witness Merchant, The appropriate rate base for Phase II should be \$604,323. (TR 346; HE 25)

COST OF CAPITAL AND CAPITAL STRUCTURE

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

A. For Phase I, if applicable

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

ARGUMENT:

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

B. For Phase II, if applicable

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

ARGUMENT:

For the Phase II capital structure, OPC witness Merchant testified that, in addition to the Phase I adjustments, the Utility's pro forma adjustment to equity should be considered debt until the Utility can demonstrate that all of the pro forma adjustments will be infused as equity. (TR 348-349) The Utility's equity infusions made in May, June, and August, 2016, should be allowed only to the extent that those infusions offset the actual negative equity balance on KWRU's books.

As of August 2016, the Utility's negative equity balance was \$1,051,663 and its reported equity infusions (shareholder contributions) totaled \$2,041,903. (TR 349; HE 62: POD 32, p. 0615 & [Additional File: p. 74]) At a minimum, the only equity that should be allowed should be netted against the negative retained earnings balance, or a net equity balance of \$989,240. In addition, KWRU refinanced its debt to BB&T on July 15, 2016. In its refinancing, KWRU retired its \$302,053 balance on Note 5 and received a new Note 7 for \$1 million. In September 2016, the Utility obtained another \$2.5 million promissory note (Note 9). Both of the new debt issuances have a prime plus 0.5% cost rate. The current prime rate is 3.5%. (HE 83) On cross-examination, Utility witness Swain agreed that a debt-to-equity conversion is considered a known and measurable change. (TR 817) She also admitted that the two new promissory notes were lines of credit fully available for the Utility to use at any time it deemed necessary. While she disagreed that the lines of credit should be included in the capital structure for rate setting, clearly KWRU's obtaining the credit lines is a responsible utility action and the Utility plans to use that debt only if there's an emergency or a true need. (TR 819) Therefore, it is appropriate for these two new promissory notes to be included in the capital structure for purposes of setting new rates. Furthermore, OPC would point out that KWRU's own books show that the \$1,000,000 was recorded as debt in the August 2016 general ledger. (HE 62: POD 32, p. 0615 & [Additional File: p. 73])

The Commission should also take note that KWRU clearly identified that it was adding new equity amounts in its rebuttal testimony which was filed on October 10, 2016; however, it failed to mention in this same testimony that any new debt financing had occurred in July and September 2016.

(TR 774, HE 79: pages 10-11, HE 53: Rog 73, page 136) In addition, witness Swain testified that the affiliate debt from WS Utilities to KWRU was converted to equity in 2016; yet, in each revision to her revenue requirement calculations, she continually added more equity to match the amount of pro forma plant but failed to reflect the new debt issuances or the conversion of the affiliate debt to equity. (TR 774; HE 79: pp. 10-11, HE 53: Rog 73, p. 136) This is another instance where KWRU cherry-picked the adjustments in its favor and presented only those adjustments to its test year that raise the revenue requirement, with none that lower or offset the revenue requirement, even when the offsetting adjustments are known and measurable. At a minimum, she has double counted the revenue requirement impact by including both the affiliate debt and increased equity in her updated revenue requirement calculation. Moreover, with the removal of debt, the equity ratio increases, which decreases the equity cost rate generated using the Commission's leverage formula.

Therefore, the Commission should update the capital structure to reflect the most current level of financing for 2016 based on the known and measurable evidence that is supported in the record.

ISSUE 15: What is the appropriate return on equity?

A. For Phase I, if applicable

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

B. For Phase II, if applicable

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

ARGUMENT:

Based on OPC's properly adjusted capital structure for Phase II in Issue 14B, the 2016 equity ratio is 20%, which generates an 11.16% cost of equity. Consistent with Stipulation 15, the appropriate leverage formula to use is the leverage formula in effect when the Commission makes its final decision. If the Commission approves an equity ratio higher than 40%, the leverage formula will generate a corresponding lower cost of equity.

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

A. For Phase I, if applicable

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

ARGUMENT:

OPC witness Merchant testified that the 2014 test year debt cost for the BB&T loan was prime plus .75%. (TR 299, 346) Since the prime rate was 3.25% in 2014, a 4% cost rate is appropriate to use for both the BB&T and the WS Utilities debt for Phase I. No pro forma adjustments are appropriate for Phase I.

B. For Phase II, if applicable

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

ARGUMENT:

In her direct testimony, OPC witness Merchant used a 4.25% cost rate for Phase II, which at that time was the BB&T debt (#00005) from the historical test year. (TR 299, 348-349) Subsequently, KWRU obtained \$3.5 million in new debt issuances that were not included in its rebuttal testimony. (TR 396-397) The appropriate cost of debt for Phase II should be 4% (prime rate plus .5%) for the two new BB&T promissory notes (#00007 for \$1,000,000 and the #00009 for \$2,500,000) issued in July and September 2016. (HE 83) The Utility refinanced and retired the BB&T note #00005 for \$302,053 when it obtained the #00007 BB&T note. (HE 83) In addition, the affiliate debt from WS Utilities should be removed from the capital structure. These are known and measurable events by KWRU that occurred in 2016 that will be used to fund the plant expansion costs. The current prime rate of interest is 3.5%. (HE 29)

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

A. For Phase I, if applicable

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

B. For Phase II, if applicable

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

NET OPERATING INCOME

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

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

ARGUMENT:

Pursuant to its contract with KWRU, Harbor Shores is required to pay all the wastewater bills on behalf of the Harbor Shores residents. (HE 103, ¶ 5) KWRU has no property rights or easements within Harbor Shores, and property rights for KWRU were intentionally omitted from the agreement. (TR 691; HE 103, ¶ 4) Therefore, KWRU cannot legally turn off individual Harbor Shores customers' wastewater service without trespassing, notwithstanding KWRU witness Johnson's testimony to the contrary. (TR 691; 695-696) Pursuant to the contract with KWRU, Harbor Shores, and not the individual unit owners, has been responsible for all the wastewater bills since March 2007. (HE 103) Other customers in similar situations are classified as general service customers, such as Sunset Marina, Meridian West, and Flagler Village. (HE 61, 84) Thus, the Commission must determine whether Harbor Shores should be classified as a general service customer, and if so, what impact that reclassification would have on rate design and billing determinants.

ISSUE 19: What is the appropriate bills and gallons to use to establish test year revenues and rates?

A. For Phase I, if applicable

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

ARGUMENT:

It is appropriate to use the PAA Order billing determinants approved in the PAA Order for Phase I rates. Although it is evident that the 2015 and 2016 revenues and billing determinants were higher than those in the 2014 test year (TR 353), OPC's revenue requirement calculations based on the PAA Order billing determinants are reasonable for setting Phase I revenues and rates.

B. For Phase II, if applicable

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

ARGUMENT:

Consistent with OPC's adjustments to Phase II test year revenues and to comply with the matching principle, the bills and gallons used to calculate the rates should be increased to reflect the projected level of customers that will be online for the first year of operation of the wastewater treatment expansion. (TR 380) Based upon witness Merchant's analysis, it is patently obvious that KWRU does not want the Commission to look beyond the historical 2014 test year, except to add in the items that increase its revenue requirement and to exclude as inappropriate or irrelevant any adjustments that would decrease its prospective revenue requirement or rates. (TR 352-353)

It is the Utility's burden to prove that its requested revenues and costs are prudent and reasonable. (TR 353) KWRU's 2015 Annual Report states that its 2015 revenues increased over its 2014 revenues by 12% and that it achieved a 16.19% rate of return, when its reported cost of capital was 7.25%. (TR 363; HE 65, KWRU response to Monroe County POD 11) As testified to by witness Merchant, KWRU's financial picture was much better in 2015 and will most likely be better in 2016; yet the Utility does not want the Commission to even consider any of these positive revenue requirement impacts. (TR 353) However, the actual increase in 2015 revenues should be used to estimate the number of bills and gallons by customer class as KWRU failed to provide the restated number of 2015 customers and gallons so that it would be consistent with the method used by the Commission in the PAA Order. (TR 380) Therefore, to determine the appropriate 2016 billing determinants, the 2015 levels should be escalated conservatively by 5%, which is consistent with OPC

witness Woodcock's used and useful projection. (TR 380; HE 20) OPC's calculations for the 2016 level of bills and gallons are reflected on Exhibit PWM-3, Schedule 4-B. (TR 351-354; HE 25, 28)

Utility witness Swain testified that she disagreed with the escalation of bills and gallonage to implement a projected test year, only because the Utility used a historic test year. (TR 775) The Commission should summarily reject the Utility's one-sided, cherry-picked adjustments where it presents only adjustments to its test year that raise the revenue requirement, with no matching adjustments that lower or offset the revenue requirement. Instead, the Commission should appropriately rely upon the bills and gallons recommended by OPC for Phase II rates.

ISSUE 20: What is the appropriate amount of miscellaneous revenues to be included in test year revenues and rates?

A. For Phase I, if applicable

POSITION: See Stipulation 9.

B. For Phase II, if applicable

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

ARGUMENT:

Phase II miscellaneous revenues should be \$86,421 based on a projected 2016 level. To properly calculate these revenues, witness Merchant first applied the actual 2015 miscellaneous revenues of \$104,651 from the General Ledger, and then removed the \$19,500 received for reuse testing from the Monroe County Detention Center (MCDC), as that tariffed rate should be discontinued and included in the reuse rate. (TR 357-358) Second, witness Merchant applied the MCDC Lift Station Cleaning Income approved in the PAA Order, a decrease of \$2,081, which matches the tariff rate. (TR 357-358) Last, witness Merchant escalated the remaining miscellaneous service revenue accounts by 5%, (\$3,276), which is the escalation factor used in OPC's pro forma 2016 Phase II rate projections. (TR 358) The net result increased the adjusted miscellaneous revenues by \$13,802. (TR 357-358, HE 25)

With respect to proper determination of reuse revenues, the 2015 reuse gallons sold increased 18% above the 2014 levels. (TR 358) To reflect the projected 2016 levels, witness Merchant

increased the 2015 gallons sold by an additional 5% consistent with her 2016 projection factors. (TR 358) This resulted in a 2016 projected level of reuse revenues at the current rate of \$0.68 per thousand gallons of \$61,098, or an increase of \$10,697 to the historical test year. (TR 358; HE 25: Schedule 3-C)

County witness Wilson further testified that KWRU will likely be able to sell additional amounts of reuse water as soon as the treatment plant expansion comes on-line. (TR 447) His best estimate of additional sales was an additional 9-10 million gallons in 2017 and an additional 5.8 million gallons per year above the 2017 level on an ongoing basis in 2018 based on the anticipated completion of the Bernstein Park redevelopment in summer of 2017 and its use of reclaimed water for irrigation. (TR 447, 450-451) This supports the OPC recommended adjustment as being very conservative. For these reasons, Phase II miscellaneous revenues should be increased.

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

A. For Phase I, if applicable

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

B. For Phase II, if applicable

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

ISSUE 22: What adjustments, if any, should be made to account for the audit adjustments in each of Staff's Audit Findings 3, 4, 5, 10 and 11 to operating expenses?

POSITION: *See Stipulation 10. No amortization adjustment is necessary for deferred accounting fees as these costs should be disallowed. (Issue 27) Also, any component of the deferred litigation fees should be added to CWIP in Phase I rates and should be capitalized to plant in service for Phase II. (Issue 28)*

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

A. For Phase I, if applicable

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

accounting/engineering fees, insurance, and rate case expense). Total Phase I O&M should be decreased by \$301,461.*

ARGUMENT:

Ms. Merchant testified PAA Phase I revenue requirement not only allowed a full level of pro forma O&M expenses to implement AWT for the existing plant, but also an increment for an additional amount of expenses to be incurred after the new plant expansion is placed into service. (TR 363-365) Because KWRU did not implement AWT on its existing plant until January 1, 2016, the historical test year does not include sufficient actual levels of costs to implement AWT on the existing plant. While witness Merchant agreed that some adjustment was necessary to the historic test year, Phase I O&M expenses to allow for AWT implementation should be no more than the actual annualized levels incurred for 2016. (TR 363-365)

KWRU provided the January to April 2016 level of operating expenses and those expenses totaled \$237,762. (TR 365) Since the Utility did not allocate or break down the expense pro formas between the existing plant compared to the plant expansion, witness Merchant testified that some alternative was appropriate to best estimate the level that has been incurred in 2016 (i.e., the time that the Phase I PAA rates have been in effect). (TR 365) The majority of the expense accounts for this four-month period should be multiplied by 3 to reflect a full year of expenses. (TR 365) For chemicals, purchased power and sludge hauling expenses, Ms. Merchant recognized that the plant flows generally increase in the last quarter of the year; therefore, the total of the first four months of 2016 should be multiplied by 3.25 to recognize the increased year-end flows. (TR 365) Specific adjustments should then be made to reduce O&M expenses by: (1) \$9,588 (Stipulations 3 & 10); (2) \$60,000 for the management fee for affiliate services not necessary or supported (Issue 25); (3) accounting and engineering fees of \$12,350 and \$653, respectively, that were removed in the PAA Order (Issue 24); and (4) \$44,785 for overstated general liability insurance which witness Swain admitted was incorrectly booked in 2016. (TR 365-366, 777; HE 24) Lastly, O&M expenses should be increased by \$38,005 to add back in rate case expense approved in the PAA Order. (TR 369) The net adjustment to annualize the Phase I O&M expenses is a decrease of \$301,461. (HE 24: Schedule 3-C) While KWRU in many instances attempts to criticize witness Merchant's annualization for 2016 expenses, the Utility has used her same type of annualization methodology in several instances to justify higher pro forma expense levels.

KWRU requested and received recovery of significant pro forma O&M expenses to implement AWT in KWRU's 2009 rate case; however, it did not incur those expenses. (TR 366) As a result, the customers paid higher rates for expenses which were not incurred. (TR 366-367) KWRU witness Johnson admitted the utility stopped treating to AWT to save money. (TR 124-125) Although witness Swain testified that the Commission allowed only a portion of the sludge hauling expense and none of the estimated additional chemical expenses (TR 775), a review of the MFRs in KWRU's last rate case clearly shows the Utility requested \$177,583 in pro forma adjustments to expenses for AWT level treatment (purchased power: \$46,518, chemicals: \$112,341, and sludge hauling: \$18,724). (HE 69: POD 29 [Additional File]) According to pages 25-26 of Order PSC-09-0057-FOF-SU² at pages 25-26 confirms that only the following adjustments were made: sludge removal was decreased by \$9,129 for non-recurring amounts, and chemicals were reduced by \$16,117 to remove the impact of overstated affiliate transactions. The Commission also removed the excess markup in pro forma expenses for chemicals, sludge hauling, and materials and supplies by of \$7,913, \$2,690, and \$23,224, respectively. Order PSC-09-0057-FOF-SU at 27-28. Thus, by removing the overstated markup amount of chemicals, purchased power and sludge hauling, the Commission still approved a net pro forma adjustment of \$148,256 for AWT. It is obvious that witness Swain did not review the MFRs or Commission order in KWRU's last rate case before she formed her erroneous opinion about the level of AWT expenses allowed in that case.

B. For Phase II, if applicable

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

ARGUMENT:

Phase II O&M expenses should be \$1,809,082. Phase II O&M expense adjustments are appropriate to reflect Stipulations 3 and 10, accounting/engineering fees (Issue 24), management fees (Issue 25), rate case expense (Issue 26), amortization of accounting fees to correct the Utility's books and records for 2007-2011 (Issue 27), and the amortization of legal fees for the permit litigation fees

² See Order No. PSC-09-0057-FOF-SU, issued January 27, 2009, in Docket No. 070293-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

incurred which should properly be capitalized. Witness Merchant also identified three additional Phase II necessary adjustments not covered in other stipulations or issues. The first is a reduction to pro forma expenses made by the Commission in the PAA Order of \$10,028, which was appropriate. (TR 369) The second is a \$29,223 reduction to the Utility's pro forma expenses adjustment to sludge removal, purchased power, chemicals, and material and supplies expenses to reflect consumption levels recommended by OPC witness Woodcock's engineering analysis and growth for the first year that the new plant expansion will be placed into service. (TR 285; HE 20) Witness Woodcock testified that the projected 2016 treatment levels will be 507,370 GPD; however, the Utility calculated its projected level of expenses using a consumption level of 550,000 GPD. (TR 285) Therefore, witness Merchant reduced those four accounts, which are directly impacted by the amount of flows treated, by 7.75% (42,630/550,000 GPD), which results in a decrease of \$29,223 to O&M expenses. (TR 369-370)

Lastly, the additional \$245,501 in expense adjustments included in Utility witness Swain's direct testimony should be disallowed. (TR 371) These KWRU-proposed expenses are in addition to the approximately \$840,000 in pro forma adjustments requested in the MFRs and were not included in KWRU's original rate case filing. The Utility failed to provide timely or sufficient documentation to support how these amounts were calculated or to identify any known and measurable changes that have occurred subsequent to the test year which would require these additional costs to be included in the revenue requirement. (TR 370-371) There are also several calculation errors included in these untimely additional expense requests. (TR 777; HE 49: Rog 16, p. 16)

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

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

ARGUMENT:

The Utility's \$12,350 pro forma increase for additional accounting services, not related to the correction of its books and records, should be disallowed consistent with the decision in the PAA Order. (TR 360) The additional work performed in the test year did not warrant an adjustment to

increase accounting fees on a going-forward basis and KWRU indicated that the increase in wastewater treated would not increase the prospective amount of accounting transactions relative to the amount of flows received. (TR 360-361) Engineering expense should also be decreased by \$653 to correct expenses for a capitalized invoice consistent with the PAA Order. (TR 360-361) The Utility also admitted that \$9,645 of the 2015 increased cost was related to non-recurring costs. (HE 53: Rog 75, p. 138)

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

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

ARGUMENT:

Ms. Merchant testified that management fees should be decreased by \$60,000 for both Phase I and Phase II rates for an affiliate transaction that is not necessary for the provision of regulated utility service consistent with the PAA Order. (TR 361-362) KWRU attempts to explain that WS Utilities, as the sole shareholder and largest creditor, requires outside management to review KWRU's operations and to ensure that all debts are properly paid and that no security is jeopardized or personal guaranty is put at risk. (TR 362) It is a fact that in 2016 WS Utilities converted all of its affiliate debt to equity. (TR 774) In addition, Utility witness Johnson testified that most financial institutions impute a 3-5% management fee as an expenditure when lending, arguing that Green Fairways' management fee is reasonable for setting rates. (TR 76) The Commission properly found that these services primarily benefit Mr. Smith as a shareholder. (TR 362) The majority of the management duties provided by Green Fairways is duplicative of the in-house officers and management KWRU has hired since its last rate case. (TR 362) Further, the services provided by the affiliate primarily benefit the Utility's shareholder and the affiliate does not provide true, independent third party oversight over the Utility. (TR 361-362)

Utility witness Johnson attempted to bolster the Utility's position in his rebuttal. (TR 608) He testified that Green Fairways oversees capital investments including check signing for large capital projects, directly oversees all of his activities as President, assists in obtaining loans for the company,

including providing the personal guarantee of William L. Smith, Jr. to obtain reasonable lending rates, reviews outside legal bills, provides budget and financial oversight, participates in capital planning, and approves compensation for employees. (TR 608) Witness Johnson also inferred that OPC witness Merchant based her opinion that the two entities are affiliates on the fact he is related by marriage to Mr. William L. Smith. (TR 608) Witness Johnson's understanding of "related parties" is flawed.

KWRU has not shown anywhere in its case why it is prudent for it to have an additional company perform services that it is fully capable of performing. Green Fairways does not breakdown its services by employee, services or time spent. Witness Smith is not an employee of Green Fairways, and KWRU has not provided evidence that any other Green Fairways employee performs those services that witness Johnson alleges are performed. The functions identified by KWRU for Mr. Smith are duplicative and unnecessary to those performed by witness Johnson in his capacity as president of KWRU. (HE 9, pages 100-102) Furthermore, the mere fact that Mr. Smith owns *both* companies is direct evidence that the two companies are related. The fact that witness Johnson is related by marriage is not in and of itself indicative of an affiliate relationship though it may well be highly indicative of such. For the reasons stated above, the \$60,000 fee is duplicative, unreasonable, and only benefits the shareholder; thus, it should be disallowed. (HE 9, page 102)

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

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

ARGUMENT:

The Commission approved rate case expense of \$152,021 in the PAA Order. Amortized over four years, this equates to an annual expense of \$38,005. (TR 369) Post-protest, KWRU's requested rate case expense should be increased by \$6,805 (\$38,005 - \$31,200). (TR 369) OPC witness Merchant testified that the final amount of rate case expense should be fully supported and reasonable, and should not be duplicative. (TR 367-369) Adjustments should be made to remove duplicative and excessive legal fees, filing fees, and costs incurred to submit and address deficiencies in the MFRs, and to allow a reasonable estimate to complete the case. (TR 367-369)

It is not appropriate for KWRU to seek reimbursement from its ratepayers to have two attorneys reviewing the same work product and attending the same meetings. (TR 367-369) It is the Utility's burden to demonstrate that the legal fees incurred are *not* duplicative. (TR 367) Customers should not pay double (or any additional) rate case expense to have two attorneys review a data request, a discovery response, attend a conference call with staff, attend the prehearing conference, or pay for hours associated with "researching" different Commission functions such as the PAA process. (TR 367-368) At the November 7-8 hearing, OPC and Monroe County each had *one attorney* actively litigating their clients' case; whereas, KWRU had two. When making adjustments to KWRU's "estimate to complete," the Commission should allow rate case expense for the participation of only one attorney, and disallow costs for the second as being unnecessary and unreasonable.

Ms. Merchant testified that accounting fees should be reduced to remove duplicate filing costs to correct MFR deficiencies, to remove duplicative, unsupported, and other accounting invoices not related to rate case expense, and to reflect a reasonable level of estimated hours to complete the case. (TR 367-369) The Commission should scrutinize the accounting rate case expense invoices to determine whether the Utility's inadequate record keeping has increased the amount of accounting work performed to prepare the MFRs, address audit findings and respond to discovery, and whether any claimed rate case expense related to bringing the Utility's books into compliance included in rate case expense should be disallowed. Ms. Merchant also testified that adjustments are appropriate to reflect a reasonable cost for customer notices, printing and shipping, and rate case travel expenses. (TR 367-369)

The record in this case is closed with the conclusion of the hearing, and no new late-filed information should be admitted into the record because there is no opportunity for the parties or staff to cross examine KWRU as to the reasonableness or veracity of any of these expenses. Moreover, KWRU failed to include any affidavits accompanying the invoices submitted with its motion. Therefore, the Commission should deny KWRU's self-seeking request to reopen the record to provide unverified and unsupported rate case expense information.

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

POSITION: *Amortization of \$11,678 for accounting costs to restate KWRU's books after the last rate case decision is unreasonable and should be disallowed. No restatement occurred, nor did the Utility make Commission-ordered adjustments from the last rate case. The

ratepayers should not be required to pay *in future rates* for historical costs which should have been incurred annually to repair KWRU's records since the last rate case.*

ARGUMENT:

Ms. Merchant testified that the \$11,678 in amortization for accounting costs related to restating the Utility's books and records subsequent to the last rate case decision and prior to filing this current rate case are unreasonable and should be disallowed. KWRU fails to explain how restating its Annual Reports provided any future benefit to KWRU or its customers, nor were any of the corrected annual reports filed with the Commission. In addition, the Utility failed to make the Commission-ordered adjustments from the last rate case, and subsequently incurred \$63,056 in 2014 to bring its books and records into compliance with the Commission's Order and the accounting requirements of the NARUC Uniform System of Accounts. (TR 339-342) Given the substantial number of Staff audit adjustments required in this case, the detailed accounting analysis was not sufficient to properly correct KWRU's books for accounting and ratemaking purposes. This extra expense for outside accounting services is not a cost that is reasonable or prudent as KWRU's books and records should have been correctly maintained. Ms. Merchant testified that ratepayers should not pay *in future rates* for costs to repair the Utility's records when that should have been incurred annually since the last rate case. (TR 339-342)

In response to Staff Interrogatory 34, KWRU stated the reason for restating its Annual Reports for 2007 to 2012 was because these reports indicated the expenditures related to the plant improvements subsequent to the last rate case had not been properly capitalized. Because of the magnitude of the corrections to be made, the Utility felt it would be appropriate to revise and refile the Annual Reports for those years. The Utility also responded that the 2013 annual report was not restated because it was based on revised information. (HE 51: Rog 34, p 58) This interrogatory response from KWRU clearly supports witness Merchant's position that the accounting fees were incurred to correct the Utility's accounting records after the last rate case in accordance with the Commission's Order and these corrections to the books should have been incurred and expensed prior to the 2014 historical test year. The Utility should not be able to get a second bite at the apple for costs that should have been incurred to correct its books from 2007 to 2013, and those costs should be disallowed.

ISSUE 28: What is the appropriate amount and accounting treatment of fees associated with the legal challenge of KWRU's FDEP Permit Numbers FLA014951-012-DWIP, 18490-0202, and 18490-021 for rate-setting purposes?

A. For Phase I, if applicable

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

ARGUMENT:

KWRU witness Swain testified on direct that The Last Stand litigation is complete and KWRU incurred legal fees of \$496,793, and argued that these fees should be amortized over five years. (TR 204-205) OPC witness Merchant testified that KWRU then updated the requested total legal fees to \$519,585 and amortized the total over 5 years for an annual amortization expense of \$103,917. (TR 337) The Utility agreed that the litigation costs should be decreased by \$42,157 to remove unsupported fees. (TR 362-363) Thus, the balance of total litigation fees should be \$477,436. These costs were incurred directly by KWRU to obtain permission from DEP to build KWRU's treatment plant expansion. While the title of the permit was labeled as an operating and construction permit, the permit for the existing plant had two more years before it expired. This permit, along with the two permits to build two additional shallow injection wells, were necessary only for the fact that KWRU wanted and needed to expand its capacity. Thus, these legal fees to defend the plant expansion permit needed for future customer growth clearly should be included with the capital costs associated with the plant expansion and should be recovered over the life of the plant, as required by the NARUC Uniform System of Accounts (USOA). These legal fees should not be considered non-recurring expenses for renewing a normal operating permit. Since the wastewater treatment plant is not in service, the auditor's adjusted cost of the construction permit legal and consulting fees of \$477,436 should be recorded in CWIP for the Phase I rates. (TR 338-339) The Utility's requested deferred debit balance of \$467,625 for the legal and consulting fees should be removed from Working Capital and test year O&M Expenses should be reduced by the Utility's requested \$103,917 in amortization. (TR 339)

Witness Swain disagreed that the permit litigation costs should be capitalized. She testified "Although the permit application was associated with the construction, the appeal was filed against the approval of the shallow wells for disposal that were allowed under the then-current operating permit." Ms. Swain argued that, since the challenge would have impacted the current operations, she believed that it is appropriate to defer and amortize the legal fees over the five-year life of the permit, rather than to capitalize them. (TR 771-772) This argument is unpersuasive.

Last Stand challenged KWRU's permit to expand the plant capacity by 0.350 MGD, and the Commission took official recognition of the DEP Final Order and Recommended Order (incorporated by reference in the Final Order) in that case. The Recommended Order states in the first introductory paragraph (p. 2) "The Permit at issue would authorize the expansion of KWRU's existing domestic wastewater facility and the installation of two additional underground injection wells.³ In paragraph 13 on page 9, the DEP Recommended Order states that only the proposed modifications to the existing facility are at issue in this proceeding, not the existing two injection wells. Lastly, pages 14-15 of the Recommended Order explains in more detail that the existing permit and authorized activities were not at issue in that proceeding (paragraph 35) and only the plant expansion and the two new injection wells (paragraphs 36 & 37) were at issue. (HE 69: POD 30, p. 1766) The above paragraphs from the DEP final order and the recommended order completely refute witness Swain's statement that the appeal was filed against the approval of the shallow wells for disposal that were allowed under the then-current operating permit.

Based on the above, it is clear that the litigation directly related to the construction of the treatment plant expansion and two new injection wells, and was not related to the existing treatment plant or injection wells. Given these facts, the only proper accounting treatment pursuant to USOA is to capitalize the costs to CWIP for Phase I plant and remove the amounts from working capital and O&M expenses.

B. For Phase II, if applicable

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

ARGUMENT:

For Phase II, \$477,436 should be added to Account 380-Wastewater Treatment & Disposal Plant. The Utility's requested deferred debit balance of \$467,625 for the legal and consulting fees should be removed from Working Capital and test year O&M Expenses should be reduced by the Utility's requested \$103,917 in amortization.

³ The Commission took official recognition of the Last Stand DEP Recommended and Final Order.

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

A. For Phase I, if applicable

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

ARGUMENT:

Net depreciation expense should be \$104,511 for Phase I rates. Adjustments are appropriate to increase amortization of CIAC by \$14,003 (Audit Finding 4) and decrease depreciation expense by \$5,489 (Audit Finding 5). Also, the pro forma depreciation expense for the wastewater treatment plant expansion should be reduced by \$196,281 and the Utility's adjustment to reflect the year-end annualization of depreciation expense should be removed, a reduction of \$4,384.

B. For Phase II, if applicable

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

ARGUMENT:

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

additional 2016 CIAC projected to be collected during the first year of operation of the WWTP expansion. (TR 372-373)

ISSUE 30: What is the appropriate amount of taxes other than income to be used in setting rates?
(Fall-out)

A. For Phase I, if applicable

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

ARGUMENT:

Phase I taxes other than income should be \$153,029, resulting in a net decrease of \$92,878 to the Utility's requested balance. Ms. Merchant testified that adjustments are appropriate to remove the \$62,863 of regulatory assessment fees on OPC's calculated test year revenue adjustment. Payroll taxes should be increased by \$5,682 to reflect the annualization of payroll taxes consistent with the method used to adjust Phase I salaries for AWT. Lastly, the Utility's requested pro forma adjustment to property taxes of \$35,696 on the pro forma plant should be removed. (TR 374)

B. For Phase II, if applicable

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

ARGUMENT:

Ms. Merchant testified that 2016 pro forma test year TOTI should be \$189,605, reflecting a decrease of \$56,302. Payroll taxes should be reduced \$1,875, consistent the pro forma salaries in the PAA Order. Property taxes should be increased by \$13,355 to reflect the Phase II pro forma plant and decreased by \$16,177 related to non-used and useful plant. (TR 374-375)

REVENUE REQUIREMENTS

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

A. For Phase I, if applicable

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

ARGUMENT:

Based on OPC's adjustments to the rate base, cost of capital and operating expenses, the Phase I revenue requirement should be \$1,821,639, representing an increase of \$286,840, or 18.69%, to adjusted 2014 test year revenues. (TR 375; HE 24, Exh. PWM-2, Schedule No. 3-A)

B. For Phase II, if applicable

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

ARGUMENT:

Based on adjustments to rate base, cost of capital and operating expenses, the appropriate revenue requirement for Phase II should be \$2,269,893, representing an increase of \$568,263, or 33.40%, to adjusted 2016 pro forma test year revenues. (TR 375; HE 25, Exh. PWM-3, Schedule No. 3-A) Ms. Merchant testified that consistent with long-standing Commission practice, KWRU's revenue increase should be limited to the amount requested in its initial MFRs. It is inappropriate for any utility, through its testimony, to seek a rate increase that exceeds its requested revenues in its original petition. KWRU increased its original request by more than \$413,000. The Utility has provided no notice to its customers that it has requested higher revenues, and thus, rates higher than those that were included in the official customer notice of the case should not be considered. Any revenue increase above the original request should be completely denied, especially if the Commission determines that the Utility failed to comply with the customer notice requirements. (TR 375-379; HE 31, GDU Silver Spring Shores Hearing Transcript)

RATES AND RATE STRUCTURE

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

POSITION: *The PAA BFC/gallonage allocation of 40/60 and the corrected billing determinants for 2014 Phase I are reasonable. Phase II billing determinants should be escalated to

project expected revenues from new customers added since 2014 and expected after the plant expansion is in-service. An investigation is appropriate to determine whether KWRU has correctly implemented changes made to bill customers by appropriate class and meter size and refunds for customers who were improperly billed.*

ARGUMENT:

Ms. Merchant testified that the 40/60 base facility charge (BFC) and gallonage charge allocation and the test year bills and gallons by meter size approved in the PAA Order for Phase I are reasonable. A full investigation should be made to determine if KWRU has correctly implemented the changes made to bill its customers by the appropriate class and meter size and whether any refunds are required for customers who were improperly billed a non-tariffed rate. (TR 379) As addressed in Issue 19, Phase II billing determinants should be escalated to project the expected revenues from new customers that have been added since the end of 2014 and which are expected to be added after the plant expansion is placed into service. Ms. Merchant's Phase I and Phase II calculated rates are reflected on Schedules 4-A in Exhibits PWM-2 (HE 24) and PWM-3 (HE 25), respectively. (TR 381)

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

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

ARGUMENT:

OPC witness Merchant testified that KWRU's originally requested reuse rate of \$1.34 is appropriate and more reasonable than the PAA Order rate of \$0.93 per thousand gallons (kgal). The two largest users of reuse water are an affiliate golf course and the Monroe County Detention Center. The Florida Keys Aqueduct Authority (FKAA) provides potable water for KWRU's service territory with a gallonage charge ranging from \$5.84 to \$11.70 per kgal. Ms. Merchant testified that the Commission's practice is to approve market-based reuse rates to provide incentives for higher reuse consumption. Currently, there are only two reuse providers in Monroe County – KWRU and FKAA. KWRU's rate is significantly lower than FKAA's lowest rate of \$2.92/kgal. Thus, setting KWRU's reuse rate to \$1.34 is more than reasonable, less than the other provider's reuse rate, and significantly less than the lower tier potable water rate. In addition, Ms. Merchant also agreed with the PAA Order

that, given the higher reuse rate, no additional charge for testing is necessary and should not be allowed. (TR 381-383)

County witness Wilson also testified that KWRU likely will be able to sell additional amounts of reuse water as soon as the treatment plant expansion comes on-line. He estimates sales of an additional 9-10 million gallons in 2017 and an additional 5.8 million gallons per year above the 2017 level on an ongoing basis in 2018 based on the anticipated completion of the Bernstein Park redevelopment in summer of 2017 and its use of reclaimed water for irrigation. (TR 447) Thus, an argument that approval of a higher reuse rate might discourage reuse consumption should be disregarded, especially since one of the reuse users that would pay higher rates is an affiliate of the Utility.

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

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

ARGUMENT:

Ms. Merchant testified that the initial connection charge and normal reconnection charge should remain at \$15 and the premises visit charge should be \$20 for normal hours and \$45 for after hours, as approved by the Commission in its PAA Order. Should the Commission approve higher levels of miscellaneous service charges, higher miscellaneous revenues should be used when calculating the amount of revenues to be collected from service rates. (TR 383, 401-402)

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

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

ARGUMENT:

KWRU implemented the PAA approved Phase I rates after the protest of the PAA Order in this case. No further Phase I rate implementation is necessary or appropriate and the Phase I revenue requirement should be used to determine whether any refunds are owed to customers. Phase II rates should be implemented no sooner than 30 days after the new plant is approved by DEP, placed into service and becomes used and useful. Once verified by Commission staff, the Phase II rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. If the Utility encounters any unforeseen events that will impede the completion of the Phase II plant items, then KWRU should immediately notify the Commission and all parties to this proceeding in advance of the deadline to allow ample time to review whether an extension is appropriate.

The Commission should determine post-protest Phase I and Phase II revenue requirements and the difference between the two. Since the 0.350 MGD plant expansion is expected, but not guaranteed, to be completed at approximately the same time the Final Order approving new rates, charges, and tariffs in this docket, then the Commission could implement Phase II rates and provide a credit on an appropriate basis to all customers for the difference between the Phase I and Phase II revenue requirements.

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

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

ARGUMENT:

Based on the testimony of OPC witness Merchant, the Commission-approved Phase I PAA rates that were implemented by the Utility were excessive based on OPC's Phase I revenue requirement calculation. Therefore, a refund is appropriate in this case and should be applied consistent with the Commission's refund rule and should be credited to customer bills over the same amount of time that the increased rates were collected to offset the initial impact of the Phase II rate increase. (TR 385)

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

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

ARGUMENT:

OPC witness Merchant testified that KWRU incorrectly billed its customers, referencing the PAA order. (TR 355-357) The PAA Order states the Utility's billing practice for several general service customers was inconsistent with its approved tariff and that Staff would address whether the Utility should be ordered to 'show cause' for charging rates that are inconsistent with its tariff in a subsequent proceeding. *See* PAA Order at 31. Commission Staff sent a letter dated February 18, 2016, to KWRU requesting the Utility to provide a response by March 21, 2016, describing when and under what circumstances each outlined violation occurred and the Utility's plan to correct the billing errors. (TR 356; HE 84) By letter dated March 21, 2016, the Utility sent a 6-page response, with 22 pages of documents attached, attempting to excuse its improper billing practices. (TR 356; HE 84)⁴ In this response, KWRU admitted to several instances of billing customers in violation of its tariffs.

The following are examples where KWRU incorrectly billed its customers: First, KWRU admitted it billed Safe Harbor Marina a non-tariffed flat rate of \$1,665.03 instead of the tariffed flat rate of \$917.11 authorized in the 2009 rate case. (TR 618-620; HE 9, p. 8 of 269; HE 84, pp. 1-2) While KWRU notified the Commission of its intent to charge Safe Harbor Marina more than its Commission authorized flat rate tariff, KWRU never received approval from the Commission to do so. (TR 621; HE 84, Exh A) KWRU witness Johnson admitted KWRU was aware it required Commission approval to change a tariff. (TR 621) From approximately April 2009 to May 2016, KWRU charged Safe Harbor Marina approximately \$750 per month more than it was legally allowed to charge under its tariff. (TR 620-621) Therefore, this customer is due a refund and possibly interest

⁴ Note: the full version of KWRU's March 21, 2016 letter was admitted into the record (TR 616); however, only the excerpt of this letter was included in the online hearing exhibit.

from KWRU for the amount of overbilling.⁵ See Rule 25-30.350(2), F.A.C.,⁶ Underbillings and Overbillings for Water and Wastewater Service.

Second, Sunset Marina should have been billed a BFC for a 8" and 2" meter and gallonage charge based on water demand; however, the Utility charged Sunset Marina for those charges, two pools, and an additional 64 BFCs for the units behind the meter. (TR 624-625; HE 84) KWRU apparently did not apply the appropriate tariff, and instead applied tariff sheets applicable to South Stock Island Marinas (Tariff # 15.6) and Key West Golf Home Owners Association (Tariff #15.7) (HE 84) Currently, Sunset Marina is a general service customer; however, in 2012 billing was done on a mixed-use basis, and KWRU charged both residential and general service BFCs to this customer. (TR 621-625). As such, the current and/or former owner(s) of Sunset Marina appear to be owed a refund for the 64 residential BFCs and two pools, going as far back as records are available. See Rule 25-30.350(2), F.A.C.

Third and fourth examples involve Meridian West and Flagler Village. These were general services customers; however, they were also charged individual residential BFCs for units behind the meter. (TR 626; HE 84) The management companies for Meridian West and Flagler Village paid the wastewater bills, including the units behind the master meter. (TR 626-627) Witness Johnson agreed FCAA policy is that whoever is responsible for the master meter is responsible for the difference in water between the master meter and sub-meter (deduct meters). (TR 627-628). In its letter to staff, KWRU acknowledged it improperly charged Meridian West and Flagler Village, and asked for Commission help in calculating a refund but only for the difference between the general service and residential gallonage rate. (TR 628-629; HE 84) KWRU witness Johnson admitted that Meridian West and Flagler Village are owed refunds for erroneously residential customer BFC charges. (TR 629) See Rule 25-30.350(2), F.A.C.

When asked whether these four customers – Safe Harbor Marina, Sunset Marina, Meridian West and Flagler Village – were owed refunds, witness Johnson stated yes for Meridian West and Flagler Village as described in the letter to staff, but no for Safe Harbor Marina and Sunset Marina for the other reasons described in his testimony. (TR 630-631)

⁵ 7 years x 12 months x \$747.92 per month = \$62,825.28 is the amount without interest and does not factor in any index or pass through amounts, if any, which would have increased the \$917.11 flat rate since April 2009.

⁶ Rule 25-30.350(2), F.A.C, states: "(2) In the event of an overbilling, the utility shall refund the overcharge to the customer based on available records. If the commencement date of the overbilling cannot be determined, then an estimate of the overbilling shall be made based on the customer's past consumption."

OPC agrees that Issue 42 is complex and the Utility may owe additional refunds to customers not charged according to the approved tariffed rates. In order to rectify this problem, the Commission should initiate a full audit and investigation up to and potentially including an order to show cause to determine whether and how much of the revenues billed were based on unapproved and improper billing classifications, and how much these, and potentially other improperly billed customers, are owed in refunds. (TR 355-357, 379)

ISSUE 45: Should this docket be closed?

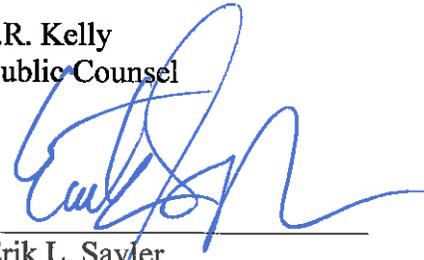
POSITION: *No. This docket should be kept open until the Commission fully resolves Issue 42 and any other issues.*

CONCLUSION

For the reasons stated herein, the Commission should adopt the recommendations of OPC and Monroe County as it relates to the respective Phase I and Phase II revenue requirements and rates.

Respectfully submitted,

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CERTIFICATE OF SERVICE
Docket No. 150071-SU

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Citizens' Post-Hearing Statement of Positions and Post-Hearing Brief has been furnished by electronic mail on this 9th day of December, 2016, to the following:

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