

SOAH DOCKET NO. 473-20-4071.WS

PUC DOCKET NO. 50788

RATEPAYERS APPEAL OF THE) BEFORE THE STATE OFFICE
DECISION BY WINDERMERE)
OAKS WATER SUPPLY) OF
CORPORATION TO CHANGE)
WATER AND SEWER RATES) ADMINISTRATIVE HEARINGS

HEARING ON THE MERITS

Thursday, December 2, 2021

(Via Zoom Videoconference)

BE IT REMEMBERED THAT at 9:00 a.m., on
Thursday, the 2nd day of December 2021, the
above-entitled matter came on for hearing at the State
Office of Administrative Hearings, William P. Clements,
Jr. Building, 300 West 15th Street, Austin, Texas,
before CHRISTIAAN SIANO and DANIEL WISEMAN,
Administrative Law Judges, and the following proceedings
were reported by Kim Pence and Mary Carol Griffin,
Certified Shorthand Reporters.

Volume 2

Pages 243 - 468

P R O C E E D I N G S

THURSDAY, DECEMBER 2, 2021

(9:00 a.m.)

JUDGE SIANO: All right. Let's go on the record, day two of this proceeding. A couple of housekeeping matters.

Ms. Katz, issues to be addressed are -- include No. 2, which is notice of a hearing. I assume that's been provided.

MS. KATZ: Yes.

JUDGE SIANO: Okay. And that's somewhere in the evidence.

MS. KATZ: I'm sorry. Can you -- Judge, would you mind -- issues to be addressed, where are we?

JUDGE SIANO: Yeah, I'm looking at the Preliminary Order No. 2.

MS. KATZ: Oh, I apologize. Okay. I believe -- I believe they did, Your Honor.

JUDGE SIANO: Okay. Can you verify that before the conclusion of the hearing --

MS. KATZ: Yes, I can, Your Honor.

JUDGE SIANO: -- and get back to me on that?

And, Ms. Allen, I understand that you submitted Ratepayer Exhibits 18 through 27 to the court

1 reporter.

2 MS. ALLEN: Yes, Your Honor.

3 JUDGE SIANO: Okay.

4 MS. ALLEN: And to -- and to counsel.

5 JUDGE SIANO: Okay. And I understand
6 those were submitted as confidential.

7 MS. ALLEN: Not that I -- I don't believe
8 any of them are confidential, but I stand to be
9 corrected by counsel.

10 JUDGE SIANO: Okay. Well, they are your
11 exhibits. And when they were presented, there was no
12 indication that they were confidential, so those will
13 not be marked confidential.

14 MS. KATZ: Judge, excuse me. We did not
15 get -- receive any of those.

16 MS. ALLEN: Hold on.

17 JUDGE SIANO: Ms. Lander, did you -- did
18 you get those?

19 MS. LANDER: Staff definitely received a
20 number of exhibits from Ms. Allen. Give me one moment
21 and I can tell you exactly what we received.

22 Your Honor, it looks like we received
23 Exhibits 18 through 27.

24 MS. ALLEN: Ms. Lander, can you tell from
25 the email that you have whether Ms. Katz was copied or

1 included?

2 MS. LANDER: On the email that I have, it
3 does look like Ms. Katz was copied.

4 MS. ALLEN: Your Honor, I'm very happy to
5 resend those, but I sent at 4:47 yesterday, both to
6 Ms. Katz and Ms. Lander, the exhibits that needed to be
7 included, and I had no idea that -- my system does not
8 show any kind of delivery failure. So --

9 JUDGE SIANO: Okay.

10 MS. ALLEN: But I can -- I can resend that
11 email right this second.

12 MS. KATZ: Yes, that would be great.
13 Yeah, I don't know if it was an issue with the size of
14 the email coming through, but I just checked my email
15 and I still -- I don't have it. So that would be
16 wonderful if you could resend it at some point and we
17 could figure that out.

18 MS. ALLEN: I have resent it right now,
19 and I did double-check -- typically I get a delivery
20 fail that says file too large or something like that,
21 and I did not get that on this particular email.

22 JUDGE SIANO: All right. Go ahead and
23 send that. And, Ms. Katz, you can let us know if you do
24 not receive that.

25 Okay. And --

1 MS. ALLEN: Your Honor -- sorry.

2 JUDGE SIANO: Go ahead.

3 MS. ALLEN: I just wanted to double-check.
4 My records show that Exhibits 18, 26 and 27 were
5 admitted, and the others were excluded. Do I have that
6 right?

7 JUDGE SIANO: That sounds right, yes.

8 MS. ALLEN: And then whenever it's
9 appropriate, I've got one housekeeping matter that I'd
10 like to tend to before --

11 JUDGE SIANO: Let's take -- we can take
12 that up now.

13 MS. ALLEN: Okay. You might remember
14 yesterday when I talked with Mr. Nelson about my
15 Exhibit 26, which was a chart on gallonage, he pointed
16 out that I had not also included the response that
17 described whether that was gallons sold. So I wanted to
18 remedy that by including that response in the record so
19 that we could be sure that we understood that that was
20 gallons sold.

21 So I have marked as Exhibit 28, and I sent
22 to counsel this morning, the chart with the Company's
23 response attached to it so that the record can be clear.

24 (Exhibit Ratepayers No. 28 marked)

25 JUDGE SIANO: Okay. Let's see. Is there

1 any -- I have not seen it. Is that -- has that been
2 previously submitted?

3 MS. ALLEN: Yes, it was. Let me see if I
4 can share my screen and show it.

5 JUDGE SIANO: Well, I want to --

6 MS. ALLEN: I did circulate it. It is a
7 part of Ratepayers Exhibit 16. It is Bates Page 17
8 and 18. And all I've done is to include the Company's
9 response so that we know that the Company was responding
10 to gallons sold, not used, so that we didn't need to
11 make an adjustment to the numbers or, for example, the
12 water treatment plant.

13 JUDGE SIANO: Okay. Are there any
14 objections? I have it here. So this would be --

15 MS. ALLEN: 28.

16 JUDGE SIANO: Any objections to Ratepayers
17 Exhibit 28?

18 MS. KATZ: No, Your Honor.

19 MS. LANDER: No, Your Honor.

20 JUDGE SIANO: All right. Ratepayer 28 is
21 admitted.

22 (Exhibit Ratepayers No. 28 admitted)

23 JUDGE SIANO: And even though this is a
24 part of what has previously been marked as Exhibit 16,
25 this is being marked individually as Exhibit 28.

1 And as such, Ms. Allen, you will need to
2 provide it to the court reporter and the other parties
3 as with the others.

4 MS. ALLEN: Absolutely.

5 JUDGE SIANO: Anything else?

6 MS. ALLEN: No, Your Honor, not from --
7 not from the Ratepayers.

8 JUDGE SIANO: Okay. By close of hearing
9 the parties will need to propose a briefing schedule and
10 briefing outline and just think about as we move
11 forward. And if you have thoughts on that now, we can
12 address that now or wait until later.

13 Ms. Katz?

14 MS. KATZ: I wouldn't mind waiting until
15 the end of the hearing. So if there is some time in
16 between if maybe Ms. Lander and Ms. Allen and I could
17 get on the phone and try to work it out before we bring
18 it to you, that would be fantastic. If not, that's
19 fine, too. So whatever the other parties would like to
20 do.

21 JUDGE SIANO: It's always preferable if
22 there's agreement on that. So I'm happy to accommodate
23 that. Just know that's something to do today and --

24 MS. LANDER: Your Honor, I'm so sorry to
25 interrupt. I just wanted to be clear. We are scheduled

1 to run through the end of tomorrow if necessary. Is
2 that correct?

3 JUDGE SIANO: This was scheduled as a
4 three-day hearing. I'm hoping that we can conclude it
5 today.

6 MS. LANDER: Thank you.

7 JUDGE SIANO: There seemed to be
8 indication that we might move relatively quickly after
9 Windermere's direct case or I guess direct and rebuttal.
10 So the hope is we can finish today.

11 MS. ALLEN: Your Honor, let me mention
12 that in that regard, Mr. Stein is not available today.
13 I had asked counsel whether we might -- since we thought
14 that time wise we might conclude today, I had asked
15 counsel whether we might stipulate to his written
16 testimony so that he would not need to actually appear
17 and save a handful of words that one says.

18 I have heard back from PUC Staff that
19 there is no objection to that. I have not heard back
20 from the Company regarding that. If we aren't able to
21 make that stipulation, then I'm afraid Mr. Stein is not
22 going to be able to appear to say those handful of words
23 until tomorrow. No one is going to cross-examine him,
24 so it's simply a matter of admitting his testimony. But
25 if we need to do it the formal way, we'll need to do it

1 tomorrow.

2 JUDGE SIANO: Okay. For planning
3 purposes, Ms. Katz, can you stipulate to --

4 MS. KATZ: Your Honor, I'd be happy --
5 yes, and just to be clear, I did respond to Ms. Allen's
6 email from last night, last night 14 minutes after she
7 emailed me letting me know about Mr. Stein. And there
8 was a conversation via email between us regarding
9 stipulating to his testimony.

10 When she clarified that this morning at
11 approximately 8:30, we were getting ready for this
12 hearing. And so after she clarified this morning
13 regarding exactly which testimony she was planning on
14 offering, at this point I'm okay with stipulating to,
15 but I would hate for the -- for Your Honor to think I
16 was ignoring Ms. Allen. That certainly wasn't the case.
17 We were discussing this since last night.

18 JUDGE SIANO: All right. I just need to
19 know if you can stipulate to that, and it sounds like
20 you can. So Mr. Stein will not need to appear, and we
21 hopefully will not need to come back tomorrow. So I
22 think that we're ready to move forward.

23 Ms. Allen, just going over the -- and I
24 know that you have principle reasons for what you're
25 doing, but just going over the numbers alone in this

1 matter, it appears that the amount in dispute is
2 approximately \$170,000. And at this point, we're
3 looking at rate case expenses that are approaching
4 \$300,000. And so even if we are -- agree with you on
5 every substantive issue, you know, unfortunately the
6 Ratepayers are very likely to be saddled with rate case
7 expenses that far exceed the amount in the original
8 dispute. So it's always unfortunate when that happens,
9 but we are where we are.

10 I believe the next witness is Mr. Gimenez.
11 Ms. Katz.

12 MS. KATZ: Yes, Your Honor.

13 JUDGE SIANO: All right. Go ahead and
14 call your witness.

15 MS. KATZ: Thank you, Your Honor.
16 Windermere Oaks calls Joe Gimenez to the stand.

17 JUDGE SIANO: Mr. Gimenez, please raise
18 your right hand.

19 (Witness sworn)

20 JUDGE SIANO: Ms. Katz.

21 MS. KATZ: Thank you.

22 PRESENTATION ON BEHALF OF
23 WINDERMERE OAKS WATER SUPPLY CORPORATION (CONTINUED)
24 JOE GIMENEZ,
25 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MS. KATZ:

3 Q Good morning, Mr. Gimenez.

4 A Good morning.

5 Q Do you have a copy of what's been previously
6 marked as Exhibits WOWSC 2 and 3, which is your direct
7 and rebuttal testimony, in front of you?

8 A Yes.

9 Q Okay. And are these true and correct copies of
10 the prefiled testimony that we filed in this case?

11 A Yes.

12 Q And if we were to ask you the same questions
13 that were listed in the direct and the rebuttal
14 testimony in front of you, Exhibits 2 and 3, would the
15 answers still be the same as what's contained in your
16 testimony today?

17 A Yes.

18 MS. KATZ: And so with these exhibits
19 already in the record, Your Honor, the Corporation
20 passes the witness for cross-examination.

21 A Let me -- I do want to say that there are two
22 small errors that I found on the direct -- on the
23 rebuttal testimony.

24 Q Okay.

25 A I don't know how much -- in the PDF version of

1 my rebuttal testimony, Page 8, and it's the page -- hang
2 on -- Page 7 of the actual document, it's Line 4. It
3 says, "First, in September-October 2019 the plaintiffs
4 in the lawsuit styled TOMA Integrity v. WOWSC," that
5 actually should be "Double F Hangar lawsuit."

6 UNIDENTIFIED SPEAKER: Our Exhibit 3,
7 Page 8.

8 THE REPORTER: I'm sorry. Who is
9 speaking? There's someone off camera speaking.

10 (No response)

11 JUDGE SIANO: Okay.

12 THE WITNESS: I don't know if my -- did
13 everything just freeze for a second there?

14 JUDGE SIANO: I can hear you. I'm not
15 sure if it froze for anyone.

16 THE WITNESS: Okay.

17 MS. KATZ: And can you hear -- Ms. Pence,
18 can you hear Mr. Gimenez clearly?

19 THE REPORTER: Yes. I believe you were on
20 mute for a second, though.

21 MS. KATZ: Okay. I apologize.

22 THE REPORTER: So if you asked a question,
23 it didn't come through.

24 MS. KATZ: I didn't. I was just
25 clarifying that he was on -- using an audio source, not

1 his computer.

2 JUDGE SIANO: Mr. Gimenez, is the footnote
3 citation there incorrect as well?

4 A Let me check. Yes, I believe that should be
5 Double F. We reference it in a -- you know, a page down
6 or so.

7 Q (BY MS. KATZ) Mr. Gimenez, you're in your
8 rebuttal testimony, Page 9?

9 A Yes. There's also on that page that I just
10 referenced at Line No. 10 it says 30,100 -- \$30,012 for
11 services rendered in the TOMA lawsuit. That should be
12 the TOMA lawsuit and Double F Hanger.

13 Q Hang on, Mr. Gimenez. I am trying to -- I
14 think that your page numbers are not corresponding with
15 my page numbers because you may have it up on a PDF, so
16 it includes additional pages.

17 A That's correct. I have it on the PDF.

18 Q Okay. So we're just trying to find the --
19 we're looking at the page numbers that are listed on
20 that document itself.

21 A Page 7 on the document itself.

22 Q Of your rebuttal testimony?

23 A Yes, ma'am.

24 Q Okay. Mr. Gimenez, are there any other
25 corrections that you need to make to your direct or your

1 rebuttal testimony?

2 A Only those two, Line 4 and Line 10 on Page 7 of
3 the actual document.

4 Q And so other than those two corrections of
5 your -- on your rebuttal testimony, which would be under
6 Exhibit 3 for purposes of the record, is everything else
7 true and accurate?

8 A Yes, ma'am, I believe so.

9 Q Okay. Again, you would answer these questions
10 today the same as you answered them in your filed --
11 prefiled testimony with the additional corrections that
12 you made today?

13 A Yes, ma'am.

14 MS. KATZ: Okay. And so with these
15 exhibits already in the record, the Corporation now
16 passes the witness.

17 JUDGE SIANO: All right. Ms. Allen?

18 THE REPORTER: You're on mute, Ms. Allen.

19 CROSS-EXAMINATION

20 BY MS. ALLEN:

21 Q I want to start by getting you to help me get a
22 clear picture of what is at issue here. All right?

23 The way I calculate it -- you help me if
24 I'm wrong -- is that the new rates are generating
25 approximate -- well, no, not approximately --

1 \$347,226.44 annually on water. Is that correct?

2 A I haven't done that math, ma'am. So I can't
3 say that that's correct.

4 Q All right. Does the Company have a calculation
5 of the amount of revenue that it believes the Company is
6 receiving as a result of this rate increase?

7 A The only calculation that I am aware of is
8 the -- if you multiply \$65 times 12 -- I mean, \$65
9 times 280-ish, it comes up to about \$16,000, and that's
10 all ballpark figures. So that would be a monthly
11 figure, a monthly amount. That's the only calculation
12 that I'm aware of.

13 Q Okay. I gotcha. So kind of a quick and dirty
14 65 times -- you said 280?

15 A Yes, ma'am.

16 Q And that's a monthly figure?

17 A Yes, ma'am.

18 Q So the quick and dirty calculation uses
19 \$218,400 annually. Right?

20 A If you say so. I'm not doing that math.

21 Q Okay. Well, I just multiplied the number you
22 gave me by 12 because it was a monthly figure. Right?

23 A Yes, ma'am, it's a monthly figure.

24 Q And the new rates have been in place for just
25 under two years. Right?

1 A I'm sorry. Would you say that again. Just
2 under?

3 Q The new rates have been in place for just under
4 two years. Right?

5 A I think it's only a year and a half.

6 Q I thought they became effective March 23rd,
7 2020. Am I wrong?

8 A They became effective at that day, but we
9 didn't start collecting on that until May of 2020.

10 Q Okay.

11 A And that's because they became effective -- we
12 didn't do the first reading until April 23rd, and then,
13 you know, that revenue would have been realized on the
14 May billing. So we would not have recognized any of
15 that additional revenue until May of 2020.

16 Q Okay. Let's just use your numbers. That's
17 fine with me. So from May of 2020 to May of 2021, by
18 the quick and dirty method, the Company received
19 additional revenue from the rate hike in the amount of
20 approximately 220,000. Right?

21 A Ma'am -- if you say so, yes, ma'am.

22 And I'm sorry. I have had a head cold
23 since Sunday. So I apologize to everyone. This is a
24 function of not feeling well is some of the difficulty I
25 might have today.

1 Q I think everybody's allergies are kicking in,
2 so I can hear you fine, but thank you for letting me
3 know that.

4 Okay. So then from -- so June, July,
5 August, September, October, November -- November, that's
6 five months? June, July, September, October,
7 November -- I used my fingers -- yeah, that's five
8 months.

9 All right. So by the time this decision
10 is rendered, there will be another month or two at
11 least. Right? Probably more?

12 A I'm not familiar with the entire process going
13 forward.

14 Q Me either. But if it does take a hot minute to
15 get this decided and the rates stay in place for two
16 years, that would be 440,000. Right?

17 A If the rates stay in place for two years, it
18 will be 12 months times 280 customers times \$16,000 a
19 month. I'm relying on your calculations.

20 Q Well, I'm just taking your monthly number you
21 gave me and multiplying by 12.

22 So the Company's plan here is that it will
23 continue to collect the higher rate amount, and it will
24 continue to pay its lawyers I think Mr. Nelson said at
25 the rate of 10,000 a month each. Is that right?

1 A Yes, ma'am.

2 Q And it will continue to incur legal expenses in
3 a far greater amount than that. Right?

4 A I don't know what the future holds in terms of
5 incurring legal fees. That could --

6 Q The board -- the board has approved the
7 expenditure of Company money to pay legal fees in the
8 Year 2020 in a far greater amount than \$20,000 a month.
9 Right?

10 A No, ma'am.

11 Q Do you recall the Company answering an RFI from
12 Staff asking about legal fees for 2020?

13 A I don't recall that.

14 Q You don't? Okay. Hang on a minute. Let me
15 just see if I can find it. I'm going to have to find
16 the supplement so that I can ask you about the right
17 number.

18 You will remember the Company gave an
19 original number and then it gave a supplemental number?

20 A No, ma'am, I don't -- that all occurred quite a
21 while ago in terms of us providing all of the responses,
22 it happened more than a year ago, and I have not
23 reviewed all of the timeline or documents of all of the
24 responses to discovery.

25 Q Fair enough. I'm going to find this so that we

1 can get it right based on the information that the
2 Company furnished, but it's going to take me just a
3 second to do it. Here we go. Let me see if I can show
4 it to you. There we go; that's it.

5 So what did the Company tell the Staff
6 when it asked about legal expenses paid in 2020?

7 A I'm sorry. I'm trying to --

8 Q You're not --

9 A I see the document. I'm trying to read the
10 document and then process your question. So let me read
11 the document first and then try to process your
12 question. Okay?

13 Q Process away.

14 A Okay. I'm sorry. Go ahead with your question.

15 Q The answer that the Company gave the Staff when
16 the Company asked -- or Staff asked is that the Company
17 had legal expenses -- it had paid legal expenses in 2020
18 for \$516,000 -- 516,144.92. Right?

19 A So as I'm looking at the question, in the
20 response, there's a discrepancy between what the
21 question and the response is.

22 Q Yes sir, there is, but I can't help that.

23 Can you confirm for us that the figure the
24 Company gave for 2020 is \$516,144.92?

25 MS. KATZ: Your Honor, I'm going to

1 object. Your Honor, I'm going to object to
2 mischaracterization of the question on the screen and
3 the answer responding to that question. Mr. Gimenez
4 clearly stated that the question uses one term and
5 within the response it uses a different term. Ms. Allen
6 is asking him to confirm something that he can't confirm
7 unless he's able to explain it further.

8 Q (BY MS. ALLEN) Explain away, Mr. Gimenez.

9 A Well, I --

10 JUDGE SIANO: Overruled. I'll allow him
11 to explain it.

12 THE WITNESS: I'm sorry.

13 JUDGE SIANO: Overruled. Go ahead.

14 A Okay. So that \$516,000 number is the total
15 amount incurred. It is not the total amount paid for
16 2020.

17 Q (BY MS. ALLEN) Okay. All right. Fair enough.
18 And so what that means is the Company -- the board has
19 obligated the Company to pay the amount of \$516,144.92
20 for legal services rendered in the Year 2020, but checks
21 haven't been cut for that full amount. Right?

22 A Right, checks have not been cut at \$516,000.

23 Q Okay. So let me see here. So there's 516,144
24 in debt to the lawyers for 2020, and my recollection is
25 Mr. Nelson told us yesterday there was a carryover from

1 2019 of at least 150,000. Right?

2 A I'm not recalling exactly what he said right
3 now, but there was some carryover, yes, ma'am.

4 Q Okay. I'm going to put that number in for
5 purposes of illustration, and his testimony will speak
6 for itself. So that gives me a figure of \$666,144
7 for --

8 A No, ma'am, that's incorrect.

9 Q My math is wrong? My math is wrong?

10 A The hundred -- so what I'm looking at with
11 these figures on your -- on this response is that the
12 amount paid in 2017 was \$2,247.21.

13 Q So now that's the amount paid?

14 A The amount paid.

15 Q Okay.

16 A And in 2018 the amount paid was \$37,981.32.
17 In 2019, the amount paid -- the amount paid by checks
18 being cut and received was \$166,583.46. The amount
19 incurred in 2020 total was \$516,100 -- \$516,144.92.
20 That was incurred, and that may have been incurred --
21 those were -- those services may have been rendered
22 in 2019, but they were not billed or received to us
23 until 2020. And all of that is included in that 516
24 figure.

25 Q Okay. And so --

1 A And so just to clarify, that's why I said
2 the 666 -- \$666,000 number that you calculated was
3 incorrect.

4 Q Okay. And I'm happy that I could tell that
5 from -- how would I -- how would anybody be able to tell
6 from the Company's response to the Staff in this case
7 that in 2017 it was paid, in 2018 it was paid, in 2019
8 it was paid, and in 2020 it includes everything? How
9 would you be able to tell that?

10 A I don't know that that was part of the
11 question.

12 Q The question was: Provide the total amount of
13 legal expenses paid by the Company in those years. That
14 was the question. Right?

15 A And for three of the four responses, that was
16 correct.

17 Q That is not a hard question for the Company to
18 answer, is it?

19 MS. KATZ: Objection, Your Honor.
20 Argumentative.

21 JUDGE SIANO: Sustained.

22 Q (BY MS. ALLEN) Let me say it this way: For
23 purposes of a rate proceeding in which someone says the
24 Ratepayers might be saddled with \$300,000 or so of rate
25 case expenses, that's not a hard question for the

1 Company to answer, is it?

2 MS. KATZ: Objection, Your Honor,
3 argumentative.

4 JUDGE SIANO: Sustained. This is not the
5 time to go over a discovery dispute, Ms. Allen. Do you
6 have specific questions for this witness?

7 MS. ALLEN: Discovery dispute. Okay. I
8 will ask my questions.

9 Q (BY MS. ALLEN) All right. So let's just say
10 for illustration purposes that the Company paid on the
11 payment plan that it described to its two law firms
12 \$20,000 a month for 12 months, that's \$240,000. Right?

13 A 12 times 20,000 is 240,000, that's correct.

14 Q But it didn't -- it couldn't start doing that
15 until you said May of 2020?

16 A That's -- what I said was in May of 2020 that
17 was when we first started receiving income from the
18 increased rates.

19 Q Okay. And so in the interim, the legal fees
20 continued to accumulate. Correct?

21 A Yes, ma'am.

22 Q And beginning in May of 2020, the Company was
23 able to have the revenue to pay the -- begin to pay on
24 the \$20,000 a month obligation. Right?

25 A I think I just said that, yes, ma'am.

1 Q I just wanted to make sure I heard you.

2 Okay. And so by May of 2021, the number,
3 whether it's a cumulative number or not, let's just plug
4 in 600,000 for illustration, 600,000, that would have
5 been reduced by 240,000 by May of 2021. Right?

6 A Well, first of all, it wasn't 600,000. But
7 whatever the number was conceivably we have -- I mean,
8 you're asking -- we're going back and forth between
9 actual versus theoretical. So I apologize. I mean,
10 theoretically, if we're paying \$20,000 a month, any
11 number would be reduced by \$240,000.

12 Q A year?

13 A In a 12-month period, yes, ma'am.

14 Q And I'm assuming that if the Company made a
15 commitment to the lawyers that it was going to pay them
16 \$10,000 a month on the accounts payable from their
17 firms, that the Company has done that. Is that a fair
18 assumption?

19 A I believe that's correct. We've -- the law
20 firms have been very, very generous with the rates that
21 they've charged us. They've been very generous with the
22 terms that they have extended to us in terms of
23 repayment. They have been --

24 Q Mr. Gimenez, you are evading me. I asked you
25 whether the Company has honored its obligation.

1 A In view of --

2 Q That was my question.

3 A In view of everything that I just said, the
4 Company has always endeavored to pay its obligations.

5 Q Can you answer this question: Has the Company
6 honored the arrangement that it made with its lawyers to
7 pay each firm \$10,000 per month on the account beginning
8 2020?

9 A Beginning in May of 2020, yes, ma'am, I believe
10 it has.

11 Q Okay. And so whatever the number started off
12 to be, by May of 2021, it would be reduced by 240,000.
13 Right?

14 A That's what our budget is. For every year
15 right now our budget is -- we have 250,000 allocated or
16 indicated in our budget for legal fees.

17 Q I am pretty sure I didn't ask you about budget.
18 I pretty sure I asked you about the Company's payments
19 on its commitment that it made to the lawyers.

20 And isn't it true that the Company's
21 payments on its commitment paid to the lawyers up to May
22 of 2021 would be 240,000?

23 A I'm sorry, ma'am. My -- the Company -- I'm
24 sorry. This is where my head fog from my cold is
25 interfering.

1 We are making payments of \$20,000 a
2 month --

3 Q Okay.

4 A -- to honor our commitments to our law firms.

5 Q And all the while that the Company is making
6 those payments, it is continuing to authorize legal
7 services in the lawsuits for the directors, and those
8 litigation expenses are continuing to accrue. Isn't
9 that right?

10 A The Plaintiffs have not stopped their pursuit
11 of the lawsuit. So, yes, ma'am.

12 Q Okay. And how much has accrued between
13 January 1 of 2021 and May of 2021?

14 A I don't have those figures in front of me,
15 ma'am.

16 Q Does 200,000 sound about right?

17 A I don't want to speculate.

18 Q You're the one -- I'm sorry. You're the one
19 who reviews the legal invoices. Right?

20 A Yes, ma'am, I receive the legal invoices.

21 Q And you're the one who is representing the
22 Company in this rate proceeding concerning whether or
23 not the board's decision to apply the Company's
24 resources for that purpose was reasonable and prudent.
25 Right?

1 A Yes, ma'am, I represent the Corporation.

2 Q And you're designated as the person who is
3 going to explain how it is that the board's use of
4 Company funds for that purpose is reasonable and
5 prudent. Right?

6 MS. KATZ: Your Honor, I'm going to
7 object. She's asking him a legal question. He's not an
8 attorney.

9 JUDGE SIANO: Overruled.

10 A I'm sorry. Am I supposed -- so I have to
11 answer that? I'm sorry.

12 MS. ALLEN: I don't think there's been a
13 ruling, but I'm waiting.

14 JUDGE SIANO: The objection is overruled.

15 A So what's the question again, ma'am?

16 Q (BY MS. ALLEN) Mr. Gimenez, in your rebuttal
17 testimony on Page 11, you are -- you respond to a
18 question. Here is the question: "Please explain why
19 the legal expenses incurred to litigate these matters
20 are just and reasonable expenses that may be recovered
21 through rates." That is the question. Right?

22 A Yes, ma'am.

23 Q And you purport to answer that question,
24 whether it's legal or not. Right?

25 A I answered that question, yes, ma'am.

1 Q Okay. And I'm examining you now on that
2 answer -- that question and that answer. Okay?

3 A Okay.

4 Q Because I want to test its accuracy. Okay?

5 A Yes, ma'am.

6 Q And so as the person who is here to explain on
7 behalf of the Company how these legal expenses are just
8 and reasonable and the person who reviews the legal
9 invoices when they come in, can you tell us what amount
10 the Company is obligated -- is obligated to pay for
11 legal services rendered between May of 2020 -- I'm
12 sorry -- between January 1, 2021 and May 2021?

13 MS. KATZ: Your Honor, objection. This
14 has been asked and answered. He said he doesn't know
15 exactly, and she continues to go on and ask the same
16 question.

17 JUDGE SIANO: So, Ms. Allen, we can hear
18 evidence of rate case expenses that are -- that were not
19 available to the board when it made its decision, but it
20 sounds like we're getting into legal -- ongoing legal
21 expenses that are prohibited from our consideration
22 because that's information that was not available to the
23 board at the time it made its decision. So I'll sustain
24 on asked and answered.

25 But as far as this line of questioning

1 goes, unless it's -- unless it lends to the
2 information -- unless it lends to the board's decision
3 at the time it made its decision, then it's not really
4 information we can consider. So -- and you're welcome
5 to make that argument. Go ahead. So your specific
6 question is -- I've sustained the objection on that.
7 But if this line of questioning goes beyond what's
8 available to the board at the time it made its decision,
9 it's not something we can consider.

10 MS. ALLEN: So just for clarity for my
11 personal benefit, are you saying I am not allowed to
12 examine the Company's witnesses concerning matters that
13 might bear on the rate case expenses?

14 JUDGE SIANO: You are allowed to examine
15 him on matters that bear on the rate case expenses.
16 That is one of the exceptions to --

17 MS. ALLEN: Okay.

18 JUDGE SIANO: -- considering information
19 outside of what was available to the board.

20 MS. ALLEN: I just wanted to be sure that
21 I was clear on that because that's what I'm doing.

22 Q (BY MS. ALLEN) Mr. Gimenez, what I'm trying to
23 ascertain here is what is at stake with these rates and
24 how much money -- if the Company were allowed to do it,
25 how much money it would extract from the Ratepayers for

1 purposes of paying these legal expenses. That's what
2 I'm trying to determine. Okay?

3 And we know the amounts that have been
4 paid. We know an amount that you now claim has been
5 incurred. We know what amount that the Company has
6 committed to pay its lawyers. And all we need to know
7 now is how quickly are the Company's legal expenses
8 continuing to mount?

9 A You want to know --

10 MS. KATZ: Your Honor, I would -- Your
11 Honor, I would object to that. I mean, if she's asking
12 about, as you mentioned, first of all, its relevance to
13 the issues in this proceeding. If she's asking about
14 specific rate case expenses that are continuing to mount
15 because of this proceeding, that's one thing. But if
16 she's asking about continuing legal expenses of outside
17 litigation that went beyond 2019, then that's outside
18 the scope of this proceeding.

19 JUDGE SIANO: Ms. Allen, do you want to
20 clarify?

21 MS. ALLEN: I don't see how it is outside
22 the scope of this proceeding. This rate increase was
23 designed inappropriately to capture -- to capture
24 amounts that the board wanted to pay on account for
25 prior years and to go on indefinitely until whatever

1 legal expenses it incurred were paid in full. That's
2 how it designed this rate, and I wanted to make sure the
3 record is clear on that. And then somebody can decide
4 whether or not that's appropriate, and somebody can
5 decide whether the -- what are we figuring, two years
6 was captured, what, \$440,000 in two years -- what ought
7 to happen with that and whether the Company ought to be
8 able to charge its ratepayers for doing that. Somebody
9 has got to decide that. They can't do it without a
10 record.

11 JUDGE SIANO: One moment.

12 So there's essentially two exceptions to
13 what we can consider that was not available at the time
14 the board made its decision, and the first one is rate
15 case expenses for the rate case at issue, which is this
16 proceeding, and the other one is the extent to which
17 subsequent events shed light on the conditions that were
18 in existence at the time the district made its decision.

19 Okay. I'm going to allow it. Go ahead.

20 Q (BY MS. ALLEN) So, Mr. Gimenez, does the
21 Company have any sort of projections -- I'm, sorry, not
22 projections.

23 Does the Company have any calculation as
24 of this time as to when this rate increase could stop
25 under the theory under which it was developed?

1 A Do we have a projection?

2 Q No, sir.

3 A I'm sorry. What --

4 Q Well, I'm assuming that -- you help me if I'm
5 wrong. I'm assuming that at all times since this rate
6 increase happened you have continued to generate legal
7 expenses for these lawsuits and these directors and
8 those expenses have exceeded the amount that you're
9 paying to the law firms. Right?

10 A Yes, ma'am.

11 Q And that's setting aside the balance that you
12 carried forward from 2019. Right?

13 A (No response)

14 Q Right?

15 A Yes, ma'am. Yes, ma'am.

16 Q And so this is like my child who uses his
17 credit card and pays the minimum balance. The balance
18 is getting bigger all the time, isn't it?

19 A As long as the legal proceedings against the
20 Corporation by the Plaintiffs continue, yes, ma'am.

21 Q Because the board is paying anything the law
22 firm bills -- I'm sorry. Let me back up.

23 The board is authorizing and committing
24 the Company to pay anything that the law firms bill in
25 connection with these lawsuits. Correct?

1 A Yes, ma'am.

2 Q And it has done that throughout. Isn't that
3 right?

4 A Yes, ma'am. We pay our obligations.

5 Q Well, you haven't paid them yet, have you?

6 A We are working every day to pay them as we can,
7 the best we can.

8 I do want to clarify something, though. I
9 think this is in response to a previous question.

10 Q Well, I'm not asking you, but you go ahead if
11 you want to and if the ALJ will let you.

12 JUDGE SIANO: Ms. Allen, do you have an
13 objection?

14 MS. ALLEN: There's not a question on the
15 table, and at some point or another somebody is going to
16 tell me that I've taken too long with this witness. It
17 doesn't matter to me. He can say whatever he wants, but
18 I have not asked him a question.

19 JUDGE SIANO: Okay. Let's -- Mr. Gimenez,
20 why don't you save that for another question --

21 THE WITNESS: Okay.

22 JUDGE SIANO: -- or for redirect.
23 Ms. Allen, go ahead and ask your next question.

24 Q (BY MS. ALLEN) Mr. Gimenez, when you applied
25 to have yourself put on the ballot to be a director of

1 this company, you filled out an application. Right?

2 A Twice, yes, ma'am.

3 Q And you put your signature on it. Right?

4 A Yes, ma'am.

5 Q And you committed to the Ratepayers by your
6 signature that you were familiar with the Company's
7 governing documents. Right?

8 A Yes, ma'am.

9 Q And you committed that if they put their trust
10 in you and elected you to the board, you would follow
11 the Company's governing documents. Right?

12 A Yes, ma'am.

13 Q And you committed that if they put their trust
14 in you and elected you to the board, you would complete
15 the mandatory statutorily required TOMA training that is
16 required for everybody that serves in a director
17 position. Right?

18 A Yes, ma'am.

19 Q Because you know that the law does require
20 directors of water supply corporations to educate
21 themselves about the requirements of the Open Meetings
22 Act and what I'm going to call the Open Records Act,
23 Public Information Act. Right?

24 MS. KATZ: Your Honor, I'm going to object
25 to relevance.

1 JUDGE SIANO: Sustained.

2 Q (BY MS. ALLEN) Mr. Gimenez, I'm not going to
3 bore you while I look for it, but do you recall that in
4 your testimony when you were attempting to justify legal
5 fees for the law firms to handled the public information
6 requests, you made the statement that directors are not
7 required to know about the Public Information Act? Do
8 you recall that?

9 A No, ma'am, I don't.

10 Q Okay. Well, I'm not going to bore you by
11 finding that. I just want to clarify that you know that
12 they are required to know. Right?

13 A Yes, ma'am.

14 MS. KATZ: Your Honor --

15 Q (BY MS. ALLEN) Now, let's go back to that
16 question that I referred you to earlier in which you
17 give a lengthy opinion about why the legal expenses
18 incurred to litigate these matters are just and
19 reasonable. Okay?

20 A Okay.

21 Q Are you with me?

22 THE WITNESS: Ma'am, could you -- could I
23 just pause for just a split second? I have a dog who
24 has cancer, and he is in the background and needs about
25 30 seconds of attention, and I'd just like to step away

1 from this for just a few minutes -- for just a split
2 second.

3 MS. ALLEN: Not my call. Judge, your
4 call.

5 JUDGE SIANO: All right. Let's take a
6 five-minute recess, and, Ms. Allen, let's go off the
7 record.

8 (Recess: 10:00 a.m. to 10:05 a.m.)

9 JUDGE SIANO: All right. We're back on
10 the record. Go ahead.

11 MS. ALLEN: Okay. I'm sorry. I thought
12 we were.

13 Q (BY MS. ALLEN) So I want to be clear that
14 there have been -- at least in the Company's view there
15 have been a number of litigation matters that have
16 arisen as a result of the board's 2016 sale of surplus
17 property to a sitting director. Right?

18 A Yes, ma'am, there have been several lawsuits
19 filed against the board.

20 Q There was TOMA Integrity. Right?

21 A Yes, ma'am.

22 Q And that lawsuit was brought to redress a
23 violation of the Open Meetings Act. Correct?

24 A I'm sorry. Say that again. It was what?

25 Q It was brought to address a violation of the

1 Open Meetings Act. Correct?

2 A It was brought to address a -- yes, ma'am, it
3 was brought to -- yes, ma'am.

4 Q And it was brought in an effort to facilitate
5 the Company's recovery of property that had been
6 transferred in violation of the Open Meetings Act.
7 Correct?

8 MS. KATZ: You Honor, I'm going to object
9 to relevance. We're getting into details of previous
10 litigation.

11 JUDGE SIANO: I'll allow that question.
12 Overruled.

13 A Ma'am, I can't speak to the intent of the
14 Plaintiff for that litigation.

15 Q (BY MS. ALLEN) You can speak to what was in
16 their pleadings because you already have in your
17 rebuttal testimony. Right?

18 A I have that in my rebuttal testimony? I'm
19 trying to recall. So --

20 Q That was not my question. My question was:
21 Isn't it true that the TOMA Plaintiff brought that suit
22 and pleaded for the reversal of the approval that was
23 taken in violation of the Open Meetings Act so the
24 Company could get its land back?

25 A Yes.

1 Q If the land transaction had been set aside in
2 the TOMA case, it would have been because there was a
3 violation of the law by the board. Right?

4 MS. KATZ: Your Honor, I'm going to
5 object. She's asking for a legal conclusion.

6 MS. ALLEN: Your Honor --

7 JUDGE SIANO: Sustained.

8 MS. ALLEN: Okay.

9 Q (BY MS. ALLEN) Do you have your rebuttal
10 testimony there, Mr. Gimenez?

11 A Yes, ma'am, I do.

12 Q Okay. So do you see -- let's just -- for
13 example, on Page 7 your discussion of the TOMA lawsuit.

14 A Page 7 in the document itself. I'm looking.

15 Q I just have a hard copy. I really wasn't
16 following your corrections. Maybe you corrected that.
17 I don't know.

18 A Okay. Page 7. Yes, ma'am, that was the page
19 that we worked on creating.

20 Q Okay. And there you render opinions about how
21 the Plaintiffs structured their lawsuit. Right?

22 A Yes, ma'am. If you call --

23 Q Okay. Well, I'm using your words. You render
24 an opinion about the manner in which the Plaintiffs
25 structured their lawsuit and the legal effect of that.

1 Right?

2 A I commented on how they structured their
3 lawsuit.

4 Q In fact, the Plaintiffs in the TOMA Integrity
5 case structured its lawsuit in an effort to get the
6 Company's land back for the Company. Right?

7 A That's not what that's addressing.

8 Q It doesn't matter to me. You're rendering
9 opinions in your rebuttal testimony about the structure
10 and the pleadings in that lawsuit, and I'm asking you
11 about that.

12 MS. KATZ: Your Honor, argumentative.
13 Objection, please.

14 JUDGE SIANO: Overruled.

15 But, Ms. Allen, can you direct me to which
16 language you're referencing on Page 7 of his rebuttal
17 testimony?

18 MS. ALLEN: Sure, I can. There's one
19 reference beginning at Line 13 about how Plaintiffs
20 structured their lawsuits. We can continue to his
21 explanation about what the cases were about on Page 9,
22 which needs some clarification. We can address the fact
23 that not all of these lawsuits were filed by the board,
24 which he discusses extensively at Pages 9 and 10 of his
25 testimony. On Page 10, Mr. Gimenez even gives us a

1 legal conclusion about whether the underlying land sale
2 was arm's length, and we will be asking him about that.

3 MS. KATZ: Your Honor, I'm going to object
4 to opposing counsel testifying at this point. I believe
5 Your Honor just asked which specific language she was
6 referencing in the question that she was asking
7 Mr. Gimenez at the time.

8 JUDGE SIANO: Overruled. What she says is
9 not -- is not evidence unless she's asking the question
10 and the witness says yes, so it won't be considered.

11 I'm just trying to understand which parts
12 you're referencing. So with respect to Page 7,
13 Ms. Allen, I think the structure of the lawsuit that
14 he's referencing here is different -- not a substantive
15 structure, but simply a matter of the parties involved.

16 MS. ALLEN: My point is that this rebuttal
17 testimony is rife with legal opinions about the TOMA
18 case and the Double F case. And if you're not going to
19 let me cross-examine him about that, I'll move -- I'll
20 just make my record and move on.

21 JUDGE SIANO: Ms. Allen, with respect to
22 Page 7, I don't think that there's a legal conclusion
23 involved here, it's simply a matter of recognizing
24 there's different parties being sued and they have to
25 defend themselves separately.

1 So with respect to -- you're going to have
2 to give me more specific citations on the other pages
3 that you referenced that concern you.

4 MS. ALLEN: Go to Page 12 -- go to Page 11
5 and 12 where he gives his opinion about why --

6 JUDGE SIANO: Line number, please.

7 MS. ALLEN: The entire answer to this
8 question: "...why the legal expenses incurred to
9 litigate these matters are just and reasonable expenses
10 that may be recovered through rates." He gives his
11 opinion about that. He gives his opinion about what
12 these lawsuits were intended to accomplish. He is
13 wrong. I want to ask him about that. And in
14 particular, he is --

15 JUDGE SIANO: Ms. Allen, I'm going to ask
16 you to wait. I need to --

17 MS. ALLEN: Fair enough.

18 JUDGE SIANO: Well, okay, what's your
19 question, Ms. Allen?

20 MS. ALLEN: My question is this: Isn't it
21 true that had the TOMA Integrity Plaintiffs prevailed
22 the land transaction would have been set aside on the
23 grounds that it was illegal?

24 MS. KATZ: And, Your Honor, I would object
25 to that as speculation.

1 JUDGE SIANO: Sustained.

2 Q (BY MS. ALLEN) None of the Plaintiffs in
3 either of these lawsuits was ever seeking to have the
4 Court order the Company to bail on the land transaction,
5 were they?

6 A I'm sorry. Say that again. There have been
7 several orders. I'm trying to process them.

8 Q None -- none of the Plaintiffs in either the
9 TOMA lawsuit or the Double F lawsuit was seeking an
10 order that the Company bail on the land transaction,
11 were they?

12 A Bail on the land transaction?

13 Q Yes, sir. The word you used on Page 12 at
14 Line 8 of your rebuttal testimony.

15 A I'm sorry. Line 12 of what page?

16 Q Page 12, Line 8, where you attempt to justify
17 these legal expenses.

18 MS. KATZ: Your Honor, I'm going to
19 object. One, that's a mischaracterization of the
20 testimony that's been admitted. There's no use of that
21 term. And, two -- oh, I apologize. I think that on
22 line -- I apologize. I do see that term.

23 A Well, I'm reading that line, ma'am, and the
24 Corporation did receive correspondence from the title
25 company, which is counsel for Friendship Homes, that if

1 we breach contract --

2 MS. ALLEN: Your Honor, I have not asked
3 him any question about communications with a title
4 company, and I'm going to object to him going off on a
5 tangent about that.

6 MS. KATZ: Your Honor, may I respond to
7 that objection?

8 JUDGE SIANO: You may.

9 MS. KATZ: That's part of the sentence
10 that she's referencing.

11 JUDGE SIANO: Okay. Well, you can -- you
12 can clarify that on redirect. I'll allow it. Go ahead,
13 Ms. Allen.

14 Q (BY MS. ALLEN) Here is my question,
15 Mr. Gimenez: Isn't it true that none of the Plaintiffs
16 in the TOMA Integrity lawsuit or the Double F lawsuit
17 were seeking that the Court order the Company to bail on
18 the land transaction?

19 A They didn't use the word "bail."

20 Q The Plaintiffs in those lawsuits were seeking
21 an order that the Court reverse the land transaction
22 because it was illegal, unauthorized, beyond the scope
23 of the powers of the corporation. Right?

24 A I don't have the details of their lawsuit in
25 front of me. What I was specifically referring to on

1 that page was the letter from the title company to the
2 Corporation.

3 Q Do you not know the answer to my question?

4 A Once again, I apologize. I have a head cold.
5 Could you repeat your question?

6 Q Well, let's separate it out. The TOMA
7 Integrity Plaintiffs was asking the Court to void the
8 land transaction because the TOMA Integrity Plaintiffs
9 contended it was illegal. Right?

10 A I believe that's what they contended, yes,
11 ma'am.

12 Q The TOMA Integrity Plaintiffs was not seeking
13 that the Court would order the Corporation to bail out
14 on the transaction. Correct?

15 A Ma'am, I don't know the legal differences
16 between avoiding and bailing and reversing a judgment.
17 I don't -- I'm not an attorney. I don't know those
18 technicalities of how any of that would work.

19 Q You do know that the TOMA Integrity Plaintiffs
20 never asked the Court to order the Company to sue Martin
21 or Friendship or anybody else, don't you?

22 A Once again, I don't know how those
23 technicalities would work. I don't -- I just don't
24 know.

25 Q Do you believe that TOMA --

1 A And then I wasn't on the board at the time when
2 the Corporation was receiving legal counsel about the
3 details of that transaction or that Court -- or that
4 case. So, in fact --

5 Q So -- okay.

6 A So, in fact, I mean, I came onto the board in
7 March of 2019, and at that time there had already been a
8 judgment against the Plaintiff, and the appeals process
9 was beginning.

10 Q So none of the testimony that you give in your
11 rebuttal about the TOMA litigation is based on your
12 personal knowledge. Is that correct?

13 A No, ma'am, that's not correct.

14 Q Because you weren't there, were you?

15 A I was there for the appeals process as I just
16 stated.

17 Q None of your rebuttal testimony about the TOMA
18 litigation other than -- if there is any -- about the
19 appeals process is based on your personal knowledge, is
20 it?

21 A Ma'am, I am -- I am very aware based on my
22 personal knowledge of the proceedings of the -- you
23 know, how the appeal process went, how the Supreme
24 Court, you know, ruled, et cetera. So I do have
25 personal knowledge of those -- you know, of those

1 matters.

2 Q Can you answer the question? Isn't it true
3 that TOMA Integrity Plaintiffs never asked the Court to
4 require the Company to sue Dana Martin, Friendship
5 Home & Hangers or anybody else?

6 MS. KATZ: Your Honor, I'm going to
7 object. I believe that he's offered -- I believe that
8 he's answered the question.

9 And I'll also object to relevance. This
10 line of questioning, as far as who asked who to sue or
11 what to happen to the property, is not relevant to the
12 rate -- the issues that are listed in the preliminary
13 order.

14 MS. ALLEN: Then I move to strike the
15 rebuttal testimony of Mr. Gimenez concerning these
16 lawsuits. If that's so, then he doesn't need to be
17 testifying about them, and he doesn't have personal
18 knowledge about them anyway.

19 JUDGE SIANO: Well, so I do believe that
20 he's already answered the question. I'll allow this --
21 him to answer your last question, but I do want to move
22 on from that. And, Ms. Allen --

23 MS. ALLEN: I'm sure you do.

24 MS. KATZ: I'm sorry. I'm going to object
25 to sidebar. The "I'm sure you do" -- as an attorney in

1 this case, I think it's extremely inappropriate for this
2 forum and, frankly, rude to Your Honors and to the rest
3 of the people involved in this matter.

4 MS. ALLEN: I agree that it was rude, and
5 I apologize.

6 JUDGE SIANO: Sustained, Ms. Allen.
7 You'll please conduct yourself appropriately.

8 MS. ALLEN: What am I allowed to do at
9 this point?

10 JUDGE SIANO: You're allowed to ask your
11 question.

12 MS. ALLEN: Okay. There's a question on
13 the table that I'm allowed to get an answer to that
14 question. Is that right?

15 JUDGE SIANO: There was an objection that
16 it was asked and answered. I'll allow the question, but
17 I do want you to move on. Go ahead.

18 MS. ALLEN: Can the court reporter read
19 back the question, please?

20 THE REPORTER: Given me one moment.

21 (Requested portion read)

22 Q (BY MS. ALLEN) Can you answer my question?

23 A The question says "never." I can't say -- I
24 can't respond to a question -- I can't -- I don't know
25 if they ever did so.

1 Q (BY MS. ALLEN) Let me ask it this way: Are
2 you aware of any instance in which the TOMA Integrity
3 Plaintiffs ever asked the Court to require the Company
4 to sue Dana Martin, Friendship Home & Hangers or anybody
5 else?

6 A That -- those types of discussions would have
7 occurred in executive council from -- in a meeting that
8 probably preceded my time on the board. That would
9 be --

10 JUDGE SIANO: Mr. Gimenez, I'm just going
11 to ask you to answer the question asked. If you don't
12 have an answer, then you can so state.

13 A Okay. I don't have an answer to that.

14 Q (BY MS. ALLEN) Well, let's try that again
15 because you ought to.

16 I'm asking you if you can think of any
17 instance in which the TOMA Integrity Plaintiffs sought
18 to have the Court order the Company to sue Dana Martin,
19 sue Friendship Home & Hangers or sue anybody else? You
20 ought to be able to tell me whether you know of any
21 instance that happened.

22 MS. KATZ: Your Honor, at this time, I'm
23 going to object, asked and answered. Just because he
24 doesn't know and that wasn't the answer that Ms. Allen
25 wanted doesn't mean that he didn't answer the question.

1 He answered it, and may we please move on.

2 JUDGE SIANO: Sustained. Let's move on.

3 Q (BY MS. ALLEN) Mr. Gimenez, isn't it true that
4 when the Company quote-unquote prevailed in the TOMA
5 Integrity lawsuit the result of that was that the
6 Company did not get its property back?

7 A I'm sorry. You used the word "bailed"? Is
8 that --

9 Q I said "quote-unquote prevailed"?

10 A Okay. I'm sorry. I got hung up on the word
11 "bail" because that's what I heard. Could you repeat
12 your question, please? I'm sorry.

13 Q I can. Isn't it true that when the Company
14 quote-unquote prevailed in the TOMA Integrity lawsuit
15 the upshot of that was that the Company did not get its
16 property back?

17 A Yes, ma'am.

18 Q And the Company spent more than a hundred
19 thousand dollars of the Ratepayers' money to achieve
20 that result. Correct?

21 A I assume that's the amount. I would assume
22 that, yes, that's the -- that is roughly the amount.

23 Q Okay. Isn't it true that the Double F
24 Plaintiffs never asked any court to order the Company to
25 bail out on the land transaction?

1 A Say it again. Isn't it true that -- I'm sorry.

2 Q The Double F Plaintiffs in the Double F
3 lawsuit. Are you with me?

4 A Yes, ma'am.

5 Q Those Plaintiffs never asked a court to have
6 the Company bail out on the land transaction, did they?

7 A They have sought its reversal.

8 Q They asked the Court to set the land
9 transaction aside on the grounds that it was
10 unauthorized and beyond the corporate powers. Correct?

11 A That's how I define "reversal."

12 Q So the answer is yes, that's correct?

13 A Yes.

14 Q All right. No one with a law license has ever
15 advised the Company that if the land transaction were
16 set aside because it was conducted illegally by the
17 board, because it was unauthorized, because it was
18 beyond the corporate powers in a transaction where the
19 buyer was involved, nobody with a law license has ever
20 told the Company there could be liability to the Company
21 in that circumstance, have they?

22 A Ma'am, I can't -- I can't answer that question.

23 Q You can't tell me whether anybody has ever said
24 that?

25 A You're asking if anybody has ever said anything

1 to the Company, and I can't -- you know, I -- that's a
2 pretty broad question.

3 Q Are you aware of any instance in which someone
4 with a law license has advised the Company that if the
5 land transaction were set aside because it was illegal,
6 unauthorized, beyond the scope of the corporate powers
7 or conducted through an abuse of authority by the
8 directors, that there would be exposure to the Company
9 in that circumstance? No one has ever said that so far
10 as you know. Isn't that right?

11 A You are asking me actually to provide
12 privileged information as to what our lawyers have
13 advised us of, and I don't know that I can answer that
14 question because you're asking for privileged Company
15 communications. So I apologize, I don't know that I can
16 answer that. I'd have to ask our -- my attorney to help
17 me on that.

18 Q Well, you would first have to determine whether
19 or not anybody ever made such a communication. And are
20 you telling me that you think that there might have been
21 such a communication?

22 A I'm saying that that might have been a part of
23 a communication that was included -- or part of a
24 general discussion that would have been included in
25 executive session.

1 Q Great. Why don't you see if the Company would
2 like to answer that question today. We can have you
3 consult with your counsel or whatever you'd like.

4 MS. KATZ: Your Honor, number one, I'm
5 going to object. I don't hear a question. Number two,
6 I believe the question has been asked and answered. And
7 number three, I'm not sure how this is relevant to any
8 of the 11 issues in the preliminary order, what happened
9 or didn't happen in executive board meeting about this
10 entire line of questioning. This is all re-litigating
11 matters that have either already been litigated or
12 pending litigation.

13 JUDGE SIANO: Sustained as to relevance.

14 MS. ALLEN: Your Honor, why don't we --
15 why don't you just instruct me about the extent to which
16 I'm going to be allowed to cross-examine this witness on
17 his rebuttal testimony, and I'll get out of your hair.

18 JUDGE SIANO: Okay. Well, you can
19 cross-examine him to -- if you have questions about his
20 rebuttal testimony, then you're free to ask those and --

21 MS. ALLEN: Okay. Then I'm just going to
22 keep on doing that.

23 Q (BY MS. ALLEN) Mr. Gimenez, this is with
24 reference to your answer to the question of why the
25 legal expenses incurred to litigate these matters are

1 just and reasonable expenses. And you have given
2 testimony on that topic, have you not?

3 A Yes, ma'am.

4 Q It was for the purpose of trying to justify the
5 rates that have been appealed, was it not?

6 A Yes, ma'am.

7 Q All right. And you have made statements about
8 what might have happened if the Company had bailed out
9 on the land transaction, have you not?

10 A I believe so, yes, ma'am.

11 Q Isn't it true nobody ever tried to get a court
12 to require the Company to bail out on the land
13 transaction?

14 JUDGE SIANO: So, Ms. Allen, to followup
15 on your request for guidance, in the context of
16 utilities just and reasonableness might be considered
17 something of a term of art, and usually it's opined on
18 by experts, and usually the expenses fall within certain
19 categories of the utility to operate.

20 This is somewhat unusual to have outside
21 legal expenses involved, but the utility's purpose is
22 to -- among other things to maintain financial
23 integrity, and so I do see that the reasonableness of
24 the expenses does -- is, to some degree, at issue, but I
25 do think that the detail that you're trying to develop

1 at this point is beyond that because we're not here to
2 relitigate those cases.

3 MS. ALLEN: Your Honor, I'm just going to
4 ask that his entire testimony on Pages 11 and 12 and 13
5 in response to the question about legal expenses being
6 just and reasonable be stricken because I'm not going to
7 be allowed to cross-examine him, that's fine, but I
8 would ask that his testimony be stricken.

9 JUDGE SIANO: Well, you can -- you can
10 cross-examine him on that, but certainly if --
11 Ms. Allen, with respect to your line of questioning, how
12 do you see that it relates to the justness and
13 reasonableness of the -- of the rates?

14 MS. ALLEN: His testimony about what might
15 or might not is speculative testimony about what might
16 or might not happen if the Company simply walked away
17 from its contract has nothing to do with these lawsuits.
18 These lawsuits were not about the Company walking away
19 from its contract. These lawsuits were about having a
20 Court hold that the contract could not be enforced by
21 anybody to it because it was illegal, unauthorized
22 beyond the corporate powers and other stuff. The buyer
23 was a sitting director in the middle of that wrongful
24 conduct. And the idea that the Company is going to say
25 it thought it had exposure is nonsense. That's not what

1 these laws were about, and the Company knows it. If I
2 can't develop that, okay, but I -- that's what I'm
3 trying to do.

4 JUDGE SIANO: Okay. But he's answered
5 your question to the extent that he can. We are getting
6 into some -- a level of detail that he may or may not
7 have been correct legally, but he's answering to the
8 extent that he can. And as I understand it, the
9 testimony goes to the decision that was made at the time
10 of -- by the board to authorize these expenses. So --

11 MS. ALLEN: I don't know what to do. You
12 just -- I will take your guidance, but it's important to
13 develop the record about what is and isn't accurate, and
14 that's all I know to do.

15 JUDGE SIANO: Okay. What's your next
16 question?

17 Q (BY MS. ALLEN) Isn't it true that every dollar
18 of the Company resources that have been spent in
19 connection with the Double F lawsuit have been devoted
20 to preventing the reversal of the land transaction and
21 preventing the imposition of personal liability on the
22 directors?

23 A Yes, ma'am.

24 Q If the Company gets exactly what the board's
25 attorneys have requested in the Double F lawsuit, the

1 Company will not get its land back. Right?

2 A So that is -- that matter is basically pending
3 the -- with the outcome of the underlying trial in the
4 48292 case because the judgment hasn't been rendered on
5 certain questions. And the Corporation has taken a
6 neutral stance on the outcome of this -- you know, of
7 that matter.

8 Q Okay. So now you're telling me that every
9 dollar that -- of Company money that has been spent is
10 for a neutral stance?

11 A Yes, ma'am, it is a neutral stance --

12 Q Uh-huh.

13 A -- in terms of -- yes, ma'am.

14 Q \$500,000 for 2020 is a neutral stance? Is that
15 what you're telling me?

16 A That money has allowed the Corporation to
17 proceed without further litigation entanglements that it
18 believes --

19 MS. ALLEN: Your Honor, this witness is
20 just about to speculate about legal matters. I don't
21 mind him doing it, but I'm going to cross-examine him on
22 it.

23 JUDGE SIANO: Mr. Gimenez, just answer the
24 question asked, if you would.

25 A Okay. In --

1 MS. ALLEN: Could the court reporter read
2 the question back, please?

3 (Requested portion read)

4 Q (BY MS. ALLEN) Do you understand my question,
5 Mr. Gimenez?

6 A Yes, ma'am.

7 Q You said the Company has taken a neutral
8 stance, and I want to know if you're telling us that it
9 is \$500,000 of the Ratepayers' money has been spent on
10 the Company to take a neutral stance in the litigation?

11 A Yes, ma'am.

12 Q Can you articulate any basis on which that is
13 reasonable and prudent on the part of the board?

14 A Yes, ma'am. The other alternatives to the
15 Corporation would have cost much more in our opinion.

16 Q The other alternative to the Corporation.
17 Okay.

18 So let's work at it this way: You do know
19 that the pleadings that have been filed in the Double F
20 case on behalf of the Company asked the Court to prevent
21 a reversal of the land sale. You know that. Right?

22 A I'm sorry. The other pleadings asked to
23 prevent the land sale?

24 Q All of the pleadings that have been filed by
25 the Company's lawyers have asked the Court not to set

1 aside the land transaction. Isn't that true?

2 MS. KATZ: Your Honor, I'm going to object
3 again. This is not relevant. And if it is relevant,
4 it's already been asked and answered about 30 minutes
5 ago.

6 JUDGE SIANO: Sustained to relevance.

7 Q (BY MS. ALLEN) If the Plaintiffs in the
8 Double F case do not prevail, the land trans -- the land
9 transaction will not be reversed and the Company will
10 not get its property back. Right?

11 MS. KATZ: Objection, relevance.

12 JUDGE SIANO: Sustained.

13 Q (BY MS. ALLEN) Does -- did the board -- in
14 trying to determine whether and to what extent to extend
15 the Ratepayers' resources on this litigation, did the
16 board consider whether the money that it was spending
17 with its attorneys was being spent to pursue an agenda
18 that would benefit the Ratepayers?

19 A Yes, ma'am, the board has always pursued an
20 agenda that benefits the Ratepayers.

21 Q Had the Court -- if the Court in the Double F
22 case were to determine that the land transaction was
23 unauthorized and should be reversed, the Company would
24 get its land back. Right?

25 MS. KATZ: Objection, Your Honor,

1 relevance. This is the third time that the same
2 question has been asked.

3 JUDGE SIANO: Sustained.

4 Q (BY MS. ALLEN) And if the folks on the other
5 side of the Double F case are successful, the Company
6 will not get its land back for the benefit of its
7 Ratepayers. Correct?

8 MS. KATZ: Objection, Your Honor,
9 relevance.

10 JUDGE SIANO: Sustained.

11 Q (BY MS. ALLEN) How could it not be in the
12 Ratepayers' best interest to get the land back through a
13 Court judgment that is illegal?

14 A I'm sorry, ma'am. How could it not --

15 Q How could it possibly be in the best interest
16 of the Company's Ratepayers if the result -- let me back
17 up. Let me ask it differently.

18 How could it possibly benefit the
19 Company's Ratepayers if its directors, current and
20 former, cannot be held accountable for their wrongful
21 conduct?

22 MS. KATZ: I'm going to object to
23 relevance, Your Honor. We're talking about legal
24 expenses that were included in the 2019 rate increase.
25 I'm not sure how this has anything to do with that rate

1 increase or rate case expenses.

2 Q (BY MS. ALLEN) Mr. Gimenez, maybe I just
3 misunderstood this whole thing. Are you -- the Company
4 paid resources to lawyers for the Double F lawsuit
5 during 2019. Right?

6 A Yes, ma'am.

7 Q And that's what I'm asking you about. Are we
8 clear?

9 A Yes, ma'am.

10 Q Because the Company has taken the position that
11 that money that was spent to pay lawyers in the Double F
12 lawsuit in 2019 is a cost of service. Right?

13 A All legal expenses are a cost of service,
14 ma'am.

15 Q I'm trying to figure out how in the world legal
16 fees spent to prevent the Company from getting its
17 property back are in the Ratepayers best interest and
18 for their benefit.

19 A I'm sorry. Was there a question there?

20 Q Yes.

21 A Can you restate it?

22 Q How is it -- how is it that the board's
23 expenditure of corporate assets for the purpose of
24 preventing the Company from recovering its property, how
25 is that in the best interest of the Ratepayers?

1 A Ma'am, that would require a very lengthy
2 explanation that's contained in my testimony.

3 Q I'm ready.

4 JUDGE SIANO: Well, he's referenced his
5 testimony. I'm not --

6 Q (BY MS. ALLEN) Line and page.

7 A Okay. Okay. Page 12, Line 3, "Since 2017,
8 three different sets of attorneys have advised three
9 different WOWSC Boards that any attempt to use legal
10 processes to coerce the land's return at the original
11 sale price of \$200,000 from Ms. Martin could be -- could
12 at the very least subject the Corporation to a lawsuit
13 or counterclaim asserting a breach of the land sale
14 contract."

15 Q All right. With regard to that testimony,
16 isn't it true that you cannot think of a single instance
17 in which anybody has attempted to use legal process fees
18 to coerce the land's return, can you?

19 A Ma'am, both lawsuits are about coercing the
20 Company to getting the land back.

21 Q Okay. Here it is. Neither of those lawsuits
22 is about coercing the Company to do anything. Isn't
23 that right?

24 A The effect of both lawsuits, to my knowledge,
25 was trying to coerce the Company in getting the land

1 back.

2 Q And if you're wrong about that, then all of
3 this testimony is wrong. Right? Because you're wrong.

4 JUDGE SIANO: Ms. Allen, you can argue
5 that in posthearing briefing.

6 MS. ALLEN: I could if there were evidence
7 in the record.

8 JUDGE SIANO: This is -- I'm not going to
9 have you arguing with the witness.

10 MS. ALLEN: If I can just get an answer to
11 the question of whether he is aware of anybody
12 attempting to use legal process fees to coerce the
13 land's return as opposed to Plaintiffs who are asking a
14 Court to review the transaction to determine whether
15 it's legal. That's my question.

16 JUDGE SIANO: And he's testified to that
17 and that's his position, and you can disagree with that
18 and you can make your argument, but I'd like you to move
19 on.

20 Q (BY MS. ALLEN) Had the Company decided on its
21 own to try to recover its property for the benefit of
22 its Ratepayers, it probably would have spent some money
23 to do that. Right?

24 A Yes, ma'am.

25 Q And it might or might not have prevailed.

1 Right?

2 A Yes, ma'am.

3 Q But at least it would be spending money with
4 the prospect that it would recover a valuable asset that
5 could then be used for its Ratepayers' benefit. Right?

6 A Yes, ma'am.

7 Q Which is a vastly different thing from using
8 Company resources for the purpose of preventing the
9 Company from getting its property back. Right?

10 A I don't think that they are the same thing.

11 Q It's a vastly different thing. That's what I
12 asked you. It's a vastly different thing, isn't it?

13 A It would all go back to what -- the board's
14 determination of the best long-term prospects for either
15 course, and in the -- I mean, this all -- in the case
16 that the Corporation would try to recover the land as
17 we've stated, it would have provided -- it would have
18 cost an incredible amount of money with limited
19 likelihood of success. And, in fact, we know now
20 because of the Judge's order, the May 3rd order, that
21 the water company would not likely have prevailed if it
22 had pursued that course and then --

23 Q Is that your legal opinion? Is that your legal
24 opinion?

25 A Ma'am, I don't have a legal opinion.

1 Q Okay. All right. But in any event, nobody
2 ever made the Company try to recover its land. Fair
3 enough?

4 A No, ma'am, that's not fair.

5 Q Okay. You rendered the legal opinion on
6 Page 13 of your rebuttal testimony that the Company's
7 insurance would not have covered the Company for
8 exposure from an interested director who acquired
9 Company property for a fraction of its value. Do you
10 see that?

11 A No, ma'am, I don't. If you could --

12 Q Would the --

13 A You said page --

14 Q Page 13, question (as read) Would the WOWSC
15 insurance cover litigation expenses if Martin were to
16 pursue it. Do you see that?

17 A Let me read this.

18 Q It starts at Line 7.

19 A So the question asked whether -- if the
20 corporation -- to me this is what the question asks: If
21 the Corporation were to sue Dana Martin and become the
22 Plaintiff against Ms. Martin, would the insurance
23 company have covered that decision of the board?

24 Q Fair enough. You're not trying to render an
25 opinion that the insurance company wouldn't have covered

1 the Company had Martin sued it back? You're not saying
2 that?

3 A No, ma'am, that's not what I'm saying.

4 Q Okay.

5 A I'm saying that the Corporation would not have
6 received funds from the insurance company to sue
7 Ms. Martin.

8 Q Fair enough.

9 A And so it would have had to have been paid
10 because the Corporation then would have been the
11 aggressor, the Corporation would have had to pay and
12 increase Ratepayers' rates to pursue that litigation.

13 Q And had it prevailed, it would have gotten
14 value?

15 A Some value, but I think that --

16 Q Okay.

17 A I think that the board's decision was that
18 there was not enough value to --

19 Q I'm really not asking for your legal assessment
20 because if you give it, I'm going to have to
21 cross-examine you about it. That wasn't my question.

22 A Okay. I was not giving you -- okay.

23 Q So you do know that had Martin sued the Company
24 or its directors, then they could have asked the
25 insurance company to cover it and defend it. Right?

1 A Ma'am, I'm not familiar enough with that
2 contract to have -- to answer that question. We
3 certainly would have presented it to the corporate -- to
4 the insurance company, but, you know, based on the
5 insurance company's reluctance to do anything positive
6 for the Corporation, I doubt that -- it's just -- I
7 can't speculate as to what they would have done, but we
8 certainly would have presented it to them.

9 Q On Page 13 of your rebuttal testimony beginning
10 at Line 14, you say, "The Directors should not be
11 personally liable for lawsuits brought against them
12 based simply on their capacity as a volunteer director
13 of the Corporation." Do you see that?

14 A Yes, ma'am.

15 Q That was the philosophy that prompted the
16 board's approval of the litigation costs that are
17 included in these rates. Correct?

18 A Yes, ma'am.

19 Q There was a point in time in very late 2019
20 when the directors who were getting Company money for
21 the litigation costs were asked to sign an undertaking.
22 Do you remember that?

23 A They were asked to sign -- I believe we
24 signed -- I can't remember if it was an affidavit or
25 something about -- it was a -- it was essentially a

1 promissory note of the directors to the Corporation
2 saying that if we were found to have violated the law or
3 what have you in any way that we would repay the
4 Corporation for the legal expenses that had been
5 incurred.

6 Q But many hundreds of thousands of dollars in
7 legal expenses have been advanced for the directors'
8 benefits without that promise. Isn't that true?

9 A No, ma'am.

10 Q Well, okay. I'm not going to waste your time
11 right now, but what we'll do is offer into evidence the
12 Company's discovery responses about that to find out how
13 much the Company spent. So I'll hold that thought and
14 I'll put that in evidence later.

15 A Well, ma'am, let me -- let me clarify the
16 answer. The -- you asked for many hundreds of thousands
17 of dollars, and the fact is at that time that was in
18 2019, even in November of 2019 we had not received bills
19 or had any sort of, you know, depositions or discovery
20 at that point. So that's -- and the directors weren't
21 added for -- the directors were not added to the 48292
22 case for the -- for personal damages until you came on
23 board in November or --

24 MS. ALLEN: Your Honor, he's not answering
25 the question that I've asked him. I don't mind him

1 talking if you want him to, but he's not answering
2 anything that I asked.

3 JUDGE SIANO: It sounds like he's
4 clarifying his response, but if -- Mr. Gimenez, are you
5 done clarifying?

6 A I think so. I mean, I could go into more
7 detail about how the timeline that she presented was
8 incorrect saying that we had signed an affidavit when
9 many hundreds of thousands of dollars had been expended.
10 I mean, that's just incorrect.

11 JUDGE SIANO: Okay. Thank you. Let's
12 wait for the next question.

13 Ms. Allen?

14 Q (BY MS. ALLEN) Isn't it true that nobody on
15 behalf of the Company has ever presented to the
16 Commission in this proceeding any sort of affidavit or
17 statement or something of that effect -- to the effect
18 that the rate case expenses or the legal expenses were
19 just and reasonable? Isn't that right?

20 A Ma'am, I think my whole testimony has opined to
21 the fact that we have had numerous allegations, false
22 allegations, brought against us and the corporation, and
23 we have --

24 MS. ALLEN: Your Honor, that's not what
25 I'm asking.

1 JUDGE SIANO: All right.

2 A Well --

3 MS. ALLEN: I don't mind him going on
4 about this, but I'm going to cross-examine him about it.
5 I know what he's going to say.

6 JUDGE SIANO: Ms. Allen, if you have an
7 objection, then make an objection.

8 MS. ALLEN: My objection is he's being
9 nonresponsive.

10 JUDGE SIANO: Okay. Sustained.

11 Mr. Gimenez, please respond to the
12 question asked.

13 A Okay. And the question asked was -- I'm sorry.

14 Q (BY MS. ALLEN) Whether anybody with the
15 Company has filed any sort of statement or affidavit in
16 this proceeding to the effect that the legal fees
17 either -- the legal fees on which these rates are based
18 or the rate case expenses are just and reasonable.

19 A I have filed testimony to that effect.

20 Q And that's it?

21 A I have not been asked to sign any sort of
22 affidavit. I would.

23 Q I'm not being critical, I'm just asking did you
24 do it or not?

25 A Ma'am, I just answered that. I said my

1 testimony testifies to that.

2 Q Okay. You understood when you became a
3 director of the Company that -- and the President of the
4 board that it was your duty to act in the best interest
5 of the Company and its Ratepayers. Correct?

6 A Yes, ma'am.

7 Q There is nothing in the Company's governing
8 documents that says that it's your duty to act in the
9 best interest of your fellow directors. Right?

10 A I haven't looked at those documents recently to
11 say yes or no to that.

12 Q Okay. You understood when you became a
13 director and the president of the board that it was your
14 duty to observe the limitations within the governing
15 documents on the Company's use of its assets. Correct?

16 A Again, I haven't reviewed that to affirmatively
17 state -- to answer your question. I don't mean to be
18 evasive.

19 Q Do you have an understanding today as to
20 whether or not you as a director of the Company have a
21 duty to observe the limitations on the corporate powers
22 that are set forth in the governing documents?

23 A We have an obligation to respond to the -- to
24 the bylaws and the state laws for operating our water
25 supply corporation.

1 Q Are you aware that there are limitations on the
2 powers of the Corporation to use its assets within its
3 governing documents?

4 A I haven't -- I haven't reviewed that to respond
5 to that question.

6 Q Okay. Okay. Just to close the loop as best we
7 can on these lawsuits, there are two lawsuits that were
8 filed by others and they are the TOMA and Double F case.
9 Right? There were two -- three lawsuits that were filed
10 by the Company. Right?

11 A In 2019, there were -- there was the TOMA
12 Integrity lawsuit that was in the appeals process. In
13 2019 -- or May of 2019, the Double F Hangar suit was
14 filed against the Corporation and its directors. In
15 August roughly, September maybe, the Corporation filed
16 suit to protect privileged documents related to its
17 invoices against the attorney general, and we prevailed
18 in that. So those are -- those are the three lawsuits
19 that occurred in 2019 to my recollection.

20 Q I'm not talking -- I didn't ask you 2019. I'm
21 asking you this question: How many lawsuits have been
22 filed by the Company during your tenure?

23 A How many have been filed by the Company?

24 Q During your tenure.

25 A By the Company?

1 Q Yes.

2 A The Company has filed three lawsuits.

3 Q One lawsuit against the Attorney General to
4 prevent the disclosure of invoices that are now on its
5 Website. Right?

6 A Right.

7 Q One lawsuit against the Attorney General to
8 prevent the disclosure of legal invoices that are now on
9 its Website. Correct?

10 A Correct.

11 Q One lawsuit to which the directors are also
12 parties, Plaintiff, against the insurance carrier.
13 Correct?

14 A Yes, ma'am.

15 Q The Company is accruing legal expenses in each
16 of those three matters. Correct?

17 A No, ma'am.

18 Q It is not?

19 A No, ma'am.

20 Q Let me ask it this way.

21 A Not now.

22 Q Let me ask it this way: Prior to the time the
23 Company decided to release the legal invoices that were
24 the subject of the two AG cases, the Company incurred
25 legal expenses in connection with those lawsuits.

1 Right?

2 A Yes, ma'am.

3 Q Those are included in the expenses on which the
4 rates were determined. Right?

5 A Only one of those two lawsuits would have been
6 included --

7 Q Okay.

8 A -- in the rate case.

9 Q The second one, though, is the revenue that the
10 Company is raising from the rate increase, that is being
11 used to pay legal fees for the second AG lawsuit.
12 Right?

13 A It's not being used that way now.

14 Q It was -- thank you. It was being used for
15 that purpose while there was a balance due on that file.
16 Right?

17 A Yes, ma'am.

18 Q And so the rate increase money paid off legal
19 bills for the second lawsuit involving the Attorney
20 General. Right?

21 A I wouldn't say that they paid it off. They
22 were part of our, you know, fees to -- that are owed to
23 the Company. I don't know if they were paid off
24 directly.

25 Q The third lawsuit that is being brought by the

1 Company -- is being brought by the Company and the set
2 of directors. Correct?

3 A Yes, ma'am.

4 Q The Company resources are being used to fund
5 that litigation. Correct?

6 A Yes, ma'am.

7 Q The director, parties, Plaintiffs, are not
8 footing any part of that bill. Is that right?

9 A No, ma'am. That's 2021 litigation you're
10 talking about.

11 Q Okay. I'm not asking a date. Isn't it true
12 that from the time that lawsuit was filed to now the
13 individual directors who are parties, Plaintiff, and
14 seek a recovery against the insurance company are not
15 footing any part of that expense?

16 A That's correct.

17 Q Okay. The board has approved the expenditure
18 of Company resources for that purpose. Correct?

19 A Yes, ma'am.

20 Q And it is using the revenues generated by this
21 rate increase to make payments on the account with the
22 attorneys for that litigation. Right?

23 A Yes, ma'am.

24 Q And those fees -- attorneys' fees for that
25 lawsuit brought by the Company are continuing to accrue.

1 Correct?

2 A That -- I mean, no -- yes and no. The
3 Corporation is not active with that litigation, just --
4 well, I guess it is. So, yes, ma'am, you're right. I'm
5 getting too detailed myself in terms of where that case
6 is.

7 Q I'm trying to keep it simple.

8 And so the Company's -- the Company's rate
9 design, if you will, would -- if it were sustained would
10 enable the Company to continue to collect the higher
11 rate until such time as its legal bill from the
12 insurance company lawsuit that the Company and the
13 directors have filed is retired. Right?

14 A Yes, ma'am.

15 Q So even -- let's just -- even if all the
16 litigation were to stop tomorrow, there's still a
17 balance of legal fees that the board has caused the
18 Company to be obligated to pay. Is that right?

19 A Yes, ma'am, we have to pay our part.

20 Q And the -- and the board's idea is that it
21 would keep this rate increase in place and use those
22 revenues for as long as it took to pay off the balance
23 for those legal fees. Correct?

24 A Ma'am, as soon as we are paid -- as soon as we
25 have paid those bills, we want to decrease those rates,

1 and we've said that from beginning from our meetings in
2 February of 2020, that that was the exact intent of the
3 board to pay our bills and then decrease the rates.

4 Q I really am not asking about intent, I'm simply
5 asking about mechanics. I want to be sure that I am
6 clear on the mechanics.

7 If the Company has its way, this rate
8 increase will stay in place until such time as all of
9 the legal expenses from all of the lawsuits that have to
10 do with the 2016 land transaction have been paid in
11 full. Correct?

12 A That was the intent of the board at that time.

13 Q Has it changed?

14 A I can't speak for a future Board -- I can't
15 speak for what a future Board might do.

16 Q Okay. Fair enough. But at the time the rates
17 were made, that was the purpose -- that was the purpose
18 and intent of the board?

19 A Yes, ma'am, that's what I said.

20 Q Okay. You know, of course, that the PUC has
21 issued a certificate of convenience and necessity to the
22 Company to provide water service in a service area that
23 includes Windemere Oaks and the airport and probably a
24 little more area. Right?

25 A Yes, ma'am.

1 Q The PUC has also issued a certificate of
2 convenience and necessity for that same area that
3 authorizes the Company to provide sewer service.
4 Correct?

5 A Yes, ma'am.

6 Q As a result of the PUC having issued those
7 certificates, if you want to live in Windemere Oaks or
8 the airport or the area right around there and you want
9 to have running water and indoor plumbing, you must deal
10 with the Company on those issues. Correct?

11 A You must become a member, yes, ma'am.

12 Q All I'm getting to is that if anybody who is in
13 the service area is required to have service from the
14 Company if they want service. Correct?

15 A Yes, ma'am, they must apply to be a member.

16 Q The PUC remains ultimately responsible for
17 ensuring that the Company's rates are just and
18 reasonable if the Ratepayers complain about them.
19 Correct?

20 A Ma'am, I can't speak to the PUC's mission.

21 Q If you don't know, it's fair just to say "I
22 don't know."

23 A I don't know.

24 Q These certificates of convenience and
25 necessity -- well, let me -- let me back up and ask you

1 if you know this: Wouldn't you agree with me that the
2 Company's Ratepayers have the legal right to request
3 records of their company through the Public Information
4 Act?

5 A Yes, ma'am.

6 Q The Company's members and Ratepayers have the
7 legal right to seek redress if they think that their
8 fiduciaries on the board have betrayed them. Wouldn't
9 you agree?

10 A Yes, ma'am.

11 Q The Ratepayers and members of the Company have
12 the right to follow the directives of the bylaws if they
13 wish to try to remove a director. Correct?

14 A Yes, ma'am.

15 Q The members and Ratepayers of the Company are
16 entitled to expect that their Board will follow and
17 abide by the governing documents, don't they?

18 A I guess so, ma'am.

19 Q They have every right to take their fiduciaries
20 to task if those fiduciaries fail to comply with the
21 Company's governing documents, don't they?

22 A Yes, ma'am.

23 Q In fact, if the board's noncompliance gets to a
24 point, the PUC can actually step in. Right?

25 A I don't know.

1 Q You don't know?

2 Okay. The Ratepayers and customers of the
3 Company have every legal right to appeal a ratemaking
4 decision to the Public Utility Commission, don't they?

5 A Yes, ma'am.

6 Q They did not give up these legal rights by
7 virtue of the certificates that require them to deal
8 with the Company, did they?

9 A No, ma'am.

10 Q Okay. We looked in Mr. -- during Mr. Nelson's
11 testimony at a provision of the tariff that pertains to
12 assessments. Are you familiar with that?

13 A Yes, ma'am.

14 Q It's a provision of the tariff that says that
15 if the Company's revenues from the provision of services
16 is not sufficient to pay costs incident to the operation
17 of the system during a particular year, the board shall
18 make and levy an assessment against each member, and it
19 goes on.

20 You're familiar with what I'm talking
21 about. Correct?

22 A Yes, ma'am.

23 Q There's no provision in the Company's bylaws
24 for an assessment?

25 A I'm sorry. I coughed. There's no provision in

1 the Company's bylaws --

2 Q Authorizing an assessment, is there?

3 A I would have to -- I don't know. I don't -- I
4 can't -- I don't know about -- I haven't reviewed the
5 bylaws recently to respond to that.

6 Q Wouldn't it be important for the president of
7 the Board of directors signing a tariff to know whether
8 or not the provisions of the tariff were authorized by
9 the Company's governing documents?

10 A Ma'am, we rely on counsel so -- to provide us
11 with how we should perform our duties with respect to
12 the bylaws and the tariffs. So, yes, ma'am, the
13 president should know that by virtue of his interaction
14 with the attorneys in the course of --

15 Q Yours --

16 A -- of the operation.

17 Q Your signature -- your signature is on the
18 tariff, isn't it?

19 A Yes, ma'am, I believe it is.

20 Q And I'm understanding from your testimony that
21 you don't know one way or the other whether are not the
22 Company's governing documents authorized the Company to
23 impose an assessment. Do I hear you right?

24 A Ma'am, I haven't read the bylaws to be familiar
25 with how that's stated, but I'm sure that the bylaws

1 allow the Corporation to modify its tariff when it needs
2 to modify its tariff. I don't know how all this works.
3 I'm not an attorney. I rely on legal counsel for that.

4 Q I just want to be sure I'm clear, and it's a
5 yes or no.

6 When you signed the tariff, did you know
7 one way or the other whether the Company's governing
8 documents authorized the Company to levy an assessment?

9 MS. KATZ: Your Honor, I'm going to object
10 to asked and answered. He explained that twice.

11 MS. ALLEN: I don't think I've gotten an
12 answer, but --

13 JUDGE SIANO: Mr. Gimenez, can you answer
14 that question?

15 A I mean, I think I have. I don't -- I can't
16 point specifically to right now a bylaw --

17 Q (BY MS. ALLEN) A good enough answer unless you
18 want to make more.

19 A Okay. There's my answer.

20 Q The Company's tariff that you signed refers to
21 Article 18 of the USDA modeled bylaws Section 1. Right?

22 A If you say so.

23 Q Do you recall one way or the other whether the
24 tariff that you signed and its assessment provision
25 referred to the USDA modeled bylaws?

1 A I don't recall.

2 Q Do you know whether other water supply
3 companies operating in Texas have bylaw provisions
4 concerning assessment?

5 A No, ma'am.

6 Q Would you agree with me that neither the
7 Company's governing documents nor its tariff authorizes
8 the Company to impose a surcharge?

9 A Yes, ma'am, I agree with you.

10 Q Okay.

11 A We do not have a surcharge capability in our
12 tariff.

13 Q Okay. The board claims that their -- that the
14 revenues from the sales of water and wastewater were not
15 sufficient for the payment of all of the costs for which
16 the Company was obligated in 2019. Correct?

17 A That's correct.

18 Q The assessment provision of the Company's
19 tariff says that in those circumstances the board shall
20 make and levy an assessment. Right?

21 A I haven't seen -- seen that, but the -- I don't
22 think that that's exactly what it says about the
23 assessment.

24 Q In any event, the board did not make and levy
25 an assessment in an effort to true-up the 2019 expenses.

1 Correct?

2 A No, the board did not use an assessment at that
3 time.

4 Q Had the board imposed an assessment, it would
5 have been quite large, wouldn't it?

6 A Ma'am, that's speculation. There's different
7 ways to interpret what the tariff says, and I can't
8 really -- I mean, I can go through the different
9 hypothetical situations about how that assessment could
10 be read and how it might be applied, but I don't think
11 we're here to speculate.

12 Q Thank you.

13 Isn't it true that the board made some
14 calculations about the amount of an assessment that
15 might be required in order for it to true-up its
16 expenses for 2019?

17 A I don't recall that the board did that. I
18 mean, we --

19 Q Okay. If you don't recall, you don't recall.
20 Good enough.

21 A Okay. I mean, let me -- let me just say
22 that --

23 Q The way that --

24 A -- in January 2020 when we were making -- when
25 George and Mike and James Smith and I were contemplating

1 how we would handle the financial situation, we
2 certainly did contemplate all of the, you know,
3 finances -- the financial, you know, obligations of the
4 Corporation at the time, not just including the legal
5 fees, but also the commitment to comply with TCEQ
6 regulations for the generator, to pay that and to pay
7 for commitments that we made to the LCRA for
8 conservation efforts so we could, you know, use
9 conservation to keep up with future supply and demand.
10 So there were all kinds of considerations at the time
11 not entirely related to the legal fees, but they were
12 included in consideration for all -- you know, for all
13 the obligations of the Company and all the opportunities
14 that -- or instruments available to us to meet those
15 obligations.

16 Q Is there anything else you'd like to say about
17 that?

18 A No, ma'am. I think that completes that.

19 Q Okay. All right. Would you agree with me that
20 if it is determined that the board was required under
21 the tariff to levy an assessment to true-up expenses for
22 the Year 2019, then we can be sure that the board did
23 not comply with that requirement?

24 A I'm sorry, ma'am. The board will comply with
25 whatever we need to comply with to run a safe, adequate

1 water system that meets -- that meets its obligations to
2 our Ratepayers.

3 MS. KATZ: Your Honor, I'm going to object
4 to that answer as nonresponsive, and I'd like to have
5 the question read back.

6 JUDGE SIANO: Okay. What was the
7 question?

8 MS. ALLEN: Could the court reporter read
9 the question back, please, ma'am?

10 (Zoom video lost)

11 JUDGE SIANO: Do we have a court reporter?

12 MS. ALLEN: Ms. Pence, can you -- can you
13 hear us?

14 THE REPORTER: (No response)

15 MS. ALLEN: Huh-oh.

16 MS. KATZ: It was frozen and now she
17 disappeared. I see her audio is on.

18 JUDGE SIANO: Ms. Pence, are you there?

19 THE REPORTER: (No response)

20 JUDGE SIANO: Ms. Pence, we've lost you.

21 MS. ALLEN: Your Honor, ought we to go off
22 the record momentarily to re-establish communications
23 with the court reporter?

24 JUDGE SIANO: I believe we're off the
25 record if we don't have a court reporter.

1 MS. ALLEN: Good point.

2 (Recess: 11:36 a.m. to 11:43 a.m.)

3 JUDGE SIANO: All right. Back on the
4 record. Our reporter is back.

5 Go ahead and read back the question,
6 Ms. Pence.

7 (Requested portion read)

8 JUDGE SIANO: And, Mr. Gimenez, response,
9 please.

10 Can you read that back as well? There was
11 an objection to nonresponsive. Ms. Pence.

12 (Requested portion read)

13 JUDGE SIANO: Okay. I'll sustain as to
14 nonresponsive.

15 A Okay. I'm sorry. Can you repeat the question
16 one more time?

17 JUDGE SIANO: Ms. Allen?

18 MS. ALLEN: I'm sorry. I thought the
19 court reporter was going to read it back. I apologize,
20 Your Honor.

21 Could the court reporter read the question
22 back, please?

23 (Requested portion read)

24 A I'm not sure I can -- I don't know how to
25 answer the question. There's two parts to it that

1 aren't making sense to me.

2 Q (BY MS. ALLEN) How about if I try to rephrase
3 it and make it simpler?

4 A That would be great. Thank you.

5 Q Did the board levy an assessment in order to
6 true-up expenses for 2019?

7 A No, ma'am, we did not levy a special
8 assessment.

9 Q Okay. Let me show you a discovery response
10 that you sponsored. It's a response to Ratepayers 3-6.
11 Do you see it?

12 A Yes, ma'am.

13 Q And I just want to scroll to the extent that
14 you need me to so that you are able to confirm that this
15 is the Company's response that has your name on it.

16 A Yes, ma'am.

17 Q Okay. And it pertains to special assessments.
18 Right?

19 A Yes, ma'am.

20 MS. ALLEN: For the record, I'm going to
21 mark it as Exhibit 29.

22 (Exhibit Ratepayers No. 29 marked)

23 Q (BY MS. ALLEN) And I want to ask you about
24 these calculations. So what you say here is that there
25 was \$121,659.17 that was billed but was not included in

1 the total cost figure. Right?

2 A That's right.

3 Q And you said that you did not consider the
4 121,659 as cost for that purpose. Right?

5 A That's right, we did not include that in the
6 rate study.

7 Q It says, "We had indications that a special
8 assessment for the 2019 amounts would be about \$449 per
9 member." Do you see that.

10 A Yes, ma'am.

11 Q How was that calculated?

12 A Well, I assume that we just took the 121,659.17
13 figure and divided that by 271.

14 Q Was it that the board didn't think the
15 membership would accept an assessment in the amount of
16 \$449 per member?

17 A I don't -- I don't recall that as a
18 consideration.

19 Q Okay. There was a mechanism in the tariff that
20 arguably would have allowed the board to true-up
21 expenses, and what I'm hearing -- for 2019, and what I'm
22 hearing you say is that the board elected not to use
23 that mechanism. Right?

24 A That's right.

25 Q So what prompted the board not to use that

1 mechanism to true-up expenses that it claimed were cost
2 of operation for 2019?

3 A I believe the consideration was simply that we
4 had not paid those. The loss calculation for 2019 based
5 on the actual amount spent was -- for the calendar or
6 fiscal -- the fiscal year of 2019 was, you know, fairly
7 minimal at the time. These are hype -- you know, these
8 were hypothetical expenses that had been incurred but
9 not paid to the 2019 fiscal year budget or, you know,
10 reconciliation. So we didn't consider that the tariff
11 would allow that. I mean, we didn't have -- you know,
12 we didn't have any -- we had guidance from the TRWA, I
13 think, that we should only include expenses that had
14 been paid in 2019.

15 Q Okay. Great. I need to go back to something
16 that you just said because I don't think I heard you
17 right.

18 You said the \$121,659 was hypothetical?

19 A Well, it was hypothetical to the 2019 budget or
20 the 2019 -- not the 2019 budget, but the 2019 year-end
21 reconciliation. In other words, it didn't --

22 Q Well --

23 A It didn't exist in our December financial
24 report that we got because it had not been paid. And
25 so, therefore, we were using numbers for the TRWA rate

1 study from -- directly from our 2019 expense calculation
2 that was -- that was, you know, paid in December.

3 Q I get that, but wouldn't -- I mean, those --
4 the 121 -- there's nothing hypothetical about the
5 \$121,659.

6 A No, ma'am, you're correct, there's nothing
7 hypothetical about it. It's hypothetical as to
8 whether -- it would have added an asterisk to our
9 budget -- I mean, to our year-end reconciliation, and we
10 didn't choose to add that asterisk to -- you know, to
11 the budget.

12 Q It was debt that the board had incurred on
13 behalf of the Company and that was not reported on its
14 year-end financials. Isn't that right?

15 A No, ma'am, that was not debt.

16 Q It was owed by the Company for services
17 rendered in 2019. Correct?

18 A It was owed, but, you know, we reserve a
19 special term for debt for loans from, you know, CoBank
20 or First United Bank for property -- I mean for our
21 capital infrastructure.

22 Q Okay. But the Company doesn't get to pay only
23 the debt for the capital infrastructure, the Company has
24 to pay all of its debt. Right?

25 A Ma'am, that's why I've been referring to it as

1 our outstanding obligations.

2 Q And that amount was not reported anywhere in
3 the financials, either as debt or negative cash flow.
4 Correct?

5 A That's correct, and it should not have been.

6 Q That really wasn't my question. You can speak
7 to that if you want.

8 Do you recall the Company produced the
9 legal invoices for November and December which were not
10 included in the rate calculation? Do you remember that?

11 A Yes, ma'am.

12 Q And I'm going to -- I'm just looking here to
13 see what was furnished. There is an invoice for
14 December 18th of 2019 from Lloyd-Gosselink re general
15 counsel in the amount of 17,579. So that was one of the
16 debts for 2019 work that existed at the end of the year.
17 Correct?

18 MS. KATZ: Your Honor, pardon me,
19 Ms. Allen and Mr. Gimenez. I would -- it would really
20 be helpful -- and I'm not sure with everybody else who
21 has their exhibits and testimony and everything in front
22 of them -- if Ms. Allen knows where a document is that
23 she's referring to that she can point us to that, for
24 example, the legal invoices on a specific day would
25 help, I think, us all and also to clarify the record for

1 briefing of what she's actually talking about.

2 JUDGE SIANO: Ms. Allen, just for the
3 benefit of everyone so we can follow along, can you
4 reference an exhibit?

5 MS. ALLEN: Your Honor, I will tell
6 everyone that I am finding these invoices at the
7 Company's -- hang on one second. I want to get it
8 right -- the Company's response to Ratepayer's
9 Representative Third Request for Information. It's 3-19
10 and the attachment.

11 JUDGE SIANO: Okay. Is that an exhibit?

12 MS. ALLEN: It is not an exhibit, and I
13 don't intend to make it an exhibit. I simply want to
14 review and confirm the information.

15 JUDGE SIANO: Okay.

16 MS. ALLEN: So may I proceed, Your Honor?

17 JUDGE SIANO: You may.

18 MS. ALLEN: Okay.

19 Q (BY MS. ALLEN) Mr. Gimenez, the first of the
20 invoices in that attachment is in the amount -- it's an
21 invoice that is dated November 30, 2019, it covers
22 services during November, and its amount is 17,579 to
23 Lloyd-Gosselink. So that was one of the amounts not
24 included in the rate study. Right?

25 A Yes, ma'am, I believe you're right.

1 Q Okay. And then there is an invoice -- one
2 second, and I'll get to it -- December 18, 2019 from
3 Lloyd-Gosselink TOMA litigation for services rendered
4 through September -- I'm sorry, November 30, 2019 in the
5 amount of 30,012. So that's an amount that was not
6 included in the rate study. Right?

7 A That's correct.

8 Q And then there is an invoice January 30, 2020,
9 and it is for services rendered in December of 2019 from
10 Lloyd-Gosselink general -- re general counsel,
11 10,788.30. That amount was not included in the rate
12 study. Right?

13 A That's correct.

14 Q There is an invoice dated January 16, 2020 from
15 Lloyd-Gosselink re TOMA Integrity litigation for
16 services rendered in December of 2019 for 33,414.27.
17 That amount was not in the rate study. Correct?

18 A Correct.

19 Q There's an invoice dated -- hang on one second,
20 down to -- there's an invoice dated November 30, 2019
21 from the Enoch Keever firm re land sale litigation for
22 services during November of 2019, and that invoice --
23 the invoice charges there are 10,531.87. The Company
24 acknowledges that was not included in the rate study.
25 Correct?

1 A Ma'am, I believe that that's correct. I'm not
2 sure of the amount because I see them in my testimony as
3 a different amount, but --

4 Q Would you agree with me that the invoice itself
5 would give the exact amount?

6 A Yes, ma'am.

7 Q Okay. There is an invoice dated December 31,
8 2019 from the Enoch Kever firm for a land sale
9 litigation for services rendered in December of 2019 in
10 the amount of 14,488.33. That amount the Company
11 acknowledges was not included in the rate study.
12 Correct?

13 A Yes, ma'am.

14 Q Okay. Those amounts, whether they constituted
15 debt or negative cash flow or whatever they constituted,
16 those were not reported in the Company's financials that
17 reflected its performance in 2019. Correct?

18 A That's correct. They were outstanding
19 liabilities.

20 Q They were outstanding liabilities for 2019, but
21 they were not recorded in the Company's financial data
22 for 2019. Is that right?

23 A That's -- they were not -- they were not
24 reported in our, you know, expenses, the amount of
25 expenses paid.

1 Q They were not included in any -- they were not
2 reported anywhere in the Company's financial reporting.
3 Correct?

4 A That's correct.

5 Q And so when the Company distributed its
6 financial reporting to the Ratepayers, those amounts
7 were not disclosed?

8 A I'm trying to think about what you just asked
9 in terms of disclosed to the Ratepayers. I mean,
10 what -- when are you -- what are you specifically
11 referring to?

12 Q The Company routinely circulated its financial
13 reporting to the membership. Correct?

14 A The Company provides a financial year-end
15 statement of amounts paid to its members at the annual
16 meeting, and then we comment at the annual meeting,
17 which I did, about the invoices that were accruing to
18 the Corporation for legal fees.

19 Q The Company prepared a set of financial records
20 that were intended to reflect the Company's financial
21 condition and performance at year-end 2019. Correct?

22 A That's right.

23 Q None of those records reflected the amounts
24 that you and I have just reviewed for these legal
25 invoices. Correct?

1 A As obligations, no, because we only confined
2 our report to the amounts paid.

3 Q I'm not critical, I don't care whether it's
4 right or wrong. I just want to know as a fact is it
5 true that none of the Company's financial reporting for
6 the Year 2019 reflected the amounts that you and I just
7 itemized?

8 A Yes, ma'am. I said that. I said that they --
9 that they were received by us, they had not been paid,
10 so, therefore, they were not part of that report.

11 Q In looking for these things, I was reminded
12 that when you and I talked earlier about the amount of
13 revenue that the Company is receiving on account of this
14 rate increase. We did not account for the increases in
15 the number of customers that the Company has had, did
16 we?

17 A I'm sorry. I don't think we --

18 Q Let me ask --

19 A Earlier we didn't talk about that.

20 Q That's kind of my point, is beginning
21 January 1, 2020 and moving forward, the Company has
22 continued to add customers. Right?

23 A Yes, ma'am.

24 Q All of those customers pay the higher rates.
25 Correct?

1 A Yes, ma'am.

2 Q And we simply have understated -- in the
3 calculations that you and I did earlier, we have
4 understated the total amount that the Company has
5 collected due to this rate increase because we have not
6 taken into account the growth and the number of taps.
7 Correct?

8 A Ma'am, I thought we were dealing with ballpark
9 figures earlier, and I can't remember if we used 270,
10 280. I think at the time earlier I said something about
11 at the time in January of 2019 the rough calculation
12 was 270 customers times the, you know, monthly increase.
13 That's a ballpark.

14 Q Mr. Gimenez, I'm not -- I'm not being critical
15 of you. I just had forgotten that the Company continued
16 to add customers to its system, and those customers paid
17 the higher rates after they became effective. Right?

18 A That's right.

19 Q And so when we made our calculation earlier --
20 and I'm not critical of you about that -- we simply did
21 not account for the fact that the system has continued
22 to add customers who pay the higher rates and,
23 therefore, the ballpark that we arrived at is
24 understated. Right?

25 A It -- yes, ma'am, it probably is.

1 Q Okay. Now, within the universe of folks who
2 pay money to the Company in connection with water and
3 wastewater services, is it accurate that there are at
4 least two categories?

5 A No, ma'am.

6 Q One category are payers who have taps. Right?

7 A I think all of our customers have taps.

8 Q Well, there are people on the system from whom
9 the Company receives revenue and they have taps and they
10 pay a base rate and they pay a gallonage charge and they
11 pay -- was it equity buy-in fees? Is that what you call
12 it?

13 A They pay that at some point.

14 Q Okay. But those are the people with taps.
15 Correct?

16 A Yes, ma'am, but not for the people with the
17 equity buy-in fees.

18 Q They are not the people with taps?

19 A No, ma'am.

20 Q Who are they?

21 A They are people who will have taps, but don't
22 have taps.

23 Q Okay. So there's a category of ratepayer that
24 has taps and it pays base rate and it pays a gallonage
25 charge. Right?

1 A That's right.

2 Q There's a category that don't have taps today,
3 but will have taps, and what they pay is equity buy-in
4 fees. Right?

5 A That's right.

6 Q And there's a third category of people --
7 customers who don't have taps, but are paying a standby
8 fee so that they have the availability of a tap in the
9 future. Right?

10 A That's right.

11 Q Okay. So those are three categories of
12 customers who pay revenue to the Company. Right?

13 A I don't think -- I haven't really studied the
14 equity buy-in and standby fees because I didn't think
15 that was part of this hearing. I thought that was
16 excluded.

17 Q I'm not being critical of you, Mr. Gimenez. I
18 just need to ask you these questions.

19 MS. KATZ: Your Honor?

20 Q (BY MS. ALLEN) And you know or you don't.

21 MS. KATZ: Your Honor, Mr. Gimenez is
22 actually correct. In the preliminary order under
23 Section 2, issues not to be addressed, the first number
24 in bold reads whether the standby fees, membership fees
25 and equity buy-in fees charged by Windemere Oaks are

1 subject to appeal under -- and then it names the code
2 section.

3 MS. ALLEN: Your Honor, I'm not -- I'm not
4 discussing those for this -- for that purpose. I'm
5 addressing the question that inquiries about
6 preferential and discriminatory rates, and I'm
7 addressing the question about the Company's total
8 revenue. I think those are relevant for purposes of the
9 questions he answered.

10 JUDGE SIANO: Right. We're certainly not
11 addressing whether those fees can be appealed, but I'll
12 allow the question. Go ahead. Overruled.

13 Q (BY MS. ALLEN) So, Mr. Gimenez, just to close
14 the loop on that, we've identified the three types of
15 ratepayers and the three types of revenue that they
16 generate for the Company.

17 Are there any other categories that we
18 need to add so we include them all?

19 A No. I think that's correct. I mean, the --
20 there are some customers who have septic systems and
21 they do not pay sewer fees for the Corporation. I think
22 there's 245 or so customers who pay both water and
23 wastewater fees, but I think there's two -- 270, 280-ish
24 customers that pay -- all the customers pay for, you
25 know, water. Is that clear?

1 Q Since the Company -- sorry. Go ahead.

2 A I'm just saying -- asking if I'm being clear.

3 Q Does the Company incur any additional expense
4 when it serves a customer who has only a water tap and
5 not sewer service?

6 A I'm not quite sure how that would be handled.
7 That would be more operational.

8 Q So you just don't know. Is that right?

9 A I don't. Yes, ma'am.

10 Q And if you said this number -- forgive me, I
11 apologize -- I heard 245 sewer customers and 271 water
12 customers. I'm assuming the difference is people with
13 septic systems?

14 A All customers are water customers. So the 245
15 are water customers and wastewater customers. The
16 difference would be the number of people who have septic
17 systems.

18 Q That's it. That's where I'm trying to get to.

19 A 25 or so, yes, ma'am.

20 Q Well, 271 minus 245?

21 A 26.

22 Q Okay. So then let me ask you about this:
23 There are master meters or meters with multiple
24 connections on the Company's --

25 THE REPORTER: I'm sorry. This is the

1 court reporter. You cut out.

2 MS. ALLEN: Let me just ask that question
3 again. Is that okay, Your Honor?

4 JUDGE SIANO: Please go ahead.

5 Q (BY MS. ALLEN) Is it correct, Mr. Gimenez,
6 that there are master meters or meters with multiple
7 connections on the Company's system?

8 A I don't know. George testified to that
9 yesterday. I don't know.

10 Q Okay. Is it accurate that the Company at one
11 point grandfathered a number of customers who were
12 sharing a meter?

13 A I don't know that.

14 Q Customers who are sharing a meter, that means
15 that the Company collects a single water or sewer charge
16 for multiple users. Correct?

17 A Ma'am, I'm not familiar with the mechanics of
18 sharing meters.

19 Q All right. Just a moment. One -- there we go.

20 Let me share my screen with you,
21 Mr. Gimenez, to show you a response to the Ratepayers
22 discovery that you sponsored. Can you see it all right?

23 A Yes, ma'am.

24 Q And it is something that you sponsored. Right?

25 A Yes, ma'am.

1 Q And it let's us know that although the board no
2 longer approves this practice, there are Ratepayers on
3 the system with multiple connections to one meter,
4 excuse me, or one grinder pump. Correct?

5 A Well, let me -- let me read that response --

6 Q Sure, absolutely.

7 A -- because I haven't reviewed this.

8 MS. ALLEN: I'm going to mark it for
9 identification as Exhibit 30.

10 (Exhibit Ratepayers No. 30 marked)

11 JUDGE SIANO: Okay. Was this previously
12 provided?

13 MS. ALLEN: Well, it was, Your Honor, but
14 I'm really kind of responding to the fact that he can't
15 remember. This was part of Ratepayers 11.

16 JUDGE SIANO: Do you intend -- do you
17 intend to offer it?

18 MS. ALLEN: I don't need to if he'll -- if
19 he remembers the information. If he doesn't remember
20 the information, I will need to offer it. But simply so
21 that the record will remember the document we're talking
22 about, I will mark it as Exhibit 30.

23 A I now remember that that was our response. I
24 don't have any further information I can provide to
25 that.

1 Q (BY MS. ALLEN) The response is that the
2 Company does not maintain a list of these properties. I
3 hear that. How many of these properties are there where
4 there is a single meter and multiple users?

5 A I can't tell you. I don't know that.

6 Q Does the Company know that?

7 A I would -- I would have to check with our
8 manager to see if he has those records.

9 Q And these companies with multiple connects to
10 one meter or one grinder pump that are described in this
11 response, that's a situation where there is -- the
12 Company is collecting a single charge for a meter or a
13 grinder pump for multiple users. Correct?

14 A Ma'am, I do not know the mechanics of how that
15 works.

16 Q Okay. Mr. Gimenez, let me turn to the topic of
17 assets that the Company had available to it at the
18 conclusion of 2019 and of which the board knew when it
19 made the decision to raise these rates. That's the
20 topic. Okay?

21 A Okay.

22 Q The Company -- at the time that the board made
23 this decision, the Company owned a 6.19 acre-tract
24 within the airport. Correct?

25 A I believe so. I've always heard it referred to

1 as 7, but you're saying 6.9.

2 Q I just looked at the survey, but --

3 A I don't know. I mean, somewhere in there.

4 Q Has the -- has the Company made any effort to
5 market that property?

6 A The Company -- and I forget the details of the
7 timeline -- but the Company in the past couple of years
8 has appointed a real estate committee to looking into
9 marketing that property.

10 MS. KATZ: Your Honor --

11 MS. ALLEN: All right.

12 MS. KATZ: -- I'm sorry for interrupting.
13 I'm just wondering if there's a timeline of when we're
14 going to take our next break.

15 JUDGE SIANO: Okay. All right.

16 Ms. Allen, how much more cross do you have for this
17 witness?

18 MS. ALLEN: You know, Your Honor, really
19 not much, but I -- I'll have whatever schedule the Court
20 would like to have.

21 JUDGE SIANO: Okay. Well, we do need to
22 take a break here at some point.

23 MS. ALLEN: This is as good a time as any.
24 I'm changing topics, and so this is a great time.

25 JUDGE SIANO: Well, if you just have a few

1 more questions, then I'd prefer to wrap up. But if you
2 have extensive cross, then --

3 MS. ALLEN: Give me just 30 seconds, Your
4 Honor.

5 Your Honor, I -- my understanding is that
6 the discovery -- the Company's discovery responses are
7 admissible -- to the extent, of course, they are
8 relevant, they are admissible, and I don't need to have
9 a Company witness there because the Company witness has
10 already sponsored them.

11 Do I understand that correctly?

12 JUDGE SIANO: Are you offering some
13 exhibits?

14 MS. ALLEN: No, Your Honor. I'm trying
15 to -- for purposes of telling you the answer to the
16 question how long do I need, I just would like to know
17 how the Court approaches offering the Company's -- I
18 have a handful of discovery responses, they have already
19 been exchanged, and they've been sponsored by the
20 Company. And I'm happy to just offer them lump sum at a
21 later time unless it's required of me to go through them
22 with Mr. Gimenez.

23 JUDGE SIANO: Well, if you want to offer
24 them, then it might be good if we could find out at this
25 point whether there are any objections. Usually

1 discovery responses from the Company would be
2 admissible, but it doesn't mean that they are not
3 subject to any objection, but we can find out if you
4 care to offer those now.

5 MS. ALLEN: Your Honor, I understand there
6 might be an objection, but we, from my perspective, need
7 not belabor that with Mr. Gimenez on the stand unless
8 it's -- unless I'm required to authenticate these.

9 JUDGE SIANO: Okay. Do you have -- do you
10 want to identify which ones and offer them now?

11 MS. ALLEN: I can, sure. So they would
12 include the Company's Response to Ratepayers 2-1.

13 JUDGE SIANO: Well, hang on. I'm looking
14 at your binder here. Which tab are we looking at?

15 MS. ALLEN: Your Honor, I think -- I think
16 that it would be more efficient if I collected these in
17 a single packet and over the noon hour let Ms. Katz and
18 Ms. Lander take a look at them and then we could resolve
19 very quickly, I think, any issues that we had. Would
20 that be acceptable?

21 JUDGE SIANO: That's acceptable to me.
22 There is the question of whether or not I have a copy
23 and the court reporter has a copy of them. So if they
24 were previously submitted, then there is certainly no
25 objection on that regard.

1 MS. ALLEN: All of them come from the
2 exhibits that were previously identified by the
3 Ratepayers, but they are in different places in those
4 exhibits if you understand what I'm saying.

5 JUDGE SIANO: Okay. And you want to pull
6 out discrete portions of those?

7 MS. ALLEN: Yes, yes, exactly.

8 JUDGE SIANO: Okay. That's probably a
9 more efficient use of our time if we do that off the
10 record.

11 Okay. Let's go ahead and -- well, I guess
12 the question is: Do we need to call this witness? Will
13 there will be -- he'll be called back anyway.

14 Okay. We'll take a break until 1:00 p.m.
15 Okay. All right. Off the record.

16 (Recess: 12:22 p.m. to 1:00 p.m.)

17 AFTERNOON SESSION

18 THURSDAY, DECEMBER 2, 2021

19 (1:00 p.m.)

20 (Exhibit Ratepayers Nos. 31 through 39 and
21 41 through 53 marked)

22 JUDGE SIANO: Let's go back on the record.
23 Ms. Lander, did you have a question?

24 MS. LANDER: Yes, Your Honor. I did
25 receive, I think, four sets of exhibits, but it looks

1 like I may be missing just the No. 40.

2 MS. ALLEN: 40 was withdrawn, and there's
3 a notation on the bottom of the email. I should have
4 highlighted that.

5 MS. LANDER: Okay. Great. Thank you.

6 JUDGE SIANO: All right.

7 Ms. Allen, did you have anymore cross for
8 this witness?

9 MS. ALLEN: I do.

10 PRESENTATION ON BEHALF OF
11 WINDERMERE OAKS WATER SUPPLY CORPORATION (CONTINUED)
12 JOE GIMENEZ, III,
13 having been previously duly sworn continued to testify
14 as follows:

15 CROSS-EXAMINATION (CONTINUED)

16 BY MS. ALLEN:

17 Q Mr. Gimenez, I want to ask you: At the time
18 the board raised the rates, it had a number that it
19 claims to have written checks for, for these legal fees.
20 Right?

21 A Right.

22 Q And it had invoices for services that had been
23 rendered in 2019 for which the board had committed the
24 Company to pay. Right?

25 A Right.

1 Q Those were the invoices that you and I walked
2 through and put the amounts down earlier. Correct?

3 A Yes, ma'am.

4 Q Beyond that, the Company had of -- well, let me
5 back up and say: Did the Company have any other
6 invoices, aside from the ones we had talked about?

7 A Yes, ma'am.

8 Q What other invoices did the board know about at
9 the time?

10 A Well, I mean, all of the standard, the
11 operational invoices.

12 Q Mr. Gimenez, I'm just going to interrupt you
13 because I wasn't clear with my question. I'm focused on
14 the legal expenses.

15 A I'm sorry. Is that a question?

16 Q Yes, sir. I'm focused on the legal expenses.
17 We've got invoices that correspond to
18 amounts the Company claims to have paid. That's one
19 category. Right?

20 A Right.

21 Q We've got invoices that correspond to amounts
22 the Company says were invoiced and a Company obligation
23 for work done in 2019 but were not paid. That's the
24 second category. Right?

25 A Right.

1 Q And what I'm asking is: Is there a third or
2 fourth category that was known to the board at the time
3 that it made these decisions?

4 A Regarding legal expenses or other expenses?

5 Q Yes, sir. Yes, sir. I'm focused in on the
6 legal expenses. Yes, sir.

7 A I don't recall. I don't recall any others.

8 Q All right. And so with regard to time periods
9 after 2019, the Company didn't know how much it was
10 going to owe in legal fees until it got an invoice.
11 Right?

12 A That's correct.

13 Q And the amount of those invoices varied greatly
14 from one month to the next. Right?

15 A I would have to review to -- I mean, I would
16 not know from one month to the next what they would be.

17 Q They were dependent upon the work that the
18 attorneys reported having done during the period that
19 was covered by the invoice. Right?

20 A That's correct.

21 Q And the board had placed no limitations on that
22 work level. Is that right?

23 A No. That's not correct.

24 Q The board had not said, for example, to its
25 lawyers, we will not pay you more than \$10,000 a month

1 for legal work?

2 A The board did not say that.

3 Q The board said to its lawyers, we will pay the
4 invoices that you present us with for the legal work
5 that you perform during the invoice period. Correct?

6 A Yes, ma'am.

7 Q One second, Mr. Gimenez. There's one thing
8 that I would like to show you.

9 Do you happen to recall whether the
10 Company furnished actual payment confirmation of the
11 invoices of the attorneys in this proceeding?

12 A Can you rephrase or restate that question?

13 Q I can. Did the Company furnish canceled checks
14 or other documents that reflected its payments during
15 2019 for the legal fees?

16 A I -- we may have as part of a PI request. I
17 don't recall.

18 Q I asked you because I've not been able to
19 locate them, and I thought perhaps you could direct us
20 to them?

21 A I don't recall us ever being asked by one of
22 the parties to provide PUC Staff but -- I don't recall.

23 Q The PUC asked it in request 1-7 and here's the
24 thing: The response was one of those voluminous
25 responses on a CD, and so I'm unsure that I have the

1 complete set of materials. If you don't remember, then
2 you don't remember.

3 A I don't remember, ma'am.

4 Q I do have a handful of canceled checks that I
5 think may have been on the website -- Company's website
6 at one time. I'm not sure. I can't remember. Since I
7 withdrew 40, though, I'm going to label these as 40 and
8 show them to you. One second. Share. There we go.

9 (Exhibit Ratepayers No. 40 marked)

10 I'm showing you what I've marked for
11 identification as Exhibit 40.

12 A Okay.

13 Q (BY MS. ALLEN) Can you confirm whether or not
14 the images are images of checks that were written on
15 Company accounts to pay for the legal fees that were
16 included in the rates?

17 And I'm scrolling slowly. I can scroll
18 up, down, whatever you like.

19 A I don't -- in part, yes. I'm sure that there
20 were many previous canceled checks from earlier in that
21 year, as well, because this only shows July of 2019.
22 That's half a year.

23 Q All right. I will see if I can find any other
24 checks in the materials that were produced in response
25 to the Staff's request.

1 But in the meantime, are you able to
2 confirm these are, in fact, checks reflecting payments
3 during 2019?

4 A Yes, ma'am.

5 Q And a lot of them are signed by you. Right?

6 A Yes, ma'am.

7 Q The other signature is Mr. Nelson's?

8 A That's correct.

9 MS. ALLEN: Okay. So, Your Honor, I will
10 offer Exhibit 40.

11 JUDGE SIANO: Has that been previously
12 submitted?

13 MS. ALLEN: It has not because I have
14 never found any checks in the materials.

15 JUDGE SIANO: Response?

16 MS. KATZ: Your Honor, I would object to
17 the rule of optional completeness. We would ask that if
18 she's attempting to get two pages of these lists of
19 checks in, that we include the entire RFI, which
20 includes the RFI question and the entirety of the
21 response.

22 MS. ALLEN: Your Honor, if there are more
23 checks in the response that I've overlooked, I would
24 welcome that they be duplicated and made a part of
25 Exhibit 40. If there are more canceled checks for 2019,

1 I would love to include them.

2 JUDGE SIANO: Okay. Well --

3 MS. ALLEN: I cannot find them.

4 JUDGE SIANO: So the rule of optional
5 completeness is not really an objection. You have the
6 right to complete the documents, so do you have any
7 objections to the admission of these checks and/or this
8 exhibit. And understanding that if you believe that
9 more needs to come in to complete the record, then that
10 is your option.

11 MS. MAULDIN: Your Honor, I -- we -- I'm
12 sorry. We're trying to figure this out on the fly.

13 We do believe that this is the information
14 provided in attachment to RFI Staff 1-7. And to the
15 extent that that is the case, which I believe it is, I
16 do believe that Ms. Allen has just taken a few pages out
17 of that attachment. We would like the record to be
18 complete so we would request that all of the RFI 1-7 be
19 entered and the entire attachment be entered.

20 JUDGE SIANO: All right.

21 MS. ALLEN: Your Honor, my exhibit stands
22 alone, and I'm offering it. If they wish to compile a
23 separate exhibit, we'll consider it at that time, and
24 I'm happy to do that.

25 JUDGE SIANO: Okay. So, Ms. Allen, there

1 is the -- I'm sorry. Was there another objection?

2 MS. MAULDIN: Yeah, just to the extent
3 that she's offering these, it's hearsay. I don't
4 know -- we haven't seen them. I mean, we've probably
5 seen them, but we just got them and we are trying over
6 here to figure out where they came from, so we can't
7 authenticate or prove what those are, so we would object
8 as hearsay.

9 JUDGE SIANO: Well, the witness has --
10 (Simultaneous discussion)

11 MS. ALLEN: Your Honor, their witness
12 authenticated them.

13 JUDGE SIANO: All right. So I'm going
14 to -- to the extent you've made an objection, I'll
15 overrule it.

16 And, Ms. Allen, there is the same hurdle
17 as far as getting these to the court reporter, the other
18 parties, and the Court. So I will admit them contingent
19 upon you effectuating that requirement.

20 MS. ALLEN: Thank you. Your Honor, that's
21 being done as we speak.

22 JUDGE SIANO: Okay. And then,
23 Ms. Mauldin, if you want to complete the record, as is
24 your option, you may do so.

25 Go ahead Ms. Allen.

1 MS. ALLEN: Your Honor, I don't have any
2 further questions for Mr. Gimenez at this time.

3 JUDGE SIANO: Okay. And -- all right.
4 Ms. Lander.

5 MS. LANDER: Staff has no questions for
6 Mr. Gimenez. Thank you.

7 JUDGE SIANO: Mr. Gimenez, I think I know
8 the answer to this, but I do have a question and that
9 is: Have there been any subsequent rate changes since
10 the March 23rd, 2020, rate decision?

11 THE WITNESS: No, Your Honor.

12 JUDGE SIANO: All right. Thank you.
13 Redirect.

14 MS. KATZ: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MS. KATZ:

17 Q Mr. Gimenez, I'm going to direct you to Page 12
18 of your rebuttal testimony.

19 A Okay.

20 Q Which would be marked as Exhibit WOWSC 3 and
21 refer you to Lines 7 through 9.

22 A Okay.

23 Q Okay. Ms. Allen, asked you questions related
24 to the term "bailed on" in that section of the
25 previously filed testimony. Correct?

1 A Yes, ma'am.

2 Q And, Mr. Gimenez, would you mind reading the
3 entire sentence from page -- starting on Page 7 -- I'm
4 sorry -- starting on Line 7 and it ends on Line 9?

5 A Yes. "WOWSC even received correspondence from
6 counsel from Friendship Homes that if the Corporation
7 bailed on the land transaction, then Friendship Homes
8 may assert a breach against WOWSC."

9 Q Okay. And so just to clarify the bail -- the
10 "bailed on" language did not come from you, did it?

11 A I don't recall. I don't believe so but -- I
12 believe that it came -- it may have come from that
13 letter but it's hard to remember right now.

14 Q And according to your testimony, did it come
15 from correspondence from counsel from Friendship Homes?

16 A I believe it did -- I mean, I believe it --

17 Q Well, are you looking at your testimony right
18 now?

19 A Yes. Yes, I am. I assume that it did, yes.

20 Q Okay. And, Mr. Gimenez, have you -- has a
21 court found you to have committed any wrongdoing as a
22 director?

23 A No, ma'am.

24 Q And I'm going to direct you to your rebuttal
25 testimony, which would be on Corporation's Exhibit

1 No. 3, Page 13, and I'm going to direct you to Lines 14
2 through 15 and also Footnote 16.

3 A Okay.

4 Q So Ms. Allen asked you questions or a question
5 something to the effect of if you believe that or
6 believed that the directors or she said you don't
7 believe that the directors should bear the costs
8 personally of the litigation. Remember that?

9 A Yes, ma'am.

10 Q Okay. And in your testimony referencing
11 Footnote 16, why do you -- well, is it your personal
12 belief that you personally shouldn't bear the litigation
13 costs or is it according to state law?

14 A It's according to state law.

15 Q Okay. And is that law referenced in Footnote
16 16?

17 A Yes.

18 Q And is the --

19 (Simultaneous discussion)

20 MS. ALLEN: Your Honor, I would object to
21 this witness giving legal opinions and conclusions
22 because I know I will not be allowed to cross-examine
23 him. He's not a lawyer, and I know that I won't be
24 allowed to cross-examine him on his legal opinions. I
25 would object to his giving them.

1 JUDGE SIANO: Well, he's giving his
2 opinion on the applicability. He could be wrong, but
3 he's testifying to his understanding that he is -- or
4 the Corporation is subject to this provision.

5 Overrule it. And if you need to do
6 cross-examination on that understanding, I'll allow
7 that.

8 MS. ALLEN: Okay. Then I withdraw the
9 objection.

10 MS. KATZ: Thank you.

11 Q (BY MS. KATZ) So it was your understanding you
12 were following state law?

13 A Yes, ma'am.

14 Q Okay. And regarding questions that Ms. Allen
15 asked you about related to the lawsuit involving the
16 release of legal invoices in the AG's office --

17 A Okay.

18 Q -- is it true that you didn't release the
19 invoices until after the Corporation prevailed in that
20 lawsuit?

21 A Yes, ma'am.

22 Q Okay. So even though the AG's office told you
23 at the end of the day that you didn't need to release
24 the invoices, you still released them?

25 A That's correct.

1 Q Okay. And why did you do that?

2 A We did that so that we would not incur, you
3 know, any additional legal costs because there was an
4 intervenor plaintiff in the agreement that was reached
5 between the water company and the AG's office. And so
6 we did not want to incur any more legal expenses to
7 fight that battle with the intervenor in the settlement
8 agreement.

9 Q Okay. All right. Let's change directions a
10 little bit to the insurance suit.

11 When you sued the insurance carrier to
12 recover funds and monies, was that for the benefit of
13 Ratepayers?

14 A Yes, ma'am.

15 Q And in your opinion, do you -- are the rates
16 unreasonably preferential, prejudicial, or
17 discriminatory against any ratepayer member?

18 A No, ma'am.

19 Q And in your opinion, are the rates sufficient,
20 equitable, and consistent in application to all
21 customers?

22 MS. ALLEN: Your Honor, I'm objecting to
23 these questions on the grounds that anything he might
24 respond would be conclusory. This question and the
25 last, I just couldn't get it in edgewise.

1 MS. KATZ: Well, Your Honor, I asked in
2 his opinion.

3 MS. ALLEN: It's conclusory. That's my
4 objection. It's the ipse dixit of somebody who really
5 isn't even qualified to conclude but it certainly is the
6 conclusionary statement of a witness.

7 JUDGE SIANO: Overruled. I'll allow it.

8 Q (BY MS. KATZ) Do you need me to repeat the
9 question, Mr. Gimenez?

10 A Yes, please.

11 Q Do you believe in your opinion that the rates
12 are sufficient, equitable, and consistent in application
13 to all of your customers?

14 A Yes, ma'am.

15 Q And in all of the answers that you've provided
16 to Ms. Allen's questions previously, where you say, "If
17 you say so" or "I mean, I'm assuming so," were you
18 trusting that she was correct in the words that she was
19 putting into your mouth when she asked the questions?

20 A Yes, ma'am, that's what I intended.

21 Q And if this appeal is upheld or approved, would
22 Windermere Oaks continue to remain financially stable
23 and be able to provide adequate water service to its
24 members?

25 A No, ma'am.

1 Q And do you have anything in any other specific
2 clarifying testimony that you would like to make
3 specifically regarding questions that Ms. Allen asked
4 you previously during her cross, but where you were
5 stopped? And if not, that's okay. But I did want to
6 ask you that.

7 A No, I think -- yeah, no. The answer is no.

8 Q Okay. And one final question, Mr. Gimenez.
9 When Ms. Allen asked you in-depth about
10 the financials of 2019 and the legal expenses and how
11 they were accounted for -- and I think that this was
12 belabored quite a bit for the November and December
13 invoices incurred versus paid -- November and December
14 were not included in the financial report for 2019.
15 Right?

16 A Correct. Correct, yes.

17 Q Did they appear in the 2020 financial report?

18 A Yes, ma'am.

19 Q So it's not like November and December just
20 went hidden somewhere. Right?

21 A That's correct.

22 Q Were they -- they were placed in the year in --
23 where the Corporation actually paid those expenses?

24 A That's correct.

25 MS. KATZ: Okay. Pass the witness.

1 JUDGE SIANO: I have a question just to
2 clarify.

3 I understood, Mr. Gimenez, you to testify
4 that if the appeal is upheld, you will not be
5 financially sound. Did I understand that correctly?

6 THE WITNESS: Yes, sir. If there is any
7 rollback of rates, you know, to what they were
8 previously or any of the Staff recommendations, I
9 believe that it will be disastrous for the Corporation's
10 financial health and it's ability to deliver adequate
11 water service.

12 JUDGE SIANO: Okay. So I think my
13 confusion is with the -- maybe the term "upheld." So if
14 the current rates are maintained, though, then --

15 THE WITNESS: Yes, sir.

16 JUDGE SIANO: -- that would be different?

17 THE WITNESS: Yes, sir. I believe the
18 current rates need to be maintained to -- for our
19 Corporation to continue to meet its ongoing obligations
20 to, you know, our legal firms and our debt service.

21 JUDGE SIANO: All right. Thank you.
22 That's all I was -- needed clarification on.

23 Okay. Ms. Allen, any additional cross
24 based on the redirect or my questions?

25 MS. ALLEN: Yes, Your Honor.

1 RE CROSS-EXAMINATION

2 BY MS. ALLEN:

3 Q Mr. Gimenez, I want to start with the statute
4 that you opined about, 7.001 of the Business
5 Organizations Code. Hang on one second and let me see
6 if I can pull it up. There we go. Nope. Hang on one
7 second and I will pull it up for us so that we can all
8 see what we're talking about.

9 That is a provision -- there we go -- that
10 speaks to things that a company can and cannot
11 indemnify. Correct? I'm sorry --

12 (Simultaneous discussion)

13 A Ma'am, I --

14 Q -- go ahead.

15 A I'm not an attorney so I don't know exactly
16 what you're --

17 Q (BY MS. ALLEN) That's what I thought, but you
18 opined about it so -- okay. Well, here it is. It's the
19 statute that is cited in your testimony, and it speaks
20 about whether and under what circumstances the Company
21 can limit the liability of a governing person. Right?
22 Here it is.

23 A Okay. Can you shrink the screen some
24 because --

25 (Simultaneous discussion)

1 Q (BY MS. ALLEN) Sure.

2 A -- I'm seeing at the bottom.

3 Q Sure.

4 A Okay. Okay. Hang on. So -- I'm sorry.

5 What's your question again now that I'm reading that?

6 Q This section that you just gave your legal
7 opinion about is a section that pertains to whether and
8 under what circumstances there can be a limitation on
9 the liability of the governing persons of an entity.
10 Right?

11 A I believe that's what that says.

12 Q And it says there are some things that if they
13 are in the governing documents, there are some limits
14 that can be placed on the liability of a governing
15 person. Right?

16 A Where does it say that?

17 Q Okay. Well, you're relying on this, not me,
18 but let's try (b).

19 JUDGE SIANO: Ms. Allen, I'm wondering if
20 this might not be better addressed in closing.

21 MS. ALLEN: Your Honor, you can cut me off
22 anytime, but I have signaled when they offered this
23 testimony that I was going to cross-examine about it and
24 they did it anyway and so you can cut me off, but I'm
25 going to ask the questions.

1 Q (BY MS. ALLEN) Mr. Gimenez, do you -- (b) is
2 the section that you opine about in your rebuttal
3 testimony, I'll just tell you that okay? It's in your
4 rebuttal testimony.

5 A Okay.

6 Q It's a section that says that if it's in the
7 governing documents, there are some limitations that can
8 be put on the liability of a governing person. Right?

9 A It says that.

10 Q There was nothing like that in the governing
11 documents of the Company. Correct?

12 A I would have to review the governing documents
13 to see what it says.

14 Q You have no opinion today that the governing
15 documents of the Company limit the liability of its
16 governing persons in any manner, do you?

17 A I haven't seen the -- I haven't reviewed the
18 documents to give you an answer -- to provide an answer
19 on that question.

20 Q Now, the statute that you opine about in your
21 testimony says in Subsection (c) that even if you have
22 it in your governing documents, there are some things
23 that you cannot limit the liability of a governing
24 person for. Do you see that?

25 A Okay.

1 Q One of them is breach of "duty of loyalty." Do
2 you see that?

3 A I see that.

4 Q That is exactly one of the things the Double F
5 Plaintiffs alleged the board had engaged in. Right?

6 A I believe so, yes, ma'am.

7 Q One of them is an act that is not in "good
8 faith." The Double F Plaintiffs alleged the directors
9 had not acted in good faith, didn't they?

10 A They alleged that.

11 Q One of them is a "breach of duty" that is not
12 in good faith. The Double F Plaintiffs alleged that,
13 didn't they?

14 A I haven't reviewed that in a while. It --
15 maybe.

16 Q One of them is "intentional misconduct" or
17 "knowing violation of the law."

18 The Double F and the TOMA Integrity
19 Plaintiffs alleged those things. Right?

20 A I mean -- I don't recall exactly what those
21 lengthy documents said.

22 Q One of the things that liability cannot be
23 limited for is a transaction from which a person
24 "received an improper benefit." Right?

25 A That's what that says.

1 Q The Double F Plaintiffs alleged exactly that in
2 the Double F lawsuits, didn't they?

3 A Ma'am, I have not reviewed those documents
4 recently, so I can't confirm that.

5 Q All right. There is nothing that you are aware
6 of in either the Company's governing documents, or the
7 applicable law, that states that directors of a
8 nonprofit water supply corporation cannot be held
9 accountable for the financial consequences of their
10 wrongdoing. Isn't that right?

11 A I'm not aware of -- I'm just not aware of those
12 matters of the law.

13 Q The Company committed considerable resources
14 with attorneys in an effort to ensure that the directors
15 would not be held personally liable for the financial
16 consequences of their alleged misconduct. Correct?

17 A I'm sorry. Can you restate that question?
18 That was a long question.

19 Q The Company committed substantial financial
20 resources in an effort to ensure that the directors
21 would not be held personally liable for the financial
22 consequences of their alleged misconduct. Isn't that
23 right?

24 A Yes, ma'am.

25 Q And as a result of the commitment of Company

1 funds in that effort, your view is that today the
2 Company cannot recover legal expenses from them.
3 Correct?

4 A That's what was stated by our attorney in the
5 prevailing Motion for Summary Judgment.

6 Q I really wasn't asking you what your lawyer
7 said. But isn't it -- I think you've answered it. So
8 let me move to a different topic -- well, hold on.

9 Isn't it true that in every instance in
10 which a member/customer has been so bold as to try to
11 hold the Company or its fiduciaries accountable, the --
12 since 2018, the board's response has been to use the
13 Company money to prevent that from happening?

14 A No, ma'am. The Company has spent a lot of
15 money to accommodate its members for their legal
16 questions.

17 Q Well, let's see. We've talked about the TOMA
18 lawsuit in which the Company claims it prevailed when it
19 prevented the TOMA Plaintiff from recovering the
20 Company's property. Right?

21 A That's right.

22 Q And the board did not hesitate to authorize the
23 expenditure of Company resources to ensure that the land
24 sale would not be reversed. Right?

25 A I don't -- no.

1 Q You don't know?

2 A I said no.

3 Q No?

4 A No.

5 Q Well, okay. What was the Company's position in
6 the TOMA lawsuit?

7 MS. KATZ: Your Honor, I'm going to
8 object. This is outside the scope of my redirect.

9 JUDGE SIANO: Ms. Allen, I think this
10 seems like we've covered this ground.

11 Sustained.

12 Q (BY MS. ALLEN) All right. Let me do it this
13 way: This is really simple. There was a lawsuit
14 brought by some members who organized as TOMA, and the
15 board used Company money to pay its litigation costs in
16 that lawsuit. Correct?

17 A I'm sorry, ma'am. I coughed right in the
18 middle of your --

19 (Simultaneous discussion)

20 Q (BY MS. ALLEN) I just want to get through this
21 really quick.

22 There is lawsuit members organized in the
23 form of TOMA Integrity and sought to hold their Company
24 accountable for what they perceived were violations of
25 Open Meetings Act. Right?

1 A They did that, yes, ma'am.

2 Q And the board did not hesitate to allocate
3 Company resources to oppose that. Right?

4 A I don't know whether they hesitated or not.

5 Q Whether they hesitated or not, they used
6 Company resources to oppose. Right?

7 A Yes, ma'am.

8 Q There was the Double F lawsuit whose plaintiffs
9 sought to hold their unfaithful fiduciaries accountable
10 for the financial loss they believed had been caused by
11 the misconduct. Right?

12 A They did that.

13 Q The board used Company money to oppose. Right?

14 A Yes, ma'am.

15 Q There was a PIA request by Danny Flunker for
16 legal invoices. Right?

17 A In the --

18 (Simultaneous discussion)

19 MS. KATZ: Objection, Your Honor. Outside
20 the scope of my -- outside the scope of my redirect.

21 JUDGE SIANO: Sustained.

22 Q (BY MS. ALLEN) I think everything will be
23 outside the scope, so why don't we do this.

24 I pulled up the 2020 financials and would
25 like for you to help me understand where in those

1 documents I'm going to find the legal expenses that were
2 omitted from the 2019 financials. Did you hear me?

3 A Yes, ma'am. You said you were going to pull
4 that up.

5 Q Oh, no. I looked at them on a break.

6 A Okay.

7 Q You told me -- you testified about 5-minutes
8 ago that, oh, yes, we could quickly find those expenses
9 in the 2020 financials. Just tell me where to look, and
10 I'll go back to the records when we take a break and
11 look.

12 MS. KATZ: Your Honor, if I -- if I may,
13 that's a mischaracterization of what Mr. Gimenez
14 testified to. He never said that she can quickly look
15 them up.

16 But since Ms. Allen said over the break
17 she pulled them up herself, to save us all the time of
18 looking through and finding where this is, it would be
19 great -- we would all, I'm sure, be very grateful if she
20 could pull that up and point us to what document that
21 she pulled up.

22 MS. ALLEN: Would the Court like for me to
23 share my screen?

24 JUDGE SIANO: I'm not -- I don't know how
25 much documentation we're looking at and if we're going

1 to be going through voluminous material that's not a
2 good use of the Court's time.

3 What are we talking about here?

4 MS. ALLEN: All I want to know is, the
5 Company now claims that, oh, yes, it disclosed this
6 information to the membership, and I want to verify
7 that. And so he says it's in the 2020 financials. Just
8 tell me where to look. That's all.

9 JUDGE SIANO: I understand that's your
10 question. I'm asking how much material are we talking
11 about.

12 MS. ALLEN: Well, let's see. I have a set
13 of 2020 financials that's 9 pages long.

14 JUDGE SIANO: Okay. Go ahead.

15 MS. ALLEN: And it did not -- I'll just
16 tell you it did not come from any discovery in this
17 proceeding. The 2020 financials are in the discovery in
18 this proceeding, but I did not have time to look them
19 up. I have a set of the Company's 2020 financials. I
20 wasn't going to -- I wasn't going to show anybody
21 anything that hadn't come out of that discovery, but
22 I'll be happy to.

23 JUDGE SIANO: Well, go ahead and share
24 your screen.

25 MS. ALLEN: Sure.

1 Q (BY MS. ALLEN) Mr. Gimenez, can you see --
2 hopefully I'm sharing my screen -- to show you
3 financials for 2020 of the Company. Is that right?

4 A Okay.

5 Q Well, don't okay. Are these or are these not
6 the 2020 financials? Do you need to look through them?
7 Just tell me what you need.

8 A Well, that's the year-end -- that's the
9 December statement.

10 Q There are 9 pages here. Would you like for me
11 to scroll through them?

12 A Yes, ma'am. But that's -- I think we're
13 struggling with terminology here. The Company provides
14 a report to the membership. It does not provide -- for
15 the annual meeting in January of -- I mean, for it's,
16 you know, annual meeting that was in March, and that's
17 not what we would have provided. This is not what we
18 would have provided. This is the monthly report.

19 Q Okay.

20 A But you can scroll down and there will be a
21 line item for legal expenses.

22 Q Stop me when I'm there.

23 A Okay. Whoa, whoa, whoa, whoa.

24 Q Whoa? Up?

25 A Go up.

1 MS. KATZ: Ms. Allen -- I apologize.

2 Judge Siano, I'm having trouble following,
3 so I would be very appreciative if she could go a little
4 bit more slowly when she scrolls through the pages.

5 Q (BY MS. ALLEN) Mr. Gimenez, you tell me when
6 to go up and down, and you tell me how fast you would
7 like for me to go.

8 A Down, please, right now.

9 Q How about this?

10 A Okay. A little bit further. Okay. Let's stop
11 right there, please.

12 Q Stop right here.

13 A Uh-huh. Okay. Scroll to the next page,
14 please. Next page. Okay. So right there, line -- it's
15 kind of in the middle of the page. It says 6300, Legal
16 Appraisal.

17 Q Have I highlighted it?

18 A Yes, ma'am.

19 Q Perfect.

20 A That would show what we had spent in 2020.
21 Toward the middle column, it says January to December
22 '20, and then go down to the amount \$240,000 --
23 \$240,785, and those invoices would have been paid in,
24 you know -- I don't know -- January, February, March.
25 I'm not quite sure when the November/December invoices

1 would have been paid. But those numbers would have been
2 included in that amount right there.

3 Q So what I want to look for, if I understand
4 you, is I want to look for a monthly financial for 2020
5 for the early part of the year, and I want to look at
6 the particular month and I want to see how much the
7 Company paid. Right?

8 A You would have to go month-by-month to see how
9 much the Company paid.

10 Q It had at least \$166,000 carried over --
11 right -- payable?

12 A I don't recall the exact number, ma'am. But it
13 was some amount.

14 Q The Company incurred far more in legal expenses
15 in 2020 than \$240,000. Correct?

16 A Yes, ma'am.

17 Q All right. So this is what you were talking
18 about in your earlier testimony?

19 A Yes, ma'am. We paid those bills in 2020, and
20 they are accounted for in our monthly reconciliation.

21 Q You paid those bills in 2020 and you told the
22 membership that it was because those nasty plaintiffs
23 had been so active in the early part of 2020 that the
24 bills were enormous, didn't you?

25 A You're putting words in my mouth, ma'am.

1 Q You can say, that's not what I mean. You can
2 say, I disagree. It's your call.

3 A I didn't say that, ma'am.

4 Q The board said that, didn't they?

5 A No, ma'am.

6 Q The board never told the membership that they
7 had spent more money in 2019 than the Company had on
8 their legal fees, did it?

9 A The Company did not say that.

10 Q All right.

11 A I can't recall. I mean, the -- I can't recall
12 all of our communications in 2020 with our membership so
13 I can't --

14 Q Let me ask it this way, and I'll move on: Can
15 you recall any occasion on which the board disclosed to
16 the membership that it had spent more money than the
17 Company had on its legal fees in 2019?

18 A I don't recall all the communications -- the
19 nuances of every single communication.

20 Q All right, sir. We know from the 2020
21 financials that we just looked at that the Company has
22 not paid nearly all of the attorney's fees that the
23 board obligated the Company to pay in 2019 and 2020.
24 Right?

25 A That's correct. We have not paid those, all of

1 the fees.

2 Q And forgive me if I asked you this earlier: Do
3 you know a balance on the litigation costs that have
4 arisen from this 2016 land transaction -- do you know a
5 balance -- unpaid balance as of today?

6 A I don't have those figures in front of me, no,
7 ma'am.

8 Q Do you know order of magnitude, what the unpaid
9 balance today is of the litigation costs for all of the
10 litigation, both litigation the Company did initiate and
11 litigation the Company did not initiate, that has arisen
12 out of this 2016 land transaction?

13 A That would require me to speculate on the
14 amounts. I can't give you an order of magnitude.

15 Q When the Company -- when the board found itself
16 at the end of 2019 in the position where it had
17 basically spent all the money there was, all the cash
18 there was, on legal fees, why was it that there were no
19 steps taken to market the 6.19 acres in the airport?

20 MS. KATZ: Your Honor, I'm going to
21 object. Outside the scope of my redirect.

22 JUDGE SIANO: Sustained.

23 MS. ALLEN: Pass the witness.

24 JUDGE SIANO: All right. Ms. Lander.

25 MS. LANDER: Staff has no questions, Your

1 Honor. Thank you.

2 JUDGE SIANO: All right. Ms. Katz,
3 redirect?

4 MS. KATZ: Your Honor, I have one
5 question.

6 FURTHER REDIRECT EXAMINATION

7 BY MS. KATZ:

8 Q Mr. Gimenez, Ms. Allen spoke with you quite a
9 bit about the Texas Business Organizations Code and
10 discussed with you limitations within that code section
11 of coverage. If you wouldn't mind referring to, and for
12 the record's purposes, it would be our Windermere Oaks
13 Exhibit 3 that's been previously admitted, Attachment
14 JG-20. So we're talking about your rebuttal testimony
15 Attachment JG-20, just to make sure the record is clear.

16 Is this a copy of the order regarding the
17 Summary Judgment Motion dismissing any allegations of
18 breach of duty and good faith and so on that Ms. Allen
19 was talking about regarding all of the directors with
20 the exception of Dana Martin?

21 A That's correct. That's the Order.

22 Q Okay. So there are -- so those allegations
23 have been dismissed by a court?

24 A That's correct.

25 MS. KATZ: Okay. Pass the witness.

1 FURTHER RECROSS-EXAMINATION

2 BY MS. ALLEN:

3 Q Mr. Gimenez, while you're there on Page JG-20,
4 can you flip back to the motion itself, which is JG-21
5 and go to Page 2.

6 A JG-21? Okay.

7 Q It's right behind the one that you were just
8 looking at and go to Page 2.

9 A Yes.

10 Q That is the motion that was filed on behalf of
11 the defendant directors. Right?

12 A Yes, ma'am.

13 Q And if we go to Page 2 -- are you with me --
14 first full paragraph?

15 A Yes, ma'am.

16 Q It says, plaintiffs seek to hold the directors
17 personally liable. Do you see that?

18 A Okay.

19 Q And if we keep reading the argument is that the
20 Texas ultra vires statute only authorizes personal
21 liability in certain instances. Do you see that?

22 A Yes, ma'am.

23 Q And it says, even if the bad acts that the
24 plaintiff's have pleaded are true, the directors cannot
25 be held personally liable. Right?

1 A Let me -- I don't read that exactly the way
2 you're presenting it.

3 Q Okay. Good. Well, let's just do it together.
4 Let's start at the beginning of the sentence. "Even if
5 the facts the plaintiffs pleaded are true" -- are you
6 with me?

7 A Yes, ma'am.

8 Q The directors did not exceed an express
9 limitation on their authority and act illegally, both,
10 and therefore, they are not personally liable. Right?

11 A It says, and act illegally by selling the land,
12 settling litigation, and paying defense costs has
13 potentially opened them up to personal liability and
14 there is no evidence proving otherwise. That's what it
15 says.

16 Q And that is what the Judge ruled on. Correct?

17 A Yes, ma'am.

18 Q And you also had a part of your rebuttal
19 testimony that addressed this. Let me just find it as
20 quickly as I can. I find it on Page 11 of your rebuttal
21 testimony, if you've still got it handy. And I look
22 starting around Line 16, you say 7 of the 8 named
23 directors did not come close to such level of abuse.
24 Are you with me?

25 A Yes, ma'am.

1 Q So as to trigger personal liability for their
2 misconduct. Correct?

3 A It doesn't say that there, but I think that's
4 what it needs to say.

5 Q Yeah. The Court in a Double F case did not
6 determine that the directors did not engage in
7 wrongdoing, did it?

8 A Ma'am, that case was dismissed. I don't know
9 how else to say it.

10 Q The Court made a determination that everyone if
11 they acted badly as the plaintiffs have alleged, they
12 simply cannot be held personally liable for it for one
13 reason or another. Correct?

14 A The plaintiffs said that or the Judge said
15 that? I'm not following you.

16 Q The Judge said that.

17 A Okay. I don't -- I think you said it a
18 different way. Could you restate it?

19 Q That's okay.

20 MS. KATZ: Judge, I'm going to object to
21 this. I'm going to object to this.

22 MS. ALLEN: I'm going to move on.

23 JUDGE SIANO: Okay. Ms. Allen, you're --
24 at this point, you're limited to the scope of the
25 redirect.

1 MS. ALLEN: Then I'm done.

2 JUDGE SIANO: Okay. All right. So the --
3 Ms. Katz, I'll allow you to do any final redirect, but
4 that's going to be the -- we're going to conclude with
5 this witness. Go ahead.

6 MS. KATZ: Your Honor, I have nothing more
7 for this witness.

8 JUDGE SIANO: All right. Thank you,
9 Mr. Gimenez. You're excused.

10 THE WITNESS: Thank you, sir.

11 JUDGE SIANO: And --

12 (Simultaneous discussion)

13 MS. MAULDIN: Your Honor, we need -- I'm
14 sorry to interrupt. We need to address the exhibits
15 that Ms. Allen circulated.

16 JUDGE SIANO: Okay. And are you talking
17 about the optional completeness, or are you talking
18 about the ones that were previously provided by the
19 Parties?

20 MS. MAULDIN: I am talking about the
21 exhibits that Ms. Allen circulated right before we
22 convened at 1:00 p.m. today. They are marked -- she
23 sent them to myself and Ms. Lander, but they've been
24 marked Exhibits 29 through 47.

25 MS. ALLEN: Your Honor, actually, they

1 are -- I provided a copy of 39, but it's already been
2 admitted.

3 But it's actually 30 through 54, and these
4 are the individual discovery responses.

5 JUDGE SIANO: Okay. If this is just a
6 housekeeping matter, we can probably take this up off
7 the record. I do want to take a short break at this
8 point. I'm sorry, Ms. Mauldin.

9 MS. MAULDIN: Very well. I'm going to --
10 yeah, so there are -- I do have some issues with this.
11 Generally, I do not object to admitting our RFI
12 responses into the record. However, there are several
13 instances where the attachment that she has sent -- I
14 just wanted to exercise my right of optional
15 completeness. Several of these reference an attachment,
16 the attachment is not included, or it's just the
17 attachment, not the RFI itself. And so I can go through
18 them. I have made a list. But we don't need to do it
19 right now. I just -- this is not going to be a simple
20 housekeeping matter.

21 JUDGE SIANO: Okay. Ms. Mauldin, as
22 previously noted, you always have the option of
23 completeness and -- but for purposes of admitting,
24 Ms. Allen, was it -- give me those exhibit numbers
25 again.

1 MS. ALLEN: 30 -- three zero -- through
2 53. 30 through 53. And they're individual discovery
3 responses.

4 JUDGE SIANO: I'm sorry. Ratepayer
5 Exhibits 30 through 53?

6 MS. ALLEN: Correct.

7 JUDGE SIANO: That's not what I heard
8 previously. We're talking about the ones that were
9 exchanged over the lunch break.

10 MS. ALLEN: Those are the ones that were
11 exchanged over the lunch break. What they are is
12 they -- I understood that what we were to do is identify
13 each separate discovery response as an exhibit. I was
14 going to put them all in one packet. But it's probably
15 better if --

16 (Simultaneous discussion)

17 MS. MAULDIN: Your Honor, I would just
18 note that we have only received Exhibits 29 through 47.

19 MS. ALLEN: I will resend the email, Your
20 Honor. I assure you that I have gotten no delivery
21 failure notices, but I will resend these emails.

22 JUDGE SIANO: Okay. Well, the most
23 important -- it's important that the Parties get these.
24 It's also very important that the court reporter get
25 them, and they're properly marked and identifiable. So

1 you can confer with the court reporter on that. But it
2 is your obligation to ensure that that is properly done.

3 MS. ALLEN: Your Honor, we have an email
4 confirmation from the court reporter of her receipt.

5 JUDGE SIANO: Okay. So I propose that we
6 take a short break here before taking up the next
7 witness. I believe that would be -- is it Mr. Rabon?

8 MS. MAULDIN: Yes, Your Honor.

9 JUDGE SIANO: Okay. And I understand that
10 Staff does have some questions for Mr. Rabon.

11 MS. LANDER: Yes, Your Honor.

12 JUDGE SIANO: Okay. All right. What do
13 the Parties need? 10 minutes?

14 MS. ALLEN: Fine by me.

15 MS. KATZ: 10 minutes is great.

16 MS. MAULDIN: That's fine, Your Honor.

17 JUDGE SIANO: Okay. Back in 10 minutes.

18 (Recess: 2:20 p.m. to 2:27 p.m.)

19 JUDGE SIANO: All right. Back on the
20 record. Go ahead.

21 MS. KATZ: Thank you. Windermere Oaks
22 calls Grant Rabon to the stand.

23 JUDGE SIANO: Ms. Rabon, please raise your
24 right hand.

25 (Witness sworn)

1 THE WITNESS: I do.

2 JUDGE SIANO: All right. Go ahead.

3 MS. KATZ: Thank you.

4 GRANT RABON,

5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. KATZ:

8 Q Good afternoon, Mr. Rabon.

9 A Good afternoon.

10 Q Do you have a copy of what's been previously
11 marked as Windermere Oaks Exhibit No. 9, which is your
12 rebuttal testimony, in front of you?

13 A Yes.

14 Q Okay. And is this a true and correct copy of
15 the prefiled testimony in this case?

16 A Yes.

17 Q And if we were to ask you questions presented
18 in that document to you again today, would the answers
19 still be the same as what's contained in that testimony?

20 A Yes.

21 Q And do you have any errors or corrections to
22 your testimony today?

23 A No.

24 MS. KATZ: Okay. So, Your Honor, with
25 this exhibit already being admitted into the record, we

1 would pass the witness for cross-examination purposes.

2 JUDGE SIANO: All right. Ms. Allen.

3 MS. ALLEN: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. ALLEN:

6 Q Mr. Rabon -- is it Rabon? Am I saying that
7 correctly?

8 A Yes, that's perfect.

9 Q Okay. Thank you.

10 I really just have a handful of questions,
11 I think, for you. I want to start with your testimony
12 that we find on Page 12 at Line 3 and below concerning
13 the docket in the Oncor case.

14 A Okay.

15 Q Are you with me? Okay. Great. Now, if I
16 understand your testimony what you're saying is that the
17 rate -- the member Ratepayers of the Company are the
18 stakeholders in this type of a business organization.
19 Is that right?

20 A Well, "stakeholders" can be a broad term that
21 could be many different individuals that have some
22 relationship to the utility, so I'm not sure that I
23 would use that term.

24 Q How about "owner"?

25 A That's a more appropriate term for the member

1 Ratepayers of the water supply corporation.

2 Q Okay. Wouldn't you agree with me that it is in
3 the best interests of the owners of any kind of
4 organization that its fiduciaries on the board of
5 directors are accountable?

6 A I would agree with that.

7 Q And if I understand your testimony in the
8 section to which I just referred you, your
9 interpretation of that Oncor decision is that the
10 equity -- that if the Company wants to insure -- if it
11 wants to self-insure in that case, in a way that
12 indemnifies the fiduciaries from their wrongful conduct
13 for intentional things, statutory violations, and
14 improper receipt of benefit, if the Company wants to do
15 that, then the people who make that decision are the
16 ones who ought to bear the cost of that. Right?

17 A I agree with that assessment.

18 Q Your view, as I understand it, is that in the
19 Oncor case it was the equity investors who had made that
20 decision and the determination was that they ought to
21 bear the cost of that. Right?

22 A Well, just to be clear about what you're
23 saying, I'm not sure what the "that" is in your
24 question. Might you restate that for me?

25 Q I can. The financial costs related to

1 intentional torts or employee misconduct by directors?

2 A Okay.

3 Q The words that you use here at Lines 10 and 11.

4 A Okay.

5 Q That is what I'm talking about. And if I
6 understand your testimony correctly, what you're saying
7 here is that if the equity investors wish to insulate
8 the Company's fiduciaries from accountability, then the
9 equity investors are going to have to pay for that.
10 Right?

11 A Yes.

12 Q The member/customers of Windermere Oaks Water
13 Supply Corporation do not wish to insulate their
14 fiduciaries from liability for intentional misconduct,
15 violations of the law, or receipt of improper benefit.
16 You understand that. Right?

17 A I could understand that position.

18 Q If they did wish to do it, it would be in the
19 bylaws, wouldn't it?

20 A I'm not sure.

21 Q Well, you know that it's not in the bylaws.
22 Right?

23 A I do not know. I have not reviewed the bylaws
24 recently.

25 Q Okay. Are you aware that any business

1 organization in the State of Texas can purchase
2 insurance against the type of conduct that is described
3 here in your Lines 10 and 11?

4 A That would not be surprising to me.

5 Q But only with the approval of the membership.
6 Did you know that?

7 A No.

8 Q This membership for this Company has never
9 approved indemnification or insurance against
10 intentional misconduct, violations of the law, or
11 receipt of improper benefit so far as you know. Right?

12 A I do not know.

13 Q Okay. You do know that the insurance that was
14 obtained and passed through in the rates did not insure
15 against those things and did not provide defense costs
16 for the directors who are alleged to have committed
17 them. Right?

18 A I do not know.

19 Q You don't know one way or the other. Do you
20 have an understanding that the Company received
21 insurance in connection with the claims that it made?

22 A No.

23 Q Okay. Would you agree with me that it is in
24 the best interest of the Customer/Ratepayers of this
25 Company that if their fiduciaries have been unfaithful

1 to hold them accountable?

2 A I believe there is a means by which they can do
3 so currently.

4 Q What means is that, as you understand it?

5 A I believe that there is a process laid out
6 whereby a board member can be removed from the board.

7 Q So one right that is available to the
8 Customer/Ratepayers at Windermere is to attempt to
9 remove that director. Right?

10 A That's my understanding.

11 Q Okay. It is not in the best interest of the
12 ratepayer/customers to have Company resources used in an
13 effort to prevent the exercise of the right of removal,
14 is it?

15 A I don't -- I can't answer that.

16 Q Can you think of any circumstance in which it
17 might be in the best interest of the Ratepayers of this
18 Company to have Company resources used for the purpose
19 of stymying a removal effort by a member?

20 MS. KATZ: Objection, Your Honor.
21 Speculation and irrelevant. This doesn't go to any of
22 the issues laid out in the Preliminary Order.

23 JUDGE SIANO: Response?

24 MS. ALLEN: I am cross-examining him on
25 testimony that I carefully identified, and if I'm not

1 going to be allowed to do it, let's just go on. I've
2 identified the testimony on Page 12, and I'm
3 cross-examining him.

4 JUDGE SIANO: Ms. Allen, what's your
5 response to the objection?

6 MS. ALLEN: That he has testified about
7 these matters and therefore opened the door for this
8 cross-examination.

9 If this were not relevant, I doubt
10 Ms. Katz would have put it into evidence.

11 JUDGE SIANO: Okay. To the extent that
12 your testimony relates to this testimony, I'll allow it.
13 Go ahead.

14 Overruled.

15 MS. ALLEN: Madam Court Reporter, could I
16 ask you if you would read the question back, please?

17 (The record was read as requested.)

18 A I can not come up with any examples, as we sit
19 here today. But facts and circumstances might make that
20 appropriate.

21 Q (BY MS. ALLEN) Okay. And that's fair enough.
22 I just wanted to know whether you can think of any right
23 now.

24 The members and customers of this Company
25 have an absolute right to hold their fiduciaries

1 accountable if their fiduciaries engage in misconduct,
2 don't they?

3 A I'm not clear what the word "absolute" is
4 intended to imply in your question.

5 Q Fair enough. Let me ask it a different way.

6 There's nothing about the fact that these
7 are Ratepayers/Customers of a water supply company that
8 would impact their right to hold their fiduciaries
9 accountable for misconduct. Right?

10 A I'm not aware of any, no.

11 Q Would you agree with me that it would not be in
12 the best interest of the Ratepayers of this Company for
13 Company resources to be used in an effort to prevent its
14 fiduciaries from being held accountable?

15 A I can't answer that without the facts and
16 circumstances of the particular situation. So, no, I
17 can't say with an absolute yes or no on that question.

18 Q If I didn't ask it this way, I intended to.

19 Can you think of a circumstance in which
20 it would be in the Ratepayers' best interest for Company
21 resources to be applied for the prevention of holding
22 their fiduciaries accountable?

23 A I have no hypothetical situation to fit those
24 facts, that circumstance.

25 Q Isn't it true that even for a water supply

1 company such as Windermere, the board -- well, let me
2 ask it this way.

3 Isn't it true that especially for a water
4 supply company, such as Windermere, the paramount
5 objective of the board of directors should be to provide
6 appropriate levels and quality of water and wastewater
7 service to its members?

8 A That was a long question. There was a
9 "paramount" in there. I will say it is a -- should be a
10 goal of the board of the utility to ensure adequate,
11 say, utility service.

12 Q Do you appreciate that by statute the purpose
13 for which this Company was organized and exists, and the
14 only purpose for which it was organized and exists, is
15 to provide water and wastewater services to its members?

16 A I'm not aware of any other purpose for their
17 creation.

18 Q All right. And so can you think of any
19 objective that ought to be a higher priority for the
20 board of directors than making sure that the Company's
21 resources are used for the purpose of providing service
22 to its members?

23 A I cannot, as we sit here, come up with any
24 other examples of what might be appropriate other
25 priorities.

1 Q Are you aware that the board of directors made
2 discretionary decisions in 2018 and 2019 to apply
3 Company resources to pay the legal fees of directors who
4 had been sued by members?

5 A No.

6 Q You did not know that?

7 A Again, there was some words in there like
8 "Discretionary" -- the way you framed the question my
9 answer is no.

10 Q Are you aware that Company resources were used
11 in 2018 and 2019 for the purpose of paying litigation
12 expenses in connection with claims that were made
13 against current and former members of the board?

14 A I have been told that, yes.

15 Q What have you been told about the circumstances
16 under which those decisions were made?

17 MS. KATZ: Objection, your Honor.
18 Hearsay.

19 A Nothing that I can recall.

20 MS. ALLEN: I don't know whether the
21 objection was ruled on, and I certainly didn't hear the
22 answer.

23 JUDGE SIANO: I didn't hear the full
24 objection. Ms. Katz?

25 MS. KATZ: Your Honor, I objected as to

1 hearsay when her question was "what have you been told."

2 JUDGE SIANO: Okay.

3 MS. ALLEN: Your Honor, this is an expert
4 witness who has been provided with information so that
5 he can develop opinions, and I want to understand the
6 information that he was provided.

7 JUDGE SIANO: Overruled.

8 MS. KATZ: And, Your Honor --

9 JUDGE SIANO: Go ahead. I believe he
10 answered the question.

11 MS. ALLEN: Forgive me, Your Honor, but I
12 simply did not hear what he said in an answer.

13 Maybe the court reporter can read it back.
14 That's fine with me.

15 JUDGE SIANO: I believe his answer was no.

16 Q (BY MS. ALLEN) Okay. I was thinking that my
17 question was, what information were you given. Maybe it
18 wasn't. I wouldn't have expected him to say no to that.

19 Madam Court Reporter, let's just cut this
20 short. Could you just tell me what the questions was?

21 (The record was read as requested.)

22 A And my answer is, nothing that I can recall.

23 Q (BY MS. ALLEN) So you know nothing about the
24 circumstances under which the board made the decision to
25 cause the Company to fund these litigation expenses. Is

1 that right?

2 A That's fair.

3 MS. KATZ: Your Honor, I'm -- Your
4 Honor --

5 JUDGE SIANO: Go ahead, Ms. Katz.

6 MS. KATZ: Thank you. I was going to
7 object that this is outside the scope of this expert
8 witness's testimony. He is testifying as an expert
9 witness, and that expert witness testimony is confined
10 to only the testimony that he is an expert on, and
11 that's on the rates themselves, not what happened in the
12 board meetings or why they were raised or what happened
13 with what lawsuit. It's on the rates themselves, and
14 that's what the purpose of his testimony is today. And
15 that's why I would be objecting to outside the scope of
16 his expert witness testimony.

17 JUDGE SIANO: Well --

18 MS. ALLEN: Your Honor, I think I might
19 could cut this short if I could ask Mr. Rabon this
20 question.

21 Q (BY MS. ALLEN) So are you here today with an
22 opinion as to whether the legal fees that were paid with
23 Company money in connection with litigation arising out
24 of the 2016 land transaction are cost of service?

25 A Yes, those -- they are not in and of themselves

1 cost of service by my term of art, but they are costs
2 that would be appropriate to be recovered from
3 Ratepayers.

4 Q So you do -- you are here to offer an opinion
5 that these costs ought to be recovered from Ratepayers.
6 Right?

7 A Yes.

8 Q But you are telling me that you don't know
9 anything about the circumstances under which the board
10 made the decision to apply Company resources in that
11 way. Is that fair to say?

12 A Correct.

13 Q Are you applying information and standards that
14 you know from other types of utilities?

15 A I don't believe I understand the question.
16 Could you restate that for me?

17 Q Sure. How is it that you could possibly render
18 an opinion as to whether these costs are appropriate to
19 recover against these Ratepayers if you don't know
20 anything about the circumstances of the board's decision
21 to expend them?

22 A So I do not feel it necessary for me to have an
23 involved understanding of the issues that led to the
24 incurrence of the legal expenses in order to determine
25 that they are costs the utility should pay and recover

1 from Ratepayers.

2 Q So do you think that these costs are just items
3 that every utility ought to be able to recover across
4 the board under any circumstances?

5 A No. Again, some of the words you're using in
6 your question prevent me from giving you a simple
7 answer. There are facts and circumstances that could be
8 very different, so -- your question seemed to be an
9 absolute, which I don't know that I can give you an
10 answer in an absolute in that fashion.

11 Q Well, I would normally ask you what
12 circumstances about this particular company and the
13 decision that the board made cause you to think that
14 these are recoverable expenses, but you don't know
15 anything about that. So I'm trying to figure out
16 whether you're just applying that universal rule or
17 there are circumstances that make it appropriate here?
18 Help me with that.

19 A There is not a universal standard for which I
20 am intending to apply to this circumstance.

21 Q So what standard are you intending to apply?

22 A The appropriateness of recovering legitimate
23 costs from ratepayers.

24 Q So you're trying to make a determination about
25 whether these are legitimate costs?

1 A Yes.

2 Q So what's the criteria for that, in your view?

3 A There would be more than one criteria. But,
4 for example, the incurrence of the costs were prudently
5 incurred and in furtherance of the operation of the
6 utility.

7 Q Okay. If you do not know how the board made
8 these decisions, how is it that you know or can opine
9 about whether or not they were prudently incurred?

10 A I don't feel I need to know the merits of the
11 underlying case that's involved in order to determine
12 whether or not the costs -- the legal costs at issue --
13 were incurred prudently by the utility.

14 Q Isn't it true that when the board of directors
15 is presented with any decision that might involve the
16 disbursement of Company money, its first priority should
17 be to make sure that the Company will have enough money
18 to provide water and wastewater service for its
19 customers. Isn't that true?

20 A That would be one of a myriad of important
21 considerations.

22 Q What could be more important for a water supply
23 company formed for the purpose of providing that
24 service?

25 A There are, you know, many costs incurred to

1 operate a water and wastewater system. I'm not sure
2 that I can prioritize or rank them for you in this
3 venue.

4 Q Can you think of anything that would be more
5 important for the board's consideration than whether it
6 will have sufficient funds to provide water and
7 wastewater service to its customers?

8 A I think that is very important. I'm not sure
9 that that is in all cases the most important
10 consideration, but I would agree with you that it is a
11 very important consideration.

12 Q Can you think of anything that would be more
13 important to the board of directors of a water supply
14 company organized under Chapter 67 of the Water Code?

15 A As we sit here, I can't think of an example for
16 you, no.

17 Q It would be very imprudent for the board of
18 directors of a Chapter 67 water utility to allow legal
19 expenses for lawsuits involving its fiduciaries to
20 absorb money that was needed to provide water and
21 wastewater service to the customers. Isn't that right?

22 A I cannot answer the question the way that
23 you've asked it.

24 Q Can you think of a single circumstance in which
25 it would be prudent for a board of directors to allow

1 legal expenses to defend the conduct of its fiduciaries
2 to eat into money that is needed to provide service to
3 the customers?

4 A I would take the view that the money spent on
5 prudently defending against lawsuits is a part of
6 providing service. It's a part of providing service.

7 Q Do you have the view that the expenditure of
8 legal fees for litigation that arose out of a sale of
9 surplus property -- do you have the view that that is a
10 cost that is necessary for the provision of water and
11 wastewater service to customers?

12 A I don't believe I expressed an opinion on that
13 in my testimony.

14 Q So you don't have an opinion on that?

15 A Not that I can come up with right now.

16 Q The opinion that you do express in your
17 testimony is that because the Company does not have
18 equity investors, the Ratepayers are the only source of
19 funding to recover these and other costs. Correct?

20 A That was in my testimony.

21 Q What about the fiduciaries who are determined
22 to have engaged in misconduct and caused damage to the
23 Company -- what about them -- as a source of funding?

24 A My testimony indicated that there is a means
25 available to Member/Ratepayers to remove board members

1 that they believe were not making decisions that were in
2 their best interests or that they disagree with.

3 Q So you just don't think that members of a water
4 supply company have the right to attempt to hold their
5 directors accountable?

6 A That was not my answer. There is at least the
7 one avenue available to them that I just mentioned.

8 Q And there are other avenues available as well.
9 Correct?

10 A There may be.

11 Q One of them is for members to put their money
12 where their mouth is and ask a Court to hold their
13 directors accountable. Right?

14 A I don't dispute that.

15 Q And it is not in the best interest of the
16 Ratepayers of the Company for the Company's resources to
17 be used in an effort to avoid accountability. Correct?

18 A I can't answer that the way that you framed it
19 because you framed it as avoid accountability. I'm not
20 sure I agree with the premise of the question. If you'd
21 like to restate it, that would be fine.

22 Q Let me be specific. It's not in the best
23 interest of the Ratepayers for Company resources to be
24 used to provide legal representation to the end of
25 avoiding personal liabilities for directors who may well

1 have engaged in wrongful conduct. Isn't that right?

2 A Your question presupposes their bad conduct, so
3 I don't know that I can answer that question the way
4 that you've asked it.

5 Q No, sir. My question does not presuppose bad
6 conduct. My question is: Shouldn't the Ratepayers have
7 the right to go to court and find out whether their
8 fiduciaries have engaged in bad conduct without their
9 money being used to stop them?

10 MS. KATZ: Your Honor, I'm going to object
11 at this --

12 A No.

13 Q (BY MS. ALLEN) So you think that it is good
14 public policy for the Ratepayers' money to be used to
15 prevent them from holding their directors accountable.
16 Is that it?

17 A No, that's not my testimony.

18 Q Say it --

19 (Simultaneous discussion)

20 A I was simply trying to --

21 JUDGE SIANO: Ms. Allen, let's wait for
22 each person to stop talking.

23 A I was simply trying to answer the question in
24 the way that you framed it.

25 Q (BY MS. ALLEN) Say it your way.

1 A I would -- I would suggest that there are --
2 that the proper incurrence of legal expenses are a cost
3 of providing service, which should be recoverable from
4 Ratepayers.

5 Q And what I'm trying to work on with you is
6 whether it's a proper use of Company resources to pay
7 legal expenses in an effort to avoid personal liability
8 for directors?

9 MS. KATZ: Objection, Your Honor. No. 1,
10 this question has been asked and answered. Mr. Rabon
11 answered several times that he doesn't know. He can't
12 answer this question, and also he is a rate consultant.
13 He's not here to testify as to the reasonableness of
14 board actions from prior litigation.

15 JUDGE SIANO: Sustained as to asked and
16 answered.

17 And, Ms. Allen, I understand that you're
18 trying to get to a particular point. I believe there
19 are some limitations as to the scope of Mr. Rabon's
20 expertise. I will allow some room here, but keep that
21 in mind.

22 Q (BY MS. ALLEN) Mr. Rabon, here's what I'm
23 trying to work on -- and I'm not a rate lawyer, so I'm
24 sorry to be inept about this.

25 What I'm trying to work on is, you seem to

1 be expressing the opinion that these are properly
2 incurred legal expenses. Have I got that right?

3 A They appear to me to be properly incurred legal
4 expenses.

5 Q What factors or circumstances about them appear
6 to you to make these properly incurred legal expenses?

7 A Legal expenses were represented to me as being
8 those associated with defense in various litigations
9 incurred by the utility and therefore in the course of
10 doing its business and were incurred prudently for and
11 should be recovered from Ratepayers.

12 Q Okay. So I take it that nobody told you, for
13 example, that these litigation costs were used in an
14 effort to prevent the Company from recovering its
15 property, nobody told you that?

16 A No one has characterized anything in that
17 fashion to me.

18 Q And no one has told you that Company resources
19 in this case were used in an effort to prevent personal
20 liability on the part of the current and former director
21 nobody has told you that?

22 MS. KATZ: Your Honor, I'm going to
23 object. All of these questions -- this line of
24 questioning calls for hearsay. "Nobody's told you
25 that..."

1 JUDGE SIANO: I'll overrule the objection.
2 She's allowed to probe the extent of his review.

3 But Ms. Allen it may be more efficient if
4 you simply ask him the extent of his review and how
5 in-depth he made his determination that they were
6 prudently incurred.

7 Q (BY MS. ALLEN) His question -- what he just
8 said -- can you answer that one?

9 A You're asking the Judge's question. Is that
10 correct?

11 Q Yes, sir.

12 A I do not recall doing any special
13 investigations into the legal expenses that were
14 incorporated into the revenue requirement.

15 Q So you kind of just treated this as ordinary,
16 run-of-the-mill litigation in which the Company needed
17 to preserve its property by defending. Right?

18 A I didn't presume that it was about preserving
19 property. Some of that question was not part of my
20 presumption.

21 JUDGE SIANO: Ms. Allen, I'd like to move
22 on because I think he's answered the question.

23 MS. ALLEN: I'm trying to figure out how
24 to do that.

25 Q (BY MS. ALLEN) I just want -- if you'll just

1 tell me the reasons why you think this board was
2 prudent, I will move on, if you think that.

3 A I have not been presented --

4 (Simultaneous discussion)

5 MS. KATZ: Objection, Your Honor. This
6 has been asked and answered.

7 JUDGE SIANO: Overruled.

8 A I have been presented with no information that
9 would lead me to believe that this was imprudent.

10 Q (BY MS. ALLEN) Okay. I really don't want to
11 belabor the point, but you apparently have something in
12 mind, a criteria or a definition about prudence, and I'm
13 just trying to figure out how you applied that and
14 determined that this board acted prudently, if you did?

15 JUDGE SIANO: Mr. Rabon, do you have a
16 response?

17 A I'm sorry. I didn't -- could you repeat the
18 question?

19 Q (BY MS. ALLEN) I'm getting the impression that
20 you have some criteria or definition that you use to
21 determine whether expenses are prudent, that you applied
22 that and made a determination here, and I just want you
23 to help me to understand what it is about this board
24 action that you -- made you say, oh, this is prudent?

25 A I made no special investigations into this --

1 these legal expenses that would -- that led me to that
2 conclusion.

3 Q All right. Fair enough.

4 Mr. Rabon, I'm going to ask you some
5 ratemaking questions, which I'll probably not do a good
6 job of, but help me. Okay?

7 My understanding is that the Company here
8 had a rate analysis done by an outfit called TRWA. Did
9 you know about that?

10 A I was told that.

11 Q Did you make any review of that analysis?

12 A No. I was not involved in that at all.

13 Q I'm sorry. I really didn't expect you to tell
14 me that you were involved in it. I wondered if in your
15 work in this case if you had taken a look at it?

16 A No. It has not been part of my review.

17 Q Can you tell us whether a rate design that is
18 structured to capture revenues for the purpose of paying
19 forward legal fees is an acceptable design practice?

20 A I'm not sure I understand the question. Can
21 you help me with the "paying forward legal fees" part of
22 that?

23 Q Let me explain to you what I understand
24 occurred here, and then we'll go from there.

25 What I think we've been told in this

1 proceeding is that this rate design was intended to
2 generate revenues so that the Company could pay two law
3 firms around \$20,000 a month going forward against the
4 legal bills that were accruing, and that this rate is
5 intended to be in effect until such time as all of the
6 legal fees that have arisen from the lawsuits involving
7 the 2016 land transaction have been concluded and the
8 bills have been paid.

9 Do you understand?

10 A I believe so.

11 Q Is that an acceptable rate design practice?

12 A I would not characterize that as a rate design
13 practice.

14 Q What would you characterize that as?

15 A What you described sounds to me like the
16 utility making arrangements to be able to pay its legal
17 expenses over a period of time. I'm not clear on how
18 you're connecting that back to rate design.

19 Q Okay. So what's happening is that the Company
20 is continuing to authorize lawyers to do work and those
21 lawyers are continuing to do work and they are charging
22 for their services on an ongoing basis -- and that's
23 been going on pretty much since 2018 and it continues
24 today -- and they send invoices periodically, typically
25 monthly, in the amounts that are whatever correspond to

1 the work they've done and those amounts accumulate a
2 balance and the Company pays \$10,000 to one law firm and
3 \$10,000 to the other law firm every month and the
4 balance keeps getting --

5 (Simultaneous discussion)

6 MS. KATZ: Your Honor, I'm going to object
7 at this -- excuse me. I'm going to object at this time
8 to, No. 1, narrative, and, No. 2, I don't hear a
9 question in between the narrative.

10 JUDGE SIANO: Ms. Allen, can you break it
11 down?

12 MS. ALLEN: I can try. I can try.

13 Q (BY MS. ALLEN) Here's the first part. The
14 Company has engaged lawyers and engaged lawyers in 2018
15 and it told them to go forth and do legal work and there
16 were no constraints placed on the amount of fees they
17 could charge, and they did their legal work and they
18 billed for it at their usual rates and they presented
19 invoices on a monthly basis. The Company found out when
20 it received the invoice how much the legal fees were,
21 and that has continued, and continues today, if I
22 understand it, so that the legal fees that the Company
23 has become obligated to pay continue to grow over time
24 as invoices are generated and received, and \$10,000 each
25 month is paid to one law firm and to another law firm --

1 (Simultaneous discussion)

2 MS. KATZ: Excuse me, Your Honor --

3 Q (BY MS. ALLEN) -- against that --

4 JUDGE SIANO: Yeah, I think we're back
5 where we were, Ms. Allen. So I -- what's your question
6 for this witness?

7 Q (BY MS. ALLEN) What's your understanding of
8 how they designed these rates? How about that?

9 A My understanding is that they designed these
10 rates with assistance from Texas Rural Water Association
11 to recover their identified revenue requirement.

12 Q What I really meant to ask you is: Can you --
13 do you have an opinion about the methodology that was
14 used to design these rates?

15 A No.

16 Q My understanding is that the rate change in
17 March of 2020 did not involve a change of the rates
18 associated with gallonage use. Does that make sense?

19 A I believe -- I believe I understand what you're
20 saying.

21 Q They changed the base rate. They did not
22 change the tiered rate for water usage. Is that right?
23 Is that your understanding?

24 A That is my understanding.

25 Q There was no analysis -- do you know whether or

1 not there was an analysis in connection with the rate
2 design of the actual variable expenses?

3 A No.

4 Q You don't know or --

5 A Correct. To be clear, I do not know.

6 Q Did you see any indication in the information
7 that was provided to you that there was any analysis of
8 the variable costs that were in that rate study?

9 A Based on an exhibit that I saw, I could see
10 that there was some division of the revenue requirement
11 between fixed and variable, but that's the extent to
12 which I'm aware.

13 Q So I take it that you didn't see any indication
14 that anybody had actually studied the allocation between
15 fixed and variable is that fair to say?

16 A I do not know.

17 MS. ALLEN: Okay. Did you see -- never
18 mind.

19 Your Honor, I'm going to turn it over to
20 the experts, and pass this witness for the moment.

21 JUDGE SIANO: Okay. Ms. Lander, how much
22 cross do you have for this witness?

23 MS. LANDER: I have about 15 questions,
24 Your Honor, give or take.

25 JUDGE SIANO: Go ahead.

1 MS. LANDER: Okay.

2 CROSS-EXAMINATION

3 BY MS. LANDER:

4 Q Good afternoon, Mr. Rabon. How are you?

5 A Good, thank you.

6 Q Great. Okay. So I have just a few questions.

7 I want to start with some basic rate design stuff.

8 Can you confirm for me that the revenue
9 requirement for the rates that are in question right
10 now, that revenue requirement is approximately \$576,000?

11 A That sounds ballpark accurate, but I don't
12 think I have that in my testimony anywhere to be able to
13 confirm it.

14 Q That's okay. I just -- we're going to get to
15 the rates in your testimony. I just wanted to have like
16 a starting point for some math.

17 So the rates are designed to include
18 approximately \$171,000 in legal expenses. Correct?

19 A I don't think that's in my testimony, but I
20 will take your word for it that that's accurate.

21 Q Thank you. So that's \$170,000 that has been --
22 it's designed to be recovered through the base rates.
23 Correct?

24 A Well, if your number is accurate, I don't
25 have -- I don't know if any of that amount was intended

1 to be recovered through volumetric charges. I'm not
2 aware of that being the case, but I just do not -- I'm
3 not positive.

4 Q Okay. If the Commission finds that it's
5 appropriate to approve the current rates as just and
6 reasonable, that means that the WSC will recover the
7 amount in the base rates every year indefinitely.
8 Right?

9 A There would be presumably some variation due to
10 customer growth and other factors, but ballpark, I
11 will -- that sounds reasonably accurate.

12 Q Okay. So unless the board changes its rates
13 and accounting for some variation in the number of
14 customers, these rates are designed to recover \$170,000
15 to be allocated toward legal expenses, and they would
16 recover that amount every year until they decided -- if
17 they decide to -- to change their rates?

18 A Assuming that your amount is correct, yes.

19 Q Okay. Great. So if we could turn to Page 6 of
20 your rebuttal testimony, which is Windermere Exhibit 9,
21 there's a chart I believe that shows the base rates
22 which are \$90.39 for water and \$66.41 for sewer.
23 Correct?

24 A I see that, yes.

25 Q Great. And there are 271 water customers and

1 245 sewer customers. Correct?

2 A That's what's represented here, and I have no
3 reason to believe that it's inaccurate.

4 Q Good. Okay. We're going to do some
5 multiplication now, I'm sorry for it. So will you
6 accept my representation that if you add the result of
7 \$90.39, multiplied by 271, which would be the amount
8 that is taken in for base rates for water, and then
9 \$66.41 times 245, which would give us the amount taken
10 in as the base rate for sewer, that would be \$489 -- I'm
11 sorry -- \$489,000 and -- \$489,193?

12 A Is that an annual amount that you're
13 representing to me?

14 Q Yes, sir.

15 A Okay. Okay.

16 Q Okay. Great.

17 A I'm not checking your math, but --

18 Q I'm happy to pull up a calculator on the
19 screen, but I feel like no one really wants that.

20 A No, that's fine.

21 Q Okay.

22 A As long as the question is not to confirm your
23 math, okay. We're good.

24 Q We're just ballparking percentages. So if the
25 base rates recover \$489,193, and the revenue requirement

1 is \$576,192, will you accept my representation that
2 Windermere recovers approximately 84.9 percent of its
3 revenue requirement through base rates.

4 A Again, without doing the math, I have no reason
5 to dispute your math. How about that?

6 Q Sure. So basically what I'm doing is, I'm
7 dividing 489 by 576 and it brings me to about
8 85 percent?

9 A Okay.

10 Q So if we get 84.9 percent from the base rates,
11 we should get about 15.1 percent of the revenue from
12 volumetric rates. Correct?

13 A That seems reasonable.

14 Q Okay. Well, I don't know if an -- do you think
15 an 85/15 split between base rights and volumetric is
16 reasonable?

17 A Well, let me be clear about my answer. Your
18 math seems reasonable --

19 (Simultaneous discussion)

20 Q (BY MS. LANDER) How does that work --

21 A -- better --

22 Q Sorry. Go ahead.

23 A My answer to it being reasonable was an
24 indication that your math seemed reasonable. I
25 apologize.

1 Q No problem. I'm just curious how do you feel
2 about the 85/15 split in terms of base rates and
3 volumetric?

4 A Sure. So there could be many reasons why a
5 utility might prioritize revenue stability through
6 higher fixed charges as compared to variable charges.
7 So, you know, there are competing priorities. Any
8 decision -- any rate design is a balance of competing
9 priorities.

10 I was not involved at all in their rate
11 design, but I'm presuming from the structure that they
12 intended to prioritize revenue stability, but in
13 recognition of the fact that they were recovering
14 significant portion of the revenue requirement through
15 their fixed charges, they have implemented or have in
16 place an inclining volumetric rate structure to help
17 incentivize water conservation or dissuading customers
18 from wasting water.

19 Q Okay. I'm sorry. I guess I should be more
20 clear.

21 Does it seem standard to you to have an
22 85/15 split?

23 A I can't point to another utility that I can
24 think of today that has that particular division.

25 Q Okay. All right. So that was an aside. I

1 want to go back to the 85.1 -- I'm sorry -- the 84.9 and
2 the 15.1.

3 So if we've recovering 15.1 of the revenue
4 requirement, will you accept my representation that
5 15.1 percent of \$576,192 is approximately \$87,000?

6 A So if 15 -- that didn't sound right. State it
7 again just to make sure I followed you. So you did
8 15 percent of half a million? Is that what you were
9 doing?

10 Q I'm sorry. 15 percent -- 15.1 percent?

11 A Okay.

12 Q The revenue requirement?

13 A Yeah. And remind me what that number was that
14 you were representing.

15 Q \$576,192.

16 A In that case, then your original number it
17 does, order of magnitude, sound accurate to me.

18 Q Great. Okay. So if my math is right, we
19 should be collecting -- or Windermere should be
20 collecting about \$489,193 in its base rates and
21 approximately \$87,000 through its volumetric rates.
22 Correct?

23 A That's what that would indicate from your
24 description, yes.

25 Q Okay. Good. Could you please turn to -- or do

1 you have a copy of Windermere Exhibit 8, which is Mike
2 Nelson's rebuttal testimony?

3 A I only have my testimony in front of me.

4 Q Okay. Let me pull it up for you. One moment
5 please. Apologies. We need a page -- we need
6 attachment MN-6, Page 6.

7 Can you read that?

8 A I can see it, yes.

9 Q Great. Okay. So this is Windermere's water
10 and wastewater revenue model for volumetric rates. You
11 can see that. Correct? Do you see water service rates
12 and revenue and sewer service rates and revenue?

13 A I see what you're pointing out to me. I don't
14 know what this is. I haven't reviewed it. But I see
15 what you're showing me, yes.

16 Q This is an attachment to the rebuttal testimony
17 of Mike Nelson.

18 A Okay.

19 Q And that was the 2019 water and wastewater
20 gallonage projected revenue for 2019. Can you see that
21 that says \$107,000 there at the bottom?

22 A Your cursor -- can you move your cursor? Okay.
23 I see where you're looking.

24 Q There you go.

25 A Okay. I'm not -- but I will warn you, I'm not

1 exactly sure what that represents, having not done
2 anything with this worksheet.

3 Q Okay.

4 A But ask your question.

5 Q So my question is: It does say that the
6 projected revenue from gallonage is \$107,000. Correct?

7 A I see that it says \$107,000 and it's a
8 worksheet. But honestly I don't know anything about
9 this worksheet, so I don't know what it's intended to
10 represent.

11 Q But you do know that the base rates are
12 intended to recover some \$489,193. Yes?

13 A Well, again, with all the stipulations that
14 we've put into the previous, you know, admission that I
15 presume that your math is right and that all the numbers
16 are what you say that they are, I'll accept that
17 statement.

18 Q Okay. So if the projected gallonage revenue is
19 \$107,000 and the base rate revenue is \$489,000, can you
20 tell me what the total -- total income would be?

21 A No. I don't have a calculator here with me.

22 Q No problem.

23 A But you can tell me, and I tell you if it
24 sounds right in order of magnitude.

25 Q Sure. So very quickly 489,193 plus -- we're

1 just going to call it \$107,000. Is that higher than
2 576?

3 A It seems like it would be.

4 Q Yeah. So it's about \$20,000 higher than 576.
5 Correct?

6 A Again, without doing the math, that sounds
7 reasonable. I mean, your math sounds like it is likely
8 right, but I haven't done the math.

9 Q Thank you. I appreciate that.

10 So if we're relying on my math and the
11 base rates described in your testimony and the
12 volumetric revenue described in Windermere's Exhibit 8,
13 Windermere would be over-recovering, all disallowances
14 for legal expenses aside, they would be recovering
15 \$20,000 more than the revenue requirement appealed
16 today. Yes?

17 A So I can't say that one way or another because
18 I didn't conduct that analysis. It also seems possible
19 to me, since I wasn't involved in the rate design, that
20 perhaps they set rates that did not exactly equal the
21 revenue requirement that we're stipulating, you know, at
22 the beginning of this conversation. That is not -- I
23 did not have anything to do with the rate design, so I
24 can't tell you if that is what in reality is happening.

25 Q Fair enough. Okay. Then I just have one last

1 thing. On Page 12 of your testimony --

2 A Okay.

3 Q -- let's just turn to that really quickly, you
4 criticized Ms. Gilford for essentially disallowing the
5 full \$171,000 in legal expenses, even though she hadn't
6 reviewed the merits of the cases on which those legal
7 expenses rested. Correct?

8 A Can you point to me in my testimony where I
9 made that statement?

10 Q Yes. I'm sorry. Did I say Page 11? I meant
11 Page 12.

12 So on Page 12, starting with line 14, it
13 says, "Anything else," and then if we skip down to
14 Line 19 it says, "I surmise that Ms. Gilford has
15 concluded that recovery of legal expenses should be
16 disallowed, regardless of the merits of the case giving
17 rights to the legal expenses." Is that right? That's
18 what it says?

19 A Yeah.

20 Q Okay. But just to be clear, you don't think
21 it's appropriate to look at the merits of the legal
22 cases giving rise to the legal expenses to decide if
23 those legal expenses should be included in the rates?

24 A I'm sorry. I lost you along the question.
25 Could you restate it again, please?

1 Q Sure. So in your testimony, it looks like you
2 criticized Ms. Gilford for disallowing the full 171 even
3 though she had not -- I'm sorry -- even though she had
4 not reviewed the merits of the case giving rise to the
5 legal expenses. Do you see that?

6 A Yeah, regardless -- well, what it says is,
7 regardless of the merits giving rise to legal expenses.

8 Q Okay. But earlier it seemed like you were
9 implying that it was inappropriate for you to review the
10 merits of the legal cases giving rise to those legal
11 expenses that are included in the rates. Is that
12 correct?

13 A What I stated was that I had not endeavored to
14 go back and evaluate the merits of the cases, so that is
15 something that I wasn't -- that I did not do as part of
16 my testimony.

17 Q Right. So Ms. Gilford disallowed the full 171?

18 A Uh-huh.

19 Q So she hadn't, you know, decided on the merits
20 of the underlying legal actions?

21 A Well, I don't know if she did or she didn't. I
22 guess my statement was that I'm presuming that she
23 didn't make that determination, but it didn't say in her
24 testimony that it had. I guess to be clear: My
25 testimony was that I'm presuming that that's a

1 determination that she made, and that's why she has made
2 the disallowance.

3 Q Do you think that the full 171 should be
4 recovered from the Ratepayers?

5 A I have not been presented with any information
6 that would suggest that it should not be recovered from
7 Ratepayers.

8 Q So -- I'm so sorry. So Ms. Gilford said that
9 it should be disallowed?

10 A Uh-huh.

11 Q But you think that it should be included, and
12 you criticized Ms. Gilford because you said, "It is not
13 clear that Ms. Gilford made a determination that the
14 board actions were unreasonable and contrary to public
15 policy. I surmise that Ms. Gilford has concluded that
16 recovery of legal expenses should be disallowed,
17 regardless of the merits of the case giving rise to the
18 legal expenses."

19 So to me, that says you think that
20 Ms. Gilford should have looked at the underlying merits
21 before deciding if those legal expenses should be
22 included. Am I wrong?

23 A What I was suggesting is that the outcome of
24 setting a policy that such expenses should not be
25 recoverable is not in the best interests of public

1 policy making. Because if a board member has done
2 nothing wrong, it -- Ms. Gilford's determination would
3 seemingly penalize or prohibit the recovery of those
4 expenses to defend the board member that has done
5 nothing wrong from Ratepayers.

6 Q So it would be appropriate, then, to decide
7 whether those legal expenses should be recovered by
8 looking at the merits because it's not appropriate to
9 decide if you don't look at the merits. Correct?

10 A Yeah -- state that again for me. I apologize.

11 Q So it's inappropriate to disallow recovery of
12 all legal expenses without having looked at the merits.
13 Correct?

14 A Well, regardless of the merits of the case so
15 sure, yes.

16 Q Sure. So then the merits of the case should
17 have some bearing on whether those legal expenses are
18 recoverable. Yes?

19 A It seems slightly something different.
20 Ms. Gilford made her contention presumably without any
21 regard for the merits of the case one way or the other.
22 So her blanket policy, I'm inferring, is that these
23 legal expenses should not be recoverable, regardless of
24 whatever the merits are, so without looking at it. So
25 your question to me is: Do you need to look at the

1 merits of the case. True? Is that your question?

2 Q Well, I guess my question was: We were -- your
3 testimony criticizes Ms. Gilford because her policy of
4 not looking at the merits would disallow all recovery?

5 A Yeah, my criticism of Ms. Gilford is that I
6 don't think the outcome is in the public interest.

7 Q But it is in the public interest to allow a
8 water supply corporation to recover any and all legal
9 costs without looking at the merits of the underlying
10 litigation?

11 A Well, and so this is where I believe you need
12 to look to what are some of the other avenues available
13 to Ratepayers in order to, you know, remove board
14 members that they think, in that circumstance have
15 either, you know, demonstrated bad behavior or
16 nonfiduciary activities. You know, something that's
17 given rise to the need to remove this board member,
18 there's a process for that.

19 Q I see. So aside from removing a board member
20 because of bad behavior, a WSC has a blank check for
21 legal expenses if we're not going to look at the merits?

22 A Yeah, I would not characterize -- I would not
23 suggest that there is a blank check the way you
24 described it, no.

25 Q What is the cap on the check?

1 A I do not have a dollar amount in mind. There
2 could be different facts and circumstances, different
3 sizes of utilities, different, you know, issues involved
4 in the litigation. It's too difficult. There's not
5 one-size-fits-all for what a numerical maximum might be.

6 Q Okay. Well, let's just talk about these facts
7 and circumstances. And even if it isn't -- even if you
8 don't have to just give me a number, are there any
9 confining parameters that are appropriate?

10 A Well, in this particular case, you know, the
11 utility has, in my view, a duty to defend itself from --
12 in litigation. That, in my view, it is reasonable to
13 incur legal representation costs in furtherance of that.

14 If the legal costs become unreasonable in
15 the view of the Ratepayers, they have the avenue to,
16 one, make their thoughts known on that issue to the
17 board, or barring that being a satisfactory result and
18 enough Ratepayers agree, removing the board member. So
19 there is a mechanism seemingly available to them to
20 moderate what legal expenses would be incurred.

21 Q Okay. So the only check on legal expenses is
22 to remove board members; otherwise, no check -- no limit
23 exists?

24 A No, that's not my testimony. I just simply
25 can't give you a blanket rule that will cover all of the

1 eventualities that might arise under which it is or is
2 not an appropriate amount.

3 MS. LANDER: Okay. Well, if we cannot
4 articulate a rule that places a limit on the amount of
5 legal expenses that the Water Supply Corporation is
6 allowed to incur, then I pass the witness.

7 Thank you so much, Mr. Rabon.

8 JUDGE SIANO: Mr. Rabon, I have a question
9 for you.

10 Are you aware of any other utilities
11 including outside legal expenses relating to civil
12 lawsuits in their rates?

13 THE WITNESS: I cannot give you any
14 examples. But, yes, it's my understanding that that
15 does happen.

16 JUDGE SIANO: Thank you. All right.

17 So at this point, it's -- we go to
18 redirect and -- well, redirect, Ms. Katz?

19 MS. MAULDIN: No redirect. And we need to
20 take a break.

21 MS. KATZ: Your Honor, we have no
22 redirect.

23 JUDGE SIANO: Okay.

24 MS. KATZ: We would ask to take a break,
25 if we can. 5 minutes, if possible.

1 JUDGE SIANO: Okay. Mr. Rabon, thank you.
2 You're excused.

3 And, yes, okay. 5-minute break.

4 MS. KATZ: Thank you.

5 (Recess: 3:45 p.m. to 3:53 p.m.)

6 JUDGE SIANO: Okay. Back on the record.
7 Anything else from the Water Supply
8 Corporation?

9 MS. KATZ: No, Your Honor. Before I rest
10 our side, I just wanted to make sure that we're on the
11 same page about optional -- that optional completeness
12 and the additional exhibits we would intend to offer
13 regarding that procedurally.

14 Do you want to discuss that now, and the
15 reason that I'm asking is because I don't want to close
16 our side of the case and not be able to offer that,
17 unless you would allow us to reopen our case for that
18 purpose to offer those additional exhibits.

19 JUDGE SIANO: Okay. And so are you still
20 preparing those or --

21 MS. KATZ: Yes, Your Honor. So there are
22 a significant -- I believe there are -- 10 or 11 that we
23 need to compile because it's grabbing that -- for
24 example, one RFI, and also within that RFI it refers to
25 other attachments, and so what we're working on is

1 compiling all of that and providing a new exhibit list,
2 which includes those additional exhibits, and making
3 sure that all Parties receive the new exhibit list and
4 the additional exhibits, to the extent that they don't
5 have them already.

6 But I don't think that we can do this
7 within the next hour, and so I would ask is, if we rest
8 our case right now, which is what I was planning on
9 doing, I would either ask if there is any opposition to
10 us reopening our case for that purpose tomorrow to
11 introduce those, unless the other Parties would
12 stipulate that the -- that there would be no issue
13 admitting those RFIs and that Ms. Allen referred to in
14 her testimony -- or in her cross-examination.

15 JUDGE SIANO: Okay. I haven't seen them,
16 so I can't opine on them. Is all of that necessary so
17 that we can fully understand the documents that
18 Ms. Allen introduced?

19 MS. KATZ: I do believe that including the
20 entirety of those responses is necessary in exercising
21 the optional completeness rule, but I don't think it's
22 necessary to have at this moment in time to continue
23 moving along with this case.

24 JUDGE SIANO: Okay. Well, I'm going to --
25 it looks like we're not going to get done today, so I'm

1 going to ask you to confer with the other Parties in the
2 interim. Hopefully, that can be resolved off the record
3 and you just continue to work on getting those to the
4 other Parties for review and to the court reporter and
5 SOAH. And then we'll --I will allow you to take them up
6 at a later time.

7 MS. KATZ: Okay.

8 JUDGE SIANO: So with that, we next move
9 to the -- I'm sorry.

10 Was there anything else, Ms. Katz?

11 MS. KATZ: We're still missing Ms. Allen's
12 exhibits. I just wanted to let everybody know that.

13 MS. ALLEN: Ms. Katz, I have now sent them
14 three times. Is there a Dropbox or something that you
15 would prefer to use? Because everybody else seems to be
16 getting them. The court reporter has gotten them.
17 Ms. Lander has gotten them. I'll send them any way that
18 you like, but I've sent them three times now, and I'm
19 not getting a kickback so that concerns me.

20 MS. KATZ: Okay. So just to be clear: We
21 have 30 through 53. Are those the only exhibits, or
22 were there additional exhibits?

23 MS. ALLEN: The exhibits that have not yet
24 been offered are 30 through 39 and 41 through 53.

25 We marked as 40 those canceled checks and

1 they were admitted. But other than that, between the
2 range of 30 and 53, except 40, those are to be offered.

3 MS. KATZ: Okay. I did receive it from
4 your client and so I would forward that on.

5 MS. ALLEN: We both sent it. From an
6 abundance of caution, we both sent it.

7 MS. KATZ: Received.

8 JUDGE SIANO: All right. Very good.
9 Thank you.

10 So it does not appear that we will
11 conclude today. But I got the impression that we might
12 move quickly through the Ratepayers' case if there is no
13 cross. So I propose that we try to conclude the
14 Ratepayers' direct and then adjourn.

15 MS. ALLEN: Your Honor, the Ratepayers are
16 ready to proceed, and I don't mean to put Ms. Katz on
17 the spot, but I had asked yesterday evening about
18 Mr. Stein and I don't yet have an answer.

19 JUDGE SIANO: And I believe we resolved
20 that this morning. She waived cross and then stipulated
21 to the admission of his testimony.

22 MS. ALLEN: Excellent.

23 MS. LANDER: All right. Your Honor,
24 really quickly. Staff witness Mark Filarowicz does have
25 an engagement tomorrow, and if at all possible, if he

1 could testify this afternoon I would really appreciate
2 it. But if not, I completely understand.

3 JUDGE SIANO: Ms. Katz, how much cross do
4 you have for Mr. Filarowicz?

5 MS. KATZ: I have -- I have 10 questions,
6 and they should go by pretty quickly -- more quickly
7 than probably than Mr. Rabon.

8 JUDGE SIANO: Okay.

9 MS. KATZ: I would say 15 minutes.

10 JUDGE SIANO: Okay. Do I understand
11 correctly, Ms. Katz, that you do not have any cross for
12 any of the Ratepayers' witnesses.

13 MS. KATZ: That's correct.

14 JUDGE SIANO: Ms. Lander, do you have any
15 cross for any of the Ratepayer witnesses?

16 MS. LANDER: No, Your Honor.

17 JUDGE SIANO: Okay. Then let's go ahead
18 and take up the Ratepayer -- it sounds like we can
19 probably get through their case very quickly. So let's
20 go ahead and do that and then we should be able to take
21 up Mr. Filarowicz.

22 What's the constraint tomorrow? Is he not
23 available at any point or just certain times?

24 MS. LANDER: I believe he's unavailable in
25 the afternoon, but let me confirm that, if you don't

1 mind.

2 JUDGE SIANO: It looks like he's here.
3 Mr. -- can you go ahead.

4 MR. FILAROWICZ: Yes, sir. I have a
5 medical appointment in the afternoon tomorrow. And the
6 situation of it is such that it would be much better if
7 I were able to go today. I will be here whenever the
8 Court needs me.

9 JUDGE SIANO: Okay. So you could appear
10 tomorrow morning?

11 MR. FILAROWICZ: Yes, if I had to. Like I
12 said, the nature of the appointment is such that
13 appearing tomorrow morning, I might have to cancel it.
14 But I am happy to, if that is the Court's preference.

15 JUDGE SIANO: Okay.

16 MR. FILAROWICZ: I honestly thought I
17 would have gone by now at this point in the hearing. I
18 apologize.

19 JUDGE SIANO: No worries. Okay. Well,
20 with a mind to that, let's go ahead and take up the
21 Ratepayers' case. And if it looks like we're bumping up
22 against the time, then we'll take up Mr. Filarowicz.
23 Okay.

24 Ms. Allen.

25 MS. ALLEN: Thank you, Your Honor.

1 The Ratepayers call Danny Flunker.

2 JUDGE SIANO: Mr. Flunker --

3 MS. KATZ: Your Honor, if it's --

4 JUDGE SIANO: Yes. Go ahead.

5 MS. KATZ: If it saves time -- and I don't
6 know if Ms. Allen would be okay with this or Ms. Lander
7 would as well, we -- you know, the Corporation would be
8 willing to stipulate to the prefiled testimony of the
9 most recent erratas of the witnesses that have filed
10 erratas, and as well as Ms. Allen's testimony, as far as
11 it goes -- concerning -- well, yeah.

12 JUDGE SIANO: I understand you have
13 objections to it that were already addressed.

14 MS. KATZ: Okay.

15 JUDGE SIANO: So --

16 MS. KATZ: So I wanted to put that out
17 there just in case -- I know we're on a time limitation,
18 and so they already have prefiled testimony and none of
19 us have cross, and so I wanted to throw that out there.

20 JUDGE SIANO: That is helpful. Thank you.

21 Ms. Lander, do you have any problem
22 stipulating to the admission of those testimonies.

23 MS. LANDER: Not at all. Staff is happy
24 to stipulate.

25 JUDGE SIANO: Okay. Ms. Allen, we're --

1 you don't need to call your witnesses. But if you could
2 just walk us through each of the exhibits, for the
3 record, and I'll take them up.

4 Go ahead.

5 MS. ALLEN: Yes, Your Honor. Ratepayers'
6 Exhibit 2 is the Errata Direct Testimony of Danny
7 Flunker, and it is the last filed errata. Ratepayers'
8 Exhibit 3 is the Errata Direct Testimony of Patricia
9 Flunker, likewise, the last filed errata. Both of those
10 with exhibits. Ratepayers' 4 is the Errata Direct
11 Testimony of Bill Stein last filed, and Ratepayers' 5 is
12 the Direct Testimony of Kathryn E. Allen and exhibits,
13 Ratepayers' 6 is Supplemental Exhibit to the Testimony
14 of Kathryn E. Allen. And that would conclude our offer
15 of direct testimony.

16 JUDGE SIANO: All right. And, Ms. Katz,
17 does that cover the stipulation?

18 MS. KATZ: Yes. And I would just re-urge
19 my objection regarding Ms. Allen's testimony but, yes.

20 JUDGE SIANO: Ms. Lander?

21 MS. LANDER: It covers everything.

22 JUDGE SIANO: Okay. Ratepayers' Exhibits
23 2 through 6 are admitted.

24 (Exhibit Ratepayers Nos. 2, 3, 4, 5, and 6
25 admitted)

1 JUDGE SIANO: And Exhibits 5 and 6 will be
2 considered for the purposes set out in Order No -- I
3 believe it was -- 9. And with that --

4 MS. KATZ: Yes, that's correct.

5 JUDGE SIANO: Anything else, Ms. Allen?

6 MS. ALLEN: Your Honor, that list of
7 exhibits that we've circulated, we would typically -- we
8 would offer that in our case-in-chief, but we are happy
9 to take the PUC's witness out of order if that
10 facilitates things.

11 JUDGE SIANO: Well, that all depends. We
12 can -- which items were you wanting to offer at this
13 point?

14 MS. ALLEN: Your Honor, Ratepayers would
15 offer Exhibits 30 through 39 and --

16 JUDGE SIANO: I'm sorry. So none of the
17 ones that were prefiled?

18 MS. ALLEN: Correct. These are the ones
19 that are exchanged today and maybe yesterday.

20 JUDGE SIANO: Okay.

21 MS. ALLEN: The discovery -- these are the
22 discovery responses.

23 JUDGE SIANO: Okay. And I do not have
24 those in front of me. Has there been a stipulation to
25 Exhibits 30 through 53?

1 MS. ALLEN: I do not know whether there is
2 a stipulation, Your Honor.

3 JUDGE SIANO: Ms. Katz, those are the
4 discovery responses from the Water Supply Corporation.

5 MS. ALLEN: Yes.

6 MS. KATZ: So outside of optional
7 completeness, as long as we're able to supplement the
8 record with the rest of the RFI responses, then we don't
9 have an objection to those.

10 JUDGE SIANO: Ms. Lander?

11 MS. LANDER: Staff is happy to stipulate
12 to those as well.

13 JUDGE SIANO: Okay. Ratepayers --

14 MS. ALLEN: Your Honor, I'm sorry. I
15 don't mean to interrupt you. For clarity, we certainly
16 do not object to the Water Supply Company presenting the
17 materials that it wishes to offer under the rule of
18 optional completeness. And the Company can present
19 those at any time that the panel wishes to entertain
20 them. However, we have no idea what the materials
21 are -- and I don't mean to lead anybody to think that we
22 won't have an objection, if there is one, but we will
23 allow them to present these things at any time the panel
24 would like them to do it.

25 JUDGE SIANO: Okay. And so with that,

1 Ratepayers' Exhibits 3 through 54 are admitted.

2 (Exhibit Ratepayers Nos. 3 through 54
3 admitted)

4 JUDGE SIANO: Ms. Allen, as previously
5 noted, sounds like the Ratepayers, the court reporter,
6 and -- I'm sorry the Water Supply Corporation, and the
7 PUC Staff has received those. Just be sure to get them
8 to SOAH, as well. We will need at least one hard
9 copy -- I'm sorry. I think there's -- so the two
10 appeals copy and one for the Court, and then when can --
11 when can you have the hard copies delivered, Ms. Allen?

12 MS. ALLEN: Tomorrow morning.

13 JUDGE SIANO: Okay.

14 MS. ALLEN: We'll have Rainmaker deliver
15 them tomorrow morning.

16 JUDGE SIANO: Okay.

17 MS. ALLEN: And, Judge, just for clarity.
18 I'm the one who misspoke. But our last Exhibit number
19 is 53, five three.

20 JUDGE SIANO: That's what I have. I may
21 have misspoke as well.

22 MS. ALLEN: Okay.

23 JUDGE SIANO: So Ratepayers' Exhibits 30
24 through 53 are admitted.

25 (Exhibit Ratepayers Nos. 30 through 53

1 admitted)

2 JUDGE SIANO: And then, Ms. Katz, please
3 work with the Parties on circulating the completed
4 documents that you want to offer, and hopefully those
5 can be stipulated to, and then I'll take those up
6 whenever you have done that.

7 MS. KATZ: Yes, Your Honor.

8 JUDGE SIANO: Okay. So anything else,
9 Ms. Allen?

10 MS. ALLEN: That would conclude our
11 case-in-chief, Your Honor.

12 JUDGE SIANO: Okay. Very good.

13 In that case, then it moves to Staff.
14 Ms. Lander.

15 MS. LANDER: Thank you, Your Honor. Staff
16 calls Mark Filarowicz to the stand, please.

17 JUDGE SIANO: All right.
18 Mr. Filarowicz -- I'm sorry.

19 MR. FILAROWICZ: Hello.

20 JUDGE SIANO: Go ahead. Please raise your
21 right hand.

22 (Witness sworn)

23 THE WITNESS: I do.

24 JUDGE SIANO: All right. Ms. Lander.

25 MS. LANDER: Thank you, Your Honor.

PRESENTATION ON BEHALF OF COMMISSION STAFF

MARK FILAROWICZ,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. LANDER:

Q Mr. Filarowicz, do you have in front of you what is marked as Staff Exhibit 1?

A Yes, I do. Staff Exhibit 1 appears to be my Errata to the Direct Testimony of former staffer Spencer English.

Q Thank you. And would the answers provided in that errata that adopts Mr. Spencer's testimony, would those answers be the same today as what was prefiled?

A My errata to his answers would be the same. And the reason why I offer that technical clarification is because some of the answers, including to the question, please state your name and business address would be different had I answered them.

But where I'm making errata to Mr. Spencer's testimony today, I would make the same errata, and I would also make one further change that is in the same vein as the errata previously filed. On Page 4 of 7 on Line 14, the question reads: "Why is your recommendation of a 1.0x DSCR appropriate?" And I would change that to read 1.1x and that change is in

1 line with other changes that I made in the errata.

2 JUDGE SIANO: Mr. -- while we're here.
3 Mr. Filarowicz, on Line 15 --

4 THE WITNESS: Yes, sir.

5 JUDGE SIANO: That number appears again.
6 Would that be --

7 THE WITNESS: I'm sorry. You were on
8 Line 15 of Page 4 of 7?

9 JUDGE SIANO: Yes, of your errata. It's
10 two lines below the question you just identified.

11 THE WITNESS: Yes. Yes. I'm sorry. I
12 was looking at the nonred-line version. So there it
13 reads a 1.1x after I've made the change, and that is
14 correct. I should have changed every instance of 1.0
15 DSC multiple to a 1.1. And I believe that the only
16 instance that I failed to change in the errata that
17 Staff filed came on what is, I guess, Line 13 of Page 4
18 of 7. I was looking at the red-line version, which I
19 believe was off by one line, which is also included in
20 Staff's errata.

21 JUDGE SIANO: I can just tell you that on
22 my version on Line 15 it also appears as 1.0. So I just
23 wanted to clarify that your intention was to change it
24 throughout as 1.1?

25 THE WITNESS: And you're certain you're

1 looking at my errata, and not Mr. Spencer's direct. Do
2 you see other changes where I need to change?

3 JUDGE SIANO: You're right. I'm looking
4 at Mr. Spencer's direct.

5 THE WITNESS: And this should be Staff
6 Exhibit 1.

7 JUDGE SIANO: But your errata does not
8 identify that line and page number, at least the table
9 does not.

10 THE WITNESS: It appears that the table
11 ends with Page 4, Line 9 and it appears that the table
12 should have two more that were in the errata and that
13 would be Page 4, Line 15 and Page 4, Line 18. Those
14 changes were made in the errata and should have been
15 reflected in the table.

16 JUDGE SIANO: Okay.

17 THE WITNESS: And then as I come to the
18 stand today, I would note that we inadvertently failed
19 to change one more instance of the 1.0 DSC multiple in
20 Mr. English's testimony, and I would offer that as my
21 only other change today.

22 JUDGE SIANO: That's all I have. Go
23 ahead.

24 MS. LANDER: Thank you. This exhibit
25 having been previously admitted, Staff submits the

1 witness for cross-examination.

2 JUDGE SIANO: Sorry. Was it previously
3 admitted?

4 MS. LANDER: My understanding was that all
5 of the prefiled testimony had been admitted.

6 JUDGE SIANO: Not to my knowledge. We can
7 do that, but we've done that as we've gone along, but it
8 wasn't for all Parties.

9 MS. LANDER: I apologize. Staff moves to
10 admit Exhibit 1 into evidence.

11 MS. ALLEN: No objection from the
12 Ratepayers.

13 MS. KATZ: No objection from the
14 Corporation.

15 JUDGE SIANO: All right. Staff Exhibit 1
16 is admitted.

17 Ms. Lander, if you wish to offer all of
18 your exhibits -- you may do so -- or propose that.

19 MS. LANDER: Your Honor, Staff proposes to
20 admit all of its prefiled exhibits into evidence.

21 JUDGE SIANO: Are there any objections to
22 the admission of all of Staff's prefiled exhibits? That
23 would be Exhibits 1 through 5. Correct?

24 MS. ALLEN: Your Honor, the Ratepayers are
25 able to stipulate on Exhibits 1 through 4. They're not,

1 able at this time, to stipulate in Exhibit 5, which was
2 a very recently filed supplement. But if we can confer
3 with Ms. Lander over the evening, we may well be able to
4 stipulate that tomorrow, and I don't think it will
5 matter for today's purposes.

6 JUDGE SIANO: Ms. Katz?

7 MS. KATZ: We have no objection to any of
8 the prefiled exhibits.

9 JUDGE SIANO: All right. So Staff
10 Exhibits 1, 2, 3, 3A, and 4 are admitted.

11 (Exhibit Staff Nos. 1, 2, 3, 3A and 4
12 admitted)

13 JUDGE SIANO: And, Ms. Lander, you'll have
14 to offer or address Exhibit 5 at a later point.

15 MS. LANDER: Of course, Your Honor.

16 Q (BY MS. LANDER) And before I actually --
17 before I tender the witness, I just wanted to ask
18 Mr. Filarowicz, would you like to offer your experience
19 and credentials before we move on?

20 A Yes, ma'am. Usually this comes at the start of
21 testimony and because I adopted Mr. English's testimony
22 I thought it might be good to just get my experience,
23 credentials, and who I am on the record.

24 My name is Mark Filarowicz. I graduated
25 Summa Cum Laude from the University of Texas in

1 December of 2003 with degrees in actuarial mathematics
2 and philosophy.

3 I am a Certified Public Accountant
4 licensee in the State of Texas. Most people know the
5 CPA credential. I am also a chartered financial analyst
6 charter holder. Few people in the finance community are
7 very familiar with the CFA charter. It is a well
8 recognized credential, but sometimes folks and other
9 stakeholders in these proceedings are less familiar with
10 it.

11 I have worked in governmental accounting
12 for over a decade. I've been at the Public Utility
13 Commission for six-and-a-half-years. I have filed
14 testimony in numerous dockets, and I have otherwise
15 participated in a myriad of other dockets. I also have
16 led and participated in rulemakings at the Commission.

17 Q Thank you, Mr. Filarowicz.

18 MS. LANDER: Staff now tenders the witness
19 for cross-examination.

20 JUDGE SIANO: Okay. Let's see. The order
21 of cross at this point would be -- I think it would go
22 to Ms. Allen first.

23 Ms. Allen, do you have any questions for
24 this witness?

25 MS. ALLEN: Not on your life, Your Honor.

1 JUDGE SIANO: Okay. Ms. Katz.

2 MS. KATZ: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. KATZ:

5 Q Good afternoon, Mr. Filarowicz.

6 A Good afternoon.

7 Q I probably could have used your help during
8 grad school accounting.

9 (Laughter)

10 Q (BY MS. KATZ) Okay. So I'll just get right to
11 it. I am looking at your testimony -- the adopted
12 testimony Page 4, Lines 8 through 12 and 16 through 19,
13 just to direct your attention there. And my question
14 is: You would agree with me that debt service coverage
15 ratio should be one where the Corporation can maintain
16 its financial integrity. Right?

17 A Yes.

18 Q And you'd agree with me that --

19 (Simultaneous discussion)

20 A Financial integrity is a specific term that is
21 included in the Water Statute, Chapter 13.

22 Q (BY MS. KATZ) Okay. And you'd agree with me
23 that a number of factors can affect a corporation's
24 financial stability. Right?

25 A Yes, I also believe it is important to perform

1 what I call holistic accounting and financial analysis
2 too. It's important to look at the pieces, but it's
3 also important to look at the pieces as a part of the
4 whole.

5 Q Okay. And so could one of the pieces be
6 something like a major repair to part of the plant or
7 part of the water utility? Could that be included?

8 A Sure. Future capital expenditures could be and
9 I do believe that Mr. English's recommendations that I
10 have adopted in his testimony explicitly account for
11 future capital expenditure.

12 Q Okay. And would something else that might
13 affect a -- the Corporation's financial stability be
14 covenant to a loan that require a minimum debt service
15 coverage ratio?

16 A Yes.

17 Q Okay. And you've had an opportunity to review
18 Mr. Gimenez's testimony -- or I guess I should ask:
19 Have you had an opportunity to review Ms. Gimenez's
20 testimony, Mr. Nelson's, and Mr. Rabon's testimony and
21 exhibits which have been previously entered?

22 A I definitely read Mr. Nelson's testimony. I
23 believe I read also Mr. Gimenez's original testimony. I
24 am not certain that I, in fact, in this docket read
25 Mr. Rabon's original testimony, but I have definitely

1 read and am familiar with all three's rebuttal
2 testimonies in this docket.

3 Q Okay. And just to clarify, Mr. Rabon didn't
4 have original direct testimony, so you're fine with
5 that. You didn't miss anything.

6 A That's why I don't remember reading it.

7 Q Okay. So you mention that you did have an
8 opportunity to review Mr. Gimenez's rebuttal testimony.
9 I'm assuming you reviewed the CoBank documents?

10 A Yes, but if you could point me -- if you're
11 going --

12 Q Sure.

13 A -- to have questions for me, if you could point
14 me to them or share a screen. I am not immediately
15 familiar with them as we sit here today.

16 Q Sure. So the documents would be within our --
17 the Corporation's Exhibit 3, which is Mr. Gimenez's
18 rebuttal, and it would be Attachment JG-19. And I can
19 give you the page numbers at the bottom, if that's
20 helpful. They're the Bates stamp numbers.

21 A Give me just one second to pull it up
22 electronically in what is a large binder that the legal
23 assistant prepared for us. It does not have the
24 voluminous attachment, so I will have to pull it from
25 the Interchange or you may share a screen with us all,

1 whichever is your preference.

2 Q Well, Ms. Filarowicz, do you want me to ask you
3 the question because you may know this offhand anyway.
4 And if not, we can wait for you to pull it up.

5 A Sure. Sure.

6 Q Okay. So what I'd like to know is if you're
7 aware that under the covenants of the CoBank loans,
8 there's a requirement to maintain a 1.25 debt service
9 coverage ratio. Do you remember reading that?

10 A Yes, I believe so. If you could tell me the
11 page number I'll be there incredibly shortly.

12 Q Sure. So I'll direct you to the documents
13 themselves and then I'll direct you to somewhere
14 elsewhere which is within Mr. Gimenez's testimony.
15 Okay?

16 A Sure.

17 Q So I think you're starting to pull open the
18 documents, so the documents would be within, again, our
19 Exhibit 3, which is Mr. Gimenez's rebuttal and it's
20 Attachment JG-19 and it is on Bates -- so the pages at
21 the bottom 46 through 61.

22 A Could you tell me which page out of 16 in
23 Attachment JG-19 it is?

24 Q One.

25 A Okay. Okay. Working backwards, I'm there now.

1 Q Okay. Thank you.

2 I'll give you a second to scroll through
3 that if you'd like, or I can give you Mr. Gimenez's
4 testimony where he also refers to that 1.25. I just
5 wanted to ask you if you were aware of that number as
6 being the debt service coverage ratio requirement for
7 them not to default on that loan?

8 A Yes.

9 Q Okay. And in knowing that requirement for the
10 Corporation not to default on a loan, does that change
11 your testimony regarding the 1.1 in any way?

12 A I do not believe it does, but I'm sorry I'm on
13 Page 1 and could you tell me exactly where on that page
14 the 1.25 DSC is?

15 Q Well, there's several -- within JG-19, there
16 are several different loan documents. But I can point
17 you to a different part of the record, which draws your
18 attention --

19 A Page 1 of 16, which is Page 47 of the PDF on
20 the Interchange -- the relevant PDF. I do not see 1.25
21 on Attachment JG-19, Page 1 of 16.

22 Q Okay. Then let me --

23 A But to answer your question, 1.25 is a common
24 DSC used in loans, and I believe that Mr. English's
25 position acknowledges this. And if I may, at a high

1 level, offer some clarification here. Having
2 reviewed --

3 Q Sure.

4 A -- having reviewed the record in this docket
5 and even having briefly spoken to Mr. English before he
6 left the Commission months, and months, and months ago
7 at this point, it is my understanding that there were
8 really only two or three very limited purposes of
9 Mr. English's testimony and one of them was to
10 memorialize what the DSC was amidst a record that at the
11 time was very unclear to what the Company's DSC was or
12 what it's requested DSC multiplier was in this docket.

13 And I believe that Mr. English, after
14 assessing the record, thought it was a 1.0, and part of
15 that may be that it does not appear in the Company's
16 requests in this application that the Company is
17 requesting, included in its annual revenue requirement
18 an amount above its debt service coverage, which is why,
19 I believe -- and I don't have Mr. English to ask -- but
20 I believe that is how he ended up incorrectly
21 mischaracterizing it. Based on the rebuttal testimonies
22 of Nelson and Gimenez, I changed that to reflect 1.1 as
23 I believed that that was after reading both of their
24 rebuttal testimonies the DSC that was on the record
25 based on the evidence in this docket. But I do stress

1 that it was unclear in the application that may have
2 lead to Mr. English pulling numbers that Mr. Nelson
3 disputed in his rebuttal testimony.

4 Q Thank you for this clarification.

5 A In his rebuttal testimony Nelson points to
6 Gimenez where he says it's 1.1.

7 Q Okay. I guess my question was more along the
8 lines of -- or was going towards, would you agree
9 that -- okay -- if a utility has a loan that has a
10 covenant, so a requirement within the loan in order to
11 maintain the loan, to maintain a certain DSCR, whether
12 it's 1.1 or 1.25 or 1.5, that it's reasonable to design
13 rates in order to meet that requirement to avoid
14 defaulting on the loan? Does that make sense, or do you
15 want me to kind of break that down a little bit?

16 A I think I understand the question that you've
17 asked me here today, and I'm going to speak in
18 generalities here. When a company comes in with a
19 request for rates that includes debt service coverage --
20 and this might be calculated using either the debt
21 service coverage method or the cash needs method in
22 either electric or water cases I'm speaking very
23 generally here -- an important piece of information can
24 be what is the DSC in the Company's actual debt
25 covenants.

1 Q Okay. And so --

2 (Simultaneous discussion)

3 A It is not the end all, be all, but, yes, I
4 agree with you that it is an important piece of
5 information.

6 Q (BY MS. KATZ) Okay. And so -- you read
7 Mr. Gimenez's testimony. Do you have any reason to not
8 believe that in his testimony he stated that the
9 requirement to maintain the CoBank loan is 1.25 DSCR?

10 A I don't have reason to dispute that.

11 Q Okay. And so knowing that if they do not -- if
12 the Corporation doesn't maintain that DSCR, do you
13 understand -- or would you agree with me that that could
14 trigger a default on that loan that the Company
15 undertook?

16 A Speaking hypothetically without seeing, there
17 could be a world in which, yes, in which --

18 Q Okay. Okay. And so if a company or
19 corporation defaults on a loan, hypothetically speaking
20 and it -- essentially they were breaking a contract with
21 a loan company. Right? If you can answer that
22 question. I know you're not an attorney yourself, so
23 I'm not going to put legal words in your mouth?

24 A Sure. That could be the case.

25 Q Okay. And so if the Corporation does default

1 on a loan and there is a lawsuit or litigation or
2 something ensues after that default because they break
3 their promise, the loan company or bank would come after
4 them, wouldn't that put the Corporation under a
5 financial instability at that time?

6 A Again, hypothetically, it could in that
7 situation.

8 MS. KATZ: Okay. Okay. Mr. Filarowicz, I
9 think it's your lucky day. I think you'll get out of
10 here because I have no more questions, so I pass the
11 witness.

12 JUDGE SIANO: Ms. Lander, any redirect?

13 MS. LANDER: Thank you, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. LANDER:

16 Q Mr. Filarowicz, I know that Ms. Katz asked you
17 quite a bit about the debt service coverage ration of
18 1.25, and you stand by your 1.1.

19 Is there anything else you'd like to offer
20 just to clarify?

21 A Sure. I think a little context here might go a
22 long way. This application is unique. This docket is,
23 first of all, an appeal of a water supply corporation,
24 so it doesn't necessarily proceed like a base rate
25 proceeding for a regular electric or water docket.

1 What the Company used here was the
2 cash-needs method. And in this appeal, the Company sort
3 of gives over its books and Staff assesses that for
4 reasonableness and necessity. It's not like other
5 full-blown proceedings whereby the staff might, you
6 know, create its own counter-model and things like that.

7 So my point is that the Company leads the
8 dance so-to-speak. And based on the Company's direct
9 case, it was not clear on the record what DSC even the
10 Company was requesting. Included in Mr. Nelson's
11 attachments that showed the rates, the 576 number that
12 we've been talking about so much here today, there does
13 not appear to be any item for additional debt service
14 coverage. Included in that is an amount -- included in
15 Mr. Nelson's testimony is an amount for depreciation.
16 Both of these are -- things that I'm going to say are
17 abnormal to the extent that we can talk about normalcy
18 in a docket for such a small water utility.

19 The cash-needs method is designed for
20 small utilities whose operations don't necessarily fit
21 into the tried and true larger models. That said,
22 depreciation expense is usually in Staff's experience
23 not included in such a case. But debt-service coverage
24 is.

25 That was not the case with what we got

1 here, which is why Mr. Spencer made a recommendation
2 that the depreciation be marked for -- as a reserve for
3 future capital expenditures. Overall though, understand
4 that holistically Staff did think that those aspects of
5 the request, those limited aspects that were in
6 Mr. English's testimony, which I have adopted here
7 today, were reasonable as long as the depreciation got
8 marked in the reserve for future Cap X.

9 All of that goes to explain how
10 Mr. English who's a smart young gentleman got wrong that
11 the Company had a 1.0 DSC multiplier in this proceeding.
12 In its rebuttal case I read Nelson's and Gimenez's
13 rebuttal testimonies to mean that the Company thought
14 that it's DSC multiplier was a 1.1 based on Gimenez's
15 rebuttal and Gimenez's direct.

16 I, accordingly, revised Mr. English's
17 testimony. So once again, we are in a unique small
18 docket and we are following the Company's lead based on
19 the information the Company put on the record.

20 MS. LANDER: Understood. Thank you so
21 much, Mr. Filarowicz.

22 Staff has nothing further.

23 JUDGE SIANO: All right. Ms. Allen, did
24 you --

25 MS. ALLEN: I only have one question.

CROSS-EXAMINATION

1
2 BY MS. ALLEN:

3 Q Sir, did you ever see any documentation
4 suggesting that there was some sort of DSC requirement
5 associated with the lending.

6 A I do believe that Mr. Gimenez's rebuttal
7 testimony mentioned that, and I also believe that
8 Mr. Gimenez's rebuttal had the 1.1, but I have not
9 reviewed that, you know, in the last 48 hours or
10 anything.

11 Q Well -- right. I understand, and I thought
12 that that is what you said, so I went to take a look at
13 his rebuttal and he does actually attach the loan
14 documents themselves.

15 Have you reviewed those loan documents?

16 A Yes, but possibly not in the level of detail to
17 answer your question. But, yes, well enough to proceed.

18 Q Let's just take one as an example because I
19 think the loans are -- the documents are very similar.
20 Let's see. There we go. So this that I hope I'm
21 showing you is Attachment JG-19, which is an attachment
22 to Mr. Gimenez's rebuttal testimony. Okay?

23 A Yes.

24 Q And it's what he references when he speaks of
25 the loans. There's a promissory note. It postdates the

1 rate increase. Right?

2 A Subject to check, I will take your word on it.

3 Q Okay. And I have looked through it, but I am
4 not sophisticated. I want to know if you can see the
5 type of requirement that Mr. Gimenez claimed was
6 applicable.

7 A I am not, which is why I asked the Water Supply
8 Corporation's counsel to point it to me when we pulled
9 it up. I did remember that somewhere in Gimenez's
10 rebuttal he does note 1.25 is a common DSC multiple for
11 loan covenants. He may have even represented that it is
12 a loaning covenant in the current -- I don't remember
13 specifically as we sit here today, which is why I
14 invited the Water Supply Corporation's attorney to point
15 me to it.

16 Q Understood. I just wanted to get your help in
17 looking through the documents the Company did attach to
18 Mr. Gimenez's rebuttal so that you could help us to know
19 whether you see any such loan covenant in these loan
20 documents?

21 A I don't right now, but I invite opposing
22 counsel to show me.

23 MS. ALLEN: Fair enough. That's it, Your
24 Honor.

25 JUDGE SIANO: All right. Ms. Katz?

1 MS. KATZ: I have no re-cross.

2 JUDGE SIANO: All right. Any final
3 redirect from Ms. Lander?

4 MS. LANDER: Yes, Your honor. Just really
5 quickly, though, I believe Ms. Allen is still sharing
6 her screen.

7 MS. ALLEN: I am. I'm just going to fix
8 that right now. I will tell you I've shared my email
9 and a whole lot of other screens.

10 MS. LANDER: Thank you. I appreciate it.

11 FURTHER REDIRECT EXAMINATION

12 BY MS. LANDER:

13 Q So, Mr. Filarowicz, following Ms. Allen's
14 cross, do you have anything else that you would like to
15 explain?

16 A No, I believe I've said everything that I
17 believe will help the ALJs and Commissioners in making
18 their decisions to understand with my case.

19 MS. LANDER: Beautiful. Thank you so
20 much.

21 Staff has nothing further.

22 JUDGE SIANO: All right. Thank you,
23 Mr. Filarowicz. Good luck tomorrow, and you're excused.

24 THE WITNESS: Thank you, Judge.

25 JUDGE SIANO: Okay. Ms. Lander, I don't

1 think we have enough time to meaningfully take up any of
2 your other witnesses today, which means that -- unless
3 there is no cross for the rest of them.

4 Ms. Katz, I understand you will have some
5 questions for the remaining -- with the exception of
6 Heidi Graham.

7 MS. KATZ: Yes, Your Honor.

8 JUDGE SIANO: Okay. All right. So we'll
9 start tomorrow, same time.

10 And let's see, Ms. Lander, who do you
11 expect to call first?

12 MS. LANDER: I believe Maxine Gilford will
13 go first, and then we'll wrap it up with Stephen
14 Mendoza.

15 JUDGE SIANO: Okay. And just so we can
16 plan our day.

17 Ms. Allen, do you anticipate any cross for
18 these witnesses?

19 MS. ALLEN: If I have any cross, it would
20 be very minimal.

21 JUDGE SIANO: Okay. All right. So we'll
22 adjourn for today.

23 I think, Ms. Katz, you're going to confer
24 with the other Parties regarding your optional
25 completeness.

1 And, Ms. Allen, it sounded like you got
2 the documents to the other Parties, so that's done.

3 And was there any other -- oh, so I would
4 like the Parties to confer off the record regarding a
5 briefing schedule and briefing outline. We won't need
6 that today, but we will need it tomorrow.

7 Anything else before we adjourn?

8 MS. ALLEN: Not from the Ratepayers, Your
9 Honor.

10 JUDGE SIANO: Ms. Katz?

11 MS. KATZ: Not on the record, Your Honor.

12 JUDGE SIANO: Okay. All right. Then
13 we'll go off the record.

14 (Proceedings recessed at 4:45 p.m.)
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C E R T I F I C A T E

STATE OF TEXAS)

COUNTY OF TRAVIS)

We, KIM PENCE and MARY CAROL GRIFFIN, Certified Shorthand Reporters in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

WE FURTHER CERTIFY THAT the proceedings of such were reported by us or under our supervision, later reduced to typewritten form under our supervision and control and that the foregoing pages are a full, true, and correct transcription of the original notes.

IN WITNESS WHEREOF, we have hereunto set our hand and seal this 6th day of December 2021.

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Mary Carol Griffin

MARY CAROL GRIFFIN
Certified Shorthand Reporter
CSR No. 3799 - Expires 07/31/23

Firm Registration No. 276
Kennedy Reporting Service, Inc.
100 E. Whitestone Blvd.
Suite 148
Cedar Park, Texas 78613
512.474.2233