

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 150071-SU

FILED: October 14, 2016

**PREHEARING STATEMENT OF HARBOR SHORES CONDOMINIUM UNIT
OWNERS ASSOCIATION INC.**

The Members of Harbor Shores Condominium Unit Owners Association Inc. (Harbor Shores), pursuant to the Order Establishing Procedure in this docket, Order PSC-16-0372-PCO-EI, issued September 15, 2016, and Orders PSC-16-0194-PCO-EI issued May 17, 2016 hereby submit this Prehearing Statement.

APPEARANCES:

Ann M. Aktabowski
Representative

Harbor Shores
6800 Maloney Ave, Unit 100
Key West, FL 33040
On behalf of the Members of Harbor Shores

1. WITNESSES:

Ann Aktabowski

2. EXHIBITS:

| <u>Witness</u> | <u>Exhibits</u> | <u>Title</u> |
|-----------------------|------------------------|--|
| Ann M. Aktabowski | AMA-1 | Cross Petition Filed by Harbor Shores |
| Ann M. Aktabowski | AMA-2 | QB Report of payments to KWRU by Harbor Shores |

| | | |
|-------------------|--------|--|
| Ann M. Aktabowski | AMA-3 | Utility Agreement between KWRU & Harbor Shores |
| Ann M. Aktabowski | AMA-4 | Utility Agreement between KWRU & Tortuga West |
| Ann M. Aktabowski | AMA-5 | Utility Agreement between KWRU & Stock Island Holdings Inc. |
| Ann M. Aktabowski | AMA-6 | Utility Agreement between KWRU & El Mar RV |
| Ann M. Aktabowski | AMA-7 | Letter to KWRU requesting creation of Harbor Shores customer account |
| Ann M. Aktabowski | AMA-8 | KWRU response to AMA-7 |
| Ann M. Aktabowski | AMA-9 | Pre-rate- increase Spreadsheet from KWRU to Harbor Shores |
| Ann M. Aktabowski | AMA-10 | Pre-rate-increase bills for Units 8 & 44 |
| Ann M. Aktabowski | AMA-11 | Post-rate-increase Spreadsheet from KWRU to Harbor Shores |
| Ann M. Aktabowski | AMA-12 | Post-rate-increase bills for Units 8 & 44 |
| Ann M. Aktabowski | AMA-13 | Master Meters bills from FKAA to Harbor Shores |
| Ann M. Aktabowski | AMA-14 | KWRU Deposit letters to Unit Owners at Harbor Shores |

3. STATEMENT OF BASIC POSITION

1. On March 23, 2016 the Commission published PSC-16-0123-PAA-SU with approved rate increases for KWRU. The result of this increase has created an undue financial hardship for members of the Harbor Shores Condominium Unit Owners Association (Harbor Shores). In 2015 Harbor Shores Association paid KWRU \$23,243.00 for wastewater services, if the Phase 1 approved rates were in effect for all of 2016, Harbor Shores charges would be approximately \$38,875, an increase of approximately 64% year over year. If or when Phase 11 rates go into effect, Harbor Shores's charges will be approximately \$42,312, an increase of approximately 82% over the 2015 charges. This is an extraordinary increase for a monopoly utility and particularly in view of the fact that many of our members and/or renters are either elderly or working class people who can ill afford these extraordinary increases.

2. During the course of our involvement in the Rate Case it came to our attention that there were different categories of customers and various fees and charges based on these categories.

Harbor Shores Association members are designated Residential Customers and it is our position that we meet the criteria (although we cannot find a publication that defines each category?) of General Service Customer due to the fact that the Association has been paying the monthly charges for all 69 units since the last rate case in 2009 per our Utility Agreement with KWRU. Had we been designated General Service in 2015, we would have paid \$15,303 compared to \$23,243 for wastewater services and if the approved Phase 1 proposed rates were in effect for all of 2016, the General Service charges would be approximately \$22,218. When and if Phase 1 rates go into effect and Harbor Shores is designated as General Service, the charges will be approximately \$24,462.

3. The Utility Agreement between Harbor Shores and KWRU seems to be different in three important areas that any other agreement sent me by KWRU during the Discovery phase of this case:

(A) It appears that almost all, if not all, other Agreements, (see Exhibits 4, 5 & 6) either Residential or General Service, under Rates, Fees and Charges, state, in part, that “All Customers will pay the applicable fees, rates and charges as set forth in the Tariff” but the Harbor Shores Agreement (see Exhibit 3) states, in part, under the same heading of Rates, Fees and Charges “The Association will pay the applicable fees, rates and charges as set forth in the Tariff”.

(B) Again, in almost all, if not all, of the other Agreements under that same Rates, fees and Charges the Agreements state, in part, “Developer shall pay to the Service Company a reservation (Capacity Reservation Fee), in the amount of \$2700.00 per E.R.C.” but the Harbor Shores Agreement states, in part, “The Association shall not be responsible to the Service Company for the reservation fee. Only the individual unit owners shall pay to the Service Company such reservation fee”.

(C) Again, in almost all, if not all, of the other Agreements under Property Rights, state, in part, “In those cases in which Service Company accepts all or any portion of the system for service, operation and maintenance, Developer shall convey the following property rights and interests for that portion of the system to Service Company”. Each Agreement goes on to include two or three paragraphs regarding non-exclusive easements to allow the Service Company access to non-public areas for maintenance and repair. In the Harbor Shores Agreement it states that this particular Property Rights section “Is intentionally omitted”.

Because of these differences and because we are responsible for and have been paying the monthly bills for all sixty-nine Units for almost ten years and because there are no individual shut-off valves to allow for shut-off of service should the Unit owner not pay, and, as stated above, KWRU has no access to the non-public areas within Harbor Shores Park, it is our contention that we fit the General Service designation and should have been classified in this category from the last rate case in 2009. It is also our contention that we have been overcharged by approximately \$10,000.00 per year for the last seven or more years.

4. ISSUES AND POSITIONS

LEGAL ISSUES

ISSUE 1: Does the Commission have the authority to update the test year requested
Contested by KWRU and approved by the Commission Chairman to set rates representative of the period in which new growth-related plant will be placed into service and in which expenses associated with such new plant will be incurred?

HOA: Agree with OPC

TEST YEAR

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

HOA Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

QUALITY OF SERVICE

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

HOA: Agree with OPC

RATE BASE

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

HOA: Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC.

B. For Phase II, if applicable

HOA: Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

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

A. For Phase I, if applicable

B. For Phase II, if applicable

HOA: Agree with OPC

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

HOA: Agree with OPC

ISSUE 12: What is the appropriate working capital allowance?

A. For Phase I, if applicable

A) HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

COST OF CAPITAL AND CAPITAL STRUCTURE

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

ISSUE 15: What is the appropriate return on equity?

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC.

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

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

A. For Phase I, if applicable

HOA: Agree with OPC

B. For Phase II, if applicable

HOA: Agree with OPC

NET OPERATING INCOME

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

customer?

HOA: The Commission should investigate this issue to determine whether Harbor Shores is a general service customer or not. The facts as stated in our basic position above and a review of our Utility Agreement, which is different than all others, should be reviewed by the Commission and a determination should be made as to whether Harbor Shores, which is currently classified as Residential, is a unique entity within the Utility's customer base and, if it is unique, then, the Commission should decide if the Utility did classify Harbor Shores incorrectly and by doing so, overcharge them for the last seven years or more.

In the interests of time, Harbor Shores agrees with OPC responses to ISSUES 19 through 40 and Issues 42 through 45

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

A. For Phase I, if applicable

B. For Phase II, if applicable

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

A. For Phase I, if applicable

For Phase II, if applicable

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

A. For Phase I, if applicable

B. For Phase II, if applicable

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

ISSUE 23: What are the appropriate annual levels of O&M expenses for implementing

advanced wastewater treatment (AWT)?

A. For Phase I, if applicable

B. For Phase II, if applicable

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

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

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

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

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

A. For Phase I, if applicable

B. For Phase II, if applicable

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

A.

B. For Phase II, if applicable

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

A. For Phase I, if applicable

B. For Phase II, if applicable

REVENUE REQUIREMENTS

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

A. For Phase I, if applicable

B. For Phase II, if applicable

RATES AND RATE STRUCTURE

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

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

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

ISSUE 35: Should KWRU be authorized to collect Non-Sufficient Funds (NSF) charges?

ISSUE 36: Should KWRU request to implement a late payment charge be approved?

ISSUE 37: Should KWRU's be authorized to collect a Lift Station Cleaning charge?

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

ISSUE 39: Should any portion of the implemented PAA rates be refunded? If so, how should

the refund be calculated, and what is the amount of the refund?

OPC: **ISSUE 40:** Should the Utility's approved service availability policy and charges be revised?

ISSUE 41: Should Harbor Shores have been classified as a General Service customer since the last rate case in 2009, and, if so, what action should the Commission take to refund the excess payments made by Harbor Shores since 2009?
Contested

HOA: This issue is addressed in **Issue #18** above and is further addressed in our **Statement of Basic Position**. Harbor Shores is billed by KWRU via monthly spreadsheet and Harbor Shores has paid the charges for all sixty-nine Units for the last ten years. We have a Utility Agreement with KWRU that requires us to pay for all units and it has been told to us on many occasions, that should it be changed to individual billing, then if one person does not pay, the "whole park will be shut off from sewer service". Since we are, therefore, responsible for all Unit member payments and our Agreement does not give KWRU Property Rights or access to any non-public areas in the Park, it follows that we are one General Service Customer and we should be charged accordingly.

We ask the Commission to review this matter and if the Commission agrees that we have been incorrectly classified and overcharged, then the Commission should also decide what, if any, refund is due Harbor Shores for almost ten of excess payments

If the Commission decides that Harbor Shores members are Individual Residential Customers and each member is to be billed by KWRU, then we also ask that the

Commission address the issue of individual delinquent payments and how KWRU and/or the Commission would propose to handle that situation.

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

ISSUE 43: What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

ISSUE 44: Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

ISSUE 45: Should this docket be closed?

5. STIPULATED ISSUES:

In the interests of time, Harbor Shores agrees with OPCs' STIPULATED ISSUES 1 through 14

1. Plant in service should be reduced by \$817,240 based on the Staff Audit Finding 1.
2. Construction work in progress should be increased by \$303,099 for the December 31,

2014 Phase I test year based on the Staff Audit Finding 2.

3. Land should be decreased by \$923 and O&M expenses (contractual services-other) should be increased by \$1,200 for survey fees, and working capital should be increased by \$738 based on the Staff Audit Finding 3.
4. CIAC should be decreased by \$297,120, accumulated amortization of CIAC should be decreased by \$81,153, and test year amortization of CIAC should be decreased by \$14,003 based on Staff Audit Finding 4.
5. Accumulated depreciation should be increased by \$2,040 and depreciation expense should be decreased by \$5,489, based on Staff Audit Finding 5.
6. The wastewater collection system should be considered 100% used and useful.
7. The existing wastewater treatment plant should be considered 100% used and useful before the wastewater treatment plant expansion is placed into service.
8. Accounts receivable-other should be increased by \$40,067 and miscellaneous current and accrued assets should be decreased by \$13,422, based on Staff Audit Finding 7.
9. Test year revenues for 2014 are as follows:

| | |
|---------------------------------|--------------------|
| Residential and General Service | \$1,411,781 |
| Reuse Revenues | \$50,400 |
| Miscellaneous Revenues | <u>\$72,619</u> |
| Total | <u>\$1,534,799</u> |
10. O&M expenses should be decreased by \$4,512, based on Staff Audit Finding 10 and \$6,276, based on Staff Audit Finding 11.
11. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:
 - a. \$25, if the face value does not exceed \$50,
 - b. \$30, if the face value exceeds \$50 but does not exceed \$300,
 - c. \$40, if the face value exceeds \$300,
 - d. Or five percent of the face amount of the check, whichever is greater.

12. KW should be authorized to collect a monthly lift station cleaning charge of \$1,462 from the Monroe County Detention Center.
13. In calculating the rates to be collected from service rates, the amount of revenues from reuse rates should be calculated using the final approved reuse rate.
14. The appropriate plant capacity charge should remain unchanged at \$2,700 per ERC.

6. **PENDING MOTIONS:**

Motion for Extension of Testimony Filing Dates established by Order NO. PSC-16-0194-PCO-SU to be filed on or about October 17, 2016.

7. **STATEMENT OF PARTY'S PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY:**

None.

8. **OBJECTIONS TO QUALIFICATION OF WITNESSES AS AN EXPERT:**

None at this time.

9. **STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE:**

There are no requirements of the Order Establishing Procedure with which Harbor Shores cannot comply other than physical attendance at the Pre-Hearing Conference at which Harbor Shores has already been approved to participate telephonically.

Dated this 14th day of October, 2016

Respectfully submitted,

Ann M. Aktabowski

/s/Ann M. Aktabowski

Ann. M. Aktabowski
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CERTIFICATE OF SERVICE
Docket No. 150071-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing Prehearing Statement of the Office of Public Counsel has been furnished by electronic mail on this 14th day of October, 2016, to the following:

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Ann M. Aktabowski
Representative

