

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. 20170141-SU

**K W RESORT UTILITIES CORP'S RESPONSE TO OPC AND MONROE COUNTY'S
JOINT MOTION TO COMPEL AND TO CONTINUE HEARING**

Applicant, K W RESORT UTILITIES CORP. ("KWRU") by and through its undersigned attorneys files this Response to the Office of Public Counsel ("OPC") and Monroe County's ("County") Joint Motion to Compel K W Resort Utilities Corp. to Correct its Continually Changing Minimum Filing Requirements and to Continue Hearing ("Motion"), and states as follows:

1. This Motion is part of OPC and County's continuing attempts to delay the final hearing and to deny KWRU an opportunity to earn a fair return.
2. OPC and County have a basic misunderstanding of the nature and purpose of the Minimum Filing Requirements ("MFRs) in the ratemaking process. The MFRs are the beginning point for the analysis of the utility's entitlement to a rate increase. Once the MFRs are deemed complete there is no requirement to continuously file amended MFRs even though various elements of the MFRs change through the audit and discovery process. However, the utility is bound by the revenue requirement requested in the MFRs.¹
3. OPC and County are complaining that Ms. Swain's rebuttal testimony included revisions of some of the MFR schedules that incorporated KWRU's position based upon the audit,

¹ To the extent subsequent facts support a revenue requirement in excess of the amount KWRU requested in the original MFRs, KWRU is not seeking any such excess amount.

discovery, and updated pro forma costs.² Further, OPC and County complain that Ms. Swain also testified about changes that should have been made to the annualization of depreciation but did not provide update MFR schedules reflecting those changes. It appears that the specific relief OPC and County seek is to compel KWRU to file a whole new set of MFRs. Requiring such action is unprecedented, and unnecessary.

4. OPC and County apparently believe that the ratemaking process is static. Such belief ignores decades of ratemaking by this Commission. Under the OPC and County theory, if the audit disclosed an expense that should have been capitalized, they would eliminate the expense but not add the amount to plant in service. The revised MFRs are simply a mechanism to show the results of Ms. Swain's analysis. It is her analysis that sets forth the facts, not revised MFRs, and the revised MFRs are not necessary to the financial conclusions she reaches.

5. Due process requires notice and opportunity to be heard. OPC and County have been provided with both. With the possible exception of the known and measurable change in KWRU's cost of debt, all issues in Ms. Swain's rebuttal testimony were known to OPC and County, which had the opportunity to address them. The cost of debt was tied to prime rate, and the original cost of debt has not been questioned by OPC or County. The prime rate has risen since the rate application was filed and no party can reasonably question that fact. This is a known and measurably change that is akin to a "fall-out" amount. If the prime rate had gone down you can be confident that OPC and County would be taking a different position.

6. Despite OPC and County's protestations to the contrary, there is no requirement to file revised MFR schedules as the evidence is developed and refined through discovery. They were

² Inconsistently, OPC and County also complain that only certain revised MFR schedules were exhibits to her testimony instead of all of them.

provide by Ms. Swain for the parties to more easily see the consequences of those updated facts. It is her testimony that provides the basis of the changes, not the revised MFR schedules.

7. To the extent applicable, KWRU incorporates its argument in response to OPC and County's earlier filed Motion to Strike.

WHEREFORE, based upon the argument and authorities set forth above, Utilities, Inc. of Florida, respectfully requests this Commission deny OPC and Monroe County's Motion.

Respectfully submitted this 26th day of
April, 2018

Friedman & Friedman, P.A.
600 Rinehart Road, Suite 2100
Lake Mary, FL 32746
Phone: (407) 830-6331
/s/ Martin S. Friedman
Martin S. Friedman, Esquire
For the Firm

Barton W. Smith, Esquire
Nick Batty, Esquire
Smith Hawks
138-142 Simonton Street
Key West, FL 33040
bart@smithhawks.com
nick@smithhawks.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 26th day of April, 2018, to the following:

<p>Kyesha Mapp, Esquire Jennifer Crawford, Esquire Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 Email: kmapp@psc.state.fl.us jcrawfor@psc.state.fl.us</p>	<p>Erik L. Sayler, Esquire Associate Public Counsel Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Rm 812 Tallahassee, FL 32399-1400 SAYLER.ERIK@leg.state.fl.us</p>
<p>Robert B. Shillinger, Esquire Cynthia Hall, Esquire Monroe County Attorney's Office 1111 12th Street, Suite 408 Key West, FL 33040 Email: hall-cynthia@monroecounty-fl.gov Shillinger-Bob@MonroeCounty-FL.gov</p>	<p>Robert Scheffel Wright, Esquire John T. LaVia, III, Esquire Gardner, Bist, Bowden, Bush, Dee, LaVia & Wright, P.A. 1300 Thomaswood Drive Tallahassee, FL 32308 Email: schef@gbwlegal.com jlavia@gbwlegal.com</p>

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail this 25th day of April, 2017, to:

Erik L. Sayler, Esquire
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
SAYLER.ERIK@leg.state.fl.us

Walter Trierweiler, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0855
trierwe@psc.state.fl.us

Brian P. Armstrong, Esquire
Law Office of Brian Armstrong, PLLC
P.O. Box 5055
Tallahassee, FL 32314-5055
brian@brianarmstronglaw.com

/s/ Martin S. Friedman
MARTIN S. FRIEDMAN
For the Firm