

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

FILED: May 4, 2018

OFFICE OF PUBLIC COUNSEL'S RESPONSE TO K W RESORT UTILITIES'
MOTION TO STRIKE PORTIONS OF TESTIMONY OF
OPC WITNESS HELMUTH W. SCHULTZ

The Citizens of the State of Florida ("Citizens"), by and through the Office of Public Counsel ("OPC"), hereby respond to K W Resort Utilities Corp.'s ("KWRU" or the "Utility") Motion to Strike Portions of the testimony of OPC Witness Helmuth W. Schultz, and states as follows:

Response

1. OPC retained the consulting services of Mr. Schultz to assist in the analysis of KWRU's proposed rate increase, to provide consultation to OPC, and to pre-file testimony. Mr. Schultz is a Certified Public Accountant ("CPA") and has more than 40 years of experience in the utility regulatory industry and has extensive experience providing expert testimony in regulatory hearings on behalf of utility commission staffs, states' attorneys general, and consumer advocacy groups. *See* Appendix to Mr. Schultz' March 14, 2018 prefiled testimony and exhibits.

2. The 16 page Appendix to his testimony provides only a partial list of utility cases in which Mr. Schultz has participated. In reviewing the list, Mr. Schultz has participated in and/or provided *expert witness testimony* and/or reports in more than 100 cases in the following states on issues affecting utility rates: Alaska, Arizona, California, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Kansas, Maryland, Massachusetts, Michigan, Minnesota,

Mississippi, Missouri, New Jersey, New York, Nevada, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Utah, Vermont and Virginia.

3. Regarding proceedings, Mr. Schultz has entered pre-filed testimony into the record and been accepted by the Florida Public Service Commission (Commission) as an expert in the following dockets:

a. Docket No. 19891345-EI, In Re: Petition of Gulf Power Company for an increase in its rates and charges (testimony about the budgeting process, labor complement and payroll taxes, turbine and boiler inspections, plant expenses, transmission line rentals, production expense, affiliated allocations, employee benefits, employee savings plan, productivity improvement program, performance pay plan, nonrecurring items, ash hauling and storage, obsolete distribution material, officer and management perks, customer service, economic development).

b. Docket No. 19920324-EI, In re: Application for a rate increase by Tampa Electric Company (testimony about the total level of plant held for future use, and number of employees).

c. Docket No. 20010949-EI, In re: Request for rate increase by Gulf Power Company (testimony about the plant in service, coal inventory, third floor corporate office, budgeted test year expenses, payroll, incentive compensation, production operation and maintenance expense, distribution expense, cable inspection, substation maintenance, tree trimming, pole inspections, light maintenance, property insurance, customer accounts, and customer records).

d. Docket No. 20080317-EI, In re: Petition for rate increase by Tampa Electric Company (testimony about the payroll, incentive compensation, employee benefits,

directors & officers liability insurance, tree trimming, pole inspections, transmission inspections, substation preventive maintenance and generation maintenance).

e. Docket 20080318-GU, In re: Petition for rate increase by Peoples Gas System (testimony about the uncollectibles recovery, gas system reliability rider, carbon reduction mechanism, plant, operating expenses, payroll, incentive compensation, employee benefits, pipeline integrity expense, directors and officers liability insurance and storm damage reserve).

f. Docket No. 20090079-EI, In re: Petition for increase in rates by Progress Energy Florida, Inc. (testimony about the nuclear fuel balance, storm reserve accrual and reserve balance, working capital, compensation and incentive pay, employee benefits including the pension plan and employee savings plan, rate case expense, transmission expense, distribution expense, power operations expense, directors and officers liability insurance, injuries and damages expense adjustment, and budget analysis).

g. Docket No. 20110200-WU, In re: Application for increase in water rates in Franklin County by Water Management Service, Inc. (testimony about the valuation of Brown Management Group, Inc. stock transfer, how the Department of Environmental Protection Loan may have been impacted, and Company's compliance with the Department of Environmental Protection loan requirements).

h. Docket No. 20160021-EI, In re: Petition for rate increase by Florida Power Company (testimony about payroll, incentive compensation, employee benefits, storm hardening and vegetation management activities, directors and officers liability insurance, capital storm hardening, depreciation reserve, and storm recovery).

4. During his 40 years of providing testimony and expert reports, Mr. Schultz recalls only one time where an Intervenor challenged his expertise during a hearing; however, the utility company in that proceeding was the first to support his expertise and the challenge was denied by that utility commission.

5. On March 14, 2018, Mr. Schultz and OPC witness Mr. Andrew Woodcock, prefiled direct testimony and provided their expert opinions on various aspects of KWRU's direct case. Mr. Schultz and Mr. Woodcock recommended significant adjustments and reductions to KWRU's requested revenue increase. Two of the areas Mr. Schultz recommended disallowances for related to KWRU's request for costs associated with a new modular office building and a new pension plan for its employees.

6. Mr. Schultz opined that KWRU's request of \$288,000 for the new modular building was *excessive and unsupported*. (Schultz testimony at 11, line 14). This testimony is not a part of KWRU's motion to strike.

7. Mr. Schulz further opined that KWRU has not offered sufficient support for either the claim that its high employee turnover rate is due to its benefits package or the claim that a pension plan will solve its employee retention problems. (Schultz testimony at 26, lines 21-23).

8. Ultimately, the finder of fact (the Commission) will weigh the testimony and evidence of all witnesses and to determine whether KWRU supported its burden of proof, not only for the modular building and pension plan costs, but also on every other issue in KWRU's requested rate increase.

Legal Standard

9. Section 90.702, F.S., states:

Testimony by experts.—If scientific, technical, or *other specialized knowledge* will assist the trier of fact in understanding the evidence or in determining a fact in issue,

a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;
- (2) The testimony is the product of reliable principles and methods; and
- (3) The witness has applied the principles and methods reliably to the facts of the case.

(Emphasis added).

It is axiomatic that it takes a significant amount of specialized knowledge to review a utility's MFRs, discovery responses, draft and pre-file direct testimony and exhibits on a utility's requested rate increase. Mr. Schultz has demonstrated that he has the requisite specialized knowledge and has testified as an accepted expert in the dockets identified above. He has been accepted as an expert based on his educational background and experience in having the ability to review and analyze the reasonableness of a utility's requested rate increase and the components of that rate increase. The subject matter at issue in this rate case is ratemaking. Mr. Schultz possesses the requisite specialized knowledge in the ratemaking process, and has been testifying and recommending ratemaking adjustments for more than 40 years in Florida and other jurisdictions.

10. KWRU apparently is arguing that an expert in utility ratemaking cannot opine on the reasonableness of the pro forma cost of a utility building (KWRU Motion at 3-4) or on the reasonableness of pension plan costs (KWRU Motion at 5-6). Every cost that a utility puts at issue in a rate case is subject to review and opinion by ratemaking experts like Mr. Schultz. In this case, KWRU does not like the fact that Mr. Schultz found that it failed to support the reasonableness of the cost of its requested modular plant (Schultz testimony at 10-13), nor did he agree that the costs of KWRU's requested pension plan were reasonable (Schultz testimony at 26-28).

11. KWRU ignores the breadth of Mr. Schultz's training and experience in the utility ratemaking process and the issues necessarily encompassed in any such analysis. The credentials of Mr. Schultz are substantial and the issue of whether the construction costs and pension plan

costs are reasonable, as well as the issue of whether the utility has met its burden of proof, do not surpass Mr. Shultz's regulatory expertise and specialized knowledge of the ratemaking process. As it has in other Florida rate cases, Mr. Schultz's experience and specialized knowledge will assist the Commission in addressing these issues in this docket.

12. For the reasons stated herein, KWRU's motion to strike should be denied and the Commission should give weight to the fact that KWRU attempted to strike his expert testimony on these two topics subject to normal ratemaking adjustments.

WHEREFORE, KWRU's Motion to Strike portions of Witness Schultz's direct testimony should be denied.

Respectfully submitted this 4th day of May, 2018.

/s/ Erik L. Saylor

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic delivery, on this 4th day of May, 2018.

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