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# Public Service Commission

May 17, 2018

Martin Friedman, Esq.  
600 Rinehart Road, Suite 2100  
Lake Mary, FL 32746

VIA CERTIFIED MAIL

Barton Smith, Esq.  
Smith Law Firm  
138-142 Simonton Street  
Key West, FL 33040

## NOTICE OF APPARENT VIOLATION

**Re: Re: 20170086-SU - Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County**

Dear Messrs. Friedman and Smith:

Pursuant to Order No. PSC-2017-0071-FOF-SU, issued March 13, 2017, Florida Public Service Commission (Commission) staff was ordered to open a new docket and conduct a full audit and investigation into K W Resort Utilities Corp.'s (KWRU or Utility) billing practices in order to determine if any orders, rules, or statutes were violated by the Utility. A copy of the audit, published September 5, 2017, was provided to the KWRU and a written response was received from the Utility on January 30, 2018.

Violations of the provisions of any lawful rule or any statute administered by the Commission may result in penalties as provided by Section 367.161, Florida Statutes (F.S.). Specifically, violations of the provisions of Chapter 367, F.S., any rule adopted pursuant to the Chapter, or Commission order may result in a penalty for each offense of not more than \$5,000. As required by Section 120.695(2)(a), F.S., KWRU's potential noncompliance with Commission statutes, rules, and orders is outlined below.

- Negotiated Flat Rate: Order No. PSC-02-1165-PAA-SU, issued August 26, 2002,<sup>1</sup> recognized that KWRU had billed discriminatory rates to Safe Harbor Marina (Safe Harbor) because the monthly flat rate that was billed to this customer was not approved by the Commission, in apparent violation on Section 367.081(2)(a)1., F.S. Following this

<sup>1</sup> Docket No. 020520-SU, In re: Complaint by Safe Harbor Marina against K W Resort Utilities Corp. and request for new class of service for bulk wastewater rate in Monroe County.

order, KWRU corrected its billing practices. However, during the billing period of March 2013 through March 2016, KWRU billed Safe Harbor a negotiated rate of \$1,650.67 per month instead of its approved bulk flat rate of \$947 per month (Tariff Sheet No. 15.5). The Utility sent a letter, dated April 20, 2009, to the Commission advising it of the Utility's decision to charge a different unauthorized rate for this wastewater customer. However, the Commission never approved the negotiated rate KWRU billed Safe Harbor during the billing period of March 2013 through March 2016.

- **Pool Charges:** Commission staff became aware of two charges used in revenue calculations for which there was no Commission-approved tariffs on file while processing KWRU's 2002 price index request. As a result, the utility formally requested a new class of service for small and large pools. The pool charges for Key West Golf Club HOA were approved in Order No. PSC-02-1711-TRF-SU. The audit findings indicated that KWRU administered the monthly pool charge from tariff Sheet No. 15.7, which was applicable only to the Key West Golf Club HOA, to two additional customers, Sunset Marina and Carefree Property during the billing period of March 2013 through March 2016.
- **Base Facility Charge (BFC):** Staff's audit into the billing practices of KWRU indicated that the utility billed the following customers BFCs based on the number of units or individual dwellings present behind a master meter rather than the appropriate BFC based on the customer's meter size, as provided in Tariff Sheet No. 12.0:
  - Sunset Marina (SM100)
  - General Service Customers: James Beaver (B008), Eadeh Bush Co. (EB002), and Armando Sosa (S046)
  - Ocean Spray Trailer Park (OS001)
  - Tropic Palm Mobile Home Park (TP001)
  - Meridian West Apartments (MW001)
  - Fourth Ave. LLC (R090)
  - Banyan Grove (BG006)
  - ITNOR Waters Edge (WE002)
  - Roy's Trailer Park (RTP)
  - Flagler Village (FV001)

Section 367.081(1), F.S., provides that a utility may only charge rates and charges that have been approved by the Commission. Further, Section 367.091(4), F.S., provides that a utility may only impose and collect those rates and charges approved by the Commission for the particular class of service involved, and a change in any rate schedule may not be made without Commission approval. By charging customers in a manner inconsistent with its Commission-approved tariffs, as set forth above, it appears that KWRU has violated Sections 367.081(1) and 367.091(4), F.S.

Commission staff acknowledges that following the PAA Order No. PSC-16-0123-PAA-SU, issued on March 23, 2016, KWRU corrected its billing practices and is now in compliance with Commission orders, statutes, and rules. However, given that this is not the first time that the Utility has billed customers outside of its tariff, please submit a response within 30 days to the

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Office of Commission Clerk providing any mitigating circumstances as why it should not be fined or otherwise penalized pursuant to Section 367.161, F.S., for its apparent violations of Commission orders, statutes, and rules.

Your prompt attention to this matter is required. Should you have any questions or comments, please do not hesitate to contact me at (850) 413-6230 or [Kmapp@psc.state.fl.us](mailto:Kmapp@psc.state.fl.us).

Sincerely,

*/s/ Kyesha Mapp*

Kyesha Mapp  
Senior Attorney

KRM

cc: (via electronic mail)  
Office of Public Counsel (J.R. Kelly/ Erik Sayler)  
Office of Commission Clerk  
Division of Economics (P. Daniel/ M. Friedrich)