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**RICHARD CORCORAN**  
*Speaker of the House of Representatives*

June 12, 2018

Carlotta S. Stauffer, Director  
Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Re: Docket No. 20170086-SU, *In re: Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County.*

Dear Ms. Stauffer:

On March 16, 2018, the Public Service Commission staff held an informal meeting with representatives from KW Resort Utilities Corp. (“the Utility or KWRU”), Monroe County and our Office of Public Counsel (OPC). OPC was requested to submit comments concerning staff’s investigation into KWRU’s billing practices. On May 17, 2018, the Commission issued KWRU a Notice of Apparent Violation (Document No. 03728-2018), noting many of the issues which are addressed herein.

The following is a synopsis of the comments offered by OPC:

1. According to Order No. PSC-17-0091-FOF-SU, Safe Harbor Marina was not billed in compliance with the Commission’s approved flat rate tariff of \$947 per month, but instead was billed a “negotiated” flat rate of \$1,650.67 per month. KWRU does not dispute that it charged the higher rate; however, KWRU claims the negotiated rate met the intent of the Commission’s approved tariff. Further, KWRU claims to have reached a settlement with Safe Harbor Marina which resolved all billing disputes and claims, including improperly charging Safe Harbor Marina the incorrect rates. However, that alleged settlement was apparently entered into before the Final Order in the last rate case was issued and has never been submitted to the Commission for review. Further, the amount of the refund calculated for Safe Harbor Marina by staff does not go back to the date the improper billing began; therefore, Safe Harbor Marina may still be owed refunds despite any purported settlement.

Based upon KWRU's actions, OPC submits the Commission should order KWRU to show cause why it did not comply with the Commission's approved tariff. The Commission should also investigate the period in which KWRU charged the incorrect rate and calculate the appropriate refund due to this customer for the entire period KWRU was in violation of its tariff.

2. KWRU has only one "pool tariff" which is applicable to pools located within the Key West Golf Club Homeowners Association (KWGC HOA). The tariff expressly and exclusively applies only to pools owned by the KWGC HOA. During staff's investigation, it became apparent that KWRU was also charging the "pool tariff" to other customers as well. Therefore, the Commission must determine whether to order the Utility to show cause why it charged the pool tariff to customers outside the KWGC HOA, whether the Utility was operating in violation of its tariff, and whether and to what extent those other customers with pools are owed refunds.
3. The Commission should examine the settlement agreement between KWRU and Roy's Trailer Park to ascertain whether there are any remaining issues for the Commission to address.
4. Regarding the additional irregular billing practices discovered during the Commission's investigation, it appears that staff calculated refunds by applying the appropriate method for customer charges; however, there are variances between staff's calculation and KWRU's calculation. The residential service tariff approved by the Commission in KWRU's 2009 rate case contains language different from the Utility's current residential service tariff, which went into effect February 26, 2018; however, any difference in the language does not relieve KWRU from its obligation to properly bill its customers. In addition, the "look-back" period in staff's billing analysis in calculating refunds, in some instances, does not appear to go all the way back to the final order issued in the 2009 rate case when KWRU started incorrectly billing these customers.
5. In addition, the Commission's review must determine whether KWRU followed, not only the letter, but also the spirit of the law when determining whether KWRU improperly charged residential service rates to general service customers with private sub-meters. It is axiomatic that ignorance of the law is no excuse for noncompliance, and appropriate action must be taken by the Commission to ensure the affected customers are made whole.
6. Regarding the May 17, 2018 Notice of Apparent Violation, the Notice was silent on the issue of customer refunds and the purported settlements addressing some of those refunds.

Thus, the Commission should determine whether there are any additional refunds owed to KWRU's customers and whether the Utility should be ordered to show cause for any apparent violations of its prior tariffs.

In conclusion, OPC looks forward to reviewing KWRU's response to the Commission's Notice of Apparent Violation and reserves the right to respond accordingly. If there are any questions, please let us know.

Respectfully submitted,

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Public Counsel

/s/ Erik L. Saylor

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