

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of: DOCKET NO. 20170086-SU

INVESTIGATION INTO THE
BILLING PRACTICES OF KW
RESORT UTILITIES CORP. IN
MONROE COUNTY.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 14

COMMISSIONERS
PARTICIPATING: COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, August 6, 2019

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DANA W. REEVES
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
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TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Item No. 14 is a panel
3 handled by Commissioner Brown.

4 COMMISSIONER BROWN: Thank you. It's a panel
5 comprised of Commissioner Polmann and Commissioner
6 Fay and myself. We'll wait on staff to present the
7 item. Good morning.

8 MS. BROWNLESS: Good morning, Commissioners.
9 Suzanne Brownless on behalf of Commission staff.

10 This recommendation is the final resolution of
11 the Commission's investigation into the billing
12 practices of KW Resort Utilities Corporation to
13 determine if KWRU violated any Commission order,
14 rule or statute. Specifically, the investigation
15 focused on overbilling, which came to light in
16 KWRU's last rate case, and was confirmed by the
17 Commission staff's audit for the period April 2013
18 through March 2017.

19 Two settlement agreements are before you
20 today. The first agreement discussed in Issue 1 is
21 a stipulation and settlement between the Office of
22 Public Council and KWRU filed on May 17th. The
23 second agreement discussed in Issue 2 is a
24 settlement offer filed by KWRU on June 14th. Both
25 the stipulation and settlement and the settlement

1 offer must be approved in order to completely
2 resolve this docket.

3 Staff supports both the settlement and
4 stipulation and the settlement offer. The
5 Commission has received no filings or comments from
6 the public on this docket. OPC and KWRU are
7 available for questions, as is Commission staff.

8 COMMISSIONER BROWN: Thank you. Would the
9 parties like to address the Commission?

10 MS. MORSE: Yes. Public Council requested
11 time to speak.

12 COMMISSIONER BROWN: Okay. You can go. If
13 you could just speak up, though, please.

14 MS. MORSE: All righty.

15 Good morning, Commissioners. Regarding the
16 proposed settlement between OPC and KW, staff's
17 recitation is an accurate description, so I won't
18 duplicate it. In short, OPC believes the
19 settlement between OPC and KW to be in the public
20 interest and request that you approve it.

21 Regarding the separate issue of the penalty to
22 be imposed in the offer of settlement from KW to
23 resolve the issue between KW and the PSC, OPC
24 agrees with and supports the judgment expressed by
25 Commissioner Graham and the rest of the Commission

1 when it deliberated this issue and the
2 circumstances extensively on the record last year,
3 on August 7th, 2018, and where the Commission
4 determine an adequate penalty to be \$10,000.

5 As noted by the Commission last year, this
6 docket was not the first time where KW failed to
7 comply with billing laws. Commission orders, in
8 two dockets from 2002, discuss three separate
9 incidents where KW was caught billing rates that
10 were different from its Commission-approved
11 tariffs. These were detailed in Order Nos. PSC
12 2002-1165 and PSC 2002-1711. The latter case was
13 similar to this one, to one of the issues in the
14 current docket, because in that 2002 case KW had
15 negotiated rates with two different customers
16 without obtaining a Commission-approved tariff in
17 either instance.

18 In the docket today, one of the billing issues
19 was that the utility apparently sent a letter to
20 the Commission that was planning to change a rate,
21 but did not receive Commission approval and did not
22 follow up. As Commissioner Graham stated last
23 year --

24 COMMISSIONER BROWN: Chairman.

25 MS. MORSE: Chairman Graham -- I'm sorry --

1 Chairman Graham -- my apologies -- stated last year
2 the utility knew there was more to changing a
3 tariff than simply mailing a letter to the PSC,
4 further expressed the point that there is no
5 incentive for a utility to comply up front if all
6 they have to do when caught doing wrong is to do
7 what they should have done in the very beginning.
8 In addition, Commissioner Brown noted the extensive
9 period of time during which the activity in this
10 case occurred.

11 The binding law, which has been substantially
12 the same for years, if not decades, is that a
13 utility can only bill customers for rates and
14 charges that are listed in Commission-approved
15 tariffs and the rates can only be changed by the
16 approval of the PSC. These mandates are found in
17 Florida Statute Sections 367.081 and .091.

18 Simply paying back money overbilled after
19 you've been caught should not be considered a
20 mitigating factor for purposes of decreasing a
21 penalty, particularly where, as this Commission
22 pointed out in the PAA Order 2018-0444, page six,
23 KW demonstrated a, quote, "pattern of failure to
24 bill customers in accordance with its approved
25 tariffs," end quote, and where the number of

1 violations discovered within the three-year audit
2 period showed the alleged mistakes were excessive.

3 OPC submits that KW does not qualify for a
4 reduced or a nominal penalty and OPC supports the
5 penalty originally imposed by this Commission.
6 Thank you.

7 COMMISSIONER BROWN: All right. Mr. Friedman.

8 MR. FRIEDMAN: Thank you. Brief comment.
9 KWRU has offered a penalty that's two-and-a-half
10 times what the staff had originally recommended and
11 my simple comment is, 30 years I dealt with Patti
12 Daniels. She and I butted heads for 30 years and
13 yet, in this particular docket, Patti Daniels said,
14 Mr. Friedman is absolutely correct. And I would
15 suggest that you follow her final recommendation as
16 she had one leg out the door.

17 COMMISSIONER BROWN: Solid argument.

18 MR. FRIEDMAN: And that's the end of my
19 argument. Thank you.

20 COMMISSIONER BROWN: She's not here to say
21 anything, either.

22 Commissioners. Commissioner Fay, Commissioner
23 Polmann, any questions? Commissioner Polmann.

24 COMMISSIONER POLMANN: Thank you, Commissioner
25 Brown.

1 I want to acknowledge the efforts of the
2 parties to bring this forward here today and the
3 hard work of staff and the analysis and the
4 difficulty in bringing this to resolution. I
5 acknowledge in the first issue OPC's work in the
6 settlement that -- stipulation settlement that's
7 brought forward and again, therein particular,
8 considerable effort of the parties, I find it to be
9 beneficial that these come forward together as a
10 package, beneficial to the Commission and in the
11 public interest that we deal with these together.
12 I support both of the Issue 1 and 2. And dealing
13 with them simultaneously is certainly the most
14 efficient and efficacious way for us to do that.

15 I think supporting your recommendations,
16 including item -- Issue 2 as we see it today is
17 fair and reasonable. I don't have any issue with
18 us proceeding according to the staff
19 recommendations.

20 COMMISSIONER BROWN: Thank you. Commissioner
21 Fay.

22 COMMISSIONER FAY: Thank you, Madam Chairman.
23 I honestly -- I don't have much to add.
24 Commissioner Polmann said it well and I'd be
25 prepared to move staff recommendation on all

1 issues.

2 COMMISSIONER BROWN: We got a motion on the
3 floor. Is there a second?

4 COMMISSIONER POLMANN: Second.

5 COMMISSIONER BROWN: All those in favor say,
6 aye.

7 (Chorus of ayes.)

8 COMMISSIONER BROWN: Motion passes. Thank you
9 for your time and effort here. Mr. Chairman.

10 (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DANA W. REEVES, Professional Court
Reporter, do hereby certify that the foregoing
proceeding was heard at the time and place herein
stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 9th day of August, 2019.



DANA W. REEVES
NOTARY PUBLIC
COMMISSION #FF968527
EXPIRES MARCH 22, 2020