

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. 070293-SU  
ORDER NO. PSC-07-0970-PCO-SU  
ISSUED: December 5, 2007

FOURTH ORDER REVISING ORDER ESTABLISHING PROCEDURE:

AND

ORDER GRANTING IN PART AND DENYING IN PART THE OFFICE OF PUBLIC COUNSEL'S MOTION TO COMPEL AND REQUEST FOR EXTENSION OF TIME TO FILE PREFILED DIRECT TESTIMONY, AND DENYING ALTERNATIVE REQUEST FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

By Order No. PSC-07-0786-PCO-SU, issued on September 27, 2007, the Commission permitted the Office of Public Counsel (OPC) to serve 300 interrogatories and 150 requests for production of documents (PODs) on K W Resort Utilities Corp. (KW Resort, utility, or KWRU). That same Order made responses to OPC's Amended First Set of Interrogatories and PODs to which the utility did not object, due on October 22, 2007.

As regards the due date of this first set of discovery, the utility and OPC reached an agreement whereby the utility would be granted a four-day extension to October 26, 2007, to file its responses to the first interrogatories and PODs, and all parties would be given an additional four days in which to prefile their testimony. This agreement was approved by Order No. PSC-07-0851-PCO-SU, issued October 25, 2007. Pursuant to approval of that agreement, the controlling dates for the filing of all subsequent prefiled testimony and exhibits was extended by four days. For those discovery requests to which the utility had objected and for which OPC's Motion to Compel had been granted, Order No. PSC-07-0851-PCO-SU required the utility to respond on or before November 1, 2007. That Order also directed the utility in its responses to state on which specific discovery request the utility claims there is no charge to the utility.

On October 26, 2007, the utility filed its responses to OPC's First Set of Interrogatories (1-75) and its Response to Citizen's Amended First Request for Production of Documents (Nos. 1-62). For all document requests, the utility responded that "the documents will be produced to the extent they exist," but no actual documents were provided to OPC at that time. Based on this failure to actually receive the documents on October 26, 2007, OPC filed its Motion to Compel KW Resort to Respond to OPC's First Set of Production of Documents and Request for Extension of Time to File Prefiled Direct Testimony on October 31, 2007.

On November 1, 2007, KW Resort filed its Response to Citizen's Motion to Compel and Request for Extension of Time, and delivered supplemental responses to OPC's First Set of Interrogatories 16 and 28. Also, on November 6, 2007, the utility delivered responses to OPC's First Request for PODs and Second Interrogatories and Request for PODs. On November 7,

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2007, the utility delivered documents further in response to OPC's PODs 50 and 60 and Interrogatory 78(k).

By Order No. PSC-07-0901-PCO-SU, issued November 8, 2007, it was noted that the utility had copied all documents it had in response to OPC's First Request for Production and provided copies to OPC and Commission staff on November 6, 2007. Therefore, OPC's Motion to Compel was deemed to be moot. However that Order required the utility to state which specific documents do not exist in response to OPC's request for PODs, and granted OPC and Commission staff an additional three days to file their testimony without a concomitant extension for the utility.

On November 26, 2007, OPC filed its Motion to Compel KW Resort Utilities Corp. to Respond to OPC's First Set of Interrogatories and PODs and Second Set of Interrogatories and PODs; Motion for an Extension of Time to Prefile Testimony or Leave to File Supplemental Testimony (Motion). The Motion includes the ways in which OPC attempted to resolve the discovery dispute.

On November 27, 2007, the utility filed supplemental responses to Interrogatories 26(b), 34(e), and 34(f). On December 3, 2007, the utility filed its timely response to OPC's Motion. In its response, the utility provided a list detailing how it has attempted to facilitate OPC's discovery requests.

The utility notes that OPC's Motion to Compel concerns four requests for PODs out of 80 requests (plus numerous subparts), and that the utility has provided OPC approximately 8,503 pages. The utility notes that there have been well over 200 interrogatories, and that OPC's request only concerns 12 of those interrogatories or subparts. Also, the utility argues that OPC did not expeditiously use the depositions to either clarify information provided or gain responses for which OPC states it did not receive a response or states that the response is inadequate. The utility then goes on to respond to each of OPC's points in its Motion to Compel.

### I. OPC's Motion to Compel

#### A. OPC's First Set of Interrogatories and PODs

Under this section of OPC's Motion to Compel, the utility has divided its motion into the following three categories: 1. No Response; 2. Nondefinitive Response; and 3. Specific Interrogatories and PODs (where the response was inadequate). Each of the three categories are discussed below.

### 1. No Response

Under this category, OPC states that the utility has provided no response to Interrogatory 30(b):

Interrogatory 30(b): Green Fairways, Inc. For each client/company identified in (a),<sup>1</sup> please identify the revenue earned by Green Fairways, Inc. from this client/company for each of the years 2002, 2003, 2004, 2005, and 2006. (please include KWRU in your response).

Utility response: [No response -- while the utility provided a response to part (a) and (c) of this interrogatory, no response was provided for part (b)].

Utility's Supplemental Response: Documents responsive to this interrogatory are attached, consisting of "Income Statements of Green Fairways, Inc. Key West CC". The "Income" section lists the income from each source.<sup>2</sup>

In its Motion, OPC states that, although the utility has indicated that some additional information is forthcoming, as of November 26, 2007, the utility has not provided an answer to 30(b) and the requested information has not been provided. OPC requests that the Commission order the utility to respond immediately, and, in accordance with Order No. PSC-07-0851-PCO-SU, the utility should state if data does not exist or if the utility has an objection.

In its response, the utility states that the information was provided as a part of the November 20, 2007 supplemental production.

I find that the utility appears to have fully responded to Interrogatory 30(b) in its supplemental response filed on November 20, 2007

### 2. Nondefinitive Responses

OPC notes that in many of the utility's responses to interrogatories, the utility states that documents responsive to the interrogatory are being produced in response to OPC's POD Request. OPC argues that these vague references to documents do not constitute bona fide answers to interrogatories pursuant to Rule 1.340(c), Florida Rules of Civil Procedure.<sup>3</sup> OPC

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<sup>1</sup> Interrogatory (a) stated: Please identify all clients/companies for which Green Fairways, Inc. performed services during 2002, 2003, 2004, 2005, and 2006 and please describe the services performed by Green Fairways, Inc. for each client/company

<sup>2</sup> This supplemental response was filed on November 20, 2007.

<sup>3</sup> That rule states:

When the answer to an interrogatory may be derived or ascertained from the records of the party to whom the interrogatory is directed or from an examination, audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries is a sufficient answer. An answer shall be in sufficient detail to permit the

argues that it included instructions in its discovery request which further amplified the requirements of Rule 1.340(c)

OPC identified the following Interrogatories as being answered in the nondefinitive manner described above: 34(e) and (f), and 38. Each are discussed below:

a. Interrogatory 34(e)

Interrogatory 34 (e) states: Please provide the amount of EDU Commissions paid to each person, for each of the years 2003, 2004, 2005, and 2007.<sup>4</sup>

Utility Response: The documents will be produced in response to OPC's Document Request.

Utility's Supplemental Response: On November 27, 2007, the utility filed its supplemental response to this interrogatory, which appeared to be responsive, except there appears to be an ambiguity concerning the year 2004 -- although the year was listed, the utility left the amount blank.

In its Motion, OPC argues that the initial response of the utility was inadequate, and OPC did not know if or when it would receive this information. Therefore, OPC requests responsive answers. In its response the utility states that the information was provided on November 27, 2007.

I find that the information provided in the utility's supplemental response appears to be adequate, except there is an ambiguity for the year 2004. The utility shall state whether any commissions were paid to Mr. Carter for the year 2004. If commissions were paid, the amount paid shall be provided, if available, and, if not available, the utility shall so state. This response shall be filed by December 10, 2007.

b. Interrogatory 34(f)

Interrogatory 34(f) states: Please provide the amount of year-end bonuses paid for each of the years 2003, 2004, 2005, and 2007.

Utility Response: The documents will be produced in response to OPC's Document Request.

Utility's Supplemental Response: On November 27, 2007, the utility filed its supplemental response to this interrogatory, which appeared to be responsive, except there appears to be an ambiguity concerning the year 2003 -- although the year was listed, the utility left the amount blank.

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interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or shall identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced.

<sup>4</sup> This interrogatory was prefaced at the beginning as follows: For purposes of this request, please refer to Key West Golf Club Monthly Charges to KW Resort Utilities for the Year 2006 in Volume IV of the MFR:

In its Motion, OPC states that the initial response of the utility was inadequate, and OPC did not know if or when it would receive this information. Therefore, OPC requests responsive answers. In its response, the utility states that the information was provided on November 27, 2007.

I find that the information provided in the utility's supplemental response appears to be adequate, except there is an ambiguity for the year 2003. The utility shall state whether any bonuses were paid for the year 2003. If bonuses were paid, the amount paid shall be provided if available, and, if not available, the utility shall so state.

c. Interrogatory 38

Interrogatory 38 states: Please provide the status of the plant projects under construction and included in the Company's test year. This status should include, but not be limited to the following: a discussion of the status of the addition; the original estimated date of completion, the current estimated date of completion, and the actual date of completion, if applicable; the status of the engineering and permitting efforts, if the plant addition has not been through the bidding process; the actual cost to complete the addition, the amount expended as of September 2007 if the addition is not complete, and the current estimate of the completed cost of the addition; a statement if any of the pro forma plant is required by the Florida Department of Environmental Protection [DEP], and explain why it is required.

Utility Response: The documents will be produced in response to OPC's Document Request.

Utility's Supplemental Response: Documents responsive to this interrogatory (and Document Request No. 56), in the form of Change Orders from US Filter/Davco, are being copied and produced.

In its Motion, OPC argues that both the initial response and supplemental response of the utility are inadequate, and OPC does not know if or when it would receive this information. Therefore, OPC requests responsive answers. In its response, the utility states that the change orders were provided, as acknowledged by OPC on page 14 of its Motion.

As to the status of the advanced wastewater treatment (AWT) project and the refurbishments under that project, I find that the utility appears to have fully responded in its response to Interrogatory 56. For the estimated times for completion, the utility clarified at deposition that the plant improvement project would probably be completed from mid to late December, and indicated that the engineering and permitting efforts were complete. However, it is unclear as to: (1) what the amount expended through September 2007 was; and (2) what pro forma plant is required by DEP, and an explanation of how it is required. Therefore, the responses of the utility are inadequate, and it does not appear that the mere provision of Change Orders will fully respond to this interrogatory. The utility shall fully respond to this interrogatory by December 10, 2007.

### 3. Specific Interrogatories and PODs

OPC states that the utility has not adequately responded to the following interrogatory requests and POD requests listed in its first set of discovery, which responses were due on October 26, 2007: Interrogatories 7(f), 28(c), 33, 41(b), 49(a), 51, 57, 58(b), and POD 7. Each are discussed below:

#### (a) Interrogatory 7(f)

Interrogatory 7(f) states: For each non-utility and non-regulated affiliated company that provides services to the Company, state the total amount of costs charged (or allocated) to the Company by Uniform System of Accounts (USOA), for the years 2002, 2003, 2004, 2005, 2006, and each month of 2007.

Utility's Original Response: The answer to this question is within the information provided in response to Interrogatories 8, 9, and 11.

Utility's Supplemental Response: The answer to this question is within the information provided in response to Interrogatories 8, 9, and 11. These interrogatories specifically ask the same question, in greater detail, for the specific entities which would otherwise be included in this response.<sup>5</sup>

In its Motion, OPC notes that the utility's responses to Interrogatories 8 and 9 do not state the total amount of costs charged to the utility from each non-utility and non-regulated affiliated company that provides services to the utility. The utility's response to Interrogatory 8 is: "No costs are allocated. Amounts are either direct charged or are paid a flat rate for specific services." OPC further notes that 7(f) asked for "allocations or amounts **charged**" (emphasis by OPC) to the Company by USOA, and that, therefore, the response to Interrogatory 8 is not responsive to interrogatory 7(f). Further, OPC requests that if the information is not available in USOA format, it can be provided in the format nearest to the request.

OPC also notes that the response to Interrogatory 9 is: "Green Fairways, Inc., Key West Golf Course, and WS Utility, Inc. are not public utilities, nor are they regulated, so their books are not maintained by NARUC account number and no translation of accounts to NARUC has ever been performed." OPC states that the utility essentially refused to provide information as requested in this interrogatory because the affiliates do not follow the NARUC accounting system. Since no information was provided, OPC argues that the utility could not have responded to Interrogatory 7(f), which did not ask for the information in the NARUC accounting system as used by the affiliate, but according to the USOA used by the utility.

Finally, OPC notes that Interrogatory 11 provides charges from Keys Environmental, Inc.; however, the data provided only covers 2004, 2005, 2006, and 2007 to-date, and did not include the years 2002 and 2003 as requested.

In its response, the utility states that it attempts to answer the question asked. Since the non-regulated entities do not utilize the NARUC USOA, the utility cannot tell OPC from which NARUC account such charges originate. The utility states that it has fully responded to

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<sup>5</sup> Supplemental Response was dated November 20, 2007.

Interrogatories 8-13, and that these responses answer Interrogatory 7(f) to the fullest extent possible. The utility further argues that this is a classical example of information that could have been followed up on at either deposition or further discovery.

I find that the utility's responses to Interrogatories 8, 9, and 11 are not responsive to this interrogatory. Therefore, for all non-utility and non-regulated affiliated companies that provide services to the utility, KW Resort shall provide the total amount of costs charged (or allocated) to the utility by USOA (or nearest corresponding format) for the years 2002, 2003, 2004, 2005, 2006, and 2007 to-date. This information shall be provided by December 10, 2007.

b. Interrogatory 28(c)

Interrogatory 28 (c) states: For each entity identified in response to (a),<sup>6</sup> please indicate the amount of all compensation (including but not limited to salary, dividends, bonuses, and income) received by each Mr. Smith, for the years 2002, 2003, 2004, 2005 and 2006, stated separately.

Utility's Original Response: No response provided.

Utility's Supplemental Response 1: For almost all of these companies, there is no charge, directly or indirectly, to the County or any other entity, costs (expense or capital) to the utility. Mr. Smith has already provided a sworn statement to the PSC that his compensation from all sources is in excess of \$1 million per year, and has been in excess of \$1 million per year for all such years. The information is not being provided for any company which did not charge, directly or indirectly, to the County or any other entity, costs (expense or capital) to the utility. For Green Fairways, title and ownership interest is as set forth below. For KW, title and ownership interest is as set forth below. Mr. Bart Smith and Mr. Alexander Smith are owners and directors of WS. Mr. Bart Smith and Mr. Alex Smith each own 10% of WS. Mr. Alex Smith owns 3.5% of 900 Commerce. Mr. Bill Smith is an owner and provides leadership, expertise and management and administrative skills to the operation of the utility. Mr. Smith is an owner, partner, employee, stock holder, officer, director, secretary or treasure[r] in SHB, KWRU, Green Fairways, Bencia Partners, Courtland, CT., 900 Commerce. Rail Golf Club, Deer Creek Golf Club, S&K, Gulf County, Norcor Tradewinds and Norcor Caldwell, and Antioch Golf Club. Documents which reveal any [compensation] received by Mr. Smith which was charged to KW will be provided. As to Mr. Smith's involvement in the various other entities listed above, he does not maintain time records. Mr. Bart Smith and Mr. Alexander Smith only devote minimal time to WS.

Utility's Supplemental Response 2: This information is not within the possession and control of KW Resort Utilities, Corp. and is also to some extent, covered by the protective order granted in Order No. PSC-07-0851-PCO-SU.

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<sup>6</sup> Interrogatory 28(a) is in reference to William Smith, Bart Smith, and Alexander Smith, and states: Identify all companies, partnerships, sole proprietorships, corporations, that each Mr. Smith is an owner, partner, employee, stockholder, officer, director, secretary, or treasurer.

In its Motion, OPC notes that in its original response, the utility did not respond to this interrogatory. Also, in its first supplemental response, the utility stated that "Documents which reveal any [compensation] received by Mr. Smith which was charged to KW will be provided" but no such documents were provided. OPC also argues that the first supplemental response shows that the information is in the possession of Mr. Smith, who is the owner of the utility, and Mr. Smith can clearly make the requested information available. OPC believes the information is relevant and necessary to this proceeding because it will help determine if the fees charged to the utility by Mr. Smith are reflective of the time he might spend conducting utility business. Mr. Smith does not keep time records, so there is no objective way to establish reasonable compensation based upon the time spent conducting utility business. Therefore, OPC seeks the requested information to assist in determining reasonable compensation and time spent conducting utility business, and requests that the information be provided.

In its response, the utility states that as regards Mr. Smith's compensation, the information has been provided and that Mr. Smith has now been deposed.

I find that the utility appears to have adequately responded to this interrogatory for Bill Smith, but not for Bart and Alex Smith. Bart and Alex Smith have a ten percent ownership interest in WS Utility, Inc., which owns the utility, and the compensation they receive through this entity should be available. Therefore, the utility shall provide by December 10, 2007, all compensation received by them for their ownership interest in WS Utility, Inc.

(b) Interrogatory 33

Interrogatory 33 states: Provide the analogous information depicted on the page entitled "Key West Golf Club Administrative Fees Charged on a Monthly Basis to KW Resort Utilities Corp." for each year 2003, 2004, and 2005, and 2007. This document is contained in Volume IV of the MFRs for 2006.

Utility Response: The documents will be produced in response to OPC's Document Request.

Utility Supplemental Response: The documents are being copied and will be produced.

In its Motion, OPC states that, although the utility has indicated in its most recent correspondence with OPC<sup>7</sup> that some additional information is forthcoming, the requested information has not been provided, and OPC does not know if and when it will receive this information. Unless the document actually depicts the information requested, OPC asks that the utility be ordered to provide the information as requested.

The utility did not address this Interrogatory in its response, but in its supplemental response provided on November 20, 2007, the utility stated: "The documents are being copied and will be produced."

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<sup>7</sup> Letter from John L. Wharton to Steve Burgess, dated November 20, 2007.



I find that this is the exact same information provided by the utility for 2006 in Volume IV of the MFRs and shall be provided by December 10, 2007.

(c) Interrogatory 41 (b):

Interrogatory 41(b) states: Please provide all documents, receipts, etc., which support the amount of cash draws from petty cash as described in footnote (2).

Utility Response: See KWGC monthly bills.

Utility Supplemental Response: Documents related to services provided by Teo Gonzales have been provided in response to Audit Request No. 4, which has been provided with OPC's Document Requests. Documents further responsive to this Interrogatory are being produced, in the form of cash register receipts for the various activities utilizing petty cash, and will be provided.

In its Motion, OPC states that no bills for Key West Golf Course were provided with the response to the Interrogatory, nor did the Company indicate the location of the Key West Golf Course bills in its initial response. Although OPC has received Audit Request No. 4, not all the requested information has been provided. The Company has indicated in its most recent correspondence with OPC that some additional information is forthcoming. However, OPC does not know if or when it will receive this information. The utility's correspondence did not specifically identify where it was providing additional information.

In its response, the utility states that this information was conveyed to OPC in response to POD Request No. 6, which was provided on November 1, 2007.

I find that the documents produced in accordance with POD Request No. 6 and Audit request No. 4 do not fully respond to this interrogatory. The utility shall fully respond to this interrogatory by December 10, 2007.

(e) Interrogatory 49 (a):

Interrogatory 49(a) states: Please explain in detail why Chemical Expenses increased from \$3,773 in October to \$7,152 in November and to \$11,906 in December.

Utility Response: Our accountants did not break our supplies out of the "Chemical and Supply" categories. Please see 18 (c) for chemical amounts.

Utility's Supplemental Response: Included in the General Ledger account 01010000-Chemicals and Supplies are supplies other than chemicals. Invoices showing chemicals purchases have been provided in response to Interrogatory 18(c).

In its Motion, OPC states that neither the original nor the supplemental response explained the increase. If the utility does not know the reason for the increase, it should so state.

In its response, again, the utility states that OPC could have inquired at deposition as to why these expenses had increased, but did not do so. The utility responds that as it continues the

conversion to AWT, chemical expenses have been increasing through the latter half of 2006 and 2007.

I find that the utility indicates that there has been a misclassification of supplies into the Chemical Expense account, and so Chemical Expense was inflated in error. If the utility can correct this error, it shall do so. The utility shall advise OPC by December 10, 2007, whether it can correct the error, and, if so, what the amount of the error was. However, other than the above, the utility appears to have satisfactorily responded to this interrogatory.

(f) Interrogatory 51:

Interrogatory 51 states: Please describe and provide the dollar amount of each capital addition made to the Company's wastewater system and included in rate base, which was constructed by or purchased from an affiliated Company since the Company's last full rate case before the Florida Public Service Commission. For each capital addition, please identify the affiliate that the addition was constructed by or purchased from.

Utility Response: From 1998 forward, the information may be gleaned from the documents provided in response to the audit. For 1983-1998, please see attached.

Utility's Supplemental Response: As discussed in Interrogatory No. 7g, Green Fairways provides construction management services. No assets have been directly purchased from or constructed by Green Fairways, but construction management services have been discussed elsewhere in these Interrogatories.

As discussed in Interrogatory No. 2, and elsewhere within these Interrogatories, the Company purchased a generator from 900 Commerce.

In its Motion, OPC states that the utility has not answered the question as asked. It has not identified the dollar amount of each capital addition to the rate base, which was constructed by or purchased from an affiliated Company since the Company's last full rate case before the Florida Public Service Commission. If the cost from an affiliate has been included in rate base as a capital addition, the amounts should be identified as requested. The utility should also be instructed to identify where it believes other responsive information has been provided, not state that it has been provided "elsewhere."

In its response, the utility states that Green Fairways charged for construction management as provide for in the contracts with Monroe County, to wit: Monroe County Detention Facility \$32,198; South Stock Island Expansion \$242,007; Collection System Expansion \$12,370. All such costs are capitalized. As overhead activity, the specific assets identifiable to the projects were charged with these costs.

I find that for the years 1983 through 1997, it appears that the utility has adequately responded. Because the utility was not purchased by the current owners until 1998, the request as to affiliate companies would not be applicable prior to 1998. Also, with this response, the utility has apparently adequately responded as to Green Fairways. However, the utility has not responded as to the other companies and has only addressed the purchase of the generator from

900 Commerce, but does not say if that was the only dealings it had with that company. Also, the utility says this information can be gleaned from the audit. However, a review of the audit shows that it is not responsive. Therefore, for the time period 1998 to the present, the utility shall state whether any capital additions included in rate base were either constructed by or purchased from any other affiliate company, and, if so, state the dollar amount.

(g) Interrogatory 57:

Interrogatory 57 states: For purposes of this request please refer to the testimony of Mr. Smith, pages 3 and 4. Please provide a detailed discussion of the status of the refurbishment of the existing wastewater treatment facilities including updated cost estimates.

Utility Response: KWRU is in the midst of the AWT upgrade and expects to be complete by Jan 1, 2008.

Utility Supplemental Response: KWRU is in the midst of the AWT upgrade and expects to be complete by Jan, 2008. See Interrogatories No. 38 and 56.

In its Motion, OPC states that in the utility's supplemental response, the utility first refers to Interrogatory 38. In its supplemental response to Interrogatory 38, the utility stated: "Documents responsive to this Interrogatory (and Document Request No. 56), in the form of Change Orders from US Filter/Davco, are being copied and will be produced." In its response to Interrogatory 56, the utility stated: "AWT project is scheduled to be complete Jan 1 2008, at a cost of \$1,204,600 extras to original contract (\$984,600) is approx. \$220000, which includes \$100,000 in extra steel, \$100,000 extra sludge hauling and \$20,000 for demobilization. Also see attached."

OPC states that the attachment provided in response to Interrogatory 56 contained documents supporting four change orders totaling \$139,470. Therefore, OPC states that the responses do not contain a discussion of the status of the project in the detail requested in Interrogatories 38, 56, and 57, and the utility's answer is non-responsive.

In its response, the utility states that the change orders do set forth the status of the project. Further, the utility argues that this is just an answer with which OPC is not satisfied, and one that could have been delved into more deeply at deposition.

I find that the utility appears to have satisfactorily responded to this interrogatory. However, the utility states that there is approximately \$220,000 in overages, but only provides change orders totaling \$139,470. The utility shall explain, if able, why there is an approximate \$81,000 difference by December 10, 2007.

(h) Interrogatory 58(b):

Interrogatory 58(b) states: Describe and quantify all cost savings resulting from the resleeving and explain and show where these cost savings are reflected in the rate case.

Utility Response: Electrical and chemical costs will be lower since we are treating less waste water, however KWRU expenses will definitely increase when we start treating to advanced wastewater treatment levels.

Utility Supplemental Response: Electrical and chemical costs will be lower since we are treating less wastewater, however KWRU expenses will definitely increase when we start treating to advanced wastewater treatment levels and for the additional customers which will begin receiving service as a result of Code Enforcement.

In its Motion, OPC states that in neither its original nor its supplemental response did the utility quantify any cost savings or submit a statement to the effect that the cost savings cannot be quantified. Therefore, the utility's answer is nonresponsive.

In its response, the utility states that the answer is responsive and could have been delved into at deposition. However, in further response, the utility states that no cost saving analysis was performed by the utility because AWT conversion is a requirement of Monroe County, and it is environmental concerns rather than cost savings which is the driving force.

I find that, with this response, the utility has apparently satisfactorily responded to this interrogatory.

(i) POD 7:

POD 7 states: Please provide all current contracts (including all attachments and amendments) between the Company and outside independent contractors for 2005, 2006, and 2007.

Utility Response: The documents will be produced to the extent they exist.

Utility Supplemental Response: The requested documents were provided in response to PSC Audit Requests No. 5 and No. 8, which have been provided with Document Request No. 50.

In its Motion, OPC states that the agreement with Weiler Engineering is provided in Audit Request 5, and the Agreement with Keys Environmental is provided in Audit Requests 8 and 4. No other agreements are identified in Audit Request 5 and 8, and several other independent contractor relationships exist, according to the utility's MFRs and general ledger transactions. The utility should be required to provide the agreements by independent contractor for the years 2005, 2006, and 2007. In an instance where an agreement has been provided in response to another discovery request, the utility should identify the contractor and the specific location of the agreement. Although the utility has indicated in its most recent correspondence with OPC that some additional information is forthcoming, OPC does not know if or when it will receive this information.

In its response, the utility states that it has produced documents responsive to this request, and states that if OPC believes other documents exist, it should so specify.

I find that while this POD request may be inartfully stated using the word “current” at the beginning of the request, it appears that the OPC is requesting all contracts with independent contractors for 2005, 2006 and 2007. The utility has apparently provided the contracts with Weiler Engineering and Keys Environmental, Inc., and yet there appears to be other contractors. Therefore, the utility shall provide those contracts as requested by OPC by December 10, 2007.

B. OPC’s Second Set of Interrogatories and PODs

For the Second Set of Interrogatories and PODs, OPC did not break its Motion to Compel into separate categories, but merely listed the two interrogatories and three PODs where it argued that the responses were inadequate. The two interrogatories were Interrogatory No 77 and interrogatory 78(b). The three PODs were POD 68, 73, and 75. All five are discussed below:

1. Interrogatory 77:

Interrogatory 77 states: With respect to costs charged to the Company by Johnson Constructors, please provide the following information for 2004, 2005, 2006, and for each month of 2007: the total dollars charged to the Company by NARUC account number and name.

Utility Response: On October 27, 2006 KWRU paid \$34,408.80 directly to Johnson Constructors on an invoice to Green Fairways for work performed for the Utility. The check, payable to both Green Fairways and Johnson Constructors is attached. There have been no other direct charges by Johnson Constructors to KWRU or payment by KWRU to Johnson Constructors.

Utility Supplemental Response: On October 27, 2006 KWRU paid \$34,408.80 directly to Johnson Constructors on an invoice to Green Fairways for work performed for the Utility. The check, payable to both Green Fairways and Johnson Constructors has been previously provided. There have been no other direct charges by Johnson Constructors to KWRU or payment by KWRU to Johnson Constructors.

In its Motion, OPC states that in neither the original or supplemental response did the utility provide the NARUC account number and name charged. Also the attachment was not included in the response to the interrogatory as indicated.

In its response, the utility believes that it has fully responded to this interrogatory, and that its records show that the check (Attachment) was attached. The utility further states that another copy of the check will be provided, and argues that this was again an area that could have been delved into at deposition or through further discovery requests.

I find that, by December 10, 2007, the utility shall provide the attachment, and the NARUC account number and name charged if it has that information. If it does not have that information, it should so state.

2. Interrogatory 78(b):

Interrogatory 78(b): By month state the amount paid to the Company by Monroe County (including amounts withdrawn from escrow accounts or similar accounts) in connection with construction of the South Stock Island Project.

Utility Response: See Audit Request No. 14

Utility Supplemental Response: See Audit Request No. 14

In its Motion, OPC states that Audit Request 14 does not provide the monthly amounts paid to the utility by Monroe County in connection with the construction of the Stock Island Project. A review of Audit Request No. 14 shows that it provides the contributions provided by customers, and does not answer OPC's interrogatory. Therefore, OPC requests that the utility be required to respond specifically to this interrogatory.

In its response, the utility states that the amounts paid to KW Resort by Monroe County is reflected in the various documents, and the response to Audit Request No. 14, all of which have already been provided.

I find that, by December 10, 2007, the utility shall clarify whether the contributions provided by the customers equals the amounts paid to the utility by Monroe County, and, if not, provide the amounts as originally requested.

3. POD 68:

POD 68: Provide a copy of all journal entries and associated vouchers that reflect the recording of all property, plant, and equipment conveyed to the Company by Monroe County.

Utility Response: The documents will be produced to the extent they exist.

Supplemental Response: Provided in Audit Request 3(d).

In its Motion, OPC states that although the utility has indicated in its most recent correspondence with OPC that some additional information is forthcoming, the requested information has not been provided. Audit Request 3(d) does not contain information regarding property, plant, and equipment conveyed to the utility from Monroe County, and is not responsive to OPC's request. OPC also states that a review of Audit Request No. 14 shows that it does not answer OPC's interrogatory, and requests that the utility be required to respond specifically to this request. In its response, the utility responds that to the extent the documents exist, they have been provided.

I find that Audit Request 3(d) does not appear to be fully responsive to this request. Therefore, by December 10, 2007, the utility shall fully respond to this POD request.

4. POD 73:

POD 73: Please provide a copy of all contracts between and among Johnson Constructors, Keys Environmental, KWRU and its affiliates.

Utility Response: The documents will be produced to the extent they exist.

Utility Supplemental Response: See document request number 7.

In its Motion, OPC notes that the utility, in its supplemental response to POD 7, states that: "The requested documents were provided in response to PSC Audit Requests No. 5 and No. 8, which have been provided with Document Request No. 50." OPC acknowledges that the utility provided its agreement with Weiler Engineering as part of its response to Audit Request No. 5, and that the utility provided its agreement with Keys Environmental and AirVac in response to Audit Request No. 4. The amendment to the Keys Environmental agreement is produced in Audit Request No. 8. No agreement with Johnson Constructors has been provided.

Other than those documents noted, OPC states that the utility has not apparently provided any other contracts with its other affiliates, or among its affiliates. OPC then requests that the utility be required to either provide those contracts or state that no such contracts exist.

In its response, the utility states that to the extent the documents exist, they have been provided, and again states that this matter could easily have been addressed at the deposition.

I find that, by December 10, 2007, the utility shall either provide all contracts within its control, state that there are no other such contracts, or state why those contracts cannot be produced.

5. POD 75:

POD 75: Please provide a copy of all written responses and attachments (where available) to these PODs in electronic format.

Utility Response: The documents will be produced to the extent they exist.

Utility Supplemental Response: See response to Interrogatory No. 75.

In its Motion, OPC states that, originally, the utility responded to Interrogatory No. 75 by stating: "This question would more properly be asked as a request to produce. Regardless, these documents have not at this time been scanned." In addition, the supplemental answer is: "This question would more properly be asked as a request to produce. Regardless, all such documents that exist in electronic form have been provided in response to Document Request No. 1." In preparing its responses, it is perfectly clear that the Company uses electronic means of preparing and storing documents. All OPC is requesting is that those documents be provided in its original electronic form, i.e. electronic word processing documents, spreadsheets, etc.

In its response, the utility states that, though OPC notes that the utility obviously uses electronic means, OPC does not provide any specific information on which documents it believes to exist in electronic format. The utility argues that it is under no duty to create documents to

respond to OPC's POD requests, and states that if the documents existed and were available, they were produced.

I find that, although the utility is not under any obligation to create documents, it appears that OPC is only requesting those documents which already exist in electronic format. Therefore, by December 10, 2007, the utility shall provide those documents that exist in electronic format, i.e., word processing documents, spreadsheets, etc.

C. Failure to Provide Affidavits or Identify the Persons Responsible for Responding to the Interrogatories

OPC argues that Rule 1.340(a), Florida Rules of Civil Procedure, requires that each interrogatory not objected to "shall be answered separately and fully in writing under oath."<sup>8</sup> OPC also states that it specifically requested that the utility identify the persons responsible for responding to the interrogatories. Yet, despite repeated requests, OPC states that the utility has done neither. Therefore, OPC requests that the utility be required to file both the required affidavits and identify the persons responsible for responding to the interrogatories.

The utility states that affidavits covering all three sets of interrogatories will be provided to OPC on December 3, 2007. Further, it states that Mr. Smith signed the interrogatories for sets 1 and 2, and Mr. Carter signed for interrogatory set 3, and that they could have been asked questions about the interrogatories at deposition.

The utility further notes that OPC was authorized 300 interrogatories, and could have easily asked which person responded to which interrogatory. The utility notes that Professor Trawick, in his Florida Practice and Procedure treatise, and the Florida Supreme Court, in their standard interrogatory forms in the Civil Rules, routinely include separate interrogatories in which the individual answering the interrogatories is requested to be revealed. The utility argues that it is not constrained by the instructions contained in OPC's interrogatory request, and that "to try to sneak in additional interrogatories, or interrogatory subparts, in the form of instructions is not consistent with the Uniform Rules or the Florida Rules of Civil Procedure." Despite this, the utility states that on several occasions it provided the names of the four individuals who had worked on the interrogatory requests to OPC, and that OPC could have inquired at deposition.

It appears that the affidavits were provided on December 3, 2007. If not, the utility shall provide, by December 10, 2007, the required affidavits. Further, I find that the utility shall identify the persons responsible for responding to the interrogatories, and, if OPC approaches its limit of 300 interrogatories, the utility may then argue whether identification of the responders should be counted as separate interrogatories.

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<sup>8</sup> This is requirement is fulfilled by filing an affidavit.



D. Failure of the Utility to Comply with Order No. PSC-07-0729-PCO-SU Requiring the Use of Bates Stamps or Other Equivalent Method

OPC argues that Order No. PSC-07-0729-PCO-SU, the Order Establishing Procedure, states:

Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number their produced documents in an unbroken sequence through the final hearing. required

Although OPC does not request that the utility go back and number the thousands of pages produced, it wants the Commission to be aware that the utility's lack of attention to detail will cause additional costs to both OPC and staff in their preparation for depositions and hearing. OPC only requests that the utility be required "to properly respond to all future discovery issued by the Citizens and the Staff and to appropriately paginate the pages."

The utility states that it offered to come to OPC's office and number each and every page produced. The utility further argues that OPC has not shown how it has been prejudiced.

I find that the utility shall appropriately paginate the pages in all future discovery requests.

E. OPC's Request for Day for Day Extension on the Prefiling of Its Testimony or Leave to File Supplemental Testimony

In the Conclusion of its Motion, OPC requests that it be granted a day for day extension on the prefiling of its testimony or that it be granted leave to file supplemental testimony. However, no other specific argument was made on this request.

The utility argues that this small company has had to respond to voluminous discovery, and that it has strived to be cooperative and respond to the discovery to the best of its ability. Therefore, the utility argues that OPC's requested relief for either additional time or that it be allowed to file supplemental testimony is not appropriate.

The response to OPC's First Set of Interrogatories was due on October 26, 2007, and the utility did file its responses on that date. However, as of December 3, 2007, it appears that the utility has failed to adequately respond to several interrogatories as discussed earlier in this Order. Also, the First Set of PODs were due on October 26, 2007, but were not received by OPC until November 6, 2007. Based on this delay, OPC and staff were granted an extension of three days in which to prefile its testimony, without a concomitant increase for the utility. It now appears that the utility has still not adequately responded to POD Request No 7 as of December 3, 2007. Also, as of December 3, 2007, it appears that the utility has not adequately responded to several requests from OPC's second set of discovery.

Based on the utility's delay in responding to these discovery requests, I find that OPC and staff shall be afforded another seven days in which to prefile their testimony. Also, I note that, because of the Christmas and New Year's holiday, I originally gave the utility a generous

twenty-five days in which to prefile its rebuttal testimony. With its further delay on the discovery matters noted in this Order, the utility shall again not be granted a concomitant extension of time in which to prefile its rebuttal testimony. Its rebuttal testimony shall still be due on January 15, 2007, which is 29 days after OPC's testimony is due, and 15 days after staff's testimony is due. This is adequate time for the utility to prepare rebuttal testimony.

In an alternative Motion, OPC requests that it be allowed to file supplemental testimony. Because OPC has been granted a seven-day extension to file its testimony, this alternative request is denied.

Controlling Dates

Based on all the above, the following controlling dates shall govern this matter:

- |  |                    |
|--|--------------------|
| (1) Intervenors' testimony and exhibits    | December 17, 2007  |
| (2) Staff's testimony and exhibits, if any | December 31, 2007  |
| (3) Rebuttal testimony and exhibits        | January 15, 2008   |
| (4) Prehearing Statements                  | January 16, 2008   |
| (5) Prehearing Conference                  | January 24, 2008   |
| (6) Discovery deadline                     | January 30, 2008   |
| (7) Hearing                                | February 6-7, 2008 |
| (8) Briefs                                 | February 28, 2008  |

Based on the foregoing, it is

ORDERED by Commissioner Nancy Argenziano, as Prehearing Officer, that the Office of Public Counsel's Motion to Compel KW Resort Utilities Corp. to Respond to its discovery requests is granted in part and denied in part as discussed in the body of this Order. It is further

ORDERED that for all discovery requests for which the Office of Public Counsel's Motion to Compel is granted, the utility shall respond by December 10, 2007.

ORDERED that the Office of Public Counsel's Request for Extension of Time to File Prefiled Direct Testimony is granted in part and denied in part as set forth in the body of this Order. It is further

ORDERED that the Office of Public Counsel's motion to file supplemental testimony is denied as set forth in the body of this Order. It is further

ORDERED that the revised controlling dates set forth in the body of this Order shall govern this matter. It is further

ORDERED that all other aspects of Order No. PSC-07-0729-PCO-SU are hereby reaffirmed.

By ORDER of Commissioner Nancy Argenziano, as Prehearing Officer, this 5th day of December, 2007.



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NANCY ARGENZIANO  
Commissioner and Prehearing Officer

( S E A L )

RRJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.