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# Public Service Commission

December 19, 2007

Mr. John Wharton  
Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301

In re: Docket 070293-SU, November 16, 2007 request for confidential classification by KW Resort Utilities Corp's for certain audit working papers prepared during audit titled "K W Resort Utilities Corp File and Suspend Rate Case as of December 31, 2006", Audit Control No. 07-233-4-1, Documents numbered 09828-07 and 10343-07

Dear Mr. Wharton:

We have read the November 16, 2007, request for confidential classification and find the following three perceived deficiencies:

1. Minutes of the Annual Meeting of Board of Directors (Working Paper No. 8, 2 pages)  
All lines

Section 367.156(3), Florida Statutes, provides that material granted a confidential classification (1) must be private and not released to the public and (2) its release must cause harm to the ratepayers or the person's or the company's business operations.

The utility has requested that the identity of its directors and officers be granted a confidential classification. This information is reported publicly to the Florida Division of Corporations within the Office of the Florida Secretary of State in the corporation's annual report. Companies have been reporting this information to the public for many years. Because this information is public, it is not eligible for a confidential classification. Further since this type of information has been public for a long period, it does not appear that release of the names of corporate directors and officers will cause the harm the utility alleges.

Secondly, the release of the general information concerning when and where the Board of Director's meeting was held does not appear to cause the harm the utility suggests.

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2. Review of Federal Tax Returns (Work Paper No. 20-3, 1 page)  
Unnumbered information blocks 2,3,5,6,8,and 9

The "Review of Federal Tax Returns" presents an analysis prepared by the staff auditor to ensure the utility has retained an investment in its plant based upon reported balances in its tax returns. The "Review of Federal Tax Returns" analysis is reported in 9 unnumbered blocks of information and reports tax return information, utility "per book" account information and analytical calculations. Three of these blocks (1, 4 and 7) report information from the tax returns and staff agrees with the utility that this information qualifies for a confidential classification.

However, 3 blocks of information (2, 5, and 8) report utility plant and CIAC balances from the utility's public annual report to the Commission and are presented in the utility's public request for a rate increase. Since this information is public, it is not eligible for a confidential classification.

Also, 3 blocks of information (3, 6, and 9) report the staff auditor's assessment of the appropriate level of plant investment. Staff's evaluation of the utility's investment in its plant will not cause the harm the utility suggests. The information pertains to the process of rate-making for a regulated monopoly and therefore does not pertain to either a competitive business or a contract. Further since the utility publicly reports its level of plant investment in its request for a rate increase, it reasonably follows that publicly reporting the level of utility's investment found by the Commission would not cause harm.

3. KEI Statement of Income and Expenses (Work Paper No. 43-1/2-4, 2 Pages)

KEI (Keys Environmental) is a related party which performs utility services including daily operations and other work for the regulated utility. The utility asserts release of the financial records of this related party vendor should qualify for a confidential classification.

Section 367.156(1), Florida Statutes, provides that the Commission shall "have reasonable access to all utility records and records of affiliated parties, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize non utility activities. . . ." (emphasis added.)

In March 1982, the Financial Accounting Standards Board issued Statement 57 and concluded related parties consist of all affiliates of an enterprise, including (1) its management and their immediate families, (2) its principal owners and their immediate families, ... and (5) any party that may or does, deal with the enterprise and has ownership, control, or significant influence over the management or operating policies of another party to the extent that an arms length transaction may not be achieved.

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When services are performed directly by the utility, costs can be accurately determined and assessed to include identifying all direct and indirect costs and identifying how costs are allocated between the utility and any non utility operations. Because a significant part of this utility's reported costs are charged to the utility by a related party vendor, staff audited KEI's costs to ensure these transactions were priced fairly. Thus, staff's rate case investigation included obtaining financial records from KEI, a related party.

Examining KEI's records reveals that the cost of providing services to the regulated utility are commingled with other business activities. While staff was willing to protect KEI's non-regulated other business costs, the KEI's financial records do not allow such an action. Utility and non-utility costs are commingled on KEI's books such that the staff auditor was not able to identify the separate utility service costs and the separate non-utility costs.

Staff has reviewed the records of hundreds of water utility systems, and based upon that public record and based upon other public information, the costs of operating a utility can be reasonably estimated such that the release of costs of operating a utility would not cause harm.

Rule 25-22.006(4)(e), Florida Administrative Code, provides the burden of proof that information is eligible for a confidential classification rests with the utility. Other than proclaiming the financial information is eligible for a confidential classification, the utility offers no other justification why the material is sensitive. Because the utility does not fully explain and justify why the commingled summary financial information concerning KEI's combined regulated and non utility operations should be granted a confidential classification, staff would recommend that this information be denied a confidential classification.

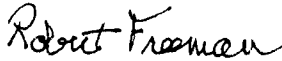
### **Response to Perceived Deficiencies**

In response to these perceived deficiencies, if the utility wishes to modify its November 16, 2007, request for confidential classification or provide additional justification, it should do so by January 3, 2008.

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If you have any technical questions, please contact Robert Freeman at 850-413-6485 or email [bfreeman@psc.state.fl.us](mailto:bfreeman@psc.state.fl.us). If you have any procedural questions regarding this request, or if you would like to talk to the staff attorney assigned to this case, please call Ralph Jaeger, at 850-413-6234 or email: [rjaeger@psc.state.fl.us](mailto:rjaeger@psc.state.fl.us).

Sincerely,



Robert Freeman  
Senior Government Analyst  
Confidential Documents Coordinator  
Bureau of Auditing

CC: Office of General Counsel (Jaeger)  
Office of Commission Clerk (Lockhard)  
Bureau of Auditing (Vandiver, Welch)