

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of billing practices of
KW Resort Utilities Corp. in Monroe County

Docket No.: **20170086-SU**

**KW RESORT UTILITIES CORP.'S NOTICE OF FILING
OF DIRECT TESTIMONY OF CHRISTOPHER A. JOHNSON**

KW RESORT UTILITIES CORP., a Florida corporation, by and through undersigned
counsel, hereby files the Direct Testimony of Christopher A. Johnson.

Respectfully submitted,

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/s/ Barton W. Smith
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and

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/s/ Martin S. Friedman
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FL Bar No.: 199060

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

E-Mail to the following parties this 4th day of June, 2019:

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Respectfully submitted,

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

Docket No. 20170086-SU

DIRECT TESTIMONY
OF
CHRISTOPHER A. JOHNSON
on behalf of
K W Resort Utilities Corp.

1 **Q. Please state your name, profession, and business address.**

2 A. My name is Christopher A. Johnson. I am President of K W Resort Utilities Corp.
3 My business address is 6630 Front Street, Key West, Florida 33040.

4 **Q. How long have you been employed as President of K W Resort Utilities Corp.**
5 **(“KWRU” or “Utility”)?**

6 A. I have been President of KWRU since mid-2009.

7 **Q. State briefly your educational background and experience.**

8 A. Please see resume attached as Exhibit CAJ-1.

9 **Q. Have you previously appeared and presented testimony before any regulatory**
10 **bodies?**

11 A. I have prepared and presented testimony before the Florida Public Service
12 Commission in KWRU’s last two rate cases. I have also testified before the Division
13 of Administrative Hearings in the Last Stand protest of the DEP’s intent to issue a
14 modification of KWRU’s wastewater permit to allow the construction of the plant
15 expansion.

16 **Q. On whose behalf are you presenting this testimony?**

17 A. I am presenting this testimony and appearing on behalf of KWRU.

18 **Q. What is the purpose of your direct testimony?**

19 A. The purpose of my direct testimony is to address the billing issues raised and to
20 provide supporting documentation and testimony to show the steps and refunds that
21 KWRU has taken to resolve these matters.

22 **Q. Are you sponsoring any exhibits?**

23 A. Yes, I am sponsoring 11 exhibits.

- 1 • Exhibit CAJ-1 lists my education and experience;
- 2 • Exhibit CAJ-2 contains the KWRU Response dated January 30, 2018 to PSC
- 3 Audit Report Exhibit, which also includes the KWRU Response dated March
- 4 21, 2016;
- 5 • Exhibit CAJ-3 contains the PSC Audit Report dated September 5, 2017;
- 6 • Exhibit CAJ-4 contains the Flagler Village refund Check #5306;
- 7 • Exhibit CAJ-5 contains the Meridian West refund Check #5307;
- 8 • Exhibit CAJ-6 contains the Banyan Grove refund Check #5308;
- 9 • Exhibit CAJ-7 contains the PAA Order (PSC-2018-0444-PAA-SU) dated
- 10 August 31, 2018;
- 11 • Exhibit CAJ-8 contains the KWRU and Sunset Marina Settlement Agreement
- 12 and Release;
- 13 • Exhibit CAJ-9 contains the KWRU and Safe Harbor Marina Settlement
- 14 Agreement and Release;
- 15 • Exhibit CAJ-10 contains the Stipulation and Settlement Agreement with OPC
- 16 concerning Water's Edge and Fourth Ave., LLC, executed on May 17, 2019;
- 17 • Exhibit CAJ-11 contains the Joint Motion of KWRU and OPC For Approval
- 18 of Stipulation and Settlement concerning Water's Edge and Fourth Ave.,
- 19 LLC, dated and filed on May 17, 2019.

20 **Q. Were these exhibits prepared by you and your staff?**

21 A. Yes, they were.

22 **Q. What steps has KWRU undertaken in regards to this matter?**

23 A. On April 6, 2017, KWRU proactively issued three refunds to Flagler Village, Banyan

1 Grove, and Meridian West, respectively. The Utility, in its response (Exhibit CAJ-
2 2) to the PSC Audit Report (Exhibit CAJ-3), pointed out that the refunds to these
3 three customers were previously made by KWRU and included the appropriate
4 interest.

5 **Q. Please describe the steps taken in refunding Flagler Village.**

6 A. KWRU recognized an unintentional billing error was made for Flagler Village. To
7 remedy this, on April 6, 2017, KWRU sent a Certified Letter with Check #5306 in
8 the amount of \$43,402.79 (Exhibit CAJ-4). This amount represented all
9 overpayment, with interest applied, as per Public Service Commission (“PSC”)
10 Rules.

11 **Q. Please describe the steps taken in refunding Meridian West.**

12 A. KWRU recognized an unintentional billing error was made for Meridian West. To
13 remedy this, on April 6, 2017, KWRU sent a Certified Letter with Check #5307 in
14 the amount of \$72,701.12 (Exhibit CAJ-5). This amount represented all
15 overpayment, with interest applied, as per PSC Rules.

16 **Q. Please describe the steps taken in refunding Banyan Grove.**

17 A. KWRU recognized an unintentional billing error was made for Banyan Grove. To
18 remedy this, on April 6, 2017, KWRU sent a Certified Letter with Check #5308 in
19 the amount of \$25,512.91 (Exhibit CAJ-6). This amount represented all
20 overpayment, with interest applied, as per PSC Rules.

21 **Q. Describe the circumstances that led to how KWRU resolved the billing issue for
22 Sunset Marina, LLC.**

23 A. The PAA Order (PSC-2018-0444-PAA-SU) (Exhibit CAJ-7) recommended a refund

1 to Sunset Marina. While KWRU believed that Sunset Marina was being billed in
2 accordance with its tariff, KWRU proactively reached out to Sunset Marina in an
3 effort to bring resolution to the matter. KWRU and Sunset Marina agreed to a
4 Settlement Agreement and Release (“Sunset Marina Agreement”) (Exhibit CAJ-8).

5 **Q. When was this agreement was entered into?**

6 A. The Sunset Marina Agreement was executed on October 23, 2018.

7 **Q. Describe the nature of the Sunset Marina Agreement.**

8 A. Under the Sunset Marina Agreement, KWRU agreed to pay \$41,034.00 to Sunset
9 Marina for any unintentional over-billing. Further, the Agreement stipulates that
10 Sunset Marina will provide KWRU with a release of all claims or potential claims
11 with regard to monthly fees for Service related to this matter.

12 **Q. Describe the circumstances and resolution of the billing issue with Safe Harbor
13 Marina.**

14 A. KWRU had been in dispute resolution with Safe Harbor Marina for a significant
15 period of time prior to the PSC issuing its PAA Order (Exhibit CAJ-7, cited above)
16 on August 31, 2018. This dispute resolution concerned Safe Harbor Marina
17 disagreeing with the Additional Capacity Fees owed due to its redevelopment, as
18 well as KWRU’s monthly fees for Service.

19 **Q. Has this matter between KWRU and Safe Harbor Marina been resolved?**

20 A. Yes. The matter was resolved as both parties agreed to a Settlement Agreement and
21 Release (“Safe Harbor Marina Agreement”) (Exhibit CAJ-9).

22 **Q. When was the Safe Harbor Marina Agreement entered into?**

23 A. This agreement was executed on May 12, 2016.

1 **Q. Describe the nature of the Safe Harbor Marina Agreement.**

2 A. The agreement resolved the parties' disputes as to the appropriate amount of Service
3 Availability Fees and Charges, as well as resolving all invoices for prior wastewater
4 service. Safe Harbour Marina, LLC, agreed to provide compensation of \$44,978.91
5 to KWRU for the Service Availability Fees and Charges and Safe Harbor duly settled
6 all prior wastewater service invoices. Per the agreement, Safe Harbor Marina made
7 payment of \$44,978.91 and released, settled, and discharged any and all claims,
8 costs, or expenses relating to Service Availability Fees and Charges due to KWRU
9 and invoices for prior wastewater service, including present and past claims or
10 potential claims that Safe Harbor had prior to or on the date of settlement, known or
11 unknown, foreseen or unforeseen, suspected or unsuspected. By mutual agreement,
12 all matters were settled and there has not been an issue between KWRU and its
13 customer, Safe Harbor Marina, since that time (May 12, 2016).

14 **Q. Please explain the circumstances and resolution of the billing issue concerning**
15 **ITNOR Water's Edge ("Water's Edge").**

16 A. KWRU's position is that Water's Edge was billed in a manner that corresponded
17 with its tariff. The PSC found in their PAA Order (Exhibit CAJ-7, also cited above)
18 under the section entitled "Unit vs. Metered Billing" that "KWRU does not have to
19 refund general service customers that were billed BFC's based on units and not
20 FCAA meters." However, this finding was disputed by the Office of Public Council
21 ("OPC") as OPC alleged that Water's Edge was over-billed by \$1,025.49. KWRU
22 determined that an efficient resolution to the matter is in the best interests of KWRU
23 and its ratepayers. Therefore, KWRU resolved the matter with the OPC in a

1 Stipulation and Settlement Agreement Filed in Docket No. 20170086-SU on May
2 17, 2019 (Exhibit CAJ-10). The settlement provides for a refund to Water's Edge of
3 \$1,025.49 within 30 days of approval of the agreement by the Commission via
4 Commission Order (Exhibit CAJ-11).

5 **Q. Please explain the circumstances and resolution of the billing issue concerning**
6 **Fourth Ave., LLC.**

7 A. KWRU's position is that Fourth Ave., LLC was billed in a manner that corresponded
8 with its tariff. The PSC found in their PAA Order (Exhibit CAJ-7, also cited above),
9 under the section entitled "Unit vs. Metered Billing," that "KWRU does not have to
10 refund general service customers that were billed BFC's based on units and not
11 FCAA meters." However, this finding was disputed by the OPC. KWRU
12 determined that an efficient resolution to the matter is in the best interests of KWRU
13 and its ratepayers. Therefore, KWRU entered into a settlement agreement with OPC
14 through a Stipulation and Settlement Agreement filed in Docket No. 20170086-SU
15 on May 17, 2019 (Exhibit CAJ-10, also cited above). This settlement provides for a
16 refund to Fourth Ave., LLC of \$1,004.34 within 30 days approval of the agreement
17 by the Commission via Commission Order (Exhibit CAJ-11, also cited above).

18 **Q. Does that conclude your direct testimony?**

19 A. Yes.

Christopher A. Johnson
1212 Von Phister Street
Key West, Florida 33040
(305) 522-0052
chris@kwru.com

Education and Licenses

Northern Illinois University, DeKalb, Illinois

Bachelor of Science in Electrical Engineering 1996

State of Illinois Registered Professional Engineer Intern (license no. 061-030504)

AIRVAC Certified Vacuum Technician (Certificate#1020)

State of Florida Department of Environmental Protection Class A Licensed Wastewater Treatment Operator
(license no. 0013917)

2013 -2014 Christopher A. Johnson, President KW Resort Utilities, co-authored an abstract titled MORE ENERGY INTENSIVE – VACUUM OR GRAVITY SEWERS?

2005 Christopher A. Johnson, President of Keys Environmental Inc. featured Civil Engineering News, Storm Survival Vacuum Sewers withstand Florida's Hurricane Barrage, April 2005 Issue,.

Experience

2009 - Present President, KW Resort Utilities Corp, Key West, Florida.

Provide operational and administrative management and oversight for the KW Resort Utilities wastewater utility. Operational responsibilities include the management of the third largest wastewater treatment plant in the Keys, and a public sewer system comprised of both vacuum and force main systems. Other responsibilities include laboratory management, compliance with State regulations, facilities management, and management of the largest reclaimed water system in the Keys. Administrative responsibilities include budgeting, capital planning, accounting, information systems, data management, billing, financial planning and reporting, and reporting to a Board of Directors. Capital project responsibilities including the review of bid packages, design, contractor qualifications, submitted bids, financing, and bonding. Additional responsibilities include personnel management, development of strategic partnerships, and contract negotiation.

2003 - Present Owner, Keys Environmental Inc., Key West, Florida.

Owner of a contract wastewater operations firm. Involved in all aspects of the business from technical wastewater plant operations to managing budgets, capital planning, inventory management, procurement, data systems, personnel decisions, customer and public relations, safety, and regulatory compliance. In addition to operations management, Keys Environmental provides project management for wastewater capital projects; in a 5 year period between 2003-2008 the company provided oversight on projects totaling more than \$4M.

2006 - Present Managing Member, JOHNSON CONSTRUCTORS, LLC, Key West Florida.

Owner (50%) of Florida Licensed General Contracting firm involved in all aspects of commercial projects from design review, project planning, value engineering, hiring of subcontractors, field supervision,

layout, contracts and administration. Projects include a 32 foot diameter foundation set on piles driven 60 feet into the earth, fabrication of a steel tank with a 56,000 gallon capacity, and construction of an elevated 240 square foot concrete equipment deck set on a pile foundation.

2002 - 2003 Project Engineer, Weiler Engineering Corp, Port Charlotte, Florida.

Provided on site engineering for the South Stock Island Sewer Expansion Project. The project was a \$4.5M project involving the installation of approximately 25,000 linear feet of vacuum sewer main, 83 valve pits and buffer tanks, and a vacuum pump station. This was the first successful vacuum sewer installation in the Florida Keys and was completed on time and under budget. Specific responsibilities included inspection, field engineering, utility conflict resolution, and coordination with surveyors. The project engineer was a liaison between the contractor and the county and provided daily updates and timely information that was used to apprise a Board of County Commissioners and their staff with regard to the project.

2000 - 2002 Senior Engineer Automated Test, Shure Inc., Evanston, Illinois.

Submitted budgets for the department's non-personnel needs. Member of new product development team for what was to become the flagship product of the company, ULX wireless. The team developed a revolutionary audio platform that was eventually integrated into several other product lines. Member of a planning team focused on the relocation of manufacturing operations to a new facility in Suzhou, China.

1999 - 2000 Automated Test Engineer, Shure Inc., Evanston, Illinois.

Developed computerized tests for a full line of consumer electronic products. Interviewed personnel for technical positions at open houses at Universities. Acted as a mentor for junior associates in the department, providing training and career guidance. Developed a structured approach to training that was later integrated into a formal departmental training matrix.

1998 - 1999 Test Engineer I Shure Inc., Evanston, Illinois.

Designed a test and retrofitted unused machinery to bring transformer manufacturing in house. Previously the company was exclusively sourcing transformers off shore. The test enabled the company to produce custom audio transformers that were less expensive, more reliable, and better suited to the product lines, thereby saving the company money while improving overall product quality.

1996 - 1998 Test Engineer II, Shure Inc., Evanston, Illinois. Developed a frequency response test for microphones. Responsible for developing the test hardware and software as well as implementing the complete test system. Additional responsibilities included supporting the system that would permanently reside in Mexico, and training the technicians in the Mexican production facilities.

Additional Relevant Experience

Rotary Club Member 2004 - Present

Rotary Foundation Trustee Chairman (2014-2015), Secretary (2012)

Key West Chamber of Commerce 2012-Present

State of Florida Commercial License (CDL Class B) Tanker Endorsement

Personal Interests

Spending time with family, coaching, fishing, boating, biking, reading, and travel.

SMITH / HAWKS
ATTORNEYS AT LAW

VIA FEDERAL EXPRESS

January 30, 2018

Ms. Carlotta Stauffer
Florida Public Service Commission
Office of Commission Clerk
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

RE: Response to Audit Report (Control No. 2017-109-1 1)
dated November 6, 2017
KW Resort Utilities Corp., Docket No. 20170086-SU

Dear Ms. Stauffer:

Please allow this letter to serve as KW Resort Utilities Corp.'s ("KWRU") response to Audit Findings 1 – 18 of the above-listed Audit Report (the "Audit"). The Audit is attached as Exhibit "A", hereto, and each Audit Finding is addressed in this letter in turn:

Audit Finding 1: Safe Harbor Marina (Account S001)

Response:

See letter provided on March 21, 2016 from KWRU to the Public Service Commission ("KWRU Letter") attached hereto and incorporated herein as Exhibit "A", which explained this matter. KWRU now recognizes that ultimately the PSC must approve any change to its tariff. However, KWRU and the customer agreed to the revised tariff rate based on the agreement between KWRU and the customer that a substantial increase in development and use at Safe Harbor Marina had occurred. KWRU noticed the PSC of this agreement to revise the rate and received no response from the PSC. KWRU mistakenly believed that the revision to the tariff had been accepted, similar to a developer's agreement for service.

Audit Finding 2: Sunset Marina (Account SM100)

Response:

PSC Order PSC-16 0123 PAA-SU ("2016 Order"), was issued March 23, 2016 and did not become effective until the customer notice of the implementation of the new tariff in April 20,

2016. The application of the 2016 Order to Sunset Marina prior to April 2016 by the audit is incorrect. As can be ascertained, Sunset Marina was properly billed after April 2016 when the correct tariff was utilized.

KWRU erroneously continued to charge the Residential Base Facility charge to the 64 residential units from May 2013 to April 2016. KWRU will be refunding the amount of \$3,343.04, plus applicable interest, to the customer. KWRU will provide documentation of such refund once it is remitted.

Audit Finding 3: Yacht Clubs of America (Account PM002)

Response: The Audit Finding is based on incorrect factual information. Yacht Clubs of America does not have a 2" meter, but rather two (2) 8" meters. The meters are labeled for fire suppression, but KWRU has confirmed they are both used for general provision of water to the property and return to the KWRU system. Based on two 8" meters, the amount billed is correct.

Audit Finding 4: Carefree Property (Account SH002)

Response: This account was billed for a large pool based on the size of the pool and the existence of a common area with pool and bathhouse for use of residents which is not billed as part of the units. The common space and pool are similar in size and use to the large pool at the Key West Golf Club. In the interest of consistency and fairness, KWRU charged this pool in the same manner as the large pool at the Key West Golf Club per its tariff for "large pool." This was discussed in detail with the PSC in 2012 and culminated with this being agreed to be an appropriate methodology. Since that discussion, the only change has been a charge adjustment from "large" to "small" pool based on the Key West Golf Club tariff. KWRU now recognizes the PSC must issue an order approving a revision to the tariff, but believed the communications constituted consent.

Audit Finding 5: General Service Customers 5/8" Meters

Response: These customers are all individual mobile home units behind a master water meter. As such, each of the listed customers was billed a BFC for each dwelling unit (behind the single meter) on its premises. Pursuant to KWRU's tariffs prior to the implementation of Original Sheet Nos. 1.0 – 21.0 on April 20, 2016, KWRU billed "All Residential \$17.81 base rate per month, in advance, (includes single family homes, mobile homes, individually metered apartment units)"(underline added). After the change to "per meter" billing, KWRU billed only a single base facility charge per month per customer.

Audit Finding 6: Ocean Spray Trailer Park (Account OS001)

Response: Ocean Spray trailer park consists of 14 mobile home units behind a master water meter. As such, Ocean Spray Trailer Park was billed a BFC for each dwelling unit (behind the single meter) on its premises. Pursuant to KWRU's tariffs prior to the implementation of Original Sheet Nos. 1.0 – 21.0 on April 20, 2016, KWRU billed "All Residential \$17.81 base rate per month, in advance, (includes single family homes, mobile homes, individually metered apartment units" (underline added). After the change to "per meter" billing, KWRU billed only a single base facility charge per month per customer.

Audit Finding 7: Tropic Palm Mobile Home Park (Account TP001)

Response: Tropic Palm Mobile Home Park is 25 mobile homes behind a master water meter. As such, Tropic Palm was billed a BFC for each dwelling unit (behind the single meter) on its premises. Pursuant to KWRU's tariffs prior to the implementation of Original Sheet Nos. 1.0 – 21.0 on April 20, 2016, KWRU billed "All Residential \$17.81 base rate per month, in advance, (includes single family homes, mobile homes, individually metered apartment units" (underline added). After the change to "per meter" billing, KWRU billed only a single base facility charge per month per customer.

Audit Finding 8: Meridian West Apartments (Account MW001)

Response: See KWRU Letter, attached as Exhibit "A".

KWRU's billing system erroneously classified the account as General Service rather than Residential, and the account was incorrectly billed the General Service gallonage rate of \$4.64/1000 gallons rather than the correct Residential gallonage rate of \$3.87 per 1000 gallons.

Upon receipt of proper refund interest rates from the PSC, KWRU calculated the refund amount as \$72,701.12, including interest, and issued a check to the customer with a letter explaining the methodology for the refund on April 6, 2017. The check has been deposited by the customer. Please find attached at Exhibit "B" a copy of the deposited check and letter.

Audit Finding 9: Fourth Avenue, LLC (Account R090)

Response: Fourth Avenue, LLC is a mobile home park which has three (3) 5/8" meters. However, only one (1) of the meters returns to the KWRU system and is billable. 4th Avenue consists of 17 mobile homes behind this master water meter. As such, Fourth Avenue was billed a BFC for each dwelling unit (behind the single meter) on its premises. Pursuant to KWRU's tariffs prior to the implementation of Original Sheet Nos. 1.0 – 21.0 on April 20, 2016, KWRU billed "All Residential \$17.81 base rate per month, in advance, (includes single family homes, mobile homes,

individually metered apartment units” (underline added). After the change to “per meter” billing, KWRU billed only a single base facility charge per month per customer.

KWRU billed April 2013 to March 2016 at the BFC of \$302.77 (\$17.81 x 17) as the Tariff issued became effective March 30, 2013.

During April 2016, KWRU billed \$29.52 for one (1) 5/8” meter. This amount was prorated to \$31.66 as the monthly charges are at the general service rate, billed in arrears, as the Tariff issued became effective April 20, 2016.

During the period of May 2016 to February 2017, KWRU billed the BFC of \$79.15 per month at one 1” meter. The meter discrepancy was a data input error by an employee who is no longer employed by KWRU. KWRU should properly have billed \$31.66 per month for the actual 5/8” meter.

From March 2013 to April 2016, KWRU erroneously charged the residential base facility rate and the general service consumption rate to the residential units. KWRU will be refunding the difference of \$1,506.51 to the customer. The spreadsheet indicating the billing discrepancy is attached hereto and incorporated herein as Exhibit “C”.

Audit Finding 10: Banyan Grove (Account BG006)

Response: Banyan Grove is a residential property consisting of 48 multi-family units. The Property was initially billed based on the existence of 48 individual meters; however, FCAA confirmed that there were three approved meters (5/8”, 1”, and 1.5”) on the property. Upon receipt of this information water consumption billing was switched to general service. Upon receipt of proper refund interest rates from the PSC, KWRU calculated the refund amount as \$25,512.91, including interest, and issued a check to the customer with a letter explaining the methodology for the refund on April 6, 2017. The check has been deposited by the customer. Please find attached as Exhibit “D” a copy of the deposited check and letter.

Audit Finding 11: ITNOR-Waters Edge (Account WE002)

Response: Water’s Edge has a total of sixty-five (65) mobile homes, with fifty-two (52) mobile homes having individual meters. The WE002 account constitutes the thirteen (13) mobile homes which do not have individual meters.

For these thirteen (13) mobile homes, KWRU totals the consumption for the fifty-two (52) individually metered units (capped at 10,000 gallons per unit), and then subtracts the gallons shown on the master meter. For these trailers, consumption is billed at the general service rate of \$6.33 per 1,000 gallons.

Pursuant to KWRU's tariffs prior to the implementation of Original Sheet Nos. 1.0 – 21.0, on April 20, 2016 KWRU billed "All Residential \$17.81 base rate per month, in advance, (includes single family homes, mobile homes, individually metered apartment units" (underline added). After the change to "per meter" billing, KWRU billed only a single base facility charge per month per customer.

During the period of April 2013 to March 2016, KWRU billed the BFC of \$231.53 ($\17.81×13) on the 5/8" meter as the issued Tariff became effective April, 2016.

From March 2013 to April 2016, KWRU erroneously billed a residential BFC for each dwelling unit (behind the single meter) on the premises. KWRU will issue a refund to the customer in the amount of \$1,538.23. Calculations underlying the amount of refund are attached hereto and incorporated herein as Exhibit "E".

Audit Finding 12: Effluent Sales

Response: Effluent sales for the month of April 2016 totaled \$4,389.41 for the Key West Golf Club and Monroe County Detention Center. Additionally, a combined \$799.17 (combined) was billed for effluent testing, prorated as new rates became effective over the course of the billing cycle. This Audit finding provides that the "Utility Amount" of effluent sales is \$4,629.57. This amount was billed only to the Key West Golf Club, and does not constitute total effluent sales.

The Key West Golf Club charge of \$4,629.57 breaks down as follows:

- (1) 5,962,000 gallons billed at a rate of \$0.68/1000 gallons = \$4,054.17; and
- (2) \$1,100.00 testing fee prorated for fifteen (15) days = \$575.40

The gallonage was billed at the \$0.68 rate, because the read date was prior to the effectiveness of the new rate structure. This was done to coincide with the FKAA read dates for the consumption portion of the bill, so no prorations were necessary for individual accounts.

Without reviewing the auditor's work papers, KWRU cannot state the reason for the \$0.83 recalculation. The Audit Finding also states that KWRU is utilizing a \$0.78 rate. This appears to be unfounded, based on the billing methodology illustrated above.

Audit Finding 13: Boyd's Campground (Account BC001)

Response: The 395,535 gallons were charged at the \$4.64 per thousand gallons general service rate. KWRU charged a base rate of \$8.76 for the 5/8" meter, prorated for fifteen days. KWRU prorated one 2" meter, three 1.5" meters, and one 5/8" meter at the new rate for twenty (20) days.

Use: \$1,835.28
Base: \$8.76
Base: \$498.26
Total: \$2,342.30 charged

Without reviewing the auditor's workpapers, KWRU cannot state the basis for the calculation that KWRU should have charged \$2,108.22.

In April 2016, KWRU correctly billed the BFC of \$8.76 per month, prorated on the 5/8" meter. The revised Tariff had been issued, and the amount was prorated to avoid overcharging the customer.

Audit Finding 14: Private Lift Stations for 5/8"

Response: The April 2016 bill was prorated for base rates as the new tariff, PSC-2016-0123-PAA-SU, was issued by the PSC on April 15, 2016 and KWRU began charging the new (higher) rates on April 21, 2016, the water meter reading date as determined by the Florida Keys Aqueduct Authority (FKAA). Because KWRU began applying the revised rates on April 21, 2016, KWRU was required to use the previous Tariff's lower consumptive rate (\$4.64/ thousand gallons) due to the fact that consumption is billed in arrears and the water was used by the customers in the time period prior to the revised rates being applied by the Utility.

Further, because the new rates were applied by the Utility on the FKAA reading date, the consumptive component of the monthly bill did not require proration. The rates that were charged are accurate according to the applicable Tariffs.

Audit Finding 15: Harbor Shores

Response: Prior to the implementation of the current Tariff, Harbor Shores was billed as a residential customer, at \$5.25 per thousand gallons (capped at 10,000 gallons) with a BFC of \$31.66 for 69 units. Effective March 2017, Harbor Shores was classified as a general service customer. As a result of this classification change, in March 2017 Harbor Shores was charged \$1,318.74 based on consumption only. KWRU did not charge a base rate for March, as Harbor Shores had paid its base rate in advance in February, as it was then a residential customer.

Audit Finding 16: Roy's Trailer Park (Account RTP)

Response: Roy's Trailer Park is unique in that the vast majority of units have been converted to multi-family (1, 2, 3, 4, and even 6 unit) residences. The owner of the park refuses to verify the number of residences, and no Monroe County or other records indicate the number of units actually in existence.

After several unfruitful discussions with the owner, KWRU determined to proceed pursuant to the PSC Order, effective April 20, 2016. On August 28, 2017, KWRU sent a letter to the owner and offered a settlement, with the settlement amount based on the PSC's stated preference for general service charges based on meter size with a gallonage charge based on water demand in accordance with the Tariff.

The Rate Charge, Original Sheet 13.2, was applied for the period beginning on its effective date, and accounts were adjusted pursuant to that methodology from December, 2015, the month in which KWRU discovered the conversion of single-family into multi-family units, triggering the change in billing.

Upon review of the Tariff and the adjusted calculations, the owner agreed the settlement was adequately supported and that the adjustments made were correct. In October 2017, the owner remitted to KWRU the sum of \$35,215.06, the sum pursuant to the revised calculation.

Because the dispute was resolved and adjustments were made back to December 2015, the bills analyzed should be disregarded. The settlement amount includes additional units other than the duplex, triplex, quadplex, etc. units.

Audit Finding 17: Flagler Village (Account FV001)

Response: See KWRU Letter, attached hereto and incorporated herein as Exhibit "A".

KWRU's billing system erroneously classified the account as General Service rather than Residential, and the account was incorrectly billed the General Service gallonage rate of \$4.64/1000 gallons rather than the correct Residential gallonage rate of \$3.87 per 1000 gallons.

Upon receipt of proper refund interest rates from the PSC, KWRU calculated the refund amount as \$43,402.79, including interest, and issued a check to the customer with a letter explaining the methodology for the refund on April 6, 2017. The check has been deposited by the customer. Please find attached a copy of the deposited check and letter, attached hereto and incorporated herein as Exhibit "F".

Audit Finding 18: Residential and General Service Customers

Response:

Residential

In March 2013, KWRU charged the \$17.81 base rate from the Fourteenth Revised Tariff sheet, as base rate is charged in advance.

Because water consumption is charged in arrears, for March 2013 KWRU applied a gallonage charge of \$4.14 as provided in the Thirteenth Revised Tariff sheet.

In April 2016, KWRU charged the \$31.86 base rate from the Original Sheet No. 13.0 (base rate charged in advanced) and charged a \$3.87 gallonage charge from the Fourteenth Revised Tariff (consumption charged in arrears).

General Service

The general service 5/8" meter was prorated at \$20.76 for twenty (20) days and \$8.76 base rate for a total of \$29.52.

In March 2017, KWRU charged a \$31.86 base rate from the First Revised Sheet No. 13.0 tariff (base rate charged in advance) and used a \$5.25 gallonage charge from Original Sheet No. 13 (consumption charged in arrears).

General Service customers are charged in arrears. In March 2013, KWRU charged a BFC of \$19.05 and a \$4.96 gallonage charge.

Conclusion

As can be ascertained, the majority of issues brought forth in the audit report stemmed from tariff sheets which did not have the uniformity that the current tariff sheets provide by billing solely off meter size and gallons. KWRU has endeavored to research each customer to ensure proceeding forward the uniform, simplified tariff sheets based solely on meter size¹ is followed. We hope this resolves the audit to the Florida Public Service Commission's satisfaction.

Sincerely,



Barton W. Smith, Esq.

BWS/llr
Enclosures

¹ Excepting Harbor Shores.



FILED MAR 22, 2016
DOCUMENT NO. 01516-16
FPSC - COMMISSION CLERK

March 21, 2016

VIA E-MAIL

Mr. Greg Shafer
Director, Division of Economics
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Re: Docket No. 150071-SU – Application for increase in Wastewater rates in Monroe County by K W
Resort Utilities Corp.
Our File No. 34000.01

Dear Mr. Shafer:

The following are K.W. Resort Utilities Corp.'s ("Utility") responses to your Billing Practices Inquiry dated February 18, 2016:

- Safe Harbor Marina is currently being billed a negotiated rate, rather than the approved bulk flat rate. By Order No. PSC-02-1165-PAA-SU, in Docket No. 020520-SU, issued August 26, 2002, the Commission found that the Utility was charging the marina a flat rate for the unmetered bar and restaurant that had not been approved by the Commission and that the Utility was billing discriminatory rates to Safe Harbor. As a result, the Commission authorized a new bulk flat rate.

Response:

Upon submitting Tariff Sheets relating to the 2009 Price Index Increase, the Utility wrote a letter (Exhibit A) to the PSC Director of Economic Regulation, dated April 20, 2009, stating, "tariff sheet #15.5 bulk wastewater with Safe Harbor Marina, the property owner has recognized that the property use has changed substantially since the tariff was originally issued and as such has agreed to continue to pay the amount of \$1,650.67 until such a time as actual water usage can be quantified". Thus, instead of going through a complaint proceeding at the Commission, the parties agreed to an amount. The Commission encourages such settlements, and this letter advised the Commission that a settlement was reached. Further, in this same letter, of April 20, 2009, the Utility asked the PSC "to address any questions or problems regarding this application to Gillian Siefert at 305-294-9578". Utility records show there was no further correspondence with regard to the letter of April 20, 2009.

The Utility openly communicated the situation to the PSC in the correspondence referenced above and the Utility has since hired a State of Florida Licensed Professional Engineer to quantify the actual water usage. It was necessary to determine actual water usage as the property had undergone massive and continuous redevelopment since the Tariff Sheet was instituted originally in 2002. Much of the redevelopment was "under the radar" as on-line records searches for County building permits turned up very little. The Utility is aware that building occurred as the property is adjacent to the wastewater treatment plant and Utility employees have lived on the property, and thus, have witnessed the undocumented development first hand.

Greg Shafer, Director
March 21, 2016
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Because of this a very thorough site visit was deemed necessary by the Utility and its engineer. The actual water usage was quantified in an Engineering Report that was then provided to Safe Harbor. The study indicated that additional capacity was due to the Utility based on the report, the Utility sent a letter requesting payment for the additional capacity used by the marina. The marina owner admitted in a letter dated April 7, 2015 (Exhibit B) that additional capacity was owed but disagreed with the report as to how much additional capacity is owed. Please note that the portion of the additional capacity charges that is not in dispute, to date, has not been paid to the Utility. As a result of the disagreement, the owner filed a PSC complaint (Inquiry#1183725). The owner's attorney then requested 120 days to allow Safe Harbor to hire a professional engineer to conduct a water usage study on behalf of Safe Harbor. The Utility engaged the legal firm of Friedman & Friedman to represent the Utility and the matter is still pending.

In summary, the Utility commissioned the Engineering Study in April 2013 and every step of the way has been difficult. The Utility routinely does in-house water usage analysis, but in this case the Utility took an extra step and hired a qualified third party to do the analysis to quantify the water usage. The Utility's third party analysis was not acceptable to the Marina and they have brought in a Professional Engineer and an attorney. The owner's Professional Engineer after 210 days still has not provided a water analysis report to the Utility. The Utility continues to work with the customer to resolve the issues. Utility records show that the Utility has had to involve legal counsel on multiple occasions when dealing with this property and the Utility is working to resolve the issue but the customer's actions suggest they are quite happy maintaining the status quo.

- Sunset Marina is currently being billed base facility charges (BFCs) based on an 8" and a 2" meter, the Utility's approved gallonage charge based on water demand, the approved charge for two pools, as well as an additional 64 BFC's based on the number of units behind the meter. According to the Utility's tariff, Sunset Marina should have been billed BFC's based on an 8" and a 2" meter and the gallonage charge based on water demand. Because the pools and 64 units are behind the water meters, no additional charges should have been billed for those facilities.

Response:

Sunset Marina's General Manager, Joanne Alexander, challenged the Utility's billing in October 2012 and engaged the Public Service Commission to resolve this same issue. Sunset Marina is a unique property in that it is actually comprised of 2 different properties, with different ownership, served by a single water service. Both properties are served by the same potable water distribution network with a 2" meter. One of the properties is a 64 unit luxury condominium complex with dock slips and 2 pools. The other property is a commercial marina which includes a ship store, clubhouse, several commercial office spaces, marine engine retailer and repair shop, bath house that serves 139 wet slips, laundry facility, 4 affordable housing units, and more than 100 live aboard boats, etc.

After the PSC received the complaint from the property manager the Utility was contacted and a teleconference was set up to discuss the matter. The teleconference occurred on October 9, 2012 at 10:00AM with the PSC regarding the manner in which the Utility was billing the Marina. The Utility explained to the PSC at this meeting that there were 2 different legal entities that could best be described as mixed use with commercial and residential activities. Because of the complexity of the property the Utility applied Tariff Sheets 15.6 and 15.7 to the properties. (Tariff Sheets Exhibit C)

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The Tariff is shown in bold below:

South Stock Island Marinas Tariff Tenth Revised Sheet #15.6

RATE – 6 residential living units at 1 ERC each \$114.33

2" Meter that serves ship store, club house, swimming pool bar, restaurant, locker rooms, bathrooms, laundry facilities, businesses located on the property, 100 wet slips served by dockside sewer, 3 boat barns dry storage to accommodate 100's of boats, fitness center, and sauna \$152.42 (Note that 2" BFC was taken directly off of Tariff Sheet #12.0)

Therefore for Sunset Marina the Utility applied Tariff Sheet #15.6 as follows:

RATE - 64 residential living units (Condos) at 1 ERC each \$1,219.52

2" Meter that serves 64 unit luxury condominium complex with dock slips and 2 pools and a commercial marina which includes a ship store, clubhouse, several commercial office spaces, marine engine retailer and repair shop, bath house that serves 139 wet slips, laundry facility, 4 affordable housing units, and more than 100 live aboard boats, etc. \$152.42 (Note 2" BFC same as on Tariff Sheet #12.0)

And for the pools Tariff Sheet #15.7 was applied in the exact same manner as for the Key West Golf Club Home Owners Association as the circumstances are identical. And it should be noted that multiple Tariff Sheets were approved for the billing of the Key West Golf Club Home Owners Association property.

The Utility also billed Sunset Marina:

1 large pool per Tariff Sheet #15.7 and 1 small pool per Tariff Sheet #15.7

In the October 9, 2012 teleconference, the PSC acknowledged that the situation is unique and complex. PSC stated that it is unusual to have so many different business entities sharing water service especially 2 completely different properties. The PSC pointed out that the 2" base meter rate is shared by many commercial ventures and that the users are benefiting from this sharing of BFC among the many businesses. The PSC also commented that Tariff Sheet #15.6 incorporates the "non-residential" use of a 2" meter and usage rate for such a meter in a manner that is not unfair or discriminatory. In short the PSC told the Utility it disagreed with Ms. Alexander's claim that the Utility was over billing her.

It was after the October 9, 2012 10AM teleconference when the PSC explained the manner of billing to the customer (Joanne Alexander). With the explanation from the PSC Joanne Alexander then dropped her pursuit of the larger billing issue and focused on a single issue, that being pool size (Exhibit D). Ms. Alexander claimed both of the pools should be billed as small pools. After the Utility engaged the State of Florida Health Department (the agency that regulates pools in the State of Florida) and the PSC, it was determined by the Utility that the Sunset Marina large pool didn't meet the size criteria for a large pool. Therefore, the Utility deemed the pool small, admitted the error, apologized to the customer, and corrected the customer's bill. Every bill where the large pool was billed was corrected to reflect a small pool.

Finally, in May 2013 an 8" Turbo meter was verified to be serving the property in addition to the 2" meter. Upon discovering the new 8" turbo meter the Utility immediately engaged the water utility (Florida Keys Aqueduct Authority - FKAA) to determine if this new meter was a dedicated fire meter or irrigation meter. The Utility does not bill dedicated meters where water isn't returned via the sewer. However, in this case, the meter was not a dedicated fire meter or irrigation meter as verified by FKAA. Therefore the 8" meter was billed the BFC for an 8" Turbo meter (Tariff Sheet #12.0).

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March 21, 2016
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- A general service customer with a 6" meter is being billed the BFC for a 5/8" x 3/4" meter for each of the 103 units, while another general service customer with a 5/8" x 3/4" meter is billed the BFC for a 5/8" x 3/4" meter for 49 units. These general service customers should have been billed a BFC for a 5/8" x 3/4" meter and the Utility's approved gallonage charge based on water demand, with no additional charge for the individual units behind the meters.

Response:

The two properties, Meridian West and Flagler Village, are residential properties consisting of multifamily residential units, where each residential unit has a separate water meter. These separate meters are not Florida Keys Aqueduct Authority (FKAA) meters but are private meters installed by the property owners. Prior to 2009 all residential properties were billed a Flat Rate for each residential unit. In 2009, the PSC issued PSC Order No. PSC-09-0057-FOF-SU which required a base rate and a usage charge per 1000 gallons for all residential units, rather than the Flat Rate that had previously been charged. It should be noted that these private residential units are configured in such a way that the Utility would not have a mechanism to disconnect an individual unit for nonpayment should an individual unit owner be delinquent. The only practical way to shut this property off would be by using a shut off valve located in the public right of way that shuts off the entire property from the central sewer system. This situation requires the Utility to set up the residential sewer account with the property owner as opposed to individual unit owners. Thus, while individual units are billed, all bills are sent to the management company.

In these two cases, the Utility utilized these private meters to measure the water consumption of each residential unit. Upon receiving the PSC Order, all residential accounts were set up using the Florida Keys Aqueduct Authority (FKAA) water meter data file and from information provided by customers. The Utility contacted Meridian West's property management company and inquired if each unit was individually metered. The property management response was that each unit is individually metered and there is usage monitoring by an off-site company (Inovonics by Tapwatch). The off-site company verified the units were individually metered, read on a daily basis and the tenants are billed monthly for water consumption. Flagler Village connected after Meridian West and they were set up in the exact same manner.

This owner/management company information was further verified by the FKAA, the FKAA data file lists 103 as number of Meridian West units (Exhibit E). The information obtained regarding Flagler Village similarly indicated 49 units. Therefore, KWRU billed each individual unit a residential base rate, for Meridian West 103 units at \$17.81 per month and for Flagler Village 49 units at \$17.81 per month, per Tariff Sheet #13.0. These accounts were erroneously misclassified in the Utility's new billing system as General Service rather than Residential. Because of the misclassification, they were billed at General Service Gallonage Rate of \$4.64/1000 gal rather than the correct \$3.87/1000 gal Residential Gallonage Rate. As a result of this error, in 2015 Meridian West was over billed \$3.30 per unit per month. In the same manner, Flagler Village was over billed \$4.62 per unit per month. For Calculations and backup information please see Exhibit F. The Utility regrets these errors and will be making a refund with interest of any overpayments. In that regard, please have someone provide me with the monthly interest amounts since 2009.

Greg Shafer, Director
March 21, 2016
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- Two marinas each with a 2" meter are currently being billed based on an approved bulk flat rate that includes BFCs for a 2" meter and six residential units, as well as a gallonage charge that was erroneously added to the bulk rate tariff as a result of an administrative approval of a 2011 price index.

Response:

Key West Harbor Yacht Club, has a 2" meter and 6 residential units and was formerly named Yacht Clubs of America and this marina is billed per Tariff Sheet#15.6. Stock Island Marina Village is a second marina that is billed a 2" meter and 6 Residential units as it is a mixed use marina which coincidentally also has 6 units residential embedded within the property. This marina is similar to Key West Harbor Yacht Club in its nature as a blend of residential and commercial activities, and substantial redevelopment, and is also billed off of Tariff Sheet#15.6.

As for the gallonage charge that was erroneously added this occurred as a result of a complete redevelopment of the property. This can be explained by looking at the history of the property and looking at the redevelopment that occurred.

In 2009 the property (Key West Harbour Yacht Club) was a marina with an old boat yard that had a number of boats up on jacks so the owners could paint the hulls and perform other maintenance on their boats. There were a handful of people living on the boats on jack stands while they undergoing maintenance. These people could use the bathhouse which was comprised of a single shower, one toilet, and one sink, each, for the men's and women's facilities. There were less than a dozen boats tied up to the seawall that were live aboard boats. There were two houses on the property, 1 mobile home, and 10 houseboats in the basin. There was a small store on the property that sold bottom paint, sand paper, and other maintenance tools and supplies that boat owners needed. There was a small sail shop that sold and repaired canvas and sails. There was an office that in the small store as well, where rents would be collected, etc. The Tariff (Ninth Revised Sheet#15.6 Effective Date of July 31, 2009 lists the amenities as follows:

13 Residential (2 houses, 1 mobile home and 10 houseboats)

16 live aboard boats and 26 non-live aboard boats

1 Bathhouse

3 Commercial Businesses

Total Bulk Rate - \$848.11.

By 2011, when the indexing Tariff was approved, the property had been redeveloped into Yacht Clubs of America which was an international private yacht club with luxury marina properties all over the world. This property has 3 massive boat barns capable of handling 392 boats under roof. There are 103 wet slips that can accommodate up to 110 foot yachts and their crews. There is a full service restaurant and bar (100 seats), with take out, capable of hosting large private weddings/meetings/parties. There is a pool with wait staff to provide food and drinks, a pool bar with patio seating outside of the pool area for 16, and a beach with 20 lounge chairs with wait service provided. There is a Spa and a Gym with men's and women's locker rooms. On the first floor of the clubhouse there are 3 separate offices (575 sq ft.). There is a fuel dock and ship store with 2 piece bathroom with Harbor Master and leasing agent offices adjoining. There are three second story units above the ship store (employee housing) with each unit consisting of bedroom, living room, kitchen, bath and washer and drier in each unit. There are two industrial washing machines for cleaning all of the towels and linens on the property. There are three luxury 2 bedroom 2.5 bath condominiums with full kitchen, living, dining, pool balconies, and lockouts to allow split rentals (lockout allows one bedroom to rent as efficiency). Each unit has a washer and drier. On the crescent

Greg Shafer, Director
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dock there is a tiki bar, full men's and women's bath houses, laundry facilities, and ice machines for guests. There are also 24 storage units, and 12 dry racks for boats. There is an Engine Repair service center (6 employee operation) with workshop office and parts warehouse. There is a Boat Services Group Office (600sqft office) includes two piece bath and kitchenette. This property reserved capacity for 175 ERC or 43,750 gallons per day. This property originally was 30.3 ERC (from Tariff Ninth Revised Sheet# 15.6) or 7,575 gallons per day. The redevelopment is 5.8 times bigger than the original property in terms of sewerage capacity. The Tenth Revised Sheet #15.6 reflects the changes that occurred as a result of the redevelopment which created the mixed use property, the 6 residential units are private residences and are each assessed a residential base rate. The 2" meter that supplies water to the entire property is billed at a 2"BFC and the gallonage per thousand gallons is billed per the general service rate.

After redevelopment Tariff Sheet#15.6 was applied and reads:

6 Residential living units at 1 ERC each.....\$114.33

2"Meter that serves ship store, club house, swimming pool bar, restaurant, locker rooms, bathrooms, laundry facilities, businesses located on property, 100 wet slips served by dockside sewer, 3 boat barns dry storage to accommodate 100's of boats, fitness center, and sauna..... \$152.42

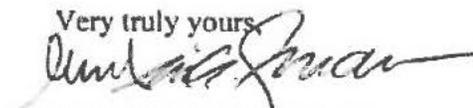
Gallonage Charge per 1,000 gallons..... \$4.96

When the 2011 index Tariff Sheet was prepared, the amounts more accurately reflected the amount of wastewater being used as redeveloped. In effect, as a result of the redevelopment, the original Tariff Sheet failed to reflect the actual customer base to which it was purported to apply. The new Tariff Sheets were thus updated. The PSC Staff approved the Tariff Sheets so the Utility began charging those rates.

Stock Island Marina Village was redeveloped after Key West Harbor Yacht Club and is also billed a 2" BFC for their meter and gallonage per thousand per the rate per Sheet #15.6. The billing began in September 2013 for Stock Island Marina Village upon their redevelopment (Phase I completion).

The billing amiguities are the result of the unique rate structures due to the unique characteristics of a number of the customers which arose out of the 2009 rate case. With conclusion of the current rate case, the rate structure has been simplified, which will eliminate any billing issues prospectively. Should you or Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours



MARTIN S. FRIEDMAN
For the Firm

MSF/
Enclosures

cc: Chris Johnson (via email)
Bart Smith, Esquire (via email)
Martha Barrera, Esquire (via email)
Carlotta S. Stauffer, Commission Clerk (via efilngl)

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: November 6, 2017

TO: Office of Commission Clerk

FROM: Lynn M. Deamer, *LD* Chief of Auditing, Office of Auditing and Performance Analysis

RE: Docket No.: 20170086-SU
Company Name: K W Resort Utilities Corp.
Company Code: SU336
Audit Purpose: A18a: Specialized Billing
Audit Control No.: 2017-109-1-1

Attached is the final audit report for the Utility stated above. I am sending the Utility a copy of this memo and the audit report. If the Utility desires to file a response to the audit report, it should send a response to the Office of Commission Clerk. There are no confidential work papers associated with this audit.

LMD/cmm

Attachment: Audit Report

cc: Office of Auditing and Performance Analysis File

State of Florida



Public Service Commission

Office of Auditing and Performance Analysis

Bureau of Auditing

Tallahassee District Office

Auditor's Report

K W Resort Utilities Corp.

Specialized Billing Audit

Forty-Eight Months Ending March 30, 2017

Docket No. 20170086-SU

Audit Control No. 2017-109-1-1

September 5, 2017

A handwritten signature in blue ink, appearing to read "Marisa N. Glover", written over a horizontal line.

Marisa N. Glover

Audit Manager

A handwritten signature in blue ink, appearing to read "Thomas Wolff", written over a horizontal line.

Thomas Wolff

Audit Staff

A handwritten signature in blue ink, appearing to read "Lynn M. Deamer", written over a horizontal line.

Lynn M. Deamer

Reviewer

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Purpose

To: Florida Public Service Commission

We have performed the procedures described later in this report to meet the objectives set forth by the Division of Economics in its audit service request dated April 17, 2017. We have applied these procedures to the schedules prepared by audit staff to document our findings in this audit report in Docket No. 20170086-SU.

This audit was performed following General Standards and Fieldwork Standards found in the AICPA Statements on Standards for Attestation Engagements. The report is intended only for internal Commission use.

Objectives and Procedures

General

Definitions:

KWRU or Utility refers to K W Resort Utilities Corporation located in Monroe County, FL.

Account S001 refers to Safe Harbor Marina.

Account SM100 refers to Sunset Marina.

Account PM002 refers to Yacht Clubs of America.

Account SIMV01 and SIMV04 refers to Stock Island Village Marina.

Account SH002 refers to Carefree Property.

Account OS001 refers to Ocean Spray Trailer Park.

Account TP001 refers to Tropic Palm Mobile Home Park.

Account MW001 refers to Meridian West Apartments.

Account R090 refers to Fourth Avenue LLC.

Account BG006 refers to Banyon Grove.

Account WE002 refers to ITNOR- Waters Edge.

Account BC001 refers to Boyd's Camp Ground.

Account RTP refers to Roy's Trailer Park.

Account FV001 refers to Flagler Village.

Background:

K W Resort Utilities Corporation is a class A Utility providing wastewater service to approximately 20,161 customers in Monroe County, according to Order No. PSC-2017-0091-FOF-SU. Water service is provided by the Florida Keys Aqueduct Authority (FKAA). The water meters are read by FKAA and monthly reports are provided to KWRU. The KWRU billing for wastewater service is based primarily on the customers' water demand. We have used the monthly Base & Overage reports as well as the monthly Billing History Reports in this audit. These reports were provided to us by KWRU.

The utility filed its application for an increase in wastewater rates on July 1, 2015, in Docket 170086-SU, Order No. PSC-2017-0091-FOF-SU, issued March 13, 2017, ordered that a new docket be opened, and a full audit and investigation be conducted by staff in regards to KWRU's billing practices to determine if any orders, rules, or statutes were violated by the Utility. Additionally, Order Nos. PSC-2002-1165-PAA-SU, PSC-2002-1711-TRF-SU, and PSC-1995-0335-FOF-SU recognize the incorrect billing practices of the utility. The Order did not specify a time period. Technical staff requested that four years of billing data be reviewed beginning on March 23, 2013 and ending on March 30, 2017.

Customer Bills

Objectives: The objectives were to determine for the forty-eight month period, beginning March 23, 2013 through March 23, 2017, whether the utility is only charging its customers the authorized rates and charges (including miscellaneous service charges) in the utility's approved tariff.

Procedures: We recalculated billing data for all provided accounts from the base and overage, and the billing history report provided by the utility. Audit staff recalculated Account S001, SM100 and PM002, and noted the utility did not use the proper tariff. Audit staff recalculated the billing data for private lift stations, and Boyds and noted the utility was using two different tariff rates. Audit staff recalculated the billing data for Harbor Shores, and noted the tariff was effective after March 21, 2017 per tariff #12.1. Audit staff recalculated the billing data for the residential customers at the base rate and volume charge per tariff 13.0 effective March 21, 2017. **See Findings 1, 2, 3, 4, 5, 14, 15, 16 and 19.**

Objectives: The objectives were to determine for the forty-eight month period, beginning March 23, 2013 through March 23, 2017, which customers if any were incorrectly billed and the differential amount by customer class and service address.

Procedures: We recalculated billing data for all provided accounts from the base and overage, and the billing history report provided by the utility. Audit staff recalculated the billing data for residential and general service customers for March 2013 through March 2016, and noted the utility used the incorrect tariff. The Utility provided the prorated calculations of effluent sales for the month of April 2016. Audit staff recalculated the billing data using the prorated calculations and determined the utility used the incorrect volume charge. Audit staff recalculated Accounts: OS001, TP001, MW001, R090, BG006, WE002, RTP, and FV001, and noted the utility was charging for more meters than what were actually on the premises. **See Findings 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 18 and 19.**

Audit Findings**Finding 1: Safe Harbor Marina (Account S001)**

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. Audit staff recalculated Safe Harbor Marina, and noted that the utility did not bill using the \$917.11 flat rate approved in Order No. PSC-09-0057-FOF-SU, issued January 27, 2009. Instead the utility billed a flat rate charge of \$1,665.03. See Table below:

K W RESORT UTILITIES CORP.					
TIME PERIOD: MARCH 2013 - MARCH 2017					
<u>Account Name</u>	<u>Account #</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
Safe Harbor Marina	S001	March 23, 2013 to December 31, 2013	\$ 16,650.30	\$ 9,235.11	\$ 7,415.19
		January 1, 2014 to December 31, 2014	\$ 19,980.36	\$ 11,005.32	\$ 8,975.04
		January 1, 2015 to December 31, 2015	\$ 19,980.36	\$ 11,005.32	\$ 8,975.04
		January 1, 2016 to December 31, 2016	\$ 37,661.92	\$ 30,548.30	\$ 7,113.62
		January 1, 2017 to March 23, 2017	\$ 11,355.09	\$ 10,554.61	\$ 800.48
Total			\$105,628.03	\$ 72,348.66	\$ 33,279.37

Effect on the General Ledger: To be determined

Finding 2: Sunset Marina (Account SM100)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Sunset Marina base facility charges (BFC) of \$142.47/month on the 2” master meter and \$2,048.10/month on the 8” turbo meter providing water service to the marina as well as an additional 64 BFC’s at \$17.81per meter per month based on the number of units behind the meters. In addition, the utility billed the marina for two small pools at \$31.31/month based on a tariff that was approved for Key West Golf Club. Per Order PSC-2016-0123-PAA-SU, Sunset Marina should have only been billed based on the 2” and 8”meters; therefore the marina was overcharged for the additional 64 units as well as the two small pools. See Table below

K W RESORT UTILITIES CORP.						
TIME PERIOD: MARCH 2013 - MARCH 2017						
<u>Account Name</u>	<u>Account #</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>	
Sunset Marina	SM100	March 23, 2013 to December 31, 2013	\$ 38,141.44	\$ 37,577.86	\$ 563.58	
		January 1, 2014 to December 31, 2014	\$ 51,041.72	\$ 50,289.28	\$ 752.44	
		January 1, 2015 to December 31, 2015	\$ 52,372.25	\$ 51,620.81	\$ 751.44	
		January 1, 2016 to December 31, 2016	\$ 48,419.94	\$ 47,144.36	\$ 1,275.58	
		January 1, 2017 to March 23, 2017	\$ 9,135.65	\$ 9,135.65	\$ -	
		Total	\$ 199,111.00	\$ 195,767.96	\$ 3,343.04	

Effect on the General Ledger: To be determined

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Finding 3: Yacht Clubs of America (Account PM002)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Yacht Clubs of America a base facility charge (BFC) of \$106.86/month (\$17.81*6) on the 5/8" meter and \$142.47/month on the 2" meter from March 2013 to April 2016. The Utility billed Yacht Clubs of America a base facility charge (BFC) of \$253.28/month on the 2" meter and \$2,532.80/month on the 2" meter from May 2016 to March 2017. The utility should have billed, per the 2012 price index increase for services rendered on or after March 30, 2013, \$101.96/month for six residential living units, and \$142.47/month for the 2" meter. See Table below

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
<u>Account Name</u>	<u>Account #</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>	
Florida Yacht	PM002	2013	\$ 6,057.36	\$ 6,013.26	\$ 44.10	
		2014	\$ 9,318.84	\$ 9,260.04	\$ 58.80	
		2015	\$ 8,167.23	\$ 8,108.43	\$ 58.80	
		2016	\$ 49,251.26	\$ 31,381.44	\$ 17,869.82	
		2017	\$ 12,888.22	\$ 2,005.68	\$ 10,882.54	
Total			\$ 85,682.91	\$ 56,768.85	\$ 28,914.06	

Effect on the General Ledger: To be determined

Finding 4: Carefree Property (Account SH002)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Carefree Property base facility charge (BFC) of \$17.81/month on the 5/8" meter. In addition, the utility billed the Carefree Property \$105.75/month for a large pool based on a tariff that was approved for Key West Golf Club, Per Order PSC-2016-0123-PAA-SU. Carefree Property should have only been billed based on the 5/8" meter; therefore they were overcharged for the additional large pool. See Table below.

K W RESORT UTILITIES CORP.						
TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account#	Year	Utility Amount	Audit Amount	Difference	
Carefree Property Management	SH002	March 23, 2013 to December 31, 2013	\$ -	\$ -	\$ -	
		January 1, 2014 to December 31, 2014	\$ 3,643.42	\$ 2,480.17	\$ 1,163.25	
		January 1, 2015 to December 31, 2015	\$ 3,305.77	\$ 2,036.77	\$ 1,269.00	
		January 1, 2016 to December 31, 2016	\$ 1,666.73	\$ 1,441.27	\$ 225.46	
		January 1, 2017 to March 23, 2017	\$ 511.27	\$ 511.27	\$ -	
		Total	\$ 9,127.19	\$ 6,469.48	\$ 2,657.71	

Effect on the General Ledger: To be determined

Finding 5: General Service Customers 5/8" Meters

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed the following accounts the based facility charges (BFC) on a 5/8" meter four times. After the last rate case, the technical staff determined that these accounts should be billed at one 5/8" meter. In March 2013, the utility billed the following accounts the based facility charges (BFC) of \$71.24/month (\$17.81*4) on the 5/8" meter. The utility should have charged the BFC of \$19.05 at one 5/8" meter. During the period of April 2013 to March 2016, the utility billed the following accounts the BFC of \$71.24/month (\$17.81*4) on the 5/8" meter, when it should have been \$17.81/month at one 5/8" meter. During the period of April 2016 to March 2017, the utility charged \$31.66 times one 5/8" meter.

K W RESORT UTILITIES CORP. KWRU'S BILLING AUDIT TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account #	Year	Utility Amount	Audit Amount	Difference	
James Beaver	B008	March 2013 - December 2013	\$ 4,984.40	\$ 3,385.22	\$ 1,599.18	
Eadeh Bush Co.	EB002	January 2014 - December 2014	\$ 5,782.48	\$ 3,859.00	\$ 1,923.48	
Armando Sosa	S046	January 2015 - December 2015	\$ 5,923.52	\$ 4,000.40	\$ 1,923.12	
		January 2016 - December 2016	\$ 1,746.41	\$ 1,265.54	\$ 480.87	
		January 2017 - March 2017	\$ -	\$ -	\$ -	
Total			\$ 18,436.81	\$ 12,510.16	\$ 5,926.65	

Effect on the General Ledger: To be determined

Finding 6: Ocean Spray Trailer Park (Account OS001)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Ocean Spray Trailer Park a base facility charge (BFC) for fourteen 5/8" meters. After the last rate case, the technical staff determined that these accounts should be billed at one 5/8" meter. In March 2013, the utility billed the BFC of \$249.34/month (\$17.81*14) on the 5/8" meter. The utility should have billed \$19.05/month at one 5/8" meter. During the periods of April 2013 to March 2016, the utility billed the BFC of \$249.34/month (\$17.81*14) on the 5/8" meter. The utility should have billed the BFC of \$17.81/month at one 5/8" meter. During the periods of April 2016 to March 2017, the utility billed the BFC of \$31.66 at one 5/8" meter.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account #	Year	Utility Amount	Audit Amount	Difference	
Ocean Spray Trailer Park	OS001	March 2013 - December 2013	\$ 3,946.93	\$ 1,863.16	\$ 2,083.77	
		January 2014 - December 2014	\$ 5,006.78	\$ 2,228.42	\$ 2,778.36	
		January 2015 - December 2015	\$ 5,209.08	\$ 2,430.72	\$ 2,778.36	
		January 2016 - December 2016	\$ 1,531.25	\$ 836.66	\$ 694.59	
		January 2017 - March 2017	\$ -	\$ -	\$ -	
Total			\$ 15,694.04	\$ 7,358.96	\$ 8,335.08	

Effect on the General Ledger: To be determined

Finding 7: Tropic Palm Mobile Home Park (Account TP001)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Tropic Palm Mobile Home Park base facility charge (BFC) of twenty-five 5/8" meters. After the last rate case, the technical staff determined that these accounts should be billed at one 5/8" meter. In March 2013, the utility billed the BFC of \$445.25/month (\$17.81*25) on the 5/8" meter. The utility should have billed \$19.05/month at one 5/8" meter. During the period of April 2013 to March 2016, the utility billed the BFC of \$445.25/month (\$17.81*25) on the 5/8" meter. The utility should have billed the BFC of \$17.81/month at one 5/8" meter. During the period of April 2016 to March 2017, the utility billed the BFC of \$31.66 at one 5/8" meter.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account #	Year	Utility Amount	Audit Amount	Difference	
Tropic Palm Mobile Home Park	TP001	March 2013 - December 2013	\$ 6,704.02	\$ 2,857.06	\$ 3,846.96	
		January 2014 - December 2014	\$ 9,193.28	\$ 4,064.00	\$ 5,129.28	
		January 2015 - December 2015	\$ 7,021.40	\$ 3,174.44	\$ 3,846.96	
		January 2016 - December 2016	\$ 2,426.62	\$ 1,144.30	\$ 1,282.32	
		January 2017 - March 2017	\$ -	\$ -	\$ -	
		Total		\$ 25,345.32	\$ 11,239.80	\$ 14,105.52

Effect on the General Ledger: To be determined

Finding 8: Meridian West Apartments (Account MW001)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Meridian West Apartments base facility charge (BFC) of one hundred three 5/8" meters. After the last rate case, the technical staff determined that this account should be billed at one 6" meter. In March 2013, the utility billed the BFC of \$1,834.43/month (\$17.81*103) on the 5/8" meter. The utility should have billed \$952.64/month at one 6" meter. During the periods\ of April 2013 to March 2016, the utility billed the BFC of \$1,834.43/month (\$17.81*103) on the 5/8" meter. The utility should have billed the BFC of \$890.49/month at one 6" meter. During the period of April 2016 to February 2017, the utility billed the BFC of \$1,583.00/month at one 6" meter and \$158.30/month at one 1.5" meter. The utility should have billed \$1583.00/month at one 6" meter. In March 2017, the utility billed \$1,584.61/month at one 6" meter and \$158.46/month at one 1.5" meter prorated. The utility should have billed \$1,584.61/month. The utility stated a 1.5" meter had been added since the last proceeding. Audit staff was unable to determine if the utility has added the 1.5" meter. We requests technical staff to review and confirm the location and size of the meter.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account #	Year	Utility Amount	Audit Amount	Difference	
Meridian West Apts.	MW001	March 2013 - December 2013	\$ 31,631.17	\$ 23,135.71	\$ 8,495.46	
		January 2014 - December 2014	\$ 42,392.51	\$ 31,065.23	\$ 11,327.28	
		January 2015 - December 2015	\$ 39,428.25	\$ 29,044.91	\$ 10,383.34	
		January 2016 - December 2016	\$ 45,890.55	\$ 41,786.71	\$ 4,103.84	
		January 2017 - March 2017	\$ 11,136.36	\$ 10,661.30	\$ 475.06	
Total			\$ 170,478.84	\$ 135,693.86	\$ 34,784.98	

Effect on the General Ledger: To be determined

Finding 9: Fourth Avenue LLC (Account R090)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Fourth Avenue LLC base facility charge (BFC) of seventeen 5/8" meters. After the last rate case, the technical staff determined that this account should be billed at three 5/8" meter. In March 2013, the utility billed the BFC of \$302.77/month (\$17.81*17) on the 5/8" meter. The utility should have billed \$57.15/month at three 5/8" meter. During the period of April 2013 to March 2016, the utility billed the BFC of \$302.77/month (\$17.81*17) on three 5/8" meter. The utility should have billed the BFC of \$53.43/month at three 5/8" meter. During the period of April 2016, the utility billed \$29.52/month at one 5/8" meter prorated. The utility should have billed the BFC of \$88.56/month at three 5/8" meters. During the periods of May 2016 to February 2017, the utility billed the BFC of \$79.15/month at one 1" meter. The utility should have billed \$94.98/month at three 5/8" meter. In March 2017, the utility billed \$79.23/month at one 1" meter. The utility should have billed \$95.07/month (\$31.66*3) at three 5/8" meter prorated. Audit staff was unable to determine if the utility has added the 1" meter. We request technical staff to review and confirm the location and size of the meter.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account #	Year	Utility Amount	Audit Amount	Difference	
5730 4th Ave LLC	R090	March 2013 - December 2013	\$ 5,619.84	\$ 3,375.78	\$ 2,244.06	
		January 2014 - December 2014	\$ 6,985.17	\$ 3,993.09	\$ 2,992.08	
		January 2015 - December 2015	\$ 5,882.72	\$ 2,890.64	\$ 2,992.08	
		January 2016 - December 2016	\$ 3,760.78	\$ 3,198.41	\$ 562.37	
		January 2017 - March 2017	\$ 548.66	\$ 596.16	\$ (47.50)	
		Total			\$ 22,797.17	\$ 14,054.08

Effect on the General Ledger: To be determined

Finding 10: Banyan Grove (Account BG006)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Banyan Grove base facility charge (BFC) of forty-eight 5/8" meters. After the last rate case, the technical staff determined that this account should be billed at one 5/8" meter, 1" meter, and 1.5" meter. In March 2013, the utility billed the BFC of \$854.88/month (\$17.81*48) on the 5/8" meter. The utility should have billed \$19.05/month at one 5/8" meter, \$47.64/ month at one 1" meter, and \$95.26/month at one 1.5" meter. During the period of April 2013 to March 2016, the utility billed the BFC of \$854.88/month (\$17.81*48) on the 5/8" meter. The utility should have billed the BFC of \$17.81/month at one 5/8" meter, \$44.53/ month at one 1" meter, and \$89.05/month at one 1.5" meter. During the period of April 2016, the utility billed \$29.52/month at one 5/8" meter prorated. The utility should have billed the BFC of \$29.52/month at one 5/8" meter, \$73.80/month at one 1" meter, and \$147.60/month at one 1.5" meter. During the periods of May 2016 to February 2017, the utility billed the BFC of \$31.66/month at one 5/8" meter, \$79.15/month at one 1" meter, and \$158.46/month at 1.5" meter. Audit staff agrees with the amounts charged during this period. In March 2017, the utility billed \$31.69/month at one 5/8" meter, \$79.23/month at one 1" meter, and \$158.46/month at 1.5" meter prorated. Audit staff agrees with the amounts being charged during this period. Audit staff was unable to determine when the utility added the 1" and 1.5" meter. We request technical staff to review and confirm the location and size of the meter.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
Account Name	Account #	Year	Utility Amount	Audit Amount	Difference	
Banyan Grove Residences LTD	BG006	March 2013 - December 2013	\$ 12,312.46	\$ 7,984.66	\$ 4,327.80	
		January 2014 - December 2014	\$ 23,370.25	\$ 14,714.65	\$ 8,655.60	
		January 2015 - December 2015	\$ 24,925.14	\$ 16,269.54	\$ 8,655.60	
		January 2016 - December 2016	\$ 7,393.66	\$ 5,308.37	\$ 2,085.29	
		January 2017 - March 2017	\$ -	\$ -	\$ -	
		Total	\$ 68,001.51	\$ 44,277.22	\$ 23,724.29	

Effect on the General Ledger: To be determined

Finding 11: ITNOR-Waters Edge (Account WE002)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed ITNOR-Waters Edge base facility charge (BFC) of thirteen 5/8" meters. After the last rate case, the technical staff determined that this account should be billed at two 5/8" meter. In March 2013, the utility billed the BFC of \$231.53/month (\$17.81*13) on the 5/8" meter. The utility should have billed \$31.10/month (\$19.05*2) at two 5/8" meter. During the period of April 2013 to March 2016, the utility billed the BFC of \$231.53/month (\$17.81*13) on thirteen 5/8" meter. The utility should have billed the BFC of \$35.62/month (\$17.81*2) at two 5/8" meter. During the period of April 2016 to March 2017, the utility billed the BFC of \$31.66/month at one 5/8" meter. Audit staff was unable to determine if the utility has changed the 5/8" meter. We requests technical staff to review and confirm the location and size of the meter.

K W RESORT UTILITIES CORP.					
TIME PERIOD: MARCH 2013 - MARCH 2017					
<u>Account Name</u>	<u>Account #</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
ITNOR- Waters Edge	WE002	March 23, 2013 to December 31, 2013	\$ 4,060.41	\$ 2,103.79	\$ 1,956.62
		January 1, 2014 to December 31, 2014	\$ 5,652.84	\$ 3,301.92	\$ 2,350.92
		January 1, 2015 to December 31, 2015	\$ 6,265.55	\$ 3,909.63	\$ 2,355.92
		January 1, 2016 to December 31, 2016	\$ 5,424.46	\$ 5,315.44	\$ 109.02
		January 1, 2017 to March 23, 2017	\$ 758.57	\$ 853.58	\$ (95.01)
		Total	\$ 22,161.83	\$ 15,484.36	\$ 6,677.47

Effect on the General Ledger: To be determined

Finding 12: Effluent Sales

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. Audit staff recalculated each account to verify customers were charged correctly. Based off of the provided the report the utility did not charge for effluent sales. The utility had to provide an additional report to show where the effluent sales were being charged. Audit staff recalculated based off of usage, the utility is using \$.78 as the volume charge instead of the prorated amount of \$ 0.83, based off the utility response.

K W RESORT UTILITIES CORP.				
APRIL 2016 - EFFLUENT SALES				
<u>Type</u>	<u>Meter Size</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
Effluent Sales	---	\$ 4,629.57	\$ 4,888.84	\$ (259.27)

Effect on the General Ledger: To be determined

Finding 13: Boyd's Camp Ground (Account BC001)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. In April 2016 the utility billed Boyd's Camp Ground base facility charge (BFC) of \$8.76/month prorated on the 5/8" meters. Boyd's should have been charged \$31.66/month based on the tariff that was approved Per Order PSC-20160123-PAA-SU.

K W RESORT UTILITIES CORP.				
APRIL 2016 - BOYD'S CAMP GROUND				
<u>Type</u>	<u>Meter Size</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
Boyd's Camp Ground	5/8"	\$ 2,342.30	\$ 2,108.22	\$ 234.08

Effect on the General Ledger: To be determined

Finding 14: Private Lift Stations for 5/8"

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. During the periods of April 2016 to March 2017, the Utility billed Private Lift Station Customers under two different tariff rates for the 5/8" meter. The utility billed the base facility charge (BFC) of \$25.33/month, and \$3.87 for the gallons usage charge on the 5/8" Private lift station meter. Per Order PSC-2016-0123-PAA-SU, the utility should have only billed \$25.33/month, and \$6.30 gallonage charge on the 5/8" Private lift station meter.

K W RESORT UTILITIES CORP.					
APRIL 2016 - MARCH 2017 - PRIVATE LIFT STATIONS					
<u>Type</u>	<u>Meter Size</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
Private Lift Station	5/8"	2016	\$ 28,913.92	\$ 30,080.27	\$ (1,166.35)
		2017	\$ 9,857.94	\$ 10,476.59	\$ (618.65)
		Total	\$ 38,771.86	\$ 40,556.86	\$ (1,785.00)

Effect on the General Ledger: To be determined

Finding 15: Harbor Shores

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The utility billed Harbor Shores base facility charge (BFC) of \$0.00 and billed \$5.25 for gallon usage. The utility should have billed \$31.66/month, and \$5.25 for gallon usage. According to the response provided by the utility, residential customers are billed in advance. Harbor Shores has an approved tariff Per Order PSC-2017-0091-FOF-SU, however was not effective during the March 2017 billing period.

K W RESORT UTILITIES CORP.				
MARCH 2017 - HARBOR SHORES				
<u>Type</u>	<u>Meter Size</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
Harbor Shores	5/8"	\$ 1,318.74	\$ 3,503.28	\$ (2,184.54)

Effect on the General Ledger: To be determined

Finding 16: Roy's Trailer Park (Account RTP)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The utility originally was billing Account RTP under residential service for the approved tariff amounts from March 2013 through October 2015. In November of 2015 through February 2017, the utility then billed for multiple 5/8" meters. However, there is only one 5/8" meter at each location. According to the utility's response, these used to be single family homes that over a period of time were modified into duplexes, triplexes, quadplexes, 5-plex, and 6-plex living units. Audit staff recalculated all of the RTP accounts using one 5/8" meter times the appropriate tariff at that time.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: NOVEMBER 2015 - FEBRUARY 2016						
<u>Account Name</u>	<u>Account #</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>	
RTP	x2 Base Rate	November 2015 - December 2015	\$ 615.52	\$ 401.80	\$ 213.72	
		January 2016 - February 2016	\$ 587.27	\$ 373.55	\$ 213.72	
		April 2016 - February 2017	\$ 528.53	\$ 566.51	\$ (37.98)	
	x3 Base Rate	November 2015 - December 2015	\$ 4,050.09	\$ 2,157.94	\$ 1,892.15	
		January 2016 - February 2016	\$ 4,038.82	\$ 2,084.03	\$ 1,954.79	
		April 2016 - February 2017	\$ 2,932.57	\$ 3,158.59	\$ (226.02)	
	x4 Base Rate	November 2015 - December 2015	\$ 6,926.75	\$ 3,106.60	\$ 3,820.15	
		January 2016 - February 2016	\$ 6,812.15	\$ 2,993.20	\$ 3,818.95	
		April 2016 - February 2017	\$ 4,488.72	\$ 4,576.51	\$ (87.79)	
x5 Base Rate	November 2015 - December 2015	\$ 4,475.91	\$ 1,782.42	\$ 2,693.49		
	January 2016 - February 2016	\$ 4,433.36	\$ 1,707.73	\$ 2,725.63		
	April 2016 - February 2017	\$ 2,538.62	\$ 2,611.31	\$ (72.69)		
x6 Base Rate	November 2015 - December 2015	\$ 1,549.27	\$ 538.79	\$ 1,010.48		
	January 2016 - February 2016	\$ 1,445.54	\$ 489.64	\$ 955.90		
	April 2016 - February 2017	\$ 695.63	\$ 692.20	\$ 3.43		
Total			\$ 46,118.75	\$ 27,240.82	\$ 18,877.93	

Effect on the General Ledger: To be determined

Finding 17: Flagler Village (Account FV001)

Audit Analysis: The Utility provided a Base & Overage Report for March 2013 through March 2017, and a Billing History Report from April 2016 through March 2017. The Utility billed Flagler Village base facility charge (BFC) of forty-eight 5/8" meters. After the last rate case, the technical staff determined that this account should be billed at one 2" meter. In March 2013, the utility billed the BFC of \$872.69/month (\$17.81*49) on the 5/8" meter. The utility should have billed \$152.42/month at one 2" meter. During the period of April 2013 to March 2016, the utility billed the BFC of \$872.69/month (\$17.81*49) on the 5/8" meter. The utility should have billed the BFC of \$152.42/month at one 2" meter. During the period of April 2016, the utility billed \$4.64 per gallons used. The utility should have billed the BFC of \$166.09/month at one 2" meter. During the period of May 2016 to February 2017, the utility billed the BFC of \$31.66/month at two 5/8" meter, \$79.15/month at one 1" meter, and \$253.28/month at one 2" meter. The utility should have billed the BFC of \$253.28/month at one 2" meter. In March 2017, the utility billed \$31.69/month at one 5/8" meter, \$79.23/month at one 1" meter, and \$253.54/month at 2" meter. Audit staff agrees with the amounts being charged during this period. The utility should have billed the BFC of \$253.28/month at one 2" meter. We request technical staff to review and confirm the location and size of the meter.

K W RESORT UTILITIES CORP.						
KWRU'S BILLING AUDIT						
TIME PERIOD: MARCH 2013 - MARCH 2017						
<u>Account Name</u>	<u>Account #</u>	<u>Year</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>	
Flagler Village	FV001	March 2013 - December 2013	\$ 17,830.21	\$ 11,258.23	\$ 6,571.98	
		January 2014 - December 2014	\$ 24,293.89	\$ 15,531.25	\$ 8,762.64	
		January 2015 - December 2015	\$ 26,952.18	\$ 18,189.54	\$ 8,762.64	
		January 2016 - December 2016	\$ 24,605.34	\$ 21,268.69	\$ 3,336.65	
		January 2017 - March 2017	\$ 5,191.07	\$ 4,763.52	\$ 427.55	
		Total	\$ 98,872.69	\$ 71,011.23	\$ 27,861.46	

Effect on the General Ledger: To be determined

Finding 18: Residential and General Service Customers

Audit Analysis: The utility provided the Base & Overage report for March 2013. Audit staff recalculated each account to verify customers were charged correctly per the tariff. According to the utility residential customers are charged in advance. However, the utility charged the \$17.81 base rate from the fourteenth revised tariff, and used \$4.14 for the gallonage charge from the thirteenth revised tariff. Audit staff recalculated based off of the fourteenth revised tariff \$17.81 base rate and \$3.87 gallonage charge.

The utility provided the Base & Overage Report from March 2013 through March 2017. The Utility also provided a billing history report for the remaining months April 2016 through March 2017. In April 2016, the utility charged the \$31.66 base rate from the Original Sheet No. 13.0 tariff, and used \$3.87 for the gallonage charge from the fourteenth revised tariff. Audit staff recalculated based off of the Original Sheet No. 13.0 tariff \$31.66 base rate and \$5.25 gallonage charge.

In March 2017, the utility charged the \$31.86 base rate from the First Revised Sheet 13.0 tariff, and used \$5.25 for the gallonage charge from the Original Sheet No. 13.0 tariff. Audit staff recalculated based off of the First Revised Sheet No. 13.0 tariff \$31.86 base rate and \$5.28 gallonage charge. See Table 14-1

Table 14-1

K W RESORT UTILITIES CORP.				
KWRU'S BILLING AUDIT				
RESIDENTIAL TARIFF VARIANCES				
<u>Type</u>	<u>Meter Size</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
Residential (2013)	5/8"	\$ 51,203.38	\$ 49,708.53	\$ 1,494.85
Residential (2016)	5/8"	\$ 67,264.25	\$ 74,589.81	\$(7,325.56)
Residential (2017)	5/8"	\$ 84,033.69	\$ 82,605.50	\$ 1,428.19
	Total	\$202,501.32	\$206,903.84	\$(4,402.52)

The utility provided the Base & Overage report for March 2013. Audit staff recalculated each account to verify customers were charged correctly per the tariff. According to the utility general service customers are charged in arrears. However, the utility charged the \$17.81 base rate from the fourteenth revised tariff, and used \$4.96 for the gallonage charge from the thirteenth revised tariff. Audit staff recalculated based off of the thirteenth revised tariff \$19.05 base rate and \$4.96 gallonage charge.

The utility provided the Base & Overage Report from March 2013 through March 2017. The Utility also provided a billing history report for the remaining months April 2016 through March 2017. The utility used various base rate charges, and \$4.64 from fourteenth revised tariff.

However, based off a response the utility should be using a prorated amount of \$29.52 as the base rate and \$4.64 for gallonage. See Table 14-2

Table 14-2

K W RESORT UTILITIES CORP.				
KWRU'S BILLING AUDIT				
GENERAL SERVICE TARIFF VARIANCES				
<u>Type</u>	<u>Meter Size</u>	<u>Utility Amount</u>	<u>Audit Amount</u>	<u>Difference</u>
General Service (2013)	5/8"	\$ 17,063.19	\$ 17,369.48	\$ (306.29)
	1" & 5/8"	\$ 982.82	\$ -	\$ 982.82
General Service (2016)	5/8"	\$ 17,063.19	\$ 17,369.48	\$ (306.29)
	1" & 5/8"	\$ 982.82	\$ -	\$ 982.82
Total		\$ 36,092.02	\$ 34,738.96	\$ 1,353.06

Effect on the General Ledger: To be determined



KW Resort Utilities Corp.

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

April 6, 2017

VIA CERTIFIED MAIL

Flagler Village
Attn: Manager
5300 Macdonald Avenue Unit 34
Key West, FL 33040

KW RU Sewer Account No. FV001

Dear Flagler Village,

As a result of the recent State of Florida Public Service Commission Rate Case (Docket No. 150071-SU) an adjustment was made to your account in the amount of \$43,402.79.

Please find the refund, plus interest, enclosed.

Sincerely,



Christopher A. Johnson
President, KW Resort Utilities Corp.

KW RESORT UTILITIES CORP.
OPERATING ACCOUNT
P.O. BOX 2125
KEY WEST, FL 33045-2125
PH. 305-295-3301

BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBANDT.COM

5306
63-9138-2631

04/06/2017

PAY TO THE
ORDER OF

Flagler Village

\$ 43,402.79

DOLLARS

Forty-three thousand four hundred two and 79/100*****

Flagler Village
5300 Macdonald Ave Unit 34
Key West, FL 33040



Christopher A. Johnson
NP

MEMO Refund on ACCT# FV001

⑈00005306⑈

KW RESORT UTILITIES CORP.

5306

04/06/2017

Flagler Village

Refund on ACCT# FV001

43,402.79

1310000 BB&T Operating Account - 3361 Refund on ACCT# FV001

43,402.79

04/06/2017

KW RESORT UTILITIES CORP.
Flagler Village

Refund on ACCT# FV001

43,402.79

5306

1310000 BB&T Operating Account - 3361 Refund on ACCT# FV001

43,402.79



KW Resort Utilities Corp.

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

April 6, 2017

VIA CERTIFIED MAIL

Meridian West
P.O. Box 4697
Logan, Utah 84323

KW RU Sewer Account No. MW001

Dear Meridian West,

As a result of the recent State of Florida Public Service Commission Rate Case (Docket No. 150071-SU) an adjustment was made to your account in the amount of \$72,701.12.

Please find the refund, plus interest, enclosed.

Sincerely,



Christopher A. Johnson
President, KW Resort Utilities Corp.

KW RESORT UTILITIES CORP.
OPERATING ACCOUNT
P.O. BOX 2125
KEY WEST, FL 33045-2125
PH. 305-295-3301

BRANCH BANKING AND TRUST COMPANY
1-800-BANK-BBT BBANDT.COM 63-8138-2631

5307
04/06/2017

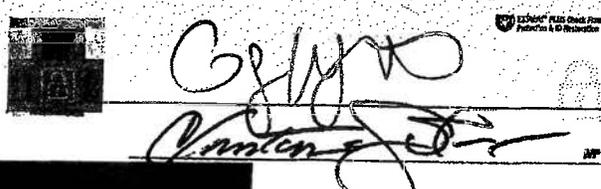
PAY TO THE ORDER OF Meridian West

\$ 72,701.12

Seventy-two thousand seven hundred one and 12/100***** DOLLARS

Meridian West
P.O. Box 4697
Logan, Utah 84323

MEMO
Refund on ACCT# MW001
⑈00005307⑈



KW RESORT UTILITIES CORP.

04/06/2017

Meridian West

Refund on ACCT# MW001

5307

72,701.12

1310000 BB&T Operating Account - 3361 Refund on ACCT# MW001

72,701.12

04/06/2017 KW RESORT UTILITIES CORP.
Meridian West

Refund on ACCT# MW001

72,701.12 5307

1310000 BB&T Operating Account - 3361 Refund on ACCT# MW001

72,701.12



KW Resort Utilities Corp.

6630 Front Street
Key West, FL 33040
305.295.3301
FAX 305.295.0143
www.kwru.com

April 6, 2017

VIA CERTIFIED MAIL

Banyan Grove
5455 Macdonald Ave Unit 46
Key West, FL 33040

KWRU Sewer Account No. BG006

Dear Banyan Grove,

As a result of the recent State of Florida Public Service Commission Rate Case (Docket No. 150071-SU) an adjustment was made to your account in the amount of \$25,512.91.

Please find the refund, plus interest, enclosed.

Sincerely,



Christopher A. Johnson
President, KW Resort Utilities Corp.

KW RESORT UTILITIES CORP.
OPERATING ACCOUNT
P.O. BOX 2125
KEY WEST, FL 33045-2125
PH: 305-295-3301

BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBANDT.COM

5308
63-0138-2631

04/06/2017

PAY TO THE ORDER OF
Banyan Grove

\$ 25,512.91

Twenty-five thousand five hundred twelve and 91/100*****

Banyan Grove
5455 Macdonald Ave Unit 46
Key West, FL 33040

MEMO
Refund on ACCT# BG006
⑈00005308⑈

Christopher A. Johnson

081064 / 12-04
Details on back
Security Features included

KW RESORT UTILITIES CORP.
04/06/2017 Banyan Grove 5308
Refund on ACCT# BG006 25,512.91

1310000 BB&T Operating Account - 3361 Refund on ACCT# BG006 25,512.91

04/06/2017 **KW RESORT UTILITIES CORP.**
Banyan Grove Refund on ACCT# BG006 25,512.91 5308

1310000 BB&T Operating Account - 3361 Refund on ACCT# BG006 25,512.91

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU
ORDER NO. PSC-2018-0444-PAA-SU
ISSUED: August 31, 2018

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD J. POLMANN
GARY F. CLARK
ANDREW GILES FAY

PROPOSED AGENCY ACTION
ORDER REQUIRING REFUNDS
AND
ORDER TO SHOW CAUSE

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the proposed agency action discussed herein requiring refunds is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

Background

K W Resort Utilities Corporation (KWRU or Utility) is a Class A utility providing wastewater service to approximately 1,865 customers in Monroe County. Water service is provided by the Florida Keys Aqueduct Authority (FKAA).

During the Utility's 2015 rate case, we found billing practices that appeared to be inconsistent with the Utility's approved tariff.¹ Subsequently, we ordered that this docket be opened to conduct a full audit and investigation of KWRU's billing practices in order to determine if any orders, rules, or statutes were violated by the Utility.² We have previously

¹Order No. PSC-16-0123-PAA-SU, issued March 23, 2016, in Docket No. 150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.

²Order No. PSC-17-0091-FOF-SU, issued March 13, 2017, in Docket No. 150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.

addressed incorrect billing practices of the Utility in Order Nos. PSC-02-1165-PAA-SU³ and PSC-02-1711-TRF-SU.⁴

An audit of the Utility's billing practices from April 2013 through March 2017 was completed and filed in the docket file on November 6, 2017.⁵ On November 8, 2017, the Utility acknowledged receipt of the audit report and stated its intent to file a written response. KWRU filed a response to the audit on January 30, 2018, and indicated that it had refunded \$72,701.12 to Meridian West, \$25,512.91 to Banyan Grove, and \$43,402.79 to Flagler Village to remedy KWRU's billing errors.⁶

On March 22, 2018, Commission staff held an informal meeting with representatives from KWRU, the Office of Public Counsel (OPC), and Monroe County (County) to discuss the audit results and ongoing investigation. Following the informal meeting between the parties, staff sent a Notice of Apparent Violation (NOAV) to KWRU on May 17, 2018, by certified letter. On June 12, 2018, OPC submitted written comments addressing KWRU's billing practices, many of which are consistent with Commission staff's NOAV. KWRU responded to Commission staff's NOAV on July 16, 2018.

This Order addresses the results of our audit and investigation into KWRU's billing practices for April 2013 through March 2016. We have jurisdiction in this matter pursuant to Sections 367.081, 367.091, and 367.161, Florida Statutes (F.S.).

Decision

Order to Show Cause

Sections 367.081(1) and 367.091, F.S., permit a utility to charge only its approved rates. We have previously investigated KWRU's billing practices on several occasions. In 2001, Safe Harbor Marina (Safe Harbor), a customer of KWRU, filed a letter with the Division of Consumer Affairs concerning the billing practices of KWRU. In Order No. PSC-02-1165-PAA-SU,⁷ issued August 26, 2002, we determined that KWRU billed Safe Harbor a flat rate that was not in the Utility's tariff and that KWRU was billing discriminatory rates to Safe Harbor. As a result, we approved a unique bulk wastewater rate for Safe Harbor.

Also in 2002, KWRU filed an application for a price index rate adjustment pursuant to Section 367.081(4)(a), F.S. During our review of that application, we became aware of two

³Order No. PSC-02-1165-PAA-SU, issued August 26, 2002, in 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.

⁴Order No. PSC-02-1711-TRF-SU, issued December 9, 2002, in Docket No. 021008-SU, In re: Request for approval of two new classes of bulk wastewater rates in Monroe County by K W Resort Utilities Corp.

⁵DN 09533-2017.

⁶KWRU indicated it refunded Meridian West and Flagler Village because its billing system erroneously classified these customer accounts as general service rather than residential. KWRU additionally indicated that it refunded Banyan Grove to correct billing based on FCAA meters instead of 48 multi-family units.

⁷Id.

wastewater charges used in revenue calculations for which there were no approved tariffs. During a conference call between Commission staff and the Utility, the Utility was informed of the findings and asked to provide additional information about the new classes of service. KWRU provided an explanation of the origin and duration of the charges and filed for new classes of service. As a result, Order No. PSC-02-1711-TRF-SU⁸ was issued December 9, 2002, which established a small pool charge and a large pool charge based on demand the Key West Golf Club - HOA (KWGC-HOA) pool facilities placed on the system. In addition, rates for temporary service for a septic tank pumping company were also approved. While we did not order KWRU to issue any refunds or to show cause for charging a rate that was not in its tariff and failing to apply for a new class of service, we put KWRU on notice that it was in violation of Sections 367.091(4) and 367.091(5), F.S. Part of our reasoning in declining to show cause KWRU in Docket No. 021008-SU, was that “[KWRU] now thoroughly [understood] the requirements of Sections 367.091(4) and 367.091(5), Florida Statutes, and will not initiate new classes of service without notifying this Commission in a timely manner.”

On February 18, 2016, during the proposed agency action (PAA) portion of KWRU’s 2015 rate case,⁹ Commission staff sent a letter to KWRU which stated that the Utility’s billing practices for several general service customers appeared to be inconsistent with its approved tariff. The Utility responded to Commission staff’s letter on March 21, 2016. In Order No. PSC-2017-0091-FOF-SU, issued March 13, 2017, we ordered that a separate docket be established to conduct a full audit and investigation into the Utility’s billing practices, and thus, this docket was established. The purpose of the audit and investigation was to determine if any orders, rules, or statutes were violated by the Utility. KWRU responded to Commission staff’s audit on January 30, 2018.

As mentioned in the background above, Commission staff held an informal meeting on March 22, 2018, with representatives from KWRU, OPC and the County. Following this informal meeting, Commission staff issued a NOAV to KWRU on May 17, 2018, by certified letter. Within Commission staff’s NOAV, staff identified the following as the Utility’s apparent noncompliance with our statutes, rules, and orders:

- Negotiated Flat Rate: Order No. PSC-02-1165-PAA-SU, issued August 26, 2002, 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 this Commission, in apparent violation on Section 367.081(2)(a)1., F.S. Following this order, KWRU corrected its billing practices. However, during the billing period of April 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 \$917.11 per month. The Utility sent a letter, dated April 20, 2009, to this Commission advising it of the Utility’s decision to charge a different unauthorized rate for this wastewater customer. However, this Commission never approved the negotiated rate KWRU billed Safe Harbor.

⁸Id.

⁹In Docket No. 150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.

- Pool Charges: While processing KWRU's 2002 price index request, Commission staff became aware of two charges used in revenue calculations for which there were no Commission-approved tariffs on file. As a result, the Utility formally requested a new class of service for small and large pools. The pool charges for KWGC-HOA were approved by Order No. PSC-02-1711-TRF-SU. Commission staff's audit indicated that KWRU administered the pool charges from tariff Sheet No. 15.7, which was applicable to the KWGC-HOA, to two additional customers, Sunset Marina and Carefree Property between April 2013 and March 2016.
- Base Facility Charge (BFC): Commission staff's audit into the billing practices of KWRU (April 2013 through March 2016) 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
 - General Service Customers: James Beaver, Eadeh Bush Co., and Armando Sosa
 - Ocean Spray Trailer Park
 - Tropic Palm Mobile Home Park
 - Meridian West Apartments
 - Fourth Ave. LLC
 - Banyan Grove
 - ITNOR Waters Edge
 - Roy's Trailer Park
 - Flagler Village

KWRU responded to Commission staff's NOAV on July 16, 2018, and addressed the negotiated flat rate, pool charges, and BFC billing practices identified within the NOAV. In its response, the Utility stated that it mistakenly believed that its revision to Safe Harbor's bulk wastewater rate had been accepted by this Commission, similar to a developer's agreement for service. Additionally, in its response, KWRU pointed out that at the end of 2009, management was moved in-house and has since routinely brought all matters before this Commission. Further, KWRU indicated it believed the pool charges were implemented reasonably under the tariff and were only implemented after consulting with Commission staff.

KWRU responded to the apparent violation of BFC billing practices by admitting it had billed several general service customers incorrect BFCs and stated it was an error that occurred in switching KWRU's billing system after the 2009 rate case. The Utility also addressed Roy's Trailer Park in its response, and explained that it had engaged in numerous discussions with the owner to mitigate the customer's outstanding balance owed to the Utility consistent with KWRU's approved tariffs. In addition, KWRU has made refunds to three of its general service customers to correct incorrect billing practices that occurred prior to the implementation of Order No. PSC-16-0123-PAA-SU (PAA Order) in April 2016. We note that the Utility's billing practices appear to be consistent with its approved tariff following the implementation of the PAA Order.

Pursuant to Section 367.161(1), F.S., we are authorized to impose upon any entity subject to our jurisdiction a penalty of not more than \$5,000 for each day a violation continues, if such entity is found to have refused to comply with or to have willfully violated any lawful rule or order of this Commission, or any provision of Chapter 367, F.S. Each day a violation continues is treated as a separate offense. Each penalty is a lien upon the real and personal property of the utility and is enforceable by us as a statutory lien. If a penalty is also assessed by another state agency for the same violation, our penalty will be reduced by the amount of the other agency's penalty. As an alternative to the above remedies, Section 367.161(2), F.S., permits us to amend, suspend, or revoke a utility's certificate for any such violation. Part of the determination we must make in evaluating whether to penalize a utility is whether the utility willfully violated the rule, statute, or order. Section 367.161, F.S., does not define what it is to "willfully violate" a rule or order.

Willfulness is a question of fact. Fugate v. Fla. Elections Comm'n, 924 So. 2d 74, 75 (Fla. 1st DCA 2006). The plain meaning of "willful" typically applied by the Courts in the absence of a statutory definition, is an act or omission that is done "voluntarily and intentionally" with specific intent and "purpose to violate or disregard the requirements of the law." Fugate at 76.

The procedure we follow in dockets such as this is to determine whether or not the facts warrant requiring the utility to respond; if so, we then issue an Order to Show Cause (show cause order). A show cause order is considered an administrative complaint by us against the utility. When we issue a show cause order, the utility is required to file a written response, which must contain specific allegations of disputed fact pursuant to Rule 28-106.2015, F.A.C. If there are no disputed factual issues, the utility's response should so indicate. The response must be filed within 21 days of service of the show cause order on the respondent.

In determining an appropriate penalty, we consider our prior orders. While Section 367.161, F.S., treats each day of each violation as a separate offense with penalties of up to \$5,000 per offense, we believe that the general purpose of the show cause penalties is to obtain compliance with the our rules, statutes, and orders. If a utility has a pattern of noncompliance with a particular rule or set of rules, a higher penalty may be warranted. If the rule violation adversely impacts the public health, safety, or welfare, the sanction should be the most severe.

The utility has two options when this show cause order is issued. The utility may respond and request a hearing pursuant to Sections 120.569 and 120.57, F.S. If the utility requests a hearing, a further proceeding will be scheduled before we make a final determination on the matter. The utility may respond to the show cause order by remitting the penalty. If the utility pays the penalty, this show cause matter is considered resolved, and the docket closed.

In the event the utility fails to timely respond to the show cause order, the utility is deemed to have admitted the factual allegations contained in the show cause order. The utility's failure to timely respond is also a waiver of its right to a hearing. If the utility does not timely respond, a final order will be issued imposing the sanctions set out in the show cause order. Finally, we note that if we commence revocation or suspension proceedings, we follow very

specific noticing requirements set forth in Section 120.60, F.S., prior to revocation or suspension of a certificate.

By billing rates that are not in the Utility's approved tariff, KWRU appears to be in violation of the statutes. While occasional mistakes may be made by any utility, making excessive and repeated mistakes demonstrates a "willful" disregard for of the utility's obligation to charge its approved rates in the sense contemplated by Section 367.161, F.S., and by Fugate.

As will be discussed later, although the Utility corrected these billing problems following the issuance of the PAA Order, Order No. PSC-16-0123-PAA-SU, in 2016, given the Utility's pattern of failure to bill customers in accordance with its approved tariffs and the number of violations discovered within the three-year audited period, KWRU's mistakes are excessive and, therefore, appear to violate Sections 367.081(1) and 367.091(3), F.S. We find that this situation warrants more than just a warning and hereby order that KWRU shall show cause, in writing within 21 days, as to why it should not be fined \$5,000 for Sunset Marina and \$5,000 for Safe Harbor Marina, for a total of \$10,000, for charging unauthorized rates in violation of Sections 367.081(1) and 367.091(3), F.S. In the event the Utility chooses to remit payment of \$10,000, it shall be made within 60 days following the 21 day period that the Utility has to respond to this show cause order.

Order Requiring Refunds

Appropriate Time Period

As previously discussed, in Order No. PSC-17-0091-FOF-SU,¹⁰ we ordered Commission staff to conduct a full audit and investigation of KWRU's billing practices. Commission audit staff reviewed the Utility's billing records from April 2013 through March 2017. In a letter dated June 12, 2018, OPC noted that Commission staff's audit does not go back to the final order issued in the 2009 rate case when KWRU started incorrectly billing these customers.

We find that time period covered by the audit is a reasonable remedy to mitigate the Utility's incorrect billing practices prior to the implementation of the PAA Order while considering that KWRU has corrected these billing practices following the implementation of the PAA Order. Therefore, we find that the appropriate time period to be considered for potential refunds in this docket is April 2013 through March 2016.

Safe Harbor Marina

Safe Harbor is a unique customer. Not only because this customer owns, operates, and maintains its own lift station; but, it is also a multi-use customer consisting of residential and commercial units, boat slips, and bathhouses. Docket No. 020520-SU was initiated due to a complaint from Safe Harbor concerning the billing practices of KWRU.¹¹ We determined that KWRU had billed Safe Harbor a discriminatory flat rate for Safe Harbor's unmetered

¹⁰Id.

¹¹Id.

bar/restaurant, which was not in KWRU's tariff, and approved a bulk wastewater rate for Safe Harbor.

During KWRU's 2015 rate case, we determined that KWRU was not billing this customer the approved tariff rate. In response to Commission staff's audit, KWRU indicated that it sent us a letter, dated February 27, 2009, stating it would charge a negotiated flat rate to Safe Harbor of \$1,650.67. While we acknowledge that KWRU sent in a letter notifying us of its intent, the Utility failed to appropriately apply for approval of the new rate and have its request brought forth and approved by this Commission. Based on the Utility's history with us, where we have addressed the Utility billing unauthorized rates in Order Nos. PSC-02-1165-PAA-SU and PSC-02-0711-TRF-SU, we believe the Utility is aware of the procedures required for approval of a new rate pursuant to Sections 367.081 and 367.091, F.S., and should not have begun to charge a negotiated bulk rate without our approval.

During the 36 month period from April 2013 through March 2016, KWRU's tariff rate for Safe Harbor Marina was \$917.11 per month (Attachment A). However, during this time period, the Utility billed Safe Harbor a negotiated bulk rate of \$1,650.67. Based on these rates, we determined that KWRU overbilled Safe Harbor by \$733.56 during each billing period. As a result of charging a negotiated rate that was not approved by this Commission. Therefore, we hereby order KWRU to refund \$26,408 ($\733.56×36) with interest in accordance with Rule 25-30.360, F.A.C, to Safe Harbor Marina. The refund shall be completed within 12 months with interest of the consummating order, and documentation supporting the final refund shall be provided to Commission staff within 10 days of the completed refund.

Sunset Marina

Sunset Marina is a general service customer with one two-inch and one eight-inch turbo FKAA meter serving a marina, convenience store, dry boat slips, and apartments. We determined that during the 36 month period (April 2013 - March 2016) KWRU billed Sunset Marina BFCs for 64 residential units in addition to BFCs for the customer's two-inch and eight-inch turbo meters, as well as charges for two small pools and a gallonage charge based on usage.

Based on KWRU's approved tariffs, Sunset Marina should have been billed based on the FKAA meters only. KWRU should not have also billed a residential BFC of \$17.81 per month for each of the 64 apartment units behind the master meters. KWRU overbilled Sunset Marina \$1,139.84 per billing period ($\$17.81 \times 64$ apartment units). Based on the above, we hereby order KWRU to refund \$41,034 ($\$1,139.84 \times 36$) with interest in accordance with Rule 25-30.360, F.A.C., to Sunset Marina. The refund shall be completed within 12 months with interest of the consummating order, and documentation supporting the final refund shall be provided to Commission staff within 10 days of the completed refund.

Pools

As discussed in the show cause section, Order No. PSC-02-1711-TRF-SU, issued December 9, 2002,¹² established a small pool rate of \$41.62 per month and a large pool rate of \$141.08 per month, which considered the demand the KWGC-HOA pool facilities placed on the system. Within that order, we determined that the Utility should not be required to refund any amounts collected from KWGC-HOA, which were billed using unauthorized rates, because the approved rate was higher than the rate the Utility had been collecting from KWGC-HOA. Additionally, as also discussed in the show cause section of that order, we did not order KWRU to issue any refunds or to show cause for charging a rate that was not in its tariff and failing to apply for a new class of service. However, the order put KWRU on notice that it should now thoroughly understand the requirements of Sections 367.091(4) and (5), F.S., and not initiate new classes of service without notifying us in a timely manner.

The investigation and audit determined that KWRU had applied its approved pool rates for KWGC-HOA to other additional customers with pools of similar demands (Sunset Marina and Carefree Property). In the Utility's response dated July 16, 2018, KWRU indicated that it applied its approved pool charges reasonably under its tariff and only implemented the charges after consultation with Commission staff and its assurance that it was appropriate. We cancelled KWRU's tariff sheet for pool charges in the PAA Order. As mentioned previously, KWRU has corrected its billing practices following the implementation of the PAA Order. Therefore, we find that the Utility shall not be required to refund rates charged for pools other than the KWGC-HOA because the Utility believed that the tariff was applicable to any additional customers with pools.

General Service Customers – Unit vs. Metered Billing

In the Utility's 2009 rate case, we transitioned the Utility from flat residential rates to a traditional BFC and gallonage charge rate structure.¹³ In response to the investigation and audit, KWRU agreed that several of its general service customers were billed based on units instead of meter sizes. According to the Utility, this error occurred during the transition from flat to volumetric rates for residential customers and a billing software error which incorrectly identified the customers as residential units. In addition, it appears that the billing determinants in the 2009 rate case may have been based on units rather than meter sizes for some general service customers. As mentioned previously, KWRU has corrected its billing practices following the implementation of the PAA Order in April 2016. Therefore, we find that KWRU does not have to refund general service customers that were billed BFCs based on units and not FCAA meters.

¹²Id.

¹³Order No. PSC-09-0057-FOF-SU, issued January 27, 2009, in Docket No. 070293-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.

Roy's Trailer Park

Roy's Trailer Park is a general service customer of KWRU consisting of approximately 100 mobile homes which have been converted to multi-units (i.e. duplex, triplex, etc.) and are serviced by 100 FKAA meters. In response to Commission staff's NOAV, KWRU admitted it billed this customer based on the number of units instead of meters dating back to December 2015.

The Utility indicated that the majority of the 100 accounts in Roy's Trailer Park have carried outstanding balances dating back to October 2015. The Utility also indicated that although Roy's Trailer Park made a payment each month for sewer service, the park was not paying its monthly sewer bill in full.

KWRU addressed the billing issues with respect to Roy's Trailer Park by letter dated August 28, 2017, and explained that the customer had repeatedly failed to remit its full payment for numerous billing periods resulting in an outstanding balance of \$49,300.37, which included late payment charges of \$7,215 assessed to all of the Roy's Trailer Park accounts that were delinquent. Roy's Trailer Park agreed to the Utility's settlement proposal of \$35,215.06, which waived the late payment charges and recalculated the customer's bill for October 2015 through March 2016 consistent with the rates established in Order No. PSC-16-0123-PAA-SU. Billing Roy's Trailer Park based on FKAA meters and not units further reduced the outstanding balance by \$6,870.31.

Based on the above, we find that the Utility's settlement with this customer was a reasonable solution to address the corrected outstanding balance for Roy's Trailer Park for this time period. Consistent with our decision regarding unit vs. metered billing, KWRU shall not be required to refund Roy's Trailer Park for the time period of April 2013 through September 2015 during which it billed based on units instead of meters.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that K W Resort Utilities Corp. shall show cause in writing within 21 days why it should not be fined a penalty in the amount of \$10,000 for its violation of Sections 367.081(1) and 367.091(3), F.S. It is further

ORDERED that in the event the K W Resort Utilities Corp. chooses to remit payment of the \$10,000 penalty, it shall be made within 60 days following the 21 day period that the Utility has to respond to this show cause order. It is further

ORDERED that if K W Resort Utilities Corp. does not remit payment, or does not respond to the order to show cause, this docket shall remain open to allow us to pursue collection of the amounts owed by the Utility. If K W Resort Utilities Corp. timely responds in writing to the Order to Show Cause, this docket shall remain open to allow for the appropriate processing of the response. If K W Resort Utilities Corp. timely responds to the show cause order by remitting the penalty, this show cause matter shall be considered resolved. It is further

ORDERED that K W Resort Utilities Corp. shall refund \$26,408 with interest in accordance with Rule 25-30.360, F.A.C., to Safe Harbor Marina. It is further

ORDERED that K W Resort Utilities Corp. shall refund \$41,034 with interest in accordance with Rule 25-30.360, F.A.C., to Sunset Marina. It is further

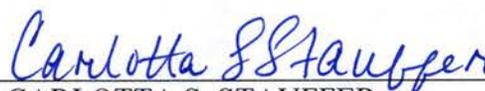
ORDERED that the refunds ordered herein shall be completed within 12 months of this Order, and documentation supporting the final refund shall be provided to Commission staff within 10 days of the completed refunds. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that upon issuance of a consummating order, this docket shall remain open until the show cause matter is resolved, K W Resort Utilities Corp. completes the refunds ordered herein, and K W Resort Utilities Corp. provides documentation of the completed refunds to Commission staff within 10 days of completion. It is further

ORDERED that once the show cause matter is resolved and all ordered refunds have been made and verified by staff, this docket shall be closed administratively.

By ORDER of the Florida Public Service Commission this 31st day of August, 2018.



CARLOTTA S. STAUFFER

Commission Clerk

Florida Public Service Commission

2540 Shumard Oak Boulevard

Tallahassee, Florida 32399

(850) 413-6770

www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

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.

The show cause portion of this Order is preliminary, procedural or intermediate in nature. Any person whose substantial interests are affected by this Show Cause Order may file a response within 21 days of issuance of the Show Cause Order as set forth herein. This response must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 21, 2018.

Failure to respond within the time set forth above shall constitute an admission of all facts and a waiver of the right to a hearing and a default pursuant to Rule 28-106.111(4), Florida Administrative Code. Such default shall be effective on the day subsequent to the above date.

If an adversely affected person fails to respond to the show cause portion of this Order within the time prescribed above, that party may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this Order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure.

As identified in the body of this Order, our action requiring refunds is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this Order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 21, 2018. If such a petition is filed, 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. In the absence of such a petition, this Order shall become effective and final upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

Attachment A

**ELEVENTH REVISED SHEET #15.5
CANCELS TENTH REVISED SHEET #15.5**

**NAME OF COMPANY: KW RESORT UTILITIES CORPORATION
SEWER TARIFF**

**BULK WASTEWATER RATE FOR
SAFE HARBOR MARINA**

AVAILABILITY - For Safe Harbor Marina.

APPLICABILITY - For Safe Harbor Marina

LIMITATIONS - Subject to all Rules and Regulations of this Tariff and General Rules and Regulations of The Commission as amended from time to time.

BILLING PERIOD - Monthly.

RATE -

13 Residential living units at 1 ERC each (apartments, Mobile homes, House Boats with apartments)	\$343.66
18 Live Aboard Boats at .6ERC each	286.38
27 Non Live Aboard Boats at 1/5 ERC each	143.20
6 Vacant slips at 1/5 ERC each	30.84
2 Bathhouses at 1 ERC each	52.87
2 Commercial Businesses at 1/2 ERC each	26.43
1 Commercial Bar	33.73
<u>Total Bulk Rate</u>	<u>\$ 917.11</u>

TERMS OF PAYMENT Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days, written notice, separate and apart from any other bill, service may then be disconnected.

EFFECTIVE DATE: MARCH 30, 2013

ORDER NO.:

TYPE OF FILING: 2012 PRICE INDEX INCREASE

FOR SERVICE RENDERED ON OR AFTER MARCH 30, 2013

Christopher A. Johnson
Issuing Officer

President
Title

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into by and between SUNSET MARINA LLC, a Florida limited liability company, ("Sunset Marina"), whose address is 5555 College Road, Key West, Florida 33040 and KW RESORT UTILITIES, INC., a Florida corporation ("KWRU"), whose address is 6630 Front Street, Stock Island, Florida 33040. From time to time hereinafter, the parties to the Settlement Agreement will be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

- A) WHEREAS the Parties have a disagreement regarding the refund, if any, KWRU owes to Sunset Marina; and
- B) WHEREAS the parties desire to resolve any disputes between them including, but not limited to the appropriate amount of the refund, if any, from KWRU to Sunset Marina;

NOW, THEREFORE, the Parties have agreed to enter into this Settlement Agreement under the following terms:

TERMS

1. **RECITALS.** The above Recitals are true and correct, incorporated herein by reference, and are made part of this Settlement Agreement.
2. **AGREEMENTS.** For and in consideration of the mutual promises and covenants made in this Settlement Agreement, KWRU shall pay to Sunset Marina the amount of Forty-One Thousand Thirty Four Dollars and No Cents (\$41,034.00), within 180 days of the Execution of this Settlement Agreement.
3. **RELEASE.** Upon full payment of Forty-One Thousand Thirty Four Dollars and No Cents (\$41,034.00) as provided for above, Sunset Marina hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to the refund due to Sunset Marina; including all claims or potential claims that Sunset Marina had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against KWRU related to the refund or related to in any way those factual issues as delineated in Public Service Commission Order No. PSC-2018-044-PAA-SU ("Released Claims").

KWRU hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to Service Availability Charges and/or over-refunds due from Sunset Marina; including all claims or potential claims that KWRU had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against Sunset Marina related to Service Availability Charges and/or over-refunds due from Sunset Marina or related to in any way those factual issues as delineated in Public Service Commission Order No. PSC-2018-044-PAA-SU ("Released Claims").

However, the Settlement Agreement is not intended to and does not release the Parties from any of their obligations under this Settlement Agreement.

4. **CONFIDENTIALITY.** The Parties agree that the terms and conditions of this Settlement Agreement, the terms of the settlement, all offers or counteroffers, all non-publicly disclosed facts, information, documents and/or details, and all other aspects of negotiations between the Parties are confidential and shall not be disclosed or revealed by them, except as specified below. The Parties agree that except as specifically provided for herein, neither shall transmit any press release or other information to the media or governmental agencies about the Settlement Agreement or its terms. The Parties expressly agree that the terms and conditions of this Settlement Agreement may be disclosed as follows:
- (a) By the Parties to their predecessors, successors, assigns, parent corporations subsidiaries, affiliates, holding companies, divisions, unincorporated business units, joint ventures, partners, investors, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, auditors and/or regulators in the event that such disclosure is required;
 - (b) By the Parties to their tax return preparers, the IRS, accountants and/or auditors;
 - (c) By any of the Parties if necessary to enforce or litigate over any provision of this Settlement Agreement;
 - (d) By either of the Parties to the Public Service Commission to evidence the agreement of the Parties to resolve this issue; and
 - (e) To the extent required by law. In the event a court or other legal body shall compel disclosure or production of this Settlement Agreement or any part hereof, the Party compelled to disclose will provide immediate written notice to the non-disclosing Party or its attorney.
5. **NO OTHER CONSIDERATION.** The Parties affirm that the only consideration received for entering into this Settlement Agreement is as stated herein, and that no other promise, representation, or agreement of any kind has been made to or relied upon by the Parties in connection with the execution of this Settlement Agreement. The Parties further acknowledge that they have read the entire Settlement Agreement and fully understand the meaning and intent of the Settlement Agreement, including, but not limited to, its final and binding effect in relation to the Released Claims.
6. **NO ADMISSION.** The Parties acknowledge that this Settlement Agreement is made as a compromise of disputed liability, and that neither of the Parties acknowledges any liability to any other Party. The Parties expressly dispute any liability or any acts of wrongdoing in violation of any federal, state, or local law, ordinance, or regulation, nor shall it be considered as evidence of any such alleged liability, wrongdoing, or violation of any federal, state, or local law, ordinance, or regulation. The Parties agree that this Settlement Agreement may be used as evidence only in a subsequent proceeding in which any of the Parties allege a breach of this Settlement Agreement.

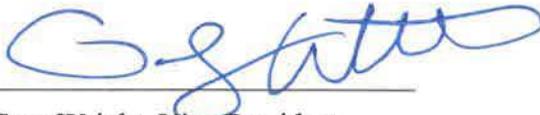
7. GENERAL PROVISION.

- (a) **Entire Agreement.** The Parties agree that this Settlement Agreement contains the entire agreement between the Parties, and therefore supersedes any prior agreements of the Parties, with respect to the issues addressed herein. The terms of this Settlement Agreement are contractual and shall survive the execution of this Settlement Agreement.
- (b) **Amendments.** No modification, amendment, or waiver of any provision of this Settlement Agreement, nor consent to any departure by any Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties, and same shall be effective only in the specific instance and for the specific purpose for which given.
- (c) **Severability.** If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect as such invalid clause or provision shall be deemed severable, unless such severance should materially affect the intent of the parties in entering into this Settlement Agreement.
- (d) **Capacity.** The Parties warrant and represent that, prior to the execution of this Settlement Agreement, they have not sold, assigned, granted, conveyed, or transferred to any other entity or person any of the rights, obligations, claims, demands, actions, or causes of actions described herein. The Parties have full legal and mental capacity to enter into, execute, and perform the terms and conditions contained in this Settlement Agreement and have entered into the Settlement Agreement voluntarily. Any person executing this Settlement Agreement in a representative capacity, represents and warrants that that person is duly authorized to execute this agreement on behalf of the represented party.
- (e) **Binding Effect.** This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.
- (f) **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, at different times and places. When all parties have executed a counterpart of this Settlement Agreement, it shall be binding on all parties notwithstanding that all of them may not have signed the same counterpart. A facsimile or other copy of an executed counterpart hereof, such as an e-mailed PDF copy, shall have the same effect as an original.
- (g) **Headings.** The headings of the paragraphs herein are intended solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.
- (h) **Date of Execution.** The date of this Settlement Agreement shall be the date that the last Party executes this Settlement Agreement as shown below.

- (i) Venue/Costs & Attorneys' Fees. Should any dispute arise out of this Agreement, venue for any suit shall be in Monroe County, Florida. The prevailing party will be entitled to recover from the non-prevailing party, its reasonable attorneys' fees and costs, including any appellate attorneys' fees.

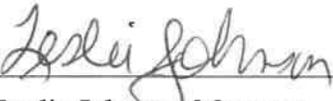
IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the dates set forth below:

KW RESORT UTILITIES, INC.

By: 
Greg Wright, Vice-President

Date: 10/23/18

SUNSET MARINA, LLC

By: 
Leslie Johnson, Manager

Date: 10/23/18

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is entered into by and between SAFE HARBOUR MARINA LLC, a Florida limited liability company, ("Safe Harbour"), whose address is 6810 Front Street, Stock Island, FL 33040 and K W RESORT UTILITIES, INC., a Florida corporation ("KWRU"), whose address is 6630 Front Street, Stock Island, FL 33040. From time to time hereinafter, the parties to the Settlement Agreement will be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

- A) WHEREAS the Parties have a disagreement regarding the amount of additional Service Availability Fees and Charges that Safe Harbour owes to KWRU; and
- B) WHEREAS the parties desire to resolve any disputes between them including, but not limited to the appropriate amount of Service Availability Fees and Charges;

NOW, THEREFORE, the Parties have agreed to enter into this Settlement Agreement under the following terms:

TERMS

1. **RECITALS.** The above Recitals are true and correct, incorporated herein by reference, and are made part of this Settlement Agreement.

2. **AGREEMENTS.** For and in consideration of the mutual promises and covenants made in this Settlement Agreement, Safe Harbour shall pay to KWRU the amount of Forty-Four Thousand Nine Hundred Seventy-Eight Dollars and Ninety-One Cents (\$44,978.91), within ~~Five (5)~~ ^{Fifteen (15)} days of the execution of this Settlement Agreement.

3. **RELEASE.** Upon full payment of (\$44,978.91) as provided for above, KWRU hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to Service Availability Charges due to KWRU; including all claims or potential claims that KWRU had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against Safe Harbour related to Service Availability Fees and Charges ("Released Claims"). However, the Settlement Agreement is not intended to and does not release the Parties from any of their obligations under this Settlement Agreement.

Safe Harbour hereby settles, compromises, releases, remits, acquits, discharges, any and all claims, demands, causes of action, rights, remedies, obligations, damages, costs, expenses, attorneys' fees and liabilities arising out of or directly related to Service Availability Charges due to KWRU and invoices for prior wastewater service; including all claims or potential claims that Safe Harbour had or may now have, whether known or unknown, matured or unmatured, foreseen or unforeseen, suspected or unsuspected, accrued or unaccrued, against KWRU related to Service Availability Fees and Charges, and prior invoices for wastewater service ("Released Claims"). Safe Harbour

specifically and expressly waives any right to any refund of amounts paid to KWRU for prior wastewater service and shall advise the Florida Public Service Commission accordingly. However, the Settlement Agreement is not intended to and does not release the Parties from any of their obligations under this Settlement Agreement. Further, Safe Harbor agrees to not object to any State or County agencies with regard to KWRU's construction of the new .350 MGD AAF treatment train to increase the existing capacity to .849MGD as described in the Florida Department of Environmental Protection Permit Number FLA014951, including but not limited to Zoning, and Permitting. This latter provision shall not prohibit Safe Harbour from making any complaints relating to odor emanating from the wastewater treatment plant.

4. CONFIDENTIALITY. The Parties agree that the terms and conditions of this Settlement Agreement, the terms of the settlement, all offers or counteroffers, all non-publicly disclosed facts, information, documents and/or details, and all other aspects of negotiations between the Parties are confidential and shall not be disclosed or revealed by them, except as specified below. The Parties agree that except as specifically provided for herein, neither shall transmit any press release or other information to the media or governmental agencies about the Settlement Agreement or its terms. The Parties expressly agree that the terms and conditions of this Settlement Agreement may be disclosed as follows:

- (a) By the Parties to their predecessors, successors, assigns, parent corporations subsidiaries, affiliates, holding companies, divisions, unincorporated business units, joint venturers, partners, investors, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, auditors and/or regulators in the event that such disclosure is required;
- (b) By the Parties to their tax return preparers, the IRS, accountants and/or auditors;
- (c) By any of the Parties if necessary to enforce or litigate over any provision of this Settlement Agreement; and
- (d) To the extent required by law. In the event a court or other legal body shall compel disclosure or production of this Settlement Agreement or any part hereof, the Party compelled to disclose will provide immediate written notice to the non-disclosing Party or its attorney.

5. NO OTHER CONSIDERATION. The Parties affirm that the only consideration received for entering into this Settlement Agreement is as stated herein, and that no other promise, representation, or agreement of any kind has been made to or relied upon by the Parties in connection with the execution of this Settlement Agreement. The Parties further acknowledge that they have read the entire Settlement Agreement and fully understand the meaning and intent of the Settlement Agreement, including, but not limited to, its final and binding effect in relation to the Released Claims.

6. NO ADMISSION. The Parties acknowledge that this Settlement Agreement is made as a compromise of disputed liability, and that neither of the Parties acknowledges any liability to any other Party. The Parties expressly dispute any liability or any acts of wrongdoing in violation of

any federal, state, or local law, ordinance, or regulation, nor shall it be considered as evidence of any such alleged liability, wrongdoing, or violation of any federal, state, or local law, ordinance, or regulation. The Parties agree that this Settlement Agreement may be used as evidence only in a subsequent proceeding in which any of the Parties allege a breach of this Settlement Agreement.

7. GENERAL PROVISIONS.

(a) **Entire Agreement.** The Parties agree that this Settlement Agreement contains the entire agreement between the Parties, and therefore supersedes any prior agreements of the Parties, with respect to the issues addressed herein. The terms of this Settlement Agreement are contractual and shall survive the execution of this Settlement Agreement.

(b) **Amendments.** No modification, amendment, or waiver of any provision of this Settlement Agreement, nor consent to any departure by any Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties, and same shall be effective only in the specific instance and for the specific purpose for which given.

(c) **Severability.** If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect as such invalid clause or provision shall be deemed severable, unless such severance should materially affect the intent of the parties in entering into this Settlement Agreement.

(d) **Capacity.** The Parties warrant and represent that, prior to the execution of this Settlement Agreement, they have not sold, assigned, granted, conveyed, or transferred to any other entity or person any of the rights, obligations, claims, demands, actions, or causes of actions described herein. The Parties have full legal and mental capacity to enter into, execute, and perform the terms and conditions contained in this Settlement Agreement and have entered into the Settlement Agreement voluntarily. Any person executing this Settlement Agreement in a representative capacity, represents and warrants that that person is duly authorized to execute this agreement on behalf of the represented party.

(e) **Binding Effect.** This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

(f) **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, at different times and places. When all parties have executed a counterpart of this Settlement Agreement, it shall be binding on all parties notwithstanding that all of them may not have signed the same counterpart. A facsimile or other copy of an executed counterpart hereof, such as an e-mailed PDF copy, shall have the same effect as an original.

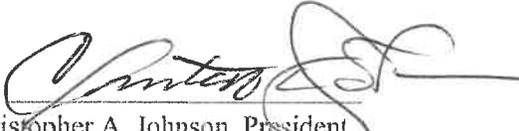
(g) **Headings.** The headings of the paragraphs herein are intended solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

(h) **Date of Execution.** The date of this Settlement Agreement shall be the date that the last Party executes this Settlement Agreement as shown below.

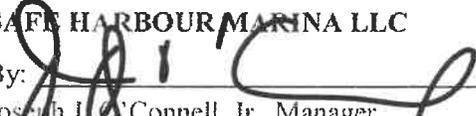
(i) **Venue/Costs & Attorneys' Fees.** Should any dispute arise out of this Agreement, venue for any suit shall be in Monroe County, Florida. The prevailing party will be entitled to recover from the non-prevailing party, its reasonable attorneys' fees and costs, including any appellate attorneys' fees.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the dates set forth below:

K W RESORT UTILITIES, INC.

By: 
Christopher A. Johnson, President
Date: 5/12/2016

SAFE HARBOUR MARINA LLC

By: 
Joseph J. Connell, Jr., Manager
Date: 5/12/2016

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

FILED: May __, 2019

STIPULATION AND SETTLEMENT

WHEREAS, K W Resort Utilities Corp. (KWRU or Utility), and the Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), have signed this Stipulation and Settlement (the “Agreement;” unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement); and

WHEREAS, on March 13, 2017, the Commission ordered its staff to open this docket, No. 20170086-SU, and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*; and

WHEREAS, on November 6, 2017, Commission Staff filed in this docket its Audit Report, titled, “K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017;” and

WHEREAS, the Utility filed its response to the Commission Staff’s Audit Report on or about January 31, 2018; and

WHEREAS, on May 17, 2018, the Commission Staff issued a Notice of Apparent Violation to the Utility; and

WHEREAS, on August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU (“PAA Order”) requiring KWRU to refund money to certain customers and to pay a penalty; and

WHEREAS, on September 21, 2018, OPC filed a Petition protesting portions of the PAA Order unrelated to the penalty, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing; and

WHEREAS, on March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying KWRU's motion to dismiss or strike; denying OPC's motion for partial summary final order and KWRU's motion for summary final order; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this docket so as to achieve fairness to customers and the Utility and to ensure compliance with the applicable Florida Statutes and Florida Rules of Administrative Procedure; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 367 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties upon acceptance of the Agreement as provided herein and upon approval in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Agreement will become effective on the date it is signed by both Parties (the "Effective Date"). The Parties agree that, in addition to any refunds issued to date, KWRU shall issue refunds in the amount of \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, respectively, within 30 days of the approval of this Agreement in its entirety by the Commission without modification, via entry of a Commission Order. This

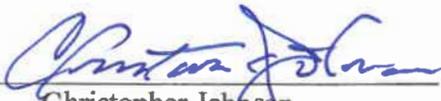
Agreement does not address Safe Harbor Marina or Sunset Marina. OPC will take no position as to whether these customers are entitled to any further refund.

2. OPC agrees to withdraw its Petition protesting the PAA Order.
3. KWRU agrees to withdraw its Cross-Petition and request for administrative hearing in this docket, except as it relates to Safe Harbor Marina and Sunset Marina.
4. This Agreement is silent on KWRU's right to advocate on matters in this docket related to the penalty outlined in the PAA Order.
5. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof.
6. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification. The Parties agree that approval of this Agreement is in the public interest. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement. Approval of this Agreement in its entirety will resolve all matters and issues which are the subject matter of this Agreement in Docket No. 20170086-SU pursuant to, and in accordance with, Section 120.57(4), Florida Statutes. No Party shall seek appellate review of any order pertaining to this Agreement.

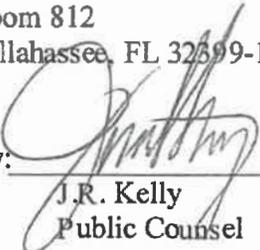
7. This Agreement is dated as of the date the last signature is affixed. It may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

K W Resort Utilities Corp.
Mr. Christopher Johnson
C/O K.W. Resort Utility
6630 Front Street
Key West FL 33040-6050

By: 
Christopher Johnson
Title: President
Date: 05-17-2019

Office of the Public Counsel
J.R. Kelly, Esq.
The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, FL 32399-1400

By: 
J.R. Kelly
Public Counsel
Date: 05-17-2019

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

FILED: May 17, 2019

JOINT MOTION OF K W RESORT UTILITIES CORP. AND
THE OFFICE OF PUBLIC COUNSEL FOR
APPROVAL OF STIPULATION AND SETTLEMENT

The Citizens of the State of Florida, by and through the Office of Public Counsel (OPC), and K W Resort Utilities Corp. (KWRU or Utility), (collectively, “Joint Movants”), by and through their undersigned attorneys, respectfully move the Florida Public Service Commission (Commission or PSC) to approve a Stipulation and Settlement addressing issues associated with the Commission’s investigation into the billing practices of KWRU, which the Joint Movants have entered into in order to resolve the litigation. In support hereof, the Joint Movants state as follows:

1. On March 13, 2017, the Commission ordered its staff to open this docket and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*

2. On November 6, 2017, Commission Staff filed its Audit Report, titled, “K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017.”

3. On August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU (“PAA Order”).

4. The Citizens filed a Petition protesting portions of the PAA Order on September 21,

2018, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing.

On March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying K W Resort's motion to dismiss or strike, denying OPC's motion for partial summary final order and denying K W Resort's motion for summary final order.

4. The Joint Movants negotiated in good faith to resolve the issues in this docket and thereby avoid the need for any further expensive and time-consuming litigation before the Commission. These efforts have been successful and the result is the Stipulation and Settlement attached hereto as Attachment A (the Agreement).

6. The Agreement is the result of good faith efforts to address the issues in this proceeding in a manner that will resolve certain billing issues and avoid the unnecessary expense and uncertainty associated with further litigation. The Agreement results in a fair, just, and reasonable disposition of the docket to the benefit of the customers referenced in the PAA Order. Therefore, the Joint Movants submit the Agreement is in the public interest and respectfully request its approval as further described below.

7. In furtherance of this Joint Motion and approval of the Agreement, the Joint Movants waive any right to seek reconsideration of, or otherwise appeal, any decision of the Commission approving, in its entirety, the Agreement.

8. As set forth in the attached Agreement, the Joint Movants have reached agreement, as follows:

- (a) KWRU agrees that in addition to any refunds issued to date, KWRU shall issue refunds in the amount of \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, respectively, within 30 days of the

approval of the Agreement in its entirety by the Commission without modification, via entry of a Commission Order.

(b) OPC agrees to withdraw its Petition protesting the PAA Order, and KWRU agrees to withdraw its Cross-Petition and request for administrative hearing in this docket, except as it relates to Safe Harbor Marina and Sunset Marina.

(c) The Joint Movants further agree that approval of the Agreement in its entirety will resolve all matters and issues which are the subject matter of the Agreement in Docket No. 20170086-SU, and that neither Party shall seek appellate review of any order pertaining to the Agreement.

(d) The Agreement does not address Safe Harbor Marina or Sunset Marina.

(e) OPC takes no position regarding whether Sunset Marina or Safe Harbor Marina are entitled to any further refund.

8. The Agreement is silent as to KWRU's right to advocate on matters in this docket related to the penalty outlined in the PAA Order.

9. The Joint Movants represent that the Agreement provides an equitable and just balance of the positions of the Joint Movants on the issues in this proceeding. The Joint Movants submit approval of the Agreement is in the best interests of both the Utility and its customers, and therefore, respectfully request approval of same.

10. Commission approval of this Joint Motion is consistent with the Commission's long-standing policy to encourage settlements that provide benefits to the customers and avoid unnecessary additional litigation expense.

WHEREFORE, the Joint Movants respectfully request that the Commission approve the Agreement attached hereto as Attachment A.

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Respectfully submitted this 17 day of May, 2019, by:



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CERTIFICATE OF SERVICE

Docket No. 20170086-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 17th day of May 2019, to the following:

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Mr. Christopher Johnson
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Exhibit “A”

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

FILED: May 17, 2019

STIPULATION AND SETTLEMENT

WHEREAS, K W Resort Utilities Corp. (KWRU or Utility), and the Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), have signed this Stipulation and Settlement (the “Agreement;” unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement); and

WHEREAS, on March 13, 2017, the Commission ordered its staff to open this docket, No. 20170086-SU, and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*; and

WHEREAS, on November 6, 2017, Commission Staff filed in this docket its Audit Report, titled, “K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017;” and

WHEREAS, the Utility filed its response to the Commission Staff’s Audit Report on or about January 31, 2018; and

WHEREAS, on May 17, 2018, the Commission Staff issued a Notice of Apparent Violation to the Utility; and

WHEREAS, on August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU (“PAA Order”) requiring KWRU to refund money to certain customers and to pay a penalty; and

WHEREAS, on September 21, 2018, OPC filed a Petition protesting portions of the PAA Order unrelated to the penalty, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing; and

WHEREAS, on March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying KWRU's motion to dismiss or strike; denying OPC's motion for partial summary final order and KWRU's motion for summary final order; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this docket so as to achieve fairness to customers and the Utility and to ensure compliance with the applicable Florida Statutes and Florida Rules of Administrative Procedure; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 367 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties upon acceptance of the Agreement as provided herein and upon approval in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Agreement will become effective on the date it is signed by both Parties (the "Effective Date"). The Parties agree that, in addition to any refunds issued to date, KWRU shall issue refunds in the amount of \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, respectively, within 30 days of the approval of this Agreement in its entirety by the Commission without modification, via entry of a Commission Order. This

Agreement does not address Safe Harbor Marina or Sunset Marina. OPC will take no position as to whether these customers are entitled to any further refund.

2. OPC agrees to withdraw its Petition protesting the PAA Order.
3. KWRU agrees to withdraw its Cross-Petition and request for administrative hearing in this docket, except as it relates to Safe Harbor Marina and Sunset Marina.
4. This Agreement is silent on KWRU's right to advocate on matters in this docket related to the penalty outlined in the PAA Order.
5. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof.
6. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification. The Parties agree that approval of this Agreement is in the public interest. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement. Approval of this Agreement in its entirety will resolve all matters and issues which are the subject matter of this Agreement in Docket No. 20170086-SU pursuant to, and in accordance with, Section 120.57(4), Florida Statutes. No Party shall seek appellate review of any order pertaining to this Agreement.

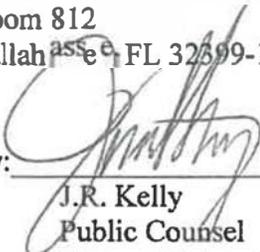
7. **This Agreement is dated as of the date the last signature is affixed. It may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original.**

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

K W Resort Utilities Corp.
Mr. Christopher Johnson
C/O K.W. Resort Utility
6630 Front Street
Key West FL 33040-6050

By: 
Christopher Johnson
Title: President
Date: 05-17-2019

Office of the Public Counsel
J.R. Kelly, Esq.
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By: 
J.R. Kelly
Public Counsel
Date: 05-17-2019