

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in wastewater rates
in Monroe County by K W Resort Utilities Corp.

DOCKET NO. 150071-SU

FILED: December 9, 2016

**HARBOR SHORES POST-HEARING STATEMENT OF POSITIONS
AND POST-HEARING BRIEF**

Pursuant to Order Nos. PSC-16-0372-PCO-EI and PSC-16-0194-PHO-EI, the Members of Harbor Shores Condominium Unit Owners Association (Harbor Shores), by and through the Representative, Ann M. Aktabowski, hereby submit their Post-Hearing Statement of Positions and Post-Hearing Brief.

PRELIMINARY STATEMENT

The Members of Harbor Shores has combined its Post-Hearing Statement of Positions and its Post-Hearing Brief into a single document. The issues on which the Members of Harbor Shores take no positions or which were stipulated have not been reflected in the Brief. Within this Brief, the Members of Harbor Shores Condominium Unit Owners Association Inc. will be shortened to "Harbor Shores" or "the HOA" and Harbor Shores will refer to K W Resort Utilities Corp. as "KWRU" or "Utility".

EXECUTIVE SUMMARY OF ARGUMENT

In 2007 Harbor Shores signed a Utility Agreement with KWRU which requires the HOA to pay the Sewer bills for all 69 Units and, during testimony at the Hearings held in Key West on November 7th and 8th 2016, KWRU agreed that the Utility would shut down service to the entire Park, should Harbor Shores fail to pay all monthly charges for any one Unit or all Units within

the Park. We would argue that this is the epitome of a General Service customer and as such, Harbor Shores should be classified and charged accordingly.

ISSUES 1 to 17 and ISSUES 19 to 45

In the interests of saving time Harbor Shores agrees with OPC on Issues 1 through 17 and Issues 19 through 45 including those issues on which OPC takes No Position or which were stipulated.

ISSUE 18: Should the members of Harbor Shores Condominium Unit Owners Association, Inc. (Harbor Shores) be classified as Residential customers or a General Service customer?

POSITION: Harbor Shores is a General Service Customer because the HOA has been responsible for paying charges for all 69 units since 2007 per our Agreement with KWRU. The President of KWRU, Chris Johnson, stated during the Hearing on 11/8/16 that the whole Park will be shut down if the HOA does not pay for one single Unit, and that solidifies our position that we are "One General Service Customer" since the Rate Case in 2009.

ARGUMENT During the course of our involvement in the Rate Case it came to our attention that there were different categories of customers and various fees and charges based on these categories. Harbor Shores Association members are designated Residential Customers and it is our position that we meet the criteria of General Service Customer based on the following:

(1) The Association has been paying the monthly charges for all 69 units since the last rate case in 2009 per our Utility Agreement with KWRU (See Hearing Exhibit 103)

(2) We have two Master Meters which FKAA reads and sends us two bills with a Deduct for the 69 unit sub-meters water bills already sent by FKAA to each unit.(See Hearing Exhibit 89)

(3) We have been told repeatedly by KWRU that we must pay for all 69 units because, if the members were charged individually, and one was delinquent, then at least half the park would be shut down for non-payment by that one Unit owner. During testimony at the Hearing on 11/8/16, Mr. Johnson, President of KWRU, stated that if the HOA failed to pay one unit or more then KWRU could not shut down the individual unit owner(s) but could shut down the whole park for non-payment (See Hearing Testimony pages 697 lines 20 to 25 continuing through all of pages 698, 699 and 700 and page 701 lines 1-2). In this same testimony, Mr. Johnson agreed that Harbor Shores is the guarantor for the payment of all 69 Harbor Shores Units and, as such, no one Unit can legally be shut down if Harbor Shores HOA fails to pay the bill per Florida Rule 25-30-320.

(4) During Hearing Testimony on 11/8/16 Ms. Jennifer Crawford of Staff questioned KWRU President Chris Johnson regarding the definition of a Customer in his Tariff (See Hearing Testimony Volume 4 pages 702 Line 22 to 25, all of pages 703, 704 and 705 line 1 to 3). Ms. Crawford read the Customer definition as follows “ a customer is any person, firm or corporation who enters

into an agreement to receive water services from the company and is liable for payment of that water service” and Mr. Johnson agreed that is their Tariff definition. Ms. Crawford went on to establish that the Agreement that KWRU has with Harbor Shores HOA makes Harbor Shores the customer and that Florida Rule 25-30-320 regarding termination of service for non-payment refers to the “customer” with whom the utility has an agreement and Mr. Johnson agreed that there is no individual unit owner in Harbor Shores being billed or paying for KWRU services.

(5) There are several Associations with Condominiums, modular, manufactured and/or mobile homes in Stock Island that are already classified as General Service (See Hearing Exhibit 84). Examples of these include Flagler Village, Sunset Marina, Meridian West and Banyon Grove with the HOA or Management Company paying the bill. Thus the precedent has been set and these Unit Owners and Renters are currently enjoying the lower rates associated with the General Service classification.

(6) We own all of the equipment inside the Park and we do the annual Back-Flow testing every year on that equipment. We also pay for any and all repairs to the system inside the park. Per our contract, KWRU has no property rights or easement rights of any kind (See Exhibit 103, Utility Agreement, page 4, item 4, Property Rights).

(7) Although the Commission saw fit to “omit” our request for a refund (original Issue #41 omitted), at the Pre-Hearing Conference, for what may be seven plus years

of incorrect classification and overcharges of approximately sixty to seventy thousand dollars, during the Hearings, it was apparent that customers have been given refunds in circumstances similar to ours when they were classified and billed as Residential customers or a combination of Residential and General Service but were actually General Service customers and are General Service customers today (See Hearing Testimony Volume 4 pages 618 through 632 wherein OPC Mr. Erik Sayler examines KWRU President, Chris Johnson)

It is our contention that given all of the reasons listed in 1 through 7 above, it should be abundantly clear that Harbor Shores has been incorrectly classified as 69 Residential Units when the evidence, documentation and testimonies all establish that Harbor Shores is entitled to the General Service classification.

This is not a small issue for our HOA. The result of the currently approved rates and charges means an annual increase of almost \$20,000 if Harbor Shores remains classified as Residential Customers. However, if Harbor Shores is classified as a General Service Customer, as we believe we should be, then the HOA may not have to increase the monthly maintenance fees for our members, many of whom cannot afford to pay such an unexpectedly large increase.

CONCLUSION

For the reasons stated herein, the Commission should approve our request for reclassification from 69 Residential Customers to one General Service Customer. However, should the Commission disagree with our arguments and conclude that each Unit Owner is to be billed as an individual Residential customer, then we

would ask that the Commission address and explain how the issue of KWRU access to private property to shut off service for non-payment by a Residential Unit Owner will be handled. Additionally, we would ask that the Commission also address and explain how the issue of customer deposit requirements will be handled.

The issues of access to private property to shut off service for non-payment and customer deposits require explanation due to the fact that Harbor Shores has been treated as a General Service customer while being incorrectly classified as a Residential customer, making those issues moot up until now. If, however, the Commission correctly decides to classify Harbor Shores as a General Service customer, these issues will remain moot, just as they have been for the past seven years.

For all the reasons mentioned herein, the Commission should approve the request that Harbor Shores be reclassified as a General Service customer.

Respectfully submitted,

/s/ Ann M. Aktabowski

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CERTIFICATE OF SERVICE
Docket No. 150071-SU

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Harbor Shores Post-Hearing Statement of Positions and Post-Hearing Brief has been furnished by electronic mail on this 9th day of December, 2016, to the following:

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