

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
ORDER NO. PSC-16-0579-PCO-SU
ISSUED: December 22, 2016

ORDER DENYING K W RESORT UTILITIES CORP.'S AMENDED MOTION FOR LEAVE TO FILE LATE-FILED EXHIBIT

K W Resort Utilities Corp. (KWRU or Utility) is a Class A utility providing wastewater service to approximately 2,061 customers in Monroe County. On July 1, 2015, KWRU filed its application for the rate increase at issue. By Order No. PSC-16-0123-PAA-SU, issued March 23, 2016, the Commission issued a proposed agency action order approving an increase in rates and charges. On April 13, 2016, timely protests to the proposed agency action order were filed by the Office of Public Counsel (OPC) and Monroe County (County). On April 18 and 20, 2016, cross-protests were filed by KWRU and the Harbor Shores Condominium Unit Owners Association, Inc. (Harbor Shores), respectively. By Order No. PSC-16-0194-PCO-SU,¹ issued May 17, 2016, controlling dates were established for prehearing activities, including dates for pre-filing testimony and exhibits, as well as specific procedures for discovery, which was set to conclude on October 28, 2016. A technical hearing was held on November 7-8, 2016, in Key West, Florida, and the Utility, OPC, the County and Harbor Shores were present, presented evidence, and cross-examined the proffered witnesses. Post-hearing briefs were filed by all parties on December 9, 2016.

On December 8, 2016, KWRU filed a Motion for Leave to File Late-Filed Exhibit (Motion). Shortly thereafter, on December 9, 2016, KWRU filed an Amended Motion for Leave to File Late-Filed Exhibit (Amended Motion). On December 15, 2016, OPC and the County filed a Joint Response in Opposition to KWRU's Amended Motion for Leave to Late-Filed Exhibit (Joint Response). The Amended Motion requests permission to late-file invoices reflecting actual amounts of rate case expense incurred since October 27, 2016. KWRU argues that its Amended Motion should be granted in the interest of justice and fairness, and in order for the record to accurately reflect the expenses incurred in this case so that the Commission may adjudge the appropriate recoverable amount.

In the Joint Response, OPC and the County state that Commission staff twice asked the Utility in two different sets of interrogatories to "provide the most recent actual and estimated rate case expense, in addition to detailed explanations and calculations to justify the estimated expense to complete this rate case." OPC and the County argue that KWRU had ample opportunities to provide estimates of rate case expense to complete the case during discovery, the Prehearing Conference, and the hearing itself. OPC and the County contend that KWRU has failed to show good cause why this information was not provided prior to the closing of the evidentiary record.

¹ This order was subsequently amended by Order No. PSC-16-0372-PCO-SU, issued September 15, 2016; and Order No. PSC-16-0536-PCO-SU, issued November 23, 2016.

Upon review of the Amended Motion and the Joint Response, KWRU has not demonstrated good cause for the relief requested. The Utility had ample opportunity to provide an estimated cost for completing the rate case and did not provide any reason as to why it failed to timely provide the Commission with the estimated expense to complete its case. Commission staff asked on multiple occasions for this specific information, which the Utility failed to provide. Furthermore, the Amended Motion was filed on December 9, 2016, over a month after the technical hearing concluded on November 8, 2016, and the evidentiary record was closed, which is additional evidence that this omission was more than an oversight on the part of the Utility. Additionally, if KWRU were allowed to submit additional invoices in this case, it would be prejudicial to the other parties as they would be unable to conduct discovery or cross-examination on the new information. To do so, would require that the record be reopened and additional due process afforded to all parties and Commission staff. Therefore, KWRU's Amended Motion is hereby denied.

Based on the foregoing, it is

ORDERED by Chairman Julie I. Brown, as Presiding Officer, that K W Resort Utilities Corp.'s Amended Motion for Leave to File Late-Filed Exhibit is hereby denied.

By ORDER of Chairman Julie I. Brown, as Presiding Officer, this 22nd day of December, 2016.



JULIE I. BROWN
Chairman and Presiding Officer
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.

KRM

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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

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

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