



Public Service Commission
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COMMISSION CLERK

DATE: NOVEMBER 7, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: DIVISION OF ECONOMIC REGULATION (SARGENT) *[Signature]*
OFFICE OF THE GENERAL COUNSEL (ECHTERNACHT) *[Signature]*

RE: DOCKET NO. 021008-SU - REQUEST FOR APPROVAL FOR TWO NEW CLASSES OF BULK WASTEWATER RATES IN MONROE COUNTY BY K W RESORT UTILITIES CORP.

AGENDA: 11/19/02 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: NOVEMBER 23, 2002

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\ECR\WP\021008.RCM

CASE BACKGROUND

KW Resort Utilities (KWRU or utility) is a Class B utility providing wastewater service in Monroe County. Based on the 2001 Annual Report, the utility serves approximately 911 wastewater customers. Revenues for 2001 were reported as \$577,125 for wastewater, and the utility reported an operating loss of \$21,707.

On September 10, 2002, KWRU filed an application for a 2002 Price Index rate adjustment for wastewater. During the review of the application, staff became aware of two wastewater charges used in revenue calculations for which there were no Commission approved tariffs on file.

During a phone conversation on September 20, 2002, the utility was informed of staff's findings and was asked to provide details about the new classes of service. KWRU offered staff an explanation to the origin and duration of the services, and stated it would

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immediately file for new classes of service with the Commission pursuant to Section 367.091, Florida Statutes.

On September 24, 2002, KWRU filed for approval of two new classes of bulk wastewater rates. The utility provided the Commission with circumstances relating to the arrangement between KWRU and the Key West Golf Club Homeowner's Association's (KWGC-HOA) wastewater services, an agreement between KWRU and Synagro Southeast, Inc. (Synagro) regarding temporary effluent treatment, actual revenues generated by the two classes of bulk wastewater rates, and Original Tariff Sheet Numbers 15.7 and 15.9.

The Commission has jurisdiction over this subject matter pursuant to Sections 367.081 and 367.091, Florida Statutes, and Chapter 25-9, Florida Administrative Code.

ISSUE 1: Should KW Resort Utilities' request for a new class of service for equivalent residential connection (ERC) based flat wastewater rates be approved?

RECOMMENDATION: Yes, KWRU's request for a new class of service for ERC-based flat wastewater rates should be approved. The utility should be allowed to continue collection of the ERC-based flat wastewater rates currently being charged and Tariff Sheet No. 15.7 should be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheets. (SARGENT)

STAFF ANALYSIS: During the review of KW's application for a 2002 Price Index rate adjustment, staff became aware of charges to the KWGC-HOA for which the utility had no Commission approved tariff on file. Once the utility was notified of staff's findings, the utility was cooperative in providing information to apply for a new class of service.

Rule 25-9.005(4), Florida Administrative Code, states:

Whenever a new or additional service classification or rate schedule is filed with the Commission, the information required by subsection (1) above need not be furnished. In lieu thereof, a statement shall be filed stating the purpose and reason for the new service classification or schedule and, if determinable, the estimated annual revenue to be derived therefrom and the estimated number of customers to be served thereby.

In November 1998, KWRU entered into a service arrangement with the KWGC-HOA to provide wastewater services for two area pools, each with restrooms. When the pools and restrooms were originally constructed and the developer initially connected to the KWRU system, service availability charges were determined based on the ERC's represented by each hook up. The small pool was charged based on 1.18 ERCs, while the large pool, which includes a clubhouse, was charged based on 4.0 ERCs.

Through phone conversations with the utility, staff learned that the current monthly flat rate charged to the KWGC-HOA of \$46.84 was simply agreed upon by the two parties. KWRU normally operates using a base facility/gallongage charge for general service wastewater customers. However, the developer for the KWGC-HOA

refused to install a meter for the two pools. Since water is supplied to the area pools by the Florida Keys Aquaduct Authority, KWRU had no authority to require that the meters be installed, and the flat rate was adopted. The utility expressed concern that this agreed upon rate did not fairly take into account the differences in size and use of the two area pools. In filing for a new class of service, KWRU wishes to develop a rate that could be applied to this general service connection based upon the ERC equivalents used in determining service availability charges. This rate would contain a base, single ERC rate which could be multiplied by the ERC equivalent of the connections.

In Order No. PSC-02-1156-PAA-SU, issued August 26, 2002, the Commission approved similar ERC based rates for KWRU to resolve a complaint by Safe Harbor Marina. In this order, flat rates were determined by first establishing a single ERC rate of \$35.27, then multiplying that rate by the ERC equivalents of Safe Harbor Marina's various connections. This ERC rate and the ERC equivalents determined when the pools were connected were used in determining the charges for KWGC-HOA. The rates proposed are as follows:

Small Pool - 1.18 ERC
\$41.62

Large Pool - 4.0 ERC
\$141.08

While this proposed rate structure resulted in a rate decrease for the small pool, (\$46.84 vs. \$41.62), it also resulted in a rate increase for the large pool, (\$46.84 vs. \$141.08). KWRU has been collecting a total monthly amount of \$93.68 from KWGC-HOA, and will begin collecting a more appropriate total rate of \$182.70. Since staff's recommended rate is higher than the rate the utility has been collecting, staff believes that KWRU should not be required to refund any amounts collected from KWGC-HOA which were billed using unauthorized rates prior to this filing for a new class of service for ERC-based flat wastewater rates.

It is important to note that the rates included in Original Sheet 15.7 include the amount of increase determined in the 2002 Price Index application which was being processed simultaneously with this recommendation.

For the reasons stated above, staff believes the requested ERC-based flat wastewater rates are just, reasonable, compensatory, and not unfairly discriminatory and KWRU's request for a new class

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of ERC-based flat wastewater rates should be approved. The utility should be allowed to continue collection of the ERC-based flat wastewater rates currently being charged and Tariff Sheet No. 15.7 should be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheets.

ISSUE 2: Should KW Resort Utilities' request for a new class of service for temporary effluent treatment wastewater rates be approved?

RECOMMENDATION: Yes, KWRU's request for a new class of service for temporary effluent treatment wastewater rates should be approved. The utility should be allowed to continue collection of the temporary effluent treatment wastewater rates currently being charged and Tariff Sheet No. 15.9 should be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheets. (SARGENT)

STAFF ANALYSIS: As stated previously, during the review of the utility's 2002 Price Index application, staff became aware of charges to Synagro for which the utility had no Commission approved tariff on file. Once the utility was notified of staff's findings, the utility was cooperative in providing information to apply for a new class of service.

During staff's September 20, 2002, phone conversation with KWRU, the utility informed staff that it treated effluent on a temporary basis for Synagro based upon an agreement entered into by the two parties on May 1, 2001.

Synagro is a septic tank pumping company which transports sludge from Monroe County to Dade and Broward counties for further processing. Synagro began additional processing to dewater the sludge in order to reduce the amount of sludge which had to be transported via truck from the Florida Keys. This dewatering process, while reducing bulk sludge amounts, produces effluent water which also requires additional treatment. In the agreement between KWRU and Synagro, the parties agreed that KWRU would accept the by-product effluent water into its Stock Island plant for treatment, as long as KWRU had the additional needed capacity to facilitate treatment.

The two parties agreed that Synagro would install, at its expense, a four inch meter to determine the amount of wastewater delivered to KWRU, and that daily deliveries would not exceed 25,000 gallons. In addition, the parties agreed that Synagro would discontinue its daily deliveries at any time should KWRU lack the necessary capacity to serve its existing customers.

Section 367.091(5), Florida Statutes, states:

If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

The rate for this temporary service provided by KWRU was agreed to be the equivalent of 20 ERC's monthly flat fee, (20 ERC's = 127,100 gallons X \$5.00 = \$635.50), plus \$5.00 per thousand gallons delivered over 127,100 gallons each month. The temporary effluent treatment wastewater rates charged to Synagro are approximately 92% of rates charged to other general service customers.

Tariff	Rate	Synagro 2001 Avg. Gallons	Total monthly charge
General Service 4" meter	\$618.17 B.F.C. \$2.97/kgal.	251.174 kg	\$1,364.16
Temporary Effluent Treatment Rate	\$635.50 min. chg. \$5.00/kgal. over 127,100 gallons	251.174 kg	\$1,255.87

Staff believes the proposed rate is reasonable due to the fact that effluent is delivered by truck to the treatment facility, requiring no use or increased maintenance and repair expenses of KWRU's collection system.

It is important to note that the rate included in Original Sheet 15.9 includes the amount of increase determined in the 2002 Price Index application which was being processed simultaneously with this recommendation.

Staff believes the requested temporary effluent treatment rate is just, reasonable, compensatory, and not unfairly discriminatory

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due to the reduced use of KWRU's collection system and the temporary nature of the agreement with Synagro. Staff recommends that KWRU's request for a new class of service for temporary effluent treatment wastewater rates should be approved. The utility should be allowed to continue collection of the temporary effluent treatment wastewater rates currently being charged and Tariff Sheet No. 15.9 should be approved as filed pursuant to Rule 25-30.475, Florida Administrative Code, for service rendered as of the stamped approval date on the tariff sheets.

ISSUE 3: Should KW Resort Utilities be ordered to show cause, in writing, within 21 days, why it should not be fined for collecting charges not approved by the Commission, in apparent violation of Sections 367.091(4) and 367.091(5), Florida Statutes?

RECOMMENDATION: No, KWRU should not be ordered to show cause, in writing, within 21 days, why it should not be fined for collecting charges not approved by the Commission, in apparent violation of Sections 367.091(4) and 367.091(5), Florida Statutes. (ECHTERNACHT, SARGENT)

STAFF ANALYSIS: KWRU initiated two new classes of bulk wastewater rates in 1998 and 2001, respectively. In doing so, KWRU failed to comply with Sections 367.091(4) and 367.091(5), Florida Statutes.

Section 367.091(4), Florida Statutes, states:

A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved.

Section 367.091(5), Florida Statutes, states:

If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

Section 367.161, Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 per day for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any Commission rule, order, or provision of Chapter 367, Florida Statutes. Utilities are charged with the knowledge of the Commission's rules and statutes. Additionally, "it is a common maxim, familiar to all minds that 'ignorance of the law' will not excuse any person, either civilly or criminally." Barlow v. United States, 32 U.S. 404, 411 (1833).

Thus, any intentional act, such as the utility's failure to file for a new class of service with this Commission in a timely manner, would meet the standard for a "willful violation." In In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund for 1988 and 1989 For GTE Florida, Inc., Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule." Id. at 6.

Although KWRU did not comply with Sections 367.091(4) and 367.091(5), Florida Statutes, staff believes that a show cause proceeding is not necessary or appropriate for the following reasons. First, staff notes that KWRU has been cooperative in providing the necessary information to apply for two new bulk wastewater classes of service since it was notified of staff's findings. Second, KWRU has assured staff that while no approved tariff was on file with the Commission, all revenues generated by providing these bulk wastewater services have been included in each of the corresponding past years' annual reports, and appropriate Regulatory Assessment Fees have been remitted. Finally, through various conversations with KWRU, staff believes that the utility now thoroughly understands 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.

For the reasons mentioned above, staff believes that it is not necessary to order KW Resort Utilities to show cause why it should not be fined by this Commission for failure to apply for new class of service in compliance with Sections 367.091(4) and 367.091(5), Florida Statutes.

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ISSUE 4: Should this docket be closed?

RECOMMENDATION: Yes. If Issue 1 and 2 are approved, the new tariffs should become effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. If a protest is filed within 21 days of the issuance date of the Order, the tariffs should remain in effect with ERC-based flat wastewater rates and temporary effluent treatment charges held subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order. (ECHTERNACHT, SARGENT)

STAFF ANALYSIS: Yes. If Issue 1 and 2 are approved, the new tariffs should become effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475, Florida Administrative Code. If a protest is filed within 21 days of the issuance date of the Order, the tariffs should remain in effect with all ERC-based flat wastewater rates and temporary effluent treatment charges held subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order.