

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: April 13, 2016

**PETITION REQUESTING EVIDENTIARY HEARING ON THE PROTESTED
PORTIONS OF THE PROPOSED AGENCY ACTION**

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Section 120.57, Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, Florida Administrative Code (F.A.C.), file this protest of the Florida Public Service Commission's (Commission) Order No. PSC-16-0123-PAA-SU, issued March 23, 2016, (PAA Order). In the PAA Order, the Commission approved, in part, the requested rate increase for K W Resort Utilities Corp. (KWRU or Utility). In support of their Petition, Citizens state as follows:

1. The name and address of the agency affected and the agency's file number:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 150071-SU

2. The Citizens include the customers of KWRU whose substantial interests are affected by the PAA Order because the PAA Order authorizes Utility to collect the proposed rate increase from the customers.

3. Pursuant to Section 350.0611, F.S., the Citizens who file this Petition are represented by the Office of Public Counsel with the following address and telephone number:

Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
Telephone No. (850) 488-9330

4. The Citizens obtained a copy of the PAA Order via email on Wednesday, March 23, 2016.

5. At this time, the disputed issues of material fact, including a concise statement of the ultimate facts alleged, and those specific facts which Citizens contend warrant reversal and/or modification of the PAA Order, are discussed below.

By way of background, the Utility requested a substantial rate increase, based on a historic test year, with substantial pro forma adjustments related to transitioning to advanced wastewater treatment (AWT) for its existing plant and its planned plant capacity expansion designed solely to serve future customer growth. For the reasons discussed in the PAA Order, the Commission bifurcated the Utility's rate request into Phase I and Phase II revenue requirement and rate determinations and established rates for both phases with the Phase II rate increase contingent upon a number of future circumstances.

Citizens contend that the Phase I and Phase II rates and charges established by the PAA Order are overstated. Specifically, there are disputed issues of material fact with respect to the test year, rate base, cost of capital, net operating income (NOI), revenue requirement, rates and rate structure, service availability policy, and the procedure for implementing Phase II rates. The resulting Phase I rates and Phase II rates (if implemented) are unjust and unreasonable.

Therefore, Citizens protest the applicable portions of the PAA Order discussed above, and the disputed issues of material fact listed below. Further, Citizens protest any fallout issues resulting from the specifically identified areas. Further, Citizens' reserve their right to fully participate in the hearing process to address any issues identified in any other party's protest or cross-petition. Below is a tentative list of issues identified by Citizens as being ripe for hearing in this protest.

Statement of Disputed Facts and Issues

Legal and Policy Issues

- Issue 1. Is it appropriate to establish rates for a growth-related plant expansion that will almost double the capacity of the existing plant using historical 2014 customers, consumption, and billing determinants?

- Issue 2. Is it appropriate to allow a true-up of plant, CIAC and legal costs absent a true-up of rate base, cost of capital, revenues, expenses, billing determinants for a growth-related plant expansion compared to non-growth related plant improvement?

Quality of Service

- Issue 3. Is the quality of service provided by K W Resort satisfactory?

Test Year

- Issue 4. What is the appropriate test year for establishing Phase II rates?

Rate Base

- Issue 5. What is the appropriate balance of plant in service for Phase II rates?
- Issue 6. What is the appropriate balance of accumulated depreciation for Phase II rates?
- Issue 7. What is the appropriate balance of CIAC for Phase II rates?
- Issue 8. What is the appropriate balance of Accumulated Amortization of CIAC for Phase II rates?
- Issue 9. What is the appropriate used and useful percentage for the wastewater treatment plant for Phase II rates?
- Issue 10. What is the appropriate balance of miscellaneous deferred debits for Phase I and II rates?
- Issue 11. What is the appropriate rate base for Phase I and II rates?

Cost of Capital

- Issue 12. What is the appropriate capital structure, including the amount of debt and equity for Phase II rates?
- Issue 13. What is the appropriate return on equity using the Commission's current leverage formula for Phase II rates?

Net Operating Income

- Issue 14. What is the appropriate amount of test year revenues to be used for Phase II rates?
- Issue 15. What is the appropriate amount of test year salaries and benefits for Phase I and Phase II rates?
- Issue 16. What is the appropriate amount of pro forma expenses related to the implementation of advance wastewater treatment (AWT) as of December 31, 2015 to include in the Phase I rates?
- Issue 17. What is the appropriate amount of pro forma expenses related to the expansion of the wastewater treatment plant for Phase II rates?

- Issue 18. What is the appropriate amount of fees associated with the legal challenge of the Utility's construction permit for the expansion of the wastewater treatment plant to be allowed for rate setting purposes?
- Issue 19. What is the appropriate amount of amortization expense for fees associated with the legal challenge of the Utility's construction permit related to the expansion of the wastewater treatment plant to be included in Phase I rates?
- Issue 20. What is the appropriate accounting treatment for the reasonable and prudent determined expenses associated with the legal challenge of the Utility's construction permit related to the expansion of the wastewater treatment plant to be included in Phase II rates?
- Issue 21. What is the appropriate amount of test year accounting fees for Phase I and Phase II rates?
- Issue 22. What is the appropriate amount of rate case expense for Phase I and Phase II rates?
- Issue 23. What is the appropriate amount of depreciation expense for Phase II rates?
- Issue 24. What is the appropriate amount of taxes other than income for Phase I and II rates?

Revenue Requirement

- Issue 25. What is the appropriate revenue requirement for Phase I and II rates?

Rates and Rate Structure

- Issue 26. What are the appropriate billing determinants (bills and gallons) to use for Phase II rates?
- Issue 27. What are the appropriate Phase I and Phase II rates?

Service Availability

- Issue 28. What is the appropriate service availability policy and resulting charges?

Other

- Issue 29. What is the appropriate Phase II rate increase implementation process, i.e., what process should the Utility should utilize when seeking to implement Phase II rates, what type of true-ups should be required, what is the appropriate point of entry for customers or other intervenors into that process, and what are the appropriate timeframe constraints, if any, for a decision on the Utility's request?
- Issue 30. What action, if any, should the Commission take regarding the charging of non-tariffed rates by the Utility, and what refunds, if any, should be made to those customers?

Statement of the Ultimate Facts Alleged

The ultimate facts from each of the issues discussed above will vary depending upon the testimony and discovery brought forth in this hearing; however, significant reductions in the customers' rates should be the result.

6. Pursuant to Sections 367.081 and 367.121, F.S., the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Pursuant to these statutes, adjustments should be made to the rates and charges approved by the PAA Order. In the broadest terms, the Citizens' ultimate factual allegation is that the PAA Order's rates and charges are unfair, unjust, unreasonable, excessive, and unfairly discriminatory. The disputed issues of material fact delineated in and by Citizens' protest should be interpreted broadly in order to effectuate full discovery on the disputed issues, thereby allowing the parties to adequately determine the scope of the issues for consideration and determination. Citizens' protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery issued in this case. Further, Citizens reserve the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party's protest or cross-petition, and resolve any issues which come to light during the pendency of this docket.

7. Citizens are entitled to a *de novo* proceeding on the disputed issues of material fact raised in Citizens' protest of the PAA Order. Citizens maintain that the Utility has the burden of proof in all aspects of the requested evidentiary hearing pursuant to Section 120.57(1), F.S., and if the burden of proof is not satisfied, the disputed issues of material fact must be resolved in the favor of the ratepayer.

8. By Order No. PSC-16-0123-PAA-SU, protests of the PAA Order shall be filed with the Office of Commission Clerk no later than the close of business on April 13, 2016. This Petition has therefore been timely filed.

9. Sections 367.081, 367.0816, and 367.121, F.S., are the specific statutes that require reversal or modification of the PAA Order.

10. Citizens request that the Commission take the following actions with respect to this protest and objection to the PAA Order:

- a) Establish a hearing schedule to resolve the disputed issues of material fact as described above, including any additional issues raised by a party's protest or cross-protest and on any issues which come to light during the pendency of this docket.
- b) Establish just and reasonable Phase I and Phase II rates and charges for the customers, so that current customers are not paying for plant capacity expansion driven by the need to serve future customers.

WHEREFORE, the Citizens hereby protest and object to Commission Order No. PSC-16-0123-PAA-SU, as provided above, and respectfully petition the Commission to conduct a formal evidentiary hearing, as required under the provisions of Section 120.57(1), F.S., at a convenient time within or as close as practical to the Utility's certificated service area.

Respectfully Submitted,

JR Kelly
Public Counsel

/s/ Erik L. Sayler

Erik L. Sayler
Associate Public Counsel
Florida Bar No. 29525
Office of the Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

CERTIFICATE OF SERVICE

I, **HEREBY CERTIFY** that a true and correct copy of the Office of Public Counsel's PETITION REQUESTING EVIDENTIARY HEARING ON THE PROTESTED PORTIONS OF THE PROPOSED AGENCY ACTION has been furnished by electronic mail to the following parties on this 13th day April, 2016.

Martha Barrera
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Blvd., Room 110
Tallahassee, FL 32399-0850
Email: mbarrera@psc.state.fl.us

Martin S. Friedman, Esquire
Friedman Law Firm
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746
Email: mfriedman@eff-attorneys.com

Mr. Christopher Johnson
c/o K.W. Resort Utility
6630 Front Street
Key West, FL 33040-6050
Email: chriskw@bellsouth.net

/s/ Erik L. Sayler

Erik L. Sayler
Associate Public Counsel