

State of Florida



## Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** September 30, 2021

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Division of Accounting and Finance (Thurmond, Norris) *ALM*  
Office of the General Counsel (Trierweiler) *JSC*

**RE:** Docket No. 20210101-SU – Request to establish a regulatory asset to recover appellate costs, by K W Resort Utilities Corp.

**AGENDA:** 10/12/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Passidomo

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

K W Resort Utilities Corp. (KWRU or Utility) is a Class A utility providing wastewater service to 1,731 customers in Monroe County. A formal evidentiary hearing was held on May 15-17, 2018 to address KWRU's request for an increase in wastewater rates. By Order No. PSC-2018-0446-FOF-SU (Final Order), issued September 4, 2018, the Commission approved, in part, the requested increase. The approved revenue requirement represented an increase of \$1,156,895.<sup>1</sup>

On October 3, 2018, the Office of Public Counsel (OPC) and Monroe County each filed a notice of administrative appeal to the First District Court of Appeal (First DCA).<sup>2</sup> The Commission's

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<sup>1</sup> Order No. PSC-2018-0446-FOF-SU, issued September 4, 2018, in Docket No. 20170141-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.*

<sup>2</sup> Document Nos. 06417-2018 and 06415-2018.

decision was affirmed *per curiam* by the First DCA, with respect to both appeals, on March 8, 2021.<sup>3</sup>

On May 18, 2021, KWRU filed a Motion for Appellate and Remand Rate Case Expense and to Treat Such Expense as a Regulatory Asset. In its motion, KWRU contends that it reasonably incurred \$28,987 defending the Final Order on appeal, and KWRU expects to incur additional rate case expense of \$7,500 associated with its motion, for a total of \$36,487. Due to the timing of its Motion and the amortization of the rate case expense approved by the Final Order, the Utility believes it would be more prudent to record the appellate rate case expense as a regulatory asset, for which KWRU would seek recovery in its next rate proceeding.

On July 7, 2021, KWRU filed an Amended Motion for Appellate and Remand Rate Case Expense and to Treat Such Expense as a Regulatory Asset (Motion),<sup>4</sup> requesting similar relief as in its original motion, but increasing its incurred appellate expenses to \$47,012, with an expectation to incur additional rate case expense of \$7,500, for a total of \$54,512

This recommendation addresses the Utility's Motion for approval to establish a regulatory asset for recording appellate rate case expense. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

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<sup>3</sup>*Monroe County v. FPSC and KW Resort Utilities and Citizens v. FPSC and KW Resort Utilities*, 313 So. 3d 87 (Fla. 1st DCA 2021).

<sup>4</sup> While KWRU's original and amended motions refer to rate case expense incurred on "remand," this appears to be in error, as the Commission's Final Order in Docket No. 20170141-SU was affirmed *per curiam*, and no remand was ordered by the First DCA. Staff's recommendation therefore discusses KWRU's Motion with respect to appellate rate case expense only.

## Discussion of Issues

**Issue 1:** Should the Commission grant KWRU's motion for appellate rate case expense and to treat such expense as a regulatory asset?

**Recommendation:** The Commission should approve KWRU's request to establish a regulatory asset for the accounting purpose of recording the deferral of costs associated with appellate rate case expense. The approval to establish a regulatory asset, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, recovery period, and other related matters for reasonableness in a future proceeding in which the regulatory asset is included. (Thurmond)

**Staff Analysis:** On May 18, 2021, KWRU filed a motion for appellate rate case expense.<sup>5</sup> In its motion, the Utility requested recovery of its appellate rate case expense in the amount of \$36,487. On July 7, 2021, KWRU filed an amended motion for appellate rate case expense in the amount of \$54,512.<sup>6</sup>

To support its motion, KWRU cited decisions on remand made by the Commission for Sunshine Utilities of Central Florida (Sunshine) and Florida Cities Water Company – Lee County Division (Florida Cities).<sup>7</sup> In both cases, the Utility initiated the appeal process and was the cost causer. The Commission determined that Sunshine was entitled to partially recover rate case expense based on the number of appealed issues on which the Utility had prevailed. The Commission determined that Florida Cities was entitled to fully recover rate case expense, finding that, based upon supporting documents provided, the Utility's request for additional rate case expense for the appeal and remand was prudent and reasonable. In the instant docket, OPC and Monroe County filed respective appeals to the First DCA, while KWRU did not.

The concept of deferral accounting allows utilities to defer costs due to events beyond their control and seek recovery through rates at a later time. If the subject costs are significant, the alternative would be for a company to seek a rate proceeding each time it experiences an exogenous event. The costs in the instant docket are attributed to appellate rate case expense. As the Utility is not the cost causer of these appeals, staff believes the Utility was prudent in its decision to incur rate case expense to defend itself. The Commission has previously ordered similar treatment of rate case expense associated with Utilities, Inc. of Florida's Phoenix Project and in the 2016 rate case for Utilities, Inc. of Florida.<sup>8</sup>

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<sup>5</sup> Document No. 04154-2021

<sup>6</sup> Document No. 07582-2021

<sup>7</sup> Order No. PSC-1994-0738-FOF-WU, issued June 15, 1994, in Docket No. 19900386-WU, *In re: Application for a Rate Increase in Marion County by Sunshine Utilities of Central Florida, Inc.* and Order No. PSC-1999-0691-FOF-SU, issued April 8, 1999, in Docket No. 19950387-SU, *In re: Application for a rate increase for North Ft. Myers Division in Lee County by Florida Cities Water Company – Lee County Division.*

<sup>8</sup> Order No. PSC-2014-0521-FOF-WS, issued September 30, 2014, in Docket No. 20120161-WS, *In re: Analysis of Utilities, Inc.'s financial accounting and customer service computer system* and Order No. PSC-20160101-WS, issued August 27, 2019, in Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

Based on the above, staff recommends the authorization of a regulatory asset to record appellate rate case expense. The approval to establish a regulatory asset, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, recovery period, and other related matters for reasonableness in a future proceeding in which the regulatory asset is included.

**Issue 2:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Trierweiler)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.