

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Sunset Ventures of Key West, Inc. against K W Resort Utilities Corp. for discontinuance of service in violation of service availability agreement in Monroe County.

DOCKET NO. 000079-SU  
ORDER NO. PSC-02-0178-FOF-SU  
ISSUED: February 11, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY

ORDER DISMISSING COMPLAINT BY SUNSET VENTURES AGAINST  
K.W. RESORT UTILITIES, INC. WITHOUT PREJUDICE AND  
CLOSING DOCKET

BY THE COMMISSION:

BACKGROUND

K.W. Resort Utilities Corporation (K.W. or utility) is a class B utility providing water and wastewater services in Key West, Monroe County, Florida. According to its 2000 annual report, K.W. serves approximately 904 wastewater customers with annual revenues of \$533,533.

On January 24, 2000, a Complaint was filed by Sunset Ventures of Key West, Inc. (Sunset) alleging several acts by K.W. against Sunset, including the improper termination of utility services. The complainant asked the Commission to investigate the dispute between Sunset and K.W., to require K.W. to provide service to Sunset, and to prevent K.W. from discontinuing service to Sunset in the future.

On January 10, 2000, our staff sent Data Requests to K.W. and Sunset, requesting further information on and documentation of the facts surrounding the allegations of the Complaint. This

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information was sought as a starting point to determine the parties' positions, and support for those positions, as they relate to our jurisdiction and the Statutes and Florida Administrative Code Rules governing utilities and customers.

Between January 10, 2000, and April 10, 2000, our staff received copies of several letters between the parties' attorneys, wherein the parties stated they were attempting to negotiate a resolution and hoped that they would be able to settle the matter without our assistance. The parties further requested an extension of time to file responses to the staff data requests sent in January. On April 10, 2000, Sunset filed an extensive response, and on April 27, 2000, K.W. filed its response.

On June 5, 2000, our staff scheduled a noticed, informal meeting between the parties. While no resolution was reached, the parties announced that they would continue their negotiations to resolve the matter without our assistance. On November 22, 2000, however, our staff were informed by K.W. that those negotiations had been unsuccessful, and that a dispute still existed between the parties. Nevertheless, K.W. requested that the Complaint be dismissed, since all relief requested in the Complaint filed by Sunset had been resolved at that time.

On January 3, 2001, Sunset filed an Amended Complaint, seeking refunds of charges and fees paid by Sunset to K.W., and seeking to modify the contract between Sunset and K.W. Our staff noticed and scheduled a second informal meeting for January 29, 2001. At the meeting, the prospect of mediation was presented to the parties and staff mediators were offered to mediate the dispute. At the conclusion of the meeting, both parties agreed to mediation, and represented that they would contact our staff with their choice of a mediator. Following a January 31, 2001, letter from K.W., wherein our staff was informed that the parties were continuing to work on an agreement between them, neither K.W. or Sunset has made further written contact with this Commission. No mediator has been chosen nor has mediation occurred.

Since January 29, 2001, our staff has contacted counsel for K.W. and Sunset approximately seven times telephonically, and was informed that the parties were continuing to "slowly" work towards a settlement agreement. The most recent contact between our staff and the parties occurred in December 2001, when our staff was

informed that a final settlement had been reached, but had not been executed by the parties. Our staff was informed that formal mediation or further staff assistance was not needed at this time, and that our active involvement was not required, since the parties appeared to have reached a satisfactory working agreement. It appears to us that the parties have reached a resolution and have no further desire to proceed with the Complaint.

We have jurisdiction pursuant to Section 367.011, Florida Statutes.

DISMISSAL OF THE COMPLAINT

Since the time the Complaint was filed, service has been continuously provided by K.W. to Sunset, and there appears to be no dispute about the on-going provision of service. Sunset appears satisfied with the service provided by K.W., and K.W. is willing to continue to provide services under contract with Sunset.

K.W. has provided bulk wastewater service to Sunset under a contract. After the filing of the Amended Complaint, the negotiations between Sunset and K.W. appeared to revolve around redrafting the contract's provisions and negotiating a refund of money and fees paid by Sunset to K.W. The parties attempted to determine the exact number of Equivalent Residential Connections (ERCs) served; whether or not a \$2500.00 "reconnection fee" is authorized by K.W.'s tariff; and whether or not service availability charges paid for some 36 boat slips should be refunded. There seems to be no dispute between the parties that some type of refund is due Sunset; it is the amount which is in question.

On August 29, 2001, our staff sent a letter to the parties, notifying them that if they did not need our assistance, the Complaint should be withdrawn, and that if information was not received by September 19, 2001, stating specific reasons why the docket should remain open, a recommendation would be filed for the October 16, 2001, agenda conference recommending this docket be closed.

On September 21, 2001, staff received a letter from counsel for Sunset, stating that the parties were very close to a settlement, and were drafting an agreement. Sunset asked for a one

week extension in which to draft an agreement, but stated that if an agreement was not reached, Sunset would in fact request mediation.

On November 26, 2001, Sunset informed our staff that although a Settlement Agreement had been drafted, it had not been executed by Sunset. Our staff was further informed that Sunset had not been in contact with its attorney, and counsel for Sunset could not state with certainty that Sunset knew of the impending December 6, 2001, recommendation filing date. In an abundance of caution, our staff postponed the filing of the recommendation and asked the attorney for Sunset to make final efforts to contact Sunset and ensure that Sunset knew that a recommendation was to be filed to dismiss the docket, absent extraordinary circumstances. Since that time no response has been received from either of the parties. The Amended Complaint has not been withdrawn, nor has Sunset indicated a need for our active involvement.

For the foregoing reasons, we believe there is no reason to continue to hold this docket open when the parties admit they had been making "slow" progress towards resolution of the dispute on their own, and in fact have negotiated and drafted a settlement agreement, which they have failed to execute. We note that if the docket is dismissed and the parties fail to execute the settlement agreement, if a new dispute arises between the parties, a new Complaint could be filed which specifically and clearly lists the exact points in contention and states with particularity the relief requested by the complainant. We note that there have been no consumer complaints with respect to these matters, and we do not believe any other customers of K.W. will be prejudiced by allowing the parties to privately negotiate a settlement.

Because K.W. is currently providing service to Sunset, and the parties have apparently resolved their dispute among themselves, the Amended Complaint filed by Sunset Ventures against K.W. Resorts Utilities Corp. shall be dismissed without prejudice.

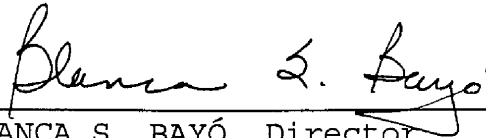
Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Amended Complaint filed by Sunset Ventures of Key West, Inc. against K.W. Resort Utilities Corporation, Inc. is dismissed without prejudice. It is further

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ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 11th  
day of February, 2002.



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BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

LDH

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule

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25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.