

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request to establish a regulatory asset to
recover appellate costs, by K W Resort
Utilities Corp.

DOCKET NO. 20210101-SU
ORDER NO. PSC-2021-0410-PAA-SU
ISSUED: November 1, 2021

The following Commissioners participated in the disposition of this matter:

GARY F. CLARK, Chairman
ART GRAHAM
ANDREW GILES FAY
MIKE LA ROSA
GABRIELLA PASSIDOMO

NOTICE OF PROPOSED AGENCY ACTION ORDER
GRANTING PETITION FOR APPROVAL OF A REGULATORY
ASSET TO RECOVER APPELLATE COSTS

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

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, we approved, in part, the requested increase. The approved revenue requirement represented an increase of \$1,156,895.¹

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).² Our decision was affirmed *per curiam* by the First DCA, with respect to both appeals, on March 8, 2021.³

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

¹ 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.*

² Document Nos. 06417-2018 and 06415-2018.

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

reasonably incurred \$28,987 defending the Final Order on appeal, and 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 in our Order, the Utility stated 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,⁴ 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 Order addresses the Utility's Amended Motion for Appellate and Remand Rate Case Expense and to Treat Such Expense as a Regulatory Asset.

We have jurisdiction over this matter pursuant to Section 367.081, Florida Statutes (F.S.).

Decision

On May 18, 2021, KWRU filed a motion for appellate rate case expense.⁵ 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 \$54,512.⁶

To support its motion, KWRU cited two of our decisions on remand in which the Utility initiated the appeal process and was the cost causer. In the first, *Sunshine Utilities of Central Florida (Sunshine)*,⁷ we determined that Sunshine was entitled to partially recover rate case expense based on the number of appealed issues on which the Utility had prevailed. In our second decision, *Florida Cities Water Company – Lee County Division (Florida Cities)*, we 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.⁸ 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

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

⁵ Document No. 04154-2021

⁶ Document No. 07582-2021

⁷ 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.*

⁸ *Id.*

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, we find the Utility was prudent in its decision to incur rate case expense to defend itself. This 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.⁹

Accordingly, we find that KWRU's request to establish a regulatory asset for the accounting purpose of recording the deferral of costs associated with appellate rate case expense is appropriate. We also find that providing our approval to establish a regulatory asset, for accounting purposes, does not limit our 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.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the petition for the approval of a regulatory asset to recover appellate costs filed by K W Resort Utilities Corp. is granted. It is further

ORDERED that the approval to establish a regulatory asset, for accounting purposes, does not limit this 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. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that if no timely protest is filed, Docket No. 20210101-SU shall be closed upon the issuance of a Consummating Order.

⁹ 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*.

By ORDER of the Florida Public Service Commission this 1st day of November, 2021.



ADAM J. TEITZMAN
Commission Clerk
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.

WLT/MJJ

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 that is available under Section 120.57, 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 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.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 22, 2021.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.