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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of K.W. Resort Utilities Corporation for limited proceeding increase in reuse water rates.	)	Docket No. 970229-SU

RESPONSE TO PETITION TO INTERVENE AND MOTION TO DISMISS

COMES NOW K.W. Resort Utilities Corporation (hereinafter "K.W. Resort" or "Utility"), by and through its undersigned attorney and files this Response to the Petition to Intervene and Motion to Dismiss filed by Key West Country Club in the above referenced matter and in support thereof states as follows:

1. On March 17, 1997, attorneys for Key West Country Club filed their "Protest and Motion to Dismiss the Application for Limited Proceeding or in the Alternative, Protest and Request for Formal Hearing" ("Motion to Dismiss") in this docket.

2. At the time of filing Key West Country Club's Motion to Dismiss, Key West Country Club was not a party to this proceeding and had not filed a motion to intervene. As such, Key West Country Club's Motion to Dismiss did not warrant a response until they became a party.

3. While K.W. Resort believes that Key West Country Club is a substantially effected party and does not object to their intervention as outlined in their "Notice of Limited Appearance and Petition to Intervene for the Limited Purposes of Raising the Issues Set Forth in its Protest and Motion to Dismiss the Application for Limited Proceeding, or in the Alternative, Protest and Request for Formal Hearing" ("Petition to Intervene") the proposed intervention by Key West Country Club now renders their

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Motion to Dismiss ripe for response by K.W. Resort. Therefore, K.W. Resort files this response to the Motion to Dismiss on each of the enumerated material allegations contained in that Motion with which issue is taken by K.W. Resort for the purposes of this Motion as follows:

Paragraph 10 The Utility's calculations of the appropriate reuse rate as contained within its original application are fully supported by the application and properly reflect the cost incurred by the Utility. The application and the costs proposed for recovery through reuse rates are fully in conformance with the requirements of the Commission, the statutes cited in the application, and standard Commission procedure for review of reuse rates charged by utilities which it regulates.

Paragraph 11 The Utility is not required to seek recovery of a fair return on its investment from its sewer operations in order to seek recovery of a fair return on its investment from those assets and costs related to its reuse customers. (See Utilities Operating Company vs. King, ____ So2nd. _____.)

Paragraph 12 The fact that the Utility was willing to enter into a stipulation in its last full rate proceeding for revenues substantially less than originally applied for does not in any way suggest that those costs as alleged by the Utility were inappropriate or unjustified. Instead, those facts merely indicate the Utility's unwillingness to go forward with a protested rate application at substantial cost.

The Utility, in this case, fully expects a full and thorough investigation of the costs of reuse service as outlined in the Utility's application which is in keeping with the Commission's standard practice and legal obligation.

Paragraph 13 While the Utility's last rate case was resolved short of a full hearing, that does not, in and of itself, mean that the Commission failed to consider the Utility's rate base cost and other matters relevant and necessary to be considered in a general rate proceeding and, in fact, the Commission did issue Proposed Agency Action Order No. 13883 on November 19, 1984, in which the Commission made specific findings concerning those matters. While those findings were not final in that that order was protested, the Staff ultimately entered into the stipulation with the Utility and the Office of Public Counsel in Docket No. 830386-S, which was approved by the Commission by Order No. 14620, issued on July 23, 1985. Neither the Commission or its Staff would propose to enter into such a stipulation without fully analyzing rate base and operating costs to compare to it. In addition, the Commission has previously considered the rates of this Utility in rate proceedings that were consummated short of a stipulation prior to the Docket No. 830386-S.

The Commission and its Staff are fully capable of reviewing the costs proposed for inclusion in establishing a reuse rate without fully considering the cost for wastewater service and any need for rate increase therein. The Utility has not sought an increase in wastewater rates at this time.

Any suggestion that the Commission cannot make cost allocations as appropriate in order to recognize the full cost of reuse service without reviewing wastewater services is without foundation. The Commission may review the costs as proposed by the Utility and determine what if any of those costs are inapplicable to reuse service, and may add any costs that it deems appropriate for inclusion in the rates for such service. An allegation that the cost of one service provided may not be reviewed without the necessity of reviewing a second service is plainly contrary to long standing Commission practice and precedent wherein it has, on many occasions, reviewed the water operations of a utility without reviewing its wastewater operations and vice versa.

Paragraph 14 A limited proceeding application is appropriate under the circumstances and allows the Commission broad discretion in reviewing matters just such as this. Commission has repeatedly utilized the limited proceeding rate application for limited review of costs related to one service provided by a utility without requiring review and rate setting for another service provided by that same utility. (See also response to Paragraph 13 above.)

Paragraph 15 See responses as outlined in Paragraphs 12 through 14.

Paragraph 17 The fact that the Commission may have previously considered the costs related to the provision of a service does not in any way preclude them from readdressing the cost for such service three years later. The fact that

the Utility may not have charged a related party for service in times when the Commission did not actively propose rates to be charged for reuse service does not preclude a utility from requesting consideration of such costs in the establishment of appropriate rates at any point in time nor does it preclude the Commission from establishing such appropriate rates on its own motion.

Paragraph 18 The Utility is seeking recovery of the appropriate costs for providing reuse service. Any sale of the Utility has no relevance to that proceeding and an allegation that the Utility is seeking to sell is not only irrelevant and inconsequential.

Paragraph 19 As noted previously in response to Paragraphs 13 through 14 above, the Utility is not obligated to file for a general rate increase nor to seek an increase for all services provided. To the extent the Commission determines that the reuse customer is being asked to bear an unreasonable burden or an insufficient burden of cost, the Commission can make that determination without necessitating a review of other services provided by the Utility. In fact, such limited review is the long standing Commission practice involving requests for increase in one service provided by utilities, where that Utility provides more than one service.

No written notice of this application was mailed to Key West Country Club, though it is apparent that the Country Club was aware of the filing. There is no obligation upon the applicant herein to provide notice to the Key West Country

Club or any other customer of the Utility upon filing such a limited proceeding application. The provisions of Rule 25-30.0407, Florida Administrative Code, concerning notice to customers, specifically deals with general rate increases and not with limited proceedings. This interpretation is not only apparent from the plain wording of this rule, but is fully in keeping with past Commission practice and interpretation of the limited proceeding statute. The case of Sailfish Point Utility Corporation (Docket No. 891114-WS) informally cited to Staff Counsel and to the undersigned by Key West Country Club's counsel is therefore wholly inapplicable to the present facts.

WHEREFORE K.W. Resort respectfully requests that the Commission deny the Motion to Dismiss filed by Key West Country Club.

Respectfully submitted this 7th day of May, 1997, by:

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F. MARSHALL DETERDING

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via Hand Delivery to Ralph Jaeger, Esquire, Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399, and via U.S. Mail to Ben E. Girtman, Esquire, 1020 E. Lafayette Street, Suite 207, Tallahassee, Florida, 32301, this 6th day of May, 1997.

F. MARSHALL DETERDING