FLORIDA PUBLIC SERVICE COMMISSION
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MEMORANDUM

JUNE 12, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (JABER)
DIVISION OF WATER AND WASTEWATER (CHASE, XANDERS)

RE: DOCKET NO. 970229-SU - APPLICATION FOR LIMITED PROCEEDING INCREASE IN REUSE WATER RATES IN MONROE COUNTY BY K.W. RESORT UTILITIES CORPORATION

COUNTY: MONROE

AGENDA: JUNE 24, 1997 - REGULAR - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: I:\PSC\LEG\970229DR.RCM

CASE BACKGROUND

On February 21, 1997, K.W. Resort Utilities Corporation (hereinafter K.W. Resort or utility) filed, pursuant to the provisions of Section 367.0822, Florida Statutes, its Application for Limited Proceeding Increase in Reuse Water Rates (Application). In the Application, the utility notes that it had originally submitted its request for a new class of service for reuse water on December 23, 1994.

In this current Application, the utility noted that in the original proceeding it had submitted "a simplified justification for a charge of $.38 per thousand gallons", but that it had only requested a rate for reclaimed water of $.25 per one thousand gallons. This request was approved by Order No. PSC-95-0335-FOF-SU, issued on March 10, 1995, in Docket No. 941323-SU. In the current Application, the utility is now requesting a reclaimed water rate of $1.25 per thousand gallons.

In response to the Application, Key West Country Club (Country Club) filed, on March 17, 1997, its Protest and Motion to Dismiss the Application for Limited Proceeding or in the Alternative Protest and Request for Formal Hearing (Protest). Also, on April 29, 1997, the Country Club (the only reuse customer) filed its

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Notice of Limited Appearance and Petition to Intervene for the Limited Purpose of Raising the Issues Set Forth in its Protest (Petition for Limited Intervention). Then, on May 6, 1997, K.W. Resort filed it Response to Petition to Intervene and Motion to Dismiss (Response). This recommendation addresses the two requests for relief set forth in the Country Club's Protest, the Country Club's Petition to Intervene, and K.W. Resort's Response.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Key West Country Club's petition to intervene for the limited purpose of raising the issues set forth in its protest?

RECOMMENDATION: The Key West Country Club's Petition for Limited Intervention should be denied. However, Key West Country Club should be granted intervention pursuant to the provisions of Rule 25-22.039, Florida Administrative Code. Pursuant to that rule, the Country Club takes the case as it finds it. All parties to this docket should furnish copies of all pleadings and other documents that are hereinafter filed in this proceeding to counsel for the Key West Country Club. (JAEGER)

STAFF ANALYSIS: In support of its motion, the Country Club states that it is the utility's only reuse water customer, and that K.W. Resort is requesting a substantial reuse water rate increase, and that the Country Club is substantially affected by the matters which are the subject of this proceeding. The Country Club also alleges in its motion its position that, as a protestant, no petition for intervention is required. The Country Club further states that, to preserve its rights if a petition to intervene is ultimately found to be required, it thereby has filed its "notice of limited appearance and its petition to intervene for the limited purpose set forth herein and reserves all its rights herein." Finally, the Country Club states that its "motions and petitions herein are filed based upon, but not limited to, Rule 25-22.037(2), and Rule 25-22.036(4)(a) and (b), F.A.C., respectively."

In its response, acknowledging that the Country Club is a substantially affected party, the utility states that it does not object to the Country Club's intervention as outlined in the Petition for Limited Intervention. The rest of the utility's Response was dedicated to the allegations in the Country Club's Protest purporting to support the motion to dismiss.

Pursuant to Rule 25-22.039, Florida Administrative Code, a motion for leave to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. A two-part test is applied in evaluating whether a person has alleged a substantial interest sufficient to entitle such person to intervene in an administrative proceeding. The person must allege (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and (2) that his substantial injury is of a type or nature

which the proceeding is designed to protect. Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), rev. den., 415 So. 2d 1359 (Fla. 1982).

The Country Club is the utility's only reuse water customer and the utility seeks to substantially raise its reuse water rate in the instant limited proceeding. It therefore appears that the Country Club's substantial interests could be affected by this proceeding.

The Petition for Limited Intervention also alleges that:

> This notice of limited appearance and petition to intervene for the limited purpose of raising procedural and jurisdictional issues is similar to filing a notice of limited appearance in a Circuit Court proceeding where an entity seeks to challenged [sic] certain procedural or jurisdictional aspects of the Court proceeding without submitting itself to the general jurisdiction of the Court. The golf course does not willingly consent to going forward with the limited proceeding filed by the Utility. Such a proceeding would violate Protestant's Constitutional rights, including but not limited to its rights of due process and equal protection.

A special or limited appearance is one in which a party appears for the purpose of objecting to the jurisdiction of the court over him, and confines his appearance solely to that question. 1 Fla. Jur. 2d, Actions § 88 (1996). In Florida, the distinction between a limited and general appearance has been abolished; the method of raising the question of jurisdiction over the parties is by a responsive pleading or motion under Fla. R. Civ. P. 1.140(b). First Wisconsin National Bank of Milwaukee v. Donian, 343 So. 2d 943, 945 (Fla. 2d DCA 1977); Ward v. Gibson, 340 So. 2d 481, 482 (Fla. 3d DCA 1976). Under Rule 1.140(b), the defense of lack of in personam jurisdiction is not waived by the fact that it is joined with other defenses or objections in a responsive pleading or motion. However, case law clearly establishes that the defense of a lack of personal jurisdiction must be raised at the first opportunity or it is waived. Romellotti v. Hanover Amgro Ins. Co., 652 So. 2d 414 (Fla. 5th DCA 1995); Hubbard v. Cazares, 413 So. 2d 1192 (Fla. 2d DCA), rev. den. 417 So.2d 329 (Fla. 1981); White v. Nicholson, 386 So.2d 74 (Fla. 2d DCA 1980).

Through its Protest and its Petition for Limited Intervention, the Country Club indicates that the matters raised by the utility in its Application for this limited proceeding need to be addressed in a full wastewater rate case and that it is wrong for the

Commission to continue to process the utility's Application as a limited proceeding. By protesting the Application itself, the Country Club believes that pursuant to Rule 25-22.026(1), Florida Administrative Code, it is already a party. That rule states in pertinent part:

> Parties in any proceeding conducted in accordance with s. 120.57, F.S., are . . . petitioners, protestants, or intervenors. Parties shall be entitled to receive copies of all motions, notices, orders and other matters filed in a proceeding . . .

However, staff believes that the protest of the Country Club is premature since it was filed before the issuance of a Proposed Agency Action Order. Therefore, staff does not believe that the provisions of Rule 25-22.026(1), Florida Administrative Code, are applicable in that regard. However, if the Commission grants intervention, the Country Club will become a party to this proceeding.

Staff does not believe that the Florida Statutes, Commission rules, or decisional law support intervention for a limited purpose as the Country Club requests. However, the Country Club has shown how its substantial interests could be affected by this limited proceeding.

Based upon the foregoing, Staff recommends that the Country Club's Petition for Limited Intervention be denied. However, Key West Country Club, because it has shown that its substantial interests could be affected by this proceeding, should be granted intervenor status pursuant to the provisions of Rule 25-22.039, Florida Administrative Code. Pursuant to that rule, the Country Club takes the case as it finds it. All parties to this docket should furnish copies of all pleadings and other documents that are hereinafter filed in this proceeding to Ben E. Girtman, counsel for the Country Club.

ISSUE 2: Should the Commission grant Key West Country Club's Motion to Dismiss the Application for Limited Proceeding?

RECOMMENDATION: No. (JAEGER)

STAFF ANALYSIS: As stated above, the utility has filed an Application for a limited proceeding to increase its reclaimed water rates to $1.25 per thousand gallons (an increase of $1.00 per thousand gallons). In that Application, the utility attaches a special report which alleges that their costs for reclaimed water per thousand gallons is now $1.60 (and not $.38 as stated in a prior proceeding). Further, the utility notes that the cost for potable water from the Keys Aqueduct Authority is $5.68 per thousand gallons. Finally, the utility says that the rate increase will increase their revenues by $39,259, but that they will still be incurring an annual loss of $80,281.

In filing its protest, the Country Club argues that since the Commission has never considered this utility's rate base, costs, or other matters relevant and necessary to be considered in a general rate proceeding, that the filing of an application for a limited proceeding is improper. Specifically, the Country Club alleges that the Commission cannot properly assess the costs of the utility, and consider the burdens which each class of customers should bear, without having a general rate proceeding. Further, the Country Club argues that the utility should not try to load the wastewater costs onto one customer.

Noting that it has never received any notice of the application, the Country Club moves the Commission to dismiss the application, or, in the alternative, requests a formal hearing. The utility did not initially file a response to the Country Club's Protest. However, upon the Country Club filing its Petition to Intervene, the utility filed its combined "Response to Petition to Intervene and Motion to Dismiss".

In Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993), the Florida Supreme Court stated that "[t]he function of a motion to dismiss is to raise as a question of law the sufficiency of facts alleged to state a cause of action." The Court went on to say that "[i]n determining the sufficiency of the complaint, the trial court must not look beyond the four corners of the complaint, . . . nor consider any evidence likely to be produced by the other side." See also, Holland v. Anheuser Busch, Inc., 643 So. 2d 621 (Fla. 2d DCA 1994)(stating that it is improper to consider information extrinsic of the complaint).

In considering this motion to dismiss, the Commission should not look beyond the four corners of the utility's Application, and

make a determination on evidence that amounts to a granting of summary judgment. The standard used in considering a motion to dismiss is to view the facts set forth in the Application in a light most favorable to the utility in order to determine whether the utility's request for a limited proceeding is appropriate pursuant to the provisions of Section 367.0822, Florida Statutes.

In its Response, the utility argues that the Commission is fully capable of reviewing the costs proposed for inclusion in establishing a rate for reclaimed water without fully considering the cost for wastewater service and any need for a rate increase therein. The utility further argues that the Commission has, in the past, used a limited proceeding to review costs related to one service provided by a utility without review and rate setting for another service provided by that same utility. Finally, the utility argues that just because the Commission may have previously considered the costs related to the provision of a service, that this does not preclude the Commission from readdressing the cost for such service some three years later.

Staff notes that in the application of Broadview Park Water Company for a limited proceeding (Docket No. 860344-WU), the Commission, through Order No. 16216, did deny the request. In that proceeding, the utility had contended: 1) that its cash flow condition was insufficient to permit payment of competitive salaries; 2) that maintenance of existing facilities had been unduly deferred because of insufficient resources; 3) that additional revenues were needed for payment of increased insurance and water testing charges; 4) that construction of additional facilities and replacement of major plant components were necessary for compliance with regulatory agency directives; and 5) that these several matters and other concerns were deserving of consideration in a limited proceeding. The Commission determined that the application, under these conditions, would more properly be handled as a general rate increase request under the provisions of Section 367.081, Florida Statutes, and denied the request for a limited proceeding.

In the case at hand, the utility is not seeking, at this time, to change its rates to its general wastewater customers. Rather, it is seeking to recover a portion of what it alleges to be the greater costs of providing reclaimed water service. The Country Club alleges that this can not be done without going into a full wastewater rate case. Staff notes that Section 367.0822, Florida Statutes, specifically provides: "The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other related matters." (emphasis supplied) Also, the reuse statute provides that: "The commission shall allow a utility

to recover the costs of a reuse project from the utility's water, wastewater, or reuse customers or any combination thereof as deemed appropriate by the commission."

Staff does not believe that it is appropriate at this time to expand this limited proceeding into a full wastewater rate case. If portions of the costs the utility is attributing to reuse should be apportioned to the wastewater customers, this could still be determined in a limited proceeding. Staff believes that this application is more similar to other limited proceedings that have been allowed (see Docket No. 901000-WU, where the Commission allowed a limited proceeding for an increase in bulk-water rates), and is limited enough to proceed as a limited proceeding.

In the last paragraph of its Protest, the Country Club alludes to the fact that it has never received proper notice about this limited proceeding. However, it does not refer to any rule or statute which the utility might have violated by failing to provide notice at this stage of a limited proceeding. Staff notes that in Docket No. 891114-WS, by Order No. 23123, and in Docket No. 930770-WU, by Order No. PSC-93-1735-FOF-WS, the Commission dismissed rate cases for Sailfish Point Utility Corporation and St. George Island Utility Corporation, respectively, based, at least in part, on improper notice. However, in each of those cases, Rule 25-22.0406, Florida Administrative Code, was applicable and had been violated. Further, in the Sailfish Point case, the utility had, just before the hearing, filed testimony which essentially revised its minimum filing requirements. The Commission found that the two together were fatal to the continued processing of the rate case and dismissed the rate case.

Staff can find no similar circumstances in this case. Neither the limited proceeding statute nor any rules require notice of the filing of a limited proceeding application. The procedure, in the past has been for staff to schedule a customer meeting and to require the utility to provide notice to the customers of the application and the customer meeting. In this case, the limited proceeding has barely begun and staff is just now closely reviewing the filing, and getting prepared for a meeting with the reuse customer to discuss the requested rate increase (staff has met with the utility and the Country Club to discuss the processing of this case, possible settlement, and the protest of the Country Club). Therefore, staff can discern no violation of any notice requirements and sees no reason to dismiss this case at this time for improper notice. Further, as noted in Carr v. Dean Steel Buildings, Inc., 619 So. 2d 392 (Fla. 1st DCA 1993), dismissal is a drastic remedy which should be used only in extreme situations.

In its Response, the utility argues that it 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. The utility referred to Utilities Operating Company v. King, but did not give the specific "So. 2d" citation (the utility is apparently referring to the case cited at 143 So. 2d 854 (Fla. 1962)). In that case, the Florida Supreme Court, at 858, stated:

> [I]n the absence of some showing that the service to the public will suffer by allowing the utility to charge rates which will not produce a fair return, the utility and not the Commission has the right of decision as to the rates it will charge so long as they do not exceed those which would produce a fair return as determined by the Commission.

Staff does not believe that the Country Club has made any such showing, and does not believe that the situation in this case justifies that the customer of one type of service should be able to force a rate case on customers of another type of service. Staff does realize that reuse can benefit water and wastewater customers as well as reuse customers. However, staff believes that the Commission can allocate the costs and the benefits without resorting to a full rate case for the other classes of customers.

Based on a review of the utility's Application, staff believes that the utility has stated a cause of action for relief under the provisions of Section 367.0822, Florida Statutes. Also, staff believes that the Application of the utility is limited enough to be processed under the limited proceeding statute.

Therefore, staff believes that the Commission should continue processing the limited proceeding using the proposed agency action (PAA) procedures. If the Country Club is not satisfied with the Commission's proposed action, it may then protest the PAA Order and request a formal hearing pursuant to the provisions of Rules 25-22.029 and 25-22.036, Florida Administrative Code.

Based on all the above, staff recommends that the Country Club's motion to dismiss be denied.

ISSUE 3: Should the Commission grant the Country Club's alternative motion for a formal proceeding?

RECOMMENDATION: No, staff should be allowed to complete its preliminary analysis and submit its recommendations before the Commission considers setting this matter for hearing. Pending this analysis, the utility should be encouraged to meet with the Key West Country Club to attempt to negotiate an acceptable rate for reclaimed water and file a status report within sixty days of the date of the order indicating the status of the negotiations as detailed in the staff analysis. (JAEGER, XANDERS)

STAFF ANALYSIS: The Country Club has requested that the Commission: 1) either grant its motion to dismiss (discussed in previous issue), 2) convert the proceeding to a general rate case or allow the utility to withdraw its Application for a limited proceeding; or 3) hold a formal hearing pursuant to Section 120.57, Florida Statutes. As discussed in the issue above, staff does not think it appropriate or necessary at this time to turn this limited proceeding into a full rate case.

Even in this limited proceeding, the Country Club can make the proper allocation of costs between the reuse customer(s) and the wastewater customers an issue. Also, as in all cases, the Commission must set rates which are "just, reasonable, compensatory, and not unfairly discriminatory." (Section 367.081(1), Florida Statutes)

The Country Club argues that it is unfair to set reuse rates which allow a fair rate of return from the reuse customers, but leave wastewater rates such that the utility continues to earn less than a fair rate of return from those customers. Generally, public utilities cannot unjustly discriminate in offering rates to its consumer. Florida courts, however, have held that offering one class of consumers a lower rate than another is not necessarily discriminatory, provided that the classification chosen is not "arbitrary, unreasonable, or discriminatory, and apply similarly to all under like conditions." Pinellas Apartments Ass'n., Inc. v. City of St. Petersburg, 294 So. 2d 676 (Fla. 1974).

The courts in other jurisdictions have held that differences in rates being offered to consumers are not discriminatory and unlawful where the differences are based upon a "reasonable classificatior corresponding to actual differences in the situation of the consumers or the furnishing of the service," for example, see, Bilton Mach. Tool Co. v. United Illuminating Co., 110 Conn. 417, 148 A. 337 (1930), Robbins v. Bangor R. & Electric Co., 100 Me. 496, 69 A. 136 (1905); St. Paul Book & Stationery Co. v. St. Paul Gaslight Co., 130 Minn. 71, 153 N.W. 262 (1915); Smith v.

Public Service Comm'n., 351 S.W. 2d 768 (Mo. 1961); New York Tel. Co. v. Siegel-Cooper Co., 202 N.Y. 502, 96 N.E. 109 (1911); Elk Hotel Co. v. United Fuel Gas Co., 75 W. Va. 200, 83 S.E. 922 (1914). Also, see, Mahoning County v. Public Utilities Comm'n., 58 Ohio St. 2d 40, 388 N.E. 2d 739 (1979). To determine the appropriate reuse rate in this docket, staff will consider the cost of providing reuse and other factors, such as alternative sources of water and the utility's alternative methods of effluent disposal.

Again, staff does not believe that the Commission must expand this limited proceeding into a full rate case to properly set the rate for reclaimed water. However, as pointed out by the Country Club, staff does note that the utility makes the following statement: "Rather than pursue a full rate case to recover this one charge needing immediate consideration and in order to properly assess the timing of and amount of any increase in wastewater service charges, the Applicant hereby requests that this change in reuse rates be recognized in a limited proceeding." Also, the utility states that it anticipates substantial expenditures in the very near future in order to expand its existing wastewater treatment facilities (approximately $900,000 in capital costs), and that even with this increase (in reclaimed water rates), the utility will still be incurring an annual loss of $80,281. While it appears that the utility may have to file a wastewater rate case in the near future, staff believes that this is a business decision to be made by the utility and should not be forced upon the utility at this time.

Also, staff notes that this Application is being processed pursuant to the proposed agency action (PAA) procedures. Pursuant to Rule 25-22.039, Florida Administrative Code, intervenors take the case as they find it. If the Commission believes that there is no chance for a PAA Order to become effective, then the Commission could either on motion of a party or, on its own motion (see, Screiber Express, Inc. v. Yarborough, 257 So. 2d 245 (Fla. 1971)), set the matter directly for hearing. However, staff believes that it should be allowed to complete its analysis and present its recommendations before the Commission considers setting this matter for hearing. Therefore, staff recommends, at this time, that the Country Club's alternative motion for a formal proceeding be denied.

However, based on the motions filed by the customer and discussions with the customer's attorney, it is clear to staff that the likelihood of a protest to the PAA is great. Staff notes that the utility is proposing to increase the reclaimed water rate from $.25 to $1.25 per 1,000 gallons, which is obviously a significant increase. Recognizing the magnitude of this proposed increase and

the unique nature of this case given that there is only one reuse customer affected, staff met (on April 16, 1997) with the utility, the Country Club, and the Office of Public Counsel to discuss the possibility of negotiating an acceptable reclaimed water rate in this docket. At the end of the meeting, the utility and the reuse customer agreed to attempt to negotiate a rate. By letter dated May 6, 1997, the customer contacted the utility and requested a meeting. To staff's knowledge, no meeting has yet been held.

Staff believes that it would be beneficial if the utility and customer attempted to negotiate an acceptable rate for reclaimed water. Since it has not requested a change in the rates for the wastewater customers, the utility has the opportunity to work with the reuse customer to reach an agreement on a reclaimed water rate prior to a full rate case. Such negotiations could avoid a protest to the PAA. Therefore, we believe that the utility should be encouraged to meet with the customer and attempt to reach a mutually acceptable agreement. Accordingly, the utility should be required to file a status report indicating the progress of the negotiations no later than sixty days from the date of the order. The status report should contain the number of meetings held between the utility and the customer, a list of the participants in the meetings, the outcomes of the meetings and the negotiated rate, if an agreement is reached. If an agreement is not reached, the report should contain an explanation of the factors that prevented an agreement.

ISSUE 4: Should the docket be closed.

RECOMMENDATION: No. (JAEGER)

STAFF ANALYSIS: If the Commission accepts staff recommendations in the issues above, then the docket should remain open for the continued processing of the utility's limited proceeding.

FLORIDA PUBLIC SERVICE COMMISSION
Fletcher Building, 101 East Gaines Street
Tallahassee, Florida 32399-0850

M E M O R A N D U M

FEBRUARY 9, 1995

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF WATER & WASTEWATER (JAMES)
DIVISION OF LEGAL SERVICES (CAPELESS)

RE: DOCKET NO. 941323-SU - KW RESORT UTILITIES CORPORATION - REQUEST FOR APPROVAL OF A NEW CLASS OF SERVICE.
COUNTY: MONROE

AGENDA: FEBRUARY 21, 1995 - REGULAR AGENDA - TARIFF FILING - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: 60-DAY SUSPENSION DATE: FEBRUARY 21, 1995

SPECIAL INSTRUCTIONS: I:\PSC\WAW\WP\941323SU.RCM

EXHIBIT "B"

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DOCKET NO. 941323-SU
DATE: February 9, 1995

CASE BACKGROUND

K W Resort Utilities (K W or utility) is a Class B utility providing sewage treatment services to approximately 550 customers, mainly residential, in Monroe County. K W is located in a critical water supply problem area as determined by the governing board of the South Florida Water Management District. In 1993, K W reported operating revenues of $261,455, and a net loss of $275,860.

On December 21, 1994, the utility filed a request for approval of a wastewater reuse agreement with Key West golf course (Key West Country Club, Inc.) and a new tariff sheet, pursuant to Section 367.091, Florida Statutes. The new tariff sheet contains rates and charges for the new class of service (reuse of reclaimed water to Key West Country Club, Inc).

Staff responded to the utility on December 30, 1994 requesting cost justification for the new rates pursuant to Section 367.091(5), Florida Statutes. Staff also requested a statement estimating the gross increase in annual revenues resulting from the new rates, pursuant to Rule 25-9.005(1)(b), Florida Administrative Code. The utility submitted the necessary information to the Commission on January 20, 1995.

The issues of this recommendation are the approval of the wastewater reuse agreement, and the approval of the new tariff sheet and the rates for the new class of service.

DOCKET NO. 941323-SU
DATE: February 9, 1995

DISCUSSION OF ISSUES

ISSUE 1: Should the proposed tariff sheet containing rates and charges for the reuse of reclaimed water to Key West Country Club, Inc. be approved?

RECOMMENDATION: Yes. The utility's proposed tariff sheet and rates and charges should be approved. Provided the customers have received proper notice, the new rates and charges, as outlined in staff's analysis below, should become effective for service rendered on or after the stamped approval date of the tariff sheet, pursuant to Rule 25-30.475, Florida Administrative Code. The utility should provide proof that the customers have received notice within ten days after the date of the notice. (JAMES, CAPELESS)

STAFF ANALYSIS: On December 21, 1994, the Commission received a proposed wastewater reuse agreement between K W Resort Utilities and Key West Country Club, Inc. Along with this agreement, the utility submitted a proposed tariff sheet which contains rates and charges for this new class of service. This tariff sheet was submitted pursuant to Section 367.091(2), Florida Statutes. Pursuant to Section 367.091(5), Florida Statutes, the sixty-day suspension date for the proposed tariff sheet is February 21, 1995.

Staff responded to the utility on December 30, 1994 requesting cost justification for the new rates and charges pursuant to Section 367.091(5), Florida Statutes. Staff also requested a statement estimating the gross increase in annual revenues resulting from the new rates, pursuant to Rule 25-9.005(1)(b), Florida Administrative Code. The utility submitted the necessary information to the Commission on January 20, 1995. The cost justification submitted by the utility substantiated a $.38 per 1,000 gallons charge in order for the utility to recover the additional labor costs, and the increase in pumping costs incurred by the utility in providing this service. Also, the potential revenue impact from the new class of service, as submitted by the utility, would be approximately $12,447 per year.

As referenced earlier, K W Resort Utilities is located in a critical water supply problem area. A critical water supply problem area is one where cumulative water withdrawals may cause adverse impacts to the water resource or the public interest. The Commission, in its water conservation efforts, is attempting to work with the water management districts to encourage spray irrigation as a means of effluent disposal. In doing so, the charge for spray irrigation should be set at a rate which will encourage golf courses and other end users to accept the spray

irrigation, and at the same time recognize the benefit received by the end user and the added costs that must be incurred by the customers of the utility. In past cases, the charge for spray irrigation has varied anywhere from zero to $.60 per 1,000 gallons.

Staff contacted the South Florida Water Management District (SFWMD) to request information regarding Key West Country Club, Inc.'s permits. SFWMD sent staff a copy of the country club's Surface Water Management Permit issued in October of 1981 which states that golf course irrigation water will be provided by secondarily treated sewage effluent.

K W Resort is proposing a charge of $.25 per 1,000 gallons of effluent used by the golf course (which is lower than the $.38 from the cost justification). Along with this usage charge, the proposed tariff sheet states that Key West Country Club, Inc. should be required to pay the costs associated with the daily testing of sewage in the water in the golf course storage pond and the testing of samples of water withdrawn from monitoring wells on the golf course. Key West Country Club, Inc. has agreed to pay these testing costs due to the fact that this testing is primarily designed to guard against excessive salt water, which could cause damage to the golf course. Furthermore, the permit issued by the SFWMD states that the golf course is responsible for all water quality data to be submitted to the district as required.

Therefore, staff believes a charge for the spray irrigation is appropriate in this instance to recognize the fact that both the utility and golf course receive a benefit from the arrangement. Staff believes that the proposed charges are just, reasonable, and compensatory. Therefore, the proposed tariff sheet should be approved, and the rates and charges should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475, Florida Administrative Code. Further, the rates and charges should not be implemented until proper notice has been received by the customers. K W should provide proof of the date notice was given within ten days after the date of the notice.

ISSUE 2: Should the utility's wastewater reuse agreement with Key West Country Club, Inc. be approved?

RECOMMENDATION: Yes. The utility's wastewater reuse agreement should be approved. Provided the customers have received proper notice, the utility should be authorized to collect the rates and charges contained in the wastewater reuse agreement on or after the stamped approval date of the proposed tariff sheet, as discussed in Issue 1. (JAMES)

STAFF ANALYSIS: The rates and charges contained in the proposed wastewater reuse agreement with Key West Country Club, Inc. are consistent with those rates and charges contained in the proposed tariff sheet for the new class of service, as discussed in Issue 1.

Based on staff's findings that the rates set forth in the tariff sheet are just, reasonable, and compensatory, and that the rates and charges contained in the reuse agreement are consistent with these charges, staff recommends that the wastewater reuse agreement should be approved. Provided the customers have received proper notice, the utility should be authorized to collect the rates and charges contained in the wastewater reuse agreement on or after the stamped approval date of the proposed tariff sheet, as discussed in Issue 1 of this recommendation.

ISSUE 3: Should this docket be closed?

RECOMMENDATION: Yes. If there are no timely objections to the tariff, no further action will be required and the docket should be closed. In the event that a timely protest is filed, the tariff should remain in effect, and the revenues should be held subject to refund pending resolution of the protest. (CAPELESS)

STAFF ANALYSIS: If there are no timely objections to the tariff, no further action will be required and the docket should be closed. In the event that a timely protest is filed, the tariff should remain in effect, and the revenues should be held subject to refund pending resolution of the protest. Further, in the event of such protest, staff will prepare an additional recommendation to address the appropriate security of such refunds.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for approval of a new class of service in Monroe County by K W RESORT UTILITIES CORPORATION.	DOCKET NO. 941323-SU ORDER NO. PSC-95-0335-FOF-SU ISSUED: March 10, 1995

The following Commissioners participated in the disposition of this matter:

SUSAN F. CLARK, Chairman
J. TERRY DEASON
JOE GARCIA
JULIA L. JOHNSON
DIANE K. KIESLING

ORDER APPROVING NEW CLASS OF SERVICE

BY THE COMMISSION:

K W Resort Utilities Corporation (K W Resort or utility) is a Class B utility providing sewage treatment services to approximately 550 customers, mainly residential, in Monroe County. K W Resort is located in a critical water supply problem area as determined by the governing board of the South Florida Water Management District (SFWMD). In 1993, K W Resort reported operating revenues of $261,455, and a net loss of $275,860.

Pursuant to Section 367.091(4), Florida Statutes, on December 23, 1994, the utility notified this Commission that it is providing and will charge for the reuse of reclaimed water to Key West Country Club, Inc. Pursuant to Section 367.091, Florida Statutes, the utility also filed a proposed tariff sheet containing rates and charges for this new class of service, as well as a request for approval of the Wastewater Reuse Agreement entered into between the utility and Key West Country Club, Inc., on December 13, 1994.

Pursuant to Section 367.091(5), Florida Statutes, on January 20, 1995, the utility submitted a cost justification for the new rates and charges. This cost justification substantiates a $.38 per 1,000 gallons charge in order for the utility to recover the additional labor costs and the increase in pumping costs incurred in providing this service. Further, pursuant to Rule 25-9.005(1)(b), Florida Administrative Code, the utility submitted a statement estimating the gross increase in its annual revenues resulting from the new service to be approximately $12,447.

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We have noted that K W Resort is located in a critical water supply area. A critical water supply area is one in which cumulative water withdrawals may cause adverse impacts upon the water resource or the public interest. SFWMD has provided us a copy of Key West Country Club, Inc.'s Surface Water Management Permit issued in October, 1981. The permit states that golf course irrigation water will be provided by secondarily treated sewage effluent. This Commission, in its water conservation efforts, is attempting to work with the water management districts to encourage spray irrigation as a means of effluent disposal. In doing so, the charge for spray irrigation should be set at a rate which will encourage golf courses and other end users to accept the spray irrigation, and at the same time recognize the benefit received by the end user and the added costs that must be incurred by the customers of the utility. In past cases, the charge for spray irrigation has varied anywhere from zero to $.60 per 1,000 gallons.

K W Resort is proposing a charge of $.25 per 1,000 gallons of effluent used by Key West Country Club, Inc., which we note is lower than the $.38 per 1,000 gallon charge substantiated in the utility's cost justification. Along with this usage charge, the proposed tariff sheet states that Key West Country Club, Inc., should be required to pay the costs associated with the daily testing of sewage in the water in the golf course storage pond and the testing of samples of water withdrawn from monitoring wells on the golf course. Key West Country Club, Inc., has agreed to pay these testing costs due to the fact that this testing is primarily designed to guard against excessive salt water, which could cause damage to the golf course. Furthermore, the permit issued by the SFWMD states that the golf course is responsible for all water quality data to be submitted to the district, as required.

Based on the foregoing, we believe a charge for the spray irrigation is appropriate in this instance to recognize the fact that both the utility and the golf course receive a benefit from the arrangement. We find that the proposed rates and charges are just, reasonable, and compensatory, in accordance with Section 367.091(4), Florida Statutes. Therefore, the utility's proposed tariff sheet shall be stamped approved.

Moreover, we find that the rates and charges contained in the Wastewater Reuse Agreement entered into between the utility and Key West Country Club, Inc., are consistent with the rates and charges contained in the proposed tariff sheet for the new class of service. Based on our findings that the rates and charges set forth in the proposed tariff sheet are just, reasonable, and compensatory, and that the rates and charges contained in the

Wastewater Reuse Agreement are consistent with those charges, the Wastewater Reuse Agreement shall also be approved.

If there are no timely objections, no further action will be required and the docket shall be closed. In the event that a timely protest is filed, the tariff shall remain in effect, and the revenues shall be held subject to refund pending resolution of the protest.

Based on the foregoing, it is, therefore,

ORDERED by the Florida Public Service Commission that K W Resort Utilities Corporation's proposed tariff sheet containing rates and charges for the reuse of reclaimed water to Key West Country Club, Inc., shall be stamped approved. It is further

ORDERED that K W Resort Utilities Corporation's Wastewater Reuse Agreement with Key West Country Club, Inc., is hereby approved. It is further

ORDERED that the tariff revision approved herein is interim in nature and shall become final unless a substantially affected person files a petition for a formal proceeding which is received by the Director, Division of Records and Reporting, by the date specified in the Notice of Further Proceedings or Judicial Review set forth below. It is further

ORDERED that if a timely protest is filed in accordance with the requirements set forth below, the tariff revision approved herein shall remain in effect and the revenues shall be held subject to refund pending resolution of the protest. It is further

ORDERED that if no timely protest is filed, this docket shall be closed.

By ORDER of the Florida Public Service Commission, this 10th day of March, 1995.

Blanca S. Bayó

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RGC

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), 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.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the action proposed files a petition for a formal proceeding, as provided by Rule 25-22.036(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a)(d) and (e), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on March 31, 1995.

In the absence of such a petition, this order shall become final on the day subsequent to the above date.

Any objection or protest filed in this docket before the issuance date of this Order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If this Order becomes final on the date described above, any party adversely affected may request judicial review by the Florida

Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting 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 of the date this Order becomes final, 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of STOCK ISLAND UTILITY COMPANY INC., for increased sewer rates in Monroe County, Florida.	) DOCKET NO. 830386-SU) ORDER NO. 14620) ISSUED: 3-22-85

The following Commissioners participated in the disposition of this matter:

JOHN R. MARKS, III, Chairman
JOSEPH P. CRESSE
GERALD L. GUNTER
KATIE NICHOLS

ORDER APPROVING STIPULATION

BY THE COMMISSION:

K W Resort Utilities Corp. (K W Resort) provides sewer service in Monroe County. K W Resort is the successor in interest to Stock Island Utility Company, Inc. (Stock Island). We have previously acknowledged the transfer of the assets of Stock Island to K W Resort and approved the transfer of Certificate No. 144-S. This was accomplished by the issuance of Order No. 14018 issued January 18, 1985.

On August 24, 1983, Stock Island filed a request for both an interim and a permanent rate increase. Permission was sought and granted to use a twelve month test year ended August 31, 1983, for the interim and December 31, 1983, for the permanent. On October 11, 1983, Stock Island completed its interim increase filing and on December 15, 1983, we issued Order No. 12786 authorizing an interim increase. The permanent rates which Stock Island has proposed, the interim rates which we had authorized, and the rates which the parties and Staff have agreed to are shown on the Stipulation of Settlement attached hereto and made a part hereof.

In addition to approving interim rates, Order No. 12786 also authorized an interim service availability charge of $937 per connection.

On May 1, 1984, Stock Island filed its Minimum Filing Requirements (MFRs) using the calendar year 1983 as the test year.

Thereafter, on November 19, 1984, this Commission issued Order No. 13682 as Proposed Agency Action which was protested by both Stock Island and the Office of Public Counsel which had intervened on behalf of the Citizens of the State of Florida. Consequently, Order No. 13682 never became effective and the matter was set for final hearing. Prior to the date of the hearing as continued, the Commission was notified that all affected parties had entered into a Stipulation of Settlement and requested this Commission's approval.

We have reviewed the attached Stipulation of Settlement and find that it should be approved. The stipulated final rate is less than the interim rate which Order No. 12786 had authorized and K W Resort agrees in the Stipulation to refund the difference within four months from the date the Public Service Commission Staff approves K W Resort's refund plan. We accept this as well as the other provisions of the Stipulation.

However, since the Stipulation did not provide a time frame in which the refund plan was to be submitted to the Commission Staff, we will require the plan be submitted as soon as practicable but no more than two months from the date of this order. In any case, the refunds should be completed within 180 days of the date of this Order.

Item No. 7 of the Stipulation provided that the amount of K W Resort's service availability charge would not be resolved by the Stipulation. Since the Stipulation provides that this docket will be closed and the $937 service availability charge was authorized on an interim basis, we will spin that matter off to a new docket for final resolution.

We have reviewed the Stipulation of Settlement and find that resulting rates are just and reasonable and the Stipulation should be approved.

In consideration thereof, it is,

ORDERED by the Florida Public Service Commission that the Stipulation of Settlement dated May 31, 1985, entered into between the Office of Public Counsel, the Public Service Commission Staff, K W Resort Utilities Corp. and the Stock Island Citizens Committee be and hereby is approved in every respect. It is further

ORDERED that the Stipulation is dispositive of all remaining issues in this docket except as otherwise noted in the body of this order and this docket may be closed upon the completion of the refund. It is further

ORDERED that except as modified in the body of this order the refund should be made with interest and in accord with Florida Administrative Code Rule 25-10.26. It is further

ORDERED that the matter of service availability charges be spun off to a separate docket. It is further

ORDERED that Docket No. 830388-S be and the same is hereby closed. It is further

ORDERED that any party adversely affected by the Commission's final action in this matter is entitled to request: 1) reconsideration of the decision by filing a motion for reconsideration with the Commission Clerk within 15 days of the issuance of this order in the form prescribed by Rule 25-22.60, Florida Administrative Code, or 2) judicial review by the First District Court of Appeal by the filing of a notice of appeal with the Commission Clerk and the filing of a copy of the notice and the filing fee with the District Court of Appeal. This filing must be completed within 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.

By ORDER of the Florida Public Service Commission, this 23rd day of JULY, 1985.

STEVE TRIBBLE
Commission Clerk

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application of K W Resort Utilities Corp., successor in interest to Stock Island Utility Company, Inc. for increased sewer rates to its customers in Monroe, County, Florida.

Docket No. 830388-S
Filed:

STIPULATION OF SETTLEMENT

K W Resort Utilities Corp. (hereinafter, "K W Resort"), successor in interest to Stock Island Utility Company, Inc. (hereinafter, "Stock Island"), the Citizens of the State of Florida, and the Staff of the Florida Public Service Commission, through their respective attorneys, stipulate to the following:

1. The agreements contained in this Stipulation do not necessarily reflect any party's positions on the substantive issues raised in this Docket. The parties recognize that this Stipulation was entered into in a spirit of compromise and in an effort to obviate the additional substantial expense associated with further litigation.

2. On August 26, 1983, Stock Island petitioned the Florida Public Service Commission (hereinafter, "the Commission") to increase its annual sewer revenues to $451,643. Stock Island's petition was based upon the proposed rate schedule reflected in the table hereinafter, under the column headed "Proposed".

Through Order No. 12784, issued on December 15, 1983, the Commission authorized interim revenues of $223,382, as reflected in the table below under the column headed "Interim". Subsequent to the grant of interim rates, Stock Island was joined with its parent company and other affiliated companies in a mortgage foreclosure action instituted by the parent company's major creditor, resulting in a receiver being appointed by the Court for Stock Island, et al., a judgment of foreclosure being obtained against Stock Island, et al., and a public sale of the assets of Stock Island, et al., on the Courthouse steps to K W Resort. The sewer operations are currently under the ownership and control of K W Resort.

3. By this Stipulation, the parties agree to the rates reflected in the table below, under the column headed "Stipulation", subject to Commission approval. The parties anticipate that, based on test year billing determinants, the stipulated rate schedule will generate revenues of approximately $185,310. This Stipulation, however, is an agreement to the specific rates listed in the column headed "Stipulation" below:

Residential

Proposed	Interim	Stipulation
$58.82 Flat	$28.80 Flat	$25.00 Flat

General Service

Meter Size	Proposed	Interim	Stipulation
5/8" x 3/4"	$ 40.29	$ 19.73	$ 18.00
1"	$ 100.73	$ 49.32	$ 46.21
2"	$ 322.33	$157.69	$ 141.96
3"	$ 644.66	$315.69	$ 281.32
4"	$1,007.29	$493.27	$ 437.90
Gallonage Charge per 1,000 Gallons	6.29	$ 3.08	$ 3.10

Privately Owned Lift Stations

Meter Size	Proposed	Interim	Stipulation
5/8" x 3/4"	$ 40.29	$ 19.73	$ 20.10
1"	$ 100.73	$ 49.32	$ 46.21
2"	$ 322.33	$157.85	$ 141.96
Gallonage Charge per 1,000 Gallons	$ 4.59	$ 3.25	$ 1.76

4. The parties have stipulated that a flat rate, instead of a base facilities' charge (BFC) with a gallonage rate, is the most efficient rate structure for the residential rate class because of the unique circumstances in this case. K W Resort provides sewer service only, while the Florida Keys Aqueduct Authority (hereinafter "FKAA") provides water service to those same customers. Therefore, in order to bill on a BFC basis, K W Resort would find it necessary to obtain the water gallonage

information from FKAA. Stock Island, however, had encountered considerable difficulty and expense in its numerous attempts to obtain the necessary gallonage information from FKAA. Thus, in order to avoid significant additional expense, the parties have stipulated to a flat rate for the residential class of customers. In the event that the Commission determines that a BFC with a gallonage fee is appropriate, the parties are unable to agree on the additional expense associated with that billing process and will therefore require additional proceedings to present evidence and argument on the issue.

5. To the extent that the interim rates exceed the rates stipulated in paragraphs 2 and 3 herein, K W Resort will refund the excess to the appropriate customers by way of a credit on future bills and by applying such credits first to any arrearages. The parties agree that K W Resort should be allowed a term of four months from the date the PSC Staff approves K W Resort's refund plan.

6. K W Resort also agrees that it will not file a petition for a rate increase pursuant to section 367.0..(23), Florida Statutes, before April 1, 1986. K W Resort, however, does not relinquish its statutory right to file for either the "indexing" or the "pass through", as authorized by Sections 367.081(4)(a) and 367.081(4)(b), Florida Statutes, respectively.

7. The issue of a change in the amount of K W Resort's service availability charge is not resolved within this

Stipulation. Rather, all parties agree that this issue will be determined at some future time.

8. Upon approval by the Commission, this Stipulation will totally dispose of this case, no further hearings need be held, and the Docket shall be closed. With the exception of the flat rate shown in the table in paragraph 3 and further described in the verbiage below that table in paragraph 4, should the Commission refuse to accept this Stipulation in its entirety and without modification, the Stipulation shall be void, and all parties will be free to pursue the full range of legal remedies which otherwise would be available to them.

9. There is presently pending and undisposed of a joint petition seeking Commission authority to transfer Certificate No. 168-S and the assets of K W Resort to South Key Utility Company. That joint petition, however, has no effect on the provisions of this Stipulation.

DATED: May 21, 1985

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