



ORIGINAL
Public Service Commission

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

DATE: April 27, 2000
TO: Division of Records and Reporting
FROM: Division of Legal Services (Van Leuven) *DTV*
RE: Docket No. 000079-SU - 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.

Please file the attached letter dated April 26, 2000, in the docket file for the above-referenced docket.

DTV/dm

cc: Division of Water and Wastewater (Rendell)

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- APP _____
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April 26, 2000

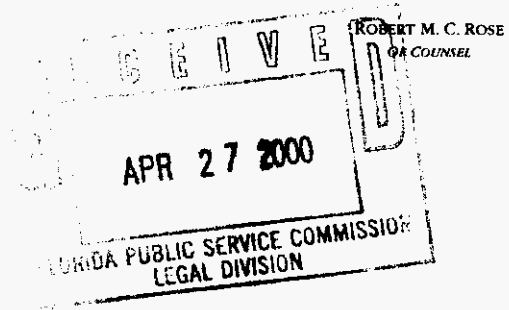
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Tyler Van Leuven, Esquire
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: K.W. Resort Utilities Corp.;
Docket No. 000079-SU; Complaint by Sunset Ventures
Our File No. 34000.02



Dear Mr. Van Leuven:

In response to your letter dated February 10, 2000 in the above-referenced docket, enclosed please find a Response to Staff Data Request filed by K.W. Resort Utilities Corp. Also enclosed is a copy of my response Kathryn Cowdery's letter dated April 11 on which you were copied.

The basic problem is that Sunset Ventures has three components to its development, the facilities on the Marina side, the facilities on the condominium side, and the 139 boat slips. In each of these three cases, the Developer breached the Contract for Waste Water Treatment between the parties, initiated wastewater flows to the Utility without authorization, placed facilities in service prior to DEP authorization, and stole service from the Utility. The Developer intentionally violated the terms of the Contract and Public Service Commission rules. Please understand our lack of patience with this Developer following repeated occurrences of problems. The Utility's disconnection of service and other actions were a necessary and appropriate response to Developer's repeated theft of service.

Should you have any questions or comments regarding these matters, please feel free to call.

Sincerely,

John R. Jenkins
For the Firm

JRJ:dcr

Enclosure

cc: Bill Smith, Esquire
Mr. Doug Carter
Kenneth Gatlin, Esquire

KWResort/Van Leuven2.ltr

KW RESORT UTILITIES, CORP.
RESPONSE TO PUBLIC SERVICE COMMISSION STAFF DATA REQUEST
April 26, 2000

The following responses are provided to the Staff Data Request dated February 10, 2000 on behalf of K.W. Resort Utilities Corp. Each question in the data request is restated in bold print with the response immediately following.

- 1. Provide the date Sunset Ventures of Key West (Sunset Ventures) began transmitting and delivering wastewater to K.W. Resort Utilities Corp. (K.W. Resort).**

The following is a chronology of events which evidence the breach of Contract for Waste Water Treatment ("Contract") and theft of service by Sunset Ventures:

August 15, 1998 the Contract is entered into by the parties.

June 1, 1999 the Utility discovered wastewater flows entering the Key West Golf Course driving range manhole from Sunset Marina. The Utility had not authorized the initiation of service, DEP had not approved or certified completion of the collection system, all service availability charges had not been paid, and no payment was being made for service. The ability to send wastewater flows to the treatment plant was prevented when the Utility discontinued electric service to the lift station on this date.

On or about September 8, 1999, the DEP approved use of the collection/transmission system serving the Marina.

September 16, 1999, Utility resumed service to Sunset Marina following notice of DEP certificate of completion and approval of use of lines.

January 18, 2000, the Utility discovered unauthorized flows coming from the condominium side of the Sunset Ventures development. The Utility had not authorized the initiation of service, DEP had not approved or certified completion of the collection system, all service availability charges had not been paid, and no payment was being made for service. The ability to send wastewater flows to the treatment plant was prevented when the Utility discontinued electric service to the lift station and plugging the line on this date.

January 21, 2000, Developer obtains DEP certificate of completion for condominium side collection system..

February 25, 2000, pursuant to Developer's request, Utility and Developer's project manager inspect lift station and authorize testing of the electrical panel. Deficiencies are identified including requirement to trim impeller to commence service. No subsequent action is taken by Developer to make these minor improvements to the lift station.

Tyler Van Leuven, Esquire
April 21, 2000
Page 2

March 6, 2000, DEP issues a notice of violation to Sunset Ventures for placing collection system in service prior to approval and unauthorized pump-out system for boat waste based on January 19th inspection. (See letter attached)

2. Where is the point of delivery, as defined by Rule 25-30.210(7), Florida Administrative Code?

The point of delivery is the service manhole on the southeast side of Junior College Road across from the entrance to Sunset Marina and adjacent to the 11th fairway of Key West Golf Course. The Utility's service area boundary is Junior College Road and the point of delivery is within the service area.

3. Does K.W. Resort consider the discharge of wastewater from boats or boat holding tanks, referenced in paragraph 10 of the Complaint, unauthorized usage pursuant to the Contract for Wastewater Treatment, paragraph 4, dated August 15, 1998?

Yes. The Contract is quite specific and clear on this point. Sunset Ventures intentionally breached the Contract.

4. If known, provide the dates and amount of gallons of the discharge of wastewater from boats that occurred between October 25, 1999 and January 16, 2000.

The Utility was not notified, and has no record as to the quantity of this unauthorized discharge. Due to the large number of boats at the Marina over the Christmas and New Year holidays, it is reasonable to believe that the discharge was substantially greater than 500 gallons. Sunset Ventures is now trying to downplay its breach of the Agreement.

In reviewing the Developer's Attachment "B" Pump Out History, it is worth noting that the Marina has a 1500 gallon storage tank for such waste. It is difficult to believe that the Developer went to the trouble of pumping out a single gallon, or two gallons, of waste into the Utility's system on a particular occasion, as stated in the Pump Out History.

Sunset Ventures billed its customers for the service of pumping out boat waste. The Company's should be required to produce all records to verify the number of boats pumped and the quantity of wasted dumped.

5. At the time wastewater was delivered from the transmission lines connected to the marina, condominium units, and restaurant, had the wastewater lines been properly tested and certified by FDEP? If so, was a copy of the letter from FDEP authorizing use of the wastewater lines provided to K.W. Resort prior to transmission of wastewater?

Please see the chronology of events in response to question 1. above.

6. Who owns and maintains the collection lines, manholes, and lift stations referenced in the Contract for Wastewater Treatment, dated August 15, 1998?

Sunset Ventures owns the lines and the Utility maintains the lines as provided for in the Contract.

7. Paragraph 4 of the Contract for Wastewater Treatment, states that the wastewater lines, pipes, manholes and lift stations shall be the property of the Owner, however, the Company shall maintain and operate the collection system. Does Sunset Ventures pay K.W. Resort a fee or maintenance charge for the maintenance and operation of the collection system? If not, why not?

No separate fee or maintenance charge is collected. The cost of this service is recovered in the Utility's rates.

8. Is Sunset Ventures in the existing certificated service territory of K.W. Resort?

No. This is stated in the fifth "Whereas" clause on page one of the Contract. Also, see response to question 2. above.

9. If known, please state the measures taken by Sunset Ventures to insure that no future discharge of boat or boat holding tank wastewater occurs.

Measures were taken by the Utility. By that time, Sunset Ventures had already breached the specific Contract prohibition against such a discharge on at least 19 separate occasions by its own admission. The Utility put its own locks on the lift stations to prevent the continuing breach of the Contract.



Jeb Bush
Governor

Department of Environmental Protection

COPY

South District
P.O. Box 2549
Fort Myers, Florida 33902-2549

David B. Scrubs
Secretary

CERTIFIED MAIL: Z 541 193 321
RETURN RECEIPT REQUESTED

Douglas Bell
5601 College Road
Key West, Florida 33040

Re: Monroe County-DW
Sunset Ventures of Key West, Inc.
CS44-63485-002-DWC
Florida Keys EMA

Dear Mr. Bell:

The purpose of this letter is to advise you of possible violations of law for which you may be responsible, and to seek your cooperation in resolving the matter. A field inspection conducted on January 19, 1999 indicates that a violation of Florida Statutes and Rules may exist at the above described facility.

Department of Environmental Protection personnel observed the following:

1. Lift Station # 2 had been placed into operation prior to being approved for use by the Department as required by Florida Administrative Code (F.A.C) Rule 62-604.500(1) and Specific Condition 3 of the collection system permit.
2. A pump out system and holding tank for storing boat waste was observed at the marina. The collection system permit application submitted with the February 24, 1998, correspondence from Dames & Moore indicates that the proposed sewage collection system would include connections for 124 marina slips. The above referenced permit authorized the construction of the sewage collection system and connection to the Key West Resort Utilities wastewater treatment plant. However, the permit did not authorize the installation of the pump-out holding tank. Information received from the Department of Health indicates that they may not have approved this system. Please be advised that the operation of a stationary source of pollution without a valid Department permit may constitute a violation of F.A.C Rule 62-4.030.

Continued

"More Protection, Less Process"

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Mr. Douglas Bell
March 6, 2000
Page 2


The activities observed during the Department's field inspection and any other activities at your facility that may be contributing to violations of the above-described statutes or rules should be ceased.

Continued activities at the facility in violation of state statutes or rules may result in liability for damages and restoration, and the judicial imposition of civil penalties up to \$10,000 per violation per day, pursuant to Sections 403.141 and 403.161, F.S.

You are requested to contact **Nancy Brooking** or **Gus Rios** at (305) 289-2310 within fifteen (15) days of receipt of this Warning Letter to arrange a meeting to discuss this matter. The Department is interested in reviewing any facts you may have that will assist in determining whether any violations have occurred. You may bring anyone with you to the meeting that you feel could help resolve this matter.

Please be advised that this Warning Letter is part of an agency investigation, preliminary to agency action in accordance with Section 120.57(5), Florida Statutes. We look forward to your cooperation in completing the investigation and resolution of this matter.

Sincerely,


Richard W. Cantrell
Director of
District Management

RWC/AB/dj

cc: Nancy Brooking, DEP Marathon
Andy Barienbrock, DEP Ft. Myers
Jack Teague, DOH Key West
Doug Carter, Key West Resort Utilities

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April 26, 2000

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ROBERT M. C. ROSE
OF COUNSEL

Ms. Kathryn Cowdery
Ruden, McClosky, Smith
Schuster & Russell, P.A.
215 South Monroe Street
Suite 815
Tallahassee, Florida 32301

Re: K.W. Resort Utilities, Inc.;
Complaint by Sunset Ventures
Our File No. 34000.02

Dear Kathryn:

I am in receipt of your April 11 letter regarding various matters associated with the complaint by Sunset Ventures. This letter will respond to several points made in that correspondence.

Pursuant to your client's request, on February 4th I provided Kenneth Gatlin with a letter pursuant to which my client agreed to authorize testing of the electrical panel and operation of the lift station intended to serve condominium unit 4. Utility personnel attended that test and advised your client and its engineers that service was available to the condominium unit following trimming of the impeller, and a couple of other minor modifications to the operation of the lift station. It is my understanding that there was no dispute regarding these matters. For whatever reason, your client never undertook these modifications. The Utility has not refused to honor any obligation it has to serve condo unit 4. This "welcome news" has been known by your client since February.

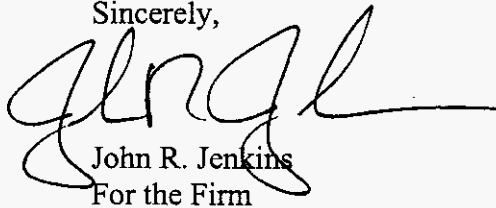
Sunset Ventures is being billed based on the approved rates and charges of KW Resort Utilities. Including the Development in the Utility's certificated service area is not the agreement reached by the parties two years ago. Further, in light of your client's continued breach of the Contract, the Utility has serious questions about whether to continue service to Sunset Ventures at all, much less include it in the certificated service area.

Your letter discusses of an offset or refund of \$75,060 in service availability charges. Payment of service availability charges makes one more issue your client is evidently unwilling to live with in the signed Contract. All service availability charges paid are justified. More to the point, it was not our intent in offering to work on amending the Contract to entertain a wish list of issues your client like to change now once service is resumed.

Ms. Kathryn Cowdery
April 21, 2000
Page 2

My client remains willing to enter into an Amended and Restated Contract for Waste Water Treatment. However, it is our position that your client has stolen service on more than one occasion, that the disconnections were justifiable, and that your client is using the PSC complaint process to secure continued service and renegotiate an existing Contract at my client's expense. Therefore, we will look to recover the costs of litigation and negotiation from your client. I look forward to a copy of your revised agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Jenkins", with a long horizontal flourish extending to the right.

John R. Jenkins
For the Firm

JRJ:dcr

cc: William L. Smith, Esq.
Mr. Doug Carter
Tyler Van Leuven, Esq.

KWResort/Cowdery.ltr