

State of Florida



Public Service Commission  
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TALLAHASSEE, FLORIDA 32399-0850

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COMMISSION CLERK

DATE: January 10, 2002

TO: DIRECTOR, DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES (BAYÓ)

FROM: OFFICE OF THE GENERAL COUNSEL (HARRIS) *John Harris*  
DIVISION OF ECONOMIC REGULATION (RENDELL) *198*

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.

AGENDA: 1/22/2002 - REGULAR AGENDA - INTERESTED PERSONS MAY PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: NONE

FILE NAME AND LOCATION: S:\PSC\LEG\WP\000079.RCM

CASE 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.

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On January 10, 2000, Staff sent Data Requests to K.W. and Sunset, requesting further information on and documentation of the facts surrounding the allegations of the Complaint. Staff sought this information as a starting point to determine the parties' positions, and support for those positions, as they relate to the Commission's jurisdiction, Statutes and Florida Administrative Code Rules governing utilities and customers.

Between January 10, 2000 and April 10, 2000, 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 the Commission's assistance. Staff was specifically asked by the parties to grant an extension of the deadline for filing responses to the Staff Data Requests, on the expectation that a settlement of the dispute was likely. By letter dated February 29, 2000, staff agreed to extend the response deadline to April 10, 2000. Thereafter, on April 10, 2000, staff received an extensive response from Sunset, and on April 27, 2000, K.W. provided its response.

On June 5, 2000, 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 Commission assistance. On November 22, 2000, however, staff was informed by K.W. that those negotiations had been unsuccessful, and that a dispute still existed between the parties. K.W., however, 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. 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 staff with their choice of a mediator. Following a January 31, 2001 letter from K.W., wherein staff was informed the parties were continuing to work on an agreement between them, there has been no further written contact between either K.W. or Sunset with staff. No staff or other mediator has been chosen nor has mediation occurred.

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Since January 29, 2001, staff has contacted counsel for K.W. and Sunset approximately seven times telephonically, and has been informed that the parties were continuing to "slowly" work towards a settlement agreement. The most recent contact between staff and the parties occurred in December 2001, when staff was informed that a final settlement had been reached, but had not been executed by the parties. Staff was informed that formal mediation or further staff assistance was not needed at this time, and that the active involvement of the Commission was not required, since the parties appeared to have reached a satisfactory working agreement. It appears to staff that the parties have reached an accommodation and have no further desire to proceed with the Complaint.

The Commission has jurisdiction pursuant to Section 367.011, Florida Statutes.

#### DISCUSSION OF ISSUES

**ISSUE 1:** Should the Complaint filed by Sunset Ventures against K.W. Resort Utilities be dismissed?

**RECOMMENDATION:** Yes, the Complaint should be dismissed without prejudice. Because the parties have not sought action by the Commission in over 23 months and have stated they have reached an agreement, and are conducting their affairs accordingly, there is no need for continued Commission involvement. (HARRIS, RENDELL)

**STAFF ANALYSIS:** As stated in the case background, this docket was opened when Sunset filed a Complaint against K.W. requesting that the Commission take jurisdiction and resolve the dispute between the parties, require the utility to continue to provide service to Sunset, and require the utility not to disconnect Sunset from future service. 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

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appears satisfied with the service provided by K.W., and K.W. is willing to continue to provide services under contract with Sunset.

Bulk wastewater service has been provided by K.W. pursuant to a contract with Sunset. 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.

Since the filing of this Complaint in January, 2000 staff has attempted to facilitate a settlement between Sunset and K.W., including numerous telephone calls, two informal meetings between the parties, and the offer of mediation, including offering the option of a Commission mediator. At this time, the parties have chosen not to take advantage of these offers, instead preferring to negotiate between themselves in an attempt to resolve the dispute without Commission intervention. On August 29, 2001, staff sent a letter to the parties, notifying them that the Commission was ready to assist with the resolution of this Complaint, but that if the parties did not wish for the Commission's assistance, the Complaint should be withdrawn. Staff informed the parties in that letter that if information was not received by staff by September 19, 2001, stating specific reasons why the docket should remain open, staff would file a recommendation 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 were not reached, Sunset would in fact request mediation. Staff believed that an extension to allow the parties to reach an agreement would be reasonable and extended the deadline until December 2001.

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While preparing the Recommendation to be filed on December 6, 2001, staff was informed by the attorney for Sunset on November 26, 2001 that although a Settlement Agreement had been drafted, it had not been executed by Sunset. 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 December 6, 2001, Recommendation filing date. In an abundance of caution, 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. Prior to filing this Recommendation, staff contacted counsel for Sunset, and notified counsel that if the active involvement of the Commission was not needed, and Sunset did not withdraw its Amended Complaint, staff would recommend that the Commission dismiss this Complaint and close the docket. The Amended Complaint has not been withdrawn, nor has Sunset indicated a need for active Commission involvement.

For the foregoing reasons, staff believes there is no reason to continue to hold open this docket 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 then neglected to execute. Staff notes that if the docket is dismissed and the parties fail to execute the settlement agreement, and 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. Staff notes that there have been no consumer complaints with respect to these matters, and staff does not believe any other customers of K.W. will be prejudiced by allowing the parties to privately negotiate a settlement.

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

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**ISSUE 2:** Should this Docket be closed?

**RECOMMENDATION:** Yes. If the Complaint is dismissed, the docket should be closed. (HARRIS)

**STAFF ANALYSIS:** If the Commission approves staff's recommendation in Issue 1, no further action is necessary and this docket should be closed upon issuance of the order.