

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Safe Harbor
Marina against K W Resort
Utilities Corp. and request for
new class of service for bulk
wastewater rate in Monroe
County.

DOCKET NO. 020520-SU
ORDER NO. PSC-02-1165-PAA-SU
ISSUED: August 26, 2002

The following Commissioners participated in the disposition of
this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

NOTICE OF PROPOSED AGENCY ACTION ORDER
APPROVING SETTLEMENT AGREEMENT, ESTABLISHING
NEW CLASS OF SERVICE, AND APPROVING TARIFF SHEET 15.5

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.

BACKGROUND

On September 26, 2001, Safe Harbor Marina (Safe Harbor) filed
a letter with the Division of Consumer Affairs concerning the
billing practices of K. W. Resort Utilities Corporation (K. W.
Resort). Safe Harbor indicated that in 1990 it paid a \$10,000
impact fee to K. W. Resort to convert one of its septic tank
systems into a lift station. The complainant further indicates
that prior to the current owners of the utility purchasing the
utility, it was billed on a gallonage rate for wastewater through
an "hour meter." When Safe Harbor decided to add another lift

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station and install a boat "pump-out" system, K. W. Resort required the marina to enter into a service contract.

Further, Safe Harbor is also billed a \$45.00 flat rate for the unmetered bar/restaurant. In its complaint, Safe Harbor indicated that it should be billed under the utility's current tariff for Private Lift Station Owners, Wastewater Tariff Sheet 15.0, since it owns and maintains two lift stations on its property.

After preliminary investigation and conclusions, the two parties requested that our staff travel to the area to conduct an on-site analysis and meet to discuss possible settlement alternatives. Our staff met with the two parties on June 11, 2002, and facilitated a settlement agreement. We have jurisdiction pursuant to Section 367.121, Florida Statutes.

SETTLEMENT AND NEW CLASS OF SERVICE

The Contract for Wastewater Treatment signed by K.W. Resort Utilities and Safe Harbor on August 31, 1999 indicates that Safe Harbor would consist of (1) a bar and restaurant of 26 seats; (2) 8 residential apartments; (3) 5,550 square feet of storage facilities; (4) 3,850 square feet of commercial retail space; (5) boat slips with 34 permanent residential live aboard boats; and (6) 2 trailer homes plus 2 R.V.s. The contract further indicates that Safe Harbor would install, maintain, and operate the wastewater collection lines, pipes, manholes, and lift stations required to connect to the utility's wastewater system. Additionally, Safe Harbor was required to pay \$43,068.29 in plant capacity charges, based upon \$2,700 per equivalent residential connection (ERC).

Further, the Contract for Wastewater Service indicated that:

All residential units including the 8 apartments, 2 trailerhomes and 2 R.V.'s and any other residential units on the property, including, approximately 34 residential, houseboat or sailboat totaling 46 units shall be billed at the month residential flat rate currently approved by the PSC which is \$34.25 per apartment per month and which may change based upon PSC approval.

Safe Harbor is also billed a \$45.00 flat rate for the unmetered bar/restaurant. We reviewed the approved wastewater tariffs, as well as our past orders, and determined that we have not approved the \$45 monthly flat rate for this general service. In its complaint, Safe Harbor indicated that it should be billed under the utility's current tariff for Private Lift Station Owners, Wastewater Tariff Sheet 15.0, since it owns and maintains two lift stations on its property.

Data requests were sent to both Safe Harbor and K. W. Resort on November 28, 2001. Safe Harbor provided a response by letter dated December 17, 2001, while K. W. Resort provided a response by letter dated January 2, 2002. Based upon the original complaint, the utility's response to the original complaint, and both responses to the data requests, our staff submitted preliminary findings in a letter to both parties dated February 7, 2002. In this letter, our staff stated its belief that K. W. Resort was billing discriminatory rates to Safe Harbor.

Section 367.081(2)(a)1, Florida Statutes states, "[t]he Commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory." Our staff based its preliminary determination of discriminatory billing practices upon the fact that Safe Harbor owns its own lift stations; however the utility was billing under the residential rate. In Order No. 13862, issued November 19, 1984, in Docket No. 830388-S, this utility's last rate case, we determined that private lift station (PLS) customers are charged the same base facility charge as other service classes, but are charged 80% of the other service classes' gallonage charge to recognize reduced costs of service to PLS owners. The reduced cost of service stems from the PLS owners paying for their own electrical pumping power and maintenance of the lift station. In Order No. 14620, issued July 23, 1985, we approved a stipulation for this utility, where PLS Rates were approved with the same reduced gallonage charge. Further, the stipulation indicated that the flat rate would be used for the residential class of customers.

In the February 7, 2002 letter, our staff suggested alternatives for the billing of Safe Harbor by K. W. Resort. In response to our staff's letter, both parties submitted a request for our staff to conduct an on-site investigation and to discuss

possible settlement alternatives. On June 10, 2002, our staff conducted a review of the service territory with K. W. Resort, including both Safe Harbor Marina and Sunset Ventures Marina. Our staff also met with Mr. Joe O'Connell, owner of Safe Harbor and conducted an extensive review of the entire marina. On June 11, 2002, our staff met with Safe Harbor and K. W. Resort and conducted an informal settlement conference. Based upon these discussions, the parties worked out a settlement agreement. This settlement proposal includes a new class of service for a bulk wastewater rate for Safe Harbor. This monthly bulk wastewater rate is based upon the following individual component rates:

Wastewater Bulk Rate

| | |
|--|-------------------|
| 13 residential living units at 1 ERC each (apartments, Mobile Homes, House Boats with apartments) | \$ 458.51 |
| 18 Live Aboard Boats at .6 ERC each | \$ 380.92 |
| 27 Non Live Aboard Boats at 1/5 ERC each | \$ 190.46 |
| 6 vacant slips at 1/5 ERC each | \$ 42.32 |
| 2 Bathhouses at 1 ERC each | \$ 70.54 |
| 2 Commercial Businesses at 1/2 ERC each | \$ 35.27 |
| 1 Commercial Bar | <u>\$ 45.00</u> |
| Total Bulk Rate | <u>\$1,223.02</u> |

Our past practice has been to establish a bulk service rate only after it is determined that the class of service is truly unique and is not similar to other existing classes of service served by the utility. We have historically approved bulk service charges that recognize differences in cost and minimize any form of cross subsidization among or between the various classes served by the utility. See Order No. PSC-95-0730-FOF-WS, in Docket No. 950186-WS, issued June 20, 1995. The circumstances involved with providing wastewater service to Safe Harbor justify the need for a bulk wastewater service rate. The Safe Harbor customer is unique in that not only does the customer own, operate, and maintain its own lift stations, but also consists of a multi-use customer base.

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This customer base consists of residential units, boat slips, commercial units, and bathhouses.

We find that the proposed wastewater bulk rate is just, reasonable, compensatory, and not unfairly discriminatory. This proposed rate recognizes the differences of this wastewater customer, as well as minimizes any form of cross subsidization among or between the various classes served by the utility. We therefore approve the proposed settlement and the new class of service for bulk wastewater service for Safe Harbor Marina. Accordingly, Wastewater Original Tariff Sheet 15.5 is approved. The approved charges shall be effective on the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, Florida Administrative Code, provided the customers have received notice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the settlement between K W Resort Utility Corp. and Safe Harbor Marian is approved. It is further

ORDERED that the new class of service for bulk wastewater service for Safe Harbor Marina is established. It is further

ORDERED that Wastewater Original Tariff Sheet 15.5 is approved, with the approved charges effective on the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, Florida Administrative Code, provided the customers have received notice. It is further

ORDERED that in the event of a protest by a person whose substantial interests are affected, the new charges shall remain in effect subject to refund, should we determine a refund to be necessary, at the resolution of the protest. It is further

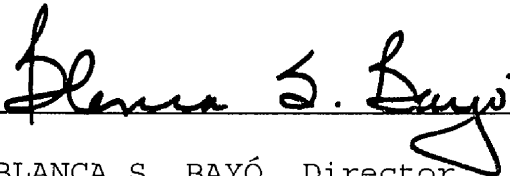
ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission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

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in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 26th day of August, 2002.



BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

LDH

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

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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 Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 16, 2002.

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.