

REQUEST TO ESTABLISH DOCKET
(Please Type)

Date	February 14, 2003	Docket No.	030146-S4
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1. Division Name/Staff Name:	ECR/Sargent
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2. OPR:	Willis, Rendell, Sargent <i>JS</i>
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3. OCR:	
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4. Suggested Docket Title:	Complaint against ^{K W} Key West Resort Utilities Corp. ^{in Monroe County} by Coral Hammock, LLC regarding Utility Agreement.
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5. Suggested Docket Mailing List (attach separate sheet if necessary)

A. Provide NAMES OR ACRONYMS ONLY if a regulated company.

B. Provide COMPLETE NAME AND ADDRESS for all others. (Match representatives to companies.)

1. Parties and their representatives (if any):

KW Resort Utilities Corp.	Feldman, Koenig & Highsmith, P.A.
	representing Coral Hammock, LLC.
	3158 Northside Drive, Offices at Northside,
	Key West, FL 33040
	ph 305-298-8851 305-296-8851
	fax 305-298-8575

2. Interested persons and their representatives (if any):

John Jenkins, representing KW Resort Utilities Corp.	
Rose, Sundstrom, & Bentley	
2548 Blairstone Pines Drive	
Tallahassee, FL 32301	

6. Check one:

Documentation is attached.

Documentation will be provided with recommendation.

DOCUMENT NUMBER DATE
01523 FEB 14 8 5
FPSC-COMMISSION CLERK

FKH

FELDMAN KOENIG & HIGHSMITH, P.A.
ATTORNEYS AT LAW

ROBERT T. FELDMAN
TIMOTHY J. KOENIG
ROBERT E. HIGHSMITH
JENNIFER G. SANCHEZ
KIRK C. ZUELCH

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OFFICES AT NORTHSIDE
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TELEPHONE (305) 296-8851
FACSIMILE (305) 296-8575

February 12, 2003

Troy Rendell
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

VIA FACSIMILE
850-413-6935

Re: Key West Resort Utilities' Utility Agreement


Dear Mr. Rendell,

Please consider this letter the formal complaint of Coral Hammock, LLC regarding the above referenced Utility Agreement. I have enclosed the following documents which together set forth the issues my client has with Key West Resort Utilities:

1. Letter from E. Atwell to Carter dated 1-31-03
2. E-mail letter from E. Atwell dated 2-6-03 to Doug Carter.
3. Letter from FK&H dated 2-7-03 to Doug Carter
4. Letter from William L. Smith, Jr. dated 2-11-03 to Koenig
5. Letter from Koenig to Smith dated 2-12-03

We are respectfully requesting that you reiterate our demand to Key West Resort Utilities that they proceed with performance under the agreement and review and approve our plans and submit them to FDEP so that we are not delayed any further with our development while the issues with the agreement are worked out. As you know, they are required to do this pursuant to Rule Chapter 25-22 and 25-30-560 F.A.C.

Sincerely


Feldman Koenig & Highsmith
Timothy J. Koenig

RECEIVED
FLORIDA PUBLIC SERVICE
COMMISSION
03 FEB 13 PM 3:10
DIVISION OF
ECONOMIC REGULATION



Coral Hammock LLC
210 S. Parsons Ave.
Suite 12
Brandon, FL 33511

January 31, 2003

Mr. Doug Carter
Key West Resort Utilities
6450 Junior College Road
Key West, FL 33040

Re: Utility Service Agreement for the Coral Hammock development

Dear Mr. Carter:

You will find enclosed an executed copy of the Utility Service Agreement for our Coral Hammock development in Stock Island, Florida. A check for the initial Capacity Reservation Fee, in the amount of \$54,810.00, is being forwarded to you under separate cover. Please return a fully executed copy of the agreement as soon as possible.

Please be advised that the owner of the project reserves the rights afforded it under Rule Chapter 25-22 and 25-30-560 F.A.C. The owner's position is that it was forced to sign this agreement in order to proceed with the project. We objected to several provisions in the agreement that we believe are unfair, and constitute overreaching on the part of the utility. Monroe County requires the owner to obtain service from Key West Resort Utilities and the owner is therefore required to sign the agreement in order to obtain service. We will be asking Monroe County and The State of Florida Public Service Commission to determine the fairness and reasonableness of the agreement post signing.

If you have any questions, you can reach me at 863-816-0016.

Sincerely,

A handwritten signature in black ink, appearing to read "Everett Atwell", written over a horizontal line.

Everett Atwell
Director of Development

Tim Koenig

From: Cortex <cortex@tampabay.rr.com>
To: Doug Carter <doug@keywestgolf.com>
Cc: Tim Koenig <koenig@fkhilaw.com>
Sent: Thursday, February 06, 2003 5:30 PM
Subject: Utility Agreement

Doug,

Per our conversation today, I am working with our attorney to provide a formal response to the issues we have with your standard Utility Agreement and it is our intention to continue working with you to resolve these issues post-signing. I expect to have our response to the contract issues sent to you on Friday. However, I must insist that you immediately execute the Utility Agreement that we have sent you so that we can move forward with our project development.

You received the signed contract from us this past Monday (2/4/03) and a check for the initial deposit on Tuesday (2/4/03). We have met all the requirements of the Utility Agreement and your Wastewater Tariff and pursuant to F.A.C. Section 25-30-560 you are required to move forward with the agreement without delay. Each day that you delay this process causes us damage and I can assure you that we will seek retribution if this continues any further.

You have held up our permit application since we submitted it to your engineer for review in late December 2002, which is now impacting the start of our construction. Your last words to me when I was in your office on January 30th was that Bill Smith would not agree to any changes in the agreement. We have tried in earnest over the past six months to negotiate these points with you to no avail and we must move on.

Please execute the agreement, return a copy to me and instruct your engineer to finish the review of our Wastewater System Permit without any further delay.

Sincerely,

Everett Atwell
Director
Coral Hammock LLC

ROBERT T. FELDMAN
TIMOTHY J. KOENIG
ROBERT E. HIGHSMITH
JENNIFER G. SANCHEZ
KIRK C. ZUELCH

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February 7, 2003

Doug Carter
Key West Resort Utilities
6450 Junior College Road
Key West, Florida 33040

VIA FACSIMILE
305-294-1212

Re: Coral Hammock, LLC-Utility Agreement

Dear Mr. Carter,

This firm represents the interests of Coral Hammock, LLC regarding its Utility Agreement with Key West Resort Utilities (hereinafter KWRU). As you know, our client has experienced significant delays in its project on Stock Island due to KWRU's failure to resolve certain unfair and overreaching provisions in the proposed Utility Agreement. Our client has attempted on several occasions over the past several months to resolve these items by requesting reasonable changes to the referenced provisions. KWRU has always responded that it was unwilling to change any provisions.

Three days ago you received the signed agreement with a cover letter from our client along with a check for the required funds. Our client reserved the right pursuant to the Florida Administrative Code to pursue challenges to the agreement. At that point, KWRU had and continues to have the obligation to sign the agreement immediately and instruct its engineer to review and approve our client's Wastewater System permit so that our client's project can move forward. KWRU's failure to meet that obligation timely has delayed, and will continue to delay the project and results in continuing damages to our client.

In a conversation yesterday with our client's project manager Everette Atwell you indicated that you had received a call from a representative from the Public Service Commission strongly suggesting that KWRU should consider making reasonable adjustments to the agreement. You requested Mr. Atwell provide you with written indications of our client's concerns with the agreement. This letter contains those concerns. However, these concerns can be addressed in an ongoing manner after the agreement is signed, and adjustments can be made accordingly.

This letter represents a repeated demand on behalf of our client that KWRU sign the agreement to avoid any further damages due to the continued delay.

The provisions of the agreement which our client strongly believes are unfair and overreaching are as follows:

1. **2. System Construction** (a) (page 3) The requirement that the Plans and Specifications be prepared by engineers acceptable to KWRU, in its sole and absolute discretion, unreasonably restricts the developer to using professionals with whom KWRU may have an existing relationship, creating a conflict of interest. Reasonable standards for certification and licensing would be sufficient. This requirement is repeated in other sections of the agreement and should be adjusted accordingly.
2. **3. System Records** and **4. Property Rights** (pages 4 and 5); These sections are inconsistent with one another and contain requirements that would be applicable only if KWRU were taking title to the system installed by the developer and making it part of KWRU's system. Section 4(d) clearly indicates that this is not the case. The requirements of section 3(d) through 3(h) inclusive seem appropriate, the balance of section 3 should be deleted. Section 4 should be deleted in its entirety. A license for KWRU to enter the property as necessary to access individual parcels which receive service is all that is necessary. Any other rights or obligations should be the subject of the service agreement with the individual parcel owners.
3. There should be a general provision in the agreement recognizing that the obligations of the agreement are that of the property owner or Homeowner's Association, from time to time, as the case may be. Once the project is built out and sold, the developer should have no ongoing responsibility under the agreement. Under the agreement as currently written the developer's responsibility and liability are never ending.
4. **13. Indemnification**; This provision should be clearly limited to instances of judicially determined Developer responsibility connected to Developer's system. The indemnification should not extend to instances where KWRU is wrongly sued. For example, if Developer and KWRU are sued, and it is determined that the liability is solely the Developer's, then KWRU must look to the plaintiff for recovery of fees and costs. Developer can't be responsible for every lawsuit filed against KWRU.
5. **14. Insurance**; Requiring the Developer to carry insurance for the acts or omissions of KWRU is unreasonable.

I welcome your response to the provisions addressed herein. In the meantime, I expect that KWRU will do all that is necessary to avoid any further delay in processing the necessary paperwork to allow our client's project to move forward.

Sincerely,

Timothy J. Koenig
For the Firm

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Law Offices of
Smith, Hemmesch, Burke & Brannigan

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WILLIAM L. SMITH, JR.
DONALD F. HEMMESCH, JR.
KEVIN P. BURKE
THOMAS E. BRANNIGAN
SCOTT M. GUETZOW
CHRISTOPHER B. KACZYNSKI

February 11, 2003

VIA FACSIMILE 305-296-8575

Mr. Timothy J. Koenig
Feldman Koenig & Highsmith, P.A.
Attorneys at Law
3158 Northside Drive
Key West, Florida 33040

Dear Mr. Koenig:

This firm represents KW Resort Utilities Corp. regarding your letter dated February 7, 2003. We are unaware that your client has experienced significant delays in its project on South Stock Island due to KW Resorts failure to resolve unfair and overreaching provisions to the proposed utility agreement. Your client first contacted us in late February 2002. He received a copy of our contract and objected to almost every paragraph in the contract. He also advised us that he was not going to be entering into a contract with us.

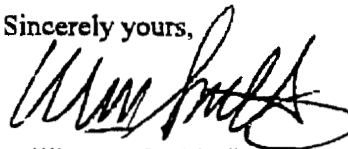
Our next contact with Mr. Atwell was on January 24, 2003 when he asked for another copy of our contract. On January 31, 2003, we received a copy of the contract executed by him, and also a letter advising that he thought the contract was unfair, constituted overreaching on the part of the utility, and that he was going to ask Monroe County and the State of Florida Public Service Commission to determine the fairness and reasonableness of the agreement.

Upon receiving said letter, we immediately forwarded the contract to the Public Service Commission for review. We further expect to be hearing from the attorneys for the Florida Public Service Commission by the end of this week.

At that time we will attempt to resolve any issues in our contract that the Service Commission feels is unfair.

We are hard pressed to understand how our actions are delaying your clients project.

Sincerely yours,



William L. Smith, Jr.

WLSJ/rms

ROBERT T. FELDMAN
TIMOTHY J. KOENIG
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February 12, 2003

William L. Smith, Jr.
Smith, Hemmesch, Burke & Brannigan
11 East Adams
Suite 1400
Chicago, Illinois 60609-6304

VIA FACSIMILE

Dear Mr. Smith,

In response to yours of 2-11-03, please be advised that the actions of Key West Resort Utilities that are delaying my clients' project are the continued refusal to sign the Utility agreement and the continued refusal to have its engineer review and approve our clients' plans so that they can be forwarded to FDEP so that our client can pull the necessary permits to begin construction. This refusal is documented in your letter in that you clearly indicate that you are simply going to wait until the issues are resolved before signing and having your engineer review and approve.

The provisions of the FAC previously cited to you clearly contemplate a separation of issue resolution from signing and moving forward, presumably to prevent the very delay being occasioned by your client's refusal to do just that.

We differ regarding the facts set forth in your letter as they relate to the history of objections to the proposed Utility agreement. We feel strongly that your client has not acted in good faith in considering reasonable requests to adjust the provisions of the agreement that are unfair and overreaching, and in fact, wouldn't have considered addressing them but for the involvement of the Public Service Commission. Their failure to address these provisions earlier has caused delay and damage to our client as well.

I hope this letter serves to make it clear how your client's actions have delayed and continue to delay our clients' project. I also hope that we can both act in a manner that serves to amicably resolve any differences between our clients so as to allow for a mutually beneficial relationship moving forward. I would welcome further discussion with you to achieve that end.

Thank you for your attention and consideration.

Sincerely,


Timothy J. Koenig