

Marguerite Lockard

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Monday, September 17, 2007 4:37 PM
To: DAVIS.PHYLLIS; Filings@psc.state.fl.us
Cc: REILLY.STEVE; Ralph Jaeger; martyd@rsbattorneys.com; MERCHANT.TRICIA; Kim Dismukes
Subject: RE:
Attachments: Citizens Motion to Permit Additional Interrogatories and POD's 091407.doc

With signatures.

From: DAVIS.PHYLLIS
Sent: Monday, September 17, 2007 4:32 PM
To: 'Filings@psc.state.fl.us'
Cc: REILLY.STEVE; 'Ralph Jaeger'; 'martyd@rsbattorneys.com'; MERCHANT.TRICIA; 'Kim Dismukes'
Subject:

On behalf of Stephen C. Reilly, Office of Public Counsel
 111 W. Madison Street, Room 812
 Tallahassee, FL 32399-1400
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1. This filing is to be made in Docket Number: 070293-SU, In Re: In Re: Application for increase in water and wastewater rates in Monroe County by Utilities, Inc.
2. Attached for filing on behalf of Office of Public Counsel is Office of Public Counsel's Motion to Permit Additional Interrogatories and Production of Documents.
3. There are a total of six (6) pages for filing

Phyllis W. Philip-Guide
 Assistant to Stephen Reilly

DOCUMENT NUMBER DATE

08475 SEP 17 8

FPSC-COMMISSION CLERK

9/17/2007

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase in
wastewater rates in Monroe County
by KW Resort Utilities, Corp.

Docket No: 070293-SU

Filed: September 17, 2007

**CITIZENS' MOTION TO PERMIT ADDITIONAL INTERROGATORIES AND
PRODUCTION OF DOCUMENTS**

Pursuant to Chapter 350.0611, Florida Statutes, Rule 28-106.206, Florida Administrative Code, and Rules 1.340 and 1.350, Florida Rules of Civil Procedure, the Citizens of the State of Florida ("Citizens"), by and through the Office of Public Counsel ("OPC") respectfully request that the Commission permit the Citizens to propound more interrogatories and requests for production of documents than permitted by Order No. PCS-07-0729-PCO-SU, Order Establishing Procedure, in this docket. In support of this request the Citizens submit:

1. Commission Order No. PCS-07-0729-PCO-SU, Order Establishing Procedure, issued on September 11, 2007, limits the number of interrogatories and requests for production of documents to 100 each, including all subparts.
2. The 100, including subparts, limitation on interrogatories and requests for production of documents, including all subparts, is an inadequate number of discovery requests for this particular rate case. KW Resort Utilities, Inc.'s ("KWRU", "Utility", or "Company") last general rate case was initiated in 1983, with the Commission's Final Order establishing rates in that proceeding being issued on July 23, 1985.

DOCUMENT NUMBER-DATE

08475 SEP 17 5

FPSC-COMMISSION CLERK

3. KWRU is a Class A Utility seeking a significant 58% increase in its wastewater rates. The Company claims that its proposed rate increase is largely driven by major capital projects including the following:

- (a) KWRU recently re-sleeved portions of their collection lines because of purported substantial infiltration. The Company claims the degradation was impacting the Company's ability to properly treat effluent and utilize the treated effluent for reuse purposes. The project was completed in early 2007 at a cost of approximately \$600,000.
- (b) The Company also began a project to refurbish the wastewater treatment plant purportedly due to the deterioration caused by the salt content in its environment. Construction began in 2006 and is slated to be completed by October 1, 2007. The estimated cost is \$426,650.
- (c) The Company is also converting its facilities to an Advanced Waste Treatment (AWT) facility at the request of Monroe County. The County has required all utilities operating in the Keys to convert to an AWT facility by 2010; however, the Company explains that the County has specifically requested it to convert prior to the deadline and has granted it \$700,000 to do so. According to the Company, since much of the effort to convert to an AWT facility would be duplicated in the projects already undertaken, KWRU decided to undertake the conversion now at an estimated cost of \$792,350.

4. The rate increase request is also driven by what the Company claims are significant increases to its operating costs, including significant staffing changes resulting from the change to AWT. The Company estimates its increased costs will amount to approximately \$288,625 per year.

5. In order for the Citizens to adequately critique the Company's requested revenue requirement the Citizens will need to review and analyze data since the Commission's last rate case order in 1985 up to the present, as well as study support for significant pro forma additions included in this case.

6. The task of reviewing this volume of activity over this extended period of time is further complicated by the fact that KWRU has no employees and it operates with the use of employees and services provided by affiliated companies. Discovering the details of the complex relationships between these affiliated companies, to assure that ratepayers are not subsidizing non-utility operations requires additional discovery requests.

7. The importance of discovering the details of these complex affiliated transactions is underscored because the Citizens have recently discovered documents which suggest that there may be misdealings between the KWRU and a former member of the Monroe County Board of County Commissioners. The Citizens have discovered that the Monroe County Board of County Commissioners were the subject of a Grand Jury investigation which also involved monies paid to a former County Commissioner by KWRU or by KW Utilities, which may be one of KWRU's affiliates. The Grand Jury report alleged that Mr. John L. London, former Monroe County Commissioner, received checks from KWRU totaling \$147,500.00. The State Attorney's investigation found that Mr. London received monthly payments from KWRU in the amount of \$2,500.00 from the period of November 1998 until October 2003. According to the findings

of the Grand Jury, Mr. London's term on the Commission expired in October 1998. The Citizens are concerned that these monies may be reflected as part of capitalized plant in service or in some other manner may have been or will be paid for by ratepayers, as part of the instant rate proceeding. The Citizens' investigation of this matter is in its infancy, but nevertheless, suggests that careful and detailed discovery is required to ensure that ratepayers do not in any fashion pay for any possible misdealings of the Utility. For this reason, as well as the other reasons identified above, the Citizens request that the Commission allow for interrogatories and document requests in excess of that allowed in the procedural order.

8. Permitting additional discovery requests will serve the Parties, the Commission and its Staff because it may shorten or even eliminate the need for depositions, and help the Parties and Staff to better define and sharpen the issues in the case, which can foster more focused prefiled testimony, prehearing statements and a shorter and more efficient hearing.

9. There are 178 interrogatories, including subparts, in the Citizens' First Set of Interrogatories and 70 requests for production of documents in the Citizens' First Set of Requests for Production of Documents propounded upon KWRU. The Citizens estimate a need for a maximum of 400 interrogatories and 200 production of documents to permit adequate follow-up discovery to the Citizens' First Set of Discovery.

WHEREFORE, for the reasons stated above the Citizens respectfully request the Commission to increase the total number of interrogatories to 400, including subparts, and to increase the total number of requests for production of documents to 200, including subparts.

Respectfully submitted,

s/Stephen C. Reilly
Stephen C. Reilly
Associate Public Counsel

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c/o The Florida Legislature
111 West Madison Street, Room 812
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Attorney for the Citizens
Of the State of Florida

CERTIFICATE OF SERVICE

DOCKET NO. 070293-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Motion to Permit Additional Interrogatories and Production of Documents has been furnished by U. S. Mail and electronic mail to the following parties on this 17th day of September, 2007.

s/Stephen C. Reilly
Stephen C. Reilly

Ralph Jaeger, Esquire
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