

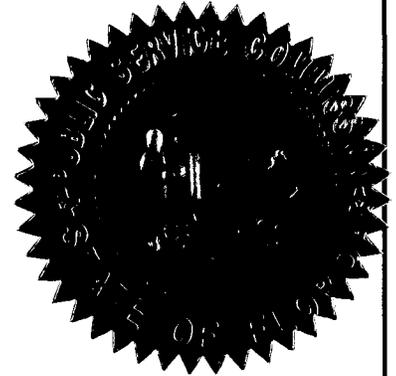
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 070293-SU

In the Matter of:

APPLICATION FOR INCREASE IN WASTEWATER  
RATES IN MONROE COUNTY BY K W RESORT  
UTILITIES CORP.



ELECTRONIC VERSIONS OF THIS TRANSCRIPT ARE  
A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING,  
THE .PDF VERSION INCLUDES PREFILED TESTIMONY.

PROCEEDINGS:                   AGENDA  
  ITEM NO. 10

BEFORE:                           CHAIRMAN LISA POLAK EDGAR  
  COMMISSIONER MATTHEW M. CARTER, II  
  COMMISSIONER KATRINA J. McMURRIAN  
  COMMISSIONER NANCY ARGENZIANO  
  COMMISSIONER NATHAN A. SKOP

DATE:                              Tuesday, September 25, 2007

TIME:                              Commenced at 10:38 a.m.  
  Concluded at 10:53 a.m.

PLACE:                             Betty Easley Conference Center  
  Room 148  
  4075 Esplanade Way  
  Tallahassee, Florida

REPORTED BY:                   LINDA BOLES, RPR, CRR  
  Official FPSC Reporter  
  (850) 413-6734

DOCUMENT NUMBER-DATE

FLORIDA PUBLIC SERVICE COMMISSION 08960 OCT-18

FPSC-COMMISSION CLERK

1 PARTICIPATING:

2 F. MARSHALL DETERDING, ESQUIRE, representing K W  
3 Resort Utilities Corp.

4 STEPHEN C. REILLY, ESQUIRE, and TRICIA MERCHANT,  
5 representing the Office of Public Counsel.

6 RALPH JAEGER, ESQUIRE; MARSHALL WILLIS and BART  
7 FLETCHER, representing the Florida Public Service Commission  
8 Staff.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

## P R O C E E D I N G S

1  
2 CHAIRMAN EDGAR: Commissioners, that will bring us to  
3 Item 10.

4 MR. FLETCHER: Commissioners, I'm Bart Fletcher with  
5 Commission staff.

6 Item 10 is staff's recommendation to suspend  
7 KW Resort Utilities Corporation's final requested rates and to  
8 approve a 21.44 percent interim rate increase.

9 The utility's counsel, Mr. Marty Deterding, has  
10 requested to address the Commission on this item.

11 Participation is at the discretion of the Commission. Staff is  
12 prepared to answer any questions the Commission may have.

13 CHAIRMAN EDGAR: Commissioners, we have a request for  
14 comments from the applicant, and I do see that we have some  
15 representatives from OPC. Is it your will to open up our  
16 discussion? I'm seeing nods. I concur.

17 Mr. Deterding, do you have comments?

18 MR. DETERDING: Thank you, Commissioner.

19 Commissioners, we are here on interim rates for  
20 KW Resort Utilities. This utility last had a general rate  
21 increase in 1983, almost 25 years ago.

22 Under the statute for interim rates the Commission is  
23 supposed to authorize rates that allow the utility to earn at  
24 the bottom end of the range of its authorized rates of return.  
25 The Commission has traditionally been very conservative in

1 establishing interim rates, and that is understandable despite  
2 the fact that substantial security is required. And in this  
3 case that security would be the most substantial in escrow  
4 where the utility would have no access to those funds  
5 throughout the interim period and they'd be subject to refund  
6 from that escrow. However, in this case the Commission staff's  
7 proposal has suggested a couple of adjustments that I believe  
8 are, go too far toward conservative, especially in light of  
9 that security that is available, and I want to address those.

10           The first is the working capital allowance. The  
11 Commission staff has made an adjustment based upon the used and  
12 useful portion of the utility plant from that case 25 years  
13 ago. Since that time this utility has invested ten times as  
14 much plant as they had at that time. A significant portion of  
15 that is related to the second issue I want to talk to you  
16 about, which is infiltration. But in any case, the Commission  
17 staff's adjustment with the used and useful analysis has, from  
18 the last case has resulted in a negative rate base. We are not  
19 arguing against the used and useful adjustment. We believe  
20 it's inappropriate, but we're not arguing against it.

21           Our concern is the fact that as a result of that  
22 negative rate base the Commission staff has not recognized any  
23 need for working capital. This is counterintuitive,  
24 nonsensical, irrational in my opinion. There is -- there may  
25 be a negative rate base, but the utility still has a need for

1 working capital based upon its need to invest in day-to-day  
2 operations. So we are asking that the Commission at least  
3 recognize a working capital allowance for this utility in  
4 interim.

5 My second issue is related to the infiltration  
6 adjustment. Again, the staff has made an adjustment for excess  
7 infiltration that existed in the system 25 years ago. This is  
8 an adjustment to chemical and electric expenses. Since that  
9 time the utility has undertaken numerous projects related to  
10 infiltration and has, as I mentioned, increased its investment  
11 approximately ten fold since that 25-year-ago rate case.

12 Four years ago the utility also implemented a vacuum  
13 system for wastewater collection which cannot operate with  
14 excessive infiltration. As such, we believe that this  
15 infiltration adjustment is completely inappropriate under these  
16 circumstances.

17 Finally, I wanted to also mention a concern that I  
18 have in this case, especially in cases where a utility utilizes  
19 an escrow for interim. The interest rate recognized in interim  
20 for any subsequent refund required should be based, in the  
21 circumstances where a utility is utilizing an escrow account,  
22 on the interest actually earned on that account rather than on  
23 a commercial paper rate. I believe that in the past the staff  
24 has suggested that that needs to be addressed in the interim  
25 order to the extent that that is the case, and I am requesting

1 that the Commission recognize that fact that this utility will  
2 use an escrow account.

3 In conclusion, there is substantial security being  
4 provided here for interim. I do not believe that the statute  
5 nor the Commission's policies or rules would suggest that the  
6 Commission needs to be punitive in interim, but rather the  
7 statute suggests that the Commission should authorize the  
8 utility to earn at the bottom end of its range, allowed range  
9 of returns. And I believe that the adjustments for  
10 infiltration and for failure to recognize a working capital  
11 allowance go beyond what the statute requires this Commission  
12 to do, and I believe they should be denied. Thank you.

13 CHAIRMAN EDGAR: Thank you, Mr. Deterding.

14 And we will ask our staff to reply to, in a moment --  
15 you want them to go ahead? Okay. I was going to give  
16 Mr. Reilly the opportunity.

17 MR. REILLY: Well, we were here to support staff as  
18 needed and if needed, and particularly I have Tricia Merchant  
19 here to talk about the working capital issue, if it needs to be  
20 delved into in more detail. But we would defer to staff and  
21 support them after they're finished.

22 CHAIRMAN EDGAR: Okay. All right. Thank you,  
23 Mr. Reilly.

24 Well, in that case I would ask our staff to respond  
25 to the comments and concerns that Mr. Deterding has raised

1 regarding the proposed adjustments.

2 MR. FLETCHER: Commissioners, with regard to interim  
3 rate requests, we're bound by the interim statute 367.082. And  
4 in that you have to look at -- the utility has to make a prima  
5 facia basis for its rate relief for interim purposes and you  
6 have to look at the four corners of the petition. And in doing  
7 so, staff has made the non-used and useful adjustments to their  
8 plant consistent with the methodology used in the last rate  
9 proceeding, pursuant to that statute, and it result, did result  
10 in a negative rate base. In the three cases that we cited in  
11 the rec on Page 5, the -- those cases had, the Commission had  
12 set rate base equal to zero, and working capital was included  
13 as a component of rate base. There was no return allowed for  
14 working capital allowance in those three rate cases cited. And  
15 also consistent with the last rate proceeding staff calculated  
16 the INI adjustments. We made reductions to chemicals and  
17 purchased power. Again, that's consistent with the interim  
18 statute.

19 And I believe the final concern regarding the escrow  
20 agreement about a request to have the refund equal to an amount  
21 of the interest earned on the actual escrow account, that I  
22 think what prevails there in the case, if there is a refund, is  
23 Rule 25-30.360, which is the refund rule. And that rule  
24 requires that the refund, if there is a determination of any  
25 refund, be, utilize the commercial paper rate.

1 MR. JAEGER: Chairman Edgar, Ralph Jaeger for legal  
2 staff.

3 I think that specific section that Mr. Fletcher was  
4 referring to was 367.082(5)(b)(1). And the second sentence  
5 says, "The achieved rate of return shall be calculated by  
6 applying appropriate adjustments consistent with those which  
7 were used in the most recent individual rate proceeding of the  
8 utility or regulated company." And so that was the reason we  
9 did the used and useful and the infiltration and inflow, and  
10 there was nothing in the filing that would allow us to go away  
11 from that provision pursuant. That's legal's interpretation.

12 CHAIRMAN EDGAR: Thank you.

13 Mr. Reilly.

14 MR. REILLY: Just a few brief comments. I think we  
15 concur that staff has done its normal calculations applying the  
16 requirements of the interim statute. We believe that the  
17 filing, that the information was not sufficient to really  
18 document the extent of improvement of excess inflow and  
19 infiltration, that we're really left with the adjustments as  
20 provided in the last case. And I think I'll offer Tricia  
21 Merchant just to make a few brief comments on the working  
22 capital. Trying to pull working capital out of rate base is  
23 not appropriate and it's really pretty much unprecedented.

24 MS. MERCHANT: Tricia Merchant with the Office of  
25 Public Counsel.

1           The utility is not disagreeing with the working  
2 capital calculation itself, but just pulling out the working  
3 capital when they have an otherwise negative rate base. You  
4 have to look back to the interim statute. And the interim  
5 statute doesn't say the Commission may consider whether or not  
6 it's appropriate to make this adjustment, it says adjustments  
7 shall be made which are consistent with the last rate  
8 proceeding. And in this case it was 23 years or so. You still  
9 have to go back.

10           In that case they had working capital and the rate  
11 base was -- you know, just a normal rate case for that type  
12 thing. So pulling out working capital as a specific component  
13 would be inconsistent with the last rate case. So it wouldn't  
14 be an adjustment consistent, and that's our position on that.

15           CHAIRMAN EDGAR: Commissioner Argenziano.

16           COMMISSIONER ARGENZIANO: So then if the company were  
17 to at a later date after this proceeding, whatever happens  
18 here, come back, then this would be their newest rate case that  
19 they would, they would be able to then accommodate the  
20 investments.

21           MS. MERCHANT: Right. It would be whatever the final  
22 decision is at the end of the case. It wouldn't be based on  
23 the interim decision. The adjustment is consistent with the  
24 last rate proceeding, are based on the final adjustments  
25 approved by the Commission in the prior rate case, not interim.

1 COMMISSIONER ARGENZIANO: 23 years ago.

2 MS. MERCHANT: 23. But, I mean, if the company  
3 believed that they needed rate relief in between then and now,  
4 they could have certainly filed. There's no stopping there.

5 CHAIRMAN EDGAR: Mr. Deterding.

6 MR. DETERDING: Just one very, one very brief  
7 comment.

8 The referenced statute says "make appropriate  
9 adjustments." Just because you made it in the last case does  
10 not either bind you to make an unreasonable adjustment in this  
11 case. So while the staff and the OPC are saying it says make  
12 the adjustments from the last case, it says make the  
13 appropriate adjustments from the last case, and those are  
14 inappropriate. Thank you.

15 CHAIRMAN EDGAR: Commissioner McMurrin.

16 COMMISSIONER McMURRIAN: I've got one question. On  
17 Page 11 of the rec, Line 9 of that schedule where it has  
18 working capital allowance, can staff help me understand what  
19 that is there?

20 MR. WILLIS: Commissioners, if I could just address  
21 that real quick.

22 COMMISSIONER McMURRIAN: Okay.

23 MR. WILLIS: If you look on Page 11, you  
24 appropriately brought it up, staff has considered working  
25 capital for this company. Even with the inclusion of over

1 \$300,000 of working capital in rate base the company still  
2 comes up with a negative rate base. And what that tells me is  
3 that the company doesn't deserve a return on the working  
4 capital right now because they're actually using the  
5 contributions from the customers to actually fund its working  
6 capital needs. That's what it tells me and, therefore, it  
7 should not be included.

8 COMMISSIONER McMURRIAN: Maybe a follow-up, follow-up  
9 for Mr. Reilly.

10 Are you in agreement with how Mr. Willis has  
11 described that adjustment there, or Ms. --

12 MR. REILLY: Yes.

13 MS. MERCHANT: Yes, I agree with that. I think that  
14 if we actually wanted to get down -- for the interim purposes  
15 you can't go in and look at the components, the individual  
16 components of working capital, and that's a lot of working  
17 capital. You know, working capital has its positives and  
18 negatives on both sides. Sometimes you'd like to make an  
19 adjustment. You don't have an adjustment consistent with the  
20 last rate proceeding, even though the result that you have  
21 might not be what you desire. But certainly \$400,000 in  
22 positive working capital offsets consistent with what  
23 Mr. Willis just said.

24 CHAIRMAN EDGAR: Commissioner Argenziano.

25 COMMISSIONER ARGENZIANO: I have a question for

1 staff. OPC indicated that they were not, or the information  
2 they had about expenditures were not very clear. Is that  
3 staff's position also?

4 MR. FLETCHER: Yes. Definitely with the infiltration  
5 excess of INI adjustments, the information within the  
6 application, we weren't able to even determine the amount of  
7 the allowable INI. So we were consistent with the adjustment  
8 that was made in the last rate case.

9 COMMISSIONER ARGENZIANO: Thank you.

10 CHAIRMAN EDGAR: Commissioners, other questions? Any  
11 comments? No questions, no comments. Is there a motion?

12 Commissioner Argenziano.

13 COMMISSIONER ARGENZIANO: I move to support staff's  
14 recommendation.

15 COMMISSIONER CARTER: Second.

16 CHAIRMAN EDGAR: Okay. We have a motion from  
17 Commissioner Argenziano to adopt the staff recommendation and a  
18 second from Commissioner Carter. Any additional discussion?  
19 Seeing none, all in favor, say aye.

20 (Unanimous affirmative vote.)

21 Opposed? Show it adopted. Thank you.

22 (Agenda Item 10 concluded at 10:53 a.m.)

1 STATE OF FLORIDA )  
2 COUNTY OF LEON )

CERTIFICATE OF REPORTER

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 15<sup>th</sup> day of October, 2007.

  
LINDA BOLES, RPR, CRR  
FPSC Official Commission Reporter  
(850) 413-6734