

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

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**KW RESORT UTILITIES CORP'S REQUEST FOR EXTENSION OF TIME,
REQUEST FOR CLARIFICATION, AND OBJECTION TO OPC'S
AMENDED FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
AND FIRST SET OF INTERROGATORIES**

KW Resort Utilities Corp ("KW"), by and through undersigned counsel, hereby files this Request For Extension of Time, Request for Clarification, and Objection to OPC's Amended First Request for Production of Documents and First Set of Interrogatories and would state and allege as follows:

Request for Extension of Time

1. On September 17, 2007, the Prehearing Officer issued her First Order Revising Order Establishing Procedure expanding the allowed number of Interrogatories from 100 to 300 (including

CMP _____ all subparts) and Requests for Production of Documents from 100 to 150 in this case. Thereafter,

COM _____ OPC served its First Request for Production of Documents, totaling 62 (not including subparts), and

CTR _____ its (revised) First Set of Interrogatories (totaling approximately 160 *including* subparts)¹. While the

ECR

GCL / Prehearing Officer accepted OPC's arguments that this case is (for some reason) highly complex,

OPC _____ in point of fact this is a very small wastewater utility serving only about 1,500 customers, with no

RCA _____

SCR _____

SGA _____ ¹To say that there are 160 Interrogatories, including subparts, hardly conveys the volume of what has been tendered. Many of the Interrogatories, if not most, actually require that each

SEC _____ question be answered for either a variety of individuals, or a variety of companies, or for a

OTH _____ variety of years, or some combination thereof.

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direct employees and only two full time contract personnel. The requirement to respond to 62 Requests for Production and 160 Interrogatories (including subparts) is, at best, an overwhelming and practically smothering activity for this utility and its consultants. It is regrettable that OPC's boilerplate, excessive, and fishing expedition-like discovery will increase rate case expense in this proceeding significantly above the initial estimates provided in Schedule B-10 which was based on standard discovery which has been exceeded by several multiples, but the fact remains that the discovery has been tendered, authorized and must be answered.

2. In fact, KW herein seeks clarification and/or objects to only a minimal number of these Requests for Production and Interrogatories. Because of the time frames involved (such as the fact that OPC has seven days to respond to this motion) and the overwhelming work involved, KW specifically requests that as to any Interrogatory or Request for Production for which clarification is sought and for any objection to which OPC files a Motion to Compel, that the response to that Interrogatory or Request for Production (if any such objection is ultimately denied), only be required to be made within ten days after the date of the Prehearing Officer's Order. KW does not wish to engage in unnecessary work in this regard nor to spend its time and effort (already overtaxed due to the volume of this discovery) preparing answers to questions which the Prehearing Officer may determine do not need to be answered.

Request for Clarification, Objections to Request
for Production and Objections to Interrogatories

3. As to Request to Produce 19, KW requests that OPC clarify what is being requested by the phrase "Operation and Maintenance Performance". In the absence of such clarification, KW objects to that portion of the Request No. 19 in that it is ambiguous, the meaning is unclear and the meaning is not sufficiently plain or known to KW such that KW can reasonably form a response.

4. Request to Produce Nos. 27, 28, 29, and 43 are not reasonably calculated to lead to the discovery of admissible evidence, constitute an improper and over-broad fishing expedition, and are vague, ambiguous, and constitute improper discovery. The broad net cast in Request Nos. 27, 28 and 43 will reach documents which are very sensitive and private in nature (as to any financial statements requested by Request No. 28 and as to any W-2 Forms requested by Request 43) and which will reach entities and individuals who have never charged any time to and have no practical connection to, KW. Assuming appropriate confidential treatment, which will be requested as required by applicable rule, KW is willing to produce those documents, in its possession, which actually relate to any entity or individual whose time or costs have been charged to the utility as a part of this rate case. Clarification by OPC that Request Nos. 27, 28 and 43 are only intended to reach those persons or entities for which any time or costs are actually charged to the utility will obviate the need for the Prehearing Officer to rule on this request.

5. In particular, the request for audited financial statements or financial statements of the law firm of "SHB" (as described in Request 28) would require the production of documents by a law firm who has not charged any of its time or costs to the utility, would require the production of sensitive, financial documents by individuals who have nothing to do with the utility in any way, shape or form, and would require the production of documents which may and likely would have attorney-client implications. The mere fact that a lawyer at SHB is a principal of the utility does not somehow throw open the entire law firm's sensitive and private financial documents to discovery, and no purpose is served by such a request.

6. In the absence of clarification by OPC that Request Nos. 27, 28, and 43 will be limited to companies or persons who "charges costs to the Company" (a phrase that OPC uses in other requests to produce, and reasonably so), KW objects to the production of documents as set

forth herein.

7. As to OPC's First Set of Interrogatories, KW objects to all requests for information related to non-capital expenditures for calendar year 2004 or earlier. Such requests are not reasonably calculated to lead to discovery of admissible evidence, are overbroad and will not reach information that would tend to prove or disprove any issue in this proceeding. While almost all of OPC's Requests for Production of Documents only reach back to 2005, inexplicably several of the Interrogatories go back further (in some cases several years). Attempting to recreate this information for years prior to 2005 will dramatically increase rate case expense, will adversely affect the ability of this small company to prepare for this proceeding, but conversely will not materially assist OPC in its preparation for its participation in this case. The temporal parameters on several of OPC's Interrogatories are excessive, overbroad and place an excessive burden upon this utility. KW objects to all Interrogatories which seek other capital expenditures information prior to January 1, 2005. KW will respond, in a timely fashion, to all such Interrogatories with regard to information for January 1, 2005 and thereafter, despite this objection.

8. To the extent any Interrogatory calls for information about any person or entity for whom no time or costs have been charged to the utility, KW objects. Such a request is not reasonably calculated to lead to the discovery of admissible evidence, is overly broad and only serves to increase KW's already considerable burden in responding to this voluminous discovery. While many Interrogatories do qualify that they seek information "with respect to the costs allocated to the company" others, inexplicably, require W2s for every employee of a certain company (see, e.g., Interrogatory 16) or an attempt to delve into the private, unrelated and unconnected (as to KW) activities of the law firm described by OPC in its discovery as "SHB", this despite the fact that SHB has no connection with KW, nor has it charged any of its time to KW, nor are any of its costs

attempted to be included in the calculation of rates in this case. (See, e.g., Interrogatory 7k). To the extent that certain Interrogatories request information about persons or employees of other companies, or other entities (whether affiliated or not), who are not attempting to charge any portion of their time or costs to KW, KW objects. If OPC will clarify that all such Interrogatories are only meant to reach those individuals, entities, or companies who charge any part of their time, expense or costs to KW, then the need for this objection will be obviated.

WHEREFORE and in consideration of the above, KW respectfully requests that the Prehearing Officer grant the extension of time requested herein, and that the response to any interrogatory or request to produce for which KW has sought clarification or to which KW has objected only be due 10 days after any appropriate Motion to Compel and ultimate Order issued by the Prehearing Officer on any such objection or Request for Clarification.

Respectfully submitted this 8th day of
October, 2007, by:

Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
850-877-6555
850-656-4029 FAX



JOHN L. WHARTON
F. MARSHALL DETERDING

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail and e-mail to the following this 8th day of October, 2007:

Stephen C. Reilly, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400
reilly.steve@leg.state.fl.us

Ralph Jaeger, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
rjaeger@psc.state.fl.us



JOHN L. WHARTON

kw/clarification and objection to production