

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 September 4, 2008

UTILITY'S PREHEARING STATEMENT

KW Resort Utilities Corporation ("KWRU" or "Utility"), by and through its undersigned counsel, hereby files their Prehearing Statement and state:

1. All Known Witnesses:

- a) William L. Smith, Jr. KW Resort Utilities Corporation P. O. Box 2125 Key West, FL 33045-2125

Subject Matter: Mr. Smith will testify on issues related to the general Utility organization; the circumstances that necessitated this request for rate relief; the Utility's quality of service; and the costs incurred by the Utility outside of legal, engineering, and accounting consulting costs in processing this rate case.

- b) Edward R. Castle Weiler Engineering Corporation 5800 Overseas Highway Marathon, Florida 33050

Subject Matter: Mr. Castle will testify on issues related to quality of service, technical operations of the Utility; the role of the Utility; including the vacuum system; re-sleeving of the collection system, infiltration and inflow; operations and the necessity for AWT; and quality of service; as well as engineering related rate case costs.

- c) Paul DeChario, C.P.A. Carlstedt, Jackson, Nixon & Wilson 2560 Gulf-to-Bay Boulevard Suite 200 Clearwater, Florida 34625-4419

Subject Matter: Mr. DeChario will testify concerning the original application as filed by the Utility; the costs of operations and the

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investments of the Utility; the overall additional rate case expense incurred by the Utility; proper rates and charges; and the effects of any adjustments to rate base or operating income; and other related general Utility theory and accounting issues.

2. All Known Exhibits:

The Utility will utilize the original "Application for Increase in Rates" with all attachments thereto, as well as all exhibits prefiled with its direct testimony and all those prefiled with its rebuttal testimony. The Utility will also use various as yet undetermined exhibits on cross-examination of other witnesses.

3. Basic Utility Position:

The utility is entitled to a rate increase as contained within its revised and final application and MFRs presented with the initial application and the increased wastewater revenues as specified therein. All such revenue requirements should be adjusted for stipulations agreed to and the substantial increase in rate case costs incurred and outlined in Rebuttal Testimony.

4. Issues and Positions

**QUALITY OF SERVICE**

**Issue 1:** Is the quality of service provided by K W Resort Utilities Corp. satisfactory?

**UTILITY POSITION:** Yes. The quality of service provided by KWRU is satisfactory. (Smith and Castle)

**RATE BASE**

**Issue 2:** Should KWRU's test year rate base be adjusted for Keys Environmental hook-up fees?

**UTILITY POSITION:** No, the amount charged to the Utility for the supervision of the hook-up is not part of the contract services provided by Keys Environmental and is therefore an appropriate additional rate base item and cost to capitalize on the Utility's books. (DeChario, Smith, Castle)

**Issue 3:** Should KWRU's test year rate base be adjusted to reclassify Keys Environmental expenses?

**UTILITY POSITION:** It is unclear what test year "Keys Environmental expenses" are referred to here, and any expenses that are related to KWRU are not rate base items. If this relates to the \$52,000 discussed in Staff's last Interrogatory then yes, the \$52,000 should be reclassified and capitalized. (DeChario)

**Issue 4:** Should KWRU's test year rate base be adjusted for KWRU's contribution to the decommissioning of jail facilities?

**UTILITY POSITION:** No, the Utility's contract with the County provided that the Utility would run a line and decommission the jail's sewer facilities. The Utility was paid a capacity charge as part of this agreement, and the agreement to "decommission" was part of the requirements in order to secure that interconnect of, and new service to, the jail facilities. (DeChario, Smith, Castle)

**Issue 5:** Should KWRU's test year rate base be adjusted for Green Fairways Jail Project management fee?

**UTILITY POSITION:** No, Green Fairways charges a 10% contract administration fee on all major projects, and Green Fairways did oversee this project and charged the normal fee for those services. As such, this cost is at market value and should be capitalized. (DeChario, Smith)

**Issue 6:** Should KWRU's test year rate base be adjusted for Green Fairways SSI Project management fee?

**UTILITY POSITION:** No, the contract with the County said that Green Fairways would charge a 10% management fee, and

Green Fairways did so. This was part of the negotiated contract with the County, and was not part of the normal duties that Green Fairways has performed for the Utility. As such, this cost is at market value and should be capitalized. (DeChario, Smith)

**Issue 7:** Should KWRU's test year rate base be adjusted for Smith, Hemmesch, and Burke legal fees?

**UTILITY POSITION:** No, these fees were for legitimate legal work in securing contracts for the benefit of the Utility and its customers. (DeChario, Smith)

**Issue 8:** Should KWRU's test year rate base be adjusted for Mr. Johnson's moving expenses?

**UTILITY POSITION:** No, these expenses were a part of the compensation that Mr. Johnson agreed to in order to operate KWRU through KEI. (DeChario, Smith)

**Issue 9:** Should KWRU's test year rate base be adjusted for Johnson Constructors charges for JAS Corp.?

**UTILITY POSITION:** No, these were legitimate charges for construction supervision of a project undertaken for the Utility. (DeChario, Smith, Castle)

**Issue 10:** Should KWRU's test year rate base be adjusted for Mr. London's consulting fees?

**UTILITY POSITION:** No, Mr. London's services were as a consultant to assist in management of the Utility and later in securing funding and service arrangements with the County on behalf of the Utility. (DeChario, Smith)

**Issue 11:** Should KWRU's test year rate base be adjusted for White and Case Legal Charges Related to Monroe County Audit Report?

**UTILITY POSITION:** No, the Utility was required to respond to the County audit, which was a part of the costs of the capitalized project. These legal services were necessary in order to prepare that response. (DeChario, Smith)

**Issue 12:** Should KWRU's test year rate base be adjusted for the findings in the County Audit?

**UTILITY POSITION:** No, the auditor was auditing the County participation and nowhere does the audit propose adjustment to the Utility or suggest inappropriate actions by KWRU. KWRU capitalized what was provided for by negotiated contract and all such costs should be recognized. (DeChario, Smith)

**Issue 13:** Should KWRU's test year rate base be adjusted for the Key West Citizen PR Advertisement?

**UTILITY POSITION:** No, this is an action undertaken at the County's request to assist customers in understanding of the required system expansion and required interconnection of customers, thereby benefitting all of the Utility's customers through a larger customer base. (DeChario, Smith)

**Issue 14:** Should adjustments be made to the utility's pro forma plant additions?

**UTILITY POSITION:** No, these are normal, legitimate fees for work done to oversee construction projects. (DeChario, Smith)

**Issue 15:** What are the used and useful percentages of the utility's wastewater treatment plant and collection and reuse systems?

**UTILITY POSITION:** The Utility's wastewater treatment plant, entire collection system, and reuse systems, are all 100% used and useful in providing service to the customers of the Utility. (DeChario, Smith)

**Issue 16:** What is the appropriate test year balance of accumulated depreciation?

**UTILITY POSITION:** The test year accumulated depreciation balance, as outlined in the Utility's original filing, adjusted for the effect of the stipulations on that balance. (DeChario)

**Issue 17:** What are the appropriate test year balances of contributions-in-aid of construction (CIAC) and accumulated amortization of CIAC?

**UTILITY POSITION:** The test year CIAC and accumulated amortization of CIAC, as outlined in the Utility's original filing, as adjusted for the effect of the stipulations on that balance. (DeChario)

**Issue 18:** What is the appropriate working capital allowance?

**UTILITY POSITION:** The working capital allowance, as outlined in the Utility's original filing, adjusted for the effect of the stipulations on that balance. (DeChario)

**Issue 19:** What is the appropriate rate base?

**UTILITY POSITION:** The appropriate rate base is that outlined in the Utility's original application, adjusted for the effect of the stipulations on that balance. (DeChario)

### **COST OF CAPITAL**

**Issue 20:** What is the appropriate return on common equity?

**UTILITY POSITION:** The appropriate return on common equity is that yielded from use of the Commission's leverage formula in effect at the time the Final Order is issued in this proceeding. (DeChario)

**Issue 21:** What is the appropriate weighted average cost of capital including the proper components, amounts, and cost rates associated with the capital structure?

**UTILITY POSITION:** The appropriate weighted average cost of capital is that contained in the Utility's filing, adjusted for any effects of the stipulations outlined herein and the updated cost of common equity, based upon the leverage formula in existence at the time of the Commission's Final Order in this proceeding. (DeChario)

### **NET OPERATING INCOME**

**Issue 22:** Should any adjustments be made to test year revenues?

**UTILITY POSITION:** Test year revenues should be those outlined in the Utility's original application, adjusted for the effects

(if any) of the stipulations outlined herein. (DeChario, Smith, Castle)

Incorporating FKAA data is an inappropriate matching and the proposed method for recognition of FKAA data by OPC is nonsensical.

The Utility benefitted by allowing the contract personnel to utilize the construction trailer as needed, while charging them rent. Costs not recovered through rent are appropriate Utility expenses and in fact, the use of the trailer in this method benefitted all Utility customers by lower costs for outside contractors.

Monroe County Detention Center revenue is merchandise and jobbing income that is passed through to a third party contractor. It should be classified as such and since the amount of related expenses for KEI provided to the Utility cannot be determined, an equal amount of expenses should be removed to below-the-line merchandising and jobbing expenses in an amount equal to the revenue amount.

**Issue 23:** Should any adjustments be made to sludge removal expenses?

**UTILITY POSITION:** No, the OPC proposed three year average is not reasonable, based on increased customers, higher treatment requirements, and increased costs. The actual costs for the test year and for future years must be recognized. (DeChario, Smith, Castle)

**Issue 24:** Should any adjustments be made to chemicals expense?

**UTILITY POSITION:** No, the OPC proposed three year average is not reasonable, based on increased customers, higher treatment requirements, and increased costs. The actual costs for the test year and for future years must be recognized. (DeChario, Smith, Castle)

**Issue 25:** Should KWRU's test year expenses be adjusted for the reduction of infiltration and inflow related to the re-sleeving of its lines?

**UTILITY POSITION:** No, I & I was not excessive before this work was done. Any effect of the re-sleeving on infiltration and inflow is extremely minor, to the point of being immaterial. (DeChario, Castle)

There is no material reduction in costs and the proposed AWT expenses should be judged based upon what constitutes fair market value for those services, in related party transactions.

**Issue 26:** Should KWRU's test year expenses be adjusted to remove any markup in pro forma expenses?

**UTILITY POSITION:** No, the fair market value of these services is the appropriate test based upon case law. These charges were reasonable for the services provided. (DeChario, Smith)

**Issue 27:** Should any adjustments be made to materials and supplies?

**UTILITY POSITION:** Yes, an adjustment should be made to a prepaid expense account and one half of that expense removed as an out of period item. (DeChario)

**Issue 28:** Should any adjustments be made to insurance – general liability?

**UTILITY POSITION:** No. This is a periodic insurance payment, not a finance charge, and is reasonable and must be recognized. (DeChario)

**Issue 29:** Should any adjustments be made to advertising expenses?

**UTILITY POSITION:** These costs were undertaken per the County's request and benefitted all customers by providing for a substantial increase in customer base. Therefore, these costs should be recognized as beneficial to the Utility. (DeChario, Smith)

**Issue 30:** Should KWRU's test year expenses be adjusted for Mr. Smith's Management Fees Charged by Green Fairways?

**UTILITY POSITION:** No, Mr. Smith receives no salary from the Utility and this is what is charged for his services to the Utility,



which charges are reasonable, based upon comparable systems. (DeChario, Smith)

**Issue 31:** Should test year expenses be adjusted for certain transactions between Keys Environmental and KWRU?

**UTILITY POSITION:** No, Keys Environmental charges must be based upon market values, not on whether there is a "mark up." Keys Environmental lab testing is not part of the services agreed to under the general Utility services provided to KWRU by KEI and are, therefore, appropriate separate charges. We agree that hookup fees paid to KEI by KWRU should be capitalized. When contractors broke sewer lines those were repaired by KEI. The cost of such repairs is a responsibility of the Utility and is not collectible for reimbursement from the contractors. (DeChario, Smith)

**Issue 32:** Should any other adjustments be made to contractual services - other expenses?

**UTILITY POSITION:** Golf cart costs include maintenance and insurance and the specialized golf cart used by the Utility and as such, the allocation method is appropriate. Employee bonuses are not bonuses in fact, but are instead reimbursement to persons for extra work performed on behalf of the Utility, and are reasonable for the services performed. (DeChario, Smith)

**Issue 33:** Should any adjustments be made to miscellaneous expenses?

**UTILITY POSITION:** No, these travel expenses were a reasonable part of the compensation package provided by the Utility for Mr. Smith. Sheriff's Office delivery notices were required by the County as part of the agreement to increase the customer base, and the Utility chose the least cost option for achieving this requirement. (DeChario, Smith)

**Issue 34:** What is the appropriate amount of rate case expense?

**UTILITY POSITION:** The amount outlined in the Utility's Rebuttal Testimony, including both actual and estimated

expenses, through the conclusion of this case.  
(DeChario, Smith, Castle)

**Issue 35:** Should any adjustment be made to test year net depreciation expense?

**UTILITY POSITION:** The net depreciation expense outlined in the Utility's filing, adjusted for any effects of the stipulations contained herein should be recognized in rate setting.  
(DeChario)

**Issue 36:** What is the test year wastewater operating income or loss before any revenue increase?

**UTILITY POSITION:** The net operating loss outlined in the Utility's original filing, adjusted for the effect of any stipulations agreed to herein. (DeChario)

### **REVENUE REQUIREMENT**

**Issue 37:** What is the appropriate revenue requirement?

**UTILITY POSITION:** The revenue requirement outlined in the Utility's filing, updated for the effect of the stipulations contained herein, and updated rate case expense as outlined in the Utility's Rebuttal Testimony.  
(DeChario)

### **RATES AND CHARGES**

**Issue 38:** What is the appropriate rate structure for this utility?

**UTILITY POSITION:** The rate structure outlined in the Utility's original application. (DeChario)

**Issue 39:** What are the appropriate monthly residential and general service rates?

**UTILITY POSITION:** The residential and general service rates as proposed in the Utility's original application, updated for the effect of any stipulations agreed to herein and the additional rate case expense outlined in the Utility's Rebuttal Testimony. (DeChario)

**Issue 40:** What are the appropriate monthly bulk and reuse service rates?

**UTILITY POSITION:** The bulk and reuse service rates as proposed in the Utility's original application, updated for the effect of any stipulations agreed to herein and the additional rate case expense outlined in the Utility's Rebuttal Testimony. (DeChario)

**Issue 41:** What is the appropriate amount by which rates should be reduced four years after the established effective date to reflect the removal of the amortized rate case expense as required by Section 367.0816, Florida Statutes?

**UTILITY POSITION:** Rates should be reduced by the amount of annual effect of rate case expense authorized as delineated in the Utility's Rebuttal Testimony. (DeChario)

#### **OTHER ISSUES**

**Issue 42:** Should the utility be required to provide proof, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable NARUC USOA primary accounts associated with the Commission approved adjustments?

**UTILITY POSITION:** The Utility agrees to provide such proof, to the extent there is a finding that any such adjustments are warranted. (DeChario)

**Issue 43:** Should this docket be closed?

**UTILITY POSITION:** Yes, after granting of the rates necessary in order to allow the Utility to recover its costs and generate a fair rate of return on its investment are granted and final. (DeChario)

#### **5. Stipulated Issues**

1. To correct a previous adjustment made by K W Resort Utilities, Inc. (KWRU) on its books, Plant was reduced by \$152,255. In accordance with Audit Finding NO. 5. Corresponding adjustments should be made to reduce Accumulated Depreciation by \$71,274 and Depreciation Expense by \$6,766.

2. To correct misclassification on the Utilities part the Florida Department of Environmental Protection permit fees and renewal application fees should be amortized over five years. According to Audit Finding NO. 18 Taxes other than Income should be reduced by \$7,950 and Plant increased by \$577. Average Depreciation should be increased by \$52 and Depreciation Expense should be increased by \$104.
3. The Beachcleaner is for cleaning the sludge beds and should have been capitalized as the charges were applied to the purchase price of the equipment. Per Audit Finding NO. 19 Operating expenses should be decreased by \$11,825 and average Plant increased by \$910. Accumulated depreciation and depreciation expense should be increased by \$493.
4. The Commission has always excluded interest earning temporary cash investments from the working capital because they have already earned a return and to add a return on rate base is duplicating. Per Audit Finding NO. 9 the thirteen month average working capital in rate base is reduced by \$168,265.
5. The Utility had to haul an inordinate amount of solids to continue to operate within the DEP requirements. Pursuant to Audit Finding NO 13 it is not going to be a recurring expense and needs to be amortized over five years. The deferred amount is \$9,129.
6. The telephone expenses are not directly related to the Utility business. Therefore, \$7,508 should not be allowed per Audit Finding NO. 14.
7. The Utility has recorded Political expense for fundraising and it should be reduced by \$1,203. According to Audit Finding NO. 16 Commission Rule 25-30.115(1), Florida Administrative Code says Expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials is considered a non-utility expense.
8. The Utility incorrectly recorded the expense to strip and wax the office floor. According to Audit Finding NO. 13 this expense is not a recurring expense and should have been amortized over five years. The deferred amount is \$1,032.

6. Pending Motions and other Matters the Utility Seeks Action Upon

The Utility is not aware of any pending Motions or other matters on which the Utility seeks action at this time.

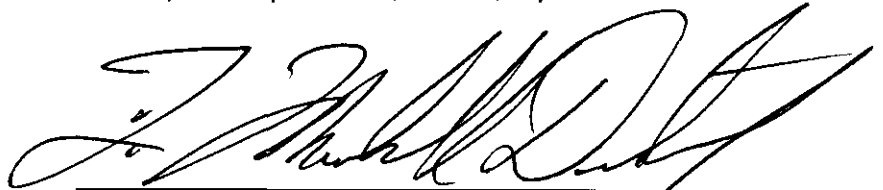
7. Parties' Pending Requests or Claims for Confidentiality

The Utility is not aware of any outstanding requests or claims for confidentiality.

8. Statement of Any Requirements Set Forth in the Order that Cannot be Complied With

KWRU is not aware of any requirements set forth in the Prehearing Procedure Order that the Utility cannot comply with.

Respectfully submitted this  
4<sup>th</sup> day of September, 2008, by:

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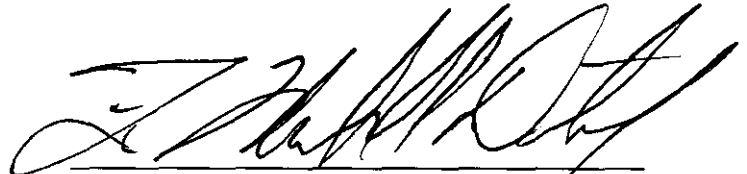
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**CERTIFICATE OF SERVICE**

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 4<sup>th</sup> day of September, 2008:

Ralph Jaeger, Esquire  
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F. MARSHALL DETERDING  
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