

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 150071-SU
Filed: October 17, 2016

**K W RESORT UTILITIES CORP.'S RESPONSE IN OPPOSITION TO HARBOR
SHORES CONDOMINIUM UNIT OWNERS ASSOCIATION, INC.'S MOTION FOR
EXTENSION OF TESTIMONY FILING DATES ESTABLISHED BY ORDER NO. PSC-
16-0194-PCO-SU**

K W Resort Utilities Corp. ("KWRU"), by and through undersigned counsel and pursuant to Rule 28-106.204, Fla. Admin. Code, hereby files its Response in Opposition to HARBOR SHORES CONDOMINIUM UNIT OWNERS ASSOCIATION, INC. ("Harbor Shores") Motion for Extension of Testimony Filing Dates Established by Order No. PSC-16-0194-PCO-SU ("Motion"), and as grounds therefore states as follows:

1. On May 17, 2014, the Public Service Commission issued its Order Establishing Procedure in the above-captioned matter. The Order Establishing Procedure provided, in pertinent part, that Intervenor's testimony and exhibits were due to be filed on or before September 9, 2016.
2. The deadline for filing of Intervenor's testimony and exhibits was subsequently extended to September 15, 2016. This extension did not really apply to Harbor Shores since it was unaffected by Hurricane Mathew.
3. Harbor Shores failed to file its testimony and exhibits on or before September 15, 2016.

4. On October 17, 2016, more than thirty days after the filing deadline, Harbor Shores filed the Motion pursuant to Rule 28-106.204(4), F.A.C., seeking an extension of time to file its testimony and exhibits. On the same date, Harbor Shores filed its testimony and exhibits.

5. Rule 28-106.204(4), F.A.C., provides that “[m]otions for extension of time shall be filed prior to the expiration of the deadline sought to be extended and shall state good cause for the request.”

6. The Motion is insufficient because it fails to comply with Rule 28-106.204(4), F.A.C., in that it was not filed prior to the expiration of the deadline sought to be extended.

7. Harbor Shores states, as good cause for the extension of time requested in the Motion, that Ann M. Aktabowski, representative for Harbor Shores, and accepted by the Commission as a Class B Practitioner, has undergone surgeries to reattach a detached retina which occurred in June, 2016.

8. Ms. Aktabowski has participated in numerous activities related to this case between June, 2016, and September 15, 2016, the deadline for intervenors to file testimony and exhibits, including propounding discovery on August 19, 2016 and participating in an issue conference call with PSC staff on August 1, 2016 related to the matter.

9. Ms. Aktabowski has been on two conference calls with the PSC, one prior to the filing deadline and one after the filing deadline, with the PSC and the parties to this action. On at least one call she discussed her detached retina and at no point did she raise that the detached retina would cause or did cause an issue in providing testimony in this case. Now, after all deadlines have closed for filing testimony, Ms. Aktabowski claims it was due to the detached retina that the testimony was not filed timely.

10. KWRU has filed its rebuttal testimony and prehearing statement in this matter, in compliance with the deadline set forth in the Order Establishing Procedure. KWRU did not address the contentions of Harbor Shores in its rebuttal testimony because the contentions of Harbor Shores were not raised in any prefiled testimony. To allow Harbor Shores to file testimony in this matter after the issues have been set, and after KWRU's timely filing of rebuttal testimony, is a violation of due process, severely prejudices KWRU in this matter and would serve to wreak havoc with the schedule as set forth in the Order Establishing Procedure.

11. Ms. Aktabowski is a Class B Practitioner in this matter, and is to be held to the same standards as an attorney. The disregard for the deadline as set forth in the Order Establishing Procedure – and the failure to request extension prior to the date same was due (as required by Rule 28-106.204(4)) warrants the striking of the testimony filed October 17, 2016. Further, never mentioning the need for an extension in any of the multiple conference calls, calls into question the genuineness of the assertion of good cause. It is more likely that Ms. Aktabowski finally understood the comments of KWRU's attorneys that she could not prove her case without prefiled testimony.

WHEREFORE, K W RESORT UTILITIES CORP. respectfully requests an Order denying HARBOR SHORES CONDOMINIUM UNIT OWNERS ASSOCIATION, INC.'s untimely Motion for Extension of Testimony Filing Dates Established by Order No, PSC 16-0194-PCO-SU, and striking the late-filed testimony filed October 17, 2016.

Respectfully submitted this 17th day of October,
2016, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-

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