

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

**K W RESORT UTILITIES CORP.'S
RESPONSE IN OPPOSITION TO HARBOR SHORES
CONDOMINIUM UNIT OWNERS ASSOCIATION, INC.'S
MOTION FOR RECONSIDERATION PURSUANT TO RULE 25-22.060, F.A.C.**

K W Resort Utilities Corp. (“KWRU”), by and through undersigned counsel and pursuant to Rule 25-22.060, Florida Administrative Code, hereby files its Response in Opposition (the “Response”) to Harbor Shores Condominium Unit Owners Association, Inc.’s (“Harbor Shores”) Motion for Reconsideration (“Motion”) of the Final Order issued March 13, 2017, by the Florida Public Service Commission (“PSC”), and in support thereof states as follows:

1. On July 1, 2015, KWRU, a Class A Wastewater Utility, filed its application for the rate case at issue in this proceeding. The test year established for final rates was the 13-month average period ended December 31, 2014.
2. On February 24, 2016, the Office of Public Counsel (“OPC”) filed a Notice of Intervention, and an Order acknowledging intervention was issued on March 18, 2016. The PSC subsequently approved a two-phased rate by Order No. PSC-16-0114-FOF-SU (“PAA Order”).
3. On April 13, 2016, OPC and Monroe County, Florida filed protests of the PAA Order. On April 18, 2016, Harbor Shores filed a cross-petition. On April 21, 2016, KWRU timely filed a cross-protest.
4. A formal evidentiary hearing in this matter was conducted on November 7 – 8, 2016. Briefs were filed on December 9, 2016.

5. On January 26, 2017, PSC Staff (“Staff”) filed its Recommendations, and on March 13, 2017, the PSC issued its Final Order (“Order”), which is the subject of this Motion.

6. On or about March 24, 2017, Harbor Shores filed the Motion, contending that “the conclusion reached by the PSC [as to Issue VIII.(P)] erred as to the classification of Harbor Shores from Residential customer to General Service customer.”

7. This Response followed.

STANDARD OF REVIEW

Motions for reconsideration are for the purpose of raising facts which the Commission either overlooked or misapprehended in its initial decision. *See Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959) (citing *State ex. Rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958)). A motion for reconsideration should not be granted “based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review.” *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315, 317 (Fla. 1974).

HARBOR SHORES’S ARGUMENTS ARE INAPPROPRIATE FOR A MOTION FOR RECONSIDERATION

Harbor Shores contends that the PSC erred in classifying it as a General Service customer while being billed a Base Facility Charge based on 69 ERCs and a gallonage charge with a 10,000 gallon per Equivalent Residential Customer cap. Harbor Shores’ Motion improperly requests the

PSC to re-weigh the evidence presented at final hearing on this matter, rather than raising facts which it contends were overlooked or misapprehended.

In its Final Order, the PSC reached the conclusion that Harbor Shores is properly classified as a general service customer based on KWRU's agreement with Harbor Shores, which specifies that each unit was responsible for paying KWRU's approved tariff charge of \$2,700 per equivalent residential connection for a total of 69 ERCs.

In its Final Order, the PSC specifically stated that “[i]f we were to allow billing based on the size of the two FKAA meters, the Utility would not be adequately compensated for the demand Harbor Shores’ residents are placing on the system”, and that Harbor Shores is distinguishable from other customers (community associations) wherein the individual units are not individually metered by the Florida Keys Aqueduct Authority. *See* Final Order, pp. 39 – 40. This is supported by Witness Christopher Johnson’s testimony that Sunset Marina condominiums and residences are billed through a single meter. *See* Transcript Vol. 2, p. 163:1 – 9. The uncontroverted testimony shows that Meridian West and Flagler Village do not have individual unit meters owned and maintained by the Florida Keys Aqueduct Authority, but rather one master meter owned by FKAA and submeters owned, controlled and operated by the properties’ respective management companies. *See* Transcript Vol. 4, p. 627:8 – 12. As such, the physical metering arrangement for Harbor Shores is distinguishable from the arrangements for the properties which Harbor Shores contends create a “discriminatory pricing point.”

The PSC properly weighed the exhibits and testimony entered on this issue, and did not misapprehend or overlook any material fact which would lead to a re-classification of Harbor Shores’ billing classification.

WHEREFORE, K W Resort Utilities Corp., prays this Commission enter an Order denying Harbor Shores Condominium Unit Owners Association, Inc.'s Motion for Reconsideration and for such other, further relief as the Commission deems just, equitable, and proper.

CERTIFICATE OF SERVICE
DOCKET NO. 150071-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 29th day of March, 2017:

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