

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 170141-SU

FILED: June 21, 2017

JOINT RESPONSE IN OPPOSITION TO PROPOSED TEST YEAR

The Citizens of the State of Florida (“Citizens”), by and through the Office of Public Counsel (“OPC”), and Monroe County, Florida, a political subdivision of the State of Florida (“Monroe County” or “County”), consistent with the process provided by Rule 25-30.430, Florida Administrative Code (“F.A.C.”), hereby file their Joint Response in Opposition to Proposed Test Year (“Joint Response”), stating the Citizens’ and Monroe County’s objections to the test year proposed by K W Resort Utilities Corp. (“KWRU”) in its letter dated June 6, 2017 (“Test Year Letter”). In summary, the Citizens and Monroe County object to KWRU’s request for approval of its proposed test year because it fails to comply with Rule 25-30.430, F.A.C. Moreover, the Citizens and Monroe County object to the proposed historic test year because it will not be representative of KWRU’s operations for the period during which any new rates approved in this docket will be effective. Further, the Citizens and Monroe County object to KWRU’s suggestion that it may be entitled to interim rate relief, because, as shown herein, interim relief is not available based on proposed pro forma adjustments. Finally, while this is an issue for another day and different pleadings, the Citizens and Monroe County object to and oppose KWRU’s request that this docket be processed using the Commission’s Proposed Agency Action (“PAA”) process; this objection is noted in this Joint Response because KWRU requested it in its Test Year Letter and

because the Citizens and Monroe County simply wish to preserve their objection for the record at this time.

HISTORICAL BACKGROUND

KWRU's most recent general rate case, Docket No. 150071-SU, remains an open docket. The Commission's Order No. 17-0091-FOF-SU, "Final Order Granting an Increase in Wastewater Rates," hereinafter the "2017 Final Order," was issued on March 13, 2017. In the 2017 Final Order, the Commission approved a revenue requirement for KWRU of \$2,436,418, which represents an increase of \$901,618 – 58.75 percent – over the test year revenues of \$1,534,799. 2017 Final Order at 65. The 2017 Final Order accurately describes the procedural history of Docket No. 150071-SU, including the facts that the Commission held two full days of hearings on KWRU's application and that the parties filed briefs on the issues in the case. KWRU moved for reconsideration of the 2017 Final Order, which the Commission denied at its June 5, 2017 agenda conference. Vote Sheet, PSC Document No. 05184-17, June 5, 2017. The Commission's order memorializing its denial of reconsideration has not yet been issued.

By letter dated June 6, 2017, the day following the Commission's vote denying reconsideration, KWRU notified the Commission that it intends to submit an application for general rate relief on or before October 31, 2017. A copy of KWRU's Test Year Letter is included as "Attachment A" to this Joint Response; the contents of the Test Year Letter are described and discussed more fully below.

In its Test Year Letter, KWRU asks the Chairman to approve "an historic test year ending June 30, 2017." The test period is hereinafter referred to as KWRU's "6/30/2017 Proposed Test Year."

Now publicly calling the Commission's 2017 Final Order "an abomination,"¹ KWRU wants the Commission to move ahead as rapidly as possible to give it more money. In other words, even before the Commission's order denying reconsideration has been published, let alone before the ink is dry on that order, and well before the 2017 Final Order is final for appellate purposes, KWRU now threatens the Commission and the parties with another rate case, obviously because it does not like the Commission's decisions set forth in the 2017 Final Order.

In practical terms, assuming KWRU meets its proposed October 31 filing date, the earliest that new final rates could be implemented, even using the PAA process, is approximately the beginning of April 2018. See Section 367.081(10), Florida Statutes. For reference, KWRU's last rate case was filed on July 1, 2015, and the "PAA Rates" were implemented in April 2016, roughly nine months after filing.

In order to seek expeditious but efficient treatment of KWRU's proposed case, the Commission Staff convened an informal meeting at the Commission's offices on June 14, 2017. Representatives of Monroe County and the Citizens participated both in person and by telephone; KWRU participated by telephone.

LEGAL BACKGROUND

Pursuant to Commission Rule 25-30.430, F.A.C., hereinafter the "Test Year Rule," prior to filing a general rate case, a wastewater utility must "submit to the Commission a written request for approval of a test year, supported by a statement of reasons and justifications showing that the requested test year is representative of utility operations." Rule 25-30.430(1), F.A.C. The required contents of a test year letter are prescribed by Rule 25-30.430(2), F.A.C., as follows:

- (2) Each applicant for test year approval shall submit the following

¹ Verbal comments of KWRU's counsel, Martin S. Friedman in the informal meeting convened on June 14, 2017 by the Commission Staff.

information in its written request to the Chairman:

(a) A statement explaining why the requested test year is representative of the utility's current operations.

(b) A general statement of major plant expansions or changes in operational methods which:

1. Have occurred in the most recent 18 months or since the last test year, whichever is less;
2. Will occur during the requested test year.

(c) A general statement of all known estimated pro forma adjustments which will be made to the requested test year amounts.

(d) If a projected test year is requested, provide an explanation as to why the projected period is more representative of the utility's operations than a historical period.

Interim rate relief is governed by Section 367.082, Florida Statutes, which provides in pertinent part: "In setting interim rates or setting revenues subject to refund, the commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a utility or regulated company and its required rate of return applied to an average investment rate base or an end-of-period investment rate base." Section 367.082(5)(a), Florida Statutes. The statute's reference to average or end-of-period rate base is to those values in the requested test year, and thus precludes pro forma adjustments to rate base in determining whether a utility may obtain interim rate relief. See In Re: Application for Increase in Water Rates in Lee County and Wastewater Rates in Pasco County by Ni Florida, LLC, Docket No. 160030-WS, Order No. 16-0249-PCO-WS at 3 ("Adjustments are necessary to remove amounts from the wastewater plant in service balance associated with the utility's pro forma plant projects") and at 4 (disallowing "the utility's adjustments to bad debt expense based on a percentage of the proposed revenue increase" because they are "pro forma in nature").

A utility's ability to request that the Commission use the PAA process is provided in Section 367.081(10), Florida Statutes.

SUMMARY OF CITIZENS' AND MONROE COUNTY'S JOINT RESPONSE

The Chairman (or the full Commission, in the event that KWRU's Test Year Letter is presented to the full body) should disapprove KWRU's requested 6/30/2017 Proposed Test Year because the Utility's Test Year Letter does not comply with the Test Year Rule and because its proposed test year is not representative of its operations during the time that the rates will be in effect. Additionally, KWRU's suggestion that it may be entitled to interim rate relief is misplaced based on its apparent intention to include pro forma rate base additions that will not be in service during its requested 6/30/2017 Proposed Test Year. Finally, while this procedural question is not necessarily at issue here, the Citizens and Monroe County state for the record that they oppose the Utility's request that the Commission process this proposed rate case using the PAA process; the Citizens and Monroe County will explain why in appropriate pleadings and communications should it become necessary.

DISCUSSION

I. The Chairman Should Disapprove KWRU's 6/30/2017 Proposed Test Year Because KWRU's Test Year Letter Does Not Comply With the Test Year Rule.

As demonstrated in the following brief discussion, the Commission's Test Year Rule requires substantial information that KWRU has failed to provide, and accordingly the Chairman should disapprove KWRU's Test Year Letter and its requested test year. In this posture, disapproval of KWRU's Test Year Letter may appropriately be thought of as analogous to a dismissal – of the Test Year Letter itself – without prejudice. Substantive issues relating to the propriety of the test year are addressed below. This discussion addresses the procedural, rule-deficiency defects in KWRU's Test Year Letter.

A. KWRU's Test Year Letter Fails to Comply with Rule 25-30.430(1) and (2)(a), F.A.C.

Rule 25-30.430(1), F.A.C., requires that a wastewater utility shall “submit to the Commission a written request for approval of a test year, supported by a statement of reasons and justifications showing that the requested test year is representative of utility operations.” Subsection (2)(a) also requires “A statement explaining why the requested test year is representative of the utility’s current operations.” KWRU’s Test Year Letter contains no such “statement of reasons and justifications” or “statement explaining why” its requested test year is representative of its operations for the period in which new rates would be in effect. The sum total of KWRU’s discussion of whether its 6/30/2017 Proposed Test Year is representative of its operations during the period that new rates would be in effect is this single sentence: “The requested test year is representative of a normal full year of operations.” Test Year Letter at 1. KWRU’s Test Year Letter provides no “reasons,” “justifications,” or “explanation” of why or how its 6/30/2017 Proposed Test Year is representative of its operations during the period – *beginning* in 2018 – when new rates would be in effect.

On a tangential note, KWRU claims that some of the projected data upon which the Commission based its decision in the 2017 Final Order “have been shown to be inadequate to cover the actual costs incurred by the Company.” *Id.* However, this is at best a conclusory allegation that KWRU is not making as much money as it wants; it makes no mention whatsoever of its costs and operations during the twelve months ending June 30, 2017, and KWRU’s allegation has nothing to do with whether the 6/30/2017 Proposed Test Year is representative of the time period in which new rates would be in effect. Thus, KWRU’s Test Year Letter fails to satisfy the requirements of Rule 25-30.430(1) and (2)(a), F.A.C., and both KWRU’s Test Year Letter and its 6/30/2017 Proposed Test Year should be disapproved accordingly.

B. KWRU's Test Year Fails to Comply with Rule 25-30.430(2), F.A.C.

Rule 25-30.430(2)(b)1&2, F.A.C., requires a general statement of major plant expansions that have "occurred in the most recent 18 months or since the last test year, whichever is less" or that will "occur during the requested test year." KWRU's Test Year Letter does not identify the specific timing of any of its alleged pro forma plant additions, rather including only the general statement that its proposed pro forma rate base additions will be "placed into service within 24 months of the end of" its 6/30/2017 Proposed Test Year.

From discussion at the June 14, 2017 informal meeting, it appears that KWRU intends to request on the order of \$100,000 in additional O&M expenses to be included in its new rates that would be added in via pro forma adjustments to its operations during the 6/30/2017 Proposed Test Year. However, the Test Year Letter contains no reference to such costs.

Accordingly, KWRU's Test Year Letter fails to comply with Rule 25-30.430(2), F.A.C., and thus the Chairman should disapprove the Test Year Letter and KWRU's 6/30/2017 Proposed Test Year.

II. KWRU's 6/30/2017 Proposed Test Year Is Not Representative of KWRU's Operations During the Time That New Rates Would Be in Effect.

KWRU's 6/30/2017 Proposed Test Year is not representative of KWRU's operations for the time that the new rates would be in effect. KWRU proposes to use an historic test year ending June 30, 2017, i.e., for the period July 1, 2016 through June 30, 2017. In contrast, the rates determined in the case would not be in effect until April 2018 at the earliest, and would more likely not be in effect until July 2018. Thus, KWRU wants its rates based on operational information that will be fully a year old before the new rates even take effect; this is not representative as required by Rule 25-30.430(1), F.A.C., and violates the "matching principle" recognized as appropriate by the Commission in the 2017 Final Order. 2017 Final Order at 66. While KWRU wants to include

new rate base items that will become operational after its 6/30/2017 Proposed Test Year, and apparently also to include additional operating and maintenance (“O&M”) expense for the time period beyond its 6/30/2017 Proposed Test Year, KWRU wants to exclude consideration of additional revenues and Contributions In Aid of Construction (“CIAC”) that will likely be realized by the Utility during the first twelve months after the new rates would be effective. KWRU also asserts that its pro forma adjustments are not growth-related; the inaccuracy of this latter assertion is demonstrated by KWRU’s own admissions during the June 14, 2017 informal meeting, as discussed below.

A. KWRU’s 6/30/2017 Proposed Test Year is Not Representative of Its Operations During the Time That the New Rates Would Be in Effect.

KWRU proposes to base the rates that would be in effect for (approximately) the period from July 1, 2018 to June 30, 2019, on costs incurred two years earlier, i.e., between July 1, 2016 and June 30, 2017. This two-year discrepancy is *prima facie* non-representative. Of course, KWRU unsurprisingly wants to include its own selectively, and self-servingly, chosen investment and cost additions to boost its claimed costs for the time period that new rates would be in effect while excluding any consideration of additional growth in sales as well as additional growth in CIAC that would likely accompany such growth. KWRU’s attempt also violates the “matching principle” recognized as appropriate by the Commission in its 2017 Final Order, where the Commission stated:

The principle of matching costs and expenses with sales is at the center of the argument for establishing correct billing determinants. This Commission recognizes the need to match identifiable customer growth and sales with known and measurable growth in the utility’s investment and expenses. Considering the impacts that any growth or decline in sales would have on revenues, we believe that the matching principle is an important concept to observe in the rate-making process.

2017 Final Order at 66.

The simple fact that KWRU proposes to include additional rate base items, and apparently also additional O&M expenses, that will not be incurred until after June 30, 2017, in and of itself demonstrates *prima facie* that KWRU's 6/30/2017 Proposed Test Year is not representative of its operations during the period that new rates would be in effect in 2018 and 2019. If its proposed historic period – the 6/30/2017 Proposed Test Year – were representative of the time that new rates would be in effect, no such adjustments would be necessary or appropriate.

Further, just as in Docket No. 150071-SU, the Citizens and Monroe County will dispute KWRU's proposal to use stale sales data (Base Facility Charge and Gallonage Charge units and revenues) to set rates that will be in effect for the period two years after the fact. Just as the Citizens and Monroe County did in Docket No. 150071-SU, if it comes to it, they will put competent, substantial evidence into the record to document likely additional growth in sales and CIAC that KWRU would realize during the time that new rates will be in effect, i.e., during a truly "representative" test year.

B. KWRU's Assertion That Its Additional Costs Are Not Growth-Related Is Demonstrably False Based on KWRU's Own Admissions During the Informal Meeting.

In the Test Year Letter, KWRU asserts that its "pro forma plant additions are not growth-related." However, KWRU's proposed pro forma adjustments include "the South Stock Island Line Extension in the approximate amount of \$912,000." When asked directly by Staff how a line extension could not be related to or associated with growth in sales and revenues, KWRU's representatives did not answer the question directly, but rather argued that the subject line extension would only add 50 or 100 EDUs (i.e., Equivalent Dwelling Units or Equivalent Residential Connections) and that such addition was "nominal" based on usage of 167 gallons per EDU per day. However, simple arithmetic reveals that 100 EDUs times 167 gallons per day times

365 days equals 6,095,000 gallons per year.² This is roughly three percent of the total gallonage (between 193,000,000 adjusted gallons and 213,000,000 unadjusted gallons) implicitly recognized in the 2017 Final Order. This may be “nominal” to KWRU, but using a gallonage sales value that is three percent greater than a value that would be proposed by KWRU would result in significantly lower rates, and therefore is not “nominal” from a rate-setting perspective in any meaningful sense.

III. KWRU’s Suggestion That It Will Request Interim Rates Is Misplaced.

Interim rate relief is governed by Section 367.082, Florida Statutes, which provides in pertinent part that, “In setting interim rates or setting revenues subject to refund, the commission shall determine the revenue deficiency or excess by calculating the difference between the achieved rate of return of a utility or regulated company and its required rate of return applied to an average investment rate base or an end-of-period investment rate base.” Section 367.082(5)(a), Florida Statutes. The statute’s reference to average or end-of-period rate base is to those values in the requested test year, and thus precludes pro forma adjustments to rate base in determining whether a utility may obtain interim rate relief. See Ni Florida at 3,4; In Re: Application for Increase in Water Rates in Lee County by Ni Florida, LLC, Docket No. 100149-WU, Order No. PSC-10-0564-PCO-WU at 2 (“We find that the Utility’s proposed adjustments are pro forma in nature because they are beyond the interim test year. As such, Ni Florida’s pro forma plant adjustments above shall be removed from the interim rate base calculation.”) Accordingly, the Citizens and Monroe County believe that KWRU cannot obtain interim relief on the basis of its proposed rate base additions that will not go into service until after June 30,

² The 167 gallons per day figure was used by KWRU during the June 14 informal meeting; other standard values for EDUs and ERCs are greater than this value, and thus using such a greater value would make the discrepancy even greater.

2017. Nor can KWRU base a request for interim rate relief on expenses that the Commission removed from rates in the Final Order (e.g., the \$60,000 management fees to William Smith).

IV. The Chairman Should Disapprove, or Decline to Act On, KWRU's Request That the Commission Process KWRU's Rate Case Using the PAA Process.

KWRU's Test Year Letter asks that the Commission use the PAA procedure to process its case. The Test Year Approval Rule has no provisions relating to what procedures the Commission may use to process a request for rate relief. The Citizens and Monroe County oppose using the PAA process on grounds of administrative efficiency and fundamental fairness or due process considerations. As presented by KWRU, even based on its unsupported assertions regarding its claimed need for rate relief, it is evident that this case will involve disputed issues of material fact, and that any PAA order will be protested by one side or the other, and accordingly, it would be best in terms of administrative efficiency for the Commission to simply set the case directly for hearing. Monroe County will also specifically object to the PAA process because it would potentially shut Monroe County out of any formal participation in the docket until after a PAA order was issued. Monroe County believes that, as KWRU's largest customer, its substantial interests will obviously be determined by any action that the Commission takes on KWRU's new rate request, and Monroe County participated appropriately, extensively, and constructively in Docket No. 150071-SU. Monroe County accordingly believes that it would be a departure from the essential requirements of law to deny it participation as a full party in this follow-on rate case from the outset.

The Citizens and Monroe County further object to this request as being outside the scope of a Test Year Letter, and will address any such request through appropriate pleadings at the appropriate time. This objection is noted here for the record, in order to avoid any argument by KWRU that the Citizens and Monroe County waived their rights to object to this request.

CONCLUDING STATEMENT

The foregoing discussion addresses the inadequacy of KWRU's Test Year Letter and the issue whether its 6/30/2017 Proposed Test Year is appropriately representative of the time period in which new rates to be approved in this docket would be in effect. As explained above, the Citizens and Monroe County believe that KWRU's Test Year Letter does not comply with the requirements of the Commission's Test Year Rule and that KWRU's 6/30/2017 Proposed Test Year is not representative of KWRU's operations in 2018 and 2019, when the new rates would be in effect.

While opposing KWRU's request for approval of a non-representative Test Year, the Citizens and Monroe County wish to make clear that this Joint Response in Opposition to KWRU's request is not, in any way, an automatic response opposing any rate relief at all. Whether KWRU is entitled to rate relief remains to be seen and is subject to KWRU satisfying its burden of proving that it needs rate relief, based on competent, substantial evidence in the record of a future proceeding. The Citizens and Monroe County are not opposed to KWRU having sufficient revenues to cover its operating costs and to earn a reasonable return on its reasonable and prudent investment that is used and useful in providing service to its customers. By this Joint Response, the Citizens and Monroe County are pointing out obvious defects in KWRU's Test Year Letter itself and also defects in its substantive claims as to the appropriateness of its 6/30/2017 Proposed Test Year.

The Citizens and Monroe County simply want KWRU to follow the Commission's rules, and to propose a test year that will, in fact, be truly and objectively representative of KWRU's operations and costs for the time period that the new rates will be in effect.

WHEREFORE, the Citizens and Monroe County hereby request that the Chairman consider their objections to KWRU's 6/30/2017 Proposed Test Year and to KWRU's Test Year Letter itself, and accordingly request that the Chairman disapprove KWRU's 6/30/2017 Proposed Test Year. Although the issues of interim rates and whether to use the Proposed Agency Action process are not within the scope of a determination regarding a proposed test year, given that KWRU has suggested that it is entitled to interim rates and has also requested that the Commission employ the PAA process for its application, the Citizens and Monroe County respectfully ask that the Chairman and Commission take notice, for the record, of the Citizens' and Monroe County's objections to these requests as well.

Respectfully submitted this 21st day of June, 2017.

J. R. Kelly
Public Counsel

/s/ Erik L. Sayler
Erik L. Sayler
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Attorneys for the Citizens
of the State of Florida

/s/ Robert Scheffel Wright
Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Gardner, Bist, Bowden, Bush, Dee,
LaVia & Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308

Attorneys for Monroe County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and foregoing JOINT RESPONSE IN OPPOSITION TO PROPOSED TEST YEAR has been furnished by electronic mail on this 21st day of June, 2017, to the following:

Kyesha Mapp
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Email: kmapp@psc.state.fl.us

Martin S. Friedman, Esquire
Friedman Law Firm
766 N. Sun Drive, Suite 4030
Lake Mary, FL 32746
Email: mfriedman@eff-attorneys.com

Barton W. Smith
Smith Law Firm
138-142 Simonton Street
Key West, FL 33040
Email: bart@smithoropeza.com

Ann M. Atkabowski
Harbor Shores Condominium Unit
Owners Association Inc.
6800 Maloney Ave., Unit 100
Key West, FL 33040
Email: harborshoreshoa@gmail.com

Robert B. Shillinger/Cynthia Hall
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
Email: hall-cynthia@monroecounty-fl.gov

/s/ Robert Scheffel Wright
Robert Scheffel Wright

ATTACHMENT A

TO

**JOINT RESPONSE OF THE CITIZENS OF THE STATE OF FLORIDA AND
MONROE COUNTY, FLORIDA TO KWRU'S PROPOSED TEST YEAR**



DOCKET NO. 170141-SU
FILED JUN 09, 2017
DOCUMENT NO. 05240-17
FPSC - COMMISSION CLERK

June 6, 2017

Chairman Julie Brown
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: K W Resort Utilities Corp.
2017 TY General Rate Increase Application
Our File No. 34000,04

Dear Chairman Brown:

This letter, pursuant to Rule 25-30.430, Florida Administrative Code, requests approval of a test year for K W Resort Utilities Corp. (the "Company"). The Company intends to submit an application for general rate relief to the Florida Public Service Commission for its wastewater system located in Monroe County, Florida. The Company intends to submit the minimum filing requirements ("MFRs") on or before October 31, 2017.

The Company's last rate proceeding was in Docket No. 150071-SU, utilizing a test year ending December 31, 2014, which resulted in the issuance of Order No. PSC-17-0091-FOF-SU issued March 13, 2017.

The Company requests an historic test year ending June 30, 2017. The requested test year is representative of a normal full year of operation. However, there will be pro forma adjustments to expenses to reflect annualized expenses in the years when rates will be in effect as a result of changes in operations, such as increases in chemicals, sludge hauling, and power.

In the Company's last rate proceeding, the Commission Order reflected projected billable gallons and meters, reuse billable gallons, chemical, sludge hauling and power expenses, plant costs and capital costs, all of which projections have been shown to be inadequate to cover the actual costs incurred by the Company.

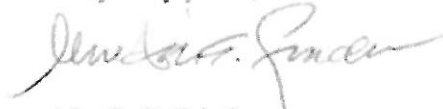
The Company anticipates including pro forma plant additions, which will be completed and placed into service within 24 months of the end of the proposed June 30, 2017 test year. The pro forma plant consists of rehabilitating the existing WWTPs in the approximate amount of \$771,000, replacement of a lift station in the approximate amount of \$215,000, and the South Stock Island line extension in the approximate amount of \$912,000. The pro forma plant additions are not growth related.

Chairman Julie Brown
Florida Public Service Commission
June 6, 2017
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Pursuant to Section 367.081(8), Florida Statutes, the Company requests that the Commission process this petition for rate relief using the proposed agency action procedure. The Company also will request interim rates based on the historic test year.

Should you or members of the Staff have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,



Martin S. Friedman
For the Firm

cc: Bart Smith, Esquire (via e-mail)
Chris Johnson (via e-mail)
Deborah Swain (via e-mail)
Frank Seidman (via e-mail)
Andrew Maurey (via e-mail)
Carlotta S. Stauffer, PSC Clerk (via US Mail)