

**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. 20170141-SU

FILED: February 16, 2018

**CITIZENS' AND MONROE COUNTY'S JOINT RESPONSE TO KW RESORT  
UTILITIES CORP.'S MOTION FOR EXTENSION OF TIME TO RESPOND TO  
DISCOVERY AND  
CITIZENS' AND MONROE COUNTY'S JOINT MOTION FOR EXTENSION OF TIME  
TO FILE TESTIMONY IN LIGHT OF PETITIONER'S FAILURE TO TIMELY FILE  
DISCOVERY RESPONSES**

The Citizens of the State of Florida ("Citizens"), by and through the Office of Public Counsel ("OPC"), and Monroe County, Florida, pursuant to Rule 28-106.204, Florida Administrative Code, hereby respond to the Motion for Extension of Time to Respond to Discovery filed by K W Resort Utilities Corp. ("KWRU"), and hereby move the Florida Public Service Commission (the "Commission"), for an extension of time to file Intervenor testimony in the above-referenced docket. The Citizens request that this Motion be granted for good cause, and in support thereof, state the following:

1. The Order Establishing Procedure ("OEP") in this docket was issued on January 12, 2018. The OEP specified that, as to discovery requests made prior to the rebuttal, responses must be served within 20 days of receipt of the discovery requests. *See*, Order No. PSC-2018-0039-PCO-SU, p. 10, amended by PSC-2018-0039A-PCO-SU.
2. The OEP further specified that Intervenors' testimony is due March 8, 2018. *Id.*

3. On January 25, 2018, OPC served its third set of interrogatories and requests for production on K W Resort Utilities Corp. (“KWRU”). Responses to OPC’s discovery requests were due on February 14, 2018.

4. On February 12, 2018, two days before KWRU’s discovery responses were due to OPC, KWRU contacted OPC to request an extension of time to serve its discovery responses. OPC responded that it could support the utility’s request for the extension of time, but *only if* KWRU in its motion formally requested a corresponding extension of time for OPC to file its testimony. On February 12, 2018, KWRU agreed to support the extension of time for OPC to file its testimony. *See*, email correspondence between OPC and KWRU dated February 12 - 14, 2018, attached hereto as **Exhibit A**.

5. On February 14, 2018, KWRU notified OPC that it would not be filing a motion regarding its plan to delay responding to OPC’s discovery. KWRU also changed its position on OPC’s request for a corresponding extension of the testimony filing deadline, and informed OPC that it opposes any extension of OPC’s testimony filing date. *Id.* KWRU subsequently filed its Motion for Extension of Time to Respond to Discovery on the afternoon that its discovery responses were due.

6. KWRU has already requested and received multiple extensions of time to file responses to discovery in this docket; OPC has previously indulged KWRU in its requests for additional time to serve discovery responses, without objection.<sup>1</sup> As documented in the attached correspondence,

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<sup>1</sup> On January 5, 2018, KWRU requested, and OPC agreed to, a seven day extension of time to file its responses to OPC’s first set of interrogatories and requests for production of documents. KWRU

OPC did not oppose KWRU's current request, under the condition that OPC be granted a similar extension of days to file its testimony. By the time that Monroe County became aware of KWRU's motion for extension, the County was also aware of KWRU's refusal to support an extension for Intervenor testimony, and accordingly opposed KWRU's motion.

7. The delay in receiving KWRU's discovery responses will in fact prejudice the Intervenors. As KWRU stated in its Motion, this is a complex case involving thousands of pages of documents, the vast majority of which were created by, or in the sole possession of, KWRU before and during most of this litigation. While the contents of the documents are well-known to KWRU, they are new to the Intervenors. Accordingly, the Intervenors will require time to analyze the discovery in the context of the rate case. Further, unlike KWRU, Intervenors will not have the opportunity to file rebuttal testimony.

8. KWRU's Motion requests relief solely as to OPC's third set of interrogatories and requests for production. KWRU does not claim that OPC's third set of interrogatories exceeds the interrogatory number limit outlined in the OEP.<sup>2</sup> As such, there is no pending issue regarding the number of interrogatories that were due from KWRU on February 14, 2018.

**Joint Motion for Extension of Time to File Testimony**

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subsequently requested an extension of time to respond to Staff's second set of interrogatories and first request for production of documents. KWRU served its responses to said discovery on February 13, 2018. <sup>2</sup> The OEP authorizes each party to serve 250 interrogatories and 150 requests for production of documents. OEP, p. 4. KWRU claimed in its Motion that OPC's fourth and fifth interrogatories exceeded the interrogatory limit outlined in the OEP. OPC disputes KWRU's contention, but recognizes that only OPC's third set of discovery is properly before the Commission in the pending motions, and the subsequent discovery requests are not yet at issue.

9. In light of KWRU's failure to comply with the OEP's requirement to serve discovery responses within 20 days, and thus KWRU's failure to timely file its responses to OPC's third set of discovery, OPC respectfully requests a six day extension of time to file its testimony (the same amount of additional time KWRU requested to serve its discovery responses). This will allow OPC to review and address KWRU's responses to OPC's third set of discovery in its testimony.

10. A grant of additional time for Citizens to file testimony would allow for a more full evaluation of KWRU's request to increase its customers' rates and, therefore, benefit customers and the public interest. It would also facilitate the Commission's work by allowing OPC to place a more complete analysis into the record, along with the accompanying facts and evidence, so the Commission can make a more informed decision.

11. Commission precedent supports Citizens' motion. *See, In re: Petition by Gulf Power Co. for Approval of Purchased Power Arrangement, et al.*, Order No. PSC-01-1682-PCO-EI.

12. Pursuant to Rule 28-106.204(3), OPC has conferred with all parties of record. KWRU informed OPC that it opposes an extension of Intervenors' testimony filing deadline.

WHEREFORE, OPC respectfully requests that the Commission deny KWRU's Motion for Extension of Time to Respond to Discovery. In the event KWRU's motion is granted, OPC respectfully requests that the Commission grant OPC's Motion for Extension of time to file its testimony and exhibits, and thus grant OPC through **March 14, 2018** to file its testimony and exhibits.

Respectfully submitted this 16<sup>th</sup> day of February, 2018.

<p><u>/s/ Robert Scheffel Wright</u></p> <p>Robert Scheffel Wright, Esquire John T. LaVia, III, Esquire Gardner, Bist, Bowden, Bush, Dee, LaVia &amp; Wright, P.A. 1300 Thomaswood Drive Tallahassee, FL 32308 <b>Attorneys for Monroe County</b></p>	<p>J. R. Kelly Public Counsel</p> <p><u>/s/ Erik L. Sayler</u> Erik L. Sayler Associate Public Counsel Stephanie A. Morse Associate Public Counsel Office of Public Counsel c/o The Florida Legislature 111 West Madison Street, Room 812 Tallahassee, FL 32399-1400 <b>Attorneys for the Citizens of the State of Florida</b></p>
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' and Monroe County's Joint Response to KW Resort Utilities Corp.'s Motion for Extension of Time to Respond to Discovery and Citizens' and Monroe County's Joint Motion for Extension of Time to File Testimony in Light of Petitioner's Failure to Timely File Discovery Responses has been furnished by electronic mail on this 16<sup>th</sup> day of February, 2018, to the following:

Kyesha Mapp  
Jennifer Crawford  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
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Robert B. Shillinger/Cynthia Hall  
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[Shillinger-Bob@MonroeCounty-FL.gov](mailto:Shillinger-Bob@MonroeCounty-FL.gov)

Christopher Johnson  
K W Resort Utilities Corp.  
C/O/ K.W. Resort Utility  
6630 Front Street  
Key West, FL 33040

/s/ Erik L. Saylor  
Erik L. Saylor

# **EXHIBIT A**

**From:** Bart Smith  
**To:** [Sayler, Erik](#); [Nick Batty](#)  
**Cc:** [Vandiver, Denise](#); [Linda Roberman](#); [Martin S. Friedman](#); [Kelly, JR](#)  
**Subject:** RE: KWRU Request for Extension - OPC Discovery  
**Date:** Wednesday, February 14, 2018 2:48:22 PM  
**Attachments:** [image001.png](#)

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Erik,

Frankly, we believe OPC's position is untenable to request unnecessary motions that increase costs. Based on when OPC's testimony is due, March 8<sup>th</sup>, which is 16 days after we can reasonably provide the discovery on February 20<sup>th</sup>, OPC's position is not reasonable. Especially in light of the 4<sup>th</sup> and 5<sup>th</sup> set of interrogatories just served. Therefore, based on the disagreement, we will request the six day extension from the PSC and state that you oppose the relief requested. Please note, we also oppose any extension of OPC's testimony as receiving this discovery 16 days before OPC's testimony is due will not prejudice OPC.

Please also note, your fourth set of interrogatories has exceeded the maximum amount of interrogatories permitted, including all subparts. I would suggest OPC review its fourth and fifth set of interrogatories and determine if sending interrogatories regarding expenditures as low as \$209 to be amortized over 4 years is a prudent use of everyone's resources as it affects rate base \$52 per year and costs more from all parties to respond to. Discovery needs to be within reason, and many of these interrogatories stretch the merits of what is reasonable and drive up costs unnecessarily.

Regards,

Bart

BARTON W. SMITH, ESQ.

## SMITH / HAWKS

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TEL. 305-296-7227 FAX. 305-296-8448 WEB. [SMITHHAWKS.COM](http://SMITHHAWKS.COM)

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**From:** Sayler, Erik [mailto:[SAYLER.ERIK@leg.state.fl.us](mailto:SAYLER.ERIK@leg.state.fl.us)]  
**Sent:** Wednesday, February 14, 2018 2:31 PM  
**To:** Nick Batty <[nick@smithhawks.com](mailto:nick@smithhawks.com)>; Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>; Martin S. Friedman <[mfriedman@ff-attorneys.com](mailto:mfriedman@ff-attorneys.com)>; Kelly, JR <[KELLY.JR@leg.state.fl.us](mailto:KELLY.JR@leg.state.fl.us)>  
**Subject:** RE: KWRU Request for Extension - OPC Discovery  
**Importance:** High

Hi Nick,



Sorry, that was not the agreement that I had with Bart about giving an extension of time to file discovery responses.

The agreement was: OPC would agree to give KWRU a six-day extension of time to file ONLY IF our March 8 testimony filing deadline was similarly extended.

As I explained to Bart, those were JR's instructions to me about this matter. Bart said he understood and that you'd file something with the Commission to memorialize that agreement.

Therefore, there is no agreement on the extension of time and we expect to see your discovery responses today in accordance with the OEP.

Please let me know what you intend to do.

Thanks.

**Erik L. Saylor**  
**Associate Public Counsel**  
**850-717-0337**

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**Please note: Florida has a very broad public records law and e-mail communication may be subject to disclosure.**

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**From:** Nick Batty [<mailto:nick@smithhawks.com>]  
**Sent:** Wednesday, February 14, 2018 12:06 PM  
**To:** Saylor, Erik <[SAYLER.ERIK@leg.state.fl.us](mailto:SAYLER.ERIK@leg.state.fl.us)>; Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>  
**Subject:** RE: KWRU Request for Extension - OPC Discovery

Erik –

Thank you for the extension through Tuesday, 2/20 for responses to OPC's 3<sup>rd</sup> RFP and Interrogatories. We have reviewed the Order Establishing Procedure and do not believe a motion is necessary in order to extend the deadline for responses where the extension is agreed. The PSC has not requested a motion for extensions to their propounded discovery, and in the issue of economy we are not inclined to file one.

A motion will, of course, be required for OPC to receive an extension of the testimony-filing deadline, and if that proves to be necessary you can certify that KWRU supports a seven-day extension for OPC.

Thank you,

NICK BATTY, ESQ.

## SMITH/HAWKS

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**From:** Sayler, Erik [<mailto:SAYLER.FRIK@leg.state.fl.us>]  
**Sent:** Monday, February 12, 2018 11:58 AM  
**To:** Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>; Nick Batty <[nick@smithhawks.com](mailto:nick@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>  
**Subject:** RE: KWRU Request for Extension - OPC Discovery

Hi Bart,

Thanks for the follow up conversation. We look forward to your motion, and we would support a six day extension to file discovery responses so long as OPC receives a similar extension of time to file our testimony.

Erik

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**From:** Bart Smith [<mailto:bart@smithhawks.com>]  
**Sent:** Monday, February 12, 2018 10:43 AM  
**To:** Sayler, Erik <[SAYLER.FRIK@leg.state.fl.us](mailto:SAYLER.FRIK@leg.state.fl.us)>; Nick Batty <[nick@smithhawks.com](mailto:nick@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>  
**Subject:** RE: KWRU Request for Extension - OPC Discovery

Erik,

We would support a six day extension on your end if we get this six day extension. We understand you need the time to review, just as we need time to compile.

BARTON W. SMITH, ESQ.

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---

**From:** Sayler, Erik [<mailto:SAYLER.FRIK@leg.state.fl.us>]  
**Sent:** Monday, February 12, 2018 10:22 AM  
**To:** Nick Batty <[nick@smithhawks.com](mailto:nick@smithhawks.com)>; Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman

<[linda@smithhawks.com](mailto:linda@smithhawks.com)>

**Subject:** RE: KWRU Request for Extension - OPC Discovery

Hi Nick,

Thanks for reaching out. The Third set is due Feb 14<sup>th</sup>, right? We're already in crunch mode to start preparing our testimony for both our accounting and engineering witnesses. Intervenor testimony is currently due Thursday, March 8<sup>th</sup>?

Is KWRU willing to support an extension of time to file OPC's testimony should we request it? If our dates are adjusted, we'd support adjusting KWRU's. If you'd like to discuss, please call. Thanks.

Best regards,  
Erik

**Erik L. Saylor**

*Associate Public Counsel*

*Office of Public Counsel*

*111 West Madison Street, Room 812*

*Tallahassee, FL 32399-1400*

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\*\*\*\*\*

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**From:** Nick Batty [<mailto:nick@smithhawks.com>]

**Sent:** Monday, February 12, 2018 10:12 AM

**To:** Saylor, Erik <[SAYLER.ERIK@leg.state.fl.us](mailto:SAYLER.ERIK@leg.state.fl.us)>; Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>

**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>

**Subject:** KWRU Request for Extension - OPC Discovery

Erik –

KWRU requests an extension of time for its response to OPC's Third Request for Production and Third Interrogatories to Tuesday, 2/20.

We are working diligently on these items but due to the volume of requests from PSC and OPC (including ongoing next-day-response required Audit Requests from PSC), as well as KWRU's small administrative staff training new admin., preparing mailings for approved interim rates, OPC/PSC inspections, and coordinating start of Wharton Smith construction, it is just not possible for us to respond fully without an extension.

Please advise as to OPC's position on the extension.

Best,

NICK BATTY, ESQ.

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**From:** Saylor, Erik [<mailto:SAYLER.FRIK@leg.state.fl.us>]  
**Sent:** Monday, February 12, 2018 9:45 AM  
**To:** Nick Batty <[nick@smithhawks.com](mailto:nick@smithhawks.com)>; Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>  
**Subject:** RE: Responses to staffs discovery

Thanks. And please pardon the typos.

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**From:** Nick Batty [<mailto:nick@smithhawks.com>]  
**Sent:** Friday, February 09, 2018 4:00 PM  
**To:** Saylor, Erik <[SAYLER.FRIK@leg.state.fl.us](mailto:SAYLER.FRIK@leg.state.fl.us)>; Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>; Linda Roberman <[linda@smithhawks.com](mailto:linda@smithhawks.com)>  
**Subject:** RE: Responses to staffs discovery

Erik –

Conformed responses (Bates numbered) to OPC's Second sets of discovery will be served on Monday (this has not been requested by the PSC yet, but is necessary to allow consecutive numbering of all produced documents going forward). Per agreement with the PSC, our responses to PSC's outstanding discovery will be served on Tuesday.

We will send you the documents in a dropbox link.

Have a good weekend.

NICK BATTY, ESQ.

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**From:** Sayler, Erik [<mailto:SAYLER.ERIK@leg.state.fl.us>]  
**Sent:** Friday, February 9, 2018 3:55 PM  
**To:** Bart Smith <[bart@smithhawks.com](mailto:bart@smithhawks.com)>; Nick Batty <[nick@smithhawks.com](mailto:nick@smithhawks.com)>  
**Cc:** Vandiver, Denise <[VANDIVER.DENISE@leg.state.fl.us](mailto:VANDIVER.DENISE@leg.state.fl.us)>  
**Subject:** Responses to staffs discovery

Nick & Bart

When yiu serve it, would you copy us with you responses to staff's discovery?

An drop box link would work fine.

Many thanks

Erik Sayler

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