

SMITH/HAWKS  
ATTORNEYS AT LAW

VIA EMAIL

July 16, 2018

Kyesha Mapp  
Senior Attorney  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

RE: *Docket No. 20170086-SU; Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County*

Dear Ms. Mapp:

Please allow this letter to serve as KW Resort Utilities Corp.'s ("KWRU" or "Utility") response to the Notice of Apparent Violation dated May 17, 2018.

1. Negotiated Flat Rate

Please see letter provided on March 21, 2016 from KWRU to the Public Service Commission ("KWRU Letter") attached hereto and incorporated herein, which explained this matter. KWRU now recognizes that ultimately the PSC must approve any change to its tariff.

KWRU recognizes that this customer was subject to a prior billing matter in 2002, but offers as mitigation that KWRU and the customer agreed to the revised tariff rate based on KWRU and customer's agreement that a substantial increase in development and use at Safe Harbor Marina had occurred prior to 2009. Therefore, on April 20, 2009, KWRU noticed the PSC of this agreement between the Utility and customer to revise its flat rate to \$1,650.67, the rate at issue during the period of March 2013 through March 2016 and received no response to this letter from the PSC. KWRU's management and legal employed at this juncture mistakenly believed that the revision to the tariff had been accepted, similar to a developer's agreement for service.

At the end of 2009, management of the Utility was switched in-house, and a new president was appointed, Christopher Johnson. Christopher Johnson was not aware that this was done improperly by prior management, legal and billing. Since management was brought in-house, all matters have been routinely brought before the Public Service Commission and KWRU has retained the undersigned and Mr. Friedman who have followed PSC rule regarding revisions to tariffs.

KWRU would also note that the property at issue was owned by Safe Harbor Marina, LLC in 2002 and was transferred to Safe Harbour Properties, LLC in 2007 prior to the revision in rates, which the new entity expanded the property in size and use. If this customer did not pay increased rates as a result of expansion of the property, then this customer would be paying less than its fair share which would result in unfairly discriminatory rates as to other customers.

## 2. Pool Charges:

KWRU was advised to charge Sunset Marina the pool charge by PSC staff members Lydia Roberts, Shannon Hudson and Bart Fletcher during conference calls to discuss flows being received from Sunset Marina and Carefree Properties from restrooms located at the pools of both of these properties. KWRU believes that the pool charge was implemented reasonably under the tariff and only implemented these charges after consultation with PSC staff and their assurance it was appropriate.

## 3. Base Facility Charges (BFC)

KWRU has reviewed its records and agrees that Sunset Marina (SM100), General Service Customers James Beaver (B008), Eadeh Bush C. (EB002), and Armando Sosa (S046), Ocean Spray Trailer Park (OS001), Tropic Palm Mobile Home Park (TP001), Meridian West Apartments (MW001), Fourth Ave. LLC (R090), Banyan Grove (BG006), ITNOR Waters Edge (WE002) and Flagler Village (FV001) were incorrectly billed a residential base facility charge for each mobile home<sup>1</sup> and a general service gallonage charge.

KWRU believes it was an error that occurred in switching its billing system after the 2007 rate case, PSC Docket Number 2007-0293-SU, from a residential flat fee to the new tariffs. Prior to the conclusion of the 2007 rate case, residential customers of KWRU were charged a flat fee for wastewater services, including each customer listed above.

As part of KWRU's rate case, KWRU applied to revise its tariff to a BFC and gallonage usage. KWRU provided a billing analysis as part of its MFRs (0668-2007) analyzing its customers billings based on its then practices and also analyzing its billing based upon a BFC charge plus gallonage. Each customer listed had residential dwellings with private water meters behind Florida Keys Aquaduct Authority (FKAA) meters. KWRU identified each individual residential dwelling as a residential customer prior to the rate case, in its billing analysis utilizing BFC and gallonage, and ultimately when PSC Final Order was issued, each residential dwelling was supposed to be switched to a BFC and gallonage. However, it appears the gallonage was switched to general service but the BFC remained a residential charge based on the number of residential units.

KWRU admits that these customers were incorrectly billed BFCs for each residential unit instead of by the general service meter size. KWRU provides as mitigation that prior to the 2007 rate case, KWRU appropriately billed each residential unit and mobile home at these multi-family or mobile home parks a flat fee. After the rate case, KWRU errantly continued to bill these customers as residential for base facility charges based on the billing software identifying the customers as residential units. KWRU did not over earn based on this error.

KWRU disagrees that Roy's Trailer Park was improperly billed. Prior to the implementation of final rates in the 2014 rate case, Roy's Trailer Park was classified residential, and charged a base

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<sup>1</sup> For ITNOR Water's Edge, forty-six (46) mobile homes had individual FKAA meters and were appropriately billed, the error occurred as to thirteen (13) mobile homes that were serviced by a singular FKAA meter that KWRU billed thirteen (13) residential BFC and the general service gallonage charge.

facility charge for each individual FKAA meter, and the consumption was charged at the residential rate. Roy's is mobile home park which originally had individual mobile homes that were serviced by FKAA meters. At some juncture, mobile home owners added additions to their units, which have separate entrances, are rented separately, and in some cases were metered separately.

The owner of the park refuses to verify the number of residences, and no Monroe County or other records indicate the number of units actually in existence.

After several unfruitful discussions with the owner, KWRU determined to proceed pursuant to the PSC Order, effective April 20, 2016. On August 28, 2017, KWRU sent a letter to the owner and offered a settlement, with the settlement amount based on the PSC's stated preference for general service charges based on meter size with a gallonage charge based on water demand in accordance with the Tariff.

The Rate Charge, Original Sheet 13.2, was applied for the period beginning on its effective date, and accounts were adjusted pursuant to that methodology from December, 2015, the month in which KWRU discovered the conversion of single-family into multi-family units, triggering the change in billing. Upon review of the Tariff and the adjusted calculations, the owner agreed the settlement was adequately supported and that the adjustments made were correct. In October 2017, the owner remitted to KWRU the sum of \$35,215.06, the sum pursuant to the revised calculation, which amount included the customer's underpayments for invoices that were properly billed.

Because the dispute was resolved and adjustments were made back to December 2015, the bills analyzed should be disregarded. The settlement amount includes additional units other than the duplex, triplex, quadraplex, etc. units.

### **Conclusion**

KWRU has appreciated the PSC and its staff efforts to simplify KWRU's billing to a uniform system based on FKAA meters. KWRU recognizes and understands that any modifications or amendments to its PSC approved tariffs must be approved by the PSC. KWRU has identified errors and proactively attempted to correct errors, ultimately errors have occurred and have been correct. KWRU has gone through two separate audits for two rate cases and the second-rate case evidences that KWRU has implemented these new tariffs correctly.

KWRU would request that this matter be dismissed as mooted by the rate case proceedings that have been finalized. In the alternative, KWRU requests to enter into settlement discussions with PSC staff to resolve this matter.

Sincerely,



Barton W. Smith, Esq.