

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

FILED 8/15/2018
DOCUMENT NO. 05308-2018
FPSC - COMMISSION CLERK

In the Matter of:

DOCKET NO. 20170086-SU

INVESTIGATION INTO THE
BILLING PRACTICES OF K W
RESORT UTILITIES CORP. IN
MONROE COUNTY.

_____ /

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 11

COMMISSIONERS
PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, August 7, 2018

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

PREMIER REPORTING
114 W. 5TH AVENUE
TALLAHASSEE, FLORIDA
(850) 894-0828

1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. Down to the bottom of
3 the page, No. 11 -- almost to the bottom of the
4 page.

5 MS. FRIEDRICH: Good morning. I'm Marissa
6 Friedrich speaking on behalf of Commission staff.

7 Item No. 11 addresses the results of staff's
8 audit and investigation of KWRU's billing practices
9 for April 2013 through March of 2016. The purpose
10 of this audit and investigation was determine- --
11 was to determine if KWRU violated any Commission
12 statutes, rules, or orders.

13 Staff recommends the utility be ordered to
14 show cause in writing within 21 days why it should
15 not be fined a flat fee of \$1,000 for apparent
16 violations of Sections 367.081 Subsection 1, and
17 367.091 Subsection 3, Florida Statutes.

18 KWRU independently refunded \$72,701.12 to
19 Meridian West; \$25,512.91 to Banyan Grove; and
20 \$43,402.79 to Flagler Village in efforts to remedy
21 its billing errors.

22 Staff recommends the utility refund Safe
23 Harbor Marina \$26,000- -- \$26,408; and Sunset
24 Marina \$41,034 to further rectify its billing
25 mistakes.

1 Staff has provided an oral modification which
2 impacts Issue 1. There has been no customer
3 contact. And representatives from the utility and
4 OPC are here to address this item. Staff is
5 available for questions you have.

6 CHAIRMAN GRAHAM: Thank you, staff.

7 Mr. Friedman, did you want to go before or
8 after OPC?

9 MR. FRIEDMAN: If I go after, I won't -- I'll
10 only have to talk once, which I'm sure you would
11 prefer.

12 (Laughter.)

13 CHAIRMAN GRAHAM: Ms. Morse?

14 MS. MORSE: Okay. Thank you. Stephanie Morse
15 for OPC.

16 OPC commends the decision to conduct the audit
17 necessary to investigate the unauthorized billing
18 outlined in the notice of apparent violation, dated
19 May 17th.

20 The issue that OPC urges the Commission to
21 consider is that the audit of some of the issues
22 did not go back -- or didn't -- not reach back in
23 time to the period before April 2013, although the
24 facts indicate that some of the incorrect billing
25 dated back as far as at least 2009.

1 Staff has indicated that the three-year period
2 it chose to consider for potential refunds is a,
3 "... reasonable remedy to mitigate the utility's
4 incorrect billing practices"; however, OPC believes
5 that both basic fairness and the operative
6 administrative rules require that customers be
7 fully compensated for any and all instances of
8 billing which violated the rules, including those
9 that occurred before April 2013.

10 Mere mitigation of the financial harm is not
11 an adequate substitute for making customers whole.
12 Our review of the Florida Administrative Code,
13 Rule 25-30.350, tells us that: In the event of an
14 overbilling, the rule requires the utility, by use
15 of the word "shall," to refund the overcharge to
16 the customer. As such, we encourage the Commission
17 to seek a full accounting for all years of
18 overbilling and order refunds in the full amount of
19 any authorized billing.

20 Thank you.

21 CHAIRMAN GRAHAM: Thank you.

22 Mr. Friedman?

23 MR. FRIEDMAN: Thank you, Mr. Chairman,
24 Commissioners. Marty Friedman on behalf of KW
25 Resort Utility Corp.

1 This billing issue has been going on awhile.
2 And -- and I'll tell you at the outset that KWRU
3 doesn't intend to drag out this proceeding by
4 requesting a formal hearing, even if you accept the
5 staff recommendation.

6 The billing issues all predate the new billing
7 that KWRU has been doing since it has been able to
8 obtain billing records from the Florida Keys
9 Aqueduct Authority. Ever since -- ever since that
10 occurred, you know, there are no billing issues.

11 The billing issues are all a result of what
12 the staff -- I think, is an understatement -- calls
13 "unique billing structure." And they attached as
14 an example to the staff recommendation a copy of
15 the -- the bulk rate for Safe Harbor that I will go
16 into in more detail in a minute.

17 But the point is that this is something
18 that's -- that's historical, will not happen again
19 in the future, and -- and the utility is ready to
20 put it behind it and move on.

21 However, I do -- I do want to make a couple of
22 points. On the Safe Harbor Marina, the staff is
23 recommending a refund of the difference between the
24 \$917.11 flat fee that you see on -- on the tariff
25 sheet that was attached to the staff

1 recommendation, and the \$1,650.67 that -- rate that
2 KWRU and Safe Harbor Marina had negotiated.

3 Back in 2009, when they negotiated this rate,
4 they advised the Commission -- sent a letter to the
5 Commission; said, here's what -- here's what the
6 new rate is. Now, they didn't follow up. Granted,
7 they didn't follow up. They didn't get an approved
8 tariff for that rate, but they did -- but they did
9 make a concerted effort to at least bring to the
10 Commission's attention the fact that they had
11 negotiated a different rate.

12 And this negotiated rate was really based upon
13 the application of what's going on on that property
14 to the tariff sheet. I think that the -- the
15 staff's recommendation is more -- form over
16 substance.

17 In other words, although there's a flat rate
18 of 917.11 in here, it goes about telling you how we
19 came up with that 917- -- or how the Commission
20 came up with that 917.11 charge.

21 And for instance, this says 13 residential
22 units at one ERC each. Now, it happens to be that
23 this -- this development expanded from more than 13
24 residential to some number greater than that.

25 So, it would lead a rational person to

1 believe, okay, if there's twice as many residential
2 units, then maybe this 343.66 ought to be twice as
3 high. That certainly would be the intent of making
4 sure that every customer paid their fair share for
5 the wastewater-service burden that they placed on
6 the utility.

7 And the same with these -- you know, these
8 change -- says a commercial business -- the
9 business expanded. You know, all of this occurred
10 with the expansion of this property; the utility
11 recognizing that that expansion of the property
12 created a greater demand on the system than was
13 included in this tariff sheet; worked with the --
14 the customer, property owner. And they agreed to
15 that \$1600 back in 2009 -- \$1600-and-something, and
16 then -- then they started paying it. They've been
17 paying it ever since.

18 And so, I think that the staff recommendation
19 is putting form over substance. I mean, I think
20 that any rational person would -- would understand
21 that the intent of the tariff is to make sure that
22 every customer pays their fair share.

23 And by the utility and the property owner
24 agreeing that, because of expansion in usage on
25 that property, that fair share meant that the

1 numbers that they should pay every month should be
2 higher than the flat fee of 917, and they -- they
3 negotiated -- business people negotiated and agreed
4 to that -- that we believe that it at least follows
5 the intent of the tariff sheet, if not the strict
6 letter of the tariff sheet.

7 So, we really don't believe that the -- the
8 \$26,000 refund Safe Harbor Marina is appropriate.

9 As to OPC's --

10 CHAIRMAN GRAHAM: The 26- --

11 MR. FRIEDMAN: -- comments --

12 CHAIRMAN GRAHAM: \$26,000?

13 MR. FRIEDMAN: I'm sorry?

14 CHAIRMAN GRAHAM: You said 2600. \$26,000?

15 MR. FRIEDMAN: Yeah, I'm a lawyer, not an
16 accountant. Thank you, though.

17 The alleged -- I was going to make note of the
18 comment that Ms. Morse made about going back
19 farther. You know, I think the records-retention
20 period is for six years or something. So, I'm not
21 sure we can go back much farther and have
22 information to that effect.

23 And like I said, to a large extent, it's all
24 historical. It's done. It's over with and -- and
25 because of the new billing, based upon the FKAA

1 meters, we don't have to worry about this sort of
2 unique billing structure having any impact on
3 customers or the utility in the future.

4 My final point is that these rates were
5 collected -- if, in fact, you agree that there
6 needs to be a refund -- these rates were collected
7 over a period of three years. And so, what the
8 utility would request would be, if -- if, in fact
9 you are going to require a refund, that you allow
10 the utility, for cash-flow purposes, to be able to
11 make that refund with interest, in equal monthly
12 installments over a 12-month period.

13 And I have -- I have brought that -- my
14 request to the staff's attention. And my
15 understanding is that staff does not oppose it.

16 Thank you very much.

17 CHAIRMAN GRAHAM: I think your request for 12
18 months is rational. The rest of it -- it's up for
19 debate.

20 I -- I think a lot of things fell through the
21 cracks on this. I had a long conversation with
22 staff specifically about the letter, the letter
23 that was sent back in '09, and why we didn't
24 address it back then. Now, granted, that doesn't
25 mean that there wasn't conversations back and

1 forth. I just didn't see a letter coming from us
2 going back out that direction.

3 Of course, it is a little concerning, reading
4 some of the e-mails that went back and forth back
5 then between Dave -- I'm sorry -- between Doug
6 Carter and Dave -- from Safe Harbor: As we
7 discussed earlier, we can touch base later this
8 week, after looking at this information. We can
9 come to a conclusion to keep you out of the -- we
10 can keep your rates about the same and keep you
11 from -- without going through the long, drawn-out
12 process of the Public Service Commission.

13 I mean, so, these people knew that there was
14 more to this that they had to do than just send the
15 letter in saying that we're changing it.

16 MR. FRIEDMAN: I -- I don't -- I do not
17 interpret that statement that you read as being
18 what you said.

19 CHAIRMAN GRAHAM: Okay. But we have a
20 process. And we can't just willy-nilly just decide
21 we're going to change a tariff.

22 MR. FRIEDMAN: Then you -- again, it's intent.
23 What is -- what does the tariff mean? The \$917
24 number is a sum of all of these numbers. And so,
25 if the numbers -- if this number changed, who's to

1 say that's not following the -- what you just said,
2 not following the tariff.

3 This says 13 mobile -- if there are 13
4 residential units, they should pay 343.66. What if
5 there's 26 units?

6 CHAIRMAN GRAHAM: Is that --

7 MR. FRIEDMAN: Wouldn't that mean -- wouldn't
8 that mean that the tariff says they should pay
9 twice that much?

10 CHAIRMAN GRAHAM: Is that how we change
11 tariffs here in the Public --

12 MR. FRIEDMAN: No, I --

13 CHAIRMAN GRAHAM: -- Service Commission?

14 MR. FRIEDMAN: You and I understand that.
15 Believe me.

16 CHAIRMAN GRAHAM: Okay.

17 MR. FRIEDMAN: I've been doing this for 37
18 years. I understand that. Whether I think it's --
19 we ought to go to that or not -- and they should
20 have followed up on the 2009 letter.

21 I think that's great in a perfect world, but
22 unfortunately, there's very little perfection in
23 this world. None of us are perfect.

24 CHAIRMAN GRAHAM: I underst- --

25 MR. FRIEDMAN: And -- and that's why our

1 suggestion is to -- to take substance over form
2 on -- with regard to Safe Harbor and let's just,
3 you know, move on.

4 CHAIRMAN GRAHAM: Well, once again, my other
5 concern is the -- the penalty of a thousand
6 dollars. I mean, I thought that was -- if you're
7 going to knowingly disregard the rules and then
8 you're just going to get smacked on the wrist a
9 thousand dollars -- I'm done -- if you're just
10 going to get smacked on the wrist a thousand
11 dollars, I don't think that's sending a clear
12 message.

13 Now, if staff can kind of walk me through --
14 and they did this at briefing tod- -- yesterday,
15 and they made some legitimate points, but I'll let
16 Mary Anne start with that because she's the one
17 that made a legitimate point in briefing.

18 MS. HELTON: Mr. Chairman, after the
19 discussion we had yesterday and -- actually,
20 Dr. Polmann raised some of the same concerns -- I
21 went back and pulled our APM that guides the staff
22 and is what the staff looks at when we are looking
23 at whether to show-cause a utility or looking at
24 whether -- what action to take if we think that a
25 utility is not following a statute, rule, or order.

1 And in that APM, it says that compliance --
2 this is directions to the staff, "Compliance is the
3 first objective. Emphasis should be placed on
4 obtaining compliance as opposed to levying
5 penalties for isolated instances of non-
6 compliance." So, the Commission uses penalties to
7 inc- -- increase compliance with rules, orders, and
8 statutes, when other efforts have failed.

9 And I -- I heard you say -- and I understand
10 that maybe they might have done this once, twice,
11 and even three times; however, it's my
12 understanding that, today, we have clear tariffs.
13 And it's my understanding that they have agreed to
14 refund customers. And it's my understanding that
15 they are now following the tariffs.

16 So, it seems to me that they are in -- in
17 compliance; that the thousand-dollar fine is a
18 recognition that they have -- could have done
19 better in the past, but I believe that they are
20 going forward, doing what they need to do.

21 CHAIRMAN GRAHAM: But -- so, they're in
22 compliance because they got caught, not because it
23 became in compliance.

24 MS. HELTON: I don't think that the -- the
25 directions to us makes that distinction. They're

1 in compliance now, after conversations with -- with
2 the staff. And I think that's probably true for
3 most utilities that are out of compliance; that
4 it's -- the question is whether -- when the staff
5 informs the utility that they are out of
6 compliance, what actions they take at that point in
7 time.

8 CHAIRMAN GRAHAM: Well, and my concern is, if
9 there's no penalty coming with lack of compliance,
10 all you have to do is become in compliance, then
11 why would you ever be in compliance until you get
12 caught?

13 MR. HETRICK: Maybe I could add something to
14 this discussion, Commissioner. I think you have to
15 look at the degree of penalties on a spectrum. And
16 I think we've had situations in this Commission
17 where -- and I'm not going to name names -- but
18 since I've been here, where you can look at a
19 utility and see an intentional pattern, a disregard
20 for Commission rules that rises to the level of
21 almost a fraudulent pattern, an intentional cover-
22 up of activities, conduct that continually reoccurs
23 where they not only knew -- should have known, but
24 they did know and it -- it was an intentional
25 cover-up and an ongoing pattern of activities that

1 occurred.

2 I don't think this situation has risen to that
3 level. We don't find an intentional pattern of
4 disregard for the rules and trying to cover up
5 actions and -- and continue this conduct.

6 At the other end of the spectrum, I think you
7 have to look at negligence and whether a duty --
8 breach of a duty of care was violated. There could
9 have been a misunderstanding. There's a gray
10 area.

11 I think, as Mary Anne pointed out, that having
12 a penalty in this case and nominal penalty is
13 recognition for the violation of the rules, but is
14 not, in this instance, deserved -- at least from
15 staff's perspective -- of an ongoing patt- --
16 pattern of intentional disregard for the rules, or
17 it doesn't rise to the level of fraudulent cover-
18 up-type activities.

19 CHAIRMAN GRAHAM: Thank you.

20 I thought you just wanted to add something. I
21 just wanted for staff to -- to articulate that
22 because this is part of the debate that came out.
23 And I'll go to the -- to the -- all the lights are
24 lit up here.

25 Commissioner Fay?

1 COMMISSIONER FAY: Thank you, Mr. Chairman.
2 And I'll follow up on your -- your comments.

3 I had the same questions with staff. And I
4 just wanted to get clarification, Mr. Friedman,
5 based on your initial statements -- so, you do get
6 to talk more than once.

7 MR. FRIEDMAN: (Inaudible.)

8 COMMISSIONER FAY: You -- you stated -- stated
9 some different points, but I was trying to get
10 clarification if you -- if you believe the penalty
11 component of the recommendation is appropriate or
12 not.

13 It sounded like you were saying, outside of
14 the reimbursements, if -- whatever is moved forward
15 by the Commission, there's not an appetite to -- to
16 challenge that any further, but I wasn't quite
17 clear if that meant that you thought the thousand
18 dollars was sufficient or insufficient or -- or
19 would even help with compliance.

20 MR. FRIEDMAN: I -- well, like the staff
21 pointed out, we don't need help with compliance
22 because those were historical issues -- billing
23 issues related to the unique nature of the tariffs
24 at the time.

25 The tariffs now are -- are standard, you know,

1 water -- water-meter tariffs. You know, nothing --
2 nothing unusual about them. And there's not -- has
3 not -- has not been any billing issues since we
4 went to billing rates based upon the KWAA water
5 meters.

6 The thousand dollars -- I -- it's fine. I
7 mean, I don't think there needs to be any, but I
8 recognize there needs to be something. And you
9 know, we're willing to -- to pay the thousand-
10 dollar fine and move on.

11 You know, like I say, this is all historical;
12 isn't going to happen anymore, so -- so, there's no
13 reason to drag it out further.

14 COMMISSIONER FAY: So, I guess, in the -- in
15 the future -- it sounds like, going forward,
16 there's not an expectation that any of this would
17 continue, based on -- on the changes that have been
18 made, but if it does move forward, the statute
19 makes it clear that there's a penalty -- a
20 potential penalty of \$5,000 a day for that
21 violation. I think what you're saying is you don't
22 have any specific objection to that penalty or the
23 range of it; you just don't believe it's going to
24 be needed going forward.

25 MR. FRIEDMAN: Correct.

1 COMMISSIONER FAY: Okay.

2 MR. FRIEDMAN: That's why we're willing to
3 accept the thousand-dollar penalty and move on.

4 COMMISSIONER FAY: Okay. So, if we see you
5 again, it's a different analysis.

6 MR. FRIEDMAN: Yes.

7 COMMISSIONER FAY: Okay.

8 CHAIRMAN GRAHAM: Commissioner Polmann.

9 COMMISSIONER POLMANN: Thank you,
10 Mr. Chairman.

11 Since we're talking about the penalty, I also
12 had quite a bit of discussion in briefing about
13 this. And I think that the violation puts that on
14 record; the point being that there is a violation
15 where, yes, we're identifying that. And the
16 penalty basically affirms that.

17 To Commissioner Fay's point, if there was
18 another violation, then a thousand dollars is not a
19 thousand dollars. Then -- then, it's a real fine.
20 So, don't come back here with another violation, is
21 the point.

22 MR. FRIEDMAN: Point taken.

23 COMMISSIONER POLMANN: And to the Chairman's
24 point on that, what came out in my discussion
25 with -- with staff in -- and with our executive

1 director was the point of -- of a fine, distinct
2 from the -- from the refund back to the customers,
3 is that what we're looking for is a benefit to the
4 customers. And -- and refunding the money provides
5 that. The fine doesn't because the fine goes to a
6 different place. You know, that -- that really
7 hurts the company.

8 But providing the refund hurts the company
9 also because that's the company money. And all
10 that has to go back to the customers. And if our
11 intent is to make the customers whole, getting the
12 refund really does that.

13 I don't have any problem with a 12-month
14 repayment plan either. What I do want and -- and
15 Mr. Friedman did acknowledge that, you know, there
16 have been problems by an extended period of time.
17 And that's -- you know, we're looking for a change
18 in behavior going forward.

19 Just a quick comment to Mr. Friedman's
20 argument to the rational person's thinking, and so
21 forth -- I -- I'm a big fan of that. I've tried
22 that so many times in my career. I just love that
23 argument. And I always lose, so --

24 MR. FRIEDMAN: Continue to make it.

25 COMMISSIONER POLMANN: -- it -- it never

1 works, so --

2 MR. FRIEDMAN: Don't give up.

3 COMMISSIONER POLMANN: Yeah. But don't have
4 high --

5 MR. FRIEDMAN: One of these days, the light is
6 going to come on --

7 COMMISSIONER POLMANN: Don't have high
8 expectations. Don't have high expectations.

9 Thank you.

10 CHAIRMAN GRAHAM: Well, you go back to OPC,
11 Ms. Morse's argument that the customers aren't
12 whole. And this goes back to what I initially
13 said, where is the motivation for them to do the
14 right job up front if there's really no penalty for
15 doing what you choose to do, other than you have to
16 do what you should have done in the very beginning.

17 I know that sounds very cyclical there, but
18 they're not paying any more out than they would
19 have done if they had done their job correctly.
20 So, where -- where is the stick?

21 Commissioner Brown.

22 COMMISSIONER BROWN: Well, I agree with you,
23 Mr. Chairman. Where is the stick? Do you have any
24 suggestions? Because I absolutely agree, but I
25 don't have a recommendation on it.

1 I do want to know a little bit more about this
2 oral modification, though, which strikes language,
3 strong language, and replaces it with less-strong
4 language. Can you elaborate on why you have made
5 that -- yesterday, I guess, we got this.

6 MS. MAPP: Yes. The oral modification is a
7 clarification of the willfulness standard because,
8 in order to show cause, a utility must be found to
9 have willfully violated a Commission order, rule,
10 or statute. And willfulness is a question of fact.
11 And that wasn't previously clear in the standard
12 that was originally used in this recommendation,
13 and staff wanted to make that clarification.

14 COMMISSIONER BROWN: But -- but you struck
15 language that, I think, was very important that
16 should have been included in the order including
17 that the -- on Page 2, the second paragraph, the
18 last sentence and -- where you're citing the
19 Florida Administrative Code relating to tax savings
20 refund for 1998 -- 1988 and '89, for GTE.

21 You say that: The Commission, having found
22 that the company had not intended to violate the
23 rule, nevertheless found it appropriate to order it
24 to show cause why it should not be fined, stating
25 that, in our view, willful implies an intent to do

1 an act.

2 And that is the -- a distinct -- it is
3 distinct from an intent to violate a statute or
4 rule. I think that language is important if we're
5 giving the utility -- if we're making a
6 recommendation here of a modest fine because I
7 think that is part of the reason why you're
8 recommending in this staff recommendation that we
9 should give them -- fine them only a thousand
10 dollars. I -- so, I was confused why you -- why
11 you took it out.

12 MS. HELTON: You can blame me. At one point
13 in time, the Commission did include that as
14 standard -- standard language with respect to
15 whether someone was acting willfully when violating
16 the statute, rule, or order.

17 And a year or two ago, we did some extensive
18 research on that and determined, based on current
19 law, that we were going too far, and that the
20 standard that's in the modification today is the
21 correct standard to apply.

22 And when we were go- -- when this
23 recommendation was going through the evaluation
24 process by management, quite frankly, I just missed
25 that, and should have -- that should never have

1 been filed that way.

2 So, this is a correction to -- the
3 modification you received yesterday is a correction
4 to make it consistent with what I believe is the
5 current state of the law.

6 COMMISSIONER BROWN: So, the current state of
7 the law is Fugate, and not these two other -- well,
8 obviously, Barlow is precedent, but you're saying
9 that the GTE case is not precedential for purposes
10 of finding willful.

11 MS. HELTON: Yes, ma'am.

12 COMMISSIONER BROWN: I still want a little bit
13 more understanding -- for this thousand-dollar
14 fine -- I mean, this is a period of activity that
15 occurred over an extensive period of time of
16 failing to -- I mean, looking at the e-mails going
17 back and forth between this --

18 CHAIRMAN GRAHAM: Safe Harbor.

19 COMMISSIONER BROWN: This -- Doug -- Safe --
20 yeah, Safe Harbor and Doug -- I mean, they --
21 they -- it's pretty strong language that they
22 understood that they didn't -- that there was a PSC
23 process, and that it was a long, drawn-out PC --
24 PSC process -- I mean, this was back in 2009.

25 To me, that is clearly willful to circumvent

1 our -- our laws and rules. So, I just don't
2 understand how a thousand dollars seems like a
3 reasonable fine.

4 MS. HELTON: Madam -- Commissioner Brown, if
5 you disagree, you have the discretion to put out a
6 different fine. The thousand-dollar fine is what
7 staff believed was appropriate based on where we
8 are today, with respect to them now being in
9 compliance and when looking at previous violations
10 by other utilities.

11 If you think that the fine should be higher,
12 then you have the discretion to make the fine
13 higher.

14 COMMISSIONER BROWN: Well, our general counsel
15 was referencing a case which I -- I think I know
16 which one you were -- you're talking about, but you
17 didn't name names, where this Commission found a
18 fine -- I believe it was in a range of a couple
19 million, for intentional -- similar -- not similar.
20 It dealt with the public-safety issue.

21 So, what would be reasonable? Because a
22 thousand dollars seems like a nom- -- a drop in the
23 bucket for intentional disregard of our rules.

24 MR. HETRICK: And maybe Patti Daniel can also
25 provide some --

1 COMMISSIONER BROWN: Of course she can.

2 MR. HETRICK: -- at least technical insight on
3 this.

4 COMMISSIONER BROWN: Patti always comes to the
5 rescue.

6 MS. DANIELS: Commissioners, I -- I do not
7 want to speak to the legal decisions that you're
8 making about this, but what I do want to reiterate
9 and emphasize to you is that Mr. Friedman is
10 absolutely correct that the -- the tariff lacked
11 clarity for many, many years. And in the 2015 rate
12 case, when I saw that lack of clarity --

13 COMMISSIONER BROWN: "We."

14 MS. DANIELS: -- we -- well, we all saw it,
15 but we -- we made recommendations, and the
16 Commission accepted them, to develop rates that
17 were based on meter sizes, as Mr. Friedman
18 described. There is no more how many widgets are
19 there.

20 So, there -- the prior tariff -- and you have
21 one example here in the recommendation, but there
22 are other examples in the prior tariffs where
23 similar types of tariffs were provided.

24 If the staff had just -- once the Commission
25 had with voted on that \$917 amount -- had put \$917

1 flat rate in the tariff, there would have been
2 clarity, but instead, staff chose to put in the
3 components of it.

4 So, this is one example -- and there are
5 numerous examples that we can see as we look
6 through the prior cases. We looked into the
7 billing determinants for the 2009 rate case and --
8 and we're not at all clear that staff was using
9 meter sizes as opposed to units to develop the
10 recommended and approved rates back then.

11 So, that's --

12 COMMISSIONER BROWN: Are you -- Patti, are you
13 saying, though, that -- that staff had a role in
14 some of the confusion that occurred?

15 MS. DANIELS: Absolutely, Commissioner.

16 COMMISSIONER BROWN: Is that why staff is
17 recommending a nominal fee of a thousand-dollar
18 fine?

19 MS. DANIELS: Absolutely.

20 COMMISSIONER BROWN: Thank you.

21 CHAIRMAN GRAHAM: Commissioner Clark.

22 COMMISSIONER CLARK: I -- I'm not --
23 Mr. Friedman, I'm not condoning what happened, but
24 I do want a -- a little, at least, understanding of
25 what would have transpired had the proced- -- had

1 the rate procedure gone through back during this
2 time period when you made the agreement with Safe
3 Harbor.

4 Had you actually -- I guess my question is:
5 Did Safe Harbor receive the benefit of your
6 services at a discounted price over that period of
7 time? Does that make any sense?

8 MR. FRIEDMAN: Let me see if I understand. I
9 think that if -- if they would have continued to
10 pay 917.11 for that period of time, sure, they
11 would have gotten a tremendous benefit; certainly
12 better than -- than other customers in the same
13 situation.

14 COMMISSIONER CLARK: And would that have put a
15 burden on your other customers as well for having
16 to pay additional costs?

17 MR. FRIEDMAN: Well, it would certainly -- I
18 don't know if there would be additional costs
19 because the bucket of costs is the same, but
20 certainly --

21 COMMISSIONER CLARK: But when you have less --

22 MR. FRIEDMAN: -- when you spread those costs,
23 it --

24 COMMISSIONER CLARK: -- units to divide it by,
25 the other costs should go up.

1 MR. FRIEDMAN: Exactly. And that's the point
2 I was trying to make, is that, if they had more
3 residential units and more usage on this particular
4 piece of property than is indicated on here, then
5 they would not be paying their fair share.

6 And like Ms. Daniel pointed out, if your
7 tariff had just said 917.11, I wouldn't be sitting
8 here trying to make this argument with -- my
9 reasonableness argument with a straight face, but
10 the fact that they showed the components of how we
11 got to 917 -- that's what leads to the confusion
12 about should it be 917 if there's more than 13
13 residential units. And the utility interpreted it
14 differently than you interpret it. And you're the
15 final determinant of how you interpret these
16 things.

17 But certainly, you can't say that this is
18 something they looked at and said, oh, well, we're
19 going to increase it and we're doing it and we
20 don't give a darn about anything. I mean, there
21 was certainly a rational basis for why they did
22 what they did and why they negotiated with this
23 particular customer the way they did. And the
24 result, I think, was a reasonable one that they --
25 you know, that that customer paid its fair share.

1 COMMISSIONER CLARK: Thank you.

2 CHAIRMAN GRAHAM: Commissioner Polmann.

3 COMMISSIONER POLMANN: Thank you,
4 Mr. Chairman.

5 A question I have -- you know, we're looking
6 at a period of time over which the use of a -- a
7 different billing amount occurred. But a question
8 that I have is that the number of what I'll call
9 the violations or the number of events in which
10 a -- the utility went outside of what -- what we
11 intended to be the correct rate.

12 So, can someone answer that for me? You know,
13 they -- they shifted from one rate to another, the
14 900 something to the 1600. And then it -- that was
15 applied for a period of time. But were there other
16 instances where they changed the customer rate?

17 MS. FRIEDRICH: To our knowledge, Safe Harbor
18 was the only one that KWRU had renegotiated a rate
19 offline with them.

20 COMMISSIONER POLMANN: Okay. So, that was one
21 event. So, essentially one --

22 (Discussion off the record.)

23 MS. FRIEDRICH: Your question is that -- is
24 this the only instance where KWRU created a
25 different rate other than what was in the tariff

1 for a customer; is that --

2 COMMISSIONER POLMANN: I'm talking about the
3 audit period. Is -- does this item deal with the
4 specific audit period of 2013-'16 or --

5 MS. FRIEDRICH: Yes.

6 COMMISSIONER POLMANN: Okay. So, within that
7 audit period, how many violations are we talking
8 about that this fine applies to? You have a fine
9 of a thousand dollars and you have a refund to
10 various entities -- how many violations within
11 that? The number of violations.

12 MS. DANIELS: If you counted each monthly bill
13 as a violation --

14 COMMISSIONER POLMANN: No, I'm talking about
15 the --

16 MS. DANIELS: -- entities? We believe that,
17 for Safe Harbor, that was one entity that was
18 improperly billed. We also believe that Sunset
19 Marina was improperly billed.

20 Is that what you were asking, how many
21 entities?

22 COMMISSIONER POLMANN: What I'm trying to
23 understand is, you know, we -- we could -- the --
24 the standard here is \$5,000 per day, per violation.
25 We put that aside, and you came up with a nominal

1 amount. And then there's a period of time which
2 gets into the per day.

3 I'm trying to go to the -- back to dollars per
4 violation. Forget about the period of time. Now,
5 can you somehow count the number of violations as
6 this customer, this customer, this customer? Or
7 we -- we, the utility, recalculated a rate and
8 applied it to this customer, and we recalculated a
9 rate and applied it to that customer or -- or we
10 came off of a tariff and made up our own rate for
11 X, Y, and Z.

12 Were there one, two, or three of those?

13 MS. DANIELS: It would depend on how you
14 characterize "violation;" whether you're talking
15 about, for Safe Harbor -- is that one violation or
16 is it every time, every month -- is that a
17 violation.

18 COMMISSIONER POLMANN: No, I'm not talking
19 about every time, every bill, every month. I'm
20 talking about Customer A, Customer B, Customer C.

21 MS. DANIELS: Then two customers.

22 COMMISSIONER POLMANN: Two customers.

23 MS. DANIELS: Safe Harbor, Sunset Marina.

24 COMMISSIONER POLMANN: Okay. Mr. Friedman,
25 are you following my question?

1 MR. FRIEDMAN: I am. I am. And I think they
2 both fit into the same category we discussed --

3 COMMISSIONER POLMANN: Okay. Forget about the
4 argument of whether or not there's a rational
5 person involved here. Do you agree that there are
6 two customers?

7 MR. FRIEDMAN: I agree that there were --
8 there were two instances, two customers that the
9 utility did not bill according to the tariff.

10 COMMISSIONER POLMANN: Thank you.

11 Commissioners, I think there are two
12 customers, and we could apply some dollar amount
13 for those two, what I'll call, instances, if you
14 wanted to come up with something other than \$1,000
15 for the entire issue.

16 CHAIRMAN GRAHAM: So, it's \$5,000 per day, per
17 customer, per incident. Since we're dealing with
18 two incidents -- \$10,000?

19 COMMISSIONER POLMANN: I think Commissioner
20 Brown asked you for a different number. I created
21 a basis on which you might want to say two times
22 some dollar, Mr. Chairman.

23 CHAIRMAN GRAHAM: Ms. Morse, did you have
24 anything to add before we conclude this?

25 MS. MORSE: As to the point, in terms of

1 making the customers whole and the discussion back
2 to the -- the refunds and the look-back date, I
3 just want to respond to one representation about
4 the lack of available records, or what have you.

5 The rule -- my reading of the rule requires
6 that where some element is lacking, there's an
7 obligation to make an estimate. So, it's not
8 material, in our view, whether, you know, the
9 utility's personal -- or their individual record-
10 retention practice is "X" date.

11 The point is the refund is supposed to be
12 made, shall be made, pursuant to the statute, even
13 if it has to be estimated, based on the customer's
14 past billing -- past usage, for all of these
15 elements.

16 CHAIRMAN GRAHAM: Thank you.

17 Well, as staff has said earlier, the utility
18 has already either paid or agreed to pay about
19 \$143,000 on top of the recommendation that's in
20 front of us, which is for about another 41 -- 26 --
21 another -- 4- -- 30 -- sorry -- \$67,000; is that
22 correct?

23 MS. FRIEDRICH: Close- -- closer to \$80,000.

24 CHAIRMAN GRAHAM: Okay. So, I think the
25 customers are pretty much whole. I -- or will be.

1 Safe Harbor went into this knowingly. As far as we
2 can tell, Sunset has not necessarily gone into this
3 knowingly, but we're looking to make those guys
4 whole.

5 I kind of like Commissioner Polmann's thought
6 process on what the penalty should be. And I think
7 that a penalty of \$10,000 is probably -- it's still
8 nowhere close to where I want it to be, but it's
9 more in line or sends a better message than a
10 thousand dollars does.

11 But I can't make that motion from sitting
12 here. If somebody would care to give it a shot --
13 and we do have an oral mod as well.

14 Commissioner Clark.

15 COMMISSIONER CLARK: Yeah, I just want to go
16 back and -- and clarify, make sure I -- I'm not
17 missing something here. We're talking about making
18 the customer whole. Again, I am not condoning what
19 occurred, but these customers received a benefit of
20 service at an extremely discounted price from what
21 would have been charged had they gone through the
22 correct procedure.

23 So, I don't want to -- I don't want to make it
24 look like, you know, they -- they got some -- you
25 know, they were grossly overcharged. They bore

1 some cost. They -- they create some of the cost
2 that the utility is incurring in this case. So,
3 just keep that in perspective when we look at it.

4 CHAIRMAN GRAHAM: Commissioner Polmann.

5 COMMISSIONER POLMANN: Commissioner Clark, I
6 don't understand how you came to that conclusion
7 because they did not go through a rate case. We
8 don't know what their actual rate would have been.
9 I -- maybe I'm confused. I don't understand how
10 you know that they got a discounted rate even
11 though they paid some other negotiated rate.

12 COMMISSIONER CLARK: Based on the fact that
13 the customer negotiated that rate with the utility
14 company. They perceived the value that was there.

15 COMMISSIONER POLMANN: So, you --

16 CHAIRMAN GRAHAM: Just -- just Safe Harbor,
17 though.

18 COMMISSIONER CLARK: Just Safe Harbor,
19 correct.

20 COMMISSIONER POLMANN: They paid a rate higher
21 than was in the tariff, but you think that they
22 paid a rate that they agreed to.

23 COMMISSIONER CLARK: Correct.

24 COMMISSIONER POLMANN: That would have been
25 something they -- they wouldn't have negotiated

1 against themselves --

2 COMMISSIONER CLARK: Correct.

3 COMMISSIONER POLMANN: -- in principle, a
4 rational person's argument.

5 CHAIRMAN GRAHAM: All right. Does someone
6 want to give a shot at a motion?

7 COMMISSIONER POLMANN: I -- Mr. Chairman, I
8 think, from all of this discussion, I think the
9 only thing that we talked about changing, other
10 than the staff recommendation -- the only thing
11 outside of the staff recommendation that we
12 contemplated changing was the amount of the
13 dollar -- the dollar amount of the fine.

14 CHAIRMAN GRAHAM: That is correct.

15 COMMISSIONER POLMANN: Okay. I would move
16 staff recommendation, and I think we're talking
17 about all issues. Is -- okay. I would move staff
18 recommendation on all issues with a change to the
19 dollar amount on the fine; rather than \$1,000, make
20 it \$10,000.

21 CHAIRMAN GRAHAM: That's the motion.

22 COMMISSIONER BROWN: Second.

23 CHAIRMAN GRAHAM: It's been seconded. Any
24 further discussion on that motion?

25 Commissioner Fay --

1 COMMISSIONER CLARK: Mr. Chairman, could I
2 move to divide the question?

3 CHAIRMAN GRAHAM: Sure.

4 COMMISSIONER POLMANN: I'm sorry.

5 CHAIRMAN GRAHAM: Commissioner Fay.

6 COMMISSIONER FAY: I just wanted to add to the
7 clarification of that motion, the utility asked for
8 a --

9 CHAIRMAN GRAHAM: 12 months.

10 COMMISSIONER FAY: -- a period of time to pay
11 back that -- that fee. And so, I just -- I would
12 be inclined to include that, but it -- it's
13 Commissioner Polmann's motion, so I just --

14 COMMISSIONER POLMANN: Let me --

15 CHAIRMAN GRAHAM: Let's let Mr. --
16 Commissioner Polmann -- see if he can't bifurcate
17 that motion and add that 12 months.

18 COMMISSIONER POLMANN: My motion is -- let
19 me -- for clarification purposes, I make the motion
20 to approve Item 11, staff recommendation, changing
21 the dollar amount of the fine from \$1,000 to
22 \$10,000, including all oral modifications and
23 allowing refunds to the customers to be made over a
24 12-month period, including interest --

25 CHAIRMAN GRAHAM: I --

1 COMMISSIONER POLMANN: -- and all of the
2 administrative authority to apply whatever is
3 necessary.

4 CHAIRMAN GRAHAM: Before we get a second, I
5 think what Commissioner Clark's request was --
6 let's make a motion just on Issue 1, which is the
7 penalty, and then close out the rest of the issues.

8 COMMISSIONER POLMANN: I withdraw that motion.
9 Commissioner Fay, would you like to make a
10 motion on Issue 1?

11 COMMISSIONER FAY: I would love to make a
12 motion, Commissioner Polmann.

13 Mr. Chairman, I would motion on -- on Item 1
14 to accept staff's recommendation with the mod- --
15 modification of the penalty to two separate \$5,000
16 penalties; in addition, allow the utility to pay --
17 well -- I guess I would get clarification from
18 staff, from a penalty-repayment period, is there
19 typically a time period allowed for that payment
20 back or is it -- is it done in whole?

21 MS. MAPP: Usually it's one payment.

22 COMMISSIONER FAY: Okay. So, that payment
23 would be made in whole.

24 And I would also give staff any administrative
25 authority to make changes as needed.

1 CHAIRMAN GRAHAM: That's been moved and
2 seconded for Issue No. 1. Any further discussion
3 on that motion?

4 Commissioner Clark.

5 COMMISSIONER CLARK: Hold on, Mr. Chairman
6 (examining document).

7 CHAIRMAN GRAHAM: The only concern I may have
8 is if 21 days is going to be enough time for them.

9 Ms. Daniels, you have anything to add?

10 MS. DANIELS: I've not heard Mr. Friedman have
11 a complaint about 21 days, so I would assume it
12 works.

13 MR. FRIEDMAN: Well, when it was a thousand
14 dollars, I was going to write you a check today,
15 but --

16 COMMISSIONER BROWN: Personal?

17 COMMISSIONER FAY: Bitcoin?

18 MR. FRIEDMAN: They're good for it.

19 (Laughter.)

20 MR. FRIEDMAN: I mean, obviously, if you're
21 talking about \$10,000, you know, the longer the
22 better. That's a lot of money for a utility like
23 this. So, if we could get 60 days -- or 90 days
24 would be better.

25 CHAIRMAN GRAHAM: Mary Anne, do we have a

1 problem going with 60 days?

2 MS. HELTON: I think the 21-day period is just
3 for them to respond to the order to show cause.
4 So, I think he could -- the utility -- if I
5 understand the law correctly -- and hopefully
6 there's a lawyer here that, if they understand the
7 law better than me, can jump in, but -- I think
8 they can respond that they will pay back the money.

9 And then, if we give them 60 days from the
10 date of the order to pay back the money, I think
11 that would be appropriate.

12 COMMISSIONER POLMANN: To pay the fine.

13 CHAIRMAN GRAHAM: Okay. So, when they respond
14 to 21 days, then we tell them how long they have to
15 pay it back; is that correct?

16 MS. HELTON: Well, perhaps, if they responded
17 in 21 days and say they will pay the \$10,000 fine
18 and give us a date certain, and if it's beyond that
19 60 days, then we will -- the staff would come back
20 to you with direct -- asking for direction, if that
21 was acceptable or not.

22 CHAIRMAN GRAHAM: Was that your motion,
23 Commissioner Fay?

24 COMMISSIONER FAY: That -- that is my motion,
25 with the understanding that the 60-day toll will

1 begin concluding the 21-day window to challenge.

2 CHAIRMAN GRAHAM: Okay. And that's been
3 seconded. Any further discussion on the Fay
4 motion, Issue No. 1?

5 Seeing none, all in favor, say aye.

6 (Chorus of ayes.)

7 CHAIRMAN GRAHAM: Any opposed?

8 By your action, that motion passes.

9 Now, Commissioner Fay, would you like to
10 continue?

11 COMMISSIONER FAY: Mr. Chairman, I would -- I
12 would like to potentially give deference to
13 Commissioner Polmann, who I think had some
14 specifics on these issues.

15 CHAIRMAN GRAHAM: Commissioner Polmann.

16 COMMISSIONER POLMANN: You're doing a great
17 job. If you would like to continue, please do so.

18 COMMISSIONER FAY: Mr. Chairman, I would like
19 to move on Issue 2 -- well, actually, I guess I
20 could do --

21 CHAIRMAN GRAHAM: All the remaining issues?

22 COMMISSIONER FAY: I would like to move all
23 remaining issues -- move with staff recommendation
24 and allow any administrative authority to make any
25 changes as needed.

1 CHAIRMAN GRAHAM: And allow them 12 months
2 to --

3 COMMISSIONER FAY: And allow them 12 months.

4 CHAIRMAN GRAHAM: That's been moved and
5 seconded. Any further discussion?

6 COMMISSIONER FAY: And just to be clear, 12
7 months with interest.

8 CHAIRMAN GRAHAM: Yes.

9 COMMISSIONER FAY: Thank you.

10 COMMISSIONER POLMANN: Are oral modifications
11 in that?

12 CHAIRMAN GRAHAM: Yes, that includes oral
13 modifications.

14 Was that good, staff?

15 MS. MAPP: Yes.

16 CHAIRMAN GRAHAM: Okay. No further
17 discussion?

18 All in favor, say aye.

19 (Chorus of ayes.)

20 CHAIRMAN GRAHAM: Any opposed?

21 By your action, you have approved the second
22 Fay motion.

23 Okay. So, that concludes Item No. 11. Thank
24 you, Mr. Friedman, Ms. Morse, staff.

25 We're going to take a five-minute break.

1 We're going to come back for Item No. 12.

2 COMMISSIONER POLMANN: That will be ten
3 minutes.

4 CHAIRMAN GRAHAM: We're going to take a ten-
5 minute break. We're going to come back to Item No.
6 12. And, then, immediately following, Item No. 12,
7 we're going to have IA over in the IA room.

8 (Agenda item concluded.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED THIS 15th day of August, 2018.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021