

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

FILED: May 17, 2019

**JOINT MOTION OF K W RESORT UTILITIES CORP. AND
THE OFFICE OF PUBLIC COUNSEL FOR
APPROVAL OF STIPULATION AND SETTLEMENT**

The Citizens of the State of Florida, by and through the Office of Public Counsel (OPC), and K W Resort Utilities Corp. (KWRU or Utility), (collectively, “Joint Movants”), by and through their undersigned attorneys, respectfully move the Florida Public Service Commission (Commission or PSC) to approve a Stipulation and Settlement addressing issues associated with the Commission’s investigation into the billing practices of KWRU, which the Joint Movants have entered into in order to resolve the litigation. In support hereof, the Joint Movants state as follows:

1. On March 13, 2017, the Commission ordered its staff to open this docket and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*

2. On November 6, 2017, Commission Staff filed its Audit Report, titled, “K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017.”

3. On August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU (“PAA Order”).

4. The Citizens filed a Petition protesting portions of the PAA Order on September 21,

2018, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing. On March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying K W Resort's motion to dismiss or strike, denying OPC's motion for partial summary final order and denying K W Resort's motion for summary final order.

4. The Joint Movants negotiated in good faith to resolve the issues in this docket and thereby avoid the need for any further expensive and time-consuming litigation before the Commission. These efforts have been successful and the result is the Stipulation and Settlement attached hereto as Attachment A (the Agreement).

6. The Agreement is the result of good faith efforts to address the issues in this proceeding in a manner that will resolve certain billing issues and avoid the unnecessary expense and uncertainty associated with further litigation. The Agreement results in a fair, just, and reasonable disposition of the docket to the benefit of the customers referenced in the PAA Order. Therefore, the Joint Movants submit the Agreement is in the public interest and respectfully request its approval as further described below.

7. In furtherance of this Joint Motion and approval of the Agreement, the Joint Movants waive any right to seek reconsideration of, or otherwise appeal, any decision of the Commission approving, in its entirety, the Agreement.

8. As set forth in the attached Agreement, the Joint Movants have reached agreement, as follows:

- (a) KWRU agrees that in addition to any refunds issued to date, KWRU shall issue refunds in the amount of \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, respectively, within 30 days of the

approval of the Agreement in its entirety by the Commission without modification, via entry of a Commission Order.

- (b) OPC agrees to withdraw its Petition protesting the PAA Order, and KWRU agrees to withdraw its Cross-Petition and request for administrative hearing in this docket, except as it relates to Safe Harbor Marina and Sunset Marina.
- (c) The Joint Movants further agree that approval of the Agreement in its entirety will resolve all matters and issues which are the subject matter of the Agreement in Docket No. 20170086-SU, and that neither Party shall seek appellate review of any order pertaining to the Agreement.
- (d) The Agreement does not address Safe Harbor Marina or Sunset Marina.
- (e) OPC takes no position regarding whether Sunset Marina or Safe Harbor Marina are entitled to any further refund.


8. The Agreement is silent as to KWRU's right to advocate on matters in this docket related to the penalty outlined in the PAA Order.

9. The Joint Movants represent that the Agreement provides an equitable and just balance of the positions of the Joint Movants on the issues in this proceeding. The Joint Movants submit approval of the Agreement is in the best interests of both the Utility and its customers, and therefore, respectfully request approval of same.

10. Commission approval of this Joint Motion is consistent with the Commission's long-standing policy to encourage settlements that provide benefits to the customers and avoid unnecessary additional litigation expense.

WHEREFORE, the Joint Movants respectfully request that the Commission approve the Agreement attached hereto as Attachment A.

Respectfully submitted this 17 day of May, 2019, by:


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CERTIFICATE OF SERVICE
Docket No. 20170086-SU

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 17th day of May 2019, to the following:

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Mr. Christopher Johnson
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Stephanie A. Morse
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Exhibit “A”

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the billing practices of
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

FILED: May 17, 2019

STIPULATION AND SETTLEMENT

WHEREAS, K W Resort Utilities Corp. (KWRU or Utility), and the Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), have signed this Stipulation and Settlement (the “Agreement;” unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement); and

WHEREAS, on March 13, 2017, the Commission ordered its staff to open this docket, No. 20170086-SU, and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*; and

WHEREAS, on November 6, 2017, Commission Staff filed in this docket its Audit Report, titled, “K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017;” and

WHEREAS, the Utility filed its response to the Commission Staff’s Audit Report on or about January 31, 2018; and

WHEREAS, on May 17, 2018, the Commission Staff issued a Notice of Apparent Violation to the Utility; and

WHEREAS, on August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU (“PAA Order”) requiring KWRU to refund money to certain customers and to pay a penalty; and

WHEREAS, on September 21, 2018, OPC filed a Petition protesting portions of the PAA Order unrelated to the penalty, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing; and

WHEREAS, on March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying KWRU's motion to dismiss or strike; denying OPC's motion for partial summary final order and KWRU's motion for summary final order; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this docket so as to achieve fairness to customers and the Utility and to ensure compliance with the applicable Florida Statutes and Florida Rules of Administrative Procedure; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 367 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties upon acceptance of the Agreement as provided herein and upon approval in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Agreement will become effective on the date it is signed by both Parties (the "Effective Date"). The Parties agree that, in addition to any refunds issued to date, KWRU shall issue refunds in the amount of \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, respectively, within 30 days of the approval of this Agreement in its entirety by the Commission without modification, via entry of a Commission Order. This

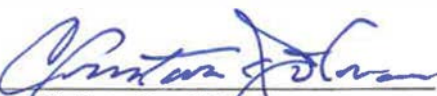
Agreement does not address Safe Harbor Marina or Sunset Marina. OPC will take no position as to whether these customers are entitled to any further refund.

2. OPC agrees to withdraw its Petition protesting the PAA Order.
3. KWRU agrees to withdraw its Cross-Petition and request for administrative hearing in this docket, except as it relates to Safe Harbor Marina and Sunset Marina.
4. This Agreement is silent on KWRU's right to advocate on matters in this docket related to the penalty outlined in the PAA Order.
5. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof.
6. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification. The Parties agree that approval of this Agreement is in the public interest. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement. Approval of this Agreement in its entirety will resolve all matters and issues which are the subject matter of this Agreement in Docket No. 20170086-SU pursuant to, and in accordance with, Section 120.57(4), Florida Statutes. No Party shall seek appellate review of any order pertaining to this Agreement.

7. This Agreement is dated as of the date the last signature is affixed. It may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

K W Resort Utilities Corp.
Mr. Christopher Johnson
C/O K.W. Resort Utility
6630 Front Street
Key West FL 33040-6050

By: 
Christopher Johnson
Title: President
Date: 05-17-2019

Office of the Public Counsel
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By: 
J.R. Kelly
Public Counsel
Date: 05-17-2019