

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

KW RESORT UTILITIES CORP.'S OFFER OF SETTLEMENT

K W Resort Utilities Corp. (KWRU or Utility), makes the following offer of Settlement to resolve the issues that were not addressed in the Stipulation and Settlement entered into between KWRU and Office of Public Counsel previously filed in this Docket.

RECITALS

WHEREAS, on March 13, 2017, the Commission ordered its staff to open this docket, No. 20170086-SU, and to conduct a full audit and investigation 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, on May 17, 2019, KWRU and OPC entered into a Stipulation and Settlement which settled OPC's concerns, but provided that OPC "will take no position as to whether these customers [Safe Harbor Marina and Sunset Marina] are entitled to any further refunds", and was silent as to the penalty.

NOW THEREFORE, KWRU offers the following in settlement of the issues of further refunds to Safe Harbor Marina and Sunset Marina and the \$10,000 penalty:

1. Safe Harbor Marina. KWRU and Safe Harbor Marina entered into a Settlement Agreement and Release, dated May 12, 2016, which has been filed in this docket, and is Exhibit CAJ-9 to witness Christopher Johnson's Prefiled Direct Testimony filed on June 4, 2019. That Agreement resolved a number of issues between them including, but not limited to, mutual obligations for refunds between the parties. Thus, pursuant to that Agreement, any refund which may be due to Safe Harbor Marina in this docket is deemed satisfied and no additional refunds are necessary.

Sunset Marina. KWRU and Sunset Marina entered into a Settlement Agreement and Release, dated October 23, 2018, which has been filed in this docket, and is Exhibit CAJ-8 to witness Christopher Johnson's Prefiled Direct Testimony, filed on June 4, 2019. In consideration of payment by KWRU to Sunset Marina in the amount of \$41,034.00, Sunset Marina released KWRU from all claims related to any further refunds due that are

addressed in PAA Order [Order No. PSC-2018-0444-SU]. Thus, all refund issues with respect to Sunset Marina in this docket are resolved and no additional refunds are necessary.

Penalty. Although for the reasons discussed below, Commission staff recommended a penalty in the amount of \$1,000, the Commission increased that penalty to \$10,000 which greatly exceeds a reasonable amount based upon the particular circumstances of the KWRU tariff at that time. There was much discussion at the August 7, 2018, Agenda regarding the unique nature of the tariff rates for KWRU during the time in question¹ and there is no need to reiterate them at this time. The following from the transcript at the August 7, 2018, Agenda points out the reasonableness of KWRU's interpretation and application of its tariff:

Ms. Daniels: ...I do want to reiterate and emphasize to you is that Mr. Friedman is absolutely correct that the –the tariff lacked clarity for many, many years...(p. 25)

Commissioner Brown: Are you – Patti, are you saying, though, that staff had a role in some of the confusion that occurred?

Ms. Daniels: Absolutely Commissioner.

Commissioner Brown: Is that why staff is recommending a nominal fee of a thousand dollar fine?

Ms. Daniel: Absolutely (p.26)

Based upon foregoing, KWRU offers a penalty of \$2,500.

2. KWRU believes that approval of this Agreement is in the public interest.
3. The approval of this Offer, and the Stipulation and Settlement entered into between OPC and KWRU, will resolve all matters and issues raised in Docket No. 20170086-SU.

¹ KWRU's rates are now based on the traditional meter size and gallonage charges and are consistent with KWRU's current tariffs.

Respectfully submitted as of the 13th day of June, 2019, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail on this 13th day of June 2019, to the following:

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