

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for Increase in Wastewater
Rates in Monroe County by K W Resort
Utilities Corp.

Docket No. **20170141-SU**

**KW RESORT UTILITIES CORP.'S AMENDED MOTION FOR APPELLATE AND
REMAND RATE CASE EXPENSE AND TO TREAT SUCH EXPENSE
AS A REGULATORY ASSET**

Applicant, KW RESORT UTILITIES CORP. (“KWRU”) by and through its undersigned counsel, moves that the Commission allow it to recover its appellate and remand rate case expense and to treat such expense as a regulatory asset and states as follows:

1. KWRU was granted a rate increase pursuant to Order No. PSC-2018-0446-FOF-SU, which was issued September 4, 2018. Monroe County and the Office of Public Counsel appealed the Commission’s Order.
2. KWRU prevailed in its defense of the appeal brought forth by the Office of Public Counsel and Monroe County.
3. To date, KWRU has incurred appellate and remand expenses of \$47,012.07, and is expected to incur additional rate case expense of \$7,500.00, for a total of \$54,512.07 (See attached **Rate Case Expense Exhibit**).
4. This Commission long ago recognized that rate case expense in connection with an appeal and/or remand is authorized by law, subject to the same test of reasonableness as other rate case expense. Order No.: PSC-94-0738-FOF-WU (June 15, 1994); and PSC Order No PSC-99-0691-FOF-SU (April 8, 1999).

5. KWRU's rate case expense in the rate case was approved to be amortized over a four-year period, which four-year amortization period will end in less than 18 months. Due to the short time frame for the underlying rate case expense to complete its amortization, KWRU believes it is more prudent to create a regulatory asset to allow KWRU to seek recovery of the expense in its next rate proceeding. This has been done previously in "ORDER NO. PSC-2019-0363-PAA-WS, issued August 27, 2019, Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*"

KW RESORT UTILITIES CORP. requests this Commission award KWRU appellate and remand rate case expenses in the amount of \$54,512.07 and establish a regulatory asset to recover the rate case expense in the Utility's next proceeding.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 7th day of **July, 2021**.

Stephanie Morse, Esquire
Richard Gentry, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Primary Email: Morse.Stephanie@leg.state.fl.us
Gentry.Richard@leg.state.fl.us

Kathryn Cowdery, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Primary Email: KCowdery@psc.state.fl.us
Secondary Email: Crawfor@psc.state.fl.us

Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Gardner, Bist, Bowden, Bush, Dee, LaVia &
Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
Primary Email: Schef@gbwlegal.com
JLavia@gbwlegal.com

Robert B. Shillinger/Cynthia Hall
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
Primary Email: Shillinger-Bob@monroecounty-fl.gov
Secondary Email: Hall-Cynthia@monroecounty-fl.gov

Respectfully submitted,

SMITH HAWKS, PL
138 Simonton Street
Key West, FL 33040
Telephone: (305) 296-7227

Primary Email: Bart@SmithHawks.com
Secondary Email: Brandi@SmithHawks.com

/s/ *Barton W. Smith*

Barton W. Smith, Esquire
Fla. Bar No.: 20169

AND

Dean, Mead,
420 S. Orange Ave., Ste. 7000
Orlando, FL 32801
Telephone: (407) 310-2077

Primary Email: MFriedman@DeanMead.com

/s/ *Martin S. Friedman*

Martin S. Friedman, Esquire
Fla. Bar. No.: 199060

**RATE CASE EXPENSE
EXHIBIT**

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee
Tampa

K W RESORT UTILITIES CORP
chris@kwru.com

February 18, 2019
ID: 037184.070337
INVOICE # 348420
MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

TOTAL FEES	\$304.00
TOTAL CURRENT AMOUNT DUE	\$304.00
TOTAL AMOUNT DUE	\$304.00

REMITTANCE

THIS INVOICE IS PAYABLE UPON RECEIPT.

**PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE OR PAY INVOICES
ONLINE AT WWW.DEANMEAD.COM
WE ACCEPT VISA, MASTERCARD, DISCOVER, AND AMERICAN EXPRESS**

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
 420 S. Orange Avenue, Suite 700
 P.O. Box 2346 (ZIP 32802-2346)
 Orlando, Florida 32801

407-841-1200
 407-423-1831 Fax
 www.deanmead.com
 Fed Tax ID# 59-2049716

Orlando
 Fort Pierce
 Viera
 Tallahassee
 Tampa

K W RESORT UTILITIES CORP
 chris@kwru.com

February 18, 2019
 ID: 037184.070337
 INVOICE # 348420
 MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

ITEMIZED ATTORNEY FEES

DESCRIPTION	DATE	ATTY	HOURS	RATE	AMOUNT
INITIAL REVIEW OF OPC AND MONROE COUNTY INITIAL BRIEFS AND TELEPHONE CONFERENCE WITH ATTORNEY SMITH WHO TELEPHONED CONCERNING SAME;	02/12/19	MSF	0.80	380.00	304.00
SUBTOTAL:					\$304.00
TOTAL CURRENT AMOUNT DUE					\$304.00
TOTAL AMOUNT DUE					\$304.00

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee

K W RESORT UTILITIES CORP
chris@kwru.com

May 20, 2019
ID: 037184.070337
INVOICE # 352503
MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

TOTAL FEES	\$494.00
TOTAL CURRENT AMOUNT DUE	\$494.00
TOTAL AMOUNT DUE	\$494.00

REMITTANCE

THIS INVOICE IS PAYABLE UPON RECEIPT.

**PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE OR PAY INVOICES
ONLINE AT WWW.DEANMEAD.COM
WE ACCEPT VISA, MASTERCARD, DISCOVER, AND AMERICAN EXPRESS**

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee

K W RESORT UTILITIES CORP
chris@kwru.com

May 20, 2019
ID: 037184.070337
INVOICE # 352503
MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

ITEMIZED ATTORNEY FEES

<u>DESCRIPTION</u>	<u>DATE</u>	<u>ATTY</u>	<u>HOURS</u>	<u>RATE</u>	<u>AMOUNT</u>
SEVERAL TELEPHONE CONFERENCES WITH MS. GREEN IN BART'S OFFICE; REVIEW 1ST DCA ADMINISTRATIVE ORDER AND LETTER TO OPPOSING ATTORNEYS REGARDING EXTENSION OF TIME;	05/02/19	MSF	0.20	380.00	76.00
TELEPHONE CALL FROM ATTORNEY COWDERY AT PSC; MISCELLANEOUS CORRESPONDENCE WITH ATTORNEYS; RESEARCH AND DRAFT NOTICE OF EXTENSION OF TIME;	05/03/19	MSF	0.40	380.00	152.00
CONFERENCE CALL WITH ATTORNEY COWDERY OF PSC, AND WITH ATTORNEY SMITH;	05/10/19	MSF	0.70	380.00	266.00
SUBTOTAL:					\$494.00
TOTAL CURRENT AMOUNT DUE					\$494.00
TOTAL AMOUNT DUE					\$494.00

DEAN
MEAD

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee

K W RESORT UTILITIES CORP
037184.070337
May 20, 2019
Page 2

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee

K W RESORT UTILITIES CORP
chris@kwru.com

June 21, 2019
ID: 037184.070337
INVOICE # 354134
MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

TOTAL FEES	\$836.00
TOTAL CURRENT AMOUNT DUE	\$836.00
TOTAL AMOUNT DUE	\$836.00

REMITTANCE

THIS INVOICE IS PAYABLE UPON RECEIPT.

**PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE OR PAY INVOICES
ONLINE AT WWW.DEANMEAD.COM
WE ACCEPT VISA, MASTERCARD, DISCOVER, AND AMERICAN EXPRESS**

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee

K W RESORT UTILITIES CORP
chris@kwru.com

June 21, 2019
ID: 037184.070337
INVOICE # 354134
MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

ITEMIZED ATTORNEY FEES

DESCRIPTION	DATE	ATTY	HOURS	RATE	AMOUNT
REVIEW PSC STAFF ANSWER BRIEF AND LETTER TO MR. JOHNSON CONCERNING SAME; TELEPHONE CALL WITH ATTORNEY LAVIA, AND PSC ATTORNEY CIBULA REGARDING EXTENSION OF TIME; LETTER TO OPC REGARDING EXTENSION OF TIME; BEGIN DRAFT OF OFFER OF SETTLEMENT; LETTER TO PSC GENERAL COUNSEL;	06/12/19	MSF	2.20	380.00	836.00
	SUBTOTAL:				\$836.00
TOTAL CURRENT AMOUNT DUE					\$836.00
TOTAL AMOUNT DUE					\$836.00

* SERVICES PROVIDED BY PARALEGAL OR LAW CLERK

**DEAN
MEAD**

Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
420 S. Orange Avenue, Suite 700
P.O. Box 2346 (ZIP 32802-2346)
Orlando, Florida 32801

407-841-1200
407-423-1831 Fax
www.deanmead.com
Fed Tax ID# 59-2049716

Orlando
Fort Pierce
Viera
Tallahassee

K W RESORT UTILITIES CORP
chris@kwru.com

July 17, 2019
ID: 037184.070337
INVOICE # 355140
MSF

RE: APPEAL

FOR PROFESSIONAL SERVICES RENDERED:

TOTAL FEES	\$76.00
TOTAL CURRENT AMOUNT DUE	\$76.00
TOTAL AMOUNT DUE	\$76.00

REMITTANCE

THIS INVOICE IS PAYABLE UPON RECEIPT.

**PLEASE RETURN THIS PAGE WITH YOUR REMITTANCE OR PAY INVOICES
ONLINE AT WWW.DEANMEAD.COM
WE ACCEPT VISA, MASTERCARD, DISCOVER, AND AMERICAN EXPRESS**

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

Invoice #: 15101
 Invoice Date: 5/16/2019
 Due Date: Due on Receipt

PAID
05/31/2019

Bill To:
 KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD6	4/18/2019	Research issues re: record.	2.9	400.00	1,160.00
CBD6	4/29/2019	Additional work re: procedural posture, research on controlling case and possibility of motion to dismiss and/or notice of authority.	3.9	400.00	1,560.00
CBD6	4/30/2019	Resolve issues re: consolidation and rate case; docket; review issues re: record for answer brief.	5.3	400.00	2,120.00
BG	5/1/2019	Telephone conference with MF re: extension of time; confer with CBD - per statute we are entitled to 30 more days; MF to send email to all parties; update BWS and CBD.	0.6	125.00	75.00
CBD6	5/2/2019	Confer re: motion for extension of time for appeal; issues re: 1st DCA and rule re: same.	0.6	400.00	240.00
BG	5/2/2019	Confer with CBD and BWS; Pull all pleadings from 1st DCA - update file.	1.2	125.00	150.00
BG	5/3/2019	Receipt of notice of agreed extension of time; update calendar; forward same to BWS and CBD; update file.	0.4	125.00	50.00
BWS9	5/10/2019	Conference call regarding appeal.	0.8	500.00	400.00
CBD6	5/10/2019	Conferral with BS, MF, outside counsel re: appeal; additional research re: Makar's opinion in 1D17-4425 for appeal and preclusive effect on arguments.	3.2	400.00	1,280.00
CBD6	5/11/2019	Research on First DCA case law on horizontal stare decisis and preclusive effect on this action.	2.4	400.00	960.00

Total \$7,995.00

Payments/Credits -\$7,995.00

Balance Due \$0.00

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

Invoice #: 15236
Invoice Date: 6/17/2019
Due Date: Due on Receipt

PAID
06/28/2019

Bill To:
 KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD7	5/30/2019	Review record on appeal; review transcripts of hearing; review customer service hearing issues and possible due process issues; go through timeline of events re: due process.	6.8	400.00	2,720.00
BWS9	6/10/2019	Discuss with CBD.	0.4	500.00	200.00
CBD7	6/10/2019	Lay out arguments re: due process, testimony of commissioners. Add in section re: testimony of commissioners.	5.3	400.00	2,120.00
CBD7	6/11/2019	Review answer brief in UI appeal. Incorporate thoughts and arguments from same.	3.2	400.00	1,280.00
CBD7	6/12/2019	Review answer brief filed by PSC.	3.9	400.00	1,560.00
CBD7	6/12/2019	Research due process cases in administrative appeal; review and research prior cases cited in briefs.	5.3	400.00	2,120.00
BG	6/12/2019	Draft unopposed motion for extension of time for 3 business days; telephone conference with MF re: same; forward to CBD for final review; finalize; file and serve via eportal; update file; email correspondence re: correction from MF; update forward to CBD for review; finalize; file and served amended motion; update file; receipt of Monroe County's Answer Brief; update file.	1.4	125.00	175.00
BWS9	6/13/2019	Review PSC response brief.	0.7	500.00	350.00
CBD7	6/13/2019	Add additional facts from record, add additional case law re: primacy of UI.	3.8	400.00	1,520.00
CBD7	6/14/2019	Finalize factual section re: commissioner testimony; review statement of case and statements of facts re: conformity with answer brief of PSC.	8.3	400.00	3,320.00

Total

Payments/Credits

Balance Due

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

PAID
 06/28/2019

Invoice #: 15236
 Invoice Date: 6/17/2019
 Due Date: Due on Receipt

Bill To:
 KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD7	6/16/2019	Review and edit UI section;change verbiage and add additional case law re: due process and distinguishing.	7.2	400.00	2,880.00
Office		Office Supplies	127	0.25	31.75
Westlaw		Westlaw research		14.30	14.30

Total \$18,291.05

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.

Payments/Credits -\$18,291.05

Balance Due	\$0.00
--------------------	---------------

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

Invoice #: 15487
 Invoice Date: 7/15/2019
 Due Date: Due on Receipt

PAID
 08/01/2019

Bill To:

KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD7	6/17/2019	Research additional case law; add additional legal argument re: County.	5.3	400.00	2,120.00
CBD7	6/17/2019	Include additional argument and case law to buttress argument about waiver and UIF.	3.6	400.00	1,440.00
BWS9	6/18/2019	Review of final appeal.	1.2	500.00	600.00
CBD7	6/18/2019	Review appellate brief; streamline arguments and remove extraneous arguments; make brief as short, succinct, and dismissive as possible by re-ordering and emphasizing dispositive caselaw.	7.4	350.00	2,590.00
CBD7	6/18/2019	Finalize appellate brief, review for typos and issue; review for consistency and file same.	3.2	400.00	1,280.00
CBD7	6/18/2019	Research any new cases re: utilities, add final caselaw re: Fla. S. Ct.	3.2	400.00	1,280.00
BG	6/18/2019	Finalize KWRU Answer Brief; create TOC; TOA; forward same to BWS and CBD for final review; e-file and e-serve all parties; update file	1.2	125.00	150.00
BG	6/28/2019	Receipt of Record on appeal and attachment (full record); download same; update file.	0.4	125.00	50.00
Westlaw		Westlaw research		186.02	186.02

Total \$9,696.02

Payments/Credits -\$9,696.02

Balance Due \$0.00

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

PAID
09/03/2019

Invoice #: 15586
Invoice Date: 8/16/2019
Due Date: Due on Receipt

Bill To:
 KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD7	7/24/2019	Review reply brief of OPC; research cases and arguments to determine if anything further needs to be done regarding appeal.	4.1	400.00	1,640.00
CBD7	7/25/2019	Review Monroe County brief; research cases and arguments to determine if anything needs to be filed; research issue of related cases and use in brief.	4.4	400.00	1,760.00

Total \$3,400.00

Payments/Credits -\$3,400.00

Balance Due \$0.00

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.

Smith Hawks, PL

Key West, FL 33040

(305) 296-7227
Karolina@Smithhawks.com
www.SmithHawks.com

Invoice

Invoice #: 15751
Invoice Date: 9/16/2019
Due Date: Due on Receipt

PAID
09/30/2019

Bill To:

KWRU
Chris Johnson
6630 Front Street
Key West, FL 33040
- Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
BWS9	8/29/2019	Review order.	0.1	500.00	50.00

Total \$50.00

Payments/Credits -\$50.00

Balance Due \$0.00

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

Invoice #: 14728
 Invoice Date: 3/14/2019
 Due Date: Due on Receipt

PAID
 05/13/2019

Bill To:
 KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD7	2/20/2019	Initial review of appellate issues and record.	2.8	400.00	1,120.00
CBD7	2/21/2019	Review document and record; look into issues re: related cases and mootng appeal.	4.6	400.00	1,840.00
BWS9	3/13/2019	Review opinion in UIF.	0.7	500.00	350.00

Total \$3,310.00

Payments/Credits -\$3,310.00

Balance Due \$0.00

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.

Smith Hawks, PL

Invoice

Key West, FL 33040

(305) 296-7227
 Karolina@Smithhawks.com
 www.SmithHawks.com

Invoice #: 14904
 Invoice Date: 4/16/2019
 Due Date: Due on Receipt

PAID
 05/13/2019

Bill To:
 KWRU
 Chris Johnson
 6630 Front Street
 Key West, FL 33040
 - Appeal Rate Case

Item	Date	Description	Hours	Rate	Amount
CBD7	4/1/2019	Research issues with OPC's lost appeal and relevance to current appeal and possible abandonment issues.	3.1	400.00	1,240.00
CBD7	4/14/2019	Initial research and issues re: appeal and other collateral action re: docket and procedural history.	3.3	400.00	1,320.00

Total \$2,560.00

Payments/Credits -\$2,560.00

Balance Due \$0.00

Please remit your payments to:
Smith Hawks, PL
138 Simonton Street, Key West, FL 33040.