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**DANIEL PEREZ**  
*Speaker of the House of  
Representatives*

April 18, 2025

Mr. Adam J. Teitzman  
Florida Public Service Commission  
Office of Commission Clerk  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Docket No. 20240108-SU**

Dear Mr. Teitzman:

Please find enclosed for filing in the above referenced docket the CITIZENS' RESPONSE TO PETITION FOR VARIANCE OR WAIVER OF A SPECIFIC PROVISION OF RULE 25-30.140, FLORIDA ADMINISTRATIVE CODE.

If you have any questions or concerns; please do not hesitate to contact me.

Thank you for your assistance in this matter.

Sincerely,

Sincerely,

/s/ Patricia A. Christensen  
Patricia A. Christensen  
Associate Public Counsel  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corp.

DOCKET NO.: 20240108-SU

FILED: April 18, 2025

**CITIZENS' RESPONSE TO PETITION FOR VARIANCE OR  
WAIVER OF A SPECIFIC PROVISION OF RULE 25-30.140,  
FLORIDA ADMINISTRATIVE CODE**

The Citizens of the State of Florida (“Citizens”), through the Office of Public Counsel (“OPC”), respond to K.W. Resort Utilities Corporation (“KWRU”) Petition for Variance or Waiver of a Specific Provision of Rule 25-30.140, Florida Administrative Code (“F.A.C.”) (“Petition”). In support of denying this Petition, OPC states:

1. On April 3, 2025, KWRU filed its Petition that requests a waiver of the application of certain provisions of Rule 25-30.140, F.A.C., Depreciation (“Rule”). Specifically, KWRU is requesting a variance or waiver of the application of the net salvage components of the Rule to accounts 391.7-Transportation Equipment, and 395.7-Power Operated Equipment. KWRU’s filing does not reflect the effect of the net salvage value in these accounts. The Company claims that net salvage components have been consistently excluded by the Commission in its past calculations.<sup>1</sup>
2. KWRU asserts that the net salvage value adjustments are not applicable to its wastewater system and the Rule contemplates that average service lives with net salvage are “guidelines” and may not be applicable to every system.
3. KWRU also claims that its variance or waiver serves the purpose of the underlying statute by accurately reflecting the depreciation rates for KWRU. Applying the “net salvage adjustment” used for account 391.7-Transportation Equipment of 10% under the Rule effectively increases the expected life from 6 years to 6.6 years. KWRU asserts, without providing any evidence, that it meets the underlying purposes of the statute without

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<sup>1</sup> The Revenue Requirement impact of not calculating the net salvage value for accounts 395.7 and 391.7 results in an approximate combined overstatement of \$4,139 of depreciation expense for these two accounts.

application of the net salvage 10% adjustment because the average service life of 6 years is the more expected useful life of transportation equipment.

4. Similarly, the “net salvage adjustment” used in the Rule for 395.7-Power Operated Equipment is 5%, which effectively increases the expected life from 12 years to 12.6 years. KWRU asserts, again without providing any evidence, that it meets the underlying purposes of the statute, without application of the net salvage 5% adjustment, because the average service life is 12 years which is more consistent for the expected useful life of Power Operated Equipment. Any evidence that might support these assertions would had to have been provided as discussed in Paragraph 9 below.
5. KWRU’s assertion that its service lives are more consistent with the expected useful lives misses the point and is unsupported by any evidence. The addition of a net salvage percentage captures the expected salvage value of property retired less the cost of removal expressed as a percent of retirements in the depreciation rate formula. See Rule 25-30.140(1)(q), F.A.C. The purpose of the addition of a net salvage percentage is to ensure that the depreciation rates do not over collect for the property by “effectively” deducting any value of salvage when the property is retired.
6. Further, net salvage value is the value of an asset at the end of its depreciable life. It is determined by excluding the cost(s) of disposal from the estimated after-tax sale or other disposal. For example, with respect to a vehicle, it is depreciated yearly by the determined depreciation rate. If a vehicle is disposed of, the remaining value is the basic residual value and must be removed from the books. Since these accounts have continually increased, it appears that remaining values have not been removed from these accounts implying net salvage has not been accounted for.
7. The Rule’s average service lives for wastewater systems including the net salvage percentage increases are mandatory and not mere guidelines. The Wastewater System Guideline Average Service Lives under section (2)(b) requires the inclusion of a net salvage value of 10% for account 391.7-Transportation Equipment and 5% for 395.7-Power Operated Equipment absent provision of highly specific justification by the utility to use other percentages. This is spelled out in section (6) of the Rule which provides that when

the utility applies for a change in its revenue rates and charges, it may petition for different average service lives justified by historic data, technical information or utility planning for the affected accounts and sub accounts (i.e. a depreciation study).<sup>2</sup>

8. KWRU's request for a test year was made July 29, 2024. The utility application for a change in its revenue rate and charges was filed on December 13, 2024. The filing date was established as of January 24, 2025. However, the request for waiver and variance was not made until April 3, 2025, over three months later. Since the request for waiver and variance was not made contemporaneously with the petition for rate change, it is untimely.
9. While section (6) does allow a utility to petition for different average service lives, those service lives including net salvage must be justified by historic data, technical information or utility planning for the affected accounts and sub accounts (i.e. a depreciation study). KWRU has not filed historical data, technical information, or utility planning that would justify a change from use of net salvage contained in section (2)(b). KWRU has merely provided a bare assertion that the average service lives without net salvage is more appropriate. The subjective assertion fails to meet the requirements of the Rule. The utility has not provided any evidence to show that it has received no net salvage on these accounts or that the net salvage rule should not be applied.
10. Moreover, KWRU's reliance on the fact it has failed to include net salvage in past rate cases as being consistent with the Commission's longstanding interpretation of the Rule is erroneous, irrelevant, and legally insufficient. Section 120.542(5), Florida Statutes, requires a person who is subject to regulation by an agency rule file a petition for waiver or variance with the agency. Granted the utility may have a perception that the Commission may have somehow waived enforcing its own rule in the past, in the absence of external objections. However, there is no lawful basis cited by KWRU that past inaction by the Commission constitutes a waiver of enforcement of its own rules in the present absent a timely petition for waiver or variance that satisfy the underlying purposes of the statute. An agency cannot

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<sup>2</sup> While the Petition also referenced section (7) of the Rule in footnote 2, it does not appear to be applicable. Under section (7), to provide time for study development, any application for remaining life guidelines should be submitted at least six months before the filing for a test year in connection with a request for a revenue rate increase. No depreciation study was submitted six months before the test year request.

lawfully and willfully ignore its own rules. The failure of a party to intervene or object in prior cases does not create a constructive revocation of the Rule. The Rule requires use of the net salvage in the guidelines absent a timely and substantiated request for different lives based on historical data, technical information, or utility planning that would justify a change from use of net salvage, which has not been provided. While the Commission must apply its Rules even in the absence of an objection, OPC's timely objection reinforces that the Commission must follow the Rule.

11. Since KWRU has failed to file its requested waiver for variance in a timely manner and did not provide any justification to support its untimely request, OPC request that any rate case expense associated with this petition be disallowed in the pending rate case.

Wherefore, for reasons articulated herein, OPC request that the Commission deny KWRU's Petition for Variance or Waiver of a Specific Provision of Rule 25-30.140, F.A.C.

Respectfully submitted,

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*Attorneys for the Citizens  
of the State of Florida*

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 20240108-SU**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 18<sup>th</sup> day of April, 2025, to the following:

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