

BEN E. GIRTMAN
Attorney at Law

ORIGINAL
FILE COPY

1020 East Lafayette Street
Suite 207
Tallahassee, Florida 32301-4552

Telephone: (904) 656-3232
(904) 656-3233
Facsimile: (904) 656-3233

March 17, 1997

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

HAND DELIVERY

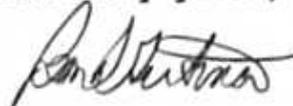
Re: Docket No. 970229-SU, Application of K.W. Resort Utilities Corporation for limited proceeding increase in reuse water rates.

Dear Ms. Bayo:

Enclosed for filing on behalf of the protestant, Key West Golf Club, are the original and fifteen copies of the Protest and Motion to Dismiss the Application for Limited Proceeding, or in the alternative, Protest and Request for Formal Hearing.

Thank you for your assistance. If there are any questions, please let me know.

Sincerely yours,



Ben E. Girtman

ACK Encl.
AFA cc w/encl.
APP William Smith, Esq.
CAF _____
CMU _____
CTR _____
EAG _____
LEG 1
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SEC 1
WAS Chase
OTH _____

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FPSC-RECORDS/REPORTING

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In re: Application of K.W.)
Resort Utilities Corporation for)
limited proceeding increase)
in reuse water rates.)

DOCKET NO. 970229-SU
Submitted for filing:
March 17, 1997

KEY WEST COUNTRY CLUB'S
PROTEST
AND
MOTION TO DISMISS
THE APPLICATION FOR LIMITED PROCEEDING
OR IN THE ALTERNATIVE
PROTEST AND REQUEST FOR FORMAL HEARING

COMES NOW Key West Golf Club, and as grounds for its protest and motion to dismiss, or in the alternative, protest and request for formal hearing, states that:

1. The applicant utility, K.W. Resort Utilities Corporation, serves a 390-unit residential community on Stock Island, just north of Key West, Florida. About half the development is built out.

2. Key West Golf Club (hereinafter referred to as "protestant", "Key West" or "the Golf Club") is the only reuse water customer of the utility (hereinafter referred to as "applicant", "K.W." or "the Utility").

3. Citicorp Real Estate, Inc. acquired the utility, the development lots and the golf course in or about 1984 in a foreclosure action. See Docket No. 850009-SU, PSC Order No. 14010, issued January 18, 1985, attached hereto as Exhibit "A".

4. Ten years later, in 1994, Citicorp sold the development lots, the golf course and club to a separate entity, Key West

Country Club Development, Inc. Citicorp retained ownership of the utility through its subsidiary, K W Resort Utility Corporation. Within a few weeks, the golf course and club were sold by the new owner to Key West Golf Club, which is owned by Gwen H. Smith. Therefore, three separate owners now own the utility, the remaining development lots, and the golf course.

5. On October 19, 1994, Citicorp and the new Golf Club owner entered into a Water Reuse Agreement whereby the Golf Club would pay \$.25 per 1,000 gallons of reuse water, based on the cost allocation of \$.38 per 1,000 gallons.

6. To implement the Reuse Water Agreement, the Utility applied to the Public Service Commission for approval of the new class of service and for approval of the reuse agreement and the utility's tariff for that service. (See Docket No. 941323-SU.)

7. In response to the utility's request for approval of the reuse agreement, the Staff Recommendation in docket No. 941323-SU (attached here to as Exhibit "B") indicated that:

Staff responded to the utility on December, 30, 1994 requesting cost justification for the new rates and charges pursuant to Section 367.091(5), Florida Statutes. . . .

* * *

The utility submitted the necessary information to the Commission on January 20, 1995. The cost justification submitted by the utility substantiated a \$.38 per 1,000 gallons charge in order for the utility to recover the additional labor costs, and the increase in pumping costs incurred by the utility in providing this service. . . . [Page 2]

* * *

. . . Staff believes that the proposed charges [of \$.25 per 1,000 gallons] are just, reasonable, and compensatory. . . [Emphasis added; Staff Rec, page 4]

8. By its Order No. PSC-95-0335-FOF-SU issued on March 10, 1995, the Commission approved the new class of service, the reuse agreement and the tariff. A copy of that order is attached hereto as Exhibit "C". The Commission also found that the Key West Country Club's Surface Water Management Permit issued in October, 1981, required that golf course irrigation water be provided by secondarily treated sewage effluent. The developer/utility owner apparently has operated the utility and the golf course for thirteen years (between getting the permit in 1981, Citicorp taking over by foreclosure in 1984, and Citicorp selling the golf course in 1994) without having the golf course ever make any payment to the utility for reuse water for the golf course. Only after the golf course had been sold to a non-related entity did the utility seek to impose a charge for reuse water. [Order, page 2]

9. The 1995 Commission Order also stated that:

. . . the utility submitted a cost justification for the new rates and charges. This cost justification substantiates a \$.38 per 1,000 gallons charge in order for the utility to recover the additional labor costs and the increase in pumping costs incurred in providing this service. [Order, page 1]

* * *

. . . We find that the proposed rates and charges [of \$.25 per 1,000 gallons] are just, reasonable, and compensatory. . . [Emphasis added; Order, page 2]

10. Along with its current application, the utility has now submitted a "Special Report, Reuse Rate Increase, January 10, 1997" alleging that instead of the costs of \$.38 per 1,000 gallons which it substantiated as the cost in the 1994 docket, the utility now alleges that the cost per 1,000 gallons is \$1.60, which is \$1.22 or an alleged cost increase of 321 percent in just over two years! In the 1994 docket, the Commission set a fee of \$.25 per thousand gallons of reuse water based on the cost justification of \$.38. Now the utility is asking for a fee of \$1.25 based on its alleged cost of \$1.60 per thousand gallons. The utility arrives at this increase by what appears to be improper, arbitrary or unsupported allocations of the costs of effluent treatment, contrary to the requirements of the Commission and of the statutes cited in the application.

11. In its Order No. PSC-95-0335-POF-SU, the Commission also noted that, "In 1993, K W Resort reported operating revenues of \$261,455, and a net loss of \$275,860." The utility has been continuously operating at a loss, and the application for limited proceeding acknowledges that it is continuing to operate at a loss. At present, and even prior to the sale of the golf club, the utility has not sought to recover a fair return on its investment from its sewer customers.

12. The early history of the utility is summarized in Commission Order No. 14620 issued on July 23, 1985 in Docket No. 830386-S. The subject utility originally was named Stock Island Utility Company, holding sewer certificate 198-S. A copy of Order

No. 14620 is attached hereto as Exhibit "D". In that docket, the utility had sought a rate increase, but before the case went to hearing a stipulation was reached with the intervenor, Office of Public Counsel. The level of revenues which the utility was willing to accept was 60% less than it had requested and 20% less than the Commission had allowed on an interim basis. That is an indication that the Commission should take a hard look at the numbers in the current "cost justification" submitted by the utility before taking any action which will have such a significant impact on the utility's customers.

13. The Commission apparently has never considered this utility's rate base, costs, or other matters relevant and necessary to be considered in a general rate proceeding. Even if a general rate proceeding had been held prior to 1985, the changes which have likely occurred since then do not enable the Commission to make cost allocations like the ones the utility is now seeking in a limited proceeding.

14. The filing of an application for limited proceeding is improper under the current circumstances. The Commission cannot properly assess the costs of the utility, and consider the burdens which each class of customers should bear, without having a general rate proceeding. Only then can the costs be properly considered.

15. While reviewing the history of this utility, protestant could find only two other rate adjustment cases for the utility, both of which were price index rate adjustments (see Docket Nos. 850573-SU and 890993-SU). These do not allow the full analysis

available in a general rate proceeding, and they cannot support the limited proceeding sought in this docket.

16. The current application for limited proceeding states on page 3 that:

. . . K.W. Resort believes that processing of this request for an increase in reuse rates is a prerequisite to the determination of both the appropriate amount of and timing of any proposed increase in wastewater rates to be filed by the Applicant in the future. Rather than pursue a full rate case to recover this one charge needing immediate consideration and in order to properly assess the timing of and amount of any increase in wastewater service charges, the Applicant hereby requests that this change in reuse rates be recognized in a limited proceeding. . . . [Emphasis added.]

17. This "one charge" has already been addressed in 1994, when the Commission imposed a charge of \$.25 on the utility's own substantiated costs of \$.38 per 1,000 gallons. If there has been need for "immediate attention" to the reuse charge, it should have been done in the thirteen years during which Citicorp, the common owner of the development and the utility, also owned the golf course.

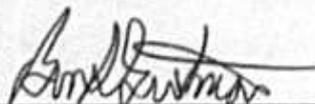
18. Why the sudden urgency? Citicorp, the utility owner, is now contemplating an imminent sale of the utility.

19. The proper method of addressing the rates of the utility, if the owner is serious about doing so, is to file a general rate application so that all costs can be analyzed and properly allocated among all classes of customers, not just try to load the wastewater costs onto one customer prior to imminent sale of the utility.

20. And finally, upon information and belief, the Key West Golf Club has not been served with notice of this application and has not been provided a copy thereof by the utility. A Golf Club representative learned from another source about a possible pending application, and protestant herein had to inquire at the Commission before determining that an application had, in fact, been filed.

WHEREFORE, Key West Golf Club protests the application for limited proceeding and moves to dismiss the application, or in the alternative, protests the limited proceeding and requests a formal hearing pursuant to Section 120.57, F.S.

RESPECTFULLY SUBMITTED this 17th day of March, 1997.



Ben E. Girtman
Fl Bar No. 186039
1020 E. Lafayette St., Suite 207
Tallahassee, Fl 32301
(904) 656-3232

- Attorney for Protestant,
Key West Golf Club

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and fifteen copies of the foregoing have been filed with the Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Blvd., Tallahassee, FL 32301, and that a copy has been sent to F. Marshall Deterding, of Rose, Sundstrom & Bentley, 2548 Blairstone Pines Drive, Tallahassee, FL 32301, by hand delivery this 17th day of March, 1997.


Ben E. Girtman

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of CITICORP REAL ESTATE, INC. to acknowledge ownership of assets of Stone Island Utility Company. DOCKET NO. 850009-89 ORDER NO. 14018 ISSUED: 1-18-85

The following Commissioners participated in the disposition of this matter:

JOHN B. WARRS, III, Chairman
JOSEPH S. GIBBS
FRANK S. LEISNER
KARLE WICKOFSKI

GEORGE ACHON, PRESIDING TRANSCRIBER OF
MEETING AT STONE ISLAND UTILITY COMPANY

BY THE COMMISSION:

On January 1, 1985, Citicorp Real Estate, Inc. (Citicorp), filed a petition with this Commission requesting that this Commission issue an order acknowledging the ownership in K W Barrett Utility Corporation, a subsidiary of Citicorp, of the assets including Certificate No. 184-S, formerly owned by Stone Island Utility Company.

Documents filed with the petition show that Citicorp held a mortgage on the assets of Stone Island Utility Company and a said mortgage was in default on November 19, 1984, upon which the Citicorp Court of the 18th Judicial Circuit made final judgment of summary judgment in favor of Citicorp. Citicorp Real Estate, Inc. vs. Citicorp Real Estate, Inc., Case No. 84-1233-C-18.

On December 21, 1984, the Court issued the Order on Plaintiff's (Citicorp) motion for Judgment which has been received in this docket. In that Order, the Court stated in part (page 3, paragraph 3): "that the Receiver shall not turn over any assets of Stone Island Utility Company until an Order is entered by the Florida Public Service Commission, authorizing Receiver to transfer to K W Barrett Utility Corporation and further authorize the transfer of the electric accounts, representing the assigned electric rate increase authorized by the Florida Public Service Commission, to K W Barrett Utility Corporation. As soon as the aforementioned assets, together with all other assets of the utility company shall be transferred by the Receiver from the Receiver to K W Barrett Utility Corporation, the Receiver shall immediately advise the Receiver of the transfer of such assets and report periodically to the Court."

While Citicorp alleged in its petition that it held a mortgage on the assets of Stone Island Utility Company including Certificate No. 184-S and had acquired such as the foreclosing sale, we do not recognize any property interest in such certificates that would enable the holder thereof to effectuate a transfer without this Commission's approval. The authority to approve such transfers rests solely with this Commission under Chapter 387, Florida Statutes, when found to be in the public interest.

Section 387.07(1)(c), Florida Statutes, gives an authority to establish the time and the terms of a transfer. We do not have the relevant financial data before us at this time so we will defer the establishment of a rate base until a more appropriate time when we will consider whether there should be an establishment of a rate base.

WE ORDER that Citicorp's petition should be granted as a request for a transfer of assets and certificates of ownership of Section 387.07(1)(c), Florida Statutes, and do issue an order that the transfer of Certificate No. 184-S and the assets previously owned by Stone Island Utility Company, including the facilities, real property and the electric account (including the electric rate increase authorized by this Commission) to the public interest and should be approved.

IT IS, therefore,

ORDERED BY THE Florida Public Service Commission that the petition of Citicorp Real Estate, Inc., for recognition of the ownership of the assets of Stone Island Utility Company, shall be granted as a request for the approval of the transfer of the facilities and Certificate No. 184-S pursuant to Section 387.07(1)(c), Florida Statutes, be and hereby is approved. It is further ORDERED that the Receiver, James A. Pionzer, transfer as Comptroller of Citicorp Real Estate, Inc. all certificates and all assets owned by the said Stone Island Utility Company, and all assets of K W Barrett Utility Corporation upon the date of this Order or as soon thereafter as may be reasonably effectuated, it is further

ORDERED that the Receiver, James A. Pionzer, transfer to K W Barrett Utility Corporation the electric account of Stone Island Utility Company which consists of monthly customer fees imposed by Stone Island Utility Company since the issuance of this certain electric rate increase authorized by the Florida Public Service Commission on December 15, 1983, pursuant to Florida Public Service Commission Order No. 12784. It is further ORDERED that K W Barrett Utility Corporation shall hold the said Order in the same said electric account and shall have no disposition of these said funds, pending the further Order of this Commission. It is further

ORDERED that the Receiver, James A. Pionzer, transfer as Comptroller of Citicorp Real Estate, Inc. all certificates of ownership of Section 387.07(1)(c), Florida Statutes, and do issue an order that the transfer of the assets of Stone Island Utility Company, including the facilities, real property and the electric account (including the electric rate increase authorized by this Commission) to the public interest and should be approved.

ORDERED that K W Barrett Utility Corporation is found to have adequate all responsibilities, duties, obligations, and liabilities which previously belonged upon Stone Island Utility Company, pursuant to Chapter 387, Florida Statutes, and the rules and regulations of the Florida Administrative Code, adopted pursuant to that said statute.

BY ORDER OF THE FLORIDA PUBLIC SERVICE COMMISSION, this 18th day of January, 1985.

SECRETARY
COMMISSION CHIEF

