

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 070293-SU

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**KW RESORT UTILITIES' RESPONSE TO
CITIZENS' MOTION TO PERMIT ADDITIONAL INTERROGATORIES
AND PRODUCTION OF DOCUMENTS
AND MOTION FOR PROTECTIVE ORDER**

KW Resort Utilities ("KW") hereby responds to the above-reference motion of the Office of Public Counsel ("OPC") and in support thereof would state as follows:

Motion for Protective Order

1. The Order Establishing Procedure provides that discovery in this case shall be limited and that the number of Interrogatories shall be limited, including all subparts, to 100.
2. OPC's Motion candidly acknowledges, in paragraph 9, that OPC's First Set of Interrogatories number 178, including subparts. Setting aside for a moment OPC's extraordinary and unjustified request for the right to send an *additional 222* interrogatories, beyond the first set,

CMP _____
 COM _____ and therefore constitutes unauthorized discovery. OPC's tendering, within six days of receiving
 CTR _____ an *Order* directing that the number of interrogatories shall be limited to 100, 78 more
 ECR _____
 GCL _____ interrogatories than are allowed by that *Order*, is clear violation of that Order.

- OPC _____ 3. OPC knew, when it tendered the 178 interrogatories, including subparts, that the
 RCA _____
 SCR _____ Order Establishing Procedure in this case required parties to seek clarification or make specific
 SGA _____ objections to a discovery request within ten days of service. Because the 178 interrogatories

SEC _____
OTH com records

constitute unauthorized discovery in violation of the Order Establishing Procedure, a burden is placed upon KW which is unfair, unauthorized and improper (to review all 178 such interrogatories, including subparts, even before the Prehearing Officer can review OPC's request to expand the number of allowed interrogatories as discussed elsewhere herein). Under the Order Establishing Procedure, the parties have ten days to review discovery for clarification or objection, and 30 days to respond to discovery. OPC's actions, in contrast to the directives of that Order, effectively deprive KW of that opportunity, by attempting to force it to deal with a number of interrogatories which are unauthorized, improper and contrary to that Order.

4. Because OPC's interrogatories constitute improper and unauthorized discovery, none of those interrogatories should not be considered served upon KW until such time as the Prehearing Officer rules on OPC's motion. Any other result places KW in a position where it does not know what discovery is pending, what discovery it should be reviewing, what experts it should have looking at which interrogatory, or which interrogatories it has the burden to object to, all because KW cannot know how the Prehearing Officer will rule. OPC knew well this situation when it tendered its unlawful and improper number of interrogatories and there is no reason, given the time frames in this case, why it should not have waited until its Motion was acted upon before it tendered 178 interrogatories.¹

Response to OPC's Motion

5. In administrative proceedings in the State of Florida, parties may obtain discovery through the means and in the manner provided in Rules 1.280 - 1.400, Florida Rules Of Civil Procedure. Rule 28-106.206, Fla.Admin.Code. The Florida Rules of Civil Procedure provides that

¹Because OPC's Request for Production of Documents is consistent with the Order Establishing Procedure, KW will deal with them consistent with the Order.

interrogatories shall not exceed 30 (Rule 1.340(a)) and that objections to interrogatories and requests to produce shall be made within 30 days of service of the same. In the Order Establishing Procedure in this case (as in most cases before the Commission), the Prehearing Officer has taken the extraordinary step of expanding the number of allowed Interrogatories to 100, expanding the allowed Request for Admissions to 100, allowing 100 Requests for Production, and of requiring that any requests for clarification or specific objection shall be made within 10 days of service of the discovery request. OPC has asked for the extraordinary extension of these liberal discovery provisions by requesting a maximum of 400 interrogatories and 200 requests for production of documents.

6. The danger of allowing such extraordinary and practically unlimited discovery is exemplified in this case by a party who, often faced with the same issues in similar cases, has on its computers extensive template-type discovery. The most complex civil cases in state and federal court are subject to 30 interrogatory limitations. The limitations of both the interrogatories and requests to produce by the Order Establishing Procedure, while generous and expansive, are based on the Commission's experience that in some cases, discovery above and beyond that contemplated by the Uniform Rules for administrative proceedings in Florida may be necessary and appropriate. In this case, an application for an increase in wastewater rates by a Class B utility with 1500 customers, OPC hardly even attempts to explain why it needs the additional discovery, other than to offer thinly veiled innuendo with the type of routine issues which are normally at issue in these types of cases. Such reasons hardly justify the extraordinary amount of discovery which it has requested be authorized in this case.

7. OPC's motion will increase the expense the rate payers of this proceeding, will cause the needless expenditures of time and money on behalf of KW, and will (most importantly) lift from

OPC's shoulders the burden of only tendering discovery which is carefully thought out, specifically tailored for needed information, and appropriately designed to further the true purpose of discovery in this type of administrative proceeding. The gigantic net which OPC seeks to throw in this case is entirely extraordinary, which is certainly one reason why OPC has not cited a single administrative, state or federal case in support of its request.

8. Just as notable as OPC's extraordinary request, and the lack of justification for such an extraordinary amount of authorized discovery in this proceeding, is OPC's request in the opening paragraph of its Motion that it is requesting that the "Citizens (be allowed) to prepare more interrogatories and request for production of documents than permitted by the Order". Obviously, if such an extraordinary remedy is granted by the Hearing Officer, and it is the position of KW that the remedy should not be granted, then the expanded number of allowed discovery should apply to all parties, not just OPC.

WHEREFORE, in consideration of the above, KW respectfully requests the Prehearing Officer grant this KW's Motion for Protective Order and determine that OPC's Interrogatories, however many are ultimately allowed, only be deemed served on the date of the Prehearing Officer's Order. Additionally, KW respectfully requests the Prehearing Officer deny OPC's Motion to Permit Additional Interrogatories and Request for Production of Documents for all of the reasons stated herein.

Respectfully submitted this 24th day of
September, 2007, by:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail and e-mail to the following this 24th day of September, 2007:

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