

Ruth Nettles

From: DAVIS.PHYLLIS [DAVIS.PHYLLIS@leg.state.fl.us]
Sent: Wednesday, October 31, 2007 4:47 PM
To: Filings@psc.state.fl.us
Cc: martyd@rsbattorneys.com; Ralph Jaeger; REILLY.STEVE; Kim Dismukes
Subject: 070293 filing
Attachments: Motion to Compel 10-31-07.doc

Electronic Filing

Stephen c. Reilly, Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330
Reilly.Steve@leg.state.fl.us

b. Docket No. 070293-SU

In Re: Application for increase in Wastewater rates in Monroe County by KW Resort Utilities Corp.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of seventeen (6) pages.

e. The documents attached for electronic filing is Citizens' Motion to Compel KW Resort Utilities Corp to Respond to OPC's First Set of Production of Documents and Request for Extension of time to File Prefiled Testimony

Phyllis Philip-Guide
Assistant to Stephen C. Reilly, Associate Public Counsel.
Office of Public Counsel
Telephone: (850) 488-9330
Fax: (850) 488-4491

DOCUMENT NUMBER-DATE

09920 OCT 31 5

FPSC-COMMISSION CLERK

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

October 31, 2007

**CITIZENS' MOTION TO COMPEL KW RESORT UTILITIES CORP. TO
RESPOND TO OPC'S FIRST SET OF PRODUCTION OF DOCUMENTS AND
REQUEST FOR EXTENSION OF TIME TO FILE PREFILED DIRECT
TESTIMONY**

The Citizens by and through their undersigned counsel, hereby file this Motion to Compel KW Resort Utilities Corporation ("KWRU," "Utility," or "Company") to respond to OPC's Amended First Request for Production of Documents ("PODs") and request an extension to file its prefiled direct testimony, and states as follows:

I. Chronology of Events

1. The dates surrounding discovery matters are listed below to put the nature of the Company's failure to timely respond to OPC's First Set of PODs into perspective.

(a) September 17, 2007, Citizens filed a Motion to Permit Additional Interrogatories and Production of Documents.

(b) September 17, 2007, Citizens filed its First Set of Interrogatories and First Request for Production of Documents.

- (c) September 24, 2007, KWRU filed its Response to OPC's Motion to Permit Additional Interrogatories and PODs, and it filed a Motion for Protective Order.
- (d) September 27, 2007, the Commission issued Order PSC-07-0786-PCO-SU First Order Revising Order Establishing Procedure; Order Granting in Part and Denying in Part OPC's Motion to Permit Additional Interrogatories and Production of Documents; and Order Granting in Part and Denying in Part the Utility's Motion for Protective Order ("Amended Procedural Order").
- (e) September 27, 2007, Citizens submitted an Amended First Set of Interrogatories and Amended First Request for Production of Documents to KWRU.
- (f) September 27, 2007, at KWRU's request, Citizens submitted an Amended First Set of Interrogatories and Amended First Request for Production of Documents to KWRU that contained the strike and edits from the original First Set of Interrogatories and First Request for Production of Documents.
- (g) October 25, 2007, the Commission issued Order No. PSC-07-0851-PCO-SU addressing discovery disputes and amending the procedural dates of this proceeding. In that Order the Company was ordered to produce responses to OPC's First Set of Document Requests on or before October 26, 2007, with the exception of responses to PODs 23, 24, 25, and 39, which are due on or before November 1, 2007; and the Company was ordered to state if information was not being provided because no such costs or charges exist.
- (h) On October 26, 2007, the Company delivered responses to OPC's First Set of PODs.

II. KWRU's Failure to Respond

2. The Company responded to POD numbers 1 through 62 with the following response: "The documents will be produced to the extent that they exist." No documents were produced in response to OPC's First Set of PODs. The Citizens are unsure how these responses should be interpreted. Should the interpretation be that since no documents were produced, none exist? Or, should it be that the Company has simply failed to respond as ordered by the Commission?
3. For purposes of this Motion, the Citizens will assume that KWRU has simply failed to respond as ordered by the Commission.
4. The Utility has had 38 days to respond to the Citizen's First Set of Production of Documents. KWRU failed to provide any reason why the documents requested have not been produced. The Utility did not contact OPC indicating that its responses would be late. The Citizens are dismayed at the Utility's complete and utter disregard for the Commission's Amended Procedural Order and the discovery dates set in that Order.
5. The Commission should order the Company to immediately respond to OPC's First Set of PODs. In addition, to the extent that a document does not exist, KWRU should be ordered to so state; otherwise, the Citizens will be left to speculate as to whether or not a response to a POD is merely late or does not exist.

III. Request to Extend Prefiled Direct Testimony Filing Date

6. The Citizens are severely hampered by the Company's failure to timely respond to its First Set of PODs. KWRU's failure to respond to the Citizens' PODs has essentially ensured that the Citizens will be unable to ask follow-up discovery and obtain responses to this discovery in time to incorporate such responses into the filing of its prefiled direct testimony, due December 7, 2007. For each day that the Utility does not respond, the Citizens have one less day to evaluate the documents that were supposed to be produced on October 26, 2007.

7. Due to the failures of the Company to respond timely to the Citizen's First Set of PODs, the Citizens request that the Commission grant a day-for-day extension of the filing of the Citizens' prefiled direct testimony (and Staff's testimony) without any extension to the filing date for the Company's rebuttal testimony. This is an extremely complex case involving a time span of over 20 years since the Utility last filed a rate case, numerous affiliate relationships, and a grand jury investigation concerning a central vacuum sewer system added to the Company's rate base. The Company's delay in responding to OPC's PODs is a detriment to the Citizens' ability to prepare for the filing of its prefiled direct testimony. An extension of the prefiled direct testimony filing date is a reasonable cure for this harm.

WHEREFORE and in consideration of the above, the Citizens respectfully request that the Prehearing Officer order the Company to immediately respond to PODs 1 through 62, , in the Citizens' First Set of Production of Documents, except for PODs 23, 24, 25 and 39 which are due on or before November 1, 2007. To the extent that documents do not exist, the Company should be ordered to so state such in the affirmative. The Citizens also respectfully request that the Commission grant a day-for-day extension of the filing of the Citizens' and the Staff's

prefiled direct testimony for each day past October 26, 2007, that the Company fails to produce the documents requested. Citizens request that no concurring extension should apply to the Company's rebuttal testimony.

Respectfully Submitted

s/Stephen C. Reilly
Stephen C. Reilly
Associate Public Counsel
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400
(850) 488-9330

Attorney for the Citizens
of the State of Florida

CERTIFICATE OF SERVICE

DOCKET NO. 070293-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing Citizens' Motion to Compel KW Resort Utilities Corp. to Respond to OPC's First Set of Production of Documents and Request for Extension of Time to File Prefiled Testimony has been furnished by E-mail and by U. S. Mail to the following parties this 31st day of October 2007:

Ralph Jaeger, Esq.
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

F. Marshall Deterding, Esq.
John Warton, Esq.
2548 Blairstone Pines Dr.
Tallahassee, FL 32301
Phone: 850-877-6555
FAX: 656-4029

s/Stephen C. Reilly
Stephen C. Reilly
Associate Public Counsel