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Attachments: 070293 Motion to Compel 11-26-07.pdf

Electronic Filing

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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 twenty-five (25) 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 Interrogatories and PODs and Second Set of Interrogatories and PODs; Motion for an Extension of time to Prefile Testimony or Leave to File Supplemental Testimony.

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11/26/2007

DOCUMENT NUMBER-DATE

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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

November 26, 2007

**CITIZENS' MOTION TO COMPEL KW RESORT UTILITIES CORP.
TO RESPOND TO OPC'S FIRST SET OF INTERROGATORIES AND PODs
AND SECOND SET OF INTERROGATORIES AND PODs;
MOTION FOR AN EXTENSION OF TIME TO PREFILE TESTIMONY OR LEAVE TO
FILE SUPPLEMENTAL 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 Set of Interrogatories and Request for Production of Documents and Second Set of Interrogatories and Request for Production of Documents (PODs) and requests an Extension of Time to Prefile Testimony or Leave to File Supplemental 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 Interrogatories and PODs and Second Set of Interrogatories and PODs into perspective. It is important to point out that the responses to OPC's First Set of Interrogatories and PODs were due October 26, 2007, and its Second Set of

Interrogatories and PODs were due November 7, 2007. The Company's inadequate responses to OPC's discovery have severely hampered its ability to timely file its testimony.

- (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. As a result, the Commission ordered the Company to produce responses to OPC's first set of discovery on or before October 26, 2007, with the exception of discovery

questions that the Company objected to, which were due on or before November 1, 2007. The Company was also ordered that it must identify in its responses if information could not be provided because no such costs or charges exist or due to the Company's objection.

- (h) On October 26, 2007, the Company delivered responses to Citizens' First Set of Interrogatories.
- (i) On November 1, 2007, the Company delivered supplemental responses to Citizens' First Set of Interrogatories 16 and 28.
- (j) On November 6, 2007, the Company delivered responses to OPC's First Request for PODs and Second Interrogatories and Request for PODs.
- (k) On November 7, 2007, the Company delivered documents further in response to OPC's PODs 50 and 60 and Interrogatory 78(k).
- (l) On November 8, 2007, the Commission issued Order No. PSC-07-0901-PCO-SU, ordering the Company to state which specific documents do not exist in response to OPC's request for PODs and granting Staff and OPC an additional three days to file their testimony.
- (m) Upon review of KWRU's responses to the discovery described in the preceding enumerations, the Citizens identified numerous areas wherein the responses were inadequate or nonexistent. Because the Prehearing Officer, through Staff Attorney, had instructed the Citizens of her desire to have the parties work through as many of the discovery disagreements as possible, the Citizens sent a spreadsheet specifying these deficiencies to KWRU, rather than filing a second motion to compel. This is attached as Attachment 1 to this motion.

- (n) This letter was sent on November 13,¹ asking KWRU to respond by the close of business on November 14. On November 14, the Citizens were informed that because Mr. Wharton was ill, an internal KWRU conference call would be set up for November 15 to address the issues. After not hearing from KWRU on November 15, the Citizens called KWRU on November 16 to determine the status of the overdue discovery.
- (o) On the afternoon of Friday, November 16, the Citizens were told that KWRU would meet internally on Monday, November 19 and respond to the Citizens on November 20. On November 20, KWRU produced some documents responsive to the Citizen's discovery, but it did not produce all the required information.
- (p) As a result, the Citizens are left with no alternative but to return and beseech the Commission to again compel KWRU to provide this relevant discovery information and to impose sanctions as appropriate for the failure to provide the information.

II. OPC's First Set of Interrogatories and PODs

A. No Response

2. The response to Interrogatory 30 (b) has not been received by OPC as of November 26, 2007. The requested information has not been provided. The Company has indicated in its most

¹ The Citizen's did not send its letter until November 13 because many of the Company's responses to the Citizens' First Set of Interrogatories indicated that additional information would be produced with the First Request for PODs. Therefore, the Citizens' waited for the Company to produce the documents responsive to the Citizen's First Request for PODs. Unfortunately, the Company's response to the Citizens' First Request for PODs was not responsive as indicated in the interrogatories, except in a few instances.

recent correspondence with OPC² that some additional information is forthcoming. However, OPC does not know when it will receive this information or if it will be responsive. The Citizens request the Commission order the Company to respond immediately. In accordance with Order No. PSC-07-0851-PCO-SU, the Company should state if data does not exist or the Company has an objection.

B. Nondefinitive Response

3. In numerous responses to Citizens' interrogatories, the Company provided vague references to unidentified Document Requests. The responses include the following:

- a. "Documents responsive to this Interrogatory are being produced in response to the Request for Production of Documents."
- b. "The documents will be produced in response to OPC's Document Request."
- c. "Documents will be provided responsive to the remainder of the Interrogatory in response to OPC's Document Request."
- d. "Further responsive documents with this information will be produced to OPC as a part of the production and inspection per OPC's First Request to Produce."
- e. "Responsive documents with this information will be produced to OPC as part of the production and inspection per OPC's First Request to Produce."

4. KWRU's vague references to documents do not constitute bona fide answers to the interrogatories.

According to Rule 1.340(c), Florida Rules of Civil Procedure,

"When the answer to an interrogatory may be derived or ascertained from the records of the party to whom the interrogatory is directed or from an examination,

² Letter from John L. Wharton to Steve Burgess, dated November 20, 2007.

audit, or inspection of the records or from a compilation, abstract, or summary based on the records and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party to whom it is directed, an answer to the interrogatory specifying the records from which the answer may be derived or ascertained and offering to give the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect the records and to make copies, compilations, abstracts, or summaries is a sufficient answer. An answer shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party interrogated, the records from which the answer may be derived or ascertained, or shall identify a person or persons representing the interrogated party who will be available to assist the interrogating party in locating and identifying the records at the time they are produced.”

The requirements of this Rule were further amplified in the Citizens’ instructions to the Utility, “If an interrogatory...asks for information that has already been provided, please so state, indicating the date provided and, if applicable, the interrogatory number, the request of production number or staff data request that requested the information.” Further, the purpose of an interrogatory is to obtain answers and information that the Company has in its possession, custody, or control. The Citizens’ interrogatories asking for information and data do not constitute document requests. Where an interrogatory requests data, the data should be provided in response to the interrogatory. KWRU should be required to supply answers to the interrogatories, rather than refer to an existing document.

5. Finally, by directing OPC to review documents it has yet to receive simply delays the proper response to legitimate discovery.

6. KWRU’s answers do not indicate the specific Document Request number that contains the answer to the Interrogatory. At the very least, KWRU should be compelled to state for every response that refers to a Document Request the specific Document Request number where the answer is located.

7. OPC has identified the following Interrogatories as being answered in the nondefinitive manner described above: 34 (e) and (f) and 38. The requested information has not been provided. The Company has indicated in its most recent correspondence with OPC³ that some additional information is forthcoming. However, OPC does not know when it will receive this information, if it will be responsive, or even provided. The Company's correspondence did not specifically identify where it was providing additional information.

C. Specific Interrogatories and PODs

8. OPC believes that many of the original and supplemental responses to OPC's First Set of Interrogatories and PODs are not responsive. However, for several of these responses OPC is hopeful that it can obtain the information required from the Company during depositions scheduled for November 27 and 28. Therefore, here OPC will only address those where we do not believe a deposition will serve our needs.

9. The Commission should order the Company to provide responsive answers to the following interrogatories:

- a. Interrogatory 7(f): For each non-utility and non-regulated affiliated company that provides services to the Company, state the total amount of costs charged (or allocated) to the Company by Uniform System of Accounts (USOA), for the years 2002, 2003, 2004, 2005, 2006, and each month of 2007.

KWRU Original Response: The answer to this question is within the information provided in response to Interrogatories 8, 9, and 11.

KWRU Supplemental Response: The answer to this question is within the information provided in response to Interrogatories 8, 9, and 11.

These interrogatories specifically ask the same question, in greater detail, for the specific entities which would otherwise be included in this response.

³ Ibid.

OPC Response: KWRU's responses to Interrogatories 8 and 9 do not state the total amount of costs charged or allocated to the Company from each non-utility and non-regulated affiliated company that provides services to the Company.

The Company's response to Interrogatory 8 is: "No costs are allocated. Amounts are either direct charged or are paid a flat rate for specific services." Clearly no information as requested in Interrogatory 7(f) was provided in this response because the Company stated that no costs were allocated. Interrogatory 7(f) asked for allocations or amounts **charged** to the Company by USOA. If it is not available in that format, it can be provided in the format nearest to the request.

The Company's response to Interrogatory 9 is: "Green Fairways, Inc., Key West Golf Course, and WS Utility, Inc. are not public utilities, nor are they regulated, so their books are not maintained by NARUC account number and no translation of accounts to NARUC has ever been performed." The Company essentially refused to provide information as requested in this interrogatory because the affiliates do not follow the NARUC accounting system. Since no information was provided, the Company could not have responded to Interrogatory 7(f), which did not ask for the information in the NARUC accounting system as used by the affiliate, but according to USOA used by the Company.

The Company's response to Interrogatory 11 provides charges from Keys Environmental; however, the data provided only covers 2004, 2005, 2006, and 2007 to-date. In its Second Order Revising Order Establishing Procedure; Order

Granting in Part and Denying in Part KW Resort Utilities Corp's Request for Extension of Time, Request for Clarification, and Objection to OPC's Amended First Request for Production of Documents and First Set of Interrogatories and Order Granting in Part and Denying in Part the Office of Public Counsel's Motion to Compel ("Second Amended Procedural Order"), the Commission ordered KWRU to respond to all requests for expense data that are from 2002 forward. Therefore, the Commission should require KWRU to provide for all non-utility and non-regulated affiliated companies that provide services to KWRU the total amount of costs charged (or allocated) to the Company by USOA for the years 2002, 2003, 2004, 2005, 2006, and 2007 to-date.

- b. Interrogatory 28 (c): For each entity identified in response to (a), please indicate the amount of all compensation (including but not limited to salary, dividends, bonuses, and income) received by each Mr. Smith, for the years 2002, 2003, 2004, 2005 and 2006, stated separately.

KWRU Original Response: No response provided.

KWRU Supplemental Response 1: For almost all of these companies, there is no charge, directly or indirectly, to the County or any other entity, costs (expense or capital) to the utility. Mr. Smith has already provided a sworn statement to the PSC that his compensation from all sources is in excess of \$1 million per year, and has been in excess of \$1 million per year for all such years. The information is not being provided for any company which did not charge, directly or indirectly, to the County or any other entity, costs (expense or capital) to the utility. For Green Fairways, title and ownership interest is as set forth below. For KW, title and ownership interest is as set forth below. Mr. Bart Smith and Mr. Alexander Smith are owners and directors of WS. Mr. Bart Smith and Mr. Alex Smith each own 10% of WS. Mr. Alex Smith owns 3.5% of 900 Commerce. Mr. Bill Smith is an owner and provides leadership, expertise and management and administrative skills to the operation of the utility. Mr. Smith is an owner, partner, employee, stock holder, officer, director, secretary or treasure[r] in SHB, KWRU, Green Fairways, Bencia Partners, Courtland, CT., 900 Commerce. Rail Golf Club, Deer Creek Golf Club, S&K, Gulf County, Norcor Tradewinds and Norcor Caldwell, and Antioch Golf Club. Documents which reveal any [compensation] received by Mr. Smith which was charged to KW will be provided. As to Mr. Smith's involvement in the various other

entities listed above, he does not maintain time records. Mr. Bart Smith and Mr. Alexander Smith only devote minimal time to WS.

KWRU Supplemental Response 2: This information is not within the possession and control of KW Resort Utilities, Corp. and is also to some extent, covered by the protective order granted in Order No. PSC-07-0851-PCO-SU.

OPC Response: The Company's original response does not contain any compensation information as requested. Furthermore, the Company states that "Documents which reveal any [compensation] received by Mr. Smith which was charged to KW will be provided." No such documents were provided.

In its supplemental response, the Company appears to have changed its mind. Contrary to the Company's claim, the information is in the possession of Mr. Smith, who is the owner of the Utility that is seeking the rate increase in this proceeding. Mr. Smith can clearly make the requested information available. OPC believes the information is relevant and necessary to this proceeding because it will help determine if the fees charged to the Utility by Mr. Smith are reflective of the time he might spend conducting utility business. Mr. Smith does not keep time records, so there is no objective way to establish reasonable compensation based upon the time spent conducting utility business. Therefore, OPC seeks the requested information to assist in determining reasonable compensation and time spent conducting utility business. The Company should be ordered to provide the requested information.

- c. Interrogatory 33: Provide the analogous information depicted on the page entitled "Key West Golf Club Administrative Fees Charged on a Monthly Basis to KW

Resort Utilities Corp.” for each year 2003, 2004, and 2005, and 2007. This document is contained in Volume IV of the MFRs for 2006.

KWRU Response: The documents will be produced in response to OPC’s Document Request.

KWRU Supplemental Response: The documents are being copied and will be produced.

OPC Response: The requested information has not been provided. The Company has indicated in its most recent correspondence with OPC⁴ that some additional information is forthcoming. However, OPC does not know when it will receive this information or if it will be responsive. Furthermore, OPC did not request documents but asked for specific information. Unless the document actually depicts the information requested, the Company should be ordered to provide the information as requested.

- d. Interrogatory 41 (b): Please provide all documents, receipts, etc., which support the amount of cash draws from petty cash as described in footnote (2).

KWRU Response: See KWGC monthly bills.

KWRU Supplemental Response: Documents related to services provided by Teo Gonzales have been provided in response to Audit Request No. 4, which has been provided with OPC’s Document Requests. Documents further responsive to this Interrogatory are being produced, in the form of cash register receipts for the various activities utilizing petty cash, and will be provided.

OPC Response: No bills for Key West Golf Course were provided with the response to the Interrogatory, nor did the Company indicate the location of the Key West Golf Course bills in its initial response. Although OPC has received Audit Request No. 4, not all the requested information has been provided. The

⁴ Ibid

Company has indicated in its most recent correspondence with OPC⁵ that some additional information is forthcoming. However, OPC does not know when it will receive this information, if it will be responsive, or even provided. The Company's correspondence did not specifically identify where it was providing additional information.

- e. Interrogatory 49 (a): Please explain in detail why Chemical Expenses increased from \$3,773 in October to \$7,152 in November and to \$11,906 in December.

KWRU Response: Our accountants did not break our supplies out of the "Chemical and Supply" categories. Please see 18 (c) for chemical amounts.

KWRU Supplemental Response: Included in the General Ledger account 01010000-Chemicals and Supplies are supplies other than chemicals. Invoices showing chemicals purchases have been provided in response to Interrogatory 18(c)

OPC Response: Neither the original nor the supplemental response explained the increase. If the Company does not know the reason for the increase, it should so state.

- f. Interrogatory 51: Please describe and provide the dollar amount of each capital addition made to the Company's wastewater system and included in rate base, which was constructed by or purchased from an affiliated Company since the Company's last full rate case before the Florida Public Service Commission. For each capital addition, please identify the affiliate that the addition was constructed by or purchased from.

KWRU Response: From 1998 forward, the information may be gleaned from the documents provided in response to the audit. For 1983-1998, please see attached.

KWRU Supplemental Response: As discussed in Interrogatory No. 7g, Green Fairways provides construction management services. No assets have been directly purchased from or constructed by Green Fairways, but construction management services have been discussed elsewhere in these Interrogatories.

⁵ Ibid.

As discussed in Interrogatory No. 2, and elsewhere within these Interrogatories, the Company purchased a generator from 900 Commerce

OPC Response: The Company has not answered the question as asked. It has not identified the dollar amount of each capital addition to the rate base, which was constructed by or purchased from an affiliated Company since the Company's last full rate case before the Florida Public Service Commission. If the cost from an affiliate has been included in rate base as a capital addition, the amounts should be identified as requested. The Company should also be instructed to identify where it believes other responsive information has been provided, not state that it has been provided "elsewhere."

- g. Interrogatory 57: For purposes of this request please refer to the testimony of Mr. Smith, pages 3 and 4. Please provide a detailed discussion of the status of the refurbishment of the existing wastewater treatment facilities including updated cost estimates.

KWRU Response: KWRU is in the midst of the AWT upgrade and expects to be complete by Jan 1, 2008.

KWRU Supplemental Response: KWRU is in the midst of the AWT upgrade and expects to be complete by Jan, 2008. See Interrogatories No. 38 and 56.

OPC Response: Interrogatory 38 was originally responded to by saying that documents would be produced. However, no documents were produced. Below are Interrogatory 38 and the Company's supplemental response.

Interrogatory 38: Please provide the status of the plant projects under construction and included in the Company's test year. This status should include, but not be limited to the following: a discussion of the status of the addition; the original estimated date of completion, the current estimated date of completion, and the actual date of completion, if applicable; the status of the engineering and permitting

efforts, if the plant addition has not been through the bidding process; the actual cost to complete the addition, the amount expended as of September 2007 if the addition is not complete, and the current estimate of the completed cost of the addition; a statement if any of the pro forma plant is required by the Florida Department of Environmental Protection, and explain why it is required.

KWRU Original Response: The documents will be produced in response to OPC's Document Request.

KWRU Supplemental Response: Documents responsive to this Interrogatory (and Document Request No. 56), in the form of Change Orders from US Filter/Davco, are being copied and will be produced.

Interrogatory 56 requested the following:

Interrogatory 56: For purposes of this request please refer to the testimony of Mr. Smith, page 5. Please provide a detailed discussion of the status of the construction of the AWT improvements including updated costs estimates.

KWRU Response: AWT project is scheduled to be complete Jan 1 2008, at a cost, of \$1,204,600 extras to original contract (\$984,600) is approx. \$220000, which includes \$100,000 in extra steel, \$100,000 extra sludge hauling and \$20,000 for demobilization. Also see attached.

The attachment provided in response to Interrogatory 56 contained documents supporting four change orders totaling \$139,470.

The Company's responses do not contain a discussion of the status of the project in the detail requested in Interrogatories 38, 56, and 57. The Company's answer is non-responsive.

- h. Interrogatory 58 (b): Describe and quantify all cost savings resulting from the resleeving and explain and show where these cost savings are reflected in the rate case.

KWRU Response: Electrical and chemical costs will be lower since we are treating less waste water, however KWRU expenses will definitely increase when we start treating to advanced wastewater treatment levels.

KWRU Supplemental Response: Electrical and chemical costs will be lower since we are treating less wastewater, however KWRU expenses will definitely increase when we start treating to advanced wastewater treatment levels and for the additional customers which will begin receiving service as a result of Code Enforcement.

OPC Response: In neither its original nor its supplemental response did the Company quantify any cost savings or submit a statement to the effect that the cost savings cannot be quantified. The answer is nonresponsive.

- i. POD 7: Please provide all current contracts (including all attachments and amendments) between the Company and outside independent contractors for 2005, 2006, and 2007.

KWRU Response: The documents will be produced to the extent they exist.

KWRU Supplemental Response: The requested documents were provided in response to PSC Audit Requests No. 5 and No. 8, which have been provided with Document Request No. 50.

OPC Response: The agreement with Weiler Engineering is provided in Audit Request 5, and the Agreement with Keys Environmental is provided in Audit Requests 8 and 4. No other agreements are identified in Audit Request 5 and 8, and several other independent contractor relationships exist, according to the Company's MFRs and general ledger transactions. The Company should be required to provide the agreements by independent contractor for the years 2005, 2006, and 2007. In an instance where an agreement has been provided in response to another discovery request, the Company should identify the contractor and the specific location of the agreement. The Company has indicated in its most recent

correspondence with OPC⁶ that some additional information is forthcoming. However, OPC does not know when it will receive this information, if it will be responsive, or even provided. The Company's correspondence did not specifically identify where it was providing additional information.

III. OPC's Second Set of Interrogatories and PODs

10. OPC believes that many of the original and supplemental responses to OPC's Second Set of Interrogatories and PODs are not responsive. However, for several of these responses OPC is hopeful that it can obtain the information required from the Company during depositions. Therefore, here we only address those where we do not believe a deposition will serve our needs.

11. The Company's original and supplemental responses to the following interrogatories and PODs are non-responsive:

- a. Interrogatory 77: With respect to costs charged to the Company by Johnson Constructors, please provide the following information for 2004, 2005, 2006, and for each month of 2007: the total dollars charged to the Company by NARUC account number and name.

KWRU Response: On October 27, 2006 KWRU paid \$34,408.80 directly to Johnson Constructors on an invoice to Green Fairways for work performed for the Utility. The check, payable to both Green Fairways and Johnson Constructors is attached. There have been no other direct charges by Johnson Constructors to KWRU or payment by KWRU to Johnson Constructors.

KWRU Supplemental Response: On October 27, 2006 KWRU paid \$34,408.80 directly to Johnson Constructors on an invoice to Green Fairways for work performed for the Utility. The check, payable to both Green Fairways and Johnson Constructors has been previously provided. There have been no other direct charges by Johnson Constructors to KWRU or payment by KWRU to Johnson Constructors.

⁶ Ibid

OPC Response: In neither the original or supplemental response did the Company provide the NARUC account number and name charged. Also the attachment was not included in the response to the Interrogatory as indicated.

- b. Interrogatory 78(b): By month state the amount paid to the Company by Monroe County (including amounts withdrawn from escrow accounts or similar accounts) in connection with construction of the South Stock Island Project.

KWRU Response: See Audit Request No. 14

KWRU Supplemental Response: See Audit Request No. 14

OPC Response: Audit Request 14 does not provide the monthly amounts paid to the Company by Monroe County in connection with the construction of the Stock Island Project. Audit Request 14 provides the contributions provided by customers.

- c. POD 68: Provide a copy of all journal entries and associated vouchers that reflect the recording of all property, plant, and equipment conveyed to the Company by Monroe County.

KWRU Response: The documents will be produced to the extent they exist.

KWRU Supplemental Response: Provided in Audit Request 3(d).

OPC Response: The requested information has not been provided. Audit Request 3(d) does not contain information regarding property, plant, and equipment conveyed to KWRU from Monroe County. The Company has indicated in its

most recent correspondence with OPC⁷ that some additional information is forthcoming. However, OPC does not know when it will receive this information, if it will be responsive, or even provided. The Company's correspondence did not specifically identify where it was providing additional information.

- d. POD 73: Please provide a copy of all contracts between and among Johnson Constructors, Keys Environmental, KWRU and its affiliates.

KWRU Response: The documents will be produced to the extent they exist.

KWRU Supplemental Response: See document request number 7

OPC Response: The Utility's original response to POD 7 is "The documents will be produced to the extent they exist." The Utility supplemented its response with "The requested documents were provided in response to PSC Audit Requests No. 5 and No. 8, which have been provided with Document Request No. 50." KWRU provided its agreement with Weiler Engineering as part of its response to Audit Request No. 5. In addition, the Company responds that it provided its agreement with Keys Environmental and AirVac in response to Audit Request No. 4. The amendment to the Keys Environmental agreement is produced in Audit Request No. 8. No agreement with Johnson Constructors has been provided.

- e. POD 75: Please provide a copy of all written responses and attachments (where available) to these PODs in electronic format.

KWRU Response: The documents will be produced to the extent they exist.

KWRU Supplemental Response: See response to Interrogatory No. 75.

⁷ Ibid.

OPC Response: Originally, the Company responded to Interrogatory No. 75 by stating, "This question would more properly be asked as a request to produce. Regardless, these documents have not at this time been scanned." In addition, the supplemental answer is "This question would more properly be asked as a request to produce. Regardless, all such documents that exist in electronic form have been provided in response to Document Request No. 1." In preparing its responses, it is perfectly clear that the Company uses electronic means of preparing and storing documents. All OPC is requesting is that those documents be provided in its original electronic form, i.e. electronic word processing documents, spreadsheets, etc.

IV. Failure to Follow Instructions and the Commission's Procedural Order

12. As part of the Citizen's instructions in its Requests for PODs and Interrogatories for both Sets 1 and 2, the Company was instructed as provide an affidavit, as required by Rules of Civil Procedure Section 1.340(a), which requires that each interrogatory not objected to "shall be answered separately and fully in writing under oath." In addition, in the instructions to the Interrogatories, the Company was instructed to identify the person(s) that responded to each interrogatory. Specifically, the Citizen's instructions stated:

B. Each interrogatory is to be answered based upon the knowledge, information or belief of the Company, and any answer based upon information and belief is to state that it is given on such basis. If the complete answer to an interrogatory is not known, so state and answers as fully as possible the part of the interrogatory to which an answer is known. For each answer, or part thereof, please identify the individual or individuals who provided the information or helped in providing the information contained in the response, specifying the individual's business address, telephone number and the individual's relationship to the Company, and

please identify the witness who will be sponsoring the response and will be able to answer cross-examination questions concerning the response.

13. Despite several requests by the counsel for the Citizens and included in the most recent list of "Outstanding Discovery Matters" provided to the Company on November 13, 2007, the Company has still not provided the affidavits, nor has it identified the persons responsible for responding to the interrogatories. The Citizens request that the Commission order the Company to provide both the affidavits and identify the persons that responded to the interrogatories.

14. The Citizens and the Company have agreed to the deposition of several of the Company's witnesses and other relevant persons to be conducted on November 27th and 28th. Because of the Company's failure to properly respond to the discovery of the Citizens and the failure to provide affidavits and identify the persons responsible for responding to the interrogatories, the Citizens have been put at a disadvantage in conducting a thorough and efficient deposition.

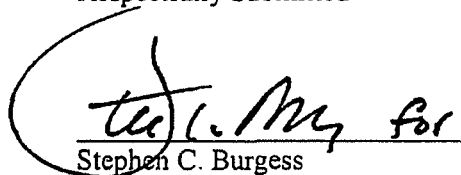
15. Finally, the Citizens note that, although identified in the attached "Outstanding Discovery Matters" provided to the Company on November 13, 2007, the Company did not follow the Commission instructions in its Procedural Order No. PSC-07-0729-PCO-SU, which states that:

(6) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number their produced documents in an unbroken sequence through the final hearing.

Citizens' realize that to require the Company to reproduce the documents provided with the ordered pagination would be expensive. Nevertheless, it is important for the Commission to realize that the lack of attention to detail has and will cause additional costs to be incurred by the Citizens and the Staff in their preparation for the depositions and formal hearing in this case. The Citizens' request that the Commission instruct the Company to properly respond to all future discovery issued by the Citizens and the Staff and to appropriately paginate the pages.

WHEREFORE and in consideration of the above, the Citizens respectfully request that the Prehearing Officer: 1) require KWRU to immediately respond to all overdue and nonresponsive answers to the Citizens' First Set of Interrogatories, Second Set of Interrogatories, and First and Second Set of PODs; 2) grant the Citizens' a day for day extension on the prefiling of its testimony or grant it leave to file supplemental testimony; 3) require the Company to identify each person responding to OPC's interrogatories; 4) require the Company to produce affidavits supporting its responses to OPC's interrogatories; and 5) require that the Company follow the Commission's procedural order regarding pagination of documents produced in response to discovery.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Stephen C. Burgess", is written over a horizontal line. The signature is enclosed within a large, hand-drawn circle.

Stephen C. Burgess
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Office of Public Counsel
c/o The Florida Legislature
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Attorney for the Citizens
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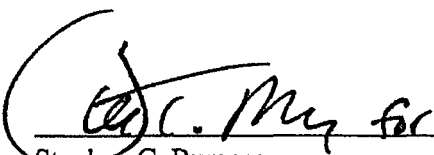
CERTIFICATE OF SERVICE

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 Interrogatories and PODs and Second Set of Interrogatories and PODs; Motion for an Extension of Time to Prefile Testimony or Leave to File Supplemental Testimony has been furnished by E-mail and by U. S. Mail to the following parties this 26th day of November 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

A handwritten signature in black ink, appearing to read "Stephen C. Burgess", is written over a horizontal line. The signature is stylized and cursive.

Stephen C. Burgess
Associate Public Counsel

ATTACHMENT 1

**Outstanding Discovery Matters
November 13, 2007**

1st Set of Interrogatories		
No Answer Provided	7(k); 27 (a) and (b); 30 (b); and 42 (c), (d), and (f)	The Company has not provided any responses to these interrogatories.
Answers Not Provided With PODs	Number	Brief Explanation
	18(b), (d), (e), (f), (g), (h), (i), (k), and (l), 19, 26(b), 31(b), 33, 34(b), (e), and (f), 38, 48, 73.	In response to these interrogatories the Company indicated that documents further responsive to this Interrogatory are being produced in response to the Request for Production of Documents. No additional documents were provided in the PODs or identified in the PODs. The company needs to state that no such documents exist, provide the documents, or identify in the PODs that have been provided, which ones are responsive to these interrogatories.
Non-Responsive	Number	Brief Explanation
	1	Did not provide legal expenses for the four years preceding the test year.
	2(d)	Information was not provided. The question did not ask about NARUC guidelines. If there was a gain or loss on the sale of the asset it should be stated.
	7(f)	The Interrogatories that the answer refers to do not to answer this question. The specific information requested should be provided.
	7(i)	Services and products for all companies listed in 7(h) were not provided.
	15	The ROGs that the answer refers to does not answer this question.
	18(j)	The Company's answer does not indicate if costs included in this category are non-recurring.
	20	The company provided the advertisements in the response to the PODs, however, it did not provide the information requested in the interrogatory.
	28(c)	Compensation information was not included.
	30(a)	This response referred to the response to Interrogatory 28, which was not answered by the Company.
	31(a)	This response referred to the response to Interrogatory 7i, which is not responsive.
	41(b)	No Key West Golf Course bills were provided.
	41(c) and (d)	It appears that the Company may have responded to these two subparts in subpart (e), however, we need confirmation that the answer holds for (c) and (d).
	42(b)	There was no explanation of why the generator was replaced.
	49(a)	No explanation is given. If the Company does not know why the cost increased, then it should so state.
	51	This response refers to the Staff audit documents, but does not say which documents are responsive.
	57	Updated cost estimates were not provided.
	58(b)	Response did not address cost savings.
	75	Documents available in electronic format, like excel spreadsheets should have been provided electronically but were not.
1st PODs		

Outstanding Discovery Matters

November 13, 2007

	5, 7, 9, 11, 20, 22, 26, 27, 29, 30, 32, 33, 34, 37, 38, 42, 44, 46, 47, 57, 58, and 61	The Company did not provide documents in response to this PODs. According to Orders PSC-07-0851-PCO-SU and PSC-07-0901-PCO-SU, the Company is to state if information cannot be provided because it does not exist. KWRU did not provide such information for these PODs. If the Company does not have supporting documentation, then it should so state.
	61	POD 61 asks for electronic documents. To the extent a document can be reproduced electronically, i.e. spreadsheets, it should be provided in that manner.

2nd ROGs

Non-Responsive	Number	Brief Summary
	76	The Company failed to provide an explanation of the relationship between Green Fairways and Johnson Constructors.
	77	Refers to an attachment but no attachment received; Also the Company did not provide the NARUC account number and name the amounts were charged to.
	78(b)	Audit Request 14 does not answer this POD.
	78(c)	Monthly interest was not provided as requested.
	78(f)	Refers to an attachment but no attachment received.
	78(g)	Refers to an attachment but no attachment received.
	78(h)	Amount of inspection fees not provided as requested.
	78(k)	The attachments do not address if any payment was withheld and the reason.
	79(b)	The Company failed to provide the amount expected to be paid at completion of AWT upgrades.
	79(c)	Need where the AWT money is deposited and the interested earned as requested.

2nd PODs

	63, 68, 73, and 75	The Company did not provide documents in response to this PODs. According to Orders PSC-07-0851-PCO-SU and PSC-07-0901-PCO-SU, the Company is to state if information cannot be provided because it does not exist. KWRU did not provide such information for these PODs. If the Company does not have supporting documentation, then it should so state.
	75	POD 75 asks for electronic documents. To the extent a document can be reproduced electronically, i.e. spreadsheets, it should be provided in that manner.

Other Matters

All Interrogatories		The Company has not produced the affidavits for Interrogatories nor has it identified the persons responsible for answering the Interrogatories as per instructions.
All PODs		The Commission's Procedural Order stated: "(6) Each page of every document produced pursuant to requests for production of documents shall be identified individually through the use of a Bates Stamp or other equivalent method of sequential identification. Parties should number their produced documents in an unbroken sequence through the final hearing." The Company failed to follow the Commission's procedural order on this matter as no documents were paginated.
CD Attachment	1, 2, 4 and 12	The Used and Useful Tab in Excel file "DEPR & CIAC AMORT.xls" contains reference errors.