

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Application for increase in )  
Wastewater rates in Monroe County by ) DOCKET NO. 150071-SU  
K W Resort Utilities Corp. )  
\_\_\_\_\_ ) FILED: APRIL 13, 2016

**PETITION OF MONROE COUNTY, FLORIDA REQUESTING FORMAL PROCEEDING  
CONCERNING THE PROTESTED PORTIONS OF PROPOSED AGENCY ACTION  
ORDER NO. PSC-16-0123-PAA-SU**

Monroe County, Florida, a political subdivision of the State of Florida, pursuant to Chapter 120, Florida Statutes,<sup>1</sup> and Rules 25-22.029 and 28-106.201, Florida Administrative Code ("F.A.C."), hereby files this petition ("Petition") protesting portions of Order No. PSC-16-0123-PAA-SU (the "PAA Order"), issued on March 23, 2016, by the Florida Public Service Commission (the "Commission"). In the PAA Order, the Commission proposed to approve, in part, certain rate increases requested by K W Resort Utilities Corporation ("KWRU").

In summary, Monroe County ("County") is a political subdivision of the State of Florida and a major customer for wastewater services from KWRU. As a customer, Monroe County's substantial interests are directly affected by the PAA Order; accordingly, the County has the right to file this Petition to request a formal proceeding concerning the protested portions of the PAA Order. In further support of this Petition, Monroe County states as follows.

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<sup>1</sup> All references herein to the Florida Statutes are to the 2015 edition thereof.

**Parties and Notice**

1. The name, address, and telephone number of the Petitioner are as follows:

Monroe County, Florida  
Monroe County Attorney's Office  
1111 12<sup>th</sup> Street, Suite 408  
Key West, Florida 33040  
Telephone (305) 292-3470  
Telecopier (305) 292-3516.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright  
John T. LaVia, III  
Gardner, Bist, Bowden, Bush,  
Dee, LaVia & Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308  
Telephone (850) 385-0070  
Facsimile (850) 385-5416

with a courtesy copy to:

Robert B. Shillinger, County Attorney  
Cynthia Hall, Assistant County Attorney  
Monroe County Attorney's Office  
1111 12<sup>th</sup> Street, Suite 408  
Key West, Florida 33040  
Telephone (305) 292-3470  
Telecopier (305) 292-3516.

3. The agency affected by this Petition is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850.

4. Monroe County is a political subdivision of the State of Florida. On March 23, 2016, the Monroe County Board of County Commissioners ("Board") authorized the filing of this Petition.

5. Monroe County obtained a copy of the PAA Order on March 23, 2016. The Notice of Further Proceedings or Judicial Review in the PAA Order provides that a petition protesting the PAA Order must be filed with the Commission by close of business on April 13, 2016. Accordingly, this Petition is timely.

**Statement of Affected Interests**

6. KWRU provides wastewater services on Stock Island in Monroe County. The County owns and operates facilities on Stock Island that receive wastewater services from KWRU, including, but not limited to the Monroe County Detention Center, the Monroe County Sheriff's Office and Headquarters, County facilities located at Bernstein Park, the Stock Island Fire Station, and Bayshore Manor, an Assisted Living Facility. The County is a large, possibly the largest, customer of KWRU. In 2015, the County paid KWRU \$201,395 for wastewater service; if the Phase I proposed rates were in effect for 2016, the County's charges would be approximately \$274,812, an increase of approximately 36 percent, and if the Phase II rates were in effect, the County's charges would be approximately \$306,031, an increase of approximately 52 percent as compared to KWRU's current rates. Thus, as a major customer of KWRU, the County's substantial interests will be directly and adversely affected by the PAA Order.

7. Moreover, even though not requested by KWRU, the PAA Order proposes substantial changes to the KWRU service availability policy and charges, including eliminating KWRU's Plant Capacity Charge (as shown on Schedule E-10, Page 1 of 1, of the Utility's MFRs) of \$2,700 per Equivalent Dwelling Unit ("EDU") (also referred to as Equivalent Residential Connection or "ERC"), and further proposing refunds to customers who have previously paid the Plant Capacity Charges but who have not yet connected to KWRU's system. The County will be substantially and adversely affected by the proposed changes to the service availability policy and charges for at least two reasons. First, eliminating KWRU's Plant Capacity Charges in the future will impose greater cost responsibility on Monroe County, which has already paid significant Plant Capacity Charges, because Monroe County will have to pay a direct pro rata share of the cost of KWRU's proposed plant expansion, which is being installed to accommodate new customers, while new customers will not have to pay a share of the capital costs of KWRU's plant comparable to the shares paid by Monroe County, and indeed, by all other existing customers of KWRU who paid significant Plant Capacity Charges - \$2,700 per EDU - when they connected to receive service. Second, the proposed treatment of already-paid Plant Capacity Charges under the PAA Order would potentially create significant questions about the administration of the County's

existing and ongoing assessment program.

8. In sum, Monroe County's substantial interests will be directly and adversely affected by the PAA Order, and Monroe County is accordingly entitled to the formal proceeding requested by its Petition.

**Disputed Issues of Material Fact**

9. Monroe County is protesting the issues in the PAA Order, as listed below. For ease of reference, and where appropriate and feasible, the Issue Number in the Staff recommendation and the heading and page numbers in the PAA Order will be specifically referenced.

10. For each issue identified below, the County protests and asserts its right to a formal proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes, including, without limitation, its rights to conduct discovery, to present evidence, including testimony and documentary evidence in the form of direct and cross-examination exhibits, to present argument on all issues involved, to conduct cross-examination, and to present rebuttal evidence on each component that goes into the calculation or determination of the main issue addressed in a given subject area, including but not limited to Rate Base, Test Year Expenses and Pro Forma Expenses, Capital Structure, Rates and Rate Structures, and KWRU's Service Availability Policy and Plant Capacity Charges. For example, refer to Schedule No. 5-A,

on page 52 of the PAA Order: that Schedule lists the components of rate base for setting Phase II rates as Plant in Service, Land and Land Rights, Non-used and Useful Components, Accumulated Depreciation, Contributions in Aid of Construction ("CIAC"), Amortization of CIAC, Construction Work in Progress ("CWIP"), and Working Capital Allowance. While the County anticipates that it will focus primarily on the amounts of Plant in Service, Used and Useful percentages, CIAC, and Working Capital, all of the components of Rate Base are necessarily encompassed in the County's protest of all issues relating to the correct amount of rate base to be used in setting Phase I and Phase II rates.

11. Monroe County also adopts and incorporates by reference all issues identified in protests filed by other parties, including, without limitation, all issues raised by the Citizens of the State of Florida in the Citizens' petition for formal proceeding (PAA protest) that the County anticipates being filed contemporaneously with the County's Petition. Further, Monroe County reserves all rights to litigate issues raised in other parties' petitions for formal proceedings, to litigate all issues raised in any party's cross-petition, and to file its own cross-petition relative to any other petition filed by a party. The following are the disputed issues of material fact identified by Monroe County at this time.

**a. Test Year**

i. What is the appropriate test year for establishing Phase II rates?

**b. Rate Base (PAA Order, pages 6-13, 27-29)**

Staff Recommendation Issues 3, 4, 5, 6, 16

i. What is the appropriate rate base for the 2014 test year?

ii. What is the appropriate amount of rate base to be used in setting Phase I rates?

iii. What is the appropriate amount of rate base to be used for setting Phase II rates?

iv. What is the appropriate amount of Plant in Service to be used in setting Phase I rates?

v. What is the appropriate amount of Plant in Service to be used for setting Phase II rates?

vi. What is the appropriate used and useful percentage for wastewater treatment plant for Phase II rates?

vii. What is the appropriate amount of CIAC to be used in determining the rate base that is used for setting Phase I rates?

viii. What is the appropriate amount of CIAC to be used in determining the rate base that is used for setting Phase II rates?

ix. What is the appropriate amount of accumulated depreciation to be used in determining the rate base that is used for setting Phase I rates?

x. What is the appropriate amount of accumulated depreciation to be used in determining the rate base that is used for setting Phase II rates?

xi. What is the appropriate amount of Working Capital to be used in determining the rate base that is used for setting Phase I rates?

xii. What is the appropriate amount of Working Capital to be used in determining the rate base that is used for setting Phase II rates?

xiii. What is the appropriate used and useful percentage for the wastewater treatment plant to be applied to Phase II rates?

**c. Cost of Capital and Capital Structure (PAA Order, pages 11-12, 29)**

Staff Recommendation Issues 7, 8, 16

i. What is the appropriate return on equity to be used in setting Phase I rates?

ii. What is the appropriate return on equity to be used in setting Phase II rates?

iii. What is the appropriate capital structure to be used in setting Phase I rates?

iv. What is the appropriate capital structure to be used in setting Phase II rates?

**d. Pro Forma Expenses (PAA Order, pages 13-18)**

Staff Recommendation Issue 11

i. What is the appropriate level of expenses for KWRU related to meeting Advanced Wastewater Treatment ("AWT") Standards?

ii. What, if any adjustment, should the Commission make to recognize the fact that KWRU's rates approved by the Commission in KWRU's last rate case included amounts to meet AWT Standards, and that those rates became effective in 2009, but KWRU did not achieve AWT standards until November or December 2015?

iii. What is the appropriate amount of expenses related to the Utility's expansion of the wastewater treatment plant for Phase II rates?

iv. What is the appropriate amount of depreciation expense to be used in setting Phase II rates?

v. What is the appropriate amount of fees associated with the legal challenge of the Utility's construction permit for the expansion of the wastewater treatment plant to be allowed for rate-setting purposes?

vi. What is the appropriate amount of amortization expense for fees associated with the legal challenge of the Utility's construction permit for the expansion of the wastewater treatment plant to be included in Phase I rates?

vii. What is the appropriate amount of amortization expense for fees associated with the legal challenge of the Utility's construction permit for the expansion of the wastewater treatment plant to be included in Phase II rates?

viii. What is the appropriate accounting treatment for the reasonable and prudent expenses associated with the legal challenge of the Utility's construction permit for the expansion of the wastewater treatment plant to be included in Phase II rates?

ix. What are the appropriate amounts of test year accounting fees to be included in setting Phase I and Phase II rates?

x. What are the appropriate amounts of rate case expense to be included in setting Phase I and Phase II rates?

xi. What are the appropriate amounts of depreciation expense to be included in setting Phase I and Phase II rates?

xii. What are the appropriate amounts of taxes other than income taxes to be included in setting Phase I and Phase II rates?

**e. Revenue Requirements (PAA Order pages 19-30)**

Staff Recommendation Issues 9, 13, 14, 15, 16

i. Are the Phase I revenue requirements that are proposed to be approved by the PAA Order appropriate? That is, will those revenue requirements, if approved, result in rates that are fair, just, reasonable, compensatory, and not unfairly discriminatory?

ii. Are the Phase II revenue requirements that are proposed to be approved by the PAA Order appropriate? That is, will those revenue requirements, if approved, result in rates that are fair, just, reasonable, compensatory, and not unfairly discriminatory?

**f. Rates and Rate Structures (PAA Order pages 30-35, 40)**

Staff Recommendation Issues 17, 18

i. Are the Phase I and Phase II rates that the PAA Order proposes for approval, specifically including the amounts of KWRU's Phase I and Phase II revenue requirements that should be recovered through Base Facility Charges and Gallonage Charges, fair, just, reasonable, compensatory, and not unfairly discriminatory? For clarity, Monroe County protests the rates both as to their overall levels and also as to the structure of

the rates as between Base Facility Charges and Gallonage Charges.

ii. Should the Commission use billing determinants (i.e., the number of customer bills by meter size and gallons used) for the period in which KWRU's new rates will be in effect, both for Phase I and for Phase II, to calculate and set KWRU's rates for the respective time periods, i.e., for Phase I rates, use pro forma projected billing determinants for the first 12 months following the effective date of the Phase I rates, and for Phase II rates, use pro forma projected billing determinants for the first 12 months following the effective date of the Phase II rates?

iii. Are the Phase I rates that are proposed to be approved by the PAA Order fair, just, reasonable, compensatory, and not unfairly discriminatory?

iv. Are the Phase II rates that are proposed to be approved by the PAA Order fair, just, reasonable, compensatory, and not unfairly discriminatory?

v. Assuming that the Commission ultimately approves a Phase II rate increase, and if the Phase II rates are not set in the final order following the formal proceeding requested by the County's Petition, what process should the Commission employ to ensure that all substantially affected parties have a meaningful point of entry to test the reasonableness and prudence of costs that will be included in such rates?

vi. Assuming that the Commission ultimately approves a Phase II rate increase, how and when should that Phase II rate increase be implemented?

vii. Is it appropriate to establish rates driven by a plant expansion needed to accommodate customer growth, where the proposed rates will nearly double the capacity of existing plant, using historical 2014 customer and consumption billing units (base facility charges and gallonage charges)?

viii. Is it appropriate to allow a true-up of plant, CIAC, and legal costs without a concomitant and matching true-up of rate base, cost of capital, revenues, expenses, and billing determinants for a growth-related plant expansion compared to non-growth-related plant improvements?

ix. What action, if any, should the Commission take regarding the charging of non-tariffed rates by KWRU?

**g. Service Availability Policy and Charges (PAA Order page 41)**

Staff Recommendation Issue 23

- i. Is the provision in the PAA Order that would require KWRU to cease collecting Plant Capacity Charges fair, just, reasonable, and not unfairly discriminatory?
- ii. What is the appropriate level of KWRU's Plant Capacity Charges?

**Statement of Ultimate Facts Alleged**

12. Monroe County asserts the following as the ultimate facts and conclusions that the Commission should reach in this docket.

- a. The Commission should use the billing determinants (i.e., the number of Base Facility Charges by meter size, and the number of gallons billed for wastewater service) for the 12-month period in which Phase I rates will be in effect for the purpose of setting KWRU's rates for that 12-month period. For example, if Phase I rates are to take effect on January 1, 2017, then the Commission should use the projected number of Base Facility Charges, by meter size, and the projected number of gallons of wastewater service billed, both projected on a pro forma basis for calendar year 2017, to calculate and set KWRU's rates to be in effect for calendar year 2017. Issue 17
- b. The Commission should use the billing determinants (i.e., the number of Base Facility Charges by meter size, and the number of gallons billed for wastewater service) for the 12-month period in which Phase II rates will be in effect for the purpose of setting KWRU's rates for that 12-month period. For example, if Phase II rates are to take effect on July 1, 2017, then the Commission should use the projected number of Base Facility Charges, by meter size, and the projected number of gallons of wastewater service billed, both projected on a pro forma basis for the 12-month period from July 2017 through June 2018, to calculate and set KWRU's rates to be in effect beginning on July 1, 2017. Issue 17
- c. Using billing determinants that match the time periods in which KWRU's costs are projected is necessary to ensure, to

the maximum extent reasonably possible, that rates paid by customers in each of the Phase I and Phase II time periods reflect the actual costs incurred by KWRU to provide service during those time periods. Issue 17

- d. The proposed rate base to be used in setting KWRU's Phase II rates is overstated and should be reduced to ensure that KWRU's Phase II rates are fair, just, reasonable, compensatory, and not unfairly discriminatory. The actual reduction will be determined by complete evaluation of plant in service amounts, used and useful percentages, accumulated depreciation, and CIAC applicable to rate base for the first 12 months of the period in which Phase II rates will be in effect. Issue 16
- e. The return on equity to be used in setting KWRU's Phase I and Phase II rates is the rate resulting from applying the Commission's leverage formula to the rate base and capital structure values ultimately approved for each set of rates. Issues 7, 8, 16
- f. KWRU's rates that were set in Docket No. 070293-SU, by Order No. PSC-09-0057-FOF-SU, included amounts for KWRU to meet AWT Standards. Those rates became effective in 2009, but KWRU apparently did not achieve AWT standards until November or December 2015. Therefore, it appears that KWRU did not spend the full amount authorized and approved by the Commission for meeting AWT Standards beginning when its 2009 rates went into effect.
- g. The Phase I revenue requirement that the Commission proposes to approve is excessive and should be reduced to ensure that KWRU's Phase I rates are fair, just, reasonable, compensatory, and not unfairly discriminatory. Issue 9, 10, 11, 15
- h. The Phase II revenue requirement that the Commission proposes to approve is excessive and should be reduced to ensure that KWRU's Phase II rates are fair, just, reasonable, compensatory, and not unfairly discriminatory. Part of Issue 16
- i. KWRU has not consistently followed its tariff in charging for wastewater service.
- j. KWRU's rates, for both Phase I and Phase II, should be calculated and set using the billing determinants (Base Facility Charges by meter size and gallons of service for which KWRU bills) for the respective 12-month periods

beginning on the date on which the Phase I rates, and the Phase II rates, respectively, will become effective. Issues 17, 18, 22

- k. The structure of rates, specifically including the amounts of KWRU's revenue requirements that should be recovered through Base Facility Charges and Gallonage Charges, must be fully evaluated to ensure that both Phase I and Phase II rates are fair, just, reasonable, compensatory, and not unfairly discriminatory. Issues 17, 18, 22
- l. The proposed provision of the PAA Order (page 41) to discontinue authorization for KWRU to collect a Plant Capacity Charge will result in rates that are unfair, unjust, unreasonable, and unfairly discriminatory. Issue 23
- m. The Commission should require KWRU to continue collecting its Plant Capacity Charge from all new customers at service locations where no Plant Capacity Charges have been paid. The amount of the charge should be \$2,700 per EDU (or ERC). Issue 23
- n. The references on page 8 of the PAA Order to "evidence" provided by KWRU are inappropriate, in that there has been no evidentiary hearing to create any evidence of record in this proceeding. Monroe County protests the references to such "evidence" in the PAA Order.

**Statutes and Rules That Entitle Monroe County to Relief**

13. The applicable statutes and rules that entitle the County to relief include, but are not limited to, Sections 120.569, 120.57(1), 367.081, 367.0816, 367.084, 367.101, and 367.121, Florida Statutes, and Rules 25-30.431, 25-30.432, 25-30.4325, 25-30.580, and 28-106.201 through 28-106.217, Florida Administrative Code.

**Statement Explaining How the Facts Alleged By Monroe County  
Entitle the County to the Relief Requested**

14. Section 120.569, Florida Statutes, provides that a person whose substantial interests are being determined in a proceeding is a party to the proceeding. Monroe County's substantial interests are being determined in this proceeding, and thus the County is entitled to participate as a party. Rule 28-106.201, F.A.C., similarly provides that persons whose substantial interests are subject to determination in agency proceedings are entitled to participate in such proceedings.

15. The above-cited provisions of Chapter 367, Florida Statutes, provide that customers of wastewater utilities are entitled to have the Commission set rates for the services provided by such utilities that are fair, just, reasonable, compensatory, and not unfairly discriminatory. Accordingly, Monroe County is entitled to have the Commission conduct the requested formal proceeding and set rates that comply with Chapter 367, Florida Statutes.

**RELIEF REQUESTED**

**WHEREFORE**, Monroe County respectfully requests the Florida Public Service Commission to conduct a formal evidentiary proceeding and hearing, as required by Sections 120.569 and 120.57(1), Florida Statutes, at a convenient time in a location that is either within or located as close as is reasonably practicable to the Utility's certificated service area.

Respectfully submitted this 13th day of April 2016.



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**CERTIFICATE OF SERVICE**

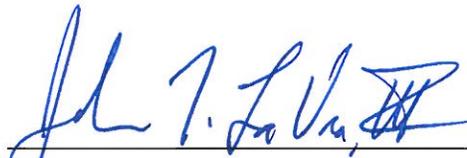
I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic mail and U.S. Mail, on this 13th day of April 2016.

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