

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 150071-SU

**K W RESORT UTILITIES CORP.'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS AND INTERROGATORIES FROM OFFICE OF PUBLIC COUNSEL**

K W Resort Utilities Corp. (“KWRU”), by and through undersigned counsel and pursuant to Rule 1.380, Fla. R. Civ. P., hereby moves this Honorable Court for an Order compelling the Office of Public Counsel (“OPC”), to provide better responses and documents in response to the Requests for Interrogatories and Requests for Production detailed below, and as grounds therefore states:

PROCEDURAL AND FACTUAL BACKGROUND

1. On March 3, 2015, KWRU filed its request for approval of a test year for rate increase in Monroe County with the Public Service Commission (“PSC”) pursuant to F.A.C. 25-30.436.
2. On July 1, 2015, KWRU complied with the PSC’s requirement to file Minimum Filing Requirements (“MFRs”).
3. On July 8, 2015, KWRU was advised that the PSC would conduct an audit (Audit Control No. 15-189-4-1). Throughout the Audit procedure, OPC was an active participant in requesting further documentation and was provided with all documentation submitted in compliance with the PSC audit.
4. OPC was supplied with responses to PSC Staff’s First Data Request, on September 14, 2015.

5. On September 25, 2015, KWRU's MFRs were deemed complete after complying with a number of additional requests.

6. On December 16, 2015, KWRU provided responses to PSC Staff's second data request which were also shared with OPC.

7. On January 19, 2016, KWRU provided additional responses to PSC Staff's third data request which were again provided to OPC.

8. On February 18, 2016, the PSC issued its Staff Recommendation. At that time, OPC had been provided all documents which formed the basis for the audit recommendation and staff recommendation by the PSC.

9. On February 24, 2016, OPC filed a Notice of Intervention.

10. On March 23, 2016, the PSC considered the Staff Recommendation at its Agenda Conference, after which time the PSC issued Order No. PSC-16-0123-PAA-SU (the "PAA Order"). In the PAA Order, the PSC proposed to approve, in part, certain rate increases requested by KWRU. Subsequently, the mandated 21 day comment and protest period followed.

11. On April 13, 2016, OPC filed its petition protesting substantially all portions of the PAA Order and requesting an evidentiary hearing on the protested portions of the PAA.

12. Upon receiving the above protest KWRU on May 5, 2016, issued its First Set of Interrogatories and First Request for Production of Documents to the OPC. The purpose of using these two discovery tools was to allow KWRU to ascertain the factual basis upon which OPC protested each issue contained within the PAA Order.

13. On June 9 and 27, 2016, OPC responded to the above requests and in its responses to KWRU's respective First Set of Interrogatories and First Request for Production, OPC utilized a blanket objection to a majority of requests. OPC stated that "[t]o the extent this

request is vague, ambiguous, overly broad, imprecise, or *premature* since the utility has yet to pre-file its testimony and exhibits, OPC objects.” (Emphasis added.) OPC utilized this objection to KWRU’s First Set of Interrogatories in responses: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44. Additionally, OPC issued the same response to KWRU’s First Request for Production in responses: 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44.

ARGUMENT

OPC’s objections to each of K W Resort Utilities Corp.’s First Set of Interrogatories and First Request for Production should be overruled, and OPC ordered to fully respond to interrogatories or produce any documents within its possession, dominion, and/or control responsive to each of K W Resort Utilities Corp.’s First Set of Interrogatories and First Request for Production because OPC’s responses and objections neither support the factual basis as required by F.S.A. § 120.569 to support a protest nor meet the standards required of discovery pursuant to the Florida Rules of Civil Procedure.

In order to support its’ protest, OPC must be responsive in this matter. As petitioner, OPC needs to make its factual basis of protest known to KWRU. KWRU has been nothing less than fully compliant and transparent with the sharing of documents and its general willingness to resolve this matter in an expedient and cost-effective manner. If KWRU is not provided with the factual support for OPC’s protests and objections, there can be no hope of resolution to this matter. Furthermore, F.S.A. § 120.569 (e) states that:

“[a]ll pleadings, motions, or other papers filed in the proceeding must be signed by the party, the party's attorney, or the party's qualified representative. The signature constitutes a certificate that the person has read the pleading, motion, or

other paper and that, based upon reasonable inquiry, *it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay, or for frivolous purpose or needless increase in the cost of litigation.*” (Emphasis added.)

Discovery is a tool intended to (1) identify at early stages of a proceeding the real issues to be resolved; (2) provide each party with all available sources of proof as early as possible to facilitate trial preparation; and (3) abolish the tactical element of surprise in the adversary trial process. *Dodson v. Persell*, 390 So. 2d 704, 706 (Fla. 1980). The purpose of modern discovery is to disclose items that may lead to evidence on the issues as framed by the pleadings. See *Caribbean Security Systems, Inc. v. Security Control Systems, Inc.*, 486 So. 2d 654, 656 (Fla. 3d DCA 1986). Revelation through discovery procedures of the strength and weaknesses of each side before trial encourages settlement of cases and avoids costly litigation. *Dodson*, at 707. Each side can make an intelligent evaluation of the entire case and may better anticipate the ultimate results. *Id.* In furtherance of the goals of discovery, Rule 1.350, Fla. R. Civ. P., allows a party to serve requests for production on opponents in litigation in order to obtain evidence on the subject matter of the case.

As the Procedural History above clearly outlines, OPC has had access and control of all documents required by the PSC to issue its PAA Order. At this current juncture, if OPC is still without an articulable basis to support its protest of the PAA Order, it is hard to imagine what OPC is hoping to adduce further down the line. OPC has been in control of all documentation submitted through the PAA process, PSC audit, and three different PSC Staff Data Requests for nearly six months, more time than is allowed for a typical rate case. The unwillingness to provide simple answers as to the basis for which OPC’s protests are lodged leads to the assumption that these protests were made in bad faith without any basis for protesting the PSC’s

PAA Order. The Commission must not allow OPC to continue on this fishing expedition considering that the ratepayers are the ones ultimately funding this frivolous proceeding.

CONCLUSION

OPC's deficient responses, as already outlined above, to KWRU's First Set of Interrogatories and First Request for Production are inadequate under both the Florida Rules of Civil Procedure and Florida Statutes. OPC is required have a factual basis prior to protesting a PAA Order. Without such factual basis, OPC is proceeding on a fishing expedition which will, and already has, caused unnecessary delay and has needlessly increased the cost of litigation—costs that will ultimately be borne by the ratepayers. The unfortunate irony is that the longer OPC remains nonresponsive and obstinate toward working to a common and necessary goal, the larger a rate increase will be necessary to offset the defense of frivolous claims lodged by OPC, the very nature of what OPC purportedly intends to avoid.

WHEREFORE, K W Resort Utilities Corp., prays this Commission enter its Order overruling OPC's objections to each of K W Resort Utilities Corp.'s First Set of Interrogatories and First Request for Production, compelling responses to said Interrogatories and Requests, and if no adequate responses or documents are available that relate to each of K W Resort Utilities Corp.'s First Set of Interrogatories and First Request for Production, provide a reasonable explanation as to why OPC is unable to provide an answer or produce any document, and granting such other further relief as this Commission deems just and equitable.

CERTIFICATION

I HEREBY CERTIFY that I have conferred, in good faith, with OPC, in an effort to secure the information or material without Commission action.

CERTIFICATE OF SERVICE
DOCKET NO. 150071-SU

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 1st day of July, 2016:

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