

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 RESPONSE IN OPPOSITION TO CITIZENS OF
THE STATE OF FLORIDA'S MOTION TO STRIKE PORTIONS OF REBUTTAL
TESTIMONY AND EXHIBITS FILED BY KW RESORT UTILITIES CORP.**

K W Resort Utilities Corp. ("KWRU"), by and through undersigned counsel, hereby files its Response in Opposition to Citizens of the State of Florida's ("OPC") Motion to Strike Portions of Rebuttal Testimony and Exhibits filed by KW Resort Utilities Corp. ("Motion to Strike"), and states as follows:

PROCEDURAL AND FACTUAL BACKGROUND

1. On June 30, 2015, KWRU filed its initial rate increase request, seeking a revenue requirement of approximately \$2,931,759 to recover costs related to modifications to its existing plant for advanced wastewater treatment ("AWT"), increased operations and maintenance ("O&M") costs and expanding its treatment plant based upon a plant in service of \$15,500,172, after pro forma adjustments.

2. After OPC and Monroe County protested the Proposed Agency Action in this matter, PAA Order PSC-16-0123-PAA-SU ("PAA Order"), KWRU cross-protested the PAA Order and on July 1, 2016, KWRU filed the direct testimony of Debbie Swain requesting a revenue requirement of \$3,345,357, based upon its request to recover additional costs for upgrades to its existing plant for advanced wastewater treatment, increased O&M costs due to AWT, expanding its treatment plant and a vacuum tank that is required to be replaced based upon a plant in service of \$16,018,641, after pro forma adjustments.

3. On September 14, 2016, in this docket, OPC filed the Direct Testimony of Patricia W. Merchant, CPA, wherein Witness Merchant testified that the amount of plant in service for Phase I rates should be \$11,108,464, and for Phase II rates should be \$15,182,830. Witness Merchant's testimony supported **lower** Phase I and Phase II revenue requirements.

4. KWRU filed rebuttal testimony and exhibits on October 10, 2016, in order to rebut Witness Merchant's stated revenue requirement support, including increases in requested revenue requirements and increased costs for construction of the plant expansion, as well as a **decreased** cost for the vacuum tank replacement. The rebuttal testimonies at issue in this Motion are the testimonies of Christopher Johnson, Edward Castle and Deborah Swain.

5. On October 28, 2016, OPC filed its Motion to Strike, alleging that KWRU "is attempting to improperly supplement its direct testimony" by introducing testimony related to engineering costs additional to the construction contract for the plant expansion.

6. Witness Merchant did not rely on Witness Johnson for the cost of the project, but rather relied on the Wharton Smith contract attached to Witness Johnson's testimony and Witness Woodcock's testimony as to the cost of the contract (See Merchant Testimony, P. 17, Lines 2 – 6). Witness Merchant also relied on Witness Woodcock's cost of the vacuum tank. (See Merchant Testimony, P. 17, Lines 16 – 22).

7. Witness Woodcock, in his Direct Testimony, provides an analysis of costs and testifies that updated actual costs, to the extent available, and updated estimates should be utilized in this proceeding. See Woodcock Testimony, P. 11, Lines 2 – 5 ("However, since the expansion will be placed into service after this rate case is concluded, the Commission should revisit the **actual expansion costs and adjustments to rate base** once the project is completed"), P. 14 – 15, Lines 22 – 23, 1 – 5 (**emphasis added**); ("[b]y the time this matter goes

to hearing in November, the vacuum tank project may be largely completed. Therefore, the Commission should be able to obtain the vacuum tank replacement contract as well as the actual costs incurred to review...”).

ARGUMENT

OPC references the general rule, as set forth in *Driscoll v. Morris*, 114 So. 2d at 315, that “it is not the purpose of rebuttal testimony to add additional facts not submitted by the plaintiff in his case-in-chief”, but fails to recognize the exception to the rule: that is, additional facts are proper where “such additional facts are required by the new matter developed by the defendant.”

Id.

As stated by Witness Woodcock, the most up-to-date cost estimates and actual costs should be at issue in this action.

The reasonable engineering and plant related costs, including actual costs of construction to date and estimates to completion, that Woodcock expressly states should be included in his testimony, OPC now puzzlingly seeks to strike. In fact, the only estimated costs that are outside the Wharton Smith’s contract cost are engineering costs in the amount of \$113,680 and \$24,030, for the plant expansion and vacuum tank, respectively, and vacuum tank estimates which are significantly lower than Woodcock’s estimates. All other costs included in rebuttal are actual costs, both of which Witness Woodcock states should be utilized.

Moreover, Witness Woodcock takes issue with the high cost of the plant, and argues for a lower cost for the vacuum tank. Witness Woodcock’s testimony is then incorporated into Witness Merchant’s direct testimony as to plant-in-service, rate base, and revenue requirement. In reaching the plant-in-service figures supported by Witness Merchant’s Direct Testimony and Exhibits, Witness Merchant used figures generated by OPC Witness Woodcock, and not figures

provided by Witness Johnson or Witness Castle. Witness Woodcock apparently assumed that the \$4.3 million construction cost (per KWRU's contract with Wharton Smith) was the entirety of plant expansion costs, and failed to consider reasonable supervisory engineering costs associated with the construction contract and other outside costs, all of which were produced in discovery and are generally associated with projects of this nature.

Based on Witness Woodcock's testimony of his analysis of the cost of the new plant and vacuum tank estimates, Witness Merchant calculates and testifies to a lower Plant-in-Service, Rate Base and Revenue Requirement, all at issues in this docket. Witness Swain, based on the very updates Woodcock states should be at issue, revises her Plant-in-Service, rate base and revenue requirement to reflect up to date estimates and actual costs. Because the overall Plant-in-Service will now be higher, leading to a higher rate base and higher revenue requirement, OPC desires to strike the rebuttal testimony which Witness Woodcock stated should be at issue. If the actual costs would have lowered Plant-in-Service, OPC would argue vehemently to include the updated costs. Certainly, OPC Witness Woodcock's testimony that up-to-date estimates and actual costs should be utilized at hearing has placed the plant-in-service and all fall out calculations at issue, and ripe for treatment in rebuttal.

Furthermore, if KWRU underearns due to the actual cost of plant expansion being greater than \$4.3 million, KWRU would be permitted to file a limited proceeding to increase rates in order to recover these costs. The limited proceeding would result in greater expense to ratepayers than the difference in cost represented by the portions of rebuttal testimony OPC prays the commission to strike. As such, equity dictates that these increased costs be adjudicated in this proceeding, in order to avoid a duplicative proceeding, where these costs are properly before the Commission in this docket.

WHEREFORE, K W Resort Utilities Corp., prays this Commission enter an Order denying OPC's Motion to Strike, and granting such other, further relief as this Commission deems just and equitable.

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 November, 2016:

Erik L. Sayler, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400
Email: SAYLER.ERIK@leg.state.fl.us

Kyesha Mapp, Esquire
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850
Email: KMapp@psc.state.fl.us

Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Gardner, Bist, Bowden, Bush, Dee, LaVia &
Wright, P.A.
1300 Thomaswood Drive
Tallahassee, FL 32308
Email: schef@gbwlegal.com
jlavia@gbwlegal.com

Robert B. Shillinger/Cynthia Hall
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
Email: hall-cynthia@monroecounty-fl.gov

Harbor Shores Condominium Unit Owners
Association, Inc.
Ann M. Aktabowski
6800 Maloney Avenue, Unit 100
Key West, FL 33040
Email: HarborShoresHOA@gmail.com

Respectfully submitted,

SMITH OROPEZA HAWKS, P.L.
138-142 Simonton Street
Key West, FL 33040
Telephone: (305) 296-7227
Fax: (305) 296-8448
bart@smithoropeza.com

/s/ Barton W. Smith
Barton W. Smith, Esquire
For the Firm

AND

FRIEDMAN & FRIEDMAN, P.A.
766 North Sun Drive, Suite 4030
Lake Mary, FL 32746
Telephone: (407) 830-6331
Fax: (407) 878-2178
mfriedman@ff-attorneys.com

/s/ Martin S. Friedman
Martin S. Friedman, Esquire
For the Firm