

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20170086-SU

INVESTIGATION INTO THE  
BILLING PRACTICES OF K W  
RESORT UTILITIES CORP. IN  
MONROE COUNTY.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 2

COMMISSIONERS  
PARTICIPATING: CHAIRMAN ART GRAHAM  
COMMISSIONER JULIE I. BROWN  
COMMISSIONER DONALD J. POLMANN  
COMMISSIONER GARY F. CLARK  
COMMISSIONER ANDREW GILES FAY

DATE: Tuesday, March 5, 2019

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: DANA W. REEVES  
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Notary Public in and for  
the State of Florida at Large

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## 1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: Okay. So we've got to  
3 circle back around to Item No. 2.

4 MR. SCHRADER: Good morning, Commissioners.  
5 Item 2 involves several motions regarding a project  
6 by OPC in the cross-protest by KW Resort Utilities  
7 to a PAA portion of an order issued last August  
8 regarding unauthorized billing practices. The  
9 order had two parts, a show-cause order levying a  
10 fine to the resorts and a PAA order that found an  
11 audit period utilized by staff was reasonable,  
12 established the appropriate time period for refunds  
13 and established refund amounts to customers.

14 The issues of this recommendation are limited  
15 to the protests of the PAA order. The show-cause  
16 portion of this docket will be taken up at a later  
17 date.

18 Issue one involves whether oral argument  
19 should be granted with these motion. Staff  
20 believes that oral argument may be helpful to the  
21 Commission understanding the entirety of series  
22 events and legal issues in this case and recommends  
23 that the Commission allow oral arguments on all  
24 motions.

25 Issue two involves a motion to dismiss and a

1 motion to strike KW Resorts. Staff recommends that  
2 these motions be denied.

3 Issue 3 involves competing motions for summary  
4 final order by OPC and KWRU. Staff recommends that  
5 these also be denied.

6 Staff is here to answer questions and the  
7 parties are present.

8 CHAIRMAN GRAHAM: Thank you, staff.

9 Commissioners, any questions of staff?

10 (No comments made.)

11 CHAIRMAN GRAHAM: Okay. First we have to deal  
12 with Issue No. 1, if we're going to grant oral  
13 arguments.

14 Commissioner Brown.

15 COMMISSIONER BROWN: Mr. Chairman, I think  
16 oral argument may be helpful. So, with that, I  
17 would move the staff recommendation on issue one.

18 COMMISSIONER CLARK: Second.

19 CHAIRMAN GRAHAM: It's been moved and  
20 seconded. All in favor say, aye.

21 (Chorus of ayes.)

22 CHAIRMAN GRAHAM: And we will grant oral  
23 arguments.

24 Key West, you guys were the -- it's your  
25 motion, so I'll let you go first.

1           MR. FRIEDMAN: I mean, I don't mind going  
2 first, but they did file the first motion for  
3 summary order, but I'll be glad to go.

4           Two of the issues -- I'm sorry. Marty --

5           CHAIRMAN GRAHAM: If you've got any time left  
6 over at the end, I'll let you come back into --

7           MR. FRIEDMAN: I will speak quickly. Thank  
8 you. It's Marty Friedman of Dean Mead on behalf of  
9 KW Resort Utility. Two of the issues raised by the  
10 Public Council in its protest are without doubt  
11 susceptible to summary disposition. There are no  
12 facts in dispute and there's no argument with  
13 regard to KRW's position, and that's in relation to  
14 the two refunds; the refunds that were ordered for  
15 Safe Harbor and the refunds that were ordered for  
16 Sunset Marina.

17           Each of those disputes were previously  
18 resolved by negotiation and settlement agreements  
19 between those customers and the utility and  
20 involved a number of issues that were in dispute  
21 between the two parties. The public council in its  
22 original petition of the PAA action argued that the  
23 settlement agreements hadn't been submitted to the  
24 Commission, so they don't know anything about them  
25 and they should be ignored. Interestingly, the

1 motion for summary disposition that they filed  
2 ignores those settlement agreements entirely.

3 Each of those settlement agreements includes a  
4 waiver of any refund for prior wastewater service.  
5 Staff somehow believes that there may be some  
6 inferences drawn from the settlement agreement that  
7 would not make this issue susceptible to a summary  
8 disposition, and I think staff is looking at it  
9 myopically and also not looking at it from the  
10 correct legal standard.

11 The settlement agreements both contains  
12 substantially the same language, Safe Harbor --  
13 this one is Safe Harbor -- specifically and  
14 expressly waives any right to a refund of amounts  
15 paid to KWRU for prior wastewater service and shall  
16 advise the Florida Public Service Commission  
17 accordingly.

18 That's pretty clear and unambiguous. The  
19 intent of the parties is clear. There's no --  
20 nothing susceptible to inferences. The -- you  
21 don't have Safe Harbor up here or you don't have  
22 Sunset Marina up here making a claim that there's  
23 something wrong with the settlement agreement.  
24 It's clear, unambiguous, and it's not susceptible  
25 to some third party coming in, saying, oh, no,

1           that's not what the two parties meant. They meant  
2           something else. That's not where we are.

3           These two settlement agreements are clear and  
4           unambiguous and not susceptible to any third-party  
5           comment, or not susceptible to what we call parole  
6           evidence. And, as a result, these agreements  
7           expressly waive any right to any refund and I don't  
8           think Public Council has the authority to tell a  
9           customer that they have to do so.

10           Keep in mind that neither Safe Harbor nor  
11           Sunset Marina has ever requested a refund, nor have  
12           they authorized Office of Public Council to request  
13           one on their behalf. In fact, it's my  
14           understanding OPC had contacted these customers and  
15           they did not want to participate. They had  
16           negotiated a deal and were honorable business  
17           people and were going to stand by that deal.

18           And, as such, I think that it's clear that  
19           certainly as to these two customers there's no  
20           disputed issue of fact and material fact and  
21           summary disposition should be granted.

22           Other than these two specific customers,  
23           Public Council believes that the Commission's audit  
24           that they ordered should have gone back past 2013.  
25           This is based on OPC's misunderstanding of the

1 nature of this proceeding, specifically the  
2 Commission's not investigating any customer  
3 complaints or issues of improper overcharging by  
4 specific customers, but was determining through its  
5 statutory authority if the utility was imposing and  
6 collecting those rates and charges approved by the  
7 Commission for the particular class of service  
8 involved, and if the utility had charged, quote,  
9 "customers in a manner inconsistent with its  
10 Commission-approved tariffs," end quote.

11 Having arisen -- this proceeding having arisen  
12 out of a billing audit, the commission's  
13 determination to do a billing audit and, as such,  
14 the Commission has the authority to set the  
15 parameters for that billing audit. This isn't  
16 based upon customers coming in and filing  
17 complaints. OPC's position that the time frame for  
18 the audit should be expanded was previously  
19 considered by the Commission and rejected. It is  
20 within the Commission's discretion to set that time  
21 period. There is no rule that requires that the  
22 Commission in conducting an audit do so in the  
23 manner in which OPC is suggesting that it do.

24 OPC's sole reliance is on Rule 2530.350, which  
25 has absolutely nothing to do with the Commission

1 exercising its audit -- exercising its authority to  
2 establish an audit, including the scope of the  
3 audit, the time of the audit, and the objectives of  
4 the audit. And that's what it really comes down  
5 to.

6 This was a proceeding for the -- that the  
7 Commission had ordered arising out of a prior rate  
8 case to do an audit. This isn't a customer  
9 complaint asking for refunds. And, as such, this  
10 Commission has the authority to determine the  
11 breadth of that audit and that's got nothing to do  
12 with the rule that's relied upon by Public Council.  
13 Thank you.

14 CHAIRMAN GRAHAM: Thank you. Ms. Morse, he  
15 took six minutes, so you have six minutes.

16 MS. MORSE: Good morning. First I'd like  
17 to -- I have prepared arguments, but I'd like to  
18 address the issue of the settlements and the  
19 purported waivers. These settlements are  
20 essentially rate-setting mechanisms, and it's been  
21 the Commission's jurisdiction and authority to set  
22 rates, not for an individual party to do so and not  
23 bring it before the Commission for approval. In  
24 any other rate-setting proceeding, where there's a  
25 settlement, those are properly brought before the



1 Commission, you have the benefit of the neutral  
2 staff's technical analysis and in -- the Commission  
3 can make the decision whether the settlement is  
4 full and fair, whether the parties fully understood  
5 what they were signing, what was going on and all  
6 the circumstances and the rules that should apply.

7 But back to the -- all of the motions, we see  
8 that the staff's recommendation is that OPC's  
9 motion for partial summary final order be denied  
10 and staff's recommendation regarding denial of KW's  
11 motion. And we recognize the final recommendation  
12 that if all the motions are at issue are denied,  
13 then the docket should remain open to address the  
14 parties' respective positions or respective  
15 requests for a hearing on a PA order.

16 In its motion for partial summary final order,  
17 OPC requested the Commission acknowledge that Rule  
18 25-30.350 requires that all overcharges to  
19 customers must be refunded back to customers. KW's  
20 argued that that rule does not apply to the case  
21 and that Rule 25-30.360 alone should govern. OPC  
22 asserts that the two rules were meant to be read in  
23 harmony so that section, the -- the 30.350 is used  
24 to determine the amount of the overcharge to be  
25 refunded while 360 is used to determine the body of

1 customers eligible for refunds and to dictate  
2 refund procedures, such as the date by which  
3 refunds should be completed, the calculation of  
4 interest, et cetera, other ministerial tasks.

5 KW misconstrued 25-30.360, specifically they  
6 erred in reading subsection three. The reference  
7 to customers, quote, "customers of record as of a  
8 date specified by the Commission," refers to the  
9 process for determining the identities of the  
10 customers eligible to receive refunds. This  
11 language is designed to prevent new customers who  
12 have not been overbilled from being swept into the  
13 refund process. So a reference to people who are  
14 not on the utilities roles as, quote, "customers of  
15 record during overbilling."

16 Contrary to KW's claims subsection three does  
17 not grant any discretion to limit the date range of  
18 the confirmed overbilling activity and does not  
19 mean that the subject refunds could be subject to  
20 any date limitation chosen by the Commission. The  
21 corresponding rule 25-30.350 clearly states that  
22 all overcharges must be refunded, not merely the  
23 ones chosen by the Commission.

24 Due to the important public policy  
25 implications for all customers across the state in

1 terms of how the Commission's rules apply, we  
2 propose that you hold this docket in abeyance while  
3 OPC seeks a declaratory statement on the generic  
4 question of whether and how Rules 30.350 and 30.360  
5 should be harmonized.

6 So every customer in the state needs to know  
7 that whether or not they would receive full refunds  
8 if they were overbilled, or whether they are at  
9 risk of paying more for their service than the  
10 tariffs require, then never being made whole once  
11 the overbilling is discovered.

12 This specific case is not simply about two KWR  
13 customers, but rather it's about the 14 or so  
14 customers discussed in the PA order. Beyond that,  
15 the case is also about the underlying rule  
16 interpretation issue that affects all customers  
17 statewide in addition to these KW customers.

18 As stated, the Commission does not have to  
19 decide on OPC's motion for final summary -- summary  
20 final order today, but could hold the case in  
21 abeyance for a short time while the generic rule  
22 interpretation issue is resolved by declaratory  
23 statement.

24 Briefly, as to the motion to dismiss and  
25 motion to strike, OPC agrees with staff that OPC's

1 standing in this matter is dictated by statute and  
2 that the Agrico test for non-statutory standing is  
3 inapplicable.

4 OPC further agrees with staff's analysis that  
5 OPC's legal conclusion is supported by sufficient  
6 factual allegations to defeat a motion to dismiss  
7 or failure to state a cause of action.

8 Regarding KW's cross motion for final -- for  
9 summary final order, KW failed to quote the  
10 complete sentence of the rule on which its case  
11 relies. They cite to Rule 25-30.360, section one,  
12 subsection one, which reads, quote, "with the  
13 exception of deposit refunds, all refunds ordered  
14 by the Commission shall be made in accordance with  
15 the provision of this rule, unless otherwise  
16 ordered by the Commission." KW left out the last  
17 phrase, which wholly undermines its argument that  
18 Rule 30.360 is the only rule which could apply to  
19 this case.

20 As I just explained previously, KW  
21 misconstrued Rule 25-30.360, but the correct  
22 interpretation of the rule dictates that KW's  
23 motion must be denied.

24 As explained, 350 is a substantive rule in  
25 calculating, determining the overcharge, while 360

1 is a procedural rule, which merely outlines a  
2 process to follow after calculation has been -- for  
3 the overcharge has been determined. So ministerial  
4 procedural aspects, again, interest to be owed.  
5 You know, identity of customers.

6 In summary, with the exception of the  
7 recommendation on OPC's motion for partial summary  
8 final order, staff's conclusions are correct. All  
9 of KW's motions should be denied. And,  
10 additionally, OPC does not object to holding the  
11 case in abeyance until after the Commission issues  
12 a declaratory statement on how Rules 25-30.350 and  
13 30.360 should be harmonized.

14 CHAIRMAN GRAHAM: Thank you, OPC.

15 Staff, I'm sure you guys have some clarifying  
16 questions.

17 MR. SCHRADER: Could you gives us, like, five  
18 minutes just to discuss for just a moment?

19 CHAIRMAN GRAHAM: Hold on. Hold on.

20 MS. HELTON: I'm not sure we need five  
21 minutes. I don't believe that a declaratory  
22 statement that we first heard of this morning is  
23 appropriate in this instance. As I understand the  
24 law on declaratory statements, it's not an  
25 appropriate way to resolve an issue that is in

1 litigation and we are now in litigation mode.

2 I also don't believe that it's appropriate for  
3 OPC to file a declaratory statement asking what  
4 conduct is appropriate on behalf of the utility.

5 So for at least those two reasons, I don't  
6 think a declaratory statement is appropriate. Mr.  
7 Bullock may be able to come up with more, or her  
8 lawyers. So I don't think a declaratory statement  
9 is appropriate.

10 Staff believes that both partial -- both  
11 motions for summary judgment should be denied  
12 because we believe there needs to be more facts  
13 developed to put the issues in context so we can  
14 make -- ultimately make a recommendation to you  
15 whether the overbilling rule applies.

16 COMMISSIONER GRAHAM: So say you all? All  
17 right --

18 MR. FRIEDMAN: You got a minute for a comment?

19 CHAIRMAN GRAHAM: Sure.

20 MR. FRIEDMAN: I find it interesting,  
21 particularly -- and in response to the staff's  
22 position, I've already outlined, these two  
23 settlement agreements clearly, unequivocally  
24 resolve the issue of those refunds to those two  
25 particular customers. May not on anything else,

1 but it clearly does within those and don't have the  
2 parameters and the authority to grant what would be  
3 called a partial summary final order and get rid of  
4 those two customers and get that out of here.

5 Interesting, OPC's comments on the refund  
6 where it was pointed out that the language says all  
7 refunds ordered by the Commission shall be made in  
8 accordance with the provision of this rule, unless  
9 otherwise ordered by the Commission. I mean,  
10 that's exactly what you did. You set up an  
11 audit -- I'm sorry. You -- you established an  
12 audit to do a billing analysis, a billing audit.  
13 You set a time frame. You set the objectives. You  
14 did all that and that fits clearly within what this  
15 sentence is, unless otherwise ordered by the  
16 Commission. That's exactly what you did. This  
17 isn't a customer complaint to seek a refund. This  
18 is a Commission-ordered audit where the Commission  
19 determined the scope of the audit and the depth of  
20 the audit and the time frame for the audit. That  
21 takes completely that rule out of play. Thank you.

22 CHAIRMAN GRAHAM: OPC, quick question.  
23 You're -- I guess you're alleging that the deal  
24 struck between Safe Harbor and Sunset Marina  
25 doesn't include all the customers, that it just

1 happens to be just these two?

2 MS. MORSE: Yes.

3 CHAIRMAN GRAHAM: And that -- what about  
4 you're also alleging that there's an overage. Do  
5 we know that there's some kind of overage, or  
6 you're just saying that the facts just aren't there  
7 and that's what your concern is?

8 MS. MORSE: Mostly that the facts aren't  
9 there, but our preliminary analysis of the other  
10 customers who are listed indicates that if the  
11 audit stretch back to 2009 properly that they might  
12 be owed even more money.

13 CHAIRMAN GRAHAM: Okay. Commissioner Brown.

14 COMMISSIONER BROWN: Thank you. I have a  
15 question for Mary Anne. When the Commission  
16 considered the PAA, the show cause, we addressed  
17 Rule 360, which is the refund, the issue of  
18 refunds. We never discussed 350, which I believe  
19 is the overbilling. So is it even appropriate to  
20 be addressing 350? It wasn't even considered in  
21 our order.

22 MS. HELTON: It wasn't considered in the  
23 order. And, quite frankly, I'm not sure why it was  
24 not considered in the order. I am not bothered by  
25 looking at whether the rule should be applied in a



1 hearing. So I guess to answer your question, I  
2 don't think the fact that 350 was not in the order  
3 precludes your ability to look at it now. Any  
4 PAA -- any evidentiary hearing is a de novo  
5 proceeding, so it's as if the order did not exist.

6 COMMISSIONER BROWN: Thank you. Just two  
7 questions for OPC. To get back to your oral  
8 argument, and I know our legal advisor has told us  
9 that a declaratory statement is not appropriate  
10 with -- while we have pending litigation. I agree  
11 with that advice, as well, but I do want to ask you  
12 what you were stating, a question to clarify. You  
13 were stating that 350 was the substantive rule  
14 regarding overbilling and 360 is the procedural  
15 aspects. Can you kind of explain that a little bit  
16 and how you see those two rules interplaying, if  
17 they do interplay?

18 MS. MORSE: Yes. Our position is that the  
19 section 350 on overbillings is clear on its face  
20 that if there's an overbilling, that is the amount  
21 and that is the time frame. It sets out all the  
22 parameters for determining the amount of an  
23 overbilling, whereas 360 is less about calculating  
24 the actual overbilling itself, but more about  
25 how -- the process you follow afterward in

1           refunding the money.

2           COMMISSIONER BROWN: And I respect the fact --  
3           the inquiry that you have, about harmonizing those  
4           two rules. This posture, you guys protested this  
5           back in September. I thought that we would have  
6           had this at least resolved and this set for hearing  
7           swiftly, but all of these different motions have  
8           been filed, so it's delayed us setting it to  
9           hearing. And I think all of this can be fleshed  
10          out during the administrative hearing.

11          I have a question for Mr. Willis, though,  
12          regarding audits and the audit period. It's your  
13          contention that you feel that the Commission should  
14          go back to 2009 in doing its audit review and that,  
15          I guess, if we go back to 2009 that there would be  
16          potentially additional customers that could  
17          potentially have been overbilled, is that correct?

18          MR. WILLIS: Well, Commissioner, that's a good  
19          question. The -- I believe if you actually look at  
20          2530 -- or .350, it basically says that the  
21          Commission should go back to the point in time they  
22          determine there was a possibility of overbilling  
23          and in this case the audit itself did not go back  
24          that far. What we're saying is that you may not  
25          find new customers; you may find that the customers

1           that were already identified, may be due additional  
2           refunds because there was potential over-earnings  
3           at that point.

4           COMMISSIONER BROWN: But wouldn't a settlement  
5           agreement that's in place with -- among those  
6           customers obviate that?

7           MR. WILLIS: Well, during my time with the  
8           Commission I may have given the legal opinion,  
9           but --

10          COMMISSIONER BROWN: You're not a lawyer,  
11          though.

12          MR. WILLIS: In my present time that's  
13          probably not a good idea.

14          COMMISSIONER BROWN: Let me switch gears real  
15          quick. So as someone in audit, who has been in  
16          audit and understands the Commission's practices,  
17          doesn't the Commission have discretion to order an  
18          audit for a specified period of time?

19          MR. WILLIS: Well, you do if it's not  
20          encompassed by a rule, and the purpose -- I happen  
21          to be here at the time when both of these rules  
22          were written and the purpose of 350 was strictly  
23          dealing with what happens when a company underbills  
24          or overbills.

25          COMMISSIONER BROWN: I am so sorry. I can --

1           there's a lot of talking going on over here. I  
2           can't really focus on what you're saying.

3           CHAIRMAN GRAHAM: Staff. Staff. That's all  
4           right. When we have two Commissioners that have  
5           questions and then we'll take a five-minute break  
6           before we make any decisions.

7           MS. HELTON: Thank you.

8           COMMISSIONER BROWN: Sorry, Mr. Willis.

9           MR. WILLIS: I believe the whole purpose  
10          behind 350 was to basically lay out how far back a  
11          Commission should go on -- when a company actually  
12          overbills. We all know that for underbilling, the  
13          rule says you only go back a year and that's mainly  
14          because the company has the records. They know  
15          what they were charging. When it comes to  
16          overbilling, it really is -- the onus is upon the  
17          customers to identify that or public council or  
18          some intervenor to identify that. You wouldn't  
19          expect a company to come forward occasionally to  
20          say, hey, we overbilled, we need to back and  
21          refund.

22          Because of that, the Commission decided in  
23          that 350 that you should go back to the point in  
24          time that there was overbilling. Actually, when it  
25          occurred, if you can identify that. If you can't

1 identify it, and there have been cases in the past  
2 where I was here, where we couldn't really identify  
3 it because the records weren't there and we didn't  
4 have any other evidence to say at what point in  
5 time that overbilling might have occurred, then we  
6 went back to a point in time where we believed we  
7 encompassed all of the overbilling.

8 COMMISSIONER BROWN: But -- but, and I know  
9 where you're going, but what Mr. Friedman cites  
10 360, and then I guess your counsel added the  
11 additional language that was excluded from his cite  
12 about or the Commission -- or what the Commission  
13 orders. And so in our PAA show-cause order, we've  
14 referenced 360 and we reference a certain period of  
15 time in that and staff went back to that period of  
16 time. So wouldn't 360 then dictate the time period  
17 covering the audit?

18 MR. WILLIS: Well, 360 was actually designed  
19 to do nothing more than lay out how the Commission  
20 administratively deals with refunds. That's all  
21 360 does. And, of course, you use 360 in a rate  
22 case, whether it's PAA or a final determination,  
23 you use it when -- for any other process where the  
24 Commission comes up with a refund necessary.

25 When it gets back to the customer-of-record

1 date, water and wastewater used to not have a  
2 customer record date, but we found back when the  
3 rule was established that electric did. Any time  
4 you issued a refund in an electric case, there  
5 always was an establishment of a customer-of-record  
6 date.

7 And the reason for that is because you don't  
8 want to have customers after that record date  
9 getting a refund they're not deserving. It also  
10 picked a point in time where the company would go  
11 to its records and say all the records -- all the  
12 customers of record on that day are the ones we're  
13 going to give refund to. No one prior to that, no  
14 one after that, but it's as of that date. That's  
15 the whole purpose of having that customer-of-record  
16 in that rule, is for the Commission to establish  
17 what day the company goes to its records and  
18 establishes what customers are actually there to  
19 give a refund to on that date.

20 COMMISSIONER BROWN: Thank you, Mr. Willis.  
21 Could I --

22 CHAIRMAN GRAHAM: Commissioner Clark.

23 COMMISSIONER CLARK: Thank you, Mr. Chairman.  
24 I just had a couple of questions, I guess more  
25 procedurally than anything. I'm not

1           understanding -- and maybe Ms. Helton can help me.  
2           Our decision here today is on disposition of these  
3           two motions. How is this -- this isn't the  
4           hearing. I mean, how far can we get into -- do I  
5           need to start lining my questions up about the  
6           settlement agreement, or is that not appropriate  
7           today?

8           MS. HELTON: Absolutely not, Commissioner. As  
9           you said, you've already decided oral argument was  
10          appropriate so there's two issues: One, should the  
11          Commission grant the motion to dismiss or strike by  
12          KW; and the other is whether the Commission should  
13          grant the motions for summary judgment,  
14          cross-motions, I guess, filed by both parties. And  
15          if you have a resolution for both of those motions,  
16          then that's all we need to do today.

17          COMMISSIONER CLARK: That makes a hearing  
18          pretty much automatic. I'm assuming both parties  
19          still want to contest this?

20          MS. HELTON: Yes, sir.

21          COMMISSIONER CLARK: Okay. Thank you. I'm  
22          making certain on I'm not completely lost.

23          CHAIRMAN GRAHAM: Do you have a quick  
24          question?

25          COMMISSIONER BROWN: On the procedural route,

1           too, and thank you Commissioner Clark for pointing  
2           that out, and we'll get into all this during the  
3           hearing, but I would ask staff since public council  
4           filed its intervention or protest in September I  
5           would like to direct staff once we vote on these  
6           two issues to set the parameters for hearing  
7           swiftly so that this goes to hearing in an  
8           expeditious time.

9           MS. HELTON: Well, we will come and work with  
10          your office on an order establishing procedure,  
11          Commissioner.

12          CHAIRMAN GRAHAM: I told staff I'd take a  
13          five-minute break before we make any determination  
14          so we'll break until 10:30 in the back of that  
15          clock. We're in recess.

16          (Brief recess.)

17          CHAIRMAN GRAHAM: All right. So issue No. 1  
18          was, yes, we granted the oral arguments. Issue No.  
19          2, should the Commission grant Key West's motion to  
20          dismiss or strike.

21          Commissioner Clark, do you have a motion for  
22          that?

23          COMMISSIONER CLARK: Yes, sir, Mr. Chairman.  
24          I move the Commission deny KWRU's motion to dismiss  
25          or strike.



1 COMMISSIONER POLMANN: Second.

2 COMMISSIONER BROWN: Second.

3 CHAIRMAN GRAHAM: It's been moved and  
4 seconded. Any further discussion on Issue No. 2?

5 (No comments made.)

6 CHAIRMAN GRAHAM: Seeing on, all in favor say,  
7 aye.

8 (Chorus of ayes.)

9 CHAIRMAN GRAHAM: Any opposed?

10 By your action, you've approved staff rec on  
11 Issue 2.

12 Issue No. 3. Should the Commission grant  
13 OPC's motion for partial summary final order or  
14 KW's cross-motion for summary final order?

15 COMMISSIONER CLARK: Mr. Chairman, move both  
16 motions be denied.

17 COMMISSIONER BROWN: Second.

18 COMMISSIONER POLMANN: Second.

19 CHAIRMAN GRAHAM: It's been moved and  
20 seconded, that both motions be denied in Issue No.  
21 3. Any further discussion?

22 (No comments made.)

23 CHAIRMAN GRAHAM: Seeing none, all in favor  
24 say, aye.

25 (Chorus of ayes.)

1 CHAIRMAN GRAHAM: Any opposed?

2 (No comments made.)

3 CHAIRMAN GRAHAM: By your action, you've  
4 approved that motion.

5 Issue No. 4. Should this docket be closed?  
6 Staff, this docket is going to stay open, correct?

7 MR. SCHRADER: That's correct, Commissioner.

8 CHAIRMAN GRAHAM: And we need a motion to that  
9 effect.

10 MR. SCHRADER: Yes, sir.

11 CHAIRMAN GRAHAM: Okay. Commissioner Clark,  
12 you're doing such a great job.

13 COMMISSIONER CLARK: Thank you, Mr. Chairman.  
14 Move that the docket be remained -- remain open.

15 CHAIRMAN GRAHAM: It's been moved and  
16 seconded. Any further discussion on Issue No. 4?

17 (No comments made.)

18 CHAIRMAN GRAHAM: Seeing none, all in favor  
19 say aye.

20 (Chorus of ayes.)

21 CHAIRMAN GRAHAM: Any opposed?

22 (No comments made.)

23 CHAIRMAN GRAHAM: By your action you have  
24 dealt with Issue No. 4.

25 That concludes our agenda. We are going to

1           have IA over in the IA chamber in ten minutes. So  
2           that's ten minutes. We're adjourned.

3                           (Agenda item concluded.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DANA W. REEVES, Professional Court Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 14th day of March, 2019.



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DANA W. REEVES  
NOTARY PUBLIC  
COMMISSION #FF968527  
EXPIRES MARCH 22, 2020