

**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 MONROE COUNTY**

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 Monroe County (the “County”), 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, Monroe County were provided with all documentation submitted in compliance with the PSC audit.
4. Monroe County 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 Monroe County.

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

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

9. 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.

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

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

12. On June 9 and 27, 2016, Monroe County responded to the above requests and in its responses to KWRU's respective First Set of Interrogatories and First Request for Production, Monroe County utilized a blanket objection to a majority of requests. The County stated that

“the final issues to be decided at hearing have not yet been determined.” Monroe County utilized this objection to KWRU’s First Set of Interrogatories in responses: 65, 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, 39, 41, 42, 43, 48, 50, 52, and 53. Additionally, Monroe County issued the same response to KWRU’s First Request for Production in responses: 6, 7, 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, 38, 39, 40, 41, 42, 43, 45, 47, 48, 49, 50, 51, and 52.

### **ARGUMENT**

The County’s objections to each of K W Resort Utilities Corp.’s First Set of Interrogatories and First Request for Production should be overruled, and Monroe County 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 the County’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, Monroe County must be responsive in this matter. As petitioner, the County 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 the County’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, Monroe County has had access and control of all documents utilized by the PSC to issue its PAA Order. At this current juncture, if the County is still without an articulable basis to support its protest of the PAA Order, it is hard to imagine what the County is hoping to adduce further down the line. Monroe County 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 the County’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 the County to

continue on this fishing expedition considering that the ratepayers are the ones ultimately funding this frivolous proceeding.

### **CONCLUSION**

Monroe County'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. The County is required have a factual basis prior to protesting a PAA Order. Without such factual basis, the County 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 the County 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 Monroe County, the very nature of what the County purportedly intends to avoid.

WHEREFORE, K W Resort Utilities Corp., prays this Commission enter its Order overruling Monroe County'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 the County 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 Monroe County, 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:

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](mailto: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](mailto:KMapp@psc.state.fl.us)

Robert Scheffel Wright, Esquire  
John T. LatVia, III, Esquire  
Gardner, Bist, Bowden, Bush, Dee, LaVia &  
Wright, P.A.  
1300 Thomaswood Drive  
Tallahassee, FL 32308  
Email: [schef@gbwlegal.com](mailto:schef@gbwlegal.com)  
[jlavia@gbwlegal.com](mailto: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@mornoecounty-fl.gov](mailto:hall-cynthia@mornoecounty-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](mailto: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](mailto: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](mailto:mfriedman@ff-attorneys.com)

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