

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation of billing practices of  
KW Resort Utilities Corp. in Monroe County

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Docket No. 20170086-SU

**CROSS-PETITION OF K W RESORT UTILITIES CORP.**  
**FOR A FORMAL ADMINISTRATIVE HEARING**

K W RESORT UTILITIES CORP. (*Utility*), by and through its undersigned attorneys and pursuant to Section 120.57, Florida Statutes, and Rules 25-22.029(3) and 28-106.201, Florida Administrative Code, files this Cross-Petition for Formal Administrative Hearing, protesting Order No. PSC-2018-0444-PAA-SU (*Order*) of the Florida Public Service Commission (*Commission*) issued August 31, 2018, and states:

Preliminary Matters

1. The name and address of the agency affected and the agency's docket number is:

Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
Docket No. 20180086-SU

2. The name of the Utility and its mailing address is:

K W Resort Utilities Corp.  
6630 Front Street  
Key West, FL 33040

3. The names and address of the persons authorized to receive notices and communications in respect to this proceeding are:

Barton W. Smith, Esquire  
Smith Hawks, PL  
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Key West, FL 33040  
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4. The Utility obtained a copy of the Order on August 31, 2018 from the Commission by email, and a copy by email of OPC's Petition on September 21, 2018.

5. The interests of the Utility are substantially affected by the Order since it requires a refund to certain customers and imposes a substantial penalty. The specific facts that the Utility contends warrant reversal or modification of the Order are as follows:

a. While the Order required refunds to certain customers it failed to require other customers to pay back over-refunds previously made by the Utility. These customer clients of OPC erroneously benefitted from the Order. Thus, OPC should be representing those customers to support the Order.

b. The Commission failed to consider mitigating circumstances in imposing an unreasonably high penalty.

c. The rate charged to Safe Harbor Marina was in compliance with the intent of the approved Tariff, and the negotiated amount between the Utility and Safe Harbor Marina of which the Commission was aware of back in 2009, evidenced that intent.

6. Each of the foregoing matters involves disputed issues of material fact.

7. The Order established September 21, 2018 as the date by which Petitions must be filed, which was the date OPC filed its Petition, and pursuant to Rule 25-22.029, Florida Administrative Code, Cross-Petitions may be filed within 10 days thereafter. This Cross-Petition is timely filed. The filing of this Cross-Petition does not operate as a waiver of its Motion to Dismiss.

9. Sections 367.081, and 367.161, Florida Statutes, are the specific statutes that the Utility contends requires reversal or modification of the Order.

10. This Cross-Petition is filed for the purpose of seeking the Commission's action with respect to the following

- a. Order customers who were over-refunded to repay such amounts to the Utility.
- b. Reduce the penalty to the nominal amount of \$1,000.
- c. Order no refund to Safe Harbor Marina.

WHEREFORE, the Utility hereby Cross-Protests and objects to Order No. PSC-2018-0444-PAA-SU as to the specific issues raised in this Cross-Petition, and cross-petitions the Commission to conduct a formal evidentiary hearing pursuant to Section 120.57(1), Florida Statutes.

Respectfully submitted on this 1<sup>st</sup> day of  
October, 2018, by:

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/s/ Martin S. Friedman  
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/s/ Barton W. Smith  
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FL Bar No.: 20169

## CERTIFICATE OF SERVICE

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 October, 2018:

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Office of Public Counsel  
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Respectfully submitted,

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