

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Analysis of UTILITIES, INC.'S
financial accounting and customer service
computer system

DOCKET NO. 120161-WS

UTILITIES, INC.'S
POST HEARING STATEMENT OF ISSUES AND POSITIONS

UTILITIES, INC. ("UI"), on behalf of its regulated subsidiaries in Florida, by and through its undersigned attorneys, and pursuant to Order No. PSC-14-0207-PHO-WS files this Post Hearing Statement of Issues and Positions.

ISSUES AND POSITIONS:

ISSUE 1: Should any adjustment be made to the Utility's Project Phoenix Financial and Customer Care Billing Systems?

No, the reduction in the number of customers served by UI subsidiaries would not have had any impact on reducing the capital cost invested in Project Phoenix. The opportunity to recover the cost of Project Phoenix should not be reduced as a result of divestitures subsequent to its implementation. Reducing the cost of Project Phoenix for divested utility systems is contrary to Section 367.0813, Florida Statutes.

Design of Project Phoenix:

The only testimony regarding the design of Project Phoenix was presented by Larry Danielson of Deloitte Consulting, who was the project manager who oversaw the design and implementation of Project Phoenix, and his testimony is uncontroverted by any cross examination. Mr. Danielson explained the design process used in the development of the financial and customer care platforms (Tr. 41-42) and in doing so explained that there is no linear relationship between the number of customers and the number of system users. Thus, as customers are added or lost there is not a change in the scope, size, complexity or components

that comprise the systems (Tr. 33). In other words, the design of the Project Phoenix software programs were not dependent on customer count (Tr. 33). He concluded that a 10% or even larger reduction in the number of customers would have made no difference in the design process because the business and technical requirements would not have changed (Tr. 33). He emphasized the fact that the systems were designed to be fully functional at peak usage periods.

The major cost components of Project Phoenix were professional fees (75%), hardware/software/licensing (15%), and training/travel/miscellaneous (10%) (Tr. 30, 34). It was Mr. Danielson's uncontroverted opinion that the only variable portion of the Project Phoenix cost was the \$380,862.00 spent for hardware and network infrastructure that is related to customer volume (Tr. 34). And even of this amount, only a small fraction would be attributable to the equipment needed to accommodate peak transaction processing periods; therefore, the number of users would not change in response to divestment or acquisition activity (Tr. 34).

In summary, since the cost of Project Phoenix would not have been reduced in response to a reduction in the number of the customers due to divestitures it would be improper to deny UI the opportunity to recover its investment in Project Phoenix as a result of such divestitures. Mr. Fletcher agrees with this as evidenced by his response to a question by Commissioner Balbis that had UI had 260,000 customers when Project Phoenix went on line he would have allocated that amount to the total cost of Project Phoenix (Tr. 129).

Mr. Fletcher's Theory:

Mr. Fletcher's efforts to reduce UI's rate base associated with its investment in the Project Phoenix systems has changed over time. It had its origin in a 2010 rate case for Utilities Inc. of Pennbrooke, in Order No. PSC-10-0400-PAA-WS. The original basis for the adjustment

was that the systems divested in 2009 and 2010 were sold for an amount significantly greater than rate base, and he believed that the amounts allocated to the divested subsidiaries were recovered by the shareholders through the sale of those systems (Tr. 94-95), even though he knew that no part of the Project Phoenix systems were included in the assets sold (Tr. 97, 100). In doing so, he ignored Section 367.0813, Florida Statutes. Mr. Fletcher's opinion then changed in Order No. PSC-10-0585-PAA-WS, issued later that year, to not only include the profit made by UI on the divestitures but also that no *added* benefit was realized by the remaining customers (Tr. 106-107). Mr. Fletcher subsequently abandoned the profit made on the sale as a basis for making the adjustment and has settled on a lack of showing that there was an *added* benefit as a result of the divestitures (Tr. 107; Order No. PSC-11-0514-PAA-WS).

Mr. Fletcher's current opinion is that the adjustment to the cost of the Project Phoenix systems is appropriate because the ratepayers of the surviving systems received no *added* benefit of bearing the additional allocated costs as a result of a reduction in the number of customers due to strategic divestitures (Tr. 87). Ignored by Mr. Fletcher is that the additional allocated cost of Project Phoenix will have a diminishing impact on the remaining ratepayers as growth occurs within existing UI systems and through acquisitions. He has no problem penalizing UI for divestitures, but under his theory, UI will receive no benefit when the total number of customers exceeds the number of customers that were active when Project Phoenix went on-line. In other words, Mr. Fletcher's theory does not treat the customers and UI equally. UI only gets penalized for divesting systems but receives no benefit of growth. Frankly, UI does not expect an upside when the number of customers exceeds that which was on line when Project Phoenix went active, but also does not expect a downside, it only seeks equal and fair treatment. The evidence is unrefuted that even with the reduction in customers, the Project Phoenix systems would have

cost substantially the same amount as they did. (Tr. 33). As Mr. Fletcher admitted under questioning by Commissioner Balbis, if there were 40,000 less customers when Project Phoenix went on-line then it would have been appropriate to allocate the entire cost over the customer base without any reduction to the cost (Tr. 129). That is consistent with Mr. Danielson's testimony that the capital cost of developing and implementing Project Phoenix would not have varied due to such a reduction in the number of customers. Due to acquisitions and organic growth, the reduction in customers has not exceeded 10%.

Another flaw in Mr. Fletcher's reasoning is that his standard that UI must show some *added* benefit is unprecedented (Tr. 124). Although it was utilized by the Commission in a recent Aqua Utilities rate case, that case relied upon the prior UIF rate case which is the purpose of the instant hearing (Tr. 143), thus such reliance was premature. Further, even in the Aqua Utilities Order (PSC-12-0102-FOF-WS), it was noted that the adjustment had been protested. Aqua Utilities' basis for seeking recovery of its IT system was not the same as that asserted by UI in the instant case (Tr. 164). Aqua Utilities acknowledged that it used a different methodology than UIF. Since different methodologies were used, the Aqua Utilities Order has no precedential value as to the instant case. As Mr. Fletcher further admitted, his *added* benefit standard does not exist in law (Tr. 110), but was extrapolated by him from the general standard to set just and reasonable rates (Tr. 109). And to further punish UI for divestitures, his opinion would not change even if the divestiture was involuntary, such as by condemnation, which was the case of the Alafaya Utilities system sale to the City of Oviedo (Tr. 102, 104). Interestingly, Mr. Fletcher had no opinion of the effect of an involuntary reduction of customers as the result of a catastrophic event (Tr. 104). So not all involuntary loss of customers are treated equally pursuant

to Mr. Fletcher's theory, and the regulated industry is left to guess at the consequences of a loss of customers.

The absurdity of Mr. Fletcher's theory is further disclosed by the fact that he only makes a negative adjustment for divested systems and does not make any positive adjust for growth in customers, through acquisitions or organic growth. In other words, even if UI acquired new systems with the same number of customers as were divested, Mr. Fletcher believes a negative adjustment is appropriate (Tr. 105, 112). Based on this theory Mr. Fletcher admitted that UI could divest itself of all of its systems, then acquire the same type of systems and number of customers, and the new customers would bear no Project Phoenix system costs even though they enjoy the benefits of those systems (Tr. 114-115). UI only has about 8% less customers than when Project Phoenix went on line, but with UI in a growth mode and with further acquisitions on the horizon, UI shortly expects to serve the same number of customers as when Project Phoenix went on line (Tr. 138). Under Mr. Fletcher's theory, UI can have more customers than when Project Phoenix went on line, yet not recover the full cost.

Mr. Fletcher's attempt to clothe his opinion with an economies of scale argument must also fail. He bases that argument on references to the 1998 PSC Order (PSC-98-1092-FOF-WS) approving the transfer to UI's subsidiary. That Order acknowledges that UI can provide economies of scale not provided by the prior owner who only owned a single, stand alone system. However, Mr. Fletcher had no idea as to the number of customers UI had at that time as compared to the present (Tr. 117), so how can he opine that the economies of scale have changed by divestitures? He also admitted that economies of scale can vary due to factors unrelated to divestitures (Tr. 117). He further admits that a utility can provide similar economies of scale at 260,000 customers (the number after divestitures and without growth) as it can with 290,000

customers (the number at the time Project Phoenix went active) (Tr. 109). Finally, Mr. Fletcher admitted under questioning by Commissioner Brown that if UI added back the same number of customers as it divested, UI would be providing economies of scale for those new customers, as it did for the customers being divested (Tr. 122). As growth in customers occur, either through acquisitions or organic growth, the fixed costs are allocated over a larger customer base (Tr. 161). Economies of scale will vary, but in the long run, the customers continue to receive the benefits of Project Phoenix (Ex. 22 p.0175)

Mr. Hoy outlined UI's corporate policies regarding acquisitions and divestitures (Tr. 133-134), pointing out that strategic divestitures are a normal part of any corporate business strategy (Tr. 134). UI's divestitures were not for the purpose of generating dividends to the investors, but to provide needed capital to reinvest in other systems (Tr. 136). Even when making strategic divestitures UI continued to make significant capital investment in its systems in order to improve the quality of service and meet regulatory requirements (Tr. 135). In the last ten years UI has invested close to half a billion dollars in its systems, and part of that was generated through strategic divestitures (Tr. 136). The new private equity owner of UI since 2012 (Tr. 137) has extensive capital to fuel continued growth, which is already showing itself in three acquisitions in 2013, as well as two acquisitions completed earlier this year. Others are currently under contract which, when combined with those already closed, will add over 10,000 ERCs (Tr. 134; Ex. 22, p. 0193).

The one-way adjustment to the Project Phoenix system costs results in new customers paying less, and that pro rata cost will continue to decline as UI adds new customers through acquisitions or through organic growth (112-114). This is true even though Mr. Fletcher had to admit that Project Phoenix was a benefit to customers (Tr. 111). Mr. Fletcher admitted in

response to questioning from Commissioner Balbis that customers benefit from UI's ability to make acquisitions quickly and seamlessly; however he has ignored those benefits and the economies of scale that they bring (Tr. 129-130).

Section 367.0813, Florida Statutes:

Section 367.0813, Florida Statutes, affirmed and clarifies the clear policy of the state that "gains or losses from a purchase or condemnation of a utility's assets which results in the loss of customers served by such assets and the associated future revenue streams shall be borne by the shareholders of the utility." Mr. Fletcher's theory is a poorly veiled attempt to circumvent this law. By asserting that UI received a sale price greater than rate base and thus recovered a portion of Project Phoenix through such sale resulting in a reduction in a capital cost to the remaining customers is the precise reason the Legislature adopted this law. Prior to the adoption of this law, the issue that arose when a utility system was sold at an amount greater than rate base was whether the remaining customers should enjoy a reduction in rates. Section 367.0813, F.S., laid that issue to rest. Yet, that is precisely the result of the application of Mr. Fletcher's theory.

The sale price of a utility is determined by what a buyer is willing to pay and a seller is willing to receive (Tr. 158). The buyers did not acquire any portion of the Project Phoenix systems (Tr. 157). The loss of Project Phoenix revenue stream has nothing to do with the price for which UI sells its systems (Tr. 157). All of those issues have become irrelevant since the adoption of Section 367.0813, F.S. in 2004. If one were to follow Mr. Fletcher's theory then why could not the Commission reduce any other expense or capital cost, or all of them, that it determined was a part of economies of scale and completely thwart Section 367.0813, F.S.?

It is clear that the reduction in the capital cost of Project Phoenix due to UI strategic divestitures is in violation of Section 367.0831, Florida Statutes.

ISSUE 2: What is the appropriate amount of rate case expense associated with this Docket?

**Based upon actual and estimated rate case expense, UI should recover \$199,701 in rate case expense, which should be allocated based upon ERC's of UI's regulated utilities in Florida and treated as a regulatory asset until the establishment of rates in the respective utilities' next rate cases, at which time it should be amortized over four years. **

The rate case expense is comprised of legal (Friedman, Friedman & Long, P.A.), consulting (Deloitte Consulting, LP), and in-house UI employees. Ms. Wiorek presented direct, rebuttal and deposition testimony (Ex. 21, incl. Depo. Ex. 1), and presented Exhibits (Ex. 7, 8 & 22) compiling the various elements of rate case expense. Additionally, rate case expense is addressed in discovery admitted into evidence (Ex. 12, 13).

Legal Rate Case Expense:

The Exhibits admitted into evidence show total legal rate case expense of \$55,376 and includes detailed descriptions of the various tasks performed and to be performed. Neither Staff nor OPC presented any evidence or cross-examination challenging the reasonableness of the legal rate case expense. Thus, the legal rate case expense of \$55,376 is uncontroverted and must be approved.

Deloitte Consulting Rate Case Expense:

The Exhibits admitted into evidence show total Deloitte Consulting rate case expenses of \$143,536. The summary of the Deloitte rate case expense was included in Exhibit 1 to Ms. Wiorek's deposition (Ex. 22). Deloitte Consulting was retained in March 2012 (Ex. 12), so despite OPC's comments to the contrary, it is not surprising that a substantial amount of its time

was spent early in the proceeding, including preparing prefiled testimony (Tr. 60). As to estimated hours, there were certain tasks that Deloitte expected to have to undertake that were not necessary resulting in a reduction in Deloitte expenses. Specifically, this would include eight hours to prepare Pre-filed Rebuttal Testimony, which became unnecessary when neither OPC nor Staff filed any testimony in response to Mr. Danielson's Pre-filed Direct Testimony (Tr. 55). Also, only one principal attended the hearing, and since Deloitte Consulting does not bill for travel time (Tr. 56-57), UI incurred nine fewer hours than estimated in connection with the hearing. Since there was no testimony refuting that of Mr. Danielson, it is also likely that Deloitte Consulting will only incur a limited amount of time, an estimated two hours, to assist in preparation of the Post Hearing Statement of Issues and Positions, review the Staff Recommendation and confer with UI and its attorney concerning the Staff Recommendation, thus reducing the estimated rate case expense by 16 hours. The updating of the estimates results in a reduction in Deloitte Consulting's rate case expense by \$19,932, for a new total of \$123,604. OPC has raised a complaint about the hourly rate paid to Deloitte Consulting. Unfortunately, since Deloitte Consulting had sole responsibility for the design of the Project Phoenix systems there was no party that could authoritatively testify of the insignificance that a 10% reduction in customers would have had on the design (Tr. 36-37). Further, Deloitte used junior staff at a reduced hourly rate to complete those tasks that did not require Mr. Danielson's direct participation (Tr. 53-54). Although the hourly rates may appear high by normal PSC standards, they are actually discounted from the customary rates that Deloitte charges (Tr. 64-65). The expertise and support provided by Deloitte was not available from any other source...there was only one.

In-House Rate Case Expense:

UI's actual and estimated in-house employee rate case expense was \$23,045, and estimated travel expenses was \$12,000. Since neither Ms. Wiorek nor Mr. Lubertozzi had to travel from Northbrook, Illinois for the hearing, and because Mr. Hoy only travelled from Orlando, and presumably drove with his attorney, it is estimated that travel expenses for hotel and meals for two days were only \$300, resulting in a reduction of \$11,700 in estimated travel expenses. In response to Staff's discovery, a breakdown by employee was provided (Ex. 12) to verify the amount. Despite OPC's attempts to obfuscate the facts by questioning Ms. Aquilino's description of having assisted in responding to discovery responses when OPC had yet to serve *formal* discovery, it is clear that OPC served numerous informal discovery requests during the almost two year informal discovery process (Tr. 152, 165). This docket has been open since May 2012, and as reflected in the numerous Motions by OPC and UI to extend the informal discovery period, UI employees incurred a significant amount of time in addressing OPC's issues, which resulted in a Stipulation and thus was beneficial in narrowing the issues in advance of the final hearing. Further, such time incurred by in-house employees is accounted for as capitalized time and thus is not included in the salary expense recovered through a rate case (Ex. 21, p.41). Ms. Wiorek and Mr. Lubertozzi did not have to attend the hearing (Tr. 153, 154), which results in a reduction of 16 hours in capitalized time for each person for a total reduction of \$2,624.00.

ISSUE 3: Should this docket be closed?

****Yes.****

Respectfully submitted this 30th day of
May, 2013, to:

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CERTIFICATE OF SERVICE
DOCKET NO. 120161-WS

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

E- Mail to the following parties this 30th day of May, 2014:

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