

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for increase  
in wastewater rates in Charlotte  
County by Utilities, Inc. of Sandalhaven

Docket No. 150102-SU

**UTILITIES, INC. OF FLORIDA'S MOTION FOR PARTIAL FINAL SUMMARY ORDER**

Utilities, Inc. of Florida as successor of Utilities, Inc. of Sandalhaven (“UIF”), by and through its undersigned attorneys, and pursuant Section 120.57(1)(h), Florida Statutes, and Rule 28-106.204(4), Florida Administrative Code, files this Motion for Partial Summary Final Order with regard to one of the issues raised by Office of Public Counsel (“OPC”) in its Petition Protesting Portions of Proposed Agency Action (“Petition”), and in support thereof states:

1. On January 27, 2016, OPC filed a protest of Florida Public Service Commission (“PSC”) Order No. PSC-16-0013-PAA-SU. As a quality of service issue OPC raised the following issue in paragraph 5(a) of the Petition:

Those aspects of Quality of Service, including but not limited to, the imprudent operation and maintenance of the wastewater treatment plant (WWTP) and the utility’s failure to maintain the WWTP’s capacity as noted in the Commission’s 2007 PAA Order (footnote omitted). These failures were imprudent and directly resulted in the premature retirement of the WWTP, which was the company’s lowest cost available wastewater treatment option for the approximately 72,000 gallons per day (annual average flow) that was redirected to the Englewood Water District (EWD), See PAA Order at 3-7.

Based upon the assertion of this issue, OPC seeks the following relief at paragraph 10 b) of the Petition:

Determine that the utility failed to prudently operate and maintain the WWTP and its permitted capacity, finding that its actions, whether by omission or commission, led to the premature retirement of the WWTP, and make appropriate adjustments to remove those imprudently incurred costs now burdening the customers.

2. In PSC Order No. PSC-07-0865-PAA-SU issued October 29, 2007 (“2007 Order”), this Commission considered the prudence of UIF interconnecting with the EWD. In that Docket, UIF provided the Commission a feasibility study of the various alternatives for increase in wastewater capacity. UIF determined that interconnection with EWD was the best option as opposed to expansion of the wastewater treatment plant and deep well injection option. In that Order, this Commission concluded that UIF “acted prudently to explore alternative treatment and disposal options to accommodate its existing and future customers, as well as to implement the most cost effective option.” at page 13.

3. Based upon the Commission’s determination in the 2007 Order, UIF moved forward with substantial capital investment to implement that option. The 2007 Order provided for a two phase implementation of what the Commission determined to be the “most cost effective option” which included approval of UIF abandoning the existing WWTP and constructing a sub-master lift station to direct flows to the master lift station which transfers effluent to EWD.

4. OPC was a party to the 2007 rate case which culminated in the issuance of the 2007 Order, and did not contest the prudence determination at that time. UIF has made substantial investment based upon the finality of the Commission’s determination of prudence in the 2007 Order, and OPC should not be allowed to now collaterally attack the prudence determination in the 2007 Order. The well established principle of Administrative Finality prohibits OPC from relitigating the prudence of the interconnection with EWD.

5. PSC Order No. PSC-14-0143-PCO-WS, issued March 28, 2014, addressed a virtually identical fact situation. In that case, OPC sought discovery to contest the reasonableness and prudence of the utility’s Phoenix Project from its inception. Based upon the principle of Administrative Finality, and noting that the Commission had approved the prudence of the

Phoenix Project in a number of prior PSC Orders, denied OPC the right to discovery on that issue.

That Order provides:

OPC argued that it is entitled to the discovery related to the issue of the reasonableness and prudence of the Phoenix Project from its inception because the Commission's orders approving the Phoenix Project's costs allocated to individual utilities did not include an examination and ruling of prudence. The contention that the Commission has not considered the issue of the prudence of the Phoenix Project is incorrect both as a matter of fact and a matter of law. Section 367.081 (3), Florida Statutes (F.S.), specifically states that in setting rates the Commission must determine the prudent cost of providing service. Dating back to 2008, the Commission has approved and considered the cost of the Phoenix Project in setting rates.

For example, Order No. PSC-10-0585-PAA-WS, issued September 22, 2010, addressed the Phoenix Project's allocation costs regarding 6 UI systems during 2009. As part of the allocation of costs, this Order approved the total Phoenix Project costs and held that UI could not reallocate costs to surviving utilities as a result of divestiture of certain of its utilities. This Order, and the orders in all subsequent rate cases of UI's utilities, are subject to the principle of administrative finality. The principle is described in general terms in Peoples Gas v. Mason, 187 So.2d 335, 339 (Fla. 1966), which provides that:

Orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts.

In Order No. PSC-93-1795-PCO-WS issued December 16, 1993, the Commission, based upon the principle of Administrative Finality, struck the issue sought to be raised by a protesting party as to the Commission's legal authority to establish state-wide uniform rates based upon prior Commission Orders determining the Commission had such legal authority.

6. Rule 28-106.204(4), Florida Administrative Code, provides that any party may move for summary final order whenever there is no genuine issue as to any material fact. A summary final order shall be rendered if it is determined from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final summary order. Section 120.57(1)(h), Florida Statutes. Under Florida Law "the party moving for summary judgment is required to conclusively demonstrate the nonexistence of an issue of material fact, and . . . every possible inference must be drawn in favor of the party against whom a summary judgment is sought." *Green v. CSX Transportation, Inc.*, 626 So.2d 974 (Fla. 1st DCA 1993)(citing *Wills v. Sears, Roebuck & Co.*, 351 So.2d 29 (Fla. 1977)). Furthermore, "A summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." *Moore v. Morris* , 475 So.2d 666 (Fla. 1985).

7. There are no facts in dispute and the sole determination that needs to be made is the finality of the 2007 Order, and the undisputed fact that UIF has made substantial capital investments in reliance upon the 2007 Order. This is not unlike that ruled upon by this Commission in PSC Order No. PSC-96-0345-FOF-SU. In that case the utility and OPC agreed that the determination in a prior case would control the outcome of the second case. The appellate court dismissed OPC's appeal in the first case without reaching the merits. OPC sought to re-litigate the issue notwithstanding the prior stipulation. This Commission correctly concluded that the prior case having been determined, OPC was bound by the prior Order, and granted the utility's motion for a final order. In PSC Order No. PSC-00-0341-PCO-SU issued February 18, 2000, the Commission granted the utility's motion for summary final order in a case similar to the instant one. A party protesting to a transfer asserted that the utility did not own all of the utility assets.

However, a prior Order entered by the Circuit Court determined that the utility did own all such assets. This Commission did not allow the protesting party to asset ownership of any of the assets since the Circuit Court had determined ownership by the utility. In the instant case, the Commission having made a determination of prudence in the 2007 Order, should not allow OPC to litigate assertions to the contrary.

8. Pursuant to Rule 28-106-204(3), Florida Administrative Code, the undersigned has conferred with counsel for OPC which objects to this Motion.

WHEREFORE, Utilities, Inc. of Florida as successor of Utilities, Inc. of Sandalhaven, requests this Commission issue a Summary Final Order with regard to the prudence of connecting all of its customers to the Englewood Water District.

Respectfully submitted on this 24th day of February, 2016, by:

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/s/ Martin S. Friedman

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MARTIN S. FRIEDMAN  
For the Firm

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 150102-SU**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by E-mail to the following parties this 24th day of February, 2016:

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/s/ Martin S. Friedman

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