

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Application for increase in water and /  
wastewater rates in Charlotte, Highlands, Lake, / Docket No: 160101-WS  
Lee, Marion, Orange, Pasco, Pinellas, Polk, and /  
Seminole Counties by Utilities, Inc. of Florida. / Filed: May 12 2016  
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**CITIZENS' RESPONSE TO UTILITIES, INC. OF FLORIDA'S APRIL 28, 2016 TEST YEAR  
LETTER REQUEST THAT ITS APPLICATION FOR RATE INCREASE BE PROCESSED  
USING THE PROPOSED AGENCY ACTION PROCEDURE**

The Citizens of the State of Florida (Citizens), through the Office of Public Counsel (OPC), pursuant to Rule 28-106.204, Florida Administrative Code (F.A.C.), file this response and objection to Utilities, Inc. of Florida's (UIF's) April 28, 2016 test year letter request that its Application for Rate Increase be processed using the proposed agency action procedure. As grounds, OPC states as follows:

1. UIF currently consists of 12 separate companies under one parent company with a combined rate base of approximately \$78 million, provides water and wastewater services, and serves approximately 33,192 water and 26,450 wastewater customers in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties.<sup>1</sup> It is one of the largest, if not largest, privately owned water and wastewater utility in the State of Florida, and recently consolidated its companies under UIF.

2. Whenever a utility petitions for rate relief, there are numerous disputed issues of material fact to be decided, and these include, but are not limited to, quality of service, rate base, used and useful, operations and maintenance expenses, depreciation and amortization rates, etc. UIF's customers'

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<sup>1</sup> Based on information obtained from UIF's 2015 Annual Reports and the 2014 Sanlando Annual Report

substantial interests will be determined in an upcoming proceeding before the Commission that sets their future rates and charges<sup>2</sup>.

3. On April 28, 2016, UIF filed a request for test year approval (test year letter) pursuant to Rule 25-30.430, F.A.C. By this letter, UIF informed the Florida Public Service Commission (Commission) that it intends to submit, on or before September 30, 2016, an application for general rate relief with the minimum filing requirements (MFRs). UIF requested a historic test year ending December 31, 2015, mentioning there will be “pro forma adjustments” to expenses. Additionally, UIF included 39 separate pro forma plant additions which it states will be placed into service within 24 months of the end of the proposed test year. **The cost of these 39 separate proposed pro forma plant additions will exceed \$30 million, representing approximately a 38% increase in rate base.** UIF stated it will request interim rates based on the historic test year.

4. In the test year letter, UIF also requested that the Commission process its petition for rate relief using the proposed agency action (PAA) procedure, which if approved requires the Commission to vote on the petition within 5 months of the official filing date. It is this specific request that Citizens are filing a response to and asking the Commission to reject.

5. In response to this test year letter, the Commission established this docket and Commission staff scheduled an informal meeting to discuss UIF’s test year letter and overview of the case.

6. On May 10, 2016, OPC filed its Notice of Intervention pursuant to Section 350.0611, F.S.

7. On May 10, 2016, the Commission staff held the informal meeting. At this meeting, OPC asked whether staff had considered whether this rate petition should be set for hearing. OPC expressed significant concerns with UIF’s request that the Commission process this petition for rate relief using

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<sup>2</sup> In March 2016, OPC and UIF-Sandalhaven entered into an agreement, settling their respective protests of the recent Sandalhaven PAA order, with each preserving their rights to litigate certain disputed issues of material fact during UIF’s next rate proceeding. *See* Order No. PSC-16-0151-FOF-SU.

the PAA procedure. OPC specifically highlighted the fact that the UIF's test year letter separately identified 39 pro formal projects – which are disputed issues of material fact – totaling \$30 million in plant. Moreover, OPC stated there are other known disputed issues of material fact which include, but are not limited to, quality of service, rate base, used and useful, operations and maintenance expenses, depreciation and amortization rates, and expenses. The staff indicated that, if it intended to, the OPC should make its objection in writing as soon as possible and set forth reasons justifying the case going straight to hearing

### **Argument**

8. OPC reiterates its position that Commission has full discretion to decide whether grant or deny a utility's request to use the PAA procedure. For the reasons below OPC is asking this Commission to exercise its discretion and set this matter for a hearing.<sup>3</sup> According to its test year letter, UIF is *requesting* that the Commission process its upcoming petition for rate relief using the Commission's PAA procedure. The threshold issue is whether UIF's proposed petition for relief should be processed using PAA procedure or set for a full hearing from the outset.

### ***The Commission's Discretion***

9. According to Section 367.081(8), F.S., "*A utility may specifically request the commission to process its petition for rate relief using the agency's proposed agency action procedure, as prescribed by commission rule. The commission shall enter its vote on the proposed agency action within 5 months of the official filing date. . . .*" (emphasis added). The statement, "*A utility may specifically request,*" means that a utility is not required to use, nor is the Commission required to acquiesce to, a

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<sup>3</sup> Inasmuch as UIF has made its request as part of the test year letter request to the Chairman, the Citizens suggest that the Chairman has the option of denying the PAA processing request on her own or referring it to the full Commission.

utility's request for use of PAA procedures. The Commission need not grant to a utility's test year letter request for PAA processing especially where the facts and circumstances – affecting the public interest – warrant setting the rate request for a hearing from the outset. The Commission has exercised this discretion to deny a *request* for use of PAA procedures in lieu of setting it for hearing from the outset.<sup>4</sup>

10. The Commission previously acknowledged that use of PAA procedures is discretionary. According to Order No. 96-1147-FOF-WS, issued September 12, 1996, in Docket No. 951258-WS, OPC argued the utility should be required to use the PAA procedures instead of requesting a full hearing. *Id.* at 33-34. The Commission found: “Section 367.081 (8), Florida Statutes, grants a utility the *option of requesting* a PAA proceeding in a rate case. *However, the PAA process is not mandatory.*” *Id.* (emphasis added). In Order No. PSC-12-0222-PCO-WU, issued April 27, 2012, in Docket No. 110200-WU, OPC argued, well after the test year letter (that did NOT have a PAA processing request in it) had been accepted.<sup>5</sup> *Id.* at 2. The Commission stated: “The plain language of Section 367.081 (8), F.S., *appears to give* the utility the *option to choose* the process, and we have historically deferred to the utility's selection since the enactment of that section.” *Id.* at 5. (emphasis added). Both orders indicate that the utility has the discretion to request the PAA procedure, and by clear implication the Commission has the discretion to grant or deny that request even if the Commission historically *defers* to the utility's request.

***Reasons it is in the public interest to set this case for hearing***

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<sup>4</sup> The Commission has previously set proposed agency action proceedings straight for hearing, and should do so in this case. *See e.g.*, Order No. PSC-06-0771-PCO-EI, issued September 18, 2006, in Docket No. 060162-EI (“After considerable discussion and deliberation, we decided on our own motion to set this matter directly for a formal administrative hearing. . . .”).

<sup>5</sup> In the WMSI case, the OPC's objection was lodged in the form of a motion for the full commission to decide since the PAA processing request was made in the Company testimony, well after the test year letter had been approved. IN fact in that case the utility originally asked for the case to be set for hearing from the outset.

11. UIF's test year letter indicated there are at least 39 disputed issues of material fact relating to the need for and cost of these pro forma projects. These projects total over \$30 million. The utility has the burden of proof to support this request. *See e.g., Florida Power Corp. v. Cresse*, 413 So.2d 1187, 1191 (Fla. 1982). In a PAA case, a utility is not initially required to file any testimony to support its petition or MFRs; pre-testimony is only required when the Commission sets the rate petition for a hearing. In this case, without any testimony attesting to the need for and cost of these pro forma plant items, the Commission will lack competent, substantial evidence to base a final determination of reasonableness or prudence. Since the OPC intends to challenge most – if not all of these elements through discovery and testimony -- the orderly, cost-effective and efficient administration of the regulatory and hearing process would strongly suggest that, from the outset, the utility should pre-file testimony and evidence to support its burden of proof.<sup>6</sup>

12. Granting UIF's discretionary request to use PAA procedures will only likely delay UIF's receipt of permanent rate relief, cause regulatory lag, and prolong customer uncertainty as to their final rates. Using the PAA procedure will almost certainly not narrow the number of issues if there is a protest, and will likely increase, not reduce, rate case expense. A post-PAA protest hearing will certainly require the parties, Commission staff, and this Commission to "plow the same ground twice, while perhaps seeking to obtain a different result."

13. Due to the size and complicated nature of the expected rate case proceeding, the reorganization of the UIF's rate structure and design, the expected magnitude of the rate increase, the complexity of the underlying issues, the level of expected controversy (i.e., Summertree, Labrador, Sandalhaven,

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<sup>6</sup> These proposed pro forma plant additions are separate and distinct, and in addition to from the other known disputed issues of material fact, discussed above. These disputed issues include, but are not limited to, quality of service, rate base, used and useful, operations and maintenance expenses, depreciation and amortization rates, and expenses, including rate case expense *as well as* the disputed issues of material fact remaining from UIF-Sandalhaven rate case. *See* Order No. PSC-16-0151-FOF-SU, approving the UIF-Sandalhaven Settlement.

etc.), as well as the \$30 million in anticipated pro forma projects (i.e., increasing rate base from \$80 million to \$110 million), *it is highly likely that the entirety of any PAA order that would be issued would be protested*. When a protest of a major rate case is practically inevitable, the OPC submits that it would be more administratively efficient and in the public interest to set the matter for hearing from the outset. Doing so preserves the limited resources of the parties, Commission staff, and Commission, and avoids deciding this case twice. Moreover, fully adjudicating all the disputed issues of material fact the case *only once* in a full evidentiary hearing is plainly in the public interest and will save an significant amount of Commission time, effort, and rate case expense.

14. The Commission's Order Denying OPC's Motion for Formal Hearing in the WMSI case, Order No. PSC-12-0222-PCO-WU, is distinguishable from the facts of the instant case. In that case, a water utility filed a test year letter in June 2011 (requesting a hearing from the outset), filed testimony and MFRs in November 2011 (requesting PAA procedures be used), and cured MFR deficiencies by February 2012. In this case, the timing, facts and circumstances surrounding this case, are completely different. By the time OPC requested that the WMSI case be set for an evidentiary hearing in March 2012, Commission staff was well along the way of processing this case PAA. The Commission staff had spent nearly four months reviewing MFRs and had adjudicated a comprehensive rate case by full hearing less than 12 months before filing a new rate case. In this case, OPC's objection is being submitted within 21 days of the filing of the test year letter. Because UIF is *requesting* in its test year letter before the case is even filed or scheduled, the time is ripe for the Chairman (or the Commission) to exercise the agency's discretion and case scheduling prerogative and set this case for hearing from the outset based on the near-certainty that a significant portion of the case will almost certainly be protested..

15. The WMSI case was an uncomplicated rate petition that had recently been through a full hearing. It involved one set of MFRs, a request for approval for \$2-3 million in pro forma projects already found to be reasonable in a prior rate case, and a review the prudence of certain utility management decisions. In contrast, UIF is currently preparing its expected rate filing to consolidate 12 different companies consisting of 40 different water and wastewater systems, and serves approximately 60,000 water and wastewater customers statewide. According to its 2014 Annual Reports, UIF has a consolidated rate base of approximately \$78 million and plans to increase it by \$30 million (or by 38%). At the May 10, 2016 informal meeting, UIF stated it was preparing 16 sets of MFRs, and at the request of staff may prepare testimony for certain disputed issues (e.g., uniform rates, cross-subsidization between systems, and regression analysis were among the disputed issues mentioned). This case is very large by any measure.

16. Since UIF has until September 30, 2016 to file its petition and MFRs, UIF will not be prejudiced if this Commission sets this case for hearing on the typical 8-month hearing track. UIF has demonstrated in the past that given its size, it has the ability and resources to develop the testimony needed (in fact is already developing some of it) to support all aspects of its rate request and file its case by September 30, 2016. If set for hearing, assuming UIF files non-deficient MFRs on September 30, 2016, the utility will have a final order from this Commission by May 30, 2017. If PAA procedures are used, followed by a protest, at the soonest, the utility will have final rates is 13 months later, or approximately October 2017. Setting this case for hearing from the outset will help avoid regulatory lag and provide certainty for the utility and customers.

17. For all the reasons stated above, it is in the public interest to fully address and adjudicate all the disputed issues of material fact from the outset through in a full hearing, avoiding a costly and expensive protest of a PAA order, ultimately saving rate case expense.

18. While the test year letter indicates UIF will file its petition and MFRs by September 30, 2016, UIF indicated at the May 10, 2016 informal meeting it is endeavoring to file this extensive, complicated, consolidation rate case by June 30, 2016. Therefore, OPC respectfully requests that the Commission exercise its discretion on UIF's request for PAA procedure for this case as soon as practicable.

19. Due to time constraints OPC was unable to consult with Counsel for UIF prior to the filing of this objection but based on information and belief believes it is reasonable to assume that UIF would oppose the Citizens' objection.

WHEREFORE, the Office of Public Counsel, on behalf of the customers of UIF, respectfully requests that Utilities, Inc. of Florida's test year letter request for PAA processing of its Application for Rate Increase for Hearing be denied and that the Commission process the application – when filed pursuant to the standard 8 month clock for a file-and-suspend rate case.

J.R. KELLY  
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s/Charles J. Rehwinkel  

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**CERTIFICATE OF SERVICE**  
**DOCKET NO. 160101-WS**

I HEREBY CERTIFY that a true and correct copy of the foregoing **CITIZENS' RESPONSE TO UTILITIES, INC. OF FLORIDA'S APRIL 28, 2016 TEST YEAR LETTER REQUEST THAT ITS APPLICATION FOR RATE INCREASE BE PROCESSED USING THE PROPOSED AGENCY ACTION PROCEDURE** has been furnished by electronic mail to the following parties on this 12<sup>th</sup> day of May, 2016.

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