

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for increase in water and
wastewater rates in Charlotte, Highlands, Lake,
Lee, Marion, Orange, Pasco, Pinellas, Polk and
Seminole Counties by Utilities, Inc. of Florida

Docket No. 160101-WS

**UTILITIES, INC. OF FLORIDA'S RESPONSE TO OPC'S
REQUEST TO DENY USE OF THE PAA PROCESS**

Applicant, UTILITIES, INC. OF FLORIDA ("UIF") by and through its undersigned attorneys files this Response to the Office of Public Counsel's ("OPC") response to UIF's test year request letter (effectively a motion to require UIF to forego the PAA process, which OPC tacitly admits by virtue of the fact that it cites as authority for its pleading the Rule concerning Motions), and states as follows:

1. Pursuant to Section 367.081(8), Florida Statutes, a utility may elect to have its petition for rate relief processed using the Proposed Agency Action ("PAA") procedure.
2. On April 28, 2016, UIF filed its test year request letter electing to utilize the PAA procedure. OPC subsequently filed "Citizen's Response to Utilities, Inc. of Florida's April 28, 2016 Test Year Letter Requesting That Its Application for Rate Increase Be Processed Using the Proposed Agency Action Procedure" objecting to the UIF's use of the PAA process. The pleading purports to be filed pursuant to Rule 28-106.204, Florida Administrative Code ("FAC"). However, this Rule applies to agency decisions which affect the substantial interest of parties. At this point, there is no agency decision from which a request for a formal hearing can be made, and none will be so until the PAA order is entered. This is made clear in Section 120.569(1), F.S., which provides that "Parties shall be notified of any order, including a final order." This triggers the point of entry into the formal hearing process. This Commission has made it clear in Rule 25-22.029, FAC., that

the rights afforded interested parties pursuant to Sections 120.569 and 120.57, F.S. arise after a PAA Order is entered. Thus, there is no proper authority for OPC's "Motion" and it should be denied on that procedural basis.

3. What is obvious at the outset is that OPC believes that it should be the party to control whether the PAA process is used and in the past it has complained when a utility did not use the PAA process, and also when a utility did use the PAA process. OPC can prophesize which process is best for it and then it has the ability to fulfill that prophesy. The Commission has spoken definitively on this issue and there have been no statutory or Rule amendments to dictate any different response.

4. OPC misconstrues the meaning of the phrase in Section 367.081(8), F.S., that a "utility may specifically request" the use of the PAA process. OPC reads into that phrase that the Commission has the discretion to deny a utility the use of the PAA procedure. That skewed interpretation has been rejected by the Commission every time OPC has raised it.

5. OPC, as an intervenor, does not have the statutory authority to dictate the Utility's decision on whether to utilize the PAA process. This Commission stated in Order No. PSC-96-1147-FOF-WS (September 12, 1996):

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....

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.

Obviously, the opposite is also true that going straight to hearing is not mandatory.

In the aforementioned Order, the utility chose to go directly to hearing, and interestingly, it was OPC that sought to reduce the utility's rate case expense for not utilizing the PAA process since OPC asserted that the PAA process results in lower rate case expense and thus lower rates to customers. In that case, OPC's case was articulated as follows:

OPC argues that if a PAA order had been entered, the customers could have decided to avoid the cost of hearing. As a result of FCWC avoiding the PAA process, OPC states that customers were deprived of an opportunity to avoid a hearing.

6. More recently, in Order No. PSC-12-0222-PCO-WU (Water Management Services, Inc.)("WMSI") the Commission was faced with an identical request by OPC based upon the same argument it raises here and OPC's request was correctly denied by the Commission. OPC now seeks to distinguish that decision based upon the timing of its motion. The timing of OPC's motion to force a full hearing in the WMSI case was never raised by WMSI, nor addressed by the Commission. The Commission did review rate case expense in protested versus non protested cases and also those rate cases deemed controversial. That was certainly true of the WMSI case, where OPC pointed out that there were significant capital improvements and pro forma adjustments not addressed in the earlier rate case that it alleged would be more effectively resolved through a full hearing.¹ Even though OPC fulfilled its prophesy by protesting the WMSI PAA Order, the issues were narrowed.

7. OPC's lack of faith in the PAA process is perplexing since one of its primary purposes is to reduce rate case expense and thus control customer rates. That process makes OPC and the utility give careful consideration as to whether to protest a PAA order. In many cases,

¹ It is interesting to now hear OPC call the WMSI rate case "uncomplicated" when it asserted just the opposite when it sought to have the Commission require that case to go directly to hearing.

OPC and/or the utility have chosen not to protest a PAA order with which they disagree because of the additional expense of such a protest, and the chance that the other party may recover more in a cross-protest, as was the result in the WMSI case. At the very least, a PAA order narrows the scope of a protest if one is filed, resulting in lower rate case expense than if the case had begun as one set directly for hearing.

8. OPC has not established that it has any statutory authority to obtain the relief which it has requested.

9. Neither has OPC established any factual or legal basis for this Commission to reject prior precedence on this issue.

WHEREFORE, Utilities, Inc. of Florida, respectfully requests this Commission follow its prior precedence and deny OPC's Request.

Respectfully submitted this 17th day of
May, 2016

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by
electronic mail this 17th day of May, 2016, to:

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