

BEFORE THE FLORIDA 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

**REQUEST FOR ENTRY OF AN ORDER ON
SEMINOLE COUNTY'S PETITION FOR LEAVE TO INTERVENE**

The Petitioner, SEMINOLE COUNTY, a political subdivision of the State of Florida, ("Seminole" or the "County"), sought leave to intervene in the afore-referenced proceeding on April 26, 2017, pursuant to Section 25-22.039, F.A.C.

1. Seminole County is represented by counsel and filed its Petition for Leave to Intervene in a timely manner meeting all of the filing requirements for intervention in Section 28-106.205, and 25-22.039 Florida Administrative Code ("F.A.C.").

2. Counsel for Seminole was advised by counsel for the Commission on April 27, 2017, that because of a past precedent of the Commission, if Seminole was granted intervention, Seminole would be precluded from cross-examining any witness. It was further advised that Seminole could not present any witnesses and the only involvement the County could have is to make an opening statement. However it was further advised by Commission staff that Seminole would retain any appellate rights.

3. By email to staff counsel on April 27, 2017, counsel for Seminole advised the Commission staff that Seminole's intervention was authorized by Commission rules and the Uniform Rules of Administrative Procedure (Chapter 28-106, F.A.C. et seq. or the "Uniform Rules"), Chapter 28-106.205 F.A.C. [Email attached as attachment "A".]

4. Intervention pursuant to Rule 28-106.205, F.A.C. grants party status to any person meeting the minimum filing requirements for intervention proscribed therein.

5. The rules proscribe that any party objecting to intervention should file indicating its objection. No formal objection has been filed in this docket to date. In fact, counsel to Seminole received an email from counsel to the Applicant UIT “welcoming” its intervention. [Email attached as Attachment “B”.]

6. Counsel was advised telephonically by the staff of the Commission that the Commission had in the past issued an “Order” precluding a party from participating in cross-examination of witnesses and precluding it from submitting post hearing recommendations if it failed to pre-file testimony of a witness for the hearing. Counsel requested a copy of that order which has not been provided.

7. If such an order exists, it is contrary to the Uniform Rules and when applied to addressing intervention by Seminole, effectively precludes it from participating at the hearing or in any further pretrial procedures being considered by the Commission and staff and effectively eliminates any effective appellate participation.

8. To deviate from the Uniform Rules, an agency must comply with the requirements of the Administrative Procedures Act, Section 120(5)(a)(2), Florida Statutes:

An agency may seek exceptions to the uniform rules of procedure by filing a petition with the Administration Commission. The Administration Commission shall approve exceptions to the extent necessary to implement other statutes, to the extent necessary to conform to any requirement imposed as a condition precedent to receipt of federal funds or to permit persons in this state to receive tax benefits under federal law, or as required for the most efficient operation of the agency as determined by the Administration Commission. The reasons for the exceptions shall be published in the Florida Administrative Register.

9. Commission staff has not provided any information demonstrating that it has sought or been authorized to adopt a rule contrary to the Uniform Rules.

10. By not approving its party status, Seminole has not received all emails being exchanged between the parties and other information circulating between the Parties. The Commission website as of this date only evidences Seminole being an “Interested Person” and not a “Party of Record”.

11. Seminole did provide its rate case position under oath by its Utility Director, Mr. Terrero at the Customer hearing before the Commission on February 2, 2017, at the Eastmonte Civic Center, Altamonte Springs, FL 32701. A copy of that presentation was provided to the Commission. [Attached as Amendment “C”.] It clearly sets forth the position of Seminole County on the rate case.

12. In addition, Applicant’s counsel was also provided by email, notice of the issue Seminole had an interest in and would address at the hearing. [See Attachment “B”, *infra*.]

13. There is no deprivation of due process to the Applicant by Seminole’s full participation at the hearing in cross-examining any witness and in post-hearing filings of recommendations.

14. While the staff has indicated that Seminole could have appellate rights, that right is effectively denied and rendered meaningless since its inability to participate in any manner in the remaining pretrial process, cross-examination of witnesses, and to make recommendations to the Commission at the conclusion of the hearing deprives it of the ability to establish and preserve its position as part of the record for appellate review.

15. Granting intervention to Seminole makes it a party to the proceeding and as a party, Seminole “shall have the right to impeach any witness regardless of which party called the witness to testify.” 28-106.213, F.A.C.

16. Granting intervention to Seminole makes it a party to the proceeding and Seminole has the right to “submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer.” 28-106.215, F.A.C.

17. Seminole has been precluded from the on-going stipulation pre-trial process by the failure of the Commission to address its Petition and, therefore, Seminole can have no input into stipulations and must take them as it finds the case when *or if* intervention status is granted.

18. Seminole has no reasonable alternative but to rely upon the representation of counsel to the Commission to its detriment since no other authority supporting the Commission’s position has been provided, the Commission has not responded to counsel’s email, nor has the Commission granted intervention status to Seminole.

WHEREFORE Seminole requests entry of an Order on its intervention and further addressing the issues raised herein concerning Seminole County’s participation in this proceeding.

Respectfully Submitted,
/s/ William S. Bilenky
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Counsel for Seminole County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 30th day of April, 2017, that a true and correct copy of the foregoing has been served by electronic mail upon the following:

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Bill Bilenky

From: Bill Bilenky
Sent: Wednesday, April 26, 2017 6:28 PM
To: 'mhelton@psc.state.fl.us'
Cc: Douglas Manson; Edward de la Parte Jr. (EDelaparte@dgfirm.com)
Subject: UIF

Hi Mary Ann:

I am just following up on our telephone conversation concerning the extent that my client may participate at the UIT/PSC hearing. I am requesting the order or Commission rules that prohibits Seminole County from participating at the hearing by appearing and cross examining witnesses and filing a recommendation at the conclusion of the hearing. I know that you indicated we may make an opening statement and have appellate rights but unless you allow us to preserve a record below, I believe you are depriving my client of administrative due process. While I recognize the uniform rules provide that the presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties. We take the case as we find it and the presiding officer can take any appropriate steps to protect the rights of the parties from prejudice by controlling the hearing process. Neither the staff nor the public counsel have taken a position on rate structure issues that affect my client. I believe that Seminole County is substantially affected by the proposed rate increase of UIT and has been granted party status. As such the uniform rules provides that each party shall have the right to impeach any witness regardless of which party called the witness to testify. I also believe that the uniform rules provide that all parties may submit proposed findings of fact, conclusions of law, orders, and memoranda on the issues within a time designated by the presiding officer.

If you have adopted rules that have receded from the uniform rules on these issues, please provide me with the citations to those departures from the uniform rules.

Thanks

Bill

BILL BILENKY
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Bill Bilenky

From: Martin S. Friedman <mfriedman@ff-attorneys.com>
Sent: Thursday, April 27, 2017 11:13 AM
To: Bill Bilenky
Subject: RE: UIF rate case

Bill,
Welcome to the "party". UIF's rate structure witness is John Guastella. He will be the second witness we offer and hope he will testify on Monday afternoon. Depends upon how much cross-examination there is on John Hoy, our first witness.
Marty

MARTIN S. FRIEDMAN, ESQ.
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From: Bill Bilenky [<mailto:BBilenky@mansonbolves.com>]
Sent: Thursday, April 27, 2017 10:57 AM
To: Martin S. Friedman <mfriedman@ff-attorneys.com>
Subject: UIF rate case

Hi Marty:

Will you tell me who your rate structure witness(es) is and when do you anticipate his/her testimony will be presented at the hearing. As you know Seminole County has sought leave to intervene and our issue(s) will mainly revolve around the rate allocation questions.

I know you can't tell me with any assurance when that(ose) witness(es) will testify but just where in the order of presentation you expect the witness to be called would help a lot. Thanks
I look forward to the hearing.

Thanks
Bill

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Attachment "C"

Public Comments

Seminole County is a customer of Utilities, Inc. of Florida purchasing water and wastewater services from Sanlando Utilities Corporation. The County Utility Staff understands that Utilities Inc. is requesting increases in both the residential water rates and wastewater rates for the provision of services system-wide. Those increases impact the County as a wholesale customer.

Any significant increase in charges to the County may require the County utility to go back to its Commission and seek authorization to increase rates to its customers to recover the increases imposed on it by the PSC. Unfortunately, the County does not have a statutory provision such as section 367.081(4)(b), F.S. that allows a pass-through of rate increases from purchased services from a regulated utility. The County can't simply pass through the additional costs of service without undertaking the same level of public participation of notices and hearings to get that authority. Absent that it would have to absorb the increase costs and have others of its ratepayers subsidized those receiving service through Sanlando.

1. The rate increase for wastewater services from Sanlando will cause significant rate shock to the County by increasing its costs by over \$216,069 annually based upon historic billings. That represents a 62% increase on residential rates and a 70% on the general rate tariff – 66% overall. Staff believes that the costs being assessed exceed the reasonable costs of providing the services and the recovery of those costs from the County is going to subsidizing higher cost systems.

2. It appears from the tariff filings of Utilities Inc. that it intends to seek a consolidated rate for all of its separate utilities and applying those rates and rate structure to all customers. While consolidated rates were considered in the past by the Commission, the courts did not accept singular rates for all utilities but instead recognized that "capbands" were permissible where the relative costs of service were reasonably close or consistent.

Staff recognizes that capbands or fully consolidated rates are easier to compute than standalone rates by a utility or the Commission but standalone rates more accurately reflect the actual cost of service for the utility. If the costs of service calculated from the same or similar costs for each utility are reasonably close for a number of utilities a capband approach may be acceptable. Currently the County pays rates based upon a low cost utility and any unjustified rate increase may result in the County impermissively subsidizing the rates for high cost utilities or utility customers. Staff recommends that Sanlando continue to use a standalone rate but if the Commission staff finds that a capband can be computed that reasonably groups similar cost of service systems it would accept a reasonable application of that rate setting policy.

We also suggest that if the Commission intends to move toward a capband system that it consider undertaking rulemaking so that interested parties can have an opportunity to participate in the setting of that policy.

3. A formulaic approach to setting wastewater charges is generally necessary since it is impractical to meter sewage usage for individual customers. However, metering for large wholesale customers or examining the actual usages may be practical and realistic for wholesale bulk customers. In light of the current practice, County staff is of the opinion that the formula based methodology may not accurately reflect the volumes that are actually being returned to the system for processing. The County staff does not believe the charges being assessed the County accurately reflect the cost of the service it is receiving and the County is being overcharged for services being provided. If so, the County is cross subsidizing other customers within the utility's service area. The County would like to work with staff and the utility in finding an acceptable methodology to measure volumes of wastewater the County is sending to the utility.