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From: Roberts, Brenda [ROBERTS.BRENDA@leg.state.fl.us]
Sent: Friday, February 17, 2012 3:14 PM
To: Filings@psc.state.fl.us
Cc: Saylor, Erik; Merchant, Tricia; Jennifer Crawford; Martha Barrera; Marty Friedman; Patrick C. Flynn (pcflyn@uiwater.com)
Subject: e-filing (Dkt. No. 110153-SU)
Attachments: 110153 OPC's response to emergency mot for continuance.final.pdf

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 110153-SU

In re: Application for Increase in Wastewater Rates in Lee County by
Utilities, Inc. of Eagle Ridge.

c. Document being filed on behalf of Office of Public Counsel

d. There are a total of 5 pages.

e. The document attached for electronic filing is Office of Public Counsel's
Response to Utilities, Inc. of Eagle Ridge's Emergency Motion for Continuance.
(See attached file: 110153 OPC's response to emergency mot for
continuance.final.pdf)

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

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2/17/2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Increase in
Wastewater Rates in Lee County by
Utilities, Inc. of Eagle Ridge.

Docket No. 110153-SU
Filed: February 17, 2012

OFFICE OF PUBLIC COUNSEL'S
RESPONSE TO UTILITIES, INC. OF EAGLE RIDGE'S
EMERGENCY MOTION FOR CONTINUANCE

The Office of Public Counsel ("OPC"), by and through J.R. Kelly, Public Counsel, on behalf of the Citizens of the State of Florida, responds pursuant to Rule 28-106.204, Florida Administrative Code, to the Emergency Motion for Continuance submitted by Utilities, Inc. of Eagle Ridge ("Eagle Ridge" or "Utility") on February 14, 2012, and in order to clarify its position on the statements contained in the Utility's Emergency Motion, responds as follows:

1. OPC does not oppose the Utility's request for a 60 to 120 day continuance in this docket as it will facilitate discussions about how best to address the handling of the generic and specific disputed issues raised by the Utility and OPC in their respective protests of PAA Order No. PSC-11-0587-FOF-SU.

2. The Utility's protest raised three issues: 1) the allocation of Project Phoenix rate base was erroneous as it included divested systems (generic); 2) rate case expense was understated (generic and specific); and 3) erroneously limited the inclusion of unamortized rate case expense in working capital (generic).

3. OPC's protest raised four issues: 1) management's failure to adjust books and records in accordance with prior Commission orders (generic); 2) Project Phoenix failed to deliver the enhanced benefits promised to its customers when it was first proposed (generic); 3) the used and useful percentages of Eagle Ridge and Cross Creek

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wastewater treatment plants are overstated (specific); and 4) Eagle Ridge rate case expense is overstated (generic and specific).

4. Based upon the discussions between the parties and Commission staff in two recent meetings, OPC believes that there are at least two and perhaps three generic issues which affect all the UI systems regulated by the Commission. Those generic issues relate to the Phoenix Project, books & records adjustments, and the Commission's analysis of rate case expense set forth in the protested PAA Order. The remaining Eagle Ridge specific issues relate to the amount of rate case expense approved as well as the used and useful percentages approved by the Commission.

5. OPC believes an extension of time, whether 60 or 120 days, will allow the parties and Commission staff additional time to discuss the process for addressing the generic issues through the creation of a generic docket, and resolving any remaining Eagle Ridge specific issues in this docket. Establishing a generic docket will protect the due process rights and substantial interests of all the customers of the Utilities, Inc. ("UI") subsidiaries affected by any Commission decision rendered on the generic issues.

6. OPC believes that it would be unfair and unnecessarily burdensome for the Eagle Ridge customers to bear the entire litigation cost for the generic issues, and agrees with the Utility that reasonable litigation cost, if any is approved by the Commission, should be allocated among the UI systems.

7. While the Utility, OPC, and the Commission staff legal have discussed some processes for addressing the generic issues, OPC disagrees with the Utility that the generic issues are best addressed within the pending docket.

8. If the generic issues are litigated in pending Eagle Ridge docket, OPC believes there are a number of procedural questions or considerations that include but are

not limited to the following: 1) clearly affording the customers of other UI systems a point of entry to participate in the Eagle Ridge docket; 2) providing notice to the customers of other UI systems that their substantial interests will be affected by the Commission's adjudication of the generic issues; 3) location of the technical hearing whether in the Eagle Ridge service territory, Tallahassee, or elsewhere; 4) bifurcating the hearing in order to address Eagle Ridge specific issues open only to Eagle Ridge customers and generic issues open to all UI customers; 5) the application of the Commission's decision on the generic issues in Eagle Ridge to at least three other UI rate cases pending (or soon to be pending) before the Commission and whether these rate cases should be stayed, continued, held open, etc. pending the Commission's decision on the generic issues.

9. Addressing the generic issues in a separate proceeding does not eliminate procedural and legal considerations referenced above, but addressing these generic issues separately would make addressing the generic issues more straightforward without the confines of a statutory clock. Further, the decision rendered by the Commission on the generic issues would clearly be applied prospectively to UI systems (including for purposes of prospective earnings monitoring and interim calculation). Moreover, it would allow the Utility and OPC to focus upon any remaining Eagle Ridge specific issues.

10. OPC believes that a separate docket to address the generic issues would prevent delay, and promote the just, speedy, and inexpensive determination of the remaining Eagle Ridge specific issues in this docket. *See* Rule 28-106.211, F.A.C.

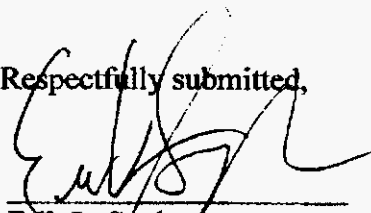
11. OPC agrees with the Utility that removing the generic issues from the Eagle Ridge docket would leave the specific rate case expense issue for litigation along with OPC's used and useful issue.

12. If a separate docket is opened by a Petition or Motion by UI or by the Commission's own motion to address the generic issues raised by the parties, OPC would withdraw its protest of the used and useful allocation issue, leaving only the Eagle Ridge specific rate case expense issue.

13. For the reasons stated above, OPC believes that the generic issues raised by the parties would best be addressed in a generic docket as these generic issues affect all UI systems in Florida, and any remaining Eagle Ridge specific issues can be addressed in this docket.

WHEREFORE, OPC respectfully believes that litigating the generic and specific issues together in this docket is not in the best interest of the customers of Utilities, Inc., and clarifies that OPC does not oppose the Utility's request for a 60 to 120 day continuance as it will facilitate discussions between the parties and Commission staff on how best to address all issues discussed herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

DOCKET NO. 110153-SU

I HEREBY CERTIFY that a true and correct copy of the OFFICE OF PUBLIC COUNSEL'S RESPONSE TO UTILITIES, INC. OF EAGLE RIDGE'S EMERGENCY MOTION FOR CONTINUANCE has been furnished by electronic mail and/or U.S. mail to the following parties this 17th day of February, 2012:

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