

**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

FILED: February 29, 2016

**OFFICE OF PUBLIC COUNSEL'S RESPONSE TO UTILITIES, INC. OF FLORIDA'S MOTION FOR PARTIAL FINAL SUMMARY ORDER**

The Citizens of the State of Florida (Citizens), by and through the Office of Public Counsel (OPC), pursuant to Rule 28-106.204(1), Florida Administrative Code (F.A.C.), file this Response to Utilities, Inc. of Florida's Motion for Partial Final Summary Order (Motion), and in support thereof states:

1. On January 27, 2016, OPC filed a Petition protesting portions of Florida Public Service Commission (Commission) Order No. PSC-16-0013-PAA-SU (PAA Order) raising several issues. The only issue of material fact relevant to this Response is found 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 permitted capacity as noted in the Commission's 2007 PAA Order.<sup>1</sup> 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 daily flow) that was redirected to the Englewood Water District (EWD). *See* PAA Order at 3-7.

And the relief based on this issue of material fact found in paragraph 10(b) of the Petition states:

Determine that the utility failed to prudently operate and maintain the WWTP and its permitted capacity, find that its actions, whether by omission or commission, led to the premature retirement of the

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<sup>1</sup> Order No. PSC-07-0865-PAA-SU at 5.

WWTP, and make appropriate adjustments to remove those imprudently incurred costs now burdening the customers.

2. On February 24, 2016, Utilities, Inc. filed the Motion requesting a “Summary Final Order with regard to the prudence of connecting all of its customers to the Englewood Water District.”

3. Utilities, Inc.’s Motion is irrelevant to the issue raised by OPC’s Petition. The issue contained in paragraph 5(a), and the associated relief in paragraph 10(b), of OPC’s Petition raises the issue of the **timing** of the retirement of the WWTP and all of the necessary sub-elements of that issue, such as prudent operation and maintenance of the WWTP, not simply that the WWTP was retired and customers were transferred to the EWD.

3. In PSC Order No. PSC-07-0865-PAA-SU issued October 29, 2007 (2007 Order), the Commission considered the issue of interconnecting with the EWD. In the 2007 Order, the Commission determined the interconnection with the EWD was prudent and allowed recovery of associated costs. Of note, at the time of the 2007 Order, Utilities, Inc. had already completed the interconnection and purchased treatment capacity from EWD for \$4,532,454 (2007 Order, p. 13), contrary to assertions in the Motion that Utilities, Inc. moved forward with substantial capital investment after the 2007 Order.

4. In the 2007 Order, the Commission recognized that the WWTP would face early retirement given the approval of an interconnection with the EWD, and, for ratemaking purposes, the Commission used a hypothetical WWTP retirement date in 2009. However, and this is critical to the Motion and this Response, at no point did the Commission ever determine prudence of or set a date certain for the retirement of the WWTP.

5. The prudence of the actual retirement date of the WWTP, and the sub-elements that led to that specific retirement date, is the issue of material fact raised in OPC's Petition paragraphs 5(a) and 10(b), not the issue of interconnection with the EWD and transfer of customers to the EWD.

6. A review of the 2007 Order and all related orders issued since shows, very clearly, that a retirement date for the WWTP, as well as the prudence of such a date, was never determined by this Commission. This is precisely the issue of material fact raised in Paragraph 5(a) of OPC's Petition. Thus, there is no collateral attack on the 2007 Order, nor is there any attack on the administrative finality of the 2007 Order.

7. Utilities, Inc. is correct in that it bears the burden of conclusively demonstrating "the nonexistence of an issue of material fact." *Green v. CSX Transp.*, 626 So. 2d 974, 975 (Fla. 1st DCA, 1993). As explained above, the issue of material fact the Motion fails to acknowledge or even address is the **timing** or **specific date** of the WWTP's retirement, not that customers were eventually transferred to the EWD interconnection. Therefore, an issue of material fact quite clearly exists.

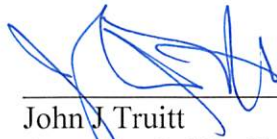
8. Furthermore, Utilities, Inc. is also correct in that "a summary judgment should not be granted unless the facts are so crystallized that nothing remains but questions of law." *Morris v. Morris*, 475 So. 2d 666, 668 (Fla. 1985). The issue of material fact regarding the specific retirement date, and the associated prudence of that date, of the WWTP was never determined by this Commission. Therefore, the facts are not crystallized. In actuality, the facts surrounding the specific retirement date itself have never been reviewed, leaving far more than a simple question of law remaining.

9. Since the timing/specific date of the retirement of the WWTP, and the elements leading to that date, is a material issue raised by OPC's Petition, and the timing/specific date in question has never been litigated before this Commission, a partial summary final order is inappropriate.

WHEREFORE, the Citizens respectfully request this Commission deny Utilities, Inc. of Florida's Motion for Partial Final Summary Order.

Respectfully Submitted,

JR Kelly  
Public Counsel



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John J. Truitt  
Associate Public Counsel  
Florida Bar No. 84752  
[truitt.john@leg.state.fl.us](mailto:truitt.john@leg.state.fl.us)

Erik Saylor  
Associate Public Counsel  
[saylor.erik@leg.state.fl.us](mailto:saylor.erik@leg.state.fl.us)  
Office of the Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, Florida 32399-1400

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Response to Utilities, Inc. of Florida's Motion for Partial Final Summary Order has been furnished by electronic mail to the following parties on this 29th day February, 2016.

Suzanne Brownless  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd., Room 110  
Tallahassee, FL 32399-0850  
[sbrownle@psc.state.fl.us](mailto:sbrownle@psc.state.fl.us)

Utilities, Inc. of Sandalhaven  
200 Weathersfield Avenue  
Altamonte Springs, FL 32714-4027  
[pcflyn@uiwater.com](mailto:pcflyn@uiwater.com)

Martin S. Friedman  
Friedman & Friedman, P.A.  
766 N. Sun Drive, Suite 4030  
Lake Mary, FL 32746  
[mfriedman@ff-attorneys.com](mailto:mfriedman@ff-attorneys.com)

  
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John J. Truitt  
Associate Public Counsel