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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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. 20200139-WS FILED: February 23, 2021

CITIZENS' POST-HEARING BRIEF

The Citizens of the State of Florida, through the Office of Public Counsel, pursuant to the Order Establishing Procedure ("OEP"), Order No. PSC-2020-0327-PCO-WS, as amended by the Chairman at the conclusion of the technical hearing, hereby submit this Post-Hearing Brief.

STATEMENT OF BASIC POSITION

The burden of proof is "**always** on a utility seeking a rate change." *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982) (emphasis added). In this case, Utilities Inc. of Florida ("UIF" or "the Utility") not only failed to carry its burden, but also attempted to impose categorically improper costs onto customers.

As to the pro forma projects proposed, the utility failed to credibly explain its criteria for documenting projects; therefore where documentation is absent, that failure to produce evidence demonstrates to the Public Service Commission ("PSC" or "Commission") the utility's inability to prove the project will comply with the claimed timelines. Additionally, projects that are not associated with active construction or that include costs that are used to avoid payment of Department of Environmental Protection (DEP) penalties may not be properly recovered from customers in this case, to the extent of such costs.

UIF's mismanagement repeatedly resulted in DEP violations and Consent Orders. The evidence shows UIF's customers have complained about discolored, foul smelling water they are afraid to drink – several stated they buy expensive filters or simply buy bottled water. UIF often subjected customers to pollution because of unlawful sewage discharges due to its own poor maintenance practices, not aging infrastructure, as the utility may suggest. Additionally, customers reported substandard customer service.

The evidence is overwhelming that UIF failed to prove it renders satisfactory quality of service to its customers.

Based on the evidence adduced at hearing, OPC recommends an annual increase in revenues for water of $1,129,866, and for wastewater of $2,720,043. The evidence shows the Utility's return on equity should be set at 9.5%. UIF's proposal for a new sewer and water cost recovery mechanism, which it calls SWIM, should be denied because the legislature has not authorized it and it is unnecessary; the ratemaking process already provides ample opportunities for utilities to conduct prudent maintenance.

Attached to this brief as "Attachment A" is an updated Exhibit ACC-3, Schedule 1, which is OPC's revenue requirement summary for wastewater ("sewer"). Based on information produced after OPC's testimony was filed and based on testimony at the technical hearing, OPC's expert reversed his disallowance of all or part of three projects. Throughout this brief, OPC has cross-referenced the wastewater recommendations listed in its pre-filed testimony as compared to the updated wastewater revenue requirement data. OPC provided all the updated schedules to UIF's counsel, who advised he has no objection to OPC's references to the updated schedules.

POSITIONS AND ARGUMENT ON DISPUTED ISSUES

ISSUE 1: Is the overall quality of service provided by the Utility satisfactory, and, if not, what systems have quality of service issues and what action should be taken by the Commission?

POSITION: *No. Systems have quality of service issues, including Lake Utility Services, Inc. (LUSI), Wekiva Hunt Club/Sanlando Utilities, Mid-County Services, Inc. and Pennbrooke. The Commission should reduce the ROE for LUSI, Mid-County Services, Inc. and Pennbrooke by at least 50 basis points and 100 basis points for Wekiva Hunt Club/Sanlando Utilities.*

ARGUMENT: Sections 367.081(2)(a)1 and 367.0812, Fla. Stat., require the Commission to consider the quality of service and the extent to which UIF provides water service that meets secondary water quality standards as established by DEP. In addition, Rule 25-30.433(1), F.A.C., specifies that the Commission must consider:

> …three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction. Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (DEP) and county health departments or lack thereof over the preceding 3-year period shall also be considered. DEP and county health department officials' testimony

concerning quality of service as well as the testimony of utility's customers shall be considered.

OPC Witness Sarah Lewis provided a summary of the various letters, exhibits, and other documentation contained in the instant docket file and in other files of the Public Service Commission ("PSC" or "Commission") as relates to the quality of service provided by Utilities, Inc. of Florida ("UIF" or "the Utility") during or after the test year. Witness Lewis tabulated complaints from the PSC's Complaint Activity Tracking System (CATS) for the years 2017-2020. Staff Witness Rhonda Hicks also testified regarding the number and type of complaints that the Commission received about UIF. Additionally, docket correspondence and statements from customers at customer service hearings indicate that there are ongoing quality of service issues in several systems.

Witness Lewis's Testimony

Witness Lewis detailed the compliance issues in Exhibit 84 and listed six consent orders pertaining to 3 facilities. Wekiva Hunt Club/Sanlando Utilities, was subject to 3 consent orders all for the discharge of untreated or improperly treated wastewater. Additionally, according to DEP Public Notices of Pollution this facility had another wet well overflow on December 26, 2020.[1] PCF-23 is related to Consent Order #20-0108 and the justification and benefits describe the violation as being related to a jammed Vulcan screen. EX 117 at 2. DEP evidence shows consistent mismanagement and a failure to comply with the terms of the Order. As briefs were being written in this case, DEP filed a past due notice informing UIF that the Department has still not received payment of the $15,952.06 which was due under the Order by December 23, 2020.[2] Even during the pendency of a rate case where the utility claims to have satisfactory service, they cannot comply with the most basic terms of the Order to which they agreed. The 2018 violation was due to an overflowing surge tank at the facility which spewed at least 25,000 gallons of raw sewage onto the ground over more than two weeks. EX 116 at 38. In response to Consent Order #18-0103, UIF implemented PCF-22. EX 116 at 2. Wekiva Hunt Club/Sanlando Utilities was subjected to a third consent order in 2015 which included 5 different violations. EX 86 at 51. DEP attributed one violation to a berm breach and another to RIB's that "were not being properly operated and maintained." EX 86 at 51. Finally, the December 26 spill described by customers and responded to by UIF at the customer service

[1]Florida Department of Environmental Protection-Pollution Notice, https://prodenv.dep.state.fl.us/DepPNP/reports/viewIncidentDetails?page=1

[2]OGC No.: #20-0108; Notification of failure to comply with Consent Order. (February 17, 2021) To the extent the Commission is obligated to consider this information, it should do so as recommended here. Otherwise it should be disregarded.

hearing was said by Patrick Flynn to be due to "a loss of power at a lift station [which] resulted in lack of pumping capacity." CSH 1/7 TR 27-28.[3]

Between 2015 and 2020, Mid-County Services Inc. WWTP was also the subject of two consent orders. EX 86 at 13, 40. LUSI was also the subject of a consent order in 2015 related to maximum contaminant level exceedances. EX 86 at 2. Staff Witness Hicks testimony also indicates that LUSI was the subject of the second highest incidence of complaints recorded in the CAT and about 20% of those complaints related to quality of service. TR 505.

Correspondence and Customer Service Hearings

The correspondence filed in this docket as of February 19 indicates that out of 537 customers who filed correspondence, approximately 85 customers mention water quality issues and 39 customers mention customer service issues. Customers also took the time to draft petitions and collect signatures which reflect that of 815 and 1,327 responses, a total of 57 response forms expressed issues related to the water quality in their area and 10 expressed dissatisfaction with the customer service provided by UIF. Document No. 00517-2021 & Document No. 00877-2021. Staff Witness Hicks stated that based on the data in the CATS, approximately 31% of complaints mention quality of service issues. TR 504.

There were five customer service hearings held in this docket throughout the months of December and January. There were 48 appearances with some customers feeling compelled to appear more than once. Approximately 35% of the comments made related to poor water quality with several customers citing such poor taste and smell that they installed whole house filters in order to make the water useable, as well as build-up and staining on sidewalks and sinks and in toilets. CSH 1/6 TR 34-35, 47; CSH 12/10 6pm TR 19, 24, 29; CSH 12/10 2pm TR 59, 48. Others stated that they are unable to afford these types of filters and are forced to purchase bottled water for drinking and cooking. CSH 12/10 6pm TR 29, 35. Customers also shared that the staining caused by the water requires them to either get their driveways and houses cleaned or they get fined by their homeowners association ("HOA"). CSH 12/10 2pm TR 60. The compounding costs of installing filters, buying bottled water, replacing appliances and having to clean stains caused by UIF's poor water quality is an unreasonable burden to place on customers who do not even receive useable, potable water. Additionally, around 22% of customers said that they had experienced customer service issues with UIF, some noting that the emergency line goes unanswered and customers have been left wondering whether their water is safe to use after an outage. CSH 12/10 2pm TR 63.

[3]References to "CSH" denote the Customer Service Hearings. The reference also contains the date and time if relevant and a transcript citation.

Witness Snow expressed that while UIF is aware of the "significant concentration of iron" in the groundwater at the Pennbrooke system, the named customers have not made a complaint directly to the utility about this matter. TR 558. However, while customers may not have filed a complaint with UIF directly many did complain to their HOA about the quality of the water provided by the utility. At least 3 community representatives like the Pennbrooke Homeowners Association representing their 1,239 residences filed letters in this docket on behalf of their members so while UIF may not be able to find the customer's name linked to a complaint that does not mean that their issues were fabricated for this case. Document No. 01701-2021, Document No. 13186-2020, and Document No. 08356-2020.

Witness Lewis testified that even if some of the consent orders have been resolved, the Commission should still consider whether there is a pattern or history of mismanagement with respect to certain facilities. TR 489-490. If UIF has been under a consent order they should not be allowed to operate in non-compliance during the test year, later resolve the deficiencies in time for the rate case, and then expect to receive a clean bill of health from the Commission with respect to setting new rates particularly when UIF is still subject to Consent Order #20-0108 and currently not in compliance with the order.

Conclusion

The Commission should find that there is an unsatisfactory quality of service based on DEP compliance history and customer testimony for the following 4 systems: Lake Utility Services, Inc. (LUSI), Wekiva Hunt Club/Sanlando Utilities, Mid-County Services, Inc. and Pennbrooke. The Commission should reduce the ROE for LUSI, Mid-County Services Inc. and Pennbrooke by a minimum of 50 basis points. Additionally, the ROE for Wekiva Hunt Club/Sanlando Utilities should be reduced by 100 basis points. See Issue 22.

ISSUE 2: Should any adjustments be made to test year plant-in service balances?

POSITION: *Yes. OPC proposes disallowance of nine projects for insufficient documentation: PCF-14, PCF-17, PCF-18, PCF-20, PCF-23, PCF-28, PCF-31, PCF-33 and PCF-16. Six projects are studies unrelated to a construction project: PCF-6, PCF-21, PCF-26, PCF-30, PCF-39 and PCF-45. Fine imbedded in-kind penalty projects: PCF-15, PCF-17, PCF-22 and PCF-23 should be disallowed.*

ARUGMENT: Section 367.081(2)(a)2., F.S., allows the Commission to consider:

> Utility property, including land acquired or facilities constructed to be constructed within a reasonable time in the future, not to exceed 24 months after the end of the historic base year used to set final rates unless a longer period is approved by the commission, to be used and useful in the public service…

OPC Witness Radigan provided a detailed explanation of projects that are in danger of failing to meet the 24-month limitation and for which the utility has not provided sufficient documentation to support the claimed completion date as well as a list of six projects which are merely studies and not connected to an active construction project. The Commission has previously disallowed recovery for pro forma projects when there was insufficient documentation to explain a change in the construction schedule and when staff requested an executed agreement for the project and the utility failed to provide the documentation.[4]

Pro Forma Projects without Sufficient Supporting Documentation

Witness Radigan recommends the Commission refuse complete recovery of eight pro forma projects and partial recovery for one pro forma project for which the company has not provided sufficient documentation to support the contention that the projects will be completed within the 24 months allowed by law. TR 464-465. UIF has the burden of proof with respect to these projects, yet to date they have not provided final construction contracts, invoices or project schedules for nine projects totaling $9,401,299. EX 62.

UIF Witness Flynn acknowledged the process that UIF follows for construction projects as involving four important documents: a bid, an award form (AF), a contract and a Notice to Proceed (NTP). TR 146-154. He also stated that the contractor may not begin work until a NTP is issued if one is included in the contract documents and that this form must be signed by both the utility and the contractor to be effective. TR 154.

Witness Radigan reviewed the proffered documentation and excluded projects where the documentation was incomplete. Examples include no NTP or a NTP that wasn't executed by both parties. Mr. Radigan testified that certain projects such as PCF-17 cannot be started until another project, namely PCF-14 is finished. TR 446. PCF-14 was originally scheduled to be completed by December 31, 2020 but UIF has provided multiple updates to this completion date stating in response to OPC's Interrogatory No. 82 that the project would be finished by March 31, 2021 and later claiming in UIF Witness Flynn's rebuttal testimony that the project will be done in June of 2021. EX 15 at 1, EX 159, TR 771. The contract for PCF-17 states that the contract time for the project is 540 days, meaning that if PCF-17 cannot be started

[4]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. Order No. PSC-2017-0361-FOF-WS. September 25, 2017; In re: Application for increase in water and wastewater rates in Lake County by Utilities Inc. of Pennbrooke. Order No. PSC-10-0400-PAA-WS p. 10. June 18, 2010.

until PCF-14 is completed by the second revised date of June of 2021, it will be impossible for PCF-17 to be completed by the 24-month deadline of December 31, 2021. EX 111 at 12.

On cross examination, UIF Witness Flynn attempted to claim that documentation was not provided for certain projects because it was unnecessary to issue an AF or a NTP for that project. Witness Flynn stated that an AF was not provided for PCF-16 because UIF does not necessarily use one for every project or for PCF-31 due to the minor scale, size and complexity of the project. TR 159, TR 165. Witness Flynn also attempted to claim that an AF was not necessary for PCF-20 because it was a straight forward project. TR 163-164. It is unclear what criteria qualify a project for an AF since according to this testimony documentation standards do not appear to be correlated to the cost, construction time or scope of the project. PCF-16 is a project costing $634,302 and is described as a "multi-phased effort…[which] will be carried out over the next five years." EX 110 at 1. The Business Case Form (BCF) for PCF-31 reflects a total cost of $145,919 and PCF-20 has a cost of $128,000 with a 10 month construction time. EX 125 at 1, EX 114 at 1. Witness Flynn's testimony is contradicted by the fact that AF's were issued for PCF-42 with a total cost of $86,837 and a construction time of 168 calendar days (EX 136 at 1, 5) and PCF-43 which had a total cost of $91,537 and a construction time of 168 calendar days. EX 137 at 1, 5. Additionally, when questioned about the lack of an AF for PCF-20 Witness Flynn testified that UIF "simply signed off on the proposal by the contractor" and he replied "correct" when asked if the company simply signed the bid. However, neither of the bid documents provided for this project contain a signature by any authority figure for UIF. TR 164; EX 114 at 3-7.

Witness Flynn also testified that a NTP was not issued for each contractor involved in PCF-16 but seems to suggest that one was only required for the contractor who was working on the project whose segment constituted the largest financial cost. TR 160. The only NTP which UIF provided for PCF-16 was for Left Coast Utilities which was also linked to an invoice for $65,725. EX 110 at 8-9. Witness Flynn appears to have been mistaken at the hearing, believing that the single NTP provided for this project was related to the contractor Insituform which has a contract for services of $414,243.80. TR 160; EX 110 at 4-7. Again, the idea that a NTP was necessary for a portion of a project costing less than one sixth the amount of the portion for which the documentation is absent is either counterfactual or a poor business practice. Witness Flynn also claimed that a NTP was not necessary for PCF-33 or PCF-20. TR 166, TR 163-164. The BCF for PCF-33 shows a total cost of $503,130. EX 127 at 1. Again, this testimony is inconsistent with the fact that NTP documents were provided for both PCF-42 and PCF-43 which as previously stated, have a significantly lower cost and shorter construction times than PCF-16, PCF-33 and

PCF-20. Furthermore, this testimony is inconsistent with the contract which was provided for PCF-33 which states that "the contract documents include the…Notice to Proceed…" and states that "The Contractor shall begin work after the issuance of a written Notice to Proceed." EX 127 at 24.

Additionally, UIF's responses to discovery and Witness Flynn's rebuttal testimony indicate a consistent inability by the utility to accurately identify the completion date of projects. On cross examination Witness Flynn admitted that at least 15 of the 45 pro forma projects requested fell behind on their construction schedules over the six months between when he filed his direct testimony and when he filed his rebuttal testimony. TR 199. Other projects such as PCF-31 have been paused and UIF has not provided any documentation to support a planned completion date. TR 197. Furthermore, Witness Flynn admitted that there is no consistent reason for which a project may fall behind schedule and he offered that the delay could be the result of third party action. TR 205. However, the statute does not consider the reasoning for why a project was or was not completed within 24 months after the test year, it merely requires that the pro forma project be placed in use within this timeframe. It may be the case that Witness Flynn is personally confident in the timelines he gave in his rebuttal testimony, but he also stated that he expected the Commission to rely on the dates he testified to on direct. TR 210, TR 154. Witness Flynn's confidence is not proof and where the utility has failed to provide any proof, the Commission should not take such speculation or personal feelings as such. The Commission should completely disallow PCF-14, PCF-17, PCF-18, PCF-20, PCF-23, PCF-28, PCF-31 and PCF-33 for a lack of sufficient documentation. Additionally, the Commission should disallow the portion of PCF-16 for which documentation was not provided.

Projects Not Associated with Plant Additions

The Commission should disallow an additional six projects because they do not have an actual plant addition associated with them. The value of the six projects is $432,673. EX 63. These six projects represent merely studies and reports which will later be used to develop construction plans. PCF-6 is described as analysis and the generation of a report, PCF-26 is related to design, permitting and bid preparation, and PCF-21 is also merely the generation of a report which will later be used to solicit bids. EX 100 at 1, EX 120 at 1, EX 115 at 1. Studies and reports which are not associated with active construction projects that will be completed within the statutory timeframes cannot be considered plant in service or construction-work-in-progress pursuant to the Uniform System of Accounts (USOA)[5] or Rule 25-30.116, F.A.C. In fact, under cross examination Witness Flynn admitted that his testimony does not

[5]The Commission adopted the Uniform System of Accounts for Water and Wastewater in Rule 25-30.115, F.A.C.

demonstrate that he evaluated PCF-6, PCF-26 or PCF-21 for consideration as plant in service or construction work in progress. TR 787-790. Furthermore, on direct Witness Flynn testified that several of these projects would require a separate capital project to address the findings. TR 185, 187, 189, 200-203.

While projects that were described as investigations and studies were included in ratebase in Order No. PSC-2017-0361-FOF-WS, this does not eliminate the fact that the decision to include these studies was contrary to the USOA and Rule 25-30.116, F.A.C. When the Commission deviates from officially stated policy or agency rule, the deviation is grounds for appeal.[6] The Commission did not explain the reasoning for allowing recovery of projects which were not connected to an active construction project or plant addition but doing so in this case would be contrary to Commission rule and policy. Furthermore, in Order No. PSC-14-0714-FOF-EI, the Commission conceded that the mere existence of precedent for the desired action does not allow them to supersede the statute which controls their decision. A previous error on the part of the Commission does not become precedent for continuing to perpetuate the erroneous ruling if it is contrary to the controlling statute or in this case, rule. The Commission should completely disallow PCF-6, PCF-21, PCF-26, PCF-30, PCF-39 and PCF-45 because they are not actual construction associated with a plant addition.

In-Kind Penalty Projects

DEP Consent Orders allow entities to choose to implement in-kind penalty projects which may be a capital/facility improvement project. EX 116 at 41. The cost of the in-kind penalty project must be at least 1.5 times the amount that the utility was to be fined under the Consent Order. OPC submits that UIF should not be allowed to accomplish indirectly what would not be allowed directly (i.e., recovery of the cost of a fine from customers) under circumstances where the utility would be prohibited from recovering such DEP fine from customers. UIF should not be allowed to choose a project that costs more than the fine and recover the entire cost of the project from customers, to the extent such costs include fines.

In Order 2018-0014-FOF-EI, the Commission held that when a Consent Order required payment of an amount that was not a fine but was essentially a donation to avoid a fine, the utility could not recover that amount from customers.[7] In that case the funds were required to be deposited into an escrow account for use by the DEP as the agency saw fit. Here, the Consent Order does not require UIF to undertake these projects but merely allows the utility to choose a project rather than a fine. This seems like a fool's choice when Commission precedent is that DEP fines may not be recovered from customers while generally

[6]Section 120.68(7)(e), Fla. Stat.
[7]In re: Environmental cost recovery clause. Order 2018-0014-FOF-EI at 15. January 5, 2018.

allowing recovery of pro forma projects.[8] Choosing an in-kind penalty project and being able to recover the cost of it from customers allows UIF to not only avoid consequences but to actually profit off of their violations. UIF should not be allowed to operate their facility in a manner that harms their customers and avoid punishment by forcing additional costs onto customers.

UIF states in the documentation provided for these projects that they are in-kind penalty projects. TR 772; EX 111 at 4, EX 116 at 37, and EX 117 at 2. For this reason the Commission should disallow the amount of the DEP fines associated with PCF-15, PCF-17, PCF-22 and PCF-23 and embedded in capital costs which total $56,147. EX 86 at 20, 43, 68, 80.

ISSUE 3: Should any adjustments be made to the Utility's pro forma plant additions?

POSITION: *****Yes. OPC proposes disallowance of nine projects for insufficient documentation: PCF-14, PCF-17, PCF-18, PCF-20, PCF-23, PCF-28, PCF-31, PCF-33 and PCF-16. Six projects are studies unrelated to a construction project: PCF-6, PCF-21, PCF-26, PCF-30, PCF-39 and PCF-45. Fines embedded in in-kind penalty projects: PCF-15, PCF-17, PCF-22 and PCF-23 should be disallowed.*

ARGUMENT: See Issue 2 above.

ISSUE 4: What are the appropriate plant retirements to be made in this docket?

POSITION: *The appropriate plant retirements are tied to the capital additions that are ultimately authorized by the Commission. If the Commission accepts OPC's recommendation to exclude several of the Company's claimed plant additions, then retirements associated with those additions should be added back to ratebase.*

ARGUMENT: Plant retirements must be tied to actual retirements allowed in this case. Should the Commission disallow any of the pro forma projects which have plant retirements associated with the project, the Commission should also add back that retirement as it will not occur. OPC recommends disallowing PCF-14, PCF-17, PCF-18, PCF-23, PCF-28 and PCF-33. EX 89. The total retirement for these six project is $3,799,821 (EX 89) therefore that amount should be added back to ratebase.

ISSUE 9: What are the appropriate used and useful percentages for the wastewater treatment and related facilities of each wastewater system?

[8]In re: Application for rate increase in Duval, Nassau, and St. Johns Counties by United Water Florida Inc. Order No. PSC-1997-0618-FOF-WS. May 30, 1997.

POSITION: *The appropriate used and useful percentages for each wastewater system below 100% are as follows: Mid-County: 93.67%; Labrador: 79.94%; Lake Placid: 29.79%; LUSI: 65%; Marion-Golden Hills/Crownwood: 78.44%.*

ARGUMENT: The guidelines for calculating the Used and Useful (U&U) percentages for wastewater are set out in Rules 25-30.431 and 25-30.432, F.A.C., and Section 367.081(2), Fla. Stat. The parties also agree on the U&U percentage for the Marion-Golden Hills/Crownwood system but disagree with respect to the Mid-County, Labrador, Lake Placid and LUSI systems.

With respect to the Mid-County system, Witness Radigan explains that a blind application of the rules would either advantage or disadvantage the utility based on the average rainfall in the test year. TR 450-451. While the rule does consider Inflow & Infiltration (I&I), OPC's position is not that Mid-County consistently suffers from excessive I&I but rather that in this particular test year the flows were unusually high. UIF Witness Seidman acknowledged that the test year was "a very wet year" and certain pro forma projects for this system such as PCF-16 provide that "this facility has had regulatory violations in 2019 related to excess I&I" as the justification for the project. EX 60 at 79, EX 110 at 2. Using the test year flows results in a U&U percent that is over 100%. EX 60 at 79. Witness Seidman admits that this system hasn't seen growth and that the increased U&U is driven by the high flows that year. EX 60 at 79. The utility should not be rewarded with a higher U&U nor should they be punished with a lower percent merely because the rainfall did or did not favor them in a particular year. The Commission should evaluate the average flows for this system and use that data to calculate the U&U and until this can be accomplished, the U&U should remain at the 93.67% set in the utility's last rate case.[9]

In Docket No. 20160101-WS, the Commission found that the U&U for Labrador was 79.94%.[10] This determination was based on the fact that the system was not built out as there was a vacant parcel. TR 754. UIF now contends that the parcel is being developed and will be completed within five years. TR 754. However, the only support UIF has provided to support this claim is an email from the contractor's VP of Construction Services which states that it is "probably…a fair assumption" that the development will be completed in this time frame. TR 761-762; EX 209. Like their pro forma projects, this development lacks sufficient proof with regard to the timing of the completion and should not support a finding that the

[9]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. Order No. PSC-2017-0361-FOF-WS. September 25, 2017.
[10]*Id*. at 96.

Labrador system is built out. UIF failed to adequately support its claim and therefore the U&U for Labrador should remain at the percent previously set by this Commission.

Like Labrador, UIF contends that the Lake Placid system is built out and that the Commission recognized this as far back as 1996. TR 755. However, they fail to mention that the Commission rejected this argument in 2016, agreeing with OPC that the system was only 29.79% U&U and should do so again.[11] In 2016, UIF made the same arguments about environmental regulation and the Commission stated that because UIF had not made an argument that was any different than the one made in their last rate case "there is no dispute regarding the calculated U&U percentages as they are based on the same flow data, capacity, and method."[12] The same things are true today. UIF has not presented any argument or evidence that is any different than that presented in 2016 and the Commission should find it as unpersuasive today as it did then.

For LUSI, UIF proposes that both historic development and pre-paid connections should be included in the ERC's resulting in a U&U of 70%. TR 756-57. However, this methodology results in a double counting and is contrary to the Commission's finding in Order No. PSC-2019-0363-PAA-WS.[13] The Commission previously decided that "capacity devoted to prepaid connections does not qualify under s. 367.081(2)(a)2.b., Fla. Stat., as property used and useful in the public service" and accordingly "revised the U&U calculation[s] for LUSI…to eliminate the prepaid connections" which resulted in a U&U of 53.54 percent.[14] This system has had growth since that time and the calculated U&U is now 65% but Commission precedent is clear about the inclusion of prepaid connections in the U&U calculation.

ISSUE 12: Should any adjustments be made to test year accumulated depreciation?

POSITION: *****Yes. The adjustments should be consistent with OPC's recommendations regarding utility plant additions. OPC recommends an accumulated depreciation adjustment of $62,729 for water per Exhibit ACC-2, Schedule 5 and of $3,318,796[15] for wastewater.*

[11] *Id*. at 97.
[12] *Id*.
[13] 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. Order No. PSC-2019-0363-PAA-WS. August 27, 2019.
[14] *Id*. at 3.
[15] As explained above in the Statement of Basic Position, OPC updated its wastewater revenue requirement data based on data UIF produced after OPC's pre-filed testimony was filed and based on evidence presented at the technical hearing. OPC provided all of its updated wastewater schedules to UIF's counsel, who advised he has no objection to OPC updating its positions on wastewater projects. Due to page limits on the brief, OPC has attached to this brief only the updated Revenue Requirement Summary for wastewater, i.e., updated Exhibit ACC-3, Schedule 1.Specifically as to Issue 12, the wastewater accumulated depreciation adjustment listed in OPC's pre-filed testimony was $3,488,242, per Exhibit ACC-3, Schedule 6; the number listed in Issue 12 above reflects the updated recommended adjustment of $3,318,796, which is a fallout number from Mr. Radigan's revisions, using the identical methodology in the original schedules.

ARUGUMENT: The Commission should make those adjustments that are necessary to be consistent with OPC's recommendations regarding utility plant additions. Therefore, the Commission should eliminate one year of depreciation expense that the Company added to the reserve related to the utility plant-in-service additions that are subject to Mr. Radigan's adjustment. It is also necessary to reduce the Company's reserve adjustment associated with retirements since some of those retirements may not occur. OPC recommends an accumulated depreciation adjustment of $62,729 for water per Exhibit ACC-2, Schedule 5 and of $3,318,796 for wastewater.

ISSUE 13: Should any adjustments be made to test year CIAC balances?

POSITION: *****Yes. The adjustments should be consistent with OPC's recommendations regarding utility plant additions and associated retirements. OPC's adjustments increase CIAC (increase the ratebase deduction) by $71,685 for water, and by $207,947 for sewer. All amounts represent adjustments to the Company's claimed position.*

ARUGUMENT: The Commission should make those adjustments that are necessary to be consistent with OPC's recommendations regarding utility plant additions and associated retirements. Therefore, the Company should adjust the CIAC balance to account for those projected plant retirements that were funded by CIAC but which the OPC reversed in its retirement adjustment, as discussed on page 14 of Ms. Crane's testimony. OPC's adjustments increase CIAC (increase the ratebase deduction) by $71,685 for water and by $207,947 for sewer.

ISSUE 14: Should any adjustments be made to test year accumulated amortization of CIAC?

POSITION: *****Yes. Adjustments to accumulated amortization should be made consistent with the adjustment to CIAC balances discussed in Issue 13. These adjustments increase accumulated amortization of CIAC (increase the ratebase addition) by $71,685 for water and by $207,947 for sewer. *

ARGUMENT: Yes. Adjustments to accumulated amortization should be made consistent with the adjustment to CIAC balances discussed in Issue 13. These adjustments increase accumulated amortization of CIAC (increase the ratebase addition) by $71,685 for water and by $207,947 for sewer. All amounts represent adjustments to the Company's claimed position.

ISSUE 16: What is the appropriate working capital allowance?

POSITION: *****The appropriate working capital allowance for water is $1,847,933 as shown on Exhibit ACC-2, Schedule 3. The appropriate working capital allowance for sewer is $2,348,716, as shown on Exhibit ACC-3, Schedule 3.*

ARGUMENT: Despite UIF's mischaracterization of Ms. Crane's position on whether working capital, or cash, should be included in ratebase (TR 800), Ms. Crane did in fact recognize that cash can be a component in determining ratebase, but she specified there must be a valid basis for including a particular amount of cash. UIF's error is in failing to meet its burden of proof for the amount of cash it claims. TR 319.

UIF came up with its own "estimate" on the amount of cash to include in working capital by creating a surrogate theory using a percentage of gross plant. (TR 796); UIF chose the gross plant data point - it is not related to any applicable data point the Commission used in UIF's last case to determine the amount of cash to include.

UIF's Witness claimed to have used Orders in two *KW Resort Utilities* cases to develop her estimate, i.e. Order Nos. PSC-20170091-FOF-SU (*KW 2017*) and PSC-20180446-FOF-SU (*KW 2018*). However, the PSC did not use a calculation of gross plant in making its decisions in those cases. Instead, the Commission considered the amounts of cash approved in KW's prior cases, among other things. *KW 2017* at 32; *KW 2018* at 31. The Commission affirmed that the working capital allowance should reflect day-to-day operations, rather than anomalous expenditures for capital projects or interest bearing escrow accounts. *KW 2018* at 31. In this case, UIF's Witness used an entirely different method from that used in the *KW* cases - UIF simply reverse engineered the *KW* data to back into a theory for its estimate, which is how the utility came up with the 2% gross plant plan. TR 248. UIF did not include a cash balance in working capital in its last case. TR 796. The estimate UIF proposed in this case is arbitrary, and not reasonably related to the company's day-to-day operational requirements. Therefore, UIF failed to meet its burden of proof on its claim regarding the amount of cash to include in working capital.

ISSUE 17: What is the appropriate ratebase for the adjusted December 31, 2019, test year?

POSITION: *****The appropriate ratebase for the December 31, 2019 test year for water is $54,066,409, as shown in Exhibit ACC-2, Schedule 3. The appropriate ratebase for the December 31, 2019 test year for sewer is $75,375,380.[16]*

[16]OPC's original test year ratebase recommendation was $74,394,657, as shown on Exhibit ACC-3, Schedule 3. As explained in footnote 15, OPC updated its test year ratebase recommendation to $75,375,380.

ARGUMENT: The appropriate ratebase for the December 31, 2019 test year for water is $54,066,409, as shown in Exhibit ACC-2, Schedule 3. The appropriate ratebase for the December 31, 2019 test year for sewer is $75,375,380.

ISSUE 18: What is the appropriate amount of accumulated deferred taxes to include in the capital structure?

POSITION: *****The components of the capital structure should be adjusted consistent with the recommendations of Mr. Garrett regarding the percentages of long-term debt, short-term debt, and common equity. The capital structure should reflect 4.88% accumulated deferred taxes, which is the percentage of accumulated deferred taxes reflected in the capital structure proposed by UIF.*

ARGUMENT: The components of the capital structure should be adjusted consistent with the recommendations of Mr. Garrett regarding the percentages of long-term debt, short-term debt, and common equity. As discussed on pages 7-8 of Mr. Garrett's testimony, the capital structure should reflect 4.88% accumulated deferred taxes, which is the percentage of accumulated deferred taxes reflected in the capital structure proposed by UIF.

ISSUE 22: What is the appropriate return on equity (ROE) for the test year?

POSITION: *****The appropriate ROE for the test year is 9.50%.*

ARGUMENT: It is well-established that, in the regulatory environment, an awarded ROE should be based on the cost of equity capital. *See, e.g.*, *Bluefield Water Works & Improvement Co. v. Public Serv. Comm'n of West Virginia*, 262 U.S. 679, 692-93 (1923); *In re: Petition of Tampa Elec. Co.*, Order No. 5278, 1971 Fla. PUC LEXIS 14, *39-42 (1971), (*citing Bluefield* and stating, "it is generally recognized that the fair rate of return should be at least equal to the cost of capital"). Florida law requires that rates charged by a public utility must be "fair and reasonable." §367.121, Fla. Stat. Moreover, Florida law requires only that utilities be provided the *opportunity* to earn a fair rate of return – utilities are not guaranteed a certain level of profit and certainly not an exorbitant profit. *In re: Petition of Tampa Elec. Co.*, at *39. In this case, UIF's requested 11.75% ROE not only exceeds the bounds of fairness, but is utterly untethered to the reality of the prevailing economic conditions, i.e., low interest rates, low utility industry risk, high utility industry access to capital, and the ROEs granted to Florida water utilities over the last 10 years; therefore UIF's proposed ROE is unreasonable. Interest rates are still near their all-time lows at about 2% (D'Ascendis Dep. p. 23 at 6-15), and the equity risk premium is only about 6%. TR 411

line 8. The equity risk premium is the premium required by investors, above the risk-free rate, for investing in all stocks in the equity market. TR 405, lines 1-10. Thus, if we were to add a risk-free rate of 2% to an equity risk premium of 6%, we would have an overall required return on the market of only 8%, which further indicates that UIF's proposed ROE of 11.75% is simply not realistic in the current market environment.

Although UIF's expert, D'Ascendis, used models similar to ones used by OPC's expert, Mr. Garrett, the inputs used by Mr. D'Ascendis were upwardly biased and in some cases unrealistic. (TR 358-359). UIF's PRPM methodology is not widely accepted or used. (D'Ascendis Dep. p. 10-11). Due to inappropriate inputs used by Mr. D'Ascendis, his results are generally inflated. (TR 358, 413-415). Further, D'Ascendis based some of his inputs on the claim that UIF's size relative to larger non-regulated utilities should affect its cost of equity, but his analysis is flawed in part because he attempts to compare UIF to non-regulated entities in his proxy group, which is like comparing apples to oranges. D'Ascendis also used a size premium theory that has been defunct for almost 40 years, and is wholly inapplicable to this case. (TR 419-420). Despite these facts, Mr. D'Ascendis's DCF Model produced a median result of 9.44% (TR 540-544), which equates to a substantially similar result as the awarded ROE of 9.5% recommended by Mr. Garrett. Nonetheless, Mr. D'Ascendis seemingly ignored the relatively reasonable results of this variation of his own DCF Model in favor of more upwardly biased models.

Mr. Garrett's ROE analysis properly took into account the historically low interest rates that have prevailed for decades and the fact that utility stocks are consistently less risky than average stocks in the marketplace, thus utilities have a lower cost of equity than the general market cost (TR 366-367). UIF's expert conceded interest rates are near all-time lows (D'Ascendis Dep. p. 23 at 7-15). Evidence shows that awarded returns elsewhere have declined as interest rates have declined. (Garrett Dep. p. 10, at 23-25).

UIF's expert conceded he was not aware of any water or wastewater utility that was authorized an ROE of 11.75% on a straight ratebase rate of return. (D'Ascendis Dep. p. 7 at 3-10). When confronted with the fact that UIF's recommended allowed ROE of 11.75% is significantly above the average of allowed ROE for water utilities going back 10 years, UIF's Witness encouraged Staff to look to the leverage formula because it allows for risk premiums based on size for smaller companies (D'Ascendis Dep. p. 30 at 7-23); however, the leverage formula result is still only 9.6% - far below UIF's excessive recommendation of 11.75%.

The Commission's own statutory leverage graph formula results in a 9.69% ROE. (TR 360). The 9.5% ROE recommended by OPC's expert is closest to the result of the Commission's leverage graph formula and most aligned with the result of the Commission's formula. UIF's extreme, inflated proposal of 11.75% stands in stark contrast to both the Commission's result and to OPC's recommendation. The bottom line is that OPC's position provides a high level of confidence that either 9.5% or 9.69% is a more accurate, fair, and reasonable result than the wildly excessive 11.75% ROE requested by UIF.

Finally, the awarded ROE should be reduced by at least 50-100 basis points – on a targeted underperforming system basis – to reflect OPC's recommendations in Issue 1, due to UIF's failure to render satisfactory quality of service. Based on OPC's recommended ROE of 9.5% and the penalties recommended in Issue 1, the ROE for water should decline from 9.50% to 9.29%, and the ROE for sewer should decline from 9.50% to 9.19%.

ISSUE 23: What is the appropriate weighted average cost of capital including the proper components, amounts and cost rates associated with the capital structure?

POSITION: *****The appropriate WACC based on OPC's proposed capital structure and cost rates is 6.73%.*

ARGUMENT: The appropriate WACC based on OPC's proposed capital structure and cost rates is 6.73%.

ISSUE 24: What are the appropriate test year revenues?

POSITION: *****Regarding proposed rates, there should be adjustments of $1,693,982 to UIF's claimed water revenue deficiency of $2,823,848. Also, OPC's proposed sewer adjustments indicate a revenue deficiency of no more than $2,720,043, per Exhibit ACC-3, Schedule 1, update attached hereto as Attachment A.[17] This reflects revenue requirement adjustments of $3,809,340 to the Company's claimed revenue deficiency of $6,529,383.*

ARGUMENT: OPC did not propose any adjustments to the Company's claimed test year revenues at present rates. With regard to proposed rates, there should be adjustments of $1,693,982 to the Company's claimed water revenue deficiency of $2,823,848, as shown on Exhibit ACC-2, Schedule 1. This would result in an overall water revenue increase of no more than approximately 6.8%. In addition, OPC's proposed sewer adjustments indicate a revenue deficiency of no more than $2,720,043, as summarized on

[17]Please see the explanation in footnote 15. Prior to the update, OPC's proposed sewer adjustments indicated a revenue deficiency of no more than $2,577,689. This reflected revenue requirement adjustments of $3,951,694 to the Company's claimed revenue deficiency of $6,529,383. OPC's original proposed adjustments would result in an overall sewer revenue increase of no more than approximately 12.7%.

Exhibit ACC-3, Schedule 1, updated and attached hereto as Attachment A. This reflects revenue requirement adjustments of $3,809,340 to the Company's claimed revenue deficiency of $6,529,383. OPC's proposed adjustments would result in an overall sewer revenue increase of no more than approximately 13.4%.

ISSUE 27: Should any further adjustments be made to the Utility's test year O&M expenses?

POSITION: *****Yes. OPC proposes that several adjustments to the Company's pro forma expense claims should be made, as discussed on pages 20-41 of Ms. Crane's testimony. The total adjustments should be $331,436 for water and $304,228 for sewer. OPC's expense adjustments are summarized on Exhibit ACC-2, Schedule 8 for water and on the updated exhibit ACC-3, Schedule 9 for sewer.[18]*

ARGUMENT: Yes. OPC proposes that several adjustments to the Company's pro forma expense claims should be made, as discussed on pages 20-41 of Ms. Crane's testimony. OPC's expense adjustments are summarized on Exhibit ACC-2, Schedule 8 for water and on exhibit ACC-3, Schedule 9 for sewer.

A. Additional Employees

UIF failed to carry its initial burden of proof to demonstrate a need for additional employees, and ultimately admitted it has failed to hire any of the additional employees claimed. TR 320-322; EX 163. O&M expense should be reduced $107,421 (water) and $98,602 (sewer).

B. Lobbying Expense

The Commission has a long, well-settled policy of disallowing lobbying expenses. *E.g., Gulf Power Co. v. Bevis*, 296 So. 2d 482, 485 (Fla. 1974), *In re: Nuclear Cost Recovery Clause*, Order No. PSC-2011-0547-FOF-EI, 2011 Fla. PUC LEXIS 392, *65-67; *In re: Application for Increase by Utilities, Inc. of Florida*, Order No. PSC-2014-0025-PAA-WS, 2014 Fla. PUC LEXIS 25, *63-64; *see also, In re: Environmental Cost Recovery Clause*, Order No. PSC 2014-0714-FOF-EI at 6 (declining to extend cost recovery to activities involved in shaping policies).

UIF is attempting to recover from customers the costs of lobbying related to what it calls its Fair Market Value ("FMV") legislation, which is fundamentally about a water company's acquisition of

[18]Please see the explanation in footnote 15 regarding the updated ACC-3, Schedule 9 provided to UIF's counsel. The wastewater adjustments listed in Issue 27 are fallout numbers from Mr. Radigan's revisions, using the identical methodology in the original schedules.

another water system. UIF's FMV bill did not pass the 2020 legislature. EX 169; TR 563.[19] Mr. Snow testified at hearing there is currently no pending bill regarding UIF's fair market value idea. TR 564.

UIF failed to present evidence of any benefit whatsoever received by customers for its lobbying related to its fair market value bill. The plain impact of the bill would have been to benefit shareholders instead of customers. Nonetheless, the utility claimed the proposed legislation would benefit *both* customers and shareholders (TR 565), but still failed to produce any evidence that it attempted to quantify the benefit to customers or to apportion the lobbying costs between customers and shareholders according to the percentage of alleged benefit to customers. (TR 566). The bottom line is the bill did not pass, so it is undisputed that no one benefitted from UIF's failed lobbying efforts. The lobbying expenses should be disallowed, as recommended by OPC expert Crane. TR 322-323. O&M expense should be reduced $23,894 (water) and $21,933 (sewer).

C. Incentive compensation.

UIF has improperly sought to include in rates executive incentive compensation in the form of the Employee Deferred Incentive Compensation Program ("EIP") in the amount of $206,718 (water) and $189,750 (sewer). The Commission should reject this unsubstantiated effort because it is designed to primarily benefit shareholders. According to UIF, the first objective of the EIP is to "provide eligible employees with an annual incentive as an integral component of their total annual compensation package while furthering the annual performance of the Company with a view to maximizing shareholder value." EX 193. Witness Crane recommended that the incentive compensation award costs that are tied to financial metrics, or which do not otherwise benefit ratepayers, be recovered from the Company's shareholders. She noted that regulatory commissions frequently disallow incentive compensation costs tied to financial metrics on the basis that such metrics benefit shareholders, but may not benefit, and may even harm ratepayers. Awarding incentive compensation based on financial metrics is inconsistent with a utility's mandate to provide safe and reliable utility service at the lowest reasonable cost. This testimony is consistent with the significant weight of Commission policy. She further testified that her adjustment to remove only 50% of incentive compensation was consistent with the overall EIP's objective to maximize shareholder value and the payout conditions for achieving certain financial metrics. TR 283. This adjustment is conservative given that 70% of the company performance metric (for determining the allocated expense) is based on financial performance measures. TR 282. UIF sought to criticize OPC's

[19]The hearing transcript indicates Mr. Snow testified the legislation passed, but appears to contain a typo, as that answer is inconsistent with UIF's responses to discovery and legislative records on the bill.

Witness (who does not have the burden of proof) for not performing her own study to compare incentive compensation to the market when UIF failed to study incentive compensation benchmarks and metrics in the cases where the Commission allowed executive incentive compensation. TR 624; EX 200.

This Commission has found that incentive compensation tied to earnings per share (EPS) could creative incentives to generate earnings in a way that is contrary to customer welfare and safety. In the 2009 Progress Energy Florida ("PEF") rate case, the Commission disallowed 100% of incentive compensation while noting the utility had deferred maintenance (and thus increased achieved earnings). Witness Crane expressed similar concerns about the impact of an incentive to place a premium on earnings boosted by expense cuts that could affect service. TR 282-283. In the PEF case the Commission stated:

> We believe both of these instances demonstrate a concern for EPS above that of conducting appropriate maintenance where it might impact Company earnings. We do not believe employees should be rewarded for that. Accordingly, we believe that incentive compensation tied to EPS should not be passed on to ratepayers.

Order No. PSC-20l0-0l3l-FOF-EI at 114. Witness Crane demonstrates that the customers should bear no more than 50% of such costs. Recent Commission precedent for the very largest investor-owned utilities supports disallowing ***all*** of such compensation. The OPC's expert is only seeking to disallow half. After noting that the EPS target could actually harm customers, the Commission disallowed 100% of incentive compensation in the PEF (now Duke Energy Florida) case:

> We believe that incentive compensation provides no benefit to the ratepayers and constitutes nothing more than added compensation to employees. Especially in light of today's economic climate, we believe that PEF should pay the entire cost of incentive compensation, as its customers do not receive a significant benefit from it. Accordingly, we find that the 2010 allowance for incentive compensation shall be reduced by $32,854,378 jurisdictional ($37,465,650 system).

Id. at 115. In a case contemporaneous with that case, 100% of the executive incentive compensation for Florida Power & Light ("FPL") was disallowed:

> We find that the entire executive incentive compensation program is designed to benefit the shareholders by creating long-term shareholder value. We find that the executive incentive compensation program is designed to place the interests of executives in the same light as that of shareholders, thus creating incentive to increase the value of FPL Group's shares. Because these programs are designed for the benefit of shareholders, those costs shall be borne exclusively by shareholders.
>
> ***
>
> We reduce FPL's O&M expenses by $30,565,472, to reflect a 100 percent reduction in executive incentive compensation.

Order No. PSC-20l0-0153-FOF-EI at 148, 150. Those orders (omitted by Mr. Deason) are the most recent rulings for Florida's largest utilities. They were made in the Great Recession of 2008-2009, as implicitly

acknowledged in the cited PEF passage. The parallel to the current pandemic and hardships the Commission's adopting Witness Crane's conservative adjustment given that she did not fully adjust for cash incentive payouts under the Long-Term Incentive Plan ("LTIP"). TR 281-283. As not all information was provided to sufficiently allow full scrutiny of the costs allocated from the executive participants in the LTIP. TR 281; 609-611; 614; 718-719. UIF failed to meet its burden to justify these costs as a part of its burden of proof. The Commission could address this by considering a 100% disallowance given the failure of UIF to provide information that justifies the allocated LTIP costs.

D. Non-qualified retirement benefit expense

The non-qualified retirement benefit plans provide supplemental retirement benefits for key executives that are in addition to the normal retirement programs provided by the Company. By offering a non-qualified plan, a company is able to provide additional benefits to highly paid officers and executives that cannot be provided under "qualified" plans, which limit the amount of compensation that can be considered for purposes of determining pension benefits. The current compensation limit is $285,000. In addition, non-qualified plans allow a company to avoid rules and regulations that apply to qualified plans, e.g., rules that prohibit discrimination among employees with regard to retirement benefits. Non-qualified plans generally do not need to meet the requirements of the Employee Retirement Income Security Act ("ERISA"). Non-qualified plans also do not qualify for the more favorable tax treatment that is available to qualified retirement plans under the Internal Revenue Service ("IRS") Tax Code. TR 285. These circumstances do not support customers bearing these extra costs. Just as the IRS has determined that these costs should not be eligible for favorable tax treatment, the Commission should also determine that these costs should not be recoverable from regulated ratepayers. If UIF wants to provide additional retirement benefits to select officers and executives, then shareholders, not ratepayers, should fund these excess benefits. TR 286. O&M expense should be reduced $28,592 (water) and $26,245 (sewer)

E. Severance pay

The parent (CII) severance costs should be disallowed because the Company provided no details regarding them. UIF failed to meet its burden of proof to provide any information about the reasons for these costs, the recurring nature (if any), the number of employees involved, or the underlying factors that resulted in these severance payments (e.g., were they downsizing or just replacing certain executives). TR 280. No showing was made that these costs are necessary to the provision of safe and reliable utility service, or that they should otherwise be paid by Florida ratepayers. UIF failed to substantiate the allocations to Florida operations or to demonstrate they were appropriate. Witness Deason was ignorant

of the reasons. He chalked it up to the "confidential negotiated compensation packages" but could only speculate about the causes. TR 605-606. Furthermore, UIF failed to clearly demonstrate that costs or their level are recurring. To the extent severance costs are non-recurring, it would be inappropriate to include them in ongoing rates regardless of the underlying factors that caused incurrence. However, the OPC recommends disallowance because the prudence of the confidential severance payouts was not provided. For water, the adjustment is $29,720 and for sewer, the adjustment is $27,280.

ISSUE 29: Should any adjustments be made to test year taxes other than income?

POSITION: *****Yes. A payroll tax adjustment should be applied. For water, a payroll tax expense adjustment of $17,537 should be made, as shown on Exhibit ACC-2, Schedule 13. For sewer, a payroll tax adjustment of $16,097 should be made, as shown on Exhibit ACC-2, Schedule 14.*

ARGUMENT: Yes. A payroll tax fallout adjustment should be applied to reflect the impact of OPC's recommended adjustments to eliminate costs for new employee positions, reduce the annual labor cost escalator, eliminate severance costs and eliminate 50% of incentive compensation award costs. For water, a payroll tax expense adjustment of $17,537 should be made, as shown on Exhibit ACC-2, Schedule 13. For sewer, a payroll tax adjustment of $16,097 should be made, as shown on Exhibit ACC-2, Schedule 14.

It is also necessary to make fallout adjustments to property tax expense in order to reflect certain reductions to utility plant-in-service and adjustments to non-used and useful plant (for the sewer utility). For water, a property tax expense adjustment of $8,551 should be made per Exhibit ACC-2, Schedule 19. For sewer, a property tax expense adjustment of $150,925[20] related to plant additions should be made, and a further property tax expense adjustment of $21,885 should be made related to non-used and useful plant, as shown on Exhibit ACC-3, Schedule 22

ISSUE 30: Should any adjustments be made to test year depreciation expense?

POSITION: *****Yes. For water, a net depreciation expense reduction of $11,914 related to plant additions should be made. (Exhibit ACC-2, Schedule 18, lines 1-2). For sewer, a net depreciation

[20]Please see footnote 15 regarding updated data reflected in Attachment A. For sewer, the original property tax expense adjustment reflected in Crane's testimony was $166,291, as shown on Exhibit ACC-3, Schedule 21 – that schedule was updated and the new adjustment is $150,925, which is a fallout number from Mr. Radigan's revisions, using the identical methodology in the original schedules.

expense reduction related to plant additions and retirements of $300,001 should be made.[21] Additionally, for sewer a reduction in depreciation expense of $101,214 related to non-used and useful plant should be made.*

ARGUMENT: Yes. For water, a net depreciation expense reduction of $11,914 related to plant additions should be made. (Exhibit ACC-2, Schedule 18, lines 1-2). For sewer, a net depreciation expense reduction related to plant additions and retirements of $300,001 should be made. In addition, for sewer, a reduction in depreciation expense of $101,214 related to non-used and useful plant should be made. (This is part of the net adjustment of $77,091 shown on Exhibit ACC-3, Schedule 20). All amounts represent adjustments to the Company's claimed position.

ISSUE 31: Should any adjustments be made to test year amortization of CIAC expense?

POSITION: ***** For water, a reduction to the amortization of CIAC expense of $1,667 should be made. For sewer, a reduction to the amortization of CIAC expense in the amount of $6,555 should be made related to plant additions.[22] Also for sewer, an increase to the amortization of CIAC expense in the amount of $24,123 should be made related to non-used and useful plant. *

ARGUMENT: For water, a reduction to the amortization of CIAC expense of $1,667 should be made. (Exhibit ACC-2, Schedule 18, line 3). For sewer, a reduction to the amortization of CIAC expense in the amount of $6,555 should be made related to plant additions. In addition, for sewer, an increase to the amortization of CIAC expense in the amount of $24,123 should be made related to non-used and useful plant. (This is part of the net adjustment of $77,091 shown on Exhibit ACC-3, Schedule 20). All amounts represent adjustments to the Company's claimed position.

ISSUE 32: What is the appropriate amount of test year income taxes?

POSITION: *****The income taxes will depend upon the specific level of revenues authorized by the Commission. However, the income taxes should reflect a state income tax rate of 4.46% in determining pro forma income tax expense. In addition, the Commission should return unprotected excess deferred income taxes to ratepayers over a five-year period.*

ARGUMENT:

A. Flowback of unprotected accumulated excess deferred income taxes

[21]Please see footnote 15 regarding updated data reflected in Attachment A. The original sewer depreciation expense reduction was reflected in Exhibit ACC-3, Schedule 19, lines 1-2; the updated Schedule 19 was provided to UIF's counsel.
[22]See footnote 15. This data was originally reflected in Exhibit ACC-3, Schedule 19, line 3; an updated Schedule 19 was provided to UIF's counsel.

The Commission should require UIF to return unprotected excess deferred federal income tax balances to ratepayers over a 5-years. Witness Crane testified that given the pandemic and financial difficulties of Floridians, this will provide needed relief to ratepayers. The Company incorrectly claimed that the use of a 10 years was "commission precedent," citing Order No. PSC-2019-0076-FOF-GU (*FPUC*). Unmentioned was a one-year flowback of unprotected deferred taxes See Order Nos. PSC-2018-0180-S-EI where Gulf Power Company agreed to reduce its rates by $69 million to refund their excess. TR 638. Together the orders provide the Commission broad discretion to choose the period within the range of one to ten. *Gulf Power Co. v. Fla. Pub. Serv. Com.*, 453 So. 2d 799 at 805 (Fla. 1984). (The PSC was within its discretionary authority to select an inventory value of a coal pile by selecting a value halfway between the two values supported by the evidence.) As Witness Crane noted, the ten years chosen in the *FPUC* involved the creation of a regulatory asset where customers had to fund the future payment of taxes. In this case the customers have overpaid and are entitled to the benefit of a refund. TR 294. Additionally, for FPUC the amount of the protected excess deferred taxes was about three times the balance of unprotected excess. Here, the unprotected balance is only $360,233 or about 7% of the size of the protected balance. TR 294. Mr. Deason could not testify that that a five-year flowback would have any harmful impact on cash flow or run afoul of any credit metric. TR 724-725.[23] Customers should receive their refunds in five years, which is reasonable and supported by the evidence.

B. State income tax rate

On September 12, 2019, the Florida Department of Revenue announced a reduction in the state corporate income tax rate from 5.5% to 4.458% for tax years beginning in 2019, 2020, and 2021. While the rate may revert to 5.5% effective January 1, 2022, a possibility exists that it will be extended. TR 295. The Commission should use 4.458% in determining the revenue requirement as Witness Crane testifies. *Id*. Notably, for the years 2019, 2020 and for all of 2021, UIF will have collected rates set using the 5.5% rate but would only be liable for remitting state incomes taxes – if at all – at the 4.458% rate. For the historical test year of 2019, the rate was 4.458%. If the rate is set at the 5.5% rate, Witness Deason

[23] In the Duke Energy Florida and Tampa Electric tax flowback mechanisms approved by the Commission in the 2017 settlements, a flowback "governor" was approved by the Commission that dictated the pace of flowback based on a two-prong test of the amount of unprotected accumulated excess deferred taxes and any impairment of bond ratings. See Order No. PSC-2017-0451-AS-EI at 39-40 and Order No. PSC-2017-0456-S-EI at 32-33. DEF's unprotected EADIT balance was $248.5 million or 44% of the protected balance of $560.5 million and above the $200 million threshold for a five-year flowback and was thus flowed back over ten years. See Order No. PSC-2019-FOF-EI at 5. Similarly, Tampa Electric's unprotected EADIT balance was $133 million or 38% of the protected EADIT balance of $347.8 million and greater than the $100 million threshold for a five-year flowback and was thus flowed back over ten years. See Order No. PSC-2018-0457-FOF-EI at 5. These treatments as reflected in Commission orders support a flowback of five years given that the UIF unprotected balance is 7% of the protected balance and the lack of any evidence of credit metric impacts.

acknowledged that there would be a period of over-collection throughout 2021 and that any possible change in the rate would occur two years after the test year at the earliest. TR 639-640; 727. The Commission should set rates to collect the rate in effect at the time of setting rates and during the test year, as this is the only equitable, known and measurable tax rate.

ISSUE 33: What is the appropriate revenue requirement for the adjusted December 31, 2019 test year?

POSITION: *****The appropriate revenue requirement should be calculated using a base revenue increase of $1,129,866 for water, as shown in Exhibit ACC-2, Schedule 1 and a base revenue increase of $2,720,043 for sewer, as shown in Attachment A hereto, which is the updated Exhibit ACC-3, Schedule 1.*

ARGUMENT: The appropriate revenue requirement should be calculated using a base revenue increase of $1,129,866 for water, as shown in Exhibit ACC-2, Schedule 1 and a base revenue increase of $2,720,043 for sewer, as shown in Attachment A hereto, which is the updated Exhibit ACC-3, Schedule 1.

ISSUE 40: Should a new Allowance for Funds Used During Construction (AFUDC) rate be established? If yes, what is the appropriate AFUDC rate and when will it be effective?

POSITION: *****Yes. The AFUDC rate should be reduced to 6.73% as of the effective date of the Final Order in this docket.*

ARGUMENT: UIF has not updated its AFUDC rate since 2004, despite the fact that interest rates have decreased since 2004. TR 299, 806-807, 810. The current AFUDC rate is excessive and is not only unduly causing current ratepayers to pay higher rates than necessary, but would negatively impact customers in the future. TR 299-301. It is unreasonable and unduly burdensome to customers to continue use of an AFUDC rate set 18 years ago, when applicable economic factors have changed and require a lower AFUDC rate.

ISSUE 41: Should the Utility's request for a Sewer and Water Improvement Mechanism (SWIM) be approved? If yes, what is the amount of the first year revenue requirement?

POSITION: *No, the SWIM idea tossed out by UIF is unlawful and the idea is not supported by fact, policy or law and should be rejected. If the commission wants to entertain the idea, it should be pursuant to legislative direction, and only then, after rulemaking.*

ARGUMENT: UIF has presented the Commission a skeletal proposal to radically eliminate customer involvement in establishing ratebase additions. A fundamental drawback of the idea is its lack of substance. Beyond that, what is known about it is not permitted by law. The sole support for the notion in the company's direct case was eight sentences contained in seventeen lines. A better description and acronym foundation would be "Details Unavailable and Mostly Missing." The Commission should reject this affront to serious regulatory policy advocacy. Instead of engaging in a meaningful effort to factually establish the existence of a problem and then discuss the policy solution(s) available to address the problem, the company intentionally withheld details and merely requested relief in the most vacuous form imaginable. The Commission, its Staff and its rate payers were all left to guess the reasons and the factual basis of this idea. There was no legal basis offered nor was there a legal analysis provided in later efforts to supplement the idea. Implementation and scope of the SWIM notion were likewise left to guesswork, with additional information cynically supplied as late as possible in rebuttal testimony and through *ad hoc* colloquies on re-direct. Stunningly, UIF admitted the SWIM proposal has nothing to do with the revenue requirement at issue in this case. TR 13; 100.

Specifically, UIF has failed to meet any burden it might have to support Commission approval of the SWIM concept. The Commission lacks authority to create alternative ratemaking methods where the legislature has already occupied that field with specific and limited authority for the Commission to establish alternative ratemaking for very small utilities, and then only by rulemaking. Additionally, the agency fundamentally cannot change its longstanding policy of establishing rates pursuant to the criteria established in s 367.081, Fla. Stat. The proposed SWIM procedure for increasing rates and making prudence determinations of ratebase additions is expressly not authorized and would be unlawful. No reviewing court would be able to conclude that the Commission possessed a lawful basis or a factual basis in the record that would support any explanation for changing Commission policy by authorizing SWIM. The index process is a creature of statute and as such cannot be misappropriated for use as an *ad hoc* rate increase mechanism. The precedents that UIF seeks to invoke are inapposite and provide no support for the creation of the rate increase mechanism.

1. SWIM is illegal.

Section 367.081, Fla. Stat. provides the exclusive means for fixing and changing rates for a Class A water and/or wastewater company, except for the specifically authorized indexes and pass-through

adjustments specified in Section 367.081(4), Fla. Stat.[24] Class C water and wastewater companies can receive Staff assistance pursuant to Section 367.0814, Fla. Stat. UIF does not qualify for this streamlined relief or process. Section 367.0814(9), Fla. Stat. further provides that:

> The Commission may ***by rule*** establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in Section 367.081 (1), (2)(a), and (3).

(Emphasis added.)

The Commission has adopted three rules pursuant to s. 367.0814, Fla. Stat. that provide for setting rates outside of the provisions of s. 367.081(1) and (2), Fla Stat.[25] The legislature has affirmatively granted the Commission very limited rulemaking authority, for small companies only, to deviate from the rate setting requirements of s. 367.081(1) and (2), Fla. Stat. Even those ratemaking procedures provide a point of entry and opportunity for hearing and require a vote by the Commission. It would be absurd to suggest that a Class A utility could bypass the statutorily prescribed procedures and the Florida Administrative Procedures Act ("APA") (Chapter 120), evade a rulemaking and a Commission vote to recover ratebase costs when even the Class C utilities cannot do so. The absence of specific authorization for Class A utilities such as UIF to benefit from alternative ratemaking mechanisms indicates that the legislature has retained unto itself the authorization to create alternative rate-setting criteria for the larger, non-SARC eligible utilities. *Ab initio* creation of a SWIM-like mechanism for any Class A utility, outside of rulemaking, is a legal non-starter. The broad authority briefly and belatedly cited in Witness Deason's non-legal, rebuttal testimony has never been construed to override specific grants of authority and the necessarily implied limitations. In any event, the requirement that alternative mechanisms for small utilities must be by rule further evinces legislative intent that the Commission cannot, in the middle of a single company's rate case, create an *ad hoc* alternative to s. 367.081(1) and (2), Fla. Stat. The Commission has recognized the principle of statutory construction of *inclusio unis est exclusio alterius* which looks to the existence or non-existence of similar statutory provisions.[26] UIF has presented no legal analysis that supports such a nonsensical authorization for its SWIM idea.

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[24]S. 367.081(1), Fla. Stat. Also, s. 367.081(6), Fla. Stat. is the file-and-suspend tariff provision that is a putative exception because rates could theoretically be initially changed without a hearing by inaction. To OPC's knowledge this has never happened.

[25]Rule 25-30.4575, F.A.C. is the operating ratio methodology rate setting mechanism that is specifically adopted under the authority of s. 367.0814(9), Fla. Stat. It applies a formula approach that ignores actual ratebase (except for a threshold qualification test) in establishing the revenue requirement for SARC-eligible utilities. UIF is ineligible for the SARC process. Rules 25-30.456 and 25-30.457, F.A.C. also limit other alternative rate setting processes to very small SARC eligible utilities.

[26]In denying an OPC motion for appointment of conflict counsel, the Commission applied the principle in noting that "Chapters 350 and 367, Florida Statutes, are silent on the provision for appointment of counsel in the event of a perceived conflict. The fact that the appointment of counsel is addressed in other statutes, but not in those related to Public Counsel, leads to our

The Company further states that it wishes to use the statutorily authorized index and pass-through mechanism for bootstrapping an annual rate increase based on a submission of invoices. TR 444, 657, 681. This is further evidence of its unlawfulness. As envisioned by UIF, the SWIM rate increase would be embedded in the pass-through and index rate factors that are reviewed and approved by Staff, and not Commissioners, in an administrative review process that would prohibit or effectively preclude meaningful intervention, discovery, prudence determinations, a point of entry, or a Commission vote. Neither the pass-through and indexing statute nor the implementation rule authorize this piggybacking. As explained by Witness Deason, this bypass of the fundamental elements of due process and the APA are the foundation for how the Company claims that it can hold down rate case expense. TR 681, 691. UIF claims they can save customers rate case expense by eliminating the customers' fundamental rights to a hearing on matters affecting their substantial interests (prudence of plant additions that increase their rates). TR 681. Assuming *arguendo* the legality of piggybacking, there is no guarantee, analysis or evidence that the SWIM would deliver ***any*** benefits to customers. UIF failed to provide any concrete evidence or analyses that there would be an actual rate case expense savings or less rate cases. Rather, Mr. Deason agreed that it is just an "intuitive" thing. TR 674, 690-696.[27] Intuition would not be a lawful or sound reason for departing from the rate case determinations of ratebase additions and prudence.

The elements of due process and protection of the customers' substantial interests are preserved in the rate cases required to be conducted pursuant to s. 367.081, Fla. Stat. and in the APA (ss. 120.57 and 120.569, Fla. Stat.). However, UIF expects to be given an exemption from statutory requirements, due process requirements, and long-standing commission prudence-determination policy by the filing of a mere eight sentences of direct testimony. TR 100. This should be rejected.

2. The SWIM idea would be reversed if adopted.

Section 120.68(7)(e)3, Fla. Stat. requires a reviewing court to reverse the Commission if it takes action that is inconsistent with officially stated agency policy or a prior agency practice, if the deviation is not explained by the Commission. Apart from the separate basis for reversal due to a clear lack of

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conclusion that Florida law does not provide for alternate counsel in this situation." Order No. PSC-96-0301-FOF-WS. See also, Order No. PSC-2001-2515-FOF-EI.

[27]Through Witness Deason, UIF could provide no concrete details about what, if any, stay-out period that would result if SWIM were to be implemented. A rather meaningless period of two years was suggested in discovery but on the stand, the Witness hedged on even that with a multitude of contingencies, rendering any stay-out concept a non-starter. TR 674-675, 678. OPC Witness Crane testified that a minimum stay-out of five years would be necessary for the concept to actually benefit customers. TR 338. The two-year, heavily hedged, "proposal" by UIF flunks that test and would render the theoretical benefit an illusion. In any event, that suggested stay-out was only offered in the now-mooted condition of a negotiated adoption of SWIM. TR 675-677; EX 197. The Commission cannot legally impose a stay-out and as Witness Deason demonstrated, they cannot rationally estimate one either.

authority to depart from the mandatory statutory method for establishing the prudence of, and method for recovering the cost of, plant additions, the Commission has no record basis to explain such a departure. Eight sentences are no explanation at all. Witness Deason only sketched out the desired departure from Commission policy. He gave no competent substantial evidentiary basis for supporting the departure in his direct testimony. The rebuttal testimony was likewise devoid of facts. It was replete with the merely aspirational, empty, marketing phrases like "more efficient," "less costly," "significant savings," "greatly reduced," "occur less frequently," "significant amount of aging infrastructure," "achieve better unit pricing," "better able to utilize," and "less rate cases." TR 587-590. Absolutely none of the phrases contained any substantial basis of a single actual fact. This is not competent substantial evidence.[28] The Commission could not demonstrate to a reviewing court that it had received any competent substantial evidence in justification as, when asked, Mr. Deason admitted that no cost analysis was done to support most of these claims. TR 690-696. For the others, he did not provide any facts on his own. Given this state of the record and the law, if it attempted to implement the SWIM idea, the Commission would simply be unable to explain the reason for the departure or why there is none. UIF's "spaghetti-against-the-wall," approach must be rejected.

3. UIF failed to meet its burden of proof to justify SWIM.

Witness Deason did confess to understanding that UIF has the burden of proof to convince the Commission to adopt SWIM. TR 99. Instead of demonstrating a sense of urgency and gravity that would provide a compelling case to support SWIM, Mr. Deason was nonchalant in explaining why the putative rational and legal basis was not provided until the rebuttal round. This exchange with Commissioner Brown ensued:

> COMMISSIONER BROWN:
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> ***
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> Why did you not address this in the direct, because as it is the utility's burden to prove all the -- (inaudible) – justify in the direct.
> THE WITNESS: Because I wanted to see what -- I wanted to lay out the general format there and then allow Staff and OPC an opportunity to ask specific questions so I could therefore answer those specific questions. I

[28]Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion ... We are of the view, however, that the evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. To this extent the "substantial" evidence should also be "competent." *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

> thought that was just a more efficient way of getting the information out there.
> COMMISSIONER BROWN: Well, often, you know, the testimony -- the prefiled testimony in these type of proceedings speaks for itself, but in the direct, it doesn't really tell us the need or the purpose of the program on the direct; nor does it tell us the Commission's authority to implement a new cost recovery program, which only seems legislative in format; nor does it talk about the reason or the comparison to the GRIP program, which was developed over years of federal mandates changing out cast iron pipes, infrastructure. I just don't -- I don't know the -- the need here. And again, this is your direct testimony, so I am giving you an opportunity to address that to the Commission.

TR118-119. These questions were never answered.

It defies logic that at a time when a utility seemingly wants the Commission to take a huge leap in re-writing Chapter 367, it resorts to holding back evidence,[29] sandbagging, and coyness in trickling out the rationale and purported legal basis for the requested change. This severely undermines the supposed need for the statutory and policy departures.[30] The Commission should send a strong signal that, contrary to the suggestion of Mr. Deason, it is not the burden of the Commissioners, Staff or OPC to extract details for such an extraordinary request. Rejection is the best way to send that signal.

On rebuttal UIF trotted out a slightly less skeletal proposal with suggested Commission precedent from the gas and electric industries and a single, unrelated anecdotal sewage spill from a municipal utility. Gratuitous and factually unsupported assertions about aging infrastructure, efficiency, cost savings and rate case savings are sprinkled through three to four pages of the rebuttal. The precedential citations are inapposite, the municipal sewage spill is irrelevant, and the factual bases do not exist. These are discussed in more detail following.

4. GRIP cannot be a precedent for SWIM.

UIF suggests that its request is supported by the Commission's consideration and approval of a highly fact- and law-specific rider created in 2012 to address an urgent explosion-prevention federal safety program to replace specific types of gas pipelines. The GRIP (or Gas Reliability Infrastructure Program)

[29]The rate case application (which is not evidence) was filed contemporaneously with Mr. Deason's direct testimony and contained phrases consistent with notions of justification presented in rebuttal. TR 111-117; EX 187. Compare red language in Exhibit 188 with TR 111-117.

[30]One of the most palatable contradictions and frustrations of UIF's cynical approach to stringing the Commission and customers along is that they have alleged (with no evidence) that their proposal will save rate case expenses (IF they can unlawfully shoehorn it into the indexing and pass-through process). The cruelest irony is that by filing eight barren lines of testimony and forcing Commissioners, Staff and OPC to dentally extract details on an issue that UIF admits has absolutely no impact on customer rates in this case, UIF is actually incurring rate case expense. TR 13; 100; 703.

was approved for Florida Public Utilities and Chesapeake Gas by vote on August 14, 2012 immediately following and in conjunction with the approval of a nearly identical program for People Gas System ("PGS") for its Cast Iron/Bare Steel Pipe Replacement rider (Rider CI/BSR).[31] These standalone and highly specific riders were approved with the tacit agreement of the OPC. TR 644; 662-668; EX 202, 203. The PGS petition was filed in 2011.[32] UIF's desperate attempt to find precedent is seen in the after-the-fact suggestion that the GRIP process is an exemplar for its proposal. If GRIP was the inspiration for SWIM, why was it not supplied in the direct case? It begs the further question: if SWIM is such a sound idea why did UIF not provide the evidence and rationale in its direct case in order to allow the Commission to understand the exigency of departing from the ratemaking statute? The answer is that it cannot be legally or factually justified, it cannot withstand the glare of scrutiny and it is not a good idea.

The GRIP is a highly specific, unique approach to a highly specific and well documented problem. Unlike UIF's SWIM idea, the CI/BSR and GRIP cost recovery mechanisms were a specific response to a documented imminent safety risk in the transportation of a highly combustible product that was subject to a concrete federal requirement and program (Distribution Integrity Management Program or DIMP). TR 643. EX 202-203. No such circumstance(s) exist or were demonstrated in evidence by UIF. TR 648, 672.[33] Significantly, the GRIP and CI/BSR mechanisms were established with a ten-year duration.[34] The UIF approach was slapped together with no limitation on duration. In addition, UIF only belatedly proposed that its cost recovery can be vaguely limited to something called "linear infrastructure." TR 589. No specifics as to what this catch-all generalization encompasses was provided beyond "things that are below ground." TR 690. This is useless as a limitation and would unlawfully delegate to the utility the unbridled discretion to set its own rates by whimsy.

The CI/BSR and GRIP authorizations establish a projection and true-up, petition-based mechanism that accommodates intervention by customers, discovery and opportunity for hearing on prudence of all investments. UIF's SWIM proposal would cut all of that out and have Staff – and not the Commission – approve the math and eliminate intervention, discovery, due process and hearing opportunities as well as any Commission vote on prudence. UIF touted its after-the-fact invoice presentation as a selling point, but

[31]Docket No. 20110320-GU; Order No 2012-0476-TRF-GU.
[32]The publicly available information on the Commission's website indicates that the PGS petition was filed on December 14, 2011.
[33]Mr. Deason' answers of "no," on TR 672, Lines 10 and 16, should have effectively been "yes" as acknowledged at TR 718.
[34]The CI/BSR program was extended on a limited basis to address a new type of dangerous pipe that had been identified by the federal regulator (PHMSA) known as PPP or Problematic Plastic Pipe. The pipe was specifically identified by manufacturer and vintage. PGS's pipe was identified and the mechanism was authorized to cover PPP by a settlement entered into by PGS and OPC. Order No. PSC-2017-0066-AS-GU at 10-13.

the opposite is true. The look-back approach is *indicia* of two SWIM infirmities. If the company presents historical invoices, it demonstrates lack of need for the mechanism, and further demonstrates that additions would have been made with no risk of disallowance or prudence review. The second aspect is more problematic as it would violate s. 367.081 and ss.120.59 and 120.569, Fla. Stat.

A crucial comparative gap between GRIP and SWIM is found hiding in plain sight in Witness Deason's rebuttal. He noted, without comment, that in the GRIP order the Commission said "[he]ere we are approving a similar surcharge, for a ***discreet period***, due to ***unusual circumstances***."[35] (Emphasis added). TR 586, 650-651; Order No. PSC-2012-0490-TRF-GU at 11. These elements were discussed at the same agenda approving both CI/BSR and GRIP.[36] UIF has provided no evidence of unusual or urgent circumstances while failing to provide a time limitation. Both elements of the GRIP (and CI/BSR) order were important to their authorization without litigation. Similarly, the Commission emphasized in the GRIP order that "[i]t is clear that we have the authority under our broad ratemaking powers found in Sections 366.04, 366.05 and 366.06, F.S. To establish this type of surcharge to recover a discreet set of costs incurred in response to unusual urgent circumstances." TR 586; Order No. PSC-2012-0490-TRF-GU at 10. The terms "surcharge," "unusual," and "urgent" are each materially significant in GRIP and CI/BSR and do not apply to SWIM. GRIP and CI/BSR are temporary mechanisms specifically designed to recover delimited and defined plant costs. Mr. Deason acknowledged this. TR 648. No such limit is presented in the SWIM; it would be interminable with no defined plant. TR 648; 672. Additionally, there is nothing unusual or urgent shown to exist in the UIF idea. In approving the CI/BSR and by extension GRIP, the Commissioners expressly noted the urgency related to deaths and explosions and the exigency behind the actions of the Federal regulators. EX 202, 203. For SWIM, there is neither urgency nor regulation nor a regulatory agency that has identified an imminent harm or risk of immediate death or injury if so-called "linear facilities" are not modernized at UIF's unbridled whim. TR 672. GRIP does not justify SWIM.

[35]The reference to a similar surcharge was to two storm surcharges for FPL and Progress Energy for discreet periods due to unanticipated storm costs (citing to Order No. PSC-2005-0937-FOF-EI and PSC-2005-0748-FOF-EI. The surcharges were time-limited, for three and two years respectively and were for the severe damage caused by four hurricanes in the 2004 season. The storm surcharges were acknowledged by the Legislature in its authorization to securitize the revenue from the surcharge(s) authorized by the Commission "separate and apart from the electric utility's base rates" under the aforementioned orders. Section 366.8260(1)(m), Fla. Stat.

[36] See Exhibit 202 at 4 (OPC counsel discussion regarding limitations and supporting the safety benefits); 8 (PGS counsel discussion regarding ten-year period; will not last forever); 9 (Commission discussion of disasters and fatalities); EX 203 at 6 (Commission acknowledgement of "priority" of the federal regulator).

The tacit agreement by the OPC on the gas company riders is significant because it was clear that the OPC had expressed an objection to the creation of a rider that it contended would invade the domain of the Legislature to determine ratemaking mechanisms that include prudence determinations. EX 202 at 4, 7-8. In voicing its concerns and outlining conditions necessary to avoid a hearing on the GRIP and CI/BSR riders, the OPC referred to a prior PGS rate case, Order No. PSC-2009-0411-FOF-GU ("2008 PGS Order"). Counsel for PGS acknowledged this concern and objection. *Id*. In rejecting PGS'S efforts to create two riders in that rate case, the Commission expressed several concerns that are relevant here.

In rejecting the GSR (Gas System Reliability) Rider, the Commission did not explicitly address the legal objection raised by OPC.[37] However, it did decline to authorize the GSR by noting a limited proceeding could be brought for such costs, with a point of entry. 2008 PGS Order at 45. Directly relevant to SWIM, in rejecting the other (CCR (Carbon Reduction Rider)), the Commission highlighted a concern about the review process PGS envisioned. In commenting on the proposed short cut process -- eerily similar to the index/pass-through bootstrapping UIF suggests -- the Commission stated that the implication was that the agency "could check the calculations, but the utility would not specifically seek Commission approval of the projects, per se. The ***lack of review of prudence of the projects*** gives us pause in passing the costs on [sic] the ratepayers through a clause." (Emphasis added.) PGS 2008 Order at 48. These concerns apply here. Piggybacking the SWIM filings onto the Staff's administrative processing of the statutory indexing and pass-through filings only provides calculation checking and compliance with the unknown categories of costs. No point of entry or prudence review would occur. TR 657,740. OPC expert Radigan expressed a concern with this deficiency as well. TR 444. In 2008 the Commission denied the CCR rider to avoid encroaching on the legislative prerogative to create asset recovery clauses:

> We also agree with OPC and FIGU that approval of the CCR may constitute imprudent regulatory policy. ***The purpose for all existing cost recovery clauses is to allow utilities to recover costs which are volatile and which are outside the control of the utility.*** Decisions ***on when and where to expand facilities are entirely under the control of the utility.*** PGS's management, not ratepayers, should bear the cost and responsibility for decision [sic] on expansion of the Utility. We also agree with OPC that we should move cautiously in ***approving collection of capital costs outside a rate case.*** OPC notes that the Legislature has already seen fit to explicitly address other areas where capital costs have been approved for recovery outside a rate case. If expansion of gas infrastructure is necessary or

[37]The OPC had argued that the Legislature had authorized two clauses for recovery of capital costs (ECCR and NCRC) and that a Commission-established rider for such costs in PGS's case would be contrary to the Legislative policy that they establish asset recovery mechanisms.

> desirable to meet state goals as noted by Witness Binswanger, ***it may be more appropriate for PGS to seek legislative approval first.***
>
> For the foregoing reasons, we find that PGS has not demonstrated the need for treatment of these costs outside a rate proceeding. ***Further, we find that there are insufficient safeguards built into the Carbon Reduction Rider, as proposed, to adequately protect ratepayers from imprudent expenditures.*** PGS's request is therefore denied.

PGS 2008 Order at 48-49.

SWIM would be the exact ratemaking departure that the Commission rejected in 2008. No prudence review is allowed for or contemplated under the notion of SWIM due to the way the SWIM costs would be embedded in the pass-through and indexing factor. TR 657, 740. No unusual or urgent circumstances exist that could support a statutory departure, even if they possessed the authority to do so (which they do not).[38] Given the amount of detail unavailable or mostly missing in the eight sentences of direct testimony, it would be entirely up to UIF to decide when and where to replace facilities. Furthermore, given the legislative enactments creating clause recovery for assets with governing standards noted in the 2008 order, as well as the very recent 2019 creation of the Storm Protection Plan Cost Recovery Clause,[39] the Commission should decline UIF's invitation to encroach upon the Legislature's role in establishing asset recovery.

The OPC's objections sustained by the 2008 Commission are central to the highly specific nature of the GRIP Order and they highlight the very narrow scope of the GRIP and CI/BSR Rider decisions. The dialogue between counsel for PGS, Chesapeake and OPC demonstrate that there was a history and an interrelatedness among the GRIP and CI/BSR cases and a direct linkage to the 2008 PGS Rider decisions. EX 202, 203. There were heavily documented legal, factual and regulatory reasons for the OPC to stand down and not to contest the exceptional rider in the face of its strong opposition to the Commission-created rider. "Urgent" and "unusual" circumstances are documented in the GRIP and CI/BSR orders.[40] These circumstances do not exist in UIF's case.

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[38]As noted above, since the Legislature only created such exceptions (and then only if done by rulemaking) for very small companies, that authority does not exist for UIF and the Commission possesses no power to create one specially for them (or anyone else).

[39]See s. 366.96 Fla. Stat., requiring the Commission to adopt rules implementing that statute. The rules govern the types of costs that may be recovered and implement the legislative proscription against double recovery. This SWIM notion has no such protection in it.

[40]The OPC does not contend that its objections control the Commission's decisions. A contested GRIP or CI/BSR order may well have led to the same outcome. However, the OPC submits that the "negotiated resolution" circumstances that are demonstrated in EX 202 and acknowledged by Mr. Deason (TR 644) as well as the highly specific exigent circumstances

5. GBRA and SoBRA are not precedents for SWIM.

An adjunct to the GRIP order offered by UIF as precedent was an after-the-fact and casual nod to the Commission orders authorizing GBRA (Generation Base Rate Adjustment) and SoBRA (Solar Base Rate Adjustments) authorizations.[41] Like the GRIP and CI/BSR authorizations, these specific ratemaking mechanisms were products of negotiations and settlement, just more formalized. But the similarities stop there, since the negotiated GBRA and SoBRA provisions were formalized and embedded in comprehensive settlements with give-and-take on multiple issues. All settlements containing these mechanisms were entered with the provisions contained in Commission orders approving them in their entirety with similar language:

> ***No Party will assert*** in any proceeding before the Commission that this 2017 Second Revised and Restated Settlement Agreement or ***any of the terms in the 2017 Second Revised and Restated Settlement Agreement shall have any precedential value***.
>
> ***
>
> It is the intent of the Parties to this 2017 Second Revised and Restated Settlement Agreement that ***the Commission's approval of all the terms and provisions of this 2017 Second Revised and Restated Settlement Agreement is an express recognition that no individual term or provision, by itself, necessarily represents a position, in isolation, of any Party … because of that Party's signature herein***.

Order No. PSC-2017-0451-AS-EI at 57-58 (DEF 2017). (Emphasis added.) By themselves, these (GBRA or SoBRA) provisions have no standalone precedential value and cannot be a source of support for SWIM on that basis.[42] Beyond that infirmity, the SWIM idea has no relationship to the GBRA and SoBRA provisions.

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supporting GRIP and CI/BSR ratemaking exceptions, isolate them from being used to foment an ill-advised, unsubstantiated and unlawful exception to established ratemaking.

[41]Witness Deason appeared to distance himself at hearing from reliance on GBRA and SoBRA "precedents." Regardless, for avoidance of doubt, since he specifically "threw those" mechanisms in his rebuttal, the company's reliance on them is being addressed. TR 698.

[42]The limitation in the settlement agreement language does expressly at least prohibit a "Party" to the settlement from asserting any provision (such as the GBRA or SoBRA) constitutes a precedent or attributing the inclusion in the settlement to an agreement by a signatory to their agreement to such a provision on a standalone basis. This specificity does not mean that non-signatories are free to use the provisions in a way that the settling parties are prohibited from doing. In fact, non-signatories are bound by the terms of a settlement agreement if they have had the opportunity to challenge it and fail to do so, and administrative finality has attached. *Fla. Indus. Power Users Grp. v. Brown, 273 So. 3d 926,* at 929-930 *(Fla. 2019).* In any event it would be illogical to allow non-signatories to have greater rights than the signatories in this regard to pirate standalone provisions of an inter-related whole.

As Witness Deason acknowledged, the only GBRA and SoBRA provisions to-date have been a product of settlement. TR 703-709. He also acknowledged that all of the GBRAs had defined facilities identified, costs determined, and had identified revenue requirements. *Id.* SWIM shares none of these fundamental features. The GBRAs were highly specific to a certain asset, time-bound and all completed. TR 712-713. SWIM has nothing in common with these provisions.

In a similar vein, the SoBRAs have a four-year life and cost caps on the specific assets spelled out with highly specific criteria. TR 715; Order Nos. PSC-2016-0650-AS-EI (FPL), PSC-2017-0451-AS-EI (DEF) and PSC-2017-0456-S-EI (Tampa Electric). The SoBRAs were also the product of settlements with approval conditions designed to wall them off from a cottage industry of make-it-up-as-you-go, freeform ratemaking proposals like UIF's SWIM. Just like the GBRA, the SoBRA cannot form a legal basis for an unexplainable departure from the Commission's ratemaking statutes and policies.

6. If it was not otherwise unlawful, SWIM would have to be adopted by rulemaking.

Were the Commission to have the authority to create it – which it lacks – SWIM would only be possible if it were the proper subject of a rulemaking. In its skeletal outline of the proposition, UIF provided nothing to indicate that the eight sentences that found their way into testimony was unique to them. In fact, the vehicle that UIF wants to use to evade customer input and prudence reviews – the pass-through and indexes process – are themselves governed by rules.[43] These rules apply to all water and wastewater utilities. Adopting a non-rule, policy of general applicability just for UIF with no record basis for such a limitation would be a violation of s. 120.54(1)(a) and (a)2.b, Fla. Stat. Witness Deason did not provide any basis for isolation of such a non-rule, policy of general applicability just to UIF such that it would be exempted from the mandate of rulemaking. In fact, one of the greatest ironies in this case is that while purporting to borrow provisions from an entirely different industry under urgent conditions which have no similarity to UIF, their Witness has the temerity to suggest that the Commission would or could prevent the other 130 identically situated water and/or wastewater utilities with "aging" "linear infrastructure" from using the SWIM device. He testified, while providing zero evidence of unique circumstances:

> I think that each individual water or sewer company would have to individually request this kind of mechanism. It wouldn't just be blanket, apply to everybody. So if the Commission were to approve it in this rate case, it would apply just to UIF.

[43]See rules 25-30.420 and 25-30.425, F.A.C.

TR 110. This grossly contradicts the thoroughly misguided effort to rely on GRIP and CI/BSR (and GBRA and SoBRA) and exposes how little UIF thought through the legality of SWIM. In any event, the suitability of the issue for rulemaking, assuming *arguendo* its legality against other challenges, illustrates yet another reason the Commission should reject it.

7. Unrelated sewage spills in Ft. Lauderdale do not support SWIM.

The passing reference to the sewage spill(s) in Ft. Lauderdale in the belated direct testimony disguised as rebuttal was not accompanied by a demonstration of any nexus to conditions at UIF. Mr. Deason did not demonstrate that the company was experiencing unique and urgent circumstances like those in Ft. Lauderdale that would single out UIF for special treatment.[44] He could not say if the spills were the product of aging pipe, human error or above ground facilities. He just offered an unsubstantiated comparison in rebuttal. Curiously, the Ft. Lauderdale sewer spill specter would seemingly have no bearing on the UIF ***water*** utility's "aging" "linear infrastructure." Even that failed attempt to analogize the safety threat of gas explosions with neglected municipal sewage spills fouling the environment breaks down when it comes to freshwater breaks.

8. Improper efforts to bolster SWIM on rebuttal re-direct should be discarded.

The OPC objects to the unsubstantiated and guided oral "testimony" on rebuttal portion of re-direct, proffered by Witness Deason. UIF intentionally held back crumbs of support for its proposal admittedly available at the time of direct (TR 115-117) and then sprinkled them into rebuttal as unsubstantiated suggestions and anecdotes. TR 587-590. The further solicitation of the new "information"

[44] If anything, the sewage spill in Ft. Lauderdale was more analogous to the overflow spillage that occurred from ***above-ground facilities*** near the Wekiva River. It is important to note that none of the compliance issues at Wekiva are related to the underground "linear infrastructure" (or any "aging" of it) that UIF implies (but provides no information to support beyond a cursory reference to the Ft. Lauderdale municipal utility situation) is an imminent risk for UIF and for which they claim to need a separate cost recovery mechanism to mitigate. PCF-23 is related to the consent order UIF entered into in 2020 and the justification and benefits describe the violation as being related to a jammed Vulcan screen. EX 117. In any event Witness Crane, a resident of Ft. Lauderdale, testified in response to a direct question from UIF counsel, that the of the reasons for the spills in Ft. Lauderdale was rooted in syphoning away available funds from the problematic maintenance needs. TR 330-331. Other UIF regulatory compliance embarrassments highlighted failures in ***above-ground*** infrastructure such as an improperly maintained berm and loss of power at a lift station. EX 86; TR 27-28; CSH 1/7. Interestingly, none of these failures were blamed on "aging" linear infrastructure. Glaringly, human error seemed to be more to blame. While UIF claims that the SWIM mechanism is necessary to prevent similar sewage spill issues, it is clear that the mechanism would have no bearing on the types of issues that have occurred in the Wekiva area, particularly if the mechanism were to be focused on the replacement of "linear infrastructure" as Witness Deason suggests. TR 656.

on re-direct (TR 739-746) would be otherwise comical were it not intended to support the creation of an unlawful mechanism.

No competent, substantial, factual evidence as to the actual facilities that would be the subject of SWIM was provided in this session either. The rehabilitative answers solicited failed to provide any support for SWIM. By reinforcing yet again that the SWIM rate would be embedded in the index and pass-through factor, the Witness confirmed that the Commission would not be making a prudence determination. TR 740. Further vague and unsubstantiated effort to link sewage spills in general to an unsubstantiated problem in UIF's infrastructure was merely repeated with no facts presented to back them up. TR 740, 742.[45] In contrast to the specifics of the GRIP and CI/BSR orders, Witness Deason agreed with UIF counsel's leading question that UIF would be "looking into" the useful life of facilities that would be presumably the subject of the company's fuzzy and discretionary inclusion in the invoices to be presented for Staff's review. TR 740-741. Despite the last second, frantic hodgepodge of testimony on rebuttal re-direct examination that such a process has been ongoing "for several years," (TR 741) UIF apparently could not have been bothered to actually present the results of this years-old "evidence" as a part of their eight-sentence direct case in support of its requests – or even on rebuttal. Perhaps most egregious among the gusher of last minute "evidence" were the rank generalizations and anecdotes about what other states might be doing. TR 741. Despite Witness Deason's claim to Commissioner Brown about backloading all the details into rebuttal to make the process "efficient," neither the Commission nor OPC were provided any prefiled testimony that could be subject to discovery and cross-examination regarding the claimed factual similarities of such non-Florida programs or the legal framework in other states that might have authorized them in contrast to the prohibitory situation here in Florida. Whether or not further last-second details surface in briefing, such sandbagging on re-direct is improper, a denial of due process and more importantly cannot form the basis of approval or an end-run around the statutory requirements for including prudent ratebase additions in customer rates.

UIF's desire to create jobs and aid "economic development," does not support the creation of alternative ratemaking. Moreover, UIF has not threatened that it will withhold replacing "aging" "linear" infrastructure if they are denied their SWIM idea. In any event, Witness Deason claims UIF has been

[45]OPC engineering expert Radigan pointed out that UIF has added over $100 million in plant with no trouble over the past five years. The only spills that have been presented in evidence are ones from above-ground facilities as the result of human error and not "aging" infrastructure. See also footnote 44.

doing this work all along, so the jobs will be created regardless of the recovery mechanism. Job creation cannot be a basis for authorizing SWIM.

For all the reasons stated above SWIM is unlawful and unsubstantiated and should be declared DOA and summarily denied.

ISSUE 42: In determining whether any portion of the interim increase granted should be refunded, how should the refund be calculated, and what is the amount of the refund, if any?

POSITION: *The refund should be calculated in accordance with the Commission's findings and the rates established in this case.*

ARGUMENT: The refund should be calculated in accordance with the Commission's findings and the rates established in this case.

ISSUE 44: Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Utility Commissioners (NARUC) Uniform System of Accounts (USOA) associated with the Commission approved adjustments?

POSITION: *Yes.*

ARGUMENT: Yes**.**

ISSUE 45: Should this docket be closed?

POSITION: *****No, the docket should remain open to ensure the Commission Ordered Adjustments are done appropriately.*

ARGUMENT: No, the docket should remain open to ensure the Commission Ordered Adjustments are done appropriately.

Dated this 23rd day of February, 2021

Respectfully submitted,

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/s/Stephanie A. Morse

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Attachment A

Docket No. 20200139-WS
Exhibit ACC-3
Schedule 1
Page 1 of 1

UTILITIES, INC. OF FLORIDA - SEWER
TEST YEAR ENDING DECEMBER 31, 2019
REVENUE REQUIREMENT SUMMARY

	Company Claim (A)	Recommended Adjustment	Recommended Position	
1. Pro Forma Rate Base	$89,747,182	($14,371,802)	$75,375,380	(B)
2. Required Cost of Capital	7.89%	-1.16%	6.73%	(C)
3. Required Return	$7,080,225	($2,010,646)	$5,069,579	
4. Operating Income @ Present Rates	2,290,839	818,088	3,108,927	(D)
5. Operating Income Deficiency	$4,789,386	($2,828,734)	$1,960,652	
6. Revenue Multiplier	1.3633	1.3633	1.3873	(E)
7. Required Revenue Increase	**$6,529,383**	**($3,809,340)**	**$2,720,043**	

Sources:
(A) UIF Filing, Schedule B-2, Page 1.
(B) Exhibit ACC-3, Schedule 3.
(C) Exhibit ACC-3, Schedule 2.
(D) Exhibit ACC-3, Schedule 9.
(E) Exhibit ACC-3, Schedule 27.

CERTIFICATE OF SERVICE
Docket No. 20200139-WS

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Post-Hearing Brief has been furnished by electronic mail on this 23rd day of February 2021, to the following:

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